

Check Against Delivery

STATEMENT BY

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Cluster II

(VI (Protection of the atmosphere) and VII (Immunity))

VII – Immunity of State Officials

1. Mr Chairman, I will make a few remarks on the topic of immunity of state officials from foreign criminal jurisdiction.
2. Let me first extend my compliments to the Special Rapporteur, Professor Concepción Escobar Hernández, for her fifth report on this topic. I shall limit my comments to draft Article 7.
3. We welcome the increased attention to national legislative practice in the fifth report of the Special Rapporteur. As we have stated before, national legislation, in addition to national court decisions, is highly relevant for the determination of the existence of a rule of custom. My Government would support the Special Rapporteur's view that there is a trend towards the recognition of exceptions to immunity
at the international and national level. Indeed, my Government would support this trend.
4. Therefore, my Government welcomes the concept as proposed in draft Article 7, on crimes under international law, in respect of which immunity
shall not apply. It is the position of the Kingdom of the Netherlands that international crimes fall inherently outside the scope of acts in official capacity and therefore should not be susceptible to the plea of immunity.
5. Nevertheless, my Government shares the concerns of some members of the Commission regarding the choice of the Drafting Committee to include a limitative list of crimes. This list includes important crimes, but leaves out other crimes under international law, such as the crime of slavery. Also, the inclusion of a list of crimes will hamper the development of the notion of crimes under international law to which immunity would not apply. We would therefore prefer a general reference to 'international crimes' as the crimes to which the immunity
shall not apply. This will allow for the interpretation of

