

Check against delivery

**72st Session of the General Assembly of the United Nations
Sixth Committee**

Agenda item 81

**International Law Commission
Report on ILC's 69th Session**

Chapter VII Immunity of state officials from foreign criminal jurisdiction

**Speech delivered by Mrs. Alina Orosan
Director General for Legal Affairs
Ministry of Foreign Affairs**

New York, October 2017

Chapter VII Immunity of State officials from foreign criminal jurisdiction

The sensitivity of the question of limitations and exceptions to the immunity of State officials from foreign criminal jurisdiction was mirrored by another vivid and wide-ranging discussion within the Commission, following last year's partial debate on the same topic.

We express our appreciation to the Special Rapporteur, Ms. Conception Escobar Hernandez, for her rich report and for her efforts in further advancing considerations on this important subject.

We take note of the Commission's decision to deal with this issue from the perspective of both codification and progressive development of international law. Against this backdrop and in light of limited relevant practice and *opinio juris*, we appreciate the more cautious approach exercised in proceeding towards a decision on draft article 7.

As stated last year, we were in favour of making a distinction between *immunity ratione personae* and *immunity ratione materiae* for the purpose of the exercise of foreign criminal jurisdiction, on the premises that immunity as a procedural mechanism to guarantee respect for sovereign equality of States should not undermine values and principles recognized by the international community as a whole. Therefore, we saw merit in identifying the acts which, even if performed in an official capacity, cannot fall within the *immunity ratione materiae* and, as a consequence, could be prosecuted under foreign criminal jurisdiction once the *immunity ratione personae* has ceased.

Taking into account the dissenting views on the category of crimes proposed for inclusion in this draft article, we appreciate the approach followed by the Commission to circumscribe such limitations and exceptions to a prescriptive list of the most serious crimes under international law for which there is a broad international consensus on their definition and which are also prohibited by customary international law. In this context, we welcome the clarifying addition that the reference to a specific treaty for the definition of each of these crimes is included only for the reasons of convenience and appropriateness and in no way affects the other relevant rules of customary or treaty-based international law.

We agree that the lingering uncertainty over the scope of immunity requires the guiding work of Commission. However, as we move forward, we need to carefully consider the risk of inter-State tensions by asserting limitations and exceptions to immunity that States are not expected to accept by means of a treaty and for which there is no sufficient and coherent State practice.

Therefore, in view of the potential of clearly defined procedural safeguards to prevent abuse in the exercise of jurisdiction by other States, we look forward to the next report of the Special Rapporteur on

This concludes my remarks on the second cluster of topics.

Thank you.

