Report of the International Law Commission on the work of its seventy-third session (Agenda item 77)

Cluster 2

Chapter VI (Immunity of State officials from foreign criminal jurisdiction) and Chapter IX (Sea-level rise in relation to International Law)

Mr. Chairman,

In the interest of time, my delegation will deliver an abbreviated version of its statement. The full statement will be made available for publishing on the website of the Committee.

Immunity of State officials from foreign criminal jurisdiction (Chapter VI)

Mr. Chairman,

We thank Ms. Escobar Hernández, the Special Rapporteur, for her work on this very important subject during her tenure in the Commission and we congratulate her and the Commission on being able to conclude the first reading of these Draft Articles.

At the same time, we believe the momentum achieved should not be lost, and

Mr. Chairman,

Portugal has throughout the years advocated that the Draft Articles should translate a careful balance between, on one hand, an understanding of immunity as essential to protect the legitimate interests of the State and, on the other hand, a rights-based approach centered on the individual and that is not complacent with the commission of core international crimes for which no immunity should be accorded.

Portugal believes the Draft Articles in its current version are balanced *and* successfully respond to the concerns the Commission has outlined in paragraphs 5 to 9 of its Commentary.

Considering it has been achieved such balance at first reading already, it is important in our view to clarify how to proceed, namely on what to recommend to the General Assembly.

As the Commission has pointed out in paragraph 2 of its Commentary, the Commission has along its history approached the issue of immunity from multiple angles and with multiple objectives. From those debates resulted *the Vienna Conventions on Diplomatic Relations and Consular Relations, the Convention on Special Missions, and the Vienna Convention on the Representation of States in their Relations with International Organizations of a Universal Character. All of these are legally binding instruments which mainly codified customary international law.*

Thus, we believe the issue at hand does not present such specificities that would dictate a departure from previous practice. Rather we should be coherent with that practice and proceed to the Second Reading having in mind a recommendation towards using these draft articles as basis for a future international treaty.

Mr. Chairman,

Looking now to the particulars of the Draft Articles, we are encouraged by the solution achieved to preserve the status of international courts. As we have previously said in this forum, international criminal tribunals are vital in the fight against impunity for the most serious crimes of international concern. We believe that the new paragraph 3 of draft article 1 is liable to achieve three very important goals: firstly, to highlight the independence of the regimes applicable to immunity before national criminal courts and from international criminal tribunals; secondly, to safeguard the application of the legal frameworks applicable to the functioning of the latter; thirdly, to present a text applicable to all States.

Mr. Chairman,

We also take note of the introduction in this draft of Part Four, regarding procedural provisions and safeguards. My delegation understands this as a step towards compromise and as a possible reassurance against misuse of proceedings against State officials. Ensuring that these procedural safeguards are part of international law will have a beneficial impact far surpassing the limits of this instrument.

We commend the Commission for making good use in this Part of best practices regarding this issue, as well as for drawing on comparable instruments such as the Vienna Convention on Diplomatic Relations.

Mr. Chairman,

We take further good note of the introduction of a dispute settlement clause, which we believe is useful, regardless of the nature of the final outcome of the work of the Commission in this topic, and which puts this instrument in line with instruments on similar matters.

Draft Article 18 as proposed by the Special Rapporteur is a good starting point for the discussion by establishing a system for the settlement of disputes divided into two consecutive phases: negotiations and recourse to arbitration or the International Court of Justice.

Mr. Chairman,

To conclude, Portugal looks forward to the second reading of these Draft Articles. We hope we will be able to build on the good work of the Commission.

Chapter IX: Sea-level rise in relation to International Law

Mr. Chairman,

Allow me to now

-Level Rise in relation to International

Commission for reconstituting the Study Group on sea-level rise.

Portugal would like to convey its appreciation to the Co-Chairs of the Study Group on issues related to statehood and to the protection of persons affected by sealevel rise, Ms. Patrícia Galvão Teles and Mr. Juan José Ruda Santolaria, for the Second Issues Paper and for providing a selected bibliography on the topic. We would also like to thank all other members of the Study Group for their active this cussions during the present session.

Portugal underlines the importance of urgently address the legal questions concerning the mul.32 841.40 1 305.33 20.10klegal questions

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