

STATEMENT BY  
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isolation, as if it were a self-



indicates that immunity entails immunity for both official and private acts. Without such far-reaching, full immunity the persons entitled to personal immunity could not perform their functions.

8. But the Explanatory Memorandum also indicates that, in general, rules of international immunity law have gradually become less absolute and more relative, for example by accepting that heads of state and government and foreign ministers, after they have ceased to hold office will no longer enjoy immunity for private acts committed while in office.
9. This trend towards more limited immunity has continued in the Netherlands in recent years. Last year the independent Advisory Committee on Issues of Public International Law (CAVV) has presented a report on the immunity of

10. The second question raised

Mr. Chairman,

12. Turning to the topic of the Provisional Application of Treaties, we note the decision of the Commission to include this topic in its Work programme. We read the report of Special Rapporteur Gómez-Robledo and the ensuing discussion in the Commission, with interest.
13. It is clear from the many points addressed by the Commission, that the identification of the issues to be covered is still in the initial stage. The decision to take Article 25 of the Vienna Convention of the law of treaties and its ~~as the starting point makes sense, and we would welcome an analysis of the customary status of article 25, since, as yet, only 128 States~~ as the starting point makes sense, and we would welcome an analysis of the customary status of article 25, since, as yet, only 128 States

application and, if so, on what conditions and to what extent. It may be difficult to draw any general rules from this diversity. We therefore call into question, for example, whether the ILC should take up questions such as which organs would be competent to decide on provisional application. This would seem to surpass the mere stock-taking of state law and practice. In the same vein we would advocate, at least at this stage of the discussions, that the ILC-study on this topic should result in guidelines and model clauses rather than in draft articles.

Mr. Chairman,

15. It is with pleasure that I now turn to address the ILC's initial steps in discussing the formation of customary law. We would like to commend the Special Rapporteur, Sir Michael Wood, on his introductory steps, highlighting the key questions in this field. The formation of customary international law is a complex matter. It is elliptical, and those of us who have tried to teach the subject know that this is difficult and at times untransparent.



16. States may at times have an interest in not being too specific about which rules they would consider to be rules of customary law, or how such rules have come to be customary law. The evaluation of the formation of a customary law rule will normally take place behind closed doors. Clarity will often only appear if a particular situation specifically calls for a determination. While there may be academic interest, there is often no need for precise or explicit determinations, which suggests the absence of a pressing need for the ILC to consider this subject.
17. However, the formation and evidence of customary international law is a fundamental issue at the very heart of international law. It is thus an issue for the ILC to discuss. The Commission is aware of the risk that this subject too broad in scope, and we trust that this project will be well managed in terms of its duration and the size of the work. Today, I wish to address three specific issues we feel have not been raised by the ILC so far.

Mr. Chairman,

18. The discussion in the ILC seems to focus on the role of domestic judges in the determination of what is (or is not) customary law. We have some hesitation with respect to whether this should be such a dominant





unrecorded or not accessible. The same goes for judicial decisions that may not be available in any of the UN's official languages.

24. We would suggest the Commission gives consideration to the language used in the expression of the

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criminal justice system. We therefore note with some concern that the Commission is considering whether or not to continue with this topic. We would urge the Commission to continue the work in this field, as a matter of priority. My Government's position remains that the work of the Commission should eventually result in presenting draft articles, based on the general framework agreed in 2009.

Mr. Chairman,

29. With regard to the topic of Treaties over Time, we thank the Commission for its work so far, and more specifically the Special Rapporteur, Professor George Nolte. In our view the inclusion of this topic to the work programme of the ILC is of great importance. It is well-known that the founding fathers of the Vienna Convention of the law on treaties, when discussing the present Article 31 of the Convention, more or less abandoned the issue of inter-temporality and we believe that time is right that this subject be revisited.
30. Although we understand that the ILC decided to limit its present study to special regimes related to subsequent agreements and subsequent practice, we would certainly welcome a decision of the ILC to include other issues

related to treaties over time in its study. We therefore ask the ILC to consider to continue its work on the topic after finalizing its present study.

Thank you, Mr. Chairman.