
70^e session de l'Assemblée générale

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Report of the International Law Commission

Chapitre IX - Protection de l'environnement en rapport avec les conflits armés
Chapter IX - Protection of the environment in relation to armed conflicts

Chapitre X - Immunité de juridiction pénale étrangère des représentants de l'Etat
Chapter X - Immunity of State officials from foreign criminal jurisdiction

New York, le 11 novembre 2015

Déclaration de la Suisse

Monsieur le Président,

Ma délégation saisit l'occasion de cette deuxième intervention relative aux rapports de la Commission du droit international pour saluer à nouveau l'excellent travail fourni par la Commission. Au fil des années, elle ne cesse de contribuer activement au développement et à la codification du droit international public, ce dont nous ne pouvons que nous réjouir. Nous nous exprimerons aujourd'hui sur deux sujets en particulier, à savoir la protection de l'environnement en rapport avec les conflits armés et l'immunité de juridiction pénale étrangère des représentants de l'Etat.

[Chapitre IX -

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La Suisse souhaite remercier pour son travail la Rapporteuse spéciale sur la protection a

La Suisse est d'avis que la protection de l'environnement naturel durant les conflits armés est une thématique qui mériterait d'être clarifiée et développée davantage. Le droit international humanitaire fournit une base précieuse, qui doit être reflétée de manière adéquate dans

Evidemment, il est possible de réduire la portée de l'immunité rationae materiae en introduisant des limitations ou des exceptions. Cet aspect doit d'ailleurs encore être traité par la commission.

Nous sommes d'avis qu'une définition très large de la portée de l'immunité fonctionnelle comporte un certain risque, même si des exceptions spécifiques sont formulées par la suite. D'une part, on note une tendance à interpréter de manière restrictive les exceptions à une règle générale. Et d'autre part, il est difficile d'imaginer le genre de scénarios qui pourraient survenir à l'avenir.

Etant donné que le travail de la commission sur le sujet est toujours en cours, nos remarques ont bien évidemment un caractère provisoire. Nous attendons avec intérêt la poursuite des travaux de la commission dans ce domaine.

Monsieur le Président, je vous remercie.

Unofficial translation

Mr Chairman,

My delegation would like to take the opportunity in this second statement on the reports of the International Law Commission to commend once again the excellent work carried out by the Commission. Over the years, it has continued to make an active contribution to the development and codification of international law, which is to be welcomed. Today, we will address two subjects: the protection of the environment in relation to armed conflicts and Immunity of State officials from foreign criminal jurisdiction.

[Chapter IX - Protection of the environment in relation to armed conflicts]

Switzerland would like to thank the Special Rapporteur on the protection of the environment in relation to armed conflicts for her work. We take note of the draft principles provisionally adopted by the Drafting Committee at its 67th session and would welcome their further clarification with a view to strengthening the protection of the natural environment.

Switzerland is of the opinion that the protection of the natural environment during armed conflicts should be made more explicit and developed. International humanitarian law provides a valuable basis, which must be adequately reflected in the elaboration of new specific protection regimes.

Please allow me to highlight the following three points:

- First, the natural environment benefits from the general protection that international humanitarian law provides to civilian objects both in international and non-international armed

conflicts. Direct attacks against parts of the natural environment are prohibited as long as it is not a military objective. In assessing attacks on legitimate military targets in accordance with the principle of proportionality, the expected incidental harm to the natural environment needs to be taken into account. Furthermore, the prohibition on destroying or seizing the property of an adversary, unless required by imperative military necessity, applies equally to the natural environment. In this regard we also welcome the explicit prohibition of reprisals against the natural environ

Rather than limiting the scope of immunity *ratione materiae*, the ILC's most recent draft articles confirm its broad nature. In our view, the following three scenarios deserve further attention:

First, would the conduct of a State official carried out *ultra vires* fall within the scope of functional immunity? It appears that an act could amount to an exercise of State authority even if it was taken contrary to instructions or if the author exceeded his or her competence.

Second, would conduct of a private military or security contractor working for the State fall within the scope of functional immunity? It is our understanding that such persons could under specific circumstances be considered to have been "empowered by the law of that State to exercise elements of the governmental authority" in the sense of article 5 of the ILC draft articles on State responsibility.

Third, would conduct of a person that holds no official position within the State but acts under its *de facto* direction or control fall within the scope of functional immunity? Neither the definition of State official, adopted in 2014, nor the definition of "acts performed in an official capacity", adopted in 2015, appear to preclude this possibility.

It is of course possible to narrow down the broad scope of immunity *ratione materiae* by limitations or exceptions. This is an aspect of the topic that still remains to be addressed by the Commission.

There is a certain risk in our view in stipulating a very broad definition of the scope of functional immunity, even if it is later qualified by specific exceptions. On the one hand, there is a tendency to construe exceptions to a general rule narrowly. On the other hand, it is difficult to foresee the kind of scenarios that might arise in the future.

Given that the Commission's work on the topic is still ongoing, our comments remain of course provisional. We look forward to the Commission's further work on the subject.

Thank you, Mr Chairman.