

**71<sup>ST</sup> SESSION OF THE UNITED NATIONS GENERAL ASSEMBLY**

**SIXTH COMMITTEE**

**REPORT OF THE INTERNATIONAL LAW COMMISSION**

**Part III: CHAPTERS X (Protection of the environment in relation to armed conflicts), XI (Immunity of State officials from foreign criminal jurisdiction) and XII (Provisional application of treaties)**

**ADDRESS DELIVERED BY**

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(Provisional version; check against delivery)

Mr Chairman,

On behalf of the Delegation of Spain, I would like to once again congratulate the International Law Commission on the quality of its work during its 68<sup>th</sup> session, in particular, on this occasion, with regard to the issues addressed in Chapters X to XII of its Report.

**Chapter X: Protection of the environment in relation to armed conflicts**

Mr Chairman,

the third phase are much more undetermined and difficult to specify. It should be recalled that peace accords or armistice agreements do not usually contain provisions for the protection of the environment. Practice is, therefore, scarce or practically non-existent. In addition, the report quite often inserts references to phases one and two.

It should also be mentioned that there are issues of far-reaching importance that demand greater attention and study. By way of example: The question of occupation, the practice of non-state actors, the indigenous peoples, the question of responsibility or the applicability of the precautionary principle.

As we said last year, all these problems and the many debates that are taking place at the Commission are clear proof of the difficulty involved in this issue. But they may also be a sign of a lack of the necessary maturity to address this matter.

With regard to specific aspects of the report and of the draft principles, my delegation applauds the new structure of the draft principles, which begin with general provisions applicable to the three phases of a conflict, and continue with provisions regarding the protection of the environment during a conflict. But even so, the criteria for placement of provisions in one part or another remains unclear. By way of example, *draft principle 9*, is located in Part Two ('Principles applicable during armed conflict'), even though the commentary states that paragraph 1 is "relevant during all three phases (before, during and after armed conflict)".

## Chapter XI: Immunity of State officials from foreign criminal jurisdiction

Mr Chairman,

Regarding Chapter XI, on the immunity of State officials from foreign criminal jurisdiction, the Spanish Delegation wishes to begin its address by congratulating our fellow Spaniard Ms Concepción Escobar Hernández on the presentation of her fifth report. We would also like to congratulate the Commission on the analysis—albeit preliminary—that it has conducted and on the two draft articles provisionally approved.

Spain will focus its address on these two draft articles. Before getting into it, allow to mention that Spain has recently issued an Act regarding, *inter alia*, the immunity of the Head of States, Heads of Government and Ministers of Foreign Affairs.

With regard to *draft article 2 f)*, this Delegation agrees with the proposed definition of an “act performed in an official capacity”. This is so from three points of view: (i) we consider it necessary to be present in the draft; (ii) we consider the wording “State authority” to be correct; and (iii) we agree with the Commission in that it is not possible to draw up an exhaustive list of examples in the article, although we believe that the examples offered in the commentary are highly useful.

As regards *ratione materiae*, we have two observations, both about paragraph 3.

Firstly, we do not quite understand

of such immunity for former Heads of State, former Heads of Government and former Ministers for Foreign Affairs.

## **Chapter XII: Provisional application of treaties**

Mr Chairman,

Proceeding to Chapter XII, on provisional application of treaties, the Spanish Delegation wishes to

In other considerations, with regard to the Commission's debates, my delegation considers that when addressing the matter of provisional application and reservations, a distinction should be made as to whether the treaty in question has been provisionally applied prior to or after a subject expresses their consent to being bound by said treaty. If a treaty is