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76TH SESSION OF THE UNITED NATIONS GENERAL ASSEMBLY

Sixth Committee

Agenda Item 82

**Report of the International Law Commission
on the work of its seventy-second session
Cluster II**

**Chapter VI: Immunity of State Officials from Foreign Criminal
Jurisdiction**

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

**Statement by
Jenny Stavridi**

Chapter VI: Immunity of State Officials from Foreign Criminal Jurisdiction

Madam Chair,

Let me at the outset commend the Special Rapporteur for the clear and concise eighth Report with which she has concluded the examination of the topic as well as for her dedication and all her efforts that enabled the Commission to make this year considerable progress on the topic with the provisional adoption of 6 new Draft Articles on the procedural aspects of immunity. We hope that the Commission will be able to overcome the differences of views on this sensitive issue and complete in a spirit of collegiality the first reading of the Draft Articles during the quinquennium.

Madam Chair,

Having in mind that, as mentioned in the Commentaries, some of the provisionally adopted Draft Articles are subject to further review by the Commission before the first reading, in order to ensure that the use of certain key terms are consistent and systematic throughout the whole set of the Draft Articles, we would like, at this stage, to state the following:

With regard to Draft Article 8, we wonder whether the phrases “may be affected by the exercise of its criminal jurisdiction” and “may affect an official of another State” in paragraph 1 and 2 thereof are too broad and general and we would like to invite the Commission to consider whether these phrases could be supplemented with further qualifications in order to clearly delimit their scope.

Regarding Draft Article 9, we welcome the alignment of the temporal standard for notifying the State of the official with the one stipulated in subparagraphs (a) and (b) of paragraph 2 of Draft Article 8. However, here again we share the concerns expressed within the Drafting Committee that the phrase “that may affect an official of another State» is too broad and could have unintended effects on the forum State’s exercise of criminal jurisdiction. With regard to paragraph 2 of this Article, we are not sure that the purpose of this paragraph, which to our understanding is to provide for a minimum

threshold of information to be included in the notification, is served with the adverb “inter alia”. Finally, concerning paragraph 3 of the same Draft Article, we welcome the fact that after its reformulation by the Commission the diplomatic channels are mentioned first and the “applicable international cooperation and mutual legal assistance treaties” are only included as a subcategory of “other means of communication accepted for that purpose by the State concerned”. Indeed, taking into account the specific content and way of operation of these treaties, we share the concerns expressed within the Commission as reflected in the relevant Commentary, since it is still not clear to us how such treaties can be used for the purposes of this Draft Article. In this respect, further explanations -and if possible concrete examples- by the Commission in the Commentary of this Draft Article would be particularly useful.

With respect to paragraph 5 of Draft Article 11 providing for the irrevocability of the waiver of immunity, we tend to agree with those members of the Commission who doubted the usefulness and desirability of this provision, since the relevant treaties adopted so far do not expressly refer to this issue and State practice is limited.

Madam Chair,

Turning now to the Draft Articles 17 and 18 which were proposed by the Special Rapporteur in her eighth report and referred to the Drafting Committee, we would like to note the following:

In our statement in 2018 we have expressed doubts as to the advisability of examining

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Thank you Madam Chair.