



77th Session of the General Assembly
Sixth Committee

Agenda item 77: Report of the International Law Commission on the work of
its seventythird session

Cluster I t Chps VI (Immunity of State officials from foreign criminal jurisdiction) and IX
(sea-level rise in relation to international law)

Statement by
Ambassador Helmut Tichy
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New York, 28 October 2022

Chairperson,

Allow me to address the topic of jurisdiction of State officials from foreign criminal jurisdiction. I am pleased to be here with the Special Rapporteur Escobar Hernández and the Commission for the completion of the first reading of the text of the draft articles. We believe that the Commission has made important progress on this topic and is moving towards a balanced outcome. Although there will be an occasion for governments for comments and observations, Austria would like to present some comments already at this stage.

As to draft article 1, paragraph 3, concerning courts and tribunals, Austria welcomes that this clause was moved from draft article 18 to draft article 1. However, there is still the question to what extent

internationalised criminal courts and tribunals. The commentary mentions in paragraph 25 courts and tribunals created by UN Security Council resolutions under Chapter VII of the UN Charter and hybrid or internationalised tribunals created by domestic law, including as a result of initiatives originating from universal or regional international organisations. However, the commentary lacks a clear indication as to which of these institutions are encompassed by article 1, paragraph 3.

The term "internationalised" used in the text. It needs to be clarified that the state meant in this wording is not necessarily identical

to the terminology used by the Commission in the context of the Articles on Responsibility of States for internationally wrongful acts. There, reference is made to internationalised tribunals which differs from the

Austria would prefer a more restrictive definition, and a limitation which

Austria appreciates draft article 7 on crimes under international law in respect of which immunity shall not apply. It regards this central provision of the draft articles as a compromise which is destined to contribute to combatting impunity. Like many others, we see a close link between this article and the procedural provisions and safeguards contained in Part Four of the draft articles. While we understand the background for the compromise on

have been included in this list.

In draft article 10, paragraph 1, on notification to the state of the official, the

to be too broad. Notification should only be required if the measures may affect the immunity of an official. In addition, there shall always be an obligation to notify if an official claims immunity.

In draft article 11 on invocation of immunity, it should be added that in the interest of all parties concerned the invocation should be made as early as possible.

As to draft article 12 on waiver of immunity, Austria proposes to insert a clause

Austria welcomes the insertion of draft article 18 on the settlement of disputes. However, once the draft articles will be turned into a convention, which we hope will soon be the case, we shall have to provide for time limits regarding any dispute settlement in relation to pending criminal proceedings. We shall also have to a

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are many fundamental questions concerning the applicability of human rights obligations that need to be addressed.

With regard to the further working methods of the study group, we believe it would be quite a challenge to tackle the broad array of topics listed in paragraphs 235 and 236 of the report alongside the other topics on the work programme of the Commission. In any event, Austria welcomes that the Commission and its study group are addressing the important topic of sea level rise and is certain that the Commission also in its new formation will significantly contribute to clarifying international law in relation to this phenomenon.

Thank you.