



Mr Chairman,



First of all, I would like to express our deep appreciation to the Special Rapporteur, Ms Escobar Hernandez, for her dedication and all her hard work during the last decade on a topic which, in our view, can rightly be considered as one of the most complex and sensitive issues on the agenda of the International Law Commission. Let me also commend the members of the Commission for the conclusion of the first reading of the Draft Articles on immunity of State officials from foreign criminal jurisdiction.

Mr. Chairman,

Turning to the text of the Draft Articles adopted on first reading, we would like, at this stage, to make the following comments:

With regard to the compromise text which was adopted on the relationship between the Draft Articles and the norms governing the functioning of international criminal tribunals, we welcome its placement as paragraph 3 of Draft Article 1. We tend to share, however, the concerns expressed within the Commission, as reflected in the Report of the Chair of the

which does not seem to fully encapsulate recent practice regarding the establishment of international courts and tribunals.

Concerning Article 11 dealing with the invocation of immunity, we would like to note that neither the Draft Article nor the Commentary thereof reflect the point made by several States last year that the invocation of immunity, a right of the State of the official as the Commission rightfully states, is not and should not be considered as a precondition to the application of immunity, since immunity, as the Commission noted, is part of international law. We only see such a reference in the Commentary of par. 2 of Draft Article 14 regarding the criteria to be taken into account by the forum State in determining immunity. We invite, therefore, the Commission to examine the possibility to introduce the above clarification preferably in the text of Draft Article 11 or, at least, in its Commentary, as well as to further elaborate on the effects of invocation or non-invocation of immunity on the obligation of the forum State to examine and determine immunity.

With regard to Draft Article 12 par. 5 expressly providing for the irrevocability of the waiver of immunity, and while we believe that a waiver of immunity should not be revoked arbitrarily, we would like to reiterate our concerns about the usefulness and desirability of such a provision, given the absence of State practice in this area.



