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by

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& K D U J H   G · $ I I D L U H V   D   L
Deputy Permanent Representative

at the 77 th Session of the United Nations General Assembly

Agenda item 77:
´ 5 H S R U W   R I   W K H   , Q W H U Q D W L R Q D O   / D Z
work of its seventy - W K L U G   V H V V L R Q µ

Cluster II:
Chps: VI (Immunity of State officials from foreign
criminal jurisdiction) and IX (Sea -level rise in relation to
international law)

New York, 28th October 202 2

coastal barriers or defences and dykes, reinforces the importance

the draft articles and the special regime applicable to international criminal courts and tribunals from the regime of immunity applicable at the national level. This is done by essentially providing

W K D W   W K H   G U D I W   Do Not affect the rights and obligations of

19.   On Draft Article 14   Determination of Immunity   µ   P\ G H O H J D W L R
tends to agree with the early determination considering the diverse
State practice and deems as appropriate the use of the
terminological phrase   ´competent authorities of the forum State   µ
since a determination can be made by a police officer, a
prosecutor, or a foreign ministry official, before courts become
involved. This also does not preclude the courts of the forum State
having a say subsequen   tly in our view.

20.   My delegation will continue to examine the utility of retaining
Draft Article 8   Examination of immunity by the forum State   µ D Q G
Draft Article 14 , and whether it may be necessary to retain both.
The decision by the Commission to differe   ntiate between
determination (Draft Article 14) and examination (Draft Article 8)
and retaining both articles is well noted.

21.   My delegation agrees at this stage with the inclusion into the text
in Paragraph 1   ánd in conformity with the applicable rules   of
international law   µ   D V L W H P S K D V L] H V W K D W U H J D U G O
envisaged with respect to the organs, laws and procedures of the
forum State, the determination must nevertheless produce a result
that is consistent with international law.

22.   On paragraph 2 of Draft Article 14, we tend to agree with the
methodology of the use of a non   -exhaustive list, the factors that
need to be taken into account by the competent authorities when
determining the potential applicability of immunity.

23.   On Paragraph 3, Sierra Leone takes note of th13(t)6met2 259.rfn

24.   The use of the standard of proof already inspired by the Rome 6WDWXWH RI WKH ,&& assure themselves that there are substantial gro unds to believe that the official committed any of the crimes under international law listed in draft article 7 µDOWKRXJK with a robust debate, further consolidates what will be the practice of at least 123 States. As this assures of a higher threshold of   proof,

of the suspect or accused official, and similar to the safeguards in the Crimes against humanity Draft Articles it adopted in 2019, and also referencing human rights and international humanitarian law and broad checks on personal and substantive righ   ts abuses. As the Draft Articles would apply against the general background of the applicable law at the national and international levels, the inclusion of this additional safeguard, in addition to those already provided for in international law, may be o   f merit.

30.   Sierra Leone takes note of the possibility now that there will be a new special rapporteur appointed for this topic by the Commission in its new composition. We call on the Commission, given the challenges this topic has faced in between transit   ions, to take into account the need for stability and continuity in the direction of the current work. That is vital to ensure the work of the Commission is ultimately more helpful to States in relation to the outcome of the present topic.

31.   My delegation   once more expresses appreciation for this important work and call on the Commission to be responsive to the views of States, particularly African States to ensure the Draft Articles does not enable politicization evidenced already in international affairs.

32.   I thank you.