



Permanent Mission of the Islamic Republic of Iran to the United Nations

622 Third Ave New York, NY 10017 ny.mfa.gov.ir Tel:+1(212)687-2020 Fax:+1(212)867-7086 E-mail: Iran@un.int



We also reemphasize that instead of enlisting specific crimes, such exception is best to be applied solely with regard to the most serious crimes of international concern as there is doubt whether State practice and jurisprudence support the inclusion of crimes, such as torture or enforced disappearance, under the scope of exceptions to the immunity *ratione materie* from foreign criminal jurisdiction. For example, the ECtHR in *Jones v. United Kingdom* effectively concluded that torture is an official act entitled to immunity from civil suits in the courts of other countries.

Second, Draft Article 17 shall be read together with Draft Article 7. We are of the view that under the circumstances in which there are considerable controversies over Draft Article 7 and the statements of States in the Sixth Committee over the course of previous years that are a testimony to this, Draft Article 17 will be applied only as a dispute production machine which will escalate tensions in relations between States.

I would also like to note that the final clauses, including a dispute settlement clause, sense only if final product will be a treaty. While the Commission had yet to decide on the final product of the topic, it seems the time is not ripe enough to include such a clause in the Draft. Moreover, in light of its relationship with the Sixth Committee, the Commission mostly had avoided inserting such clauses in its final products from the beginning of its work. It is a significant reminder that
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be taken as a precedent. Mr. Tladi, the Special Rapporteur for that topic,
did not exclude the possibility that draft conclusion 21 might be
reviewed to take account of the reactions of States while noting that the
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the draft conclusion.

Third, regarding the relationship between the immunity in national
and international criminal tribunals, we believe that the fact that a person
can be prosecuted by an international tribunal cannot affect the
immunity of the same person before the Forums of any foreign State.
This emanates from the stark difference between the origins of
immunity. The latter emanates from the principle of sovereign equality
of States, while the first derives from the consent of States to the
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SUHMXLGH ³ustifying the relationship between national courts and
international tribunals is of no relevance for the purpose of the current
topic which relates only to the manner of application of foreign criminal
jurisdiction. Moreover, such a clause has already been mentioned in
Draft Article 1(2) in more acceptable and logical wording which can
also be construed as a mle ed> 5b41mrinceh-4(t asiv(b)-200(co)-se co



Concerning the proposal of the Special Rapporteur on
practices which are based on policy preferences and a lack of concrete
measures may lead to unbalanced practices which can disrupt
international legal order based on recognized general principles of
international law including, but not limited to, non-intervention,
international cooperation and sovereignty of States.

Finally, we once again express our dissent with paragraph 4 of
draft article 11 regarding the procedural requirements of the waiver of
immunity. We are of the view that the waiver of immunity as a
procedural rule is the exclusive right of sovereign States which shall be
declared by the State concerned in a manner that manifests the will of
that State to waive the immunity of its official. Therefore, the state of the
concerned official has an exclusive authority to invoke and waive the
immunity of its officials, and the waiver should be not only clear and
expressed but also should mention the official whose immunity is being
waived. In relation to draft article 11(4), we cannot concur with the
Special Rapporteur about a general obligation derived from a treaty on
a substantial matter related to individual responsibility that can be
deemed as an express waiver.



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Madam Chairperson,

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