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Summary record of the 3219th meeting

Topic:
Immunity of State officials from foreign criminal jurisdiction

Extract from the Yearbook of the International Law Commission:-
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individuals, were attributable to the State. They might provide a useful indication of which acts might be subject to immunity *ratione materiae*, although they would have to be examined carefully before transposing the attribution tests wholesale to the field of immunity *ratione materiae*. The conclusion drawn in paragraph 38 of the report was consistent with the fact that what mattered was not so much who the person was, but rather which acts were involved.

43. The only decision of an international court of any potential relevance to the identification of persons who enjoyed immunity was that delivered by the Appeals Chamber of the International Tribunal for the Former Yugoslavia in *Prosecutor* v. *Blaškić*. However, it was concerned, not with immunity from criminal jurisdiction, but with immunity from the execution of a subpoena for the production of State papers. The *Arrest Warrant of 11 April 2000* case had been concerned with the position of a Minister for Foreign Affairs and referred only to persons enjoying immunity *ratione personae*. The passages cited from the case concerning *Certain Questions of Mutual Assistance in Criminal Matters* dealt with the nature of the acts performed by individuals, not with the question whether those individuals were "officials" for the purposes of immunity *ratione materiae*. None of the cases heard by the European Court of Human Rights and cited in the third report shed light on the meaning of "official". It was also unclear how the special regime under the Vienna Convention on Diplomatic Relations assisted in identifying the meaning of "State official" for other purposes. The same was true of all the other conventions discussed and of the "other work of the Commission" examined in chapter II, section B of the report.

44. The Special Rapporteur was right to conclude that all officials, all persons who acted on behalf of the State, could enjoy immunity *ratione materiae* from foreign criminal jurisdiction. Whether they did depended on their acts or omissions, not on their position or relationship to the State. However, her emphasis on two separate criteria, a "relationship with the State" and "acting on behalf of the State", was hard to understand. The first was subsumed in the second: it was sufficient to show that the acts in question had been done on behalf of the State.

45. While to a degree he shared the Special Rapporteur's wish to review the title of the topic, the alternatives that she suggested, particularly the word "organ", did not work. "Organ of a State" would be an unusual way to refer to an individual official. It might therefore be better to retain "official" and its equivalent in other languages.

46. Turning to the two draft articles proposed in the third report, he said that if a definition like the one put forward in draft article 2 (*e*) was required, although he did not believe that it was, then subparagraph (ii) would have to be greatly simplified, as it contained qualifications or restrictions of dubious relevance. The inclusion of the words "and represents the State or exercises elements of governmental authority, whether the person exercises legislative, executive or judicial functions, whatever position the person holds in the organization of the State", might unduly restrict the circle of persons who enjoyed immunity *ratione materiae*. He therefore suggested that draft article 2 (*e*) simply read "(ii) any other person who acts on behalf of the State".

47. The phrase in draft article 5, "who exercise governmental authority", seemed to confuse the persons who might potentially enjoy immunity *ratione materiae* with the acts with respect to which immunity was enjoyed. He was unconvinced that draft article 5 should be adopted at the current stage of deliberations, but even if it were to be adopted, it should be modelled on draft article 3 and should read "State officials enjoy immunity *ratione materiae* from the exercise of foreign criminal jurisdiction".

48. Lastly, he drew attention to some imperfections in the English translation of the report, where terminological corrections made the previous year had been ignored.

49. He was in favour of referring the two draft articles to the Drafting Committee.

Organization of the work of the session (*continued*)[*]

[Agenda item 1]

50. The CHAIRPERSON explained that, in the absence of Mr. McRae, Mr. Forteau had offered to chair the Study Group on the most-favoured-nation clause. Mr. McRae had sent a voluminous draft report for the Study Group's consideration and finalization. If he heard no objection, he would take it that the Commission wished to reconstitute the Study Group.

It was so decided.

51. Mr. FORTEAU said that the other members of the Study Group were Mr. Caflisch, Ms. Escobar Hernández, Mr. Hmoud, Mr. Kamto, Mr. Murase, Mr. Murphy, Mr. Park, Mr. Singh, Mr. Šturma, Mr. Vázquez-Bermúdez, Sir Michael Wood and, *ex officio*, Mr. Tladi.

The meeting rose at 12.55 p.m.

3219th MEETING

Wednesday, 9 July 2014, at 10.05 a.m.

Chairperson: Mr. Kirill GEVORGIAN

Present: Mr. Caflisch, Mr. Candioti, Mr. Comissário Afonso, Mr. El-Murtadi Suleiman Gouider, Ms. Escobar Hernández, Mr. Forteau, Mr. Hassouna, Mr. Huang, Ms. Jacobsson, Mr. Kamto, Mr. Kittichaisaree, Mr. Laraba, Mr. Murase, Mr. Murphy, Mr. Niehaus, Mr. Nolte, Mr. Park, Mr. Peter, Mr. Petrič, Mr. Saboia, Mr. Singh, Mr. Šturma, Mr. Tladi, Mr. Valencia-Ospina, Mr. Vázquez-Bermúdez, Mr. Wisnumurti, Sir Michael Wood.

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[*] Resumed from the 3216th meeting.

Immunity of State officials from foreign criminal jurisdiction (*continued*) (A/CN.4/666, Part II, sect. B, A/CN.4/673, A/CN.4/L.850)

[Agenda item 5]

THIRD REPORT OF THE SPECIAL RAPPORTEUR (*continued*)

1. The CHAIRPERSON invited the Commission to resume its consideration of the third report on immunity of State officials from foreign criminal jurisdiction (A/CN.4/673).

2. Mr. FORTEAU said that, for the most part, he shared the views expressed by Mr. Tladi and Sir Michael Wood. It would be premature to take a position on the question of exceptions to immunity, which the Special Rapporteur would address in her fourth report, and the work of the current session was without prejudice to any position the Commission would ultimately adopt. Nevertheless, in light of the judgment handed down on 14 January 2014 by the European Court of Human Rights in the case of *Jones and Others* v. *the United Kingdom*, the Commission might need to recognize exceptions to immunity, and to acknowledge that some official acts, namely those involving international crimes, were not covered by immunity, subject to the availability of procedural guarantees intended to avoid malicious prosecution.

3. Although the assumptions made by the Special Rapporteur and the approach she had taken to the current topic were appropriate, he could not subscribe to the conclusions she had drawn, nor to the resulting draft articles. To begin with, the two draft articles were mutually inconsistent. As a matter of fact, owing to a lack of sufficient concordance between the two, draft article 5 seemed to preclude the enjoyment of immunity *ratione materiae* by persons who enjoyed immunity *ratione personae*, as had been noted by Mr. Murase. Even more problematic was the fact that the Special Rapporteur appeared not to have followed the course she had set out to take, namely, to deal separately with the persons who enjoyed immunity and the acts protected by immunity, since in the two draft articles, persons who enjoyed immunity were defined with reference to the acts they performed. However, the nature of the powers exercised could not constitute a criterion for determining which persons enjoyed immunity, given that some persons, depending on the acts they performed, acted at times *jure gestionis* and at others in the exercise of elements of governmental authority (for example, the director of a central bank might perform acts that were financial or monetary in nature). In order to apply such a criterion, it was necessary to determine on a case-by-case basis whether such persons met the conditions set out in draft article 2 (*e*); the criterion could be used only to identify the *acts* that were covered by immunity. That raised the question of how, if it was adopted it would relate to the concept of "official acts"—which played much the same role—and whether the two did not, in the end, amount to one and the same thing.

4. Second, as indicated by the jurisprudence and practice cited in the report, the situation was more straightforward than draft articles 2 and 5 seemed to suggest: a person who enjoyed immunity was any person through whom the State acted. Since immunity *ratione materiae* flowed from an act, it was the nature of the function performed by means of that act that mattered: ultimately, it was immunity *of the State* and not of the person. It thus followed logically that any person who acted as an agent or official of the State enjoyed immunity *ratione materiae*, thus obviating the need for any additional criterion. That was implicit in the United Nations Convention on Jurisdictional Immunities of States and Their Property, which included among those who enjoyed immunity "representatives of the State acting in that capacity", and also in numerous judgments and international instruments that defined the persons who enjoyed immunity *ratione materiae* as State officials or agents acting in that capacity, without further specification. One example was the judgment of the International Court of Justice in the case concerning *Certain Questions of Mutual Assistance in Criminal Matters (Djibouti* v. *France)*, which seemed to use the terms "agents" and "organs" of the State synonymously. However, that did *not* mean that those officials or agents should enjoy or actually enjoyed absolute immunity, as everything depended on the *separate* question of whether the act carried out by the official or agent was itself covered by such immunity.

5. In light of those observations, he wished to make three proposals. First, with regard to the term to be used in the title of the draft articles, he agreed with the view that "organ" was not the most suitable. Given that, in its previous work, namely in the commentaries to the 2001 draft articles on responsibility of States for internationally wrongful acts,[190] the Commission had drawn a distinction between organs and agents, it would appear to be excluding the latter of the two categories if it selected the word "organ" for the present set of draft articles. And although, as the Commission had also had the occasion to indicate, individuals could be organs of the State and it was not out of the question to bring criminal proceedings against legal persons, in the majority of cases, immunity from criminal prosecution concerned natural persons, which meant that the term "organ" risked creating confusion. The term "officials", which appeared to be the appropriate term in English, would therefore be more appropriately rendered in French by the expression *tout représentant ou tout agent de l'État*, which included both administrative agents and political office holders. Second, the definition of persons who enjoyed immunity, which was indeed required, could be simplified by modelling it on the definition of agents contained in article 2 of the articles on the responsibility of international organizations,[191] so as to read: "State official means any person who is charged by the State with carrying out, or helping to carry out, one of its functions, and thus through whom the State acts."

6. That definition had several advantages: apart from the fact that it was easy to translate, it referred to "any

[190] General Assembly resolution 56/83 of 12 December 2001, annex. See the draft articles on responsibility of States for internationally wrongful acts adopted by the Commission at its fifty-third session and the commentaries thereto in *Yearbook … 2001*, vol. II (Part Two) and corrigendum, pp. 26 *et seq.*, paras. 76–77.

[191] See the draft articles on the responsibility of international organizations adopted by the Commission at its sixty-third session and the commentaries thereto in *Yearbook … 2011*, vol. II (Part Two), pp. 40 *et seq.*, paras. 87–88. See also General Assembly resolution 66/100 of 9 December 2011, annex.

person", without further qualification of the persons concerned; it used the neutral term "functions" instead of the controversial expression "elements of governmental authority"; it placed emphasis on the State, which, through its agent, was the primary beneficiary of immunity *ratione materiae*; and it covered the various categories of persons concerned.

7. Finally, he proposed that a corresponding amendment be made to draft article 5, using Sir Michael's proposal. Draft article 5 would then read: "State officials enjoy immunity *ratione materiae* from the exercise of foreign criminal jurisdiction".

8. Mr. PARK said that he supported the Special Rapporteur's approach, which started from the assumption that international law did not generally define the concept of "official" and examined national and international practice in order to develop criteria for identifying the persons who could be protected by immunity from foreign criminal jurisdiction. That approach was actually preferable to one that relied on a definition of the concept of "official". In paragraph 111, subparagraph (*a*), of her third report, based on her review of the practice, the Special Rapporteur concluded that the connection between the State official and the State could take several forms (constitutional, statutory or contractual) and that it could be either *de jure* or *de facto* in nature. That being the case, the expression "whatever position the person holds in the organization of the State", contained in draft article 2 (*e*) (ii), seemed to limit the concept of official or *de jure* official, and clarification of that point would therefore be welcome. It would also be useful to have clarification of the scope of the *de facto* connection: could the persons referred to in article 5 of the articles on responsibility of States for internationally wrongful acts—namely those that were not an organ of the State as defined in article 4 of that text, but who were empowered by the law of that State to exercise elements of the governmental authority—be considered *de facto* officials? And what of the persons referred to in article 8 of the same text, namely, those who acted on the instructions of, or under the direction or control of, the State?

9. With regard to the choice of terms, he agreed with the Special Rapporteur that the word *représentant* was not the most suitable. The word "organ" was not much better: it had already been used in the articles on responsibility of States for internationally wrongful acts to designate both natural persons and entities that acted on behalf of the State. In addition, as pointed out by Mr. Murphy and Mr. Forteau, the term was potentially confusing as it could give the false impression that the Commission's work dealt with the immunity of the State, whereas it dealt with the immunity from foreign criminal jurisdiction of natural persons who acted on behalf of, or in the name of, the State. Questions of terminology did not boil down to simply selecting a term, since none was able to meet the Commission's expectations fully. For that reason, he proposed to use the expression *fonctionnaire de l'État* in the French version, *funcionario* in the Spanish version and "official" in the English version, as well as to specify that, for the purposes of the draft articles, the meaning of those terms was independent of the one they might have under national law.

10. Turning to the proposed draft articles, he said that draft article 2 (*e*) (ii), which seemed to reproduce the broad outlines of article 1, paragraph 1, of the Convention on the prevention and punishment of crimes against internationally protected persons, including diplomatic agents, should be reformulated because it drew a problematic distinction between representing the State and exercising elements of governmental authority. In actuality, persons who held senior positions, and who were every bit as much civil servants [*fonctionnaires*] as their subordinates, were considered to represent the State, so that the fact of discharging such duties did not differ from the exercise of elements of governmental authority, but was instead derived from it. The expression "whatever position the person holds in the organization of the State" assumed that State officials were all civil servants [*fonctionnaires*], which was also problematic. Lastly, it might be necessary to proceed in the same manner as in article 4 of the articles on responsibility of States for internationally wrongful acts, by indicating that the word "official" referred to both officials of the central Government and those of territorial units. It would also be necessary to determine whether a person acting temporarily on behalf of the State enjoyed immunity from foreign criminal jurisdiction.

11. With regard to draft article 5, he took note of the Special Rapporteur's explanations in paragraph 150 of her third report, but was of the view that they should appear, not in the commentary, but in the draft article itself, which could be reformulated to read: "Former Heads of State, Heads of Government and Ministers for Foreign Affairs and the persons referred to in draft article 2 (*e*) (ii), who exercised elements of governmental authority enjoy immunity *ratione materiae*." Once it had completed its consideration of the question of acts performed in an official capacity, the Commission could add language to draft article 5 to indicate that officials other than those comprising the troika enjoyed immunity *ratione materiae* for acts they performed in an official capacity. Finally, he was of the view that a new draft article should be formulated in order to cover the temporal element of immunity *ratione materiae*. Like Mr. Tladi and Mr. Forteau, he believed that it was still premature to consider Mr. Murase's proposal, which raised complex questions. In conclusion, he was in favour of referring draft articles 2 and 5 to the Drafting Committee.

12. Mr. SABOIA said that, in the Special Rapporteur's analysis of the criteria to be used in identifying the persons who enjoyed immunity, she had relied, *inter alia*, on treaty practice, and particularly on "international treaties which define conduct that could constitute a crime, regardless of its connection with international relations". The study she had carried out on that subject was excellent and unquestionably useful, but it should be borne in mind that those treaties had different objects and purposes and operated in a specific context, owing to the fact that they defined and established penalties for serious international crimes or transnational crimes the repression of which required close cooperation among States. Such crimes could, of course, be committed by State officials or agents, but they were often perpetrated by individuals who had no official ties to the State, with the complicity of the State or at its instigation, precisely in an attempt to preclude the State's exposure to liability. Consequently, the criteria to be used in identifying organs or agents of the State must be broad

enough to include the categories of persons who, without being State officials or agents, nevertheless acted with the State's complicity or consent, or at its instigation.

13. As several members had recalled, immunity remained an exception and should be dealt with in a restrictive manner. The definition of State official for the purposes of immunity from foreign criminal jurisdiction must be based on distinct and stricter criteria than those of treaties relating to international crimes such as genocide, torture or corruption. Those treaties would be more suited to determining what constituted an "official act" and which acts could justify exceptions to the rule of immunity. In her analysis of treaties on diplomatic and consular relations, the Special Rapporteur provided useful examples of how immunity was dealt with in international law. Faced with the need to determine who, among the highest authorities, enjoyed immunity *ratione personae*, the Commission had opted for a restricted list. When it came to immunity *ratione materiae*, it must give preference to narrow criteria.

14. Consequently, it seemed difficult to include persons acting *de facto* as agents of the State, as did the Committee against Torture, or those working for a public-sector company or body in a foreign country, as indicated in paragraph 93 of the third report. If, for the reasons given and for their mutual benefit, two countries wished to grant such persons privileges or immunities, they could do so by means of a bilateral agreement. Similarly, although it was true that, for the purposes of establishing the responsibility of States for internationally wrongful acts, one could consider that even persons acting *de facto* as organs or agents could exercise such authority if, as indicated in paragraph 109 of the third report, they were "in fact exercising elements of the governmental authority in the absence or default of the official authorities and in circumstances such as to call for the exercise of those elements of authority", the same could not apply to immunity *ratione materiae* from foreign criminal jurisdiction, unless there was an *ad hoc* arrangement—for example, when a State hosted peace negotiations between another State and an insurgent group. For those reasons, he generally supported the criteria proposed in paragraph 111 of the third report for use in determining what constituted a State official for the purposes of the present topic, with the exception of the clarification made at the end of subparagraph (*a*) to the effect that the connection between the State official and the State could be *de jure* or *de facto*.

15. With regard to terminology, he was in favour of using the term "official" in English, even if it meant foregoing consistency with the other languages. It was true that the term, like its Spanish equivalent *funcionario,* was not suitable for referring to an elected member of the legislature or judiciary, but the nuances could be explicated in the commentary. He was also of the view that the growing tendency to ease the rules on exceptions to immunity in favour of the fight against impunity must be taken into account. Nevertheless, the Special Rapporteur's cautious approach to the matter should be followed and the whole issue, including the "without prejudice" clause proposed by Mr. Murase, must be considered in due course. In conclusion, he was in favour of referring the two draft articles proposed by the Special Rapporteur to the Drafting Committee.

16. Mr. CAFLISCH said that, in response to the question of which acts and which persons were immune from foreign criminal jurisdiction, it was necessary to find a definition that covered all criminally punishable acts committed by natural or legal persons in the name of, and on behalf of, the State. It was therefore a matter of including all types of acts performed in the name of, and on behalf of, the State, with the exception of those not committed within that very context, even if they were attributable to a civil servant [*fonctionnaire*], and with the exception of international crimes—an issue that would be dealt with in the near future. Included in that category were all acts attributable to a simple employee (and not a "civil servant" [*fonctionnaire*]), but also acts attributable to a private person or entity, for example, a private company based in Switzerland which, on a contractual basis, exercised governmental authority in another State. There was no doubt that drawing up a list of the persons and acts covered by immunity would be of little use, since all lists were, by definition, non-exhaustive. Consequently, and as the Special Rapporteur probably intended, an abstract definition that encompassed all acts not subject to foreign criminal jurisdiction *ratione materiae* had to be formulated. For that purpose, the wording of draft article 2 (*e*) (ii) seemed, at first glance, to be suitable. As to the choice of terms, he considered the word *fonctionnaire* [civil servant] to be unsuitable, as it referred exclusively to those persons whose connection to the State was by means of a specific status. As far as the term *employé* [employee] was concerned, although it was more widely used, it was ambiguous because it did not cover persons who, without being connected to the State by an employment contract, acted on behalf of the State. The word *organe* [organ] was no better suited, since, among the persons who acted on behalf of the State, there were persons and entities that were not organs of the State, within the meaning generally attributed to that term. It should nevertheless be pointed out that all persons or entities that fell within the scope of the topic acted on behalf of the State and that, consequently, at least some of them "represented" it, in the usual sense of the word. For that reason, he could support Mr. Forteau's proposal to utilize the expression *agents et/ou représentants de l'État* [State officials and/or agents] and he was not opposed to the use of the term "officials" in the English version, but he could under no circumstances accept that the term should be translated by *fonctionnaire*. There were many persons who acted on behalf of the State but who could not be referred to as a *fonctionnaire*, judges being one such example. Attention should also be drawn to the need to ensure that, by acting in the name of, and on behalf of, the State, the "official or agent" concerned was in strict compliance with his or her mandate, since it was only in those circumstances that he or she could enjoy immunity. In conclusion, he had no objection to referring the draft articles to the Drafting Committee.

17. Mr. KITTICHAISAREE recalled that delegates in the Sixth Committee had strongly emphasized that, as far as immunity was concerned, the Commission should clarify whether it was codifying customary international law or engaging in the progressive development of international law.

18. Mr. CANDIOTI said that it would be unwise to enter into that debate, because the topic under consideration was

already complex enough. In any event, the Commission's practice was not to make a clear distinction between the two aspects of its mandate, recognizing as it did that they were two aspects of one and the same function.

The meeting rose at 11.30 a.m.

3220th MEETING

Thursday, 10 July 2014, at 10.05 a.m.

Chairperson: Mr. Kirill GEVORGIAN

Present: Mr. Caflisch, Mr. Candioti, Mr. Comissário Afonso, Mr. El-Murtadi Suleiman Gouider, Ms. Escobar Hernández, Mr. Forteau, Mr. Hassouna, Mr. Huang, Ms. Jacobsson, Mr. Kamto, Mr. Kittichaisaree, Mr. Laraba, Mr. Murase, Mr. Murphy, Mr. Niehaus, Mr. Nolte, Mr. Park, Mr. Peter, Mr. Petrič, Mr. Saboia, Mr. Singh, Mr. Šturma, Mr. Valencia-Ospina, Mr. Vázquez-Bermúdez, Mr. Wisnumurti, Sir Michael Wood.

Immunity of State officials from foreign criminal jurisdiction (*continued*) (A/CN.4/666, Part II, sect. B, A/CN.4/673, A/CN.4/L.850)

[Agenda item 5]

THIRD REPORT OF THE SPECIAL RAPPORTEUR (*continued*)

1. The CHAIRPERSON invited the Commission to resume its consideration of the third report of the Special Rapporteur on the topic of immunity of State officials from foreign criminal jurisdiction (A/CN.4/673).

2. Mr. KAMTO said that he endorsed the Special Rapporteur's observations in chapter II, section A, of her third report concerning the term "official". In paragraph 19, she stated that the term "official" (*représentant*) was not the most suitable term for referring to all categories of persons who were covered by immunity from foreign criminal jurisdiction. He was of a different view, however, and he disagreed with her preference for the term "organ".

3. The term "organ" could refer to an individual, a physical person, or to an entity, in which case it was difficult to speak of criminal responsibility. One should recall the Latin maxim: *societas delinquere non potest*. Even today, when criminal responsibility was envisaged for corporations, it was actually the responsibility of the senior managers that was invoked—at least when the criminal responsibility of the physical person entailed a custodial sentence—and not the responsibility of the corporation itself. Moreover, a reference to an "organ" in the present context risked blurring the distinction between the immunity of representatives of the State and the immunity of the State itself.

4. He did not favour any of the alternatives to the term "official" proposed by the Special Rapporteur. The terms *agent* or *fonctionnaire* in French were entirely unsuitable since, in many French-speaking countries of Africa, they referred to employees of the public administration whose status was governed by the national labour code; they would thus not encompass all the persons that the Commission intended to cover.

5. The proposal to use the combined term *représentants et agents de l'État* would raise more questions than it would resolve, since in many French-speaking countries, it was possible for a *représentant de l'État* not to be an *agent de l'État*, but an *agent de l'État* was always a *représentant de l'État*, in the broad sense of the word "representative", and not in the strict sense in which it referred to the members of the troika and other high-level State officials.

6. However, the term *représentant de l'État* was broad enough to cover the members of the troika, who already enjoyed immunity *ratione personae*, and other persons, whether they were agents of the State, *fonctionnaires* or even *ad hoc* representatives of the State. The determining element, and, in fact, the sole criterion for identifying persons who enjoyed immunity from foreign criminal jurisdiction, was whether the person had acted on behalf of and in the name of the State. Such an approach would obviate the need to subdivide subparagraph (*e*) into subordinate subparagraphs (i) and (ii) in order to make a distinction between the members of the troika and the other persons acting on behalf of and in the name of the State. At the same time, so long as the treatment of the topic depended on making a fundamental distinction between immunity *ratione personae* and immunity *ratione materiae*, the distinction between those who enjoyed the two kinds of immunity had to be reflected in the definition of the term "State official". Consequently, the current structure of draft article 2 (*e*) did not pose insurmountable problems for him, and he was in favour of referring draft article 2 to the Drafting Committee.

7. With regard to the identification of the persons who enjoyed immunity from foreign criminal jurisdiction, a distinction also had to be made between the members of the troika and other State officials. The same justification used to grant the members of the troika immunity *ratione personae*—to facilitate relations between States—remained valid for granting them immunity *ratione materiae*. However, the same could not be said of other State officials, whose immunity might depend on the nature of the criminal offence they had committed, and was thus relative, not complete. Any reference to complete immunity for the members of the troika was, of course, without prejudice to the regime of criminal responsibility before international criminal courts. As was clearly indicated in article 27, paragraph 2, of the Rome Statute of the International Criminal Court, article 7, paragraph 2, of the Statute of the International Tribunal for the Former Yugoslavia[192] and article 6, paragraph 2, of the Statute of the International Tribunal for Rwanda,[193]

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[192] Security Council resolution 827 (1993) of 25 May 1993 (see the report of the Secretary-General presented pursuant to paragraph 2 of Security Council resolution 808 (1993) (S/25704 and Corr.1 and Add.1, annex)).

[193] Security Council resolution 955 (1994) of 8 November 1994, annex.