

Translated from Arabic

**Permanent Mission of the Kingdom of Saudi Arabia to the United Nations
New York**

Observations and comments of the Kingdom of Saudi Arabia regarding the draft articles on immunity of State officials from foreign criminal jurisdiction

First, the Kingdom welcomes the wording of draft article 9, entitled “Examination of immunity by the forum State”, because it takes into account the jurisdiction of the legal system of the forum State in certain countries, while stressing that, in all cases, no criminal proceedings shall be initiated or coercive measures shall be taken before the question of immunity has been examined. Draft article 14 is an extension of draft article 9, of which the former provides that no criminal or coercive measures shall be taken until a determination has been made in respect of immunity. The Kingdom considers that the immunity of State officials is a matter of public order. Accordingly, the competent authorities of the forum State may examine the issue of their own initiative, even if the State of the official has not made a request for it to do so.

Second, draft article 11 provides that a State may invoke the immunity of its official based on the fact that immunity emanates from the principle of State sovereignty. The State may therefore invoke it if it wishes to do so. However, the Kingdom believes that immunity should be presumed, on the basis of the principle of State sovereignty and customary international law, and that the court of the forum State must act on that basis when making a determination in respect of the official’s immunity. Accordingly, the wording of draft article 11, on invocation of immunity, should be reviewed. It is sufficient to indicate that the State may waive immunity, if it so desires, as stated in article 12. This should be amended wherever it appears in the draft articles.

Third, the Kingdom expresses reservations regarding draft article 7, on crimes under international law in respect of which immunity *ratione materiae* shall not apply. The definitions of such crimes are still under discussion in the Sixth Committee. Moreover, these crimes are defined in international treaties to which not all States are parties. Accordingly, there is no international consensus with regard to such crimes. In addition, these crimes are not defined in the domestic laws of all Member States. This could open the door to an expanded interpretation of these crimes and thus lead to an increase in arbitrary accusations against officials of foreign States, creating serious tensions in international relations.

Accordingly, the Kingdom supports the conditions for the exercise of jurisdiction by the forum State over the official of a foreign State that were proposed by some members and set out in the seventh report of the Special Rapporteur at the seventy-first session (A/74/10). Some of those proposals have been addressed in the draft articles. The Kingdom reaffirms that the forum State, when exercising its jurisdiction over the official of a foreign State, should:

- (a) [Ensure that] the evidence that the official committed the alleged crime is absolutely conclusive;
- (b) Endeavour to transfer the proceedings to the courts of the State of the official before exercising jurisdiction.

Fourth, the forum State must be obligated to request the State of the official to provide it with information related to article 13. Doing so should not be left to the discretion of the forum State or be something that is a matter of choice, as in the current text of the article, in particular given that such information is among the matters that are considered by the competent authority when making a determination in respect of immunity under article 14 of the draft articles.

In conclusion, the Kingdom reaffirms the importance of observing the principle of State sovereignty and the importance of the issues arising from that principle, including the immunity of States and their officials. The Kingdom once again thanks the [International Law] Commission for its contributions with regard to these draft articles and trusts that the Commission will continue to work diligently on the matter before the draft articles become part of customary international law.
