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**71<sup>st</sup> Session of the General Assembly of the United Nations  
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***Agenda item 78***

**International Law Commission  
Report on ILC's 68<sup>th</sup> Session**

***Chapter X - Protection of the Environment in relation to Armed Conflicts  
Chapter XI – Immunity of State officials from foreign criminal jurisdiction  
Chapter XII - Provisional Application of Treaties***

**Speech delivered on behalf of Mrs. Alina Orosan,  
Director General for Legal Affairs,  
Ministry of Foreign Affairs by Mr. Stefan Racovita, Counselor, Permanent  
Mission of Romania to the United Nations**

**New York, November 2016**

Mr. Chair,

*I express this delegation's gratitude to the ILC President for the comprehensive presentation of the topics included in the last cluster. In the following I shall address all three topics forming part of this cluster.*

### ***Chapter X - Protection of the Environment in relation to Armed Conflicts***

We cannot stress enough the importance and timeliness of the consideration of this subject by the Commission. We commend the Special Rapporteur for the impressive work undertaken to properly identify the issues that should be covered by the draft principles. The reports submitted by the special rapporteur are a testimony of the breadth and complexity of the subject. Over the years, the rules pertaining to the protection of the environment have multiplied, attesting to the importance we pay to the environment.

The draft principles adopted so far by the Commission accurately reflect the current law in the field.

However, we would like to make a comment in respect of the contents of the third report submitted.

Romania agrees that indigenous people are dependent on the environment of the territories they inhabit, and damage to this environment has direct consequences on their existence. At the same time, damage to this environment during armed conflict has direct consequences on all people who depend, for example, on agriculture, including animal husbandry, on that territory even if they are not indigenous people. The Commission might want to consider a more general statement aimed at the protection of people who have a very close connection to the environment of the territories they inhabit.

As confirmed by the relevant legislation in force, Romania attaches great importance to the protection of the environment from the point of view of military activities.

Art. 443 paragraph 2 of the *Romanian Criminal Code* provides that *"The carrying of an attack by military means, as part of an armed conflict with an international character, knowing that it will cause extended, lasting and grave damage to the environment, which is visibly disproportionate with the overall specific and anticipated military advantage, shall be punishable by no less than 3 and no more than 10 years of imprisonment and a ban on the exercise of certain rights."*

In the field of the protection of the environment, the Romanian legislation provides for a specific role for the Ministry of National Defence:

- *To elaborate specific rules and regulations in its fields of activity, in accordance with the legislation on the protection of the environment;*
- *To supervise the observance, by its personnel, of the rules concerning the protection of the environment, as regards the activities from military areas;*
- *To control the activities and to enforce the sanctions for the violation, by its personnel, of the legislation concerning the protection of the environment in the military field;*
- *To ensure the evaluation of the impact on the environment, of the site report and, as appropriate, of the security report, through specialized structures, certified by the central authority for the protection of the environment, only for activities in the military areas;*
- *To notify the competent authorities for the protection of the environment on the results of self-monitoring of pollutant emissions and of the quality of the environment in the impact area, as well as any accidental pollution.*

The Romanian authorities have adopted the *Strategy for the Protection of the Environment in the Romanian Army*, which provides the following: “*The general objective of protection of the environment in the Army consists in the application and observance of the legislation and other normative acts regarding the protection of the environment elaborated at national level, with a view to reducing the impact of military activities on the environment.*”

*Law no. 291/2007 regarding the entry, stay, carrying of operations or transit of foreign armed forces on Romanian territory* contains a section related to the protection of the environment. The agreements concluded by the Romanian authorities regarding the status of visiting forces and their activities as well as the technical arrangements on the conducting of military exercises include provisions aimed at protecting the environment.

The Romanian delegation will follow with great interest the developments on this topic in the ILC’s future reports.

### ***Chapter XI – Immunity of State officials from foreign criminal jurisdiction***

With regard to the topic "*Immunity of State Officials from Foreign Criminal Jurisdiction*", we express our appreciation to the Special Rapporteur, Ms. Concepcion Escobar Hernandez, for her detailed and rich report dealing with the question of limitations and exceptions to the immunity of State officials from foreign criminal jurisdiction and for her efforts in finding a balanced approach on these issues. We also note the vivid debate within the Commission on this topic which prevented the conclusion, at this year’s session of the ILC, of the consideration of the report of the Special Rapporteur.

We welcome the approach of the Special Rapporteur in analyzing the immunity of state officials in the context of the international law, in relation to other provisions of the international law system (including the Rome Statute).

It is our view that the Commission should *primarily* focus on the codification of the norms of international law in relation to the subject matter, including with respect to limitations and exceptions, given that these issues are rather controversial in international relations. Attention should also be paid to progressive development of international law in order for the draft articles to reflect the legal status with respect to the issue of immunity of State officials from foreign criminal jurisdiction, but this should come as subsequent to codification.

We equally appreciate that much more consideration should be given to identifying the emergence of an international custom with regard to limitations and exceptions to immunity from the exercise of the jurisdiction of *other States*, since we do consider that the conclusion of the Special Rapporteur is far reaching and not supported by sufficient state practice and opinion juris in this regard. We certainly have doubts with respect to the existence of an international custom of such kind in what concerns the crime of corruption.

We do agree that distinction should be made in respect to immunity *ratione personae* and *immunity ratione materiae* for the purpose of the exercise of foreign criminal jurisdiction and that immunity *ratione personae* is a procedural bar to jurisdiction, which cannot conflict with substantive rules of international law, especially where there are obligations falling from an international treaty to which a State in question is a Party to prosecute a certain international crime, if not extradite (the so-called treaty based exceptions to the immunity *ratione materiae*). Therefore, we see merits in identifying the acts which, even if performed in an official capacity, cannot fall within the immunity *ratione materiae*, and which, thus, could be prosecuted under foreign criminal jurisdiction once the immunity *ratione personae* has ceased.

We also share the view that a distinction should be preserved between the exercise of inter-State jurisdiction – which should pay due consideration to principles of international law and relevant rules of customary international law (the so-called horizontal relation) – and the exercise of jurisdiction by an international criminal forum, which draws its mandate from an international treaty (the so called vertical relation), the latter being exceptional in nature. If the practice of this jurisdictional institutions could be considered to be applicable at horizontal level, this should be carefully analysed and placed under the progressive development of international law.

The Romanian delegation will closely and attentively follow the debate on this topic within the ILC and shall deepen its considerations of the matter.

## ***Chapter XII - Provisional Application of Treaties***

The delegation of Romania welcomes the continuation of work by the International Law Commission concerning the provisional application of treaties, and appreciates the efforts of the Special Rapporteur in further substantiating his research.

Romania remains very interested in this topic, and reiterates its conviction that it is of great practical significance. Romania is also in agreement with the members of the Commission that more examples of practice are needed in order to substantiate the conclusion drawn.

Even if, as stated during last year's intervention, provisional application of treaties is viewed by Romania as an exceptional, and therefore limited, treaty action, for reasons attached primarily to legal certainty, practice has been accumulating over the years. An analysis of this practice should pay particular attention to the nature and characteristics of each treaty.

We maintain our previously sent comments on this topic many of which were not taken up in this year's Rapporteur's research.

Romania also supports the idea of examining the question of interpretative declarations made by States provisionally applying a treaty, as well as the suggestion to develop an indicative list of model clauses.

This delegation looks forward to the next reports and expresses the conviction that they will bring even more clarity on this topic.

*This concludes the remarks of the Romanian delegations on this year's report of the International Law Commission.*

*Thank you.*