

*THIRD COMMISSION*

*Resolution on the Immunity from Jurisdiction of the State  
and of Persons Who Act on Behalf of the State in case of International Crimes*

Rapporteur : Lady Fox

RESOLUTION

*The Institute of International Law,*

*Mindful* that the Institute has addressed jurisdictional immunities of States in the 1891 Hamburg Resolution on the jurisdiction of courts in proceedings against foreign States, sovereigns and heads of State, the 1954 Aix-en-Provence Resolution on immunity of foreign States from jurisdiction and measures of execution, the 1991 Basle Resolution on the contemporary problems concerning immunity of States in relation to questions of jurisdiction and enforcement and in the 2001 Vancouver Resolution on immunities from jurisdiction and execution of heads of State and of Government in international law ;

*Conscious* that under conventional and customary international law a State has an obligation to respect and to ensure the human rights of all persons within its jurisdiction;

*Considering* the underlying conflict between immunity from jurisdiction of States and their agents and claims arising from international crimes;

*Desirous* of making progress towards a resolution of that conflict;

*Recognizing* that the removal of immunity from proceedings in national courts is one way by which effective reparation for the commission of international crimes may be achieved;

*Adopts* the following Resolution:

**Article I: Definitions**

1. For the purposes of this Resolution “international crimes” means serious crimes under international law such as genocide, crimes against humanity, torture and war crimes, as reflected in relevant treaties and the statutes and jurisprudence of international courts and tribunals.
2. For the purposes of this Resolution “jurisdiction” means the criminal, civil and administrative jurisdiction of national courts of one State as it relates to the immunity of another State or its agents conferred by treaties or customary international law.

**Article II: Principles**

1. Immunities are conferred to ensure an orderly allocation and exercise of jurisdiction in accordance with international law in proceedings concerning States, to respect the sovereign equality of States and to permit the effective performance of the functions of persons who act on behalf of States.

2. Pursuant to treaties and customary international law, States have an obligation to prevent and suppress international crimes. Immunities should not constitute an obstacle to the appropriate reparation to which victims of crimes addressed by this Resolution are entitled.
3. States should consider waiving immunity where international crimes are allegedly committed by their agents.

**Article III: Immunity of persons who act on behalf of a State**

1. No immunity from jurisdiction other than personal immunity in accordance with international law applies with regard to international crimes.
2. When the position or mission of any person enjoying personal immunity has come to an end, such personal immunity ceases.
3. The above provisions are without prejudice to:
  - (a) the responsibility under international law of a person referred to in the preceding paragraphs;
  - (b) the attribution to a State of the act of any such person constituting an international crime.

**Article IV: Immunity of States**

The above provisions are without prejudice to the issue whether and when a State enjoys immunity from jurisdiction before the national courts of another State in civil proceedings relating to an international crime committed by an agent of the former State.

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