The question:

For all or for some? Functional immunity of State officials before the International Law Commission

Introduced by Beatrice Bonafé, Micaela Frulli and Paolo Palchetti

Under international law, State officials are entitled to different types of immunity from foreign jurisdiction. Generally, two categories of immunities are identified: the so-called functional immunity (or *ratione materiae*) and personal immunities (or *ratione personae*). Notwithstanding the fact that these rules are among the oldest ones of modern international law, there are still many controversial issues surrounding them. It is therefore not surprising that the International Law Commission (ILC) decided to include the topic “Immunity of State officials from foreign criminal jurisdiction” in its programme of work. Two Special Rapporteurs were appointed: Roman A Kolodkin from 2007 until 2011 and Concepción Escobar Hernández from then until today.

The present zoom-out intends to discuss one of the most contentious issues in this field, namely whether it is all state officials or only some of them that enjoy functional immunity from foreign jurisdiction. Both Rapporteurs share the traditional view upheld by most international law scholars and affirm that there exists a customary rule granting functional immunity from the jurisdiction of foreign states to every state official for acts performed in an official capacity. Over time, this view has been criticized by a number of scholars who deny the existence of a general rule along these lines and argue that there are instead some specific rules granting functional immunity only to a few classes of state officials for acts performed within the limits of their official mandate.

In order to stimulate the debate over this issue QIL asked Riccardo Pisillo Mazzeschi to present his critique to the traditional theories by comprehensively addressing the questions concerning the legal basis,
scope of application and content of functional immunity for foreign officials. Philippa Webb and Gionata Buzzini replied upholding the more traditional view and dwelling on its enduring validity. Other scholars will take part in the debate in the following weeks.

With the present Zoom-out, QIL presents a variation on the usual formula, by offering a wider, background paper from one author, together with shorter and targeted commentaries from a number of other scholars. This Zoom-out also represents the inauguration of an occasional series devoted to the critical examination of some of the general topics addressed by the ILC in its work of codification of international law.