



IRELAND

Statement by

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at the

Sixth Committee

United Nations General Assembly 74th Session

Agenda Item 79:

The Report of the International Law Commission on the Work

of its 71st Session

Cluster 2 – Chps VI (Protection of the environment in relation to armed conflicts), Ch VIII (Immunity of State officials from foreign criminal jurisdiction) and Ch X (Sea-level rise in relation to international law)

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Madam Chair,

1. Thank you for the opportunity to comment on the second cluster of issues contained in the ILC's report. I will speak today on the topics of "Immunity of State officials from foreign criminal jurisdiction" and "Sea-level rise in relation to international law".

Immunity of State officials from foreign criminal jurisdiction

2. In relation to **Immunity of State officials from foreign criminal jurisdiction**, Ireland expresses its warm appreciation to the Special Rapporteur, Ms. Concepción Escobar Hernández, for her Sixth and Seventh Reports on procedural safeguards and welcomes the close attention given by the Special Rapporteur and the Commission to these very important issues. We note that this year the drafting Committee has not provisionally adopted any of the draft articles proposed by the Special Rapporteur and therefore our comments are preliminary and general in nature.
3. The Special Rapporteur has noted her intention to re-order the draft articles and my delegation is of the view that this would result in a clearer picture of the different procedural stages to be dealt with.
4. My delegation also believes that consistency of terminology is important throughout the draft articles. Where the Special Rapporteur has used different formulations in relation to similar issues (for example, in draft articles 8 and 9), the Drafting Committee might usefully consider whether this is warranted.
5. My delegation agrees with those members of the Commission who highlighted the importance of this topic "maintain[ing] consistency with the work of the Commission on other related topics such as crimes against humanity and peremptory norms of general international law (*jus cogens*)."

Madam Chair,

6. Ireland welcomes the recognition of the need for safeguards to prevent any potential political or abusive use of criminal jurisdiction against foreign state officials and the

analysis of this issue in the Special Rapporteur's Sixth and Seventh Reports. We welcome the draft articles' focus on consultation and communication between the forum State and the State of the official and note that sharing of relevant information with the State of the official is an essential aspect of safeguards in such context.

7. My delegation emphasises that in reviewing the draft articles, and the approaches set out therein, it is necessary to ensure that the relevant mechanisms and procedures in different legal systems are considered and reflected in the text.

Madam Chair,

8. Following on from our comments in previous years regarding the need to identify on a granular level whether proposals represent codification or progressive development of international law, Ireland welcomes the approach taken by the Special Rapporteur in paragraph 139, where she indicates her view that draft articles 12, 13, 14 and 15 constitute progressive development. It would be helpful if this approach could be extended when drafting the commentaries to the draft articles as a whole.
9. Let me recall that last year Ireland expressed support for "consideration of the dual components of procedural aspects: on the one hand concerning issues such as timing and waiver, and on the other hand, full consideration of safeguards – including in the specific context of Article 7." In this regard, we look forward to further discussion in the Commission next year of the link between these safeguards and draft article 7 and possible proposals for the inclusion of additional safeguards specifically linked to article 7.
10. While noting the differing views of Commission members in relation to this issue, Ireland welcomes the Special Rapporteur's indication that she will consider the question of dispute settlement mechanisms in next year's report. Ireland would be interested to see proposals and analysis in this regard and is of the view that dispute settlement mechanisms could potentially form part of the "safeguards aimed at protecting the stability of international relations and avoiding political and abusive prosecutions" which my delegation referenced in last year's intervention.

Madam Chair,

11. Finally, on this issue, Ireland notes that it is proposed to complete the first reading of the draft articles during next year's session. However, the Special Rapporteur has referred to a number of important issues which still need to be addressed, including definition, as well as the obligation to cooperate with international criminal courts and tribunals and such an obligation's possible impact on the immunity of state officials. Bearing in mind the significance of this topic, adequate time must be allocated to complete full consideration of all its aspects by both the Commission and, in due course, the Sixth Committee. My delegation emphasises that, further detailed analysis will be key to ensuring broad support for the outcome of the Commission's consideration of this topic.
12. We look forward to receiving the Special Rapporteur's Eighth Report and to continuing discussions on the draft articles next year.

Sea-level rise in relation to international law

Madam Chair,

13. I would like now to make some brief remarks on the important issue of **Sea-level rise in relation to international law**. Last year, Ireland welcomed the Commission's decision to include this topic in its long-term programme of work. My delegation is pleased that the issue is now on the Commission's active agenda. Further study of this issue is very timely given the grave environmental challenges we all face, but particularly low-lying states and small island states.
14. As the President of Ireland, Michael D Higgins, said in his address to the General Assembly in September

Small Island Developing States, drawing on their expertise and their stark experience, have led the debate on climate change ... [and] have a unique moral authority to speak out.

We must all play our part in dealing with this issue.

15. Ireland also welcomes the Intergovernmental Panel on Climate Change's Special Report on the Ocean and Cryosphere in a Changing Climate which brought home the urgency of responding to climate change in order to address the unprecedented changes in our ocean and cryosphere.

16. Ireland supports the proposed approach of the Commission to establish an open-ended Study Group which will focus on three subtopics, namely issues related to law of the sea, issues related to statehood and issues related to the protection of persons affected by sea-level rise. My delegation would like to thank the co-chairs for taking on this task.

Madam Chair,

17. Ireland believes that an in-depth examination of this topic, especially on issues relating to statehood and the protection of affected persons, will provide a basis for future constructive discussion of this important issue within the Sixth Committee. In particular, the Study Group's work can play an important role in identifying existing legal rules and gaps in the legal framework which the international community will need to address as part of its response to the challenges sea-level rise brings.

Thank you Madam Chair