



# IRELAND

Statement by

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at the

Sixth Committee

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Agenda Item 82:

The Report of the International Law Commission on the Work  
of its 72<sup>nd</sup> Session

Cluster II Chps: VI (Immunity of State officials from foreign criminal jurisdiction) and IX  
(Sea-level rise in relation to international law)

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## Immunity of State officials from foreign criminal jurisdiction:

Madam Chair

1. Thank you for the opportunity to comment on the second cluster of issues contained in the International Law Commission's Report. I will first speak today on the topic of **"Immunity of State officials from foreign criminal jurisdiction."**
2. Ireland expresses its deep appreciation to the Special Rapporteur, Ms. Concepción Escobar Hernández, for her work on the topic and her eighth report, as well as her detailed engagement with the Drafting Committee in 2021. Ireland also appreciates the work of the Drafting Committee and the members of the Commission as a whole on this important topic. My remarks will first address the draft articles and commentaries adopted by the Commission this year and will then comment on the draft articles to be considered by the Drafting Committee and finally I will make some remarks on the future direction of the Commission's work, following the completion of the Special Rapporteur's 2012 work plan.
3. Turning now to the draft articles adopted by the Drafting Committee, Ireland reiterates its view that procedural provisions and safeguards are relevant to the draft articles as a whole and therefore welcomes that this position is reflected in Article 8 *ante*.
4. We note that the commentary to Article 8 *ante* states that the draft article does not prejudice and is without prejudice to the adoption of any additional procedural guarantees and safeguards, including whether specific safeguards apply to draft Article 7. Ireland has previously called for full consideration of safeguards – including in the specific context of Article 7 – and would welcome proposals in this regard, which would also give the Commission the opportunity to revisit elements of draft Article 7 in conjunction with provisions on procedures and safeguards.
5. Ireland notes that the commentary to Article 8 *ante* explains that various terms require review in the final revision of the draft articles before their adoption on first reading. Ireland's comments in relation to both the draft articles and the commentaries are therefore necessarily preliminary in nature.
6. Ireland welcomes the intention of Article 8 to give effect to the International Court of Justice's determination that the question of immunity should be examined at an early stage and considered in *limine litis*.
7. As noted in the commentary adopted this year, we recall that the term "criminal jurisdiction" has not yet been considered by the Drafting Committee and therefore further consideration of the article will be required when the definition and use of this term throughout the draft articles has been considered.

8. We note further that consideration of the interaction between Articles 8 and 9 and Article 13 will be required when the latter draft article has been adopted.
9. Turning now to Article 10, Ireland agrees with the members of the Commission who commented - when considering the Special Rapporteur's seventh report - that the invocation of immunity was not a prerequisite for its application, as immunity existed as a matter of international law. Ireland further recalls that some members mentioned that a requirement of invocation of immunity in writing did not necessarily reflect the international practice. We would share this understanding and reiterate our suggestion that the commentaries to relevant articles indicate when a proposal reflects progressive development of the law.
10. My delegation notes that the commentary to Article 10 explains that "This draft article does not deal with the effects of invocation, which will be addressed later." Ireland will provide further comments on this provision when the "effects of invocation" have been addressed.

Madam Chair

11. Turning now to the draft articles to be considered by the Drafting Committee. As a strong supporter of accountability, Ireland supports the inclusion of a without prejudice provision in Article 18 addressing the relationship of these articles with the rules governing international criminal courts and tribunals.
12. Ireland shares the view that draft article 18 should merely separate different legal regimes, whose validity and separate fields of application are intended to be preserved, without creating a hierarchy.
13. We look forward to input from the Drafting Committee in relation to the wording and placement of such provision, noting different proposals raised during the Commission's discussion of the Special Rapporteur's proposal.
14. Ireland notes the Special Rapporteur's proposals to include Article 17 addressing a dispute settlement mechanism and the differing opinions in relation to this article in the Commission.
15. Ireland remains of the view that a dispute settlement mechanism could potentially form part of the "safeguards aimed at protecting the stability of international relations and avoiding political and abusive prosecutions" and looks forward to the input of the Drafting Committee in considering the draft article before it.

Madam Chair

16. Finally turning to the future direction of the Commission's work, noting that the Special Rapporteur has completed her plan of work on the topic, Ireland recalls that a number of draft articles and commentaries thereto have not yet been adopted and remain pending in the drafting Committee – including a new draft article X proposed in the Drafting Committee. It is clear from the commentaries adopted thus far that

some of the articles and commentaries already adopted or provisionally adopted also require further consideration, including in the context of definitions of particularly important terms that are repeated throughout the text.

17. Furthermore, Ireland recalls that in 2017 we voiced our concern that the Commission was divided internally on the adoption of Article 7 and its commentaries and expressed the view that further information on practice relating specifically to the non-application of immunity would be helpful. We note that this year a number of members suggested that the Commission would need to overcome the divergent views of its members on Article 7 before completing its first reading on the topic and would welcome proposals on the way forward in relation to this topic and in relation to this Article in particular.
18. Ireland recalls that the importance of giving States an adequate opportunity to comment on a full set of draft articles at the conclusion of the first reading was emphasised during the Commission's consideration of this topic. Such an opportunity would permit States to consider the full set of articles – including the interaction between different articles – and to provide comments and observations to the Commission for consideration.
19. We welcome the Drafting Committee's statement that at the end of the first reading that it will be necessary to consider the order of the draft articles as well as the consistency of the expressions used in the draft articles and are of the view that this consideration will improve the outcome and will be of assistance to States.
20. We look forward to continuing discussions on the draft articles and this topic next year.

#### **Sea-level Rise in relation to international law:**

Madam Chair

21. Turning now to the topic "**Sea-level Rise in relation to international law**", Ireland would like to thank the Co-Chairs Mr Bogodan Aurescu and Ms Nilüfer Oral for producing the extensive First Issues paper and other members of the Study Group for their valuable contributions.
21. Ireland aligns itself with the statement made by the European Union on this topic and would like to make the following additional observations.
22. My delegation shares the concerns of others about the likely effects of sea-level rise, one of the most visible adverse effects of climate change. Sea-level rise will raise profound challenges for many states, in particular low-lying and small island states, and all of us in the international community must work together to meet these challenges. Sea-level rise is a subject raised in a variety of fora, including this year's Informal Consultative Process on Oceans and Law of the Sea.

23. My delegation welcomes the consideration of this topic by the Commission, which has a valuable contribution to make in examining important legal questions, including law of the sea questions, as identified in paragraph 4 of the 2018 mandate of the Study Group.
24. Accordingly, we read with interest the First Issues Paper on the subtopic of sea-level rise in relation to the law of the sea. We have also had an opportunity to read the report of the discussion of that paper within the Study Group. We note the preliminary character of the Paper and the very broad range of views expressed by members of the Group on many aspects of this sub-topic.
25. My delegation has taken careful note of the discussion of the mandate of the Study Group set out in paragraph 285 of the Report and the suggestion of some members of the Group that it ought to be transparent from the beginning in distinguishing between *lex lata*, *lex ferenda* and policy options. My delegation agrees that transparency in the Commission's work is important, including with respect to this important topic. As my delegation understands it, the role of the Study Group is to carry out an in-depth analysis of existing international law, including treaty and customary international law, in accordance with the mandate of the Commission to progressively develop and codify international law, as indicated in paragraph 5 of its mandate. Ireland supports the suggestion in paragraph 285 that the Commission should be fully guided by its own prior work relevant to the topic. Once the mapping exercise referred to in paragraph 18 of the mandate has been completed, then possible options for future work by the Commission can be considered in light of the analysis presented.

Madam Chair

26. My remarks will now focus on Ireland's baselines. Irish baselines are composed of a mixture of normal baselines, straight baselines and bay closing lines. The normal baseline is the low water line along the coast as marked on maritime charts prescribed by law for this purpose. These charts are regularly updated to reflect physical changes in the maritime domain, including any change to the location of the low water line where this has occurred. In this sense, the normal baseline is ambulatory in that it may ambulate landward or seaward depending on a variety of factors, including coastal erosion and land reclamation.
27. Our straight baseline system was first prescribed in 1959 shortly after the adoption of the Geneva Convention on the Territorial Sea and the Contiguous Zone. The basepoints used in the construction of this system were all physically resurveyed in 2015 using modern technology and a revised system of straight baselines was subsequently prescribed by law.
28. We appreciate that the Co-Chairs have made a number of preliminary observations in their First Issues Paper on this issue. We agree however that they have not had the benefit of information on relevant practice and law on baselines, hydrographic charts

and deposits with the UN Secretary-General from a large number of member states and that this information is necessary before any definitive conclusions can be drawn.

29. We therefore welcome the extension by the Commission - to 30 June 2022 - of its request for information on relevant state practice and laws. We note also the request for information on practice concerning existing or planned measures for coastal adaptation in relation to sea-level rise. We are currently compiling this information and intend to make a submission to the Commission shortly.
30. In the meantime, we wish to point out that in Ireland - as elsewhere - practice specifically with regard to sea-level rise is at a very early stage. Notwithstanding this, many of the measures that will be taken in response to sea-level rise, or that may be necessary to protect the coast against it, are likely to be similar to those taken in response to natural phenomena such as coastal erosion and coastal flooding. These will have to be adapted to the new challenge.
31. Moreover, legal solutions to the problem of preserving baselines and the limits of maritime zones will have to be explored. We look forward to further consideration of this and other issues in the Sixth Committee as the important work of the Commission progresses.

Thank you Madam Chair