



Ireland's (abridged) National Statement for delivery in the Sixth Committee debate on the International Law Commission's Report

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

29 October 2021

Immunity of State officials from foreign criminal jurisdiction:

Mr/Madam Chair

1. I will first speak today on the topic of **“Immunity of State officials from foreign criminal jurisdiction.”** In the interest of time, please note that I will be delivering an abbreviated statement and will submit a longer version in writing.
2. My remarks will address the draft articles and commentaries adopted by the Commission this year, the draft articles to be considered by the Drafting Committee and finally the future direction of the Commission's work.
3. Regarding 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. 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.
5. 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. 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.
8. Consideration of the interaction between Articles 8 and 9 and Article 13 will also be required when the latter draft article has been adopted.
9. Regarding 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. Some members mentioned that a requirement of invocation of immunity in writing did not necessarily reflect the international practice. We agree and reiterate our suggestion that the commentaries indicate when a proposal reflects progressive development of the law.
10. 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.

Mr/Madam Chair

11. Regarding 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 agrees 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. 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.
14. 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.

Mr/Madam Chair

15. Regarding the future direction of the Commission’s work, noting that the Special Rapporteur has completed her work, 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 that some of the articles and commentaries already adopted or provisionally adopted also require further consideration.
16. In 2017, we voiced concern that the Commission was divided internally on the adoption of Article 7 and its commentaries and stated 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 and would welcome proposals on the way forward on this topic.

17. 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 by the Commission. Such an opportunity would permit States to consider the full set of articles – including the interaction between different articles.

18. We look forward to continuing discussions on this topic next year.

Sea-level Rise in relation to international law:

Mr/Madam Chair

21. Turning now to the topic “**Sea-level Rise in relation to international law**”,

19. Ireland aligns itself with the statement made by the European Union on this topic.

20. Ireland 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.

21. We read with interest the First Issues Paper on the subtopic of sea-level rise in relation to the law of the sea. We also 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.

22. We take 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. Transparency in the Commission’s work is important, including with respect to this important topic. 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.

Mr/Madam Chair

26. Ireland’s 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. 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 note 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.

Thank you Mr/Madam Chair