



Sixth Committee

United Nations General Assembly 77th Session

Statement of Ireland on Agenda item 77:

**Report of the International Law Commission on the work of its
seventy-third session**

**Cluster II – Chapters of the ILC report: VI (Immunity of State officials
from foreign criminal jurisdiction) and IX (Sea-level rise in relation
to international law)**

Delivered by Declan Smyth, Acting Legal Adviser

New York, 28 October 2022

Mr / Madam Chairperson,

I would like to begin by taking this opportunity to express Ireland's continuing appreciation for the work of the International Law Commission and its contribution to the codification and progressive development of international law. Ireland attaches great importance to this work and takes seriously its responsibility to contribute to it by providing comments, observations and details of state practice and *opinion juris*, as requested by the Commission.

Before commenting on the topics under consideration within this cluster, we would like to briefly address the Commission's programme of work. In particular we would like to suggest – as others have in the past - that the incoming Commission seriously consider reducing the number of topics on its programme of work. In our view, this would afford states the opportunity to consider more thoroughly the remaining topics and to provide more extensive views and examples of practice, to the ultimate benefit of the Commission itself.

Mr / Madam Chairperson,

Let me address the first of the topics under consideration within today's cluster, **Immunity of State officials from foreign criminal jurisdiction**.

Ireland expresses its appreciation to the Special Rapporteur, Concepción Escobar Hernández, for her work on this topic, including her detailed engagement with the Drafting Committee in 2022, which we understand greatly assisted the Drafting Committee in progressing its work.

My remarks will first address some of the draft articles and commentaries adopted by the Commission this year and will then turn to the future work on this topic, noting the request for states to submit comments and observations by 1 December 2023. Ireland will provide more detailed comments on the full set of draft articles and commentaries in its written submissions next year, but we offer the following brief comments now.

Firstly, as a strong supporter of accountability Ireland agrees with the inclusion of a 'without prejudice' provision in the draft articles in order to address their relationship with the rules governing international criminal courts and tribunals. We therefore welcome the intention to include such a provision at draft Article 1(3) (formerly Article 18), and we support its proposed positioning within the draft articles. However, we have reservations about its current wording and

agree with the concerns expressed in the Drafting Committee - referenced in the Commentary - that the current formulation appears to be too restrictive.

While noting that this wording is based on the UN Convention on Jurisdictional Immunities of States and Their Property, in our view the proposed text does not correspond with recent practice concerning the creation of international criminal courts and tribunals and therefore requires further consideration in order to achieve the intended goal. Specifically, we believe that the current wording would omit those international criminal courts and tribunals which are not established by international agreement, such as tribunals established by the UN Security Council. In our view, the provision should not be limited to criminal courts and tribunals established by international agreement.

Turning now briefly to draft Article 7, we note the apparent continuing divergence of views within the Commission on this provision, notwithstanding the absence of a vote this year. Ireland will provide detailed observation on Article 7 in our written submissions next year. However, at this stage we wish to record our welcome for the additional safeguards regarding draft Article 7 introduced now by draft Article 14(3).

Noting also the possibility that the implementation of the draft Articles in any given case could give rise to disagreements or misunderstandings between states, Ireland supports the inclusion of draft Article 17 as a useful mechanism whose purpose is to prevent conflict between the forum state and the state of the relevant official, and to protect stability in international relations.

Mr / Madam Chairperson,

Ireland notes that the inclusion of draft Article 18 is related to the final form of the draft articles and the recommendation to be addressed by the Commission to the General Assembly in due course. Ireland will comment on both of these issues in its written comments. At this stage, however, we remain of the view that should that final form be an international agreement, a dispute settlement provision would form an important part of safeguards aimed at protecting the stability of international relations and avoiding political and abusive prosecutions.

Finally, while noting that the Commission has not yet recommended a proposed outcome for this topic, Ireland welcomes the opportunity for States to comment on the full set of draft articles as a whole. This will allow consideration of the

complete set of draft articles – including the interplay between different articles – and to provide comments and observations to the Commission for consideration.

Mr / Madam Chairperson,

I would like now to address the other topic for consideration today, Chapter IX of the Commission's Report, **on Sea-level Rise in relation to International Law**, and the work of the Study Group in its first two issues papers.

Sea-level rise is a pressing, even existential issue. Its impact will be disproportionately felt by people in low-lying areas and in developing countries, particularly small island developing states.

As an island state itself, Ireland is very aware of the urgency of the issue. The legal aspects of the impact of sea-level rise are also crucial in our view. The ILC's work is already helping to identify gaps in the legal framework as we respond to the challenges posed by this issue. The UN Convention on the Law of the Sea will clearly be a key consideration in any response.

Mr / Madam Chairperson,

We wish to thank Ms. Galvão Teles and Mr. Ruda Santolaria for the second issues paper on the topic, which deals with the legal issues of statehood and protection of persons.

We note the many complex and novel legal issues raised in the paper and in the Report of the discussion of it by the Commission.

There are few, if any, legal precedents for the situation that now confronts us. It is undoubtedly for this reason that the Commission has now asked states not just for information on their practice with regard to certain matters, but also for their appraisals of, for instance, the nature of the territory of a State and of the requirements for both the configuration of a State as a subject of international law and for the continuance of its existence in the context of the phenomenon of sea-level rise.

We note also the suggestion that, in the absence of specific legal rules addressing some of the issues with which we will be confronted by sea-level rise, an examination of potentially relevant general principles of law may be necessary. Ireland intends to consider all of these matters with a view to

submitting its views – as well as any relevant state practice – to the Commission before the end of June next year, as requested.

As the Study Group returns its focus in 2023 to the Law of the Sea aspects of the topic, I wish to mention here that, further to the earlier request made by the Commission, Ireland has submitted detailed information on updating both baselines from which the breadth of maritime zones is measured and national laws regarding baselines, as well as other related national practice.

Ireland recently carried out a full resurvey of the points from which our system of straight baselines and our bay closing lines are drawn, and subsequently amended the national laws prescribing these straight baselines and bay closing lines. We wish to note, however, that to date our practice in this area has not been formulated expressly in contemplation of sea-level rise.

Mr /Madam Chairperson,

We look forward to reviewing the outcome of this next phase of the work of the Study Group next year. The issues raised are complex, difficult and urgent.

I thank you for your kind attention.