



IRELAND

Statement by

Mr James Kingston
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at the

Sixth Committee

United Nations General Assembly 72nd Session

Agenda Item 81:

**The Report of the International Law Commission
on the Work of its 69th Session**

**PART 2 – Ch VI (Protection of the atmosphere), and Ch VII
(Immunity of State officials from foreign criminal jurisdiction)**

New York, 27 October 2017

Check against delivery

Mr Chair,

Protection of the atmosphere

1. Ireland wishes to begin by aligning itself with the statement delivered by the European Union on the topic “Protection of the atmosphere” and would like to acknowledge the work of the Special Rapporteur, Mr Shinya Murase, in producing his fourth report on this topic considering the interrelationship between international law on the protection of the atmosphere and other fields of international law.

Immunity of State Officials from Foreign Criminal Jurisdiction

2. With regard to the topic “Immunity of State officials from foreign criminal jurisdiction” Ireland again welcomes the fifth report of the Special Rapporteur, Ms Concepción Escobar Hernández. We would like to thank Ms Hernández for the considerable work that has gone into this report, analysing the question of limitations and exceptions to the immunity of State officials from foreign criminal jurisdiction.
3. We further note the provisional adoption by the Drafting Committee of draft Article 7 and its commentaries. Ireland acknowledges that this is a complex and difficult topic and accordingly believes that the work of the Commission on this subject is important. Therefore, Ireland wishes to voice our concern that the Commission was divided internally on the adoption of draft Article 7 and its commentaries, which led to a vote being held on its adoption.
4. Ireland is of the view that while the Special Rapporteur's report contained an extensive discussion of practice, the groundwork for detailed consideration of the question of non-application of immunity was not fully in place prior to this year's session. Accordingly, the resultant draft Article 7 may not be fully grounded in widely accepted State practice. In light of this, further information on practice relating specifically to the non-application of immunity would be helpful.
5. For these reasons, Ireland would like to express the wish that the Commission continue to consider the basis for and content of draft Article 7 in conjunction with the provisions on procedures and safeguards at its next session with a focus on State practice.

6. Ireland also notes the Special Rapporteur's comments (at paragraph 134 of the ILC Report) that the draft articles contain elements of both codification and progressive development. Ireland, however, believes it is unclear from the Special Rapporteur's Report, the report of the Drafting Committee and the commentaries whether and in what respect draft Article 7 seeks to determine the scope of existing international law (*lex lata*) or the extent to which the Commission is following an emerging trend towards desirable norms (*lex ferenda*). Indeed, while the Special Rapporteur stated that the Commission was not engaged in crafting "new law", Ireland takes note of the comments made by some members of the Commission that the text does not reflect existing international law or identifiable trends.
7. Ireland recalls the mandate of the Commission to codify and progressively develop international law. Whilst both aspects of its work are equally valid, Ireland believes that the focus of the Commission on any given item should initially be on establishing the current state of the law and only then should it move on to assess proposals for progressive development. This is particularly so with a topic such as the current one, which may give rise to practical issues that fall to be considered not only by Foreign Ministries and international lawyers, but also by domestic courts grappling with highly sensitive cases that may come before them.
8. Therefore, irrespective of the form of the outcome of the Commission's work on this topic, the Commission should – in our view – articulate in a granular way and in respect of each draft Article or part thereof identify whether it seeks to codify customary international law or progressively develop it. I should emphasise that this desire for clarity does not imply that my delegation is opposed to progressive development, but rather that elements of such development, based on emerging trends, should be clearly signposted.
9. My delegation looks forward to continuing to engage on this important topic and to receiving the Special Rapporteur's Sixth report on the procedural aspects of immunity.