



IRELAND

Sixth Committee

United Nations General Assembly 79th Session

Statement of Ireland on Agenda Item 79:

'Report of the International Law Commission on the work of its seventy-fifth session

**Cluster I – Chapters I-III, VII (Immunity of State officials from foreign criminal jurisdiction),
X (Sea-level rise in relation to international law) and XI (Other Decisions and Conclusions)'**

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New York, 21 October 2024

– CHECK AGAINST DELIVERY –

Mr Chairman

1. As this is my first time taking the floor in the Sixth Committee this year, I would like to express our pleasure in seeing you in the chair and assure you of Ireland's support for the work of the Bureau.
2. I also wish to express Ireland's appreciation to the Chair and Members of the International Law Commission, as well as to the Secretariat staff, for their work during the 75th session.
3. I wish to address today the topics of Immunity of State officials from foreign criminal jurisdiction and of sea-level rise in relation to international law. I will also make a brief remark on 'Other decisions and conclusions of the Commission.'
4. As regards **immunity of State officials from foreign criminal jurisdiction**, Ireland reiterates its thanks to the Commission for its work on this complex topic. We welcome the appointment of Professor Grossman Guiloff as Special Rapporteur and his first report on this topic this year, which covers draft articles 1 to 6 of the Commission's draft articles adopted on first reading.
5. As a preliminary point, we note the Special Rapporteur's proposal to review the draft articles over the course of two sessions and, in particular, welcome his acknowledgement of the requests of States for additional time to comment on the entire set of draft articles. The subject matter of immunity of State officials merits careful consideration and it is important that all States have an opportunity to engage substantively with the issues.
6. Given the fact that many of the draft articles interact with each other, it will also be important to give States an opportunity to review the draft articles in their entirety. We therefore emphasise the need to provide adequate time for States to conduct their analysis of a full set of revised draft articles and commentaries, together and as a whole.
7. In January this year, Ireland submitted written comments on the full set of draft articles adopted on first reading. We encourage those States that have not already done so to avail of the additional time provided by the Commission to submit written comments on draft articles 7 to 18.

Mr. Chairman,

8. As regards the proposals of the Special Rapporteur for reformulated draft articles 1 to 6, for consideration on second reading, I would like to make the following observations. Firstly, on paragraph (3) of draft article 1, Ireland welcomes the amendment of this paragraph. Ireland had been one of the delegations urging this adjustment but wonder whether the revised text would capture all relevant instruments, including for instance the recently concluded Ljubljana – The Hague Convention on International Cooperation in the Investigation and Prosecution of International Crimes.
9. On draft article 3, Ireland notes that the text remains unchanged from first reading and reiterates our view, as set out in our written comments, that the text of this article reflects customary international law on this point. Ireland favours maintaining this text.
10. On draft article 4, Ireland remains of the view that the substance of the draft article reflects *lex lata*, notwithstanding the small deletion proposed for paragraph 3. On the reformulated draft article 5 (previously draft articles 5 and 6), Ireland welcomes the merging of these provisions into one article and the improved clarity this brings to the text. In particular, the reformulated paragraph (1) makes it clearer that State officials enjoy immunity *ratione materiae* only insofar as they are acting in an official capacity.
11. Draft article 2, in the form adopted at first reading, contains a definition of ‘acts performed in an official capacity’ and the final form of this definition and its commentaries will be of importance to the scope of the new draft article 5. We therefore intend to revisit this point at the next session, with the benefit of the Commission’s views on draft article 2.
12. We remain of the view that our proposal – made in our written comments – to explicitly state in paragraph (1) of this draft article that State officials’ enjoyment of immunity *ratione materiae* is ‘subject to draft article 7’ would add greater clarity to this draft article. We suggest that this proposal be re-considered in conjunction with the Commission’s treatment of draft article 7 at its next session.

Mr. Chairman

13. We note that in their written comments States expressed differing views as regards the final form that the work of the Commission on this topic should take. We further note that some Members of the Commission supported the proposal put forward by Ireland and others that Parts One to Three be formulated as draft articles but that Part Four would be more appropriately framed as draft guidelines.
14. Nevertheless, we appreciate the preference expressed by other Commission members and the Special Rapporteur for a unified outcome that could be recommended to States as forming the basis for the negotiation of a treaty. However, before coming to a final conclusion on this question, it will be important to hear the views of States as the Commission's work on this topic continues to develop.

Mr. Chairman

15. I would like to turn now to the topic of **sea-level rise in relation to international law**, and in particular to the sub-topics of protection of persons and of statehood, which were the subject of consideration by the Commission during its 75th Session.
16. Firstly, Ireland is acutely aware of the importance – and urgency – of this topic. It raises profound issues that will affect all coastal states and will have a significant impact on the lives of people living in coastal communities, in particular in small island developing states. As an island state itself, Ireland is very conscious of – and already preparing for – the potentially devastating consequences of sea-level rise. The topic raises genuinely novel legal issues for which there may be little precedent. We therefore welcome this debate and look forward to hearing the views and perspectives of all delegations as we begin to develop a coherent legal response to sea-level rise.
17. I would like to thank Professors Galvao Teles and Ruda Santolaria for the additional paper to the Study Group's original Second Issues paper. This has provided further valuable information on – and analysis of – the legal issues of statehood and protection of persons.

Mr. Chairman

18. On the question of statehood, Ireland's preliminary assessment is that a number of important principles of international law are relevant and can provide some guidance on the question of continuing statehood where a state's land territory is submerged or rendered uninhabitable by sea-level rise induced by climate change. Amongst these are the principles of self-determination of peoples and of permanent sovereignty over natural resources.
19. Both principles tend to support a presumption in favour of continuity of statehood. Once a people has exercised its right of self-determination by establishing a State, that State enjoys permanent sovereignty over the natural resources located within its land territory and appurtenant maritime zones. Permanent sovereignty so established cannot be extinguished by rising sea levels.
20. Undoubtedly, the form continuity of statehood takes requires further consideration by all States. Many practical issues arise. If a State is denied its land territory because it has been submerged or rendered uninhabitable by rising sea levels induced by climate change, what will be the consequences for the organisation of a State's government, the provision of services by it to its citizens, its funding, even its political independence?
21. We note also a number of different possible modalities for the self-determination of peoples, identified by the Co-Chairs, by which a State threatened by rising sea-levels might seek to associate itself in some way with another State, or enter into confederal or federal arrangements with one, and in so doing preserve some measure of independence and autonomy. Furthermore, States in a position to do so may wish to develop tailored solutions with one or more States threatened by sea-level rise, offering facilities for the relocation of people and Government, and possibly other arrangements. These should be encouraged.
22. On protection of persons, in Ireland's view all States must cooperate and work together to protect – to the greatest extent possible – the rights of peoples most directly affected by sea-level rise. As the Co-Chairs have pointed out, respect for human dignity should serve as an overarching guiding principle in this work.
23. Finally, Mr. Chairman, on the product of the Study Group's work, Ireland looks forward to a joint final report next year on all three sub-topics – including the linkages between them – together

with a set of conclusions. Such a report will allow States to consider the issues in the round and determine how best to follow-up the work of the Commission on this very important topic.

Mr. Chairman

24. To conclude, I would briefly like to mention the report of the **International Law Seminar**, which took place in Geneva during summer. Ireland considers that this Seminar is integral to the promotion of international law broadly speaking, giving as it does the opportunity to young lawyers, particularly those from developing countries, to learn about the work of the Commission, as well as deepening their general understanding of international law. We again commend the Members of the Commission for giving their valuable time to the Seminar each year. We share the Commission's concern about the finances of the Seminar and encourage those states in a position to do so to consider making voluntary contributions to the Seminar, as we have done, to ensure wide participation, including by young lawyers who could not afford to do so without financial assistance.

I thank you for your kind attention.