



IRELAND

Statement by

Ms Anne-Marie O'Sullivan
Assistant Legal Adviser
Department of Foreign Affairs and Trade

at the

Sixth Committee
United Nations General Assembly 71st Session

Agenda Item 78:

The Report of the International Law Commission on the Work of its 68th Session
PART 3 – Ch X (Protection of the Environment), Ch XI (Immunity of State Officials from foreign
criminal jurisdiction) and Ch XII (Provisional Application of Treaties)

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PERMANENT MISSION OF IRELAND TO THE UNITED NATIONS
885 SECOND AVENUE, NEW YORK, NY 10017 TELEPHONE 212 421-6934 FAX 212 752-4726
newyorkpmun@dfa.ie

Mr Chair,

1. Thank you for the opportunity to comment on the third cluster of issues contained in the ILC's report. I will speak today on the topic of "Immunity of State officials from foreign criminal jurisdiction" and the topic of "Provisional application of Treaties". A slightly longer version of my remarks will be made available in writing.

Immunity of State Officials

2. Regarding the topic "Immunity of State officials from foreign criminal jurisdiction" Ireland wishes to express its appreciation to the Special Rapporteur, Ms Concepción Escobar Hernández for her fifth report, which analyses the question of limitations and exceptions to the immunity of State officials from foreign criminal jurisdiction. We understand that the debate of this aspect of the topic at the present session was preliminary in nature and will be continued at the Sixty-ninth session of the Commission. Therefore, my delegation's comments on this element of the topic must be understood to be preliminary in nature. My delegation also thanks the Drafting Committee for its work on draft articles 2, subparagraph (f) and 6 which were provisionally adopted by the Commission at the present session.
3. In Ireland's statement to the Sixth Committee on this topic in 2015, we noted that the proposed definition of an "act performed in an official capacity" in draft Article 2(f) was general in nature. Therefore, we welcome the acknowledgement in paragraph 10 of the commentary on this draft article that such acts must be identified on a case-by-case basis and we agree with the Commission's decision to set down the criteria to be examined, namely, that the act in question has been performed by a State official, is generally attributable to the State and has been performed in "the exercise of State authority".
4. In relation to draft article 7, which was briefly considered by the Commission and will be discussed again at the Commission's next session, Ireland makes the preliminary comment that further consideration should be given by the Commission to the international crimes to which immunity does not apply.
5. Ireland looks forward to the Commission's full discussion of this topic at its next session. We also note that the sixth report of the Special Rapporteur in 2017 will address the procedural aspects of immunity of State officials from foreign criminal jurisdiction and we believe that consideration of these procedural aspects should take into account the exceptions set out in draft Article 7.

Mr Chair,

Provisional application of Treaties

6. Turning to the topic "Provisional application of treaties", my delegation thanks the Special Rapporteur, Mr Juan Manuel Gómez-Robledo, for his fourth report, and the Drafting Committee for its careful consideration of draft guidelines 1-3 and 4-9, which have been provisionally adopted by the Committee. Ireland aligns itself with the statement delivered by the European Union, and would like to offer the following additional observations.
7. At our last session in 2015, Ireland was amongst a number of delegations which urged that further analysis be undertaken as to the precise nature of the legal effects created by

provisional application, and the extent to which they differ, if at all, from the effects created by the entry into force of the treaty. While taking note of draft guideline 7 and the statement of the Chair of the Drafting Committee in relation thereto, we continue to be of the view that further elaboration of this question, based upon a detailed review of state practice, would be beneficial to the Sixth Committee's consideration of the topic as a whole.

8. In this connection, it is with considerable interest that Ireland notes the contribution of the Treaty Section of the UN Office of Legal Affairs regarding the approach of the Secretariat to the provisional application of treaties in the context of its registration functions and the depositary functions of the Secretary-General. The statistics alone provide a valuable insight – 1,349 provisional application actions registered between 1946 and 2015, with 1,733 treaties registered subject to provisional application. The treatment of provisional application in the 1946 Regulations on Registration and Publication of Treaties, the Repertory of Practice of the United Nations, the Treaty Handbook, the Handbook on Final Clauses of Multilateral Treaties and the Summary of Practice of the Secretary-General as Depositary of Multilateral Treaties all appear, to my delegation, to be pertinent to an examination of this topic, and so worthy of further consideration. Such consideration might include an examination of issues such as the breakdown of treaties registered subject to provisional application when divided as between bilateral and multilateral agreements; whether the practice of the Treaty Section with regard to displaying information on provisional application varies depending on whether provisional application is provided for in the agreement itself or has been agreed by some other means and if agreed by some other means, what information is required? Another issue that might be considered is the effect of Article 102, paragraph (2), of the UN Charter with regard to a provisionally applied treaty that has not been registered with the UN.
9. We very much welcome, therefore, the decision to request the Secretariat to prepare a memorandum analysing state practice in respect of treaties which provide for provisional application deposited or registered with the Secretary-General in the last 20 years, and look forward to reflecting on the further insights that this will surely provide.

Thank you Mr Chair