



IRELAND

Statement by

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at the

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Agenda Item 82:

The Report of the International Law Commission on the Work of its 70th
Session

PART 3 – Ch IX (Protection of the environment in relation to
armed conflicts), Ch X (Succession of States in respect of State
responsibility) and Ch XI (Immunity of State officials from foreign
criminal jurisdiction)

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Mr Chair,

1. Thank you for the opportunity to comment on the third cluster of issues contained in the International Law Commission's Report. I will speak today on the topic of "Immunity of State officials from foreign criminal jurisdiction".
2. Ireland expresses its warm appreciation to the Special Rapporteur, Ms Concepción Escobar Hernández, for her Sixth Report, which begins the analysis of the important question of procedural aspects of immunity of State officials from foreign criminal jurisdiction. As the Rapporteur did not propose any draft articles in her Report, we understand that the debate which took place within the Commission on this topic was preliminary in nature and will be continued next year at the Seventy-first session of the Commission. Nevertheless, my delegation wishes to comment on some of the preliminary conclusions reached by the Special Rapporteur on the proviso that a more complete analysis of these particular procedural aspects of immunity will only be possible next year.

Mr Chair,

3. In this regard, Ireland supports consideration of the dual components of procedural aspects: on the one hand, concerning issues such as timing and waiver, and on the other hand, full consideration of safeguards – including in the specific context of Article 7. We are of the view that such consideration should analyse safeguards protecting due process and other guarantees under international human rights law, as well as safeguards aimed at protecting the stability of international relations and avoiding political and abusive prosecutions.
4. We recognise that discussion this year focussed on the procedural aspects of immunities more generally rather than setting out procedural provisions and safeguards as they apply to particular draft articles, such as Article 7. Discussion of procedural safeguards at next year's session will give the Commission a welcome opportunity to revisit elements of draft Article 7, including in conjunction with provisions on procedures and safeguards.

5. As mentioned on previous occasions, my delegation would welcome guidance from the Commission on those aspects of the draft articles put forward that constitute codification of existing international law and those which represent progressive development.

Mr Chair,

6. We agree with the view expressed by some members that procedural provisions and safeguards are relevant to the draft articles as a whole. My delegation believes that the question of timing is one on which the Commission can offer valuable guidance.
7. We note that it is generally accepted that determinations in relation to the immunity of a State's official from foreign criminal jurisdiction should be considered in *limine litis*. However, it would be useful if the Special Rapporteur and the Commission could consider this issue in more detail.

Mr Chair,

8. As regards the material element, that is the acts of the forum States to which immunity applies, the Special Rapporteur identified detention, appearance as a witness and precautionary or preliminary measures as acts that could attract immunity. We note the Special Rapporteur and the Commission's consideration of the impact of inviolability on immunity and in particular the distinctions discussed in this regard in relation to immunity *ratione personae* and immunity *ratione materiae*. Further, the discussion at plenary of the difference between a criminal investigation of a case more generally and criminal investigation of a particular case for the purposes of immunity was interesting. It is our view that these areas could benefit from further elaboration in the Special Rapporteur's next report.
9. Ireland notes the plan of future work suggested by the Special Rapporteur and supported by Commission members which aims to complete the first reading of the draft articles during the next session. In this context we note that a number of issues remain to be resolved, both in relation to procedural matters in the Seventh Report, as well as in relation to matters addressed in earlier reports. We note further that States will not have

had an opportunity to comment on all draft articles before the planned first reading of all draft articles in 2019. Bearing in mind the significance of immunity of State officials from foreign criminal jurisdiction in international relations, my delegation would highlight the need to ensure that adequate time is allocated in order to complete full consideration of this important and complex topic.

10. We look forward to receiving the Special Rapporteur's Seventh Report and to continuing this discussion of the procedural aspects of immunity next year.