

STATEMENT

BY THE AMBASSADOR, PERMANENT REPRESENTATIVE OF SPAIN  
TO THE UNITED NATIONS

H.E. Mr. Agustín Santos Maraver

AT THE SIXTH COMMITTEE  
OF THE 76<sup>th</sup> SESSION OF THE GENERAL ASSEMBLY

Mr./Ms. Chair,

It is an honor to address this Sixth Committee on the work of the International Law Commission at its seventy-second session. Before commenting on the work of the Commission on the topics introduced in Cluster 2, I would like to thank the Chairman of the LC, Ambassador Mahmoud Hmoud, for presenting the Report for this session. The ILC was unable to meet in 2020 as a result of the restrictions imposed by the COVID 19 pandemic. This year, the Commission has been able to continue its work under difficult conditions, for which we wish to express our appreciation to its

As my delegation has already expressed its views on previous occasions on draft articles 1 to 7 provisionally adopted by the Commission, I shall now focus my statement on the procedural aspects of immunity to which the six new articles are devoted. With regard to these articles, I should like to point out, first of all, the importance that my delegation attaches to the incorporation of procedural dimension into the work of the Commission. In that regard, we fully share the Special Rapporteur's assessment of the importance of procedural provisions for the purpose of promoting confidence building among the States concerned and for objecting the treatment of the question of immunity in each specific case. Along with this, Spain also considers that the procedural provisions and guarantees also contribute significantly to establishing a necessary balance between the interests of the States concerned and will make it possible to respond to the legitimate concerns of several States, expressed in this Chamber, regarding the risks of politicization that could be generated in the event that the immunity of State officials from foreign criminal jurisdiction were not applied by the State's domestic organs and courts, in particular as a result of the possible application of the exceptions to immunity contained in draft article 7,

With regard to draft articles 10 (invocation of immunity) and 11 (waiver of immunity), my delegation considers that both are sufficiently consistent with international practice. With regard to the question of the irrevocable nature of the waiver of immunity, my delegation wishes to express its support for the provisions of paragraph 6 of draft article 11, which is moreover - consistent with the provisions of our domestic legal system, in particular article 28 of Organic Law 16/2015 on privileges and immunities of foreign States, international organizations and international conferences and meetings held in Spain.

Mr./Ms. Chair,

My delegation is fully aware that important draft articles of a procedural nature are still pending consideration by the Commission, in particular articles 13, 14, 15 and 16. We note the relevance of these draft articles, especially the one on the determination of immunity which is essential to establish a proper balance between the guarantee of immunity and the protection of other values of the international community, in particular the fight against impunity for the most serious crimes under international law to which Spain continues to be closely linked. We are confident that, with the leadership of the Special Rapporteur and the contributions of other members of the Commission, the adoption of these drafts will be able to take into account

flexible and could support either the maintenance of a ~~stand~~ draft article or its inclusion in draft article 1 on the scope of application of the Draft Articles.

In summary, Mr. In summary, MChairman, my delegation would like to conclude by once again reiterating its appreciation to the Commission and the Special Rapporteur for their tireless work on this topic. We will continue to closely examine the work of the Commission and trust that the Commission will be able to adopt the Draft Articles

Mr./Ms. Chair

To conclude my remarks, allow me to make a brief but important reflection on the composition of the International Law Commission from a gender perspective. As other delegations have already pointed out, we cannot fail to draw attention to the fact that the ILC only includes a small number of women among its members (4 at present) and that the number of women candidates in the current electoral process is also very small (only 8 candidates). It is obvious that the composition of the Commission does not reflect the reality of the group of jurists specialized in International Law and we can only express our wish that this inadequacy be progressively reduced. For this reason, Spain has once again decided to present the candidacy of Professor Concepción Escobar Hernández and trusts that the Member States will be able to support her in order to allow her to complete her work as Special Rapporteur on Immunity of State Officials from Foreign Criminal Jurisdiction.

Thank you very much for your kind attention.