

Explanation of vote by Mario Oyarzábal

on Draft Article 7 of the Draft Articles on the Immunity of State Officials from Foreign Criminal Jurisdiction (A/CN.4/775 3 May 2024) as provisionally adopted by the International Law Commission in its 77th Session

**International Law Commission – 77th Session
28 April 2026**

Original: Spanish

Thank you, Mr. Chair, and good afternoon to all.

Allow me to begin by congratulating you, Mr. Chair, on the skillful conduct of our work during difficult times.

Allow me also to highlight the value of the work carried out by the Secretariat headed by Mr. Arnold Pronto, whose work and guidance is indispensable for the successful conclusion of our work.

I regret that the Commission is unable to adopt draft article 7 by consensus, notwithstanding the extensive and careful deliberations we conducted last year. This is a worrying development that risks undermining our work not only in the Drafting Committee as we discuss the procedural safeguards, but ultimately with respect to the final product we will submit to the Sixth Committee. Those risks should have justified exhausting every effort to reach consensus.

I voted in favor of draft article 7 because I agree with the balance it strikes between two fundamental norms of international law: the immunity enjoyed by State officials from foreign criminal jurisdiction, and accountability for the most serious international crimes.

In that same spirit, I have supported in previous interventions that the Draft Articles, once concluded, be submitted to the General Assembly so that it may consider the elaboration of a convention on that basis in due course.

I consider it essential that the commentaries to draft article 7, as well as to the remaining draft articles, address adequately their normative character — clarifying, to the extent determinable, whether each article reflects existing customary international law or constitutes progressive development, without foreclosing further legal developments in an area that remains in continuous evolution.

I associate myself with those members of this Commission, beginning with the Special Rapporteur, who consider it unacceptable that international law should favor, through the entrenchment of absolute immunity, impunity for the most serious crimes affecting the international community.

At the same time, supporting article 7 as a desirable progressive development is not the same as endorsing the claim that it already reflects established custom. I am not persuaded that the survey of State practice conducted by the Commission to date supports the assertion in the first-reading commentary that a “discernible trend” exists in favor of the exception to immunity *ratione materiae*.

I therefore call upon the Special Rapporteur to ensure that the commentaries reflect State practice in an up-to-date and representative manner, drawing on countries from all regions, and giving adequate weight to the normative value of pronouncements by national governments and by international and domestic tribunals — to the extent they reveal the necessary *opinio juris* to establish a customary norm, or constitute subsidiary means for the determination of the existence and content of rules of international law.

Thank you.