



General Assembly

Distr.: Limited
1 June 2021

Original: English, French and
Spanish

International Law Commission

Seventy-second session

Geneva, 26 April–4 June and 5 July–6 August 2021

Immunity of State officials from foreign criminal jurisdiction

Texts and titles of draft articles 8, 9, 10 and 11 provisionally adopted by the Drafting Committee

Draft article 8

Examination of immunity by the forum State

1. When the competent authorities of the forum State become aware that an official of another State may be affected by the exercise of its criminal jurisdiction, they shall examine the question of immunity without delay.
2. Without prejudice to paragraph 1, the competent authorities of the forum State shall always examine the question of immunity:
 - (a) before initiating criminal proceedings;
 - (b) before taking coercive measures that may affect an official of another State, including those that may affect any inviolability that the official may enjoy under international law.

Draft article 9

Notification of the State of the official

1. Before the competent authorities of the forum State initiate criminal proceedings or take coercive measures that may affect an official of another State, the forum State shall notify the State of the official of that circumstance. States shall consider establishing appropriate procedures to facilitate such notification.
2. The notification shall include, *inter alia*, the identity of the official, the grounds for the exercise of criminal jurisdiction and the competent authority to exercise jurisdiction.
3. The notification shall be provided through diplomatic channels or through any other means of communication accepted for that purpose by the States concerned, which may include those provided for in applicable international cooperation and mutual legal assistance treaties.

Draft article 10

Invocation of immunity

1. A State may invoke the immunity of its official when it becomes aware that the criminal jurisdiction of another State could be or is being exercised over the official. Immunity should be invoked as soon as possible.
2. Immunity shall be invoked in writing, indicating the identity of and the position held by the official, and the grounds on which immunity is invoked.



3. Immunity may be invoked through diplomatic channels or through any other means of communication accepted for that purpose by the States concerned, which may include those provided for in applicable international cooperation and mutual legal assistance treaties.

4. The authorities before which immunity has been invoked shall immediately inform any other authorities concerned of that fact.

Draft article 11

Waiver of immunity

1. The immunity from foreign criminal jurisdiction of the State official may be waived by the State of the official.

2. Waiver must always be express and in writing.

3. Waiver of immunity may be communicated through diplomatic channels or through any other means of communication accepted for that purpose by the States concerned, which may include those provided for in applicable international cooperation and mutual legal assistance treaties.

4. The authorities to which the waiver has been communicated shall immediately inform any other authorities concerned that immunity has been waived.

5. Waiver of immunity is irrevocable.
