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The Permanent Mission of Ireland to the United Nations presents its compliments to the United Nations Office of Legal Affairs and has the honour to refer to the Report of the International Law Commission on work of its 65th session (A/68/10) and, specifically, to issues on which comments would be of particular interest to the Commission as set out in Chapter III thereof. With apologies for not fulfilling the request to provide such information by 31st January 2014, the Permanent Mission would nonetheless be grateful if the Office of Legal Affairs could forward the following information on behalf of Ireland to the International Law Commission.

In respect of the topic "Immunity of State officials from foreign criminal jurisdiction", Ireland wishes to inform the Commission that it is unaware of any decision of its judicial authorities in which the immunity of a foreign state official from the exercise of criminal jurisdiction by Ireland has been considered.

Regarding the topic "Formation and evidence of customary international law", the Commission has requested information on the practice of states relating to the formation of customary international law and the types of evidence suitable for establishing such law in a given situation, as set out in (a) official statements before legislatures, courts and international organisations and (b) decisions of national, regional and subregional courts.

An example of a statement to the legislature touching on the formation of customary law may be found in a reply to a parliamentary question relating to the Geneva Conventions of 1949 given on 22 November 2001, in which the Minister for Foreign Affairs noted that the Conventions "have acquired the status of customary international law, given that the overwhelming majority of states accept them as binding, by having become parties to them". On the website of the Department of Foreign Affairs and Trade (www.dfa.ie), a section on the sources of international law includes the following description of customary international law: "In the absence of a treaty governing relations between two or more states on a particular topic, what is important is evidence of the existence of consensus among states as to what the law should be, or, in other words, state practice combined with recognition that a certain practice is obligatory. If sufficiently widespread and consistent, such practice and consensus may constitute customary international law. Evidence of custom may be found among the following sources: diplomatic correspondence, opinions of official legal advisers; statements by governments, United Nations General Assembly resolutions; comments by governments on drafts produced by the International Law Commission; the decisions of national and international courts. However, as with all matters of evidence, the weight which

can be given to a particular statement varies greatly depending on the circumstances in which it was made.”

Ireland also wishes to inform the Commission of nine decisions of national superior courts (High Court and Supreme Court) in which some consideration was given to the question of the existence or formation of a customary international law rule, and which may be of some assistance to the Commission’s work on this topic. A brief summary of the relevant aspect of each decision is set out in the enclosed annex, together with copies of the decisions.

The Permanent Mission of Ireland to the United Nations avails itself of this opportunity to renew to the Office of Legal Affairs the assurances of its highest consideration.

New York, 12 June 2012



Office of Legal Affairs
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