



IRELAND

Statement by

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at the

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Agenda Item 81:
The Report of the International Law Commission on the Work
of its 63rd and 65th Sessions

PART 3 – Ch VI (Protection of Persons in the event of disasters), Ch VII (Formation and evidence of customary international law), Ch VIII (Provisional application of treaties), Ch IX (Protection of the environment in relation to armed conflicts), Ch X (Obligation to extradite or prosecute) and Ch XI (Most-Favoured Nation-Clause)

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Mr Chair,

Ch VI – Protection of Persons in the Event of Disasters

Regarding the topic of “Protection of Persons in the Event of Disasters”, I once again thank Special Rapporteur Mr. Eduardo Valencia-Opesina for his continued work on this topic, including his comprehensive sixth report, which was before the Commission at its last session. We are grateful also to the Drafting Committee for its report on draft articles 5 *ter* and 16. Ireland aligns itself with the statement on behalf of the European Union on Part 3 of the debate on the ILC’s report.

My delegation very much welcomes the detailed and extensive treatment given by the Special Rapporteur to the risk reduction or pre-disaster phase in his sixth report, in which prevention, mitigation and preparedness in respect of disasters is carefully examined. The informative overview of existing provisions in global, regional and bilateral instruments, as well as in national policy and legislation, is extremely helpful. Ireland supports draft Articles 5 *ter* and 16 and the commentaries thereto.

My delegation also welcomes the commentaries to draft articles 5 *bis*, 12, 13, 14, and 15. Regarding the commentary to draft Article 12, we particularly welcome the statement in paragraph (3) that “offers of assistance which are consistent with the present draft articles cannot be regarded as interference in the affected State’s internal affairs”, as well as the highlighting of the role played by NGOs in paragraph (5).

In addressing this topic last year, we stressed the importance of needs assessment. We welcome, therefore, the explanation in paragraph (8) of the commentary to draft Article 13 that the term “identified” indicates that there must be some process by which the needs of affected persons are made known. Similarly, we approve of the statement in paragraph (5) of the commentary to draft Article 15 that that article should be read in the light of the purpose of the draft articles as indicated in draft Article 2, such that decisions on termination of assistance “are to be made taking into consideration the needs of the persons affected by disaster, namely, whether and how far such needs have been met”. We welcome too, the further detail which has been provided on the possible forms of external assistance through the commentary to draft Article 14.

Mr Chair,

Ch VII - Formation and Evidence of Customary International Law

I turn next to the topic of “Formation and Evidence of Customary International Law” now renamed by the Commission “Identification of customary international law”. Ireland reaffirms the welcome expressed at last year’s session for Special Rapporteur Michael Wood’s plan of work for this important topic, and we thank him for his extensively researched first report. We are grateful, too, for the excellent Memorandum prepared by the Secretariat, reminding us all of the Commission’s previous work on this topic.

As Ireland stated at our previous session, a suitable outcome to our work on this topic should be practical and provide useful guidance not only to those practicing at the international level, but also those acting in the domestic sphere. We are very much encouraged by the approach taken by the

Special Rapporteur in his report, and we welcome the decision to leave aside the issue of *jus cogens* at this stage.

As regards future work on the topic, my delegation is particularly interested in the proposals to examine the relationship between customary international law and general principles of international law, as well as consideration of the question of whether there is a unitary or plurality of approaches to the identification of customary international law depending on the field of international law at issue. We commend the Special Rapporteur for the emphasis he intends to place on terminological clarity and we believe that this may form a significant contribution of our work on this topic. We would also wish to express our support for the breadth of the range of materials which it is proposed will be consulted, including earlier work by the International Law Association, the Institute of International Law and the International Committee of the Red Cross.

Ch VIII – Provisional Application of Treaties

Turning to the topic of “The Provisional Application of Treaties”, Ireland expresses its gratitude to the Special Rapporteur, Mr Juan Manuel Gómez-Robledo, for his first report, as well as to the Secretariat for its Memorandum recounting in detail the development of Article 25 of the Vienna Convention on the Law of Treaties through the work of the International Law Commission and the Vienna Conference on the Law of Treaties. Together, these two documents shed much light on the mechanism of provisional application and the legal issues to which it gives rise and will provide a valuable framework for our future discussions.

In particular, my delegation looks forward to further consideration of the relationship between Article 25 and other provisions of the Vienna Convention, as well as an examination of the extent to which provisional application may apply to provisions of a treaty that create institutional mechanisms. We would also encourage consideration of the question whether the rules in Article 25 are applicable as rules of customary international law in cases where the Vienna Convention does not apply. Finally, my delegation would see the merit in including within our work some consideration of provisional application of treaties by international organisations, as envisaged by Article 25 of the Vienna Convention on the Law of Treaties between States and International Organisations or between International Organisations of 1986.

Ch IX – Protection of the Environment in relation to Armed Conflicts

Finally, Mr Chair, Ireland welcomes the inclusion of the topic “Protection of the environment in relation to armed conflicts” in the programme of work. We thank Ms. Marie Jacobsson, Special Rapporteur, for her work to date and look forward to reading her first report. We endorse the proposals for a future work plan, including dividing the work into temporal phases which will address legal measure taken to address the environment before, during and after an armed conflict.