



IRELAND

Statement by

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at the

Sixth Committee
United Nations General Assembly
69th Session

Agenda Item 78:

The Report of the International Law Commission on the Work of its 66th Session

**PART 3 – Ch X (Identification of customary international law),
Ch XI (Protection of the environment in relation to armed conflicts),
Ch XII (Provisional application of treaties) and
Ch XIII (Most-Favoured Nation-Clause)**

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Mr Chair,

1. Ireland aligns itself with the statement delivered by the European Union in relation to the Identification of Customary International Law and the Provisional Application of Treaties, and would like to offer the following additional observations.

Ch X - Identification of Customary International Law

1. Ireland welcomes the work of the Commission on the topic of the identification of customary international law. We express our thanks to Special Rapporteur, Michael Wood, and commend him on his very thorough and considered second report, which we believe will provide a sound basis for the production of conclusions and commentaries on the identification of customary international law. Ireland is pleased to have been in a position to provide the Commission, earlier this year, with details regarding the practice of national authorities, in particular Irish courts, in indentifying customary international law, and we hope that it proves useful to the Commission in its work.
2. We are also grateful to the Drafting Committee for their ongoing work on this topic, and for the Chairman's very helpful statement of progress. We note that the Drafting Committee has provisionally adopted eight of the draft conclusions, and plans further consideration of this matter at the 67th session. Whilst we note that these conclusions have been circulated for information, we would like to take this opportunity to make the following observations.
3. My delegation shares the view that the outcome of this work must be to provide guidance which is clear and practical, for those not only working at the international level but also to practitioners in the domestic sphere, while at the same time not being unduly prescriptive such that it might restrict the inherent flexibility of customary international law.
4. We agree with the proposal of the Special Rapporteur to omit from **draft conclusion 1** the "without prejudice" clause, which might instead be addressed in the commentary.
5. Regarding **draft conclusion 2**, we welcome the general approach of the Special Rapporteur, to provide a clear two-stage process, comprising of the twin constituent elements of general practice and acceptance as law. While my delegation shares the view that the language of the Statute of the International Court of Justice ought to be closely followed so as to ensure harmony across practice and commentary, we consider the insertion of the words "that is", to be a useful and delicate way of identifying the two elements as being distinct. We favour ending this conclusion with the words "*opinio juris*" in parentheses, given the central significance of the term to this topic. We welcome the Commission's view that the delicate interplay between the two constitutive elements requires further consideration, particularly on the potential temporal implications of the current draft, as well as the question of "double-counting".
6. We support the comments of the European Union in relation to **draft conclusion 4** and look forward to the Special Rapporteur's further examination of the practice of international organisations in his third report.

7. In *draft conclusion 5*, we favour an approach that focuses on the *functions* of the state, rather than on acts *attributable* to the state.
8. Ireland is supportive of a cautious approach when it comes to addressing the inaction of states as a form of state practice, and my delegation welcomes the two proposals by the Drafting Committee to incorporate inaction within paragraph (2) of *draft conclusion 6*, rather than maintain it as a stand-alone paragraph and, secondly, to expressly state that it is “under certain circumstances” that practice may take the form of inaction. Context is particularly important when assessing inaction as a form of practice, and is likely to play a greater role than when assessing other forms of practice. We believe that the issues identified in paragraph 163 of the Commission’s report are pertinent ones and we look forward to their further examination.

Ch XII – Provisional Application of Treaties

9. Turning to the topic, *Provisional Application of Treaties*, Ireland expresses its gratitude to Special Rapporteur, Mr Juan Manuel Gómez-Robledo, for his Second Report, and welcomes the report’s focus on the substantive legal effects of the provisional application of treaties at the international level.
10. We agree with the core observation that both state practice and case law indicate that the provisional application of treaties does produce legal effects. We note with interest the consideration of the Commission’s previous work on unilateral acts of states capable of creating legal obligations in the context of provisional application. Whilst we agree that the effect of a unilateral commitment to provisionally apply all or part of a treaty is an interesting and useful aspect of this topic, we would suggest that a clear distinction be maintained between principles or conclusions relevant to such unilateral acts, and the consideration of mutually agreed provisional application of a treaty by the parties thereto. In this regard, we would also suggest that, in relation to certain aspects of the topic, it may be helpful to have a more separate consideration of bilateral and multilateral treaties.
11. Finally, Mr. Chair, my delegation supports the issues identified in paragraphs 242 and 247 of the Commission’s Report as questions meriting further examination, and shares the view that a study of the practice of treaty depositaries would be particularly beneficial.

Thank you, Mr. Chair.