



IRELAND

Statement by

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at the

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Agenda Item 78:

The Report of the International Law Commission on the Work of its 68th Session

PART 1 – Ch I - III (Introduction, Summary of Work, Specific Issues), Ch IV (Protection of persons in the event of disasters), Ch V (Identification of customary international law), Ch VI (Subsequent agreements and subsequent practice in relation to the interpretation of treaties) and Chap XIII (Other decisions and conclusions of the Commission)

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Mr. Chair,

1. As this is our first time taking the floor, Ireland wishes to congratulate the Chair and Bureau on your election, and to assure you of our support for your work.
2. My delegation thanks the Commission for the report of its Sixty-eighth Session. We also wish to thank the Chair of the Commission and the Special Rapporteurs for their presence here in New York.
3. Today, I will comment on the topics of "Protection of persons in the event of disasters", "Identification of customary international law" and "Subsequent agreements and subsequent practice in relation to the interpretation of treaties". Finally, I will make some brief comments on "Other decisions and conclusions of the Commission". A slightly longer version of my written remarks will be made available.

Protection of persons in the event of disasters

4. Ireland aligns itself with the statement delivered by the European Union on the topic of "Protection of persons in the event of disasters" and would also like to congratulate the Commission and the Special Rapporteur, Mr Eduardo Valencia Ospina, on the completion of the Special Rapporteur's Eighth Report and the successful adoption of the entire set of draft articles on the protection of persons in the event of disasters and the commentaries thereto.
5. Ireland has been supportive of the International Law Commission's consideration of this topic and we welcome the adoption of the set of draft articles and the commentaries thereto. These draft articles in themselves will significantly contribute to the codification and harmonisation of this field of law as well as providing useful guidance to States. We are open to discussing further the final form of the draft articles.

Identification of Customary International Law

6. Ireland aligns itself with the statement delivered by the European Union on the topic of "Identification of Customary International Law" and offers the following remarks.
7. My delegation once again thanks the Special Rapporteur, Sir Michael Wood, as well as the working group chaired by Mr Marcelo Vázquez-Bermúdez, for the impressive work undertaken over the past year which has resulted in a set of 16 draft conclusions and detailed commentaries, together with an extensive bibliography that will no doubt serve as a highly useful resource. In addition to this, the Special Rapporteur has begun consideration of the ways in which evidence of customary international law might be made more readily available. In this regard, we support the suggestion that the Secretariat be requested to update the survey of compilation and digests contained in its 1949 memorandum, and we look forward to considering this in due course.
8. We must also express our gratitude to the Secretariat for its excellent Memorandum on the role of decisions of national courts in the case law of international courts and tribunals for the

purpose of the determination of customary international law. The 25 Observations contained in the Memorandum provide an invaluable insight into the manner in which such decisions are considered in practice. In particular, we would note the discussion in paragraphs 53 and 55 which highlights that reliance on national court decisions tends to increase in relation to subject areas where domestic judicial practice is especially relevant, such as immunity from jurisdiction, criminal law and diplomatic protection. We are uncertain as to the manner in which the Memorandum will form part of the final outcome on the topic, and would encourage that consideration be given to this.

Mr Chair,

9. We welcome the commentary to draft conclusion 3 and the clear explanation of the three aspects of “overall context”, “nature of the rule” and “particular circumstances in which the evidence ... is to be found”, as well as the need to assess each element separately as part of two distinct inquiries.
10. Let me turn now to the draft conclusions themselves. Regarding the suggested changes to draft conclusion 4, whilst we are generally supportive of adherence to language used in judgments of the International Court of Justice, the revised draft as set out in paragraph 32 of the Special Rapporteur’s report seems, to us, to lose some of the meaning of the earlier draft, which we would wish to see retained. In particular, we consider that it is worthwhile maintaining the reference to the primary role of state practice in contributing to the creation of customary international law.
11. In our comments on the topic last year, my delegation urged a cautious approach to the question of inaction, and called for the inclusion within the draft conclusions of specific criteria to be taken into account to qualify inaction as evidence of acceptance as law. We are pleased, therefore, that the commentary to draft conclusion 6 cautions that only deliberate abstention from acting may serve to count as practice. We are further satisfied by the fact that the commentary to draft conclusion 10 builds upon paragraph (3) so as to make clear that, in order for inaction to have probative value as evidencing acceptance as law, it is necessary that, first, a reaction was called for, such as where the practice in question directly or indirectly affects the interests or rights of the inactive state and, secondly, that the state must have had knowledge of the practice as well as sufficient time and ability to act.
12. Finally, Mr Chair, Ireland welcomes the stringent approach taken in draft conclusion 15 to the persistent objector rule, including the requirement that an objection should be reiterated whenever the circumstances are such that a restatement is called for.

Subsequent agreements and subsequent practice in relation to the interpretation of treaties

13. Very briefly, Mr Chair, Ireland aligns itself with the statement delivered by the European Union on the topic of “Subsequent agreements and subsequent practice in relation to the interpretation of treaties”, but would like to add an expression of our gratitude for the meticulous and efficient work of the Special Rapporteur, Mr Georg Nolte, which has resulted in the adoption by the Commission this year of a set of 13 draft conclusions with commentaries.

14. The detailed treatment of the pronouncement of expert treaty bodies within his fourth report provides an excellent basis on which to consider draft conclusion 13. At this point we might note that we welcome the reference within paragraph (3) of the draft conclusion to the fact that silence by a party shall not be presumed to constitute subsequent practice accepting an interpretation of a treaty as expressed in a pronouncement of an expert treaty body. Within this paragraph, we also support the wording that a pronouncement of an expert treaty body may “refer to” a subsequent agreement or subsequent practice, rather than stating that such an agreement or practice may be “reflected in” a pronouncement. We agree with the view of the Drafting Committee that the former serves to clarify that any subsequent agreement of the parties is not comprised in the pronouncement itself. We look forward to further considering the draft conclusions and their detailed commentaries.

Other decisions and conclusions of the Commission

15. Turning to other decisions of the Commission during its Sixty-eighth Session, Ireland takes note of, and supports, the decision to recommend the inclusion of the topic “The settlement of international disputes to which international organisations are parties” in its long-term programme of work. We wish to thank Sir Michael Wood for his useful paper addressing this proposed topic and the attached bibliography. We also support the inclusion of disputes of a private nature to which international organisations are party within the scope of this proposed topic.
 16. As a final remark, we welcome the Commission’s recommendation to hold a seventieth anniversary event in two parts during the first part of the seventieth sessions in New York and Geneva in 2018 and we support the Commission’s proposed agenda for this event.
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