

# **Ireland**

Statement by

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Report of the International Law Commission on the work of its 61<sup>st</sup> session

Chapter IV:  
Responsibility of International Organisations

Mr Chair

1. As this is the first time for me to take the floor, allow me to congratulate you and the other members of the Bureau on your election. I can assure you of the full cooperation of my delegation.

2. Ireland welcomes the opportunity to comment on the Report of the International Law Commission on the work of its 61<sup>st</sup> session. We place great value on the work of the Commission and commend the consistent depth and quality of its outputs.

3. We wish to today address Chapter IV of the Commission's Report on the important topic of "Responsibility of International Organisations". Ireland has closely followed the Commission's consideration of this topic and welcomes adoption by the Commission, on first reading, of the 66 draft articles and commentaries before us this session. We also wish to particularly commend the careful and detailed work of Special Rapporteur Giorgio Gaja over the past 7 years.

4. We look forward to the opportunity to provide detailed written comments and observations on the draft articles and commentaries to the Commission, as well as on the particular issues identified in paragraph 27 of the Commission's Report. In advance of these, we will today confine our remarks to short observations on draft articles 44, 51, 60 and 63.

Mr Chair

5. Concerning admissibility of claims, Ireland considers that inclusion of the principle of exhaustion of remedies in draft article 44(2) is generally appropriate. While the draft article refers to remedies "provided by that organisation", we welcome the clarification of the commentaries that this is intended to include remedies such as arbitral tribunals, national courts or administrative bodies in respect of which the international organisation has accepted competence to examine claims.

6. However, the criteria for assessing whether any "available and effective" remedy exists may often be contentious. Although the Commission has examined a similar issue in relation to diplomatic protection, it may be helpful for it to apply its expertise to better tease out the practical operation of this rule in the commentaries. Issues may also arise around competing remedies and/or jurisdiction between specialised regimes of international law and associated tribunals. Due to its fragmentation study, the Commission has already developed an expertise on such questions which it might usefully apply in this context.

Mr Chair

7. The topic of countermeasures is a particularly sensitive one, in which the importance of clear procedures and limits is clear. Ireland, in general, welcomes and considers appropriate the close relationship between these draft articles on countermeasures and those agreed in relation to state responsibility. We share the view of the Special Rapporteur, as expressed in his 7<sup>th</sup> Report, that countermeasures should not be a primary means of ensuring compliance of member states.

8. Draft article 51 appears to us appropriate where the relevant international organisation has a dispute resolution mechanism, by which the allegedly injured member state can seek redress. In our view, the Commission may wish to further consider the case of organisations which do not have dispute resolution mechanisms, and/or where their constitutive agreements or rules either prohibit countermeasures or are silent on their use.

Mr Chair

9. The question of attribution of responsibility between an international organisation and its member states is a critical, if complex issue. We note the current draft reflects a number of amendments to earlier drafts. We note in particular replacement of the term “circumvent” with the phrase “seeks to avoid complying with” its international obligations. Although the drafting appears to suggest a need for intent on the part of the State, the commentaries indicate that “the existence of a specific intention of circumvention is not required” and that circumvention may reasonably be inferred. We welcome this clarification, as a requirement for specific intent – and proof of same – might be a difficult hurdle to establishing responsibility in practice.

10. We further note amendment of draft article 60 from a formulation referring to a State “providing the organisation with competence” to a State “taking advantage of the fact that the organisation has competence.” We also agree that this represents a positive broadening of the provision.

Mr Chair

11. Turning now to the question of diversity of international organisations, Ireland notes the addition of new draft article 63, which we support. Organisations differ fundamentally on factors such as their purpose, capacity or competence, nature of the relationship with member states, whether they possess their own distinct legal order and so on. In our view it is important not to limit the relevance of the draft articles by failing to take this into account.

Mr Chair

12. In closing, I would reiterate Ireland’s deep appreciation of the Commission’s work in this challenging and highly technical field. We look forward to submitting more detailed written observations on the full text of the draft articles in due course.

Thank you