



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 1 – Chs I-III (Introduction, Summary of Work, Specific Issues),
Ch IV (Expulsion of Aliens), Ch V (Protection of Persons in the Event of
Disasters) and Ch XIV (Other Decisions)**

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Mr. Chair

1. At the outset, the Irish delegation thanks the Commission for the report of its Sixty-sixth Session and commends the considerable progress made. I will first make a brief comment on the topic “Expulsion of Aliens” and my remarks will then focus on the topic of the “Protection of Persons in the Event of Disasters”. I will conclude with some observations on the Introductory and “Other Decisions” chapters, including addressing some of the specific questions posed by the Commission. Ireland aligns itself with the statement on behalf of the European Union made earlier in this debate.

Ch IV – Expulsion of Aliens

Mr. Chair

2. Turning to the topic of “Expulsion of Aliens”, Ireland expresses its gratitude to the Commission and, in particular, to Special Rapporteur Mr. Maurice Kamto, for its work on this topic ever since 2005. While the draft articles in many instances provide useful guidance to states, we do not favour using them as the basis from which to elaborate a convention on the topic.

Chapter V – Protection of Persons in the Event of Disasters

3. Turning first to the topic of “Protection of Persons in the Event of Disasters”, we congratulate the Commission and Special Rapporteur, Mr. Eduardo Valencia Ospina, on the adoption of a complete set of 21 draft articles, together with detailed commentaries thereto. We commend the carefully calibrated approach taken in the draft articles, both as regards balancing the sovereignty of the affected state with the need for international cooperation, as well as balancing a rights based and a needs based approach to the topic. We support the formulation that has been adopted, which emphasises the importance of a response which adequately and effectively meets the needs of the persons affected, in a manner which fully respects the rights of such persons.
4. Ireland supports the clarification in paragraph (3) of the commentary to **draft Article 1** that the scope *ratione personae* of the draft articles is limited to natural persons affected by disasters. We note that the commentary to **draft Article 1** confirms that the draft articles are not limited *ratione loci* to activities in the arena of the disaster, but also cover those within assisting states and transit states. As previously expressed, my delegation would see merit in a provision within the draft articles dealing specifically with transit states. We continue to feel that the commentaries to **draft Article 1** would benefit from a brief explanation of the term “society” as used in the qualifier, “*serious disruption of the functioning of society*”. Whilst appreciating that a degree of flexibility

needs to be maintained, my delegation considers that without further explanation, possibly by way of an example, this aspect of the qualifier may be the cause of some uncertainty.

5. My delegation welcomes the definitions provided in draft **Article 4** and, in particular, welcomes the extension of the definition of “affected State” to include the State under whose jurisdiction or control persons, property or the environment are affected by a disaster. In this regard, we find the explanation in the commentary as to the relationship between this definition and paragraph (1) of draft Article 12 to be particularly useful.
6. As previously stated, Ireland has no difficulty with the general reference in draft **Article 8** to a duty to cooperate “as appropriate”, on the understanding that this is not intended to go beyond the concept as established in customary international law. This limitation could, we feel, be made more explicit in the draft commentary to the article, perhaps in paragraph (6) thereof. Given their central role, we welcome the reference to the International Federation of the Red Cross and Red Crescent Society and the International Committee of the Red Cross in draft **Article 8**.
7. For the sake of completeness, we would suggest that paragraph (2) of **draft Article 14** might also include a reference to withdrawal of consent, such that consent to external assistance shall not be withheld or withdrawn arbitrarily.
8. My delegation very much welcomes the requirement in **draft Article 15**, that any conditions imposed on the provision of external assistance shall take into account the identified needs of the persons affected and the quality of the assistance. We are supportive of paragraph (8) of the commentary, which notes that whilst no set procedure is predetermined, there must be a process by which needs are made known, which can take the form of a needs assessment, preferably in consultation with assisting actors. Similarly, in relation to **draft Article 19**, we place importance on the statement in paragraph (5) of the commentary that decisions regarding the termination of assistance are to be made taking into consideration the needs of the persons affected, namely, whether and how far such needs have been met.
9. Regarding **draft Article 21**, we maintain our preference for a “without prejudice” clause as regards the relationship to international humanitarian law. We support the decision to omit the proposed draft Article 19, on the relationship to the UN Charter, as we consider such a clause to be unnecessary.

Other Decisions and conclusions

10. Turning, finally, to other decisions of the Commission during its 66th Session, Ireland takes note of the fact that the topic “**Crimes Against Humanity**” has been added to the Commission’s programme of work and congratulates Mr. Sean Murphy on his appointment as Special Rapporteur.
11. Ireland shares the concern expressed by other delegations that there is a lacuna in the area of operational tools in relation to the prosecution of international atrocity crimes, and, for that reason, supports the international initiative towards the development of a Multilateral Treaty for Mutual Legal Assistance and Extradition in Domestic Prosecution of Atrocity Crimes. We view such an instrument as providing a necessary tool to facilitate the domestic prosecution of these crimes and would not wish to see the work of the Commission on the topic of Crimes Against Humanity detract from this initiative.
12. In response to the questions posed in chapter 2, in order to implement the Rome Statute, Ireland introduced the International Criminal Court Act 2006, which criminalises “crimes against humanity” as defined within the Statute. The Act ensures that Ireland may exercise jurisdiction in relation to crimes against humanity in the event that such crimes are committed in Ireland or, indeed, in the event that such crimes are committed by Irish nationals outside of Ireland. To date, there have been no cases before the Irish courts in relation to such crimes.
13. We look forward to the first report of the Special Rapporteur on this topic.

Mr Chair,

14. My delegation welcomes the decision to include “***Jus Cogens***” in the Commission’s long-term programme of work, and thanks Mr. Dire Tladi for his proposal and for the detailed and illuminating syllabus to the topic, contained in the annex to this year’s report. We agree with the view that “questions relating to sources lie at the heart of international law”, and for the reasons explained in the syllabus, we agree that it is now timely for the Commission continue its strong tradition of engaging with, and promoting acceptance of, *jus cogens*, by a comprehensive examination of the concept as a topic in and of itself. This work should usefully bring together different strands from the Commission’s earlier work, including the Vienna Convention on the Law of Treaties, the Articles on State Responsibility and the report of the Study Group on the Fragmentation of International Law. Ireland supports the list of legal issues which have been identified, which should provide an appropriate framework from which to proceed. The Commission’s work will help to elucidate what is – and equally importantly what is not – encompassed within the concept of *jus cogens*. In my delegation’s view, it would at this

stage be premature to take a view on any future outcome of the Commission's consideration of this topic.

15. As a final remark, we wish to commend the Working-Group on the Long-Term Programme of Work for its initiative in instigating a systematic review of the Commission's work and a consideration of the 1996 illustrative scheme of topics. We very much look forward to receiving the Secretariat's survey by the end of the present quinquennium.

Thank you Mr Chair.