



IRELAND

Statement by

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on the work of its 59th session

Chapter VIII

Responsibility of International Organisations

CHECK AGAINST DELIVERY

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**The International Law Commission's Draft Articles on the
Responsibility of International Organizations**

Statement by the Legal Adviser to the Department of Foreign Affairs, Ireland

Mr Chairman (Madam Chair),

1. On behalf of Ireland, I would firstly like to congratulate the members of the Commission on their election last November, and to welcome the newly elected members to the Commission. We thank the Commission for its efforts in formulating a regime of responsibility of international organizations and commend the Special Rapporteur for all his work to date on this important topic.

2. Having considered draft articles 31 to 45, together with the Commission's commentary and the reports of the Special Rapporteur, we would like to comment on four aspects of the draft articles, namely: the recognition of the separate legal personality of an international organization; the provision by member States of the means for an international organization to make reparations; the consequences entailed by serious breaches of peremptory norms; and lastly, the question of the diversity of international organizations.

Mr Chairman (Madam Chair),

Recognition of the international legal personality of an international organization

3. Ireland notes that while no draft article on this issue has yet been formulated, it has been suggested that recognition of the legal personality of an international organization by the injured State should be necessary before that organization has an

obligation to make reparation for the injury caused.¹ This question of recognition raises important legal and practical considerations.

4. The international legal personality of an organization, a prerequisite to it having international responsibility under the draft articles,² may arise even in the absence of express provisions in its constituent instrument conferring separate personality. In its 1949 Advisory Opinion on *Reparations*, the International Court of Justice held that the separate legal personality of an international organization may be inferred in certain circumstances from the competences, powers and purposes which the member States have given to the organization.³

5. Requiring recognition by an injured State of the legal personality of an international organization before that organization is obliged to make reparation may be at odds with this Opinion of the Court. It also raises the practical consideration of how to determine if such recognition has taken place. Ireland would welcome further discussion of this question by the Commission.

Mr Chairman (Madam Chair),

Draft articles on reparation

6. We welcome draft article 34 and draft articles 37 to 40, which outline the duty of an international organization to make reparation and the various forms which reparation may take. A difficult question arises as to whether member States are under an obligation, in any circumstances, to provide an international organization with the necessary resources (financial or otherwise) to make reparation.

¹ International Law Commission, *Fifth Report of the Special Rapporteur on responsibility of international organizations* A/CN.4/583, para. 9.

² Draft article 2:

Use of terms

For the purposes of the present draft articles, the term “international organization” refers to an organization established by a treaty or other instrument governed by international law and possessing its own international legal personality. International organizations may include as members, in addition to States, other entities.

³ *Reparations for Injuries Suffered in the Service of the United Nations*, International Court of Justice, Advisory Opinion of 11 April 1949, *ICJ Rep* (1949) 174, at 179.

7. The Special Rapporteur is correct in pointing to the lack of practice evidencing any obligation of member States to make extraordinary payments to finance reparations.⁴ However, we believe that some, at least limited, obligation of member States should be included in the draft articles as a rule of progressive development, having regard to the importance of reparations to an effective regime of responsibility. To do otherwise may suggest that States could somehow escape liability by acting collectively through an international organization.

Draft article 43

8. We welcome the introduction of draft article 43 concerning effective performance of the obligation of reparation.⁵ However, we express some reservation with its present wording, which provides that members are required to take all appropriate measures “in accordance with the rules of the organization”. We agree that primacy should be given to any internal rules of an organization, which may be decisive in determining the means by which the constituent member States are to ensure reparations can be made. However, our concern is that a member State could seek to rely on these internal rules to escape responsibility, for example where the rules expressly prohibit extraordinary financial contributions from members to finance reparations. For this reason, we would urge the Commission to re-examine the formulation of draft article 43.

Draft article 35

9. Regarding draft article 35, we agree that a distinction must be made between obligations owed by international organizations towards their members, and those which are owed to non-members.⁶ As the Special Rapporteur points out, in relations

⁴ International Law Commission, *Fifth Report of the Special Rapporteur on responsibility of international organizations* A/CN.4/583, para. 28.

⁵ Draft article 43:

Ensuring the effective performance of the obligation of reparation

The members of a responsible international organization are required to take, in accordance with the rules of the organization, all appropriate measures in order to provide the organization with the means for effectively fulfilling its obligations under this chapter.

⁶ Draft article 35:

Irrelevance of the rules of the organization

1. The responsible international organization may not rely on its rules as justification for failure to comply with its obligations under this Part.
2. Paragraph 1 is without prejudice to the applicability of the rules of an international organization in respect of the responsibility of the organization towards its member States and organizations.

with non-member States the rules of an organization are similar to the internal law of a State and cannot be relied upon as justification for failure to comply. The situation differs, however, with regard to member States. Here we agree that the rules of the organization may be relevant. Although we would imagine that there is little practice to support this principle, we believe it to be sound as a matter of progressive development, given that it is fully consistent with the structural principle of consent which underlies international law.

Mr Chairman (Madam Chair),

Draft articles 44 and 45

10. Draft articles 44 and 45 concern the serious breach of obligations under peremptory norms of general international law. If one examines these two draft articles alongside their State responsibility equivalent, it becomes clear that a gap exists. Draft article 44 is engaged only when there has been a serious breach committed by an international organization. Draft article 45 addresses the consequences for other international organizations and for States of such a serious breach. Similarly, Article 40 of the Articles on State Responsibility⁷ is engaged where a serious breach is committed by a State. However, Article 41 of the State responsibility regime only addresses the consequences for other States, with no reference to international organizations.

11. This lacuna could cast doubt upon the obligations of an international organization in the event of a serious breach of a peremptory norm by a State. We acknowledge that the draft articles, as currently formulated, are not intended to exclude such obligations arising under customary international law. However, in the interests of comprehensive codification, we would propose that the scope of draft articles 44 and 45 should be re-visited to address the consequences for an international organization of serious breaches of peremptory norms by both a State and by another international organization.

⁷ *Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 10 and corrigendum (A/56/10 and Corr. 1)*

12. In addressing the duty of States and international organizations to co-operate in bringing a serious breach to an end, it is important to recognise that international organizations and States differ greatly in their capacity as international legal persons. The Advisory Opinion of the International Court of Justice on *Reparations* distinguished between States, who “possess the totality of international rights and duties recognised by international law”, and organizations whose rights and duties depend on their purpose and functions.⁸ Consequently, an international organization may be unable to respond to a *jus cogens* breach in an identical manner to a State. We therefore welcome the statement of the Commission that draft article 45 is not intended to confer duties upon an international organization which exceed its mandate.⁹

Mr Chairman (Madam Chair),

Diversity of international organizations

13. This acknowledged difference in the capacity of international organizations and States highlights the need for consideration of the diversity of international organizations in formulating the draft articles. Nevertheless, as illustrated by the 1986 Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations,¹⁰ there are identifiable common principles of international law applicable to all international organizations, though their execution may vary according to the substantive rules of the organization.

14. We accept the Special Rapporteur’s view that the draft articles are formulated in general terms, and that the implementation of the principles therein may differ according to the international organization at issue, having regard to special rules of international law.¹¹ We welcome the Special Rapporteur’s suggestion of including a

⁸ *Reparations for Injuries Suffered in the Service of the United Nations*, International Court of Justice, Advisory Opinion of 11 April 1949, *ICJ Rep* (1949), 174, at 180.

⁹ International Law Commission, *Report of the Fifty-Ninth Session* (2007) A/62/10, p. 219, para. 4.

¹⁰ *Official Records of the United Nations Conference on the Law of Treaties between States and International Organizations or between International Organizations, Vienna, 18 February-21 March 1986*, vol. II, document A/CONF.129/15.

¹¹ International Law Commission, *Fifth Report of the Special Rapporteur on responsibility of international organizations* A/CN.4/583, para. 7.

text in the final draft, along the lines of Article 55 on State responsibility, to address this.

Conclusion

15. In closing, Mr Chairman (Madam Chair), Ireland expresses its appreciation for the important work of the Commission and the Special Rapporteur on this challenging topic and looks forward to its next report.