

YEARBOOK OF INTERNATIONAL HUMANITARIAN LAW - VOLUME 14, 2011
CORRESPONDENTS' REPORTS

IRELAND¹

Contents

Legislation — Measures to Deal with Biological Weapons	1
Legislation — Measures to Amend the Current Defence Act with Regard to Director of Military Prosecutions and Military Judges	2
Legislation — Measures to Amend Criminal Law to Improve Procedure and Police Investigative Powers.	3
Government Policy — Acceptance of Compulsory Jurisdiction of International Court of Justice.....	4

Legislation — Measures to Deal with Biological Weapons

- *Biological Weapons Act 2011*, No. 13 of 2011, commencement date 10 July 2011
<www.attorneygeneral.ie>

The *Biological Weapons Act* is designed to fill possible gaps in Ireland's legislative framework by creating specific offences relating to the use, production and possession of biological weapons.² It had an uncontroversial passage through the legislature and was broadly welcomed by all commentators.

The purpose of the Act is to make provision in Irish law to prohibit, amongst other acts, the production, acquisition, possession, development, transport, transfer or use of biological weapons. The Act makes further provision in domestic law for the State's obligations under the 1925 *Geneva Protocol* and the 1972 *Biological and Toxin Weapons Convention*, ('BTWC'), as well as relevant elements of UN Security Council Resolution 1540 of 2004. The *Geneva Protocol*, to which Ireland acceded in 1930, banned the use in armed conflict of poisonous gases, as well as bacteriological methods of war. The Protocol was supplemented in much greater detail by the 1972 BTWC and the 1993 *Chemical Weapons Convention*. Most poisonous gases are referred to today as chemical weapons and their development, production, stockpiling and use are prohibited by the *Chemical Weapons Convention*, which also requires the destruction of any existing weapons. The Act provides for certain offences and penalties that may be imposed upon conviction.

Under section 2, it is an offence to use, develop, produce, possess, stockpile, acquire, retain or transfer biological and toxin weapons in accordance with the obligations imposed on states parties to the BTWC. It is also an offence to attempt to commit any of these acts.

In the course of parliamentary debate on the legislation, a practical issue was raised in relation to the enforcement of this legislation. In response the Minister for Foreign Affairs pointed out that the 'Garda [Irish police] has general powers of search in terms of aircraft and so on, although it needs a reasonable suspicion under current Acts that something unlawful is

¹ Information provided by Professor Ray Murphy, Irish Centre for Human Rights, National University of Ireland Galway, Ireland.

² Ireland, *Parliamentary Debates*, Senate (Seanad Éireann), 8 June 2011, Vol. 208 No. 5 (Deputy Jan O'Sullivan, Minister of State at the Department of Foreign Affairs and Trade) <<http://debates.oireachtas.ie/seanad/2011/06/08/00008.asp>>.

YEARBOOK OF INTERNATIONAL HUMANITARIAN LAW - VOLUME 14, 2011
CORRESPONDENTS' REPORTS

occurring or present before it can search premises, including aircraft.’³ This was considered to be a weak provision that required further amendment of the air navigation legislation in Ireland. To date, no such amendments have been initiated.

Section 3 makes it an offence to commit outside the State any act, which if committed within the State would be an offence under section 2. This provision applies to acts committed outside the State on board an Irish ship or aircraft, by a member of the Defence Forces, by a citizen of Ireland or an Irish body corporate.

Section 4 makes provision for penalties for those guilty of an offence under Sections 2 and 3. On summary conviction, the maximum penalty is imprisonment for 12 months and a fine of EUR 5,000 or both. For conviction on indictment, the maximum penalty is life imprisonment, a fine or both.

Section 5 makes provision for evidence in proceedings as to a person’s Irish citizenship.

Section 6 ensures that proceedings cannot be brought under the Act against a person within Ireland in respect of acts allegedly constituting an offence under the Act for which that person has already been tried outside the State.

Legislation — Measures to Amend the Current Defence Act with Regard to Director of Military Prosecutions and Military Judges

- *Defence Amendment Act 2011*, No. 17 of 2011, commencement date 9 November 2011
<www.attorneygeneral.ie>

The purpose of this Act is to amend and update the existing Defence Acts by providing for an expansion of the persons eligible for appointment to the post of military judge and Director of Military Prosecutions. This includes persons other than members of the Defence Forces. It also provides for the appointment of a Circuit Judge to perform the functions of the military judge where the military judge is not available for whatever reason.

The Act also makes provision for an amendment to the powers of the Selection Committees established for the purposes of selecting a suitable and qualified candidate for appointment to the posts of Director of Military Prosecutions and military judge, respectively.

The legislation was controversial insofar as it had direct implications for a case concerning a member of the Defence Forces who had been recommended for appointment as a military judge by a selection committee but who was subsequently deemed ineligible for the position.⁴ Not only did this legislation render the individual concerned eligible for appointment, more generally, it broadened the pool of potential candidates for future vacant posts.

Sections 3 and 4 of the Bill provide that the Committee established under section 184D of the *Defence Act 1954* for the purposes of identifying candidates and informing the Minister of their suitability for appointment to the post of Director of Military Prosecutions, may determine a candidate’s qualification for the post. These sections also expand the pool of

³ Ireland, *Select Committee on Foreign Affairs Debate (Biological Weapons Bill 2010)*, 15 December 2010 (Deputy Micheál Martin, Minister for Foreign Affairs) <<http://debates.oireachtas.ie/FOS/2010/12/15/00003.asp>>.

⁴ See Ireland, *Parliamentary Debates*, Senate (Seanad Éireann), 8 July 2011, Vol. 209 No. 6 <<http://debates.oireachtas.ie/seanad/2011/07/08/00008.asp>>.

YEARBOOK OF INTERNATIONAL HUMANITARIAN LAW - VOLUME 14, 2011
CORRESPONDENTS' REPORTS

eligible candidates for the post of the Director of Military Prosecutions to extend to persons other than officers of the Permanent Defence Force.

Sections 5 and 6 provide that the Committee established under section 184K of the *Defence Act 1954* for the purposes of identifying candidates and informing the government of the suitability of those candidates for appointment to judicial office, may determine a candidate's qualification for the post of military judge. Sections 5 and 6 also enlarge the pool of potential candidates for appointment as a military judge by making persons other than officers of the Permanent Defence Force eligible for the position.

Section 7 provides that the Minister for Defence, having consulted the Minister for Justice and Equality, may request the President of the Circuit Court temporarily to designate a Circuit Court Judge to perform the functions of a military judge under certain circumstances.

This would include circumstances where:

- (a) no person has been appointed as military judge;
- (b) a military judge appointed under the Principal Act is ill, absent or otherwise unable to carry out his or her functions; and
- (c) a military judge cannot properly deal with a matter before him or her.

Legislation — Measures to Amend Criminal Law to Improve Procedure and Police Investigative Powers.

- *Criminal Justice Act 2011*, No. 22 of 2011, commencement date 9 August 2011
<www.attorneygeneral.ie>

The main purpose of the Act is to address delays in the prosecution and investigation of complex crime by improving certain important procedural matters and strengthening Garda investigative powers. The intention is that such improvements will assist in reducing the delays associated with the investigation and prosecution of complex crime, in particular white collar crime.

The Act also addresses two matters relating to the investigation of offences more generally: (i) refinements to the processes around the constitutional/European Convention on Human Rights entitlement of a person in Garda custody to access legal advice; and (ii) the circumstances in which a person detained under section 4 of the *Criminal Justice Act 1984* may be questioned between midnight and 8am.

The Act provides for a new system to make more effective use of detention periods. This will allow persons arrested and detained for questioning by the Garda (Irish police) to be released and their detention suspended in order for further investigations to be conducted during the suspension period. A central provision of the Act is the new power for the Garda Síochána to apply to a court for an order to require any person with relevant information to produce documents, answer questions and provide information for the purposes of the investigation of relevant offences. Failure to comply with such an order will be an offence.

The Act also contains measures relating to how documents are to be produced to the Garda. These measures are aimed at reducing the delays associated with the production of large volumes of poorly ordered and uncategorised documents to the Garda in the course of its investigations. The Act contains other measures to prevent unnecessary delays during investigations arising from claims of legal privilege. In addition, it provides for presumptions as to the creator, sender and recipient of documents to be used as evidence in criminal trials.

YEARBOOK OF INTERNATIONAL HUMANITARIAN LAW - VOLUME 14, 2011
CORRESPONDENTS' REPORTS

Government Policy — Acceptance of Compulsory Jurisdiction of International Court of Justice

- Ireland accepts the compulsory jurisdiction of International Court of Justice on 15 December 2011

Ireland accepted the compulsory jurisdiction of the International Court of Justice by making a Declaration under Article 36(2) of the Court's Statute and lodging this with the UN Secretary-General on 15 December 2011. By so doing, Ireland gained the right to refer to the Court legal disputes with other states that have made a similar Declaration. It has also accepted the right of such states to bring a case against Ireland. Ireland's only reservation relates to disputes with the United Kingdom in regard to Northern Ireland.

The 1996 White Paper on Foreign Policy indicated that Ireland would give urgent consideration to making a declaration under the Optional Clause.⁵ However, it was not until April 2011, soon after a new government took office and ahead of the then Irish President Mary McAleese's visit to the ICJ, that the Minister for Foreign Affairs announced Ireland's intention to accept the compulsory jurisdiction of the Court before the end of 2011.

⁵ See Ireland, *White Paper on Foreign Policy: Challenges And Opportunities Abroad* (Dublin, Government Publications, 1996).