



**71ST SESSION OF THE UNITED NATIONS GENERAL ASSEMBLY
SIXTH COMMITTEE
AGENDA ITEM 78
REPORT OF THE INTERNATIONAL LAW COMMISSION
[CLUSTER I]**

STATEMENT BY

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NEW YORK, 26 OCTOBER 2016

Mr. Chairman,

I would like to begin by congratulating you on your assumption of the Chairmanship of this year's Sixth Committee meeting. I am confident that under your leadership you can lead our meetings to a successful conclusion.

I also would like to extend my appreciation to the Chairman of International Law Commission, Mr. Pedro Commisario Alfonso of Mozambique for the preparation and presentation of this year's Report of International Law Commission.

Mr. Chairman,

I wish to make observation to Chapter IV and V of the Report under Cluster I of our discussion.

On the **protection of persons in the event of disasters**, my Delegation would like to commend Special Rapporteur, Mr. Eduardo Valencia-Ospina and the Drafting Committee of the International Law Commission for its Sixty-Eighth Session, whose diligent work and approach had facilitated the adoption, on its second reading, a draft preamble and 18 draft articles together with its commentaries, on the protection of persons in the event of disasters. I also took note that the Commission had

recommended to the General Assembly the elaboration of a convention on the basis of the said draft articles.

Mr. Chairman,

The topic of **Protection of Persons in the Event of Disasters** hold dear to my country as Indonesia is located in one of the most seismically region known as the Pacific Ring of Fire. It is a circum-Pacific belt where almost 90% of volcanic activities takes place, and consequently, natural calamities has become our second nature. This fact also speaks for Indonesia's neighboring countries as issue of disasters occupied an important dimension in the relation between countries, particularly in Southeast Asia's region.

Within the context of the Association of Southeast Asian Nations there have been quite much work performed on this topic, as reflected in the robust references made by the draft commentaries to ASEAN instruments, importantly, the Agreement on Disaster Management and Emergency Response of the Association of Southeast Asian Nations and the 1976 ASEAN Declaration on Mutual Assistance on Natural Disasters. It is against this background that I would like to submit the following observation under this topic:

On the draft preamble, My Delegation concurs with the approach taken by the Commission to opt for the principle of "sovereignty of states" rather than phrases such as "by virtue of their sovereignty" or "sovereign equality of states" that was debated during the preparation of the current draft articles. Such reference reflects and reaffirms the primary role of the affected states in the provision of disaster relief assistance. Hence, it is important that it is against this principle that the entire draft articles should be understood.

My Delegation welcomes the reference to the element of "**particularly vulnerable**" under article 6 of the draft articles. Although by definition every persons affected by disasters are vulnerable, such reference certainly has merit to disasters-prone countries like Indonesia and at the same time an important statement and recognition to the growing state practices in this field.

Indonesia itself makes particular reference to vulnerable persons in our Act Number 24 of 2007 on Disaster Management that includes infants, children, disabilities, pregnant women and elderlies. Such provision entails obligation to render treatment that is specific and suitable to this category of persons during and in the post-disasters reliefs.

As provided by the Commission in commentary paragraph 7 of draft article 6, we are mindful of the Commission's position to deliberately make it an open-ended reference. Nevertheless, Indonesia views that a more definitive approach is needed

which can be achieved by strengthening the qualification against which decision or determination of whom are to be regarded as vulnerable be exercised. Affected states when determining vulnerable groups may take into account its relevant policies and regulations while upholding principle of non-discrimination and ensuring respect towards their fundamental rights.

On the duty to cooperate under Article 7 of the draft articles. My Delegation took note that this article appears to impose new “rights” and “duties” to states during times of disasters. I would like to stress that the exercise of such duty should only be taken in light of the principle of sovereignty to which the whole draft articles rest upon. My country’s own experience shows that during times of disasters the affected country is under constant duty to make critical and prudent assessments concerning which assistance that may be useful and which are not, in addition to where and how to appropriately deploy the assistance. However, on this note, we support article 13 paragraph 2 of the draft articles that once consent had been given to external assistance, it cannot be withheld arbitrarily, unless sound and legitimate reasons are provided. This essentially reaffirm and gives context on why it is important that affected states make critical and prudent assessments regarding external assistance.

Mr. Chairman,

Now, I am turning to the issue of **Identification of customary international law**

My Delegation commends Special Rapporteur, Sir. Michael Wood for his latest report on identification of customary international law. We also took note of the contribution by the Secretariat in the Memorandum that they have prepared. It certainly augments merit to the issue at hand.

Mr. Chairman,

On draft Conclusion 3, paragraph 2 on assessment of evidence for the two constituent elements. My delegation views that the Special Rapporteur has managed to clarify further the relationship between the two constituent elements. It comes to an understanding that while the two elements are indeed inseparable, their existence has to be considered and verified separately.

On draft conclusion 11 on treaties, we view that such draft provision deals with the important role of treaties in the identification of customary international law. The analysis of the Special Rapporteur on this question led to the three ways in which a treaty provision could form a rule of customary international law as reflected under paragraph a), b), and c) of the draft article.

On draft conclusion 12 regarding resolutions of international organizations and conferences, it is agreed that the resolutions adopted by international organizations

and at international conferences in the formation and identification of customary international law have played an important role and are widely noted. At the same time it is necessary to ensure that before a resolution or any form of normative position adopted by Member States at an international organization or at international conference be regarded as reflecting customary international law, a certain process of examination concerning practice of the Member States and degree of its acceptance as law is necessary. The very wording of draft conclusion 12 paragraph (1) that “A resolution adopted by an international organization or at an intergovernmental conference cannot, of itself, create a rule of customary international law”, justifies the need for caution.

With regard to draft conclusion 13 on decisions of courts and tribunals, my delegation wish to emphasize the importance of the real effect of judicial decisions depending on the weight given to each of the decisions.

With regard to draft conclusion 15 on persistent objector rule, my delegation would like to share the view that both judicial decisions and State practice have confirmed that states are not bound by an emerging rule of customary international law to which that State has persistently objected and maintains its objection after such rule has crystallized. The rule of persistent objector is indeed important for preserving the consensual nature of customary international law. It is in this conjunction that duly caution should be exercised by the Commission when elaborating inaction as expressive or creative of customary international law.

Mr. Chairman,

Before I conclude my statement, I wish to express the support of my delegation to further the work of the International Law Commission.

I thank you.

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