

**Statement by Mr. Robert Kojc, Acting Director General,
Ministry of Foreign Affairs of the Republic of Slovenia**

Agenda Item 79: 'Report of the International Law Commission on the work of its sixty-fourth session'

Chapter V: Protection of persons in the event of disasters, Chapter VII: Provisional application of treaties, and Chapter XII: Other decisions and conclusions of the Commission

**67th Session of the General Assembly
Sixth Committee**

Mr Chairman,

Firstly, allow me to congratulate you on your election as Chairperson of this year's Sixth Committee session. I would also like to take this opportunity to pay tribute to the Chairman of the 64th session of the International Law Commission, Mr Lucius Caflish, and to other members of the Commission, particularly the Special Rapporteurs, the fruits of whose valuable endeavours we have at hand.

Moreover, we would like to commend the Codification Division of the Secretariat on its efforts regarding assistance to the work of the Commission. We believe that its contribution, as well as the contribution made through cooperation of the Commission with other bodies, facilitates the examination of current issues in a broader context, thus adding significant value to the Commission's dedicated work.

Mr Chairman,

I would like to touch upon Chapter XII: Other decisions and conclusions of the Commission. My delegation welcomes the decision of the Commission to include the topics 'Provisional applications of treaties' and 'Formation and evidence of customary international law' in its programme of work. Like in the past, my delegation fully supports the discussion on the Commission's working methods in order to find the best possible solutions to make the work of the Commission efficient and productive.

In the light of his announced retirement, we would like to pay special tribute to Mr Václav Mikulka for his distinguished contribution to progressive development and the codification of international law as Secretary of the Commission. My delegation highly values his dedicated work and wishes him every success in his future aspirations.

Mr Chairman,

on specific issues, allow me to refer to Chapter V: Protection of persons in the event of disasters, to which Slovenia attaches great importance, as already underlined in the Sixth Committee last year. We believe that this issue deserves the **immediate attention** of the international community, given the rising number of losses produced by natural disasters in today's world. Through **legal certainty at the universal level**, the efficiency and quality of humanitarian assistance and the protection of the victims can be improved.

We would like once again to commend the Commission and the Special Rapporteur, Mr Valencia-Ospina, on their **balanced and focused work**. Draft articles 1 to 12 are the **foundation for the initiation and provision of international disaster relief, and stipulate the basic rights and duties of States involved**. When taken as a whole and interdependently, these articles strike a delicate and important balance - between the necessary protection of lives and dignity of disaster victims on the one hand, and the basic international legal principles of state sovereignty and non-interference, on the other. We are convinced that retaining this balance **is crucial for the successful completion** of the Commission's work on this issue. Any re-opening of contentious issues that have been agreed upon would be contrary to this aim.

With the adoption of draft articles 5 *bis* and 13 to 15, the Commission has focused this year on **operational aspects of disaster relief**. We commend the further elaboration of the principle of cooperation that specifies its concrete forms in disaster relief situations. However, **draft Article 5 bis** should not, in any way, be interpreted as an implicit expression of the duty to provide assistance by assisting States. Discussions in the Sixth Committee in 2011 unanimously expressed that such a duty has no basis in existing international law and practice.

Furthermore, with regard to the **right of the affected State to set conditions on the provision of external assistance (draft Article 13)**, my delegation would like to stress that any conditions should be reasonable and in accordance with the duties of States to protect

persons on their territories. Such conditions must also not contravene the principles of humanity, neutrality, impartiality, and non-discrimination, or the basic human rights applicable in disaster situations. Rapid and accurate identification of the scope and type of assistance needed can contribute significantly to the effectiveness of disaster relief. Therefore, the affected State should undertake a needs assessment, preferably also in cooperation with the relevant humanitarian agencies and assisting States.

We fully support the text of **draft Article 14 (obligation of the affected State to facilitate external assistance)**, which deals with another important aspect contributing to effective and timely disaster relief. Furthermore, we believe that **draft Article 15 on the termination of external assistance** is fully in accordance with the fundamental premise of this topic, i.e. the duty of cooperation between all parties concerned. However, it is not clear what happens if the consultations between the parties concerned are not successful. In such cases, it seems that the primary role of the affected State to “*direct, control, coordinate and supervise relief and assistance*” should be respected. At the same time, the termination of external assistance should not endanger the needs of disaster victims. The principle of “*not arbitrarily withholding consent*” by the affected State (draft Article 11) should also apply when considering the termination of assistance.

In conclusion, let me turn to the question of the **future work of the Commission on this topic**. Although it is neither necessary nor wise to make a decision yet on the final form of the Commission’s endeavours, various aspects should be taken into consideration. For example, numerous non-binding guidelines, sets of rules and model agreements have already been adopted by various organisations and entities. Another fact is that regional binding conventions and bilateral treaties on disaster relief are in force in almost all regions of the world, while a global, universal legal document on this subject is still lacking.

Slovenia believes that the Commission should establish a set of principles and rules underpinning international disaster relief **based on the recognition of rights and obligations of the States involved**. We agree with the view that it is also the function of international law to regulate the situations involving possible violations of accepted rules and principles. In the past, we have witnessed cases when affected States have refused external assistance, despite their inability to provide assistance to their own disaster-stricken populations. In this context, it would be recommendable for the Commission to study in more detail the issue of the

consequences of the failure of States to carry out the duties established in the respective draft articles.

Mr Chairman,

with regard to Chapter VII: Provisional application of treaties, a new topic included in the programme of work of the Commission, we would like to congratulate Mr Juan Manuel Gómez-Robledo on his appointment as Special Rapporteur for this topic. The topic is highly relevant for States and, as such, certainly deserves further examination. We feel that this topic has not received due formal attention in view of its use in the practice of States since the adoption of the Vienna Convention. We hope that an in-depth analysis of this topic by the Commission will contribute significantly to a better understanding of it, so that at the end of the process, it will be possible to say that the provisional application of treaties is no longer “*une notion ambiguë*”, as some authors have maintained.

Thank you, Mr Chairman, for your attention.