

Statement by
Dr. T. Suka Mangisi, Deputy Permanent Representative
of the Kingdom of Tonga to the United Nations on Agenda Item 81:
Report of the International Law Commission on the work of its sixty-third and sixty-
fifth sessions (Part III), at the
Sixth Committee of the 68th Session of the United Nations General Assembly,
New York, Monday, 4 November 2013

Mr Chair

I would like to take this opportunity to thank the Chair of the International Law Commission and congratulate the Commission on the outcomes of its 65th session.

My delegation would like to comment specifically on the draft articles on the Protection of persons in the event of disasters.

Tonga welcomes the inclusion of Article 5 *ter* and Article 16, which recognize the duties upon States to reduce the risk of disasters, as well as to respond when disasters do occur.

This focus on prevention is particularly important in the Pacific.

Tonga, like other Pacific small island developing states, is highly susceptible to the increased risk of disaster as a result of climate change. Across the Pacific, rising sea levels and more frequent and intense tropical storms are having a profound adverse impact on our people.

Tonga was the first country in the region to develop a Joint National Action Plan on Climate Change Adaptation and Disaster Risk Management, and has been a leader in the development and implementation of a regional approach to disaster risk assessment and mitigation.

However, responsibility for mitigating the risk of disaster as a result of climate change must not be borne solely by those developing countries most affected.

Responsibility for mitigating the heightened risk of disaster as a result climate change must be borne by the international community, and developed countries in particular.

Mr Chair

Article 5 *ter* confirms that the duty upon States to cooperate, as set out in Article 5, extends to cooperation in respect of measures intended to reduce the risk of disasters.

In the context of climate change, States must therefore cooperate, and indeed are obliged to do so under international law, to reduce the risk of disaster, including by reducing global emissions of greenhouse gases.

It is incumbent upon States, both developed and developing, to cooperate with each other to ensure that measures are taken now to reduce the effects of climate change, which are devastating small island developing states.

Mr Chair

Article 16 goes on to articulate a separate duty upon States to reduce the risk of disasters by taking the necessary and appropriate measures, including through legislation and regulations, to prevent, mitigate and prepare for disasters.

In its commentary, the ILC states that this duty is based on States' obligations to actively protect human rights and the principle of "due diligence".

Tonga considers that the principle of due diligence must also apply to State action or inaction which impacts upon the risk of disaster in other States.

Tonga considers that the commentary in respect of Article 16 should clarify that States' duty to prevent disasters includes a duty to take necessary and appropriate measures to ensure that its actions do not increase the risk of disaster in other States.

Again, under the duty in Article 16 States must take measures to reduce the risk of disaster as a result of climate change by reducing emissions of greenhouse gases, and supporting other mitigation and adaptation measures.

Mr Chair

When disasters do occur, Tonga also considers that the duty to cooperate in disaster relief under Article 5 does include a positive duty upon States to provide assistance when requested by the affected State, taking into account the capacity of each State to provide such assistance. In the context of climate change, the nature of this positive duty to provide assistance should reflect States' legal and moral responsibility for the harm caused as a result of the rapid pace of human development over the past two hundred years.

Thank you, Mr Chair.

