



**INDIA**  
**भारत**

*Please check against delivery*

**STATEMENT**

**BY**  
**MR. MOHAMMED ADEEB**  
**HONOURABLE MEMBER OF PARLIAMENT**  
**AND MEMBER OF THE INDIAN DELEGATION**

**ON**  
**AGENDA ITEM - 83**  
**“CONSIDERATION OF PREVENTION OF TRANSBOUNDARY HARM FROM**  
**HAZARDOUS ACTIVITIES AND ALLOCATION OF LOSS IN THE CASE OF**  
**SUCH HARM”**

**AT THE**  
**SIXTH COMMITTEE OF THE SIXTY-EIGHTH SESSION OF THE**  
**UNITED NATIONS GENERAL ASSEMBLY**

**NEW YORK**

**22 OCTOBER 2013**

**Mr. Chairman,**

At the outset, I would like to congratulate you on your assuming the Chairmanship of the Sixth Committee of the United Nations General Assembly. My congratulations are also due to the other Bureau members.

**Mr. Chairman,**

The present agenda item, under consideration of the Sixth Committee, is comprised of two important documents of vital interest for the international community, namely: the Draft Articles on prevention of transboundary harm from hazardous activities; and the Draft Principles on the allocation of loss in the case of transboundary harm arising out of hazardous activities.

The Draft Articles and the Draft Principles were adopted by the International Law Commission (ILC) at its fifty-third session in 2001 and at its fifty-eighth session in 2006 respectively, and submitted to the General Assembly.

Regarding the Draft Articles, the ILC recommended to the General Assembly for the elaboration of a convention on the basis thereof. With regard to the Draft Principles, the ILC recommended to the Assembly to endorse the Draft Principles by a resolution and urge States to take national and international action to implement them.

**Mr. Chairman,**

Once again, we take this opportunity to acknowledge the excellent work done by the ILC on the Draft Articles, and the Draft Principles; and once again we express our deep appreciation for Dr. P.S. Rao of India, the Special Rapporteur for both these topics, while also recognizing the contribution of the other two Special Rapporteurs for these topics.

**Mr. Chairman,**

We thank the Secretary-General for his reports on this agenda item, containing compilation of decisions of international courts, tribunals and other bodies referring to these Draft Articles and Draft Principles; and containing comments and information received from Governments concerning these documents.

**Mr. Chairman,**

The Draft Articles are a valuable contribution of the ILC toward the progressive development of international law. We believe that they are supplementary to the customary law reflected in the judicial decisions dealing with the principle of transboundary harm and ensuing damage from hazardous activities.

We reiterate our view that the Draft Articles are dealt in a general manner, providing enough flexibility to States to fashion specific liability regimes for particular sectors of activities under their jurisdiction.

It is our belief that the thrust of the prevention aspect, in the Draft Articles, could be seen in the broader context of the right to development and the obligation to promote, preserve and protect the environment.

**Mr. Chairman,**

Concerning the Draft Principles, we agree with the basic purpose thereof and support the fundamental premise that in situations involving harm arising out of hazardous activities, the liability rests with the operator and where appropriate extends to the other persons or entities also.

Regarding the "response measures", we recognize that obligations to notify as well as consultation to mitigate the effects of transboundary harm are recognized in a number of international instruments governing hazardous activities. At the same time, we also believe that competent authorities of a State shall have the power, under domestic laws, to require response measures from the operator towards mitigation/elimination of the damage. Any residual response measure from the State should be supplementary to the operator's liability, based on the capacity of the State to undertake such measures.

**Mr. Chairman,**

We, as stated earlier, have a concern on an expanded definition of "damage" which, under the Draft Principle 2(a), includes: loss of life or personal injury, loss of or damage to property; loss or damage by impairment of the environment; costs of reasonable measures of reinstatement of the property; and costs of reasonable response measures.

A traditional civil liability regime as the one in my country provides for a definition of damage that includes loss of life, property and loss caused on account of "actual damage" to the environment. We believe that cost of response measures or reinstatement of the environment on account of "impairment of the environment" will have adverse impact on the developmental efforts of States. Therefore, in our view the draft principles should be complementary in nature without prejudice to the regime on state responsibility under international law.

**Mr. Chairman,**

The Draft Articles and the Draft Principles are a major step forward toward regulating the transboundary impact of hazardous activities. These documents, in our view, are set to serve as a useful guide to States in their efforts to adopt legislative, regulatory and administrative measures, incorporating relevant principles in their domestic laws and policies.

**I Thank you Mr. Chairman.**