



PEOPLE'S REPUBLIC OF CHINA
MISSION TO THE UNITED NATIONS

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(translation)

Statement by Mr. Li Zhenhua
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On Agenda Item 81
Report of the 65th Session of the International Law
Commission (Part 3)

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Mr. Chairman,

I wish to introduce the views of the Chinese delegation on the relevant topics of the ILC:

I. On Protection of Persons in the Event of Disasters

At the 65th session, Special Rapporteur Valencia-Ospina submitted the 6th report, which contained detailed descriptions of the history and evolution of disaster prevention, preparedness and reduction, the source of relevant law, the current status of international cooperation, and national policy and legislation. It also contained two new draft articles on “Duty to prevent” and “Cooperation for disaster risk reduction”. I wish to pay tribute to Mr. Valencia-Ospina for the professionalism and dedication with which he effectively moved the consideration of the topic forward in a continuous manner.

I endorse the Special Rapporteur’s proposal to extend the temporal scope of the topic by expanding the consideration from post disaster response to all the phases up to pre-disaster preparedness. This is in line with the purpose of the study and reflects an important consensus of the international community in the field of disaster prevention and reduction. In this regard, the Chinese government has initiated a process to build working mechanisms for disaster prevention, preparedness and reduction at home while actively promoting international cooperation abroad. As to how the consideration of pre-disaster phases should be conducted, I believe that a distinction should be made between

natural and man-made disasters and no excessive responsibilities should be imposed on affected states for disasters that are hard to predict.

Today, space technology plays an important role in disaster prevention, reduction and preparedness. The application of remote sensing, earth observation, meteorological observation and satellite navigation has greatly helped national efforts in disaster prevention and reduction, and contributed to the effective protection of affected population. The Chinese delegation proposes that the Commission pay attention to the role of space technology and other new technologies in the protection of persons in the event of disaster and consider including in the draft articles the following formulation, “encourage states to find innovative ways and leverage space technology applications in disaster prevention, preparedness and reduction”.

II. On Identification of Customary International Law

The Chinese delegation takes note of the change of the title of the topic from “Formation and evidence of customary international law” to “Identification of customary international law”. We believe that the new title better defines the elements to be considered under the topic and aligns itself better with the objective of the consideration. The Chinese delegation appreciates the high quality of the first report submitted by Special Rapporteur Mr. Michael Wood. It laid out the scope and possible outcome of the topic,

presented an overview of various materials relevant to its study and proposed a clear and broad approach.

The Chinese delegation believes that the approach to the identification of customary international law should not vary according to the substantive area of international law or its audience. Consequently, a unified approach should be applied. *Jus cogens* and customary international law are two distinct concepts in spite of their interrelations. It is therefore inappropriate for the Commission to deal with *jus cogens* under this topic. Instead, it should focus on clarifying the relationship between customary international law on the one hand and treaties and general principles of law on the other. As to the possible outcome of the topic, we believe that the Commission should formulate a set of guidelines to provide unified and clear guidance to practitioners of international law for identifying and applying customary international law in practice.

III. On Provisional Application of Treaties

The Chinese delegation expresses its appreciation to Special Rapporteur Juan Manuel Gomez-Robledo for his first report on the topic, which established, on the basis of state practice, relevant legal issues that arose in the context of the provisional application of treaties and set the direction and plan for the next phase of work. State practice in provisional application of treaties has existed for a long time, but relevant rules have never been clarified or unified while relevant provisions in the Vienna Convention on the Law of

Treaties are also short on details. As a result, many states find themselves in a muddle when deciding whether or how to resort to the provisional application of treaties, and international disputes have occurred in this context. Therefore, we see a practical and obvious need for the study of this topic.

On the approach to the study of the topic, the Chinese delegation is of the view that the study should be carried out on the basis of an in-depth review of the relevant international and national practice, focus on the legal effects of provisional application, particularly when it comes to related rights and obligations. The Commission may provide guidance on the following issues: Will a signature state become bound by the rights and obligations under the treaty as a consequence of provisional application? Will those rights and obligations expire upon the unilateral decision of a state to terminate provisional application? After a treaty comes into force, what are the relations in the context of rights and obligations under the treaty between states that continue with provisional application and states that have completed their domestic process of ratification?

In addition, the Commission should study the relations between provisional application on the one hand and national constitutions and legislations on the other. Of all the treaties that are being provisionally applied, most require such application not to “contravene the internal laws of the state”. As a result, the legal effects and consequences of provisional application have been

repeatedly challenged and remained a major contentious issue since the creation of this rule. Moreover, provisional application may give rise to problems relating to the separation of power between the executive and the legislative as the decision for provisional application can be made by the executive branch at the signing of the treaty. It may also lead to over hasty application. In this regard, some states have made useful attempts. For instance, some require provisional application to be approved by congress; some treaties stipulate that recourse to provisional application only becomes available after a state has completed domestic process of ratification and before the treaty enters into force. The Chinese delegation believes that the key to the solution of this issue lies in a reasonable balance between provisional application and domestic law. On the one hand, the effects of provisional application as a rule of international law should be guaranteed. On the other, there should be appropriate space for states to decide on provisional application in accordance with their domestic laws.

Thank you, Mr. Chairman.