



INDIA भारत

STATEMENT

BY
THE DELEGATION OF THE REPUBLIC OF INDIA

ON
AGENDA ITEM 81
“REPORT OF THE INTERNATIONAL LAW COMMISSION
ON THE WORK OF ITS SIXTY-FIFTH SESSION- Part-3”

AT THE
SIXTH COMMITTEE OF THE 68TH SESSION OF THE
UNITED NATIONS GENERAL ASSEMBLY

NEW YORK

Mr. Chairman,

I thank the Chairman of the International Law Commission for the presentation of his report concerning the third cluster of topics.

Mr. Chairman,

We congratulate the Special Rapporteur Mr. Eduardo Valencia-Ospina for submitting sixth report on the topic "Protection of persons in the event of disasters". It deals with the prevention aspects, in particular, those relating to: prevention as a principle of international law, and international cooperation. The report has also provided an over-view of national policies and legislations on the preventive aspect. The Special Rapporteur has elaborated draft article 5 *ter* (Cooperation for disaster risk reduction); and draft article 16 (Duty to reduce the risk of disasters). We note with appreciation that the Commission has adopted the commentaries to all draft articles adopted so far.

Mr. Chairman,

We have made comments on other draft articles in previous sessions, and so would restrict our comments on the new draft articles 5 *ter* and 16, relating mainly to the duty and cooperation towards the risk reduction. In this regard, we welcome the Special Rapporteur's shift from response-centric model to focus also on prevention and preparedness.

We also note with interest that the Commission had relied upon variety of sources of law in order to identify the duty to reduce the risk of disasters, including international agreements and instruments (such as the 2005 Hyogo Framework for Action), regional and national laws on prevention, preparation and mitigation, which also includes India's Disaster Management Act, 2005.

Mr. Chairman,

Draft Article 16 obliges each State to take measures, including laws and regulations to prevent, mitigate and prepare for disasters. The scope of the topic will thus comprise not only the disaster phase but also the pre and post disaster phases. However, it is unclear whether the same would also be applicable to industrial disaster situations.

As a State's undertaking of rights and obligations during pre-disaster phase is largely linked with that State's economical development, technical know-how and human resources, we would stress for a balance to ensure that the interests of developing States are not affected by the rights and obligations under this draft article. Similarly, 'the principle of common but differentiated responsibility' envisaged under environmental law for developing States need to be considered and respected while determining the characteristics with regard to 'due diligence'.

Mr. Chairman,

We welcome the elaboration of draft article 5 *ter*, which envisages extending the cooperation for taking measures intended to reduce the risk of disasters. We agree with the approach of the Commission reflected in paragraph 3 of the commentary to draft article 5 *ter* regarding the flexibility as to the location of this draft article or combining together the draft articles dealing with the aspects of cooperation.

Mr. Chairman,

Turning to the topic, "Formation and evidence of customary international law", we thank the Secretariat for a very useful Memorandum identifying the previous work of the Commission relevant to the topic. We complement the Special Rapporteur Sir Michael Wood for his excellent first report and appreciate the rich debate within the Commission.

We agree that the purpose of the work on the topic should be to provide practical assistance to the practitioners of international law as well as to the judges and lawyers in the domestic jurisdictions, who might not be well-versed with public international law, but called upon to examine and decide on matters involving international law aspects. This purpose would be better served if, as agreed in the Commission, the outcome of the work would be in the form of non-prescriptive "conclusions" and commentary that would provide guidance to States.

Mr. Chairman,

We share the view that the substance of the rules of customary international law would not fall within the scope of the topic. We agree that "*jus cogens*" would not also fall within the scope of the topic, as the peculiarity of non-derogation distinguishes it from the customary international law rules.

Mr. Chairman,

We think as appropriate the change of the title of the topic to "Identification of customary international law", and that this study would also include the dynamic process of formation, with special focus on the objective evidence of the rules of customary international law. The existence and formation of regional customary international law should also be studied. While the dynamic relationship between customary international law and treaties would form part of the study of the topic, we look forward to the study of the relationship between customary international law and other sources of international law, especially, the general international law.

Mr. Chairman,

India would like to see that both elements the State practice and *opinio juris* are given equal importance in the study. The practice of States from all regions should be taken into account. In this regard, the developing States, which do not publish digests of their practice should be encouraged and assisted to submit their State practice including their statements at international and regional fora, and the case-law, etc. At the same time, we urge the Commission to exercise utmost caution in taking into account the arguments and positions advanced by the States before international adjudicative bodies and, should not be detached from or devoid of the context in which they were made.

Mr. Chairman,

We welcome and appreciate the first report of the Special Rapporteur, Mr. Juan Manuel Gomez-Robledo on the topic "Provisional application of treaties" and also welcome the comprehensive Memorandum of the Secretariat on the topic.

Since the provisional application is a sort of formal application, it would be relevant if the study addresses various legal implications of provisional application and relations between the State parties to it, including the extent of international responsibility incurred by a State vis-a-vis other State parties for violation of an obligation under a provisionally applied treaty.

We agree with the idea that the present study should be in the form of guidelines with commentaries for the guidance of States.

Thank you Mr. Chairman.