



**Statement by  
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On Agenda Item 81  
Report of the International Law Commission  
on the work of its sixty-third and sixty-fifth session (Part / Cluster 3)**

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**Mr. Chairman,**

I would like to express once again the appreciation of my delegation for the opportunity to make additional comments on the issues that are currently being discussed under the Report of the Commission in its 65<sup>th</sup> session.

Protection of Persons in the Event of Disasters

**Mr. Chairman,**

With regard to the draft articles on the Protection of Persons in the Event of Disasters, let me begin by commending the Special Rapporteur, Mr. Eduardo Valencia-Ospina for his excellent work on this topic.

My Delegation agrees that the core principles of sovereignty, non-intervention and the requirement of State consent must be considered in the light of the responsibilities of a State, and that the work of the Commission on the topic should ensure the attainment of proper balance of those principles. It is important to emphasize, however, that it is the Government of an affected State that is in the best position to determine the severity of a disaster situation and the limits of its national response capacity, and to consider the need to seek external assistance.

Furthermore, it is essential that we do not undermine the actual practice of States, including Indonesia, which, when dealing with major disasters have always promptly chosen to work with the international community. Indonesia, as a country that is vulnerable to disasters, has enacted a law on disaster management. The law stipulates that the provision of external assistances shall respect our political independence, sovereignty, territorial integrity, laws and national legislations.

Draft Article 12, on the "Right to offer assistance", raises doubts as to whether we need it in the first place. By virtue of its sovereignty, and subject to the consent of the affected State, any non-affected State could provide assistance to that affected State at any time that it considers it to be needed. Establishing a right to offer assistance is in our view unnecessary. However, we welcome commentary (2) of Article 12 providing explanation that there would be no legal duty to assist nor does it create the obligation for the affected state to accept it. In our view, this notion should also be viewed in line with commentary (1), (5) and (6) of Article 13, upon which the affected state place conditions on provision of external assistance, and the affected and assisting states must both comply with the applicable national laws of the affected state.

## Formation and Evidence of Customary International Law

**Mr. Chairman,**

As regards Formation and Evidence of Customary International Law, I wish to thank Mr. Michael Wood, the Special Rapporteur, for his intensive research and analysis on the topic, which facilitates our discussion of the topic.

The Indonesian delegation is of the view that this topic is important, as the final outcome will provide the users (including national judges, government lawyers and practitioners, as well as judges and arbitrators in specialized international courts and tribunals), with adequate guidance for finding or identifying and applying rules of customary international law.

The topic covers both the formation of customary international law, which reflects a dynamic process, and evidence of customary international law that has a static character. Even though the two have different characteristics, they are nonetheless closely related. Both issues, should therefore be addressed comprehensively, irrespective of the final decision on the title. It is evident that in order to determine whether a rule of customary international law exists, it is necessary to consider both the requirements for the formation of a rule of customary international law, and the type of evidence that establishes the fulfillment of those requirements.

The Report also refers to the issue of including *jus cogens* in the study of this topic. We are of the view that *jus cogens* should not be part of the present topic. It is to be understood, however that *jus cogens* might come up in the work on the topic as the need arises.

## Provisional Application of Treaties

**Mr. Chairman,**

Moving on to the issue of Provisional Application of Treaties, my delegation should like to express our appreciation to the Special Rapporteur, Mr. Manuel Gomes-Robledo for his first report. We take the view that Article 25 of the 1969 Vienna Convention on the Law of Treaties is certainly the basis on which the Commission will develop a mechanism or a set of guidelines that would provide States with a clear and viable option relating to the provisional application of treaties. We consider this topic to be very important as it aims to clarify the legal issues involved and the legal consequences of the provisional application of treaties.

We recognize that this topic is complex, and some issues raised have been quite controversial. We think that it would be beneficial, therefore, if more research could be done on State practices, judicial decisions and arbitral awards as appropriate, relating to the provisional application of treaties.

Specifically on the legal effect of provisional application, it would be essential to consider the relationship between provisional application of treaties and the constitutional law requirements for the entry into force of the treaty concerned, as the provisional application of treaties could lead to a conflict between international law and constitutional law of the parties concerned. It is therefore imperative that, for reason of legal certainty, any guidelines on the provisional application of treaties must include establishing conditions for the provisional application of treaties that would avoid or minimize the potential of conflict that I have just alluded to, including elements that establish conditions for the provisional application.

Pertaining to the form of outcome of this topic, whether a set of guidelines or any other forms, my delegation believes that it would be best for the Committee to make the decision on the form of the outcome only after the topic has made sufficient progress. The Indonesian Delegation would like to reiterate that the purpose of this topic is not to encourage States to use the mechanism of provisional application more often. Instead, the aim should rather be to provide a mechanism or guidelines for the provisional application of treaties that will serve as an option to States that might have the intention to provisionally apply a treaty pending its entry into

force. Ultimately, it is the sovereign right of States to decide on what is best for them concerning the provisional application of treaties.

Protection of the Environment In Relation To Armed Conflicts

**Mr. Chairman,**

My Delegation would like to take the opportunity to thank Ms. Mari G. Jacobsson, Special Rapporteur of the topic "protection of the environment in relation to armed conflicts." Indonesia welcomes the approach of addressing the topic in temporal phases without strict division between phases. We support the notion that temporal phases would address legal measures taken to protect the environment before, during and after an armed conflict, as it would allow the identification of concrete legal issues relating to the topic that arose at the different to an armed conflict, however such notion should be viewed in the light that there would not be any strict divisions between phases. We also share the views of the Special Rapporteur that this topic would be more suited to the development of non-binding draft guidelines rather than to a draft convention.

The Obligation to Extradite Or Prosecute (*Aut Dedere Aut Judicare*)

With regard to the issue of the obligation to extradite or prosecute (*aut dedere aut judicare*), the Indonesian Delegation would like to express our appreciation to the Chairman of the Working Group on the topic, Mr. Kriangsak Kittichaisaree, for his untiring effort to make progress by embarking on an intensive research on this difficult subject. We welcome the reconstitution of the open-ended Working Group to evaluate the progress of work on the topic and to explore possible future options to be taken by the Commission.

**Mr. Chairman,**

Before I conclude my statement, I wish to express the support of my delegation for the further work of the International Law Commission.

I thank you.

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