

Statement by
Dr. T. Suka Mangisi, Deputy Permanent Representative
of the Kingdom of Tonga to the United Nations 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 68th Session of the United Nations General Assembly,
New York, Tuesday, 22nd October 2013

Mr Chair

Since this is the first time my delegation is taking the floor in the Sixth Committee, I would like to first congratulate you on your election as Chair, and extend similar sentiments to your Bureau. I am confident that we are in good stead under your leadership during this 68th Session.

I would also like to thank the Secretary - General for the two reports before the Committee on the consideration of prevention of transboundary harm and the allocation of loss in the case of such harm.

Mr Chair

The issue of transboundary harm is of critical importance to the Kingdom of Tonga and our Pacific Small Island Developing State neighbours. Our connection to the oceanic environment runs deep. It is the ancient pathway connecting maritime peoples of the Pacific, and continues as the foundation of our economic, social and cultural sustainability.

The risk of harm to the oceanic environment from human activity carries with it the potential for devastating consequences in the Pacific. As custodians of the ocean and its living and non-living resources, we have a responsibility to ensure that activity affecting the ocean is governed in a way that prevents harm to the extent possible, and ensures adequate remedy in the event that such harm does occur.

This is an issue on which the international community must be proactive, not reactive. We have seen many times the consequences of failing to act to prevent harm, including in the profound effects of climate change on rising sea levels, oceans acidification and loss of biodiversity, and in the aftermath of the horizon oil spill in the Gulf of Mexico.

Mr Chair

The technical and economic feasibility of exploiting deep-sea resources is increasing rapidly, representing huge economic opportunity but also the risk of serious harm to the oceanic environment and those who depend on it.

The exploitation of deep-sea resources requires that we have in place an effective regime to mitigate risk and ensure adequate remedy in the case of harm. Developing effective regulatory regimes requires clarity on parties' respective rights and obligations in the context of transboundary harm. Tonga is playing a leading role in the Pacific in the development of a regional legislative and regulatory framework for deep seabed mining activity. It has also been one of the first states to engage with the International Seabed Authority on the potential for sponsoring activity in the Area beyond national jurisdiction reserved for the benefit of developing states.

In 2011, the Seabed Chamber of the International Tribunal for the Law of the Sea issued an Advisory Opinion on the responsibility and liability of states sponsoring deep seabed mining activity in the Area. While the Tribunal's opinion provides useful guidance to sponsoring states on the nature of their obligations under Part XI of UNCLOS and the 1994 Implementing Agreement, it also highlights liability gaps and the question of residual state responsibility under general international law. These issues require the attention of the international community.

Mr Chair

Just as we depend on oceanic resources for our livelihoods, our fate is also sealed in the oceans in the context of climate change.

Rising sea levels and ocean temperatures disproportionately impact Pacific small island developing states, to the extent that the very survival of low-lying island nations is threatened. In Tonga, we are experiencing more frequent and intense tropical storms, rising sea levels, ground water contamination, crop failure, and diminishing fish stocks.

A period of intense industrialization in the developed world over the past 200 years has resulted in unequivocal, unprecedented, and profound change in our climate. Yet the adverse affects of climate change are felt most acutely in the developing world, and particularly in small island developing states.

Pacific nations are taking steps to strengthen oceans governance and mitigate the effects of climate change, for example through the Majuro Declaration on Climate Leadership and the Pacific Oceanscape Framework, which calls for clarification and formalization of states' jurisdictional rights and responsibilities in the Pacific Ocean. Tonga has also joined other small island developing states in calling for the inclusion of climate change and oceans governance as cross-cutting issues in sustainable development goals and the post-2015 development agenda.

At the domestic level, Tonga has taken action in a Joint National Action Plan on Climate Change Adaptation and Disaster Risk Management to promote good governance, enhanced technical capability, and community resilience to climate change impacts and disasters.

But we in the Pacific cannot remedy this harm alone, and nor should we have to. Harm caused by greenhouse gas emissions in the developed world has transcended our land, ocean and airspace boundaries in the most fundamental way, posing an immediate threat to our survival in the Pacific and elsewhere. This is a global issue, and responsibility for harm should be allocated accordingly.

Tonga has noted that states have considered calling on the International Court of Justice to determine the question of state responsibility for transboundary harm caused by greenhouse gas emissions. It does appear that such an action would clarify state responsibility and spur action to address the profound effects climate change.

Mr Chair

The development of international law on the prevention of transboundary harm and the allocation of loss in the case of such harm is critical to ensure obligations are clear, comprehensive and enforceable.

Finally therefore, Tonga recognizes the fact the Sixth Committee in previous sessions has noted the important contribution of the International Law Commission to the progressive development and codification of international law. The ILC's draft articles and principles concerning transboundary harm thus already constitute authoritative guidance for States and judicial bodies. Tonga agrees with the Sixth Committee in encouraging states to be guided by the articles and principles when negotiating agreements, as well as in taking domestic measures.

I thank you Mr Chair