

ISRAEL

SIXTH COMMITTEE

CHECK AGAINST DELIVERY

Statement by

The Attorney General of Israel
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Report of the International Law Commission on the Work of its Sixty-
Eighth Session

Cluster I

Protection of Persons in the Event of Disasters
Identification of Customary International Law

Agenda Item 78

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Thank you Mr. Chairman,

Israel would first like to take this opportunity to express its appreciation to the International Law Commission and its on-going work. We believe that the opportunity provided by this forum, allowing for dialogue between the Commission and the Sixth Committee, is of great value, and look forward to sharing our views, and hear the opinions of other delegations.

The Government of Israel applauds the remarkable work of the Special Rapporteur, Mr. Eduardo Valencia-Ospina, on the Eighth report relating to the "**protection of persons in the event of disaster**". Israel steadfastly supports the Commission's efforts to enhance protection afforded to people affected by disasters.

The State of Israel does not merely pay lip service to providing disaster relief and supporting humanitarian efforts in international cooperation and collaboration efforts. Israeli teams have been at the forefront of countless disaster relief missions around the world, as they were in Nepal, when Israel sent the largest medical delegation following the powerful earthquake that struck there. Israeli rescue missions have been promptly dispatched within a day or days of such calamitous events.

Though Israel is firmly committed to improving protection for persons affected by all phases of disasters, Israel would like to reiterate our view that the undertaking to engage in a protection mission should not be considered in terms of legal rights and duties. Instead, the draft articles should be formulated as guidelines or principles for international cooperation efforts undertaken on a voluntary basis. As such, the language in numerous draft articles should be altered to avoid creating the impression of the assertion of new legal "rights" and "duties." Draft articles 7, 10, 11, 14, 15, 16, and 17 could be adapted simply by substituting more circumscribed language like "should" or "may" instead of the imperative "shall".

Israel appreciates the emphasis placed in draft article 11 on the affected State's responsibility to determine that a disaster exceeds its national response capacity as we believe that affected States are best placed to determine the gravity of an emergency situation in their territory.

We concur with draft article 13 that external assistance can only be provided with the consent of the affected State. State sovereignty is overarching and other than very limited situations, aid cannot be imposed by a third party without the State's consent.

The State of Israel values the addition of the phrase "at any time" to draft article 17, highlighting the prerogative of the affected State, assisting States, or any other assisting actors to terminate external assistance when they desire.

We attach importance to the statement in draft article 18 that the draft articles do not apply to the extent that the response to a disaster is governed by the rules of international humanitarian law, though we would note that even under IHL the consent of the affected State is generally required in circumstances where a third State wishes to provide assistance.

In conclusion, Israel respects the thoughtful discourse between States on this vital and increasingly pertinent topic and anticipates the production of useful, pragmatic guidelines to facilitate and streamline international disaster relief cooperation efforts.

Mr. Chairman,

The Government of Israel would like to express its gratitude to the International Law Commission and the Special Rapporteur, Sir Michael Wood, for their invaluable work related to the “**Identification of Customary International Law**”. Israel attributes great importance to a thorough and rigorous identification of customary norms and thus welcomes the formulation of a set of practical, simple conclusions and commentary that could aid in this endeavor.

There is a growing tendency among some academics and State actors to claim that certain principles reflect customary international law without the serious and methodical examination of State practice and *opinio juris* that is required. Sometimes these claims reflect political preferences. Sometimes they reflect a lack of discipline and attention to detail. But in any case, casual references to norms as reflecting customary international law, that are not based on the accepted process for identifying custom, ultimately undermine the integrity of international law and its binding force.

It is for this reason that Israel considers the work of the International Law Commission on this topic as important and wishes to make a number of comments regarding draft conclusions to strengthen the disciplined approach that is required in the process of identifying customary norms.

The State of Israel believes that the draft conclusions adopted by the Commission so far generally reflect a healthy approach. At the same time, Israel continues to have reservations regarding the vague language sometimes used in the text as well as a lack of emphasis on the nature of the rule in question, the overall context, and particular circumstances – despite the general caveat expressed in Draft Conclusion 3. For example, Draft Conclusion 6, paragraph 2 and Draft Conclusion 10, paragraph 3 stipulate that “conduct in connection with resolutions adopted by an international organization or at an intergovernmental conference” is a form of State practice as well as a form of *opinio juris*. More often than not, however, such conduct has nothing to do with the formation or identification of customary law and is heavily influenced by non-legal and political considerations. Consequently, it seems that the current draft text exceedingly inflates the significance of conduct in connection with resolutions. It would be more accurate in some circumstances to say that conduct in connection with resolutions adopted by an international organization or at an intergovernmental conference may be a form of State practice and at most, can be considered in some circumstances, a form of *opinio juris*.

The State of Israel is also concerned that the draft conclusions deviate from existing law in a number of places. Draft Conclusion 4, for instance, argues that practice by international organizations *qua* international organizations contributes to the formation or expression of custom, although this is not the case under international law. Another

example may be found in Draft Conclusion 7, according to which varying practice by a State should be given reduced weight. However, it is precisely variations in practice which often indicate that a State does not see itself bound to act in any particular way at all.

To conclude, and as stated in the past, Israel appreciates the careful deliberation of the Commission, the dedication and diligence of the Special Rapporteur, and the meaningful discourse between States regarding this important project. Israel certainly looks forward to the production of helpful guidelines regarding the identification of customary international law. In order to facilitate the important work of the Commission and the Special Rapporteur, Israel will seriously consider the proposal to comment on the draft text and commentary by January 2018, so that it can provide a more complete picture of its positions and concerns.

Thank you Mr. Chairman