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AGENDA ITEM 78
REPORT OF THE INTERNATIONAL LAW COMMISSION
71ST SESSION OF THE GENERAL ASSEMBLY

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Statement by Mr. Seoung-ho Shin, Counsellor
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Mr. Chairman,

My delegation would like to express its deep gratitude to the International Law Commission (ILC) for adopting, after 10 years of hard work, the final outcome on the “protection of persons in the event of disaster.” We also would like to thank the Special Rapporteur, Mr. Valencia-Ospina, for his outstanding contributions.

Considering the increasing severity of natural disasters at both the regional and global levels, my delegation firmly believes that the work of the ILC will provide essential and pragmatic guidance to enhance international cooperation for efficient and effective humanitarian relief assistance in our interdependent world.

During the 2nd reading of the draft articles, the ILC rightly identified the need for a duty of State by stipulating, “To the extent that a disaster manifestly exceeds its national response capacity, the affected State has the duty to seek assistance.” This draft article 11 is a notable improvement and my delegation is convinced that it would promote the fundamental rights of persons affected by disasters. Nonetheless, it needs to be further elaborated what are the practical standards in defining this novel duty of a State and when a disaster can be constituted to virtually “exceed manifestly the state’s response capacity.”

Concerning the possible format of the draft articles on the “protection of persons in the event of disasters,” it was the recommendation of the ILC that the General Assembly concludes them as a convention. Indeed, the draft articles contain many foundational rights and obligations of the State in particular with respect to the ever-growing scale and severity of natural disasters, and in this regard, my delegation respects the position of the Commission. Nonetheless, in consideration of the past and on-going discussions among the international community on this issue, it is my delegation’s view that a General Assembly resolution may well serve the current context of international law and relations with an aim to disseminating emerging rules and facilitating their effective implementation on a broader basis. Again, my delegation appreciates the excellent work by the Special Rapporteur and the ILC.

Mr. Chairman,

With regard to the Identification of Customary International Law, my delegation expresses its sincere thanks to the Special Rapporteur, Sir Michael Wood, for his fourth report. We also appreciate the work of the drafting committee in provisionally adopting draft conclusions after the first reading.

While my delegation welcomes the speedy and efficient working methods applied to discuss the subject matter, we are of the view that it might require a more cautious approach and careful consideration in light of the importance of the topics. Indeed, this subject includes controversial issues on the theory of customary international law such as “persistent objector.” Topics and their discussion should maintain a high level of clarity with a view towards being used as practical guidelines for national and international legal practitioners.

In this regard, my delegation welcomes that the ILC has requested a proposal on the means and methods by which the Commission is able to acquire evidence concerning relevant customary international law for the purpose of facilitating further discussions on this topic. Accordingly, it is my delegation's wish that the Government of the Republic of Korea will complete and submit the requested survey by the due date.

Mr. Chairman,

Turning to the topic of “subsequent agreements and subsequent practice in relation to the interpretation of treaties,” my delegation would like to express our deep gratitude to the International Law Commission for finalizing the first reading and sharing as an outcome a set of 13 draft conclusions, together with their commentaries. We express our sincere appreciation to the Special Rapporteur, Mr. Georg Nolte, for his fourth report and timely contribution to this subject.

Given the practical difficulties in applying Articles 31 and 32 of the 1969 Vienna Convention on the Law of Treaties, the work is expected to provide States with indispensable guidelines on the interpretation of treaties. And this has been successfully done by identifying and clarifying the scope and the roles of various subsequent agreements and practices related to the interpretation of treaties.

With respect to draft conclusion 13[12] regarding “pronouncements of expert treaty bodies,” my delegation is of the view that it is very much timely to deal with the roles of such bodies in treaty interpretation. As a matter of fact, many multilateral treaties today, including a good number of human rights conventions, have established bodies composed of individual experts acting in their own independent capacities, and thus the text of draft conclusion 13[12], which replaces the previous term “reflect” by a new term “refer to,” is a prudent move and properly reflects the sensitivity of the interpretation of treaties. According to its commentaries, the Commission also confirms that such a modification has the purpose of “mak[ing] clear that any subsequent practice or agreement of the parties is not comprised in the pronouncement itself” by those expert bodies (see ILC Report 2016, p. 236 (para. 17)). My Government deeply appreciates the Commission’s necessary caution on the wording, and agrees with this modification.

Meanwhile, my delegation takes note of the existence of divergent views within the Commission on paragraph 4 of draft conclusion 13[12]. That disagreement is related to what extent, and in which form, pronouncements of expert treaty bodies may contribute to the treaty interpretation. My Government further requests the ILC to re-examine this issue on the occasion of its second reading on the basis of observations that the governments of the UN Member States would make.

I thank you.