



Statement by H.E. Dr. Rohan Perera
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to the United Nations
before the Sixth Committee of the UNGA 71st Session
Agenda Item 78 : Report of the International Law Commission (ILC)
on the Work of its Sixty-Eighth Session
(Cluster I – Chapters I, II, III, IV, V and XIII)

Mr. Chairman,

At the outset I wish to extend our warm appreciation to the Chairperson of the Commission, Mr. Pedro Comissário Afonso for his presentation of the first cluster of topics in the Commission Report. Our intervention this morning will focus on the topic of Protection of Persons in the event of Disasters, the Draft Articles of which have been adopted on Second Reading by the Commission. Let me begin by expressing our deep appreciation to Mr. Eduardo Valencia-Ospina, Special Rapporteur on the Protection of Persons in the Event of Disasters, for his dedicated work and outstanding contribution to this topic.

My work in the Commission at the time this topic was taken up for consideration, gave me an insight into the tireless efforts Mr. Valencia-Ospina made in carefully approaching a topic fraught with many complexities. His close consultations with other bodies such as the IFRC which had already undertaken work in this area, considerably facilitated the task at hand and provided useful guidance to the Commission.

The draft articles adopted by the Commission reflects a very careful balance between recognizing the principle of sovereignty and the attended primary role of the State affected by a disaster in providing disaster relief assistance, and at the same time underlining the fundamental value of solidarity in international relations and strengthening international cooperation in providing disaster relief to persons affected. We note the fact that the draft preamble which has been introduced reinforces the balance that has been achieved among these core principles.

While the draft articles, as they rightly should, are primarily focused on the immediate post-disaster response and early recovery phase, nevertheless as **Draft Article 2** read with **Draft Article 9**, confirms, disaster risk reduction and disaster prevention and mitigation are very much contemplated to be within the scope of the draft articles. That the draft articles address the issue of protection of persons in the event of disasters in a holistic manner covering all stages of the disaster cycle is to be welcomed. As the SG Ban Ki-moon recently observed in his message on International Day for Disaster Reduction “On this International Day for Disaster Reduction, I call on all Governments to work with civil society and the private sector to move from

managing disasters to managing risk. Let us move from a culture of reaction to one of prevention and build resilience by reducing loss of life”.

We also welcome the fact that the draft articles recognize the importance of the response to a disaster and the reduction of the risk of disasters should meet, primarily the “needs” of the persons concerned, whilst fully respecting the rights of such persons. This approach is appropriate, rather than being enmeshed in a futile ‘needs vs. rights’ debate.

We view **Draft Article 4** on respect of the Inherent Dignity of the Human Person, **Draft Article 5** on respect for the Human Rights of the Persons Affected, and **Draft Article 6** on the Principles of Humanity, Neutrality & Impartiality and Nondiscrimination as forming the core of the humanitarian principles that should guide in providing relief to persons in the event of disasters.

Draft Articles 7 & 8, on Cooperation among States and with Other Entities, and on forms of cooperation respectively also forms an important component of the framework for providing international disaster relief. As the General Assembly recognized, in Resolution 46/182, such international cooperation to strengthen response of affected countries is of great importance where the magnitude and duration of a disaster may be beyond the response capacity of affected countries. It also recognizes that such cooperation should be provided in accordance with international law and national law.

As noted by the Commission, international cooperation, however, should not be interpreted as diminishing the primary role of the affected State in the direction, control, coordination and supervision of relief assistance as provided for in Draft Article 10: Paragraph 2. Further, the principle of cooperation must be understood also as being complementary to the duty of the authorities of the affected States to take care of persons affected by disasters, within their jurisdiction.

We also welcome the singling out of the Red Cross and Red Crescent Movement in recognition of the important role played by the movement in facilitating international cooperation in situations of disasters.

The cluster of articles comprised of **Draft Article 10: Role of the Affected State**, **Draft Article 11: Duty of the Affected State to Seek External Assistance**, **Draft Article 12: Offers of External Assistance** and **Draft Article 13: Consent of the Affected State**, collectively deals with a range of complex issues which arise in the consideration of this topic. We welcome the fact that **Draft Article 10** recognizes the primary role of the affected State in the direction control coordination and supervision of external relief assistance. This is consonant with the core principles of sovereignty which underpins the draft articles.

In this context it has to be noted that GA Resolution 46/182 affirms that “the sovereignty, territorial integrity and national unity of States must be fully respected in accordance with the

Charter of the United Nations”. We agree with the view that the primacy of an affected State is also grounded in longstanding recognition in international law that an affected State is best placed to determine the gravity of an emergency situation and to frame appropriate response policies. These principles must, of course, be read in concert with the need for international cooperation in appropriate situations.

It is stated that **Draft Article 11** on the Duty of the Affected States to Seek Assistance in Situations in which the national capacity of an affected State is manifestly exceeded, reflects the Commission’s concern to enable the timely and effective disaster relief assistance. It is important, however, that assessment of severity of a disaster must, in the ultimate analysis, be left to determination by an affected State which is best placed to determine the severity of a disaster, as well as the limits of its national response capacity. It is understood that the principle of good faith will be a crucial factor in determining the application of threshold requirements of this Draft Article.

Draft Article 13 on the Consent of the Affected State for Providing External Assistance has given rise to considerable deliberations in the Commission and the Article as drafted, reflects a delicate balance of a “qualified consent regime”. The consent of the affected state is a core principle in providing disaster relief and GA Resolution 46/182 notes that “humanitarian assistance should be provided with the consent of the affected State and in principle on the basis of an appeal by the affected country. The requirement in Paragraph 2 that the consent to external assistance shall not be withheld arbitrarily, while being an essential element of a qualified consent regime, requires a delicate balancing of number of factors in its application. In this regard, we welcome the helpful guidance that paragraph 8 of the commentary to this draft article, provides.

Mr. Chairman,

We are confident that draft articles adopted by the Commission will make an invaluable contribution by way of providing a solid legal framework in dealing with the protection of persons in the event of disasters, which is also flexible in its application in disaster situations.

Before I conclude, Mr. Chairman, I also wish to briefly refer to the adoption by the Commission on first reading, a set of 13 draft conclusions together with commentaries on the topic of “Subsequent agreement and subsequent practice”, in relation to the interpretation of treaties. We wish to pay tribute to the outstanding contribution that has been made by the Special Rapporteur, Mr. Georg Nolte since this topic was included on the agenda of the Commission in 2008 under the title “Treaties Overtime”.

Overall, we believe that the draft conclusions will further elaborate and add clarity to the principles of treaty interpretation as contained in Articles 31 & 32 of the Vienna Convention on the Law of Treaties. The work that has been accomplished has covered relevant jurisprudence, inter-alia, of the International Court of Justice, Arbitral Tribunals, as well as the jurisprudence of

special regimes relating to subsequent agreement and subsequent practice. At the current session, the work has addressed the legal significance for the purpose of interpretation and as forms of practice under a treaty, of pronouncements of expert treaty bodies and of domestic Courts. Pronouncement of Treaty Bodies, is no doubt an important area which requires attention of member states. We welcome the fact that the draft conclusion specifically provides for a presumption against silence as constituting acceptance of the pronouncement of an expert body as subsequent practice under the Vienna Convention. Acceptance of an interpretation of a treaty as expressed in a pronouncement of an expert treaty body cannot be lightly presumed. As the commentary notes it cannot usually be expected that State Parties take a position with respect to every pronouncement by an expert treaty body. These conclusions require careful application to specific circumstances.

We believe the work that has been accomplished on this topic will make a distinct contribution to the practical application of the general principles of treaty interpretation contained in Articles 31 & 32 of the Vienna Convention on the Law of Treaties.

Finally, Mr. Chairman, we recognize the progress that has been made on the topic, "Identification of Customary International Law", and we recognize important contribution made by the Special Rapporteur, Mr. Michel Wood to present comprehensive reports enabling the first reading of the draft conclusions to be adopted by the Commission.