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**Statement by Mr. NGUYEN MINH VU,**
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**at the 71st Session of the Sixth Committee of UNGA**
**on Agenda Item 78: "Report of the International Law Commission"**

**Cluster I (Chapters I, II, III, IV, V, VI and XIII)**

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Our delegation thanks the International Law Commission for the comprehensive report on the work of its sixty-eighth session. Viet Nam highly appreciates the Commission for its dedication to the progressive development and codification of international law. The Commission's tireless efforts have provided this Committee with valuable information and analysis on many important areas of international law.

In my statement, I will address the topics of "Protection of persons in the event of disasters", "Identification of customary international law", and "Subsequent agreements and subsequent practice in relations to the interpretation of treaties" in the order of their appearance.

**Protection of persons in the event of disasters**

Turning to Chapter IV of the Commission's report on the "Protection of persons in the event of disasters", my delegation wishes to express our appreciation for the work of the Special Rapporteur, Mr. Eduardo Valencia Ospina, on the eighth report and revised draft articles of the Commission. We are of the view that the draft articles has reached its finalization and forms a basis for member States to elaborate on a Convention on the protection of persons in the event of disasters. On that note, I will make several brief comments.

First, with regards to the provision on the duty to seek assistance, we believe that the primary role and responsibility to prevent and respond to disasters rest first and foremost with the affected State while other States and actors may offer or request to assist. It is, however, also the right of the affected State to accept or decline the offer of assistance. Thus, the duty of affected States to seek external assistance as provided for under Article 11 of the draft articles will place unnecessary legal

burdens, which include, for example, the legal responsibility that the affected State has to bear if it fails to make a request for external assistance.

Furthermore, we are concerned of the elements that the current draft lacks. Firstly, the external assistance needs to respect not only the principle of sovereign equality, but also that of territorial integrity and the obligation of non-arbitrary intrusion or access to locations or sites without the consent of the host State. At the same time, there must be additional provisions to ensure that relief personnel who are guaranteed rights and privileges under the draft articles shall also observe the laws, regulations, instructions, and commands of the host State.

Finally, we note that response to disasters is not merely an immediate concern but rather one that requires plans and roadmaps to ensure the relief for persons affected by such disasters. This, in our view, is also an important task of disaster response which require extensive resources and which thus highlights the importance of international cooperation.

**Identification of customary international law**

Turning next to the topic of the "identification of customary international law", my delegation wishes to express our appreciation for the outstanding work of Sir Michael Wood over the years on this important topic. We are also appreciative of the Commission for the draft conclusions provisionally adopted based on the fourth report of Sir Michael Wood. I would like to make some observations in this regard.

First, we reiterate our full support for the two elements approach to identifying customary international law, which are state practice and *opinio juris*. In regards to the identification of whose practice to take into consideration as noted in draft conclusion 4, we support the notion that States are the primary actors whose practices are to be taken into account for the formation or expression of customary international law. Practice of international organizations in this regard, however, should be considered with caution. We concur with commentaries made in relations to paragraph 2 of draft conclusion 4, namely that the contribution of an international organization should only be considered in certain cases and based on certain criteria, among which, whether the practice of such organization is carried out on behalf of or endorsed by its member States.

Second, we note the divergence in the view of State in regards to the forms of state practice and those of the evidence of acceptance as law, as stated in draft conclusions 6 and 10 respectively. Thus, in order to address the concern of States and to help clarify this matter, we suggest that further consideration be made so as to establish clear guidelines and criteria for the determination of what forms state practice and *opinio juris* may take.

Third, we wish to draw attention to the forms of practice and *opinio juris* related to conducts in relation with resolutions adopted by an international

organization or at an international conference. Many resolutions of international organizations are political, recommendations, and non-legally binding in nature and thus may not reflect customary international law. Therefore, we recommend that further consideration be given to the inclusion of this element into paragraph 2 of draft conclusion 6, paragraph 2 of draft conclusion 10, and draft conclusion 12.

Finally, as for draft conclusion 13, my delegation has concerns over the role of the decisions national courts as subsidiary means for the determination of rules of customary international law. As we have indicated in past sessions, national courts vary in their country-specific constitutional constraints as well as the degree to which the doctrine of legal precedents is applied in their jurisdiction. Therefore, it is difficult to view national courts as sharing the same values with international courts and tribunals, particularly the International Court of Justice, or their decisions as having similar weight in international law. Furthermore, the decisions of national courts have also been regarded as forms of state practice as well as those of *opinio juris*. To avoid confusions, it is recommended that further study be made to clarify the role that decisions of national courts may play in the identification of rules of customary international law.

**Subsequent agreements and subsequent practice in relations to the interpretation of treaties**

As we address the topic "Subsequent agreements and subsequent practice in relation to the interpretation of treaties", we would like to commend the Special Rapporteur, Mr. Georg Nolte for his outstanding contribution to the work of the Commission, which led to adoption by the Commission of the set of 13 draft conclusions on the issue and its transmission to Governments for comments and observations.

We would like to express our support for the draft conclusions as presented. The set of draft conclusions has clarified how to identify subsequent agreements and subsequent practice provided for in Article 31 and 32 of the Vienna Convention and the role of such agreements and practices in the interpretation of treaties. It provides practitioners with guiding rules for taking into account subsequent agreements and subsequent practice in the process of interpretation of treaty provisions.

We also agree with the Commission's conclusion that 'the possibility of amending or modifying a treaty by subsequent practice of the parties has not been generally recognized', that 'the parties to a treaty, by an agreement subsequently arrived at or a practice in the application of the treaty, intend to interpret the treaty, not to amend or to modify it' (Conclusion 7.3).

In conclusion, we would like to affirm our wish to give further comments and observations on the set of draft conclusions by 01 January 2018.

Thank you, Mr. Chairman.