

STATEMENT BY MR. BAJU BAN RIYAN, MEMBER OF PARLIAMENT, ON AGENDA ITEM  
81 – 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 65<sup>TH</sup> SESSION OF THE UNITED NATIONS GENERAL  
ASSEMBLY ON OCTOBER 21, 2010.

Madam Chairperson,

On the recommendation of the General Assembly in 1973, the topic “International liability for injurious consequences arising out of acts not prohibited by international law” was included in the programme of work of the International Law Commission in 1978.



In 2001 the Commission completed the draft articles on prevention of transboundary harm from hazardous activities and recommended to the General Assembly the elaboration of a convention on the basis of the draft articles.

In 2006, the Commission completed draft principles on the allocation of loss in the case of transboundary harm arising out of hazardous activities and recommended the Assembly to endorse the draft principles by a resolution and urge States to take national and international action to implement them.

At its sixty-second session, the General Assembly by resolution 62/68 again invited Governments to submit their comments, including on the possible legal form the respective articles and principles may take.

The General Assembly also decided to include in the provisional agenda of its sixty-fifth session the item entitled "Consideration of prevention of transboundary harm from hazardous activities and allocation of loss in the case of such harm".

Madam Chairperson,

My delegation would like to give some comments on the draft articles on the prevention of transboundary harm as well as on the draft principles on the allocation of loss in the case of such harm. Let me first express our sincere appreciation for the work done by the Commission on the draft articles as well as the draft principles which represent progressive development of international law.

In our view, the draft articles on the prevention of transboundary harm provide useful addition to the existing customary law reflected in the Trail Smelter, Corfu Channel and Lake Lanoux cases dealing with the principle of transboundary harm and the ensuing damage from hazardous activities. In our view, the draft articles on prevention are dealt with in a general manner, providing enough flexibility to States to fashion specific liability regimes for particular sectors of activity under their jurisdiction.

Madam Chairperson,

Coming to the draft principles, while we agree with the basic purpose of the draft principles, we have concerns on an expanded definition of "damage" which includes: loss of life or personal injury, loss of or damage to property; loss or damage by impairment of the environment; costs of reasonable measures of reinstatement of the property; and costs of reasonable response measures.

A traditional civil liability regime as the one in our country provides for a definition of damage that includes loss of life, property and loss caused on account of 'actual damage' to the environment. We believe that cost of response measures or

reinstatement of the environment on account of "impairment of the environment" will come as a stumbling block in our developmental efforts.

In our view these principles should be complementary in nature and not prejudice the regime on state responsibility under international law.

Madam Chairperson,

We support the fundamental premise of the topic that in all situations involving harm arising out of hazardous activities, the primary liability shall be that of the operator. We also believe that operator should establish and maintain financial security and insurance cover to be able to pay for compensation for harm caused to innocent victims. Besides mandatory financial security, supplementary funding mechanisms may be established by the participation of the industry and other stakeholders.

As regards 'response measures', we recognise that obligations to notify as well as consultation to mitigate the effects of transboundary harm are recognised in a number of international instruments governing hazardous activities. It may, however, be noted that competent authorities of a State shall have the power under domestic laws to require response measures from the operator towards mitigation/ elimination of the damage. Any residual response measure from the State should be supplementary to the operator's liability, based on the capacity of the States to undertake such measures.

Madam Chairperson,

We believe that the draft articles on the prevention of transboundary harm and the draft principles on the allocation of loss in the case of such harm will serve as a useful guide to States in making efforts to adopt legislative, regulatory and administrative measures incorporating relevant principles in their domestic laws and policies.

As to the form of a possible legal regime on the draft articles on prevention and draft principles on allocation of loss, we are of the view that any attempt to codify them in the form of a convention would prove counter-productive. It may not add value to the already achieved progressive development of international law in this field by the ILC. The State practice shows that States prefer sectoral environmental treaties with in-built liability regimes.

Thank you Madam Chairperson.

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