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Sixth Committee
Agenda item 86

Protection of persons in the event of disasters

Oral report of the Chair of the Working Group

Chair: H.E. Amb. Antonio **Lagdameo** (Philippines)

Mr. Chair,

I have the honour to present the report of the Working Group on the Protection of persons in the event of disasters for this year's session.

I. Proceedings

Pursuant to General Assembly resolution 76/119 of 17 December 2021, the Sixth Committee, at its first meeting, on 2 October 2023, decided to establish a working group on the protection of persons in the event of disasters. At the same meeting, I had the honour of being elected by the Sixth Committee to Chair the Working Group.

I wish to thank Ambassador and Permanent Representative Suriya Chindawongse, Chair of the Sixth Committee, and his Bureau, as well as all delegations, for the trust reposed on me to chair the Working Group.

The mandate of the Working Group is to examine the draft articles on the protection of persons in the event of disasters, adopted by the International Law Commission in 2016, and to consider further the recommendation of the Commission for the elaboration of a convention by the General Assembly or by an international conference of plenipotentiaries on the basis of the draft articles, or any other potential course of action with respect to the draft articles, also in the light of the views and comments expressed in the debates of the Sixth Committee since, as well as the comments and observations received from Governments in writing.

The Working Group was open to all States Members of the United Nations. The observer delegation of the International Federation of Red Cross and Red Crescent Societies (IFRC) was further invited to participate in its work.

The Working Group held eight meetings on 5, 6, 9, 10 October and 6 November 2023. I would like to thank **Ambassador and Deputy Permanent Representative Ariel Rodelas Penaranda** for his stewardship of some of the Working meetings during my absence from New York.

II. Informal summary

At its first meeting, the Working Group received expert presentations by the representatives of the United Nations Office for the Coordination of Humanitarian Affairs (OCHA), the New York Liaison Office of the United Nations Office for Disaster Risk Reduction (UNDRR), and the International Federation of Red Cross and Red Crescent Societies (IFRC), respectively, and was followed by a questions and answers segment.

The remaining seven meetings were dedicated to the examination of the draft articles as provided by resolution 76/119. To facilitate a focused and fruitful discussion on the topic, the programme of work was divided into the following five thematic clusters of articles in the draft articles on the Protection of Persons in the Event of Disasters.

Thematic cluster 1 concerned the general provisions, namely the draft preamble and draft articles 1, 2, 3 and 18.

Thematic cluster 2 focused on the core obligations, as contained in draft articles 4, 5, 6 and 9.

Thematic cluster 3 dealt with the provisions on international cooperation, found in draft articles 7, 8, 12.

Thematic cluster 4 concerned the affected State and focused on the provisions in draft articles 10, 11, 13 and 14.

Finally, **thematic cluster 5**, dealt with the question of the facilitation of external assistance and focused on draft articles 15, 16 and 17.

Delegations were also given the opportunity to hold an initial exchange of views on the recommendation of the International Law Commission.

I am pleased to report that delegations engaged in a series of in-depth substantive and thought-provoking discussions throughout the meetings of the working group. I expect that such rich discussion will help to set the ground for the second round of meetings of the working group, to be held next year during the seventy-ninth session of the General Assembly and will also inform discussions held during the inter-sessional period.

In the interests of time and given the extensive and detailed debate held in the working group, the written version of this report will be posted on the Sixth Committee's website together with an annex containing the Chair's summary of the deliberations in the working group. The summary was prepared under my responsibility, with the assistance of the Secretariat, and is provided for information purposes only and solely for the convenience of delegations. An initial draft of the Chair's summary was circulated and all delegations were afforded the opportunity to submit comments thereon in writing or orally during the final meeting of the working group, held on Monday this week. I have endeavored to take all such comments into account in finalizing the Chair's summary. In pursuit of balance and impartiality, I have

diligently incorporated a range of contributions into the final summary, ensuring a representation that is both nuanced and equitable, reflective of our extensive discussions.

It is my hope that having such a detailed written summary of the deliberations will be of assistance to delegations in continuing the inter-sessional dialogue on the draft articles, and in preparation for the second round of meetings of the working group, next year.

Before concluding my statement, allow me to thank sincerely all delegations for their meaningful engagement and contribution to the work of the working group at this year's session, as well as to the Secretariat for its valuable assistance. I wish to thank, in particular, Mr. Arnold Pronto.

This concludes my presentation of the oral report of the Chair of the Working Group. I recommend that the Sixth Committee take note of the present oral report.

Thank you.

Annex

Chair’s summary of the deliberations in the working group during the seventy-eighth session (2023)

Thematic Cluster 1 – General provisions (Draft preamble and draft articles 1, 2, 3 and 18)

1. Thematic Cluster 1, concerning the general provisions reflected in the draft Preamble and draft articles 1, 2, 3 and 18, was discussed at the second and third meetings of the Working Group, held on 5 and 6 October 2023.
2. Several delegations generally welcomed the draft articles on the protection of persons in the event of disasters and considered them to be an appropriate starting point for the development of a positive legal instrument on the matter. At the same time, a preference was expressed for placing greater emphasis on the role of affected States, in view of the primacy of the affected State in the provision of assistance to its population, the need to respect State sovereignty and the importance of avoiding imposing additional burdens on affected States in times of emergency. Other delegations highlighted the need to find the right balance between protecting persons and respecting the principles of the Charter of the United Nations, including the principles of sovereign equality of States and non-intervention in the internal affairs of States.

Draft preamble

3. Delegations acknowledged the important role the preamble would play in defining the purposes and objectives, as well as in the interpretation, of an eventual convention. The reference to article 13, paragraph 1 (a) of the Charter of the United Nations, in preambular paragraph 1 was generally welcomed, as was the reference in preambular paragraph 2 to the frequency and severity of disasters and their durations.
4. With respect to preambular paragraph 3, a number of delegations expressed support for its emphasis on the needs and rights of affected persons. The need to clarify the relationship with the possibility of derogating from human rights obligations was noted. It was proposed to refer in a non-exhaustive manner to relevant human rights instruments, as well as to General Assembly resolution 46/182 on “Strengthening the coordination of humanitarian emergency assistance of the United Nations” and the Sendai Framework for Disaster Risk Reduction 2015–2030.¹ The relevance of considering the means available to affected States to meet the essential needs of affected persons, and to ensure the protection of their rights, was raised. It was also suggested to add the words “according to international law” at the end of the paragraph.
5. Several delegations welcomed the emphasis in preambular paragraph 4 on solidarity and international cooperation. The view was expressed that solidarity should be a duty limited to those States with sufficient capacity. Some underscored the importance of avoiding the implication that the application of the principle of solidarity could give rise to a right to intervene in other States’ internal affairs.
6. With respect to preambular paragraph 5, delegations welcomed the emphasis on the sovereignty of States and the primary role of the affected State in providing disaster relief assistance, as reflected in draft article 13. Several delegations emphasized the

¹ See General Assembly resolution 69/283 of 3 June 2015, annex II.

significance of the consent of the affected State to any disaster relief assistance. The view was expressed, however, that the primary role of the affected State included the obligation to seek external assistance where required. Several delegations called for the inclusion of explicit references to other core principles of the Charter of the United Nations, in particular, the principles of non-intervention in the internal affairs of States, and respect for the territorial integrity and political independence of States, as well as the prohibition of the use of force. Others considered that a general reference to the principles and purposes set forth in the Charter of the United Nations would be sufficient.

7. Some delegations proposed additions to the draft preamble, including references to other international conventions relevant to the topic as well as to instruments dealing with disaster risk reduction and disaster response. References to the important roles of local communities and women's leadership in crises were also proposed. Further suggestions included referring to the role played by States in disaster risk reduction, as well as to the need for capacity building.

Draft article 1 – Scope

8. Several delegations considered draft article 1 as appropriately delimiting the scope of the draft articles. At the same, the view was also expressed that the provision was overly broad and should be limited to disasters occurring in affected States rather than in areas where a disaster had not occurred.

9. With respect to the scope *ratione materiae* of the draft articles, several delegations welcomed the focus on protection. Nonetheless, more elaboration of the concept of protection was sought. It was proposed that draft article 1 be recast to refer to application of the draft articles to the provision of assistance and support to affected States and persons, rather than protection, considering that the draft articles dealt primarily with the horizontal obligations of affected and other States. However, it was noted that the draft articles also dealt with the vertical relationship between States and the persons to be protected. The importance of ensuring consistency with the principles and purposes of the Charter of the United Nations was highlighted. Some delegations expressed the view that the duty to protect persons applied regardless of nationality or migratory status, as reflected in the corresponding commentary. The incorporation of an express recognition of such understanding into the text of the provision was proposed.

10. The reference to the activities of States, international organizations and non-governmental organizations (NGOs) was welcomed by some delegations, and it was suggested that such reference could even be reflected in a revised title of the draft convention. The importance of distinguishing between the positions of States, international organizations and other entities was also emphasized.

11. A number of delegations welcomed the comprehensive temporal scope of the draft articles, covering the phases before, during and after the onset of a disaster. Some delegations called for further clarity as to which draft articles applied to the pre-disaster stage. The view was expressed that there should be an obligation to seek external assistance to prepare for future disasters. Nevertheless, several delegations welcomed the fact that the draft articles address prevention and risk reduction. The importance of

the provision of external assistance during the post-disaster recovery phase was also highlighted.

Draft article 2 – Purpose

12. Several delegations recalled that the purpose of the draft articles was to facilitate a coordinated response to disasters, thus seeking to minimize loss of life and livelihood. It was proposed to replace the words “adequate and effective” with “appropriate, concerted and effective”, so as to place greater emphasis on responsiveness to the needs of the affected State. A number of delegations also expressed support for the references in the provision to both disaster response and disaster risk reduction.

13. A number of delegations welcomed the reference to the essential needs and rights of affected persons. Some delegations considered that indirectly affected persons should also be included within the scope of the draft convention. Some noted that further clarification of the meaning of “full respect for ...rights” would be useful, especially in light of the possibility of the derogation of certain human rights. It was suggested that the concept of “essential needs” could also be further elaborated in the text. It was proposed to replace the reference to “rights” with one to human dignity, as a reflection of the most essential needs of people. It was also proposed to refer to the rights of the affected State in order to balance the reference to the rights of affected persons at the end of the provision. It was noted that, in the context of disaster prevention and disaster risk reduction, affected persons were those who might be affected by a future disaster. Some delegations referenced the important role of existing frameworks for disaster response and prevention, including General Assembly resolution 46/182 and subsequent related resolutions² as well as the Sendai Framework.

Draft article 3 – Use of terms

14. Several delegations welcomed the approach of the Commission in defining the terms. The need to avoid sacrificing flexibility for specificity was also raised.

15. Several delegations welcomed the attempt to provide a general definition of “disaster” in subparagraph (a), and a number of them called for the careful consideration of the definition proposed by the Commission. Several delegations noted the breadth of the definition, which some welcomed as it would allow for a broad scope of application of the draft articles. The recognition that disasters can arise from complex causes, including the effects of climate change, was highlighted. However, it was also noted that the definition was wide enough to encompass events falling within the scope of existing instruments. As such further consideration would be called for if action taken under the draft articles would duplicate obligations under existing instruments.

16. Some delegations noted that there was not yet a universally accepted legal definition of the term. A preference was expressed for introducing a further distinction between types of disasters, including that between natural and human-made disasters. A distinction was also drawn between sudden and slow-onset disasters. The significance of damage caused by disasters to cultural heritage was also recalled. A

² Including resolution 77/28 on “Strengthening of the coordination of emergency humanitarian assistance of the United Nations” and resolution 77/29 on “International cooperation on humanitarian assistance in the field of natural disasters, from relief to development”.

number of delegations considered that the definition should explicitly refer to certain categories of events that the Commission had excluded in its commentaries. These included armed conflicts and their consequences as well as political and economic crises. Other delegations were of the view that the definition should cover political and economic crises, including the harmful consequences of unilateral coercive measures (UCMs) on affected States and their capability to provide support and assistance to the populations in dire need, which could be comparable in scale to disasters.

17. A number of delegations proposed the deletion of the reference to the phrase “territory under whose jurisdiction or control, a disaster takes place”, from subparagraph (b). According to such a view, the definition of “affected State” should be limited to States on whose territory and subject to whose jurisdiction a disaster occurs. Several delegations considered such clarification to be necessary in order to prevent confusion and delays in effective response. It was further recalled that situations of occupation were governed by international humanitarian law. Some delegations expressed doubt whether an occupying State could appropriately be called the affected State for purposes of the draft articles.

18. It was also proposed to clarify that an “affected State” was one in which a disaster had taken place, thereby excluding the application of the concept during the pre-disaster phase. Additionally, the question was raised as to how States other than the one where the disaster had occurred, but nonetheless impacted by the onset of the disaster, were covered by the draft articles. It was suggested that the definition could refer to an “affected and beneficiary State”, in line with the Framework Convention on Civil Defence Assistance.³

19. With respect to the definition of “assisting State” contained in subparagraph (c), while a number of delegations emphasized the need for the consent of the affected State to the delivery of assistance, in accordance with draft article 13, the view was also expressed that international law does not categorically require such consent.

20. Some delegations welcomed the definition of “other assisting actor” contained in subparagraph (d). The importance of the consent of the affected State to the activities of such actors was highlighted. Several delegations suggested further clarification of the relevant actors. Additionally, the expansion of the notion of “external assistance”, defined in subparagraph (e) to include financial support was proposed. Further specification of the meaning of “equipment and goods” as defined in subparagraph (g) was also called for, as was the qualification of the definition of such phrase by explicitly referring to the consent of the affected State. It was also proposed to expand the scope of the phrase to include good practices, information and essential medicines.

21. Some delegations proposed adding further definitions. It was noted that the phrase “disaster relief assistance” was used throughout the draft articles without being defined. Defining a “request” to require a public request with an express acceptance by

22. the affected State was suggested. Dealing with the position of third States across whose territory assistance transited was also proposed.

³ United Nations, *Treaty Series*, vol. 2172, No. I-38131, p.213.

Draft article 18 – Relationship to other rules of international law

23. Delegations generally welcomed the inclusion of a provision addressing the relationship between the draft articles and other applicable rules of international law. It was noted that the draft articles seek to complement other existing and applicable rules. A number of delegations raised the need to avoid duplication with existing or other proposed instruments. The Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency⁴ and the potential new treaty on pandemics were raised as relevant examples. The importance of avoiding undermining the existing obligations of States whose activities had given rise to disasters was also underscored.

24. Several delegations welcomed paragraph 2. Delegations generally concurred that international humanitarian law was the *lex specialis* with respect to the protection of persons during armed conflicts, but several noted that the relationship between international humanitarian law and the draft articles could raise complex questions. Some considered that the paragraph made clear that the draft articles did not apply in cases of armed conflict. Others expressed the view that the provision was insufficiently clear on that point and that further clarity was needed. Several delegations considered that the draft articles should apply to disasters occurring in areas of armed conflict not covered by international humanitarian law. Support was also expressed for the draft articles applying in cases where they were more precise than the corresponding rule of international humanitarian law. It was proposed to reformulate the paragraph to read: “The present draft articles do not call into question the rules of international humanitarian law insofar as the response to a disaster was governed by them.”

Thematic Cluster 2 – Core obligations (draft articles 4, 5, 6 and 9)

25. Thematic Cluster 2, concerning the core obligations reflected in draft articles 4, 5, 6 and 9, was discussed at the third and fourth meetings of the Working Group, held on 6 October 2023.

26. Several delegations generally welcomed the draft articles in the thematic cluster. Support was expressed for the rights-based approach, for which draft articles 4, 5 and 6 were considered important. According to another view, greater emphasis on respecting the principles of sovereign equality of States and non-interference in the domestic affairs of affected States was needed. Furthermore, the view was expressed that the draft articles should be reoriented so as to place less emphasis on the rights and needs of affected persons, and more on the practical aspects of international cooperation in the provision of disaster relief assistance.

Draft article 4 – Human dignity

27. As regards draft article 4, delegations reiterated the importance of respecting and protecting human dignity in the event of disasters. Several delegations expressed support for the express reference to human dignity in the text of the draft articles. According to another view, the ambiguity in the definition of “disaster”, in draft article 3, would have implications for the interpretation of draft article 4.

28. The concern was expressed that the current placement of the draft article, as well as its wording, could be interpreted as providing for a standalone legal right to

⁴ United Nations, *Treaty Series*, vol. 1457, No. I-24643, p.133.

human dignity, as well as a corresponding legal obligation for States to protect it in the context of the protection of persons in the event of disasters. It was also observed that most multilateral human rights instruments did not contain a separate obligation to protect human dignity. Some delegations also questioned how the concept could be enforced in the disaster response context, as well as to whom the obligation to protect human dignity was addressed.

29. Proposals were made to amend draft article 4 or to simply include a reference to human dignity in either the preamble or draft article 5. At the same time, support was also expressed for keeping draft article 4 on human dignity as an autonomous provision.

Draft article 5 – Human rights

30. Many delegations welcomed the inclusion of draft article 5 in the draft articles. It was observed that in the event of disasters, States were under an obligation to respect and protect human rights in accordance with international law. Support was expressed for the phrase “respect and protect”, as such wording encapsulated both negative and positive human rights obligations of States. It was also suggested that a link be established between the draft article and the principle of human dignity, in draft article 4. While some delegations were open to considering the possibility of including a non-exhaustive list of potentially applicable human rights in the event of disasters, others advised caution in doing so.

31. A delegation questioned how the phrase “entitled to the respect for and protection of their human rights” would be interpreted in practice since not all human rights were enforceable in the disaster response context. It was recalled that international law allowed States to derogate from their human rights obligations in some situations. It was proposed to further clarify the draft article by including a reference to the distinction between derogable and non-derogable rights.

32. Furthermore, it was considered necessary to indicate more clearly to whom the provision was addressed, i.e. which actors would be obliged to respect and protect human rights in the event of disasters. It was recalled that the Commission, in its commentary to draft article 5, had indicated that the scope *ratione personae* of the provision extended to States, international organizations and other entities enjoying specific international legal competence in the provision of disaster relief assistance.

33. Some delegations were of the view that there was, strictly speaking, no need to include references to the international human rights obligations of States, since they were already defined by relevant international instruments. In their view, doing so led to unnecessary duplication.

Draft article 6 – Humanitarian principles

34. Several delegations welcomed the affirmation in draft article 6 of applicable humanitarian principles and emphasized that the provision of humanitarian assistance in accordance with the humanitarian principles should be paired with respect for State sovereignty and the principle of non-intervention. Some suggestions were made to include an explicit reference to those latter two principles in draft article 6. Several delegations were also of the view that the humanitarian principle of independence (endorsed by the General Assembly in resolution 58/114 of 17 December 2003) should be added to the set of humanitarian principles included in draft article 6 and referred to

explicitly in the text, in order to ensure consistency with resolutions 46/182, 58/114 and other humanitarian resolutions of the General Assembly and to avoid reinterpreting the humanitarian principles. A delegation noted that the humanitarian principle of independence should not be confused with the principle of impartiality.

35. A preference was expressed for formulating the draft article in non-binding terms. It was further suggested that draft article 6 could contain a reference to specific actions. It was also pointed out that draft article 6 did not represent codification nor progressive development of international law, but merely reiterated humanitarian principles found in other instruments.

36. Support was expressed for the reference to taking into account the needs of particularly vulnerable groups as it could allow for the adoption of special measures. It was noted that the commentary on the draft article did not establish an exhaustive list of such vulnerable groups, which could also include certain persons like non-nationals. In terms of another view, the reference to “particularly vulnerable groups” was ambiguous and unclear.

Draft article 9 – Reduction of the risk of disasters

37. Several delegations welcomed the inclusion of draft article 9, and pointed to the fact that its inclusion confirmed the holistic approach taken in the draft articles, covering the various phases, from disaster prevention and mitigation to disaster response. The view was also expressed that disaster risk reduction was of critical importance to the preparation for and mitigation of disasters. It was also stated that the draft article had the particular merit of establishing a rule that would fill a critical legal lacuna, and which could thereby contribute to the acceleration of national efforts aimed at disaster risk reduction by providing a legal basis for taking action at the national and regional level, including, for example, by means of the establishment of national action plans and the allocation of dedicated resources.

38. Various suggestions were made for improvement, including adding a reference to the undertaking of scientific assessments in disaster-prone areas, including an express obligation to share scientific data, adding references to policy guidance, administrative measures, and capacity-building efforts, as well as to the importance of building resilience and establishing rapid alert response systems. Some delegations called for further elaboration of the scope of the provision by, for example, including a definition of “disaster risk reduction” in draft article 3. It was further suggested that the scope of the obligation in the provision could be focused more clearly on the preparation for disasters. It was also suggested that elements from the corresponding commentary and from other instruments, such as the Sendai Framework for Disaster Risk Reduction, 2015, could be incorporated into the provision.

39. Furthermore, some delegations indicated their understanding that the obligation to reduce the risks of disasters was one of conduct and not of result. Reference was made to the importance of considering the capacity and financial resources of States, and it was stated that such factors should be taken into account in the assessment of the action taken by States.

40. The concern was expressed that the obligation envisaged in the provision could be difficult to comply with, due to the broad definition of disasters in draft article 3. It was recalled that no such legal obligation to take measures to prevent disasters existed

under customary international law or in existing international human rights treaties. It was suggested that the provision could be drafted as a non-binding obligation. A preference was also expressed for excluding disaster risk reduction, and hence draft article 9, entirely from the scope of the draft articles.

Thematic Cluster 3 – International cooperation (draft articles 7, 8 and 12)

41. Thematic cluster 3 was discussed at the fourth and fifth meetings of the Working Group, held on 6 and 9 October 2023. Delegations emphasised the central importance of international cooperation within the context of disaster risk reduction and response.

Draft article 7 – Duty to cooperate

42. Several delegations recalled that the duty to cooperate was a principle of international law. Particular reference was made to Articles 1, 3, 55 and 56 of the Charter of the United Nations, as well as to the provisions regarding cooperation in other international instruments, such as the Convention on the Rights of Persons with Disabilities, of 2006, United Nations Convention on the Law of the Sea, of 1982, the Agreement under the United Nations Convention on the Law of the Sea on the Conservation and Sustainable Use of Marine Biological Diversity of Areas Beyond National Jurisdiction, of 2023, the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States, of 1970,⁵ and the Sendai Framework on Disaster Risk Reduction, 2015. Some delegations, however, were of the view that draft article 7 did not reflect customary international law, as there was no State practice to support the existence of an obligation to cooperate.

43. A number of delegations highlighted the importance of striking a balance between the principles of State sovereignty, sovereign equality of States, and non-interference in the internal affairs of the State, with the duty to cooperate. It was stated that the duty to cooperate envisaged prevention and preparedness on one hand and response on the other. The view was expressed that since international cooperation was often complex, the duty to cooperate constituted an obligation of conduct, and as such the provision amounted to a “best efforts” clause. The view was also expressed that the national context and capabilities of both assisting and affected States needed to be taken into account when discussing the duty to cooperate.

44. While several delegations agreed that there existed a duty under international law to cooperate with the non-State actors referred to in the provision, others stressed that the duty to cooperate towards States did not apply to, or was different from, that owed to other actors, and thus a clear distinction between the two was called for. It was observed that neither the Charter of the United Nations nor General Assembly resolution 2625 (XXV) imposed a specific legal obligation to cooperate with the broad range of organizations listed in draft article 7.

45. The importance of the qualifier “as appropriate”, was emphasised, but it was suggested that the qualifier could benefit from further clarification and more precise drafting. It was observed that the qualifier had to be read in conjunction with the non-exhaustive list contained in draft article 8. The view was expressed that the text did not provide sufficient clarity as to which States would be obligated to cooperate as well as the types of actions that would be sufficient to satisfy the duty to cooperate.

⁵ General Assembly resolution 2625 (XXV) of 24 October 1970.

46. Other delegations were of the view that draft article 7 did in fact provide sufficient flexibility for States in determining whether to offer or accept assistance and for establishing conditions for receiving such assistance. The prerogative of affected States to choose whom to ask for assistance or from whom to accept assistance, and the primary role of affected States in decision-making was reiterated.

47. Several suggestions for textual changes to draft article 7 were made. It was suggested that draft article 7 could be composed of two different paragraphs; one would address the duty to cooperate among States, while the other would address the cooperation with other actors, albeit in non-binding terms. It was also suggested that the important leadership and coordination role of the United Nations in disaster response ought to be specifically acknowledged and that draft article 7 could be more specific as to which component of the United Nations States would be expected to cooperate and coordinate with, including as a form of preparedness ahead of disasters. It was suggested that the provision, and the draft articles more generally, could be further aligned with General Assembly resolution 46/182 of 19 December 1991 on “Strengthening the coordination of humanitarian emergency assistance of the United Nations”. According to another view, draft article 7 would be better framed as a non-binding guideline, including by replacing the word “shall” with “should” and changing the title from “duty to cooperate” to “principle of cooperation”. Other suggestions included clarifying who the “other actors” would be and making an express reference to regional organizations. The inclusion of a cross-reference to draft article 13 was likewise suggested, so as to highlight the importance of the consent of the affected State.

Draft article 8 – Forms of cooperation in the response to disasters

48. Several delegations welcomed the provision, noting that it complemented draft article 7. The flexibility provided by the draft article was particularly welcomed. It was pointed out that draft article 8 was not intended to create an additional legal obligation and that the list of forms of cooperation contained therein was illustrative and not exhaustive. Other delegations expressed the view that the draft article lacked a degree of clarity, in particular as to whether draft articles 7 and 8, read together, would oblige States to provide resources to States affected by disasters.

49. Some delegations referred to other important forms of cooperation not covered by the draft article, such as regarding visas, border crossing, the transportation and importation of goods and services, and coordination between States and assisting actors. It was suggested that such other forms could be added to the provision to promote additional clarity and certainty. The view was expressed that the application of draft article 8 should be contingent on the specific situation of the disaster. It was further observed that the specific needs of developing countries and of vulnerable groups had to be taken into account during the decision-making process of assistance.

50. Some specific drafting suggestions were made, including modifying the title in order to make it clear that the provision related to the prevention, preparedness and response to disasters; adding a reference to disaster risk reduction within the body of the provision; and adding express reference to relevant conventions and instruments containing provisions on cooperation.

Draft article 12 – Offers of external assistance

51. Some delegations expressed support for the intended goal of draft article 12. The flexibility provided by the provision was welcomed and it was emphasised that the provision was aimed at harmonizing the respective positions of affected and assisting States. The balance struck between paragraphs 1 and 2 was noted. It was suggested that the leadership and coordination role of the United Nations be further highlighted, in particular by detailing which United Nations entities were being referred to.

52. Regarding paragraph 1, several delegations welcomed the permissive terms of its text and the fact that it did not suggest that States had a legal duty to offer assistance, while other delegations considered it vague. It was stressed that paragraph 1 should not be construed as implying an obligation on the affected State to accept the offer of assistance. It was also suggested that the phrase “other potential assisting actors” in paragraph 1 could be refined to refer to “eligible actors”, as employed in the IDRL Guidelines adopted by the International Federation of Red Cross and Red Crescent Societies.⁶

53. Several delegations considered paragraph 2 to be relevant, noting that it sought to ensure legal certainty, by providing for the right of the affected State to seek assistance, as well to consent to it. A number of delegations were of the view that imposing assistance on affected States was incongruous with State sovereignty and that assistance should be provided solely on the basis of an appeal by the affected State. The view was expressed that paragraph 2 purported to establish a duty that did not exist under international law. According to another view, it was clear from the text itself and the corresponding commentary that the provision did not impose a mandatory duty. It was proposed to reformulate paragraph 2 as a best practices clause.

54. Some delegations were of the view that paragraph 2 required further explanation and specificity, such as regarding the meaning of the reference to “expeditiously” and the envisaged timeline for the request for assistance process. Several proposals were made, including inserting the phrase “whenever possible” after “inform the affected State of its reply”. Adding an explicit reference to the principle of solidarity, as well as to the prohibition on withholding assistance arbitrarily, was also suggested by some delegations. At the same time, other delegations expressed the view that the principle of solidarity needed careful consideration.

Thematic Cluster 4 – The affected State (draft articles 10, 11, 13 and 14)

55. Thematic cluster 4 was discussed at the fifth and sixth meetings of the Working Group, held on 9 October 2023.

56. It was recalled that the draft articles in cluster 4 dealt with the question of the grant of consent by the affected State. In general, support was expressed for the attempt to strike a balance in the draft articles between the rights and duties flowing from the sovereignty of States and the duties imposed on them to protect human rights.

57. Some delegations stressed the need to interpret the provisions in the thematic cluster within the broader context of the draft articles as a whole, including the

⁶ International Federation of Red Cross and Red Crescent Societies, *Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance* (Geneva, 2007).

principles referred to in the draft preamble and draft article 6. Other delegations called for further clarification of certain terms so as to ensure a balance between the sovereignty of the affected State and the possibility of obtaining assistance.

Draft article 10 – Role of the affected State

58. Delegations generally welcomed draft article 10 and its emphasis on the primary role of the affected State in ensuring the protection of persons and the provision of disaster relief assistance on its territory.

59. As regards paragraph 1, while the view was expressed that the terms “under jurisdiction and control” should include occupied territories, other delegations reiterated their concerns, raised in the context of the definition of “affected State” in draft article 3, about such extension of the scope *ratione loci* of the draft articles.

60. Some delegations observed that the draft provision sought to draw a balance between the possibility of obtaining external assistance and the capacity of the affected State to provide protection. It was noted that the duty of the affected State to protect persons encompassed all phases in the disaster cycle including pre-disaster prevention and mitigation measures, as well as post-disaster measures aimed at recovery. It was stressed that the principles of sovereignty and non-interference remained important in the present context. It was also noted that the rules related to the protection of refugees and internally displaced persons were likewise of relevance when considering draft article 10. A delegation queried whether the primary role of the affected State in the “control” and “supervision” of disaster relief assistance were appropriate terms, as these roles would be challenging to implement during disasters and also departed from the related terminology used in General Assembly resolution 46/182 and its subsequent humanitarian resolutions (“initiation, organization, coordination and implementation”).

61. In relation to paragraph 2, a clarification was requested as to the level of control granted to affected States over the assets and personnel provided by third parties. It was questioned whether the reference to control, coordination and supervision of the assistance by the affected State was necessary. The attention of delegations was drawn to existing regional frameworks, such as the ASEAN Agreement on Disaster Management and Emergency Response, of 2005,⁷ which provided for the standard of overall control. The view was expressed that the draft convention should, at all times, recognize the full sovereignty and independence of the affected States to manage relief assistance, and that there should be no conditions imposed on affected States in doing so. It was further proposed to insert the phrase “by virtue of its sovereignty”, so as to address some of the concerns expressed by delegations.

62. The concern was expressed that paragraph 2 granted the affected State a more intrusive role in humanitarian operations than that envisaged in the corresponding rules of international humanitarian law, which did not recognise such a right of the affected State to direct, coordinate and supervise the provision of assistance. It was maintained that the position taken in the paragraph was thus contrary to the humanitarian principles recalled in draft article 6.

⁷ ASEAN Document Series 2005, p. 157.

Draft article 11 – duty of the affected State to seek external assistance

63. As regards draft article 11, several delegations agreed with its content, and support was expressed for the flexible approach taken therein, which reflected the fact that States had different response capacities. Some delegations were, however, of the view that affected States had the right, as opposed to the obligation, to seek assistance based on their assessment as to whether they need to request such assistance. It was also stated that offers of assistance should not be subject to conditions, nor should they impinge on the sovereignty of the affected State.

64. Delegations recalled that the Commission had discussed the tension between the rights and duties of the affected State and had sought to establish a high threshold for the application of the draft articles, namely where the disaster “manifestly exceeds the national response capacity” of the affected State. Such a threshold also reflected the fact that the affected State was in the best position to determine its own capacity. Several delegations called for further clarification of the concept since it was not defined in the draft articles. The view was expressed that the ascertainment of whether a disaster manifestly exceeded the national response capacity of the affected State had to be undertaken in good faith. It was suggested that the provision be redrafted to make it clearer that it was for the affected State to determine whether the magnitude of the disaster exceeded its national response capacity, to avoid arbitrary assessments. Further clarification was sought as to the consequences, under the draft article, of the affected State being unable to ascertain whether the disaster had manifestly exceeded its national response capacity. The view was also expressed that draft article 11 should not be used to legitimise situations of humanitarian intervention.

65. Several delegations observed that the use of the term “seek” instead of “request” assistance was in line with soft law instruments related to the protection of persons in the event of disasters and that the request for assistance did not entail a form of implied consent to accepting subsequent offers of assistance. Others questioned whether it was appropriate to establish a duty of the affected State to seek assistance, or whether a more flexible approach should be followed through the use of a non-binding formulation. The view was also expressed that imposing an obligation on the affected State to seek assistance infringed on its sovereignty and violated the principle of non-intervention. Some delegations further expressed the view that the obligation in draft article 11 was not supported by existing practice and did not reflect a rule of customary international law.

Draft article 13 – Consent of the affected State to external assistance

66. Several delegations expressed support for draft article 13. It was noted that the provision was central to the draft articles because it confirmed the primary role of the affected State.

67. Regarding paragraph 1, it was stressed that the provision of external assistance can only be given with the consent of the affected State and should respect the sovereignty and territorial integrity of the affected State. Various delegations referred to the recognition of such requirements in General Assembly Resolution 46/182. Some delegations considered that there existed no rule under customary international law requiring States to request or accept assistance. Others maintained that an assisting

State was not required under international law to obtain the consent of the affected State to the provision of relief assistance.

68. Regarding paragraph 2, several delegations called for clarification of the reference to consent being “withheld arbitrarily”. The concern was expressed that the term “arbitrarily” was ambiguous and that its subjective interpretation could impinge on the independence of the affected State. Nor was it clear who would determine such arbitrariness. It was suggested that an assessment of the appropriateness of the refusal of consent should be based on objective not arbitrary criteria. It was proposed that a study be undertaken of other instruments which addressed the possibility of States withholding consent arbitrarily, including the Guiding Principles on Internal Displacement.⁸ Some delegations indicated that they would oppose a rule that would restrict the provision of assistance in the absence of consent. Clarification was also sought as regards the consequences of the withdrawal of consent by the affected State. It was further pointed out that the problem of States rejecting all offers of external assistance rarely occurred in the context of disasters. There was also a suggestion that the phrase “withheld arbitrarily” be replaced by a reference to consent given in good faith.

69. Other delegations considered paragraph 2 to be a balanced provision since it established an obligation on the affected State not to withhold consent arbitrarily, on the one hand, but did not create a correlative right of other States or assisting actors to provide relief without consent, on the other. Some drafting suggestions were made to align the text with international humanitarian law, including by indicating that the affected State retains a “right of control over the implementation of such relief”. It was added that a State could bear responsibility under international law for refusing assistance if it undermines the rights of the affected persons.

70. Some delegations called for further study of situations where the affected State could not provide its consent, such as in the event of a collapse of the government, or in situations where assistance was being provided in accordance with a resolution of the Security Council adopted under chapter VII of the Charter authorizing humanitarian assistance. While some delegations expressed openness to discussing such special situations, it was pointed out that such consideration was unwarranted since the disasters contemplated by the draft articles rarely amounted to a threat or breach of the peace, as required by Article 39 for Chapter VII action. In any event, the application of the draft articles to such situations would be constrained by the application of Article 103 of the Charter, which would give priority to Security Council resolutions adopted under Chapter VII.

71. The proposed procedural requirement in paragraph 3 was considered to be appropriate. In terms of another view, imposing a time constraint could prove difficult for an affected State struggling to cope in the wake of the onset of a disaster. It was proposed to refine the text so as to indicate that the affected State should “consider” the offer in a timely manner.

⁸ E/CN.4/1998/53/Add.2, annex.

Draft article 14 – Conditions on the provision of external assistance

72. Several delegations welcomed the draft article, and in particular the emphasis on the authority of the affected State to specify the type of assistance it needs, as well as to reject unwanted assistance including unsolicited or low-quality assistance. Some delegations stressed the need to determine which modality of assistance would be the most favourable for protecting affected persons. It was pointed out that there was a need to regulate the problem of unwanted goods and inadequate assistance, and it was noted that the prerogatives of the affected State in relation to the assistance received could be expanded. It was also indicated that particular emphasis should be placed on the assistance provided corresponding to the needs of the population while limiting the entry of unprofessional or inadequate personnel or assistance which may be ill-suited to adequately addressing the specific needs of the affected population. Clarity was sought as to the terms employed in the draft articles so as to ensure any duties imposed in any future instrument were mindful of the affected State's ability to fully implement such duties during a disaster situation.

73. The clarification that any conditions imposed shall be in accordance with the draft articles, applicable rules of international law and the national law of the affected State was further welcomed. The provision was understood to require that the conditions imposed by the affected State should be reasonable and in line with, *inter alia*, other applicable rules of international law including those of international human rights law, and international humanitarian law, as well as the international rules applicable to refugees and internally displaced persons. Several delegations placed particular emphasis on the duty of assisting actors to respect the laws and regulations of the affected State, as well as those under international law, and including a reference to General Assembly Resolution 46/182 was suggested. Other delegations expressed doubts as regards the necessity of referring to the applicability of national laws if the intention was to conclude an international convention regulating the question of the imposition of conditions on the provision of external assistance.

Thematic Cluster 5 – Facilitation of External Assistance – Draft articles 15, 16 And 17

74. Thematic Cluster 5 was discussed at the sixth and seventh meetings of the Working Group, held on 9 and 10 October 2023.

Draft article 15 – Facilitation of external assistance

75. Several delegations welcomed draft article 15 and noted the importance of addressing measures to be taken by an affected State with a view to facilitating prompt and effective external assistance. Various examples of relevant regional and national practices were recalled. The importance of having legislative and regulatory measures in place in preparation for disasters so as to facilitate and allow the expeditious arrival of external assistance was emphasized.

76. It was suggested that the draft article be recast as providing for an explicit duty on the affected State to facilitate the prompt and effective provision of external assistance similar to the duty not to withhold consent to external assistance, in draft article 13. In terms of another view, it was considered necessary for the draft article not to impose any obligations on affected States, but rather to leave the possible facilitation

measures to their discretion, subject to the exigencies of each situation. It was also suggested that the draft article be redrafted in softer terms, by making reference to “best-efforts”. Caution was also expressed since the implementation of the draft article in its present form could require amendments to various domestic regulations and controls.

77. In terms of other suggestions, the draft article could be further elaborated with more detail on particular measures to be undertaken in order to facilitate external assistance, including, in particular, the various measures listed in the corresponding commentary to the draft article. It was also suggested that additional procedural provisions be included on, *inter alia*, requests for assistance, the duration of stay of the assisting actors on the territory of the affected State, and the obligations of transit States. It was also considered important to extend the scope of application of the provision to include both disaster risk reduction and post-disaster early recovery. A proposal was made to introduce the concept of “eligible actors” in the text of the draft article. Furthermore, it was considered necessary to introduce the word “appropriate” in paragraph 1, so that the affected State would be required to take “the necessary and appropriate measures” to facilitate prompt and effective external assistance.

78. In terms of another view, draft article 15 was not balanced, since it did not provide any guarantees against abuse by assisting actors. It was also stated that the draft article should not be understood as requiring the automatic lifting of all border control restrictions or entry requirements on the part of the affected State. A view was expressed that the provision by the affected State of the specific facilities referred to in draft article 15 should be voluntary.

Draft article 16 – Protection of relief personnel, equipment and goods

79. Several delegations supported the inclusion of draft article 16. It was noted that it was a necessary provision for the facilitation of the provision of relief assistance thereby ensuring the protection of the affected population. The reference to “appropriate measures” was welcomed, as it provided a margin of flexibility to the affected State. At the same time, it was considered necessary to clarify the particular obligations of States. In particular, a suggestion was made to specify that the appropriate measures should include systems to identify and address corruption, fraud and aid diversion. It was also considered necessary to include a qualification that the obligation on the affected State to protect relief personnel, equipment and goods, should be subject to its national capacity, and should not impose unreasonable and disproportionate burdens on the already limited capabilities of the affected State. It was also observed that the obligation established by the provision should only extend to the affected State’s territory.

Draft article 17 – Termination of external assistance

80. While some delegations generally supported draft article 17, a question was also raised as to whether it was strictly necessary, since external assistance was always provided on the basis of a prior agreement between the affected State and relevant external actors.

81. It was noted that the right to terminate external assistance at any time was generally compatible with the right of the affected State to consent to external

assistance and to withdraw such consent. Delegations welcomed the two procedural guarantees contained in the draft article, namely the requirement of appropriate notification and the duty to consult on the modalities for the termination of external assistance.

82. Several delegations considered it necessary to include a requirement that the assisting actors take into consideration the rights and needs of persons affected by disasters prior to withdrawing the assistance. The view was expressed that the requirement of “appropriate notification” did not necessarily mitigate against the risk of harm caused by premature or arbitrary termination of assistance. It was also observed that the right of external actors to terminate external assistance “at any time” seemed to be at odds with the obligation to provide “appropriate notification”. It was considered necessary to introduce additional safeguard provisions limiting the ability of assisting States and other actors from withdrawing assistance arbitrarily. The view was expressed that the termination of external assistance by any actor or State should take into account the sovereign rights of the affected State, as well as the scale and severity of disaster and humanitarian conditions on the ground. It was also asserted that the termination of external assistance should not violate the human dignity and right to life of affected persons.

83. A further suggestion was to introduce a list of grounds for termination of external assistance in good faith in the text of the draft article. In addition, it was also suggested that provision be made for affected States to have the right to terminate external assistance on security grounds.

Recommendation of the International Law Commission

84. Support was expressed by many delegations for the conclusion of a convention on the protection of persons in the event of disasters on the basis of the draft articles adopted by the International Law Commission in 2016. Particular emphasis was placed on the importance of a legally binding instrument in the area of protection of persons in the event of disasters. It was further recalled that the Commission had completed its work and that the fate of the draft articles was now in the hands of the Sixth Committee. Accordingly, it was time to move forward since further refinements could be made during the negotiations on the convention.

85. Several delegations offered examples of how a possible future convention could fill a gap and intensify efforts on disaster management and reduction. It was stated that the Association of Southeast Asian Nations (ASEAN) Agreement on Disaster Management and Emergency Response could serve as an example of how a binding instrument could change the disaster management landscape and was evidence of the practical value of a convention. It was recalled that the ASEAN agreement provided for, *inter alia*, the development of disaster management tools to strengthen ASEAN capacity, as well as several outreach initiatives to raise awareness and preparedness of disasters.

86. Some other delegations indicated support for the draft articles as a useful starting point for a potential future convention but emphasized that further consultations and discussions would be needed before the Sixth Committee could make a recommendation. The view was expressed that the positions of States were still too far apart and needed to be brought closer before proceeding further. It was suggested that

a mapping exercise be undertaken in order to take stock of the existing international legal framework relating to the protection of persons in the event of disasters in order to avoid fragmentation, duplication and contradiction.

87. Other delegations were of the view that the time was not yet ripe for the adoption of a legally binding instrument in form of a treaty, as the content of several provisions in the draft articles were not supported by sufficient, uniform and consistent State practice, and imposed cumbersome obligations on affected States. Some delegations pointed to the need for revisions to the approach taken by the Commission, as well as to the need to draw a better balance between the principles contained in the draft articles, as well as between the rights and obligations of affected States. Reference was made by a delegation to the possibility of referring the draft articles back to the International Law Commission for further refinement.

88. Several delegations indicated that while they had not participated in the substantive discussions within the Working Group, their silence should not be construed as a lack of interest. Instead, they confirmed their openness to continuing the discussions at the next series of meetings of the Working Group, scheduled for the seventy-ninth session of the General Assembly.

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