



UNITED STATES MISSION TO THE UNITED NATIONS

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**U.S. Remarks at Meeting of the Sixth Committee Working Group on Agenda
Item 86: Protection of Persons in the Event of Disasters
Cluster I
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Thank you, [Mr./Madame Chair]. The United States is pleased to participate in this working group on an area of international law with the potential to impact many lives around the globe. As we discussed in our remarks before the plenary yesterday, we believe the Draft Articles can make a valuable contribution to the provision of practical guidance and cooperation for disaster assistance, though we have concerns about several aspects of specific Draft Articles as written. We emphasize that this Working Group is not the place to engage in negotiations of the Draft Articles and does not prejudge the question of whether to launch a process to negotiate a convention on protection of persons in the event of disasters. Rather, it is an opportunity to exchange views, including expressions of support, concerns, and any relevant observations about the Draft Articles. We very much look forward to a robust and fruitful discussion.

I will turn directly to Draft Article 3, which contains the Draft Articles' definition of disaster. The United States appreciates the considerable thought that went into the Commission's work on these Draft Articles, including the definition of "disaster," but has significant concerns with this definition. The United States is concerned that the definition of "disaster" does not clearly exclude circumstances such as situations of armed conflict or other political and economic crises. Regrettably, "great human suffering and distress," "mass displacement," and "widespread loss of life" regularly occur in armed conflict. International humanitarian law, which governs the conduct of hostilities and the protection of victims of war, provides principles and rules to address the humanitarian consequences of armed conflict. There is a risk that the Draft Articles could conflict with this body of law, and that this risk is not adequately addressed by Draft Article 18, which I will turn to in a moment. The better approach to

mitigating this risk, in our view, is to define “disaster” so as to remove the consequences of armed conflict from the definition. This would not be a blanket exclusion of the applicability of the Draft Articles in all situations of armed conflict, but instead would only exclude the consequences of an armed conflict in order to avoid potential inconsistency with international humanitarian law.

Turning now to Draft Article 18, the United States appreciates the Commission’s revision to this draft article to include paragraph two’s express statement that the Draft Articles do not apply to the extent that a response to a disaster is governed by the rules of international humanitarian law. However, in our view, this provision is not sufficiently clear regarding whether the Draft Articles would apply in situations of armed conflict where there is no specifically applicable “rule” of international humanitarian law governing the response to a disaster. We recommend that Draft Article 18(2) expressly affirm that the Draft Articles do not regulate the consequences of armed conflict but may apply in relation to disasters that coincide with situations of armed conflict, to the extent that the activities are not governed by international humanitarian law.

Separately, the United States has concerns with the definitions of “assisting State” and “other assisting actor” in Draft Article 3 insofar as those definitions are limited to states and other actors providing assistance to affected States that have provided “consent.” As we will discuss in more detail in our comments on Draft Article 13, the United States does not believe that international law categorically requires state consent for the delivery of humanitarian assistance.

Finally, the United States notes that the definition of “affected state” in Draft Article 3 is problematic insofar as the definition covers situations that occur outside the territory of a state but under the state’s “jurisdiction or control.” Under this definition, a state could incur responsibilities as an “affected state” with respect to territory over which it does not have sovereignty, and over which another state claims sovereignty. This element of the definition creates the potential for confusion or disagreement among “affected states” that could delay an effective response. We therefore recommend limiting the definition of “affected state” to states affected by disasters on their territory and subject to their jurisdiction.

Thank you, [Mr./Madam Chair].