

Statement by Ambassador Masood Khan, Permanent Representative of Pakistan to the United Nations, in the Sixth Committee on Agenda Item 81: Report of the International Law Commission (New York, 4 November 2013)

Mr. Chairman,

Pakistan appreciates the work done by the Members of the International Law Commission (ILC) and the Secretariat during its sixty-fifth session. In this part of the debate, we would like to comment on Chapter VI of the ILC Report: Protection of Persons in the Event of Disaster.

Mr. Chairman,

The primacy of the affected State in the provision of disaster relief assistance in draft articles is rooted in the key principle of international law, i.e. sovereignty of State. The Charter of the United Nations, numerous international instruments, the jurisprudence of ICJ, and resolutions of the General Assembly highlight the principle of sovereignty of State.

My delegation is of the view that in case of an overwhelming natural disaster requiring a response beyond the capacity of the affected State, it would certainly seek assistance of the international community. As such the assumption of draft articles 10 and 11 that States would not seek assistance from the international community even in cases of overwhelming natural disaster is flawed. We do not find sufficient empirical evidence

for the assumption that if the disaster exceeded the affected State's capacity, the affected State would not seek or accept assistance from any external actor arbitrarily and would let its citizens suffer indefinitely.

We can, however, assume that based on its national security concerns a State might prefer receiving assistance from certain States and external assistance actors over offers of others. A sovereign State has the right and must be free to choose among various external actors offering assistance. A suitable reference would be welcome in the draft articles to assure the affected State that the humanitarian assistance would not be abused in any manner to undermine its sovereignty or to interfere in its domestic affairs.

Mr. Chairman,

We have noted that draft Article 12 does not treat non-governmental organizations at par with States and inter-governmental organizations. We agree with the Rapporteur that an offer of assistance does not create a legal obligation for the affected State to accept it.

We have noted different forms of cooperation between States and other organizations indicated in draft Article 5 bis. We understand the primacy of the affected State in all forms of cooperation including humanitarian assistance and coordination of international relief actions. In the light of draft Articles 11 and 13, the consent of the affected State and the conditions placed by

it on the provision of external assistance are vital for all forms of cooperation in relief operations. We agree that the affected State must indicate the scope and type of assistance sought from other States.

We have also taken note of the suggestion contained in draft Article 5 ter to extend the scope of cooperation to prevention for reducing the risk of disasters. The prevention of disaster entails a large number of activities to be undertaken in normal circumstances for disaster preparedness and the international cooperation in this phase is also important. However, we note that the duty to cooperate as enshrined in draft Article 5 is subjected to the qualification of “appropriateness” which will be determined by States and particularly by the affected State because of its knowledge of its own needs and capacities to deal with a possible disaster.

Mr. Chairman,

We have also noted the duty of each State to reduce the risk of disasters contained in draft Article 16. Most of the State practice that has been cited for providing legal foundation to Article 16 was developed during States’ responses to natural disasters like earthquakes and floods. Our delegation looks at the definition of disaster contained in Article 3 in this context. We also note that in the duty to reduce the risk of disasters, the reference to “necessary and appropriate measures” leaves a scope for the discretion of each State for disaster preparedness.

We agree with the idea that legal framework for preventive measures are vital for disaster preparedness. Equally important are risk assessments and installation and operation of early warning systems. We would infer from the language of Article 16 that even if prevention and disaster risk reduction might be formulated as a legal obligation for each State, the determination of the scope of this obligation should be left to the State itself because the affected State is likely to have the most authentic data about risk assessment and its capacity to prevent it. A broad approach towards the obligation of States for prevention of disaster in particular and the definition of disaster and the consequent obligations in general needs to be avoided.

Thank you, Mr. Chairman.