

STATEMENTS PRESENTED BY JAMAICA
Sixth Committee
Seventy-eighth session
Working Group on Protection of Persons in the Event of Disasters
5-10 and 20 October 2023

CLUSTER I

Preamble

1. It is recommended that the last paragraph be amended to insert ‘territorial integrity’ and ‘political independence’ after the word ‘sovereignty’ so that the text reads as follows: *Stressing the principle of the sovereignty, territorial integrity, and political independence of all States, and, consequently, reaffirming the primary role of the State affected by a disaster in providing disaster relief assistance.*

2. It is recommended that the following formulation for capacity building and transfer of technology, inspired by the BBNJ Agreement be inserted at the end of the preamble: *Noting that support for developing States Parties through capacity building and the development and transfer of technology are essential for the attainment of the purpose of the Convention.”*¹ The reference to purpose has to do with Article 2 of the Draft Articles. The Committee/Working Group may wish to consider whether that Article should be renamed, “Objective,” which is a term that is more commonly used.

Article 1

3. Paragraph 4 of the commentaries articulate that the Draft Articles emphasise the immediate post-disaster response and early recovery phase inclusive of the post-disaster reconstruction phase. It further articulates that Draft Articles 2 and 9 point to the scope for the pre-disaster phase; however, on review, it was

¹ This formulation was inspired by the BBNJ Agreement at preambular paragraph 6.

observed that the text is limited to the state's primary role as it pertains to reducing the risk of disasters as no mention was made of cooperation or seeking external assistance at the pre-disaster stage.

4. GOJ is of the view that the Draft Articles should seek to afford a more balanced approach between the pre-disaster and post-disaster phases. This perspective may also have implications for the definition of 'disaster' in Draft Article 3 of the text, where, ostensibly, the calamitous event or series of events must result in *inter alia* widespread loss of lives before the instrument becomes applicable.

Article 2

5. GOJ notes the complementary treatment of the 'rights-based' and 'needs-based approach', as there is a focus on the 'the importance of the response to a disaster, and the reduction of the risk of disasters, that adequately and effectively meets the "needs" of the persons concerned'. This, therefore, means that, in accordance with paragraph 1 of the commentaries relating to Draft Article 2, a 'response, or reduction of risk, has to take place with full respect for the rights of such persons'.

Article 3

6. My delegation observes that the term 'disaster relief assistance' has been used frequently throughout the text but it has not been defined. From the reading of Draft Article 3, it appears that 'external assistance', 'relief personnel' as well as 'equipment and goods' are for ensuring 'disaster relief assistance' is provided to the persons concerned. Accordingly, my delegation has the following questions:
 - A) in this context, what is the nature and scope of disaster relief assistance as it appears to be a term that could encapsulate the foregoing?

- B) What safeguards does the Commission propose to insert into the text of the Draft Articles to ensure as far as possible that States do not use the provision of disaster relief assistance as a pretext for intervention in the internal affairs of another State?²

Article 18

1. There is no objection to Article 18 in its present form. Should a state submit that language akin to the following be added, there is also no objection to the same:
 - A) *The Draft Articles shall be interpreted and applied in the context of and in a manner consistent with rules of international law [including customary international law].*
 - B) *Nothing in this Agreement shall prejudice the rights and duties of States under international law.*
 - C) *The Draft Articles shall be interpreted and applied in a manner that does not undermine relevant legal instruments, frameworks and coordination with those instruments, frameworks and bodies.*³

CLUSTER II

Article 4 & 5

7. My delegation recommends that Draft Articles 4 and 5 be merged. It was observed further to paragraph 1 of the commentaries to Draft Article 5, that the Commission had opted to place both provisions in close proximity because it 'recognizes an intimate connection between human rights and the principle of human dignity'; however, as was indicated in paragraph (2) of the commentary to Draft Article 4 (human dignity), and with which my delegation agrees, '[t]he

² This could be stated as a recommendation that safeguards be inserted to preclude intervention.

³ These 3 formulations were taken from paragraphs 1 – 2 of Article 5 of the BBNJ Agreement with the exception of paragraph 3. Paragraph 3 is redundant given the nature and application of international law; hence, the reason it was not included.

principle of human dignity undergirds international human rights instruments and has been interpreted as providing the ultimate foundation of human rights law'. It is for this reason my delegation recommends that both articles be merged into one. This may also be done through two separate paragraphs. Notwithstanding, we are amenable to the utilisation of two separate articles, should there be a majority preference for this formulation.

Article 6

8. No comment on Article 6 at this time. It may require further studying. We, however, note the explanations of the Commission particularly in relation to the inclusion of the term 'neutrality' and the decision not to elaborate a list of vulnerable groups.

Article 9

9. It is recommended that in relation to Draft Article 9 (Reduction of the Risk of Disaster), that this provision be amended to specify 'policy guidance and administrative measures' after the words 'legislation and regulations' in paragraph 1. This is in line with commentary 6, which recognises that countries have recognised this commitment to reduce the risk of disaster through national policy measures. Further, Jamaica wishes to be included in the list of states that have adopted legislation specifically addressing disaster risk reduction either as stand-alone legislation or as part of a broader legal framework concerning both disaster risk management and disaster response. We have achieved this through our Disaster Risk Management Act, which came into force in the year 2015.

CLUSTER IV

Article 10

10. My delegation agrees with the general thrust of Article 10, which makes provision for the role of the affected state in respect of its protection and provision of disaster relief assistance to citizens as well as its primary role in the direction, control, coordination, and supervision of such relief assistance. We wish to highlight further, the significance of our prior recommendation, that the preamble should not only stress the principle of sovereignty but also territorial integrity and political independence of all States.

Article 11

11. My delegation welcomes Article 11 as it is a necessary corollary to Article 10, which provides for the primary role of the State. We believe that a part of the State's primary role in protecting and providing for its citizens in times of disasters includes seeking external assistance, where the 'disaster manifestly exceeds its national response capacity'. We query, however, whether there should be such a duty even before the disaster occurs, particularly where it is foreseeable that the impact will exceed national response capacity.

12. Mr. Chairman, my delegation recommends that the word 'potential' be deleted from the last line of Draft Article 11 as the defined term makes mention of 'other assisting actors' not 'other potential assisting actors'. We are also of the view that the word 'potential' does not advance the text by its inclusion.

Article 13

My delegation welcomes this article. We note paragraph 2 of Draft Article 13, which states that 'consent to external assistance shall not be withheld arbitrarily'. While this

provision seeks to ensure that States operate in good faith as well as ensure that the human rights and human dignity of those affected are preserved, my delegation believes this needs to be further examined as it raises questions regarding determination, practical application, among others.

Article 14

13. Regarding, Article 14, my delegation welcomes the ability of affected States to specify conditions regarding the provision of external assistance. Special notation is being taken of such States' ability to take into account the needs of the persons affected by disasters and the quality of assistance as well as to indicate the scope and type of assistance sought. This Article is critical given the primary role of the affected State in Article 10 regarding the State's duty to its citizens and its role in the direction, control, coordination, and supervision of disaster relief assistance.

CLUSTER V

Article 15

14. My delegation supports the general objective of Article 15, which is the facilitation of external assistance so as to access the disaster relief assistance that is being provided by assisting States and other assisting actors. We note phrases such as “take necessary measures, within its national law,” and the explanation in paragraph (2) of the Commentary that this “may include, inter alia, legislative, executive or administrative measures.”

15. We also take into account that “[m]easures may also include actions taken under emergency legislation, as well as permissible temporary adjustment or waiver of the applicability of particular national legislation or regulations, where appropriate.”

16. We further wish to highlight paragraph (5) of the Commentary, particularly in relation to “equipment and goods,” and desire to study the whole provision further from a national perspective.

Article 16

17. My delegation welcomes Article 16, which provides for the protection of relief personnel, equipment and goods. We appreciate the emphasis on ‘appropriate measures’ and the fact that this would be context-driven given the realities of disaster. We also support the explanation found in paragraph 4 of the Commentary that this is also a preliminary requirement for the affected State to prevent its organs from adversely affecting relief activities.

Article 17

18. My delegation is of the view that the termination of disaster relief assistance is a critical component of the Draft Articles, which need to be properly ventilated.

To this end, we wish to highlight the phrases, “at any time” and “appropriate notification,” both of which may signal different meanings for the affected States, assisting State, United Nations and other assisting actors, in the event of disaster.