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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 2024, decided to reconvene the Working Group on the Protection of Persons in the Event of Disasters, which I had the honour of being elected by the Sixth Committee to Chair the Working Group at the last session.

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.

Pursuant to General Assembly resolution 76/119, the working group was to report on the outcome of its deliberations, with a view to the Committee making a recommendation to the Assembly as to any further action to take in respect of the draft articles.

The Working Group was open to all States Members of the United Nations and this year held seven meetings on 7, 8, 9 and 28 October 2024.

II. Informal summary

At its first meeting, the Working Group began with 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.

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 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.

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 held this year. 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 28 October 2024. 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.

I would like to take this opportunity to note that the summary of the debate held in the working group during last year's session and the Chair's summary of the deliberations is available on the website of the Sixth Committee.

It is my hope that having such a detailed written summary of the deliberations for both sessions will be of assistance to delegations in further considering the next steps on this topic.

Before concluding my statement, allow me to sincerely thank 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, particularly to

Mr. Arnold Pronto and Ms. Paola Patarroyo. I also take this opportunity to thank Ambassador and Deputy Permanent Representative Leila Lora-Santos for chairing some of the sessions.

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-ninth session (2024)

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 first and second meetings of the Working Group, held on 7 October 2024.

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 and the need to respect State sovereignty.

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 long-term damaging impact of disasters. Explicit reference to both natural and human-made disasters was also called for. A proposal was also made to introduce a reference to Article 2 of the Charter of the United Nations in the first preambular paragraph.

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 view was expressed that there was a need to reaffirm the importance of a people-centred approach and human dignity. At the same time, it was observed that a careful balance between the principle of State sovereignty and the respect for and protection of human rights must be ensured. 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 international instruments, in particular to the Sendai Framework for Disaster Risk Reduction 2015–2030¹ and the Political declaration of the high-level meeting on the midterm review of the Sendai Framework for Disaster Risk Reduction 2015–2030.² 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. The reference made in the preambular paragraph to all phases of a disaster was welcomed.

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

² See General Assembly resolution 77/289 of 18 May 2023, annex.

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. 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.

7. A view was expressed that the text of the preamble should contain references to rules of customary international law. 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 and anticipatory action, as well as to the need for capacity building. A proposal was made to highlight the role of the United Nations, relevant intergovernmental organizations and other entities. It was also proposed that the preamble address the differences in capacities and resources of States, in particular developing States.

Draft article 1 – Scope

8. Several delegations considered draft article 1 as appropriately delimiting the scope of the draft articles. A view was expressed that there should be a distinction drawn between natural and human-made disasters in the draft article. A request to clarify the meaning of the phrase “in the event of disasters” was made. It was also suggested that the phrase “according to international law” be added at the end of the draft article. A proposal was made to merge draft articles 1 and 2.

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. The draft articles' primary focus on the protection of persons, and in particular of natural persons, was welcomed. A qualification was sought as to whether the scope extended to the entire population of a State or only the affected people. It was also noted that expanding the focus to the protection of environment, culture and property could be considered. Some delegations expressed the view that the duty to protect persons applied regardless of nationality or migratory status, as reflected in the corresponding commentary. A view was expressed that neither the subject matter, nor the territorial and personal scope of its application, were clear. A view was also expressed that the need to support developing countries should be prioritized in the purpose and scope of the draft articles as well as the addition of a standalone article referring to international cooperation for the benefit of States from developing countries both as assisting and affected States.

10. The reference to the activities of States, international organizations and non-governmental organizations (NGOs) was welcomed.

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. It was suggested that the application of the draft articles to all phases, including pre-and post-disaster, should be explicitly reflected in the text of the draft article. The view was expressed that there should not 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, specifically with respect to recovery, rehabilitation and reconstruction, was also highlighted. A view was expressed that the term “protection” should be replaced with “assistance”, which was more neutral in tone.

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”, in draft article 2, with “appropriate, concerted and effective”, so as to place greater emphasis on responsiveness to the needs of the affected State. A view was expressed that the draft article should explicitly indicate, as specified by the International Law Commission in the commentary thereto, that the draft articles covered, *ratione materiae*, the rights and obligations of States affected by a disaster. Some delegations welcomed the reference to the essential needs and rights of affected persons. At the same time, a view was expressed that the draft article was overly focused on human rights protection, decreasing their practical value in the context of response to disasters. Some delegations considered that indirectly affected persons should also be included within the scope of the draft convention. A suggestion was made to replace the words “persons concerned” with “persons affected”. A preference was expressed for replacing the word “facilitate” with a stronger formulation. Some noted that further clarification of the meaning of the phrase “to meet the essential needs of the persons concerned, with full respect for their rights” would be useful. It was noted that while the phrase “persons concerned” specifically referred to those directly impacted by disasters, including those displaced, it also included those who may face future risks.

Draft article 3 – Use of terms

13. Several delegations welcomed the approach of the Commission in defining the terms. Openness to refining the definitions was also expressed.

14. A number of delegations welcomed the attempt to provide a general definition of “disaster” in subparagraph (a). Several delegations noted the breadth of the definition, which some welcomed as it would allow for the flexible, rapid and effective application of the draft articles. The recognition that disasters can arise from complex causes, including the effects of climate change, was highlighted. It was noted that the definition covered both natural and human-made disasters. It was suggested that the definition could better cover both sudden and slow-onset disasters. Several delegations supported also including a reference to damage to cultural heritage. It was also proposed to reformulate the definition to ensure that it covered disasters affecting specific communities. The need to mention transboundary disasters was also raised. However, some delegations 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.

15. A 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 prevent and respond to disasters.

16. Further discussion on the criterion of “seriously disrupting the functioning of society” was also called for. Some delegations expressed support for such a high threshold, which could be found in other relevant international agreements, while others questioned the need for it. It was emphasized that the criterion should not be understood as giving the impression that such serious disruption affected the statehood and sovereignty of an affected State under international law.

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. Other delegations supported the definition, and it was proposed that the corresponding responsibilities of the States concerned could be further clarified. A view was expressed on the appropriateness of the term “affected State” as “requesting State” is more meaningful in practical terms.

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, some delegations proposed that the definition should address States other than the one where the disaster had occurred, but nonetheless impacted by the onset of the disaster. It was suggested that the draft articles should include an obligation not to cause a disaster in another State. With respect to the definition of “assisting State” contained in subparagraph (c), a number of delegations welcomed the reference to the consent of the affected State. Some delegations proposed the qualification of the definitions in subparagraphs (e), (f) and (g) by including a similar explicit reference to the consent of the affected State.

19. Several delegations suggested further clarification of the term “other assisting actors”, as defined in subparagraph (d). A specific reference to regional integration organizations was proposed. It was questioned whether it was necessary to address non-governmental organizations or civil society in such a broad manner. With respect to subparagraph (f), several delegations emphasized that, in line with relevant United Nations guidelines, the use of military personnel should be a last resort. Further specification of the meaning of “equipment and goods” as defined in subparagraph (g) was also called for. It was also proposed to expand the scope of the phrase to include good practices, information and essential medicines

20. Concerning the possibility of adding further definitions, it was noted that the phrase “disaster relief assistance” should be defined as it was used throughout the draft articles without being defined. Dealing with the position of third States across whose territory assistance transited was also proposed.

Draft article 18 – Relationship to other rules of international law

21. Delegations generally welcomed the inclusion of a provision addressing the relationship between the draft articles and other applicable rules of international law. A number of delegations raised the need to avoid duplication with existing or other proposed instruments. It was proposed that a mapping exercise to identify such instruments be undertaken before any future convention negotiations. The Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency³ 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, including in relation to climate change, was also underscored.

22. Several delegations welcomed paragraph 2, and a number of them expressed openness to further clarifying the text of the paragraph. Delegations generally concurred that international humanitarian law was the *lex specialis* with respect to the protection of persons during armed conflicts. Several delegations considered that the draft articles applied to disasters occurring in areas of armed conflict not covered by the rules of international humanitarian law. Differing views were also expressed as to whether the draft articles should apply in cases where they were more precise than the corresponding rule of international humanitarian law. It was recalled that other fields of international law beyond international humanitarian law, including international environmental law, international human rights law, international criminal law and international refugee law, also applied in the case of armed conflict. The importance of the rights of humanitarian organizations to provide relief during armed conflict provided for by international humanitarian law was emphasized.

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

23. Thematic Cluster 2, concerning the core obligations reflected in draft articles 4, 5, 6 and 9, was discussed at the second and third meetings of the Working Group, held on 7 and 8 October 2024. Several delegations generally welcomed the draft articles in the thematic cluster and supported 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 human rights approach taken by the ILC were inappropriate and that the draft articles should be reoriented to focus on overcoming specific legal and practical obstacles for international cooperation in responding to disasters.

Draft article 4 – Human dignity

24. 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 term

³ United Nations, *Treaty Series*, vol. 1457, No. I-24643, p.133.

“human dignity” did not have a specific juridical definition and it was difficult to identify with any certitude the content of the international legal obligations under the draft article.

25. 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 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.

26. Proposals were made to merge draft article 4 with draft article 5 or to simply include a reference to human dignity in the preamble. 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

27. 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. Some delegations were of the view that this draft article should also apply in the prevention and reduction of the risk of disasters. 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.

28. It was suggested that the meaning of the phrase “entitled to the respect for and protection of their human rights” should be clarified since not all human rights could be fully realized in the disaster response context. It was recalled that international law allowed States to derogate from their human rights obligations to the extent required by the exigencies of an emergency and through measures that were proportionate and necessary to address the emergency. It was proposed to further clarify the draft article by including a reference to the distinction between derogable and non-derogable rights.

29. Furthermore, it was considered necessary to indicate more clearly in the draft article which actors would be obliged to respect and protect human rights in the event of disasters, so that the provision would be read in light of an understanding that distinct obligations would be held by affected States, assisting States and various other assisting actors.

Some delegations were of the view that there was, strictly speaking, no need to include references to the human rights obligations of States, which were already defined by existing human rights treaties and did not cease in the event of a disaster. In their view, draft articles 4 and 5 went beyond the purpose and substance of the draft articles and led to unnecessary duplication.

Draft article 6 – Humanitarian principles

30. 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. It was noted that these principles had their origins in international humanitarian law. A number of 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 relevant resolutions of the General Assembly and to avoid reinterpreting the humanitarian principles. It was also suggested that the provision should make clear that it applies to disaster prevention as well as to disaster response.

31. It was questioned whether the provision should be written in manner that suggested the existence of a binding obligation on State, as the humanitarian principles were not designed to be legal obligations. The view was expressed that an effort to create binding legal obligations based on the humanitarian principles should involve stakeholders not presently engaged in the process. According to another view, the preamble would be a better location to address humanitarian principles.

32. 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. It was suggested that “migrants” were missing from the list in the text. In terms of another view, the reference to “particularly vulnerable groups” was ambiguous and unclear, and the need for such a reference was questioned.

Draft article 9 – Reduction of the risk of disasters

33. Several delegations welcomed the inclusion of draft article 9, It was observed 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 would complement existing soft-law frameworks and 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.

34. The margin of appreciation in implementation left to States by the broad framing of the provision, including the use of the term “appropriate measures”, was highlighted. It was emphasized that affected States, having first-hand knowledge of the regions and communities susceptible to specific types of disasters, would be best placed to determine the necessary measures to mitigate disaster risks. Several delegations welcomed the reference to legislative and regulatory measures, as well as that to the operation of early warning systems. The view was expressed that

it would be better to substitute “including through legislation and regulation” by “in accordance with legislation, regulation or national policies” to accommodate States without relevant legislation.

35. Various suggestions were made for improvement, including adding references to bolstering resilience, compliance with technical standards in investments, to increase resilience by reducing vulnerabilities, the introduction of climate change adaptation and mitigation measures, with emphasis on safe water, food security and health, as well as the preparedness of the population at risk. It was noted that, according to the commentary to the draft article, the list in paragraph 2 was non-exhaustive, and it was proposed to clarify this in the text. The view was expressed that the provision overlooked the question of the obligation of States to reduce the risk of disasters by ensuring that activities on their own territories do not cause transboundary damage amounting to a disaster. It was suggested that the provision could be strengthened by the establishment of an implementation mechanism for capacity building and technology transfer.

36. Several delegations indicated their understanding that the obligation to reduce the risks of disasters was one of conduct and not of result, which was proposed to be reflected more clearly in the text. Some delegations expressed the view that the obligation was one of due diligence. It was noted that similar obligations were well established in international environmental law. A number of delegations emphasized 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. It was suggested that the provision could be clearer as to the degree of risk that must be anticipated and that minimum specific obligations relating to prevention, mitigation and preparedness could be established.

37. The concern was expressed that it would be difficult to transform States’ political commitments relating to disaster risk reduction into legal obligations that were sufficiently specific and clear to allow for an objective assessment of compliance. 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. It was noted that the scope of the provision was linked to the definition of “disaster”, and it was questioned whether the provision should be framed with reference to the nature of possible disasters, as the obligation seemed punitive in the case of a human-made disaster to which the contribution of the State is negligible. A preference was also expressed for excluding disaster risk reduction, and hence draft article 9, entirely from the scope of the draft articles, in favour of a greater focus on promoting technical assistance. The view was also expressed that the development of obligations parallel to other frameworks should be avoided.

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

38. Thematic cluster 3 was discussed at the third meeting of the Working Group, held on 8 October 2024. Delegations emphasised the central importance of international cooperation within the context of disaster risk reduction and response.

Draft article 7 – Duty to cooperate

39. Several delegations recalled that the duty to cooperate was a well-established 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 1970,⁴ and the Sendai Framework on Disaster Risk Reduction, 2015. Other delegations recognized the importance of international cooperation in responding to disasters but were of the view that draft article 7 did not reflect customary international law and was not supported by State practice.

40. A number of delegations highlighted the importance of striking a balance between the duty to cooperate and other principles of international law, such as the principles of State sovereignty, sovereign equality of States, and non-interference in the internal affairs of the State. The view was also expressed that the circumstances of each disaster and the relevant national context and capabilities of both affected and assisting States needed to be taken into account when discussing the duty to cooperate.

41. 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. 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. 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”. It was also suggested that the provision be moved to the preamble.

42. The importance of the qualifier “as appropriate”, was emphasized, but it was suggested that the qualifier could benefit from further clarification and more precise drafting. 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.

43. 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

⁴ General Assembly resolution 2625 (XXV) of 24 October 1970.

for assistance or from whom to accept assistance, and the primary role of affected States in decision-making was reiterated.

44. It was 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. 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

45. 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. Some delegations highlighted the importance of the consent of the affected State and suggested that the forms of cooperation should be determined on the basis of a request from the affected State.

46. Several delegations referred to other important forms of cooperation not covered by the draft article, such as financial support, capacity building, technology transfer, and coordination in the transportation and importation of goods and services, as well as the issuance of visas for assistance personnel. The view was expressed that the application of draft article 8 should be contingent on the specific situation of the disaster and that the specific needs of developing countries and of vulnerable groups should be taken into account,

47. Some specific drafting suggestions were made, including modifying the title 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

48. Some delegations expressed support for the general approach in draft article 12, affirming that no legal obligation existed to offer assistance not to accept requests for assistance. 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. While some delegations rejected any changes to the current formulation, other delegations welcomed the opportunity to refine the text to prevent imbalance between affected States and assisting States. A suggestion was made to adjust the title of draft article 12 since it covers both offers and requests for external assistance.

49. A view was expressed that by envisaging a right rather than an obligation on different actors to offer assistance to the affected State draft article 12 introduced an imbalance to the text and placed the affected State in a discriminatory position, dependent upon the will of the assisting States and other actors.

50. Regarding paragraph 1, some delegations welcomed the permissive terms of its text which emphasised the voluntary nature of the assistance and the fact that it did not suggest that States had a legal duty to offer assistance. Despite no legal obligation imposed in this paragraph, several delegations also recalled the importance of highlighting the guiding principles, such as the principle of solidarity among States. Concerning the reference to “other participating actors”, there were suggestions regarding the legal criteria for assistance given by the non-governmental actors and international organizations. At the same time, there still remained delegations that considered the formulation of the provision to be vague as it suggested that the affected State was dependent on the arbitrary will of the assisting States. Further suggestions included providing a clarification of the term “offers”, as well as including an explicit reference to the duty of solidarity.

51. 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 thereby respecting the requested State’s prerogatives. Further suggestions were made with a view to reassuring the position of the requested State, including among others, the deletion of the word “due” and replacing the word “shall” with “should”.

52. Some delegations were of the view that paragraph 2 required further explanation and specificity, such as regarding the meaning of the reference to “expeditiously” along with “due” and the envisaged time frame for responding to a request. Several proposals were made, including establishing general criteria for requesting, granting and accepting assistance, drawing a distinction between a general appeal and a formal request and specifying the authorities eligible to make the request. In addition, inserting the phrase “whenever possible” after “inform the affected State of its reply” and adding the prohibition of withholding assistance arbitrarily were also suggested by several delegations.

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

53. Thematic cluster 4 was discussed at the third and fourth meetings of the Working Group, held on 8 October 2024.

54. 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.

55. 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 principles referred to in the draft preamble, draft article 4 and draft article 6. Other delegations emphasized the relevance of the principles of sovereignty, territorial integrity and non-interference in the interpretation of the provisions in thematic cluster 4.

Draft article 10 – Role of the affected State

56. 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. While some delegations remarked that the “duty to ensure protection” emanated from legal obligations under human rights law, others argued that the obligation to protect persons was a moral obligation rather than a legal one. It was remarked that the “duty to ensure protection” was an obligation of conduct, and involved a due diligence obligation. Concern was also expressed about the provision being too general.

57. As regards paragraph 1, while some delegations expressed that the terms “under jurisdiction and control” should include occupied territories, others 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.

58. Some delegations observed that the draft provision sought to draw a balance between the role of external actors in providing assistance and the obligation of the affected State to provide protection. It was noted that the duty of the affected State to protect persons included the development of national structures and 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.

59. 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 or reflective of existing rules under international humanitarian law. The attention of delegations was drawn to existing regional frameworks, such as the ASEAN Agreement on Disaster Management and Emergency Response, of 2005,⁵ 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, that there should be no conditions imposed on affected States in doing so or that the affected State should have an exclusive responsibility over the direction, control, coordination and supervision of relief assistance. It was further proposed to insert the phrase “by virtue of its sovereignty”, so as to address some of the concerns expressed by delegations.

60. The concern was expressed that the draft article did not include measures for accountability for omissions and commissions involving damage. Concern was also expressed as to the expansion of the applicability of the draft article to territories under the jurisdiction or control of the affected State.

⁵ ASEAN *Document Series 2005*, p. 157.

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

61. 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 expressed support for the draft article and noted that the protection of the population was part of the obligation of a State and went hand in hand with its sovereignty.. Several 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 needed to request such assistance. Several delegations voiced their concern about the draft article not reflecting customary international law or possibly contradicting conventional provisions.

62. It was expressed that the “duty to seek assistance” required further clarification. 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. It was suggested that draft article 11 also include a reference to “and its agencies” after “the United Nations.

63. 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. Some delegations called for further clarification of the concept since it was not defined in the draft articles. Some delegations also 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. Several delegations emphasized that it was for the affected State to determine whether the magnitude of the disaster exceeded its national response capacity or the kind of assistance that was required. 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. Some delegations expressed that draft article 11 should not be used to legitimise situations of humanitarian intervention

64. Some delegations 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 or by emphasizing the role of the “duty to cooperate” in this context. 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. The duty to seek assistance from other assisting actors such as non-governmental organization was also questioned.

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

65. 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.

66. 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. Reference was made 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.

67. 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 also proposed to evaluate arbitrariness against existing obligations of the affected State under international law. There was also a suggestion that the phrase “withheld arbitrarily” be replaced by a reference to consent given in good faith. It was further recalled that the prohibition of threat or use of force and the principle of non-interference in internal affairs continued to apply even when an affected State was unable to adequately respond to a disaster.

68. 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. A view was expressed that the prerogative to provide consent was not unlimited as was recognized in the Guiding Principles on Internal Displacement⁶ and, in the context of armed conflict, by the rules of international humanitarian law. A view was also expressed that where assistance was offered in accordance with draft articles and no alternative sources of assistance was available, there should be a strong inference that a decision to withhold consent would be arbitrary. It was noted that a State could bear responsibility under international law for arbitrarily refusing to grant consent if it undermines the rights of the affected persons.

69. 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. A suggestion was made to further study situations where it was not possible to determine the affected State from which to obtain consent, as well as where the affected State was withholding consent to the provision of international relief assistance. A view was expressed that in the event where the affected State was not able to provide consent due to the seriousness of the disaster, the Security Council should act in line with Chapter VII of the Charter to authorize the provision of humanitarian relief. A view was also expressed that in the event of an armed conflict the parties are obliged to allow humanitarian access and that while the Security Council resolutions are binding, they are separate from the question whether the affected State has a duty to accept external assistance. A suggestion was made to further explore whether there was a corresponding duty on third States to offer assistance.

70. In terms of a further view, the provision was inspired by the concept of the “responsibility to protect”, which had no basis in international law, and could be used as a justification for humanitarian intervention in violation of international law.

⁶ E/CN.4/1998/53/Add.2, annex.

71. The proposed procedural requirement in paragraph 3 was considered by some delegations to be appropriate.

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. It was noted that any conditions imposed on the external assistance should be clearly defined. A proposal was made to make reference to the need to respect humanitarian principles of humanity, neutrality, impartiality and independence. It was also suggested to specify in the text of the draft article the need to respect sovereignty and territorial integrity of an affected State.

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. A proposal was made to replace the words “shall” in the draft article with “should”. Several delegations placed particular emphasis on the duty of assisting actors to respect the applicable rules of international law, and the laws and regulations of the affected State.

Cluster 5

74. Thematic Cluster 5 was discussed at the fourth and fifth meetings of the Working Group, held on 9 October 2024.

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 to facilitate and allow the expeditious arrival of external assistance was emphasized. Various delegations stressed the importance of this provision covering multiple aspects such as the regulation of privileges and immunities for humanitarian staff, visas, entry requirements, work permits and freedom of movement, as well as aspects related to the materials and equipment to provide assistance including customs, tariffs, taxation and transport. The view was also expressed that the recognition of the privileges and immunities of relief personnel could also depend on the existence of an international agreement. It was mentioned that in some national legal systems the privileges and immunities granted to staff of international organizations did not cover non-governmental organizations and private companies.

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. The view was expressed that the provision should achieve a balance between the consent given by the affected State and the voluntary nature of the assistance. According to another view draft article 15 was balanced and drafted in a manner that respected the sovereignty of the affected State and required its consent to receiving external assistance, allowing it to impose conditions on the provision of such assistance.

77. Delegations expressed openness to discussing whether the draft article could 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. Various delegations stressed the importance of a provision indicating that the assisting States and other actors should respect the national regulations of the affected State. The view was expressed that the resources provided as part of humanitarian assistance should be managed by the affected State and that in providing any assistance the traditions and culture of the receiving State should be respected at all times. The view was also expressed that respect for the domestic regulations of the affected State could ensure that the assistance was given in good faith and provided to the benefit of the affected State.

78. 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. 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 measures for efficient and appropriate withdrawal and exit of relief personnel, goods and equipment upon termination of external assistance.

79. In terms of another view, draft article 15 was not balanced, differed from international treaty practice and did not provide any guarantees against abuse by assisting actors. A view was expressed that the provision by the affected State of the specific facilities referred to in draft article 15 paragraph 1 did not reflect customary international law and should not be kept.

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

80. Several delegations supported the inclusion of draft article 16. It was noted that it was a provision properly reflecting Security Council resolutions protecting humanitarian personnel. The reference to “appropriate measures” was welcomed, as it provided a margin of flexibility to the affected State. At the same time, requests for clarification of the particular obligations of States under the draft article were voiced. In that sense, the view was expressed that draft article 16 imposed an obligation of conduct. A suggestion was made to specify that the appropriate measures should include systems to identify and address corruption, fraud and aid diversion. Several delegations were of the view that the draft article should not impose unreasonable and disproportionate burdens on the already limited capabilities of the affected State. It was observed

that the obligation established by the provision should only extend to the affected State's territory. It was emphasized that the provision should add "internationally or nationally recruited" in its coverage of humanitarian personnel, that it should include an obligation upon States to criminally prosecute perpetrators of attacks against relief personnel and goods and that it should also include an obligation upon humanitarian agencies not to impair their own protection.

Draft article 17 – Termination of external assistance

81. 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.

82. 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.

83. 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. A suggestion to include a duty to consult the affected populations prior to termination was made. It was considered necessary to introduce additional safeguard provisions limiting the ability of assisting States and other actors from withdrawing assistance arbitrarily, and the view was expressed that the draft articles should also address the obligation to compensate in cases of gross negligence in the termination of assistance. It was also asserted that the termination of external assistance should be done in good faith and should not violate the human dignity and right to life of affected persons.

84. A further suggestion was made 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 indicated that the modalities for the termination of external assistance should be clarified, as well as the potential compensation owed to the actors involved in the relief operation in cases of gross negligence.

Recommendation of the International Law Commission

85. The recommendation of the International Law Commission was discussed at the fifth meeting of the Working Group, held on 9 October 2024.

86. Many delegations expressed support for a recommendation by the Sixth Committee calling for a conference of plenipotentiaries to elaborate 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. It was emphasized that the recommendation of the Commission was not to turn the draft articles into a treaty but to conclude an instrument on the basis of the draft articles.

Accordingly, it was time to move forward since further refinements could be made during the negotiations on the convention. Some delegations highlighted that, while not perfect, the draft articles were a useful starting point for the negotiation of a future convention and emphasized that the discussions in the working group evidenced the points where delegations coincided and could give an opportunity to reach agreements on points where delegations had different views.

87. Many delegations offered examples of how a possible future convention could fill a gap and intensify efforts on disaster management and reduction. Many delegations highlighted that States are not limited by the text prepared by the International Law Commission and thus the text would be a solid basis for the negotiation. The view was expressed that the exchanges held in the Working Group evidenced points of convergence and possible improvements to the text. It was also highlighted that there was a need for a universal binding legal instrument and that delegations across the regional groups supported the recommendation to negotiate a convention.

88. The view was expressed that the discussion had evidenced convergence among delegations on some elements of the draft articles, such as the importance of the fundamental principles of international law contained in the United Nations Charter, including sovereign equality and non-intervention. It was also noted that delegations had expressed interest in the need to meet the basic needs of the persons affected by disasters and the primary role of the affected State in the efforts to mitigate and respond to disasters with the assistance of international cooperation. The view was also expressed that the possible convention could serve as a basis for solidarity, while various delegations referred to their commitment to the principles of solidarity, cooperation and respect for human dignity. Some delegations also referred to the timeliness of the discussions on this topic due to the increased frequency and magnitude of disasters, including some associated to the effects of climate change.

89. It was considered that the preparation of a negotiation of an international convention could address the fragmentation of existing instruments on humanitarian assistance for the protection of persons in the event of disasters. A view was also expressed that a possible legal framework for disaster response should complement and not undermine other areas of international law.

90. A delegation expressed its willingness to host an international conference of plenipotentiaries.

91. Some delegations expressed openness to continue discussing the possible procedural alternatives to address the recommendation of the Commission. A view was also expressed that while there was openness to continue the discussions on the topic it could be impractical to create binding legal obligations based on some of the draft provisions and perhaps a non-binding instrument would more effectively advance the goal of promoting cooperation on disaster assistance. According to another view, it had not been discussed in the working group how the implementation of such a legal framework would take place and whether it would be supported and monitored and whether existing mechanisms could be used and that a treaty would require the right mechanisms to implement the duties and principles.

92. 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, and that 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. The view was expressed that the draft articles were not aligned with the current practice in terms of disaster relief, and that in certain parts of the draft articles the text did not reflect the current state of international law.
