

PROTECTION OF PERSONS IN THE EVENT OF DISASTERS

[Agenda item 8]

DOCUMENT A/CN.4/615*

Second report on the protection of persons in the event of disasters, by Mr. Eduardo Valencia-Ospina, Special Rapporteur

[Original: English]
[7 May 2009]

CONTENTS

	<i>Page</i>
Multilateral instruments cited in the present report	187
Works cited in the present report	188
	<i>Paragraphs</i>
INTRODUCTION	1–14 188
<i>Chapter</i>	
I. DEFINING THE SCOPE OF THE TOPIC	15–49 191
A. <i>Ratione materiae</i>	16–27 191
1. Rights and needs in the protection of persons in the event of disasters	16–18 191
2. The dual nature of the protection of persons in the event of disasters	19–27 191
B. <i>Ratione personae</i> : States and non-State actors	28 193
C. <i>Ratione temporis</i> : pre-disaster, disaster proper and post-disaster action	29–30 193
Draft article 1. Scope	30 193
D. Defining disaster	31–49 193
Draft article 2. Definition of disaster	45 195
II. SOLIDARITY AND COOPERATION	50–70 196
Draft article 3. Duty to cooperate	70 200
III. FUTURE WORK	71 200

Multilateral instruments cited in the present report

	<i>Source</i>
Convention on the Prevention and Punishment of the Crime of Genocide (Paris, 9 December 1948)	United Nations, <i>Treaty Series</i> , vol. 78, No. 1021, p. 277.
Vienna Convention on Consular Relations (Vienna, 24 April 1963)	<i>Ibid.</i> , vol. 596, No. 8638, p. 261.
International Covenant on Economic, Social and Cultural Rights (New York, 16 December 1966)	<i>Ibid.</i> , vol. 993, No. 14531, p. 3.
African Charter on Human and Peoples' Rights (Nairobi, 27 June 1981)	<i>Ibid.</i> , vol. 1520, No. 26363, p. 217.
Vienna Convention for the Protection of the Ozone Layer (Vienna, 22 March 1985)	<i>Ibid.</i> , vol. 1513, No. 26164, p. 293.
Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency (Vienna, 26 September 1986)	<i>Ibid.</i> , vol. 1457, No. 24643, p. 133.

* Incorporating A/CN.4/614/Corr.1.

Source

Montreal Protocol on Substances that Deplete the Ozone Layer (Montreal, 16 September 1987)	<i>Ibid.</i> , vol. 1522, No. 26369, p. 3. For the final amended version of the Protocol, see <i>Handbook for the Montreal Protocol on Substances that Deplete the Ozone Layer</i> , 8th ed. (UNEP, 2009), sect. 1.
Agreement establishing the Caribbean Disaster Emergency Response Agency (Port of Spain, 26 February 1991)	<i>Ibid.</i> , vol. 2256, No. 40212, p. 53.
Inter-American Convention to Facilitate Disaster Assistance (Santiago, 7 June 1991)	OAS, <i>Official Documents</i> , OEA/Ser.A/49 (SEPF), p. 13.
Tampere Convention on the Provision of Telecommunication Resources for Disaster Mitigation and Relief Operations (Tampere, 18 June 1998)	United Nations, <i>Treaty Series</i> , vol. 2296, No. 40906, p. 5.
Framework Convention on Civil Defence Assistance (Geneva, 22 May 2000)	<i>Ibid.</i> , vol. 2172, No. 38131, p. 213.
ASEAN Agreement on Disaster Management and Emergency Response (Vientiane, 26 July 2005)	<i>ASEAN Documents Series 2005</i> , p. 157.
Convention on the Rights of Persons with Disabilities (New York, 13 December 2006)	United Nations, <i>Treaty Series</i> , vol. 2515, No. 44910, p. 3.

Works cited in the present report

- BABOVIĆ, Bogdan
 “The duty of States to cooperate with one another in accordance with the Charter”, in Milan ŠAHOVIĆ, ed., *Principles of International Law Concerning Friendly Relations and Cooperation*. Belgrade, Institute of International Politics and Economics, 1972, pp. 277–321.
- BECK, Ulrich
Risk Society: Towards a New Modernity. Translated by Mark Ritter. London, Sage Publications, 1992. 266 p.
- BERNARD, Mountague
 “On the principle of non-intervention”. A lecture delivered in the hall of All Souls’ College. Oxford, Parker, 1860. 36 p.
- FISCHER, Horst
 “International disaster response law treaties: trends, patterns, and lacunae”, *International Disaster Response Laws, Principles and Practice: Reflections, Prospects and Challenges*. Geneva, International Federation of Red Cross and Red Crescent Societies, 2003, pp. 24–44.
- GIDDENS, Anthony
 “Affluence, poverty and the idea of a post-scarcity society”. Discussion Paper No. 63. UNRISD, 1995.
- HART, Herbert Lionel Adolphus and Tony HONORÉ
Causation in the Law. 2nd ed. Oxford, Clarendon Press, 1985. 516 p.
- HUME, David
A Treatise of Human Nature. 2nd ed. Oxford, Clarendon Press, 1978 (reprint of 1739). 743 p.
- INSTITUTE OF INTERNATIONAL LAW
Yearbook. Vol. 70, Part II, session of Bruges, 2003, second part, Paris, Pedone.
- MACDONALD, Ronald St. John
 “The principle of solidarity in public international law”, in C. DOMINICÉ, R. PATRY and C. REYMOND, eds., *Études de droit international en l’honneur de Pierre Lalive*. Basel, Helbing & Lichtenhahn, 1993, pp. 275–307.
- MILL, John Stuart
A System of Logic, Ratiocinative and Inductive, being a Connected View of the Principles of Evidence and the Methods of Scientific Investigation. Book III, chap. V, p. 327, para. 3, in J. M. ROBSON, ed., *Collected Works of John Stuart Mill*, vol. VII. Toronto, University of Toronto, 1974. 638 p.
- UVIN, Peter
Human Rights and Development. Bloomfield (Connecticut), Kumarian Press, 2004. 241 p.
- WERNER, Wouter G.
 “State sovereignty and international legal discourse”, in Ige F. DEKKER and Wouter G. WERNER, eds., *Governance and International Legal Theory*. Leiden, Nijhoff, 2004. pp. 125–157.

Introduction*

1. The present report on the protection of persons in the event of disasters is preceded by a preliminary report on the same topic,¹ submitted by the Special Rapporteur at

* The Special Rapporteur expresses his appreciation for their assistance in the preparation of the present report to: Arjen Vermeer, PhD candidate, T.M.C. Asser Institute, The Hague; René Urueña, PhD candidate, and J. Benton Heath, JD candidate, New York University Law School, New York.

¹ *Yearbook ... 2008*, vol. II (Part One), document A/CN.4/598.

the sixtieth session of the International Law Commission in May 2008, following the Commission’s decision at its fifty-ninth session in 2007² to include the topic in its current programme of work.

2. The preliminary report dealt in a general way with the scope of the topic, in order to properly circumscribe

² *Yearbook ... 2007*, vol. II (Part Two), p. 98, para. 375.

48. Similarly, the definition does not distinguish between natural and man-made events, recognizing that disasters often arise from complex sets of causes that may include both wholly natural elements and contributions from human activities. Armed conflicts are expressly excluded, with the understanding that a well-developed body of law exists to cover such situations.

49. Finally, the definition excludes an inquiry into causation. Disasters generally arise from a complex

set of factors, making virtually impossible any effort to identify a single sufficient cause. Furthermore, in the light of this topic's focus on protection of persons, the inquiry into a calamity's root cause is immaterial. The disruption itself, not the originating causal phenomena, gives rise to the need for protection. This definition, focusing on the disruption and its particular harms, builds the most appropriate framework to explore the rights and obligations relating to protection of persons.

CHAPTER II

Solidarity and cooperation

50. The underlying principles in the protection of persons in the event of disasters are those of solidarity and cooperation, both among nations and among individual human beings. It is in the solidarity inspired by human suffering that the Commission's mandate finds *telos*, as an expression of our common heritage in a global context.

51. In such a context, effective international cooperation is indispensable for the protection of persons in the event of disasters. As has been observed by the Secretary-General:

The belief in the dignity and value of human beings as expressed in the preamble of the Charter of the United Nations is and must be the prime motive for the international community to give humanitarian assistance. The concept of international solidarity so often evoked following major emergencies and understood as a feeling of responsibility towards people in distress equally has its roots in the ethical principles of the Charter. Solidarity in this sense is not charity.⁷¹

More recently, the independent expert on human rights and international solidarity held that:

International solidarity and international cooperation are based on the foundation of shared responsibility. In the broadest sense, solidarity is a communion of responsibilities and interest between individuals, groups and States, connected by the ideal of fraternity and the notion of cooperation. The relationship between international solidarity and international cooperation is an integral one, with international cooperation as a core vehicle by which collective goals and the union of interests are achieved.⁷²

An expression of the principle of solidarity can be found in the 2005 Hyogo Declaration:

We are determined to reduce disaster losses of lives and other social, economic and environmental assets worldwide, mindful of the importance of international cooperation, solidarity and partnership, as well as good governance at all levels.⁷³

52. The duty to cooperate is well established as a principle of international law and can be found in numerous international instruments. The Charter of the United Nations enshrines it, not least with reference to the humanitarian context in which the protection of persons

in the event of disasters places itself.⁷⁴ Article 1, paragraph 3, of the Charter clearly spells out as one of the purposes of the Organization:

To achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion.

Articles 55 and 56 of the Charter elaborate on Article 1, paragraph 3, with respect to international cooperation. Article 55 of the Charter reads:

With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote:

- a. Higher standards of living, full employment, and conditions of economic and social progress and development;
- b. Solutions of international economic, social, health, and related problems; and international cultural and educational cooperation; and
- c. Universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.

Article 56 of the Charter reads:

All Members pledge themselves to take joint and separate action in cooperation with the Organization for the achievement of the purposes set forth in Article 55.

53. The general duty to cooperate was reiterated as one of the principles of international law in the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations in the following terms:

States have the duty to cooperate with one another, irrespective of the differences in their political, economic and social systems, in the various spheres of international relations, in order to maintain international peace and security and to promote international economic stability and progress, the general welfare of nations and international cooperation free from discrimination based on such differences.⁷⁵

⁷¹ A/45/587, para. 5.

⁷² A/HRC/9/10, para. 6. See also General Assembly resolution 46/182 of 19 December 1991, annex, guiding principles, para. 5.

⁷³ A/CONF.206/6 and Corr.1, chap. I, resolution 1, fifth preambular paragraph.

⁷⁴ See *Yearbook ... 2008*, vol. II (Part One), document A/CN.4/590, para. 17 and footnote 57.

⁷⁵ General Assembly resolution 2625 (XXV) of 24 October 1970, annex, para. 1.

As interpreted by one author, this obligation “consecrat[es] the solidarity of nations”.⁷⁶

54. Solidarity as an international legal principle, and distinct from charity, gives rise to a system of cooperation in furtherance of the notion that justice and the common good are best served by policies that benefit all nations.⁷⁷ Seen in this light, it can also be traceable in the context of international environmental law, in relation to the role of the developing world. Thus, the Stockholm Declaration proclaimed that nations must undertake a coordinated effort to preserve and safeguard natural resources, insofar as environmental protection “affects the well-being of peoples and economic development throughout the world”.⁷⁸ Recognizing that “environmental deficiencies generated by the conditions of under-development and natural disaster pose grave problems”, the Declaration calls for accelerated development through financial and technological assistance.⁷⁹ The Declaration further provides that developed countries shall provide, and developing countries shall assist in promoting, scientific information and expertise relevant to mitigating environmental degradation.⁸⁰ The duties placed on developed and developing States alike are premised on the recognition that global environmental problems “will require extensive cooperation among nations”⁸¹ with the specific understanding that “industrialized countries should make efforts to reduce the gap [between] themselves and the developing countries”.⁸² Moreover, the Rio Declaration on Environment and Development, reaffirming Stockholm, prioritizes the concerns of developing countries, stating that the “special situation and needs of developing countries, particularly the least developed and those most environmentally vulnerable, shall be given special priority”.⁸³

55. Subsequent instruments implemented this obligation to cooperate, establishing mechanisms to share information, finances and scientific resources. The Vienna Convention for the Protection of the Ozone Layer, for example, mandates cooperative research and information-sharing among all States parties to the Convention. In 1990, the amending Montreal Protocol on Substances that Deplete the Ozone Layer fulfilled the Vienna Convention’s promise to take into account the “circumstances and particular requirements of developing countries”. Developing countries are given leniency with respect to certain proscribed or regulated chemicals,⁸⁴ and the Protocol mandates that developed nations shall provide financial

assistance and technology to less-developed nations.⁸⁵ The Protocol establishes a multilateral fund to motivate participation by developing countries.⁸⁶ In turn, developing nations are bound to pollution control measures, and the parties to the Convention are empowered to invoke non-compliance procedures where appropriate.⁸⁷

56. As noted above, solidarity is an important element of cooperation towards solving economic problems, as put forward in Article 1, paragraph 3, of the Charter of the United Nations and in the 1970 Friendly Relations Declaration.⁸⁸ The Declaration recognizes a duty of States to cooperate with one another, and provides that “States should cooperate in the promotion of economic growth throughout the world, especially that of the developing countries”.⁸⁹ This concept was brought to the fore and expanded by the Declaration on the Establishment of a New International Economic Order.⁹⁰ The Declaration is based upon a duty of States to cooperate “in the solving of world economic problems ... bearing in mind the necessity to ensure accelerated development of all the developing countries”.⁹¹ And further holds that “cooperation for development is the shared goal and common duty of all countries”.⁹²

57. Solidarity as an international legal principle found reflection beyond the 1974 Declaration. The Declaration of International Economic Cooperation, adopted by the General Assembly in 1990, notes the interdependence of the international community⁹³ and recognizes that reviving growth in developing countries requires “a concerted and committed effort by all countries”.⁹⁴ Most recently, the United Nations Millennium Declaration places solidarity among the fundamental values essential to international relations.⁹⁵ The declaration further elaborates on its invocation of solidarity:

Global challenges must be managed in a way that distributes the costs and burdens fairly in accordance with basic principles of equity and social justice. Those who suffer or who benefit least deserve help from those who benefit most.⁹⁶

58. Solidarity is also reflected in regional instruments. The African Charter on Human and Peoples’ Rights establishes that individuals and groups should dispose of their wealth “with a view to strengthening African unity and solidarity”⁹⁷ and guarantees the right to social and

⁷⁶ B. Babović, “The duty of States to cooperate with one another in accordance with the Charter”, at p. 289.

⁷⁷ See generally MacDonald, “Solidarity in the practice and discourse of public international law”, at p. 275.

⁷⁸ Declaration of the United Nations Conference on the Human Environment, *Report of the United Nations Conference on the Human Environment, Stockholm, 5–16 June 1972* (United Nations publication, Sales No. E.73.II.A.14), and corrigendum, chap. I.

⁷⁹ *Ibid.*, principle 9.

⁸⁰ *Ibid.*, principle 20.

⁸¹ *Ibid.*, para. 7.

⁸² *Ibid.*, para. 4.

⁸³ Report of the *United Nations Conference on Environment and Development Rio de Janeiro, 3–14 June 1992* (United Nations publication, Sales No. E.93.I.8 and corrigenda), principle 6.

⁸⁴ Art. 5, paras. 1–3.

⁸⁵ Arts. 10 and 10A; see also article 5, paragraph 5 (noting that developing nations’ compliance with the Protocol’s control measures will be contingent on developed countries’ willingness to provide financial and technological assistance).

⁸⁶ Art 10.

⁸⁷ Art 5.

⁸⁸ General Assembly resolution 2625 (XXV) of 24 October 1970, annex.

⁸⁹ *Ibid.*

⁹⁰ General Assembly resolution 3201 (S–VI) of 1 May 1974.

⁹¹ *Ibid.*, para. 4 (c).

⁹² *Ibid.*, para. 3.

⁹³ General Assembly resolution S–18/3 of 1 May 1990, annex, para. 12.

⁹⁴ *Ibid.*, para. 21.

⁹⁵ See General Assembly resolution 55/2 of 8 September 2000, para. 6.

⁹⁶ *Ibid.*

⁹⁷ African Charter on Human and Peoples’ Rights, art. 21, para. 4.

economic development.⁹⁸ It also establishes a right to a “satisfactory environment”⁹⁹ and the duty of the individual to promote social and national solidarity.¹⁰⁰

59. The international cooperation imperative is firmly rooted in international instruments of a humanitarian character. As noted above, the duty to cooperate in the context of human rights has been explicitly embodied in Article 1, paragraph 3, of the Charter of the United Nations. Likewise, it has been reiterated in numerous General Assembly declarations and resolutions. Thus, for example, the Friendly Relations Declaration proclaims:

States shall cooperate in the promotion of universal respect for, and observance of, human rights and fundamental freedoms for all, and in the elimination of all forms of racial discrimination and all forms of religious intolerance.¹⁰¹

And in its resolution 56/152, entitled “Respect for the purposes and principles contained in the Charter of the United Nations to achieve international cooperation in promoting and encouraging respect for human rights and for fundamental freedoms and in solving international problems of a humanitarian character”, the General Assembly affirmed:

The solemn commitment of all States to enhance international cooperation in the field of human rights and in the solution to international problems of a humanitarian character in full compliance with the Charter of the United Nations.

60. As has been pointed out in the preliminary report on this topic, international human rights law takes on special significance in this context.¹⁰² The International Covenant on Economic, Social and Cultural Rights refers explicitly to international cooperation as a means of realizing the rights contained therein.¹⁰³ This has been reiterated by the Committee on Economic, Social and Cultural Rights in its general comments relating to the implementation of specific rights guaranteed by the Covenant.¹⁰⁴ In a recent resolution, the Economic and Social Council encouraged:

Member States and, where applicable, regional organizations to strengthen operational and legal frameworks for international disaster relief, [to take] into account, as appropriate, the Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance, adopted at the thirtieth International Conference of the Red Cross and Red Crescent held in Geneva in November 2007.¹⁰⁵

⁹⁸ *Ibid.*, art. 22.

⁹⁹ *Ibid.*, art. 24.

¹⁰⁰ *Ibid.*, art. 29, para. 4.

¹⁰¹ See footnote 75 above.

¹⁰² See *Yearbook ... 2008*, vol. II (Part One), document A/CN.4/598, paras. 25–26.

¹⁰³ General Assembly resolution 2200 A (XXI), annex, arts. 11, 15, 22 and 23.

¹⁰⁴ See, in particular, general comments No. 2 (Report on the fourth session, Committee on Economic, Social and Cultural Rights, *Official Records of the Economic and Social Council, 1990, Supplement No. 3* (E/1990/23), annex III, p. 86); No. 3 (Report on the fifth session, *ibid.*, *Supplement No. 3* (E/1991/23), annex III, p. 83); No. 7 (Report on the sixteenth and seventeenth sessions, *ibid.*, *Supplement No. 2* (E/1998/22), annex IV, p. 113); No. 14 (Report on the twenty-second, twenty-third and twenty-fourth sessions, *ibid.*, *Supplement No. 2* (E/2001/22), annex IV, p. 128; and No. 15 (Report on the twenty-eighth and twenty-ninth sessions, *ibid.*, *Supplement No. 2* (E/2003/22), annex IV, p. 120.

¹⁰⁵ Resolution 2008/36 of the Economic and Social Council, of 25 July 2008, para. 5.

And, in the same resolution, the Council:

Recognizes the benefits of engagement of and coordination with relevant humanitarian actors to the effectiveness of humanitarian response, and encourages the United Nations to continue to pursue efforts to strengthen partnerships at the global level with the International Red Cross and Red Crescent Movement, relevant humanitarian non-governmental organizations and other participants of the Inter-Agency Standing Committee.¹⁰⁶

61. International cooperation gained particular prominence in the 2006 Convention on the Rights of Persons with Disabilities which is, *inter alia*, applicable “in situations of risk, including situations of armed conflict, humanitarian emergencies and the occurrence of natural disasters”.¹⁰⁷ In a separate article of that Convention, international cooperation is dealt with in the following terms:

States Parties recognize the importance of international cooperation and its promotion, in support of national efforts for the realization of the purpose and objectives of the present Convention, and will undertake appropriate and effective measures in this regard, between and among States and, as appropriate, in partnership with relevant international and regional organizations and civil society, in particular organizations of persons with disabilities.¹⁰⁸

62. There is a vast number of instruments of specific relevance to the protection of persons in the event of disasters which demonstrate the importance of the imperative of international cooperation in combating the effects of disasters. Not only are these instruments in themselves expressions of cooperation, they generally reflect the principle of cooperation relating to specific aspects of disaster governance in the text of the instrument. Typically in bilateral agreements, this has been reflected in the title given to the instrument, denoting either cooperation or (mutual) assistance.¹⁰⁹ Moreover, the cooperation imperative, usually laid down in the preamble of a particular instrument, in the vast majority of cases is framed as one of the objectives of the instrument or is attributed positive effects towards their attainment. Again, the Tampere Convention is of relevance in this respect as it indicates in paragraph 21 of its preamble that the parties wish “to facilitate international cooperation to mitigate the impact of disaster”. Another example, very much in line with the scope of the present topic, can be found in an agreement between France and Malaysia:

Convinced of the need to develop cooperation between the competent organs of both Parties in the field of the prevention of grave risks and the protection of populations, property and the environment.¹¹⁰

¹⁰⁶ *Ibid.*, para. 7.

¹⁰⁷ Art. 11.

¹⁰⁸ Art. 32.

¹⁰⁹ See *Yearbook ... 2008*, vol. II (Part One), addendum I, document A/CN.4/590 and Add.1–3, paras. 25–26, for a comprehensive list of relevant instruments. For a further typology of instruments for the purposes of international disaster response law, see Fischer, “International disaster response law treaties: trends, patterns, and lacunae” (“Despite the fact that in all cases the specific purpose is different, the underlying rationale is the need to increase capacities to deal with the effects of disaster”, p. 33).

¹¹⁰ Agreement between the Government of the French Republic and the Government of Malaysia on Cooperation in the Field of Disaster Prevention and Management and Civil Security, 25 May 1998, preambular paragraph 4: *Journal officiel de la République française*, 9 December 1998, p. 18519.

63. Cooperation should, however, not be interpreted as diminishing the prerogatives of a sovereign State within the limits of international law. On the contrary, the principle underlines respect for the sovereignty of States and its corollary, non-intervention and the primary role of State authorities in the initiation, organization, coordination and implementation of the measures relevant to the protection of persons in the event of disasters. Sovereignty may be conceived as “a concept to describe a pre-existing reality, a scheme of interpretation, used to organize and structure our understanding of political life”.¹¹¹ Non-intervention is a well-established principle of international law, dating from the early stages of that body of law,¹¹² whose substantive contents need not be restated here. Suffice it to point out that the protection of persons in the event of disasters will often involve the adoption of political, regulatory, administrative and juridical measures by the affected State, including the deployment of its armed forces within its own territory, which are expressions of the “right of every sovereign State to conduct its affairs without outside interference”, as ICJ defined said principle in its 1986 judgment in the *Case concerning Military and Paramilitary Activities in and against Nicaragua*.¹¹³

64. It is the primary duty of the authorities of the affected State to take care of the victims of natural disasters and similar emergencies occurring in its territory.¹¹⁴ In the words of the General Assembly, “the abandonment of the victims of natural disasters and similar emergency situations without humanitarian assistance constitutes a threat to human life and an offence to human dignity”.¹¹⁵

65. Cooperation complements the primary duty of States. However, this primary duty concerns not only Governments and governmental authorities, but also competent international organizations and elements of civil society, such as national Red Cross and Red Crescent societies. The position has been characterized with clarity by the Secretary-General as early as 1971 in the comprehensive report entitled “Assistance in cases of natural disaster”:

While a Government should be able to count on the help of the international community, provided through Governments, the League of Red Cross Societies and other voluntary agencies or the United Nations organizations, in its preparations against or its efforts to meet such emergencies, the primary responsibility for protecting the life, health and property of people within its frontiers and for maintaining the essential public services rests with that Government. International assistance can only supplement, and will depend very largely for its effectiveness on, the efforts of the country itself through its Government or through such organizations as its national Red Cross society.¹¹⁶

¹¹¹ Werner, “State sovereignty and international legal discourse”, p. 155.

¹¹² For an early exposition of its origins, see Bernard, “On the principle of non-intervention. a lecture delivered in the hall of all Souls’ College”.

¹¹³ *Case Concerning Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, I.C.J. Reports 1986, para. 202.

¹¹⁴ Resolution 46/182 of 19 December 1991, annex, para. 4. See also Hyogo Declaration 2005 (footnote 73 above), para. 4.

¹¹⁵ Resolution 45/100 of 14 December 1990, sixth preambular paragraph.

¹¹⁶ E/4994, para. 100. This point was reaffirmed by the General Assembly in resolution 43/131 of 8 December 1988.

66. The 2008 Secretariat memorandum points out the link between the principle of cooperation as a *sine qua non* for this topic and the multiple actors involved, listing not only State actors but also non-State actors, that is, relief organizations.¹¹⁷ The involvement of, and cooperation with, non-State actors has thus gradually found its way into the international legal discourse which recognizes that the increasing interdependence within international society necessitates international cooperation including actors other than States. In the words of the Independent expert on human rights and international solidarity:

From a global perspective, interdependence, by its very nature, exists not only between States, but also between other international actors, and these relationships require international cooperation.¹¹⁸

67. The role of those actors has been recognized as essential for combating the effects of disasters. The duty of States to cooperate with the United Nations is expressed in Article 56 of the Charter and the Organization has, in turn, emphasized the need to work in close cooperation with IFRC¹¹⁹ and with non-governmental organizations and civil society as a whole.¹²⁰

68. In addition, a number of treaties between States and international organizations¹²¹ have been concluded that acknowledge the importance of international cooperation between State actors and non-State actors at the international level.¹²² Other international instruments do likewise. The preamble to the 1992 Rio Declaration on Environment and Development cites the goal of “establishing a new and equitable global partnership through the creation of new levels of cooperation among States, key sectors of societies and people”.¹²³ The concept of global partnership is then repeated in principles 7, 21 and 27. Cooperation is expressed in a number of ways. With regard to the present topic, principle 18 provides:

States shall immediately notify other States of any natural disasters or other emergencies that are likely to produce sudden harmful effects on the environment of those States. Every effort shall be made by the international community to help States so afflicted.

The ASEAN Agreement on Disaster Management and Emergency Response of 2005 states that:

¹¹⁷ *Yearbook ... 2008*, vol. II (Part One), addendum I, document A/CN.4/590 and Add.1–3, para. 18.

¹¹⁸ A/HRC/4/8, para. 11.

¹¹⁹ See, *inter alia*, resolutions 2435 (XXIII) of 19 December 1968, 2816 (XXVI) of 14 December 1971, 36/225 of 17 December 1981, 46/182 of 19 December 1990, 57/150 of 16 December 2002 and 63/139 of 11 December 2008.

¹²⁰ Resolutions 63/139 of 11 December 2008 and 63/141 of 11 December 2008.

¹²¹ The Special Rapporteur follows the definition provisionally adopted by the Commission under the topic of “Responsibility of international organizations”. Draft article 2 defines an international organization for the purposes of the draft articles as “an organization established by a treaty or other instrument governed by international law and possessing its own international legal personality. International organizations may include as members, in addition to States, other entities” (*Yearbook ... 2008*, vol. II (Part Two), para. 164).

¹²² See the list of instruments between States and international organizations in *Yearbook ... 2008*, vol. II (Part One), addendum I, document A/CN.4/590 and Add.1–3.

¹²³ *Report of the United Nations Conference on Environment and Development ...* (see footnote 83 above).

The Parties, in addressing disaster risks, shall involve, as appropriate, all stakeholders including local communities, non-governmental organizations and private enterprises, utilizing, among others, community-based disaster preparedness and early response approaches.¹²⁴

The 1986 Convention on Assistance in the Case of Nuclear Accident or Radiological Emergency provides in its first article:

The States Parties shall cooperate between themselves and with the International Atomic Energy Agency.

The Hyogo Declaration expresses the value of non-State actor involvement in the context of disaster reduction in terms of “cooperation, including partnerships”.¹²⁵ Likewise, the Institute of International Law, in its resolution on humanitarian assistance, has recognized the “essential role played by the United Nations, intergovernmental organizations, the International Committee of the Red Cross and non-governmental organizations”.¹²⁶

69. The concept of civil society does not necessarily carry a transnational connotation. Rather, it emphasizes local civil society. The working definition proposed by the London School of Economics Centre for Civil Society is illustrative:

¹²⁴ Art. 3, para. 6.

¹²⁵ Hyogo Declaration 2005 (footnote 73 above), para. 4. See also paragraph 2 in which “the importance of involving all stakeholders” is underlined.

¹²⁶ Resolution adopted on 2 September 2003 (Institute of International Law, *Yearbook*, p. 263).

Civil society refers to the arena of uncoerced collective action around shared interests, purposes and values. In theory, its institutional forms are distinct from those of the state, family and market, though in practice, the boundaries between state, civil society, family and market are often complex, blurred and negotiated. Civil society commonly embraces a diversity of spaces, actors and institutional forms, varying in their degree of formality, autonomy and power. Civil societies are often populated by organizations such as registered charities, development non-governmental organizations, community groups, women’s organizations, faith-based organizations, professional associations, trade unions, self-help groups, social movements, business associations, coalitions and advocacy groups.¹²⁷

70. In the light of the foregoing, the Special Rapporteur proposes the following draft article on the duty of cooperation:

“Draft article 3. Duty to cooperate

“For the purposes of the present draft articles, States shall cooperate among themselves and, as appropriate, with:

“(a) Competent international organizations, in particular the United Nations;

“(b) The International Federation of Red Cross and Red Crescent Societies; and

“(c) Civil society.”

¹²⁷ “What is civil society?”, Centre for Civil Society, London School of Economics, 2004.

CHAPTER III

Future work

71. The present report has focused on the scope of the protection of persons in the event of disasters and proposed a definition of disaster. It has stressed the conceptual approach to guide further developments, and has put forward a draft article on the basic principle that inspires work on the topic. As the next step, work shall be directed

towards complementing the first axis, namely, that of the rights and obligations of States in relation to one another, and identifying the principles that inspire the protection of persons in the event of disaster, in its aspect related to persons in need of protection. Further work will concentrate on the operational aspects of disaster relief and assistance.

PROTECTION OF PERSONS IN THE EVENT OF DISASTERS

[Agenda item 7]

DOCUMENT A/CN.4/643*

Fourth report on the protection of persons in the event of disasters, by Mr. Eduardo Valencia-Ospina, Special Rapporteur

[Original: English/French]
[11 May 2011]

CONTENTS

	<i>Page</i>
Multilateral instruments cited in the present report	205
Works cited in the present report	206
	<i>Paragraphs</i>
INTRODUCTION	1–27 207
A. Comments by Governments	1–26 207
B. Related developments.....	27 210
<i>Chapter</i>	
I. RESPONSIBILITY OF THE AFFECTED STATE TO SEEK ASSISTANCE WHERE ITS NATIONAL RESPONSE CAPACITY IS EXCEEDED	28–50 210
A. Responsibility of the affected State towards individuals on its territory.....	32–35 211
B. Cooperation	36–39 212
C. Formulations of a specific duty to seek assistance	40–50 213
<i>Draft article 10. Duty of the affected State to seek assistance</i>	<i>45 213</i>
II. DUTY OF THE AFFECTED STATE NOT TO ARBITRARILY WITHHOLD ITS CONSENT TO EXTERNAL ASSISTANCE	51–77 214
<i>Draft article 11. Duty of the affected State not to arbitrarily withhold its consent</i>	<i>77 218</i>
III. RIGHT TO OFFER ASSISTANCE IN THE INTERNATIONAL COMMUNITY	78–109 218
A. Offers of assistance by non-affected States	88–95 219
B. Offers of assistance by international organizations and other humanitarian actors	96–106 220
C. Non-interference.....	107–109 222
<i>Draft article 12. Right to offer assistance</i>	<i>109 222</i>

Multilateral instruments cited in the present report

	<i>Source</i>
Convention (I) for the pacific settlement of international disputes (The Hague, 18 October 1907)	J. B. Scott (ed.), <i>The Hague Conventions and Declarations of 1899 and 1907</i> , 3rd ed., New York, Oxford University Press, 1918, p. 41.
Convention (VIII) relative to the laying of automatic submarine contact mines (The Hague, 18 October 1907)	<i>Ibid.</i> , p. 151.

* Incorporating document A/CN.4/643/Corr.1.

	<i>Source</i>
Geneva Conventions for the protection of war victims (Geneva, 12 August 1949)	United Nations, <i>Treaty Series</i> , vol. 75, Nos. 970–973, pp. 31 <i>et seq.</i>
Geneva Convention relative to the Protection of Civilian Persons in Time of War	<i>Ibid.</i> , No. 973, p. 287.
Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of international armed conflicts (Protocol I) (Geneva, 8 June 1977)	<i>Ibid.</i> , vol. 1125, No. 17512, p. 3.
Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of non-international armed conflicts (Protocol II) (Geneva, 8 June 1977)	<i>Ibid.</i> , No. 17513, p. 609.
Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) (Rome, 4 November 1950)	<i>Ibid.</i> , vol. 213, No. 2889, p. 221.
International Covenant on Civil and Political Rights (New York, 16 December 1966)	<i>Ibid.</i> , vol. 999, No. 14668, p. 171.
International Covenant on Economic, Social and Cultural Rights (New York, 16 December 1966)	<i>Ibid.</i> , vol. 993, No. 14531, p. 3.
Treaty of amity and co-operation in Southeast Asia (Denpasar, Bali, 24 February 1976)	<i>Ibid.</i> , vol. 1025, No. 15063, p. 297.
Convention on assistance in the case of a nuclear accident or radiological emergency (Vienna, 26 September 1986)	<i>Ibid.</i> , vol. 1457, No. 24643, p. 133.
African Charter on the Rights and Welfare of the Child (Addis Ababa, 11 July 1990)	<i>Human Rights: A Compilation of International Instruments</i> , vol. II, <i>Regional Instruments</i> (United Nations publication, Sales No. E.97.XIV.1), sect. C, No. 39.
Inter-American Convention to Facilitate Disaster Assistance (Santiago, 7 June 1991)	OAS, <i>Official Documents</i> , OEA/Ser.A/49 (SEPF).
Tampere Convention on the Provision of Telecommunication Resources for Disaster Mitigation and Relief Operations (Tampere, 18 June 1998)	United Nations, <i>Treaty Series</i> , vol. 2296, No. 40906, p. 5.
Framework Convention on civil defence assistance (Geneva, 22 May 2000)	<i>Ibid.</i> , vol. 2172, No. 38131, p. 213.
ASEAN Agreement on Disaster Management and Emergency Response (Vientiane, 26 July 2005)	<i>ASEAN Documents Series 2005</i> , p. 157.
Convention on the Rights of Persons with Disabilities (New York, 13 December 2006)	United Nations, <i>Treaty Series</i> , vol. 2515, No. 44910, p. 3.

Works cited in the present report

- BOTHE, Michael
 “Relief actions”, in Rudolf Bernhardt (ed.), *Encyclopedia of Public International Law*. Amsterdam, Elsevier, 2000, pp. 168–174.
- HARDCASTLE, Rohan J. and Adrian T. L. CHUA
 “Humanitarian assistance: towards a right of access to victims of natural disasters”, *International Review of the Red Cross*, vol. 38, December 1998, No. 325, pp. 589–609.
- ICRC
Draft Additional Protocols to the Geneva Conventions of August 12, 1949. Commentary. Geneva, ICRC, 1973.
Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949. Geneva, ICRC, 1987.
- INSTITUTE OF INTERNATIONAL LAW
 “The protection of human rights and the principle of non-intervention in internal affairs of States”, *Yearbook*, vol. 63 (II), Session of Santiago de Compostela, 1989, Paris, Pedone, 1989, pp. 339–345.
 “Humanitarian assistance: Preparatory work”, *Yearbook*, vol. 70 (I), Session of Bruges, 2003: first part, Paris, Pedone.
- “Humanitarian assistance”, *Yearbook*, vol. 70 (II), Session of Bruges, 2003: second part, Paris, Pedone.
- INTERNATIONAL INSTITUTE OF HUMANITARIAN LAW
 “Guiding principles on the right to humanitarian assistance”, *International Review of the Red Cross*, vol. 33, November–December 1993, No. 297, p. 519.
- LAUTERPACHT, E. (ed.)
International Law: Being the Collected Papers of Hersch Lauterpacht, vol. 2, part 1. Cambridge, Cambridge University Press, 2009.
- RAMCHARAN, B. G.
 “The Concept and Dimension of the Right to Life”, in B. G. Ramcharan (ed.), *The Right to Life in International Law* (1985). Dordrecht, Martinus Nijhoff, 1985, pp. 1–31.
- SCHINDLER, Dietrich
 “The right to humanitarian assistance: right and/or obligation?” *International Colloquium on the Right to Humanitarian Assistance*, SHS-95/CONF.805/6, Paris, UNESCO, 1995.

Convinced that, in providing humanitarian assistance, in particular the supply of food, medicines or health care, for which access to victims is essential, rapid relief will avoid a tragic increase in their number.

The Framework Convention on civil defence assistance includes in article 3, paragraph (e), among the principles that States Parties undertake to respect in terms of providing assistance in the event of a disaster, the following:

Offers of, or requests for, assistance shall be examined and responded to by recipient States within the shortest possible time.

Any delay should be justified accordingly. In the context of international armed conflicts, the ICRC commentary to article 70 of Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of international armed conflicts (Protocol I) states that “in concrete terms, the delay can only really be justified if it is impossible for reasons of security to enter the territory where the receiving population is situated”.¹²³ Similarly, reasons of national security might be valid to justify a delay in the decision to accept or not an offer of assistance in the event of a disaster. The decision to refuse or accept humanitarian assistance should therefore be made for good reasons and without delay on the part of the affected State.

76. In conclusion, the rule on consent to humanitarian assistance must be in line with the purpose of the work of the Commission on this topic, defined in draft article 2, as provisionally adopted by the Commission.¹²⁴ To reinforce

¹²³ ICRC, *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949*, para. 2846.

¹²⁴ *Yearbook ... 2010*, vol. II (Part Two), para. 330.

this purpose, both in terms of the adequateness and effectiveness of the response, humanitarian assistance should not be arbitrarily objected to if required and appropriate to meet the essential needs of the persons concerned, with full respect for their rights. The position of the persons in need in all protection regimes and in the language adopted by the General Assembly is thus central to justifying a limitation on consent. In addition, the operational aspects involved may benefit from more clarity and transparency to enhance the response system, requiring the affected State to explain its conduct, in particular in case of refusal of humanitarian assistance.

77. Bearing these considerations in mind, the Special Rapporteur proposes the following draft article:¹²⁵

“Draft article 11. Duty of the affected State not to arbitrarily withhold its consent

“1. Consent to external assistance shall not be withheld arbitrarily if the affected State is unable or unwilling to provide the assistance required.

“2. When an offer of assistance is extended pursuant to draft article 12 of the present draft articles, the affected State shall, without delay, notify all concerned of its decision regarding such an offer.”

¹²⁵ This draft article follows immediately the text on consent proposed by the Special Rapporteur as paragraph 2 of draft article 8, in his third report (*Yearbook ... 2010*, vol. II (Part One), document A/CN.4/629, p. 392, para. 96), which was referred to and is currently under consideration by the Drafting Committee.

CHAPTER III

Right to offer assistance in the international community

78. Throughout the discussion of the Special Rapporteur’s three prior reports and from the resulting provisional adoption of nine draft articles within the Commission, valuable guidance has been provided as to the international legal basis for the protection of persons in the event of disasters. Solidarity underpins the principles of humanity, neutrality, impartiality and non-discrimination, which have emerged as the juridical framework that defines the present undertaking (draft article 6). Protection of the individual, in turn, remains its ultimate goal and inspiration, reflected in the Commission’s concern with the inherent dignity of the human being (draft article 7) and the protection of human rights (draft article 8).

79. In turn, the role of the affected State has been considered by the Commission. Its definition has also been inspired by dignity and human rights, as the affected State has the duty to ensure the protection of persons on its territory. Similarly, it is primarily responsible for the direction, control, coordination and supervision of efforts to provide relief and assistance therein (draft article 9).

80. Thus understood, the protection of persons in the event of disasters is a project of the international community as a whole, which is hinged upon the primary

responsibility of the affected State and its sovereignty. Such is the cornerstone of the legal structure that is framed by the principles of humanity, neutrality, impartiality and non-discrimination, underpinned by solidarity.

81. Non-affected States, as members of the international community, have an interest in the protection of persons in the event of disasters not occurring within their territory. This interest needs to be understood in the context of the primary responsibility of the affected State in the protection of persons in its territory, as it also is an expression of the principle of humanity, underpinned by solidarity. Furthermore, recognition of such interest is instrumental to the preservation of human dignity in the event of disasters, and the protection of human rights.

82. Perhaps the most salient instance of the interest of non-affected States in the protection of persons outside their territory is the event of a health hazard. In that case, the 2005 International Health Regulations¹²⁶ impose on all States members of WHO the duty to report evidence that a human victim outside their territory is not being appropriately treated. Under article 9, paragraph 2:

¹²⁶ WHO resolution WHA58.3.

States Parties shall, as far as practicable, inform WHO within 24 hours of receipt of evidence of a public health risk identified outside their territory that may cause international disease spread, as manifested by exported or imported:

- (a) Human cases;
- (b) Vectors which carry infection or contamination; or
- (c) Goods that are contaminated.

83. This dual nature of the disaster as primary responsibility of the affected State or States, on the one hand, and as a global event of interest for the international community as a whole, on the other, has been noted before by the 186 States that adopted the 2005 Hyogo Framework for Action,¹²⁷ paragraph 13 (b) of which confirms the 1994 Yokohama Strategy, and provides:

Taking into account the importance of international cooperation and partnerships, each State has the primary responsibility for its own sustainable development and for taking effective measures to reduce disaster risk, including for the protection of people on its territory, infrastructure and other national assets from the impact of disasters. At the same time, in the context of increasing global interdependence, concerted international cooperation and an enabling international environment are required to stimulate and contribute to developing the knowledge, capacities and motivation needed for disaster risk reduction at all levels.

84. An appropriate point of complementarity between the primary responsibility of the affected State and the interest of non-affected States in the protection of persons in the event of disasters may be found in the form of the latter's right to offer assistance in the event of disasters. Offering assistance in the international community is the practical manifestation of solidarity, informing the present undertaking since its early inception. As such, it is the logical corollary of the recognition that the protection of persons in the event of disasters is an inherently global matter, which strains the capacity of the affected sovereign State, yet confirms the importance of its role as the primary responsible for the protection of its population.

85. Such a holistic approach to conflicts has been long part of the evolution of international law, most notably in the context of international humanitarian law. As early as 1907, the Convention (I) for the pacific settlement of international disputes established the right of third parties to offer their assistance in the event of an international dispute, while recognizing the right of the States in dispute to reject the means of reconciliation that could be offered. Under article 3 of the Convention:

Independently of this recourse, the *Contracting Powers* deem it expedient and *desirable* that one or more Powers, strangers to the dispute, should, on their own initiative and as far as circumstances may allow, offer their good offices or mediation to the States at variance.

Powers strangers to the dispute have the right to offer good offices or mediation even during the course of hostilities.

The exercise of this right can never be regarded by either of the parties in dispute as an unfriendly act.

86. Moreover, the same principle providing for the right to offer assistance of third parties can be found in subparagraph (2) of common article 3 of the Geneva Conventions for the Protection of War Victims:

In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:

... (2) The wounded and sick shall be collected and cared for. An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict.

87. Similarly, article 18 of Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of non-international armed conflicts (Protocol II) has recognized the right of third parties to offer assistance in the case of conflict:

1. Relief societies located in the territory of the High Contracting Party, such as Red Cross (Red Crescent, Red Lion and Sun) organizations may offer their services for the performance of their traditional functions in relation to the victims of the armed conflict. The civilian population may, even on its own initiative, offer to collect and care for the wounded, sick and shipwrecked.

2. If the civilian population is suffering undue hardship owing to a lack of the supplies essential for its survival, such as food-stuffs and medical supplies, relief actions for the civilian population which are of an exclusively humanitarian and impartial nature and which are conducted without any adverse distinction shall be undertaken subject to the consent of the High Contracting Party concerned.

A. Offers of assistance by non-affected States

88. The holistic mindset has inspired more recent international legal developments, outside the laws of armed conflict. Specifically concerned with the present undertaking, the State's right to offer assistance in the context of disaster response has also been recognized in multiple international treaties. In the Convention on assistance in the case of nuclear accident or radiological emergency, article 2, paragraph 4, creates a system of an open offer of assistance in the event of nuclear disasters, in the following terms:

States Parties shall, within the limits of their capabilities, identify and notify the Agency of experts, equipment and materials which could be made available for the provision of assistance to other States Parties in the event of a nuclear accident or radiological emergency as well as the terms, especially financial, under which such assistance could be provided.

89. In turn, the Inter-American Convention to Facilitate Disaster Assistance features that right in article I, paragraph b, providing that "[a]cceptance by a State party of an offer of assistance from another State party shall be considered to be a request for such assistance". Article II of the same Convention develops the rules applicable to the possibility of offering assistance on the basis of a prior offer by the non-affected State, followed by the voluntary acceptance of the affected State. The system is set out in the Convention in the following terms:

a. Requests for and offers and acceptance of assistance from one State party to another shall be communicated via diplomatic channels or the National Coordinating Authority, as the circumstances may warrant.

b. Upon the occurrence of a disaster the assisting State shall consult with the assisted State to receive from the latter information on the kind of assistance considered most appropriate to provide to the populations stricken by the disaster.

c. To facilitate assistance, a State party that accepts it shall promptly notify its competent national authorities and/or its National Coordinating Authority to extend the necessary facilities to the assisting State, in accordance with this Convention.

¹²⁷ United Nations International Strategy for Disaster Reduction. *Hyogo Framework for Action 2005–2015: Building the Resilience of Nations and Communities to Disasters*, World Conference on Disaster Reduction (18–22 January 2005)(A/CONF.206/6, resolution 2).

90. A similar solution was found in the Tampere Convention of Telecommunication Resources for Disaster Mitigation and Relief Operations, which also contains language recognizing the right to offer assistance. According to article 4, paragraphs 5 and 6:

5. No telecommunication assistance shall be provided pursuant to this Convention without the consent of the requesting State Party. The requesting State Party shall retain the authority to reject all or part of any telecommunication assistance offered pursuant to this Convention in accordance with the requesting State Party's existing national law and policy.

6. The States Parties recognize the right of requesting States Parties to request telecommunication assistance directly from non-State entities and intergovernmental organizations, and the right of non-State entities and intergovernmental organizations, pursuant to the laws to which they are subject, to provide telecommunication assistance to requesting States Parties pursuant to this Article.

91. Confirming the pattern, the Framework Convention on civil defence assistance establishes in article 3:

The States Parties undertake to respect the following principles in terms of providing assistance when a State is threatened or affected by a disaster:

(a) Only assistance requested by the Beneficiary State or proposed by the Supporting State and accepted by the Beneficiary State may take place.

(b) All offers of assistance shall respect the sovereignty, independence and territorial integrity of the Beneficiary State as well as the principle of non-intervention in the internal affairs of this State and should be carried out with due respect for its ways and customs. Such assistance should not be viewed as interference in the internal affairs of the Beneficiary State.

(c) Assistance shall be provided without discrimination, particularly with regard to race, colour, sex, language, religion, political or any other opinion, to national or social origin, to wealth, birth, or any other criterion.

(d) Assistance shall be undertaken in a spirit of humanity, solidarity and impartiality.

(e) Offers of, or requests for, assistance shall be examined and responded to by recipient States within the shortest possible time.

92. More recently, the ASEAN Agreement on Disaster Management and Emergency Response established the following guiding principle (art. 3, para. 1):

The sovereignty, territorial integrity and national unity of the Parties shall be respected, in accordance with the Charter of the United Nations and the Treaty of Amity and Cooperation in Southeast Asia, in the implementation of this Agreement. In this context, each affected Party shall have the primary responsibility to respond to disasters occurring within its territory and external assistance or offers of assistance shall only be provided upon the request or with the consent of the affected Party.

93. The right to offer assistance is recognized as well by a wealth of other international instruments. The United Nations Committee on Economic, Social and Cultural Rights has put forward the individual responsibility of States to contribute in times of emergency, and their interest in doing so, in its General Comment No. 14 (2000),¹²⁸ concerned with the right to the highest attainable standard of health (article 12 of the International Covenant on Economic, Social and Cultural Rights), paragraph 40 of which reads:

¹²⁸ See *Official Records of the Economic and Social Council, Twenty-second, Twenty-third and Twenty-fourth Sessions, Supplement No. 2, annex IV.*

States parties have a joint and individual responsibility, in accordance with the Charter of the United Nations and relevant resolutions of the United Nations General Assembly and of the World Health Assembly, to cooperate in providing disaster relief and humanitarian assistance in times of emergency, including assistance to refugees and internally displaced persons. Each State should contribute to this task to the maximum of its capacities. Priority in the provision of international medical aid, distribution and management of resources, such as safe and potable water, food and medical supplies, and financial aid should be given to the most vulnerable or marginalized groups of the population. Moreover, given that some diseases are easily transmissible beyond the frontiers of a State, the international community has a collective responsibility to address this problem. The economically developed States parties have a special responsibility and interest to assist the poorer developing States in this regard.

94. Moreover, a number of expertise-based organizations, concerned with the development of international law, have also put forward the right to offer assistance in the event of disasters. Thus, the Institute of International Law, in article 5 of its 1989 resolution on the protection of human rights and the principle of non-intervention in internal affairs of States, stated:

An offer by a State, a group of States, an international organization or an impartial humanitarian body such as the International Committee of the Red Cross, of food or medical supplies to another State in whose territory the life or health of the population is seriously threatened cannot be considered an unlawful intervention in the internal affairs of that State. However, such offers of assistance shall not, particularly by virtue of the means used to implement them, take a form suggestive of a threat of armed intervention or any other measure of intimidation; assistance shall be granted and distributed without discrimination.

States in whose territories these emergency situations exist should not arbitrarily reject such offers of humanitarian assistance.¹²⁹

95. Developing such a principle, the Institute of International Law has more recently given content to a specific right to offer assistance in its 2003 resolution on humanitarian assistance. Under article IV, there is a specific right:

Right to offer and provide humanitarian assistance

1. States and organizations have the right to offer humanitarian assistance to the affected State. Such an offer shall not be considered unlawful interference in the internal affairs of the affected State, to the extent that it has an exclusively humanitarian character.

2. States and organizations have the right to provide humanitarian assistance to victims in the affected States, subject to the consent of these States.¹³⁰

B. Offers of assistance by international organizations and other humanitarian actors

96. The interest of the international community in the protection of persons in the event of disasters can be better achieved through the expedient involvement of international organizations and other humanitarian actors, always in the framework of the principles of humanity, neutrality, impartiality and non-discrimination, underpinned by solidarity.

97. Several of the aforementioned instruments establishing a right to offer assistance on behalf of non-affected

¹²⁹ Institute of International Law, "The protection of human rights and the principle of non-intervention in internal affairs of States", p. 339 (rapporteur: Giuseppe Sperduti).

¹³⁰ Institute of International Law, "Humanitarian assistance" p. 262 (rapporteur: Budislav Vukas).

States extend that benefit to international organizations and other humanitarian actors. Moreover, offers of assistance from these actors have also been addressed specifically and belong as well to the *acquis* of the international law of disaster response.

98. In the ambit of the United Nations, the Secretary-General has been deemed competent to call upon States to offer assistance to victims of natural disasters and other disastrous situations, e.g., in General Assembly resolutions 43/131 of 8 December 1988 (Humanitarian assistance to victims of natural disasters and similar emergency situations), 36/225 of 17 December 1981 (Strengthening the capacity of the United Nations system to respond to natural disasters and other disaster situations) and 46/108 of 16 December 1991 (Assistance to refugees, returnees and displaced persons in Africa).

99. WHO, in turn, has been given the express power to offer its assistance in the event of a global health hazard. According to article 10, paragraph 3, of the 2005 International Health Regulations,

When WHO receives information of an event that may constitute a public health emergency of international concern, it shall offer to collaborate with the State Party concerned in assessing the potential for international disease spread, possible interference with international traffic and the adequacy of control measures. Such activities may include collaboration with other standard-setting organizations and the offer to mobilize international assistance in order to support the national authorities in conducting and coordinating on-site assessments. When requested by the State Party, WHO shall provide information supporting such an offer.¹³¹

100. In similar terms, under article 5, paragraph (d), of the Convention on assistance in the case of nuclear accident or radiological emergency, IAEA was given the power to:

Offer its good offices to the States Parties and Member States in the event of a nuclear accident or radiological emergency.

101. The International Institute of Humanitarian Law adopted a corresponding approach in its 1993 Guiding Principles on the Right to Humanitarian Assistance (San Remo Principles), of which Principle 5 provides that

National authorities, national and international organizations, whose statutory mandates provide for the possibility of rendering humanitarian assistance, such as the ICRC, UNHCR (Office of the United Nations High Commissioner for Refugees), other organizations of the United Nations system, and professional humanitarian organizations, have the right to offer such assistance when the conditions laid down in the present Principles are fulfilled. This offer should not be regarded as an unfriendly act or an interference in a State's internal affairs. The authorities of the States concerned, in the exercise of their sovereign rights, should extend their cooperation concerning the offer of humanitarian assistance to their populations.¹³²

102. Non-governmental humanitarian organizations have also played a pivotal role in disaster response. The General Assembly was keen in recognizing as much, when in resolution 43/131 of 8 December 1988 (Humanitarian assistance to victims of natural disasters and similar emergency situations) it stated:

The General Assembly,

...

Aware that alongside the action of Governments and intergovernmental organizations, the speed and efficiency of this assistance often depends on the help and aid of local and non-governmental organizations working with strictly humanitarian motives,

...

3. *Stresses* the important contribution made in providing humanitarian assistance by intergovernmental and non-governmental organizations working with strictly humanitarian motives;

4. *Invites* all States in need of such assistance to facilitate the work of these organizations in implementing humanitarian assistance, in particular the supply of food, medicines and health care, for which access to victims is essential;

5. *Appeals*, therefore, to all States to give their support to these organizations working to provide humanitarian assistance, where needed, to the victims of natural disasters and similar emergency situations.

103. The offer of assistance by non-governmental humanitarian organizations is, therefore, a crucial aspect of the present project, which can also be found in prior developments of international law. Most of the instruments recognizing the right of States and international organizations also extend that benefit to humanitarian organizations. In the context of international humanitarian law, common article 3 of the Geneva Conventions for the Protection of War Victims and article 18 of Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of non-international armed conflicts (Protocol II) (quoted respectively in paras. 86 and 87 above) recognize the right of humanitarian organizations to offer their assistance in the case of conflict.

104. The Guiding Principles on Internal Displacement, in turn, establish under Principle 25:

1. The primary duty and responsibility for providing humanitarian assistance to internally displaced persons lies with national authorities.

2. International humanitarian organizations and other appropriate actors have the right to offer their services in support of the internally displaced. Such an offer shall not be regarded as an unfriendly act or an interference in a State's internal affairs and shall be considered in good faith. Consent thereto shall not be arbitrarily withheld, particularly when authorities concerned are unable or unwilling to provide the required humanitarian assistance.¹³³

105. Recent international practice suggests the existence of extensive and consistent practice of States and international and non-governmental organizations making offers of assistance to a State affected by a disaster. According to press reports, in response to the Japanese earthquake and tsunami of 11 March 2011, offers of assistance were made as of 17 March by about 113 countries.¹³⁴ Likewise, press and United States congressional sources report that in the aftermath of Hurricane Katrina in 2005, a large number of States offered \$854 million in cash and in kind to the United States.¹³⁵ Similarly, many international organizations have made offers of assistance to States affected by disaster. For example, according to press information, after

¹³³ E/CN.4/1998/53/Add.2.

¹³⁴ For a full list of offers of assistance by States, see Reuters, "Factbox: Aid and rescue offers for Japan quake", 17 March 2011.

¹³⁵ Bill Rodgers, "Katrina foreign aid handling generates criticism", Voice of America News, 14 May 2007.

¹³¹ See footnote 126 above.

¹³² International Institute of Humanitarian Law, "Guiding principles on the right to humanitarian assistance", p. 521.

the Haiti earthquake of 12 January 2010, the EU offered €337 million in aid to the ravaged country.¹³⁶ In addition to about 113 States which offered assistance to Japan following the 2011 earthquake and tsunami, 24 international organizations offered humanitarian assistance.¹³⁷

106. The Special Rapporteur concludes that the right to offer assistance is not limited to non-affected States, but applies also to international organizations whose mandate may be interpreted as including such offer, and other humanitarian organizations. Through the recognition of this right, the present projects complete the landscape of relevant actors needed to achieve the interest of the international community in the protection of persons in the event of disasters.

C. Non-interference

107. International instruments providing for a right to offer assistance by relevant actors in case of disaster or similar situations are consistent in reiterating the basic assumption of the Special Rapporteur's third report that any such offer shall not be regarded as interference in the internal affairs of the beneficiary State nor an infringement on its sovereignty. For example, article 3, paragraph (b), of the Framework Convention on civil defence assistance¹³⁸ states that offers of assistance should not be viewed as interference in the internal affairs of the

¹³⁶ Reuters, "EU offers over 400 million euros quake aid to Haiti", 18 January 2010.

¹³⁷ See footnote 134 above.

¹³⁸ See paragraph 91 above.

beneficiary State. Similarly, Principle 5 of the Guiding Principles on the Right to Humanitarian Assistance contains a provision that offers of assistance should not be regarded as an unfriendly act or an interference in a State's internal affairs.¹³⁹

108. Legal instruments in related areas provide likewise. The Guiding Principles on Internal Displacement provides that offers of assistance should not be regarded as an unfriendly act or an interference in the affected State's internal affairs.¹⁴⁰ The commentary to article 18 of Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of non-international armed conflicts (Protocol II) also states that offers made by ICRC should not be considered an interference in the internal affairs of the State or as infringing its sovereignty, whether or not the offer is accepted.¹⁴¹

109. In the light of the foregoing, the Special Rapporteur proposes the following draft article 12 on the right to offer assistance:

"Draft article 12. Right to offer assistance

"In responding to disasters, States, the United Nations, other competent intergovernmental organizations and relevant non-governmental organizations shall have the right to offer assistance to the affected State."

¹³⁹ See footnote 132 above.

¹⁴⁰ E/CN.4/1998/53/Add.2, annex, Principle 25, para. 2.

¹⁴¹ ICRC, *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949*, para. 4892.

PROTECTION OF PERSONS IN THE EVENT OF DISASTERS

[Agenda item 4]

DOCUMENT A/CN.4/652

Fifth report on the protection of persons in the event of disasters, by Mr. Eduardo Valencia-Ospina, Special Rapporteur

[Original: English]
[9 April 2012]

CONTENTS

	<i>Page</i>
Multilateral instruments cited in the present report	12
Works cited in the present report	13
	<i>Paragraphs</i>
INTRODUCTION	1–9 13
<i>Chapter</i>	
I. COMMENTS MADE IN THE SIXTH COMMITTEE BY STATES AND ORGANIZATIONS	10–54 14
A. General comments	12–16 14
B. Draft articles 5–8	17–22 15
C. Draft article 9	23 16
D. Draft article 10	24–32 16
E. Draft article 11	33–43 17
F. The right to offer assistance (proposed draft article 12)	44–50 18
G. Duty to provide assistance (question posed by the Commission in its 2011 annual report)	51–54 19
II. THE SPECIAL RAPPORTEUR'S POSITION ON THE COMMISSION'S QUESTION IN ITS 2011 ANNUAL REPORT	55–78 20
III. ELABORATION ON THE DUTY TO COOPERATE	79–116 23
A. The nature of cooperation and respect for the affected State's sovereignty	82–84 23
B. The duty to cooperate, an obligation of conduct	85–92 23
C. Categories of cooperation	93–116 24
IV. CONDITIONS FOR THE PROVISION OF ASSISTANCE	117–181 28
A. Compliance with national laws	120–145 29
B. Identifiable needs and quality control	146–160 32
C. Limitations on conditions under international and national law	161–181 35
V. TERMINATION OF ASSISTANCE	182–187 39
VI. RELATED DEVELOPMENTS	188–190 40

Multilateral instruments cited in the present report

	<i>Source</i>
Declaration of St. Petersburg of 1868 to the Effect of Prohibiting the Use of Certain Projectiles in Wartime (St. Petersburg, 11 December 1868)	International Committee of the Red Cross, <i>Handbook of the International Red Cross and Red Crescent Movement</i> , 14th ed., Geneva, 2008, p. 331.
The Hague Convention of 1899 Respecting the Laws and Customs of War on Land (The Hague, 29 July 1899)	James Brown Scott (ed.), <i>The Hague Conventions and Declarations of 1899 and 1907</i> , New York, Oxford University Press, 1915, p. 100.
Convention and Statute establishing an International Relief Union (Geneva, 12 July 1927)	League of Nations, <i>Treaty Series</i> , vol. CXXXV (1932–1933), No. 3115, p. 247.
Geneva Conventions for the protection of war victims (Geneva, 12 August 1949)	United Nations, <i>Treaty Series</i> , vol. 75, Nos. 970–973, pp. 31 <i>et seq.</i>
Geneva Convention relative to the Treatment of Prisoners of War (Geneva, 12 August 1949)	<i>Ibid.</i> , No. 972, p. 135.
Consolidated version of the Treaty on the Functioning of the European Union (Rome, 25 March 1957)	<i>Official Journal of the European Union</i> , vol. 45, No. C 83/47, 30 March 2010.
Nordic Mutual Emergency Assistance Agreement in connection with (Vienna, 17 October 1963)	United Nations, <i>Treaty Series</i> , vol. 525, No. 7585, p. 75.
International Covenant on Civil and Political Rights (New York, 16 December 1966)	<i>Ibid.</i> , vol. 999, No. 14668, p. 171.
International Covenant on Economic, Social and Cultural Rights (New York, 16 December 1966)	<i>Ibid.</i> , vol. 993, No. 14531, p. 3.
Convention on the Elimination of All Forms of Discrimination against Women (New York, 18 December 1979)	<i>Ibid.</i> , vol. 1249, No. 20378, p. 13.
Vienna Convention for the Protection of the Ozone Layer (Vienna, 22 March 1985)	<i>Ibid.</i> , vol. 1513, No. 26164, p. 293.
Montreal Protocol on Substances that Deplete the Ozone Layer (Montreal, 16 September 1987)	<i>Ibid.</i> , vol. 1522, No. 26369, p. 3.
Convention on assistance in the case of a nuclear accident or radiological emergency (Vienna, 26 September 1986)	<i>Ibid.</i> , vol. 1457, No. 23643, p. 133.
Agreement [between Denmark, Finland, Norway and Sweden] on cooperation across State frontiers to prevent or limit damage to persons or property or to the environment in the case of accidents (Stockholm, 20 January 1989)	<i>Ibid.</i> , vol. 1777, No. 31001, p. 223.
Convention on the Rights of the Child (New York, 20 November 1989)	<i>Ibid.</i> , vol. 1577, No. 27531, p. 3.
Convention on temporary admission (Istanbul, 26 June 1990)	<i>Ibid.</i> , vol. 1762, No. 30667, p. 121.
Agreement establishing the Caribbean Disaster Emergency Response Agency (Port of Spain, 26 February 1991)	<i>Ibid.</i> , vol. 2256, No. 40212, p. 53.
Inter-American Convention to Facilitate Disaster Assistance (Santiago, 7 June 1991)	OAS, <i>Official Documents</i> , OEA/Ser.A/49 (SEPF), p. 13.
Convention on the Transboundary Effects of Industrial Accidents (Helsinki, 17 March 1992)	United Nations, <i>Treaty Series</i> , vol. 2105, No. 36605, p. 457.
Agreement among the Governments of the Participating States of the Black Sea Economic Cooperation (BSEC) on collaboration in Emergency Assistance and Emergency Response to natural and man-made Disasters (Sochi, 15 April 1998)	Available from www.bsec-organization.org .
Tampere Convention on the Provision of Telecommunication Resources for Disaster Mitigation and Relief Operations (Tampere, 18 June 1998)	United Nations, <i>Treaty Series</i> , vol. 2296, No. 40906, p. 5.
International Convention on the simplification and harmonization of Customs procedures (as amended) (Kyoto, 18 May 1973)	<i>Ibid.</i> , vol. 950, No. 13561, p. 269.
Protocol of Amendment to the International Convention on the simplification and harmonization of Customs procedures (Brussels, 26 June 1999)	<i>Ibid.</i> , vol. 2370, No. 13561, p. 27.
Food Aid Convention, 1999 (London, 13 April 1999)	United Nations, <i>Treaty Series</i> , vol. 2073, No. 32022, p. 135.
Protocol on Health in the Southern African Development Community (Maputo, 18 August 1999)	Available from www.sadc.int .
Framework Convention on civil defence assistance (Geneva, 22 May 2000)	<i>Ibid.</i> , vol. 2172, No. 38131, p. 213.
Partnership agreement between the members of the African, Caribbean and Pacific Group of States and the European Community and its member States (Cotonou, 23 June 2000)	<i>Official Journal of the European Communities</i> , No. L 317, vol. 43 (15 December 2000), p. 3.
ASEAN Agreement on Disaster Management and Emergency Response (Vientiane, 26 July 2005)	<i>ASEAN Documents Series 2005</i> , p. 157.
Convention on the Rights of Persons with Disabilities (New York, 13 December 2006)	United Nations, <i>Treaty Series</i> , vol. 2515, No. 44910, p. 3.
African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (the Kampala Convention) (Kampala, 23 October 2009)	Available from www.au.int .

CHAPTER III

Elaboration on the duty to cooperate

79. In response to comments made in the Sixth Committee, as summarized above,¹⁴³ the Special Rapporteur will now proceed to a further elaboration on the duty to cooperate, enshrined in draft article 5.

80. As discussed in the previous reports of the Special Rapporteur, cooperation plays a central role in the context of disaster relief and is an imperative for the effective and timely response to disaster situations. Such an essential role lends itself to further elaboration of the functional requirements of the duty to cooperate outlined in draft article 5 and the kind of coordination required by affected States and assisting actors.

81. The present analysis is, therefore, an attempt to identify the contours of the duty of cooperation in draft article 5. Admittedly, the nature of cooperation has to be shaped by its purpose, which in the present context is to provide disaster relief assistance. Seen from the larger perspective of public international law, to be legally and practically effective, the States' duty to cooperate in the provision of disaster relief must strike a fine balance between three important aspects. First, such a duty cannot intrude into the sovereignty of the affected State. Second, the duty has to be imposed on assisting States as a legal obligation of conduct. Third, the duty has to be relevant and limited to disaster relief assistance, by encompassing the various specific elements that normally make up cooperation on this matter.

A. The nature of cooperation and respect for the affected State's sovereignty

82. By its very nature, cooperation is likely to appear in conflict with the sovereign prerogatives of the recipient State. For example, food access to domestic populations or the use of foreign search and rescue teams might both be regarded as offensive to the traditional notion of State sovereignty. The legitimate concern to give its due to the affected State's sovereignty has been examined extensively in the Special Rapporteur's previous reports and the earlier discussions in the Commission. Therefore, while reaffirming that, as such, this issue remains a central consideration regarding the nature of cooperation, the present section needs to touch on it rather briefly.

83. Any attempt to provide disaster relief must take cognizance of the principle of sovereignty. In order to respect and safeguard the sovereignty of the affected State, article 5 disposes that cooperation will be implemented "in accordance with the present draft articles". Consequently, cooperation will have to be extended in conformity with draft article 9, which places the affected State, "by virtue of its sovereignty", at the forefront of all disaster relief assistance, limiting other interested actors to a complementary role.

84. The attempt to provide for assistance while respecting the sovereignty of the affected State is not a novel concept in international law. As indicated in

paragraph (1) of the commentary to draft article 5,¹⁴⁴ the Charter of the United Nations balances both concepts of sovereignty (Art. 2, para. 1), and international cooperation (Art. 1, para. 3; Arts. 13, 55 and 56). Similar balancing is achieved in the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations.¹⁴⁵ Likewise, such balance is reflected in General Assembly resolution 46/182 on the strengthening of the coordination of humanitarian emergency assistance of the United Nations and in the Tampere Convention.

B. The duty to cooperate, an obligation of conduct

85. The duty to cooperate is also embodied in article 17 of the final draft articles on the Law of transboundary aquifers, adopted by the Commission at its sixtieth session, in 2008.¹⁴⁶ Paragraph 4 of the article reads:

States shall provide scientific, technical, logistical and other cooperation to other States experiencing an emergency. Cooperation may include coordination of international emergency actions and communications, making available emergency response personnel, emergency response equipment and supplies, scientific and technical expertise and humanitarian assistance.

86. The article calls for States to provide "scientific, technical, logistical and other cooperation" to other States experiencing an emergency, in order to ensure the protection of an aquifer. It expands upon the general obligation to cooperate in draft article 7 by describing the cooperation necessary between affected States and assisting actors in emergency situations. The commentary to article 17 indicates that the Commission established an obligation "of conduct and not result".¹⁴⁷ The commentary further states that the

assistance required would relate to coordination of emergency actions and communication, providing trained emergency response personnel, response equipment and supplies, extending scientific and technical expertise and humanitarian assistance.¹⁴⁸

87. The ASEAN Declaration on Mutual Assistance on Natural Disasters of 1976¹⁴⁹ contains similar language and provides that

The Member Countries shall, within their respective capabilities, cooperate in the

- (a) improvement of communication channels among themselves as regards disaster warning;
- (b) exchange of experts and trainees;
- (c) exchange of information and documents; and
- (d) dissemination of medical supplies, services and relief assistance.

¹⁴⁴ *Yearbook ... 2010*, vol. II (Part Two), pp. 188–189.

¹⁴⁵ General Assembly resolution 2625 (XXV) of 24 October 1970.

¹⁴⁶ *Yearbook ... 2008*, vol. II (Part Two), p. 22.

¹⁴⁷ *Ibid.*, p. 41, para. (4) of the commentary.

¹⁴⁸ *Ibid.*, p. 42, para. (9) of the commentary.

¹⁴⁹ Signed at Manila on 26 June 1976, *Malaya Law Review*, vol. 20 (1978), p. 411.

¹⁴³ See, in particular, paragraphs 17, 28–29, 37, 45, 47 and 53 above.

88. The establishment of an obligation of conduct rather than one of result appears in various United Nations instruments. The General Assembly, in paragraph 12 of the annex to resolution 46/182, called for the United Nations to adopt a coordinating role in the provision of emergency aid, but not for specific attainments as a result of that coordination. The Declaration on the Establishment of a New International Economic Order focuses on conduct in its call for “the strengthening, through individual and collective actions, of mutual economic, trade, financial and technical cooperation among the developing countries”.¹⁵⁰

89. The Economic and Social Council, in resolution 2008/36 of 25 July 2008 dealing with emergency humanitarian assistance, also called for specific conduct without envisaging any specific outcome, when it

encourages Member States to create and strengthen an enabling environment for the capacity-building of their national and local authorities, national societies of the Red Cross and Red Crescent, and national and local non-governmental and community-based organizations in providing timely humanitarian assistance, and also encourages the international community, the relevant entities of the United Nations system and other relevant institutions and organizations to support national authorities in their capacity-building programmes, including through technical cooperation and long-term partnerships based on recognition of their important role in providing humanitarian assistance.¹⁵¹

90. Several multilateral instruments prioritize the establishment of an obligation of conduct. The States parties to the Tampere Convention, for example, agree, in article 3, paragraph 2 (c), to “the provision of prompt telecommunication assistance to mitigate the impact of a disaster”, but not to the functioning of a given type of telecommunications network. For its part, the ASEAN Agreement, which has detailed provisions on the methods of technical and scientific cooperation, does not turn any of those provisions into obligations. Instead of, for example, agreeing to standardize their reporting methods by a certain date, the members of ASEAN agree, in article 18, paragraph 1 (b), of the ASEAN Agreement, to “promote the standardization of the reporting format of data and information”. Similarly, obligations of conduct and not result are found in the Convention on the Rights of Persons with Disabilities and the Convention on assistance in the case of a nuclear accident or radiological emergency.

91. Outside the realm of international disaster relief law proper, the obligation to cooperate as an obligation of conduct and not one of result is also embodied in bilateral treaties. Among the many examples, suffice it to mention the United States–Mexico Treaty on Agriculture, which commits both States to cooperation on fumigation of pears, but not to the eradication of the Oriental Moth.¹⁵² The Agreement between the European Community and

the United States of America on precursors and chemical substances frequently used in the illicit manufacture of narcotic drugs or psychotropic substances calls for “technical cooperation ... in particular, training and exchange programmes for the officials concerned”, but not in requiring that those officials pass a certain predetermined knowledge test.¹⁵³

92. In line with other relevant international legal obligations, by its very nature, cooperation regarding the protection of persons in the event of disasters implies an obligation of conduct and not one of result.

C. Categories of cooperation

93. In the context of the present topic, the duty to cooperate has a well-defined goal, i.e. to protect persons in the event of disasters. To meet this goal in practice, the duty to cooperate most often covers activities such as “medical care, food, agricultural training, disaster relief, shelter, education, clothing, water, professional exchanges, institutional reform, technical assistance, and support of human rights and civil liberties”.¹⁵⁴ The duty to cooperate must be understood as encompassing a great variety of coordinating, technical, scientific and logistical activities. Guidance as to the extent of such activities under draft article 5 can be found in other related international legal rules that specify the nature of the cooperation involved.

94. Cooperation has been addressed in specific terms in various United Nations instruments. The General Assembly, in resolution 46/182, explained how the United Nations should adopt a coordinating role and—as an indicative list—should

establish a central register of all specialized personnel and teams of technical specialists, as well as relief supplies, equipment and services available within the United Nations system and from Governments and intergovernmental and non-governmental organizations, that can be called upon at short notice by the United Nations.¹⁵⁵

The Declaration on the Establishment of a New International Economic Order calls, in turn, for, *inter alia*, the strengthening of “technical cooperation”. Such cooperation was also called for by the Economic and Social Council in its aforementioned resolution 2008/36, which focused on humanitarian assistance. The last two instruments, however, do not elaborate on the meaning of “technical cooperation”.

95. Some multilateral instruments refer to specific categories of cooperation without accompanying them by indicative or exhaustive lists. For example, the International Covenant on Economic, Social and Cultural Rights refers to economic and technical cooperation (art. 2) and to the creation of specific programmes on the problem of hunger (art. 11). A series of environmental instruments also call for coordination on the basis of such general categories. The 1972 Declaration of the United Nations Conference on the Human Environment (“Stockholm Declaration”) provides for “accelerated development

¹⁵⁰ General Assembly resolution 3201 (S-VI), para. 4 (s).

¹⁵¹ *Official Records of the Economic and Social Council, Supplement No. 1 (E/2008/99 and Corr.1)*, Economic and Social Council resolution 2008/36 of 25 July 2008, entitled “Strengthening of the coordination of emergency humanitarian assistance of the United Nations”, para. 2.

¹⁵² United States, State Department No. 02-50, 2002 WL 1517444 (Treaty), Memorandum of understanding between the United States Department of Agriculture and the Office of the United States Trade Representative, and the Secretariat of Agriculture, Livestock, Rural Development, Fisheries and Food and the Secretariat of Economy of the United Mexican States regarding areas of food and agricultural trade, signed at Washington, D.C. and Mexico City on 29 March, and 1 and 3 April 2002.

¹⁵³ *Official Journal of the European Communities*, L 164/27, 21 June 1997, art. 9.

¹⁵⁴ Holland Anthony, “The responsible role for international charitable grantmaking in the wake of the September 11, 2001 terrorist attacks”, p. 911.

¹⁵⁵ Annex, para. 27.

through financial and technological assistance”, which “includes scientific information and expertise relevant to mitigating environmental degradation”.¹⁵⁶ The Vienna Convention for the Protection of the Ozone Layer calls for information-sharing among all Parties to that Convention of scientific, technical, socioeconomic, commercial and legal information relevant to that Convention (art. 4, para. 1). Finally, the Montreal Protocol on Substances that Deplete the Ozone Layer appeals to developed nations to provide financial assistance and technology to less-developed nations (arts. 5 and 10).

96. Other multilateral treaties provide more detailed examples that help to clarify the general categories of cooperation that they identify. The Convention on the Rights of Persons with Disabilities indicates, in article 32, paragraph 1 (d), that “technical and economic assistance” includes “facilitating access to and sharing of accessible and assistive technologies, and through the transfer of technologies”. Similarly, the Tampere Convention, in article 3, paragraph 2 (c), calls for “the provision of prompt telecommunication assistance to mitigate the impact of a disaster”, to be accomplished by means such as “the installation and operation of reliable, flexible telecommunication resources to be used by humanitarian relief and assistance organizations” (art. 3, para. 2 (d)).

97. In an even more detailed fashion, article 18 of the ASEAN Agreement holds the following:

Technical Cooperation

1. In order to increase preparedness and to mitigate disasters, the Parties shall undertake technical co-operation, including the following:

- (a) facilitate mobilisation of appropriate resources both within and outside the Parties;
- (b) promote the standardisation of the reporting format of data and information;
- (c) promote the exchange of relevant information, expertise, technology, techniques and know-how;
- (d) provide or make arrangements for relevant training, public awareness and education, in particular, relating to disaster prevention and mitigation;
- (e) develop and undertake training programmes for policy makers, disaster managers and disaster responders at local, national and regional levels; and
- (f) strengthen and enhance the technical capacity of the Parties to implement this Agreement.

2. The AHA Centre shall facilitate activities for technical cooperation as identified in paragraph 1 above.

98. The Convention on assistance in the case of a nuclear accident or radiological emergency provides general headings for the type of cooperation it envisages and a detailed list of actions under each heading. For example, it allows the International Atomic Energy Agency to

(b) Assist a State [p]arty or a [m]ember State when requested in any of the following or other appropriate matters:

- (i) preparing both emergency plans in the case of nuclear accidents and radiological emergencies and the appropriate legislation;

¹⁵⁶ See *Report of the United Nations Conference on the Human Environment*, Stockholm, 5–16 June 1972 (United Nations publication, Sales No. E.73.II.A.14 and Corr.), Part One, chap. 1.

(ii) developing appropriate training programmes for personnel to deal with nuclear accidents and radiological emergencies;

(iii) transmitting requests for assistance and relevant information in the event of a nuclear accident or radiological emergency;

(iv) developing appropriate radiation monitoring programmes, procedures and standards;

(v) conducting investigations into the feasibility of establishing appropriate radiation monitoring systems.

While not exhaustive, the foregoing list gives a clear indication of many forms of cooperation allowing, by analogy, an evaluation of other possible forms.

99. In other fields, most bilateral agreements that call for some form of technical cooperation provide a list with the types of assistance that such cooperation encompasses. For example, the International Tribunal for the Former Yugoslavia concluded agreements with domestic jurisdictions to provide technical assistance and evidence for domestic trials. Those agreements mentioned the type of technical assistance involved. Additionally, the United States–Mexico memorandum of understanding on agriculture enumerated specific types of activities such as fumigation,¹⁵⁷ while the United States–Republic of Korea memorandum of understanding on science and technology explained that cooperation included “research, exchanges of scientific information, scientific visits, individual exchanges, joint seminars and workshops, and other forms of activities as are mutually agreed upon”.¹⁵⁸

100. As indicated in the preceding paragraphs, instruments in the field of disaster response refer, broadly speaking, to scientific, technical and logistical cooperation. That includes the coordination of communication and the sharing of information; the provision of personnel, response equipment and supplies; and the extension of scientific and technical expertise to strengthen the response capacity of the affected State. Owing to the nature of many of the requirements of disaster relief efforts, regulatory barriers to the entry of personnel, equipment and supplies pose a particular challenge and are thus treated by a variety of international, regional and bilateral agreements. Additionally, a significant number of more recent agreements have focused on *ex ante* cooperation emphasizing disaster prevention and preparedness, including search and rescue arrangements, standby capacity requirements, early warning systems, exchange of information pertaining to risk identification, and contingency planning.

1. COMMUNICATION AND EXCHANGE OF INFORMATION

101. One aspect of cooperation that is frequently mentioned in disaster relief instruments is communication. The coordination of communication and exchange of information is essential to effective disaster response. Accordingly, many of the instruments that deal with

¹⁵⁷ See footnote 152 above.

¹⁵⁸ Memorandum of understanding between the National Science Foundation of the United States of America and the Korea Science and Engineering Foundation of the Republic of Korea concerning Cooperation in Science and Technology, signed at Arlington on 21 September 2000.

disaster relief also touch on the topic of information exchange.¹⁵⁹ For example, the preamble of the Tampere Convention notes “the vital role of broadcasting in disseminating accurate disaster information to at-risk populations”,¹⁶⁰ and the Framework Convention on civil defence assistance requires the affected State to “provide all necessary information available relating to the situation, so as to ensure smooth implementation of assistance” (art. 4 (a) (1)). The Hyogo Framework for Action 2005–2015 also emphasizes the central role of information exchange, dialogue and cooperation in the context of disasters.¹⁶¹

102. The approach taken by various instruments with regard to communications varies, as some provisions refer generally to the desirability of effective disaster relief communications or a general obligation of the affected State to facilitate communications, while others contain more specific direction pertaining to the facilitation of disaster relief communications. For example, the International Law Association model bilateral agreement provides that

in the zone of operations ... the organization shall have the right to communicate by radio, telegraph, or by any other means and to establish the necessary means for the maintenance of said communications in the interior of its facilities or between these facilities and its service units.¹⁶²

Likewise, the Guidelines on the Use of Foreign Military and Civil Defence Assets in Disaster Relief (Oslo Guidelines) state that “the Affected State should provide to the international disaster community timely and accurate information on the nature and magnitude of the disaster, in order to enhance the effectiveness of external assistance”.¹⁶³

¹⁵⁹ See, for example, the Agreement between Denmark, Finland, Norway and Sweden on cooperation across State frontiers to prevent or limit damage to persons or property or to the environment in the case of accidents, 1989, art. 6 (1). (“The Contracting States shall provide each other with information of importance for this agreement”). See also Agreement among the Governments of the Participating States of the Black Sea Economic Cooperation (BSEC) on collaboration in Emergency Assistance and Emergency Response to natural and man-made Disasters (“Black Sea Agreement”), art. 4 (4).

¹⁶⁰ See also article 3 (2), which calls for “the deployment of terrestrial and satellite telecommunication equipment to predict, monitor and provide information concerning natural hazards, health hazards and disasters”, and “the sharing of information about natural hazards, health hazards and disasters among the States Parties and with other States, non-State entities and intergovernmental organizations, and the dissemination of such information to the public, particularly to at-risk communities”.

¹⁶¹ Report of the World Conference on Disaster Reduction, Kobe, Hyogo, Japan, 18–22 January 2005 (A/CONF.206/6 and Corr.1), chap. I, resolution 2, Hyogo Framework for Action 2005–2015: Building the Resilience of Nations and Communities to Disasters.

¹⁶² Draft Model Agreement on International Medical and Humanitarian Law, art. 6. *Report of the Fifty-ninth Conference of the International Law Association*, Belgrade, 17–23 August 1980, p. 523. See also Agreement between the Swiss Federal Council and the Government of the Republic of the Philippines on Cooperation in the Event of Natural Disaster or Major Emergencies, 6 December 2001, art. 8 (2) (“the competent authorities of the requesting State shall undertake ... to facilitate the use by the aid units of existing telecommunication systems or the use of special frequencies, or both, or the establishment by the aid units of an emergency telecommunications system”).

¹⁶³ OCHA, Guidelines on the Use of Foreign Military and Civil Defence Assets in Disaster Relief (also known as the Oslo Guidelines) of 2006, as revised 1 November 2007, para. 54.

103. In the vein of substantive measures to facilitate communications, the Agreement establishing the Caribbean Disaster Emergency Response Agency provides, in article 11 (c), for the creation and maintenance of an emergency operations system to handle emergency telecommunications. The most comprehensive instrument in this area is the Tampere Convention, which provides a regulatory framework for cooperation with respect to the utilization of telecommunications and information technology in disasters.

2. SCIENTIFIC AND TECHNICAL ASSISTANCE

104. Another often-mentioned modality of cooperation is the provision of scientific, technical or technological assistance and expertise. Different classes of disasters may call for specific technologies or expertise that are either not readily available in the affected country or that are not available in sufficient degree or quantity. Consequently, a number of instruments refer specifically to the provision of scientific and technical assistance, such as the ASEAN Agreement, which, in article 18, entitled “Technical cooperation”, calls for Parties to “promote the exchange of relevant information, expertise, technology, techniques and know-how”.¹⁶⁴ The Framework Convention on civil defence assistance also refers, in article 2 (a), to cooperation with regard to the exchange of expertise. Moreover, a number of bilateral agreements provide for mutual assistance in scientific and technical matters as well.¹⁶⁵

105. Technology can also enhance communication, as the utilization of telecommunications and information technology can substantially improve information exchange and increase the overall efficacy and efficiency of disaster relief efforts. The Tampere Convention deals with the provision of telecommunications assistance, including equipment, materials, information, training, radio-frequency spectrum, network or transmission capacity or other resources necessary to telecommunications. Another agreement that refers to a specific class of technological cooperation is the Charter on Cooperation to Achieve the Coordinated Use of Space Facilities in the Event of Natural or Technological Disasters (also known as the International Charter on Space and Major Disasters), which relates to coordination of satellite technology in the disaster relief context.¹⁶⁶

3. RELIEF PERSONNEL

106. Effective disaster relief also necessitates coordination with regard to the provision of emergency response personnel to strengthen the response capacity of the affected State, including medical teams, search and rescue teams, and technical specialists. A number of instruments

¹⁶⁴ Art. 18 (c). See paragraph 97 above.

¹⁶⁵ See, for example, Convention on mutual assistance in combating disasters and accidents (Netherlands–Belgium) (The Hague, 14 November 1984), art. 13 (stating that the Parties should exchange all useful information of a scientific and technical nature) (United Nations, *Treaty Series*, vol. 1526, No. 26466, p. 27, at p. 47); see also Protocol on technical cooperation and mutual assistance in the field of civil defence (Spain–Portugal) (Evora, 9 March 1992), art. 1 (2) (*ibid.*, vol. 1730, No. 30218, p. 191); and Agreement on cooperation on disaster preparedness and prevention, and mutual assistance in the event of disasters (Spain–Argentina) (Madrid, 3 June 1988), art. IV (*ibid.*, vol. 1689, No. 29123, p. 23).

¹⁶⁶ Available from www.disasterscharter.org.

call upon States to coordinate efforts and facilitate the expedited entry of relief personnel. These include General Assembly resolutions 46/182 of 19 December 1991¹⁶⁷ and 57/150 of 16 December 2002,¹⁶⁸ as well as the Measures to expedite international relief¹⁶⁹ adopted by the International Conference of the Red Cross and Red Crescent Societies and the Economic and Social Council in 1977 and endorsed by the General Assembly in resolution 32/56 of 8 December 1977.¹⁷⁰

107. In addition to the entry of personnel, instruments also deal with the coordination, facilitation and supervision of the provision of assistance within the affected State. Common issues are freedom of movement, transport of personnel, access to facilities, and coordination with the affected State, including the provision of support, relevant information, guidance, and translation and interpretation services. The General Assembly, in its resolution 46/182, referred broadly to “facilitating” the work of relief teams. The Tampere Convention provides, in article 9, that “the States Parties shall, when possible, and in conformity with their national law, reduce or remove ... regulations restricting the movement of personnel who operate telecommunication equipment or who are essential to its effective use”, and the Oslo Guidelines call, in paragraph 60, for “free access to disaster zones” for relief teams. The Agreement establishing the Caribbean Disaster Emergency Response Agency provides, in articles 16 and 22, for the cooperation of the affected State in making available local facilities and services and facilitating the in-country transit of relief personnel.

108. A number of instruments, including the Framework Convention on civil defence assistance, the Tampere Convention (art. 5, para. 3), the Inter-American Convention to Facilitate Disaster Assistance, and the Oslo Guidelines deal with the identification and protection of relief personnel. The General Assembly, in paragraph 4 of its resolution 57/150, urged “all States to undertake measures to ensure the safety and security of international urban search and rescue teams operating in their territory”.

4. RELIEF SUPPLIES AND EQUIPMENT

109. Disaster relief efforts also require a variety of goods and equipment. Victims of disaster need food, clothing, medicine and other items to support their basic needs. Relief teams require equipment such as telephones, radios, computers, vehicles and construction equipment in order to operate effectively. While some goods and equipment necessary in the aftermath of a disaster may be found locally, there may be a need to import items in the event of a shortage of goods and equipment in the affected State. Owing to the nature of disasters, the rapid attainment of relief supplies is critical. Moreover, many of those items, such as food and medicine, could spoil or

expire if not transported and delivered in a timely manner. Cooperation in the area of provision and facilitation of entry of relief supplies and equipment is particularly crucial because many of the necessary items are highly regulated by domestic law. Those items include foods, medicines, machines, telecommunications equipment, vehicles and rescue dogs.

110. As such, many agreements and guidelines deal with the facilitation of rapid access to disaster relief equipment and supplies. Some instruments specify those items and treat them in detail, while others make general provisions for “relief supplies and equipment”, which encompass a variety of items. The General Assembly, in its resolution 46/182, called generally for coordination to facilitate expeditious access to relief supplies and suggested that “disaster-prone countries should develop special emergency procedures to expedite the rapid procurement and deployment of equipment and relief supplies”.¹⁷¹ The Measures to expedite international relief¹⁷² also focus on coordination to avoid delay because of regulatory barriers.

111. Some instruments highlight equipment and supplies with specificity. The ASEAN Agreement, for example, mentions, in article 14 (a), telecommunications equipment and vehicles specifically. General Assembly resolution 46/182 and the International Convention on the simplification and harmonization of Customs procedures (“Kyoto Convention”) call on affected States to assist in the entry of medicines. The Kyoto Convention also expressly refers to “specially trained animals” among the types of relief consignments that should be prioritized for expedited processing. Several bilateral agreements, such as the Agreement between Sweden and Norway concerning the improvement of rescue services in frontier areas¹⁷³ and the Agreement between the Swiss Federal Council and the Government of the Republic of the Philippines on Cooperation in the Event of Natural Disaster or Major Emergencies of 2001, also deal with the entry process for specially trained rescue dogs.

112. Agreements also provide for the re-export of goods to ensure that relief supplies and equipment can be efficiently redirected to where they are most needed. The ASEAN Agreement calls, in article 14 (b), for the facilitation of “the entry into, stay in, and departure from* its territory of personnel and of equipment, facilities, and materials involved or used in the assistance”. Similarly, the Tampere Convention, in article 9, paragraph 2 (d), calls for reduction of “regulations restricting the transit of telecommunication resources into, out of, and through the territory of a State party”.

113. Cooperation involves both accommodation by the affected State to expedite and facilitate the provision of relief assistance and coordination and planning by assisting actors to reduce the complications of providing relief. If assisting actors are informed of and prepare adequately for the requirements of the affected State, the process can be made more efficient. The Measures

¹⁶⁷ Paras. 27 and 28.

¹⁶⁸ Para. 3.

¹⁶⁹ ICRC/IFRC, *Handbook of the International Red Cross and Red Crescent Movement*, 14th ed., Geneva, ICRC/IFRC, 2008, p. 1226.

¹⁷⁰ See also Inter-American Convention to Facilitate Disaster Assistance, art. VII; and League of Arab States Decision No. 39 (Arab Cooperation Agreement on Regulating and Facilitating Relief Operations), art. 3.

¹⁷¹ Annex, para. 30.

¹⁷² *Handbook of the International Red Cross and Red Crescent Movement* (footnote 169 above), Recommendation D.

¹⁷³ Signed at Oslo on 19 March 1974 (United Nations, *Treaty Series*, vol. 1424, No. 24063, p. 301).

to expedite international relief call on “donors to restrict their relief contributions to those high-priority relief needs identified by appropriate relief authorities and agencies”.¹⁷⁴ Many instruments provide for a degree of specificity to the requests of affected States, and for assisting actors to comply with those requests. The Inter-American Convention to Facilitate Disaster Assistance, for example, states in article II (b) that

[u]pon the occurrence of a disaster the assisting State shall consult with the assisted State to receive from the latter information on the kind of assistance considered most appropriate to provide to the populations stricken by the disaster.

Communication as to the requirements, capacities and expectations of concerned parties can facilitate the relief process significantly and reduce the difficulty caused by regulation.

5. COOPERATION IN DISASTER PREPAREDNESS, PREVENTION AND MITIGATION

114. More recent conventions have shifted the focus from a primarily response-centric model to one focused largely on prevention and preparedness. Many instruments deal with not only cooperation as it pertains to relief assistance, but also with the prevention and mitigation of disasters: search and rescue arrangements, standby capacity requirements, early warning systems, exchange of information pertaining to risk assessment and identification, contingency planning and capacity-building.

115. The Hyogo Framework for Action puts a large degree of emphasis on prevention and preparedness, stating that one of the agreement’s primary objectives is “to share good practices and lessons learned to further disaster reduction within the context of attaining sustainable development, and to identify gaps and challenges”.¹⁷⁵ The General Assembly, in resolution 46/182,¹⁷⁶ called for cooperation in sharing scientific and technical information related to the assessment, prevention, mitigation and early

¹⁷⁴ *Handbook...* (footnote 169 above), Recommendation F.

¹⁷⁵ A/CONF.206/6 and Corr.1, chap. I, resolution 2, para. 10 (c).

¹⁷⁶ Annex, paras. 5, 13 and 14.

warning of disasters as well as assistance to developing States to bolster their capacity in disaster prevention and mitigation, while in paragraph 7 of resolution 57/150 the Assembly more generally encouraged “the strengthening of cooperation among States at the regional and subregional levels in the field of disaster preparedness and response, with particular respect to capacity-building at all levels”.¹⁷⁷ Other instruments call for cooperation in regard to the training of experts, research, and studies to increase preparedness, such as the ASEAN Agreement, which states, in article 19, paragraph 1, that

the Parties shall individually or jointly, including in cooperation with appropriate international organizations, promote and, whenever possible, support scientific and technical research programmes related to the causes and consequences of disasters and the means, methods, techniques and equipment for disaster risk reduction.

116. In the light of all of the above, the Special Rapporteur concludes that the inclusion is warranted in the set of draft articles on Protection of persons in the event of disasters of an additional draft article concerning the elaboration of the duty to cooperate. That additional draft article, whose number and placing in the set is to be decided at a later stage, can most economically and usefully be modelled on article 17, paragraph 4, of the draft articles on the Law of transboundary aquifers, cited earlier.¹⁷⁸ The proposed additional draft article would thus read as follows:

“Draft article A. Elaboration of the duty to cooperate

“States and other actors mentioned in draft article 5 shall provide to an affected State scientific, technical, logistical and other cooperation, as appropriate. Cooperation may include coordination of international relief actions and communications, making available relief personnel, relief equipment and supplies, scientific and technical expertise, and humanitarian assistance.”

¹⁷⁷ See also Southern African Development Community Protocol on Health, art. 25 (b) (calling for Parties to “collaborate and facilitate regional efforts in developing awareness, risk reduction, preparedness and management plans for natural and man-made disasters”).

¹⁷⁸ See paragraph 85 above.

CHAPTER IV

Conditions for the provision of assistance

117. The Commission has established in draft article 9 that an affected State, by virtue of its sovereignty, has the duty to ensure the protection of persons and to ensure the provision of humanitarian assistance on its territory. It also has the primary role to direct, control, coordinate and supervise such assistance within its territory. The Special Rapporteur will now consider the conditions that an affected State may place on the provision of assistance.

118. In determining the extent of appropriate conditions, it is necessary to reiterate the core principles of State sovereignty and non-intervention. The Special Rapporteur, in his third report, noted that “the correlating principles of sovereignty and non-intervention presuppose a given

domestic sphere, or a *domaine réservé*, over which a State may exercise its exclusive authority”.¹⁷⁹ In formulating his proposal for draft article 9, the Special Rapporteur took particular note of the principles of State sovereignty and non-intervention, concluding that “it is clear that a State affected by a disaster has the freedom to adopt whatever measures it sees fit to ensure the protection of the persons found within its territory”.¹⁸⁰ As such, the affected State may impose conditions on the provision of assistance, including compliance with its national laws and fulfilling demonstrated needs.

¹⁷⁹ *Yearbook ... 2010*, vol. II (Part One), document A/CN.4/629, para. 75.

¹⁸⁰ *Ibid.*, para. 74.

PROTECTION OF PERSONS IN THE EVENT OF DISASTERS

[Agenda item 4]

DOCUMENT A/CN.4/662

Sixth report on the protection of persons in the event of disasters, by Mr. Eduardo Valencia-Ospina, Special Rapporteur

[Original: English]
[3 May 2013]

CONTENTS

		<i>Page</i>
Multilateral instruments cited in the present report		2
Works cited in the present report		3
	<i>Paragraphs</i>	
INTRODUCTION	1–10	4
PREVENTION	11–162	6
A. Historical development of the concept of disaster risk reduction	11–35	6
B. Prevention as a principle of international law	36–69	9
1. Human rights law	42–53	11
2. Environmental law	54–69	13
(a) Due diligence	61–65	14
(b) Precautionary principle	66–69	15
C. International cooperation on prevention	70–112	16
1. Bilateral instruments	76–81	17
2. Multilateral instruments	82–112	18
(a) Global instruments	85–93	19
(b) Regional instruments	94–112	21
D. National policy and legislation	113–161	24
1. Risk prevention	123–140	27
(a) Risk assessment	124–130	27
(b) Collection and dissemination of risk information	131–136	28
(c) Land use controls	137–140	29
2. Mitigation of harm	141–144	30
(a) Construction standards	142	30
(b) Insurance	143–144	30
3. Preparedness	145–161	30
(a) Institutional framework	146–149	30
(b) Funding	150	31
(c) Community preparedness and education	151–152	32
(d) Early warning	153–161	32
E. Proposals for draft articles	162	33

Multilateral instruments cited in the present report

Source

Convention and Statute establishing an International Relief Union (Geneva, 12 July 1927)	League of Nations, <i>Treaty Series</i> , vol. 135, No. 3115, p. 247.
Convention on the Prevention and Punishment of the Crime of Genocide (Paris, 9 December 1948)	United Nations, <i>Treaty Series</i> , vol. 78, No. 1021, p. 277.
Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) (Rome, 4 November 1950)	<i>Ibid.</i> , vol. 213, No. 2889, p. 221.
Treaty establishing the European Economic Community (Rome, 25 March 1957)	United Nations, <i>Treaty Series</i> , vol. 298, No. 4300, p. 3. See also the consolidated versions of the Treaty establishing the European Community, <i>Official Journal of the European Communities</i> , No. C 340, 10 November 1997, p. 173, and the Treaty on the Functioning of the European Union, <i>Official Journal of the European Union</i> , No. C 306 (17 December 2007), p. 1.
International Covenant on Economic, Social and Cultural Rights (New York, 16 December 1966)	United Nations, <i>Treaty Series</i> , vol. 993, No. 14531, p. 3.
International Covenant on Civil and Political Rights (New York, 16 December 1966)	<i>Ibid.</i> , vol. 999, No. 14668, p. 171.
Convention on the prevention of marine pollution by dumping of wastes and other matter (London, Mexico City, Moscow and Washington, D.C., 29 December 1972)	<i>Ibid.</i> , vol. 1046, No. 15749, p. 120.
United Nations Convention on the Law of the Sea (Montego Bay, 10 December 1982)	<i>Ibid.</i> , vol. 1833, No. 31363, p. 3.
Convention against torture and other cruel, inhuman or degrading treatment or punishment (New York, 10 December 1984)	<i>Ibid.</i> , vol. 1465, No. 24841, p. 85.
Vienna Convention for the Protection of the Ozone Layer (Vienna, 22 March 1985)	<i>Ibid.</i> , vol. 1513, No. 26164, p. 293.
Montreal Protocol on Substances that Deplete the Ozone Layer (Montreal, 16 September 1987)	<i>Ibid.</i> , vol. 1522, No. 26369, p. 3.
Convention on Early Notification of a Nuclear Accident (Vienna, 26 September 1986)	<i>Ibid.</i> , vol. 1439, No. 24404, p. 275.
Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency (Vienna, 26 September 1986)	<i>Ibid.</i> , vol. 1457, No. 24643, p. 133.
Convention on the Regulation of Antarctic Mineral Resource Activities (Wellington, 2 June 1988)	ILM, vol. XXVII, No. 4 (July 1988), p. 868.
Convention on the Rights of the Child (New York, 20 November 1989)	United Nations, <i>Treaty Series</i> , vol. 1577, No. 27531, p. 3.
Bamako Convention on the Ban of the Import into Africa and the Control of Transboundary Movement and Management of Hazardous Wastes within Africa (Bamako, 30 January 1991)	<i>Ibid.</i> , vol. 2101, No. 36508, p. 177.
Convention on environmental impact assessment in a transboundary context (Espoo, 25 February 1991)	<i>Ibid.</i> , vol. 1989, No. 34028, p. 309.
Agreement establishing the Caribbean Disaster Emergency Response Agency (Port of Spain, 26 February 1991)	<i>Ibid.</i> , vol. 2256, No. 40212, p. 53.
Inter-American Convention to Facilitate Disaster Assistance (Santiago, 7 June 1991)	OAS, <i>Official Records</i> , OEA/Ser.A/49 (SEPF), p. 15.
Convention on the Protection and Use of Transboundary Watercourses and International Lakes (Helsinki, 17 March 1992)	United Nations, <i>Treaty Series</i> , vol. 1936, No. 33207, p. 269. See also ILM, vol. 31, No. 6 (November 1992), p. 1312.
Convention on the Transboundary Effects of Industrial Accidents (Helsinki, 17 March 1992)	United Nations, <i>Treaty Series</i> , vol. 2105, No. 36605, p. 457.
United Nations Framework Convention on Climate Change (New York, 9 May 1992)	<i>Ibid.</i> , vol. 1771, No. 30822, p. 107.
Convention on biological diversity (Rio de Janeiro, 5 June 1992)	<i>Ibid.</i> , vol. 1760, No. 30619, p. 79.
Cooperation Agreement on the Forecast, Prevention and Mitigation of Natural and Technological Disasters (Vienna, 18 July 1992)	Available from www.biicl.org/files/4299_cci_cooperation_agreement.pdf .
Convention (No. 174) concerning the prevention of major industrial accidents (Geneva, 22 June 1993)	United Nations, <i>Treaty Series</i> , vol. 1967, No. 33639, p. 231.
Convention on Nuclear Safety (Vienna, 20 September 1994)	<i>Ibid.</i> , vol. 1963, No. 33545, p. 293.
Convention to combat desertification in those countries experiencing serious drought and/or desertification, particularly in Africa (Paris, 14 October 1994)	<i>Ibid.</i> , vol. 1954, No. 33480, p. 3.
Convention on the Law of the Non-navigational Uses of International Watercourses (New York, 21 May 1997)	<i>Official Records of the General Assembly, Fifty-first Session, Supplement No. 49</i> , vol. III, resolution 51/229, annex.

Source

Treaty on Amsterdam amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts (Amsterdam, 2 October 1997)	<i>Official Journal of the European Communities</i> , No. C 340 (10 November 1997), p. 1.
Agreement among the Governments of the Participating States of the Black Sea Economic Cooperation (BSEC) on collaboration in Emergency Assistance and Emergency Response to natural and man-made disasters (Sochi, 15 April 1998)	Available from www.bsec-organization.org/UploadedDocuments/StatutoryDocumentsAgreements/EmergencyAgreement071116.pdf .
Tampere Convention on the Provision of Telecommunication Resources for Disaster Mitigation and Relief Operations (Tampere, 18 June 1998)	United Nations, <i>Treaty Series</i> , vol. 2296, No. 40906, p. 5.
Agreement between Member States and Associate Members of the Association of Caribbean States for Regional Cooperation on Natural Disasters (Santo Domingo, 17 April 1999)	Available from www.acs-aec.org/index.php?q=documents/osg/1999/agreement-between-member-states-and-associate-members-of-the-association-of-carib .
Treaty for the establishment of the East African Community (Arusha, 30 November 1999)	United Nations, <i>Treaty Series</i> , vol. 2144, No. 37437, p. 255.
Framework Convention on civil defence assistance (Geneva, 22 May 2000)	<i>Ibid.</i> , vol. 2172, No. 38131, p. 213.
Constitutive Act of the African Union (Lomé, 11 July 2000)	<i>Ibid.</i> , vol. 2158, No. 37733, p. 3.
ASEAN Agreement on Disaster Management and Emergency Response (Vientiane, 26 July 2005)	<i>ASEAN Documents Series 2005</i> , p. 157.
Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community (Lisbon, 13 December 2007)	<i>Official Journal of the European Union</i> , No. C 306 (17 December 2007), p. 1.

Works cited in the present report

- BARNIDGE, Robert Perry Jr.
“The due diligence principle under international law”, *International Community Law Review*, vol. 8, No. 1, 2006, p. 81.
- BAUM, Marsha
When Nature Strikes: Weather Disasters and the Law. Westport, Connecticut, Praeger, 2007.
- CAMERON, Linda
“Environmental risk management in New Zealand—is there scope to apply a more generic framework?”, New Zealand Treasury Policy Perspectives Paper 06/06, 2006.
- CONDORELLI, Luigi
“The imputability to States of acts of international terrorism”, *Israel Yearbook on Human Rights*, vol. 19, 1989, p. 233.
- DRAKOPOULOS, J. and S. TASSOS
“Earthquakes and their social, economic and legal implications”, *Proceedings of the Seminar on Earthquake Preparedness, Athens, 11–14 January 1983*, Geneva, Office of the United Nations Disaster Relief Coordinator, 1984.
- FARBER, Daniel A. and Jim CHEN
Disasters and the Law: Katrina and Beyond. New York, Aspen Publishers, 2006.
- FEINBERG, David L.
“Hurricane Katrina and the public health-based argument for greater federal involvement in disaster preparedness and response”, *Virginia Journal of Social Policy and the Law*, vol. 13, No. 3 (2005–2006), p. 596.
- FISHER, David
Law and Legal Issues in International Disaster Response: A Desk Study. Geneva, IFRC, 2007.
- FRANCIS, Julian
“Legal aspects of disaster management and rehabilitation: the recent Indian experience of the tsunami disaster”, in C. Raj Kumar and D. K. Srivastava, eds., *Tsunami and Disaster Management: Law and Governance*. Hong Kong, Sweet & Maxwell Asia, 2006, p. 243.
- FORTUN, Kim
“Environmental right-to-know and the transmutations of law”, in Austin Sarat and Javier Lezaun, eds., *Catastrophe: Law, Politics and The Humanitarian Impulse*. Amherst, University of Massachusetts Press, 2009, p. 146.
- GARCIA, Márcio Pereira Pinto
“Famine as a catastrophe: the role of international law”, in David D. Caron and Charles Leben, eds., *The International Aspects of Natural and Industrial Catastrophes*. The Hague, Martinus Nijhoff, 2001, p. 229.
- GESTRI, Marco
“EU Disaster response law: principles and instruments”, in Andrea de Guttry, Marco Gestri and Gabriella Venturini, eds., *International Disaster Response Law*. The Hague, T.M.C. Asser Press, 2012, p. 105.
- GREEN, Stephen
International Disaster Relief: Toward a Responsive System. New York, McGraw-Hill Book Company, 1977.
- HAND, Jacqueline
“Disaster prevention presentation, from SCJIL symposium 2003”, *Santa Clara Journal of International Law*, vol. 1, No. 1, 2003, p. 147.
- HARDING, Ronnie and Elizabeth FISHER, eds.
Perspectives on the Precautionary Principle. Sydney, Federation Press, 1995.
- HESSBRUEGGE, Jan Arno
“The historical development of the doctrines of attribution and due diligence in international law”, *New York University Journal of International Law and Politics*, vol. 36, No. 2/3, 2004, p. 265.
- KÁLIN, Walter and Claudine Haenni DALE
“Disaster risk mitigation—why human rights matter”, *Forced Migration Review*, No. 31, October 2008, p. 38.
- KENT, George
“The human right to disaster mitigation and relief”, *Environmental Hazards*, vol. 3, 2001.

- KRIEBAUM, Ursula
 “Prevention of human rights violations”, *Austrian Review of International and European Law*, vol. 2, No. 2, 1997, p. 155.
- LA VACCARA, Alessandra
 “An enabling environment for disaster risk reduction”, in Andrea de Guttery, Marco Gestri and Gabriella Venturini, eds., *International Disaster Response Law*. The Hague, T.M.C. Asser Press, 2012, p. 199.
- MCINERNEY-LANKFORD, Siobhán, Mac DARROW and Lavanya RAJAMANI
Human Rights and Climate Change: A Review of the International Legal Dimensions. Washington, D.C., World Bank, 2011.
- MORÉTEAU, Olivier
 “Catastrophic harm in United States law: liability and insurance”, *American Journal of Comparative Law*, vol. 58, 2010, p. 69.
- NICOLETTI, Barbara
 “The prevention of natural and man-made disasters: what duties for States?”, in Andrea de Guttery, Marco Gestri and Gabriella Venturini, eds., *International Disaster Response Law*, The Hague, T.M.C. Asser Press, 2012, p. 177.
- NOWAK, Manfred
UN Covenant on Civil and Political Rights, CCPR Commentary. 2nd revised ed. Kehl, N. P. Engel, 2005.
- NOWAK, Manfred and Walter SUNTINGER
 “International mechanisms for the prevention of torture”, in Arie Bloed, Liselotte Leicht, Manfred Nowak and Allan Rosas, eds., *Monitoring Human Rights in Europe*. Dordrecht, Martinus Nijhoff, 1993, p. 145.
- PISILLO-MAZZESCHI, Riccardo
 “The due diligence rule and the nature of the international responsibility of States”, *German Yearbook of International Law*, vol. 35, 1992, p. 9.
 “Forms of international responsibility for environmental harm”, in Francesco Francioni and Tullio Scovazzi, eds., *International Responsibility for Environmental Harm*. London, Graham & Trotman, 1991, p. 15.
- ROMANO, P. R. Cesare
 “L’obligation de prévention des catastrophes industrielles et naturelles”, in David D. Caron and Charles Leben, eds., *Les aspects internationaux des catastrophes naturelles et industrielles/The International Aspects of Natural and Industrial Catastrophes*. The Hague, Martinus Nijhoff, 2001, p. 379.
- SAMUELS, J.W.
 “The relevance of international law in the prevention and mitigation of natural disasters”, in Lynn H. Stephens and Stephen J. Green, eds., *Disaster Assistance: Appraisal, Reform and New Approaches*. New York, New York University Press, 1979, p. 245.
- SUNSTEIN, Cass R.
Laws of Fear: Beyond the Precautionary Principle. New York, Cambridge University Press, 2005.
- SUTTON, Jeannette and Kathleen TIERNEY
 “Disaster preparedness: concepts, guidance and research”, report prepared for the Fritz Institute “Assessing Disaster Preparedness” Conference, Sebastopol, California, 3–4 November 2006.
- TROUWBORST, Arie
Precautionary Rights and Duties of States. Leiden, Martinus Nijhoff Publishers, 2006.
 “The precautionary principle in general international law: combating the Babylonian confusion”, *Review of European Community & International Environmental Law*, vol. 16, No. 2, 2007, p. 185.
- UNISDR
Early Warning Practices Can Save Lives: Selected Examples: Good Practices and Lessons Learned. Bonn, August 2010.
- VAN BOVEN, Theo
 “Prevention of human rights violations”, in Asbjørn Eide and Jan Helgesen, eds., *The Future of Human Rights Protection in a Changing World: Fifty Years since the Four Freedoms Address: Essays in Honour of Torkel Opsahl*. Oslo, Norwegian University Press, 1991, p. 183.
- WORLD BANK
Analysis of Disaster Risk Management in Colombia: A Contribution to the Creation of Public Policies. Bogota, 2011.

Introduction*

1. At the sixty-fourth session of the International Law Commission, in 2012, the Special Rapporteur submitted his fifth report on the protection of persons in the event of disasters.¹ He provided therein an overview of the views

* The Special Rapporteur expresses his deep appreciation to the Special Representative of the Secretary-General for Disaster Risk Reduction, Margareta Wahlstrom, and her adviser, Marco Toscano-Rivalta, for their encouragement and support. His appreciation for assistance in the preparation of the present report extends to the following: Matthias A. Braeunlich, PhD candidate, The Graduate Institute, Geneva; Melissa Stewart, JD candidate and Global Law Scholar, Georgetown University Law Center, Washington, D.C., and LLM candidate, Institut d’études politiques de Paris; Trent Buatte, JD candidate, and Josh Doherty, JD/MA candidate, George Washington University Law School, Washington, D.C.; Emika Tokunaga, PhD candidate, Osaka School of International Public Policy, Osaka University; Amogh Basavaraj, MA in law and diplomacy 2013, Amanda Mortwedt, LLM 2013, Katherine Conway, MA in law and diplomacy 2013, Yang Fu, MA in law and diplomacy 2014, and Suparva Narasimhaiah, LLM 2012, The Fletcher School of Law and Diplomacy, Tufts University, Medford (Massachusetts), United States; and Paul R. Walegur, The Hague, Netherlands. The Special Rapporteur also expresses his gratitude to Andrea de Guttery, Sant’Anna School of Advanced Studies of Pisa, Italy, co-editor of *International Disaster Response Law* (The Hague, T.M.C. Asser Press, 2012), for making available to him well in advance of publication the text of the valuable contributions included therein.

¹ *Yearbook ... 2012*, vol. II (Part One), document A/CN.4/652.

of States and organizations on the work undertaken by the Commission to date, in addition to an explanation of his position on the Commission’s question in its report on the work of its sixty-third session, in 2011: “Does this duty to cooperate include a duty on States to provide assistance when requested by the affected State?”² The report contained a further elaboration of the duty to cooperate and a discussion of the conditions for the provision of assistance and of the question of the termination of assistance. Proposals for the following three further draft articles were made in the report: A (Elaboration of the duty to cooperate),³ 13 (Conditions on the provision of assistance)⁴ and 14 (Termination of assistance).⁵

2. The Commission considered the fifth report from 2 to 6 July 2012,⁶ and referred all three draft articles to the Drafting Committee. The Drafting Committee also had

² *Yearbook ... 2011*, vol. II (Part Two), para. 44.

³ *Yearbook ... 2012*, vol. II (Part One), document A/CN.4/652, para. 116.

⁴ *Ibid.*, para. 181.

⁵ *Ibid.*, para. 187.

⁶ *Ibid.*, vol. I, 3138th to 3142nd meetings.

before it draft article 12 (Right to offer assistance), proposed by the Special Rapporteur in his fourth report,⁷ the consideration of which it had been unable to conclude at the sixty-third session, in 2011, owing to a lack of time.

3. The Drafting Committee, in the light of the discussion held by the Commission in plenary meeting, provisionally adopted the following five additional draft articles: 5 *bis* (Forms of cooperation), 12 (Offers of assistance), 13 (Conditions on the provision of external assistance), 14 (Facilitation of external assistance) and 15 (Termination of external assistance).

4. The five draft articles were submitted to the Commission in plenary meeting in a comprehensive report presented by the Chair of the Drafting Committee on 30 July 2012.⁸ Owing to a lack of time for the subsequent preparation and adoption of the corresponding commentaries, the Commission at that meeting took note of draft articles 5 *bis* and 12 to 15 as provisionally adopted by the Drafting Committee. The five draft articles were reproduced in a Commission document⁹ and in the Commission's report on the work of its sixty-fourth session.¹⁰

5. In November 2012, at the sixty-seventh session of the General Assembly, the Sixth Committee considered the chapter of the Commission's annual report devoted to the Special Rapporteur's fifth report and the Commission's debate thereon, particular attention being given to draft articles 5 *bis* and 12 to 15, as adopted by the Drafting Committee. Some delegations, for their part, concentrated on draft articles A, 12, 13 and 14 as originally proposed by the Special Rapporteur. A summary of the debate of the Sixth Committee, has been prepared by the Secretariat at the request of the Assembly (resolution 67/92 of 14 December 2012, para. 32).¹¹

6. According to the syllabus supporting the recommendation for inclusion of the present topic in the Commission's long-term programme of work,¹² the focus of the topic would be "the undertaking of activities aimed at the prevention, and mitigation of the effects, of ... disasters as well as ... the provision of humanitarian relief in the immediate wake of ... disasters".¹³ The syllabus considered "largely relevant today" the classification made in General Assembly resolution 46/182 of 19 December 1991, of key activities undertaken in this area, which extended to disaster prevention, mitigation and preparedness, including through enhanced early warning capacities.¹⁴ The syllabus also made reference to the findings of the High-level Panel on Threats, Challenges and Change in 2004, which identified the responsibility to prevent as

one of the three specific responsibilities of the international community, considering it "the most pertinent to the topic at hand".¹⁵ Thus, the scope of the topic *ratione temporis* would comprise "not only the 'response' phases of the disaster, but also the pre- and the post-disaster phases".¹⁶ Moreover, the syllabus listed the principles of prevention and mitigation among the core principles underpinning contemporary activities in the realm of protection of persons in the event of disasters. With regard to the former, "States are to review existing legislation and policies to integrate disaster risk reduction strategies into all relevant legal, policy and planning instruments, both at the national and international levels, in order to address vulnerability to disasters". With regard to the latter, "States are to undertake operational measures to reduce disaster risks at the local and national levels with a view to minimizing the effects of a disaster both within and beyond their borders".¹⁷

7. In 2008, in his preliminary report,¹⁸ the Special Rapporteur considered that, on the question of the scope of the topic *ratione temporis*, "a broad approach appears indicated as concerns the phases which should be included, in order to provide fully fledged legal space". He referred to "the wide range of specific issues to which providing disaster assistance gives rise through successive phases, not only of disaster response but also of pre-disaster and post-disaster: prevention and mitigation on the one hand, and rehabilitation on the other".¹⁹ He concluded, "To achieve complete coverage, work on the topic should extend to all three phases of a disaster situation, but it would appear justified to give particular attention to aspects relating to prevention and mitigation of a disaster as well as to provision of assistance in its immediate wake".²⁰

8. In 2009, in his second report,²¹ the Special Rapporteur suggested concentrating, at the initial stage of work, on response at the disaster proper and immediate post-disaster phase, while emphasizing that this was "without prejudice to the Commission addressing, at a later stage, preparedness at the pre-disaster phase".²²

9. In 2012, in his fifth report,²³ the Special Rapporteur, summarizing the general comments made by the Sixth Committee in its debate on the Commission's 2011 annual report, recorded that it had been suggested that the proposed scope of the draft articles was too narrow with respect to the events to be covered and, therefore, it should be extended to a wider range of pre-disaster activities relating to risk reduction, prevention preparedness and mitigation.²⁴ Also in that report, the Special Rapporteur touched upon the

⁷ *Yearbook ... 2011*, vol. II (Part One), document A/CN.4/643, p. 222, para. 109.

⁸ *Yearbook ... 2012*, vol. I, 3152nd meeting.

⁹ Document A/CN.4/L.812, mimeographed.

¹⁰ *Yearbook ... 2012*, vol. II (Part Two), para. 56, footnote.

¹¹ See the Topical summary of the discussion held in the Sixth Committee of the General Assembly during its sixty-seventh session (A/CN.4/657), paras. 16–25.

¹² *Yearbook ... 2006*, vol. II (Part Two), pp. 206–216, annex III.

¹³ *Ibid.*, p. 206, para. 1.

¹⁴ *Ibid.*, p. 207, para. 6.

¹⁵ *Ibid.*, para. 10; see also A/59/565 and Corr.1.

¹⁶ *Yearbook ... 2006*, vol. II (Part Two), annex III, p. 211, para. 27.

¹⁷ *Ibid.*, p. 212, para. 34.

¹⁸ *Yearbook ... 2008*, vol. II (Part One), document A/CN.4/598.

¹⁹ *Ibid.*, p. 154, para. 57.

²⁰ *Ibid.*, p. 155, para. 66.

²¹ *Yearbook ... 2009*, vol. II (Part One), document A/CN.4/615.

²² *Ibid.*, para. 29.

²³ *Yearbook ... 2012*, vol. II (Part One), document A/CN.4/652.

²⁴ *Ibid.*, para. 15, citing a statement by Poland (*Official Records of the General Assembly, Sixty-sixth Session, Sixth Committee*, 21st meeting (A/C.6/66/SR.21), para. 84).

question of cooperation in disaster preparedness, prevention and mitigation, noting that “more recent conventions have shifted the focus from a primarily response-centric model to one focused largely on prevention and preparedness”.²⁵

²⁵ *Ibid.*, para. 114.

10. In his concluding remarks at the end of the Commission’s 2012 debate on his fifth report, the Special Rapporteur expressed his intention to devote his next report to prevention, mitigation and preparedness in respect of disasters.²⁶

²⁶ *Ibid.*, vol. I, 3142nd meeting.

Prevention

A. Historical development of the concept of disaster risk reduction

11. The Office of the United Nations Disaster Relief Coordinator (UNDRO) was founded in 1971. It was the predecessor of the present Office for the Coordination of Humanitarian Affairs (OCHA). As early as 1973, it initiated a research project that culminated in an expert group meeting, held from 9 to 12 July 1979, bringing together scientists and planners specializing in the major natural hazards of meteorological, geological and geophysical origin. In its report studying in detail natural disaster and vulnerability analysis,²⁷ the expert group concluded, “it is now also realized that the actual and potential consequences of natural hazards are becoming so serious and so increasingly global in scale, that much greater emphasis will henceforth have to be given to pre-disaster planning and prevention”.²⁸

12. Nearly a decade later, in 1987, the General Assembly focused on disaster reduction, citing increasing and grave damages and loss of life. In its resolution 42/169 of 11 December 1987, it recognized “the responsibility of the United Nations system for promoting international cooperation in the study of natural disasters of geophysical origin and in the development of techniques to mitigate risks arising therefrom, as well as for coordinating disaster relief, preparedness and prevention, including prediction and early warning”, and decided to designate the 1990s as the International Decade for Natural Disaster Reduction. It also decided on five specific goals, including “to disseminate existing and new information related to measures for the assessment, prediction, prevention and mitigation of natural disasters” and “develop measures for the assessment, prediction, prevention and mitigation of natural disasters through programmes of technical assistance and technology transfer, demonstration projects, and education and training, tailored to specific hazards and locations, and to evaluate the effectiveness of those programmes.”

13. In its resolution 44/236 of 22 December 1989, the General Assembly adopted the International Framework of Action for the International Decade for Natural Disaster Reduction, devoting one section to actions to be taken by the United Nations system. It declared, “The organs, organizations and bodies of the United Nations system are urged to accord priority, as appropriate and in a concerted manner, to natural disaster preparedness, prevention, relief and short-term recovery.” It also recognized “the important responsibility of the United Nations system as a

whole for promoting international cooperation in order to mitigate natural disasters, provide assistance and coordinate disaster relief, preparedness and prevention”.

14. On 19 December 1991, a year into the International Decade, the General Assembly adopted its landmark resolution 46/182, containing in its annex guiding principles for humanitarian relief, preparedness, prevention and on the continuum from relief to rehabilitation and development. It recommended that “special attention should be given to disaster prevention and preparedness by the Governments concerned, as well as by the international community” (para. 8). Sections II and III of the annex focused on prevention and preparedness, proposing specific measures to be taken by the international community and States.

15. In the same year, the General Assembly noted that approximately 100 States were already following the 1989 call to establish national strategies to achieve the objectives of the Decade, and endorsed a proposal to convene a world conference on natural disaster reduction to help to implement the International Framework of Action (see General Assembly resolution 46/149 of 18 December 1991, para. 3). The General Assembly agreed that the objectives of that conference were to review the accomplishments of the Decade, to increase actions and exchange, and to “increase awareness of the importance of disaster reduction policies” (see General Assembly resolution 48/188, para. 6), recognizing the role that disaster reduction could play for the improvement of emergency management in general and capacity-building for disaster preparedness and mitigation at the national level.

16. In 1994, the World Conference on Natural Disaster Reduction took place in Yokohama, Japan. Building on the midterm review of the Decade, it led to the adoption of the Yokohama Strategy for a Safer World: Guidelines for Natural Disaster Prevention, Preparedness and Mitigation containing the Principles, the Strategy and Plan of Action.²⁹ In the Yokohama Message, the 148 participating States affirmed that “disaster prevention, mitigation, preparedness and relief are four elements which contribute to and gain from the implementation of sustainable development policies”, recommending that “nations should incorporate them in their development plans and ensure efficient follow-up measures at the community, national, subregional, regional and international levels”³⁰ and calling for further improvements in early warning.³¹ They

²⁹ Report of the World Conference on Natural Disaster Reduction, A/CONF.172/9, chap. I, resolution 1, annex I.

³⁰ *Ibid.*, annex II, para. 2.

³¹ *Ibid.*, annex I, para. 5.

²⁷ UNDRO/EXPGRP/1.

²⁸ *Ibid.*, foreword.

affirmed that “disaster prevention, mitigation and preparedness are better than disaster response in achieving the goals and objectives of the Decade” and that “disaster response alone is not sufficient”.³² For the rest of the Decade and beyond, States were urged to “develop and strengthen national capacities and capabilities and, where appropriate, national legislation for natural and other disaster prevention, mitigation and preparedness”.³³

17. In 1999, the International Strategy for Disaster Reduction was launched as a follow-up to the International Decade for Natural Disaster Reduction and to develop the Yokohama Strategy and its Plan of Action (see General Assembly resolution 54/219 of 22 December 1999). According to the secretariat mandated to oversee and guide the Strategy, the Strategy “reflects a major shift from the traditional emphasis on disaster response to disaster reduction, and in effect seeks to promote a ‘culture of prevention’”.³⁴ This statement is a reflection of the contents of the major General Assembly resolutions relating to the Strategy, emphasizing the need for international cooperation across the board with a focus on prevention (see General Assembly resolutions 54/219 of 22 December 1999 and 56/195 of 21 December 2001, respectively).

18. In 2002, the Plan of Implementation of the World Summit on Sustainable Development declared that “an integrated, multi-hazard, inclusive approach to address vulnerability, risk assessment and disaster management, including prevention, mitigation, preparedness, response and recovery, is an essential element of a safer world in the twenty-first century”.³⁵

19. A year later, in 2003, the twenty-eighth International Conference of the Red Cross and Red Crescent adopted the resolution “Adoption of the Declaration and Agenda for Humanitarian Action”, which focused on four main areas, one of which was reducing the risk and impact of disasters and the improvement of preparedness and response mechanisms. Final goal 3.1 of the Agenda was to “acknowledge the importance of disaster risk reduction and undertake measures to minimize the impact of disasters on vulnerable populations”.

20. That same year, in its resolution 58/214 of 23 December 2003, the General Assembly took note of the report of the Secretary-General on the Implementation of the International Strategy for Disaster Reduction, in which it was indicated that “the International Strategy for Disaster Reduction should continue to become a more visible, recognized and flexible instrument for reducing the risk of and vulnerability to natural hazards and related environmental and technological disasters”.³⁶ To this end, the Secretary-General envisaged the development of a “framework for guidance and monitoring of disaster risk

reduction”.³⁷ The goal of this new framework would be “to increase the understanding and effectiveness of disaster risk reduction practices through a participatory process and building on existing praxis”.³⁸ The Secretary-General concluded that “disaster risk reduction is a potent no-regrets solution for adapting nationally to climate change”, and encouraged disaster risk assessment to support the new strategy.³⁹

21. Moreover, the General Assembly recognized “the urgent need to further develop and make use of the existing scientific and technical knowledge to reduce vulnerability to natural disasters”.⁴⁰ It therefore decided to “convene a World Conference on Disaster Reduction in 2005 ... designed to foster specialized discussion and produce concrete changes and results”.⁴¹ By building on the Yokohama Strategy and its Plan of Action and the Johannesburg Plan of Implementation,⁴² the objectives of the Conference were to “share the best practices and lessons learned to further disaster reduction within the context of attaining sustainable development and identify gaps and challenges”; “increase awareness of the importance of disaster reduction policies”; and “increase the reliability and availability of appropriate disaster-related information to the public and disaster management agencies in all regions”.⁴³ The General Assembly stressed “the importance of identifying, assessing and managing risks prior to the occurrence of disasters”.⁴⁴

22. In 2005, the participants in the International Meeting to Review the Implementation of the Programme of Action for the Sustainable Development of Small Island Developing States, held in Mauritius, adopted the Mauritius Declaration,⁴⁵ in which they emphasized the need for increased preventive protection of small island developing States⁴⁶ and pointed to disaster risk reduction and early warning systems⁴⁷ and the building of resilience⁴⁸ as appropriate measures.

23. The World Conference for Disaster Reduction took place in Kobe, Hyogo, Japan, from 18 to 22 January 2005. It adopted the Hyogo Declaration⁴⁹ and the Hyogo Framework for Action 2005–2015: Building the Resilience of Nations and Communities to Disasters.⁵⁰ The Hyogo Framework was intended as “the first plan to explain,

³⁷ *Ibid.*, para. 17.

³⁸ *Ibid.*, para. 20.

³⁹ *Ibid.*, paras. 59 and 60.

⁴⁰ General Assembly resolution 58/214 of 23 December 2003, preamble.

⁴¹ *Ibid.*, para. 7.

⁴² *Report of the World Summit on Sustainable Development...* (see footnote 35 above), chap. I, resolution 2, annex.

⁴³ General Assembly resolution 58/214 of 23 December 2003, para. 7 (c)–(e).

⁴⁴ General Assembly resolution 59/231 of 22 December 2004, para. 11.

⁴⁵ A/CONF.207/11 (United Nations publication, Sales No. E.05.II.A.4), chap. I, resolution 1, annex I.

⁴⁶ *Ibid.*, paras. 3, 4, 6 and 10.

⁴⁷ *Ibid.*, para. 6.

⁴⁸ *Ibid.*, para. 13.

⁴⁹ A/CONF.206/6, available from www.unisdr.org/we/inform/publications/1037, chap. I, resolution 1.

⁵⁰ *Ibid.*, resolution 2.

³² *Ibid.*, annex II, para. 3.

³³ *Ibid.*, para. 7 (c).

³⁴ UNISDR, “What is the International Strategy?”, available from www.unisdr.org/who-we-are/international-strategy-for-disaster-reduction.

³⁵ *Report of the World Summit on Sustainable Development, Johannesburg, South Africa, 26 August–4 September 2002* (United Nations publication, Sales No. E.03.II.A.1 and corrigendum), chap. I, resolution 2, annex, para. 37.

³⁶ A/58/277, para. 1.

describe and detail the work that is required from all different sectors and actors to reduce disaster losses”,⁵¹ and the Conference provided “a unique opportunity to promote a strategic and systematic approach to reducing vulnerabilities and risks to hazards”.⁵² The Hyogo Declaration stated:

We recognize as well that a culture of disaster prevention and resilience, and associated pre-disaster strategies, which are sound investments, must be fostered at all levels, ranging from the individual to the international levels. Human societies have to live with the risk of hazards posed by nature. However, we are far from powerless to prepare for and mitigate the impact of disasters. We can and must alleviate the suffering from hazards by reducing the vulnerability of societies. We can and must further build the resilience of nations and communities to disasters through people-cent[red] early warning systems, risks assessments, education and other proactive, integrated, multi-hazard, and multi-sectoral approaches and activities in the context of the disaster reduction cycle, which consists of prevention, preparedness, and emergency response, as well as recovery and rehabilitation. Disaster risks, hazards, and their impacts pose a threat, but appropriate response to these can and should lead to actions to reduce risks and vulnerabilities in the future.⁵³

24. The Hyogo Framework for Action re-emphasized the responsibility of each State to take effective measures to reduce disaster risk, “including for the protection of people on its territory”,⁵⁴ and took up the call made in the Johannesburg Plan of Implementation that “an integrated, multi-hazard approach to disaster risk reduction should be factored into policies, planning and programming related to sustainable development, relief, rehabilitation, and recovery activities in post-disaster and post-conflict situations in disaster-prone countries”.⁵⁵

25. The review of progress made in implementing the Yokohama Strategy identified specific gaps and challenges as key areas for developing a relevant framework for action for the decade 2005–2015: (a) governance: organizational, legal and policy frameworks; (b) risk identification, assessment, monitoring and early warning; (c) knowledge management and education; (d) reducing underlying risk factors; and (e) preparedness for effective response and recovery.⁵⁶ In the light of the objectives of the World Conference, the expected outcome for the subsequent 10 years was formulated as “the substantial reduction of disaster losses, in lives and in the social, economic and environmental assets of communities and countries”.⁵⁷

26. In its resolution 60/195 of 22 December 2005, the General Assembly recognized that “the Hyogo Framework for Action complements the Yokohama Strategy ... and its Plan of Action” (preamble), and called for “a more effective integration of disaster risk reduction into sustainable development policies, planning and programming; for the development and strengthening of institutions, mechanisms and capacities to build resilience to hazards and for a systematic incorporation of risk reduction approaches into the implementation of emergency preparedness, response and recovery programmes” (para. 3).

27. In its resolution 61/200 of 20 December 2006, paragraph 4, the General Assembly stressed:

The importance of the Hyogo Declaration and the Hyogo Framework for Action and the priorities for action that States, regional and international organizations and international financial institutions as well as other concerned actors should take into consideration in their approach to disaster risk reduction and implement, as appropriate, according to their own circumstances and capacities, bearing in mind the vital importance of promoting a culture of prevention in the area of natural disasters, including through the mobilization of adequate resources for disaster risk reduction, and of addressing disaster risk reduction, including disaster preparedness at the community level, and the adverse effects of natural disasters on efforts to implement national development plans and poverty reduction strategies with a view to achieving the internationally agreed development goals, including the Millennium Development Goals.

28. The General Assembly adopted resolution 61/198 of 20 December 2006, in which it “notes the proposed establishment of a Global Platform for Disaster Risk Reduction as the successor mechanism of the Inter-Agency Task Force for Disaster Reduction, and, taking into account the implementation of the Hyogo Framework for Action, decides that the Global Platform shall have the same mandate as the Inter-Agency Task Force for Disaster Reduction” (para. 15). Three sessions of the Global Platform have been held since—in 2007, 2009 and 2011—with the fourth scheduled for May 2013. Preparatory and follow-up work on the sessions of the Global Platform is led by the United Nations Office for Disaster Risk Reduction (UNISDR), which was created in 1999 as the secretariat of the International Strategy for Disaster Reduction (General Assembly resolution 54/219 of 22 December 1999).

29. At the second session of the Global Platform, in 2009, Heads of State and Government highlighted “in stark, unequivocal terms that reducing disaster risk is critical to managing the impacts of climate change”, while risk-prone countries stressed that they were giving “high priority to disaster risk reduction and wish to move ahead quickly in the design and adoption of policies and strategies to address their risks”.⁵⁸

30. In the report on the midterm review of the Hyogo Framework for Action, it was observed that “a growing political momentum for disaster risk reduction has been generated over the past five years”, as exemplified by the thematic debate on disaster risk reduction convened in 2011 by the President of the General Assembly, at which Member States called for “more awareness-raising activities, better use of shared experiences, advance planning and prevention”.⁵⁹ In the report, a growing commitment at the national level to disaster risk reduction and the achievement of the Hyogo Framework for Action objectives was observed, and it was noted that preparedness was the priority for action where Governments had achieved the most “success”.⁶⁰ It was stressed that, at the

⁵¹ See www.unisdr.org/we/coordinate/hfa.

⁵² A/CONF.206/6, chap. I, resolution 2, para. 1.

⁵³ *Ibid.*, resolution 1, para. 3.

⁵⁴ *Ibid.*, resolution 1, para. 4; and *ibid.*, resolution 2, para. 13 (b).

⁵⁵ *Ibid.*, resolution 2, para. 13 (c).

⁵⁶ *Ibid.*, resolution 2, para. 9.

⁵⁷ *Ibid.*, resolution 2, para. 11.

⁵⁸ Chair’s summary of the second session of the Global Platform for Disaster Risk Reduction (Geneva, 3–16 May 2011), paras. 1 and 6, available from www.preventionweb.net/files/10750_GP09ChairsSummary.pdf.

⁵⁹ Inter-Agency Secretariat of the International Strategy for Disaster Reduction, *Hyogo Framework for Action 2005–2015: Building the Resilience of Nations and Communities to Disasters: Mid-term Review 2010–2011* (2011), sect. 3.3, available from www.unisdr.org/files/18197_midterm.pdf.

⁶⁰ *Ibid.*, sect. 3.1, Priority for Action 5.

regional level, the Hyogo Framework for Action “has brought about a significant momentum for change”.⁶¹

31. In May 2011, the third session of the Global Platform for Disaster Risk Reduction was held, grounded on the findings of the second session, in 2009, the results of the midterm review and the 2011 *Global Assessment Report on Disaster Risk Reduction* of UNISDR.⁶² The Platform identified that it was critical to create incentives for investing in prevention, and noted that few countries incorporated disaster prevention into reconstruction and recovery planning.⁶³ In addition, “the discussions at the third session demonstrated that we now possess the knowledge, the means and the commitment to make disaster risk reduction a national, local and international priority”.⁶⁴

32. In its resolution 66/199 of 22 December 2011, the General Assembly took note with appreciation of the results of the midterm review of the Hyogo Framework for Action and recognized that the Global Platform had been confirmed as “being the main forum at the global level for strategic advice coordination and partnership development for disaster risk reduction” (para. 4). It also requested UNISDR to “facilitate the development of a post-2015 framework for disaster risk reduction” (para. 5).

33. The Hyogo Framework for Action and the International Strategy for Disaster Reduction gave further impetus for binding and non-binding regional initiatives⁶⁵ focused on disaster risk reduction:⁶⁶ the ASEAN Agreement on Disaster Management and Emergency Response;⁶⁷ the Beijing Action for Disaster Risk Reduction in Asia (2005); the Delhi Declaration on Disaster Risk Reduction in Asia (2007); the Kuala Lumpur Declaration on Disaster Risk Reduction in Asia (2008); the Fourth Asian Ministerial Conference on Disaster Risk Reduction (2010), leading to the Incheon Declaration on Disaster Risk Reduction in Asia and the Pacific (2010), and the Incheon Regional Roadmap and Action Plan on Disaster Risk Reduction through Climate Change Adaptation in Asia and the Pacific, reaffirming the Framework for Action and proposing Asian initiatives for climate change adaptation and disaster risk reduction considering vulnerabilities in the region;⁶⁸ the African Union Africa Regional Strategy for Disaster Risk Reduction of 2004, which was followed

by a programme of action for its implementation (originally for the period 2005–2010, but later extended to 2015);⁶⁹ four sessions of the Africa Regional Platform for Disaster Risk Reduction, the most recent in 2013;⁷⁰ the Arab Strategy for Disaster Risk Reduction 2020, adopted by the Council of Arab Ministers Responsible for the Environment at its twenty-second session, in December 2010;⁷¹ and, lastly, the Nayarit Communiqué on Lines of Action to Strengthen Disaster Risk Reduction in the Americas (2011).⁷²

34. Developments in the field of climate change have reinforced disaster risk reduction, most prominently in the Cancun Adaptation Framework, to enhance action on adaptation, seeking to reduce vulnerabilities and build resilience in developing countries, explicitly taking into consideration the Hyogo Framework for Action (FCCC/CP/2010/7/Add.1, para. 14 (e)). In addition, in the outcome document of the United Nations Conference on Sustainable Development, entitled “The future we want”, adopted in 2012, Heads of State and Government and high-level representatives reaffirmed their commitment to the Hyogo Framework for Action.⁷³ They called “for disaster risk reduction and the building of resilience to disasters to be addressed with a renewed sense of urgency ... and ... to be integrated into policies, plans, programmes and budgets at all levels and considered within relevant future frameworks”.⁷⁴

35. States have implemented the Hyogo Framework for Action by incorporating disaster risk reduction into national policy and legal frameworks. In a 2011 review of international implementation of national policy and legal frameworks for disaster risk reduction, based on a self-reporting mechanism that is non-exclusive, numerous States reported having integrated disaster risk reduction into development plans.⁷⁵

B. Prevention as a principle of international law

36. At this point, the Special Rapporteur deems it appropriate to recall the centrality of his dual-axis approach throughout the study of the present topic. Just as the disaster phase proper, the pre-disaster phase implies rights and obligations both horizontally (the rights and obligations of States in relation to one another and the international community) and vertically (the rights and obligations of States in relation to persons within a State’s territory and

⁶¹ *Ibid.*, sect. 3.2.

⁶² *Global Assessment Report on Disaster Risk Reduction* (Geneva, 2011, UNISDR).

⁶³ Chair’s summary of the third session of the Global Platform for Disaster Risk Reduction and World Reconstruction Conference (Geneva, 8–13 May 2011), paras. 8.5 and 9.1, available from www.preventionweb.net/files/20102_gp2011chairsummary.pdf.

⁶⁴ *Ibid.*, para. 4.

⁶⁵ The establishment of national platforms for disaster reduction, already called for in 1991, was requested by the Economic and Social Council in paragraph 9 of its resolution 1999/63, as well as in paragraph 10 of General Assembly resolution 56/195 of 21 December 2001 and paragraph 3 of General Assembly resolution 58/215 of 23 December 2003.

⁶⁶ For an overview, see also General Assembly resolution 59/231 of 22 December 2004.

⁶⁷ The Agreement is the first international treaty concerning disaster risk reduction to have been developed after the adoption of the Hyogo Framework for Action.

⁶⁸ For the text of the Incheon Declaration, see www.unisdr.org/we/inform/publications/16327.

⁶⁹ *Extended Programme of Action for the Implementation of the Africa Regional Strategy for Disaster Risk Reduction (2006–2015) and Declaration of the Second African Ministerial Conference on Disaster Risk Reduction 2010*, introduction, available from www.unisdr.org/files/19613_bookletpoenglish.pdf.

⁷⁰ “Africa seeks united position on disaster risk reduction”, 13 February 2013, available from www.unisdr.org/archive/31224.

⁷¹ For the text of the Strategy, see www.unisdr.org/files/18903_17934asdrrfinalenglishjanuary20111.pdf.

⁷² For the text of the Communiqué, see www.unisdr.org/files/18603_communiqueayarit.pdf.

⁷³ General Assembly resolution 66/288 of 27 July 2012, annex, para. 186.

⁷⁴ *Ibid.*

⁷⁵ See the Compilation of national progress reports on the implementation of the Hyogo Framework for Action (2009–2011), Hyogo Framework for Action priority 1, core indicator 1.1. Available from www.preventionweb.net/english/hyogo/progress/documents/hfa-report-priority1-1%282009-2011%29.pdf.

control). The obligation of States in relation to one another and the international community in the pre-disaster phase have been alluded to by the Special Rapporteur in his fifth report with reference to the duty to cooperate in disaster preparedness, prevention and mitigation.⁷⁶ Also relevant in the pre-disaster phase as regards rights and obligations of States in relation to one another is the obligation to prevent transboundary harm.⁷⁷ Nevertheless, as noted in the memorandum by the Secretariat, “prevention is more closely associated with a primary obligation to prevent harm to one’s own population, property and the environment generally”.⁷⁸

37. As can be seen from the historical account given in the preceding section, prevention, mitigation and preparedness have long been part of the discussion relating to natural disaster reduction and more recently to that on disaster risk reduction. Generally, they cover measures that can be taken in the pre-disaster phase.⁷⁹ As has been aptly put in the memorandum by the Secretariat, “prevention, mitigation and preparedness lie on different points of the continuum of actions undertaken in advance of the onset of a disaster”.⁸⁰

38. Preparedness, which is an integral part of disaster or emergency management, has been characterized as “the organization and management of resources and responsibilities for addressing all aspects of emergencies, in particular preparedness, response and initial recovery steps”.⁸¹ It was proposed as an appropriate measure to confront earthquakes as early as 1983.⁸² After inclusion as a specific focus of the International Decade for Natural Disaster Reduction, UNDP organized a disaster management training programme on disaster preparedness and elaborated further upon the notion in 1994. Preparedness came to be understood as crucial to international relief assistance. Accordingly, the objective of preparedness measures is closely related to the occurrence of a disaster.⁸³ As the Secretariat concluded, “preparedness refers to those measures put into place in advance to ensure an effective response, including the issuance of timely and effective early warning and the temporary evacuation of people and property”.⁸⁴ In temporal terms, preparedness straddles two areas of disaster risk reduction and disaster management: the pre-disaster phase and the post-disaster phase. The simple goal of disaster preparedness is to respond effectively and recover more swiftly when disasters strike. Preparedness efforts also aim at ensuring

that those having to respond know how to use the necessary resources. The activities that are commonly associated with disaster preparedness include developing planning processes to ensure readiness; formulating disaster plans; stockpiling resources necessary for effective response; and developing skills and competencies to ensure effective performance of disaster-related tasks.⁸⁵ The Federal Emergency Management Agency of the United States has defined disaster preparedness as “a continuous cycle of planning, organizing, training, equipping, exercising, evaluating, and taking corrective action in an effort to ensure effective coordination during incident response”.⁸⁶

39. “Mitigation” is frequently referred to in most instruments relating to disaster risk reduction together with preparedness.⁸⁷ The General Assembly set as a goal of the International Decade for Natural Disaster Reduction, “to improve the capacity of each country to mitigate the effects of natural disasters expeditiously and effectively”.⁸⁸ In terms of specific measures, mitigation came to be understood as aiming at structural or non-structural measures to limit the adverse effects of disaster.⁸⁹

40. Since, by definition, mitigation and preparedness imply the taking of measures prior to the onset of a disaster, they can be properly regarded as specific manifestations of the overarching principle of prevention, which lies at the heart of international law. The Charter of the United Nations has so enshrined it in declaring that the first purpose of the United Nations is “to maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace”.⁹⁰ The Commission, in its 2001 draft articles on the prevention of transboundary harm from hazardous activities, considered the “well-established principle of prevention” in relation to that international aspect of man-made disasters.⁹¹ The Commission explicitly referred to the Declaration of the United Nations Conference on the Human Environment (Stockholm Declaration),⁹² the Rio Declaration on Environment and Development⁹³ and General Assembly resolution 2955 (XXVII) of 15 December 1972,⁹⁴ and concluded that

[the] prevention of transboundary harm to the environment, persons and property has been accepted as an important principle in many multilateral treaties concerning protection of the environment, nuclear accidents, space objects, international watercourses, management of hazardous wastes and prevention of marine pollution.⁹⁵

⁷⁶ *Yearbook ... 2012*, vol. II (Part One), document A/CN.4/652, paras. 114–115.

⁷⁷ See the draft articles on prevention of transboundary harm from hazardous activities, *Yearbook ... 2001*, vol. II (Part Two), p. 148, para. 98.

⁷⁸ A/CN.4/590 and Add.1–3 (available from the Commission’s website, documents of the sixtieth session; the final text will be published as an addendum to *Yearbook ... 2008*, vol. II (Part One)), para. 24.

⁷⁹ General Assembly resolution 42/169 of 11 December 1987, para. 4 (a).

⁸⁰ A/CN.4/590 and Add.1–3 (footnote 78 above), para. 27.

⁸¹ UNISDR, *2009 UNISDR Terminology on Disaster Risk Reduction* (Geneva, 2009), p. 18.

⁸² Drakopoulos and Tassos, “Earthquakes and their social, economic and legal implications”, p. 183.

⁸³ General Assembly resolution 46/182 of 19 December 1991, annex, para. 18.

⁸⁴ See footnote 80 above.

⁸⁵ Sutton and Tierney, “Disaster preparedness: concepts, guidance and research”.

⁸⁶ See <https://training.fema.gov/programs/emischool/el361/toolkit/preventionresources.htm>.

⁸⁷ General Assembly resolution 46/182 of 19 December 1991, annex, sect. III.

⁸⁸ General Assembly resolution 44/236 of 22 December 1989, annex, para. 2 (a).

⁸⁹ See International Strategy for Disaster Reduction, *Living with Risk: A Global Review of Disaster Reduction Initiatives, 2004 version*, vol. I (United Nations publication, Sales No. GVE.03.0.2), p. 17.

⁹⁰ Article 1, paragraph 1.

⁹¹ *Yearbook ... 2001*, vol. II (Part Two), p. 148, para. (4) of the general commentary.

⁹² *Ibid.*

⁹³ *Ibid.*, para. (3) of the general commentary.

⁹⁴ *Ibid.*, para. (4) of the general commentary.

⁹⁵ *Ibid.*, p. 149, para. (5) of the general commentary.

41. The existence of an international legal obligation to prevent harm, both in its horizontal and vertical dimensions (see para. 36 above), finds support in human rights law and environmental law.

1. HUMAN RIGHTS LAW

42. In his preliminary report, the Special Rapporteur emphasized that “States are under a permanent and universal obligation to provide protection to those on their territory under the various international human rights instruments and customary international human rights law”.⁹⁶ He further recalled that “each human right is deemed to entail three levels of obligation on the State”:⁹⁷ the duty to respect (i.e. refraining itself from violating), protect (i.e. protecting rights holders from violations by third parties) and fulfil (i.e. taking affirmative actions to strengthen access to the right).⁹⁸ Protection, however, not only relates to actual violations of human rights, but also entails an obligation for States to prevent their occurrence.⁹⁹

43. This positive obligation to prevent human rights violations is explicitly enshrined in article 1 of the Convention on the Prevention and Punishment of the Crime of Genocide and article 2 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

44. Furthermore, the International Covenant on Civil and Political Rights establishes a positive obligation for States to respect and ensure human rights for all individuals subject to its jurisdiction, without distinction of any kind.¹⁰⁰ Article 2, paragraphs 2 and 3 (a)–(b), of the Covenant point to an obligation to prepare for and mitigate the consequences of human rights violations. Article 2, paragraph 2, has been described as entailing “preventive measures to ensure the necessary conditions for unimpeded enjoyment of the rights enshrined in the Covenant”.¹⁰¹ The prevention of human rights violations has been described as “basically the identification and the eradication of the underlying causes leading to violations of human rights”.¹⁰² With reference to torture, it has been observed that the violation of the right not to be tortured is the “final link in a long chain which starts where respect for the human dignity is taken lightly, its prevention means having to identify the links of the chain which precede torture and to break the chain before it reaches its final link”.¹⁰³

45. More explicitly, the Inter-American Court of Human Rights has formulated the legal obligation of States to take reasonable steps to prevent human rights violations in the following manner:

⁹⁶ *Yearbook ... 2008*, vol. II (Part One), document A/CN.4/598, p. 149, para. 25.

⁹⁷ *Ibid.*, para. 26.

⁹⁸ Fisher, *Law and Legal Issues in International Disaster Response: A Desk Study*, p. 34.

⁹⁹ Van Boven, “Prevention of human rights violations”, p. 191.

¹⁰⁰ Nowak, *UN Covenant on Civil and Political Rights, CCPR Commentary*, p. 37, art. 2, para. 18.

¹⁰¹ Kriebaum, “Prevention of human rights violations”, p. 156.

¹⁰² Nowak and Suntinger, “International mechanisms for the prevention of torture”, p. 146.

¹⁰³ *Ibid.*

This duty to prevent includes all those means of a legal, political, administrative and cultural nature that promote the protection of human rights and ensure that any violations are considered and treated as illegal acts, which, as such may lead to the punishment of those responsible and the obligation to indemnify the victims for damages. It is not possible to make a detailed list of all such measures, since they vary with the law and the conditions of each State Party.¹⁰⁴

46. Also in his preliminary report, the Special Rapporteur gave as examples of the human rights relevant in the event of disasters the rights to life, food, health and medical services, to the supply of water, to adequate housing, clothing and sanitation and the right not to be discriminated against.¹⁰⁵ The protection of those rights in the event of disasters extends to the taking of measures aimed at preventing and mitigating their effects. Each of those rights must also be read in the light of a State’s duty “to respect and to ensure”.¹⁰⁶ The obligation to respect requires States not to take any measures that would result in individuals being prevented from exercising or experiencing their rights. The obligation to ensure requires States to take positive measures to ensure that State authorities and third parties cannot violate a person’s rights. Thus, an international obligation to prevent and mitigate disasters arises from States’ universal obligation to ensure rights such as the rights to life and food, clothing and shelter. Such an international duty to prevent and mitigate disasters based on human rights law was identified as early as 1978.¹⁰⁷

47. Article 6 of the International Covenant on Civil and Political Rights prohibits the arbitrary deprivation of life, which includes obligations on States to affirmatively protect the right to life. The Human Rights Committee has already indicated that article 6 requires States to prevent certain life-threatening and foreseeable disasters. In its general comment interpreting article 6, the Committee stated that it would be desirable for States to take positive measures to reduce mortality, including measures to “eliminate malnutrition and epidemics”.¹⁰⁸ Here, the Committee clearly had such disasters in mind, including, for example, extreme cases of malnutrition (e.g. famine) as would fall within the definition of disaster adopted by

¹⁰⁴ *Velasquez Rodriguez v. Honduras*, judgment of 29 July 1988, Inter-American Court of Human Rights, Series C, No. 4, para. 175; see also para. 174.

¹⁰⁵ *Yearbook ... 2008*, vol. II (Part One), document A/CN.4/598, p. 149, para. 26.

¹⁰⁶ See, for example, art. 2, para. 1 of the International Covenant on Civil and Political Rights.

¹⁰⁷ See Samuels, “The relevance of international law in the prevention and mitigation of natural disasters”, pp. 245 and 248. (“As a minimum, the recognized right to an adequate standard of living, including adequate food, clothing, and housing, must involve a State’s legal obligation to assist another in time of natural disaster, a State’s legal obligation to prepare for disaster relief within its own territory and to take preventive measures in order to minimize the suffering resulting from natural disasters.”) See also Hand, “Disaster prevention presentation, from SCJIL symposium 2003”, pp. 147 and 159–161.

¹⁰⁸ Report of the Human Rights Committee, *Official Records of the General Assembly, Thirty-seventh Session, Supplement No. 40 (A/37/40)*, annex V, General comment No. 6 (article 6) on the right to life, p. 93, para. 5. (“Moreover, the Committee has noted that the right to life has been too often narrowly interpreted. The expression ‘inherent right to life’ cannot properly be understood in a restrictive manner, and the protection of this right requires that States adopt positive measures. In this connection, the Committee considers that it would be desirable for States parties to take all possible measures to reduce infant mortality and to increase life expectancy, especially in adopting measures to eliminate malnutrition and epidemics.”)

the Commission in draft article 3.¹⁰⁹ The rights secured by the Covenant also go hand in hand with those enshrined in the Universal Declaration of Human Rights. According to article 3 of the Declaration, “Everyone has the right to life, liberty and security of person”.¹¹⁰ As provided in article 25, paragraph (1),

Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.¹¹¹

Disasters are certainly situations under which an individual may face “circumstances beyond his control”.¹¹²

48. In addition, article 11, paragraph 1, of the International Covenant on Economic, Social and Cultural Rights recognizes the “right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions”. In the event of a disaster, a State has the obligation to guarantee the standard of living of everyone by mitigating its effects.¹¹³ Such a legal obligation in respect of disaster relief was already affirmed in 1977, also in consideration of “the economic, social, and political interest of all nations in the speedy mitigation of the human effects of a disaster anywhere”.¹¹⁴ Of course, the Covenant regime is subject to progressive realization,¹¹⁵ meaning that a State’s obligation to fulfil article 11 depends in part on its level of economic development.¹¹⁶

49. The Convention on the Rights of the Child also recognizes “the right of every child to a standard of living adequate for the child’s physical, mental, spiritual, moral and social development”.¹¹⁷ The States parties to the Convention have the duty to “take appropriate measures” to assist parents in fulfilling their primary responsibility to implement that right, “particularly with regard to nutrition”.¹¹⁸

50. The existence of an obligation to mitigate has been recently addressed in relation to climate change, in

¹⁰⁹ For a discussion of famine and malnutrition as a disaster, see Garcia, “Famine as a catastrophe: the role of international law”, p. 229.

¹¹⁰ General Assembly resolution 217 (III) of 10 December 1948.

¹¹¹ *Ibid.*

¹¹² Kent, “The human right to disaster mitigation and relief”, p. 137.

¹¹³ In support of the view that this human right presupposes an obligation to mitigate, see Nicoletti, “The prevention of natural and man-made disasters: what duties for States”, p. 194. See also Hand, “Disaster prevention presentation”, pp. 147 and 159.

¹¹⁴ Green, *International Disaster Relief: Towards a Responsive System*, p. 66.

¹¹⁵ See art. 2.

¹¹⁶ Progressive realization itself is not foreign to the concept of prevention in international law. In the commentary to the Commission’s draft articles on prevention of transboundary harm, it was noted that “the economic level of States is one of the factors to be taken into account in determining whether a State has complied with its obligation of due diligence” and that “a State’s economic level cannot be used to dispense the State from its obligation under the present articles”. See *Yearbook ... 2001*, vol. II (Part Two), p. 155, para. (13) of the commentary to article 3.

¹¹⁷ Art. 27, para. 1.

¹¹⁸ Art. 27, para. 3.

particular when establishing a core set of minimum thresholds or basic human rights standards, which have to be taken into account when dealing with climate change.¹¹⁹ In addition, as regards preparedness, it has been suggested that public health law “recommends laws that encourage or require natural disaster preparedness”.¹²⁰

51. International jurisprudence has recently adopted the approach outlined in the present section, with the European Court of Human Rights expressly recognizing that the right to life requires States to take all appropriate measures to prevent both natural and man-made disasters.¹²¹ In two groundbreaking cases, the Court held that failing to take feasible measures that would have prevented or mitigated the consequences of foreseeable disasters amounted to a violation of the right to life and therefore incurred the responsibility of the State under international law.¹²² In *Öneriyildiz*, a methane explosion in a public refuse dump, situated on a slope overlooking a valley in Istanbul, engulfed 10 slum dwellings in the immediate vicinity of the dump and killed 39 people. Experts had warned the Turkish authorities of the risk of such an explosion two years earlier, but no steps were taken. In *Budayeva*, a mudslide swept through a mountainous town in the Russian Federation, killing several people and destroying many buildings. While the town had been protected by retention dams, they were badly damaged by particularly heavy mudslides in 1999 and never repaired, warnings by the State meteorological institute notwithstanding. Two weeks before the mudslide, the agency informed the local Ministry for Disaster Relief about the imminent danger of a new disaster and requested that observation points should be set up in the upper sections of the river and that an emergency warning should be issued if necessary. None of the proposed measures were taken.

52. Interpreting article 2 of the European Convention on Human Rights, which ensures the right to life in almost identical terms as article 6 of the International Covenant on Civil and Political Rights, the Court affirmed in its judgment in *Öneriyildiz* that the right to life “does not solely concern deaths resulting from the use of force by agents of the State but also... lays down a positive obligation on States to take appropriate steps to safeguard the lives of those within their jurisdiction” and stressed that “this positive obligation entails above all a primary duty on the State to put in place a legislative and administrative framework designed to provide effective deterrence against threats to the right to life”.¹²³ In its 2008 judgment in *Budayeva*, the Court concluded:

¹¹⁹ McInerney-Lankford, Darrow and Rajamani, *Human Rights and Climate Change: A Review of the International Legal Dimensions*, p. 30.

¹²⁰ Feinberg, “Hurricane Katrina and the public health-based argument for greater federal involvement in disaster preparedness and response”, p. 598.

¹²¹ See Kälén and Dale, “Disaster risk mitigation—why human rights matter”, p. 38.

¹²² See ECHR, *Öneriyildiz v. Turkey* [GC], application No. 48939/99, judgment of 30 November 2004, *Reports of Judgments and Decisions* 2004-XII, and *Budayeva and Others v. Russia*, application Nos. 15339/02, 21166/02, 20058/02, 11673/02 and 15343/02, judgment of 20 March 2008 (extracts).

¹²³ *Öneriyildiz*, para. 71, and *Budayeva*, para. 129 (see previous footnote).

In the sphere of emergency relief, where the State is directly involved in the protection of human lives through the mitigation of natural hazards, these considerations should apply in so far as the circumstances of a particular case point to the imminence of a natural hazard that had been clearly identifiable, and especially where it concerned a recurring calamity affecting a distinct area developed for human habitation or use... The scope of the positive obligations imputable to the State in the particular circumstances would depend on the origin of the threat and the extent to which one or the other risk is susceptible to mitigation.¹²⁴

53. A State therefore incurs liability when it neglects its duty to take preventive measures when a natural hazard is clearly identifiable and effective means to mitigate the risk are available to it.¹²⁵ These two decisions concerning a duty to prevent and mitigate disasters are relevant for a number of reasons. First, the Court articulated the same duty regarding natural and man-made disasters. Second, the Court faulted Turkey and the Russian Federation for failing to “take appropriate steps” to prevent the harm, which mirrors the obligation in various international instruments for States to take “appropriate” or “necessary” measures to reduce the risk of disaster. Third, the cases suggest that a State’s duty is triggered when a disaster becomes foreseeable, which mirrors the foreseeability requirement within the principle of due diligence.¹²⁶

2. ENVIRONMENTAL LAW

54. States have an obligation not to cause environmental harm *in genere* and to ensure that activities within their jurisdiction do not harm the environment or areas under the jurisdiction of another State. The duty to prevent in international environmental law encompasses both obligations.¹²⁷ Prevention in the environmental context is based on the common law principle of *sic utere tuo ut alienum non laedas*. As declared by ICJ in the *Corfu Channel* case, this principle is well established in international law¹²⁸ and was applied as early as 1941 in the *Trail Smelter* arbitration.¹²⁹ The first clear pronouncement of the principle of prevention in international environmental law can be found in principle 21 of the Declaration of the United Nations Conference on the Human Environment, which reads:

States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction.¹³⁰

55. Principle 2 of the Rio Declaration on Environment and Development adopted principle 21 wholesale, with the added recognition that States have a sovereign right to exploit their own resources according to their

developmental policies.¹³¹ Principle 11 of the Rio Declaration builds on this obligation by adding that States must adopt legislative and administrative policies intended to prevent or mitigate transboundary harm.¹³²

56. The principle was affirmed in the 1996 advisory opinion of ICJ on the *Legality of the Threat or Use of Nuclear Weapons* in the following terms: “The existence of the general obligation of States to ensure that activities within their jurisdiction and control respect the environment of other States or of areas beyond national control is now a part of the corpus of international law relating to the environment”.¹³³

57. Over time, the key enunciations of the principle of prevention have been used to hold States responsible for failing to take steps necessary to stop transboundary harm. For example, in the *Gabčíkovo-Nagymaros Project* case, ICJ called upon both parties to “look afresh at the effects on the environment of the operation of the Gabčíkovo power plant” on the Danube River.¹³⁴ In the light of “new norms and standards”, the Court found that, at least in the field of environmental protection, “vigilance and prevention are required” on account of the often irreversible character of damage to the environment and of the limitations inherent in the very mechanism of reparation to this type of damage.¹³⁵ Similarly, in the *Pulp Mills on the River Uruguay* case, the Court found that the principle of prevention was part of customary international law and that a State was thus obliged to use all the means at its disposal in order to avoid activities that took place in its territory or in any area under its jurisdiction causing significant damage to the environment of another State.¹³⁶

58. The World Charter for Nature was adopted by the General Assembly in its resolution 37/7 of 28 October 1982, embodying prevention as its underpinning principle. The Assembly recalled its conviction that “the benefits which could be obtained from nature depended on the maintenance of natural processes and on the diversity of life forms and that those benefits were jeopardized by the excessive exploitation and the destruction of natural habitats”.

59. As already mentioned, in 2001, the Commission identified a “well-established principle of prevention” in the context of transboundary environmental harm.¹³⁷ Article 3 of the draft articles on prevention of transboundary harm from hazardous activities requires States to “take all appropriate measures to prevent significant transboundary

¹²⁴ *Budayeva* (footnote 122 above), para. 137.

¹²⁵ Kálin and Dale, “Disaster risk mitigation—why human rights matter”, p. 39.

¹²⁶ See para. 61 below.

¹²⁷ *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, Judgment, I.C.J. Reports 2010, p. 14, separate opinion by Judge Cançado Trindade, at p. 159, para. 59.

¹²⁸ *Corfu Channel (United Kingdom of Great Britain and Northern Ireland v. Albania)*, Judgment of 9 April 1949, I.C.J. Reports 1949, p. 4, at p. 22.

¹²⁹ *Trail Smelter case (United States of America v. Canada)*, UNRIIAA, vol. III (Sales No. 1949.V.2), p. 1905.

¹³⁰ *Report of the United Nations Conference on the Human Environment, Stockholm, 5–16 June 1972, A/CONF.48/14/Rev.1* (United Nations publication, Sales No. E.73.II.A.14), p. 5, principle 21.

¹³¹ *Report of the United Nations Conference on Environment and Development, Rio de Janeiro, 3–14 June 1992*, vol. I, Resolutions Adopted by the Conference (United Nations publication, Sales No. E.93.I.8a), resolution 1, annex I, principle 2.

¹³² *Ibid.*, principle 11.

¹³³ *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion*, I.C.J. Reports 1996, p. 226, at p. 241, para. 29.

¹³⁴ *Gabčíkovo-Nagymaros Project (Hungary/Slovakia)*, Judgment, I.C.J. Reports 1997, p. 7, at p. 78, para. 140.

¹³⁵ *Ibid.*

¹³⁶ *Pulp Mills on the River Uruguay* (footnote 127 above), para. 101 (citing p. 22 of the judgment in the *Corfu Channel* case (footnote 128 above) and the advisory opinion of ICJ on the *Legality of the Threat or Use of Nuclear Weapons* (footnote 133 above)).

¹³⁷ Draft articles on prevention of transboundary harm from hazardous activities, *Yearbook ... 2001*, vol. II (Part Two), p. 148, paragraph (4) of the general commentary.

harm or at any event to minimize the risk thereof".¹³⁸ In establishing such a duty, the Commission drew upon the principle of *sic utere tuo ut alienum non laedas*, while adding more specificity to the "limitations on the freedom of States reflected in principle 21" of the Declaration of the United Nations Conference on the Human Environment. Article 3 imposes an obligation on States to "adopt and implement national legislation incorporating accepted international standards"¹³⁹ and to enforce legislation and administrative regulations to ensure compliance.¹⁴⁰ The principle of prevention also animates article 7 on the assessment of risk, article 8 on the duty to notify, article 9 on the duty to consult with affected States on preventive measures and article 16 on emergency preparedness. The commentary to article 16 even recognizes a "duty to prevent environmental disasters".¹⁴¹

60. Both ICJ and the Commission agree that the principle of prevention stems from two distinct but interrelated State obligations: due diligence and the precautionary principle.¹⁴²

(a) *Due diligence*

61. The principle of due diligence is an established principle of international law and has been referred to as one of its "basic principles".¹⁴³ It has been associated with the principle of responsibility, referring to underlying rules within a "regime of responsibility for breach of due diligence obligations".¹⁴⁴ In relation to acts or omissions of non-State actors, it has been stated as early as the beginning of the twentieth century that "the State may incur responsibility if it fails to exercise due diligence in preventing or reacting to such acts or omissions".¹⁴⁵ Due diligence, as it relates to prevention in the environmental context, has been defined as using, among others, the "best practicable means"¹⁴⁶ or "all appropriate and effective measures".¹⁴⁷ As described by ICJ in the *Pulp Mills on the River Uruguay* case, the obligation to "prevent

pollution" in the treaty between Uruguay and Argentina was "an obligation to act with due diligence in respect of all activities which take place under the jurisdiction and control of each party".¹⁴⁸

62. The obligation of due diligence is the standard basis for prevention.¹⁴⁹ The obligation is one of conduct rather than result; the duty of due diligence cannot guarantee the total prevention of significant harm, but a State must exert its best possible efforts to minimize the risk.¹⁵⁰ In this sense, the duty of due diligence is the core obligation of the prevention principle,¹⁵¹ and the formula obliging States to take all "necessary or appropriate measures" (e.g. art. 3 of the draft articles on transboundary harm) is often used to express this due diligence obligation.¹⁵² Due diligence is manifested by a State's efforts to implement and enforce legislation and administrative regulations on prevention.¹⁵³ Due diligence has been accepted by States as "in accordance with current realities of State practice and international law".¹⁵⁴ To arrive at this finding, the Commission relied on a number of international environmental conventions that contain obligations to take appropriate measures or, more specifically, to implement treaty obligations through legislation and administrative regulations.¹⁵⁵ Thus, although the term "due diligence" is not used by international environmental conventions, it is accepted that numerous treaties on the law of the sea, maritime pollution, protection of the ozone layer, environmental impact assessments and the use of transboundary watercourses and international lakes contain such an obligation.¹⁵⁶

¹⁴⁸ *Pulp Mills on the River Uruguay* (footnote 127 above), p. 79, para. 197.

¹⁴⁹ Prevention of transboundary harm from hazardous activities, *Yearbook ... 2001*, vol. II (Part Two), p. 154, paragraph (8) of the commentary to article 3.

¹⁵⁰ *Ibid.*, paragraph (7).

¹⁵¹ In his second report on international liability for injurious consequences arising out of acts not prohibited by international law (prevention of transboundary damage from hazardous activities), the Special Rapporteur, Pemmaraju Sreenivasa Rao, notes that "the duty of prevention, which is an obligation of conduct, is essentially regarded as a duty of due diligence" and that "any question concerning implementation or enforcement of the duty of prevention would necessarily have to deal with the content of the obligation and hence the degree of diligence which should be observed by States" (*Yearbook ... 1999*, vol. II (Part One), document A/CN.4/501, p. 116, para. 18).

¹⁵² Convention on the prevention of marine pollution by dumping of wastes and other matter, art. 1; United Nations Convention on the Law of the Sea, art. 194; and Convention on the Transboundary Effects of Industrial Accidents, art. 3. See also Romano, "L'obligation de prévention des catastrophes industrielles et naturelles", p. 389. See in particular Nicoletti, "The prevention of natural and man-made disasters: what duties for States".

¹⁵³ Draft articles on prevention of transboundary harm from hazardous activities, *Yearbook ... 2001*, vol. II (Part Two), p. 154, paragraph (10) of the commentary to article 3.

¹⁵⁴ *Yearbook ... 2000*, vol. II (Part One), document A/CN.4/510, p. 117, para. 10.

¹⁵⁵ *Yearbook ... 2001*, vol. II (Part Two), p. 154, paragraph (8) of the commentary to article 3, footnote 880 (citing the United Nations Convention on the Law of the Sea, art. 194, para. 1; the Convention on the prevention of marine pollution by dumping of wastes and other matter, arts. I, II and VII, para. 2; the Vienna Convention for the Protection of the Ozone Layer, art. 2; the Convention on the Regulation of Antarctic Mineral Resource Activities, art. 7, para. 5; the Convention on environmental impact assessment in a transboundary context, art. 2, para. 1; and the Convention on the Protection and Use of Transboundary Watercourses and International Lakes, art. 2, para. 1).

¹⁵⁶ *Yearbook ... 2001*, vol. II (Part Two), p. 154, paragraph (8) of the commentary to article 3.

¹³⁸ *Ibid.* Prevention is also the preferred method of asserting State responsibility and liability for transboundary harm. In his first report on prevention of transboundary damage from hazardous activities, the Special Rapporteur, Pemmaraju Sreenivasa Rao, states that "prevention as a policy in any way is better than cure" and that "it is a time-honoured policy and one that is widely used by many developed and industrialized societies to manage and even reduce or eliminate the ill effects of their economic growth" (*Yearbook ... 1998*, vol. II (Part One), document A/CN.4/487 and Add.1, p. 186, para. 32).

¹³⁹ *Yearbook ... 2001*, vol. II (Part Two), p. 153, paras. (2) and (4) of the commentary to article 3.

¹⁴⁰ *Ibid.*, p. 154, para. (6).

¹⁴¹ *Ibid.*, p. 168, para. (1) of the commentary to article 16.

¹⁴² *Ibid.*, pp. 154–155, paras. (7)–(18) of the commentary to article 3.

¹⁴³ Condorelli, "The imputability to States of acts of international terrorism", pp. 240–242. See also Pisillo-Mazzeschi, "The due diligence rule and the nature of the international responsibility of States", pp. 9–51.

¹⁴⁴ Pisillo-Mazzeschi, "Forms of international responsibility for environmental harm", pp. 15–16.

¹⁴⁵ Hessbruegge, "The historical development of the doctrines of attribution and due diligence in international law", p. 268, referring to Amos Shurtle Hershey, *The Essentials of International Public Law*, New York, Macmillan Company, 1918, p. 162. See also Barnidge, "The due diligence principle under international law", pp. 81–121.

¹⁴⁶ United Nations Convention on the Law of the Sea, art. 194, para. 1.

¹⁴⁷ Convention on environmental impact assessment in a transboundary context, art. 2, para. 1.

63. The obligation of due diligence has two main characteristics: the degree of care in question is that expected of a “good Government” and the required degree of care is also proportional to the degree of hazardousness of the activity involved.¹⁵⁷ Regarding the “good Government” standard, for the Commission:

The main elements of the obligation of due diligence involved in the duty of prevention could be thus stated: the degree of care in question is that expected of a good Government. It should possess a legal system and sufficient resources to maintain an adequate administrative apparatus to control and monitor the activities. It is, however, understood that the degree of care expected of a State with a well-developed economy and human and material resources and with highly evolved systems and structures of governance is different from States which are not so well placed.¹⁵⁸

64. According to the Commission, under the “good Government” criterion, the economic level of States is one of the factors to be taken into account in determining whether a State has complied with its obligations of due diligence.¹⁵⁹ It is understood, however, that a State’s economic level cannot discharge it from its obligation in this regard and, in fact, “vigilance, employment of infrastructure and monitoring of hazardous activities in the territory of the State, which is a natural attribute of any Government, are expected”.¹⁶⁰ As far as the proportionality standard is concerned, the degree of care required of a State is proportional to the degree of harm that the hazard involves. The harm itself should be foreseeable and the State must have known or should have known that the degree of risk was significant.¹⁶¹

65. The European Court of Human Rights has also framed the duty of prevention as one of due diligence. In *Öneryildiz*, the Court held that Turkish authorities had a positive obligation to prevent when they “knew or ought to have known that there was a real and immediate risk to a number of persons”¹⁶² and, in *Budayeva*, that a failure “to take measures that were necessary and sufficient to avert the risks inherent in dangerous activity”¹⁶³ amounted to a violation of the right to life under article 2 of the European Convention on Human Rights. Similarly, in *Budayeva*, the Court found that, in the face of increasing risks of mudslides, “the authorities could reasonably be expected to acknowledge the increased risk of accidents in the event of a mudslide that year and to show all possible diligence in informing the civilians and making advance arrangements for the emergency evacuation”.¹⁶⁴ Nevertheless, in *Öneryildiz*, the Court recognized that “an impossible or disproportional burden must not be imposed on the authorities without consideration being given, in particular, to the operational choices which they must make in terms of priorities

and resources”.¹⁶⁵ In *Budayeva*, the Court noted that “this consideration must be afforded even greater weight in the sphere of emergency relief in relation to a meteorological event, which is as such beyond human control, than in the sphere of dangerous activities of a man-made nature”.¹⁶⁶ Allowing for various actions to be taken on the basis of the specific capacities and priorities of the State does not, however, absolve States of their obligation to avert risk and to “do everything within their power to protect [people] from the immediate and known risks to which they were exposed”.¹⁶⁷

(b) *Precautionary principle*

66. Under international environmental law, the “precautionary principle” relates to the more general prevention of environmental harm (including within national boundaries) and essentially creates a rebuttable presumption that an action or policy has a suspected risk of causing harm to the public or to the environment absent evidence that it does not pose a risk.¹⁶⁸ The Rio Declaration first formulated it as follows:

In order to protect the environment, the precautionary approach shall be widely applied by States, according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.¹⁶⁹

The precautionary principle entails two main elements: the awareness of the existence or persistence of risks and the awareness of scientific uncertainties surrounding the issue at stake.¹⁷⁰

67. The commentary to article 3 of the draft articles on prevention of transboundary harm recognizes that the duty to prevent involves taking such measures as are appropriate by way of abundant caution, even if full scientific certainty does not exist, to avoid or prevent serious or irreversible damage.¹⁷¹ The commentary to draft articles 7 and 10 expressly finds that the precautionary principle has become a general principle of environmental law.¹⁷²

68. The principle has been implicitly included in a number of international conventions, such as the Bamako Convention on the Ban of the Import into Africa and the Control of Transboundary Movement and Management of Hazardous Wastes within Africa (art. 4, para. 3), the United Nations Framework Convention on Climate Change (art. 3, para. 3), the Treaty establishing the European Community as amended by the Treaty of Amsterdam (art. 174 (former art. 130 (r)) and the Vienna Convention for the Protection of the Ozone Layer (art. 2).¹⁷³

¹⁵⁷ *Yearbook ... 2000*, vol. II (Part One), document A/CN.4/510, p. 119, para. 20.

¹⁵⁸ *Yearbook ... 2001*, vol. II (Part Two), p. 155, paragraph (17) of the commentary to article 3.

¹⁵⁹ *Ibid.* See also *Yearbook ... 2000*, vol. II (Part One), document A/CN.4/510, p. 120, para. 23.

¹⁶⁰ *Yearbook ... 2001*, vol. II (Part Two), p. 155, paragraph (17) of the commentary to article 3.

¹⁶¹ *Ibid.*, paragraph (18).

¹⁶² *Öneryildiz* (footnote 122 above), para. 101.

¹⁶³ *Budayeva* (footnote 122 above), para. 140.

¹⁶⁴ *Ibid.*, para. 152.

¹⁶⁵ *Öneryildiz* (footnote 122 above), para. 107.

¹⁶⁶ *Budayeva* (footnote 122 above), para. 135.

¹⁶⁷ *Öneryildiz* (footnote 122 above), para. 109.

¹⁶⁸ See, for example, principle 15 of the Rio Declaration (footnote 131 above).

¹⁶⁹ *Ibid.*

¹⁷⁰ See *Pulp Mills on the River Uruguay* (footnote 127 above), separate opinion by Judge Cançado Trindade, at p. 159, para. 62. See also Trouwborst, *Precautionary Rights and Duties of States*.

¹⁷¹ *Yearbook ... 2001*, vol. II (Part Two), p. 155, paragraph (14) of the commentary to article 3.

¹⁷² *Ibid.*, pp. 162–163, paragraphs (6)–(7) of the commentary to article 10.

¹⁷³ *Ibid.*, paragraph (7).

69. Since the 1990s, it has been argued that the precautionary principle has become a principle of “customary international environmental law” or even general international customary law.¹⁷⁴ In his dissenting opinion in the ICJ judgment in the *Pulp Mills on the River Uruguay* case, Judge *ad hoc* Vinuesa concluded that the precautionary principle “indisputably is at the core of environmental law”, saying “in my opinion, the precautionary principle is not an abstraction or an academic component of desirable soft law, but a rule of law within general international law as it stands today”.¹⁷⁵ The Court has not, however, yet acknowledged the principle as such.¹⁷⁶

C. International cooperation on prevention

70. The Commission has reaffirmed the duty to cooperate in article 5 of its draft articles on the present topic and, in article 5 *bis*, adopted in 2012, has given a non-exhaustive enumeration of the forms that cooperation may take in the context of relief. Cooperation is also at the centre of the horizontal (international) dimension of prevention. In his fifth report, the Special Rapporteur briefly touched upon cooperation as it relates to disaster preparedness prevention and mitigation. As noted therein, cooperation relates to nearly all aspects of disaster prevention, including cooperation on search and rescue arrangements, standby capacity requirements, early warning systems, exchange of information pertaining to risk assessment and identification, contingency planning and capacity-building.¹⁷⁷

71. The duty to cooperate is a well-established principle of international law. As the Special Rapporteur noted in his second report,¹⁷⁸ it is enshrined in numerous international instruments, including the Charter of the United Nations. As formulated in the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, the purpose of cooperation is, in part, “to promote international economic stability and progress” and “the general welfare of nations”.¹⁷⁹

72. The duty to cooperate is also well established in connection with prevention. It has been reiterated by the General Assembly in numerous resolutions that address disaster prevention and disaster risk reduction. In establishing the International Decade for Natural Disaster Reduction, the Assembly recognized the responsibility of the United Nations to cooperate to mitigate risk, including through prevention and early warning, while calling upon

States to cooperate to reduce natural hazards.¹⁸⁰ In more recent resolutions, the Assembly has urged the international community “to reduce the adverse effects of natural disasters” through cooperation.¹⁸¹ International cooperation is to be undertaken in order to support national efforts for prevention,¹⁸² especially “to increase the capacity of countries to respond to the negative impacts of all natural hazards ... particularly in developing countries”.¹⁸³ The Hyogo Framework for Action was adopted in large part to encourage cooperation in prevention, both among States and between States and non-State actors.¹⁸⁴ As has been explained, the Hyogo Framework for Action “is the guiding document in strengthening and building international cooperation to ensure that disaster risk reduction be used as a foundation for sound national and international development agendas”.¹⁸⁵ This is confirmed by the language of the Framework, which stresses the importance of cooperation with regard to disaster prevention: “We are determined to reduce disaster losses of lives and other social, economic and environmental assets worldwide, mindful of the importance of international cooperation, solidarity and partnership, as well as good governance at all levels.”¹⁸⁶

73. Non-binding declarations have referred to cooperation when underscoring the duty to prevent. For example, the Yogyakarta Declaration on Disaster Risk Reduction in Asia and the Pacific 2012 called upon stakeholders to “enhance and support regional cooperation mechanisms and cent[re]s on disaster information management” relating to local risk assessment and financing.¹⁸⁷ Likewise, the Declaration of Panama placed cooperation as central to the “prevention and mitigation of risks and natural disasters”. Heads of State and/or Government pledged “to foster international co-operation and capacity-building in the area of natural disasters, in enhancing the provision of humanitarian assistance at all stages of a disaster and in promoting a culture of prevention and early warning systems”.¹⁸⁸

74. Cooperation is embedded in the regional organs and platforms concerned with prevention, including the Regional Platform for Disaster Risk Reduction in the Americas, the Arab Strategy for Disaster Risk Reduction 2020, the Asian Ministerial Conference on Disaster Risk Reduction, the European Forum for Disaster Risk Reduction, the Pacific Platform for Disaster Risk Management and the Africa Regional Strategy for Disaster Risk Reduction. For

¹⁷⁴ See in more detail Harding and Fisher, eds., *Perspectives on the Precautionary Principle*, p. 5; Trouwborst, “The precautionary principle in general international law: combating the Babylonian confusion”, p. 189; Romano, “L’obligation de prévention des catastrophes industrielles et naturelles”, p. 396.

¹⁷⁵ *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, *Provisional Measures*, Order of 13 July 2006, *I.C.J. Reports 2006*, p. 113, dissenting opinion of Judge *ad hoc* Vinuesa, at p. 152.

¹⁷⁶ Sunstein, *Laws of Fear: Beyond the Precautionary Principle*; Cameron, “Environmental risk management in New Zealand—is there scope to apply a more generic framework?”

¹⁷⁷ *Yearbook ... 2012*, vol. II (Part One), document A/CN.4/652, paras. 114–115.

¹⁷⁸ *Yearbook ... 2009*, vol. II (Part One), document A/CN.4/615.

¹⁷⁹ General Assembly resolution 2625 (XXV) of 24 October 1970, annex, para. 1.

¹⁸⁰ General Assembly resolution 42/169 of 11 December 1987, paras. 7–8.

¹⁸¹ General Assembly resolution 58/215 of 23 December 2003, para. 2.

¹⁸² See, for example, General Assembly resolution 60/196 of 22 December 2005, para. 2.

¹⁸³ General Assembly resolution 59/233 of 22 December 2004. See also resolution 60/196 of 22 December 2005.

¹⁸⁴ A/CONF.206/6, chap. I, resolution 2.

¹⁸⁵ See www.unisdr.org/we/coordinate.

¹⁸⁶ A/CONF.206/6, resolution 1, fifth preambular paragraph.

¹⁸⁷ Adopted by the Fifth Asian Ministerial Conference on Disaster Risk Reduction, held in Yogyakarta, Indonesia, in 2012.

¹⁸⁸ Declaration of Panama, adopted at the Fourth Summit of Heads of State and/or Government of the Association of Caribbean States, held in Panama City in July 2005, available from www.acs-aec.org/sites/default/files/Declaracion_de_Panama_en_0.pdf.

example, the European Forum has noted that it “will serve as a venue for ... information sharing, exchange of knowledge and ideas and facilitation of cooperation”.¹⁸⁹ To this end, the European Forum has “identified specific opportunities for cross-fertilization between countries and sub-regions for exchanging knowledge and information, as well as inter-government and inter-sector cooperation”.¹⁹⁰ In addition, the Extended Programme of Action for the Implementation of the Africa Regional Strategy for Disaster Risk Reduction (2006–2015) identified cooperation as a major area of activity relating to risk assessment. It stressed cooperation “regionally and internationally to assess and monitor regional and transboundary hazards”.¹⁹¹ Regional cooperation is said to be important as it allows for the efficient use of resources and reduces duplicative efforts.¹⁹²

75. As a legal duty, international cooperation for disaster prevention finds its source in bilateral and multilateral treaties concluded between States or between States and international organizations. As an example of the latter, a 2000 framework agreement between the Caribbean Community and Japan specifically addressed cooperation for disaster prevention. The framework resolved “to promote cooperation for ... preventive action and rehabilitation”, as well as stressing that “international cooperation should be promoted to strengthen the institutional capacity of the regional and national agencies concerned with disaster prevention emergency response and management”.¹⁹³

1. BILATERAL INSTRUMENTS

76. Many States have concluded bilateral agreements specially addressing cooperation in disaster prevention.¹⁹⁴ Examples are the agreements between Argentina and Spain,¹⁹⁵ Guatemala and Mexico,¹⁹⁶ Germany and Hungary,¹⁹⁷ France and Italy,¹⁹⁸ the Republic of

Korea and Poland,¹⁹⁹ Poland and Hungary,²⁰⁰ Poland and Ukraine,²⁰¹ Poland and the Russian Federation,²⁰² the Russian Federation and Greece,²⁰³ Switzerland and Italy,²⁰⁴ the United States and the Russian Federation,²⁰⁵ the United States and Poland,²⁰⁶ the United States and Bulgaria,²⁰⁷ the United States and Ukraine,²⁰⁸ the United States and the Philippines,²⁰⁹ Uruguay and Spain,²¹⁰ Spain and Mexico,²¹¹ the Russian Federation and Spain,²¹² and France and Malaysia.²¹³ The last-mentioned

¹⁹⁹ Republic of Korea and Poland: Agreement on scientific and technological cooperation (Seoul, 29 June 1993), *ibid.*, vol. 1847, No. 31455, p. 289.

²⁰⁰ Agreement between the Governments of the Republic of Poland and the Republic of Hungary on Cooperation and Mutual Aid in Preventing Catastrophes, Natural Disasters and other Serious Events and in Eliminating their Effects (6 April 2000).

²⁰¹ Agreement between the Government of the Republic of Poland and the Cabinet of Ministers of Ukraine on Cooperation and Mutual Aid in Preventing Catastrophes, Natural Disasters and other Serious Events and in Eliminating their Effects (19 July 2002).

²⁰² Agreement between the Government of the Republic of Poland and the Government of the Russian Federation on Cooperation Preventing the Technological and Natural Disasters and Elimination of their Effects (Warsaw, 25 August 1993).

²⁰³ Agreement between the Government of the Hellenic Republic and the Government of the Russian Federation on co-operation in the field of prevention and response to natural and man-made disasters (Athens, 21 February 2000).

²⁰⁴ Agreement between the Swiss Confederation and the Italian Republic on Cooperation in the Area of Risk Management and Prevention and on Mutual Assistance in the Event of Natural and Man-made Disasters (Rome, 2 May 1995).

²⁰⁵ Memorandum of Understanding between the Government of the United States of America and the Government of the Russian Federation on cooperation in natural and man-made technological emergency prevention and response (Moscow, 16 July 1996), United Nations, *Treaty Series*, No. 50116, p. 1.

²⁰⁶ Protocol of Intentions between the Federal Emergency Management Agency (United States of America) and the Ministry of Defence of the Republic of Poland on cooperation in natural and man-made technological emergency prevention and response (Warsaw, 9 May 2000).

²⁰⁷ Protocol of Intentions between the Federal Emergency Management Agency (United States of America) and the Ministry of Defence of the Republic of Bulgaria on Cooperation in natural and man-made technological emergency prevention and response (Washington, D.C., 24 January 2000).

²⁰⁸ Memorandum of Understanding between the Government of the United States of America and the Government of Ukraine on Cooperation in Natural and Man-made Technological Emergency Prevention and Response (Kiev, 5 June 2000).

²⁰⁹ Protocol of Intentions between the Government of the United States of America and the Republic of the Philippines Concerning Cooperation and Disaster Prevention and Management (Washington, D.C., 20 November 2001).

²¹⁰ Agreement between the Ministry of National Defence of the Eastern Republic of Uruguay and the Ministry of the Interior of the Kingdom of Spain on Scientific and Technological Cooperation and Mutual Assistance in Civil Defence and Disaster Prevention (Madrid, 25 September 1997).

²¹¹ Agreement between the Ministry of the Interior of the Kingdom of Spain and the Ministry of the Interior of the United Mexican States on Scientific and Technological Cooperation and Mutual Assistance in Civil Defence and Disaster Prevention, 1997.

²¹² Agreement between the Government of the Kingdom of Spain and the Government of the Russian Federation on cooperation in the field of prevention of natural disasters and mutual assistance in the mitigation of their outcome (Madrid, 14 June 2000), United Nations, *Treaty Series*, vol. 2153, No. 37586, p. 57.

²¹³ Agreement between the Government of the French Republic and the Government of Malaysia on Cooperation in the Field of Disaster Prevention and Management and Civil Security (Paris, 25 May 1998), *Journal officiel de la République française*, 9 December 1998, p. 18519.

¹⁸⁹ See www.preventionweb.net/files/19800_efdrwebfinal.pdf, p. 16.

¹⁹⁰ *Ibid.*

¹⁹¹ Extended Programme of Action for the Implementation of the Africa Regional Strategy for Disaster Risk Reduction (2006–2015) and declaration of the second African Ministerial Conference on Disaster Risk Reduction 2010, p. 47, available from www.unisdr.org/files/19613_bookletpoenglish.pdf.

¹⁹² “Implementing the Hyogo Framework for Action in Europe: Advances and Challenges, Report for the period 2009–2011”, pp. 39–41, available from www.unisdr.org/.

¹⁹³ A New Framework for CARICOM–Japan Cooperation for the Twenty-first Century, sect. 1-1, available from www.mofa.go.jp/region/latin/latin_e/caricom0011.html.

¹⁹⁴ A/CN.4/590 and Add.1–3 (footnote 78 above), para. 43.

¹⁹⁵ Spain and Argentina: Agreement on cooperation on disaster preparedness and prevention, and mutual assistance in the event of disasters (Madrid, 3 June 1988), United Nations, *Treaty Series*, vol. 1689, No. 29123, p. 23.

¹⁹⁶ Mexico and Guatemala: Agreement on cooperation for the prevention of and assistance in cases of natural disasters (Guatemala City, 10 April 1987), *ibid.*, vol. 1509, No. 26055, p. 3.

¹⁹⁷ Federal Republic of Germany and Hungary: Agreement on matters of common interest relating to nuclear safety and radiation protection (Budapest, 26 September 1990), *ibid.*, vol. 1706, No. 29504, p. 263.

¹⁹⁸ France and Italy: Convention on the prediction and prevention of major hazards and on mutual assistance in the event of natural or man-made disasters (Paris, 16 September 1992), *ibid.*, vol. 1962, No. 33532, p. 369.

agreement provides an illustrative example of the type of language in these agreements that speaks to the importance of cooperation: “Convinced of the need to develop cooperation between the competent organs of both Parties in the field of the prevention of grave risks and the protection of populations, property and the environment.”²¹⁴

77. By way of illustration, one of the earliest examples of a bilateral agreement addressing disaster risk reduction is that concluded between the United Kingdom and the United States in 1958, which includes elements to improve technology in forecasting, information sharing and early warning for hurricanes. The agreement was for a cooperative meteorological programme for the purpose of achieving “greater accuracy and timeliness in forecasts of hurricanes and in warnings of accompanying destructive winds, tides, and floods”.²¹⁵

78. The United States has also concluded several bilateral agreements with other countries that address both disaster prevention and management. An agreement concluded with Poland indicated that “the Parties intend to cooperate in natural and man-made technological disaster mitigation, preparedness, response, and recovery in the areas of training, expert assistance and exchange of experiences”.²¹⁶ The activities primarily concerned were training and the exchange of information.²¹⁷ A similar agreement, signed with the Philippines, expressed the desire of both countries to “further cooperative activities in disaster prevention and management through a framework of collaboration that facilitates the exchange of expertise, knowledge, and information, and the transfer of new technology in emergency management”.²¹⁸

79. More than two decades ago, France signed bilateral agreements with Italy and Greece to address major risks that could lead to natural disasters. The agreement with Greece, signed in 1989, concerned cooperation on major natural risks and outlined activities to predict and prevent risks and to mitigate their effects.²¹⁹ A similar agreement with Italy, signed in 1992, covered prediction and prevention of risks, including through information exchange, as part of a broader agreement addressing both pre-disaster prevention and disaster response.²²⁰

80. In 2000, Greece and the Russian Federation signed a bilateral agreement for the purpose of cooperation in

“prevention and response to natural and man-made disasters”.²²¹ The agreement defined “emergency prevention” as “a set of measures taken in advance and aimed at a maximum possible reduction of emergency risk, protection of health of population, diminishing damage for natural environment and material losses in case of emergency”.²²² This agreement mentioned a range of activities specifically geared towards disaster prevention, including through environmental monitoring, assessment of risk and exchange of information.²²³

81. Other bilateral agreements concluded by States for a purpose other than risk reduction included provisions on disaster prevention. A bilateral agreement concluded in 2002 between South Africa and Nigeria referred to capacity-building and exchange of information for public health issues, including “emergency preparedness and response”.²²⁴ An agreement concluded between Germany and Austria in 1988 primarily concerning cooperation in disaster response also included provisions on disaster prevention.²²⁵ Under this agreement, the two States were to cooperate “in preventing and countering disasters or serious accidents, by exchanging all relevant scientific and technical information ... In exchanging information of risks and damage which may affect the territory of the other Contracting State this exchange of information shall include precautionary data measurements”.²²⁶ A similar bilateral agreement signed between Belgium and France in 1981 included an article specifically on disaster prevention relating to forecasting and prevention.²²⁷ This agreement included pledges to exchange information relating to forecasting and prevention.²²⁸

2. MULTILATERAL INSTRUMENTS

82. The Special Rapporteur turns now to the examination of the text of multilateral instruments, both global and regional, concerned with the prevention of any disaster, regardless of its transboundary effects. In assessing each instrument, the discussion focuses on States’ obligations to adopt or implement appropriate legislative and regulatory measures to fulfil their preventive obligations. Such “necessary measures” are the hallmark of due diligence and may serve to tie these instruments to a more general duty to prevent and mitigate disasters.

83. There is no comprehensive international instrument obliging States to prevent natural or man-made disasters. Instead, the international system has to date

²¹⁴ *Ibid.*, fourth preambular paragraph (original: French).

²¹⁵ United Kingdom of Great Britain and Northern Ireland and United States of America: Exchange of notes constituting an agreement for the continued operation of hurricane research stations in the Cayman Islands established under the Agreement of 30 December 1958 as amended by the Agreement of 15 February 1960 (Washington, 23 November and 12 December 1966), United Nations, *Treaty Series*, vol. 603, No. 8735, p. 235.

²¹⁶ Protocol of Intentions... (footnote 206 above).

²¹⁷ *Ibid.*

²¹⁸ See footnote 209 above.

²¹⁹ Agreement on the modalities of Franco-Hellenic cooperation with regard to major natural hazards (Paris, 11 May 1989), United Nations, *Treaty Series*, vol. 1549, No. 26941, p. 299. Under art. 1, the Governments “shall cooperate with regard to major natural hazards. Their cooperation shall be aimed at: Hazards prediction, when possible; Hazards prevention, either by keeping hazards from degenerating into disasters or by attenuating their effects.”

²²⁰ See footnote 198 above.

²²¹ See footnote 203 above.

²²² *Ibid.*, art. 1.

²²³ *Ibid.*, art. 3.

²²⁴ Agreement between the Government of the Republic of South Africa and the Government of the Federal Republic of Nigeria on Cooperation in the Field of Health and Medical Sciences (Pretoria, 28 March 2002).

²²⁵ Austria and Federal Republic of Germany: Agreement concerning mutual assistance in the event of disasters or serious accidents (Salzburg, 23 December 1988), United Nations, *Treaty Series*, vol. 1696, No. 29224, p. 61.

²²⁶ *Ibid.*, art. 13.

²²⁷ France and Belgium: Convention on mutual assistance in the event of disasters or serious accidents (Paris, 21 April 1981), United Nations, *Treaty Series*, vol. 1437, No. 24347, p. 33.

²²⁸ *Ibid.*, art. 11.

followed a piecemeal approach when including disaster risk reduction in treaty obligations, either focusing on the kind of disaster (e.g. industrial or nuclear accidents) or the kind of State response activity (e.g. telecommunications assistance). Taken together, these instruments contain common language revolving around States' due diligence obligations regarding the prevention and mitigation of certain disasters.

84. In 1980, the Office of the United Nations Disaster Relief Coordinator published a compendium of legal arrangements for disaster prevention and mitigation,²²⁹ it being a "comprehensive review of existing knowledge of the causes and characteristics of national phenomena and the preventive measures which may be taken to reduce or eliminate their impact on disaster-prone developing countries".

(a) *Global instruments*

85. The first global international treaty that may be said to have addressed, albeit indirectly, the question of prevention is the United Nations Convention on the Law of the Sea, article 145 of which, on the protection of the marine environment, provides that "necessary measures shall be taken in accordance with this Convention ... to ensure effective protection for the marine environment from harmful effects which may arise from such activities". Mention should also be made in this connection of the Convention on the Law of the Non-navigational Uses of International Watercourses, which requires watercourse States to prevent and mitigate harm to other watercourse States. It should be observed, however, that these prevention provisions were very much environmental law-oriented, as were most of the similar pronouncements referring to prevention made in the last two decades of the twentieth century.²³⁰

86. As observed by the Secretariat, "the closest contemporary global international convention dealing with the prevention and mitigation of disasters" is the Framework Convention on civil defence assistance.²³¹ Currently with 14 States parties and 12 signatories, it entered into force in 2001 and aims to promote cooperation among State civil defence authorities "in terms of prevention, forecasting, preparedness, intervention and post-crisis management" (preamble). Although most of the Convention covers inter-State assistance after a disaster has occurred, it also envisages prevention as a key element of "assistance".²³²

It provides for a general requirement for States parties to "undertake to explore all possibilities for co-operation in the areas of prevention, forecasting, preparation, intervention and post-crisis management".²³³

87. Aside from the Framework Convention on civil defence assistance, the Tampere Convention on the Provision of Telecommunication Resources for Disaster Mitigation and Relief Operations is often cited as one of the global instruments to address disaster risk reduction.²³⁴ It expressly makes prediction and mitigation of disasters a priority in the area of telecommunication assistance.²³⁵ The Convention obliges States to cooperate with other States, "non-State entities" and intergovernmental organizations to facilitate the use of telecommunication resources for disaster mitigation,²³⁶ which the Convention defined as "measures designed to prevent, predict, prepare for, respond to, monitor and/or mitigate the impact of, disasters".²³⁷ To achieve this duty of cooperation, States may deploy equipment to "predict, monitor and provide information" about disasters,²³⁸ share information among themselves about potential disasters²³⁹ and provide "prompt telecommunication assistance to mitigate the impact of a disaster".²⁴⁰ Thus, just as the Framework Convention on civil defence assistance, the Tampere Convention requires States only to "cooperate" with other States in disaster risk reduction. An obligation to prevent disasters within State borders can, however, be inferred from this duty to cooperate and from the other articles of the Convention. The Convention creates an internal obligation of States to "reduce or remove regulatory barriers to the use of telecommunication resource for disaster mitigation and relief".²⁴¹ Thus, a State party's duty to use telecommunications to mitigate disasters includes an obligation to take appropriate legislative and regulatory measures to promote disaster mitigation, which mirrors the traditional "due diligence" obligation identified in international environmental law instruments.

88. A duty of due diligence can also be read into global instruments covering specific types of potential disasters. Unlike the Framework Convention on civil defence assistance and the Tampere Convention, conventions covering industrial accidents, nuclear safety and environmental harm do not directly mention disaster situations. Given the definition by the Commission of "disaster" in draft article 3 of its draft articles on the present topic, each instrument addresses conditions that can rise to the level of a disaster if they cause "widespread loss of life, great human suffering and distress, or large-scale material or

²²⁹ *Disaster Prevention and Mitigation: A Compendium of Current Knowledge*, vol. 9, *Legal Aspects* (United Nations publication, Sales No. 80.III.M.1, 1980).

²³⁰ Such as the Vienna Convention for the Protection of the Ozone Layer and its Montreal Protocol on Substances that Deplete the Ozone Layer, in addition to the Convention on biological diversity, eighth and ninth preambular paragraphs.

²³¹ A/CN.4/590 and Add.1-3 (footnote 78 above), para. 36. It should also be noted that the Convention and Statute establishing an International Relief Union made one of its objectives the prevention of disasters (art. 2, para. 2). The Union was, however, formally replaced by UNESCO in 1968, which did not include disaster prevention among its objectives. See Nicoletti, "The prevention of natural and man-made disasters: what duties for States", p. 183, footnote 24.

²³² Art. 1 (d) defines "assistance" as "any action undertaken by the Civil Defence Service of a State for the benefit of another State, with the objective of preventing, or mitigating the consequences of disasters".

²³³ Art. 4.

²³⁴ See, for example, Nicoletti, "The prevention of natural and man-made disasters: what duties for States", p. 184 (discussing only the Framework Convention on civil defence assistance and the Tampere Convention as creating international disaster risk reduction obligations).

²³⁵ Art. 3, paras. 1-2. In art. 1, para. 15, the Convention also defines "telecommunications" as "any transmission, emission, or reception of signs, signals, writing, images, sounds or intelligence of any nature, by wire, radio, optical fibre or other electromagnetic system".

²³⁶ Art. 3, para. 1.

²³⁷ Art. 1, para. 7.

²³⁸ Art. 3, para. 2 (a).

²³⁹ Art. 3, para. 2 (b).

²⁴⁰ Art. 3, para. 2 (c).

²⁴¹ Art. 9, para. 1.

environmental damage, thereby seriously disrupting the functioning of society". For example, the Convention on the Transboundary Effects of Industrial Accidents applies to the prevention of, preparedness for and response to industrial accidents "capable of causing transboundary effects", including those caused by natural disasters.²⁴² The preamble of ILO Convention (No. 174) concerning the Prevention of Major Industrial Accidents, adopted in 1993, recognizes "the need to ensure that all appropriate measures are taken to: (a) prevent major accidents; (b) minimize the risks of major accidents; and (c) minimize the effects of major accidents".

89. The Convention on the Transboundary Effects of Industrial Accidents obliges States parties to "take appropriate measures" to prevent industrial accidents through "preventive, preparedness and response measures".²⁴³ States parties must take "appropriate legislative, administrative and financial measures" to implement their prevention obligations²⁴⁴ and establish emergency preparedness mechanisms to respond to industrial accidents.²⁴⁵ For example, the Convention states that "the Parties shall take appropriate measures for the prevention of industrial accidents, including measures to induce action by operators to reduce the risk of industrial accidents".²⁴⁶ Thus, although States are required under the Convention only to take steps to prevent transboundary accidents, the accidents themselves, especially in the case of natural disasters, occur within the State, and the State's due diligence obligation revolves around domestic prevention of internal industrial accidents.

90. A specific type of man-made disaster can arise as a result of nuclear activity. Several instruments refer to prevention in this context. Under the Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency, the general provisions require States to cooperate to minimize the consequences of a nuclear disaster by entering into agreements "for preventing or minimizing injury and damage which may result in the event of a nuclear accident or radiological emergency".²⁴⁷ Similarly, the Convention on Nuclear Safety seeks to "prevent accidents with radiological consequences and to mitigate such consequences should they occur".²⁴⁸ This convention, unlike the Convention on the Transboundary Effects of Industrial Accidents, does not apply only to activities that may cause harm to other States. Instead, it applies to any civilian nuclear installation regardless of its potential transboundary harm. Although the Convention on Nuclear Safety never expressly articulates a duty of States to prevent nuclear accidents, it is clear that the entire object and purpose of the Convention is to create international obligations to promote nuclear safety in order to prevent nuclear disasters.²⁴⁹ Moreover, the Convention requires States parties to take "legislative, regulatory and administrative

measures and other steps necessary" for implementing it.²⁵⁰ The Convention works in conjunction with the Convention on Early Notification of a Nuclear Accident. That Convention, with 115 States parties, establishes a notification system through the International Atomic Energy Agency for any nuclear accident that has the potential for transboundary harm to another State.²⁵¹ It mandates States to notify those States that could be affected by significant nuclear accidents listed in article 1 not only about the existence of the harm but also about information relevant for mitigation damage.²⁵²

91. Core international environmental law instruments also require States to take preventive steps regarding potential environmental disasters. The United Nations Framework Convention on Climate Change, for example, recognizes that "Parties should take precautionary measures to anticipate, prevent or minimize the causes of climate change and mitigate its adverse effects".²⁵³ The Convention specifically requires developed countries listed under its annex I to adopt national policies to mitigate climate change through the reduction of greenhouse gas emissions²⁵⁴ and commits all parties to formulate and implement domestic measures to mitigate climate change.²⁵⁵ It is important to note that, under the Convention, States' duties to mitigate climate change and its resulting effects do not depend on transboundary harm to other States. Instead, the Convention applies to all anthropogenic emissions of greenhouse gas emissions, regardless of their potential effect on other countries. Moreover, in 2007, the States parties to the Convention recognized the link between climate change and disaster risk reduction by adopting the Bali Action Plan, in which States were called upon to adapt their national climate change plans to reflect "disaster reduction strategies".²⁵⁶

92. Other environmental conventions on specific areas such as biological diversity, desertification and environmental impact assessments also incorporate a duty to prevent in circumstances that could become disasters. For example, although the Convention on biological diversity focuses on responsibility for transboundary environmental damage,²⁵⁷ it also requires each State party to develop national strategies on environmental conservation²⁵⁸ and implement procedures for environmental impact assessments for projects likely to have significant adverse effects on biological diversity.²⁵⁹ Similarly, the United Nations Convention to Combat Desertification calls upon States to implement programmes to "combat desertification and/or mitigate the effects of drought"²⁶⁰ through appropriate and necessary legislation and regulatory measures²⁶¹ and national action programmes encompassing early warning

²⁴² Art. 2, para. 1.

²⁴³ Art. 3, para. 1.

²⁴⁴ Art. 3, para. 4.

²⁴⁵ Art. 8, para. 1.

²⁴⁶ Art. 6, para. 1.

²⁴⁷ Art. 1, paras. 1 and 2.

²⁴⁸ Art. 1, para. (iii).

²⁴⁹ *Ibid.*

²⁵⁰ Art. 4. See also art. 7.

²⁵¹ Art. 1, para. 1.

²⁵² Art. 2.

²⁵³ Art. 3, para. 3.

²⁵⁴ Art. 4, para. 2 (a).

²⁵⁵ Art. 4, para. 1 (b).

²⁵⁶ FCCC/CP/2007/6/Add.1, decision 1/CP.13, para. 1 (c) (iii).

²⁵⁷ Art. 3.

²⁵⁸ Arts. 6–7.

²⁵⁹ Art. 14.

²⁶⁰ Art. 3 (a).

²⁶¹ Arts. 4–5.

systems.²⁶² Lastly, the Convention on environmental impact assessment in a transboundary context sets out the obligations of States parties to assess the environmental impact of certain activities at an early stage of planning. It also lays down the general obligation of States to notify and consult one another on all major projects under consideration that are likely to have a significant adverse environmental impact across boundaries. In particular, it requires States parties to “take all appropriate and effective measures to prevent, reduce and control significant adverse transboundary environmental impact from proposed activities”.²⁶³ In this way, the Convention, just as the other environmental treaties, closely tracks article 3 of the draft articles on prevention of transboundary harm, laying down the general duty of States to prevent significant transboundary harm.

93. Moreover, although many environmental conventions focus on the duty to prevent deleterious transboundary effects, there is significant overlap between the topics covered by these conventions and disaster situations. These international instruments are also constructive because they each contain a duty of due diligence.

(b) *Regional instruments*

(i) *Asia*

94. In Asia and the Pacific, the ASEAN Agreement on Disaster Management and Emergency Response is the most specific and comprehensive international instrument binding States to prevent and mitigate disasters through the adoption of disaster risk reduction mechanisms. The treaty, signed in 2005, entered into force in 2009 and has been ratified by all 10 States members of ASEAN. It aims to “provide effective mechanisms to achieve substantial reduction of disaster losses in lives and in the social, economic and environmental assets of the Parties, and to jointly respond to disaster emergencies”.²⁶⁴ It states that States parties “shall give priority to prevention and mitigation, and thus shall take precautionary measures to prevent, monitor and mitigate disasters”.²⁶⁵ In terms of mitigation, it expressly requires that States parties “immediately respond to a disaster occurring within their territory”,²⁶⁶ and each of these obligations must be met by taking necessary legislative and administrative measures.²⁶⁷

95. The Agreement contains three primary categories of disaster risk reduction obligations: risk identification and monitoring; prevention and mitigation; and disaster preparedness. First, States parties must identify all disaster risks within their territory and assign disaster risk levels to each potential hazard.²⁶⁸ Second, article 6 requires States parties, jointly or individually, to “identify, prevent and reduce risks arising from hazards”.²⁶⁹ The Agreement then

places the onus on “each Party” to adopt and implement legislative and regulatory measures on disaster mitigation and to strengthen local and national disaster management plans.²⁷⁰ Lastly, States parties have a duty to prepare for disasters by establishing and maintaining “national disaster early warning arrangements”²⁷¹ and by developing strategies and response plans to reduce losses from disasters.²⁷² Together, these provisions create a comprehensive duty on all States members of ASEAN to take measures necessary to prevent, prepare for and mitigate disasters.

96. Other (non-binding) agreements in Asia also encourage States to work individually and together to reduce the risk of disasters. For example, the Asia-Pacific Economic Cooperation (APEC) forum adopted the APEC Framework for Capacity Building Initiatives on Emergency Preparedness, urging States to cooperate in a number of initiatives, including with regard to the legislative frameworks of member States. The APEC Principles on Disaster Response and Cooperation, adopted in 2008, also call upon individual member States to formulate and implement disaster risk mitigation and preparedness policies and early warning systems.²⁷³ In addition, in the wake of the 2004 tsunami in Asia, the South Asian Association for Regional Cooperation endorsed a new comprehensive framework on early warning and disaster management, in which States committed themselves to developing and implementing risk reduction programmes within their own territories and to providing support to regional early warning systems.²⁷⁴ In addition, the Delhi Declaration on Disaster Risk Reduction in Asia 2007 includes extensive provisions urging States to implement the Hyogo Framework for Action and to pass and strengthen legislative frameworks for disaster risk reduction.²⁷⁵ The Dhaka Declaration on South Asia’s Environmental Challenges and Natural Disasters calls for regional measures of prevention.²⁷⁶ The Incheon Declaration on Disaster Risk Reduction in Asia and the Pacific 2010 reaffirms the commitment to the Hyogo Framework for Action and urges Governments and international actors to implement its five priorities for action.²⁷⁷

(ii) *Africa*

97. Various African organizations have established regional and subregional agencies that facilitate information-sharing and capacity-building tools relating to disaster risk reduction. Article 13, paragraph 1 (e) of the Constitutive Act of the African Union provides that its Executive Council may “take decisions on policies in areas of common interest to the Member States, including ... environmental protection, humanitarian action and disaster response and relief”. Pursuant to this mandate, the African Union and

²⁶² Art. 10, para. 3 (a).

²⁶³ Art. 2, para. 1.

²⁶⁴ Art. 2.

²⁶⁵ Art. 3, para. 4.

²⁶⁶ Art. 4 (b).

²⁶⁷ Art. 4 (d).

²⁶⁸ Art. 5.

²⁶⁹ Art. 6, para. 1.

²⁷⁰ Art. 6, para. 2.

²⁷¹ Art. 7.

²⁷² Art. 8.

²⁷³ Available from http://aimp.apec.org/Documents/2008/SOM/CSOM/08_csom_020.pdf.

²⁷⁴ Available from www.saarc-sec.org.

²⁷⁵ Available from http://siteresources.worldbank.org/CMUDLP/Resources/Delhi_Declaration_on_DRR_2007.pdf.

²⁷⁶ Available from http://saarc-sec.org/uploads/digital_library_document/13_-_Dhaka_-_13th_Summit_12-13_Nov_2005.pdf, para. 33.

²⁷⁷ Available from www.unisdr.org/files/16327_incheondeclaration4amcdrrrev3.pdf.

the New Partnership for Africa's Development adopted the Africa Regional Strategy for Disaster Risk Reduction in 2004.²⁷⁸ The Strategy is intended to facilitate initiatives at the subregional and national levels.²⁷⁹

98. In addition, the Economic Community of West African States approved its policy for disaster risk reduction in 2006 and recently established an implementation mechanism on disaster risk reduction, consisting of a ministerial coordination committee and a disaster management task force in the secretariat.²⁸⁰ That mechanism has a mandate to coordinate State requests for international assistance and the mobilization of emergency response teams for member States. In 2002, the Intergovernmental Authority on Development (IGAD) developed a regional disaster risk management programme addressing issues relating to disaster risk reduction and management, including support for building national legislation on disaster management and identifying opportunities “for agreements on mutual assistance and development in disaster management at regional level and for cross-border agreements on harmonizing disaster management arrangements”.²⁸¹

99. Currently, the East African Community is enacting a disaster risk reduction and management bill as an attempt to operationalize article 112 (1) (d) of the Treaty for the Establishment of the East African Community, in which the partner States agreed to take necessary disaster preparedness, management, protection and mitigation measures especially for the control of natural and man-made disasters.

(iii) Arab region

100. In the Arab region, the League of Arab States developed the Arab Strategy for Disaster Risk Reduction 2020, which was adopted by the Council of Arab Ministers Responsible for the Environment at its twenty-second session, on 19 December 2010.²⁸² The strategy has two purposes: “to outline a vision, strategic priorities and core areas of implementation for disaster risk reduction in the Arab region” and “to enhance institutional and coordination mechanisms, and monitoring arrangements to support the implementation of the Strategy at the regional, national and local level through preparation of a Programme of Action”.²⁸³ Deriving from the Hyogo Framework for Action and based on the purpose of the Arab Strategy, five corresponding key priorities were developed: strengthen commitment for comprehensive disaster risk reduction across sectors; develop capacity to identify, assess and monitor disaster risks; build resilience through knowledge, advocacy, research and training; improve accountability for disaster risk management at the subnational and local

levels; and integrate disaster risk reduction into emergency response, preparedness and recovery.²⁸⁴ The implementation of the programme was envisaged in two phases, with a review in 2015, and the expected outcome in 2020 to substantially reduce “disaster losses, in lives and in the social, economic and environmental assets of communities and countries across the Arab region”.²⁸⁵

(iv) Europe

101. Developments in Europe centre on the involvement of the European Union in prevention, preparedness and mitigation strategies originally referred to as civil protection. Since 1985, when a ministerial-level meeting in Rome addressed the issue, several resolutions on civil protection have been adopted, building the foundation on which disaster risk reduction today stands.²⁸⁶ Civil protection in the European Union was lifted to another level with the adoption of the Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, which entered into force on 1 December 2009. The resulting consolidated version of the Treaty on the Functioning of the European Union regulated the competences of European Union organs, including as regards article 196 of the Treaty, on civil protection, and established a legal basis for European Union actions thereon.

102. The competence granted in article 196 is only a complementary competence “to carry out actions to support, coordinate or supplement the actions of the Member States, without thereby superseding their competence in these areas” (art. 2, para. 5). Pursuant to the Treaty of Lisbon:

1. The Union shall encourage cooperation between Member States in order to improve the effectiveness of systems for preventing and protecting against natural or man-made disasters. Union action shall aim to:

(a) support and complement Member States' action at national, regional and local level in risk prevention, in preparing their civil-protection personnel and in responding to natural or man-made disasters within the Union;

(b) promote swift, effective operational cooperation within the Union between national civil-protection services;

²⁸⁴ *Ibid.*, p. 4.

²⁸⁵ *Ibid.*

²⁸⁶ Resolution of the Council and the representatives of the Governments of the Member States, meeting within the Council of 25 June 1987 on the introduction of Community Cooperation on Civil Protection (25 June 1987), *Official Journal of the European Communities*, No. C 176, 4 July 1987, p. 1; resolution of the Council and the representatives of the Governments of the Member States, meeting within the Council on the new developments in Community cooperation on civil protection (13 February 1989), *ibid.*, No. C 44, 23 February 1989, p. 3; resolution of the Council and the representatives of the Governments of the Member States, meeting within the Council on Community cooperation on civil protection (23 November 1990), *ibid.*, No. C 315, 14 December 1990, p. 1; resolution of the Council and the representatives of the Governments of the Member States, meeting within the Council on improving mutual aid between Member States in the event of natural or technological disaster (8 July 1991), *ibid.*, No. C 198, 27 July 1991, p. 1; resolution of the Council and the representatives of the Governments of the Member States, meeting within the Council on strengthening Community cooperation on civil protection (31 October 1994), *ibid.*, No. C 313, 10 November 1994, p. 1; and resolution of the Council and of the representatives of the Governments of the Member States, meeting within the Council on strengthening the capabilities of the European Union in the field of civil protection (26 February 2001), *ibid.*, No. C 82, 13 March 2001, p. 1.

²⁷⁸ Available from www.unisdr.org/files/13093_AFRICAREGIONALDRRSTRATEGYfullPDF.pdf.

²⁷⁹ One of the express objectives of the Strategy is to “increase political commitment to disaster risk reduction” (para. 3.2).

²⁸⁰ The policy is available from www.preventionweb.net/files/4037_ECOWASpolicyDRR.pdf. Under the policy, “national authorities recognize the need to develop and strengthen institutions required to build resilience to hazards”, meaning that “political commitment to disaster risk reduction is increasing in the sub-region” (para. 2.2.1).

²⁸¹ IGAD, “Disaster risk management programme for the IGAD region”, p. 18.

²⁸² Available from www.preventionweb.net/publications/view/18903.

²⁸³ Available from www.preventionweb.net/files/18903_17934asdrfinalenglishjanuary20111.pdf.

(c) promote consistency in international civil-protection work.

2. The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall establish the measures necessary to help achieve the objectives referred to in paragraph 1, excluding any harmonisation of the laws and regulations of the Member States.²⁸⁷

103. Lastly, article 222 of the consolidated version of the Treaty on the Functioning of the European Union, known as the “solidarity clause”, enshrines an obligation for member States to “act jointly in a spirit of solidarity if a Member State is... the victim of a natural or man-made disaster”. This “hard-law” provision sets the European Union apart from other regional coordination schemes: any action taken by it under this provision will need to be enacted within the ordinary legislative procedure (art. 294 of the Treaty) and thereby established as European Union law, in the form of regulations, directives and decisions.²⁸⁸

104. In 2001, the European Union established the Community Mechanism for Civil Protection “to ensure even better protection in the event of natural, technological, radiological and environmental emergencies”.²⁸⁹ The mechanism, which was reformed and updated in 2007,²⁹⁰ successfully enhanced European Union protection strategies in emergencies for the subsequent years, also in third States.²⁹¹ Recently, the European Union proposed a decision on a new reformed European Union civil protection mechanism.²⁹² While the emphasis of the Mechanism in force since 2007 is mainly on preparedness and response, the 2007 reform envisaged some rules on prevention and early warning.²⁹³ The proposal, in comparison, aims to develop an “integrated approach” to disaster management, including prevention, preparedness and response. This would include the establishment of an emergency response centre; the development of reference scenarios for the main types of disaster; the development of contingency plans in member States; and pre-committed civil protection assets (pooling).²⁹⁴ One specific objective would thus be “to achieve a high level of protection against disasters by preventing or reducing their effects and by fostering a culture of prevention” and “to enhance the Union’s state of preparedness to respond to disasters”.²⁹⁵

²⁸⁷ Art. 176 C.

²⁸⁸ Gestri, “EU Disaster response law: principles and instruments”, pp. 116–117.

²⁸⁹ Council Decision of 23 October 2001 establishing a Community mechanism to facilitate reinforced cooperation in civil protection assistance interventions (2001/792/EC), *Official Journal of the European Communities*, No. L 297, 15 November 2001, p. 7.

²⁹⁰ Council Decision of 8 November 2007 establishing a Community Civil Protection Mechanism (recast)(2007/779/EC), *Official Journal of the European Union*, No. L 314, (1 December 2007), p. 9.

²⁹¹ See the Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions—Improving the Community Civil Protection Mechanism (COM/2005/137 final), p. 2.

²⁹² See the Proposal for a Decision of the European Parliament and of the Council on a Union Civil Protection Mechanism (COM/2011/934 final).

²⁹³ Communication from the Commission to the Council and the European Parliament—EU strategy for supporting disaster risk reduction in developing countries (COM/2009/84 final).

²⁹⁴ See the Proposal for a Decision on a Union Civil Protection Mechanism (footnote 292 above).

²⁹⁵ *Ibid.*, art. 3, para. 1 (a)–(b).

105. The involvement of the European Union in the implementation of disaster risk reduction can be better appreciated in a number of normative activities carried out at the European Union level. In 2008, the European Commission approved a communication on reinforcing the disaster response capacity of the Union, which was a preliminary effort to pave the way towards a European Union approach to disaster risk reduction. In 2009, the Commission adopted two communications relating to disaster risk reduction: a community approach on the prevention of natural and man-made disasters²⁹⁶ and a strategy for supporting disaster risk reduction in developing countries.²⁹⁷ The former plays a fundamental role in the European Union effort towards a common enabling environment for disaster risk reduction.²⁹⁸ In particular, it identifies specific areas in which action at the European Union level could provide added value: establishing a European Union-level inventory of existing information and best practices; developing guidelines on hazards and risk mapping; linking actors and policies throughout the disaster management cycle; improved access to early warning systems; and more efficient targeting of community funds.

106. On 20 March 1987, the Council of Europe Committee of Ministers adopted resolution 87 (2), creating a cooperation group for the prevention of, protection against and organization of relief in major natural and technological disasters. This intergovernmental forum, now known as the European and Mediterranean Major Hazards Agreement, fosters research, public information and policy dialogue on disaster-related matters among its 27 member States.

107. The Council of Europe has stressed the imperative nature of the duty to prevent and mitigate the risks of nuclear disasters. In resolution 1087 (1996), on the consequences of the Chernobyl disaster, the Council of Europe Parliamentary Assembly recognized that “urgent action is imperative and must be viewed as an overriding priority for the international community” to take “practical steps to avert or at the very least reduce such risks” of a nuclear disaster (paras. 10–11).

108. European subregional groups have been also active in signing binding agreements containing disaster risk reduction elements. For example, in 1998, the Agreement among the Governments of the Participating States of the Black Sea Economic Cooperation (BSEC) on Collaboration in Emergency Assistance and Emergency Response to Natural and Man-made Disasters set out procedures to request assistance, required requesting States to “ensure unobstructed receipt and distribution of goods of assistance exclusively among the afflicted population” without discrimination, and called upon them to simplify and expedite customs procedures and waive customs fees and charges. In 1992, the States members of the Central

²⁹⁶ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions—A Community approach on the prevention of natural and man-made disasters (COM/2009/82 final).

²⁹⁷ See footnote 293 above.

²⁹⁸ See La Vaccara, “An enabling environment for disaster risk reduction”, pp. 199 and 208.

European Initiative adopted the Cooperation Agreement on the Forecast, Prevention and Mitigation of Natural and Technological Disasters, requiring member States to cooperate with one another to adopt prevention and mitigation measures (arts. 1–2). The agreement also sets up a joint committee responsible for developing “procedures for tighter solidarity” for cooperation in response to a disaster (arts. 4–5).

(v) *Latin America and the Caribbean*

109. The Inter-American Convention to Facilitate Disaster Assistance, adopted in 1991, is the only regional convention for the entire Americas directly relating to disasters. The Convention, which entered into force in 1996, exclusively focuses on disaster response and is thus of limited value in determining pre-disaster responsibilities of States.

110. At the subregional level, however, agreements place increasing importance on disaster prevention and mitigation. In 1999, the Association of Caribbean States adopted its own treaty on disaster response: the Agreement between Member States and Associate Members of the Association of Caribbean States for Regional Cooperation on Natural Disasters.²⁹⁹ The Agreement expressly aims to create “a network of legally binding mechanisms that promote co-operation for prevention, mitigation and management of natural disasters” (art. 2). Pursuant to the Agreement, the Contracting Parties agree to promote “the formulation and implementation of standards and laws, policies and programmes for the management and prevention of natural disasters, in a gradual and progressive manner”, including through the identification of “common guidelines and criteria” in a number of areas, such as the classification of humanitarian supplies and donations (arts. 4 and 7). The Declaration of Panama³⁰⁰ adopted at the Fourth Summit of Heads of State and/or Government of the Association of Caribbean States, affirmed the importance of prevention in reducing vulnerability to disasters in the following terms:

We acknowledge the vulnerability of our countries and territories to natural disasters and their negative impact on our efforts to ensure sustainable development; we also share the idea that the best way to combat vulnerability to natural disasters is to integrate disaster management and risk reduction into development policies and plans at all levels of our governments. We further reaffirm the importance of international cooperation, particularly at the regional level, in order to strengthen the national and regional bodies dedicated to the prevention and mitigation of risks and natural disasters.³⁰¹

111. Other subregional instruments have established agencies to coordinate disaster risk reduction efforts. For example, in 1991, States members of the Caribbean Community adopted the Agreement Establishing the Caribbean Disaster Emergency Response Agency. The Agreement tasks the Agency with building national capacities for disaster response. States parties commit themselves to taking a number of steps to ensure that their national disaster response systems are adequately prepared (art. 4). They also commit themselves to reducing legal

barriers to the entry of personnel and goods, providing protection and immunity from liability and taxation to assisting States and their relief personnel, and facilitating transit (arts. 21–23).

112. In addition, in 1993, Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and Panama created the Coordination Centre for the Prevention of Natural Disasters in Central America under the Central American Integration System as a specialized agency charged with coordinating implementation of the Regional Disaster Reduction Plan. The Coordination Centre revised its founding agreement in 2003 to reflect principles such as international cooperation, promotion of human rights (including the right to be protected for disasters) and the participation of the public in disaster management planning. The Coordination Centre itself is tasked with facilitating technical assistance and cooperation among member States in disaster prevention and mitigation.

D. National policy and legislation

113. As previously noted,³⁰² following the International Decade for Natural Disaster Reduction, States engaged in various actions to unify efforts to better prepare for and reduce the harmful impact of disasters. The resulting two main agreements—the Yokohama Strategy and the Hyogo Framework for Action—both call upon States to implement national legislation that includes disaster prevention, mitigation and preparedness.

114. As stated above,³⁰³ States have implemented the Hyogo Framework for Action by incorporating disaster risk reduction into national policy and legal frameworks. In the 2011 review, 64 States or areas reported having established specific policies on disaster risk reduction, evenly spread throughout all continents and regions, including the major hazard-prone locations. They are: Algeria, Anguilla, Argentina, Armenia, Bangladesh, Bolivia (Plurinational State of), Brazil, British Virgin Islands, Canada, Cape Verde, Chile, Colombia, Cook Islands, Costa Rica, Côte d’Ivoire, Cuba, Dominican Republic, Fiji, Finland, Georgia, Germany, Ghana, Guatemala, Honduras, India, Indonesia, Italy, Japan, Kenya, Lao People’s Democratic Republic, Lebanon, Madagascar, Malawi, Malaysia, Maldives, Marshall Islands, Mauritius, Mexico, Mongolia, Morocco, Mozambique, Nepal, New Zealand, Nicaragua, Nigeria, Norway, Panama, Paraguay, Peru, Poland, Saint Kitts and Nevis, Saint Lucia, Samoa, Senegal, Sri Lanka, Sweden, Switzerland, Syrian Arab Republic, Thailand, the former Yugoslav Republic of Macedonia, United Republic of Tanzania, United States, Vanuatu and Venezuela (Bolivarian Republic of).

115. More recently, UNISDR has identified 76 States that have adopted national platforms, defined as a “coordinating mechanism for mainstreaming disaster risk reduction into development policies, planning and programmes”, to implement disaster risk reduction strategies.³⁰⁴

²⁹⁹ The text of this Agreement, not yet in force, is available from www.acs-aec.org.

³⁰⁰ See footnote 188 above.

³⁰¹ Para. 20.

³⁰² See para. 35 above.

³⁰³ *Ibid.*

³⁰⁴ For a continuously updated list of States that have adopted national platforms, see www.unisdr.org/partners/countries.

116. The Secretariat has pointed out that legal and policy frameworks relating more directly to prevention have typically been implemented at the national level versus the regional or international level.³⁰⁵ Several countries 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. States and territories that have enacted national and territorial laws envisaging disaster risk reduction include Algeria,³⁰⁶ Cameroon,³⁰⁷ the Dominican Republic,³⁰⁸ El Salvador,³⁰⁹ Estonia,³¹⁰ France,³¹¹ Guatemala,³¹² Haiti,³¹³ Hungary,³¹⁴ India,³¹⁵ Indonesia,³¹⁶ Italy,³¹⁷ Madagascar,³¹⁸ Namibia,³¹⁹ New Zealand,³²⁰ Pakistan,³²¹ Peru,³²² the Philippines,³²³ the Republic of Korea,³²⁴ Slovenia,³²⁵ South Africa,³²⁶ Taiwan Province of China,³²⁷ Thailand³²⁸ and the United States.³²⁹

³⁰⁵ A/CN.4/590 and Add.1–3 (footnote 78 above), para. 33.

³⁰⁶ Algeria, Act on the prevention of major risks and the management of disasters within the framework of sustainable development, of 25 December 2004, available from www.mtp.gov.dz/GUIDE%20JURIDIQUE/textes-de-portee-generale/5-Loi-n2004-20.pdf.

³⁰⁷ Cameroon, *Arrêté No. 037/PM du 19 mars 2003 portant création, organisation et fonctionnement d'un Observatoire National des Risques*.

³⁰⁸ Dominican Republic, Decree No. 874-09 approving the Regulation for the application of Law No. 147-02 on Risk Management and repealing chapters 1, 2, 3, 4 and 5 of Decree No. 932-03 (2009).

³⁰⁹ El Salvador, Law on Civil Protection, Disaster Prevention and Disaster Mitigation (2005).

³¹⁰ Estonia, Emergency Preparedness Act (2000).

³¹¹ France, Law No. 2003-699 regarding the prevention of technological and natural risks and reparation of damages (2003).

³¹² Guatemala, Decree No. 109-96, Law on the National Coordinator for the Reduction of Natural or Man-made Disasters (1996).

³¹³ Haiti, National Risk and Disaster Management Plan (2001).

³¹⁴ Hungary, Act LXXIV on the direction and organization of disaster prevention and the prevention against serious accidents related to hazardous materials (1999).

³¹⁵ India, Disaster Management Act, No. 53 (2005), available from <http://indiacode.nic.in>.

³¹⁶ Indonesia, Law No. 24 of 2007 Concerning Disaster Management.

³¹⁷ Italy, Decree of the Prime Minister to establish a national platform for disaster risk reduction (2008).

³¹⁸ Madagascar, Decree No. 2005-866 setting out the manner of application of Law No. 2003-010 of 5 September 2003 on the national risk and disaster management policy (2005).

³¹⁹ Namibia, Disaster Risk Management Act (2012).

³²⁰ New Zealand, National Civil Defence Emergency Management Plan Order 2005 (SR 2005/295), part 3.

³²¹ Pakistan, National Disaster Management Act (2010). See also the official statement of the Government of Pakistan at the third session of the Global Platform for Disaster Risk Reduction, in 2011, available from www.preventionweb.net/files/globalplatform/pakistanofficialstatement.pdf.

³²² Peru, Law No. 29664 creating the National System for Disaster Risk Management (2011).

³²³ The Philippines, Philippine Disaster Risk Management Act (2006).

³²⁴ Republic of Korea, National Disaster Countermeasures Act (1995); National Disaster Management Act (2010).

³²⁵ Slovenia, Act on the Protection against Natural and Other Disasters (2006).

³²⁶ South Africa, Disaster Management Act No. 57 of 2002.

³²⁷ Taiwan Province of China, Disaster Prevention and Response Act (2002).

³²⁸ Thailand, Disaster Prevention and Mitigation Act (2007).

³²⁹ United States, Disaster Mitigation Act of 2000.

117. By way of illustration, a few examples of the integration of prevention into legislative or policy frameworks may be given. After South Africa passed the Disaster Management Act in 2002, it followed with a detailed policy document on its national disaster management framework. In addition, South Africa has a number of laws relating to disasters, such as fires, and associated with disaster prevention, such as those relating to environmental impact assessments. Namibia has incorporated prevention into its Disaster Risk Management Act of 2012, intended “to provide for an integrated and coordinated disaster management approach that focuses on preventing or reducing the risk of disasters, mitigating the severity of disasters, emergency preparedness, rapid and effective response to disasters and post-disaster recovery”.³³⁰ The Philippines has included prevention in governance structures, defining it as

the outright avoidance of adverse impacts of hazards and related disasters. It expresses the concept and intention to completely avoid potential adverse impacts through action taken in advance such as construction of dams or embankments that eliminate flood risks, land-use regulations that do not permit any settlement in high-risk zones, and seismic engineering designs that ensure the survival and function of a critical building in any likely earthquake.³³¹

118. Colombia has recently strengthened its national policy framework relating to disaster management to include prevention under a single comprehensive framework. The National Disaster Risk Management System Act, adopted in April 2012, established a national system for disaster risk management and includes provisions on both disaster prevention and response. It creates a framework with various government bodies such as the Disaster Risk Management Unit and the National Disaster Prevention and Response System.³³²

119. Several States have also implemented policies focused on disaster risk reduction as a supplement to legislation or as stand-alone efforts. For example, Ghana has developed a national disaster risk reduction policy to integrate disaster risk reduction into planning and operation of public institutions. Ghana stated at the third session of the Global Platform for Disaster Risk Reduction, in 2011, that disaster risk reduction was among the key factors in considering good governance and sustainable development.³³³ Bangladesh provides another example of robust policies in the absence of a formal law, including the coordination of 12 ministries under a comprehensive disaster management programme and the formulation of a national disaster management plan for the period 2010–2015, a climate change strategy and action plan (2009) and standing orders on disaster.³³⁴

³³⁰ Namibia, Disaster Risk Management Act (2012), preambular paragraph.

³³¹ The Philippines, Implementing Rules and Regulations of Republic Act No. 10121, rule 2, sect. 1 (l).

³³² World Bank, “For the first time, Colombia has a natural disaster awareness and prevention policy—Colombia’s President Juan Manuel Santos”, 24 April 2012.

³³³ See www.preventionweb.net/files/globalplatform/globalplatform2011ghana.docx.

³³⁴ At the third session of the Global Platform, in 2011, the Government of Bangladesh noted that the issue of framing a national disaster management act remained under its active consideration. See <http://preventionweb.net/files/globalplatform/bangladeshrevisedstatement.pdf>.

120. The present section does not purport to deal with an exhaustive list of national disaster risk reduction legislation, but merely attempts to provide an overview of a variety of approaches. Although the analysis below addresses mainly legislation specifically targeted towards disaster management, other types of legislation are also relevant, including weather forecasting, insurance, land use restriction and right-to-know legislation. The last-mentioned legislation will be discussed briefly below. The present section will summarize key elements of disaster management laws from 14 geographically and economically diverse States, some of which were identified in the memorandum by the Secretariat,³³⁵ while others have been chosen to diversify the sampling on the basis of geography and economic development. The present section will explore features of disaster legislation adopted by Algeria,³³⁶ Bolivia (Plurinational State of),³³⁷ Colombia,³³⁸ Costa Rica,³³⁹ Cuba,³⁴⁰ India,³⁴¹ Japan,³⁴² Nicaragua,³⁴³ the Philippines,³⁴⁴ South Africa,³⁴⁵ Sri Lanka,³⁴⁶ the United Kingdom,³⁴⁷ United States³⁴⁸ and Viet Nam.³⁴⁹

121. Before describing in some detail the key elements of the legislation studied, the present section will explore two common aspects of that legislation that demonstrate States' recognition of an obligation to take steps to address disasters. First, the States do not vary widely in determining the scope of the problem that they seek to address. Principally, the legislation aims to protect against both natural and man-made disasters. The major distinction lies in the specificity of examples provided within the text of the legislation. For instance, Sri Lanka includes in its definition of natural or man-made catastrophes a long list of potential qualifying incidents, including landslides,

cyclones, fires, chemical accidents, civil or internal strife, nuclear disaster and oil spills.³⁵⁰ In Nicaragua, the law addresses both natural and man-made disasters, but presents a long list of natural disasters that could qualify without providing a parallel list for man-made disasters.³⁵¹ Other States provide a broad definition of disaster without giving more specific examples. For example, the legislation in the Philippines defines "disaster" as "a serious disruption of the functioning of a community".³⁵² A few laws are specific to floods or storms: although these limitations tend to be reflected in the title, they could potentially apply to both natural and man-made floods.³⁵³ Several States also incorporate a requirement that an event must cause harm to people, property or the economy in order to be truly considered a disaster.³⁵⁴ Read together, however, these laws demonstrate a recognized obligation to craft legislation addressing natural and man-made disasters.

122. A second element of disaster legislation that signals States' obligations is the two distinct methods by which States indicate the object, purpose and goals of the legislation. The more common approach simply declares that the legislation is intended to set forth a framework to manage disaster risks with an aim of preventing disasters, mitigating harm and increasing a State's disaster preparedness.³⁵⁵ A handful of other States also supplement

³³⁵ A/CN.4/590 and Add.1–3 (footnote 78 above).

³³⁶ See footnote 306 above.

³³⁷ Plurinational State of Bolivia, Risk Reduction and Disaster Attention Act (2000), Law No. 2140, available from www.preventionweb.net/files/30230_bol2140.pdf.

³³⁸ Colombia, Law No. 1523 of 24 April 2012 adopting the National Policy on Disaster Risk Management and establishing the National System of Disaster Risk Management and containing other provisions. Shortly before the adoption of the law, the World Bank had released a comprehensive study of the disaster risk management policies in Colombia, in which it criticized the country's framework, which may have influenced the shape of the new legislation. See World Bank, *Analysis of Disaster Risk Management in Colombia: A Contribution to the Creation of Public Policies*.

³³⁹ Costa Rica, National Emergency and Risk Prevention Act (2011), Law No. 8488 of 11 January 2006.

³⁴⁰ Farber and Chen, *Disasters and the Law: Katrina and Beyond*, pp. 211–212.

³⁴¹ See footnote 315 above.

³⁴² Japan, Disaster Countermeasures Basic Act, Act No. 223 (1961, revised 1997).

³⁴³ Nicaragua, Law No. 337 (2000), Law Establishing a National System for the Prevention of, Mitigation of and Attention to Disasters.

³⁴⁴ The Philippines, Philippine Disaster Risk Reduction and Management Act of 2010, Rep. Act No. 10121.

³⁴⁵ See footnote 326 above.

³⁴⁶ Sri Lanka, Disaster Management Act, No. 13 of 2005, 13 May 2005.

³⁴⁷ United Kingdom, Flood and Water Management Act (2010).

³⁴⁸ United States, Homeland Security Act of 2002, 6 U.S.C., paras. 311–321 (setting forth the mission, obligations and powers of the Federal Emergency Management Agency).

³⁴⁹ Viet Nam, Ordinance of Prevention and Control of Floods and Storms and Implementation Provisions, No. 09-L/CTN (1993).

³⁵⁰ Sri Lanka, Disaster Management Act, art. 25. See also Algeria, Risk Prevention and Disaster Management Act (footnote 306 above), arts. 2 and 10 (including earthquakes, floods, fires, industrial and nuclear accidents and health epidemics); and Japan, Disaster Countermeasures Basic Act (footnote 342 above), art. 2, which indicates that "disaster" refers to a storm, flood, earthquake, tsunami or other unusual natural event, a conflagration or explosion or any other damage of similar extent.

³⁵¹ Nicaragua, Law Establishing a National System for the Prevention of, Mitigation of and Attention to Disasters (footnote 343 above), art. 3.

³⁵² The Philippines, Philippine Disaster Risk Reduction and Management Act (footnote 344 above), para. 3. See also Plurinational State of Bolivia, Risk Reduction and Disaster Attention Act (footnote 337 above), art. 1 (protecting against natural, technological and man-made threats); United States, Homeland Security Act (footnote 348 above), para. 313 (b) (2) (A) (protecting "against the risk of natural disasters, acts of terrorism, and other man-made disasters, including catastrophic incidents"); India, Disaster Management Act (footnote 315 above), art. 2 ("disaster" refers to natural or man-made catastrophes or accidents or negligence).

³⁵³ See Viet Nam, Ordinance of Prevention and Control of Floods and Storms and Implementation Provisions (footnote 349 above), art. 2; United Kingdom, Flood and Water Management Act (footnote 347 above), art. 1 (covering floods and coastal erosion, including dam breaches, but not flooding where high rainfall has caused the sewage system to overflow).

³⁵⁴ South Africa, Disaster Management Act No. 57 of 2002 (footnote 326 above), para. 1 (Disaster means "a progressive or sudden, widespread or localized, natural or human-caused occurrence which causes or threatens to cause, death, injury or disease, damage to property, infrastructure or the environment, or disruption of the life of a community, and which is of a magnitude that exceeds the ability of those affected by the disaster to cope with its effects using only their own resources"); and Colombia, Law establishing the National System of Disaster Risk Management (footnote 338 above), art. 4, para. 8 (declaring that disasters are the result of natural or unintentional man-made occurrences that cause harm or loss to persons, property, the economy or the environment).

³⁵⁵ See South Africa, Disaster Management Act (footnote 326 above), preamble (providing for "a disaster management policy that focuses on preventing or reducing the risk of disasters, mitigating the severity of disasters, emergency preparedness, rapid and effective response to disasters and post-disaster recovery"); Viet Nam, Ordinance of Prevention and Control of Floods and Storms and Implementation

such statements of purpose with more general goals, such as protecting life,³⁵⁶ or motivations for the act, such as prior experience with disasters.³⁵⁷ Still, for example, the Indian National Disaster Management Act specifically requires measures for the prevention of disasters, the integration of mitigation measures and disaster preparedness capacity-building.³⁵⁸ The United States adopts a slightly more precise approach, suggesting that the Federal Emergency Management Agency “develop guidance” on “identifying potential hazards and assessing risk and impacts; mitigating the impact of a wide variety of hazards ... managing necessary emergency preparedness and response recourses”.³⁵⁹ These statements of purpose identify prevention, mitigation and preparedness as specific goals of the States. For the sake of coherence, the present section will refer to those three recognized components of the disaster reduction framework in describing the particular features of the States’ laws that are of relevance.

Provisions (footnote 349 above), preamble (setting out provisions for activities conducted for the prevention, control and mitigation of the consequences of floods and storms); United Kingdom, Flood and Water Management Act (footnote 347 above), preamble (stating that the act is for the management of risks in connection with flooding and coastal erosion); United States, Homeland Security Act (footnote 348 above), para. 313 (b) (2) (A) (leading “the nation’s efforts to prepare for, protect against, respond to, recover from [disasters]”); India, Disaster Management Act (footnote 315 above), preamble (providing the effective management of disasters); Nicaragua, Law Establishing a National System for the Prevention of, Mitigation of and Attention to Disasters (footnote 343 above), art. 1 (stating that the law’s purpose is to establish principles, norms and instruments necessary to create a system for the disaster prevention risk reduction, mitigation and preparedness); Plurinational State of Bolivia, Risk Reduction and Disaster Attention Act (footnote 337 above), art. 1 (regulating all activities in the field of the reduction of risks and warnings of disasters and emergencies, establishing an institutional framework that reduces risks from disasters and emergencies); Colombia, Law establishing the National System of Disaster Risk Management (footnote 338 above), art. 1 (disaster management, accomplished through a process of policies, strategies, plans and regulations, is necessary for reduction of risk, management of risk, and maintenance of the security, well-being and quality of life for persons); and Algeria, Risk Prevention and Disaster Management Act (footnote 306 above), art. 1 (enacting rules for the prevention of major risks and management of disasters).

³⁵⁶ See, for example, United States, Homeland Security Act (footnote 348 above), para. 313 (b) (2) (mission is to reduce the loss of life and property and protect the nation from all hazards). See also Japan, Disaster Countermeasures Basic Act (footnote 342 above), art. 1 (“For the purpose of protecting the national territory, the life and limb of the citizens and their property, this act shall have for its aim the establishment of a machinery ... the formulation of disaster prevention plans ... ensuring an effective and organized administration of comprehensive and systematic disaster prevention.”); the Philippines, Philippine Disaster Risk Reduction and Management Act (footnote 344 above), para. 2 (identifying the State policy to uphold the right to life and strengthen the country’s institutional capacity for disaster risk reduction); and Sri Lanka, Disaster Management Act (footnote 346 above), preamble (citing the necessity to protect human life and property of the people and environment of Sri Lanka from disasters).

³⁵⁷ See, for example, Nicaragua, Law Establishing a National System for the Prevention of, Mitigation of and Attention to Disasters (footnote 343 above), preamble (referencing a handful of motivating factors for adopting the law, among them the United Nations International Decade for Natural Disaster Reduction, the climate phenomena El Niño and La Niña, and the country’s history of earthquakes, volcanic eruptions, floods, hurricanes and forest fires). See also Viet Nam, Ordinance on Prevention and Control of Floods and Storms and Implementation Provisions (footnote 349 above), preamble (citing the life and property losses caused by floods and storms).

³⁵⁸ India, Disaster Management Act (footnote 315 above), art. 11.

³⁵⁹ United States, Homeland Security Act (footnote 348 above), para. 321 *l*.

1. RISK PREVENTION

123. Risk prevention concerns the actions that States take to minimize the likelihood that a disaster will occur. To that end, the legislation discussed shows three main approaches to realizing this goal: risk assessment, information-sharing and land use controls.

(a) Risk assessment

124. According to the Hyogo Framework for Action,

[t]he starting point for reducing disaster risk and for promoting a culture of disaster resilience lies in the knowledge of the hazards and the physical, social, economic and environmental vulnerabilities to disasters that most societies face, and of the ways in which hazards and vulnerabilities are changing in the short and long term, followed by action taken on the basis of that knowledge.³⁶⁰

125. The Framework has as its second priority for action to “identify, assess and monitor disaster risks and enhance early warning” (para. 14 (2)). Key activities presented within the framework are to:

(a) Develop, update periodically and widely disseminate risk maps and related information to decision makers, the general public and communities at risk in an appropriate format.

(b) Develop systems of indicators of disaster risk and vulnerability at national and subnational scales that will enable decision makers to assess the impact of disasters on social, economic and environmental conditions and disseminate the results to decision makers, the public and populations at risk.

(c) Record, analyse, summarize and disseminate statistical information on disaster occurrence, impacts and losses, on a regular basis through international, regional, national and local mechanisms.³⁶¹

126. The Yokohama Strategy emphasizes as its first principle that “risk assessment is a required step for the adoption of adequate and successful disaster reduction policies and measures”,³⁶² while the General Assembly has stressed the importance of risk assessment at both the national and local levels in order to reduce vulnerability to hazards and to address the adverse impacts of disasters.³⁶³

127. Risk assessment at the national level is varied owing to financial and scientific constraints, regional and local needs and each State’s individual approach. In 2011, 12 of 15 respondents to a survey of States members of the Group of 20 reported conducting national risk assessments, while the remaining three reported that risk assessments were in development and were to be implemented as early as 2013.³⁶⁴ A review of national and local risk assessments on the basis of hazard data and vulnerability information reveals that this is the activity most widely

³⁶⁰ A/CONF.206/6, para. 17.

³⁶¹ *Ibid.*

³⁶² A/CONF.172/9, chap. I, resolution 1, annex I.

³⁶³ General Assembly resolutions 59/233 of 22 December 2004, para. 3; 61/200 of 20 December 2006, para. 7; and 63/217 of 19 December 2008, para. 10.

³⁶⁴ See the G20/OECD methodological framework on disaster risk assessment and risk financing. Available from www.oecd.org/gov/risk/G20disasterriskmanagement.pdf.

practised as regards any prevention strategy in the Hyogo Framework for Action.³⁶⁵

128. There is evidence that States seek assistance for their national assessment of risk. At least 40 countries have sought assistance from the Global Risk Identification Programme of the United Nations Development Programme to improve their knowledge of disaster risk through national risk assessments and national risk information systems.³⁶⁶ Twelve countries in Latin America and South Asia have sought assistance from the Central American Probabilistic Risk Assessment for technical assistance in risk assessment.³⁶⁷

129. Of the 14 States selected for study, a number focus on disaster risk identification, assessment and monitoring. India, for example, requires State-level and district-level plans to identify specific vulnerabilities and develop measures to mitigate harm caused by that vulnerability.³⁶⁸ In furtherance of these goals, the legislation suggests ensuring that guidelines for prevention and mitigation are followed, and examining the construction of buildings to confirm that they are built to appropriate standards for the prevention of disasters.³⁶⁹ Risk monitoring can take different forms, but generally involves risk assessments and weather forecasting. For example, the Japanese legislation includes a provision that local governments should engage in weather forecasting to help to prevent disasters caused by storms.³⁷⁰ In the Philippines, the legislation includes risk assessments and risk knowledge-building.³⁷¹ In Viet Nam, the ordinance calls for weather forecasting and tracking and envisages public-private partnership to realize these goals.³⁷² Similarly, in the Philippines, the legislation requires identifying, assessing and prioritizing hazards and risks,³⁷³ with the aim of consolidating local disaster risk information, including natural hazards, vulnerabilities and climate change risks, to maintain a local risk map.³⁷⁴

130. Some States have adopted routine weather monitoring as a means of identifying potential risks. In the United States, for example, the National Weather Service initially began as a means of helping farmers, but its utility

³⁶⁵ See the compilation of national progress reports on the implementation of the Hyogo Framework for Action (2009–2011), Hyogo Framework for Action priority 1, core indicator 1.1, available from www.preventionweb.net/english/hyogo/progress/documents/hfa-report-priority1-1%282009-2011%29.pdf.

³⁶⁶ Achievements cited include the completion of a national risk assessment and national hazard profile in the Lao People's Democratic Republic; the completion of urban risk assessments in Mexico, Mozambique and Nepal; the establishment of a national disaster observatory in Armenia; and the launch of a comprehensive risk assessment in Mozambique.

³⁶⁷ Bangladesh, Bhutan, Chile, Colombia, Costa Rica, El Salvador, India, Nepal, Pakistan, Panama, Peru and Sri Lanka.

³⁶⁸ India, Disaster Management Act (footnote 315 above), art. 21.

³⁶⁹ *Ibid.*, art. 30.

³⁷⁰ Japan, Disaster Countermeasures Basic Act (footnote 342 above), art. 35.

³⁷¹ The Philippines, Philippine Disaster Risk Reduction and Management Act (footnote 344 above), paras. 3–4 and 12.

³⁷² Viet Nam, Ordinance of Prevention and Control of Floods and Storms and Implementation Provisions (footnote 349 above), arts. 10–11.

³⁷³ The Philippines, Philippine Disaster Risk Reduction and Management Act (footnote 344 above), para. 9.

³⁷⁴ *Ibid.*, para. 12.

for disaster prevention has expanded.³⁷⁵ Weather forecasting is undertaken by a number of entities in the United States, including the National Weather Service, the Federal Aviation Administration (which provides forecasting to airlines and flights), the National Oceanic and Atmospheric Administration (which uses its systems to implement the country's emergency alert system) and a number of state-level authorities, such as the Utah Department of Transportation (which provides avalanche risk forecasts).³⁷⁶ In addition, States are cooperating in the development of international weather warning systems under WMO.³⁷⁷

(b) *Collection and dissemination of risk information*

131. The collection and dissemination of risk information can contribute to prevention in that it reduces vulnerabilities and builds resilience to hazards. The Hyogo Framework for Action explains this purpose:

Disasters can be substantially reduced if people are well informed and motivated towards a culture of disaster prevention and resilience, which in turn requires the collection, compilation and dissemination of relevant knowledge in information of hazards, vulnerabilities and capacities.³⁷⁸

As further explained in a report on the implementation of the Framework:

Data collection and dissemination processes allow decision makers and the public to understand a country's exposure to various hazards and its social, economic, environmental and physical vulnerabilities. Such information, disseminated in an appropriate and timely manner, allows communities to take effective action to reduce risk.³⁷⁹

132. Under the third priority of action in the Hyogo Framework for Action, States are to undertake a variety of activities towards this end. They include providing for information, management and exchange through activities such as disseminating "easily understandable information on disaster risks and protection options".³⁸⁰ The Yokohama Strategy called for the collection and dissemination of information "to improve public awareness of natural disasters and the potential to reduce their impact".³⁸¹

133. Data collection and dissemination are part of policies adopted at the national level. For example, China has reported a robust strategy for making risk information available, including through a countrywide public awareness strategy.³⁸² Other countries have established disaster losses databases so that decision makers are aware of local risks and vulnerabilities.³⁸³

134. Of the 14 States selected, the legislation adopted in the United Kingdom requires the maintenance of a register of vulnerable structures and suggests dissemination of

³⁷⁵ Baum, *When Nature Strikes: Weather Disasters and the Law*, p. 3.

³⁷⁶ *Ibid.*, pp. 9 and 14.

³⁷⁷ *Ibid.*, p. 15.

³⁷⁸ A/CONF.206/6, para. 18.

³⁷⁹ UNISDR, "Implementing the Hyogo Framework for Action in Europe: Advances and Challenges", p. 36, available from www.unisdr.org/files/19690_hfa11web.pdf.

³⁸⁰ A/CONF.206/6, para. 18 (i) (a).

³⁸¹ A/CONF.172/9, chap. I, resolution 1, annex I, para. 12 (a) (i).

³⁸² A/66/301, annex, para. 8.

³⁸³ *Ibid.*, para. 24.

flood and erosion risk maps and information.³⁸⁴ In Algeria, the law establishes that citizens have a right to information on any vulnerabilities or risks that they face with regard to disasters, the services that are available to them for risk prevention and the identity of the actors in charge of disaster management.³⁸⁵ Colombia has established a national information system for disaster risk management, which is specifically tasked with collecting and making available information relating to standards, protocols, technological solutions and processes that can reduce risk. Essentially, this entity acts as the nation's knowledge bank for issues regarding disaster risk reduction.³⁸⁶

135. In some cases, industrial accidents have prompted States to adopt stronger regulations that have, as a side effect, reduced risks of man-made disasters through risk identification and information sharing. In 1984, a chemical gas leak in Bhopal, India, killed and injured thousands of people who lived near a chemical plant.³⁸⁷ In the aftermath of the incident, India passed laws regulating industrial conduct. The Environment (Protection) Act of 1986 prohibits industry, operations or processing from emitting environmental pollutants in excess of prescribed standards.³⁸⁸ The Manufacture, Storage and Import of Hazardous Chemicals Rules of 1989 establish a duty on pollution control authorities to routinely inspect industrial establishments³⁸⁹ and require industrial establishments to submit audit reports and emergency disaster management plans.³⁹⁰

136. The Bhopal disaster also spurred the requirement for environmental impact assessment statements, mandatory statements that contain information on any potentially adverse impacts on the environment, and proposed disaster management plans to address such adverse impacts, which are another means for risk identification and information-sharing.³⁹¹ Industrial regulations can also involve right-to-know provisions, such as the Emergency Planning and Community Right-to-Know Act, adopted by the United States in 1986, which established a toxic release inventory.³⁹² This law requires public reporting of the release of toxic chemicals.³⁹³ Other groups then use this information to better understand risks, risk distribution and risk reduction.³⁹⁴

(c) *Land use controls*

137. Land use controls are methods by which States seek to prevent either particular activities in specific

³⁸⁴ United Kingdom, Flood and Water Management Act (footnote 347 above), art. 21.

³⁸⁵ Algeria, Risk Prevention and Disaster Management Act (footnote 306 above), art. 11.

³⁸⁶ Colombia, National System for the Management of Risks and Disasters Act (footnote 354 above), art. 45.

³⁸⁷ Francis, "Legal aspects of disaster management and rehabilitation: the recent Indian experience of the tsunami disaster".

³⁸⁸ *Ibid.*

³⁸⁹ *Ibid.*, pp. 246–247.

³⁹⁰ *Ibid.*

³⁹¹ *Ibid.*, p. 247.

³⁹² Fortun, "Environmental right-to-know and the transmutations of law".

³⁹³ *Ibid.*

³⁹⁴ *Ibid.*

vulnerable areas or all types of access to a particular area. The extent of the control would probably depend on the probability and severity of the risk posed in a particular area. Algeria, for example, identifies its major objectives as improving risk awareness and risk monitoring, taking into account risks in construction, and putting in place plans to manage all types of disasters.³⁹⁵ Before indicating a number of specific actions that the State is permitted to adopt within its disaster management plans, the legislation cites five underlying principles that inform the State's policies: the precautionary principle, the principle of co-existence, the principle of preventive action and swift correction, the principle of participation, and the principle of the integration of new and innovative techniques.³⁹⁶ It proposes a prohibition on construction and habitation within zones at risk of earthquakes or floods.³⁹⁷ Similarly, Costa Rica can declare restrictions on land uses in order to avoid disasters.³⁹⁸ The United Kingdom also grants itself broad powers to restrict or mandate certain uses of land.³⁹⁹

138. India adopted the Coastal Regulation Zone Notification in 1991, which controlled developmental activities within 500 metres of the high tide line as a means of mitigating potential harm caused by tsunamis.⁴⁰⁰ Land use controls have also been effective in Cuba, where the Institute of Physical Planning establishes regulations to require that certain construction projects meet minimum safety requirements.⁴⁰¹ These regulations can also prohibit construction entirely in certain locations.⁴⁰² The Government of Cuba also promotes urbanization by ensuring that rural populations have access to essential government services; by reducing the size of the urban population, disaster risks that are accentuated by overpopulation can be prevented.⁴⁰³ By implementing these land use controls, States are attempting to reduce the population's exposure to potential hazards and limit any harm that may result from a disaster in that area. In some cases, however, land use controls are less effective. For example, in the United States, certain government restrictions on land usage can be prohibited.⁴⁰⁴

139. Environmental regulations have also been used in the United States and are another type of land use restriction. The destruction of wetlands in Louisiana by industrial development drastically reduced the region's natural ability to withstand hurricanes; however, the

³⁹⁵ Algeria, Risk Prevention and Disaster Management Act (footnote 306 above), art. 7.

³⁹⁶ *Ibid.*, art. 8.

³⁹⁷ *Ibid.*, art. 19.

³⁹⁸ Costa Rica, National Emergency and Risk Prevention Act (footnote 339 above), art. 34.

³⁹⁹ United Kingdom, Flood and Water Management Act (footnote 347 above), art. 3.

⁴⁰⁰ Francis, "Legal aspects of disaster management and rehabilitation ..." (footnote 387 above), pp. 247–248.

⁴⁰¹ Farber and Chen, *Disasters and the Law: Katrina and Beyond*, p. 218.

⁴⁰² *Ibid.*

⁴⁰³ *Ibid.*

⁴⁰⁴ *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003 (1992) (holding that a South Carolina statute that prohibited a landowner from building permanent habitable structures on islands off the coast of South Carolina constituted a taking that required just compensation).

Government is able to take steps to control the development of wetland areas under the Clean Water Act.⁴⁰⁵ By protecting and regenerating wetlands, the State hopes, among other goals, to reduce harm caused by storms by taking advantage of the natural buffer that these wetlands provide.⁴⁰⁶

140. Although a number of approaches can constitute risk prevention, several disaster risk reduction acts include at least some specific policy suggestions in this area.

2. MITIGATION OF HARM

141. Mitigation of harm involves the steps that States follow to reduce the amount of harm caused by a disaster. This approach can take various forms, including requiring buildings in at-risk areas to conform to certain safety standards or the building of dykes or levees.

(a) *Construction standards*

142. The Algerian law proposes the mandating of construction standards in various disaster scenarios.⁴⁰⁷ In Viet Nam, the ordinance authorizes both the enforcement of construction standards and the building of facilities such as dykes.⁴⁰⁸ United Kingdom law identifies a number of examples of State actions that could be taken in the course of flood or coastal erosion risk management, namely removing or altering buildings and using the State's law-making power to permit, require, restrict or prevent certain activities.⁴⁰⁹ In addition, the State has a duty to maintain a register of structures, along with information regarding the owners and the state of repair of the structures, which are likely to have a significant effect on a flood risk area.⁴¹⁰ This law amends the Building Act of 1984 in order to include a requirement that people working on erecting, fitting or equipping a building take measures to increase the structure's flood resistance or resilience.⁴¹¹

(b) *Insurance*

143. Insurance systems are another way in which States seek to mitigate harm from disaster. In 1991, India adopted the Public Liability Insurance Act, which required industries to take out insurance policies to discharge any liabilities that might arise from their activities, such as any potential environmental harm.⁴¹² The United States has adopted a national flood insurance programme, which is designed to reduce the likelihood that people will live in flood zones, thereby reducing the risk

of disaster.⁴¹³ The programme encourages individuals to move away from flood zones by requiring property owners to obtain flood insurance and increasing the cost of insurance premiums each time the owner makes flood insurance claims.⁴¹⁴ California has also implemented a state-specific earthquake insurance regime that operates in a similar manner.⁴¹⁵

144. Although fairly few disaster risk reduction acts specify particular measures that States should or must take with regard to the mitigation of harm, all the plans include some mention of harm as a goal of the legislation, leaving the specific methods used up to the relevant authorities charged with promulgating further regulations or legislation.

3. PREPAREDNESS

145. Disaster preparedness concerns the steps that States have taken in advance of a disaster, as a matter of course, that facilitate the provision of aid once a disaster has occurred. The South African Disaster Management Act of 2002 contains a detailed definition: "emergency preparedness means a state of readiness which enables organs of State and other institutions involved in disaster management, the private sector, communities and individuals to mobilize, organize, and provide relief measures to deal with an impending or current disaster or the effects of a disaster".⁴¹⁶ One of the most common ways in which States have approached disaster preparedness is by establishing an institutional hierarchy of agencies or actors and defining the roles and responsibilities of those actors.

(a) *Institutional framework*

146. Many States' laws either include a thorough description of a new institution established specifically for the purpose of promoting disaster risk reduction policies, including disaster preparedness,⁴¹⁷ or entrust already existing political or non-governmental actors with additional responsibilities.⁴¹⁸ Often, these new hierarchies are diverse, including members from a wide variety of government ministries and, in some cases, non-governmental actors such as businesses and labour organizations. Given the emphasis on disaster management in the selected legislation, it is unsurprising that a significant portion of almost every State's law is devoted to establishing, staffing and defining the roles of new government institutions devoted specifically to addressing disasters. Of the States surveyed, Algeria is alone in not defining which

⁴¹³ Farber and Chen, *Disasters and the Law: Katrina and Beyond*, p. 228.

⁴¹⁴ *Ibid.*

⁴¹⁵ Moréteau, "Catastrophic harm in United States law: liability and insurance", pp. 69 and 80.

⁴¹⁶ South Africa, Disaster Management Act (footnote 326 above), art. 1.

⁴¹⁷ See, for example, the National Disaster Management Authority of India, created by art. 3 of the Disaster Management Act (footnote 315 above); and the National Council for Disaster Reduction and Response of the Plurinational State of Bolivia, by art. 8 of the Risk Reduction and Disaster Attention Act (footnote 337 above).

⁴¹⁸ See, for example, Viet Nam, Ordinance of Prevention and Control of Floods and Storms and Implementation Provisions (footnote 349 above), art. 6.

⁴⁰⁵ Farber and Chen (footnote 401 above), pp. 211–212.

⁴⁰⁶ *Ibid.*

⁴⁰⁷ Algeria, Risk Prevention and Disaster Management Act (footnote 306 above), art. 23.

⁴⁰⁸ Viet Nam, Ordinance of Prevention and Control of Floods and Storms and Implementation Provisions (footnote 349 above), arts. 34–35.

⁴⁰⁹ United Kingdom, Flood and Water Management Act (footnote 347 above), art. 3.

⁴¹⁰ *Ibid.*, art. 21.

⁴¹¹ *Ibid.*, art. 40.

⁴¹² Francis, "Legal aspects of disaster management and rehabilitation ..." (footnote 387 above), p. 248.

portion of the Government is responsible for crafting and carrying out disaster risk reduction or disaster management policies.⁴¹⁹ Most States not only establish a national institution and national disaster management plan, but also create decentralized parallel structures at other levels of government.⁴²⁰ The Indian Disaster Management Act, for example, creates a national disaster management authority,⁴²¹ which is tasked with preparing a national plan for disaster management.⁴²² It also establishes State⁴²³ and district⁴²⁴ institutions tasked with implementing the national plan at the local level.

147. These institutions, in particular at the national level, tend to comprise a wide variety of government ministers and thus incorporate a broad range of subject-matter expertise.⁴²⁵ In the Philippines, the National Disaster Risk Reduction and Management Council, which is headed by the Secretary of the Department of National Defence, also includes the secretaries of the Department of the Interior and Local Government, the Department of Social Welfare and Development, the Department of Science and Technology, the National Economic and Development Authority, the Department of Health, the Department of Environment and Natural Resources, the Department of Agriculture and 36 other members, including additional government bodies, regional and local representatives and private sector and civil society representatives.⁴²⁶

148. Several States decided that the Head of Government should be the principal agent of disaster management institutions, signalling the importance that they place on disaster management.⁴²⁷ Sri Lanka extends this principle and includes not only the President, but also the Prime Minister and the Leader of the Opposition as the leaders of the National Council for Disaster Management.⁴²⁸

⁴¹⁹ See Algeria, Risk Prevention and Disaster Management Act (footnote 306 above), arts. 50 and 52 (calling for national, regional and municipal plans for the management of disasters, but not specifying the plan's structure, composition or key components).

⁴²⁰ See, for example, Plurinational State of Bolivia, Risk Reduction and Disaster Attention Act (footnote 337 above), arts. 11–12; Viet Nam, Decree No. 32-CP (20 May 1996), arts. 3 and 7; the Philippines, Philippine Disaster Risk Reduction and Management Act (footnote 344 above), paras. 10–11; South Africa, Disaster Management Act (footnote 326 above), paras. 22–25 and 43–50; Japan, Disaster Countermeasures Basic Act (footnote 342 above), arts. 3–5; and United States, Homeland Security Act (footnote 348 above), para. 317.

⁴²¹ India, Disaster Management Act (see footnote 315 above), art. 3.

⁴²² *Ibid.*, art. 10.

⁴²³ *Ibid.*, art. 14.

⁴²⁴ *Ibid.*, art. 25.

⁴²⁵ See, for example, Plurinational State of Bolivia, Risk Reduction and Disaster Attention Act (footnote 337 above), art. 8; Viet Nam, Decree No. 32-CP (footnote 420 above), art. 11; South Africa, Disaster Management Act (footnote 326 above), para. 5; and Nicaragua, Law Establishing a National System for the Prevention of, Mitigation of and Attention to Disasters (footnote 343 above), art. 10.

⁴²⁶ The Philippines, Philippine Disaster Risk Reduction and Management Act (footnote 344 above), para. 5.

⁴²⁷ See, for example, Japan, Disaster Countermeasures Basic Act (footnote 342 above), art. 11; Nicaragua, Law Establishing a National System for the Prevention of, Mitigation of and Attention to Disasters (footnote 343 above), art. 10; Colombia, National System for the Management of Risks and Disasters Act (footnote 354 above), art. 9; and Plurinational State of Bolivia, Risk Reduction and Disaster Attention Act (footnote 337 above), art. 8.

⁴²⁸ Sri Lanka, Disaster Management Act (footnote 346 above), art. 3.

149. Lastly, disaster management legislation also typically includes obligations that the institutions and disaster management plans are to undertake.⁴²⁹ Colombia, for example, requires that the national plan develop a system for identifying and prioritizing risks, monitoring risks, communicating the existence of risks to affected populations and taking proactive steps to prevent or reduce the harm caused by disasters.⁴³⁰

(b) Funding

150. Legislation requires funding in order to allow the Government to fulfil the obligations that it has created. Within disaster management laws, States, for the most part, include some provisions relating to funding. Most States, however, do not include specific appropriations in the acts. The Algerian act contains no provisions relating to funding. Several laws establish a fund to be used for disaster management, including risk reduction.⁴³¹ In some States, such funds are authorized, but not mandated.⁴³² Lastly, the United States,⁴³³ the Philippines⁴³⁴ and Sri Lanka⁴³⁵ each have acts that appropriate specific levels of funding to be used for disaster management. These funding provisions enable States to engage in the disaster

⁴²⁹ See, for example, Plurinational State of Bolivia, Risk Reduction and Disaster Attention Act (footnote 337 above), art. 5; United States, Homeland Security Act (footnote 348 above), para. 318; India, Disaster Management Act (footnote 315 above), art. 10; Japan, Disaster Countermeasures Basic Act (footnote 342 above), arts. 3–5; the Philippines, Philippine Disaster Risk Reduction and Management Act (footnote 344 above), para. 6; Sri Lanka, Disaster Management Act (footnote 346 above), art. 4; South Africa, Disaster Management Act (footnote 326 above), para. 4; Nicaragua, Law Establishing a National System for the Prevention of, Mitigation of and Attention to Disasters (footnote 343 above), art. 7; and United Kingdom, Flood and Water Management Act (footnote 347 above), art. 7.

⁴³⁰ Colombia, National System for the Management of Risks and Disasters Act (footnote 354 above), art. 6.

⁴³¹ Plurinational State of Bolivia, Risk Reduction and Disaster Attention Act (footnote 337 above), art. 21 (establishing a fund for the reduction of risks and economic recovery); Nicaragua, Law Establishing a National System for the Prevention of, Mitigation of and Attention to Disasters (footnote 343 above), arts. 12–13 (establishing a national fund for disasters, which is to comprise funds received from the national budget and domestic and international donations); and Colombia, National System for the Management of Risks and Disasters Act (footnote 354 above), arts. 46–54 (renaming the National Fund for Calamities the National Fund for the Management of Disaster Risks and elaborating on the procedures that relate to the management of the Fund).

⁴³² Viet Nam, Ordinance of Prevention and Control of Floods and Storms and Implementation Provisions (footnote 349 above), art. 27; India, Disaster Management Act (footnote 315 above), arts. 46–49; Japan, Disaster Countermeasures Basic Act (footnote 342 above), arts. 94 and 101; South Africa, Disaster Management Act (footnote 326 above), paras. 56–57; United Kingdom, Flood and Water Management Act (footnote 347 above), art. 16.

⁴³³ United States, Homeland Security Act (footnote 348 above), para. 321 *j* (authorizing the appropriation of more than \$5.5 billion for the period 2004–2013).

⁴³⁴ The Philippines, Philippine Disaster Risk Reduction and Management Act (footnote 344 above), para. 21 (the local disaster risk reduction and management fund is funded by no less than 5 per cent of the estimated revenue from regular sources (i.e. tax revenues), to support disaster risk management activities, with 30 per cent of this Fund allocated as a quick response fund). See also *ibid.*, para. 23 (allocating 1 billion pesos to the Office of Civil Defence to carry out disaster risk reduction activities).

⁴³⁵ Sri Lanka, Disaster Management Act (footnote 346 above), art. 16 (granting the National Council for Disaster Management starting capital of 10 million rupees).

risk reduction policies envisaged without requiring a second set of processes for budgeting.

(c) *Community preparedness and education*

151. Disaster preparedness involves community-level preparedness. Most States accomplish this goal through education and awareness-raising campaigns mandated by their disaster risk reduction acts. Japan, for example, specifically identifies the Japanese Red Cross Society as an organization with a special role regarding community preparedness.⁴³⁶ The Philippines, by contrast, calls for disaster risk management to be introduced during secondary and tertiary education and mandates disaster risk management training and education for all public employees.⁴³⁷

152. The Indian act further recommends identifying buildings that can be used as relief centres in the event of a disaster, stockpiling food, providing information to State authorities, encouraging non-governmental organization and civil society involvement and ensuring that communications systems are in order (such as by performing drills periodically), among other tasks.⁴³⁸ Japan mandates that local disaster plans provide for emergency provision, stockpiling and distribution and outline the operations relating to disaster prevention.⁴³⁹ Meanwhile, Viet Nam focuses on education, establishing education programmes to promote common knowledge about storms and floods.⁴⁴⁰ The United Kingdom suggests making arrangements for financial support of individuals and providing education and guidance on risk management.⁴⁴¹ These States typically include only a couple of specific recommendations or requirements relating to the structure or content of such education, however.

(d) *Early warning*

153. Early warning was recognized by the General Assembly as an important aspect of disaster prevention as early as 1971.⁴⁴² It has been included in nearly all subsequent General Assembly resolutions dealing with the subject.⁴⁴³ The Economic and Social Council emphasized that early warning should be a “key element” within regional, national and local prevention efforts.⁴⁴⁴

154. As noted in the Yokohama Strategy, “early warning of impending disasters and their effective dissemination ...

⁴³⁶ Japan, Disaster Countermeasures Basic Act (footnote 342 above), art. 2.

⁴³⁷ The Philippines, Philippine Disaster Risk Reduction and Management Act (footnote 344 above), para. 4.

⁴³⁸ India, Disaster Management Act (footnote 315 above), art. 30.

⁴³⁹ Japan, Disaster Countermeasures Basic Act (footnote 342 above), art. 42.

⁴⁴⁰ Viet Nam, Decree No. 32-CP (footnote 420 above), art. 11.

⁴⁴¹ United Kingdom, Flood and Water Management Act (footnote 347 above), art. 3.

⁴⁴² In paragraph 8 of its resolution 2816 (XXVI) of 14 December 1971, the General Assembly invited potential recipient Governments to improve national disaster warning systems.

⁴⁴³ See, for example, General Assembly resolutions 46/182 of 19 December 1991; 59/233 of 22 December 2004, para. 7; 60/196 of 22 December 2005, para. 8; 61/200 of 20 December 2006, para. 9; and 63/217 of 19 December 2008, para. 12.

⁴⁴⁴ Economic and Social Council resolution 1999/63.

are key factors to successful disaster prevention”.⁴⁴⁵ Early warning has been seen as an essential modality of prevention at the national, regional and international levels.⁴⁴⁶

155. The Hyogo Framework for Action is most explicit when it comes to early warning, naming it within its second priority for action, and suggesting the following key activities on which States might draw:

(d) Develop early warning systems that are people centred, in particular systems whose warnings are timely and understandable to those at risk, which take into account the demographic, gender, cultural and livelihood characteristics of the target audiences, including guidance on how to act upon warnings, and that support effective operation by disaster managers and other decision makers.

(e) Establish, periodically review, and maintain information systems as part of early warning systems with a view to ensuring that rapid and coordinated action is taken in cases of alert/emergency.

...

(g) Implement the outcome of the Second International Conference on Early Warning held in Bonn, Germany, in 2003, including through the strengthening of coordination and cooperation among all relevant sectors and actors in the early warning chain in order to achieve fully effective early warning systems.

(h) Implement the outcome of the Mauritius Strategy for the further implementation of the Barbados Programme of Action for the sustainable development of small island developing States, including by establishing and strengthening effective early warning systems as well as other mitigation and response measures.⁴⁴⁷

156. A review of existing national early warning systems in place with outreach to communities includes the following States or areas: Anguilla, Antigua and Barbuda, Armenia, Australia, Bangladesh, Bolivia (Plurinational State of), Botswana, British Virgin Islands, Canada, Cape Verde, Cayman Islands, Chile, Colombia, Cook Islands, Costa Rica, Cuba, Czech Republic, Dominican Republic, Ecuador, El Salvador, Fiji, Finland, Georgia, Germany, Ghana, Guatemala, Honduras, India, Indonesia, Italy, Jamaica, Japan, Kenya, Lao People’s Democratic Republic, Lesotho, Madagascar, Malaysia, Maldives, Marshall Islands, Mauritius, Mexico, Mongolia, Morocco, Mozambique, New Zealand, Nicaragua, Nigeria, Norway, Panama, Paraguay, Peru, Poland, Saint Kitts and Nevis, Saint Lucia, Senegal, Solomon Islands, Sri Lanka, Sweden, Switzerland, Syrian Arab Republic, the former Yugoslav Republic of Macedonia, Turks and Caicos Islands, United States, Vanuatu, Venezuela (Bolivarian Republic of) and Zambia.⁴⁴⁸

157. Of the 14 States selected, Algeria,⁴⁴⁹ the Philippines⁴⁵⁰ and India⁴⁵¹ each specifically provide for early

⁴⁴⁵ A/CONF.172/9, chap. I, resolution 1, annex I.

⁴⁴⁶ See, for example, General Assembly resolution 36/225 of 17 December 1981.

⁴⁴⁷ A/CONF.206/6, para. 17 (ii).

⁴⁴⁸ See the compilation of national progress reports on the implementation of the Hyogo Framework for Action (2009–2011), Hyogo Framework for Action priority 2, core indicator 2.3, available from www.preventionweb.net/english/hyogo/progress/documents/hfa-report-priority2-3%282009-2011%29.pdf.

⁴⁴⁹ Algeria, Risk Prevention and Disaster Management Act (footnote 306 above), art. 17.

⁴⁵⁰ The Philippines, Philippine Disaster Risk Reduction and Management Act (footnote 344 above), para. 4.

⁴⁵¹ India, Disaster Management Act (footnote 315 above), art. 30.

warning systems, while a number of others allude to them by mentioning information sharing or prompt communication of threats. In South Africa, the State must collect and disseminate information on phenomena that cause or aggravate disasters, risk factors, early warning systems and emergency response resources.⁴⁵² Nicaragua specifies the details of the State's three-tiered risk-level system as part of its early warning system.⁴⁵³

158. Early warning is, of course, not the sole province of national policy or legislation. References to that measure are found in multilateral and bilateral agreements and in decisions of judicial organs. Given its practical importance, it is deemed useful to give some examples of the manner in which early warning is dealt with by those three other sources.

159. According to the ASEAN Agreement on Disaster Management and Emergency Response, States should not only establish early warning systems, but also maintain and review them.⁴⁵⁴ Part of the review could be a determination of the appropriateness of the warning system based on regular risk assessment.⁴⁵⁵ An early warning system should have a mechanism to deliver information to people in a timely way.⁴⁵⁶ An effort should be made to notify and educate persons within a State's territory or control on how to respond to the established early warning system.⁴⁵⁷ The General Assembly has referred to such early warning systems as "people-centred".⁴⁵⁸ As appropriate, States should also develop a mechanism of early warning to notify other States of the transboundary effects of hazards.⁴⁵⁹

160. Bilateral agreements have also provided for early warning systems. For example, an agreement between the United Kingdom and the United States concluded in 1958 provided for elements to improve early warning for the

⁴⁵² South Africa, Disaster Management Act (footnote 326 above), para. 17.

⁴⁵³ Nicaragua, Law Establishing a National System for the Prevention of, Mitigation of and Attention to Disasters (footnote 343 above), arts. 26–31.

⁴⁵⁴ Art. 7, para. 1.

⁴⁵⁵ *Ibid.*

⁴⁵⁶ *Ibid.*

⁴⁵⁷ *Ibid.*

⁴⁵⁸ General Assembly resolutions 60/196 of 22 December 2005, para. 8; 61/200 of 20 December 2006, para. 9; and 63/217 of 19 December 2008, para. 12.

⁴⁵⁹ ASEAN Agreement on Disaster Management and Emergency Response, art. 7, para. 2.

purpose of achieving "greater accuracy and timeliness in forecasts of hurricanes and in warning of accompanying destructive winds, tides, and floods".⁴⁶⁰ Domestic practice as regards early warning is widely developed and mostly adapted to individual requirements and risk factors.⁴⁶¹

161. The European Court of Human Rights has upheld the obligation to establish early warning systems. In *Budayeva*, the Court held that "the authorities' omission in ensuring the functioning of the early warning system was not justified".⁴⁶² Furthermore, the Court found there was a "causal link between the serious administrative flaws", including the lack of early warning, and the death of and injuries to the petitioners.⁴⁶³ In addition, although not specifically using the term "early warning", the Court also found that, under article 2 of the European Convention on Human Rights (right to life), States had "a positive obligation to ... adequately inform the public about any life-threatening emergency".⁴⁶⁴

E. Proposals for draft articles

162. In the light of the foregoing, the Special Rapporteur proposes the following two draft articles:

"Draft article 16. Duty to prevent

"1. States shall undertake to reduce the risk of disasters by adopting appropriate measures to ensure that responsibilities and accountability mechanisms be defined and institutional arrangements be established, in order to prevent, mitigate and prepare for such disasters.

"2. Appropriate measures shall include, in particular, the conduct of multi-hazard risk assessments, the collection and dissemination of loss and risk information and the installation and operation of early warning systems."

"Draft article 5 ter. Cooperation for disaster risk reduction

"Cooperation shall extend to the taking of measures intended to reduce the risk of disasters."

⁴⁶⁰ See footnote 215 above.

⁴⁶¹ UNISDR, *Early Warning Practices Can Save Lives: Selected Examples: Good Practices and Lessons Learned*.

⁴⁶² *Budayeva* (footnote 122 above), para. 155.

⁴⁶³ *Ibid.*, para. 158.

⁴⁶⁴ *Ibid.*, para. 131.

Chapter IV

PROTECTION OF PERSONS IN THE EVENT OF DISASTERS

A. Introduction

38. At its fifty-ninth session (2007), the Commission decided to include the topic “Protection of persons in the event of disasters” in its programme of work and to appoint Mr. Eduardo Valencia-Ospina as Special Rapporteur for the topic.¹² In paragraph 7 of its resolution 62/66 of 6 December 2007, the General Assembly took note of the decision of the Commission to include the topic in its programme of work.

39. From its sixtieth (2008) to sixty-sixth (2014) sessions, the Commission considered the topic on the basis of seven successive reports submitted by the Special Rapporteur.¹³ The Commission also had before it a memorandum by the Secretariat¹⁴ and a set of written replies submitted by the Office for the Coordination of Humanitarian Affairs (OCHA) and the International Federation of Red Cross and Red Crescent Societies (IFRC) to the questions addressed to them by the Commission in 2008.¹⁵

40. At its sixty-sixth session (2014), the Commission adopted, on first reading, a set of 21 draft articles on the protection of persons in the event of disasters, together with commentaries thereto.¹⁶ It decided, in accordance with articles 16 to 21 of its statute, to transmit the draft articles, through the Secretary-General, to Governments, competent international organizations, the ICRC and the IFRC for comments and observations.¹⁷

B. Consideration of the topic at the present session

41. At the present session, the Commission had before it the eighth report of the Special Rapporteur (A/CN.4/697),

¹² *Yearbook ... 2007*, vol. II (Part Two), p. 98, para. 375. At its fifty-eighth session (2006), the Commission endorsed the recommendation of the Planning Group to include, *inter alia*, the topic “Protection of persons in the event of disasters” in the long-term programme of work of the Commission (*Yearbook ... 2006*, vol. II (Part Two), p. 185, para. 257). A brief syllabus on the topic, prepared by the secretariat, was annexed to the report of the Commission in 2006 (*ibid.*, annex III). In its resolution 61/34 of 4 December 2006, the General Assembly took note of the Commission’s decision to include the topic in its long-term programme of work.

¹³ *Yearbook ... 2008*, vol. II (Part One), document A/CN.4/598 (preliminary report); *Yearbook ... 2009*, vol. II (Part One), document A/CN.4/615 and Corr.1 (second report); *Yearbook ... 2010*, vol. II (Part One), document A/CN.4/629 (third report); *Yearbook ... 2011*, vol. II (Part One), document A/CN.4/643 and Corr.1 (fourth report); *Yearbook ... 2012*, vol. II (Part One), document A/CN.4/652 (fifth report); *Yearbook ... 2013*, vol. II (Part One), document A/CN.4/662 (sixth report); and *Yearbook ... 2014*, vol. II (Part One), document A/CN.4/668 and Corr.1 and Add.1 (seventh report).

¹⁴ A/CN.4/590 and Add.1–3 (available from the Commission’s website, documents of the sixtieth session). The final text will be published as an addendum to *Yearbook ... 2008*, vol. II (Part One).

¹⁵ *Yearbook ... 2008*, vol. II (Part Two), p. 16, paras. 32–33.

¹⁶ *Yearbook ... 2014*, vol. II (Part Two), pp. 61 *et seq.*, paras. 55–56.

¹⁷ *Ibid.*, paras. 51–53.

as well as comments and observations received from Governments, international organizations and other entities (A/CN.4/696 and Add.1).

42. The Commission considered the eighth report of the Special Rapporteur at its 3291st to 3296th meetings, from 2 to 11 May 2016. At its 3296th meeting, held on 11 May 2016, the Commission referred the draft preamble, proposed by the Special Rapporteur in his eighth report, and draft articles 1 to 21 to the Drafting Committee, with the instruction that the Drafting Committee commence the second reading of the draft articles taking into account the comments of Governments, international organizations and other entities, the proposals of the Special Rapporteur and the debate in plenary on the Special Rapporteur’s eighth report.

43. The Commission considered the report of the Drafting Committee (A/CN.4/L.871) at its 3310th meeting, held on 3 June 2016, and adopted the entire set of draft articles on the protection of persons in the event of disasters, on second reading, at the same meeting (sect. E.1 below).

44. At its 3332nd to 3335th meetings, from 2 to 4 August 2016, the Commission adopted the commentaries to the aforementioned draft articles (sect. E.2 below).

45. In accordance with its statute, the Commission submits the draft articles to the General Assembly, together with the recommendation set out below.

C. Recommendation of the Commission

46. At its 3335th meeting, held on 4 August 2016, the Commission decided, in accordance with article 23 of its statute, to recommend to the General Assembly the elaboration of a convention on the basis of the draft articles on the protection of persons in the event of disasters.

D. Tribute to the Special Rapporteur

47. At its 3335th meeting, held on 4 August 2016, the Commission, after adopting the draft articles on the protection of persons in the event of disasters, adopted the following resolution by acclamation:

The International Law Commission,

Having adopted the draft articles on the protection of persons in the event of disasters,

Expresses to the Special Rapporteur, Mr. Eduardo Valencia-Ospina, its deep appreciation and warm congratulations for the outstanding contribution he has made to the preparation of the draft articles through his tireless efforts and devoted work, and for the results achieved in the elaboration of draft articles on the protection of persons in the event of disasters.

E. Text of the draft articles on the protection of persons in the event of disasters

1. TEXT OF THE DRAFT ARTICLES

48. The text of the draft articles adopted by the Commission, on second reading, at its sixty-eighth session is reproduced below.

PROTECTION OF PERSONS IN THE EVENT OF DISASTERS

Preamble

Bearing in mind Article 13, paragraph 1 (a), of the Charter of the United Nations, which provides that the General Assembly shall initiate studies and make recommendations for the purpose of encouraging the progressive development of international law and its codification,

Considering the frequency and severity of natural and human-made disasters and their short-term and long-term damaging impact,

Fully aware of the essential needs of persons affected by disasters, and conscious that the rights of those persons must be respected in such circumstances,

Mindful of the fundamental value of solidarity in international relations and the importance of strengthening international cooperation in respect of all phases of a disaster,

Stressing the principle of the sovereignty of States and, consequently, reaffirming the primary role of the State affected by a disaster in providing disaster relief assistance,

Article 1. Scope

The present draft articles apply to the protection of persons in the event of disasters.

Article 2. Purpose

The purpose of the present draft articles is to facilitate the adequate and effective response to disasters, and reduction of the risk of disasters, so as to meet the essential needs of the persons concerned, with full respect for their rights.

Article 3. Use of terms

For the purposes of the present draft articles:

(a) “disaster” means a calamitous event or series of events resulting in widespread loss of life, great human suffering and distress, mass displacement, or large-scale material or environmental damage, thereby seriously disrupting the functioning of society;

(b) “affected State” means a State in whose territory, or in territory under whose jurisdiction or control, a disaster takes place;

(c) “assisting State” means a State providing assistance to an affected State with its consent;

(d) “other assisting actor” means a competent intergovernmental organization, or a relevant non-governmental organization or entity, providing assistance to an affected State with its consent;

(e) “external assistance” means relief personnel, equipment and goods, and services provided to an affected State by an assisting State or other assisting actor for disaster relief assistance;

(f) “relief personnel” means civilian or military personnel sent by an assisting State or other assisting actor for the purpose of providing disaster relief assistance;

(g) “equipment and goods” means supplies, tools, machines, specially trained animals, foodstuffs, drinking water, medical supplies, means of shelter, clothing, bedding, vehicles, telecommunications equipment, and other objects for disaster relief assistance.

Article 4. Human dignity

The inherent dignity of the human person shall be respected and protected in the event of disasters.

Article 5. Human rights

Persons affected by disasters are entitled to the respect for and protection of their human rights in accordance with international law.

Article 6. Humanitarian principles

Response to disasters shall take place in accordance with the principles of humanity, neutrality and impartiality, and on the basis of non-discrimination, while taking into account the needs of the particularly vulnerable.

Article 7. Duty to cooperate

In the application of the present draft articles, States shall, as appropriate, cooperate among themselves, with the United Nations, with the components of the International Red Cross and Red Crescent Movement, and with other assisting actors.

Article 8. Forms of cooperation in the response to disasters

Cooperation in the response to disasters includes humanitarian assistance, coordination of international relief actions and communications, and making available relief personnel, equipment and goods, and scientific, medical and technical resources.

Article 9. Reduction of the risk of disasters

1. Each State shall reduce the risk of disasters by taking appropriate measures, including through legislation and regulations, to prevent, mitigate, and prepare for disasters.

2. Disaster risk reduction measures include the conduct of risk assessments, the collection and dissemination of risk and past loss information, and the installation and operation of early warning systems.

Article 10. Role of the affected State

1. The affected State has the duty to ensure the protection of persons and provision of disaster relief assistance in its territory, or in territory under its jurisdiction or control.

2. The affected State has the primary role in the direction, control, coordination and supervision of such relief assistance.

Article 11. Duty of the affected State to seek external assistance

To the extent that a disaster manifestly exceeds its national response capacity, the affected State has the duty to seek assistance from, as appropriate, other States, the United Nations, and other potential assisting actors.

Article 12. Offers of external assistance

1. In the event of disasters, States, the United Nations, and other potential assisting actors may offer assistance to the affected State.

2. When external assistance is sought by an affected State by means of a request addressed to another State, the United Nations, or other potential assisting actor, the addressee shall expeditiously give due consideration to the request and inform the affected State of its reply.

Article 13. Consent of the affected State to external assistance

1. The provision of external assistance requires the consent of the affected State.

2. Consent to external assistance shall not be withheld arbitrarily.

3. When an offer of external assistance is made in accordance with the present draft articles, the affected State shall, whenever possible, make known its decision regarding the offer in a timely manner.

Article 14. Conditions on the provision of external assistance

The affected State may place conditions on the provision of external assistance. Such conditions shall be in accordance with the present draft articles, applicable rules of international law and the national law of the affected State. Conditions shall take into account the identified needs of the persons affected by disasters and the quality of the assistance. When formulating conditions, the affected State shall indicate the scope and type of assistance sought.

Article 15. Facilitation of external assistance

1. The affected State shall take the necessary measures, within its national law, to facilitate the prompt and effective provision of external assistance, in particular regarding:

(a) relief personnel, in fields such as privileges and immunities, visa and entry requirements, work permits, and freedom of movement; and

(b) equipment and goods, in fields such as customs requirements and tariffs, taxation, transport, and the disposal thereof.

2. The affected State shall ensure that its relevant legislation and regulations are readily accessible, to facilitate compliance with national law.

Article 16. Protection of relief personnel, equipment and goods

The affected State shall take the appropriate measures to ensure the protection of relief personnel and of equipment and goods present in its territory, or in territory under its jurisdiction or control, for the purpose of providing external assistance.

Article 17. Termination of external assistance

The affected State, the assisting State, the United Nations, or other assisting actor may terminate external assistance at any time. Any such State or actor intending to terminate shall provide appropriate notification. The affected State and, as appropriate, the assisting State, the United Nations, or other assisting actor shall consult with respect to the termination of external assistance and the modalities of termination.

Article 18. Relationship to other rules of international law

1. The present draft articles are without prejudice to other applicable rules of international law.

2. The present draft articles do not apply to the extent that the response to a disaster is governed by the rules of international humanitarian law.

2. TEXT OF THE DRAFT ARTICLES
AND COMMENTARIES THERETO

49. The text of the draft preamble and the draft articles, together with commentaries thereto, adopted by the Commission on second reading, is reproduced below.

**PROTECTION OF PERSONS
IN THE EVENT OF DISASTERS**

Preamble

Bearing in mind Article 13, paragraph 1 (a), of the Charter of the United Nations, which provides that the General Assembly shall initiate studies and make recommendations for the purpose of encouraging the progressive development of international law and its codification,

Considering the frequency and severity of natural and human-made disasters and their short-term and long-term damaging impact,

Fully aware of the essential needs of persons affected by disasters, and conscious that the rights of those persons must be respected in such circumstances,

Mindful of the fundamental value of solidarity in international relations and the importance of strengthening international cooperation in respect of all phases of a disaster,

Stressing the principle of the sovereignty of States and, consequently, reaffirming the primary role of the State affected by a disaster in providing disaster relief assistance,

Commentary

(1) The preamble aims at providing a conceptual framework for the draft articles, setting out the general context in which the topic of the protection of persons in the event of disasters has been elaborated and furnishing the essential rationale for the text.

(2) The first preambular paragraph focuses on the mandate given to the General Assembly, under Article 13, paragraph 1 (a), of the Charter of the United Nations, to encourage the progressive development of international law and its codification and on the consequential object of the International Law Commission, as provided in article 1 of its statute. It restates similar wording included in recent final drafts of the Commission containing a preamble.¹⁸ It also serves, at the outset, to highlight the fact that the draft articles contain elements of both progressive development and codification of international law.

(3) The second preambular paragraph calls attention to the frequency and severity of natural and human-made disasters, and their damaging impact, which have raised the concern of the international community, leading to the formulation by the Commission of legal rules. The reference to “natural and human-made disasters” emphasizes a distinctive characteristic of the draft articles when compared with other similar instruments, which have a more restricted scope by being limited to natural disasters. On the contrary, disasters often arise from complex sets of causes. Furthermore, the draft articles are intended to cover the various stages of the disaster cycle, focusing on response and disaster risk reduction. The reference to “short-term and long-term impact” is intended to show that the focus of the draft articles is not just on the immediate effects of a disaster. It also implies a far-reaching approach, addressing activities devoted to the recovery phase.

(4) The third preambular paragraph addresses the essential needs of the persons whose lives, well-being and property have been affected by disasters, and reiterates

¹⁸ See the articles on prevention of transboundary harm from hazardous activities, General Assembly resolution 62/68 of 6 December 2007, annex, and for the commentaries thereto, *Yearbook ... 2001*, vol. II (Part Two) and corrigendum, pp. 148 *et seq.*, para. 98; and the articles on the law of transboundary aquifers, General Assembly resolution 63/124 of 11 December 2008, annex, and for the commentaries thereto, *Yearbook ... 2008*, vol. II (Part Two), pp. 22 *et seq.*, para. 54.

that the rights of those persons must be respected in such circumstances as provided for by the draft articles.

(5) The fourth preambular paragraph recalls the fundamental value of solidarity in international relations, and the importance of strengthening international cooperation in respect of all phases of a disaster, both of which are key concepts underlying the topic and which cannot be interpreted as diminishing the sovereignty of affected States and their prerogatives within the limits of international law. Mention of “all phases of disasters” recognizes the reach of the articles into each component phase of the entire disaster cycle, as appropriate.

(6) The final preambular paragraph stresses the principle of the sovereignty of States, and reaffirms the primary role of the affected State in the provision of disaster relief assistance, which is a core element of the draft articles. The reference to sovereignty, and the primary role of the affected State, provides the background against which the entire set of draft articles is to be understood.

Article 1. Scope

The present draft articles apply to the protection of persons in the event of disasters.

Commentary

(1) Draft article 1 establishes the scope of the draft articles and tracks the formulation of the title of the topic. It sets the orientation of the draft articles as being primarily focused on the protection of persons whose life, well-being and property are affected by disasters. Accordingly, as established in draft article 2, the focus is on facilitating a response to disasters, as well as reducing the risk of disasters, so as to adequately and effectively meet the essential needs of the persons concerned, while fully respecting their rights.

(2) The draft articles cover, *ratione materiae*, the rights and obligations of States affected by a disaster in respect of persons present in their territory (irrespective of nationality) or in territory under their jurisdiction or control, and the rights and obligations of third States and intergovernmental organizations and non-governmental organizations and other entities in a position to cooperate, particularly in the provision of disaster relief assistance as well as in the reduction of disaster risk. Such rights and obligations are understood to apply on two axes: the rights and obligations of States in relation to one another and the rights and obligations of States in relation to persons in need of protection. While the focus is on the former, the draft articles also contemplate, albeit in general terms, the rights of individuals affected by disasters, as established by international law. The importance of human rights protection in disaster situations is demonstrated by the increased attention paid to the issue by human rights bodies established under the auspices of the United Nations, as well as by regional international courts. Furthermore, as is elaborated in draft article 3, the draft articles are not limited to any particular type of disaster. A distinction between natural and human-made disasters would be artificial and difficult to sustain in practice in view of the complex interaction of different causes leading to disasters.

(3) The scope *ratione personae* of the draft articles is limited to natural persons affected by disasters. In addition, the focus is primarily on the activities of States and intergovernmental organizations, including regional integration organizations, and other entities enjoying specific international legal competence in the provision of disaster relief assistance in the context of disasters. The activities of non-governmental organizations and other private actors, sometimes collectively referred to as “civil society” actors, are included within the scope of the draft articles only in a secondary manner, either as direct beneficiaries of duties placed on States (for example, of the duty of States to cooperate, in draft article 7) or indirectly, as being subject to the domestic laws implementing the draft articles of the affected State, a third State or the State of nationality of the entity or private actor. Except where specifically indicated otherwise, the draft articles cover international disaster response by both international and domestic actors. The draft articles do not, however, cover other types of international assistance, such as assistance provided by States to their nationals abroad and consular assistance.

(4) As suggested by the phrase “in the event of” in the title of the topic, the scope of the draft articles *ratione temporis* is primarily focused on the immediate post-disaster response and early recovery phase, including the post-disaster reconstruction phase. Nonetheless, as confirmed by draft article 2, the pre-disaster phase falls within the scope of the draft articles, and is the subject of draft article 9, which deals with disaster risk reduction and disaster prevention and mitigation activities.

(5) The draft articles are not limited, *ratione loci*, to activities in the area where the disaster occurs, but also cover those within assisting States and transit States. Nor is the transboundary nature of a disaster a necessary condition for the triggering of the application of the draft articles. Certainly, it is not uncommon for major disasters to have a transboundary effect, thereby increasing the need for international cooperation and coordination. Nonetheless, examples abound of major international relief assistance efforts being undertaken in response to disasters occurring solely within the territorial boundaries of a single State, or within a territory under its jurisdiction or control. In the event of a disaster, States have the duty to protect all persons present in their territory, or in territory under their jurisdiction or control, irrespective not only of nationality but also of legal status. While different considerations may arise, unless otherwise specified, the draft articles are not tailored with any specific disaster type or situation in mind, but are intended to be applied flexibly to meet the needs arising from all disasters, regardless of their transboundary effect.

Article 2. Purpose

The purpose of the present draft articles is to facilitate the adequate and effective response to disasters and reduction of the risk of disasters, so as to meet the essential needs of the persons concerned, with full respect for their rights.

Commentary

(1) Draft article 2 elaborates on draft article 1 (Scope) by providing further guidance on the purpose of the draft

articles. The main issue raised relates to the juxtaposition of “needs” versus “rights”. The Commission was aware of the debate in the humanitarian assistance community on whether a “rights-based” approach as opposed to the more traditional “needs-based” approach was to be preferred, or vice versa. The prevailing sense of the Commission was that the two approaches were not necessarily mutually exclusive, but were best viewed as being complementary. The Commission settled for a formulation that emphasized 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. Such response, or reduction of risk, has to take place with full respect for the rights of such persons.

(2) Although not necessarily a term of art, by “adequate and effective” what is meant is a high-quality response or reduction of the risk of disasters, so as to meet the essential needs of the persons affected by the disaster. Similar formulations are to be found in existing agreements, in the context of the response to disasters. These include “effective and concerted” and “rapid and effective” found in the Association of Southeast Asian Nations (ASEAN) Agreement on Disaster Management and Emergency Response of 2005 (ASEAN Agreement), as well as “proper and effective” used in the Tampere Convention on the Provision of Telecommunication Resources for Disaster Mitigation and Relief Operations of 1998 (Tampere Convention). Given the context in which such response is to be provided, an element of timeliness is implicit in the term “effective”. The more drawn-out the response, the less likely it is that it will be effective. This and other aspects of what makes a response “adequate” and “effective” is the subject of other provisions of the draft articles, including draft article 15. Notwithstanding this, it is understood that while a high standard is called for, it has, nonetheless, to be based in what is realistic and feasible “on the ground” in any given disaster situation. Hence, no reference is made, for example, to the response having to be “fully” effective.

(3) While the main emphasis of the draft articles is on the response to disasters, the dimension of disaster risk reduction also falls within their scope and is the subject of draft article 9. In doing so, the draft articles acknowledge the general recognition, within the international community (most recently evidenced by the Sendai Framework for Disaster Risk Reduction, 2015–2030, adopted in 2015),¹⁹ of the essential role of disaster risk reduction. The reference to “adequate and effective” action so as to “meet the essential needs of the persons concerned, with full respect for their rights”, accordingly, applies equally to disaster response and disaster risk reduction.

(4) The Commission decided not to formulate the provision in the form of a general statement on the obligation of States, as it was felt that it would not sufficiently highlight the specific rights and obligations of the affected State. It was not clear, for example, whether such a formulation would sufficiently distinguish between different obligations for different States, such as for the affected State

as opposed to assisting States. Accordingly, a reference to States was not included, on the understanding that it was not strictly necessary for a provision on the purpose of the draft articles. The obligations of States are specifically considered in other provisions of the draft articles.

(5) The word “facilitate” reflects the vision of the Commission for the role that the draft articles might play in the overall panoply of instruments and arrangements that exist at the international level in the context of disaster relief assistance, as well as disaster risk reduction. It was felt that while the draft articles could not by themselves ensure a response, or the reduction of risk, they were intended to facilitate an adequate and effective response or reduction of risk.

(6) The qualifier “essential” before the term “needs” was included in order to indicate more clearly that the needs being referred to are those related to survival or similarly basic needs in the aftermath of a disaster. It was felt that “essential” clearly brought out the context in which such needs arise. Such reference should be further understood in the context of the importance of taking into account the needs of the particularly vulnerable, as indicated in draft article 6.

(7) By “persons concerned” what is meant are people directly affected by the disaster, including by being displaced thereby, as opposed to individuals more indirectly affected. This term was inserted so as to qualify the scope of the draft articles and is in conformity with the approach taken by existing instruments, which focus on the provision of relief to persons directly affected by a disaster. This is not to say that individuals who are more indirectly affected, for example, through loss of family members in a disaster or who suffered economic loss owing to a disaster elsewhere, would be without remedy or recourse. Indeed, it is not the intention of the Commission to state the legal rules applicable to such individuals in the draft articles. The inclusion within the scope of the draft articles of disaster risk reduction implies that the “persons concerned” would cover those likely to be affected by a future disaster, a determination to be made at the national level based on an evaluation of the persons’ exposure and vulnerability.

(8) The reference to “with full respect for their rights” aims at ensuring that the rights in question be respected and protected, as confirmed, in the context of human rights, by draft article 5. In addition, the phrase intentionally leaves the question of how rights are to be enforced to the relevant rules of international law themselves. While the draft articles primarily envisage the application of human rights, which is the subject of draft article 5, the reference to “rights” is not only a reference to human rights, but also, *inter alia*, to rights acquired under domestic law.

Article 3. Use of terms

For the purposes of the present draft articles:

(a) “disaster” means a calamitous event or series of events resulting in widespread loss of life, great human suffering and distress, mass displacement, or large-scale material or environmental damage, thereby seriously disrupting the functioning of society;

¹⁹ The Sendai Framework for Disaster Risk Reduction 2015–2030, adopted at the Third United Nations World Conference on Disaster Risk Reduction and endorsed by the General Assembly in its resolution 69/283 of 3 June 2015, annex II.

(b) “affected State” means a State in whose territory, or in territory under whose jurisdiction or control, a disaster takes place;

(c) “assisting State” means a State providing assistance to an affected State with its consent;

(d) “other assisting actor” means a competent intergovernmental organization, or a relevant non-governmental organization or entity, providing assistance to an affected State with its consent;

(e) “external assistance” means relief personnel, equipment and goods, and services provided to an affected State by an assisting State or other assisting actor for disaster relief assistance;

(f) “relief personnel” means civilian or military personnel sent by an assisting State or other assisting actor for the purpose of providing disaster relief assistance;

(g) “equipment and goods” means supplies, tools, machines, specially trained animals, foodstuffs, drinking water, medical supplies, means of shelter, clothing, bedding, vehicles, telecommunications equipment, and other objects for disaster relief assistance.

Commentary

(1) The Commission’s practice, as reflected in most of the draft articles adopted on diverse topics of international law, has been to include a provision on the “use of terms”. Some of the terms selected for inclusion in draft article 3 were specifically singled out in the commentaries to various draft articles as requiring definition. Other terms were included because of their overall frequency of occurrence in the draft articles.

Subparagraph (a)

(2) Subparagraph (a) defines the term “disaster” solely for the purposes of the draft articles. The definition has been delimited so as to properly capture the scope of the draft articles, as established in draft article 1, while not, for example, inadvertently also dealing with other serious events, such as political and economic crises, which may also undermine the functioning of society, but which are outside the scope of the draft articles. Such delimitation is evident from two features of the definition: (a) the emphasis placed on the existence of a calamitous event that causes serious disruption of the functioning of society; and (b) the inclusion of a number of qualifying phrases.

(3) The Commission considered the approach of the Tampere Convention, which conceptualized a disaster as being the consequence of an event, namely the serious disruption of the functioning of society caused by that event, as opposed to being the event itself. The Commission was aware that such an approach represented contemporary thinking in the humanitarian assistance community, as confirmed, notably, by the 2005 World Conference on Disaster Reduction, convened by the United Nations at Kobe (Hyogo, Japan), as well as by recent treaties and other instruments, including the 2007

Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance of the IFRC (IDRL Guidelines).²⁰ Nonetheless, the Commission decided to shift the emphasis back to the earlier conception of “disaster” as being a specific event, since it was embarking on the formulation of a legal instrument, which required a more concise and precise legal definition, as opposed to one that is more policy-oriented.

(4) The element requiring the existence of an event is qualified in several ways. First, the reference to a “calamitous” event serves to establish a threshold, by reference to the nature of the event, whereby only extreme events are covered. This was inspired by the definition embodied in the resolution on humanitarian assistance adopted by the Institute of International Law at its 2003 Bruges session,²¹ which deliberately established a higher threshold so as to exclude other acute crises. What constitutes “calamitous” is to be understood both by application of the qualifier in the remainder of the provision, namely “... resulting in widespread loss of life, great human suffering and distress, mass displacement, or large-scale material or environmental damage, thereby seriously disrupting the functioning of society”; and by keeping in mind the scope and purpose of the draft articles, as articulated in draft articles 1 and 2. In addition, reference is made to “event or series of events” in order to cover those types of events, such as frequent small-scale disasters, that, on their own, might not meet the necessary threshold, but that, taken together, would constitute a calamitous event for the purposes of the draft articles. No limitation is included concerning the origin of the event, that is whether it is natural or human-made, in recognition of the fact that disasters often arise from complex sets of causes that may include both wholly natural elements and contributions from human activities. Likewise, the draft articles apply equally to sudden-onset events (such as an earthquake or tsunami) and to slow-onset events (such as drought or sea-level rise), as well as to frequent small-scale events (floods or landslides).

(5) The event is further qualified by two causation requirements. First, for the event, or series of events, to be considered “calamitous” in the sense required by the draft articles, it has to result in one or more of four possible outcomes: widespread loss of life, great human suffering and distress, mass displacement, or large-scale material or environmental damage. Accordingly, a major event such as a serious earthquake, which takes place in the middle of the ocean or in an uninhabited area and which does not result in at least one of the four envisaged outcomes, would not satisfy the threshold requirement in subparagraph (a). Second, the nature of the event is further qualified by the requirement that any, or all, of the four possible outcomes, as applicable, result in the serious disruption of the functioning of society. In other words, an event that

²⁰ IDRL Guidelines, adopted at the 30th International Conference of the Red Cross and Red Crescent, Geneva, 26–30 November 2007 (30IC/07/R4, annex and annotations); see also International Federation of Red Cross and Red Crescent Societies (IFRC), *Introduction to the Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance* (Geneva, 2008).

²¹ *Yearbook of the Institute of International Law*, vol. 70, Part II (Session of Bruges, 2003), p. 263 (www.idi-iil.org, *Publications and Works/Resolutions*).

resulted in, for example, large-scale material damage, but did not seriously disrupt the functioning of society, would not, accordingly, satisfy the threshold requirement. Hence, by including such causal elements, the definition retains aspects of the approach taken in contemporary texts, as exemplified by the Tampere Convention, namely by considering the consequence of the event as a key aspect of the definition, albeit for purposes of establishing the threshold for the application of the draft articles.

(6) The element of “widespread loss of life” is a refinement, inspired by the 1995 Code of Conduct for the International Red Cross and Red Crescent Movement and Non-Governmental Organizations (NGOs) in Disaster Relief.²² The requirement of “widespread” loss of life serves to exclude events that result in relatively low loss of life; it being borne in mind that such events could nonetheless satisfy one of the other causal requirements. Conversely, an event causing widespread loss of life could, on its own, satisfy the causation requirement and could result in the triggering of the application of the draft articles if it resulted in the serious disruption of the functioning of society.

(7) The possibility of “great human suffering and distress” was included out of recognition that many major disasters are accompanied by widespread loss of life or by great human suffering and distress, including that occasioned by non-fatal injuries, disease or other health problems caused by the disaster. Accordingly, cases where an event has resulted in relatively localized loss of life, owing to adequate prevention and preparation, as well as effective mitigation actions, but nonetheless has caused severe dislocation resulting in great human suffering and distress that seriously disrupt the functioning of society, would be covered by the draft articles.

(8) Similarly, “mass displacement” refers to one of the other consequences of major disasters, namely the displacement of persons on a large scale. Together with “great human suffering and distress”, displacement by the onset of a disaster is one of the two most common ways in which persons are considered “affected” by the disaster. Displacement affects persons through the loss of access to livelihoods, social services and social fabric. In complying with their obligations set forth in the draft articles, States should also take into account the displacement dimension. The qualifier “mass” was included to align with the high threshold for the application of the draft articles.

(9) “Large-scale material or environmental damage” was included by the Commission in recognition of the wide-scale damage to property, livelihoods and economic, physical, social and cultural assets, as well as the environment, typically caused by major disasters and the resultant disruption of the functioning of society arising from the severe setback for human development and well-being that such a loss typically causes. It is to be understood that it is not the environmental or property loss *per se* that would be covered by the draft articles, but rather the impact on persons of such loss; thus avoiding a consideration of economic loss in general. A requirement of economic loss might unnecessarily

limit the scope of the draft articles, by, for example, precluding them from also dealing with activities designed to mitigate potential future human loss arising from existing environmental damage.

(10) As already alluded to, the requirement of serious disruption of the functioning of society serves to establish a high threshold that would exclude from the scope of the draft articles other types of crises such as serious political or economic crises. Moreover, differences in application can be further borne out by the purpose of the draft articles, as established in draft article 2, and by the fact that the type of protection required, and rights involved, may be different, and are, to varying extents, regulated by other rules of international law, in particular international humanitarian law, as indicated in draft article 18. A situation of armed conflict cannot be qualified *per se* as a disaster for the purposes of the present draft articles. The requirement of serious disruption necessarily also implies the potential for such disruption. This means that the fact that a State took appropriate disaster risk reduction measures or relief measures, in accordance with established emergency plans in response to a disaster with the potential to seriously disrupt the functioning of society, would not *per se* exclude the application of the draft articles.

(11) While the four possible outcomes envisaged provide some guidance on what might amount to a serious disruption of the functioning of society, the Commission refrained from providing further descriptive or qualifying elements, so as to leave some discretion in practice.

(12) The definition of “disaster”, for purposes of the draft articles, is subject to the specification in draft article 18, paragraph 2, that the draft articles do not apply to the extent that the response to a disaster is governed by the rules of international humanitarian law.

Subparagraph (b)

(13) Subparagraph (b), which defines the term “affected State” for purposes of the draft articles, is inspired by the definition of the same term provided in the IDRL Guidelines.²³ It reflects the basic orientation that the draft articles are primarily addressed to States. It also anticipates the centrality of the role to be played by the State affected by the disaster, as established in draft article 10.

(14) The key feature in disaster response or disaster risk reduction is State control. In most cases that would accord with control exercised by the State upon whose territory the disaster occurs. However, this does not necessarily exclude other situations in which a State may exercise *de jure* jurisdiction, or *de facto* control, over another territory in which a disaster occurs. The phrase “in whose territory, or in territory under whose jurisdiction or control” was inspired by the definition of “State of origin” in draft article 2, subparagraph (d), of the 2001 articles on prevention of transboundary harm from hazardous activities.²⁴

²³ IDRL Guidelines (see footnote 20 above), Introduction, sect. 2, para. 8: “the State upon whose territory persons or property are affected by a disaster”.

²⁴ General Assembly resolution 62/68 of 6 December 2007, annex; for the commentary thereto, see *Yearbook ... 2001*, vol. II (Part Two) and corrigendum, pp. 148 *et seq.*, para. 98.

²² *International Review of the Red Cross*, vol. 36, No. 310 (January–February 1996), p. 119.

(15) The Commission considered that a State exercising jurisdiction or control over a territory (other than its own) in which a disaster occurs would also be deemed an “affected State” for purposes of the draft articles. Such possibility is also implicit in the recognition, in draft article 18, that the draft articles would apply in the context of so-called “complex disasters”, which occur in the same territory where an armed conflict is taking place, to the extent that the response to the disaster in question is not governed by the rules of international humanitarian law. At the same time, the provision was intentionally formulated to make the territorial link clear. As such, the reference to “jurisdiction” is not intended to include States of nationality that may claim jurisdiction under international law over individual persons affected by a disaster that occurs outside their territory, or territory under their jurisdiction or control. The Commission recognized that the implication of including States exercising jurisdiction or control was that, in exceptional cases, there may be two affected States: the State upon whose territory the disaster occurs and the State exercising jurisdiction or control over the same territory.

(16) The concluding phrase “a disaster takes place” is intended to align the definition of “affected State” with that of “disaster”, in subparagraph (a). It seeks to strike a balance between the option of placing the emphasis on the effects of a disaster, thereby increasing the number of States that could potentially be considered “affected States”, as opposed to that of focusing on the territorial component (where the event took place), which could unnecessarily exclude States that suffer the consequences of the disaster even though the event did not, strictly speaking, take place in their territory (or territory under their jurisdiction or control). Accordingly, an explicit *renvoi* to the definition of “disaster”, in subparagraph (a), is made in recognition of the fact that the draft articles provide for a composite definition of disaster, covering both the event and its effects, and implying that different States may be considered “affected”, for purposes of the draft articles, in different scenarios. It also accords with the Commission’s approach of considering the consequence of the event as a key element for purposes of establishing the threshold for the application of the draft articles.²⁵

Subparagraph (c)

(17) The definition of “assisting State” in subparagraph (c) is drawn from the definition of “supporting State” in article 1 (f) of the 2000 Framework Convention on Civil Defence Assistance, with the term “Beneficiary State” changed to “affected State”, which is the term utilized in the draft articles and defined in subparagraph (b). The phrase “a State providing assistance” is a reference to the concept of “external assistance”, which is defined in subparagraph (e), and which is undertaken on the basis of the duty to cooperate in draft article 7, read together with draft articles 8 and 9.

(18) A State is only categorized as an “assisting State” once the assistance is being or has been provided. In other words, a State offering assistance is not an “assisting State”, with the various legal consequences that flow from

such categorization, as provided for in the draft articles, until such assistance has been consented to by the affected State, in accordance with draft article 13.

Subparagraph (d)

(19) In addition to affected and assisting States, the draft articles also seek to regulate the position of other assisting actors. A significant proportion of contemporary disaster risk reduction and disaster relief activities are undertaken by, or under the auspices of, international organizations, including but not limited to the United Nations, as well as non-governmental organizations and other entities. This group of actors is collectively referred to in the draft articles as “other assisting actors”. This reference is without prejudice to the differing legal status of these actors under international law, which is acknowledged in the draft articles, for example in draft article 12.²⁶

(20) The definition reflects the commentary to draft article 7, which confirms the understanding that the term “assisting actors” refers to, in the formulation employed in draft article 7, the United Nations, the components of the International Red Cross and Red Crescent Movement, and other assisting actors.²⁷ The phrase “or entity”, which is drawn, in part, from the ASEAN Agreement,²⁸ was added in recognition of the fact that not all actors that are involved in disaster relief efforts can be categorized in one or the other category mentioned. In particular, that phrase is to be understood as referring to entities such as the International Red Cross and Red Crescent Movement.

(21) The Commission understood the definition of “other assisting actors” as being limited, for purposes of the draft articles, to those that are external to the affected State.²⁹ Accordingly, the activities of domestic non-governmental organizations, for example, are not covered. Nor would a domestic actor incidentally fall within the scope of the draft articles through the act of securing, or attempting to secure, assistance from abroad.

(22) As with the definition of “assisting State”, in subparagraph (c), the concluding phrase “providing assistance to that State with its consent” is a reference to the central role played by consent in the draft articles, in accordance with draft article 13. It is also included in recognition of the broad range of activities typically undertaken by the entities in question, in the context of both disaster risk reduction and the provision of disaster relief assistance, and which are regulated by the draft articles.

Subparagraph (e)

(23) Subparagraph (e) defines the type of assistance that the draft articles envisage assisting States or other assisting actors providing to the affected State, as a form of cooperation anticipated in draft article 8.

²⁶ See para. (4) of the commentary to draft article 12, below.

²⁷ See para. (1) of the commentary to draft article 7, below. See also the IDRL Guidelines (footnote 20 above), Introduction, sect. 2, para. 14 (definition of “assisting actor”).

²⁸ Art. 1, para. 1 (definition of “assisting entity”).

²⁹ See para. (2) of the commentary to draft article 14, below.

²⁵ See para. (4) of the present commentary, above.

(24) The formulation is based on both the Guidelines on the Use of Foreign Military and Civil Defence Assets in Disaster Relief (also known as the “Oslo Guidelines”)³⁰ and the 2000 Framework Convention on Civil Defence Assistance.³¹ The reference to “material” in the Oslo Guidelines was replaced with “equipment and goods”, which is the term used in the draft articles, and which is defined in subparagraph (g).

(25) The phrase “provided to an affected State by an assisting State or other assisting actor” reiterates the nature of the legal relationship between the assisting State or actor and the affected State, as envisaged in the draft articles.

(26) The concluding clause seeks to clarify the purpose for which external assistance ought to be provided, namely “for disaster relief assistance”. The Commission understood that the concept of “external assistance”, by definition, applied specifically to the response phase. While the formulation is cast in the technical terminology of disaster response, it is understood to accord with the relevant part of the overall purpose of the draft articles, as set out in draft article 2, namely to “facilitate the adequate and effective response to disasters ... so as to meet the essential needs of the persons concerned, with full respect for their rights”.

Subparagraph (f)

(27) The subparagraph defines the personnel component of external assistance provided by assisting States or by other assisting actors. The definition indicates the two types of personnel who are typically sent for the purpose of providing disaster relief assistance, namely “civilian” or “military” personnel.³² The reference to the latter category was also inspired by the bilateral treaty between Greece and the Russian Federation of 2000,³³ and is intended as recognition of the important role played by military personnel, as a category of relief personnel, in the provision of disaster relief assistance. While the reference to military personnel is more pertinent to the case of assisting States, the term “civilian” personnel is meant to be broad enough to cover such personnel sent by assisting States and other assisting actors. That these are options open to some, but not all, assisting entities (including States) is confirmed by the use of the phrase in the alternative (“or”).

(28) It is understood that such personnel are typically “specialized” personnel, as referred to in the annex to General Assembly resolution 46/182 of 19 December 1991, in that what is expected are personnel who have the necessary skill set and are provided with the necessary equipment and goods, as defined in subparagraph (g), to perform the functions in question.

³⁰ United Nations, OCHA, *Oslo Guidelines. Guidelines on The Use of Foreign Military and Civil Defence Assets in Disaster Relief*, Revision 1.1 (November 2007).

³¹ See article 1 (d) (definition of “assistance”).

³² See the Oslo Guidelines (footnote 30 above).

³³ Agreement between the Government of the Hellenic Republic and the Government of the Russian Federation on co-operation in the field of prevention and response to natural and man-made disasters, Athens, 21 February 2000, art. 1 (definition of “team for providing assistance”).

(29) The phrase “sent by” establishes a nexus between the assisting actor, whether a State or other actor, and the personnel concerned. The Commission decided against making a reference to “acting on behalf of” in order not to prejudge any question related to the application of the rules of international law on the attribution of conduct to States or international organizations,³⁴ given the primary role of the affected State as provided for in draft article 10, paragraph 2.

Subparagraph (g)

(30) As indicated in subparagraph (e), “equipment” and “goods” are a key component of the kind of external assistance being envisaged in the draft articles. The formulation is drawn from the commentary to draft article 15,³⁵ as well as the resolution on humanitarian assistance of the Institute of International Law.³⁶ The list covers the types of material generally accepted to be necessary for the provision of disaster relief assistance. That the list is not exhaustive is confirmed by the reference to “other objects”.

(31) Generally speaking, two types of material are envisaged: the technical “equipment” required by the disaster relief personnel to perform their functions, both in terms of their own sustenance and in terms of what they require to provide relief, such as supplies, physical and electronic tools, machines and telecommunications equipment; and “goods” that are necessary for the survival and fulfilment of the essential needs of the victims of disasters, such as foodstuffs, drinking water, medical supplies, means of shelter, clothing and bedding. Search dogs are specifically anticipated in the phrase “specially trained animals”, which is drawn from specific annex J to the International Convention on the Simplification and Harmonization of Customs Procedures (“Revised Kyoto Convention”).³⁷ The Commission considered the definition to be sufficiently flexible also to include services that might be provided by relief personnel.

Article 4. Human dignity

The inherent dignity of the human person shall be respected and protected in the event of disasters.

Commentary

(1) Draft article 4 addresses the principle of human dignity in the context of both disaster response and disaster risk reduction. Human dignity is the core principle that informs and underpins international human rights law. In the context of the protection of persons in the event of disasters, human dignity is situated as a guiding principle for any action to be taken in the context of the provision of relief assistance, in disaster risk reduction and in the

³⁴ See the 2001 articles on responsibility of States for internationally wrongful acts (General Assembly resolution 56/83 of 12 December 2001, annex, arts. 4–9; for the commentaries thereto, see *Yearbook ... 2001*, vol. II (Part Two) and corrigendum, pp. 30 *et seq.*, para. 77) and the 2011 articles on the responsibility of international organizations (General Assembly resolution 66/100 of 9 December 2011, annex, arts. 6–7; for the commentaries thereto, see *Yearbook ... 2011*, vol. II (Part Two), pp. 46 *et seq.*, para. 88).

³⁵ See para. (5) of the commentary to draft article 15, below.

³⁶ See footnote 21 above.

³⁷ Revised by the Protocol of Amendment to the International Convention on the Simplification and Harmonization of Customs Procedures of 26 June 1999 (definition of “relief consignments”).

ongoing evolution of applicable laws. The Commission considered the centrality of the principle to the protection of persons in the event of disasters as sufficient justification for the inclusion of “human dignity” in a separate, autonomous provision in the body of the draft articles.

(2) The principle of human dignity undergirds international human rights instruments and has been interpreted as providing the ultimate foundation of human rights law. Reaffirmation of “the dignity and worth of the human person” is found in the preamble to the Charter of the United Nations, while the preamble to the 1948 Universal Declaration of Human Rights³⁸ declares that “recognition of the inherent dignity ... of all members of the human family is the foundation of freedom, justice and peace in the world”. Affirmation of the principle of human dignity can be found in the International Covenant on Civil and Political Rights,³⁹ the International Covenant on Economic, Social and Cultural Rights,⁴⁰ the International Convention on the Elimination of All Forms of Racial Discrimination,⁴¹ the Convention on the Elimination of All Forms of Discrimination against Women,⁴² the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,⁴³ the Convention on the Rights of the Child⁴⁴ and the Convention on the Rights of Persons with Disabilities.⁴⁵ The principle is also central to the field of international humanitarian law. The concept of personal dignity is recognized in common article 3, paragraph 1 (c), of the Geneva Conventions for the protection of war victims,⁴⁶ articles 75 and 85 of the Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of international armed conflicts (Protocol I)⁴⁷ and article 4 of the Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of non-international armed conflicts (Protocol II).⁴⁸

³⁸ General Assembly resolution 217 (III) (A) of 10 December 1948.

³⁹ Preambular paras. and art. 10, para. 1.

⁴⁰ Preambular paras. and art. 13, para. 1.

⁴¹ Preambular paras.

⁴² *Idem*.

⁴³ *Idem*.

⁴⁴ *Idem*; art. 23, para. 1; art. 28, para. 2; art. 37; and arts. 39–40.

⁴⁵ Art. 3.

⁴⁶ Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field; Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea; Geneva Convention relative to the Treatment of Prisoners of War; and Geneva Convention relative to the Protection of Civilian Persons in Time of War, common art. 3, para. 1 (c) (noting the prohibition on “outrages upon personal dignity, in particular humiliating and degrading treatment”).

⁴⁷ Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of international armed conflicts (Protocol I), 1977, art. 75, para. 2 (b) (noting the prohibition on “[o]utrages upon personal dignity, in particular humiliating and degrading treatment, enforced prostitution and any form of indecent assault”); art. 85, para. 4 (c) (noting that when committed wilfully and in violation of the Conventions or the Protocol, “[p]ractices of *apartheid* and other inhuman and degrading practices involving outrages upon personal dignity, based on racial discrimination” are regarded as grave breaches of the Protocol).

⁴⁸ Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of non-international armed conflicts (Protocol II), 1977, art. 4, para. 2 (e) (noting the prohibition on “[o]utrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault”).

(3) The concept of human dignity also lies at the core of numerous instruments at the international level directed towards the provision of humanitarian relief in the event of disasters. The IDRL Guidelines state: “Assisting actors and their personnel should ... respect the human dignity of disaster-affected persons at all times.”⁴⁹ The General Assembly, in its resolution 45/100 of 14 December 1990, holds that “the abandonment of the victims of natural disasters and similar emergency situations without humanitarian assistance constitutes a threat to human life and an offence to human dignity”.⁵⁰ The Institute of International Law likewise was of the view that a failure to provide humanitarian assistance to those affected by disasters constitutes “an offence to human dignity”.⁵¹

(4) The precise formulation of the principle adopted by the Commission, namely the “inherent dignity of the human person”, is drawn from the preamble to the International Covenant on Economic, Social and Cultural Rights and article 10, paragraph 1, of the International Covenant on Civil and Political Rights. This formulation has also been adopted in instruments such as the Convention on the Rights of the Child⁵² and the American Convention on Human Rights: “Pact of San José”.⁵³

(5) The provision does not give an express indication of the actors being addressed. It could be considered that it applies only to States, but not necessarily to “other assisting actors”, given that different legal approaches exist as to non-State entities owing legal obligations, under international law, to protect the human dignity of an affected person. Nonetheless, the provision should be understood as applying to assisting States and those assisting actors (as understood under draft article 3) capable of acquiring legal obligations under international law. The Commission recognizes the role played both by affected States and by assisting States in disaster response and risk reduction activities (which are the subject of draft articles 9 to 16). Much of the activity in the field of disaster response, and to a certain extent in that of disaster risk reduction, occurs through organs of intergovernmental organizations, non-governmental organizations and other non-State entities such as IFRC.⁵⁴

(6) The phrase “respected and protected” accords with contemporary doctrine and jurisprudence in international human rights law. The formula is used in a number of instruments that relate to disaster relief, including the Oslo Guidelines,⁵⁵ the Mohonk Criteria,⁵⁶ the Guiding

⁴⁹ IDRL Guidelines (see footnote 20 above), Part I, sect. 4, para. 1.

⁵⁰ Preambular paragraph.

⁵¹ Resolution on humanitarian assistance (see footnote 21 above), art. II, para. 1.

⁵² See article 37 (c) (noting, *inter alia*, that “[e]very child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person”).

⁵³ Art. 5, para. 2 (noting, *inter alia*, that “[a]ll persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person”).

⁵⁴ See *Yearbook ... 2006*, vol. II (Part Two), annex III, p. 211, para. 28.

⁵⁵ Oslo Guidelines (see footnote 30 above), para. 20 (noting that “[t]he dignity and rights of all victims must be respected and protected”).

⁵⁶ J. M. Ebersole, “The Mohonk Criteria for humanitarian assistance in complex emergencies: Task force on ethical and legal issues in humanitarian assistance” (“Mohonk Criteria”), *Human Rights Quarterly*, vol. 17, No. 1 (1995), p. 192, at p. 196 (noting that “[t]he dignity and rights of all victims must be respected and protected”).

Principles on Internal Displacement⁵⁷ and the Guiding Principles on the Right to Humanitarian Assistance.⁵⁸ In conjunction, the terms “respect” and “protect” connote a negative obligation to refrain from injuring the inherent dignity of the human person and a positive obligation to take action to protect human dignity. By way of example, the duty to protect may require States to adopt legislation proscribing activities of third parties in circumstances that threaten a violation of the principle of respect for human dignity. The Commission considered that an obligation to “protect” should be commensurate with the legal obligations borne by the respective actors addressed in the provision. An affected State therefore holds the primary role in the protection of human dignity, by virtue of its primary role in the direction, control, coordination and supervision of disaster relief assistance, as reflected in draft article 10, paragraph 2. Furthermore, each State shall be guided by the imperative to respect and protect the inherent dignity of the human person when taking measures to reduce the risk of disasters, as contemplated in draft article 9.

(7) The generic reference at the end of the provision to “in the event of disasters”, which is the same formulation used in draft article 1, reflects the general scope of the draft articles, which includes disaster risk reduction.

Article 5. Human rights

Persons affected by disasters are entitled to the respect for and protection of their human rights in accordance with international law.

Commentary

(1) Draft article 5 reflects the broad entitlement to human rights protection held by those persons affected by disasters. It also serves as a reminder of the duty of States to ensure compliance with all relevant human rights obligations applicable both during the disaster and the pre-disaster phase. The Commission recognizes an intimate connection between human rights and the principle of human dignity reflected in draft article 4, reinforced by the close proximity of the two draft articles.

(2) The general reference to “human rights” encompasses human rights obligations expressed in relevant international agreements and those in customary international law. Best practices for the protection of human rights included in non-binding texts at the international level, including, *inter alia*, the Inter-Agency Standing Committee Operational Guidelines on the Protection of Persons in Situations of Natural Disasters,⁵⁹ as well as the Guiding Principles on Internal Displacement,⁶⁰ serve

⁵⁷ E/CN.4/1998/53/Add.2, annex, principle 26 (noting, *inter alia*, that “[p]ersons engaged in humanitarian assistance, their transport and supplies shall be respected and protected”).

⁵⁸ Adopted by the Council of the International Institute of Humanitarian Law in April 1993: principle 10, noting that “[h]umanitarian assistance can, if appropriate, be made available by way of ‘humanitarian corridors’ which should be respected and protected by the competent authorities of the parties involved and if necessary by the United Nations authority” (*International Review of the Red Cross*, No. 297 (November–December 1993), p. 519).

⁵⁹ Inter-Agency Standing Committee, *IASC Operational Guidelines on the Protection of Persons in Situations of Natural Disasters* (Washington, D.C., The Brookings–Bern Project on Internal Displacement, 2011).

⁶⁰ See footnote 57 above.

to contextualize the application of existing human rights obligations to the specific situation of disasters. Protection under national law (such as that provided in the constitutional law of many States) is also envisaged. The formulation adopted by the Commission indicates the broad field of human rights obligations, without seeking to specify, add to or qualify those obligations.

(3) As clarified in the commentary to draft article 1, at paragraph (3), the scope *ratione personae* of the draft articles covers the activities of States and international organizations, including regional integration organizations, and other entities enjoying specific international legal competence in the provision of disaster relief assistance. The Commission recognizes that the scope and content of an obligation to protect the human rights of those persons affected by disasters will vary considerably among those actors. The neutral phrasing adopted by the Commission should be read in light of an understanding that distinct obligations will be held by affected States, assisting States and various other assisting actors, respectively.

(4) The draft article recognizes the entitlement of affected persons to “the respect for and protection of” their human rights, which continue to apply in the context of disasters. The phrase tracks that found in draft article 4, on human dignity, thereby further confirming the linkage between the two provisions. The reference to the concept of “protection”, commonly found in existing international instruments for the protection of human rights, is intended, together with “respect”, as a holistic formula describing the nature and extent of the obligations upon States, and is to be read in light of the reference to “full respect for their rights” in draft article 2. Hence, States’ obligations are not restricted to avoiding interference with people’s rights (“respect”), but may extend, as required by the rules in question, to “protection”⁶¹ of their rights by, *inter alia*, adopting a number of measures varying from passive non-interference to active ensuring of the satisfaction of individual needs, all depending on the concrete circumstances. In the light of the purpose of the draft articles, set out in draft article 2, such measures also extend to the prevention and avoidance of conditions that might lead to the violation of human rights.⁶²

(5) The Commission did not consider it feasible to draw up an exhaustive list of all potentially applicable rights and was concerned that such a list could lead to an *a contrario* interpretation that rights not mentioned therein were not applicable.

(6) A particularly relevant right is the right to life, as recognized in article 6, paragraph 1, of the International Covenant on Civil and Political Rights, if a State is refusing to adopt positive measures to prevent or respond to disasters that cause loss of life.⁶³ It was also understood that some of the relevant rights are economic and social

⁶¹ See European Court of Human Rights (ECHR), *Budayeva and Others v. Russia*, Nos. 15339/02, 21166/02, 20058/02, 11673/02 and 15343/02, ECHR 2008 (extracts).

⁶² See, for example, the Guiding Principles on Internal Displacement (footnote 57 above), principle 5.

⁶³ See also the Inter-Agency Standing Committee Operational Guidelines on Human Rights and Natural Disasters, 2006 (A/HRC/4/38/Add.1, annex), and paras. (2) and (3) of the commentary to draft article 6.

rights, which States parties to the International Covenant on Economic, Social and Cultural Rights, and other applicable conventions, have an obligation to realize progressively, including those which provide minimum core obligations (in relation to the provision of essential foodstuffs, essential health care, basic shelter, and housing and education for children) and which continue even in the context of a disaster. Other applicable rights include, *inter alia*, the right to receive humanitarian assistance; the rights of particularly vulnerable groups (as anticipated in draft article 6) to have their special protection and assistance needs taken into account; the right of communities to have a voice in the planning and execution of risk reduction, response and recovery initiatives; and the right of all persons displaced by disasters to non-discriminatory assistance in obtaining durable solutions to their displacement. References to specific rights are also to be found in some of the commentaries to other draft articles.⁶⁴

(7) The draft article intentionally leaves open the question of how rights are to be enforced to the relevant rules of international law themselves. It is understood that there is often an implied degree of discretion in the application of rights, conditioned by the severity of the disaster, depending on the relevant rules recognizing or establishing the rights in question. Furthermore, the Commission considered that the reference to “human rights” incorporates both the rights and the limitations that exist in the sphere of international human rights law. The reference to “human rights” is, accordingly, to the whole of international human rights law, including in particular its treatment of derogable and non-derogable rights. As such, the provision contemplates an affected State’s right of suspension or derogation where recognized under existing international agreements, which is also confirmed by the concluding phrase “in accordance with international law”.

(8) The concluding reference to “in accordance with international law” also serves to recall that there may be other rules of international law, such as those dealing with refugees and internally displaced persons, which may have a bearing on the rights of persons affected by disasters, a possibility also envisaged in draft article 18.

Article 6. Humanitarian principles

Response to disasters shall take place in accordance with the principles of humanity, neutrality and impartiality, and on the basis of non-discrimination, while taking into account the needs of the particularly vulnerable.

Commentary

(1) Draft article 6 establishes the key humanitarian principles relevant to the protection of persons in the event of disasters. The Commission did not find it necessary to determine whether these principles are also general principles of international law and noted that the principles do not apply to the exclusion of other relevant principles of international law. The draft article recognizes the significance of these principles to the provision of disaster relief

assistance, as well as in disaster risk reduction activities, where applicable.

(2) The principles of humanity, neutrality and impartiality are core principles recognized as foundational to humanitarian assistance.⁶⁵ These principles are likewise fundamental to applicable laws in disaster relief efforts. By way of example, the General Assembly, in its resolution 46/182, notes that “[h]umanitarian assistance must be provided in accordance with the principles of humanity, neutrality and impartiality.”⁶⁶

(3) The principle of humanity stands as the cornerstone of the protection of persons in international law. Situated as an element both of international humanitarian law and international human rights law, it informs the development of laws regarding the protection of persons in the event of disasters. Within the field of international humanitarian law, the principle is most clearly expressed in the requirement of humane treatment in common article 3 of the Geneva Conventions for the protection of war victims.⁶⁷ However, as the International Court of Justice affirmed in the *Corfu Channel* case (merits), among general and well-recognized principles are “elementary considerations of humanity, even more exacting in peace than in war”.⁶⁸ Pictet’s commentary on the principles of the Red Cross attributes three elements to the principle of humanity, namely, to prevent and alleviate suffering, to protect life and health, and to assure respect for the individual.⁶⁹ In the specific context of disaster relief, the Oslo Guidelines and the Mohonk Criteria affirm that the principle of humanity requires that “[h]uman suffering [must] be addressed wherever it is found”.⁷⁰

(4) While the principle of neutrality is rooted in the law of armed conflict, the principle is nonetheless applicable in other branches of the law. In the context of humanitarian assistance, the principle of neutrality requires that the provision of assistance be independent of any given political, religious, ethnic or ideological context. The Oslo Guidelines and the Mohonk Criteria both affirm that the assistance should be provided “without engaging in hostilities or taking sides in controversies of a political, religious or ideological nature”.⁷¹ As such, the principle of neutrality indicates the apolitical nature of disaster response and affirms that humanitarian activities may not be used for purposes other than responding to

⁶⁵ See discussion in the memorandum by the Secretariat on the protection of persons in the event of disasters (A/CN.4/590 [and Add.1–3]; footnote 14 above), para. 11.

⁶⁶ Annex, para. 2.

⁶⁷ See article 3, para. 1 (noting that “[p]ersons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria”).

⁶⁸ *Corfu Channel, Judgment of 9 April 1949, I.C.J. Reports 1949*, p. 4, at p. 22.

⁶⁹ J. Pictet, *The Fundamental Principles of the Red Cross proclaimed by the Twentieth International Conference of the Red Cross, Vienna, 1965: Commentary* (Geneva, Henry Dunant Institute, 1979), pp. 21–27; also available from www.icrc.org.

⁷⁰ Oslo Guidelines (see footnote 30 above), para. 20; Mohonk Criteria (see footnote 56 above), p. 196.

⁷¹ *Ibid.*

⁶⁴ See, for example, paras. (4) and (5) of the commentary to draft article 11, below.

the disaster at hand. The principle ensures that the interests of those persons affected by disasters are the primary concern of the affected State and any other relevant actors in disaster response. Respect for the principle of neutrality is central to facilitating the achievement of an adequate and effective response to disasters, as outlined in draft article 2.

(5) The principle of impartiality encompasses three principles: non-discrimination, proportionality and impartiality proper. For reasons discussed below, the principle of non-discrimination is articulated by the Commission not merely as an element of draft article 6, but also as an autonomous principle of disaster response. Non-discrimination is directed towards the removal of objective grounds for discrimination among individuals, such that the provision of assistance to affected persons is guided solely by their needs. The principle of proportionality stipulates that the response to a disaster be proportionate to the scope of that disaster and the needs of affected persons. The principle also acts as a distributive mechanism, enabling the provision of assistance to be delivered with attention given to the most urgent needs. Impartiality proper reflects the principle that no subjective distinctions be drawn among individuals in the response to disasters. The commentary to the Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of international armed conflicts (Protocol I) thus conceptualizes impartiality as “a moral quality which must be present in the individual or institution called upon to act for the benefit of those who are suffering”.⁷² By way of example, the draft International Guidelines for Humanitarian Assistance Operations provide that “[h]umanitarian assistance should be provided on an impartial basis without any adverse distinction to all persons in urgent need”.⁷³ As a whole, the principle of impartiality requires that responses to disasters be directed towards full respect for and fulfilment of the needs of those affected by disasters in a manner that gives priority to the needs of the particularly vulnerable.

(6) The principle of non-discrimination, applicable also in the context of disaster risk reduction, reflects the inherent equality of all persons and the determination that no adverse distinction may be drawn between them. Prohibited grounds for discrimination are non-exhaustive and include ethnic origin, sex, nationality, political opinions, race, religion and disability.⁷⁴ The Commission

⁷² Y. Sandoz, C. Swinarski and B. Zimmermann (eds.), *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949*, Geneva, ICRC and Martinus Nijhoff, 1987, para. 2800 (paragraph 2801 of the same commentary includes a footnote citing the “Proclamation of the Fundamental Principles of the Red Cross”, adopted by resolution VIII of the Twentieth International Conference of the Red Cross (Vienna, 1965)); and Pictet, *The Fundamental Principles of the Red Cross ...* (see footnote 69 above), pp. 33–51.

⁷³ P. MacAlister-Smith, *International Guidelines for Humanitarian Assistance Operations* (Heidelberg, Max Planck Institute for Comparative Public Law and International Law, 1991), p. 4, para. 6 (a).

⁷⁴ See, *inter alia*, the 1949 Geneva Conventions for the protection of war victims, common art. 3, para. 1; the Universal Declaration of Human Rights (footnote 38 above), art. 2; the International Covenant on Civil and Political Rights, art. 2, para. 1; and the International Covenant on Economic, Social and Cultural Rights, art. 2, para. 2. See also the Convention on the Rights of Persons with Disabilities, art. 5, and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, art. 7.

determined that non-discrimination should be referred to as an autonomous principle in the light of its importance to the topic at hand. Such an approach has also been taken by the Institute of International Law in its 2003 resolution on humanitarian assistance, which stipulates that the offer and distribution of humanitarian assistance shall occur “without any discrimination on prohibited grounds”.⁷⁵ The IDRL Guidelines likewise specify that assistance be provided to disaster-affected persons without “any adverse distinction (such as in regards to nationality, race, ethnicity, religious beliefs, class, gender, disability, age and political opinions)”.⁷⁶

(7) The principle of non-discrimination is not to be taken as excluding the prospect of “positive discrimination” as appropriate. The phrase “while taking into account the needs of the particularly vulnerable” in draft article 6 reflects this position. The term “vulnerable” encompasses both groups and individuals. For this reason, the neutral expression “vulnerable” was preferred to either “vulnerable groups” or “vulnerable persons”. The qualifier “particularly” was used in recognition of the fact that those affected by disaster are by definition vulnerable. The specific phrasing of “particularly vulnerable” is drawn from Part I, section 4, paragraph 3 (a), of the IDRL Guidelines, which refer to the special needs of “women and particularly vulnerable groups, which may include children, displaced persons, the elderly, persons with disabilities, and persons living with HIV and other debilitating illnesses”.⁷⁷ The qualifier is also mirrored in the resolution on humanitarian assistance adopted by the Institute of International Law, which refers to the requirement to take into account the needs of the “most vulnerable”.⁷⁸ Similarly, the General Assembly, in its resolution 69/135 of 12 December 2014, requested:

Member States, relevant humanitarian organizations of the United Nations system and other relevant humanitarian actors to ensure that all aspects of humanitarian response, including disaster preparedness and needs assessments, take into account the specific humanitarian needs and vulnerabilities of all components of the affected population, in particular girls, boys, women, older persons and persons with disabilities, including in the design and implementation of disaster risk reduction, humanitarian and recovery programming and post-humanitarian emergency reconstruction, and in this regard encourage[d] efforts to ensure gender mainstreaming ...⁷⁹

The Commission decided against including a list of vulnerable groups within the draft article itself in recognition of the relative nature of vulnerability. What was important was less a fixed iteration of particularly vulnerable subgroups of individuals within the broader body of persons affected, or potentially affected, by a disaster, and more a recognition that the principle of non-discrimination includes within it the positive obligation to give specific attention to the needs of the particularly vulnerable. The term “particularly vulnerable” is deliberately open-ended to include not only the categories of individuals usually associated with the concept, as mentioned above, but

⁷⁵ Resolution on humanitarian assistance (see footnote 21 above), art. II, para. 3.

⁷⁶ IDRL Guidelines (see footnote 20 above), Part I, sect. 4, para. 2 (b).

⁷⁷ *Ibid.*, Part I, sect. 4, para. 3 (a).

⁷⁸ Resolution on humanitarian assistance (see footnote 21 above), art. II, para. 3.

⁷⁹ Para. 32.

also other possible individuals that might find themselves being particularly vulnerable in the wake of a disaster, such as non-nationals.

(8) The Commission understood the reference to “taking into account” in a broad sense, so as also to cover, *inter alia*, accessibility of information and community participation, including engagement of vulnerable groups in the design, implementation, monitoring and evaluation of assistance provided in the event of a disaster, as well as in preparing for the possibility of a disaster.

(9) The Commission was cognizant of the fact that disasters frequently affect women, girls, boys and men differently. In many contexts, gender inequalities constrain the influence and control of women and girls over decisions governing their lives as well as their access to resources such as finance, food, agricultural inputs, land and property, technologies, education, health, secure housing and employment. They are often disproportionately affected and exposed to risks, including increased loss of life and livelihoods and gender-based violence, during and in the aftermath of disasters. It is increasingly recognized that women and girls—like men and boys—possess skills and capacity to prepare for, respond to and recover from crisis, as actors and partners both in disaster risk reduction and in humanitarian action. The capacity and knowledge of women and girls plays an important part in individual as well as community resilience. The significance of taking a gender-based approach to disaster risk management has been recognized, including in both the Hyogo Framework for Action 2005–2015: Building the Resilience of Nations and Communities to Disasters⁸⁰ and the Sendai Framework.⁸¹

Article 7. Duty to cooperate

In the application of the present draft articles, States shall, as appropriate, cooperate among themselves, with the United Nations, with the components of the International Red Cross and Red Crescent Movement, and with other assisting actors.

Commentary

(1) Effective international cooperation is indispensable for the protection of persons in the event of disasters. The duty to cooperate is well established as a principle of international law and can be found in numerous international instruments. The Charter of the United Nations enshrines it, not least with reference to the humanitarian context in

⁸⁰ Report of the World Conference on Disaster Reduction, Kobe, Hyogo, Japan, 18–22 January 2005 (A/CONF.206/6 and Corr.1), chap. I, resolution 2, para. 13 (d): “A gender perspective should be integrated into all disaster risk management policies, plans and decision-making processes, including those related to risk assessment, early warning, information management, and education and training”.

⁸¹ Sendai Framework for Disaster Risk Reduction 2015–2030 (see footnote 19 above), para. 19 (d): “Disaster risk reduction requires an all-of-society engagement and partnership. It also requires empowerment and inclusive, accessible and non-discriminatory participation, paying special attention to people disproportionately affected by disasters, especially the poorest. A gender, age, disability and cultural perspective should be integrated in all policies and practices, and women and youth leadership should be promoted. In this context, special attention should be paid to the improvement of organized voluntary work of citizens”.

which the protection of persons in the event of disasters places itself. Article 1, paragraph 3, of the Charter clearly spells it out as one of the purposes of the Organization:

To achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion ...

Articles 55 and 56 of the Charter elaborate on Article 1, paragraph 3, with respect to international cooperation. Article 55 of the Charter reads:

With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote:

(a) higher standards of living, full employment, and conditions of economic and social progress and development;

(b) solutions of international economic, social, health, and related problems; and international cultural and educational cooperation; and

(c) universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.

Article 56 of the Charter reads:

All Members pledge themselves to take joint and separate action in cooperation with the Organization for the achievement of the purposes set forth in Article 55.

The general duty to cooperate was reiterated as one of the principles of international law in the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations in the following terms:

States have the duty to co-operate with one another, irrespective of the differences in their political, economic and social systems, in the various spheres of international relations, in order to maintain international peace and security and to promote international economic stability and progress, the general welfare of nations and international cooperation free from discrimination based on such differences.⁸²

(2) Cooperation takes on special significance with regard to international human rights obligations that have been undertaken by States. The International Covenant on Economic, Social and Cultural Rights refers explicitly to international cooperation as a means of realizing the rights contained therein.⁸³ This has been reiterated by the Committee on Economic, Social and Cultural Rights in its general comments relating to the implementation of specific rights guaranteed by the Covenant.⁸⁴ International cooperation gained particular prominence in the 2006 Convention on the Rights of Persons with Disabilities, which reaffirms existing international obligations

⁸² General Assembly resolution 2625 (XXV) of 24 October 1970, annex.

⁸³ Arts. 11, 15, 22 and 23.

⁸⁴ See, in particular, general comment No. 2 (*Official Records of the Economic and Social Council, 1990, Supplement No. 3 (E/1990/23-E/C.12/1990/3)*, annex III); general comment No. 3 (*ibid.*, 1991, *Supplement No. 3 (E/1991/23-E/C.12/1990/8)*, annex III); general comment No. 7 (*ibid.*, 1998, *Supplement No. 2 (E/1998/22-E/C.12/1997/10)*, annex IV); general comment No. 14 (*ibid.*, 2001, *Supplement No. 2 (E/2001/22-E/C.12/2000/21)*, annex IV); and general comment No. 15 (*ibid.*, 2003, *Supplement No. 2 (E/2003/22-E/C.12/2002/13)*, annex IV).

in relation to persons with disabilities “in situations of risk, including situations of armed conflict, humanitarian emergencies and the occurrence of natural disasters”.⁸⁵

(3) With regard to cooperation in the context of disaster relief assistance, the General Assembly recognized, in resolution 46/182, that:

The magnitude and duration of many emergencies may be beyond the response capacity of many affected countries. International cooperation to address emergency situations and to strengthen the response capacity of affected countries is thus of great importance. Such cooperation should be provided in accordance with international law and national laws ...⁸⁶

Furthermore, with regard to cooperation in the context of risk reduction, the Sendai Framework’s guiding principles, paragraph 19 (a), indicate that: “Each State has the primary responsibility to prevent and reduce disaster risk, including through international, regional, subregional, transboundary and bilateral cooperation.”⁸⁷ In addition, there exist a vast number of instruments of specific relevance to the protection of persons in the event of disasters, which demonstrate the importance of international cooperation in combating the effects of disasters. Not only are these instruments in themselves expressions of cooperation, they generally reflect the principle of cooperation relating to specific aspects of disaster governance in the text of the instrument. Typically in bilateral agreements, this has been reflected in the title given to the instrument, denoting either cooperation or (mutual) assistance.⁸⁸ Moreover, the duty to cooperate, in the vast majority of cases, is framed as one of the objectives of the instrument or is attributed positive effects towards their attainment. Again, the Tampere Convention is of relevance in this respect as it indicates in paragraph 21 of its preamble that the parties wish “to facilitate international cooperation to mitigate the impact of disasters”. Another example can be found in an agreement between France and Malaysia:

Convinced of the need to develop cooperation between the competent organs of the two Parties in the field of the prevention of grave risks and the protection of populations, property and the environment ...⁸⁹

(4) Cooperation, however, should not be interpreted as diminishing the primary role of the affected State as provided for in draft article 10, paragraph 2. Furthermore, the principle of cooperation is to be understood also as being complementary to the duty of the authorities of the affected State to take care of the persons affected by natural disasters and similar emergencies occurring in its

⁸⁵ Art. 11.

⁸⁶ Annex, para. 5.

⁸⁷ Sendai Framework (see footnote 19 above).

⁸⁸ Annex II to the memorandum by the Secretariat on the protection of persons in the event of disasters (A/CN.4/590 and Add. 1–3; see footnote 14 above) contains a comprehensive list of relevant instruments. For a further typology of instruments for the purposes of international disaster response law, see H. Fischer, “International disaster response law treaties: trends, patterns and *lacunae*”, in IFRC, *International Disaster Response Laws, Principles and Practice: Reflections, Prospects and Challenges* (Geneva, 2003), p. 24.

⁸⁹ Agreement between the Government of the French Republic and the Government of Malaysia on Cooperation in the Field of Disaster Prevention and Management and Civil Security, Paris, 25 May 1998, *Journal officiel de la République française*, 9 December 1998, p. 18519, preambular paragraph 4.

territory, or in territory under its jurisdiction or control (draft article 10, paragraph 1).⁹⁰

(5) A key feature of activity in the field of disaster relief assistance is international cooperation not only among States, but also with intergovernmental and non-governmental organizations. The importance of their role has been recognized for some time. In its resolution 46/182, the General Assembly confirmed that:

Intergovernmental and non-governmental organizations working impartially and with strictly humanitarian motives should continue to make a significant contribution in supplementing national efforts.⁹¹

In its resolution 2008/36 of 25 July 2008, the Economic and Social Council recognized:

the benefits of engagement of and coordination with relevant humanitarian actors to the effectiveness of humanitarian response, and encourage[d] the United Nations to continue to pursue efforts to strengthen partnerships at the global level with the International Red Cross and Red Crescent Movement, relevant humanitarian non-governmental organizations and other participants of the Inter-Agency Standing Committee ...⁹²

(6) Draft article 7 recognizes the central importance of international cooperation to international disaster relief assistance activities, as well as in the reduction of disaster risk. It reflects a legal obligation for the various parties concerned. The nature of the obligation of cooperation may vary, depending on the actor and the context in which assistance is being sought and offered. The nature of the legal obligation to cooperate is dealt with in specific provisions (hence the opening phrase “[i]n the application of the present draft articles”), particularly draft articles 8, on response to disasters, and 9, concerning the reduction of the risk of disasters. The Commission inserted the phrase “as appropriate”, which qualifies the entire draft article, both as a reference to existing specific rules that establish the nature of the obligation to cooperate among the various actors mentioned in the draft article, and as an indication of a degree of latitude in determining, on the ground, when cooperation is or is not “appropriate”. It does not qualify the level of cooperation being envisaged, but rather the actors with whom the cooperation should take place.

(7) In addition to cooperation among States, draft article 7 also envisages cooperation with assisting actors. Express reference is made to cooperation with the United Nations, in recognition of the central role played by the Organization in the coordination of relief assistance. OCHA enjoys a special mandate, in accordance with General Assembly resolution 46/182, to assist in the coordination of international assistance. Under that resolution, the Assembly established the high-level position of Emergency Relief Coordinator as the single United Nations focal point for complex emergencies as well as for natural disasters. The Emergency Relief Coordinator processes requests from affected Member States for emergency assistance requiring a coordinated response, serves as a central focal point concerning United Nations

⁹⁰ See also General Assembly resolution 46/182, annex, para. 4, and the Hyogo Declaration, Report of the World Conference on Disaster Reduction (footnote 80 above), chap. I, resolution 1, para. 4.

⁹¹ Annex, para. 5.

⁹² Para. 7.

emergency relief operations and provides consolidated information, including early warning on emergencies.

(8) The reference to “other assisting actors” imports the definition contained in draft article 3, subparagraph (d), which includes competent intergovernmental organizations and relevant non-governmental organizations or entities. The Commission felt it appropriate to single out one such group of entities, namely the components of the International Red Cross and Red Crescent Movement, in recognition of the important role played by the Movement in international cooperation in the context of the situations covered by the draft articles. The reference to the components of the International Red Cross and Red Crescent Movement includes the ICRC as a consequence of the fact that the draft articles may also apply in complex emergencies involving armed conflict.⁹³ As indicated in paragraph (18) of the commentary to draft article 3, the category of “other assisting actors” is intentionally broad. In the reduction of the risk of disasters, cooperation with other actors is enshrined in the Sendai Framework’s paragraph 19 (b), which indicates that “[d]isaster risk reduction requires that responsibilities be shared by central Governments and relevant national authorities, sectors and stakeholders”, and paragraph 19 (d), which indicates that “[d]isaster risk reduction requires an all-of-society engagement and partnership”.⁹⁴

(9) The forms of cooperation in the context of the response phase are covered by draft article 8, and in risk reduction by draft article 9.

Article 8. Forms of cooperation in the response to disasters

Cooperation in the response to disasters includes humanitarian assistance, coordination of international relief actions and communications, and making available relief personnel, equipment and goods, and scientific, medical and technical resources.

Commentary

(1) Draft article 8 seeks to clarify the various forms which cooperation between affected States, assisting States and other assisting actors may take in the context of response to disasters. Cooperation is enshrined in general terms in draft article 7 as a guiding principle and fundamental duty with regard to the present topic, as it plays a central role in disaster relief efforts. The essential role of cooperation lends itself to a more detailed enunciation of the kinds of cooperation relevant in this context. The present draft article is therefore designed to elaborate further on the meaning of draft article 7, without creating any additional legal obligations.

(2) The list of forms of cooperation in draft article 8—humanitarian assistance, coordination of international relief actions and communications, and making available relief personnel, relief equipment and goods, and scientific, medical and technical resources—is loosely based on the second sentence of paragraph 4 of article 17 of

the articles on the law of transboundary aquifers. That paragraph explains the general obligation to cooperate in article 7 of those articles by describing the cooperation necessary in emergency situations. The second sentence of paragraph 4 of article 17 reads:

Cooperation may include coordination of international emergency actions and communications, making available emergency response personnel, emergency response equipment and supplies, scientific and technical expertise and humanitarian assistance.⁹⁵

As this provision had been specifically drafted with reference to a related context—namely, the need for cooperation in the event of an emergency affecting a transboundary aquifer—the Commission felt that its language was a useful starting point for the drafting of draft article 8. However, the text of draft article 8 was tailored to appropriately reflect the context and purpose of the present draft articles and to ensure that it took into account the major areas of cooperation dealt with in international instruments addressing disaster response. Similar language is contained in the ASEAN Declaration on Mutual Assistance on Natural Disasters, of 26 June 1976, which states that

Member Countries shall, within their respective capabilities, cooperate in the: (a) improvement of communication channels among themselves as regards disaster warning; (b) exchange of experts and trainees; (c) exchange of information and documents; and (d) dissemination of medical supplies, services and relief assistance.⁹⁶

In a similar vein, in explaining the areas in which it would be useful for the United Nations to adopt a coordinating role and encourage cooperation, General Assembly resolution 46/182 calls for coordination with regard to “specialized personnel and teams of technical specialists, as well as relief supplies, equipment, and services ...”⁹⁷

(3) The beginning of draft article 8 confirms that the forms of cooperation being referred to are those relevant in the response phase following the onset of a disaster or in the post-disaster recovery phase. They are by their nature concerned with the provision or facilitation of relief assistance to affected persons. Cooperation in the pre-disaster phase, including disaster prevention, preparedness and mitigation, is dealt with in draft article 9. At the same time, draft article 8, which is to be read in the light of the other draft articles, is oriented towards the purpose of the topic as a whole as stated in draft article 2, namely “to facilitate the adequate and effective response to disasters ... so as to meet the essential needs of the persons concerned, with full respect for their rights”. In the context of the present topic, the ultimate goal of the duty to cooperate, and therefore of any of the forms of cooperation referred to in draft article 8, is the protection of persons affected by disasters.

(4) While the draft article highlights specific forms of cooperation, the list is not meant to be exhaustive, but is instead illustrative of the principal areas in which cooperation may be appropriate according to the circumstances.

⁹⁵ General Assembly resolution 63/124 of 11 December 2008, annex; for the commentary thereto, see *Yearbook ... 2008*, vol. II (Part Two), pp. 22 *et seq.*, para. 54.

⁹⁶ *ASEAN Documents Series 1976*. See also *Malaya Law Review*, vol. 20 (1978), p. 411.

⁹⁷ Annex, para. 27.

⁹³ See para. (8) of the commentary to draft article 18, below.

⁹⁴ Sendai Framework (see footnote 19 above).

The non-exhaustive nature of the list is emphasized by the use of the word “includes” and its equivalent in the other official languages. The Commission determined that the highlighted forms are the main areas in which cooperation may be warranted and that the forms are broad enough to encapsulate a wide variety of cooperative activities. Cooperation may, therefore, include the activities mentioned, but is not limited to them; other forms of cooperation not specified in the present draft article are not excluded, such as: financial support; technology transfer covering, among other things, technology relating to satellite imagery; training; information-sharing; joint simulation exercises and planning; and undertaking needs assessments and situation overview.

(5) As draft article 8 is illustrative of possible forms of cooperation, it is not intended to create additional legal obligations for either affected States or other assisting actors to engage in certain activities. Notwithstanding this, cooperation may also take place in the context of existing obligations. For example, an affected State may have a duty to inform or notify, at the onset of a disaster, other States and other assisting actors that have a mandated role to gather information, provide early warning and coordinate assistance provided by the international community. Such duty was envisaged in article 17 of the articles on prevention of transboundary harm from hazardous activities, adopted in 2001, which provides:

The State of origin shall, without delay and by the most expeditious means at its disposal, notify the State likely to be affected of an emergency concerning an activity within the scope of the present articles and provide it with all relevant and available information.⁹⁸

(6) The forms that cooperation may take will necessarily depend upon a range of factors, including, *inter alia*, the nature of the disaster, the needs of the affected persons and the capacities of the affected State and other assisting actors involved. As with the principle of cooperation itself, the forms of cooperation in draft article 8 are meant to be reciprocal in nature, as cooperation is not a unilateral act, but rather one that involves the collaborative behaviour of multiple parties.⁹⁹ The draft article is therefore not intended to be a list of activities in which an assisting State may engage, but rather areas in which harmonization of efforts through consultation on the part of both the affected State and other assisting actors may be appropriate.

(7) Cooperation in the areas mentioned must be in conformity with the other draft articles. For example, as with draft article 7, the forms of cooperation touched upon in draft article 8 must be consistent with draft article 10, which grants the affected State the primary role in disaster relief assistance, as a consequence of its sovereignty. Cooperation must also be undertaken in accordance with the requirement of consent of the affected State to external assistance (draft article 13), as well as the recognition that the affected State may place appropriate conditions on the provision of external assistance, particularly with respect to the identified needs of persons affected by a disaster and the quality of the assistance (draft article 14).

⁹⁸ General Assembly resolution 62/68 of 6 December 2007, annex; for the commentary thereto, see *Yearbook ... 2001*, vol. II (Part Two) and corrigendum, pp. 148 *et seq.*, para. 98.

⁹⁹ See para. (6) of the commentary to draft article 7, above.

Cooperation is also related to draft article 15, which recognizes the role of the affected State in the facilitation of prompt and effective assistance to persons affected by a disaster. As such, and since draft article 8 does not create any additional legal obligations, the relationship between the affected State, assisting State, and other assisting actors with regard to the above-mentioned forms of cooperation will be regulated in accordance with the other provisions of the present draft articles.

(8) Humanitarian assistance is intentionally placed first among the forms of cooperation mentioned in draft article 8, as the Commission considers this type of cooperation of paramount importance in the context of disaster relief. The second category—coordination of international relief actions and communications—is intended to be broad enough to cover most cooperative efforts in the disaster relief phase, and may include the logistical coordination, supervision and facilitation of the activities and movement of disaster response personnel and equipment and the sharing and exchange of information pertaining to the disaster. Though information exchange is often referred to in instruments that emphasize cooperation in the pre-disaster phase as a preventive mode to reduce the risk of disasters,¹⁰⁰ communication and information is also relevant in the disaster response phase to monitor the developing situation and to facilitate the coordination of relief actions among the various actors involved. A number of instruments deal with communication and information-sharing in the disaster relief context.¹⁰¹ The mention of “making available relief personnel, equipment and goods, and scientific, medical and technical resources” refers to the provision of any and all resources necessary for disaster response operations. The reference to “personnel” may entail the provision of and cooperation among medical teams, search and rescue teams, engineers and technical specialists, translators and interpreters, or other persons engaged in relief activities on behalf of one of the relevant actors—affected State, assisting State or other assisting actors. The term “resources” covers scientific, technical and medical expertise and knowledge as well as equipment, tools, medicines or other objects that would be useful for relief efforts.

Article 9. Reduction of the risk of disasters

1. Each State shall reduce the risk of disasters by taking appropriate measures, including through legislation and regulations, to prevent, mitigate, and prepare for disasters.

2. Disaster risk reduction measures include the conduct of risk assessments, the collection and dissemination of risk and past loss information, and the installation and operation of early warning systems.

¹⁰⁰ See, for example, the ASEAN Agreement, art. 18, para. 1.

¹⁰¹ See, for example, the Tampere Convention, art. 3 (calling for “the deployment of terrestrial and satellite telecommunication equipment to predict, monitor and provide information concerning natural hazards, health hazards and disasters” and “the sharing of information about natural hazards, health hazards and disasters among the States Parties and with other States, non-State entities and intergovernmental organizations, and the dissemination of such information to the public, particularly to at-risk communities”); and the Oslo Guidelines (footnote 30 above), para. 54. See also discussion in the memorandum by the Secretariat on the protection of persons in the event of disasters (A/CN.4/590 [and Add.1–3]; footnote 14 above), paras. 158–173.

Commentary

(1) Draft article 9 deals with the duty to reduce the risk of disasters. The draft article is composed of two paragraphs. Paragraph 1 establishes the basic obligation to reduce the risk of disasters by taking certain measures and paragraph 2 provides an indicative list of such measures.

(2) As indicated in draft article 2, the reduction of the risk of disasters falls within the purpose of the present draft articles. The concept of disaster risk reduction has its origins in a number of General Assembly resolutions and has been further developed through the World Conference on Natural Disaster Reduction held in Yokohama, Japan, from 23 to 27 May 1994,¹⁰² the Hyogo Framework for Action and the Sendai Framework, as well as several sessions of the Global Platform for Disaster Risk Reduction.

(3) At the fourth session of the Global Platform for Disaster Risk Reduction, in 2013, the concluding summary by the Chair drew attention to the “growing recognition that the prevention and reduction of disaster risk is a legal obligation, encompassing risk assessments, the establishment of early warning systems, and the right to access risk information”.¹⁰³ At the Third United Nations World Conference on Disaster Risk Reduction, “States also reiterated their commitment to address disaster risk reduction and the building of resilience to disasters with a renewed sense of urgency”.¹⁰⁴ The Sendai Framework indicated that “[i]t is urgent and critical to anticipate, plan for and reduce disaster risk in order to more effectively protect persons, communities and countries” and called for “accountability for disaster risk creation ... at all levels.”¹⁰⁵ Furthermore, the Sendai Framework stated, as a principle, that “[e]ach State has the primary responsibility to prevent and reduce disaster risk, including through international, regional, subregional, transboundary and bilateral cooperation”.¹⁰⁶ Finally, with the aim of achieving “[t]he substantial reduction of disaster risk and losses in lives, livelihoods and health and in the economic, physical, social, cultural and environmental assets of persons, businesses, communities and countries”,¹⁰⁷ the Sendai Framework indicated that “the following goal must be pursued: [p]revent new and reduce existing disaster risk through the implementation of integrated and inclusive economic, structural, legal, social, health, cultural, educational, environmental, technological, political and institutional measures that prevent and reduce hazard exposure and vulnerability to disaster, increase preparedness for response and recovery, and thus strengthen resilience.”¹⁰⁸

¹⁰² Report of the World Conference on Natural Disaster Reduction, Yokohama, 23–27 May 1994 (A/CONF.172/9), chap. I, resolution 1, annex I: Yokohama Strategy for a Safer World: Guidelines for Natural Disaster Prevention, Preparedness and Mitigation (available from www.preventionweb.net/files/10996_N9437604.pdf).

¹⁰³ United Nations Office for Disaster Risk Reduction, *Proceedings of the Fourth Session of the Global Platform for Disaster Risk Reduction, Geneva, Switzerland, 19–23 May 2013: Invest Today for a Safer Tomorrow*, p. 13.

¹⁰⁴ Sendai Framework (see footnote 19 above), preamble, para. 2 (footnote omitted). See Sendai Declaration in General Assembly resolution 69/283, annex I.

¹⁰⁵ Sendai Framework (see footnote 19 above), paras. 5–6.

¹⁰⁶ *Ibid.*, para. 19 (a) (guiding principles).

¹⁰⁷ *Ibid.*, para. 16 (expected outcome).

¹⁰⁸ *Ibid.*, para. 17 (goal).

(4) The Commission bases itself on the fundamental principles of State sovereignty and non-intervention and, at the same time, draws on principles emanating from international human rights law, including the obligations undertaken by States to respect and protect human rights, in particular the right to life. Protection entails a positive obligation on States to take the necessary and appropriate measures to prevent harm from impending disasters. This is confirmed by the decisions of international tribunals, notably the European Court of Human Rights judgments in the *Öneryıldız v. Turkey*¹⁰⁹ and *Budayeva and Others v. Russia*¹¹⁰ cases, which affirmed the duty to take preventive measures. In addition, draft article 9 draws inspiration from a number of international environmental law principles, including the “due diligence” principle.

(5) An important legal foundation for draft article 9 is the widespread practice of States reflecting their commitment to reduce the risk of disasters. States and international organizations have adopted multilateral, regional and bilateral instruments concerned with reducing the risk of disasters, including: the Paris Agreement (2015); Transforming our world: the 2030 Agenda for Sustainable Development (2015);¹¹¹ the Addis Ababa Action Agenda of the Third International Conference on Financing for Development (2015);¹¹² the SIDS Accelerated Modalities of Action (SAMOA) Pathway (2014);¹¹³ the ASEAN Agreement;¹¹⁴ the Beijing Action for Disaster Risk Reduction in Asia (2005);¹¹⁵ the Delhi Declaration on Disaster Risk Reduction in Asia (2007);¹¹⁶ the Kuala Lumpur Declaration on Disaster Risk Reduction in Asia (2008);¹¹⁷ the Incheon Declaration on Disaster Risk Reduction in Asia and the Pacific (2010);¹¹⁸ the Incheon Regional Roadmap and Action Plan on Disaster Risk Reduction through Climate Change Adaptation in Asia and the Pacific;¹¹⁹ reaffirming the Hyogo Framework for Action and proposing Asian initiatives for climate change adaptation and disaster risk reduction considering vulnerabilities in the region; “The Way Forward: Climate and Disaster Resilient Development in the Pacific” (meeting statement) of the Pacific Platform for Disaster Risk Management (2014);¹²⁰ the Framework of Cooperation on strengthening regional cooperation among Disaster Management Authorities of

¹⁰⁹ *Öneryıldız v. Turkey* [GC], No. 48939/99, ECHR 2004-XII.

¹¹⁰ *Budayeva and Others v. Russia* (see footnote 61 above).

¹¹¹ General Assembly resolution 70/1 of 25 September 2015.

¹¹² General Assembly resolution 69/313 of 27 July 2015, annex.

¹¹³ General Assembly resolution 69/15 of 14 November 2014, annex.

¹¹⁴ The ASEAN Agreement is the first international treaty concerning disaster risk reduction to have been developed after the adoption of the Hyogo Framework for Action.

¹¹⁵ Adopted at the Asian Conference on Disaster Risk Reduction, Beijing, 27–29 September 2005. Available from www.ifrc.org/docs/IDRL/Beijing_action_for_DRR%5B1%5D.pdf.

¹¹⁶ Adopted at the Second Asian Ministerial Conference on Disaster Reduction, New Delhi, 7–8 November 2007.

¹¹⁷ Adopted at the Third Asian Ministerial Conference on Disaster Risk Reduction, Kuala Lumpur, 2–4 December 2008. Available from www.preventionweb.net/files/3089_KLDeclarationonDisasterRiskReductioninAsia202008.pdf.

¹¹⁸ Adopted at the Fourth Asian Ministerial Conference on Disaster Reduction, Incheon, Republic of Korea, 25–28 October 2010. Available from www.preventionweb.net/files/16327_finalincheondeclaration1028.pdf.

¹¹⁹ See www.unisdr.org/files/20382_summaryof4hamcdrr.pdf.

¹²⁰ Adopted at the sixth session of the Pacific Platform for Disaster Risk Management, Suva, 2–4 June 2014 (see A/CONF.224/PC(I)/9).

the Central Asian and South Caucasus Region in the area of disaster risk reduction (2015);¹²¹ the African Union's Africa Regional Strategy for Disaster Risk Reduction of 2004,¹²² which was followed by a programme of action for its implementation (originally for the period between 2005 and 2010, but later extended to 2015);¹²³ the East African Community Disaster Risk Reduction and Disaster Management Bill (2013);¹²⁴ four sessions of the Africa Regional Platform on Disaster Risk Reduction, the most recent one being in 2013;¹²⁵ the Yaoundé Declaration on the Implementation of the Sendai Framework in Africa (2015);¹²⁶ the Arab Strategy for Disaster Risk Reduction 2020 (2010);¹²⁷ the Sharm El Sheikh Declaration on Disaster Risk Reduction (2014);¹²⁸ the Asunción Declaration "Guidelines towards a Regional Action Plan for the Implementation of the Sendai Framework 2015–2030" (2016);¹²⁹ the Aqaba Declaration on Disaster Risk Reduction in Cities (2013);¹³⁰ the Latin American Parliament Protocol on Disaster Risk Management in Latin America and the Caribbean (2013);¹³¹ the Guayaquil Communiqué of the Fourth Session of the Regional Platform for Disaster Risk Reduction in the Americas (2014);¹³² the Nayarit Communiqué on Lines of Action to Strengthen Disaster Risk Reduction in the Americas (2011);¹³³ the Outcome of the European Ministerial Meeting on Disaster Risk Reduction: Towards a Post-2015 Framework for Disaster Risk Reduction—Building the Resilience of Nations and Communities to Disasters (2014);¹³⁴ sixth annual meeting of the European

Forum for Disaster Risk Reduction—2015–2020 Roadmap for the Implementation of the Sendai Framework (2015);¹³⁵ "Solidarity in Action": Joint Statement of the Ministers for Foreign Affairs of the South East Europe Cooperation Process (2013);¹³⁶ the European Union's Civil Protection Mechanism (2013);¹³⁷ resolution 6, on strengthening legal frameworks for disaster response, risk reduction and first aid, adopted by the 32nd International Conference of the Red Cross and Red Crescent (2015);¹³⁸ and the European Commission's Action Plan on the Sendai Framework for Disaster Risk Reduction 2015–2030 (2016).¹³⁹

(6) Recognition of this commitment is further shown by the incorporation by States of disaster risk reduction measures into their national policies and legal frameworks. A compilation of national progress reports on the implementation of the Hyogo Framework for Action¹⁴⁰ and other sources indicate that, as of 2016, 64 States or areas reported having established specific policies on disaster risk reduction, evenly spread throughout all continents and regions, including the major hazard-prone locations. They are Algeria, Anguilla, Argentina, Armenia, Bangladesh, the Plurinational State of Bolivia, Brazil, the British Virgin Islands, Canada, Cape Verde, Chile, Colombia, the Cook Islands, Costa Rica, Côte d'Ivoire, Cuba, the Dominican Republic, Fiji, Finland, Georgia, Germany, Ghana, Guatemala, Honduras, India, Indonesia, Italy, Japan, Kenya, the Lao People's Democratic Republic, Lebanon, Madagascar, Malawi, Malaysia, Maldives, the Marshall Islands, Mauritius, Mexico, Mongolia, Morocco, Mozambique, Nepal, New Zealand, Nicaragua, Nigeria, Norway, Panama, Paraguay, Peru, Poland, Saint Kitts and Nevis, Saint Lucia, Samoa, Senegal, Sri Lanka, Sweden, Switzerland, the Syrian Arab Republic, Thailand, the former Yugoslav Republic of Macedonia, the United Republic of Tanzania, the United States of America, Vanuatu, and the Bolivarian Republic of Venezuela. More recently, the United Nations Office for Disaster Risk Reduction identified 93 States¹⁴¹ that had adopted national platforms for disaster risk reduction, which, in accordance with the Sendai Framework, are government coordination forums composed of relevant stakeholders aimed "to, *inter alia*, identify sectoral and multisectoral disaster risk, build awareness and knowledge of disaster risk through sharing and dissemination of non-sensitive disaster risk information and data, contribute to and coordinate reports on local and national disaster risk, coordinate public awareness campaigns on

¹²¹ Adopted by the Regional Ministerial Meeting of Disaster Management Authorities of Central Asian and South Caucasus Countries, Bishkek, 30 January 2015. Available from www.preventionweb.net/files/42374_frameworkofcooperationregionaldrca.pdf.

¹²² Available from www.unisdr.org/files/4038_africaregionalstrategy1.pdf.

¹²³ Extended Programme of Action for the Implementation of the Africa Regional Strategy for Disaster Risk Reduction (2006–2015). Available from www.unisdr.org/files/19613_bookletpoenglish.pdf.

¹²⁴ Available from www.unisdr.org/files/48230_eacdrbill.pdf.

¹²⁵ United Nations Office for Disaster Risk Reduction, "Africa seeks united position on disaster risk reduction", 13 February 2013. Available from www.unisdr.org/archive/31224.

¹²⁶ Adopted by the Fourth High-Level Meeting on Disaster Risk Reduction, Yaoundé, 23 July 2015. Available from www.preventionweb.net/files/43907_43907yaoundedeclarationen.pdf.

¹²⁷ Adopted by the Council of Arab Ministers Responsible for the Environment at its twenty-second session, Cairo, 19–20 December 2010. Available from www.unisdr.org/files/18903_17934asdrfinalenglishjanuary20111.pdf.

¹²⁸ Adopted at the Second Arab Conference on Disaster Risk Reduction, Sharm El Sheikh, Egypt, 14–16 September 2014. Available from www.unisdr.org/files/42726_42726sharmdeclarationpublicationfin.pdf.

¹²⁹ Adopted at the First Meeting of Ministers and High-Level Authorities on the Implementation of the Sendai Framework for Disaster Risk Reduction 2015–2030 in the Americas, Asunción, 8–9 June 2016. Available from www.preventionweb.net/files/49235_asunciondeclaracion2016.pdf.

¹³⁰ Adopted at the First Arab Conference for Disaster Risk Reduction, Aqaba, Jordan, 19–21 March 2013. Available from www.preventionweb.net/files/31093_aqabadeclarationenglishfinaldraft.pdf.

¹³¹ <http://eird.org/americas/noticias/protocolo-sobre-gestion-del-riesgo.pdf> (Spanish only).

¹³² The fourth session was held in Guayaquil, Ecuador, 27–29 May 2014. Available from [www.preventionweb.net/files/37662_communiqueguayaquilpr1428may14\[1\].pdf](http://www.preventionweb.net/files/37662_communiqueguayaquilpr1428may14[1].pdf).

¹³³ Adopted at the second session of the Regional Platform for Disaster Risk Reduction in the Americas, Nayarit, Mexico, 15–17 March 2011. Available from www.unisdr.org/files/18603_communiquenayarit.pdf.

¹³⁴ Adopted at the European Ministerial Meeting, Milan, Italy, 8 July 2014 (see A/CONF.224/PC(I)/12).

¹³⁵ The sixth annual meeting took place in Paris, 7–9 October 2015. Available from www.preventionweb.net/files/55096_55096efdrroadmap20152020anditsacti.pdf.

¹³⁶ Adopted by the Ministers in Ohrid, the former Yugoslav Republic of Macedonia, 31 May 2013. Available from www.preventionweb.net/files/31414_solidarityinactionjointstatement.pdf.

¹³⁷ See Decision No. 1313/2013/EU of the European Parliament and of the Council of 17 December 2013, *Official Journal of the European Union*, L 347, 20 December 2013, p. 924.

¹³⁸ The conference was held in Geneva, 8–10 December 2015. Available from https://rcrcconference.org/app/uploads/2015/04/321C-Res6-legal-frameworks-for-disaster_EN.pdf.

¹³⁹ See SWD(2016) 205 final/2 of 17 June 2016. Available from http://ec.europa.eu/echo/sites/echo-site/files/sendai_swd_2016_205_0.pdf.

¹⁴⁰ Hyogo Framework for Action, priority 1, core indicator 1.1. See www.preventionweb.net/sendai-framework/Hyogo-Framework-for-Action.

¹⁴¹ For a list of States that have adopted national platforms, see www.undrr.org.

disaster risk, facilitate and support local multisectoral cooperation (e.g. among local governments) and contribute to the determination of and reporting on national and local disaster risk management plans and all policies relevant for disaster risk management".¹⁴² Several countries 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, including Algeria,¹⁴³ Cambodia,¹⁴⁴ Cameroon,¹⁴⁵ China,¹⁴⁶ El Salvador,¹⁴⁷ Slovenia,¹⁴⁸ the United States of America,¹⁴⁹ Estonia,¹⁵⁰ the Philippines,¹⁵¹ France,¹⁵² Georgia,¹⁵³ Guatemala,¹⁵⁴ Haiti,¹⁵⁵ Hungary,¹⁵⁶ India,¹⁵⁷ Indonesia,¹⁵⁸ Italy,¹⁵⁹ Madagascar,¹⁶⁰ Namibia,¹⁶¹ New Zealand,¹⁶² Pakistan,¹⁶³ Peru,¹⁶⁴ the Republic of Korea,¹⁶⁵ the Dominican Republic,¹⁶⁶ South Africa¹⁶⁷ and Thailand.¹⁶⁸

¹⁴² Sendai Framework (footnote 19 above), para. 27 (g).

¹⁴³ Act No. 04-20 of 25 December 2004 on Risk Prevention and Disaster Management in the Framework of Sustainable Development.

¹⁴⁴ Law on Disaster Management, No. NS/RKM/0715/007. Approved by the Senate on 30 June 2015. Available from www.ifrc.org/Global/Publications/IDRL/DM%20acts/Cambodia%20DM%20Law_English.pdf.

¹⁴⁵ Decree No. 037/PM of 19 March 2003 on the Establishment, Organization and Functions of a National Risk Observatory.

¹⁴⁶ Emergency Response Law of the People's Republic of China (2007). Available from http://english.mec.gov.cn/Resources/laws/envir_elatedlaws/201705/t20170514_414040.shtml.

¹⁴⁷ Law on Civil Protection and the Prevention and Mitigation of Disasters (2005).

¹⁴⁸ Act on Protection against Natural and Other Disasters (2006).

¹⁴⁹ Disaster Mitigation Act of 2000.

¹⁵⁰ Emergency Preparedness Act (2000).

¹⁵¹ Philippine Disaster Risk Management Act 2006.

¹⁵² Act No. 2003-699 on the Prevention of Technological and Natural Risks and the Reparation of Damages (2003).

¹⁵³ Law on Public Safety. Document No. 2467-II. Available from <https://matsne.gov.ge/en/document/view/2363013>.

¹⁵⁴ Act No. 109-96 on the National Coordinator for Disaster Reduction (1996).

¹⁵⁵ National Risk and Disaster Management Plan (2001).

¹⁵⁶ Act LXXIV on the management and organization of disaster prevention and the prevention of major accidents involving hazardous substances (1999).

¹⁵⁷ Disaster Management Act, 2005 (No. 53).

¹⁵⁸ Law No. 24 of 2007 concerning Disaster Management.

¹⁵⁹ Decree on the Creation of a National Platform for Disaster Risk Reduction (2008).

¹⁶⁰ Decree No. 2005-866 establishing the procedure for implementing Act No. 2003-010 of 5 September 2003 on National Risk and Disaster Management Policy (2005).

¹⁶¹ Disaster Risk Management Act, 2012 (No. 10).

¹⁶² National Civil Defence Emergency Management Plan Order 2005 (SR 2005/295).

¹⁶³ National Disaster Management Act, 2010. See also the official statement of the Government of Pakistan at the third session of the Global Platform for Disaster Risk Reduction, 2011, available from www.preventionweb.net/files/globalplatform/pakistanofficialstatement.pdf.

¹⁶⁴ Act No. 29664 creating the National System for Disaster Risk Management (2011).

¹⁶⁵ Countermeasures against Natural Disasters Act (1995) and National Disaster Management Act (2010).

¹⁶⁶ Decree No. 874-09 approving implementing regulations for Act No. 147-02 on Risk Management and repealing Chapters 1, 2, 3, 4 and 5 of Decree No. 932-03 (2009).

¹⁶⁷ Disaster Management Act, 2002 (No. 57).

¹⁶⁸ Disaster Prevention and Mitigation Act (2007).

(7) Draft article 9 is to be read together with the rules of general applicability in the present draft articles, including those principally concerned with the response to a disaster.

(8) Paragraph 1 starts with the words "[e]ach State". The Commission opted for this formula over "States" for the sake of consistency with the draft articles previously adopted, where care had been taken to identify the State or States that bore the legal duty to act. In contrast to those draft articles dealing directly with disaster response where a distinction exists between an affected State or States and other States, in the pre-disaster phase the obligation in question applies to every State. Furthermore, as is evident from paragraph 2, the obligation to reduce risk implies measures primarily taken at the domestic level. Any such measures requiring interaction between States or with other assisting actors are meant to be covered by draft article 7. In other words, the obligation applies to each State individually. Hence the Commission decided against using the word "States" also to avoid any implication of a collective obligation.

(9) The word "shall" signifies the existence of the international legal obligation to act in the manner described in the paragraph and is the most succinct way to convey the sense of that legal obligation. While each State bears the same obligation, the question of different levels of capacity among States to implement the obligation is dealt with under the phrase "by taking appropriate measures".

(10) The obligation is to "reduce the risk of disasters". The Commission adopted the present formula in recognition of the fact that the contemporary view of the international community, as reflected in several major pronouncements, notably, and most recently, in the Sendai Framework, is that the focus should be placed on the reduction of the risk of harm caused by a hazard, as distinguished from the prevention and management of disasters themselves. Accordingly, the emphasis in paragraph 1 is placed on the reduction of the risk of disasters. This is achieved by taking certain measures so as to prevent, mitigate and prepare for such disasters. The duty being envisaged is one of conduct and not result; in other words not to completely prevent or mitigate a disaster, but rather to reduce the risk of harm potentially caused thereby.

(11) The phrase "by taking appropriate measures" indicates the specific conduct being required. In addition to the further specification about legislation and regulations explained in paragraph (13) below, the "measures" to be taken are qualified by the word "appropriate", which accords with common practice. The use of the word "appropriate", therefore, serves the function of specifying that it is not just any general measures that are being referred to, but rather specific and concrete measures aimed at prevention, mitigation and preparation for disasters. What might be "appropriate" in any particular case is to be understood in terms of the stated goal of the measures to be taken, namely "to prevent, mitigate, and prepare for disasters" so as to reduce risk. This is to be evaluated within the broader context of the existing capacity and availability of resources of the State in question, as has been noted in paragraph (9) above. Accordingly, the reference to "taking appropriate measures" is meant to indicate the relative

nature of the obligation. The fundamental requirement of due diligence is inherent in the concept of “appropriate”. It is further understood that the question of the effectiveness of the measures is implied in that formula.

(12) The paragraph indicates by means of the phrase “including through legislation and regulations” the specific context in which the corresponding measures are to be taken. The envisaged outcome consists of a number of concrete measures that are typically taken within the context of a legislative or regulatory framework. Accordingly, for those States that do not already have such a framework in place, the general obligation to reduce the risk of disasters would also include an obligation to put such a legal framework into place so as to allow for the taking of the “appropriate” measures. The phrase “legislation and regulations” is meant to be understood in broad terms to cover as many manifestations of law as possible, it being generally recognized that such law-based measures are the most common and effective way to facilitate (hence the word “through”) the taking of disaster risk reduction measures at the domestic level.

(13) The word “including” indicates that, while “legislation and regulations” may be the primary methods, there may be other arrangements under which such measures could be taken. The word “including” was chosen in order to avoid the interpretation that the adoption and implementation of specific legislation and regulations would always be required. This allows a margin of discretion for each State to decide on the applicable legal framework, it being understood that having in place a legal framework that anticipates the taking of “appropriate measures” is a *sine qua non* for disaster risk reduction.

(14) The phrase “through legislation and regulations” imports a reference to ensuring that mechanisms for implementation and accountability for non-performance be defined within domestic legal systems. Such issues, though important, are not the only ones that could be the subject of legislation and regulations in the area of disaster risk reduction.

(15) The last clause, namely “to prevent, mitigate, and prepare for disasters”, serves to describe the purpose of the “appropriate” measures that States are to take during the pre-disaster phase to address exposure, vulnerability and the characteristics of a hazard, with the ultimate goal of reducing disaster risk. The phrase tracks the formula used in major disaster risk reduction instruments. The Commission was cognizant of the fact that adopting a different formulation could result in unintended *a contrario* interpretations as to the kinds of activities being anticipated in the draft article. In addition, the Commission was of the opinion that this clause would also address the Sendai Framework’s requirement to prevent new, and reduce existing, risk, and thus strengthen resilience.

(16) The Terminology on Disaster Risk Reduction prepared by the United Nations Office for Disaster Risk Reduction in 2009 illustrates the meaning of each of the three terms used—prevention, mitigation and preparedness:¹⁶⁹

Prevention [is] [t]he outright avoidance of adverse impacts of hazards and related disasters.

... Prevention (i.e. disaster prevention) expresses the concept and intention to completely avoid potential adverse impacts through action taken in advance. ... Very often the complete avoidance of losses is not feasible and the task transforms to that of mitigation. Partly for this reason, the terms prevention and mitigation are sometimes used interchangeably in casual use.

Mitigation [is] [t]he lessening or limitation of the adverse impacts of hazards and related disasters.

... The adverse impacts of hazards often cannot be prevented fully, but their scale or severity can be substantially lessened by various strategies and actions. ... It should be noted that in climate change policy, “mitigation” is defined differently, being the term used for the reduction of greenhouse gas emissions that are the source of climate change.¹⁷⁰

Preparedness [is] [t]he knowledge and capacities developed by governments, professional response and recovery organizations, communities and individuals to effectively anticipate, respond to, and recover from, the impacts of likely, imminent or current hazard events or conditions.

... Preparedness action is carried out within the context of disaster risk management and aims to build the capacities needed to efficiently manage all types of emergencies and achieve orderly transitions from response through to sustained recovery. Preparedness is based on a sound analysis of disaster risks and good linkages with early warning systems ... [The measures to be taken] must be supported by formal institutional, legal and budgetary capacities.

The Commission is cognizant that the above terms may be subject to further refinements by the General Assembly on the basis of the outcome of the open-ended intergovernmental expert working group on indicators and terminology relating to disaster risk reduction, established by its resolution 69/284 of 3 June 2015.

(17) Paragraph 2 lists three categories of disaster risk reduction measures, namely: the conduct of risk assessments; the collection and dissemination of risk and past loss information; and the installation and operation of early warning systems. As noted in paragraph (3) above, these three measures were singled out in the Chair’s summary at the conclusion of the fourth session of the Global Platform for Disaster Risk Reduction, held in May 2013.¹⁷¹ The Commission decided to refer expressly to the three examples listed as reflecting the most prominent types of contemporary disaster risk reduction efforts. The relevance of such measures was further confirmed by their inclusion in the Sendai Framework. The word “include” serves to indicate that the list is non-exhaustive. The listing of the three measures is without prejudice to other activities aimed at the reduction of the risk of disasters that are being undertaken at present or which may be undertaken in the future.

(18) The practical structural and non-structural measures that can be adopted are innumerable and depend on the social, environmental, financial, cultural and other relevant circumstances. Practice in the public and private sectors, as well as instruments, such as the Sendai Framework, provide a wealth of examples, among which may be cited: community-level preparedness and education; the establishment of disaster risk governance frameworks; contingency planning; setting-up of monitoring

¹⁷⁰ The Commission is conscious of the discrepancy in the concordance between the English and French versions of the official United Nations use of the term “mitigation”.

¹⁷¹ See footnote 103 above.

¹⁶⁹ See www.preventionweb.net/files/7817_UNISDRTerminologyEnglish.pdf.

mechanisms; land-use controls; construction standards; ecosystems management; drainage systems; social safety-nets addressing vulnerability and resilience; risk disclosure; risk-informed investments; and insurance.

(19) The three consecutive measures listed in paragraph 2 share a particular characteristic: they are instrumental to the development and applicability of many if not all other measures concerning normative frameworks and definitions of priorities or investment planning, both in the public and the private sector.

(20) The first measure—risk assessments—is about generating knowledge concerning hazards, exposure and vulnerabilities, as well as disaster risk trends. As such, it is the first step towards any sensible measure to reduce the risk of disasters. Without a sufficiently solid understanding of the circumstances and factors, and their characteristics, that drive disaster risk, no measure can be defined and enacted effectively. Risk assessments also compel a closer look at local realities and the engagement of local communities.

(21) The second measure—the collection and dissemination of risk and past loss information—is the next step. Reducing disaster risk requires action by all actors in the public and private sectors and civil society. Collection and dissemination should result in the free availability of risk and past loss information, which is an enabler of effective decisions and action. It allows all stakeholders to assume responsibility for their actions and to make a risk-informed determination of priorities for planning and investment purposes; it also enhances transparency in transactions and public scrutiny and control. The Commission wishes to emphasize the desirability of the dissemination and free availability of risk and past loss information, as it is the reflection of the prevailing trend focusing on the importance of public access to such information. The Commission, while recognizing the importance of that trend, felt that it was best dealt with in the commentary and not in the body of paragraph 2, since making it a uniform legal requirement could prove burdensome for States.

(22) The third measure concerns early warning systems, which are instrumental both in initiating and implementing contingency plans, thus limiting the exposure to a hazard; as such, they are a prerequisite for effective preparedness and response.

(23) As explained in paragraph (8) above, draft article 9 concerns the taking of the envisaged measures within the State. Any inter-State component would be covered by the duty to cooperate in draft article 7. Accordingly, the extent of any international legal duty relating to any of the listed or not listed measures that may be taken in order to reduce the risk of disasters is to be determined by way of the relevant specific agreements or arrangements each State has entered into with other actors with which it has the duty to cooperate.

Article 10. Role of the affected State

1. The affected State has the duty to ensure the protection of persons and provision of disaster relief assistance in its territory, or in territory under its jurisdiction or control.

2. The affected State has the primary role in the direction, control, coordination and supervision of such relief assistance.

Commentary

(1) Draft article 10 is addressed to an affected State in the context of the protection of persons in the event of a disaster upon its territory, or in territory under its jurisdiction or control. The term “role” in the title is a broad formulation intended to cover as well the “function” of a State. Paragraph 1 reflects the obligation of an affected State to protect persons and to provide disaster relief assistance. Paragraph 2 affirms the primary role held by an affected State in the response to a disaster upon its territory, or in a territory under its jurisdiction or control.

(2) Draft article 10 is premised on the core principle of sovereignty as highlighted in the preamble to the present set of draft articles. Both the principle of sovereignty and its corollary, non-intervention, inform the Charter of the United Nations¹⁷² and numerous international legal instruments and judicial pronouncements.¹⁷³ In the context of disaster relief assistance, General Assembly resolution 46/182 affirms: “The sovereignty, territorial integrity and national unity of States must be fully respected in accordance with the Charter of the United Nations.”¹⁷⁴

(3) The duty held by an affected State to ensure the protection of persons and the provision of disaster relief assistance in its territory, as recognized in paragraph 1, stems from its sovereignty. The further reference to “or in territory under its jurisdiction or control” has been inserted to align the text with the expanded meaning of the term “affected State” in draft article 3, subparagraph (b).

(4) The conception of a bond between sovereign rights and concomitant duties upon a State was expressed in particular by Judge Álvarez in an individual opinion in the *Corfu Channel* case:

By sovereignty, we understand the whole body of rights and attributes which a State possesses in its territory, to the exclusion of all other States, and also in its relations with other States.

¹⁷² Charter of the United Nations, Article 2, paras. 1 (“The Organization is based on the principle of the sovereign equality of all its Members”) and 7 (“Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any State or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII”).

¹⁷³ See, for example, the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations (footnote 82 above), which notes, *inter alia*, that “[a]ll States enjoy sovereign equality. They have equal rights and duties and are equal members of the international community”; “[t]he use of force to deprive peoples of their national identity constitutes a violation of their inalienable rights and of the principle of non-intervention”; and “States shall conduct their international relations in the economic, social, cultural, technical and trade fields in accordance with the principles of sovereign equality and non-intervention”. The International Court of Justice has held that: “Between independent States, respect for territorial sovereignty is an essential foundation of international relations” (*Corfu Channel* case (see footnote 68 above), p. 35).

¹⁷⁴ Annex, para. 3.

Sovereignty confers rights upon States and imposes obligations on them.¹⁷⁵

(5) Paragraph 1 emphasizes that the affected State is the actor that holds the duty to protect persons located within its territory or within a territory under its jurisdiction or control. The Commission considered that the term “duty” was more appropriate than the term “responsibility”, which could be misunderstood given its use in other contexts.

(6) Paragraph 2 further reflects the primary role held by a State in disaster response. For the reasons expressed above, the Commission decided to adopt the word “role” rather than “responsibility” in articulating the position of an affected State. The adoption of the term “role” was inspired by General Assembly resolution 46/182, which affirms, *inter alia*, that an affected State “has the primary role in the initiation, organization, coordination, and implementation of humanitarian assistance within its territory”.¹⁷⁶ Use of the word “role” rather than “responsibility” allows some flexibility for States in the coordination of disaster response activities. Language implying an obligation upon States to direct or control disaster response activities may, conversely, be too restrictive for States that preferred to take a more limited role in disaster response coordination because, for example, they faced a situation of limited resources.

(7) The primacy of an affected State is also grounded in the long-standing recognition in international law that the State is best placed to determine the gravity of an emergency situation and to frame appropriate response policies. The affirmation in paragraph 2 that an affected State holds the primary role in the direction, control, coordination and supervision of disaster relief assistance should be read in concert with the duty of cooperation outlined in draft article 7. In this context, draft article 10, paragraph 2, confirms that an affected State holds the primary position in the cooperative relationships with other relevant actors contemplated in draft article 7.

(8) Reference to the “direction, control, coordination and supervision” of disaster relief assistance is drawn from article 4, paragraph 8, of the Tampere Convention.¹⁷⁷ The Tampere Convention formula is gaining general acceptance in the field of disaster relief assistance and represents more contemporary language.¹⁷⁸ The formula reflects the

¹⁷⁵ *Corfu Channel* case (see footnote 68 above), Individual Opinion by Judge Álvarez, p. 39, at p. 43. See also the opinion expressed by Max Huber, Arbitrator, in the *Island of Palmas* case (*Netherlands/United States of America*), Award of 4 April 1928, UNRIAA, vol. II (Sales No. 1949.V.1), p. 829, at p. 839 (“Territorial sovereignty, as has already been said, involves the exclusive right to display the activities of a State. This right has as corollary a duty: the obligation to protect within the territory the rights of other States ...”).

¹⁷⁶ Annex, para. 4.

¹⁷⁷ “Nothing in this Convention shall interfere with the right of a State Party, under its national law, to direct, control, coordinate and supervise telecommunication assistance provided under this Convention within its territory.”

¹⁷⁸ See, for example, the ASEAN Agreement, art. 3, para. 2 (noting that “[t]he Requesting or Receiving Party shall exercise the overall direction, control, co-ordination and supervision of the assistance within its territory”), and the Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency, art. 3 (a) (noting, *inter alia*, that unless otherwise agreed “[t]he overall direction, control, co-ordination and supervision of the assistance shall be the responsibility within its territory of the requesting State”).

position that an affected State exercises control over the manner in which relief operations are carried out, which shall be in accordance with international law, including the present draft articles. Such control by an affected State is not to be regarded as undue interference with the activities of an assisting actor.

(9) The Commission departed from the Tampere Convention in deciding not to include a reference to “national law” in its articulation of the primary role of an affected State. In the context of the Tampere Convention, the reference to national law indicates that appropriate coordination requires consistency with an affected State’s domestic law. The Commission decided not to include this reference in the light of the fact that the internal law of an affected State may not in all cases regulate or provide for the primary position of a State in disaster response situations.

Article 11. Duty of the affected State to seek external assistance

To the extent that a disaster manifestly exceeds its national response capacity, the affected State has the duty to seek assistance from, as appropriate, other States, the United Nations, and other potential assisting actors.

Commentary

(1) Draft article 11 addresses the particular situation in which a disaster manifestly exceeds a State’s national response capacity. In these circumstances, an affected State has the duty to seek assistance from, as appropriate, other States, the United Nations, and other potential assisting actors as defined in draft article 3, subparagraph (d). The duty expounded in draft article 11 is a specification of draft articles 7 and 10. Paragraph 1 of draft article 10 stipulates that an affected State has the duty to ensure the protection of persons and provision of disaster relief assistance in its territory, or in territory under its jurisdiction or control. The draft article affirms the obligation of the affected State to do its utmost to provide assistance to persons in a territory under its jurisdiction or control. The duty to cooperate also underlies an affected State’s duty to the extent that a disaster manifestly exceeds its national response capacity. Draft article 7 affirms that the duty to cooperate is incumbent upon not only potential assisting States or other potential assisting actors, but also affected States where such cooperation is appropriate. The Commission considers that, where an affected State’s national capacity is manifestly exceeded, seeking assistance is both appropriate and required.

(2) The draft article stresses that a duty to seek assistance arises only to the extent that the national response capacity of an affected State is manifestly exceeded. The words “to the extent that” clarify that the national response capacity of an affected State may not always be sufficient or insufficient in absolute terms. An affected State’s national capacity may be manifestly exceeded in relation to one aspect of disaster relief operations, although the State remains capable of undertaking other operations. As a whole, the phrase “[t]o the extent that a disaster manifestly exceeds its national response capacity” encompasses the situation in which a disaster appears likely to manifestly exceed an affected State’s national response capacity. This flexible

and proactive approach is in line with the fundamental purpose of the draft articles as expressed in draft article 2. The approach facilitates an adequate and effective response to disasters that meets the essential needs of the persons concerned, with full respect for their rights. Recognition of the duty upon States in these circumstances reflects the Commission's concern to enable the provision of timely and effective disaster relief assistance.

(3) The Commission considers that the duty to seek assistance in draft article 11 also derives from an affected State's obligations under international human rights instruments and customary international law. Recourse to international support may be a necessary element in the fulfilment of a State's international obligations towards individuals where the resources of the affected State are inadequate to meet protection needs. While this may occur also in the absence of any disaster, as alluded to in the commentary to draft article 5, a number of human rights are directly implicated in the context of a disaster, including the right to life, the right to adequate food, the right to health and medical services, the right to safe drinking water, the right to adequate housing, clothing and sanitation and the right to be free from discrimination.¹⁷⁹ The Commission notes that the Human Rights Committee has said (see general comment No. 6 on the right to life) that a State's duty in the fulfilment of the right to life extends beyond mere respect to encompass a duty to protect the right by adopting positive measures.¹⁸⁰ The right to life is non-derogable under the International Covenant on Civil and Political Rights, even in the event of a "public emergency which threatens the life of the nation"¹⁸¹—which has been recognized to include a "natural catastrophe" by the Human Rights Committee in general comment No. 29.¹⁸² The International Covenant on Economic, Social and Cultural Rights states that in pursuance of the right to food:

The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.¹⁸³

The Committee on Economic, Social and Cultural Rights noted, in general comment No. 12 on the right to adequate food (article 11 of the Covenant), that if a State party maintains that resource constraints make it impossible to provide access to food to those in need:

the State has to demonstrate that every effort has been made to use all the resources at its disposal in an effort to satisfy, as a matter of priority, those minimum obligations. ... A State claiming that it is unable to carry out its obligation for reasons beyond its control therefore has the burden of proving that this is the case and that it has unsuccessfully sought to obtain international support to ensure the availability and accessibility of the necessary food.¹⁸⁴

¹⁷⁹ See the examples listed in the preliminary report of the Special Rapporteur, *Yearbook ... 2008*, vol. II (Part One), document A/CN.4/598, para. 26.

¹⁸⁰ *Official Records of the General Assembly, Thirty-seventh Session, Supplement No. 40 (A/37/40)*, annex V, para. 5.

¹⁸¹ Art. 4, para. 1.

¹⁸² *Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 40 (A/56/40)*, vol. I, annex VI, para. 5.

¹⁸³ Art. 11, para. 1.

¹⁸⁴ *Official Records of the Economic and Social Council, Twentieth and Twenty-first Sessions, Supplement No. 2 (E/2000/22-E/C.12/1999/11)*, annex V, p. 102, para. 17.

The Commission therefore notes that "appropriate steps" to be taken by a State include seeking international assistance where domestic conditions are such that the right to food cannot be realized.

(4) Specific references to the protection of rights in the event of disasters are made in the African Charter on the Rights and Welfare of the Child and the Convention on the Rights of Persons with Disabilities. Under article 23 of the African Charter on the Rights and Welfare of the Child, States shall take "all appropriate measures" to ensure that children seeking or holding refugee status, as well as those who are internally displaced due to events including "natural disaster", are able to "receive appropriate protection and humanitarian assistance in the enjoyment of the rights set out in this Charter and other international human rights and humanitarian instruments to which the States are parties". The Convention on the Rights of Persons with Disabilities refers to the obligation of States towards disabled persons in the event of disasters:

States Parties shall take, in accordance with their obligations under international law, including international humanitarian law and international human rights law, all necessary measures to ensure the protection and safety of persons with disabilities in situations of risk, including situations of armed conflict, humanitarian emergencies and the occurrence of natural disasters.¹⁸⁵

The phrase "all necessary measures" may encompass recourse to possible assistance from members of the international community in the event that an affected State's national capacity is manifestly exceeded. Such an approach would cohere with the guiding principle of humanity as applied in the international legal system. The International Court of Justice affirmed in the *Corfu Channel* case that among general and well-recognized principles are "elementary considerations of humanity, even more exacting in peace than in war".¹⁸⁶ Draft article 6 affirms the core position of the principle of humanity in disaster response.

(5) The Commission considers that a duty to "seek" assistance is more appropriate than a duty to "request" assistance in the context of draft article 11. The Commission derives this formulation from the duty outlined in the resolution on humanitarian assistance adopted by the Institute of International Law, which notes:

Whenever the affected State is unable to provide sufficient humanitarian assistance to the victims placed under its jurisdiction or *de facto* control, it shall seek assistance from competent international organizations and/or from third States.¹⁸⁷

Similarly, the IDRL Guidelines hold that:

If an affected State determines that a disaster situation exceeds national coping capacities, it should seek international and/or regional assistance to address the needs of affected persons.¹⁸⁸

¹⁸⁵ Art. 11.

¹⁸⁶ *Corfu Channel* case (see footnote 68 above), p. 22 (noting that "[t]he obligations incumbent upon the Albanian authorities consisted in notifying, for the benefit of shipping in general, the existence of a minefield in Albanian territorial waters and in warning the approaching British warships of the imminent danger to which the minefield exposed them. Such obligations are based, not on the Hague Convention of 1907, No. VIII, which is applicable in time of war, but on certain general and well-recognized principles, namely: elementary considerations of humanity, even more exacting in peace than in war ...").

¹⁸⁷ Resolution on humanitarian assistance (see footnote 21 above), art. III, para. 3.

¹⁸⁸ IDRL Guidelines (see footnote 20 above), Part I, sect. 3, para. 2.

In addition, the guiding principles annexed to General Assembly resolution 46/182 also appear to support a duty on the affected State to have recourse to international cooperation where an emergency exceeds its response capacity:

The magnitude and duration of many emergencies may be beyond the response capacity of many affected countries. International cooperation to address emergency situations and to strengthen the response capacity of affected countries is thus of great importance. Such cooperation should be provided in accordance with international law and national laws.¹⁸⁹

(6) The alternate formulation of “request” is incorporated in the Oslo Guidelines, which note that “[i]f international assistance is necessary, it should be requested or consented to by the Affected State as soon as possible upon the onset of the disaster to maximize its effectiveness.”¹⁹⁰ The Commission considers that a “request” of assistance carries an implication that an affected State’s consent is granted upon acceptance of that request by an assisting State or other assisting actor. In contrast, the Commission is of the view that a duty to “seek” assistance implies a broader, negotiated approach to the provision of international aid. The term “seek” entails the proactive initiation by an affected State of a process through which agreement may be reached. Draft article 11 therefore places a duty upon affected States to take positive steps actively to seek out assistance to the extent that a disaster manifestly exceeds their national response capacity.

(7) An affected State will be in the best position, in principle, to determine the severity of a disaster situation and the limits of its national response capacity. Having said this, this assessment and its assessment of the severity of a disaster must be carried out in good faith. The principle of good faith is expounded in the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations,¹⁹¹ which stipulates that “[e]very State has the duty to fulfil in good faith” obligations assumed by it “in accordance with the Charter of the United Nations”,¹⁹² “obligations under the generally recognized principles and rules of international law”¹⁹³ and “obligations under international agreements valid under the generally recognized principles and rules of international law”.¹⁹⁴ A good faith assessment of the severity of a disaster is an element of an affected State’s duty to ensure the protection of persons and provision of disaster relief assistance pursuant to draft article 10, paragraph 1.

(8) The phrase “as appropriate” was adopted by the Commission to emphasize the discretionary power of an affected State to choose from other States, the United Nations, and other potential assisting actors the assistance that is most appropriate to its specific needs. The term further reflects that the duty to seek assistance does not imply that a State is obliged to seek assistance from every source listed in draft article 11. The phrase “as appropriate” therefore reinforces the fact that an affected State

has the primary role in the direction, control, coordination and supervision of the provision of disaster relief assistance, as outlined in draft article 10, paragraph 2.

(9) The existence of a duty to seek assistance to the extent that national capacity is manifestly exceeded does not imply that affected States should not seek assistance in disaster situations of a lesser magnitude. The Commission considers cooperation in the provision of assistance at all stages of disaster relief to be central to the facilitation of an adequate and effective response to disasters and a practical manifestation of the principle of solidarity. Even if an affected State is capable and willing to provide the required assistance, cooperation and assistance by international actors will in many cases ensure a more adequate, rapid and extensive response to disasters and an enhanced protection of affected persons.

Article 12. Offers of external assistance

1. In the event of disasters, States, the United Nations, and other potential assisting actors may offer assistance to the affected State.

2. When external assistance is sought by an affected State by means of a request addressed to another State, the United Nations, or other potential assisting actor, the addressee shall expeditiously give due consideration to the request and inform the affected State of its reply.

Commentary

(1) Draft article 12 acknowledges the interest of the international community in the protection of persons in the event of disasters, which is to be viewed as complementary to the primary role of the affected State enshrined in draft article 10. It is an expression of the principles of solidarity and cooperation, highlighted in the preamble, which underlie the whole set of draft articles on the topic, the latter principle being specifically embodied in draft articles 7 to 9.

(2) Draft article 12 is only concerned with “offers” of assistance, not with the actual “provision” thereof. Such offers, whether made unilaterally or in response to a request, are essentially voluntary and should not be construed as recognition of the existence of a legal duty to assist. Nor does an offer of assistance create for the affected State a corresponding obligation to accept it. In conformity with the principle of the sovereignty of States and the primary role of the affected State, stressed in the preamble and which inform the whole set of draft articles, an affected State may accept in whole or in part, or not accept, offers of assistance from States or non-State actors in accordance with the conditions set forth in draft article 13.

(3) Offers of assistance must be made consistent with the principles set forth in these draft articles, in particular in draft article 6. Such offers of assistance cannot be regarded as interference in the affected State’s internal affairs. This conclusion accords with the statement of the Institute of International Law in its 1989 resolution on the protection of human rights and the principle of non-intervention in internal affairs of States:

¹⁸⁹ Annex, para. 5.

¹⁹⁰ Oslo Guidelines (see footnote 30 above), para. 58.

¹⁹¹ General Assembly resolution 2625 (XXV), annex.

¹⁹² *Ibid.*

¹⁹³ *Ibid.*

¹⁹⁴ *Ibid.*

An offer by a State, a group of States, an international organization or an impartial humanitarian body such as the International Committee of the Red Cross, of food or medical supplies to another State in whose territory the life or health of the population is seriously threatened, cannot be considered an unlawful intervention in the internal affairs of that State.¹⁹⁵

(4) Draft article 12 addresses the question of offers of assistance to affected States made by those most likely to be involved in such offers after the occurrence of a disaster, namely States, the United Nations and other assisting actors. The term “other assisting actor”, qualified by the word “potential”, is defined in draft article 3, subparagraph (d), to comprise a competent intergovernmental organization or a relevant non-governmental organization or entity. The United Nations and intergovernmental organizations not only are entitled, as mandated by their constituent instruments, but are also encouraged to make offers of assistance to the affected State.

(5) Non-governmental organizations or entities may be well placed, because of their nature, location and expertise, to provide assistance in response to a particular disaster. The position of non-governmental organizations or entities in carrying out relief operations is not a novelty in international law. The Geneva Conventions for the protection of war victims already provide that, in situations of armed conflict:

An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict.¹⁹⁶

Similarly, the Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of non-international armed conflicts (Protocol II) provides that:

Relief societies located in the territory of the High Contracting Party, such as Red Cross (Red Crescent, Red Lion and Sun) organizations, may offer their services for the performance of their traditional functions in relation to the victims of the armed conflict. The civilian population may, even on its own initiative, offer to collect and care for the wounded, sick and shipwrecked.¹⁹⁷

The important contribution of non-governmental organizations or entities, working with strictly humanitarian motives, in disaster response was stressed by the General Assembly in its resolution 43/131 of 8 December 1988 on humanitarian assistance to victims of natural disasters and similar emergency situations. In that resolution, the Assembly, *inter alia*, invited all affected States to “facilitate the work of [such] organizations in implementing humanitarian assistance, in particular the supply of food, medicines and health care, for which access to victims is essential” and appealed “to all States to give their support to [those] organizations working to provide humanitarian assistance, where needed, to the victims of natural disasters and similar emergency situations”.¹⁹⁸

¹⁹⁵ *Yearbook of the Institute of International Law*, vol. 63, Part II (Session of Santiago de Compostela, 1989), p. 339, at p. 345, art. 5 (www.idi-iil.org, *Publications and Works/Resolutions*).

¹⁹⁶ See, for example, the 1949 Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, art. 3, para. 2.

¹⁹⁷ Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of non-international armed conflicts (Protocol II), art. 18, para. 1.

¹⁹⁸ Paras. 4–5.

(6) The use of the verb “may” in paragraph 1 is intended to emphasize that, in the context of offers of external assistance, what matters is the possibility open to all potential assisting actors to make an offer of assistance, regardless of their status and the legal grounds on which they can base their action.

(7) Paragraph 2 finds inspiration in article 3 (e) of the 2000 Framework Convention on civil defence assistance, according to which: “Offers of, or requests for, assistance shall be examined and responded to by recipient States within the shortest possible time.”¹⁹⁹ The paragraph aims at introducing a greater balance within the text of the draft articles as a whole, by providing a countervailing obligation on the part of States, or other potential assisting actors, when confronted with a request by an affected State for external assistance. The obligation is established in parallel to that in draft article 13, paragraph 3, namely the obligation of the affected State to make known its decision regarding an offer made to it in a timely manner. However, the obligation is formulated differently in each of the two articles in recognition that the position of an affected State, in the wake of a disaster falling within the scope of the present draft articles, is different from that of an assisting State or other assisting actor.

(8) Paragraph 2 has three components. First, the seeking of external assistance by the affected State triggers the application of the provision. While, in draft article 11, the duty on the affected State is a general duty to “seek” assistance, this paragraph deals with the scenario where specific assistance is sought by the affected State “by means of a request addressed to” the enumerated list of potential assisting actors. Such specification is important since it limits the application of the provision to specific requests, and not general appeals for assistance.

(9) Second, the provision refers to the various addressees of a request for assistance, including other States, the United Nations and other potential assisting actors, which is a cross-reference to the definition in draft article 3, subparagraph (d). The United Nations is singled out for special mention given the central role it plays in receiving requests for assistance.

(10) Third, paragraph 2 sets an obligation on the addressee or addressees of the specific request, which is structured in two parts: first, to give due consideration to the request; and, second, to inform the affected State of its or their reply thereto. Both obligations contain the term “expeditiously”, which is a reference to timeliness. The formulation of the obligation to give “due consideration to the request” is drawn from similar wording in article 19, of the articles on diplomatic protection, adopted in 2006.²⁰⁰ The word “due” is meant less in the sense of timeliness, which is already covered by the notion of expeditious, and more as a reference to giving the request careful consideration.

¹⁹⁹ See also the ASEAN Agreement, art. 4 (c) (“In pursuing the objective of this Agreement, the Parties shall ... promptly respond to a request for assistance from an affected Party”), and the South Asian Association for Regional Cooperation (SAARC) Agreement on Rapid Response to Natural Disasters, art. IV, para. 3.

²⁰⁰ General Assembly resolution 62/67 of 6 December 2007, annex; for the commentary thereto, see *Yearbook ... 2006*, vol. II (Part Two), pp. 26 *et seq.*, para. 50.

Article 13. Consent of the affected State to external assistance

1. The provision of external assistance requires the consent of the affected State.

2. Consent to external assistance shall not be withheld arbitrarily.

3. When an offer of external assistance is made in accordance with the present draft articles, the affected State shall, whenever possible, make known its decision regarding the offer in a timely manner.

Commentary

(1) Draft article 13 addresses consent of an affected State to the provision of external assistance. As a whole, it creates for affected States a qualified consent regime in the field of disaster relief operations. Paragraph 1 reflects the core principle that implementation of international relief assistance is contingent upon the consent of the affected State. Paragraph 2 stipulates that consent to external assistance shall not be withheld arbitrarily, while paragraph 3 places a duty upon an affected State to make known, whenever possible, its decision regarding an offer of external assistance in a timely manner.

(2) The principle that the provision of external assistance requires the consent of the affected State is fundamental to international law. Accordingly, paragraph 3 of the guiding principles annexed to General Assembly resolution 46/182 notes that “humanitarian assistance should be provided with the consent of the affected country and in principle on the basis of an appeal by the affected country”. The Tampere Convention stipulates that “[n]o telecommunication assistance shall be provided pursuant to this Convention without the consent of the requesting State Party”,²⁰¹ while the ASEAN Agreement notes that “external assistance or offers of assistance shall only be provided upon the request or with the consent of the affected Party”.²⁰² Recognition of the requirement of State consent to the provision of external assistance comports with the position in draft article 10, paragraph 2, that an affected State has the primary role in the direction, control, coordination and supervision of disaster relief assistance in its territory or in territory under its jurisdiction or control.

(3) The recognition, in paragraph 2, that an affected State’s right to refuse an offer is not unlimited reflects the dual nature of sovereignty as entailing both rights and obligations. This approach is reflected in paragraph 1 of draft article 10, which affirms that an affected State “has the duty to ensure the protection of persons and provision of disaster relief assistance in its territory, or in territory under its jurisdiction or control”.

(4) The Commission considers that the duty of an affected State to ensure protection and assistance to those within its territory, or in territory under its jurisdiction or control, in the event of a disaster, is aimed at preserving the life and dignity of the persons affected by the disaster

and guaranteeing the access of persons in need to humanitarian assistance. This duty is central to securing the right to life of those within an affected State’s territory, or in territory under its jurisdiction or control.²⁰³ The Human Rights Committee has interpreted the right to life as embodied in article 6 of the International Covenant on Civil and Political Rights to contain the obligation for States to adopt positive measures to protect this right.²⁰⁴ An offer of assistance that is met with refusal might thus under certain conditions constitute a violation of the right to life. The General Assembly reaffirmed in its resolutions 43/131 of 8 December 1988 and 45/100 of 14 December 1990 that “the abandonment of the victims of natural disasters and similar emergency situations without humanitarian assistance constitutes a threat to human life and an offence to human dignity”.²⁰⁵

(5) Recognition that an affected State’s discretion regarding consent is not unlimited is reflected in the Guiding Principles on Internal Displacement.²⁰⁶ The Guiding Principles, which have been welcomed by the former Commission on Human Rights and the General Assembly in unanimously adopted resolutions and described by the Secretary-General as “the basic international norm for protection” of internally displaced persons,²⁰⁷ provide:

Consent [to offers of humanitarian assistance] shall not be arbitrarily withheld, particularly when authorities concerned are unable or unwilling to provide the required humanitarian assistance.²⁰⁸

The Institute of International Law dealt twice with the question of consent in the context of humanitarian assistance. Its 1989 resolution on the protection of human rights and the principle of non-intervention in the internal affairs of States, article 5, second paragraph, states in the authoritative French text:

*Les Etats sur le territoire desquels de telles situations de détresse [où la population est gravement menacée dans sa vie ou sa santé] existent ne refuseront pas arbitrairement de pareilles offres de secours humanitaires.*²⁰⁹

In 2003, the Institute of International Law revisited this issue, stipulating in its resolution on humanitarian assistance under the heading “Duty of affected States not arbitrarily to reject *bona fide* humanitarian assistance”:

Affected States are under the obligation not arbitrarily and unjustifiably to reject a *bona fide* offer exclusively intended to provide humanitarian assistance or to refuse access to the victims. In particular, they

²⁰³ See International Covenant on Civil and Political Rights, art. 6, para. 1.

²⁰⁴ General comment No. 6 (see footnote 180 above), para. 5 (“The expression ‘inherent right to life’ cannot properly be understood in a restrictive manner, and the protection of this right requires that States adopt positive measures”).

²⁰⁵ General Assembly resolution 43/131, eighth preambular paragraph, and General Assembly resolution 45/100, sixth preambular paragraph.

²⁰⁶ E/CN.4/1998/53/Add.2, annex.

²⁰⁷ A/59/2005, para. 210.

²⁰⁸ E/CN.4/1998/53/Add.2, annex, principle 25, para. 2.

²⁰⁹ *Yearbook of the Institute of International Law*, vol. 63, Part II (see footnote 195 above), p. 345. The French text is presented in mandatory language, while the English translation reads: “States in whose territories these emergency situations exist should not arbitrarily reject such offers of humanitarian assistance.” The explanatory text, “où la population est gravement menacée dans sa vie ou sa santé”, is drawn from the first paragraph of article 5 of that resolution.

²⁰¹ Art. 4, para. 5.

²⁰² Art. 3, para. 1.

may not reject an offer nor refuse access if such refusal would endanger the fundamental human rights of the victims or would amount to a violation of the ban on starvation of civilians as a method of warfare.²¹⁰

(6) In the context of armed conflict, the Security Council has frequently called upon parties to the conflict to grant humanitarian access, and on a number of occasions it has adopted measures in relation to humanitarian relief operations.²¹¹ In response to the humanitarian crisis caused by the conflict in the Syrian Arab Republic, the Security Council has adopted a more proactive approach. In resolution 2139 (2014) of 22 February 2014, it condemned all cases of denial of humanitarian access and recalled that “arbitrary denial of humanitarian access and depriving civilians of objects indispensable to their survival, including wilfully impeding relief supply and access, can constitute a violation of international humanitarian law”.²¹² In resolution 2165 (2014) of 14 July 2014, the Security Council decided to authorize United Nations humanitarian agencies and their implementing partners to use routes across conflict lines and specified border crossings to provide humanitarian assistance to people in need, with notification by the United Nations to the Syrian authorities.²¹³

(7) The term “withheld” implies a temporal element in the determination of arbitrariness. Both the refusal of assistance, and the failure of an affected State to make known a decision in accordance with draft article 13, paragraph 3, within a reasonable time frame, may be deemed arbitrary. This view is reflected in General Assembly resolutions 43/131²¹⁴ and 45/100,²¹⁵ which each include the following preambular paragraphs:

Concerned about the [difficulties] that victims of natural disasters and similar emergency situations may experience in receiving humanitarian assistance,

Convinced that, in providing humanitarian assistance, in particular the supply of food, medicines or health care, for which access to victims is essential, rapid relief will avoid a tragic increase in [their number].

The 2000 Framework Convention on Civil Defence Assistance likewise reflects among the principles that States parties, in terms of providing assistance in the event of a disaster, undertake to respect that “[o]ffers of, or requests for, assistance shall be examined and responded to by recipient States within the shortest possible time.”²¹⁶

(8) The term “arbitrary” directs attention to the basis of an affected State’s decision to withhold consent. The determination of whether the withholding of consent is arbitrary must be made on a case-by-case basis, although as a general rule several principles can be adduced. First,

the Commission considers that withholding consent to external assistance is not arbitrary where a State is capable of providing, and willing to provide, an adequate and effective response to a disaster on the basis of its own resources. Second, withholding consent to assistance from one external source is not arbitrary if an affected State has accepted appropriate and sufficient assistance from elsewhere. Third, the withholding of consent is not arbitrary if the relevant offer is not made in accordance with the present draft articles. In particular, draft article 6 establishes that humanitarian assistance must take place in accordance with the principles of humanity, neutrality and impartiality, and on the basis of non-discrimination. Conversely, where an offer of assistance is made in accordance with the draft articles and no alternate sources of assistance are available, there would be a strong inference that a decision to withhold consent is arbitrary.

(9) In 2013, the Secretary-General requested OCHA to engage in further analysis on the issue of arbitrary withholding of consent to humanitarian relief operations.²¹⁷ According to the resulting guidance document,²¹⁸ consent is withheld arbitrarily if: (a) it is withheld in circumstances that result in the violation by a State of its obligations under international law; or (b) the withholding of consent violates the principles of necessity and proportionality; or (c) consent is withheld in a manner that is unreasonable, unjust, lacking in predictability or that is otherwise inappropriate. Even if the guidance addresses situations of armed conflict, it provides valuable insights in order to establish factors for the determination of when withholding of consent can be considered “arbitrary”. It is evident that, in fact as well as in law, situations of armed conflict differ from disasters. Nevertheless, in the context of the non-arbitrary withholding of consent, the subjacent legal issue presents itself in similar terms in both kinds of situation.

(10) An affected State’s discretion to determine the most appropriate form of assistance is an aspect of its primary role in the direction, control, coordination and supervision of disaster relief assistance under draft article 10, paragraph 2. This discretion must be exercised in good faith in accordance with an affected State’s international obligations.²¹⁹ The Commission encourages affected States to give reasons where consent to assistance is withheld. The provision of reasons is fundamental to establishing the good faith of an affected State’s decision to withhold consent. The absence of reasons may act to support an inference that the withholding of consent is arbitrary.

²¹⁰ Resolution on humanitarian assistance (see footnote 21 above), art. VIII, para. 1.

²¹¹ In relation to northern Iraq, by Security Council resolution 688 (1991) of 5 April 1991; in relation to Bosnia and Herzegovina, by resolution 770 (1992) of 13 August 1992 and resolution 781 (1992) of 9 October 1992; and in relation to Somalia, by resolution 794 (1992) of 3 December 1992.

²¹² Security Council resolution 2139 (2014) of 22 February 2014, tenth preambular para.

²¹³ Security Council resolution 2165 (2014) of 14 July 2014, para. 2.

²¹⁴ Ninth and tenth preambular paras.

²¹⁵ Eighth and ninth preambular paras.

²¹⁶ Framework Convention on civil defence assistance, article 3 (e), also quoted in para. (7) of the commentary to draft article 12.

²¹⁷ See report of the Secretary-General on the protection of civilians in armed conflict (S/2013/689), 22 November 2013, para. 80.

²¹⁸ D. Akande and E.-C. Gillard, *Oxford Guidance on the Law Relating to Humanitarian Relief Operations in Situations of Armed Conflict*, Commissioned by the United Nations Office for the Coordination of Humanitarian Affairs (University of Oxford/OCHA, 2016).

²¹⁹ See, for example, the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations (footnote 82 above), noting, *inter alia*, that “[e]very State has the duty to fulfil in good faith” obligations assumed by it “in accordance with the Charter of the United Nations”, “obligations under the generally recognized principles and rules of international law” and “obligations under international agreements valid under the generally recognized principles and rules of international law” (para. 1).

(11) In this vein, it is generally accepted in international law that good faith has, *inter alia*, the purpose of limiting the admissible exercise of rights and discretion. The International Court of Justice and international arbitral tribunals have in a number of cases examined this function of good faith.²²⁰ Thus, good faith serves as an outer limit of sovereignty and the exercise of discretion, both in cases where the decision of a State necessitates the taking into account of political factors, as well as when the performance of treaty obligations is at stake. *A fortiori* this is the case when the treaty provision in question imposes positive obligations to act in a certain manner, as for example in article 6 of the International Covenant on Civil and Political Rights referred to above.

(12) In paragraph 3, the Commission opted for the phrase “make known its decision regarding the offer in a timely manner” to give a certain degree of flexibility to affected States in determining how best to respond to offers of assistance. It is recognized that a rigid duty formally to respond to every offer of assistance may place too high a burden on affected States in disaster situations. This is balanced by the indication that the decision ought to be timely, so as to allow the actor or actors offering the external assistance the opportunity to react appropriately. The Commission considers the current formulation to encompass a wide range of possible means of response, including a general publication of the affected State’s decision regarding all offers of assistance. The paragraph applies to both situations where an affected State accepts assistance and situations in which an affected State withholds its consent.

(13) The Commission considers the phrase “whenever possible” to have a restricted scope. The phrase directs attention to extreme situations where a State is incapable of forming a view regarding consent due to the lack of a functioning Government or circumstances of equal incapacity. The phrase is thus meant to convey the sense of general flexibility on which the provision is built. The phrase also circumscribes the applicability of the expression “in a timely manner”. The Commission is further of the view that an affected State is capable of making its decision known in the manner it feels most appropriate if the exceptional circumstances outlined in this paragraph are not applicable.

Article 14. Conditions on the provision of external assistance

The affected State may place conditions on the provision of external assistance. Such conditions shall be in accordance with the present draft articles, applicable rules of international law and the national law of the affected State. Conditions shall take into account the identified needs of the persons affected by disasters and the quality of the assistance. When formulating conditions, the affected State shall indicate the scope and type of assistance sought.

²²⁰ *Admission of a State to the United Nations (Charter, Art. 4), Advisory Opinion, I.C.J. Reports 1948, p. 57, at pp. 63–64; Case concerning rights of nationals of the United States of America in Morocco, Judgment of 27 August 1952, I.C.J. Reports 1952, p. 176, at p. 212; Certain Questions of Mutual Assistance in Criminal Matters (Djibouti v. France), Judgment, I.C.J. Reports 2008, p. 177, at p. 229, para. 145; and The North Atlantic Coast Fisheries Case (Great Britain, United States of America), award of 7 September 1910, UNRIAA, vol. XI (Sales No. 61.V.4), p. 167, at p. 188.*

Commentary

(1) Draft article 14 addresses the setting of conditions by the affected State on the provision of external assistance in its territory or in territory under its jurisdiction or control. It affirms the right of the affected State to place conditions on such assistance, in accordance with the present draft articles and applicable rules of international and national law. The draft article indicates how such conditions are to be determined. The identified needs of the persons affected by disasters and the quality of the assistance guide the nature of the conditions. It also requires the affected State, when formulating conditions, to indicate the scope and type of assistance sought.

(2) The draft article furthers the principle enshrined in draft article 10, which recognizes the primary role of the affected State in the direction, control, coordination and supervision of disaster relief assistance in its territory, or in territory under its jurisdiction or control. By using the phrasing “may place conditions”, which accords with the voluntary nature of the provision of assistance, draft article 14 acknowledges the right of the affected State to impose conditions for such assistance, preferably in advance of a disaster’s occurrence but also in relation to specific forms of assistance by particular actors during the response phase. The Commission makes reference to “external” assistance because the scope of the provision covers the assistance provided by third States or other assisting actors, but not assistance provided from internal sources, such as domestic non-governmental organizations.

(3) The draft article places limits on an affected State’s right to condition assistance, which must be exercised in accordance with applicable rules of law. The second sentence outlines the legal framework within which conditions may be imposed, which comprises “the present draft articles, applicable rules of international law and the national law of the affected State”. The Commission included the phrase “the present draft articles” to stress that all conditions must be in accordance with the principles reflected in the draft articles, there being no need to repeat an enumeration of the humanitarian and legal principles already addressed elsewhere, notably, sovereignty, good faith and the humanitarian principles dealt with in draft article 6, that is, humanity, neutrality, impartiality and non-discrimination.

(4) The reference to national law emphasizes the authority of domestic laws in the particular affected area. It does not, however, imply the prior existence of national law (internal law) addressing the specific conditions imposed by an affected State in the event of a disaster. Although there is no requirement of specific national legislation before conditions can be fixed, they must be in accordance with whatever relevant domestic legislation is in existence in the affected State, as envisaged in draft article 15.

(5) The affected State and the assisting actor must both comply with the applicable rules of national law of the affected State. The affected State may only impose conditions that are in accordance with such laws and the assisting actor must comply with such laws at all times throughout the duration of assistance. This reciprocity is

not made explicit in the draft article, since it is inherent in the broader principle of respect for national law. Existing international agreements support the affirmation that assisting actors must comply with national law. The ASEAN Agreement, for example, provides in article 13, paragraph 2, that “[m]embers of the assistance operation shall respect and abide by all national laws and regulations.” Several other international agreements also require assisting actors to respect national law²²¹ or to act in accordance with the law of the affected State.²²²

(6) The duty of assisting actors to respect national law implies the obligation to require that: members of the relief operation observe the national laws and regulations of the affected State;²²³ the head of the relief operation take all appropriate measures to ensure the observance of the national laws and regulations of the affected State;²²⁴ and assisting personnel cooperate with national authorities.²²⁵ The obligation to respect the national law and to cooperate with the authorities of the affected State accords with the overarching principle of the sovereignty of the affected State and the principle of cooperation.

(7) The right to condition assistance is the recognition of a right of the affected State to deny unwanted or unneeded assistance, and to determine what and when assistance is appropriate. The third sentence of the draft article gives an explanation of what is required of conditions set by affected States, namely, that they must “take into account” not only the identified needs of the persons affected by disasters but also the quality of the assistance. Nevertheless, the phrase “take into account” does not denote that conditions relating to the identified needs and the quality of assistance are the only ones that States can place on the provision of external assistance.

(8) The Commission included the word “identified” to signal that the needs must be apparent at the time conditions are set and that needs can change as the situation on the ground changes and more information becomes available. It implies that conditions should not be arbitrary, but be formulated with the goal of protecting those affected by a disaster. “Identified” indicates that there must be some process by which needs are made known, which can take the form of a needs assessment, preferably also in consultation with assisting actors. However, the procedure to identify needs is not predetermined and it is left to the affected State to follow the most suitable

²²¹ See, for example, the Inter-American Convention to Facilitate Disaster Assistance, arts. VIII and XI, para. (d), and the Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency, art. 8, para. 7.

²²² *Ibid.*; and the Agreement among the Governments of the Participating States of the Black Sea Economic Cooperation (BSEC) on Collaboration in Emergency Assistance and Emergency Response to Natural and Man-made Disasters (1998), arts. 5 and 9.

²²³ See, for example, the Convention on the Transboundary Effects of Industrial Accidents, 17 March 1992, annex X, para. 1 (“The personnel involved in the assisting operation shall act in accordance with the relevant laws of the requesting Party”).

²²⁴ See, for example, the ASEAN Agreement, art. 13, para. 2 (“The Head of the assistance operation shall take all appropriate measures to ensure observance of national laws and regulations”).

²²⁵ See, for example, MacAlister-Smith (footnote 73 above), para. 22 (b) (“At all times during humanitarian assistance operations the assisting personnel shall ... [c]ooperate with the designated competent authority of the receiving State”).

one. This is a flexible requirement that may be satisfied according to the circumstances of a disaster and the capacities of the affected State. In no instance should identifying needs hamper or delay prompt and effective assistance. The provision of the third sentence is meant to “meet the essential needs of the persons concerned” in the event of a disaster, as expressed in draft article 2, and should be viewed as further protection of the rights and needs of persons affected by disasters. The reference to “needs” in both draft articles is broad enough to encompass the special needs of women, children, the elderly, persons with disabilities, and vulnerable or disadvantaged persons and groups.

(9) The inclusion of the word “quality” is meant to ensure that affected States have the right to reject assistance that is not necessary or that may be harmful. Conditions may include restrictions based on, *inter alia*, safety, security, nutrition and cultural appropriateness.

(10) Draft article 14 contains a reference to the “scope and type of assistance sought”. This is in line with previous international agreements that contain a similar provision.²²⁶ By the use of the words “shall indicate” the draft article puts the onus on the affected State to specify the type and scope of assistance sought when placing conditions on assistance. At the same time, it implies that once fixed, the scope and type of such assistance will be made known to the assisting actors that may provide it, which would facilitate consultations. This will increase the efficiency of the assistance process and will ensure that appropriate assistance reaches those in need in a timely manner.

(11) The Commission considered several possibilities for the proper verb to modify the word “conditions”. The Commission’s decision to use two different words, “place” and “formulate”, is a stylistic choice that does not imply differentiation of meaning between the two uses.

Article 15. Facilitation of external assistance

1. The affected State shall take the necessary measures, within its national law, to facilitate the prompt and effective provision of external assistance, in particular regarding:

(a) relief personnel, in fields such as privileges and immunities, visa and entry requirements, work permits, and freedom of movement; and

(b) equipment and goods, in fields such as customs requirements and tariffs, taxation, transport, and the disposal thereof.

2. The affected State shall ensure that its relevant legislation and regulations are readily accessible, to facilitate compliance with national law.

Commentary

(1) Draft article 15 addresses the facilitation of external assistance. This includes ensuring that national law

²²⁶ See, for example, the Tampere Convention, article 4, para. 2) (“A State Party requesting telecommunication assistance shall specify the scope and type of assistance required ...”).

accommodates the provision of prompt and effective assistance. To that effect, it further requires, in paragraph 2, the affected State to ensure that its relevant legislation and regulations are readily accessible to assisting actors.

(2) The draft article provides that affected States “shall take the necessary measures” to facilitate the prompt and effective provision of assistance. The phrase “take the necessary measures, within its national law” may include, *inter alia*, legislative, executive or administrative measures. Measures 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. It can also extend to practical measures designed to facilitate external assistance, provided that they are not prohibited by national law. In formulating the draft article in such a manner, the Commission encourages States to allow for temporary non-applicability of their national laws that might unnecessarily hamper assistance in the event of disasters and for appropriate provisions on facilitation to be included within their national law so as not to create any legal uncertainty in the critical period following a disaster when such emergency provisions become necessary. Certain facilitation measures may also remain necessary even after the need for assistance has passed, in order to guarantee an efficient and appropriate withdrawal, handover, exit and/or re-export of relief personnel, equipment and unused goods upon termination of external assistance. This is emphasized by the use of the expression “disposal thereof” in paragraph 1 (b). While the focus of draft article 15 is on the affected State, the facilitation for the benefit of persons affected by disasters implies that a transit State will likely take the necessary measures, within its national law, to ensure an effective provision of external assistance.

(3) The draft article outlines examples of areas of assistance in which national law should enable the taking of appropriate measures. The words “in particular” before the examples indicate that this is not an exhaustive list, but rather an illustration of the various areas that may need to be addressed by national law to facilitate prompt and effective assistance. Guidance on such measures can be found in relevant instruments, such as the 2007 IDRL Guidelines²²⁷ and the related 2013 Model Act for the Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance.²²⁸

(4) Subparagraph (a) envisages facilities for relief personnel. The areas addressed in the subparagraph provide guidance on how personnel can be better facilitated. Granting of privileges and immunities to assisting actors is an important measure included in many international agreements to encourage the help of foreign aid workers.²²⁹ Waiver or expedition of visa and entry requirements and work permits is necessary to ensure prompt

²²⁷ See footnote 20 above.

²²⁸ Elaborated by IFRC, OCHA and the Inter-Parliamentary Union, 2013.

²²⁹ See, for example, the Framework Convention on civil defence assistance, art. 4, para. 5 (“The Beneficiary State shall, within the framework of national law, grant all privileges, immunities, and facilities necessary for carrying out the assistance ...”).

assistance.²³⁰ Without a special regime in place, workers may be held up at borders or be unable to work legally during the critical days after a disaster, or forced to exit and re-enter continually so as not to overstay their visas. Freedom of movement means the ability of workers to move freely within a disaster area in order to properly perform their specifically agreed functions.²³¹ Unnecessary restriction of movement of relief personnel inhibits workers’ ability to provide flexible assistance.

(5) Subparagraph (b) addresses equipment and goods, as defined in draft article 3, subparagraph (g), which encompasses supplies, tools, machines, specially trained animals, foodstuffs, drinking water, medical supplies, means of shelter, clothing, bedding, vehicles, telecommunications equipment and other objects for disaster relief assistance. The Commission intends that this category also includes search dogs, which are normally regarded as goods and equipment, rather than creating a separate category for animals. Goods and equipment are essential to the facilitation of effective assistance and national laws must be flexible to address the needs of persons affected by disasters and to ensure prompt delivery. Customs requirements and tariffs, as well as taxation, should be waived or lessened in order to reduce costs and prevent delay in the provision of goods.²³² Equipment and goods that are delayed can quickly lose their usefulness and normal procedures in place aiming at protecting the economic interests of a State can become an obstacle in connection with aid equipment that can save lives or provide needed relief. States can therefore reduce, prioritize or waive inspection requirements at borders with regard to equipment and goods related to assisting States and other assisting actors. National regulation can also address overflight and landing rights, tools, minimization of documentation required for import and transit of equipment and goods and temporary recognition of foreign registration of vehicles. Subparagraph (b) does not provide an exhaustive list of potential measures aimed at facilitating external assistance in relation to equipment and goods. For instance, given the crucial role of telecommunications in emergency situations, it will often be necessary to reduce or limit regulations restricting the use of telecommunication equipment or of the radio-frequency spectrum, as envisaged by the 1998 Tampere Convention.

(6) The second paragraph of the draft article requires that all relevant legislation and regulations be readily accessible to assisting actors. By using the words “readily accessible”, what is required is ease of access to such laws, including, when necessary, their translation into

²³⁰ The League of Red Cross Societies (now IFRC) has long noted that “the obtaining of visas for disaster and relief delegates and teams remains a time-consuming procedure which often delays the dispatch of such delegates and teams”, thus delaying the vital assistance the affected State has a duty to provide (see resolution No. 13 adopted by the League of Red Cross Societies Board of Governors at its 33rd session, Geneva, 28 October to 1 November 1975).

²³¹ See M. El Baradei, *et al.*, *Model Rules for Disaster Relief Operations*, Policy and Efficacy Studies No. 8 (United Nations publication, Sales No. E.82.XV.PE/8), annex A, rule 16, which states that an affected State must permit assisting personnel “freedom of access to, and freedom of movement within, disaster stricken areas that are necessary for the performance of their specifically agreed functions”.

²³² This is stressed in various international treaties. See, for example, the Tampere Convention, article 9, para. 4, and the ASEAN Agreement, article 14 (b).

other languages, without creating the burden on the affected State to provide this information separately to all assisting actors. This paragraph also confirms the importance of States introducing domestic regulations concerning the facilitation of external assistance in advance of disasters, as envisaged in draft article 9, paragraph 1.

Article 16. Protection of relief personnel, equipment and goods

The affected State shall take the appropriate measures to ensure the protection of relief personnel and of equipment and goods present in its territory, or in territory under its jurisdiction or control, for the purpose of providing external assistance.

Commentary

(1) Draft article 16 establishes the obligation for the affected State to take the measures that would be appropriate in the circumstances to ensure the protection of relief personnel, equipment and goods involved in the provision of external assistance. Taking into account the often chaotic situations arising from disasters, the security concerns for such individuals and objects might create obstacles for the carrying out of activities aimed at giving support to the victims, thus reducing the likelihood that their essential needs would be properly satisfied.

(2) This draft article, therefore, complements draft article 15 in establishing a coherent set of obligations whereby the affected State is expected to perform a series of activities that are necessary in order to guarantee to assisting States and other assisting actors the possibility of delivering efficient and prompt assistance. Nevertheless, the two provisions have a somewhat different focus and approach. Draft article 15 highlights the need for the affected State to establish a domestic legal order capable of facilitating the external assistance, mainly through the adoption of a series of legislative and regulatory actions. On the other hand, the question of the protection of relief personnel and their equipment and goods has traditionally—and for compelling policy reasons owing to its nature and the kind of measures to be adopted—been dealt with as a distinct matter, deserving of its own separate treatment, as the present draft article does.

(3) The measures to be adopted by the affected State may vary in content and can imply different forms of State conduct due to the context-driven nature of the obligation concerned. In particular, the flexibility inherent in the concept of “appropriate measures” suggests that the affected State may assume different obligations depending on the actors involved in potential threats to relief personnel, equipment and goods.

(4) A preliminary requirement for the affected State is to prevent its organs from adversely affecting relief activities. In this case, the duty imposed on the affected State is not to cause harm to the personnel, equipment and goods involved in external assistance through acts carried out by its organs.

(5) Secondly, draft article 16 contemplates a series of measures to be adopted to prevent detrimental activities caused by non-State actors aimed, for instance, at profiting from the volatile security conditions that may ensue

from disasters in order to obtain illicit gains from criminal activities directed against disaster relief personnel, equipment and goods. The affected State is not expected to succeed, whatever the circumstances, in preventing the commission of harmful acts but rather to endeavour to attain the objective sought by the relevant obligation. In particular, the wording “appropriate measures” allows a margin of discretion to the affected State in deciding what actions to take in this regard. It requires the State to act in a diligent manner in seeking to avoid the harmful events that may be caused by non-State actors. Measures to be taken by States in the realization of their best efforts to achieve the expected objective are context-dependent. Consequently, draft article 16 does not list the means to achieve the result aimed at, as this obligation can assume a dynamic character according to the evolving situation.

(6) Diverse circumstances might be relevant to evaluate the appropriateness of the measures to be taken in a disaster situation in implementation of this obligation. These include the difficulties that a State might encounter when attempting to perform its regular activities, due to the unruly situation created by the magnitude of the disaster and the deterioration of its economic situation, and the extent of the resources at the disposal of the concerned State, which might have been seriously affected by the disaster, as well as its capacity to exercise control in some areas involved in the disaster. The same applies to the security conditions prevailing in the relevant area of operations and the attitude and behaviour of the humanitarian actors involved in relief operations. In fact, even if external actors are requested to consult and cooperate with the affected State on matters of protection and security, they might disregard the directive role attributed to the local authorities, thus increasing the possibility of their being faced with security risks. Furthermore, if harmful acts are directed against relief personnel, equipment and goods, the affected State shall address them by exercising its inherent competence to repress crimes committed within the area on which a disaster occurs.

(7) International humanitarian actors can themselves contribute to the realization of the goal sought by adopting, in their own planning and undertaking of operations, a series of mitigation measures geared to reducing their vulnerability to security threats. This may be achieved, for instance, through the elaboration of proper codes of conduct, training activities, and furnishing appropriate information about the conditions under which their staff are called upon to operate and the standards of conduct they are required to meet. In any event, the adoption of such mitigating measures should not interfere with the taking of autonomous measures by the affected State.

(8) At the same time, it must be emphasized that security risks should be evaluated having in mind the character of relief missions and the need to guarantee to victims an adequate and effective response to a disaster. Draft article 16 should not be misinterpreted as entailing the creation of unreasonable and disproportionate hurdles for relief activities. As already emphasized with regard to draft article 15, the measures that, based on security concerns, may be adopted to restrict the movement of relief personnel should not result in unnecessarily inhibiting the capacity of these actors to provide assistance to the victims of disasters.

(9) Similarly, the possibility of resorting to armed escorts in disaster relief operations to dispel safety concerns should be strictly assessed according to the best practices developed in this area by the main humanitarian actors. Particular attention is drawn to the 2013 Inter-Agency Standing Committee Non-Binding Guidelines on the Use of Armed Escorts for Humanitarian Convoys,²³³ which are designed to assist relevant actors in evaluating, in an appropriate manner, the taking of such a sensitive course of action. As explained in that document, humanitarian convoys will not, as a general rule, use armed escorts unless exceptional circumstances are present that make the use of armed escorts necessary. In order for the exception to be adopted, the consequences of and the possible alternatives to the use of armed escorts should be considered by the relevant actors, especially taking into account that the security concerns that may prevail in disaster situations may be far less serious than those present in other scenarios.

(10) Draft article 16 provides protection for “relief personnel, equipment and goods”, that is, the pertinent persons and objects qualified as such in draft article 3, subparagraphs (f) and (g), and involved in providing external assistance. As emphasized in other provisions of the current draft articles, mainly draft articles 10 and 13, external assistance is contingent upon the consent of the affected State, which has the primary role in the direction, control, coordination and supervision of such activities. Therefore, once the affected State has requested assistance or has accepted offers submitted by assisting States, it shall endeavour to guarantee the protection prescribed in draft article 16.

(11) Such a comprehensive approach is relevant for the proper fulfilment of the obligation enshrined in draft article 16. Domestic authorities are best placed to assure a proper safety framework for the performance of relief activities. In particular, they are requested to evaluate the security risks that might be incurred by international relief personnel, to cooperate with them in dealing with safety issues and to coordinate the activities of external actors, taking into account those concerns.

(12) In accordance with draft article 3, subparagraph (f), the relief personnel that would potentially benefit from draft article 16 may belong to either the civilian or military personnel sent, as the case may be, by an assisting State or other assisting actor, namely a competent inter-governmental organization, or a relevant non-governmental organization or entity, providing assistance to an affected State with its consent. All these categories are, thus, pertinent regarding the application of draft article 16. The reference to the term “external assistance” reflects the position, also affirmed in the commentary to draft article 14,²³⁴ that the articles only regulate the activities of actors that are external to the affected State.

(13) Equipment and goods, as defined in draft article 3, subparagraph (g), relating to the activities of relief personnel, likewise benefit from the application of draft

article 16. Being at the disposal of assisting States or other assisting actors, equipment and goods will be covered by the application of draft article 16 independently from their origin. These objects could also be directly acquired in the domestic market of the affected State. The wording “present in its territory, or in territory under its jurisdiction or control” is intended to clarify this aspect.

Article 17. Termination of external assistance

The affected State, the assisting State, the United Nations, or other assisting actor may terminate external assistance at any time. Any such State or actor intending to terminate shall provide appropriate notification. The affected State and, as appropriate, the assisting State, the United Nations, or other assisting actor shall consult with respect to the termination of external assistance and the modalities of termination.

Commentary

(1) Draft article 17 deals with the question of termination of external assistance. The provision comprises three sentences. The first sentence confirms the basic right of the actors concerned, namely the affected State, the assisting State, the United Nations, or other assisting actor, to terminate external assistance at any time. The second sentence sets out the requirement that parties intending to terminate assistance provide appropriate notification. The third sentence concerns the requirement that the affected State and, as appropriate, the assisting State, the United Nations, or other assisting actor consult each other as regards the termination of external assistance, including the modalities of such termination. It is understood that the reference to termination of assistance includes both whole or partial termination. An express reference to the United Nations among the potential assisting actors has also been made in draft article 17, given its central role in the provision of relief assistance.

(2) When an affected State accepts an offer of assistance, it retains control over the duration for which that assistance will be provided. Draft article 10, paragraph 2, explicitly recognizes that the affected State has the primary role in the direction, control, coordination and supervision of disaster relief assistance in its territory. For its part, draft article 13 requires the consent of the affected State to external assistance, with the caveat that consent shall not be withheld arbitrarily. The combined import of the foregoing provisions is that the affected State can withdraw consent, thereby terminating external assistance.

(3) Draft article 17 does not recognize the right of only the affected State to unilaterally terminate assistance. Instead, the Commission acknowledges that assisting States, the United Nations and other assisting actors may themselves need to terminate their assistance activities. Draft article 17 thus preserves the right of any party to terminate the assistance being provided.

(4) Draft article 17 should be read in the light of the purpose of the draft articles, as indicated in draft article 2. Accordingly, decisions regarding the termination of assistance are to be made taking into consideration the needs

²³³ “IASC Non-Binding Guidelines on the Use of Armed Escorts for Humanitarian Convoys”, endorsed by the Inter-Agency Standing Committee on 27 February 2013.

²³⁴ See para. (2) of the commentary to draft article 14 above.

of the persons affected by disaster, namely, whether and how far such needs have been met so that the termination of external assistance does not adversely impact persons affected by a disaster, as a premature decision to terminate assistance could be a setback for recovery.

(5) The Commission anticipates that termination may become necessary for a variety of reasons and at different stages during the provision of assistance. The relief operations may reach a stage where either the affected State or one or more of the assisting actors feel they must cease operations. Circumstances leading to termination may include instances in which the resources of an assisting State or other assisting actor are depleted or where the occurrence of another disaster makes the diversion of resources necessary. In a similar vein, affected States ought to be able to terminate assistance that had become irrelevant or had deviated from the original offers. Draft article 17 is flexible, allowing for the adjustment of the duration of assistance according to the circumstances, while implying that parties should consult in good faith. Draft article 17 is drafted in bilateral terms, but it does not exclude the scenario of multiple assisting actors providing external assistance.

(6) In the Commission's 1989 draft articles on the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier, article 9, paragraph 2, states that "[t]he diplomatic courier may not be appointed from among persons having the nationality of the receiving State except with the consent of that State, which may be withdrawn at any time".²³⁵ According to the corresponding commentary, "[t]he words 'at any time' are not intended to legitimize any arbitrary withdrawal of consent".²³⁶

(7) The second sentence establishes a requirement of notification by the party intending to terminate external assistance. Appropriate notification is necessary to ensure a degree of stability in the situation, so that no party is adversely affected by an abrupt termination of assistance. The provision is drafted flexibly so as to anticipate notification before, during or after the consultation process. No procedural constraints have been placed on the notification process. However, notification should be "appropriate" according to the circumstances, including the form and timing, preferably early, of the notification.

(8) The requirement to consult, in the third sentence, reflects, as stressed in the preamble, the spirit of solidarity and cooperation implicit throughout the draft articles and the principle of cooperation enshrined in draft articles 7 and 8. The word "modalities" refers to the procedures to be followed in terminating assistance. Even though termination on a mutual basis may not always be feasible, consultation in relation to the modalities would enable the relevant parties to facilitate an amicable and efficient termination. The reference to the term "as appropriate" clarifies that the anticipated consultation takes place between the affected State, on the one hand, and, on the other hand, any other actor (whether an assisting State, the United Nations or other assisting actor) providing the assistance.

Article 18. Relationship to other rules of international law

1. The present draft articles are without prejudice to other applicable rules of international law.

2. The present draft articles do not apply to the extent that the response to a disaster is governed by the rules of international humanitarian law.

Commentary

(1) Draft article 18 deals with the relationship between the draft articles and other rules of international law. It seeks to clarify the way in which the draft articles interact with certain rules of international law that either deal with the same subject matter as the draft articles or are not directly concerned with disasters but would nonetheless apply in situations covered by the draft articles.

(2) The reference to "other rules" in the title aims at safeguarding the continued application of existing obligations regarding matters covered by the present draft articles. The formulation "other applicable rules of international law", in paragraph 1, is intentionally flexible, without referring to such other rules as being "special" in relation to the draft articles, since that may or may not be the case depending on their content.

(3) Paragraph 1 is meant to cover different forms of "other applicable rules of international law". Those include, in particular, more detailed rules enshrined in treaties the scope of which falls *ratione materiae* within that of the present draft articles (for example, regional or bilateral treaties on mutual assistance in case of disasters) as well as those included in treaties devoted to other matters but which contain specific rules addressing disaster situations.²³⁷

(4) This draft article also deals, in paragraph 1, with the interaction between the present draft articles and rules of international law that are not directly concerned with disasters, but that nonetheless may be applied in the event of disasters. Examples would be provisions concerning the law of treaties—in particular, those related to supervening impossibility of performance and fundamental change of circumstances—as well as the rules on the responsibility of States and international organizations and the responsibility of individuals. The provision confirms that such a category of rules is not displaced by the present draft articles.

(5) The "without prejudice" clause in draft article 18 also applies to the rules of customary international law. In fact, the draft articles do not cover all the issues that may be relevant in the event of disasters. Moreover, the draft articles do not intend to preclude the further development of rules of customary international law in this field. As such, the draft article is inspired by the penultimate preambular paragraph of the Vienna Convention on the Law of Treaties of 1969, which states that "the rules

²³⁵ *Yearbook ... 1989*, vol. II (Part Two), p. 21, para. 72.

²³⁶ *Ibid.*, p. 22, para. (4) of the commentary to draft art. 9.

²³⁷ See, for example, section 5, sub-section F, of the annex to the 1965 Convention on Facilitation of International Maritime Traffic (modified in 1977).

of customary international law will continue to govern questions not regulated by the provisions of the present Convention”.

(6) In addition, it should be borne in mind that rules of general application not directly concerned with disasters might also be contained in treaty law. The Commission therefore considered that the wording “other applicable rules of international law” was the most appropriate to indicate all rules of international law that might interact with the draft articles, for it expresses the idea that the “without prejudice” clause in draft article 18 applies to all categories of international law rules.

(7) Paragraph 2 deals specifically with the relationship between the draft articles and international humanitarian law. The provision is formulated in a manner intended to clarify the relationship by giving precedence to the rules of international humanitarian law.

(8) The Commission considered including an express exclusion of the applicability of the draft articles in situations of armed conflict as a further element in the definition of “disaster” (draft article 3, subparagraph (a)), so as to avoid any interpretation that, for purposes of the draft articles, armed conflict would be covered to the extent that the threshold criteria in draft article 3 were satisfied. Such an approach was not followed since a categorical

exclusion could be counterproductive, particularly in situations of “complex emergencies” where a disaster occurs in an area where there is an armed conflict. A blank exclusion of the applicability of the draft articles because of the coexistence of an armed conflict would be detrimental to the protection of the persons affected by the disaster, especially when the onset of the disaster predated the armed conflict.²³⁸

(9) In such situations, the rules of international humanitarian law shall be applied as *lex specialis*, whereas the rules contained in the present draft articles would continue to apply “to the extent” that legal issues raised by a disaster are not covered by the rules of international humanitarian law. The present draft articles would thus contribute to filling legal gaps in the protection of persons affected by disasters during an armed conflict while international humanitarian law shall prevail in situations regulated by both the draft articles and international humanitarian law. In particular, the present draft articles are not to be interpreted as representing an obstacle to the ability of humanitarian organizations to conduct, in times of armed conflict (be it international or non-international) even when occurring concomitantly with disasters, their humanitarian activities in accordance with the mandate assigned to them by international humanitarian law.

²³⁸ See para. (10) of the commentary to draft article 3 above.



General Assembly

Distr.: General
19 December 2016

Seventy-first session
Agenda item 78

Resolution adopted by the General Assembly on 13 December 2016

[on the report of the Sixth Committee (A/71/509)]

71/141. Protection of persons in the event of disasters

The General Assembly,

Having considered chapter IV of the report of the International Law Commission on the work of its sixty-eighth session,¹ which contains the draft articles on the protection of persons in the event of disasters,²

Noting that the Commission decided to recommend to the General Assembly the elaboration of a convention on the basis of the draft articles,³

Emphasizing the continuing importance of the codification and progressive development of international law, as referred to in Article 13, paragraph 1 (a), of the Charter of the United Nations,

Noting that the subject of the protection of persons in the event of disasters is of major importance in the relations of States,

Taking into account views and comments expressed in the Sixth Committee on chapter IV, on the protection of persons in the event of disasters, of the report of the Commission,

1. *Expresses its appreciation* to the International Law Commission for its continuing contribution to the codification and progressive development of international law;

2. *Takes note* of the draft articles on the protection of persons in the event of disasters, presented by the Commission,² and invites Governments to submit comments concerning the recommendation by the Commission to elaborate a convention on the basis of these articles;³

3. *Decides* to include in the provisional agenda of its seventy-third session an item entitled "Protection of persons in the event of disasters".

*62nd plenary meeting
13 December 2016*

¹ *Official Records of the General Assembly, Seventy-first Session, Supplement No. 10 (A/71/10).*

² *Ibid.*, para. 48.

³ *Ibid.*, para 6.

