

## Chapter VII

### PROTECTION OF PERSONS IN THE EVENT OF DISASTERS

#### A. Introduction

290. The Commission, at its fifty-ninth session (2007), decided to include the topic “Protection of persons in the event of disasters” in its programme of work and appointed Mr. Eduardo Valencia-Ospina as Special Rapporteur. At the same session, the Commission requested the Secretariat to prepare a background study, initially limited to natural disasters, on the topic.<sup>1329</sup>

291. At the sixtieth session (2008), the Commission had before it the preliminary report of the Special Rapporteur,<sup>1330</sup> tracing the evolution of the protection of persons in the event of disasters and identifying the sources of the law on the topic, as well as previous efforts towards codification and development of the law in the area. It also presented in broad outline the various aspects of the general scope with a view to identifying the main legal questions to be covered and advancing tentative conclusions without prejudice to the outcome of the discussion that the report aimed to trigger in the Commission. The Commission also had before it a memorandum by the Secretariat,<sup>1331</sup> focusing primarily on natural disasters and providing an overview of existing legal instruments and texts applicable to a variety of aspects of disaster prevention and relief assistance, as well as of the protection of persons in the event of disasters.

292. At its sixty-first session in 2009, the Commission considered the second report of the Special Rapporteur<sup>1332</sup> analysing the scope of the topic *ratione materiae*, *ratione personae* and *ratione temporis*, and issues relating to the definition of “disaster” for purposes of the topic, as well as undertaking a consideration of the basic duty to cooperate. The report contained proposals for draft articles 1 (Scope), 2 (Definition of disaster) and 3 (Duty to cooperate). The Commission also had before it written replies submitted by the Office for the Coordination of Humanitarian Affairs of the United Nations Secretariat and the International Federation of the Red Cross and Red Crescent Societies (IFRC) to the questions addressed to them by the Commission in 2008.

293. At its 3019th meeting, on 10 July 2009, the Commission referred draft articles 1 to 3 to the Drafting Committee, on the understanding that if no agreement was possible on draft article 3, it could be referred back to the Plenary with a view to establishing a working group to discuss the draft article. At its 3029th meeting,

on 31 July 2009, the Commission received the report of the Drafting Committee and took note of draft articles 1 to 5, as provisionally adopted by the Drafting Committee.<sup>1333</sup>

#### B. Consideration of the topic at the present session

294. At the present session, the Commission had before it the third report of the Special Rapporteur (A/CN.4/629) providing an overview of the views of States on the work undertaken by the Commission thus far, a consideration of the principles that inspire the protection of persons in the event of disasters, in its aspect related to persons in need of protection, and a consideration of the question of the responsibility of the affected State. Proposals for the following three further draft articles were made in the report: draft articles 6 (Humanitarian principles in disaster response), 7 (Human dignity) and 8 (Primary responsibility of the affected State).

295. The Commission considered the third report at its 3054th to 3057th meetings, from 1 to 4 June 2010.

296. At its 3057th meeting, on 4 June 2010, the Commission referred draft articles 6 to 8 to the Drafting Committee.

297. At its 3067th meeting, on 20 July 2010, the Commission received the report of the Drafting Committee and took note of draft articles 6 to 9, as provisionally adopted by the Drafting Committee (A/CN.4/L.776).<sup>1334</sup>

298. The Commission adopted the report of the Drafting Committee on draft articles 1 to 5, which had been

<sup>1333</sup> A/CN.4/L.758 (mimeographed; available on the Commission’s website, documents of the sixty-first session).

<sup>1334</sup> The draft articles provisionally adopted by the Drafting Committee read as follows:

“Article 6. *Humanitarian principles in disaster response*

“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. *Human dignity*

“In responding to disasters, States, competent intergovernmental organizations and relevant non-governmental organizations shall respect and protect the inherent dignity of the human person.”

“Article 8. *Human rights*

“Persons affected by disasters are entitled to respect for their human rights.”

“Article 9. *Role of the affected State*

“1. The affected State, by virtue of its sovereignty, has the duty to ensure the protection of persons and provision of disaster relief and assistance on its territory.

“2. The affected State has the primary role in the direction, control, coordination and supervision of such relief and assistance.”

<sup>1329</sup> *Yearbook ... 2007*, vol. II (Part Two), paras. 375 and 386.

<sup>1330</sup> *Yearbook ... 2008*, vol. II (Part One), document A/CN.4/598.

<sup>1331</sup> A/CN.4/590 and Add.1–3 (mimeographed; available on the Commission’s website, documents of the sixtieth session).

<sup>1332</sup> *Yearbook ... 2009*, vol. II (Part One), document A/CN.4/615.

considered at the Commission's previous session, at the 3057th meeting, held on 4 June 2010 (sect. C.1 below).

299. At its 3072nd meeting, on 2 August 2010, the Commission adopted commentaries to draft articles 1 to 5 (sect. C.2 below).

#### 1. INTRODUCTION BY THE SPECIAL RAPPORTEUR OF THE THIRD REPORT

300. The Special Rapporteur explained that his third report followed from the debate held on his second report. In particular, he recalled that it had been recommended that he focus on two issues: the principles—in addition to that of consent—directly relevant to the protection of persons, including the humanitarian principles of humanity, neutrality and impartiality, and the question of the primary responsibility of the affected State for protecting persons under its territorial jurisdiction, which also raised issues concerning the fundamental principles of sovereignty and non-intervention. Both sets of issues were the subject matter of his third report.

301. As to draft article 6, the Special Rapporteur recalled that the Secretariat had pointed out in its memorandum on the protection of persons in the event of disasters that the three principles of neutrality, impartiality and humanity were “core principles regularly recognized as foundational to humanitarian assistance efforts generally”.<sup>1335</sup> This was further substantiated by recent discussions within the United Nations on the basic principles of humanitarian assistance, as well as by recent reports of the Secretary-General. The Special Rapporteur further recalled that the principles were routinely cited in General Assembly resolutions and a number of instruments dealing with humanitarian response, including those adopted under the auspices of the Red Cross Movement.

302. The principle of neutrality referred to the apolitical nature of action taken in disaster response. It implied that the actors involved should refrain from committing acts that might constitute interference in the internal affairs of the domestic State, so as to ensure an adequate and effective response as required by draft article 2. It also ensured that the interests of the persons affected by a disaster continued to be the central concern of relief efforts.

303. The principle of impartiality concerned the qualitative purpose of disaster response, as elaborated in draft article 2, namely to meet the essential needs of the persons affected by a disaster, and to ensure full respect for their rights. It included three components: non-discrimination, proportionality and impartiality *per se*. Non-discrimination, which was initially developed in the context of international humanitarian law, had also become a fundamental provision in human rights law, and was reflected in Article 1, paragraph 3, of the Charter of the United Nations. Under the principle of proportionality, the response to a disaster should be in proportion to the degree of suffering and urgency. It took into account the possibility that time and resources may not be readily available, and a degree of flexibility and prioritization was necessary. As for the aspect of impartiality proper, this referred to the obligation not to draw a substantive distinction between individuals based on criteria other than need.

304. The Special Rapporteur noted that the principle of humanity was a long-standing principle of international law. In its contemporary meaning it was the cornerstone for the protection of persons in international law and it served as a meeting point between international humanitarian law and international human rights law. Accordingly, it provided the necessary inspiration for instruments on the protection of persons in the event of disasters, and was an expression of general values which provided guidance to the international system as a whole both in times of war and in times of peace. He chose to include the principle in the draft articles since it was equally applicable in times of crisis arising out of the onset of a disaster.

305. Concerning draft article 7, on human dignity, the Special Rapporteur recalled that the Commission had already had the opportunity to debate the concept in the context of its consideration of the topic of the expulsion of aliens. There seemed to be agreement that it was not a human right *per se*, but rather was posited as a fundamental principle that gave rise to all human rights. Although closely related to the principle of humanity in draft article 6, it was nonetheless distinguishable. It was recalled that human dignity was incorporated as a central element of the 1948 Universal Declaration of Human Rights,<sup>1336</sup> as well as in numerous human rights treaties adopted at universal and regional levels. It was also an essential pillar of the protection of human rights in domestic legal systems. By including the principle of human dignity, together with the humanitarian principles elaborated in draft article 6, the Special Rapporteur sought to provide a complete framework guaranteeing respect for the protection of human rights of persons affected by disasters, making it unnecessary to elaborate a list of specific rights.

306. Draft article 8 arose out of an understanding reached in the Drafting Committee in 2009, upon the adoption of draft article 5, that a provision on the primary responsibility of the affected State would be formulated. It reflected the principles of sovereignty and non-intervention, both of which were universally accepted as underpinning the edifice of international law. The principle of sovereignty, which was based on the fundamental concept of sovereign equality, and which was well established in international law, implied that each State was free and independent, and therefore could exercise its functions on its own territory to the exclusion of others. Closely related was the principle of non-intervention in the domestic affairs of other States, also well established in international law, which served to guarantee the maintenance of sovereign equality between States.

307. In his view, there was no doubt that an affected State had the faculty to adopt legitimate measures to guarantee protection of persons on their territory. As a consequence of this, other entities, whether international organizations or States, could not interfere in a unilateral way in the process of response. Instead, they were required to act in accordance with draft article 5 on the duty to cooperate. This did not mean that such sovereign authority should be absolute. The Special Rapporteur recalled that there existed minimum international norms, including human rights protections, which had to be respected. As such,

<sup>1335</sup> A/CN.4/590 and Add.1–3 (see footnote 1331 above), para. 11.

<sup>1336</sup> General Assembly resolution 217 A (III) of 10 December 1948.

the principles of sovereignty and non-intervention were a point of departure and not a point of conclusion, and implied both rights and obligations. He further confirmed his intention to clarify, in his next report, the scope and the limitations of the exercise by the affected State of its primary responsibility. It was further pointed out that it was well established in international law that the Government of the affected State was in the best position to assess the seriousness of an emergency situation and to implement response policies. Consequently, the affected State had the primary responsibility to ensure the protection of persons in the event of disasters by facilitating, coordinating and supervising relief activities on its territory.

308. Furthermore, many international instruments had recognized either expressly or implicitly that international relief operations could only be undertaken on the basis of the consent of the affected State. Whereas the responsibility to coordinate and facilitate assistance was an internal aspect of the primary responsibility of the affected State, the requirement of obtaining that State's consent was an external matter since it governed relations with other States and bodies. The requirement of consent was a consequence of the principles of sovereignty and non-intervention, and applied throughout the period of relief activities provided by external actors.

## 2. SUMMARY OF THE DEBATE

### (a) *Draft article 6. Humanitarian principles in disaster response*<sup>1337</sup>

309. Support was expressed for the reference to the humanitarian principles applicable to disaster response. They were characterized as important safeguards for the relationship between relevant actors, while also guaranteeing that the needs of affected persons were given priority. The view was further expressed that the three principles were well established in international law, as reflected in a number of international instruments. At the same time, it was noted that there existed possible divergences, and conflicts, political, ideological, religious or cultural, among States, which could impede efforts to deliver timely and effective assistance. According to a further view, it was not advisable to depart from the principles without good reason since they were well established. According to a contrary view, while they were important principles for the International Red Cross Movement, it was not clear that they were principles of international law.

310. The view was expressed that the principle of humanity was the cornerstone for the protection of persons in international law since it placed the affected person at the centre of the relief process and recognized the importance of his or her rights and needs. It also served as an important litmus test for the actions of those providing humanitarian assistance. According to another view, references to the "principle of humanity" were mostly found in non-binding instruments, and were largely context specific.

<sup>1337</sup> Draft article 6 read as follows:

*"Humanitarian principles in disaster response*

*"Response to disasters shall take place in accordance with the principles of humanity, neutrality and impartiality."*

311. Support was also expressed for the inclusion of the principle of neutrality which obliged assisting actors to do everything feasible to ensure that their activities were not undertaken for purposes other than responding to the disaster in accordance with humanitarian principles. It was observed that the principle of neutrality was a consequence of the obligation to respect the sovereignty of States. Several members, however, expressed doubts as to the incorporation of the principle of neutrality which was traditionally asserted in the context of armed conflict. The view was also expressed that the concern about interference in the domestic affairs of the State was best covered by the principle of impartiality. Another suggestion was to replace the reference to the principle of neutrality with that of the principle of non-discrimination.

312. The view was expressed that the principle of impartiality was well established. It was also noted that directing assistance to vulnerable groups would not *per se* violate the component of non-discrimination within the broader principle of impartiality. However, doubts were expressed concerning the requirement of proportionality. It was stated that the linkage to the needs of the affected persons was not the only issue of relevance. Other factors, such as economic considerations relating to the capability to provide assistance, were also relevant. In other words, it was not always possible to require that the assistance offered had to be proportional to the needs. It was thus important that proportionality be assessed on a case-by-case basis, taking into account the reality on the ground. On the impartiality *per se* aspect, the view was expressed that it should be made more explicit in the provision, by including a reference to the obligation not to draw a subjective distinction according to the persons affected.

313. It was further noted that the principle of humanity did not give rise to specific obligations, which was different from the principles of neutrality (non-intervention) and impartiality (non-discrimination). Therefore, it was proposed to distinguish between the principle of humanity and the other two principles, by either replacing the phrase "shall take place in accordance with" by "is guided by" or "is based upon", or by reflecting the principles in the preamble and providing separate articles on the content of those principles, namely non-intervention and non-discrimination. Other suggestions included adding a reference to the principle of independence and reflecting the humanitarian principles in the preamble. The latter suggestion was opposed by a member who was of the view that including them in the operative part served to emphasize the point that the manner in which humanitarian response is managed is not only a policy consideration, but also a legal obligation.

### (b) *Draft article 7. Human dignity*<sup>1338</sup>

314. Support was expressed for the Special Rapporteur's proposal for draft article 7. It was recognized that human dignity was a source of human rights and not a

<sup>1338</sup> Draft article 7 read as follows:

*"Human dignity*

*"For the purposes of the present draft articles, States, competent international organizations and other relevant actors shall respect and protect human dignity."*

right *per se* entailing obligations. It was recalled that the issue had been discussed in the context of the topic “expulsion of aliens” and that there was agreement in the Commission not to dwell on establishing human dignity as a right, since its focus was on the treatment of the individual which ought to respect human dignity. Some members were of the view that it was not entirely clear that the concept could be easily transposed to the situation of a disaster, which was different from the context of expulsion of aliens, where it applied to questions of process. Nor was it clear what its relationship was with draft articles 6 and 8. The doubt was expressed that the provision seemed to imply that every life should be rescued and every victim assisted, which had implications for the capacity of the affected State and the duty of other States to give assistance. A preference was thus expressed for viewing the concept in terms of a desired conduct as opposed to imposing an obligation of result.

315. It was also suggested that the recognition of human dignity could be supplemented by the obligation to respect human rights as set out in existing international instruments, so as to reinforce the applicability of rights, while also giving recognition to the fact that in such emergencies, the affected State was authorized provisionally to suspend (derogate from) certain human rights to the extent permitted by international law. It was also proposed that the reference to “relevant actors shall respect and protect human dignity” be clarified in terms of its relationship with existing international human rights law. According to another view, draft article 7 could be amalgamated with draft article 6.

(c) *Draft article 8. Primary responsibility of the affected State*<sup>1339</sup>

316. Several members proposed to restate the principles of sovereignty and non-intervention in the domestic affairs of a State, which constituted the primary principles on the basis of which the regime for protection of persons in the event of disasters was to be developed. It was said that such an approach would properly reflect both the rights of the affected State *vis-à-vis* humanitarian assistance, as well as its responsibility for the overall rescue operations. Another view was that the implicit reference to the principles of sovereignty and non-intervention in draft article 8, paragraph 2, requiring the consent of the affected States, was inadequate. According to a different view, the approach taken in the Special Rapporteur’s report leaned too much in favour of the traditional view of international law as being based on sovereignty and the consent of States, and did not adequately take into account the contemporary understanding of State sovereignty. It was considered important to balance State sovereignty with the need to protect human rights, and it was recalled that the purpose of the topic was the protection of persons in the event of disasters, and not the protection of the rights of States.

<sup>1339</sup> Draft article 8 read as follows:

*“Primary responsibility of the affected State*

“1. The affected State has the primary responsibility for the protection of persons and provision of humanitarian assistance on its territory. The State retains the right, under its national law, to direct, control, coordinate, and supervise such assistance within its territory.

“2. External assistance may be provided only with the consent of the affected State.”

317. Several members spoke in favour of draft article 8, and of the position that under international law the primary responsibility remained with the affected State. This was considered to be an important clarification since it protected against unwarranted interference in the domestic affairs of the affected State. Accordingly, the affected State had the duty to protect individuals on its territory in accordance with the draft articles, while retaining the right to refuse assistance from abroad.

318. Several members were of the view that it had to be clarified that primary responsibility did not mean exclusive responsibility. While the affected State would be allowed a margin of appreciation, in the final analysis it bore the responsibility for its refusal to accept assistance, which could lead to the existence of an internationally wrongful act if such refusal undermined the rights of the affected individual under international law. The affected State remained subject to the duty to cooperate under draft article 5. It was suggested that a reference to the secondary responsibility of the international community be added to the provision, or that paragraph 2 could be replaced with the following sentence: “Article 8, paragraph 1, is without prejudice to the right of the international community as a whole to provide lawful humanitarian assistance to persons affected by a disaster if the affected State lacks the capacity or will to exercise its primary responsibility to provide humanitarian assistance.” According to a further view, the international community did not, under contemporary international law, enjoy a “secondary” responsibility for the protection of victims of disasters. Accordingly, the reference to the “primary” responsibility should be deleted, as it implied the existence of “secondary” duties, which could lead to unwarranted intervention. It was recalled that the Commission had excluded the applicability of the concept of “responsibility to protect” from the scope of the application of the draft articles in 2009.

319. Other members expressed the view that, while emphasizing the duty of cooperation, the draft articles should recognize the sovereignty of the affected State, its responsibility towards its own nationals and its right to decide whether it requires international assistance (as it was in the best position to assess the needs of the situation), as well as its own capacity to respond, and, if it accepted international assistance, the right to direct, coordinate and control such assistance within its territory. It was recalled that the notion of primary responsibility of the affected State was recognized in various General Assembly resolutions and in global and regional instruments and in various international codes of conduct and guidelines for disaster relief. As such, all offers of humanitarian assistance in response to disasters would have to respect the sovereignty, independence and territorial integrity of the affected State.

320. It was suggested that the term “affected” State be defined, particularly in the context of situations of occupation or international administration. It was also recommended that it be clarified that the reference to “responsibility” was meant in the sense of “competence” and not that which arises from the commission of an internationally wrongful act. In terms of a further suggestion, the reference to “responsibility” could be replaced by “duty”, which would accord with the affected State

having an obligation under international law to protect persons on its territory. It was noted that such a formulation was closer to that proposed by the Institute of International Law in its resolution of 1985.<sup>1340</sup>

321. Another suggestion was that paragraph 1 could be replaced with the text of operative paragraph 4 of the annex to General Assembly resolution 46/182 of 19 December 1991: “Each State has the responsibility first and foremost to take care of the victims of natural disasters and other emergencies occurring on its territory. Hence, the affected State has the primary role in the initiation, organization, coordination, and implementation of humanitarian assistance within its territory.”

322. Support was expressed for the requirement of consent established in paragraph 2, which was considered by some to be the central provision of the draft articles. Reference was made to General Assembly resolution 46/182 which contained the requirement that humanitarian assistance be provided with the consent of the affected State and, in principle, on the basis of an appeal by that State. It was noted that the requirement of consent of the affected State followed from elementary considerations of sovereignty. To enter a foreign State to provide assistance against the will of that State would be a form of intervention contrary to the Charter of the United Nations. It was suggested that it be made clear that the draft articles do not permit a right of intervention in cases of disaster.

323. Other members expressed doubts as to the inclusion of the word “only”. The view was expressed that prior express consent was not always required, since there could be exceptional circumstances where the affected State would be unable to give formal consent within a timescale needed to react to an overwhelming disaster. It was also suggested that consideration be given to recognizing the legal consequences of the responsibility of the affected State by stating that its consent “shall not unreasonably be withheld”, without prejudice to its sovereign right to decide whether external assistance was appropriate. The affected State would thus be placed under an obligation not to reject a *bona fide* offer exclusively intended to provide humanitarian assistance. Reference was made to the memorandum of the Secretariat<sup>1341</sup> which detailed some of the nuances surrounding consent. It was also suggested that incentives be established for the affected State to give its consent whenever international cooperation was likely to enhance the protection of the victims of disasters. According to another view, the focus should be less on consent and more on adequate coordination of relief assistance. Others spoke out against reformulating draft article 8 so as to suggest that the affected State could be penalized for “unreasonably withholding consent” as that would be contrary to existing law.

324. Other suggestions included clarifying that consent should be explicit, and specifying whether the reference to “external” assistance imposed an international law requirement that the actions of non-governmental organizations (NGOs) or other private bodies should also be based on the consent of the affected State, or whether it was sufficient that

such entities comply with the internal law of the affected State. It was also suggested that the two paragraphs in draft article 8 be reflected in separate draft articles.

### 3. SPECIAL RAPPORTEUR’S CONCLUDING REMARKS

325. With regard to draft article 6, the Special Rapporteur recalled some of the concerns that were expressed during the debate regarding the reference to the principles of humanity, neutrality, impartiality and proportionality, which had been employed in specific areas of law, including in international humanitarian law and on the non-use of force in the Charter of the United Nations. It had been maintained that their transposition to the context of protection of persons in events of disasters was not easy nor necessarily feasible. In his view, the applicability of a principle, which by definition was conceived in general and abstract terms, could extend to other areas of law, different from that in which the concept originated and with which it was traditionally associated.

326. The Special Rapporteur stated that he also did not believe it necessary or useful to draw up specific definitions of the principles because they were universally recognized by international law. This was as valid with regard to the humanitarian principles as it was for the principles of sovereignty and non-intervention. The fact that behaviour should be in accordance with certain principles was a sufficient standard to be guided by. He nonetheless confirmed that the specificity that some members sought would be provided in the corresponding commentaries.

327. He noted further that there had been divergent opinions about whether to keep or exclude the reference to the principle of neutrality. He preferred to retain it for the reasons put forward in the third report. He noted also the proposal to include the principle of non-discrimination, whose modern origins were found in international humanitarian law, particularly in the first Convention for the Amelioration of the Condition of the Wounded in Armies in the Field of 1864. However, he reiterated his view that the fact that a specific principle such as non-discrimination was historically closely linked to international humanitarian law did not mean that the same principle could not be applicable to the protection of persons in the event of disaster. Accordingly, he could accept the principle of non-discrimination being added to the three principles contained in draft article 6.

328. With respect to draft article 7, the Special Rapporteur recalled that the Drafting Committee had recently proposed the inclusion of a similar draft article on human dignity in the context of the expulsion of aliens (not as a preambular clause), and he saw no reason why the same could not be done with the present draft articles.

329. Concerning draft article 8, the Special Rapporteur confirmed that it would be followed by other provisions that will explain the scope and limits of the exercise by an affected State of its primary responsibility to protect persons affected by a disaster. The Special Rapporteur could not support a proposal to delete paragraph 2 as it would run counter to existing regulation and practice in the field. In his view, draft article 8, specifically paragraph 2, provided necessary recognition of the fact that the principles

<sup>1340</sup> See footnote 1315 above.

<sup>1341</sup> See footnote 1331 above.

of sovereignty and non-intervention were in effect. He recalled further the proposal, made during the debate, to include specific mention of the latter two principles, and while he did not consider it strictly necessary, he would follow the prevailing opinion in the Commission to make such a reference in either draft article 6 or 8.

### C. Text of the draft articles on protection of persons in the event of disasters provisionally adopted so far by the Commission

#### 1. TEXT OF THE DRAFT ARTICLES

330. The text of the draft articles provisionally adopted so far by the Commission is reproduced below.

#### PROTECTION OF PERSONS IN THE EVENT OF DISASTERS

##### 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 an adequate and effective response to disasters that meets the essential needs of the persons concerned, with full respect for their rights.

##### Article 3. Definition of disaster

“Disaster” means a calamitous event or series of events resulting in widespread loss of life, great human suffering and distress, or large-scale material or environmental damage, thereby seriously disrupting the functioning of society.

##### Article 4. Relationship with international humanitarian law

The present draft articles do not apply to situations to which the rules of international humanitarian law are applicable.

##### Article 5. Duty to cooperate

In accordance with the present draft articles, States shall, as appropriate, cooperate among themselves, and with the United Nations and other competent intergovernmental organizations, the International Federation of the Red Cross and Red Crescent Societies and the International Committee of the Red Cross, and with relevant non-governmental organizations.

#### 2. TEXT OF THE DRAFT ARTICLES AND COMMENTARIES THERE TO PROVISIONALLY ADOPTED BY THE COMMISSION AT ITS SIXTY-SECOND SESSION

331. The text of the draft articles, together with commentaries thereto, provisionally adopted by the Commission at its sixty-second session is reproduced below.

##### Article 1. Scope

The present draft articles apply to the protection of persons in the event of disasters.

##### Commentary

(1) Article 1 establishes the scope of the draft articles, and tracks the formulation of the title of the topic. It establishes 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 article 2, the focus is on facilitating a response that adequately and effectively meets the essential needs of the persons concerned, while 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 on their territory (irrespective of nationality), third States and international organizations and other entities in a position to cooperate, particularly in the provision of disaster relief and assistance. 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. Furthermore, as is elaborated in article 3, the draft articles are not limited to any particular type of disaster.

(3) The scope *ratione personae* of the draft articles is limited to natural persons affected by disasters, although the possibility of including legal persons may be considered in the future. In addition, the focus is primarily on the activities of States and international organizations and other entities enjoying specific international legal competence in the provision of disaster relief and assistance in the context of disasters. The activities of NGOs 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 article 5) or indirectly, as being subject to the domestic laws, implementing the draft articles, of either the affected State, a third State or the State of nationality of the entity or private actor.

(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 recovery phase, including the post-disaster reconstruction phase. Nonetheless, it was generally agreed that the draft articles should also, where relevant, cover the pre-disaster phase as relating to disaster risk reduction and disaster prevention and mitigation activities.

(5) The draft articles are not limited, *ratione loci*, to activities in the arena of the disaster, 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. It is certainly 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. While different considerations may arise, unless otherwise specified, no such distinction is maintained in the draft articles. In other words, 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 an adequate and effective response to disasters that meets the essential needs of the persons concerned, with full respect for their rights.**

### Commentary

(1) Article 2 deals with the purpose of the draft articles. While it is not always the case for texts prepared by the Commission to include a provision outlining the objectives of the draft articles in question, it is not unprecedented. The draft principles on the allocation of loss in the case of transboundary harm arising out of hazardous activities adopted by the Commission at its fifty-eighth session include a provision (principle 3) on purposes.<sup>1342</sup>

(2) The provision elaborates on article 1 (Scope) by providing further guidance on the purport 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”, 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 a response which adequately and effectively meets the “needs” of persons affected by the disaster. Such response has to take place with full respect for the rights of such individuals.

(3) Although not necessarily a term of art, what is meant by “adequate and effective” is a high-quality response that meets the needs of the persons affected by the disaster. Similar formulations are to be found in existing agreements. These include “effective and concerted” and “rapid and effective”, found in the ASEAN Agreement on Disaster Management and Emergency Response of 2005, 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. 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” will be the subject of specific provisions. 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.

(4) The Commission decided not to formulate the provision in the form of a general statement on the obligation of States to ensure an adequate and effective response, 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 different obligations for different States, such as for the affected State as opposed to

assistance-providing 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, and that specific provisions on the obligations of States would be considered in subsequent articles.

(5) The phrase “response to disasters” needs to be read in conjunction with the general direction in article 1 that the temporal application of the draft articles needs to be viewed, where relevant, to include pre-disaster risk reduction, prevention and the mitigation phase. While other formulations specifying all the phases of assistance were considered, the Commission opted for the present, more economical, phrasing, without intending to favour a strict interpretation that would render the provision applicable only to the response phase of disaster assistance activities.

(6) The word “facilitate” reflects the vision of the Commission for the role 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 and assistance. It was felt that while the draft articles could not by themselves *ensure* a response, they were intended to *facilitate* an adequate and effective response.

(7) 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 essential needs in the aftermath of a disaster. It was felt that “essential” clearly brought out the context in which such needs arise.

(8) By “persons concerned” what is meant are people directly affected by the disaster, as opposed to individuals more indirectly affected. This term was included so as to further qualify the scope of application of the draft articles. This 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 through, for example, loss of family members in a disaster or who suffered economic loss owing to a disaster elsewhere, would be without remedy, but it is not the intention of the Commission to cover their situation in the present draft articles.

(9) As regards the reference to rights, it was understood that some of the relevant rights are economic and social rights, which States have an obligation to ensure progressively. As such, the present formula of “with full respect for” was accepted as being more neutral, but nonetheless carries an active connotation of the rights being “fully” respected. In addition, the phrase intentionally leaves the question of *how* those rights are to be enforced to the relevant rules of international law themselves. The Commission did consider the possibility of including a further qualifier such as: “as appropriate”, “as far as possible”, “to the extent possible”, “as required by the present draft articles”, “in accordance with relevant provisions of international and domestic law” and “applicable rights”. None of these was included since it was felt that adding further qualifiers risked diluting existing legal rights. Nonetheless, it is understood that there is an implied degree of latitude in the applicability of rights, conditioned by the extent of the impact of the disaster.

<sup>1342</sup> *Yearbook ... 2006*, vol. II (Part Two), p. 72.

The extent of such latitude, as far as it is not covered by the draft articles being developed by the Commission, is to be ascertained by the relevant rules recognizing or establishing the rights in question.

(10) The reference to “rights” is not only a reference to human rights, but also, *inter alia*, to rights acquired under domestic law. A suggestion to draw up a list of applicable rights did not meet with approval for the simple reason that it is not possible to consider all potentially applicable rights, and out of concern that such a list could lead to an *a contrario* interpretation that rights not mentioned therein were not applicable. Nonetheless, it is contemplated that the reference would include such applicable rights as the right to life, as recognized in article 6, paragraph 1, of the International Covenant on Civil and Political Rights.<sup>1343</sup>

### Article 3. Definition of disaster

**“Disaster” means a calamitous event or series of events resulting in widespread loss of life, great human suffering and distress, or large-scale material or environmental damage, thereby seriously disrupting the functioning of society.**

#### Commentary

(1) Draft article 3 seeks to define the term “disaster” for the purpose of the draft articles. It was considered necessary to delimit the definition so as to properly capture the scope of application of the draft articles, as established in 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. Such delimitation of the definition is evident from two features of the definition: (1) the emphasis placed on the existence of an event which caused the disruption of society; and (2) the inclusion of a number of qualifying phrases.

(2) The Commission considered the approach of the Tampere Convention on the Provision of Telecommunication Resources for Disaster Mitigation and Relief Operations, of conceptualizing 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 by the 2005 World Conference on Disaster Reduction, convened by the United Nations in 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.<sup>1344</sup> Nonetheless, the prevailing view was that the Commission was free 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.

(3) The element of 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 adopted by the Institute of International Law at its 2003 Bruges session, which deliberately established such higher threshold so as to exclude other acute crises.<sup>1345</sup> What constitutes “calamitous” is to be understood both by application of the qualifier in the remainder of the provision—“resulting in widespread loss of life, great human suffering and distress, 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 articles 1 and 2. In addition, reference is made to “event or series of events” in order to cover those types of events which, on their own, might not meet the necessary threshold, but which, taken together, would constitute a calamitous event for purposes of the draft articles. No limitation is included concerning the origin of the event (natural or man-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.

(4) 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 three possible outcomes: widespread loss of life; great human suffering and distress; 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 accordingly does not result in at least one of the three envisaged outcomes, would not satisfy the threshold requirement in article 3. In addition, the nature of the event is further qualified by the requirement that any, or all, of the three possible outcomes, as applicable, result in the serious disruption of the functioning of society. In other words, an event which resulted in, for example, the widespread loss of life, but does not seriously disrupt the functioning of society, would not 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 on the Provision of Telecommunication Resources for Disaster Mitigation and Relief Operations, 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.

(5) 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] in Disaster Relief.<sup>1346</sup> The requirement of “widespread” loss of life serves to exclude isolated events which result in relatively

<sup>1343</sup> See also the Operational Guidelines on Human Rights and Natural Disasters adopted by the Inter-Agency Standing Committee in 2006 (A/HRC/4/38/Add.1, annex).

<sup>1344</sup> IFRC, *Introduction to the Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance*, Geneva, 2008.

<sup>1345</sup> Institute of International Law, *Yearbook*, vol. 70 (2003), Session of Bruges (2003), Part II, pp. 263 *et seq.*

<sup>1346</sup> *International Review of the Red Cross*, No. 310 (January–February 1996), pp. 119 *et seq.*



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.

(6) 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. 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 which seriously disrupt the functioning of society, would be covered by the draft articles.

(7) “[L]arge-scale material or environmental damage” was included by the Commission in recognition of the wide-scale damage to property and the environment typically caused by major disasters, and the resulting 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.

(8) 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 application of the draft articles other types of crises such as serious political or economic crises. Such differences in application are further borne out by the purpose of the draft articles, as established in article 2, and by the fact that the type of protection required, and rights involved, in those other types of crises may be different, and are, to varying extents, regulated by other rules of international law. While the three 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.

#### **Article 4. Relationship with international humanitarian law**

**The present draft articles do not apply to situations to which the rules of international humanitarian law are applicable.**

##### *Commentary*

(1) Article 4 deals with the relationship of the draft articles with international humanitarian law, and, accordingly, the extent to which the draft articles cover situations of armed conflict, which can have an equally calamitous impact on the functioning of societies. The provision is

formulated in a manner intended to clarify this relationship by giving precedence to the rules of international humanitarian law in situations where they are applicable.

(2) The Commission considered including an express exclusion of the applicability of the draft articles over armed conflict as a further element in the definition of “disaster” (art. 3), 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 counter-productive, particularly in situations of “complex emergencies” where a disaster occurs in an area where there is an armed conflict. A blanket exclusion of the applicability of the draft articles because of the coexistence of an armed conflict would be detrimental to the protection of the victims of the disaster, especially when the onset of the disaster predated the armed conflict.

(3) The Commission also initially considered rendering the provision as a more straightforward “without prejudice” clause, merely preserving the applicability of both sets of rules, and thereby suggesting that the draft articles applied in the context of armed conflict to the same extent as existing rules of international law. Instead, the Commission settled for the current approach of addressing the matter in terms of the relationship between the draft articles and international humanitarian law. While the draft articles do not seek to regulate the consequences of armed conflict, they can nonetheless apply in situations of armed conflict to the extent that existing rules of international law, particularly the rules of international humanitarian law, do not apply.

#### **Article 5. Duty to cooperate**

**In accordance with the present draft articles, States shall, as appropriate, cooperate among themselves, and with the United Nations and other competent intergovernmental organizations, the International Federation of the Red Cross and Red Crescent Societies and the International Committee of the Red Cross, and with relevant non-governmental organizations.**

##### *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 which the protection of persons in the event of disasters places itself. Article 1, paragraph 3, of the Charter of the United Nations clearly spells out as one of the purposes of the Organization:

To achieve international co-operation 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 of the United Nations elaborate on Article 1, paragraph 3, with respect to international cooperation. Article 55 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 of the United Nations reads:

All Members pledge themselves to take joint and separate action in co-operation 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 co-operation free from discrimination based on such differences.<sup>1347</sup>

(2) Cooperation takes on special significance with regard to international human rights law. The International Covenant on Economic, Social and Cultural Rights refers explicitly to international cooperation as a means of realizing the rights contained therein.<sup>1348</sup> 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.<sup>1349</sup> International cooperation gained particular prominence in the 2006 Convention on the Rights of Persons with Disabilities which is applicable, *inter alia*, “in situations of risk, including situations of armed conflict, humanitarian emergencies and the occurrence of natural disasters”.<sup>1350</sup>

(3) With regard to cooperation in the context of disaster relief and assistance, the General Assembly recognized, in resolution 46/182, that “[t]he 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

<sup>1347</sup> General Assembly resolution 2625 (XXV) of 24 October 1970, annex.

<sup>1348</sup> Articles 11, 15, 22 and 23.

<sup>1349</sup> See, in particular, General Comments No. 2 (Report of the Committee on Economic, Social and Cultural Rights, *Official Records of the Economic and Social Council, 1990, Supplement. No. 3* (E/1990/23-E/C.12/1990/3), annex III), No. 3 (*ibid.*, 1991, *Supplement. No. 3* (E/1991/23-E/C.12/1990/8), annex III), No. 7 (*ibid.*, 1998, *Supplement. No. 2* (E/1998/22-E/C.12/1997/10), annex II), No. 14 (*ibid.*, 2001, *Supplement. No. 2* (E/2001/22-E/C.12/2000/21), annex IV) and No. 15 (*ibid.*, 2003, *Supplement. No. 2* (E/2003/22-E/C.12/2002/13), annex IV).

<sup>1350</sup> Article 11.

and national laws”.<sup>1351</sup> 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 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.<sup>1352</sup> Moreover, the cooperation imperative, 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 on the Provision of Telecommunication Resources for Disaster Mitigation and Relief Operations 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 both Parties in the field of the prevention of grave risks and the protection of populations, property and the environment...”<sup>1353</sup>

(4) Cooperation should not, however, be interpreted as diminishing the prerogatives of a sovereign State within the limits of international law; this point will be addressed in a subsequent article. Furthermore, the principle of cooperation is to be understood also as being complementary to 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.<sup>1354</sup> The provision has to be read in light of the other provisions in the draft articles, particularly those on the primary duty of the affected State.

(5) A key feature of activity in the field of disaster relief assistance is international cooperation not only among States, but also with international organizations and NGOs. The importance of their role has been recognized for some time. In its resolution 46/182, the General Assembly confirmed that “[i]ntergovernmental and non-governmental organizations working impartially and with strictly humanitarian motives should continue to make a significant contribution in supplementing national efforts”.<sup>1355</sup>

<sup>1351</sup> Annex, para. 5.

<sup>1352</sup> See Annex II of the Secretariat’s memorandum on the protection of persons in the event of disasters (see footnote 1331 above) for 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, pp. 24–44.

<sup>1353</sup> 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).

<sup>1354</sup> See General Assembly resolution 46/182, annex, para. 4. See also the Hyogo Declaration 2005 (Report of the World Conference on Disaster Reduction, held in Kobe, Hyogo, Japan, 18–22 January 2005 (A/CONF.206/6 and Corr.1), chap. 1, resolution 1, para. 4.

<sup>1355</sup> Annex, para. 5.

In a resolution adopted in 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.<sup>1356</sup>

(6) Article 5 recognizes the central importance of international cooperation to international disaster relief and assistance activities. It establishes a legal obligation for the various parties concerned. It was understood, however, that the nature of the obligation of cooperation may vary, depending on the actor and the context in which assistance is being sought and offered. By its nature, cooperation is reciprocal, so that a duty for a State to cooperate with an international organization, for example, implies the same duty on the part of the organization. It was found that attempting to separate out cooperation between States, and cooperation between States and international organizations (particularly the United Nations), the IFRC and “relevant non-governmental organizations”

did not adequately capture the range of possible legal relationships between States and the various entities mentioned in the provision. Nor was it necessary to spell out the exact nature of the legal obligation to cooperate in a general provision on cooperation. Such matters are to be dealt with in specific provisions to be adopted in the future (hence the opening phrase “[i]n accordance with the present draft articles”). Accordingly, the Commission inserted the phrase “as appropriate” which qualifies the entire draft article by serving both as a reference to existing specific rules on cooperation between the various entities mentioned in the draft article (including those such rules to be added to the draft articles in the future) which establish the nature of the obligation to cooperate, and as an indication of a degree of latitude in determining, on the ground, when cooperation is or is not “appropriate”.

(7) The qualifier “competent” before “intergovernmental organizations” was included as an indication that, for purposes of the draft articles, cooperation would only be necessary with those entities that are involved in the provision of disaster relief and assistance. A reference to the International Committee of the Red Cross (ICRC) is included as a consequence of the fact that the draft articles may also apply in complex emergencies involving armed conflict.

<sup>1356</sup> Resolution 2008/36 of 25 July 2008, para. 7.