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## Draft report of the International Law Commission on the work of its sixty-second session

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## Chapter VII

### Protection of persons in the event of disasters

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## **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**

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 with commentaries thereto adopted by the Commission at its sixty-second session**

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

## Protection of persons in the event of disasters

### Texts of draft articles 1 to 5 with commentaries thereto

#### 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 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 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. 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. 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. Nor do the draft articles require for their application that there be an element of international cooperation with assistance to the affected State, although most of the articles are drafted with such cooperation in mind. An affected State which, on legitimate grounds, declines offers of assistance, from other States or the international community more broadly, remains under an obligation to respect the rights of persons on its territory affected by the disaster, to the extent required by international law including as recognized by the present draft articles.

## **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 2006 Draft Principles on the allocation of loss in the case of transboundary harm arising out of hazardous activities include a provision (draft article 3) on purposes.

(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, by “adequate and effective”, what is meant 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 2006, 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 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 broadly to include the pre-disaster risk-reduction, prevention and 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 more clearly indicate that the needs being referred to are those related to survival 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, and 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, for example, through loss of family members in a disaster or who suffered economic loss owing to a disaster elsewhere, would be without remedy. Instead, 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 applicable rights are economic and social rights, for which States are obliged to progressively ensure (or to “take steps” towards ensuring). 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 were accepted since it was felt that including further qualifiers risked diluting existing legal rights. Nonetheless, it is understood that there is an implied margin of appreciation for the applicability of rights, conditioned by the extent of the impact of the disaster. The extent of such conditionality, 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>1</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 purposes 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 1998, 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 approach represented contemporary thinking in the humanitarian assistance community, as confirmed by the 2005 World Conference on Disaster Reduction, convened by the United Nations at Hyogo in Japan, as well as by recent treaties and other instruments, including the 2007 IFRC Guidelines for the domestic facilitation and regulation of international disaster relief and initial recovery assistance. 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. What constitutes “calamitous” is to be understood both by application of the qualifier in the remainder of the provision, viz. “... 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, i.e. whether natural or man-made, in recognition of the fact that disasters often arise from complex sets

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<sup>1</sup> United Nations, *Treaty Series*, vol. 999, p. 171 and vol. 1057, p. 407. See too: Inter-Agency Standing Committee (IASC) Operational Guidelines on Human Rights and Natural Disasters, 2006.

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, or 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, 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.

(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. The requirement of “widespread” loss of life serves to exclude isolated events which 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.

(6) The possibility of “great human suffering and distress” was included out of recognition that many major disasters are accompanied not only by widespread loss of life, but also 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) “Large-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 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.

(8) As already alluded to, the requirement of serious disruption of the functioning of society serves to establish a high threshold which would exclude from the scope of application of the draft articles other types of crises such as serious political, or extreme economic, crises. Likewise, the application of the draft articles to crises involving armed conflict is regulated by article 4. Such differences in application is 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 a margin of appreciation in practice. Nonetheless, it should also be borne in mind that one of the core functions of the draft articles is to regulate *international* cooperation in disaster relief and assistance, which typically takes place on the request of the affected State in a context where its local response capacity has been overwhelmed. It is a basic assumption employed in these draft articles that such a situation would necessarily mean that there has been the level of disruption of the functioning of society envisaged in article 3.

#### **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 such relationship by giving predominance 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” (article 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 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 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 (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 (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 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.”<sup>2</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>3</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>4</sup> International cooperation gained particular prominence in the 2006 Convention on the

<sup>2</sup> General Assembly resolution 2625 (XXV) of 24 October 1970, annex, para. 1.

<sup>3</sup> General Assembly resolution 2200 A (XXI), annex, arts. 11, 15, 22 and 23.

<sup>4</sup> See, in particular, general comment No. 2 (E/1990/23), No. 3 (E/1991/23), No. 7 (E/1998/22), No. 14 (E/C.12/2000/4) and No. 15 (E/C.12/2002/11).

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”.<sup>5</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 and national laws ...”<sup>6</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>7</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 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 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>8</sup>

(4) 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. 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 the International Court of Justice stated in its 1986 Judgment in the *Case concerning Military and Paramilitary Activities in and against Nicaragua*.<sup>9</sup> Furthermore, the principle of international 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

<sup>5</sup> General Assembly resolution 61/106 of 13 December 2006, art. 11.

<sup>6</sup> Annex, para. 5.

<sup>7</sup> See A/CN.4/590/Add.2 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* (2003), at pp. 24–44.

<sup>8</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, 25 May 1998, preambular paragraph 4.

<sup>9</sup> *Case concerning Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, ICJ Reports 1986, para. 202.

and similar emergencies occurring in its territory.<sup>10</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 and non-governmental organizations. The importance of their role has been recognized for some time. In resolution 46/182 of 19 December 1991, 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>11</sup>

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>12</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 that between States and international organizations (particularly the United Nations), the International Federation of the Red Cross, and that with “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 (whether “shall” or “should”) 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 margin of appreciation 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 is included as a consequence of the fact that the draft articles may also apply in complex emergencies involving armed conflict.

<sup>10</sup> Resolution 46/182 of 19 December 1991, annex, para. 4. See also Hyogo Declaration 2005, note 77 above, para. 4.

<sup>11</sup> Annex, para. 5.

<sup>12</sup> Resolution 2008/36 of 25 July 2008, para. 7.