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Chapter VI Protection of Persons in the Event of Disasters

Addendum

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

1. Text of the draft articles

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 Red Cross and Red Crescent Societies and the International Committee of the Red Cross, and with relevant non-governmental organizations.

Article 5 bis

Forms of cooperation

For the purposes of the present draft articles, cooperation includes humanitarian assistance, coordination of international relief actions and communications, and making available relief personnel, relief equipment and supplies, and scientific, medical and technical resources.

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.

Article 10**Duty of the affected State to seek assistance**

To the extent that a disaster exceeds its national response capacity, the affected State has the duty to seek assistance from among other States, the United Nations, other competent intergovernmental organizations and relevant non-governmental organizations, as appropriate.

Article 11**Consent of the affected State to external assistance**

1. The provision of external assistance requires the consent of the affected State.
2. Consent to external assistance shall not be withheld arbitrarily.
3. When an offer of assistance is extended in accordance with the present draft articles, the affected State shall, whenever possible, make its decision regarding the offer known.

Article 12**Offers of assistance**

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

Article 13**Conditions on the provision of external assistance**

The affected State may place conditions on the provision of external assistance. Such conditions shall be in accordance with the present draft articles, applicable rules of international law, and the national law of the affected State. Conditions shall take into account the identified needs of the persons affected by disasters and the quality of the assistance. When formulating conditions, the affected State shall indicate the scope and type of assistance sought.

Article 14

Facilitation of external assistance

1. The affected State shall take the necessary measures, within its national law, to facilitate the prompt and effective provision of external assistance regarding, in particular:

(a) civilian and military relief personnel, in fields such as privileges and immunities, visa and entry requirements, work permits, and freedom of movement; and

(b) goods and equipment, in fields such as customs requirements and tariffs, taxation, transport, and disposal thereof.

2. The affected State shall ensure that its relevant legislation and regulations are readily accessible, to facilitate compliance with national law.

Article 15

Termination of external assistance

The affected State and the assisting State, and as appropriate other assisting actors, shall consult with respect to the termination of external assistance and the modalities of termination. The affected State, the assisting State, or other assisting actors wishing to terminate shall provide appropriate notification.

2. Text of the draft articles and commentaries thereto provisionally adopted by the Commission at its sixty-fifth session

Draft article 5 *bis*

Forms of cooperation

For the purposes of the present draft articles, cooperation includes humanitarian assistance, coordination of international relief actions and communications, and making available relief personnel, relief equipment and supplies, and scientific, medical and technical resources.

Commentary

(1) Draft article 5 *bis* seeks to clarify the various forms which cooperation between affected States, assisting States, and other assisting actors may take in the context of the protection of persons in the event of disasters. Cooperation is enshrined in general terms in draft article 5 as a guiding principle and fundamental duty with regards to the present topic, as it plays a central role in disaster relief efforts. The essential role of cooperation lends itself to a more detailed enunciation of the kinds of cooperation relevant in this latter context. The present draft article is therefore designed to further elaborate on the meaning of draft article 5, without creating any additional legal obligations.

(2) The list of forms of cooperation in draft article 5 *bis* — humanitarian assistance, coordination of international relief actions and communications, and making available relief personnel, relief equipment and supplies, and scientific, medical and technical resources — is loosely based on the second sentence of paragraph 4 of draft article 17 of the final draft articles on the law of Transboundary Aquifers, which expands upon the general obligation to cooperate in article 7 of those draft articles by describing the cooperation necessary in emergency situations.¹ The second sentence of paragraph 4 of draft article 17 reads:

¹ *Official Records of the General Assembly, Sixty-third Session, Supplement No. 10 (A/63/10)*, Chapter IV.E, paras. 53–54.

Cooperation may include coordination of international emergency actions and communications, making available emergency response personnel, emergency response equipment and supplies, scientific and technical expertise and humanitarian assistance.²

As this provision had been specifically drafted with reference to a related context — namely, the need for cooperation in the event of an emergency affecting a transboundary aquifer — the Commission felt that its language was a useful starting point for the drafting of draft article 5 *bis*. However, the text of article 5 *bis* was tailored to appropriately reflect the context and purpose of the present draft articles, and to ensure that it took into account the major areas of cooperation dealt with in international instruments addressing disaster response. Similar language is contained in the ASEAN Declaration on Mutual Assistance on Natural Disasters (26 June 1976), which states that “Member Countries shall, within their respective capabilities, cooperate in the improvement of communication channels among themselves as regards disaster warnings, exchange of experts and trainees, exchange of information and documents, and dissemination of medical supplies, services and relief assistance.”³ In a similar vein, in explaining the areas in which it would be useful for the United Nations to adopt a coordinating role and encourage cooperation, General Assembly Resolution 46/182 calls for coordination with regards to “specialized personnel and teams of technical specialists, as well as relief supplies, equipment, and services ...”.⁴

(3) The opening phrase of draft article 5 *bis* states that the modalities of cooperation are outlined “for the purposes of the present draft articles.” Therefore, draft article 5 *bis*, which is to be read in accordance with the other draft articles, is oriented towards the purpose of the topic as a whole as stated in draft article 2, namely, “to facilitate an adequate and effective response to disasters that meets the essential needs of the persons concerned, with full respect for their rights.” In the context of the present topic, the ultimate goal of the duty to cooperate, and therefore of any of the forms of cooperation referred to in draft article 5 *bis*, is the protection of persons affected by disasters.

(4) While the draft article highlights specific forms of cooperation, the list is not meant to be exhaustive, but rather illustrative of the principal areas in which cooperation may be appropriate according to the circumstances. The non-exhaustive nature of the list is emphasized by the use of the word “includes”, and its equivalent in the other official languages. The Commission determined that the highlighted forms are the main areas in which cooperation may be warranted, and that the forms are broad enough to encapsulate a wide variety of cooperative activities. Cooperation may, therefore, include the activities mentioned, but is not limited to them; other forms of cooperation not specified in the present draft article are not excluded, such as financial support; technological transfer covering, among others, satellite imagery; training; information-sharing and joint simulation exercises and planning.

(5) As draft article 5 *bis* is illustrative of possible modalities of cooperation, it is not intended to create additional legal obligations for either affected States or assisting actors to engage in certain activities. The forms which cooperation may take will necessarily depend upon a range of factors, including, *inter alia*, the nature of the disaster, the needs of the affected persons, and the capacities of the affected State and assisting actors involved. As with the principle of cooperation itself, draft article 5 *bis* is meant to be reciprocal in nature, as cooperation is not a unilateral act, but rather one that involves the collaborative behavior

² *Ibid.*

³ ASEAN Documents Series 1976.

⁴ Para. 27.

of multiple parties.⁵ The draft article is therefore not intended to be a list of activities in which an assisting State may engage, but rather areas in which harmonization of efforts through consultation on the part of both the affected State and assisting actors may be appropriate.

(6) Moreover, cooperation in the areas mentioned must be in conformity with all other draft articles. For example, as with draft article 5, the forms of cooperation touched upon in draft article 5 *bis* must be consistent with draft article 9, which grants the affected State, “by virtue of its sovereignty” the primary role in disaster relief assistance. Cooperation must also be in accordance with the requirement of consent of the affected State to external assistance (draft article 11), as well as the recognition that the affected State may place appropriate conditions on the provision of external assistance, particularly with respect to the identified needs of persons affected by disaster and the quality of the assistance (draft article 13). Cooperation is also related to draft article 14, which recognizes the role of the affected State in facilitation of prompt and effective assistance to persons affected by disaster. As such, and since draft article 5 *bis* does not create any additional legal obligations, the relationship between the affected State, assisting States, and other assisting actors with regards to the abovementioned forms of cooperation will be in accordance with the other provisions of the present draft articles.

(7) Humanitarian assistance is intentionally placed first among the forms of cooperation mentioned in draft article 5 *bis*, as the Commission considers this type of cooperation of paramount importance in the context of disaster relief. The second category — coordination of international relief actions and communications — is intended to be broad enough to cover most cooperative efforts in the disaster relief phase, and may include the logistical coordination, supervision, and facilitation of the activities and movement of disaster response personnel and equipment and the sharing and exchange of information pertaining to the disaster. Though information exchange is often referred to in instruments that emphasize cooperation in the pre-disaster phase as a preventive mode to reduce the risk of disasters,⁶ communication and information is also relevant in the disaster relief phase to monitor the developing situation and to facilitate the coordination of relief actions amongst the various actors involved. A number of instruments deal with communication and information sharing in the disaster relief context.⁷ The mention of “making available relief personnel, relief equipment and supplies, and scientific, medical and technical resources” refers to the provision of any and all resources necessary for disaster response operations. The reference to “personnel” may entail the provision of and cooperation between medical teams, search and rescue teams, engineers and technical specialists, translators and interpreters, or other persons engaged in relief activities on behalf of one of the relevant actors – affected State, assisting State, or other assisting actors. The term “resources”

⁵ *Official Records of the General Assembly, Sixty-fifth session, Supplement No. 10 (A/65/10)*, para 331, commentary to draft article 5, para. (6).

⁶ See e.g., ASEAN Agreement on Disaster Management and Emergency Response, (26 July 2005), ASEAN Documents Series 2005, art. 18, para. 1.

⁷ See e.g., Tampere Convention on the Provision of Telecommunication Resources for Disaster Mitigation and Relief Operations, United Nations, *Treaty Series*, vol. 2296, p. 5, art. 3 (calling for “the deployment of terrestrial and satellite telecommunication equipment to predict, monitor and provide information concerning natural hazards and disasters,” and “the sharing of information about natural hazards, health hazards and disasters among the States Parties and with other States, non-state entities and intergovernmental organizations, and the dissemination of such information to the public, particularly to at-risk communities”); Guidelines on the Use of Military and Civil Defence Assets in Disaster Relief (“Oslo Guidelines”), as revised in 2006, para. 54. See also discussion in Secretariat Memorandum, A/CN.4/590, paras. 159–72.

covers scientific, technical, and medical expertise and knowledge as well as equipment, tools, medicines, or other objects that would be useful for relief efforts.

(8) Draft article 5 *bis* presents a list of the possible modalities of cooperation in the disaster relief, or post-disaster, phase. As such, the content of the draft article is without prejudice to any applicable rule on cooperation in the pre-disaster phase, including disaster prevention, preparedness, and mitigation.

Draft article 12 **Offers of assistance**

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

Commentary

(1) Draft article 12 acknowledges the interest of the international community in the protection of persons in the event of disasters, which is to be viewed as complementary to the primary role of the affected State enshrined in draft article 9. It is an expression of the principle of solidarity underlying the whole set of draft articles on the topic and, in particular, of the principle of cooperation embodied in draft articles 5 and 5 *bis*.

(2) Draft article 12 is only concerned with “offers” of assistance, not with the actual “provision” thereof. Such offers, whether made unilaterally or in response to a request, are essentially voluntary and should not be construed as recognition of the existence of a legal duty to assist. Nor does an offer of assistance create for the affected State a corresponding obligation to accept it. In line with the fundamental principle of sovereignty informing the whole set of draft articles, an affected State remains free to accept in whole or in part, or not to accept, offers of assistance from States or non-State actors. At most, as provided in paragraph 3 of article 11 on “Consent of the affected State to external assistance”:

“Where an offer of assistance is extended in accordance with the present draft articles, the affected State shall, whenever possible, make its decision regarding the offer known.”

The requirement that offers of assistance be made “in accordance with the present draft articles” implies, among other consequences, that such offers cannot be discriminatory in nature nor be made subject to conditions that are unacceptable to the affected State.

(3) Offers of assistance which are consistent with the present draft articles cannot be regarded *per se* as interference in the affected State’s internal affairs. This conclusion accords with the statement of the Institut de Droit International in its 1989 resolution on the protection of human rights and the principle of non-intervention in internal affairs of States:

“An offer by a State, a group of States, an international organization or an impartial humanitarian body such as the International Committee of the Red Cross, of food or medical supplies to another State in whose territory the life or health of the population is seriously threatened cannot be considered an unlawful intervention in the internal affairs of that State. [...]”⁸

⁸ Institute of International Law, Session of Santiago de Compostela, “The Protection of human rights and the principle of non-intervention in the internal affairs of States” (13 December 1989), art. 5.

(4) Draft article 12 addresses the question of offers of assistance to affected States made by third actors by mentioning in two separate sentences those most likely to be involved in such offers after the occurrence of a disaster. States, the United Nations and other competent intergovernmental organizations are listed in the first sentence while the second concerns non-governmental organizations. The Commission decided to use a different wording in each of the two sentences. In the first sentence it opted for the phrasing “have the right to offer assistance” for reasons of emphasis. States, the United Nations and intergovernmental organizations not only are entitled but are also encouraged to make offers of assistance to the affected State. When referring to non-governmental organizations in the second sentence, the Commission adopted instead the wording “may also offer assistance” to stress the distinction that exists between the position of those organizations and that of States and intergovernmental organizations. Although equally free to offer assistance to the affected State, non-governmental organizations have their activities governed by national law, which may place restrictions on the offering of assistance.

(5) The second sentence of draft article 12 recognizes the important role played by those non-governmental organizations which, because of their nature, location and expertise, are well placed to provide assistance in response to a particular disaster. The position of non-governmental, and other, actors in carrying out relief operations is not a novelty in international law. The Geneva Conventions of 1949 already provided that, in situations of armed conflict:

[...] An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict.⁹

Similarly, the Second Additional Protocol to the Geneva Conventions provides that:

Relief societies located in the territory of the High Contracting Party, such as Red Cross (Red Crescent, Red Lion and Sun) organizations, may offer their services for the performance of their traditional functions in relation to the victims of the armed conflict. The civilian population may, even on its own initiative, offer to collect and care for the wounded, sick and shipwrecked.¹⁰

The important contribution of non-governmental organizations, working with strictly humanitarian motives, in disaster response was stressed by the General Assembly in its resolution 43/131 of 8 December 1988, entitled “Humanitarian assistance to victims of natural disasters and similar emergency situations”, in which the Assembly, *inter alia*, invited all affected States to “facilitate the work of [such] organizations in implementing humanitarian assistance, in particular the supply of food, medicines and health care, for which access to victims is essential” and appealed “to all States to give their support to [those] organizations working to provide humanitarian assistance, where needed, to the victims of natural disasters and similar emergency situations”.¹¹

Draft article 13 **Conditions on the provision of external assistance**

The affected State may place conditions on the provision of external assistance. Such conditions shall be in accordance with the present draft articles, applicable rules of international law, and the national law of the affected State.

⁹ See, for example, the 1949 Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, art. 3 (2).

¹⁰ II Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977, art. 18 (1).

¹¹ See General Assembly resolution 43/131 of 8 December 1988, paras. 4–5.

Conditions shall take into account the identified needs of the persons affected by disasters and the quality of the assistance. When formulating conditions, the affected State shall indicate the scope and type of assistance sought.

Commentary

(1) Draft article 13 addresses the establishment of conditions by affected States on the provision of external assistance on their territory. It affirms the right of affected States to place conditions on such assistance, in accordance with the present draft articles and applicable rules of international and national law. The article indicates how such conditions are to be determined. The identified needs of the persons affected by disasters and the quality of the assistance guide the nature of the conditions. It also requires the affected State, when formulating conditions, to indicate the scope and type of assistance sought.

(2) The draft article furthers the principle enshrined in draft article 9, which recognizes the primary responsibility of the affected State in the direction, control, coordination and supervision of assistance on its territory. By using the phrasing “may place conditions”, which accords with the voluntary nature of the provision of assistance, draft article 13 acknowledges the right of the affected State to establish conditions for such assistance, preferably in advance of a disaster’s occurrence but also in relation to specific forms of assistance by known actors during the response phase. The Commission makes reference to “external” assistance because the scope of the provision covers the assistance provided by third States or other assisting actors, such as international organizations, but not assistance provided from internal sources, such as domestic non-governmental organizations.

(3) The draft article places limits on an affected State’s right to condition assistance, which must be exercised in accordance with applicable rules of law. The second sentence outlines the legal framework within which conditions may be imposed, which comprises “the present draft articles, applicable rules of international law, and the national law of the affected State.” The Commission included the phrase “the present draft articles” to stress that all conditions must be in accordance with the principles reflected in previous and subsequent articles, there being no need to repeat an enumeration of the humanitarian and legal principles already addressed elsewhere, notably, good faith, sovereignty and the humanitarian principles dealt with in draft article 6, to wit, humanity, neutrality, impartiality and non-discrimination.

(4) The reference to national law emphasizes the authority of domestic laws in the particular affected area. It does not, however, imply the prior existence of national law geared to the specifics of the conditions brought forth by an affected State in the event of a disaster. Although there is no requirement of specific national legislation before conditions can be fixed, they must be in accordance with whatever relevant domestic legislation is in existence in the affected State.

(5) The affected State and the assisting actor must both comply with the applicable rules of national law. The affected State can only impose conditions that are in accordance with such laws, and the assisting actor must comply with such laws at all times during the duration of assistance. This reciprocity is not made explicit in the draft article, since it is inherent in the broader principle of respect for national law. Existing international agreements support the assertion that assisting actors must comply with national law. The ASEAN Agreement, for example, provides in art. 13 (2) that “[m]embers of the assistance operation shall respect and abide by all national laws and regulations”. Several other

international agreements also require assisting actors to respect national law¹² or to act in accordance with the law of the affected State.¹³

(6) The duty of assisting actors to respect national law implies the obligation to require that: members of the relief operation observe the national laws and standards of the affected State,¹⁴ the head of the relief operation ensures the observance of the national laws and standards of the affected State,¹⁵ and that assisting personnel cooperate with national authorities.¹⁶ The obligation to respect the national law and authorities of the affected State is a manifestation of compliance with the overarching principle of the sovereignty of the affected State and the principle of cooperation.

(7) The right to condition assistance is the recognition of a right of the affected State to deny unwanted or unneeded assistance, and to determine what and when assistance is appropriate. The third sentence of the draft article gives an explanation of what is required of conditions put forth by affected States, namely, that they must “take into account” not only the identified needs of the persons affected by disasters but also the quality of the assistance. Nevertheless, the phrase “take into account” does not denote that conditions relating to the identified needs and the quality of assistance are the only ones which States can place on the provision of external assistance.

(8) The Commission included the word “identified” to signal that the needs must be apparent at the time conditions are put forth, and that needs can change as the situation on the ground changes and more information becomes available. It implies that conditions should not be arbitrary, but be formulated with the goal of protecting those affected by a disaster. “Identified” indicates there must be some process by which needs are made known, which can take the form of a needs assessment, preferably also in consultation with assisting actors. However, the procedure to identify needs is not predetermined, and it is left to the affected State to follow the most suitable one it finds. This is a flexible requirement that may be satisfied according to the circumstances of a disaster and the capacities of the affected State. In no instance should identifying needs hamper or delay prompt and effective assistance. The provision of the third sentence is meant to “meet the essential needs of the persons concerned” in the event of a disaster, as expressed in draft article 2, and should be viewed as further protection of the rights and needs of persons affected by disasters. The reference to “needs” in both draft articles is broad enough to import the special needs of women and especially vulnerable or disadvantaged groups, more explicitly envisaged in draft article 6, including children, the elderly and persons with disabilities.

(9) The inclusion of the word “quality” is meant to ensure that affected States have the right to reject assistance that is not necessary or that may be harmful. Conditions may include restrictions based on, *inter alia*, safety, security, nutrition and cultural appropriateness.

¹² See, for example, the Inter-American Convention, art. VIII, XI (d); and the Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency, art. 8 (7).

¹³ Ibid; Agreement among the Governments of the Participating States of the Black Sea Economic Cooperation (BSEC) on Collaboration in Emergency Assistance and Emergency Response to Natural and Man-made Disasters, of 15 April 1998, arts. 5 and 9.

¹⁴ See, for example, Convention on the Transboundary Effects of Industrial Accidents, 17 March 1992, United Nations, *Treaty Series*, vol. 2105, No. 36605, annex X (1): “The personnel involved in the assisting operation shall act in accordance with the relevant laws of the requesting Party.”

¹⁵ See, for example, ASEAN Agreement, art. 13 (2): “The Head of the assistance operation shall take all appropriate measures to ensure observance of national laws and regulations.”

¹⁶ See, for example, Max Planck Guidelines, para. 22 (b): “At all times during humanitarian assistance operations the assisting personnel shall... [c]ooperate with the designated competent authority of the receiving State.”

(10) Draft article 13 contains a provision on the “scope and type of assistance sought.” This is in line with previous international agreements that contain a similar provision.¹⁷ By the use of the words “shall indicate” the draft article puts the onus on the affected State to specify the type and scope of assistance sought when placing conditions on assistance. At the same time, it implies that once fixed, the scope and type of such assistance will be made known to the third actors that may provide it, which would facilitate consultations. This will increase the efficiency of the assistance process, and will ensure that appropriate assistance reaches those in need in a timely manner.

(11) The Commission considered several possibilities for the proper verb to modify the word “conditions”. The Commission’s decision to use two different words, “place” and “formulate”, is a stylistic choice that does not imply differentiation of meaning between the two uses.

Article 14

Facilitation of external assistance

1. The affected State shall take the necessary measures, within its national law, to facilitate the prompt and effective provision of external assistance regarding, in particular:

(a) civilian and military relief personnel, in fields such as privileges and immunities, visa and entry requirements, work permits, and freedom of movement; and

(b) goods and equipment, in fields such as customs requirements and tariffs, taxation, transport, and disposal thereof.

2. The affected State shall ensure that its relevant legislation and regulations are readily accessible, to facilitate compliance with national law.

Commentary

(1) Draft article 14 addresses the facilitation of external assistance. Its purpose is to ensure that national law accommodates the provision of prompt and effective assistance. To that effect, it further requires the affected State to ensure that its relevant legislation and regulations are readily accessible to assisting actors.

(2) The draft article provides that affected States “shall take the necessary measures” to achieve prompt and effective provision of assistance. The phrase “take necessary measures, within its national law” may include, inter alia, legislative, executive, and administrative measures. Measures may also include actions taken under emergency legislation, as well as temporary adjustment or waiver of the applicability of particular national legislation or regulations, where appropriate. In formulating the article in such a manner, the Commission encourages States to allow for temporary non-applicability of their national laws in the event of disasters, and for appropriate provisions to be included within their national law so as to not create any legal uncertainty in the critical period following a disaster when such emergency provisions become necessary.

(3) The draft article outlines examples of areas of assistance in which national law should not stand in the way. The words “in particular” before the examples indicate that this is not an exhaustive list, but rather an illustration of the various areas that may need to be addressed by national law to facilitate prompt and effective assistance.

¹⁷ See, for example, Tampere Convention, article 4 (2): “A State Party requesting telecommunication assistance shall specify the scope and type of assistance required.”

(4) Subparagraph (a) envisages relief personnel. Specific mention of both civilian and military relief personnel indicates the Commission's recognition that the military often plays a key role in disaster response actions. Military relief personnel is that involved in the provision of humanitarian assistance and not of military aid. The areas addressed in the subparagraph provide guidance as to how personnel can be better accommodated. Granting of privileges and immunities to assisting actors is an important measure included in many international agreements to encourage the help of foreign aid workers.¹⁸ Waiver or expedition of visa and entry requirements and work permits is necessary to ensure prompt assistance.¹⁹ Without a special regime in place, workers may be held up at borders or unable to work legally during the critical days after a disaster, or forced to exit and re-enter continually so as not to overstay their visas. Freedom of movement means the ability of workers to move freely within a disaster area in order to properly perform their specifically agreed upon functions.²⁰ Affected States can restrict access to certain sensitive areas while still allowing for freedom within the area concerned. Unnecessary restriction of movement of relief personnel inhibits workers' ability to provide flexible assistance.

(5) Subparagraph (b) addresses goods and equipment, which encompasses any and all supplies, tools, machines, foodstuffs, medicines, and other objects necessary for relief operations. The Commission intends that this category also include search dogs, which are normally regarded as goods and equipment, rather than creating a separate category for animals. Goods and equipment are essential to the facilitation of effective assistance, and national laws must be flexible to address the needs of persons affected by disasters and to ensure prompt delivery. Custom requirements and tariffs, as well as taxation, should be waived or lessened in order to reduce costs and prevent delay of goods.²¹ Goods and equipment that are delayed can quickly lose their usefulness, and normal procedures in place aiming at protecting the economic interests of a State can become an obstacle in connection with aid equipment that can save lives or provide needed relief.

(6) The second paragraph of the draft article requires that all relevant legislation and regulations are readily accessible to assisting actors. By using the words "readily accessible", what is required is ease of access to such laws without creating the burden on the affected State to physically provide this information separately to all assisting actors.

Article 15 **Termination of external assistance**

The affected State and the assisting State, and as appropriate other assisting actors, shall consult with respect to the termination of external assistance and the modalities of termination. The affected State, the assisting State, or other assisting actors wishing to terminate shall provide appropriate notification.

¹⁸ See, for example, the Framework Convention on Civil Defense Assistance, art. 4 (5): "The Beneficiary State shall, within the framework of national law, grant all privileges, immunities, and facilities necessary for carrying out the assistance."

¹⁹ The League of Red Cross Societies has long noted that entry requirements and visas serve as a "time-consuming procedure which often delays the dispatch of such delegates and teams," thus delaying the vital assistance the affected State has a duty to provide. Resolution adopted by the League of Red Cross Societies Board of Governors at its 33rd session, Geneva, 28 October–1 November, 1975.

²⁰ See UNITAR Model Rules, annex A, rule 16, which states that an affected State must permit assisting "personnel freedom of access to, and freedom of movement within, disaster stricken areas that are necessary for the performance of their specifically agreed functions."

²¹ This is stressed in various international treaties. See, for example, Tampere Convention, art. 9 (4); see also ASEAN Agreement, art. 14 (b).

Commentary

(1) Draft article 15 deals with the question of termination of external assistance. The provision is comprised of two sentences. The first sentence concerns the requirement that the affected State, the assisting State, and as appropriate other assisting actors consult each other as regards the termination of the external assistance, including the modalities of such termination. The second sentence lays out the requirement that parties wishing to terminate assistance provide appropriate notification.

(2) When an affected State accepts an offer of assistance, it retains control over the duration for which that assistance will be provided. Draft article 9, paragraph 2, explicitly recognizes that the affected State has the primary role in the direction, control, coordination and supervision of disaster relief and assistance on its territory. For its part, draft article 11 requires the consent of the affected State to external assistance, with the caveat that consent shall not be withheld arbitrarily. The combined import of the foregoing provisions is that the affected state can withdraw consent, thereby terminating external assistance and bringing to an end the legal regime under which the assistance was being provided.

(3) Draft article 15 seeks to strike a balance between the right of the affected State to terminate external assistance and the position of assisting actors, with a view to providing adequate protection to persons affected by disasters. Accordingly, the provision is not drafted in terms of granting only the affected State a unilateral right of termination. Instead, the Commission recognizes that assisting States and other assisting actors may themselves need to terminate their assistance activities. Draft article 15 thus preserves the right of any party to terminate the assistance being provided, on the understanding that this is done in consultation with the other States or actors, as appropriate.

(4) The words “assisting actors” are drawn from existing instruments²² to describe international organizations and non-governmental organizations which provide disaster relief and assistance, on the understanding that they will be defined in an article on the use of terms. Draft article 15 is drafted in bilateral terms, but it does not exclude the scenario of multiple assisting actors providing external assistance.

(5) The requirement to consult is laid down by the Commission in the spirit of solidarity and cooperation implicit in the context of the entire draft articles, and the principle of cooperation enshrined in draft articles 5 and 5 *bis*. The Commission anticipates that termination may become necessary for a variety of reasons and at different stages during the provision of assistance. The relief operations may reach a stage where it would be only logical either for the affected State or one or more of the assisting parties to cease operations. Circumstances leading to termination may include instances in which the resources of assisting actors are depleted, or where the occurrence of another disaster makes the diversion of resources necessary. Draft article 15 is flexible, allowing adjusting the duration of assistance according to the circumstances, while implying that parties should consult in good faith. In any event, draft article 15 should be read in light of the purpose of the draft articles, as indicated in draft article 2; thus, decisions regarding the termination of assistance are to be made taking into consideration the needs of the persons affected by disaster, namely, whether such needs have been met.

(6) The word “modalities” refers to the procedures to be followed in terminating assistance. Even though termination on a mutual basis may not always be feasible, consultation in relation to the modalities would enable the relevant parties to facilitate an amicable and efficient termination.

²² Article 12 of the IFRC Guidelines.

(7) The second sentence establishes a requirement of notification by the party wishing to terminate external assistance. Appropriate notification is necessary to ensure a degree of stability in the situation, so that no party is adversely affected by the abrupt termination of assistance. The provision is drafted flexibly so as to anticipate notification before, during or after the consultation process. No procedural constraints have been placed on the notification process. However, notification should be “appropriate” according to the circumstances, including the form and timing, preferably early, of the notification.
