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State

Agenda Item

Report of the International Law Commission

on the work of the Commission

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State

Ms. P.

Legal Adv.

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requested¹. Nonetheless, no matter how convenient it might be to consider it sufficient to implant a word such as "shall" with distributive connotations, it is not enough to do so, and it is not enough to offer assistance.

Two arguments may be put forward to show that it is not obvious that a State or an international organization may, at any time, propose its assistance to an affected State,² hence that it is not enough to couch such offer in terms of a "right" or "duty". In the first place, the connection could generate some perplexing questions, which are not easily answered. Thus, a right bestowed on a subject of international law entails, in principle, a corresponding duty for another subject, which is not easy to establish in the present case. What, in fact, would be the duty of the affected State? One might be tempted to establish a link between the "right" referred to in article 12 and the "duty to seek assistance" mentioned in article 13. This approach, however, would completely miss the point here, as the two provisions do not refer to each other in any way.

For these reasons, we support the view expressed last year by some delegations, that the term "right" is unsatisfactory and should therefore be reformulated, focusing more on the cooperative character of the offer rather than on its legal qualification.³

As regards Draft Article 6, several delegations, including members of the ILC who have expressed the view that the use of mandatory language in this regard, such as the word "shall", indicates the existence of an obligation to provide assistance, a position which has been found not to be supported by practice or theory, and which would benefit from an indicative, as opposed to a prescriptive, tone. One which is now employed, of the type of assistance mentioned in article 13, would give the assisting State more options within the framework outlined by article 13.

Mr. Chairman,

¹For a summary of the position of States on this issue, see the report of the Secretary-General on the event of assistance, A/C.6/46/L.2, para. 15.

²See Russian Federation, A/C.6/66/SR.24, par. 37, p. 7.

³See United Kingdom, A/C.6/65/SR.23, para. 45, p. 19; United States, A/C.6/65/SR.23, para. 69, p. 14.

I would like now to address a matter of a more general nature in relation to the future work of the International Law Commission.

The Special Rapporteur informed the Commission that his intention is to spend most of his time in the field, not only in disaster-hit areas, but also in areas including the prevention and mitigation of disasters.⁴ His approach, as protection of persons is the primary objective, should not be limited to the provision of relief assistance but also encompass measures to prevent such disasters or mitigate their effects through appropriate infrastructure, international cooperation, early warning systems and contingency plans. This approach has additional merit in the case of recurrent harmful events, such as river floods.

In relation to the latter, we would like to stress the importance of the United Nations Economic Commission for Europe's *Transboundary Flood Management: Theoretical Model, Practical Guidelines* with commentaries that were prepared in 2006.⁵ Contracting Parties to the Helsinki Convention on the Protection and Use of Transboundary Watercourses and International Lakes, negotiated in 2006 and are now in the process of finalizing the final text of the bilateral or multilateral agreements. The Commission is aware that, among the very few normative instruments at the international level on flood-related matters of flood-related disaster prevention, the *Transboundary Flood Management: Theoretical Model, Practical Guidelines* provides a useful precedent to be taken into account in the course of the future work of the Special Rapporteur and the International Law Commission in relation to this topic.

Thank you Mr. Chairman.

⁴See *Report of the International Law Commission, 60th session, 2008, paras. 10-12*, para. 10.

⁵See doc. ECE/MP.WAT/2006/4 available at :

http://www.ece.org/Docs/2006/MP.WAT/2006/4/2006/4_001.pdf