

Ireland

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Agenda item 81:

The report of the International Law Commission on the work of its 63rd Session

Chapter IX: Protection of Persons in the Event of Disaster

Mr Chair

1. I am pleased to have the opportunity to make some comments in relation to Chapter IX of the Report of the ILC on the topic of the Protection of Persons in the Event of Disaster.
2. Ireland has from the outset been strongly in favour of consideration of this topic by the International Law Commission. It is a matter of very direct and practical concern to us all. It is noticeable and welcome that in a number of States, including Ireland, this topic has drawn the work of the ILC to the attention of a wider variety of state agencies (including for example development assistance agencies).
3. These are among the reasons for which we have in the past 2 sessions made interventions in this forum, expressing our views on the draft articles and the approaches put forward by the Commission.
4. Ireland and a number of other states at last year's session of 6th Committee expressed views on draft articles 6, 7 and 8, including a view that the contents of draft articles 7 and 8 (human dignity and human rights respectively) might be better reflected in a preambular section rather than in the draft articles themselves. We have noted the discussion which took place within the Commission on this issue. However we remain of the view that it would be preferable to refer to such overarching principles including human rights only in a possible preambular section; and for the draft articles to focus instead on more operational and practically-orientated elements.
5. Moving on to the new issues addressed at its 63rd session this year, we have noted the question posed by the Commission on whether a duty to cooperate with an affected state in the context of disaster includes a "duty on States to provide assistance when requested by the affected State?" Although we strongly support

international cooperation and assistance, Ireland is firmly of the view that there is no such legal *duty* to provide assistance in customary international law.

6. Turning to the draft articles adopted by the Commission at its 63rd session, we agree with the emphasis of draft article 9 upon the affected state (by virtue of its sovereignty) as having a duty to ensure the protection of persons and provision of disaster relief on its territory. It follows that the affected State as a result has the primary role in the direction, control, coordination and supervision of such relief and assistance.

7. We also agree with the view set out in the commentary that draft article 10 – duty to seek assistance – may be an element of the fulfilment of an affected State’s primary responsibilities, when its national response capacity is exceeded. In light of the current status of international law, in such cases we too prefer to cast this as a responsibility to ‘seek’ rather than a more direct duty to ‘request’ assistance.

8. Draft article 11 concerns issues of consent of an affected State. This is a crucial element of the overall framework.

9. It is fully consistent with draft article 9 – and in our view with general international law - that draft article 11(1) should recognise that provision of external assistance requires the consent of the affected State as a matter of general principle. We are however unsure of some elements in the remainder of the draft article and associated commentaries.

10. For instance, subparagraph 2 provides that consent shall not be withheld arbitrarily. While we do not disagree with this at the level of principle, we wonder how it might translate into practice. The associated commentaries state that whether withholding of consent is arbitrary shall be determined on a case by case basis and that the absence of reasons for refusal may serve “to support an inference that the

withholding of consent is arbitrary”. We note the general principles offered in paragraph 7 of the commentaries regarding the basis on which such assessments might be carried out. However it is not clear by whom it is suggested such assessments would be made; or what the effect would be of an assessment that consent had been arbitrarily withheld. It may be helpful for the Commission to elaborate further, as it has already begun to do in the commentaries to this draft article, on the position in existing international law by identifying treaties or practice relevant to consent and arbitrary refusal of assistance.

Mr Chair

11. Ireland believes that the ILC is in a unique position to consider and provide expert legal input in relation to the topic and to assist in creating a practical framework which States might consider in relation to disaster relief and response. We would like to commend the Special Rapporteur Eduardo Valencia-Ospina for his work to date and look forward to our future cooperation.

Thank you