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67TH SESSION

State

Agenda Item

Report of the International Inquiries Commission

on the

Complaint

State

Ms. P.

Legal Adv.

Mi

NEW YORK

Friday, November 2, 2012

Mr. Chairman,

Concerning the Commission's Report on the Evils of Disaster, I have read the Special Rapporteur's Report. The Commission has returned in his report to the community has dealt with bilateral contacts, a high degree of binding and also taking into account is taking in its course full explanations for the forward and satisf even clearer picture of the treated.

Mr. Chairman,

While fully endorsing the we would like to particular questions.

Mr. Chairman,

Article 12 refers to a "right" of other assistance by the opinion of no duty of States and international organizations. The formulation is avoiding any of disasters, or State or an international organization.

requested.¹ Nonetheless, no matter how convenient it might be to consider it sufficient to implant a word such as "shall" with its usual connotations to imply that the offer is intended to be binding, it is not possible to offer assistance.

Two arguments may be put forward to show that there is no 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 possible to couch such offer in terms of a "right" or "duty" of the assisting State in connection with the offer. Such a right or duty is a concept which is not easily answered. Thus, a right bestowed on a subject of international law entails, in principle, a corresponding duty on the part of the State which is not easy to establish in the present case. It is not clear what is the duty of the affected State.³ One might be tempted to establish a link between the "right" referred to in article 12 and the "duty to assist" mentioned in article 13. This approach, however, completely misses 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" should therefore be reformulated, focusing more on the cooperative character of the offer rather than on its legal implications.³

As regards Draft Article 6, a reformulation of the word "shall" in the mandatory language in this regard, such as the word "shall" indicates the existence of an obligation to provide assistance, an obligation which has been found not to be supplementary, but one which would benefit from an individualist, as opposed to a collective one which is now employed, of the types 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 *Yearbook of International Law on the Event of Unlawful Acts*, vol. 1, p. 15.

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

³See United Kingdom, A/C.6/65/SR.23, par. 45, p. 19; United States, A/C.6/65/SR.23, par. 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 mandate will spend most of his time on the study of transboundary disasters, including the prevention and mitigation of disasters. His approach, as protection of persons is the main focus, 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 added value, particularly 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: The Vienna Model Protocol* with commentaries, the *Agreement on Contracting Parties to the Helsinki Convention on the Protection and Use of Transboundary Watercourses and International Lakes*, the *Helsinki Convention of 2006* and the *Agreement on the Danube River* as the only bilateral or multilateral instruments at the international level addressing the very few normative instruments at the international level addressing matters of flood-related disaster prevention. The Vienna Model Protocol provides a useful precedent to be taken into account in the context 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*, 59th session, 2007, paras. 10-12, 14 and 15.

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

<http://www.unep.org/dp/dpdocs/Agreement%20on%20the%20Danube.pdf>