Introduction

In order to address the fragmented and underdeveloped nature of international law pertaining to natural and technological disasters, the International Law Commission (ILC or the Commission) at its fifty-ninth session in 2007, decided to include the topic ‘Protection of persons in the event of disasters’ in its programme of work. With Eduardo Valencia-Ospina as Special Rapporteur, the ILC ultimately produced a set of Draft Articles relating to the topic in 2016. The ILC claims that the objectives of its work are to ultimately ‘facilitate an adequate and effective response to disasters that meets the essential needs of the persons concerned, with full respect for their rights’. 1 As one of the most significant developments relating to disaster law in recent years, an appraisal of the ILC’s approach to human rights is warranted. Such an appraisal is further justified by the ILC’s claim that the individual, ‘as a bearer of rights and as a person with essential needs, is at the centre of its work on the topic’. 2

The chapter demonstrates that human rights are referenced throughout the entire set of Draft Articles and the Commentaries thereto. It assesses the human rights approach of the ILC to the Draft Articles from the appointment of the ILC’s Special Rapporteur through to their adoption on final reading. Thus, the first section addresses the scope of the ILC’s work and its implications for human rights. The second through fourth sections address the Draft Articles concerning human dignity, human rights and humanitarian principles respectively. It is clear that these provisions, in particular the stand-alone human rights Draft Article (Draft Article 5) proposed by the ILC, are human rights inspired or partly informed by considerations of international human rights obligations, are partly influenced by them or have important human rights implications. Therefore, a brief overview of the human rights content of the Draft Articles will thus be provided in the fifth section before a more general appraisal of the ILC’s approach to human rights concerning the topic is undertaken in the sixth section. This approach discusses the seemingly confused definition of protection adopted by the ILC and the implications this has for the approach to human rights that the

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THE HUMAN RIGHTS APPROACH
OF THE INTERNATIONAL LAW
COMMISSION IN ITS WORK ON
THE PROTECTION OF PERSONS
IN THE EVENT OF DISASTERS

Rónán McDermott
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The ILC has undertaken. The tension that the ILC encountered between promoting the protection of human rights on the one hand while respecting the principles of territorial sovereignty and non-intervention on the other is also highlighted. Finally, the human rights approach of the ILC is set in context and situated alongside parallel international developments in the law and policy of disaster management.

Scope of the ILC’s work and its implications for human rights

The ILC has limited the scope of its work on the topic to protection in the context of natural and technological disasters. This is reflected in Draft Article 3 in which disaster is defined as:

a calamitous event or series of events resulting in widespread loss of life, great human suffering and distress, mass displacement, or large-scale material or environmental damage, thereby seriously disrupting the functioning of society.

Of interest from a human rights perspective, this definition includes disasters causing large-scale material or environmental damage that do not impact directly on human life or directly cause great human suffering and distress.1 The Draft Articles address the applicability of the Draft Articles in armed conflict settings. Despite earlier confusion in the drafting of the Articles and the Commentaries thereto, it is recognised in the commentary to Draft Article 18 that the Draft Articles do apply in accordance with the principle of lex specialis to disasters that occur in the context of armed conflict to the extent that the specific legal issues raised by a disaster are not covered by international humanitarian law.2

While human rights issues are more likely to arise in conflict than in natural and technological disaster settings, recent disasters have seen increased attention being paid by humanitarian actors and scholars from across disciplines to human rights issues in natural disaster settings.3 This development has served to highlight the fundamental human rights dimension to both the generation of vulnerability to disaster and the perpetuation and exacerbation of human rights abuses arising from disasters. Despite this, the nexus between human rights and natural and technological disasters have been relatively neglected within international law. It was recognised early in the Commission’s work on the topic that the ‘link between international human rights law and disasters has not yet been generally reflected in existing hard-law instruments on either subject’.4 Only in recent years have legal scholarship begun exploring the relationship between human rights law and natural and technological disasters.5 One focus of attention has been on exploring the existence of an independent human right to humanitarian assistance.6 Considering the human rights approach of the ILC, it would be instructive to assess how it engages with this debate. The Special Rapporteur’s Preliminary Report notes that there are no major international or regional human rights treaties that explicitly recognise the existence of such a right.7 The existence of an implied right is also seen. The Special Rapporteur acknowledges that recognising such a right to assistance would counter the risk of fragmentation that would inevitably arise from the arbitrary selection of, or emphasis on, particular rights. However, he also recognises that the recognition of such a right would have broader ramifications for the international legal order, resulting in a potential tension with the principles of State sovereignty and non-intervention.8

The Preliminary Report examined two existing human rights instruments at the time that make explicit reference to disaster settings: the Convention on the Rights of Persons with Disabilities9 and the African Charter on the Rights and Welfare of the Child.10 Noting that these impose obligations to protect rather than bestow individual rights per se, it asserted that a
right-based approach to protection and assistance in the event of disasters contemplates these obligations as well. Reflecting this, the Preliminary Report recognises the relevance of international human rights law of general application to the protection of persons in times of disaster. It lists a number of relevant rights, including the right to life, the right to health and medical services, the right to the supply of water, the right to adequate housing, clothing and sanitation and the right not to be discriminated against.

The temporal scope of the ILC’s work on the topic is also important in assessing its human rights approach. Amongst social scientists focusing on disasters and humanitarian actors, the symbiotic relationship between human rights and disasters is recognised. On the one hand, human rights violations in times of normalcy can render those whose rights are violated more vulnerable to disasters where and when they occur. This would merit greater attention in pre-disaster phases. On the other hand, disasters can reinforce human rights violations, for example as a result of discrimination in disaster response. The increased recognition of human agency in generating and exacerbating, as well as alleviating, the impact of disasters has complemented the hitherto emphasis within disaster management on disaster preparedness and response.

Turning to the extent that the ILC has adopted such an approach, it should be noted that it was noted in the Special Rapporteur’s Second Report on the topic that a number of delegates in the Sixth Committee suggested that the ILC should effectively limit its focus to disaster response while the inclusion of other phases of the disaster management cycle. In the same Report the Special Rapporteur stated that having a wider focus could be ‘overly ambitious’ to be appropriately covered at this stage of the Commission’s work on the topic. Nonetheless, he left the possibility open of returning to pre-disaster phases later on in the Committee’s work. Ultimately, Draft Article 9 addresses disaster risk reduction, imposing a duty on States to reduce the risk of disasters and to undertake the ‘appropriate measures, including through legislation and regulations, to prevent, mitigate, and prepare for disaster’. While the Draft Article does go some way in ensuring that a broad disaster management approach is undertaken that embraces the pre-disaster phase. Paragraph 4 of the Commentary on the Draft Article references the obligation to take preventative measures to reduce disaster risk as a corollary of States’ human rights obligations, in particular the right to life. It thus proceeds to illustrate how such an obligation has been recognised in decisions of international tribunals, in particular the European Court of Human Rights.

Draft Articles 1 and 2 concern the general scope and purpose of the Draft Articles. In determining the general scope of the project and the meaning of protection of persons in the event of disasters, the ILC grappled with the extent to which a rights-based approach should imbue its work on the topic. Already in the Preliminary Report provided to the ILC, the Special Rapporteur outlined his view concerning the meaning of such an approach:

The essence of a rights-based approach to protection and assistance is the identification of a specific standard of treatment to which the individual, the victim of a disaster, in casu, is entitled. To paraphrase the Secretary-General, a rights-based approach deals with situations not simply in terms of human needs, but in terms of society’s obligation to respond to the inalienable rights of individuals, empowers them to demand justice as a right, not as a charity, and gives communities a moral basis from which to claim international assistance when needed.

In an early plenary session of the ILC, there was a debate concerning the role of what is described as a ‘right-based approach’ to the topic of the protection of persons in the event of disasters. Support was expressed by some members of the ILC for a rights-based approach, at least as
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starting point’ and that ‘the human rights protection mechanism provided the best protection for
the alleviation of the suffering of victims’.20 However, some ambiguities were concerning the pick-
ing of a rights-based approach against a needs-based approach. Some members of the ILC con-
sidered that a focus on rights to the detriment of needs within the work of the Commission on
the topic might hinder a pragmatic response that the topic much since in emergency situations
certain human rights are derogable and that a rights-based approach might compel an affected
State to ‘always accept international aid, an obligation that was not based on State practice.’21
Ultimately these competing arguments appear to have been reconciled on the basis of agreement
around the assertion that a rights-based approach ought to be taken in the Commission’s work
but that such an approach must be adopted ‘in light of the principles of sovereignty and non-
intervention’22. The commentary to Draft Article 1 ultimately states that, while the scope of the
Draft Article primarily corresponds to the rights and obligations of States to one another in the
context of disasters and to persons affected by disaster, another axis of rights and responsibilities
of concern to the Draft Articles is the rights of individuals as established by international law’.23
Having detailed some of the key dimensions of the ILC’s work on this topic from a human rights
perspective, the following sections address individual Draft Articles. While necessarily selective
and not intended to be exhaustive, the selection of Draft Articles to further analyse is guided by
the concern to convey the particular approach to human rights adopted by the Commission.

Draft Article 4 – human dignity

The provision with one of the most important human rights origins and implications is Draft
Article 4, which reads as follows:

The inherent dignity of the human person shall be respected and protected in the event
of disasters.24

The first paragraph to the Commentary to the Draft Article states that the ILC ‘recognises human
dignity as the core principle that informs and underpins international human rights law’.25 The
following paragraph also highlighted the role of dignity in the protection of persons ‘in the ulti-
mate formulation of human rights law’.26 Some members of the ILC did suggest before the stand-
dalone human rights article (Draft Article 5 on final reading) was adopted that the recognition
of human dignity ‘could be supplemented by the obligation to respect human rights as set out
in existing international instruments, so as to reinforce the applicability of rights’.27 It should be
noted that, while some delegates in the Sixth Committee were supportive of the inclusion of the
stand-alone Draft Article on human dignity, when it was initially introduced, other delegates in
the Sixth Committee suggested that it might be better placed in the preamble.28 Nonetheless, a
dedicated Draft Article addressing human dignity was ultimately retained by the Commission,
which would indicate a strong preference on the part of the ILC to ensure that human dignity
was prominent within its work on the protection of persons in the event of disaster.

Draft Article 5 – human rights

The most obviously human rights-inspired of the Draft Articles is Draft Article 5. It reads as
follows:

Persons affected by disasters are entitled to the respect for and protection of their human
rights in accordance with international law’.29
The ILC Plenary Session that discussed this Article as originally submitted by the Special Rapporteur noted that the Special Rapporteur had indicated that the principles of sovereignty and non-intervention were a ‘point of departure’ and not a ‘point of conclusion’ in determining how the extent to which international human rights instruments and customary law should influence the protection of persons in the event of disaster. This would signify that at least towards the beginning of its work, the Special Rapporteur was not opposed to challenging the pre-existing balance between human rights and sovereignty concerns.

However, some of the effect of the human rights Draft Article appears to have been diluted somewhat through the course of the ILC’s work on the topic. The Draft Article adopted on first reading read as follows:

 persons affected by disasters are entitled to respect for their human rights.

A point of contention concerning the draft Article adopted on first reading is that the Draft Article did not adequately take into account the right of States to derogate and impose limitations on human rights during times of emergency and that some further elaboration would be required within the Draft Article. While the ILC did recognise in the commentary to the first reading of the Draft Article that the Draft Article does not prejudice a State’s freedom to derogate and limit its human rights obligations in accordance with international human rights instruments and customary international law, it had been argued that further clarity would have been beneficial. The wording of the Draft Article on final reading removed some ambiguity concerning the nature of the human rights obligations imposed and emphasised that human rights ought to be respected and protected ‘in accordance with international law’. Nonetheless, further clarity would have been welcome concerning the process by which derogations may be made rather than limitations. Limitations of course often being sufficient in the context of natural and similar disasters.

Another call for greater clarity that emerged from the Sixth Committee and which was supported by the ILC was that the wording of the Draft Article as adopted on first reading was excessively general and vague and that the particular human rights relevant during disasters be referenced in the commentary. This view was shared by the International Federation of the Red Cross and Red Crescent Societies (IFRC) in its written submission on the Draft Articles. In its commentary on the Draft Article adopted on final reading, the Commission declined to draw up an exhaustive list of relevant rights due to a concern that such a list could lead to an interpretation that rights not mentioned ought not to be applicable. However, it did proceed to enumerate some of the most pertinent civil and political rights (the right to life) and economic, social and cultural rights (relating to the provision of essential foodstuffs, essential health care, basic shelter and education for children).

The general wording and broad scope of application of the Draft Article as adopted on first reading allowed for differing obligations to be placed on States, NGOs and inter-governmental organisations. In so doing it could be argued that the Draft Article directed itself not only towards State actors but also towards non-state actors who do not fall under direct human rights obligations imposed by international human rights instruments and yet may as a result of the wording of the Draft Article have placed certain obligations to adhere to human rights norms. This intention is confirmed in the Commentary to the Draft Article as adopted on final reading. The ILC did not limit itself to human rights obligations under international agreement and customary international law but included ‘assertions of best practices for the protection of human rights included in non-binding texts on the international level’. This approach arguably reinforces developments within the humanitarian sector whereby self-regulation and regulation by donors towards the promotion of the human rights of disaster-affected persons and the enhancing of downwards accountability...
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Towards such persons have been increasingly promoted. Consequently, the newly inserted wording, ‘in accordance with international law’, can be regarded as somewhat disappointing from a human rights perspective and as a missed opportunity for the progressive development of international law to extend and consolidate their efforts in promoting human rights-based approaches to their work that occurs in the absence of formal international legal processes. The explicit reference to international law also removes human rights provisions as contained in national constitutions from the purview of the Draft Article. Despite these apparent setbacks in the elaboration of the Draft Article, it should however be noted that the final reading Draft Article revised the previous readings, expanding explicitly the human rights obligations from mere ‘respect for’ to also embrace ‘protection of’, thus broadening the scope of the obligations imposed on States.

Draft Article 6 – humanitarian principles

Draft Article 6 concerns the humanitarian principles and reads as follows:

> 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.

While the humanitarian principles pertain mainly to assistance rather than protection as commonly understood within the humanitarian sector, it is nonetheless important to assess the human rights approach adopted by the ILC to them as it is included in its work on the protection of persons in the event of disasters. Although the principles have been mainly inspired by international humanitarian law and the policy and striven-for practice of humanitarian actors in their pursuit of humanitarian space, it is possible to discern a human rights dimension to the approach the ILC takes to them. Thus, the ILC recognises that the principle of humanity is a ‘meeting point between international humanitarian law and international human rights law’. Furthermore, the Special Rapporteur in his reports recognises the element of non-discrimination as constituting the principle of impartiality. This inclusion met with the approval of the ILC in one of its plenary sessions at which it stated that:

> Non-discrimination, which was initially developed in the context of international humanitarian law, has also become a fundamental principle in human rights law, and is reflected in Article 1, paragraph 3, of the Charter of the United Nations.

Draft Articles 7 through 17 – human rights and the relationship between affected States and third States

With the possible exception of Draft Article 10, Draft Articles 7–17 concern the two-way relationship between the affected State and third States. Obligations in international human rights law permeate the ILC’s work in formulating these draft Articles. Draft Article 7 concerns both directions of the affected State-third State relationship. Third States are placed under a duty to cooperate, as appropriate, with the affected State:

> In the application of the present draft articles, States shall, as appropriate, cooperate among themselves, with the United Nations, with the components of the Red Cross and Red Crescent Movement, and with other assisting actors.
A general clause obliges States to cooperate, as appropriate, among themselves and with the United Nations (UN), the Red Cross and Red Crescent Movement and other assisting actors. The latter category is imported from the definition found in Draft Article 3, subparagraph (d). Again, the duty to cooperate is only required to the extent appropriate. In drafting this Draft Article, the ILC relies heavily on a justification based on human rights considerations. It cites the report of the Independent Expert on Human Rights and International Solidarity submitted to the Human Rights Council by the High Commissioner for Human Rights in which it is stated that ‘if obligations related to international assistance and cooperation are complementary to the primary responsibility of States to meet their national human rights obligations’ 48 International cooperation rests on the premise that developing countries may not possess the necessary resources for the full realisation of rights set forth in human rights instruments, in particular the International Covenant on Economic, Social and Cultural Rights, resulting in a shared responsibility for development 50 The Special Rapporteur reiterates, however, that cooperation should not be understood in a manner that would diminish the sovereignty of States within the international legal regime as laid out in UN General Assembly (UNGA) Resolution 46/182. 51 This is also reflected in the final Commentary on the Draft Article. 52 The Commission therefore refrains from challenging the status quo ante concerning international cooperation contained within Resolution 46/182 in which the sovereignty of the affected State remains central, despite an auxiliary responsibility to seek assistance where national capacities are overwhelmed. 53 Nonetheless, the Commentary to the Draft Article concerning international cooperation does proceed to cite further provisions of UNGA Resolution 46/182:

The 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. 54

This would suggest that the ILC is reflecting in its approach to the Draft Articles the core tension encountered in ensuring compliance with and implementation of human rights law at the domestic level. The nature of this tension is that the effect of international human rights norms is tempered by the demands of the principles of sovereignty and non-intervention. Nonetheless, the Special Rapporteur cites instruments that highlight what he calls the ‘internal’ aspect of sovereignty, whereby the primary responsibility placed on an affected State may ‘may encompass a duty to seek external support where national response capacities are overwhelmed’. 55 This caveat to sovereignty is also reflected in the Commentary to Draft Article 10 concerning the role of the affected State in furthering cooperation between assisting actors and affected States in a manner to ensure that the principle of non-intervention is not undermined. The Special Rapporteur highlights that cooperation may be considered as enhancing the sovereignty of States rather than undermining it. 56

In particular, the lack of clarity concerning the content of the duty to cooperate does not sufficiently constitute the obligations under international human rights law on third States to lend assistance.
Draft Article 11 concerns the duty of the affected State to seek external assistance:

1. In the event that a disaster manifestly exceeds its national response capacity, the affected State has the duty to seek assistance from, as appropriate, other States, the United Nations, and other potential assisting actors.

2. When external assistance is sought by an affected State by means of a request addressed to another State, the United Nations, or other potential assisting actor, the addressee shall expeditiously give due consideration to the request and inform the affected State of its reply.

While human rights do not feature explicitly in Draft Article 12 nor the Commentary thereto, it should be noted that an early version of the Draft Article accorded States, the UN and...
other competent inter-governmental organisations a right to offer assistance. NGOs were not bestowed the same right but may have offered assistance to the affected State. In presenting the early draft, the Special Rapporteur noted that the solidarity that underpins the identification of the right to offer assistance has its "ultimate goal and inspiration" in the protection of the individual, which is reflected in the inherent dignity of the human being and the protection of human rights. The role of the affected State had also been considered by the Commission, which the Special Rapporteur also claimed had been inspired by dignity and human rights. In guiding the ILC's early approach to offers of assistance, the Special Rapporteur noted that the right to offer assistance is recognised by a range of international instruments, including human rights instruments.

The definition of protection of persons and its implications for the human rights approach

It is important to highlight the potentially different usages of the term 'protection' deployed by the ILC on the one hand and humanitarian actors on the other. Such differing usage as deployed by human rights lawyers on the other hand and humanitarian actors on the other certain important implications for the nature of the human rights approach adopted by the ILC in its work on the topic. Humanitarian actors consider protection as all those activities that contribute to the respect for the rights of the individual. In the context of humanitarian crises without an armed conflict dimension (in which case international humanitarian law would not be relevant), such rights are derived from international human rights law. Protection activities can include prevention measures, advocacy in cases of ongoing violations of international human rights law and remedial actions designed to address the effects of violations. Humanitarian actors thus distinguish protection from assistance in their activities, the latter generally relating to all activities whereby material help is provided to persons affected by disasters.

Along similar lines, in his Preliminary Report the Special Rapporteur asserts that protection can be understood in a broad or a narrow manner:

"Protection can be said to be all-encompassing, containing the more specific concepts of response, relief or assistance with which it is often associated. One should however differentiate between protection, assistance and protection sensu stricto. This may be conceptualized as follows: there is a general, all-encompassing concept of protection which includes protection in a strict sense, denoting a rights-based approach, and other concepts, in particular assistance."

The ILC in its work seems to adopt the broader definition at times, which makes sense from a humanitarian perspective as it broadens the flexible approach to the legal issues that arise in the case of disaster is assessed. As a means of illustration, the Special Rapporteur in his Fourth Report stated that the term "assistance" reflects the broad ambit of operational aspects in the provision of humanitarian protection. The adoption of this broader definition is arguably also reflected in the inclusion of reference to the humanitarian principles in the scope of protection, notwithstanding the rationale for the principles being primarily grounded in the need for humanitarian actors to establish and maintain access to affected populations in order to provide assistance. However, the adoption of such broader definition can be problematic if the Draft Articles are to be integrated into protection debates within the fields of disaster management and humanitarian action.
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The comment by some States in the Sixth Committee that human rights and human dignity provisions should be placed in the preamble or towards the beginning of the Draft Articles as these Articles ought to permeate the entire set of Draft Articles might arguably indicate that the ILC has attempted to address not only human rights but also other legal issues and therefore goes beyond the ordinary definition of protection as understood within humanitarian circles. If protection is to be defined as all those activities that contribute to the enjoyment of human rights, then it could be argued that every aspect of the ILC’s approach to the topic can be considered as part of a human rights approach. Adopting such a broad definition of protection thus ensures that the ILC addresses, such as the protection of relief goods and termination of external assistance into the human rights arena, which may not be mentioned.

Conclusion

At the heart of the human rights approach to the protection of persons in the event of disaster is a tension between securing the human rights of disaster-affected persons while respecting the principles of sovereignty and non-intervention. This human equality forces onto the ILC's mandate to codify and progressively develop international law. Mere codification would present little threat to existing conceptions of the principles of sovereignty and non-intervention. In contrast, progressive development of the law on this topic would necessitate a re-appraisal of the principles of sovereignty and non-intervention as currently understood.

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The States in the Sixth Committee perhaps ultimately act as an eminence grise in constraining the human rights potential of the Draft Articles.

With greater attention being paid by human rights bodies to disasters, the ILC's human rights approach ought to be more closely integrated with wider developments in the law and policy of disaster management and humanitarian action. Limited though it may be in terms of its ambition, the human rights approach contained within the ILC's Draft Articles ought to be considered and taken into account by and benefit from other parallel developments within the international legal and policy architecture of disaster management. The concern with persons who are endowed with agency and rights as well as the duties on disaster management actors has been increasingly recognised within broader academic literature and operational policy briefs and best practices over the last twenty years or so.

The Agenda for Humanity issued by the UN Secretary-General ahead of the first World Humanitarian Summit (WHS) in May 2016 had as a central headline the upholding of norms, admittedly primarily in conflict but which nonetheless would be relevant for natural and similar disasters. Other relevant initiatives that form part of the international agenda on disaster reduction that are important for understanding the ILC's Draft Articles include the United Nations Framework for Disaster Risk Reduction (Sendai Framework), which was formulated in 2015, and discusses the importance of adequate legal frameworks for disaster risk reduction at multiple

levels.
levels of governance. It highlights, in one of its guiding principles, the objective of ‘promoting and protecting all human rights in the management of the risk of disasters.’

To date these various initiatives have been taking place at some distance from the work of the ILC. If the human rights approach of the ILC, limited inevitably though it may be by the inescapable precepts of international law outlined above relating to the principles of sovereignty and non-intervention, is to be realised, then a greater connectedness within the debate is required. The consultation with the parallel international processes detailed in the Special Rapporteur’s Eighth Report on the topic is therefore to be welcomed as is the broad consultation undertaken with relevant stakeholders prior to the adoption of the Draft Articles on final reading. Ultimate-ly these process are essentially related so that they are aimed at promoting human dignity at a period in human history when humanitarian needs are being outstripped by the international community’s capacity to meet them. The challenge is to seek a coherent message across policy domains.

In conclusion, the ILC claims to have addressed the topic of the protection of persons in the event of disasters with international human rights law as a core component. This is highlighted in the Secretariat document provided towards the beginning of the ILC’s work on the topic and for the most part in the Reports of the Special Rapporteur and the ILC’s plenary sessions. The divergence from the human rights approach that can be discerned is mainly due to the sovereignty considerations and perhaps the realisation that the ILC operates in the shadow of UN member States in the Sixth Committee of the UNGA and their jealous guarding of their sovereignty. Throughout its work on the topic, the ILC is conscious that it is conducting its work either in anticipation of or in reaction to the responses of States. The question arises as to whether and to what extent the ILC has ultimately engaged in codification and/or progressive development respectively. In the sense that disparate bodies of law and policy have been unified and addressed in a ‘whole-of-life’ manner, the ILC’s work could be said to have aimed at progressive development. In terms of substance, at least in relation to human rights, the Special Rapporteur, and the ILC generally, have been cautious. And it is in the form of the Draft Articles and their reception at the diplomatic level that the key test of the impact of the largely human rights approach of the ILC’s practice will be. These impacts will also depend on how the Draft Articles are articulated with similar developments in other aid policy domains. Every effort ought to be made to ensure that the Draft Articles, whatever form they may ultimately take, contribute to a more predictable, coherent and effective international legal order governing humanitarian crises and one which places human rights at the centre.

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11. ILC (n. 3) draft art 9.
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16. Ibid. draft art 4.
17. Ibid para 1.
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19. ILC (n. 27) para 307.
33 ILC (n. 1) para 3.
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41 ILC (n. 26) draft art 8, para 2.
42 One of the latest developments in this regard is the development of the Core Humanitarian Standard, available at www.corehumanitarianstandard.org/the-standard, accessed on 31 May 2016.
43 ILC (n. 3) commentary to draft art 6, para 8.
44 Ibid.
46 Ibid para 15.
48 ILC (n. 27) para 303. See also Casolari’s chapter in this volume.
49 ILC (n. 28) para 36.
50 ILC (n. 3) commentary to draft art 7, para 2.
51 Ibid para 38.
52 ILC (n. 3) commentary to draft art 10, para 2.
53 Ibid.
54 ILC (n. 28) Annex.
55 Ibid.
56 ILC (n. 3) commentary to draft art 13, para 2.
57 Ibid para 39.
58 Ibid para 40.
59 Ibid para 93.
60 IASC defines protection as "a broad term for activities aimed at obtaining full respect for the rights of all individuals in accordance with international law, including international humanitarian, human rights and refugee law, regardless of their age, gender or social, ethnic, national, religious or other background." "
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69 ILC (n. 10) para 51.
70 ILC (n. 28) para 47.
71 ILC (n. 10) para 52.
72 ILC (n. 26) para 275.
73 The UNSG notes that ‘[t]here is outrage that national sovereignty and security are being placed above people’s right to protection and assistance and that the most basic tenets of international humanitarian and human rights law, are being violated on a daily basis without accountability’. See UNSG, One Humanity: Shared Responsibility: Report of the Secretary General for the World Humanitarian Summit, UN Doc. A/70/709 (2016) para 10.