

IDRL: Protection of persons in the event of disasters

Published: 30 October 2009

Statement by Marwan Jilani, Permanent Observer of the IFRC to the Sixth Committee of the United Nations, in the UN General Assembly, in New York

It is my pleasure to take the floor on behalf of the International Federation of Red Cross and Red Crescent Societies to comment on the International Law Commission's progress on its project concerning the protection of persons in the event of disasters.

I would like to start by thanking the Chairman of the International Law Commission for his presentation of the report. I would like also to commend Special Rapporteur Eduardo Valencia-Ospina for another thoughtful report and to express our appreciation for the ongoing interest he and his colleagues have shown in our experience and work in the area of disaster response and disaster law.

Bearing in mind that the Commission has considered but not yet finally adopted several preliminary articles seeking to frame the scope and direction of the project, we would like to make the following observations:

First, we would like to express our appreciation for the attention the Special Rapporteur and his colleagues have paid to ensuring that the Commission's initiative is complementary to the ongoing work to implement the Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance (also known as the IDRL Guidelines), as adopted at the 30th International Conference of Red Cross and Red Crescent Societies.

We are pleased to note that over a dozen states have already either adopted new regulations using the Guidelines or are in a formal process of internal review of existing laws. Many others are in the initial stages of planning such reviews, in conjunction with their National Red Cross and Red Crescent Societies.

In this connection, we welcome the Commission's disposition to build on the consensus generated around the IDRL Guidelines to address the rights and duties both of states and the non-state sector in its draft articles.

The failure to account for the non-state sector is an important gap in some of the older global and regional treaties related to disaster cooperation.

However, the modern trend, as exemplified by the IDRL Guidelines as well as recent treaties such as the Tampere Convention on the Provision of Telecommunication Resources for Disaster Mitigation and Relief Operations and the ASEAN Agreement on

Disaster Management and Emergency Response, is to ensure coverage of these critical actors.

Second, we would like to express our appreciation for the Commission's acknowledgment of the Red Cross and Red Crescent's traditional adherence to an approach to disaster response that is based on needs but informed by rights. We are convinced that human rights must be considered a crucial component of the regulatory framework for disaster response. In particular, as affirmed by the Principles and Rules of the Red Cross and Red Crescent in Disaster Relief, we believe that humanitarian assistance is a fundamental right.

However, we also agree with the sentiment expressed in the Commission's report that not all practical problems can be solved through a rights-focused lens.

Third, we recognize the complexities facing the Commission in arriving at a definition of disaster. We believe that no single definition could be adequate for all purposes and that it is therefore important for the one adopted by the Commission to be directly informed by the extent and type of legal consequences it is considered to trigger. Nevertheless, we are of the view that a separation is appropriate and necessary between situations of armed conflict and other types of humanitarian emergency.

Armed conflicts, whether or not they coincide with a natural disaster, involve unique operational dynamics and uniquely implicate International Humanitarian Law.

The rules governing relief are and should continue to be distinct in several respects for disasters where there is no conflict. A simple "savings clause" for the application of International Humanitarian Law may not capture those distinctions.

Finally, we would like to highlight the Commission's focus on cooperation, a critical element in an effective disaster response.

As a matter both of international law and the domestic law of the countries in which they are established, our member Societies have a unique role in cooperating with the public authorities as their "auxiliaries in the humanitarian field."

The meaning and scope of this auxiliary role as an international norm was recently clarified in resolution 2 of the 30th International Conference of the Red Cross and Red Crescent. We hope that the Commission's articles will also be able to take this into account.

Mr. Chairman: We have appreciated the active dialogue that the Special Rapporteur has maintained with us and look forward to broadening this dialogue with other members in coming session.