

Protection of persons in the event of disasters (IDRL issues)

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Statement by Michael Schulz, Permanent Observer a.i. to the United Nations, at the Sixth Committee of the United Nations General Assembly, in New York

I take the floor on behalf of the International Federation of Red Cross and Red Crescent Societies (IFRC) to address the International Law Commission's report on its work on "protection of persons in the event of disasters."

As this Committee may recall, the International Federation of Red Cross and Red Crescent Societies is the world's oldest and largest humanitarian network, representing tens of millions of volunteers with a primary vocation for responding to the humanitarian consequences of disasters and conflicts supporting vulnerable people and promoting their development.

We are present in nearly every country to provide relief and comfort to stricken communities and we are well-prepared to respond quickly and massively across borders when domestic capacities are overwhelmed.

Our experience has given us an acute awareness of the importance of normative frameworks for disaster response – both at the domestic and international levels.

Strong frameworks are critical to enable governments to fulfil their role as the primary actors in mitigating and responding to disasters on their territories, to facilitate the supportive work of civil society and, most importantly, to empower communities to reduce their own vulnerabilities and to recover from disasters.

Seven years ago, IFRC began a systematic programme, the IDRL Programme, of research, including over two dozen case studies and discussions with governments and humanitarian actors, to identify relevant law and legal issues in international disaster relief.

Last year, after an 18-month consultation process involving representatives of over 140 governments, over 140 National Red Cross and Red Crescent Societies and several dozen UN agencies, NGOs and other stakeholders, the States parties to the Geneva Conventions and the components of the International Red Cross and Red Crescent Movement unanimously adopted the "Guidelines for the domestic facilitation and regulation of international disaster relief and initial recovery assistance" at the 30th International Conference of the Red Cross and Red Crescent.

These non-binding Guidelines, known as the "IDRL Guidelines" are drawn from existing international law and norms and are designed to help governments to prepare themselves before disasters strike for the most common legal issues of international operations.

I am pleased to report that a number of governments have already begun to use the Guidelines to analyse the strengths and weaknesses of their current laws and that the Guidelines have been favourably received in a number of regional and international forums, including this year's ECOSOC humanitarian segment.

IFRC and its member National Red Cross and Red Crescent Societies are now working to support governments to get the most benefit from the Guidelines in their individual contexts, through technical assistance projects, development of education materials and trainings and workshops.

Chair, While we are delighted with the consensus that has adopted the Guidelines, we are very aware that they will not solve all regulatory problems in disaster management, even if fully implemented.

Their exclusive focus on international assistance, and on technical issues such as visas, customs, transport, taxation and radio licensing, only captures part of the picture.

Important questions about the protection of disaster-affected persons, the right to humanitarian assistance and the obligations of states in reducing the risks and responding to disaster remain to be answered.

Moreover, a thorough assessment of the development of custom in this area – particularly with regard to international relief – could be very helpful.

We therefore welcome the interest of the ILC and the preliminary work of Mr. Eduardo Valencia-Ospina as special Rapporteur.

We have had good contacts with the UN Office of Legal Affairs as this topic has taken form on the ILC agenda.

We have also been very favourably impressed by Mr. Valencia-Ospina's willingness to engage with us and other humanitarian actors as well as his rapid appreciation for the many practical issues lurking behind the legal questions.

We are looking forward to our continued collaboration, both to share our experiences and to maximize the complementarity of our respective efforts.

Because the ILC's work is still at a very preliminary stage, I will not comment at any length on the substance of the report today.

However, I would like to make two brief points.

First, we recognise that determining the scope of the right to humanitarian assistance in disasters is of central importance. For its part, the International Red Cross and Red Crescent Movement considers it a fundamental right of all people to both offer and receive humanitarian assistance, as recently reaffirmed by our International Conference and as plainly implied in numerous human rights instruments.

However, there is an important distinction that must be maintained between the existence of a right on the one hand and the issues of its character and how it is applied, on the other.

This right is not a *carte blanche* for any international actor to respond in any way it likes to a natural disaster without regard to the domestic authorities and national laws. Second, we note that the various actors responding to disasters are informed by a variety of international instruments and norms and are not guided by human rights alone.

The IFRC, for example, considers its approach to be “needs based, but informed by rights.”

We are hopeful that the ILC will take different perspectives into account in its consideration of how to address the “rights-based approach” in the contexts of disaster response.

We stand ready to contribute to this discussion as it proceeds, bringing our operational experience to the table as well as the results of our analysis and extensive stakeholder consultations on the applicable legal frameworks.