

Comments on the international law commissions draft articles on protecting persons in the event of disasters - draft articles 10-12

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Statement by Ms. Kathryn Cooper on behalf of the IFRC, Agenda item 81: Report of the International Law Commission on the work of its sixty-third session, Protection of Persons in the Event of Disasters (Chapter IX of the Report), Sixth Committee of the United Nations General Assembly, in New York

Mr Chairman,

On behalf of the International Federation of Red Cross and Red Crescent Societies (IFRC), it is my pleasure to speak in relation to the Report of the International Law Commission (ILC), specifically Chapter 9 which concerns the protection of persons in the event of disasters.

As in past years, we would like to again extend our sincere appreciation to Special Rapporteur Mr Valencia-Ospina and his colleagues, for their thoughtful attention and their continued progress with this project.

As many Committee members are no doubt aware, the IFRC is the global federation of the world's 186 National Red Cross and Red Crescent Societies. The IFRC has taken a close interest in the development of regulatory frameworks for disaster response over the last ten years. Issues related to disaster law are also high on the agenda of the 31st International Conference of the Red Cross and Red Crescent, which will be held in Geneva from 28 November to 1 December. I will go into further detail about the International Conference at the end of my remarks.

We note that during its 63rd session this year, the ILC provisionally adopted the draft articles 6-9. I note that in our statement to the Sixth Committee in relation to this project last year, we expressed our support for most aspects of those draft articles, but also raised several concerns, particularly in relation to the articulation of humanitarian principles in draft article 6. We note that these concerns remain outstanding, but rather than repeat them here again today, copies of the IFRC's statement from last year are instead available on request.

Draft Article 10 - Duty to seek assistance

With regard to draft article 10, we would like to express the IFRC's strong support for the ILC's conclusion that affected states have a duty under international law to seek international support if their domestic capacity is insufficient to meet humanitarian needs following a disaster. We agree with this conclusion in light of the right of all persons to life and an adequate standard of living.

That said, we do not believe that states are required by general human rights law to seek that assistance from any specific actor. According to the provisionally adopted commentary, we understand that the addition of the phrase "as appropriate" in draft article 10 is meant to suggest that states have free choice to request assistance from any of the enumerated actors (and presumably also from actors not mentioned). However, we find this unclear from a plain reading of the current text.

We raise this issue primarily because of the results of our research and consultations over the last ten years, which suggest that there have been significant problems in some major disaster operations with the involvement of foreign actors that lack the requisite skills and ability to contribute to a well-coordinated, appropriate and high quality response. As such, states can and should be selective about the foreign assistance they seek, and accept, in the wake of natural disasters. They may wish to target their requests to specific types of assistance or to particular actors, in order to fill identified gaps in national capacity. This approach should also help to minimize the significant problems that inappropriate assistance can create.

This point is directly addressed by the Guidelines for the domestic facilitation and regulation of international disaster relief and initial recovery assistance (also known as the "IDRL Guidelines"). The IDRL Guidelines were adopted by the state parties to the Geneva Conventions at the 30th International Conference of the Red Cross and Red Crescent in 2007. We acknowledge the reference to the IDRL Guidelines made by Slovenia, El Salvador, Austria and the United Kingdom in their respective statements, which highlighted the IDRL Guidelines as a comprehensive source with which to inform the discussion and the development of the draft articles.

Draft Article 11 - Consent of the affected state to external assistance

With regard to draft article 11, we endorse the ILC's conclusion that international assistance can only be provided with the consent of the affected state. While we support the conditionality on the power to withhold consent provided in draft article 11, subsection 2, we remain concerned that the language provided thus far does not clearly indicate that affected states may be selective about the external assistance they accept. This could be addressed in the commentary to draft article 11.

Subsection 3 of draft article 11 raises several concerns for the IFRC. First, there is currently no indication in the draft articles as to who must make formal offers of assistance to an affected state. Neither the IFRC nor its 186 member National Societies

generally make formal offers to states, as assistance among the components of the International Movement of the Red Cross and Red Crescent is provided according to the rules of the Movement, and as endorsed by states through the International Conference. Our consultations indicate that many foreign NGOs also rarely make formal offers to states concerning the assistance they provide.

Second, subsection 3 of draft article 11 refers to offers “made in accordance with the present draft articles,” however no procedure for making offers has been included in the draft articles as of this date. Moreover, notwithstanding the explanations in points 9 and 10 of the relevant commentary, we remain unsure whether any temporal deadline for responding to offers is implied in subsection 3. We would hope that there would be some notion that such decisions be made as quickly as possible in light of the potentially urgent humanitarian needs.

Draft Article 12 - Right to offer assistance

With regard to draft article 12, we note that the IFRC and its member National Societies are not mentioned and do not fall within any of the current categories listed, being neither an intergovernmental organization, nor a non-governmental organization.

On the one hand it is technically appropriate not to include them in this list, given that, pursuant to the Principles and Rules of Red Cross and Red Crescent Disaster Relief which have been approved by States at the International Conference, offers of support from the Red Cross Red Crescent Movement are actually made to the relevant National Red Cross or Red Crescent Society of the affected state, not its government. This is because Red Cross and Red Crescent assistance is meant to support the National Society in the affected state to carry out its humanitarian mission.

On the other hand, we are concerned that if the internal workings of the Movement are not well understood, this provision could lead to confusion as to the right of the Movement to act in the event of a disaster, which we are sure is not the intention of the drafters. One way to address this concern would be to clarify the issue in future commentary to the article.

Cooperation with the ILC

The IFRC was very pleased this year to have had an opportunity to host members of the ILC for an informal reception. We would like to reiterate our offer to provide closer support to the ILC’s members, including through formal briefings on relevant issues, which we would be happy to organize in conjunction with relevant partners such as the United Nations.

International Dialogue on Strengthening Partnership in Disaster Response: Bridging National and International Support

Increasingly, states and humanitarian actors are placing growing importance on strong domestic laws for managing international disaster response, in line with the IDRL

Guidelines. This was one of the key conclusions of the “International Dialogue on Strengthening Partnership in Disaster Response: Bridging National and International Support,” which was held this week in Geneva. Convened jointly by the Swiss Government, the IFRC, OCHA and the International Council of Voluntary Agencies, the Dialogue was attended by more than 40 states and numerous humanitarian agencies and regional organizations. The conveners’ summary will shortly be available.

31st International Conference of the Red Cross and Red Crescent

As I mentioned at the outset of my remarks, next month’s International Conference of the Red Cross and Red Crescent will devote substantial attention to developments in disaster law, including an assessment of the progress made in relation to implementation of the IDRL Guidelines. I am happy to note that to date nine states have adopted new laws or regulations consistent with the Guidelines; a further twelve states have new legislation pending; and many other states are in the process of reviewing their existing legal frameworks. Still, a great deal remains to be done. To facilitate states’ use of the IDRL Guidelines, the IFRC together with OCHA and the Inter-Parliamentary Union are developing model legislation, which will be discussed at the Conference.

The Conference will also be used as an opportunity to open the debate on two often neglected issues related to disaster law: (1) how domestic laws can promote and sustain disaster risk reduction activities at the local level and (2) how states and humanitarian actors can cooperate to find practical solutions to the regulatory barriers that often impede the speedy and equitable provision of shelter after a natural disaster. The draft resolution and background papers on these issues have been sent to all Permanent Missions in Geneva and are also available to any interested member of the Committee today.

Thank you.