



Statement on behalf of the European Union

By

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on

"Protection of persons in the event of disasters"

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- CHECK AGAINST DELIVERY

The European Union has the honour to address the Sixth Committee on the work of the International Law Commission relating to the topic of Protection of Persons in the Event of Disasters, based on the sixth report prepared by Special Rapporteur Eduardo Valencia-Ospina.

The Candidate Countries the former Yugoslav Republic of Macedonia*, Montenegro*, and Serbia*, the countries of the Stabilisation and Association Process and potential candidates Albania and Bosnia and Herzegovina, as well as, the Republic of Moldova and Armenia, align themselves with this statement.

The European Union would like to start by expressing its great appreciation for the progress and quality of the reports produced by the Special Rapporteur and the International Law Commission on this topic thus far.

It will be recalled that the European Union has addressed this topic for the first time on the occasion of its statement before the 2011 session of the 6th Committee, as well as again during the last year's session of the 6th Committee relating to the work of the ILC on the abovementioned topic based on the fifth report of the Special Rapporteur. The Union appreciates that the International Law Commission and the Special Rapporteur Eduardo Valencia-Ospina have taken note of various points made by the European Union in its intervention of last year.

The European Union is pleased to note that the Special Rapporteur and the Commission focused this year's report on the pre-disaster phase, in particular prevention, mitigation and preparedness in respect of disasters. These issues have long been an integral part of EU legislation and action, both internally and in its cooperation with and assistance to third countries and thereby the European Union has a lot of experience to share, as reflected in paragraphs 101-104 of the report.

Moreover, the European Union welcomes the focus on cooperation for disaster risk reduction. In this regard, the report's reference to the dual-axis approach is welcome, in particular the emphasis that "[j]ust as *the disaster- proper phase, the pre-disaster phase implies rights and obligations both horizontally (the rights and obligations of States in relation to one another and the international community) and vertically (the rights and obligations of States in relation to persons within a State's territory and control).*" (paragraph 36 of the sixth report).

To the European Union, what is of utmost importance is that in this debate we do not lose sight of the fact that ultimately protection in relation to disasters should be "people focused in purpose".

The European Union would like to first highlight a selected number of issues.

* The former Yugoslav Republic of Macedonia, Montenegro and Serbia continue to be part of the Stabilisation and Association Process.

With regard to the duty to prevent, the report refers to the Article 196 of the Treaty on the Functioning of the European Union, introduced by the Treaty of Lisbon in 2009, providing the European Union with a specific legal basis on civil protection. That Article emphasizes prevention in its opening paragraph. It provides that "[t]he Union shall encourage cooperation between the Member States in order to improve the effectiveness of systems for preventing and protecting against natural and man-made disasters". The Article provides for Union action to support and complement Member States' action and also to promote consistency in international civil protection work.

In this regard, the European Union is currently in the process of adopting a new reformed Union Civil Protection Mechanism which would facilitate reinforced cooperation between the Member States and the Union in the field of civil protection and provide funding for the actions under the Mechanism to ensure protection against natural and man-made disastersⁱ. The new legal framework will integrate prevention, preparedness and risk management actions as part of the activities of the Mechanism with specific focus on risk assessments and risk management planning which Member States will have to develop and further refine.

In addition, the 2009 Commission's Communication on preventionⁱⁱ endorsed by the Member Statesⁱⁱⁱ establishes a cross-sectoral EU disaster risk management policy framework which promotes a holistic approach for all natural and man-made risks throughout all sectors – based on improvements in data sharing and accessibility, risk assessments and planning, sharing of good practices between countries including through peer reviews, developing innovative solutions for financing disaster prevention and increasing the resilience of infrastructure and new investments. Disaster risk management has been furthermore promoted in synergies with climate change adaptation action and integrated into key EU policies and legislation (e.g. structural and investments funds, research, internal security strategy, health, environmental protection, nuclear safety).

As the European Union noted last year, Article 196 TFEU is complemented by a solidarity clause in Article 222 of that Treaty relating to, *inter alia*, natural or man-made disasters. It calls on the European Union and the Member States to act "jointly in a spirit of solidarity" in response to a request by a Member State who is the victim of a natural or man-made disaster.

The Union is pleased to note that the Special Rapporteur included in his report reference to the solidarity clause (paragraph 103). The Union would like to make a point of clarification that, in accordance with Article 222 (3) TFEU, the arrangements for the implementation of this clause are defined by a decision adopted by the Council of the European Union acting on a joint proposal by the Commission and the High Representative of the Union for Foreign Affairs and Security Policy. The procedure followed is a special procedure which is not the ordinary legislative procedure within the meaning of the Treaty.

On the external side, the Treaty of Lisbon also introduced a specific Treaty provision on humanitarian aid, Article 214 TFEU. Through the Humanitarian Aid consensus, prevention and mitigation are included as common objectives.

In this regard, reference to the notion of resilience which is referred to throughout the report must be made. Resilience is understood to mean the ability of an individual, a household, a community, a country or a region to prepare for, to withstand, to adapt, and to quickly recover from stresses and shocks without compromising long-term development prospects.

The new EU approach to resilience recognises the need to address the root causes of crises. It incorporates a number of key components including the need to anticipate crises by assessing risks and a greater focus on risk reduction, prevention, mitigation and preparedness^{iv}. This new approach requires new partnerships, different ways of working and shared objectives between development and humanitarian actors. Two initiatives are already underway: "Supporting Horn of African Resilience (SHARE)" and "l'Alliance Globale pour l'Initiative Résilience Sahel (AGIR)".

Following these preliminary remarks, the European Union is now pleased to submit comments on draft article 5 *ter* and Article 16 as provisionally adopted by the ILC, as well as on the commentaries to them.

Regarding Draft Article 5 *ter* (Cooperation for disaster risk reduction)

The European Union welcomes draft Article 5 *ter*. Its drafting emphasises the need for cooperation also at the pre-disaster phase. It should be clear from a full reading of Article 5, 5 *bis* and 5 *ter*, that cooperation extends *ratione temporis* not only to the response phase of a disaster, but also the pre- and post-disaster phases.

In this regard, the European Union cannot emphasise enough the fact that besides taking the required measures intended to reduce the risk of the disasters themselves, it is also important that in the pre-disaster phase cooperation is extended to enhancing the resilience of the affected populations and communities to disasters.

For this reason, the Union suggests that the phrase "and to build resilience thereto" be added at the end of draft Article 5 *ter*. In fact, this is in line with the current Hyogo Framework for Disaster Risk Reduction^v.

In addition, the Union is pleased to note that in the commentary to this draft Article reference is made to the measures under draft Article 16. The Union would like to submit for further consideration whether draft Article 5 *ter* would benefit if a cross-reference to draft Article 16 is included in the text of the Article itself and not only in the commentaries to it.

The Union also suggests that the commentaries to draft Article 5 *ter* indicate that the cooperation may also include joint projects and programmes, cross border planning, development of methodologies and standards, capacity building, exchange of expertise and good practices, as well as exchange of risk analysis and information.

Regarding Draft Article 16 (Duty to reduce the risk of disasters)

The European Union strongly welcomes the introduction of Article 16 on the duty to reduce the risk of disasters. The reference to early warning systems is particularly welcome. In fact,

this action can become one of the targets as part of the post-2015 revision of the Hyogo Framework^{vi}.

The European Union submits the following specific suggestions for further considerations.

Firstly, in order to ensure that the risk of disasters is reduced, it must be ensured that the appropriate measures are taken and that those measures are "systematic". Without systematic measures, the effect on disaster risk reduction will be less meaningful in terms of results achieved. In this regard, the draft article would benefit from including the word "systematic" in relation to the measures to be taken. This is, in fact, the terminology already used in the Hyogo Framework for Action 2005-2015, which considers the "strategic and systematic approach to reducing vulnerabilities and risks to hazards" also in its preamble.

Furthermore, the Union notes that the commentaries to paragraph 1 of draft Article 16 (paragraph 13) consider the effective implementation of the legislation as implied. In view of the importance of effective implementation of the legislation, the Union suggests that reference to it is included in the text of paragraph 1 of draft Article 16.

In addition, the wording concerning the duty to prevent should be more people focused in purpose. In this regard, hazard risk assessments should incorporate, among other things, an identification of the people or communities who are at risk, and the infrastructure which is pertinent for the well-being of those communities. Article 16 could make a specific reference to multi-hazard assessments including the identification of vulnerable people or communities, and the pertinent infrastructure, in relation to the relevant hazards.

Finally, the appropriate measures in draft Article 16, second paragraph, should not only include assessments, dissemination of information and early warning systems. Practical pre-emptive measures which assist people or communities in reducing their exposure and enhancing their resilience should also be considered. In addition, the Union notes that the commentaries to paragraph 2 refer to the Hyogo Framework for Action. However, the Union submits for further consideration possible reference in the text of the paragraph itself to this document, which is the agreed international framework setting the list of appropriate measures and priorities for action.

Before concluding, the Union reiterates its suggestion, made during our previous interventions on this topic, to include a reference to regional integration organisations in the draft texts or to include a clarification to that effect in the commentaries to the draft Articles.

European Union once again commends the ILC and the Special Rapporteur for their work on the topic. The Union will continue to closely follow further developments and contribute to the deliberations.

ⁱ Proposal for a Decision of the European Parliament and of the Council on a Union Civil Protection Mechanism, COM/2011/0934 final - 2011/0461 (COD).

ii COM(2009) 82 final. Communication 'A Community approach on the prevention of natural and man-made disasters'.

iii Council Conclusions on a Community framework on disaster prevention within the EU 2979th JUSTICE and HOME AFFAIRS Council meeting, Brussels, 30 November 2009.

iv Council conclusion on EU approach to resilience, 3241st Foreign Affairs Council meeting, Brussels, 28 May 2013, point 5. Those conclusions build upon a European Commission Communication, "The EU approach to resilience: learning from Food Security Crises", COM(2012) 586 final.

v HFA Priority Action 3, Core indicator 4 focused on awareness raising for culture of disaster resilience with outreach to urban and rural communities.

vi See chair's summary from the 2013 Global platform for Disaster risk reduction, available at <http://www.preventionweb.net/globalplatform/2013/>