



**Statement on behalf of the European Union**

**By**

**Lucio Gussetti  
Director  
European Commission, Legal Service**

**at the Sixth Committee**

**on  
Agenda item 78  
on**

**"Protection of persons in the event of disasters"  
and  
"Expulsion of Aliens"**

**United Nations**

**New York**

**27 October 2014**

Mr Chairman,

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 seventh report prepared by Special Rapporteur Eduardo Valencia-Ospina, dealing with the protection of relief personnel and their equipment as well as with the relationship with special or other rules of international law.

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 in the subsequent years. The European 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 interventions.

The European Union would like to start by expressing its deep appreciation for the great contribution of the Special Rapporteur, Mr Eduardo Valencia-Ospina, which had enabled the International Law Commission to successfully adopt in first reading a consolidated set of articles.

As a consequence, it is for the first time that we have in front of us the consolidated set of articles 1 to 21, together with commentaries thereto, on the protection of persons in the event of disasters. The European Union is content to note that the draft articles have been re-ordered by the Drafting Committee which introduced a greater coherence.

Overall, the European Union wishes to congratulate the Special Rapporteur and the International Law Commission for having succeeded in striking a fine balance between the need to safeguard the national sovereignty of the affected States on the one hand, and the need for international cooperation regarding the protection of persons in the event of disasters, on the other, as provided for by the interplay of draft Articles 13, 14 and 16.

In addition, the European Union is pleased that the focus of the draft articles is on persons in need, as set out in draft Articles 1 and 2, accompanied by a rights-based approach (draft Article 2). It is an important point for the European Union which we stressed in previous statements that the new instrument effectively meets the essential needs of the persons affected by disaster.

\*\*\*

The European Union takes this opportunity to comment on draft Articles 18 and 20, as adopted by the International Law Commission.<sup>1</sup>

**Regarding Draft Article 18 (Protection of relief personnel, equipment and goods)**

The European Union welcomes draft Article 18 which provides protection for "relief personnel, equipment and goods" which are as such qualified in draft Article 4 on the use of terms, and involved in providing external assistance.

---

<sup>1</sup> See Ch V, point C of the report of the sixty-sixth session of the International Law Commission.

Against the background of the definitions contained in Article 4, the European Union notes that Article 4(e) defines "relief personnel" as both civilian and military personnel and Article 4(d) defines "external assistance" as including "relief personnel", so that wherever one of these terms is used, the obligation might equally refer to civilian and military aid. However, the Oslo guidelines and the guidelines on the use of Military and Civil Defence Assets to Support UN Humanitarian Activities in Complex Emergencies (MDCA) only specify that international military assets should be used as a last resort, when civilian alternatives are exhausted.

For this reason, the European Union suggests that a clarification to that effect is added to the current text of Article 4(e). The Article could read as follows:

"(e) "relief personnel" means civilian and military personnel sent by an assisting State or other assisting actor for the purpose of providing disaster relief assistance to disaster risk reduction; military assets should be used only where there is no comparable civilian alternative and only the use of military assets can meet a critical humanitarian need;"

As a consequence, the words "civil and military" should be removed from Article 17 (1)a), so that it just refers to "relief personnel". In the commentary to draft Article 4(e), the European Union suggests that it should be explained that the recourse to military assets is to be used as a last resort.

#### **Regarding Draft Article 20 (Relationship to special or other rules of international law)**

The European Union welcomes draft Article 20 and does not have any specific comments to the text of the draft Article.

In reply to paragraph 80 of the report by the Special-Rapporteur which refers to Article 21 of the Treaty on European Union which concerns the principles that guide its action in external relations, the European Union would like to clarify the structure of this provision which needs to be read in conjunction with the different policies of the European Union in the external field. Article 21 (2) TEU formulates principles of the Union's external action which apply across the board to all external policies of the Union, including also to humanitarian aid. The respective Article 214 Treaty on the Functioning of the European Union (TFEU) reads in this respect "*[t]he Union's operations in the field of humanitarian aid shall be conducted within the framework of the principles and objectives of the external action of the Union.*" Amongst the principles, which Article 21 TEU embraces is the need to "*assist populations, countries and regions confronting natural or man-made disasters*".<sup>2</sup> Overall, the European Union's action on the international scene shall be guided by the principles which have inspired its own creation, inter alia, respect for the principles of the United Nations Charter and international law. The same commitment to the principles of the United Nations Charter is expressed in Article 3 (5) TEU which deals with the Union's values in its relations with the wider world.

It follows that the Union's operations in the field of humanitarian aid and civil protection are guided by the respect for the principles of the UN Charter and international law. By contrast, secondary legislation like Council Regulation (EC) No 1257/96 concerning humanitarian aid or the Union Civil

---

<sup>2</sup> See Article 21 (2)(g) Treaty on European Union, Official Journal of the European Union C83, page 13.

Protection Mechanism<sup>3</sup> do not contain references to the UN Charter. These are expressed in the Union's primary legislation as set out above.

\*\*\*

Mr Chairman,

Lastly, I would like to address a matter of a more general nature in relation to "assisting actors". The European Union welcomes that draft Articles 4 and 8 do not only relate to States in relation to the provision of external assistance, but encompass a broader notion of "assisting actors". It is also recognized in draft Article 8 that a key feature of activity in the field of disaster relief assistance is international cooperation not only among States, but also with competent intergovernmental and non-governmental organizations.

At the level of the European Union, a supranational mechanism of disaster response has been established which is framed by the principles that guide the Union's external action, as set out above. Internally, a reformed Union Civil Protection Mechanism has been adopted on 17 December last year which places more emphasis on disaster prevention and preparedness and by ensuring more predictable, high-quality assistance when disaster strikes. Externally, the 'EU Aid Volunteers initiative' has been established by Regulation (EU) No 375/2014 of the European Parliament and of the Council of 3 April 2014<sup>4</sup> which allows the Union to deploy Volunteers in third countries in order to support and complement humanitarian aid in such countries.

Against this background of the Union's activities in the field of disaster response, the European Union already suggested in its earlier statements to expressly include a reference to regional integration organisations in the draft texts<sup>5</sup> or to include a clarification to that effect in the commentaries of the draft articles. The European Union notes with regret that such a clarification has not been added to the commentary of draft Article 4 concerning the term "other assisting actors".

The Union therefore suggests including in the commentary to draft Article 4 c) that the term "competent intergovernmental organization" also includes regional international organisations.

Mr Chairman,

In conclusion on the topic of Protection of Persons in the Event of Disasters, in the European Union's view the outstanding work of the Special Rapporteur and the International Law Commission have already contributed significantly to the reflection on how to best codify and progressively develop this area of international law which will steer the international community in its assistance to

---

<sup>3</sup> See Decision No 1313/2013/EU of the European Parliament and of the Council on a Union Civil Protection Mechanism, Official Journal of the European Union L347, 20.12.2013, page 924.

<sup>4</sup> See Regulation (EU) No 375/2014 of the European Parliament and of the Council of 3 April 2014 establishing the European Voluntary Humanitarian Aid Corps ('EU Aid Volunteers initiative'), Official Journal of the European Union L 122, 24.04.2014, p. 1–17.

<sup>5</sup> The term 'regional integration organization' is accepted at UN level and has been included in important international legal instruments, including for example in the 2006 UN Convention on the Rights of Persons with Disabilities.

persons affected by man-made and natural disasters. With respect to the legal nature that the future instrument might take, the European Union prefers to defer its position to its written comments on the overall set of articles which can be submitted to the Secretary-General by January 2016.

Mr Chairman,

The European Union has the honour to address the Sixth Committee on the work of the International Law Commission relating to the topic on Expulsion of Aliens, in particular considering that the Commission has adopted the entire set of draft articles on the expulsion of aliens on second reading and has decided to submit the draft articles to the General Assembly.

The European Union has been actively involved in the consideration and deliberations on this important topic and while the International Law Commission concluded during this past session its work on it, the Union takes the opportunity to make the following remarks:

The European Union takes note of the adoption of the draft articles and of the recommendations of the International Law Commission to the General Assembly. In this respect, the European Union confirms its views that elaboration of a convention on expulsion of aliens is not appropriate at this stage.

The European Union also notes that according to the International Law Commission, its conclusions on this topic were inspired by the European Union's own policy and legislation. As the Special Rapporteur pointed out in its 8<sup>th</sup> Report, the EU Return Directive *"contains extremely progressive provisions on such matters that are far more advanced than the norms found in other regions of the world."*

At the same time, the Union regrets that the final outcome on this topic does not reflect some of the concrete suggestions made by the Union in this respect. Considering that a number of these suggestions have a strong human rights character (such as the inclusion of sexual orientation as a ground for non-discrimination, the right to a speedy judicial review of the lawfulness of detention, the right to receive a written decision, the right to information about available legal remedies, etc.), the Union calls on all UN Member States to take appropriate actions in order to guarantee these rights in cases of expulsion of aliens.

In concluding, the European Union would like to reiterate its attachment to this subject.

Thank you for your attention.