



International Federation of Red Cross and Red Crescent Societies
Fédération internationale des Sociétés de la Croix-Rouge et du Croissant-Rouge
Federación Internacional de Sociedades de la Cruz Roja y de la Media Luna Roja
الاتحاد الدولي لجمعيات الصليب الأحمر والهلال الأحمر

Delegation to the United Nations

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**STATEMENT BY MS. ANNE CHRISTENSEN
ON BEHALF OF THE INTERNATIONAL FEDERATION OF RED CROSS AND RED CRESCENT SOCIETIES**

Agenda item 78: Report of the International Law Commission on the work of its sixty-sixth session,
Protection of Persons in the Event of Disasters (Chapter V of the Report)
Sixth Committee of the United Nations General Assembly
New York, 29 October 2014

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 on Chapter 5, which concerns the protection of persons in the event of disasters. I will offer a somewhat abbreviated version of our written statement, which will be made available to all members.

As in past years, we would like to extend our compliments to Special Rapporteur Eduardo Valencia-Ospina and his colleagues on the ILC for their thoughtful attention to this project. We note that the ILC has now completed its review, on first reading, of the integral text and commentary of the draft articles and that it has requested input from states and certain organizations. My comments today will go first to some of the articles just adopted in this year's session and I will then add a few words on the project as a whole.

In this session, the ILC adopted several definitions. We are pleased to note that several of them employ terminology similar to that of the "Guidelines for the domestic facilitation and regulation of international disaster relief and initial recovery assistance" (also known as the IDRL Guidelines) as adopted by the 30th International Conference of the Red Cross and Red Crescent.

However, article 4(e) sets out the following definition of "personnel": "civilian or military personnel sent by an assisting State or other assisting actor for the purpose of providing disaster relief assistance or disaster risk reduction". We have two concerns about this definition.

Differentiating civilian and military assistance

First, the definition places civilian and military personnel on exactly the same plane for disaster response operations. Similarly (and somewhat repetitively), article 17 binds affected states to facilitate "civilian and military relief personnel, in fields such as privileges and immunities, visa and entry requirements, work permits, and freedom of movement."

While in appropriate circumstances, foreign military personnel and assets can add critical, life-saving value to international operations, the IFRC and many other humanitarian agencies have expressed concerns that an indiscriminate mixing of military and civilian relief efforts can create significant risks to the acceptance and security of humanitarians, both in the country where they are used and in others where the precedent will be noted.

As a result, both humanitarians and states have embraced the *Oslo Guidelines on the Use of Foreign Military and Civil Defense Assets in Disaster Relief*, which call for foreign military assistance to be used only when civilian alternatives are not adequate, and then to limit the involvement of military personnel as much as possible to indirect actions (such as transportation of relief goods and infrastructure support), rather than face-to-face relief dissemination. We recommend that the ILC's articles be brought into line with this existing consensus language.

Affirming the particularity of humanitarian action

Our second concern with the definition of "personnel" relates to its equation of persons sent to provide humanitarian relief with those sent to assist in the field of disaster risk reduction. This comes into play in articles 17 and 18, which, respectively, call on states to take extraordinary measures to facilitate the entry and protect the security of "personnel". According to the current definition, these extraordinary measures would be required to exactly the same degree for humanitarian relief personnel in the midst of a crisis as for a disaster risk reduction advisor in a time of calm.

While we strongly applaud the Draft Articles' inclusion of a duty to undertake disaster risk reduction (in article 11(1)), and to identify risk reduction as an important aspect of international cooperation (in article 10), we think it important to maintain the particularity of humanitarian action. Arguably, states have some duty at all times to facilitate development-oriented work (to which they have consented) and to protect the safety of foreign persons on their territory. However, the extraordinary measures expected in situations of humanitarian crisis (such as waiving visa requirements and developing specific security arrangements) should be confined to those situations, in order to avoid unnecessary burdens on states' normal procedures and ensure their willingness to comply when needs are urgent.

Regional arrangements

I would also like to address article 20, on the relationship of the articles to special or other rules of international law. We have no objection to the text per se, but we see a missed opportunity here to expressly address the status of regional agreements and mechanisms for disaster cooperation. The importance of regional arrangements in this area has been growing at an accelerating pace in recent years and we feel that is indispensable for the draft articles to more openly articulate their relationship to them.

Next steps

Mr. Chairman,

My last comments relate to the project as a whole, now that the first reading is complete. The IFRC is pleased to be among the agencies solicited for written comments on the integral text. We will be gathering views from our members and hope to provide helpful suggestions well before the stated deadline. We would like to take this opportunity to urge all of the states represented here to also



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comply with the ILC's request and, in particular, to ensure that their disaster management authorities are fully engaged, as the ILC will benefit greatly from their operational experience.

We understand that it is the ILC's normal practice to seek formal input from states and international organizations. In this case, however, we think it a major gap not to solicit comments from the many extremely experienced non-governmental organizations and private sector actors, whose participation is increasingly important in international disaster response. Perhaps this committee might reassure the ILC that it would not object to it drawing on this wealth of expertise.

We believe that the draft articles have important strengths but also that improvements can still be made in several aspects, and we will provide our proposals in this regard in our written submission to the ILC. At the same time, now that an integral text is being refined, we believe that it will soon become necessary to decide upon recommendations as to their final form – in other words, whether the draft articles should be proposed as some sort of guidelines or as a draft treaty.

We don't think that the option of presenting them as guidelines would be advisable. Such guidelines might be seen to compete with, and hamper the progress in, the implementation of existing guidelines on very similar themes, in particular the IDRL Guidelines, as previously negotiated and adopted by the state parties to the Geneva Conventions.

On the other hand, we think that strengthening the global legal framework would add a new element with the potential to further stimulate and enhance the work that has been accomplished through soft instruments. The ILC's product could serve as a source for further reflection on this possibility.

We realise that a treaty is not a project to be taken lightly and would be very happy to do our part to promote the dialogue, experience sharing, and particularly the gathering of operational evidence necessary for states to take an informed decision in this regard. Through our Disaster Law Programme, we have supported National Societies and national authorities in over 50 countries to undertake formal processes to examine and strengthen their laws and procedures for international disaster assistance and we believe that our findings from this experience may be of use to this discussion.

As I hope most of the representatives here are aware, in 2011, the 31st International Conference reaffirmed its role as a "a key international forum for continued dialogue on the strengthening of disaster laws". Accordingly, we hope and expect that the 32nd International Conference at the end of 2015 will provide an important opportunity to advance dialogue on this important topic. As a preparatory step, we will be organizing regional dialogues on the future of international disaster response law in the lead-up to the conference and hope for member state support in engaging relevant officials.