



ICRC

Check against delivery

United Nations General Assembly

71st Session

Sixth Committee

Report of the International Law Commission

on the work of its sixty-eighth session

[Agenda item 78]

Statement by the

International Committee of the Red Cross (ICRC)

October 2016

This statement will soon be available, in all six official UN languages,

on the ICRC website:

www.icrc.org

Mr. Chair,

The International Committee of the Red Cross (ICRC) takes note, with appreciation, of the report of the Commission's **sixty-eighth session** and congratulates all members of the Commission for their hard work.

Turning to the topic on the **Protection of persons in the event of disasters**, the ICRC congratulates the International Law Commission for its adoption, on second reading, of a draft preamble and 18 draft articles, together with commentaries thereto. We also commend Special Rapporteur, Mr. Eduardo Valencia-Ospina for his dedication and commitment to the topic.

Recent situations have illustrated the serious humanitarian consequences of disasters and the necessity to consolidate the legal framework governing the protection of persons when they occur. Our colleagues in the wider International Red Cross and Red Crescent Movement are tireless in addressing the humanitarian needs that arise from such disasters and know the critical importance of work in this area. The ICRC has no doubt that the draft articles and their commentaries will constitute an important contribution to contemporary international law in accordance with the leading role played by the Commission in the promotion of the progressive development of international law and its codification.

In relation to the substance of the Draft Articles and their commentaries, the ICRC has always emphasized that it is crucial they do not contradict international humanitarian law rules. Our view has long been that this objective can only be achieved by expressly excluding situations of armed conflict, including in so-called "complex" emergencies, from the scope of application of the Draft Articles. We take note, with appreciation, of the Commission's revised approach regarding the relationship of the draft articles with the rules of international humanitarian law. Unfortunately, however, in the ICRC's view, these amendments do not fully address our concerns which were conveyed in written observations to the ILC in January 2016.

The ICRC also takes note of the Commission's recommendation to the General Assembly regarding the elaboration of a convention on the basis of the draft articles. Whichever form these articles may take, we express our concern that, as drafted, they present an increased risk of conflict of norms with international humanitarian law and ultimately undermine the ability of impartial humanitarian organizations, such as the ICRC, to carry out their humanitarian activities in a principled manner and in accordance with the mandate assigned to them by States.

Mr Chair,

The ICRC follows with much interest the International Law Commission's work on **the identification of customary international law** and congratulates the Commission for its adoption, on first reading, of a set of 16 draft conclusions, together with commentaries thereto. We commend the Special Rapporteur, Sir Michael Wood, for his work on the topic.

As you may know, in 2005, mandated by the 26th International Conference of the Red Cross and Red Crescent, the ICRC published a study on customary IHL, based on almost ten years of research. Keen attention to the "way in which the existence and content of rules of customary international law are to be determined" has therefore long been of major importance to us. We thus greatly appreciate the Commission's consideration of questions arising in identifying customary international law – questions that also the customary IHL study needed to address – such as which forms of State practice are to be taken into account, whether there is a "predetermined hierarchy among the various forms of practice", or what the significance of treaties is for customary international law. We are pleased that the considerations underlying the customary IHL study are generally in line with the approach taken by the Commission.

For ten years now, we have also been updating the practice section of the customary IHL study; making the study, together with regular practice updates, available on our on-line database customary IHL database, thereby contributing to the accessibility of IHL practice.

We look forward to continuing engaging with the Commission's important work on the identification of customary international law.

Thank you, Mr Chair.

+++