
Translated from Spanish

Permanent Mission of El Salvador to the United Nations

Protection of persons in the event of disasters

Report pursuant to General Assembly resolution 73/209

The Republic of El Salvador is submitting this report pursuant to General Assembly resolution 73/209, by which the Assembly invited Governments to submit comments concerning the recommendation made by International Law Commission to the Assembly to elaborate a convention on the basis of the draft articles on the protection of persons in the event of disasters adopted by the Commission at its sixty-eighth session (2016).

The Government of El Salvador recognizes that, in the light of the severity and frequency of natural and human-made disasters, the international community is more concerned than ever with taking action and strengthening normative frameworks to ensure an adequate and effective approach to disasters and disaster risk reduction that emphasizes meeting the essential needs of the persons concerned and protecting their rights and human dignity.

Inclusion- and resilience-focused disaster prevention, mitigation, reduction and response contribute significantly to sustainable development and ensure continuous respect for human dignity, a core principle of international human rights law. Therefore, since the International Law Commission took up consideration of the topic, the Republic of El Salvador has supported its decision to opt for codification and progressive development of the law in this area, with a view to preventing the serious consequences of disasters that affect people all over the world every year. There should be a particular focus on developing countries, including middle-income developing countries.

El Salvador is highly vulnerable to the increasing and recurrent effects of phenomena associated with climate change and climate variability. Rainfall patterns have changed, with rainfall increasing as a result of low-pressure systems, and there are more sudden, intense downpours. There has also been an increase in the frequency and duration of droughts, heatwaves, ocean swells and floods, among other phenomena. The Intergovernmental Panel on Climate Change predicts that the intensity and frequency of the above-mentioned phenomena will continue to grow, increasing the possibility of various countries, including El Salvador, experiencing large-scale disasters that will

require them to turn to the international community for assistance in meeting the needs of the affected populations.

At the national level, effective risk management, civil protection, early warning systems and repairing the damaged social fabric are of crucial importance to El Salvador, given its history of disasters and its susceptibility to the catastrophic effects of various types of phenomena. However, in some cases the devastating effects of disasters have overwhelmed national resources and the country's capacity to provide humanitarian assistance to those affected, and the competent authorities have been forced to declare a state of national emergency and public disaster in order to enable the needs of the affected population to be met through the solidarity and support of the international community.

It therefore seems appropriate to adopt an international legal instrument that takes a human rights approach and is of particular relevance to the role of the affected State in ensuring the protection of persons in its territory, or in a territory under its jurisdiction or control. The Government of El Salvador considers that it is particularly important to elaborate a convention on the basis of the draft articles, since it would be declaratory of existing practices among States and would therefore help clarify and systematize those practices, and to ensure the practical application of the fundamental value of solidarity in international relations. This would result in more nimble international cooperation and enable the provision of appropriate and dignified humanitarian assistance to those affected by a disaster.

The adoption of an international legal instrument would undoubtedly make a significant contribution to the harmonization of measures and protocols for effectively addressing the underlying causes of disasters and the current high levels of vulnerability. It would also strengthen disaster risk reduction and management efforts at every stage, without prejudice to the bilateral and multilateral instruments on the matter to which States are already parties. In that connection, El Salvador is a party to a number of relevant instruments, including a bilateral agreement on technical cooperation with Cuba, which aims to reduce disaster risk and disasters in El Salvador; and an agreement with Guatemala on disaster prevention, response and mitigation.

El Salvador wishes to make the following comments concerning the draft articles:

- **Draft article 1 (Scope):** El Salvador reiterates the need to include in draft article 1 details of the elements *ratione materiae* and *ratione personae* mentioned in the commentary to that draft article, which would clarify significantly the rights and obligations of States affected by a disaster with respect to persons present in their territory, or in a territory under their

jurisdiction or control, and the rights and obligations of third States, international organizations, non-governmental organizations and other entities in a position to cooperate in the provision of disaster relief assistance and contribute to disaster risk reduction.

- **Draft article 3 (g), concerning the definition of “equipment and goods”, and draft article 8 (Forms of cooperation in the response to disasters):** El Salvador proposes that, taking into consideration the current situation arising from the COVID-19 pandemic, these provisions ensure that disaster response cooperation includes the exchange of good practices or relevant information. It further proposes that they not only include general references to “medical supplies” but also provide for the delivery of essential medicines, as humanitarian assistance, to those who need them.

With regard to forms of cooperation in the response to disasters, it is important for the commentary to draft article 8 to reflect the wording and guidance of important international instruments such as the Sendai Framework for Disaster Risk Reduction 2015–2030 (adopted by General Assembly resolution 69/283). According to the Sendai Framework, in the context of increasing global interdependence, concerted international cooperation, an enabling international environment and means of implementation are needed to stimulate and contribute to developing the knowledge, capacities and motivation for disaster risk reduction at all levels, in particular for developing countries.

Furthermore, in order to ensure human dignity, the commentary to draft article 8 must reinforce the idea that decision-making on the provision of humanitarian assistance must be inclusive and take into account the vulnerabilities, including intersectional vulnerabilities, of women, children, youth, persons with disabilities, the poor, migrants, indigenous peoples, health workers, security personnel and older persons.

- **Draft article 6 (Humanitarian principles):** El Salvador recalls its comments submitted pursuant to General Assembly resolution 63/123 and its statement on this topic delivered during the thematic debate of the sixty-fifth session of the Sixth Committee.

El Salvador wishes to draw particular attention to the question of the wording used in relation to the principle of “neutrality”. The term has been included in the draft article on the basis of its use in international humanitarian law, in particular in the Geneva Convention for the Amelioration of the Condition of the Wounded in Armies in the Field of 22 August 1864 as a characteristic of medical services accompanying armies.

In international humanitarian law, the principle of neutrality has been applied in the

context of situations of armed conflict, with entities such as the International Red Cross and Red Crescent Movement expressing the need to refrain from taking sides in hostilities or engaging at any time in controversies of a political, racial, religious, or ideological nature.

While disasters may trigger serious disturbances in the States in which they occur, such disturbances are not generally associated with a conflict or dispute giving rise to the need to maintain neutrality. In most cases, there are not two or more sides that could be taken.

If it is demonstrated that, in the majority of cases, the efforts of the State and those providing assistance are directed towards the same purpose – the provision of adequate assistance – it would be reasonable to assume that they share the same objectives, or even values. It is therefore unclear how the principle of neutrality would operate.

These historical, legal and linguistic considerations lead us to conclude that the inclusion of the “principle of neutrality” should be re-evaluated in order to ensure that the draft articles are properly understood and internally coherent.

However, if the intended meaning is that those responding to disasters should refrain from committing any act that could be seen as interference in the interests or internal affairs of the State concerned, El Salvador considers that, for the above-mentioned reasons, such behaviour is not a matter of neutrality but rather concerns the principles of State sovereignty and non-interference.

El Salvador therefore considers that either of the latter terms would better reflect the intended meaning of the draft article. They may also provide a middle ground that would make it possible to reconcile the wishes of different States, since the term “neutrality” would be removed but the concept of non-interference in the internal affairs and political, religious, ethnic and ideological situations of States would remain.

In sum, this new product of the International Law Commission will not only constitute an important legal development in terms of harmonization but will also make a decisive contribution to improving the legal framework for protecting persons more effectively in the event of disasters, with a focus on inclusion and resilience. It will also serve as an essential tool in the global response to disasters, in particular since the recent emergence of the COVID-19 pandemic has given the international community a renewed vision for the adoption of a prevention-focused and forward-looking approach to reducing disaster risks and increasing multilateral cooperation among States in order to address the problems caused by disasters. El Salvador wishes to express its support and gratitude for the work carried out by the various relevant agencies of the United Nations system to

ensure the effectiveness of efforts on this topic. The mechanisms for coordination among those agencies should be strengthened even further, preferably using resources that are already available, in order to ensure an adequate and effective response.
