



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

Check against delivery

### STATEMENT BY MR. MARWAN JILANI ON BEHALF OF THE INTERNATIONAL FEDERATION OF RED CROSS AND RED CRESCENT SOCIETIES

Agenda item 79: Report of the International Law Commission on the work of its sixty-fourth session, Protection of Persons in the Event of Disasters (Chapter V of the Report)  
Sixth Committee of the United Nations General Assembly  
New York, 2 November, 2012

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.

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 and their continued progress with this project.

To put our comments into perspective, and for the benefit of Committee members who might not be completely familiar with us, I will mention that the IFRC is the global federation of the world's 186 National Red Cross and Red Crescent Societies. Together, they and constitute the world's largest humanitarian network, deploying over 13 million community-based volunteers working in disaster risk management, public health and first aid, and community development. National Societies and the IFRC secretariat are very actively engaged in international disaster relief and, for the last eleven years, they have devoted particular attention to promoting effective and balanced regulatory frameworks for international relief through the IFRC's Disaster Law Programme.

Having already commented on draft article 12 last year, we will confine our comments to the remaining draft articles provisionally adopted this year.

#### Article 5 bis

With regard to draft Article 5 bis, we find the proposed enumeration of "cooperation" to be quite limited – and much more so than the instruments like the ASEAN Agreement on Disaster and Emergency Management and the Tampere Convention on the Provision of Telecommunications Resources for Disaster Mitigation and Relief Operations from which it is partly inspired.

We note that the present list seems focused on relief and might be taken to exclude cooperation on disaster risk reduction (despite the fact that the ILC's report indicates that the Special Rapporteur will be addressing disaster prevention at the next session), as well as preparedness for disasters and recovery. We also note that the list omits such common types of cooperation as financial support, technological transfer, training, information-sharing, and joint simulation exercises and planning. We think it would be a pity to fail to encourage and commit to these types of "cooperation" as well.

Moreover, the addition of article 5 bis changes our reading of the existing language of article 5, in ways we find unfortunate. We had thought that the original obligation of cooperation referred not only to states providing assistance but also to those receiving it. We found that general concept to be quite helpful as a building block for more specific language on the facilitation of such assistance to follow in later articles. However, since "cooperation" appears to be defined in article 5 bis in terms of providing assistance, we fear that this interpretation may no longer apply.

#### **Draft Articles 13 and 14**

With regard to draft articles 13 and 14, we are glad to see the ILC affirm two conclusions that we have also drawn from our global consultations on regulatory problems in international disaster response:

- (1) that states should take steps to oversee the quality of incoming international assistance; and
- (2) that they should provide legal facilities to those providing assistance so as to avoid unnecessary delays, restrictions and expense.

As currently drafted, these two articles set out only the very broadest parameters for the regulation and facilitation of international relief. They leave nearly all the detail to be separately and differently determined by every state. This is certainly a good description of how things stand at present, but it must be recognized that the operational value of these general principles will be limited, since they cannot create clear expectations about the concrete rules that will apply as relief personnel and consignments begin to move.

This uncertainty is aggravated by the unfortunate fact that few states have adopted clear domestic rules on these questions, leaving the issue for ad hoc approaches in the midst of a major disaster. For the last five years, the IFRC and its members have been encouraging and supporting interested states to develop such domestic rules, using the "Guidelines for the domestic facilitation and regulation of international disaster relief and initial recovery assistance" as a tool for analysis. There has been some encouraging progress, with ten states have adopted new legislation or procedures and approximately a dozen more currently considering draft legislation, but we are still quite far from the ideal.

We recognize the difficulty the ILC would likely face in attempting to develop detailed rules on international relief which, by their nature, call for more direct negotiation by states themselves. If the draft articles are eventually presented as a draft treaty (a decision, we realize, that has yet to be taken), it would be important to consider revisiting this point.

In the meantime, and without entering into that level of operational detail, we would offer the following suggestions for the existing text:

We find the third and fourth sentences of Article 13 to carry an unfortunate (and probably unintentional) implication that states should be designing their “conditions” on aid on an ad hoc basis, after each disaster. We would recommend that states carefully consider and design the types of requirements they will make of external aid providers before disaster strikes, as a preparedness measure. Ideally, those conditions should draw upon widely-accepted standards of humanitarian quality and conduct, such as the Sphere Charter and Minimum Standards in Humanitarian Response and the Code of Conduct of the Red Cross and Red Crescent and Non-Governmental Organizations in Disaster Relief .

With regard to Article 14, we find it unfortunate that no distinction is made between military and civilian assistance. This is contrary to existing international norms, such as the Oslo Guidelines on the Use of Military and Civil Defence Assets in Disaster Relief and the IDRL Guidelines, which clearly set out a preference for civilian assistance to be supported, where necessary, by military resources.

### **Draft article 15**

With regard to draft article 15, on the other hand, we have only words of support. This language is very similar to that of the IDRL Guidelines, which were quite thoroughly negotiated with disaster management officials of countries around the world as well as humanitarian partners. It addresses the very real operational problem that the termination of international response activities is often much too abrupt – plunging affected persons just at the point of getting back on their feet back into a second period of crisis.

Governments often feel themselves under substantial pressure to declare a crisis finished and we can certainly understand the legitimate need to help a society to “move on”, to revert to a more normal way of doing things and particularly to make clear that the government has reached the point that it is able to handle all needs without external support. Everyone, including responsible international relief providers, wants to see that point reached as soon as possible after a disaster. However, a premature decision along these lines can be a real setback for recovery.

While it may seem like a bit of an imposition, we found that it was well accepted by disaster management experts that it is a very good practice at least to consult with international responders about what will happen to affected persons after the termination of their response operations, as the ILC suggests here, and to ensure a smooth handover.

### **Cooperation with the ILC**

Mr. Chairman,

I will conclude my remarks on a familiar note. As in previous years, we would like to reiterate our offer to organize briefings for interested ILC members, gathering relevant partners from the UN and other key stakeholders in the field of disaster management. We trust that hearing the experience and perspectives of such actors would be helpful to the ILC in its task. Thus far, our offer has not been taken up, but we hope there will be opportunities in the near future.