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### Protection of persons in the event of disasters

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### Report of the Secretary-General

#### *Summary*

The present report has been prepared pursuant to General Assembly resolution [73/209](#), by which the Assembly invited Governments to submit comments concerning the recommendation made by the 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).

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\* [A/75/150](#).



## I. Introduction

1. The International Law Commission adopted the draft articles on the protection of persons in the event of disasters at its sixty-eighth session, held in 2016 (see [A/71/10](#), para. 48). The General Assembly took note of the draft articles, as presented by the Commission, in its resolutions [71/141](#) and [73/209](#). In its resolution [71/141](#), the Assembly invited Governments to submit comments concerning the recommendation by the Commission to elaborate a convention on the basis of the articles (see [A/73/229](#)). The Assembly, in its resolution [73/209](#), requested the Secretary-General to invite those Governments that had not yet done so to submit comments on the recommendation made by the Commission.

2. Pursuant to the above-mentioned request, by notes verbales dated 17 January 2019 and 14 January 2020, Governments that had not yet done so were invited to submit, no later than 1 June 2020, their written comments concerning the recommendation by the Commission that a convention be elaborated on the basis of the draft articles.

3. As at 1 July 2020, written comments had been received from Colombia, Cuba, El Salvador, Italy, Japan and Turkey. Those comments or summaries thereof are provided below, organized according to comments on any future action regarding the articles on protection of persons in the event of disasters (sect. II) and on the articles (sect. III).

## II. Comments on any future action regarding the articles on the protection of persons in the event of disasters

### Colombia

[Original: English and Spanish]  
[31 May 2020]

Colombia stresses the pressing need to create a framework for response and cooperation in the event of disasters. Confronted with a potential or actual disaster, States have resorted to a greater or lesser degree to international cooperation in order to implement, as the case may be, measures to reduce the risk of a possible disaster or to respond to its consequences once it occurs. However, owing to the increasing number of bilateral, regional and multilateral instruments on these matters, a disorganized and fragmented body of legal instruments has been created, with obligations that contain different and sometimes contradictory terminologies, definitions, principles and objectives. Therefore, the value of the draft articles is to create a common legal framework that facilitates the coordination of humanitarian action of the institutions dedicated to this work. Decisions in the context of disasters must be taken quickly enough to allow adequate management of the situation, while protecting the people affected by such disasters and guiding the actions of the affected States, the assisting States and other actors involved. Such decisions need a set of unified rules, such as those presented in the draft articles. Furthermore, the draft articles respect State sovereignty and the rights of people affected by disasters without distinction as to whether a disaster is caused by human action or by natural causes, which gives them a more comprehensive and universal character.

Based on the recognition of the value of solidarity in international relations and the promotion of international cooperation, the draft articles strike a delicate balance between the principles of State sovereignty and non-intervention as well as between the essential needs of people affected by disasters and the respect for their rights, drawing inspiration from human rights and international humanitarian law

instruments. The provisions reflect fundamental principles and concepts that have influenced international instruments and documents relating to disaster risk reduction, such as the Sendai Framework for Disaster Risk Reduction 2015–2030 and Security Council decisions on situations of armed conflict. Those developments demonstrate the progressive consolidation of the draft articles through State practice, serving to justify the need for a convention. The draft articles also represent the materialization of disasters and international law as an autonomous branch of international law, which includes provision for the effective management of disaster prevention, reduction and risk management. Likewise, the draft articles take into account the interests of the different actors involved, including affected States and external actors, such as other States, international organizations, non-governmental organizations, and even companies, among others, that can provide important support in the event of disasters. They also take into account the interests of those directly affected by the situations: the victims. Moreover, the text strikes a delicate balance between a focus on victims' rights and the more traditional focus on their needs, enshrining provisions on relations between the aforementioned actors and on the relationship between States in matters related to cooperation.

General Assembly resolution [74/270](#), unanimously adopted on 2 April 2020 and sponsored by 188 Member States, entitled “Global solidarity to fight the coronavirus disease 2019 (COVID-19)”, finds inspiration in the basic tenets of the draft articles, including solidarity, cooperation and human rights. It is also a telling manifestation of a collective political will, which ought to be harnessed in support of the Commission's recommendation regarding the final form to be given to the draft articles. Many States only seem to act when confronted with a disaster of immeasurable proportions, as recalled in the Hyogo Framework for Action and the Sendai Framework. The COVID-19 pandemic, being the first truly global disaster, should move States to understand the need for an effective and binding instrument such as the one proposed by the Commission in the draft articles.

### **Cuba**

[Original: Spanish]  
[5 February 2020]

The Republic of Cuba reaffirms its support for the Commission's efforts to improve the protection of persons affected by disasters and agrees with the recommendation that a convention be elaborated on the basis of the draft articles. However, the final wording of the articles should continue to be discussed by Governments to ensure that a text is adopted that enjoys broad consensus.

### **El Salvador**

[Original: Spanish]  
[6 January 2020]

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 its 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 to an agreement with Guatemala on disaster prevention, response and mitigation.

[...]

In sum, the draft articles 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. They will also serve as an essential tool in the global response to disasters, in particular since the recent emergence of the coronavirus disease (COVID-19) pandemic, which 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.

### **Italy**

[Original: English]  
[12 June 2020]

Italy welcomes a universal legal instrument on the protection of persons in the event of disasters, hence seeing merit in the recommendation by the International Law Commission and in a United Nations-driven process towards that end. This should result in a convention with a clearly defined scope of application, establishing the fundamental rules and principles of international cooperation in disaster response and prevention.

[...]

[T]he possibility for international organizations to participate in a future convention should be explored. Their participation would prove vital in considering the important role played by universal, regional and subregional organizations in this area and the relative lack of clear legal provisions facilitating their activities in disaster prevention and disaster response.

### **Japan**

[Original: English]  
[9 October 2019]

Japan highly appreciates the work on the draft articles and the commentaries thereto. Learning from the lessons of past disasters such as the great east-Japan earthquake, Japan has been actively promoting international cooperation in the field of disaster risk reduction, including the implementation of emergency humanitarian assistance in disasters abroad and building disaster-resilient societies.

[...]

The contents of the draft articles are well-balanced, giving careful attention to relevant factors such as the roles and the duties of the affected State and the assisting State, State sovereignty, and humanitarian requirements for the protection of persons affected by disasters. Therefore, the draft articles should be acceptable to many countries. On the other hand, it is necessary to further refine the text of the draft articles, taking into consideration the interests of concerned countries, in order to conclude a treaty based on the draft articles. Should a diplomatic conference be held, the Government of Japan expects that the draft articles would be made more operationally useful and effective through further in-depth discussions in order to protect the persons affected in the event of disasters.

### III. Comments on the articles on the protection of persons in the event of disasters

#### Cuba

[Original: Spanish]  
[5 February 2020]

Regarding paragraph 2 of article 9 on the reduction of the risk of disasters, the following wording is proposed: “Disaster risk reduction measures include, among other things, the conduct of risk assessments, the collection and dissemination of risk and past loss information, compliance with technical standards in investment, to foster increased resilience by reducing prospective vulnerabilities, the introduction of climate change adaptation and mitigation measures with an emphasis on areas such as safe water, food security and health, the preparation of the population at risk and the installation and operation of early warning systems”.

Concerning paragraph 1 of article 10 on the role of the affected State, the following wording is proposed: “The affected State, by virtue of its sovereignty and in accordance with its national legislation, has the duty to ensure the protection of persons and provision of disaster relief and assistance in its territory”.

Regarding article 11, the following wording is proposed: “To the extent that a disaster exceeds its national response capacity, the affected State has the right to request or accept bilateral or international assistance from other States, the United Nations, other competent intergovernmental organizations and relevant non-governmental organizations, as appropriate”.

On article 12, the following wording is proposed: “In responding to disasters, States, the United Nations and other competent intergovernmental organizations have the right to offer assistance to the affected State. Relevant non-governmental organizations may also offer assistance to the affected State. In all cases, the affected State shall be the one that requests external assistance and the offer of assistance may not be subject to conditions”.

Concerning article 14, it is proposed that the following paragraph be added: “The provision of external assistance cannot be dependent on elements that undermine the sovereignty of the affected State”.

#### El Salvador

[Original: Spanish]  
[6 January 2020]

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

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.

Regarding draft article 3 (g), concerning the definition of “equipment and goods”, and draft article 8, El Salvador proposes that, taking into consideration the current situation arising from the coronavirus disease (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 the General Assembly in its 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, young persons, persons with disabilities, the poor, migrants, indigenous peoples, health workers, security personnel and older persons.

Regarding draft article 6, 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 Sixth Committee at the sixty-fifth session. 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 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 to the conclusion 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.

**Italy**

[Original: English]  
[12 June 2020]

With respect to the scope of application, the text of the new instrument should clearly exclude armed conflicts and political and economic crises from the definition of disasters currently provided in draft article 3 (a). Similarly, the connection between draft articles 7 and 8 should be better clarified to identify the scope of application of that latter provision (whose text makes specific reference to response capacities, while the commentary also touches on prevention activities).

Moreover, proper consideration should be given to rendering the text more operational. Whereas draft article 15 provides a comprehensive legal framework aimed at facilitating activities of assisting actors, more specific provisions could be elaborated in order to safeguard the interests and rights of the affected State, while at the same time providing for increasing legal certainty for assisting actors when planning and deploying in disaster response operations.

In the same vein, the process towards a convention could open the door to establishing some form of standing mechanism – for instance, a secretariat, a meeting of the parties and/or a technical body or a combination of different options – which would enable the parties to develop operational, technical protocols and practical tools for facilitating the work of stakeholders and relief operators on the ground.

Moreover, the text of draft article 18, paragraph 2, should be amended according to the explanations contained in the commentary to that article and should clarify that, in situations of “complex emergencies”, where a disaster in an area is compounded by armed conflict, the rules of international humanitarian law shall take precedence. The rules contained in the new convention would be applicable only to the extent that any relevant issue is not covered already by international humanitarian law.

**Japan**

[Original: English]  
[9 October 2019]

From the viewpoint of a disaster-affected State and an assisting State in the context of disasters, the Government of Japan would like to submit the following comments and observations on the draft articles.

In relation to the importance of disaster risk reduction and the preventive approach, as mentioned in draft article 9, it is essential, with a view to reducing risks and minimizing the damage of disasters, to take necessary measures before disasters occur. In this regard, Japan has supported the principle of “building back better” and “a broader and a more people-centred preventive approach” as described in the Sendai Framework for Disaster Risk Reduction 2015–2030 as well as promoted in international cooperation in the field of disaster reduction. The Government of Japan considers it important that the draft articles are based on such on-the-ground efforts of international cooperation in the area of disaster reduction in order to make them valuable for tackling the challenges in reality.

The Government of Japan shares the idea that the affected State has the duty to seek external assistance when a disaster manifestly exceeds its national response capacity, as mentioned in article 11 of the draft articles. On the other hand, as the draft articles point out, with regard to the implementation of external assistance, it is reasonable to require the consent of the affected State and to allow the affected State to place certain conditions on the provision of external assistance, in accordance with international law, national law, the needs of persons affected by disasters and so on.

However, the Government of Japan considers that the requirement of the affected State's consent and creation of conditions should not be abused for political and other reasons that may result in delay of external assistance delivery to affected persons who are in danger of loss of life, injury or property damage.

## Turkey

[Original: English]

[5 July 2019]

Turkey submitted the following comments of the Turkish Red Crescent Society on the protection of persons in the event of disasters.

Regarding article 5, the following modification is proposed: "Persons affected by disasters are entitled to the respect for and protection of their human rights in accordance with international law, which include the right to seek and receive humanitarian assistance". The rationale is that the latter are corollary to human rights in any context where the lack of assistance may lead to human suffering, driving people into miserable and inhumane conditions.

With respect to article 11, the following modification is proposed: "To the extent that a disaster manifestly exceeds its national response capacity due to high severity, urgency and scale of needs, the affected State has the duty to seek assistance from, as appropriate, other States, the United Nations, and other potential assisting actors". The rationale is that the affected State and the international community need determinants by which to decide on the sufficiency and effectiveness of assistance in proportion to needs in that context.

Regarding article 12, the following modification is proposed: "In the event of disasters, States, the United Nations, and other potential assisting actors may offer assistance in a manner not compromising humanitarian principles to the affected State". The rationale is that humanitarian assistance is frequently abused to advance political objectives in different contexts; therefore, the offer of assistance shall be made in accordance with humanitarian principles in order to prevent the politicization of humanitarian affairs.

Regarding article 13, the following modification is proposed to paragraph 2: "Consent to external assistance shall be given on the basis of the objectively assessed needs, their coverage and circumstances of the affected population and shall not be withheld arbitrarily". The rationale is that the affected State shall ground its consent or refusal based on reasonable justification; otherwise, decision-making will be left to the unlimited discretion of the affected State, which creates space for arbitrariness.