



ICRC

ICRC Recommendations on the Draft Articles on the Protection of Persons in the Event of Disasters

The ICRC has closely followed the process on the protection of persons in the event of disasters (PPED) since the work of the International Law Commission and through the discussions in the UN General Assembly Sixth Committee. It looks forward to participating as an observer in the forthcoming negotiations on a legally binding instrument on the basis of the ILC draft articles.

The ICRC would like to make two proposals for the consideration of States throughout the negotiation process, both of which are offered with the objective of ensuring that the legal framework is clear for all humanitarian response and that each situation is covered by the most appropriate legal framework, without ambiguity. It is important that the two legal frameworks of international humanitarian law (IHL) and the proposed treaty on PPED remain clearly delineated, to avoid uncertainty in contexts where the new rules might overlap with the well-established rules of IHL. Indeed, disasters may occur in a territory where there is an armed conflict, or an armed conflict may occur while the effects of a disaster are still being felt.

1. Exclude armed conflict from the scope of the definition of disasters

To provide the most clarity to all relevant actors, including States and impartial humanitarian organizations, armed conflict should be excluded from the definition of the term “disaster” in Draft Article 3. Armed conflict, and the humanitarian response thereto, are governed by IHL. This legal regime contains rules carefully crafted to meet the specific realities of armed conflict and to allow and facilitate humanitarian activities in such situations.

Excluding armed conflict from the scope of the definition of disaster is the clearest way to ensure that armed conflict-related humanitarian activities are exclusively governed by IHL rules, including in complex emergencies (i.e. situations where areas of a State’s territory are affected by both disaster and armed conflict). Draft Article 18(2) states that the PPED articles “do not apply to the extent that the response to a disaster is governed by the rules of international humanitarian law”, providing some amount of clarity on the relationship between IHL and the PPED rules (see below). Even with that clause, however, allowing for armed conflict to fall under the definition of disaster could create uncertainty as to the applicable legal framework.

Excluding armed conflict from the definition of disasters would not reduce the scope of application of the convention for the disaster-related humanitarian activities in a State affected by both armed conflict and disaster, as it would govern humanitarian relief wherever a disaster does not overlap with armed conflict or its effects. Nevertheless, it would helpfully clarify that an armed conflict is not a

disaster that would *per se* serve as a basis to invoke the convention.

The ICRC believes for these reasons that the definition of “disaster” in the Draft Articles should expressly exclude armed conflict and recommends that States consider the following written amendment to be added at the end of the definition of disaster: “but excluding armed conflict”.

The ICRC notes that several States and groups of states, as well as the International Federation of Red Cross and Red Crescent Societies, have put forward proposed definitions that would accomplish the same goal.

2. Maintain the clarity of the relationship with international humanitarian law

Draft Article 18(2) clarifies that the PPED articles “*do not apply to the extent that the response to a disaster is governed by the rules of international humanitarian law*”. This clause remains highly relevant even if armed conflict is excluded from the scope of the definition of disaster (see above), because it is not uncommon for disasters and armed conflicts to overlap in geographic and temporal scope. Draft Article 18(2) ensures that all humanitarian activities with a nexus to armed conflict, including in situations of complex emergency, remain governed by IHL as the more specific body of law for such situations.

The formulation is also precise enough that it allows for the PPED rules to play an important supplementary role for all disaster-related humanitarian activities with no nexus to armed conflict.

The ICRC strongly recommends that States retain Draft Article 18(2) as it is written.

Conclusion

Clarity in the applicable legal framework for responding to situations of armed conflict, disaster, and complex emergency will support the smooth functioning of the humanitarian assistance architecture, leading to better humanitarian outcomes. Legal certainty is the key priority for the ICRC in these negotiations.

At the same time, the ICRC has identified that some of the draft articles are more restrictive on humanitarian access and assistance than the rules of IHL.¹ Without taking a position on whether these proposed rules are appropriate for responding to disasters, they do not reflect the existing, well-established rules that are designed to govern humanitarian assistance in armed conflict.

It is for these reasons that the ICRC encourages States to incorporate these recommendations throughout the process of negotiating a treaty on the protection of persons in the event of disasters.

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¹ For example, certain elements of Draft Articles 10, 15, 16, and 17 are more oriented toward state sovereignty and control than the relevant corresponding rules in IHL.