



**PERMANENT MISSION OF THE CZECH REPUBLIC
TO THE UNITED NATIONS**

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The Permanent Mission of the Czech Republic to the United Nations in New York presents its compliments to the Secretary-General of the United Nations and, with reference to the Secretary-General's note No. LA/COD/57 of 26th November 2014, concerning the draft articles on the "**Protection of persons in the event of disasters**" adopted, on the first reading, by the International Law Commission at its sixty-sixth session, has the honour to convey the comments and observations of the Czech Republic.

The Permanent Mission of the Czech Republic to the United Nations in New York avails itself of this opportunity to renew to the Secretary-General of the United Nations the assurances of its highest consideration.

New York, January 1, 2016



His Excellency
Mr. Ban Ki-moon
Secretary-General
United Nations
New York

Copy to the attention of:
Secretary of the International Law Commission
United Nations
New York

Comments and observations of the Czech Republic on the draft articles on the topic “Protection of persons in the event of disasters” adopted by the International Law Commission at its 66th session (2014)

The Czech Republic welcomes the draft articles on the topic “Protection of persons in the event of disasters” contained in Chapter V of the Report of the International Law Commission on the work of its 66th session (2014) and recognizes their importance for complementing instruments already existing in the area of disaster response and prevention. We commend the work done by the Special Rapporteur Mr. Eduardo Valencia-Ospina which lead to the adoption of the draft articles on first reading last year.

We especially appreciate that the Commission struck the balance among the principles of non-intervention and sovereignty as expressed mainly in draft articles 12, 14 and 15 and the humanitarian principles and human rights that guide the provision of assistance by the assisting actors to the affected State and are a cornerstone of these draft articles. The respect for these principles is not only listed in the draft articles 6 and 7, but also includes the duty to seek assistance and the duty not to withhold its consent to external assistance arbitrarily, contained in draft articles 13 and 14 respectively.

Yet the Czech Republic presents hereinafter the following comments and observations on the draft articles.

Draft article 3 contains a definition of “disaster” the aim of which is not to be very limiting on the one hand but also not far-reaching on the other hand. In our opinion, the Commission has found a right balance between these two extremes and we support this definition. We understand that there is a need for leaving some space for discretion regarding the possible applicability of the draft articles, however, we would appreciate that the Commission further elaborates in the commentary on the definition of “serious disruption of the functioning of society”, for instance by way of examples, since such a general definition poses difficulties in determining the threshold which would trigger the application of the present draft articles.

In draft article 4 a) a definition of an “affected State” is provided. In the commentary to this article the Commission admits that there might be situations, although rare, when two States might be regarded as “affected States”. Despite the fact that these situations might be exceptional, we find it convenient to have a set of certain indications that might be of use in this respect. Hence, we suggest that the Commission considers putting forward criteria, at least in the commentary to said draft article, which might be applicable in such situations.

The Czech Republic acknowledges that both the civilian and military personnel may be deployed in emergency situations, including disasters as defined in draft article 4 e). We would like to draw the attention of the Commission to the Guidelines on the Use of Foreign Military and Civil Defence Assets in Disaster Relief (“Oslo guidelines”) as well as the Guidelines on the Use of Military and Civil Defence Assets to Support UN Humanitarian Activities in Complex Emergencies which both stress the primacy of use of civilian personnel and limit the use of military personnel only to the situations when there is no comparable civilian personnel available. We propose that the Commission address this matter in the text of the commentary thereto.

Further, we agree that the affected State may wish to place conditions on the provision of external assistance and according to the current situation indicate the scope and type of assistance sought. For enabling and speeding up the activities of the relief personnel we suggest that the commentary to the draft article 15 also sets forth that the affected State may indicate general conditions of such assistance, *inter alia*, transport and security conditions, points of contacts etc.

Regarding draft article 16 we would like to make a remark that the commentary to this draft article does not deal with possible offers of assistance by individuals, whereas for instance ASEAN Agreement on Disaster Management and Emergency Response and other sets of rules, including Oslo guidelines, recognize them as assisting actors.

The Czech Republic also concurs with the commentary to the draft article 21 that foresees the applicability of draft articles also in complex emergency situations, including those of armed conflict, to the extent that the international humanitarian law does not apply. Having said that we feel that text of the draft article does not reflect the commentary thereto. In general terms also the text of other commentaries that touches upon the relationship of the present draft articles with international humanitarian law does not seem to be in accordance with the draft article 21. Therefore, we suggest that Commission clearly explains in the relevant commentaries to the draft articles its position towards the applicability of the draft articles in armed conflict and its relationship with the international humanitarian law and considers reformulating the text of the draft article 21. We believe that a further analysis of the relationship between these draft articles and rules of armed conflict would be desirable. It would be very helpful for the practitioners if the commentary indicated situations in which the international humanitarian law may prevail and thus disable the application of the present draft articles or clarified in which situations these articles may apply also in situations of armed conflict.