

Joint comments by the Nordic countries; proposals for amendments to the ILC draft articles on the protection of persons in the event of disasters

The Nordic countries (Denmark, Finland, Iceland, Norway and Sweden) would like to express their appreciation to the Office of Legal Affairs of the United Nations for the request for comments on the draft articles adopted by the International Law Commission on the protection of persons in the event of disasters. The General Assembly decided in its resolution 79/128 of 4 December 2024 to elaborate and conclude a legally binding instrument on the protection of persons in the event of disasters, without prejudice to the legal effects of any particular provisions contained therein, by the end of 2027 and invited, in the operative paragraph 6 of said resolution, Governments to submit to the Secretary General proposals for amendments to the ILC draft articles, with a view to preparing the consolidated text that will serve as the basis for the negotiations of the legally binding instrument.

The Nordic countries are strong supporters of further strengthening the international disaster relief and humanitarian assistance system. The elaboration of the draft articles has involved seeking to find a balance between different interests, notably on the one hand the aspects of State sovereignty and, on the other hand, the needs of international cooperation in protecting persons and providing humanitarian assistance in the event of disasters.

The Nordic countries consider that the draft articles, as adopted by the International Law Commission, provide a solid basis for the negotiations for a legally binding instrument and would wish to make the following proposals for amendments:

Article 3

Use of terms

For the purposes of the present draft articles:

- (a) “disaster” means a calamitous event or series of events resulting in widespread loss of life, great human suffering and distress, mass displacement, or large-scale material or environmental damage, thereby seriously disrupting the functioning of society **or parts thereof, while a situation of armed conflict cannot be qualified *per se* as a disaster for the purposes of the present draft articles;**
- (b) “affected State” means a State in whose territory, or in territory under whose jurisdiction or control, a disaster takes place;
- (c) “assisting State” means a State providing assistance **through civil or military components** to an affected State with its consent, **while military assets should be used only where there is no comparable civilian alternative to meet critical humanitarian needs;**
- (d) “other assisting actor” means a competent intergovernmental organization, or a relevant non-governmental organization or entity, providing assistance **on the territory of or on the territory under the jurisdiction or control of** an affected State with its consent;

(e) “external assistance” means relief personnel, equipment and goods, and services provided to an affected State by an assisting State or **on the territory of or on the territory under the jurisdiction or control of an affected State by** other assisting actor for disaster relief assistance;

(f) “relief personnel” means ~~civilian or military~~ personnel sent by an assisting State or other assisting actor for the purpose of providing disaster relief assistance;

(g) “equipment and goods” means supplies, tools, machines, specially trained animals, foodstuffs, drinking water, medical supplies, means of shelter, clothing, bedding, vehicles, telecommunications equipment, and other objects for disaster relief assistance.

Reasoning:

Article 3

a)

The threshold in article 3(a) seems too high to trigger the applicability of the future convention. Such events might be devastating yet regional and, thus, while not seriously disrupting the functioning of the entire society, a disaster can at the same time manifestly exceed the national response capacity of an affected state and create essential needs for persons affected by the disaster. Thus, suggest broadening the scope by inserting “or parts thereof” at the end.

For the Nordic countries, it is important to preserve the integrity of IHL. Therefore, it is pertinent to make it clear already in the definition of disaster in article 3(a) that a situation of armed conflict cannot be qualified *per se* as a disaster for the purposes of the future convention. Such an inclusion would be in line with the commentary under article 18 and consistent with the draft article 18(2). Thus, suggest inserting “while a situation of armed conflict cannot be qualified *per se* as a disaster for the purposes of the present draft articles” at the end of article 3(a).

c) and f)

The Nordic countries remain concerned that the neutrality of humanitarian assistance is not adequately ensured in the current draft articles. It is pertinent to safeguard principled humanitarian assistance throughout the future convention. While Article 6 stipulates that response to disasters shall take place in accordance with listed humanitarian principles, especially the principle of neutrality is not consistently considered in some of the other articles. Currently, civilian and military relief personnel are referred to in the same context in article 3(f) on “*relief personnel*”. Maintaining neutrality, impartiality and independence is the best way to protect humanitarian space and ensure humanitarian access and the safety and security of humanitarian personnel. Therefore, it is crucial that the articles more clearly distinguish between military personnel and humanitarian response and make clear the fundamentally civilian character of humanitarian assistance. In the commentary, it has also been stated that the reference to military personnel is more pertinent to the case of assisting States. The IDRL Guidelines have included in its definitions a reference to military components in its definition on *Assisting State*, but not when defining *personnel*. This logic

could also be adopted in the future convention by adding “through civil or military components” to the definition of an Assisting State in Article 3(c). This would in our mind also be more in line with the objective that military assistance as disaster relief assistance is to be used as a last resort (*ultima ratio*), where there is no comparable civilian alternative to meet critical humanitarian needs. We would also wish this *ultima ratio* nature of military assistance as disaster relief be explicitly included. Thus, suggest removing reference to “civilian or military” from 3(d) and adding “through civil or military components” and “while military assets should be used only where there is no comparable civilian alternative to meet critical humanitarian needs” to 3(c).

d) and e)

As emphasized above, it is crucial to safeguard principled humanitarian action for the aid to reach affected populations in timely manner. Intergovernmental and non-governmental organizations working impartially and with strictly humanitarian motives provide humanitarian relief *for persons most in need*. Principled humanitarian assistance is not provided directly to affected States or State entities themselves, while civil protection may be bilaterally provided by a State to another. Therefore, when referring to humanitarian assistance, it would be more accurate to refer to aid provided by such actors *on the territory of or on the territory under the jurisdiction or control of an affected State* with its consent. The IDRL Guidelines have utilized similar language regarding responding to a disaster on the territory of the affected State. According to the commentary, humanitarian assistance is intentionally placed first among the forms of cooperation mentioned in draft article 8, as the Commission considered this type of cooperation of paramount importance in the context of disaster relief. As protecting principled humanitarian assistance provided by neutral humanitarian actors translates into humanitarian access on the ground, this must be safeguarded also in the future convention. Thus, suggest referring to providing assistance “on the territory of or on the territory under the jurisdiction or control of an affected State” in both articles 3(d) and 3(e).

Article 5

Human rights

Persons affected by disasters are entitled to the respect for, **and** protection of **and fulfilment of** their human rights in accordance with international law.

Reasoning:

People are at their most vulnerable in times of disasters and, therefore, preventing human rights violations and abuses and actively fulfilling human rights are of utmost importance. It is the duty of States under international law to respect, to protect and to fulfil human rights. While understanding the broader *ratione personae* of the articles that cover activities of States and other actors, the language in Article 5 should be revised to clearly ensure compliance with all relevant human rights obligations. The obligation to fulfil entails that States must take positive action to facilitate the enjoyment of human rights. As it has been

stated in the commentary also regarding Article 11, recourse to international support may be a necessary element in the fulfilment of a State's international obligations towards individuals and the duty to seek assistance derives from an affected State's obligations under international human rights instruments and customary international law. Thus, suggest also referring to fulfilment of human rights in Article 5.

Article 6

Humanitarian principles

Response to disasters shall take place in accordance with the principles of humanity, neutrality, **and impartiality and independence**, and on the basis of non-discrimination, while taking into account the needs of **persons in the particularly vulnerable situations. The specific needs of the affected population shall be taken into account.**

Reasoning:

The Nordic countries are very pleased that the humanitarian principles have been included in an article of their own and that it also contains an explicit reference to the needs of those in a particularly vulnerable situation. Humanitarian principles include the principles of humanity, neutrality, impartiality and independence, the last one of which is not included in Article 6. Independence means the autonomy of humanitarian objectives from political, economic, military or other objectives. Whilst understanding the before mentioned *ratione personae* of the articles and its effects, it is important to include the principle of independence, also taking into consideration the commentary on article 8 highlighting the importance of humanitarian assistance and placing humanitarian assistance intentionally first among the forms of cooperation. In addition, individuals and groups in particularly vulnerable situations are commonly those most affected in the event of disasters and deserving of particular attention. Thus, suggest adding "and independence", "persons in vulnerable situations" and a new sentence "The specific needs of affected population shall be taken into account."

Article 6bis

Do no harm principle

Response to disasters shall take place in accordance with the '*do no harm*' principle, in order to prevent and alleviate any adverse consequences of disaster relief assistance to the persons affected by disasters and to the environment.

Reasoning:

Another key aspect of humanitarian assistance that the Nordic countries have emphasized is the importance of the 'do no harm' principle. Response to disasters should avoid exposing people to further harm as a result of their action, ensure access to impartial assistance, protect persons from physical and psychological harm arising from violence

and coercion, and assist persons to claim their rights and access to necessary remedies. Suggest adding a new Article 6bis to include the do no harm -principle.

Article 10

Role of the affected State

1. The affected State has the duty to ensure the protection of persons and provision of disaster relief assistance in its territory, or in territory under its jurisdiction or control.
2. The affected State has the primary role in the direction, control, coordination and **supervision facilitation** of such relief assistance.

Reasoning:

According to the commentary, the formulation on article 10(2) “*direction, control, coordination and supervision*” is drawn from article 4, paragraph 8, of the Tampere Convention. In the commentary under article 10, it is stated that “such control by an affected State is not to be regarded as undue interference with the activities of an assisting actor”. In the Annex of the resolution of the UN General Assembly 46/182, on the Strengthening of the coordination of humanitarian emergency assistance of the United Nations, it is stated that “the affected State has the primary role in the initiation, organization, coordination, and implementation of humanitarian assistance within its territory”. In order to preserve principled humanitarian assistance while also respecting State control and ensuring quality and appropriate assistance, we suggest replacing “supervision” with “facilitation” in article 10(2).

Article 12

Offers of external assistance

1. In the event of disasters, States, the United Nations, and other potential assisting actors may offer assistance to the affected State.
2. When external assistance is sought by an affected State by means of a request addressed to another State, the United Nations, or other potential assisting actor, the addressee shall **expeditiously** give due consideration to the request and inform the affected State of **its reply any assistance being provided in response to the request**.

Reasoning:

Affected states often send requests to all UN member states. Requesting to inform the affected state in writing and even when the request is not met, would add undue administrative burden in a time of crisis. The Nordic countries suggest that the focus should be on the assisting states and assisting actors seeking to provide assistance. Thus, suggest deleting “expeditiously” and “its reply” and adding “any assistance being provided in response to the request” in article 12.

Article 14

Conditions on the provision of external assistance

The affected State may place conditions on the provision of external assistance. Such conditions shall be in accordance with the present draft articles, applicable rules of international law and the national law of the affected State. Conditions shall **adequately** take into account the identified needs of the persons affected by disasters and the quality of the assistance. When formulating conditions, the affected State shall indicate the scope and type of assistance sought.

Reasoning:

Particular attention should be paid to the importance of the needs of individuals affected by disasters. The Nordic countries very much support that needs-based assistance is clearly included in article 2 and, hence, in the purpose of the draft articles. This should be more clearly articulated also in article 14. Thus, suggest adding “*adequately*” in article 14.

Article 15

Facilitation of external assistance

1. The affected State shall take the necessary measures, within its national law, to facilitate the **access and** prompt and effective provision of external assistance **in accordance with humanitarian principles**, in particular regarding:

(a) relief personnel, in fields such as privileges and immunities, visa and entry requirements, work permits, and freedom of movement; and

(b) equipment and goods, in fields such as customs requirements and tariffs, taxation, transport, and the disposal thereof.

2. The affected State shall ensure that its relevant legislation and regulations are readily accessible, to facilitate compliance with national law.

Reasoning:

Suggest adding “*in accordance with humanitarian principles*” in the chapeau of Article 15(1) as it is important that the facilitation of external assistance also safeguards principled relief assistance. Suggest including that the affected State should also facilitate the “*access*” of external assistance, as access has not been included explicitly in any of the articles, and this would complement also the wording of Article 13 regarding the consent of the affected state to external assistance and that such consent shall not be withheld arbitrarily.

Article 17

Termination of external assistance

The affected State, the assisting State, the United Nations, or other assisting actor may terminate external assistance at any time **while adequately considering the identified needs of the persons affected by disasters**. Any such State or actor intending to terminate shall provide appropriate notification. The affected State and, as appropriate, the assisting State, the United Nations, or other assisting actor shall consult with respect to the termination of external assistance and the modalities of termination. **The assisting State and other assisting actors shall be allowed to withdraw their personnel, equipment and goods upon the termination of external assistance.**

Reasoning:

The needs of the affected persons should be taken into account also when terminating external assistance, as also in Article 14 it is stated that conditions on the provision of external assistance shall take into account the identified needs of the persons affected by disasters. We would also suggest to explicitly refer to the withdrawal of personnel, equipment and goods upon the termination of external assistance. Suggest adding “*while adequately considering the identified needs of the persons affected by disasters*” at the end of the first sentence of Article 17 and at the end of the paragraph “*The assisting State and other assisting actors shall be allowed to withdraw their personnel, equipment and goods upon the termination of external assistance.*”