



Permanent Mission
of the Federal Republic of Germany
to the United Nations
New York

Note No. 240/2015

The Permanent Mission of the Federal Republic of Germany to the United Nations presents its compliments to the Secretary-General of the United Nations and, with reference to Chapter V B) para. 53 of the Report of the International Law Commission on its Sixty-sixth Session (5 May–6 June and 7 July–8 August 2014) [United Nations document A/69/10], has the honour to submit the following comments and observations on the draft articles on the “Protection of persons in the event of disasters” requested by the International Law Commission:

First of all, we would like congratulate the Commission on adopting the 21 articles on the protection of persons in the event of disasters, including commentaries, on first reading.

In general, the articles provide good recommendations supporting international practice and domestic legislation to establish effective national systems of disaster prevention, mitigation, preparedness and response.

In the following, we would like to comment on individual articles:

Article 3 [3] Definition of disaster: Disaster Risk Reduction should not only focus on fast-onset “events”, but also on slow-onset processes such as droughts, which pose a huge threat to high-risk countries. We therefore propose that “prolonged processes” be incorporated into the definition of a disaster in draft article 3:

“Disaster” means a calamitous event, series of events, [**or prolonged process**] resulting in widespread loss of life, great human suffering and distress, or large-scale material or environmental damage, thereby seriously disrupting the functioning of society.

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Article 4 lit. (d) “external assistance” and lit. (e) “relief personnel”: Article 4 (e) defines “relief personnel” as encompassing both civilian and military personnel. Article 4 (d) defines “external assistance” *inter alia* by referring to “relief personnel”. In consequence, wherever one of these terms is applied, the recommendation might equally refer to civilian and military aid. However, we would like to draw attention to the fact that the Oslo guidelines and the guidelines on the use of Military and Civil Defence Assets to Support UN Humanitarian Activities in Complex Emergencies (MDCA) specify that international military assets should be used only as a last resort, when civilian alternatives are exhausted.

Germany would therefore like to propose the following amendment to article 4 lit. (e):

“relief personnel”: means civilian or **[in exceptional cases in which civilian assistance cannot sufficiently be provided,]** military personnel sent by an assisting State or other assisting actor for the purpose of providing disaster relief assistance or disaster risk reduction;

Article 11 [16] Duty to reduce the risk of disasters: The definition of disaster risk reduction should adhere to the international framework, the Sendai Framework for Disaster Risk Reduction, which clearly points to early warning systems and risk transfer mechanisms as part of a comprehensive understanding of disaster risk reduction. Article 11 para. 2 should be amended as follows:

[...]

2. Disaster risk reduction measures include the conduct of risk assessments, the collection and dissemination of risk and past loss information, and the installation and operation of early warning systems, **[the installation and maintenance of appropriate infrastructure protection measures, the installation and maintenance of appropriate response surge capacity (personnel and material), and the installation of appropriate financial disaster risk transfer mechanisms.]**

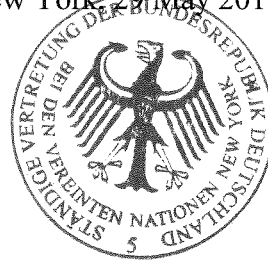
Article 12 [9] to article 15 [13]: As already pointed out in our oral statement delivered in the Sixth Committee of the General Assembly, the approach to the concept of sovereignty enshrined in articles 12 to 15 is highly pertinent. In particular, we share the perception that sovereignty entails the duty of the affected State to ensure within its jurisdiction the protection of persons and the provision of disaster relief. We also concur that although the consent of the affected State shall not be withheld arbitrarily, consent is nevertheless an indispensable requirement for every provision of external assistance.

Article 18 Protection of relief personnel, equipment and goods: We would also like to reiterate our support for article 18, given that sufficient protection of deployed personnel, their equipment and goods is crucial to allow States and other actors to provide humanitarian assistance efficiently.

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The Permanent Mission of the Federal Republic of Germany to the United Nations avails itself of this opportunity to renew to the Secretary-General of the United Nations the assurances of its highest consideration.

New York, 29 May 2015



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