

PROTECTION OF PERSONS IN THE EVENT OF DISASTERS

WRITTEN AMENDMENTS AND PROPOSALS SUBMITTED BY THE
FEDERATIVE REPUBLIC OF BRAZIL

30 December 2025

Preamble

Add the following preambular paragraph:

“Underscoring that the provision of external assistance in the event of disaster may never justify, excuse or facilitate intervention in the domestic affairs of any State, nor entail any other form of violation of the Charter of the United Nations.”

Article 2

Rephrase article 2 with the following insertion:

“The purpose of the present draft articles is to facilitate the adequate and effective response to disasters, and reduction of the risk of disasters, so as to meet the essential needs of the persons concerned, with full respect for their rights [ADD: and in compliance with the principles of sovereign equality and non-intervention, as well as all other principles of the Charter of the United Nations and of international humanitarian law.]

Article 3

Rephrase article 3, items (c), (d) and (f), with the following insertions:

“(c) ‘assisting State’ means a State providing assistance to an affected State with [ADD: its request and] consent;

(d) ‘other assisting actor’ means a competent intergovernmental organization, or a relevant non-governmental organization or entity, providing assistance to an affected State [ADD: with its request and] consent;”

(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 [add:, in accordance with obligations under International Humanitarian Law];

Article 5

Rephrase article 5 with the following insertion:

“Persons affected by disasters are entitled to the respect for and protection of their human rights [add: without any discrimination], in accordance with international law.”

Article 6

Rephrase Article 6 with the following insertion, with a view to adequately reflect fundamental principles of international humanitarian law:

“Response to disasters shall take place in accordance with the principles of humanity, neutrality, impartiality [ADD: and independence], and on the basis of non-discrimination, while taking into account the needs of the particularly vulnerable.”

Article 7

Split article 7 in two separate articles, so as to avoid confusion between the inter-State duty to cooperate, the duty of member States to cooperate with the United Nations, and cooperation with other actors. Article 7 would have the following wording:

“In the application of the present draft articles, States shall, as appropriate, cooperate among themselves and with the United Nations.”

Article 7 bis

“In the application of the present draft articles, States should cooperate, as appropriate and pursuant to their obligations under international law and international humanitarian law, with the components of the Red Cross and Red Crescent Movement, and other assisting actors.”

Article 10

Rephrase article 10, paragraph 1, with the following insertions:

1. The affected State has the duty [add: to engage in best efforts] to ensure the protection of persons [add:, without any discrimination,] and the provision of disaster relief assistance in its territory, or in any territory under its jurisdiction or control.

Article 11

Delete article 11, which does not reflect customary international law and seems to imply the existence of a “right” to provide assistance and a countervailing obligation to accept it, in direct contradiction with the principle of consent enshrined in article 13.

Article 13

Rephrase article 13, paragraphs 1 and 2, with the following corrections:

1. The provision of external assistance requires the consent of the affected State [add:, which has the right to accept or refuse such an offer].
2. [Delete: Consent to external assistance shall not be withheld arbitrarily.] [Add: When exercising its sovereign right to request, accept, or refuse external assistance, the affected State shall give due consideration to its duty under article 10 of the present draft articles.]

Article 14

Rephrase article 14 with the following corrections:

The affected State may place conditions on the provision of external assistance [delete: . 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 take] [add:, taking] into account the identified needs of the persons affected by disasters and the quality of the assistance [add:, among other concerns identified by the affected State]. When formulating conditions, the affected State shall indicate the scope and type of assistance sought.

Article 15

Rephrase article 15 with the following corrections:

The affected State shall [delete: take the necessary measures] [add: undertake best efforts], within its national law [add: and prevailing circumstances], to facilitate the prompt and effective provision of external assistance, in particular regarding:

Article 16

Rephrase article 16 with the following corrections:

The affected State shall [delete: take the appropriate measures] [add: undertake best efforts] to ensure the protection of relief personnel (...).

Article 17

Rephrase article 17 with the following insertions:

The affected State, the assisting State, the United Nations, or other assisting actor may terminate external assistance at any time. 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. [add: The affected State shall undertake best efforts, within its national law and prevailing circumstances, to provide a structured phase-out plan and timely departure for relief personnel until their final exit from the territory].

EXPLANATORY MEMORANDUM

1. While the draft articles provided by the ILC are an appropriate starting point for negotiations, they require some adjustments to achieve a balanced text, adequately reflecting customary international law.

2. The protection of persons in the event of disasters, as all other objectives pursued by the international community, must be aligned with the principles of the UN Charter, such

as those of sovereign equality and non-intervention. Brazil proposes the inclusion of a reference to those principles in the articles, underscoring that the provision of external assistance may never be used as pretext for intervention in the domestic affairs of any state, nor in any other form of violation of the UN Charter.

3. Brazil reiterates that external assistance should not only be based on consent, but also on a formal request by the affected State. This requirement ensures national ownership and the propriety of assistance to the necessities arising from the specific situation faced by that State.

4. The draft articles could also be improved by incorporating the humanitarian principle of independence. As in every other case involving humanitarian assistance, independence of humanitarian actors in responding to disaster ensures that assistance is provided solely based on need, without political, economic or any other kind of undue interference, without discrimination.

5. Brazil also finds the duty to cooperate should not be construed as entailing equivalent duties or rights for other actors involved in providing assistance, such as non-governmental entities. It should be understood as a reciprocal obligation between States among themselves, as well as an obligation of member States towards the United Nations.

6. The draft articles should imply no obligation incumbent upon States to seek external assistance in the event of disasters. This has no basis on customary international law. Furthermore, it could encourage the erroneous construction of an alleged right to provide international assistance, in grave breach of the rights of States to conduct their internal affairs in a sovereign manner.