

Proposed amendments to the draft articles on the protection of persons in the event of disasters

I. General comments on the draft articles

United Nations General Assembly resolution 79/128 mandated the elaboration and conclusion of a legally binding international instrument on the protection of persons in the event of disasters by the end of 2027, and invited Governments to submit, no later than 31 December 2025, proposals for amendments to the draft articles on the protection of persons in the event of disasters (hereinafter, the “draft articles”) of the International Law Commission, with a view to preparing the consolidated text that will serve as the basis for the negotiations.

China believes that this resolution is of positive significance in providing a universal international legal framework for disaster prevention and mitigation. As one of the countries most severely affected by natural disasters, China has consistently been committed to international cooperation on disaster relief, and has constructively participated in discussions on this topic at successive sessions of the International Law Commission and the Sixth Committee of the General Assembly.¹ In September 2025,

¹ See UN Doc. A/C.6/63/SR.23, 20 January 2009, paras. 27-31; UN Doc. A/C.6/64/SR.20, 1 March 2010, paras. 21-24; UN Doc. A/C.6/65/SR.22, 28 January 2011, paras. 62-65; UN Doc. A/C.6/66/SR.23, 10 January 2012, paras. 41-42; UN Doc. A/C.6/68/SR.26, 18 November 2013, paras. 11-12; UN Doc. A/C.6/69/SR.20, 10 November 2014, paras. 23-26; UN Doc. A/C.6/71/SR.20, 11 November 2016, paras. 64-65; UN Doc. A/C.6/75/SR.18, 16 December 2020, paras. 10-11; UN Doc. A/C.6/76/SR.12, 3 June 2022, paras. 53-56; UN Doc. A/C.6/78/SR.6, 25

Chinese President Xi Jinping proposed the Global Governance Initiative, emphasizing core concepts, such as staying committed to sovereign equality, international rule of law, multilateralism, the people-centered approach, and real results, thereby offering valuable insights for global governance in the field of disaster prevention and mitigation. China is willing to uphold the aforementioned concepts, actively participate in subsequent negotiations on the instrument and play a constructive role.

Regarding the current draft articles, the principle of the sovereignty of States, the spirit of solidarity, and the emphasis on the primary role of the affected State in disaster relief contained therein align with China's consistent position. At the same time, with a view to achieving proper balance between the rights and obligations of affected States and assisting actors, and to reconciling respect for State sovereignty with the enhancement of cooperation, there is still room for further refinement of the relevant articles. Pursuant to the requirements of General Assembly resolution 79/128, China hereby submits the following proposed amendments to the draft articles.

II. Comments on specific articles

(i) Preamble

Bearing in mind ~~the purposes and principles Article 13, paragraph 1 (a),~~ of the Charter of the United Nations, ~~which provides that the General Assembly shall initiate studies and make recommendations for the purpose of encouraging the progressive development of international law and its codification,~~

October 2023, paras. 26-31.

Recalling General Assembly resolution 79/128, which decided 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,

Considering the frequency and severity of natural and human-made disasters and their short-term and long-term damaging impact,

Fully aware of the essential needs of persons affected by disasters, and conscious that the rights of those persons must be respected in such circumstances,

Mindful of the fundamental value of solidarity in international relations and the importance of strengthening international cooperation in respect of all phases of a disaster, **and taking into account the circumstances and particular requirements of developing countries;**

~~Stressing the principle of the sovereignty of States and, consequently,~~
~~Re~~affirming the primary role of the State affected by a disaster in providing disaster relief assistance,

Emphasizing that States shall comply with generally recognized principles of international law in the protection of persons affected by disasters, in particular the principles of the sovereignty of States, non-intervention in internal affairs of States, and humanity, neutrality and impartiality.

1. It is proposed that paragraph 1 be refined by deleting the reference to Article 13, paragraph 1 (a), of the Charter of the United Nations concerning the purpose of the International Law Commission, adding a reference to the purposes and principles

of the Charter of the United Nations, and inserting after this paragraph a new paragraph regarding the mandate for the negotiation and conclusion of the present instrument. The main reason is that, the present draft articles will serve as the basis for negotiations on an international legal instrument to be adopted by the General Assembly, beyond the outcome of the International Law Commission. Therefore, it is no longer appropriate for the preamble of the draft articles to reflect the purposes of the International Law Commission. At the same time, in accordance with international treaty-making practices and common approaches, the preamble of an international treaty typically references the purposes and principles of the Charter of the United Nations and the mandate for the conclusion of the treaty. For specific wording, reference may be made to paragraphs 1² and 15³ of the preamble of the recently concluded United Nations Convention against Cybercrime, as well as paragraph 3⁴ of the preamble of the Minamata Convention on Mercury, one of the multilateral environmental conventions, among others.

2. It is proposed to add “taking into account the circumstances and requirements of developing countries” at the end of paragraph 4. The main reason is that, developing countries are mostly located in areas prone to natural disasters, with limited

² The second preambular paragraph of the United Nations Convention against Cybercrime provides: “Bearing in mind the purposes and principles of the Charter of the United Nations.”

³ The fifteenth preambular paragraph of the United Nations Convention against Cybercrime provides: “Recalling General Assembly resolutions 74/247 of 27 December 2019 and 75/282 of 26 May 2021.”

⁴ The third preambular paragraph of the Minamata Convention on Mercury provides: “Recalling decision 25/5 of 20 February 2009 of the Governing Council of the United Nations Environment Programme to initiate international action to manage mercury in an efficient, effective and coherent manner.”

capacity for disaster prevention and mitigation, and therefore require special consideration and accommodation in the implementation of the present instrument. The proposed addition draws upon relevant language in international instruments on disaster prevention and mitigation, such as the *Sendai Framework for Disaster Risk Reduction 2015–2030*,⁵ as well as in multilateral conventions, including the *Vienna Convention for the Protection of the Ozone Layer*⁶ and the *Stockholm Convention on Persistent Organic Pollutants*.⁷

3. It is proposed that the “principle of the sovereignty of States” in paragraph 5 be set out in a separate paragraph and expanded to encompass the relevant principles of international law that States must observe in the protection of persons affected by disasters. The main reason is that, the original paragraph 5 of the preamble of the draft articles merely refers to the principle of the sovereignty of States in general terms, which is insufficient to reflect the relevant principles of international law that States shall observe in the protection of persons affected by disasters and in achieving the objectives of the present instrument. China notes that many States consider that the draft articles must adhere

⁵ The eighth preambular paragraph of the Sendai Framework for Disaster Risk Reduction 2015–2030 provides: “...Developing countries, in particular the least developed countries, small island developing States, landlocked developing countries and African countries, as well as middle-income countries facing specific challenges, need special attention and support...”

⁶ The fourth preambular paragraph of the Vienna Convention for the Protection of the Ozone Layer provides: “Taking into account the circumstances and particular requirements of developing countries.”

⁷ The twelfth preambular paragraph of the Stockholm Convention on Persistent Organic Pollutants provides: “Taking into account the circumstances and particular requirements of developing countries, in particular the least developed among them, and countries with economies in transition...”

to the principle of non-intervention in internal affairs,⁸ and that the text of the draft articles previously proposed by the Special Rapporteur of the International Law Commission on this topic also contained relevant language.⁹ In light of this, to ensure consistency throughout the instrument and with reference to the guiding principles contained in the annex to the General Assembly resolution 46/182,¹⁰ it is proposed that the principle of the sovereignty of States be set out in a separate preambular paragraph, and that the principle of non-intervention in internal affairs and the principles of humanity, neutrality, and impartiality be added in this new paragraph.

(ii) 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, **but does not include armed conflict and situations related to armed conflict;**

⁸ The Eighth Report of the Special Rapporteur of the International Law Commission on the Protection of Persons in the Event of Disasters, A/CN.4/697, para. 9: “Chile, Cuba and Myanmar recalled the importance of full observance and respect for the principle of non-intervention as enshrined in the Charter of the United Nations.”

⁹ The fifth preambular paragraph of the draft articles proposed by the Special Rapporteur of the International Law Commission in his eighth report provides, “Stressing the fundamental principle of the sovereign equality of States and its corollary, the duty not to intervene in matters within the domestic jurisdiction of any State, ...”

¹⁰ General Assembly resolution 46/182 on strengthening of the coordination of humanitarian emergency assistance of the United Nations, Annex, paras. 2 and 3.

(b) “affected State” means a State in whose territory, ~~or in territory under whose jurisdiction or control~~, a disaster takes place;

(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, or military personnel sent as a supplement when the circumstances so require;

1. It is proposed that a more concise and clear definition of “disaster” be provided in subparagraph (a). The main reason is that, the definition of “disaster” will determine the scope of application of the entire instrument. However, this subparagraph establishes rather complex criteria for the determination of “disaster”; in particular, it does not specify who is to determine criteria such as “seriously disrupting the functioning of society”, nor how such a determination is to be made. In addition, the commentary to the draft articles emphasize that the scope of “disaster” does not deal with other serious events such as political and economic crises¹¹. Yet, according to this subparagraph, it seems difficult to completely rule out this possibility. It is proposed that the relevant language be streamlined to ensure greater clarity.

2. It is proposed that relevant wording be added after subparagraph (a) to explicitly exclude situations of armed conflicts. Viewed in conjunction with paragraph 2¹² of draft article 18 and its commentary, in “complex situations”, such as where a disaster

¹¹ See paragraph (2) of the commentary to subparagraph (a) of draft article 3, “Use of terms”.

¹² Paragraph 2 of draft article 18 provides that, “the present draft articles do not apply to the extent that the response to a disaster is governed by the rules of international humanitarian law”. See also paragraphs (7) to (9) of the commentary to draft article 18, “relationship to other rules of international law”.

occurs prior to or simultaneously with an armed conflict, international humanitarian law should take precedence as *lex specialis*, while the present draft articles apply as a supplement. China fully understands the relevant considerations, but is also of the view that the current definition of “disaster” is likely to cause confusion between the draft articles and international humanitarian law regarding the subjects and territorial scope of application, particularly in situations where a disaster and an armed conflict occur simultaneously, the requirement to apply two sets of rules sequentially would instead increase complexity. To avoid introducing complicating factors into subsequent negotiations, it is advisable that the definition of disaster explicitly exclude situations of armed conflict from the scope of application. China notes that many countries have also expressed similar concerns.¹³

3. It is proposed that the wording “or in territory under whose jurisdiction or control” be deleted from the definition of “affected State” in subparagraph (b). The main reason is that, the relevant guidelines of the International Federation of Red Cross and Red Crescent Societies, which were referenced in drafting this paragraph, limit the territorial scope of the definition of “affected State” solely to its territory, and do not include “territory under its jurisdiction or control”.¹⁴ Under the definition in the current draft article,

¹³ The Eighth Report of the Special Rapporteur of the International Law Commission on the Protection of Persons in the Event of Disasters, para. 366, A/CN.4/697: “Austria, the Nordic States, the Russian Federation, Spain, Thailand, Greece, Israel, Cuba, Poland, Sri Lanka, the Netherlands, the United States, Colombia, Mongolia and India supported the exclusion of situations of armed conflict from the scope of application of the topic.”

¹⁴ Paragraph 8 of Article 2 of the International Federation of Red Cross and Red Crescent Societies’ Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance provides that, “‘affected State’ means the State upon whose

special situations such as those involving sovereignty disputes may give rise to two “affected States”, namely the sovereign State and the occupying Power, thereby generating numerous complex and sensitive issues. For example, if a disaster occurs in the territory concerned, would other assisting actors be required to obtain consent from both States simultaneously in order to provide assistance? If the positions of the two States are conflicting, how should this be resolved?

Similar language appears in the paragraph 1 of draft article 10 and 16.¹⁵ It is proposed that these wordings be deleted as well.

4. It is proposed that necessary restrictions be added regarding “military personnel” in the definition of “relief personnel” in subparagraph (f). In international disaster relief practices, civilian specialized relief personnel are generally sent as the primary option. Dispatching military personnel is considered only as a last resort when civilian relief capacities are inadequate, so as to maximize relief efficiency. Placing civilian and military personnel on an equal footing in the draft article lacks *opinio juris*, and is also inconsistent with international practice.

(iii) Insertion of a new article after article 3, “Use of Terms”: “States shall comply with generally recognized principles and obligations of international law”

territory persons or property are affected by a disaster.”

¹⁵ Paragraph 1 of draft article 10 provides that, “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”; draft article 16 provides that, “the affected State shall take the appropriate measures to ensure the protection of relief personnel and of equipment and goods present in its territory, or in territory under its jurisdiction or control, for the purpose of providing external assistance.”

In order to achieve the purposes and objectives of the instrument, it is imperative to respect the sovereignty and territorial integrity of States and refrain from intervening in the internal affairs of other States in accordance with the Charter of the United Nations, and to act in accordance with the principles of humanity, neutrality, and impartiality.

Assisting States and other assisting actors shall also comply with the laws and regulations of the affected State, as well as the conditions for external assistance set forth in Article 14 of the present instrument, when providing external assistance.

This new article consists of two paragraphs above. The main reasons are as follows: on the one hand, the current draft articles set out respect for and protection of human dignity and human rights in the event of disasters as separate articles, while neglecting crucial elements, such as respect for sovereignty, territorial integrity, non-intervention in internal affairs, and compliance with the principles of humanity, impartiality, and neutrality, thereby resulting in an imbalance. It is therefore proposed that these elements be set out in a separate new article.¹⁶ On the other hand, the draft articles impose more duties on the affected State, while making less references to the duties of the assisting State and other assisting actors. It is proposed that these duties be specified as well. The above new language also resonates with the relevant content in the preamble and in article 14 of the draft articles.

(iv) Article 7 “Duty to Cooperate”

¹⁶ See General Assembly resolution 46/182 on strengthening of the coordination of humanitarian emergency assistance of the United Nations, annex, paras. 2 and 3.

In the application of the present draft articles, States shall, as appropriate, cooperate among themselves, and with the United Nations, ~~with the components of the Red Cross and Red Crescent Movement, and with other assisting actors.~~

It is proposed that the wording “with the components of the Red Cross and Red Crescent Movement, and with other assisting actors” be deleted from this article. The main reasons are as follows: on the one hand, the commentary to the draft article cites relevant provisions of the Charter of the United Nations, the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, and human rights treaties as proof. However, the aforementioned provisions only provide for the duty of States to cooperate among themselves and with the United Nations, and do not set out a duty for States to cooperate with other intergovernmental international organizations and non-governmental organizations. In view of this, it is proposed that this article reflect existing provisions of international law, and no longer characterize cooperation between States and components of the Red Cross and Red Crescent Movement and other assisting actors as a duty. China notes that many other States have expressed similar concerns regarding this provision.¹⁷ On the other hand, in accordance with the principles of state sovereignty and non-

¹⁷ Russian Federation considered it necessary to distinguish between cooperation of States among themselves, in application of a fundamental principles of international law, and the duty to cooperate with international organizations, non-governmental organizations and “other assisting actors” (A/C.6/71/SR.21, para. 42); Israel believed that the guidelines or principles for voluntary international cooperation should be followed, such as changing the language of articles 7, 10, 11, 14, 15, 16, and 17 from “shall” to “should” (A/C.6/71/SR.22, para. 36); Brazil considered that States had a duty to cooperate with each other, but had no equivalent duty to cooperate with “other assisting actors” (A/C.6/78/SR.5, para. 81).

intervention in internal affairs, it is for States to decide at their own discretion whether to cooperate in the protection of persons affected by disasters and with whom to cooperate. Stipulating this as a mandatory legal obligation would, instead, increase the burden of compliance, heighten the concerns of States regarding accession to the instrument, and would not be conducive to its future promotion and application.

(v) Article 8 “Forms of cooperation in the response to disasters”

Cooperation in the response to disasters includes, **but is not limited to,** humanitarian assistance, coordination of international relief actions and communications, and making available relief personnel, equipment and goods, **and as well as** scientific, medical and technical resources, **and capacity-building, among others.**

It is proposed that the description of the forms of cooperation in the response to disasters in this article be modified to a non-exhaustive list, and that the provision of “capacity-building” be added as one of the forms of cooperation. The main reason is that, the original language of this article may lead to the misinterpretation that the forms of cooperation in the response to disasters are limited only to the listed content. Changing it to a non-exhaustive enumeration seems to be clearer and more accurate. At the same time, taking into account the special circumstances of developing countries and the differences in their disaster response capabilities, the forms of cooperation in the response to disasters should also include means such as the provision of capacity-building. This also echoes the relevant language proposed by China to be added to the preamble.

(vi) Article 11: “Duty of the affected State to seek external assistance”

To the extent that a disaster **is deemed to** manifestly exceeds its **own** national response

capacity, the affected State ~~has the duty to~~ may seek assistance from, as appropriate, other States, the United Nations, and other potential assisting actors.

It is proposed that the title of this article be amended to “seeking external assistance”. Meanwhile, it is proposed to explicitly clarify in the text of the article that, it is for the affected State to determine, at its own discretion, the severity of the disaster and whether it “manifestly exceeds its own response capacity”, thereby softening the duty of the affected State to seek assistance. The main reasons are as follows: the draft article and its commentary do not specify how to determine whether a disaster “manifestly exceeds the response capacity of the affected State”. Furthermore, setting out a duty for the affected State to seek external assistance in such circumstances lacks general State practice and *opinio juris*. China is of the view that, it is the affected State that should autonomously assess the extent of the disaster and whether the disaster “manifestly exceeds its response capacity,” and decide whether to seek assistance from other States. This is an inherent implication of the principle of State sovereignty and is also consistent with paragraph 2 of article 10 of the draft articles.¹⁸ Therefore, it is not appropriate to set out mandatory or obligatory requirements for the affected State to seek external assistance. It is proposed that a motivating and encouraging language be adopted, and that the title of this article no longer reflect that seeking external assistance is the duty of the affected State. China notes that many other States have expressed similar concerns.¹⁹

¹⁸ Paragraph 2 of draft article 10 provides that, “the affected State has the primary role in the direction, control, coordination and supervision of such relief assistance.”

¹⁹ Malaysia stressed that, the affected State should retain the right to determine whether a disaster exceeds its national response capacity. South Africa and Cuba were of the view that, the affected State had the right to determine whether or not its capacity was sufficient to protect persons affected

(vii) Article 13 “Consent of the affected State to external assistance”

1. The provision of external assistance requires the consent of the affected State.

~~2. Consent to external assistance shall not be withheld arbitrarily.~~

~~3.~~ 2. When an offer of external assistance is made in accordance with the present draft articles, the affected State shall, whenever possible, make known its decision regarding the offer in a timely manner.

It is proposed that paragraph 2 of this article be deleted. The main reasons are as follows:

First, this article is highly ambiguous. The commentary to the draft articles does not elaborate on how the element of “arbitrariness” in this paragraph should be determined, or based on what criteria the withholding of consent constitutes an “arbitrary” withholding. This article could be abused, or even be used to interfere in the internal affairs of other States. China notes that many States have expressed similar concerns.²⁰

within its jurisdiction, and that the affected State should not be obliged to seek or request such assistance (the Eighth Report of the Special Rapporteur of the International Law Commission on the Protection of Persons in the Event of Disasters, A/CN.4/697, para. 233); The Republic of Korea considered there was a need for further elaboration of what practical standards were to be used in defining when a disaster could be considered to “manifestly” exceed the State’s response capacity (A/C.6/71/SR.23, para. 10); Brazil was of the view that this article did not reflect customary international law, insofar as States had the right, but not the obligation to seek external assistance (A/C.6/78/SR.5, para. 81).

²⁰ The Russian Federation was of the view that, the purpose of the draft article was to set out the moral and political duty of an affected State, rather than a legal obligation that would entail international legal consequences in the event of non-compliance; Israel, Argentina and India suggested further clarification of the meaning of “arbitrariness”; Malaysia and Ireland sought

Second, it lacks a robust international legal basis. The commentary to the draft article suggests that, the duty of affected States not to “arbitrarily” withhold consent to external assistance is derived from soft law instruments, such as the relevant General Comments of the United Nations Human Rights Committee and the Guiding Principles on Internal Displacement, and manifestly lacks support in universally binding international conventions and State practices.

Third, it is questionable whether relevant provisions of international humanitarian law can be copied and applied in the draft articles. According to international humanitarian law, the provision of humanitarian assistance requires the consent of the recipient State. Meanwhile, the duty of recipient State not to arbitrarily withhold consent to humanitarian assistance, which has developed on the basis of relevant rules, is increasingly gaining international recognition.²¹ However, international

clarification as to who was to decide on the seriousness of the situation requiring assistance and who would decide whether there was an arbitrary refusal of consent; The United Kingdom pointed to the difficulty in ascertaining arbitrariness, given that the receipt of assistance would no doubt involve numerous difficult, economic, logistical and international relations issues (the Eighth Report of the Special Rapporteur of the International Law Commission on the Protection of Persons in the Event of Disasters, A/CN.4/697, paras. 256-257). Iran considered that, the determination that “consent to external assistance shall not be withheld arbitrarily” depended on an evidently subjective criterion, and that such a determination risked being influenced by political factors that might entail legal consequences for the affected States (A/C.6/71/SR.23, para. 14); Algeria was of the view that the term “arbitrarily” was used in a vague manner, that the consent of the affected State to external assistance should be subject only to that State’s own discretion and to the principle of sovereignty, and that the term should be deleted from the draft articles (A/C.6/76/SR.13, para. 6); Brazil considered there was no clarity or legal certainty regarding the meaning of “arbitrarily” in respect of the withholding of consent (A/C.6/78/SR.5, para. 81).

²¹ See Additional Protocol I, Article 70, paragraph 2.

humanitarian law does not stipulate under what circumstances the withholding of consent constitutes an “arbitrary” withholding, nor is there any international consensus on this matter. Whether the aforementioned duty of not arbitrarily withholding consent can be copied and applied to situations other than armed conflict, such as natural disasters, still requires further clarification.