

**Draft articles on the protection of persons in the event of disasters
Proposals for amendments by Germany**

| | <u>Draft Articles:</u> | <u>GER proposals for amendments</u> |
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| TITLE | Protection of persons in the event of disasters | |
| Preamble | <p><i>Bearing in mind</i> 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,</p> <p><i>Considering</i> the frequency and severity of natural and human-made disasters and their short-term and long-term damaging impact,</p> <p><i>Fully aware</i> of the essential needs of persons affected by disasters, and conscious that the rights of those persons must be respected in such circumstances,</p> <p><i>Mindful</i> of the fundamental value of solidarity in international relations and the importance of strengthening international cooperation in respect of all phases of a disaster,</p> <p><i>Stressing</i> the principle of the sovereignty of States and, consequently, reaffirming the primary role of the State affected by a disaster in providing disaster relief assistance,</p> | <p>GER suggests to delete “...Considering the frequency and severity of [DEL] natural and human-made disasters...”</p> <p><u>Rationale:</u> Referring only to “disasters” aligns with the definition provided by the Report of the Open-ended Intergovernmental Expert Working Group on Terminology and Indicators Relating to DRR (A/71/644) and aligns the Draft Articles with the Sendai Framework for DRR and its Midterm Review.</p> |

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| Article 1 | <p>Scope</p> <p>The present draft articles apply to the protection of persons in the event of disasters.</p> | <p>GER suggests to add to the scope “...persons in the event of disasters [ADD] or when there is a risk of an imminent disaster.”</p> |
| Article 2 | <p>Purpose</p> <p>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.</p> | |
| Article 3 | <p>Use of terms</p> <p>For the purposes of the present draft articles:</p> <p>(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;</p> <p>(b) “affected State” means a State in whose territory, or in territory under whose jurisdiction or control, a disaster takes place;</p> <p>(c) “assisting State” means a State providing assistance to an affected State with its consent;</p> <p>(d) “other assisting actor” means a competent intergovernmental organization, or a relevant non-</p> | <ol style="list-style-type: none"> 1. DA 3a) GER suggests to use the definition of the Report of the Open-ended Intergovernmental Expert Working Group on Terminology and Indicators Relating to Disaster Risk Reduction (A/71/644): “disaster” means a serious disruption of the functioning of a community or a society at any scale due to hazardous events interacting with conditions of exposure, vulnerability and capacity, leading to one or more of the following: human, material, economic and environmental losses and impacts. 2. DA 3d) GER suggests to add “...organization or entity [ADD] or a regional integration organization...” 3. DA 3e) GER suggests the following changes: “...equipment and goods, [DEL] and services [ADD] and expertise...” 4. DA 3e) In addition, GER suggests to add at the end of 3e) “...other assisting actor for disaster [ADD] risk reduction and relief assistance”. |

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| | <p>governmental organization or entity, providing assistance to an affected State with its consent;</p> <p>(e) “external assistance” means relief personnel, equipment and goods, and services provided to an affected State by an assisting State or other assisting actor for disaster relief assistance;</p> <p>(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;</p> <p>(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.</p> | |
| Article 4 | <p>Human dignity</p> <p>The inherent dignity of the human person shall be respected and protected in the event of disasters.</p> | |
| Article 5 | <p>Human rights</p> <p>Persons affected by disasters are entitled to the respect for and protection of their human rights in accordance with international law.</p> | |
| Article 6 | <p>Humanitarian principles</p> <p>Response to disasters shall take place in accordance with the principles of humanity, neutrality and impartiality, and on the</p> | <p>1. GER suggests the following changes: “...neutrality [DEL] and , impartiality [ADD] and independence...”</p> |

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| | basis of non-discrimination, while taking into account the needs of the particularly vulnerable. | 2. GER supports up-dated language on “the particularly vulnerable”: “...taking into account the needs of [DEL] the particularly vulnerable [ADD] persons in vulnerable situations. ” |
| Article 7 | Duty to cooperate In the application of the present draft articles, States shall, as appropriate, cooperate among themselves, with the United Nations, with the components of the Red Cross and Red Crescent Movement, and with other assisting actors. | |
| Article 8 | Forms of cooperation in the response to disasters Cooperation in the response to disasters includes humanitarian assistance, coordination of international relief actions and communications, and making available relief personnel, equipment and goods, and scientific, medical and technical resources. | <p>1. GER suggests to change the title by deleting “Forms of cooperation [DEL] in the response to disasters”</p> <p>Alternatively, the title could read – according to DA 1 – “Forms of cooperation [DEL] in the response to disasters [ADD] in the event of disasters or when there is a risk of an imminent disaster.”</p> <p>2. Furthermore, GER suggests the following changes: “Cooperation [DEL] in the response to disasters includes humanitarian assistance, coordination of international relief actions and communications, [DEL] and making available relief personnel, equipment and goods, and scientific, medical and technical resources [ADD] allowing for building back better and risk reduction activities in the aftermath of a disaster”</p> |
| Article 9 | Reduction of the risk of disasters (1) Each State shall reduce the risk of disasters by taking appropriate measures, including through legislation and regulations, to prevent, mitigate, and prepare for disasters. | <p>For DA 9(2) GER suggests the following changes:</p> <p>“...past lost information, [ADD] the strengthening of disaster risk governance, investment in structural and non-structural disaster resilience measures, [DEL] and the installation and operation of early warning systems [ADD], and the</p> |

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| | (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. | enhancement of disaster preparedness for response and resilient recovery, including through a whole-of society approach.” |
| Article 10 | <p>Role of the affected State</p> <ol style="list-style-type: none"> 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 of such relief assistance. | For DA 10(1) GER suggests the addition of “... duty to ensure the [ADD] timely and effective.... ” |
| Article 11 | <p>Duty of the affected State to seek external assistance</p> <p>To the extent that a disaster manifestly exceeds its national response capacity, the affected State has the duty to seek assistance from, as appropriate, other States, the United Nations, and other potential assisting actors.</p> | |
| Article 12 | <p>Offers of external assistance</p> <ol style="list-style-type: none"> 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. | <p>GER suggests the following changes:</p> <p>DA 12(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 [DEL] expeditiously give due consideration to the request [DEL] and inform the affected State of its reply.’</p> <p>Could alternatively be rephrased: “...the addressee shall [DEL] expeditiously give due consideration to the request and inform the affected State of [DEL] its reply any assistance being provided in response to the request.”</p> |

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| | | <p><u>Rationale:</u> Subjecting states, the United Nations or other potential assisting actors to a legal obligation to inform the affected state – even in case, where the request is not met – is not deemed necessary nor expedient. Often affected states send requests to all UN member states, and replies from all, rather than primarily from assisting member states, may simply add to an administrative burden in a time of crisis.</p> |
| Article 13 | <p>Consent of the affected State to external assistance</p> <ol style="list-style-type: none"> 1. The provision of external assistance requires the consent of the affected State. 2. Consent to external assistance shall not be withheld arbitrarily. 3. 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. | |
| Article 14 | <p>Conditions on the provision of external assistance</p> <p>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 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.</p> | <p>GER suggests to explicitly name groups of persons in vulnerable situations and change the text as follows:</p> <p>“...identified needs of the persons affected by disasters [ADD] in a non-discriminatory manner, including the needs of women, children, older persons, persons with disabilities, LGBTQI+ persons and other persons in vulnerable situations and other disadvantaged groups....”</p> |

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| <p>Article 15</p> | <p>Facilitation of external assistance</p> <p>1. The affected State shall take the necessary measures, within its national law, to facilitate the prompt and effective provision of external assistance, in particular regarding:</p> <p>(a) relief personnel, in fields such as privileges and immunities, visa and entry requirements, work permits, and freedom of movement; and</p> <p>(b) equipment and goods, in fields such as customs requirements and tariffs, taxation, transport, and the disposal thereof.</p> <p>2. The affected State shall ensure that its relevant legislation and regulations are readily accessible, to facilitate compliance with national law.</p> | |
| <p>Article 16</p> | <p>Protection of relief personnel, equipment and goods</p> <p>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.</p> | |

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| Article 17 | <p>Termination of external assistance</p> <p>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.</p> | |
| Article 18 | <p>Relationship to other rules of international law</p> <ol style="list-style-type: none"> 1. The present draft articles are without prejudice to other applicable rules of international law. 2. 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. | |