

**Draft articles on the protection of persons in the event of disasters**  
**2016**

Adopted by the International Law Commission at its sixty-eighth session, in 2016, and submitted to the General Assembly as a part of the Commission's report covering the work of that session (A/71/10). The report, which also contains commentaries to the draft articles (para. 49), will appear in *Yearbook of the International Law Commission, 2016*, vol. II, Part Two.



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**Protection of persons in the event of disasters**

...

*Bearing in mind* 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,

*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,

*Stressing* 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,

...

## **Article 1**

### **Scope**

The present draft articles apply to the protection of persons in the event of disasters.

## **Article 2**

### **Purpose**

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.

## **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. [The present term excludes armed conflict, to which the rules of international humanitarian law apply, in accordance with Article 18 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 to an affected State with its consent;

(d) “other assisting actor” means a competent intergovernmental organization, or a relevant non-governmental organization or entity, providing assistance to 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 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.

## **Article 4**

### **Human dignity**

The inherent dignity of the human person, [as well as its individual autonomy and independence](#), shall be respected and protected in the event of disasters.

#### **Article 5** **Human rights**

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

#### **Article 6** **Humanitarian principles**

Response to disasters shall take place in accordance with the principles of humanity, neutrality and impartiality, and on the basis of non-discrimination, while taking into account [gender perspective and](#) the needs of [the particularly vulnerable persons in vulnerable situations, including marginalised groups](#).

#### **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.

#### **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.
2. Disaster risk reduction measures [may include, among others](#) the conduct of risk assessments, the collection and dissemination of risk and past loss information, and the installation and operation of early warning systems, [which adhere to obligations in regard to accessibility](#).

#### **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 of such relief assistance.

#### **Article 11** **Duty of the affected State to seek external assistance**

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.

**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.

**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. 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**  
**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 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.

**Article 15**  
**Facilitation of external assistance**

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:
  - (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.

**Article 16**  
**Protection of relief personnel, equipment and goods**

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.

**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. 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.

#### **Article 18**

##### **Relationship to other rules of international law**

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.

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**Proposals for amendments submitted by Mexico to the draft articles on Protection of Persons in the Event of Disasters as requested by the General Assembly in resolution 79/128.**

1. Add the following in subparagraph (a) of Article 3:

(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. The present term excludes armed conflict, to which the rules of international humanitarian law apply, in accordance with Article 18 of the present Draft articles.

*Rationale:* It is proposed to make an explicit reference clarifying that the definition excludes situations of armed conflict, to which the rules of international humanitarian law apply. This proposal is consistent with the International Law Commission’s own commentaries on the definition of “disaster,” as reflected in paragraph (10) of the commentary to subparagraph (a) of article 3, as well as with article 18 of the draft itself, which provides that the application of the articles is without prejudice to other applicable rules of international law, such as international humanitarian law.

2. Add the following amendment to Article 4:

The inherent dignity of the human person, as well as its individual autonomy and independence, shall be respected and protected in the event of disasters.

*Rationale:* It is fundamental that the draft articles recognize the value of human dignity. However, it is suggested to adopt a broader terminology, recognizing not only dignity but also individual autonomy and independence, as recognized in Article 3 of the Convention on the Rights of Persons with Disabilities.

3. Add the following amendment to Article 6:

Response to disasters shall take place in accordance with the principles of humanity, neutrality and impartiality, and on the basis of non-discrimination, while taking into account gender perspective and the needs of the particularly vulnerable persons in vulnerable situations, including marginalised groups.

*Rationale:* Noting commentaries contained in paragraphs (6), (7), (8) and (9), it is proposed to include a gender perspective as an independent principle, to complement the other principles set out in the article, such as non-discrimination. Furthermore, it is suggested to adopt the terminology “groups in situations of vulnerability” rather than “vulnerable groups.”

4. Add the following amendment to subparagraph (2) of Article 9:

2. Disaster risk reduction measures may include, among others the conduct of risk assessments, the collection and dissemination of risk and past loss information, and the installation and operation of early warning systems, which adhere to obligations in regard to accessibility.

*Rationale:* The proposal seeks to provide clarity in the sense that the list of risk reduction measures set out therein is not exhaustive, taking into account the different types of disasters that may arise, and the wide range of measures that may be taken in anticipation of them. Likewise, it is proposed to include references to the need for early warning systems to incorporate accessibility criteria, in line with international instruments such as the Convention on the Rights of Persons with Disabilities.