PHILIPPINES

STATEMENT

Permanent Mission of the Republic of the Philippines to the United Nations

Working Group on Agenda Item - 86: Protection of persons in the event of disasters (Cluster I)

78th Session of the United Nations General Assembly

5 October 2023, Trusteeship Council

UN Headquarters New York

Mr. Chair,

The Philippines welcomes this opportunity to examine in detail the draft articles on PPED and to consider further the recommendation of the International Law Commission for the elaboration of a convention by the Assembly or by an international conference of plenipotentiaries on the basis of the draft articles, or any other potential course of action.

For Cluster 1, the following are our preliminary comments:

PREAMBLE

We proceed on the basis of the understanding, set out in the first preambular paragraph, on the mandate given to the General Assembly under the UN Charter, and then to the International Law Commission, to encourage the progressive development of international law. As noted in the commentary, this highlights that the present Draft Articles contain elements of both progressive development and codification of international law.

As one of the most disaster-prone countries in the world, the rationale for the Draft Articles, the frequency and severity of natural and human-made disasters and their short-term and long-term impact, as set out in the second preambular paragraph, strongly resonates with us. The emphasis on human dignity, human rights, especially the right to life, and humanitarian principles, is consistent with the spirit of our national law, the “Philippine Disaster Risk Reduction and Management Act of 2010”.

We understand that the articles apply with flexibility to both natural and human-made disasters and have had the occasion to endorse this in previous debates, noting that the less restricted scope, as compared with other instruments of this nature, anticipate that disaster can arise from complex sets of causes, as noted in the ILC commentary. This is the reality that we face today.

As widely noted by relevant stakeholders, the frequency, complexity and severity of disasters and their impacts are likely to increase in the future due to a variety of factors or a complex set of causes, such as climate change, displacement, conflict, rapid and unplanned

urbanization, technological hazards and public health emergencies. Further, insisting on a distinction between natural and man-made disasters may be challenging, and indeed even artificial, in view of the complex interaction between various causes leading to disasters.

Nevertheless, we have carefully noted the comments pointing out that applying the draft articles to both natural and human-made disasters affect the distinct legal systems that apply to each category as well as the concerns raised that the lack of clear distinction between natural and human-made disasters may affect the legal systems that have been established to apply to each category respectively.

The final preambular paragraph reflects a fundamental understanding for us: the principle of sovereignty is a *sine qua non*, and the primary role of the affected state in the provision of disaster relief assistance as a core element of the Draft Articles.

This also reflects practice within our region. These core elements recall relevant provisions of the ASEAN AGREEMENT ON DISASTER MANAGEMENT AND EMERGENCY RESPONSE, a legally binding agreement among the Member States of the Association of Southeast Asian Nations, forged in the spirit of implementing the Hyogo Declaration and the Hyogo Framework for Action set out by the World Conference on Disaster Reduction regional approaches to, inter alia, prepare for and ensure rapid and effective disaster response in situations that exceed national coping capacities.

Article 3 of the said Agreement states that

> *1. The sovereignty, territorial integrity and national unity of the Parties shall be respected, in accordance with the Charter of the United Nations and the Treaty of Amity and Cooperation in Southeast Asia, in the implementation of this Agreement. In this context, each affected Party shall have the primary responsibility to respond to disasters occurring within its territory and external assistance or offers of assistance shall only be provided upon the request or with the consent of the affected Party.*
>
> *2. The Requesting or Receiving Party shall exercise the overall direction, control, co-ordination and supervision of the assistance within its territory.*

ARTICLE 1

On the scope of the disaster, as set out in Article 1, we appreciate the focus, which is on facilitating a response to disasters, as well as reducing the risk of disasters, so as to adequately and effectively meet the essential needs of the persons concerned, while fully respecting their rights.

Nevertheless, my delegation remains flexible on the issue of the scope of the possible instruments, bearing in mind the experts presentations made earlier from the Secretariat and the IFRC. Where further elaboration of the Draft Articles could be made, to fill up existing lacunae, then we would be open to further discussions.

ARTICLE 3

On the definition of a disaster, there have been calls for more precision of what can be qualified as disaster in order to avoid confusion.

We note also that the Commission refrained from providing further descriptive or qualifying elements, so as to leave some discretion in practice

The commentary also noted that the definition has been delimited so as to properly capture the scope of the draft articles, as established indraft article 1, while not, for example, inadvertently also dealing with serious events, such as political and economic crises, which may also undermine the functioning of society, but which are outside the scope of the draft articles.

On whether or not armed conflict should be explicitly excluded in the definition of disaster, we note the comments that have asked for further clarification or explicit exclusion of armed conflicts from the definition of disaster, especially since armed conflicts are governed by the International Humanitarian Law.

This matter was also considered by the Commission, which considered including an express exclusion of the applicability of the draft articles in situations of armed conflict as a further element in the definition of "disaster" (draft article 3, subparagraph (a)), so as to avoid any interpretation that, for purposes of the draft articles, armed conflict would be covered to the extent that the threshold criteria in draft article 3 were satisfied.

However, as noted in the Commentary, such approach was not followed since a categorical exclusion could be counterproductive, particularly in situations of "complex emergencies" where a disaster occurs in an area where there is an armed conflict. As noted in the commentary, a blank exclusion of the applicability of the draft articles because of the coexistence of an armed conflict would be detrimental to the protection of the persons affected by the disaster, especially when the onset of the disaster predated the armed conflict.

We are willing to engage with interested delegations to discuss this and related matters.

END

Thank you, Mr. Chair. END

PHILIPPINE MISSION TO THE UNITED NATIONS
556 FIFTH AVENUE, NEW YORK, NY 10036 • TEL. (212) 764-1300 • FAX (212) 840-8602