



Permanent Mission of Italy  
UN - New York

**Working Group – Protection of Persons in the Event of Disasters (Cluster 4)**  
**Statement of Italy – delivered by Mr Enrico Milano**

Thank you Mr Chair,

With regard to Cluster 4, my delegation would like to make the following observations.

Articles 10, 11, 13 and 14 of the draft articles deal with the role of the affected State in the aftermath of a disaster. They are key provisions for the effective protection of persons affected by disasters as they give expression to the principle of sovereignty recalled in the preamble and in the commentary, as entailing both rights and responsibilities towards the population affected by a disaster. Once again in Italy's view they strike a good balance between the need to respect the sovereignty and primary role of States, on the one hand, and the role of external assisting actors in the protection of persons, on the other hand.

Article 10 clearly lays down the legal foundation for the role of the affected State. The affected State is both duty holder in the protection of persons and in the

provision of relief assistance in the aftermath of a disaster and has primary responsibility in the direction, control, coordination and supervision of relief assistance. Italy would like to note in this regard that a requirement for the effective fulfillment of the obligation under Article 10 and the related primary responsibility is the development of dedicated national structures, in line with the capacities of each State, in order to mitigate the risks and promptly respond to disastrous events, as also reiterated in DRR policy frameworks developed by the UN.

However, when national capacities are inadequate, Article 11 provides that, to the extent that a disaster manifestly exceeds the national response capacity of an affected State, the affected State has the duty to seek assistance from external actors. The evaluation of such scenario – that, we repeat, requires a situation where the disaster *manifestly* exceeds the national response capacity – is not attributed to any third-party determination, but it is based on a self-evaluation of the affected State made in good faith. Once again the provision “tames” a strict interpretation of the principle of sovereignty, with the positive obligation to protect fundamental human rights of the population affected by disasters, consistently with Article 5, such as the right to life, the right to food, the right to adequate food, the right to health and the right to safe drinking water. The qualifier “as appropriate” in Article 11 is well placed, in order to signal the broad discretion enjoyed by the affected State in choosing the type of assistance that is most needed and by which State, international or non-governmental organization is needed.

Article 13 is another important provision, because it reaffirms the principle of consent of the affected State in the provision of external assistance, however it adds that consent shall not be withheld arbitrarily and that the decision whether to accept or not external assistance will be made known in a timely manner. The principle of consent is here of relevance not only because it gives expression to the principle of State sovereignty, but also because the affected State has the possibility of better

regulating the entry of personnel and materials according to the actual needs which are specific and different in each disaster and avoid overwhelming the capacity of a State to receive assistance in short periods of time. Paragraph 2 is a balanced provision because, in line with similar approaches adopted in other legal regimes dealing with humanitarian assistance, such as international humanitarian law, it creates an obligation for the affected State to refrain from arbitrarily withholding consent. However, the provisions does not establish a corresponding right of assisting actors to enter the territory of the affected State and provide relief, even in cases in which consent could be held to have been denied arbitrarily. Paragraph 3, finally, is a procedural obligation aiming to apply the principle of good faith while leaving broad discretion to the affected State in the modalities by which its decision is communicated. Even the time requirement is moderated by the qualifier “whenever possible” in the provision.

Article 14 deals with the conditions on the provision of external assistance that the affected State may place. The legal perimeter of those conditions is identified in the draft articles, other applicable rules of international law and domestic legislation. Of great importance is the reference to the quality of assistance and to the fact that assistance must appropriate to the specific needs of the affected population. In other words, the provision seeks to avoid entry of unprofessional and ill-prepared organizations in the territory of the State or of specialized and competent relief personnel, which however is ill-suited for the specificities of the disaster just occurred. Detailed technical standards could be developed in a future treaty instruments or in subsequent instruments adopted under the treaty.

In sum, our delegation can support at this stage Articles 10, 11, 13 and 14 as they have been drafted and approved by the ILC and it is of the view that they will represent a solid basis for treaty negotiations on these important aspects.

That concludes our observations on cluster 3.

I thank you.