



PHILIPPINES

CHECK AGAINST DELIVERY

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 IV – Articles 10, 11, 13 and 14)**

79th Session of the United Nations General Assembly
8 October 2024 PM, Trusteeship Council
UN Headquarters New York

Thank you, Madam Chair,

For Cluster IV, the following are our **preliminary comments**:

Art 10 - Role of the Affected State

- We welcome the inclusion of DA10 as corollary of the core principle of sovereignty.
- We share the views shared by other delegations requesting clarity on the level of control granted to affected States over the assets and personnel provided by third parties, particularly whether the reference to control, coordination and supervision of the assistance by the affected State also extends to equipment, goods and other assets brought in as part of the humanitarian assistance.
- We note that the ASEAN Agreement on Disaster Management and Emergency Response of 2005 provided for the standard of overall control.

Art 11 - duty of the affected state to seek external assistance

- We heard views expressed by some delegations that the matter referred to is more correctly a right on the part of a State, as a corollary of its sovereignty, and not a duty. We would welcome more discussion on the nature of this principle from fellow delegations.
- We agree that the affected State will be in the best position, in principle, to determine the severity of a disaster situation and the limits of its national response capacity, and that this assessment must be carried out in good faith – a principle expounded in the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter and general principles of international law.
- We note the Commentary linking a good faith assessment of the severity of a disaster with an affected State's duty to ensure the protection of persons and provision of disaster relief assistance pursuant to DA10.

Art 13 – Consent of the affected State to external assistance

- We wish to focus our intervention on para 2, addressing the issue of the basis of an affected State's decision to withhold consent.

- We note this is a crucial element of the draft articles, highlighting, according to the Commentary, that “an affected State’s right to refuse an offer is not unlimited and reflects the dual nature of sovereignty as entailing both rights and obligations”. That is, on one hand, the State has the primary role for disaster relief, and the exclusive albeit not unlimited right of consent, while also maintaining the duty to ensure protection and assistance of persons within its territory.
- We welcome the Commission’s statement that whether or not consent is arbitrary must be determined on a case-by-case basis, although as a general rule several principles can be used to guide such determination, and the Commentary proceeds to enumerate these principles as follows:
 - withholding consent to external assistance is not arbitrary where a State is capable of providing, and willing to provide, an adequate and effective response to a disaster on the basis of its own resources;
 - withholding consent to assistance from one external source is not arbitrary if an affected State has accepted appropriate and sufficient assistance from elsewhere
 - withholding of consent is not arbitrary if the relevant offer is not made in accordance with the present draft articles.
- In relation to draft article 6, which establishes that humanitarian assistance must take place in accordance with the principles of humanity, neutrality and impartiality, and on the basis of non-discrimination, where an offer of assistance is made in accordance with the draft articles and no alternate sources of assistance are available, there would be a strong inference that a decision to withhold consent is arbitrary.
- The Commentary also refers to analysis by the Office for the Coordination of Humanitarian Affairs on instances when consent is withheld arbitrarily, in situations of armed conflict, noting possible parallels:
 - If it is withheld in circumstances that result in the violation by a State of its obligations under international law;
 - Where the withholding of consent violates the principles of necessity and proportionality; or
 - consent is withheld in a manner that is unreasonable, unjust, lacking in predictability or that is otherwise inappropriate.
- The Commentary also cites the Guiding Principles on Internal Displacement; instances when refusal of an offer of assistance may constitute a violation of the right to life, or human dignity and may poses implications on the issue of arbitrariness; or as in the opinion of the Institute of International Law, instances when the refusal of an offer or refusal of humanitarian access is likely to endanger the fundamental human rights of the victims or would amount to a violation of the ban on starvation of civilians as a method of warfare, or other violations of IHL, in situations of armed conflict.

Art 14 - conditions on the provision of external assistance

- The right to impose conditions, which to our mind may include modalities on the delivery of assistance, determination of proper channels, documentation or form of assistance, depending on what may be deemed appropriate given the needs, culture or the circumstances obtaining in the affected localities, is consistent with the sovereignty of the affected State.
- We note that “in accordance with national law” does not necessarily mean embodied in national law, considering that situations of disasters do require prompt actions and

decision making, for as long as the conditions are communicated through or by duly appointed State authorities acting within their mandates under national law, policy or regulations.

Thank you, Madam Chair. **END**

