



Model Act for the Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance

*Pilot Version
November 2011*

 International Federation
of Red Cross and Red Crescent Societies

 **OCHA** United Nations Office
for the Coordination of
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Coordination Saves Lives



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INTRODUCTION

This “Model Act for the Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance” is intended as a reference tool for voluntary use, in whole or in part, by states that wish to prepare for the possibility that they may one day require international assistance to respond to a disaster on their territory. If such an event occurs, global experience shows that an affected state will benefit from a clear legal framework for the entry and coordination of international humanitarian assistance, which balances safeguards for public security and safety against the urgent needs of those affected by the disaster. States will also find it easier to facilitate the speedy transit of humanitarian aid destined for other states affected by disaster, if the legal framework is already in place.

This “Pilot Version” of the Model Act has benefitted from the advice and suggestions of a number of experts over the period of several years, as described below. The project partners intend to use it for “field testing” (i.e. focussed discussions with interested governments currently developing new laws in this area) as well as ongoing consultations with interested stakeholders in order to produce a final version by the end of 2012.

Origins of the Model Act

In November 2007 the 30th International Conference of the Red Cross and Red Crescent (gathering the state parties to the Geneva Conventions and the components of the International Red Cross and Red Crescent Movement) approved the *Guidelines for the Domestic Facilitation of International Disaster Relief and Initial Recovery Assistance* (also known as “the IDRL Guidelines”).¹ These are a set of recommendation to governments on how to prepare their disaster laws and procedures for the common regulatory problems in international disaster relief operations. The IDRL Guidelines were based on seven years country case studies, legal research, and consultations with governments and relief specialists, carried out by the International Federation of Red Cross and Red Crescent Societies’ (IFRC) “International Disaster Response Laws, Rules and Principles” (IDRL) programme.

Since the approval of the IDRL Guidelines, further consultations and training have been conducted in all regions of the globe, to raise awareness and provide technical assistance to states wishing to implement them. During this process, lawmakers have frequently requested model legislative language to assist them in implementing the IDRL Guidelines in their domestic law and procedures. In response to these requests, the IFRC partnered with the UN Office for the Coordination of Humanitarian Affairs (OCHA) and the Inter-Parliamentary Union (IPU) in 2009 to begin work on this Model Act. They benefited from expert assistance from a number of individuals and institutions, including legal research and drafting support from Allen & Overy LLC, Baker & McKenzie, CMS Cameron McKenna, Microsoft Corporation, and the World Customs Organization. A series of expert meetings were also convened in Geneva, Oxford and Kuala Lumpur to provide feedback and advice on earlier drafts.

In 2008, the UN General Assembly adopted three resolutions (Res. 63/139, 63/141, and 63/137) encouraging states to make use of the IDRL Guidelines, and in June 2011 they were also recommended to states by the World Customs Organisation in a Resolution of the Customs Co-operation Council on the Role of Customs in Natural Disaster Relief. However, many countries have already seen the benefits of improving such facilitation and have begun measures to adapt their domestic laws to this end.

¹ Available in multiple languages at <http://www.ifrc.org/idrl>

Purposes of the Model Act

This Model Act, like the IDRL Guidelines, is intended to help states address some of the legal and regulatory issues that commonly arise concerning international assistance during disasters. These issues relate to the entry and operation of assisting international actors, and also to the coordination of their assistance, especially in the relief and initial recovery period.

Issues in legal entry and operation often include:

- Delays in the entry of international humanitarian personnel, goods and equipment due to the requirements of customs and immigration laws which are not adapted to a situation of urgency
- Imposition of duties, tolls and taxes on relief items and activities
- Problems granting legal recognition of foreign qualifications for specialised professional personnel
- Difficulties in granting legal recognition for foreign humanitarian organizations, which mean they may not be able to open bank accounts, hire local staff, lease premises, or other legal actions necessary for efficient in-country assistance.

Issues in the quality and coordination of international relief may include:

- Importation of unnecessary or inappropriate relief items
- Failure to coordinate with domestic authorities and other relief providers
- Use of inadequately trained personnel
- Failure to consult with beneficiaries
- Culturally unacceptable behaviour
- Proselytizing

Issues in transit of relief goods to another state affected by disaster may include:

- Delays in the entry and exit of international humanitarian personnel, goods and equipment destined for the other state
- Imposition of duties, tolls and taxes on relief items in transit to the other state

Experience has shown that the wake of a major disaster is the wrong time to try to develop new rules and systems to address these kinds of problems. The IDRL Guidelines are designed to help governments to prepare for them before disaster strikes, and the Model Act is a concrete tool towards this objective.

This Model Act is not intended to replace the IDRL Guidelines, but simply to provide a tool for states wishing to implement them. It is also not intended to describe a system for domestic disaster management. It is a model law to help states integrate assisting international actors into a coordinated response, as quickly as possible after the onset of a major disaster that overwhelms national capacity. It is based on the following core ideas:

- Domestic actors have the primary role in meeting the humanitarian needs caused by a disaster. The government of the affected state has the primary responsibility, while National Red Cross or Red Crescent Societies and other domestic civil society actors play a key supporting role.
- International relief providers have responsibilities to provide their disaster assistance according to the principles of humanity and impartiality, as well as to meet minimum standards of coordination and quality in their relief goods, personnel and programmes.
- International actors need certain legal facilities, expedited procedures or other accommodations, to do an effective job responding to humanitarian needs. These may include expedited approval for disaster personnel, goods and equipment, facilitation of relief transport, exemptions from duties and taxes, and recognition of legal capacity to allow them to operate legally within the country.
- Some legal facilities for international actors should be conditional on their commitment to, and continuing implementation of, minimum standards of quality and accountability.

Uses of the Model Act

Given the diversity of legal systems around the globe, and especially the different domestic approaches to disaster management, it is well understood that not every clause in this model will be equally relevant to each country. In every case, it will need to be adapted to local circumstances. In some countries, it may not be possible or appropriate to adopt a single stand-alone act embracing all of the topics included in this model.

In these cases, various portions of the model language suggested here might rather be inserted as amendments to other existing instruments, such as legislation or regulations concerning disaster management, immigration, customs, taxation, health, telecommunications or transport. Accordingly, side notes in this draft suggest the other key domestic legislation in which certain elements of the Model Act could be inserted. However, if such a “modular” approach is taken, it is recommended that key elements of the Model Act be kept together. For example, it would be important that the regime for the approval and termination of international actors’ eligibility for special legal facilities is kept within one Act, even if some aspects of the facilities may be regulated under other laws (such as customs, or immigration).

It should also be noted that the Model Act does not set out a system for coordinating domestic disaster response. It is assumed that such a system already exists under the disaster management legislation in the country enacting it. Accordingly, efforts have been made in drafting to avoid provisions overlapping with the usual content of domestic disaster management acts.

Drafting notes

Text boxes in the right margin indicate how states might use sections of this model language as individual amendments to various existing laws, if it makes better sense in their circumstances to do so rather than adopting the whole text as a single stand-alone act.

Bracketed text in the Model Act text refers to elements that might be particularly subject to differing approaches based on the specific circumstances and legal and institutional structures of the adopting country.

Italicized text within brackets is meant to be replaced with the appropriate domestic equivalent (for example, the name of the country or the name of the National Disaster Management Agency, if one exists).

Text within brackets that is not italicized is either proposed as a choice between several options (for example, “President/Prime Minister,” “district/province”) or is an element considered to be especially subject to differing choices between countries (such as the precise length in time of certain deadlines).

Defined terms, as described in Article 3, are capitalized throughout the text for easy reference.

**MODEL ACT FOR THE FACILITATION AND REGULATION
OF INTERNATIONAL DISASTER RELIEF AND INITIAL RECOVERY ASSISTANCE**

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Chapter I

General Provisions

While this Model Act is presented as a stand-alone statute, it may be deemed more appropriate in some states to use various elements as amendments to various laws, regulations or other instruments. Marginal boxes like this one are included to suggest where various sections of this text might be placed if that is the case. They are not intended to be published into law as part of an act.

Chapter I General Provisions

Article 1 Short Title

- a. This Act shall be known as the *Act for the Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance*.
- b. This Act may also be cited as *the Act on International Disaster Assistance of [YEAR]*.

Article 2 Purpose and Scope of the Act

- a. This Act [implements Articles *** of the Constitution of *country name*. It] is based on the understanding that [*country name*] bears the primary responsibility to respond to disasters on its territory, but that International Disaster Assistance may sometimes be required to supplement domestic efforts.
- b. This Act sets out procedures, roles and responsibilities related to the facilitation and regulation of International Disaster Assistance provided to [*country name*] in the event of a Disaster on its territory, as well as for International Disaster Assistance transiting through [*country name*]'s territory to aid another affected state.
- c. In particular, this Act:
 - (i) sets out roles and responsibilities for key ministries and departments concerned with the facilitation and regulation of International Disaster Assistance;
 - (ii) establishes procedures for initiating, coordinating, and terminating International Disaster Assistance;
 - (iii) establish the mechanism for recognition of eligibility for Legal Facilities for certain Assisting Actors;
 - (iv) specifies the Legal Facilities to be provided to such Eligible Actors;
 - (v) specifies that minimum standards are expected from Assisting Actors providing International Disaster Assistance; and
 - (vi) facilitates the transit of International Disaster Assistance to other countries affected by a Disaster.
- d. The provisions of this Act do not apply to situations of armed conflict or to Disasters that occur in an area of [*country name*] also affected by an armed conflict. International assistance provided in those circumstances is governed by [International Humanitarian Law or *Act Implementing the Geneva Conventions*].

Article 3 Definitions

For the purposes of this Act:

“Assisting Actor” means any Assisting International Actor and any Assisting Domestic Actor responding to a Disaster in [country name].

“Assisting Domestic Actor” means any non-profit entity established under the laws of [country name], which is responding to a Disaster in the territory of [country name].

“Assisting International Actor” means any foreign state, organization, entity or individual responding to a Disaster on the territory of [country name] or transiting through the territory of [country name] to respond to a Disaster in another country.

“Assisting State” means any foreign government that is providing Disaster Relief or Initial Recovery Assistance to [country name], whether through its civilian or military institutions.

“Disaster Relief” means the Goods, Equipment, Services and Internationally Donated Funds provided to meet the immediate humanitarian needs of Disaster-affected communities.

“Disaster” [is defined as set out in Article *** of the [national disaster management act] [or means a serious disruption of the functioning of society, which poses a significant, widespread threat to human life, health, property or the environment, whether arising from accident, nature, or human activity, whether developing suddenly or as the result of long-term processes, but excluding armed conflict.]

“Domestic Non-Governmental Organization” or “Domestic NGO” means any non-governmental, not-for-profit entity, which has its headquarters in [country name] and whose mandate and activities are exclusively focused on humanitarian relief, recovery or development.

“Eligible Actor” means any Assisting Actor that has been determined to be eligible to receive Legal Facilities, in accordance with Chapters V and VI of this Act.

“Equipment” means physical items, other than Goods, which come from international sources and are designated for use in Disaster Relief or Initial Recovery Assistance, including, but not limited to, vehicles, medical, and telecommunications Equipment.

“Foreign Components of the International Red Cross and Red Crescent Movement” means foreign National Red Cross or Red Crescent Societies, the International Federation of Red Cross and Red Crescent Societies and the International Committee of the Red Cross.

“Foreign Non-Governmental Organization” or “Foreign NGO” means any non-governmental, not-for-profit entity not [incorporated /registered] in [country name], whose mandate and activities are focused on humanitarian relief, recovery or development.

“Goods” means supplies from international sources intended to be provided to Disaster-affected communities for their relief or initial recovery.

If parts of this Model Act are apportioned to amendments of other acts or regulations, care should be taken to ensure that defined terms are also clear in those individual amendments, potentially, by also including one or more of the relevant definitions here in the amendment.

“Initial Recovery Assistance” means Goods, Equipment, Services and Internationally Donated Funds intended to restore or improve the pre-Disaster living conditions of Disaster-affected communities, including initiatives to increase resilience to Disasters and reduce Disaster risk.

“Internationally Donated Funds” means any funds donated by foreign persons or entities directly to the Government of [*country name*] or to an Assisting Domestic Actor for purposes of Disaster Relief or Initial Recovery Assistance.

“International Disaster Assistance” means Disaster Relief and Initial Recovery Assistance that is provided by Assisting International Actors, or imported or otherwise brought to [*country name*] from abroad by or on behalf of Assisting Domestic Actors.

“International Disaster Relief Period” means the period following a Disaster, as described in Articles 8 and 9 of this Act, during which the relevant Legal Facilities described in Chapter VI are made available to Eligible Actors for the purpose of providing Disaster Relief.

“International Initial Recovery Period” means the period following a Disaster, as described in Articles 8 and 10 of this Act, during which the relevant Legal Facilities described in Chapter VI are made available to Eligible Actors for the purpose of providing Initial Recovery Assistance.

“International Personnel” means the staff, and volunteers of any Assisting Actor providing Disaster Relief or Initial Recovery Assistance in [*country name*], being persons who are neither citizens of [*country name*] nor domiciled in [*country name*] prior to their recruitment by the Assisting Actor.

“Legal Facilities” means the special entitlements and exemptions that are made available to Eligible Assisting Actors under Chapter VI of this Act.

“Locally Engaged Personnel” means nationals or persons domiciled in [*country name*] who are recruited as staff or volunteers by Assisting International Actors to provide Disaster Relief or Initial Recovery Assistance.

“Services” means activities undertaken by Assisting Actors to assist Disaster-affected communities with their relief or initial recovery, such as search and rescue activities, medical care, protection Services and information Services.

“Transit Facilities” means the special entitlements and exemptions that are made available to Assisting International Actors under Chapter VII of this Act.

“Transit Facilities Period” means the period following a Disaster in another country, as described in Article 62 of this Act, during which the relevant Legal Facilities described in Chapter VII are made available to Assisting Actors for the purpose of providing Disaster Relief or Initial Recovery Assistance.

“Transport” means the land, air or water vehicles operated on or behalf Assisting Actors to transport International Personnel, Goods and Equipment across an international border for the purpose of providing Disaster Relief or Initial Recovery Assistance.

Article 4 Existing Rights, Privileges and Immunities

Nothing in this Act shall be interpreted to limit or reduce the existing rights, privileges or immunities of any Assisting Actor as separately recognized by other laws or agreements of [country name], including the [*International Organisations Act* and the *Diplomatic/Consular Relations Act*] and any status or headquarters agreement between [country name] and an Assisting International Actor.

Chapter II
Initiation and Termination
of International Disaster
Assistance

Chapter II Initiation and Termination of International Disaster Assistance

Article 5 Assessment of the Need for International Disaster Assistance

- a. Immediately after the onset of a major Disaster, and in consultation with relevant [provincial/district] and local authorities, the [*relevant disaster management authority*] shall make a determination, based on initial estimates, as to whether domestic capacities are likely to be sufficient to attend to the needs of affected persons for Disaster Relief and Initial Recovery Assistance. This determination may also be made, at the discretion of the [*relevant disaster management authority*], prior to the onset of an imminent major Disaster.
- b. In the event of a determination that domestic response capacities are not likely to be sufficient due to the scale of the Disaster, the [*relevant disaster management authority*] shall advise the [President/Prime Minister] and recommend that an immediate request be made for International Disaster Assistance.

[Alternative Article 5(b): In the event of a determination that domestic capacities are not likely to be sufficient due to the scale of the Disaster, the [*relevant disaster management authority*] shall advise the [*relevant high level committee or council on national disaster management*] and recommend that a request be made for International Disaster Assistance. Without delay, the [*high level committee or council on national disaster management*] shall convene to decide whether to endorse the recommendation. Upon endorsement, the recommendation shall be made to the [President/Prime Minister].

- c. If such a recommendation is made, the [*relevant disaster management authority*] shall, in consultation with relevant [provincial/district/state] and local authorities, develop a preliminary list of Goods, Equipment and Services required. The [*relevant disaster management authority*] shall make this list available to potential Assisting International Actors immediately upon the commencement of an International Disaster Relief Period pursuant to Article 8. The list shall be updated as needed to reflect new information and changing circumstances.
- d. A determination that domestic capacities are likely to be sufficient and that International Disaster Assistance is therefore unnecessary may be reviewed and rescinded by the [*relevant disaster management authority*] at any time, in light of updated information.

The provisions of Chapter II might alternatively be placed in the national disaster management act or its implementing regulations.

Article 6 Requests for International Disaster Assistance

- a. Upon the advice of the [*relevant disaster management authority*], the [President/Prime Minister] may make a request for International Disaster Assistance. That request may be specifically directed to particular international actors, or it may be a general request directed to the international community as a whole. [In the latter case, the request shall be directed to the [*relevant regional organization*] and] the United Nations Emergency Relief Coordinator for assistance in dissemination to potential Assisting International Actors.]
- b. The request shall be accompanied by:
 - (i) information as to the extent and type of assistance required, based on the list prepared by the [*relevant disaster management authority*] pursuant to Article 5, unless this would lead to undo delay; and
 - (ii) information on the procedures for Assisting International Actors to make offers or provide assistance pursuant to Article 7.
- c. The [*country name* Red Cross/Red Crescent] Society may request assistance from the Foreign Components of the International Red Cross and Red Crescent Movement to supplement its disaster relief and recovery work at any time[, pursuant to the rules, regulations and procedures previously approved by [*country name*] at the International Conference of the Red Cross and Red Crescent].

Article 7 Offers and Acceptance of International Assistance

- a. Except as otherwise provided in subsection (d), Assisting International Actors may provide International Disaster Assistance in [*country name*] only if they have made an offer that has been accepted pursuant to this Article.
- b. Assisting States and intergovernmental organizations (including the United Nations) interested in providing International Disaster Assistance direct offers to [the Ministry of Foreign Affairs [through, the appropriate [*country name*] embassy]. Offers should indicate, in general terms, the type, amount and estimated duration of assistance to be provided. The Ministry of Foreign Affairs shall then consult with the [*relevant disaster management authority*] about such offers. Upon the direction of the [*relevant disaster management authority*], the Ministry of Foreign Affairs may accept such offers, in whole or in part.
- c. Assisting States planning to provide aid through military actors shall make such offers according to [regulations to be made under this Act / *agreement between [country name] and the Assisting States / relevant regional agreement*]. They may be accepted, in whole or in part, with the specific conditions set out in [the aforementioned regulations / agreement].
- d. In the event of a general request for International Disaster Assistance made pursuant to Article 6(a), Assisting International Actors other than Assisting States and intergovernmental organizations are exempt from making formal offers. However, they shall comply with the terms of the general request and shall inform the [*relevant disaster management*

provided [at least ** hours] in advance of their arrival.

- e. In the absence of a general request for International Disaster Assistance, Assisting International Actors may make unsolicited offers to the Ministry of Foreign Affairs [through, the appropriate [*country name*] embassy]. The Ministry of Foreign Affairs shall consult with the [*relevant disaster management authority*] and, upon its direction, may accept such offers, in whole or in part.
- f. The [*relevant disaster management authority*] shall determine whether to accept or reject offers of International Disaster Assistance with urgency appropriate to the circumstances.
- g. [Foreign Components of the Red Cross and Red Crescent Movement may direct their offers of support at any time to the *country name* National Red Cross / Red Crescent Society, which may accept them in whole or in part. The *country name* National Red Cross / Red Crescent Society shall inform the [*relevant disaster management authority*] of any offers it accepts.]

Article 8 International Disaster Relief and Initial Recovery Periods

- a. The International Disaster Relief and Initial Recovery Periods shall both commence simultaneously upon the issuance of a request for International Disaster Assistance under Article 6, or upon acceptance of an offer under Article 7, and shall continue until terminated pursuant to Article 9 or Article 10, as appropriate.
- b. The Legal Facilities described in Chapter VI shall only be effective during the International Disaster Relief and Initial Recovery Periods.

Article 9 Termination of the International Disaster Relief Period

- a. When, on the basis of updated needs assessments and other information, and in consultation with Assisting Actors, the [*relevant disaster management authority*] is satisfied that the need for Disaster Relief is coming to an end, it shall advise the [President/Prime Minister/ *high level committee or council on national disaster management*] to approve a termination date for the International Disaster Relief Period, with due consideration for the impact on ongoing relief activities. This termination shall not affect the ongoing validity of the International Initial Recovery Period.
- b. The termination date shall be announced to Assisting Actors no later than [45] days prior to the proposed date. The announcement shall also include information about the anticipated ongoing needs for Goods and Services related to Initial Recovery Assistance, if any.
- c. Upon the issuance of an announcement pursuant to this Article, the [*relevant disaster management authority*] shall consult with Assisting Actors actively involved in Disaster Relief work in order to reduce any negative impact from the termination and, where necessary, to ensure an adequate handover of responsibilities.

Article 10 Termination of the International Initial Recovery Period

- a. When, on the basis of updated needs assessments and other information, and in consultation with Assisting Actors, the *[relevant disaster management authority]* is satisfied that the need for International Initial Recovery Assistance is coming to an end, it shall advise the *[President/Prime Minister/ high level committee or council on national disaster management]* to approve a termination date for the International Initial Recovery Period, with due consideration for the impact on ongoing initial recovery activities.
- b. The termination date shall be announced to Assisting Actors no later than [90] days prior to the proposed date.
- c. Upon the issuance of an announcement pursuant to this Article, the *[relevant disaster management authority]* shall consult with Assisting Actors actively involved in Initial Recovery Assistance work in order to reduce any negative impact from the termination and, where necessary, to ensure an adequate handover of responsibilities.

Chapter III
Coordination and
Preparedness for
International Disaster
Assistance

The provisions of Chapter III might alternatively be placed within the text of the national disaster management act or an implementing regulation to that act. Moreover, specific institutional structures suggested here may not be appropriate to every state. They are not essential to the functioning of the Model Act, but it is recommended that the functions attributed to the structures herein be clearly allocated to some state organ.

Chapter III Coordination and Preparedness for International Disaster Assistance

Article 11 Coordination Duties and Powers of the Focal Point Agency

- a. The [*relevant disaster management authority*] established by the [national disaster management act] shall serve as a central focal point agency for liaison between the government of [*country name*] and Assisting International Actors, promoting the effective facilitation, coordination and oversight of International Disaster Assistance pursuant to this Chapter. As such, the [*relevant disaster management authority*] shall serve as the main counterpart for any applicable international or regional coordination mechanisms, including those of the United Nations.
- b. The [*relevant disaster management authority*] shall inform Assisting Actors and relevant national, [state/provincial/district] and local governmental agencies of their rights and responsibilities under this Act and orient them to other laws, rules or procedures especially relevant to International Disaster Relief and Initial Recovery Assistance.
- c. [During the International Disaster Relief and Initial Recovery Periods,] the [*relevant disaster management authority*] may [request/order] any relevant governmental body of [*country name*] to undertake actions or make available assets or premises required to facilitate the work of Assisting International Actors to provide Disaster Relief or Initial Recovery Assistance. Such bodies [shall/may] comply to the fullest extent possible within their legal mandates. Any [request/order] that may impose a substantial burden on the cooperating agency may be reviewed at its request by the [*appropriate high-level official*].
- d. [During the International Disaster Relief and Initial Recovery Periods,] the [*relevant disaster management authority*] may likewise request any private actor to undertake voluntary actions, at their own expense, as needed to facilitate the work of Assisting International Actors to provide Disaster Relief or Initial Recovery Assistance. This may include a request to lower or waive fees or charges for key services required by Assisting International Actors and/or to extend operating hours for their provision.

Article 12 Taskforce on International Disaster Assistance Preparedness

- a. A cross-sectoral Taskforce on International Disaster Assistance Preparedness (*hereinafter "the Taskforce"*) shall be established, to operate in accordance with this Article, under the chairmanship of the [*relevant disaster management authority*], with the primary role of enhancing preparedness for implementation of this Act in case of a Disaster requiring International Disaster Assistance.
- b. The Taskforce shall be composed of representatives from:
 - (i) The [*relevant disaster management authority*];
 - (ii) [*other appropriate governmental ministries, agencies and/or departments*];
 - (iii) The [*country name* Red Cross/Red Crescent] Society;
 - (iv) Domestic NGOs active in Disaster management;
 - (v) Such other members as the Taskforce may invite to participate, including relevant officials from [regional/provincial] and local

government offices, and other national stakeholders, as well as relevant United Nations agencies, regional organizations, Foreign NGOs, or Foreign Components of the International Red Cross and Red Crescent Movement.

- c. The Taskforce shall provide technical advice on preparedness for the facilitation of International Disaster Assistance to the *[relevant disaster management authority]* as requested. In fulfilling this role, the Taskforce shall:
- (i) Prepare and update manuals, guidelines, plans or other procedures for the entry and coordination of International Disaster Relief and Initial Recovery Assistance;
 - (ii) Compile and update information on existing bilateral, regional and international coordination mechanisms applicable to *[country name]*, and provide technical advice to the *[relevant disaster management authority]* on the further development of such mechanisms;
 - (iii) Develop and maintain a list of personnel nominated by the relevant ministries to participate in Single Window International Facilitation Teams (SWIFTs), as described in Article 13, and to assist the *[relevant disaster management authority]* to convene the SWIFTs immediately upon the commencement of an International Disaster Relief Period pursuant to Article 8, if required for the volume of International Disaster Assistance expected;
 - (iv) *[Advise the relevant disaster management authority on the development of/ Develop]* technical quality standards for International Disaster Relief and Initial Recovery Assistance, as described in Chapter IV of this Act];
 - (v) Develop, in accordance with Chapter V of this Act, procedures, documentation requirements and information about the responsibilities of Assisting Actors under this Act;
 - (vi) Undertake other tasks related to International Disaster Assistance, as requested by the *[relevant disaster management authority]* or *[other relevant authority]*.
- d. The Taskforce shall meet:
- (i) immediately upon the commencement of an International Disaster Relief Period pursuant to Article 8, to ensure the effective operation of the SWIFTs described in Article 13 and to advise the *[relevant disaster management authority]* on the application of relevant procedures, manuals and other technical materials concerning the facilitation of International Disaster Assistance; and
 - (ii) otherwise as necessary, and in no case less frequently than twice per year, to review national preparedness for implementing the provisions of this Act and to carry out the functions assigned to it pursuant to this Article.

Article 13 Single Window International Facilitation Teams (SWIFTs)

- a. Single Window International Facilitation Teams (SWIFTs) shall be established in accordance with this Article, for the purpose of consolidating and expediting the legal requirements concerning entry of incoming International Disaster Relief and Initial Recovery Personnel,

Goods, Equipment and Transport, as well as the application process for eligibility, as described in Chapter V.

- b. In consultation with the Taskforce on International Disaster Assistance Preparedness, the *[relevant disaster management authority]* shall establish the membership, functions, authorities and operating procedures for the SWIFTs, consistent with this Act and other relevant legislation.
- c. The SWIFTs shall be composed of representatives of relevant ministries and agencies, from the list established and updated by the Taskforce on International Disaster Assistance Preparedness in accordance with Article 12.
- d. Upon the commencement of an International Disaster Relief Period pursuant to Article 8, SWIFTs shall be deployed to primary points of entry for International Disaster Assistance, including, as circumstances dictate, relevant airports, seaports and land border crossing points.
- e. In the absence of a SWIFT team at a particular border crossing, officials involved in regulating the entry of International Personnel, Goods, Equipment and Transport shall nevertheless apply the relevant provisions of this Act.

Article 14 Operational Coordination of Assisting International Actors

- a. National, *[regional/provincial]* and local authorities shall endeavour to integrate the role of Assisting International Actors into their contingency planning and mechanisms for operational coordination for Disaster Relief and Initial Recovery Assistance efforts *[calling, as appropriate, on the assistance and advice of the UN Emergency Relief Coordinator]*. In particular, they shall endeavour to facilitate the work of Assisting International Actors, while balancing the urgent needs of people affected by Disaster and necessary safeguards relating to public safety and health, coordination and oversight.
- b. Assisting International Actors shall cooperate and coordinate with national, *[regional/provincial]* and local authorities in their Disaster Relief and Initial Recovery Assistance. In particular, they shall provide them with such information as is available to them on the needs, and on the location, type and extent of their Disaster Relief and Initial Recovery Assistance operations, as required for a coordinated and effective response.
- c. With due consideration for the need to adequately coordinate and oversee their work, no official of *[country name]* shall seek to prevent Assisting International Actors from acting according to the principles for humanitarian assistance in Article 16.
- d. Assisting International Actors shall cooperate with any international or regional mechanisms for coordination that have been specifically approved for a particular operation by the *[relevant disaster management authority]*, including those of *[appropriate regional organization and]* the United Nations.

Article 15 Limited Exemption from Privacy of Personal Data

Public authorities and Assisting Actors shall be permitted to share personally-identifiable information concerning Disaster-affected persons among themselves for the purpose of avoiding imminent death or physical harm to individuals, or grave and foreseeable harm to public health or safety, or for facilitating family reunification.

Chapter IV

General Responsibilities of Assisting Actors

Chapter IV General Responsibilities of Assisting Actors

Article 16 Principles of International Disaster Assistance

- a. Assisting Actors shall comply with the principles of humanity and impartiality in providing International Disaster Assistance. In particular, they shall establish their aid priorities on the basis of need alone and they shall not:
 - (i) engage in any adverse distinctions, exclusions or preferences based on status, such as nationality, race, ethnicity, religious beliefs, class, gender, sexual orientation, disability, age or political opinion;
 - (ii) seek to further a particular political or religious standpoint or interfere in internal matters irrelevant to the Disaster response;
 - (iii) seek to obtain commercial gain from their assistance;
 - (iv) gather sensitive information of a political, economic or military nature that is irrelevant to International Disaster Relief or Initial Recovery Assistance.
- b. In addition, non-governmental organizations shall comply with the principle of independence. In particular, they shall not act as instruments of the foreign policy of any government.

The provisions of Chapter IV might alternatively be placed in the national disaster management act or in its implementing regulations.

Article 17 Respect for the Dignity of Persons Affected by Disaster

Assisting Actors providing International Disaster Assistance shall respect the dignity of persons affected by a Disaster. In particular, they shall consult with the beneficiaries of their assistance in the design, implementation, monitoring and evaluation of the Disaster Relief and Initial Recovery Assistance they provide.

Article 18 Quality of Goods and Services

- a. Assisting Actors shall ensure that the Goods and Services they provide are appropriate to the needs and circumstances of persons affected by the Disaster and in compliance with the requirements of this Act and all applicable laws of [*country name*].
- b. Except as described in subsection (c) of this Article, Assisting Actors shall additionally make their best efforts, in light of all of the circumstances, to ensure that the Goods and Services they provide conform to the Sphere Project Minimum Standards in Humanitarian Response [as amended from time to time/(2011 edition)].
- c. If an Assisting Actor believes that the circumstances make it impractical or unwise for it to make any attempt to conform with a significant aspect of the Sphere Standards, it may so inform the [*relevant disaster management authority*] and seek its advance approval for an exemption from the requirement of subsection (b) of this article.

[Alternative Article 18(b) & (c): Assisting Actors shall additionally comply with technical quality standards as contained by regulations to be developed by the [*relevant disaster management authority*], in consultation with the Technical Taskforce on International Disaster Assistance, within [six months] of the entry into force of this Act.]

Article 19 Disposal of Unusable Goods, Non-Functioning Equipment and other Waste

Assisting Actors shall ensure that any Goods or Equipment they import for the purpose of Disaster Relief or Initial Recovery Assistance, which are or which become unusable, as well as any other waste products produced by them in the course of their Disaster Relief or Initial Recovery Assistance operations, are destroyed, recycled or otherwise disposed of in a safe, environmentally sensitive and effective manner and in compliance with [*country name*] law.

Chapter V

Eligibility for Legal Facilities

The provisions of Chapter V might alternatively be placed in the national disaster management act or its implementing regulations.

Chapter V Eligibility for Legal Facilities

Article 20 Provision of Legal Facilities to Eligible Actors

- a. The Legal Facilities described in Chapter VI are available only to Eligible Actors as described in this Chapter and are effective only during the International Disaster Relief and Initial Recovery Periods. Unless otherwise stated in Chapter VI, the Legal Facilities are equally effective during both of those periods.
- b. All of the Legal Facilities described in Chapter VI shall be available to Assisting International Actors deemed eligible pursuant to Article 21, or approved as eligible pursuant to Article 22.
- c. The Legal Facilities described Parts 1 to 5 in Chapter VI only shall be available to Assisting Domestic Actors deemed eligible pursuant to Article 21 or approved as eligible pursuant to Article 22, with respect to International Personnel, Goods, Equipment and Transport they bring to the country from abroad to provide Disaster Relief or Initial Recovery Assistance.

Article 21 Deemed Eligibility for Legal Facilities for Certain Assisting Actors

- a. Upon the commencement of an International Disaster Relief Period pursuant to Article 8, the following Assisting International Actors shall be deemed eligible to receive the Legal Facilities described in Chapter VI of this Act without a further application process pursuant to Article 22:
 - (i) Assisting States;
 - (ii) Relevant intergovernmental organizations, including United Nations and regional organizations;
 - (iii) The [*country name* Red Cross/Red Crescent] Society and Foreign Components of the International Red Cross and Red Crescent Movement; and
 - (iv) Any other Assisting Actor that the [*relevant disaster management authority*] wishes to deem eligible.
- b. In order to facilitate access to the Legal Facilities, the [*relevant disaster management authority*] shall provide Assisting International Actors described in subsection (a) a certificate of eligibility, upon their request.

Article 22 Application for Eligibility for Legal Facilities by Assisting Actors

- a. With the exception of those deemed eligible pursuant to Article 21, Assisting Actors seeking eligibility shall apply in accordance with this Article. Assisting International Actors may apply only if they are recognized as a legal person in a foreign country or under international law.
- b. The eligibility of private businesses for Legal Facilities shall be limited to assistance from which they make no profit or other commercial gain.
- c. Applications for eligibility may be made in advance of any Disaster, or after the onset of a Disaster. In the event that eligibility for Legal Facilities is granted in advance of a Disaster, it will remain valid for [5 years], after which a new application is required. The Legal Facilities will

enter into legal effect only during an International Disaster Relief or Initial Recovery Period.

- d. All Assisting Actors seeking eligibility shall submit:
- (i) certified copies of documents evidencing their legal personality in a foreign jurisdiction or under international law, in the case of Assisting International Actors, or under the laws of *[country name]*, in the case of Assisting Domestic Actors;
 - (ii) the name and full contact details of the authorized representative of the organization and the address of its headquarters, if any, in *[country name]*;
 - (iii) documentation relating to their previous experience and current capacity in providing effective Disaster Relief or Initial Recovery Assistance;
 - (iv) an undertaking relating to their organizational commitment and practices concerning the responsibilities set out in Chapter IV.

Article 23 Eligibility Determination and Certificates

- a. The *[relevant disaster management authority]* shall respond to any application under Article 22 by either approving it and issuing a certificate of eligibility for the relevant Chapter VI Legal Facilities, or by giving notice that the application has not been approved.
- (i) For applications made during the International Disaster Relief Period, the *[relevant disaster management authority]* shall respond no later than *[specified time]* after receipt of all required documents.
 - (ii) For applications made after the termination of an International Disaster Relief Period but during an International Initial Recovery Period, the *[relevant disaster management authority]* shall respond no later than *[specified time]* after receipt of all required documents.
- b. Applications from Assisting Actors with significant experience will be accepted unless the documentation provided or external information raises doubts as to their capacities, in which case, additional opinions and information may be gathered prior to making a determination.
- c. Upon approval of an application pursuant to Article 22 or upon the request of an Assisting Actor deemed eligible pursuant to Article 21, the *[relevant disaster management authority]* shall issue a certificate indicating that the Assisting Actor is eligible for the relevant Chapter VI Legal Facilities. In the case of a Domestic Assisting Actor, the certificate shall state that the eligibility extends to the Legal Facilities in Parts 1 to 5 of Chapter VI.
- d. A certificate issued in accordance with this Article shall be valid for a period of [5 years] from the date of issue and may be renewed through a new decision under Article 20 or Article 22.

Article 24 Termination of Eligibility for Legal Facilities

Eligibility of Assisting Actors for the relevant Chapter VI Legal Facilities may be terminated upon the request of the Eligible Actor concerned or upon the termination of the Legal Facilities for failure to comply with this Act, pursuant to Article 57.

Chapter VI

Legal Facilities for Eligible Actors

Chapter VI Legal Facilities for Eligible Actors

Part 1 International Personnel

Article 25 Disaster Visa

- a. The International Personnel of Eligible Actors shall be entitled to a Disaster Visa, unless national security or public health and safety concerns related to the particular individual preclude it. Disaster Visas shall be issued without a fee for an initial period of [three months], and renewable without a fee for periods of up to [six months] from within [country name], then as often as necessary throughout the International Disaster Relief and Initial Recovery Periods.
- b. During the International Disaster Relief Period, Disaster Personnel Visas shall be issued to the International Personnel of Eligible Actors, upon arrival at the point of entry [or by prior application to the appropriate embassy, which shall adjudicate them within a [specified time]].
- c. After the termination of the International Disaster Relief Period but during the International Initial Recovery Assistance Period, Disaster Visas shall be issued by prior application to the appropriate [country name] embassy, which shall adjudicate them within a [specified time].
- d. Holders of the Disaster Visa shall be allowed to undertake Disaster Relief and Initial Recovery work for their sponsoring entities during the International Disaster Relief and Initial Recovery Assistance Periods without the requirement to seek a separate residence or work permit.

[Alternative Article 25 Visa Waiver

The International Personnel of Eligible Actors shall be entitled to waiver of entry visa requirements, including any associated fees or charges. International Personnel who enter [country name] under this Disaster Personnel visa waiver, shall be allowed to undertake Disaster Relief and initial recovery work for their sponsoring entities without the requirement to seek a separate residence or work permit. As long as they continue as International Personnel of their sponsoring entities, they shall be entitled to remain in or re-enter the territory as often as necessary throughout the International Disaster Relief and International Initial Recovery Periods. After that time, they may apply for a relevant visa from within the country.]

If the provisions of Chapter VI are placed in various other acts rather than in a stand-alone statute, they should refer back to the eligibility procedure described in Chapter V.

Article 25 might alternatively be placed in the immigration act.

Article 26 might alternatively be placed in the disaster management act, or in the relevant regulatory acts concerning recognition of professional qualifications.

Article 26 Recognition of Foreign Professional Qualifications

- a. Eligible Assisting Actors wishing to deploy International Personnel for tasks requiring legal recognition of their foreign professional qualifications shall certify the validity of those qualifications and the competence of their Personnel for the tasks envisaged.
- b. Within [six months] of the entry into force of this Act, the [*relevant authority*] shall establish lists of countries and/or educational institutions whose [health professionals, architectural, engineering and other relevant professionals] may be given automatic recognition of their foreign qualifications when certified by an Eligible Assisting Actor pursuant to subsection (a) of this Article. The lists shall be reviewed at least [once per year] and published [electronically].
- c. The [*relevant authority*] shall also establish expedited procedures to be applied for the assessment and recognition of the foreign qualifications of the International Personnel originating from countries or institutions not included on the above-mentioned lists, when certified by their sponsoring Eligible Assisting Actor pursuant to subsection (a) of this Article.
- d. Recognition of qualifications under this Article shall exempt International Personnel of Eligible Actors from any obligations for compulsory membership of professional associations or other professional registration processes within [*country name*] until the end of the International Initial Recovery Period.
- e. recognition of qualifications under this Article shall remain valid until the end of the International Initial Recovery Period, absent individual criminal conduct, or other professional misconduct sufficient to bar the individual from professional practice in [*country name*].

Article 27 might alternatively be placed in the transport act.

Article 27 Recognition of Foreign Driving Licenses

The [*relevant authority*] shall accord temporary recognition of the foreign driving licenses of the International Personnel of Eligible Actors, during the International Disaster Response and Initial Recovery Periods.

Article 28 might alternatively be placed in the disaster management act along or its implementing regulations.

Article 28 Freedom of Access

- a. The International Personnel of Eligible Actors under this Act shall be provided freedom of access to Disaster-affected areas and persons requiring Disaster Relief or Initial Recovery Assistance, subject only to limitations based on national security, public order or public health, weighed in the context of the urgency of the Disaster needs. They shall be permitted to provide their Goods and Services directly to affected persons.
- b. In situations where the relevant authorities have decided to restrict public access to affected areas out of concern for the safety of those persons seeking to enter, they shall warn the International Personnel of Eligible Actors, but allow them to enter, if they may do so without endangering others and if the International Personnel assume the risk.

Part 2 Entry of International Disaster Goods and Equipment

Article 29 Customs Facilitation and Priority Treatment

As further described in this Part, the [customs authority] shall facilitate the rapid importation of consignments of Goods and Equipment by Eligible Actors and shall accord them priority treatment in handling.

Article 30 Duty of Compliance by Eligible Actors

In order to benefit from the Legal Facilities in this Part, Eligible Actors shall:

- a. declare that all the Goods and Equipment they seek to import under this Part are exclusively for Disaster Relief or Initial Recovery Assistance and that they comply with any relevant standards under national law, including as provided in this Act or its regulations; and
- b. pack, classify and mark their consignments in accordance with the requirements described in this part and as directed by the [customs authority].

Article 31 Representation to Customs

Eligible Actors may make representations directly to the [customs authority] with respect to their International Disaster Assistance consignments or through a designated third party acting on their behalf.

Article 32 Exemption from Import Duties, Taxes and Restrictions

Consignments of Goods and Equipment by or on behalf of Eligible Actors shall benefit from:

- a. exemption from all duties and taxes;
- b. waiver of economic prohibitions and restrictions except for categories of special Goods and Equipment as provided in Part 3 of this Act; and
- c. clearance without regard to the country of origin or the country from which the Goods have arrived, subject to monitoring for reasons of public health and security.

Article 33 Simplification of Documentation Requirements

The [customs authority] shall:

- a. clear or release consignments of Goods and Equipment sent by or on behalf of Eligible Actors on the basis of a [simplified / provisional goods declaration] providing the minimum information necessary for the [customs authority] to identify the Goods and Equipment and subject, when deemed necessary, to completion of a more complete declaration within a specified period;
- b. allow a single Goods declaration for all imports of Goods or Equipment by or on behalf of Eligible Actors;
- c. allow the Goods declaration and any supporting documents relating to consignments of Goods or Equipment sent by or on behalf of Eligible Actors to be lodged [electronically and] without any fee;
- d. allow the lodging and registering or checking of the Goods declaration and supporting documents prior to the arrival of consignments of Goods

The provisions of Part 2 of Chapter VI might alternatively be placed in the customs act or its implementing regulations.

release upon arrival;

- e. waive any requirement of translation of details in documents relating to consignments of Goods or Equipment sent by or on behalf of Eligible Actors unless it is absolutely necessary for the purposes of release or clearance.

Article 34 Extended Hours for Customs

During the International Disaster Relief Period only, the [*customs authority*] shall:

- a. upon request, and without additional charges, carry out the functions necessary for the release or clearance of consignments of Goods or Equipment imported by or on behalf of Eligible Actors outside their designated hours of business and/or away from customs offices when necessary; and
- b. coordinate with the business hours and competencies of any other relevant [departments/ministries] involved in the approval of incoming consignments and, whenever possible, carry out joint operations, such as joint customs controls, including participation in SWIFTs, if established under Article 13.

Article 35 Inspections and Customs Security

During the International Disaster Relief Period only, the [*customs authority*] shall:

- a. on the basis of risk analysis, take only such action as it deems essential to ensure compliance with customs and related laws for the purpose of checking the Goods declaration of a consignment sent by or on behalf of Eligible Actors;
- b. use risk analysis, preferably on the basis of advance information, to determine which consignments of Goods and Equipment imported by or on behalf of Eligible Actors shall be inspected and the extent of that inspection;
- c. waive, as feasible, any customs security that would normally be required in respect of consignments of Goods and Equipment imported on or behalf of Eligible Actors. However, if, in an exceptional case, customs security is deemed necessary, it shall accept as security an undertaking from the relevant Eligible Actor or, where appropriate, a general customs security.

Article 36 Agreements on Pre-Positioning of Stock

The [*relevant authority*] may enter into an agreement with an Eligible Actor to extend the relevant Legal Facilities of this Part to pre-positioning of stocks in [*country name*], in preparation for potential Disaster, or after a specific Disaster warning.

Part 3 Expedited Entry and Use Restrictions for Specific International Disaster Goods and Equipment

Article 37 Telecommunications Equipment

- a. Eligible Actors shall be permitted to import telecommunications Equipment for the purpose of Disaster Relief or Initial Recovery Assistance without restrictions, except as required for purposes of national security or public order.
- b. Upon notification of the names, frequencies, as applicable, and locations of intended use of such telecommunications Equipment imported by Eligible Actors, the [*relevant telecommunications authority*] shall waive any licensing requirements or fees for their use.
- c. The [*relevant telecommunications authority*] shall also grant Eligible Actors priority over domestic users [with the exception of security forces, ambulance services and other domestic emergency responders] in access to bandwidth, frequencies and satellite use for telecommunications and data transfer associated with Disaster Relief and Initial Recovery Assistance.

Article 37 might alternatively be placed in the telecommunications law or its implementing regulations.

Article 38 Medications

- a. Eligible Actors shall be permitted to import medications and medical Equipment for the purpose of Disaster Relief or Initial Recovery Assistance so long as they conform to the requirements of this Article.
- b. Any such medications and medical Equipment shall be appropriate to the needs of the Disaster-affected persons, and shall be legal for use in the country of origin according to its laws as well as in [*country name*] according to [*appropriate law on pharmaceuticals*]. Pursuant to subsections (c) and (d) below, a distinction shall otherwise be made between medications intended to be donated for the use of others and those that Eligible Actors intend to use directly in providing medical Services.
- c. Medications that Eligible Actors intend to use directly in providing medical services in Disaster Relief or Initial Recovery Assistance, shall be:
 - (i) transported and maintained by the Eligible Actor in appropriate conditions at all times to ensure their quality and;
 - (ii) guarded against misappropriation and abuse.
- d. Medications intended for donation for the use of others shall be:
 - (i) at least 12 months from their expiry date upon arrival, unless otherwise specifically agreed by the [*relevant health authority*];
 - (ii) transported and maintained by the Eligible Actor in appropriate conditions to ensure their quality until they reach their intended domestic recipients; and
 - (iii) appropriately labelled in a language understood in the affected State with the International Non-proprietary Name or generic name, batch number, dosage form, strength, name of manufacturer, quantity in the container, storage conditions and expiry date.

Article 38 might alternatively be placed in the pharmaceuticals law or its implementing regulations.

The intention behind Article 39 might be achieved in implementing regulations for a

Article 39 Food

Food imported by Eligible Actors shall be admitted pursuant to expedited procedures set out by regulations to be developed within [6 months] of the entry into force of this Act by the [*relevant agricultural or health authority*.]

Article 40 might alternatively be placed in the motor vehicles or road safety act.

Article 40 Imported Vehicles

The [*relevant transportation authority*] shall grant temporary recognition to foreign registration and plates to vehicles imported by Eligible Actors pending the provision of local registration and plates.

[**Alternative Article 40:** The [*relevant transportation authority*] shall expedite the granting of local registration and [temporary] plates for vehicles imported by Eligible Actors.]

Article 41 Search Dogs

Search dogs imported temporarily by Eligible Actors shall be admitted without the need for quarantine so long as they meet the conditions and requirements of special regulations to be developed within [6 months] of the entry into force of this Act by the [relevant authority].

The provisions of Part 4 might alternatively be placed in the customs law or its implementing regulations.

Part 4 Permitted Disposition of Equipment and Unused Goods

Article 42 Disposition of Equipment and Unused Goods

- a. This part sets out the permitted disposition of Goods or Equipment for which Eligible Actors have received waivers or exemptions from fees, duties, taxes or other charges pursuant to this Chapter and which remain in their possession as of the end of their Disaster Relief and Initial Recovery Assistance operations.
- b. Such Goods and Equipment may be:
 - (i) retained by Eligible Actors that are non-profit entities and used or distributed by them for humanitarian, development or charitable purposes in [*country name*];
 - (ii) re-exported pursuant to Article 43;
 - (iii) donated pursuant to Article 44; or
 - (iv) disposed of pursuant to Article 19.
- c. Additionally, such Goods and Equipment may be sold, but only:
 - (i) after the termination of the Initial Recovery Period; and
 - (ii) with payment of all fees, duties, taxes or charges that were previously waived or exempted for these items under this Chapter.

Article 43 Re-Export of Goods and Equipment

Eligible Actors that import Equipment or Goods benefitting from the Legal Facilities in this Chapter are permitted to re-export any Equipment or unused Goods and to do so without the imposition of any taxes, export duties, or similar charges, provided that:

- a. re-export is commenced no later than [three months] after the termination of the International Initial Recovery Period; and

- b. they provide documentation that the Equipment and Goods in question were originally imported for the purpose of Disaster Relief or Initial Recovery Assistance pursuant to this Chapter.

Article 44 Donation of Unused Goods and Equipment

When they are no longer needed for their Disaster Relief or Initial Recovery Assistance, Eligible Actors are permitted to donate any imported or locally purchased Goods and Equipment without the imposition of any taxes, fees, duties, or similar charges on either the donor or the beneficiary, provided that:

- a. the donation is made no later than [three months] after the termination of the International Initial Recovery Period;
- b. the Eligible Assisting International Actor provides documentation to [*the relevant authority* with copies to the beneficiary] of the identity of the importer or purchaser, the date of import or purchase, and the fact that the item or group of items was imported or purchased pursuant to the Legal Facilities in this Chapter;
- c. the beneficiary of the donation is the [*country name* Red Cross/Red Crescent] Society, a Domestic NGO, or other not-for-profit charitable or humanitarian organization established in [*country name*]; and
- d. any items thus donated may not be sold for a period of [three years] unless fees, duties, taxes or charges that were previously waived or exempted for these items under this Chapter are paid.

Part 5 Transport

Article 45 Facilitation of Means of Transport

- a. Ground, air and water Transport vehicles operated by or on behalf of Eligible Assisting Actors to transport International and Locally Engaged Personnel, Goods, or Equipment for the purposes of Disaster Relief or Initial Recovery Assistance shall be accorded priority treatment for passage, including, as appropriate, priority in air traffic routing and landing permissions.
- b. exempt from any applicable taxes, levies, duties, fees or charges normally imposed by governmental entities of [*country name*], including, but not limited to:
 - (i) overflight, landing, parking, taking off and navigation service fees;
 - (ii) demurrage and docking fees; and
 - (iii) road tolls.
- c. exempt from any prohibitions, limitations or restrictions in respect of their arrival, overflight, landing, stay and departure, other than those necessary to guarantee national security, public safety or public health.
- d. accorded priority treatment for passage, including, as appropriate, priority in air traffic routing and landing permissions.

The provisions of the articles in Part 5 might alternatively be placed separately in laws concerning ground vehicles, marine traffic and aviation.

Article 46 might also be placed in the immigration act.

Article 46 Entry of Transport Operators

The *[relevant authorities]* shall endeavour to reduce and expedite any procedures for the entry of drivers, pilots and crew of Transport vehicles operated by on or behalf of Eligible Actors.

Article 47 Notice of Transport

To facilitate the provision of the Legal Facilities in this Part, Eligible Assisting Actors or their carriers shall:

- a. inform the *[relevant aviation authority]* in advance of the intended route of flights, type and call signs of the aircraft, number of crew members, the character of the cargo, time-table of flights, and the list of all passengers, and shall comply with any directions from the *[relevant aviation authority]* as to air traffic control and landing procedures.
- b. inform the *[relevant marine authority]* in advance, of the intended port or location of arrival of each water vessel, the type, make and registration number of each vessel, the number of personnel operating and on board each vessel and the equipment, facilities and other materials on board each vessel, and shall comply with any directions from the *[relevant authority]* as to the control of incoming vessels or docking procedures.

Part 6 Legal Capacity and Employment

Article 48 Legal Capacity of Assisting International Actors

The status of eligibility for Legal Facilities of an Assisting International Actor includes such legal capacity as may be relevant for the exercise of its functions and the fulfilment of its purposes in providing International Disaster Relief or Initial Recovery Assistance in accordance with the laws of *[country name]* during the International Disaster Relief and Initial Recovery Periods, in particular the capacity to:

- a. open bank accounts;
- b. enter into contracts and leases;
- c. acquire and dispose of immovable and movable property;
- d. receive and disburse private and public funds;
- e. instigate legal proceedings;
- f. engage and terminate Locally Engaged Personnel, as set out in Article 49 of this Act.

Aspects of Article 48 might alternatively be placed in a disaster management act, the banking act and the labour relations act.

Article 49 Engagement and Termination of Locally Engaged Personnel

- a. Subject to Article 4 of this Act, and except as provided in this Article, all Eligible Assisting International Actors shall comply with the applicable law in *[country name]* with regard to the employment of Locally Engaged Personnel, being persons normally resident or domiciled in *[country name]*.
- b. Eligible Assisting International Actors shall not be required to make any separate registration as employers, including for the purposes of taxation, social security, and social insurance registration requirements relating to the employment of Locally Engaged Personnel.

Article 49 and Article 50 might alternatively be placed in the labour relations act.

- c. Notwithstanding any provisions of labour and employment laws to the contrary, Eligible Assisting International Actors may:
 - (i) recruit any individual legally entitled to perform the work envisaged in [*country name*] through a non-discriminatory process;
 - (ii) engage local personnel pursuant to fixed-term contracts, which may be of short duration, and may be renewed as required without creating an open-ended obligation.

Article 50 Jurisdiction over International Personnel

Notwithstanding any public order or provisions of labour and employment laws to the contrary, the courts, administrative tribunals and officials of [*country name*] shall not seek to exercise jurisdiction concerning contracts between Eligible Assisting International Actors and International Personnel engaged by them, where such contracts contain choice of law provisions that establish the exclusive jurisdiction of a foreign or international court, tribunal or other mechanism.

Part 7 Taxation of Eligible Assisting International Actors

Article 51 Value-Added Tax (VAT)[and other similar taxes]

- a. The supply of Disaster Relief and Initial Recovery Assistance by an Eligible Assisting International Actor shall be exempt from all VAT, service taxes and similar taxes, duties, levies and governmental fees where such supply takes place during the International Disaster Relief or Initial Recovery Periods. Eligible Assisting International Actors shall also be exempt from registration for VAT during the same periods.
- b. In providing this Legal Facility the [*relevant taxation authority*] shall take all practical steps to ensure that local suppliers suffer no negative financial or administrative impact in providing goods or services to Eligible Assisting International Actors.
- c. The rate of VAT in respect of the supply of merchandise or a service to an Eligible Assisting International Actor in connection with its Disaster Relief or Initial Recovery Assistance shall be zero where such supply is of a value exceeding [*specific value*]. Accordingly, a supplier of such goods and services shall not be required to account for, and shall not charge the relevant Eligible Assisting International Actor any VAT in respect of such supplies.

The provisions in Part 7 might alternatively be placed in the appropriate tax laws.

[Alternative options for Article 51(c):

VAT – exemption approach

The supply of merchandise or a service to an Eligible Assisting International Actor in connection with its Disaster Relief or Initial Recovery Assistance shall be exempt from VAT where such supply is of a value exceeding [*specific value*] and, accordingly, a supplier shall not be required to account for, and shall not charge the relevant Eligible Assisting International Actor any VAT in respect of such supplies.

VAT – deemed no supply approach

The supply of merchandise or a service to an Eligible Assisting International Actor in connection with its Disaster Relief or Initial Recovery Assistance shall be disregarded for the purposes of VAT where such supply is of a value exceeding [*specific value*]and, accordingly, a supplier shall not be required to

account for, and shall not charge the relevant Eligible Assisting International Actor any VAT in respect of such supplies.]

Article 52 Income Tax [and Other Similar Taxes]

- a. The activities of an Eligible Assisting International Actor carried on for the purpose of providing Disaster Relief or Initial Recovery Assistance shall be disregarded for tax purposes during the International Disaster Relief and Initial Recovery Periods and, accordingly, any actual or deemed income or gain arising from such activities shall not be subject to any taxes, duties, levies or governmental fees having similar effect.
- b. The activities of the International Personnel of Eligible Assisting International Actors carried on in connection with the provision of Disaster Relief or Initial Recovery Assistance shall be disregarded for tax purposes during the International Disaster Relief and Initial Recovery Periods and, accordingly, taxes, duties, levies or governmental fees having similar effect shall not be payable in respect of such activities.
- c. The International Personnel of an Eligible Assisting International Actor shall not be treated as resident in [*country name*] or as having any other connection with [*country name*] relevant for taxation purposes by reason of their presence in [*country name*] or activities undertaken there during the International Disaster Relief and Initial Recovery Periods. Accordingly, such International Personnel shall not be subject to or required to account for any taxes, duties, levies, social security contributions and governmental fees or employment levies having similar effect.

Article 53 Property, Assets [and Other Similar] Taxes

During the International Disaster Relief or International Initial Recovery Periods, no taxes, duties, levies or governmental fees having similar effect shall accrue or be payable by Eligible Assisting International Actors. in connection with:

- a. land, a building or any part of a building where such land, building or part thereof is wholly or primarily used by an Eligible Assisting International Actor for the purpose of Disaster Relief or Initial Recovery Assistance; and
- b. the assets of an Eligible Assisting International Actor.

Part 8 Currency and Banking

Article 54 Right to Bring Necessary Funds and Currencies into the Country

The [*relevant authority*] shall facilitate the entry of such funds and currencies by Eligible Assisting International Actors to provide Disaster Relief and Initial Recovery Assistance.

Article 55 Preferential Exchange Rates

The [*relevant authority*] shall make available to Eligible Assisting International Actors the best available legal exchange rates into the state's currency for funds to be used for the purpose of providing Disaster Relief or Initial Recovery Assistance.

Part 8 might alternatively be placed in the banking or financial services acts.

Chapter VII

Supervision, Reporting and Sanctions

The provisions of Chapter VII might alternatively be placed in the national disaster management act or its implementing regulations.

Chapter VII Supervision, Reporting and Sanctions

Article 56 Supervision of Assisting Actors

- a. The [*relevant disaster management authority*] shall be responsible for monitoring the compliance of Assisting Actors with their responsibilities under this Act, and in particular Chapter IV.
- b. To facilitate the [*relevant disaster management authority's*] oversight, it may require Assisting Actors to report to it, at reasonable intervals, about the Disaster Relief and Initial Recovery Assistance they provide. These reports shall be made publicly available [through electronic means].
- c. Any reporting requirements imposed by the [*relevant disaster management authority's*] under this Article shall be designed so as to reduce any administrative burden on Assisting Actors to the minimum necessary.

Article 57 Non-Compliance by Assisting Actors

- a. If, on the basis of credible information, the [*relevant disaster management authority*] suspects that any Assisting Actor has failed to materially comply with its responsibilities under this Act, and in particular its responsibilities under Chapter IV, it shall immediately consult with the Assisting Actor and seek clarification or explanation. If still unsatisfied, the [*relevant disaster management authority*] shall provide written notice of non-compliance along with a decision either:
 - (i) to require the Assisting Actor to bring itself into compliance within a specified period of time, with or without temporary suspension of its eligibility, if any, for Legal Facilities under Chapter VI; or
 - (ii) to revoke the Assisting Actor's eligibility, if any, for Legal Facilities under Chapter VI;
 - (iii) in the case of deliberate misrepresentation or fraud, to impose fines to be set out by implementing regulation; or
 - (iv) in the most extreme cases concerning an Assisting International Actor, to revoke [*country name's*] consent for it to provide Disaster Relief or Initial Recovery Assistance in response to the Disaster.
- b. In the event of a decision to revoke pursuant to subsection (a)(iii) of this Article, if the Assisting International Actor lacks a legal basis independent of this Act to remain in the country, it may be required to depart, as of a date no sooner than [30] days from the date of the notice.
- c. Decisions to suspend or revoke Legal Facilities pursuant to subsections (a)(i) or (a)(ii) of this Article may not be given retroactive effect, except in cases of fraud or criminal misconduct attributable to the Assisting International Actor.
- d. The Assisting Actor may appeal any negative decision to [*an ombudsman or other appropriate agency*].
- e. Nothing in this Article precludes the prosecution of Assisting International Actors or their International and Locally Engaged Personnel for criminal offences or for the imposition of civil liability under the laws of [*country name*].

Article 58 Transparency as to Internationally Donated Funds

- a. Internationally Donated funds received by the Government of [country name] for the purposes of Disaster Relief and Initial Recovery Assistance shall be:
 - (i) [included in the national disaster management fund established by the national disaster management act/International Disaster Relief and Initial Recovery Fund, the procedures for which shall be set out by regulation]; and
 - (ii) subject to audit by the [appropriate authority] no later than [six months] after the termination of the International Disaster Relief Period or [three months] after the termination of the International Initial Recovery Period. The results of this audits shall be made publicly available [by electronic means].
- b. International Donated Funds received by Assisting Domestic Actors shall be:
 - (i) maintained in a dedicated account for Disaster Relief or Initial Recovery Assistance;
 - (ii) subjected to an external audit no later than [six months] after the termination of the International Disaster Relief Period or [three months] after the termination of the International Initial Recovery Period, whichever is sooner. The results of these audits shall be reported to [appropriate authority] and made publicly available [by electronic means].

The regulation of international donations may already be regulated under existing legislation concerning disaster management, financial transactions and/or domestic non-governmental organizations.

Article 59 Annual Reporting on Implementation

The [relevant disaster management authority] shall report annually to the [relevant committee of the] Parliament on steps taken to implement this Act, including preparedness measures taken prior to a Disaster.

Article 60 Sanction for Non-Compliance by Officials

Officials of [country name] that fail to abide by their responsibilities under this Act may be subject to [discipline pursuant to a civil service code], and/or] a fine of up to [amount]. This Article is without prejudice to any civil or criminal liability under other laws that might also attach to the official’s actions or omissions.

Chapter VIII

Transit of International Disaster Assistance

Chapter VIII Transit of International Disaster Assistance

Article 61 Facilitation for Transit

In the event a Disaster occurs in another country for which International Disaster Assistance is required the [*relevant customs, immigration, and transport authorities*] shall facilitate the speedy transit or transshipment across national territory of International Disaster Assistance by Assisting International Actors, including International Personnel, Goods, Equipment and Transport, in order to reach the affected country, as further described in this Part.

The provisions of Chapter VIII might alternatively be placed in the customs law or its implementing regulations.

Article 62 Transit Facilities Period

- a. When, after seeking the views of the relevant authorities of a Disaster-affected country, the [*relevant authority*] is satisfied that International Disaster Relief or Initial Recovery Assistance is likely to be required and that the transit or transshipment of International Personnel, Goods or Equipment through its territory is likely to be helpful, the [*relevant authority*] may declare the beginning of a Transit Facilities Period.
- b. The Transit Facilities Period shall continue until terminated by the [*relevant authority*], when it is satisfied that Transit Facilities are no longer required.
- c. The termination of a Transit Facilities Period shall be announced to Assisting International Actors no later than [*time period*] prior to the proposed date.
- d. The Transit Facilities described in this Chapter shall be effective only during the Transit Facilities Period.

Article 63 Entitlement to Transit Facilities

- a. Subject to subsection (b), all Assisting International Actors shall be entitled for the Transit Facilities provided in this Chapter upon declaration that the International Personnel, Equipment and Goods that they seek to send in transit through [*country name*] are for the purpose of providing International Disaster Relief or Initial Recovery Assistance to a Disaster-affected country.
- b. The [*relevant authority*] may deny Transit Facilities to any Assisting International Actor, in case of actual or suspected fraud or if necessary to safeguard national security or public health. The denial of Transit Facilities may be appealed pursuant to the process described in Article 57 of this Act.

Article 64 Disaster Transit Visa

The International Personnel of Eligible Actors entering [*country name*] for the purpose of transit to a Disaster-affected country shall be entitled to a [*single entry*] Disaster Transit Visa on arrival, unless national security or public health and safety concerns related to the particular individual preclude it. Disaster Transit Visas shall be issued without a fee.

[**Alternative Article 64:** International Personnel entering [*country name*] for the purpose of transit to a Disaster-affected country shall be entitled to waiver of entry

Article 65 Goods and Equipment in Transit and Transshipment

The provisions of Parts 2 and 3 of Chapter VI shall apply, mutatis mutandis, to consignments of Goods and Equipment by Eligible Actors, when placed under customs transit or transshipment to an affected country.

Article 66 Transport for Transit and Transshipment

The provisions of Part 5 of Chapter VI shall also apply, mutatis mutandis, to the ground, air and water vehicles of Eligible Actors in transit through the territorial lands, waters or airspace of [*country name*] to provide International Disaster Relief or Initial Recovery Assistance to an affected country.

Chapter IX
Implementation,
Transitional and Final
Provisions

Chapter IX Implementation, Transitional and Final Provisions

Article 67 Implementing Regulations

The [*relevant authorities*] may make regulations concerning all matters which are required or permitted to be prescribed, or which are necessary to carry this Act into effect or to give effect to any power, function, duty, or authority under this Act.

Article 68 Repeals and Revocations

[*Names of relevant acts and sections* / The legislative provisions listed in Schedule [#]] are repealed from [*date*].

Article 69 Severability

Each of the articles of this Act is severable. If any such article is or becomes illegal, invalid or unenforceable in any respect, that shall not affect or impair the legality, validity or enforceability of the other articles of this Act.

Article 70 Entry into Force

This Act shall enter into force on [*date* / the [*i cardinal number*] day following its publication in the [*title of official publication*].

Article 71 Transitional Provisions

The [*relevant authority*] may make such transitional, transitory or savings provisions as are necessary for the implementation of this Act.

**COMMENTARY TO THE MODEL ACT FOR THE FACILITATION AND REGULATION
OF INTERNATIONAL DISASTER RELIEF AND INITIAL RECOVERY ASSISTANCE
(PILOT VERSION)**

Introduction to the Commentary

This Commentary is intended to provide background information on the various provisions of the Model Act for the Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance (Pilot Version). It is merely explanatory and not intended as an integral part of the Model Act.

The Commentary:

- identifies the links between the clauses of the Model Act and relevant sections of the Guidelines for the domestic facilitation and regulation of international disaster relief and initial recovery assistance (IDRL Guidelines);
- identifies the problem or issue each chapter, section and article seeks to address;
- explains the intention of the drafters and the reasons for choosing one path over another;
- provides examples of existing legislative language from various countries where available (and it must be borne in mind that very few states have addressed these problems to date, which is why the IDRL Guidelines were developed in the first instance); and
- where useful, discusses alternative methods of implementing the same solutions in ways other than a stand-alone statute.

**Commentary to the Model Act for the Facilitation and Regulation
of International Disaster Relief and Initial Recovery Assistance (Pilot Version)**

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Chapter I
General Provisions
Commentary

Chapter I Commentary on General Provision

This Chapter includes:

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| Article 1 | Short Title |
| Article 2 | Purpose of the Act |
| Article 3 | Definitions |
| Article 4 | Existing Rights, Privileges and Immunities |

Chapter I relates to the following sections of the IDRL Guidelines:

- 1 - Introduction (especially 1.4)
- 2 – Definitions

Overview

Chapter I includes a number of important preliminaries. The long title of the Model Act (Article 1) and its purpose and scope (Article 2), are intended generally to reflect the subject matter covered by the IDRL Guidelines. One significant exception is that, unlike the IDRL Guidelines, the Model Act does not propose rules governing humanitarian assistance originating from the adopting state and intended to assist another state affected by a disaster.

The definitions (Article 3) define key terms relevant to the whole of the Model Act. The savings clause on existing rights, privileges and immunities ensure this legislation will not negatively impact existing arrangements between international actors and the legislating state (Article 4).

See also:

IDRL Desk Study, especially Introduction, and Chapter 7, Summary and conclusions on existing frameworks.

Article 1 Short Title - Commentary

The long title – an Act for the Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance – reflects the title of the IDRL Guidelines and sets out the full scope and limitations of the subject matter. The short title is provided for ease of reference, a common practice in legislation.

Article 2 Purpose and Scope of the Act - Commentary

Article 2(a) provides for insertion of the relevant constitutional power on which the act is based – for countries where this is standard practice. It also reiterates that the legislating state (the potentially disaster-affected state) bears primary responsibility to manage disasters in its territory, and that international actors only assist as required. This is an important principle underpinning the IDRL Guidelines and other key international instruments, notably UN General Assembly Resolution 4/182 (1991).

Articles 2 (b) and **(c)** set out the overall scope of the Model Act. Four key points are:

- Firstly, the Model Act concerns the facilitation and regulation of **International Disaster Assistance**; it is not a blueprint for a national system of disaster management and it does not encompass regulation or coordination of national actors, except insofar as they have roles and responsibilities related to international assistance. As noted in the introduction to the Model Act, it is assumed that these issues are governed by existing disaster management legislation.
- Secondly, it concerns **Disaster Relief** and **Initial Recovery Assistance**, which are the early phases of response and recovery, and not longer-term recovery, reconstruction and

development. This is not because these later stages are regarded as less important, but because it is during the early stages that time is so crucial to providing effective assistance and that a special legal regime aimed at reducing delays is therefore justified.

- Thirdly, under the system of facilitation and regulation proposed in the Model Act, **Assisting Actors** have both responsibilities and the potential to receive special facilities to gain rapid entry for disaster personnel, relief goods and equipment, as well as the right to operate legally and effectively in-country. This is the crux of the problem addressed by the IDRL Guidelines and the Model Act – the need for special expedited procedures to ensure that the necessary international assistance can be provided in a timely manner, but also a mechanism for regulation and oversight over those providing International Disaster Assistance by means of a system of ‘eligibility’ for special facilities based on the quality and type of assistance they can provide.
- Finally, the Model Act proposes **Transit Facilities** for international disaster personnel, goods and equipment crossing the territory of the legislating state to provide disaster relief and initial recovery assistance in another country affected by disaster. Although the facilities – such as expedited procedures, and exemptions from customs duties or other taxes – are similar to many of those proposed for disaster assistance destined for the legislating state, the procedures for granting facilities are simplified in the case of transit.

Article 2(d) concerns the application of the act in relation to armed conflict. Consistent with the approach of the IDRL Guidelines, this section excludes application of the act to situations of armed conflict and to Disasters that occur in an area of the country affected by armed conflict.

This exclusion is needed because both the relevant international legal framework and the operational dynamics of international relief operations are very different as between “peacetime” disasters and war. International Humanitarian Law (also known as the law of armed conflict) applies in situations of armed conflict and in situations where conflict overlaps with a natural disaster. It imposes certain constraints on governments’ discretion to refuse and control outside humanitarian assistance that do not otherwise apply outside of the context of conflict. Moreover, conflict situations raise concerns different in type and degree concerning humanitarian independence, security and access. Accordingly, this section proposes that situations of armed conflict will be governed by IHL or by appropriate domestic law implementing the requirements of IHL, such as an act implementing the Geneva Conventions.

Note that the exclusion set out in Article 2(d) does not extend to situations of violence or strife not rising to the level of armed conflict. For guidance on how the term “armed conflict” is defined, see ‘How is the Term "Armed Conflict" Defined in International Humanitarian Law?’ International Committee of the Red Cross (ICRC), Opinion Paper, March 2008.

Article 3 Definitions - Commentary

Several of the definitions in article 3 are based on those included in the IDRL Guidelines. While most of the definitions in Article 3 are self-explanatory, the rationale behind some of them is further described below:

Assisting Actors

The Model Act uses the term **Assisting Actors** to refer to both Assisting International Actors and Assisting Domestic Actors responding to a Disaster in the legislating state. The reason for this is that Domestic Actors may also be involved in providing assistance from foreign sources and so require equal access to facilities relating to the entry of International Personnel, Goods and Equipment and related Transport. Accordingly, it is sometimes convenient to refer to both international and domestic actors together. However, there are also some aspects in which these two categories are treated differently in this Act, so individual definitions are also provided for Assisting International Actors and Assisting Domestic Actors.

Assisting International Actors include any and all organizations from outside the country that offer or provide disaster relief and/or initial recovery assistance if the legislating state is affected by disaster. These potentially include state and non-state entities, NGOs private businesses, United Nations system organizations, other international organizations, regional intergovernmental organizations and individuals. There are then certain distinctions made within this category of international actors, relating to their legal status, and so they also specifically include **Assisting States** as well as the **Foreign Components of the International Red Cross and Red Crescent Movement** and **Foreign Non-Governmental Organizations** (or Foreign NGOs).

Assisting Domestic Actors includes NGOs, private businesses and individuals. The main sub-category defined is that of Domestic Non-Governmental Organizations (or Domestic NGOs) to distinguish non-governmental actors which are not-for-profit organizations assisting in the domestic sphere, who may be entitled to **Legal Facilities** relating to International Disaster Assistance.

Eligibility for Legal Facilities

In the Model Act, the term **Legal Facilities** refers to special entitlements provided to some Assisting Actors during the International Disaster Relief and/or Initial Recovery Period, which are set out in Chapter VI of the Act. These are for the purpose of facilitating the entry of International Disaster Assistance provided by actors that the affected state has determined are most likely to provide assistance of reliable quality in line with humanitarian principles. Therefore, these facilities are made available only to **Eligible Actors**.

Both Assisting International Actors and Assisting Domestic Actors may become Eligible Actors, but the facilities for domestic actors are limited to those relating to the entry of International Personnel, Goods, Equipment and Transport. The facilities for international actors who are eligible also relate to questions of their legal capacity within the country, taxation, and currency exchange and transfer.

As described in Chapter V, some Assisting International Actors do not need to apply for eligibility because of their prior status. Instead, they may be deemed eligible. These are Assisting States, intergovernmental organizations (such as the United Nations and treaty-based regional organizations), and both the National Red Cross or Red Crescent Society and the Foreign Components of the International Red Cross and Red Crescent Movement (Article 21). All others, including both foreign and domestic NGOs and private businesses, may apply for eligibility (Article 22) - although experience and capacity are central factors and it is made explicit that private businesses may only be eligible for the facilities for their non-profit assistance.

The regime established by this act does not require Assisting International Actors to be eligible for the legal facilities before they can provide assistance. The affected state may allow entry to international actors who have not yet applied for eligibility or whose applications are pending, at its discretion, so that eligibility for legal facilities is not a prerequisite for entry and operation. It is only a prerequisite to receiving the Legal Facilities that provide for expedited entry procedures, tax-free importation/purchase for relief and recovery goods and equipment, recognition of legal personality, and the other facilities set out in Chapter VI.

Disaster

Where **Disaster** is already defined in a national disaster management law, it would generally be most desirable to use the same definition here to avoid confusion and contradictions. Where there is no such definition or it is unsuited to the purposes of this act, an alternative definition is proposed. It excludes armed conflict, because the legal framework for states during peacetime is very different from when they are on a war footing, and international humanitarian law applies (also known as the law of armed conflict). For this reason the application of the Act – Article 2(d) – also excludes armed conflict as well as assistance in disasters that occur in a part of a country affected by armed conflict.

International Disaster Relief Period and International Initial Recovery Period

The other two pivotal definitions concern the **International Disaster Relief Period** and the **International Initial Recovery Period**, sometimes referred to together in the act as the “International Disaster Relief and Initial Recovery Periods”. As is explained more fully in the Commentary on Chapter II, these are the defined periods during which the Legal Facilities are made available to Eligible Actors. These periods are intended to replace any reliance on declarations of disaster or emergency for the affected state to accept international disaster assistance, or to provide the legal facilities to facilitate such assistance. These two periods run concurrently but need not finish at the same time. Article 8 specifies that these periods both start automatically when the affected state issues a request for international disaster assistance pursuant to Article 6, or accepts an offer pursuant to Article 7. Each period is ended on a date announced in advance by the government of the affected state - in accordance with Article 9 for the International Disaster Relief Period, and in accordance with Article 10 for the International Initial Recovery Period.

Article 4 Existing Rights, Privileges and Immunities - Commentary

The intention of this Article is simply to ensure that new legislation based on the Model Act does not inadvertently nullify or amend the existing legal status of international assisting actors under the law of the legislating state. International actors may already be recognised by the legislating state in a number of ways. For example, Foreign NGOs may already have domestic legal status if they have registered to operate in the country under a law for international associations, or they may have a branch registered as a national association, and/or they may have entered a specific headquarters or other status agreement with the government that includes certain privileges, such as tax exemptions. UN system organizations will usually have specified privileges and immunities, including recognition of legal personality and tax exemptions, under the relevant international conventions (assuming the state is a party to one or both of the conventions on privileges and immunities relating to UN bodies and specialised agencies), and/or they may have negotiated a specific headquarters/status agreement if they have a regular presence in the country.

Other inter-governmental and regional organizations will also often have pre-existing status agreements. Foreign private businesses may have legally registered branches in the affected state so that, while they would still need to seek eligibility for the legal facilities in Chapter VI of the Model Act only in relation to their non-profit disaster assistance activities, they would not need to apply for temporary recognition of legal personality. It is important that these carefully considered prior agreements, including prior recognition of legal personality and tax exemptions for international humanitarian organizations, are not nullified or inadvertently altered by this new law. This article refers to not “limiting or restricting” those existing rights. It leaves open the possibility that, if this act provides facilities not otherwise covered by an organizations’ existing rights, they should be available to it if it complies with the requirements of this act.

Chapter II
Initiation and Termination of
International Disaster
Assistance
Commentary

Chapter II Commentary on Initiation and Termination of International Disaster Assistance

This Chapter includes:

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| Article 5 | Assessment of the Need for International Disaster Assistance |
| Article 6 | Requests for International Assistance |
| Article 7 | Offers of International Assistance |
| Article 8 | International Disaster Relief and Initial Recovery Periods |
| Article 9 | Termination of the International Disaster Relief Period |
| Article 10 | Termination of the International Initial Recovery Period |

Chapter II relates to the following sections of the IDRL Guidelines:

- 3 – Responsibilities of Affected States (especially 3.2 & 3.3);
- 8 – Legal, Policy and Institutional Frameworks (especially 8.2); and
- Part III – Initiation and Termination of International Disaster Relief and Initial Recovery Assistance – Chapters 10, 11 & 12.

Overview

Chapter II deals with the questions of how international disaster assistance is initiated and terminated by the legislating state if it is affected by a major disaster, and establishes the periods during which Assisting International Actors may receive special legal facilities.

At present the mechanism for determining need, making international requests, and accepting offers of assistance, varies considerably between countries. The delays and difficulties frequently experienced, as well as good practices, are documented in national case studies carried out by the IDRL programme of the IFRC, and in the IDRL Desk Study, Chapter 8. Delay in receiving humanitarian assistance is a central issue for the welfare of persons affected by sudden-onset disasters. Where the needs challenge national capacity, delays in an international appeal due to institutional confusion can have life or death consequences for many of those affected. In some countries, a national declaration of disaster or emergency has been required before the executive has been empowered to make an international appeal for assistance. Experience shows that such a requirement may lead to unnecessary delays in requesting assistance, not only because the mechanism itself may be slow to implement, but because governments are often reluctant to declare states of disaster or emergency for reasons entirely unrelated to the need for outside assistance. For example, such measures may be linked to suspending certain constitutional rights of citizens, and are therefore used with great caution. This model suggests, therefore, a separate decision-making process for a call for international assistance.

This chapter provides a model for the affected state to request and/or accept offers of international disaster assistance without the need to declare a state of emergency, disaster or calamity (Articles 5, 6 & 7). Instead, it uses the concepts of an International Disaster Relief Period and Initial Recovery Period, which are triggered in accordance with Article 8 – that is, when a request is made under Article 6 or an offer is accepted under Article 7. The commencement and termination of these designated periods for international relief and/or initial recovery is important for the schema of the Model Act, as special legal facilities for eligible assisting international actors (Ch.VI) are intended to operate during these periods. Although the International Disaster Relief and Initial Recovery Periods commence at the same time, they would rarely end at the same time. Hence, this chapter provides separate mechanisms for termination of each of these periods by the affected state (Articles 9 & 10).

See also: IDRL Desk Study, Chapter 8.

Article 5 Assessment of the Need for International Disaster Assistance - Commentary

Article 5(a) leaves it open to affected states to conduct their own estimates or initial assessments or, if they wish, to obtain such analysis from international actors who specialise in rapid initial assessments. The Model Act is not prescriptive on that question. However, whichever mechanism is chosen, the process needs to be clarified in regulations made under this Act, to ensure there is no confusion or delay as to what triggers such an assessment/estimate, who conducts it, and how the relevant disaster management authority obtains this data in a timely manner. (See: IDRL Guideline 10.1 concerning joint needs assessments with the UN and other assisting humanitarian organizations).

Many countries that have specific disaster management legislation have nominated a focal point agency, such as a national disaster management authority, to ensure that overall needs assessments are made and updated when a disaster occurs or commences. However, not all of these legislative arrangements have specific provisions concerning assessment of the need for international assistance. One example where this is well integrated is Indonesia, where the role of the National Disaster Management Agency - BNPB - includes ensuring there is a “quick and appropriate study on location, damage, losses, and resources”, (Arts. 48-49, Law No. 24; Articles 21(1)(a) and 22 of Regulation No. 21). Moreover, in the more recently adopted Indonesian Guideline on the Role of the International Organizations and Foreign Non-Government Organizations during Emergency Response, 2011 (informal translation), the BNPB is assigned responsibility for conducting a ‘rapid assessment’ as the basis for a ‘formal statement from the Government on the acceptance of international assistance’ (Ch.II(2)(b); Ch.III,A). In Guyana, also, there is clear responsibility for needs assessment, allocated to the National Damage Assessment Team (NDAT) which is charged with estimating ‘the additional support required from local, national and international sources for relief and recovery...’ (5.3(d), Damage Assessment and Needs Analysis Plan, 2010).

Affected States may also wish to request the support of specialised rapid response teams, such as the United Nations Assessment and Coordination (UNDAC) teams managed by the UN Office for the Coordination of Humanitarian Affairs (OCHA) to assist them in evaluating needs and in making a decision on whether or not to request international assistance, and if so, what type of assistance to request. If this is preferred, such a process can also be incorporated into disaster management regulations as either the first form of assessment, or as an additional support system. An example of the latter case is found in New Zealand law, where the ‘National Civil Defence Emergency Management Plan 2005’ (a formal plan made under the Civil Defence Emergency Management Act 2002, Rep. 1 Oct 2008), has provisions allowing the emergency management authorities to call on OCHA for international response assistance for New Zealand in a major disaster of national significance (Plan clauses 70-83, especially 82(3)).

Article 5(b) assumes the Executive has the power to request international assistance without declaring a national emergency/disaster, on the advice of the national disaster management agency – or that if it does not already have such authority, then this Act will give the Executive the power to initiate international assistance as described therein.

The most important aspect of the proposal in the Model Act, is that it envisages a rapid two-step process where needs are assessed, then one person or body has the authority to make an international request if required, without the need to declare a national disaster or emergency. In Haiti, for example, one of the tasks of the Office of Civil Protection and the Organisation for Disaster Preparedness Response during a disaster is to evaluate the extent of damages and the priority needs and present a report to the National Committee for Risk and Disaster Management (CNGRD) together with the appropriate recommendations. This report should include a specific list of the support that needs to be requested from the international community, so it is thus tied in with the process of making requests (National Disaster Management Plan, 2001). Also, in Greece, the General Secretariat for Civil Protection is

responsible for making external requests for international assistance, after first receiving these requests from the relevant national agencies, who apparently make their own needs assessments, a process that does not appear to prioritise rapid assessment (Law 3536/2006 Art.27 para. 2).

The “**Alternative Article 5(b)**” refers to a ‘high level committee on national disaster management’. This is proposed because a number of states already have national committees with a key role in national disaster management oversight, as mentioned in the previous examples. The head of state or deputy head of state often chairs these committees, and their members are generally the ministers of the key ministries relevant to disaster management. In some states, it may be deemed more appropriate for this committee to have the primary role in deciding whether international assistance is required. However, given the usual urgency of such situations, a requirement for a committee’s approval could cause delay, so the procedure should take this into account.

Article 5(c) is a mechanism for developing a list of the humanitarian goods and services required by the affected state to manage the specific disaster response, to be shared with potential assisting international actors as described in Article 6. This process helps to ensure all essential requirements are met, and to avoid duplication of effort or the sending of unwanted or inappropriate items.

Article 5(d) reflects that fact that initial determinations of need often evolve very significantly over time. Relevant officials should be prepared to revise a decision not to seek outside help if evolving information justifies it). For example, during the response to the October 2011 earthquake near Van in eastern Turkey, the Government initially indicated it did not require international assistance for search and rescue operations or food items. The Government’s needs assessment at that stage indicated the disaster response was within national capacity, although the Government also chose to make bilateral requests and/or accept offers for specific items from some other states. However, as the situation evolved and it became apparent how many people were displaced from their homes – many whose homes were less damaged but to which they feared returning during continued aftershocks - the Turkish Government made a general request for certain non-food items, including winter-proofed tents. (‘Turkey Earthquake Information Bulletin n° 2’, IFRC, GLIDE n° EQ-2011-000162-TUR, 24 Oct. 2011; ‘Turkey’s post-quake relief races against winter’, Reuters, 29 Oct. 2011, <http://www.reuters.com>).

Article 6 Requests for International Disaster Assistance - Commentary

As noted in the commentary to Article 5, a number of existing disaster management laws provide for assessments, followed by specific requests for International Disaster Assistance if required. Some allow considerable discretion to an Executive authority in making international appeals or requests. For example, in Tunisia, foreign assistance can be requested in very serious situations which exceed national capabilities, as recommended by the disaster management authorities, and decided and implemented by the government through the diplomatic channels of the Ministry of Foreign Affairs (Tunisia National Report, Civil Protection Strategy 2004). In the Maldives the Government is authorised to appeal for ‘international humanitarian assistance’ with the consent of the Council, thus allowing the executive to initiate such assistance (Disaster Management Act 2006). While others may delegate the role of international requests to the disaster management authority, such as in Burkina Faso, where the National Council of Emergency Relief and Rehabilitation (CONASUR) is tasked with making international appeals (Article 11, Decree no 2009/601).

Likewise, **Article 6(a)** allows the relevant senior member of the Executive to make a determination on the basis of technical advice from the relevant disaster agency. It also makes a distinction between a general appeal for international assistance and a specific appeal to particular actors. This distinction will become important with respect to whether non-state international actors are expected to make offers pursuant to art. 7(d).

Article 6(a) does not require the declaration of a state of emergency or state of disaster before international assistance must be sought. Many existing laws, such as those of Indonesia, the Philippines, Guatemala and Trinidad and Tobago, require such a declaration. However, since these types of declarations have legal and political impacts well beyond international assistance, they can sometimes lead to significant hesitation.

While requests for International Disaster Assistance should be based on rapid needs assessments, and while for domestic purposes a factual declaration needs to be made at the appropriate level of government, there is no operational necessity to tie the initiation of international assistance to an order imposing a general emergency regime. Thus 6(a) merely requires that the President or Prime Minister base his/her decision upon relevant technical advice that international assistance is in fact necessary.

Article 6(b) provides for a steps to encourage the most helpful offers of assistance. The list mentioned in Art. 5 can steer assisting international actors in the right direction. However, a request for assistance should not be put off if making such a list is likely to take too much time.

Article 6(c) makes clear that the disaster assistance appeals process within the International Red Cross and Red Crescent Movement is independent from government requests, according to a process that has been approved by states. State parties to the Geneva Conventions and National Societies have approved the 'Principles and Rules for Red Cross and Red Crescent Disaster Relief' (<http://www.ifrc.org/docs/idrl/I280EN.pdf>) at the International Conference of the Red Cross and Red Crescent. Originally adopted in 1969, these Principles have been amended five times, most recently at the 1995 International Conference. Consistent with the Movement's Principle of Universality (i.e. that the Movement is global and interconnected), they provide (Rule 14) that a National Society of a stricken country may direct a request for international disaster assistance to the International Federation of Red Cross and Red Crescent Societies, and the Federation may then launch an appeal to all National Societies (no appeal will be launched without a request from the National Society). The Federation may also take the initiative to offer assistance even though the National Society has not asked for it. This process is linked to assisting the National Society of the affected state to carry out its own humanitarian mission and is therefore independent of any requests for international assistance by the affected state.

Article 7 Offers of International Assistance - Commentary

Article 7 concerns when formal offers must be made and accepted. The general rule – as stated in **7(a)** - is that International Disaster Assistance is only provided after an offer is accepted by the legislating State, but there are exceptions. The rule holds for states and intergovernmental organizations **7(b) & (c)** regardless of whether there has been a general request by the affected country or a specifically directed request to the other state or intergovernmental organization under Article 6(a), or whether they have made an unsolicited offer of assistance – **7(e)**. Article 7 distinguishes between those actors who would normally relate to the affected state through diplomatic channels – that is, other states (including their militaries) and intergovernmental organizations (including the UN) – and non-governmental actors. In most cases the states and intergovernmental organizations would make offers through the Ministry of Foreign affairs.

The offer-and-acceptance rule also holds for other Assisting International Actors except when there has been a general request for assistance under Article 6(a). Where there has been a general request, the non-state Assisting International Actors are exempt from making formal offers - **7(d)** - but must still comply with the terms of any request and give notice of their intended assistance. This is based on the existing practice in modern disaster operations. Whereas formal offers have been expected from states and inter-governmental organizations, since their formal entry onto national territory implicates sovereignty, Foreign NGOs and other non-state entities have generally been regulated differently. They are not generally expected to follow the diplomatic protocols of foreign or international state-based organizations, and any

such requirement would impose an unwieldy obligation on both the receiving state and the Assisting International Actors.

Also based on practical experience, the Model Act does not require the affected state to make a call for international assistance before offers are made. Article **7(e)** is the mechanism for an affected state to consider unsolicited offers of disaster assistance – that is, without making either a general or specific request pursuant to Article 6(a). The relevant disaster management authority determines acceptance of all offers, either in whole or in part, with the appropriate level of urgency - **7(f)**. When such unsolicited offers are accepted, the International Disaster Relief and International Initial Recovery Period commences, pursuant to Article 8.

The other exception to the offer-and-acceptance rule is that Foreign Components of the International Red Cross and Red Crescent Movement may direct offers of support to the National Red Cross or Red Crescent Society at any time - **7(g)** – and the National Society must then notify the disaster authority of any such offers they accept. The intention is that any such assistance from Foreign Components of the International Red Cross and Red Crescent Movement will also trigger the International Disaster Relief Period and the International Initial Recovery Period (if not already commenced) and will thus be made under the Chapter VI Legal Facilities, for which they are already deemed eligible under Article 21. Model Act **Article 7(c)** concerns foreign assistance through military actors, which may be provided as a form of disaster assistance by agreement between an affected state and an assisting state. It is useful for states to have guidelines in place as part of disaster preparedness, so that satisfactory terms for the acceptance of assistance through foreign states' military actors can be concluded rapidly. Such agreements may take the form of bilateral Status of Forces Agreements (SOFAs), or they may not involve troops at all, but only air support, or logistics, or communications services, for example. They can take a range of forms, from treaties ratified by the legislature to relatively informal agreements entered by the Executive, depending on other aspects of the two countries' bilateral relationship. Given the national security implications of such agreements, they would normally require high-level governmental approval, which may require some time. For example, some national constitutions prohibit the Executive government from inviting foreign military forces, and require the legislature's approval. Therefore, states might consider developing appropriate guidelines or regulations for accepting disaster assistance by foreign states through military actors, either under this Act, or under other relevant legislation. This could involve both the national disaster management authority and the ministry of defence. A resource for states on this question is the "Oslo Guidelines" - the Guidelines on the Use of Foreign Military and Civil Defence Assets in Disaster Relief, (Rev 1 2006, Rev 1.1 Nov 2007, OCHA), which also includes, as an annex, a model agreement along these lines.

Although there is some flexibility, these offer-and-acceptance measures are intended to reduce congestion at the borders due to an influx of material assistance that is not required and cannot be used. Some states and humanitarian appeals encourage private businesses (and individuals) to make financial contributions rather than making in-kind donations or providing direct assistance, and this Article in no way affects such donations. The IDRL Guidelines provide that states should actively encourage private donors to 'make financial donations where possible or otherwise donate only those types of goods expressly requested by the affected state' (guideline 5.2). However, in many major disasters, well-meaning private operators have sent or arrived with forms of assistance that could not be used, and/or with inexperienced or unequipped personnel. In numerous cases they have inadvertently blocked the entry of the assistance and experienced personnel that were really needed, or used resources such as wharf and warehousing space, or means of transport, which could have been better utilised.

States currently have a variety of ways to accept offers of International Disaster Assistance. Speed in processing offers is clearly essential for timely relief. In Greece, although the requests are made by the General Secretariat for Civil Protection (through the EU or NATO), offers are received and processed by the Centre of Operations for Civil Protection, which could potentially speed this process, although the next step of forwarding the offers to relevant national

authorities to decide on acceptance could slow the process, depending on the communication mechanism used and whether there are strict timelines imposed by regulation (Law 3536/2006 Art.27).

During consultations towards preparation of the Model Act, a concern raised was that a system relying primarily on offers - and their acceptance by the affected state - would not cater for situations where the disaster has severely affected the functioning of government institutions, making it impossible or impractical for the affected state to process offers. An example frequently cited was the Haiti 2010 earthquake. However, it is very difficult for a country to legislate for this situation without relinquishing its sovereign right to control its borders, and these cases are the exception rather than the rule, so no 'deemed acceptance' clause is proposed in the Model Act. It is noted, however, that the UN does have an accountable system in place which can deal with such situations, and legislating states can choose to adopt this as part of their laws, regulations or plans.

OCHA has a special mandate to assist in the coordination of international assistance based on UN General Assembly Resolution 46/182, which strengthened the United Nations' international response to both complex emergencies and natural disasters and created the high-level position of Emergency Relief Coordinator as the single United Nations focal point for complex emergencies, as well as for natural disasters. It provides that, if there is a need for externally coordinated emergency assistance, the government of the affected state may inform the Emergency Relief Coordinator and the UN representative in the country.

Under the direction of the Emergency Relief Coordinator, OCHA has a general coordination role and can also mobilise specific mechanisms, including: the United Nations Disaster Assessment and Coordination (UNDAC) teams, which are stand-by teams of disaster management professionals; the International Search and Rescue Advisory Group (INSARAG), which deals with urban search and rescue (USAR) and related disaster response issues; the Virtual On Site Operations Coordination Centre, which provides an Internet tool to facilitate the information exchange between responding governments and organisations involved during an emergency; and surge capacity available through OCHA, which provides a mechanism to rapidly deploy international resources to emergencies with the aim of supporting the co-ordination function in the field.

Article 8 International Disaster Relief and Initial Recovery Periods - Commentary

Article 8 describes the trigger for the commencement of the International Disaster Relief and International Initial Recovery Period. These triggers are a request by the affected state in accordance with Article 6(a) or acceptance of an unsolicited offer or offers under Articles 7(e) or 7(g).

Many states rely on 'state of emergency' laws that are not well adapted to the regulation of international relief, as they tend to have onerous procedural requirements and to run for very short periods, since they may suspend certain constitutional rights. Because of the seriousness of declaring a state of emergency, many states are hesitant to do so, and this may delay the entry of much-needed international assistance. As an alternative, Chapter II of the Model Act proposes this system of declaring relief and initial recovery periods which are solely for the purpose of facilitating international assistance, and do not have the other legal consequences and therefore do not need to be of such short duration. These provisions aim to give governments the authority to do this.

That the two periods start at the same time is consistent with the current understanding in the disaster management community that steps for initial recovery must already be in mind from the very beginning of an operation.

Article 9 Termination of the International Disaster Relief Period - Commentary

Article 9 provides for the termination of the international disaster relief period only, without affecting the continuation of the international initial recovery period.

Governments are often submitted to substantial political pressure to declare that an emergency period is over and that recovery has begun. In the face of this pressure, they have sometimes reverted quite suddenly from a regime of very little regulation over Assisting International Actors to the imposition of all “everyday” rules, which remain too onerous for an initial recovery operation. By separating the termination of the International Disaster Relief Period from that of the International Initial Recovery Period, the Model Act allows governments to more gradually bring the various rules back to their non-disaster state.

This article provides for an orderly winding up of disaster relief activities, by providing for a minimum of period of public notice of termination (45 days is suggested as one possibility) of the international disaster relief period. At the same time, Article 9 also requires the government to provide information on ongoing needs in the continuing international initial recovery period. Procedures for implementation of this article could form part of regulations made under this act and these could include, for example, a standard form for publicizing the termination of the international disaster relief period in the government gazette or similar official electronic publication.

Article 10 Termination of the International Initial Recovery Period - Commentary

Article 10 provides for the termination of the International Initial Recovery Period only. It is presumed this would normally run longer than the international disaster relief period, although the two periods start at the same time under Article 8. Article 10 provides a notice period for the termination of the initial recovery period (90 days is suggested as a possibility). This period is longer than the one proposed for the termination of the International Disaster Relief Period because recovery activities are more long-term and programmatic in nature, and may therefore require longer to phase out, or, where possible, to hand over to the affected communities. As suggested for Article 9, procedures and a standard form for implementation of this article could be included in regulations made under this act.

Chapter III
Coordination and
Preparedness for
International Disaster
Assistance
Commentary

Chapter III Commentary on Coordination and Preparedness for International Disaster Assistance

This Chapter includes:

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| Article 11 | Coordination Duties and Powers of the Focal Point Agency |
| Article 12 | Taskforce on International Disaster Assistance Preparedness |
| Article 13 | Single Window International Facilitation Teams (SWIFTs) |
| Article 14 | Operational Coordination of assisting International Actors |
| Article 15 | Limited Exemption from Privacy of Personal Data |

Chapter III relates to the following sections of the IDRL Guidelines:

- 3 – Responsibilities of Affected States
- 8 – Legal, Policy and Institutional Frameworks (generally)
- 23 – Extended hours

Overview

Chapter III concerns coordination of international assistance by the affected state. It is separable from the general scheme of the Act, in that states that already have a strong institutional structure for disaster management may prefer to adapt their existing structures rather than establishing new ones for international assistance. In any case, care will need to be taken to ensure that any new structures or roles created pursuant to this Chapter are well integrated with those existing structures.

Regardless of the structure chosen, the following key notions from this chapter should be somehow addressed:

- Clear designation of a focal point agency for coordinating international assistance;
- Encouragement of pre-disaster meetings of relevant ministries and departments to ensure a clear understanding of roles and responsibilities;
- The integration of preparedness for international assistance in contingency planning, manuals, etc.; and
- Clear institutional mechanisms for speedy resolution of potential administrative hurdles to incoming assistance.

This Chapter also provides for a limited exemption from disclosure of personal data for the purpose of avoiding serious harm and to assist in family reunification. This Article could, alternatively, be used to amend privacy of information laws and/or freedom of information laws, as required.

See also: IDRL Desk Study: Chapter 6, National Law; and Chapter 14, Coordination.

Article 11 Coordination Duties and Powers of the Focal Point Agency - Commentary

Article 11, and indeed the Model Act as a whole, assumes that a national disaster management agency or mechanism has previously been established under another law, which would set out its general structure and functions. These provisions relate only to that agency's role in relation to Assisting International Actors and International Disaster Assistance. Alternatively, states may wish to include the powers and responsibilities set out in the Model Act for a national disaster management authority, into the legislation that establishes and governs that authority.

Article 11(a) designates the relevant disaster management authority as the clear focal point agency for both individual Assisting International Actors (especially Foreign NGOs) and any international or regional coordination mechanisms, such as those of the United Nations (the UN Emergency Relief Coordinator, who is the focal point concerning UN emergency relief operations, or UN sectoral ‘clusters’ and mechanisms within the affected state such as Humanitarian Country Teams) and regional bodies such as ASEAN in South East Asia, the European Union, or specific disaster-related regional organizations such as the Coordination Centre for the Prevention of Natural Disasters in Central America (CEPREDENAC).¹ Coordination is distinct from offers and acceptance through diplomatic channels, so it involves all Assisting International Actors.

Article 11(b) also places an obligation on the focal point agency to ensure that all Assisting Actors and all government agencies are informed of their responsibilities and obligations in the act, and especially the procedures related to implementing the Chapter VI Legal Facilities.

Concerning **Articles 11(c) and 11(d)**, where there is already a national disaster management agency established under specific legislation, it might well have special powers of coordination or even coercion of government agencies – and sometimes private persons – concerning national actors. This section is specific to the support of Assisting International Actors, but there could still be overlap with national disaster management law, so that care will need to be taken in determining how the two relate, and whether it is necessary for a given state to include such a section in this proposed law. Moreover, federal states should consider whether these powers fit within the type of authority available to a national institution.

The other issue is that, sometimes, a national disaster management agency would not have either coordination or coercive powers unless there has also been a declaration under national law of a disaster or emergency. The Model Act is intended to operate whether or not such a declaration has been made, so that it may be useful to include this mechanism for that reason.

Some countries have already given legislative authority to a national disaster management agency to coordinate international assistance, or established a specific mechanism for this, for example: the national disaster management agency in Indonesia – the BPNB – as discussed above, has very clear powers to manage, direct and coordinate international assistance. Similarly, in Peru, the Regulation to Law 29664 creating a National Disaster Risk Management System (SINAGERD) 2011, provides that one of the functions of the National Institute of Civil Defence (INDECI) is the coordination of the participation of entities and agencies of national and international cooperation in the processes of preparedness, response and rehabilitation (Article 9(6)). Moreover, it has particular powers to coordinate the response and recovery operations in case of large-scale disasters when support from international assistance might be needed (Art. 43 (2) (c)). In Trinidad and Tobago, one of the key government responsibilities following a catastrophic earthquake is to establish a Humanitarian Operations Centre (HOC) for the ‘systematic and efficient management of regional and international aid that may be received’ (Section 5.3, Trinidad and Tobago National Earthquake Plan 2011).

Other countries’ national focal point agencies have broadly worded powers that can include international assistance. For example, the National Crisis Commission in Cameroon (Clause 4, Decree No. 98/31) has broad powers of coordination which include international actors, which could be made more specific in line with the Model Act and IDRL Guidelines. And in Tunisia the National Office for Civil Protection – ONPC – has broad powers for disaster assistance and coordination which includes International Disaster Assistance (Law 121-93), as does the Permanent National Commission within the Tunisian Ministry of the Interior (Law 91-39, Decree 942).

¹ For the Spanish Translation: *Centro de Coordinación para la Prevención de los Desastres Naturales en América Central*

Many other countries do have focal point agencies for national coordination which do not have specific powers regarding coordination of international actors, but which could be adapted to this role through legislative amendment and additional resources. Examples of such potentially adaptable institutions include: the National Council of Emergency Relief and Recovery - CONASUR - in Burkina Faso (Decree no 2009/601), the proposed National Disaster Management Agency in The Gambia (National Disaster Management Bill 2008); the disaster management teams established under the Lesotho Disaster Management Act 1997; Sri Lanka's National Council for Disaster Management - NCDM (Disaster Management Act, No. 13 of 2005).

Article 12 Taskforce on International Disaster Assistance Preparedness - Commentary

Article 12 proposes a Taskforce that is primarily concerned with preparedness for the facilitation of international disaster assistance, and is technical in nature rather than being a high-level policy body or an operational agency. The concept for such a taskforce originates in the similar bodies that a number of countries put in place on a temporary and ad hoc basis after the development of the IDRL Guidelines in 2007 to examine how their implementation would impact on different ministries and sectors. Governments that have used this model with success include Cambodia, Colombia, Peru, Kazakhstan, Namibia, Sierra Leone and Uganda, among others.

The membership of the proposed taskforce would be made up of experts and technical or operational personnel from each of the relevant government ministries or agencies, as well as from the National Red Cross or Red Crescent Society, key civil society organizations and other experts and stakeholders. In countries with an established UN Humanitarian Country Team, states may wish to include the Humanitarian Coordinator or a representative as part of such a Taskforce. The idea for the Taskforce membership is to obtain the greatest cross-section of expertise and operational perspectives in its disaster-preparedness role, rather than to act as a representative body on a political level.

The National Red Cross or Red Crescent Society is proposed as a standing member because National Societies have a legally defined role to support the public authorities in their own countries as independent auxiliaries to the government in the humanitarian field. This role has been approved by states through their adoption of the Statutes of the Red Cross and Red Crescent Movement, and in particular Resolution 2 of the 30th International Conference of the Red Cross and Red Crescent (gathering the state parties to the Geneva Conventions and the components of the International Red Cross and Red Crescent Movement) which reiterated this role, in 2007.

Article 12 provides an extensive (but not exhaustive) list of tasks and responsibilities for the Taskforce, which span a number of areas of expertise, including administrative, procedural and legal matters, as well as assessment criteria for international actors' eligibility for legal facilities, and quality standards for humanitarian assistance. States might decide instead to assign some or all of these functions to their national disaster management agency.

It should be noted that the main role of this Taskforce is one of disaster preparedness, so that the various functions allocated to it are intended to be done or maintained on a regular basis, not primarily in the aftermath of a disaster.

Article 13 Single Window International Facilitation Teams (SWIFTs) - Commentary

Article 13 proposes an institutional mechanism to expedite processing of assisting international actors and/or their relief goods and equipment in cases of large-scale disaster. It is certainly not the only way this could be done, and existing disaster management authorities or national committees may already have other procedures to achieve the same purpose.

The Single Window International Facilitation Teams (SWIFTS) concept was inspired by a mechanism used very effectively in Central America, for example, in Guatemala in 2005 during the international response to Tropical Storm Stan. This was in turn adapted from the Regional

Manual of Procedures for Foreign Ministries in Cases of Disaster prepared by CEPREDENAC. Under this system, Guatemala's national coordinator for disaster response, CONRED, established an inter-ministerial mechanism under the title of Centre for the Coordination of Humanitarian Assistance, (CCAH).² This was then the source of inter-departmental teams which operated around the clock at the major ports and airports. They had authority to provide rapid (provisional) customs clearance for relief goods and equipment and entry of international humanitarian personnel. In Guatemala these were called CCAH teams. But the drafters of the Model Act felt this title had the potential to be confusing as to the overall coordination role of a national disaster management authority, the facilitation role of an inter-ministerial taskforce on the entry of international assistance, and the operational role of the border control teams.

Another similar structure is employed in Indonesia, under the 'Guideline on the Role of the International Organizations and Foreign Non-Government Organizations during Emergency Response, 2011' (Ch.II,A(2)(e)(2)), whereby 'Supporting Posts' are established at each entry point for international assistance, which include representatives from thirteen different government ministries. Their responsibilities include: registering 'international agencies and foreign non-government organizations'; managing permits, immigration, excise, security clearances for personnel and equipment, as well as quarantine; operating the centre for logistics and equipment prior to distribution; issuing identity cards to Personnel; and registering exits from the disaster-affected area (both International Personnel and Goods being re-exported).

Article 14 Operational Coordination of Assisting International Actors - Commentary

Article 14 sets out the basic elements required for operational coordination of international assistance, including at the national, regional/provincial and local level of the affected state. It places obligations on domestic government authorities at all levels – **Articles 14(a) & (c)** – and on Assisting International Actors – **Article 14(b) & (d)** – to coordinate with each other. Federal states may need to consider if provincial and municipal authorities may legally be tasked in this way in their systems.

The Article also requires Assisting International Actors to cooperate with international or regional mechanisms for coordination that have been specifically approved by the affected state for the particular disaster operation – **14(d)**. This may include coordination with the relevant national disaster management authority, with military actors, or with UN structures, as determined by the government of the affected state. Especially relevant UN structures include the Emergency Relief Coordinator / OCHA, the a Humanitarian Country Team, On-Site Coordination Operations Center (OSOCC) and may also include "Clusters".

A number of countries have clearly allocated powers for the coordination, and in many cases the direction, of international actors. In Pakistan, for example, the National Disaster Management System Act (2010) provides that the federal Government may take measures with regard to coordination with the UN agencies, international organizations and governments of foreign countries for the purposes of that Act (Article 23 (d)). Under Pakistan's National Disaster Management Ordinance 2007 - the NDMO – which establishes the National Disaster Management Commission, a National Disaster Management Authority (NDMA) as well as Provincial and District Authorities - Federal Government is also clearly responsible for the coordination of non-governmental organisations with regard to disaster management.

Article 15 Limited Exemption from Privacy of Personal Data - Commentary

This limited exemption from disclosure of personal data is for the purpose of avoiding serious harm and to assist in family reunification. The Article would be necessary where existing law of privacy would otherwise constrain the sharing of information in these circumstances. The proposed language might, alternatively, be used to amend privacy of information laws and/or

²For the Spanish translation: *Centro de Coordinación de Ayuda y Asistencia Humanitaria*.

freedom of information laws, as required. Federal states may need to consider whether any provincial or local level privacy laws may be altered in this way.

The reason the article is proposed is that, sometimes, legislation intended to protect the personal information of residents can become a barrier to providing such essential information. For example, efforts to confirm the safety of disabled people following the Great East Japan Earthquake of 11 March 2011 were allegedly limited by the application of the Personal Information Protection Law. A survey of 33 relevant municipalities in Japan, conducted by the newspaper The Yomiuri Shimbun, indicated that of the three prefectures and eight municipalities which said they received requests for information on their disabled population, only one prefecture and one municipality handed over the information to recognised Japanese organizations with a mandate to support disabled persons. (Source: Daily Yomiuri Online, 5 June 2011: <http://www.yomiuri.co.jp/dy/national/T110604003223.htm>).

Chapter IV
General Responsibilities of
Assisting Actors
Commentary

Chapter IV General Responsibilities of Assisting Actors – Commentary

Chapter IV includes the following:

- Article 16 Principles of International Disaster Assistance
- Article 17 Respect for the Dignity of Persons Affected by Disaster
- Article 18 Quality of Goods and Services
- Article 19 Disposal of Unusable Goods or Non-functioning Equipment

Chapter IV relates to the following sections of the IDRL Guidelines:

4 – Responsibilities of Assisting Actors

Overview

Chapter IV concerns the responsibilities of assisting international actors to work according to humanitarian principles and to meet reasonable standards of quality and accountability while working with disaster-affected communities. These brief provisions summarise the key responsibilities of all assisting actors, but in addition they set out the minimum requirements for assisting international actors to become eligible for the Chapter VI Legal Facilities, and to retain those privileges.

The Chapter IV responsibilities apply to all Assisting Actors, whether organisations or individuals, government or non-government. It is intended to indicate the minimum requirements, with the implication that actors who do not wish to comply with these provisions may not be allowed to operate or to continue operations within the affected state (as provided in Article 57). For Assisting International Actors who become eligible under Ch. V for the special legal facilities in Ch.VI, the responsibilities set out here also serve as a minimum requirement for the retention of those facilities. In this sense, Ch. IV is the other side of the implicit ‘contract’ between the affected state and Eligible Actors. Non-compliance can result in termination of the facilities, as also provided by Article 57.

Many specific international standards give concrete expression to the principles and concepts incorporated into Chapter IV being concerned with the way humanitarian actors conduct themselves regarding the rights of the affected populations. The most widely-used of these by international humanitarian actors are the ‘Code of Conduct for the International Red Cross and Red Crescent Movement and NGOs in Disaster Relief’ (<http://www.ifrc.org/en/publications-and-reports/code-of-conduct/>) and the Sphere Project’s Humanitarian Charter and Minimum Standards in Disaster Relief (<http://www.sphereproject.org/>). Because of the very wide acceptance of the Sphere Standards by the international humanitarian community, they are proposed as the minimum quality standard for Assisting International Actors in Article 18.

Article 19 concerning disposal of waste, in particular unusable or inoperable equipment (such as vehicles that have been involved in traffic accidents), is a new type of provision inserted in response to concerns voiced during consultations for this Model Act.

See also: IDRL Desk Study, Part III, Chapter 13, Quality and accountability, and Chapter 14, Coordination.

Article 16 Principles of International Disaster Assistance - Commentary

Article 16(a) summarizes briefly key humanitarian principles that represent a broad international consensus amongst humanitarian actors. In this Article, they are made part of the responsibilities of Assisting Actors, and also part of the criteria for such actors to gain (and retain) eligibility for the Chapter VI facilities.

Article 16(a) refers to 'humanity' and 'impartiality' as central humanitarian principles. Principles for humanitarian assistance are already included in major international instruments, such as United Nations General Assembly Resolution 46/182.. The principle of 'neutrality', which is central to the work of the International Red Cross and Red Crescent Movement, is not explicitly mentioned as a requirement in Article 16, as it is not accepted by all humanitarian actors. However, the text of Article **16(a)(ii)** provides that Assisting International Actors must not 'seek to further a particular political or religious standpoint or interfere in internal matters irrelevant to the disaster response.' Also, the concept of independence for non-government actors as described in **Article 16(b)** is widely accepted, and there is strong consensus that 'humanity' and 'impartiality' are essential, for example in the Sphere Humanitarian Charter (see Article 18 Commentary).

The concept of 'impartiality' does not mean that everyone must be assisted in exactly the same way or to the same extent, only that they should be offered assistance on the basis of need, without adverse discrimination based on their status (e.g. race, gender etc.). It reflects the wider principle of non-discrimination, which also means that adverse distinctions should not be made on the basis of a person's status, while also permitting positive action to remedy existing social or economic disadvantage. In the context of disasters, while needs assessments and relief must consider the differential impact of disaster within the affected population, as some persons may be more vulnerable to the effects of disaster (for example, children, people with disabilities, the elderly, and in some cases women as a group), Assisting Actors are required to provide relief according to the principles of humanity and impartiality, based only on the needs of the affected persons.

A number of existing disaster management laws and policies already make some reference to humanitarian principles. For example, The Philippines Disaster Risk Management Act of 2010 declares it a "policy of the state" to "adhere to and adopt the universal norms, principles, and standards of humanitarian assistance and the global effort on risk reduction as concrete expression of the country's commitment to overcome human sufferings due to recurring disasters" (art. 2). Likewise, Panama's Manual on Procedures for the Foreign Ministry in the Case of Disasters requires that international assistance must "not be conditioned on race, creed or nationality of beneficiaries, must respect local culture and customs and must recognize disaster victims as dignified human beings and not as an object of charity" (sec. 4).

Article 17 Respect for the Dignity of Persons Affected by Disaster - Commentary

Article 17 packages together the need for assisting international actors to respect the dignity of affected persons, and the closely related concept of consulting with the beneficiaries of assistance. Obviously consultation is sometimes not practicable in the emergency relief phase, but becomes more possible as the response and initial recovery periods continue. Empowerment of affected communities and individuals through having their voice heard as to their needs is a key aspect of human dignity in the context of disaster response. Use of the word 'dignity' recalls Article 1 of the Universal Declaration of Human Rights, 'All human beings are born free and equal in dignity and rights....' The organizational components of the quality standards cited under the commentary for Article 18 below, include guidance on consulting with beneficiaries in ways that are also consistent with the principles outlined in Article 16.

In many cases, existing national disaster management legislation already requires the State and other national actors to comply with human rights standards, and to work with the affected communities, so these requirements for international actors would bring them under a similar level of obligation. Two recently adopted laws with such provisions are those in the Philippines and Indonesia. The Philippine Disaster Risk Reduction and Management Act of 2010 commits the State, in s.2 (j) to 'Ensure that disaster risk reduction and climate change measures are gender responsive, sensitive to indigenous knowledge systems, and respectful of human rights'. The Law of the Republic of Indonesia No. 24 of 2007 Concerning Disaster Management in its specific regulation, the Government Regulation No. 23, 2008, on the participation of

International Agencies and Foreign Non-Governmental Organizations, provides for ‘The regulation of participation of international institutions and foreign non-governmental organizations’ in disaster management in Indonesia ‘... in accordance with the prevailing international and national laws including the law of human rights and humanity.’ The more recent ‘Guideline on the Role of the International Organizations and Foreign Non-Government Organizations during Emergency Response’ 2011 of Indonesia sets out principles concerning meeting the different needs of men and women, caring for vulnerable groups and in particular respecting and protecting the ‘dignity and rights’ of affected persons (Ch.I, F).

Article 18 Quality of Goods and Services - Commentary

Article 18 requires Assisting Actors to abide by minimum standards of quality with respect to the Goods and Services they provide. This article makes it clear that the mere fact of an emergency does not excuse the provision of “just anything” in response to human needs. Within the constraints of the circumstances, Assisting Actors are expected to meet certain standards.

Article 18(a)’s requirement that Goods and Services be appropriate to the real needs of beneficiaries and abide by national law may seem simply to articulate basic common sense, but this notion has been neglected surprisingly often (usually by inexperienced international responders) in past disaster operations.

Article 18(b) provides a much more specific set of obligations by incorporating the Sphere Project Minimum Standards in Disaster Response (“Sphere Standards”) by reference. Since they were first developed in 1997 together with the Sphere Humanitarian Charter (setting out a statement of the rights of affected persons and general engagements by humanitarian actors), the Sphere Standards have come to be among the best known, most wide-ranging and most widely disseminated standards of humanitarian quality. They have been updated and refined twice, most recently in 2011, drawing on the views and expertise of thousands of experts from numerous countries around the world. They are detailed and specific as to a range of common activities in relief and recovery settings. For this reason, a number of participants in the consultation on this Model Act recommended that states take advantage of Sphere rather than “reinventing the wheel” by creating entirely new detailed standards for disaster response Goods and Services.

Moreover, some states have already begun to make use of the Sphere Standards. For example, Guatemala’s national disaster coordination agency, CONRED, formally adopted the Sphere Project standards, requiring that all requests for assistance address the Sphere Standards. Likewise, in 2009, the Ekurhuleni Metropolitan Municipality in Gauteng Province of South Africa accepted the Sphere Standards as the Council Policy that would guide the implementation of humanitarian assistance in any emergencies.” Donors, such as USAID and ECHO also refer to reporting on Sphere compliance among the requirements for their grantmaking process.

However, the Sphere Standards were not originally designed as a binding set of rules and were rather intended to be used with significant flexibility. As they note at page 8, “conforming with Sphere does not mean meeting all the standards and indicators. The degree to which agencies can meet standards will depend on a range of factors, some of which are outside their control.”

Accordingly, Article 18(b) requires not a literal compliance with each individual standard listed in Sphere (and even less with each individual “key indicator” or “key activity” Sphere includes) but rather a best efforts standard. In other words, Assisting Actors are responsible to try to conform to Sphere “in light of all the circumstances”. They would be judged (for the purpose of their minimum legal responsibilities under this act) on whether they have made a serious attempt to conform rather than actually achieving conformance. This is quite important because, pursuant to Article 57, legal consequences can flow under this act for the failure to meet the various responsibilities the act sets out.

Article 18(c) adds an additional caveat to compliance with Sphere. In some instances, it will not make sense even to try to conform to the Sphere standards. For example, as noted in Sphere

itself, “if the general living conditions of an affected population were significantly below the minimum standards before the disaster, agencies may have insufficient resources to meet the standards. In such situations, providing basic facilities for the entire affected population may be more important than reaching the minimum standards for only a proportion” (p.9). In such cases, Sphere calls on agencies to publicly report why and how they have decided not to try to reach the standards and to try to mitigate any harm.

Drawing on this concept, Article 18(c) provides that Assisting Actors may be excused from the best efforts standards in specific circumstances that justify a deviation, upon approval by the relevant disaster management authority. Those circumstances are not firmly defined here, but authorities would want to balance a measure of flexibility against the danger that an over-liberal use of the exception could swallow the rule of Article 18(b). Moreover, both the authorities and the Assisting Actor should be encouraged to work together to mitigate the harmful effect of the deviation. If advance approval is not sought under this provision, it is nevertheless recommended that any defense along these lines still be considered in the event of a procedure under Article 57.

The **Alternative 18(b) and (c)** (presented as a single article) is proposed for countries for which it would be uncomfortable or inappropriate to make direct reference to an externally developed standard. This alternative would simply provoke the relevant authorities to develop their own quality standards within a defined time (hopefully drawing on the lessons of Sphere). A similar path was taken in Indonesia, for example, Its 'Guideline on the Role of the International Organizations and Foreign Non-Government Organizations during Emergency Response, 2011' notes concerning the provision of basic needs that there is an Indonesian standard for these - issued by the Head of BNPB as Regulation Number 7 of 2008 on Procedures for the Provision of Basic Needs Assistance.

It should be emphasized that the Sphere Standards are not the only international standards relevant to disaster response. Among the many others are the International Search and Rescue Advisory Group Guidelines, Qualite Compas, the 2010 Humanitarian Accountability Partnership (HAP) Standard in Accountability and Quality Management, and the People in Aid codes on personnel and related matters. For those authorities designing their own standards, these sources may also prove useful as a reference.

Article 19 Disposal of Unusable Goods or Non-Functioning Equipment - Commentary

During consultations for the Model Act this issue was raised a number of times, both by NGOs and governmental actors, who regretted that some Assisting Actors sometimes do not currently take responsibility for the environmental, public health, financial and other consequences of the unusable goods and equipment they leave behind. While it is recognised that in a natural disaster situation affecting access and transport it will not always be possible to retrieve all such damaged equipment, Article 19 sets out the general obligation on Assisting Actors to either take their waste away with them or dispose of it safely and legally.

Chapter V
Eligibility for Legal Facilities
Commentary

Chapter V Commentary on Eligibility for Legal Facilities

This Chapter includes:

- Article 20 Provision of Legal Facilities to Eligible Actors
- Article 21 Deemed Eligibility for Legal Facilities for Certain Assisting
- Article 22 Application for Eligibility for Legal Facilities by Assisting Actors
- Article 23 Eligibility Determination and Certificates
- Article 24 Termination of Eligibility for Legal Facilities

Chapter V relates to the following sections of the IDRL Guidelines:

Part IV – Eligibility for Legal Facilities (13, 14, 15)

Overview

The number and type of actors involved in humanitarian response and initial recovery assistance has both increased and diversified in recent years, including many smaller NGOs, private businesses and individuals who do not have a history of such involvement. With so many different actors involved, there is also a great deal of variation in the standards and quality of their operations. However, when large numbers of international actors offer assistance, or arrive in the country to provide it, it is essential for the affected state that the most useful and relevant assistance has priority. The concept of having some actors eligible to receive Legal Facilities therefore has a dual purpose. Firstly it is designed to speed up the process for entry of international assistance overall. Secondly, it is intended to reduce the risk for the affected state that the personnel or assistance entering through the expedited procedures will be untrained, unprofessional or inappropriate, by ensuring that these facilities are made available only to actors judged by the affected state to be likely to have sufficient capacity, and to operate according to humanitarian principles and standards of quality. Eligibility for Legal Facilities pursuant to Chapter V is not a prerequisite to providing assistance within the affected state, but it is a prerequisite to accessing the Legal Facilities - or privileges - set out in Chapter VI.

Chapter V sets out the way in which Assisting Actors may be deemed eligible, or apply for eligibility, to receive the Legal Facilities in Chapter VI. As noted in Article 3, the term Legal Facilities refers to special entitlements provided to some Assisting Actors during the International Disaster Relief Period and Initial Recovery Periods, which are set out in Chapter VI. The rationale for this concept of ‘eligibility’ is that the legislating state can ensure that those best equipped to provide quality disaster relief and initial recovery assistance have priority, thus avoiding bottlenecks at the national borders, and ensuring that resources such as means of transport and communications are used more efficiently for disaster assistance within its territory. (See: IDRL Desk Study, Part III, Chapter 13, Quality and accountability, especially 13.3.4 Accreditation.)

Article 20 provides that both Assisting International Actors and Assisting Domestic Actors may become Eligible Actors if they are importing and/or providing International Disaster Assistance, but the facilities for domestic actors are more limited. (Moreover, some Legal Facilities are only available during the International Disaster Relief Period, as described further in Chapter VI.) While most Assisting Actors need to apply for eligibility under Article 22 (in advance or after the onset of a Disaster), some Assisting International Actors are already deemed eligible under Article 21 because of their prior status. These include states, intergovernmental organizations and components of the International Red Cross and Red Crescent Movement.

It is noted that the process for obtaining eligibility for Legal Facilities under Chapter V is independent from the process of acceptance of offers of assistance pursuant to Article 7. The regime established by this act does not require Assisting International Actors to be eligible for

the Legal Facilities before they can provide assistance. The affected state may allow entry to international actors who have not yet applied for eligibility or whose applications are pending, at its discretion, so that eligibility for Legal Facilities is not a prerequisite for entry and operation. It is only a prerequisite for provision of the Legal Facilities that allow the expedited entry procedures, tax-free importation/purchase for relief and recovery goods and equipment, recognition of legal personality, and the other facilities set out in Chapter VI. Conversely, the fact that an actor might already possess a certificate of eligibility under this chapter (since, as described below, they can be issued in anticipation of future disasters) does not excuse them from complying with any requirements concerning offers and acceptance as set out in Chapter II for a particular Disaster.

Federal states making use of the IDRL Guidelines will need to consider whether and how the various Legal Facilities described in Chapter VI can be linked to a system of eligibility established at the national level, if those Legal Facilities are generally governed at the provincial or lower level of government.

Article 20 Provision of Legal Facilities to Eligible Actors - Commentary

Article 20 provides that both Assisting International Actors and Assisting Domestic Actors may become Eligible Actors if they are importing and/or providing International Disaster Assistance, but the facilities for domestic actors are limited to those relating to the entry of International Personnel, Goods, Equipment and Transport (Chapter VI Parts 1 to 5). The facilities for Assisting International Actors who are eligible relate also to questions of their legal capacity within the country, taxation, and currency exchange and transfer.

This notion of an eligibility process for Legal Facilities for international actors has not been often employed to date in national laws on disaster management, many of which instead provide for blanket exemptions for any “humanitarian assistance” admitted, regardless of source, or ad hoc approvals for individual issues, for example for individual relief consignments. For example, article 18 of the Philippines Disaster Risk Management Act of 2010, which provides that the “importation and donation of food, clothing, medicine and equipment for relief and recovery and other disaster management and recovery-related supplies” may be done free of import duties so long as they are approved by the Office of the President. The problem with the former approach is that blanket approvals facilitate both helpful and unhelpful international assistance equally and ad hoc individual approval processes, such as those that look separately at each customs consignment, are burdensome for all involved.

However, the idea of an approved provider authorized to skip certain administrative steps, is being increasingly used with success in the area of customs treatment of trade under the concept of an “Authorized Economic Operator.” This involves the certification of certain importers by customs authorities on the basis of customs compliance, appropriate record-keeping, financial solvency and, where relevant, security and safety standards to allow for “fast track” treatment. A similar concept is involved here, providing authorities with a mechanism for distinguishing between various actors wishing to provide disaster assistance.

Article 21 Deemed Eligibility for Legal Facilities for Certain Assisting Actors - Commentary

Article 21 provides that some Assisting International Actors do not need to apply for eligibility because of their special status. Instead, they are deemed eligible and can receive a certificate of eligibility automatically upon application (merely as proof of their status when relating to government officials concerning access to the Legal Facilities). These are Assisting States, intergovernmental organizations (such as the United Nations and treaty-based regional organizations), and both the National Red Cross or Red Crescent Society and the Foreign Components of the International Red Cross and Red Crescent Movement. In all of the above cases, the actors are well known to governments and “easy to find” in case of any difficulty, even well after a disaster operation has terminated. This may be less true, for example, for some

NGOs. However, **Article 21(a)(iv)** provides flexibility if the relevant authorities have reason to believe that a particular Assisting Actor is worthy of enough trust to forego an application process under Article 22.

Article 21(b) provides that a certificate of eligibility can be provided, upon request, in order to make clear to any officials charged with providing one or more of the Legal Facilities in Chapter VI, that the particular actor is in fact eligible. Certificates of eligibility are further described in Article 23.

Article 22 Application for Eligibility for Legal Facilities by Assisting Actors - Commentary

All Assisting Actors not already deemed eligible under Article 21, and which also have legal personality in their home country or under international law, may apply for eligibility under Article 22. This includes both foreign and domestic NGOs and private businesses, but excludes individual persons. Experience and capacity are central factors and it is made explicit that private businesses may only be eligible for the facilities for their non-profit assistance.

Article 22(c) includes the option of applying in advance for eligibility, the legal effect of which status would subsequently be triggered by the commencement of the International Disaster Relief and Initial Recovery Periods pursuant to Article 8. Clearly, for larger Foreign NGOs and other entities that specialise in humanitarian assistance prior application for eligibility will often be preferable. They then need only present their certificates (described further in Article 23) to obtain Legal Facilities upon the onset of a Disaster. However, this section also allows for applications for eligibility after the commencement of a disaster, as many smaller organizations may not have the resources to apply in advance, or they may be new Assisting Actors in the affected state due to the nature or scale of the disaster.

Detailed criteria and processes for application for eligibility under Articles 22 and 23 will need to be developed by the legislating state, and preferably made as regulations under the act. In one sense, this is a very streamlined and minimalist form of organizational accreditation conducted by the affected state. For, while technical quality standards are now well-advanced within the international humanitarian community, there is currently no system of organizational accreditation or recognition that approaches universality, although there are piecemeal initiatives such as the Humanitarian Accountability Partnership (HAP) and the International Search and Rescue Advisory Group (INSARAG) certification of search and rescue teams. In the absence of a globally accepted system of international accreditation for humanitarian actors, the Model Act proposes that the affected state establish objective and usable criteria for the approval of eligibility for Legal Facilities.

It is again emphasised that this regime is not concerned with permission to enter and operate in the state, but rather with organizations' access to the Legal Facilities in Ch. VI. It is a risk management tool for the affected state, which speeds up the provision of quality assistance to affected communities while minimising the risk of inappropriate assistance. For the international actors, clear criteria in legislation and/or regulations make the eligibility criteria transparent and subject to public scrutiny.

Applicants under this Article may include private businesses, or any other Assisting Actor as defined in Article 3, as long as they have legal personality in the affected state, or in another country, or under international law. These provisions therefore apply only to incorporated or otherwise registered legal entities, and not to individuals. The reason for this is twofold. It both reduces the administrative burden of processing individual applications, and increases accountability through legally sanctioned organizational structures. It does not in any way prevent individuals from volunteering or partnering with existing organizations, or donating to the relief effort.

With reference to Article 22(b), limiting the eligibility of private businesses to non-profit activities, the Model Act does not seek to prohibit or interfere with commercial activities. These provisions are simply intended to ensure that its special Legal Facilities, such as tax exemptions,

are offered only for international assistance that is truly charitable and disaster-related in nature. That is, the exemptions provided for humanitarian assistance should not be used for commercial advantage.

Article 23 Eligibility Determination and Certificates – Commentary

Article 23 is concerned with criteria, processes and certification of eligibility. The relevant disaster management authority, or a body such as the Taskforce described in Article 12 of the Model Act, will need to develop regulations and forms in preparedness for the process of granting eligibility, in advance of any disaster. Such model forms could be made available, for example, as a schedule to the regulations.

Conscious that states may have to make decisions based on limited information – particularly with respect to applications for eligibility made in the immediate wake of a disaster – **Article 23(b)** proposes a presumption that Assisting Actors with significant experience will be found eligible. This does not mean, of course, that those without experience may not be accepted. The notion of “significant experience” is left to the discretion of the relevant authorities, who will require flexibility in making their determinations under this Article.

Some participants in consultations on the Model Act suggested that some sort of appeals process should be integrated for applications for eligibility that are not accepted. The pilot version of the Model Act does not take up that idea, preferring to leave more discretion in the hands of the disaster management authorities.

Article 23(d) makes clear that certificates of eligibility granted prior to a disaster are not permanent. The circumstances of a particular responder may change over time, making it less suitable for this sort of special treatment. Accordingly, it is proposed that certificates be time-limited.

Article 24 Termination of Eligibility for Legal Facilities - Commentary

Article 24 makes clear that Eligibility may be terminated in two ways in addition to the expiration of a certificate under Article 23(d) – the Eligible Actor may request it (for whatever reason) or it may be removed pursuant to Article 57.

Chapter VI
Legal Facilities for Assisting
Actors
Commentary

Chapter VI Commentary on Legal Facilities for Eligible Actors

This Chapter is composed of eight parts as follows:

- Part 1 International Personnel, Articles 25-28
- Part 2 Entry of International Disaster Goods and Equipment, Articles 29-36
- Part 3 Expedited Entry and Use Restrictions for Specific International Disaster Goods and Equipment, Articles 37-40
- Part 4 Permitted Disposition of Equipment and Unused Goods, Articles 41-43
- Part 5 Transport, Articles 44-46
- Part 6 Legal Capacity and Employment, Articles 47-49
- Part 7 Taxation of Eligible Assisting International Actors, Articles 50-53
- Part 8 Currency and Banking, Articles 53-54

Chapter VI relates to the following sections of the IDRL Guidelines:

- Part IV – Eligibility for Legal Facilities (13, 14, 15)
- Part V – Legal Facilities for Entry and Operations (16-23)

Overview

Chapter VI sets out the expedited procedures and legal recognition that will allow Eligible Actors to start their International Disaster Assistance operations as fast as possible and to work efficiently within the country where they may previously have lacked legal capacity.

The whole of the Chapter is relevant to International Assisting Actors, whereas Parts 1-5 (Articles 25 – 46) only are relevant to Assisting Domestic Actors. Parts 1-5 relate to International Disaster Assistance in terms of entry of Personnel and the importation of Goods and Equipment and related Transport. Parts 5-8 concern the legal capacity and international financial transactions of International Assisting Actors only.

Part 1 International Disaster Personnel - Commentary

This Part includes:

- Article 25 Disaster Visa
- Article 26 Recognition of Foreign Professional Qualifications
- Article 27 Recognition of Foreign Driving Licenses
- Article 28 Freedom of Access

Part 1 relates to the following sections of the IDRL Guidelines:

Part V: Legal Facilities for Entry and Operations - 16, Personnel and 20, Temporary domestic legal status.

Overview Part 1

Part 1 concerns the main legal elements relevant to the international personnel - employees and volunteers – of Eligible Actors, including the entry of international personnel and their capacity to operate legally and efficiently in the affected state.

See also: IDRL Desk Study Part III, Chapter 10 – Personnel

Article 25 Disaster Personnel Visa - Commentary

Some international staff may be entitled to enter on other visas, but the Model Act encourages states to either use a disaster personnel visa as described in Article 25, or a disaster personnel visa waiver (alternative Article 25) rather than tourist visas. This distinguishes between those entering the disaster-affected state as experienced humanitarian actors, and others who may wish to engage in 'disaster tourism' at a time when the state cannot afford to accommodate their needs, or well-meaning but unattached/untrained foreign volunteers.

Articles 25(b) and (c) differentiate between the International Disaster Relief and the International Initial Recovery Periods. In the former, it is considered that time will be so pressing that states ought to provide visas upon arrival. Once the International Disaster Relief Period has been terminated pursuant to Article 10, however, life-and-death urgency may be considered to have abated, though there is still a need for facilitation. Accordingly, Article 25(c) provides for prior application before travel. Of course, for countries that regularly allow visas on arrival even in the absence of a disaster, this should be taken into account in deciding whether to adopt the above-described distinction.

Alternative Article 25 allows that some states may simply prefer to waive visa requirements during the disaster and initial response period, especially if this is limited to the international personnel of actors that have otherwise been formally permitted these Legal Facilities. The main concerns about visa waiver are usually that there is no way of subsequently identifying those in the territory without visas, but in such a case this might be done through the sponsoring Eligible Actors.

Many states have special visa provisions for entry of disaster personnel. Some of these are:

- In the Maldives, "a special visa is the permit granted to a foreign national visiting the Maldives, or already present in the Maldives for a period of time as specified and notified by the Government for purposes including "humanitarian work" (Art. 17, Maldives Immigration Act 2007).
- In Panama, an executive decree on immigration was promulgated in August 2008, which included a special visa category for international humanitarian relief personnel (Executive Decree No. 320 of August 8 2008, arts. 56-58).
- In Colombia the law requires that a special, temporary visa be given to "volunteers, aid workers or NGO personnel, or a person who is duly backed by an international agency or a diplomatic mission; in order to perform social welfare work, attendance, testing, observation or humanitarian aid." (Colombia – Decree 4000 of 2004, Art. 41.6).
- In Indonesia, as noted in the commentary to Article 13 above, the entry-point Supporting Posts determine entry of personnel during a disaster, and all those entering require a permit (Guideline on the Role of the International Organizations and Foreign Non-Government Organizations during Emergency Response, 2011' (Ch.II,A(2)(e)(2)) but these are expedited during a disaster emergency response.

Others provide for visa waiver, for example: in Norway, amendments to the migration law that came into effect in 2010 provide for waiver of visa requirements for international relief personnel; in Mexico, pursuant to the General Law on Civil Protection, visas are waived in these circumstances; and Pakistan has also adopted the practice of visa waiver during recent disasters.

Afghanistan's Draft National Disaster Preparedness law (2011) (Ch.V, Art. 41) also provides that the Ministry of Foreign Affairs should establish a system for the quick issuance of visas for humanitarian purposes, and similar visas are contemplated in the Kazakhstan Draft Law on Civil Protection (2011), (Art.114) as part of general facilitation.

Article 26 Recognition of Foreign Professional Qualifications - Commentary

Most countries have certain regulated professions, such as physicians or architects which, for reasons of public safety, require formal certification before they are allowed to practice. Recognition of foreign qualifications is often subject to lengthy verification procedures which cannot be adapted readily to the timeframe of disaster response. This is often carried out by the relevant professional accreditation body, and compulsory membership of that body may be the main way that recognition is affirmed.

Article 26 recognizes that this is a complex area of regulation, often involving many different professional bodies in specialist disciplines within each state (and in federations, these may also be different between the constituent states or provinces). In the absence of any global system for speedy recognition of those professional qualifications in disaster settings, Article 26 proposes a national system which, as far as possible, clarifies these issues as part of disaster preparedness. It does not attempt to substitute a new mechanism that would replace regular procedures, but to develop a recognition process which balances the broader needs of public health and safety against the urgent needs following a disaster. In the absence of any such system, the affected state has little option other than to either refuse entry of foreign qualified professionals - such as surgeons and other medical staff, engineers and architects - or simply accept their qualifications at face value.

Article 26(b) and (c) attempt to make this process easier for domestic officials by encouraging the development of a list of countries and institutions from which certifications will be expected to be particularly trustworthy. Many countries already maintain such lists with regard to addressing the recognition of foreign qualifications of labour migrants. In all cases, however, **Article 25(a)** makes clear that the sponsoring Eligible Actor must also take responsibility for the qualifications and competence of personnel it deploys.

It should be emphasized that this article is only addressed to those professionals whose practice is specifically constrained by a registration requirement under national law. It is not meant as a vetting process for the schooling of any and all disaster response personnel. In other words, if national law implies that no one may construct a temporary shelter unless s/he is a registered architect, or that no one may assist in a field surgery unless s/he is a registered nurse, this article would be relevant.

By way of example, Indonesia requires that incoming personnel, especially those represented as experts, meet required qualifications according to government needs as mentioned in the 'initiation letter' (request) for foreign assistance, in particular those in the professions of health, search and rescue, construction, communications, and water experts (Ch.II, C. and D.2(a), Guideline on the Role of the International Organizations and Foreign Non-Government Organizations during Emergency Response, 2011). However, this is admittedly a system to match the qualifications to the needs rather than assessing individuals' qualifications.

Federal states may also face an additional complication if the recognition of foreign qualifications is governed at the provincial or lower level of governments. In those cases, this article may need to be expressed more in terms of encouragement to the relevant authorities rather than as a mandate.

See: IDRL Desk Study discussion of insurance and liability issues at 12.5 - Insurance; and at 13.3.3 - Civil and criminal liability.

Article 27 Recognition of Foreign Driving Licenses - Commentary

This Article might not be necessary if the legislating state already recognizes international driving licenses pursuant to the Convention on Road Traffic, Vienna, 1968, (which had 70 state

parties as at July 2011). On the other hand, for federal states, this may be an area that cannot easily be governed by a national law.

Article 28 Freedom of Access - Commentary

A right to access is included in the Legal Facilities for eligible Assisting Actors. This is a common provision of bilateral treaties concerning disaster assistance between states and is of particular concern to humanitarian organizations, whose principle of independence requires them to have the capacity to provide assistance directly.

Article 28(b) addresses the frequent situation where there are security concerns in the disaster-affected area. This section allows Assisting Actors to assume such risks and to work in such areas, which is consistent with the nature of disaster relief work.

Federal states will need to consider whether a national mandate along these lines would be consistent with their legal systems.

Part 2 Entry of International Disaster Goods and Equipment – Commentary

This Part Includes:

- Article 29 Customs Facilitation and Priority Treatment
- Article 30 Duty of Compliance by Eligible Actors
- Article 31 Representation to Customs
- Article 32 Exemption from Import Duties, Taxes and Restrictions
- Article 33 Simplification of Documentation Requirements
- Article 34 Extended Hours for Customs
- Article 35 Inspections and Customs Security
- Article 36 Agreements on Pre-Positioning of Stock

Part 2 refers to the following section of the IDRL Guidelines:

Part V, Legal facilities for entry and operations, 16, Goods and equipment

Overview

The Articles in Part 2, set out the ways in which general categories of disaster relief goods and equipment can be processed under tax-free and expedited procedures. However, some articles also specify obligations of the customs authority and the Eligible Assisting

Part 2 necessarily utilises some terms specific to customs and taxation that have technical meanings, which are outlined in the commentary as they occur in the text. The first of these are the concepts of ‘customs clearance’ and ‘release of goods’.

‘Customs clearance’ means the completion of all customs formalities, including any payment of taxes or duties necessary to allow goods to enter for use, to be exported, or to be placed under another customs procedure (in this case, ‘another customs procedure’ could mean customs transit, customs warehouse, temporary admission, etc.). This is part of customs control measures to ensure compliance with customs law. However, it is not uncommon for the customs authority to ‘release’ the goods beforehand, which means the customs authority permits goods and equipment undergoing clearance to be placed at the disposal of the persons concerned with their importation. The release of the goods is only one specific action in the clearance process, which includes a number of steps. At the time of the release, which is when the customs authority authorizes the persons to take possession of the goods, the clearance process may still not be completed if, for example, the duties and taxes are not yet paid yet. In that case the release of the goods would, in normal circumstances, be subject to sufficient customs security. The proposal in this Model Act is that, for eligible Assisting Actors during the relief and initial

recovery periods, customs release/clearance could be expedited - in part because they would have no financial liabilities payable to the customs authority for the importation of the goods or equipment. Part 2 includes a number of specific ways in which customs clearance, and especially the release of disaster assistance goods, can be expedited for eligible Assisting Actors during the international disaster relief and/or initial recovery period.

Customs clearance is still necessary under the procedures in Part 2, but these provisions allow for a simpler process because there are no taxes or duties payable, and because the additional level of trust in eligible Assisting International Actors means that the affected state does not need to conduct extensive checking or inspections to verify the goods and equipment.

The Legal Facilities for entry of disaster goods and equipment in this Part are consistent not only with the IDRL Guidelines but also follow international policy trends in the field of customs. For example, a June 2011 resolution on the Role of Customs in Natural Disaster Relief, by the Customs Co-operation Council of the World Customs Organization recently reiterated the importance of customs administration in disaster preparedness and invited states to implement Chapter 5, Special Procedures, in Annex J to the International Convention on the simplification and harmonization of Customs procedures 1973 (Kyoto Convention) as amended in 1999 - the Revised Kyoto Convention (RKC). The RKC entered into force in February 2006, and as at June 2011 had 76 state parties. As an annex to the commentary on that section, the WCO has also included a "Model Agreement on Customs Facilitation" developed in conjunction with UN OCHA.

A number of countries and regions have laws that include measures consistent with the recommendations of these instruments. For example:

- Austrian customs law contains provisions for disaster situations: "accelerated customs clearance" for goods and equipment that are part of relief supplies and also the supplies to cover the needs of the disaster relief teams. These are exempt from import duties, VAT and consumer taxes if imported from non-EU States into the EC. However, materials and equipment destined for the reconstruction of disaster areas are not duty free. (Art 79-85 Council Regulation on Relief from Customs Duty, Council Regulation (EEC) 918/83 of 28 March 1983 - Community system of reliefs from customs duty). Since Austria is part of the EU, the EU customs code applies. This provides for accelerated procedures in Art. 97 (2) b). Austria in its implementing law (para. 62 (3) 5. Zollrechtsdurchführungsgesetz) regulated that the customs authority can grant permission for these accelerated procedures in case of assistance following a natural disaster.
- In Burkina Faso the Customs Code (Law no. 03/92/ADP of 1992) allows for the executive government - the President with the National Council - to exceptionally 'modify, suspend or re-instate import duties and taxes on equivalent items', which is a broad power that can be used in emergencies (Articles 7(2), 12(2), 13). But importantly, in addition, Article 160 provides exemption from import duties for diplomatic consignments and "goods or dispatches destined to the Red Cross and other solidarity movements [... for dispatches] devoid of any commercial characteristics".
- In India, Section 25 of the Customs Act 1962 empowers the national government to exempt goods from customs duty where to do so is in the public interest. Pursuant to Customs Notification No. 148/94, certain categories of goods have been declared exempt, and several of these categories are the type of goods envisaged by IDRL Guideline 17 Chapter VI Part 1 and Part 2. For example, one of the categories provides that goods imported by the Indian Red Cross Society are exempt from customs duty where the goods are meant for the purposes of relief to distressed persons. Another category applies where the goods are imported for the purposes of relief and rehabilitation in accordance with an agreement in force between India and another country.
- Under Art.18 of the Philippines Disaster Risk Reduction and Management Act 2010, the "importation and donation of food, clothing, medicine and equipment for relief and recovery

and other disaster management and recovery-related supplies” is authorized in accordance with the amended Tariff and Customs Code (Sec. 105) and the General Appropriations Act covering national internal revenue taxes and import duties of national and local government agencies. As noted earlier in this commentary it appears from this law that such importation is done under the umbrella of the NDRRMC, subject to the approval of the Office of the President, rather than on the basis of individual actors’ status. This law also states that foreign donations and importations for humanitarian assistance and disaster relief shall be guided by the IDRL Guidelines.

- Indonesia’s Regulation No. 21/2008 to the disaster management law provides that ‘equipment or logistics’ entering Indonesian territory to help with disaster management during the disaster emergency response shall have ‘easy access in the form of exemption from import duty and other import taxes’ (Articles 32 and 36). Indonesia’s Decree No. 89/KMK.04/2002 further details that goods imported for the needs of international bodies may be exempted from import duties provided certain conditions are met. Firstly, the international bodies must be located in Indonesia via a domestic branch or organisation and have a mandate to provide technical assistance in social, economic and/or cultural fields (The appendix of Decree No. 569KMK.051998 contains a list of recognised international bodies in various fields, approved by the Finance Minister, including WFP, UNHCR, UNICEF, WHO, WVI, ICRC, CARE, CRS, OXFAM). The Chairperson of the international body must then apply to receive the exemptions, which must be approved by recommendation from the State Secretary Minister of the Republic of Indonesia or the appointed official, and implemented by the Director General of Customs and Excise. Then the exemptions only apply to goods that are sent from the parent organisation to the international body based in Indonesia.

Afghanistan's Draft National Disaster Preparedness law (2011) (Ch.V, Art. 42) also provides that the Ministry of Foreign Affairs should create extraordinary quick and simplified customs procedures for actions during emergency situations.

The examples of Indonesia and the Philippines, above, also demonstrate the potential complexity and cross-linkages that may be required in implementing such exemptions from customs duties. Given how much these provisions bridge a number of areas of regulation, countries that are implementing laws based on the Model Act may find it useful to include a schedule of the other related laws that also govern aspects of the same procedures. This would be in addition to the usual schedule of other laws that are amended by the new law.

There are a number of different approaches taken by states on this issue. For example, four contrasting legal frameworks are:

- Mexico's Federal Tax Code (Art. 39,I) simply authorizes the President to totally or partially eliminate import duties, taxes and compliance with non-tariff regulations and restrictions for disaster relief and recovery goods and equipment in case of disaster. While this power is broad, it is also discretionary and does not therefore provide legal certainty for Assisting International Actors;
- In Colombia, as in some other countries, the relevant exemptions are specified in each declaration of a specific disaster, which provides clarity after each declaration but not for advance planning; and
- In Jamaica the Disaster Preparedness and Emergency Management Act (1993) exempts from import or export duties and taxes only those items imported or exported by the Office of Disaster Preparedness and Emergency Management and shown to the satisfaction of the Commissioner of Customs to be required for the use of the Office in the performance of its functions under this Act. This appears to mean that International Disaster Assistance must be (at least temporarily) nationalised and imported by the Office in order to be exempt.

- In Sri Lanka under the Customs Ordinance, Part II: Levying of Customs Duties (1988) the Minister of Finance can, by an order published in the Gazette, exempt any goods imported by, or consigned to, representatives of foreign Governments, the United Nations or its affiliates and such other international organisations, institutions or bodies from customs duties (Section 19). It is important to note, however, that such orders will not take effect unless they have been approved by a resolution of Parliament (Section 19(5)).

In each of these four final examples there is limited legal certainty for Assisting International Actors that they will receive import, export or other tax exemptions on the Goods and Equipment that are part of the International Disaster assistance to these countries. The certainty provided by the earlier examples is more consistent with the IDRL Guidelines and the Revised Kyoto Convention (RKC) Annex J.

It should be noted that, in federal states, there may be taxes or charges related to goods entering a particular province or locality that cannot be regulated by a national law of this type.

Article 29 Customs Facilitation and Priority Treatment - Commentary

Article 29 imposes a duty on the customs officials to facilitate access to the Legal Facilities and establishes that the Goods and Equipment of Eligible Actors shall receive priority treatment. This “fast lane” is an important element of the overall rationale of the Model Act.

Article 30 Duty of Compliance by Eligible Actors - Commentary

Article 30 imposes a reciprocal duty on Eligible Actors (to that of Customs officials in Article 29) to comply with the requirements for access to the Legal Facilities, including not only abiding by relevant laws but also adequately packing, classifying and marking their consignments.

Article 31 Representation to Customs - Commentary

Article 31 restates what is a fairly general practice for the sake of clarity, allowing that an eligible Assisting Actor may deal with the customs authority through a third party agent.

Article 32 Exemption from Import Duties, Taxes and Restrictions - Commentary

In this Article, the ‘duties and taxes’ mentioned are intended to broadly include import duties and taxes, as well as VAT (value added taxes), service taxes, sales taxes, turnover taxes and similar taxes, duties, levies and governmental fees. The exemption (or relief) from duties and taxes means that, during the international disaster relief and/or initial recovery period, the customs authority will clear goods and equipment for use within the territory, as long as they are for the purpose of disaster relief or initial recovery and are imported/exported by an eligible Assisting Actor. Note that export duties and taxes are addressed in Article 43.

Article 33 Simplification of Documentation Requirements - Commentary

In this Article, an important part of the simplification of documentation requirements is the simplified ‘goods declaration’, which allows for more rapid customs clearance or release of the goods or equipment. The goods declaration is a statement made - in the manner prescribed by the customs authority - by which the persons concerned indicate the nature and purpose of the goods and equipment, furnish particulars of the responsible person, and provide other details as required. The declaration can be made by the owner of the goods or by a third party, including a customs broker, agent or transporter (the declarant).

In normal circumstances, after lodgment of the goods declaration, the customs authority checks it to ensure its accuracy and completeness as required by customs law. Customs declarations are usually very detailed (and may require translation of documents), and many customs laws require separate documentation for each consignment by the same entity even if they arrive at the same time. Moreover, the checking process can also be very time-consuming. Therefore the

Article 36 proposal for a simplified goods declaration, provisions for lodgment and checking of the declaration in advance, waiver of any translation requirements, and provision for a single declaration for all the consignments of the eligible Assisting Actor arriving at the same time, can make the clearance and/or release process a great deal faster.

Article 34 Extended Hours for Customs and Other Services - Commentary

Article 34 addresses an issue frequently encountered in past disaster relief efforts, that crucial consignments of disaster goods & equipment could not be released because they arrived outside normal business hours for the customs authority (or other relevant ministry), or at a port or airport that was not staffed regularly. In a major disaster it may be essential that consignments can be processed around the clock, at least in the early stages of the disaster response. This issue may also be addressed institutionally by the proposed SWIFT teams under Article 13.

Some countries make special provision for this eventuality, for example:

- Indonesia's 'Guideline on the Role of the International Organizations and Foreign Non-Government Organizations during Emergency Response 2011 (Ch. II, D.1 (g)) provides that, in order to facilitate provision of humanitarian assistance from international organizations and foreign non-government organizations, the relevant government ministries and institutions may provide services beyond the normal working hours.
- The Bulgarian Labour Code (Promulgated SG N26/1 April 1986, amended SG N 41/2 June 2009), allows for extended working hours for the prevention and struggle against natural and social disasters or threats, and for the removal of their immediate consequences, as well as for the performance of urgent publicly necessary work to restore water and electrical supply, heating, sewerage, transport and communication networks and for providing medical assistance.

In order to minimize any unnecessary burden on customs authorities, this article only applies during the International Disaster Relief Period. In the International Initial Recovery Period, it is assumed that there is not likely to be a real need for officials to be working in the middle of the night.

Article 35 Inspections and Customs Security - Commentary

Article 35 contributes to faster customs clearance for Goods and Equipment by reducing the degree of inspection, and by either waiving the requirement for customs security or accepting an undertaking from the Eligible Actor, as well as by allowing a 'general' customs security if one is deemed necessary.

Because the reduction of normal inspections naturally entails a certain level of risk from the point of view of customs authorities, this article is only applicable in the International Disaster Relief Period and not during the International Initial Recovery Period. Moreover, **Article 35(a) and (b)** makes clear that inspections of declarations and of Goods and Equipment may still take place where essential in a particular situation.

Article 35(c) alters the standard process with regard to customs security. Normally, customs clearance requires inspection of the goods and then, if they are released before all the fees and taxation formalities are complete, payment of a 'customs security'. This means a deposit of cash or negotiable securities in the form of a bond, or other guarantee, to ensure to the satisfaction of the customs authority that a financial obligation to it will be fulfilled. Customs security can be paid per consignment, or it may be paid as 'general' security that covers the obligations arising from several customs processing operations (consignments), rather than requiring a separate security for each operation.

It is common for customs authorities to accept a general security instead of a separate security in each instance from declarants who declare goods regularly at different offices in the customs territory, and under Article 35(c), this would be the practice for all Eligible Actors.

Article 36 Agreements on Pre-Positioning of Stock - Commentary

In consultations on the Model Act, some participants felt that pre-positioned stock should also be provided Legal Facilities. However, it was also pointed out that this would complicate the system of the Act, which generally provides for Legal Facilities only during the International Disaster Relief and Initial Recovery Periods. Article 36 therefore provides that the Part 2 Legal Facilities may be extended to pre-positioning of stock by Eligible Actors prior to a disaster, but only by special agreement with the relevant authority.

Part 3 Expedited Entry and Use Restrictions for Specific International Disaster Goods and Equipment – Commentary

This Part includes:

- Article 37 Telecommunications Equipment
- Article 38 Medications
- Article 39 Food
- Article 40 Imported Vehicles
- Article 41 Rescue Dogs

Part 3 refers to the following section of the IDRL Guidelines:

Part V, Legal facilities for entry and operations, 18, Special goods and equipment

Overview

Part 3 applies, in addition to Part 2, to special forms of goods and equipment that in many states are subject to additional import or use restrictions, namely, telecommunications equipment, medications, foodstuffs, vehicles and rescue dogs. (See: IDRL Desk Study Part III, Chapter 9.2).

With regard to each of these types of Goods and Equipment, federal states will need to consider whether a national law of this type may permissibly govern if the area is more usually governed at a lower level of government.

Article 37 Telecommunications Equipment - Commentary

Telecommunications equipment is often subject to import and use restrictions, and the legal barriers to the importation and use of such equipment in disaster response operations can be even greater than for food. (IDRL Desk Study, 9.2.2). Article 37 provides that any import restrictions be waived for eligible Assisting Actors, along with any licensing requirements, during the international disaster relief and initial recovery period - as long as the equipment is for use in disaster relief and/or initial recovery. It also provides for priority access to communication channels for eligible Assisting Actors, without detriment to the needs of local actors in the disaster response.

For state parties to the Tampere Convention, legislation based on the Model Act (or an accompanying schedule) might refer to that treaty or refer to other national legislation implementing the treaty. For states not yet party to the Tampere Convention, its principles may nevertheless provide a useful reference. The Convention's primary objective is to ensure that states 'cooperate among themselves and with non-State entities and intergovernmental organizations... to facilitate the use of telecommunication resources for disaster mitigation and relief' (Article 3). It establishes the United Nations Emergency Relief Coordinator as the operational coordinator for telecommunications disaster assistance, and the International Telecommunications Union (ITU) as a key agency. Among other things, it allows states or other entities providing telecommunications assistance to an affected state to do so subject to the payment or reimbursement of certain costs or fees (Article 7). And, in particular, it encourages states to remove regulatory barriers to the provision of telecommunications disaster assistance,

including restrictions on the type and quantity of equipment that can be imported, exported or transited through the state, as well as the personnel required to operate it (Article 9).

See: Tampere Convention on the Provision of Telecommunication Resources for Disaster Mitigation and Relief Operations, Tampere, 18 June 1998 (entry into force 8 January 2005; 44 state parties as at July 2011). Full text in English at: <http://www.ifrc.org/Docs/idrl/I271EN.pdf>. Treaty parties' information and certified copies in UN languages at UN Treaty Collection, Ch.XXV, No.4, <http://treaties.un.org>.

Article 38 Medications - Commentary

The importation of medications and medical equipment is also generally subject to very specific restrictions and has often led to delays. As noted in the IDRL Desk Study, 'delays in the arrival of necessary medications and medical equipment can have severe implications on the well-being of affected persons.' At the same time, however, there has also often been a significant concern about the donation of inappropriate, illegal and/or expired medications in the wake of disasters.

The purposes of Article 38 are therefore twofold. Firstly, it seeks to facilitate the process of importing medications for Eligible Actors and secondly it requires that those medications be permitted under existing pharmaceutical law.

Article 38(c) and (d) draw a distinction between medications sent for donation to others and those brought by Eligible Actors for their own application to sick or injured persons. In the former case, more safeguards are required to ensure that the medication is not expired before it is used and that the end recipient understands how to use it.

In addition to the IDRL Guidelines, an important international reference in this regard is the WHO Guidelines for Drug Donations (2d ed 1999). One current example of national practice comes from Indonesia, where a Decree of the Head of National Agency of Drug and Food Control (No. HK.00.05.3.00914 of 2002) on Special Access Scheme on Drugs allows that some drugs intended for donation purposes may be imported through special channels, provided they comply with the guide on donated drugs issued by the Food and Drugs Supervisory Body and only for restricted uses.

Article 39 Food - Commentary

For reasons of human and animal health, and sometimes also for commercial trade considerations, food imports are often highly regulated by domestic law. In part because of this, international food disaster assistance is frequently delayed, and apparently for longer periods than most other disaster-related goods. One approach to this issue is not to ship foodstuffs internationally, but only to buy locally, which has the dual advantages of speed, and support for the local economy. However, sometimes it is necessary to ship food internationally for disaster assistance. The purpose of Article 39 is to require the legislating state's authorities to develop specific procedures for expedited but safe handling during a disaster and/or initial recovery period for Eligible Actors.

Sources:

- IDRL Desk Study, at 3.1.9 and 9.2.1;
- The Food Aid Convention quality provisions at Articles 3(j), 7(b),(c),(d), 8(a),(b),(d), and 9(d) (<http://www.foodaidconvention.org/en/Default.aspx>); and
- The 'Code of Ethics for International Trade in Food' (1985 update), of the Codex Alimentarius Commission (1985 update), at 2 n.2, Article 4 and Article 6 (http://www.codexalimentarius.net/download/standards/1/CXP_020e.pdf).

Article 40 Imported Vehicles - Commentary

Article 40 facilitates the importation of vehicles by Eligible Actors. In addition to the general exemptions of duties and taxes etc. as set out in Part 2, it allows for temporary recognition of foreign vehicle registration, pending the grant of local plates. The alternative proposal merely requires that the normal process for obtaining registration and plates should be expedited.

Article 41 Rescue Dogs – Commentary

The quarantine of dogs is more of a concern in some countries than in others, but in many cases the entry of search dogs could be regulated drawing inspiration from the INSARAG Guidelines (Ch. D, D1, D2-1 and 4.3). This article calls for the development of specific regulations relevant to rescue dogs, presumably by a veterinary authority.

Part 4 Permitted Disposition of Equipment and Unused Goods – Commentary

This Part includes:

- Article 41 Disposition of Equipment and Unused Goods
- Article 42 Re-Export of Goods and Equipment
- Article 43 Donation of Unused Goods Equipment

Article 42 Disposition of Equipment and Unused Goods - Commentary

Article 42 emerged from consultations towards the Model Act, and arose from concerns to allow Eligible Actors to donate, sell or continue using Goods and Equipment imported under the Legal Facilities, but at the same time to reduce the potential for abuse of the provisions (for example, by allowing an actor to import vehicles free of duty and shortly thereafter sell them on the local market at profit). Article 42 establishes a regime to clarify what can be done with such Goods and Equipment after they are no longer required by the Eligible Actor for Disaster Relief or Initial Recovery.

Article 42(b) and (c) exhaustively describe what may be done with Equipment and unused Goods when they have benefited from waivers or exemptions from fees under the Act. Any disposition consistent with Article 42(b) may be accomplished without liability for previously waived fees or duties. Article 42(c) provides that Goods and Equipment may not be sold until after the Initial Recovery Period (to avoid abuse of the various provisions in Chapter VI to expedite importation) or without payment of previously waived fees, duties and taxes.

Article 43 Re-Export of International Disaster Equipment - Commentary

This Article simplifies the established customs procedure of ‘temporary admission’ and ‘re-export’ (with tax exemption) into a single provision specific to International Disaster Assistance. It allows Goods and Equipment imported as part of International Disaster assistance to be re-exported, and with the same tax and duties exemptions, within a specified time after the termination of the International Initial Recovery Period.

These provisions apply both to unused Goods and Equipment, and particularly to vehicles and other types of equipment that an eligible assisting international actor might need for use while providing International Disaster Assistance, but would then wish to take out of the affected state for use elsewhere. For example, electricity generators, large-scale water purifying equipment, mobile medical facilities, telecommunications and information technology equipment.

Article 44 Donation of Equipment - Commentary

This Article details the terms on which Goods and Equipment which have been imported under the Legal Facilities’ exemption may be donated, a common practice after many international disaster operations.

Article 44(a) is intended to ensure that the disposition of the item is decided promptly after the end of the International Initial Recovery Period.

Article 44(b) is intended to ensure an adequate “paper trail” concerning the items in question.

Article 44(c) provides a broad list of entities entitled to receive donations.

Article 44(d) seeks to avoid potential abuse by postponing resale of the Goods or Equipment, unless the receiving organization pays previously waived fees, duties taxes and charges.

Part 5 Transport – Commentary

This Part Includes:

Article 45 Facilitation of Means of Transport

Article 46 Entry of Transport Operators

Article 47 Notice of Transport

This Part refers to the following section of the IDRL Guidelines:

Part V, Legal facilities for entry and operations, 19, Transport

Overview:

In addition to delays and import or export duties or other taxes affecting many disaster assistance goods, some regulatory issues that have often emerged regarding the entry of relief transport, include:

- For land transport: carriage permit requirements; vehicle type and performance standards regulations, including treatment of specially adapted vehicles, such as armoured vehicles, which may come under a special regime or may even be prohibited; tolls, fees and charges for road use; recognition of foreign license plates, including the length of time for which this is allowed; limits on the overall number of vehicles that may be imported; whether the vehicles need to be accompanied by a representative of the importing actor; whether the details of the driver need to be provided in advance; and whether drivers need some form of entry clearance such as a visa, even if they are not the personnel of the international actor.
- For air transport: difficulties obtaining landing or overflight permission; general problems in coordination of air transport relief; landing and departure taxes; and inflated fuel costs by opportunistic service providers.
- For sea transport: delays in ‘flag waiver’, a standard procedure which allows foreign crews exemption from immigration regulations and other requirements; and high berthing, wharf and storage fees.

See: IDRL Desk Study at Chapter 3.1.7 – Transport Law; Chapter 9 – Goods and Equipment (9.2.3); Chapter 11 – Transport and Movement.

Article 45 Facilitation of Means of Transport - Commentary

This Article focuses on the means of transport that Eligible Actors use to bring in and transport disaster assistance, and the general duty of the national authorities to facilitate their entry, exit and transit within the affected state. It is meant to cover all means of transport, with some specific provisions particularly relevant to land, sea and air vehicles, respectively.

The Draft National Disaster Preparedness Law (2011) of Afghanistan includes a similarly broad facilitation clause: “air and land transportations despatching relief assistance along with the operational teams from overseas countries, shall enjoy flight privileges, and landing of aircrafts, transit fees of vehicles, payments of border expenditures and airport are exempted from custom duties and other taxes” (Art. 44).

Article 46 Entry of Transport Operators - Commentary

The term ‘transport operators’ refers to drivers and pilots of land, air and water transport. They are rarely the personnel of the Assisting Actors concerned, but are usually either independent contractors, or staff pilots or drivers provided by the owner of the means of transport chartered or hired by the humanitarian actor. This Article proposes expedited entry procedures for such transport operators when they are conveying International Disaster Assistance on behalf of Eligible Actors.

Article 47 Notice of Transport - Commentary

This Article is intended to facilitate the entry of Transport by or on behalf of Eligible Actors by ensuring the relevant government authorities have notice of its arrival. This is especially relevant to flights arriving at airports and ships arriving at sea ports, which are normally subject to permissions and special fees.

Regarding air transport, the Convention on International Civil Aviation, Chicago, 1944 (the Chicago Convention) and its Annexes are applicable in the territory of almost all states (the Convention has 190 state parties, it is available at http://www.icao.int/eshop/annexes_list.htm). In particular, the recently updated Annex 9 specifies Standards and Recommended Practices (SARPs) to facilitate clearance operations in compliance with states’ laws, while enabling higher turnover.

Part 6 Legal Capacity and Employment - Commentary

This Part includes

- Article 48 Legal Capacity of Assisting International Actors
- Article 49 Engagement and Termination of Locally Engaged Personnel
- Article 50 Jurisdiction over International Personnel

This Part refers to the following section of the IDRL Guidelines:

Part V, Legal facilities for entry and operations, 20, Temporary domestic legal status

Overview:

Eligible Assisting International Actors are required to have legal or juridical personality in their home country or under international law as part of the criteria for eligibility. But this does not necessarily give them legal capacity to operate within the affected state. Legal or juridical personality is an essential characteristic for an organization - as opposed to a natural person - to be able to enter contracts, buy or sell movable and immovable property, and be part of legal proceedings. This Part – in particular Article 48 – clarifies the legal capacity of Eligible Assisting International Actors. Essentially, for most purposes it is the same as a domestic entity that has legal personality, but it is limited to the International Disaster Relief Period and the International Initial Recovery Period. It also includes specific provisions related to employment of Locally Engaged Personnel – Article 49 – and jurisdiction for contracts of International Personnel – Article 50.

It should be noted that this part may be more complex for federal states as these issues may more commonly be governed at the provincial levels.

Article 48 Legal Capacity of Assisting International Actors - Commentary

The main objective of this Part is to ensure in the simplest way that eligible Assisting International Actors are able to operate legally within the affected state during the International Disaster Relief and Initial Recovery Periods, while also avoiding delays in the commencement of their relief operations. Recognition of legal capacity is often a necessary precursor to many of the activities that are part of a relief and initial recovery effort within an affected country,

including hiring local personnel, entering contracts for the hire or purchase of premises, vehicles and other equipment, opening bank accounts and, often, transferring money from abroad. Without a fast-track method to recognize the legal capacity of Eligible Actors when a disaster occurs, only the Assisting International Actors already operating legally in the country can work at full efficiency in the disaster response.

The facility in this clause does not establish a new legal entity under the law of the affected state, but recognizes provisionally an existing and documented legal or juridical personality created under the law of another state, or created under international law by treaty or custom. It is not intended to replace the national law procedure for recognition or registration of foreign legal or juridical persons in the affected state. This legal capacity means that all the legal obligations and liabilities taken on by the Eligible Assisting International Actor in the affected state are in fact taken on by the foreign or international legal person of that entity.

In the absence of legal capacity for Assisting International Actors, many contractual transactions can be complex and inhibit their work in the affected state. This facility is primarily aimed at Foreign NGOs, foreign National Red Cross and Red Crescent Societies and foreign private businesses that already have a foreign legal personality, but do not otherwise have a special status agreement with the affected state. By contrast, assisting states generally do not need any special recognition of legal capacity because, as sovereign states, they already have international legal personality and they do not require any other recognition if they have diplomatic relations with the affected state (with the accompanying international conventions and country-specific agreements on privileges and immunities). The same applies to treaty-based intergovernmental organizations, both international and regional, including the UN system agencies, which also come under the Convention on the Privileges and Immunities of the United Nations 1946 or the Convention on the Privileges and Immunities of the Specialized Agencies 1947.

Ordinarily legal personality under domestic law can take many different forms, including incorporated businesses (public or private), other business structures (unincorporated companies, partnerships), NGOs or civil society associations, charities, and churches. Eligible Assisting International Actors could potentially be any of these types of legal entities in their home state (so that in the affected state they have a foreign legal personality), in addition to those that enjoy international legal personality, due to the fact that they are intergovernmental organizations, or an international treaty created them, or they have gained recognition over time through international custom and practice. States may recognize the legal personality of international organizations such as the UN system organizations, regional intergovernmental organizations, and the ICRC and IFRC, through being parties to a relevant treaty or agreement, or through custom and practice.

In light of this diversity, it may be particularly helpful for implementing regulations to address the detail of this Article in light of national law on the above questions and to clarify what recognition means for the various categories of actors (i.e. whether a Foreign NGO is recognized as the equivalent of a “foundation” or a “charity” or other appropriate status under domestic law). It must be noted, moreover, that this provision could be particularly complex for a federal state to adopt, since legal personality may often be controlled at the provincial or lower levels of government.

A useful model for the recognition of international non-government organizations registered in another state is the Council of Europe’s Convention on the Recognition of the Legal Personality of International Non-Governmental Organizations 1986, which, in Article 3, sets out a process and type of proof of legal personality that might be required by states under the present law, as follows:

‘The proof of acquisition of legal personality and capacity shall be furnished by presenting the NGO’s memorandum and articles of association or other basic constitutional instruments. Such instruments shall be accompanied by documents establishing administrative authorisation, registration or any other form of [...official

publication by the registering State...] which granted the legal personality and capacity. In a [State] Party which has no publicity procedure, the instrument establishing the NGO shall be duly certified by a competent authority...'

Consistently with the EU provisions, in Austria foreign relief organizations that have legal capacity in their home country also have legal capacity under Austrian law; thus, the establishment of a separate legal entity under Austrian law is not a statutory necessity (Law of 15 June 1978, BGB1. No. 304/1978), Art 10).

Not surprisingly, most states regulate the presence of foreign legal entities in their territory. The Model Act does not propose changing this, but proposes mechanisms to increase the efficiency of assisting international Actors only during the relief and initial recovery phase.

Some countries already allow for such expedited procedures. For example:

- Indonesia requires permits for all Assisting International Actors, and normally these require the submission of a proposal and entering an MOU, but during Disasters its law allows waivers of these aspects of the process (Ch.II, D., Guideline on the Role of the International Organizations and Foreign Non-Government Organizations during Emergency Response, 2011). Indonesia's Decree No. 89/KMK.04/2002 further details that goods imported for the needs of international bodies may be exempted from import duties provided certain conditions are met, including having a formal representative organisation based in Indonesia.
- In Nepal, there is a separate system for registration of Foreign NGOs under the Social Welfare Act, No. 2049, 1992, which requires general registration as well as project-by-project approval. Although there is no formal mechanism to waive these procedures (which are primarily designed for development projects), established practice has been to allow Assisting International Actors entry without registration during disaster emergencies.

Few domestic legal systems are in fact geared towards the very temporary presence of foreign entities such as occurs during major disaster relief efforts, though in some cases they can confer similar benefits for organisations that are already operating in their territory. For example:

- China allows foreign NGOs to provide humanitarian assistance, but only if they are already established as legal entities, under Decree No. 400 of the State Council of the People's Republic of China, 'The Regulations on Administration of Foundations' - Effective June 2004 (the Foundations Regulation), Articles 6.4, 14, 25 and 26. This law regulates the registration and administration of non-profit, non-governmental organisations engaged in "welfare activities" and funded by voluntary donations from individuals and organisations. This applies to Foreign NGOs (with external donations) as well domestic civil society. For Foreign NGOs to register, they must establish a representative office in China. This allows Foreign NGOs to open bank accounts and transfer funds from overseas (normally highly restricted), to obtain tax benefits, lease premises, and enter into contracts enforceable in domestic courts, as well as the right to employ personnel. However, there is also a complex and ongoing system of oversight and approval that is administratively complex. This system is not designed for the temporary situation of a Disaster, but for those Foreign NGOs already registered under it, it provides many of the Legal facilities envisaged in Chapter VI.
- Bulgaria's Code on Private International Law (promulgated SG N42/17 May 2005, last amended SG N47/23 June 2009) does not provide for any limitations or special registration regime of international or foreign relief organizations. The status of legal persons is determined by the legislation of the country where they are registered or where, according to their Constitutions, their headquarters are located. However, newly established non-profit legal entities, as well as branches of foreign NGOs, need to be register with the district court where their headquarters are located (which reportedly takes around one month).

See also:

- IDRL Desk Study at Chapter 3.1.5 – Privileges and immunities, and 12.1 - Domestic legal personality.

Article 49 Engagement and Termination of Locally Engaged Disaster Personnel - Commentary

This Article is intended to facilitate the ability of Assisting International Actors to hire local personnel for the temporary purposes of relief and initial recovery programmes. Local labour law rules that do not allow for them to limit the length of the contracts they provide can make it very difficult for them to do their work

Some Assisting International Actors have encountered difficulties in countries where employment contracts are regulated in favour of presumed continuity of employment. For example, some national employment laws allow one or two short-term employment contracts, and after that any new contract is regarded as a ‘permanent’ employment contract, which is more difficult and more expensive to bring to an end. While these employment conditions clearly serve an important social welfare purpose for employees in normal circumstances, they are not practical and can be very costly for Assisting International Actors working only temporarily in the country in providing International Disaster Assistance. Such laws can also discourage Assisting International Actors from engaging local personal rather than bringing in international personnel, a practice which can reduce their contribution to the local economy as employers.

Article 50 Jurisdiction concerning International Personnel - Commentary

This article guarantees that eligible Assisting International Actors can rely on contract provisions with their International Personnel concerning choice of law and choice of forum for the adjudication of any disputes. They can thus be less apprehensive that local courts will ignore such provisions and apply rules and procedures never contemplated by either party to the contract at its inception. Such a rule is justified in light of the need for Assisting International Actors to be ready to provide their assistance with very little advance notice (and little opportunity for previous labour law research) in an affected country.

Part 7 Taxation of Eligible Assisting International Actors - Commentary

This Part includes:

Article 51 Value-Added Tax (VAT) [and other similar taxes]

Article 52 Income Tax [and Other Similar Taxes]

Article 53 Property, Assets [and other similar] Taxes

This Part refers to the following section of the IDRL Guidelines:

Part V, Legal facilities for entry and operations, 21, Taxation

Overview:

The purpose of this part is similar to the provisions relating to exemption from customs duties and similar levies provided in Parts 1-5 of this Chapter. That purpose is to reduce the overhead costs for eligible Assisting International Actors providing International Disaster Assistance during the designated periods. Part of the cost reduction is also the administrative costs of registering for each of the relevant tax regimes and submitting accounts or tax returns. While it remains an important anti-corruption measure that eligible Assisting International Actors are subject to financial reporting, as described in Chapter VII of the Model Act, this should be simplified consistent with their tax-free status and temporary legal capacity in the affected state.

The provisions in Part 6 are not proposals for blanket long-term tax exemptions for international actors operating in the legislating state. If such long-term exemptions are provided, this will be an entirely separate process, normally subject to other national laws, international conventions and/or status agreements, such as those discussed in the commentary to Article 4. Of course, if the relevant actors already have such exemptions under other laws or agreements, Article 4 ensures that these are not affected by legislation based on the Model Act.

Federal states will need to consider to what extent provincial and local taxes may be waived by a national law of this type.

See: IDRL Desk Study Part III, Chapter 12.3 - Taxation

Article 51 Value-Added Tax (VAT)[and other similar taxes] - Commentary

This Article relates to exemption for eligible Assisting International Actors from Value Added Taxes (VAT) and other similar taxes, which include service taxes, sales taxes, turnover taxes and similar taxes, duties, levies and governmental fees. This exemption applies only to eligible Assisting International Actors and only during the International Disaster Relief and/or Initial Recovery Period.

The first option in **Article 51(c)** is usually described as the 'zero rating' approach to VAT exemption. It is the mechanism that places the least administrative burden or financial penalty on local suppliers, and is therefore recommended. However, the other two options, the 'exemption' approach and the 'no supply' approach are both valid and may be more compatible with existing regimes in some implementing states.

A number of countries do have exemptions for VAT and similar taxes for disaster assistance. For example:

- In India, Section 93 of the Finance Act 1994 empowers the national government to provide an exemption on service tax where to do so is in the public interest. At the provincial level in India, The Punjab VA Act 2005, the Himachal Pradesh VAT Act 2005 and the Haryana VAT Act 2003 are also good examples of the use of local (rather than national) VAT legislation to help disaster victims in specific areas of India. This legislation provides for VAT exemption on goods destined for relief and rehabilitation, and was used regarding the victims of the Jammu and Kashmir earthquake in 2005.
- In Vietnam, Article 5, Law on Value-Added Tax No. 13/2008/QH12 (the LVAT) designates the repair and construction of public infrastructure and residential houses funded by humanitarian aid as a non-taxable object. It also designates goods imported as humanitarian aid and donations and gifts for Vietnam-based individuals (within the Government prescribed quotas) as non-taxable objects.
- In China, Article 16 of the Provisional Regulation on Value-added Tax 1993, exempts from VAT imported materials and equipment from foreign governments and international organisations given as assistance.
- South Korea, the Value Added Tax Law 1976 provides an exemption from VAT for: unprocessed foodstuffs; water; medical and health services; goods donated from a foreign country to religious, charitable or relief organisations or for any other public benefit; and goods donated from a foreign country to the state or a local authority. And its Corporate Tax Act (1998) states that domestic non-profit corporations are only subject to tax on income from certain listed profit-making activities, and that foreign non-profit corporations are only subject to tax on income from Korean-source profit making activities.

Article 52 Income Tax [and Other Similar Taxes] - Commentary

This Article concerns income tax exemptions for both the eligible Assisting International Actors and their international disaster personnel but, again, only during the International Disaster

Relief and/or Initial Recovery Period. For these purposes, income and similar taxes include national, state/provincial and local/municipal taxes related to organizational or personal income. The exemption is relevant for non-profit organizations, as many such tax regimes relate to gross income and to deemed profits.

Article 53 Property, Assets [and other similar] Taxes - Commentary

This Article exempts eligible Assisting International Actors' own assets from property or assets taxes, as well as premises used by them during the International Disaster Relief and/or Initial Recovery Period, as long as these are used for the purposes of International Disaster Assistance.

Part 8 Currency and Banking – Commentary

This Part includes:

Article 54 Right to Bring Necessary Funds and Currencies into the Country

Article 55 Preferential Exchange Rates

This Part refers to the following section of the IDRL Guidelines:

Part V, Legal facilities for entry and operations, 20, Temporary domestic legal status

Overview:

As with Parts 1-6, one of the purposes of the provisions in Part 8 is to reduce overheads for eligible Assisting International Actors during the International Disaster Relief Period and/or International Initial Recovery Period, by allowing international currency transfers (Article 54), which are untaxed in accordance with this Chapter, and preferential exchange rates (Article 55). Such transactions may be prohibited or restricted under other national laws, whereas the capacity to bring international funds into the affected state is now an essential element of International Disaster Assistance. It is often both faster, and of benefit to the local economy, if international actors have the capacity to buy many items locally.

See: IDRL Desk Study Part III, Chapter 9.2.6 – Currency, and Chapter 12.2 - Banking

Article 54 Right to Bring Necessary Funds and Currencies into the Country - Commentary

This Article reduces overheads for eligible Assisting International Actors during the International Disaster Relief and/or Initial Recovery Period, by allowing untaxed international currency transfers. It also makes it possible to do this where it is prohibited or restricted under other national laws.

The Indonesian 'Guideline on the Role of the International Organizations and Foreign Non-Government Organizations during Emergency Response (2011) (Ch. II, D.1 (e)) allows that providers of assistance may carry foreign and rupiah currencies to and from Indonesia according to monetary regulations and obtain legal exchange value in accordance with the disaster emergency operations. The same Guideline (Ch II, D.1 (f)) also allows foreign personnel to open personal bank accounts for operational needs in carrying out their humanitarian activities, subject to checking with their respective embassies in Indonesia.

Article 55 Preferential Exchange Rates - Commentary

Currency exchange may normally be taxed, subject to high fees for transactions, or subject to less favourable exchange rates for foreign entities. This Article provides for the most favourable exchange rates for eligible Assisting International Actors during the International Disaster Relief and/or Initial Recovery Period, providing the funds are for the purpose of disaster assistance.

Chapter VII
Supervision, Reporting and
Sanctions
Commentary

Chapter VII Commentary on Supervision, Reporting and Sanctions

This Chapter includes:

- Article 55 Supervision of Assisting Actors
- Article 56 Non-Compliance by Assisting Actors
- Article 57 Transparency as to Donated Funds
- Article 58 Annual Reporting on Implementation

This Chapter extends beyond the scope of particular IDRL Guidelines, taking into account subsequent developments.

See also:

'Preventing Corruption in Disaster Relief Operations', Chapter 5, *Knowledge Commitment Action: Against Corruption in Asia and the Pacific*, proceedings of the 5th Regional Anti-Corruption Conference of the ADB/OECD Anti-Corruption Initiative for Asia and the Pacific, Beijing 2005 (2007 OECD e-book), ADB, 26 Nov 2007.

IDRL Desk Study 9.26- Currency, and 13.3 - Accountability.

Standard in Accountability and Quality Management, Humanitarian Accountability Partnership (HAP) 2010.

Overview

This chapter concerns a range of more concrete measures to both clarify and improve accountability for both Assisting Actors and government officials and agencies regarding their responsibilities under this act.

Article 56 Supervision of Assisting Actors - Commentary

This Article provides for supervision and monitoring of Assisting Actors's compliance with the act, including powers for the national disaster management authority to impose reporting requirements. This element is necessary given that the act includes sanctions for non-compliance in Article 56.

Similar provisions have been implemented in Indonesia's 'Guideline on the Role of the International Organizations and Foreign Non-Government Organizations during Emergency Response, 2011' which provide that the National Disaster Management Agency – the BNPB – manages international assistance, including monitoring and evaluation (Ch.II) and sanctions for non-compliance in accordance with existing regulations (Ch.III).

Article 57 Non-Compliance by Assisting Actors - Commentary

This Article is concerned with Assisting Actors' compliance with their obligations under the act. The consequences of non-compliance can include withdrawal of eligibility for Legal Facilities – for those who have them – and, in the most extreme cases, withdrawal of the government's consent for an Assisting International Actor to provide International Disaster Assistance in response to a particular Disaster.

Article 57 sets out a basic procedure, with guidance on how such a process should work if it is to be fair and open. The key elements include the quality and source of the information about the actor's activities, its right of reply, the option of temporary suspension of facilities while the matter is being investigated, the actor's right of appeal, and a specified period of notice of such suspension if the state's decision is negative. It is difficult to be more specific than this in a Model Act, but legislating states may find it necessary to include more detailed procedures in regulations, in particular to specify the body to which appeals would be made.

Article 57(e) makes clear that the particular sanctions noted in this article are without prejudice to any civil or criminal liability that might apply to an Assisting Actor based on other laws of the country.

Article 58 Transparency as to Donated Funds - Commentary

This Article concerns financial accountability for internationally donated funds as part of International Disaster Assistance. Article 57 (a) provides for transparency in internationally donated funds received by the Government, and Article 57(b) mirrors these for donations received by Assisting Domestic Actors, both requiring external audit.

Many states have initiated procedures for tracking international donations to government – such as the tracking system used by the national coordinator CONRED and the Executive Government Commission SEGEPLAN in Guatemala after Tropical Storm Stan in 2005 (Legal issues from the international response to the tropical storm Stan in Guatemala, IFRC, April 2007 at 22). Moreover, some governments have created a designated national disaster fund of some kind that is used to receive both domestic and international donations. Where such a fund exists and has its own procedures for audit and transparency, consideration should be given whether the provisions of **Article 58(a)** are necessary.

Many states are also interested in tracking foreign donations to Assisting Domestic Actors. **Article 58(b)** provides a simple mechanism that should not be too burdensome for them to ensure transparency about how they use such funds.

The background to the provisions of the Model Act is the considerable reflection following the South-East Asian Tsunami of 2005, and in particular the ‘Jakarta Framework’ developed from an initial meeting of experts on Curbing Corruption in Tsunami Relief Operations (‘Preventing Corruption in Disaster Relief Operations’, Ch. 5, *Knowledge Commitment Action Against Corruption in Asia and the Pacific*, ADB/OECD 2007). The key elements of this framework are that corruption can be lessened if the affected country owns the relief and reconstruction effort, that affected communities need to participate and drive the processes, and all stakeholders need financial transparency, in particular by tracking aid flows and ensuring oversight and evaluation, which require administrative capacity for comprehensive financial and budgetary information as well as effective systems for complaints and enforcement.

The Bulgarian Regulations on the organization of the activities of the Joint Commission for Recovery and Relief at the Council of Ministers refer to standards of accountability and transparency, although they do not encompass donations to NGOs, only to government authorities. Chapter 4 of its Regulation No. 58/06.04.2010 (as amended, SG No. 7/21.01.2011) concerns Coordination of Relief and Donations by the Commission. It requires in Article 42 (1) that “Ministries, institutions and municipalities inform the Commission on the relief and donations from Bulgarian and foreign individuals and legal entities, which they received for prevention, control and overcoming of the consequences of disasters, on the specific individuals to whom they were distributed, and the entities for which they are granted”, which information is then posted on the web page of the Council of Ministers (42(3)).

Article 59 Annual Reporting on Implementation - Commentary

This Article concerns the government’s own monitoring of steps taken to implement this act. It is particularly hoped that steps taken in preparation for future disasters, such as the preparedness tasks described in Chapter III will receive oversight and encouragement through this process.

Article 60 Sanction for Non-Compliance by Officials - Commentary

Just as there are sanctions for non-compliance with the act by Assisting Actors, this Article provides for sanctions against government officials. These cannot be more specific in the Model Act due to national variation in such procedures, but the Article serves to identify the issue.

Chapter VIII
Transit of International
Disaster Assistance
Commentary

This Chapter includes:

- Article 61 Facilitation for Transit
- Article 62 Transit Facilities Period
- Article 63 Eligibility for Transit Facilities
- Article 64 Disaster Transit Visa
- Article 65 Goods and Equipment in Transit and Transshipment
- Article 66 Transport for Transit and Transshipment

This Chapter relates to the following sections of the IDRL Guidelines:

Part II, Early warning and preparedness, 8 – Legal, policy and institutional frameworks (especially 8.2)

Part IV, Eligibility for Legal Facilities (as applicable to transit states)

Part V, Legal facilities for entry and operation, 16-19, as applicable to transiting Assisting International Actors, including International Personnel.

Overview

Chapter VIII addresses a different subject from the earlier part of the Model Act, that is, transit of International Disaster Assistance through the territory of the legislating state to another state affected by disaster. This Chapter provides for expedited and tax free entry and exit of International Personnel, Goods and Equipment (including vehicles) by international actors assisting the other state. It reflects the relevant facilities and provisions in Chapter VI, and although it also provides for a specific period when the facilities are made available, it does not include a system of eligibility. It is assumed that, subject to basic security checks by the state of transit, it is the destination state that will control the entry of Assisting International Actors and their Personnel, Goods and Equipment as well as to coordinate them and apply any eligibility requirements.

These provisions essentially provide for expedited entry and transit of Personnel, and for ‘customs transit’ of relief consignments, of Goods and Equipment (including vehicles).

When entering a customs territory, goods are normally liable to import duties and taxes, and subsequent re-exportation does not necessarily give entitlement to a repayment. For this reason the legislation of most countries contains provisions under which movement through their territory may take place without payment of the import or export duties and taxes, with the goods being transported under customs control to ensure compliance with the requirements laid down. The procedure under which such movements are made is termed ‘customs transit’. In the present context this applies to the transit of relief goods and equipment (including vehicles) through the territory of the affected state for the purpose of assisting another country affected by a disaster.

To facilitate the international transport of goods that have to pass through a number of customs territories, arrangements have also been made under international agreements to apply standard procedures for the treatment of goods carried in customs transit through their territories. In order for any goods to move under a transit procedure, a request must be made for customs clearance in transit, subject to the conditions set by the various provisions. The goods declaration to be used depends on the type of transit planned and the Convention at issue.

This Chapter also utilises some other terms specific to customs and taxation, which are outlined in the commentary as they occur in the text. The first of these is the concepts of ‘customs

clearance', which is a general term meaning the completion of all customs formalities, including any payment of taxes or duties necessary to allow goods to enter for use, to be exported, or to be placed under another customs procedure (in this case, 'another customs procedure' would mean customs transit). This is part of customs control measures to ensure compliance with customs law. When the goods are being transported through the territory under 'customs transit', the clearance process will normally be done while the shipment is in transit across the territory. The proposal in this Model Act is that, for transiting relief consignments, customs clearance and release could be expedited - in part because they would have no financial liabilities payable to the customs authority for the importation/transit of the Goods or Equipment.

See also: IDRL Desk Study: Chapter 3, Global International Law and Norms (especially 3.1.7 – Transport law, 3.1.2 – Legal barriers); Chapter 4 – Regional law and norms; and Chapter 9.1.3 – Transit.

Article 61 Facilitation for Transit - Commentary

This Article parallels Article 29, and defines a general duty of government authorities to facilitate transit or transshipment of international disaster assistance destined for another state.

Article 62 Transit Facilities Period - Commentary

This Article establishes a Transit Facilities Period during which the Transit Facilities are made available, based on information the transit state receives from the other state affected by disaster, as to its needs for such assistance. This establishes a boundary around disaster transit so that the customs administrations of both countries do not have to assess every case at any time as to whether the Transit Facilities are justified. This broadly parallels the regime for domestic International Disaster Assistance in Chapter II of this act, but is greatly simplified.

Article 63 Entitlement to Transit Facilities - Commentary

This Article establishes basic criteria for access to Transit Facilities by Assisting International Actors, including a right of refusal by the transit state in cases of actual or suspected abuse, or for public health or security reasons.

Article 64 Disaster Transit Visa - Commentary

This Article parallels Article 25 concerning the entry of international disaster personnel, but for the purpose of transit only.

Some transiting international disaster personnel may be entitled to enter on other visas, but the Model Act encourages states to either use a disaster transit visa, as in this Article, or a visa waiver, as in alternative Article 64, rather than tourist visas. This distinguishes between those transiting to the disaster-affected state as experienced humanitarian actors, and others who may wish to engage in 'disaster tourism' at a time when that state cannot afford to accommodate their needs, or well-meaning but unattached/untrained foreign volunteers.

Although the disaster transit visa is proposed as the first option, because it has the benefit of identifying the personnel and their dates of entry to and exit from the transit state, and also assists the destination state in determining its own disaster personnel visa applications, this does place an administrative burden on the transit state. Hence, transit states may sometimes find it easier to adopt a visa waiver facility for this purpose (Alternative Article 64), although it should clearly be waived only for personnel with evidence of their attachment to an international assisting actor, and of their travel bookings to the affected state.

Article 65 Goods and Equipment in Transit and Transshipment - Commentary

This Article applies to transit relief consignments, Chapter VI, Part 2, concerning entry of Goods and Equipment generally, and Part 3 concerning entry and use restrictions for specifically

regulated types of Goods and Equipment, including telecommunications equipment, medications, food, imported vehicles and rescue dogs.

Article 66 Transport for Transit and Transshipment - Commentary

This Article applies to the vehicles used to transit International Disaster Assistance. It applies to transit situations the provisions of Chapter VI, Part 5 concerning land, sea and air transport, including the entry of transport operators (drivers and pilots).

In addition to delays and import or export duties or other taxes affecting many disaster assistance goods, some regulatory issues that have often emerged regarding the transit of International Disaster Assistance, include:

- For land transport: carriage permit requirements; vehicle type and performance standards regulations, including treatment of specially adapted vehicles; tolls, fees and charges for road use; whether the vehicles need to be accompanied by a representative of the Assisting international Actor; whether the details of the driver need to be provided in advance; and whether drivers of transiting relief consignments need some form of entry clearance such as a visa.
- For air transport: difficulties obtaining landing or overflight permission; general problems in coordination of air transport relief; landing and departure taxes; and inflated fuel costs by opportunistic service providers.
- For sea transport: delays in 'flag waiver', a standard procedure which allows foreign crews exemption from immigration regulations and other requirements; and high berthing, wharf and storage fees.

See also: IDRL Desk Study at Chapter 3.1.7 – Transport Law; Chapter 9 – Goods and Equipment (especially 9.1.3 – Transit); Chapter 11 – Transport and Movement.

Chapter IX
Implementation, Transitional
and Final Provisions
Commentary

Chapter IX Commentary on Implementation, Transitional and Final Provisions

This Chapter includes:

- Article 67 Implementing Regulations
- Article 68 Repeals and Revocations
- Article 69 Severability
- Article 70 Entry into Force
- Article 71 Transitional Provisions

Overview

This Chapter includes relatively standard types of legislative formalities which allow for the making of regulations, and place this law in the context of the other laws of the legislating state, including: which if any other laws are amended or repealed by it (Article 68); the fact that even if one part of this law is later found invalid by a court, the rest still stands (Article 69); the date it becomes effective in law (Article 70); and any transitional arrangements that need to be made to phase in this law (Article 71).

Article 67 Implementing Regulations - Commentary

This Article provides the necessary powers to make further regulations under the act. Many of the provisions of the Model Act will require more detailed procedures for implementation.

Article 68 Repeals and Revocations – Commentary

This Article places the act in the context of the other laws of the legislating state, indicating which, if any, other laws are amended or repealed by it.

Article 69 Severability – Commentary

This Article means that even if one part of this law is later found invalid by a court, the rest still stands.

Article 70 Entry into Force - Commentary

This Article sets the date for entry into force, which is generally a designated date after legislation is passed by the parliament or congress or national assembly. This may be dependant on the date on which the law receives royal or presidential assent, depending on the constitutional system of each country.

Article 71 Transitional Provisions - Commentary

Transitional provisions can be used to bring some parts into force and not others for a time, generally to allow institutional arrangements to be set up for its implementation. If it amends other laws, the transitional provisions may also be used to allow administrative changes for the institutions implementing these other laws.

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