

POSITION PAPER ON THE INTERNATIONAL LAW COMMISSION'S DRAFT ARTICLES ON THE PROTECTION OF PERSONS IN THE EVENT OF DISASTERS

Geneva, 20 July 2023

Introduction

In 2016, the International Law Commission (**ILC**) adopted, on second reading, the [Draft articles on the protection of persons in the event of disasters](#) (the **Draft Articles**). The ILC subsequently presented the Draft Articles to the United Nations General Assembly (**UNGA**) with a recommendation that a treaty be elaborated based on them. This marked a notable departure from the ILC's tendency, in recent decades, to recommend that draft articles be adopted in soft final forms such as guidelines or recommendations.¹

At the time of writing, the prospect of a new international treaty based on the Draft Articles remains on the international community's agenda and has the support of a core group of states. Pursuant to UNGA Resolution 76/119, a working group of the Sixth Committee will convene for four full consecutive days during the 78th and 79th sessions of the UNGA and will make a recommendation to the UNGA as to any further action to be taken in respect of the Draft Articles. It is anticipated that the working group's deliberations will focus on the prospect of developing a treaty based on the Draft Articles.

This paper outlines the International Federation of Red Cross and Red Crescent Societies' (**IFRC**) position on the prospect of a new treaty based on the Draft Articles. Section 1 of the paper provides key background information, including a brief overview of key developments in international disaster law during the past two decades. Section 2 outlines the key reasons why IFRC supports the development of a treaty based on the Draft Articles. Section 3 discusses the strong elements of the Draft Articles which should be retained in any new treaty. Section 4 provides IFRC's recommendations on areas where the Draft Articles could be strengthened in order to make a strong impact on the management of disasters and disaster risk.

¹ Giulio Bartolini, 'A universal treaty for disasters? Remarks on the International Law Commission's Draft Articles on the Protection of Persons in the Event of Disasters' (2017) 99(3) *International Review of the Red Cross* <https://international-review.icrc.org/sites/default/files/906_12.pdf> accessed 20 February 2023, 1107.

1. Background

IFRC has been active in disaster law at the international, regional and domestic levels for over 20 years. During this period, IFRC has witnessed significant developments in the international legal framework relating to disasters in two key areas: external assistance for disaster response; and domestic disaster risk reduction (**DRR**).² The following sub-sections provide a brief overview of these developments.

A. External assistance

In large-scale disasters, external assistance can be essential to rapidly meeting the needs of affected people. Experience shows that even well-prepared and well-resourced states may need external assistance, especially in the context of an increasing number of catastrophic disasters that exceed historic records. However, international disaster response operations encounter a set of common, recurring challenges including: delays in obtaining visas for relief personnel and the inability of foreign professionals (e.g., doctors, nurses) to practice due to licensing restrictions; delays and bottlenecks in customs clearance for relief consignments; delays in obtaining permission for the passage or arrival of land, marine and air vehicles; and challenges relating to opening local bank accounts and transferring relief funds. Spurred by growing recognition of these regulatory challenges, during the past two decades international disaster response law (**IDRL**) has emerged as a distinct branch of international law concerned with addressing the regulation and facilitation of external assistance.

IFRC has made a significant normative contribution to IDRL by developing the [Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance](#) (commonly known as the **IDRL Guidelines**). The IDRL Guidelines compile the main norms and principles relating to international disaster response into a single, coherent framework that can be more readily implemented at domestic level. In 2007, the IDRL Guidelines were adopted by the 30th International Conference of the Red Cross and Red Crescent, which occurs once every four years and convenes the states parties to the Geneva Conventions, the 191 National Red Cross and Red Crescent Societies (**National Societies**), the International Committee of the Red Cross (**ICRC**), and IFRC.³ Subsequently, the IDRL Guidelines have been cited by 22 resolutions of the UNGA,⁴ have influenced the substance of the ILC's Draft Articles,⁵ and are referenced in the Sendai Framework for Disaster Risk Reduction 2015-2030 (**Sendai Framework**).⁶ They have also been influential at regional and

² Disaster risk reduction refers to "preventing new and reducing existing disaster risk and managing residual risk, all of which contribute to strengthening resilience and therefore to the achievement of sustainable development": Report of the open-ended intergovernmental expert working group on indicators and terminology relating to disaster risk reduction, A/71/644 (1 December 2016). The terminology recommended in this report was endorsed by the United Nations General Assembly on 13 February 2017: Report of the open-ended intergovernmental expert working group on indicators and terminology relating to disaster risk reduction, GA Res 71/276, UN Doc A/RES/71/276 (adopted 13 February 2017).

³ 30th International Conference of the Red Cross and Red Crescent, 'Resolution 4 – Adoption of the Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance' (Geneva, November 2007) <https://disasterlaw.ifrc.org/sites/default/files/media/disaster_law/2021-02/ic-r4.pdf> accessed 20 February 2023.

⁴ See, eg, UNGA Res 72/133 (11 December 2017) UN Doc A/RES/72/133; UNGA Res 72/132 (11 December 2017) A/RES/72/132.

⁵ International Law Commission, Draft articles on the protection of persons in the event of disasters, with commentaries (2016) <https://legal.un.org/ilc/texts/instruments/english/commentaries/6_3_2016.pdf> commentary on arts 3(a), 3(b), 3(d), 4, 6, 11 and 15.

⁶ Sendai Framework for Disaster Risk Reduction 2015-2030 (adopted 18 March 2015) [33p].

domestic levels, with IFRC and National Societies having supported the implementation of the IDRL Guidelines in several regional instruments⁷ and in domestic instruments in 38 countries.⁸

The key issues addressed by the IDRL Guidelines are: the initiation and termination of international assistance; the responsibilities of affected states and assisting actors; and the cross-border movement of personnel, goods and equipment. The IDRL Guidelines affirm state sovereignty and the primary role of domestic authorities in managing disasters that occur within their borders, emphasising that international assistance should complement rather than displace the efforts of domestic actors. As discussed further below, a fundamental concept of the IDRL Guidelines is that domestic authorities should only provide facilitation measures to a select group of international actors that it has approved based on their capacity to adhere to minimum standards of coordination, quality and accountability. While there has been significant progress on IDRL during the past two decades, in IFRC's experience regulatory barriers remain a major challenge in international disaster response operations, preventing the right assistance from reaching people in need at the right time.

B. Domestic disaster risk reduction

In parallel to the emergence of IDRL, during the past two decades there has also been growing international normative activity concerning the *domestic* management of disaster risk. This has largely occurred under the auspices of the World Conference on Disaster Risk Reduction, which adopted the Hyogo Framework for Action in 2005 and the Sendai Framework in 2015. Despite being non-binding soft law, the Sendai Framework has catalysed significant activity at domestic level, spurring the development of national and sub-national strategies, policies and plans for disaster risk reduction. It should be noted that, notwithstanding its title, the Sendai Framework also contains some provisions on disaster preparedness and recovery, with one of its four priorities being to enhance disaster preparedness for effective response and to "Build Back Better" in recovery, rehabilitation and reconstruction.

In addition to the adoption of the Sendai Framework, 2015 saw the adoption of the Paris Agreement and the Sustainable Development Goals. There is substantial overlap between states' commitments under the Sendai Framework, the Paris Agreement and the Sustainable Development Goals. Both conceptually and practically, the effective management of disaster risk at the domestic level is critical to sustainable development and climate change adaptation. IFRC has contributed to the development of international guidance on the domestic management of disasters by developing key guidance documents, which have been endorsed by the International Conference of the Red Cross and the Red Crescent. These documents include: first, [The Checklist on Law and Disaster Risk Reduction \(Checklist on Law and DRR\)](#), jointly developed with the United Nations Development Programme and endorsed by

⁷ IFRC and National Societies have jointly influenced the development of regional provisions consistent with the IDRL Guidelines including in the Regional Mechanism for Humanitarian Assistance in the event of Disasters of the Central American Integration System, the Guidelines on International Cooperation for Humanitarian Assistance among Andean Countries, the European Union Host Nation Support Guidelines, the ASEAN Agreement on Disaster Management and Emergency Response, and the ASEAN Standard Operating Procedure for Regional Standby Arrangements and Coordination of Joint Disaster Relief and Emergency Response Operations.

⁸ The 38 countries are: Bhutan, Bosnia and Herzegovina, Burkina Faso, Cambodia, Colombia, Cook Islands, Costa Rica, Ecuador, El Salvador, Finland, Guatemala, Honduras, Indonesia, Italy, Kyrgyzstan, Maldives, Mexico, Mongolia, Mozambique, Myanmar, Namibia, Nepal, Netherlands, New Zealand, Nicaragua, Norway, Panama, Paraguay, Peru, Philippines, Rwanda, Samoa, Seychelles, Tajikistan, Turkmenistan, Thailand, Vanuatu, Vietnam.

the 31st International Conference in 2015; and secondly, [The Checklist on Law and Disaster Preparedness and Response](#), endorsed by the 32nd International Conference in 2018.⁹

2. IFRC's position on the prospect of a treaty based on the Draft Articles

IFRC strongly supports the development of a treaty based on the Draft Articles. IFRC has three key reasons for supporting a new treaty.

First, based on IFRC's 20 years of experience in disaster law, there is a need for more detailed international regulation of external disaster assistance to address the perennial challenges encountered in this area. Despite increased understanding and some progress in this area during the past two decades, most states remain unprepared to receive external assistance, resulting in bottlenecks and delays. These challenges detrimentally impact affected populations, preventing them from receiving the assistance they need in a timely manner. They can also make it difficult for domestic authorities to control the quality and appropriateness of incoming external assistance. A new treaty could provide a degree of certainty about what states can expect from one another when they offer or accept disaster assistance and prompt the necessary national regulatory reforms. In particular, a new treaty could clarify the types of facilitation measures that will be granted to assisting states and other assisting actors if their assistance has been accepted or requested by the affected state.

Secondly, a new treaty based on the Draft Articles would generate vital momentum for disaster risk reduction. Investing in DRR pays large dividends, both in terms of avoiding human and economic impacts: each dollar invested saves between 3 and 15 dollars in response and recovery costs.¹⁰ While the Sendai Framework has undoubtedly catalysed stronger DRR action at domestic level, there is still a need for many states to strengthen their laws and policies in this area. The creation of a duty for disaster risk reduction, as is contemplated by the Draft Articles, would accelerate domestic efforts to reduce disaster risk, catalysing important legal and policy reforms at national and sub-national levels. This is critically important in the face of the growing risks posed by climate-related hazards.

Thirdly, the current international legal landscape relating to disasters is an incomplete patchwork. None of the existing disaster instruments are universal in scope. Many existing instruments only apply to regional groups of states or only address specific types of disasters or specific forms of assistance. Moreover, the practical impact of the existing instruments is limited by low ratification numbers for binding instruments and the fact that several key instruments — such as the Sendai Framework and the IDRL Guidelines — are non-binding soft law. As a result, the international community lacks a clear and comprehensive legal framework to regulate disasters, with existing provisions being scattered across many different instruments of varying status. A universal, hard law instrument on the protection of persons affected by disasters would serve to clarify and consolidate states' obligations with respect to the management of disasters and disaster risk.

⁹ 32nd International Conference of the Red Cross and Red Crescent, 'Resolution 6 - Strengthening legal frameworks for disaster response, risk reduction and first aid' (Geneva, December 2015) 32IC/15/R6 <https://disasterlaw.ifrc.org/sites/default/files/media/disaster_law/2021-02/32IC-Res6-legal-frameworks-for-disaster_EN.pdf> accessed 21 February 2023; 33rd International Conference of the Red Cross and the Red Crescent, 'Resolution 7 – Disaster Laws and Policies that Leave No One Behind' (Geneva, December 2019) 33IC/19/R7 <https://disasterlaw.ifrc.org/sites/default/files/media/disaster_law/2021-02/33IC_R7-Disaster-Law-resolution-adopted-EN-1.pdf>.

¹⁰ The amount saved is, ultimately, highly context dependent and cannot be universalised. However, it is clear that investment in DRR and preparedness is highly financially efficient: see David Hugenbusch Thomas Neumann, 'Cost-Benefit Analysis of Disaster Risk Reduction: A Synthesis for Informed Decision Making' (Aktion Deutschland Hilft e.V., October 2016) <https://www.aktion-deutschland-hilft.de/fileadmin/fm-dam/pdf/publikationen/ADH_Studie_EN_rev3.pdf> 29-30.

IFRC considers that the Draft Articles provide a good starting point to negotiate a new treaty. It notes, as a general comment, that if a new treaty is developed, it will be important to include provisions addressing its ongoing implementation such as provisions establishing a monitoring and compliance mechanism, creating a secretariat and/or providing for ongoing conferences of the parties.

3. Strong elements of the Draft Articles

A. The protection of people affected by disasters

As their title suggests, the Draft Articles place central importance on the protection of people affected by disasters. The Draft Articles establish that the human dignity of people affected by disasters must be respected (article 4) and further provide that disaster response shall take place in accordance with the principles of humanity, neutrality and impartiality, and based on non-discrimination, while taking into account the needs of the particularly vulnerable (article 6). IFRC considers that these provisions are strong elements of the Draft Articles which should be retained in any future treaty. IFRC highlights the practical relevance of these principles to domestic disaster risk management,¹¹ noting in particular that eliminating direct and indirect discrimination in disaster risk management activities is key to protecting the most vulnerable and reducing the disaster impacts they bear. It further notes that establishing a hard law basis for humanitarian principles in disasters would be valuable at a time when there is significant pressure on them.

B. Disaster risk reduction

IFRC considers that, consistent with the Draft Articles, it would be very beneficial to include a general duty for disaster risk reduction in any new treaty. Draft article 9(1) establishes a general duty to reduce the risk of disasters by taking appropriate measures, including through legislation and regulations, to prevent, mitigate, and prepare for disasters. Draft article 9(2) provides a non-exhaustive list of DRR measures; it refers to risk assessments, the collection and dissemination of risk and past loss information, and the installation and operation of early warning systems. IFRC notes that there is currently no hard law duty for DRR under international law and that draft article 9 would fill this critical gap. While the Sendai Framework and its predecessors have undoubtedly catalysed stronger DRR action at domestic level,¹² the creation of a hard law duty for DRR would accelerate domestic efforts to reduce disaster risk. This is vital to address the growing risks posed by climate-related hazards and would cohere with states' existing climate adaptation commitments under the Paris Agreement, including the global goal to enhance adaptive capacity, strengthen resilience and reduce vulnerability to climate change.¹³ IFRC considers that a particularly strong element of draft article 9(1) is the reference to "legislation and regulations" as a means of promoting DRR. This element is also included in the Sendai Framework and its importance has been underlined by

¹¹ IFRC uses the term disaster risk management to refer to all phases of managing disasters, from disaster risk reduction through to preparedness, response and recovery. It defines disaster risk management as "[t]he application of policies, strategies and other measures to prevent new disaster risk, reduce existing disaster risk and manage residual risk (through disaster preparedness, response and recovery), contributing to the strengthening of resilience and reduction of disaster losses": IFRC, Disaster Risk Management Policy (2020) <https://www.ifrc.org/sites/default/files/2022-05/20210127_IFRC-DRM-EN%5B1%5D.pdf> 3.

¹² The predecessors to the Sendai Framework are: Yokohama Strategy for a Safer World: Guidelines for Natural Disaster Prevention, Preparedness and Mitigation and its Plan of Action (adopted at the World Conference on Natural Disaster Reduction, 23-27 May 1994 in Yokohama, Japan); and Hyogo Framework for Action 2005-2015: Building the Resilience of Nations and Communities to Disasters (adopted by the World Conference on Disaster Reduction, 18-22 January 2005 in Kobe City, Japan).

¹³ Paris Agreement (adopted 12 December 2015, entered into force 4 November 2016) UNTS 3156 art 7.

the recent Midterm Review of the Sendai Framework, which found that a lack of legal frameworks for DRR is hampering progress on the implementation of the Framework.¹⁴

C. External assistance

Articles 11 to 17 of the Draft Articles address external disaster assistance. IFRC considers that these articles provide a good starting point for a new treaty. It notes that strong elements of these Draft Articles include: the explicit recognition of the primary role of the affected State in the direction, control, coordination and supervision of external assistance; and the right of the affected State to place conditions on the provision of external assistance. IFRC further notes that the Draft Articles allow the affected State the discretion to determine what types of external assistance to accept and from whom, appropriately allowing it to select the external assistance it requires based on needs and damages assessments. Based on IFRC's experience, these provisions are important and judicious. Indeed, in order to ensure that external assistance is of high quality and appropriate to the specific needs of the affected population, states should place conditions on external assistance, only accept the specific external assistance they require based on needs assessments, and take a proactive approach to directing, coordinating and supervising external assistance. IFRC therefore recommends retaining these elements in any future treaty.

D. The role of “other assisting actors”

The provisions of the Draft Articles concerning external assistance apply to affected States, assisting States, and other assisting actors. The term “other assisting actors” is defined to mean a competent intergovernmental organisation, or a relevant non-governmental organisation or entity, providing assistance to an affected State with its consent. This includes, but is not limited to, the United Nations and the components of the International Red Cross and Red Crescent Movement. IFRC considers that the inclusion of “other assisting actors” in the Draft Articles — and the definition of this term — is a strong element that should be retained in any future treaty. It reflects the practical reality of international disaster assistance operations, which typically involve a multitude of intergovernmental organisations and non-governmental organisations.

E. Relationship with international humanitarian law

IFRC considers that the current wording of draft article 18(2) appropriately addresses the applicability of the Draft Articles to situations involving armed conflict. As discussed in the commentaries to draft article 18(2), the effect of the current wording is that, in situations where a disaster occurs in an area where there is an armed conflict, international humanitarian law (IHL) would apply as *lex specialis* and the rules in the Draft Articles (or any future treaty) would only apply to the extent that legal issues raised by the disaster are not covered by IHL. IFRC considers this to be a sensible approach, which gives precedence to IHL while also allowing international disaster law to play a supplementary role when needed. Moreover, it reflects the widely accepted use of the *lex specialis* maxim as a technique of interpretation and conflict resolution in international law.¹⁵ IFRC further notes that the ICRC, as the custodian of international humanitarian law, is satisfied with the wording of draft article 18(2).

¹⁴ Report of the Midterm Review of the Sendai Framework 2015–2030 (UNDRR, 2023) <<https://sendaiframework-mtr.undrr.org/publication/report-midterm-review-implementation-sendai-framework-disaster-risk-reduction-2015-2030>> 41-43.

¹⁵ See Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law (Report of the Study Group of the International Law Commission, 18 July 2006) A/CN.4/L.702 <https://legal.un.org/ilc/documentation/english/a_cn4_l702.pdf> 8.

4. IFRC's recommendations on the Draft Articles

A. The protection of people affected by disasters

IFRC has two main comments on the protection elements of the Draft Articles. First, IFRC notes that the International Red Cross and Red Crescent Movement has recognised a right to receive humanitarian assistance through Resolution 11 of the Council of Delegates held in 1993 and Resolution 4 of the 26th International Conference held in 1995. IFRC notes that, consistent with the existing Draft Articles, this right does not require the affected State to request assistance if it is capable of meeting humanitarian needs within its borders, nor does it require the affected State to accept assistance from all actors which offer it. States may wish to consider including this right in any new treaty based on the Draft Articles. Secondly, in order to clarify the meaning of the existing reference to “the needs of the most vulnerable” in draft article 6, IFRC recommends including a provision outlining a non-exhaustive and general list of measures to assist vulnerable people. Such a provision could take a similar form to draft article 9(2), which contains a non-exhaustive list of disaster risk reduction measures. Measures that could be listed include: collecting disaggregated data (e.g., sex, age and disability-disaggregated data); removing informal barriers to accessing assistance (e.g., physical, cultural or language barriers); meeting specific needs (e.g., needs relating to healthcare, nutrition, and education); preventing, monitoring and responding to protection risks (e.g., sexual and gender-based violence, trafficking); and promoting the participation, representation and leadership of marginalised and at-risk groups in disaster risk management.¹⁶

B. Disaster risk reduction

While creating a hard law DRR obligation would accelerate domestic efforts to reduce disaster risk, IFRC considers that draft article 9 could be more detailed. First, similar to the Sendai Framework and consistent with IFRC's Checklist on Law and DRR, it would be beneficial for article 9 to explicitly reference mainstreaming DRR into legislation and regulations across all sectors including instruments relating to construction, land use planning, urban planning, development planning, infrastructure, natural resource management, the environment, health and education. Secondly, in draft article 9(2) it would be helpful to reference a wider range of risk reduction measures. Key activities to be referenced (which are not included in the current text) include: vulnerability assessments; contingency planning; training, drills and simulation exercises; enhancing the resilience of housing and infrastructure; and using nature-based solutions to reduce natural hazards. Thirdly, it would be beneficial to introduce an additional paragraph addressing disaster recovery. Specifically, this new paragraph should emphasise: preparing for recovery, including through developing pre-event recovery plans; integrating DRR into disaster recovery, consistent with the principle of ‘building back better’ espoused by the Sendai Framework; and promoting and facilitating equity in disaster recovery.¹⁷

¹⁶ The importance of several of these measures was recognised by Resolution 7 of the 33rd International Conference: 33rd International Conference of the Red Cross and the Red Crescent, ‘Resolution 7 – Disaster Laws and Policies that Leave No One Behind’ (Geneva, December 2019) 33IC/19/R7 <https://disasterlaw.ifrc.org/sites/default/files/media/disaster_law/2021-02/33IC_R7-Disaster-Law-resolution-adopted-EN-1.pdf> para 8.

¹⁷ These recommendations are based on a forthcoming IFRC report on law and disaster recovery. The report, which will be published in September 2023, provides recommendations on how laws, policies, plans and institutional arrangements can best support disaster recovery. It draws on a literature review and a set of eight in-depth country reports.

C. Facilitation of external assistance

While there has been significant progress on IDRL during the past two decades, in IFRC's experience regulatory barriers remain a major challenge in international disaster response operations. In some cases, the domestic legal framework is too permissive, enabling an influx of poor quality or inappropriate assistance. In most cases, however, the legal framework is too restrictive to enable the timely entry of external assistance. The application of 'situation normal' regulations slows or even prevents the entry of personnel, goods and equipment. As identified above, common problems include: delays in obtaining visas for relief personnel and the inability of foreign professionals (e.g., doctors, nurses) to practice due to licensing restrictions; delays and bottlenecks in customs clearance for relief consignments; delays in obtaining permission for the passage or arrival of land, marine and air vehicles; and challenges relating to opening local bank accounts and transferring relief funds.

The timely entry of external assistance generally requires facilitation measures, most of which take the form of simplified and expedited regulatory processes, or targeted exemptions from standing regulations. Draft article 15 addresses the facilitation of external assistance. It provides that the affected State shall take the necessary measures, within its national law, to facilitate the prompt and effective provision of external assistance, in particular regarding relief personnel, equipment and goods. In relation to relief personnel, draft article 15 refers to privileges and immunities, visa and entry requirements, work permits, and freedom of movement. In relation to relief equipment and goods, draft article 15 refers to customs requirements and tariffs, taxation, transport, and the disposal thereof.

IFRC has two key recommendations regarding draft article 15. First, IFRC recommends including more detail about the facilitation of external assistance. While draft article 15 refers to the *general* areas where facilitation is needed, it does not create clarity or set standards for what types of facilitation measures are to be provided. It would be beneficial to specify in more detail the types of facilitation measures that will be provided for external assistance. This would promote greater certainty about what states can expect from one another when offering or accepting disaster assistance. To take an example, rather than simply referring to "customs requirements", a future instrument could refer to simplifying and expediting customs clearance through measures such as priority processing, waiver or reduction of inspection requirements, and duty exemption. IFRC notes that states have already developed more detailed provisions on facilitating external assistance in regional agreements and in international agreements relating to specific types of disasters or specific forms of assistance.¹⁸ These agreements may serve as a point of reference for developing provisions on the facilitation of external assistance in a new treaty.

Secondly, IFRC recommends introducing the concept of 'eligible actors' into draft article 15. This concept, which originates from the IDRL Guidelines, stipulates that when a state needs external assistance, it should provide facilitation measures to the actors that it selects based on adherence to criteria such as quality standards and humanitarian principles. This group of actors, which should always include the UN, the IFRC, the ICRC and other qualified humanitarian organisations, are referred to as 'eligible actors'. This concept provides a critical

¹⁸ See, eg, Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency (adopted 26 September 1986, entered into force 26 February 1987) 1457 UNTS 134 arts 8-9; Tampere Convention on the Provision of Telecommunication Resources for Disaster Mitigation and Relief Operations (adopted 18 June 1998, entered into force 8 January 2005) 2296 UNTS 5 art 5; ASEAN Agreement on Disaster Management and Emergency Response (signed 26 July 2005, entered into force 24 December 2009) art 14; Agreement Establishing the Caribbean Disaster Emergency Management Agency (entered into force 4 July 2013) arts XXVII-XXVIII.

mechanism to enable states to expedite the entry of external assistance, while also maintaining control over the quality of assistance. For example, regulatory controls that apply to the importation of medication and medical equipment may be relaxed, but *only* for the select group of eligible actors that can be trusted, based on the government's own assessment, to import high quality and appropriate goods and equipment. The concept of eligible actors is similar to the concept of Authorised Economic Operator (**AEO**), which has been successfully implemented in the customs sphere to manage security risks. AEO status is granted by domestic customs authorities to economic operators that can demonstrate they meet certain prescribed requirements and criteria relating to security risks. Conferral of AEO status entitles the economic operator to benefits such as expedited clearance, reduced inspections, and easier access to simplified customs procedures. The success of this scheme in the customs domain provides a blueprint which could be replicated in the context of external disaster assistance.

In addition to the above two points, IFRC has a further recommendation regarding the temporal scope of draft articles 11 to 17. These draft articles presume that external assistance will only be required for the *response* phase. In IFRC's experience, however, external assistance may also be required during the early recovery phase, which moves beyond life-saving activities and focuses on restoring a minimum level of functioning across key sectors (e.g., housing, education, health). The facilitation measures contemplated by draft article 15 often continue to be required once the response phase has concluded and the early recovery period is underway. For example, the importation of temporary shelters for people affected by disasters often takes place after the response phase. IFRC therefore considers that it would be beneficial to introduce minor targeted amendments as needed throughout this portion of the Draft Articles to clarify that they apply both to response and early recovery.

D. The role of “other assisting actors”

During the past two decades, disaster response treaties, mechanisms and agencies have proliferated under the auspices of regional and sub-regional intergovernmental organisations. Key examples include the ASEAN Agreement on Disaster Management and Emergency Response, the Decision No 1313/2013/EU of the European Parliament and of the Council on a Union Civil Protection Mechanism (and subsequent amending instruments), the Agreement establishing the Caribbean Disaster Emergency Management Agency, and the Regional Humanitarian Assistance Mechanism for Disasters of the Central American Integration System. While regional and sub-regional disaster agencies fall within the definition of “other assisting actors”, IFRC considers that it would be beneficial for any future treaty to *explicitly* recognise the role of this category of actors. IFRC therefore recommends adding the words “regional and sub-regional intergovernmental organizations” into the text of draft article 7, which establishes a duty for states to cooperate among themselves, with the components of the Red Cross and Red Crescent Movement, and with other assisting actors. Additionally, IFRC recommends including a paragraph in the preamble to the Draft Articles, affirming the important role of regional and sub-regional intergovernmental organisations in the management of disasters, including through facilitating mutual cooperation and assistance between countries within the regional or sub-regional grouping. Moreover, IFRC notes that the content of regional and sub-regional disaster agreements may provide a useful point of reference for the development of any future treaty.