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SPECIAL ECONOMIC AND DISASTER RELIEF

ASSISTANCE: OFFICE OF THE UNITED

NATIONS DISASTER RELIEF CO-ORDINATOR

ECONOMIC AND SOCIAL COUNCIL

Second regular session 1984

Item 18 of the provisional

agenda **

SPECIAL ECONOMIC, HUMANITARIAN

AND DISASTER RELIEF

ASSISTANCE

Office of the United Nations Disaster Relief Co-ordinator

Report of the Secretary-General

Addendum

Proposed draft convention on expediting the delivery
of emergency relief

* A/39/50.

** E/1984/100.

"Although every disaster is a special case with its own challenges and problems, the problems experienced ... were to a large extent those which have arisen in many major disasters in recent years. These range from the inadequate functioning of warning systems to the breakdown of communications, including telecommunications. They include the absence of reliable early information on the nature and extent of the emergency and of priority needs that cannot be met by local resources ignorance of which causes serious difficulty and embarrassment to the would-be donors. They also include obstacles to the rapid dispatch of assistance from overseas, such as delays in obtaining overflight and landing clearances for aircraft, uncertainty regarding the waiver of import duties and restrictions for relief supplies, the failure in some cases to grant 'tourist' or similar favourable exchange rates to relief organizations and units, and the absence of prior arrangements for granting the Red Cross authority to use its own radio transmitters and wave-lengths." (E/4994, para. 5)

1. The question of the removal of obstacles to the flow of effective international disaster relief is not a new one. The summary of some of the major problems in the 1971 report of the Secretary-General - which, after having been discussed in the Economic and Social Council and the General Assembly of that year, led to the founding of the Office of the United Nations Disaster Relief Co-ordinator - remains true today.

2. The general desire to strengthen international co-operation for the relief of suffering caused by disasters has none the less grown stronger with the years. Many agencies of the United Nations system which are active in development and welfare work of a continuing and Long-standing nature are also equipped to provide effective disaster relief, and legal instruments exist which regulate the agencies' work and presence in particular countries. Bilateral and regional agreements have been entered into by States - sometimes with the intervention of an international governmental agency or organization - concerning the provision of assistance by and for the benefit of the parties to the agreements. International conventions have entered into force which deal with specific subjects which, whether or not the texts mention disaster relief, are none the less applicable when the question of expediting such relief comes to be discussed.

3. Among his other duties, the United Nations Disaster Relief Co-ordinator is mandated "to establish and maintain the closest co-operation with all organizations concerned and to make all feasible advance arrangements with them for the purpose of ensuring the most effective assistance" (General Assembly resolution 2816 (XXVI) of 14 December 1971). It is worthy of note that, in the course of the compilation of the report of the Secretary-General cited above, one Government had even then said that:

"It would be useful if recommendations of the United Nations could be prepared to facilitate assistance measures, inter alia, by the proposal of regulations for the entry into the country concerned, for the customs formalities, for requests to

foreign relief personnel and for matters regarding liability and expenses." (E/4994, footnote 18)

The thought behind this suggestion was embodied in Assembly resolution 2816 (XXVI), in which the Assembly invited potential recipient Governments, *inter alia*, to consider appropriate legislative or other measures to facilitate the receipt of aid, including overflight and landing rights and necessary privileges and immunities for relief units".

4. Those matters are basic elements in an effective disaster preparedness organization soundly based on comprehensive legislation, but they have not yet been sufficiently widely adopted. In 1976 and 1977, the United Nations Disaster Relief Co-ordinator and the Secretary-General of the League of Red Cross Societies carried out a survey of the problems experienced in relief delivery and made a report, with recommendations (A/32/64 and Corr.1, annex II), which was considered in 1977 by both the General Assembly and the International Conference of the Red Cross. The Economic and Social Council adopted resolution 2102 (LXIII) on 3 August 1977 and, noting the report of the survey, requested the Co-ordinator

"To continue [his] efforts and, in co-operation with Governments, United Nations bodies and appropriate intergovernmental organizations and voluntary agencies, and particularly the International Red Cross, to pay special attention to the promotion of measures designed to remove obstacles and to expedite international relief assistance".

In the same resolution, the Council also called upon Governments to give due consideration to the implementation of the recommendations of the report. That resolution was later endorsed by the General Assembly in its resolution 32/56 of 8 December 1977.

5. Subsequent action by the United Nations Disaster Relief Co-ordinator was designed principally to establish the likely degree of acceptance of proposals for an international convention or, failing that, a series of individual agreements, based upon the replies to the questionnaire he had sent to Governments. This was formulated so as to reveal current national practices in granting visas, waiving customs duties and so on. In 1980, the United Nations Institute for Training and Research UNITARY began work on its study entitled Model Rules for Disaster Relief Operations.¹ Proposals were also compiled by the International Law Association. In a wider context, the General Assembly, in its resolutions each year since 1981, has called for the strengthening of the capacity of the United Nations system to respond to disasters of every kind, and the increase of the capacity of Governments to deal with disasters as they occurred.

6. In late 1982, the United Nations Disaster Relief Co-ordinator invited a consultant to study and report on the history of attempts to expedite the flow of international relief, to examine the principles of international law involved and the present practice and problems, and to propose solutions which would meet the present need. There was no attempt to circumscribe his work by pointing to a desired result. The stated aim was to expedite the flow of international relief in cases of "natural disasters or other disaster situations" which fell within

¹ UNITARY Policy and Efficacy Studies No. 8 (Sales No. B.82.XV.PE/8).

the mandate given to the Disaster Relief Co-ordinator by the General Assembly (General Assembly resolutions 2816 (XXVI) of 14 December 1971 and 36/225 of 17 December 1981).

7. In September 1983, the consultant's report and recommendations were examined by an informal group of experts, all of whom were international lawyers, assisted by representatives of United Nations agencies which were involved in disaster relief operations or whose activities had a direct bearing on disaster preparedness and prevention.²

8. At the thirty-eighth session of the General Assembly, the United Nations Disaster Relief Co-ordinator, in his introductory statement to the discussion on the annual report of the Secretary-General on UNDRO,³ briefly outlined the kinds of problems which needed to be solved, and reported upon the progress which had been made. The Assembly took note with appreciation of the Co-ordinator's statement (resolution 38/202 of 20 December 1983).

9. The comments of the Legal Counsel of the United Nations and of the International Red Cross on the draft text of the Convention have been received *by* the Secretary-General. Some modifications to the proposals have been made, and the text annexed below is placed before the Economic and Social Council in order for the Council to decide on a further review *by* a group of governmental experts.

² A list of participants is available for consultation in the Office of the United Nations Disaster Relief Co-ordinator.

³ See A/C.2/38/SR.34, paras. 1-12.

ANNEX

Draft convention on expediting the delivery of emergency assistance

THE PARTIES TO THIS CONVENTION,

Bearing in mind that throughout history, disasters and emergency situations have inflicted heavy loss of life and property affecting every people and every country,

Aware of and concerned about the suffering caused by disasters and the serious economic and social consequences for all, especially the developing countries, and bearing in mind also relevant provisions of the International Development Strategy,

Noting that the international community has willingly rendered assistance in individual cases of disaster and continues to do so whenever necessary,

Concerned to improve the ability of the international community to provide emergency humanitarian assistance speedily and effectively,

Recalling the principles of international law as expressed in the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, adopted on 24 October 1970 by the General Assembly of the United Nations, in particular the principle of the duty of States to co-operate with one another in accordance with the Charter and the principles of sovereign equality of States and non-intervention within the domestic jurisdiction of any State,

Welcoming the establishment by the General Assembly of the United Nations of the Office of the United Nations Disaster Relief Co-ordinator to mobilize, direct and co-ordinate the relief activities of the various organizations of the United Nations system and to co-ordinate United Nations assistance with assistance given by all sources of external aid,

Have agreed as follows:

PART I. GENERAL PROVISIONS

Article 1

Definitions

In this Convention:

- (a) "Emergency assistance", hereafter referred to as "assistance", means the relief consignments and services of an exclusively humanitarian and non-political character provided to meet the needs of those affected by disasters;
- (b) "Disaster" means any natural, accidental or deliberate event (not being an ongoing situation of armed conflict) as a result of which assistance is needed from outside the State upon whose territory the event occurred or which has been affected by the *consequences* of the event;
- (c) "Relief consignments" means goods such as vehicles, foodstuffs, seeds and agricultural equipment, medical supplies, blankets, shelter materials or other goods of prime necessity, forwarded as assistance to those affected by disasters;
- (d) "Services" means the personnel, equipment., means of transport and action necessary to meet the needs;
- (e) "Receiving State" means the State on whose territory assistance is needed [being given] [being provided) under this *Convention*;
- (f) "Assisting State or organization" means the State or intergovernmental organization, or international or national non-governmental organization, providing or co-ordinating assistance under this Convention;
- (g) "Transit State" means a State upon whose territory emergency assistance destined for a Receiving State is transshipped or through whose territory assistance must be transported to reach the Receiving State.

Article 2

Objective of -the Convention

The objective of this Convention is to expedite the delivery of assistance following disasters.

Article 3

Principles

1. Assistance provided under this Convention shall be in accordance with the following Principles:

- (a) Respect for the sovereignty of the Receiving State and non-interference in its internal affairs;

(b) Co-operation with the appropriate authorities of the Receiving State and respect for and observance of its laws;

(c) Abstention from any activity which is inconsistent with the objective of this Convention and from any commercial or political activity on the territory of the Receiving State.

2. The Receiving State shall have, within its territory, responsibility for facilitating the co-ordination of operations to meet the situation created by the disaster.

Article 4

Scope of application

1. This Convention applies to all assistance provided by an Assisting State or organization to a Receiving State.

2. This Convention shall apply during the whole period of the disaster and shall cease to apply on the termination of all relief operations.

PART II. ASSISTANCE

Article 5

Assistance

1. The basic conditions for the delivery of assistance in case of disaster are:

(a) Assistance shall be free of charge unless otherwise specified in this Convention or agreed between the Assisting State or organization and the Receiving State;

(b) The Receiving State shall ensure the most effective use of the assistance provided and shall use it for the purpose for which it is *intended*, *unless* otherwise agreed by the Assisting State or organization;

(c) Assistance shall be distributed or provided without discrimination of any kind such as race, colour, sex, language, religion, political or other opinion, national and social origin, birth or other status;

(d) The Parties to this Convention shall give priority to the delivery of assistance, including its transport, provision of the necessary transit facilities and distribution.

2. A Receiving State and an Assisting State or organization may agree to terms other than those contained in this Convention without derogating from the basic conditions of this Convention.

Article 6

Exchange of information

1. Parties to this Convention which obtain information about events which may lead Convention should immediately notify those States likely to be affected, as well as the Office of the United Nations Disaster Relief Co-ordinator and/or other appropriate organizations.
2. Parties to this Convention which obtain information that may be useful in helping States affected by a disaster shall make such information available to the States affected and, with their agreement, to the Office of the United Nations Disaster Relief Co-ordinator and/or other appropriate organizations.
3. When the United Nations Disaster Relief Co-ordinator is requested or required to exercise his co-ordinating functions, the Parties to this Convention shall inform him about the development of the situation, the assistance needed and provided, and the relief consignments which are being or could be made available.
4. Information provided in confidence in connection with the assistance should be protected from disclosure by the recipient of the information to the maximum extent possible and should not be misused.

Article 7

Protection and facilities

1. The Receiving State shall take all practicable measures to ensure the security (sûreté) of relief personnel and the protection of all premises, facilities, means of transport, relief consignments and equipment used in connection with the assistance.
2. The Receiving State shall [without prejudice to existing instruments on privileges and immunities to which it is a Party) grant to the Assisting State or organization and its personnel the necessary [privileges, immunities] protection and facilities for the expeditious performance of their functions under this Convention. In particular, the Receiving State shall:
 - (a) Promptly issue, without cost, multiple transit, entry and exit visas for personnel representing Assisting States or organizations;
 - (b) Facilitate freedom of access to and freedom of movement in the disaster area for such personnel in the performance of their agreed functions;
 - (c) Permit the Assisting State or organization and its personnel access to the site or sites outside the disaster area where its relief consignments and equipment are stored prior to distribution;

(d) Recognize university degrees, professional certificates and other certificates of competency and licences held by relief personnel and necessary for the performance of their agreed function;

(e) Waive any work permits that may be required under its laws;

(f) Waive income tax on the salaries and emoluments of the personnel of the Assisting State or organization [if the imposition of such taxation would involve double taxation].

3. The Receiving State shall return, or authorize! and facilitate the re-export of, any material and equipment provided by the Assisting State or organization and not used for assistance purposes or which, having been used, the Assisting State or organization wishes to retain.

Article 8

Communications

1. The Receiving State shall, to the extent compatible with national security, authorize and facilitate disaster relief telecommunications required by the Assisting State or organization and [if necessary] authorize the Assisting State or organization to operate its own means of internal and external communications.

2. The Receiving State shall, to the extent possible, provide communications over national telecommunications networks on a priority basis and free of charge.

Article 9

Notification

1. The Assisting State or organization shall notify the designated authority in the Receiving State in advance of the dispatch of assistance, giving appropriate details, including in particular the intended time and place at arrival at personnel, relief consignments and equipment.

2. The Receiving State shall acknowledge to the Assisting State or organization the receipt of relief consignments. In case at loss or damage, the Receiving State shall immediately inform the Assisting State or organization or organization and shall decide in consultation with it the measures to be taken.

Article 10

Qualitative nature of assistance

1. An Assisting State or organization shall ensure that its assistance is appropriate to the assessed needs and that it conforms to the traditions and usages in the Receiving State.

2. An Assisting State or organization shall ensure that its assistance complies with the quality,

health and other relevant standards or regulations of the Receiving State, except in so far as these standards or regulations are waived or modified for the duration of the relief operations.

Article 11

Packaging, labelling and marking

The Assisting State or organization shall, whenever practicable, use an appropriate internationally established system for packaging, labelling and marking relief consignments.

Article 12

Identification

1. Assisting States or organizations which use an internationally recognized distinctive sign should use that sign to identify their relief consignments, equipment, means of transport, personnel and their locations as necessary.
2. Assisting States or organizations which do not use such a sign should use the international distinctive sign of civil defence. This is an equilateral blue triangle on an orange background.]
3. Receiving States and Assisting States or organizations shall take measures necessary to supervise the display of these signs and to prevent their misuse.

Article 13

Exportation

1. Assisting States shall ensure that domestic export documentation requirements do not delay the dispatch of relief consignments and equipment.
2. Assisting States should limit their requirements for export documentation to a single form based on the United Nations Layout Key for Trade Documents. A model for such a form is appended to the present Convention.
3. Relief consignments and equipment shall be cleared rapidly and as a matter of priority by Customs authorities, and any examination shall be limited to that deemed necessary to ensure compliance with the laws and regulations which the Customs are responsible for enforcing.
4. Clearance, examination and release of relief consignments shall, if necessary, be arranged outside the business hours of the Customs authorities and/or at a place other than a Customs office.

Article 14

Importation

1. The Receiving State shall exempt relief consignments and equipment from all customs duties and charges of any kind imposed on or in connection with importation and from all internal taxes or other internal charges of any kind.
2. The Receiving State shall exempt relief consignments and equipment from any import prohibitions or restrictions.
3. The Receiving State shall, to the extent possible, exempt relief consignments and equipment from regulations concerning health, hygiene and animal protection where such regulations would delay importation.
4. The Receiving State shall ensure that domestic import documentation requirements do not delay the delivery of relief consignments and equipment.
5. The Receiving State should limit its requirements for import documentation to a single form based on the United Nations Layout Key for Trade Documents. A model for such a form is appended to the present *Convention*.
6. Relief consignments and equipment shall be cleared rapidly and as a matter of priority by Customs authorities, and any *examination shall* be limited to that deemed necessary to ensure compliance with the laws and regulations which the Customs are responsible for enforcing.
7. Clearance, examination and release of relief consignments shall, if necessary, be arranged outside the business hours of the Customs authorities and/or at a place other than a Customs office.

Article 15

Financial provisions

Unless otherwise agreed between an Assisting State or *organization and* the Receiving State, the Receiving State shall assume the costs of:

- (a) The unloading, storing, handling, insuring, forwarding and distributing of relief consignments and equipment;
- (b) The local administrative, personnel and logistics support needed for the delivery of assistance.

Article 16

Accounting

The Receiving State shall maintain such accounting and statistical records with respect to relief consignments and their distribution as may be agreed to be necessary and shall furnish upon request such records and reports to the Assisting State or organization.

Article 17

Irregularities

1. The Parties to this Convention shall, within their respective jurisdictions, initiate appropriate proceedings with respect to acts involving unlawful diversion or misappropriation of relief consignments or equipment.
2. The Assisting State or organization and the Receiving State shall bring to each other's attention any difficulties arising in the practical implementation of this Convention.

Article 18

Termination of assistance

The Receiving State or an Assisting State or organization may give notice of termination of assistance and where necessary the Parties to this Convention which are affected by such notice shall then arrange to bring the assistance to an orderly conclusion under the terms of this Convention.

PART III. TRANSPORT

Article 19

Facilities

1. The Parties to this Convention, whether Receiving, Assisting or Transit States, shall provide on a priority basis adequate means of transport and related services for the speedy transport of relief consignments and movement of relief personnel.
2. The Parties to this Convention shall facilitate the transport of assistance. They shall, to the extent possible, make appropriate arrangements to ensure expeditious handling, clearance, transshipment, storage and onward movement of relief consignments and equipment on or through their territories.
3. Where transport and related services cannot be provided free of charge, the charges shall be limited to the extent possible and in any case shall not be higher than those applied by the State concerned in the transport of its own supplies.

4. The Receiving State shall, in case of need, authorize the Assisting State or organization to operate its own means of transport.

Article 20

Transit

1. The Parties to this Convention shall:

(a) Grant the right of transit across or over their territories to the relief consignments, equipment and personnel of the Assisting State or organization and to their means of transport, proceeding to or returning from the Receiving State;

(b) Exempt relief consignments and equipment from any requirements for bonding and from all customs duties or other charges of any kind imposed in connection with the transit;

(c) Ensure the security of assistance in transit through their territories.

2. The Parties to this Convention should limit their requirements for transit documentation to a single form based on the United Nations Layout Key for Trade Documents. A model for such a form is appended to the present Convention.

3. Examination by Customs authorities of relief consignments and equipment in transit shall be limited to that deemed necessary to ensure compliance with the laws and regulations which the Customs are responsible for enforcing.

Article 21

Air transport

1. The Parties to this Convention shall grant without undue delay permission for the overflight, landing and departure of civil aircraft operated by or on behalf of an Assisting State or organization for the transport of assistance. Such aircraft shall also be authorized to operate within the territory of the Receiving State as required for the delivery of assistance.

2. The operation of aircraft other than civil aircraft shall be subject to the prior authorization of the Party to this Convention within or over whose territory the aircraft would operate.

PART IV. LIABILITY

Article 22

Liability

1. The Receiving State shall bear all risks and claims resulting from, occurring in the course of, or otherwise connected with the assistance rendered on its territory. In particular, the Receiving State shall be responsible for dealing with claims which might be brought by third parties against the Assisting **State or** organization or its personnel. The Receiving State shall hold the Assisting State or organization or its personnel harmless in case of any claim or liabilities in connection with the assistance, except in respect of liability of individuals having caused damage intentionally or recklessly with the knowledge that damage may result.

2. The Receiving State shall compensate the Assisting State or organization for the death of, or temporary or permanent injury to its personnel, as well as for loss of or damage to non-perishable equipment or materials, caused within its territory in connection with the assistance.

3. An Assisting State shall bear all risks and claims in connection with damage or injury occurring in its own territory.

4. This Article shall not prejudice any recourse action under the applicable national law, except that recourse actions can be brought against the personnel of an Assisting State or organization only in respect of damage or injury which they have caused intentionally or recklessly with the knowledge that damage may result.

PART V. FINAL PROVISIONS

Article 23

Depositary

The Secretary-General of the United Nations shall be the depositary of this *Convention and* of all related instruments, notifications, declarations etc.

Article 24

Signature, ratification, acceptance, approval and accession by States

1. This Convention shall be open for signature to all States until [a/]
2. This Convention is subject to ratification, acceptance or approval by signatory States.
3. This Convention shall remain open for accession by all States from the date when it is opened for signature.

Article 25

^{a/} Not more than one year after the date of opening for signature.

Acceptance by intergovernmental organizations

This Convention shall be open for acceptance by intergovernmental organizations, to be effected in the form of a notification.

Article 26

Undertaking of application by non-governmental organizations

1. Non-governmental organizations that are called upon to provide emergency assistance may undertake to apply the provisions of this Convention for the purpose of those operations in which they participate.
2. The undertaking shall be in the form of a written declaration.

Article 27

Entry into force

1. This Convention shall come into force on the thirtieth day following the date of deposit of the second instrument of ratification, acceptance, approval or accession by a State.
2. For each State or intergovernmental organization that ratifies, accepts or approves this Convention or accedes thereto after the deposit of the second instrument of ratification, acceptance, approval or accession by a State, this Convention shall enter into force on the thirtieth day after the deposit of the corresponding instrument.

Article 28

Provisional application

Any Party may, at the time of signature, ratification, acceptance, approval or accession, declare that it will apply this Convention provisionally pending entry into force in accordance with article 29, from such date as it will determine.

Article 29

Application of other agreements on emergency assistance

1. This Convention is without prejudice to the applicability of other agreements concluded by a Party before its entry into force.
2. The entry into force of this Convention shall not prevent a Party from subsequently concluding other agreements on emergency assistance provided that the rights and obligations of the other States and organizations applying the provisions of this Convention are not affected.

Article 30

Reservations

[Alternative A]

No reservations may be made in respect of any provision of this Convention.

[Alternative B]

Reservations may be made in respect of any provision of this Convention except (...)

Article 31

Settlement of disputes

[Alternative A]

1. Any dispute relating to the interpretation or application of this *Convention* shall be settled by direct negotiations between the parties to the dispute or, failing this, shall be settled in accordance with such procedures as may be adopted by a (two-thirds) majority of the Parties to this Convention.

2. Where the dispute involves a non-governmental organization having undertaken to comply with the provisions of this Convention, the decision referred to in paragraph 1 of this article shall provide for equitable participation by that organization in the settlement procedures.

(Alternative BI)

1. Any dispute relating to the interpretation or application of this Convention shall be settled by direct negotiations between the parties to the dispute or, failing this, shall be submitted to arbitration if a [two-thirds] majority of the Parties to this *Convention* so agrees.

2. For the purpose of arbitration:

(a) The parties to a bilateral dispute shall each designate one arbitrator, and the arbitrators so designated shall in turn elect a third arbitrator, who shall serve as the chairman of the arbitral commission.

(b) The parties to a multilateral dispute shall, by unanimous decision, designate a chairman and two other arbitrators.

(c) Should the parties to the dispute or their arbitrators fail to effect the required designations, any party to the dispute may request the President of the International Court of Justice to effect such designation.

Article 32

Amendments and revision

1. Any Party may propose amendments to this *Convention*. The text of the proposed amendment shall be communicated to the depositary for the purpose of circulation among the Parties. The proposed amendment shall be deemed to have been accepted if, within ninety days from the date of circulation, no objection has been notified to the depositary by any of the Parties.
2. Apart from the procedure in paragraph I above, any Party may, by a notification to the depositary, request the convening of a review conference to revise this Convention. The depositary shall make arrangements for the convening of such a conference if, within (three] months from the circulation of the request, a majority of the Parties have expressly agreed thereto.

Article 33

Denunciation

1. Any Party may at any time denounce this *Convention* by written notification to the depositary.
2. The denunciation shall take effect upon the expiry of a period of one year from the date of deposit of the notification.

Done at on
in one original in the Arabic, Chinese, English, French, Russian and Spanish texts,
all being equally authentic.

/ ...

APPENDIX

Model form for import/export documentation

Consignor (Exporter)		Date; Reference No. etc.		
Consignee		Carrier		
Notify or delivery address		Country whence consigned		
		Country of origin	Country of destination	
Transport details		Terms of delivery		
Time and place of arrival				
Shipping marks Container number	Description of contents	Commodity number	Gross weight Net quantity	Cube Value
Instructions and special requirements for handling/storage of the supplies		Insurance Place and date of issue Authentication		