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Annotations
to the
Draft Guidelines
for the Domestic Facilitation and Regulation of
International Disaster Relief and Initial Recovery
Assistance

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Annotations on the Draft Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance

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Background

In 2003, Final Goal 3.2.6 of the 28th International Conference of the Red Cross and Red Crescent called on the International Federation of Red Cross and Red Crescent Societies' (IFRC) to study existing norms relevant to international disaster response, identify gaps, develop models, tools and guidelines, and report back to the 30th International Conference in November 2007. In its studies and consultations since that time, the IFRC's "International Disaster Response Laws, Rules and Principles" (IDRL) programme has identified gaps in (1) the scope and geographic coverage of existing international law, (2) the knowledge and application of existing international norms, and especially (3) the preparedness of domestic law for the common legal issues in international disaster relief and recovery operations. As a result, a common set of legal problems have consistently surfaced in major international disaster operations, including administrative barriers to entry and operation, and gaps in the regulation of the quality and coordination of international relief and recovery activities.

As one step toward addressing these issues, and through formal consultations with States, national societies, and other humanitarian organizations and stakeholders, including in formal regional forums held in Africa, Asia-Pacific, the Americas, Europe and the Middle East in 2006-2007, the IDRL programme has developed draft guidelines compiling existing norms and addressing key problem areas, to be proposed to the 30th International Conference.

These annotations summarize the legal precedents upon which the provisions of this draft text are based. The factual rationales behind the measures recommended will be elaborated in a separate desk study analysing existing norms and operational experiences, to be made available in 2007. The text of the Guidelines is listed here in italics and the commentary is in standard type.

Please note that the full text of the instruments cited in these annotations is available on the IDRL Programme's online database at <http://www.ifrc.org/idrl>.

Introduction

Article 1 Purpose

1. These Guidelines are non binding. Their purpose is to contribute to national legal preparedness by providing guidance to States interested in improving their domestic legal, policy and institutional frameworks concerning international disaster relief and initial recovery assistance.

These Guidelines are not a treaty and are not intended to be legally binding. Rather, by drawing on existing international norms and practical experiences, they aim to express the international consensus on the best steps States can take to improve their domestic regulatory frameworks to ensure that if international help is needed, the right assistance arrives in time without displacing domestic relief and recovery efforts.

The International Conference has previously adopted a “Declaration of Principles for International Humanitarian Relief to the Civilian Population in Disaster Situations” (1969), a set of “Principles and Rules for Red Cross and Red Crescent Disaster Relief” (1969 and as subsequently amended), and a set of “Measures to Expedite Emergency Relief” (1977). Likewise, the United Nations General Assembly adopted a set of “Guiding Principles” for emergency humanitarian assistance in Resolution 46/182 of 1991. This initiative draws on these and many other past instruments (notably a similar initiative by National Societies in the Balkans States that resulted in the development of a set of “Recommended Rules and Practices” for the regulation of disaster relief in 2004), to set out in some detail how national law can best facilitate and regulate international disaster relief and initial recovery activities.

Because these Guidelines are intended as non binding, the term “should” is used throughout the document rather than more mandatory language, although many of the provisions restate elements from existing binding international law. This should not, therefore, be seen as modifying the provisions of existing international law in any way, as noted in paragraph 3.

2. While affirming the principal role of domestic authorities and actors, these Guidelines recommend minimum legal facilities that should be provided to assisting States and to assisting humanitarian organizations that are willing and able to comply with minimum standards of coordination, quality and accountability. These Guidelines will enhance the quality and efficiency of international disaster relief and initial recovery assistance in order to better serve disaster-affected persons.

At the heart of these Guidelines is the realization that the international disaster relief community has grown enormously, both in the numbers of actors and their diversity. Whereas a century ago there were only a handful of states and humanitarian actors regularly involved in disaster response, large disasters today can attract hundreds of

international responders, ranging from states and humanitarian organizations to private companies and individuals.

This change has many positive aspects, bringing new energy, funding and approaches to the service of affected persons. However, from a regulatory standpoint, it creates more complications, not least with regard to professionalism and quality. Whereas it might have been more possible to work out regulatory problems informally in the past, this approach is becoming less and less manageable. We thus find in any single operation, bureaucratic bottlenecks in some areas and a lack of effective oversight in others.

The Guidelines set out minimal legal facilities that should be provided to assisting States and assisting humanitarian actors but also recommend that they be tied to guarantees of compliance with internationally-accepted standards.

3. These Guidelines are not intended to affect existing international law, or agreements, in particular:

(a) International humanitarian, human rights and refugee law;

(b) The legal personality and status of States, inter-governmental organizations, the International Federation of Red Cross and Red Crescent Societies and the International Committee of the Red Cross;

(c) International law related to privileges and immunities;

(d) The Statutes and regulations of the International Red Cross and Red Crescent Movement and existing legal arrangements between the individual components of the Movement and States; and

(e) Other existing agreements between States or between States and assisting actors.

While not technically necessary, given that the Guidelines are designed as a non-binding instrument, it is important to make clear that there is no intention to upset any existing international law or agreements. In particular, the Guidelines do not directly address the rights of affected persons, inasmuch as they are primarily of a technical nature, designed to address a discrete set of common regulatory problems in international operations. Existing human rights, humanitarian and refugee law are thus important additional sources for States developing disaster relief and recovery preparedness laws and policies.

Moreover, many of the legal facilities provided in Part V should already be guaranteed to diplomatic and consular staff of States, and officials of inter-governmental organizations and the international components of the International Red Cross and Red Crescent Movement by operation of international law. For example, both positive and customary law guarantees that international organizations must enjoy a domestic legal personality allowing them to undertake certain legal actions, such as entering into contracts and

initiating legal proceedings. Likewise, the law of privileges and immunities provides its subjects with rights in the area of visas, customs, taxation, and security. While privileges and immunities do not generally apply to relief or initial recovery personnel of foreign governments (as noted by the commentary to the UNITAR Model Rules, rule 14), numerous bilateral treaties and other agreements specifically grant it to them for disaster relief activities.

As noted above, the International Red Cross and Red Crescent Movement has a number of its own agreements, practices and regulations, some of which have been approved by States through adoption at the International Conference. These Guidelines neither restrict nor modify these rules and regulations or the rights and obligations they create. Finally, many States have entered into agreements with inter-governmental and non-governmental actors setting out certain rights and responsibilities applicable to disaster relief and initial recovery and these should not be deemed abrogated or modified just because of the adoption of these Guidelines.

Article 2 Definitions

For the purposes of these Guidelines,

1. “**Disaster**” means a serious disruption of the functioning of society which exceeds national coping capacities and 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.

The term “disaster” has been defined in nearly as many different ways as there are international instruments on the topic. The political difficulties in defining the term have led some to abandon the effort entirely (see, e.g., the annotations to the Max Planck Draft Guidelines, deciding instead to refer only to “humanitarian assistance”; and the Inter-American Convention, offering no definition). Because these Draft Guidelines are meant to apply only to disasters and not to all situations in which humanitarian assistance may be required (i.e. armed conflict as discussed below), it is deemed important for this Draft to offer a definition of disaster.

Like this one, a number of definitions of disaster in international instruments have limited the term to situations that exceed national capacities (e.g., 1984 Draft Convention, art. 1(b); Department of Humanitarian Affairs, International Agreed Glossary of Basic Terms Related to Disaster Management (1992)). This serves to highlight that international assistance is secondary to national mechanisms of response.

Most of the remainder of this definition is drawn from article 1(6) of the Tampere Convention, which is one of the most recent multilateral treaties in this area. (It is also similar to the definition adopted by the ASEAN Agreement on Disaster Management and Emergency Response of 2005, art. I(3) (defining “disaster” as “a serious disruption of the functioning of a community or a society causing widespread human, material, economic

or environmental losses’’)). This broad definition extends not only to obvious catastrophes such as earthquakes, but to equally damaging but gradual events, such as droughts and HIV crises. Unlike in Tampere, however, the definition in these Guidelines specifically excludes armed conflict situations to which international humanitarian law (IHL) applies. It draws this distinction for several reasons.

First, IHL provides greater and more explicit rights and duties to international humanitarian assistance than existing disaster assistance instruments, and draws a direct, unambiguous and nearly unconditional link, not present in other international law, between persons in need and international humanitarian actors (see, e.g., Fourth Geneva Convention of 1949 arts. 30 and 59; Additional Protocol I to the Geneva Conventions (1977), art. 70 (& commentary); Additional Protocol II to the Geneva Conventions (1977), art. 18 (& commentary)). It is crucial that any development of norms or standards in the area of disaster response not impinge upon the full application of IHL. Inasmuch as disasters arising in the context of armed conflict should also be covered by IHL, there is no need for these Guidelines to address those situations (cf. Balkans National Societies Recommended Rules and Practices of 2004, section A.2, excluding disaster in times of conflict for the same reason).

Second, disaster settings are politically and operationally different from armed conflicts. Conflict settings are inherently more politically sensitive than pure disaster situations. Unjustified refusals to allow the entry of humanitarian relief are unfortunately common. In contrast, it is well accepted that domestic actors should have the primary role in responding to disasters; international assistance is only justified when domestic capacities are exceeded. When international help is needed, access is normally granted (at least at a political level). Thus, although the imperative of affected persons to receive relief and recovery assistance is equal no matter what type of crisis has created the need, there is a practical basis for some differentiation in the way external relief is regulated as between conflict and disasters.

2. *“Disaster relief” means goods and services provided to meet the immediate needs of disaster-affected persons.*

This definition of disaster relief is similar to those used by many other instruments, though different primary terms have been used (see, e.g., Measures to Expedite, para. 4, defining “international relief,” BSEC Agreement, art. 2, defining “assistance”; Max Planck Draft Guidelines, para. 2(a), defining “humanitarian assistance”). Relief is meant to encompass not only relief goods, but also services provided to disaster-affected persons.

3. *“Initial recovery assistance” means goods and services designed to restore or improve, to a defined level, the pre-disaster living conditions of disaster-affected persons, including initiatives to increase resilience and reduce risk, provided for an initial period of time set by the affected State.*

The IDRL programme's studies and consultations indicate that many of the most challenging legal issues tend to arise several months into a disaster response operation. Unfortunately, many existing international instruments in this area focus solely on the immediate relief period.

The wording of this definition draws upon the definition of "recovery" offered by the UNISDR in its "Terminology: Basic Terms of Disaster Risk Reduction" (available at <http://www.unisdr.org>), which follows the growing international consensus that it makes little programmatic sense to entirely separate relief and recovery. Thus, some modern instruments have sought to address both relief and recovery activities. These include UN GA Res. 46/182 (1991), annex para. 9, which highlights the "clear relationship between emergency, rehabilitation and development" and emphasizes the need for measures to ensure smooth transitions "in ways that will be supportive of recovery and long-term development," as well as the recent ASEAN Agreement, art. 1, which defines "Disaster Management" to cover the full range of activities from relief to recovery.

On the one hand, the definition here takes a broad approach to recovery, including not only efforts to "restore" the status quo ante, but also those to improve the situation of stricken communities to a level defined in coordination with the affected State, and to make them more resilient to future disasters. This is in line with the strategic goal of the Hyogo Framework of Action (2005), para. 12(c), to encourage "[t]he systematic incorporation of risk reduction approaches into the design and implementation of emergency preparedness, response and recovery programmes in the reconstruction of affected communities."

On the other hand, this definition also restricts itself to "initial recovery" which should have a limited time period relevant to the circumstances as determined by the affected State. This is because full "recovery" from a major disaster may take many years and even decades to achieve. While operational experiences clearly show that many of the facilities in Part V are needed in the medium term to ensure effective international recovery assistance operations, many States would find it difficult to extend them indefinitely (cf., e.g., Treatment of Donor-Financed Projects, U.N. Doc. E/C.18/2006/5, approved by the Economic and Social Council's Committee of Experts on International Cooperation in Tax Matters on October 3, 2006, noting that normal taxation of development activities is considered appropriate, whereas special exemptions should be applied for disaster response activities).

In order to provide some measure of predictability to assisting States and assisting humanitarian organizations as to the duration of the facilities they will receive, this time period should be determined by the affected State as soon as possible in the aftermath of a disaster. Of course, if circumstances warrant, the period should also be extended as appropriate by the affected State.

Still, not all of the legal facilities provided by existing instruments for disaster relief make equal sense, even in the initial recovery context. Thus, Part V distinguishes between the facilities that should be provided both for disaster relief and early recovery,

and those that should remain specific to disaster relief. A chart illustrating which facilities apply in relief and initial recovery is attached to this document as appendix 1.

4. **“Goods”** means the supplies intended to be provided to the disaster-affected persons for their relief or initial recovery.

5. **“Services”** means activities (such as rescue and medical care) undertaken by disaster relief and initial recovery personnel on behalf of disaster-affected persons.

6. **“Equipment”** means the physical items (such as vehicles and radios) other than goods necessary to undertake disaster relief or initial recovery operations.

Existing disaster assistance instruments tend to define relief and recovery goods quite broadly, as items necessary for operations. Thus, for example, the Oslo Guidelines of 2006 define “Military and civil defence assets” as relief personnel, equipment, supplies and services provided by foreign military and civil defence organizations for [international disaster response assistance]” (para.3). Likewise, the NATO MOU on “Vital Civil Cross Border Transport” defines “material” as “any equipment, means of transport and goods to be used with regard to civil co-operation in the framework of coping with the consequences of a disaster, including equipment, vehicles, and items needed for the relief personnel’s own use” (para. 1(3)).

A number of existing instruments also distinguish between “goods” and “equipment”, with the former described as items destined for distribution and or use of affected persons and the latter described as items needed by relief providers to carry out their work, but provide both the same treatment in terms of customs privileges, etc. For example, Specific Annex J.5 of the Revised Kyoto Convention provides the following definition for “relief consignments”:

- blankets, tents, prefabricated houses, water purifying and water storage items, or other goods of prime necessity, forwarded as aid to those affected by disaster; and
- all equipment, vehicles and other means of transport, specially trained animals, provisions, supplies, personal effects and other goods for disaster relief personnel in order to perform their duties and to support them in living and working in the territory of the disaster throughout the duration of their mission.

Similar definitions can be found in the Istanbul Convention, Annex B.9, art.1, and a number of bilateral agreements (e.g., the Convention between the French Republic and the Federal Republic of Germany on Mutual Assistance in the Event of Disasters or Serious Accidents (1977), art. 5).

7. **“Personnel”** means the staff and volunteers providing disaster relief or initial recovery assistance.

This definition includes not only paid staff but also the volunteers. However, independent contractors hired to provide a service to an assisting actor would normally not be covered by this definition. A separate provision of Article 20 addresses visas for independent transport personnel acting under contract to transport relief goods, equipment or personnel.

8. *“Affected State” means the State upon whose territory persons or property are affected by a disaster.*

International instruments have used a variety of terms to refer to the State affected by a disaster. For instance, some use the term “receiving” State or party (e.g., UNITAR Model Rules (1982), para. A.2; ASEAN Agreement (2006), art. 1(11)) and others refer to the “requesting” State or party (e.g., Tampere Convention (1998), art. 1(3); BSEC Agreement, art. 2), or “beneficiary State” (e.g., Framework Convention, art. 1(e)).

The term “affected State” and its variants as used by some other instruments (e.g., UN GA Res. 46/182 annex para. 4 & Res. 57/150 p.p. 4; Institute of International Law’s Resolution on Humanitarian Assistance (2003), art. 1(5); RC/NGO Code of Conduct, annex D) is preferred here. While “Requesting State” serves the purpose of emphasizing the sovereignty of the State requiring disaster assistance, it will not always be directly applicable, for example, when States delegate the task of formulating international appeals to the United Nations. In these Draft Guidelines, the primary role of the affected State is reaffirmed in Article 3 and the requirement for its consent to the initiation of disaster relief and initial recovery is reflected in article 10, making such a semantic signal unnecessary. “Receiving State” also implies that it is the government or the country that “receives” disaster assistance. While this is partly true when relief goods and equipment are consigned directly to the government, a great deal of international disaster assistance is operated and/or disseminated directly by international actors. Moreover, the real intended recipients are the persons affected by the disaster. “Affected State” appears the most neutral and descriptive term.

9. *“Assisting State” means a State providing disaster relief or initial recovery assistance, whether through civil or military components.*

The term “assisting State” is nearly uniformly used in existing instruments on international disaster response. The present definition also recognizes that foreign governmental assistance may be provided through either civilian or military means. Many of the same considerations and legal needs pertain to assistance efforts by these types of government actors. However, as noted in the annotations to Article 11, the use of military actors generates particular concerns and in accordance with the Revised Oslo Guidelines, States have therefore been recommended to limit their involvement.

10. *“Originating State” means the State from which disaster relief and initial recovery personnel, goods and equipment begin travel to the affected State.*

Regulatory barriers to the delivery of international disaster relief and recovery can arise even before it begins to move toward the affected State. Host state restrictions on the export of certain goods and equipment or exit visa requirements can impede the ability of assisting humanitarian actors to provide timely and effective assistance. This was recognized, for example, in the Measures to Expedite, which recommended the waiver of exit visas (Recommendation E). Originating State regulatory barriers also appear to be included within the scope of art. 9 of the Tampere Convention, inasmuch as it applies to all “State Parties” and refers to “export” and “exit” of goods and equipment and “movement” of personnel.

11. *“Transit State” means the State through whose territorial jurisdiction disaster relief or initial recovery assistance passes on its way to or from the affected State in connection with disaster relief or initial recovery operations.*

A number of previous international disaster assistance instruments have acknowledged that restrictions on visas and customs in transit States can hamper disaster assistance from reaching those in need in the affected State. Thus, a number of existing instruments have specified commitments to be undertaken by transit states, including the Nuclear Assistance Convention, art. 9, Tampere Convention, art. 9(2)(d), UN GA Resolution 46/182, the UNITAR Model Rules, and the Measures to Expedite. The “territorial jurisdiction” referred to here is meant in the broadest sense to extend to all areas over which a particular State might exercise regulatory authority that might affect the movement of disaster relief and/or initial recovery shipments or personnel.

12. *“Assisting humanitarian organization” means foreign or international non-state, non-profit entities whose mandate and activities are primarily focused on humanitarian relief, recovery or development.*

Though used with great ease in field and policy discussions, the term “humanitarian organization” is rarely defined in international legal instruments. In contrast to the Geneva Conventions – which reserve a number of important facilities and rights to humanitarian organizations – most existing international instruments on disaster response make no distinction between humanitarian and other actors, assuming that all are entirely equal when it comes to providing disaster relief and recovery assistance. For example, article 1(10) of the Tampere Convention includes both private sector entities and humanitarian NGOs in its definition of “Non-Governmental Organization,” and provides all of them similar facilities. Likewise, Specific Annex J.5 of the Revised Kyoto Convention and Annex B.9 of the Istanbul Convention refer to special facilities for relief consignments regardless of their source.

For the purpose of these Guidelines, however, there are relevant differences in the operations and approach between humanitarian organizations and other actors. While all foreign actors providing disaster relief and initial recovery assistance can and should be required to abide by minimum standards, organizations that are expressly founded upon and motivated by humanitarian principles and that specialize in humanitarian or development assistance should be recognized as such and provided appropriate facilities.

In particular, funds donated to them to alleviate the suffering of affected persons by States and the general public should not be lost to unnecessary administrative delays, barriers or charges. As noted in Annex 1 to the RC/NGO Code of Conduct, “If [non-governmental humanitarian agencies] are to act in full compliance with their humanitarian principles, they should be granted rapid and impartial access to disaster victims, for the purpose of delivering humanitarian assistance.”

In order to fall under the definition of “assisting humanitarian organization” given here, both an organization’s mandate and its activities should have, as a primary focus, humanitarian relief, recovery or development. This would, for example, exclude commercial actors, whose primary mandate, regardless of their activities, would be profit generation. Nothing prevents affected states from providing private sector and other non-humanitarian actors certain legal facilities as well. Doing so however, should not be to the detriment of assisting humanitarian organizations. Organizations whose primary activities and mandate focused on development (like CARE, Oxfam and Worldvision) are included in this list because they frequently become involved in disaster relief and initial recovery assistance due to existing capacity in the affected State and/or relevant expertise and their underlying mandates and principles are similar to those of relief-oriented actors. However, the legal facilities discussed in these Guidelines would only apply to their relief and initial recovery activities.

13. “Assisting actor” means any assisting humanitarian organization, assisting State or other foreign entity or person responding to a disaster on the territory of the affected State or sending in-kind or cash donations.

The diversity and breadth of international actors becoming involved in major disasters has been increasing for a number of years. In addition to more “classic” actors such as other States, the International Red Cross and Red Crescent Movement, UN agencies and NGOs, more private sector entities, community organizations and individuals are becoming involved. Many international actors work primarily or partly through domestic counterparts, but others direct their assistance themselves. Domestic regulation of international relief and initial recovery must, therefore, take this into account. In particular, all international actors should be held to certain minimum standards in providing their disaster relief and initial recovery assistance (see article 4 below). However, as also discussed in Article 15, a differentiation can and should be made as to how different types of actors are regulated and facilitated.

Part I: Core Responsibilities

Article 3 Responsibilities of Affected States

1. Affected States have the primary responsibility to provide or arrange for disaster risk reduction, relief and initial recovery assistance on their territory. National Red Cross and Red Crescent Societies, as auxiliaries to the public authorities in the humanitarian field, and other domestic civil society actors, play a key supporting role at the domestic level.

The United Nations General Assembly has repeatedly affirmed that each State has the “responsibility first and foremost to take care of the victims of natural disasters and other emergencies occurring on its territory” (see, e.g., GA Res. 46/182, annex para. 4; 57/150 p.p. 5). Likewise the Hyogo Declaration of 2005 “affirm[ed] that that States have the primary responsibility to protect the people and property on their territory from hazards” (para. 4). Article 3(1) also points out that States can meet their responsibility either by directly providing assistance or by arranging it for it be provided by other actors (whether domestic or international).

With respect to the latter point, the second sentence highlights the unique auxiliary role of National Red Cross and Red Crescent societies, affirmed in the Statutes of the Red Cross/Red Crescent Movement (art. 4(3)) (accepted by all State parties to the Geneva Conventions as well as the components of the Movement) and in domestic legislation recognizing each national society. It also notes the important supporting role of other domestic civil society actors.

2. In order to ensure that the needs of affected persons are met, affected States should seek international or regional assistance, when a disaster situation exceeds national coping capacities.

Article 3(2) elaborates on the responsibility described in Article 3(1). It is consistent with the Hyogo Framework for Action’s (2005) call on States to “ensure rapid and effective disaster response in situations that exceed national coping capacities” (para. 20(c)), and GA Res. 46/182’s similar call upon “States whose populations are in need of humanitarian assistance . . . to facilitate the work of . . . organizations in implementing humanitarian assistance(annex, para. 6).” It is also consistent with the obligations placed upon States in situations of armed conflict by international humanitarian law. For example, article 59 of the Fourth Geneva Convention provides that occupying powers “shall agree” to relief schemes when the occupied territory is inadequately supplied and article 30 provides that protected persons “shall have every facility” for applying for international assistance.

3. Affected States have the sovereign right to coordinate, monitor and regulate, consistent with humanitarian principles and international law, disaster relief and recovery assistance provided by assisting actors on their territory.

This paragraph complements Article 2(1)’s affirmation of the affected State’s primary role and responsibility as a sovereign actor. As stated by GA Res. 46/182, “the affected State has the primary role in the initiation, organization, coordination and implementation of humanitarian assistance within its territory” (cf. also Max Planck Draft Guidelines para. 19). This paragraph has used slightly different language, inasmuch as some of this concept is included in Article 1(1) and other aspects are addressed in other articles. In this subsection, the affected State’s sovereign right to ensure that international assistance is appropriate and well coordinated is emphasized. Still, the regulatory efforts by the affected State should respect international law and humanitarian principles, including by

ensuring that international humanitarian organizations retain sufficient independence to act according to humanitarian principles as set out, for example, in the RC/NGO Code of Conduct.

Article 4 Responsibilities of Assisting Actors

Article 4 sets out core quality and humanitarian principles that all assisting actors should follow in providing disaster relief and initial recovery assistance. Adherence to these minimum standards should form the basis for eligibility for the legal facilities in Part V (subject to existing rights, as noted in Article 1).

Not all recognized standards are included here – only those that are applicable to all assisting actors and that a state granting legal facilities might be reasonably capable of monitoring. Thus, certain acknowledged responsibilities that are particular to humanitarian organizations (e.g., the responsibility to maintain independence) are not listed. Their omission here in no way implies that they are unimportant.

1. Assisting actors and their personnel should abide by applicable national and international law and respect the human dignity of disaster-affected persons at all times.

Like UN GA Res. 46/182 para. 5, this paragraph expresses an elementary aspect of the supportive relationship between international actors providing disaster relief and recovery and affected States: abiding by applicable national laws while operating within their territories. Likewise, international actors should abide by applicable international law, for example, by ensuring that their programmes do not infringe upon internationally-protected human rights of disaster affected persons. Most fundamentally, the human dignity of affected persons should be at the centre of operations, as noted in paragraph 20 of the Oslo Guidelines (“[t]he dignity and rights of all victims must be respected and protected”) and Principle 1.1 of the Sphere Humanitarian Charter (affirming the “right to life with dignity”).

2. Assisting actors should ensure that their disaster relief and initial recovery assistance is:

(a) Allocated solely in proportion to needs and on the basis of needs assessments;

This paragraph derives from paragraph 6 of the Principles and Practice of Good Humanitarian Donorship, adopted by a number of major humanitarian donors in 2003. It is also consistent with article VIII (b) and (d) of the Food Aid Convention of 1999 (providing respectively in relevant part that “food aid should be based on an evaluation of needs by the recipient and the members” and “the provision of food aid . . . should respect basic humanitarian principles”). Likewise, it echoes the imperative of paragraph 2 of the RC/NGO Code of Conduct that “aid priorities are calculated on the basis of need alone,” the affirmation of UN GA Res. 46/182, annex, para.2, that “[h]umanitarian

assistance must be provided in accordance with the principle[] of humanity,” and the descriptions of the principle of humanity provided by the Fundamental Principles of the Red Cross/Red Crescent Movement and paragraph 1 of the Principles and Practice of Good Humanitarian Donorship. It places need as the primary criterion for disaster relief and early recovery assistance.

Common Standard 2 of the Sphere Humanitarian Charter and Minimum Standards emphasizes that need should be objectively measured to ensure that the assistance provided is appropriate. In this regard, the Balkans National Societies Recommended Rules and Practices urge affected States to undertake joint needs assessments with interested assisting humanitarian actors (section B.II.2). In any event, the manner and comprehensiveness of the needs assessment to be undertaken should be appropriate to the circumstances, and the urgency of the situation, and should be appropriately updated.

(b) Provided without any adverse distinction (such as, in regards to nationality, race, ethnicity, religious beliefs, class, gender and political opinions) to all persons in need;

The wording of this paragraph is inspired by paragraph 6(a) of the Max Planck Draft Guidelines. It also draws from paragraph 2 of the RC/NGO Code of Conduct, and the fundamental principle of impartiality as expressed in the Fundamental Principles of the Red Cross/Red Crescent Movement and described in paragraph 1 of the Principles and Practice of Good Humanitarian Donorship. It provides a non-exhaustive list of prohibited bases for discrimination similar to that provided in the Fundamental Principles of the Red Cross/Red Crescent as articulated in the preamble of the Statutes of the Movement.

(c) Provided without seeking to further a particular political or religious standpoint or to obtain commercial gain from philanthropic assistance;

This paragraph draws from paragraph 3 of the RC/NGO Code of Conduct, the principle of neutrality as provided in the Fundamental Principles of the Red Cross/Red Crescent Movement, and the affirmation of UN General Assembly Resolution 46/182 (annex, para.2) that “[h]umanitarian assistance must be provided in accordance with the principle[] of . . . neutrality[.]” It emphasizes that philanthropic disaster assistance should be not used as a cover for commercial gain, such as the opening of markets. A similar sentiment underlies the Draft Guiding Principles for Philanthropic Private Sector Engagement in Humanitarian Action currently being developed by OCHA and the World Economic Forum in consultation with other partners.

(d) Provided by competent and adequately trained personnel;

It is a common provision of existing bilateral treaties on disaster response that assisting States assign only fully trained and qualified personnel (see, e.g., Agreement between the Federal Republic of Germany and the Kingdom of the Netherlands on Mutual Assistance in the Event of Disasters Including Serious Accidents (1998), art. 4). Competence is also

highlighted in many humanitarian standard-setting documents, including the Sphere Humanitarian Charter and Minimum Standards, e.g., Common Standard 7, the Compass Quality Method developed by Groupe U.R.D. in 2004 (Criterion I), and the Humanitarian Accountability Partnership International's Quality Management and Accountability Standards (e.g., Benchmark 4). Similarly, the RC/NGO Code of Conduct asserts that "our programmes will be based upon high standards of professionalism and expertise in order to minimize the wasting of valuable resources." Thus, assisting States and assisting humanitarian organizations should respond with the appropriate level of personnel.

(e) Commensurate with their organizational capacities;

In addition to questions of training and capacity, assisting actors may be limited in resources, mandate and organizational focus in what they are able to achieve in disaster relief and initial recovery situations. Overreaching in this area can lead to gaps in service when tasks are shared through coordination processes. As noted by the Sphere Handbook (p. 34), "[e]ven within the specific limits of an agency's expertise and mandate . . . it is likely that the overall humanitarian need will outstrip organisational resources." Actors should thus aim to do what they can competently and "be prepared to promptly acknowledge gaps in their capacity to meet basic needs" so that other domestic or international actors might be able to fill them.

(f) Provided in coordination with the responsible authorities of the affected State and, to the greatest extent practicable, with other relevant domestic and foreign actors; and

Coordination structures between international actors and affected States are a central element of most bilateral and multilateral treaties in this area. In addition, consistent with paragraph 4 of UN GA Res. 46/182, international actors should remain mindful in their activities of the primary role of the affected State, and therefore cooperate with relevant authorities in their efforts to coordinate, monitor and regulate assistance in a manner consistent with humanitarian principles.

This paragraph also refers to coordination with "other domestic actors", which would include the national Red Cross or Red Crescent society and other domestic relief and/or recovery actors. This is consistent with paragraph 6 of the RC/NGO Code of Conduct, which emphasizes cooperation between international actors and local non-governmental actors. It further refers to "foreign actors". The importance of close cooperation between international actors has been the subject of a great number of UN General Assembly and ECOSOC resolutions (e.g., UN GA Res. 60/124 (2005); ECOSOC Res. 2005/4 (2005)). This would include other assisting humanitarian organizations, assisting States, and also – at least in the initial recovery phase – international development actors not directly involved in disaster response.

Whereas coordination with responsible domestic authorities must be seen as a requirement, it can frequently be difficult in practice to coordinate with all of the varied domestic civil society and international actors who might become involved in a large

operation. Accordingly, assisting actors are called upon here to do so “to the greatest extent practicable.”

(g) *Not used as a means to gather sensitive information of a political, economic or military nature that is irrelevant to disaster relief or initial recovery operations.*

This is similar to language in the RC/NGO Code of Conduct para. 4, where it is discussed as one means to avoid the instrumentalization of humanitarian organizations’ activities for governmental foreign policy aims. While the issue of independence is unique to humanitarian organizations, the same duty to refrain from unnecessarily gathering sensitive information should hold true for any assisting actor providing assistance in an affected State.

3. *To the greatest extent practicable, assisting actors’ disaster relief and initial recovery assistance should also be:*

The provisions of Article 4(3) are very important elements of disaster relief and initial recovery activities, but are sometimes difficult to measure and the degree to which they can reasonably be guaranteed may vary depending on the circumstances (cf. Sphere Charter and Minimum Standards in Disaster Response, p. 14, noting that “there will inevitably be situations where it may be difficult, if not impossible, to meet all of the standards”). This subsection therefore calls for good faith efforts by assisting actors with regard to these standards.

(a) *Responsive to the special needs, if any, of women and particularly vulnerable groups, which may include children, displaced persons, the elderly, persons with disabilities, persons living with HIV and other debilitating illnesses;*

The special needs of vulnerable groups are widely recognized but often insufficiently addressed in disaster situations. International humanitarian law recognizes these needs in the armed conflict context and calls for specific positive measures to ensure relief efforts address them. For instance Article 70(1) of the First Additional Protocol provides that, “[i]n the distribution of relief consignments, priority shall be given to those persons, such as children, expectant mothers, maternity cases and nursing mothers, who, under the Fourth Convention or under this Protocol, are to be accorded privileged treatment or special protection.” Moreover, a recently published study by the ICRC on Customary International Humanitarian Law has identified a customary norm for both international and internal conflicts that children, “[t]he elderly, disabled and infirm” are “entitled to special respect and protection” (Rules 135 & 138). The same concerns should extend to disaster settings. Indeed, the Food Aid Convention of 1999 article VIII requires members to “pay attention to meeting the particular nutritional needs of women and children” and to target food aid for free distribution to “vulnerable groups”. The special needs of displaced persons are recognized by 1951 Convention relating to the Status of Refugees and the 1998 Guiding Principles on Internal Displacement, among other instruments.

(b) Adequate for the needs of affected persons and consistent with any applicable international standards of quality;

This paragraph calls for international actors to make best efforts to ensure that the assistance they provide is adequate and appropriate. The Food Aid Convention of 1999 art. III(j) similarly provides that “all products provided as food aid shall meet international quality standards[and] be consistent with the dietary habits and nutritional needs of recipients[.]” Somewhat similar provisions were proposed in the Max Planck Draft Guidelines, para. 16(c), and the 1984 Draft Convention, art. 10. While there is no single document that defines “international standards of quality” for all actors, there are a number of widely-accepted tools in this area, in particular the Sphere Humanitarian Charter and Minimum Standards in Disaster Response.

(c) Provided in a manner that is sensitive to cultural, social and religious customs and traditions;

This paragraph is consistent with paragraph 5 of the RC/NGO Code of Conduct, which calls for respect for “culture and custom.” It is meant to apply to relief goods and services themselves (e.g, food should be provided that is locally acceptable, housing design should account for local traditions and taboos), but also the manner in which they are carried out. Thus, culturally disrespectful behavior by relief staff would also be targeted. Per Article 4(1), however, assisting actors are also bound not to violate international law, including international human rights law. The interest in sensitivity to local norms should not be taken to the extreme of violating human rights.

(d) Carried out with adequate involvement of affected persons, including women, youth and the elderly, in their design, implementation, monitoring and evaluation;

This paragraph is drawn from the Principles and Practice of Good Humanitarian Donorship, para. 7. It is also consistent with RC/NGO Code of Conduct, para.7, the Humanitarian Accountability Partnership International Accountability Principles, and Balkans National Societies Recommended Rules and Practices, section B.III.17. The Food Aid Convention of 1999, article XIII, provides that “members shall pay particular attention to . . . facilitating the participation of women in the decision-making process and in the implementation of food aid operations[.]” Accountability to beneficiaries is a crucial element of ensuring that disaster relief and initial recovery operations are actually providing the assistance needed.

(e) Building upon and conducted in a manner that strengthens local disaster relief and recovery capacities and reduces future vulnerabilities to disasters; and

This paragraph draws from paragraphs 6 and 8 of the RC/NGO Code of Conduct. It is also consistent with paragraph 8 of the Principles and Practice of Good Humanitarian Donorship of 2003. It recognizes the potential identified in numerous past evaluations of disaster operations, for international assistance to undermine rather than reinforce domestic coping mechanisms and to recreate vulnerabilities to disaster.

(f) Carried out so as to minimize negative impacts on the local community, economy, job market and environment; and

Paragraph 8 of the RC/NGO Code of Conduct commits humanitarian actors to “strive to reduce future vulnerabilities to disaster as well as meeting basic needs.” To do so, the explanatory text notes that they should “endeavour to minimize the negative impact of humanitarian assistance[.]” One of the most frequently cited negative impacts of international aid is distortion of community structures and markets for goods, labor and housing. These can be particularly acute in the midst of large operations, when a great deal of funds must be spent quickly, leading to price inflation and other problems. However, this does not mean that local markets should be systematically avoided; on the contrary, local spending by relief and recovery operations can represent a needed stimulus to disaster-impacted economies.

Thus, the Food Aid Convention of 1999 calls on members to “pay particular attention to . . . avoiding harmful effects on local harvests, production and marketing structures, by appropriately timing the distribution of food aid” (art. XIII(a)) and to “avoiding harmful effects on low-income consumers due to price changes resulting from local purchases” (art. XII(d)). It also calls on members to “give consideration” to purchasing their food aid from other developing countries or from local purchases (article XII). Similarly, the Balkans National Societies Recommended Rules and Practices, section B.I.7, suggests that relief goods be purchased “on the local market” in the affected State “where this is possible and economically more feasible and where it saves money and time.”

Moreover, the signatories to the RC/NGO Code of Conduct pledge “to pay particular attention to environmental concerns in the design and management of relief programmes” (para.8) and environmental impacts of relief operations are identified as a cross cutting issue for all sectors discussed in the Sphere Humanitarian Charter and Minimum Standards in Disaster Relief (p.13).

(g) Provided in a transparent manner, sharing appropriate information on activities and funding.

The RC/NGO Code of Conduct calls on signatories to ensure that “[a]ll our dealings with donors and beneficiaries shall reflect an attitude of openness and transparency” (para. 9). The Principles and Rules for Red Cross and Red Crescent Disaster Relief (1995), the International NGO Accountability Charter (2006) and the Interaction PVO Standards (1992) likewise emphasize transparency, particularly of financial information and donations given and received. The same level of openness should be expected of all assisting actors.

Article 5 Additional Responsibilities of All States

1. States providing funding to other assisting actors should encourage them to comply with the obligations in Article 4.

Like the Food Aid Convention (art. 11), this section recognizes that donor states have important responsibilities with regard to how their aid is provided, even when channeled through other actors, such as assisting humanitarian organizations. Some of the responsibilities in article 4 are already expressed in standard grant agreements employed by large donors.

2. All States should actively encourage members of the public interested in providing direct disaster relief to send only those relief goods expressly requested by the affected State and discourage them from sending unnecessary or inappropriate goods.

This section is drawn from recommendation G of the Measures to Expedite International Relief, focusing here on the role of States to take steps to educate their publics about the goods that are needed to respond to disasters abroad and particularly those that are not needed or appropriate. They might do this through public announcements and comments to the media.

Article 6 Responsibilities Concerning Diversion

States and assisting humanitarian organizations should cooperate to prevent unlawful diversion, misappropriation, or fraud concerning disaster relief or initial recovery goods, equipment or resources and initiate proceedings as appropriate.

This language is similar to 1984 Draft Convention art. 17 and UNITAR Model Rules, rule A14. It is also common for bilateral assistance agreements to include provisions to guard against corruption and diversion of aid (see, e.g., Grant Agreement between the Government of the People's Republic of Bangladesh and the United States of America for Relief and Rehabilitation (1972), arts. 3 & 4).

Part II: Early Warning and Preparedness

Article 7 Early Warning

In order to minimize transboundary impacts and maximize the effectiveness of any international assistance that might be required, all States should ensure that procedures are in place to facilitate the expeditious sharing of information about disasters, including emerging disasters, with other States and assisting

humanitarian organizations as appropriate, including the United Nations' Emergency Relief Coordinator.

There are a large number of multilateral treaties requiring states to share information about potential cross-border hazards. These include the Convention on Early Notification of a Nuclear Accident (1986), art. 2, the revised International Health Regulations (2005), art. 6; the Convention on Transboundary Effects of Industrial Accidents (2000), art. 4; the Rio Declaration on Environment and Development (1992), principle 18 and the ASEAN Agreement, arts. 4 & 7. The importance of sharing information on developing hazards in order to facilitate international assistance, and the role of the Emergency Relief Coordinator in disseminating that information, has also been underlined in a number of instruments, including UN GA Res. 46/182, the Tampere Convention, art. 3, and the Oslo Guidelines, para. 54. Similar language was proposed in the 1984 Draft Convention, art. 6. Article 3 of the Tampere Convention is remarkable in obligating state parties to share information not only with other states and the UN but with “non-State entities” as well as the general public.

Article 8 Legal, Policy and Institutional Frameworks

1. As an essential element of a larger disaster risk reduction programme, States should adopt comprehensive legal, policy, and institutional frameworks for disaster prevention, mitigation, preparedness, relief and recovery which take full account of the auxiliary role of their National Red Cross and Red Crescent Society, are inclusive of domestic civil society, and empowers communities to enhance their own safety and resilience. States, with the support, as appropriate, of relevant regional and international organizations, should devote adequate resources to ensure the effectiveness of these frameworks.

A first and fundamental step in ensuring legal preparedness for disasters is the development of a comprehensive legal and institutional framework. This is recommended in a number of existing international documents, including the Hyogo Framework and Plan of Action (Priorities 1 and 5), which specifically calls for these frameworks to address not only disaster relief but also risk reduction. In doing so, States should ensure that the role of the national Red Cross and Red Crescent societies are incorporated, pursuant to articles 3 and 4 of the Statutes of the Movement. Such frameworks rarely function effectively without adequate resources.

2. These frameworks should also adequately address the initiation, facilitation, transit and regulation of international disaster relief and initial recovery assistance consistent with these Guidelines. They should allow for effective coordination of international disaster relief and initial recovery assistance, duly taking into account the role of the United Nations Emergency Relief Coordinator as central focal point with States and assisting humanitarian organizations concerning United Nations emergency relief operations. They should also clearly designate domestic government entities with responsibility and

authority in these areas. Consideration should be given to establishing a central focal point to liaise between international and government actors at all levels.

Few states have clear and complete laws on the initiation, facilitation, transit and regulation of international assistance. In order for the domestic frameworks discussed in Article 6(1) to be truly comprehensive and of maximum use and impact in major disasters, they should also integrate these international issues, including with regard to coordination. On the latter point, consistent with UN GA Res. 46/182 para. 35(f), this paragraph encourages States to ensure that their legal frameworks account for the role of the Emergency Relief Coordinator. The suggestion of a national focal point has also frequently been made in international instruments, for instance, UN GA Resolution 2816 (XXVI) of 1971, “invite[d] potential Recipient Governments . . . to appoint a single national disaster relief coordinator to facilitate the receipt of international aid in times of emergency” (para. 8(b)).

3. Where necessary and appropriate, national governments should encourage other domestic actors with authority over areas of law or policy pertinent to international disaster relief or initial recovery assistance, such as provincial or local governments and private regulatory bodies, to take the necessary steps at their level to implement the Guidelines.

Particularly in federal States, some of the legal issues in these Guidelines may be considered to be within the jurisdiction of provincial or local governments. Moreover, some questions may be regulated by private or semi-private bodies. For instance, private medical associations may be accorded responsibility over the recognition of foreign medical qualifications. In these cases, national governments (as the level of government most closely associated with international affairs) should take appropriate steps to encourage these entities to make any necessary reforms in order to implement the spirit of these Guidelines.

Article 9 Regional and International Support for Domestic Capacity

1. With a view to increasing resilience and reducing the need for international assistance in disaster relief and initial recovery, the international community, including donors, regional organizations and other relevant actors, should support developing States, their national Red Cross and Red Crescent Societies and other domestic civil society actors, where requested, to build their capacities to mitigate, prepare for and respond to disasters domestically.

This paragraph is consistent with the commitment of the Hyogo Framework and Plan of Action to support the development of national capacities to ensure disaster risk reduction and preparedness, particularly in developing countries (see, e.g., paras. 13(h), 20, 26, 34(b)), as well as with the Millennium Declaration’s (UN GA Res. 55/2 (2000)) commitment to “intensify cooperation to reduce the number and effects of natural and man-made disasters” (para. 23); the Principles and Practice of Good Humanitarian

Donorship, para.8; and a number of General Assembly resolutions, including Res. 46/182 (1991), (para.13) & 44/236 (1989), (para. 2(a)).

2. The international community should also support developing States to build the capacity to adequately implement legal, policy and institutional frameworks to facilitate international disaster relief and initial recovery assistance. This support should be provided to States in a coordinated manner among the relevant actors.

In the IDRL Programme's consultations, a number of stakeholders have pointed out that not only legal but also capacity gaps lead to regulatory problems in international disaster relief and initial recovery operations (see, e.g., Report of the European IDRL Forum of May 2006, page 6). The need for the international community to support States in implementing laws on disaster response has been acknowledged before, for example by the UN General Assembly (see, e.g., UN GA Res. 60/125 (2005), para 4 & 36/255 (1981), para. 17). Developing this capacity has a financial aspect, but it is also a matter of awareness and training. In this latter context, national Red Cross and Red Crescent societies, as auxiliaries to the public authorities in humanitarian affairs, may have an important role.

Part III: Initiation and Termination of International Disaster Relief and Recovery Assistance

Article 10 Initiation

1. Disaster relief or initial recovery assistance should be initiated by the affected State either on the basis of its request or through acceptance of an offer from an assisting actor. The affected State should decide in a timely manner whether or not to request or accept offers of disaster relief or initial recovery assistance and communicate its decision promptly. In order to make this decision, the affected State should promptly assess needs. Consideration should be given to undertaking joint needs assessments with the United Nations and other assisting humanitarian organizations.

Nearly all treaties concerning disaster relief or recovery assistance include provisions concerning how international aid should be initiated. Some contemplate aid commencing only upon the request of the affected State (see, e.g., Nuclear Assistance Convention, art. 2; Convention on the Transboundary Effects of Industrial Accidents (2000), art. 12); others also refer to offers by assisting States or other international actors (see, e.g., Inter-American Convention, art. 2; Framework Convention on Civil Defense Assistance (2000), art. 3)). The UN General Assembly has also stated that "humanitarian assistance should be provided with the consent of the affected country and in principle on the basis of an appeal by the affected country" (Res. 46/182 (1991) annex, para. 2). This article draws on these precedents. It should also be read in connection with Article 3(2) concerning the responsibility of affected States to seek outside assistance when it is needed.

The second sentence is similar to provisions in the ASEAN Agreement, art.11(5), and the Oslo Guidelines, para. 58. Delays in the request for international assistance have frequently been cited in the IDRL Programme's consultations with stakeholders as a problem area, particularly in situations when life-saving assistance is immediately required. In some cases, this is related to legal rigidities in declarations of states of emergency or disaster.

Consistent with UN GA Res. 46/182 para. 35(c), the third and fourth sentences underline the importance of needs assessments and the desirability of states undertaking joint assessments, such as with the "United Nations Disaster Assessment and Coordination" (UNDAC) teams.

This paragraph is not intended to suggest that international assistance should be automatically accepted, but rather that systems should be in place for a quick assessment and decision-making in order to heighten the effectiveness of international assistance where it is needed. Moreover, it should be recalled that Article 1 makes clear that these Guidelines are subject to existing international law and agreements, which will obviously have a role to play with regard to the initiation of disaster assistance in situations within their particular scope. For instance, within the Red Cross/Red Crescent Movement, the Statutes, Principles and Rules for Red Cross and Red Crescent Disaster Relief, 1969, "Seville Agreement" on the Organization of International Activities of the Components of the International Red Cross and Red Crescent Movement of 1997, and Supplementary Measures to Enhance the Implementation of the Seville Agreement of 2005 among other agreements establish internationally-accepted ground rules for the initiation of assistance by and between Movement actors.

2. Both offers and requests should be as specific as possible as to the types and amounts of goods and the services and expertise available or requires, respectively. Affected States may also wish to indicate particular types of goods and services likely to be offered that are not needed.

Like a number of other instruments (e.g., Convention on the Transboundary Effects of Industrial Accidents (2000), art. 12; Tampere Convention, art. 4(3); ASEAN Agreement, arts. 4 & 11; BSEC Agreement, art. 4), this paragraph calls upon affected States and assisting actors to be specific about the types of assistance they require or can offer. Consistent with the Measures to Expedite International Relief, para. 14, affected States are also advised to consider including information in their request about what is not needed, in order to avoid irrelevant and unnecessary goods and services being provided.

3. Affected States should provide assisting States and assisting humanitarian organizations with adequate information about domestic laws and regulations of particular relevance to the entry and operation of disaster relief and initial recovery operations.

Experience indicates that information about national law is rarely immediately available to assisting actors in disaster response settings, and their ignorance of applicable rules frequently leads to unnecessary delays, misunderstandings and expense. As the best expert in its own legal system, the affected State should take steps to ensure that the most relevant rules are communicated to assisting States and assisting humanitarian organizations at the outset of operations.

Article 11 Initiation of Military Relief

Military assets should be deployed in disaster relief or initial recovery operations only at the request or with the specific consent of the affected State, on a time-limited basis, as a last resort and as a tool to complement civilian relief mechanisms where the latter are incapable to address the critical needs of affected persons. Military personnel should be unarmed and in national uniforms of the assisting State, unless otherwise agreed with the affected State.

These provisions are drawn principally from the revised Oslo Guidelines, paras. 24, 28, 29 & 32. A number of other instruments also regulate the provision of foreign assistance by military actors, in particular with regard to their arms and identification (see, e.g., ASEAN Agreement, arts. 12 & 15).

Article 12 Termination

When an affected State or an assisting actor wishes to terminate disaster relief or initial recovery assistance, it should provide adequate notification. Upon such notification, the affected State and assisting actor should consult with each other, bearing in mind the impact of such termination on disaster affected persons.

This paragraph draws on art. 18 of the 1984 Draft Convention and article 6 of the Tampere Convention, which provides that either the assisting State or affected State may terminate assistance “by providing notification in writing” after which the parties should “consult with each other to provide for the proper and expeditious conclusion of the assistance, bearing in mind the impact of such termination on the risk to human life and ongoing disaster relief and recovery operations.”

Part IV: Eligibility for Legal Facilities

Article 13 Facilities for Assisting States

Transit and affected States should grant, at minimum, the legal facilities described in Part V to assisting States with respect to their disaster relief and initial recovery assistance.

While many States have entered into bilateral treaties concerning disaster assistance, it is still common for assistance to be required where there is no such advance agreement. The facilities provided in Part V are very similar to those that States normally accord to

each other in such agreements. By incorporating the “package” of Part V into national law, States can lessen the delay or uncertainty in future cases where no previous bilateral agreement exists. Of course, this recommendation is conditioned by the exceptions in Article 16 and any existing international law and agreements, per Article 1(3).

Article 14 Facilities for Assisting Humanitarian Organizations

1. *Originating, transit and affected States should grant, at a minimum, the legal facilities set out in Part V to eligible assisting humanitarian organizations with respect to their disaster relief and initial recovery assistance.*

2. *In order to be eligible for legal facilities, an assisting humanitarian organization should submit a request to the State concerned and:*

(i) *demonstrate both its willingness and capacity to comply with Article 4 of these Guidelines; and*

(ii) *fulfil any other reasonable requirements of that State, which are not inconsistent with the spirit of these Guidelines.*

States are urged to implement the provisions for Part V for assisting humanitarian organizations. However, particularly in light of the growing numbers of such organizations (including those formed in the aftermath of a particular disaster), it is understood that States would be hesitant to grant such facilities to just any organization presenting itself as “humanitarian”, given the potential for abuse. Moreover, issues of quality, accountability and coordination are being increasingly raised in major international operations. Thus, some decision-making mechanism by which States can choose organizations to be granted the facilities is required. These Guidelines propose that willingness and capacity to comply with the standards in Article 4 are the most efficient and principled means for making this kind of choice. This system is closely akin to the International Search and Rescue Advisory Group (INSARAG) system endorsed by UN General Assembly Resolution 57/150 for international urban search and rescue teams, which links legal facilities for entry and operation with compliance with agreed quality and coordination standards.

States might have additional requirements with regard to some of the facilities – such as reporting requirements or proof of valid incorporation in the organization’s headquarters. Any such additional requirements should be as narrow as possible to avoid unnecessary administrative barriers and should not compromise the independence of assisting humanitarian organizations.

3. *Determination of eligibility by the State granting the facilities should be possible in advance of a disaster or as soon as possible after its onset. Applicable procedures and mechanisms should be as simple and expeditious as possible. They should be clearly described and information about them should be made freely*

available. They might include the use of a national roster, bilateral agreements or reliance upon international or regional systems of accreditation, if available.

As a time-saving device, it is recommended that States set up a decision-making system with regard to granting the facilities contained in Part V to the appropriate actors prior to the onset of a disaster. These procedures should not only prepare for situations of accepting outside aid, but also to circumstances where they are acting as originating or transit States for disaster relief or initial recovery assistance. What is envisaged is that the organizations involved would demonstrate that they have policies in place committing them to carry out the elements of Article 4 and also make a showing that they have the expertise and real capacity to carry out the type of work they propose to do (e.g., trained staff, adequate stocks, previous experience (if applicable), etc.). It is not envisaged as an investigative system (as this would be well beyond what most States currently require even for registration as a full national NGO).

Different States may wish to implement such procedures in different ways. A non-exhaustive list of possibilities is included in the text. This list includes accreditation, which is not widely used at present; however, there have been a number of recent recommendations that the humanitarian community should move in this direction, so this may be an option for States in the future.

Any procedures chosen by States should further the goal of reducing administrative barriers, so they should be simple, expeditious and made easily available to assisting humanitarian actors.

2. Retention of the legal facilities in Part V should be made dependent on ongoing compliance with the obligations in paragraph 2 of this Article. However, entitlement to legal facilities should not be changed arbitrarily, retroactively or without notice appropriate to the circumstances.

States can and should insist upon actual compliance with Article 4 in order to justify continued enjoyment of the legal facilities provided consistent with these Guidelines. A reasonable and fair process, consistent with the circumstances, should be followed in the determination whether to end eligibility and provision of facilities.

This Article will mainly concern affected States, as it addresses the actual performance of an assisting humanitarian organization on the ground. However, if an originating or transit State is apprised of a failure of an assisting humanitarian organization to abide by Article 4, it should also review the continued eligibility of that organization for legal facilities recommended in Part V.

Article 15 Facilities for Other Assisting Actors

Affected States may also wish to extend some of the legal facilities in Part V to assisting actors other than those covered by articles 14 and 15, such as private companies providing charitable relief, provided it does not negatively affect

operations of assisting humanitarian organizations or assisting States. Any actor receiving such facilities should be required to abide, at a minimum, by the same conditions described in article 14.2.

Many States recognize that the private sector, private individuals, and other “non-traditional” foreign actors can make a valuable contribution to disaster response. However, private sector involvement raises the spectre of a (sometimes not so) hidden profit motive behind “charitable” activities. Moreover, many private individuals lack experience and may deliver inappropriate and uncoordinated “aid”. Sometimes, the “assistance” from these and other non-humanitarian actors can so crowd entry points, that the critical assistance items and activities of humanitarian and States actors is blocked.

It is by no means the aim of these Guidelines to block assistance from these actors. However, they do recommend that the specific legal facilities identified in Part V be generally limited to assisting States and eligible assisting humanitarian organizations, as a sort of legal “fast track”. Where some facilities are extended to other actors, they should be held to the same high standards listed in Article 4.

Part V: Legal Facilities for Entry and Operations

Article 16 Exceptions

The legal facilities in this Part should be subject to the interests in national security, public order, public and environmental health, and public morals of the affected, originating and transit States granting them. Exceptions to any of these facilities designed to protect such interests should be clearly stated, tailored to the exigencies of a disaster setting, and consistent with the imperative of addressing the needs of affected persons.

Part V sets out the minimum legal facilities (with their applicable safeguards) which assisting States and assisting humanitarian organizations generally require to ensure timely and efficient assistance. Where specific activities or situations implicate the critical state interests listed in this paragraph, however, some level of exception to the recommended facilities is both appropriate and inevitable. Thus, for example, state responsibilities to protect their citizens from foreign terrorists, unsafe medicines, or smuggled contraband do not vanish merely because a disaster has occurred. However, a disaster setting does call for any exceptions made for these reasons to be as narrow as possible in order to reduce any unnecessary impediments to the alleviation of human suffering. This approach is analogous to article 43 of the newly revised International Health Regulations (2005), which provides that restrictions on the cross-border entry of persons and goods designed to limit exposure to foreign diseases should not be “more restrictive of international traffic and not more invasive or intrusive to persons than reasonably available alternatives that would achieve the appropriate level of health protection.”

Article 17 Personnel

1. *With regard to disaster relief and initial recovery personnel of assisting States and assisting humanitarian organizations, affected States should:*

(a) Grant multiple entry and exit visas and any necessary work permits without cost, renewable within the affected State, for the time necessary to carry out disaster relief or initial recovery activities;

(b) In disaster relief operations, waive or significantly expedite the provision of such visas and work permits;

The language of these paragraphs is similar to article 7(2)(a) from the 1984 Draft Convention. Other like provisions may be found in many existing bilateral agreements and in a number of existing multilateral instruments, including: UN GA Res. 57/150, para. 3; Recommendation E of the Measures to Expedite; Oslo Guidelines, para.60; Inter-American Convention, art. 7; ASEAN Agreement, art. 14(b); UNITAR Model Rules, Rule 15; Max Planck Draft Guidelines, para. 21(d); Balkans National Societies Recommended Rules and Practices, section B.III.12, and Institute of International Law, Resolution on Humanitarian Assistance (2003), art. VI(1). Analogously, international humanitarian law provides that the rapid entry of relief personnel should be facilitated (see e.g. Fourth Geneva Convention arts. 30, 59; First Additional Protocol art. 70).

Here, specific reference is made to the right to renew a visa within the affected States, inasmuch as in several recent disaster relief and recovery operations, assisting humanitarian actors and even assisting State personnel were required to leave the affected State multiple times during operations simply to renew visas. Paragraph (b) specifically notes that visa procedures should be particularly expedited in disaster relief settings, as opposed to initial recovery operations, for which normal processing times are usually not a problem.

(c) Establish expedited procedures for temporary recognition of professional qualifications of foreign medical personnel, architects, and engineers, drivers licences and other types of licenses and certificates that are reasonably necessary for the performance of their functions and that have been certified as genuine by the concerned assisting State or assisting humanitarian organization, for the time necessary to carry out relief or initial recovery activities;

This language draws from article 7(2)(d) of the 1984 Draft Convention. The Oslo Guidelines, para. 60, similarly provide for the “recognition of certificates” and the NATO Status of Forces Agreement (1951), art. 4, provides for the recognition of foreign drivers licenses held by members of NATO forces. The Balkans National Societies Recommended Rules and Practices, section B.III.14, similarly called on assisting States to “see that legal recognition of professional expertise . . . is accorded.”

The recognition of foreign credentials is particularly important for medical personnel of assisting States and assisting humanitarian actors, who often find themselves operating in a technically illegal status due to the lengthy procedures normally required to be granted permission to practice medicine. The recognition of these credentials is tied to their disaster relief and initial recovery work and should therefore only be temporary. The sponsoring State or assisting humanitarian organizations should be called upon to vouch for the credentials of their staff.

(d) Facilitate freedom of access to and freedom of movement in the affected area, bearing in mind the safety of relief and initial recovery personnel.

This language is drawn from article 7(2)(b) of the 1984 Draft Convention. It is also similar to provisions in the Oslo Guidelines, para. 60; UNITAR Model Rules, rule 16; and the Max Planck Draft Guidelines, para. 21(h).

2. Upon request, originating and transit States should likewise waive or promptly issue, without cost, exit or transit visas, as appropriate, for the disaster relief and initial recovery personnel of assisting humanitarian organizations.

Visas can sometimes be an issue from the State of departure or transit on the way to an affected State. These types of issues are addressed in a number of existing instruments, including the ASEAN Agreement, art. 16; BSEC Agreement, art. 5; Inter-American Convention, art. 8; and Measures to Expedite, recommendation E.

Article 18 Goods and Equipment

1. With regard to the disaster relief and initial recovery goods and equipment exported or imported by, or on behalf of, assisting States and assisting humanitarian organizations, originating, transit and affected States should:

(a) Exempt them from all customs duties, taxes, tariffs or charges;

A number of bilateral and multilateral treaties call for exemptions from customs duties and charges for Assisting States (see, e.g., Convention between the Kingdom of the Netherlands and the Kingdom of Belgium on Mutual Assistance in Combating Disasters and Accidents (1984), art. 7; Inter-American Convention, art. 5). Other instruments also apply more broadly to organizations providing assistance. For instance, the Customs Co-operation Council Recommendation, paras. 1, 5 & 6, called on States to waive any export or import duties or taxes on relief consignments (without regard to who sent them). Similar provisions appear in Specific Annex J.5, Recommended Practice 6, to the Revised Kyoto Convention; the Istanbul Convention, Annex B.9 (for equipment to be re-exported); Tampere Convention, art. 5; ASEAN Agreement, art. 14; BSEC Agreement, art. 10(1); UNITAR Model Rules, rule 6, and the Agreement on the Temporary Importation, Free of Duty, of Medical, Surgical and Laboratory Equipment for Use on Free Loan in Hospitals and other Medical Institutions for Purposes of Diagnosis or Treatment (1960), among others.

(b) Exempt them from all export, transit, and import restrictions;

Many of the same instruments mentioned just above also call for elimination or reduction of restrictions on export, transit and import. Thus, the Customs Co-operation Council Recommendation, paras. 1 & 5, called on States to waive both import and export restrictions on relief goods and equipment. Specific Annex J.5 to the Revised Kyoto Convention likewise recommended waiver of any restrictions based on country of origin or destination (Recommended Practice 4) and of any export restrictions (Recommended Practice 5). Other instruments with similar provisions include the Tampere Convention (1998), art. 9(2);

(c) Simplify and minimize documentation requirements for export, transit and import;

Many of the above instruments similarly provide for the simplification or reduction of documentation requirements on export, transit or import for disaster relief goods and equipment. For example, the Measures to Expedite, recommendations B-D respectively call for waiver of consular certificates, import/export licenses, and fumigation certificates. Specific Annex J.5 (Standard 3) to the Revised Kyoto Convention calls for States to allow the “lodging of a simplified Goods declaration or of a provisional or incomplete Goods declaration.” Annex B9 of the Istanbul Convention stipulates that no customs document or security is required for temporary admission, instead customs authorities may require only a simple inventory of the goods and an undertaking to re-export. Article 9(3)(d) of the Tampere Convention suggests that States recognize foreign type-approval and licenses for telecommunications equipment; and the UNITAR Model Rules, rule 5 recommends that States “waive normal commercial document requirements or use simplified documentation and procedures in regard to designated relief supplies.”

(d) Permit re-exportation of any equipment or unused goods which the assisting State or assisting humanitarian organization wishes to retain.

Re-exportation of equipment and unused goods is a frequent issue as major disaster operations wind down. In some cases, national regulations impose tax or duties on relief items when re-exported; in others their re-exportation is banned outright. Such an approach encourages inefficiency and waste.

A number of existing instruments address not only the entry but also the exit of relief items. For example, the Istanbul Convention, annex B.9, provides for exemption from duties for relief equipment re-exported after disaster operations and sets a limit of at least 12 months for this to be accomplished. For its part, the Tampere Convention, art. 9(2)(d), calls for reduction or removal of “regulations restricting the transit of telecommunication resources into, out of and through the territory of a State Party.” Likewise, the ASEAN Agreement, art. 14(b), binds State parties to “facilitate the entry into, stay in and departure from its territory of personnel and of equipment, facilities and materials involved or used in the assistance”; the CDERA Agreement, art. 16(4) provides that, “[i]n the absence of a contrary agreement, ownership of equipment and materials dispatched to

the requesting State by a sending State during periods of assistance shall be unaffected and their prompt return shall be ensured”; and the Nordic Mutual Assistance Agreement in Connection with Radiation Accidents (1963), art. I(2), provides that equipment or materials brought in by an assisting entity should be returned upon its request. The 1984 Draft Convention, art. 7(3), also would have called upon states to “return, or authorize and facilitate re-export” of any equipment and unused goods.

2. *With regard to disaster relief goods and equipment only, originating, transit and affected States should additionally:*

(a) *Waive or reduce inspection requirements. Where waiver is not possible, clear relief goods and equipment rapidly and as a matter of priority, through a “pre-clearance” process where feasible; and*

(b) *Arrange for any necessary inspection and release outside business hours, and at a place other than a customs office, as necessary and in accordance with safety regulations of the affected State, to minimize delay.*

These two types of customs facilities are particularly appropriate to the relief context, where speed is necessary to save lives. While the facilities mentioned in Article 13(1) are also relevant to making customs clearance expeditious, they do not place the same level of stress on normal customs procedures as dispensing with inspections, or arranging for inspections at unusual hours or locations.

These types of facilities are mentioned in a number of existing instruments. The Customs Co-operation Council Recommendation, para. 7, suggested that exporting states “authorize as far as possible, relief consignments to be cleared outside the hours and places normally prescribed, and, in such circumstances, waive, if possible, any charges for Customs attendance[.]” Similarly, Specific Annex J.5, Standard 3, of the Revised Kyoto Convention calls for limiting any examinations to “exceptional cases” and for processing outside of normal office hours. The Measures to Expedite, recommendation I, likewise calls on States to instruct customs officials to expedite the clearance of relief shipments. The 1984 Draft Convention, art. 14(6), would have asked States to clear relief consignments rapidly and as a matter of priority, reducing any examination to the minimum required to abide by national law.

3. *In order to benefit from the facilities above, assisting States and assisting humanitarian organizations should, in accordance with agreed international standards, appropriately pack, classify and mark disaster relief and initial recovery goods and equipment, and should include detailed manifests with each shipment. They should additionally inspect all such goods and equipment to ensure their quality, appropriateness for the needs in the affected State, and compliance with national law and international standards.*

While documentation and inspection requirements should be simplified and reduced, States can and should insist on appropriate packaging, labelling and the provision of basic

information about the contents of relief shipments, in order to guard against abuse of the relaxed customs regime. Similar provisions can be found in the Max Planck Guidelines, para. 16, UNITAR Model Rules, rule 4; and the 1984 Draft Convention, arts. 10-11. The ASEAN Agreement, art. 12(4), likewise provides that goods provided by relief providers under the treaty should “meet the quality and validity requirements of the Parties concerned for consumption and utilization” (art. 12(4)).

4. *Assisting States and assisting humanitarian organizations should assume responsibility for removing or disposing of any unwanted and unused relief and initial recovery goods, particularly if those goods may pose a threat to human health or safety, or the environment.*

In some disaster settings, domestic authorities and relief actors find themselves burdened with mountains of unwanted “relief” items sent with little regard to actual needs. Particularly when such items are dangerous (like expired medicines), their disposal can generate important expenses that domestic actors can often ill afford. It is thus reasonable to require assisting States and assisting humanitarian organizations to take responsibility for these goods remove them, safely destroy them, or (if appropriate) find some alternative domestic use for them. This is an application of the more general principle described in the RC/NGO Code of Conduct (para. 8) that disaster responders should “minimize the negative impact of humanitarian assistance.”

5. *If an affected State has received direct donations of in-kind goods from assisting States or assisting humanitarian organizations and considers it necessary to sell or exchange all or some of them, it should first consult with the donating assisting actor. Funds or goods thus obtained should only be used for disaster relief or initial recovery, unless otherwise agreed.*

This provision is similar to paragraph 29 of the Principles and Rules for Red Cross and Red Crescent Disaster Relief, and its relevance to other actors is confirmed by the numerous bilateral agreements that place limits on the sale of donated goods by affected States (see, e.g., Agreement between the Government of the United States of America and the Government of the Republic of Belarus Regarding Cooperation to Facilitate the Provision of Assistance, July 18, 1996, art. 4 [providing that “[a]ny commodities, supplies, or other property provided under United States assistance programs will be used for the purposes agreed upon by the Government of the United States of America and the recipient of the assistance in the Republic of Belarus”]). It supports the important principle that donor goods should be used for their intended purpose. However, circumstances may change or be different from those understood by the donor, and thus consultation can often lead to acceptable alternatives. It should be noted that this provision is solely aimed at affected States. It does not mean to impede affected persons from using aid in any way they see fit.

Article 19 Special Goods and Equipment

In addition to the facilities described in Article 18:

1. Affected States should grant temporary recognition to foreign registration and plates with regard to vehicles imported by assisting States and assisting humanitarian organizations or on their behalf in disaster relief and initial recovery operations.

Delays related to the registration of vehicles imported for disaster relief and initial recovery purposes are common and easily avoidable through the means suggested in this paragraph. A similar solution is implemented in the ASEAN Agreement, art. 15(3), which provides that “[a]ircrafts and vessels used by the military personnel and related civilian officials of the Assisting Entity may use its registration and easily identifiable license plate without tax, licenses and/or any other permits.”

A number of other existing instruments address vehicle entry and use requirements more generally. For example, the Inter-American Convention , art. 5, provides that “[t]ransport vehicles, equipment, and supplies fully identified and sent by states parties for assistance purposes may enter, move about in, and leave the territory of the assisted state.” Council of the European Communities Regulation 881/92 (1992), annex 2, art 5, provides that vehicles transporting medical supplies for emergencies, including disasters, are exempt from carriage requirements. Likewise, the Agreement between Norway and Sweden Concerning the Improvement of Rescue Services in Frontier Areas (1974), art. 1, provides that “[t]he equipment necessary for such search and rescue operations in the territory of the other State, including civilian snow vehicles and motor vehicles, may be introduced even if it does not meet the requirements applicable in the other country for the use of such vehicles.” A number of other instruments provide that States should “facilitate transit” (e.g., Framework Convention, art. 4(7)). The 1984 Draft Convention, art. 19, would have called upon states to provide facilities for transport, including allowing international actors to “operate [their] own means of transport.”

2. Affected States should waive or expedite the granting of any applicable licenses and reduce any other barriers to the use, import or export of telecommunications and information technology equipment by assisting States and assisting humanitarian organizations or on their behalf in disaster relief and initial recovery operations. Without discrimination against domestic relief actors, affected States should also grant assisting States and assisting humanitarian organizations priority access to bandwidth, frequencies and satellite use for telecommunications and data transfer associated with disaster relief operations.

The use, import and export of telecommunications and information technology equipment tend to pose particular challenges in disaster operations. Building upon a series of resolutions and recommendations adopted by bodies of the International Telecommunications Union (e.g., Resolution 7 of the World Telecommunication Development Conference of 1994 (calling on all governments to remove national regulatory barriers to the use of telecommunications in disaster relief); Resolution 10 of the World Administrative Radio Conference of 1979, urging governments to take account

of Red Cross Red Crescent needs for radio communications and to assign them specific frequencies for disaster work)), the Tampere Convention, arts. 5 and 9, calls for reduction of licensing barriers and import/export restrictions on telecommunications equipment. Similar provisions can be found in GA Res. 57/150 (2002), para. 3, and the ASEAN Agreement, art. 14(a).

In addition to licensing and import issues, the sudden surge in demand for bandwidth and frequencies that frequently follows major disasters, as well as the common damage to telecommunications infrastructure, can frequently limit the ability of international actors to communicate. This provision follows on a number of prior instruments calling for priority access for disaster relief providers in the use of telecommunications. These include: UNITAR Model Rules, rule 12, Measures to Expedite, recommendation M and ASEAN Agreement, art. 14(a); the Constitution of the International Telecommunications Union (1992), art. 140, Resolution 10 of the World Radiocommunications Conference of 2000, calling on states to assign working frequencies for two-way wireless communication to the components of the International Red Cross Red Crescent Movement; Resolution 645 of that same conference, calling on States to move towards the creation of harmonized spectrums for disaster communications; ITU-R Recommendation S.1001, calling for the facilitation of the use of fixed satellite services in disaster situations; and ITU-T Recommendation E.106 calling for an international emergency preference scheme. At the same time, it is important to emphasize that a priority system for disaster communications should not privilege international over domestic relief actors. This subsection refers only to disaster relief, not early recovery, inasmuch as there is no pressing need for priority access in the longer term.

3. Originating, transit and affected States should reduce legal and administrative barriers to the exportation, transit, importation and re-exportation of medications and medical equipment by assisting States and assisting humanitarian organizations or on their behalf in disaster relief and initial recovery operations, to the extent consistent with public safety and international law. Assisting States and assisting humanitarian organizations should ensure the quality, appropriateness and safety of any such medications and equipment, and in particular ensure that any medications are:

- (i) Neither expired nor near expiration;*
- (ii) Appropriately labelled in a language understood in the affected State;*
- (iii) Inspected, and transported and maintained in appropriate conditions, to ensure their quality; and*
- (iv) Guarded against misappropriation and misuse.*

Medications and medical equipment tend to be subject to regulatory restrictions that can impede their use in disaster operations. Some such restrictions can and should be waived or reduced in disasters settings, while others should remain in force in order to ensure that the good intentions of international actors do not threaten public safety or violate international law, for instance with regard to the importation of certain types of proscribed drugs.

The Istanbul Convention and the Council of Europe's Agreement on the temporary importation, free of duty, of medical, surgical and laboratory equipment for use on free loan in hospitals and other medical institutions for purposes of diagnosis or treatment (1960) both provide for exemptions from customs duties for the temporary importation of medical equipment, in the former case specifically for emergency situations.

The WHO has adopted standardized guidelines and packages of medicines and medical equipment that might be useful to States in determining which medications and equipment are essential and which might be of secondary importance. Resolution 19 of the 25th International Conference of the Red Cross and Red Crescent (1986) referred to these Guidelines, when it called on national societies to ensure that their donations of medical supplies in international operations be limited to those requested by the International Federation and ICRC and that they conform to guidelines of those organizations and the WHO.

The WHO's Model List of Essential Medicines (as updated in 2006) lists over 300 medications considered to be "minimum medicine needs for a basic health care system" and for priority diseases. The makeup of the WHO's Emergency Health Kit (1998), a standardized package of drugs, supplies and equipment for general medical care of a population of 10,000 for three months, might also serve as a guide. The WHO also promotes a Certification Scheme on the Quality of Pharmaceutical Products Moving in International Commerce, a voluntary programme aimed at enabling countries with limited drug regulatory capacity to obtain partial assurance from exporting countries concerning the safety, quality and efficacy of the products they plan to import.

A number of existing legal instruments include provisions allowing for but controlling the transfer of narcotic drugs for disaster relief purposes (e.g., art. Convention between the Netherlands and Belgium on Mutual Assistance in Combating Disasters and Accidents (1984), art. 7(6); BSEC Agreement, art. 10(3)). At the urging of the United Nations Commission on Narcotic Drugs (Resolution 7 (1996)), the WHO also developed a specific set of Model Guidelines for the International Provision of Controlled Medicines for Emergency Medical Care in 1996.

Furthermore, WHO in consultation with a number of other organizations has developed Guidelines for Drug Donations (1999) from which the numbered precautionary measures listed above are drawn.

4. Originating, transit and affected States should consider whether normal requirements regarding fumigation and prohibitions and restrictions on food imports and exports by assisting States and assisting humanitarian organizations in disaster relief operations can be modified or reduced.

This language draws on Recommendation D of the Measures to Expedite, (calling on States to "waive – to the extent compatible with minimum standards of hygiene and animal protection – normal requirements regarding fumigation certificates and

restrictions on food imports”). Clearly, many rules concerning fumigation and restrictions on food import or export are directly related to the safety of persons, plants and animals and should not be dropped merely because a disaster has occurred. However, as with medicines there may be rules that can be safely relaxed in light of the circumstances of a disaster. States are simply invited to consider this question in advance.

Article 20 Transport

1. Originating, transit and affected States should grant, without undue delay, permission for the speedy passage of land, marine and air vehicles operated by an assisting State or assisting humanitarian organization or on its behalf, for the purpose of transporting disaster relief or initial recovery assistance and waive applicable fees, except fees for reasonable use.

This paragraph is drawn from art. 21 of the 1984 Draft Convention. Similar provisions can be found in some bilateral treaties, such as the Agreement between Sweden and Norway concerning the Improvement of Rescue Services in Frontier Areas (1974), art. 1 (providing that “[t]he equipment necessary for such search and rescue operations in the territory of the other State, including civilian snow vehicles and motor vehicles, may be introduced even if it does not meet the requirements applicable in the other country for the use of such vehicles”) and the Agreement Between the Government of the Republic of Mozambique and the Government of the Republic of South Africa Regarding the Co-ordination of Search and Rescue Services (2002), art. 5 (providing that each party should establish agreements to allow for the passage of aircraft and vessels for search and rescue purposes without special authorization). Likewise, the Inter-American Convention, art. 5, provides that “[t]ransport vehicles, equipment, and supplies fully identified and sent by states parties for assistance purposes may enter, move about in, and leave the territory of the assisted state,” and Council of the European Communities Regulation 881/92 (1992), annex 2, art 5, provides that vehicles transporting medical supplies for emergencies, including disasters, are exempt from carriage requirements.

2. In particular, permission should be granted for overflight, landing and departure of aircraft. Such aircraft should also be authorized to operate within the territory of the affected State as required for the delivery of assistance.

The particular potential for regulatory problems concerning the use of aircraft for disaster response operations has been recognized by many existing instruments. Annex 9 to the Chicago Convention on Civil Aviation (as updated in 2005) provides that “Contracting States shall facilitate the entry into, departure from and transit through their territories of aircraft engaged in relief flights performed by or on behalf of international organizations recognized by the UN or by or on behalf of States themselves and shall take all possible measures to ensure their safe operation.”

More specific provisions on overflight, landing and operation of relief flights are provided in recommendations K-L of the Measures to Expedite; rules 8-10 of the

UNITAR Model Rules (1984); UN GA Res. 57/150, para. 3; the Oslo Guidelines, para. 60; BSEC Agreement, art. 11; the 1984 Draft Convention, art. 21; and numerous bilateral agreements (e.g., Convention between France and Belgium on Mutual Assistance in Case of Disasters or Serious Accidents (1981), art. 6).

3. *Any applicable exit, transit and entry visas for the operating personnel of such transport vehicles should be promptly issued.*

Frequently, the shipment of humanitarian relief is handled by private sector actors under contract. Their personnel would not be covered by the provisions of Principle 11(1) addressed to relief personnel, yet delays in the approval of transport personnel visas can also serve to delay relief. Thus, for example, the Convention on Facilitation of Maritime Traffic (1965), annex 1, art. 5.11 provides that “[p]ublic authorities shall to the greatest extent possible facilitate the entry and clearance of persons and cargo arriving in vessels” transporting disaster relief assistance.

Article 21 Domestic Legal Personality

1. *Affected States should ensure that assisting States and assisting humanitarian organizations are granted, immediately upon entry or as soon as possible thereafter, at least a temporary form of domestic legal personality as appropriate under national law so as to enjoy the rights, inter alia, to open bank accounts, enter into contracts and leases, acquire and dispose of property and instigate legal proceedings, for the duration of the disaster relief and initial recovery operations.*

Domestic legal personality is a frequent issue in disaster relief and particularly initial recovery operations. For UN agencies, this issue is addressed in the Convention on the Privileges and Immunities of the United Nations (1946), art. 1; Convention on the Privileges and Immunities of the Specialized Agencies (1947), art. 2. Similar conventions cover the status of other inter-governmental organizations. Some other international organizations, notably the IFRC, have headquarters agreements with States that also address these issues. The only roughly comparable international legal standard on point for NGOs is the European Convention on the Recognition of the Legal Personality of International Non-Governmental Organizations of 1986, which provides, with limited exceptions, that the legal personality and capacity of an international NGO acquired in one state party will be recognized by the others, and the UNITAR Model Rules, rule 13, which recommended that States accord assisting organizations the right to maintain bank accounts. In practice, many international NGOs acquire domestic legal personality by officially registering as a domestic NGO or entering into ad hoc bilateral agreements with governments, both of which can be time-consuming processes. In light of the selective process recommended in Part IV, affected States should be able to provide at least a temporary status allowing assisting States and assisting humanitarian actors sufficient domestic legal personality to carry out their operations.

2. *Assisting States and assisting humanitarian organizations should also be granted the right to freely bring funds and currencies in or out of the country through legal means and to obtain the most favourable legal rates at the time of exchange in connection with disaster or initial recovery operations.*

The ability to import and use funds in an affected State can be just as important as personnel, goods and equipment for effective operations. This issue is also addressed for IGOs in conventions on privileges and immunities (see, e.g., Convention on the Privileges and Immunities of the United Nations (1946), art. IV(11)(e)). The UNITAR Model Rules, rule 13, recommend that Affected States allow for the conversion of currency at favourable rates of exchange.

3. *Affected States should ensure that assisting States and assisting humanitarian organizations may legally hire and terminate the contracts of local personnel in accordance with domestic labour laws.*

Hiring local staff has been recommended (see, e.g., Key Factors for Developmental Relief, International Conference of the Red Cross (1995), para. 5) as it helps to reduce costs associated with international personnel, allows international actors to benefit from local knowledge, and builds local capacity. Thus, the “Model Agreement” proposed as an annex to the Oslo Guidelines, paragraph 19, provides that “The MCDA operation may recruit locally such personnel as it requires. Upon the request of the Head of the MCDA operation, the Government of the Receiving state undertakes to facilitate the recruitment of qualified local staff by the MCDA operation and to accelerate the process of such recruitment.” The right to hire is normally made possible for NGOs through domestic registration, which, as noted above, can be very time-consuming. Moreover, since disaster relief and initial recovery operations are designed to be temporary, assisting States and assisting humanitarian organizations should be able to terminate local personnel without undue administrative burden.

Article 22 Taxation

Affected States should provide exemptions to assisting States and assisting humanitarian organizations from value-added and other taxes or duties associated with disaster relief and initial recovery operations, with the exception of reasonable usage fees.

While certain other provisions of these Guidelines relate to specific issues of taxation (such as customs duties and transport fees), this provision is meant to address the full range of any remaining taxes that might be imposed on disaster relief and initial recovery operations, including VAT. It is a common provision of bilateral treaties for Assisting States to be exempted from taxation for their relief activities (see, e.g., Agreement between the Government of the United States of America and the Government of the Republic of Belarus Regarding Cooperation to Facilitate the Provision of Assistance (1996), art. 1). Similarly, the Nuclear Assistance Convention, art. 8 provides that “[t]he requesting State shall afford to personnel of the assisting party or personnel acting on its

behalf exemption from taxation, duties or other charges, except those which are normally incorporated in the price of goods or paid for services rendered” and the Tampere Convention art. 5 provides that relief organizations and personnel are to be provided “exemption from taxation, duties or other charges, except for those which are normally incorporated in the price of goods or services, in respect of the performance of their assistance functions or on the equipment, materials and other property brought into or purchased in the territory of the request State Party for the purpose of providing telecommunication assistance[.]”

This paragraph is also consistent with the recommendations discussed by the UN Committee of Experts on International Cooperation in Tax Matters in December 2005 (U.N. Doc. E/C.18/2005/11) and by the International Tax Dialogue (Tax Treatment of Donor-Financed Projects Discussion Paper (2 July 2006), p.13) (whose steering group includes the IMF, IDB, OECD and World Bank and the UN as an observer) that humanitarian actors should be exempt from taxation for disaster relief activities.

Article 23 Security

Affected States should take necessary measures to ensure the security of disaster relief and initial recovery personnel and of assisting States and assisting humanitarian organizations and of the premises, facilities, means of transport and equipment used in connection with their disaster relief or initial recovery operations.

A large number of existing instruments stress the responsibility of the affected State to take necessary measures to protect the personnel and property of disaster assistance providers. These include the Optional Protocol to the Convention on the Safety of United Nations and Associated Personnel (2005), art. 2; the Nuclear Assistance Convention, art. 3(b); Tampere Convention, art. 5(2); UN GA Res. 57/150, para. 4; Inter-American Convention, art. 4(c); CDERA Agreement, art 16(5); and bilateral treaties such as Agreement between the Government of the Hellenic Republic and the Government of the Russian Federation on Co-operation in the Field of Prevention and Response to Natural and Man-Made Disasters (2000), art. 8. Similar language is likewise included in the UNITAR Model Rules, rule 17; Max Planck Draft Guidelines, para. 20(c); Draft 1984 Convention, art. 7(1), and Balkans National Societies Recommended Rules and Practices, section III.6.

Article 24 Extended Hours

Affected States should endeavour to ensure, when necessary, that State-operated offices and services that are essential to the timely delivery of international disaster relief function outside of normal business hours.

Permissions, support and assistance from a number of government offices are required for international relief operations. Ensuring that any such offices are available for the hours needed can make an important contribution to speeding the arrival and distribution

of assistance. Past IDRL instruments have recommended a similar rule with regard to customs administrations (see note above for Article 18(2)).

Article 25 Costs

1. The costs of providing international disaster relief or initial recovery assistance pursuant to these Guidelines should normally be borne by the assisting State or assisting humanitarian organization. However, assisting States may agree in advance with the affected State for the reimbursement of certain costs and fees.

This language is similar to the provisions of a number of existing instruments that generally provide that the affected State is not responsible for the costs of assisting States absent an agreement to the contrary (see e.g., Tampere Convention, art. 7; Nuclear Assistance Convention, art. 7; Inter-American Convention, art. 14; BSEC Agreement art. 3; Convention between the Kingdom of the Netherlands and the Kingdom of Belgium on Mutual Assistance in Combating Disasters and Accidents (1984), art. 9(1); Oslo Guidelines, para. 27).

This provision only applies to assisting States. Assisting humanitarian organizations are presumed to offer their assistance free of cost.

2. Affected States should consider, to the extent possible under the circumstances, providing certain services at reduced or no cost to assisting States and assisting humanitarian organizations, including:

- a. In-country transport, including by national airlines;*
- b. Use of buildings and land for office and warehouse space; and*
- c. Use of cargo handling equipment and logistic support.*

While affected States are not generally responsible for the overall costs of international disaster relief and early recovery operations, they are encouraged to provide support where possible. Provisions similar to this one can be found in the Tampere Convention, art. 5(2); ASEAN Agreement, art. 12(2); Inter-American Convention, art. 4(c) & 9; UNITAR Model Rules, Rules 8 & 11; Max Planck Draft Guidelines, para 21(g) among others.

Article 26 Protection from Liability for Assisting States

Affected States should hold harmless, defend and indemnify assisting States and their personnel from civil liability for acts or omissions related to disaster relief or initial recovery operations in the territory of the affected State, with the exception of wilful misconduct and gross negligence.

One of the most common provisions in bilateral disaster assistance treaties between States is a clause similar to this one limiting the liability of the assisting State (see, e.g., Convention between France and Germany on Mutual Assistance in the Event of Disasters

or Serious Accidents (1977), art. 9). Such clauses also appear in a number of multilateral instruments, including the Nuclear Assistance Convention, art. 10; the Inter-American Convention, art. 12; the Agreement Establishing the Caribbean Disaster Emergency Response Agency (1991), art. 23; and the Max Planck Draft Guidelines, para. 25. It is still very rare for international instruments to provide for protections from liability of non-State actors and this article does not do so.

Abbreviations

1969 Declaration of Principles: Declaration of Principles for International Humanitarian Relief to the Civilian Population in Disaster Situations, 21st International Conference of the Red Cross, 1969

1984 Draft Convention: Draft Convention on Expediting the Delivery of Emergency Assistance, 1984

ASEAN Agreement: ASEAN Agreement on Disaster Management and Emergency Response, 2005 (not yet in force)

Balkans National Societies Recommended Rules and Practices: Implementation of International Response Laws, Rules and Principles in the Balkans: Recommended Rules and Practices, 2004

BSEC Agreement: Agreement among the Governments of the Participating States of the Black Sea Economic Cooperation (BSEC) on Collaboration in Emergency Assistance and Emergency Response to Natural and Man-Made Disasters, 1998

CDERA Agreement: Agreement Establishing the Caribbean Disaster Emergency Response Agency, 1991

Customs Co-operation Council Recommendation: Recommendation of the Customs Co-operation Council to expedite the forwarding of relief consignments in the event of disasters, 1970

Framework Convention: Framework Convention on Civil Defence Assistance, 2000

Principles and Rules: Principles and Rules for Red Cross and Red Crescent Disaster Relief, 1969, and as amended as of 1995

Inter-American Convention: Inter-American Convention to Facilitate Disaster Assistance, 1984

Istanbul Convention: Istanbul Convention on Temporary Admission, 1990

Revised Kyoto Convention: Kyoto Convention on the Harmonization and Simplification of Customs Procedures, as revised in 1999

Max Planck Draft Guidelines: Peter McAlister-Smith, Draft International Guidelines for Humanitarian Assistance Operations (Max Planck Institute for Comparative Public Law and International Law, 1991)

Measures to Expedite: Measures to Expedite International Relief, 23rd International Conference of the Red Cross, 1977 & UN Economic and Social Council Res. 2102 (LXIII), 1977

NATO MOU: Memorandum of Understanding on the Facilitation of Vital Civil Cross Border Transport (Sept. 13, 2006) (not yet in force)

Nuclear Assistance Convention: Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency, 1986

RC/NGO Code of Conduct: Code of Conduct for the Red Cross/Red Crescent Movement and NGOs in Disaster Relief, 1994

Oslo Guidelines: Oslo Guidelines on the Use of Military and Civil Defence Assets in Disaster Relief, as updated in 2006

Tampere Convention: Tampere Convention on the Provision of Telecommunications Resources for Disaster Mitigation and Relief Operations, 1998

UNITAR Model Rules: Mohamed el Baradei, Model Rules for Disaster Relief Operations (United Nations Institute for Training and Research, 1982)