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الاتحاد الدولي لجمعيات الصليب الأحمر والهلال الأحمر

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

Version of 26 October 2007

Note: These annotations are purely explanatory and are not being proposed for official adoption by the International Conference of the Red Cross and Red Crescent

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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 (International Federation) 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 subsequent studies and consultations, the International Federation’s “International Disaster Response Laws, Rules and Principles” (IDRL) programme 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. It found that 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. These findings are described in detail in a desk study entitled: “Law and Legal Issues in International Disaster Response,” which will be launched in November 2007.

To stimulate dialogue on these issues and potential solutions, the International Federation organized a series of formal consultations with States, National Societies, and other humanitarian stakeholders over a period of 18 months from 2006-2007. In particular, the International Federation and its partners organized high-level regional forums in Africa, Asia-Pacific, the Americas, Europe and the Middle East for high-level representatives of governments National Societies and other humanitarian stakeholders. The main product of these discussion was the development and refinement of the draft “Guidelines for the domestic facilitation and regulation of international disaster relief and initial recovery assistance,” which address the main issue areas identified by stakeholders and draw on agreed language and principles from existing international instruments. The draft Guidelines have been submitted for adoption by the 30th International Conference of the Red Cross and Red Crescent in November 2007.

These annotations provide some background on the provision of the draft Guidelines and summarize the legal precedents upon which they are based. They are merely explanatory and are not themselves proposed for formal adoption. 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

1. Purpose and Scope

1. These Guidelines are non-binding. While it is hoped that States will make use of them to strengthen their laws, policies and/or procedures related to international disaster response, as appropriate, the Guidelines do not have a direct effect on any existing rights or obligations under domestic law.

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 an international consensus on 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 choice whether and how to use the Guidelines remains with States themselves.

Because these Guidelines are intended to be 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 1.4.

2. They draw from many existing international instruments, including United Nations General Assembly Resolutions 46/182 of 1991 and 57/150 of 2002, the Measures to Expedite International Relief of 1977 and the Hyogo Framework for Action of 2005.

As noted above, the Guidelines draw on a wealth of existing treaties, resolutions, guidelines, and codes that have been agreed by the international community. These instruments are compiled and described in the IDRL desk study mentioned above. This paragraph notes just a few key examples.

It is worthwhile to note that the International Conference of the Red Cross and Red Crescent has adopted similar instruments in the past. These include not only the Measures to Expedite International Relief (1977) (which were adopted both by the International Conference and the UN General Assembly), but also the Declaration of Principles for International Humanitarian Relief to the Civilian Population in Disaster Situations (1969), and the Principles and Rules for Red Cross and Red Crescent Disaster Relief (1969 and as subsequently amended). These Guidelines also draw inspiration from a recent regional 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).

3. 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. While affirming the principal role of domestic authorities and actors, they recommend minimum legal facilities to 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. It is hoped that the use of these Guidelines will enhance the quality and efficiency of international disaster relief and initial recovery assistance in order to better serve disaster-affected communities.

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 therefore 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.

4. These Guidelines are not intended to apply to situations of armed conflict or disasters that occur during armed conflicts, or to imply changes in any rules governing relief in those contexts. They are also not intended to recommend any changes to, or affect the meaning or implementation of, any existing international law or agreements, including but not limited to:

- (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) Existing agreements between States or between States and assisting actors.

These Guidelines are designed for disaster situations and not for armed conflict. They draw this distinction for several reasons.

First, international humanitarian law (IHL) provides greater and more explicit rights and duties regarding 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); see also ICRC Customary International Humanitarian Law Study (2005), Rules 55-56). 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 relief for 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 and in coordinating and regulating any international relief. When international help is needed, it is normally requested by the affected State itself. 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 differentiation in the way external relief is regulated in conflicts and disasters.

In addition to not interfering with IHL, the Guidelines are not intended to upset any other existing international law or agreements. This includes both global and regional law (such as European Union rules and regulations). 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 to 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.

2. Definitions

For the purposes of these Guidelines,

1. ***“Disaster”*** means a serious disruption of the functioning of society which poses a significant, widespread threat to human life, health, property or the environment, whether arising from accident, nature or human activity, whether developing suddenly or as the result of long-term processes, but excluding armed conflict.

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.

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. 1(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 for the reasons discussed above.

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

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 intended to restore or improve the pre-disaster living conditions of disaster-affected communities, including initiatives to increase resilience and reduce risk, provided for an initial period of time, as determined by the affected State, after the immediate needs of disaster-affected communities have been met.

The IDRL programme’s studies and consultations indicate that many of the most challenging legal issues tend to arise several weeks or 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 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 disaster-affected communities for their relief or initial recovery.*

5. *“Services” means activities (such as rescue and medical care) undertaken by disaster relief and initial recovery personnel to assist disaster-affected communities.*

6. *“Equipment” means physical items, other than goods, that are necessary for disaster relief or initial recovery assistance, such as vehicles and radios.*

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 defense assets” as relief personnel, equipment, supplies and services provided by foreign military and civil defense 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 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).

Instruments on disaster response use various terms to refer to the activities of relief personnel (referred in these Guidelines as “services”), ranging from “operations” (Arab Agreement (1987), art 1(c)), to “disaster management” (ASEAN Agreement (2005), art .1(4)), to “assistance” (Framework Convention (2000), art. 1(d)).

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 paragraph 19 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), Rule 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 Para. 3 and the requirement for its consent to the initiation of disaster relief and initial recovery is reflected in Para. 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 Para. 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 has received permission to pass on its way to or from the affected State in connection with disaster relief or initial recovery assistance.*

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 a foreign, regional, inter-governmental or international non-profit entity 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. ***“Eligible assisting humanitarian organization”*** means an assisting humanitarian organization determined to be eligible to receive legal facilities pursuant to Part V by the originating, transit or affected State, as applicable.

Subject to existing rights under international law (for example with regard to the privileges and immunities of international organizations as discussed above), it is up to States to determine which organizations will be provided legal facilities in their domestic systems. This defined term will be used to make clear that the facilities list in Part V would only be available to organizations deemed “eligible” by the state from whom they are requested.

14. ***“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 and it is for this reason that the catch-all “assisting actor” is used in these Guidelines. In particular, the Guidelines recommend that all assisting actors should be held to certain minimum standards in providing their disaster relief and initial recovery assistance (see Para. 4 below). However, as also discussed in Para. 15, a differentiation can and should be made as to how different types of actors are regulated and facilitated.

Part I: Core Responsibilities

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). Para. 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. If an affected State determines that a disaster situation exceeds national coping capacities, it should seek international and/or regional assistance to address the needs of affected persons.

Para. 3(2) elaborates on the responsibility described in Para. 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, regulate and monitor, disaster relief and recovery assistance provided by assisting actors on their territory, consistent with international law.

This paragraph complements Para. 3(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). In this subsection, the affected State's sovereign right to ensure that international assistance is appropriate and well coordinated is emphasized.

4. Responsibilities of Assisting Actors

Para. 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 Para. 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 the laws of the affected State and applicable international law, coordinate with domestic authorities, 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”).

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.

2. Assisting actors should ensure that their disaster relief and initial recovery assistance is provided in accordance with the principles of humanity, neutrality and impartiality, and in particular:

The principles of humanity, neutrality and impartiality are widely recognized as the central pillars of humanitarian action. They are affirmed not only in Red Cross and Red Crescent instruments, such as the Fundamental Principles of the Movement, but also in such generally applicable instruments as UN GA Res. 46/182 (1991), annex, para.2 and Principles and Practice of Good Humanitarian Donorship (2003), para. 1.

(a) Aid priorities are calculated on the basis of need alone;

This paragraph derives from paragraph 2 of the RC/NGO Code of Conduct paragraph 6 and is meant to emphasize that any priorities and/or differences in the types, timing and amount of aid provided should be determined solely on the basis of comparisons of need. It is similar to language in the Principles and Practice of Good Humanitarian Donorship (2003), which calls for the allocation of humanitarian funding to be “in proportion to needs and on the basis of needs assessments.” 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”). .

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, disability, age and political opinions) to disaster-affected persons;

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, intervene in the internal affairs of the affected State, or obtain commercial gain from charitable 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, UN General Assembly Resolution 46/182, annex, para.2, and article 2.7 of the United Nations Charter. It also 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) 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 assistance.

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, their disaster relief and initial recovery assistance should also be:*

The provisions of Para. 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, and 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, such as the Sphere Humanitarian Charter and Minimum Standards in Disaster Response.

(c) Coordinated with other relevant domestic and assisting actors;

The central importance of adequate coordination among international actors and with domestic relief actors (additional to governmental authorities) has long been recognized by the international community, as evidenced, for example, by annual resolutions devoted to strengthening coordination in the UN General Assembly and ECOSOC (see e.g., UN GA Res. 61/134 (2006) and ECOSOC Res. 2006/5 (2006)). Likewise, in the context of a commitment to build relief efforts on local capacities the RC/NGO Code of Conduct pledges that its signatories will “place high priority on coordination.”

(d) Provided and conducted 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 Para. 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.

(e) 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.

(f) 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.

(g) *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.

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

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.

(i) *Carried out so as to minimize negative impacts on the local community, economy, job markets, development objectives and the 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).

(j) 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.

5. Additional Responsibilities of All States

1. States providing funding to other assisting actors should encourage them to act in a manner consistent with the provisions of paragraph 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 paragraph 4 are already expressed in standard grant agreements employed by large donors.

2. All States should actively encourage members of the public interested in contributing to international disaster relief or initial recovery to make financial donations where possible or otherwise donate only those types of relief goods expressly requested by the affected State.

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. Given the logistical difficulties of sending relief items internationally, it is advisable that members of the public be encouraged to donate funds instead. If this is not possible, they should at least be advised to respond to specific types of goods requested by the affected state.

6. Responsibilities Concerning Diversion and the Intended Use of Resources

1. 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).

2. Affected States should use funds and relief goods donated to them, and which they have accepted in relation to a disaster, in a manner consistent with the expressed intent with which they were given.

This provision refers to donations provided directly to the governments of affected States for their own use in response to a disaster and which the latter have accepted for that purpose. It is similar to Rule 3 of the UNITAR Model Rules, which provides that “[t]he receiving State shall employ disaster assistance exclusively for the purpose for which it has been supplied.” By referring to the “expressed intent” the present provision encourages donating actors to be clear about their intent, so that affected States need not try to guess about them. Clarity on this issue is particularly important in the event that circumstances change (e.g. if a surplus of a certain donated item remains after all needs for it have been met), and some other disposition of the donations may become necessary.

Part II: Early Warning and Preparedness

7. Early Warning

In order to minimize transboundary impacts and maximize the effectiveness of any international assistance that might be required, all States should have procedures in place to facilitate the expeditious sharing of information about disasters, including emerging hazards that are likely to cause 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.

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 and planning for disaster prevention, mitigation, preparedness, relief and recovery which take full account of the auxiliary role of their National Red Cross or Red Crescent Society, are inclusive of domestic civil society, and empower 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, 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 governmental entities with responsibility and authority in these areas. Consideration should be given to establishing a national 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 Para. 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.

9. Regional and International Support for Domestic Capacity

1. With a view to increasing resilience and reducing the need for international disaster relief and initial recovery assistance, the international community, including donors, regional and other relevant actors, should support developing States, domestic civil society actors and National Red Cross and Red Crescent Societies to build their capacities to prevent, 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)). The support referred to here might come in various forms, including sharing of technologies, financial support, and technical assistance.

2. The international community should also support developing States to build the capacity to adequately implement legal, policy and institutional frameworks to facilitate international 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

10. Initiation

1. Disaster relief or initial recovery assistance should be initiated only with the consent of the affected State and in principle, on the basis of an appeal. The affected State should decide in a timely manner whether or not to request 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 organisations.

The first sentence of this section is drawn from UN GA Res. 46/182 (1991), annex para. 2. It requires the consent of the affected State for the commencement of international assistance and expresses a preference for an official appeal as the trigger. However, unlike the issue of consent, this preference for appeals ("in principle") is not an absolute rule. Many states express their consent, particularly for relief by non-governmental actors, by indicating that they would "welcome" support rather than formally requesting it. Moreover, some treaties, such as the Inter-American Convention, art. 2; ASEAN Agreement, art. 11(2) and the Framework Convention on Civil Defense Assistance, art. 3 set offers and requests on an equal footing as means to initiate assistance, so long as the affected State's consent is provided.

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. Affected States should also make use of existing mechanisms for sharing information about their needs, such as the UN's virtual OSOCC.

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 Para. 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. Requests and offers for assistance should be as specific as possible as to the types and amounts of goods as well as the services and expertise available or required, 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 make available to assisting actors adequate information about domestic laws and regulations of particular relevance to the entry and operation of disaster relief or initial recovery assistance.

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.

11. Initiation of Military Relief

Military assets should be deployed for disaster relief or initial recovery assistance only at the request or with the express consent of the affected State, after having considered comparable civilian alternatives. Prior to any such deployment, terms

and conditions (including such issues as the duration of deployment, whether they must be unarmed or may be armed the use of their national uniforms, and mechanisms for cooperation with civilian actors) are to be agreed by the affected and assisting States.

These provisions are inspired principally by the Oslo Guidelines. 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).

12. Termination

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

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.” Where they are present, it may also be advisable to involve development actors in such discussions as well to ensure a smooth transition from recovery and development assistance.

Part IV: Eligibility for Legal Facilities

13. Facilities for Assisting States

It is recommended that transit and affected States grant, at a minimum, the legal facilities described in Part V to assisting States with respect to their disaster relief or 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 the “chapeau” for Part V and any existing international law and agreements, per paragraph 1(4).

14. Facilities for Assisting Humanitarian Organizations

1. Subject to existing international law, it is the prerogative of originating, transit and affected States to determine which assisting humanitarian organizations will be eligible to receive the legal facilities described in Part V with respect to their disaster relief or initial recovery assistance.

2. It is recommended that States establish criteria for assisting humanitarian organizations seeking eligibility for legal facilities. These criteria should include a showing by the organization of its willingness and capacity to act in accordance with the responsibilities described in paragraph 4 of these Guidelines.

3. Any additional requirements imposed on assisting humanitarian organizations should not unduly burden the provision of appropriate disaster relief and initial recovery assistance.

States are encouraged 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 act in accordance with the standards in paragraph 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.

4. 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 Para. 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.

5. Retention of the legal facilities in Part V should be made dependent on ongoing compliance with the provisions of subsection 2 of this paragraph. 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 Para. 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 paragraph 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 Para. 4, it should also review the continued eligibility of that organization for legal facilities recommended in Part V.

15. Facilities for Other Assisting Actors

Affected States may also wish to extend, upon request, some of the legal facilities in Part V to assisting actors other than those covered by paragraphs 13 and 14, such as private companies providing charitable relief, provided this 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 paragraph 4.

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 potential of conflict with profit motives 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.

Recognizing that prior international instruments have neither encouraged nor discouraged States from providing many of the types of facilities described in Part V to private actors, these Guidelines do not take a position on the issue. It is likely that States would not want to extend all of the same facilities (see e.g., those in paragraph 20) to private sector actors. If a State does decide to provide private sector some of these types of facilities, it should ensure that this does not crowd out aid by traditional actors such as assisting States and eligible assisting humanitarian organizations (for example, by generating bottlenecks in customs). Moreover, where they receive such facilities, private sector actors should be held to at least the same high standards listed in paragraph 4.

Part V: Legal Facilities for Entry and Operations

It is recommended that States provide the legal facilities described in paragraphs 16-24 to assisting States and eligible assisting humanitarian organizations. It is understood that the granting of these facilities will be subject to the interests of national security, public order, public and environmental health, and public morals of the concerned affected, originating and transit States. Measures to protect such interests should be tailored to the exigencies of the specific disaster and consistent with the humanitarian imperative of addressing the needs of affected communities.

Where specific facilities recommended here are within the competence of authorities other than the national government, the national government should, where possible and appropriate, encourage those authorities to provide the relevant facilities to assisting States and eligible assisting humanitarian organizations.

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.”

The second paragraph of this “chapeau” reiterates the understanding (also noted in paragraph 8.3) that authority to provide many of the facilities in this Part may not reside with national authorities, particularly in federal states. In these cases, it is recommended that national authorities encourage those other authorities to take the necessary steps.

16. Personnel

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

(a) Grant visas and any necessary work permits, ideally without cost, renewable within their territory, 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); Arab Agreement, art. 8; 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 necessary for the performance of disaster relief or initial recovery functions and that have been certified as genuine by the concerned assisting State or eligible assisting

humanitarian organization, for the time necessary to carry out disaster 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 and from the disaster-affected area, bearing in mind the safety of disaster 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, ideally without cost, exit or transit visas, as appropriate, for the disaster relief and initial recovery personnel of eligible 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.

3. Assisting States and eligible assisting humanitarian organizations should consider to what degree disaster relief and initial recovery objectives can be met through hiring local staff.

The RC/NGO Code of Conduct para. 6 highlights the importance of building on local capacities in international disaster response operations, including by hiring local personnel, where possible.

17. 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 governmental fees;

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, art. 9(2), and the Arab Agreement, art. 7.

(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 inspection and release outside business hours and/or at a place other than a customs office as necessary to minimize delay, in accordance with the safety regulations of the affected State. Assisting States and eligible assisting humanitarian organizations should respect any routes and delivery points prescribed by the affected State.

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 Para. 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 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 conformity with the national law of the affected State 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 eligible assisting humanitarian organizations should assume responsibility for removing or disposing of any unwanted and unused relief and initial recovery goods, particularly if they 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.”

18. Special Goods and Equipment

In addition to the facilities described in paragraph 17:

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

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 assistance. Without discrimination against or negative impact to domestic relief actors, affected States should also grant (or where, appropriate, encourage other domestic actors to grant) assisting States and eligible 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, ASEAN Agreement, art. 14(a), Arab Agreement art. 9, 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 eligible assisting humanitarian organizations or on their behalf in disaster relief and initial recovery assistance, to the extent consistent with public safety and international law. Assisting States and eligible assisting humanitarian organizations should take all reasonable steps to ensure the quality, appropriateness and safety of any such medications and equipment and in particular:

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 2007) 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.

- (a) *Any medications they import should be approved for use in the originating and affected State;*
- (b) *Medications they use in their own operations should be:*
 - (i) *transported and maintained in appropriate conditions to ensure their quality and;*
 - (ii) *guarded against misappropriation and abuse.*
- (c) *Any medications they donate for use by others in the affected State should be:*

(i) *at least twelve months from their expiration date upon arrival, unless otherwise agreed by receiving authorities;*

(ii) *transported and maintained in appropriate conditions to ensure their quality until they reach the affected State; and*

(iii) *appropriately labelled in a language understood in the affected State with the International Nonproprietary Name or generic name, batch number, dosage form, strength, name of manufacturer, quantity in the container, storage conditions and expiry date.*

In consultation with a number of other organizations, WHO developed Guidelines for Drug Donations in 1999. These provisions are drawn from those Guidelines and are intended to ensure that medicines used in disaster relief and initial recovery operations are safe and appropriate. Particular caution and controls should be employed with regard to donated medicines (*i.e.* those not used by trained disaster responders themselves), inasmuch it is common for them to expire prior to when they can be used or to be poorly labelled, leading to a public health hazard.

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 eligible 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.

19. 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 eligible assisting humanitarian organization or on its behalf, for the purpose of transporting disaster relief or initial recovery assistance and, ideally, waive applicable fees.

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 Coordination 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.

20. Temporary Domestic Legal Status

1. Affected States should grant relevant entities of assisting States and eligible assisting humanitarian organizations, upon entry or as soon as possible thereafter, at least a temporary authorization to legally operate on their territory 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 purpose of providing disaster relief and initial recovery assistance.

Domestic legal status 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 International Federation, 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 eligible assisting humanitarian organizations should also be granted the right to freely bring the necessary funds and currencies in or out of the country through legal means and to obtain legal exchange rates in connection with their disaster relief or initial recovery assistance.

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 the most favourable rates of exchange.

3. Affected States should allow assisting States and eligible assisting humanitarian organizations to legally hire and terminate the contracts of local personnel.

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.

21. Taxation

Affected States should provide exemptions to assisting States and eligible assisting humanitarian organizations from value-added and other taxes or duties directly associated with disaster relief and initial recovery assistance.

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.

22. Security

Affected States should take appropriate measures to address the safety and security of disaster relief and initial recovery personnel of assisting States and eligible assisting humanitarian organizations and of the premises, facilities, means of transport, equipment and goods used in connection with their disaster relief or initial recovery assistance. Assisting States and assisting humanitarian organizations should also take appropriate steps in their own planning and operations to mitigate security risks.

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.

While existing international instruments do not express particular obligations of assisting actors for their own security, it is widely accepted within the field that there are a number of steps that they can and should take to reduce their vulnerability to threats.

23. Extended Hours

Affected States should endeavour to ensure, when necessary, that State-operated offices and services 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 Para. 18(2)).

24. 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, or for the temporary loan of equipment.

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, when it is in their power and to the extent possible under the circumstances, providing certain services at reduced or no cost to assisting States and eligible assisting humanitarian organizations, which may include:*

- 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.

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

Arab Agreement: Arab Cooperation Agreement Regulating and Facilitating Relief Operations, 1987

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)

Annex 1: Map of Legal Facilities in Part V Applicable in Disaster Relief and Initial Recovery

Topic	Applicable only to disaster relief	Applicable to both disaster relief and initial recovery
Personnel	Para. 16(1)(b): Waive or significantly expedite visas	Para. 16(1)(a) & (c)-(d), (2) & (3): Grant visas and work permits Temporarily recognize degrees and qualifications Consider hiring local staff Facilitate freedom of access and movement
Goods and Equipment	Para. 17(2): Waive or reduce inspection requirements (pre-clearance) Inspection and release outside business hours and at different places	Para. 17(1), (3) & (4): Exemption from customs duties Exemption from import/export restrictions Reduced documentation Permit re-exportation Responsibilities of assisting states and assisting humanitarian organizations in shipment and address unwanted material
Special Goods and Equipment	Para. 18(4): Relax fumigation and food restrictions if appropriate	Para. 18(1): Recognize foreign plates and registration Para. 18(2): Waive or expedite telecom licenses and waive or reduce barriers of export or import of telecom equipment Para. 18(3): Reduce barriers to import and export of medicines and medical equipment
Transport		Para. 19 Permission for land, sea or air vehicles, including overflight and crew visas
Temporary Legal Status		Para. 20: Grant temporary domestic legal status, rights with regard to currency, and right to hire and terminate local staff
Taxation		Para. 21: Provide exemptions from tax
Security		Para. 22 Take measures to address security of staff, premises, goods and equipment
Extended Hours	Para. 23: Endeavour to ensure extended hours for necessary offices and services	
Costs		Para. 24: Costs normally to be born by provider, with some exceptions