

CONSULTATION DRAFT VERSION 1.0

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

(Version of 10 August 2011)

This consultation draft is being circulated for the views and comments of legal and disaster management experts. Please note that both the text and the format are in an early form. All input, whether personal or institutional, is very welcome.

We would appreciate your comments on this version no later than September 15, 2011.

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

Introductory Notes

The aim of this Model Act initiative is to provide a legal tool for states to prepare for the possibility that they may one day require international assistance to respond to a disaster in their territory that overwhelms national capacity. If such an event occurs, experience shows that an affected state can greatly benefit from having in place a clear legal framework for the entry and coordination of international humanitarian assistance, which balances safeguards to guarantee domestic oversight, public security and safety against the often urgent need for speedy delivery of international aid to those in need.

In November 2007 the 30th International Conference of the Red Cross and Red Crescent (gathering the state parties to the Geneva Conventions and the components of the International Red Cross and Red Crescent Movement) adopted the *Guidelines for the Domestic Facilitation of International Disaster Relief and Initial Recovery Assistance* (also known as “the IDRL Guidelines”).¹ The IDRL Guidelines have also subsequently been endorsed in a series of resolutions by the UN General Assembly (most recently in Resolution No. 65/133 of 2010).

The IDRL Guidelines are a set of recommendation to governments on how to prepare their disaster laws and plans for the common regulatory problems in international disaster relief operations. The IDRL Guidelines were based on country case studies, legal research and extensive consultations with governments and relief specialists carried out since 2001, when the IDRL programme was first established within the International Federation of Red Cross and Red Crescent Societies (IFRC).

Since the adoption of the IDRL Guidelines, further consultations and training have been conducted in all regions of the globe to raise awareness and provide technical assistance to states wishing to implement them. During this process, state participants have frequently requested model clauses to assist them in implementing the IDRL Guidelines.

In 2009, the IFRC joined with the UN Office for the Coordination of Humanitarian Affairs (OCHA) and the Inter-Parliamentary Union (IPU) to begin discussions and research into the possibility of drafting a model act, with advice from an advisory group of humanitarian partners. The project partners have received valuable assistance from a number of experts in this process, including pro bono technical assistance from the World Customs Organization (WCO), the law firms of Allen & Overy LLP, CMS Cameron Mckenna, Baker and McKenzie, the legal department of Microsoft Corporation, and advice from an expert meeting assessing a “zero draft”, which was conducted in Geneva in May 2011. Legal consultant Mary Picard consolidated changes to the current draft.

¹ Available in multiple languages at <http://www.ifrc.org/en/what-we-do/idrl/guidelines/>

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

Issues in legal entry and operation often include:

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

Issues in coordination of international actors may include:

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

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

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

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

This Draft Model Act is not intended to replace the IDRL Guidelines, but simply to provide a tool for states wishing to implement them. It is also not intended to describe a system for domestic disaster management. It is a model law to help states integrate assisting international actors into a coordinated

response, as quickly as possible after the onset of a major disaster that overwhelms national capacity. It is based on the following core ideas:

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

Given the diversity of legal systems around the globe, and especially the different domestic approaches to disaster management, the clauses of the Draft Model Act are not prescriptive or detailed. It will of course need to be adapted by states to their own legal and governmental systems. However, the drafting assumes there is an existing national coordination mechanism for disaster response, and that certain responsibilities such as foreign relations, customs, immigration, duties and taxes, health and transport are generally administered by different government ministries. The Model Act can nevertheless be implemented as either a stand-alone act or inserted as modules into existing legislation, such as legislation concerning disaster management, immigration, customs, health, telecommunications or transport. This may depend on national preferences and/or on the way legislation is passed and amended in each country's legal system. Accordingly, side notes in this draft suggest the other key domestic legislation in which certain elements of the Model Act could be inserted. However, if the modular approach is taken it will be important to ensure that key elements of the Model Act are not lost, and that each self-contained regime is kept together. For example, it would be important that the regime for the approval and termination of international actors' eligibility for special legal facilities is kept within one act, even if some aspects of the facilities may be regulated under other laws (such as customs, or immigration).

At this stage the commentary to the Draft Model Act is incomplete and preliminary in nature, and is included in the form of footnotes. In its final form, there will be a commentary for each section and/or clause, which will explain its purpose and the background to the issue in terms of experience or best practices. Where relevant, the commentary will also canvass different options for how the concept can be translated into domestic law.

The following Draft Model Act is a preliminary version (version 1.0) for consultation.

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Chapter I General Provisions²

Article 1 Short Title

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

Article 2 Purpose of the Act

- a. The purpose of this Act is to set out procedures, roles and responsibilities related to the facilitation and regulation of international disaster assistance provided to [COUNTRY NAME] in the event of a disaster on its territory, as well as for disaster assistance transiting through [COUNTRY NAME]’s territory to aid another affected state. For the purposes of this Act, disaster is as defined in Article 3, which excludes armed conflict.
- b. In particular, this Act is designed to:
 - (i) set out roles and responsibilities for key ministries and departments concerned with the facilitation and regulation of international disaster relief and initial recovery assistance;
 - (ii) establish procedures for initiating, coordinating, and terminating international disaster assistance;
 - (iii) establish the mechanism for registration of assisting international actors;
 - (iv) identify legal facilities to be provided to eligible assisting international actors;
 - (v) identify minimum quality standards expected from assisting international actors;
 - (vi) facilitate the transit of international disaster assistance to third countries affected by a disaster, including personnel, equipment and goods.

Article 3 Definitions

For the purposes of this Act:

“[COUNTRY NAME] humanitarian organization” means a non-profit [ENTITY/ASSOCIATION/FOUNDATION] which has its headquarters in [COUNTRY NAME] and whose mandate and activities are primarily focused on humanitarian relief, recovery or development.

“Assisting international actor” means any international humanitarian organization, foreign state, foreign individual, foreign private business providing charitable relief, or other foreign entity responding to a disaster on the territory of [COUNTRY NAME].

“Assisting International humanitarian organization” [or “Assisting foreign humanitarian organization”] means a foreign, non-profit entity that is either non-

Chapters I through V, and Chapter VIII form the core of the regime established by this Model Act concerning the facilitation of international disaster assistance. They may alternatively be inserted into an existing disaster management act, but ideally the issues they address should be kept together in a single piece of legislation.

² NOTE: Text boxes in the right margin indicate how states might use sections of this model language as individual amendments to various existing laws, if it makes better sense in their circumstances to do so rather than adopting the whole text as a single stand-alone act. They also make suggestions about which sections would be best kept together to ensure that the overall regime of the Model Act, or its separate parts, remains coherent.

governmental or intergovernmental (regional or international), whose mandate and activities are primarily focused on humanitarian relief, recovery or development.³

“Assisting state” means a state providing disaster relief or initial recovery assistance to [COUNTRY NAME], whether through its civil or military institutions.

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

“Disaster relief equipment” means physical items, other than goods, designated for use in international disaster relief or initial recovery assistance, such as vehicles, medical, and telecommunications equipment.

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

“Disaster relief services” means activities, such as search and rescue activities and medical care, undertaken by assisting international actors to assist disaster-affected communities.

“Eligible assisting international actor” means any assisting international actor eligible to receive legal facilities in [COUNTRY NAME] in accordance with Chapter V of this Act.

“International disaster relief period” means the period following the onset of a disaster during which the legal facilities described in Chapter VI are made available to eligible assisting international actors for the purpose of providing disaster relief.

“International disaster relief” means the goods and services provided by assisting international actors to meet the immediate humanitarian needs of disaster-affected communities.

“International initial recovery assistance” means the goods and services provided by assisting international actors intended to restore or improve the pre-disaster living conditions of disaster-affected communities, including initiatives to increase resilience and reduce risk.

“International initial recovery period” means the period following the onset of a disaster during which the legal facilities described in Chapter VI are made available to eligible assisting international actors for the purpose of providing initial recovery assistance.

“International disaster personnel” means the staff and volunteers of assisting international actors providing disaster relief or initial recovery assistance in [COUNTRY NAME], being persons who are neither citizens nor ordinarily resident or domiciled in [COUNTRY NAME]

³ Commentary: The alternative definition title, “Assisting foreign humanitarian organization”, could be used, particularly if the terminology of “Assisting international humanitarian organization” conflicts with other national legal definitions of international organizations.

“**Local disaster personnel**” means nationals or persons ordinarily resident in [COUNTRY NAME] who are recruited as staff or volunteers by assisting international actors to provide disaster relief or initial recovery assistance.

“**Temporary recognition of legal personality**” or “**TRLP**” means temporary recognition of the existing foreign or international legal personality of an assisting international humanitarian organization or foreign private business under Chapter VI, Part 5 of this Act.

Article 4 Existing Rights, Privileges and Immunities

Nothing in this Act shall be interpreted to limit or reduce the existing rights, privileges or immunities of any assisting international actor as separately recognized by other laws or agreements of [COUNTRY NAME], including the [INTERNATIONAL ORGANIZATIONS ACT] and the [DIPLOMATIC/CONSULAR RELATIONS ACT] and any status or headquarters agreement between [COUNTRY NAME] and an assisting international actor.

Chapter II Initiation and Termination of International Disaster Assistance⁴

Article 5 Assessment of the Need for International Disaster Assistance

- a. Immediately after the onset of a disaster, and in consultation with relevant provincial/local authorities, the [RELEVANT DISASTER MANAGEMENT AUTHORITY] shall make a determination, based on initial estimates, as to whether domestic capacities are likely to be sufficient to attend to the relief and/or initial recovery needs of affected persons.⁵
- b. In the event of a determination that domestic response capacities are likely to be overwhelmed by the scale of the disaster, the [RELEVANT DISASTER MANAGEMENT AUTHORITY] shall advise the [PRESIDENT/PRIME

The provisions of Chapter II may, alternatively, be inserted in the disaster management act.

⁴ Commentary: At present the mechanism for determining need, making international requests, and accepting offers of assistance, varies considerably between countries. The delays and difficulties frequently experienced, as well as good practices, are documented in national case studies carried out by the IDRL programme of the IFRC, and in the publication, ‘Law and Legal Issues in International Disaster Response: A Desk Study’ (IFRC 2007: <http://reliefweb.int/node/23051>), Chapter 8, at 89-97. Delay in receiving humanitarian assistance is the biggest central issue for the welfare of persons affected by sudden-onset disasters. Where the needs exceed national capacity, delays in an international appeal due to institutional confusion can have life or death consequences for many of those affected. In some countries, a national declaration of disaster or emergency has been required before the Executive is empowered to make an international appeal for assistance. Experience shows that such a requirement may lead to unnecessary delays in requesting assistance, not only because the mechanism itself may be slow to implement, but because governments are often reluctant to declare states of disaster or emergency for reasons entirely unrelated to the need for outside assistance. For example, such measures may be linked to suspending certain constitutional rights of citizens, and are therefore used with great caution. This model suggests, therefore, a separate decision-making process for a call for international assistance. .

⁵ Commentary: Affected states may choose to conduct their own estimates or initial assessments, and/or they may wish to obtain such analysis from international actors who specialise in rapid initial assessments. This Model Act is not prescriptive on that question. However, whichever mechanism is chosen, the process needs to be clarified in regulations made under this Act, to ensure there is no confusion or delay as to what triggers such an assessment/estimate, who conducts it, and how the relevant disaster management authority obtains this data in a timely manner. See: IDRL Guideline 10 ‘Initiation’ concerning joint needs assessments with the UN and other assisting humanitarian organizations.

MINISTER/COUNCIL OF MINISTERS] and recommend that an immediate request be made for international assistance.⁶

[Alternative Article 5(b): In the event of a determination that domestic capacities are not likely to be sufficient, the *[RELEVANT DISASTER MANAGEMENT AUTHORITY]* shall advise the *[HIGH LEVEL COMMITTEE ON NATIONAL DISASTER MANAGEMENT]* and recommend that a request be made for international assistance. Without delay, the *[HIGH LEVEL COMMITTEE ON NATIONAL DISASTER MANAGEMENT]* will convene to decide whether to endorse the recommendation. Upon endorsement, the recommendation will be made to the *[PRESIDENT/PRIME MINISTER/ COUNCIL OF MINISTERS]*.⁷

- c. If such a recommendation is made, the *[RELEVANT DISASTER MANAGEMENT AUTHORITY]* shall, in consultation with relevant provincial/local authorities, develop a preliminary list of international disaster relief and/or initial recovery goods and services required. This list shall be made available to potential assisting international actors on the commencement of an international disaster relief and/or initial recovery period pursuant to Article 8, and shall be updated from time to time to reflect new information and changing circumstances.
- d. A determination that domestic capacities are likely to be sufficient and that international assistance is therefore unnecessary may be reviewed by the *[RELEVANT DISASTER MANAGEMENT AUTHORITY]* at any time, in light of updated information.

Article 6 Requests for International Assistance⁸

- a. Upon the advice of the *[RELEVANT DISASTER MANAGEMENT AUTHORITY]*, the *[PRESIDENT/PRIME MINISTER]* may make a request for international assistance. That request may be directed to particular international actors, or a general request may be directed to the international community as a whole.
- b. The request shall be accompanied by:

⁶ Commentary: The first model presented in Art.5(b) assumes the Executive has the power to request international assistance without declaring a national emergency/disaster, on the advice of the national disaster management agency – or that if it does not already have such authority then this Act will give the Executive the power to initiate international assistance as described herein. The alternative 5(b) model presented here recognises that, if there is already a ‘high level committee on national disaster management’ (or similar) such a committee would normally be involved in the decision to call for international assistance. However, given the usual urgency of such situations, a requirement for a committee’s approval could cause delay, so the procedure should take this into account.

⁷ Commentary: The reference to a ‘high level committee on national disaster management’ recognizes that many states already have national committees with a key role in national disaster management oversight. The head of state or deputy head of state often chairs these committees, and their members are the ministers of the key ministries relevant to disaster management. They may have a role in deciding whether international assistance is required, and generally in advising the government. They generally do not have an implementation role, but focus more on policy advice, and inter-ministerial coordination mechanisms.

⁸ Commentary: It is recognized that states have different ways of advising the international community of the need for assistance during a disaster. These provisions use the simple terminology of making a ‘request’ although it may be called a ‘declaration’, an ‘appeal’, an ‘indication’, a ‘statement’, or many other terms.

- (i) information as to the extent and type of assistance required, based on the list prepared by the *[RELEVANT DISASTER MANAGEMENT AUTHORITY]* pursuant to Article 5; and
 - (ii) information on the procedures for different assisting international actors to make offers or provide assistance, pursuant to Article 7
- c. *[Consistent with THE APPLICABLE NATIONAL RED CROSS/RED CRESCENT LAW]*, the *[COUNTRY NAME RED CROSS/RED CRESCENT SOCIETY]* may request assistance from the International Red Cross and Red Crescent Movement to supplement its disaster relief and recovery work at any time, pursuant to the rules, regulations and procedures previously approved by *[COUNTRY NAME]* at the International Conference of the Red Cross and Red Crescent.⁹

Article 7 Offers of International Assistance¹⁰

- a. Other states interested in providing international disaster relief and/or initial recovery assistance shall be invited to respond to the request for international assistance with an offer prepared in a simple format to be determined by the *[RELEVANT DISASTER MANAGEMENT AUTHORITY]* and disseminated with the request. Offers should indicate, in general terms, the type, amount and estimated duration of assistance to be provided.
- b. The request shall invite other states and intergovernmental organizations to direct offers of assistance to the Ministry of Foreign Affairs through the appropriate *[COUNTRY NAME]* embassy. The *[MINISTRY OF FOREIGN AFFAIRS]* shall then consult with the *[RELEVANT DISASTER MANAGEMENT AUTHORITY]* about such offers.¹¹
- c. Other international humanitarian organizations shall not be required to make formal offers in response to a general request for international assistance. However, they shall make themselves known to the *[RELEVANT DISASTER*

⁹ Commentary: All States and National Societies have approved the 'Principles and Rules for Red Cross and Red Crescent Disaster Relief' (<http://www.ifrc.org/docs/idrl/I280EN.pdf>) at the International Conference of the Red Cross and Red Crescent. Originally adopted in 1969, these Principles have been amended five times, most recently at the 1995 International Conference. Consistent with the Movement's Principle of Universality (i.e. that the Movement is global and interconnected), they provide (Rule 14) that a National Society of a stricken country may direct a request for international disaster assistance to the International Federation of Red Cross and Red Crescent Societies, and the Federation may then launch an appeal to all National Societies (no appeal will be launched without a request from the National Society). The Federation may also take the initiative to offer assistance even though the National Society has not asked for it. This process is linked to assisting the National Society of the affected state to carry out its own humanitarian mission and is therefore independent of any requests for international assistance by the affected state.

¹⁰ Commentary: A state affected by disaster, depending on its magnitude and effect on governmental institutions, may not be in a position to make formal requests or to accept offers. However, this model emphasises that the affected state has the right to exercise control over its borders and to refuse entry to actors or goods that are inappropriate or unwanted, as these can cause bottlenecks in the entry of essential actors and assistance. All assisting actors and donors should rely on the "Guide to Humanitarian Giving" (<http://reliefweb.int/node/390799>.)

¹¹ Commentary: Distinctions are made here between those actors who would normally relate to the affected state through diplomatic channels – that is, other states and intergovernmental organizations, including the UN – and non-governmental actors. In most cases the former group would make offers through the Ministry of Foreign affairs (or similar), while the latter would normally deal directly with customs and immigration (unless they already have an agreement defining their legal status, which may determine the appropriate channels of communication).

MANAGEMENT AUTHORITY], if possible in advance of their arrival, and in any event immediately upon arrival.

- d. Offers of humanitarian assistance from other states to be provided through military actors shall be made, and may be accepted, all or in part, according to the procedures to be established by [*RELEVANT AUTHORITY*].¹²
- e. Foreign private businesses wishing to provide direct humanitarian assistance and who are not already eligible under Article 24 shall be required to make specific offers in response to a general request for international assistance, which may be accepted, in all or in part, by the [*RELEVANT DISASTER MANAGEMENT AUTHORITY*], before the relief arrives in the territory of [*COUNTRY NAME*]. However, a foreign private business already eligible under Article 24 may follow the same procedure as for international humanitarian organizations in subsection (c) above.
- f. In the absence of a general request for international assistance, [*COUNTRY NAME*] shall nevertheless consider unsolicited offers of assistance, and may accept them, in all or in part.¹³
- g. The [*RELEVANT DISASTER MANAGEMENT AUTHORITY*] shall determine whether to accept or reject offers of international assistance with urgency appropriate to the circumstances. In particular:
 - (i) offers made according to the required format in the first ten days after a general request under Article 6 (a) shall be assessed no later than [*48 hours*] after receipt; and
 - (ii) other offers made during the international disaster relief period in response to a general request shall be assessed no later than [*four days*] after receipt.

[Alternative to subclause 7(g): The [*RELEVANT DISASTER MANAGEMENT AUTHORITY*] shall determine whether to accept or reject offers of international assistance no later than [*48 hours*] after the receipt of offers made in the first ten days after a general request, and no later than [*four days*] after the receipt of any subsequent offers made during the international disaster relief period. In the event that decisions are not taken and communicated within the time prescribed by this subsection, the offers will be deemed to have been accepted for the purposes of this act.]

¹² Commentary: Often foreign assistance through military actors is provided by agreement between an affected state and an assisting state in situations of disaster. It is useful to have guidelines in place in advance of a disaster so that satisfactory terms for the acceptance of such assistance can be concluded rapidly. These may take the form of bilateral Status of Forces Agreements (SOFAs), or they may not involve troops at all, but only air support, or logistics or communications services, for example. They can take a range of forms, from treaties ratified by the legislature to relatively informal agreements entered by the Executive, depending on other aspects of the two countries' bilateral relationship. Some national constitutions prohibit the Executive government from inviting foreign military forces, and require the legislature's approval. Given the national security implications of such agreements, they would normally require high-level governmental approval, and states might consider involving both the national disaster management authority and the ministry of defence in developing appropriate guidelines or regulations for assistance by military actors under this Act or other relevant legislation.

¹³ Commentary: When such unsolicited offers are accepted, the international disaster relief and/or initial recovery period commences, pursuant to Article 8.

Article 8 International Disaster Relief and Initial Recovery Periods¹⁴

For the purposes of this Act, the international disaster relief period and the international initial recovery period shall commence simultaneously upon the issuance of a request for international assistance under Article 6(a), or upon acceptance of an offer under Article 7(f), and shall continue until terminated pursuant to Article 9 or Article 10

Article 9 Termination of the International Disaster Relief Period

- a. When, on the basis of updated needs assessments, programme reports and other information and in consultation with assisting international actors, the *[RELEVANT DISASTER MANAGEMENT AUTHORITY]* is satisfied that the need for international disaster relief is coming to an end, it shall advise the *[PRESIDENT/PRIME MINISTER]* to approve a termination date for the international disaster relief period. This termination shall not affect the ongoing validity of the international initial recovery period.
- b. The termination date shall be announced to assisting international actors no later than 45 days prior to proposed date. The announcement shall also include information about the anticipated ongoing needs for goods and services related to initial recovery assistance, if any.
- c. Upon the issuance of an announcement, the *[RELEVANT DISASTER MANAGEMENT AUTHORITY]* shall consult with assisting international actors actively involved in disaster relief work in order to mitigate any negative impact from the termination and to ensure an adequate handover of responsibilities.

Article 10 Termination of the International Initial Recovery Period

- a. When, on the basis of updated needs assessments, programme reports and other information and in consultation with assisting international actors, the *[RELEVANT DISASTER MANAGEMENT AUTHORITY]* is satisfied that the need for international initial recovery assistance is coming to an end, s/he shall advise the *[PRESIDENT/PRIME MINISTER]* to approve a termination date for the international initial recovery period.
- b. The termination date shall be announced to assisting international actors no later than 90 days prior to the proposed date.
- c. Upon the issuance of an announcement, the *[RELEVANT DISASTER MANAGEMENT AUTHORITY]* shall consult with assisting international actors actively involved in initial recovery work in order to mitigate any negative impact from the termination and to ensure an adequate handover of responsibilities.

¹⁴ Commentary: This Model Act proposes a system of declaring relief and initial recovery periods which are solely for the purpose of facilitating international assistance, and do not have the other legal consequences or short duration of states of disaster, calamity, or emergency. These provisions aim to give governments the authority to do this. States that already have special legislative provisions for the declaration of disasters or calamities may prefer to use the existing declaration and request process, although this can also often be very short-term, and can make it difficult to facilitate initial recovery assistance. However, many states rely on ‘state of emergency’ laws that are not well adapted to disaster situations, as they tend to have onerous procedural requirements and to run for very short periods, since they may suspend certain constitutional rights. Because of the seriousness of declaring a state of emergency, many states are hesitant to do so, and this may delay the entry of much-needed international assistance.

Chapter III Coordination of International Disaster Assistance¹⁵

Article 11 Focal Point Agency

- a. The *[RELEVANT DISASTER MANAGEMENT AUTHORITY]* established by the *[NATIONAL DISASTER MANAGEMENT/COORDINATION ACT]* shall serve as a central focal point agency for liaison between the government of *[COUNTRY NAME]* and assisting international actors, promoting the effective facilitation, coordination and oversight of international assistance pursuant to this Act. As such, the *[RELEVANT DISASTER MANAGEMENT AUTHORITY]* shall serve as the main counterpart for any applicable international or regional coordination mechanisms, including those of the United Nations.¹⁶
- b. The *[RELEVANT DISASTER MANAGEMENT AUTHORITY]* shall inform assisting international actors and relevant national, regional and local agencies of their rights and responsibilities under this Act and orient them to any other applicable laws, rules or procedures relevant to international disaster relief and initial recovery assistance.
- c. In consultation with the Taskforce on International Disaster Assistance described in Article 12 the *[RELEVANT DISASTER MANAGEMENT AUTHORITY]* shall be entitled to call upon any relevant governmental body of *[COUNTRY NAME]* to request support and assistance in facilitating the work of assisting international actors. Such governmental bodies shall cooperate and assist the *[RELEVANT DISASTER MANAGEMENT AUTHORITY]* to the fullest extent possible within their legal mandates during the international disaster relief and initial recovery periods. Any such request that may impose a substantial financial burden on the cooperating agency may be reviewed at its request by the *[APPROPRIATE HIGH LEVEL OFFICIAL]*.¹⁷

The functions in Chapter III, Articles 11-13 could also be fulfilled by existing institutional mechanisms established under the disaster management act. The structures are not essential to the proposal of the Model Act, but the functions are central.

¹⁵ Commentary: The institutional arrangements proposed in this chapter are independent suggestions from the remainder of the Act. The reasons why they are proposed is to show which functions need to be established, and at which level of government, to assure the smooth operation of legislation based on this Model Act. In determining how much of this chapter to incorporate, care should be taken to guard against duplications or confusion with existing institutional structures.

¹⁶ Commentary: This Model Act assumes that a national disaster management agency or mechanism is established under another law, which would set out its general structure and functions. These provisions relate only to its role in relation to assisting international actors and international assistance. Alternatively, states may wish to include these powers and responsibilities in the legislation that establishes and governs the national disaster management agency.

¹⁷ Commentary: Where there is already a national disaster management agency established under specific legislation, it may well have special powers of coordination or even coercion of government agencies – and sometimes private persons – concerning national actors. This section is specific to the support of international actors, but there could still be overlap with national disaster management law, so that care will need to be taken in determining how the two relate, and whether it is necessary to include such a section in a law based on this Model Act. The other issue is that, sometimes, a national disaster management agency would not have either coordination or coercive powers unless there has also been a declaration under national law of a disaster or emergency. The present Model Act is intended to operate whether or not such a declaration has been made, so that it may be useful to include this mechanism for that reason.

Article 12 Taskforce on International Disaster Assistance¹⁸

- a. A cross-sectoral Taskforce on International Disaster Assistance shall be established, to operate in accordance with this Article, under the chairmanship of the *[RELEVANT DISASTER MANAGEMENT AUTHORITY]*.
- b. In addition to the *[RELEVANT DISASTER MANAGEMENT AUTHORITY]* Chair, the Taskforce on International Disaster Assistance shall be composed of:
 - (i) Representatives of *[the following ministries and departments:*
 - *Foreign Affairs*
 - *Immigration*
 - *Interior/Home Affairs,*
 - *Customs*
 - *National Defence*
 - *Police*
 - *Finance, Taxation and Audit*
 - *Civil Aviation*
 - *Marine Transport*
 - *Road Transport*
 - *Health*
 - *Social Welfare*
 - (ii) *National Red Cross or Red Crescent Society;*¹⁹
 - (iii) *National/ local civil society organizations and/or peak bodies ...*
 - (iv) *Such other members or observers as the Taskforce may invite to participate from time to time, including potential assisting international actors, relevant officials from [regional/provincial] and/or local government offices, and other national stakeholders.]*

¹⁸ Commentary: This dual concept of (a) an inter-ministerial taskforce in Article 12 and (b) one-stop operational border control teams, which are here termed Single Window International Facilitation Teams (SWIFTS) in Article 13, comes from a mechanism used very effectively in Guatemala in 2005 during the international response to Tropical Storm Stan. This was in turn adapted from the Regional Manual of Procedures for Foreign Ministries in Cases of Disaster (*Manual Regional de Procedimientos de las Cancillerías en casos de Desastres*) prepared by the Coordination Centre for the Prevention of Natural Disasters in Central America (CEPREDENAC, for the Spanish, *Centro de Coordinación para la Prevención de los Desastres Naturales en América Central*). Under this system, Guatemala's national coordinator for disaster response, CONRED, established an inter-ministerial mechanism under the title of Centre for the Coordination of Humanitarian Assistance, (CAHA, for the Spanish *Centro de Coordinación de Ayuda y Asistencia Humanitaria*). This was then the source of inter-departmental teams which operated around the clock at the major ports and airports. They had authority to provide rapid (provisional) customs clearance for relief goods and equipment and entry of international humanitarian personnel. In Guatemala these were called CAHA teams. But the drafters of the Model Act felt this title had the potential to be confusing as to the overall coordination role of a national disaster management authority, the facilitation role of an inter-ministerial taskforce on the entry of international assistance, and the operational role of the border control teams. This drafting proposes a similar model, but with names and descriptions intended to clarify those relationships.

¹⁹ Commentary: National Red Cross or Red Crescent Societies are proposed because they have a legally defined role to support the public authorities in their own countries as independent auxiliaries to the government in the humanitarian field. This role is approved by states through their adoption of the Statutes of the Red Cross and Red Crescent Movement, and in particular Resolution 2 of the 30th International Conference of the Red Cross and Red Crescent (gathering the state parties to the Geneva Conventions and the components of the International Red Cross and Red Crescent Movement) in 2007.

- c. The Taskforce on International Disaster Assistance shall provide technical advice to the *[RELEVANT DISASTER MANAGEMENT AUTHORITY and/or to the Government of [COUNTRY NAME]* as requested from time to time,]] on the facilitation, regulation and coordination of international disaster relief and initial recovery assistance. In fulfilling this role the Taskforce shall:²⁰
- (i) Collaborate with relevant national and international actors to prepare and update manuals, guidelines, plans or other procedures for the entry and coordination of international disaster assistance. ;
 - (ii) Compile and update information on existing bilateral, regional and international coordination mechanisms, manuals guidelines, plans or other procedures, and provide technical advice on the further development of such mechanisms in collaboration with relevant national, regional and international actors;
 - (iii) Develop and maintain a list of personnel nominated by the relevant ministries to participate in Single Window International Facilitation Teams (SWIFTs) described in Article 13, and to assist the *[RELEVANT DISASTER MANAGEMENT AUTHORITY]* to convene the SWIFTs immediately upon the commencement of an international disaster relief and/or initial recovery period pursuant to Article 8, if required for the volume of international assistance expected;
 - (iv) Develop, pursuant to Chapter V of this Act, procedures, documentation requirements and information about their responsibilities under this Act, for international humanitarian organizations and foreign private businesses seeking approval for eligibility for the legal facilities described in Chapter VI of this Act. This shall be done in consultation with the *[RELEVANT DISASTER MANAGEMENT AUTHORITY]* and relevant international and national civil society and private sector organizations;
 - (v) Advise the *[RELEVANT DISASTER MANAGEMENT AUTHORITY]* and/or oversee the development of technical quality standards for international disaster assistance, as described in Chapter IV of this Act;
 - (vi) Undertake tasks related to international disaster and initial recovery assistance, as requested by the *[RELEVANT DISASTER MANAGEMENT AUTHORITY]* or the Government of *[COUNTRY NAME]* from time to time.
- d. The Taskforce on International Disaster Assistance shall meet:
- (i) Immediately upon the commencement of an international disaster relief and/or initial recovery period pursuant to Article 8, to ensure the effective operation of the Single Window International Facilitation Teams described in Article 13 and to address problems in the integration of international assistance.
 - (ii) Otherwise as necessary, and in no case less frequently than once per year, to review national preparedness for implementing the provisions

²⁰ Commentary: One ministry or body need not carry out all the functions given to the Taskforce in this article, although in some countries this may be done or coordinated by one centralised agency. Rather, this is an indication of the types of supporting procedures, documentation, negotiation and research that the Government and its agencies would need to put in place to implement the various elements of this Model Act. It should be noted that the main role of this Taskforce is one of disaster preparedness, so that the various functions allocated to it are intended to be done or maintained on a regular basis, not primarily in the aftermath of a disaster.

of this Act and to carry out the functions assigned to it pursuant to this Article.

Article 13 Single Window International Facilitation Teams (SWIFTs)

- a. Single Window International Facilitation Teams (SWIFTs) shall be established in accordance with this Article, for the purpose of consolidating and expediting the legal requirements concerning entry of incoming relief and initial recovery personnel, goods, equipment and transport into the territory of [COUNTRY NAME].
- b. In consultation with the Taskforce on International Disaster Assistance, the [RELEVANT DISASTER MANAGEMENT AUTHORITY] shall establish the membership, functions, authorities and operating procedures for the SWIFTs, consistent with this Act and other relevant legislation.
- c. The SWIFTs shall be composed of representatives of relevant ministries and agencies, from the list established and updated by the Taskforce on International Disaster Assistance in accordance with Article 12.
- d. Upon the commencement of an international disaster relief and/or initial recovery period pursuant to Article 8, SWIFTs shall be deployed to primary points of entry for assisting international actors, including, as circumstances dictate, relevant airports, seaports and land border crossing points.

Article 14 Operational Coordination

- a. National, [regional/provincial] and local authorities shall endeavour to integrate the role of assisting international actors into their planning and mechanisms for operational coordination for disaster relief and initial recovery efforts. In particular, they shall endeavour to facilitate the work of assisting international actors, while balancing the urgent needs of people affected by disaster and necessary safeguards relating to public safety and health, coordination and oversight.
- b. Assisting international actors shall cooperate and coordinate with and assist national, [regional/provincial] and local authorities in their disaster relief and initial recovery efforts. In particular, they shall exchange with [COUNTRY NATIONALITY] authorities such information on needs, and on the location, type and extent of their relief and initial recovery operations, as is required for a coordinated and effective response.
- c. In providing international disaster relief or initial recovery assistance, the personnel of assisting international actors shall not impede or unnecessarily duplicate the work of emergency personnel of the national, [regional/provincial] or local authorities of [COUNTRY NAME], including, but not limited to:
 - (i) civil defence;
 - (ii) fire and rescue services;
 - (iii) ambulance services;
 - (iv) identification of disaster victims; and
 - (v) organ, blood or equipment transport services.
- d. In addition, and subject to Article 18d, assisting international actors shall cooperate with any international or regional mechanisms for coordination that *have been specifically approved* for a particular operation by the [RELEVANT DISASTER MANAGEMENT AUTHORITY], such as those of regional organizations or the United Nations.

Article 15 Security and Safety of Assisting International Actors²¹

- a. The *[RELEVANT POLICING AUTHORITY]* shall take all necessary measures within its capabilities to ensure the security and safety of:
 - (i) the personnel of assisting international actors; and
 - (ii) the premises, facilities, means of transport, equipment and goods used for or in connection with the international disaster relief and initial recovery assistance of assisting international actors.
- b. In particular, the *[RELEVANT POLICING AUTHORITY]* shall take measures to guard against violence, theft, kidnapping or violence against the personnel, premises, facilities, means of transport, equipment and goods of assisting international actors.

Article 16 Security as an Element of Disaster Contingency Plans²²

National, regional or local disaster contingency plans developed by *[RELEVANT GOVERNMENTAL BODIES]* shall include provisions regarding the safety and security objectives set out in Article 15.

Chapter IV Responsibilities of Assisting International Actors²³

Article 17 Compliance with Laws

Assisting international actors are required to comply with the applicable laws of *[COUNTRY NAME]*, including as provided in this Act.

Chapter IV sets out the responsibilities of the international actors. Inasmuch as compliance with these responsibilities is a condition of eligibility for special legal facilities, this Chapter is a core part of the regime of this Model Act. Ideally it should be enacted in the same instrument as the provisions of Chapters I through III, V and VIII, whether in a free-standing act or in the main disaster management act.

²¹ Commentary: While the general term ‘policing authority’ is used in the model clause, the role of providing security may be divided between different state agencies, so that in some states this wording may need to be adapted to reflect these responsibilities.

²² Commentary: While it is not the task of this legislation to define the relevant national disaster management or security mechanisms, such a process might be overseen by a national disaster management authority in consultation with security authorities.

²³ Commentary: This Chapter applies to all assisting international actors, whether organisations or individuals, government or non-government. It is intended to indicate the minimum requirements, with the implication that actors who do not wish to comply with these provisions may not be allowed to operate or to continue operations within the affected state. For international assisting actors who become eligible under Ch. V for the special legal facilities in Ch.VI, the responsibilities set out here serve as a minimum requirement for the retention of those facilities. In this sense, Ch. IV is the other side of the implicit ‘contract’ between the affected state and eligible international assisting actors. Non-compliance can result in termination of the facilities pursuant to Art. 26.

Article 18 Principles for Humanitarian Assistance²⁴

- a. All assisting international actors shall comply with the principles of humanity and impartiality in providing international disaster relief or initial recovery assistance.²⁵
- b. In particular, they shall establish their aid priorities on the basis of need alone and they shall not:
 - (i) engage in any adverse distinctions (such as in regards to nationality, race, ethnicity, religious beliefs, class, gender, disability, age and political opinion);
 - (ii) seek to further a particular political or religious standpoint or interfere in internal matters irrelevant to the disaster response;
 - (iii) seek to obtain commercial gain from their assistance;
 - (iv) gather sensitive information of a political, economic or military nature that is irrelevant to international disaster relief or initial recovery assistance.
- c. In addition, non-state assisting international humanitarian organizations shall comply with the principle of independence. In particular, they shall not seek to act as instruments of the foreign policy of any government.
- d. With due consideration for the need to adequately coordinate and oversee their work, no official of [COUNTRY NAME] shall seek to prevent assisting international humanitarian actors from acting according to humanitarian principles.

²⁴ Commentary: Principles for humanitarian assistance are already central to major international instruments, such as the “Fundamental Principles of the Red Cross and Red Crescent Movement” (<http://www.redcross.int/en/>) and the United Nations General Assembly Resolution 46/182 (<http://www.un.org/documents/ga/res/46/a46r182.htm>). The principle of “neutrality”, which is central to the work of the Red Cross and Red Crescent, is not explicitly mentioned here, as it is not accepted by all humanitarian actors in this formulation. However, this text does provide that assisting actors must not “seek to further a particular political or religious standpoint or interfere in internal matters irrelevant to the disaster response.” The concept of independence for non-government actors as described here is widely accepted, and there is strong consensus that ‘humanity’ and ‘impartiality’ are essential, for example in the Sphere Humanitarian Charter (<http://www.sphereproject.org/>). Many specific standards also give concrete expression to these principles in the way humanitarian actors conduct themselves regarding the rights of the affected populations, the most widely-used of which are the Code of Conduct for the International Red Cross and Red Crescent Movement and NGOs in Disaster Relief (<file://localhost/http://www.ifrc.org/en/publications-and-reports/code-of-conduct>) and the Sphere Project Humanitarian Charter and Minimum Standards in Disaster Relief.

²⁵ Commentary. The concept of ‘impartiality’ does not mean that everyone must be assisted in exactly the same way or to the same extent, only that they should be offered assistance on the basis of need, without adverse discrimination based on their status (e.g. race, gender etc.). It reflects the wider principle of non-discrimination, which also means that adverse distinctions should not be made on the basis of a person’s status, while also permitting positive action to remedy existing social or economic disadvantage. In the context of disasters, while needs assessments and relief must consider the differential impact of disaster within the affected population, as some persons may be more vulnerable to the effects of disaster (for example, children, people with disabilities, the elderly, and in some cases women as a group), assisting international actors are required to provide relief according to the principles of humanity and impartiality, based only on the needs of the affected persons.

Article 19 Respect for Human Rights and Dignity²⁶

Assisting international actors shall respect the human rights and dignity of disaster-affected persons at all times. In particular, they shall do their best, whenever feasible, to consult with the beneficiaries of their assistance (including women, men, youth, children and the elderly) in the design, implementation, monitoring and evaluation of the disaster relief and initial recovery assistance they provide.

Article 20 Technical Quality Standards²⁷

- a. Assisting international actors shall ensure the quality and appropriateness of the goods, equipment, personnel and services they offer, in conformity with accepted international standards of humanitarian quality, as well as any specific legal or other regulatory requirements of [*COUNTRY NAME*].
- b. The [*RELEVANT DISASTER MANAGEMENT AUTHORITY*], in consultation with the Taskforce on International Disaster Assistance, may develop or adopt technical quality standards for international disaster relief and initial recovery assistance in [*COUNTRY NAME*], consistent with internationally accepted standards of humanitarian quality. In particular, these standards may address minimum quality in the provision of food and food security assistance, medications, shelter, water and sanitation, health services, clothing, fuel and lighting.²⁸

²⁶ Commentary: In many cases, existing national disaster management legislation requires the State and other national actors to comply with human rights standards, and to work with the affected communities, so these requirements for international actors would bring them under a similar level of obligation. Two recently adopted laws with such provisions are those in the Philippines and Indonesia. The Philippine Disaster Risk Reduction and Management Act of 2010 (<http://reliefweb.int/node/346013>) commits the State, in s.2(j) to "Ensure that disaster risk reduction and climate change measures are gender responsive, sensitive to indigenous knowledge systems, and respectful of human rights" The Law of the Republic of Indonesia No. 24 of 2007 Concerning Disaster Management in its specific regulation, the Government Regulation No. 23, 2008, on the participation of International Agencies and Foreign Non-Governmental Organizations (<http://preventionweb.net/go/10841> or in English at <http://www.ifrc.org/Docs/idrl/N722EN.pdf>, at page 140), provides for "The regulation of participation of international institutions and foreign non-governmental organizations' in disaster management in Indonesia in accordance with the prevailing international and national laws including the law of human rights and humanity."

²⁷ Commentary: A range of international technical quality mechanisms and standards have been developed, including: The Sphere Project's Humanitarian Charter and Minimum Standards in Disaster Response (2011 edition - <http://www.sphereproject.org/content/view/720/200/lang,english/>); *Qualité Compas* <http://www.compasqualite.org/en/index/index.php>; and The 2010 HAP Standard in Accountability and Quality Management (<http://www.hapinternational.org/>). In a situation where the standards set at the national level are lower than the international standards used by the assisting international actor, the latter should be followed to the extent possible. However, as noted in the Sphere Handbook (pp 8-9), the international standards may sometimes exceed the everyday living conditions for the affected (and surrounding) population prior to the disaster. In these cases, assisting actors may not have sufficient resources to meet minimum standards for all those affected, and may need to provide basic facilities for the entire affected population rather than the higher standard for only a proportion.

²⁸ Commentary: The choice of developing or adopting standards recognizes that states may not wish to develop new standards for humanitarian assistance, but may prefer to adopt existing standards developed by the international humanitarian community.

Article 21 Termination of Assistance by Assisting International Actor²⁹

When, for whatever reason, an assisting international actor decides to terminate its international disaster relief or initial recovery assistance, it shall consult with the [RELEVANT DISASTER MANAGEMENT AUTHORITY] and other assisting international actors to minimize any negative impacts on beneficiaries and to ensure a proper handover of responsibilities.

Chapter V Eligibility for the Granting of Legal Facilities

Article 22 Provision of Legal Facilities for Assisting International Actors³⁰

[COUNTRY NAME] shall make available to assisting international actors the legal facilities described in Chapter VI. These facilities are designed to facilitate the rapid entry of appropriate international disaster personnel, goods and equipment, while also reducing additional costs to the assisting international actors providing disaster relief and initial recovery assistance, and allowing them to operate legally within the territory. Such facilities shall be provided to assisting international actors deemed or approved as eligible in accordance with this Chapter.

Chapter V's regime for eligibility for special legal facilities is a core element of the Model Act. Even if implementation of the facilities in Ch. VI is accomplished through other legislation, ideally these provisions should be enacted in the same statute as Chapters I through IV and VIII, whether as a free-standing act or in the disaster management act.

²⁹ Commentary: While it is neither realistic nor desirable to compel assisting international actors to continue to provide relief or recovery assistance beyond the time when they have made an organisational decision to withdraw, it is clearly good practice for them to give the maximum notice possible in the circumstances.

³⁰ Commentary: The number and type of actors involved in humanitarian response and initial recovery assistance has both increased and diversified in recent years, including many smaller NGOs, private businesses and individuals who do not have a history of such involvement. With so many different actors involved, there is also a great deal of variation in the standards and quality of their operations. However, when large numbers of international actors offer assistance, or arrive in the country to provide it, it is essential for the affected state that the most useful and relevant assistance has priority. The concept of having some actors eligible to receive legal facilities therefore has a dual purpose. Firstly it is designed to speed up the process for entry of international assistance overall. Secondly, it is intended to reduce the risk for the affected state that the personnel or assistance entering through the expedited procedures will be untrained, unprofessional or inappropriate, by ensuring that these facilities are made available only to actors known to the affected state as having sufficient capacity, and which operate according to humanitarian principles. Eligibility for legal facilities is not a prerequisite to providing assistance within the affected state, but it is a prerequisite to accessing the legal facilities - or privileges - set out in Ch.VI. For these purposes, it is assumed in Art. 23 that assisting states and intergovernmental organisations would automatically meet any such criteria. It is also assumed that international humanitarian organizations that already operate legally in the affected state and/or have other agreements concerning their legal status in that state, would be deemed eligible. The remaining international humanitarian organizations or individuals would need to be approved as eligible in accordance with Art. 24, and the model proposed allows this to occur either in advance of any disaster, or after the commencement of a disaster. Clearly for larger international humanitarian organizations, with respect to a state in which they might expect to provide future assistance, prior application for eligibility would be preferable. They then need only present their certificates to obtain the legal facilities upon the onset of a disaster. However, this drafting also allows for applications for eligibility after the commencement of a disaster, as many humanitarian organizations may not have the resources to apply in advance, or they may be new assisting actors in the affected state due to the nature or scale of the disaster.

Article 23 Deemed Eligibility for Legal Facilities³¹

Upon the commencement of an international disaster relief and/or initial recovery period pursuant to Article 8, the following assisting international actors shall be automatically deemed eligible to receive the legal facilities described in Chapter VI of this Act:

- a. assisting states;
- b. relevant international or regional organizations and components of the International Red Cross and Red Crescent Movement; and
- c. other assisting international humanitarian organizations that have an existing authorisation to operate legally within [*COUNTRY NAME*].

Article 24 Application for Eligibility to Receive Legal Facilities³²

- a. All potential assisting international actors, other than those described in Article 23 may apply to the [RELEVANT DISASTER MANAGEMENT AUTHORITY] for approval of eligibility for the legal facilities described in Chapter VI of this Act.³³
- b. Such applications may be made in advance, in preparation for any future disaster, or after the commencement of an international disaster relief and/or initial recovery period pursuant to Article 8, and shall be made in accordance with the procedures issued by the [RELEVANT DISASTER MANAGEMENT AUTHORITY] after consultation with the Taskforce on International Disaster Assistance.

³¹ Commentary: This article recognizes that some organizations have a special legal status that would render an additional application process for eligibility superfluous and potentially in conflict with their existing rights. Article 23(a) and (b) extend this to organizations that have existing international legal personality (such as foreign states, international organizations as the United Nations, and regional organizations such as ASEAN), and the International Red Cross and Red Crescent Movement, some components of which have international legal personality (i.e., ICRC and IFRC) and others of which are governed by specific global standards concerning their international operations as agreed by states at the International Conference of the Red Cross and Red Crescent. Art. 23(c) also includes a third category, for assisting international humanitarian organizations with a pre-existing status agreement or registration in the affected country. It is presumed that these latter organizations have already had to go through an official vetting process in order to obtain the legal authorisation to operate in the country and it would therefore be duplicative and confusing to require them to do so again for the purposes of this act.

³² Commentary: Detailed criteria and processes for application for eligibility under Art. 24 will need to be developed by each state, and preferably made as regulations under the Act. In one sense, this is a very streamlined and minimalist form of organizational accreditation conducted by the affected state. For, while technical quality standards are now well-advanced within the international humanitarian community, there is no universal system of organizational accreditation or recognition that approaches universality, although there are piecemeal initiatives such as the Humanitarian Accountability Partnership (HAP) and the organisational elements of the Sphere Handbook and Qualité Compas. In the absence of a globally accepted system of international accreditation for humanitarian actors, this Model Act proposes that the affected state establishes objective and fair criteria for the approval of eligibility for legal facilities. It is again emphasised that this regime is not concerned with permission to enter and operate in the state, but rather with organizations' access to the legal facilities in Ch. VI. It is a risk management tool for the affected state, which speeds up the provision of quality assistance to affected communities without the risk of inappropriate assistance. For the international actors, clear criteria in legislation and/or regulations make the eligibility criteria transparent and subject to public scrutiny.

³³ Commentary: This may include individuals, private businesses, or any other 'assisting international actor' as defined in Article 3.

- c. To be approved as eligible for the legal facilities, potential assisting international actors shall provide documentation relating to their legal registration, previous experience and/or current capacity in providing effective international disaster relief or initial recovery assistance in relevant contexts, as required by the regulations and procedures established by the [RELEVANT DISASTER MANAGEMENT AUTHORITY].
- d. In principle, applications from actors with significant experience should be accepted unless the documentation provided or external information raises doubts as to their capacities, in which case, additional opinions and information may be gathered prior to making a determination.
- e. Private businesses' approval for eligibility shall be limited to assistance from which they make no profit or other commercial gain. Legal facilities under this Act shall not be provided to benefit commercial activity.³⁴
- f. Upon approval of an application, the [RELEVANT DISASTER MANAGEMENT AUTHORITY] shall issue a certificate indicating that the assisting international actor is eligible for legal facilities pursuant to Chapter VI, [which notice shall specify any limitations or conditions on the legal facilities which relate to the specific actor].³⁵

Article 25 Provision of Legal Facilities for Eligible Assisting International Actors³⁶

- a. The legal facilities described in Chapter VI shall be provided to assisting international actors deemed or approved as eligible pursuant to this Chapter by the [RELEVANT DISASTER MANAGEMENT AUTHORITY].
- b. Unless otherwise stated, the legal facilities will be available during both the international disaster relief and the initial recovery periods, and shall not be removed or varied retroactively.

Article 26 Termination of Legal Facilities for Failure to Comply

- a. If, on the basis of credible information, the [RELEVANT DISASTER MANAGEMENT AUTHORITY] suspects that any eligible assisting international actor has failed to materially comply with its responsibilities under this Act and in particular under Chapter IV it shall immediately consult with the actor and seek clarification or explanation of any extenuating circumstance. If still unsatisfied, it shall provide written notice of non-compliance along with a decision either (1) to require the actor to bring itself into compliance within a specified period of time with or without suspension of its enjoyment of the facilities set out in Chapter VI (with the exception of those listed in Part 5 of that Chapter concerning legal personality); or (2) to revoke its eligibility as of a set date no sooner than 30 days from the date of the notice.

³⁴ Commentary – This Model Act does not in any way prohibit or interfere with commercial activities. These provisions are simply intended to ensure that its special legal facilities, such as tax exemptions, are offered only for international assistance that is truly charitable and disaster-related in nature. That is, the exemptions provided for humanitarian assistance should not be used to commercial advantage.

³⁵ Commentary: The relevant disaster management authority or a body such as the Taskforce described in Article 12 will need to develop regulations and forms in preparedness for this process, in advance of any disaster.

³⁶ Commentary: The process for obtaining eligibility for legal facilities is independent from the process of acceptance of offers of assistance pursuant to Article 7.

- b. The assisting international actor may appeal a negative decision to *[OMBUDSMAN OR OTHER APPROPRIATE AGENCY]*.
- c. In the event of a negative outcome, the assisting international actor shall consult with the *[RELEVANT DISASTER MANAGEMENT AUTHORITY]* and other assisting international actors to minimize any negative impacts on beneficiaries and to ensure a proper handover of responsibilities.
- d. Nothing in this Article precludes assisting international actors, or their international or national disaster personnel, from prosecution for offences under the laws of *[COUNTRY NAME]*, subject to the provisions of Article 4.

Chapter VI Legal Facilities for Eligible Assisting International Actors

Part 1 International Disaster Personnel

Article 27 International Disaster Personnel Visa³⁷

- a. The international disaster personnel of eligible assisting international actors shall be entitled to a Disaster Personnel Visa, unless national security or public health and safety concerns related to the particular individual preclude it. Disaster Personnel Visas shall be issued without a fee for an initial period of three months, renewable for periods of up to six months from within *[COUNTRY NAME]*, and as often as necessary throughout the international disaster relief and initial recovery periods.
- b. During the international disaster relief period, Disaster Personnel Visas shall be issued upon arrival at the point of entry in *[COUNTRY NAME]* to the international personnel of eligible assisting international actors.
- c. After the termination of the international disaster relief period but during the international initial recovery assistance period, Disaster Personnel Visas may be issued *[on arrival, or by prior application to the appropriate [COUNTRY NAME] embassy, which shall adjudicate them within [specified time]]*.
- d. Holders of the Disaster Personnel Visa shall be allowed to undertake disaster relief and initial recovery work for their sponsoring entities without the requirement to seek a separate residence or work permit.

Art. 27 could alternatively be placed in the immigration act.

[or Alternative Article 27- **International Disaster Personnel Visa Waiver**

The international disaster personnel of eligible assisting international actors shall be entitled to waiver of entry visa requirements, including any associated fees or charges. Personnel who enter *[COUNTRY NAME]* under this disaster personnel visa waiver, shall be allowed to undertake disaster relief and initial recovery work for their sponsoring entities without the requirement to seek a separate residence or work permit. As long as they continue as personnel of their sponsoring entities, they shall be entitled to remain in or re-enter the territory as often as necessary throughout the international disaster relief and

³⁷ Commentary: Some staff may be entitled to enter on other visas, but this Model Act encourages states to either use a disaster personnel visa (rather than tourist visas) or a disaster personnel visa waiver. This distinguishes between those entering the disaster-affected state as experienced humanitarian actors, and others who may wish to engage in ‘disaster tourism’ at a time when the state cannot afford to accommodate their needs, or well-meaning but unattached/untrained foreign volunteers.

initial recovery periods. After that time, they may apply for a relevant visa from within the country.]³⁸

Article 28 Recognition of Foreign Professional Qualifications³⁹

- a. Within [specified time] of the entry into force of this Act, the [*RELEVANT GOVERNMENT MINISTRIES*] shall establish lists of countries and/or educational institutions whose health professionals, architectural, engineering and other relevant professionals may be given automatic recognition of their foreign qualifications when deployed by an eligible assisting international actor during an international disaster relief or initial recovery period. The lists shall be reviewed at least once per year.
- b. The [*RELEVANT GOVERNMENT MINISTRIES*] shall also establish expedited procedures to be applied for the assessment and recognition of the foreign qualifications of the international disaster personnel of eligible assisting international actors originating from countries or institutions not included on the above-mentioned lists. These procedures shall balance safeguards for public safety and health against the urgency of disaster needs.
- c. Recognition of qualifications under this Article shall exempt international disaster personnel of eligible assisting international actors from any obligations for compulsory membership of professional associations or other professional registration processes within [*COUNTRY NAME*] until the end of the initial recovery period.
- d. Recognition of qualifications under this Article shall remain valid until the end of the initial recovery period, absent individual criminal conduct, or other professional misconduct sufficient to bar the individual from professional practice in [*COUNTRY NAME*].

Article 28 could alternatively be placed in the disaster management act, or – less ideally – in the relevant regulatory acts concerning recognition of professional qualifications.

Article 29 Recognition of Foreign Driving Licenses

The [*MINISTRY OF TRANSPORT*] shall accord temporary recognition of the foreign driving licenses of the international disaster personnel of eligible assisting international actors, at a minimum during the disaster response and initial recovery periods.⁴⁰

Article 29 could alternatively be placed in the transport act.

³⁸ Commentary: Some states may simply prefer to waive visa requirements during the disaster and initial response period, especially if this is limited to the international personnel of actors that have otherwise been formally permitted these legal facilities. The main concerns about visa waiver are usually that there is no way of subsequently identifying those in the territory without visas, but in such a case this could be done through the eligible international actors.

³⁹ Commentary: [Further consideration will be given to the question of professional and other insurance for international disaster personnel. It can be very difficult to obtain local insurance, but it may be appropriate to require international assisting actors to insure their personnel. This is also relevant to the question of limited or partial liability addressed in Article 65].

⁴⁰ Commentary: This is not necessary if the legislating state already recognizes international driving licences pursuant to the Convention on Road Traffic, Vienna, 1968, (which had 70 state parties as at July 2011).

Article 30 Freedom of Access⁴¹

The personnel of assisting international actors eligible to receive legal facilities under this Act shall be provided freedom of access to disaster affected areas and persons requiring disaster relief and initial recovery assistance, subject only to limitations based on pressing national security, public order or public health grounds, weighed in the context of the urgency of the disaster needs. Eligible assisting international actors shall also be permitted to disseminate their disaster relief and/or initial recovery items directly to affected persons, should they so desire.

Article 30 could alternatively be placed in the disaster management act along with core provisions from Chapters I - IV.

Article 31 Engagement and Termination of Local Disaster Personnel⁴²

- a. Subject to Article 4 of this Act, and except as provided in this Article, all assisting international actors shall comply with the applicable law in [COUNTRY NAME] with regard to the employment of local disaster personnel.
- b. Eligible assisting international actors who have obtained Temporary Recognition of Legal Personality (TRLP) pursuant to Chapter VI Part 5 shall not be required to make any separate registration as employers. TRLP shall be also be accepted for purposes of taxation, social security, and social insurance registration requirements relating to the employment of local disaster personnel.
- c. Notwithstanding any provisions of labour and employment laws to the contrary, eligible assisting international actors may:
 - (i) recruit any individual legally entitled to perform the work envisaged in [COUNTRY NAME] through a non-discriminatory process;
 - (ii) engage local disaster personnel pursuant to fixed-term contracts, which may be of short duration, and may be renewed as required without creating an open-ended obligation.

Articles 31 & 32 could alternatively be placed in the disaster management act or the labour relations act.

Article 32 Jurisdiction concerning International Disaster Personnel

Notwithstanding any provisions of labour and employment laws to the contrary, the courts, administrative tribunals and officials of [COUNTRY NAME] shall not seek to exercise jurisdiction concerning contracts between assisting international actors eligible for legal facilities under this Act and international disaster personnel engaged by them, where such contracts establish the exclusive jurisdiction of a foreign or international court, tribunal or other mechanism over employment-related disputes.

Part 2 Entry of Goods and Equipment

Article 33 Duty of Facilitation and Compliance

- a. As further described in this part, the [CUSTOMS DEPARTMENT] shall facilitate the importation, or transit of consignments of goods and equipment by assisting international actors eligible for legal facilities under this part, and shall carry this out as a matter of priority.

Parts 2, 3 and 4 of Ch. VI could equally be placed in the customs act (Articles 33-52).

⁴¹ Commentary: The question of access is closely linked with that of security, a general obligation undertaken by the affected state in enacting this law (Article 15). However, a right to access is included in the legal facilities, as the affected state is not under an obligation to grant international actors in general freedom of access to all parts of its territory regardless of safety, security etc. These provisions aim to achieve the objective that, where it is an issue, priority access to affected communities is granted to the international assisting actors known to have the capacity to provide appropriate assistance.

⁴² Commentary: [All international assisting actors should employ local personnel to the greatest extent practical and feasible in the circumstances etc.]

- b. If Single Window International Facilitation Teams (SWIFTs) are established in accordance with Article 11, the [*CUSTOMS DEPARTMENT*] shall conduct the following procedures consistently with its participation in the SWIFTS.
- c. In order to benefit from these facilities, assisting international actors shall
 - (i) declare that all the goods and equipment they seek to import under this part are exclusively for disaster relief and/or initial recovery assistance; and
 - (ii) pack, classify and mark their consignments in accordance with the simplified requirements described in this part and as directed by the [*CUSTOMS DEPARTMENT*], in addition to their responsibilities as set out in Chapter IV.

Article 34 Priority Treatment

During the international disaster relief and initial recovery periods, the [*CUSTOMS DEPARTMENT*] shall accord priority treatment to all procedures related to consignments of goods and equipment by or on behalf of eligible assisting international actors.

Article 35 Exemption from Import and Export Duties, Taxes and Restrictions

During the international disaster relief and initial recovery periods, consignments of goods and equipment by or on behalf of eligible assisting international actors shall benefit from:

- a. exemption from all duties and taxes;⁴³
- b. waiver of economic prohibitions and restrictions;
- c. clearance without regard to the country of origin or the country from which the goods have arrived, subject to monitoring for reasons of public health and security.⁴⁴

⁴³ Commentary: In this Article the ‘duties and taxes’ include import duties and taxes, and/or export duties and taxes, as well as VAT (value added taxes), service taxes, sales taxes, turnover taxes and similar taxes, duties, levies and governmental fees. The exemption (or relief) from duties and taxes means that, during the international disaster response and/or initial recovery period, the customs authority will clear goods and equipment for use within the territory, or for exportation, free of import or export duties or taxes, irrespective of their normal liability, as long as they are for the purpose of disaster relief or initial recovery and are imported/exported by an eligible assisting international actor. Although the most relevant aspect for assisting international actors is the import process, the export exemptions can also be important for removing goods or equipment no longer required, or when winding down operations during the notice period for the end of the international disaster relief and/or initial recovery period.

⁴⁴ Commentary: ‘Customs clearance’ means the completion of all customs formalities, including any payment of taxes or duties necessary to allow goods to enter for use, to be exported, or to be placed under another customs procedure (in this case, ‘another customs procedure’ could mean customs transit, customs warehouse, temporary admission, etc.). This is part of customs control measures to ensure compliance with customs law. However, it is not uncommon for the customs authority to ‘release’ the goods beforehand, which means the customs authority permits goods and equipment undergoing clearance to be placed at the disposal of the persons concerned with their importation. The release of the goods is only one specific action in the clearance process, which includes a number of steps. At the time of the release, which is when the customs authority authorizes the persons to take possession of the goods, the clearance process may still not be completed if, for example, the duties and taxes are not yet paid yet. In that case the release of the goods would, in normal circumstances, be subject to sufficient customs security. The proposal in this Model Act is that, for eligible assisting international actors during the relief and initial recovery periods, customs

Article 36 Simplification of Documentation Requirements

During the international disaster relief and initial recovery periods, the [*CUSTOMS DEPARTMENT*] shall:

- a. clear or release consignments of goods and equipment sent by or on behalf of eligible assisting international actors against a simplified goods declaration, or against a provisional or incomplete goods declaration, or a commercial/transport document providing the minimum information necessary for the [*CUSTOMS DEPARTMENT*] to identify the goods and equipment and subject, when deemed necessary, to completion of the declaration within a specified period;⁴⁵
- b. allow a single goods declaration for all exports, custom transits or imports of goods or equipment by or on behalf of eligible assisting international actors;
- c. allow the goods declaration and any supporting documents relating to consignments of goods or equipment by or on behalf of eligible assisting international actors to be lodged electronically;
- d. provide for the lodging and registering or checking of the goods declaration and supporting documents prior to the arrival of consignments of goods or equipment sent by or on behalf of eligible assisting international actors, to facilitate their release upon arrival;
- e. waive any requirement of translation of details in documents relating to consignments of goods or equipment sent by or on behalf of eligible assisting international actors unless it is absolutely necessary for the purposes of release or clearance.

Article 37 Extending Customs Business Hours and Locations

During the international disaster relief period only, the [*CUSTOMS DEPARTMENT*] shall:

- a. upon request, and without additional charges, carry out the functions necessary for the release/clearance of consignments goods and equipment by or on behalf of eligible assisting international actors outside their designated hours of business and/or away from customs offices;

release/clearance could be expedited - in part because they would have no financial liabilities payable to the customs authority for the importation of the goods or equipment.

⁴⁵ Commentary: In this Article, an important part of the simplification of documentation requirements is the simplified 'goods declaration', which allows for more rapid customs clearance or release of the goods or equipment. The goods declaration is a statement made - in the manner prescribed by the customs authority - by which the persons concerned indicate the nature and purpose of the goods and equipment, furnish particulars of the responsible person, and provide other details as required. The declaration can generally be made by the owner of the goods or by a third party, including a customs broker, agent or transporter (the declarant). In normal circumstances, after lodgement of the goods declaration, the customs authority checks it to ensure its accuracy and completeness as required by customs law. Customs declarations are usually very detailed (and may require translation of documents) --, many customs laws require separate documentation for each consignment by the same entity even if they arrive at the same time -- and the checking process can also be very time-consuming. Therefore the Article 36 proposal for a simplified goods declaration, provisions for lodgement and checking of the declaration in advance, waiver of any translation requirements, and provision for a single declaration for all the consignments of the eligible assisting international actor arriving at the same time, can make the clearance and/or release process a great deal faster.

- b. coordinate with the business hours and competencies of any other relevant [DEPARTMENT/MINISTRIES] involved in the approval of incoming consignments and, whenever possible, carry out joint operations, including joint customs controls.

Article 38 Inspections and Customs Security⁴⁶

During the international disaster relief and initial recovery periods, the [CUSTOMS DEPARTMENT] shall:

- a. on the basis of risk analysis, take only such action as it deems essential to ensure compliance with customs law for the purpose of checking the goods declaration;
- b. use risk analysis, preferably on the basis of advance information, to determine which personnel and which consignments of goods and equipment imported on or behalf of assisting international actors shall be examined and the extent of that examination. Examinations and/or sampling shall be carried out only in exceptional circumstances.
- c. waive, as possible, any customs security that would normally be required in respect of consignments of goods and equipment imported on or behalf of assisting international actors. If, in an exceptional case, customs security is deemed necessary, it shall accept as security an undertaking from the relevant assisting international actor, and where appropriate, a general customs security.

Article 39 Facilities for Temporary Admission and Re-Exportation⁴⁷

⁴⁶ Commentary: ‘Normally, customs clearance requires inspection of the goods and then, if they are released before all the fees and taxation formalities are complete, payment of a ‘customs security’. This means a deposit of cash or negotiable securities in the form of a bond, or other guarantee, to ensure to the satisfaction of the customs authority that a financial obligation to it will be fulfilled. Customs security can be paid per consignment, or it may be paid as ‘general’ security that covers the obligations arising from several customs processing operations (consignments), rather than requiring a separate security for each operation. Normally, the customs authority accepts a general security instead of a separate security in each instance from declarants who declare goods regularly at different offices in the customs territory, and under Article 38 this would be the practice for all eligible assisting international actors. The Article 38 procedures should reduce the need for physical inspection of the goods and equipment imported by eligible assisting international actors, and almost eliminate the need for customs security at all – given the exemptions from import duties and taxes. But if the customs authority requires security, then a guarantee of the eligible assisting actor would normally be sufficient and, in the event that a monetary guarantee is still required, this could be done by way of a general security rather than per consignment.

⁴⁷ Commentary: ‘Temporary admission’ means the customs procedure under which certain goods and equipment can be brought into the customs territory of the affected state conditionally, with total or partial relief from payment of import duties and taxes. For present purposes, such goods must be imported for the purpose of disaster relief or initial recovery assistance in the affected state, and must be intended for re-export within a specified period, and without having undergone any change except normal depreciation due to the use made of them. It is therefore primarily applicable to equipment rather than consumable goods, and particularly the type of equipment that an eligible assisting international actor might need for use during the disaster response and/or initial recovery, but would then wish to take out of the affected state for use elsewhere, for example, electricity generators, large-scale water purifying equipment, mobile medical facilities, telecommunications and information technology equipment (although certain specialist equipment is considered separately in Part 3) and vehicles (also considered in more detail under Part 4).

The concept of ‘temporary admission’ is different from both normal ‘re-export’ with tax exemption (considered in Article 35) and ‘customs transit’, which means the procedure under

- a. The [*CUSTOMS DEPARTMENT*] shall facilitate the temporary admission of relevant equipment of eligible assisting international actors, including vehicles, and accept appropriate documents and guarantees in lieu of national customs documents and security.
- b. Means of transport conveying consignments of goods and equipment imported on or behalf of assisting international actors, together with their associated equipment and spare parts, shall be temporarily admitted by the [*CUSTOMS DEPARTMENT*] as a matter of priority and shall not be subject to any restrictions or taxes when re-exported.
- c. In addition to equipment granted temporary admission upon entry, the [*CUSTOMS DEPARTMENT*] shall allow any goods or other equipment imported on or behalf of assisting international actors but found to be surplus to requirements to be re-exported under simplified arrangements and without additional duties, taxes or charges if they are no longer required in connection with the disaster.

Article 40 Representation to Customs

Eligible assisting international humanitarian actors shall have the choice of dealing with the [*CUSTOMS DEPARTMENT*] with respect to their consignments either directly or by designating a third party to act on their behalf.

Article 41 Cooperation with other Customs Administrations

- a. In preparation for potential disaster, the [*CUSTOMS DEPARTMENT*] shall seek to co-operate with other customs administrations and seek to conclude mutual administrative assistance agreements to exchange information in order to facilitate the release or clearance of relief consignments.
- b. When the release or clearance of consignments of goods and equipment imported by or on behalf of assisting international actors at subsequent stages will be facilitated thereby, the [*CUSTOMS DEPARTMENT*] shall take relevant steps to facilitate re-exportation and transit, such as recording the details of any customs control on the relevant documents and placing the goods under customs seal.

Article 42 Pre-Positioning of Stock

- a. In preparation for potential disaster and after agreement with the [*RELEVANT DISASTER MANAGEMENT AUTHORITY*], an eligible assisting international actor may, at its own expense, pre-position stocks in [*COUNTRY NAME*] of items likely to be needed in a future disaster.
- b. Information about the nature, quantities and location of pre-positioned stocks shall be shared with the [*RELEVANT DISASTER MANAGEMENT AUTHORITY*].
- c. Pre-positioned stocks imported in compliance with this article shall benefit from the facilities described in Article 35 notwithstanding the absence of an international disaster relief or initial recovery period.

which goods are transported under customs control through the territory without being used in that country (considered in Chapter VII concerning transit of international disaster assistance to another state).

Article 43 Customs Information

The (*CUSTOMS DEPARTMENT*) shall make readily available general information relating to the customs treatment of consignments by eligible assisting actors and provide, as quickly and as accurately as possible, any further specific information required. It shall maintain consultative relations with the assisting international actors to ensure effective cooperation and working methods in the event of a disaster.

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

Article 44 Telecommunications Equipment⁴⁸

- a. The [*RELEVANT AUTHORITY*] shall waive any restrictions on the importation of telecommunications equipment by eligible assisting international actors providing it is to be used by them for disaster relief and/or initial recovery.
- b. Upon notification of the names, frequencies [as applicable] and locations of intended use of such equipment by eligible assisting actors, the [*MINISTRY OF TELECOMMUNICATIONS*] shall waive any licensing requirements or fees for their use.
- c. Without discrimination against domestic relief actors, the [*MINISTRY OF TELECOMMUNICATIONS*] shall also grant eligible assisting actors priority access to bandwidth, frequencies and satellite use for telecommunications and data transfer associated with international disaster relief, without thereby, discriminating against domestic disaster responders.

Article 45 Medications⁴⁹

- a. Within [*specify period*] of the entry into force of this Act, the [*MINISTRY OF HEALTH*] shall develop special procedures for the approval of the importation of medications and medical equipment by eligible assisting international actors in the event of a disaster. In developing those procedures, consideration shall be given to whether and under what conditions normal legal restrictions or requirements may be modified in order to expedite delivery without compromising public health.

Parts 2, 3 and 4 of Ch. VI could equally be placed in the customs act (Articles 33-52).

⁴⁸ Commentary: For state parties to the Tampere Convention, the Act (or an accompanying schedule) could refer to that treaty. For states not yet party to the Tampere Convention, its principles may nevertheless provide a useful reference. The Convention's primary objective is to ensure that states "cooperate among themselves and with non-State entities and intergovernmental organizations... to facilitate the use of telecommunication resources for disaster mitigation and relief" (Art. 3). It establishes the United Nations Emergency Relief Coordinator as the operational coordinator for telecommunications disaster assistance, and the International Telecommunications Union (ITU) as a key agency. Among other things, it allows states or other entities providing telecommunications assistance to an affected state to do so subject to the payment or reimbursement of certain costs or fees (Art. 7). And, in particular, it encourages states to remove regulatory barriers to the provision of telecommunications disaster assistance, including restrictions on the type and quantity of equipment that can be imported, exported or transited through the state, as well as the personnel required to operate it (Art. 9). See: Tampere Convention on the Provision of Telecommunication Resources for Disaster Mitigation and Relief Operations, Tampere, 18 June 1998 (entry into force 8 January 2005; 44 state parties as at July 2011). Full text in English at: <http://www.ifrc.org/Docs/idrl/I271EN.pdf>. Treaty parties' information and certified copies in UN languages at UN Treaty Collection, Ch.XXV, No.4, <http://treaties.un.org/>.

⁴⁹ Commentary: [international standards etc.]

- b. All medications and medical equipment shall be appropriate to the needs of the disaster-affected persons, and shall be certified for use in the country of origin by [its RELEVANT AUTHORITY] and in [COUNTRY NAME]. Pursuant to subsections (c) and (d) below, a distinction shall otherwise be made between medications intended to be donated for the use of others and those that assisting international actors intend to use directly in providing medical services.
- c. Medications that assisting international actors intend to use directly in providing medical services in relief or initial recovery operations, shall be:
 - (i) transported and maintained in appropriate conditions at all times to ensure their quality and;
 - (ii) guarded against misappropriation and abuse
- d. Medications intended for donation for the use of others shall be:
 - (i) at least 12 months from their expiry date upon arrival, unless otherwise specifically agreed by the [MINISTRY OF HEALTH];
 - (ii) transported and maintained in appropriate conditions to ensure their quality until they reach their intended domestic recipients;
 - (iii) and appropriately labelled in a language understood in the affected State with the International Non-proprietary Name or generic name, batch number, dosage form, strength, name of manufacturer, quantity in the container, storage conditions and expiry date.

Article 46 Food⁵⁰

Within [specified time] of the entry into force of this Act the [MINISTRY OF AGRICULTURE] shall develop procedures for the expedited approval of food imported by eligible assisting international actors in the event of a disaster. In developing those procedures, consideration shall be given to whether and under what conditions normal legal restrictions or requirements may be modified in order to expedite delivery without compromising public health.

Part 4 Transport

Article 47 Facilitation of Transport⁵¹

All pertinent authorities of [COUNTRY NAME] shall facilitate the entry into, exit from and transit through its territories of the ground, air and water transport carrying personnel, goods or equipment of eligible assisting international actors.

Article 48 Imported Vehicles

The [MINISTRY OF TRANSPORTATION] shall grant temporary recognition to foreign registration and plates with regard to vehicles imported by eligible assisting international actors, pending the grant of local registration and plates.

Article 49 Ground Vehicles

Ground vehicles operated by or on behalf of eligible assisting international actors, including spare parts and fuel supplies necessary for the operation of the vehicle, shall

Parts 2, 3 and 4 of Ch. VI could equally be placed in the customs act (Articles 33-52).

⁵⁰ Commentary: [preference for local purchasing, appropriateness etc.]
⁵¹ Commentary: [armoured vehicles, length of time foreign licence plates should be recognized, limits on number of vehicles, whether vehicles need to be accompanied by importing entity or specific driver etc.]

be subject to the general exemptions from import and export taxes and restrictions set out in Article 39, and in particular shall be exempt from:

- a. all otherwise applicable taxes, levies, duties, tolls, fees and other charges; and
- b. restrictions, other than those necessary to guarantee public safety.

Article 50 Air Transport⁵²

- a. To the degree possible, aircraft entering the airspace of [COUNTRY NAME] which are operated on or behalf of eligible assisting international actors shall be accorded priority in air traffic routing and landing permissions. In addition, they shall be exempt from:
 - (i) all applicable taxes, levies, duties, fees, tolls and other charges imposed by the government of [COUNTRY NAME], including, without limitation, in respect of all landing, parking, taking off and navigation services;
 - (ii) prohibitions, limitations and restrictions in respect of the entry, overflight or exit of its airspace, including with respect to access to the disaster affected area, as necessary to provide effective assistance.
- b. To facilitate the provision of these facilities, eligible assisting international actors or their carriers shall inform the [RELEVANT AUTHORITY] in advance of the intended route of flights, type and call signs of the aircraft, number of crew members, the character of the cargo, time-table of flights, and the list of all passengers, and shall comply with any directions from the [RELEVANT AUTHORITY] as to air traffic control and landing procedures.

Article 51 Water Transport

- a. Water transport vessels entering the territorial waters and/or ports of [COUNTRY NAME] which are operated by or on behalf of eligible assisting international actors shall be exempt from:
 - (i) all applicable taxes, levies, duties, fees, imposed by the government of [COUNTRY NAME], including, without limitation, demurrage and docking fees;
 - (ii) all prohibitions, limitations and restrictions in respect of their arrival, stay and departure to the territorial waters and/or ports of [COUNTRY NAME].
- b. To facilitate the provision of these facilities, eligible assisting international actors or their carriers shall inform the [RELEVANT AUTHORITY] in advance, of the intended port or location of arrival of each vessel, the type, make and registration number of each vessel, the number of personnel operating and on board each vessel and the equipment, facilities and other materials on board each vessel, and shall comply with any directions from the [RELEVANT AUTHORITY] as to the control of incoming vessels and/or docking procedures.

Article 52 Entry of Transport Operators

Article 52 could alternatively be placed in the immigration act.

⁵² Commentary: The Convention on International Civil Aviation, Chicago, 1944 (the Chicago Convention) and its Annexes are applicable in the territory of almost all states (the Convention has 190 state parties, it is available at http://www.icao.int/eshop/annexes_list.htm). In particular, the recently updated Annex 9 specifies Standards and Recommended Practices (SARPs) to facilitate clearance operations in compliance with states' laws while enabling higher turnover.

The (*MINISTRY OF FOREIGN AFFAIRS/MINISTRY OF TRANSPORT/AIRPORT AND PORT AUTHORITIES*) shall endeavour to reduce and expedite any procedures for the entry of drivers, pilots and crew of transport vehicles operating on or behalf of eligible assisting international actors.

Part 5 Temporary Recognition of Legal Personality⁵³

Article 53 Temporary Recognition of Foreign or International Legal Personality

- a. An eligible assisting international actor, other than a foreign state, that is recognized as a legal person in a foreign country or under international law, but which is not already recognized as such in [*COUNTRY NAME*], may apply for temporary recognition of that legal personality in accordance with this article.
- b. Any foreign National Red Cross or Red Crescent Society seeking to register a TRLP pursuant to this part must demonstrate that it has the approval of the [*COUNTRY NAME*] National [*Red Cross/Red Crescent*] Society to do so.⁵⁴

Part 5 may alternatively be placed in either the disaster management act or the company/business registration law

Article 54 Applications for Temporary Recognition of Legal Personality (TRLP)

- a. Within [*specified time*] of the entry into force of this Act, the [*RELEVANT AUTHORITY*] shall develop a procedure for applications for Temporary Recognition of Legal Personality (TRLP) by eligible assisting international actors. Pursuant to that procedure, eligible assisting international actors shall submit, at a minimum:
 - (i) the name and address for their local offices;
 - (ii) the name and full contact details for the authorized representative of the organization in the country;

⁵³ Commentary: This facility is not intended to apply to assisting states or their organs or agents, as it is assumed that they do not require such recognition if they have diplomatic relations with the affected states, or bilateral or multilateral agreements or other diplomatic channels for recognition. This facility is for international humanitarian organizations and foreign private businesses that do not otherwise have a special status agreement with the affected state. This process does not establish an entirely new legal entity under the law of the affected state, but recognizes provisionally an existing and documented legal or juridical personality created under the law of another state, or created under international law by treaty or custom. It is not intended to replace the national law procedure for recognition or registration of legal or juridical persons in the affected state, but it could potentially be the first step in national recognition or registration for international assisting actors. This temporary recognition of an existing legal personality means that all the legal obligations and liabilities taken on by the international assisting humanitarian organization, or private business, in the affected state are in fact taken on by the foreign or international legal person of that organization or business. It does not make any provision for the establishment of completely new legal persons under the law of the affected state, as this would be too time-consuming and in most cases unrealistic, in the context of disaster relief and initial recovery periods.

⁵⁴ Commentary: This provision serves to uphold well-established rules of the International Red Cross and Red Crescent Movement, as accepted by states at the International Conference of the Red Cross and Red Crescent, concerning the role of the National Society in an affected state vis-à-vis sister National Societies lending support there. Pursuant to the Fundamental Principle of “unity”, there can be only one recognized National Society per country. Where National Societies provide humanitarian assistance in another country, they must do so with the approval of the National Society of that country, as set out in the Principles and Rules of Red Cross and Red Crescent Disaster Relief, as adopted by the International Conference.

- (iii) full details of its foreign legal registration and supporting evidence for the same; and
 - (iv) its certificate of eligibility received pursuant to Chapter V of this Act.
- b. The *[RELEVANT AUTHORITY]* shall respond to any application by either issuing a registration certificate or giving notice that it will not issue a registration certificate.
 - c. For applications made during the international disaster relief period, the *[RELEVANT AUTHORITY]* shall respond no later than *[specified time]* after receipt of all required documents.
 - d. For applications made after the termination of an international disaster relief period but during an international initial recovery period, the *[RELEVANT AUTHORITY]* shall respond no later than *[specified time]* after receipt of all required documents.
 - e. Eligible assisting international actors may apply prospectively to obtain permission for Temporary Recognition of Legal Personality (TRLP) in preparation for a potential disaster. In the event that a certificate is granted in these circumstances, the TRLP will enter into legal effect only upon the commencement of a future international disaster relief or initial recovery period and this shall be stated upon the face of the certificate.

Article 55 Evidence of the Registration of TRLP

The Temporary Recognition of Legal Personality shall be evidenced by way of a registration certificate issued by the *[RELEVANT AUTHORITY]*. The certificate shall clearly state that the validity of the TRLP is limited to the international disaster relief and initial recovery periods *[or that the validity of the TRLP is limited to a *[specified period of time]*]*. This certificate shall be accepted as proof of the legal capacity and personality of the international assisting actor in *[COUNTRY NAME]* during that time.⁵⁵

Article 56 Capacity provided through TRLP

The capacity of an assisting international actor with TRLP in *[COUNTRY NAME]* includes such legal capacity as may be relevant for the exercise of its functions and the fulfilment of its purposes and, in particular in accordance with the laws of *[COUNTRY NAME]*, the capacity to:

- a. open bank accounts;
- b. enter into contracts and leases;
- c. acquire and dispose of immovable and movable property;
- d. receive and disburse private and public funds;
- e. instigate legal proceedings;

⁵⁵ Commentary: This Model Act proposes that the TRLP is linked to the international disaster relief and initial recovery periods as described in Article 8. Alternatively, the affected state may simply choose to grant the TRLP for a specific period of time, either from the date of its international request for assistance, using the same period for all actors, such as 3 or 6 months from the start of the disaster period, or as specified for each actor in its certificate. The latter could be administratively very onerous, but it would have the benefit that each actor would know exactly how long they were legally able to enter obligations in the country, such as property leases and employment contracts.

- f. hire and terminate the contracts of local disaster personnel as set out in Article 31 of this Act.

Article 57 Termination of TRLP

- a. TRLP shall be terminated:
 - (i) upon the termination of the initial recovery period pursuant to Article 10;
 - (ii) upon the termination of the eligibility of an assisting international actor pursuant to Article 26; or
 - (iii) upon the request of the eligible assisting international actor concerned.
- b. Upon termination, any outstanding legal obligations of the TRLP (such as ongoing contractual obligations and debts) and all of its assets shall be deemed to be assumed by the eligible assisting international actor concerned.

Part 6 Taxation

Article 58 Value-Added Tax [and other similar taxes]⁵⁶

- a. The supply of international disaster relief and initial recovery assistance by an eligible assisting international actor shall be exempt from all value added taxes, service taxes and similar taxes, duties, levies and governmental fees where such supply takes place during the international disaster relief or initial recovery periods, or in preparation for a potential disaster by pre-positioning of stock pursuant to Article 42. They shall also be exempt from registration for VAT during the same period.
- b. In providing this facility [*THE RELEVANT TAXATION AUTHORITY*] shall ensure that local suppliers suffer no negative financial or administrative impact in providing goods or services to eligible international assisting actors.
- c. The rate of VAT in respect of the supply of supplies or services of a value exceeding [___] to an eligible assisting international actor in connection with its international disaster relief or initial recovery assistance shall be zero where such supply takes place during an international disaster relief or initial recovery period. Accordingly, a supplier of such supplies shall not be required to account for, and shall not charge the relevant eligible assisting international actor any VAT in respect of such supplies.⁵⁷

[Alternative options for part c:

VAT – exemption approach

The supply of supplies or services of a value exceeding ___ to an eligible assisting international actor in connection with its international disaster relief or initial recovery assistance shall be exempt from VAT where such supply takes place during an international disaster relief or initial recovery period and, accordingly, a supplier of such supplies shall not be required to account for, and

Part 6 may alternatively be placed in the taxation law.

⁵⁶ Commentary: “VAT” means value added taxes, service taxes, sales taxes, turnover taxes and similar taxes, duties, levies and governmental fees.

⁵⁷ Commentary: this is usually described as the ‘zero rating’ approach to VAT exemption. It is the mechanism that places the least administrative burden or financial penalty on local suppliers, and is therefore recommended. However, the other two options, the ‘exemption’ approach and the ‘no supply’ approach are both valid and may be more compatible with existing regimes in some implementing states.

shall not charge the relevant eligible assisting international actor any VAT in respect of such supplies.

VAT – deemed no supply approach

The supply of supplies or services of a value exceeding ___ to an eligible assisting international actor in connection with its international disaster relief or initial recovery assistance shall be disregarded for the purposes of VAT where such supply takes place during an international disaster relief or initial recovery period and, accordingly, a supplier of such supplies shall not be required to account for, and shall not charge the relevant eligible assisting international actor any VAT in respect of such supplies.]

Article 59 Income Tax [and Other Similar Taxes]⁵⁸

- a. The activities of an eligible assisting international actor carried on for the purpose of providing international disaster relief or initial recovery assistance during an international disaster relief or initial recovery period shall be disregarded for tax purposes and, accordingly, any actual or deemed profit, income or gain arising from such activities shall not be subject to any taxes, duties, levies or governmental fees having similar effect, or any associated reporting requirements.
- b. The activities of the international disaster personnel of eligible assisting international actor carried on in connection with the provision of international disaster relief or initial recovery assistance during an international disaster relief or initial recovery period shall be disregarded for tax purposes and, accordingly, taxes, duties, levies or governmental fees having similar effect shall not be payable in respect of such activities. In particular, but without limiting the foregoing:
 - (i) neither the international disaster personnel nor the eligible assisting international actor shall be subject to or required to account for, or be subject to, reporting requirements in respect of any taxes, duties, levies, social security contributions or governmental fees or employment levies having similar effect; and
 - (ii) international disaster personnel of an eligible assisting international actor shall not be treated as resident in [COUNTRY NAME] or as having any other connection with [COUNTRY NAME] relevant for taxation purposes by reason of their presence in [COUNTRY NAME] or activities undertaken there during an international disaster relief or initial recovery period.

Article 60 Property, Assets [and other similar] Taxes

During the international disaster relief or initial recovery periods, no taxes, duties, levies or governmental fees having similar effect shall be payable by eligible assisting international actors, and in particular those related to:

- a. a building or any part of a building where such building or part thereof is wholly or mainly occupied by an eligible assisting state or eligible international humanitarian organization, including under the legal facility of Temporary Recognition of Legal Personality, and used wholly or mainly for the purpose of facilitating the provision of international disaster relief or initial recovery assistance;

⁵⁸ Commentary: [municipal, state/federal taxes and other levies].

- b. The assets of an eligible international humanitarian organization.

Part 7 Currency and Banking

Article 61 Right to Bring Necessary Funds and Currencies into the Country

The [RELEVANT MINISTRY] shall facilitate the transit through the territory of [COUNTRY NAME] such funds and currencies by eligible assisting international actors as they deem necessary to provide international disaster relief and initial recovery assistance. Such funds shall be exempt from any declaration obligation, and from any taxation or other payment contingent on such movement of funds.

Part 7 may alternatively be placed in the banking and financial services act.

Article 62 Preferential Exchange Rates

The [RELEVANT MINISTRY] shall make available to eligible assisting international actors the most favourable legal exchange rates into the state’s currency that are provided to foreign actors, with regard to funds to be used for the purpose of providing international disaster relief or initial recovery assistance.

Article 63 Right to Open Accounts in Domestic Banks

Eligible assisting international actors shall be permitted to open accounts in domestic banks, or in domestic branches of international banks.

Part 8 Other Facilities

Article 64 Information on Disaster-Affected Persons⁵⁹

- a. During the relief and initial recovery period, the [RELEVANT DISASTER MANAGEMENT AUTHORITY and/or RELEVANT NATIONAL/MUNCIPAL/REGIONAL AUTHORITIES] and Eligible Assisting International Actors shall share information concerning persons in the disaster-affected area, for the purpose of avoiding imminent death or physical harm to individuals, or grave and foreseeable harm to public health or safety. Such information may include, but shall not be limited to:
 - (i) the names and whereabouts of individuals or communities who may have become especially vulnerable during the disaster, such as persons with disabilities, children, older persons, and displaced persons;
 - (ii) the names and whereabouts of individuals in institutions in the affected area at the onset of the disaster, such as educational institutions, hospitals, resident care facilities, detention centres and prisons.

Part 8 may alternatively be included in the disaster management act or the privacy act.

⁵⁹ Commentary: Sometimes legislation intended to protect the personal information of residents can become a barrier to providing such essential information. Either the laws protecting such information, or freedom of information laws, need to allow for its release to certain assisting actors in order to protect the life and health, and arguably also the livelihoods and assets, of persons affected by disaster, especially disabled persons. For example, efforts to confirm the safety of disabled people following the Great East Japan Earthquake of 11 March 2011 were allegedly limited by the application of the Personal Information Protection Law. A survey of 33 relevant municipalities in Japan, conducted by the newspaper The Yomiuri Shimbun, indicated that of the three prefectures and eight municipalities which said they received requests for information on their disabled population, only one prefecture and one municipality handed over the information to recognised Japanese organizations with a mandate to support disabled persons. Source: Daily Yomiuri Online, 5 June 2011: <http://www.yomiuri.co.jp/dy/national/T110604003223.htm> The Article suggested in this Model Act concerning assisting actors' access to information on affected populations, could, alternatively, be used to amend privacy of information laws and/or freedom of information laws.

- b. The release of personally identifiable information pursuant to subclause (a) of this article:
 - (i) Shall not be considered a breach of the provisions of the [*RELEVANT PRIVACY and/or FREEDOM OF INFORMATION LEGISLATION*]; and
 - (ii) Shall not give rise to a claim, suit, or prosecutorial offence against the [*RELEVANT DISASTER MANAGEMENT AUTHORITY or the MUNICIPAL/REGIONAL AUTHORITIES*] or an Eligible Assisting International Actor giving or receiving such information.
- c. Information obtained in accordance with this Article:
 - (i) Shall be used for the purposes provided in subclause (a) this Article and shall not be used for any other purpose whatsoever, including commercial or personal gain.
 - (ii) If stored, shall be kept in a manner appropriate to its confidential or sensitive nature, and shall be retained only for such time as is reasonably and foreseeably necessary in all the circumstances, after which such data shall be disposed of in a secure and reliable fashion.

Article 65 Civil Liability Protection

Neither an eligible assisting international actor nor its personnel shall be subject to civil liability for any harm or damage caused by any act or omission during an international disaster relief or initial recovery period, provided that the personnel involved were acting within the scope of their responsibilities as described in this Act at the time of the act or omission, and the harm or damage was not caused by wilful or reckless misconduct.

Article 66 Extended Hours

- a. All relevant ministries shall seek to ensure that state-operated offices and services essential to the timely delivery of international disaster relief function outside of normal business hours when needed during the international disaster relief period.
- b. Upon request by an eligible assisting international actor, the [*RELEVANT DISASTER MANAGEMENT AUTHORITY*] may approach any relevant national, regional or local authority in [*COUNTRY NAME*] to request their compliance with this Article. Any such request that may impose a substantial financial burden on the cooperating agency may be reviewed at its request by [*INTER-MINISTERIAL COMMITTEE ON NATIONAL DISASTER MANAGEMENT*].

Article 66 could alternatively be placed in the disaster management act.

Chapter VII Transit of International Disaster Assistance

Part 1 General Provisions on Transit of International Disaster Assistance

Article 67 Definitions

In this part:

“**Transiting international assisting actor**” means any international humanitarian organization, foreign state, foreign individual, foreign private business providing charitable relief, or other foreign entity who seeks permission to transit disaster relief personnel, goods, equipment or transport through the territory of [*COUNTRY NAME*] to respond to a disaster on the territory of another state,

“**Customs Transit**” means the procedure under which goods are transported under customs control from one customs office to another, in this instance it primarily refers to transit across the territory of [*COUNTRY NAME*] to the border of another state.⁶⁰

“**Disaster relief equipment**” means physical items, other than goods, designated for use in international disaster relief or initial recovery assistance, such as vehicles, medical, and telecommunications equipment.

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

“**Transiting International Disaster Personnel**” means the staff and volunteers of Transiting Assisting International Actors providing disaster relief or initial recovery

Chapter VII is to a large extent a free-standing module of the Model Act. It could alternatively be inserted into the customs act, with relevant amendments to the immigration, transport and taxation acts.

⁶⁰ Commentary: There are two main ways international disaster relief consignments can undergo transit through the territory of the legislating state. The simplest is ‘customs transit’ and the other option is to import and re-export the goods or equipment, (including through temporary admission of equipment).

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

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

The provisions of Chapter VII allow for the possibility of customs transit, but also transshipment (import/export) without payment of duties and taxes, when the goods and equipment concerned are shipped through the national/customs territory by an international actor assisting another state to respond to a disaster. To the extent applicable, these provisions mirror those in Chapter VI for legal facilities to eligible assisting international actors during a domestic disaster response and/or initial recovery period. However, the transit/transshipment provisions do not include any system of eligibility are not bound to a legally defined “international disaster relief or initial recovery period”, as it is the destination state’s role to decide these questions (and it would be impractical for a transit state to engage in a similar screening activity). The transit state need only be satisfied that the relief goods are destined for a disaster-affected state and that they are in fact relief consignments, in order to provide the Chapter VII legal facilities.

assistance in another state, being persons who are neither citizens nor ordinarily resident or domiciled in [COUNTRY NAME]

“**Transiting relief consignment,**” means any consignment of disaster relief goods or equipment through the territory of [COUNTRY NAME] to respond to a disaster on the territory of another state, by or on behalf of a transiting international assisting actor.

Article 68 Facilitation of Transit

In the event a disaster occurs in another country for which international assistance is required, and as further described in this part, the [CUSTOMS DEPARTMENT and/or IMMIGRATION AUTHORITY and/or TAXATION ASUTHORITY] of [COUNTRY NAME] shall facilitate the speedy and unencumbered transit or transshipment of international disaster relief and initial recovery personnel, goods, equipment and transport through the territory of [COUNTRY NAME] in order to reach the affected country.

Part 2 Transit of International Disaster Relief Personnel

Article 69 Disaster Transit Visa

Transiting International Disaster Personnel entering [COUNTRY NAME] shall be entitled to a [single entry] Disaster Transit Visa on arrival, unless national security or public health and safety concerns related to the particular individual preclude it. Disaster Transit Visas shall be issued without a fee.

[or Alternative Article 69

International Disaster Personnel entering [COUNTRY NAME] shall be entitled to waiver of entry visa requirements, including any associated fees or charges [on the condition that they exit the territory of [COUNTRY NAME] within a period of [specify number of days]].

Part 3 Transit of Disaster Relief Goods and Equipment

Article 70 Disaster Relief Goods and Equipment

- a. In order to benefit from these provisions, transiting assisting international actors shall pack, classify and mark their consignments in accordance with the simplified requirements directed by the [CUSTOMS DEPARTMENT] as for entry of such assistance during a domestic disaster, pursuant to Chapter VI.
- b. The provisions of this Part apply to Transit Consignments carried by transiting international assisting actors through the territory of [COUNTRY NAME] and to such consignments placed under customs transit and transshipment, subject only to pressing concerns of public safety and health.
- c. The [CUSTOMS DEPARTMENT] shall seek to co-operate with the Customs administrations of other states and seek to conclude bilateral and regional transit agreements or arrangements with a view to facilitating the Customs transit of relief consignments
- d. The [CUSTOMS DEPARTMENT] shall make readily available general information relating to the customs treatment of transit relief consignments.

Article 71 Exemption from Import and Export Duties, Taxes and Restrictions

Transit relief consignments shall benefit from:

- a. exemption from all duties and taxes;⁶¹
- b. waiver of economic prohibitions and restrictions;
- c. clearance for transit without regard to the country of origin, the country from which the goods have arrived, or the country for which they are destined, other than that the destination is a country affected by a disaster for which it has requested international assistance.⁶²

Article 72 Simplification of Documentation Requirements

The [*CUSTOMS DEPARTMENT*] shall:

- a. clear or release transit relief consignments against a simplified goods declaration, or against a provisional or incomplete goods declaration, or a commercial/transport document providing the minimum information necessary for the [*CUSTOMS DEPARTMENT*] to identify the goods and equipment and subject, when deemed necessary, to completion of the declaration within a specified period;⁶³

⁶¹ Commentary: In this Article the ‘duties and taxes’ include import duties and taxes, and/or export duties and taxes, as well as VAT (value added taxes), service taxes, sales taxes, turnover taxes and similar taxes, duties, levies and governmental fees. The exemption (or relief) from duties and taxes applies to all transiting relief consignments, meaning that the customs authority will clear these goods and equipment for transit free of import or export duties or taxes, irrespective of their normal liability, as long as they are for the purpose of disaster relief or initial recovery assistance to another disaster-affected state. As explained above in note 60, this Article applies without the need for the designation of any domestic periods designated for international disaster response and/or initial recovery, and without regard to whether the assisting international actor would be deemed eligible for the Chapter VI legal facilities for domestic purposes. .

⁶² Commentary: ‘Customs clearance’ means the completion of all customs formalities, including any payment of taxes or duties necessary to allow goods to enter for use, to be exported, or to be placed under another customs procedure (in this case, ‘another customs procedure’ could mean customs transit, customs warehouse, temporary admission, etc.). This is part of customs control measures to ensure compliance with customs law. If the goods are being transported through the territory under ‘customs transit’, the clearance process will normally be done while the shipment is in transit across the territory. However, if assisting international actors are transshipping consignments independently, they will not be able to proceed until the consignments are ‘released’ into their control. ‘Release’ is when the customs authority permits goods and equipment undergoing clearance to be placed at the disposal of the persons concerned with their importation. The release of the goods is only one specific action in the clearance process, which includes a number of steps. At the time of the release, which is when the customs authority authorizes the persons to take possession of the goods, the clearance process may still not be completed if, for example, the duties and taxes are not yet paid yet. In that case the release of the goods would, in normal circumstances, be subject to sufficient customs security. The proposal in this Model Act is that, for transit relief consignments, customs clearance and release could be expedited - in part because they would have no financial liabilities payable to the customs authority for the importation of the goods or equipment. Parts 3 and 4 include a number of specific ways in which customs clearance can be expedited for transiting relief consignments.

⁶³ Commentary: In this Article, an important part of the simplification of documentation requirements is the simplified ‘goods declaration’, which allows for more rapid customs clearance or release of the goods or equipment. The goods declaration is a statement made - in the manner prescribed by the customs authority - by which the persons concerned indicate the nature and purpose of the goods and equipment, furnish particulars of the responsible person, and provide other details as required. The declaration can generally be made by the owner of

- b. allow a single goods declaration for all transit relief consignments sent or carried by or on behalf of each transiting assisting international actor at a given time;
- c. allow the goods declaration and any supporting documents relating to transit relief consignments to be lodged electronically;
- d. provide for the lodging and registering or checking of the goods declaration and supporting documents prior to the arrival of transit, to facilitate their release or customs transit upon arrival;
- e. waive any requirement of translation of details in documents relating to transit relief consignments unless it is absolutely necessary for the purposes of release, or customs transit.

Article 73 Extending Customs Business Hours and Locations

Where the urgency of the disaster in another state, and the volume of transit relief consignments require it, the [*CUSTOMS DEPARTMENT*] shall offer extended business hours and locations to facilitate transit relief consignments, in particular it shall:

- a. upon request, and without additional charges, carry out the functions necessary for the release/clearance or customs transit of transit relief consignments outside their designated hours of business and/or away from customs offices;
- b. correlate the business hours and competencies of any other relevant [*DEPARTMENT/MINISTRIES*] involved in the approval of incoming transit relief consignments and, whenever possible, carry out joint operations, including joint customs controls.

Article 74 Inspections and Customs Security

When processing transit relief consignments sent or carried by transiting international assisting actors, the [*CUSTOMS DEPARTMENT*] shall:

- a. on the basis of risk analysis, take only such action as it deems essential to ensure compliance with customs law for the purpose of checking the goods declaration;
- b. use risk analysis, preferably on the basis of advance information, to determine which consignments shall be examined and the extent of that examination. Examinations and/or sampling shall be carried out only in exceptional circumstances.
- c. waive, as possible, any customs security that would normally be required in respect of such consignments. If, in an exceptional case, customs security is deemed necessary, the [*CUSTOMS DEPARTMENT*] shall accept as security an

the goods or by a third party, including a customs broker, agent or transporter (the declarant). In normal circumstances, after lodgement of the goods declaration, the customs authority checks it to ensure its accuracy and completeness as required by customs law. Customs declarations are usually very detailed (and may require translation of documents), many customs laws require separate documentation for each consignment by the same entity, even if they arrive at the same time, and the checking process can also be very time-consuming. Therefore the Article 72 proposal for a simplified goods declaration, provisions for lodgement and checking of the declaration in advance, waiver of any translation requirements, and provision for a single declaration for all the consignments of the transiting international assisting actor arriving at the same time, can make the clearance and/or release process a great deal faster.

undertaking from the relevant transiting assisting international actor, and where appropriate, a general customs security.⁶⁴

Article 75 Temporary Admission and Re-Exportation of Transit Relief Consignments

- a. The [*CUSTOMS DEPARTMENT*] shall facilitate the temporary admission of transit relief consignments carried or transhipped through the territory of [*COUNTRY NAME*] by or on behalf of transiting international assisting actors, according to regulations and procedures determined by the [*CUSTOMS DEPARTMENT*].
- b. Means of transport conveying transit relief consignments, together with their associated equipment and spare parts, shall be temporarily admitted by the [*CUSTOMS DEPARTMENT*] as a matter of priority, according to regulations and procedures determined by the [*CUSTOMS DEPARTMENT*].⁶⁵

Part 4 Transit of Means of Transport

Article 76 Transport

The [*RELEVANT AUTHORITIES*] shall facilitate the transit through the territory, territorial waters or airspace of [*COUNTRY NAME*] the ground, air and water vehicles of transiting international actors that carry or form part of transit relief consignments, or carry transiting international disaster personnel, subject only to pressing concerns of public safety and health.

Article 77 Transit Relief Vehicles

⁶⁴ Commentary: Normally, customs clearance requires inspection of the goods and then, if they are released before all the fees and taxation formalities are complete, payment of a ‘customs security’. This means a deposit of cash or negotiable securities in the form of a bond, or other guarantee, to ensure to the satisfaction of the customs authority that a financial obligation to it will be fulfilled. Customs security can be paid per consignment, or it may be paid as ‘general’ security that covers the obligations arising from several customs processing operations (consignments), rather than requiring a separate security for each operation. Normally, the customs authority accepts a general security instead of a separate security in each instance from declarants who declare goods regularly at different offices in the customs territory, and under Article 74 this would be the practice for all transiting international assisting actors. The Article 74 procedures should reduce the need for physical inspection of the goods and equipment imported by transiting international assisting actors, and almost eliminate the need for customs security at all – given the exemptions from import duties and taxes. But if the customs authority requires security, then a guarantee of the transiting international assisting actor would normally be sufficient and, in the event that a monetary guarantee is still required, this could be done by way of a general security rather than per consignment.

⁶⁵ Commentary: The concept of ‘temporary admission’ is different from both normal re-export with tax exemption and ‘customs transit’. ‘Temporary admission’ means the customs procedure under which certain goods and equipment can be brought into the customs territory of the affected state conditionally, with total or partial relief from payment of import duties and taxes. For present purposes, such goods must be imported as part of a transiting relief consignment, including the goods and equipment being transported and any transport vehicle that is also imported and exported while carrying the consignment. Under normal ‘temporary admission’, goods or equipment must be intended for re-export within a specified period, and without having undergone any change except normal depreciation due to the use made of them. It is therefore primarily applicable to equipment rather than consumable goods, and in applying the principle to transit, would apply particularly to the vehicles of the transiting international assisting actor carrying the consignments, but could also apply to equipment in the transiting relief consignment even if it was not used.

The [*MINISTRY OF TRANSPORTATION*] shall waive requirements for registration of foreign vehicles and plates when these are either part or, or carrying, transit relief consignments.

Article 78 Ground Vehicles

Ground vehicles operated by or on behalf of transiting assisting international actors, including spare parts and fuel supplies necessary for the operation of the vehicle, shall be exempt from:

- a. all otherwise applicable taxes, levies, duties, tolls, fees and other charges; and
- b. entry or use restrictions, other than those necessary to guarantee public safety.

Article 79 Air Transport⁶⁶

- a. To the degree possible, aircraft transiting the airspace of [*COUNTRY NAME*] which are operated by or on or behalf of transiting assisting international actors shall be accorded priority in air traffic routing and landing permissions. In addition, they shall be exempt from:
 - (i) all applicable taxes, levies, duties, fees, tolls and other charges imposed by the government of [*COUNTRY NAME*], including, without limitation, in respect of all landing, parking, taking off and navigation services;
 - (ii) prohibitions, limitations and restrictions in respect of the entry, overflight or exit of its airspace.
- b. To facilitate the provision of these facilities, transiting assisting international actors or their carriers shall inform the [*RELEVANT AUTHORITY*] in advance of the intended route of flights, type and call signs of the aircraft, number of crew members, the character of the cargo, time-table of flights, and the list of all passengers, and shall comply with any directions from the [*RELEVANT AUTHORITY*] as to air traffic control and landing procedures.

Article 80 Water Transport

- a. Water transport vessels entering the territorial waters and/or ports of [*COUNTRY NAME*] which are carrying transit relief consignments and/or transiting international disaster personnel, and are operated by or on behalf of transiting assisting international actors, shall be exempt from:
 - (i) all applicable taxes, levies, duties, fees, imposed by the government of [*COUNTRY NAME*], including, without limitation, demurrage and docking fees;
 - (ii) all prohibitions, limitations and restrictions in respect of their arrival, stay and departure to the territorial waters and/or ports of [*COUNTRY NAME*];
- b. To facilitate transit, the relevant transiting assisting international actors or their carriers shall inform the [*RELEVANT AUTHORITY*] in advance, of the intended

⁶⁶ Commentary: The Convention on International Civil Aviation, Chicago, 1944 (the Chicago Convention) and its Annexes are applicable in the territory of almost all states (the Convention has 190 state parties, it is available at http://www.icao.int/eshop/annexes_list.htm). In particular, the recently updated Annex 9 specifies Standards and Recommended Practices (SARPs) to facilitate clearance operations in compliance with states' laws while enabling higher turnover.

port or location of arrival of each vessel, the type, make and registration number of each vessel, the number of personnel operating and on board each vessel and the equipment, facilities and other materials on board each vessel, and shall comply with any directions from the [RELEVANT AUTHORITY] as to the control of incoming vessels and/or docking procedures.

Article 81 Entry of Transport Operators

The (*MINISTRY OF FOREIGN AFFAIRS/MINISTRY OF TRANSPORT/AIRPORT AND PORT AUTHORITIES*) shall endeavour to reduce and expedite any procedures for the entry of drivers, pilots and crew of transport vehicles carrying transit relief consignments or transiting international disaster personnel, and are operated by or on or behalf of transiting assisting international actors.

Chapter VIII Transitional and Final Provisions

Article 82 No Cause of Action

Nothing in this Act should be construed as creating a cause of action in the courts of [COUNTRY NAME] for civil or criminal liability with regard to the compliance or non-compliance with any of its provisions.

Article 83 Repeals and Revocations

[NAMEs OF RELEVANT ACTs and sections] / [The legislative provisions listed at Schedule [_#]] is/are repealed from [insert date].

Article 84 Severability

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

Article 85 Entry into Force

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

Article 86 Transitional Provisions

An [AUTHORIZED AUTHORITY] may make such transitional, transitory or savings provisions as are necessary for the implementation of this Act.