

North American Humanitarian Response Summit  
Project  
Multinational Legal and Policy Preparedness Scan

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## Acronyms

<b>CBP</b>	Customs and Border Patrol (United States)
<b>CBSA</b>	Canadian Border Services Agency
<b>CIFFC</b>	Canadian Interagency Forest Fire Centre
<b>CNE</b>	Comité Nacional de Emergencias or National Emergencies Committee (Mexico)
<b>DHS</b>	Department of Homeland Security (United States)
<b>DOS</b>	Department of State (United States)
<b>DRR</b>	Disaster Risk Reduction
<b>EIHP</b>	Enhancing International Humanitarian Partnership
<b>eTA</b>	Electronic Authorization Program (Canada)
<b>FEMA</b>	Federal Emergency Management Agency (United States)
<b>FERP</b>	Federal Emergency Response Plan (Canada)
<b>GAC</b>	Global Affairs Canada
<b>GOC</b>	Government Operations Centre (Canada)
<b>IAS CONOPS</b>	International Assistance System Concept of Operations (United States)
<b>ICRC</b>	International Committee of the Red Cross
<b>IDRL Guidelines</b>	Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance or “the Guidelines”
<b>IFRC</b>	International Federation of Red Cross and Red Crescent Societies or “the Federation”
<b>INAC</b>	Indigenous and Northern Affairs Canada
<b>INSARAG</b>	International Search and Rescue Advisory Group
<b>L3</b>	United Nations Level 3 Emergencies
<b>MOU</b>	Memorandum of Understanding
<b>NAFTA</b>	North American Free Trade Agreement
<b>NAHRS</b>	North American Humanitarian Response Summit
<b>NICC</b>	National Interagency Coordination Center

<b>NORAD</b>	North American Aerospace Defense Command
<b>NRP</b>	National Response Plan (United States)
<b>OECD</b>	Organization for Economic Cooperation and Development
<b>PNWBHA</b>	Pacific Northwest Border Health Alliance
<b>PSC</b>	Public Safety Canada
<b>RCMP</b>	Royal Canadian Mounted Police
<b>SINAPROC</b>	Sistema Nacional de Protección Civil or National Civil Protection System (Mexico)
<b>SEGOB</b>	Secretaría de Gobernación or the Interior Ministry (Mexico)
<b>SRE</b>	Secretaría de Relaciones Exteriores or the Foreign Ministry (Mexico)
<b>UNDAC</b>	UN Disaster Assessment and Coordination
<b>US</b>	United States
<b>USNORTHCOM</b>	United States Northern Command

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# 1 Introduction

## 1.1 Objectives

This multinational legal and policy scan and analysis is submitted as part of the North American Humanitarian Response Summit (NAHRS) initiative. Commissioned by the American Red Cross, **the study's objectives stem from the following two NAHRS initiative elements:**

### *The American Red Cross Terms of Reference for NAHRS Project*

The multinational policy scan will cover the analysis of existing agreements, partnerships and key stakeholders among the three countries and relevant operational policies and procedures of the three Red Cross National Societies and their respective governments. (Global Emergency Group, May 17, 2017, p. 17)

### *The NAHRS Project Purpose*

The purpose of the NAHRS project is to engage the American Red Cross, Mexican Red Cross and Canadian Red Cross and their respective governments in efforts to increase efficiencies and better align operational procedures in cross-border disaster response, as well as improve relevant policy and diplomatic relations. (Global Emergency Group, May 17, 2017, p. 3)

**This scan will accordingly incorporate the following perspectives, through the lens of legal and policy preparedness, principally as they relate to national facilitation of efficient and effective mutual assistance among the American, Mexican and Canadian Red Cross National Societies after a catastrophic event:**

1. The political, legal and diplomatic operating environment within and across the three countries which informs the development of North American cross-border disaster response law and policy to date;
2. A legal and policy preparedness mapping and analysis, highlighting the current state of readiness in key areas as identified by the stakeholders themselves as well as through external evaluation. As such, this scan will not serve as a comprehensive survey of all laws (national and subnational), policies and regulations in effect within and across the six parties. Instead it draws attention to current areas of strength and vulnerability in this sphere on an operational level; and
3. Opportunities for further growth in the legal and policy preparedness domain amongst the National Red Cross Societies and governments of North America.

A special note: Given this initial study's accelerated time frame, the inherent challenges associated with a multi-party survey in which relevant material may not be publicly accessible and/or available only in Spanish (requiring translation) and the limited interview availability of key stakeholders, **this scan is a "living document" that will continue to be revised and updated as appropriate throughout the duration of the NAHRS project.**

## 1.2 Key Findings

**Legal, policy and regulatory points of interface covering cross-border disaster relief among the six stakeholders are extensive, multi-faceted and complex due to**

1. the multi-sector and multi-dimensional nature of incoming assistance, correspondingly triggering extensive regulatory mechanisms horizontally across numerous national-level governmental agencies in each country.
2. the three countries' federal governmental systems (as well as indigenous community modes of sovereignty) vertically allocating domestic regulation of incoming disaster relief to both national and subnational levels.
3. the three countries' contrasting perceptions of the role of the international disaster response system as aid provider, potentially resulting in problematic response coordination among them.
4. the three national governments' respective diplomatic agendas and concerns, leading to an ever shifting legal, political and policy context within which North American cross-border disaster response occurs.
5. the three National Societies' distinctive relationships with their own governments, potentially generating differing policy expectations of their contributions during a cross-border disaster response.
6. the three National Societies' decentralized organizational structure between national headquarters and local chapters, producing a multi-level network of relationships and operating values.
7. the border communities' keen interest in mutual aid provision--irrespective of international boundaries and national policies--shaping their critical but often overlooked role as the first wave of cross-border disaster response.

Given such complexity, finding an appropriate entry point for a dialogue on North American cross-border assistance may appear overwhelmingly daunting from the outset. Yet **a landscape analysis of this intricate web hints at ways forward in advancing legal and policy preparedness for both participating governments and the National Societies. More vitally, trilateral stakeholder interviews strongly indicate not only a receptiveness but a high level of commitment to elevating the level of legal and policy preparedness in this domain.**

**From the perspective of this scan and analysis, potential starting points for the NAHRS dialogue pertinent to building legal and policy capacity might include**

1. empowering local Red Cross chapters along the US-Canadian and US-Mexican borders or otherwise geographically proximate chapters with Memorandums of Understanding (MOU) or similar instruments to enhance operational preparedness. For those MOUs that are currently in existence, review and update them where appropriate.

2. facilitating an information sharing process across the three national governments-- ideally in a compendium format in English, French and Spanish—that identifies and synthesizes national and subnational regulations within each country applicable to cross-border disaster aid in all forms (goods, personnel, equipment). A long-range goal should optimally involve an additional dialogue focusing on ways to reduce regulatory barriers to mutual aid provision. Still an initial understanding of the regulatory landscape is an important first step in moving away from what is currently an anecdotal based understanding of such challenges.
3. updating the trilateral MOU between the American, Canadian and Mexican Red Cross National Societies so that it more fully recognizes the operational conditions generated by the regulations noted in #2 above.
4. determining the best modes for “document preparedness” (see below under Section 3.5) within and between the three National Red Cross Societies as well as with their respective governments. Disaster readiness in this form allows for immediate ease of access (both physically and multi-lingually) and a shared understanding by all relevant parties as to mutual assistance protocols in force following a catastrophic event.
5. considering potential value-added contributions and resources of other actors outside that of the three National Societies, including the International Federation of the Red Cross/Red Crescent (IFRC or “the Federation”).

**There are other policy areas also essential to efficient cross-border disaster response operations, requiring sustained policy attention at the highest decision making levels of the national governments of Canada, Mexico and the United States. The National Societies may want to consider initiating a dialogue with the appropriate governing authorities related to the following four areas:**

1. Facilitated border entry of external disaster response personnel;
2. Facilitated entry of personnel providing emergency medical provision specifically as it relates to issues of licensing/credential recognition and liability;
3. Facilitated cross-border population movement in the wake of a catastrophic event; and
4. Advance operational planning between the three governments for coordinated entry of relief-related goods and equipment, particularly as they relate to the impacted states’ regulatory authorities.

## 2 Methodology

**Several qualitative research methods were employed for the mapping and analysis process.**

The first was a **primary document review** of available domestic legislation, policies, regulations and international agreements in existence between the three countries’ governments as well as Memorandums of Understandings in place between the National Societies or local chapters relevant to cross-border disaster response. It should be noted that the review is not exhaustive or complete, due to the legal and policy complexity of the subject area, the number of stakeholders participating and countries involved. The scan therefore **relies heavily on**

**publicly accessible materials. Internal documents were also provided by stakeholders and other authoritative parties when authorized to do so and were shared based on the contributor's individual understanding of the laws and policies in place.** Original policy documents related to the national government of Mexico were not available in English and translated for the purposes of this project.

**Semi-structured interviews with NAHRS initiative stakeholders and field expert consultations also provided an important basis for the study's key findings.** Again, due to the multiple perspectives germane to the scan, the project's accelerated timeframe and scheduling challenges, interviews were not conducted with all contributors to North American cross-border disaster response. Instead, **completed interviews provide a "snapshot" into the concerns of those closely involved with day to day management and/or operations.** Individuals were asked to express their views concerning the current state of legal and policy readiness related to North American cross-border disaster response as well as their desired outcomes for the NAHRS initiative.

Those consulted represent the following entities: **American, Canadian and Mexican Red Cross National Societies, the Canadian and US governments, the IFRC, the International Committee of the Red Cross (ICRC) and the United Nations Office for the Coordination of Humanitarian Affairs (UNOCHA).** A total of 20 sessions were conducted via phone or Skype. It should be noted that several other participants were highly willing to participate in the study but were not able to be scheduled before this document's final submission. They include other representatives of the Canadian government, including Global Affairs Canada (GAC) and the government of Mexico's Ministry of Foreign Affairs (SRE).<sup>i</sup>

**Finally, a comprehensive secondary literature review also supports the scan's conclusion and recommendations.** The search included media reports, related organizational homepages and specialized academic studies from the fields of international disaster response, international disaster law, domestic emergency response as well as political science and international relations.

### 3 Reference Points for Scan and Analysis

#### 3.1 Nature of Event

This study will examine policy and legal preparedness as they principally pertain to **rapid onset, large scale disasters.** In the North American context, these events have been historically triggered by natural hazards like earthquakes and hurricanes. The three countries' respective national authorities have been able as a rule to absorb the ensuing impacts. Yet under certain conditions a government's internal capacity to respond will be overwhelmed, prompting appeals for external aid and with fellow countries keen to assist. Notable cases germane to this study include the 1985 Mexico City earthquake (Mexico) and 2005 Hurricane Katrina (US).

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<sup>i</sup> In Spanish known as Secretaría de Relaciones Exteriores.

The United Nations currently classifies such episodes as “Level 3” or “L3” emergencies, during which the following five elements become particularly heightened:

- *Scale* (amount of people, territory, countries impacted)
- *Urgency* (crude mortality rates, extent of population movement, etc.)
- *Complexity* (multiple dynamics at play including causes, impacts and response)
- *Capacity* (national and international resource capability for effective response)
- *Reputational Risk* (public and media expectations for response) (Inter-Agency Standing Committee, 2012, p. 6)

### 3.2 Nature of Cross-Border Disaster Response Following Catastrophic Events

L3 crises, especially rapidly unfolding ones with an element of surprise, generate widespread global media and public attention. Accordingly, the affected government finds itself at the center of a maelstrom, encountering a phenomenon known as “external convergence”.

**Following a catastrophic episode, the impacted country is barraged by informational inquiries and offers (informational convergence) outside goods and materials (material convergence) and an influx of people (physical convergence).** (Fritz & Mathewson, 1957) Even countries with substantial domestic emergency management capacities have not been immune on this front, as the US, New Zealand (2011 Christchurch Earthquake) and Japan (2011 Earthquake, Tsunami and Nuclear Disaster) can individually attest. (Bookmiller & Bookmiller, 2016)

Given the multi-sectoral impact of such events, the rapidly growing number of diverse external aid conduits (fellow governments, intergovernmental and nongovernmental entities, the global public and multinational corporations) and conflicting domestic and international political agendas on a sizeable scale, **any catastrophically impacted state will be significantly challenged to effectively manage incoming international assistance.** The IFRC has documented numerous global contemporary examples where international aid has been refused, delayed or undistributed, even when assistance was desired by the affected country. (Fisher, 2007) Obstacles such as customs clearances, search dogs quarantines, domestic professional licensing, credentialing and liability requirements and technical regulations pertaining to food, medicines and other relief supplies all contribute to significant bottlenecks at the point of entry for cross-border disaster response, costing precious hours following a large scale disaster.

Conversely overwhelmed authorities may exercise little regulation over inbound relief, diminishing the quality and integrity of incoming aid for its intended recipients. The resulting chaotic nature of such responses in either form will impact the affected communities for years to come.

### 3.3 Legal and Policy Oriented Disaster Preparedness

**While cross-border aid provision and acceptance following a massive disaster will always pose intrinsic challenges, governments and other humanitarian assistance stakeholders can**

**mitigate such effects by proactively engaging in legal and policy preparedness to elevate efficiency levels.** As one legal preparedness study covering the Americas noted: “Often overlooked in preparedness planning, solid legal frameworks are fundamental to how societies reduce their exposure to risk, as well as guiding their preparation and response to disasters.” (IFRC, 2011, p. 1)

For nearly two decades, the IFRC, in partnership with national governments, the National Red Cross and Red Crescent Societies and other humanitarian aid providers, has been the leading global advocate in promoting the importance of legal and policy preparedness related to international disaster response. Following the 2001 biennial meeting of the IFRC, ICRC and the National Societies, the Council of Delegates urged the IFRC and the National Societies to work with governments “to promote appropriate disaster response laws and regulations, allowing relief actors to meet the needs of the disaster victims in the most effective way...” (Council of Delegates, 2002)

Since then, the fundamental connection between developing and strengthening national, regional and international legal frameworks and effective disaster management pertaining to all phases, including response, is increasingly acknowledged by governments and other major actors in the humanitarian community. The Sendai Framework for Disaster Risk Reduction, 2015-2030 is among the most recent international legal instruments to recognize its critical importance. (Sendai Framework for Disaster Risk Reduction 2015-2030, 2015)

### 3.4 The IDRL Guidelines as Legal Preparedness Benchmarking Tool

**The most globally prominent benchmarking tool for assessing legal and policy preparedness in the sending and acceptance of cross-border assistance following a catastrophic episode is that of the Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance (IDRL Guidelines or “the Guidelines”) promulgated by the IFRC in 2007.** (IFRC, 2007(a)) The IDRL Guidelines seek to strike a balance between the interests of international disaster relief providers seeking streamlined border entry processes for their humanitarian personnel, goods and equipment (facilitation) and those of the host country, whose governments desire respect for their domestic sovereignty and attendant laws related to incoming assistance (regulation).

The IDRL Guidelines address many of the common sources of confusion that arise during the provision of cross-border disaster response. They include the initiation and termination of international disaster assistance, legal facilities for entry and operations including personnel, goods and equipment, transport, taxation and several other potential tension points. As contained in the Guidelines’ introduction:

*Their purpose is to contribute to national legal preparedness by providing guidance to States interested in improving their domestic legal, policy and institutional frameworks concerning international disaster relief and initial recovery assistance. While affirming the principle role of domestic authorities and actors, they recommend minimum legal*

*facilities to be provided to assisting states and to assisting humanitarian organizations that are willing to and able to comply with minimum standards of coordination, quality and accountability. (IFRC, 2007(a), p. 13)*

**To date, 22 countries have used the Guidelines to develop or update their respective national laws and policies applicable to incoming international assistance, with a further dozen considering the same.** (IFRC, 2017) Of the three countries examined here, Mexico has especially embraced the spirit and substance of the Guidelines while updating its own domestic framework in 2012 (to be further elaborated on below). A review of these national efforts highlights the multiple forms that such preparedness may assume. Some examples include:

*National disaster management acts or frameworks<sup>ii</sup>*  
*Interdepartmental/Interagency Instructions*  
*Regulations*  
*Guidelines*  
*Manuals*  
*Plans*  
*Policies*  
*Standard operating procedures*  
*Executive decrees*  
*Directives*  
*Rules*

**In addition, the Guidelines also urge states to develop bilateral and regional frameworks that further promote cooperation in the facilitation of cross-border disaster relief.** Binding and non-binding instruments in this sector--beyond the more conventional titles of treaties and agreements--frequently are termed:

*Mutual Aid/Assistance Agreements, Frameworks or Compacts*  
*Memorandums of Understanding*  
*Arrangements*  
*Protocols*

It should be noted that cross-border cooperative frameworks are not limited to national governments alone. **Highly relevant to this analysis is the parallel existence of arrangements between subnational authorities of neighboring border communities, whether mid-level governmental entities (provincial to state in the case of the US-Canadian border as one example) or on the municipal level.** Many such agreements are labeled similarly to those between national governments.

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<sup>ii</sup> In 2013, the Federation also issued a Model Act for the Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance as a further reference tool for governments. The Model Act is grounded in the key principles outlined in the Guidelines.

**The Guidelines also serve as an essential vehicle for the National Societies. The Societies can utilize them to advance legal and policy preparedness in relation to their own and other governments as well as with their fellow Societies.** The Guidelines' introductory notes suggest they may serve as a useful template in drafting memorandums of understandings between the Societies and concerned governments as well "as a checklist of potential legal issues for which to prepare in advance of a relief operation". (IFRC, 2007(a), p. 11)

### 3.5 A Note About Document Readiness as Part of Legal Preparedness

While legal preparedness primarily focuses upon the drafting and revising of related frameworks, there is another equally crucial element to the process. Borrowing from the domestic emergency management sector and the concept of emergency operations plans for governments and other entities, **it is also critical that any relevant laws, policies, regulations and international understandings pertinent to North American cross-border disaster response be made easily and quickly accessible by all involved participants.** Ease of access is not only measured technologically (dashboards, shared drives, etc.) but also by language. North American cross-border response may involve up to three official languages, including English, French and Spanish (as well as those of the Indigenous Nations). Document readiness will save vital time in the immediate hours and days after a major disaster. The process of organizing such materials also promotes shared understandings and expectations among key stakeholders.

## 4 National Government Legal and Policy Frameworks for Domestic Facilitation of Cross-Border Disaster Assistance

### 4.1 Canada

#### 4.1.1 National Legal and Policy Context

**In profound contrast to its North American counterparts, Canada has fortunately never experienced a significant catastrophic event akin to that faced by Mexico and the US, partly owing to its comparatively smaller population dispersed over a large landmass.** As disaster management reform typically takes place only after hard lessons are learned following a national trauma, Canada's legal and policy preparedness efforts are continuing to evolve, a theme reiterated by several stakeholder interviews. It was the collateral impact of a crisis striking its southern neighbor, the September 11, 2001 terrorist attacks in the US, that transformed Canada's approach to disaster response. On that day, over 200 US-destined aircraft were rerouted to Canadian airfields. The experience prompted Ottawa to initiate a major reorganization of its emergency management structures and policies, **leading to a new federal ministry now called Public Safety Canada (PSC) in 2003.** The new ministry centralized public safety structures and initiatives within one federal department, bringing together five agencies that include the Royal Canadian Mounted Police (RCMP) and the Canadian Border Services Agency (CBSA).

The PSC homepage notes, "Our mandate is to keep Canadians safe from a range of risks such as natural disasters, crime and terrorism." (Government of Canada, Public Safety Canada, 2017)

While the newly-organized PSC concentrated emergency management attention at the highest governmental levels, **Public Safety Canada does not house a unique agency comparable to the Federal Emergency Management Agency (FEMA), located in the US Department of Homeland Security (DHS). Canada however did create a Government Operations Centre (GOC) in 2004 with the mandate to provide an all hazards, integrated federal emergency response.** The GOC is the Canadian Government's "single point of contact during emergencies, supports provincial and local authorities, and coordinates horizontally with other federal government departments, non-governmental organizations, the private sector and allied governments." (Government of Canada, Public Safety Canada, 2011, p. 8) While operational for a dozen years, the GOC has repeatedly come under scrutiny in various government audits. The most recent October 2016 review states that the **GOC's "current infrastructure would likely be unable to support the concurrent management of two or more events."** (Government of Canada, Public Safety Canada, 2016, p. 10)

**In tandem with this institutional reorganization, Canada replaced its outdated disaster legislation with a new 2007 Emergency Management Act.** This act mandated emergency planning within every federal department and named the Minister of Public Safety as the central coordinator. **Public Safety Canada's Federal Emergency Response Plan (FERP) was approved in 2009 and updated in 2011.** FERP planning seeks to harmonize national and provincial level emergency responses as well as that of the Canadian Red Cross and other organizations. The FERP framework also coordinates an emergency response under federal jurisdiction when federal assets or personnel are impacted by an event.

**Canada has more recently turned its policy attention to readiness to receive external aid beyond that provided by the US, with which it has a robust set of cooperative frameworks long in place** (refer to Sections 5.1.2 and 5.1.3). Like the US, Canada has traditionally viewed itself as an international assistance provider rather than a beneficiary. Yet stakeholder interviews indicate that while the devastating 2016 Fort McMurray fires accelerated policy discussions in this area, **the increasing frequency of disasters impacting Canada over the past several years has made interagency coordination and aid facilitation an increasing concern for some time.** While the 2011 FERP outlines agency responsibility for incoming international assistance during an emergency, Canadian government interest in the issue dates back even earlier. In 2007, Canada--a major financial supporter of the IFRC's Disaster Law initiatives--pledged at the 30<sup>th</sup> International Red Cross and Red Crescent Conference to strengthen its incoming assistance frameworks. The pledge included:

*To continue to examine domestic emergency management policies and regulations with a view to identifying and addressing, as necessary, potential obstacles to receiving international assistance in the event of a major domestic emergency. The Department of Foreign Affairs (the lead on the International Disaster Response Laws file for the Government of Canada) and Public Safety Canada (the lead on domestic emergency*

*management for Canada) will work jointly with federal departments and other levels of government to assess and identify possible solutions. (IFRC, 2007(b))*

In 2009, the Canadian Red Cross commissioned an early study on the subject, highlighting several policy attention areas to be addressed in Section 4.1.2. (See, 2009)

The Canadian Armed Forces' 2015 Joint Task Force Pacific Humanitarian Assistance and Disaster Response Symposium, which examined legal and policy readiness to receive international assistance following a potential earthquake along the Cascadia Fault in the Pacific Northwest (one of the high priority scenarios identified by numerous stakeholders in interviews), is a more recent manifestation of this concern. (Joint Task Force Pacific Humanitarian Assistance and Disaster Response (HADR) Symposium Meeting Agenda, 1 May 2015) **However, there are no currently existing, publicly available documents providing comprehensive regulatory guidance for external aid providers, comparable to that which exists in Mexico and the US.** Such a guide is natural next progression in Canada's evolving approach to domestic legal and policy facilitation of international assistance. As a 2014 Canadian Red Cross study noted: "When a catastrophic disaster occurs, the world will land on our doorstep." (Nemrava, 2014)

#### 4.1.2 Applicable National Legal, Policy and Regulatory Frameworks

##### 4.1.2.1 *Canadian Constitutional Framework*<sup>iii</sup>

Canada, like its Mexican and US counterparts, has a federal system which divides power between the federal and provincial levels. Different however from the other two countries is the form this arrangement assumes, known as "asymmetrical federalism". Owing to both historical development and the ability of each province to "opt out" of specific national policies/programs and create their own, the ten provinces have uniquely distinct relationships with Ottawa, including facets related to emergency management such as first responder provision.

**Historically emergency management has been the purview of the provincial governments, each possessing their own response entity and operating procedures.** Nearly all emergencies are handled on the municipal and/or provincial level without federal involvement. Ottawa will not typically intervene unless municipal and provincial resources are exhausted or overwhelmed by the magnitude of a disaster. Even then, intervention occurs only when there is a specific request for federal assistance by a province. While most emergencies may be addressed on the local/provincial level, **it is now accepted in Canada that emergency management is a "shared responsibility" between all levels of government.**

**Still one policy area remaining firmly under the control of provincial authorities involves recognition of medical personnel credentials.** These regulations apply whether the medical

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<sup>iii</sup> Unlike Mexico and the United States, the Canadian Constitution is not a single, written document but rather "composed of written and unwritten statutes, customs, judicial decisions, and tradition." (Parliament of Canada)

provider is coming from a fellow province<sup>iv</sup> or from outside the country. While some provinces will allow for temporary waivers under certain circumstances, the waiver processes still entail various registration requirements that will cause significant delay during a response to a catastrophic event. **Several stakeholders interviewed identified Canada’s provincial-based credentialing system as one of their most pressing policy concerns related to efficient and timely cross-border aid to Canada after a crisis.** Some exceptions, however, may be made for personnel arriving from the US based on bilateral arrangements between the two countries (see Section 5.1.2).

#### 4.1.2.2 1988 Emergencies Act

**This Act, which replaced the 1914 War Measures Act, allows for federal authorities to take specific measures that may have the effect of overriding provincial laws, including those covering medical certification during a “public welfare emergency”.** However, this Act has never been invoked since its passage. The earlier War Measures Act was only utilized three times in Canadian history, the last time being in 1970 and the two times prior during both World Wars. It therefore remains to be seen how the declaration would work in practice related to cross-border assistance to Canada and federal-provincial relations. (Government of Canada, 1988)

#### 4.1.2.3 2007 Emergency Management Act

While the Act importantly establishes a national coordination framework for emergency management, **there are no references made to the domestic facilitation of international assistance.** Notably, the Act contains a provision related to assisting the US during a crisis:

*The Minister may develop joint emergency management plans with the relevant United States’ authorities and, in accordance with those plans, coordinate Canada’s response to emergencies in the United States and provide assistance in response to those emergencies.* (Government of Canada, 2007, p. 3)

#### 4.1.2.4 2011 Federal Emergency Response Plan

FERP delegates lead agency responsibility depending on the nature of the event. **For those disasters requiring international assistance, Global Affairs Canada (GAC)<sup>v</sup> serves as the primary facilitator between external aid providers and the GOC.** Secondary support may be provided by an additional 18 national departments, agencies or services. (Government of Canada, 2011)

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<sup>iv</sup> For the legal intricacies surrounding the issue of Canadian interprovincial medical assistance, refer to Vicky Edgecombe’s study of deploying Canadian Red Cross Emergency Response Units and Field Assessment Coordination Teams. (Edgecombe, 2011)

<sup>v</sup> Referred to as Department of Foreign Affairs and International Trade (DFAIT), the previous name of GAC, in document.

#### 4.1.2.5 2002 Immigration and Refugee Protection Act and Regulations: Visas<sup>vi</sup>

**Per this Act and subsequent implementing regulations, US citizens require a passport to enter Canada if arriving through a Canadian airport, but they do not need a visa or to complete the Electronic Authorization Program (eTA). If the US citizen is entering Canada by car, train, bus or boat, a passport is not required,** but another form of citizenship documentation must be provided, such as a birth or naturalization certificate as well as photo identification. Please note, however, American citizens returning to the US will still need their passport to reenter, even in those instances where it was not originally required to travel to Canada. This requirement has posed a problem for US assistance providers returning from Canada on prior occasions. (Government of Canada, 2002) (Government of Canada, Global Affairs Canada, 2017(b))

**As of November 25, 2016, Mexican nationals no longer require a visa to enter Canada (a policy in place for six years prior), in addition to having a passport. Yet unlike US citizens, they will still be required to complete the eTA** if arriving through a Canadian airport (as well as possess a passport). This is an expedited online authorization process, with approval given as quickly as a few minutes or a day. If entering by land or water transportation, a passport is still required but the eTA authorization is not. (Government of Canada, Global Affairs Canada, 2017(b))

This latest policy change has been praised for providing a greater ease of access for Mexican nationals desiring to enter Canada compared to the earlier, more cumbersome visa application process, including during times of emergency. **Still there is concern that the eTA process may not be able to handle a dramatic spike in applications** if external aid providers from Mexico (and other eTA eligible countries) would inundate the system following a major disaster in Canada.

**From the perspective of a mass cross-border movement of people from the US into Canada, as far as *national law* stands, the potential is there for a more facilitated entry given the lower document threshold required for US citizens entering specifically by land or sea. This mechanism would not apply to non-US citizens entering Canada from the US,** and depending on the nationality involved, a full visa process may still be required. A few Canadian-US bilateral agreements, covered in Section 5.1.2, urge that the two countries aspire to facilitate the movement of evacuees. How this mechanism would operate in practice remains to be seen.

There have been cases after major international disasters such as the 2004 South Asian Tsunami and the 2010 Haitian Earthquake in which **impact by natural disasters may be considered for expedited entry into Canada,** but typically a family or other kind of link to

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<sup>vi</sup> For a comprehensive thematic overview of disaster-induced migration related matters throughout the Americas, refer to a 2015 study conducted under the auspices of the Nansen Initiative titled *Law, Policy and Practice Concerning the Humanitarian Protection of Aliens on a Temporary Basis in the Context of Disasters* (Cantor, 2015)

Canada must be demonstrated. **These legal issues remain open to exploration regarding entrance of non-US citizens into Canada following a large-scale event.**

#### 4.1.2.6 *2002 Immigration and Refugee Protection Act and Regulations: Work Permits*

**Canadian law does contain a waiver for entering emergency services personnel from abroad.**

According to Regulation 186(t), a foreign national may work in Canada without a work permit, “as a provider of emergency services, including medical services, for the protection or preservation of life or property...” (Government of Canada, 2016, p. 167)

Please note in relation to Sections 4.1.2.5 and 4.1.2.6, that entry into Canada is not automatic, even if meeting the document requirements stated above. The CBSA remains the final authority at the border regarding entry.

#### 4.1.2.7 *Administration of Temporary Importation Regulation, Memorandum D8-1-1, Goods for Emergency Use Remission Order*

**This remission order allows for a waiver on customs duties and taxes related to goods and equipment** entering Canada designated for emergency use. According to D8-1-1:

*As the goods are required on site quickly, the inspecting officer will try to expedite the clearance of the goods. No security deposit will be collected and, where the inspecting officer deems it necessary, only a simple blotter record on a Form E29B will be kept describing the goods in general terms. Depending on the circumstances, a Form E29B can also be issued after the fact. In cases where the emergency situation requires the release of the goods where officers or RCMP officers are not in attendance, a record kept by a responsible individual such as a chief of police, a fire chief, a municipal mayor, a representative of the provincial government or other individual charged with the responsibility of directing the emergency counter measures is acceptable. (Government of Canada, Canadian Border Services Agency, 2016)*

While highly laudable from the perspective of cross-border assistance facilitation, **there is a debate among legal observers whether this provision applies only to fellow responding governments or covers assisting humanitarian organizations from abroad as well.** In addition, while customs duties and taxes may be waived, border authorities may still halt entrance of goods due to regulatory prohibitions based on safety, environmental and other concerns.

#### 4.1.3 *NAHRS Dialogue Points*

This section has examined Canada’s current domestic legal framework for receiving incoming assistance apart from its significant bilateral commitments with the US in this area, to be addressed in Sections 5.1.2 and 5.1.3. **In anticipation of a catastrophic event in Canada requiring outside assistance, and with the view of elevating the efficiency of cross-border response, potential focus areas for upcoming NAHRS discussions might include:**

1. Federal vs. provincial laws and regulations covering foreign medical teams seeking to enter and operate within Canada;

2. A new, comprehensive guide of all Canadian government laws, policies and regulations applicable to incoming disaster assistance, comparable to those previously developed by the Mexican and US governments;
3. Further to #2, the process by which controlling Canadian government laws, policies and regulations relevant to cross-border disaster response are made available in the Spanish language and publicly accessible in both English and Spanish; and
4. Canadian immigration policies related to a spontaneous, cross-border population movement into Canada.

## 4.2 Mexico

### 4.2.1 National Legal and Policy Context

**Mexico has emerged as one of the leading examples of national disaster risk reduction (DRR) and preparedness planning in the world**, as most recently evidenced by its hosting of the Global Platform for Disaster Risk Reduction in Cancun in May 2017. It confronts a challenging multi-hazard environment as one of the top global 30 most exposed countries to natural hazards (World Bank Group, 2013), with earthquakes, floods and hurricanes leading to an especially high proportion of human and economic loss.<sup>vii</sup> Yet the Mexican government has diligently worked for decades to strengthen its multi-faceted civil protection system in order to mitigate such catastrophic damage. The fact that no lives were lost following the 2015 landfall of Hurricane Patricia—one of the Western Pacific’s strongest ever recorded hurricanes—was in part attributed to the government’s DRR efforts long in place. (Lessons of Past Disasters, 2015)

**The 1985 Mexico City earthquake—and the international response to it—was the catalyst that transformed the country’s approach to preparedness planning, including on the legal and policy fronts.** The quake cost at least 5,000 lives according to government estimates, with another 30,000 injured. With an increasingly globally interconnected community due to communication and transportation advancements, the 1985 event is often recognized not only as a national but also international watershed regarding disaster assistance. The worldwide outpouring of aid was historic for its time. The Mexican government was barraged with 250 relief offers by governments as well as intergovernmental and nongovernmental organizations, ultimately accepting aid from 52 countries and four international organizations. While this global expression of compassion was laudable, the ensuing relief chaos was not. As one post-assessment report indicated at the time: “Food, medical supplies, heavy equipment, clothing and other goods began arriving by the ton at Mexico City International Airport, much of it unrequested; most of it untargeted, with no designated recipient organization or group.” (Comfort, 1986, p. 1) Similar disarray was also reported concerning arriving international aid personnel.

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<sup>vii</sup> According to the Organization for Economic Cooperation and Development (OECD), these three hazards alone caused nearly 80% of Mexican disasters between 1970-2011, as well as 89% of disaster related fatalities and 93% of economic losses. (Organization for Economic Cooperation and Development, 2013, p. 31)

The 1985 tragedy had an immediately galvanizing effect upon Mexico’s disaster management approach. One year later **the government established its current National Civil Protection System, known as SINAPROC<sup>viii</sup>**, a coordinating framework bringing together all related stakeholders from the public and private sectors, from the national to the grassroots level. Over the next 25 years the government also implemented a series of legal and policy reforms. **The most recent law, the General Civil Protection Act, was passed in 2012.<sup>ix</sup>**

As SINAPROC sought to augment Mexico’s domestic civil protection capacity, first focusing upon response and later expanding to preventative measures, **it correspondingly reduced the need for post-disaster international assistance in the years after the 1985 event.** Numerous NAHRS-related interviews and a field literature based case study review affirm that **this decreasing reliance on post-disaster external aid is a point of great national pride for both the Mexican government and wider society. Yet one unintended effect may have been an increasing policy disconnect between national and international disaster response systems.** It was another 20 years before Mexico City next requested international assistance, during the devastating 2007 Tabasco floods. The event impacted over a million people and ranks as one of the worst disasters Mexico has ever encountered. According to one study of the crisis:

*...when the request came and the international assistance started flowing in, it was complicated precisely because the UN humanitarian presence was almost without precedent. In other disaster-prone countries there is a strong presence of NGOs and UN bodies, with longstanding protocols for humanitarian work. Governments and agencies are familiar with one another’s modus operandi....Although most UN agencies and major NGOs were represented in Mexico in 2007, the government lacked experience of working with these organisations, and the two sides had to learn how to work together in a short time and under great pressure. (Weiss Fagan, 2008, p. 20)*

**Mexico would soon assume a leadership role, in building Latin American and Caribbean readiness for cross-border disaster response, by co-sponsoring with UNOCHA a forum evolving into an annual meeting known as “Enhancing International Humanitarian Partnership” (EIHP).** By 2010, EIHP participating countries agreed to contribute to a survey titled The Regional Compendium of Regulatory Instruments (or “Regional Compendium”). Each government would engage in a comprehensive self-study—utilizing the IDRL Guidelines—to identify existing national laws, policies and regulations within their respective countries covering incoming assistance.

**For Mexico and other partaking governments, the process also highlighted critical areas warranting further attention from the sending and host countries’ perspectives.** As Anne Lice

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<sup>viii</sup> SINAPROC in Spanish stands for “Sistema Nacional de Protección Civil”.

<sup>ix</sup> For two excellent surveys of Mexico’s domestic civil protection/emergency management legal and policy framework, refer to the OECD’s *Review of Mexican National Civil Protection System* (Organization for Economic Cooperation and Development, 2013) and the UN Development Program’s *Mexico: Country Case Study*. (UN Development Program, June 2014)

Hernández Alba, Relief Coordinator and Inter-institutional Focal Point of the Mexican Civil Protection Department, characterized the value of her government's self-study at the time:

*It allowed us to see gaps in our laws and procedures, identify best practices that have not yet been institutionalized yet, and to plan improvements. It created an excellent opportunity for us to take a stand on strengthening our approach in case an emergency in Mexico or abroad (IFRC, 2012).*

The impact of the Regional Compendium review upon the 2012 General Civil Protection Act revisions and subsequent governmental guidelines will be noted under Section 4.2.2.

**One further outcome of the EIHP initiative is that Mexico has since the 2007 Tabasco crisis fostered stronger ties with key actors from the international disaster response system, chief among them the IFRC and UNOCHA.** Partnering with the latter suggests an increasingly integrated post-disaster interface with the UN Disaster Assessment and Coordination (UNDAC) process should external assistance be warranted. Mexico in fact engaged in a trial run by hosting the UNDAC-linked International Search and Rescue Advisory Group (INSARAG), for that body's 2012 Regional Simulation Exercise of Earthquake Response, held in Mexico City. This development injects another potential variable into the operations of North American cross-border disaster response, adding a multilateral overlay to bi-or trilaterally oriented efforts.

#### 4.2.2 Applicable National Legal, Policy and Regulatory Frameworks

##### 4.2.2.1 *The Mexican Constitution*

The Mexican Constitution establishes a federal system in which all three levels, including the federal government, the 31 states and the Federal District and over 2400 municipalities all have a shared responsibility for civil protection, with corresponding systems and laws in place from the federal to the local level. (Government of Mexico, 2015) **While the Constitution explicitly grants regulatory power over civil protection to federal authorities, the Constitution and implementing legislation establishes the municipalities as the frontline of public safety response and charged with determining whether further state or federal assistance is warranted.** Regardless, there have been experiences like the 2007 Tabasco flooding crisis that revealed operational tensions on this front. The federal government preempted local authorities and immediately organized an emergency response, including a call for international assistance, without first consulting local or state level authorities.

*Special Note: The following three items (4.2.2.2.-4.2.2.4) are currently not publicly available in English. The comments below are based on translations triangulated by three non-certified translators, including the author. Translations should therefore be formally verified by a field-related professional before used for official purposes.*

#### 4.2.2.2 *2012 General Civil Protection Act*<sup>x</sup>

Mexico passed this Act as an update of its existing civil protection legislation (dating back to 2000), based on findings generated from its Regional Compendium generated self-review. Domestically, it served to sharpen the understanding of the respective roles of the federal, state and municipal authorities within the context of SINAPROC, among many other enhancements.

#### **The 2012 Act, from the standpoint of cross-border disaster relief, possesses several key elements. The Act**

1. established the National Emergencies Committee (CNE)<sup>xi</sup>, tasked with the responsibility for operational coordination during an emergency or disaster. The CNE is the lead entity following a major event responsible for conducting an impact and needs assessment and making determinations as to the nature and amount of relief required.
2. mandated that regulations and guidelines be implemented related to donations, whether national or international in origin (see Section 4.2.2.3).
3. charged its National Board of Civil Protection with developing plans related to “international cooperation and assistance modalities” in conjunction with the SRE. (Government of Mexico, 2012(a))

#### 4.2.2.3 *2012 General Guidelines for the Issuance of Visas Issued by the Ministries of Interior and Foreign Affairs*<sup>xii</sup>

**The Mexican government in 2011 passed a new Law of Migration that contained sweeping reforms related to the status of non-citizens already in country and for those seeking to enter.** The legislation is noteworthy for several new visa classifications possessing a humanitarian basis, partly inspired by Mexico’s experience receiving Haitian nationals following the latter country’s 2010 catastrophic earthquake.

The 2012 General Guidelines provide procedural guidance related to the visa expediting process. One category is dedicated specifically to humanitarian response personnel, defined as: “a foreign person who intends to undertake relief actions or rescue in situations of emergency or disaster in the country and is a member of any group of public, private or social character that have that object.” (Government of Mexico, 2012(b), p. 26) The General Guidelines include application instructions and the term of validity, which is 15 days following the granting of the visa. The inclusion of a humanitarian personnel category is one recommendation of the IDRL Guidelines.

**The 2012 General Guidelines also establish procedures for granting and expediting a visa for non-citizens to enter Mexico due to a natural disaster in their country of residence (this is distinct from those already in Mexico due to tourism or other reasons).** While expedited, a

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<sup>x</sup> In Spanish titled as Ley General De Protección.

<sup>xi</sup> In Spanish known as the Comité Nacional de Emergencias.

<sup>xii</sup> In Spanish known as Lineamientos Generales para la Expedición de Visas que Emiten las Secretarías de Gobernación y de Relaciones Exteriores.

formal application process is required though the relevant Mexican embassy or consulate in country. Per already existing policy, US and Canadian citizens (as well as from other visa-waiver countries) may enter Mexico with a US or Canadian passport alone. **In the case of a more spontaneous, cross-border mass movement of people from the US into Mexico due to a catastrophic event, it remains to be clarified whether Mexican border authorities have the discretion to waive the requirements for US citizens who are not passport holders (as well as other nationalities recognized in Mexico’s visa waiver program) as well as for non-citizens who would customarily require an entrance visa.** (Government of Mexico, 2012(b))

Outside of this framework, a 2008 bilateral agreement between Mexico and the United States (refer to Section 5.2.2.3) recommends that each country work to mutually facilitate prompt entry of personnel, materials and equipment but does not establish protocols in this regard.

#### 4.2.2.4 *2014 Guide for Reception, Organization, Distribution, and Delivery of Humanitarian Assistance/Provision to Assist Populations Affected by a Disaster*<sup>xiii</sup>

The Mexican government’s Ministry of Interior (SEGOB)<sup>xiv</sup>, in partnership with SRE, prepared this guide as one means to meet the spirit and intent of the 2012 Act. The document addresses many of the insights gained through the Regional Compendium review process as well as feedback provided by the IFRC’s Disaster Law Program for the Americas. **While specific procedures and regulations for facilitating incoming international assistance are included, this document addresses aid provision protocols as they apply both to domestic as well as from external sources.** In addition to the General Civil Protection Act, the Guide incorporates provisions from national law and regulations covering customs, foreign trade and airports, the government’s 2006 Organization and Operations Manual of the National Civil Protection System<sup>xv</sup> and several international instruments, including the IDRL Guidelines and the earlier 1994 Code of Conduct for the International Red Cross and Red Crescent Movement and NGOs in Disaster Relief.

Accordingly, the 67-page guide impressively endeavors to balance the multiple agendas and perspectives of a large-scale response with an overlay of potential international involvement. **Through it Mexico signals its willingness to receive post-disaster assistance but also asserts the leading role of its government during the entirety of the process, particularly that of SINAPROC, SEGOB and SRE.** Further it conditions that aid be needs based, of suitable quality and culturally appropriate, whether sourced nationally or internationally. Accordingly, the document provides significant regulatory detail applicable to in-kind donations. For international requests, sending authorities must work through Mexico’s diplomatic missions abroad and ultimately SRE.

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<sup>xiii</sup> Its Spanish title is *Guía para la Recepción, Organización, Distribución, y Envío de Suministros Humanitarios para la Asistencia de Poblaciones Afectadas por un Desastre.*

<sup>xiv</sup> In Spanish known as *Secretaría de Gobernación.*

<sup>xv</sup> In Spanish known as *Manual de Organización y Operación del Sistema Nacional de Protección Civil.*

**From the viewpoint of North American cross-border response, the following are several key highlights from the guide:**

1. Forms of assistance covered include:
  - Technical support, search and rescue teams and medical staff, which must be previously requested, arrive sufficiently equipped and have coordinated their involvement through SEGOB and SRE in order to assess its relevance among other aspects
  - Access to national or international funds
  - Cash donations
  - Remote shopping in grocery stores
  - In-kind donations
2. Twelve specific categories of in-kind donations are listed with stipulations, in most cases mandating that they be new along with other quality-related conditions.
3. It is assumed that medical support in most instances can be provided from within Mexico. Domestic requests for foreign medical support must go to SRE in coordination with SINAPROC. Regarding credentials, the only stipulation is that “the staff be qualified and/or authorized by SINAPROC in coordination with the Health Ministry.” The exact nature of needed qualifications is not included.
4. The document notes that regulations and procedures of up to 14 government ministries and agencies may be involved depending on the form of assistance. According to the guide: “These measures will be made known by the Ministry of Foreign Affairs.”
5. The guide recommends that simplified legal facilities are provided for both responding governments and humanitarian organizations, including visas and customs processing for staff, goods and rescue teams, exemption from taxes, duties and fees for relief and the temporary granting of legal status in order for personnel to operate legally in the country. Further confirmation is needed as to whether implementing laws and regulations exist at this time.
6. The Red Cross Movement is noted throughout the guide. In addition to references made to the IDRL Guidelines and the 1994 Code of Conduct, the IFRC is noted as an important international partner for the purposes of a joint needs assessment (along with the United Nations). The Mexican Red Cross, while legally an auxiliary to the Mexican government, is mentioned as one of several recognized civil society organizations important to aid distribution centers. (Government of Mexico, Ministry of the Interior, 2014)

#### 4.2.3 NAHRS Dialogue Points

Mexico has proactively pursued legal and policy measures that expedite the entry of international assistance while promoting provider accountability, especially through its 2014 Guidelines. **In anticipation of a catastrophic event in Mexico requiring outside assistance, and**

**with the view of elevating the efficiency of cross-border response, potential focus areas for upcoming NAHRS discussions might include:**

1. The specific procedures by which the Mexican government will facilitate customs waivers, legal status of entering personnel and other relevant matters that are not explicitly addressed in the 2014 Guidelines;
2. Required credentials, liability requirements and other mandates for foreign medical teams to enter and operate in country;
3. The potential coordination interface between the Mexican government and the UNDAC system on the one hand, and bilaterally-oriented assistance efforts by the United States and Canada on the other;
4. Mexican immigration policies related to a spontaneous, cross-border population movement into Mexico; and
5. The process by which controlling Mexican government laws, policies and regulations relevant to cross-border disaster response are made available in the English language and publicly accessible in both English and Spanish.

## 4.3 United States

### 4.3.1 National Legal and Policy Context

**Prior to Hurricane Katrina in 2005, it was inconceivable that the US--one of the world's most powerful countries and a top aid donor--would ever require international assistance following a major disaster.** "FEMA managers anticipated using international aid only during a period of martial law in the United States." (Richard, 2006) **Katrina therefore marked a major watershed in US emergency management history.** Ranked as one of the five deadliest hurricanes ever to hit the US and one of the most destructive of any natural disaster in the nation's history, it devastated 93,000 square miles along its Gulf Coast.

In total, over 150 countries and international organizations made relief offers following the catastrophe, the greatest expression of international financial, material and technical assistance ever made to the US. Ultimately the government would accept assistance from 108 countries and organizations. Finding itself in the unfamiliar role of aid recipient following Katrina, the relief deluge profoundly challenged the government legally, politically and administratively. **The prevailing legislative framework in place at the time of Katrina was--and continues to be--the 1988 Robert T. Stafford Disaster Relief and Emergency Assistance Act, commonly known as the 'Stafford Act'.** Stafford outlines the procedures for a domestic disaster declaration and grants authority to the President or his delegate to accept and use donations. **FEMA is designated as the official entity for responding to disasters within the US,** located within DHS since the September 11<sup>th</sup> attacks. The 2004 National Response Plan (NRP) directed the US Department of State (DOS) to coordinate incoming aid assistance offers, while FEMA was assigned the responsibility of accepting the assistance and managing its distribution. No provision in the NRP addressed how material donations would actually enter the US, be judged for appropriateness or be tracked or deployed once accepted. Officials and other stakeholders

improvised numerous ad-hoc procedures and work arounds to do the best they could under difficult circumstances.

**In response to the Katrina experience, the Bush administration completely overhauled the US government operational policy framework related to incoming international assistance. The new policy became known as the International Assistance System Concept of Operations (IAS CONOPS), first released in 2010 and updated in 2015.** IAS CONOPS addresses many of the challenges encountered during the 2005 crisis as well as formalizes several of the mechanisms improvised in response. While IAS CONOPS does not acknowledge the IDRL Guidelines as a foundation for its approach, the document meets the intent of what the Federation’s Guidelines set out to achieve.

#### 4.3.2 Applicable National Legal, Policy and Regulatory Frameworks

##### 4.3.2.1 *The US Constitution*

The US Constitution establishes a federal framework in which the primary responsibility for public health and safety rests with the states. (Government of the United States) As enshrined subsequently in the Stafford Act, the federal government only becomes engaged if a state requests assistance or local response capacity is overwhelmed.

Like Canada, **the American federal system has important implications for incoming international assistance, particularly as it applies to professional licensing and liability requirements for incoming personnel.** In the US, these regulatory matters are fully under the legal purview of state authorities, with vastly different requirements across them. Numerous stakeholders interviewed have expressed profound concern over the challenges this arrangement poses for the cross-border provision of medical and urban search and rescue (USAR) teams, as most state level frameworks render such international assistance impossible. The US government has developed policies in which the national authorities can “federalize” pre-certified American USAR teams and Disaster Medical Assistance Teams (DMAT). This will allow the respective sectors to provide assistance across the country, by having their credentials recognized nationally as well as extend critical liability coverage. However, this framework does not extend to incoming international teams.

##### 4.3.2.2 *The 1988 Stafford Act (amended 2016)*

The Stafford Act establishes the country’s national emergency management structure and operating procedures to align with the US constitutional framework. **The 2016 amended version contains two key provisions germane to cross-border assistance:**

1. The IAS CONOPS system cannot be engaged until there is a “Stafford Act” declaration of a disaster by the federal government (as opposed to subnational authorities);
2. Stafford recognizes the importance of emergency preparedness-based mutual aid frameworks in relation to “neighboring countries”, defined in the Act as Canada and Mexico. (Government of the United States, 2016)

#### 4.3.2.3 2015 IAS CONOPS

As with Mexico's Guide on humanitarian assistance, this operational plan is lauded for bringing policy coherence to US government acceptance of incoming international aid. **Unlike the Mexican government guidelines, however, IAS CONOPS only applies to assistance from fellow governments and international organizations and not from nongovernmental organizations, the private sector or private citizens.** Nor does it cover aid given to state, local, or tribal governments or replace mutual aid agreements already in place. **Still it provides important legal and policy guidance applicable to all international parties seeking to offer support to the US following a significant disaster.** At this time, the document is not publicly available in Spanish.

#### **The document achieves three primary purposes:**

1. It establishes an inter-agency understanding of respective responsibilities and coordination protocols on the federal level, with a key role to be played by FEMA regarding needs assessment and aid offer acceptance while DOS handles intergovernmental communications.
2. It disseminates information to potential external aid providers related to appropriate channels of communication, the government's accept/decline system and regulatory mechanisms applicable to incoming assistance.
3. It outlines all relevant immigration and border requirements for arriving personnel from abroad.

This 59-page document, comparable to Mexico's framework, establishes the primacy of the US government in determining whether external assistance will be required and that international aid will only be requested in the most extraordinary circumstances. It also states that the preferred form of assistance is in the form of monetary donations to appropriate domestic relief organizations. To date it has not been formally invoked, but provided informal guidance following events such as Hurricane Sandy in 2012.

#### **From the viewpoint of North American cross-border response, the following are several key highlights from IAS CONOPS:**

1. Due to their heavily regulated nature within the United States (up to 15 US agencies) and state control over some matters as noted above, a "No-Go" list addressing potential incoming goods and personnel is provided. Only under the most extraordinary circumstances would FEMA request them, and even then, significant scrutiny and major policy adjustments would be required. The "No-Go" list includes: "food and water, medical supplies and equipment, personnel (foreign first responders), and miscellaneous equipment and supplies."
2. A "Pull" list of possible goods that FEMA has identified as potentially needed but requiring less regulation includes: "emergency supplies not subject to Antidumping or Countervailing Duties, hygiene kits, blankets, and tarps."

3. US Customs and Border Patrol (CBP) can waive duties/taxes on rescue and relief equipment for temporary use and if certain conditions are met.
4. Under the exceptional case where foreign relief personnel will be accepted, a passport will be required at minimum for all entering individuals. A passport alone may be acceptable for entering Canadian citizens in most cases.<sup>xvi</sup> Mexican nationals, as with other countries not covered by the government’s Visa Waiver Program, must also obtain a Business-related category visa. (Government of the United States, US Embassy and Consulates in Mexico) Yet the guidelines also indicate that these document requirements may be waived “on the basis of unforeseen emergency in individual cases”, which includes international disaster services personnel. Intergovernmental arrangements between the US and Canada may also hasten the process, as covered in Section 5.1.2. A fee and prior notification process is involved which may too be waived under certain circumstances. Further, a 2008 bilateral agreement between Mexico and the United States (refer to Section 5.2.2.) calls for each country to “use its best efforts to facilitate prompt entry into and exit from its territory of personnel involved in and materials and equipment for use in cooperative programs under this Agreement” but does not establish protocols in this regard. **Stakeholder interviews highlighted a widespread concern that under the current US presidential administration (refer to Section 5.2.1.), Mexican relief personnel seeking to enter the US would encounter major difficulties in receiving approval to do so.**
5. Any foreign personnel who would be requested by FEMA to come to the US would still be required to address matters related to worker’s compensation, liability coverage and credential and licensing required by states where the provider would operate prior to arrival.
6. Finally, it should be noted that UNOCHA’s UNDAC protocols are integrated into the plan, but only in relation to the receipt of international USAR teams, an exceptional circumstance under current legal and regulatory frameworks. (Government of the United States, FEMA, 2015)

#### 4.3.2.4 *A Final Note: Cross-Border Movement into the United States*

**In the case of a more spontaneous, cross-border mass movement of people either from Canada or Mexico into the United States due to a catastrophic event, US immigration law and regulations related to those matters termed “humanitarian” currently do not explicitly address this scenario.** Like Canada, there have been exceptional circumstances whereby immigration authorities may consider impact by a natural disaster, but only if a US-based family link, financial sponsorship and other elements can be demonstrated. Two bilateral agreements

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<sup>xvi</sup> There are special categories where a visa for Canadian passport holders will still be required under normal conditions, including for Canadian government officials, international organization representatives and NATO-official personnel on temporary or permanent assignment. (Government of the United States, US Embassy and Consulates in Canada)

between the United States and Canada, covered in Section 5.1.2, urge the two countries to facilitate the movement of evacuees in several disaster contexts, but do not specify details.

As such, it remains to be clarified whether US border authorities have the discretion to waive the requirements for entering Canadian citizens who are not passport holders and for Mexican nationals (as well as citizens from other non-visa waiver countries) who would also additionally require an entrance visa. **Stakeholder interview subjects indicate that there may also be a political hesitation by the US government to publicly announce a policy that addresses large scale, cross-border movement following a major disaster.**

#### 4.3.3 NAHRS Dialogue Points

The US has made substantial progress since its painful Katrina experience to enhance its policy and operational capacity to receive international assistance following a major catastrophic event. It has done so within a context of significant legal and regulatory constraints. **Still in anticipation of a catastrophic event in the US requiring outside assistance, and with the view of elevating the efficiency of cross-border response, potential focus areas for upcoming NAHRS discussions might include:**

1. How IAS CONOPS would recognize the assistance provided by the Canadian and Mexican Red Cross Societies;
2. Federal vs. state laws and regulations covering foreign medical teams seeking to enter and operate within the US;
3. US immigration policies related to a spontaneous, cross-border population movement into the US; and
4. The process by which IAS CONOPS and other controlling US government documents relevant to cross-border disaster response will be made publicly available in Spanish.

## 5 A Policy Note About Indigenous Peoples in North American Borderlands

**It is also important to note the presence of Indigenous Nations (either living on reserved or traditional lands) on both the Canadian-US border and the Mexican-US border.** As Rachel Rose Starks observes: “Of the 40 or so Indigenous Nations whose people now live on both sides of an international U.S. border, twelve have reservations that either touch or are within a mile of the Canadian or Mexican border. Many more have relationships—including kinship ties -- that straddle these borders.” (Starks, McCormack, & Cornell, 2011, p. 6) In the North, there are six US federally recognized tribes whose lands cross the international border, including the 28,000 members of the Mohawk Nation. Mohawk lands stretch from New York state into parts of Quebec and Ontario. In the south, the most expansive territory belongs to the Tohono O’odham Nation and its 25,000 plus members. Its traditional lands span 2.8 million acres across the state of Arizona and into Sonora, Mexico. However, the Mexican government does not formally recognize these traditional lands. (Marchbanks, 2015)

From a disaster management perspective, only in recent years have the three North American national governments more fully sought to incorporate Indigenous Nation concerns into their preparedness plans. In the US, while FEMA has established Tribal Liaisons in each of its ten regions and the 2013 Sandy Recovery Improvement Act recognized Tribal leaders (rather than state governors) as having the authority to directly request a disaster declaration from the president, a vast majority of the Nations cannot apply for FEMA funding. (Peek & Carter, 2016, p. 52) Only 20% of the nearly 600 tribes in the US have FEMA-recognized disaster mitigation plans in place. (Peek & Carter, 2016, p. 53) Elsewhere, Indigenous and Northern Affairs Canada (INAC) requires First Nation communities to develop emergency management plans and INAC funds those efforts. However, as Minister of Public Safety and Emergency Preparedness, Ralph Goodale, told a Canadian Red Cross gathering in May 2017, “Here in Canada some of the biggest gaps in emergency preparedness and emergency planning are in Indigenous communities.” (Honorable Ralph Goodale, 2017)

## 6 Intergovernmental Agreements and Arrangements

This study emphasizes the domestic legal and policy frameworks of Canada, Mexico and the US, especially as they impact mutual cross-border assistance across the related National Societies.

**These national frameworks operate in tandem with a prolific network of bilateral agreements, chiefly among Canada and the US but also to a lesser extent between Mexico and the US.** The following section will not engage in a comprehensive overview of all such agreements in place. Rather it will provide a wider backdrop for their existence and highlight those instruments that serve as major reference points for NAHRS stakeholders interviewed to date, particularly as they supply a context for National Society cooperation.

*Note: While the Canadian-Mexican diplomatic relationship is very strong, intergovernmental understandings between the two governments fall largely under multilateral arrangements at this time.*

### 6.1 Canada and the US

#### 6.1.1 Bilateral Context

**At 5,525 miles (8,891 kilometers), the Canadian-US border is the longest international boundary between two countries.** This border region encompasses eight of Canada’s thirteen provinces or territories (Yukon, British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec and New Brunswick) and thirteen US States (Alaska, Washington, Idaho, Montana, North Dakota, Minnesota, Michigan, Ohio, Pennsylvania, New York, Vermont, New Hampshire and Maine). **Some 75% of Canada’s population (of 36 million people) live within 100 miles (161 kilometers) of the border. Estimates place 12% (of 321 million) of the US population within 100 miles of the common border.**

At one time, this boundary line was known as the world’s “longest undefended border”, but with changes enacted after **the September 11, 2001 terrorist attacks in the US, the border has significantly “hardened”** thus creating many challenges for cross-border disaster assistance.

**The border remains a very active space given that Canada and the US have the world's largest trading relationship.** The US-Canadian two-way trade in goods and services was nearly \$628 billion (US) in 2016. (Government of the United States, Office of the United States Trade Representative, 2016) According to GAC “close to 400,000 people cross our shared borders every day for business, pleasure, or to maintain family ties.” (Government of Canada, Global Affairs Canada, 2017(a)) Militarily, Canada and the US share in the mutual defense of their common aerospace (and since 2006, maritime areas) through the North American Aerospace Defense Command (NORAD). It is important to note that the American commander of NORAD also heads US Northern Command (USNORTHCOM) whose “civil support mission includes domestic disaster relief operations that occur during fires, hurricanes, floods and earthquakes.” (Government of the United States, US Northern Command)

### 6.1.2 Intergovernmental Agreements and Understandings (National Level)

Under the heading of “civil defense” or “civil emergency planning”, Ottawa and Washington have had a long history of intergovernmental cooperation, dating back to the 1967 Canada-United States Agreement Concerning Civil Emergency Planning. Most observers mark the start of the modern era of the two countries’ collaboration with the signing of the 1986 Agreement between the Government of Canada and the Government of the United States of America on Cooperation in Comprehensive Civil Emergency Planning and Management in 1986 and perhaps most importantly, with its successor accord, the 2008 Agreement between the Government of Canada and the Government of the United States of America on Emergency Management Cooperation. **Over the past decade, the two governments have continued to expand their cooperation regarding mutual assistance and aid facilitation mechanisms.**

Applicable bilateral agreements are compiled in The Compendium of US-Canada Emergency Management Assistance Mechanisms (“US-Canada Compendium”), itself a product of a Working Group established by the 2008 Canada-US Agreement. A second edition of the US-Canada Compendium (which only addresses national government-to-national government understandings) was issued jointly by DHS and PSC in October 2016. **Of the thirty some documents included in the US-Canada Compendium, over 75% of these arrangements were only established after 2006 (in the post-9/11 and post-Katrina era).** Their subject matter runs the gamut from joint cooperation over pollution to critical infrastructure to cyber security to nuclear emergencies. (The Compendium of US-Canada Emergency Management Assistance Mechanisms, 2016)

**The following bilateral frameworks were highlighted as instrumental by US and Canadian stakeholders as they apply to cross-border disaster assistance between the two countries:**

#### 6.1.2.1 *1982 Canada/United States Reciprocal Forest Fire Fighting Arrangement and Operational Plan (Updated 2017)*

**This arrangement facilitates cooperation between the Canadian Interagency Forest Fire Centre (CIFFC) and the US National Interagency Coordination Center (NICC) related to equipment, personnel and aircraft as “needed across the international boundary.”** The 2017

Operating Plan for this reciprocal arrangement asserts that in addition to the national government-to-government interchange, “Local agencies sharing common international borders are encouraged to enter into ‘Border Agreements’ to facilitate pre-suppression and suppression on fires posing common threat.” As a further note, the Canadian side has extended this framework to several other countries, including Mexico. (Canada/United States Reciprocal Forest Fire Fighting Arrangement and Operational Plan, 2017)

Over the past few years there have been several high-profile wildfires in Canada which necessitated requests for assistance of hundreds of external fire service personnel from the United States, Mexico and other countries. While the Canadian wildfire crises in 2015 and 2016 gained significant media attention due to these international arrivals, mutual assistance in the fire service sector stretches back decades.

#### *6.1.2.2 2008 Agreement between the Government of Canada and the Government of the United States of America on Emergency Management Cooperation*

**This milestone agreement between the two countries structures nearly daily, on-going cooperation between the respective governments related to mutual interests in emergency management.** In addition to formalizing a Working Group for high-level consultations, the instrument establishes the principle--but not the operational detail--for mutually facilitated entry covering emergency services personnel, goods, equipment and transportation support. It also urges that “Each Party shall use its best efforts to facilitate the movement of evacuees, emergency personnel, equipment or other resources into its territory or across its territory when it is agreed that such movement will facilitate emergency operations by both Parties”, further adding that evacuees should be supported according to the same standard as their own citizens. (Agreement between the Government of Canada and the Government of the United States of America on Emergency Management Cooperation, 2008)

#### *6.1.2.3 2009 Canada-United States Framework for the Movement of Goods and People Across the Border During and Following an Emergency (and Maritime Annex) and Plan for the Movement of People and Goods During and Following an Emergency (Canada, Revised 2014)*

**The Framework comes into effect if there is a “significant border disruption”** as a result of “(a) An attack or threat of attack to the United States or Canada by terrorists; (b) A natural or man-made incident, including a pandemic or other health incident, that impacts large numbers of citizens and/or affects Critical Infrastructure and Key Resources of national interest to one or both countries; or (c) Federal, State, Local, Provincial, Territorial or U.S. Tribal Governments request national-level assistance through existing procedures” The Annex can be invoked “in the event of an incident [described above] that affects the shared maritime transportation systems” of Canada and the United States.

It should be noted that the governments establish communication channels to support the agreement and “to take steps to ensure that Canada and the United States have activated their respective decision-making processes to manage the movement of goods and people across the border”. However, the arrangement is not internationally legally binding and does not replace

US and Canadian statutory and regulatory frameworks in this area. (Canada-United States Framework for the Movement of Goods and People Across the Border During and Following an Emergency, 2009)

#### 6.1.2.4 *2012 Agreement between the Government of Canada and the Government of the United States for the Sharing of Visa and Immigration Information*

According to the US-Canadian Compendium, **“It is intended to stop threats before they arrive in Canada or the U.S. [by] improving information available for visa determinations,”** through the establishment and verification of travelers’ identities. (Agreement between the Government of Canada and the Government of the United States for the Sharing of Visa and Immigration Information, 2012)

#### 6.1.3 Intergovernmental Agreements and Understandings (Provincial-State level)

**On the province-to-state level, three regional compacts exist which link all the adjacent and territorial subunits of Canada and the United States into one of three emergency management arrangements.** Since under the US Constitution states cannot enter into international agreements, these compacts – signed at the state/provincial level -- must be approved by Congress (ex post facto in all three cases).<sup>xvii</sup> The federal government does not have a similar role in Canada.

As Beverly Bell explains, until the creation of these compacts, “state-to-province assistance—or vice versa—wasn’t clear-cut. While help would come, it probably would be delivered on a piecemeal basis, replete with urgent phone calls and emails, and plenty of long-distance negotiation.” Now she argues, the province-to-state agreements “can facilitate the exchange.” (Bell, March/April 2017) Other observers such as Timothy Boucher are more critical of the agreements. Boucher terms the agreements “insufficient” as “they do not provide the basis or means for which emergency responders can cross the border in an expeditious and secure manner.” (Boucher, 2016, p. 152) He further notes that while these compacts are at the provincial-state level, federal authorities still control the border crossings and “when firefighters rush from their homes in the middle of the night to respond to a call, they do not usually stop to think if they have their passports or licenses.” (Boucher, 2016, p. 157)

The three compacts (in order of their establishment) are:

##### 6.1.3.1 *1996 Pacific Northwest Emergency Management Arrangement*

Covering British Columbia and the Yukon plus Alaska, Idaho, Oregon and Washington. (Pacific Northwest Emergency Management Arrangement, 1996)

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<sup>xvii</sup> The text of US Congressional authorizations of the various compacts covered in this section can be found in the 2015 Compendium of Authorities for FEMA’s International Affairs Engagement. (Government of the United States. FEMA. International Affairs Division., 2015)

### 6.1.3.2 2000 International Emergency Management Assistance Compact

Covering New Brunswick, Newfoundland and Labrador, Nova Scotia, Prince Edward Island and Quebec plus Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island and Vermont. (International Emergency Management Assistance Compact, 2000)

### 6.1.3.3 2013 Northern Emergency Management Assistance Compact

Covering Alberta, Manitoba, Ontario and Saskatchewan plus Illinois, Indiana, Ohio, Michigan, Minnesota, Montana, New York, North Dakota, Pennsylvania, and Wisconsin. (State and Province Emergency Management Assistance Memorandum of Agreement: Executive Summary (NEMAC), 2013)

In addition to these three compacts, several sector-specific provincial-state agreements exist. Foremost among them is the Pacific Northwest Border Health Alliance (PNWBHA). The PNWBHA grew out of the Pacific Northwest Emergency Management Agreement by institutionalizing “the previously ad hoc cross border working groups.” It encompasses Alberta, British Columbia, Saskatchewan and the Yukon plus Alaska, Idaho, Montana, Oregon and Washington. Goals include providing an organizational structure that can help “[t]o prevent and/or mitigate the potential impact of a health incident, such as; a naturally-occurring pandemic; a devastating environmental or geological event; or a terrorist attack with chemical, biological or radiological weapons, through dynamic and open collaboration.” Since 2004, this grouping has held an annual cross-border workshop which has addressed issues as varied as tracking infectious diseases across borders to the health impacts of seismic events. (Pacific Northwest Border Health Alliance, n.d.)

## 6.2 Mexico and US

### 6.2.1 Bilateral Context

The Mexican-US border is an estimated 1,933 miles (3,111 kilometers) in length. The border region includes six Mexican states (Baja California, Sonora, Chihuahua, Coahuila, Nuevo Leon and Tamaulipas) and four US states (California, Arizona, New Mexico and Texas). Under the La Paz Agreement (1983), the border region is defined as 100 kilometers (63 miles) north and south of the international boundary. Within this zone there are approximately 12 million people – a population which is expected to double by 2025. (United States-Mexico Border Health Commission) Mexico is the United States’ third-largest trading partner (after Canada and China). The US-Mexican two-way trade in goods and services was nearly \$580 billion (US) in 2016. (Government of the United States, Office of the United States Trade Representative) Additionally, remittances--funds sent from Mexicans working in the US--reached a record high of \$27 billion (US) in 2016. (Harrup, 2017) Generally, these funds go directly to family members in Mexico, but some are “collective remittances” which are used for community projects. Legal border crossings along the shared US-Mexican boundary are significant given the commercial, employment, family and educational dynamics of the border region. **Unlike the northern border, in the south there are major adjacent cities that seemingly transcend the borderline (for example, San Diego/Tijuana or El Paso/Ciudad Juarez). Daily legal border crossings number in the hundreds of thousands to perhaps upwards to a million people a day, making it one of the most traveled borders in the world.** (Valverde, 2016)

Regarding the border, the US DOS asserts that “The United States and Mexico have a long history of cooperation on environmental and natural resource issues, particularly in the border area, where there are serious environmental problems caused by rapid population growth, urbanization, and industrialization.” (Government of the United States, Department of State, 2017) **However as of this writing, the six-month old administration of US President Donald Trump has cast a profound shadow over these long-standing bilateral areas of cooperation.** The administration’s decision to renegotiate rather than terminate NAFTA (per his original position) has taken pressure off one element of US-Mexican relations. Still President Trump’s steadfast insistence upon heightened border security measures with Mexico (including the building of a US “wall” at Mexico’s expense) and increased immigration-related arrests of Mexican nationals currently residing in the United States, **have several NAHRS stakeholders concerned about how this diplomatic atmosphere will affect cooperation in cross-border assistance matters. Other stakeholders interviewed, however, believe that close ties and networks long in place between Mexican and US public servants in the assistance sector will mitigate some of the negative impact of high level political relations.**

#### 6.2.2 Intergovernmental Agreements and Understandings (National Level)

While not as extensive in number or as deep in legal obligation as the bilateral arrangements between Canada and the United States, there are several emergency management related frameworks in place between Mexico and the United States, primarily within the environmental, industrial and public health sectors. **Most are circumscribed to information exchanges focusing on preparedness, information sharing during events having a simultaneous impact upon both countries and technical/scientific cooperation.** They are less dedicated to cross-border response specifically, but there are some exceptions. A few referenced as important by stakeholders related to this project:

##### 6.2.2.1 *1983 Agreement on Cooperation for the Protection and Improvement of the Environment in the Border Area (La Paz Agreement)*

**While heavily oriented toward environmental protection protocols covering the border area--defined as 62 miles (100 km) to the north and south of the international boundary--this agreement also contains provisions related to joint contingency planning and emergency response following a pollution-based disaster in the identified zone.** These specific sectors of cooperation were further elaborated upon in a 1985 Annex to the original agreement and a 1999 Joint Contingency Plan. La Paz emphasizes coordination between the country’s governments within their own national spheres, but does contain a section related to facilitating incoming assistance in either direction: “In accordance with national legislation and as soon as the Agreement enters into force, special customs, immigration and other necessary authorization mechanisms will be sought by each Party.” (Agreement on Cooperation for the Protection and Improvement of the Environment in the Border Area (La Paz Agreement), 1983)

**One of La Paz’s more recent implementing mechanisms, Border 2020, strongly emphasizes local border community cooperation following a hazardous substance release, akin to the US-**

**Canadian state-provincial level instruments discussed earlier.** Contingency planning for emergency response is one of the areas covered within the 15 sister-city plans spanning the US-Mexican border. The arrangement also covers the Tohono O'Odham Nation. (Border 2020: US-Mexico Environmental Program, 2012)

6.2.2.2 *1999 Wildfire Protection Agreement Between the Department of Agriculture and the Department of the Interior of the United States of America and the Secretariat of Environment Natural Resources and Fisheries of the United Mexican States for the Common Border (updated in 2003)*

**This agreement, like that between Canada and the US, creates more explicit commitments around cross-border assistance during wildfire events:** “The purpose of this Agreement is to enable wildfire protection resources originating in the territory of one country to cross the United States-Mexico border in order to suppress wildfires on the other side of the border within the zone of mutual assistance in appropriate circumstances.” A “zone of mutual assistance” covers an area of up to 10 miles or 16 kilometers (10 miles) on each side of the United States-Mexican border, although the need to go beyond this zone is also envisioned.

Given the challenges raised regarding US liability waivers and other legal requirements in Section 4.3.2.3., this agreement notably arranges for “cross waiver” of liability claims (with a few exceptions such as criminal conduct). The two parties also commit to cooperating “with the involved agencies of their respective governments, to process appropriate legal documentation, within the applicable laws and regulations of both countries, and to otherwise facilitate entry to and exit from its territory of all personnel engaged in wildfire protection”. The same applies to the cross-border movement of goods, specialized equipment and transportation. (Wildfire Protection Agreement Between the Department of Agriculture and the Department of the Interior of the United States of America and the Secretariat of Environment Natural Resources and Fisheries of the United Mexican States for the Com, 1999; Updated 2003)

6.2.2.3 *2011 Agreement between the Government of the United States of America and the Government of the United States of Mexico on Emergency Management Cooperation in Cases of Natural Disasters and Accidents*

While similar in tenor to the 2008 US-Canadian agreement on emergency management cooperation, this pact focuses primarily on establishing channels of communication through a binational, high-level Working Group to address issues in this sector. Nonetheless one provision does urge that the two parties “use its best efforts to facilitate prompt entry into and exit from its territory of personnel involved in and materials and equipment for use in cooperative programs under this Agreement subject to applicable laws of each country.” (Agreement between the Government of the United States of America and the Government of the United States of Mexico on Emergency Management Cooperation in Cases of Natural Disasters and Accidents, 2011)

### 6.3 Trilateral Arrangements Between Canada, Mexico and US

The US-Canada Compendium lists **one trilateral understanding, the 2012** (North American Plan for Animal and Pandemic Influenza, 2012). This document identifies how the three countries would collectively prepare for and manage a large-scale outbreak of influenza (human or animal) impacting the continent.

On the political level, trilateral meetings of the national leaders – dubbed by some as the “Three Amigos Summit” --date back to at least 2005 when it was part of the now defunct Security and Prosperity Partnership of North America. Although originally an annual gathering, it has become more infrequent in recent years with disagreements and other issues leading to summit cancelations. The last was held in June 2016 between Prime Minister Justin Trudeau, President Enrique Pena Nieto and President Barack Obama. It is unclear whether the gathering will continue under President Donald Trump. **President Trump’s May 2017 decision to re-open negotiations on the North American Free Trade Agreement (NAFTA) may also shape the future course of trilateral disaster assistance.** While NAFTA’s focus is on trade-oriented rules and regulations between the three, discussions related to cross-border movement mechanisms under a revised NAFTA may have implications for North American mutual aid.

## 7 North American Red Cross Societies Cooperation and Cross-Border Disaster Response

Up to this juncture, this study has mapped and analyzed Canadian, Mexican and US governmental legal and policy frameworks related to cross-border assistance following a catastrophic event. **This section will address the interface between these official frameworks and the agreements in existence between the American, Canadian and Mexican Red Cross National Societies in various combinations.** It will also highlight areas of interest and concern among stakeholder interview participants pertaining to mutual assistance by the North American National Societies and their respective border chapters.

### 7.1 Context for Cooperation

**Numerous elements set the contextual stage for the quality of North American National Society cooperation.** Several strengths include: the deep pride that each society takes in assisting the others through a shared sense of humanitarian imperative, and specifically the Red Cross/Red Crescent Movement’s seven “Fundamental Principles”<sup>xviii</sup>; the pivotal value of the three organizations’ senior leadership meeting annually; and the legally enshrined auxiliary status the National Societies possess within their respective home countries. Yet interviewed stakeholders have also highlighted several factors that may impact the overall efficiency of North American cross-border disaster response operations involving the three Societies. They include varying degrees of public understanding related to a National Society’s special role in

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<sup>xviii</sup> They include: humanity; impartiality; neutrality; independence; voluntary service; unity and universality. (IFRC)

aid provision, the Societies' respective decentralized organizational structures and potentially missed opportunities to capitalize on IFRC resources and networks.

During project interviews as well as in media coverage, representatives of the three National Societies expressed considerable pride in the fact that they have helped each other out during times of crisis. The Canadian and Mexican National Societies note assistance given to the US during Hurricanes Katrina (the first time ever on behalf of the Mexican Red Cross), Ike in 2008 and Sandy in 2012. (American Red Cross, 2012(a)) (American Red Cross, 2012(b)) The Mexican Red Cross also instrumentally provided cross-border aid to the US during the 2007 Southern California wildfires and the 2015 Hidalgo, Texas and 2016 Baton Rouge, Louisiana flooding events. (Weaver, 2009) (Jarrell, 2016) **Mexican National Society personnel note that their assistance to the US (and by extension Canada) is more than the tangible elements of food or tents. The Mexican staff also make a meaningful difference in providing translation services to Spanish only speakers. Equally crucially, many undocumented Mexican nationals residing in disaster impacted areas in the US feel they can approach the Mexican Red Cross for assistance while they are potentially more fearful to do so with American relief personnel.** As one American Red Cross provider captured the role of the Mexican National Society following the Southern California wildfires:

*When American and Mexican Red Cross volunteers walked side-by-side through affected Hispanic communities, many more people came up to us for help...The Mexican Red Cross uniforms are different than ours and well-known by all Mexicans for their disaster assistance because they are the primary emergency responders in their country. So we reached a greater number of people this way. (American Red Cross, 2008)*

ARC personnel were dispatched to Canada during the 2013 Alberta Floods and the 2015 Saskatchewan and 2016 Fort McMurry fire emergencies. (Canadian Red Cross, 2013) (American Red Cross, 2016) The American Red Cross also partnered with the Mexican Red Cross to provide relief to those impacted in Mexico by Hurricane Dean in 2007, the 2010 Laredo floods, 2014 Hurricane Odile and at the border during the 2014 Central American unaccompanied minors crisis. (American Red Cross-Texas/Cruz Roja Mexicana Cross Border Meeting [Meeting Notes], Laredo, Texas, 2011) (Weaver, 2009) (DeFrancis, 2015) While physical Canadian Red Cross assistance to Mexico is rarer (and vice-versa), the Canadian National Society has channeled Canadian government and private donations to the Mexican Red Cross during major disasters such as the 2007 Tabasco Floods. (Canadian Red Cross, 2007)

**Outside of these high media profile examples, local border chapters—particularly on the US-Canadian border—report nearly daily examples whereby the respective Societies assist each other during the myriad small emergencies that occur. American and Mexican Red Cross local chapters express a similar desire to engage in mutual assistance but express concern that US immigration policies and personal security concerns on the Mexican side near the border make such ad-hoc aid much more difficult.**

Another reinforcing element to North American National Society cooperation is that each year since 2009, the Presidents of the three National Societies, Suinaga Cardenas (Mexican), Gail McGovern (American) and Conrad Sauvé (Canadian) have met to discuss matters related to cross-border response along with their senior leadership. (DeFrancis, 2015) **Their highly collegial working relationship—the three are dubbed the “three amigos”—is credited with facilitating highly positive interactions across the respective organizations and have led to significant capacity building measures regarding mutual assistance** (refer to Section 6.2).

**Many stakeholders also affirm the importance of their respective National Societies’ special auxiliary status within their home countries**, a legal principle long established by International Humanitarian Law, rules of the Red Cross/Red Crescent Movement and national legislation within each country. **Yet while this arrangement makes the Societies legally unique among all domestic relief organizations within their own countries, several Red Cross representatives have expressed concern that this relationship is not always clearly understood** by government officials or the public, depending on the national context and the nature of the crisis. An IFRC media item echoes this sentiment: “The auxiliary role is one of the defining characteristics of the Red Cross Red Crescent’s relationship with governments. It is also, arguably, one of the least well understood aspects of the Movement.” (Zambello, 2012) This lack of clarity regarding the unique contributions of the participating Societies could potentially generate differing policy expectations of their roles during a cross-border disaster response.

**Finally, the National Societies’ internal organizational makeup and their external affiliation with the IFRC inject additional variables into the calculus of cross-border assistance.** The end results are both a rich pool of resources from which to draw during times of crisis but also a much more complex response landscape. **The three National Societies’ decentralized organizational structure between national headquarters and local chapters, produces a multi-level network of relationships, operating values, expectations and even IT systems**, a dynamic clearly recognized by all stakeholders interviewed for the project. While the national leadership of the three Societies have forged strong bonds among each other, **it should be also recognized the equally significant ties between local communities and chapters residing across from each other along the respective borders.** A keen sense of shared interests is evident related to disaster relief irrespective of international boundaries and national policies, shaping their critical but often overlooked role as the first wave of cross-border disaster response. “Help can’t wait” was a phrase often invoked by Red Cross border chapter personnel on every side of the respective international borders during interviews for this project.

Conversely, the federal relationships between the Geneva-based Red Cross and Red Crescent Movement and the individual National Societies add yet another layer to the conduct of cross-border operations. **Some interview subjects suggested that opportunities exist to foster still stronger ties with the IFRC**, and that its multinational informational and network resources could be further capitalized upon during a catastrophic North American event.

## 7.2 Frameworks for North American Red Cross Society Cooperation

### **Three MOUs were provided by the American Red Cross covering cross-border assistance between the three National Societies.**

They include: 1) the 2008 MOU between the American and Canadian Red Cross National Societies (Memorandum of Understanding between The American National Red Cross and The Canadian Red Cross, 2008); 2) the trilateral MOU between the American, Canadian and Mexican National Societies (date unconfirmed; but believed to be 2009); and 3) a 2009 border chapter MOU between San Diego/Imperial County, California and Baja California, Mexico.

While it does not explicitly state it, it appears that the trilateral MOU has the contractual effect of replacing the bilateral American-Canadian Red Cross agreement. Research indicates the existence of a 2008 counterpart bilateral agreement between the American and Mexican National Societies, but no copy has been provided. According to authoritative officials involved with US-Mexican border chapter cooperation, there are no other local MOUs that exist among the southern border. It remains to be confirmed as to whether there are local chapter MOUs along the US-Canadian border. This scan will be updated as further documents are provided but at this time the trilateral agreement and the San Diego-Baja California MOU will be examined more closely here.

#### *7.2.1 Memorandum of Understanding between The American Red Cross, The Mexican Red Cross, The Canadian Red Cross (year to be confirmed)*

This trilateral agreement covers six aspects of cooperation, with Disaster Preparedness and Response identified as the first area. The MOU establishes several points of understanding, including:

1. Support for the respective border chapters and “their traditional established neighborly relations” as well as for their individual mutual aid agreements “in time of border disasters affecting their respective populations”;
2. Participating border personnel must respect the national laws of the country to which they are deployed;
3. Border chapters should keep their respective National Headquarters informed of a response to a “significant” incident;
4. Personnel are exchanged only after a request is made in writing by the requesting Society;
5. The salaries of participating personnel will be covered by the sending Society while costs are absorbed by the hosting Society; and
6. Sending Societies will provide detailed information regarding personnel, including background check results. (Memorandum of Understanding between The American Red Cross, The Mexican Red Cross, The Canadian Red Cross , n.d.)

**The MOU does not address any specific elements related to the national laws and regulations of the host countries applicable to cross-border assistance, as surveyed in Section 4 of this**

**study.** MOUs typically possess more general provisions to allow for operational flexibility as years pass. **Still it may be time to update the trilateral National Society agreement to recognize some of the inherent legal and regulatory challenges that will impede cross-Society cooperation and to determine joint courses of action** that the National Societies can pursue in relation to their home governments to facilitate border entry of personnel, goods and equipment. This point is perhaps further emphasized by a trilateral meeting of the three National Society presidents in 2013, whose talks that year focused on establishing “protocols for humanitarian assistance that are unified with the authorities in each country” according to an IFRC press release. (Red Cross Societies in Canada, Mexico and the United States to Cooperate Further During Major Disasters, 2013)

*7.2.2 2009 Mutual Aid Agreement between American Red Cross, San Diego/Imperial Counties Chapter and La Cruz Roja, Baja California Delegacion*

**This border chapter agreement was considered landmark for its time** and emerged because of the previous cooperation between the involved local chapters during the devastating 2007 Southern California fires. It establishes mutual expectations in the following areas:

1. The agreement will cover planning, training and specialized assistance requests between the chapters;
2. Like the trilateral agreement between the National Societies, it establishes protocols for assistance requests, responsibility for costs and liability and other matters; and
3. Importantly, it recognizes the responsibility of the respective chapters to work with governing authorities to domestically facilitate the assistance provided by the sending chapter: “The Requesting Party should facilitate the rapid entry of the resources and personnel of the Responding Party with their respective federal immigration and customs authorities. This does not exempt the responding party from the requirement of having the necessary documents to legally enter the country that has requested the assistance.” (Mutual Aid Agreement between American Red Cross, San Diego/Imperial Counties Chapter and La Cruz Roja, Baja California Delegacion, 2009)

In 2010, Texas-based Red Cross border chapters actively pursued their own MOU with their immediate counterparts in Coahuila, Tamaulipas and Nuevo Leon States in Mexico and subsequently held a meeting in Texas in 2011. (Sano, 2011) (American Red Cross-Texas/Cruz Roja Mexicana Cross Border Meeting [Meeting Notes], Laredo, Texas, 2011) Despite strong support expressed by all sides as to the desirability of such an agreement, subsequent immigration and financial difficulties prevented further progress on the initiative. Still, **American and Mexican Red Cross representatives have indicated significant interest in relaunching the project, particularly due to increased unpredictability under the current US presidential administration and heightened tensions toward Mexican nationals within Texas itself.** Border American Red Cross providers note that they have still been able to furnish assistance when requested by pro-actively building a rapport with US border authorities and

related consulates. Yet they prefer to move from an improvisational, ad hoc approach to one that is more formalized.

**Conversely, border chapters on the US-Canadian border report high levels of interaction and collaboration on a regular basis**, and do so without formalized protocols and significant involvement with national headquarters. Stakeholders interviewed for the project believe that to date the more flexible, less institutionalized approach has served them well. Nonetheless they have noted that there have been periodic issues-- particularly with US border authorities-- that may become heightened during a more extreme event, warranting a more structured approach in some cases.

### 7.3 NAHRS Dialogue Points

**From the perspective of the North American National Societies and their respective border chapters, the NAHRS Summit initiative represents an exciting opportunity. The project provides an occasion to revitalize already existing agreements, by aligning them with current best practice approaches to legal and policy preparedness applicable to cross-border disaster response. For those border chapters desiring greater formalization, the NAHRS initiative supplies new energy and momentum to conclude local agreements, especially considering larger political and diplomatic developments on the US-Mexican border.**

**Another achievable but extremely useful outcome for the National Societies during this process is to pursue “document preparedness”.** Throughout the conduct of the policy scan, there was a lack of clarity across and within the National Societies regarding the existence, location and status of agreements in effect. This phenomenon is in no way unique to the Red Cross. Still an essential element of any successful emergency response plan within and across partnering organizations is immediate and widely available access to documents vital to an efficient and timely response. While it may seem like a simple step, pursuing such measures will have a profoundly transforming effect during cross-border disaster response.

## 8 Concluding Comments

To echo the opening comments of this study, finding a policy launching point for a productive multi-stakeholder dialogue on cross-border disaster response across three very different countries may seem initially formidable. **Yet interviews with nearly 20 NAHRS-related stakeholders highlight the presence of two vital ingredients necessary to ensuring the success of the project.** The first is that participants firmly believe in the fundamental importance of such an initiative and universally laud the American Red Cross for taking the lead on it. Secondly, NAHRS stakeholders—whether they are high-level government officials or decades long volunteers with local Red Cross chapters-- want the project to achieve maximum success. These two intangible but essential elements will be important in the coming months of policy discussions.

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