

Commentary to the Model Decree for the Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance

Contents

Introduction to the Commentary	3
Commentary on the Preamble	3
Commentary on Coordination of International Disaster Assistance	4
Overview	4
Paragraph 1	5
Paragraph 2	6
Commentary on Offers and Acceptance of International Disaster Assistance	7
Overview	7
Paragraph 3	7
Paragraph 4	7
Commentary on Responsibilities of Assisting International Actors	8
Overview	8
Paragraph 5	9
Paragraph 6	9
Paragraph 7	11
Commentary on Eligibility for Facilities	11
Overview	11
Paragraph 8	13
Paragraph 9	13
Commentary on International Relief [and Initial Recovery] Goods and Equipment	14
Overview	14
Paragraph 10	17
Paragraph 11	18
Paragraph 12	18
Paragraph 13	19
Paragraphs 14 and 15	20
Paragraph 16	21
Paragraph 17	21
Paragraph 18	21
Commentary on Legal Status and Facilities for Approved Actors	22

Overview:	22
Paragraph 19	23
Paragraph 20	25
Paragraph 21	25
Paragraph 22	26
Paragraph 23	26
Commentary on International Disaster Personnel of Approved Actors.....	27
Overview	27
Paragraph 24.....	27
Paragraph 25.....	28
Paragraph 26.....	29
Paragraph 27.....	29
Commentary on Specialized Unit to Expedite the Entry of Incoming International Assistance	29
Overview	29
Paragraph 28.....	30
Paragraph 29.....	31
Paragraph 30.....	31
Paragraph 31.....	32
Paragraph 32.....	32
Commentary on Oversight.....	32
Overview	32
Paragraph 33.....	33
Paragraph 34.....	33
Paragraph 35.....	34
Commentary on Transparency as to International Financial Donations.....	34
Overview	34
Paragraph 36.....	34
Paragraph 37.....	35

Introduction to the Commentary

This Commentary is intended to provide background information on the various provisions of the [Model Emergency Decree for the Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance](#). It is an explanatory document and is not intended as an integral part of the Model Emergency Decree, but rather to complement it.

The Commentary does the following:

- identifies the links between the provisions of the Model Emergency Decree and relevant sections of the [‘Guidelines for the domestic facilitation and regulation of international disaster relief and initial recovery assistance’ \(the ‘IDRL Guidelines’\)](#)¹ and the [‘Checklist on the facilitation and regulation of international disaster relief and initial recovery assistance’ \(the ‘IDRL Checklist’\)](#).
- identifies the problem or issue that each section and paragraph seeks to address;
- provides examples of relevant existing legislation from different countries, where available² (and it must be kept in mind that few states have addressed these problems to date, which is why the IDRL Guidelines were developed in the first instance).

The Model Emergency Decree is intended as a reference tool for voluntary use by disaster management and other relevant authorities who face a major national disaster requiring international humanitarian assistance, and who have not yet developed detailed domestic legislation, regulation and/or procedures in their countries for managing incoming international disaster assistance. The Model Emergency Decree is not intended to replace the [Model Act for International Disaster Relief and Initial Recovery Assistance](#), a document which aims at providing a comprehensive and predictable legal framework for the facilitation of international humanitarian assistance. Rather, the Model Emergency Decree is a more simplified and succinct tool which spells out core minimum requirements and standards regarding eligibility of international actors, legal facilities, coordination and oversight – among others – which can be applied quickly in a disaster, especially in the absence of specific legislation, regulation or procedures on this matter. The drafters of the Model Emergency Decree also note the diversity of legal systems around the world, and the different approaches to disaster risk management, and therefore this tool is recommended to be used and adapted as relevant for the domestic context in question.

Commentary on the Preamble

In many countries, disaster management legislation already exists – and with the declaration of an emergency, certain provisions usually come into effect which govern the coordination of domestic response efforts. In general, however, provisions regarding international humanitarian assistance are often lacking. Where they do exist, they are often contained in subsidiary legislation (e.g. regulations) or in ‘soft’ instruments such as guidelines, plans or manuals, rather than in a central disaster risk

¹ The IDRL Checklist contains 10 key questions to consider when legislating for the management of international disaster assistance. These 10 questions and the explanatory text contained in the IDRL Checklist provide a useful tool to be used alongside the IDRL Guidelines and Model Emergency Decree. Detailed examples of best practice are also available in the IFRC’s publication [‘From Law to Action: Saving Lives through International Disaster Response Law’](#) (2017).

² Copies of some of the laws mentioned in this commentary are available on the IFRC’s online [Disaster Law Database](#).

management law. This can make these systems difficult to navigate, especially for international actors, and therefore hard to implement effectively.

Some countries might have a system or centre for disaster management in place, but this does not always cover international actors. Increasingly, governments are including a specific chapter in their national disaster risk management legislation which outlines the management and coordination of international disaster assistance, such as in Cambodia, Colombia, Mexico, Mongolia, Myanmar, Nauru, the Seychelles and Vietnam. The level of detail differs, however, with some examples being stronger and more detailed than others. Often, the details regarding the management of international disaster assistance are relegated to subsidiary legislation, implementing rules or regulations, or disaster management plans or manuals (e.g. in the cases of Costa Rica, Ecuador, Indonesia, Mexico, Philippines, Samoa etc). In some cases, though very few, states have adopted specific laws on international disaster assistance, such as the 'Law of the Kyrgyz Republic on International Disaster Relief', [adopted in Kyrgyzstan](#) in June 2017 and based on the IFRC's Model Act and a [model law on international disaster relief](#) developed by the Commonwealth of Independent States (CIS).

The Model Emergency Decree assumes that a more general declaration of emergency³ has already been issued in the wake of a disaster, thereby serving as a reference for drafting a subsequent decree based on the special powers of the state of emergency, and to provide specific rules for the management and coordination of international disaster assistance.

It is important to note that the power to declare a state of emergency and adopt an emergency decree can be assigned to different entities or individuals, depending on the state. For example, in American Samoa, that power falls within the acting governor of the territory's responsibilities. Another example is in the US, where the governor of the affect state (within the federal system) must request the President to declare an emergency. It should also be noted that countries vary in their own definitions of a disaster, and the threshold conditions for a declaration of emergency. For example, in Singapore the security or economic life of the country must be threatened in order to declare an emergency.

Commentary on Coordination of International Disaster Assistance

This section relates to the following parts of the IDRL Guidelines and IDRL Checklist:

- Guideline 3 – Responsibilities of Affected States;
- Guideline 8 – Legal, Policy and Institutional Frameworks, and
- Guideline 10 – Initiation of International Disaster Relief and Initial Recovery Assistance.
- Checklist Question 2 – Setting out a focal point for the coordination of International Disaster Assistance

Overview

This section deals with the focal point for the coordination of international assistance. When a country declares a state of emergency, there should be a clear designation of a focal point agency for coordinating international assistance, as well as who is responsible for declaring the state of

³ A general declaration of emergency is typically provided for in a country's Constitution. It is usually designed for a full social breakdown and allows for the setting aside of other laws and putting in place 'emergency powers'. Alternatively, a 'declaration of disaster' could be made, which tends to be more limited than a state of emergency but may still provide for special procedures to be put in place (such as an emergency decree), the activation of disaster response funding mechanisms (such as a disaster relief fund) and mobilization of an emergency operations centre, for example.

emergency itself. This power often sits with the Head of State, or the authority in charge of the affected state or region, if it is not a disaster of national scale. To improve efficiency, requests for international assistance should be as specific as possible.

Paragraph 1

1. The [*disaster management authority*] shall serve as the central focal point agency in-country for liaison between the government and assisting international actors, in order to promote the effective facilitation, coordination and oversight of international disaster assistance. The [*disaster management authority*] shall also serve as the main counterpart in-country for any applicable regional or international coordination mechanisms.

Paragraph 1, and indeed the Model Emergency Decree as whole, assumes that a national disaster management authority has previously been established under law, which would set out its general structure and functions. This provision designates the relevant disaster management authority as the clear focal-point agency for individual assisting international actors (especially foreign NGOs) and any international or regional coordination mechanisms. This may include inter-agency actors and mechanisms such as the UN Emergency Relief Coordinator (the focal point concerning UN emergency relief operations), sector-based clusters and mechanisms within the affected state (such as Humanitarian Country Teams) and regional bodies such as the Association for South East Asian Nations (ASEAN), the European Union, or the Coordination Centre for the Prevention of Natural Disasters in Central America (CEPREDENAC)⁴, the Caribbean Disaster Emergency Management Agency (CDEMA) in the Caribbean. Coordination is distinct from offers and acceptance through diplomatic channels, so it must therefore involve all assisting international actors, including regional bodies such as those listed above.

Some countries have already delegated legislative authority to a national disaster management agency to coordinate international assistance, or established a specific mechanism for this. For example, the National Disaster Management Agency in Indonesia – the BNPB – has very clear powers to manage, direct and coordinate international assistance. Similarly, in Peru, the Regulation to Law 29664 creating a National Disaster Risk Management System (SINAGERD) in 2011, provides that one of the functions of the National Institute of Civil Defence (INDECI) is the coordination of the participation of entities and agencies of national and international cooperation in the processes of preparedness, response and rehabilitation (Article 9(6)). Moreover, it has powers to coordinate the response and recovery operations in case of large-scale disasters when support from international assistance might be needed (Article 43(2)(c)). The new Disaster Risk Reduction and Management Law in Nepal, approved in October 2017, calls for the establishment of a ‘National Disaster Risk Reduction and Management Center’ to manage international search and rescue teams, cash and relief materials, and maintain a record of ‘international, bi-lateral and multi-lateral assistance’ (article 11(i) and 11(j)).

Another example is in Trinidad and Tobago, where one of the key government responsibilities following a catastrophic earthquake is to establish a Humanitarian Operations Centre (HOC) for the “systematic and efficient management of regional and international aid that may be received” (Section 5.3, Trinidad and Tobago National Earthquake Plan 2011).

In Costa Rica, the National Emergency Committee of Costa Rica established a specific ‘Technical Advisory Committee for International Humanitarian Assistance’ (also known as ‘CATAI’), which also developed the national manual for the shipment, transit and reception of international humanitarian

⁴ From the Spanish: *Centro de Coordinación para la Prevención de los Desastres Naturales en América Central*.

assistance. Also in the Americas region, Ecuador's Emergency Operation Centre's Manual provides for the establishment of a 'Technical Group on International Cooperation', with the purpose of clarifying roles and responsibilities and facilitating the entry of humanitarian assistance. The Ecuadorian Red Cross is included in this group along with the UN Agencies present in the country.

Other countries' national focal point agencies have broadly worded powers that can include international assistance. For example, the National Crisis Commission in Cameroon (Clause 4, Decree No. 98/31) has broad powers of coordination which include international actors, which could be made more specific in line with the IDRL Guidelines. And in Tunisia the National Office for Civil Protection – ONPC – has broad powers for disaster assistance and coordination which includes international disaster assistance (Law 121-93), as does the Permanent National Commission within the Tunisian Ministry of the Interior (Law 91-39, Decree 942).

Many other countries have focal point agencies for national coordination which do not have specific powers regarding coordination of international actors, but which could be adapted to this role through legislative amendment and additional resources. Examples of potentially adaptable institutions include: the National Council of Emergency Relief and Recovery – [CONASUR](#) – in Burkina Faso (Decree no 2009/601), the proposed National Disaster Management Agency in Gambia (National Disaster Management Bill 2008); the disaster management teams established under the Lesotho Disaster Management Act 1997; Sri Lanka's National Council for Disaster Management – NCDM (Disaster Management Act, No. 13 of 2005).

Some countries have also designated a focal point agency for coordination of disaster response in specific emergency decrees, such as: the Territorial Emergency Management Coordinating Office in American Samoa (State of emergency declaration, 2009), the National Coordinator for the Reduction of Natural or Caused Disasters⁵ (CONRED) in Guatemala (see Article 5(a) of Decreto Gubernativo 10-2009, article 5(a) of Decreto Gubernativo 14-2010, article 5(a) of Decreto Gubernativo 15-2010, article 6 of Decreto Gubernativo 10-2011).

Paragraph 2

2. The [*disaster management authority*] shall maintain and [electronically] publish a regularly updated account of the humanitarian needs of the affected population, including the location and scope of needs as well as a list of goods, services and equipment required for the disaster operation.

Paragraph 2 is a mechanism for developing a list of the humanitarian goods and services required by the affected state to manage the specific disaster response, to be shared with potential assisting international actors. States might consider including additional provisions requiring local offices to contribute to these registers based on local needs assessments. This process helps to ensure all essential requirements are met and to avoid duplication of effort or the sending of unwanted or inappropriate items. The account of the humanitarian needs should be as specific as possible as to the types and amounts of goods as well as the services and expertise available or required. Affected states may also wish to indicate specific types of goods and services likely to be offered that are not needed.

In Nauru, for example, the National Disaster Risk Management Act of 2016 clearly stipulates that the Secretary for the Department of National Emergency Services, in consultation with the National

⁵ From the Spanish: *Coordinadora Nacional para la Reducción de Desastres Naturales o Provocados*.

Disaster Risk Management Council, must develop and maintain a list of goods, equipment and services required, and make this list available to potential assisting actors immediately upon the commencement of the disaster relief period (article 36(4)). Furthermore, this law includes provisions strongly discouraging the sending of Unsolicited Bilateral Donations (UBDs) which, if sent, will not benefit from any of the waivers or exemptions outlined in the law (article 48). Such provisions are largely based on the experience in the Pacific of public authorities being completely overwhelmed with UBDs, many of which take up valuable storage space, are inappropriate or unusable, and end up having to be destroyed. The Australian Red Cross conducted [research looking extensively at the issue of UBDs in the Pacific](#), which was published in 2016.

Commentary on Offers and Acceptance of International Disaster Assistance

This section relates to the following sections of the IDRL Guidelines and IDRL Checklist:

- Guideline 3 – Responsibilities of Affected States, and
- Guideline 10 – Initiation of International Disaster Relief and Initial Recovery Assistance.
- Checklist Question 4 – Outlining a process for requesting or welcoming offers of international assistance.

Overview

This section deals with the response to international calls for assistance. It governs how formal offers must be made and accepted. To improve efficiency, the offers for assistance should be as specific as possible. This section distinguishes between those actors who would normally coordinate with the affected state through diplomatic channels – that is, other states and intergovernmental organizations (including the UN) – as well as non-government actors (e.g. NGOs).

Paragraph 3

3. Offers of international disaster assistance by states and intergovernmental organisations shall be directed to the [*Ministry of Foreign Affairs, or other authority*] [through the appropriate embassy or diplomatic mission]. The [*Ministry of Foreign Affairs, or other authority*] shall promptly respond to all offers, after conferring with the [*disaster management authority*].

The states and intergovernmental organizations that make offers through the Ministry of Foreign Affairs should consult with the disaster management authority in order to avoid duplication of efforts or the sending of unwanted or inappropriate items or UBDs. However, where states participate in regional mechanisms, such as the Community Mechanism for Civil Protection in the European Union and the Regional Mechanism for Humanitarian Assistance in cases of mid to large-scale disasters (also known as the ‘Mec-Reg’) in Central America, offers of assistance would be coordinated through the specific mechanism instead of the Ministry of Foreign Affairs.

Paragraph 4

4. International disaster assistance by foreign non-governmental actors shall be notified directly to the [*disaster management authority*] no less than [*** hours/days in advance of the planned shipment of goods or equipment or arrival of personnel*] as a condition of eligibility for the legal facilities conferred by this decree.

While formal offers of assistance are usually expected from states and inter-governmental organizations (since their entry into the territory of another state can implicate issues around sovereignty and territorial integrity), foreign non-governmental organizations (NGOs) and other non-state entities have generally been regulated differently. They are not generally expected to follow the diplomatic protocols of foreign or international state-based organizations, and any such requirement would impose an unwieldy obligation on both the receiving state and the assisting international actors. In cases where a general request for assistance has not been made, international NGOs can still make offers but this should be done through the authorized body (e.g. the Disaster Management Agency or Ministry of Foreign Affairs). Some countries have already included provisions about this in their relevant laws, such as the Law on International Disaster Relief in Kyrgyzstan which states that “if there is no general request for international disaster assistance, international assisting actors can make unsolicited offers through the authorized organ of the Kyrgyz Republic that conducts the state politics and management in the field of foreign affairs, or to the foreign entities of the Kyrgyz Republic” (article 7(6)). Any such offers made by foreign NGOs should be done so with consideration of the needs of the disaster-affected population, to avoid the provision of unnecessary or inappropriate goods.

Commentary on Responsibilities of Assisting International Actors

This section relates to the following section of the IDRL Guidelines and IDRL Checklist:

- Guideline 4 – Responsibilities of Assisting Actors and;
- Guideline 11 – Initiation of Military Relief
- Checklist Question 3 – Outlining roles and responsibilities of different institutions relating to international disaster assistance.
- Checklist Question 6 – Quality standards for international assisting actors

Overview

This section concerns the responsibilities of assisting international actors to work according to national law and humanitarian principles and to meet reasonable standards of quality and accountability while working with disaster-affected communities. These provisions summarise the key responsibilities of all assisting actors, but in addition they set out the minimum requirements for assisting international actors to become eligible for legal facilities (see the subsequent section on ‘Eligibility for Facilities’), and to retain those facilities.

The responsibilities apply to all assisting international actors, whether organisations or individuals, governmental or non-governmental. It is intended to spell out minimum core requirements, with the implication that actors who do not wish to comply with these provisions may not be allowed to operate or to continue operations within the affected state. For assisting international actors who become eligible for special facilities, the responsibilities set out here also serve as a minimum requirement for the retention of those facilities. Non-compliance can result in termination of the given legal facilities. See also the [IFRC IDRL Desk Study](#), Part III, Chapter 13, Quality and accountability, and Chapter 14, Coordination.

Paragraph 5

5. Assisting international actors shall abide by the laws of [country] and cooperate and coordinate with national [regional/provincial] and local authorities. In particular, assisting international actors shall provide these authorities with any information available to them on the needs of the affected population, and on the location, type and extent of their disaster relief [and initial recovery] activities, to ensure a coordinated and effective response.

Paragraph 5 sets out the basic elements required for operational coordination of international assistance. It places obligations on domestic government authorities at all levels and on assisting international actors to coordinate with each other.

What could also be suggested to include here is a requirement that assisting international actors cooperate with international or regional mechanisms for coordination that have been specifically activated by the affected state for the disaster response or initial recovery operation. Examples include the Association for Southeast Asian Nations (ASEAN) regional emergency response and assessment teams ('ERAT'), the Caribbean Disaster Emergency Management Agency (CDEMA) regional response mechanism, and the CEPREDENAC Regional Mechanism for humanitarian assistance in cases of mid to large-scale disasters (the 'Mec-Reg'). This may include coordination with the relevant national disaster management authority, with military actors, or with UN structures, as determined by the government of the affected state. Relevant UN structures to coordinate with include the UN Resident Coordinator, the Humanitarian Country Team, the On-Site Coordination Operations Centre (OSOCC) and sector-based clusters.

Several countries have clearly allocated powers for the coordination, and in many cases the direction, of international actors. In Pakistan, for example, the National Disaster Management System Act 2010 provides that the Federal Government may take measures regarding co-ordination with the UN agencies, international organizations and governments of foreign countries for the purposes of that Act (Article 23 (d)).

Paragraph 6

6. Assisting international actors shall:
 - a. comply with the principles of humanity, impartiality and neutrality;
 - b. ensure that all goods and services they provide are appropriate to the needs and circumstances of the affected population and are in compliance with the requirements of this decree and all applicable laws and standards in [country];
 - c. make their best efforts, in light of all of the circumstances, to ensure that the goods and services they provide conform to the Sphere Project Humanitarian Charter and Minimum Standards in Humanitarian Response [2011 edition].

This paragraph requires assisting actors to abide by key humanitarian principles and minimum standards of quality with respect to the goods and services they provide. It serves to highlight that the mere fact of an emergency does not excuse the provision of *any* type of assistance in response to human needs. Within the constraints of the circumstances, assisting actors are expected to meet certain minimum standards.

Paragraph 6(a) refers to 'humanity', 'neutrality' and 'impartiality' as central humanitarian principles. These principles are stated in the IDRL Guidelines and several other major international instruments, including [United Nations General Assembly Resolution 46/182](#). The drafters of the Model Emergency Decree acknowledge that there are some humanitarian actors who no longer embrace the principle of neutrality. However, it remains a widely-supported principle, especially among states.

It should be emphasized that the concept of 'impartiality' does not mean that everyone must be assisted in exactly the same way or to the same extent, only that they should be offered assistance on the basis of need, without adverse discrimination based on their race, gender, social standing etc. It means that adverse distinctions should not be made based on a person's status, but permits positive action to remedy existing social or economic disadvantage. In the context of disasters, while needs assessments and relief operations must consider the differential impact of disasters within the affected population, as some persons may be more vulnerable to the effects of disaster (for example, women, children, people with disabilities, the elderly etc.) assisting actors are required to provide relief according to the principles of humanity and impartiality, based on the needs of the affected persons.

Several existing disaster management laws and policies already refer to humanitarian principles. For example, The Philippines Disaster Risk Reduction and Management Act 2010 declares it a "policy of the state" to "adhere to and adopt the universal norms, principles, and standards of humanitarian assistance and the global effort on risk reduction as concrete expression of the country's commitment to overcome human sufferings due to recurring disasters" (Article 2). Likewise, Panama's Manual on Procedures for the Foreign Ministry in the Case of Disasters 2009 requires that international assistance must "not be conditioned on race, creed or nationality of beneficiaries, must respect local culture and customs and must recognize disaster victims as dignified human beings and not as an object of charity" (Section 4).

Paragraph 6(b) of the Model Emergency Decree requires that goods and services are appropriate to the real needs of beneficiaries and abide by national law. While this paragraph may be articulating what some would consider to be basic common sense, this notion has been neglected surprisingly often by inexperienced international responders (and sometimes even the more experienced ones!). All too frequently, various organizations and individuals arrive in post-disaster settings unprepared, ill-equipped and with little experience in disaster response. This can pose serious challenges to the operation at hand, and- even if well-intentioned – these efforts can have serious negative effects on the response. Paragraph 6(b) seeks to overcome this issue by outlining that any goods and services provided must meet the specific needs of the affected population, and are provided in compliance with national laws and procedures.

Paragraph 6(c) provides a much more specific commitment by making direct reference to the [Sphere Project Minimum Standards in Humanitarian Response](#) ("Sphere Standards"). Since they were first developed in 1997, together with the Sphere Humanitarian Charter (which sets out a statement of the rights of affected persons and general engagements by humanitarian actors), the Sphere Standards have come to be among the best known, most wide-ranging and widely disseminated humanitarian quality standards.⁶ While they are among the most well-known, these are not the only relevant humanitarian standards. One can also look to the [Code of Conduct for the International Red Cross and Red Crescent Movement and NGOs in Disaster Relief](#) for key principles and standards as to how humanitarian actors should conduct themselves and the response they provide.

Some states have already begun to make use of the Sphere Standards. For example, Guatemala's national disaster coordination agency, CONRED, formally adopted the Sphere Standards, requiring that all requests for assistance address the Sphere Standards. Likewise, in 2009, the Ekurhuleni Metropolitan Municipality in Gauteng Province of South Africa accepted the Sphere Standards as the Council Policy that would guide the implementation of humanitarian assistance in any emergencies.

⁶ At the time of writing this commentary, the Sphere Standards were currently under revision. It is expected that the revised version will be finalized in 2018. The Sphere Standards had previously been revised in 2011 as well.

Donors, such as USAID and ECHO also refer to reporting on Sphere compliance among the requirements for their grant making process.

However, the Sphere Standards were not originally designed as a binding set of rules and were intended to be used with significant flexibility. As they note at page 8, “conforming with Sphere does not mean meeting all the standards and indicators. The degree to which agencies can meet standards will depend on a range of factors, some of which are outside their control.”

Accordingly, Paragraph 6(c) not does require compliance with each individual standard listed in the Sphere document, but rather that actors make their ‘best efforts’. In other words, assisting actors are responsible to make their best attempt to conform to the Sphere Standards “in light of all the circumstances”. They would be judged on whether they have made a serious attempt to conform rather than formal compliance. This is quite important because, pursuant to Paragraph 35, legal consequences can result in accordance with this Decree for the failure to meet the various responsibilities that the Decree sets out.

Paragraph 7

7. The use of foreign military assets shall be guided by the *Guidelines on the Use of Foreign Military and Civil Defence Assets in Disaster Relief* (the Oslo Guidelines).

Paragraph 7 concerns foreign assistance provided through military actors and the use of foreign military and civil defense assets. This form of assistance is typically guided by standards that are already in place, such as the [Guidelines on the Use of Foreign Military and Civil Defence Assets in Disaster Relief](#) (also known as the “Oslo Guidelines”). Some regions even have specific guidelines on this type of assistance, tailored to the specific region e.g. the [Asia Pacific Regional Guidelines for the Use of Foreign Military Assets in Natural Disaster Response Operations \(APC-MADRO\)](#). It is useful for states to have guidelines in place for the use of foreign military assistance as part of disaster preparedness, so that satisfactory terms for the acceptance of assistance through foreign states’ military actors can be determined rapidly. Militaries, both foreign and domestic, are playing an increasingly big role in disaster response operations, due in large part to their sheer logistical capacity which supersedes that of an NGO or even the UN. Therefore, states must be prepared to manage this type of assistance if required. The IFRC has also recently developed an [online ‘dashboard’](#) which includes key legal instruments related to civil-military coordination and the use of civil-military and defence assets.

Commentary on Eligibility for Facilities

This section relates to the following parts of the IDRL Guidelines and IDRL Checklist:

- Part IV – Eligibility for Legal Facilities (Guidelines 13, 14, 15)
- Checklist Question 7 – Eligibility requirements for international assisting actors
- Checklist Question 6 – Quality standards for international assisting actors.

Overview

The number and variety of actors involved in disaster response and initial recovery assistance has increased and diversified in recent years, including many smaller NGOs, private businesses and individuals who do not have a history of such involvement. With so many different actors on the ground, there is also a great deal of variation in the standards and quality of their operations. When

large numbers of international actors offer assistance, or arrive in the country to provide it, it is essential for the affected state to prioritize the entry and facilitation of assistance from the most useful and relevant actors. The concept of having certain actors approved to receive special legal facilities therefore has a dual purpose. Firstly, it is designed to speed up the process for entry of international assistance from approved actors. Secondly, it is intended to reduce the risk for the affected state that the personnel or good entering with expedited procedures will be unprofessional, inappropriate or untrained. The idea is to ensure that legal facilities are made available only to actors determined by the affected state to be likely to have sufficient capacity, and to operate according to humanitarian principles and quality standards. Eligibility for facilities pursuant to this section is not a prerequisite for providing a donation to the affected state, but it is a prerequisite to access the legal facilities and to operate and / or enjoy a legal personality in the affected state. Moreover, the fact that actors are considered “approved” does not excuse them from complying with any requirements concerning offers and acceptance for a specific disaster.

The term ‘legal facilities’ refers to special entitlements provided to ‘eligible’ assisting actors during the international disaster relief and initial recovery periods. The rationale for this concept of ‘eligibility’ is that the affected state can ensure that those best equipped – and qualified - to provide quality disaster relief and initial recovery assistance are those who receive special legal facilities to expedite and facilitate their efforts. This helps to avoid bottlenecks at the national borders, and ensures that resources such as means of transport and communications are used more efficiently for disaster assistance within its territory. Moreover, it is important for states to have an ‘eligibility criteria’ in place to ensure that legal facilities are provided only to assisting international actors who meet that eligibility criteria for quality control purposes. This puts in place a control mechanism whereby the affected state can ensure that the type of assistance being provided meets minimum quality standards, and the needs of the affected population. Paragraphs 8 and 9 of the Model Emergency Decree, as explained below, suggest which actors could be considered eligible. (See also the [IDRL Desk Study](#), Part III, Chapter 13, Quality and accountability, especially 13.3.4 on Accreditation.)

The notion of approval for legal facilities for international actors has not often been employed in national laws on disaster management, many of which instead provide for blanket exemptions for any “humanitarian assistance” admitted, regardless of source. For example, Article 18 of the Philippines Disaster Risk Reduction and Management Act 2010 provides that the “importation and donation of food, clothing, medicine and equipment for relief and recovery and other disaster management and recovery-related supplies” may be done free of import duties so long as they are approved by the Office of the President. The problem with the former approach is that blanket approvals facilitate both helpful and unhelpful international assistance equally. At the same time, ad hoc individual approval processes, such as those that look separately at each customs consignment, are burdensome for all involved.

Some States have adopted an approach similar to the one suggested in this Model Emergency Decree by granting legal facilities to specific actors. For example, the United Arab Emirates grant facilities to their Red Crescent Society, and its funds, properties and purchases, as well as the humanitarian relief material sent by the International Movement of the Red Crescent and the Red Cross, are exempt from all taxes and duties (Article 21, Federal Law No. 9 of 2002 on the Red Crescent Society in the United Arab Emirates State). Likewise, article 3 of Colombia’s Decree 3967 of 2005 provides that donations from the Order of Malta’s are exempted from all taxes or fees. Guatemala also granted tax exemptions on importation of goods intended for disaster relief to charities recorded on certain registries (article 5, Decreto 70-2005).

Federal states making use of the IDRL Guidelines will need to consider whether and how the various facilities described in the next sections can be linked to a system of eligibility established at the national level, if those facilities are generally governed at the provincial or lower level of government.

Paragraph 8

8. For the purposes of this decree and the facilities granted herein, the following assisting actors shall be “Approved Actors”:
 - a. states and intergovernmental organizations whose offers have been formally accepted by the Ministry of Foreign Affairs;
 - b. the [Country Red Cross/Red Crescent Society] and any components of the International Red Cross and Red Crescent Movement acting in support of the [Country Red Cross/Red Crescent Society];
 - c. foreign and domestic non-governmental organizations that are approved by the [disaster management authority] on the basis of their experience and capacity for providing effective relief and their continuing adherence to the conditions set out in paragraphs 5 and 6.

Paragraph 8 identifies the assisting actors who are eligible for the status of “Approved Actors”. Paragraphs 8(a) and 8(b) outline the assisting actors who are deemed “Approved Actors” because of their special status. These are states, intergovernmental organizations (such as the United Nations and treaty-based regional organizations), and both the National Red Cross or Red Crescent Society of the affected country and the foreign components of the International Red Cross and Red Crescent Movement (IFRC and ICRC). These actors are usually well known to governments and “easy to find” in case of any difficulty, even well after a disaster operation has been terminated. This may be less so, for example, for some NGOs. This explains why Paragraph 8(c) requires foreign and domestic non-governmental organizations to be approved by the disaster management authority, based on their experience and capacity, in order to be eligible for legal facilities.

Paragraph 9

9. A regularly updated list of all Approved Actors pursuant to this decree shall be maintained and published by the [disaster management authority].

Paragraph 9 requires states to maintain an updated list of all Approved Actors (as described in paragraph 8) who are eligible for legal facilities. The publication of this list ensures the dissemination of information about Approved Actors, who could be easily identified by the governmental actors and therefore benefit promptly from the facilities. While few national disaster risk management laws provide for detailed eligibility requirements, as mentioned in the overview for this section, or for keeping a regularly updated list of approved actors, things are starting to change. For example, both Nauru and Kyrgyzstan have included detailed provisions in their disaster laws regarding eligibility requirements for international assisting actors, including application and termination processes (See ‘Division 4: Eligibility for Legal Facilities’ in Nauru’s National Disaster Risk Management Act of 2016 and; ‘Chapter V: Eligibility for Legal Benefits and Restrictions on Certain Categories of Goods, Supplies and Equipment’ in Kyrgyzstan’s Law on International Disaster Relief (2017)).

Commentary on International Relief [and Initial Recovery] Goods and Equipment

This section relates to the following parts of the IDRL Guidelines and IDRL Checklist:

- Part V – Legal Facilities for Entry and Operations (Guidelines 17-19)
- Checklist Question 5 – Legal Facilities for international assisting actors

Overview

This section set out the ways in which disaster relief goods and equipment can be processed under expedited procedures. Some paragraphs specify obligations of the customs authority and the Approved Actors. States might also consider extending the facilities provided in this section to domestic actors importing relief goods. With regard to the different types of goods and equipment, federal states will need to consider whether a national law of this type may permissibly govern if the area is usually governed at a lower level of government.

The special facilities for the entry of goods and equipment in this section are consistent not only with the IDRL Guidelines but also follow international policy trends in the field of customs. For example, a June 2011 resolution on the Role of Customs in Natural Disaster Relief, by the Customs Co-operation Council of the World Customs Organization, reiterated the importance of customs administration in disaster preparedness. It also invited states to implement Chapter 5, Special Procedures, in Annex J to the International Convention on the simplification and harmonization of Customs procedures 1973 (Kyoto Convention) as amended in 1999 – the [Revised Kyoto Convention](#) (RKC). The RKC entered into force in February 2006, and [as of May 2017](#) had 110 contracting state parties. As an annex to the commentary on that section, the WCO has also included a [Model Agreement on customs facilitation](#) developed in conjunction with UN OCHA.

A number of countries and regions have laws that include measures consistent with the recommendations of these instruments and those contained in the IDRL Guidelines and, as such, there are several good examples to be mentioned in this section, as outlined below:

- Austrian customs law contains provisions for disaster situations, such as “accelerated customs clearance” for goods and equipment that are part of relief supplies and also the supplies to cover the needs of the disaster relief teams. These are exempt from import duties, VAT and consumer taxes if imported from non-EU states into the EC. However, materials and equipment destined for the reconstruction of disaster areas are not duty-free (Articles 79-85, Council Regulation on Relief from Customs Duty, Council Regulation (EEC) 918/83 of 28 March 1983 – Community system of reliefs from customs duty). Since Austria is part of the EU, the EU customs code applies. This provides for accelerated procedures in Article 97(2)(b). Austria in its implementing law (paragraph 62(3)5. *Zollrechtsdurchführungsgesetz*) regulated that the customs authority can grant permission for these accelerated procedures in case of assistance following a natural disaster.
- In Burkina Faso, the Customs Code (Law no. 03/92/ADP of 1992) allows for the executive Government – the President with the National Council – to exceptionally “modify, suspend or reinstate import duties and taxes on equivalent items”, which is a broad power that can be used in emergencies (Articles 7(2), 12(2) and 13). But importantly, in addition, Article 160 provides exemption from import duties for diplomatic consignments and "goods or dispatches destined to the Red Cross and other solidarity movements [... for dispatches] devoid of any commercial characteristics".

- In India, Section 25 of the Customs Act 1962 empowers the national Government to exempt goods from customs duty where to do so is in the public interest. Pursuant to Customs Notification No. 148/94, certain categories of goods have been declared exempt, and several of these categories are the type of goods envisaged by IDRL Guideline 17. For example, one of the categories provides that goods imported by the Indian Red Cross Society are exempt from customs duty where the goods are meant for the purposes of relief to distressed persons. Another category applies where the goods are imported for the purposes of relief and rehabilitation in accordance with an agreement in force between India and another country.
- In response to 2010 Chile earthquake, the National Customs Director issued instructions to facilitate the entry of goods, especially the donations and the goods meant for humanitarian relief. For example, according to his instructions, if following the earthquake, the documentation normally required was not available, it could be replaced by simple copies or photocopies authenticated by customs agents. Moreover, in cases of missing documents, those could be provided later to customs. The instructions also waived fees in the case of relief equipment and goods entering the country on a temporary basis, such as field hospitals, satellite phones, etc.
- Under Article 18 of the Philippines Disaster Risk Reduction and Management Act 2010, the “importation and donation of food, clothing, medicine and equipment for relief and recovery and other disaster management and recovery-related supplies” is authorized in accordance with the Tariff and Customs Code 1978 (as amended) (Section 105) and the General Appropriations Act of each fiscal year, covering national internal revenue taxes and import duties of national and local government agencies. It appears from this law that such importation is done under the umbrella of the NDRRMC, subject to the approval of the Office of the President, rather than on the basis of individual actors’ status. This law also states that foreign donations and importations for humanitarian assistance and disaster relief shall be guided by the IDRL Guidelines.
- Indonesia’s Regulation No. 21/2008 to the disaster management law provides that “equipment or logistics” entering Indonesian territory to help with disaster management during the disaster emergency response shall have “easy access in the form of exemption from import duty and other import taxes” (Articles 32 and 36). Indonesia’s Decree No. 89/KMK.04/2002 further details that goods imported for the needs of international bodies may be exempted from import duties provided certain conditions are met. Firstly, the international bodies must be located in Indonesia via a domestic branch or organisation and have a mandate to provide technical assistance in social, economic and/or cultural fields (The appendix of Decree No. 569/KMK.05/1998 contains a list of recognised international bodies in various fields, approved by the Finance Minister, including WFP, UNHCR, UNICEF, WHO, WVI, ICRC, CARE, CRS, OXFAM). The Chairperson of the international body must then apply to receive the exemptions, which must be approved by recommendation from the State Secretary Minister of the Republic of Indonesia or the appointed official, and implemented by the Director General of Customs and Excise. Then the exemptions only apply to goods that are sent from the parent organisation to the international body based in Indonesia.
- Vietnam’s Law on Natural Disaster Prevention and Control of 2013 provides that ‘foreign organizations and individuals and international organizations participating in the response’ have the right ‘to be exempted from import and export duties and fees for means, equipment and goods serving emergency relief, search and rescue, relief and support for people affected by natural disaster’ and to ‘enjoy priority in entry and exit procedures, and procedures for import and export of means, equipment and goods serving search and rescue, relief and support for people affected by natural disasters’ (article 41 (1)(a) and (1)(b)).

- In the Seychelles, the Disaster Risk Management Act of 2014 states that the Director General of the Disaster Risk Management Division ‘to the extent necessary for the performance of disaster relief and recovery’ should facilitate the entry of the humanitarian personnel in Seychelles, including liaising with the Ministry responsible for immigration for necessary visa or permit (Part V, Article 30(4)), as well as facilitate through the Ministry responsible for finance and trade for the exemption of customs duties, taxes, levies and tariffs or any other government fees on goods and equipment imported, to be exported, in transit or to be re- exported. These are among a number of other legal facilities provided for in the section on international assistance.
- Cambodia’s Law on Disaster Management, adopted in 2015, is less detailed with regards to legal facilities but provides that the state shall bear ‘every tax and duty imposed on assistance for disaster management and humanitarian response activities being provided to Cambodia’ (article 31). Furthermore, the law permits the National Disaster Management Committee to ‘authorize the utilisation of international assistance to be delivered into the country under special rules, regulations and procedures’ (article 32(3)).
- Nauru’s National Disaster Risk Management Act of 2016 goes into significant detail about legal facilities, including the various facilities provided and eligibility requirements (Part 7, divisions 4 and 5). This includes almost the entire range of legal facilities provided for in the IFRC’s Model Act, including entry of relief goods and personnel, medical equipment, customs facilitation, transportation, and registration procedures, among others. This is one of the most comprehensive examples of a national disaster risk management law that addresses, in detail, legal facilities for international actors.
- Kyrgyzstan’s Law on International Disaster Relief of 2017 carries significant detail and provisions with regard to the facilitation of international disaster relief and initial recovery goods and equipment. Article 21 explains the simplified procedures for issuing visas to personnel, while articles 23 – 28 set out a variety of legal facilities pertaining to customs procedures and the entry and use of medical and telecommunications equipment, as well as food products, search and rescue dogs, and transportation.
- The 2015 Disaster Management Rules from Myanmar contain a section on ‘communication and collaboration with international assisting actors’ (Chapter X) which state that the ‘The Ministry assigned by the National Committee as the Competent Authority for International Communication’ shall ‘facilitate the entry of those assisting international actors into the country’ and ‘coordinate with relevant government departments and organizations for tax and duty exemptions of imported emergency relief materials and rehabilitation items under the existing law’ (articles 42(b) and 42(c)).

The examples of Indonesia and the Philippines, mentioned above, also demonstrate the potential complexity and cross-linkages that may be required in implementing such exemptions from customs duties. There are a number of different approaches taken by states on this issue. For example, four contrasting legal frameworks are:

- Mexico's Federal Tax Code (Article 39, I) simply authorizes the President to totally or partially eliminate import duties, taxes and compliance with non-tariff regulations and restrictions for disaster relief and recovery goods and equipment in case of disaster. While this power is broad, it

is also discretionary and does not therefore provide legal certainty for assisting international actors.

- In Colombia, as in some other countries, the relevant exemptions are specified in each declaration of a specific disaster, which provides clarity after each declaration but not for advance planning.
- In Jamaica, the Disaster Preparedness and Emergency Management Act 1993 exempts from import or export duties and taxes only those items imported or exported by the Office of Disaster Preparedness and Emergency Management and shown to the satisfaction of the Commissioner of Customs to be required for the use of the Office in the performance of its functions under the Act. This appears to mean that international disaster assistance must be (at least temporarily) nationalised and imported by the Office in order to be exempt.
- In Sri Lanka, under the Customs Ordinance, Part II: Levying of Customs Duties 1988, the Minister of Finance can, by an order published in the Gazette, exempt from customs duties any goods imported by, or consigned to, representatives of foreign Governments, the United Nations or its affiliates and such other international organisations, institutions or bodies (Section 19). It is important to note, however, that such orders will not take effect unless they have been approved by a resolution of Parliament (Section 19(5)).

In each of these examples there is limited legal certainty for assisting international actors that they will receive import, export or other tax exemptions on the goods and equipment that are part of the international disaster assistance to these countries. The certainty provided by the earlier examples is more consistent with the IDRL Guidelines and the Revised Kyoto Convention (RKC) Annex J.

It should be noted that, in federal states, there may be taxes or charges related to goods entering a particular province or locality that cannot be regulated by a national law of this type.

Paragraph 10

10. The importation of all relief goods and equipment [and initial recovery assistance] by or on behalf of Approved Actors to [port(s)], and clearly labelled as such, shall be expedited through the One-Stop-Shop[s] established there. Simplified documentation requirements shall be clearly detailed and published [by/on the website of] the [customs and/or other border authority].

[Alternate 10: The importation of all relief goods and equipment [and initial recovery assistance] [by or on behalf of Approved Actors and] clearly labelled as such, shall be facilitated by the [customs and/or other border authority] on a priority basis. Simplified documentation requirements shall apply as follows:

- *bill of lading or waybill (accepted [electronically] in advance to facilitate immediate release),*
- *pro forma invoice or donation certificate,*
- *packing list,*
- *[biochemical / sanitary / phytosanitary certificates, as appropriate].*

Paragraph 10 requires the simplification of documentation to allow for more rapid customs clearance or release of goods or equipment specifically meant for the purposes of disaster relief. The goods declaration is a statement – made in the manner prescribed by the customs authority – by which the persons concerned indicate the nature and purpose of the goods and equipment and provide other details as required. The declaration can be made by the owner of the goods or equipment or by a third party, including a customs broker, agent or transporter (the declarant).

In normal circumstances, after lodgement of the goods declaration, the customs authority checks it to ensure its accuracy as required by customs law. Customs declarations are usually very detailed (and may require translation of documents), and many customs laws require separate documentation for each consignment by the same entity, even if they arrive at the same time. Moreover, the checking process can also be very time-consuming. Therefore, Paragraph 10 requires the State to adopt simplified documentation requirements and publish them. It also requires Approved Actors to clearly label all relief goods to facilitate identification of the goods and equipment eligible for the simplified importation procedure. The 'alternate Paragraph 10' provides an example of simplified documentation requirements for importation of relief goods and equipment on a priority basis.

The establishment of the "One-stop shop" provides a good example of an expeditious and simplified importation process. Its purpose is to bring together in a single location the key staff necessary for expediting customs clearances for humanitarian cargo. This approach has proven effective by reducing bureaucratic delays in the aftermath of disasters in different countries, including in the Philippines, Indonesia and Guatemala.

Paragraph 11

11. The importation of relief goods and equipment [and initial recovery assistance] by or on behalf of Approved Actors that are clearly labelled as such in conformity with the requirements published by the [*customs and/or other border authority*] shall benefit from exemption from all customs duties, taxes, tariffs, or governmental fees as well as a waiver of economic prohibitions, geographic and other restrictions, except as required for reasons of public health or security.

In Paragraph 11, the fees mentioned are intended to broadly include import duties and taxes, as well as VAT (value added taxes), service taxes, sales taxes, turnover taxes and similar taxes, duties, levies and governmental fees. The exemption (or relief) from duties and taxes means that, during the international disaster relief and/or initial recovery periods, the customs authority will clear goods and equipment for use within the territory, as long as they are for the purpose of disaster relief or initial recovery assistance and are imported by an Approved Actor.

The Paragraph also waives other types of prohibition, such as economic or geographic prohibitions, except for reasons of public health or security. The United States provides a good example on this issue as it waived "certain size and weight restrictions and penalties [...], and certain registration requirements and penalties [...] for the vehicles transporting food, fuel, equipment, supplies and utilities along North Carolina roadways to grief stricken counties affected by Hurricane Ivan" (Executive Order No. 69 Emergency Relief for Damage Caused by Hurricane Ivan).

Paragraph 12

12. Ground, air and water transport of disaster relief goods and equipment [and initial recovery assistance] by or on behalf of Approved Actors shall be accorded priority of passage, including at any checkpoints and in air-traffic routing and landing permissions, and shall be exempt from all fees and tolls.

Paragraph 12 calls for the facilitation and priority passage for the use of ground, air and water transport, and that the goods and equipment of Approved Actors shall receive priority treatment. This

could be considered a “fast lane” or “fast track” approach, and an important element of the overall rationale of the Model Emergency Decree. The Paragraph also provides for an exemption of fees and tolls in relation to transport of relief goods and equipment.

For example, the United Arab Emirates and Qatar exempt the planes used in relief, search and rescue, including those of the Red Crescent and the Red Cross, from fees and charges related to civil aviation (United Arab Emirates, article 66, Federal Law no 20 concerning the Civil Aviation Law; Qatar, article 60, Law no. 15 of 2002 on Civil Aviation). In Ecuador, a regulation on ‘Operating Permissions for the Delivery of Aviation Transport Services’ (Official Registry No. 397 of 16 December 2014) states that “in cases of emergency declared by the competent authority, the entry, exit and transit of humanitarian assistance delivered by, or on behalf of, recognized international organizations or states shall be facilitated. The National Council on Civil Aviation and General Directorate of Civil Aviation shall adopt the necessary measures to guarantee the security of these operations and shall provide operational facilities” (section 4). This regulation joins the existing rules under articles 26-28 of the national Aviation Law providing for waiver of landing fees, installations and protection services for relief flights.

Paragraph 13

13. The [*telecommunications authority*] shall temporarily waive any licensing requirements or fees for the use by Approved Actors of telecommunications equipment that is necessary for their disaster relief [and initial recovery] operations. The [*telecommunications authority*] shall grant Approved Actors priority access to bandwidth, frequencies and satellite use for telecommunications and data transfer for the disaster operations, except over security forces, ambulance services and other domestic emergency responders.

Telecommunications equipment is often subject to import and use restrictions, and the legal barriers to the importation and use of such equipment in disaster response operations can be even greater than for food ([IDRL Desk Study](#), 2007, 9.2.2). Paragraph 13 provides that any import restrictions be waived for Approved Actors, along with any licensing requirements, during the international disaster relief and initial recovery periods – as long as the equipment is for use in disaster relief or initial recovery assistance. It also provides for priority access to communication channels for Approved Actors, without detriment to the needs of local actors in the disaster response.

For state parties to the [Tampere Convention on the Provision of Telecommunication Resources for Disaster Mitigation and Relief Operations](#) 1998, sectoral legislation might already exist which implements that treaty. For states not yet party to the Tampere Convention, its principles may nevertheless provide a useful reference. The Convention’s primary objective is to ensure that states “cooperate among themselves and with non-State entities and intergovernmental organizations [...] to facilitate the use of telecommunication resources for disaster mitigation and relief” (Article 3). It establishes the United Nations Emergency Relief Coordinator as the operational coordinator for telecommunications disaster assistance, and the International Telecommunications Union (ITU) as a key agency. Among other things, it allows states or other entities providing telecommunications assistance to an affected state to do so subject to the payment or reimbursement of certain costs or fees (Article 7). It also encourages states to remove regulatory barriers to the provision of telecommunications disaster assistance, including restrictions on the type and quantity of equipment that can be imported, exported or transited through the state, as well as the personnel required to operate it (Article 9).

The United Arab Emirates Regulations on Spectrum Fees is an example of national practice as it provides for fee waivers for all emergency, distress and safety frequencies as well as all wireless transmission equipment exclusively for emergencies.

Paragraphs 14 and 15

- 14.** Medications may be imported for direct medical use by foreign medical teams approved by the [Ministry/Department of Health] provided they are:
- a. legal for use in [*country name*] according to [*appropriate law on pharmaceuticals*];
 - b. transported and maintained by the approved foreign medical team in appropriate conditions at all times to ensure their quality; and
 - c. guarded against misappropriation and abuse.
- 15.** Medications imported by Approved Actors intended for donation shall fulfil the conditions of paragraph 14 and shall also:
- a. have no less than 12 months remaining before their expiration date unless otherwise specifically agreed by the [*health authority*], and
 - b. be accurately labelled in [*official or widely understood language(s) in the country*] with the international non-proprietary or generic name, batch number, dosage, concentration, manufacturer, quantity, storage conditions and expiry date.

The importation of medications and medical equipment is also generally subject to very specific restrictions which, while important, can lead to unnecessary delays. As noted in the [IDRL Desk Study](#), “delays in the arrival of necessary medications and medical equipment can have severe implications on the well-being of affected persons.” At the same time, however, there has also often been a significant concern about the donation of inappropriate, illegal and/or expired medications in the wake of disasters.

The purposes of Paragraph 14 and 15 are therefore twofold. Firstly, they seek to facilitate the process of importing medications for Approved Actors and secondly it requires those medications to be permitted under existing pharmaceutical law and transported in appropriate conditions to ensure their quality.

These paragraphs also draw an important distinction between medications sent for donation to others and those imported for the use of foreign medical teams for their own application to sick or injured persons. In the case of medication intended for donation, additional safeguards are required to ensure that the medication is not expired before it is used and that the end recipient understands how to use it.

In addition to the IDRL Guidelines, an important international reference in this regard is the WHO [Guidelines for Drug Donations 1999](#). One current example of national practice comes from Indonesia, where a Decree of the Head of National Agency of Drug and Food Control (No. HK.00.05.3.00914 of 2002) on Special Access Scheme on Drugs allows that some drugs intended for donation purposes may be imported through special channels, provided they comply with the guide on donated drugs issued by the Food and Drugs Supervisory Body and only for restricted uses.

The IFRC and the World Health Organization published a report in June 2017 which examines the ‘regulation and management of emergency medical teams (EMTs)’ in a range of sudden-onset disasters and health emergencies. The report collates information about EMT response issues and identifies best practices and provides recommendations on how to reduce potential harm and enhance the positive aspects of EMT deployment in disasters, including addressing issues related to the import and use of medical goods and equipment.

At the national level, a good example comes from Ecuador where a decree was adopted during the 2016 earthquake response which authorized the donation of medical supplies and the expedited clearance of health equipment for emergency response units (as contained in Decree ARCSA-DE-014-2016-GGG, Official Registry No. 759 of 20 May 2016, adopted by the National Agency for Sanitary Regulation, Control and Surveillance (ARCSA). This was subsequently modified by Regulation ARCSA-DE-022-2016-YMIH of 29 September 2016).

Paragraph 16

16. Quarantine requirements shall be waived for search and rescue dogs, provided that the assisting actor responsible for the dog teams in country guarantees compliance with the applicable sections of the [INSARAG Guidelines \[2015 version\]](#).

Paragraph 16 sets conditions for waiving quarantine requirements for the entry of search dogs. Those conditions can be found in the [International Search and Rescue Advisory Group \(INSARAG\) Guidelines](#), Chapters D, D1, D2-1 and 4.3. This specific issue is important because many search and rescue teams employ rescue dogs to detect trapped persons or bodies, particularly in urban disaster settings and after earthquakes. As noted in the [IDRL Desk Survey](#), many states regulate the entry of dogs, mainly for fear that they may spread new diseases or other illnesses. In an emergency, however, it can be crucial to allow these dogs to quickly enter the affected State in order to identify and reach people who are trapped as soon as possible. Without the right procedures in place, these efforts can be delayed, as was the case in Japan after the 2011 earthquake/tsunami/nuclear disaster, where Japan's stringent customs regulations on importing animals delayed a Swiss search and rescue team from getting their nine highly trained dogs to the earthquake zone quickly.⁷

Paragraph 17

17. The [transportation authority] shall temporarily waive local registration and license plate requirements for vehicles imported by Approved Actors for the disaster operation.

Paragraph 17 seeks to facilitate the importation of vehicles by Approved Actors. Relief and recovery operations in disaster-affected areas can require the use of specialized vehicles, which are often brought in from overseas. In addition to the general exemptions of duties and taxes, the temporary recognition of foreign vehicle registration is an important detail which should ideally be provided for in the relevant laws or procedures relating to international disaster assistance, or in an emergency decree. Such provisions help to avoid situations where vehicles remain [unused or in storage due to complicated registration rules](#). The United States provides an example of good national practice. In response to Hurricane Ivan, it waived certain registration requirements for vehicles transporting food, fuel, equipment, supplies and utilities along North Carolina roadways to the areas affected by the hurricane.

Paragraph 18

18. Assisting actors shall ensure that any goods or equipment they import for the disaster operation, which are or become unusable, as well as any other waste products produced by

⁷ This example and others are outlined in a study commissioned by the IFRC on 'The impact of regulatory problems and the gains from legal preparedness in recent disaster response operations' undertaken in 2015 and available online at http://www.ifrc.org/PageFiles/195860/IDRL%20Impact%20Study%20Draft%20for%20Expert%20Meeting_270215.pdf

them in the course of the disaster operation, are destroyed, recycled or otherwise disposed of in a safe, environmentally sensitive and effective manner in compliance with [country] law.

During consultations for the development of the Model Act on International Disaster Assistance, this issue was raised several times both by NGOs and governmental actors, who regretted that some assisting actors do not take responsibility for the environmental, public health, financial and other consequences of the unusable goods and equipment they leave behind. This was particularly the case in relation to unusable or inoperable equipment, such as vehicles that had been involved in traffic accidents (see the commentary on Article 19 of the Model Act). Paragraph 18 of the Model Emergency Decree therefore seeks to address this concern. While it is recognised that in a disaster situation it will not always be possible to retrieve and dispose of all damaged equipment, Paragraph 18 sets out the general obligation on assisting actors to take the initiative to dispose of their waste safely and legally.

Commentary on Legal Status and Facilities for Approved Actors

This section relates to the following parts of the IDRL Guidelines and IDRL Checklist:

- Part V – Legal Facilities for Entry and Operations (Guidelines 16, 20, 21)
- Checklist Question 5 – Legal Facilities for international assisting actors

Overview:

The main objective of this section is to ensure that Approved Actors are able to operate legally within the affected state during the international disaster relief and initial recovery periods, while also avoiding delays in the initiation of their relief operations. Approved Assisting International Actors are required to have legal or juridical personality in their home country or under international law. But this does not necessarily give them legal capacity to operate within a disaster-affected state. Legal or juridical personality is an essential characteristic for an organization – as opposed to an individual person – to be able to enter contracts, buy or sell movable and immovable property, and be part of legal proceedings. This section clarifies the legal capacity of Approved Actors. For most purposes, it is the same as a domestic entity that has legal personality, but it is limited to the international disaster relief and initial recovery periods. It also includes a specific provision related to employment of locally engaged personnel.

This section also proposes to reduce overheads for Approved Actors, by allowing international currency transfers. Such transactions may be prohibited or restricted under other national laws, whereas the capacity to bring international funds into the affected state is now an essential element of international disaster assistance, particularly with the growth in Cash Transfer Programming (CTP). It is often both faster, and of benefit to the local economy, if international actors have the capacity to buy many items locally (see [IDRL Desk Study](#) Part III, Chapter 9.2.6 – Currency, and Chapter 12.2 – Banking). Part of the cost reduction is also the administrative costs of registering for each of the relevant tax regimes and submitting accounts or tax returns. While it remains an important anti-corruption measure that Approved Actors are subject to financial reporting, as described in the sections about oversight and transparency of the Model Emergency Decree, this should be simplified consistent with their tax-free status and temporary legal capacity in the affected state. (See [IDRL Desk Study](#) Part III, Chapter 12.3 – Taxation). It should be noted here that this part may be more complex for federal states as these issues may be more commonly governed at the provincial levels.

Paragraph 19

19. Approved Actors shall be authorised to operate on the territory of [country] [for the duration of the state of emergency or up to ** weeks/months] without any registration or other similar obligation beyond that set out in this decree.

Recognition of legal capacity and registration of international actors is often a necessary precursor to many of the activities that are part of a relief and initial recovery effort within an affected country, including hiring local personnel, entering contracts for the hire or purchase of premises, vehicles and other equipment, opening bank accounts and, often, transferring money from abroad. Without a fast-track method to recognize the legal capacity of Approved Actors when a disaster occurs, only the Approved Actors already operating legally in the country can work at full efficiency in the disaster response.

The facility in Paragraph 19 does not establish a new legal entity under the law of the affected state, but provisionally recognizes an existing and documented legal or juridical personality created under the law of another state, or created under international law by treaty or custom. This recognition allows Approved Actors to operate in the affected state without any registration. The Paragraph is however not intended to replace other national law procedures for recognition or registration of foreign legal or juridical persons in the affected state. This legal capacity means that all the legal obligations and liabilities taken on by the Approved Actor in the affected state are in fact taken on by the foreign or international legal person of that entity.

In the absence of legal capacity for Approved Actors, many contractual transactions can be complex and inhibit their ability to work efficiently and effectively in the affected state. This facility is primarily aimed at foreign NGOs, foreign National Red Cross and Red Crescent Societies and foreign private businesses that already have a foreign legal personality, but do not otherwise have a special status agreement with the affected state. By contrast, assisting states generally do not need any special recognition of legal capacity because, as sovereign states, they already have international legal personality and they do not require any other recognition if they have diplomatic relations with the affected state (with the accompanying international conventions and country-specific agreements on privileges and immunities). The same applies to treaty-based intergovernmental organizations, both international and regional, including the UN system agencies, which also come under the [Convention on the Privileges and Immunities of the United Nations 1946](#) or the [Convention on the Privileges and Immunities of the Specialized Agencies 1947](#).

A useful model for the recognition of international non-governmental organizations registered in another state is the Council of Europe's [Convention on the Recognition of the Legal Personality of International Non-Governmental Organizations 1986](#), which, in Article 3, sets out a process and type of proof of legal personality that might be required by states under the present law, as follows:

'The proof of acquisition of legal personality and capacity shall be furnished by presenting the NGO's memorandum and articles of association or other basic constitutional instruments. Such instruments shall be accompanied by documents establishing administrative authorization, registration or any other form of [...official publication by the registering State...] which granted the legal personality and capacity. In a [State] Party which has no publicity procedure, the instrument establishing the NGO shall be duly certified by a competent authority...'

In Austria, for example, and consistent with the EU provisions, foreign relief organizations that have legal capacity in their home country also have legal capacity under Austrian law; thus, the

establishment of a separate legal entity under Austrian law is not a statutory necessity (Act of Private International Law 1978, Article 10).

Not surprisingly, most states regulate the presence of foreign legal entities in their territory. The Model Emergency Decree does not propose changing this, but proposes a mechanism to increase the efficiency of assisting international actors only during the relief and initial recovery phase.

Some countries already allow for such expedited procedures. For example:

- Indonesia requires permits for all assisting international actors, and normally these require the submission of a proposal and entering an MOU, but during disasters its law allows waivers of these aspects of the process (Chapter II, D., Guideline on the Role of the International Organizations and Foreign Non-Government Organizations during Emergency Response 2011; See also articles 5,6,8, Regulation no 23 of 2008). Indonesia's Decree No. 89/KMK.04/2002 further details that goods imported for the needs of international bodies may be exempted from import duties provided certain conditions are met, including having a formal representative organisation based in Indonesia.
- In Nepal, there is a separate system for registration of foreign NGOs under the Social Welfare Act 1992, which requires general registration as well as project-by-project approval. Although there is no formal mechanism to waive these procedures (which are primarily designed for development projects), established practice has been to allow assisting international actors' entry without registration during disaster emergencies.
- In Ecuador, a regulation adopted during the 2016 earthquake response allowed selected international humanitarian NGOs that were not previously registered in Ecuador to operate and provide humanitarian assistance during the response (Regulation 29, issued by the authority responsible of the International Cooperation System (ICS)).

Few domestic legal systems are in fact geared towards the temporary presence of foreign entities, as occurs during major disaster relief efforts. In some cases, however, they can confer similar benefits for organisations that are already operating in their territory. For example:

- China allows foreign NGOs to provide humanitarian assistance, but only if they are already established as legal entities, under Decree No. 400 of the State Council of the People's Republic of China, the Regulations on Administration of Foundations (the Foundations Regulation), Articles 6.4, 14, 25 and 26. This law regulates the registration and administration of non-profit, non-governmental organisations engaged in "welfare activities" and funded by voluntary donations from individuals and organisations. This applies to foreign NGOs (with external donations) as well domestic civil society. For foreign NGOs to register, they must establish a representative office in China. This allows foreign NGOs to open bank accounts and transfer funds from overseas (normally highly restricted), to obtain tax benefits, lease premises, and enter into contracts enforceable in domestic courts, as well as the right to employ personnel. However, there is also a complex and ongoing system of oversight and approval that is administratively complex. This system is not designed for the temporary situation of a disaster, but for those foreign NGOs already registered under it, it provides many of the legal facilities envisaged in Chapter VI.
- Bulgaria's Code on Private International Law 2005 does not provide for any limitations or special registration regime of international or foreign relief organizations. The status of legal persons is determined by the legislation of the country where they are registered or where, according to their Constitutions, their headquarters are located. However, newly established non-profit legal

entities, as well as branches of foreign NGOs, need to be registered with the district court where their headquarters are located (which reportedly takes around one month).

See also the [IDRL Desk Study](#) at Chapter 3.1.5 – Privileges and immunities, and 12.1 - Domestic legal personality.

Paragraph 20

20. Approved Actors may engage staff or casual labour locally [for the duration of the state of emergency or up to ** weeks/months] in accordance with applicable labour and employment laws. During this period, Approved Actors shall be exempt from all related registration and contribution requirements, including in respect of taxation, social security and social insurance.

Paragraph 20 is intended to facilitate the ability of Approved Actors to hire local personnel for the temporary purposes of relief and initial recovery programmes. It waives all related registration and contribution requirements.

Local labour laws that do not allow for limitations to the length of contracts can make it very difficult for Approved Actors to do their work. Some assisting international actors have encountered difficulties in countries where employment contracts are regulated in favour of presumed continuity of employment. For example, some national employment laws allow one or two short-term employment contracts, and after that any new contract is regarded as a 'permanent' employment contract, which is more difficult and more expensive to terminate. While these employment conditions clearly serve an important social welfare purpose for employees in normal circumstances, they are not practical and can be very costly for assisting international actors working temporarily in the country when providing international disaster assistance. Such laws can also discourage assisting international actors from engaging local personal rather than bringing in international personnel, a practice which can reduce their contribution to the local economy.

Paragraph 21

21. Approved Actors may operate bank accounts and hold and exchange funds of any currency without restriction [for the duration of the state of emergency or up to **weeks/months].

Paragraph 21 proposes to reduce overheads for Approved Actors during the international disaster relief and/or initial recovery period. It allows the Approved Actors to open bank accounts and exchange international currency. It also makes it possible to do this where it is prohibited or restricted under other national law.

An example of good practice is the Indonesian Guideline on the Role of the International Organizations and Foreign Non-Government Organizations during Emergency Response 2011 (Chapter II, D.1(e)) allows providers of assistance to carry foreign and Indonesia rupiah currencies to and from Indonesia according to monetary regulations and to obtain legal exchange value in accordance with the disaster emergency operations. The same Guideline (Chapter II, D.1(f)) also allows foreign personnel to open personal bank accounts for operational needs in carrying out their humanitarian activities, subject to checking with their respective embassies in Indonesia.

Paragraph 22

22. The purchase and supply of goods and equipment for the disaster relief [and initial recovery] activities of Approved Actors during the [state of emergency] shall be exempt from all value-added tax (VAT), service taxes and fees and similar duties, levies and governmental fees. This exemption includes the purchase of goods and equipment for official use by the Approved Actor. The [tax authority] shall take all practical steps to ensure that local suppliers suffer no negative financial or administrative impact in providing goods and services to Approved Actors.

Paragraph 22 relates to an exemption for Approved Actors from value added taxes (VAT) and other similar taxes, which include service taxes, sales taxes, turnover taxes and similar taxes, duties, levies and governmental fees. This exemption applies only to Approved Actors and only during the international disaster relief and/or initial recovery period.

A number of countries have exemptions for VAT and similar taxes for disaster assistance. For example:

- In India, Section 93 of the Finance Act 1994 empowers the national Government to provide an exemption on service tax where to do so is in the public interest. At the provincial level in India, The Punjab VAT Act 2005, the Himachal Pradesh VAT Act 2005 and the Haryana VAT Act 2003 are also good examples of the use of local (rather than national) VAT legislation to help disaster victims in specific areas of India. This legislation provides for VAT exemption on goods destined for relief and rehabilitation, and was used regarding the victims of the Jammu and Kashmir earthquake in 2005.
- In Vietnam, Article 5 of the Law on Value-Added Tax No. 13/2008/QH12 (the LVAT) designates the repair and construction of public infrastructure and residential houses funded by humanitarian aid as a non-taxable object. It also designates goods imported as humanitarian aid and donations and gifts for Vietnam-based individuals (within the Government prescribed quotas) as non-taxable objects.
- In China, Article 16 of the Provisional Regulation on Value-Added Tax 1993 exempts from VAT imported materials and equipment from foreign governments and international organisations given as assistance.
- In the Republic of Korea, the Value Added Tax Law 1976 provides an exemption from VAT for: unprocessed foodstuffs; water; medical and health services; goods donated from a foreign country to religious, charitable or relief organisations or for any other public benefit; and goods donated from a foreign country to the state or a local authority. Additionally, its Corporate Tax Act 1998 states that domestic non-profit corporations are only subject to tax on income from certain listed profit-making activities, and that foreign non-profit corporations are only subject to tax on income from Korean-source profit making activities.
- In order to stimulate local economy, Samoa's National Disaster Management Plan also provides duty waiver for goods purchased locally with disaster relief funding.

Paragraph 23

23. Approved Actors and their personnel (including staff, casual labour and volunteers) shall be permitted freedom of access to disaster-affected areas and populations, subject only to

limitations based on national security, public order or public health, weighed in the context of the disaster needs. They shall be permitted to provide goods and services as disaster assistance directly to the affected persons.

Freedom of access is a common provision of bilateral treaties concerning disaster assistance between states and is of particular concern to humanitarian organizations, whose principle of independence requires them to have the capacity to provide assistance freely and directly. Disaster-affected areas frequently raise security and related issues for concerned authorities, but it is precisely because of the extreme nature of the situation that relief personnel need to be present. This article seeks to balance the two concerns. Federal states will need to consider whether a national mandate along these lines would be consistent with their legal systems.

Access can also be linked to entry (immigration) requirements, such as obtaining the necessary visas. Strict regulations around entry and access to affected states have impacted international actors' ability to reach affected populations quickly and effectively. For example, after the 2004 tsunami, international personnel in Indonesia reported lengthy, expensive, bureaucratic processes to get the appropriate visas and work permits. The same was reported in Sri Lanka and Thailand. For more details, see Chapter 10 of the [IDRL Desk Study](#). This issue is also linked to paragraph 24, outlined below.

Commentary on International Disaster Personnel of Approved Actors

This section relates to the following sections of the IDRL Guidelines and IDRL Checklist:

- Guideline 16 – Personnel
- Guideline 21 – Taxation
- Checklist Question 5 – Legal Facilities for international assisting actors

Overview

This section concerns the main legal elements relevant to the international personnel – employees and volunteers – of Approved Actors, including the entry of international personnel and their capacity to operate legally and efficiently in the affected state. This section sets out the expedited procedures and legal recognition that will allow Approved Actors to start their international disaster assistance operations as fast as possible and to work effectively within the country where they may previously have lacked legal capacity. See also the [IDRL Desk Study](#) Part III, Chapter 10 – Personnel.

Paragraph 24

24. The international personnel of Approved Actors shall be entitled to a waiver of entry visa, work permit or residence permit requirements [for the duration of the state of emergency or up to ** weeks/months].

Some international staff may be entitled to enter on other visas, but Paragraph 24 encourages states to use a specific visa waiver (or 'disaster visa') rather than tourist visas. This distinguishes between those entering the disaster-affected state as experienced humanitarian actors, and others who may wish to engage in 'disaster tourism' at a time when the state cannot afford to accommodate their needs - or even those well-meaning individuals who are untrained foreign volunteers.

The main concerns about visa waivers are usually that there is no way of subsequently identifying those in the territory without visas. Some states provide for visa waiver, such as Norway, for example. The Norwegian Immigration Act of 2008 provides for a waiver of visa requirements for international relief personnel (Section 11).

Panama's Executive Order no 320 of 2008 establishes a short-stay visa category for representatives of accredited humanitarian organisations (governmental and non-governmental). No fees or charges are associated with this visa type. A good example is also found in Mexico, where [general guidelines were adopted in 2012 for expediting visas, including a specific visa type for humanitarian personnel](#).

Paragraph 25

25. Approved Actors whose international personnel require legal recognition of their foreign professional qualifications (such as medical professionals, architects, engineers, etc.) shall certify to the [*relevant authority*] the validity of the foreign qualifications and the competence of such personnel for their work on the basis of this certification, these personnel shall be exempt from registration [and/or compulsory membership requirements] and all associated fees or charges [for the duration of the state of emergency or up to ** weeks/months]. This temporary waiver may be revoked at any time upon any finding of misconduct sufficient to bar the individual from professional practice in [*country*].

Most countries have certain regulated professions, such as physicians or architects which, for reasons of public safety, require formal certification before they can practice. Recognition of foreign professional qualifications is often subject to lengthy verification procedures which cannot be adapted readily to the timeframe of disaster response. This is often carried out by the relevant professional accreditation body, and compulsory membership of that body may be the main way that recognition is affirmed.

Paragraph 25 attempts to make this process easier for domestic officials by exempting approved international actors from registration and all associated fees and charges, when the relevant authority validates their foreign qualifications. This temporary waiver could nonetheless be revoked upon any finding of misconduct.

It should be emphasized that this paragraph is only addressed to those professionals whose practice is specifically constrained by a registration requirement under national law. It is not meant as a vetting process for the qualifications of any and all disaster response personnel. In other words, if national law implies that no one may construct a temporary shelter unless s/he is a registered architect, or that no one may assist in a field surgery unless s/he is a registered nurse, this paragraph would be relevant.

A somewhat similar existing example can be found in section 180 of the Australian Capital Territory's Emergencies Act of 2004, which provides that the professional qualifications of specialists from other states or territories of Australia or from foreign countries will be recognized without further registration requirements, so long as they are provided under a pre-existing agreement.

Federal states may face difficulties regulating this type of issue in national law, if the recognition of foreign qualifications is reserved to the provincial or lower level of governments. In those cases, this paragraph may need to be expressed more in terms of encouragement to the relevant authorities rather than as a mandate.

See also the [IDRL Desk Study](#) discussion of insurance and liability issues at 12.5 – Insurance; and at 13.3.3 - Civil and criminal liability.

Paragraph 26

26. The [relevant authority] shall grant temporary recognition of foreign driving licenses for the international personnel of Approved Actors [for the duration of the state of emergency or up to ** weeks/months].

Among the regulatory issues that emerge regarding the entry of relief transport, is the recognition of foreign driving licenses. This includes issues around the length of time for which this recognition is allowed. Paragraph 26 might not be necessary if the legislating state already recognizes international driving licenses pursuant to the Convention on Road Traffic, Vienna, 1968 (which had 72 state parties as at April 2014), however, for many states this is still an important consideration, and something which can significantly hamper operations in an emergency setting. For federal states, this may be an area that cannot easily be governed by a national law and may require specific emergency procedures.

Paragraph 27

27. The salaries and emoluments received by the international personnel of Approved Actors in connection with their participation in the disaster operation shall be exempt from all income and similar taxes. Provided they would not otherwise be subject to income or similar taxes in [country], international personnel of Approved Actors shall not be required to make any tax declaration or filing in [country].

Paragraph 27 concerns income tax exemptions for the international personnel of Approved Actors but, again, only during the international disaster relief and/or initial recovery periods. For these purposes, income and similar taxes include national, state/provincial and local/municipal taxes related to organizational or personal income. Accordingly, the international personnel would not be required to produce a tax declaration. The temporary nature and presence of Approved Actors should be emphasized here. Such actors would ordinarily be paying tax in their home country, so the purpose of this paragraph is not to evade the payment of tax, but rather to avoid unnecessary or unwarranted financial and bureaucratic processes for the Approved Actors during the relief and initial recovery phases of a disaster.

Commentary on Specialized Unit to Expedite the Entry of Incoming International Assistance

This section relates to the following parts of the IDRL Guidelines and IDRL Checklist:

- Paragraphs 3(3), 8(2)(3) and Part V
- Checklist Question 8 – Establishing a specialized unit for expediting the entry of international disaster assistance.

Overview

This section draws upon recommendations from the IDRL Model Act articles 13 and 14 on ‘establishing a taskforce on international disaster assistance preparedness’ and ‘single window international facilitation teams (SWIFTs)’. To improve the coordination and facilitation of international disaster assistance, it is recommended to establish a specialized unit for expediting the entry of international

disaster assistance. This can also be referred to as a 'One Stop Shop', and can be established through the provisions contained in this Model Emergency Decree. The One Stop Shop is responsible for consolidating and expediting the administrative arrangements concerning the entry of incoming international personnel, goods and equipment. Additionally, it can provide a control mechanism through the selection of international actors to support the response operations based on pre-established selection or eligibility criteria.

The SWIFT concept was inspired by a mechanism used in Guatemala in 2005 during the international response to Tropical Storm Stan. This was in turn adapted from the Regional Manual of Procedures for Foreign Ministries in Cases of Disaster prepared by CEPREDENAC. Under this system, Guatemala's national coordinator for disaster response, CONRED, established an inter-ministerial mechanism under the title of Centre for the Coordination of Humanitarian Assistance (CAHA). This was then the source of inter-departmental teams which operated around the clock at the major ports and airports. They had authority to provide rapid (provisional) customs clearance for relief goods and equipment and entry of international humanitarian personnel.

Another similar structure has been employed in Indonesia, under the Guideline on the Role of the International Organizations and Foreign Non-Government Organizations during Emergency Response 2011 (Chapter II, A(2)(e)(2)), whereby 'Supporting Posts' are established at each entry point for international assistance, which include representatives from thirteen different Government ministries. Their responsibilities include registering "international agencies and foreign non-government organizations"; managing permits, immigration, excise, security clearances for personnel and equipment, as well as quarantine; operating the centre for logistics and equipment prior to distribution; issuing identity cards to personnel; and registering exits.

The activation of the One Stop Shop mechanism has also been seen in recent mega disasters such as the earthquake in Ecuador in 2016 and Typhoon Haiyan in the Philippines in 2013, where the establishment of the One Stop Shop is outlined in the implementing rules and regulations for the Philippines' National Disaster Risk Reduction and Management Act of 2010. Recently adopted legislation, such as the Law on International Disaster Relief in Kyrgyzstan, is also one of few laws that mandates the establishment of a 'SWIFT' team (article 13).

Paragraph 28

28. A One-Stop-Shop[s] [or Single Window International Facilitation Team], specialized unit of the [Emergency Operations Centre] of the [Disaster Management Authority], shall be established and activated in accordance with this article. The purpose of the One-Stop-Shop[s] will be to consolidate and expedite the legal requirements concerning the entry of incoming international personnel, goods, equipment and transport of international relief in case of disaster and international initial recovery.

The One Stop Shop is a specialized unit within an Emergency Coordination Centre or other body established for the purpose of coordinating disaster assistance. The actors within the One Stop Shop would be responsible for ensuring complete processing and management of international humanitarian assistance, and advising and supporting the various responsible agencies for airports, seaports and land-border crossing points, on the coordination or facilitation of international cooperation.

Paragraph 29

- 29.** The One-Stop-Shop[s] is composed of representatives of relevant ministries and agencies, including:
- a. The Secretariat of the [*Disaster Management Authority*];
 - b. [Ministries, agencies and / or appropriate government departments such as Ministry of Foreign Affairs; Ministry of Economy and Finances, Ministry of Interior or National Security, Ministry of Health, Ministry of Infrastructure, Transports and Communications, Ministry of Defense and/or National Armed Forces, National Agency for Customs, Civil Defense Agency, as well as other institutions that are considered necessary, according to the organization and regulations of the country.];
 - c. The [*Country*] Red Cross or Red Crescent;
 - d. Other members that the [*Disaster Management Authority*] may invite to participate, including, but not limited to, relevant officers from [provincial / regional/ district] local government offices, other national strategic actors, as well as relevant organizations, regional organizations, foreign NGOs or foreign components of the International Red Cross and Red Crescent Movement.

As outlined in paragraph 29, the One Stop Shop should ideally be composed of representatives from relevant ministries and agencies, such as foreign affairs, finance, interior affairs, national security, health, immigration etc. These are the ministries and agencies typically involved in disaster response and in managing and coordinating international assistance. It could also include representatives from the national armed forces or civil defence, given their increasing role in disaster response through Humanitarian and Disaster Relief (HADR) operations and the logistical speed and scale at which these actors can support a response. Furthermore, the National Red Cross or Red Crescent Society should also be part of this mechanism, given their unique role as auxiliaries to public authorities in the humanitarian sphere. Local government officers could also be included.

The idea is for the membership of this body to be comprised of the greatest cross-section of expertise and operational perspectives, rather than to act as a representative body on a political level.

Paragraph 30

- 30.** Within the [*Emergency Operations Centre*], the One-Stop-Shop[s] is responsible for:
- a. Ensuring complete processing and management of international humanitarian aid and assistance, under the responsibility of [a coordinator who is a member of the Disaster Management Authority];
 - b. Advising and supporting the responsible agencies for airports, seaports and land border crossing points, on the coordination or facilitation of international cooperation;
 - c. Applying the relevant provisions of this decree.

The idea behind having a One Stop Shop mechanism in place is to expedite the processing of international assistance in case of a large-scale disaster. Existing disaster management authorities or committees may already have other procedures in place to achieve the same purpose, but as witnessed after large scale emergencies such as Typhoon Haiyan and the 2016 Ecuador Earthquake, this has proved to be an effective mechanism for coordination and for the expedition of international disaster relief and initial recovery assistance. As highlighted in paragraph 30(c), it can also serve to ensure that the relevant provisions of the Model Emergency Decree are applied effectively and consistently.

Paragraph 31

31. [For the duration of the state of emergency or up to ** weeks/months], the One-Stop-Shop[s] shall be deployed to primary points of entry for international disaster assistance such as the relevant airports, ports and border crossing points, depending on the circumstances. In the absence of a One-Stop-Shop[s] team at a particular border crossing, officials involved in regulating the entry of international personnel, goods, equipment and transport shall nevertheless apply the relevant provisions of this decree.

The One Stop Shop can be established in multiple points of entry, especially if the disaster has affected multiple states / provinces which may not be close to a capital city and the central air/seaports. Multiple hubs like this were set up in the affected regions of the Philippines after Typhoon Haiyan in 2013, so that relief goods and personnel could quickly access the affected areas.

Paragraph 32

32. The One-Stop-Shop[s] is activated with the declaration of a state of emergency and therefore the mechanism is temporary, covering the international relief period [and the initial recovery period].

The activation and timeframe for the mechanism should be clearly stated when the state of emergency is declared, stipulating the period for which it covers (e.g. relief and initial recovery period). The need to activate the One Stop Shop can be determined based on the scale and scope of the emergency.

Commentary on Oversight

Overview

This section extends beyond the scope of specific provisions within the IDRL Guidelines, taking into account subsequent developments. Of relevance is Question 9 from the IDRL Checklist, on transparency, safeguards and accountability.

See also 'Preventing Corruption in Disaster Relief Operations', Chapter 5, *Knowledge Commitment Action: Against Corruption in Asia and the Pacific*, proceedings of the 5th Regional Anti-Corruption Conference of the ADB/OECD Anti-Corruption Initiative for Asia and the Pacific, Beijing 2005 (2007 OECD e-book), ADB, 26 Nov 2007; and [IDRL Desk Study](#) 9.26 – Currency, and 13.3 – Accountability and Standards in Accountability and Quality Management, Humanitarian Accountability Partnership (HAP) 2010.

This section concerns a range of more concrete measures to both clarify and improve accountability for both assisting actors and government officials and agencies regarding their responsibilities under this Model Emergency Decree.

Paragraph 33

33. The [*disaster management authority*] shall monitor the compliance of Approved Actors with their responsibilities under this decree. To facilitate this oversight, the [*disaster management authority*] may require Approved Actors to furnish periodic reports about their activities and the assistance they have provided. These reports shall be consolidated and published [electronically].

Paragraph 33 provides for supervision and monitoring of Approved Actors' compliance with the Decree, including powers for the national disaster management authority (or any other appropriate body) to impose reporting requirements. This element is necessary given that the Decree includes sanctions for non-compliance.

Similar provisions have been implemented in Indonesia's Guideline on the Role of the International Organizations and Foreign Non-Government Organizations during Emergency Response 2011 which provide that the National Disaster Management Agency – the BNPB – manages international assistance, including monitoring and evaluation (Chapter II) and sanctions for non-compliance in accordance with existing regulations (Chapter III).

The regulation from Ecuador mentioned in the section above on paragraph 19, which allows select international humanitarian NGOs not previously registered in Ecuador to operate and provide humanitarian assistance, also places an obligation on those actors to coordinate their response operations with the Secretariat for Risk Management, *and* to be accountable through presentation of activities reports to 'SETECI', the government entity responsible for international cooperation in Ecuador (Regulation 29, issued by the authority responsible of the International Cooperation System (ICS)).

Paragraph 34

34. If the [*disaster management authority*] suspects that any Approved Actor has failed to materially comply with its obligations as set out by this decree, it shall consult with the actor to seek clarification or explanation and, where appropriate, may provide an opportunity to come into compliance. If, following consultation, the [*disaster management authority*] determines that an Approved Actor has failed to materially comply, it may suspend or revoke the entity's entitlement to the facilities granted by this decree and remove its name from the list of Approved Actors. Such revocation shall take effect after a reasonable period of notice and shall not be applied retroactively. Decisions to suspend or revoke legal facilities may be appealed to [*appropriate authority*].

Paragraph 34 is concerned with Approved Actors' compliance with their obligations under the Decree. The consequences of non-compliance can include withdrawal of eligibility for facilities. Paragraph 34 sets out a basic procedure, with guidance on how such a process should work if it is to be fair and open. The key elements include the quality and source of the information about the actor's activities, its right of reply, the actor's right of appeal, and a specified period of notice of such suspension if the state's decision is negative. It is difficult to be more specific than this in a Model Decree, but legislating states may find it necessary to include more detailed procedures in regulations to specify the body to which appeals would be made.

Paragraph 35

35. The [disaster management authority] may refer suspected cases of fraud or other criminal conduct by Approved Actors or their personnel to the appropriate authorities. Nothing in this decree precludes prosecution for criminal offense or the imposition of civil liability under the laws of [country].

Paragraph 35 makes clear that the particular sanctions noted in Paragraph 34 are without prejudice to any civil or criminal liability that might apply to an assisting actor based on other laws of the country. It should be borne in mind, however, that some international personnel may benefit from international immunities from such liability under other law. Furthermore, it is important to keep in mind the nature and legal personality of the actor in question, as intergovernmental organizations including from the UN system fall under the Convention on Privileges and Immunities of the United Nations (1946) or the Convention on the Privileges and Immunities of the Specialized Agencies (1947).

Commentary on Transparency as to International Financial Donations

Overview

This section extends beyond the scope of specific provisions in the IDRL Guidelines, taking into account subsequent developments. Of relevance is Question 9 from the IDRL Checklist, on transparency, safeguards and accountability. See also 'Preventing Corruption in Disaster Relief Operations', Chapter 5, *Knowledge Commitment Action: Against Corruption in Asia and the Pacific*, proceedings of the 5th Regional Anti-Corruption Conference of the ADB/OECD Anti-Corruption Initiative for Asia and the Pacific, Beijing 2005 (2007 OECD e-book), ADB, 26 Nov 2007 and; [IDRL Desk Study](#) 9.26 – Currency, and 13.3 – Accountability and; Standards in Accountability and Quality Management, Humanitarian Accountability Partnership (HAP) 2010.

This section concerns a range of more concrete measures to improve accountability and transparency as to international financial donations.

Paragraph 36

36. International donations to the Government of [country] as financial assistance for the disaster response operation shall be directed to and received by the [relevant governmental body] for deposit to the [special disaster fund established for this purpose]. The [fund] shall be audited by the [relevant authority] no later than [1 year] from the date of this decree, and the audit report shall be published [electronically] and available to the public.

Paragraph 36 concerns financial accountability for internationally donated funds received by the Government as part of international disaster assistance, requiring external audit. Many states have initiated procedures for tracking international donations to government – such as the tracking system used by the national coordinator CONRED and the Executive Government Commission SEGEPLAN in Guatemala after Tropical Storm Stan in 2005 (Legal issues from the international response to the tropical storm Stan in Guatemala, IFRC, April 2007 at 22). The Philippines launched the [Foreign Aid Transparency Hub \(Faith\) website](#) that tracks pledges of assistance from foreign governments. The updates to the website provides clearer, more detailed and accurate information on how much foreign aid has been given by foreign governments and where these were channelled.

Moreover, some governments have created a designated national disaster fund of some kind that is used to receive both domestic and international donations. Where such a fund exists, and has its own procedures for audit and transparency, consideration should be given whether the provisions of Paragraph 36 are necessary.

Paragraph 37

37. Financial donations received by domestic assisting actors for the disaster response operation, including those from international sources, shall be maintained in a dedicated account for this disaster operation. All such dedicated accounts shall be audited by a nationally-recognised independent auditor no later than [1 year] from the date of this decree, and all such audit reports shall be published [electronically] and available to the public.

Paragraph 37 concerns financial accountability for internationally donated funds received by assisting domestic actors as part of international disaster assistance, requiring external audit. It provides a simple mechanism that should not be too burdensome to ensure transparency about how they use such funds.

The background to paragraphs 36 and 37 is the considerable reflection following the 2004 Indian Ocean Tsunami and the 'Jakarta Framework' developed from an initial meeting of experts on Curbing Corruption in Tsunami Relief Operations ('Preventing Corruption in Disaster Relief Operations', Chapter 5, *Knowledge Commitment Action Against Corruption in Asia and the Pacific*, ADB/OECD 2007). The key elements of this framework are that corruption can be lessened if the affected country owns the relief and reconstruction effort, that affected communities need to participate and drive the processes, and all stakeholders need financial transparency, in particular by tracking aid flows and ensuring oversight and evaluation, which require administrative capacity for comprehensive financial and budgetary information as well as effective systems for complaints and enforcement.

The 2010 Bulgarian Regulations on the organization of the activities of the Joint Commission for Recovery and Relief at the Council of Ministers refer to standards of accountability and transparency, although they do not encompass donations to NGOs, only to government authorities. Chapter 4 of the Regulations concerns the Coordination of Relief and Donations by the Commission. It requires in Article 42(1) that "ministries, institutions and municipalities inform the Commission on the relief and donations from Bulgarian and foreign individuals and legal entities, which they received for prevention, control and overcoming of the consequences of disasters, on the specific individuals to whom they were distributed, and the entities for which they are granted", which information is then posted on the web page of the Council of Ministers (Article 42(3)).
