

Model Rules for Disaster Relief Operations

Objective

The purpose of the Model Rules is to contribute to closing the lacunae in international humanitarian law regarding assistance to victims of disasters. While the law of armed conflict sets out rules for protection and assistance to victims of armed conflicts, no such body of law exists to cover other disaster situations. In the case of natural disasters no guidelines exist. No law governs State responsibilities in such disasters. There is no standard for assistance to disaster victims or for regulating the rights and duties of states.

The development of international law in this area could be enhanced through the evolution of uniform rules applicable to disaster situations which have so far eluded regulation. This process could start through the drafting of a set of Model Rules designed to overcome some of the legal restrictions and bureaucratic impediments which are often major obstacles to the success of a relief operation.

A certain amount of improvisation and flexibility is necessary in a relief operation due to the essentially unique nature of each set of circumstances, e.g., cause of the disaster, organisational capabilities of each affected country and/or transportation problems. Relief operations, however, should become more than a series of ad hoc and ex post facto responses. A certain level of normative expectation in the form of an advance agreement would contribute to a correctly timed and efficiently implemented relief operation. Most of the proposals and ideas that have been presented in the proposed Model Rules are non-controversial, dealing with manageable obstacles. "The International Community simply hasn't focused on them with the result that they stand as obstacles to international humanitarian rescue operations. Because timing is the essence of any relief operation and because an efficient operation is always in the interest of the participants, especially the disaster-stricken States, the elaboration of Model Rules is both valuable and feasible.

Most disaster relief situations are treated on an ad hoc or ex post facto basis. Experiences vary from one relief operation to another and between different organisations, agencies and donor States. While bilateral or trilateral agreements have regulated some relief operations, in other operations relief has been regulated on the basis of the existing "basic" agreements concluded between a relief agency and the affected country for the purpose of governing the agency's assistance programmes." The League of Red Cross Societies, on the other hand, relies in a disaster situation on affiliated national societies.

Comprehensive regulation of relief assistance operations should comprise a wide range of rules on the rights and duties of the parties to the proposed instrument. At this stage of the development of the law, regulation should be limited to the most practical aspects of relief operations.

The Model Rules are predicated on the assumption that the relief assistance will be provided at the request or with the consent of disaster-stricken States and with mutual cooperation between assisting and disaster-stricken parties. The recipient States will continue to shoulder the major responsibility in connection with the initiation and operation of relief assistance. The Model Rules, therefore, would not detract from, or conflict with, the sovereign rights of disaster-stricken States. Their purpose is to contribute towards the efficient administration of assistance through the elimination of bureaucratic and logistical impediments. The Model Rules are primarily designed to regulate the emergency phase of the disaster when time is recognized to be the critical factor. They do not deal with other aspects of disaster relief such as disaster prevention and rehabilitation.

Finally, the Model Rules are conceived to strengthen commitment to the cause of human rights and the development of international humanitarian law, not to impose added constraints upon the parties. Benefit will accrue, because of the commitment, to all participants in international relief efforts, most notably to the suffering population of disaster-stricken countries. Efforts have been made in the past to address the

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problem of expediting disaster relief. This research continues those various efforts, in particular the recommendations formulated by OCHA and ICRC. The Model Rules represent one further step toward normative regulation of disaster relief operations.

Possible Forms of the Rules

The form of the instrument that can be used to regulate disaster relief operations, can vary greatly. Different formats are not mutually exclusive. These forms include:

(1) The conclusion of a multilateral agreement on disaster relief assistance. The obvious advantage of this approach is its universal and non-discriminatory regulation of disaster relief assistance on the basis of standard legal rules rather than ad hoc diplomacy. This approach, moreover, could make a significant contribution to the development of international law in the area of disaster relief not covered by the Geneva Conventions of 1949. The approach was adopted in the conclusion of the Convention establishing the International Relief Union.²⁷ The disadvantage of this approach is the expected reluctance of a number of prospective parties to commit themselves in any substantial degree, especially in a multilateral form, with respect to relief assistance in the case of anticipated disaster situations. This would result in an agreement that would necessarily reflect the lowest common denominator among the parties. Another factor militating against this approach is the inertia involved in the multilateral treaty-making process in general and in the development of a new area of international law in particular.

(2) The conclusion of regional or sub-regional agreements on relief assistance. Such an approach was adopted in the conclusion of the Nordic Mutual Emergency Assistance Agreement in Connection with Radiation Accidents.²¹¹ The advantage of such an approach is its practical feasibility, especially in regions where a close degree of cooperation already exists, and its adaptability to the particular characteristics of each region. This advantage is reduced, however, by the fact that a number of regions might consist of States that are not themselves in a position to provide effective assistance to one another.

(3) A stand-by agreement to be concluded on a bilateral basis in anticipation of a disaster situation. The agreement would become automatically applicable whenever a disaster situation occurs. Such an approach was taken by a number of European States, members of the Council of Europe, who concluded bilateral agreements on mutual relief assistance. This approach has the advantage of flexibility, insofar as it retains the option for every party to enter into contractual relief assistance arrangements with the party or parties of its own preference. It also has the added advantage of not restricting the content of the arrangements to a mere "standard contract". Rather, it opens the possibility for diversification and innovation so as to reflect the specific political, economic and cultural variations that come into play in bilateral relations. The effectiveness of this approach, however, depends upon the conclusions of a closely netted web of bilateral agreements by the different foreseeable parties.

(4) A set of model rules for bilateral agreements which can be circulated in advance to all prospective parties and which can be referred to in requests and offers of assistance. These Model Rules would have no legal effect in themselves. They would merely provide a clear, consistent test for incorporation into a specific agreement made by parties to a particular disaster relief operation as and when the need arises. This standard text, when incorporated into the exchange of offers and acceptances of assistance in relation to a particular disaster situation, would constitute a legal instrument. This approach provides a substantial degree of flexibility. It makes available the text of an agreement in anticipation of a disaster situation to which it can be applied on an ad hoc basis. Furthermore, it does not commit any party to an agreement before an actual disaster situation has occurred and the affected State chooses to negotiate an agreement as part of its voluntary request for assistance. It may be argued that one disadvantage of this approach is that since relief assistance is usually needed from multiple sources, it requires the conclusion of a series of bilateral

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agreements. While this would ordinarily be difficult and time consuming to coordinate, that problem is significantly mitigated when standard (model) rules are used in each instance. Moreover, the effect of a standard practice is to reinforce itself by repeated usage, while the low-keyed practice of incorporation by reference in an exchange of letters requires less diplomatic effort than the negotiation of a separate agreement. The previous analysis suggests that multiple approaches to the choice of form might be pursued. No single approach necessarily excludes or sufficiently substitutes for the other ones, but each strengthens and mutually supports the others. A multilateral convention setting the basic ground rules can raise the awareness of the need to develop the law in the disaster relief area and lead to its supplementation in more detailed regional and bilateral agreements. On the other hand, the conclusion of bilateral and regional agreements can point to the need and set the stage for a universal and systematic regulation of relief assistance. In sum, a synergistic relationship between the different approaches can only enhance the development of the law to the benefit of all participants.

Prospective Parties

Prospective parties can be fitted into three broad categories: States, Intergovernmental Organisations and Non-Governmental Organisations (NGO's)

States

States provide the major portion of international relief assistance through their bilateral contributions and their contributions to international organisations and voluntary agencies. However, as the Secretary-General stated: "The great majority of governments already send the greater part of their assistance through bilateral arrangements."³⁴

Intergovernmental Organisations

Intergovernmental organisations, especially those of the United Nations systems, provide a substantial portion of international relief assistance. Due to its significant administrative and technical resources, the United Nations system is capable of filling a very central role in disaster relief. And while some expect a continued dominance of bilateral actions by donor governments, others believe that United Nations systems' coordination mechanisms will become more and more important.

Non Governmental Organisations (NGO's)

Several hundred religious and secular voluntary agencies are active in international disaster relief. Voluntary agencies can be separated into three categories:

- (1) Red Cross organisations;
- (2) other non-governmental organisations; and
- (3) bilateral aid organisations.

Because of their non governmental character and due to their "grass-roots" nature and operations in many States voluntary agencies, unlike States and inter-governmental organisations, are usually able to operate flexibly, rapidly and without formal agreement. The need to preserve this flexible modus operandi, however, does not detract from their need in certain circumstances to enter into agreement to regulate their relief assistance, as evidenced by the number of agreements concluded between States and non governmental

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organisations. As will appear from the next chapter, one advantage of the Model Rules approach is that it can be adapted for use by, between and among any combination of these three categories of actors.

Model Rules for Bilateral Agreements

Given the existing political and legal circumstances, Model Rules for bilateral agreements are the most practical and feasible at this stage. Such bilateral agreements, as mentioned, could be concluded at the outset of a disaster situation or in anticipation of it. Three types of relations may be established in such agreements.

- (a) the assisting State and the receiving State might enter into an agreement governing the provision of relief assistance (personnel and/or supplies);
- (b) the assisting organisation, e.g., a United Nations system organisation, some other inter governmental organisation or a non-governmental organisation, and the receiving State might enter into such an agreement; or
- (c) an assisting State or organisation or a receiving State - might request a State to enter into an agreement governing the transit of relief assistance through its territories en route to the receiving State. We have proposed three sets of model rules, one applicable to each of the three pairs of potential parties. Each set is divided into individual rules according to subject matter. An exchange of letters or cables establishing a disaster relief operation could simply specify that the operation would be conducted in accordance with the appropriate set of rules thereby triggering the legal operation of the rules. The exchange could also specify the duration of the rules operation. Although the rules are designed for the initial emergency phase of a disaster relief operation and not for the rehabilitation phase, specifying duration in an exchange of letters will facilitate extending their operation, as mutually agreed. The detailed mechanisms required for implementing the rules (e.g., designation of relief personnel and relief supplies) are left to the discretion of the contracting parties and should also be specified in the exchange of letters. It should be noted in this respect that when a United Nations organisation, a United Nations specialized agency or the International Atomic Energy Agency enters into agreement with respect to a disaster relief operation, account should be taken of the set of obligations specified in one of the three conventions on privileges and immunities. The conventions on privileges and immunities govern some of the issues regulated by the Model Rules (e.g., visas, communications facilities, foreign exchange regulations) often providing a broader arrangement than the Model Rules. If the receiving State is party to an applicable convention, the value of the Model Rules for the contracting parties would be to expand the rights and duties governing the disaster relief operation. On the other hand, if the State is not a party to the said convention, the contracting parties will either invoke rules that make certain articles and sections of the appropriate convention applicable or will select other comparable rules included in the Model Rules.

In the ensuing rules, (A) refers to relations between an assisting State and a receiving State, (B) refers to relations between an assisting organisation and a receiving State and (C) refers to relations between an assisting State or organisation or a receiving State and a transit State. The three sets of Model Rules are set out in Annex 1.

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ANNEX

A. MODEL RULES FOR BILATERAL AGREEMENT BETWEEN AN ASSISTING STATE AND A RECEIVING STATE

Rule 1

The Receiving State shall designate a national relief authority to coordinate the relief activities, documentation and procedures required. In any event absolute priority shall be granted to relief supplies.

Rule 2

The assisting State shall, inter alia:

- (1) Give to the designated national authority information about the assistance that it can immediately provide.
- (2) Ensure that the relief assistance it provides is restricted to appropriate relief needs. In particular, it shall consult the designated national authority with respect to the needs of the Receiving State.
- (3) Ensure that the relief assistance it provides is correctly timed. In particular, it shall promptly notify the designated national authority of impending relief shipments.

Rule 3

The Receiving State shall employ disaster assistance exclusively for the purpose for which it has been supplied. Relief supplies shall be distributed without discrimination.

Rule 4

The Assisting State shall, in accordance with agreed standards, appropriately pack, classify and mark relief supplies, and shall include detailed manifests with each shipment.

Rule 5

The Receiving State and the assisting State shall waive normal commercial documentation requirements or use simplified documentation and procedures in regard to designated relief supplies. The Receiving State shall duly notify the Assisting State of the precise nature of the relief commodities.

Rule 6

The Receiving State and the Assisting State shall exempt the designated relief supplies from customs duties, taxes, fees, or tolls chargeable by reason of exportation or importation.

Rule 7

The Receiving State and the assisting State shall relax to the extent compatible with standards of hygiene and animal protection normal requirements regarding fumigation and prohibitions and restrictions on food imports and exports in regard to the designated relief supplies.

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Rule 8

- (1) The Receiving State and the Assisting State shall take all possible measures for their airlines to provide transport on a priority basis for designated relief personnel and relief supplies.
- (2) The Receiving State and the Assisting State shall take all possible measures so that their airlines accord free transportation or transportation at minimal fares or rates for the designated relief personnel and relief supplies.

Rule 9

The Receiving State and the Assisting State shall waive limitations imposed on aircraft not possessing traffic rights when such waiver is necessary for taking on or discharging the designated relief personnel and relief supplies.

Rule 10

The Receiving State shall grant permission for overflight and landing of aircraft transporting designated relief personnel and relief supplies.

Rule 11

- (1) The Receiving State and the Assisting State shall provide, subject to availability, adequate means of transport and handling equipment on a priority basis for the movement of designated relief supplies.
- (2) The Receiving State and the Assisting State shall provide, to designated relief supplies using facilities operated or administered by the State, free transportation or tariffs or charges that are reasonable as regards both their rates and the method of their application. These charges shall not be higher than the charges applied by the State for the transport of its own supplies.

Rule 12

The Receiving State shall authorise the designated relief personnel in the performance of their duties to use on a priority basis, free or at rates not higher than the rates applied by the receiving State, telex, cable, wire, telephone, and other means of communication.

The Receiving State may also authorise the designated relief personnel to establish a system of radio communication.

Rule 13

The Receiving State shall allow the Assisting State to maintain bank accounts and to convert currency held by it into local currency as necessitated by the relief function and at the most favourable rate of exchange.

Rule 14

The Receiving State shall extend to the designated relief personnel the necessary facilities with a view to securing the expeditious performance of relief functions. Relief personnel shall cooperate at all times with

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the appropriate authorities of the Receiving State to facilitate the proper administration of justice, secure the observance of police regulations and prevent the occurrence of any abuse in connection with the facilities granted.

Rule 15

The Receiving State shall waive requirements for entry and exit visas, provide with minimum delay visas at points of entry and exit, or issue multiple entry and exit visas, for the designated relief personnel. The Assisting State shall waive requirements for, or provide with the minimum delay, exit visas for its designated relief personnel.

Rule 16

The Receiving State shall permit the designated relief personnel freedom of access to, and freedom of movement within, disaster-stricken areas that are necessary for the performance of their specifically agreed functions.

Rule 17

The Receiving State shall take all necessary measures to ensure the security and safety of the designated relief personnel and of all premises, facilities, means of transport and equipment used in connection with relief activities.

B. MODEL RULES FOR BILATERAL AGREEMENT BETWEEN AN ASSISTING ORGANISATION AND A RECEIVING STATE

Rule 1

The Receiving State shall designate a national relief authority to coordinate the relief activities.

Rule 2

The assisting organisation shall, inter alia:

- (1) Give to the designated authority information about the assistance it can immediately provide.
- (2) Ensure that the relief assistance it provides is restricted to appropriate relief needs. In particular, it shall consult the designated national authority with respect to the needs of the Receiving State.
- (3) Ensure that the relief assistance it provides is correctly timed. In particular, it shall promptly notify the designated national authority of impending relief shipments.

Rule 3

The Receiving State shall employ disaster assistance exclusively for the purpose for which it has been supplied. Relief supplies shall be distributed without discrimination.

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Rule 4

The assisting organisation shall, in accordance with agreed standards, appropriately pack, classify and mark relief supplies, and shall include detailed manifests with each shipment.

Rule 5

The Receiving State shall waive normal commercial documentation requirements or use simplified documentation and procedures in regard to designated relief supplies. The Receiving State shall duly notify the assisting organisation of the precise documentation and procedures required. In any event absolute priority shall be granted to relief supplies.

Rule 6

The Receiving State shall exempt the designated relief supplies from customs duties, fees or tolls chargeable by reason of importation.

Rule 7

The Receiving State and the Assisting State shall relax to the extent compatible with standards of hygiene and animal protection normal requirements regarding fumigation and prohibitions and restrictions on food imports and exports in regard to the designated relief supplies.

Rule 8

(1) The Receiving State shall take all possible measures for its airlines to provide transport on a priority basis for designated relief personnel and relief supplies.

(2) The receiving State shall take all possible measures so that its airlines accord free transportation or transportation at minimal fares or rates for designated relief personnel and relief supplies.

Rule 9

The Receiving State shall waive limitations imposed on aircraft not possessing traffic rights when such waiver is necessary for taking on or discharging the designated relief personnel and relief supplies.

Rule 10

The Receiving State shall grant permission for over flight and landing of aircraft transporting designated relief personnel and relief supplies.

Rule 11

(1) The Receiving State shall provide, subject to availability adequate means of transport and handling equipment on a priority basis for the movement of designated relief supplies.

(2) The Receiving State shall provide to designated relief supplies using facilities operated or administered by the State free transportation or tariffs or charges that are reasonable as regards

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both their rates and the method of their application. These charges shall not be higher than the charges applied by the State for the transport of its own supplies.

Rule 12

The Receiving State shall authorise the designated relief personnel in the performance of their duties to use on a priority basis, free or at rates not higher than the rates applied by the receiving State, telex, cable, wire, telephone, and other means of communication.

The Receiving State may also authorise the designated relief personnel to establish a system of radio communication.

Rule 13

The Receiving State shall allow the assisting State to maintain bank accounts and to convert currency held by it into local currency as necessitated by the relief function and at the most favourable rate of exchange.

Rule 14

(1) (i) The Receiving State shall extend to disaster relief units that are subsidiary organs of the United Nations or are made available through the United Nations the privileges and immunities contained in articles I, II and III of the Convention on the Privileges and Immunities of the United Nations. It shall also extend to relief personnel who are:

- (a) officials of United Nations, the privileges and immunities contained in article V and sections 24 and 25 of article VII of Rule 13 of the Convention;
- (b) experts on missions for the United Nations, the privileges and immunities contained in article V of the Convention;
- (c) holders of certificates that they are travelling on the business of the United Nations, the privileges contained in section 26 of article VII of the Convention.

(ii) The Receiving State shall extend to disaster relief units that are subsidiary organs of the United Nations Specialized Agencies the privileges and immunities contained in articles II, III and IV of the Convention on the Privileges and Immunities of the Specialized Agencies. It shall also extend to relief personnel who are:

- (a) officials of the Specialized Agencies the privileges contained in article VI and section 27 and 28 of article VII of the Convention;
- (b) experts and other persons, holders of certificates that they are travelling on the business of the Specialized Agency, the privileges contained in section 29 of article VII of the Convention.

(iii) The Receiving State shall extend to disaster relief units that are subsidiary organs of the International Atomic Energy Agency the privileges and immunities contained in articles 11, III and IV of the agreement on the Privileges and Immunities of the International Atomic Energy Agency. It shall also extend to relief personnel who are:

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- (a) officials of the Agency, the privileges and immunities contained in article VI and sections 29 and 30 of article IX of the agreement;
- (b) experts on missions for the Agency, the privileges and immunities contained in article VII of the Agreement;
- (c) holders of certificates that they are travelling on the business of the Agency the Privileges contained in section 31 of article IX of the Agreement.

(iv) Relief personnel shall cooperate at all times with the appropriate authorities of the receiving State to facilitate the proper administration of justice, secure the observance of police regulations and prevent the occurrence of any abuse in connection with privileges, immunities and facilities granted.

(2) The Receiving State shall extend to designated relief personnel the necessary facilities with a view to securing the expeditious performance of relief functions. Relief personnel shall cooperate at all times with the appropriate authorities of the receiving State to facilitate the proper administration of justice, secure the observance of police regulations and prevent the occurrence of any abuse in connection with the facilities granted.

Rule 15

The Receiving State shall waive requirements for entry and exit visas, provide with minimum delay visas at points of entry and exit or issue multiple entry and exit visas for designated relief personnel

Rule 16

The Receiving State shall permit the designated relief personnel freedom of access to, and freedom of movement within, disaster stricken areas that are necessary for the performance of their specifically agreed functions.

Rule 17

The Receiving State shall take all necessary measures to ensure the security and safety of the designated relief personnel and of all premises, facilities, means of transport used in connection with relief activities.

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C. MODEL RULES FOR BILATERAL AGREEMENT BETWEEN AN ASSISTING STATE OR ORGANISATION OR A RECEIVING STATE AND A TRANSIT STATE

Rule 1

The Transit State shall waive normal commercial documentation requirements or use simplified documentation and procedures in regard to designated relief supplies. The Transit State shall duly notify the requesting party of the precise documentation and procedures required. In any event absolute priority shall be granted to relief supplies.

Rule 2

The Transit State shall exempt the designated relief supplies from customs duties, taxes, fees or tolls chargeable by reason of importation or exportation or any special dues in respect to transit.

Rule 3

The Transit State shall relax to the extent compatible with standards of hygiene and animal protection normal requirements regarding fumigation and prohibitions and restrictions on food imports and exports in regard to the designated relief supplies.

Rule 4

(1) The Transit State shall take all possible measures for its airlines to provide transport on a priority basis for designated relief personnel and relief supplies.

(2) The Transit State shall take all possible measures so that its airlines accord free transportation or transportation at minimal fares or rates for designated relief personnel and relief supplies.

Rule 5

The Transit State shall waive or relax to the minimum limitations imposed on aircraft not possessing traffic rights when such action is necessary for taking on or discharging the designated relief personnel and relief supplies.

Rule 6

The Transit State shall grant permission for overflight and landing of aircraft transporting designated relief personnel and relief supplies.

Rule 7

(1) The Transit State shall grant freedom of transit for the designated relief supplies.

(2) The Transit State shall provide, subject to availability at the points of entry and exit, and as required at points of trans-shipments, adequate means of transport and handling equipment on a priority basis for the movement of designated relief supplies.

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(3) The Transit State shall provide to designated relief supplies in transit using facilities operated or administered by the State tariffs or charges that are reasonable as regards both their rates and the method of their application. These charges shall not be higher than the charges applied by the Transit State for the transport of its own supplies.

Rule 8

The Transit State shall waive requirements for entry and exit visas, provide with minimum delay visas at points of entry and exit, or issue multiple entry and exit visas, for designated relief personnel.