



Model Technical Arrangement on the Liability of Relief Personnel

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Introduction

The aim of this document is to improve the effective deployment of relief personnel within a framework of international Disaster Relief Operations (DRO).

It is a practical tool designed to help both the sending nation (SN) and requesting nation (RN)¹ prepare for the deployment of foreign relief personnel and to ensure that liability issues do not prevent relief personnel or their equipment from reaching those who need help as soon as possible.

In a disaster, whether it is caused by floods, earthquakes, transportation or CBRN incidents, the first 48 hours is a critical period especially when the impact of the disaster will exceed domestic capacities and additional resources are required from other countries in order to save lives. International support can be mobilised quickly but deployment can be delayed by liability issues concerning relief personnel and the way they operate.

This document builds upon the solid foundation of existing guidelines such as the Oslo Guidelines on the Use of Foreign Military & Civil Defence Assets (MCDA) in Disaster Relief, NATO's Allied Joint Doctrine for Host Nation Support (HNS) and the Red Cross Analysis of EU Law Pertaining to Cross Border Disaster Relief.

For those who already have liability agreements in place with other nations, this document provides a useful checklist both for real events and exercises.

For those with no agreements it can form the foundation for new agreements.

There are a range of options so that nations can choose the elements which suit their needs and allow them to stay in control before and during a crisis. The focus is on official state actors, not all relief workers.

This document is grounded in the following logic:

The **PROBLEM** (the encountered effects)

Relief workers have raised a number of liability issues that have hindered their deployment during previous disasters – and this document aims to address those issues, especially where exposure to liability is unclear:

- Could a doctor working as part of a relief unit in a foreign country face legal claims if a disaster victim he/she treats dies?
- Would an assisting relief unit be obligated to compensate the owner of a building it demolished?

Lack of clarity on these and similar questions can lead to significant financial costs, delays in deployments and diplomatic tensions between states.

¹ The term "Requesting Nation", RN is standard terminology in the Memorandum of Understanding (MoU) on the Facilitation of Vital Cross Border Transport and is considered equivalent to the alternative term "Host Nation", HN which is currently more commonly used in international disaster relief operations literature. Host Nation, as the more familiar term, is used in Part 1 of this document for ease of reading. Requesting Nation is used in Part 2 (including the model clauses) for compatibility with the MoU.

The CAUSE

Numerous international and regional agreements, bilateral agreements and *ad hoc* arrangements between states govern the status of foreign relief personnel and the terms under which they are deployed.

The question of liability however is rarely covered in sufficient detail.

The SOLUTION

These issues would be solved by:

- a MODEL: a collection of model clauses on liability for use by states in their bilateral agreements;
- OPTIONS: the requesting state and sending state will be able to choose from the proposed liability options, adapt them, and have the liability agreement ready;
- SCENARIOS: the liability accord model will cover a broad range of potential liability exposure for both states and individual relief personal
- IMPLEMENTATION: a step-by-step description of the implementation process as seen from the viewpoint of both states, including Requesting and Sending Nation checklists.

Background

In their Final Report, the Ad-Hoc Working Group (AHWG) on the Status of Relief Personnel identified the need to further work on the problem area of liability² and recommends taking this issue further in an expert working group:

- “The AHWG has concluded that the **problem area of liability merits further work** and recommends taking this issue further in an expert working group.”
- “A possible way forward could be to **develop a model liability clause / agreement on the basis of similar clauses of existing Status of Forces Agreements (SOFA)** in an expert working group with legal expertise.”

The Civil Protection Group (CPG) endorsed this recommendation and a new Ad-Hoc Working Group on Liability of relief personnel was tasked to develop a model liability agreement.

Aware of the possibility to further develop the aforementioned Memorandum of Understanding (MoU) on the Facilitation of Vital Civil Cross Border Transport, based on its article 6, the AHWG on Liability of Relief Personnel, proposed to **develop a model “Technical Arrangement (TA) on Liability of Relief Personnel”**.

This document includes some key components which are designed to provide emergency practitioners and planners with some practical tools:

- An illustrative framework by which to analyse the potential liability exposure.
- Scenario-based examples and a series of model clauses providing options for the attribution of liability in different situations.

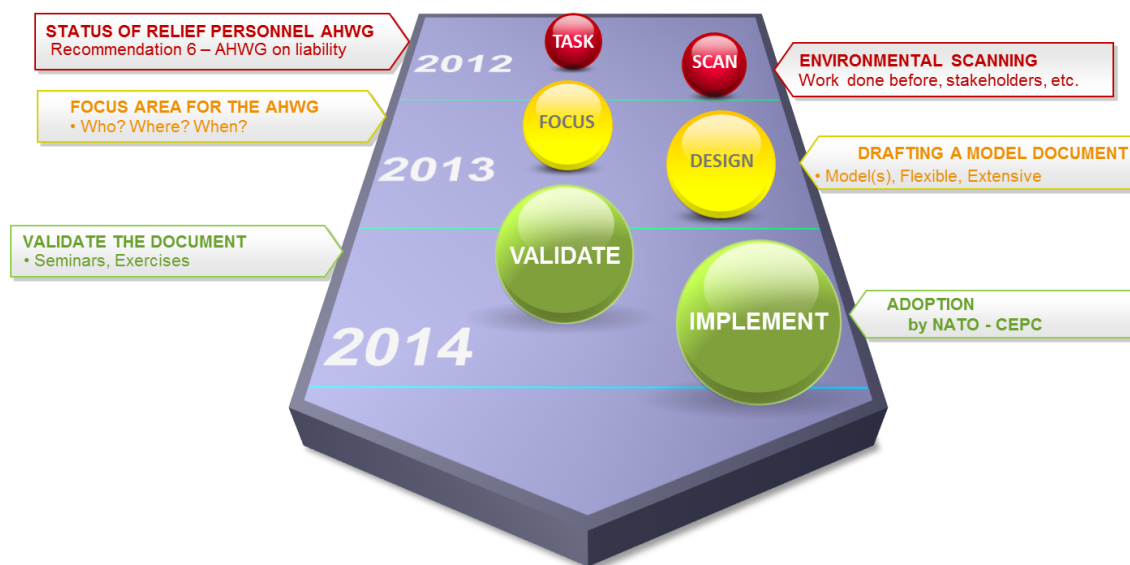
The model clauses are based on clauses in existing treaties and bilateral agreements among states regarding disaster response. The language has been adapted to align with the MoU on the Facilitation of Vital Civil Cross Border Transport, for greater clarity and to reflect the evolving nature of disaster response operations (many of the existing clauses collected are from agreements dating back several decades).

² Note: For clarity on the terms and definitions used in this document, refer to the Lexicon section at the end of the Technical Annex: Model Technical Arrangement.

Overview

The project was conceived in six stages, spread over a period of three years, as showed below.

The Project Milestones



In the first year, the group carried out general research on the subject to provide an environmental scan and a gap analysis and to define the project objectives.
(See the “**What’s new**” section.)

In the second year, the group initially defined the parameters of the project and then in the most intense stage of the project covering a 9 month period the group consulted key actors inside and outside NATO, to produce the “document”. In that second year the validation process was also started through exercises and seminars.
(See the “**Focus**” and “**Document Management**” section.)

In the third year, validation continued through additional seminars and exercises and the document was then presented for validation as an official NATO document.
Once the document is validated it is envisioned that additional activities will continue to promote implementation and provide continual improvement whenever required.
(See the “**Why, When and How to Use this Document?**” section.)

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PART 1

GUIDANCE

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FRAMEWORK

What's new

Several well established guidelines and other guidance materials on cross-border disaster assistance address the issue of liability, but not comprehensively or in sufficient detail to resolve the range of potential or even probable issues. See for example the Oslo Guidelines on the Use of Foreign Military & Civil Defence Assets in Disaster Relief, NATO's Allied Joint Doctrine for Host Nation Support (AJP-4.5), EU Host Nation Support (HNS) Guidelines, as well as the recommendations in the IFRC's Analysis of Law in the EU and a Selection of Member States Pertaining to Cross Border Disaster Relief.

The result is a gap in practical guidance to tackle the liability issues either in a pre-event planning phase (time frame of years, months) or in the mode of *ad hoc* preparation (time frame of days, hours) of a real deployment. The following table highlights this gap and the added value of the Model Technical Arrangement on the Liability of Relief Personnel.

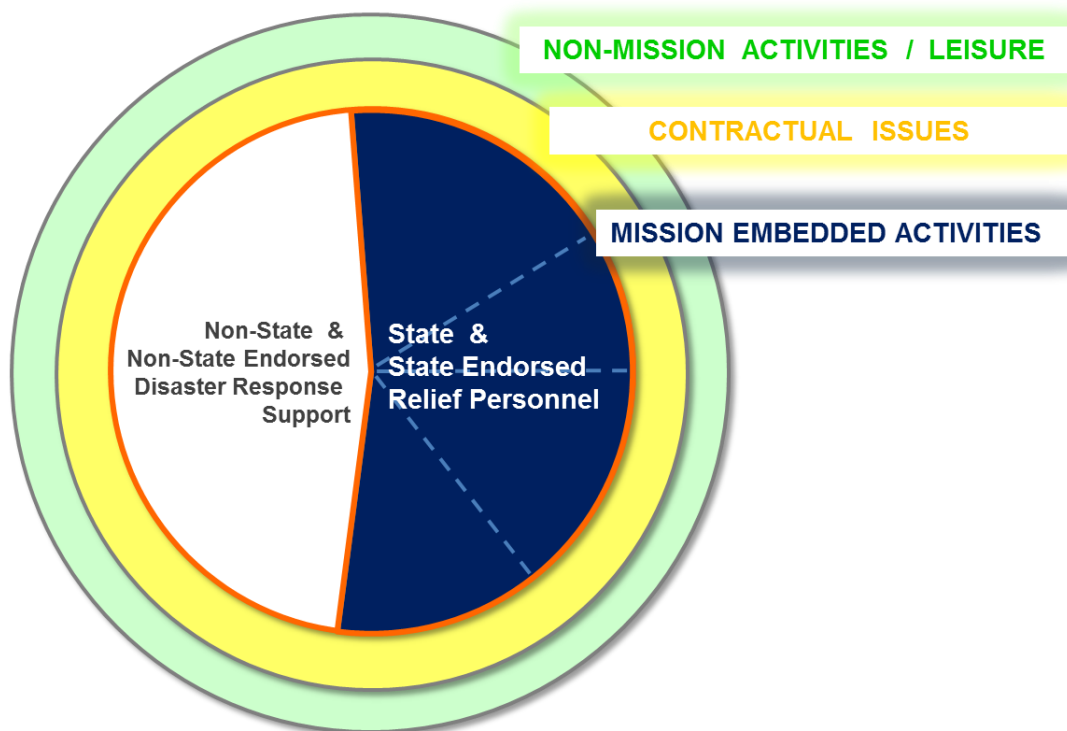
Existing instruments and guidelines	Scope of application	Provisions on liability of personnel	Gaps
OSLO GUIDELINES	UN MCDA requested by and deployed under UN control to support (non armed conflict) humanitarian activities (non binding)	UN MCDA personnel alerted, mobilized and deployed at the request of OCHA benefit from the privileges and immunities set out in the 1946 Convention on the Privileges and Immunities of the UN	Does not apply to relief personnel deployed on a bilateral basis without a request by UN OCHA.
MODEL AGREEMENT ANNEXED TO THE OSLO GUIDELINES	Model proposed as a basis for agreements between states deploying MCDA on a bilateral basis (model – non binding)	Extends privileges and immunities for the head of the MCDA operation. (and other members of the incoming team(s) as agreed)	Lacks flexibility. Does not provide options for states wanting to facilitate the entry and assistance of relief personnel without granting full privileges and immunities to all incoming personnel.
NATO AJP-4.5	NATO-led military activities, including military assistance provided by NATO-led forces in disaster relief and civil emergency planning (doctrine)	Refers to the NATO or PfP SOFA	Does not apply to civilian relief personnel except as attached to military forces, or in any case in the absence of a SOFA.

Existing instruments and guidelines	Scope of application	Provisions on liability of personnel	Gaps
EU HNS GUIDELINES	Civil protection assistance among or from participating states of the EU Civil Protection Mechanism (non binding)	Refers to a Commission Decision providing that states shall refrain from making claims for compensation for damage to the property or staff provides that states shall cooperate to facilitate compensation for third party damage	Defers liability issues for later resolution by the states. Does not bar third party claims.
IDRL GUIDELINES	(non binding)	<i>none</i>	-
NUMEROUS BILATERAL AGREEMENTS	(binding)	Variety of approaches, but few address liability of personnel in detail.	-

Focus

The Technical Annex covers liability in the following scope or context:

- **state employed or state endorsed relief personnel** (*not* non-state actors³),
- during the **response and early recovery phases**, (see: “When and How to Use this Document” section),
- related to **Mission Embedded Activities** (official duties/functions, *not* contractual disputes or issues outside official duties / functions⁴)



The inner shell is limited to the “Mission Embedded Activities”, whereas the circle itself is subdivided into two main segments “State & State Endorsed Relief Personnel” and all other disaster responders. The segments in blue (separated by the dotted lines) symbolise different categories of relief personnel to whom this Technical Arrangement can apply, which may include:

- Members of Public sector emergency services;
- Military personnel assigned to Disaster Relief Operation (DRO) organisations;
- State organised or state endorsed NGOs;
- Recognised professional associations;
- Individual state recognised experts, ...

acting under the authority of the sending nation.

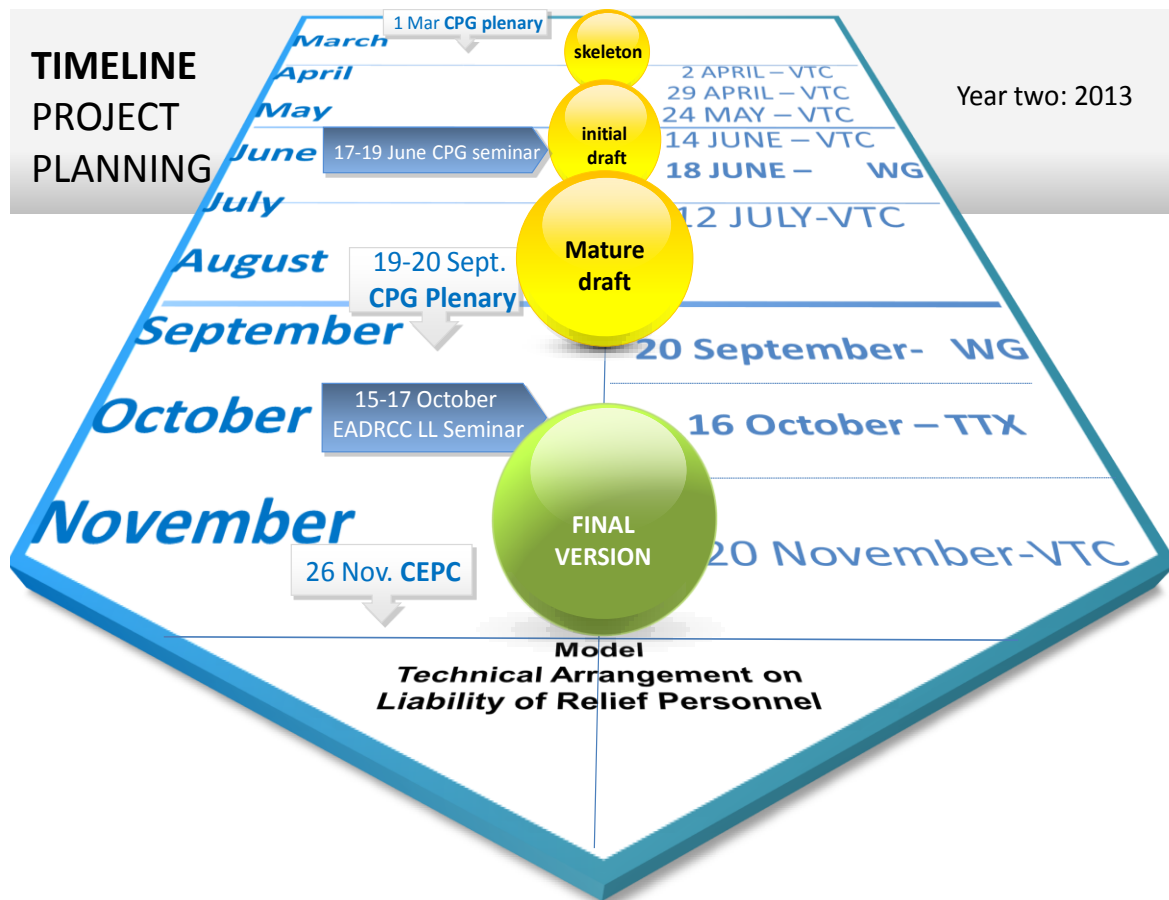
³ While not developed with non-state actors in mind, the model clauses offered here may nonetheless provide a useful basis for agreements between receiving states and foreign non-state relief actors.

⁴ Distinctions between official duty and private activities can be challenging, being both highly fact-dependent and different across jurisdictions. This point is flagged for consideration in choosing liability clauses and in applying them in actual cases.

Document Development

The document before you was developed through an intensive collaborative effort, sustained for nine months.

The following graphic illustrates the overall planning for the AHWG Liability of Relief Personnel and the succession of the brainstorming sessions and consultation sessions in 2013.



Milestones in Development & Validation

The conclusions of the module discussions during the **CPG seminar in June 2013** endorsed the work of the AHWG. The same seminar also became a starting point for more intense exchanges between the NATO AHWG, SHAPE J4 HNS staff and EU HNS experts.

The group continued to develop the document and presented a mature version of the document in the **CPG plenary in September 2013**.

Following positive feedback, the document was shared with the national representatives in CPG. Consequently, the group engaged in discussions with the interested nations via e-mail and through a dedicated VTC, leading to new improvements of the document.

The document was first tested during a table top exercise (TTX), during the **Lessons Learned conference organised by EADRCC in October 2013** in Ohrid.

The TTX, built on the scenario included in the “Problem” section, allowed the participants to test the model proposed in the second part of the document. As a result, one of the conclusions of the conference was to include such TTX as a new element of the future EADRCC exercises.

At the political level, the document was first presented in the **CEPC permanent session in November 2013** and reached general initial agreement.

Based on the feedback received during the extensive consultation process described above, the group continued to improve the document until it was submitted for the formal **NATO validation process in February 2014**.

The Working Methods and the Consultation Process

Much thought was given to the composition of the Ad Hoc Working Group: Members were chosen for their skills, ability and diverse backgrounds – ranging from the Legal, Emergency Management, Military, Government and Media Professions: This helped reflect the diverse cultural aspects of NATO and led to an effective combination of ideas, which continuously improved the document.

The group also consulted with experts inside and outside NATO. In particular the collaborations with the Office of the NATO Legal Advisor and with SHAPE J4 HNS were of great importance.

International experts and stakeholders were offered the opportunity to scrutinize ideas and provide insight into both the practical operational aspects and the complex regulatory framework.

Existing networks of international experts and practitioners were consulted through IAEM (International Association of Emergency Managers), CEMAC (Crisis & Emergency Management Centre) and IFRC (International Federation of Red Cross and Red Crescent Societies).

The group members worked mostly from their place of work, scattered across two continents, in seven countries.

The group met for brainstorming sessions in 6 video conferences (VTC).

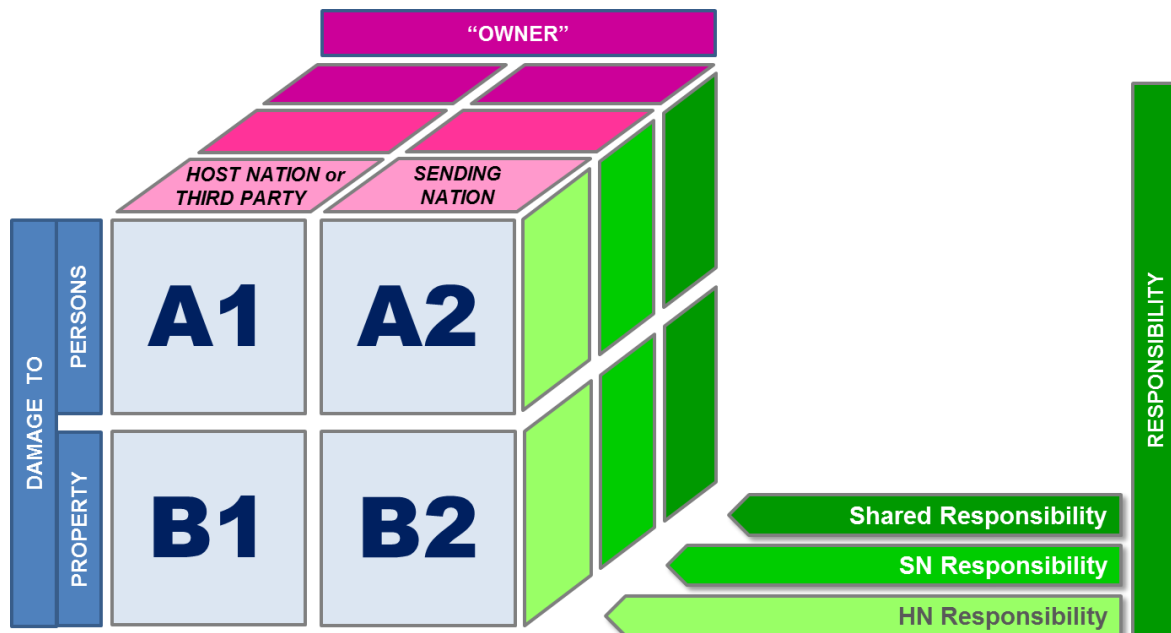
A rhythm of one VTC every three weeks, sustained for more than four months, resulted in a first draft that was presented in the CPG seminar held in Bosnia and Herzegovina in June 2013.

Structure: The Cube

The concept of "THE LIABILITY CUBE" was developed as a way to structure the various liability positions, to simply the overall complexity and to create an easy to use document (and set of model clauses) with a very straightforward structure.

Hence, this document is built based on this "cube"-concept, with the following three dimensions:

- What happened?
 - (1) What is damaged? (persons or property),
 - (2) Who is affected? (the Sending Nation (SN), the Host Nation (HN) or a third party) and
- (3) Who will bear the responsibility? (the SN, HN or shared).



Each square on the facing plane of the cube represents a category of potential liability exposure.

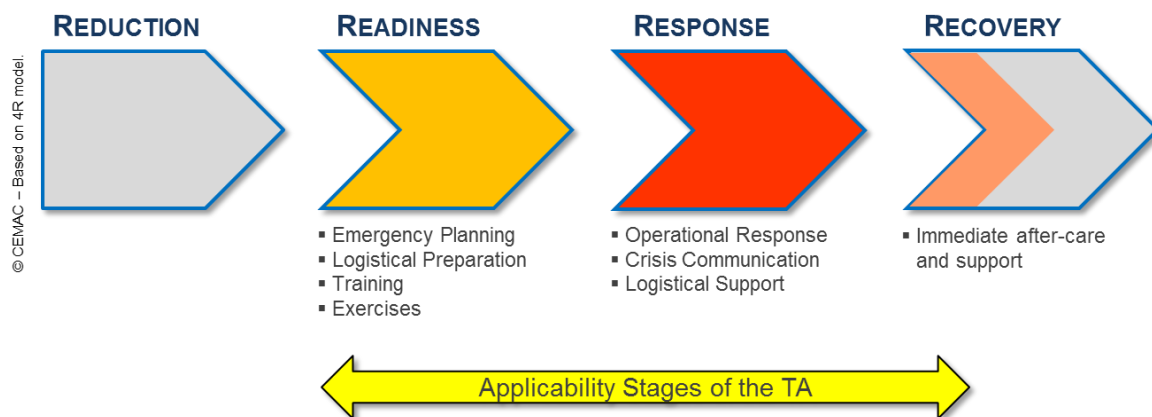
For example, **A1** represents damage to persons in the Host Nation, such as a disaster victim injured during a search and rescue operation when a damaged building further collapses during the rescue effort.

The squares are references in the scenario-based "Pain" section below and provide the organisational structure of the liability clause options in the Model Technical Arrangement.

Why, When and How to Use this Document?

The document before you is conceived as a modular guidance on liability issues for relief personnel, can and should be used in the various stages of national preparation for and international deployment during large scale DRO's.

- This document can be used to **build new** bilateral agreements or to **analyse existing** agreements.
- It can be used for real events or during exercises.
- It can be used when there is time to deliberate, reflect and plan or under time pressure⁵.



The concept of the guidance recognises the variations between states in their level of preparedness, approach to emergency planning, or degree of experience in international DRO's, either as a HN or as a SN.

This document consists of two parts:

- Part 1: Guidance, with two main sections: (i) Framework and (ii) the Problem
- Part 2: Model Clauses
- A collection of annexes: with a step-by-step approach to implementation

The first part should be used to create awareness about the problem and to get insight in the overall issues and possible solutions.

It also illustrates by means of a case scenario a number of standard DRO activities that can "turn sour" because of unresolved liability issues.

⁵ In which case the "Single Template Model" can be used as a completely pre-defined "sign here" document.

The second part is the actual “model agreement”, whereby two variants are proposed:

- A model agreement document that can be tailored to fit the exact detailed requirements of both states;
- A single template model that can be used as an initial document.

The third part is a collection of annexes, with the focus on implementation. It contains:

- Detailed step-by-step descriptions of the development and implementation process, both from the viewpoint of the Requesting Nation and the Sending Nation;
- Two checklistst to be used as basic guidance in the steps after the signature of the agreement.

Both part 2 and the annexes are sections of a “work book” to be used by national planners or in bi-national or multi-national working groups.

Whichever approach nations prefer, they have the flexibility to choose among several options as well as to further modify the text to create a tailor-made agreement suited to their specific circumstances.

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THE PROBLEM

Introduction

A case description has been chosen to illustrate the potential scope, width and impact of the element of legal liability on international Disaster Relief Operations where an affected state receives international assistance (for the scope of this document limited to state endorsed first responders) from one or more Sending Nations.

Context Framework

The case study below describes – through the proverbial eyes of deploying relief personnel – the relationship and possible mishaps with liability issues between two nations: an affected state that will be the host nation (HN) to disaster response assistance received from abroad and the state by which the personnel were deployed (SN).

For reason of simplicity, we assume in this case study that both the Host Nation (the Affected State) and the nation bringing in assistance are democratic countries, with comparable (at least in majority secular) legal and economic systems, and that the operational approach of civil protection and disaster response in both countries is comparable: e.g. main processes, USAR (Urban Search & Rescue) philosophy.

We also assume that while there have been earlier informal contacts between the states, there is no agreement or MoU between the states regarding disaster assistance.

The Emergency Situation

A major city (a provincial capital) and several smaller cities and villages in the northern part of the Host Nation were hit by a flash flood following the collapse of part of a dam upstream on a major river. Consecutive tsunami like waves of water with a height of up to 6 meters hit the buildings and city's infrastructure, creating havoc and casualties.

National emergency response assets proved insufficient to cope with the scale of the disaster and the national government of the Host Nation launched an appeal for international assistance. The call for assistance primarily focused on aerial EVAC (Evacuation) assets, high capacity pumping units, mobile transmission systems and in theatre deployable USAR teams.

Providing Assistance

The Sending Nation can easily call upon its existing module of (U)SAR experts, a team made up of members of staff from the civilian emergency services, military units and government recognised volunteer organisations.

A mixed USAR team is activated, prepared for its mission and supplied with the necessary equipment and consumables.

The case study on the following pages describes in an anecdotal manner some actions and events that might lead to liability issues for the relief personnel involved.

In each of these cases the potential issues have been analysed and tracked back to the different segments of "the Liability Cube," each of which is in turn linked to a series of model clauses providing options to clearly allocate the related liability exposure.

CASE DESCRIPTION				
Item	Scenario	Problems	Causes	Solutions
001.	<p>Day 1: Sarah watches the headlines of the evening news.</p> <p>The main news story is the failure of a water dam in the northern part of HostLand (Host Nation - HN)⁶ provoking a flash flood that has inundated the provincial capital NoLim city and several smaller municipalities. The flash flood following the catastrophic failure of the weir has caused a flood wave of up to 6 meters entering the populated areas just after midday.</p> <p>National emergency response assets proved insufficient to cope with the scale of the disaster and the national government of the Affected State launched a request for international assistance.</p> <p>The call for assistance primarily focused on aerial EVAC assets, high capacity pumping units, mobile transmission systems and in theatre deployable USAR teams.</p> <p>The authorities of SendLand (Sending Nation - SN) decide to offer assistance to HostLand consisting in relief goods (medical supplies and transmission equipment) and a USAR team (36 persons with their intervention and communication equipment, logistics and two 4x4 Landrover Defender equipped with a blue light lightbar and transmission equipment on-board). The USAR team is a medium state endorsed team, with a well-defined structure (accordingly with INSARAG Guidelines). That is a mixed team composed by members of the civil protection agency - components: management, search, rescue and logistics, while the medical component is manned with doctors and nurses belonging to the Ministry of Health. The offer is sent to HN and accepted by that.</p>	<ul style="list-style-type: none"> ▪ USAR teams can be operational and deployable within hours, but cross-border deployments are often delayed because of missing authorisations and “paperwork”. 	<p><i>Questions regarding the liability exposure of relief personnel can be such a delaying factor.</i></p>	<p>States can avoid these delays by concluding explicit agreements on the allocation of potential liability exposure – ideally in advance as a preparedness measure.</p>

⁶ Note that the UN uses the term “Affected State” instead of Host Nation. For consistency with existing HNS(A) documents, it has been preferred to use HN throughout this document.

CASE DESCRIPTION				
Item	Scenario	Problems	Causes	Solutions
002.	<p>Day 1 - Just after 2100hr UTC: Sarah receives a telephone call from the national civil protection operational centre.</p> <p>Sarah is an EMS (Emergency Medical Services) nurse belonging to the Ministry of Health, who has national and international experience as member in the national USAR team.</p> <p>Given the response time, she starts packing her kit and checks her personal documents and documentation.</p> <p>David receives the same telephone call. He is professional rescuer and colleague of Sarah's in the same national USAR Team.</p> <p>David has gone through a number of national and international USAR courses and has a track record of two international missions and participation in five national SAR exercises.</p>	<ul style="list-style-type: none"> ▪ The cohesion and effectiveness of the deployed team is hampered when the individual members are subject to different rules and obligations. ▪ Recognition of national diplomas and certificates has implications for the activities members of relief teams are authorised to carry out within the HN, and therefore also on professional liability and professional insurance coverage. <p><i>MCDAs teams are often composed of staff with different professional background and employment status: military personnel, public servants, seconded NGO staff, individual experts appointed by a state, ... resulting in different legal contracts and working conditions.</i></p> <p><i>Absence of international standardisation.</i></p>		<p>The status of the relief teams and the individual members should be clearly set out (as uniformly as possible) in a TA, which should also clarify the start and end of the validity of the arrangement.</p> <p>The foreign professional qualifications of members of accepted teams should be granted temporary recognition for the scope and duration of the assistance mission.</p> <p>[Ref.: single template model]</p> <p>[OG]: recommend that foreign MCDAs be deployed on the basis of agreements setting out the status of deployed teams. Where such agreements do not exist, it is suggested that the head of the MCDAs operation (and potentially other members of the team) be accorded the privileges and immunities of a diplomatic envoy.</p>

CASE DESCRIPTION				
Item	Scenario	Problems	Causes	Solutions
003.	<p>Day 1: HostLand is a secular state, member of OECD, UN affiliated organisations, recognizes the ICRC, several other international organisations and recognizes the authority of the ICJ (International Court of Justice). HostLand is not member of the EU, NATO, PfP (Partnership for Peace) or any other linked alliance.</p> <p>Entrance of the country requires a (non-worker) visa – valid for 90 days - issued by the Embassy in the country of departure (normally at least 10 days before departure).</p> <p>Due to those facts, the SN maintains contact with HN authorities to make all the necessary arrangements for sending the team and the relief goods (visa, customs, validity certificates of goods, documentation for relief donation, transportation needs, etc.).</p> <p>The checklists with all personnel, intervention and communication equipment and goods to be transported to the HN are sent to the HN.</p> <p>The HN reassures SN that no major difficulties are to be expected due to the fact that there is no bilateral agreement between the 2 nations.</p> <p>Hostland has virtually no experience in receiving large scale foreign assistance.</p>	<ul style="list-style-type: none"> ▪ The focus of attention in the acute phase of a major crisis will be on operational response, capacity generation and the establishment of command & control, not on identifying and clearing “red tape” that might interfere with the primary objectives. 	<p><i>Lack of preparedness – whether in the form of written agreements, mutual assistance plans or exercises – can significantly increase the response time for international assistance or increase legal liability if they choose to deploy anyway without the proper structures and arrangements in place.</i></p>	<p>An existing bi-lateral or multi-lateral agreement (tested and validated through exercises) or an “off the shelf” agreement that can be finalised at short notice can minimize the impact on the operational side.</p> <p>[OG⁷]: recommend waiver of visa requirements for MCDA personnel.</p>

⁷ Oslo Guidelines. Note that the Oslo Guidelines are *non-binding* Guidelines.

CASE DESCRIPTION				
Item	Scenario	Problems	Causes	Solutions
004.	<p>Day 1: During the night, a private sector airplane reserved by the SN civil protection authorities is loaded with the equipment and relief goods.</p> <p>After document verifications, civil protection staff load the cargo a/c with pallets of medical supplies, USAR equipment, transmission equipment, emergency shelter for the relief staff and pre-packed meals.</p>			<p>[MOU on the status of MCDA⁸]: provides for exemption from import duties and restrictions for all equipment, provisions, supplies and other goods for official use for the MCDA operation.</p>
005.	<p>Day 2: David and Sarah attend a briefing to the USAR team at the airport before departure. The briefing covers the actual situation in theatre, the destination, the deployment details and the objectives of the mission.</p> <p>The plane takes off and arrives after a 3.5 hour flight at a regional airport which was designated as the national Hostland hub for incoming disaster support.</p>			

⁸ Model Agreement Covering the Status of MCDA, Annex 1 to the Oslo Guidelines.

CASE DESCRIPTION				
Item	Scenario	Problems	Causes	Solutions
006.	<p>Day 2: The civil protection authorities of the HN give a briefing on the situation to the foreign teams' representatives (team leaders, liaison officers), covering the following topics:</p> <ul style="list-style-type: none"> - Existence of a coordination structure in place for the international teams - Person of contact with LEMA, liaison officer, relevant responsible persons - Rules of Engagement and other Operational arrangements - Local rules on using the blue-lights and sirens, speed limits, availability of police escort - Using of communication equipment - Availability of Host Nation Support, to what extent - Level of security in the affected area - Interpreters availability, if the case 	<ul style="list-style-type: none"> ▪ Use of blue lights & siren is subject to authorisation in most countries: what if local police does not accept the vehicles, what if driver causes an accident whilst driving "priority"? ▪ Same can apply to the set-up and use of radio transmission equipment causing use of the regulated electromagnetic spectrum. ▪ Use of CE certified equipment should not lead to any dispute. ▪ Will it be allowed that local customs agents ask to view/inspect the personal belonging of the relief team members? 		<ul style="list-style-type: none"> ▪ [OG]: recommends that the provisions of the Tampere Convention apply to the MCDA operation and provides in the annexed model agreement further detailed provisions on telecommunications - including the right to install and operate radio equipment, telephone, fax, etc. ▪ [MOU on the status of MCDA]: provides that MCDA have the right to import their personal belongings free of any duties.
007.	<p>Day 2: Local cargo handlers unload the a/c. After the briefing, the SN USAR team embarked in the 4x4 Landrovers and the trucks made available by the HN authorities, deploys to the affected area with local police escort, where a location for Base of Operations set up was indicated by HN during the briefing.</p>	<ul style="list-style-type: none"> ▪ - 		

CASE DESCRIPTION				
Item	Scenario	Problems	Causes	Solutions
008.	<p>Day 2: The small convoy arrives at the Base of Operations and the SN teams starts to disembark its equipment and set up the tents, when a local civilian comes to the small compound to complain that the infrastructure is placed on his land, that the HN authorities did not ask him, but just “did” and he addresses the members of the SN team stating that “I will not allow you to make your camp here”.</p> <p>The potential dispute gets settled through the assistance of the local liaison officer.</p>	<ul style="list-style-type: none"> Who would bear responsibility for any compensation owed to this property owner: (a) for use of his land, (b) for any damage caused to his property? <p>[Ref.: Solution B1]</p>		
009.	<p>Day 2: HostLand and SendLand officials agree to continue working on a bilateral agreement on the Liability of the Deployed Relief Staff.</p> <p>A working group is composed by senior legal advisers from both countries with the aim of producing a draft text for approval within four to five days.</p> <p>The prime ministers of both countries have accepted this approach and agreed that in the meantime the group will also solve the issues that might arise.</p>	<ul style="list-style-type: none"> 		
010.	<p>Day 2: As briefed by the HostLand civil protection HNS team, the SN team received an intervention sector in one of the suburbs of the flooded capital. Several areas situated on high grounds were flash flooded, but water has since receded and the buildings are accessible again. SN USAR team’s first mission consists in performing an USAR operation in the area to locate and rescue victims.</p>	<ul style="list-style-type: none"> 		

CASE DESCRIPTION				
Item	Scenario	Problems	Causes	Solutions
011.	<p>Day 2: At house no. 6 the SN team finds a young child barely alive. Sarah starts to administer first aid and asks David to help her since the situation of the child is quite serious.</p> <p>Sarah has full EMS training whereas David only has had some basic first aid courses.</p> <p>The event is reported by radio to the RN responsible person for that sector (On Site Commander) and a specialised medical team support is requested⁹.</p> <p>Due to the huge number of casualties no RN medical team is available, so David and Sarah decide to transport themselves the child to the nearest hospital, using their 4x4 Landrover.</p> <p>Together they succeed in keeping the child alive for a while, but during the transportation to a medical facility the child dies.</p>	<ul style="list-style-type: none"> ▪ Might the SN be held responsible for the death of the child? Or either Sarah or David individually? ▪ Does it matter whether Sarah is authorised to perform medical acts in the HN? ▪ Does it matter that David has no medical certification in the SN? <p>[Ref.: Solution A1]</p>		

⁹ [INSARAG] Accordingly with the INSARAG rules, the medical component of an USAR team has to keep alive the casualties during the rescue operations (first aid) and hand over them to the medical teams of the HN who will perform specialized medical acts for the casualty treatment.

CASE DESCRIPTION				
Item	Scenario	Problems	Causes	Solutions
012.	<p>Day 2: The huge quantity of water which flash flooded the area dislocated various materials which pile up in a narrow alley between two buildings, creating a debris-made water dam and retaining a huge quantity of water.</p> <p>It is necessary to release urgently the water in order to be able to continue the search operations, especially because based on locals' information some persons living there are missing.</p> <p>There are only 2 ways to remove the debris: - destroy the ad-hoc dam by removing piece by piece the materials crowded there, or - demolish the smaller building, which is state owned (which is the safer option).</p> <p>The SN Team leader discusses the issue with the N officer in charge of conducting operations in the area (On-site commander), and the HN officer refuses to assume responsibility for damaging the public building.</p> <p>Consequently, the team starts working on removing the piled up debris by hand, despite the risks.</p> <p>During these activities, a SN rescuer is hit by a wooden beam and severely injured. With a possible pelvic fracture he is taken to hospital.</p>	<ul style="list-style-type: none"> Since the SN team is embedded in the HN command & control structure, the HN On-site commander is the director of all teams and thus makes the decisions on actions, priorities and methods. In this case the chosen action by a HN official is the indirect cause of an accident whereby a foreigner is injured. This event could also have happened when the SN team leader was in charge and had had the same decision. 		

[Ref.: Solution A2]

CASE DESCRIPTION				
Item	Scenario	Problems	Causes	Solutions
013.	<p>Day 2: David, affected by the child’s death earlier that day has a traffic accident with the 4x4 Defender while driving back to the Base of Operations.</p> <p>There are no casualties but the automobile of a local resident suffered considerable damage. Secondary damage occurred because both cars ended up on the pavement, sliding over two traffic signs and ending up in the shop window of a small convenience store.</p> <p>The police department was called to make the necessary reports.</p> <p>The SN car did not require towing and could be driven back to the Base of Operations.</p>	<ul style="list-style-type: none"> ▪ Will the SN bear responsibility for the damage to the private vehicles? to the convenience store? ▪ Will the SN bear the cost of repairs to its own vehicle? ▪ Could David be held personally responsible for any of the damage caused? ▪ What is the process for filing and processing any claims for damage? 		
014.	<p>Day 2: Upon arrival at the Base of Operations, David is called by the Team Leader, who is in the company of the local mayor.</p> <p>Apparently there is some turmoil in the local population because of the child’s death.</p> <p>People want to know what happened and why, if the foreign relief helpers are competent and do have the required training and licenses.</p> <p>Consequently, the overall atmosphere within the local communities is rather unfriendly towards the SN team.</p>	<ul style="list-style-type: none"> ▪ The public relations and image issues resulting from any incident must be handled with extreme sensitivity and in close collaboration between the HN and SN to avoid escalation – and potentially security problems for the SN staff. 		

[Ref.: Solution B1, B2]

CASE DESCRIPTION				
Item	Scenario	Problems	Causes	Solutions
015.	<p>Day 3: The mishaps of the SN team have made it to page 2 of one of the larger national newspapers.</p> <p>The newspaper raises the issue of national autonomy in disaster response and states that with fewer budget cuts “we would not need foreigners” to assist the local population.</p> <p>The newspaper also compares the EMS training in HN and SN and concludes that the SN responder (i.e. Sarah) is probably so ill trained that she would never have even received first aid certification in Hostland.</p>	<ul style="list-style-type: none"> Media attention can raise the stakes of even minor incidents to major diplomatic issues. 	<p><i>The absence communications protocols and designated liaison staff greatly increase the likelihood of uncoordinated communication to the local population and local and international media.</i></p>	<p>Defining clear protocols on who is authorised to speak publically on any incident and on the need to co-ordinate messaging with the HN is critically important.</p> <p>By addressing potential issues in advance, the authorities of both states will be better able to diffuse tensions – without putting their personnel in jeopardy.</p> <p>[Ref.: Budapest Guidelines]</p>

CASE DESCRIPTION				
Item	Scenario	Problems	Causes	Solutions
016.	<p>Day 3: In a press release the SendLand government announces that a representative of the national prosecution authority will go to HostLand to assist in the enquiry on the death of the young child and to deliberate with the HostLand authorities to find the most suitable solution for the legal issues that have arisen.</p> <p>The local prosecution officer in charge of the inquest replies before TV cameras that there is of course no discussion possible: the “crime” has been committed in HostLand, so the HostLand judicial procedure will be followed, whatever the status of the people involved.</p> <p>In a follow-up a SendLand journalist asks the spokesperson of the SendLand Ministry of Foreign Affairs “why there are apparently no rules?”.</p>	<ul style="list-style-type: none"> ▪ 		
017.	<p>Day 3: The search personnel of the SN USAR team locate a person blocked into a room in a building.</p> <p>The access points are blocked by various materials carried by the flash flood, so the only solution to rescue the person is to penetrate through the wall belonging to an adjacent apartment.</p> <p>Because the health of the trapped person is a major concern and the victim needs urgent medical assistance, the rescue team performs a horizontal penetration operation demolishing the wall and extracting the person.</p> <p>The decision to enter through the adjacent apartment was made by the SN team on site.</p>	<ul style="list-style-type: none"> ▪ 		

CASE DESCRIPTION				
Item	Scenario	Problems	Causes	Solutions
018.	<p>Day 3: A few hours later, the team leader is contacted by a local claiming that his house was destroyed by the SN USAR team during the rescue operation.</p> <p>The local resident demands compensation for the damage done to his apartment.</p>	<ul style="list-style-type: none"> Will the SN be responsible for the damage to the adjacent apartment? What is the process for filing and processing any claims for damage? <p><i>Lacking a pre-established agreement on the applicability of law and the individual responsibility of the emergency responder, it will be unclear if the damage will be compensated through the HN legislation or compensation rules, or whether the SN rescue worker will be held accountable individually or the SN organisation in which he is embedded.</i></p> <p>[Ref.: Solution B1]</p>		
019.	<p>Day 4: The SN USAR Team is requested, through the Liaison Officer, to execute a rescue at height together with some rescuers of the HN.</p> <p>The Team Leader accepts the mission and sends two members of this team to the location with the 4x4 Landrover together with some of their equipment. The rest of the group and equipment are already involved in rescue activities in other parts of the city.</p> <p>When arriving on the spot, the HN rescuers, already on the building's roof (together with the casualties) start dropping down roof tiles in an attempt to create a safer area.</p> <p>They do not wait for a co-ordination talk with the SN rescuers and the 4x4 Defender is seriously damaged when hit by a number of roof tiles.</p>	<ul style="list-style-type: none"> Who will bear the cost of repairs to the SN vehicle? <p>[Ref.: Solution B2]</p>		

CASE DESCRIPTION				
Item	Scenario	Problems	Causes	Solutions
020.	<p>Day 4: Finally, the HN and SN rescuers co-ordinate and the rescue at height start using the SN equipment.</p> <p>During the operation, due to exhaustion, one of the SN rescuers releases a rope too early.</p> <p>This destabilizes the stretcher carrying an injured person, and the HN rescuer who was bringing the casualty down sustains a head contusion.</p>	<ul style="list-style-type: none"> ▪ Might the SN be held responsible for the injury sustained by HN personnel? ▪ Can the HN personnel pursue a private claim against the SN rescuer who released the rope early? 		<p>[Ref.: Solution A1]</p>
021.	<p>Day 4: The Team Leader receives an informal report from the liaison officer that the autopsy does not show any causal relationship between the death of the child and the actions of the SendLand team.</p> <p>Drowning is determined as the cause of death, and the team just found the victim too late.</p> <p>The coroner however found that several ribs were cracked due to resuscitation attempts by the SN team, and wants to question the two team members, especially in view that David holds no medical certification.</p>	<ul style="list-style-type: none"> ▪ If the family of the child files a claim for civil damages, would the SN be responsible to cover the cost of any judgement? ▪ Could a claim be filed against either Sarah or David individually? 		<p>[Ref.: Solution A1]</p>
0.. .				
END	Team redeploys home.			

**PART 2:
MODEL
DOCUMENT
AND
IMPLEMENTATION
TOOLS**

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**MODEL
TECHNICAL ARRANGEMENT (TA)
ON
LIABILITY OF RELIEF PERSONNEL**

BETWEEN

— —
(Hereafter called the Sending Nation (SN))

AND

— —
(Hereafter called the Requesting Nation (RN))

1. **Mindful of** the establishment of the Euro-Atlantic Partnership Council (EAPC) providing the overarching framework for consultations among its members and its adoption of the Memorandum of Understanding (MoU) on the Facilitation of Vital Civil Cross Border Transport in 2006;
2. **Mindful of** the Final Report of the Ad-Hoc Working Group on the Status of Relief Personnel identifying in recommendation 6 the need to further work on the problem area of liability and recommends taking this issue further in an expert working group;
3. **Mindful of** the work of the Ad-Hoc Working Group on Liability of Relief Personnel;
4. **Noting**, furthermore, the usefulness of international arrangements and agreements on civil co-operation in the framework of Partnership for Peace (PfP);
5. **Aware of** the possibility to further develop the aforementioned Memorandum of Understanding (MoU) on the Facilitation of Vital Civil Cross Border Transport, based on its article 6, have reached the following understanding:

PARAGRAPH 1: SCOPE

6. The Model Technical Arrangements on Liability of Relief Personnel complements the Memorandum of Understanding (MoU) on the Facilitation of Vital Civil Cross Border Transport in 2006. It offers a practical framework and sample clauses to determine liability in the context of civilian disaster relief deployments across state borders.

7. The Model Technical Arrangements covers liability in the following scope or context:

- **state owned or state endorsed relief personnel** (NOT non-state actors¹⁰);
- during the **response and early recovery phases**(NOT in stabilization and reconstruction,);
- related to **official duties/functions** (NOT contractual disputes or issues outside official duties/functions);
- where no Status of Forces Agreement applies, or where a Status of Forces Agreement does not extend to the relief personnel and/or the civilian disaster relief deployment;
- where the relief personnel and their activities on the territory of the receiving Participant do not benefit from privileges and immunities.

8. The Model Technical Arrangements is foreseen to be a flexible tool to be used in the following situations:

- In the preparedness phase, the annex could be used to create the liability part of bilateral agreements on disaster relief.
- Immediately after the disaster, among states that do not have a bilateral agreement on disaster relief.

¹⁰ While not developed with non-state actors in mind, the model clauses offered here may nonetheless provide a useful basis for agreements between receiving states and foreign non-state relief actors.

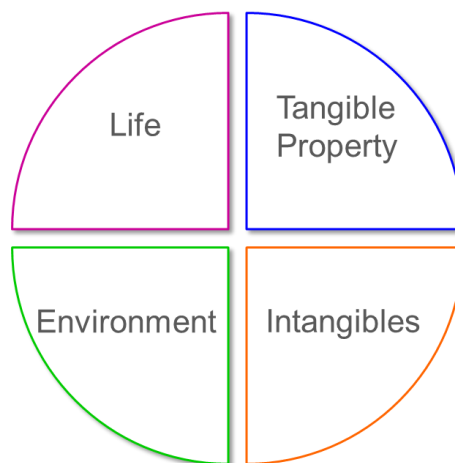
PARAGRAPH 2: LEXICON

TERMS and DEFINITIONS

9. In addition to the expressions defined in the MoU:

Damage is used as a synonym for injury to persons or property, including both tangible and intangible injuries (for example, loss of a limb and loss of reputation), giving rise to civil claims or to criminal charges. It is not used in the legal sense of monetary awards or compensation for harm.

- Fatalities
- Injuries



- Destruction of and damage to collective and individual property and infrastructure

- Destruction of and damage to the natural environment

- Loss of know how, cultural heritage, national security, ...

© CEMAC – Based on "Ryski" methodology.

Liability is defined here to include both civil and criminal liability, whether based on charges by a state authority or claims by individuals.

Property refers to fixed and moveable objects, either belonging to the HN, the SN or a third party.

Relief personnel includes all personnel of the sending Participant in the territory of the requesting Participant and taking part in the relief operation, whether directly or indirectly.

Type	Description and Examples
1. Direct Operational Activities	- Personnel directly involved in the relief effort and operating under the command of the HN. Examples: USAR teams, CBRN teams
2. C3 Support	- Personnel supporting the HN at the level of command & control, including national and international co-ordination, operational assessment and planning. Examples: staff officers, experts and analysts
3. Logistical Support	- Personnel providing logistics support at the local, regional, national and international level, such as transport, transmissions, procurement, and operations facilitation. Examples: MOV control officers for land, air, sea transport, ATC support staff, TELECOM staff.
4. Deployed Unit Support	- Personnel deployed to the HN to facilitate the operations of the detachment staff, but not directly involved in the relief effort. Examples: mechanics, facility managers, cooking staff, HR support
5. Other Miscellaneous Support	- Indirectly involved staff not listed in the categories above. Examples: RECCE team, Rapid Response Team (RRT), Advisory Support Team (AST), United Nations Disaster Assessment and Coordination (UNDAC) team sent out for the preparation of the mission.

PARAGRAPH 3: NOTIFICATION AND GUIDELINES

10. This technical annex is intended to support Participants in determining the balance of liability exposure through bilateral or multilateral technical arrangements for the deployment of civilian disaster relief teams under the MoU.

11. Eight different liability situations or categories are described, and a series of model and alternative clauses are provided for each. States may select from among the clauses to generate a customised and mutually-agreeable arrangement on liability.

12. Alternatively, rather than selecting individual clauses, states may prefer to adopt the single template model.

13. In either case, both the model clauses and the single template model should be considered a basis for adaptation by states to suit their context. Further, in using or adapting the model clauses, states must be conscious of their own national legal frameworks, in particular to any limitations or procedural requirements to give effect to their bilateral state-to-state agreements on the subjects addressed here.

14. The model clauses, including those in the single template model, are based on thorough research of clauses in existing bilateral and regional agreements among states, the Agreement between the Parties to the North Atlantic Treaty regarding the Status of their Forces (NATO SOFA, 1951), and relevant guidelines and other non-binding texts. They are also informed by practical experience.

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MODEL CLAUSES

A. INJURY TO PERSONS

A1. INJURY TO PERSONS IN THE REQUESTING NATION

A1. SITUATION 1

(WHAT)	physical injury, adverse health effects or death to an individual on the territory of the RN (excluding SN personnel)
(BY WHOM)	by SN relief personnel
(WHEN)	in the course of performance of official duties
(HOW)	<i>executing orders or applying standard operational procedures</i>

Alternative 1: requesting nation responsibility

- Model clause:**
The requesting Participant shall relieve the sending Participant of any liability deriving from the official acts of its relief personnel resulting in physical injury, adverse health effects or death of any person on the territory of the requesting Participant.
- Optional addition:**
(no individual liability)
The individual relief personnel of the sending Participant shall likewise be relieved of any personal liability and shall not be subject to any criminal charges or civil claims in this respect.

Alternative 2: sending nation responsibility

- Model clause:**
The sending Participant shall not be relieved of any liability deriving from the official acts of its relief personnel resulting in physical injury, adverse health effects or death of any person on the territory of the requesting Participant.
- Optional addition:**
(no individual liability)
The individual relief personnel of the sending Participant shall, however, not be subject to any criminal charges or civil claims arising from physical injury, adverse health effects or death of any person on the territory of the receiving Participant due to the actions or omissions of such personnel in the course of the performance of his/her official duties.

Alternative 3: responsibility is shared between SN and RN

- Model clause:**
(cooperation)
The Participants will cooperate closely in compliance with their respective national laws to facilitate the settling of any private claims deriving from the official acts of the relief personnel of the sending Participant resulting in physical injury, adverse health effects or death of any person on the territory of the requesting Participant, and shall exchange all available information for this purpose.

- Model clause:**
(cost-sharing)
The requesting Participant shall settle or resolve any private claims deriving from the official acts of the relief personnel of the sending Participant resulting in physical injury, adverse health effects or death of any person on the territory of the requesting Participant. The sending Participant shall reimburse the requesting Participant up to [insert amount] per incident or injury.

- Optional addition:**
(no individual liability)
The individual relief personnel of the sending Participant shall, however, not be subject to any criminal charges or civil claims arising from physical injury, adverse health effects or death of any person on the territory of the receiving Participant due to the actions or omissions of such personnel in the course of the performance of his/her official duties.

A1. SITUATION 2

(WHAT)	physical injury, adverse health effects or death to an individual on the territory of the RN (excluding SN personnel)
(BY WHOM)	by SN relief personnel
(WHEN)	in the course of performance of official duties
(HOW)	<i>due to gross negligence or wilful misconduct</i>

Alternative 1: requesting nation responsibility

- Model clause:**
(as in A1. Situation 1)
The requesting Participant shall relieve the sending Participant of any liability deriving from the official acts of its relief personnel resulting in physical injury, adverse health effects or death of any person on the territory of the requesting Participant.
- Optional addition:**
(no individual liability – as in A1. Situation 1)
The individual relief personnel of the sending Participant shall likewise be relieved of any personal liability and shall not be subject to any criminal charges or civil claims in this respect.
- Alternative optional addition 2:**
(individual liability – exception to A1. Situation 1)
The individual relief personnel of the sending Participant shall likewise be relieved of any personal liability and shall not be subject to any criminal charges or civil claims in this respect – except in cases of gross negligence or wilful misconduct.

Alternative 2: sending nation responsibility

- Model clause:**
(as in A1. Situation 1)
The sending Participant shall not be relieved of any liability deriving from the official acts of its relief personnel resulting in physical injury, adverse health effects or death of any person on the territory of the requesting Participant.
- Alternative model clause:**
(exception to A1. Situation 1)
The requesting Participant shall relieve the sending Participant of any liability deriving from the official acts of its relief personnel resulting in physical injury, adverse health effects or death of any person on the territory of the requesting Participant – except in cases of gross negligence or wilful misconduct on the part of such personnel.
- Optional addition:**
(no individual liability – as in A1. Situation 1)
The individual relief personnel of the sending Participant shall, however, not be subject to any criminal charges or civil claims arising from physical injury, adverse health effects or death of any person on the territory of the receiving Participant due to the actions or omissions of such personnel in the course of the performance of his/her official duties.

- Alternative optional addition 2:**
(individual liability – exception to A1. Situation 1)
The individual relief personnel of the sending Participant shall not be subject to any criminal charges or civil claims arising from physical injury, adverse health effects or death of any person on the territory of the receiving Participant due to the actions or omissions of such personnel in the course of the performance of his/her official duties – except in cases of gross negligence or wilful misconduct.

Alternative 3: responsibility is shared between SN and RN

- Model clause:**
(cooperation – as in A1. Situation 1)
The Participants will cooperate closely in compliance with their respective national laws to facilitate the settling of any private claims deriving from the official acts of the relief personnel of the sending Participant resulting in physical injury, adverse health effects or death of any person on the territory of the requesting Participant, and shall exchange all available information for this purpose.
- Model clause:**
(cost-sharing – as in A1. Situation 1)
The requesting Participant shall settle or resolve any private claims deriving from the official acts of the relief personnel of the sending Participant resulting in physical injury, adverse health effects or death of any person on the territory of the requesting Participant. The sending Participant shall reimburse the requesting Participant up to [insert amount] per incident or injury.
- Optional addition:**
(no individual liability – as in A1. Situation 1)
The individual relief personnel of the sending Participant shall, however, not be subject to any criminal charges or civil claims arising from physical injury, adverse health effects or death of any person on the territory of the receiving Participant due to the actions or omissions of such personnel in the course of the performance of his/her official duties.
- Alternative optional addition 2:**
(individual liability – exception to A1. Situation 1)
The individual relief personnel of the sending Participant shall not be subject to any criminal charges or civil claims arising from physical injury, adverse health effects or death of any person on the territory of the receiving Participant due to the actions or omissions of such personnel in the course of the performance of his/her official duties – except in cases of gross negligence or wilful misconduct.

A2. INJURY TO SENDING NATION RELIEF PERSONNEL

A2. SITUATION 1

(WHAT)	physical injury, adverse health effects or death to SN relief personnel
(WHEN)	in the course of performance of official duties
(HOW)	<i>executing orders or applying standard operational procedures</i>

Alternative 1: requesting nation responsibility

Model clause:

The requesting Participant shall assume responsibility for any physical injury, adverse health effects or death of relief personnel of the sending Participant in the course of his/her official duties on the territory of the requesting Participant, under the same conditions as apply to the relief personnel of the requesting Participant.

Alternative 2: sending nation responsibility

Model clause:

The sending Participant waives all claims against the requesting Participant in connection with physical injury, adverse health effects or death of relief personnel of the sending Participant in the course of his/her official duties on the territory of the requesting Participant.

Alternative 3: responsibility is shared between SN and RN

Model clause:

(cooperation)

The Participants will cooperate closely in compliance with their national laws to facilitate the settling of any private claims related to any physical injury, adverse health effects or death of relief personnel of the sending Participant in the course of his/her official duties in connection with the relief operation on the territory of the requesting Participant, and shall exchange all available information on claims for this purpose.

Model clause:

(cost sharing)

The requesting Participant shall compensate the sending Participant for any physical injury, adverse health effects or death of relief personnel of the sending Participant in the course of his/her official duties on the territory of the requesting Participant under the same conditions as apply to the relief personnel of the requesting Participant up to a maximum of [insert amount] per incident or injury.

A2. SITUATION 2

(WHAT)	physical injury, adverse health effects or death to SN relief personnel
(WHEN)	in the course of performance of official duties
(HOW)	<i>due to gross negligence or wilful misconduct on the part of the sending Participant or its relief personnel</i>

Alternative 1: requesting nation responsibility

- Model clause:**
(as in A2. Situation 1)
The requesting Participant shall assume responsibility for any physical injury, adverse health effects or death of relief personnel of the sending Participant in the course of his/her official duties on the territory of the requesting Participant, under the same conditions as apply to the relief personnel of the requesting Participant.

Alternative 2: sending nation responsibility

- Model clause:**
(as in A2. Situation 1)
The sending Participant waives all claims against the requesting Participant in connection with physical injury, adverse health effects or death of relief personnel of the sending Participant in the course of his/her official duties on the territory of the requesting Participant.

- Alternative model clause:**
(exception to A2. Situation 1)
The requesting Participant shall assume responsibility for any physical injury, adverse health effects or death of relief personnel of the sending Participant in the course of his/her official duties on the territory of the requesting Participant, under the same conditions as apply to the relief personnel of the requesting Participant – except in cases of gross negligence or wilful misconduct on the part of the sending Participant or its relief personnel.

Alternative 3: responsibility is shared between SN and RN

- Model clause:**
(cooperation – as in A2. Situation 1)
The Participants will cooperate closely in compliance with their national laws to facilitate the settling of any private claims related to any physical injury, adverse health effects or death of relief personnel of the sending Participant in the course of his/her official duties in connection with the relief operation on the territory of the requesting Participant, and shall exchange all available information on claims for this purpose.

- Model clause:**
(cost sharing – as in A2. Situation 1)

The requesting Participant shall compensate the sending Participant for any physical injury, adverse health effects or death of relief personnel of the sending Participant in the course of his/her official duties on the territory of the requesting Participant under the same conditions as apply to the relief personnel of the requesting Participant up to a maximum of [insert amount] per incident or injury.

B. DAMAGE TO PROPERTY

B1. DAMAGE TO PROPERTY IN THE REQUESTING NATION

B1. SITUATION 1

(WHAT)	damage to property on the territory of the RN (excluding property of the SN)
(BY WHOM)	by SN relief personnel
(WHEN)	in the course of performance of official duties
(HOW)	<i>executing orders or applying standard operational procedures</i>

Alternative 1: receiving nation responsibility

- Model clause:**
The requesting Participant shall relieve the sending Participant of any liability deriving from the official acts of its relief personnel resulting in damage to property on the territory of the requesting Participant.
- Optional addition:**
(no individual liability)
The individual relief personnel of the sending Participant shall likewise be relieved of any personal liability and shall not be subject to any criminal charges or civil claims in this respect.

Alternative 2: sending nation responsibility

- Model clause:**
The sending Participant shall not be relieved of any liability deriving from the official acts of its relief personnel resulting in damage to property on the territory of the requesting Participant.
- Optional addition:**
(no individual liability)
The individual relief personnel of the sending Participant shall, however, not be subject to any criminal charges or civil claims arising from damage to property on the territory of the receiving Participant due to the actions or omissions of such personnel in the course of the performance of his/her official duties.

Alternative 3: responsibility is shared between SN and RN

- Model clause:**
(cooperation)
The Participants shall cooperate closely in compliance with their respective national laws to facilitate the settling of any private claims deriving from the official acts of the relief personnel of the sending Participant resulting damage to property on the territory of the requesting Participant, and shall exchange all available information for this purpose.

Model clause:

(cost-sharing)

The requesting Participant shall settle or resolve any private claims deriving from the official acts of the relief personnel of the sending Participant resulting in damage to property on the territory of the requesting Participant. The sending Participant shall reimburse the requesting Participant up to [insert amount] per incident or injury.

Optional addition:

(no individual liability)

The individual relief personnel of the sending Participant shall, however, not be subject to any criminal charges or civil claims arising from damage to property on the territory of the receiving Participant due to the actions or omissions of such personnel in the course of the performance of his/her official duties.

B1. SITUATION 2

(WHAT)	damage to property on the territory of the RN (excluding property of the SN)
(BY WHOM)	by SN relief personnel
(WHEN)	in the course of performance of official duties
(HOW)	<i>due to gross negligence or wilful misconduct</i>

Alternative 1: receiving nation responsibility

- Model clause:**
(as in B1 Situation 1)
The requesting Participant shall relieve the sending Participant of any liability deriving from the official acts of its relief personnel resulting in damage to property on the territory of the requesting Participant.
- Optional addition:**
(no individual liability – as in B1 Situation 1)
The individual relief personnel of the sending Participant shall likewise be relieved of any personal liability and shall not be subject to any criminal charges or civil claims in this respect.
- Alternative optional addition:**
(individual liability – exception to B1 Situation 1)
The individual relief personnel of the sending Participant shall likewise be relieved of any personal liability and shall not be subject to any criminal charges or civil claims in this respect – except in cases of gross negligence or wilful misconduct.

Alternative 2: sending nation responsibility

- Model clause:**
(as in B1 Situation 1)
The sending Participant shall not be relieved of any liability deriving from the official acts of its relief personnel resulting in damage to property on the territory of the requesting Participant.
- Alternative model clause:**
(exception to B1 Situation 1)
The requesting Participant shall relieve the sending Participant of any liability deriving from the official acts of its relief personnel resulting in damage to property on the territory of the requesting Participant – except in cases of gross negligence or wilful misconduct.
- Optional addition:**
(no individual liability – as in B1 Situation 1)
The individual relief personnel of the sending Participant shall, however, not be subject to any criminal charges or civil claims arising from damage to property on the territory of the receiving Participant due to the actions or omissions of such personnel in the course of the performance of his/her official duties.

- Alternative optional addition:**
(individual liability – exception to B1 Situation 1)
The individual relief personnel of the sending Participant shall not be subject to any criminal charges or civil claims arising from damage to property on the territory of the receiving Participant due to the actions or omissions of such personnel in the course of the performance of his/her official duties – except in cases of gross negligence or wilful misconduct.

Alternative 3: responsibility is shared between SN and RN

- Model clause:**
(cooperation – as in B1 Situation 1)
The Participants shall cooperate closely in compliance with their respective national laws to facilitate the settling of any private claims deriving from the official acts of the relief personnel of the sending Participant resulting damage to property on the territory of the requesting Participant, and shall exchange all available information for this purpose.
- Model clause:**
(cost-sharing – as in B1 Situation 1)
The requesting Participant shall settle or resolve any private claims deriving from the official acts of the relief personnel of the sending Participant resulting in damage to property on the territory of the requesting Participant. The sending Participant shall reimburse the requesting Participant up to [insert amount] per incident or injury.
- Optional addition:**
(no individual liability – as in B1 Situation 1)
The individual relief personnel of the sending Participant shall, however, not be subject to any criminal charges or civil claims arising from damage to property on the territory of the receiving Participant due to the actions or omissions of such personnel in the course of the performance of his/her official duties.
- Alternative optional addition:**
(individual liability – exception to B1 Situation 1)
The individual relief personnel of the sending Participant shall not be subject to any criminal charges or civil claims arising from damage to property on the territory of the receiving Participant due to the actions or omissions of such personnel in the course of the performance of his/her official duties – except in cases of gross negligence or wilful misconduct.

B2. DAMAGE TO PROPERTY OF THE SENDING NATION

B2. SITUATION 1

(WHAT)	damage to property of the SN
(WHERE)	on the territory of the RN
(HOW)	<i>in use in accordance with orders or standard operating procedures</i>

Alternative 1: requesting nation responsibility

Model clause:

The requesting Participant shall reimburse the sending Participant the fair value of any damage or destruction to the property of the sending Participant on the territory of the receiving Participant for use in the relief operation.

Alternative 2: sending nation responsibility

Model clause:

The sending Participant waives all claims against the requesting Participant in connection with damage to property of the sending Participant on the territory of the receiving Participant for use in the relief operation.

Alternative 3: responsibility is shared between SN and RN

Model clause:

(cost sharing)

The requesting Participant shall reimburse the sending Participant the fair value of any damage or destruction to the property of the sending Participant on the territory of the receiving Participant for use in the relief operation. Such reimbursements shall be capped at [insert amount] per item or event and a total of [insert amount] per relief operation.

B2. SITUATION 2

(WHAT)	damage to property of the SN
(WHERE)	on the territory of the RN
(HOW)	<i>due to gross negligence or wilful misconduct by the SN or its relief personnel</i>

Alternative 1: requesting nation responsibility

- Model clause:**
(as in B2. Situation 1)
The requesting Participant shall reimburse the sending Participant the fair value of any damage or destruction to the property of the sending Participant on the territory of the receiving Participant for use in the relief operation.

Alternative 2: sending nation responsibility

- Model clause:**
(as in B2. Situation 1)
The sending Participant waives all claims against the requesting Participant in connection with damage to property of the sending Participant on the territory of the receiving Participant for use in the relief operation.
- Alternative model clause:**
(exception to B2. Situation 1)
The requesting Participant shall reimburse the sending Participant the fair value of any damage or destruction to the property of the sending Participant on the territory of the receiving Participant for use in the relief operation – except in cases of gross negligence or wilful misconduct on the part of the sending Participant or its relief personnel. [Such reimbursements shall be capped at [insert amount] per item or event and a total of [insert amount] per relief operation.]

Alternative 3: responsibility is shared between SN and RN

- Model clause:**
(cost sharing – as in B2. Situation 1)
The requesting Participant shall reimburse the sending Participant the fair value of any damage or destruction to the property of the sending Participant on the territory of the receiving Participant for use in the relief operation. Such reimbursements shall be capped at [insert amount] per item or event and a total of [insert amount] per relief operation.

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SINGLE TEMPLATE MODEL

1. The Participants waive all claims against one another for damage to their respective property by the relief personnel of the other Participant in the execution of their official duties in connection with the relief operation.
2. The Participants similarly waive all claims against one another for injury, adverse health effects or death of their respective relief personnel in the execution of their official duties in connection with the relief operation.
3. The requesting Participant shall temporarily recognise the foreign professional qualifications of relief personnel of the sending Participant as valid within the scope of their official duties in connection with the relief operation.
4. The Participants shall cooperate closely in compliance with their respective national laws to facilitate the settling of any private claims deriving from the official acts of the relief personnel of the sending Participant and resulting in damage or injury to third parties.
5. The individual relief personnel of the sending Participant shall not be subject to any such private claims or related proceedings for the enforcement of judgements arising from the execution of his/her official duties in connection with the relief operation.
6. Subject to the provisions herein and any other relevant agreements concluded between the Participants or to which they are party, the receiving Participant shall have jurisdiction over the relief personnel of the sending Participant with respect to offences committed within the territory of the receiving Participant and punishable by the law of that state.
7. In the event of arrest or detention of any member of the relief personnel of the sending Participant by the authorities of the receiving Participant, the Participants shall cooperate closely in compliance with their national laws to facilitate all necessary investigations and the collection and production of evidence.
8. The relief personnel of the sending Participant shall benefit from any exclusions, special provisions or leniency as would apply to the relief personnel of the receiving Participant.

9. Any member of the relief personnel of the sending Participant prosecuted under the jurisdiction of the receiving Participant shall be entitled to:

- a) a prompt and speedy trial
- b) be informed in advance of trial of the specific charge or charges made against him/her
- c) be confronted with the witnesses against him/her
- d) have compulsory process for obtaining witnesses in his/her favour, as possible within the jurisdiction of the receiving Participant
- e) have legal representation of his/her own choice for his/her defence or to have free or assisted legal representation
- f) have the services of a competent interpreter
- g) communicate with a representative of the sending Participant government and when the rules of the court permit, to have such a representative present at the trial.

ANNEXES

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IMPLEMENTATION PROCESS

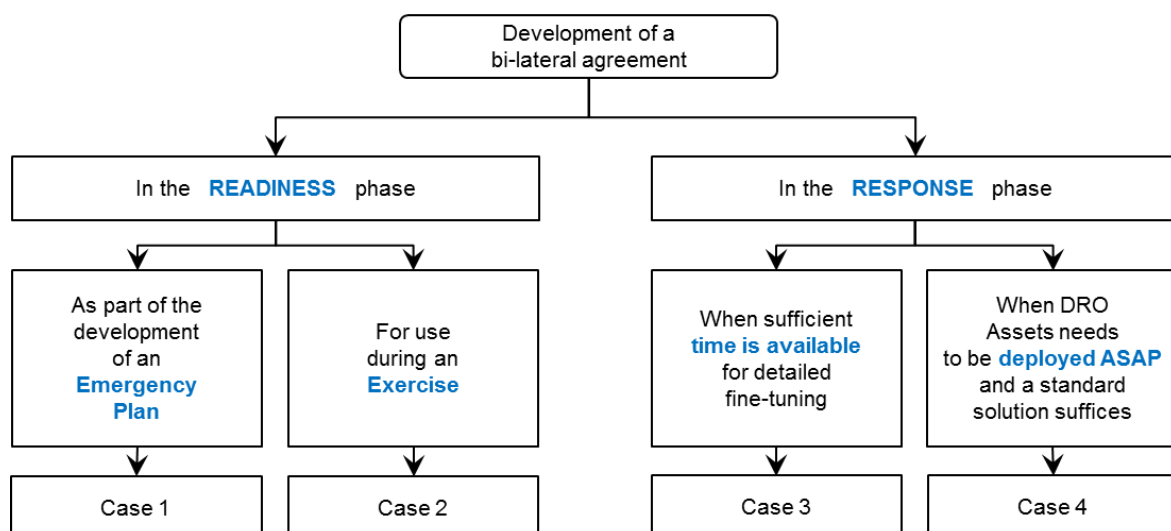
GENERAL

The implementation process describes a generic approach to developing a bi-lateral agreement on Disaster Relief Operation (DRO) liability issues, based on either the Model Clauses or the Single Template Model.

This process description cannot be anything else but generic, since it needs to take into account the variations in state organisation, existing multi- or bi-lateral agreements between specific states, the diplomatic and other channels already in use to facilitate agreements between specific states, the wish to cluster bi-lateral relationships between a stricken nation and multiple aid-offering nations, etcetera.

GENERIC PROCESS WORKFLOW

In starting the process of developing an agreement on liability issues, the main initial question refers to the actual conditions, scope and objectives to be taken into consideration:



Case 1 – Development and implementation of a bi-lateral agreement as part of the development an emergency plan

The columns below represent generic actions in sequence for “Nation 1” and “Nation 2”. Given that two nations establish a dialogue to arrange for bi-lateral disaster response, it is assumed that the application of rules will be reciprocal, and thus Nation 1 and Nation 2 can both become Sending Nation or Requesting Nation.

Nation 1	Nation 2
1.1: Identification of key stakeholders and decision makers at national level, in subordinate authorities and in related governmental (GO) and non-governmental organisations (NGO).	2.1: Identification of key stakeholders and decision makers at national level, in subordinate authorities and in related governmental (GO) and non-governmental organisations (NGO).
1.2: Creation of a working group to develop a “National Position” on liability issues, with respect to political and legal constraints and operational requirements.	2.2: Creation of a working group to develop a “National Position” on liability issues, with respect to political and legal constraints and operational requirements.
1.3: Exchange of position / proposal between the two nations.	2.3: Exchange of position / proposal between the two nations.
1.4/2.4: Negotiation on the development of a common position.	
1.5/2.5: Signing of the Technical Arrangement (TA).	
1.6: Ratification by the national competent authorities.	2.6: Ratification by the national competent authorities.
1.7: Translation of the agreement in the national language(s), if not yet done in earlier stages.	2.7: Translation of the agreement in the national language(s), if not yet done in earlier stages.
1.8: Integration of the TA “rules” into the processes and organisational framework of the relevant emergency plan(s).	2.8: Integration of the TA “rules” into the processes and organisational framework of the relevant emergency plan(s).
1.9: Adaptation of related operational doctrine documents, SOP’s, instructions, ...	2.9: Adaptation of related operational doctrine documents, SOP’s, instructions, ...
1.10: Training of staff of the operational departments: * Teams designated for international deployment * Supervisory authorities for deployed assets * Legal support staff * Law enforcement and judicial authorities on the RN role * ...	2.10: Training of staff of the operational departments: * Teams designated for international deployment * Supervisory authorities for deployed assets * Legal support staff * Law enforcement and judicial authorities on the RN role * ...
1.11: Development and implementation of a national training module to integrate the liability aspect into exercises.	2.11: Development and implementation of a national training module to integrate the liability aspect into exercises.
1.12: Organisation of bi-national exercise(s) to validate the existing preparations and to assess state of preparedness.	2.12: Organisation of bi-national exercise(s) to validate the existing preparations and to assess state of preparedness.
1.13: National and bi-lateral monitoring and adaptation of the standing arrangements, based on changed needs, requirements and/or regulatory framework.	2.13: National and bi-lateral monitoring and adaptation of the standing arrangements, based on changed needs, requirements and/or regulatory framework.

Case 2 – Development and implementation of a bi-lateral agreement as part of an exercise

This case is based on the assumption that no standing agreement exists between the nations involved in the exercise. The objective is also not to fully go through the process of developing a “real” TA, but to test the process of roles and responsibilities and the development steps themselves.

Ideally, both nations will be convinced after the exercise of the usefulness of a standing agreement and will develop a formal bi-lateral agreement as part of an action plan.

Requesting Nation	Sending Nation
1.1: Identification of key stakeholders to be added to the Exercise Planning Staff, and tasked with the development of a negotiable proposition.	2.1: Identification of key stakeholders and decision makers at national level, in subordinate authorities and in related governmental (GO) and non-governmental organisations (NGO).
1.2: Development of a “National proposition for exercise purposes only”.	2.2: Development of a “National proposition for exercise purposes only”.
1.3: Exchange of position / proposal between the two nations.	2.3: Exchange of position / proposal between the two nations.
1.4/2.4: Negotiation on the development of a common position.	
1.5/2.5: Signing of the TA (by members of the exercise planning staff).	
1.6: Simulated ratification by the national competent authorities.	2.6: Simulated ratification by the national competent authorities.
1.7: Integration of the rules of the agreement into relevant exercise documents to maximise its comprehension and applicability by exercise participants.	2.7: Integration of the rules of the agreement into relevant exercise documents to maximise its comprehension and applicability by exercise participants.
1.8: Integration of events and checkpoints on liability in the exercise scenario.	2.8: Integration of events and checkpoints on liability in the exercise scenario.
1.9: Briefing of the exercise participants and observers / evaluators.	2.9: Briefing of the exercise participants and observers / evaluators.
1.10: Evaluation of the aspect of Liability issues as it was observed in the exercise.	2.10: Evaluation of the aspect of Liability issues as it was observed in the exercise.
1.11: Development of common lessons learned and of a national and/or bi-lateral improvement plan.	2.11: Development of common lessons learned and of a national and/or bi-lateral improvement plan.

Case 3 – Development and implementation of a bi-lateral agreement at the on-set of a DRO with sufficient planning time

The assumption of Case 3 is that no standing agreement exists between a stricken nation and another nation proposing to send relief personnel, but that time is sufficient to formally negotiate on specific clauses for a bi-lateral agreement and that as such the “Model Clauses” can serve as framework for bi-national discussions.

Requesting Nation	Sending Nation
1.1: Creation of a task force with the minimum composition required to be able to develop a binding national proposition within a minimum time frame.	2.1: Creation of a task force with the minimum composition required to be able to develop a binding national proposition within a minimum time frame.
1.2: Development of a proposal of TA based on the Model Clauses.	2.2: Development of a proposal of TA based on the Model Clauses.
1.3: Exchange of position / proposal between the two nations.	2.3: Exchange of position / proposal between the two nations.
1.4/2.4: Negotiation on the development of a common position.	
1.5/2.5: Signing of the TA.	
1.6: Ratification by the national competent authorities.	2.6: Ratification by the national competent authorities.
1.7: Translation of the agreement in the national language(s), if not yet done in earlier stages.	2.7: Translation of the agreement in the national language(s), if not yet done in earlier stages.
1.8: If time permits, development of information sheets, checklists or other basic operational support documents for persons who will come into contact with the international DRO teams and might be confronted with liability issues (e.g. local law enforcement and judicial authorities).	2.8: If time permits, development of checklists, aide-memoire or other basic operational support documents for the deployment teams.
1.9: Briefing of all persons who will come into contact with the international DRO teams and might be confronted with liability issues. E.g. * Local commanders of emergency services * Local administrative authorities * Law enforcement and judicial authorities * PIO's and media	2.9: Briefing of all parties involved in the deployment. This includes both staff to be deployed and support staff remaining in the homeland.
1.10: Establishment of a 24/7 support team to be able to communicate with the SN authorities to prevent or resolve issues.	2.10: Establishment of a 24/7 support team to be able to communicate with the RN authorities to prevent or resolve issues.
1.11: Initiate additional actions, as in Case 1, to embed the TA in the traditional disaster response framework (e.g. modification of SOP's).	2.11: Initiate additional actions, as in Case 1, to embed the TA in the traditional disaster response framework (e.g. modification of SOP's).

Case 4 – Development and implementation of a bi-lateral agreement when foreign deployment is imminent

The assumption of Case 4 is that no standing agreement exists between a stricken nation and another nation proposing to send relief personnel, and that the SN's assets can be sent out with minimal response time.

The aim in this case it to not lengthen the deployment delay by stretched bi-lateral talks, by providing a standard coverage of liability issues by the simple acceptance or minimal modification of the Single Template Model.

Requesting Nation	Sending Nation
1.1: Creation of a task force with the minimum composition required to be able to SIGN a binding national proposition within a minimum time frame.	2.1: Creation of a task force with the minimum composition required to be able to SIGN a binding national proposition within a minimum time frame.
1.2: Use the Single Template Model as the starting point of an agreement and identify possible issues, so that additional clauses or modifications can be proposed to the SN.	2.2: Use the Single Template Model as the starting point of an agreement and identify possible issues, so that additional clauses or modifications can be proposed to the RN.
1.3: Exchange of position / proposal between the two nations.	2.3: Exchange of position / proposal between the two nations.
1.4/2.4: Acceptance of the Single Template Model or Negotiation on modified clauses.	
1.5/2.5: Signing of the TA.	
1.6: Ratification by the national competent authorities.	2.6: Ratification by the national competent authorities.
1.7: Briefing of all persons who will come into contact with the international DRO teams and might be confronted with liability issues. E.g. * Local commanders of emergency services * Local administrative authorities * Law enforcement and judicial authorities * PIO's and media	2.7: Briefing of all parties involved in the deployment. This includes both staff to be deployed and support staff remaining in the homeland.
1.8: Establishment of a 24/7 support team to be able to communicate with the SN authorities to prevent or resolve issues.	2.8: Establishment of a 24/7 support team to be able to communicate with the RN authorities to prevent or resolve issues.
1.9: Probably with the operation already underway, development of information sheets, checklists or other basic operational support documents for persons who will come into contact with the international DRO teams and might be confronted with liability issues (e.g. local law enforcement and judicial authorities).	2.9: Probably with the operation already underway, development of checklists, aide-memoire or other basic operational support documents for the deployment teams.
1.11: Initiation of additional actions, as in Case 1, to embed the TA in the traditional disaster response framework (e.g. modification of SOP's).	2.10: Initiation of additional actions, as in Case 1, to embed the TA in the traditional disaster response framework (e.g. modification of SOP's).

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REQUESTING NATION IMPLEMENTATION CHECKLIST

Item	Remarks / Comments
<input type="checkbox"/> Ratification by a higher authority	(if applicable)
<input type="checkbox"/> Translation of TA into native language for comprehension by local law enforcement and judicial authorities.	
<input type="checkbox"/> Translation of extracts from the TA into native language for use by other types of authorities in the RN.	(e.g. Customs officers)
<input type="checkbox"/> Designation of special prosecutor or monitoring service.	(if applicable)
<input type="checkbox"/> Briefing of potentially involved law enforcement and judicial authorities.	
<input type="checkbox"/> Briefing of other potentially involved authorities	
<input type="checkbox"/> Preparation of briefing material to be available for national and international press and media, usable to explain the content of the agreements.	Available in case of high visibility problems, where it is advised that the RN authorities provide background information on the TA to its own population.
<input type="checkbox"/> Creation of the required administrative support system and tools to process the information exchange required for the implementation of the TA.	(e.g. registration and storage of border crossing information, certificates and permits of relief personnel)
<input type="checkbox"/>	
<input type="checkbox"/>	
<input type="checkbox"/>	
<input type="checkbox"/>	
<input type="checkbox"/>	
<input type="checkbox"/> Development of a permanent assessment structure to address problems in the implementation of the TA during the assistance.	The quality of the TA should also be addressed as part of After Action Reporting in the context of exercises.
<input type="checkbox"/> Periodic review of the TA with the SN.	
<input type="checkbox"/>	

SENDING NATION IMPLEMENTATION CHECKLIST

Item	Remarks / Comments
<input type="checkbox"/> Ratification by a higher authority.	(if applicable)
<input type="checkbox"/> Translation of TA into native language for comprehension by all staff involved in the implementation.	
<input type="checkbox"/> Development of a practical checklist based on the TA with Rules of Conduct for the relief personnel due to deploy.	
<input type="checkbox"/> Designation of the appropriate judicial support from SN to implement the TA.	
<input type="checkbox"/> Briefing of operations commanders from SN.	
<input type="checkbox"/> Briefing of relief personnel involved.	
<input type="checkbox"/> Collection, collation and distribution of information required to be shared with the RN.	(e.g. border crossing information, equipment certificates, relief personnel certificates, diplomas)
<input type="checkbox"/>	
<input type="checkbox"/>	
<input type="checkbox"/>	
<input type="checkbox"/>	
<input type="checkbox"/>	
<input type="checkbox"/> Development of a permanent assessment structure to address problems in the implementation of the TA during the assistance.	The quality of the TA should also be addressed as part of After Action Reporting in the context of exercises.
<input type="checkbox"/> Periodic review of the TA with the RN.	
<input type="checkbox"/>	

LEXICON

This annex contains acronyms relevant to this Model Technical Arrangement and is not meant to be exhaustive. Definitive and more comprehensive details are to be found in AAP-6 and AAP-15, IFRC, UN references and other relevant publications.

Acronyms & Abbreviations

Acronym / Abbreviation	Meaning	Remarks / Source
AAP	Allied Administrative Publication	(NATO)
AHWG	Ad Hoc Working Group	
AJP	Allied Joint Publication	
AS	Affected State	
AST	Advisory Support Team	
ATC	Air Traffic Control	
C2	Command & Control	
C3	Command, Control & Communications	
CBRN	Chemical, Biological, Radiological, Nuclear	
CEMAC	Crisis & Emergency Management Centre	(NATO)
CEPC	Civil Emergency Planning Committee	
COR	Concept of Requirements	(NATO)
CPG	Civil Protection Group	
DRO	Disaster Relief Operation	(NATO)
EADRCC	Euro-Atlantic Disaster Response Co-ordination Centre	(NATO)
EAPC	Euro-Atlantic Partnership Council	
EU	European Union	
EVAC	Evacuation	
HN	Host Nation	
HNS	Host Nation Support	
HNSA	Host Nation Support Arrangements	(UN)
ICJ	International Court of Justice	
ICRC	International Committee of the Red Cross	
IDRL	International Disaster Response Law	
IDRO	International Disaster Relief Operation	
IFRC	International Federation of Red Cross and Red Crescent Societies	
INSARAG	International Search and Rescue Advisory Group	
IO	International Organisation	
JDP	Joint Doctrine Publication	
JIA	Joint Implementation Arrangement	
LEMA	Local Emergency Management Authority	(OSOCC Guidelines)
LO	Liaison Officer	

Acronym / Abbreviation	Meaning	Remarks / Source
MCDA MEDEVAC MoU MOV	Military Civil Defence Assistance Medical Evacuation Memorandum of Understanding Movement	
NATO	North Atlantic Treaty Organisation	
OCHA OECD	Office for the Co-ordination of Humanitarian Affairs Organisation for Economic Co-operation and Development	(UN)
OG	Oslo Guidelines	
PfP	Partnership for Peace	
RECCE RN ROE RRT RSOI	Reconnaissance Receiving Nation / Requesting Nation Rules of Engagement Rapid Response Team Reception, Staging, Onward movement and Integration	
SAR SN SOFA SOR	Search & Rescue Sending Nation Status of Forces Agreement Statement of Requirements	(NATO)
TA TMED	Technical Arrangement Telemedicine	
UN UNDAC UNEP UNISDR	United Nations United Nations Disaster Assessment & Co-ordination United Nations Environmental Programme United Nations International Strategy for Disaster Reduction	
USAR	Urban Search & Rescue	
4R	Reduction, Readiness, Response and Recovery	(CEMAC)

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The development of this Model Technical Arrangement on Liability of Relief Personnel has been done by an international group of experts, which formed the Ad Hoc Working Group “Liability of Relief Personnel”, under the NATO Civil Protection Group. They have backgrounds in international law, operations, emergency preparedness and other relevant fields of expertise.

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