

**CO-CHAIRS' SUMMARY REPORT
OF THE 3RD ARF SEMINAR ON LAWS AND REGULATIONS ON THE
PARTICIPATION IN INTERNATIONAL DISASTER RELIEF BY ARMED FORCES**

Beijing, China, 11 June 2012

Introduction

1. Pursuant to the decision made by the 18th ARF on 23 July 2011 in Bali, Indonesia, and building upon the success of the two previous seminars, the 3rd ARF Seminar on Laws and Regulations on the Participation in International Disaster Relief by Armed Forces was held in Beijing, China, on 11 June 2012. The Seminar was officially opened by Rear Admiral Li Ji, Deputy Director of Foreign Affairs Office, Ministry of National Defense of China, and co-chaired by Major General Zhu Chenghu, Academic Department of Strategic Studies, National Defense University of China, Major General Syaiful Anwar, Vice Rector for Non-Academic Affairs, Indonesian Defense University, and CMDR William Dwyer, United States Coast Guard, office of the Secretary of Defense, USA.
2. The seminar was attended by all ARF participants, except Bangladesh, Brunei Darussalam, Cambodia, Canada, the Democratic People's Republic of Korea, the European Union, Malaysia, Mongolia, Myanmar, Pakistan, Papua New Guinea, Sri Lanka and Timor-Leste. Representatives from the International Commission of the Red Cross (ICRC), the International Federation of Red Cross and Red Crescent Societies (IFRC) and the ASEAN Secretariat were also present. The List of Participants appears as [ANNEX 1](#).

Item 1: Opening Ceremony

3. In his opening remarks, Rear Admiral Li Ji reiterated that natural disasters pose direct threat to people's lives, property security, economic development and social stability in Asia Pacific countries. He recalled the initiatives and activities implemented in the ARF HADR cooperation. He noted that with the increasing participation of armed forces in international disaster relief, law issues concerning cooperation in disaster relief are becoming more prominent. He outlined the objectives of the seminar and underscored that HADR cooperation is about cooperation and mutual assistance among sovereign countries and not just to show favors to any one country.
4. Ms. Yang Jian, Deputy Director-General of the Asian Department, Ministry of Foreign Affairs of China delivered her opening remarks. She highlighted China's strong interest in advancing HADR cooperation within the ARF framework. She expressed hope that the discussions in the seminar could further promote mutual trust, understanding and cooperation among ARF participants.
5. In his opening remarks, Major General Syaiful Anwar underscored the importance of disaster management in national security and defense. He highlighted contributions by the Indonesian Armed Forces in international HADR operations, including the ARF Disaster Relief Exercise (ARF DiREx) with Japan, and the ASEAN Militaries' HADR Exercise (AHX) with Singapore. He noted the legal challenges in deploying military units in affected countries and expressed his hope that the Seminar will be able to facilitate ideas and initiatives to address these challenges.

6. In his opening remarks, CMDR William Dwyer expressed that US has recognized that legal preparedness is key to effective disaster risk reduction. He explained the ongoing work in developing the ARF Rapid Disaster Response (RDR) Agreement which is an evolution of the ARF Model Arrangement for the Use of Military and Civil Defense Assets (MCDA) in Disaster Relief Operations. He emphasized that the RDR is a “living” and flexible document with the aim to save lives by providing a text that can be quickly concluded as an agreement in the immediate aftermath of a disaster.

Item 2: Adoption of Agenda

7. The Seminar discussed and adopted the Agenda, which appears as **ANNEX 2**.

Item 3: Briefing by the ASEAN Secretariat

8. The ASEAN Secretariat presented an overview of the ASEAN sectoral bodies which oversee humanitarian assistance and disaster relief (HADR) cooperation, namely the ASEAN Committee on Disaster Management (ACDM), the ASEAN Regional Forum (ARF), and ASEAN Defense Ministers’ Meeting/ASEAN Defense Ministers’ Meeting Plus (ADMM/ADMM-Plus). ASEAN cooperation in HADR has advanced steadily since the adoption of the ASEAN Agreement on Disaster Management and Emergency Response (AADMER) and the ASEAN Standby Arrangements and Coordination of Joint Disaster Relief and Emergency Operations (SASOP), as well as the launch of the AHA Centre as the operational coordination body and engine of AADMER. Furthermore, disaster relief continues to be an important area of cooperation within the ARF and the ADMM/ADMM-Plus with a number of seminars and exercises scheduled to be held in 2013, including the ARF Disaster Relief Exercise (ARF DiREx) and the ADMM-Plus HADR/Military Medicine Exercise (AMHX). The presentation appears as **ANNEX 3**.

Topic 1: Latest Developments in the Laws and Regulations Building in International Disaster Relief Operations by Armed Forces

9. The Seminar noted the sharing of experiences on the legislation and standby posture for HADR. The Seminar noted the existing international and regional legal frameworks on HADR, including the Oslo Guidelines and the ASEAN Agreement on Disaster Management and Emergency Response (AADMER). Taking this into consideration, the Seminar was of the view that the ARF should further discuss the implementation of these frameworks.

10. The Seminar noted the experience of Japanese Self-Defense Force (JSDF) in response to the 2011 Great East Japan Earthquake in search and rescue operations in the restricted areas and medical support and evacuations lessons learned from it.

11. The Seminar underscored the importance of the international relief assistance and coordination in the event of a disaster. The Seminar shared the view that it is critical to remove all legal obstacles in international HADR operations to expedite deployment of relief assistance. The Seminar viewed that for a long time international HADR cooperation has been regulated by traditional customary international law which stipulates that: 1) visiting military forces must first obtain consent of a host state before entry; and 2) the domestic law of the host state should not apply to foreign troops who are invited to operate within the territory of a host state, unless a special agreement between the host country and the troop-contributing country is established.

Confusion will occur when several countries send military forces to operate within the foreign territory in the context of HADR.

12. The Seminar addressed the question of the elements, scope and coverage to include in an agreement in HADR operations. The issues of immunity of jurisdiction, waiver of claims, and coverage of exercise were discussed. Some participants were of the view that appropriate measures for multilateral exercises should be included in such an agreement.

13. The Seminar discussed the issue of bilateral versus multilateral agreements on HADR. The Seminar observed that preparing a bilateral agreement every time in HADR operation is too cumbersome while concluding a standard multilateral agreement might not be appropriate to the national legal framework of each individual country.

14. The Seminar also discussed lessons learned from the HADR operations. There is a wide range of activities that the military are expected to conduct, especially within the limited infrastructure after the disaster. The military should be involved from the initial stage of the response operation to be able to ascertain its capabilities and limitations. For this purpose the Seminar suggested that cooperation with local governments to share information is important.

15. The Seminar exchanged views on the possible response of the international community in the absence of a request from the affected country. In such a situation the United Nations should be the international entity to respond. In another instance some participants also raised if the affected country could extend similar response to all assisting countries. The Seminar noted that a solid legal base, such as a SOFA, would facilitate the response of the affected country to the offer of assistance.

16. Representatives of Japan and the United States presented their national briefings which appear as [ANNEX 4](#).

Topic 2: Obligations and Rights of the Armed Forces Participating in International Disaster Relief Operations (I)

17. The Seminar discussed problems encountered in the HADR operations in the absence of SOFA, such as immunities of deploying armed forces and force protection. Immunities attached to the duration of the HADR operations reinforce sovereignty of the host nation. The extent of the immunity of the foreign forces should cover both military and civilian troops including agencies deployed by the assisting government. On the issue of force protection, the Seminar observed that there are cases where the host nation lacked the capacity to provide protection for the foreign troops.

18. The Seminar discussed basic obligations of the assisting country such as respect for the affected country and obligations in entry and exit. Prior to deployment of troops, both assisting and affected countries should exchange information on the needs and capacities of the military forces and conditions of the affected country. The assisting countries should pay for their own supplies including services during the HADR operations and insurance for their forces.

19. The Seminar discussed the rights of the assisting country. Functional immunity from host nation jurisdiction and facilitation of exemptions for the assisting country such as visa, medical cost of the forces of assisting countries and criminal jurisdiction were addressed. Some participants viewed that the proposed RDR Agreement will lead to total exemption of all legal jurisdictions to the foreign forces by the host nation. Other participants suggested that if the violation of national jurisdiction leads to the disruption of national security, the case should not be exempted and rather be addressed according to the national law of the affected nation. In conclusion, the Seminar shared the common view that immunity can only be applied during the specific task of the mission with minimal function requirements.

20. Some participants raised the question on the possibility of applying similar rules and regulations in peacekeeping operations to HADR operations. The Seminar noted that in peacekeeping operations, the status of forces is negotiated by the United Nations while similar legal framework in HADR operations is only established in the aftermath of the disaster at the beginning of the military mission.

21. In the absence of SOFA, the Seminar emphasized that political will should be the basis of multilateral HADR operations. In this case, information sharing is essential to build common understanding between the assisting and affected nations. The Seminar held that there are some other key issues for further negotiation, such as immunity of deploying armed forces, force protection, religious sensitivities arising from importing blood products into host nation and recognition of professional skills and qualifications (medical practitioners).

22. Representatives from Australia and China presented briefings which appear as ANNEX 5.

Topic 3: Obligations and Rights of the Armed Forces Participating in International Disaster Relief Operations (II)

23. The Seminar discussed the issue of privileges and immunities of armed forces participating in international disaster relief. The granting of privileges and immunities for diplomats is well accepted in diplomatic practice and well codified in international laws and conventions. However, privileges and immunities for armed forces participating in international disaster relief remain limited in international law and conventions. The question of eligibility and types of privileges and immunities in international disaster relief were also addressed. This condition created two challenges for the practices of armed forces in disaster relief, namely the challenges in defining the status of the armed forces when the affected area is close to armed conflict zones, and the need to strike a balance between delivering swift relief and the requirements of national law, in particular when national security is a concern. The Seminar noted the suggestion to address these challenges by developing specific international law on armed forces privileges and immunities in international disaster relief.

24. The Seminar noted the development of the Standard Operating Procedure (SOP) for the Utilization of Military Assets for HADR under the Framework of AADMER by the ASEAN Military Operations Informal Meeting (AMOIM) held in Phnom Penh on 13 March 2012. The SOP will be submitted as part of the ASEAN Standby Arrangements and Coordination of Joint Disaster Relief and Emergency Operations (SASOP). The SOP stipulates the role of the affected states, the role of assisting states, the military medical operation, assessment, coordination with affected state with the supervision of the head of HADR operation, military-to-military coordination, and civilian-to-military coordination. The SOP needs to further discuss the issues of SOFA and privileges and immunities.

25. Representatives from China, New Zealand and Indonesia presented their briefings which appear as ANNEX 6.

Items 4: Summary by the Co-Chairs

26. Major General Syaiful Anwar presented Co-Chairs' summary of the discussion. He highlighted the briefing by the ASEAN Secretariat, the latest developments in laws and regulations building in HADR operations, the obligations and rights of assisting and affected countries, the privileges and immunities of foreign armed forces in HADR operations and the need to start developing a set of consolidated norms on privileges and immunities for armed forces. He also explained that the SOP which has been developed by the AMOIM is intended to be included as the civil-military coordination section of SASOP. With regard to the utilization of SASOP by the wider grouping, he suggested that this issue should be consulted further.

27. Major General Zhu Chenghu in his concluding remarks observed that there are a number of differences in the laws and regulations of each armed forces in their HADR operations. These differences stem from the various political systems, values, histories, cultures, domestic laws, levels of development, approaches as well as needs and requirements of individual country in the region. These differences lead to diverse levels of cooperation and acceptance between assisting and affected nations. In the future, the ARF needs further discussion to narrow the differences of laws and regulations concerning humanitarian assistance and identify the challenges and lessons learned of the HADR operations. The modification of existing laws and regulations as well as formulating new ones should be carefully studied. All in all, the ultimate objective of these exercises is to save more lives and properties in the event of a disaster.

28. CMDR William Dwyer recalled the ongoing discussions on the legal challenges and the frameworks to address these challenges well in advance before disaster strikes. The goal is to ensure an agreed upon legal framework in order to refer to when requested is established. Military support can be dispatched to assist in saving lives and alleviate suffering. He expressed hope that ARF can continue to work on developing the rapid response frameworks.

29. The participants expressed their sincere thanks to the government of the People's Republic of China for the warmest hospitality and the outstanding arrangements for them.