

Remarks on the Rapid Disaster Response Agreement  
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As discussed earlier, natural disasters sometimes exceed any single country's capacity to respond in an effective and timely manner. The co-chairs and many of the earlier presentations also emphasized that devoting resources and planning now will help save countless lives in the future. We have made considerable progress in building capacity and enhancing multilateral cooperation in preparing for and respond to disasters. However, despite our best efforts, there are still cases in major disasters where domestic capacity is overwhelmed and foreign military and civil defense assets are requested by the affected state government to fill the gap until the national government can get things under control

Effective rapid disaster response to extreme disasters requires the removal of bottlenecks and legal hurdles. Last year in November, President Obama proposed to the leaders at the East Asia Summit the concept of Rapid Disaster Response Agreements for use in major disasters. The Rapid Disaster Response Agreement, or RDR, is an evolution and operationalization of the ARF Model Arrangement that facilitates the employment of foreign Military and Civil Defense Assets (MCDA). At the request of the affected state the RDR can effect faster deployment and acceptance of assistance personnel and supplies in the aftermath of an extreme natural disaster.

As stated before in the ARF and in a variety of international fora, and as noted in the Oslo Guidelines on the use of MCDA in Disaster Relief, these military assets are used as a last resort only and in full support of civilian-led relief operations in coordination with, and at the request of, the affected government. Though it is understood that the additional resources and capabilities of MCDA does, in certain situations, provide critical and timely assistance to the affected population, the introduction of MCDA brings forward a number of new and complicated issues for the international, regional, and national relief entities.

When discussing the introduction of MCDA, there are many complex and sensitive administrative and legal issues for both affected and assisting states to deal with. These include privileges and immunities, cost requirements for facilities, communication, movement within the Affected State, licensing, and dispute settlement among many other issues. Under the current system, the affected and assisting states must deal with these issues in the intense, complicated, and often emotional phase of immediate relief operations in the affected state often within hours of the disaster.

The best way to address these issues is to identify and deal with them prior to any future disaster. By negotiating the terms of a Rapid Disaster Response Agreement in advance, when (and only when) foreign MCDA are requested by the affected nation, the pre-arranged RDR could turn this complex negotiating process from a day or more to just a few hours or less while MCDA are en route. This will save valuable time that can have very positive results in minimizing the loss of lives and property, and providing much-needed relief to affected populations in the critical period just after a disaster has occurred.

Agreements of this kind can involve complex legal issues. And we all know that lawyers are never the easiest people to deal with! The RDR would streamline the myriad of often complicated and bureaucratic interagency and legal processes needed for affected and assisting nations to agree to such an arrangement. The intent is that the text will become familiar and widely accepted by regional governments so that the agreement can be quickly activated through exchange of DIPNOTEs in the event of a disaster.

Next, I would like to make some clarifications about the RDR. First, in its current form, the RDR is not intended to be a multilateral agreement. It is intended to be a set of pre-negotiated and concluded bilateral agreements between potential affected and assisting states. We do hope that someday we can achieve a multilateral agreement and will continue to work towards that ultimate goal. In the meantime, the set of bilateral RDRs will fill the gap until a multilateral agreement can be achieved.

Second, the RDR is flexible and may be tailored to each country's needs. At the East Asia Summit, the United States distributed a text of what we believe is a suitable text that, from our perspective, meets our needs as a starting point for negotiations. We understand that our needs and requirements may be different from many of yours. To that end, each pairing of countries should negotiate an agreement that is suitable to their own needs and in compliance with national laws and regulations. We encourage all ARF participants to review our proposed draft as it incorporates lessons the United States has learned by having sent MCDA as an assisting state to many disaster sites globally over many years. We also incorporated lessons learned from our own experience with a major disaster in the aftermath of Hurricane Katrina.

Third, though we believe that this tool is vital to saving lives and property by improving response times in extreme disasters, participation in implementing this concept is voluntary. Additionally, affected economies will benefit by having the fastest possible response to speed the restoration of vital functions of utilities and transportation infrastructure.

Fourth, the RDR Agreement is not a standing agreement. It is a temporary, disaster relief specific agreement used only in the event of an extreme natural disaster. It remains in effect for a limited period of time to allow for military assets to conduct rapid disaster response operations until government and NGO assets can effectively respond to the disaster. The RDR should contain language stating that as soon as the Affected State government determines that foreign MCDA are no longer necessary, those assets will turn over operations to appropriate national and NGO assets and depart the area. Upon the departure of those MCDA, the RDR will no longer be in effect.

In closing, I have proposed some notional next steps for continuing the discussion on the RDR. I would like to hear from you how you see this concept – your concerns, comments, and questions would be greatly appreciated given the extensive group of government and non-government experts we have here today. We encourage countries to indicate in principle their intent to use the RDR Agreement in the event of future disasters to ease the acceptance and the deployment of international MCDA assistance.

## RAPID DISASTER RESPONSE AGREEMENT

### A. Preamble

1. The Embassy of \_\_\_\_\_ (*Assisting State*) has the honor to refer to recent discussions between representatives of our two governments regarding issues related to the deployment of the Assisting State's military and civilian personnel to \_\_\_\_\_ (*Affected State*). The military and civil defense assets of the Assisting State shall be present in the Affected State only on the invitation of, and for assistance to, the Affected State. Personnel of the Assisting State may be temporarily present in the Affected State in support of disaster relief efforts associated with \_\_\_\_\_ (*Disaster Name*).

2. For the purpose of the present Agreement, the definitions contained in the United Nations Oslo Guidelines on the Use of Foreign Military and Civil Defense Assets (MCDA) in Disaster Relief, Revision 1.1, November 2007 (hereafter referred to as the "Oslo Guidelines"), shall apply unless otherwise stated. Members of the Assisting State's Armed Forces, civilian employees, contractors, and their equipment are hereafter referred to collectively as the "MCDA Operation." The government of the Assisting State is hereafter referred to as the "Assisting State." The government and the authorities of the Affected State are hereafter referred to collectively as the "Affected State." The Assisting State shall appoint one of its members of the MCDA Operation to have control of and be in command of the MCDA Operation, hereafter referred as the "Head of the MCDA Operation." The Assisting State's MCDA Operation will remain under national command and control, but the Affected State and its designated authorities will exercise authority for the overall monitoring, direction, coordination, and supervision of disaster response within its territory. (*Reference 1: Oslo Guidelines*)

### B. Conduct and Maintenance of Discipline of MCDA Operation

3. Members of the MCDA Operation shall refrain from any action or activity that is incompatible with the humanitarian nature of their duties and the principles of humanity, neutrality, and impartiality, or that is inconsistent with the present agreement and the spirit of the Oslo Guidelines. Members of the MCDA Operation must respect local laws and regulations in the fulfillment of their humanitarian duties. The Head of the MCDA Operation shall take all appropriate measures to ensure the observance of these obligations according to the Oslo Guidelines' principles of Humanitarian Assistance and Disaster Relief.

4. The Head of the MCDA Operation shall take all appropriate measures to ensure the maintenance of discipline and good order among its members and, as feasible, over locally recruited personnel. To this end, personnel may be designated by the Head of the MCDA Operation to police its premises and in such other areas as may be mutually arranged with the Affected State.

5. The rights and protection of the citizens of the Affected State are the responsibility of the authorities of the Affected State. The Head of the MCDA Operation may temporarily detain any unauthorized person found on the premises of the MCDA Operation. Such a person must be delivered immediately to the nearest appropriate official of the Affected State responsible for dealing with any offence or disturbance on such premises.

6. Officials of the Affected State may not detain members of the MCDA Operation who are suspected of committing criminal offenses. If apprehended, such a person shall be delivered immediately, without delay, together with any weapons or other items seized, to the Head of the MCDA Operation. (*Reference Two: Vienna Convention, 1961, Article 27.5*)

*Alternative Language to 6:* In consultation with the Assisting State, the Affected State may require the removal of a member of the MCDA Operation from the territory of the Affected State for reasons that may or may not be stipulated with respect to the criminal jurisdiction of the Affected State.

7. The Assisting State and the Affected State shall assist each other and cooperate in carrying out all necessary investigations into offenses in respect of which either or both have an interest. The competent authorities of the Assisting State shall have the right to exercise on the territory of the Affected State all the criminal jurisdiction and disciplinary powers conferred on them by the law of the Assisting State with regard to all its personnel subject to the relevant law of the Assisting State.

### **C. Privileges and Immunities of MCDA Operation**

8. Members of the Armed Forces and civilian employees of the Assisting State's MCDA Operation are hereby accorded the privileges, exemptions, and immunities equivalent to those accorded to the administrative and technical staff of a diplomatic mission under the Vienna Convention on Diplomatic Relations of April 18, 1961. (*Reference Two: Vienna Convention, 1961*)

9. The Affected State undertakes to facilitate the entry into and departure from its territory of the members of the MCDA Operation and shall be kept informed of such movements. Upon prior notification to and agreement by the Affected State, the members of the MCDA Operation shall be exempt from passport and visa regulations and immigration inspection and restrictions upon entering or departing from the Affected State. They shall also be exempt from any regulation governing the residence of aliens in the Affected State, including registration, but shall not acquire any right to permanent residence or domicile in the Affected State.

*Alternative Language to 9:* The Affected State undertakes to facilitate the entry into and departure from its territory of the members of the MCDA Operation and shall be kept informed of such movements. Upon prior notification to and agreement by the Affected State, the members of the MCDA Operation shall be facilitated through Affected State immigration processes upon entering or departing from the Affected State. They shall not acquire any right to permanent residence or domicile in the Affected State.

10. The Affected State agrees to accept as valid, without tax or fee, a certificate provided on request by the Head of the MCDA Operation in respect of the technical and professional qualifications of any of its members practicing a profession or similar occupation in connection with the MCDA Operation.

11. Wherever the present Agreement refers to the privileges, immunities, and rights granted to the MCDA Operation, the Affected State shall have the responsibility for the implementation and fulfillment of such privileges, immunities, and rights by the appropriate local authorities.

#### **D. Identification and Arms**

12. Members of the MCDA Operation are authorized to wear uniforms while performing official duties. In principle, members of the MCDA Operation should not carry arms. The Affected State should work, if capable, to provide adequate security during the MCDA Operation. However, the Affected State shall determine, in consultation with the Assisting State, whether or not members of the MCDA Operation may possess and carry arms while performing official duties and/or for other reasons in accordance with their orders. Such a determination shall be communicated by the Affected State to the Assisting State prior to the arrival of the MCDA Operation.

#### **E. Cost Requirements for MCDA Operation, Facilities, and Communication**

13. The MCDA Operation shall not be liable to pay any tax, duty, or similar charge assessed within the Affected State. The Assisting State may import into, export out of, and use in the Affected State any personal property, equipment, supplies, materiel, technology, training, or services in connection with activities under this Agreement. Such importation, exportation, and use shall be exempt from customs duties, taxes, or any other charges assessed within the Affected State.

14. The Affected State undertakes to provide to the MCDA Operation and in agreement with the Head of the MCDA Operation such facilities or areas for headquarters, camps, or other premises as may be necessary for the conduct of the operational and administrative activities of the MCDA Operation and for the accommodation of its members. The Affected State shall provide any such facilities to the MCDA Operation at no cost to the Assisting State. Without prejudice to the fact that all such premises remain the sovereign territory of the Affected State, the Affected State undertakes to treat them as being subject to the exclusive control and authority of the Head of the MCDA Operation. Such facilities shall be free from inspection or unauthorized entrance by nationals or authorities of the Affected State and returned to the Affected State upon completion of the MCDA Operation.

15. The Affected State grants to the MCDA Operation the right to use the facilities with respect to secure and unsecure communications as may be required for the performance of its tasks. Issues with respect to communications, which may arise and which are not specifically provided for in the present Arrangement shall be dealt with pursuant to the relevant provisions of the Tampere Convention on the Provision of Telecommunications Resources for Disaster Mitigation and Relief Operations. (*Reference Three: Tampere Convention on the Provision of Telecommunication Resources for Disaster Mitigation and Relief Operations*<sup>1</sup>)

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<sup>1</sup> Where the Affected State is not a State Party to the Tampere Convention, when it accepts assistance, it may voluntarily accept the relevant provisions of the Tampere Convention, or, at its sole discretion, make adjustments to its relevant provisions provided by Paragraph 191, Article 40 of the Constitution of the International Telecommunication Union, and inform the Assisting State of such adjustments.

## **F. Movement within the Affected State and Interaction with its Local Economy**

16. Vessels, aircraft, and vehicles operated by or, at the time, exclusively for the MCDA Operation may enter, exit, and move freely within the disaster zone of the Affected State and any other area necessary for the fulfillment of its tasks in coordination with the Affected State.

17. Vehicles (whether self-propelled or towed) operated by or, at the time exclusively for the MCDA Operation, shall not be subject to the payment of overland transit tolls. Upon prior notification to the Affected State, vessels and aircraft owned or operated by or, at the time, exclusively for the Assisting State for the sole purpose of supporting the respective MCDA Operation shall not be subject to the payment of landing, parking, or port fees, pilotage charges, lighterage, and harbor dues at facilities owned and operated by the Affected State. Aircraft owned and operated by or, at the time, exclusively for the MCDA Operation shall not be subject to the payment of navigation, overflight, terminal, or similar charges when in the territory of the Affected State during the timeframe of the MCDA Operation. Such vessels, aircraft, and vehicles shall be free from boarding and inspection.

18. The MCDA Operation shall pay reasonable charges for services requested and received at rates no less favorable than those paid by the Armed Forces of the Affected State less taxes and similar charges.

19. The Affected State undertakes to assist the MCDA Operation as far as possible in obtaining equipment, provisions, supplies and other goods and services required for its subsistence and operations from local sources. The Affected State shall exempt the MCDA Operation from all taxes in respect to all official local purchases.

20. The Assisting State retains the sole responsibility for the mortuary affairs of its deceased personnel, including repatriation of the deceased.

## **G. Dispute Settlement**

21. The Parties waive any and all claims (other than contractual claims) against each other for damage to, loss, or destruction of the other's property or injury or death to personnel of either Party's armed forces or their civilian personnel arising out of the performance of their official duties in connection with activities under this Agreement. Claims by third parties for damages or loss caused the MCDA Operation shall be resolved by the Assisting State in accordance with the laws and regulations of the Assisting State. Notwithstanding the termination of this agreement, claims arising out of and submitted prior to the termination of the present Agreement shall be settled in accordance with the relevant priorities of the present Agreement.

## **H. Status of the Agreement**

22. The Head of the MCDA Operation and the Affected State may conclude supplemental agreements. The present Agreement may be amended by written agreement between the two governments.

23. The present Agreement shall remain in effect until the departure of the final element of the MCDA Operation from the Affected State, provided that such date shall be mutually confirmed in writing between the Assisting State and the Affected State through diplomatic channels.

24. If the foregoing is acceptable to the Government of \_\_\_\_\_ (*Affected State*), the Embassy of \_\_\_\_\_ (*Assisting State*) proposes that the signature by both parties or an accompanying exchange of diplomatic notes or memorandum of understanding shall constitute an agreement between the two Governments, which shall enter into effect on the date of signature or the date of entry of the MCDA Operation into the Affected State.

\_\_\_\_\_ (*Date*) \_\_\_\_\_ (*Date*) \_\_\_\_\_  
(Government of \_\_\_\_\_ (*Affected State*)) (Embassy of \_\_\_\_\_ (*Assisting State*))