

WORLD BANK

The focus [herein is placed] on practical issues, such as the implications of the articles' contents on the complexity and time demand of organizing relief and getting it to the affected people. There always is a risk that new rules, aimed in this case at the better protection of victims of disasters as well as relief workers, could result in unintended consequences, such as delays, or in the worst case, failure to organize and deliver.

Article 8: under which legal / regulatory framework would the cooperation be organized? When / how would the rules and logistics for coordination be decided? Is there a default leadership role of one particular organization, or would this be decided ad hoc? These issues may significantly affect the speed of constituting and operationalizing cooperation. If cooperation is made a duty there need to be a clear set of rules and guidance to ensure this duty becomes a facilitating, not debilitating factor.

Article 10 and 11: same principle applies as above. Also it is unclear if the Article refers to disaster prevention, post-disaster risk reduction (beyond immediate relief and recovery), if this would still be planned and financed under disaster relief instruments, and over which time horizon this would extend. Art 11 (1) should specify the standards and good practice reference for legislation, regulations and measures for disaster prevention. Also, for many states this duty could theoretically develop into a multi-billion dollar liability; some countries have annually recurrent damage rates in the range of % of GDP; prevention, e.g. a significant reduction over 25 years, could thus cost a significant portion of GDP. Countries will need smart guidance to identify low hanging fruit and develop intelligent prevention programs, often focusing on low cost, but high regulatory effort types such as land management, including spatial planning. The spatial planning component is probably worth specifically mentioning in Art 11 (2).

Articles 12 to 14: Somehow the combination of the 3 articles seems to be confusing. The affected state has territorial sovereignty (art 12) , BUT the duty to seek assistance under specific conditions Art 13), BUT has the right of consent (Art 14 (1)), BUT cannot withhold consent arbitrarily (2). So, what in concrete terms happens, if a state cannot cope with a disaster, but refuses international help? Is this a likely / realistic scenario? If considered so, which leverage would there be for the UN? Does this legal framework promise to speed up disaster relief, or does introduce additional formal due diligence requirements and clearances, that could pose delays? In my experience, if the legal and regulatory situation is not crystal clear at the onset of a disaster, each decision point will inevitably cause delays, that in the face of extreme urgency are bound to be significantly negative in their impacts.

Article 17 (1): the qualifier "within its national law" could be a major stumbling stone and cause long delays in relief delivery, until legal issues are sorted out, unless the national law contains specific provisions allowing exceptions in case of emergencies. Here lies an important connector with Article 11, where provisions for exceptional rules for immigration, work permits, import and duties should be advocated to be integrated into national law.

Article 18: If from the onset of a disaster there is clarity that the affected state will not be able to protect relief goods, equipment and personnel, is there any thinking of providing for remedies? Would e.g. the affected state have an obligation to allow security personnel onto the territory to provide the protection the state cannot? It appears that there are precedents, where such agreements on armed escorts have been negotiated and successfully implemented.

Finally, there may be a fairly significant likelihood that the victims of a disaster themselves might turn to e.g. looting out of desperation, which could pose a rather difficult conundrum between this article, and Arts. 2 and 5-7. Not sure this is something that can be tackled from the legal / regulatory side, but it probably is an issue to be aware of.