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Inter-American Bar Association

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INTER-AMERICAN BAR ASSOCIATION

JOHN O. DAHLGREN*

I. TWENTY-FOURTH CONFERENCE	399
A. <i>Summary of Proceedings</i>	399
B. <i>Resolutions, Recommendations and Declarations</i>	399
II. STATEMENT OF REASONS: INTER-AMERICAN CONVENTION TO FACILITATE ASSISTANCE IN CASES OF DISASTER	406
A. <i>Background</i>	406
B. <i>Analysis of the Fundamental Proposition</i>	408

I. TWENTY-FOURTH CONFERENCE

A. *Summary of Proceedings*

The Inter-American Bar Association (IABA) considers papers and recommendations presented by its members in committee sessions held during its conferences. The resolutions adopted by the XXIV Conference, held in Panama, were included in the Inter-American Law Review (formerly Lawyer of the Americas), Volume 16:1.

B. *Resolutions, Recommendations and Declarations*

Resolution 18 of our XXIII Conference, held in Tampa, Florida, was the result of a proposed "Disaster Relief Convention" prepared by IABA member, Raymond W. Konan. Mr. Konan is a former Disaster Assistance Coordinator in The U.S. Department of Defense. Resolution 18 states:

* Mr. Dahlgren is the Secretary General of the Inter-American Bar Association.

COMMITTEE VII MILITARY LAW RES. 18

Draft Multilateral Convention on Disaster Assistance in the Hemisphere

WHEREAS:

Each year disasters take and threaten the lives and safety of thousands of people in the Americas;

The human suffering caused by such disasters can be reduced and more effectively relieved through better preparation for disaster assistance in the Hemisphere, and

The failure to provide in advance for the entry, status, movement and exit requirements of visiting emergency assistance personnel can delay, encumber or prevent life-saving disaster relief.

RESOLVES

To suggest that the Organization of American States, through its Inter-American Juridical Committee, study how the entry, status, movement and exit of emergency assistance personnel and the provision of disaster assistance can be facilitated, and prepare a draft multilateral convention that could be adopted by the American States to improve their preparation for, and cooperation in, life-saving efforts when disasters strike in the Americas.

The draft of the proposal was forwarded by IABA Executive Headquarters to Ambassador Jorge A. Aja Espil, then Chairman of the Inter-American Juridical Committee. It was subsequently reported to the Committee by Dr. Seymour J. Rubin, Executive Director of the American Society of International Law and member of the Inter-American Juridical Committee.

The proposed Convention was approved by the Inter-American Juridical Committee in Rio de Janeiro in August, 1984, and was forwarded to the Secretary General of the Organization of American States for appropriate action. The text is as follows and although it reflects minor changes in wording its substance remains unchanged.

DRAFT INTER-AMERICAN CONVENTION
TO FACILITATE DISASTER ASSISTANCE**

PREAMBLE

CONSIDERING the frequent occurrence of disasters, catastrophes and calamities which take and threaten the lives, safety and property of the inhabitants of the Americas;

MINDFUL of the lofty feelings of cooperation which move the States of this region in such cases affecting the well-being of peoples of this Continent;

CONVINCED that the human suffering caused by such disasters can be more effectively and promptly relieved through an instrument to facilitate such cooperation and to regulate international procedures for providing assistance in such cases,

THE SIGNATORY American States agree as follows:

INTER-AMERICAN CONVENTION
TO FACILITATE DISASTER ASSISTANCE

ARTICLE I

Applicability

a. This Convention shall apply whenever a signatory State furnishes assistance in response to a request of another signatory State, except as they otherwise agree;

b. For purposes of this Convention, acceptance by a signatory State of an offer of assistance from another signatory State shall be deemed to be a request for such assistance.

ARTICLE II

Requests for, Offers and Acceptance of Assistance

a. Requests for, offers and acceptance of assistance from one signatory State to another shall be communicated through diplomatic channels or any appropriate channel, according to circumstances;

** Rapporteur: Dr. Seymour J. Rubin

b. Signatory States that accept disaster assistance shall promptly notify their national authorities (customs, immigration, military, etc.) for appropriate arrangements to be made so that assistance can be facilitated, as provided in this Convention.

ARTICLE III

Respect for Requesting State Laws

Assistance personnel sent to the requesting State have an obligation to respect its laws and customs, and to abstain from political or other activities inconsistent with said laws and customs or with the terms of this Convention.

ARTICLE IV

Means of Transportation, Equipment and Supplies

The means of transportation, equipment and supplies from signatory States that are assigned to disaster assistance shall freely enter, move within, and exit the territory of the assisted State. They shall equally enjoy free transit in other signatory States en route to where assistance is to be provided. In the above-mentioned cases, they shall be exempt from the payment of taxes, fees or other charges, and likewise from customs formalities.

Assisting States shall be exempt from advance notice requirements, unless the requesting State communicates otherwise.

ARTICLE V

Personnel

Assistance personnel entering, moving within, exiting or transiting through or over a signatory State shall be permitted free passage. Passports and visas shall not be required nor shall such assistance personnel or their luggage be encumbered by normal customs procedures and inspections and shall remain in the assisted State as long as said State sees fit.

No entry, exit or transit tax, fees or charge of any kind shall apply. However, any other individual or group identification document shall be shown on demand of any signatory State authorities.

ARTICLE VI

Restricted Areas

In acting pursuant to this Convention, signatory States shall observe any restricted areas so designated.

ARTICLE VII

Requesting State Support

A signatory State requesting assistance shall provide appropriate support to the assistance teams sent by signatory States including interpreter services and accompanying personnel, as well as all available information including reports on the scope of the calamity, conditions of roads, bridges and landing strips.

ARTICLE VIII

Due Care

Signatory States furnishing assistance shall spare no effort to ensure that the assistance is furnished in a careful and safe manner. However, this does not imply a guarantee that no damages or injury will occur.

ARTICLE IX

Waiver of Claim and Subrogation

A signatory State requesting assistance waives claim for indemnity against the furnishing signatory States and agrees to subrogate for them with respect to claims by other parties. It is implicit in both instances that waiver and subrogation apply to acts resulting directly from the assistance provided.

ARTICLE X

Immunity

Assistance personnel shall be immune from the criminal, civil and administrative jurisdiction of the requesting State for actions

performed while discharging their duty, unless the furnishing State elects in writing to waive such immunity.

Claims against such assistance personnel arising out of tortious acts or omissions in the assisted State not done in the performance of official duty shall be settled by the courts and the laws of the assisted State.

ARTICLE XI

Costs

Except for the provisions of Articles VII and IX, assistance shall be provided at the expense of the furnishing State, without cost to the requesting State, except as these States may otherwise agree.

ARTICLE XII

Relation to Existing Treaties

Any differences between this Convention and other similar Treaties shall be interpreted with a view to promoting and facilitating assistance and providing the maximum support and protection to assistance personnel.

ARTICLE XIII

Signature

This Convention shall be open for signature by the member States of the Organization of American States.

ARTICLE XIV

Accession

a. This Convention shall be open to accession by any American State.

b. It shall equally be open to accession by States having the status of permanent observer to the Organization of American States.

ARTICLE XV

Ratification

This Convention is subject to ratification. The instruments of ratification shall be deposited with the General Secretariat of the Organization of American States.

ARTICLE XVI

International and Non-governmental Organizations

International and non-governmental organizations —national or international— providing disaster assistance may apply the general principles of this Convention by agreement with the assisted State, provided that immunity from criminal jurisdiction not apply.

ARTICLE XVII

Entry into Force

This Convention shall enter into force between ratifying States from the date of such ratification.

ARTICLE XVIII

Duration and Denunciation

This Convention shall remain in force indefinitely, but any of the signatory States may denounce it. The instrument of denunciation shall be deposited with the General Secretariat of the Organization of American States. After one year from the date of deposit of the instrument of denunciation, the Convention shall no longer be in effect for the denouncing State, but shall remain in effect for the other signatory States.

ARTICLE XIX

Deposit, Registration, Publication and Notification

The original instrument of this Convention, the English,

French, Portuguese, and Spanish texts of which are equally authentic, shall be deposited with the General Secretariat of the Organization of American States, which shall send an authenticated copy of its text to the Secretariat of the United Nations for registration and publication in accordance with Article 102 of its Charter. The General Secretariat of the Organization of American States shall notify the member States of that Organization and the States that have acceded to the Convention of the signatures and deposits of instruments of ratification, accession or denunciation, and reservations, if any.

AUGUST 6, 1984
RIO DE JANEIRO

II. STATEMENT OF REASONS*

INTER-AMERICAN CONVENTION TO FACILITATE ASSISTANCE IN CASES OF DISASTER

A. *Background*

The topic of an interAmerican convention, with the purpose of facilitating assistance in cases of disaster in the American republics was placed on the agenda of the Juridical Committee at the session of July-August, 1984, though it had been informally discussed at the session immediately previous. Widespread interest in the subject was evidenced, and the Committee took into account a Resolution endorsing such a convention previously adopted by the Inter-American Bar Association. During its sessions of January-February 1984, the Juridical Committee decided to consider the matter further, designated Dr. Seymour J. Rubin as Rapporteur and included it on the agenda for the present session.

Prior to the opening of the present session, the Rapporteur furnished to the Secretariat of the Committee, for distribution to members, as well as to the General Secretariat of the Organization of American States his comments on the possible characteristics of a convention. He also presented an article-by-article analysis of the draft which had been approved at the Inter American Bar Association which was useful as a discussion document.

During the present period of sessions, the matter was exten-

* Unedited.

sively discussed and a full set of articles was drafted. Certain ambiguities and some defects which were revealed by this scrutiny were eliminated. After full consideration in several sessions the Committee agreed that a procedural convention of this sort would be extremely useful, and was likely to be generally welcomed.

The basis of the proposed Convention is the unfortunately all-too frequent recurrence of disasters and catastrophes in the countries of the hemisphere such as earthquakes, floods, tornadoes and the like. On many such occasions, other American republics— and some countries outside the hemisphere, and some non-governmental organizations have responded to the need for immediate assistance, by furnishing doctors, medical supplies, relief equipment, emergency housing, and personnel of many kinds. In such emergency situations, there is generally little time to comply with the formalities which are a normal function of the international movement of persons or materials —passports, visas, customs clearances, notices with respect to destinations, and the like. The Convention as a whole was approved by the Committee on August 6, 1984, after full consideration on an article-by-article basis. Its basic purpose, as a procedural agreement, is exclusively to facilitate humanitarian assistance, *in cases in which it has been requested and in which it is being given in accordance with such a request.*

This point is essential to an understanding of the proposed Convention. It is a procedural, not a substantive, Convention. It does not require any State to ask for assistance, or any State to furnish it. It allows States to place their own conditions and limitations on how aid shall be furnished —to provide for restricted zones, for example, in which relief vehicles or personnel will not be permitted access. It allows assisting and assisted States, as between themselves, to modify the procedures of the Convention, if they so desire. It thus carefully safeguards the sovereignty and legitimate sensibilities of States which become party to the Convention.

At the same time, it has an important function —that of providing procedural rules, which can be agreed in advance, and which can be notified to the authorities of all States party to the Convention, so that, in case of sudden disaster, procedural norms will be already in place, and understood by all concerned. This makes it possible for a sending State to move quickly and efficiently to respond to the emergency need, without having to negotiate special arrangements. Such arrangements would in normal cases take

some time to negotiate, since they touch on such matters as passport and visa facilities and matters of customs clearances; but they are obviously next to impossible to negotiate urgently, when there has been a major and likely highly disruptive disaster. In circumstances such as these, even the normal functioning of government is difficult especially in the area of the disaster. To draft and agree on special procedures, and to notify all who should be informed, in conditions of the kind of emergency produced by disasters and catastrophes, is clearly not a procedure compatible with the interests and the aims of disaster assistance. The Convention merely—but importantly—puts those procedures in place in advance.

The proposed Convention does not, of course, affect any other arrangements between States, either of a substantive or a procedural nature, which may be, or may come to be, in force. It is itself a set of procedural norms much, as was pointed out in the Committee discussion, like those often used in international commercial transactions—standard terms, like the well-known INCOTERMS. Even so, its provisions depend on a request being made and being answered. The Convention does provide that if assistance is offered and accepted, the act of acceptance qualifies as a request.

The Juridical Committee was unanimously in favor of the principle of such a Convention. It considers that such a Convention is long overdue.

The Inter-American Juridical Committee also notes that, although the Convention is drafted as an inter-American Convention, its terms are such that they might be applied anywhere. In other words, States not party to the Convention might well use its procedures as an immediately available model in any situation in which disaster assistance is required. The Convention in general uses the term “disaster” but, as the Preamble makes clear, equated with other generally-used terms, such as “catastrophe” or “calamity”.

B. Analysis of the Fundamental Proposition

The first part of the Convention, including the Preamble, states the purpose of the Convention, and makes clear that it applies in cases in which one State requests the assistance of another. Acceptance of an offer of assistance is equivalent to a request. In such cases, the requesting State has an obligation promptly to in-

form all relevant authorities, including of course customs and border authorities. On its side, the supplying State has an obligation to take care that assistance personnel observe and respect the laws and customs of the requesting State, and that they abstain from political or other unacceptable activities of a similar nature not permitted by such laws.

The Convention provides for the free entry, movement and exit of vehicles covered by the Convention, and for their ability to transit the territories of intervening States parties. Vehicles and personnel are to be exempted from normal requirements, such as advance notice — unless the requesting State makes clear that such requirements shall apply. Normal customs and similar procedures are to be waived. Although the usual passport requirements are waived, personnel are to be furnished with adequate identifying documents, including those of organizations with which they may be affiliated. Such personnel are not to enter any restricted areas which are so designated.

The Convention requires that all due care be used in connection with the provision of assistance, and also provides for waiver and subrogation of possible claims which might arise out of the furnishing of assistance. It also provides immunity for personnel in the furnishing of assistance, unless there is a specific waiver of such immunity. It specifies that claims arising out of tortious acts not done in performance of duty shall be settled in accordance with the furnishing of assistance, unless there is a specific waiver of such immunity. It specifies that claims arising out of tortious acts not done in performance of duty shall be settled in accordance with the laws and procedures of the assisted State.

Costs are normally to be borne by the sending or assisting State, except as otherwise provided, primarily in connection with the obligation of the requesting State to furnish certain facilities and information.

The final clauses provide that the Convention shall be open to signature of member States of the Organization of American States, and to accession by any American State, as well as by all those accredited to the Organization of American States as Observers. Non-governmental organizations may apply its terms in agreement with the assisted State, other than immunity in regard to criminal jurisdiction. (The Juridical Committee here had in mind the valuable work of such organizations as the various Red Cross societies. It also had in mind application of the principles by such

inter-governmental organizations as the Pan American Health Organization, et al.)

Instruments of ratification are to be deposited in accordance with normal procedures, and the Convention enters into effect between any ratifying States. Duration is indefinite. The Convention may be denounced, however, provided that a one-year period of notification is given. This period, it should be observed, is of little significance in the normal case, since the Convention has no effect unless and until a request for assistance is given, which in turn can be qualified as the requesting State desires. The major effect of the one year delay is in the case in which a request has already been made, personnel have been sent, etc. In that case, it would not be appropriate to give immediate effect to a denunciation of the Convention, since the assistance would have been furnished in reliance on its continuing existence. In such a probably unlikely case, a one year notice requirement would seem to establish a fair and easily administered standard.

Rio de Janeiro, August 7 1984