

Agreement on Cooperation on Marine Oil Pollution Preparedness and Response in the Arctic

Presentation of the Agreement and Development of the Operational Guidelines

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ABSTRACT 289690:

This paper describes the background, approach, challenges and results of the development of the Agreement on Cooperation on Marine Oil Pollution Preparedness and Response in the Arctic signed May 2013 by the eight member states of the Arctic Council at Kiruna, Sweden. The Arctic Council established an interdisciplinary task force in May 2011 to develop the Agreement. The Task Force included participants from the Arctic states, Permanent Participants of the Arctic Council, observers, industry representatives, and invited experts. The Task Force met five times over nearly a one year period. The objective of the Agreement is to strengthen cooperation, coordination and mutual assistance among the Parties on oil pollution preparedness and response in the Arctic in order to protect the marine environment by pollution from oil. The Agreement applies to oil pollution incidents that occur in or may pose a threat to any marine area over which a State whose government is a Party exercises sovereignty, sovereign rights or jurisdiction, including in its internal waters, territorial sea, exclusive economic zone and continental shelf, consistent with international law. An Operational Guideline to the Agreement was developed by the Arctic Council's standing Emergency Prevention, Preparedness, and Response (EPPR) work group to provide tactical operating procedures for: notification; requests for assistance; provision of assistance; coordination and cooperation in response operations, including in areas beyond the jurisdiction of any State; movement and removal of resources across borders; procedures for conducting joint exercises and training; and a variety of other topics.

INTRODUCTION:

This document describes the background, approach, challenges and results of the development of the Agreement on Cooperation on Marine Oil Pollution Preparedness and Response in the Arctic (Agreement) signed May 2013 by the eight member states of the Arctic Council at Kiruna, Sweden. Recognising the significant operational aspects to the Agreement, the Arctic Council and Task Force required the simultaneous completion of not only the informational appendices but a working draft of the proposed Operational Guidelines. The Operational Guidelines, summarized herein were produced under the guidance of the Emergency Prevention, Preparedness and Response Working Group (EPPR).

The opportunity to demonstrate leadership and cooperation in this time of change in the Arctic has enhanced the importance and efforts of the Arctic Council and its various working groups. This Agreement in particular expands on the existing bi-national and multi-nation response plans and builds upon an Arctic-wide appreciation of the need for mutual aid and assistance. While many challenges remain, this approach provides a framework for further development and cooperation.

BACKGROUND ON THE ARCTIC COUNCIL:

The Ottawa Declaration of 1996 formally established the Arctic Council as a high level intergovernmental forum to provide a means for promoting cooperation, coordination and interaction among Arctic States, with the involvement of the Arctic Indigenous communities and other Arctic inhabitants on common Arctic issues, in particular issues of sustainable development and environmental protection in the Arctic.

Arctic Council member States are Canada, Denmark (including Greenland and the Faroe Islands), Finland, Iceland, Norway, Russian Federation, Sweden and the United States of America.

In addition to member States, The Arctic Council has the category of Permanent Participants (Arctic Council. About the Arctic Council).

The Council's activities are conducted in six working groups, which include individual mandates and a common structure comprised of a chairmanship (which rotates through the member states), a management board or steering committee and a supporting Secretariat. Each working group includes representatives from the Arctic Council member states and representatives from the Permanent Participants. In addition, group meetings may be attended by observer states, observer organisations, or invited guests or experts to participate at meetings or in projects. All working groups operate under the Principle of Consensus. The six groups are:

1. Arctic Contaminants Action Program (ACAP)
2. Arctic Monitoring and Assessment Programme (AMAP)
3. Conservation of Arctic Flora and Fauna (CAFF)
4. Emergency Prevention, Preparedness and Response (EPPR)
5. Protection of the Arctic Marine Environment (PAME)
6. Sustainable Development Working Group (SDWG)

THE TASK FORCE AND THE DEVELOPMENT OF THE AGREEMENT:

In May 2011, the *Nuuk Declaration*, on the occasion of the Seventh Ministerial Meeting of the Arctic Council, outlined the Council's intention to establish a task force to develop an international instrument on oil pollution preparedness and response (referred to as "the Agreement"). This Agreement was considered an important step forward on Arctic State cooperation in preparing for the increase in oil and gas and shipping activities that are expected to occur in the coming years. The Task Force co-chaired by Mr. Karsten Klepsovik (Norway), Ambassador Anton Vasiliev (Russian Federation), and Ambassador David Balton (United States) was established shortly thereafter. Initial challenges included establishing the geographic scope or areas of application, and the commitment to a legally binding or non-binding agreement. A notable consequence of committing to a legally binding agreement required states to seek individual negotiating mandates from their respective governments, while in the midst of drafting the document. This binding requirement coupled with the short timeframe required significant effort by all parties to successfully achieve this result. Additionally, the EPPR working group was simultaneously tasked with the development of the supporting operational guidelines and/or procedures. Ultimately the Agreement, which is legally binding, was developed by the Task Force over a series of five (5) meetings held between October 2011 and October 2012, culminating in its endorsement by the Arctic Council in Kiruna, Sweden, on the 15 May, 2013 at Eighth Ministerial Meeting of the Arctic Council, (Kiruna Declaration).

THE AGREEMENT:

Overall, the Agreement serves largely as a means to operationalize, in the unique conditions of the Arctic, the broader International Convention on Oil Pollution Preparedness, Response and Co-operation, 1990 to which all Arctic States are Party. It provides for Parties to cooperate and assist a Party which requests assistance to respond to an oil pollution incident. Key elements of the Agreement also include commitments to:

- provide mutual assistance in the event that an oil spill exceeds one nation's capacity to respond;
- undertake appropriate monitoring activities to identify oil spills in areas within a Party's national jurisdiction;
- promote cooperation and coordination amongst the Parties by endeavoring to carry out joint exercises and training;
- promote the exchange of information that could improve the effectiveness of response operations; and,
- conduct a joint review of activities undertaken during a coordinated response operation.

All of these undertakings aim to increase the collective capacity for oil spill response since it is recognized that, at present, an Arctic oil spill of any significant magnitude likely could not be adequately addressed by any single Arctic State acting alone.

An interesting component of the Agreement is that it applies to the areas beyond the defined national jurisdiction, where actions may include monitoring, spill notification, and requests for assistance. Such actions must be consistent with international law and, as with all obligations in the Agreement, will be subject to the availability of resources and national capacity.

Following a typical structure, the Agreement addresses the broad organisational, as well as operational articles.

Organisational articles address, the overall objective, terms and definitions, scope of application (Articles 1-3) and the requirements for meetings, resources, relationships with other international agreements, dispute settlement, amendments, appendices, provisional application, entry and withdrawal of parties and identification of a depository (Articles 14-16, 18-20 and 22-23). These articles support the structural elements of the Agreement.

Operational articles address, the content of the Agreement providing specific directions or conditions to facilitate the objective of cooperation. The wording is specific and direct befitting the binding nature of the document. Articles include: the obligation to maintain a national system for preparedness and response, including contact points and authorities (Articles 3 & 4), notification, monitoring and request for assistance provisions, including non-parties to the Agreement (Articles 6-8 and 17) to facilitate those requests and render assistance pertaining to the movement of resources across borders; and, reimbursement of costs (Articles 9-10). Provisions for joint review of activities, exchanges of information and coordination of training and exercising (Articles 11-13) are also included. Finally, Article 21 identifies the requirement to develop and maintain a set of operational guidelines to assist in the implementation of the Agreement.

THE EMERGENCY PREVENTION, PREPAREDNESS AND RESPONSE WORKING GROUP (EPPR):

The EPPR working group was established in 1991 under the Arctic Environmental Protection Strategy (AEPS) and was subsequently rolled in to the working groups of the Arctic Council in 1996. As stated in the EPPR Strategic Plan:

The mandate of the Emergency Prevention, Preparedness and Response Working Group (EPPR) is to deal with the prevention, preparedness and response to environmental emergencies in the Arctic. EPPR is not an operational response organization. Members of the Working Group exchange information on best practices and conduct projects to include development of guidance and risk assessment methodologies, response exercises and training. The EPPR mandate is refined biennially through Ministerial Declarations and is further shaped by guidance from Senior Arctic Officials. The goal of the EPPR is to contribute to the protection of the Arctic environment from the threat or impact from an accidental release of pollutants or radionuclides. In addition, EPPR considers questions related to the consequences of natural disasters (Emergency Prevention Preparedness. Strategic Plan of Action).

Numerous projects and products have been completed over the years ranging from mapping projects, producing guidelines and reports, and observing significant oil spill and Search and Rescue (SAR) exercises.

In addition to the initial development of the Operational Guidelines supporting the Agreement, EPPR has been tasked with the ongoing maintenance of the Guidelines in consultation with National Competent Authorities.

THE DEVELOPMENT OF THE OPERATIONAL GUIDELINES:

Development of the Operational Guidelines, Appendix IV of the Agreement, was facilitated by the Emergency Prevention, Preparedness and Response (EPPR) working group. Under the guidance of the EPPR, specialists from each party participated in a Guidelines development workshop held in Canada in early 2013. Subsequent input and revisions were consolidated by Canada who undertook the lead for this effort. In conjunction with the Agreement, Article 21, the Guidelines were designed to address:

- a system and formats for notification, requests for assistance, and other related information;
- provision of assistance, as well as coordination and cooperation in response operations involving more than one Party, including in areas beyond the jurisdiction of the State;
- movement and removal of resources across borders;
- procedures for conducting joint reviews of oil pollution incident response operations;
- procedures for conducting joint exercises and training; and
- reimbursement of costs of assistance.

Immediate (but not unforeseen) challenges to developing the process included:

- Establishment of a common operating picture in accordance with existing practices within each Arctic Nation's response system. This required a targeted selection of representatives from each country to assist in the definition and assessment of each step in the process.
- Establishment of the document's framework, given various countries' viewpoints. This was accomplished by consensus of the previously mentioned representatives.
- Recognition that the Guidelines are non-binding and consequently, nothing in them is intended to create or modify any obligation of the parties under the Agreement or international law. Further, the Guidelines should not negatively affect existing bi-national or multilateral contingency plans and execution of joint responses under those plans.
- Ensuring development and completion of the guidelines maintained continuity with the development of the Agreement, in particular in the latter stages of both processes.

Development Concept:

The starting point of the development of the Operational Guidelines was the establishment of the core chronological activities typically associated with an incident response. To facilitate the discussions and obtain consensus on the framework, a flow diagram of a typical incident scenario with draft application of the Agreement elements was created. (See Appendix One). The following four broad core activities were suggested:

Incident Occurrence

Incident occurs and is either detected and reported by a third party or is reported to lead jurisdictional entity by the party or parties involved.

Assessment and Notification

The lead or jurisdictional entity activates its response protocols, typically found in a contingency or response plan. This involves some type of initial assessment and a

notification procedure for key internal and external stakeholders. Depending upon the national systems for response, a similar activity is usually undertaken by a polluting party or responsible party.

Activation, Execution and Termination of a Response

A response is activated and facilitated in accordance with the applicable national system for response. During this time all response actions and resource utilisation is documented.

Post Response Activities

This activity refers to the post incident reviews, finalisation of cost recovery and other financial requirements such as settlement of claims, legal actions, etc.

Through discussion, these four broad activities lead to the development of the section headings required for the guidelines. Each section representative of a critical operational step or organisational activity required, in more or less chronological order. As a result, key elements such as notification to provide situational awareness, precedes requests for assistance which precedes movement of resources etc. Input from the various experts contributed greatly to development of these sections and activities.

THE OPERATIONAL GUIDELINES:

The resulting guidelines contain:

Section 1 - Notification

Upon report of or recognition of an incident, the party in whose waters the incident occurred is responsible for notification of all other parties. A standard format capturing basic data and communication to pre-identified points of contact and a requirement to acknowledge receipt of this information was adopted.

Section 2 – Assistance

The next step in the process was considered to be the recognition of assistance being required. In all instances the party in whose waters the incident occurs is expected to activate its national response protocols. In areas of shared interest bi-national or multi-lateral agreements are also expected to be initiated prior to a call for assistance. Should the needs of the response require further assistance the Guidelines provide a mechanism to request such assistance. To that end the Guidelines outline the framing of the request to signatory parties, acknowledgement requirements and evaluation of the proposed assistance. In addition, the Guidelines recommend the establishment of a liaison officer as a representative of the assisting party's operations to assist in a variety of ways. Finally it was also recognised that parties outside of the Agreement may provide unsolicited offers of assistance, as was experienced in past incidents, particularly the 2010 Gulf of Mexico spill incident. Consequently "Recommendations for Coordination Mechanism for International Offers of Assistance" was included as an Addendum to the Guidelines.

Section 3 – Movement and Removal of Resources Across Borders

Once a level of operational assistance has been established, the Guidelines address the requirements for movement of resources across borders. This requires the requesting party (and potentially other adjacent nations) to facilitate the arrival of said resources. This section within the Guidelines contains very broad recommendations regarding customs, establishing points of

entry, manifesting, immigration, diplomatic clearances, wildlife transport, innocent passage and trans-boundary removal/management of waste. It remains incumbent on each party to develop, detail and integrate the appropriate methodology for his/her own country of origin.

Section 4 – Response Operations in Areas Beyond National Jurisdiction

Section 4 was included in recognition of the potential for spills in international waters having the potential to impact waters of a signatory party or if a party wished to voluntarily assume leadership of an event for which no other alternative existed. There was considerable discussion regarding this component and its inclusion given the defined scope of the overall Agreement. It was included to highlight its potential application only.

Section 5- Command and Control

This section identifies the necessity to integrate the assisting parties operations, and liaison officer role within the context of the requesting party's response system. This includes incorporating these functions into existing bi- or multi-lateral command and control systems or protocols, whatever they may be. It covers the general principles of application and addresses the objective of integration of resources. While not explicitly stated, this section covers the entire execution and eventual termination of the operational response phase, including the following section.

Section 6 – Facilitation of Situational Awareness and a Common Operating Picture

Learning from previous incidents, the experts wished to highlight the potential for development of an Internet-based information portal to be used during a response. The common operating picture provides informational consistency, facilitates transparency and enhances the ability to address the high level of public interest during a response. Consequently parties are encouraged to develop this portal in accordance with the suggested points of interest.

Section 7 – Joint Review of Oil Pollution Incident Response Operations

Once an incident has been operationally completed a review of activities is typically completed to assist in the longer term development of practices and procedures. This section outlines a basic list of items to consider when undertaking such a review.

Section 8 – Reimbursement of Costs of Assistance

The Guidelines are relatively silent on the requirements or processes surrounding costs and financial arrangements. This is attributed to the relative clarity described in the Agreement - Article 10.

In basic terms, unless some other legal instrument is in play, the requesting party is expected to bear the costs of its request as addressed by the assisting party. The assisting party is expected to provide appropriate documentation and fairly calculated "rates" according to its domestic law and practices.

Section 9 – Joint Exercises and Training

In recognition of the preparatory activities required in facilitating an effective and efficient response, the Guidelines include the need for development and execution of both joint

exercises and joint training. Significant further work is envisioned for this section as the Guidelines mature.

The first exercise under the Agreement will be hosted by Canada in the summer 2014.

Section 10 – Administrative Provisions

Similar to the Agreement, organisational provisions have been included to maintain and improve the guidelines. The EPPR working group has been tasked with this activity.

Recommended Next Steps - Follow-up and Acceptance

Upon completion of the Guidelines the following was recommended.

- Creation of a communications plan for signatory parties outlining the critical aspects of the Guidelines.
- Facilitation of integration of these processes into the relevant national systems is encouraged.
- Development of opportunities for training and/or exercising of the Guidelines.

CONCLUSIONS:

In 2011, the Arctic Council responsible for promoting cooperation, coordination and interaction between the eight Arctic States, created a Task Force to develop an international instrument on oil pollution response. The effort built upon existing bi-national and multi-nation response agreements, and expanded to include mutual aid and cooperation was completed in early 2013. Simultaneously, the EPPR Working Group, one of six such groups operating under the Arctic Council, was tasked with coordination and facilitation of a non-legally binding Operational Guidelines as an Appendix to the Agreement.

Challenges involving the geographic scope, legal versus non-legal application and self-imposed timelines were overcome through a high level of cooperation and effort by the Task Force and supporting delegations. Similarly, the establishment of a common operating picture, acceptable framework and maintenance of continuity with the provision of the Agreement prior to its finalisation, provided challenges to the EPPR, and its coordination of the development of the supporting Operational Guidelines. Again a high degree of commitment and effort resulted in a procedural guideline which will be exercised in early 2014.

This opportunity to demonstrate leadership and cooperation during this time of change in the Arctic has resulted in not only an Agreement, but an operational commitment to enhance the collective capacity for oil spill responses in this important part of the World.

ACKNOWLEDGEMENTS:

This presentation is a summary of the work supporting both the Task Force and Emergency Prevention Preparedness and Response Working group. It represents the collective effort of a myriad of professionals from various Non-Government Organisations, Ministries and Departments within each of the eight Arctic Council member states.

REFERENCES:

Arctic Council. *About the Arctic Council*. 07 April 2011. 8 Dec. 2013 <<http://www.arctic-council.org/index.php/en/about-us/arctic-council/about-arctic-council>>

The Emergency Prevention, Preparedness and Response Working Group. *Strategic Plan of Action*. June 2013. 10 Dec. 2013 <<http://www.arctic-council.org/eppr/about-eppr/strategic-plan-of-action>>

Chapter 6 Logistics: On Scene Coordinator Report, Deepwater Horizon Oil Spill, Submitted to the National Response Team, September 2011

BIBLIOGRAPHY:

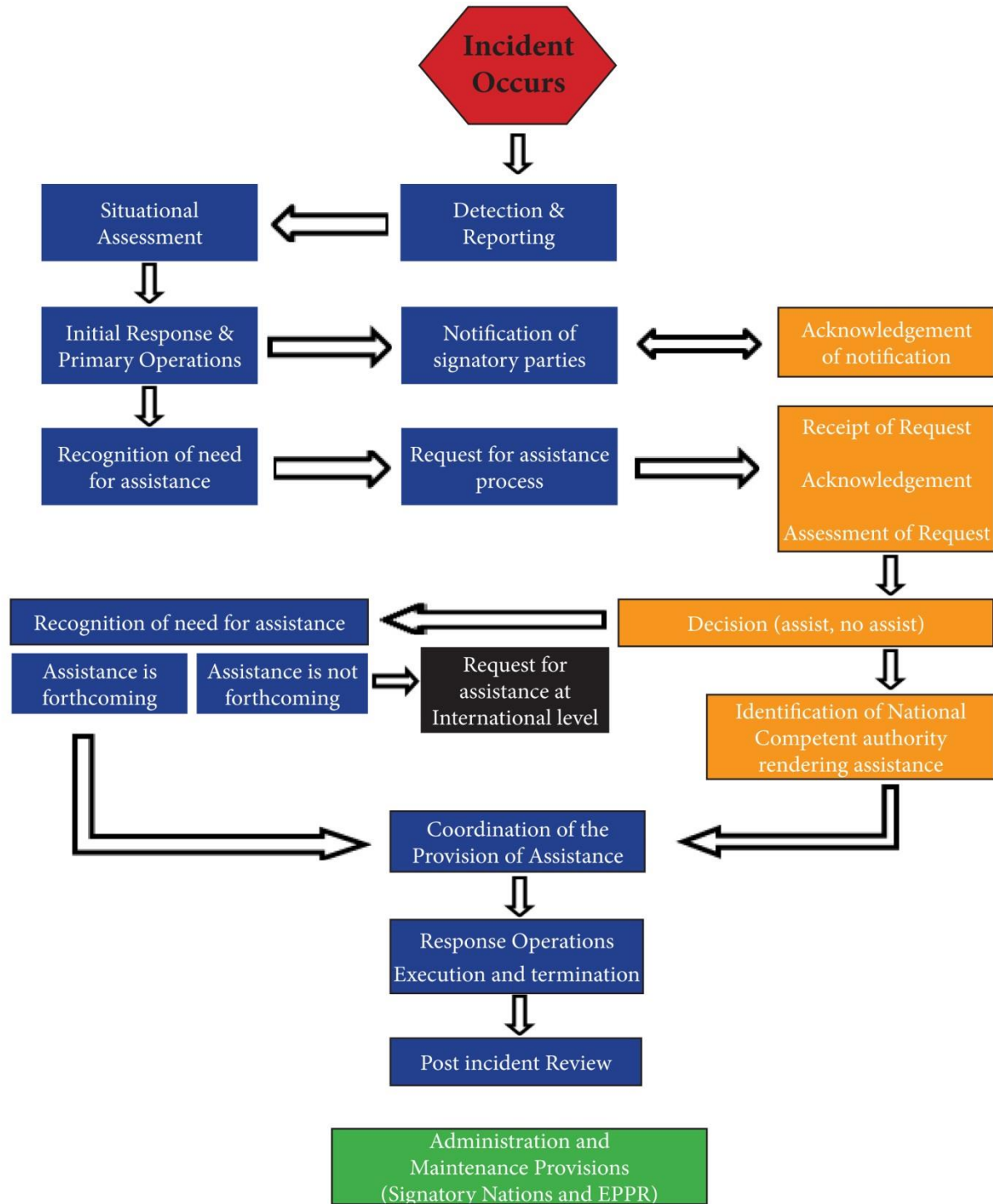
The Emergency Prevention, Preparedness and Response Working Group. “Agreement on Cooperation on Marine Oil Pollution Preparedness and Response in the Arctic,” Signed at the eighth ministerial meeting of the Arctic Council in Kiruna, Sweden May 15, 2013.

<<http://www.arctic-council.org/eppr/agreement-on-cooperation-on-marine-oil-pollution-preparedness-and-response-in-the-arctic/>>

The Emergency Prevention, Preparedness and Response Working Group. “Agreement on Cooperation on Marine Oil Pollution Preparedness and Response in the Arctic: Appendix IV, Operational Guidelines”, Signed at the eighth ministerial meeting of the Arctic Council in Kiruna, Sweden May 15, 2013.

<<http://www.arctic-council.org/eppr/agreement-on-cooperation-on-marine-oil-pollution-preparedness-and-response-in-the-arctic/>>

APPENDIX ONE: FLOW DIAGRAM OF TYPICAL INCIDENT SCENARIO WITH DRAFT APPLICATION OF AGREEMENT ELEMENTS



Legend			
Requesting Party Activity	Assisting Party Activity	Guideline Provision	Activity outside of scope

The Flow Diagram was introduced at the EPPR Operational Guidelines Workshop to facilitate the creation of the Operational Guidelines in accordance with the requirements outlined in Article 21 of the Agreement. It has been modified for this presentation to include references to the Agreement.

Incident Occurrence (or Potential Occurrence requiring a Response).

Detection & Reporting

Recognises that each party has detection and reporting protocol as part of their national system.

Situational Assessment

Situational assessment is required by the nation in whose waters, Article 3, the incident occurred or is impacting. The result of this activity is the assumption of responsibilities for conducting a response, by a host nation as per Article 7. Note: This may involve more than one potential host.

Initial Response & Primary Operations

The initial response is made up of internal notification and activation of a national, bi-national, or regional response. This activity in accordance with Article 4 assumes that a host nation has activated its internal or existing partnership agreements to facilitate the response.

Notification of signatory parties

Notification of signatory nations of significant incidents represents the requirements of Article 6 from the Agreement. Subsection 2 of the Agreement indicates the need to establish a scale for determining severity. The contact points for communication purposes are derived from Article 5. The Guidelines suggest all signatories receiving such information acknowledge it accordingly.

Recognition of need for assistance

At some point in the response there may be recognition of a national limitation or identification of requirements for assistance or advice due to circumstances. While this may occur at any point during an incident it has been presented here in the earliest stages of a response. This represents the fundamental objective of the agreement, Article 1. This Activity is designed to address whether assistance beyond the internal capacity is required. It addresses the basic conditional question: Is assistance required?

Request for assistance process – Requesting Party

The request for assistance is designed in accordance with Article 8. The operational purpose of the request for assistance is to provide information on the degree of assistance required and to activate the mechanisms that will facilitate the transfer of assets and resources to the host nation to facilitate a response. Transmission of request is designed to go through the national contacts listing as indicated in Article 5, similar to the notification process.

Receipt of Request, Acknowledgement and Assessment of Request

Signatory parties are expected to coordinate and distribute the request to internal competent authorities to facilitate an assessment and decision pertaining to the request. This activity is designed to address whether assistance will be provided and to provide feedback should the request be fulfilled or not be fulfilled.

Receipt of decision (assist, no assist)

As a result of previous activity the flow diagram diverges into three possible activities.

- If assistance is not being provided the requesting party may ask for assistance using other international options. It should be noted that the non-binding nature of the Guidelines does not limit a party from requesting assistance from whatever nation it feels appropriate assistance can be rendered. This process is identified chart element - ***Request for assistance at International level.***
- If assistance is being provided the chart elements related to ***Coordination of the Provision of Assistance*** and ***Identification of National Competent authority rendering assistance*** are suggested. As indicated in Articles 4, 9 and 12 of the Agreement the requesting party is expected to facilitate the movement of resources.

Response Operations (Execution and termination)

Upon delivery of resources the requesting party is expected to integrate those resources into its response operation. Upon termination of the response or the specific activity provided by the assisting party, demobilisation of all appropriate resources is completed. The assisting party is expected to maintain thorough records of its involvement for potential cost recovery as applicable.

Post incident Review

Upon completion of the response the requesting party is expected to conduct a Joint review of the applicable operations as per Article 11. Results of the post incident review are expected to be made public.

Administration and Maintenance Provisions

This element was included to identify the need and means to communicate the roles and responsibilities of each signatory nation and National Competent authorities as assigned in the Agreement. Basic guidelines refer to the review and communications but may also include the integration of these systems into the national response protocols of each signatory nation.

OTHER ELEMENTS UNDER CONSIDERATION

The requirement for a training module or curriculum with specific learning objects related to the Agreement and the applications of the protocols specified in the previous activities.

An exercise cycle with clearly constructed sub-objectives is also required.

Note: This activity requires a sustainable infrastructure and resources to maintain and execute. A funding mechanism or agreed upon “value” is recommended.