



**Law and legal issues
in international disaster
response: a desk study**



International Federation
of Red Cross and Red Crescent Societies

The International Federation's Global Agenda (2006–2010)

Over the next five years, the collective focus of the Federation will be on achieving the following goals and priorities:

Our goals

Goal 1: Reduce the number of deaths, injuries and impact from disasters.

Goal 2: Reduce the number of deaths, illnesses and impact from diseases and public health emergencies.

Goal 3: Increase local community, civil society and Red Cross Red Crescent capacity to address the most urgent situations of vulnerability.

Goal 4: Promote respect for diversity and human dignity, and reduce intolerance, discrimination and social exclusion.

Our priorities

Improving our local, regional and international capacity to respond to disasters and public health emergencies.

Scaling up our actions with vulnerable communities in health promotion, disease prevention and disaster risk reduction.

Increasing significantly our HIV/AIDS programming and advocacy.

Renewing our advocacy on priority humanitarian issues, especially fighting intolerance, stigma and discrimination, and promoting disaster risk reduction.

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Foreword

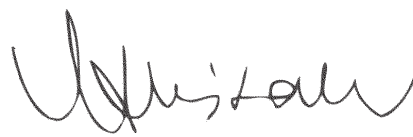
When disasters strike, affected persons need and deserve the support of their communities, governments and civil societies. In 186 countries around the world, they can count on help from National Red Cross and Red Crescent Societies and the millions of volunteers that have rallied to their mission to preserve and protect human dignity.

However, disasters are sometimes so large that they overwhelm national coping capacities. In these cases, the assistance of foreign and international actors is critical to ensuring that humanitarian needs are promptly and adequately met.

Such operations often raise complex legal and administrative issues. Recent experiences confirm that bureaucratic barriers to the entry of relief personnel, goods and equipment and the operation of relief programmes, as well as regulatory failures to monitor and correct problems of quality and coordination, can undermine aid effectiveness.

Since 2001, the International Federation of Red Cross and Red Crescent Societies has been consulting about these issues and researching existing international laws and norms. We have found a growing realization on all sides of the many common regulatory problems but also a rising determination to find solutions. We can see this not only in the many governments now examining or enacting new laws to help them better prepare for the possibility of international assistance, but also at the multitude of initiatives – particularly at the regional level – to facilitate cross-border cooperation.

By comprehensively surveying existing international law and identifying the main regulatory problem areas, we trust that this study will support these efforts and foster an enhanced dialogue and encourage concrete initiatives balancing the interests in the speed and efficiency of international relief, means to ensure its quality and cooperation, and guarantees of local leadership over relief efforts.



Markku Niskala
Secretary General
International Federation of Red Cross and Red Crescent Societies

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Executive summary

Though little discussed, legal barriers can be as obstructive to effective international disaster relief operations as high winds or washed-out roads. At the same time, the absence of regulation where it is needed can contribute to a response that is uncoordinated, wasteful, and inadequately respectful to beneficiaries and domestic relief actors. These problems often lead to disaster-affected communities not receiving the right aid at the right time, delivered in the right way.

This desk study compiles the findings of the International Federation of Red Cross and Red Crescent's research and consultations with stakeholders over the last few years about existing legal frameworks and regulatory problems in international disaster response. It draws on over two dozen legal and operational case studies, a wide-ranging global survey of major stakeholders, and the discussions in a series of formal regional forums including high level representatives of governments, National Red Cross and Red Crescent Societies, UN agencies, NGOs and other interested parties.

It finds that, although few practitioners are fully aware of it, there is in fact a large number of international instruments, including treaties, resolutions, guidelines, codes and models, designed to guide international relief operations. However, this international regulatory framework, increasingly known as "international disaster response laws, rules and principles" or "IDRL", has a number of gaps, including limits in geographic reach of pertinent instruments (often due to lack of ratification), restrictions in scope (either to particular types of disasters, or to a particular sector or activity), and failures to address major players (particularly NGOs and the International Red Cross and Red Crescent Movement). There are also potential areas of overlap, in particular with regard to various systems for funnelling requests and offers for international assistance. Moreover, few national legal systems are adequately prepared for the potential of receiving international assistance, leading to ad hoc rule-making and confusion in the aftermath of a disaster, just when it can least be afforded.

The study also finds that there is a consistent set of legal and regulatory problems plaguing international operations, including both barriers to access and issues of quality. Both types of problem have been aggravated by the recent growth in both the size and the diversity of the international disaster response community, which now regularly includes not only "traditional" relief actors but also many that are new to the field.

Access problems begin with bureaucratic impediments to the initiation of international assistance when it is needed. Even when these are overcome, problems frequently arise in the entry of relief goods, equipment, transport and resources, particularly food, medications, vehicles, and telecommunications and information technology equipment. Likewise, while relief personnel are usually able to enter affected states without great delay, visa renewal and work permit problems can soon arise and medical professionals often encounter difficulties in legally providing their services. Once in country, operational problems linked to a lack of domestic legal personality can lead to problems hiring local staff, opening bank accounts, and obtaining tax exemptions. In addition, operations are sometimes prematurely terminated, either by governmental fiat or by international actors themselves, with little planning for transitions to recovery.

Quality problems have been found to be just as serious as those related to access and they proliferate in the absence of regulatory structures. These include failures to adequately support local capacity, supplying inappropriate relief items or incompetent services, and failing to coordinate activities with other international and domestic actors. Accountability has been difficult to achieve in this area, particularly with respect to beneficiaries themselves, who are often given no say in programmes aimed at their own recovery.

Quality and access problems are clearly linked. Bottlenecks and bureaucratic barriers are often closely related to domestic authorities' frequently justified concerns about the appropriateness of relief items sent and the competence and intentions of some of the many actors involved in some of today's most visible disasters. The right aid is often quite literally trapped behind the wrong aid. That wrong aid not only harms beneficiaries, but impacts on perceptions of the entire international response community, even if only a minority of actors are to blame.

A new way must be found out of this thicket. The regional forums organized by the International Federation and its partners in 2006–2007 have resulted in the development of a set of draft Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance. The draft Guidelines encourage states to create systems to provide assisting states and approved international humanitarian actors with the minimum legal facilities they need to provide effective assistance. In return, they recommend that affected states also demand from them that they abide by internationally recognized standards of humanitarian action and quality in their work.

The primary recommendation of this study is that states support the adoption of the draft Guidelines at the 30th International Conference of the Red Cross and Red Crescent and then use them as a tool to examine their own legal, institutional and policy frameworks, drawing on the expertise of national Red Cross and Red Crescent Societies. The study also identifies a number of other “ideas for the future” for various stakeholders that could be complementary to the use of the Guidelines.

Table of abbreviations

| | |
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| ACS | Association of Caribbean States |
| APEC | Asia-Pacific Economic Cooperation |
| ALNAP | Active Learning Network for Accountability and Performance in Humanitarian Action |
| ASEAN | Association of Southeast Asian Nations |
| AU | African Union |
| BSEC | Black Sea Economic Cooperation |
| CAN | Andean Community |
| CAPRADE | Andean Committee for Disaster Prevention and Assistance |
| CARICOM | Caribbean Community |
| CCC | Customs Co-operation Council (now known as the World Customs Organization) |
| CDERA | Caribbean Disaster Emergency Response Agency |
| CEI | Central European Initiative |
| CEPREDENAC | Coordination Centre for the Prevention of Natural Disasters in Central America |
| CERF | Central Emergency Response Fund (previously, the Central Emergency Revolving Fund) |
| CESCR | International Covenant on Economic, Social and Cultural Rights |
| COE | Council of Europe |
| DREF | Disaster Relief Emergency Fund |
| EADRCC | Euro-Atlantic Disaster Response Coordination Centre |
| EADRU | Euro-Atlantic Disaster Response Unit |
| ECB | Emergency Capacity Building Project |
| ECHO | European Commission Directorate General for Humanitarian Aid |
| ECO | Economic Cooperation Organization |
| ECOWAS | Economic Community of West African States |
| ERC | United Nations Emergency Relief Coordinator |
| EU | European Union |
| FAO | Food and Agriculture Organization of the United Nations |
| HAP | Humanitarian Accountability Partnership International |
| IAEA | International Atomic Energy Agency |
| IAMRA | International Association of Medical Regulatory Authorities |
| IASC | Inter-Agency Standing Committee |
| ICAO | International Civil Aviation Organization |
| ICDO | International Civil Defence Organisation |
| ICRC | International Committee of the Red Cross |
| ICVA | International Council of Voluntary Agencies |
| IDP | Internally Displaced Person |
| IDRL | International Disaster Response Laws, Rules and Principles |

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| IGAD | Intergovernmental Authority on Development |
| IHL | International Humanitarian Law |
| IHR | International Health Regulations |
| ILA | International Law Association |
| ILC | International Law Commission |
| IMO | International Maritime Organization |
| INSARAG | International Search and Rescue Advisory Group |
| IOM | International Organization for Migration |
| IPU | Inter-Parliamentary Union |
| IRU | International Relief Union |
| ISDR | International Strategy for Disaster Reduction |
| ISO | International Organization for Standardization |
| ITD | International Tax Dialogue |
| MIC | Monitoring and Information Centre |
| NATO | North Atlantic Treaty Organization |
| NGO | Non-governmental organization |
| OAS | Organization of American States |
| OCHA | Office for the Coordination of Humanitarian Affairs |
| OECD | Organization for Economic Co-operation and Development |
| OIE | World Organization for Animal Health |
| PAHO | Pan American Health Organization |
| SAARC | South Asian Association for Regional Coordination |
| SADC | Southern African Development Community |
| SCHR | Steering Committee for Humanitarian Response |
| SICA | System for Central American Integration |
| SOPAC | Pacific Islands Applied Geoscience Commission |
| TEC | Tsunami Evaluation Coalition |
| UN | United Nations |
| UNDAC | United Nations Disaster Assessment and Coordination |
| UNDP | United Nations Development Programme |
| UNDRO | Office of the United Nations Disaster Relief Coordinator |
| UNECE | United Nations Economic Commission for Europe |
| UNESCO | United Nations Education, Scientific and Cultural Organization |
| UNHCR | United Nations High Commissioner for Refugees |
| UNICEF | United Nations Children's Fund |
| UNRRA | United Nations Relief and Rehabilitation Administration |
| USAID | United States Agency for International Development |
| VAT | Value-Added Tax |
| VOICE | Voluntary Organizations in Cooperation in Emergencies |
| WCO | World Customs Organization |
| WFP | World Food Programme |
| WHA | World Health Assembly |
| WHO | World Health Organization |
| WTO | World Trade Organization |



Introduction

When the international community mobilizes to provide support in the chaos following a major disaster, laws, rules and regulations are not the first things that generally come to mind. Why bother with legalities, one might reasonably ask, when immediate action is needed to save lives?

Unfortunately, the answer to this question is that legal barriers can be as obstructive to effective international relief operations as high winds or washed-out roads. At the same time, the absence of regulation where it is needed can contribute to a response that is uncoordinated, inappropriate and wasteful. Put simply, legal problems mean that disaster affected persons may not receive the right aid at the right time, delivered in the right way.

For example, although both governments made significant efforts to accommodate international relief, customs clearance became so backlogged in both Sri Lanka and Indonesia after the December 2004 tsunami that hundreds of containers of relief goods remained stranded long after many of the items they contained, such as tents, blankets and body bags, were no longer needed and food had perished.¹ In Indonesia, over 400 such containers were reportedly still in customs custody as of January 2006.² While the massive size of the humanitarian response as well as the ignorance of many international responders about applicable local rules and needs certainly had a large part to play in this dilemma, the complexity, ambiguity and changing nature of the legal rules to be applied, as well as the number of ministries charged with clearing certain items, were also identified as key factors.³

In other settings, customs problems have arisen even before relief goods arrived. For example, in August 2006, after strong winds in Swaziland left 13,000 persons homeless and exposed to ongoing heavy rains, the International Federation of Red Cross and Red Crescent Societies' (hereinafter "International Federation") regional delegation in Harare, Zimbabwe sent a shipment of tarpaulins and tents.⁴ However, the shipment was delayed at the border with South Africa for five days before it could proceed to the destination country, due to problems with customs.

Customs regulations are not the only barriers to the effective distribution of international assistance. A 2006 United States government evaluation of its response to Hurricane Katrina found that a lack of legal guidance and ad hoc procedures had hampered even the use of cash assistance provided directly to the US government by foreign governments and individuals. Thus, of \$126 million in foreign cash donations received, nearly half had not yet been distributed or assigned to a particular agency as of April 2006, and that amount was being held in a non-interest-bearing account.⁵

Moreover, relief actors are frequently stymied in their attempts to obtain formal authorization for their operations and legal recognition of the organizations and personnel. For example, after the 2004 tsunami struck Thailand, international and local NGOs alike found registration processes so impenetrable that few were ever successful in even temporarily normalizing their legal status.⁶ Among other consequences, lack of legal standing can render it particularly difficult to obtain work permits, open a bank account, and obtain tax exemptions.⁷ As a result, in Thailand and many other disaster operations, international relief staff operated on tourist visas;⁸ organizational bank accounts were opened in the personal name of staff members;⁹ and funds intended for relief were lost to taxes.¹⁰

Likewise, a 2003 study of several countries conducted by the Norwegian Red Cross noted that recovery projects had been abandoned and funding returned to donors because necessary permissions could not be obtained within the timeframe of the project.¹¹

These examples are representative of a much broader spectrum of common problems, which are by no means restricted to the states mentioned.

At the same time, affected states' abilities to facilitate and coordinate international actors is being challenged by the proliferation of international actors arriving in disaster-affected countries to respond to events with high media profiles, such as the Indian Ocean tsunami.¹² To some degree, these include more of the "traditional actors", such as foreign civil defence and military forces, United Nations agencies, the International Red Cross and Red Crescent Movement and established NGOs. However, the greatest increase is in completely new players, including purpose-formed NGOs, private companies and individuals.

Particularly (though not exclusively) among new and inexperienced actors, there have been reports of poor quality goods and services and a lack of effective coordination.¹³ For example, in each of the major disaster operations of 2004–2005, massive amounts of unneeded and inappropriate aid were brought in, including mountains of used and unsuited clothing, expired medications, duplicative and unnecessary field hospitals, culturally unacceptable food and other inappropriate items. As noted by the multi-agency "Tsunami Evaluation Coalition" evaluation published in 2006, "[i]nappropriate aid is not just worthless to the recipients; it has a negative value. It occupies storage and transport space at the very time when this is needed for real aid. It then requires special handling to dispose of – all an additional burden on a response."¹⁴

Moreover, some relief actors have provided services incompetently. For example, an unidentified NGO reportedly vaccinated some of the children in a village near Banda Aceh in Indonesia after the tsunami, leaving no records and no way to determine who had been vaccinated and who had not.¹⁵ In several tsunami-affected countries, some purportedly "humanitarian" organizations were accused of proselytising, and even conditioning aid on religious conversion.¹⁶ While representing only a small minority of those providing international aid, the conduct of these actors significantly impacted perceptions of international efforts in general.¹⁷

Recent experiences indicate that national laws and institutions are generally unprepared to handle the special issues incident to the receipt of international disaster relief and recovery assistance. While most states have disaster laws and/or plans of some sort, few have put sufficient advance thought into how to balance local control with the need for any international assistance that is required to be as speedy as possible. Instead, these dilemmas are commonly addressed for the first time in the charged and chaotic environment immediately following a disaster. This results in ad hoc rule-making, confusion and delay just when it can least be afforded. As noted by former United States President William Clinton in his final report as Special Envoy of the UN Secretary-General on Tsunami Recovery, "[t]he aftermath of a crisis is the wrong time to create new institutions, establish new policies and legal frameworks, and recruit new staff, as all of this takes time. Confusion over responsibilities between new and existing institutions can also create major bottlenecks and delays, not to mention uncertainty among international partners that must deal with national, provincial, and local officials."¹⁸

Introduction

At the international level, there is no overarching legal framework for disasters comparable to international humanitarian law, which governs situations of armed conflict.¹⁹ There are a number of relevant instruments, including some multilateral treaties, a multitude of bilateral agreements between states (as well as between states and international organizations), and an important number of resolutions, declarations, guidelines, and models issued by various authoritative bodies. However, the effectiveness of this body of international law, increasingly known as “international disaster response laws, rules and principles” or “IDRL”, is hampered by: its dispersed nature; the lack of awareness and implementation of relevant instruments among the key stakeholders; and important gaps in its scope and coverage. The gaps are particularly evident in the areas of quality and accountability, which benefit mainly from “soft-law” regimes emphasizing voluntary compliance.

This is not the first time these issues have been broached. In addition to the two historical attempts to establish a comprehensive international legal regime in this area (described below), there was a flowering of interest in international disaster law among policy-makers and academics in the 1970s and 1980s.²⁰ Important (but piecemeal) efforts to address some of these problems have also continued since that time, for example with the adoption of the Tampere Convention on the Provision of Telecommunication Resources for Disaster Mitigation and Relief Operations in 1988 (hereinafter, “Tampere Convention”)²¹ and United Nations General Assembly Resolution 57/150 on “strengthening the effectiveness and coordination of international urban search and rescue assistance” in 2002 and through the creation of new institutions for regional cooperation, such as the Coordination Centre for the Prevention of Natural Disasters in Central America (CEPRENAC) in 1988, and the European Community Mechanism for Civil Protection in 2001.

Nevertheless, legal barriers remain, contributing to delay, waste and inefficiency, and they are only likely to get worse if nothing is done to address them. The frequency of disasters²², the number of lives they affect²³, the amount of damage they inflict²⁴ and the size of international involvement in relief²⁵ have all been on a steady rise in recent decades (even discounting the unusually enormous impact of the disasters of 2004-2005), magnifying the problems due to failures of legal preparedness. Moreover, while grateful for the help they receive, governments and civil society actors in affected states are increasingly decrying the lack of coordination, respect, complementarity and accountability of some international actors in large-scale disaster relief operations²⁶.

Fortunately, there appears to be a growing readiness to more fully address some of these long-simmering issues, both domestically and internationally. For example, the experience of the massive international operations responding to the particularly devastating disasters of 2004-2005 has led a number of states to re-examine their national legislative and institutional structures for the receipt of international disaster relief²⁷ (as recommended by the UN Secretary General²⁸ and Special Envoy Clinton²⁹) and to consider new regional agreements to strengthen cooperation, such as the Association of Southeast Asian Nations (ASEAN) Agreement on Disaster Management and Emergency Response of 2005³⁰ and the North Atlantic Treaty Organization (NATO) Memorandum of Understanding on the Facilitation of Vital Civil Cross Border Transport of 2006.³¹ At the global level, UN member states adopted the Hyogo Framework for Action³² in January 2005, setting forth five priorities for all governments and for the international community to improve disaster risk reduction and mitigation. Among these

were the development and strengthening of national legislative and institutional frameworks and improving contingency planning to ensure rapid and effective disaster response³³. Moreover, in 2006, the International Law Commission (a UN body whose object is the “promotion of the progressive development of international law and its codification”³⁴) decided to place the issue of the “protection of persons in natural disasters” on its work program.³⁵

In addition, much attention has been devoted recently to the United Nations-led “humanitarian reform” and, in particular, to the development of coordination “clusters” for international humanitarian relief.³⁶ This important initiative is designed to improve coordination and accountability among international humanitarian actors. However, these reform efforts have thus far remained mainly horizontal – addressing relationships between international actors rather than the interaction between international actors and affected state governments and domestic civil society.³⁷ Improving the implementation and effectiveness of disaster laws and regulation in order to better manage the vertical relationship between international and domestic actors should be seen as an important next step along the path to more effective relief collaboration at all levels.

In order to start addressing these issues, the International Federation has been leading a process of formal consultations that has resulted in the development a set of draft Guidelines for the Domestic Facilitation and Regulation on International Disaster Relief and Initial Recovery Assistance (available at <http://www.ifrc.org/idrl>) which will be presented to the 30th International Conference of the Red Cross and Red Crescent for adoption. Adoption and use of these draft Guidelines is the main recommendation of this study.

Note to the reader

This study is divided into three main parts:

Part I offers some background both on this study and on the historical and operational context of the legal frameworks and problems it examines.

Part II provides an overview of existing legal frameworks related to international disaster response at the global, regional, bilateral and national levels.

Part III examines a number of specific legal or regulatory “issue areas” in international disaster response. These include barriers to access and operations, issues of quality and coordination, and some brief specific discussion on issues of military assistance and mixed situations of disaster and armed conflict.

In addition to its primary recommendation concerning the draft Guidelines, the study also proposes some “ideas for the future” for the various issues in Part III. These ideas are summarized in the conclusion.

Part I: Background and context



Chapter 1

Background to the study

Before turning to the analysis, it is important to provide some brief background on the origins and primary sources for this study and to explain its scope and limitations.

1.1 Origins and linkages to the International Red Cross and Red Crescent Movement

The origins of this study are linked to the long history of the International Red Cross and Red Crescent Movement, as the world's largest humanitarian network, in disaster relief. The Movement, and especially its founding organ, the International Committee of the Red Cross (ICRC), is well known for its role in promoting the development and implementation of international humanitarian law (IHL) for situations of armed conflict, in particular, the Geneva Conventions of 1949 and their Additional Protocols. However, as early as 1869, the 2nd International Conference of the Red Cross (hereinafter, "International Conference"),³⁸ adopted a resolution calling on National Red Cross Societies to provide relief "in case of public calamity which, like war, demands immediate and organized assistance." This peacetime role was confirmed in practice, emphasized in the 1919 Constitution of the League of Red Cross Societies (now known as the International Federation of Red Cross and Red Crescent Societies) and eventually codified in the Statutes of the International Red Cross and Red Crescent Movement, first adopted in 1928.

Unsurprisingly, the Movement has also been a leading actor in developing the existing norms and standards of international disaster relief. This has included not only instruments concerning its own role and activities, such as the Principles and Rules for Red Cross and Red Crescent Disaster Relief of 1969,³⁹ but also critical instruments for all actors in the field, such as the Declaration of Principles for International Humanitarian Relief to the Civilian Population in Disaster Situations of 1969, the Measures to Expedite Emergency Relief adopted both by the International Conference and the United Nations General Assembly in 1977, and the Code of Conduct for the Red Cross and Red Crescent Movement and Non-Governmental Organizations in Disaster Relief of 1994 (hereinafter, "the Red Cross Red Crescent NGO Code of Conduct").

In 2000, a chapter of the International Federation's World Disasters Report highlighted the question of international law on disaster response and urged further research and dialogue in this area.⁴⁰ As a result, in 2001, the Council of Delegates⁴¹ of the Red Cross and Red Crescent adopted a resolution calling upon the International Federation to "advocate for the development and, where applicable, the improvement and faithful application of International Disaster Response Law." The International Federation then established a dedicated programme, now known as the International Disaster Response Laws, Rules and Principles (IDRL) Programme⁴² to initiate research on existing law and the nature of the most common problems. Since its inception, the IDRL Programme has been active in researching and disseminating information about existing international law, preparing case studies of domestic laws and their application in particular disaster settings, and consulting with stakeholders inside and outside the Movement about the problems they have experienced.

In 2003, the 28th International Conference (gathering the components of the Movement and all state parties to the Geneva Conventions) adopted an “Agenda for Humanitarian Action,” including Final Goal 3.2 (attached to this study as Appendix 1), which called upon the International Federation and National Red Cross and Red Crescent Societies to “lead collaborative efforts” to research, analyse and disseminate the existing legal and normative framework for international disaster relief, identify gaps, and develop practical solutions. A similar commitment to find solutions in this area was expressed in regional Red Cross/Red Crescent conference instruments, including the Manila Action Plan of 2002,⁴³ the Santiago de Chile Commitment of 2003⁴⁴ and, most recently, the Singapore Declaration of 2006⁴⁵ and the 2nd Commonwealth International Humanitarian Law Conference of 2007.⁴⁶ Likewise, in November 2005, the Commission of the Council of Delegates on Access to Victims and Vulnerable Persons noted that the International Federation’s work on regulatory frameworks to facilitate the delivery of humanitarian was crucial to ensuring access in disasters.⁴⁷

Also in 2005, the General Assembly of the Red Cross and Red Crescent adopted the “Global Agenda and Framework of Action,”⁴⁸ setting out overarching goals for the Movement for the next five years. Among these are reducing the number of deaths, injuries and impact from disasters (Goal 1) and reducing the number of deaths, illnesses and impact from diseases and public health emergencies (Goal 2).⁴⁹ It also established a number of priorities for action, including “[i]mproving our local, regional and international capacity to respond to disasters and public health emergencies” and “[r]enewing our advocacy on priority humanitarian issues[.]”⁵⁰

The International Federation believes that improving the regulatory environment governing all international disaster response actors will increase the speed and effectiveness of both Red Cross and Red Crescent assistance and the overall response, saving more lives in disasters and public health emergencies, and more completely addressing disaster impact. Sensibly balancing the interest in speed and efficiency of international assistance with the needs for coordination, quality control and complementarity will also help to check the erosion of the roles of local responders that has occurred in some major international operations and that has been regularly criticized in “lessons learned” evaluations of the last two decades.

In accordance with the terms of Final Goal 3.2, the issue of legal regulation and facilitation of international disaster response will again be taken up at the 30th International Conference in November 2007.

1.2 Sources

In addition to desk research, this study draws from four main sources. The first of these is the IDRL database, a collection of several hundred international, regional and national legal instruments pertinent to international disaster relief gathered by the IDRL programme and its contributors since 2001. The database is publicly available online at <http://www.ifrc.org/idrl>.

The second source is the more than two dozen legal and operational case studies conducted by or in coordination with the IDRL programme since 2002, as listed in Appendix 2 to this study. The text of these prior studies is also available on the website above or by request to the International Federation.

The third source is the responses to a series of surveys the IDRL programme sent in 2006 to governments, National Red Cross and Red Crescent Societies, international organizations, and NGOs. These surveys sought respondents' viewpoints and experiences of legal and regulatory issues in international disaster relief operations, as well as exploring the awareness and use of existing international instruments. A summary report on the results of the surveys is included as Appendix 3 to this study.

The fourth, and probably most important, source is the direct consultations and interviews IDRL programme staff have held over the period of the programme's activity with National Red Cross and Red Crescent Societies, logistics and disaster management staff of the International Federation, external humanitarian partners and governments. These include both informal discussions and formal meetings, notably a series of five regional "forums" the International Federation began to organize in 2006 in preparation for the 30th International Conference. These forums convened senior representatives of governments, National Red Cross and Red Crescent Societies, international organizations, NGOs and other stakeholders to discuss current problems and best practices in the regulation and facilitation of international disaster response. Reports from the regional forums are available at <http://www.ifrc.org/idrl>.

1.3 Scope

1.3.1 Which law?

This study examines the effectiveness of legal, regulatory and normative frameworks that govern international disaster response. At the international level, this includes analysing the coverage and implementation of existing "hard law" and "soft law"⁵¹ instruments. At the national level, it includes the examination of how successfully applicable legal and institutional regimes have facilitated and regulated international relief and recovery efforts in recent operations.

The legal scope will be limited in several respects. First, it examines regulatory issues related to international disaster response, to the exclusion of rules related to purely domestic activities. Second, it looks mainly at rules for relief and recovery rather than risk reduction. The omission of these topics is not a reflection of their importance. Indeed, progress in these areas is rightly considered a priority for the international community, with hopes of minimizing the need for international disaster assistance in the first instance. Nevertheless, international assistance will, in all likelihood, remain a necessity in many situations and its associated legal issues have received comparatively little attention.

Third, with a few minor exceptions, this study does not address the issue of customary international law in the area of disaster response. Custom is a well recognized form of binding international law formed by general state practice accompanied by an acceptance of that practice as required ("opinio juris").⁵² Evidence of these two elements have been found both in the verbal and physical acts of states, and can include a wide range of sources, including conforming domestic legislation and case law, diplomatic correspondence, votes on international resolutions, treaty texts or simple physical presence, such as when patrolling territorial waters.⁵³ Thus, many of the instruments and field practices identified here would likely be relevant to this inquiry, though this study will be focusing on problem areas rather than a more general description of practice. However, precisely because proof of customary international law must be pieced to-

gether from a myriad of indications of state intent and belief, it requires a scholarly depth beyond the scope of this introductory desk study⁵⁴ and there is little prior research from which to draw conclusions in this area.⁵⁵ As noted above, the International Law Commission has recently decided to begin examining the legal issues in disaster relief, and the existence of customary law will likely figure large in its inquiry.

1.3.2 Which disasters?

The term “disaster” has been defined in many ways by scholars of various disciplines⁵⁶ and the development and humanitarian communities. It is now widely recognized that all of the varying approaches to the term are imbued with particular political, ideological, cultural and other biases⁵⁷ and a definitive settlement of “what disaster means” appears unlikely anytime soon. As two scholars noted in a recent publication on this topic, “the more we know about specific disasters, the more definitions of disaster are registered in the literature.”⁵⁸

International normative instruments have also approached “disaster” in various ways. Some do so narrowly, focusing exclusively on events of a particular type (e.g., nuclear emergencies⁵⁹ or oil pollution⁶⁰) or category (e.g., natural disasters⁶¹ or industrial accidents⁶²). Some others have deliberately rejected the term “disaster” due to its uncertain nature⁶³ or used it without providing a definition.⁶⁴ However, there seems to be a tendency in newer international instruments to view and define the term “disaster” quite broadly.

For example, in 1998, the Tampere Convention defined “disaster” as “a serious disruption of the functioning of society, posing a significant, widespread threat to human life, health, property or the environment, whether caused by accident, nature or human activity, and whether developing suddenly or as the result of complex long-term processes.”⁶⁵ That same year, the Agreement among the Governments of the Participating States of the Black Sea Economic Cooperation on collaboration in Emergency Assistance and Emergency Response in Natural and Man-Made Disasters of 1998 (hereinafter “the BSEC Agreement”) deemed “disaster” “an event in a definite area that has occurred as a result of an accident, hazardous natural phenomena, catastrophe, natural or man-made, which may or have caused significant physical, social, economic and cultural damage to human lives or environment.”⁶⁶ In 2000, the International Civil Defence Organization’s Framework Convention on Civil Defence Assistance (hereinafter, “the Framework Convention on Civil Defence”) offered this brief definition: “an exceptional situation in which life, property or the environment may be at risk.”⁶⁷ Most recently, in 2005, the ASEAN Agreement on Disaster Management and Emergency Response (hereinafter, “the ASEAN Agreement”) determined that “disaster” “means a serious disruption of the functioning of a community or a society causing widespread human, material, economic or environmental losses.”⁶⁸ Some additional legal definitions are listed below in Box 1.

For its part, the international humanitarian community has also adopted a broad approach to the term disaster in policy documents. For example, in 1992, an “Agreed Glossary of Basic Terms Related to Disaster Management” prepared by the United Nations Department of Humanitarian Affairs (DHA) (a predecessor to the Office for the Coordination of Humanitarian Affairs (OCHA)) defined disaster as “[a] serious disruption of the functioning of society, causing widespread human, material or en-

Box 1: Some international definitions of “disaster”

“Disaster means a serious disruption of the functioning of society, posing a significant, widespread threat to human life, health, property or the environment, whether caused by accident, nature or human activity, and whether developing suddenly or as the result of complex long-term processes.”

Tampere Convention, 1998, art. 1

“Disaster... A serious disruption of the functioning of society, causing widespread human, material or environmental losses which exceed the ability of affected society to cope using only its own resources.”

UN DHA, Agreed Glossary of Basic Terms, 1992

“‘Disaster’ means the sudden event attributable directly and solely either to the operation of the forces of nature or to human intervention or to both of them and characterised by widespread destruction of lives or property accompanied by extensive dislocation of public services, but excluding events occasioned by war, military confrontation or mismanagement.”

CDERA Agreement, 1991 art. 1(d)

“A disaster is a calamitous event resulting in loss of life, great human suffering and distress, and large scale material damage.”

Red Cross/Red Crescent and NGO Code of Conduct, 1995

“The term ‘natural or technological disaster’ means a situation of great distress involving loss of human life or large-scale damage to property, caused by a natural phenomenon, such as a cyclone, tornado, earthquake, volcanic eruption, flood or forest fire, or by a technological accident, such as pollution by hydrocarbons, toxic or radioactive substances.”

International Space Charter, 1999, art. 1

“‘Disaster’ is an exceptional situation in which life, property or the environment may be at risk.”

Framework Convention on Civil Defence, 2000, art. 1(c)

vironmental losses which exceed the ability of affected society to cope using only its own resources.”⁶⁹ Variants of this definition remain in active use by UN agencies⁷⁰ and other humanitarian actors.

Accordingly, this study also adopts a broad approach to disaster, looking at legal issues of operations in both sudden-onset events (such as earthquakes, typhoons, fires, and particularly volatile diseases) and slow-onset events (such as droughts, creeping floods, and slow-spreading disease), and in so-called “natural”⁷¹ and “man-made” disasters.

Like the approaches in the above instruments, it will not focus on incidents that do not pose a widespread threat to a society, such as airplane or naval emergencies or individual traffic accidents. Unlike these definitions, however, it will expressly exclude “armed conflict” as a type of “disaster” to be examined (except tangentially, in its discussion in Chapter 15 of situations when disasters arise in the context of a conflict).⁷² This is because there is already a comprehensive global legal framework of IHL, including the Geneva Conventions of 1949 and their three Additional Protocols, which governs humanitarian assistance in conflict. The ICRC, which has a universally recognized role as “guardian” and promoter of IHL,⁷³ is actively pursuing initiatives to expand and consolidate IHL and its impact.⁷⁴ Moreover, there is a formidable array of legal research and writing ongoing in this area in universities, research institutes and other fora across the globe. Finally, there are important differences between the context of conflict and peacetime disaster, as discussed in chapter 15.

1.3.3 Which activities?

This study will address disaster preparedness, emergency relief, recovery and rehabilitation. This is a fairly broad scope of activities, and the same rules do not and should not necessarily apply to each stage. However, it quickly became plain in the initial research for the IDRL programme that the scope of its inquiry had to extend beyond the immediate period after a disaster when emergency relief is provided. While a number of existing international legal instruments⁷⁵ are specifically focused on this brief period, many others extend well beyond.⁷⁶ More importantly, as noted by a number of respondents to the IDRL survey, many of the most troublesome legal problems that arise in disaster operations do so not in the initial days but in the several weeks or months that follow, as “normal” rules of business re-emerge, and the consequences of faulty mechanisms of coordination, quality and accountability become more apparent.⁷⁷

It is not always easy to distinguish between recovery/rehabilitation and development. Ensuring an effective continuum of disaster response, which includes development elements from the beginning and which guarantees a smooth transition between relief and development work has been a major goal of the international community in recent years.⁷⁸ A major disaster can have enormous and extremely long-lasting effects on a society, such that subsequent efforts to encourage development must take it into account; likewise, recovery efforts must take long-term development goals into account. Still, at some point, a line is crossed, and existing international instruments do acknowledge a boundary between disaster response and general development.⁷⁹

This dividing line is particularly important for humanitarian actors (i.e., organizations operating according to humanitarian principles, such as those described in the Red Cross Red Crescent NGO Code of Conduct), as their claim for access and “humanitarian space” rests on their independence and commitment to respond impartially, neutrally and solely on the basis of critical need. In contrast, development aid must be intimately tied to the domestic political process of setting long-term goals for the future of the nation.

Chapter 2

Historical and operational context

As described below, the current international legal regime for disaster response is characterized by a rather dispersed framework of bilateral, regional and international instruments. This is in strong contrast to the centralized regime that has developed for armed conflict under the Geneva Conventions of 1949 and their Additional Protocols. To understand why, it is helpful to review a few indicative historical milestones in this area. It is also important to bear in mind recent trends in the evolution of disasters and the international disaster relief community.

2.1 Early origins

Just as legal historians can trace the origins of IHL to ancient rules and practices concerning the conduct of war,⁸⁰ there are early precedents for international relief in peacetime. For example, although very much connected with the crusades, in the 12th Century, the Order of the Knights of St. John of Jerusalem formed a non-military branch concerned with care for the wounded and sick in both war and peace.⁸¹ Likewise in 1758, Swiss diplomat and legal scholar Emer de Vattel wrote of the duty of states to come to the assistance of others experiencing famine, asserting that “assisting in such a dire situation is so central to humanity that no civilized nation would fail entirely to do so.”⁸²

Nevertheless, as in the case of IHL, serious attempts to codify international law in this area did not begin until the 19th century. Starting in the mid-1800s, treaties began to be developed to regulate telecommunications, which also set out rules for priority access for emergency communications⁸³ and to combat the cross-border spread of diseases.⁸⁴ Likewise, in the early part of the 20th century, a number of maritime treaties established emergency rules for vessels in distress.⁸⁵

2.2 The International Relief Union

In 1921, Giovanni Circolo, a senator and president of the Italian Red Cross Society, began to promote the idea of developing an intergovernmental organization to ensure international assistance to victims of natural disasters.⁸⁶ A resolution from that year by the 10th International Conference of the Red Cross encouraged state parties to the 1864 Geneva Convention to develop a new treaty on the role of the Red Cross in disaster relief, but did not specifically address Circolo’s suggestion of creating a new organization.⁸⁷ However in 1922, the League of Nations formally took up the proposal and, after several years of consultations, a conference of 43 states adopted the Convention and Statutes Establishing an International Relief Union in 1927.⁸⁸

The Convention set out two core objectives for the new Union (IRU):

- (1) In the event of any disaster due to force majeure, the exceptional gravity of which exceeds the limits of the powers and resources of the stricken people, to furnish to the suffering population first aid and to assemble for this purpose funds, resources and assistance of all kinds;

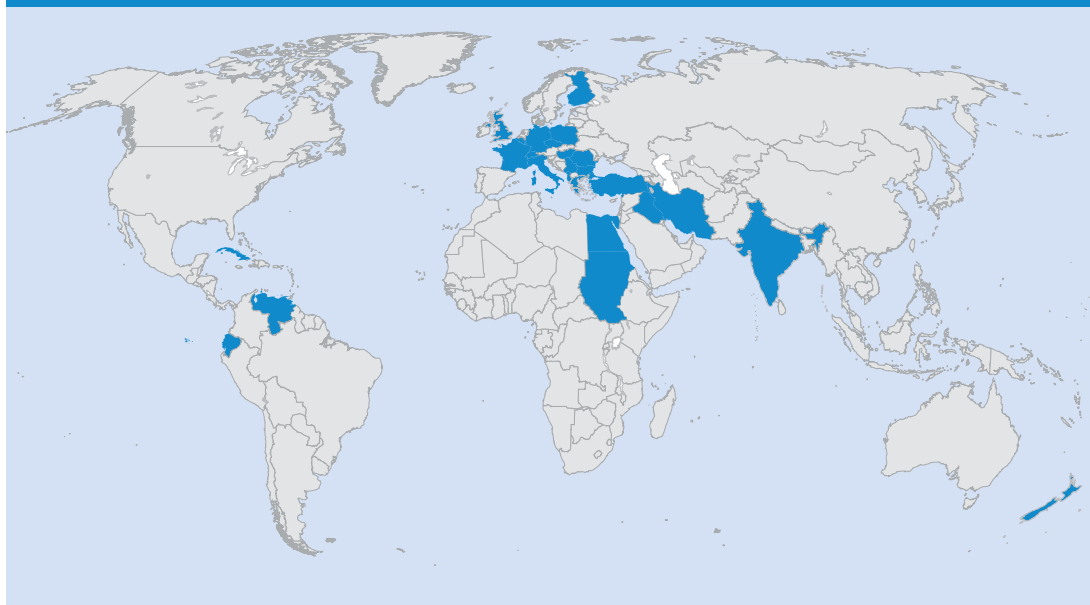


UNOG Archives/UNOG Library

(2) In the event of any public disaster, to co-ordinate as occasion offers the efforts made by relief organisations, and, in a general way, to encourage the study of preventive measures against disasters and to induce all peoples to render mutual international assistance.⁸⁹

Thus, the IRU was meant to be (1) a centralized operational agency, funnelling international funds and support in disaster settings; (2) a coordinator of other actors; and (3) a promoter of study and research on disaster management. It was to be directed by a General Council, consisting of delegates of all member states, which additionally appointed a seven-member Executive Committee for operational management.⁹⁰

State parties to the International Relief Union as of 1935



The IRU's scope of activity was limited to disasters occurring in the territories of member states (or those likely to affect them) and it was required to obtain the consent of the affected state government for any action.⁹¹ The term "disaster" was not defined by the Convention, except by the vague qualifier "force majeure". As originally proposed by Ciralo, the Convention would have expressly applied to natural and man-made disasters, including armed conflict, however this language was rejected over the course of drafting consultations.⁹² The resulting ambiguity was never clearly resolved,⁹³ although at one point the British Government called on the IRU to intervene on behalf of the victims of the Spanish Civil War.⁹⁴

Ciralo also originally envisaged the IRU as a sort of global mutual insurance scheme, with substantial annual financial contributions from state parties.⁹⁵ However, this idea was jettisoned in the drafting process due to an overriding concern to keep the costs of the endeavour as low as possible. In its final text, the Convention envisaged that the IRU would receive only a single and relatively modest obligatory contribution from all new member states, followed by ongoing authority to receive voluntary grants from governments and private actors.⁹⁶ Moreover, rather than providing for a dedicated secretariat, the Convention and Statute invited National Red Cross Societies to carry out the work of the IRU

in the field (and thus benefit from its inter-governmental privileges and immunities) and called upon the international components of the Red Cross Movement to provide it headquarters secretariat services, all under the direction of the Executive Committee.⁹⁷

The Convention entered into force in 1932 and eventually attracted 30 state parties. However, the IRU was never able to effectively carry out its mission, due mainly to the crippling lack of funds incident to its inability to command regular contributions from member states.⁹⁸ It intervened in two disasters and sponsored some scientific studies, but with the crumbling of the League of Nations and withdrawal of support of the Red Cross in the late 1930s, the IRU effectively died.⁹⁹ Its official existence lingered for many years, only ending with the transfer of its research promotion responsibilities to UNESCO in 1967.¹⁰⁰

Some of the blame for the failure of the IRU can be attributed to bad timing, arriving just as Europe was embarking on the road to World War II.¹⁰¹ However, an enduring lesson that can be drawn from the IRU experience is the supreme difficulty - even in the waning days of Wilsonian idealism - of persuading the international community to funnel all financial support and coordinating authority for disaster relief into a single agency.¹⁰² One prominent scholar has speculated that the IRU's principal weakness could have been "pretend[ing] too soon to universality",¹⁰³ but it might also be concluded that "universality" is simply unlikely ever to prevail in this area,¹⁰⁴ particularly in light of the ever more diverse disaster response community, as described below.

After the failure of the IRU, international law on disaster relief developed in a fragmented manner, through the assignment of institutional mandates to various international agencies, the development of bilateral agreements between states (particularly in the periods following World War II¹⁰⁵ and in the 1970s¹⁰⁶), the inclusion of specific provisions in treaties in various sectors, such as sea transport and customs and dedicated resolutions and declarations in various international forums, as discussed in Part II.

2.3 The Draft Convention on expediting the delivery of emergency assistance

The next attempt to create a comprehensive international legal regime for disaster assistance did not come until fifty years after the de facto demise of the IRU, when the Office of the United Nations Disaster Relief Coordinator (UNDRO) – predecessor to the present-day Office for the Coordination of Humanitarian Affairs (OCHA) – proposed a draft "Convention on Expediting the Delivery of Emergency Assistance" (hereinafter, "the Draft Convention") to the UN Economic and Social Council (ECOSOC). Reflecting the very different institutional realities of the day, this attempt eschewed a centralized approach and focused instead on smoothing the technical barriers to relief operations.

The Draft Convention followed on a joint study conducted by UNDRO and the League of Red Cross Societies in 1976 about the legal problems in international disaster relief operations.¹⁰⁷ That study led to the development of a set of non-binding "Measures to Expedite International Relief" (discussed in greater detail below) that were adopted by both the International Conference of the Red Cross and ECOSOC in 1977. In 1982, UNDRO invited a consultant to prepare a new study of remaining problems and to report back with recommended solutions. On the basis of the consultant's findings,

UNDRO determined that a convention would be necessary and proposed a draft text to ECOSOC in 1984 with the request that it “decide on a further review by a group of governmental experts.”¹⁰⁸

The Draft Convention’s scope was limited to natural and man-made disasters, defined so as to exclude an “ongoing situation of armed conflict.”¹⁰⁹ However, it sought to encompass a broad range of actors, including assisting states, intergovernmental organizations, and both international and national NGOs.¹¹⁰ It laid out detailed means by which “receiving states” should facilitate the entry and operation of international relief operations, including through the expeditious granting of visas and waiver of work permits, reduced and simplified customs procedures, exemption from duties, taxes and charges, facilitation of transport and overflight and similar measures. It also required aid providers to respect the sovereignty of the receiving state, obey local laws cooperate with authorities, abstain from political and commercial activities, and ensure that their assistance was both appropriate to the assessed needs and compliant with domestic quality, health and other standards.

The Draft Convention did not go far. ECOSOC referred the text to the UN’s 2nd Committee,¹¹¹ which, despite expressions of support from several states,¹¹² never took official action on it. Among those opposed to the Draft Convention were the German Democratic Republic (GDR) on the one side, and the League of Red Cross Societies and the ICRC on the other. For the GDR, existing bilateral and multilateral arrangements would be sufficient to improve the effectiveness of relief, so long as “certain States should cease to use emergency relief as a coercive measure against the progressive policies of the States concerned.”¹¹³ For their part, the League and the ICRC feared, on the contrary, that the Draft Convention over-emphasized the sovereignty and control of receiving states.¹¹⁴ The record is less clear as to why other states declined to take the Draft Convention any further, but it has been speculated that it was “premature”.¹¹⁵

Since the 1980s, there have been a large number of sectoral and regional treaties adopted on disaster response, but none with the universal scope to which the Draft Convention aspired. One somewhat analogous initiative began in 2000 when it was suggested that consideration be given to enhancing international law on coordination, standards and access issues for international urban search and rescue teams.¹¹⁶ OCHA convened an inter-governmental group of experts, the “International Search and Rescue Advisory Group” (INSARAG), which produced a set of guidelines, but the corresponding attempt to develop a treaty could not find agreement. Instead, a non-binding resolution was prepared and adopted by the UN General Assembly (Resolution No. 57/150 of 2002), as discussed further below.

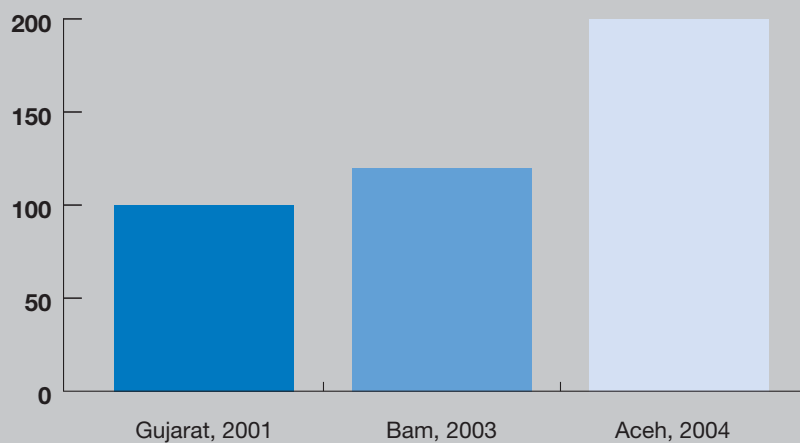
2.4 Growth of the international disaster response community

The absence of a centralized regime or institution for disaster relief has favoured the development of a large and diverse international disaster relief community. The face of this community has changed dramatically, not only between the time of the development of the IRU and the Draft Convention, but particularly from 1984 to the present day. As has traditionally been the case, a great deal of international assistance is still provided by states bilaterally,¹¹⁷ but the way that governmental aid is delivered has evolved and there are now many additional actors involved whose numbers have been growing at an exponential pace in recent years.

As noted by Dr. Peter Macalister-Smith, “[t]he first large scale international relief work in cases of natural disasters, organized on a basis of permanent readiness, was undertaken by the Red Cross movement at the end of the 19th century.”¹¹⁸ The organization of National Red Cross Societies into an international “League of Red Cross Societies” in 1919 expanded their capacity to undertake international disaster assistance activities, which were soon involving dozens of National Societies as well as the international components of the Movement.¹¹⁹ This was accompanied by the development of other international relief initiatives and organizations, such as the very successful but short-lived Commission for Relief in Belgium which operated from 1914 to 1919; Caritas Internationalis, begun in 1897, the Save the Children Fund, formed in 1919; and the Lutheran World Convention (forerunner to the Lutheran World Federation) created in 1923.¹²⁰

After the failure of the IRU and the vast upheavals generated by World War II, these organizations were joined on the humanitarian scene by the United Nations.¹²¹ This initially included agencies such as United Nations Relief and Rehabilitation Administration (UNRRA), United Nations High Commissioner for Refugees (UNHCR), Food and Agriculture Organization (FAO), and the United Nations Children’s Fund (UNICEF). These were later joined by the United Nations Development Programme (UNDP), World Food Programme (WFP), the predecessor entities to OCHA and a number of other UN bodies now more or less regularly involved in disaster relief and recovery.¹²² For its part, the International Red Cross and Red Crescent Movement has also greatly expanded, with National Societies now in nearly every country, tens of millions of active volunteers, and increasing involvement of both National Societies and the International Federation Secretariat in international disaster response operations.¹²³

Figure 1: Numbers of international NGOs responding to disasters



NGO growth has been particularly dramatic since the 1980s. Estimates of the current numbers of established international NGOs specifically focused on humanitarian relief reach into “the hundreds,” though only a few receive the overwhelming majority of government donor funding.¹²⁴ However, with the increasing power and attention of the media directed at large disasters, the phenomenon of purpose-formed NGOs to respond to a particular disaster (mainly funded by private donations) has become

more familiar.¹²⁵ Likewise, the most visible large-scale disasters have drawn in large numbers of NGOs normally focused on general development or on “complex emergencies” (i.e., armed conflict).¹²⁶ Thus, for example, nearly 100 international NGOs reportedly responded to the 2001 earthquake in Gujarat, India,¹²⁷ 120 responded to the 2003 earthquake in Bam, Iran,¹²⁸ and over 200 arrived in Banda Aceh, Indonesia after the 2004 tsunami,¹²⁹ as illustrated in Figure 1. The trends indicate that this growth will likely continue. As noted in one recent evaluation of the sector:

NGOs are likely to continue to grow in number and importance. It is unlikely that the growth in the number of NGOs, which multiplied in the first post-Cold War decade, will subsist [sic] anytime soon. Indeed, every indication suggests that the growth will continue and the field will become increasingly crowded. The recommendation that NGOs practice birth control is unlikely to be taken seriously. There is something about the humanitarian imperative that makes it difficult to “just say ‘no’.”¹³⁰

Moreover, less traditional actors are also increasing their participation in international disaster response. The role of foreign militaries in disaster relief is on the rise, as evidenced by the 34 national militaries that responded to the 2004 tsunami,¹³¹ and the increasingly prominent role of NATO in disaster-only operations, including Hurricane Katrina in the United States and the October 2005 earthquake in Pakistan.¹³² Likewise, corporate actors are becoming more interested in disaster relief, in both profit- and “charity”-oriented ways.¹³³ Several large companies, such as IBM and Ericsson, have gone so far as to establish permanent offices for disaster-related activities.¹³⁴ Many private companies are beginning to specialize in performing paid services in areas such as health, education, and sanitation in disaster- and conflict-affected countries that were formally offered mainly by humanitarian organizations.¹³⁵ Charitable interest from the private sector was particularly evident in the response to the 2004 tsunami, which “resulted in an unprecedented influx, at all levels of the relief effort, of goods and services from the corporate business community.”¹³⁶ Finally, private individuals are responding in increasing numbers by sending items they feel might be useful to disaster victims and in some cases even travelling to disaster sites themselves to lend their support.¹³⁷

It should be emphasized, however, that not every disaster draws a flood of responders. The vast majority of disasters, even those with large local impacts, are addressed solely by domestic actors.¹³⁸ Other major disasters, for which international support is sorely needed, receive scant attention.¹³⁹ Although widely decried, this arbitrary “feast or famine” in the availability of international relief has thus far persisted despite years of efforts to rationalize the system.

The growing size and diversity of the international response to disasters has important ramifications for the facilitation, coordination and quality of relief efforts. This was acknowledged by the ECOSOC in 2004, which cautioned about “the need to ensure that this multiplication of actors does not detract from the effectiveness of the humanitarian response and the neutrality and independence of humanitarian assistance.”¹⁴⁰ It has even been argued that “there is no international relief system per se, as the diverse set of actors displays little structural interdependence [and lacks] a common boundary, other than the fact that each component may on occasion contribute to the relief process.”¹⁴¹

However, it should be recognized that international coordination efforts, particularly among and between the UN, the International Red Cross and Red Crescent Movement, and the NGO community, have become increasingly sophisticated. These include:

- the efforts of OCHA and other UN agencies to improve the gathering, analysis and sharing of relevant information and enhance cooperation in relief activities, advocacy and fundraising (for example, through promotion of the “clusters” initiative described in Chapter 14);¹⁴²
- the development of clear coordination rules and mechanisms within the International Red Cross and Red Crescent Movement, such as the Seville Agreement of 1997¹⁴³ and International Federation’s “Operational Alliances” initiative of 2006;¹⁴⁴
- the creation of international NGO networks, such as the International Council of Voluntary Agencies (ICVA),¹⁴⁵ Interaction,¹⁴⁶ Disasters Emergency Committee (DEC),¹⁴⁷ Steering Committee for Humanitarian Response (SHCR), Asian Disaster Reduction and Response Network (ADRRN),¹⁴⁸ and Voluntary Organizations in Cooperation in Emergencies (VOICE)¹⁴⁹ to develop common approaches; and
- the establishment of the Inter-Agency Standing Committee (IASC), as a joint policy and dialogue forum for all of these actors.¹⁵⁰

Nevertheless, many challenges remain, particularly with regard to the interaction of the diverse international community with governments and other domestic actors in affected states.

2.5 Growth in the incidence of disasters

Part of the explanation for the growth of the international relief community may be the rise in the numbers and impacts of disasters themselves. While comparative figures suffer from a lack of systematic registration prior to the mid-20th century,¹⁵¹ there is no denying the substantial upward trend, particularly in the last few decades. In the decade of the 1970s, there were 1,231 reported disasters.¹⁵² That number rose in every subsequent decade and, for the six years from 2000 to 2006 alone, it had reached 5,287. This trend is likely to continue, in particular due to the effects of climate change, which the Intergovernmental Panel on Climate Change has recently concluded will probably lead to increased instances of extreme temperatures, drought, heavy precipitation and cyclones, among other disasters.¹⁵³

Fortunately, this trend has not resulted in an increase in mortality. On the contrary, deaths due to disasters fell from approximately 1.7 million in the 1970s to slightly over 741,000 in the 1990s. However, the number of persons affected (*i.e.*, those who might be in need of relief and recovery assistance) has increased substantially. In the 1970s, disasters affected slightly over 780 million people. In the 1990s, they affected over 1.9 billion. From 2000–2006 alone, the figure was over 1 billion.

Only a very small fraction of these disasters have required, or resulted in, international relief efforts. Nevertheless, as the overall trends have risen, there has also been an appreciable affect on international assistance. Thus, for example, in the 1970s, the International Federation issued 191 appeals for international disaster relief assistance. In the 1990s, that number had increased to 595.

Part II: Overview of current legal frameworks applicable to international disaster response



Chapter 3

Global international law and norms

While no central treaty regime has been created for international disaster response, it is not the case that international law has been silent on the topic. On the contrary, following the demise of the IRU in the 1930s, international law on disaster relief has developed at the global level on separate tracks in many sectors or areas of international law, as well as in many “soft law” instruments, such as resolutions, declarations, codes, models, and guidelines, that are not formally binding but nevertheless exercise varying levels of moral authority as evidence of international consensus and/or best practice.

3.1 Areas of international law relevant to international disaster response¹⁵⁴

3.1.1 Institutional mandates

Though they cannot be examined here in any depth,¹⁵⁵ a number of global institutions have legal mandates relevant to international disaster relief and recovery and these form part of the fabric of existing IDRL. Article 1 of the United Nations Charter lists fostering international cooperation in solving humanitarian problems among the organization’s primary purposes, and several individual entities within the UN secretariat and among the specialized agencies have particular mandates in this area, either through resolutions of the General Assembly or separate treaty. These include OCHA,¹⁵⁶ WFP,¹⁵⁷ FAO,¹⁵⁸ UNICEF,¹⁵⁹ the World Health Organization (WHO),¹⁶⁰ UNDP,¹⁶¹ the United Nations Environmental Programme (UNEP),¹⁶² and UNHCR¹⁶³ (as discussed further below), among others. There are also a number of non-UN intergovernmental organizations at the global level with relevant formal mandates, such as the International Organization for Migration (IOM),¹⁶⁴ the International Civil Defence Organization (ICDO)¹⁶⁵ (as discussed further below), and the World Bank.¹⁶⁶

International humanitarian NGOs also have strong missions to address humanitarian need, however their mandates are self-created by their membership and have not been individually endorsed by states in the same way as those of inter-governmental organizations (though the collective role of NGOs in international disaster response has been repeatedly recognized in UN resolutions and other instruments).¹⁶⁷ For its part, the mandate of the International Red Cross and Red Crescent Movement in disaster relief is also self-created at its origin, but it has additionally been specifically endorsed by states at the international level through their approval of the Statutes of the Movement at the International Conference of the Red Cross and Red Crescent.¹⁶⁸

While an official mandate does not provide a very complete answer to the legal access questions discussed later in this study, it can be an important means of establishing legitimacy and acceptability of an agency’s offers of assistance, both with regard to affected states and potential donors.¹⁶⁹

3.1.2 Human rights law

Within the body of human rights law,¹⁷⁰ only two binding instruments make direct reference to disaster assistance. Article 23 of the African Charter on the Rights and Welfare of the Child of 1990¹⁷¹ provides in relevant part that states shall take “all appropriate measures” to ensure that refugee children as well as “internally displaced children whether through natural disaster, internal armed conflicts, civil strife, breakdown of economic and social order or howsoever caused” receive “appropriate protection and humanitarian assistance in the enjoyment of the rights set out in this Charter and other international human rights and humanitarian instruments to which the States are Parties.” Likewise, when it enters into force, the recently adopted International Convention on the Rights of Persons with Disabilities of 2006 will require state parties to take “all necessary measures to ensure protection and safety of persons with disabilities in situations of risk, including situations of armed conflict, humanitarian emergencies and the occurrence of natural disasters.”¹⁷²

However, there are many other treaties (notably the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights (“CESCR”)) that set out rights germane to disaster relief and recovery assistance, such as the rights to life,¹⁷³ food and water,¹⁷⁴ housing,¹⁷⁵ clothing,¹⁷⁶ health,¹⁷⁷ livelihood,¹⁷⁸ and freedom from discrimination,¹⁷⁹ among others.

The human rights treaty bodies¹⁸⁰ consider that states have three levels of obligation with respect to each human right: the duty to respect (i.e. refraining from itself violating them), protect (i.e. protecting rights-holders from violations by third parties) and fulfil (i.e. undertaking affirmative actions to strengthen access to the right). Thus, for example, the Human Rights Committee has asserted that it is not a sufficient observance of the right to life for a state to avoid arbitrarily executing its own citizens, or to protect citizens against private violence; it must also take positive measures to reduce mortality, such as measures to “eliminate malnutrition and epidemics.”¹⁸¹ The Committee’s reasoning thus implies an obligation to allow access to international humanitarian relief when national efforts are insufficient to avoid loss of life.¹⁸²

The Committee on Economic Cultural and Social Rights has made this more explicit in the context of economic and social rights. For example, in General Comment No. 12, the Committee determined that the right to food implies a core right to be free of hunger, which is violated if hunger exists on a state’s territory and it cannot show that it has made “every effort” to address it immediately, including by seeking international assistance, as quoted below in Box 2.¹⁸³ Likewise, “the prevention of access to humanitarian food aid in internal conflicts or other emergency situations” is a violation of the right to food.¹⁸⁴ Thus, even though economic and social rights like the rights to food, housing and health, are generally considered subject to “progressive realization” over time,¹⁸⁵ it would be inappropriate for a state to simply throw up its hands in the face of a crisis when international assistance would be available.¹⁸⁶

Moreover, though still subject to debate,¹⁸⁷ the existence of a general right to humanitarian assistance arising from these and other human rights instruments has also been asserted by some legal experts and supported by “soft law” instruments.¹⁸⁸ For the International Red Cross and Red Crescent Movement, at least, the question has long been settled. The Principles and Rules of the Red Cross Red Crescent Movement in Disaster Relief, as amended by the International Conference of the Red Cross and

Box 2: The right to humanitarian assistance

“The Red Cross and Red Crescent in its endeavour to prevent and alleviate human suffering, considers it a fundamental right of all people to both offer and receive humanitarian assistance.”

Principles and Rules of Red Cross and Red Crescent Disaster Relief (1995), para. 2.1

“States in whose territories... emergency situations exist should not arbitrarily reject... offers of humanitarian assistance.”

Institute of International Law, Resolution on the Protection of Human Rights and the Principle of Non-intervention in Internal Affairs of States 1989, art. 5

“Should a State party argue that resource constraints make it impossible to provide access to food for those who are unable by themselves to secure such access, the State has to demonstrate that every effort has been made to use all the resources at its disposal in an effort to satisfy, as a matter of priority, those minimum obligations.”

Committee on Economic Social and Cultural Rights, General Comment 12, para. 17 (1999)

Red Crescent in 1995 (including both state and Red Cross/Red Crescent actors), provides that the Movement “considers it a fundamental right of all people to both offer and receive humanitarian assistance.”¹⁸⁹

In general, the primary duty-bearer with regard to the human rights of persons affected by disasters would be considered to be the government of the affected state, whether it acts entirely on its own resources or with the help of outside actors.¹⁹⁰ However, there are some sources that also assert human rights responsibilities for international actors.

For instance, the Committee on Economic, Social and Cultural Rights has stated that, pursuant to article 11 of the CESCR, “States parties should take steps to respect the enjoyment of the right to food in other countries, to protect that right, to facilitate access to food and to provide the necessary aid when required,” and that “food aid should, as far as possible, be provided in ways which do not adversely affect local producers and local markets, and should be organized in ways that facilitate the return to food self-reliance of the beneficiaries. Such aid should be based on the needs of the intended beneficiaries. Products included in international food trade or aid programmes must be safe and culturally acceptable to the recipient population.”¹⁹¹ It further insisted that “States have a joint and individual responsibility, in accordance with the Charter of the United Nations, to cooperate in providing disaster relief and humanitarian assistance in times of emergency[.]”¹⁹²

In 2006, the IASC adopted a set of Operational Guidelines on Human Rights and Natural Disasters, providing detailed recommendations as to “what humanitarian ac-

tors should do to implement a rights-based approach to humanitarian action in the context of natural disasters.”¹⁹³ The Guidelines provide that “international humanitarian organizations, while not directly bound by international human rights treaties, accept that human rights underpin all of their actions.”¹⁹⁴ They should thus endeavour to respect those rights in their own actions, promote their respect by relevant authorities, and strive to enable affected persons to exercise their own rights.¹⁹⁵ The Guidelines then set out a series of actions humanitarian actors should take with regard to the protection of life, security of the person, physical integrity and dignity, protection of rights related to the basic necessities of life, protection of other economic, social and cultural rights and protection of civil and political rights.

3.1.3 International humanitarian law

IHL is generally limited in application to situations of armed conflict, which, as noted above, is not included as a “disaster” for purposes of this study. However, there are a few exceptions to this general rule. For instance, the Geneva Conventions and their Additional Protocols guarantee the indicative use by National Red Cross and Red Crescent Societies and national civil defence authorities of their respective emblems and signs both in times of peace and war.¹⁹⁶ Moreover, when “natural” disasters coincide with a situation of armed conflict (as discussed below in section 15.2), IHL will apply and prevail over other types of law as a matter of *lex specialis*. In any event, it is instructive to look to IHL by way of analogy where it addresses the same issues confronted by IDRL, particularly in light of the fact that some of the origins of IDRL can be traced to the rise of IHL.

Article 59 of the Fourth Geneva Convention, states that, “if the whole or part of the population of an occupied territory is inadequately supplied, the Occupying Power shall agree to relief schemes on behalf of the said population and shall facilitate them by all the means at its disposal.”¹⁹⁷ Subject to a right of control, both the occupying power and all other contracting parties are required to “permit the free passage” of relief consignments from “impartial humanitarian organizations,” including the ICRC, and “guarantee their protection.”¹⁹⁸ As pointed out by the ICRC’s Commentary to the Fourth Geneva Convention, the requirement to accept such relief when it is needed is “unconditional”.¹⁹⁹

Similar duties are expressed in articles 70 of the First Additional Protocol concerning non-occupied territory of states in international conflicts and 18 of the Second Additional Protocol²⁰⁰ on internal conflict, but are conditioned on the consent of the parties concerned. The Commentary on these sections asserts that such consent may not be arbitrarily withheld, as the offending party would otherwise necessarily be using starvation as a method of war, a specifically prohibited act.²⁰¹

With regard to the mechanics of offering such assistance, article 30 of the Fourth Geneva Convention provides that humanitarian organizations shall be “granted all facilities” needed to provide assistance “within the bounds set by military or security considerations” and civilians requiring such assistance shall also have “every facility” to request and receive it. Similar language is employed in article 142 with regard to relief sent to detained persons,²⁰² though that section also provides that parties may control the numbers of societies and organizations involved in providing relief so long as the limitation does not hinder the supply of relief. Article 61 of the Fourth Geneva

Convention requires that relief consignments be “exempt in occupied territory from all charges, taxes or customs duties unless these are necessary in the interests of the economy of the territory” and that the Occupying power “facilitate the[ir] rapid distribution[.]” The Commentary on this section notes that the limit to the exemption from charges, taxes and duties was included to apply to “certain relief consignments not being gifts but being sent against payment, under a long-term arrangement between governments” and that states should therefore regard it as “absolutely exceptional, since to grant absolute exemption from all charges is really the only way of acting in the true spirit of relief actions[.]”²⁰³

On a similar note, the Commentary on article 70 of the First Additional Protocol further states that the intention behind the requirement in that provision of “rapid and unimpeded passage” was

to avoid any harassment, to reduce formalities as far as possible and dispense with any that are superfluous. Customs officials and the police in particular should receive instructions to this effect. The passage referred to may take place over land, water, or by air. However, the speed of the passage and whether it takes place unimpeded depends on local circumstances. Thus the obligation imposed here is relative: the passage of the relief consignments should be as rapid as allowed by the circumstances.²⁰⁴

More specialized facilities are provided in article 23 of the Fourth Geneva Convention for expediting consignments – from whatever source – of “medical and hospital stores and objects necessary for worship” as well as for other relief items destined for “children under fifteen, expectant mothers and maternity cases”. Likewise, both articles 74 of the Third Geneva Convention and 110 of the Fourth Geneva Convention, specifically call for relief consignments sent to detained persons to be exempt from all “import customs and other dues.”

In a comprehensive study of customary international humanitarian law published in 2005, the ICRC found that many of the above-described rules have also become rules of customary law, binding in both international and internal conflicts. For example, it concluded that: “[t]he parties to the conflict must allow and facilitate rapid and unimpeded passage of humanitarian relief for civilians in need, which is impartial in character and conducted without any adverse distinction, subject to their right to control;”²⁰⁵ the parties to the conflict “must ensure the freedom of movement of authorized humanitarian relief personnel essential to the exercise of their functions” subject only to temporary restrictions due to military necessity;²⁰⁶ and humanitarian relief personnel and objects “must be respected and protected.”²⁰⁷ While acknowledging that it is “self-evident that a humanitarian organisation cannot operate without the consent of the party concerned[.]” the study asserts that “such consent must not be refused on arbitrary grounds.”²⁰⁸

3.1.4 Refugee and IDP law

Like IHL, refugee law is not normally associated with disasters. Indeed, the definition of “refugee” provided by the Convention Relating to the Status of Refugees of 1951 (hereinafter, “the Refugee Convention”)²⁰⁹ and its 1969 Protocol²¹⁰ is addressed solely to persons fleeing the threat of persecution. Even the expanded definitions of the Con-

vention Governing the Specific Aspects of Refugee Problems in Africa of 1969²¹¹ and the Cartagena Declaration on Refugees of 1984²¹² refer only to flight from human factors, such as armed conflict, external aggression, disturbances of public order and, in the latter instrument, generalized violence and massive human rights violations.²¹³ While some advocates have called for the expansion of international protection to so-called “environmental refugees,”²¹⁴ this suggestion has not yet found general support.²¹⁵

Still, refugee law can be considered relevant to this study inasmuch as (1) refugees can be affected by disasters in their states of residence and have rights under refugee law relevant to international disaster relief and recovery operations and (2) a massive influx of refugees might itself constitute a “disaster”, pursuant to modern definitions described above, in the sense that it can precipitate a humanitarian crisis in the receiving state, requiring international support.

With regard to the first point, the Refugee Convention provides that refugees are to be provided the same treatment accorded to nationals with regard to rationing systems and public relief, and treatment no worse than that provided to any other alien in a number of other areas relevant to disaster relief, including employment, housing and freedom of movement.²¹⁶

With regard to the second point, it is useful to note that, pursuant to each of the refugee instruments cited above,²¹⁷ states are required to cooperate with UNHCR, whose core mandate is international protection and the search for durable solutions for refugees and other “persons of concern.”²¹⁸ Moreover, both the United Nations General Assembly²¹⁹ and UNHCR’s Executive Committee²²⁰ have made clear that access to refugees should be guaranteed to both UNHCR and other “approved” humanitarian organizations. Likewise, both the Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child provide that refugee (and, in the latter case, internally displaced) children should be provided “appropriate protection and humanitarian assistance,” and that states should “cooperate” with international actors in their efforts to “protect and assist” such children.²²¹

In contrast, the law of internally displaced persons (IDPs) is as relevant in disasters as in conflict settings. The most prominent international instrument for IDPs²²² is the non-binding Guiding Principles on Internal Displacement of 1998, which apply to persons rendered homeless not only by conflict but also by “natural or human-made disasters” among other causes.²²³ The Guiding Principles set out a number of basic rights of IDPs drawn for human rights and humanitarian law, including the right to receive humanitarian assistance.²²⁴

They also articulate a number of rights and obligations for humanitarian organizations. In particular, they provide that the latter have the right to offer their services, that consent to such offers shall not be “arbitrarily withheld,” that their free access shall be granted and facilitated, and that they shall be respected and protected.²²⁵ On the other hand, they call for all humanitarian assistance to be “carried out in accordance with the principles of humanity and impartiality and without discrimination” and for international humanitarian organizations “and other appropriate actors when providing humanitarian assistance” to “give due regard to the protection needs and human rights of internally displaced persons and take appropriate measures in this regard. In so doing, these organizations and actors should respect relevant international standards and codes of conduct.”²²⁶

Recently, eleven states in the Great Lakes region of Africa adopted a binding “Protocol on the Protection and Assistance to Internally Displaced Persons” (not yet in force), which requires state parties to abide by the Guiding Principles.²²⁷

3.1.5 Privileges and immunities law

The doctrine of “privileges and immunities” is not specifically linked to disasters. Nevertheless, it is an essential tool for those covered entities involved in disaster response, inasmuch as it addresses many of the access and operations issues identified as the most problematic in field operations. While the content of privileges and immunities varies to some extent by the holder, at their core is the objective of allowing the holder to easily enter, exit and operate in a foreign country with a minimum of interference from domestic authorities (once the latter have invited them into their country), as illustrated by the summary in Box 3.

Box 3: A simplified list of common privileges and immunities

- *Exemption from standard immigration restrictions and work permit rules, as well as from customs regulations and duties.*
- *Exemptions from personal or military service and similar requirements, as well as from most domestic taxation.*
- *Inviolability of buildings, archives and communications.*
- *Immunity of covered entities and individuals from the jurisdiction of domestic courts and administrative tribunals.*
- *Recognition of legal personality at the domestic level, allowing the covered entity to enter into enforceable contracts, acquire and dispose of property and institute legal proceedings.*

The concept of privileges and immunities in international law has its origins in the special treatment traditionally accorded to diplomatic and consular representatives of foreign governments. This treatment was based on the theory that sovereign equality prohibited the involuntary submission of one state to the internal jurisdiction of another, as well as the practical desire for reciprocal guarantees of non-interference necessary for representatives of a foreign state to do their work.²²⁸ Much of the customary law in this area has been codified in the Vienna Convention on Diplomatic Relations of 1961²²⁹ and the Vienna Convention on Consular Relations of 1963,²³⁰ which have achieved very wide ratification.

Importantly, however, personal diplomatic and consular privileges and immunities generally do not extend outside the scope of mission staff, their families and, to some extent, their domestic personnel.²³¹ Thus, civil protection, military and other disaster

responders arriving in a foreign country for disaster relief or recovery activities will generally not benefit from them.²³² For this reason, many of the bilateral treaties and agreements on disaster assistance have specifically provided for rights similar to diplomatic privileges and immunities for these actors, as discussed below.

Intergovernmental organizations have also traditionally been granted privileges and immunities to enable them to carry out their functions without undue interference from a single state.²³³ The United Nations, its agencies and officials are provided for in a series of widely-ratified instruments, including the Convention on Privileges and Immunities of the United Nations of 1946²³⁴ and the Convention on Privileges and Immunities of the Specialized Agencies of 1947.²³⁵ Other international and regional intergovernmental organizations have also been accorded privileges and immunities in international law, including a number active in disaster response, such as the International Organization for Migration, the European Union and ASEAN. In addition, the ICRC and the International Federation have been accorded privileges and immunities modelled on those provided to the UN in the status agreements they have concluded with the governments of most countries where they operate, due to their unique international mandates, composition, and recognition in the Geneva Conventions and their Additional Protocols.²³⁶

In general, NGOs do not benefit from privileges and immunities under international law. An historic exception to this general rule was made with the adoption of the Tampere Convention, discussed further below, which provides for the possibility of extending such rights to NGO personnel with regard to telecommunications assistance.²³⁷

Privileges and immunities are not absolute. Receiving states retain the right to prohibit an organization from entering and operating on its territory in the first instance, as well as to declare a particular official or representative “*persona non grata*” and exclude him or her from their territory.²³⁸ Moreover, the parties enjoying privileges and immunities are also enjoined by the relevant instruments not to abuse them, to ensure that complaints about them can be addressed (usually through an arbitration procedure) and to exercise good faith in cooperating with domestic authorities, where doing so would not compromise their functionality.²³⁹ The immunities enjoyed by officials may be waived by the sending state or organization.²⁴⁰

3.1.6 Customs Law

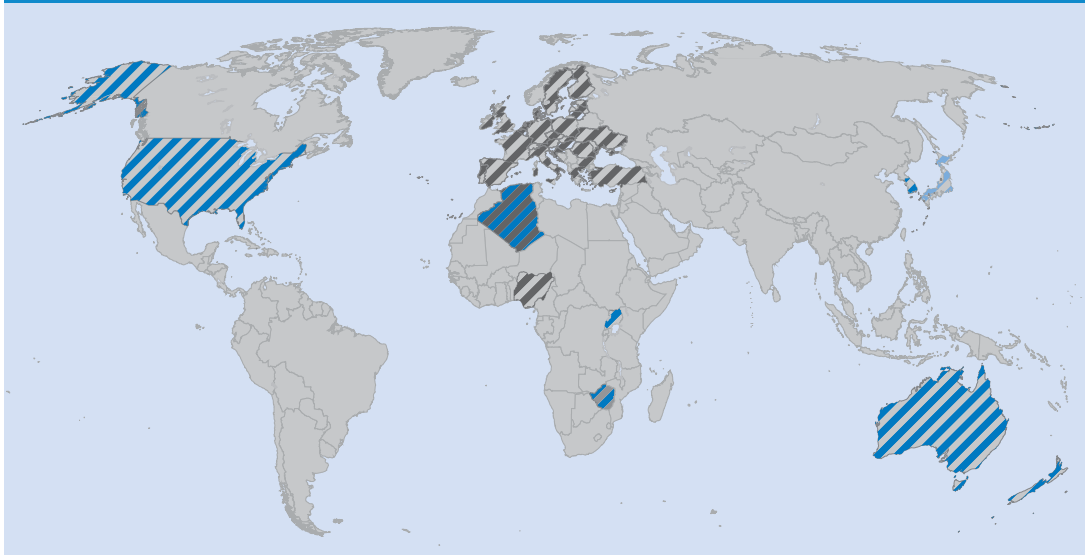
Due to its clear connection with the facilitation of international trade, it is no surprise that a body of multilateral international law has developed to regulate issues related to customs. To the extent that these rules facilitate customs generally, they also benefit the importation of relief consignments. Over the last few decades, a number of instruments specific to customs in the context of disaster relief have also been developed. However, the relevant provisions are either non-binding and/or applicable to only a limited number of states.

In 1970, the Customs Co-operation Council (CCC) (now known as the World Customs Organization (WCO)), adopted the first customs instrument specifically focused on disaster relief, a non-binding “Recommendation of the Customs Co-Operation Council to Expedite the Forwarding of Relief Consignments in the Event of Disasters” (hereinafter, “the CCC Recommendation”).²⁴¹ The Recommen-

dition, directed to all members of the CCC as well as all member states of the UN, called on states to take a number of steps to facilitate relief consignments, including: the waiver of restrictions on the export or import of relief consignments; simplification of associated paperwork; waiver of duties, taxes and fees on consignments to approved organizations; and the authorization of customs clearance outside normally prescribed hours and locations.


Many aspects of the Recommendation were later incorporated into annexes of two of the major customs conventions. The first of these was the Convention on the Simplification and Harmonization of Customs Procedures (“Kyoto Customs Convention”), which was adopted in 1973²⁴² and substantially amended in 1999.²⁴³ Among the Kyoto Customs Convention’s optional “specific annexes” are two with specific relevance to disaster relief: specific annexes B.3 and J.5. Specific annex B.3 provides as a “recommended practice” that states exempt “[g]oods such as foodstuffs, medicaments, clothing and blankets sent as gifts to an approved charitable or philanthropic organization for distribution free of charge to needy persons by the organization or under its control[.]”²⁴⁴ Specific annex J.5 provides for a mixture of binding and recommended steps similar to those recommended in the CCC Recommendation, in order to speed the clearance of relief consignments. There are currently 8 parties to specific annex B.3 and 7 parties to specific annex J.5.²⁴⁵

State parties to relevant annexes of the Kyoto and Istanbul Customs Conventions



 Kyoto Special Annex B.3

 Istanbul Convention Annex B.9

 Kyoto Special Annex B.3 and J.5

 Istanbul Convention Annex B.9 and D

In 1995, the UN Department of Humanitarian Affairs (predecessor to OCHA) and WCO collaborated in the development of a “Model Customs Agreement”²⁴⁶ concerning “measures to expedite the import, export and transit of relief consignments and possessions of relief personnel in the event of disasters and emergencies.”²⁴⁷ The model agreement reiterated provisions found in existing customs instruments described above and extended them to UN operations as well as to civil defence, military, international

search and rescue teams and NGOs working under a “United Nations relief operation” and certified as such by the UN. It was later appended to the WCO’s non-binding “Guidelines to Specific Annex J” for the reference of state parties.²⁴⁸

In 1990, the Convention on Temporary Admission (“Istanbul Convention”) was adopted to consolidate the provisions of a number of conventions concerning “temporary admission”, *i.e.*, the waiver of import duties and taxes and simplification of documentation for the temporary import of specific types of items.²⁴⁹ Annex B.9 to the Istanbul Convention provides that relief equipment and items (such as medical, surgical and laboratory equipment, vehicles, blankets, tents) may be imported free of customs duties or charges, provided that: they are intended to be re-exported; they are “owned by a person outside the territory of temporary admission” and are “loaned free of charge;” and they are “dispatched to persons approved by the competent authorities in the territory of temporary admission.” There are currently 37 parties to annex B.9.²⁵⁰ Annex D of the Istanbul Convention (with 36 parties) allows for temporary admission of animals including “detector dogs” and animals involved in “rescue operations” (presumably also referring to dogs).

While not specific to disasters, additional provisions of the Istanbul Convention and other customs treaties may be of particular relevance in disaster situations. For example, annex C of the Istanbul Convention allows for temporary admission of means of transport used by a foreign entity (as opposed to being loaned to local entities, as required in annex B.9). Annex B.2 as well as the Customs Convention on the Temporary Importation of Professional Equipment of 1962²⁵¹ apply to “professional equipment” which includes “any... equipment necessary for the exercise of the calling, trade or profession of a person visiting the territory of another country to perform a specific task.”²⁵² Annex A of the Istanbul Convention and the Customs Convention on the ATA Carnet for the Temporary Admission of Goods of 1961 allow for the temporary importation - including for transit - of certain goods (including professional equipment) with simplified documentation (“the carnet”) and without having to post security. Moreover, the Convention on the International Transport of Goods under Cover of TIR Carnets of 1975 (hereinafter “the TIR Convention”) allows for both reduced documentation and customs inspections for goods in transit through the territory of state parties, by virtue of the “TIR carnet” issued by approved national guaranteeing organizations (with “TIR” standing for transport international routier or international road transport).²⁵³

3.1.7 Transport law

There is no specific instrument concerning transport and disasters, but several treaties concerned with sea and air transport have individual provisions of direct relevance. For example, in addition to general provisions aimed at reducing paperwork and other formalities involved in international shipping, the Convention on Facilitation of International Maritime Traffic of 1965 (107 state parties) requires state parties to facilitate the entry and exit of vessels involved in “disaster relief work” as well as the entry and clearance of the persons and cargo they transport.²⁵⁴ Likewise, Annex 9 to the Convention on International Civil Aviation of 1944 (“Chicago Convention”) (189 state parties) requires state parties to “facilitate the entry into, departure from and transit through their territories of aircraft engaged in relief flights performed by or on behalf of international organizations recognized by the UN or by or on behalf of States themselves and shall take

all possible measures to ensure their safe operation.”²⁵⁵ It also calls on states to “ensure that personnel and articles arriving on relief flights... are cleared without delay.”²⁵⁶

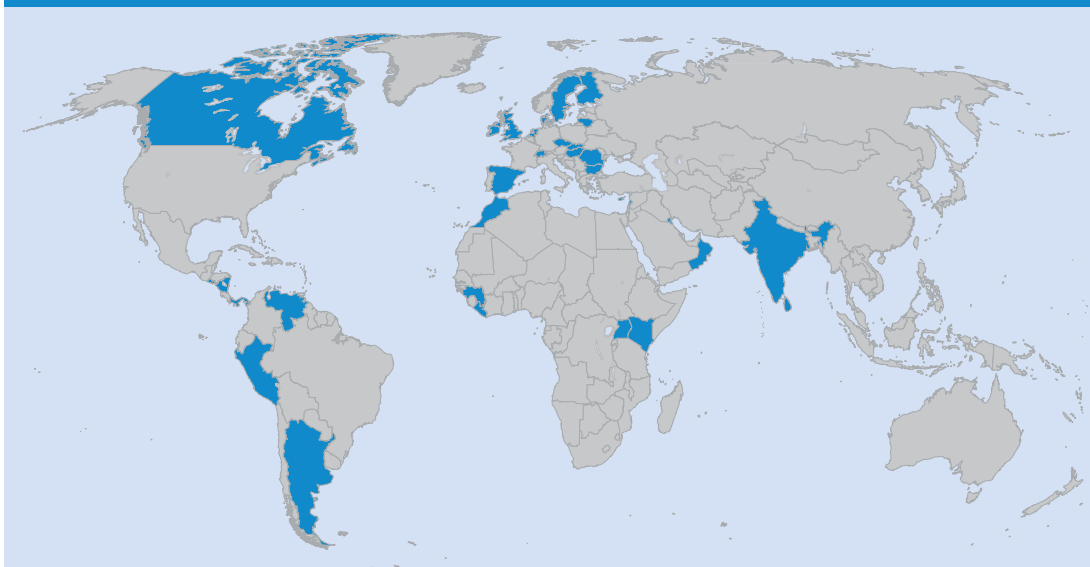
For the most part, the major international road transport instruments do not make specific reference to disaster relief situations.²⁵⁷ However, a number of general-purpose conventions might be relevant to relief transport. These include the Customs Convention on the Temporary Importation of Private Road Vehicles of 1954,²⁵⁸ the Customs Convention on Temporary Importation of Commercial Road Vehicles of 1956,²⁵⁹ and the Convention on Customs Treatment of Pool Containers Used in International Transport of 1994,²⁶⁰ all of which provide for duty-free entry of vehicles or containers subject to the assurance that they will be re-exported, as well as the Customs Convention on the International Transport of Goods under Cover of TIR Carnets (“TIR Convention”) of 1975,²⁶¹ which provides for the waiver of frontier checks in transit states for goods in international road transit crossing several countries.

3.1.8 Telecommunications law

As mentioned above, the importance of the emergency use of telecommunications has been recognized in international telecommunication law from the early days of the technology. For example, the Convention Télégraphique Internationale de Paris of 1865 provided that an emergency might justify the interruption of transmission. International instruments regulating telecommunications have often made special provisions for emergency communications, such as priority transmission and responses to distress calls,²⁶² particularly with regard to ships²⁶³ and airplanes,²⁶⁴ and the reservation of wavelengths for such calls.²⁶⁵

However, it has not been until recently that instruments have been developed specific to telecommunications issues in international disaster response operations. The most important of these is the Tampere Convention on the Provision of Telecommunication Resources for Disaster Mitigation and Relief Operations of 1998,²⁶⁶ the first

State Parties to the Tampere Convention



global treaty to provide a comprehensive regulatory framework for international cooperation in disasters with respect to telecommunications.

The Convention provides that parties should reduce regulatory barriers to the use of telecommunications resources for disaster mitigation and relief, including restrictions on import or export, the use of particular types of equipment, and the use of particular radio-frequency spectrums.²⁶⁷ It also expressly calls for addressing “delays in the administration of such regulations[.]”²⁶⁸ Moreover, it recommends a non-exhaustive list of possible measures to achieve these ends, such as pre-clearance of particular telecommunication resources, recognition of foreign type-approval of equipment, and temporary waiver of regulations.²⁶⁹

While reserving to receiving states the prerogative to decide whether, and from which states or organizations, to request assistance,²⁷⁰ the Convention obliges signatories (“to the extent permitted by [their] national law”) to provide certain privileges and immunities to organizations and individuals providing telecommunications assistance under its terms, including immunity from local court jurisdiction, exemption from taxation, duties and other charges, and immunity from seizure.²⁷¹ It also calls on receiving states to provide local facilities and services, expedited or waived licensing procedures and measures to ensure the security of relief personnel, equipment and materials. The Convention assigns a leadership role to the United Nations Emergency Relief Coordinator, in particular in the development of model agreements subsidiary to the Convention and inventories of existing resources and providers.

The Convention entered into force in January 2005, and as of the date writing, 37 states had become parties. The United Nations General Assembly,²⁷² the World Telecommunication Development Conference,²⁷³ the World Radiocommunication Conference,²⁷⁴ and the International Conference of the Red Cross and Red Crescent,²⁷⁵ among others, have called upon states to ratify or accede to the Tampere Convention.

Other relevant telecommunications instruments have been adopted by the International Conference of the Red Cross and various bodies associated with the International Telecommunication Union (ITU). In the former category are a resolution adopted at the 20th International Conference of the Red Cross in 1965, encouraging the development of an international radio communication network for National Red Cross Societies²⁷⁶ and a 1977 resolution of the 23rd International Conference, noting progress in such a network and calling on the World Administrative Radiocommunications Conference to be held in 1979 to take practical measures along these lines.²⁷⁷ The latter instruments include resolution 10 of the World Administrative Radio Conference of 1979, urging governments to take account of Red Cross/Red Crescent needs for radio communications and to assign them specific frequencies for disaster work; resolution 7 of the World Telecommunication Development Conference of 1994, which called on all governments to remove national regulatory barriers to the use of telecommunications in disaster relief; resolution 10 of the World Radiocommunications Conference of 2000 calling on states to assign working frequencies for two way wireless communication to the components of the International Red Cross and Red Crescent Movement; Resolution 645 of that same conference, calling on states to move toward the creation of harmonized spectrums for disaster communications; and resolution 646 of the World Radiocommunications Conference of 2003 recommending the use of regionally harmonized bands for public protection and disaster relief.

Study groups of the Radiocommunications and Telecommunication Standardization sectors of the ITU have also issued a number relevant recommendations to states concerning telecommunications in disaster operations, including recommendations to facilitate the use of fixed-satellite service,²⁷⁸ facilitate global cross-border circulation of radiocommunications equipment,²⁷⁹ institute an international emergency preference scheme,²⁸⁰ and facilitate the operation of amateur radio.²⁸¹

3.1.9 Donor law

After the IRU experience described above, donor states have mainly shied away from global regulation of their disaster response donations. However, there are some important exceptions.

Since the late 1960s, large food aid contributors have agreed to several iterations of the Food Aid Convention, which is one component of the International Grains Agreement. The current version of the Food Aid Convention was adopted in 1999 with an effective life of three years.²⁸² It has been renewed several times since then, most recently in 2007, valid though 30 June 2008.²⁸³ It has 22 parties – all of them donors –, including 21 states and the European Union.²⁸⁴

Box 4: Some quality provisions added to the Food Aid Convention in 1999

Food aid must:

- *respect “basic humanitarian principles”;*²⁸⁵
- *be provided “only when it is the most effective and appropriate means of assistance”;*²⁸⁶
- *“meet international quality standards [and] be consistent with the dietary habits and nutritional needs of recipients”;*²⁸⁷
- *be based on needs assessments by both the recipient and donor states;*²⁸⁸
- *take particular account of the needs of women, children and vulnerable groups,*²⁸⁹ *and ensure the participation of women in decision-making on operations;*²⁹⁰
- *avoid harmful effects on local harvests, production and trade;*²⁹¹ *and*
- *take into account, even in emergency situations, “longer-term rehabilitation and development objectives[.]”*²⁹²

The Food Aid Convention sets out minimum tonnage commitments of annual food aid of certain types²⁹³ to be provided by each member to certain recipient states,²⁹⁴ covering both emergency and non-emergency situations. “Eligible” food aid (*i.e.*, aid that may be counted toward the agreed quotas) may include both bilateral assistance as

well as aid provided through multilateral organizations and NGOs.²⁹⁵ It also has a number of provisions on how aid should be provided, as noted in Box 4.

The Convention sets up a governing body of representatives of all member states called the Food Aid Committee and tasked with monitoring progress and addressing problems arising under the Convention on the basis of consensus.²⁹⁶

The Development Assistance Committee of the Organization for Economic Co-operation and Development (OECD) took a somewhat similar initiative in 2001, when it adopted a “Recommendation on Untying Official Development Assistance to the Least Developed Countries.”²⁹⁷ Aimed primarily at development aid (but not excluding emergency assistance, which the OECD considers a type of “Official Development Assistance”), the recommendation called on OECD members to progressively “untie” their bilateral aid to certain countries, meaning that they should dispense with rules requiring that goods or services involved be procured within their borders or from their nationals.

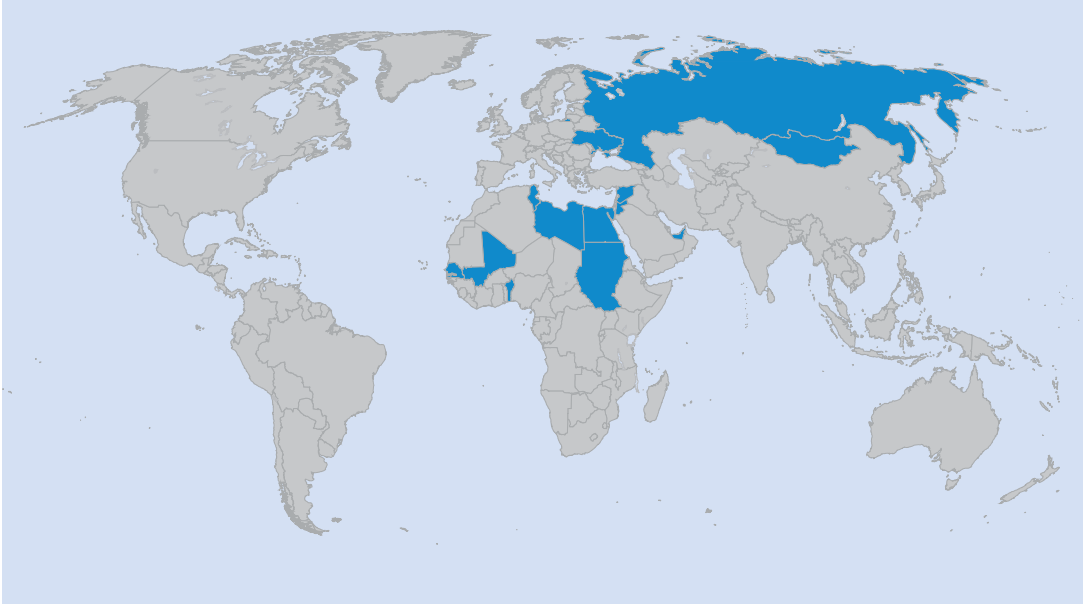
With more direct reference to disaster assistance, donors at a 2003 international conference in Stockholm adopted a set of “Principles and Practice of Good Humanitarian Donorship” (hereinafter, “the Good Humanitarian Donorship Principles”).²⁹⁸ The Good Humanitarian Donorship Principles set out agreed objectives and definitions of humanitarian action, general principles for donors in humanitarian assistance, and best practices in financing, management and accountability. They cover both “man-made crises and natural disasters” and call on donors to ensure, among other things, that humanitarian funding is provided speedily and flexibly (e.g., without earmarking), in accordance with the principles of humanity, impartiality, neutrality and independence and allocated on the basis of objectively determined needs. Donors are also urged to promote the participation of beneficiaries in the planning and implementation of disaster assistance programmes and to ensure that funding for new crises does not displace support for humanitarian responses to ongoing crises.

3.1.10 Civil defence and military law

In 1966, an international conference adopted the constitution of the International Civil Defence Organization (ICDO), thereby transforming what had for the previous thirty-five years operated as a private association into an inter-governmental organization.²⁹⁹ The ICDO was tasked with supporting the establishment and development of national civil defence organizations, assisting in their cooperation and exchange of information, and promoting the study and dissemination of information about the protection of persons and property in disaster and war.³⁰⁰ The ICDO and its members have been active in the elaboration of general norms and guidelines, including “Guidelines for the Development of Civil Defence Structures”³⁰¹ and an “International Charter for Voluntary Service in Civil Defence.”³⁰²

In 2000, an international conference (including both ICDO members and non-member states) adopted a Framework Convention on Civil Defence Assistance³⁰³ to address barriers to effective mutual assistance between civil defence organizations in international disaster response operations. The Framework Convention sets out mechanisms for the offer and acceptance of assistance, regulations for how such assistance should be carried out, provisions for the reduction of administrative and customs barriers

State Parties to the framework convention on Civil Defence Assistance



and “necessary” privileges and immunities for responders, and commitments to facilitate transit of civil defence units. It also calls on parties to supplement its provisions with more detailed agreements to carry out its spirit.³⁰⁴ Though it has 26 signatories, only 13 states have ratified or acceded.³⁰⁵

While many states have some level of integration between their armed forces and civil defense administrations, the ICDO instruments are not focused on military actors. However, the two are treated together in the “Guidelines on the Use of Military and Civil Defence Assets in Disaster Relief,” known as the “Oslo Guidelines”, first prepared in 1994 by a number of donor states and humanitarian agencies and revised in 2006.³⁰⁶ The Oslo Guidelines encourage states to use military and civil defence assets (“MCDA”) in international disaster operations only as a last resort, when there is no other civilian alternative.³⁰⁷ They urge MCDA donors to abide by a number of broad principles and affected states to provide certain legal facilities to MCDA actors (such as with regard to customs, visas, overflight permission, and other areas). They set out particularly detailed guidance for the use of MCDA as part of UN-directed relief operations, including the recommendation that military organizations should provide only indirect assistance, without interacting directly with the affected population.³⁰⁸ A model bilateral agreement for MCDA disaster assistance is provided as an annex to the Oslo Guidelines.

3.1.11 Health law

The most important instrument in international health law is the International Health Regulations (IHR), originally adopted in 1951 and greatly revised in 2005.³⁰⁹ The original IHR, drawing on a patchwork of treaties on international cooperation in infectious diseases developed in the 19th century, required states to notify the World Health Organization (WHO) of outbreaks within their borders of three listed diseases (cholera, plague and yellow fever) and provided rules on maximum public health measures applicable to international traffic and travel.³¹⁰ The revisions to the IHR,

which entered into force in 2007,³¹¹ expanded their scope to all diseases (infectious or otherwise) that might constitute public health threats, provided more detailed state reporting requirements on disease “events”, and required states to develop their own capacities to detect and respond to diseases. They also expanded the power of the WHO to issue non-binding recommendations, collect information from non-state sources (such as research institutions and NGOs), use it to query affected state governments (who must investigate and respond according to a particular deadline), and, in certain circumstances, share disease information without affected states’ consent.³¹² The IHR thus provide a new formal avenue for non-state actors to alert the international community to developing public health hazards.

The IHR are also concerned with limiting the inappropriate use of putative public health risks to unnecessarily disturb trade. Thus, there are provisions restraining the public health restrictions states may place on passengers, cargo, ships, airplanes and other conveyances, which may also be relevant to international disaster relief operations.³¹³ Less detailed requirements along the same lines are found in the World Trade Organization’s (WTO) Agreement on the Application of Sanitary and Phytosanitary Measures.³¹⁴

There are additionally several instruments particularly relevant to the importation of medicines and medical equipment for disaster relief. For example, in 1996, both the World Health Assembly (WHA) and the United Nations Commission on Narcotic Drugs adopted resolutions on procedures to allow timely international supplies of controlled medicines for emergency care.³¹⁵ Pursuant to the WHA resolution, WHO developed model guidelines on this topic later that year.³¹⁶ Moreover, in 2003, WHO and the Pan-American Health Organization (PAHO) jointly developed guidelines on the use of foreign field hospitals in disasters.³¹⁷

WHO also provides a regularly-updated “Model List of Essential Medicines,”³¹⁸ which sets out minimum needs for medicines of a basic health care system and to combat priority diseases, and an “Emergency Health Kit,”³¹⁹ which lists the minimal drugs and medical supplies required to care for 10,000 persons over three months. It also collaborated in developing an Interagency List of Essential Medicines for Reproductive Health³²⁰ and a set of Guidelines for Drug Donations.³²¹ WHO has likewise produced more general standards that may be relevant to the importation of medicines in disaster settings, such as the WHO Certification Scheme on the Quality of Pharmaceutical Products Moving in International Commerce.³²²

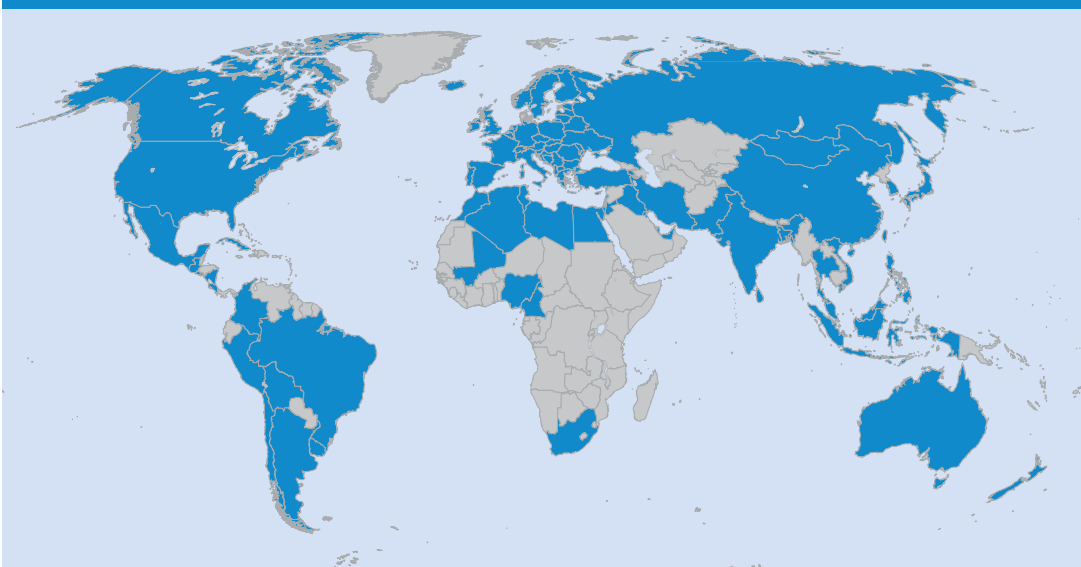
3.1.12 Environmental and Industrial Accident Law

Many (if not most) environmental and industrial accident treaties are relevant to the prevention of disasters. For example, the United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification of 1994,³²³ the United Nations Framework Convention on Climate Change of 1992 and its “Kyoto Protocol” of 1997,³²⁴ the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal of 1989,³²⁵ and International Labour Organization Convention No. 147 on Prevention of Major Industrial Accidents of 1993³²⁶ and its accompanying Recommendation³²⁷ all seek to check the development of conditions that could lead to disaster.

Some treaties also set up systems for international cooperation in the response to environmental disasters. For example, the Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency of 1986 (hereinafter “Nuclear Accident Convention”)³²⁸ lays out basic rules for the initiation, coordination and operation of international assistance operations in case of nuclear or radiological events, touching on the transit of equipment and personnel, privileges and immunities, and costs. The Convention, adopted in the wake of the Chernobyl disaster, had garnered 96 state parties as of November 2006.³²⁹ By its terms, it applies only to states, the International Atomic Energy Agency (IAEA) and other “inter-governmental organizations”, notwithstanding the prominent role that the International Red Cross and Red Crescent Movement, NGOs and other non-state actors have played in the recovery from Chernobyl.³³⁰

Another example is the International Convention on Oil Pollution Preparedness, Response and Cooperation of 1990 (hereinafter, “the Oil Pollution Convention”)³³¹ and its Protocol on Preparedness, Response and Co-operation to Pollution Incidents by Hazardous and Noxious Substances of 2000³³² which require state parties, among other things, to inform other parties of marine discharges of oil or hazardous or noxious substances that might affect them, set up national and regional systems for preparedness and response (including designation of competent national authorities and focal points), and cooperate “subject to their capabilities and the availability of relevant resources” to “provide advisory services, technical support and equipment” in the event of a serious incident.³³³ In order to improve the effectiveness of this cooperation, parties are further required to “take necessary legal or administrative measures to facilitate” the arrival and utilization of ships, aircraft and their cargo and the “expeditious movement into, through and out of its territory of personnel, cargoes, materials and equipment[.]”³³⁴ Likewise, if and when it enters into force, the Convention on the Law of the Non-Navigational Uses of International Watercourses of 1997 will require parties to “take all practicable measures necessitated by the circumstances to prevent, mitigate and eliminate harmful effects of [an] emergency” originating from their watercourses.³³⁵

State parties to the Nuclear Accident Convention



A number of similar accords have been reached at the regional level.³³⁶ Moreover, while mainly aimed at domestic response mechanisms, the OECD Guiding Principles on Chemical Accident Prevention, Preparedness and Response of 2003 also state that, “[t]o the extent practicable, public authorities should attempt to provide assistance to other countries that have requested help related to the preparedness for, or response to, accidents involving hazardous substances,” and that “[p]ublic authorities should develop procedures to facilitate the transit through their territory of personnel and equipment to be used for mutual aid in the event of an accident involving hazardous substances.”³³⁷

3.1.13 Weapons control law

Systems for international cooperation in disaster response have likewise been included in several widely ratified weapons control treaties. While these conventions are mainly focused on the potential for use of such weapons in situations of armed conflict, they can also be relevant for mutual assistance concerning illicit use of weapons outside of that context, for instance, with regard to isolated terrorist attacks.

For example, among other things, the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction of 1972 (hereinafter “the Biological Weapons Convention”) prohibits the development, acquisition, storage and transfer of biological agents or toxins and weapons systems “for hostile purposes or in armed conflict” (emphasis added).³³⁸ With regard to assistance, it provides that

[e]ach State Party to this Convention undertakes to provide or support assistance, in accordance with the United Nations Charter, to any Party to the Convention which so requests, if the Security Council decides that such Party has been exposed to danger as a result of violation of the Convention.³³⁹

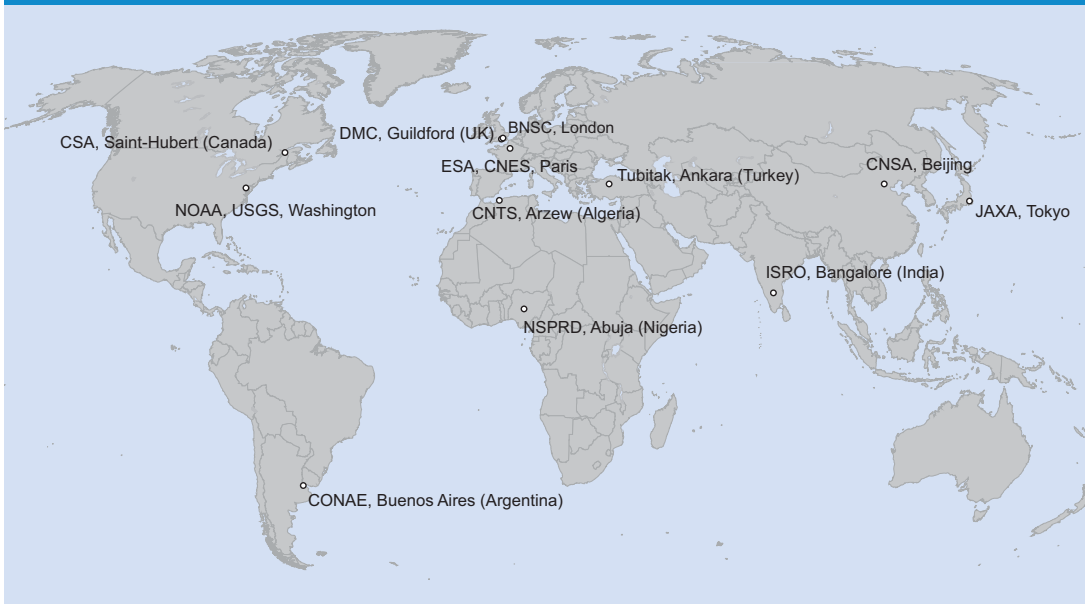
At the 2006 review conference, the state parties to the Biological Weapons Convention noted “with satisfaction” that this latter provision has never been invoked.³⁴⁰ They also noted “the desires expressed” that assistance be provided in response to a request even before action by the Security Council.³⁴¹ They also determined that, “in the event that this Article might be invoked, the United Nations could play a coordinating role in providing assistance, with the help of States Parties as well as the appropriate intergovernmental organizations such as the World Health Organization (WHO), World Organization for Animal Health (OIE), the Food and Agriculture Organization of the United Nations (FAO), and the International Plant Protection Convention (IPPC).”³⁴² However, they further acknowledged the proposal that “States Parties may need to discuss the detailed procedure for assistance in order to ensure that timely emergency assistance would be provided by States Parties, if requested, in the event of use of biological or toxin weapons.”³⁴³

Greater detail on response was included in the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction of 1993 (hereinafter, “Chemical Weapons Convention”).³⁴⁴ Article 10 of that treaty sets out a strict, time-bound procedure for the response to calls for emergency assistance (“including, inter alia, the following: detection equipment and alarm systems; protective equipment; decontamination equipment and decontaminants; medical antidotes and treatments; and advice on any of these protective measures”) from state parties that are the victims of chemical weapon attacks.

3.1.14 Space law

In general, as in the fields of maritime and aviation law, provisions of the law of outer space on emergencies tend to refer to issues of space travel and objects.³⁴⁵ However, there are several instruments addressing the use of satellites for imaging in support of disaster mitigation and response.³⁴⁶ In 1986, the UN General Assembly adopted a resolution setting out Principles Relating to Remote Sensing of the Earth from Outer Space.³⁴⁷ Principle 11 provided that “[r]emote sensing shall promote the protection of mankind from natural disasters” and that states should therefore promptly transmit any information they obtain through remote sensing that might be of use to states affected or likely to be effected by impending natural disasters.

Space agency members of the International Space Charter



In 1999, the Canadian, European and French space agencies, later joined by eight others,³⁴⁸ adopted a “Charter On Cooperation To Achieve The Coordinated Use Of Space Facilities In The Event Of Natural Or Technological Disasters” (hereinafter, “the International Space Charter”).³⁴⁹ Pursuant to the International Space Charter, the civil defence forces from member states may call upon the satellite capacities of all members for imaging regarding disasters that are pending or have struck. Likewise, states that are not parties can request support through the civil defence department of a member state. Finally, the EU, OCHA, and “recognized” international and national organizations (including NGOs) may also enter into cooperative relationships with one of the state parties to request assistance.

Most recently, in late 2006, the UN General Assembly adopted a resolution creating a new UN programme “to provide universal access to all countries and all relevant international and regional organizations to all types of space-based information and services relevant to disaster management to support the full disaster management cycle by being a gateway to space information for disaster management support, serving as a bridge to connect the

disaster management and space communities and being a facilitator of capacity-building and institutional strengthening, in particular for developing countries[.]”³⁵⁰

3.1.15 Humanitarian personnel security law

In 1994, the United Nations General Assembly adopted the Convention on the Safety of United Nations and Associated Personnel,³⁵¹ which requires state parties to take a number of measures to ensure the physical security of persons involved with certain UN-controlled missions. These measures include criminalizing attacks on or kidnapping of these persons, taking measures to prevent and punish such crimes and cooperating with the UN and other states in the capture and adjudication of perpetrators of such acts. However, the scope of the Convention was limited to UN-controlled peacekeeping missions not involving a Chapter VII enforcement mandate and other operations declared exceptionally risky by the Security Council or General Assembly.³⁵² Accordingly, absent a specific declaration, the Convention does not apply in a disaster setting. The Convention currently has 81 state parties.³⁵³

In 2005, the General Assembly adopted an Optional Protocol to the Convention on the Safety of United Nations and Associated Personnel,³⁵⁴ extending the original convention’s protections to humanitarian, political and development activities associated with “peacebuilding” as well as to “emergency humanitarian assistance” operations. The latter category clearly applies to non-conflict disasters; however a host state may specifically opt out of its application in a particular natural disaster operation, if it does so prior to deployment.³⁵⁵ Moreover, the protocol does not extend the category of personnel covered by the original convention, which is limited to UN personnel and experts and to the personnel of NGOs operating under UN direction by specific agreement.³⁵⁶ The Optional Protocol currently has only 10 parties and 34 signatories and will not enter into force until it has received 22 ratifications.³⁵⁷

The General Assembly and the Security Council have also both adopted numerous resolutions calling on states to ensure the security of humanitarian personnel, albeit generally with direct reference to situations of armed conflict.³⁵⁸

3.2 Resolutions and declarations

In addition to the resolutions and declarations discussed in the categories above, there are a large number of more general resolutions and declarations adopted by inter-governmental and international bodies that are relevant to international disaster response.

3.2.1 United Nations

In its early years, the UN’s attention to the issue of disasters was limited and sporadic.³⁵⁹ However, in 1964, ECOSOC requested the Secretary-General to report on issues of coordination in disaster relief,³⁶⁰ resulting in the first General Assembly (GA) resolution on this topic.³⁶¹ Subsequently, both ECOSOC and the GA developed a sustained interest in disaster response, eventually adopting dozens of resolutions and devoting annual attention to the issue.³⁶² Initially, these resolutions focused mainly on encouraging donor states to increase the amount and rapidity of emergency assistance they made available,³⁶³ but as the UN’s direct participation in disaster assistance grew over time, they turned increasingly to developing the UN’s role and its coordination

with states, the International Red Cross and Red Crescent Movement and other actors. Other important themes included state sovereignty, the facilitation and quality of assistance, and more recently, major statements of commitment.

3.2.1.1 UN coordination and cooperation

In 1971, General Assembly Resolution 2816 (XXVI) called on the Secretary-General to appoint a Disaster Relief Coordinator with responsibility to “mobilize, direct and coordinate” the UN response to disasters. Subsequent resolutions continued to emphasize the importance of coordination, noting for instance, the concern that “the lack of adequate co-ordination on a world-wide basis results, in some cases, in lapses in meeting priority needs and, in others, in costly duplication and the supply of unneeded assistance.”³⁶⁴ They called upon UN agencies, states and humanitarian actors to cooperate with the Disaster Relief Coordinator and share advance information with him but also acknowledged the financial weakness of his office and his difficulties in meeting his objectives.³⁶⁵

In 1991, the General Assembly adopted its landmark resolution 46/182, which sought to strengthen the “central and unique role” of the UN in “coordinating the efforts of the international community to support the affected countries.” It replaced the Disaster Relief Coordinator with a higher-level “Emergency Relief Coordinator” (ERC) with responsibility for improving coordination of international assistance both in disaster and conflict emergencies and assigned him and his secretariat (now known as OCHA) a number of responsibilities, including collecting and disseminating information, “processing” requests for assistance by affected states, and negotiating humanitarian access.³⁶⁶ It also created a new policy-making body, the “Inter-Agency Standing Committee,” (IASC) composed of UN humanitarian and development agencies, with standing invitations to the International Federation, ICRC, IOM and NGO consortia.³⁶⁷ It sought to improve and expedite funding by calling for consolidated appeals and creating a small “central emergency revolving fund” (CERF) aimed at providing ready capital for urgent use in emergencies.³⁶⁸ Since 1991, there have been regular resolutions on strengthening humanitarian coordination, most recently significantly strengthening the CERF.³⁶⁹

A number of resolutions have also called upon the UN to cooperate with other relevant actors, in particular the International Red Cross and Red Crescent Movement³⁷⁰ and NGOs.³⁷¹ Likewise, in 1994, the General Assembly expressed its support for the “White Helmets Initiative,” a project to organize and deploy standby teams of trained volunteers from member states to provide international assistance, including under the aegis of UN operations.³⁷² In 2006, the General Assembly also emphasized the need for better coordination between the UN system and military actors providing disaster assistance.³⁷³

3.2.1.2 Sovereignty, the “cardinal importance” of humanitarian assistance and humanitarian principles

Another central theme that has developed over time is the balance between the urgency of providing humanitarian relief on the one hand and the sovereignty and primary role affected states on the other.³⁷⁴ In Resolutions 43/131 of 1998 and 45/100 of 1990, the General Assembly asserted that the “abandonment of the victims of natural disasters and similar emergency situations without humanitarian assistance constitutes a threat to

human life and an offence to human dignity.”³⁷⁵ It thus reaffirmed the “importance” (and, in Res. 45/100, the “cardinal importance”) of humanitarian assistance as well as the necessity of “utmost consideration” by all involved to be paid to the principles of humanity, neutrality and impartiality.³⁷⁶ At the same time, these resolutions also reaffirmed the sovereignty of affected states and their “primary role in the initiation, organization, co-ordination and implementation of humanitarian assistance within their respective territories.”³⁷⁷ This same balance was repeated in Resolution 46/182, which has become the cornerstone to which subsequent resolutions generally refer.

3.2.1.3 Legal barriers to international disaster assistance

UN resolutions have also addressed domestic legal barriers to international humanitarian assistance. In 1968, General Assembly Resolution 2435 (XXIII) called upon the Secretary-General to study the legal status of disaster relief units made available to the UN.³⁷⁸ In 1971, General Assembly Resolution 2816 (XXVI) “invite[d] potential recipient Governments... [t]o appoint a single national disaster relief coordinator to facilitate the relief of international aid in times of emergency” and “[t]o consider appropriate legislative or other measures to facilitate the relief of aid, including overflight and landing rights and necessary privileges and immunities for relief units.”³⁷⁹

In 1977, both ECOSOC and the 23rd International Conference of the Red Cross adopted a detailed list of recommendations for facilitating disaster assistance, called the “Measures to Expedite International Relief” (hereinafter, “Measures to Expedite”).³⁸⁰ The United Nations General Assembly later endorsed the ECOSOC resolution.³⁸¹ The Measures to Expedite³⁸² were derived from the recommendations of a joint study prepared in 1976 by UNDRO and the League of Red Cross Societies on regulatory issues in disaster relief. They set out specific legal steps that states should take in the area of customs (such as waiving consular certificates of origin and invoices, reducing customs documentation, reducing requirements for fumigation and restrictions on food imports), visas for relief personnel, transport (such as providing free or concessional air freight fares on national airlines and relaxing traffic, overflight and landing rights for aid flights) and access to communication facilities to ease the entry of international relief. They also called on “all donors” to avoid sending “irrelevant goods” and to provide adequate notification to consignees of impending relief shipments.

Echoes of the Measures to Expedite can be heard in a number of subsequent resolutions. These include GA Resolutions 45/100 of 1990 and 46/182 of 1991 which called upon “States whose populations are in need of humanitarian assistance” to “facilitate the work of these [humanitarian] organizations in implementing humanitarian assistance, in particular the supply of food, medicines, shelter and health care, for which access to victims is essential” and also urged nearby states to facilitate the transit of humanitarian assistance to affected states.³⁸³ In Resolutions 54/97 of 2000 and 56/109 of 2002, the General Assembly called on states affected by the Chernobyl disaster to facilitate the work of humanitarian organizations in providing assistance, including by “simplify[ing] their relevant internal procedures and [identifying] ways in which to make their systems of granting exemption from customs and other duties more effective with regard to goods provided free of charge as humanitarian assistance by humanitarian organizations, including non-governmental organizations.”³⁸⁴

In 2002, the General Assembly adopted Resolution 57/150 on international urban search and rescue assistance, urging states to “simplify or reduce customs and administrative procedures related to the entry, transit, stay and exit of international urban search and rescue teams and their equipment and materials” including in the areas of customs, visas, quarantining of animals, utilization of air space and the importation of equipment and medications.³⁸⁵ For their part, the Resolution urges assisting states to ensure that their teams operate in accordance with the Guidelines of the International Search and Rescue Advisory Group, and in particular with its provisions on “timely deployment, self-sufficiency, training, operating procedures and equipment, and cultural awareness.”³⁸⁶

3.2.1.4 Major statements of commitment

In recent years, UN member states have used resolutions to announce major statements of commitment relevant to disasters. This included the proclamation of the 1990s as the “International Decade of Natural Disaster Reduction” by GA Resolution 42/169 of 1987 and the adoption of the Yokohama Strategy and Plan of Action for a Safer World, Guidelines for Natural Disaster Prevention, Preparedness and Mitigation, adopted after an international conference in 1994. Two of the most important recent declarations along these lines are the Millennium Declaration of 2000 and the Hyogo Framework of Action of 2005.

3.2.1.4.1 The Millennium Declaration (and Millennium Development Goals)

In September 2000, the UN organized an international summit to develop a set of common goals for the international community for the new millennium. The resulting “United Nations Millennium Declaration” set out a number of commitments on human security, poverty reduction, environmental protection, human rights, and other areas.³⁸⁷ Among these were the commitments “[t]o intensify cooperation to reduce the number and effects of natural and manmade disasters” and to “spare no effort to ensure that children and all civilian populations that suffer disproportionately the consequences of natural disasters, genocide, armed conflicts and other humanitarian emergencies are given every assistance and protection so that they can resume normal life as soon as possible.”³⁸⁸

The Millennium Declaration also set out measurable goals on poverty, education, health, environmental stewardship, gender equality and international development cooperation to be met by 2015, now collectively known as the “Millennium Development Goals³⁸⁹”. While disaster mitigation is not expressly listed among them, both the General Assembly³⁹⁰ and development agencies³⁹¹ have been quick to recognize that progress in this area is essential to success in meeting the Millennium Development Goals.

3.2.1.4.2 Hyogo Framework for Action

In January 2005, an international conference adopted the “Hyogo Framework for Action 2005–2015: Building the Resilience of Nations and Communities to Disasters” to set goals and priorities for disaster prevention and preparedness.³⁹² Building on the Yokohama Strategy of 1994, the Hyogo Framework set out 5 common priority areas for governments and the international community with regard to prevention and preparation for disasters, including “Priority 5”: “[s]trengthen[ing] disaster prepared-

ness for effective response at all levels.”³⁹³ Among the “key activities” identified to meet this goal were the following:

- (a) Strengthen policy, technical and institutional capacities in regional, national and local disaster management, including those related to technology, training, and human and material resources.
- ... (c) Strengthen and when necessary develop coordinated regional approaches, and create or upgrade regional policies, operational mechanisms, plans and communication systems to prepare for and ensure rapid and effective disaster response in situations that exceed national coping capacities.
- ... (d) Prepare or review and periodically update disaster preparedness and contingency plans and policies at all levels, with a particular focus on the most vulnerable areas and groups. Promote regular disaster preparedness exercises, including evacuation drills, with a view to ensuring rapid and effective disaster response and access to essential food and non-food relief supplies, as appropriate, to local needs.

In a subsequent resolution, the UN General Assembly welcomed the Hyogo Declaration and Framework and called on states to fully implement it.³⁹⁴

3.2.2 International Conference of the Red Cross and Red Crescent

The International Conference of the Red Cross and Red Crescent is the highest deliberative body of the International Red Cross and Red Crescent Movement, normally meeting every four years.³⁹⁵ It is composed of representatives of each component of the Red Cross and Red Crescent Movement but also of all state parties to the Geneva Conventions (which now includes every state, inasmuch as adherence to the Conventions has become universal). Thus, while not exclusively an inter-governmental body, the International Conference’s resolutions are considered to carry significant authority.³⁹⁶ The International Conference has adopted a number of resolutions relevant to international disaster relief, some of which address solely the activities of the International Red Cross and Red Crescent Movement and others that address international relief more generally.

With regard to the former category, many of the resolutions have been aimed at ensuring the coordination and high quality of the Movement’s work. Thus, for example, in 1969 the 21st International Conference adopted the Principles and Rules for Red Cross and Red Crescent Disaster Relief, setting out a detailed structure for Movement cooperation in international disaster relief operations.³⁹⁷ In 1981, the 24th International Conference adopted a resolution with measures for National Societies to take to ensure the competence of medical personnel involved in international relief.³⁹⁸ Similarly in 1986, the 25th International Conference adopted a resolution on the use of medications and medical supplies, calling for adherence to established guidelines in the donation and use of these materials as well as proper labelling and packaging.³⁹⁹ In 1995, the 26th International Conference adopted guidelines on the role of the Red Cross and Red Crescent societies in response to technological disasters, notably nuclear and chemical disasters.⁴⁰⁰

The International Conference has also sought to reduce the barriers faced by the components of the Movement in providing international relief. Thus, as mentioned above, in 1977 the 23rd International Conference resolutions on Red Cross emergency radio communications (calling on states and the World Administrative Radio Communi-

cations conference to find ways to increase the number of dedicated frequencies provided for emergency use by the Red Cross/Red Crescent),⁴⁰¹ and on the issue of visas for Red Cross personnel (calling on National Societies to request that their governments facilitate and reduce visa formalities for personnel of the League of Red Cross and Red Crescent Societies and participating National Societies).⁴⁰²

With regard to humanitarian relief beyond the Movement, in 1969, the 21st International Conference adopted a Declaration of Principles for International Humanitarian Relief to the Civilian Population in Disaster Situations,⁴⁰³ calling on international humanitarian organizations to conform to humanitarian principles (such as that of non-discrimination) and to coordinate their activities to avoid duplication. It also called on governments to facilitate access by such organizations, including in transit, admission and distribution of relief supplies. That same Conference also adopted a resolution on air transport in international relief actions, requesting airline companies “to transport relief supplies under conditions in no way prejudicial to the conveyance of such supplies and in particular to reduce freight charges”⁴⁰⁴. In 1977, the 23rd International Conference adopted the Measures to Expedite International Relief,⁴⁰⁵ subsequently also endorsed by the UN General Assembly as described above. In 1999, Final Goal 2.1 of the Plan of Action adopted by the 27th International Conference committed states to “establish or update national disaster preparedness plans which incorporate linkages, where necessary, to international systems of disaster response[.]” Most recently, as described above, in 2003, the International Conference adopted Final Goal 3.2, calling for examination of existing legal frameworks for international disaster response and for the development of additional guidelines, tools and models.

3.2.3 International Parliamentary Union

The International Parliamentary Union (IPU), an international association of 140 national parliaments, has adopted a number of resolutions pertinent to international disaster response. This includes a 1988 resolution that unsuccessfully urged humanitarian organizations to create a working group to draft an international convention on international disaster relief.⁴⁰⁶ Its interest in the issue has nonetheless continued since that time, as evidenced by a resolution encouraging states to consider ratifying the Tampere Convention and committing to the Oslo Guidelines,⁴⁰⁷ inviting parliaments to make use of the International Federation’s 2003 report to the 28th International Conference of the Red Cross and Red Crescent on IDRL,⁴⁰⁸ and calling on states “to recognize the importance of developing an international framework to govern the provision of humanitarian assistance in accordance with the principles of neutrality and impartiality, and with full respect for the sovereignty, territorial integrity and national unity of States[.]”⁴⁰⁹

IPU resolutions have also called on states to “promote co-operation and co-ordination within the various humanitarian organizations,”⁴¹⁰ “improve donor response coordination and harmonization,”⁴¹¹ and “take part in the international coordination of assistance in order to ensure the efficient use of available resources[.]”⁴¹² Most recently, in 2006, the IPU adopted a resolution about famine in Africa, in which it “urge[d] the governments concerned to take every appropriate measure to facilitate access to the affected areas for the speedy delivery of food supplies and to provide security,” called on “all parties to ensure that food relief programmes are not used for political ends” and “recommend[ed] that parliaments in the affected countries monitor the delivery of food relief programmes[.]”⁴¹³

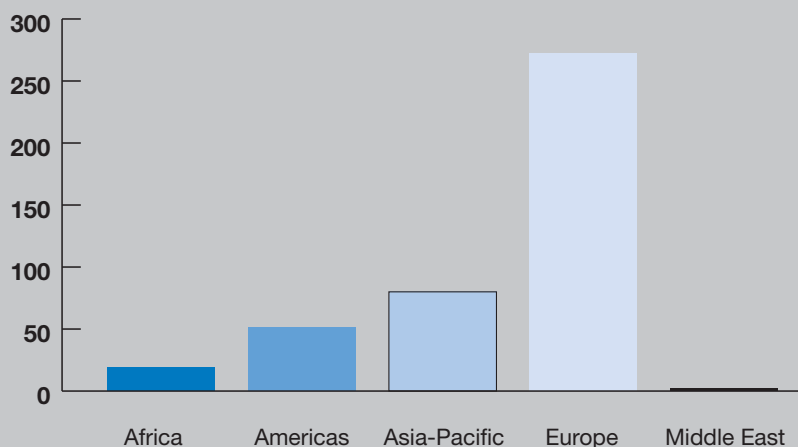
3.3 Codes and standards

While many international relief organizations have long adhered to various internal or national codes of conduct and accountability schemes⁴¹⁴ and some have made use of general international standards of managerial quality, such as the ISO-9000 series,⁴¹⁵ the 1990s began a particularly productive period for the creation of system-wide codes and standards for the delivery of international humanitarian assistance. The resulting products are all voluntary; organizations “opt in” by announcing their adherence and there are varying levels of institutionalised monitoring of their compliance. Having been developed entirely by non-state actors, they are not considered legal documents, but several have become quite authoritative in the humanitarian field.

In 1992, InterAction, a network of American NGOs, developed a set of standards that its member agencies were then required to follow.⁴¹⁶ Known as the “PVO Standards” (for “private voluntary organization”), the document touches on issues of internal governance, management, and financial transparency as well as programmatic issues with regard to the ways in which humanitarian assistance is provided. Each InterAction member agency is required to annually certify its level of compliance with the provisions of the PVO Standards and, where it is not in compliance, to indicate the steps that have been taken to remedy the situation.

In 1991, the Council of Delegates of the Red Cross and Red Crescent called on the International Federation “to set up a group of experts to study the possibility of elaborating a Code of Conduct relative to humanitarian aid in situations of natural and technological disasters.”⁴¹⁷ The International Federation then collaborated with the Steering Committee for Humanitarian Response (SCHR), a network of several major international NGOs (including, at the time, CARE, Caritas Internationalis, Catholic Relief Services, Lutheran World Federation, Oxfam, Save the Children and the World Council of Churches) to develop the Code of Conduct for the International Red Cross and Red Crescent Movement and NGOs in Disaster Relief in 1994.⁴¹⁸ The Red Cross Red Crescent NGO Code of Conduct was “welcomed” by a resolution of the Inter-

Figure 2: Numbers of signatory organizations to the Red Cross Red Crescent NGO Code of Conduct by region



national Conference of the Red Cross and Red Crescent the next year.⁴¹⁹ The Red Cross Red Crescent NGO Code of Conduct set out ten basic principles as well as three annexes with recommendations to governments of affected states, donor governments and intergovernmental organizations. NGOs are invited to register their acceptance of the Code with the International Federation. To date, over 400 have done so, as illustrated in Figure 2⁴²⁰ and it has become one of the most generally accepted instruments of its type, though with uneven geographical spread.⁴²¹

In 1995, soon after the Red Cross Red Crescent NGO Code of Conduct was prepared, a group of NGOs involved in food relief developed a NGO Code of Conduct on Food Aid and Food Security (hereinafter, “NGO Food Aid Code”).⁴²² The NGO Food Aid Code commits signatories to strive to fulfil the right to food, *inter alia* by acting rapidly to import food (if it is needed) and distribute it, implementing comprehensive programs aimed at the root causes of food insecurity, ensuring the active participation of beneficiaries in program planning, coordinating adequately with other stakeholders, and providing high quality, well-balanced food items.

In 1997, a group of humanitarian NGOs, the International Federation and the ICRC formed the “Sphere Project” to develop detailed standards on specific sectors of humanitarian assistance. The resulting Sphere Project Humanitarian Charter and Minimum Standards in Disaster Response (hereinafter, “the Sphere Handbook”) was published in 2000 and updated in 2004.⁴²³ The Sphere Charter reiterates general principles on disaster assistance derived from international humanitarian, human rights and refugee law. The Minimum Standards sets out detailed standards and key indicators (the latter sometimes quantifiable) for the content of disaster relief and recovery programmes, with special attention to four sectors: (1) water supply, sanitation and hygiene promotion, (2) food security, nutrition and food aid; (3) shelter, settlement and non-food items, and (4) health services. While there is no specific procedure for “signing” the Sphere Handbook similar to that for the Red Cross Red Crescent NGO Code of Conduct, it has been very widely recognized.

In the same period, the international humanitarian community explored the possibility of creating a “humanitarian ombudsman” to accept and act upon complaints by beneficiaries. After failing to find consensus on this proposal, the project evolved into the “Humanitarian Accountability Partnership International” (HAP) which developed a set of Principles of Accountability in 2003⁴²⁴ and a Standard in Humanitarian Quality and Management in 2007,⁴²⁵ both designed to facilitate a system of peer-review certification of humanitarian organizations related to the degree of their accountability to their beneficiaries.

Other prominent standards from the humanitarian community include the Groupe Urgence Réhabilitation Développement (URD)’s “Compas Method”, which like HAP’s tools, emphasizes a process-oriented approach to improving humanitarian quality and accountability,⁴²⁶ the “International Non-Governmental Organizations Accountability Charter” of 2006, focusing on issues of transparency, management, and governance,⁴²⁷ and the People in Aid Code of Good Practice in the Management and Support of Personnel (as updated in 2003), designed to improve human resources management in humanitarian relief organizations.⁴²⁸ In tandem with these standard-setting efforts, other initiatives, such as the Active Learning Network for Accountability and Performance in Humanitarian Action (ALNAP) and the Emergency

Capacity Building Project (ECB), have sought to foster better evaluation and accountability of humanitarian assistance.

At the time of writing, there were also several initiatives in process to develop new standards relevant to international disaster response. At the International Organization for Standards (ISO), an inter-governmental committee was working toward the development of a new standard on “societal security”, which would guide activities that “provide[] protection from and response to risks of unintentionally, intentionally, and naturally caused crises and disasters that disrupt and have consequences on societal functions.”⁴²⁹ It is envisaged that the standard would include guidelines on “command, control, coordination and cooperation” in disaster response, in areas such as “information gathering; information sharing/information processing; information flows/knowledge flow; interoperability; structures and procedures; decision support; warning[.]”⁴³⁰ OCHA and the World Economic Forum, a Swiss foundation best known for its annual meetings of business and political leaders in Davos, Switzerland, were also developing a set of “Guiding Principles for Philanthropic Private Sector Engagement in Humanitarian Action.”⁴³¹ The principles would set out a series of voluntary rules by which private actors should abide to ensure the complementarity of their relief efforts with humanitarian principles and the activities and mandates of humanitarian organizations.

3.4 Models and guidelines

In 1980, the International Law Association (ILA) (an international association of legal scholars dedicated to the “study, clarification and development of international law”) adopted a “Projet d’accord-type relatif aux actions de secours humanitaires” (“Draft Model Agreement Concerning Humanitarian Relief Operations”) developed by Professor Michel Bothe.⁴³² The model was intended as a basis for agreements between receiving states and assisting states or organizations. Among other issues, it addressed the initiation of relief, entry of relief personnel and goods, taxation of relief, currency exchange, and the obligation of relief providers to abide by national law.

In 1982, the United Nations Institute for Training and Research (UNITAR) undertook a similar initiative, publishing a set of “Model Rules for Disaster Relief Operations” (authored by Dr. Mohamed El Baradei, current director-general of the IAEA), along with accompanying commentary and examples justifying their need.⁴³³ The Model Rules in fact incorporate three models (with many areas of overlap) for bilateral agreements regulating the emergency phase of disaster relief operations: one for agreements between an assisting state and a receiving state; one for agreements between an “assisting organization” (*i.e.*, humanitarian organizations) and a receiving state; and one for agreements between an assisting state or organization and a transit state.

In 1990, the Max Planck Institute for Comparative Public Law and International Law published a set of “Draft International Guidelines for Humanitarian Assistance Operations” prepared by Dr. Peter Macalister-Smith.⁴³⁴ Developed at the request of the German government, the Draft Guidelines sought to set out “general and specific principles relating to international humanitarian assistance in cases of disaster, but excluding any attempt to regulate such actions in situations of armed conflict.” The Draft Guidelines set out certain “basic principles” of humanitarian assistance as well as proposed rights and responsibilities of assisting states and organizations, receiving states, and relief personnel.

Most recently, in 2004, National Red Cross and Red Crescent Societies in the Balkans region proposed a set of “Recommended Rules and Practices” for receiving and assisting states in international relief operations, setting out a number of legal facilities that should be accorded to relief providers (including humanitarian organizations) and mechanisms to ensure that relief goods and funds are properly distributed.⁴³⁵

While the foregoing four instruments are remarkably consistent – in particular with regard to the kinds of legal facilities affected states should provide assisting actors –, there are also some interesting divergences of approach. For example, the ILA Draft Model assumes that the distribution of relief supplies will normally be undertaken by the receiving State (though it does provide for a variant rule where international actors would insist on acting themselves),⁴³⁶ while the others appear to contemplate that relief will mainly be distributed by international actors. The Max Planck Draft Guidelines devote significant attention to the responsibilities of international humanitarian organizations, whereas the other instruments address them only briefly or, in the case of the Balkans Recommended Rules, not at all. Moreover, the ILA Draft Model calls for all parties to bear liability for their actions according to national law, whereas the UNITAR Model Rules merely refer to the privileges and immunities of UN actors, and both the Max Planck Draft Guidelines and Balkans Recommended Rules advocate that receiving states should generally bear liability for both assisting states and humanitarian organizations in the absence of an agreement to the contrary.⁴³⁷

Though they come from a very different institutional environment, it is also appropriate to mention the “products” of the IASC under the heading of guidelines. As noted above, the IASC was created by UN General Assembly Resolution 46/182 of 1991. Its role as the “primary mechanism for inter-agency coordination” was affirmed by General Assembly Resolution 48/57 of 1993.⁴³⁸ Though primarily a UN institution, the participation of International Federation, ICRC, IOM and several NGO networks makes the IASC one of the most important policy-making bodies for the wider international humanitarian community. Since its formation, the IASC has adopted a large number of policies, guidelines and reference documents that, while not binding on any of the participating organizations, nevertheless carry a level of authority as products of humanitarian consensus.⁴³⁹ While these instruments touch on a number of areas pertinent to humanitarian assistance, the most important for present purposes are those setting out frameworks for coordination. These include the IASC policy paper on internally displaced persons,⁴⁴⁰ the Terms of Reference for Humanitarian Coordinators (which recommends that humanitarian coordinators serve as a focal point for the humanitarian community on issues such as wage levels for local staff, customs, and travel passes),⁴⁴¹ and the “Guidance Note” on using the cluster approach,⁴⁴² among others.

Chapter 4

Regional law and norms

Currently, only Europe can be said to have an elaborate legal and institutional structure addressed to international disaster assistance at a region-wide level. However, recent decades have seen an increase in lawmaking in this area in several regions, and sub-regional organizations have taken particularly long strides toward increasing cooperation among their members and, to some extent, with external actors. Moreover, many regional and sub-regional organizations are currently considering taking on a larger role.

4.1 Africa

There is currently no multilateral treaty in Africa specifically concerned with facilitating international disaster response.⁴⁴³ The sole region-wide instrument on point is the Dar es Salaam Declaration on Feeding of Infants and Young Children in Emergency Situations in Africa adopted in 1999.⁴⁴⁴ On the other hand, the African Union (AU) and several sub-regional organizations have express mandates in their founding instruments related to developing policies on disaster issues, and a number have adopted or revised such policies in recent years.⁴⁴⁵ Most of these policies focus mainly on risk reduction and prevention, however some have also set out systems and mechanisms of cooperation in disaster response. Moreover, several sub-regional organizations have adopted binding instruments with provisions on health cooperation relevant to disasters and health emergencies.

4.1.1 AU

Article 13(1)(e) of the AU's Constitutive Act provides that its Executive Council may "take decisions on policies in areas of common interest to the Member States, including... environmental protection, humanitarian action and disaster response and relief."⁴⁴⁶ Pursuant to this mandate, the AU, together with the New Partnership for Africa's Development (NEPAD), adopted the Africa Regional Strategy for Disaster Risk Reduction in 2004 and the AU Secretariat (known as the "Commission") incorporated elements of cooperation on disaster risk reduction into its strategic plan for 2004-2007.⁴⁴⁷ The Strategy does not establish a regional institutional mechanism for cooperation, but is rather meant to facilitate initiatives at the sub-regional and national level.⁴⁴⁸

4.1.2 IGAD

The Inter-Governmental Authority on Development (IGAD)⁴⁴⁹ was originally formed to facilitate cooperation related to drought. In 1995, IGAD's mandate was changed and expanded (particularly in the area of conflict resolution),⁴⁵⁰ but article 13A of its revised establishing agreement still committed members to "respect the fundamental and basic rights of the peoples of the region to benefit from emergency and other forms of humanitarian assistance" and to "facilitate the movement of food and emergency supplies in the event of man-made or other natural disasters[.]"

In 2002 IGAD developed a regional Disaster Risk Management Programme addressing a number of issues related to disaster risk reduction and management, including support for building domestic legislation on disaster management and identifying op-



opportunities “for agreements on mutual assistance and development in disaster management at regional level and for cross-border agreements on harmonising disaster management arrangements,”⁴⁵¹ and the promotion of standardized, multi-stakeholder needs assessments.⁴⁵² However, an IGAD representative at the African IDRL Forum expressed his feeling that “although IGAD has accepted a regional disaster risk management role, its responsibilities and policies in relation to this role have not been clearly defined.”⁴⁵³

4.1.3 ECOWAS

Pursuant to its Policy for Disaster Risk Reduction of 2006, the Economic Community of West African States (ECOWAS)⁴⁵⁴ has very recently established a “Mechanism for Disaster Reduction” consisting of a ministerial coordinating committee and a Disaster Management Task Force in the secretariat serviced by a Disaster Management Unit in the ECOWAS Department of Humanitarian and Social Affairs.⁴⁵⁵ The Mechanism has a mandate, among many other tasks, to coordinate state requests for international assistance and the mobilization of “emergency response teams” made up of first responders from member states.

4.1.4 COMESA

Chapter 14 of the Common Market for Eastern and Southern Africa’s (COMESA)⁴⁵⁶ 1993 establishing treaty commits member states to cooperation in the area of health, including “evol[ing] mechanisms for joint action in combating outbreak of epidemics such as AIDS, cholera, malaria, hepatitis and yellow fever as well as co-operation in facilitating mass immunization and other public health community campaigns[.]”⁴⁵⁷ Chapter 18 further commits members to cooperation in promoting regional food security, including various measures to promote agricultural efficiency, trade and development. COMESA has taken a number of measures pursuant to this latter mandate to promote regional agricultural trade and discussions are also underway on proposals to create a regional food reserve.⁴⁵⁸

4.1.5 SADC

In 1999, Southern African Development Community (SADC)⁴⁵⁹ members adopted a Community Protocol on Health, which provides, in relevant part, that members will “co-operate and assist each other in the co-ordination and management of disaster and emergency situations,” including through the development of “mechanisms for cooperation and assistance with emergency services” and regional plans for risk reduction and preparation.⁴⁶⁰ The Protocol entered into force in 2004 and currently has nine members.⁴⁶¹

In 2001, the SADC adopted a comprehensive disaster management strategy, among whose recommendations was to consider the development of regional emergency standby teams for disaster response and the development of a dedicated regional protocol on disaster response.⁴⁶² A number of committees and institutional structures have been formed to implement elements of that strategy, however resource issues have impeded full implementation, and neither the proposed standby mechanism nor the protocol have yet been developed,⁴⁶³ though public calls for the latter proposal continue to be heard among member states.⁴⁶⁴

4.2 Americas

4.2.1 OAS

In 1991, the General Assembly of the Organization of American States (OAS) adopted the “Inter-American Convention to Facilitate Disaster Assistance”⁴⁶⁵ (hereinafter, “the Inter-American Convention”). The Inter-American Convention sets out modalities for requests and offers of disaster assistance between members, commits them to designate national coordinating authorities to transmit or receive such requests or offers and to coordinate assistance within their jurisdiction, and clarifies that while the affected state maintains overall control of international assistance, assisting states will retain direction over their personnel and equipment.⁴⁶⁶ It calls on affected states to provide a number of facilities to assisting states, including easing the entry of personnel, goods and equipment, providing for their security, and shielding them and their personnel from liability in national courts.⁴⁶⁷ For their part, assisting states and their personnel are expected to cover their own costs, respect any designated restricted areas and abide by national law.⁴⁶⁸ By its terms, the Inter-American Convention can apply to non-state actors, such as humanitarian NGOs, only upon separate express agreement by the affected state or if they are “included” within the mission of an assisting state (presumably meaning that they act under its authority and direction).⁴⁶⁹

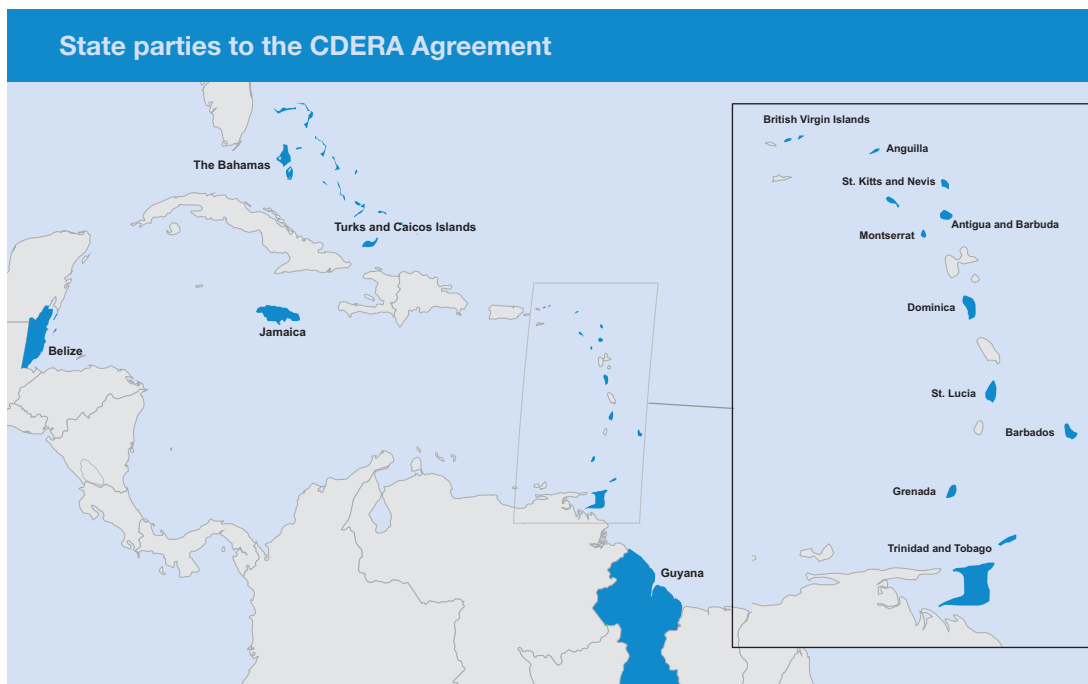
The Inter-American Convention entered into force in 1996, but, to date, it has only attracted three parties (Panama, Peru and Uruguay⁴⁷⁰) and it has apparently never been implemented. At the April 2007 Americas Forum on International Disaster Response Laws, Rules and Principles, representatives of the OAS secretariat recommended that states consider reviving interest in the convention, both with regard to ratifying and implementing it.⁴⁷¹ In June 2007, this sentiment was echoed by member states themselves in OAS General Assembly Resolution 2314, which also called upon the Inter-American Convention’s current parties to designate their coordinating authorities under its terms and on the OAS secretariat “to work on strengthening the technical capacity of member states in the areas addressed” in the convention.⁴⁷²

In addition to adopting the Inter-American Convention, the OAS General Assembly has adopted a number of resolutions related to regional cooperation in disaster response, including through promotion of the “White Helmets Initiative,”⁴⁷³ and the development of an Inter-American Emergency Fund (FONDEM) to provide (very modest) support to affected state governments.⁴⁷⁴ In 1999, it established the Inter-American Committee on Natural Disaster Reduction, chaired by the OAS Secretary General and including the Chair of the OAS Permanent Council and directors of key regional development agencies, as the “principal forum at the OAS for matters relating to natural disasters.”⁴⁷⁵ At the request of the General Assembly, the Committee developed an Inter-American Strategic Plan for Policy on Vulnerability Reduction, Risk Management and Disaster Response in 2003 (including, among other goals, undertakings to reinforce regional cooperation in disaster response through new agreements and mechanisms such as sub-regional medical support units) and now coordinates implementation efforts.⁴⁷⁶ In 2006, the General Assembly charged the Committee with a coordinating role under the Inter-American Convention and with regard to the Inter-American Emergency Fund.⁴⁷⁷

4.2.2 CDERA (CARICOM)

In 1991, member states of the Caribbean Community (CARICOM) adopted the Agreement Establishing the Caribbean Disaster Emergency Response Agency (CDERA) (hereinafter “the CDERA Agreement”).⁴⁷⁸ The Agreement tasks CDERA with building national capacities for disaster response, but also coordinating regional assistance efforts and serving as an intermediary with other “governmental and non-governmental organisations” providing relief.⁴⁷⁹ State parties commit to undertake a number of steps to ensure that their national disaster response systems are adequately prepared, both institutionally and legally, to deal with disasters within their borders and also to provide external assistance upon request by CDERA’s coordinator, the chief officer of the agency.⁴⁸⁰

With respect to such inter-state assistance, state parties commit to reducing legal barriers to the entry of personnel and goods, providing protection and immunity from liability and taxation to assisting states and their relief personnel, and facilitating transit, as needed, to third countries affected by disasters.⁴⁸¹ Assisting states and their personnel commit to abiding by national law, maintaining the confidentiality of sensitive information, deploying military forces only with the express consent of the affected state, and covering their own costs, absent an agreement to the contrary.⁴⁸² Though it is not clearly stated in the text, it appears that these facilities and responsibilities are not intended to extend to non-state actors. As in the Inter-American Convention, overall direction of disaster assistance is agreed to be with the receiving state.⁴⁸³ The CDERA Agreement also provides for the establishment of an Emergency Assistance Fund for use to defray expenses in disaster assistance.⁴⁸⁴



CDERA currently has sixteen member states⁴⁸⁵ and is comprised of a council of heads of state, a board of directors consisting of the directors of national disaster agencies, four regional focal points and a secretariat known as the “coordinating unit.”⁴⁸⁶ In recent years, its work has turned increasingly toward disaster risk reduction and, as a re-

sult, discussions are now underway to amend the CDERA Agreement to give it a greater orientation in that direction.⁴⁸⁷

4.2.3 CEPREDENAC (SICA)

In 1993, the foreign ministers of several Central American states formalized an existing experts network on technical assistance in disaster prevention by creating the Coordination Centre for Natural Disaster Prevention in Central America (CEPREDENAC).⁴⁸⁸ CEPREDENAC was brought under the System for Central American Integration (SICA) as a specialized agency and charged with coordinating implementation of the Regional Disaster Reduction Plan (PRRD) adopted that same year. In 2003, CEPREDENAC's establishing agreement (hereinafter "the CEPREDENAC Agreement") was revised and it currently has five parties.⁴⁸⁹ The revised CEPREDENAC Agreement sets out a number of guiding principles, including respect for human rights and human dignity, the participation of the public disaster mitigation and response activities, and meeting the special needs of vulnerable groups.⁴⁹⁰ It charges CEPREDENAC with facilitating technical assistance and cooperation among member states in disaster prevention and mitigation. It is led by a council of representatives made up of directors of national disaster response agencies, and serviced by a secretariat and national and technical committees. Among CEPREDENAC's products are the Regional Manual of Disaster Procedures for Foreign Ministries, setting out guidelines for foreign ministry activities in the initiation, facilitation and regulation of international assistance,⁴⁹¹ and the Mechanism for Coordination Cooperation in Disaster Response, setting out additional protocols for the initiation and coordination of regional assistance.⁴⁹²

4.2.4 ACS

In 1999, the Association of Caribbean States (ACS), a sub-regional organization with member states both in the Caribbean and in Central America,⁴⁹³ adopted its own treaty on disaster response: the Agreement between Member States and Associate Members of the Association of Caribbean States for Regional Cooperation on Natural Disasters (hereinafter "the ACS Agreement").⁴⁹⁴ Pursuant to the ACS Agreement, members would agree to promote "the formulation and implementation of standards and laws, policies and programmes for the management and prevention of natural disasters, in a gradual and progressive manner," including through the identification of "common guidelines and criteria" in a number of areas, such as "the adoption of existing standards for the classification and management of humanitarian supplies and donations with the purpose of improved transparency and efficiency in humanitarian assistance."⁴⁹⁵ The Agreement would also call on member states to identify "highly vulnerable areas" within their jurisdictions where cooperation from other members might be most useful.⁴⁹⁶ It would assign the ACS's existing Special Committee responsible for Natural Disasters with a number of tasks to facilitate information sharing and technical assistance between members.⁴⁹⁷

The ACS Agreement currently has 11 ratifications but will only enter into force after it receives 17 (representing two-thirds of the ACS membership).⁴⁹⁸ In January 2007, the ACS Ministerial Council declared 2007 "The Year for Entry into Force of ACS Agreements," in a concerted effort to encourage the necessary ratifications for this and several other ACS treaties.⁴⁹⁹

4.2.5 CAPRADE (CAN)

In 2002, the Council of Foreign Ministers of the Andean Community (CAN) adopted Decision 529, creating the Andean Committee for the Prevention and Response to Disasters (CAPRADE),⁵⁰⁰ charged with coordinating and promoting cooperation in disaster prevention and response, including through promoting: “compliance with and the harmonization of international agreements on natural disasters;” “joint efforts to obtain bilateral and multilateral cooperation;” and “the implementation and harmonization of international agreements in the area of natural disasters.” Discussions are currently ongoing on a draft treaty to provide CAPRADE with a juridical status and greater stability.⁵⁰¹

4.2.6 Iberoamerican association of governmental civil defence and civil protection bodies

In 1996, the Sixth Iberoamerican Summit of Heads of State and Government approved the creation of the Ibero-American Association of Governmental Civil Defence and Civil Protection Bodies, with the aim of promoting cooperation and information sharing among these agencies.⁵⁰² Among the Association’s products is the Emergency Web Network (ARCE) a system for consolidating information, requests and offers of assistance between Ibero-American civil defence agencies in disaster situations.⁵⁰³ In a declaration after their most recent meeting, members signalled their interest in formalizing an early warning system based on ARCE.⁵⁰⁴

4.3 Asia-Pacific

There is no single inter-governmental organization that embraces the entire Asia-Pacific region nor any region-wide instrument related to disaster response. However, there are several important sub-regional instruments and initiatives related to IDRL.

4.3.1 ASEAN

In their 1976 “Declaration of Concord,” the member states of the Association of Southeast Asian Nations (ASEAN)⁵⁰⁵ made their first joint commitment to “extend, within their capabilities, assistance for relief of member states in distress.”⁵⁰⁶ That same year, they adopted the Declaration on Mutual Assistance on Natural Disasters, reiterating that commitment and calling on both transit and affected states to take the necessary administrative steps to facilitate the movement of relief vehicles, personnel, goods and equipment.⁵⁰⁷ Three years later, ASEAN adopted the binding Agreement on the ASEAN Food Security Reserve, committing members to maintaining dedicated food stocks (including an Emergency Rice Reserve with specific minimum amounts set out in the Agreement) in case of emergency need by another member state, which may then negotiate for their speedy purchase.⁵⁰⁸ To date, no state has ever sought assistance through the Reserve.⁵⁰⁹

In July 2005, ASEAN adopted a second, more comprehensive, treaty in this area, the Agreement on Disaster Management and Emergency Response (hereinafter, “the ASEAN Agreement”).⁵¹⁰ The ASEAN Agreement sets out six overarching principles: respect for national sovereignty; the overall direction and control of relief by the affected state; strengthening regional cooperation; priority to prevention and mitigation; mainstreaming disaster risk reduction in development; and involving local



communities and civil society disaster planning.⁵¹¹ In addition to provisions concerning cooperation in disaster risk reduction and early warning, the ASEAN Agreement sets out a number of specific measures related to smoothing barriers to international response. These include commitments for advance identification of available assets, processes for requests and offers of disaster assistance, provisions on the direction and control of both civilian and military assistance, as well as important new institutional measures, including the establishment of an emergency fund and a new ASEAN Co-ordinating Centre for Humanitarian Assistance on Disaster Management.⁵¹² While ASEAN has had various expert committees for sharing technical information and developing strategies for thirty years, the Centre would be the first institution with authority to coordinate relief efforts.

Under the Agreement, affected states commit to “facilitate the entry into, stay in and departure from its territory of personnel and of equipment, facilities and materials involved or used in the assistance,” exempt that assistance from taxes or charges; protect assistance personnel, goods and equipment; and provide them other “local facilities and services for the proper and effective administration of the assistance.”⁵¹³ Assisting entities are committed to abiding by national law: ensuring that their relief goods “meet the quality and validity requirements of the Parties concerned for consumption and utilization;” and refraining from “any action or activity incompatible with the nature and purpose” of the Agreement.⁵¹⁴ Remarkably, these provisions apply not only to assisting states, but to any “assisting entity” (defined to include “a State, international organisation, and any other entity or person that offers and/or renders assistance to a Receiving Party or a Requesting Party in the event of a disaster emergency”⁵¹⁵) whose assistance is accepted by the receiving state.

The ASEAN Agreement requires ratification by all 10 ASEAN member states before it will officially enter into force⁵¹⁶ and to date only 4 have done so.⁵¹⁷ Nevertheless, measures to implement the Agreement have already begun, including regional simulation exercises⁵¹⁸ and in the operational response to the 2006 earthquake in Yogyakarta, Indonesia.⁵¹⁹

4.3.2 SAARC

In 1987, members of the South Asian Association for Regional Cooperation (SAARC)⁵²⁰ adopted the Agreement on Establishing the SAARC Food Security Reserve.⁵²¹ Like the ASEAN Food Security Reserve, the Agreement committed members to earmark specific amounts of grains or rice to be available in event of emergency need by another member, which may then negotiate for their purchase. However, also like the ASEAN food reserve, no use has been made of the SAARC mechanism.⁵²² To address this, a new treaty was adopted in April 2007 renaming the Food Security Reserve the “SAARC Food Bank,” and extending eligibility for its use beyond cases of major disaster to less dramatic situations of food shortfall.⁵²³

Most of SAARC’s other work on disasters has been focused on risk reduction and information sharing, particularly in the context of overall environmental management, for example, through the creation of the SAARC Meteorological Research Centre in Dhaka and the SAARC Coastal Zone Research Centre in Male.⁵²⁴ In the wake of the 2004 tsunami, a special session of SAARC Environment Ministers issued a declaration, later endorsed by the heads of state in their sixth summit, calling for greater cooperation in early warning and the integration of recovery activities into development plans, as well as the creation of a “Comprehensive Framework on Early Warning and Disaster Management.”⁵²⁵ This Framework is still being developed, but one element reportedly being discussed is the creation of a “regional response mechanism dedicated to disaster preparedness, emergency relief and rehabilitation.”⁵²⁶ SAARC has also approved the creation of a new SAARC Disaster Management Centre in New Delhi to foster research and information sharing on disaster risk reduction and management.

4.3.3 ECO

Like SAARC, the Economic Cooperation Organization (ECO) (a sub-regional group of 10 Central Asian states) created a new regional centre for research and information sharing on disasters in 2006, the Centre for Risk Management of Natural Disasters in Mashad, Iran.⁵²⁷ That same year, the Baku Declaration of the Ninth Summit Meeting of Heads of State or Government “[r]ecommend[ed] consideration of regional programmes and projects for early warning, preparedness and management of natural disasters and the need for strengthening collaboration within and beyond the region in this regard, and putting in place a permanent regional response mechanism dedicated to disaster preparedness, earthquake safety and drought management, etc.; emergency relief and rehabilitation to ensure immediate response[.]”⁵²⁸

4.3.4 APEC

In 1997, the Asia Pacific Economic Cooperation (APEC)⁵²⁹ Ministerial Meeting “noted that APEC should define its value-added role in formulating emergency preparedness and disaster recovery measures” and called for “strengthening cooperative efforts to ensure an effective and integrated approach to deal with this key issue.”⁵³⁰ This led to the development of the APEC Framework for Capacity Building Initiatives on Emergency Preparedness, committing to cooperation in a number of initiatives, including with regard to member state legislative frameworks,⁵³¹ as well as a number of specific initiatives in various sectors. In the wake of the 2004 tsunami, a dedicated “Task Force for Emergency Preparedness” was created with a mandate to explore a “non-duplicative” role for APEC in increasing regional cooperation in disasters.

Among the sectoral efforts, was a 2005 APEC Initiative on Preparing for and Mitigating an Influenza Pandemic, endorsed by the APEC ministers in 2005, with a number of commitments to cooperate in building capacity, sharing information and responding to avian influenza.⁵³² Of particular interest to this study, the “Action Plan” formulated to carry out that initiative commits members to “pursue consistent approaches with international organizations and support existing global coordinating mechanisms” and “[e]ncourage facilitation of entry, such as pre-authorized visas and customs, of WHO rapid response teams requested by the host economy, and their necessary equipment to pandemic outbreak sites[.]”⁵³³

4.3.5 SOPAC, Pacific Islands Forum and FRANZ

The South Pacific Applied Geoscience Commission (SOPAC) (now called the Pacific Islands Applied Geoscience Commission with the same acronym) is a sub-regional organization created in 1972 and devoted to cooperation in a number of areas related to geoscience, including hazard assessment and risk management, environmental vulnerability.⁵³⁴ SOPAC has traditionally focused on early warning and risk reduction issues. However, in a recent annual meeting of regional disaster managers, the possibility of extending SOPAC’s activities “to develop or strengthen legal and institutional arrangements for... disaster management” was raised.⁵³⁵

In 1976, another sub-regional organization, the Pacific Islands Forum (formerly, the South Pacific Forum⁵³⁶), established a Regional Natural Disaster Relief Fund from which member states may request moderate grants in the event of a disaster.⁵³⁷ In 1992, the governments of France, Australia and New Zealand signed the FRANZ Joint Statement on Disaster Relief Cooperation in the South Pacific, with the aim of improving their coordination in providing disaster relief to Pacific Island states.

4.4 Europe

4.4.1 European Union (EU)

A regional study carried out by the Austrian Red Cross and the International Federation in 2006 identified two main areas of European Union (EU) law on international disaster response: humanitarian assistance and civil protection cooperation.⁵³⁸ Each area is also represented by its own institution: the European Commission Humanitarian Aid Office (ECHO) (now known as the “Directorate General for Humanitarian Aid” or “Humanitarian Aid Department” under the same acronym) for the former and the Community Civil Protection Mechanism and its Monitoring and In-

formation Centre (MIC) for the latter. Both areas of law and institutions are concerned with providing assistance outside of the EU, whereas only civil protection is involved in cross-border assistance within the EU. EU law also includes other relevant instruments related to border-area mutual assistance, and customs and taxation issues in disaster response.

4.4.1.1 Humanitarian assistance

ECHO was created in 1992 as an arm of the European Commission in an effort to rationalize the previously fragmented EU humanitarian assistance policy.⁵³⁹ ECHO currently provides 30 per cent of the global total for humanitarian funding (in addition to the 25 per cent provided bilaterally by member states), channelled through over 200 non-governmental organizations and international institutions, including the United Nations and the International Red Cross and Red Crescent Movement.⁵⁴⁰

The Commission's current mandate with regard to humanitarian assistance is set out in Council of the European Union Regulation 1257/96 of June 20, 1996.⁵⁴¹ That regulation states that the EU's humanitarian aid "shall comprise assistance, relief and protection operations on a non-discriminatory basis to help people in third countries, particularly the most vulnerable among them, and as a priority those in developing countries, victims of natural disasters, man-made crises, such as wars and outbreaks of fighting, or exceptional situations or circumstances comparable to natural or man-made disasters."⁵⁴² Such aid is intended to be time limited, but to support not only life-saving relief but also short-term reconstruction and rehabilitation projects and measures to reduce future risk.⁵⁴³ It is provided in the form of grants (*i.e.* without expectation of reimbursement by receiving states)⁵⁴⁴ and may be provided through EU member-state NGOs or international organizations and "if necessary" by the Commission itself or specialized agencies of member states.⁵⁴⁵

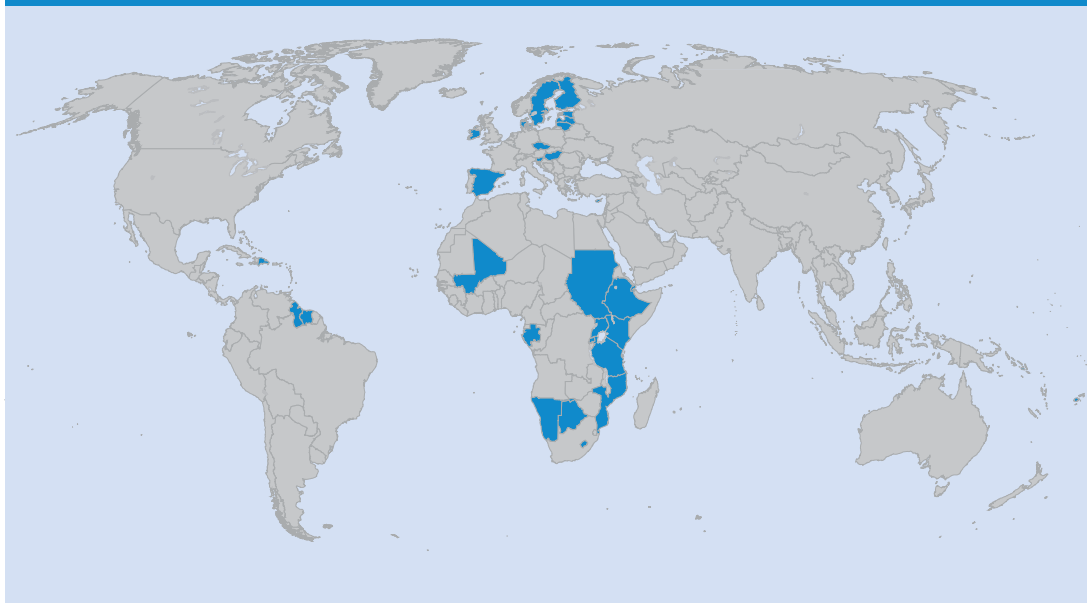
The Regulation describes a number of eligibility criteria for NGO grantees, including with regard to their experience, technical and logistical capacity, willingness to cooperate with coordination structures, and impartiality, and empowers the Commission to set additional standards. It also details how aid may be initiated, sets out mechanisms for coordination (including information exchange mechanisms with member states providing bilateral assistance), describes the types of items and programmes that maybe funded and provides that aid "shall be exempt from taxes, charges, duties and customs duties."⁵⁴⁶

Also in 1996, the Council adopted Regulation 2258/96 of November 22, 1996 on rehabilitation and reconstruction operations in developing countries.⁵⁴⁷ It provides for the support of "operations designed to help re-establish a working economy and the institutional capacities needed to restore social and political stability to the countries concerned and meet the needs of the people affected as a whole" that "progressively take over from humanitarian action and pave the way for the resumption of medium-term and long-term development aid[.]"⁵⁴⁸ Rehabilitation and reconstruction assistance is also provided in the form of grants, and may be channelled through international and non-governmental organizations, but also regional organizations, national, provincial and local government departments and agencies, community-based organizations, institutes and public and private operators.⁵⁴⁹ Like Regulation 1257/96, it sets out certain criteria for eligible projects as well as coordination powers and mechanisms to ensure effectiveness.⁵⁵⁰

In 2007, the Commission adopted a communication to the Council and Parliament signalling the desire for the adoption of a new “European Consensus on Humanitarian Aid,” which would involve, among other things, a stronger stance in advocacy for respect for humanitarian principles and international humanitarian law; measures to improve coordination of EU and global humanitarian aid; official adoption of the “Good Humanitarian Donorship Principles and Best Practice” and the “Oslo Guidelines” (described above); the establishment of minimum standards of assistance and protection, including common frameworks for needs assessments; and a strong affirmation of the EU’s support for the role of international humanitarian organizations.⁵⁵¹

In addition to its internal regulations, the EU and its member states have entered into a series of successive “Partnership Agreements” with members of the “African, Caribbean and Pacific Group of States”⁵⁵² for several decades regarding development assistance. The most recent version, known as the Cotonou Agreement, was adopted in 2000 and revised in 2005.⁵⁵³ With regard to humanitarian and emergency assistance, it affirms underlying humanitarian principles and the primary aims of such relief. It notes that such assistance “shall be undertaken either at the request of the [African, Caribbean or Pacific] country affected by the crisis situation, the Commission, international organisations or local or international non-State organisations” and that it shall be “administered and implemented under procedures permitting operations that are rapid, flexible and effective[.]”⁵⁵⁴ It likewise stipulates that “free access to and protection of victims shall be guaranteed as well as the security of humanitarian personnel and equipment[.]”⁵⁵⁵ The Cotonou Agreement entered into force in 2003 and is set to continue until 2020, with periodic opportunities for revision.⁵⁵⁶

State parties to the revised Cotonou Agreement



4.4.1.2 Civil protection

The Council of the European Union has adopted a number of decisions and resolutions with regard to improving civil protection cooperation both within and outside the EU, some of which are described below. These have gradually led to the creation of a formal mechanism for regulating this cooperation, which has recently been given an expanded mission and funding base.⁵⁵⁷

An early instrument worthy of note is the European Outline Convention on Trans-frontier Co-operation between Territorial Communities or Authorities of 1980, which includes a “Model agreement between local and regional authorities on the development of transfrontier co-operation in civil protection and mutual aid in the event of disasters occurring in frontier areas.”⁵⁵⁸ The model encourages states to agree “to ensure that the transport of the persons and equipment . . . may be effected as smoothly as possible, whatever the mode of transport employed”⁵⁵⁹ and sets out provisions on information exchange, management of assistance and costs.

In 1991, the Council adopted a resolution on “improving mutual aid between member states in the event of a natural or technological disaster” (hereinafter, Council Resolution of 8 July 1991”).⁵⁶⁰ The resolution calls on member states to provide aid teams “supplied with equipment and aid material” upon another member state’s request “as they deem possible and available in the event of a disaster in the territory of that other Member State entailing serious physical damage or danger to persons, property and the environment, and clearly exceeding the Member State’s own assistance capability.” Assisting states are to ensure that their aid teams are “logistically independent” and “self-sufficient in situ for at least 48 hours,” after which, requesting states are to replenish their supplies, house and feed them, and provide overall direction.⁵⁶¹ Requesting states are called upon to: provide assisting state aid teams with “access to all places where their cooperation is requested;” ensure adequate procedures for “rapid issue of the necessary permits;” reduce border controls and formalities; authorize overflight and landing of aircraft, and protect the security of the aid teams.⁵⁶² Moreover, absent agreement to the contrary, they are responsible for all the costs of the operation and should normally refrain from any claims against the assisting state for any damages and assist it in providing compensation for third-party claims.⁵⁶³

In subsequent years, the Council has adopted decisions setting out action plans for civil protection cooperation (currently expired) and specific measures of cooperation in instances of marine pollution.⁵⁶⁴ In 2001, it adopted Decision 2001/792/EC establishing the Community Civil Protection Mechanism,⁵⁶⁵ with the aim of providing greater institutional support for civil protection assistance both inside and outside the EU. The Mechanism requires member states to identify and prepare intervention teams for eventual cross-border assistance and set up a centralized system of receiving requests for assistance (from both EU members and outside states), and assisting in the dispatch of available resources.⁵⁶⁶ It also established a 24-hour Monitoring and Information Centre to make the above links and share breaking information as well as a “common emergency communication and information system.”⁵⁶⁷ A Commission Decision in 2003 set out greater details on the means for communicating requests and offers of assistance and coordinating operations, noting that “the requesting State shall facilitate border crossings for the interventions and ensure logistical support” and, absent agreement to contrary, bear all costs.⁵⁶⁸ The Mechanism now covers 30 European states and has intervened in a broad range of disasters, ranging from fires to floods, hurricanes and the 2004 tsunami.⁵⁶⁹

In 2007, the Council adopted Decision 2007/162/EC establishing a civil protection financial instrument, which expands the funds available for the operation of the Civil Protection Mechanism, including payment of some costs for transportation of aid teams and resources.⁵⁷⁰ The Council also recently adopted a recast of its Decision 2001/792/EC, expanding the mandate of the Mechanism, calling on member states to establish discrete “modules” within the civil protection forces capable of a high level of interoperability with EU and UN-led operations undertaken pursuant to the Mechanism and strengthening the duties of states to inform and cooperate with the Mechanism.⁵⁷¹

4.4.1.3 Other instruments

Given the breadth of topics covered by EU law, a full description of instruments potentially relevant to disaster response additional to the broad areas identified above will not be attempted here. However, it is worthwhile to take note that Council Regulation No. 918/83 of 1983⁵⁷² concerning customs duties, Council Directives No. 2006/112/EC of 2006 and 83/181/EEC of 1983⁵⁷³ concerning value added tax, and Commission Regulation No. 2454/93/EEC of 1993⁵⁷⁴ concerning temporary importation all contain specific provisions concerning the waiver of duties or taxes on disaster relief items imported by charitable organizations. Moreover, specific instruments, including Council Resolution 1292/96 of 1996⁵⁷⁵ and Commission Regulations 2298/2001⁵⁷⁶ and 2519/97⁵⁷⁷ regulate the provision of food aid.

4.4.2 Council of Europe

In 1987, the Council of Europe (COE) Committee of Ministers adopted Resolution 87(2), creating a “Co-operation Group for the Prevention of, Protection Against and Organisation of Relief in Major Natural and Technological Disasters.”⁵⁷⁸ This inter-governmental forum, now known as the “EUR-OPA Major Hazards Agreement,” fosters research, public information, and policy dialogue on disaster-related matters among its 25 member states (including both COE and some non-COE members).⁵⁷⁹ Its activities have included studies of member state legal and institutional frameworks for disaster response, the development of standardized damage assessment models and the establishment of a regional earthquake warning system that acts as a conduit of information between affected and member states on damage and needs.⁵⁸⁰

The COE has also adopted two binding agreements that, while not specifically focused on disasters, are pertinent to the topics of this study.

The first is the Agreement on the Temporary Importation, Free of Duty, of Medical, Surgical and Laboratory Equipment for Use on Free Loan in Hospitals and other Medical Institutions for Purposes of Diagnosis and Treatment of 1960 (hereinafter, “COE Agreement on Temporary Importation”).⁵⁸¹ This Agreement binds its 24 member states to provide free loans for up to six months of medical, surgical and laboratory equipment to other parties in exceptional need. Receiving states must “grant all possible facilities for the importation on a temporary basis of the equipment loaned,” including by ensuring the availability of any necessary licenses and waiving any customs duties, taxes or charges.⁵⁸²

The second is the European Convention on the Recognition of the Legal Personality of International Non-Governmental Organizations, adopted by the Council of Europe in 1986 (hereinafter “European NGO Convention”).⁵⁸³ The European NGO Convention is the only existing treaty addressing the issue of whether and how states should recognize the domestic legal status international NGOs. According to its terms, member states commit to recognize the legal personality and capacity of NGOs granted by another member state upon production of documentary evidence set out in the Agreement, except if the organization’s purpose or activity “contravenes national security, public safety, or is detrimental to the prevention of disorder or crime, the protection of health or morals, or the protection of the rights and freedoms of others; or... jeopardises relations with another State or the maintenance of international peace and security.”⁵⁸⁴ The Convention entered into force in 1991 and currently has 11 members.

4.4.3 NATO

In 1953, North Atlantic Treaty Organization (NATO) member states adopted their first procedures for “NATO Cooperation for Disaster Assistance in Peacetime,” which was applicable only to assistance between NATO-member states.⁵⁸⁵ NATO was sporadically involved in such operations in subsequent decades. In 1992, these procedures were revised to allow for assistance to non-NATO states. The new procedures also commit individual NATO members to inform NATO about needs transmitted to them by outside disaster-affected states.⁵⁸⁶

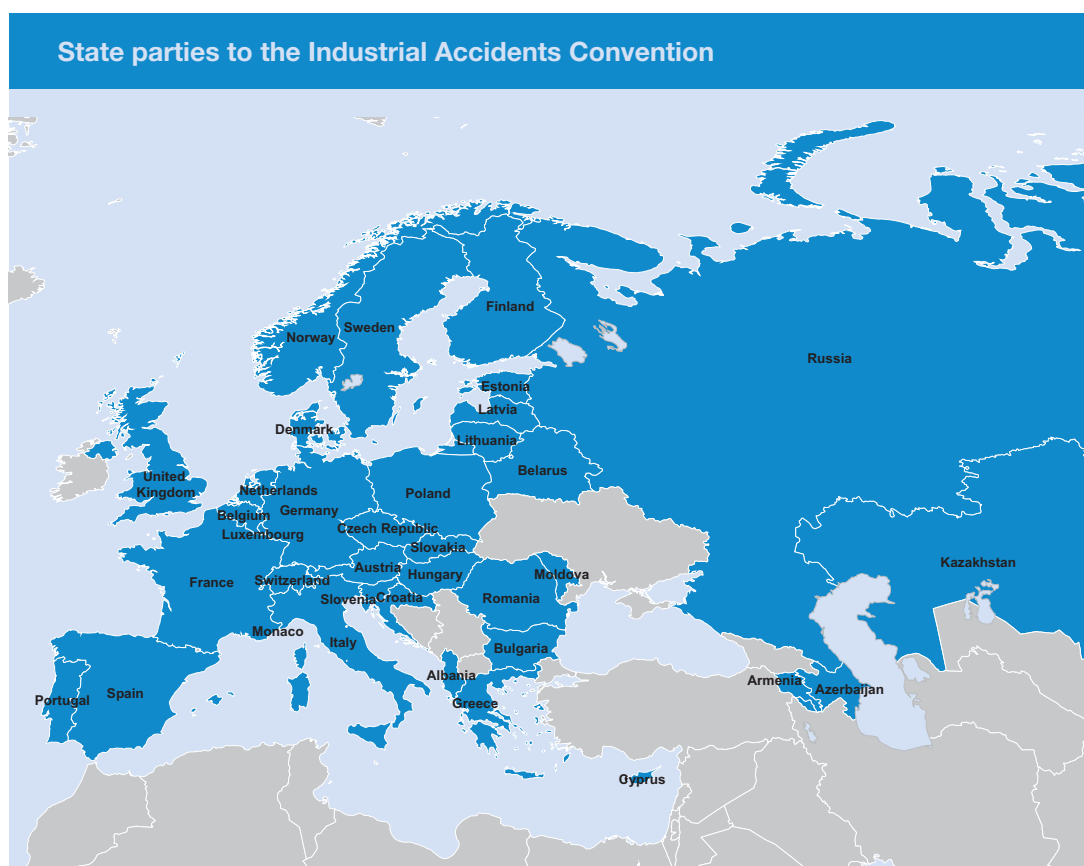
In 1998, NATO ministers adopted a policy on “Enhanced Practical Cooperation in the Field of International Disaster Relief,” establishing the Euro-Atlantic Disaster Response Coordination Centre (EADRCC). The EADRCC responsible for coordinating disaster assistance between NATO states, and a Euro-Atlantic Disaster Response Unit (EADRU), a non-standing group of volunteer member states available to provide military and/or civilian assets for assistance efforts outside of NATO.⁵⁸⁷ In the Standard Operating Procedures adopted for the EADRU, members are committed to coordinating with the UN and to observing the Oslo Guidelines.⁵⁸⁸ An annex to those procedures sets out a model agreement between assisting and “stricken” states.⁵⁸⁹ The EADRCC and EADRU have subsequently played important roles in organizing NATO-state assistance efforts to the United States after Hurricane Katrina and to Pakistan after the 2005 earthquake.

In 2006, NATO members and partner states adopted a Memorandum of Understanding on the Facilitation of Vital Civil Cross Border Transport (hereinafter “the NATO MOU”),⁵⁹⁰ developed due to administrative problems faced by civilian components of NATO disaster response operations that are not covered by the various NATO Status of Force Agreements, and the privileges and immunities they provide to military actors. The NATO MOU provides that requesting states will accord priority to civilian NATO disaster relief transport, including permission to cross otherwise closed borders.⁵⁹¹ Requesting states also commit to waive or expedite visas for relief personnel, and waive all customs duties, taxes and charges other than payment for services.⁵⁹² Assisting states commit to informing affected states about proposed transport means and border entry points and to consult with them about routes, as well as to abide by national law related to their transit and to abstain from activity inconsistent with the NATO MOU.⁵⁹³

Though it is considered non-binding, the NATO MOU still requires definitive signatures from member states. To date, NATO has announced signatures by NATO “Partnership for Peace” states Albania, Armenia and the Former Yugoslav Republic of Macedonia.

4.4.4 UNECE

There are several environmental treaties negotiated within the context of the United Nations Economic Commission for Europe (UNECE) with implications for international disaster response. The Convention on the Protection and Use of Transboundary Watercourses and International Lakes of 1992 (hereinafter “the Transboundary Watercourses Convention”), calls on aid requesting states to reduce border-crossing formalities, provide local facilities, waive assisting state liability and assume costs.⁵⁹⁴



The Convention on the Transboundary Effects of Industrial Accidents of 1992 (hereinafter, the “Industrial Accidents Convention”) devotes an entire annex to the issue of mutual assistance in the context of industrial accidents, providing that requesting states shall provide local facilities and services needed by assisting states, protect their personnel, equipment and goods, provide their personnel with “the privileges, immunities or facilities necessary for the expeditious performance of their assistance functions,” facilitate the entry, stay, and departure of relief personnel, goods and equipment, bear all costs (absent agreement to the contrary), and shield assisting states and their personnel from liability.⁵⁹⁵

Moreover, the European Agreement concerning the International Carriage of Dangerous Goods by Road of 1957 (and as subsequently amended) exempts “emergency transport intended to save human lives or protect the environment” from its restrictions concerning the carriage of dangerous goods, “provided that all measures are taken to ensure that such transport is carried out in complete safety.”⁵⁹⁶

4.4.5 BSEC

In 1998, members of the Black Sea Economic Cooperation (BSEC) (a sub-regional organization of 12 states in Central Europe) adopted the Agreement among the Governments of the Participating States of the Black Sea Economic Cooperation (BSEC) on Collaboration in Emergency Assistance and Emergency Response to Natural and Man-Made Disasters.⁵⁹⁷ The Agreement sets out procedures for requests of assistance, commits requesting states to “ensure unobstructed receipt and distribution of goods of assistance exclusively among the afflicted population” without discrimination,⁵⁹⁸ and calls on them to simplify and expedite customs procedures and waive customs fees and charges.⁵⁹⁹ Specific provisions deal with issues related to coordination, transport, particularly aircraft, and the importation of “drug materials and psychotropic substances.”⁶⁰⁰ Assisting parties should normally bear the costs, but they are also entitled to reimbursement for death or injury of their personnel and indemnification against third party claims, absent gross negligence.⁶⁰¹ The Agreement also establishes a Working Group on Emergencies to ensure implementation of its provisions.

In 2005, BSEC adopted an additional protocol to the BSEC Agreement, establishing a “Network of Liaison Officers” to improve information exchange.⁶⁰² Among the responsibilities of these officers would be to transmit urgent requests for emergency assistance to their governments within one day, and other requests within three days.

4.4.6 CEI

In 1992, the member states of the Central European Initiative (CEI) adopted a Cooperation Agreement on the Forecast, Prevention and Mitigation of Natural and Technological Disasters. The agreement mainly focuses on issues of prevention and information sharing, but also provides for the creation of a Joint Committee whose responsibility would include developing “procedures for tighter solidarity” for cooperation in response to a disaster.⁶⁰³ In both its 2004–2006 and 2007–2009 “Action Plans,” the CEI observed that “[b]order-crossing procedures need to be improved in the case of interventions for either natural or man-made disasters, peacekeeping operations, etc.” and charged its Working Group on Civil Protection to “use its influence” to “facilitate fast and unbureaucratic border-crossings for persons and equipment entering the affected country from abroad.”⁶⁰⁴ The latter plan also referred to discussions about the creation of a sub-regional network for civil defence coordination.

4.4.7 Other sub-regional agreements

The Convention for the Protection of the Mediterranean Sea against Pollution of 1976 (and as revised in 1995) (known as the “Barcelona Convention”)⁶⁰⁵ and the Agreement for Cooperation in Dealing with Pollution of the North Sea by Oil and other Harmful Substances of 1983⁶⁰⁶ both have general provisions on the request and offer of assistance between member states in the event of a pollution emergency. The

Barcelona Convention also has a protocol on emergencies originally adopted in 1976 and revised in 2002 with specific provisions not only on requesting and coordinating emergency assistance, but also on facilities that affected states should accord to assisting state ships, personnel and equipment to enter and move in and out of their territories as well as on the assignment of costs.⁶⁰⁷ The Protocol codifies the role of the Regional Marine Pollution Emergency Response Centre (REMPEC) for the Mediterranean Sea, administered by IMO and UNEP, in facilitating communication about pollution emergencies and requests and offers of assistance.

In 2001, six states adopted the Agreement on the Establishment of the Civil-Military Emergency Planning Council for Southeastern Europe (hereinafter, “Southeastern Europe Agreement”), seeking to improve their coordination in sub-regional assistance, develop common standards and organize exercises.⁶⁰⁸

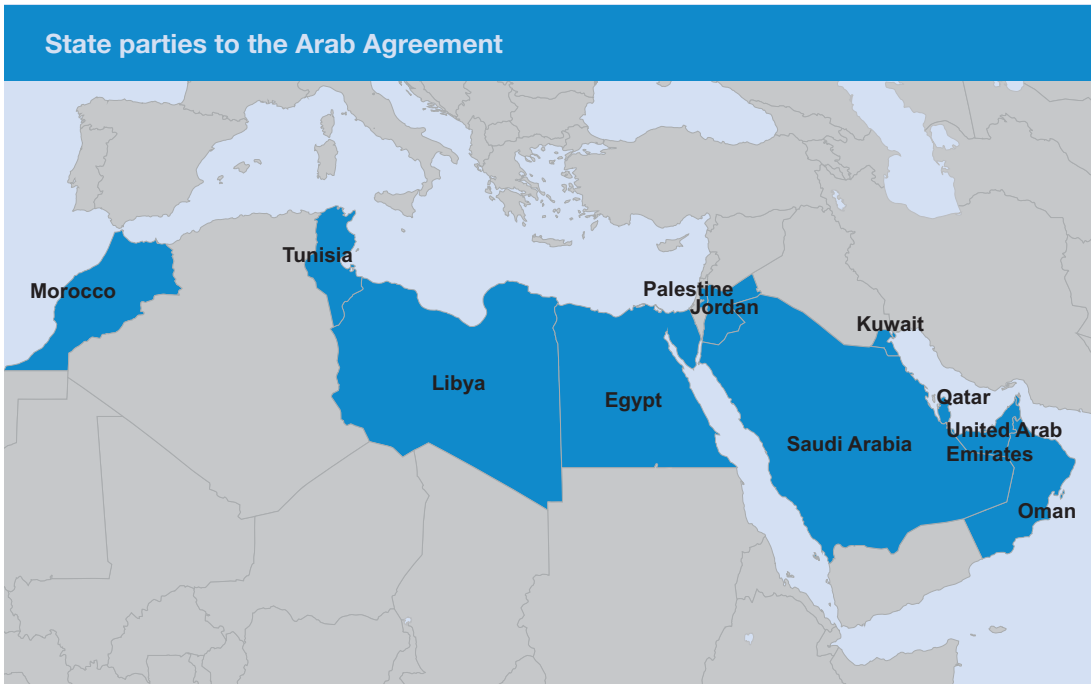
In 1963, Denmark, Finland, Norway Sweden and the IAEA adopted a Nordic Mutual Emergency Assistance Agreement in Connection with Radiation Accidents.⁶⁰⁹ Pursuant to the agreement, requesting states are committed to directing assistance efforts, providing local facilities and protection to assistance personnel and materiel, granting “necessary privileges and immunities with a view to securing the expeditious performance of functions,” and guaranting protections from liability for assisting states.⁶¹⁰ Assisting states are responsible for the salaries of their assistance personnel and other costs outside the affected state, whereas the requesting state is made responsible for in-country costs.⁶¹¹ The agreement also affirms the IAEA’s role in consulting about and helping to coordinate assistance, as well as in channelling offers from states outside the agreement.⁶¹²

In 1989, the same four states entered into an Agreement on Cooperation across State Frontiers to Prevent or Limit Damage to Persons or Property or to the Environment in the Case of Accidents.⁶¹³ The agreement does not define “accidents” although the preamble refers to “assistance in the case of accidents in peacetime.” It commits members “to remove possible obstacles” to cooperation in addressing accidents from their “national legislation and other provisions.”⁶¹⁴ In particular, it requires requesting states to “ensure that vehicles, rescue materials and other equipment brought for the purpose of an operation can be taken over the frontiers without import or export formalities and free of taxes, duties and charges.”⁶¹⁵ Requesting states are also responsible for all costs and to protect assisting states from liability for any damages.⁶¹⁶

4.5 Middle East

In 1987, the League of Arab States adopted an “Arab Cooperation Agreement on Regulating and Facilitating Relief Operations” (hereinafter “the Arab Agreement”).⁶¹⁷ Pursuant to the Arab Agreement, members pledge to “coordinate their efforts to provide all the assistance and facilities required to respond to any natural disaster or emergency situation” as well as to take “measures required to eliminate obstacles or difficulties which may impede the rapid access of relief teams or materials to the victims[.]”⁶¹⁸ The Agreement lays out a number of these measures in detail, including: reducing customs documentation requirements; facilitating quick customs clearance, exempting relief items from customs duties and other fees or taxes, facilitating the entry of relief transport, including through reductions in charges in national carriers; providing entry and exit visas without undue delay; as well as facilities related to communications.⁶¹⁹

The Arab Agreement entered into force in 1990 and 12 of the League's 22 members have acceded to it to date.⁶²⁰ However, participants at the Middle East Forum on IDRL reported that there has been difficulty ensuring implementation.⁶²¹ They also expressed concern that the agreement does not cover international assistance other than by states.



Chapter 5

Bilateral treaties and agreements

The bulk of the existing international instruments relevant to disaster response are bilateral treaties and agreements. The International Federation's database (by no means exhaustive, inasmuch as many of these documents are not internationally compiled)⁶²² includes dozens of such treaties between states, and its research has also made it aware of a large number of bilateral agreements between states and international humanitarian organizations.

5.1 Agreements between States

A study commissioned by the International Federation in 2003 identified three "waves" of bilateral treaty making in this area.⁶²³ The first began roughly in the 1950s, when several states, notably the United States, began concluding agreements designed to ensure the smooth delivery of donated relief goods in response to a single emergency. For example, in 1956, the United States and Haiti entered into an agreement concerning food assistance in response to drought in the latter state, setting out amounts to be provided and Haiti's responsibilities concerning "port charges, in-land transportation, free distribution, information and observation."⁶²⁴ Likewise, a 1964 agreement between the United Kingdom and India committed the latter to ensure duty-free entry of the former's food relief.⁶²⁵

The study found a second and third wave of bilateral treaties starting in the 1970s and the 1990s respectively.⁶²⁶ Some were exclusively concerned with technical assistance (e.g., with regard to training or capacity building).⁶²⁷ A more substantial proportion were mutual assistance agreements, particularly between European states,⁶²⁸ such as the Agreement between Sweden and Norway concerning the Improvement of Rescue Services in Frontier Areas of 1974⁶²⁹ and the Agreement between Austria and the Czech Republic on Mutual Assistance in the Event of Disasters or Serious Accidents of 1998.⁶³⁰ Like those of the first wave, there were also some assistance agreements crossing regional boundaries, such as the Memorandum of Understanding Between the Government of the United States of America and the Government of Ukraine on Cooperation in Natural and Man-Made Technological Emergency Prevention and Response of 2000⁶³¹ and the Swiss Federal Council and the Government of the Republic of the Philippines on Cooperation in the Event of Natural Disaster or Major Emergencies of 2001.⁶³²

It is also important to note the existence of bilateral status of forces (SOFA) and visiting forces (VFA) agreements and their associated memoranda of understanding, which tend to set out privileges and immunities of foreign military personnel, materiel and facilities and sometimes have specific provisions with regard to assistance in the event of an emergency. The United States alone has over 100 such agreements with other states.⁶³³

While there are, of course, many differences across the various agreements specific to disaster response, there are a number of common trends. The agreements tend to set out procedures for the initiation and termination of assistance, require the designation of permanent focal points on both sides for the exchange of relevant informa-



Yoshi Shimizu / International Federation

tion and describe modalities for the management of emergency teams (normally reserving overall direction to the requesting state).⁶³⁴ They also “reflect a general intention to ensure that frontier-crossing formalities are minimized,”⁶³⁵ in particular, with respect to waiving or expediting visas and work permits for the assisting states’ relief personnel and reducing customs controls and waiving duties and taxes on relief goods and equipment.⁶³⁶ They normally include provisions apportioning responsibility for the costs of the operation, and these tend to be assigned to the requesting state.⁶³⁷ They also very commonly require receiving states to waive any claims against assisting states for any damage their operations might cause and to assume liability for third-party claims other than international torts or gross negligence,⁶³⁸ as well as to ensure the physical protection of assisting state personnel, goods and equipment.⁶³⁹ They rarely make any reference to humanitarian principles or the quality of the assistance to be delivered, although some provide that assisting state personnel should be adequately trained and equipped.⁶⁴⁰

5.2 Status agreements

It is also common for inter-governmental organizations, such as UN agencies, to enter into status agreements, both in states where they maintain headquarters and those in which they have ongoing programmes. Among other things, UN agency agreements usually refer to the Convention on Privileges and Immunities of the United Nations of 1946 and/or the Convention on Privileges and Immunities of the Specialized Agencies of 1947, and also restate certain of their provisions in areas such as visas, customs, liability and judicial immunity.⁶⁴¹ The International Federation has entered into similar agreements with 69 states, providing it with privileges and immunities similar to those of UN agencies on the basis of its unique international (though not inter-governmental) status.⁶⁴²

Like international organizations, NGOs frequently sign agreements with states in which they operate. These agreements are generally governed by the law of the signing state and are not considered international agreements (but are nevertheless included here for convenience). Their terms vary considerably between organizations and states but they generally do not provide for protections at the level of the “privileges and immunities” provided to international organizations. Nearly half of the NGO headquarters respondents to the IDRL survey did indicate that their agreements normally covered issues of coordination with government officials, freedom of movement within the country and waiver or reduction of customs duties, and one-third covered issues of the entry of foreign personnel.⁶⁴³ Thirteen per cent covered other types of taxes of relief goods or issues with respect to telecommunications equipment.

5.3 Donor state grant agreements

Donors require humanitarian organizations receiving funds to carry out international disaster assistance operations to sign agreements governing the use of those funds. The two largest donors in this area (in absolute terms) are the United States and ECHO.⁶⁴⁴ Both employ (separate) agreements with many standardized terms for humanitarian inter-governmental organizations and NGOs, respectively. As in the preceding section, the agreements with NGOs would not be considered international law, but their impact is certainly felt internationally.⁶⁴⁵

ECHO's "Framework Partnership Agreements" with international organizations have only what might be characterized as "technical" requirements, related to eligible types of costs, monitoring and reporting requirements, contracting and procurement rules, visible acknowledgment of ECHO, liability and payment and financial issues.⁶⁴⁶ Its equivalent agreements with "humanitarian organizations" additionally set out requirements related to abiding by humanitarian principles, adhering to humanitarian codes of conduct and quality standards, coordination with other actors, participation of and respect for beneficiaries, local customs, and local capacity.⁶⁴⁷

None of these latter types of conditions are included in the standard terms employed by the United States Agency for International Development (USAID), which are mainly mandated by United States law.⁶⁴⁸ Notably, however, in addition to "technical" requirements and those concerning USAID visibility, are undertakings to guard against the receipt of funds by terrorists and (for NGOs) to employ US-based carriers for flights and shipment of goods and materials. Depending on the location and nature of the project funded, additional mandatory terms may include undertakings to refrain from the promotion of condom use, prostitution and abortion; provisions related to drug use and trafficking; and language concerning the use of humans as research subjects and disability-based discrimination.

Chapter 6

National law

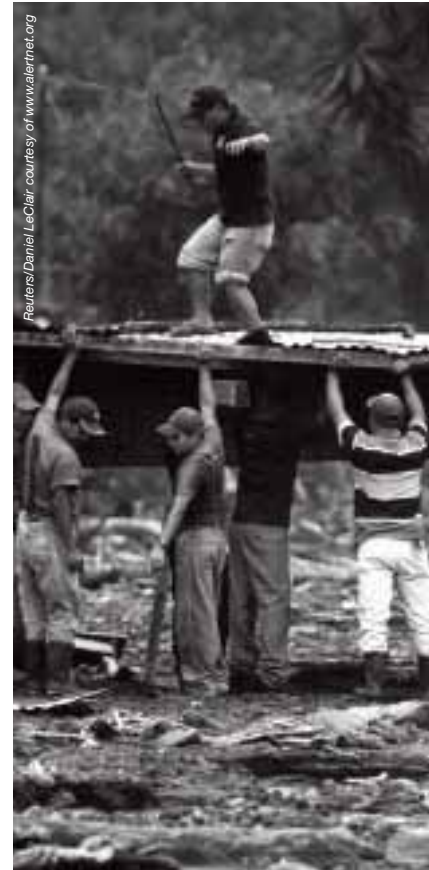
While there is little global information about national legislation on international disaster response,⁶⁴⁹ the available evidence indicates that few states have existing national legislative and policy frameworks that comprehensively address the key issues in this area. This is not entirely surprising, inasmuch as some states still suffer from scattered or inadequate legal and policy frameworks related to domestic disaster response.⁶⁵⁰

Approximately two-thirds of the respondents queried by the IDRL survey indicated that there exists a comprehensive national law or policy on disaster response in their states.⁶⁵¹ However, substantially less than half indicated that existing disaster-specific laws or policies set out the procedures for requesting and accepting international assistance (38%); set out a procedure for determining when international assistance is required (36%); or regulated the quality and accountability of international disaster relief operations (25%). On the other hand, over half indicated that their laws had some provisions on the speedy entry of relief personnel and relief goods. Nevertheless, a majority of National Societies and international humanitarian organization field offices responding felt that existing disaster-specific laws and policies did not adequately address the legal issues of international disaster-response.

These trends are consistent with the findings of the studies commissioned by the International Federation. For instance, in Nepal, it was reported that,

[r]egarding international disaster response, the National Calamity Relief Act has very little to offer in terms of facilitation. Indeed, only three of the provisions make any express mention of the possibility of international assistance - two relating to the donation of goods or money and one which enables the Government to prevent international organisations accessing disaster affected areas. Rather it would appear that the operational and physical presence of foreign organisations is not envisaged.⁶⁵²

Similarly, when the 2004 tsunami struck Sri Lanka, “much of [the] disaster management mechanisms were still ‘works in progress’ yet to be adopted by the Parliament and did not have fully developed structures, systems or mandate to support their implementation” in facilitating and managing international relief.⁶⁵³ In Thailand, “there are few specific laws in place to facilitate the access of international aid agencies and personnel.”⁶⁵⁴ In Mali, “[t]here is a multitude of legal texts, some of which are obsolete and conflicting with more recent legislation... [resulting in] a multiplication of institutional response structure.”⁶⁵⁵ In Nigeria and South Africa, “[w]hile the importance of international co-operation is acknowledged, neither [state’s] framework provides detailed and comprehensive guidelines on how such international co-operation will proceed, especially as regards requests for assistance from the international community.”⁶⁵⁶ In Turkey, “[t]he legislative weaknesses in the... legal system regarding disaster management, led to the creation of many complexities” during the 1999 Marmara Earthquake.⁶⁵⁷ In both the United States⁶⁵⁸ and Pakistan,⁶⁵⁹ the governments themselves have acknowledged that the lack of specific national legislation had hindered their capacity to address international relief after Hurricane Katrina and the 2005 earthquake, respectively.



Reuters/Daniel LeClair, courtesy of www.valerinet.org

On the other hand, there are best practices from which to draw. For example, the International Federation's 2005 study of Fiji found that "the legal and regulatory system... is responsive to the needs of international relief providers and attempts to create an environment in which international assistance can supplement and support national disaster response systems and structures," including formal recognition of the role of NGOs, international organizations and governmental assistance.⁶⁶⁰ Moreover, Guatemala won praise for its implementation of CEPREDENAC's recommendation of "Centres for the Coordination of Humanitarian Assistance," made up of integrated teams of representatives of various governmental ministries and stationed at points of entry to facilitate the admission of international relief providers and materiel during the response to Tropical Storm Stan.⁶⁶¹ Many other states have individual elements with the potential for easing international relief when it is necessary, as described in greater detail in Part III. It would simply be a matter of extending these initiatives to include the whole range of common issues.

Chapter 7

Summary and conclusions on existing frameworks

If the foregoing overview makes anything clear, it is that there is a lot of existing international law on international disaster response and apparently not very much dedicated national law. However, existing international law is poorly organized, leaving gaps in many areas and overlaps in others.

One important gap is that of geographical reach. For example, the Kyoto Customs Convention, Framework Convention, and Tampere Convention are all global in ambition, but have garnered a very limited number of parties and are therefore only occasionally applicable. At the regional level, the Inter-American Convention, ACS Agreement and Arab Agreement have all similarly struggled to obtain ratifications. In general, binding arrangements seem to be flourishing at the regional level only in Europe, and at the sub-regional level elsewhere, making for relatively small communities for each set of rules.

The second major gap is in thematic scope. Some instruments with large numbers of parties, such as the Nuclear Assistance Convention, Chemical Weapons Convention and Industrial Accidents Convention, apply only to a specific kind of disaster. Others, like the Tampere Convention, Food Aid Convention, and CCC Recommendation, apply only to a single sector or area of relief activity. Many of the relevant multilateral treaties at the global level, such as the Chicago Convention and the Oil Pollution Convention, devote only very brief treatment to issues of international assistance, if they make explicit reference to it at all.

The third gap is in the types of international actors addressed. Very few instruments address non-state humanitarian actors in disaster response, notwithstanding the fact that they channel the bulk of governmental funding and a growing amount of private funds.⁶⁶² Hardly any make reference to the role of the private sector or individuals, though the Tampere Convention and ASEAN Agreement are two important exceptions.

The fourth gap is between binding and non-binding instruments. At the global level, the greatest reliance is apparently being placed on non-binding resolutions, declarations, guidelines and codes. However, the most comprehensive of these non-binding instruments for the issues discussed in this study, the Measures to Expedite International Relief, is rarely cited.

Moreover, there appears to be a pattern by which instruments essentially concerned with civil protection assistance are binding whereas those conceiving of disaster assistance as humanitarian relief are not. In the former instruments, there is an assumption that assets and personnel are provided as a favour to an affected state government, which is generally expected to reimburse costs and closely manage how the assistance is carried out. The latter presume that international actors will actively manage their own operations according to humanitarian principles.

While a clear conceptual division between humanitarian organizations and other actors is salutary in order to emphasize the special role of the former, other potential ramifications of this trend raise some cause for concern. This includes the notion that



International Federation

humanitarian obligations should not be considered as obligatory and that some types of disaster relief are subject to humanitarian principles and others are not. Arguably, binding obligations in human rights instruments can serve to counter these potential problems, however, it is not clear that the relevant interpretations have been completely accepted by member states.

Areas of potential overlap appear in particular with regard to mechanisms of coordination and information sharing, as well as potentially inconsistent operational rules. The hypothetical in Box 5 may help to illustrate some of the potential dilemmas.

The real ramifications of these gaps and overlaps can only be fully appreciated in light of problems experienced in operations and Part III will now turn to that analysis.

Box 5: An hypothetical (Legal) disaster

The scenario

In 1991, there was a very minor leak of nuclear material from the Kozlodui Nuclear Plant, located in north-western Bulgaria, on the border with Romania.⁶⁶³ In 2006, north-western Bulgaria was shaken by shockwaves from an earthquake with its epicentre in Serbia.⁶⁶⁴ Combining these incidents with a dose of morbid imagination, assume that a larger earthquake were to induce a massive leak of radioactive material from the same plant, affecting a large number of persons and overwhelming Bulgaria's capacity to respond.



Potentially applicable instruments

Just on the question of how assistance should be initiated, Bulgaria and potential assisting actors might theoretically invoke more than a dozen major IDRL instruments with differing rules and procedures, ranging from General Assembly Resolutions 46/182 and 57/150, the Nuclear Assistance Convention, the Tampere Convention, Council of the European Union Resolution of 8 July 1991 and Council Decision 2001/792/EC (concerning the European Community Civil Protection Mechanism),

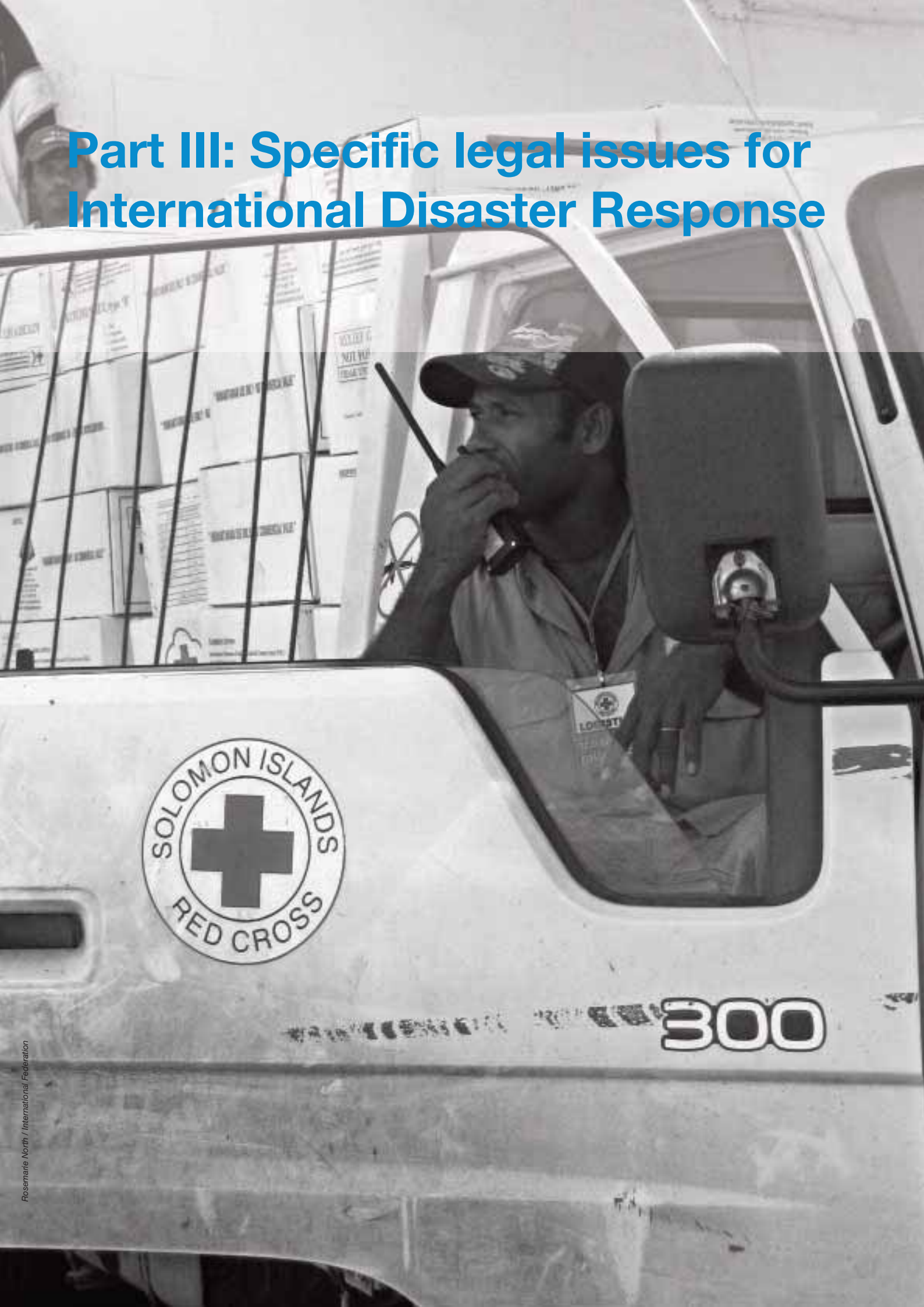
NATO's EADRCC, the CEI Cooperation Agreement, the Southeastern Europe Agreement, the Industrial Accidents Convention, the Transboundary Watercourses Convention (for example, if the leak affected drinking water and fishing in the Danube), the BSEC Agreement, the EUR-OPA Earthquake Warning Service, and the Oslo Guidelines, not to mention various bilateral agreements.

Areas of potential overlap or conflict

OCHA, IAEA, the EU's MIC, NATO's EADRCC, and the CEI Committee, among others, might all make claims pursuant to these various instruments to be a funnel for requests and offers of international assistance and information about disaster needs.⁶⁶⁵ Moreover, depending on the instrument invoked, the rules that apply in the operation might be very different. For example, if Greece offered assistance pursuant to the BSEC Agreement, it would be presumed that it would bear the costs, whereas if it offered its assistance pursuant to the Industrial Accidents Convention, the presumption would be the opposite. If it offered response teams pursuant to the Community Civil Protection Mechanism, it would be presumed that they should be self-sufficient for at least 48 hours under the Council Resolution of 8 July 1991, whereas if they were provided under NATO's model agreement, it would be presumed that the affected state would immediately be responsible for their housing, food, and supplies, among other needs. If a NGO deployed experts in disaster management and emergency telecommunications, the latter would be entitled to diplomatic-style privileges and immunities under the Tampere Convention, whereas the former would not.

Notwithstanding the advances of recent decades, the potential for confusion and inconsistent results is plainly still high.

Part III: Specific legal issues for International Disaster Response



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Chapter 8

Initiation and termination

Despite over one hundred years of collective experience with international assistance operations in response to major disasters, the process of initiation frequently remains fraught with difficulty. On the one hand, particularly in sudden-onset disasters, it is undeniable that the effectiveness of international relief is directly linked to the speed with which it can be delivered. On the other hand, it is widely acknowledged that disasters should be addressed, to the maximum possible extent, by domestic actors and many states are highly concerned with potential encroachments on national sovereignty. Added to these substantive issues are the procedural ambiguities frequently found in domestic legislation and policy on the initiation of international disaster assistance.

Likewise, the modalities of termination continue to present problems. International disaster response is widely understood to be a temporary reaction to an extraordinary event. This notion has its critics, who point to “silent emergencies” such as chronic hunger and underdevelopment and condemn the tendency of donors to pour out their greatest generosity only on situations identified as “crises”. Yet, at least in the context of legal frameworks and the special facilities that are expected to facilitate the assistance of international actors in disasters, it is plain that a distinction must be made between disaster response (including recovery and rehabilitation) and general development.⁶⁶⁶ At a certain point, international disaster responders must either go home or the nature of their status must change (or revert) to that of a development actor. The management of this transition is not always as smooth as might be hoped.

8.1 Governmental requests and offers

As noted above, requests for international assistance in disaster situations are very much the exception – both as a matter of generally accepted principle and common practice – as nearly all disasters are addressed domestically. Requests for international assistance are thus normally reserved for the most massive disasters.⁶⁶⁷

In some instances, governments have categorically refused to request or accept international assistance where the needs clearly outstripped national capacities. In such cases, the discussion in Section 3.1.2 above concerning the right to humanitarian assistance would plainly be quite relevant. However, instances like these are very rare in non-conflict settings and, even when there has been an initial refusal, the affected state government’s position has often softened over time, albeit sometimes at significant cost to affected persons in the interim.⁶⁶⁸

More frequently, problems arise when governments delay making any statement about the need for international relief. For example, significant delays were reported after various storm events in Fiji and after the 1999 earthquake in Turkey before international assistance was requested.⁶⁶⁹ Equally common are ambiguous or confusing signals from the affected state government. For example, three days after Hurricane Katrina struck the United States in August 2005, President George Bush was quoted saying that he did not expect international assistance and that “this country’s going to rise up and take care of it.” Later that same day, a spokesman for the State Department announced

that “no offer that can help alleviate the suffering of the people of the affected area will be refused.”⁶⁷⁰ Subsequently, a large number of international offers of assistance were in fact declined or not used.⁶⁷¹ Similarly, after the 2004 tsunami struck Indonesia, the government reportedly decided almost immediately to open the previously long-closed province of Aceh to international relief. However, this decision was not made widely known for two days.⁶⁷²

A number of existing IDRL instruments encourage affected states to speed the process of requesting and/or accepting offers of assistance from other states.⁶⁷³ However, this can be complicated by a number of factors. It can be politically difficult for a government to declare that it requires international assistance for fear of appearing weak or damaging national pride.⁶⁷⁴ Moreover, the provisions of national law are often ambiguous as to who is responsible for taking the necessary steps leading to such a request, such as with regard to needs assessments, as discussed separately below. Other factors inducing hesitation include “mistrust of the motivations behind the provision of international assistance and concerns that international actors would usurp the primary role of the government in responding to the disaster.”⁶⁷⁵

In addition, governments may be hesitant or even legally prohibited from requesting international assistance in the absence of a formal declaration of a state of disaster or emergency.⁶⁷⁶ For example, under section 703 of the Micronesian Disaster Relief Assistance Act of 1989, a state of emergency is defined as “a formal declaration by the President in a situation where it is required to preserve public peace, health, or safety, at a time of extreme emergency caused by a disaster, and where the States need national and possibly international aid to prevent, prepare for, or recover from the disaster” and under section 709 the President’s power to make a request for international assistance is conditioned on the formal declaration.⁶⁷⁷

Such a declaration may also be required before a government can begin to modify laws and regulations in order to respond to a disaster, including those especially relevant to international relief, such as rules on visas and customs and taxation of relief items. For example, in South Africa, national law provides that the Minister of Provincial and Local Government may take legal steps to facilitate domestic and international assistance, but only after the declaration of a national disaster.⁶⁷⁸ How-

Box 6: States of emergency and initiation

“In one country, the complex, bureaucratic and politically charged process of declaring a state of calamity, coupled with outdated national legislation on foreign contributions, made it difficult to launch an official request for international assistance. These challenges were partially overcome by a government announcement that it would accept “spontaneous gestures of solidarity” from the international community, which became the basis for extensive financial and operational international assistance for the disaster.”

IDRL Multi-Country Operational Case Study, 2003⁶⁸⁰

ever, such a declaration can bring a host of other legal and political consequences, such as the potential for the abridgement of civil rights, and governments can therefore be “extremely cautious” in making them.⁶⁷⁹

Instead, some governments indicate that they would “welcome” offers of assistance without actually asking for them.⁶⁸¹ This approach has won wide support as a practical device,⁶⁸² although it must be admitted that the resulting ambiguity can sometimes affect the amount of international aid offered,⁶⁸³ reduce the effectiveness of international appeals by humanitarian actors, and complicate the efforts of some actors – particularly UN agencies – that require clearer expressions of need before taking action as a matter of policy.⁶⁸⁴ On the latter point however, the evolution of quick response systems by the UN, in particular United Nations Disaster Assessment and Coordination (UNDAC) and INSARAG teams, has helped to chip away at the notion that it must remain immobilized absent a formal appeal.

Particularly in sudden-impact disasters, offers of support from other states often begin to arrive immediately after the disaster becomes known.⁶⁸⁵ Simply cataloguing and responding to these offers in a timely manner has often been beyond domestic capacity, particularly where administrative responsibilities are unclear. This is not only the case in developing states. For example, it was reported that, after Hurricane Katrina, a Swedish plane filled with water purification and cellular telephone equipment remained grounded for 11 days pending clearance from the United States State Department.⁶⁸⁶ By the time permission was granted and the plane was able to depart, none of the supplies it carried were still needed.

Often, international offers of assistance are quite “supply-driven” and foreign governments can be insistent that affected states accept items that they do not need. For example, it was reported that many foreign governments insisted on sending field hospitals and medical personnel to Indonesia in the wake of the 2004 tsunami, despite pleas from the Indonesian government and the WHO that they were not required.⁶⁸⁷

UN General Assembly Resolution 46/182 states that humanitarian assistance should be “provided with the consent of the affected country and in principle on the basis of an appeal by the affected country,”⁶⁸⁸ clearly evincing a preference for a request as the initiating factor. A number of other international instruments, such as the Tampere Convention, the Nuclear Assistance Convention, and many bilateral treaties, similarly contemplate that it is the affected state that initiates communication.⁶⁸⁹ However, other significant instruments, such as the Cotonou Agreement, Framework Convention, ASEAN Agreement, and the Inter-American Convention, appear to place offers and requests on an equal footing, so long as there is consent from the affected state.⁶⁹⁰ This approach is likely more attuned with the fluid type of communications that actually occur in practice, particularly when there is a significant delay in the formal request.

On the other hand, GA Resolution 46/182 also encourages both affected and assisting states to funnel offers and requests through the Emergency Relief Coordinator and many (though certainly not all) have done so. Nevertheless, regional and sub-regional organizations in Europe, the Americas and Asia have also been quite active over the last decade in creating regional and sub-regional mechanisms to centralize the transmission of governmental requests and offers of assistance. The funnelling efforts of several of these, such as NATO, the European Community Civil Protection Mechanism,

CDERA and ASEAN have drawn praise in the International Federation's consultations with governmental stakeholders. Yet, as discussed above in Box 5, there is an important potential for overlapping coordination efforts and it is also plain that many governments, both from assisting and affected states, remain frustrated by current processes.

8.2 Initiation of non-governmental assistance

Whereas foreign governments and inter-governmental organizations normally deal with affected state governments via official offers and requests prior to providing assistance, this is not the common practice of other international actors. While some large NGOs may make formal overtures to affected state governments, others do not attempt any official communication until they have already arrived in the affected state. For example, 62 per cent of international humanitarian organizations (predominantly NGOs) responding to the IDRL survey reported that formal agreements they had with governments were normally made during a disaster operation rather than before.⁶⁹¹ Certainly, private citizens shipping aid collectively or to relatives or friends in an affected state, do not generally have prior official contacts and do not necessarily wait for official appeals. Thus, in practice, affected state control over the initiation of disaster response by these actors (if any) is normally exercised in other ways, for example, through visa and customs controls and in regulations on in-country operations, as discussed below.

Within the International Red Cross and Red Crescent Movement, both common practice and the Movement's governing regulations establish that the various components of the Movement may provide support to the National Red Cross or Red Crescent Society in an affected state when that society requests it (or if it accepts an offer of such support), without a separate approval from the government. The normative basis for providing such direct support to the National Society can be found in the Statutes of the Movement⁶⁹² and the Principles and Rules of Red Cross and Red Crescent Disaster Relief,⁶⁹³ both of which were adopted at the International Conference with the unanimous support of states. Of course, as in the case of NGOs, governments retain their authority over visa, customs and similar control mechanisms. In any event, in light of the close relationship of affected National Societies with their governments (incident to their role as legally recognized auxiliaries to the public authorities in the humanitarian field⁶⁹⁴), such support will rarely be an area for disagreement.

For others, however, this is an area of some ambiguity in existing international law. GA Res. 46/182 does not refer directly to "offers", merely insisting upon the "consent of the affected country." On the other hand, in the absence of a prior standing engagement (like that described above for the International Red Cross and Red Crescent Movement), it would seem logical that some type of notification would be required at some point in order for a government to consent to assistance by a NGO or other international actor, as contemplated by the foregoing language. The Tampere Convention, ASEAN Agreement and the Inter-American Convention all appear to contemplate that humanitarian organizations, like states, should work on the basis of a request by the affected state or its consent to an offer – though none set out any required format or timing of such communications.⁶⁹⁵ In contrast, the Cotonou agreement provides that "[h]umanitarian and emergency assistance operations shall be undertaken either at the request of the ACP country affected by the crisis situation, the Commission, international organisations or local or international non-State organisations."⁶⁹⁶

Looking to IHL by analogy, as discussed above in section 3.1.3, it also appears to contemplate that states (and other armed parties) will have an opportunity to express their consent to relief schemes in situations of armed conflict, though in the case of occupied territory, such “consent” is mandatory under the Fourth Geneva Convention if the population in the occupied territory is not adequately supplied and a strong case has been made that consent may not be arbitrarily withheld in other conflict settings as a matter of customary law. In any event, common article 3 of the Geneva Conventions makes it clear that humanitarian organizations need not await an official request before indicating their readiness to provide assistance in a conflict setting.⁶⁹⁷

It might be similarly argued under human rights law that a state cannot arbitrarily withhold its consent to humanitarian assistance when it is required in a disaster setting. For example, the Guiding Principles on Internal Displacement provide in relevant part that

[i]nternational humanitarian organizations and other appropriate actors have the right to offer their services in support of the internally displaced. Such an offer shall not be regarded as an unfriendly act or an interference in a State’s internal affairs and shall be considered in good faith. Consent thereto shall not be arbitrarily withheld, particularly when authorities concerned are unable or unwilling to provide the required humanitarian assistance.⁶⁹⁸

Here again, however, it is contemplated that there will be an “offer” of services or at least some communication allowing the affected state to express its consent.

There might thus be said to be some tendency in international instruments to expect a process of offer and acceptance between NGOs and affected states similar to the one used between states, but this expectation is not borne out in common practice. It is also unrealistic from an operational perspective. Certainly, an unregulated flow of humanitarian organizations (and other actors) into an affected state can have a number of unfortunate consequences, in particular with regard to displacement of local capacity, as discussed in greater detail below. On the other hand, the potential for further delay of urgently needed humanitarian assistance might be increased if a strict rule requiring a diplomatic-style communication were to be imposed prior to entry. Moreover, many affected states have had more than enough trouble simply responding to official offers from states; adding a new flood of “offers” from humanitarian organizations would likely further overwhelm their capacities without adding much value in terms of respect for sovereignty.

The best solution to this dilemma may be greater use of the flexible “welcoming of international assistance” model discussed above. If states can quickly determine that international humanitarian assistance would be useful, a blanket statement of this kind would be considered an expression of its consent for humanitarian organizations to provide assistance. Governments will still want to screen who responds to such a welcoming message. The most efficient way to do so would be to link critical legal facilities (such as expedited visas or customs clearance) to a system of registration as discussed in greater detail below.

8.3 Needs assessments

Needs assessments are a fundamental tool in ensuring that relief and recovery efforts are appropriately targeted and designed. They are also crucial to the determination whether international assistance is required to supplement national efforts.

Weaknesses in domestic administrative clarity and capacity to undertake valid needs assessments can be a major cause for problems in both the request and provision of international assistance. For example, it has been reported that “the import displacement time for international food aid has usually been long because of the time it takes governments to assess the disaster situations and food aid needs and to find or request from donors the finances or commodities required.”⁶⁹⁹

Sometimes difficulties arise from a lack of communication between national and sub-national governmental agencies in assessing needs. For example, on one day after the massive 2007 floods in Bolivia, the national civil defence agency publicly reported 2,000 affected families in the Beni Department, whereas departmental officials simultaneously reported 16,000.⁷⁰⁰ Similarly, after Tropical Storm Stan in Guatemala, international NGOs quickly concluded that information available from the national CONRED centre of operations was not reliable, due to a lack of governmental capacity at the departmental and local levels.⁷⁰¹ After the 2004 tsunami in Sri Lanka, “[w]hilst most actors were conscious of the importance of identifying needs at the local level, a lack of adequate communication, assessment standards and a clear division of roles and responsibilities between district and national levels were considered to have resulted in some conflict between national and district-level needs assessments.”⁷⁰²

Due in part to the variable quality of domestic needs assessments, many donors and humanitarian organizations have insisted upon independent evaluations before committing resources. For example, in Sri Lanka, “[t]he doubt over the accuracy of government assessments... led many organisations to conduct their own fact-finding missions and needs assessments... [S]ome organisations described this as necessary in some circumstances, due to the lack of government officials with the requisite skills and technical expertise in some affected districts.”⁷⁰³ However, some affected states resist outside assessment for fear of losing control of the relief process. Thus, in Sri Lanka, UNDAC teams were not cleared to enter the country to assess needs from the 2004 tsunami for 3 days.⁷⁰⁴

Local authorities may also have very different priorities from both national authorities and international humanitarian organizations in assessment processes, as illustrated by the example below in Box 7.

For their part, authorities of affected states often have good reason to complain about needs assessments by the international humanitarian community. For example, in an evaluation workshop of the response to Hurricanes George and Mitch, it was reported that “[l]ocal governments and community organizations involved in disaster response expressed frustration with the lack of coordination and the multiple external actors undertaking needs assessment.”⁷⁰⁶ Similarly, in the first three weeks after the 2004 tsunami struck Indonesia, 17 bilateral assessment teams arrived in Aceh producing results of widely varying quality, few of which were shared with other agencies.⁷⁰⁷

Box 7: Challenges of needs assessments

“In a remote area, an organisation may make an assessment, noting that after a disaster, the poorer parts of the population are in need of medical attention. A project targeting the identified needs will then be proposed to the local authorities. However this is sometimes not seen as priority by the local authorities, who would rather the organisation contribute funds for other projects, such as building a new bridge to benefit the more affluent part of the community. The result is that the organisation is denied access to the identified target population.”⁷⁰⁵

With the urging of donors,⁷⁰⁸ recent years have seen a great deal of emphasis on harmonization of standards and methods and increasing cooperation in assessments among members of the international humanitarian community.⁷⁰⁹ While some degree of consolidation is already resulting, it is unlikely that a single assessment tool and/or team could or should be imposed on all humanitarian actors, given the many differences of philosophy and approach, the close identification of the process with fundraising, and (not least) the propensity of donors themselves to insist on their own independent assessments. As noted by a recent Humanitarian Policy Group study of needs assessments:

In general terms, the benefits of joint agency approaches to assessment – including consistency of results and the countering of individual agency biases – outweigh the disadvantages, which can include a tendency to cumbersome processes, the danger of creating false consensus, and the collection of data which remains unanalysed and therefore useless. It is vital that individual agencies are free to conduct their own assessments where necessary.⁷¹⁰

Most existing international IDRL instruments provide little guidance for resolving these various tensions. As noted above, GA Resolution 46/182 indicates a preference for international assistance to be provided only after an appeal of the affected state. However, the same resolution includes among the responsibilities of the Emergency Relief Coordinator: “[o]rganizing, in consultation with the Government of the affected country, a joint inter-agency needs-assessment mission and preparing a consolidated appeal to be issued by the Secretary-General, to be followed by periodic situation reports including information on all sources of external assistance[.]”⁷¹¹ No reference is made in this paragraph to waiting for an official appeal before initiating a needs-assessment mission, though it is clear that the affected state must at least be kept informed. In this respect, it is notable that the 1992 terms of reference for OCHA’s UNDAC teams provides that they may be dispatched “pursuant to a request from an affected Government, the ERC, or the Resident/Humanitarian Coordinator (RC/HC).”⁷¹²

The ASEAN Agreement takes the issue a step further by mandating that “the Requesting Party and Assisting Entity shall, in consultation, jointly assess and decide upon the scope and type of assistance required.”⁷¹³ This type of joint needs assessment is also advocated in the IGAD Disaster Risk Management Programme.⁷¹⁴

8.4 Termination of legal facilities and programmes

In their anxiousness to re-establish a sense of normality and reassert their own role as main social welfare actor, some governments have imposed premature cut-off dates concerning the access or legal facilities of international disaster responders. The UN argued that this was the case, for example, in September 2005, when the government of North Korea declared that it would no longer accept humanitarian assistance by the end of that year, notwithstanding UN assessments that “7 per cent of its 22.5 million people were still starving and 37 per cent remained chronically malnourished.”⁷¹⁵ Moreover, some relief providers abruptly terminate their own relief and recovery programmes without planning or consultation with affected persons, domestic officials or other aid providers.⁷¹⁶ Neither practice is conducive to a smooth transition from relief to recovery or to the well-being of disaster-affected persons.⁷¹⁷

It is clear that some legal facilities that are essential for international responders' emergency operations are not required in a recovery phase. For example, disrupting normal procedures to ensure expedited visa processing or customs clearance makes little sense once relief has passed on to longer-term activities, such as reconstruction. On the other hand, the justifications behind ensuring the availability of work permits, radio licenses, domestic legal capacity, tax exemptions and other such facilities do not change in an initial recovery phase, when programming remains very specific to addressing the results of the disaster. If international actors are to contribute in an efficient manner, they will continue to need these facilities even if they are not normally provided to development actors. At some point, recovery and development work can become difficult to distinguish. The final determination as to when this point has been reached would necessarily have to be made by the affected state. To some extent, both Sri Lanka and Indonesia took this general approach after the tsunami. Both changed their approach to visas and customs clearance privileges provided to international actors after an initial emergency period had ended, but continued to provide other facilities to those remaining for rehabilitation and reconstruction work.⁷¹⁸

A flexible approach also seems to be the overall trend in international instruments. Whereas some IDRL instruments expressly or impliedly limit their scope to emergency relief only,⁷¹⁹ others seem to apply to disaster response more broadly, leaving it to the parties to agree upon the scope and type of assistance to be provided.⁷²⁰ Moreover, many instruments make clear that termination of assistance should be done only after consultation between the parties in order to properly wind down activities.⁷²¹ The Tampere Convention has similar language but also makes direct reference to the potential impacts on affected persons, providing in relevant part that “the States Parties involved shall consult with each other to provide for the proper and expeditious conclusion of the assistance, bearing in mind the impact of such termination on the risk to human life and ongoing disaster relief operations.”⁷²²

8.5 Ideas for the future on initiation and termination

For governments:

- Review disaster laws and policies to ensure that they include clear processes and assignments of responsibility with regard to decision-making and communication concerning the initiation of international assistance.
- In particular, examine whether existing laws and policies set out procedures for undertaking and evaluating rapid needs assessments. Systems for sharing assessment information between national and sub-national levels of government should be clearly established.
- Examine also whether the domestic legal regime concerning states of disaster/emergency could unnecessarily delay a request for international assistance.
- Consider an early announcement “welcoming international assistance” in the event that a formal appeal or request would be delayed for reasons other than absence of need.
- Consider allowing early multi-stakeholder needs assessment missions by international humanitarian organizations including the UN, even in case of some doubt about the eventual need for international relief.
- Employ a flexible approach to terminating legal facilities extended to approved disaster responders as recommended by the draft Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance

For parties to the Tampere Agreement, Inter-American Convention and ASEAN Agreement:

- Construe their agreements so as to allow member states to adopt a flexible system for demonstrating their consent for the initiation of assistance from humanitarian organizations so as not to increase their administrative burden and unduly delay relief.

For UN and regional organizations:

- Ensure that coordination schemes designed to facilitate offers and requests between states do not compete with or duplicate each other.
- Encourage states to enhance their laws to ensure a smooth and workable system with regard to offers and requests of international assistance.

For international disaster responders in general:

- Participate in and enhance international coordination systems for international disaster response as far as their working modalities allow.
- Respect the primary role of domestic actors in responding to disaster needs.

For both affected state governments and international disaster responders:

- Consult prior to termination of programming to ensure a smooth transition of relief to recovery and minimize any negative impacts on disaster-affected persons.

Chapter 9

Goods and equipment

Goods and equipment play a central, though not exclusive, role in international disaster relief efforts. Persons who have lost their homes, property, family members, and/or sources of livelihood require support in providing for their basic needs; reconstruction demands appropriate building materials; and all in-country operations require critical equipment, such as radios, telephones, computers and vehicles, in order to run efficiently.

In recent years, many analysts have criticized what they see as an overemphasis on imported relief goods - particularly food, which can often be purchased more cheaply locally and can sometimes be damaging to local agricultural markets if brought in from outside.⁷²³ There is also a rising interest in the potential advantages and efficiencies of providing cash to affected persons rather than material items.⁷²⁴ However, even the most fervent supporters of cash-based programming acknowledge that it is not appropriate for all phases and circumstances (*e.g.*, a functioning market must be available) and the provision, and indeed importation, of some material goods will continue to have an important role in the future.⁷²⁵

Despite the effects of globalization, international importation remains a complex undertaking and the specific context of disasters can exacerbate problems. On the one hand, particularly after sudden-impact disasters, there is a unique need for speedy passage of relief consignments if they are to address critical needs. On the other hand, due to the growth of the “CNN effect,”⁷²⁶ among other factors, the crush of consignments from the varied international actors – sometimes having little relation to needs on the ground – has sometimes become utterly unmanageable from a regulatory standpoint. Problems arise in affected states – but also in transit states and states of origin – in large part because specific rules have generally not been decided and put in place prior to a large disaster.

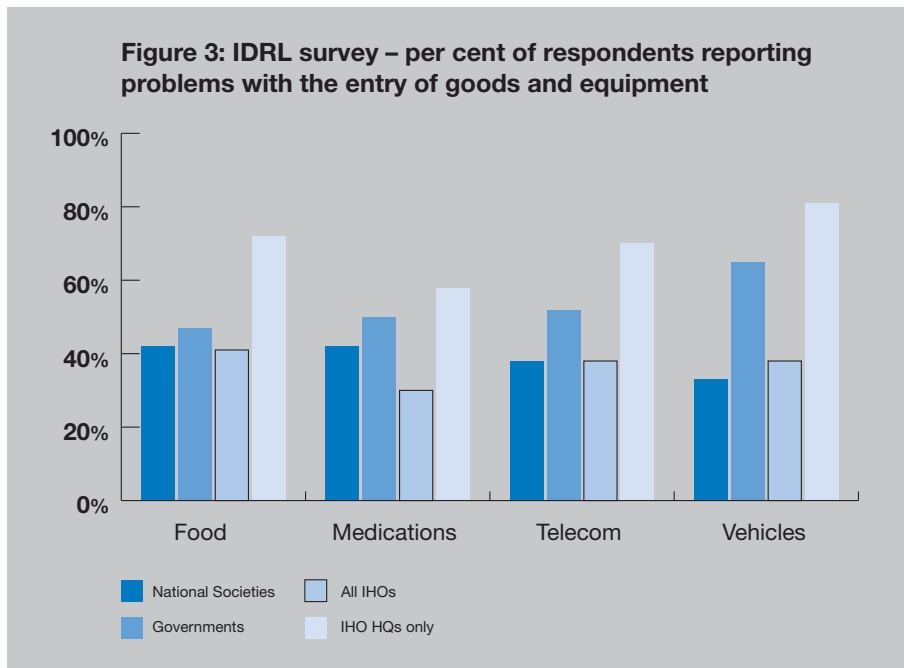
9.1 Customs procedures for goods and equipment

9.1.1 Import

Many states have laws in place allowing for customs duty exemptions for the import of certain types of goods imported for public benefit, including humanitarian relief. Moreover, it is quite common for disaster-affected governments to make special arrangements with regard to customs rules for incoming disaster relief items after a major disaster. Nevertheless, customs issues, including delays, restrictions and duties, remain among the most widely cited legal problems in international disaster response. Over 40 per cent of all respondents to the IDRL survey reported having encountered problems in the importation of food, medications, ground vehicles, telecommunications equipment and other relief items in one or more disaster settings.⁷²⁷ These figures were much greater for NGO headquarters respondents, 80 per cent of whom reported problems in the importation of relief goods.⁷²⁸ Similarly, 71 per cent of the humanitarian organizations responding to the 2004 Indian Ocean tsunami surveyed by the Fritz Institute⁷²⁹ and 52 per cent of local organizations responding to the 1999 Marmara earthquake in Turkey surveyed by the Turkish Red Crescent Society⁷³⁰ reported that they had encountered delays in customs.



Hector Emanuel/American Red Cross



Examples of such delays can be found around the world. As noted in the introduction to this report, notwithstanding the active measures Sri Lanka and Indonesia took after the tsunami to facilitate the entry of relief goods, both experienced months-long clearance delays. As a result, “perishable items rotted, medicines expired, and emergency relief items like clothes, tents, blankets and surgical equipment, which were essential at the start of the relief effort, were redundant by the time they were cleared months later.”⁷³¹ Similarly, in the Russian Federation, delays of nearly nine months were recently reported for medicines imported to treat persons affected by the Chernobyl meltdown.⁷³² In Cape Town, South Africa, a donation of nine containers of clothing from Taiwan was essentially abandoned in customs by local authorities for two years.⁷³³ In Mozambique, International Federation telecommunications equipment was trapped in customs for “several months” in 2002.⁷³⁴ In Angola, “critically needed medical and non-food supplies” were delayed in customs during the 2006 operations to address outbreaks of cholera.⁷³⁵ In the Dominican Republic, Red Cross mosquito nets, hygiene kits, water tanks, and vehicles were substantially delayed after the 2004 floods.⁷³⁶ After the 2007 floods in Bolivia, numerous humanitarian organizations “reported at least some degree of trouble with the [customs] process, in particular, significant delays.”⁷³⁷

A significant proportion of the blame for customs delays must reside with those sending relief consignments. Particularly inexperienced actors often omit required customs documentation;⁷³⁸ mark consignments incorrectly or in languages not locally understood;⁷³⁹ or fail to designate or alert named consignees.⁷⁴⁰ On the latter point, NGOs in Nepal noted that “[i]n some instances, particular organisations were listed as consignees for unsolicited goods or equipment and were therefore required to pay customs fees and taxes, which they were not able to afford.”⁷⁴¹

Shipments of large volumes of unneeded or inappropriate items are commonplace. These include expired foods and medicine as described further below, a well as used clothing, often ill-suited to local climatic and cultural needs, such as heavy sweaters

sent to southern India, and ski jackets and used undergarments sent to Sri Lanka.⁷⁴² Thus, for instance, after Hurricane Mitch in 1998, it was reported that ports in Honduras became so clogged with private donations of used clothing, bottled water and canned food that vital machinery and water pipes could not get through.⁷⁴³ Moreover, some illicit actors have taken advantage of perceived laxity in customs control during ongoing relief operations, prompting authorities to redouble their attention to inspection. For example, in both Sri Lanka after the tsunami and Guatemala after Tropical Storm Stan, customs officials insisted on individually inspecting relief shipments after discovering instances where contraband items, such as arms and narcotics, were hidden among food shipments.⁷⁴⁴

Combining all of this with the many appropriate and needed relief consignments arriving in a short period, the sheer volume can be enough to explain some customs delay in many recent operations. For example, “[i]n Sri Lanka alone, over 350 flights carrying 17,000 tons of relief arrived at Bandaranaike International Airport in the first days following the tsunami.”⁷⁴⁵ In Indonesia, up to 150 relief flights per day similarly stretched customs capacity.⁷⁴⁶

However, these are not the only reasons for delay. In some cases, governments applied no special rules with regard to customs regulation of disaster relief consignments, notwithstanding the urgency of the circumstances. For example, when the 2007 floods struck Bolivia, there was reportedly “no special expedited process for the importation of goods during an emergency. IOs and NGOs [were] expected to abide by the same process and rules for customs clearance applicable during non-emergency situations.”⁷⁴⁷ Similarly, after the 2007 floods in Mozambique, significant delays were reported in obtaining authorization to import medical supplies and vehicles because the absence of an official disaster declaration precluded the granting of expedited facilities.⁷⁴⁸

In other cases, special rules did exist but there were problems of implementation. For example, in both Turkey and Fiji, it was reported that special rules had been devised prior to a disaster, but officials failed to fully implement them.⁷⁴⁹ In both Sri Lanka and Indonesia, new rules for customs clearance of relief consignments were developed after the 2004 tsunami, and then repeatedly changed over the course of the response operations, creating confusion among customs officials and relief providers alike.⁷⁵⁰ Lack of training of customs officials has also contributed to such problems.⁷⁵¹

Other important reasons for delay are the multiplicity of agencies, ministries and authorities that frequently must clear various types of items before they can be released from customs custody,⁷⁵² and rigidities in the clearance process. For instance, during the 2007 floods, a humanitarian organization arranged for two cargo planes containing mosquito nets to fly to Bolivia.⁷⁵³ After arriving at a fuelling point in Santa Cruz (in the affected district), one plane was not able to continue to the capital for customs clearance because of the sudden bankruptcy of the airline and a fuel shortage. Authorities turned down requests to arrange for customs inspection in Santa Cruz. As a result, although the nets were already in the affected area, it was several weeks before they could be transported to La Paz and then returned to Santa Cruz.

The process of obtaining exemptions from customs duties and charges can also be fraught with difficulties, leading to delay and, when exemptions are not accorded, prohibitively increased operating costs. For example, in Eritrea, hundreds of tonnes of

UN food aid for drought-affected persons were delayed for over a month in 2005 due to government demands for taxes.⁷⁵⁴ After the tsunami in Sri Lanka, customs duties on all relief items were initially waived, but this was soon replaced with a complex system allowing for exemptions on some items but not others and a practice that essentially excluded most NGOs without prior MOUs with the government.⁷⁵⁵ Many NGOs were also greatly troubled by an order requiring some goods to be consigned to the government in order to benefit from exemption from duties, for fear that “the distribution of such goods would not be done fairly on a needs-basis in a timely and efficient manner and would not be properly monitored.”⁷⁵⁶ In a well-publicized instance, Sri Lankan authorities also required Oxfam to pay over US\$ 1 million in customs duties for the importation of 25 vehicles.⁷⁵⁷

Clearance delays can also have other financial consequences to relief providers. After the 1999 earthquake in Turkey, a legal storage deadline was exceeded for some relief consignments awaiting customs clearance, and as a result they were nationalized rather than cleared for distribution.⁷⁵⁸ After the tsunami in Indonesia, storage charges accumulated for relief cargo awaiting clearance sometimes exceeded the value of the goods themselves. For example, “it was reported that by the time the Sampoerna Foundation finally received approval for its relief shipment of clothes, blankets and mattresses, storage fees had reached 65 million rupiah (US\$ 6,914) - and the relief was no longer needed.”⁷⁵⁹

Often, international humanitarian organizations decide to buy whatever they can locally specifically in order to avoid the delays and complications of customs.⁷⁶⁰ In some instances, this could be a positive outcome, as there are often many other good reasons to buy locally rather than importing goods.⁷⁶¹ However, this is certainly not always the case, particularly where needed goods are available only in insufficient quantities, sub-standard quality, or at inflated prices. For example, in Nepal, “[i]nstances of price-fixing had been identified which meant that organisations were paying far more than the true value of the items for relief operations, and thus depleted overall financial resources.”⁷⁶²

The effect of customs-related delays and costs on disaster-affected persons has never been directly measured, though the available anecdotal evidence is at least evocative. For example, in the Bolivia example cited above, it had been determined that each family required two mosquito nets. Due to the delay with the cargo plane, each family instead received only one.⁷⁶³ In Jamaica, the Red Cross had found a need for 400 tarpaulins after Hurricane Michelle in 2002. Due to customs problems, only 50 could be distributed.⁷⁶⁴

It would be wrong to leave the impression that massive customs delays always occur in disaster settings. For instance, after the outbreak of meningitis in Ethiopia in 2001, the government was able to clear Red Cross shipments of hundreds of thousands of vaccines “within a matter of two hours.”⁷⁶⁵ Similarly, after the 2003 earthquake in Bam, Iran, the government adopted an “open skies” policy for the first ten days, greatly easing customs delays⁷⁶⁶ and in Guatemala, after Tropical Storm Stan, “Humanitarian Coordination Centre” teams ensured quick clearance of incoming supplies and documentation requirements were greatly reduced.⁷⁶⁷

On the other hand, even where states have successfully implemented streamlined customs regimes for the emergency phase of operations, they are frequently terminated prior to or during the rehabilitation/reconstruction phase.⁷⁶⁸ While there is plainly

not the same extreme level of urgency after immediate survival needs have been met, significant delays and charges in this phase can have also have a cost on human dignity. For example, in Indonesia, strict legal controls on domestic logging caused many organizations to try to import lumber for use in rebuilding housing destroyed by the tsunami.⁷⁶⁹ However, this was delayed by special inspection requirements, notwithstanding an increasingly charged political atmosphere due to the slow pace of reconstruction.

Many existing IDRL instruments address the foregoing types of importation problems. At the global level, this includes several customs-specific instruments, as noted above in section 3.1.6, however their utility is limited by several factors. Although approximately a quarter of the respondents to the IDRL survey indicated that they had made use of the Kyoto Customs Convention's special annexes relating to charitable and relief consignments,⁷⁷⁰ they have only a handful of state parties each. The Istanbul Convention's pertinent annexes have several dozen parties, but they relate only to items intended for re-exportation. Article 1 of Annex B.9 makes some optimistic assumptions about the types of items that might fall into this category, referring to "vehicles or other means of transport, blankets, tents, prefabricated houses or other goods of prime necessity forwarded as aid to those affected by natural disaster and similar catastrophes." While this might indeed often be useful for vehicles, it would rarely be economically feasible to try to re-export used blankets, tents or houses.

The CCC Recommendation (upon which both the Kyoto and Istanbul Conventions draw) does provide a number of useful guidelines concerning expedited clearance, simplified documentation requirements, and exemptions from duties and charges, and is addressed to all WCO and UN members. Importantly, it also limits import facilities for goods and equipment shipped to "organizations approved by the competent authorities," which could help to establish priorities among the masses of "relief" items that now sometimes inundate affected states. Thirty-two per cent of respondents to the IDRL survey, including 50 per cent of governments, reported having made use of this document.⁷⁷¹

The WCO/OCHA Model Customs Agreement seeks to solve the dilemma that governments face in determining which organizations ought to be provided special customs facilities. By signing the agreement with OCHA, a government would agree to provide the types of facilities described in the CCC Recommendation to the components of a "UN operation" including UN agencies themselves as well as governments, IGOs and NGOs acting "on its behalf."⁷⁷² It contemplates that the UN will provide included entities with a certificate establishing their "bona fide" participation in a UN operation. Thus, this agreement would not apply to organizations such as the components of the International Red Cross and Red Crescent Movement and many NGOs that do not act "on behalf" of the UN or under its direction. While 38 per cent of respondents to the IDRL survey indicated that they had made some use of the Model Customs Agreement,⁷⁷³ it has been signed by only three governments to date.⁷⁷⁴

A great number of other IDRL instruments also have individual provisions relevant to importation of relief goods and equipment. This includes most of the bilateral, regional and sub-regional agreements described above in Part II, as well as several global instruments, as illustrated by Box 8. These provisions range from very general calls for facilitation (*e.g.*, General Assembly Resolutions 46/182 of 1991 and 57/150 of 2002), to very specific guidance on methods of expedited clearance, documentation require-

Box 8: Some selected provisions on customs facilities

“The Government of the Affected State grants the MCDA operation... the right:

- a) To import, free of duty or other restrictions, equipment, provisions, supplies and other goods, which are for the exclusive and official use of the MCDA operation;*
- b) To clear ex customs and excise warehouse, free of duty or other restrictions, equipment, provisions, supplies and other goods which are for the exclusive and official use of the MCDA operation[.]”*

Oslo Guidelines, Model Agreement, 2007, para. 12

“In order to ensure speed and efficiency of intervention, the requesting Member States... shall endeavour to reduce to a minimum border checks and formalities for aid teams, their equipment and the aid material needed to carry out their assignment, including medical equipment and medicinal products.”

Council of the European Union Resolution of 8 July 1991, para. 6

“Transport vehicles, equipment, and supplies fully identified and sent by states parties for assistance purposes... shall be exempt from the payment of taxes, fees, and other charges. Also in the aforementioned cases, the assisted state or transit state shall make its best efforts to expedite or, if appropriate, dispense with customs formalities, and to facilitate the transit of such transport vehicles, equipment, and supplies.”

Inter-American Convention, 1991, art. 5

“Relief supplies and equipment are brought into a country solely for the purpose of alleviating human suffering, not for commercial benefit or gain. Such supplies should normally be allowed free and unrestricted passage and should not be subject to requirements for consular certificates of origin or invoices, import and/or export licences or other restrictions, or to importation taxation, landing fees or port charges.”

Red Cross Red Crescent and NGO Code of Conduct, 1994, annex 1

ments and exemptions from duties and charges (e.g., Arab Agreement, Measures to Expedite). There does appear to be a common expectation that governments will alter normal customs procedures in relief settings.

Exemption from customs duties and certain inspection requirements are also among the privileges and immunities granted to inter-governmental organizations such as the UN through the various conventions on privileges and immunities and to the international components of the International Red Cross and Red Crescent Movement through status agreements. However, these do not necessarily also extend to priority processing of international consignments.

The Measures to Expedite call on “donors to restrict their relief contributions to those high-priority relief needs identified by appropriate relief authorities and agencies” and also urge governments and humanitarian organizations to “educate donors on the importance of avoiding contributions of non-essential items.”⁷⁷⁵ One best practice along the lines of the latter suggestion is the Center for International Disaster Information, which the United States government has supported since 1988 to distribute public information about appropriate and inappropriate donations for disasters.⁷⁷⁶

Overall, it appears from the examples above, that while most governments are making some efforts to adjust customs rules for disaster relief, they are not necessarily following all the guidance (and in some instances obligations) provided in international agreements. This is particularly true with regard to the idiosyncratic approach taken to exemptions from duties. In general, the failure to implement workable systems for distinguishing between “approved” and “non-approved” organizations pursuant to the CCC Recommendation seems to be an important source of grief for all sides.

9.1.2 Re-export

Once the need for them has passed, it sometimes makes good programmatic and economic sense to re-export unused relief goods and equipment in order to re-direct them to other emergencies. However, some states erect legal barriers to such re-export and 40 per cent of respondents to the IDRL survey reported having encountered problems in this area.⁷⁷⁷ For example, in Indonesia, regional officials prohibited NGOs from removing unused and unneeded medications and medical equipment from Aceh even to use them in another part of the country.⁷⁷⁸ This included malaria pills that had originally been destined for relief staff, surgical equipment for medical programmes that had been discontinued and cholera kits made unnecessary when a feared outbreak did not occur.⁷⁷⁹

A number of existing instruments support the notion that assisting actors should be allowed to re-export goods and equipment in such circumstances. For example, the Tampere Convention calls for reduction or removal of “regulations restricting the transit of telecommunication resources into, out of and through the territory of a State Party.”⁷⁸⁰ Likewise, the ASEAN Agreement binds state parties to “facilitate the entry into, stay in and departure from its territory of personnel and of equipment, facilities and materials involved or used in the assistance.”⁷⁸¹ The CDERA Agreement, Nuclear Assistance Convention and Nordic Mutual Assistance Agreement in Connection with Radiation Accidents of 1963 also provide that the ownership of equipment and unused materials are not affected by relief operations and their prompt return must be ensured.⁷⁸²

9.1.3 Transit

Relief goods and equipment must often transit through the territory of one or more states on their way to a disaster affected state. In doing so, they become subject to additional customs controls and consequent delays. As noted in the introduction to this report, this occurred in 2006 with regard to relief shipments crossing South Africa on their way to storm-affected persons in Swaziland. Similarly, International Federation food shipments to Burkina Faso were blocked for four days in Niger customs during the 2006 food crisis⁷⁸³ and non-food items on their way to the Bahamas after Hurricane Jeanne in 2005 were blocked by customs in Miami, United States.⁷⁸⁴

Many existing IDRL instruments extend their call for expedited customs processes and waivers of duties to transit states as well as to the affected state. This is true, for example, of the UN General Assembly Resolution 46/182,⁷⁸⁵ the Nuclear Assistance Convention,⁷⁸⁶ the ASEAN Agreement,⁷⁸⁷ the Arab Agreement,⁷⁸⁸ the BSEC Agreement,⁷⁸⁹ and the Inter-American Convention,⁷⁹⁰ among others.

As noted above in section 3.1.6, although it is not addressed to disaster relief, it is pertinent to note the advantages of the TIR Convention, which allows road consignments to be effectively sealed by customs in the originating state and allowed to pass through transit states without intermediate inspection by virtue of the “TIR carnet”. The TIR Convention currently has 65 parties (including the EU) but its web of contiguous states is quite sparse outside of Europe.⁷⁹¹

9.2 Special issues

Due to their nature, some types of relief goods and equipment are subject to special regulatory regimes in the domestic law of most states, complicating both their entry and use in the affected state. Moreover, quality concerns with some of these items (in particular food, medications and rescue dogs) present particularly thorny policy dilemmas. These problems are given some attention by international instruments, but not always in a coherent fashion.

9.2.1 Food

For obvious reasons of human and animal health, and sometimes also for commercial trade considerations, food imports are often highly regulated by domestic law. As noted by one respondent to the IDRL survey, “the laws and rules concerning food and medication are complex and oblige a strict control of their entry in the country.” Thus, it is unsurprising that 44 per cent of respondents (including 48% of governments and 75% of international humanitarian organization headquarters) reported that they had encountered delays or other bureaucratic issues in importing disaster food assistance.⁷⁹²

These delays can sometimes be substantially greater for food than for other items. For example, one organization responding to the IDRL survey noted that it had experienced a six-week delay in clearance of therapeutic and supplementary food imported into Kenya. Yet, according to a 2004 “time-release study” carried out by the Kenyan Revenue Authority, the average release time for consignments from Kenyan sea ports is approximately 10.5 days.⁷⁹³

Part of the reason for the slower pace is the disregard shown by some international actors for domestic legal standards. For example, after the 2004 tsunami in Indonesia, customs officials measured the amounts of expired foods they had received – some with expiry dates over a year old – by the truckload.⁷⁹⁴

However, not all cases are so straightforward. One highly publicized example arose after Hurricane Katrina struck the United States. Very soon after the disaster, the United States government circulated a list of needed relief items abroad through its embassies, including “meals ready to eat” or “MREs”.⁷⁹⁵ Based on this communication, the United Kingdom offered 500,000 MREs and the United States State Department reportedly accepted.⁷⁹⁶ The MREs were flown to Little Rock and a significant pro-

portion had already been transported to New Orleans, when the United States Department of Agriculture “caught up with them” and determined that they could not be distributed because they contained British beef, which had been banned by American law in 1997 out of fear of bovine spongiform encephalopathy (“mad cow disease”).⁷⁹⁷ The MREs were returned to Little Rock where they were kept in storage at significant expense for nearly a year until the United States government was able to locate foreign recipients willing to accept them (which eventually included a contingent of border guards in the Republic of Georgia).⁷⁹⁸

Clearly, a very large part of the problem here was simply one of communication about the pertinent law, both between the United States and the United Kingdom and between different departments within the United States government. However, some critics also faulted the United States for enforcing the ban, which they saw as overly cautious in light of the urgency of the disaster setting.⁷⁹⁹ American officials responded that there was little flexibility in the governing law but that, in any case, the true urgency for food had already passed by the time the problem was discovered.⁸⁰⁰ Moreover, as one official stated, “[w]e didn’t want to distribute food that’s not approved on a daily basis for American consumption to those impacted by the hurricanes.”⁸⁰¹

Recommendation D of the Measures to Expedite calls on affected states to “waive – to the extent compatible with minimum standards of hygiene and animal protection – normal requirements regarding fumigation certificates and restrictions on food imports where these would impede the admission of relief items essential for the protection of disaster victims.”⁸⁰² Rule 7 of the UNITAR Model Rules includes very similar language.⁸⁰³ While this appears to be sensible advice – the above example illustrates how difficult it can be to draw the suggested line between imperative and waivable requirements related to food safety.

Some limited guidance on this task may be drawn from the standards developed by the Codex Alimentarius Commission, an inter-governmental body formed by FAO and WHO in 1961 to develop international rules and guidelines related to food. Only one of these currently makes specific reference to food aid and emergency relief: the non-binding Code of Ethics for International Trade in Food, adopted by the Commission in 1979 and amended in 1985 (hereinafter, “the Code of Ethics”).⁸⁰⁴ As its title implies, the Code of Ethics is addressed broadly to all international trade in food, but a footnote states that “[i]t is understood that the principles of this code should also apply, mutatis mutandi, to concessional and food aid transactions.”⁸⁰⁵ In addition to advice in areas ranging from irradiation to food additives, the Code includes a number of “general principles” addressed to hazardous substances, rot, adulteration, deceptive labelling and unsanitary handling.⁸⁰⁶ It also states generally that food should conform to all applicable domestic and international laws and standards.⁸⁰⁷ Article 8 on “exceptional circumstances” provides:

Where special circumstances exist under which it is neither possible nor desirable to apply certain provisions of this code, as in the case of famines and other emergency situations (where the appropriate competent authorities in recipient and donor countries responsible for food control may decide to establish mutually agreed criteria), due regard should always be given to the basic principles of the safety of the food and other provisions of this code as may be applicable under those circumstances.

While providing some direction, the Code of Ethics does not offer a very satisfying answer to the question raised by the Measures to Expedite (*e.g.*, which safeguards should never be waived, which should be depending on the circumstances, and what are the relevant circumstances?). The Commission is currently considering a new revision of the Code and this might be a good opportunity to provide some additional detail on these issues.

Another issue that frequently arises is whether imported food is helpful at all in a given disaster setting. While most recent criticism of food aid has focused on its non-emergency applications, FAO and others have argued that even emergency food aid can have adverse effects on local markets and livelihoods “if not well timed and well targeted.”⁸⁰⁸ For example, Oxfam argued in 2005 that the projected delivery delays for food aid pledged by the United States to Sri Lanka and Indonesia after the tsunami would lead to its arrival just as local harvests were occurring and act to depress prices.⁸⁰⁹

A major reason that has been cited for delay in American food aid in particular (which represents nearly half of the global total⁸¹⁰), is the requirement in American law that nearly all of it must be purchased domestically and then shipped to the affected state.⁸¹¹ It has been argued that this also greatly increases costs, particularly in light of the further requirement that at least 75 per cent of the food must be transported using American-flagged carriers.⁸¹² American policymakers are currently considering proposals to modify these rules.⁸¹³

Even where food is needed, however, the quality and types provided by some international actors sometimes leave a great deal to be desired. Many respondents to the IDRL survey decried the frequent arrival of inappropriate, culturally unacceptable or unfamiliar foods, often labelled in languages not spoken in the affected state. For example, canned pork was shipped to Muslim Aceh after the tsunami,⁸¹⁴ and in the early days of that operation, when clean water was unavailable or severely rationed, dried noodles and sacks of rice were brought in.⁸¹⁵ In Bam, Iran, donated rice was provided that included broken kernels at a rate of 25%, which is considered suitable for human consumption but was not acceptable to the Iranian population.⁸¹⁶ In 2001, whole maize was delivered to persons displaced by flooding along the Zambezi River in Mozambique, notwithstanding their lack of any utensil to grind or prepare it.⁸¹⁷

As noted above in section 3.1.9, the Food Aid Convention has a number of important provisions related to the quality, appropriateness, and cultural adequacy of food aid, as well as its potential effects on local markets. It also encourages donors to “give consideration” to purchasing food aid supplies in the affected state or in a developing country.⁸¹⁸ It is noteworthy, however, that the quality obligations are not repeated as standard provisions in the USAID and ECHO agreements for implementing humanitarian organizations.⁸¹⁹ Moreover, it is not clear to what extent, if any, the Food Aid Committee is monitoring the application of these provisions in the field, given the lack of public information it produces.⁸²⁰ For the last several years, the parties to the Convention have extended its life for one year at a time as discussions have continued about revising it. Many proposals and suggestions have been advanced to strengthen its impact, including opening membership to receiving states, revisiting the focus on domestically-sourced in-kind food, strengthening (or replacing) the Food Aid Committee, and increasing the participation of humanitarian organizations in monitoring and implementation discussions.⁸²¹ While much of the rationale behind these proposals has fo-

cused on non-emergency food aid, they might be equally helpful for emergency aid.⁸²² For their part, humanitarian organizations have adopted detailed voluntary standards on the quality of food assistance and methods of distribution, including the NGO Food Aid Code and a dedicated section of the Sphere Handbook. Nevertheless, as the above discussion makes clear, their application remains less than perfect, and particularly many non-humanitarian actors remain unaware of them.

Significant debate has also arisen over the provision of genetically modified (GM) foods as food aid, mainly by the United States. Several governments, particularly, but not only in Southern Africa,⁸²³ have rejected GM food aid, citing potential health concerns and the fear that contamination of their crops might lead to the loss of European markets, with devastating long-term impacts on their economies.⁸²⁴ The United States has argued that GM food is safe and used ubiquitously in its own market and that speculative concerns about its potential effects should not interfere with feeding persons in crisis.⁸²⁵ This position has been echoed by WFP, WHO and FAO⁸²⁶ but remains controversial, particularly among environmental organizations.⁸²⁷

In 2000, parties to the 1992 Convention on Biological Diversity adopted the Cartagena Protocol on Biosafety, which requires exporting states to provide advance notification that they are exporting genetically-modified organisms, including food, in order to provide the receiving state an opportunity to refuse them.⁸²⁸ The Protocol entered into force in 2003 and there are currently 141 parties (not including the United States). Also in 2003, the Codex Alimentarius Commission adopted a set of guidelines for testing the safety of GM foods.⁸²⁹ Discussions are ongoing with the Commission about standards on the labelling of such foods.⁸³⁰

In 2002, WFP adopted a policy stating that it would continue to accept GM food aid, but that it would also abide by all applicable national legal standards of both donor and recipient states, including any domestic bans on GM foods and rules on advance warning derived from domestic implementation of the Cartagena Protocol.⁸³¹ The International Federation has adopted a similar position.

9.2.2 Telecommunications and IT equipment

The critical role of telecommunications and information technology (IT) equipment in ensuring the effectiveness of disaster response operations is beyond dispute. As noted by Johan Schaar, Special Representative of the International Federation Secretary General for the Tsunami Operation, “[w]hen we are unable to use our equipment, our operations are not only slower – which hinders our ability to save the lives of those affected – but the safety of our own staff and volunteers is placed at greater risk.”⁸³²

Unfortunately, legal barriers to the importation and use of such equipment in disaster response operations can be even greater than for food. Forty-four per cent of respondents to the IDRL survey reported having encountered problems importing telecommunications equipment in disaster response operations and 40 per cent reported barriers to its use once in the affected state.⁸³³ These figures were particularly high for international humanitarian organization headquarters (70 per cent and 83 per cent, respectively). Likewise, a 2003 multi-state case study, noted that “[t]he import of telecommunications equipment and access to networks and bandwidths were... particular areas of concern for telecommunications specialists” noting that “the num-

ber of administrative hurdles and delays can be so extreme as to prevent effective telecommunications from being established until the disaster is over.”⁸³⁴

As might be expected, many problems arise with regard to newer technologies, such as satellite telephones, Very Small Aperture Terminals (VSATs) and computers. For example, after the tsunami in Sri Lanka, the government set out rules to allow duty-free temporary admission of certain telecommunications equipment, but special permission and restrictions on use were applied to VSATs.⁸³⁵ Significant customs delays on VSATs were also reported after the 2005 earthquake in Pakistan (though existing cell phone networks largely made up for their absence).⁸³⁶ In Nepal, “[i]t was . . . observed that whilst satellite phone technology would be extremely useful for communicating in times of disaster, it was very costly and had not been granted any tax, licensing or import exemptions, which placed it out of reach of most relief providers.”⁸³⁷ There were similar reports of problems in the importation of computer equipment in Bolivia after the 2007 floods and in Thailand after the tsunami.⁸³⁸

However, problems also arise in the importation and use of older technologies, particularly VHF radios, which remain a crucial tool for many international providers.⁸³⁹ For example, in Sri Lanka, one UN agency was unable to obtain clearance for its radios, notwithstanding its prior status agreement with the government.⁸⁴⁰ In Mozambique, International Federation radio equipment imported in anticipation of floods was delayed for months by customs in 2002.⁸⁴¹ In Mali, NGOs had great difficulty obtaining access to radio frequencies.⁸⁴² Respondents to the IDRL survey reported similar problems in many other states, ranging from Sudan to North Korea.

Some governments seek to encourage or force international actors to purchase the relevant material locally. Unfortunately, as noted by Hugh Peterken, International Federation Head of Information systems, “we see regional differences in product even from the same multinational manufacturers. This means that our technicians are not trained on the use of these radios and may not have the appropriate equipment to configure and maintain them. The only practical way of ensuring a fast, effective response is to deploy a fully functioning kit with technicians trained in its use.”⁸⁴³

Conversely, customs barriers for telecommunications and IT equipment sometimes occur not at the affected state but at the state of origin. For example, signatories of the Wassenaar Arrangement on Export Controls on Convention Arms and Dual-Use Goods and Technologies of 1996 restrict the export of certain types of so-called “dual-use” telecommunications and IT equipment and software identified as having the potential to be used in warfare or weapons systems.⁸⁴⁴ Such restrictions have affected the ability of some international NGOs and National Red Cross Societies to use optimal equipment in their relief operations,⁸⁴⁵ though ad hoc exceptions have been made by originating states for certain disasters.⁸⁴⁶

Other critical issues related to international disaster response telecommunications are problems with licensing and the availability of frequencies, bandwidth and satellite access in the affected state. Thirty-seven per cent of respondents to the IDRL survey (including 82 per cent of international humanitarian organization headquarters) reported encountering bureaucratic difficulties in the use of their telecommunications equipment.⁸⁴⁷ With regard to satellite use in particular, it has been noted that some states require special licenses both of end users and providers, sometimes at extremely high fees.⁸⁴⁸

As discussed above in section 3.1.8, the Tampere Convention has the potential to address many of these problems, including with regard to customs and licensing, for telecommunications equipment. The Convention also appears to apply to computer equipment and software as a “telecommunications resource” so long as it is considered “necessary to telecommunication,” which is defined broadly to include “any transmission, emission, or reception of signs, signals, writing, images, sounds or intelligence of any nature, by wire, radio, optical fibre or other electromagnetic system.”⁸⁴⁹ Likewise, the Convention calls for the reduction of export and import restrictions,⁸⁵⁰ though it is careful to exclude any interpretation allowing for abrogation or violation of existing international obligations related to customs or export controls.⁸⁵¹

However, despite prompting by the UN General Assembly, the World Radiocommunication Conference and other forums, ratification of the Tampere Convention remains rather limited. Moreover, its first “field test” should have been in Sri Lanka, as it came into force there in the midst of the tsunami operation in January 2005. Nevertheless, a subsequent International Federation case study was unable to find any evidence that it had been taken into account there, either by the government or by relief providers.⁸⁵²

It is also not clear from recent operations to what extent ITU recommendations, such as ITU-R S.1001 on the use of fixed satellite service and ITU-R F.1105-1 on the use of fixed radiocommunications in relief operations, are being observed by domestic authorities and relief actors. Over the last year, the ITU has been organizing a number of regional workshops and conferences on emergency telecommunications, in part to disseminate information about the Tampere Convention and existing recommendations and standards.⁸⁵³ In May 2007, ITU also launched a questionnaire to member states about the usefulness of existing recommendations and standards in emergency telecommunications.

In the meantime, the UN General Assembly has encouraged states, “pending the entry into force of the [Tampere] Convention, to facilitate, consistent with their national laws and regulations, the use of communications equipment” in disaster relief operations.⁸⁵⁴ General references to facilities for importation of telecommunications equipment also appear in other General Assembly Resolutions, the ASEAN Agreement and some bilateral treaties.⁸⁵⁵

9.2.3 Vehicles

Forty-two per cent of respondents to the IDRL survey (including 65 per cent of governments and 82 per cent of international humanitarian organizations headquarters) reported having encountered problems bringing ground vehicles into disaster-affected states.⁸⁵⁶ As with telecommunications equipment, customs restrictions and duties/tariffs are sometimes erected to encourage local purchase of vehicles. However, relief and reconstruction operations in disaster-affected environments often require specialized vehicles not available in sufficient quantity and quality in the affected state.

After the 1999 earthquake in Turkey, the importation of vehicles was among the greatest customs problems reported by NGOs.⁸⁵⁷ These included lengthy delays in clearance as well as vehicle types that were simply refused admission. Moreover, a provision in a 1959 disaster management law that had provided for duty and tax ex-

emption for vehicles imported for disaster response had been abolished in 1986.⁸⁵⁸ Customs delays in the importation of vehicles were likewise reported in Guatemala after Tropical Storm Stan in 2005, grounding at least one urban search and rescue team.⁸⁵⁹ After the 2004 tsunami in Indonesia, there was an initial period during which relief agency vehicles were allowed to import vehicles duty free and without standard customs clearance procedures, but this was soon brought to end and international actors thereafter encountered significant delay, expense and complication.⁸⁶⁰ Similarly, in Sri Lanka, after an initial period of several months during which the country's substantial tariffs on outside vehicles were waived and restrictions eased for disaster response vehicles, this was replaced by a more restrictive set of facilities, resulting in important complications, delays and extra costs.⁸⁶¹ As a result, some NGOs reported that their vehicles had to be left in customs custody for months while negotiations were carried on with the authorities. These were not always successful, as illustrated by the Oxfam's eventual payment of US\$ 1 million in duties for its vehicles, as noted above.

Though few go into detail, some existing IDRL instruments (such as the ASEAN Agreement⁸⁶² the Kyoto and Istanbul Customs Conventions,⁸⁶³ and the NATO MOU⁸⁶⁴) specifically refer to vehicles as among the items for which customs procedures and duties should be relaxed in disaster response operations. However, vehicles would clearly fall within the broad definitions many others assign to "relief equipment."

An additional source of delay and complication is related to obtaining domestic registration and license plates, without which imported vehicles can be legally immobilized. For example after the tsunami, in Indonesia, authorities originally allowed vehicles to be used without domestic registration and plates.⁸⁶⁵ However, this soon changed and many organizations complained of long and costly procedures. Many were also required to obtain Aceh-specific license plates not valid anywhere else in the country. Police authorities were scrupulous in enforcing registration rules, impounding vehicles from a number of relief organizations considered to be non-conforming.

In some other countries, authorities have recognized license plates produced by the UN for its own vehicles. Moreover, in some of its operations, the ICRC has persuaded domestic authorities to recognize the initial or long-term use of Swiss license plates of its vehicles.⁸⁶⁶ However, this issue is not covered in the primary international instruments concerning vehicle licenses and identification⁸⁶⁷ and it is addressed only indirectly in most existing IDRL instruments. For example, the Oslo Guidelines call on affected states to agree to allow relief providers "together with [their] vehicles, vessels, aircraft and equipment, freedom of movement within the disaster zone[.]"⁸⁶⁸ Likewise, the BSEC Agreement provides that, "[f]or the purposes of transportation of Assistance teams, their Equipment and Foods of assistance any suitable vehicles can be used in order to reach the destination as soon as possible."⁸⁶⁹

On the other hand, the ASEAN Agreement provides that "[a]ircrafts and vessels used by the military personnel and related civilian officials of the Assisting Entity may use its registration and easily identifiable license plate without tax, licenses and/or any other permits."⁸⁷⁰ It is not clear if this provision is also meant to apply to land vehicles, though it would certainly be curious if it did not. If it does, then it could also serve as an important model for other regions.

9.2.4 Medications and medical equipment

The importation of medications and medical equipment is also generally subject to very specific restrictions. Thus, 42 per cent of respondents to the IDRL survey reported problems in importing medications (including 45 per cent of National Societies, 50 per cent of governments and 56 per cent of international humanitarian organization headquarters).⁸⁷¹ Such delays and complications have been documented in recent disasters ranging from Mozambique⁸⁷² to Ukraine⁸⁷³ and Turkey.⁸⁷⁴ As noted by respondents to the IDRL survey, painkillers and narcotics can be among the most difficult to import. Other respondents reported that medications could not be imported to certain countries unless they had been previously registered there or could not be domestically produced.

Plainly, delays in the arrival of necessary medications and medical equipment can have severe implications on the well-being of affected persons. However, here, even more than in the case of food imports, inappropriate donations are an enormous and dangerous problem. For example, in both Indonesia and Sri Lanka after the tsunami, authorities were overwhelmed by the influx of medicines beyond their expiration dates, labelled in foreign languages, and/or inappropriate to the needs generated by the emergency.⁸⁷⁵ After the 1998 earthquake in Armenia, 5,000 tons of drugs were received, of which only 30 per cent were readily identifiable.⁸⁷⁶ Previously, Eritrea had received “seven truck loads of aspirin tablets that took six months to burn; a container full of unsolicited cardiovascular drugs with two months to expiry; and 30,000 bottles of expired amino acid infusion that could not be disposed of anywhere near a settlement because of the smell.”⁸⁷⁷ As summed up by WHO: despite good intentions, experience over the years shows that some drug donations can be more harmful than helpful. They may not be relevant for the emergency situation, for the disease pattern or for the level of care that is available; they may even be dangerous. They may be unknown to local health professionals and patients and may not comply with local drug policies or standard treatment guidelines. Many donated drugs arrive unsorted, or without an international nonproprietary (generic) name on the label. When this occurs, scarce resources are wasted and people in need continue to suffer.⁸⁷⁸

As a result of these twin problems of access and quality, existing international instruments give somewhat contradictory messages on the importation of these items. For example, the Kyoto Customs Convention and (more vaguely) UN General Assembly Resolutions 46/182 and 57/150 call on affected states to facilitate the entry of medications in disaster situations and the Istanbul Convention and the COE Agreement on Temporary Importation do the same with regard to medical equipment,⁸⁷⁹ whereas the WHO’s Guidelines for Drug Donations seek to discourage such donations unless they meet very strict standards.⁸⁸⁰ One limiting factor in the former instruments is their reference to humanitarian organizations or states as either consignors or consignees. Likewise, the many bilateral treaties that refer to facilities for the entry of medications refer only to donations by a state party. Yet, even among these donors, many fail to take responsibility for unusable medicines.

A more cautious approach to drug donations is expressed in other instruments, such as the BSEC Agreement,⁸⁸¹ Resolution 19 of the 25th International Conference of the Red Cross and Red Crescent⁸⁸² and some bilateral treaties – in the latter case particularly when referring to narcotics and other “controlled substances”.⁸⁸³ For its part, the WHO’s Model Guidelines for the International Provision of Controlled Medicines for Emergency Medical Care⁸⁸⁴ is balanced between reasonably strict controls on narcotic

and psychotropic medications and measures to ensure that they can be made rapidly available, when needed.

9.2.5 Rescue dogs

Many international urban search and rescue teams employ rescue dogs to detect trapped persons or bodies, particularly after earthquakes. However, most states regulate the entry of dogs, mainly for fear of the spread of rabies and other illnesses. Twenty-five per cent of the National Societies and 35 per cent of the governments responding to the IDRL survey reported that they had experienced problems obtaining entry of these animals. One respondent noted that its dogs had been barred from entry to Iran after the Bam earthquake for religious reasons. Another respondent noted that its dogs were quarantined for several days after the Kobe earthquake in Japan.

As in the case of relief food and medications, existing international instruments do not entirely resolve the dilemma some affected states governments have felt in weighing the life-saving advantages of allowing rescue dogs immediate entry versus the potential long-term health risks should they carry disease. The Kyoto Customs Convention expressly includes “specially trained animals” among the types of relief consignments that should be provided special facilities, including priority processing and “examination and/or sampling... only in exceptional circumstances” among others.⁸⁸⁵ However, it does not make any direct reference to quarantine rules. Similarly, the Istanbul Convention calls for duty-free temporary importation of animals involved in rescue operations but does not address quarantine.⁸⁸⁶ Conversely, the World Organization for Animal Health’s (OIE) Terrestrial Animal Health Code,⁸⁸⁷ a set of expert guidelines for the international trade in animals provides specific recommendations on quarantine and other veterinary procedures (including the basis for the “international veterinary certificate”), but it does not specifically address the entry of rescue animals.⁸⁸⁸

Other instruments take opposing approaches. For example, the BSEC Agreement⁸⁸⁹ and the Agreement between the Government of the Hellenic Republic and the Government of the Russian Federation on Co-operation in the Field of Prevention and Response to Natural and Man-Made Disasters of 2000⁸⁹⁰ require assisting actors to conform to all domestic quarantine requirements for their rescue dogs, whereas the Agreement between Sweden and Norway concerning the Improvement of Rescue Services in Frontier Areas of 1974⁸⁹¹ and the Agreement between the Swiss Federal Council and the Government of the Republic of the Philippines on Cooperation in the Event of Natural Disaster or Major Emergencies of 2001⁸⁹² require affected states to waive them.

United Nations General Assembly Resolution 57/150 calls on affected states to “simplify or reduce, as appropriate, the customs and administrative procedures,” including with regard to quarantine.⁸⁹³ However, it also calls on urban search and rescue teams to abide by the INSARAG Guidelines, which provide that all rescue dogs should be appropriately trained, submitted to “regular veterinary health checks to remain fit for international deployment, which includes de-worming,” given all vaccines required by both the home and affected states, and accompanied by adequate veterinary documentation.⁸⁹⁴ The ongoing consultations, exercises and training activities of INSARAG are also likely to inspire a greater level of confidence in the level of attention of its participating teams to veterinary issues.

9.2.6 Currency

Most states also closely regulate the entry and exchange of foreign currency. Growing concerns about money laundering and terrorism in particular have led a number of states to tighten their rules on currency flows, as provided for in the International Convention for the Suppression of Financing for Terrorism of 2002.⁸⁹⁵ The Financial Action Task Force on Money Laundering (an inter-governmental group established by the G-7 in 1989) likewise recently recommended to states that they tighten their controls on wire transfers as well as on financial transactions of “non-profit organizations.”⁸⁹⁶

Such rules can lead to complications and delay in the launch of disaster response operations, particularly when disaster relief goods are to be purchased locally. This is reflected by the IDRL survey, to which 31 per cent of respondents (including 67 per cent of international humanitarian organization headquarters) reported having encountered problems bringing foreign currency into an affected state for disaster response operations and 27 per cent reported problems related to currency exchange.

The UN and other inter-governmental organizations are exempted from currency restrictions and guaranteed exchange rates made available to foreign diplomats by the various conventions on privileges and immunities⁸⁹⁷ and similar provisions can be found in status agreements of the International Federation and ICRC.⁸⁹⁸ However, NGOs, foreign National Red Cross and Red Crescent Societies, and other actors may not benefit from the same facilities. Both UNITAR and the International Law Association recommended in their model rules that assisting actors should be allowed to exchange currency and at similarly favourable rates.⁸⁹⁹

As discussed further in section 13.3.2 below, a flexible approach is needed, for this and other issues related to corruption and terrorism concerns, that adequately takes into account the humanitarian imperative.

9.3 Ideas for the future on goods and equipment

For governments:

- Develop or strengthen mechanisms in national law prior to the advent of a disaster for providing customs facilities to assisting states and approved humanitarian organizations, including simplified documentation requirements, expedited processing, and waiver of duties, fees and charges other than reasonable user fees, as recommended by the Guidelines for the Domestic Facilitation and Regulation on International Disaster Relief and Initial Recovery Assistance.
- Expedited procedures should not be provided to just any well-wisher, but reserved to assisting states and approved humanitarian organizations pursuant to existing international law in order to avoid customs gridlock. In other words, completely “open doors” policies are discouraged.
- Ensure that such mechanisms also cover issues of transit of humanitarian assistance, appropriate exceptions from export restrictions, and re-exportation of unused relief goods and relief equipment.
- Develop specific rules or guidelines in advance of a disaster for the entry of food assistance, telecommunications and IT equipment, vehicles, medica-

tions and medical equipment, rescue dogs, and foreign currency making use of existing international guidelines and appropriately balancing health, public order and national security concerns with humanitarian needs.

- Develop expedited procedures to waive or provide assisting states and approved humanitarian organizations with vehicle registrations and plates and telecommunications licenses.
- Consider ratifying the Tampere Convention, Kyoto Customs Convention annexes B.3 and J.5, and Istanbul Convention annexes B.9 and D.

For international disaster responders:

- Gather adequate information about applicable domestic law concerning relief goods and equipment in affected states.
- Ensure that the relief goods and equipments they send are required and of appropriate type and quality and that consignees are willing and prepared to accept them.
- Take responsibility for ensuring appropriate disposal of any unused medications and medical equipment they send.

For the Codex Alimentarius Commission:

- Consider the possibility of developing more detailed recommendations with regard to emergency food assistance.

For the WCO:

- Consider working together with humanitarian organizations to further integrate disaster relief issues into its training materials and activities.

For parties to the Food Aid Convention:

- Consider, among potential revisions to the Convention, measures to strengthen monitoring mechanisms with regard to its quality provisions and enhancing the dialogue with humanitarian organizations.

Chapter 10

Personnel

Today's disasters can attract not only international donations of relief goods and funds but also crowds of foreign nationals seeking to directly assist in relief and recovery activities. These include experts and staff of assisting states and humanitarian organizations but also, increasingly, employees of interested private companies, civic groups and unaffiliated "well-wishers".

As in the case of imported goods, the tradition of sending large numbers of international personnel to manage and run relief and recovery programmes has come in for increasing critique on the basis of the comparative advantages and cost savings of relying upon domestic actors. A better overall balance between speedy intervention and building local capacity is undoubtedly needed in this area as discussed further below. Nevertheless, even when that balance is achieved, the intervention of some international personnel will still often be required in major disasters⁹⁰⁰ and some adjustment of normal legal procedures will be necessary. At the same time, it would also be appropriate to reduce barriers that sometimes arise in national law to the employment of local staff by international actors.

10.1 Visas and work permits

A number of states have, by bilateral or multilateral agreement, waived certain visa requirements for each other's nationals. However, when a particular disaster affected state or relief worker falls outside one of these agreements, problems can arise for relief providers. Accordingly, 47 per cent of respondents to the IDRL survey (including 55 per cent of governments and 77 per cent of international humanitarian organization headquarters) reported having encountered difficulties in this area.⁹⁰¹

Occasionally, such problems have to do with refusal or delay in granting an entry visa. For example, after the tsunami in Sri Lanka, the government actively sought to encourage the hiring of local staff after the tsunami and thus delayed many applications for visas, particularly for finance staff.⁹⁰² Much more often, international relief personnel are allowed to enter without a visa or on tourist visas. However, this temporary solution sometimes begins to come apart for those staying beyond one or two weeks when normal rules (such as requirements for work permits for those engaging in paid activities) begin to resurface.

For example, after the 2004 tsunami, international personnel in Indonesia (including not only from NGOs and Red Cross/Red Crescent Societies, but also UN agencies and even foreign government personnel) reported a "bureaucratic, lengthy and expensive process in their attempts to obtain the appropriate visas and work permits."⁹⁰³ This included requirements to leave the country after 60 days in the country and then every month thereafter to renew visas.⁹⁰⁴ Additionally, staff in Aceh and Nias were required to obtain identity cards, initially renewable every two weeks (and thereafter every month), available only in Banda Aceh City, which required a several day voyage from certain work sites.⁹⁰⁵



Anthony Mwangi/Kenya Red Cross

Likewise, in Thailand, personnel of NGOs not officially registered prior to the tsunami were generally able to obtain only tourist visas, renewable solely by leaving the country every 30 days.⁹⁰⁶ Moreover, in Iran, after an initial “open doors” period during the emergency stage after the Bam earthquake, the government reverted to a strict visa regime. The International Federation thus reported that “the tight control by the Iranian authorities over the issuing of visas, and in some cases their refusal of visas to Federation delegates and consultants, caused unnecessary delays in the implementation of the programme, and in particular forced the postponement of the launch of an effective reconstruction programme from mid-May until mid-August.”⁹⁰⁷

In some instances, relief workers have faced travel restrictions from their home states. For example, in the United States, domestic sanctions against North Korea and other countries have reportedly restricted the action of American humanitarian NGOs.⁹⁰⁸ Others have had difficulties in third states. For instance, in April 2004, the Government of Kenya ceased accepting Somali passports after the reported discovery of a significant number of such passports “pre-stamped” with fraudulent Kenyan entry visas.⁹⁰⁹ Many Somali staff were thus unable to visit the hubs of the humanitarian agencies based in Nairobi, significantly hampering operations.

Box 9: Selected provisions on the entry of international relief personnel

“The States Parties shall, when possible, and in conformity with their national law, reduce or remove... regulations restricting the movement of personnel who operate telecommunication equipment or who are essential to its effective use[.]”

Tampere Convention (1998), art. 9

“Member States pledge to... grant relief delegates who are duly accredited by government authorities or relief organizations recognized in Member States, entry or exit visas at their arrival or departure at border points in Member States without undue delay provided that their entry into or exit from such States is on account of relief works.”

Arab Agreement (1987), art. 8

“The receiving State shall waive requirements for entry and exit visas, provide with minimum delay visas at points of entry and exit or issue multiple entry and exit visas for designated relief personnel.”

UNITAR Model Rules (1982), Rule B15

“The XXIIIrd International Conference of the Red Cross... urges National Societies to make representations to their governments, with a view to achieving an easing of governmental formalities for the entry of official League delegates or official national teams provided by other Societies in response to a League appeal[.]”

23rd International Conference of the Red Cross (1977), Resolution 5

As with customs, the law of privileges and immunities (whether provided by convention or status agreement) generally exempts the officials of international and inter-governmental organizations from immigration related restrictions.⁹¹⁰ UN officials, in particular, are entitled to use a “laissez-passer” issued by the UN.⁹¹¹

There are also great many other IDRL instruments calling on affected states to expedite the granting of visas for other relief personnel, as illustrated by the selection in Box 9. Several also make express reference to exit and transit visas. For example, the Measures to Expedite recommend that “all Governments waive requirements for transit, entry and exit visas for relief personnel acting in their official capacity as representatives of internationally-recognized relief agencies.”⁹¹² Likewise, UN General Assembly Resolution 57/150 calls for facilitation of the “entry, transit, stay and exit of international urban search and rescue teams[.]”⁹¹³ Other instruments, such as UN General Assembly Resolution 46/182 and the Declaration of principles for international humanitarian relief to the civilian population in disaster situations,⁹¹⁴ make vaguer references to “facilitating” the work of international humanitarian organizations, which should, of course, also be applicable to this question.

It is noteworthy that most of these provisions refer only to other state parties or to approved humanitarian organizations. They do not apply to just anyone who might like to come and help.

10.2 Recognition of professional qualifications

States commonly require a license, permit, certificate or other form of governmental approval for the exercise of certain professions pertinent to disaster response operations, such as doctors, nurses, and pharmacists, as well for certain types of relevant activities, such as driving a motor vehicle or piloting a helicopter. Normal procedures for obtaining these licenses and permits are notoriously slow and difficult as are processes for recognizing foreign credentials. For example, in Thailand, foreign doctors must take a Thai language exam (which few have ever passed) and undergo a registration process that can take approximately two years.⁹¹⁵

In many states, there is no mechanism for urgent recognition of such credentials. For example, in Nepal, it was found that “no special provisions are made for doctors or medical professionals who are seeking to enter the country on short notice to provide medical services in disasters and emergencies.”⁹¹⁶ In others, provisions are available for the temporary recognition of credentials, but they are not necessarily attuned to emergency circumstances. For instance, Indonesian law provides for the provision of a temporary certificate of registration for foreign doctors providing medical services, but medical NGOs responding to the tsunami found it easier to simply limit their activities instead.⁹¹⁷

This issue is sometimes resolved in ad hoc, post-disaster rule-making, but not always with complete success. For example, after Hurricane Katrina struck the United States, the Governor of Louisiana suspended licensure rules for foreign doctors by decree, but only two weeks later and after a number of foreign offers had been turned away by the national government.⁹¹⁸ In general, ad hoc arrangements appear to be relatively easy to put in place for medical staff of foreign governments, as was reportedly the case in Bolivia after the 2007 floods,⁹¹⁹ but more difficult for humanitarian organizations,

particularly NGOs. It is noteworthy in this regard that although 50 per cent of the international humanitarian organization headquarters responding to the IDRL survey reported having encountered problems with professional qualifications at least at some point, none of them indicated that their bilateral agreements with affected states normally address this issue.

It is therefore unsurprising that, in many disaster settings, the relevant rules on licenses and credentials are not enforced, at least initially, or a great deal of uncertainty reigns about their application. For example, in Sri Lanka, foreign and international driver's licenses are not recognized, but a large number of relief personnel nevertheless drove vehicles.⁹²⁰ Similarly, in Thailand, a number of NGOs reportedly provided varying types of medical services after the tsunami without formal registration, including 31 of the 32 international forensic teams.⁹²¹ While this important safety valve helps to soften bureaucratic barriers that might otherwise be intolerable where there is a massive need for assistance, it also creates substantial risks.

For relief providers, these risks include expulsion or other types of civil or criminal liability. For example, one international medical NGO was reportedly expelled from Nepal for failing to comply with medical registration requirements.⁹²² For affected persons, a lack of effective control, particularly over medical services, raises an elevated potential for sub-standard assistance. For example, after the 2004 tsunami, teams of Scientologists responded in Sri Lanka, Indonesia and India to perform their modern version of faith healing on affected persons.⁹²³

There is currently remarkably little international guidance on this topic. A series of regional treaties were negotiated (mainly in the 1970s and 1980s) under the aegis of UNESCO on the issue of recognition of foreign academic qualifications,⁹²⁴ however, none of them address emergency situations. Among EU member states, medical qualifications can be mutually recognized pursuant to a Council directive of 1993, but these rules do not extend to non-EU nationals.⁹²⁵ The International Association of Medical Regulatory Authorities (IAMRA), a private international association, is reportedly working to develop international standards to expedite recognition processes for foreign medical credentials, though again, without specific reference to emergencies.⁹²⁶

On the other hand, the Oslo Guidelines' model status agreement, calls on affected states to commit 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."⁹²⁷ Similar provisions were included in the 2000 International Emergency Management Assistance Memorandum of Understanding between a number of states of the United States and provinces of Canada (hereinafter, "USA-Canada Provincial MOU")⁹²⁸ and the Balkans National Societies Recommended Rules and Practices.⁹²⁹ While not directly related to disaster response, the NATO Status of Forces Agreement also commits members to recognize military driver's licenses.⁹³⁰

While it is relatively straightforward to call on affected states to simply recognize foreign driver's licenses of international relief personnel, the appropriateness of summary recognition of other qualifications, particularly of medical professionals, is more complex. The "vouching" solution employed by the Oslo Guidelines would seem to be a

reasonable way forward. Moreover, PAHO has recently suggested that an international expert panel be convened to develop specialized guidance on the recognition of international medical credentials for emergency deployments.⁹³¹ This would also likely be quite helpful.

10.3 Engagement of local personnel

The advantages of involving local staff in international response operations are widely recognized. As noted by the Center on International Cooperation:

Local staff bring special skills and strengths to senior positions, including a greater understanding of the particular political and cultural context in which they are operating. Building local capacity in the civil sector also contributes directly to post-emergency reconstruction goals and to long-term sustainability of programs. At the same time, costs for expatriate staff tend to be considerably higher, as a comparison between local and expatriate staff costs suggests that expatriates may cost ten to forty times more than locals. Finally, the relatively rapid turnover of Western recruits, many of whom are available for one to six months, adds to the extremely high costs of field personnel.⁹³²

Accordingly, both the Red Cross Red Crescent NGO Code of Conduct and other international guidelines have set local hiring as an important goal.⁹³³

At the same time, criticism has also sometimes arisen about the over-recruitment of competent staff of domestic disaster response agencies by international actors. For example, the TEC Report found that “local agencies were sometimes undermined by poaching of their staff by international agencies” during the tsunami response operation.⁹³⁴ It also noted that some international actors had been known “for recruiting managerial-level staff from national agencies and then using them as support staff.”⁹³⁵

Overall, 29 per cent of the respondents to the IDRL survey (including 85 per cent of international humanitarian organization headquarters) reported encountering problems hiring local staff.⁹³⁶ Particularly for NGOs, this has often been due to a lack of domestic legal personality, as discussed further below in section 12.1. NGOs have also reported particular problems with establishing valid time-limited labour contracts under domestic law, which would clearly be crucial for an operation limited to a fairly brief disaster relief and recovery period. For example, in Indonesia, humanitarian organizations received conflicting advice about the requirements of domestic law on employment. Some were told that fixed-term contracts were not allowed at all, others were advised that they would be valid only if registered with the pertinent authorities within 7 days (without which they would automatically convert to indefinite term), while still others were informed that contracts between one and two years were not subject to labour laws.⁹³⁷ As a result of this confusion, many NGOs expressed concern that they would likely face legal claims at the termination of their operations if they hired local staff.⁹³⁸

By virtue of their legal privileges and immunities, UN organizations and inter-governmental organizations should be able to operate largely outside the rules of domestic labour laws.⁹³⁹ However, as noted by some respondents to the IDRL survey, some states have failed to recognize these privileges with regard to hiring local staff.

Most other existing IDRL instruments are silent on this issue. However, the model agreement of the Oslo Guidelines again provides an important model in calling on affected states to accept that “[t]he MCDA operation may recruit locally such personnel as it requires. Upon the request of the Head of the MCDA operation, the Government of the Receiving state undertakes to facilitate the recruitment of qualified local staff by the MCDA operation and to accelerate the process of such recruitment.”⁹⁴⁰ The same language appears in the NATO EADRU Model Agreement.⁹⁴¹

10.4 Ideas for the future on personnel

For governments:

- Develop or strengthen rules in national law prior to the advent of a disaster for providing expedited exit, transit and entry visas and any necessary work permits to international relief personnel, as recommended by the draft Guidelines for the Domestic Facilitation and Regulation on International Disaster Relief and Initial Recovery Assistance.
- Expedited procedures should not be provided to just any well-wisher, but reserved to assisting states and approved humanitarian organizations pursuant to existing international law in order to avoid proliferation. In other words, completely “open doors” policies are discouraged.
- These rules should also allow for easy renewals of such visas and permits as needed to complete operations.
- Ensure mechanisms are in place for expedited review and recognition of the foreign qualifications of medical and other professional relief personnel from assisting states and approved humanitarian organizations, as well as necessary licenses and permits, as recommended by the draft Guidelines for the Domestic Facilitation and Regulation on International Disaster Relief and Initial Recovery Assistance.
- Develop or strengthen rules in national law to allow international humanitarian organizations to enter into and terminate short-term contracts with local staff.

For PAHO/WHO:

- Consider convening an expert panel of interested stakeholders (such as states, humanitarian organizations, and IAMRA) to develop guidance for governmental recognition of medical qualifications for disaster relief personnel.

For international disaster responders:

- Only deploy competent and adequately trained personnel.
- Engage local personnel to the degree possible without undermining local capacity.

Chapter 11

Transport and movement

In addition to customs and visa issues, international disaster responders sometimes encounter other barriers related to the transportation of relief personnel, goods and equipment to and inside the affected state. These include general restrictions on the movement of humanitarian actors as well as more technical barriers, such as restrictions on the operation of certain types of vehicles, transport specific charges and taxes and immigration issues for transport vehicle crews.

On the other hand, in-country transport is also one of the most frequent areas of close cooperation between international and domestic actors. Governmental (often military) actors in Guatemala,⁹⁴² Thailand,⁹⁴³ Turkey⁹⁴⁴ and many other affected states have provided critical transport services for international relief items within their countries without charge, and 59 per cent of respondents to the IDRL survey reported having received such support at least once.

11.1 Freedom of movement

In some instances, disaster-affected state governments have imposed direct limitations on humanitarian access. This has particularly been the case where a disaster has overlapped with a situation of armed conflict or civil disturbance (as discussed below in chapter 15). However, it has also sometimes arisen outside those contexts. For instance, in North Korea, organizations responding to food crises in recent years have been subjected to movement limitations.⁹⁴⁵ While relatively few governmental (30%) and National Red Cross and Red Crescent Societies (37%) respondents to the IDRL survey had experienced movement restrictions, 85 per cent of international humanitarian organizations headquarters reported encountering such problems.

The general question of access, of which freedom of movement is one important part, is often addressed in existing IDRL instruments. For example, UN General Assembly Resolution 46/182 calls on states to facilitate the work of humanitarian organizations, “for which access to victims is essential;”⁹⁴⁶ the Cotonou Agreement provides that “free access to... victims shall be guaranteed;”⁹⁴⁷ the Oslo Guidelines call on affected states to ensure “free access to disaster zones;”⁹⁴⁸ the Inter-American Convention provides that “transport vehicles, equipment and supplies... may enter, move about in, and leave the territory of the assisted state;”⁹⁴⁹ and the Red Cross Red Crescent NGO Code of Conduct points out that free access is a necessary precondition for humanitarian organizations to act in full compliance with their humanitarian principles.⁹⁵⁰

11.2 Land transport

As noted above in section 9.2.3, a substantial proportion of respondents to the IDRL survey (including 65 per cent of governments and 82 per cent of international humanitarian organizations headquarters) reported having encountered problems bringing ground vehicles into disaster affected states.⁹⁵¹ As one example, the commentary to the UNITAR Model Rules noted that, during the Sahel famine emergency of 1974, Chadian truck drivers insisted on the exclusive right of transporting food on the last 80-mile stretch of road from Nigeria to Chad, leading to considerable delay from unloading and reload-



ing.⁹⁵² Several existing IDRL instruments provide express waivers of carriage permit requirements as well as vehicle type and performance standards for vehicles used in humanitarian relief operations,⁹⁵³ but other than the Model Rules themselves,⁹⁵⁴ there are still none with global application that specifically address this type of issue for land transport.

More recently, issues with tolls, fees and charges on ground transport have been more commonly noted, including after the 1999 earthquake in Turkey⁹⁵⁵ and the 2005 storms in Guatemala.⁹⁵⁶ A number IDRL instruments call generally for the waiver of taxes, fees and charges on disaster assistance and several (such as the Inter-American Convention,⁹⁵⁷ the ASEAN Agreement,⁹⁵⁸ and Council of the European Union Resolution of 8 July 1991⁹⁵⁹) also refer directly to these kinds of charges on land transport.

11.3 Air transport

Transporting relief goods and personnel by air can also raise specific legal issues, as noted by 23 per cent of the respondents to the IDRL survey.⁹⁶⁰ For instance, in Nepal “[s]ome organisations highlighted the difficulty of obtaining flight permission for relief flights into the country and to disaster-affected areas”⁹⁶¹ This can also be an issue in transit states, as when Pakistan reportedly refused to allow flights of Indian aid to Afghanistan to cross its airspace in 2006.⁹⁶² An expert seminar organized by the International Civil Aviation Organization in 2005 generally noted significant strains in the coordination of air transport of relief after the 2004 tsunami.⁹⁶³

Landing and departure taxes and other airport fees have also sometimes amounted to prohibitive sums. This was the case for some responders to the tsunami in Indonesia, where “airport charges made it too expensive for some aircraft carrying relief goods to land. It was also reported that the steady flow of consignments arriving at ports encouraged some service providers to take advantage of relief agencies. For example, it was reported that the UN was charged inflated fuel charges as part of transport costs and that stevedores in Nias doubled their rates for international relief providers.”⁹⁶⁴ In contrast, in Sri Lanka, normal landing and parking charges on relief flights by foreign governments and (in most cases) other actors were waived and parking surcharges for tardy offloading were reduced.⁹⁶⁵

As noted above in section 3.1.7, Annex 9 to the Chicago Convention of 1944 (which enjoys nearly universal adhesion among states) commits member states to “facilitate the entry into, departure from and transit through their territories of aircraft engaged in relief flights performed by or on behalf of international organizations recognized by the UN or by or on behalf of States themselves” as well as to “ensure that personnel and articles arriving on relief flights . . . are cleared without delay.”⁹⁶⁶ A number of other international instruments similarly call for the easing of restrictions on overflight, landing, carrier privileges (e.g., concerning cabotage⁹⁶⁷), and the waiver of any associated fees or taxes (without particular reference to recognition by the UN).⁹⁶⁸ Such provisions are quite common in bilateral treaties.⁹⁶⁹

11.4 Sea transport

Nineteen per cent of respondents to the IDRL survey also reported problems with sea transport. On the other hand, after the tsunami in Indonesia, it was reported that delays arose with regard to “‘flag waiver’, a standard procedure which takes four to six days

after a vessel's arrival in a foreign port. Without such a waiver, foreign crew members are subject to Indonesian immigration regulations and other requirements. Accordingly, some agencies opted to hire Indonesian ships, which were considered to be of a lower standard but were not subject to any regulations which could cause delays.⁹⁷⁰

Moreover, issues with high berthing, wharfage and storage fees associated with the unloading of ocean transport have often been cited. Particularly problematic in the rush of a relief setting are demurrage costs (a large daily charge applied when the unloading of ships takes longer than a specified amount of "laytime").⁹⁷¹ For example, in Eritrea in 2003, it was reported that the arrival of two large Red Cross wheat consignments at the same time had overwhelmed the national Red Cross Society's unloading capacity, leading to high demurrage costs.⁹⁷² Similar experiences were reported after the 1999 earthquake in Turkey,⁹⁷³ and the 2002 floods in Mozambique.⁹⁷⁴

As noted above in section 3.1.7, the Convention on Facilitation of International Maritime Traffic of 1965 calls on member states to "facilitate" the entry and departure of vessels bearing disaster relief. Moreover, the Oslo Guidelines model agreement calls on affected states to allow military and civil defence assistance operations to "use roads, bridges, tunnels, canals and other waterways, port facilities and airfields without the payment of dues, tolls or charges."⁹⁷⁵ However, apart from bilateral treaties, few other instruments make direct reference to sea transport of relief.

11.5 Ideas for the future on transport and movement

For governments:

- Develop or strengthen rules in national law prior to the advent of a disaster providing for freedom of movement of disaster relief providers and waiving restrictions, tolls, and charges on land, sea or air vehicles bearing disaster response personnel, goods and equipment as recommended by the draft Guidelines for the Domestic Facilitation and Regulation on International Disaster Relief and Initial Recovery Assistance.

For the International Civil Aviation Organization (ICAO) and International Maritime Organization (IMO):

- Consider further developing training and promotional activities related to disaster relief transportation by air and sea, respectively.

Chapter 12

Operations

As the foregoing discussion makes clear, achieving the speedy arrival of appropriate relief goods, equipment and personnel can sometimes be quite a difficult process. However, arrival is only the first step. Particularly for Red Cross and Red Crescent actors and NGOs, difficulties in obtaining a domestic legal personality in the affected state can entail a multitude of other barriers and problems in operations. Moreover, they and other assisting actors have faced issues related to taxation, security and insurance.

12.1 Domestic legal personality

“Legal persons”, such as associations, non-profit corporations and for-profit corporations, must generally be officially recognized by governmental authorities in order to benefit from a “legal personality” allowing them to legally do such things as enter into contracts or initiate judicial proceedings.⁹⁷⁶ Recognized non-profit entities are also often (though not always⁹⁷⁷) accorded beneficial tax treatment under domestic law, due to the important social functions they carry out.⁹⁷⁸ In order to obtain a legal personality, states (or their subdivisions) impose varying types of eligibility and registration requirements on not-for-profit organizations. There are often different types of recognition with different processes associated with each.

The recognition of the domestic legal personality of UN agencies and other inter-governmental organizations is guaranteed by the law of privileges and immunities.⁹⁷⁹ Likewise, the status agreements of the International Federation provide for the recognition of domestic legal personality. However, not all states have signed such agreements as yet, leaving the International Federation in an uncertain status in some operations. Moreover, with the exception of the European Convention on the Recognition of the Legal Personality of International Non-Governmental Organizations of 1986, there is no international regulation of the recognition of the legal personality of foreign NGOs (or for foreign National Red Cross and Red Crescent Societies). As noted by one scholar in the area: “the international law pertaining to nonprofit organizations is in its infancy, at a low level of achievement in terms of any grand goal of harmonization or unification of law as it applies to nonprofit organizations.”⁹⁸⁰

International NGOs sometimes gain domestic legal personality by entering into a special agreement or MOU with the government, associating with an existing domestically registered organization, or invoking standard domestic registration procedures. However, all of these means can be time-consuming and complex and it rare for special procedures to be specified for disaster settings.⁹⁸¹ Moreover, in some instances, the proper procedures are far from clear. For instance, in Thailand, NGOs reported that they had approached private lawyers, governmental officials and even political parties without being able to learn what they needed to do to register and some authorities specifically dissuaded them from trying.⁹⁸² Likewise, after Tropical Storm Stan in Guatemala, exemption from customs duties was granted through a disaster declaration but only to NGOs with a particular type of national registration (there being several available in Guatemala), which was not the type of registration most international NGOs had obtained.⁹⁸³



Mika Jouhki / Finnish Red Cross

Without a recognized legal personality, international humanitarian organizations have reported difficulties in a number of areas, ranging from hiring local staff and signing leases for office space as well as opening bank accounts and obtaining tax exemptions (both discussed further below).⁹⁸⁴ Nevertheless, given the complexity of procedures, some international NGOs simply go without official registration and “hope for the best.” However, their uncertain status can also have other consequences. For example, foreign NGOs in both Thailand and Indonesia that had given up on registration reported feeling significant concern that they might be “asked to leave at a moment’s notice” and this impeded their planning and operations.⁹⁸⁵

12.2 Bank accounts

As noted above, one of the important consequences of problems with legal personality is difficulty opening bank accounts in the affected state. However, this is not the only reason for difficulties in this area, and even governments and inter-governmental organizations are sometimes affected. Thus, 30 per cent of National Societies, 85 per cent of international humanitarian organization headquarters, and 36 per cent of governments responding to the IDRL survey reported problems opening bank accounts in the affected state. As noted by some respondents, without a local bank account, humanitarian actors have resorted either to carrying large amounts of cash to fund their projects or to opening accounts in the individual names of their staff members.⁹⁸⁶ Existing IDRL instruments do not directly address this issue.

12.3 Taxation

Many states provide for tax benefits for recognized non-profit organizations, although the degree of exemption and the types of taxes involved varies widely.⁹⁸⁷ There is also some variation in the tax treatment of diplomatic corps and inter-governmental organizations, notwithstanding general rules from the law of privileges and immunities exempting them from direct taxes. Moreover there is important variation in the tax treatment of bilateral aid among states, though some aid providers have made it a condition of their help that taxes be waived.⁹⁸⁸

Overall, 38 per cent of respondents to the IDRL survey (including 32 per cent of National Societies and 82 per cent of international humanitarian organization headquarters) reported problems related to taxes in their operations.⁹⁸⁹ Moreover, although it has been asserted that, “in general, sovereigns do not tax each other,”⁹⁹⁰ 66 per cent of government respondents also reported tax-related problems in their relief activities. As discussed in detail above, these include customs duties and transport-related charges. Additional issues have been reported concerning value-added taxes (VAT) and income tax.

VAT can be an issue both with regard to the goods and services disaster responders import and those they purchase locally.⁹⁹¹ Different states provide differing types of beneficial treatment on VAT to charitable organizations, ranging from exempting them from paying the VAT on their purchases in the first instance, to treating them as “non-taxable persons” (which only exempts their output and does not release them from paying VAT on goods and services they purchase) and “zero-rating” or establishing a low VAT rate for their services and allowing them to apply for a refund on their purchases.⁹⁹² Many also limit VAT exemptions to specific types of goods and services, sometimes but not always, including humanitarian assistance.⁹⁹³ For example, after

the 1999 earthquake in Turkey, imported medications were initially charged VAT, until a specific order was issued creating a special rule.⁹⁹⁴

VAT is generally not considered a “direct tax” under the Convention on the Privileges and Immunities of the United Nations⁹⁹⁵ or the Vienna Convention on Diplomatic Relations⁹⁹⁶ and is therefore not subject to exemption under those instruments. Nevertheless, bilateral agreements between states and with the UN, International Federation and some NGOs provide for VAT exemptions and a number of states also provide for such exemptions directly in their domestic legislation.

Where VAT reimbursement is provided, it can dramatically lower the costs of operations and allow for a greater level of assistance. For example, it was reported that a 2005 VAT reimbursement on International Federation food distribution operations in Belarus allowed for the purchase and distribution of 1,800 additional food parcels.⁹⁹⁷ On the other hand, reimbursement processes can often be quite lengthy and complicated.⁹⁹⁸ Exemptions at the point of purchase are plainly preferable from the point of view of aid providers, especially if they are operating in a particular state only temporarily.

Income tax (both organizational and individual) can also be a complex issue in disaster operations. UN agencies and other inter-governmental organizations, as well as their officials and experts are generally exempt from income taxes by operation of their privileges and immunities.⁹⁹⁹ International Federation status agreements as well as some bilateral agreements between states and with international NGOs provide for similar rights (though usually not extended to local staff). Moreover, many states have entered into bilateral agreements to guard against double taxation on their nationals, and these might be applicable to certain personnel in an operation.¹⁰⁰⁰ This still leaves a number of actors, including non-diplomatic foreign state personnel, and the employees of NGOs and foreign National Red Cross and Red Crescent Societies¹⁰⁰¹ potentially subject to income tax.

Thus, in both Indonesia and Sri Lanka, donations to international NGOs were considered taxable organizational income, though in the latter case exceptions were made for funds associated with selected relief and rehabilitation activities.¹⁰⁰² Moreover, in Indonesia, a number of international NGOs reported consulting with government officials and multiple tax lawyers and still remaining unsure whether they were required to withhold tax from employee salaries or not.¹⁰⁰³

As discussed above in Chapter 9, a great many existing disaster-specific instruments call for the waiver of duties and other taxes on imported relief goods and equipment. Often, the operative language is broad enough to include VAT as well as import-specific taxes. For example, the Inter-American Convention provides that “[t]ransport vehicles, equipment, and supplies... shall be exempt from the payment of taxes, fees, and other charges;”¹⁰⁰⁴ the CDERA Agreement provides that the affected state shall “accord the sending State exemption from taxes, duties or other charges on equipment and property brought into the territory of the requesting State by the sending State for the purpose of rendering assistance;”¹⁰⁰⁵ and the BSEC Agreement provides that goods and equipment shall be “exempt from customs duties, taxes and fees.”¹⁰⁰⁶ Some bilateral agreements also have very sweeping language prohibiting any taxation,¹⁰⁰⁷ and in some instances, United States agreements with some other states have extended these provisions to NGOs carrying out projects funded by USAID.¹⁰⁰⁸

The model agreements appended to the Oslo Guidelines and employed by the NATO EADRU both specifically call for exemption from taxation on locally purchased items.¹⁰⁰⁹ In contrast, both the Nuclear Assistance Convention and the Tampere Convention specifically exclude taxes “normally incorporated in the price of goods or services” from their otherwise general call for immunities from taxation for relief operations and personnel.¹⁰¹⁰ This dichotomy of tax treatment between imported and locally purchased goods could create an odd and counter-productive incentive for international actors to favour the former, to the detriment of the local economy. On the other hand, the Oslo Guidelines, the Nuclear Assistance Convention and Tampere Convention all appear to be on the same page with regard to calling for exemption from organizational and personal income taxes for international relief operations.¹⁰¹¹

In 2005, the International Tax Dialogue (ITD) (a consortium of international development organizations) approached the Committee of Experts on International Cooperation on Tax Matters (an intergovernmental body formed by ECOSOC to identify issues and develop recommendations on tax matters with international dimensions), with the issue of taxation of development aid.¹⁰¹² In its paper, the ITD noted that the World Bank and some large donors had begun to move away from insisting that their development aid not be taxed and urged that the Committee recommend this to other donors. However, it also specifically distinguished situations of disaster, noting that taxation of humanitarian relief “might be considered unreasonable.”¹⁰¹³ The Committee generally concurred with this position, recommending that international guidelines be developed on the taxation of international assistance along

Box 10: Potential elements for guidelines on taxation of disaster assistance mentioned by the committee of experts on international cooperation on tax matters

- *No taxes or duties on the import of goods for humanitarian relief*
- *Physical presence of aid personnel should not be taken into account in determining resident status for purpose of income tax*
- *Government and “public international organisation” aid personnel should be exempt from employment income tax*
- *Foreign private companies and consultants carrying out aid work on behalf of a foreign government should not be subject to income tax for a specific length of time (e.g. six or twelve months)*
- *Tax rules applicable to transactions connected with aid projects financed by governments or public international organizations should “in no cases be discriminatory or unusually burdensome compared with the otherwise applicable tax regime in the recipient country”¹⁰¹⁵*

the lines of the elements described in Box 10.¹⁰¹⁴ However, the strong focus on governmental and inter-governmental aid is evident the Committee's current thinking and it does not yet appear to have addressed issues of VAT in disaster relief.

The Committee is scheduled to continue its consideration of this issue at its 2007 session.

12.4 Security

The security of international relief personnel, goods, and equipment is normally discussed primarily with regard to situations of armed conflict. However, 39 per cent of the respondents to the IDRL survey¹⁰¹⁶ (including 30 per cent of National Societies, 43 per cent of governments and 85 per cent of international humanitarian organization headquarters) reported having encountered security problems in disaster operations.

Such concerns are particularly common when disasters occur in the context of ongoing political instability. For instance, in Somalia, drought relief efforts have been greatly hampered by pervasive banditry and piracy.¹⁰¹⁷ Massive disasters can also sometimes provoke civil disturbances, particularly when emergency relief is delayed or inadequate. For example, after the August 2007 earthquake in Peru, delays in provision of relief supplies led to rioting and looting of shops and relief trucks.¹⁰¹⁸ Likewise, lawlessness and looting wracked New Orleans after Hurricane Katrina in 2005.¹⁰¹⁹

Even in the absence of widespread lawlessness, large relief operations can be a tempting target for criminals. For example, after Tropical Storm Stan in Guatemala, relief workers reported armed assaults on trucks delivering food assistance.¹⁰²⁰ In fact, International Federation statistics in recent years have indicated that International Federation delegates are more at risk of becoming victims of violent attack in high crime areas than in conflict areas.¹⁰²¹ Likewise, a 2003 survey of relief and development workers from various agencies in 39 countries found that even among those working in overall environments of little or no violence, over 15 per cent reported obstacles to their operational access to beneficiaries due to concerns about small arms.¹⁰²²

From the regulatory standpoint, security raises issues both with regard to the efforts that should be expected of authorities to protect relief operations as well as to the restrictions they might impose on humanitarian access. Overall, 51 per cent of respondents to the IDRL survey reported that affected state governments had provided them with free security services at least some of the time,¹⁰²³ but others complained that their personnel were often "on their own." On the other hand, many organizations have chafed against restrictions on their movement justified by security concerns. For example, the Indonesian army imposed military escorts on some humanitarian actors immediately after the 2004 tsunami.¹⁰²⁴ Moreover, in the United States, governmental authorities reportedly ordered the American Red Cross not to enter New Orleans after Hurricane Katrina, in part due to security concerns.¹⁰²⁵

As noted above in section 3.1.15, once it enters into force, the Optional Protocol to the Convention on the Safety of the United Nations and Associated Personnel will apply to disaster settings unless the state concerned "opts out" for that operation. However, it will only apply to UN actors and others acting under UN direction. On the other hand, a number of other IDRL instruments at the global,¹⁰²⁶ regional¹⁰²⁷ and bilateral level¹⁰²⁸ also impose obligations on affected states to protect relief per-

sonnel, goods and equipment. With a few notable exceptions (such as the Tampere Convention and ASEAN Agreement),¹⁰²⁹ these instruments apply only to the personnel of foreign governments or UN agencies.

There is less direct language in existing instruments concerning the right of humanitarian actors to refuse unwanted armed escorts. However, the concept of neutrality is plainly integrated in international humanitarian law and states have often emphasized the importance of respecting it. For example, UN General Assembly Resolution 46/182 states that “[h]umanitarian assistance must be provided in accordance with the principles of humanity, impartiality and neutrality.”¹⁰³⁰ Moreover, a mandatory escort requirement could easily be characterized as an impediment to the freedom of movement of humanitarian personnel, discussed above. The international humanitarian community has adopted a number of its own guidelines in this area for conflict situations, uniformly calling for the most restricted and careful acceptance of armed escorts, and only as a last resort.¹⁰³¹

12.5 Insurance

In addition to outright attack, international disaster response operations entail a number of dangers to response personnel and materiel due to accidents (particularly involving motor vehicles) and/or disease.¹⁰³² Moreover, many activities involved in disaster response may carry high risk of liability (as discussed further below in section 13.3.3). Unsurprisingly, therefore, insurance can be a very important issue. Yet 29 per cent of respondents to the IDRL survey (including 30 per cent of National Societies and 78 per cent of international humanitarian organization headquarters) reported encountering difficulties obtaining insurance.¹⁰³³

Some participants at the European IDRL Forum raised the concern that some humanitarian organizations do not adequately insure their personnel for the many risks they undertake.¹⁰³⁴ The lack of insurance and medical coverage for international aid personnel was similarly identified as an important problem during the response to the 1999 earthquake in Turkey.¹⁰³⁵ While rather dated, a 1998 survey of British and Irish NGOs by People in Aid lends some credence to these concerns. It found wide variations in the level of coverage for medical expenses, disability and loss of life (for example, medical coverage ranged from £8,000 to £1 million).¹⁰³⁶ It also noted that the agencies that offered coverage below the median were not necessarily those with fewest resources.¹⁰³⁷ More recently, a 2004 study of humanitarian security commissioned by ECHO reported that “[o]nly a minority of NGOs consulted felt confident that adequate cover is in place for all employees.”¹⁰³⁸ It also noted that many NGOs had found global policies increasingly expensive and difficult to obtain after September 11, and that they were greatly hemmed in with exclusion clauses sometimes too vague to fully understand.¹⁰³⁹ For example, it reported that one NGO “caught in the recent Goma volcano eruption” had found that its “comprehensive war risk insurance” excluded natural disasters.¹⁰⁴⁰

Vehicle insurance has also been identified as an important issue. For example, motor vehicle incidents account for over half of all security incidents experienced by the International Federation in the first half of 2006.¹⁰⁴¹ A survey of humanitarian organizations by the Fleet Forum, a coalition of agency experts in fleet management, found that many agencies purchase global insurance and some self-insure their fleets.¹⁰⁴²

However, many find that they must also combine this with the purchase of local insurance, due to the requirements of domestic law, regional restrictions in global policies (many exclude African states where a majority of respondents' relief vehicles are used), and other "difficulties in executing" global policies in "underdeveloped areas."¹⁰⁴³ Purchasing such local insurance is not always straightforward. For instance, in Indonesia, the rates for local insurance shot up after the tsunami and some local insurers were hesitant to cover relief vehicles.¹⁰⁴⁴ Moreover some NGOs found that their local policies were not honoured.¹⁰⁴⁵

Relatively few existing IDRL instruments address issues of insurance. The BSEC Agreement commits assisting states to "provide insurance of the members of the Assistance teams" but also contemplates that the affected state will normally reimburse the costs of this insurance.¹⁰⁴⁶ In contrast, the USA-Canada Provincial MOU requires the assisting state to insure its own personnel against accidents and disability.¹⁰⁴⁷ The BSEC Agreement and a number of bilateral agreements also require affected states to provide "free-of-charge medical assistance" to assistance teams.¹⁰⁴⁸ On the other hand, both the Oslo Guidelines model agreement and some bilateral treaties require the assisting state to take responsibility for insuring its vehicles.¹⁰⁴⁹ Some bilateral grant agreements also require the affected state to insure relief goods and materiel.¹⁰⁵⁰

None of the above instruments apply to non-governmental actors and it is doubtful that many affected states would be willing to provide them with the same types of benefits. Perhaps the only normative reference for these actors is the People in Aid Code of Good Practice in the Management and Support of Personnel, which lists health insurance among its "indicators" of best practice.¹⁰⁵¹

12.6 Ideas for the future on operations

For governments:

- Ensure that reasonable means are available for assisting states and humanitarian organizations to legally enter into contracts, sign leases, hire local staff and open bank accounts, as needed for their operations. For foreign humanitarian organizations, a temporary registration system drawing on the draft Guidelines for the Domestic Facilitation and Regulation on International Disaster Relief and Initial Recovery Assistance would likely be most efficient.
- Provide approved international disaster relief and recovery actors with beneficial tax treatment, including exemption from VAT and income tax (at least with regard to donations), with respect to disaster relief and recovery goods and services.
- Take reasonable steps to ensure the security of assisting states and humanitarian organizations without unduly impinging on humanitarian independence and access.
- Consider ratifying the Optional Protocol to the Convention on the Safety of United Nations and Associated Personnel.

For international humanitarian organizations:

- Ensure that measures are in place, either through external or self-insurance, to adequately cover health, disability, and death claims for their personnel as well as vehicle-related claims.

For the Committee of Experts on International Cooperation in Tax Matters:

- Consider means to involve humanitarian organizations in discussions about its proposed guidelines.
- Consider drawing on the ideas developed in the draft Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance concerning eligibility processes.
- Include the issues of VAT exemption and donation “income” of international relief and recovery actors, in particular with regard to locally purchased relief goods.

Chapter 13

Quality and accountability

In its consultations with stakeholders, the IDRL programme has found that quality issues are among the most pressing regulatory questions they see in international disaster response today. These include issues of the adequacy, equity and appropriateness of the assistance provided as well as the accountability and coordination of international responders. In large part, these issues are linked to the regulatory dilemmas in the area of access and have therefore been discussed to some extent above. This section will examine some additional elements that have been identified as critical.

13.1 Adequacy, timeliness and equity of funding

Much of this study has focused on regulatory problems at the level of disaster-affected states, which necessarily relates to what to do with international assistance that has been made available. Those problems are exacerbated by the “embarrassment of riches” that occurs when too many actors and relief consignments overwhelm domestic administrative capacities. However, as acknowledged above in section 2.4, in many disasters, it is a question of too little rather than too much assistance. As one participant at the African IDRL Forum put it, “systems for facilitation of international aid [are] useless in the absence of speedy mobilisation of financial resources. His Government had taken measures to exempt incoming humanitarian assistance from taxes and duties, but international aid was not forthcoming to meet the needs of the population.”¹⁰⁵²

The neglect of some disasters and disproportionate attention to others was the topic of the International Federation’s 2006 World Disasters Report, which tallied the large disparities of the proceeding year, noting, for example, that the UN appeal for tsunami relief was funded at 475 per cent of the requested amount whereas most of its appeals were under-funded by one-third, and humanitarian aid per beneficiary for the tsunami for the year was over US\$ 1,000 for tsunami affected states as compared to US\$ 30 or under in Niger, Malawi, Côte d’Ivoire, Guyana and Chad.¹⁰⁵³ It also noted large regional disparities over the last decade (in fact, Africa received much more humanitarian funding in proportion to the numbers killed in crises than Asia over this period) and the higher attention and funding directed to armed conflict relative to disasters.¹⁰⁵⁴

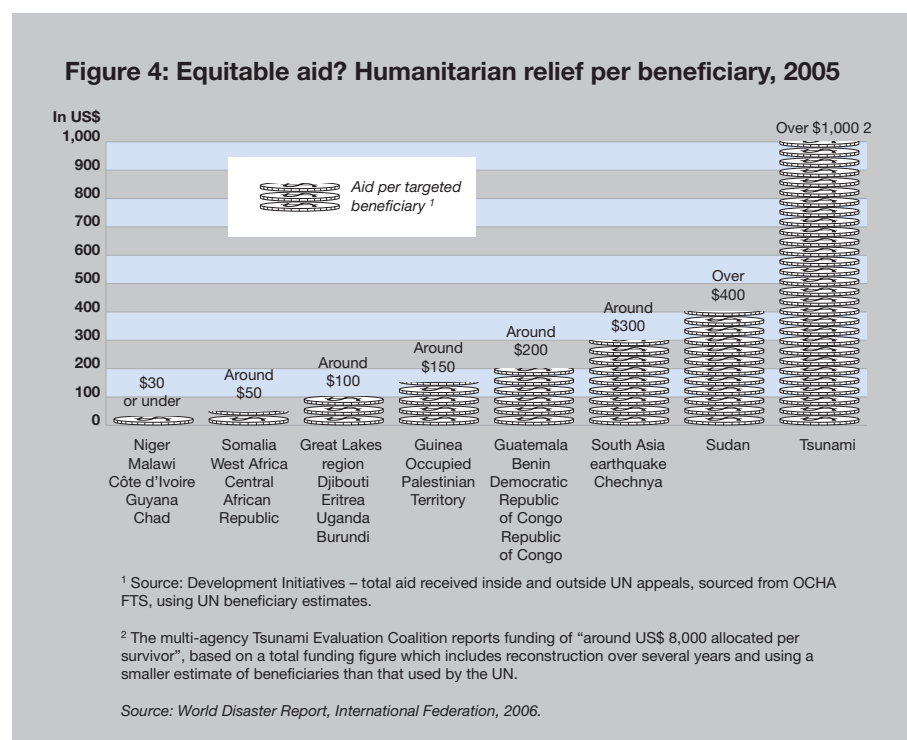
Problems with the timeliness of the availability of international assistance have also been the subject of much discussion in recent years. In particular, the lack of rapid access to funding has been identified as an important obstacle to providing life-saving relief. As noted by then-United Kingdom International Development Secretary Hilary Benn in 2005: “The UN presses the fire alarm; but in order to get the engine out of the station, it has to pass round the hat to put petrol in the tank and water in the hoses.”¹⁰⁵⁵

Current international regulation of this area is quite thin. The Food Aid Convention and the various Asian food reserve agreements are the sole binding IDRL instruments that set out minimum levels of contributions from states. However, critics charge that the Food Aid Convention’s quota system has been of little value because the amounts have been set significantly lower than habitual food aid commitments of nearly all of the signatories.¹⁰⁵⁶ Moreover, the Asian food reserves have never been used, as noted above. In any event, none of these instruments require equity in the disbursement of aid between affected states.



Yoshi Shimizu/International Federation

In 2005, the UN General Assembly adopted Resolution 60/124, authorizing the expansion of the CERF (a temporary loan facility capped at US\$ 50 million) by adding a substantial grant mechanism to ensure both timely access to start-up emergency funding for UN relief operations and some plugging of gaps in under-funded appeals.¹⁰⁵⁷ The new fund has an authorized total of US\$ 500 million (to be provided by voluntary contributions) for “promoting early action and response to reduce loss of life, enhancing response to time-critical requirements and strengthening core elements of humanitarian response in underfunded crises[.]”¹⁰⁵⁸ However, if fully funded, this amount would still only represent 4 per cent of overall humanitarian funding and it is directly available only to the UN and IOM.¹⁰⁵⁹ NGOs can receive funding from CERF as implementing partners of the UN or IOM, but some criticism has arisen in early operations as to the cost-effectiveness and speed of the “pass-through” approach.¹⁰⁶⁰



In order to maintain its independence and neutrality, the International Red Cross and Red Crescent Movement does not participate in the CERF. However, since 1985, the International Federation has operated a somewhat similar mechanism, the Disaster Relief Emergency Fund (DREF).¹⁰⁶¹ The DREF is a standing fund which can be used for small grants to national Red Cross or Red Crescent Societies encountering smaller emergencies for which no international appeal is prepared as well as start-up funds for larger disasters pending an appeal. The DREF thus responds to the multitude of disasters usually ignored by the international community and places funds directly in the hands of local actors, usually within hours of the request. However, it is quite modest – totalling about US\$ 11 million in 2006 (though it is planned to increase it to US\$ 25 million in the next few years).

Perhaps the most important normative instrument is the non-binding Good Humanitarian Donorship Principles of 2003, as discussed above in section 3.1.9, which call for the provision of humanitarian assistance on the basis need, in an equitable

and timely manner. Since they were developed, participating donor states have continued to meet regularly to develop pilot projects (so far, all in conflict- rather than disaster-affected states) and share best practices.

The Principles were sorely tested in the crucible of the 2004 tsunami. One donor official quoted in the TEC Report concluded that, “[w]hen the tsunami hit, [good humanitarian donorship] went out the window,” because of the degree to which political considerations overwhelmed any objective assessment of need.¹⁰⁶² On the other hand, the TEC thematic study on funding also found that tsunami funding was made available in a remarkably timely and flexible fashion, distributed among the affected states in a manner generally proportionate to their needs at the national level (though at the community level there were troubling disparities), and did not appear to directly draw down funding for other emergencies (though, as noted above, the comparative generosity certainly underlined the inadequate response to many other crises).¹⁰⁶³ Clearly, work remains to be done to encourage full implementation of the Principles but there are reasons to be hopeful about their long-term impact.

It is noteworthy in this regard that UN General Assembly resolutions have referred to the Principles several times, “encouraging the donor community to improve its response to humanitarian emergencies through policies and practices of good donorship” in 2004, “noting” them “with interest” and “call[ing] upon donors to take further steps to improve their policies and practices with respect to humanitarian assistance” in 2005;¹⁰⁶⁴ and most recently, in 2006, “[c]all[ing] upon donors to provide adequate, predictable and flexible resources based on and in proportion to assessed needs, and to encourage efforts to implement the principles of Good Humanitarian Donorship.”¹⁰⁶⁵ This progression to relatively stronger endorsing language is an encouraging sign. Moreover, as noted above in section 4.4.1.1, the European Commission recommended “European Consensus on Humanitarian Aid” would include formal adoption of the Principles by all members.

13.2 Appropriateness and accountability of assistance

Disaster professionals have long decried the pervasive myth that, after a major disaster, “any kind of international assistance is needed, and it’s needed now!”¹⁰⁶⁶ In fact, the wrong kind of assistance can do more harm than good. As discussed above, affected state concerns about inappropriate assistance drive many of the legal barriers and restrictions that international disaster responders encounter. For example, the fear that so-called relief consignments might contain arms, weapons, disguised commercial shipments or other illegal items can make it quite difficult for domestic authorities to forego careful customs inspections, which in turn lead to delay. In addition to this indirect consequence, however, inappropriate assistance can have important impacts on disaster-affected persons and on the capacity of domestic relief actors.

There has been an increasing level of attention to these problems in recent years, in part due to the self-critical zeal of the humanitarian community and in part to the rising proliferation of actors. Likewise, there has been a greater focus on the accountability of humanitarian organizations, both with regard to the quality of their work and external issues, such as their vulnerability to diversion by criminal, including terrorist, elements. To date, however, the role of the affected state in regulating the appropriateness and accountability of international assistance has not been as thoroughly examined.

13.2.1 Impact on local capacity

International actors can lastingly undermine the resilience of communities if the former take over tasks that the latter could do on their own. A clear message that was reiterated by participants at all the IDRL regional forums was that a request for international assistance should be seen as an invitation to complement, not displace domestic response efforts. At the Americas IDRL Forum, Walter Cotte of the Colombian Red Cross analogised the situation to the fable of the ant that asked the elephant to scratch its back, only to be crushed by the supposed favour.¹⁰⁶⁷ This can happen in various ways, for instance, by “poaching” staff as noted above in section 10.3; directly competing with local civil society actors for donor funds¹⁰⁶⁸ or for beneficiaries; and failing to coordinate with domestic actors in their operations (as discussed below). It was reportedly a widespread problem during the tsunami response. As the TEC’s thematic report on the “impact of the tsunami response on local and national capacities” grimly concluded: to a significant extent, local ownership of the tsunami response was undermined by the actions of international agencies. In some cases, recognition and engagement with local capacity was totally lacking, particularly where capacities were not visible in the form recognised by international agencies. In other cases, local capacities were rendered even more vulnerable by the response. CBOs and NGOs became contracted organisations, corruption spread and inappropriate forms of leadership were able to flourish.¹⁰⁶⁹

While often discussed with regard to UN agencies and NGOs, some members of the International Red Cross and Red Crescent Movement have sometimes been equally guilty of the failure to respect local capacity, notwithstanding clear rules to the contrary in the Principles and Rules for Red Cross and Red Crescent Disaster Relief, the Seville Agreement and its Supplementary Measures.¹⁰⁷⁰

Though many existing IDRL treaties refer to the primary and directing role of domestic authorities, few expressly address the question of designing international assistance so as to support local capacity. One exception is the Food Aid Convention, which calls on member states to support affected both affected governments and civil society in developing and carrying out food security programmes and encourages “reinforcing food aid by other means (financial aid, technical assistance etc.)” in order to support domestic capacity.¹⁰⁷¹ Moreover, the Good Humanitarian Donorship Principles, the ECHO Framework Partnership Agreement with Humanitarian Organizations and the Red Cross Red Crescent NGO Code of Conduct set out strengthening local capacity as a key goal in humanitarian assistance operations, though they are also careful to make it subordinate to the overriding objective of saving lives.¹⁰⁷²

In fact, these two aims will rarely be in conflict, inasmuch as it is local actors who generally save the most lives after disasters. As noted by the TEC thematic report, “[t]he period of saving lives was practically over by the time the international agencies arrived. So there was little justification for the focus on delivery rather than capacity strengthening. And the fact that saving lives depended almost entirely on local communities is a strong argument in favour of long-term vulnerability reduction through capacity strengthening.”¹⁰⁷³ The TEC Report therefore advocated a “fundamental reorientation” of the international humanitarian community in favour of support for local capacity.¹⁰⁷⁴ A separate evaluation of tsunami operations undertaken by the “NGO Impact Initiative” (a coalition of American NGOs and the American Red Cross) at the request of UN Secretary-General’s Special Envoy for Tsunami Recovery

President William Clinton, came to a similar conclusion, noting that “[a] consistent theme throughout all of the consultations was that INGOs should reorient their provision of humanitarian assistance to make the strengthening of local capacity in recovery from an emergency a priority equal to that of service delivery.”¹⁰⁷⁵

13.2.2 Suitability and competence

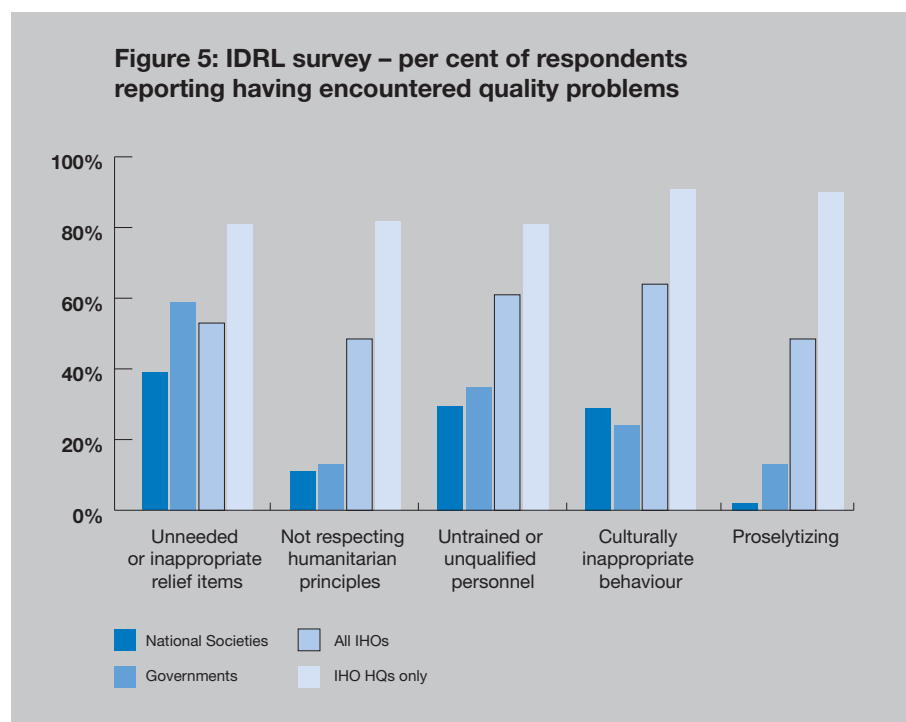
In addition to corroding local capacity and confidence, international assistance can be harmful if it delivers the wrong goods and services, or delivers the right ones in the wrong way. A number of examples of the wrong goods have already been discussed above. These include sub-standard food and expired or inappropriate medication, which could be affirmatively harmful to the health of affected persons. Incompetent services, such as the NGO mentioned in the introduction to this study that vaccinated children without leaving records, or the construction of shoddy housing,¹⁰⁷⁶ can be just as dangerous. Inflated promises mixed with the inexperience of a number of actors, including within the Red Cross and Red Crescent Movement, led to a great deal of disappointment for persons made homeless by the tsunami.¹⁰⁷⁷ Unprepared international actors can also become an affirmative drain on the very necessities needed by affected persons. For instance, after the 2003 earthquake in Bam, Iran, the Iranian Red Crescent had to provide food and tents to some international personnel.¹⁰⁷⁸

Moreover, inappropriate goods and services can be damaging to the dignity of affected persons. For example, the heaps of used clothing, much of it in poor condition, ill-attuned to the local climate (such as the parkas sent to Sri Lanka, sweaters sent to India and warm weather clothes sent to Pakistan), and sometimes culturally shocking (such as the thong underwear and high heel boots sent to Sri Lanka)¹⁰⁷⁹ not only taxed the time, energy and storage space of local relief actors, but also left affected persons feeling humiliated and angry at receiving the world’s castoffs.¹⁰⁸⁰ Likewise, Kenyans were scandalized when it was reported in 2006 that a New Zealand company had offered to donate powdered dog food for children affected by drought.¹⁰⁸¹

Even if the right relief is provided, inappropriate means of delivery can insult and belittle affected persons and their communities. For example, survivors of the Bam, Iran earthquake were unimpressed to receive high-protein biscuits marked “gift for the children of Afghanistan.”¹⁰⁸² Communities in Thailand and Indonesia were indignant when some aid providers were accused of proselytising and even conditioning assistance on religious conversion.¹⁰⁸³ Also in Indonesia, the enormous variation in the quality of housing provided to tsunami-affected persons by various international agencies (ranging in cost from US\$ 4,000 to US\$ 10,000, and in materials from wood siding to brick and from tile roofing to galvanized sheeting) led to inter-community jealousies.¹⁰⁸⁴

Many respondents to the IDRL survey had encountered these types of problems. Forty-eight per cent of all respondents (including 59 per cent of Governments and 80 per cent of international humanitarian organization headquarters) had encountered inappropriate or unneeded relief items. The use of untrained or unqualified personnel was noted by 42 per cent of respondents (including 91 per cent of international humanitarian organization headquarters). One humanitarian respondent pointed out that “the use of well-meaning, motivated but untrained volunteers is commonplace in all major disaster responses.” Linked to this was the issue of culturally inappropriate behaviour by international personnel, which was identified by 41 per cent of all respondents and

91 per cent of international humanitarian organization headquarters. Specific bad behaviours noted included consumption of non-authorised substances, “drinking, boisterous, disrespectful behaviour in Muslim environments,” provocative dress and inappropriate male-female relations. As one respondent observed, “in our commitment to try and get things done, we often overlook the impact of our actions on local norms.”



Although, by all accounts, incompetent and unprincipled work is in the minority, it can have a disproportionately negative impact. As noted by Alex Jacobs of Mango, a NGO dedicated to strengthening the financial management of humanitarian NGOs: “[m]uch more good work is carried out than bad. But, this is no more acceptable in the humanitarian sector than it would be in the medical profession. Like heart surgeons, humanitarian actors labour under the terrifying obligation of having to achieve the highest possible professional standards at all times.”¹⁰⁸⁵ Likewise, the NGO Impact Initiative warned that “[i]f even a small minority of INGOs fails to meet their stated missions – or worse, do harm to the local communities in which they work – these failures can affect the entire INGO sector and erode public trust in the INGO community more broadly.”¹⁰⁸⁶

Issues of quality and competence are occasionally addressed in existing IDRL treaties, but, with the exception of the Food Aid Convention as discussed above, generally without great detail. For example, the ASEAN Agreement provides that “[t]he relief goods and materials provided by the Assisting Entity should meet the quality and validity requirements of the Parties concerned for consumption and utilisation,”¹⁰⁸⁷ and the Framework Convention on Civil Defence Assistance provides that all assistance “should be carried out with due respect” for the “ways and customs” of the affected state.¹⁰⁸⁸ A number of bilateral agreements also specify that governmental search and

rescue and/or relief services will be carried out by specialist personnel with appropriate equipment.¹⁰⁸⁹ Moreover, EU Council Resolution 1257/96 and the Framework Partnership Agreements of ECHO implementing it include specific competence requirements for implementing partners, as discussed in section 4.4.1.1.

Some, but not all, disaster-specific treaties also make reference to humanitarian principles. For example, the Framework Convention provides that assistance should be non-discriminatory, and “undertaken in a spirit of humanity, solidarity and impartiality.”¹⁰⁹⁰ Similarly, the BSEC Agreement provides that “[t]he Goods of assistance shall be distributed without any discrimination based on race, religion, language, political or other factors.”¹⁰⁹¹ The Cotonou Agreement provides that “[h]umanitarian and emergency assistance shall be granted exclusively according to the needs and interests of victims of disasters and in line with the principles of international humanitarian law. In particular, there shall be no discrimination between victims on grounds of race, ethnic origin, religion, gender, age, nationality or political affiliation.”¹⁰⁹² The Council of the European Union has also underlined that civil protection assistance pursuant to the Community Civil Protection Mechanism “should, as is the general rule in civil protection, be non discriminatory, independent, impartial and in accordance with the victim’s needs and interests.”¹⁰⁹³ However, these principles are pointedly absent from other instruments, such as the Tampere Convention, ASEAN Agreement, and many bilateral treaties.

On the other hand, the UN General Assembly has repeatedly affirmed that “[h]umanitarian assistance must be provided in accordance with the principles of humanity, neutrality and impartiality”¹⁰⁹⁴ and UN General Assembly Resolution 57/150 broke important new ground by asserting not only these principles but also calling on all states to ensure that their urban search and rescue teams abide by the INSARAG Guidelines, which have detailed provisions on technical competence, self-sufficiency, coordination standards and cultural awareness.¹⁰⁹⁵ Similarly, the Oslo Guidelines affirm both the importance of humanitarian principles and that “[t]he Assisting State should ensure that international standards for the quality, packaging and marking of relief supplies are met, bearing in mind the needs, customs and traditions of the Affected State,”¹⁰⁹⁶ and the Guiding Principles on Internal Displacement call on humanitarian organizations “and other appropriate actors” to abide by humanitarian principles, “give due regard to the protection needs and human rights” of IDPs, and, “[i]n so doing,” “respect relevant international standards and codes of conduct.”¹⁰⁹⁷

Among humanitarian organizations, the most important instruments on humanitarian principles and the quality of relief are undoubtedly the Red Cross Red Crescent Code of Conduct and the Sphere Handbook, which, between them cover all of the sorts of issues described above. While the latter in particular originally came in for some criticism, particularly from some French NGOs concerned about potential rigidity of the standards it espouses,¹⁰⁹⁸ they both now command the respect of a substantial proportion of the humanitarian community. This was confirmed by respondents to the IDRL survey. Sixty-six per cent of them indicated that they used the Code at least sometimes and many National Red Cross and Red Crescent Societies (61 per cent) and international humanitarian organizations (82 per cent) reported that they used it frequently or always.¹⁰⁹⁹ Similarly, 72 per cent of all respondents reported making use of the Sphere Handbook in their operations, and 50 per cent of National Societies and 82 per cent of international humanitarian organizations said that they used it frequently or always.¹¹⁰⁰

Among the most frequent criticisms of both of these instruments is their lack of enforcement mechanisms. Large majorities of humanitarian respondents to a 2004 survey about the Red Cross Red Crescent Code felt that beneficiaries should be able to use the code to complain about humanitarian actors and that signatories should report on their performance.¹¹⁰¹ There have also been some calls for means to enforce the Sphere standards.¹¹⁰²

Moreover, the stated scope of these instruments is limited. As its title indicates, the Red Cross Red Crescent NGO Code of Conduct is aimed at a specific segment of the international disaster response community (although its annexes call on governments and inter-governmental organizations to also take certain steps to create an “enabling environment”). Likewise, the Sphere Handbook was designed for “humanitarian agencies.”

On the other hand, the Sphere Humanitarian Charter also “invite[s] other humanitarian actors, including states themselves, to adopt these standards as accepted norms.”¹¹⁰³ Some states have taken up this suggestion. For example, after the tsunami, Sri Lankan authorities required that all transitional housing structures comply with Sphere’s minimum standards.¹¹⁰⁴ Some other states, such as Angola, Nicaragua and Honduras, have made use of Sphere in developing their own guidelines and standards.¹¹⁰⁵ Similarly, Pakistani officials signed an agreement with local and international humanitarian organizations working on earthquake reconstruction to abide by a version of the Red Cross Red Crescent NGO Code of Conduct.¹¹⁰⁶ A substantial majority of government respondents to the IDRL survey also indicated that they had made use of both the Code (67 per cent) and the Sphere Handbook (59 per cent).

While still being drafted, the proposed “Guiding Principles for Philanthropic Private Sector Engagement in Humanitarian Action” will likely make reference to adherence by private sector actors to one or more of these instruments. This would be a salutary step, inasmuch as there appears to be little other normative guidance at the international level guiding their disaster relief-related activities.

13.3 Accountability

While there are some existing international standards on the quality of international relief, existing mechanisms for enforcement are generally weak. Most treaties either ignore enforcement completely or include dispute settlement mechanisms that amount to little more than recommendations that the affected states discuss any differences.¹¹⁰⁷ Other codes and standards, such as the Red Cross Red Crescent NGO Code of Conduct and the Sphere Handbook, have been purposefully made voluntary, without any formal monitoring or enforcement mechanism. While they have nonetheless achieved a demonstrable impact on the quality of the work of the humanitarian community,¹¹⁰⁸ the examples and survey results discussed above show that important gaps of implementation remain.

Affected states should be in a position to monitor the quality of international relief activities in their territories. Indeed, it is their responsibility to do so in light of their obligation to ensure that the humanitarian needs of persons within their territories are met.¹¹⁰⁹ However, their task is complicated by a number of factors, including the many different types of actors involved; diplomatic considerations with regard to assisting states; reduced capacity and heightened distraction due to the disaster; and the fact that many international actors intervene only briefly and then withdraw from the affected jurisdiction.

Donors can and do hold relief organizations to account, though they often do not do so primarily on the basis of international standards. For example, as noted by a 2004 evaluation of the Sphere Project, “[w]hile the donor organizations we spoke to are all quite familiar with the Sphere Project – and laudatory of it – there are no real rewards for those NGOs who use it more, nor are there specific negative consequences for those who do not use it at all.”¹¹¹⁰ Most unfortunately, disaster-affected persons often lack any reasonable means for calling international relief providers to account.

13.3.1 Beneficiary involvement and complaints

With regard to the latter point, a key gauge of the quality of commercial goods and services is the degree to which consumers decide to purchase them. In the domain of international disaster response, the “consumers” are not the ones who pay for the goods and services they receive and they are usually not in a position to “vote with their feet” to find another provider.¹¹¹¹ As a result, many relief providers have found themselves placing great emphasis on responding to reporting requirements of their donors and relatively little on the subjective satisfaction of their beneficiaries.

Thus, in its “Humanitarian Accountability Report” for 2005, the Humanitarian Accountability Project (HAP) concluded that donors and aid providers alike had failed to make good on their stated intentions to be accountable to beneficiaries.¹¹¹² Likewise, a survey by the Fritz Institute of persons affected by the 2005 earthquake in Pakistan found that “[m]ost households reported that they had no input in the decision-making processes related to the restoration of livelihoods (98 per cent), shelter (98 per cent), and food assistance (97 per cent)”¹¹¹³ and the TEC Report found that, after the tsunami, many “[a]ffected individuals felt ‘assessed to death’, too frequently interviewed and yet not truly consulted.”¹¹¹⁴

On the other hand, in Sri Lanka, the National Human Rights Commission took an innovative approach by establishing a dedicated “Disaster Relief Monitoring Unit” to handle complaints of affected persons about the failures of both domestic and international relief efforts.¹¹¹⁵ In the early stages of operations, the Unit received over 200 letters per day and also undertook numerous field visits to consult with affected persons and relief providers. It regularly published reports on problem areas and was successful in influencing the response of the government and other actors. Human Rights Commissions in other countries have also been active in responding to complaints from disaster-affected persons, though normally with a focus on their own governments.¹¹¹⁶ Likewise, a number of international relief organizations have begun to set up beneficiary complaints systems.¹¹¹⁷

Among existing IDRL treaties, only the Food Aid Convention comes close to addressing this issue, calling on member states to “pay particular attention to... facilitating the participation of women in the decision-making process and in the implementation of food aid operations, thus strengthening food security at the household level.”¹¹¹⁸ On the other hand, in its provision encouraging members to “assess the impact of their aid programmes” the convention refers to “indicators such as the nutritional status of the beneficiaries and other indicators related to world food security” without mention of the opinions of beneficiaries.¹¹¹⁹ While not a treaty, the ECHO Framework Partnership Agreement with Humanitarian Organizations also legally binds funded organizations to “promote the participation of beneficiaries in the formulation, implementation and evaluation of humanitarian aid Operations.”¹¹²⁰

The issue is also raised in a number of agency policy statements. For example, in 1995, the International Conference of the Red Cross and Red Crescent included a policy paper on the “key factors for developmental relief” as an annex to its resolutions, calling on relief actors to ensure that, “[e]ven in particularly difficult situations, such as relief to large-scale displaced populations” they “deliberately involve” beneficiaries in decision making processes and also “practice accountability to disaster survivors” including by sharing information on the “planning, execution and expected duration of the relief programme.”¹¹²¹ Likewise, the WFP Policy on Humanitarian Principles identifies beneficiary participation as among the “foundations for effective humanitarian action” and commits the agency to “involve women and men beneficiaries wherever possible in all activities[.]”¹¹²²

Several humanitarian codes and standards also stress beneficiary involvement. The Red Cross Red Crescent NGO Code of Conduct provides that “[w]ays shall be found to involve programme beneficiaries in the management of relief aid”¹¹²³ and the Sphere Humanitarian Charter states that “our fundamental accountability must be to those we seek to assist”¹¹²⁴ and its Minimum Standards also incorporate beneficiary involvement and complaints in a number of the sectors covered.¹¹²⁵ The Good Humanitarian Donorship Principles commit adherents to “[r]equest implementing humanitarian organisations to ensure, to the greatest possible extent, adequate involvement of beneficiaries in the design, implementation, monitoring and evaluation of humanitarian response.”¹¹²⁶ Moreover, HAP’s “Principles of Accountability” and “Standard of Accountability and Quality Management” advocate that beneficiaries are appropriately informed and involved in relief programmes and that adequate means are available for them to make complaints.¹¹²⁷

13.3.2 Anti-Corruption and anti-terrorism

While it has been admitted that “[t]here is no empirical evidence to support [the] proposition” that disaster relief and reconstruction lead to increased corruption, the perception of stakeholders is that the risks are very high.¹¹²⁸ Corruption and diversion of aid was the most frequently cited problem in the IDRL survey, particularly among governments, 79 per cent of whom reported having experienced it in their foreign assistance and 44 per cent of whom said that they encountered it frequently or always.¹¹²⁹ Overall, 62 per cent of respondents had encountered corruption in their operations and 30 per cent encountered it frequently or always.

In 2006, a study commissioned by Transparency International identified a multitude of corruption risks associated with the various stages and activities of an international disaster relief and recovery operation, ranging from the formation of bogus NGOs, bribes to needs assessors to induce them to modify their reports in favour of particular groups, threats or payments to ensure nepotistic hiring, theft of goods and kickbacks in procurement.¹¹³⁰ Some of these risks are related to the common bureaucratic access problems described above. For example, the report notes that “[b]ribes in customs is a significant procurement problem and has led some organizations, such as Médecins Sans Frontières (MSF) to establish systems for bringing in essential medicines.”¹¹³¹

To take one example, a number of measures were taken to address corruption risks in the response to the tsunami in Indonesia, including the establishment of a dedicated governmental oversight board credited with preventing a great deal of potential graft,

the convening of an international conference of experts to generate targeted recommendations, the engagement of the international accounting firm Ernst & Young to monitor disbursements, and the institution of a required “Anti-Corruption Declaration” for non-state relief organizations.¹¹³² Nevertheless, the Aceh Anti-Corruption Movement, an Indonesian NGO, reported that “30 to 40 [per cent] of all the aid funds, Indonesian and international, ha[d] been tainted by graft”¹¹³³ and international relief organizations reported being victimized by corrupt officials, contractors, and even their own staff.¹¹³⁴

In addition to the inherent dangers of a relief operation, it has been asserted that NGOs, and especially international NGOs, are vulnerable to misuse by terrorists, either as shell organizations or as unwitting vehicles of terrorist money laundering activities.¹¹³⁵ This concern has led to greater scrutiny of humanitarian NGOs by some states, particularly the United States, under laws concerning terrorist financing.¹¹³⁶ Moreover, USAID grantee organizations are required to take a number of steps to certify that none of their funds or transactions benefit terrorists, including checking names against certain official “blacklists” and reviewing “all public information that is reasonably available to it or of which it should be aware.”¹¹³⁷ Recently, a new and more intensive “Partner Vetting System” has been proposed, which would require USAID grantees to collect detailed information about their employees and directors for use by American law enforcement and intelligence officials.¹¹³⁸ American NGOs have complained about the potential administrative burden imposed.¹¹³⁹

Provisions on financial transparency and monitoring are very common in bilateral IDRL agreements, particularly when related to grants¹¹⁴⁰ but not in the multilateral instruments. One exception is EU Council Regulation 1257/96, which provides that the Commission may require grantees to submit detailed financial information and allow the Commission to audit and monitor them.¹¹⁴¹ However, a general multilateral statement of commitment by states to prevent and combat corruption in disaster relief is currently lacking.

For their part, humanitarian organizations have acknowledged the importance of financial transparency. For example, the Red Cross Red Crescent NGO Code of Conduct provides that “[w]e recognize the need to report on our activities, both from a financial perspective and the perspective of effectiveness. We recognize the obligation to ensure appropriate monitoring of aid distributions and to carry out regular assessments of the impact of disaster assistance.”¹¹⁴² Similar provisions can be found in InterAction’s PVO Standards and the NGO Accountability Charter. Moreover, the Balkans National Societies Recommended Rules and Practices identified financial transparency in the affected state as a central issue and called for effective monitoring systems.¹¹⁴³

13.3.3 Civil and criminal liability

Relief and recovery operations can entail a number of complex and dangerous activities, raising the spectre of civil and even criminal liability of assisting actors and their personnel. Protections and immunities are available for some of them, though coverage remains spotty. On the other hand, the IDRL Programme’s consultations indicate that claims and liability concerns are not currently creating important disruptions to international relief or recovery activities.

As noted by a recent study undertaken by the United States military, “[t]here is no overarching agreement or model in place to manage fiscal and liability issues” in international disaster relief and “[g]enerally, there is no consistency across nations regarding the relief of foreign responders from liability.”¹¹⁴⁴ Some states have laws providing some level of protection from civil liability for both domestic and international personnel providing emergency assistance. For example, Fijian law provides that [a] person performing a role or discharging a responsibility in accordance with the National Disaster Management Plan, Agency Support Plan or any regulations which apply during an – emergency situation shall not be liable for an injury or loss sustained by any other person, unless such loss or injury is caused by or arises from negligence or wilful default.¹¹⁴⁵

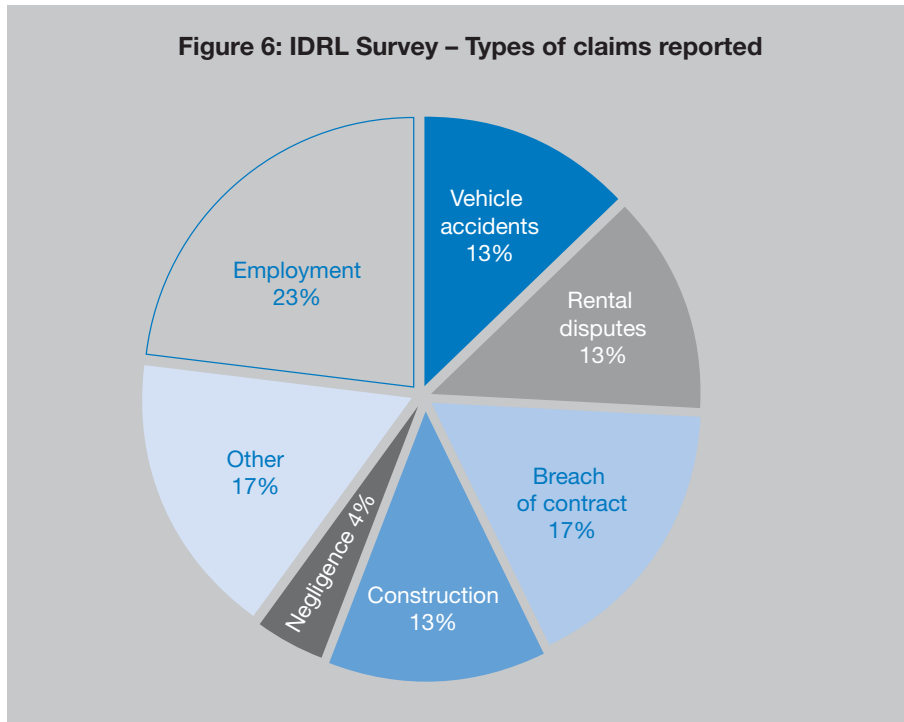
Similarly, French and German laws impose a duty to rescue in emergency situations, and concomitant protections from liability for persons complying with this command.¹¹⁴⁶ Many states and provinces of the United States and Canada also have “good Samaritan laws,” particularly for medical professionals, shielding them from liability for emergency care.¹¹⁴⁷ However, such general protections are not available in many other countries.¹¹⁴⁸

It is also accepted in customary international law that states have a certain level of immunity from process in each other’s courts, though neither the precise extent of that immunity nor the degree to which it would protect governmental relief personnel are entirely clear.¹¹⁴⁹ Moreover, as noted above in section 3.1.5, although international law provides specific immunities for diplomatic and consular personnel, its scope would be unlikely to cover all relief personnel. It is clear that inter-governmental organizations (and the International Federation, as recognized by its status agreements) enjoy immunity from judicial process, as do their personnel, at least for acts performed in their official capacity.¹¹⁵⁰ Other actors, however, including foreign Red Cross and Red Crescent Societies acting under their own legal status,¹¹⁵¹ NGOs, and their personnel are normally fully subject to local judicial process.

Very little public information is available about the extent to which international relief operations have resulted in legal claims. For their part, 15 per cent of respondents to the IDRL survey (including 32 per cent of international humanitarian organizations) reported having had claims filed against them.¹¹⁵² However, the preponderance of claims they reported involved contractual issues such as employment and rental disputes rather than negligence, as illustrated in Figure 6 below.

Encouragingly, respondents also reported that neither actual claims nor fears of liability are actively impeding their operations.

Only 4 per cent of all respondents and 7 per cent of NGOs stated that the potential of civil liability had substantially impeded their operations, though 15 per cent of all respondents and 32 per cent of international humanitarian organizations (including some UN agencies) acknowledged that claims had been brought against them.¹¹⁵³ Similarly, only 1 per cent of all respondents and 3 per cent of international humanitarian organizations reported substantial impediments from the potential of criminal investigation or arrest, though 6 per cent of all respondents and 19 per cent of international humanitarian organizations reported that a staff member or volunteer had at one point been criminally investigated or jailed in the course of an international disaster relief operation.



On the other hand, if existing international instruments are any guide, some governments at least are concerned about liability issues. The overwhelming majority of bilateral IDRL agreements contain provisions calling for the waiver of liability of assisting states and many also refer to immunities for their personnel.¹¹⁵⁴ Military actors are usually also granted certain immunities in SOFAs.¹¹⁵⁵ Moreover, according to the American military study mentioned above, the United States “is developing an approach to issues of liability that will seek to tie any offer of... assistance from the United States to a commitment from the requesting/receiving country to provide waivers of liability to responding USG agencies and personnel.”¹¹⁵⁶

Most of the multilateral treaties discussed in this study also provide for waivers of liability against assisting states and protections for them for third-party claims, and many also call for immunity of relief personnel. For example, the Nuclear Assistance Convention provides:

Unless otherwise agreed, a requesting State shall in respect of death or of injury to persons, damage to or loss of property, or damage to the environment caused within its territory or other area under its jurisdiction or control in the course of providing the assistance requested:

- a. not bring any legal proceedings against the assisting party or persons or other legal entities acting on its behalf;
- b. assume responsibility for dealing with legal proceedings and claims brought by third parties against the assisting party or against persons or other legal entities acting on its behalf;
- c. hold the assisting party or persons or other legal entities acting on its behalf harmless in respect of legal proceedings and claims referred to in sub-paragraph (b);...
except in cases of wilful misconduct by the individuals who caused the death, injury, loss or damage.¹¹⁵⁷

Provisions along the same lines (but sometimes in less detail) can be found in the Convention on the Transboundary Effects of Industrial Accidents,¹¹⁵⁸ Framework Convention on Civil Defence Assistance,¹¹⁵⁹ Tampere Convention,¹¹⁶⁰ Inter-American Convention,¹¹⁶¹ CDERA Agreement¹¹⁶² and BSEC Agreement,¹¹⁶³ among others. Among these instruments, only the Tampere Convention arguably extends judicial immunity to non-governmental relief personnel and only to personnel directly involved in telecommunications.

During several of the IDRL regional forums, a number of participants, including some NGO representatives themselves, asserted that international NGOs should remain subject to domestic liability for their relief and recovery activities, in order to foster accountability.¹¹⁶⁴ However, it is not clear how effective judicial remedies can be for beneficiaries in many developing states in light of economic and class barriers to use of legal systems and the fact that many relief actors remain in an affected country's jurisdiction only briefly.

13.3.4 Accreditation

In light of the proliferation of actors and many quality problems in international disaster relief, there has been a recent resurgence of the argument that there should be an international system of accreditation for humanitarian organizations.

This idea was first given prominent attention in 1996 as one of the principle recommendations of multi-agency joint evaluation of international assistance to Rwanda.¹¹⁶⁵ Having found that a number of international NGOs had “performed in an unprofessional and irresponsible manner that resulted not only in duplication and wasted resources but may also have contributed to an unnecessary loss of life,”¹¹⁶⁶ the evaluation concluded that voluntary implementation of the Red Cross Red Crescent NGO Code of Conduct was not sufficient. It therefore recommended either an “international accreditation system” based on criteria to be developed jointly by “official agencies and NGOs” or, as a second-best alternative, a strengthened form of “self-managed regulation” by the humanitarian sector.¹¹⁶⁷

Rather than moving toward a centralized accreditation system at the global level, however, the humanitarian sector mainly continued to look to softer alternatives, such as the development of additional standards (including the Sphere Handbook), and the establishment of more comprehensive systems of research and evaluation (such as the ALNAP Network). At the same time, some NGOs have experimented with accreditation systems of various types, including country-level peer-review mechanisms, membership certification schemes (such as Interaction's “Self-Certification Plus” and the Canadian Council of International Cooperation's self-certification mechanism), adoption of the ISO 9000 Quality Management Standards (originally designed for the private sector), and submission to auditing and rating by outside actors (such as the European Foundation for Quality Management, the Société Générale de Surveillance NGO Benchmarking).¹¹⁶⁸ This latter method has also been pursued by a coalition of African Red Cross and Red Crescent Societies through the “New Partnership for African Red Cross and Red Crescent Societies” or NEPARC, which requires a series of outside financial, governance and programmatic audits of all participants.¹¹⁶⁹

Probably the best known among the accreditation experiments is HAP, which began as a membership-certification scheme for international humanitarian NGOs based

on its Principles of Accountability, but struggled to expand beyond a handful of large Western NGOs.¹¹⁷⁰ It has therefore recently turned toward a multi-stage scheme whereby HAP accredits other bodies to audit NGOs and certify them according to HAP's Humanitarian Accountability and Quality Management Standard.¹¹⁷¹

INSARAG has also taken steps in this direction, albeit with a more technical approach, focused on the competence of urban search and rescue teams. In 2005, INSARAG agreed upon standards classifying such teams into light, medium and heavy categories based on their capacities and available equipment and established a system of mutual assessment of these teams.¹¹⁷²

In addition to the cumulative effect of these initiatives, the idea of global accreditation received an important boost in 2006 when the TEC Report on the tsunami response echoed the Rwanda evaluation by recommending that “[t]he international relief system should establish an accreditation and certification system to distinguish agencies that work to a professional standard in a particular sector.”¹¹⁷³ However, as noted by a paper provided by the Sphere Project, “[t]he humanitarian sector is still a long way from having a fully autonomous accrediting body.”¹¹⁷⁴ Some indications as to why this is so are apparent in the report of the NGO Impact Initiative, which noted that its consultations in the sector had resulted in [n]o agreement... on who or what entity would/should have the authority to monitor INGO compliance with standards, and be charged with offering technical assistance to NGOs wanting to meet them. Also unresolved was any agreement on what the appropriate incentives might be to promote the embrace of these core standards, or what the penalty might be for an NGO that decides not to adopt these core standards, or is found to be out of compliance with them.¹¹⁷⁵

Similarly, a 2004 survey of humanitarian actors about the implementation of the Red Cross Red Crescent NGO Code of Conduct revealed great interest in creating some kind of monitoring and/or complaints mechanism for the Code, but no clear idea as to how such a mechanism would be structured.¹¹⁷⁶

Nevertheless, the NGO Impact Initiative recommended that “an independent Humanitarian NGO Professional Association” be created which, among other things, would seek to develop universal “consensus among NGO platforms around a set of standards” of professional humanitarian work and “[w]ork in concert with existing NGO accountability and standards-setting bodies around the world in establishing a system or systems for external, non-governmental, compliance verification or certification mechanisms.”¹¹⁷⁷ In his concluding report, Special Envoy Clinton endorsed this recommendation, calling on NGOs to “develop a mechanism to promote and verify optimal standards of performance by NGOs” and to “identify specific tasks and functions in relief operations that ought to be staffed by trained or certified personnel, and consider means for professional accreditation.”¹¹⁷⁸ Plainly, these ideas are gathering important adherents, but they remain quite tentative and unformed.

Very much on the margins of this debate, some IDRL instruments have already taken steps along the lines of accreditation, albeit without any attention to standards. For example, both Annex 9 to the Chicago Convention on Civil Aviation and the Optional Protocol to the Convention on the Safety of United Nations and Associated Personnel provide the possibility of legal facilities for NGOs, but only upon designation by

the United Nations, in the former case by providing its “recognition”¹¹⁷⁹ and in the latter case by entering into a specific agreement incorporating the NGO into a “UN operation”.¹¹⁸⁰ The WCO/OCHA Model Customs Agreement is in the same tradition, calling for “certification” by the UN of NGOs as “bona fide participants within the framework of a United Nations relief operation.”¹¹⁸¹ None of these instruments include any guidance to the UN in making these decisions.

Importantly for the themes of this study, both the Rwanda evaluation and the TEC Report suggested, as (perhaps temporary) alternatives to their primary recommendations, that donor and affected states condition legal facilities on adherence to humanitarian standards as a means to enhance the accountability of international NGOs. While noting its preference for the stronger option of international accreditation, the Rwanda evaluation asserted that [self-regulation... would be encouraged if donors and donor governments agreed to restrict their funding and tax-free privileges to agencies that have adopted the [Red Cross Red Crescent NGO Code of Conduct] and standards. Similarly, host-country governments could restrict registration, work permits and duty-free importation privileges to adopting agencies. If implemented, these incentives and disincentives would compensate for the enforcement weakness of the [self-regulation] option.¹¹⁸²

Likewise, the TEC Report opined that [g]overnments can support regulation by making tax-exempt status dependent on meeting accountability requirements, such as those required in the US, as well as demanding regular published audits and independent evaluations. Affected country governments can demand similar transparency requirements of agencies responding to natural disasters in their countries. The European Commission could introduce a directive to ensure that NGOs in the European Union are obliged to be as transparent about their finances and expenditures as are NGOs in the US.¹¹⁸³

On the other hand, the NGO Impact Initiative warned that, “[p]recisely because of NGO’s essential role as advocates and in social service delivery, government regulation of the NGO sector runs the very real risk of becoming politicised.”¹¹⁸⁴

While this is a valid concern, it is also true, as mentioned above, that affected state governments in fact have a human rights obligation to ensure the quality of humanitarian relief. Moreover, the potential for abuse is much less problematic if the consequence of governmental action on the basis of an alleged failure of a humanitarian organization to abide by internationally recognized humanitarian standards consists of the withdrawal of legal facilities to which that organization is not otherwise entitled by international law (i.e., tax exemption or expedited customs clearance).¹¹⁸⁵ In other words, a “carrot” approach of conditioning special legal facilities on adherence to standards, as recommended by the Rwanda Evaluation and TEC Report, could be a positive contribution to the empowerment of affected states, the easing of humanitarian operations, and humanitarian accountability.

If and when a universally recognized system of international accreditation is established, it could quite logically be proposed as the basis for the granting or withdrawing of such facilities. In the meantime, however, states should be called upon to apply those standards to their best of their abilities on their own.

13.4 Ideas for the future on quality and accountability

For governments:

- Insist upon the involvement of disaster-affected persons in the planning and execution of international disaster relief and recovery operations to the greatest degree practicable.
- Support the development of effective complaints mechanisms for affected persons, including by national human rights institutions.
- Prominently affirm their commitment, for example through a resolution in an appropriate inter-governmental body, to cooperate in preventing and combating corruption in international disaster relief and recovery assistance.
- Ensure, by the same token, that anti-corruption and anti-terrorism measures do not unduly delay or hamper the delivery of humanitarian assistance.
- Reaffirm that the principles of humanity, impartiality and neutrality apply to all disaster relief and initial recovery assistance, whether delivered by states, humanitarian organizations or other actors.
- Affirm likewise, that all international actors should be subject to minimum standards of quality in the assistance they provide.
- Condition the provision of legal facilities to international humanitarian organizations not already entitled to them by international law on adherence to internationally recognized humanitarian standards, as set out in the Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance and monitor that compliance.

For donor states:

- Continue to promote commitment to and full implementation of the Good Humanitarian Donorship Principles.
- Make full use of mechanisms such as CERF and DREF to ensure speedy and equitable funding to disasters.

For international humanitarian organizations:

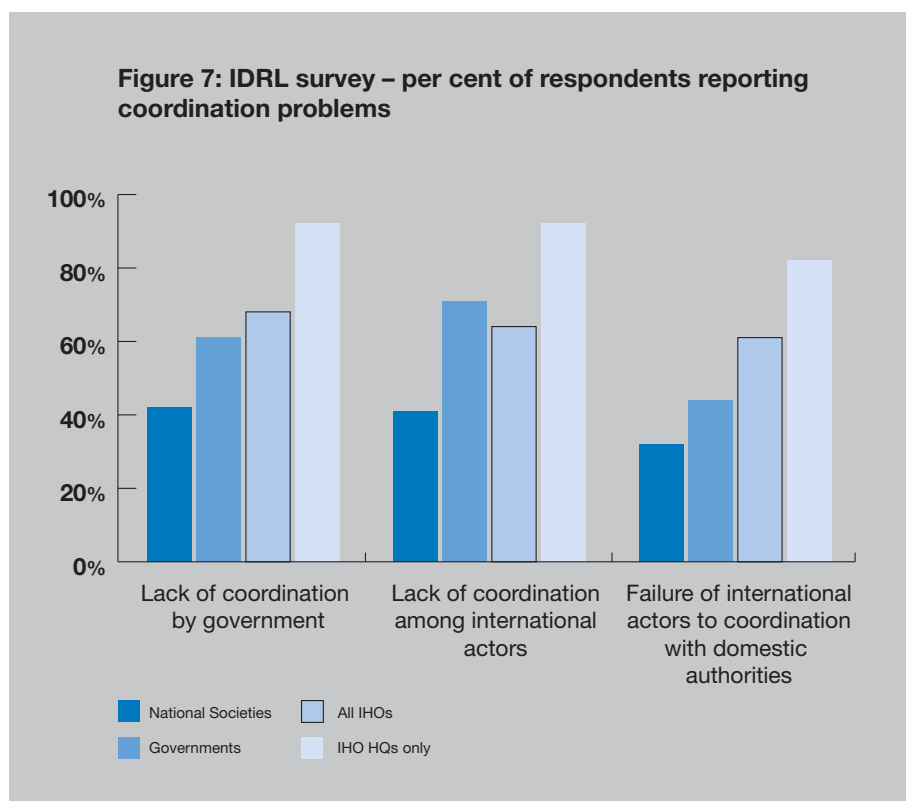
- Support and actively work toward investing their commitments to humanitarian quality standards – including with regard to local capacity building and accountability to beneficiaries – with real mechanisms of enforcement, whether by international accreditation or equivalently effective means.
- Ensure sufficient financial transparency – including to beneficiaries – to guard against waste, misuse and diversion of aid resources.

Chapter 14

Coordination

Coordination is probably the most discussed issue in international disaster response. Yet, failures in this area remain a constant complaint both among international actors and between international actors and their domestic counterparts in affected states. This was true of respondents to the IDRL survey, as shown in Figure 7 below.

There are a number of IDRL instruments that seek to improve coordination. However, for the most part, the international community has preferred to address such issues by less formal means and this may very well be for the best. On the other hand, at the national level, many states lack robust legal and institutional arrangements for the coordination of international actors providing assistance in their territories and the negative consequences of this lack of preparation have been apparent in recent operations.



14.1 Coordination among international actors

At the international level, many coordination problems flow from the well-documented contest for “market share” among relief actors, particularly during high-profile disasters.¹¹⁸⁶ For political reasons, assisting states need to be seen to be doing something and therefore demand maximum visibility for their assistance. Humanitarian actors, in permanent competition for fickle funding from donor states and/or the general public, must also be seen to be the first and the best amid a growing pack.

Private sector actors also wish their charitable donations and activities to be publicly known. At the same time, many new and inexperienced actors have become involved who are either ignorant of international coordination systems or lack any institutional loyalty to them.¹¹⁸⁷ All of these factors were painfully illustrated in the international response to the tsunami, after the unusually large outpouring of funds led to enhanced opportunities for new international actors, a reduction of mutual inter-dependence among them, and competition for beneficiaries.¹¹⁸⁸ Unsurprisingly, 59 per cent of the respondents to the IDRL survey reported encountering lack of coordination between international actors, and of these 36 per cent encountered it frequently or always.¹¹⁸⁹

In the 1920s, the international community briefly flirted with legally imposing a centralized approach to international disaster relief coordination through the creation of the IRU, as discussed above in section 2.2. Following the IRU's rapid demise, global coordination policies and structures have been mainly developed through non-binding instruments, such as UN General Assembly Resolution 46/182 and the Principles and Rules for Red Cross and Red Crescent Disaster Relief. On the other hand, a number of sectoral treaties, such as the Nuclear Assistance Convention, Chemical Weapons Convention, and Tampere Convention, and some regional instruments, such as the CDERA Agreement, ASEAN Agreement, Arab Agreement, and EU Council Decision 2001/792/EC, provide specific coordination roles for particular intergovernmental entities. For some of these instruments, that role is primarily to channel requests and offers of assistance, as discussed above in section 8.1. However others, such as the CDERA and ASEAN Agreements, foresee a much more active part for the respective secretariats in coordinating international operations on the ground. As noted above in section Chapter 7, these various roles have the potential for overlap, depending on the location and kind of disaster.

Nevertheless, there has been no attempt comparable to the IRU agreement to install a "command and control" structure over the entire disaster response community. Indeed, even within the UN system, the Emergency Relief Coordinator and his country level representatives, the "humanitarian coordinators", who are primarily charged with coordinating humanitarian assistance, lack command authority over operational agencies.

This state of affairs has the salutary effect of preserving the independence of actors such as the International Red Cross and Red Crescent Movement and NGOs, which has been acknowledged as a crucial element of their successes in providing rapid and effective humanitarian assistance.¹¹⁹⁰ It allows for innovation and different approaches to the complexities and particularities of different disasters and different countries. It is also quite likely to remain this way if only because donor and assisting states show little interest in constraining their own options.

Nevertheless, it is widely acknowledged that improved inter-operability is needed within the relief sector. Some important steps have recently been taken toward this end. Largely as a result of a disappointingly slow initiation of international assistance to the Darfur crisis in 2004, then-ERC Jan Egeland commissioned an independent review of the humanitarian response capacities of the UN, NGOs, International Red Cross and Red Crescent Movement and other key actors. The Humanitarian Response Review,¹¹⁹¹ published in April 2005, identified a number of gaps in the capacities and practices of the international humanitarian community, in a number of sectors and many failures of coordination. Among its recommendations was the creation of sectoral "clusters" with lead organizations responsible for global coordination among its partners in that area.

In response to these recommendations, in September 2005, the IASC approved the creation of nine sectoral clusters, in the areas of nutrition, water and sanitation, health, camp coordination and management, emergency shelter, protection, logistics, telecommunications, and early recovery and assigning lead agencies for each.¹¹⁹² The clusters are comprised of international humanitarian organizations and are designed to improve their collaboration, capacity, and overall effectiveness as well as to enhance accountability. As mentioned above, in addition to actively participating in a range of clusters, International Federation has agreed to serve as “cluster lead” for emergency shelter in disasters.¹¹⁹³ Though still beset by growing pains,¹¹⁹⁴ the cluster approach has now been successfully employed in a number of emergencies and has the potential not only to address international coordination but also coordination between the international community and domestic actors.

More recently, in July 2007, representatives of the UN, the International Red Cross and Red Crescent Movement and NGOs agreed upon a set of “Principles of Partnership” designed to emphasize the transparency, complementarity, equality and mutual responsibility among these different sectors of the humanitarian community.¹¹⁹⁵

14.2 Coordination between international and domestic actors

Many states have struggled to implement effective systems of disaster response coordination that adequately take into account the multiple concerned ministries, departmental and local levels of government, and civil society. Problems in these domestic systems often have a spill over effect on coordination with international actors. For example, after the 2007 floods in Bolivia, problems in information sharing and coordination between departmental and national authorities reportedly led to mixed messages and confusion for international actors.¹¹⁹⁶ Similarly, in Thailand, the government’s national database of tsunami relief projects could not cover activities below the provincial level.¹¹⁹⁷

Moreover, in many states it is either unclear which governmental entity is truly in charge of coordination of international actors or this task is entrusted to institutions lacking full authority or capacity. For example, when the 2005 earthquake struck Pakistan, there was no provision in national law designating a responsible institution for coordinating relief.¹¹⁹⁸ After Tropical Storm Stan in Guatemala, it was reported that the central disaster management authority, “CONRED”, “did not appear to perceive its role as extending to coordination of the total relief effort, thereby leaving most NGOs to decide where to go and what to do[.]”¹¹⁹⁹ After the tsunami in Sri Lanka, the government “did implement a number of structures and initiatives to improve coordination of the relief; however, they were not immediately functional. Thus, the various relief organizations – both domestic and foreign – initially dealt directly and independently with local authorities.”¹²⁰⁰ Similarly, in Indonesia, repeated institutional reshuffling led to gap periods during which international actors were unsure as to their proper liaison.¹²⁰¹ Moreover, the entity eventually placed in charge of reconstruction coordination lacked any policy-making authority, and other ministries, officials and policy often ignored its letters of recommendation on tax exemptions, visas and other matters.

On the other hand, some international actors deliberately bypass national coordination structures and fail to inform domestic authorities of their activities. This was reported by 44 per cent of respondents to the IDRL Survey (including 82 per cent of

international humanitarian organizations).¹²⁰² Moreover, local civil society is often left in the dark. For example, it was reported that “a consequence of the ‘swamping’ of local capacity by the large international presence in Aceh and Sri Lanka was the poor representation of, and consultation with, local NGOs and CBOs in consultation meetings.”¹²⁰³ Moreover, some National Red Cross Society respondents to the IDRL survey complained that, contrary to Movement rules, foreign National Societies had failed to seek their approval before responding to disasters in their countries and failed to share information with them about their activities.¹²⁰⁴

In 1971, the UN General Assembly “invite[d] potential recipient Governments... [t]o appoint a single national disaster relief coordinator to facilitate the relief of international aid in times of emergency” and a large number of subsequent instruments, both at the global and regional levels, have reiterated this call.¹²⁰⁵ Many of these instruments also call on international actors to recognize governmental coordination procedures. The ASEAN Agreement is typical in providing that “[t]he Requesting or Receiving Party shall exercise the overall direction, control, coordination and supervision of the assistance within its territory.”¹²⁰⁶ Moreover, the commentary to principle 6 of the Red Cross Red Crescent NGO Code of Conduct provides that signatories will “co-operate with local government structures where appropriate” and “place a high priority on the proper co-ordination of our emergency responses.”¹²⁰⁷

14.3 Ideas for the future on coordination

For governments:

- Review their domestic legal and administrative systems for the coordination of relief and ensure that they are adequately clear and robust with respect to a potential large international operation including not only foreign states and inter-governmental bodies but also non-state actors. In particular, a focal point agency or entity should be designated with adequate capacity and mandate to address common problem areas.
- Ensure that regional and international coordination mechanisms created by treaties to which they are a party are themselves prepared to reconcile with each other in case of overlapping application.

For international humanitarian organizations:

- Place appropriate emphasis on coordination with domestic authorities and civil society in their programming. This should include the clusters, which should take on local capacity building as a key goal.

Chapter 15

Involvement of militaries and mixed situations of disaster and conflict

While this study has excluded armed conflict from its definition of disaster, it still cannot ignore military and conflict issues entirely. This is because military actors are increasingly involved in peacetime disaster relief operations and because disasters sometimes coincide with conflict situations, raising questions about the applicable law.

15.1 International disaster relief by military actors

The provision of disaster relief assistance by military actors can be particularly sensitive due to the heightened sovereignty concerns they raise for the affected state, particularly if they are armed. Moreover, the international humanitarian community has voiced serious concerns about the potential blurring of distinctions between military and civilian relief actors, and the implications this might have for the acceptance and security of the latter in conflict settings.

Nevertheless, as noted above, there is a growing interest in many states to make greater use of their military assets in this way, as evidenced by the enormous military presence after the tsunami. As noted by the UN, “Member States, even those who do not give a primary role to their military forces in domestic response, are now using their military capacity for relief operations on a global basis.”¹²⁰⁸ Many of these military relief actors come from European countries.¹²⁰⁹ However, the United States military, long mandated by domestic law to participate in international disaster relief has also increased its emphasis on relief activities in recent years.¹²¹⁰ Moreover, newer actors are also becoming increasingly involved. For example, in 1992, Japan amended its law on international disaster relief to provide a specific role for its military forces, which have been active in operations ever since.¹²¹¹

A number of somewhat cynical reasons have been suggested for this phenomenon, ranging from the political need to “find something to do” for inactive militaries facing budget cuts, enhancing their public images both in potential theatres of war and at home on the recruitment front, and exercising systems of deployment that could later be useful in combat actions.¹²¹² On the other hand, military forces have unique skills and capacities, as well as ready access to critical equipment that can make a powerful contribution, particularly at the outset of an operation. As noted in a study by the Institute for Foreign Policy Analysis (IFPA):

[F]ew, if any, would deny that national militaries can provide critical support when responding to a large-scale natural disaster, whether it is the ability to organize quickly on the scene or to provide unrivalled logistical capabilities. During the Pakistan earthquake relief effort, for example, U.S. military helicopters carried more than twenty thousand passengers, conducted over thirty-seven hundred medical evacuations, and delivered nearly fifteen thousand tons of cargo to distressed villages, which was more than any other country or organization handled, including the UN.¹²¹³

Likewise, during the 2004 tsunami, it was reported that international militaries played a “pivotal role”, particularly in Indonesia.¹²¹⁴ Still, it has been pointed out that mili-



Reuters/Mian Khurshid, courtesy of www.alternet.org

tary relief operations are particularly expensive, sometimes amounting to many times what an equivalent civilian effort would cost.¹²¹⁵ Moreover, military actors can lack sensitivity to interests beyond the basic logistics of delivering goods. For example, as noted in the IFPA study,

[d]uring one cleanup operation in Indonesia after the 2004 tsunami disaster, a group of NGOs were assisting local villagers with a labor-intensive process of separating wreckage piece by piece, creating piles of different materials that could be reused, recycled, burned, and discarded. The operation involved a large and diverse segment of the village population, creating a communal sense of rebuilding, and each worker earned a small wage that contributed wealth to his or her family. Within a few days, however, a military detail came in with heavy equipment, dug deep holes and pushed all the debris into large pits. The job was done much faster, but it proved to be more expensive (factoring in the cost to mobilize the men and equipment) and possibly undermined the village's rebuilding effort.¹²¹⁶

Moreover, coordination of military and civilian actors remains difficult due to the very different philosophies, working methods, and cultures, and the aforementioned concern about potential damage to the perception of humanitarian organizations' neutrality.¹²¹⁷

Beyond these particular issues, military actors also encounter many of the same bureaucratic barriers as other disaster responders as discussed above in this study. As noted by the IFPA study, "protracted negotiations between nations over the deployment of military and air relief operations, such as landing authorization and customs clearance, have also delayed the transit of goods and equipment for emergency assistance. As a result, relief operations can suffer from logistical bottlenecks, duplication of assistance efforts in some locations, and supply shortages in other places."¹²¹⁸ Likewise, a summary of the "lessons learned" from NATO's intervention in Pakistan points out that "[t]he importance of working with host governments must not be underestimated. Many issues must be resolved before operations forces arrive, including terms of entry, force protection, legal status, communication channels, liaison arrangements contracting arrangements, use of land for basing and translators."¹²¹⁹

Relatively few existing international legal instruments make specific reference to military relief, although it is reasonable to assume that many of their provisions would also be pertinent to military actors. Those that do have specific reference, such as the ASEAN, CDERA and BSEC Agreements, the Agreement between the Government of the Republic of Finland and the Government of the Republic of Estonia on Cooperation and Mutual Assistance in Cases of Accidents of 1995, and the Agreement between Sweden and Norway concerning the Improvement of Rescue Services in Frontier Areas of 1974, uniformly contemplate that the affected state must specifically approve the entry and use of military actors and assets. Several of these agreements also call for foreign forces to be clearly identified, to report to a single commander notified to the affected state,¹²²⁰ and the ASEAN Agreement requires them to be unarmed.¹²²¹ Bilateral or regional (e.g. NATO) status of forces agreements or MOUs also address a number of the legal issues that might arise for military actors in disaster operations,¹²²² however they are limited in number and can be difficult to negotiate at the outset of a disaster.

As noted above in section 3.1.10, the primary instrument in this area is the Oslo Guidelines, which call for the use of military assets in disaster relief only as a last resort when

no civilian actor can meet a critical need.¹²²³ They also urge that military actors not be involved in the “face-to-face distribution of goods” but rather confine themselves to tasks such as transportation of personnel and goods and infrastructure support.¹²²⁴ Nevertheless, they commit military relief to the same humanitarian principles in their work as other relief actors and call for the easing of barriers in customs, visas, etc. as noted above. The Oslo Guidelines approach was reaffirmed in the Good Donorship Principles, which

[a]ffirm the primary position of civilian organisations in implementing humanitarian action, particularly in areas affected by armed conflict. In situations where military capacity and assets are used to support the implementation of humanitarian action, ensure that such use is in conformity with international humanitarian law and humanitarian principles, and recognises the leading role of humanitarian organisations.¹²²⁵

Still, work remains to be done to shore up support for the Oslo Guidelines and to ensure their wide dissemination, as illustrated by the TEC report’s finding that the Guidelines were “not... widely known or used by the national ministries responsible for disaster assistance, nor by the humanitarian community or military forces” during the tsunami response.¹²²⁶

15.2 Mixed situations of conflict and disaster

Civil-military relations are just one of many issues that are greatly more complex in relief operations in situations of conflict than in disasters. These issues are well documented elsewhere (indeed a large majority of the scholarship on humanitarian relief appears to focus on “complex emergencies”) and will not be repeated here. However, in the IDRL Programme’s consultations, the question has often been raised as to the applicable rules and considerations when conflicts and disasters occur simultaneously, as when the tsunami first struck Aceh (although the conflict came to a rapid close thereafter) and when the 2005 earthquake affected disputed zones of Kashmir.¹²²⁷

In fact, many of the same kinds of access barriers and quality issues discussed above arise also in situations of armed conflict.¹²²⁸ For example, in Sudan, notwithstanding several formal agreements between the UN and the government to streamline procedures regarding relief to Darfur, humanitarian officials have reported that the time, paperwork and expense required to obtain and renew visas as well as internal travel permits have been onerous.¹²²⁹ Moreover, during the war in the Balkans in the 1990s, there were reports of significant customs delays on humanitarian relief in Yugoslavia¹²³⁰ and in neighbouring countries hosting refugees.¹²³¹ Finally, as noted above, the Rwanda evaluation of 1996 found serious deficits in the quality of operations by many relief actors in that conflict setting.

However, the dynamics of a conflict situation are quite different. Security threats are extremely high for all concerned and the parties are often fearful that relief efforts will favour the other side. These factors lead to barriers that are more deliberate and more difficult to overcome than in disaster settings. Thus, for example, in Sri Lanka, whereas access for relief providers was quite open in the immediate aftermath of the 2004 tsunami,¹²³² ongoing assistance programs have undergone much greater restrictions since the renewed outbreak of fighting with the Liberation Tigers of Tamil Eelam (LTTE).¹²³³ These heightened dynamics occur whether a conflict is the “only” crisis

or if it coincides with a disaster. Thus, in the early days of the Aceh operation, humanitarian actors' travel and activities were tightly controlled by the military.¹²³⁴

Moreover, whereas there is a general expectation in disaster settings that domestic authorities should take the lead and that international assistance should merely supplement domestic efforts, the expectation in conflict settings is quite different, as reflected in IHL. As discussed above in section 3.1.3, the Fourth Geneva Convention removes the discretion of occupying powers to withhold consent to international relief schemes and it has been argued that arbitrary refusals are also barred in other conflict settings, as a matter of interpretation of the First Additional Protocol and the development of customary international law. While a limited right of control is retained for security purposes and to guard against diversion of supplies to enemy armed forces, it is presumed that the parties to conflict will otherwise permit and facilitate free passage. There is little room here for state parties to a conflict to coordinate, lead and ensure the quality of international relief (though it is likely that some very limited quality control measures – *e.g.*, ensuring that imported medicines are not expired and thus dangerous to the public – would likely be considered permissible).

In a situation of armed conflict where IHL applies, relief operations undertaken to cater to needs generated by an intervening disaster would still be governed by IHL and its particular requirements to allow and facilitate aid. This is due to the operative language of article 59 of the Fourth Geneva Convention, 70 and 71 of the First Additional Protocol and 18 of the Second Additional Protocol, all of which refer to situations of “inadequate supply” without any requirement that any shortages be directly attributable to fighting.¹²³⁵ The fundamental concern is with the critical human needs and ensuring that the dynamics of a conflict do not interfere with meeting them.

It is not clear to what extent many of the IDRL instruments discussed above would or should also apply in a mixed situation of disaster and conflict. Some of them, such as the Arab Agreement,¹²³⁶ and the Sphere Handbook,¹²³⁷ expressly state that they are intended both for disasters and conflict settings. Others, such as the CDERA Agreement¹²³⁸ and Oslo Guidelines¹²³⁹ specifically exclude application in armed conflict. Still others, like the Tampere Convention,¹²⁴⁰ employ a definition of disaster that is so broad as to necessarily include armed conflict. However, many instruments are simply unclear. It is plain that IHL, as *lex specialis* in situations of armed conflict, should be considered to prevail in any potential conflict of provisions with other applicable law or instruments and serves as an interpretive guide for provisions of any applicable non-conflicting laws and instruments.¹²⁴¹ Otherwise, the articles on the “Effects of Armed Conflicts on Treaties,” currently being developed by the International Law Commission may be helpful in determining when other IDRL treaties would continue to apply.¹²⁴²

15.3 Ideas for the future on militaries and mixed situations

For governments:

- Ensure that training and policy documents on international disaster relief by their militaries make full use of the Oslo Guidelines.
- Ensure that the relevant authorities understand the imperative to apply the relevant provisions of IHL (at a minimum) to relief in mixed situations of armed conflict and disaster.

Conclusion

In 1937, American writer Gertrude Stein declared with regard to her home town that “there is no there there.”¹²⁴³ Some commentators have come to a similar conclusion about IDRL, emphasizing the “yawning gap” at its core,¹²⁴⁴ pointing to the Tampere Convention as the only major development¹²⁴⁵ and concluding that “assisting and victim states retain virtually unfettered sovereignty in the context of natural disaster policy.”¹²⁴⁶ In fact, as important as it is, the Tampere Convention is not the only relevant instrument. There are quite a few others pertinent to the governance of international disaster relief and recovery operations at the global, regional and bilateral level. However, these commentators are quite right that the current system of international law in this area is dispersed, incoherent and not well understood or implemented by practitioners. As such, it is not contributing as much as might be hoped to the many legal problems that arise in these operations.

Those problems, broadly described here in relation to the access of international actors and the quality of the assistance they provide, are remarkably consistent across major disasters in various parts of the world and quite similar in type to many of those identified by scholars and humanitarian organizations in the 1980s and even in the initial negotiations on the IRU in the 1920s. However, the recent growth in the size and diversity of the international disaster response community is new and this factor is exacerbating those long-standing problem areas – not least the irritation of domestic actors at not being treated as the primary actors in handling their own disasters. Most governments confronted with a major disaster find that they have not adequately thought through how to facilitate, monitor and regulate a large influx of international assistance and their legal and institutional arrangements frequently show the strain. Too often, the result is that persons affected by disasters are not getting the right aid, delivered in the right way at the right time.

The results of the IDRL survey and case studies indicate that all stakeholders are encountering these types of issues to one extent or another. Even states, which usually benefit from the greatest deference and legal privileges from affected states, report many bureaucratic barriers to their assistance. Likewise, notwithstanding the fact that their privileges and immunities accord them rights that should overcome most legal access problems, UN agencies have reported many problems in their implementation. National Red Cross and Red Crescent Societies responding to the IDRL survey generally indicated fewer access problems than NGOs. This is likely due to their close cooperation with affected state National Societies and their ability to make use of the legal status of the International Federation (and also because a number of responding societies rarely intervene in international operations). However, significant numbers of them had experienced similar problems and a number expressed deep concerns with quality and coordination problems, both inside and outside the Movement. NGOs reported a high level of access difficulties but were also deeply troubled by quality issues.

These legal problems are also remarkably consistent across different types of disasters. Even slow onset disasters can sometimes require a speedy response, particularly if local authorities and/or international actors have waited beyond the last minute to initiate the response. In any event, operating issues such as those related to legal personality, taxation, and security and quality problems are very much the same regardless whether there is an instant crisis or a more protracted situation.

Conclusion

What should be done? Some participants in the regional IDRL forums argued for the development of a comprehensive global treaty in this area. The United Nations' Joint Inspection Unit appeared to come to a similar conclusion in a January 2007 report on the response to the 2004 tsunami.¹²⁴⁷ However, this still appears to be the minority view, in light of the enormous difficulties of the global treaty-making process. Indeed, the history of unsuccessful attempts to do just this with the IRU in 1927, UNDRO's draft convention in 1984 and the draft convention on urban search and rescue assistance in 2002, provide reason enough to be cautious. Moreover, many existing IDRL treaties have struggled to attract parties, as witnessed by the mere handful of states that have ratified Annex J.5 of the Kyoto Convention, the Inter-American Convention, and the Framework Convention on Civil Defence Assistance. Meanwhile, many states appear more interested in developing their cooperation at the regional or sub-regional level than in a new global compact.

In any event, regardless of whether such a treaty is ever attempted, most issues discussed in this study will need to be addressed through dedicated domestic law. Even in those states and circumstances in which treaty provisions can technically be directly applied in the national setting without implementing legislation,¹²⁴⁸ the reality is that the relevant domestic actors are much more likely to be familiar with and to implement domestic laws, rules and procedures. It therefore makes good sense to pay immediate attention to the domestic level. For this reason, the discussions at the regional IDRL forums have resulted in the development of the draft Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance previously mentioned.

The draft Guidelines are meant to assist governments in preparing their legal and institutional arrangements for the possibility of international assistance, should it ever be required. They seek to reconcile the need for speedy access for such assistance, with adequate controls to ensure its quality, complementarity and coordination. The draft Guidelines set out the minimal legal facilities that assisting states and humanitarian organizations require to provide effective assistance, without impinging upon any existing legal rights or arrangements. At the same time, they call on states to be discriminating in providing these rights – employing internationally recognized standards of humanitarian quality as the measure for deciding which organizations will receive them.

Recommendation

The primary recommendation of this study is that states adopt the draft Guidelines in the upcoming International Conference of the Red Cross and Red Crescent and then use them as a tool to examine their own laws and systems prior to the next major disaster. National Red Cross and Red Crescent Societies, as auxiliaries to the public authorities in the humanitarian field, are well placed to assist their governments in undertaking this examination. In addition, as summarized below, this study has identified a number of “ideas for the future” that could be quite complementary to the use of the draft Guidelines.

It should also be emphasized that this study is meant to be the opening rather than the final word on the “field” of IDRL. In many areas, it has only skimmed the surface of important and complex legal questions and other issues have been left out entirely. Much more discussion and debate is needed among stakeholders about how best to solve these issues and additional attention to the issues from the academic community would be most welcome.

Summary of ideas for the future

For governments

- Consistent with the draft guidelines for the domestic facilitation and regulation of international disaster relief and initial recovery assistance:

Initiation and termination

- Ensure that their disaster laws and policies include clear processes and assignments of responsibility with regard to decision-making and communication concerning the initiation of international assistance and procedures for undertaking and evaluating rapid needs assessments, including joint needs assessments with international actors when appropriate.
- Consult with international actors prior to termination of their programming to ensure a smooth transition of relief to recovery and minimize any negative impacts on disaster-affected persons.

Facilities for entry

- Develop or strengthen mechanisms in national law for providing expedited visas and work permits and customs facilities for assisting states and approved humanitarian organizations.
- Review in particular, regulations on the importation of food, medications, rescue dogs and currency and on the entry and use of vehicles, telecommunications and information technology equipment to reduce unnecessary barriers in disaster relief and recovery operations.
- Ensure mechanisms are in place for expedited review and recognition of the foreign qualifications of medical and other professional relief personnel from assisting states and approved humanitarian organizations, as well as necessary licenses and permits.

Facilities for operations and transport

- Develop or strengthen mechanisms in national law for providing assisting states and approved humanitarian organizations the necessary legal capacity to contract, open bank accounts and to enter into and terminate the contracts of local staff.
- Develop or strengthen rules for freedom of movement of disaster relief providers and waiving restrictions, tolls, and charges on land, sea or air vehicles bearing disaster response personnel, goods and equipment

- Provide approved international disaster relief and recovery actors with beneficial tax treatment, including exemption from VAT and income tax (at least with regard to donations), with respect to disaster relief and recovery goods and services.

Quality measures

- Condition the provision and retention of legal facilities to international humanitarian organizations not already entitled to them by international law on adherence to internationally recognized humanitarian standards.
- Insist upon the involvement of disaster-affected persons in the planning, execution and evaluation of international disaster relief and recovery operations to the greatest degree practicable.
- Prominently affirm their commitment, for example through a resolution in an appropriate inter-governmental body, to cooperate in preventing and combating corruption in international disaster relief and recovery assistance.
- Ensure, by the same token, that anti-corruption and anti-terrorism measures do not unduly delay or hamper the delivery of humanitarian assistance.
- Consider ratifying the Tampere Convention, Kyoto Customs Convention annexes B.3 and J.5, Istanbul Convention annexes B.9 and D, Optional Protocol to the Convention on the Safety of United Nations and Associated Personnel, and applicable regional and sub-regional conventions.

For donor states

- Evaluate grantee humanitarian organizations on the basis of internationally recognized standards of humanitarian quality.
- Implement the Oslo Guidelines and the Good Humanitarian Donorship Principles.
- Make full use of mechanisms such as CERF and DREF to ensure speedy and equitable funding to disasters.

For National Red Cross and Red Crescent Societies

- Provide expert advice to their governments about the development and strengthening of national law related to international disaster relief and initial recovery, making use of the draft Guidelines.

For international disaster responders, and particularly international humanitarian organizations

- Participate in and enhance international coordination systems for international disaster response as far as their working modalities allow and place appropriate emphasis on coordination with domestic authorities and civil society.
- Ensure that the relief goods and equipments they send are required and of appropriate type and quality and that consignees are willing and prepared to accept them.
- Only deploy competent and adequately trained personnel and engage local personnel to the degree possible without undermining local institutions
- Ensure that measures are in place, either through external or self-insurance, to adequately cover health, disability, and death claims for their personnel as well as vehicle-related claims.
- Explore potential mechanisms to improve enforcement of humanitarian and quality standards, whether by international accreditation or equivalently effective means.
- Ensure sufficient financial transparency - including to beneficiaries - to guard against waste, misuse and diversion of aid resources.
- Consult with domestic authorities prior to termination of programming to ensure a smooth transition of relief to recovery and minimize any negative impacts on disaster-affected persons.

For the Codex Alimentarius commission, PAHO/WHO, and committee of experts on international cooperation in tax matters

- Consider the possibility of developing additional guidance for states related to disaster relief with respect to the importation of food, recognition of medical credentials and taxation of relief activities, respectively.

For the WCO, ICAO and IMO

- Consider working together with humanitarian organizations to further integrate disaster relief issues into its training materials and activities

For parties to the Food Aid Convention

- Consider, among potential revisions to the Convention, measures to strengthen monitoring mechanisms with regard to its quality provisions and enhancing the dialogue with humanitarian organizations

End notes

- 1 Victoria Bannon et al, *Legal Issues from the International Response to the Tsunami in Sri Lanka* (International Federation of Red Cross and Red Crescent Societies 2006) (hereinafter, "International Federation Sri Lanka Study"), at 12; Victoria Bannon et al, *Legal Issues from the International Response to the Tsunami in Indonesia* (International Federation of Red Cross and Red Crescent Societies 2007) (hereinafter, "International Federation Indonesia Case Study"), at 20-22.
- 2 See *International Federation Indonesia Study*, supra note 1, at 21.
- 3 *Id.* at 21.
- 4 International Federation of Red Cross and Red Crescent Societies, *Swaziland: Storm*, DREF Bulletin No. MDRSZ001, Update No. 1 (Aug. 17, 2006), available at http://www.ifrc.org/cgi/pdf_appeals.pl?06/MDRSZ00101.pdf.
- 5 United States Government Accountability Office, *Hurricane Katrina: Comprehensive Policies and Procedures Are Needed to Ensure Appropriate Use of and Accountability for International Assistance*, U.S. Doc. No. GAO-06-460 (2006).
- 6 See Victoria Bannon et al, *Legal Issues from the International Response to the Tsunami in Thailand* (International Federation of Red Cross and Red Crescent Societies 2006) (hereinafter, "International Federation Thailand Study"), at 12-15; see also *International Federation Sri Lanka Study*, supra note 1, at 8-9.
- 7 See *id.* at 14; International Federation of Red Cross and Red Crescent Societies, *Report on the European Forum on International Disaster Response Laws, Rules and Principles (IDRL)*, Antalya, Turkey, 25-26 May 2006 (hereinafter, "European IDRL Forum Report"), at 4, available at <http://www.ifrc.org/idrl>.
- 8 See, e.g., *International Federation Thailand study*, supra note 6, at 15-16.
- 9 *Id.* at 19; Presentation of Johannes Richert, Head of National and International Cooperation Division, German Red Cross, to the European Forum on Disaster Response Laws, Rules and Principles (IDRL), Antalya, Turkey, 25-26 May 2006 (on file with author).
- 10 *Id.*
- 11 See Norwegian Red Cross, *Report on Studies and Interviews Conducted in Norway, Sri Lanka and Vietnam* (2003) (hereinafter, "NRC Case Study"), at 6, available at www.ifrc.org/idrl.
- 12 See John Telford and John Cosgrave, *Joint Evaluation of the International Response to the Indian Ocean Tsunami: Synthesis Report 55-61* (Tsunami Evaluation Coalition, 2006) (hereinafter, "TEC Synthesis Report"). A different sort of problem is confronted in many other crisis situations that have been unable to generate interest.
- 13 *Id.* at 56.
- 14 *Id.* at 52.
- 15 International Federation of Red Cross and Red Crescent Societies, *World Disasters Report: Focus on Information in Disasters* (2005) (hereinafter, "World Disasters Report 2005"), 93.
- 16 See Australian Broadcasting Corporation, *The World Today, Claims tsunami aid used as evangelical opportunity* (Dec. 19, 2005), available at www.abc.net.au.
- 17 See *infra* note 1085.
- 18 Office of the UN Secretary-General's Special Envoy for Tsunami Recovery, *Lessons Learned from Tsunami Recovery: Key Propositions for Building Back Better* (hereinafter, "Special Envoy Report") (2006), at 8.
- 19 For a comparative discussion of the development of IHL and IDRL, see International Federation of Red Cross and Red Crescent Societies, *World Disasters Report 2000: Focus on Public Health* (2000), at chapter 8 "Towards an international disaster response law" (hereinafter "World Disasters Report 2000").
- 20 Among the important publications of this period are PETER MCALISTER-SMITH, *INTERNATIONAL HUMANITARIAN ASSISTANCE: DISASTER RELIEF ACTIONS IN INTERNATIONAL LAW AND ORGANIZATIONS* (Martinus Nijhoff Publishers, 1985); MOHAMED EL BARADEI, *MODEL RULES FOR DISASTER RELIEF OPERATIONS* (United Nations Institute for Training and Research, 1982), and Jiri Toman, *Towards a disaster relief law: Legal aspects of disaster relief operations*, in *ASSISTING THE VICTIMS OF ARMED CONFLICT AND OTHER DISASTERS* (Frits Kalshoven, ed., Martinus Nijhoff Publishers, 1989). For a very useful compilation of other relevant articles from the same period, see the annexes to PETER MCALISTER-SMITH, *INTERNATIONAL GUIDELINES FOR HUMANITARIAN ASSISTANCE OPERATIONS* (Max Planck Institute for Comparative Public Law and International Law 1991).
- 21 Tampere Convention on the Provision of Telecommunication Resources for Disaster Mitigation and Relief Operations, June 18, 1998, United Nations depositary notification C.N.608.1998.TREATIES-8 of Dec. 4 1998 (entered into force Jan. 8, 2005) (hereinafter, "Tampere Convention"). The full text is available at <http://www.ifrc.org/what/disasters/idrl/publication.asp>.
- 22 See EM-DAT: The OFDA/CRED International Disaster Database, www.em-dat.net, Université Catholique de Louvain.
- 23 *Id.*
- 24 See D. Guha-Sapir et al, *Thirty Years of Natural Disasters, 1974-2003: The Numbers* (Centre for Research on the Epidemiology of Disasters, 2004) at 13 (noting that "[t]he economic cost associated with natural disasters has increased 14-fold since the 1950s").
- 25 According to a recent analysis of humanitarian financing, "however you measure it, humanitarian aid has been growing over the long term both in overall volume and as a share of aid." Development Initiatives, *Global Humanitarian Assistance 2003* (2003), at 1. The international humanitarian response to the tsunami alone reportedly totalled \$3.8 billion. See Development Initiatives, *Global Humanitarian Assistance Update 2004-2005* (2005), at 23-24.
- 26 See, e.g., Kenya offended at N. Zealander's dog food aid offer, *REUTERS*, Jan. 31, 2006, available at www.reliefweb.int; Stephanie Strom, *Poor Nations Complain that Not All Charity Reaches Victims*, *NEW YORK TIMES*, Jan. 29, 2006, available at <http://www.nytimes.com>.
- 27 As of the time of this writing, International Federation staff were aware of active governmental reviews on this topic taking place in Guatemala, Indonesia, USA, Canada, Denmark, Norway, Sweden, and the Philippines.
- 28 See Report of the Secretary General, *Strengthening emergency relief, rehabilitation, reconstruction, recovery and prevention in the aftermath of the Indian Ocean tsunami disaster*, U.N. Doc. No. A/61/87-E/2006/77 (2006) (advance unedited version) at 21.
- 29 See Special Envoy Report, supra note 18, at 8.
- 30 ASEAN Agreement on Disaster Management and Emergency Response, July 26, 2005 (hereinafter, "ASEAN Agreement"), available at <http://www.aseansec.org>.
- 31 On file with the International Federation.
- 32 See Report of the World Conference on Disaster Reduction, U.N. Doc. No. A/Conf.206/6 (6 March 2005), Resolution 2.
- 33 *Id.* at para 16.
- 34 Statute of the International Law Commission (1947), art. 1, available at <http://www.un.org/law/ilc>.
- 35 See Report of the International Law Commission, 58th Sess. (1 May-9 June and 3 July-11 August 2006), U.N. Doc. No. A/61/10 (2006), at 464.
- 36 See Outcome Statement, IASC Principals Meeting, Sept. 12, 2005, available at <http://www.humanitarianinfo.org/iasc>.
- 37 See, e.g., Actionaid International, *The Evolving UN Cluster Approach in the Aftermath of the Pakistan Earthquake: An NGO Perspective* (2006), chapter 4.
- 38 The International Conference of Red Cross and Red Crescent Societies (as it is currently known) is the "supreme deliberative body for the Movement", and is attended by all States parties to the Geneva Conventions, all national Red Cross and Red Crescent societies recognized by the ICRC, the ICRC and the International Federation. It normally meets every four years.
- 39 Adopted by the 21st International Conference of the Red Cross (Istanbul, 1969) and as subsequently amended.
- 40 See *World Disasters Report 2000*, supra note 19.
- 41 The Council of Delegates is a deliberative body made up of representatives of all components of the Movement (recognised National Societies, ICRC, and the International Federation) to discuss matters which concern the Movement as a whole. It normally meets every two years.
- 42 Initially called the "International Disaster Response Law Project," the initiative was later renamed the "International Disaster Response Laws, Rules and

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- Principles Programme*” to emphasize the broad scope of its research, which encompasses not only treaties but also other normative instruments and rules.
- 43 International Federation of Red Cross and Red Crescent Societies, *Uniting for Human Dignity: The Manila Action Plan* (2002), available at <http://www.ifrc.org/docs/pubs/events/manila02/manila-action.pdf>.
- 44 Resolution of the XXIth Inter-American Conference of the Red Cross, April 23-26, 2003, annex 1, available at http://www.ifrc.org/cgi/pdf_pubs.pl?events/interam/Commitment.pdf.
- 45 “Singapore Declaration” of the VIIth Asia-Pacific Conference of the International Federation of Red Cross and Red Crescent Societies, November 19-23, 2006 (on file with author).
- 46 See Outcome Statement of the Second Commonwealth Red Cross and Red Crescent International Humanitarian Law Conference, attended by representatives of Commonwealth States and Commonwealth National Red Cross and Red Crescent Societies, Wellington, New Zealand, Aug. 29-31, 2007 (on file with author).
- 47 See Access to Victims and Vulnerable Persons: Consolidated Report of the Commissions, Nov. 16, 2005, at 3.
- 48 See International Federation of Red Cross and Red Crescent Societies, *The Federation of the Future: Working Together for a Better Tomorrow* (May 2006) (hereinafter, “Federation of the Future”).
- 49 *Id.* at 9.
- 50 *Id.*
- 51 “There is no accepted definition of ‘soft law,’ but it usually refers to any international instrument other than a treaty that contains principles, norms, standards, or other statements of expected behavior. The term ‘soft law’ is also sometimes employed to refer to the weak, vague, or poorly drafted content of a binding instrument[.]” Dinah Shelton, *Normative Hierarchy in International Law*, 100 AMERICAN JOURNAL OF INTERNATIONAL LAW 291, 319 (2006).
- 52 See IAN BROWNLIE, *PRINCIPLES OF PUBLIC INTERNATIONAL LAW* 6 (6th ed. 2003); PETER MALANCZUK, *AKEHURST’S MODERN INTRODUCTION TO INTERNATIONAL LAW* 39 (7th ed. 1997); Statute of the International Court of Justice, June 26, 1945, art. 38(1)(b) (annexed to the Charter of the United Nations).
- 53 See BROWNLIE, *supra* note 52, at 6; MALANCZUK, *supra* note 52, at 39-40; JEAN-MARIE HENCKAERTS AND LOUISE DOSWALD-BECK, *CUSTOMARY INTERNATIONAL HUMANITARIAN LAW, VOLUME I: RULES* xxxii (International Committee of the Red Cross 2005) (hereinafter “ICRC Customary Law Study”).
- 54 For an example of such a comprehensive analysis, see the ICRC Customary Law Study, *supra* note 53, a project undertaken over 10 years by the ICRC with the help of dozens of legal scholars to determine rules of customary international humanitarian law resulting in a several-volume product.
- 55 Some prior papers have devoted passing attention to customary IDRL, but there is nothing approaching the depth of the ICRC Customary Law Study in this area. See, e.g., Zama Coursen-Neff, *Preventive Measures Pertaining to Unconventional Threats to the Peace such as Natural and Humanitarian Disasters*, 30 NEW YORK UNIVERSITY JOURNAL OF INTERNATIONAL LAW AND POLICY 645, 693-94 (1998), Rohan Hardcastle & Adrian Chua, *Humanitarian Assistance: Towards a Right of Access to Victims of Natural Disasters*, 38 INTERNATIONAL REVIEW OF THE RED CROSS 589, 589-609 (1998).
- 56 See generally WHAT IS A DISASTER? PERSPECTIVES ON THE QUESTION (C.E.L. Quantelli, ed., Routledge 1998) (hereinafter, “WHAT IS A DISASTER?”).
- 57 See, e.g., ANDERS WIJKMAN AND LLOYD TIMBERLAKE, *NATURAL DISASTERS: ACTS OF GOD OR ACTS OF MAN?* 14 (Earthscan 1984) (arguing that “our whole perception of the concept of a ‘disaster’ has much more to do with social and political conditioning than with logic”).
- 58 Steve Kroll-Smith and Valerie J. Gunter, *Legislators, Interpreters and Disasters: The Importance of How as Well as What is a Disaster*, in WHAT IS A DISASTER?, *supra*, note 56, at 160. See also Anthony Oliver-Smith, *Global Changes and the Definition of Disaster*, in WHAT IS A DISASTER? *supra*, note 56, at 179 (contending that the term disaster is among those concepts “the proper use of which inevitably involves endless disputes about their proper uses on the part of their users” (quoting W. Gallie, “Essentially contested concepts,” *Proceedings of the Aristotelian Society* 56, 167-98 (1955)); BARRY A. TURNER AND NICK F. PIDGEON, *MAN-MADE DISASTERS* (2d ed. 1997) (concluding that “it does not seem too bold to suggest that no full and adequate listing of disasters will ever be constructed”).
- 59 See, e.g., *Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency* Sept. 26, 1986, 1439 U.N.T.S. 275 (hereinafter, “Nuclear Assistance Convention”).
- 60 See, e.g., *International Convention on Oil Pollution Preparedness, Response and Cooperation*, Nov. 30, 1990, 30 I.L.M. 733 (1990) (hereinafter, “Oil Pollution Convention”).
- 61 See, e.g., *Emergency Technical Co-operation Agreement between the Pan American Health Organization and the Government of Suriname in Case of a Major Natural Disaster*, Jan. 3, 1983, art. 1(3), 1300 U.N.T.S. 130; *Vertrag zwischen der Republik Österreich und der Slowakischen Republik über die Zusammenarbeit und die gegenseitige Hilfeleistung bei Katastrophen*, June 11, 1997, art. 2, *Bundesgesetzblatt* 155/1998 of Oct. 2, 1998. See also Recommendation of the Customs Co-operation Council to Expedite the Forwarding of Relief Consignments in the Event of Disasters, June 8, 1970, Doc. No. T2-423 (stating that “the term ‘disaster’ shall be taken to cover both natural disasters and similar catastrophes”).
- 62 See, e.g., *Convention on the Transboundary Effects of Industrial Accidents*, March 17, 1992, 2105 U.N.T.S. 46.
- 63 See, e.g., Peter Macallister-Smith, *International Guidelines on Humanitarian Assistance* (Max Planck Institute for Comparative Public Law and International Law 1991), at 21 (hereinafter “Max Planck Guidelines”) (arguing that past attempts to define the term have produced short-lived and unhelpful results).
- 64 The use of the undefined terms “national disasters and other disaster situations” by General Assembly Resolution 2816 (XXVI), UN Doc. A/RES/2816(XXVI) (Dec. 14, 1971), in its description of the mandate of UNDR0 caused a great deal of unfortunate confusion as to the scope of that office’s activities. See Jiri Toman, *Report on the Convention for Expediting Emergency Relief* (Office of the United Nations Disaster Relief Coordinator 1984), at 75-87, available in the archives of the United Nations Office in Geneva.
- 65 See *Tampere Convention*, *supra* note 21, at art. 1(6). Cf. ASEAN Agreement, *supra* note 30, at art. 1(3) (defining “disaster” as “a serious disruption of the functioning of a community or a society causing widespread human, material, economic or environmental losses”).
- 66 *Agreement among the Governments of the Participating States of the Black Sea Economic Cooperation on collaboration in Emergency Assistance and Emergency Response in Natural and Man-Made Disasters* (hereinafter, BSEC Agreement), April 15, 1998, available at <http://bsec-organization.org/>.
- 67 See, e.g., *Framework Convention on Civil Defence Assistance*, May 2, 2000, art. 1(c), 2172 U.N.T.S. 231 (2000) (hereinafter, “Framework Convention”) (defining disaster as “an exceptional situation in which life, property or the environment may be at risk”).
- 68 ASEAN Agreement, *supra* note 30 at art. i (3).
- 69 Department of Humanitarian Affairs, *Internationally Agreed Glossary of Basic Terms Related to Disaster Management*, U.N. Doc. No. DHA/93/36 (1992), at 27.
- 70 See e.g., ISDR website, “Terminology: Basic terms of disaster risk reduction” at <http://www.unisdr.org/eng/library/lib-terminology-eng%20home.htm> (accessed 7 May 2007); UNITED NATIONS DEVELOPMENT PROGRAMME, *REDUCING DISASTER RISK: A CHALLENGE FOR DEVELOPMENT* 98 (2004); cf. World Food Programme Executive Board, *Definition of Emergencies*, WFP/EB.1/2005/4-A/Rev.1 (2005).
- 71 The term “natural disaster” is falling out of favour by some in the humanitarian community. For example, the UN Secretary-General criticised the term in his 2005 report to the General Assembly on international cooperation on humanitarian assistance in the field of natural disasters, from relief to development, U.N. Doc. No. A/60/227 (2005), para. 1, “as it conveys the mistaken assumption that disasters occurring as a result of natural hazards are wholly ‘natural,’ and therefore inevitable and outside human control. Instead, it is widely recognized that such disasters are the result of the way individuals and societies relate to threats originating from natural hazards.” A/60/227 Para 1.
- 72 Cf. Agreement Establishing the Caribbean Disaster Emergency Response Agency,

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- Feb. 26, 1991, art. 1(d), available at <http://www.ifrc.org/Docs/idrl/I222EN.pdf> (excluding from its definition of disaster "events occasioned by war, military confrontation or mismanagement").
- 73 See Yves Sandoz, *The International Committee of the Red Cross as guardian of international humanitarian law* (International Committee of the Red Cross 1998), at <http://www.icrc.org/Web/Eng/siteeng0.nsf/html/about-the-icrc-311298>.
- 74 See ICRC Annual Report 2005, at 27-28.
- 75 See, e.g., UN General Assembly Res. 57/150, U.N. Doc. A/RES/57/150 (2002) (addressing urban search and rescue missions); Agreement between the Republic of Austria and the Italian Republic on the Facilitation of Air Ambulance Flights in the Frontier Regions for Urgent Transport of Injured or Seriously Ill Persons Feb. 21, 1989, available at <http://www.ifrc.org/idrl>.
- 76 See, e.g., UN General Assembly Res. 55/163, UN Doc. A/RES/55/163 (2001); Agreement between the Government of Mali and the United States of America on the Sabel Drought Recovery Program, Jan. 1, 1974, 1066 U.N.T.S. 173.
- 77 See Appendix 3.
- 78 See, e.g., International Federation of Red Cross and Red Crescent Societies, *Integrating relief, rehabilitation and development policy*, available at <http://www.ifrc.org/who/policy/rrdpolicy.asp>.
- 79 See, e.g., Institute of International Law, *Resolution on Humanitarian Assistance* (2003) at para 1(1) (defining "humanitarian assistance" as "all acts, activities and the human and material resources for the provision of goods and services of an exclusively humanitarian character, indispensable for the survival and the fulfillment of the essential needs of the victims of disasters").
- 80 See, e.g., Zidane Meriboute, *Humanitarian Rules and Sanctions in the Major Philosophical and Religious Traditions*, in *MAKING THE VOICE OF HUMANITY HEARD: ESSAYS ON HUMANITARIAN ASSISTANCE AND INTERNATIONAL HUMANITARIAN LAW IN HONOUR OF HRH PRINCESS MARGRIET OF THE NETHERLANDS* (Lisbeth Lijnzaad et al, eds., Brill Academic Publishers 2004) at 365.
- 81 See PETER MACALISTER-SMITH, *INTERNATIONAL HUMANITARIAN ASSISTANCE: DISASTER RELIEF ACTIONS IN INTERNATIONAL LAW AND ORGANIZATION* 9 (Martinus Nijhoff Publishers 1985) (hereinafter, "MACALISTER-SMITH, INTERNATIONAL HUMANITARIAN ASSISTANCE").
- 82 EMER DE VATTEL, *LE DROIT DES GENS OR THE PRINCIPLES OF NATURAL LAW APPLIED TO THE CONDUCT AND AFFAIRS OF NATIONS AND SOVEREIGNS*, vol. II, book 2, para. 5 (1758). De Vattel also specified, however, that, pursuant to the contemporary notion of sovereignty, receiving states were under no obligation to receive such aid. See *id.* at para. 7.
- 83 See International Federation of Red Cross and Red Crescent Societies, *Background Information Sheet: International Regulation of Telecommunications in Disaster Relief* (April 25, 2006), available at <http://www.ifrc.org/idrl>.
- 84 See Obijofor Aginam, *International law and communicable diseases*, 80 BULLETIN OF THE WORLD HEALTH ORGANIZATION 946, 947 (2002).
- 85 See Jiri Toman, *Towards a Disaster Relief Law: Legal Aspects of Disaster Relief Operations*, in *ASSISTING THE VICTIMS OF ARMED CONFLICT AND OTHER DISASTERS* 182 (Frits Kalshoven, ed., Martinus Nijhoff Publishers 1989); Michael Meyer, *Principles of Emergency Relief as Derived from the International Law and Organization Governing Transportation Disasters (Maritime, Aerial and Outer Space)*, presented to the Congress on International Solidarity and Humanitarian Action, International Institute of Humanitarian Law, San Remo, Italy, Sept. 10-13, 1990, at 20-28. Interestingly, the drafters of the International Relief Union convention borrowed from maritime law of this period in formulating the scope of relief activities. See John F. Hutchinson, *Disasters and the International Order - II: The International Relief Union*, 23 INTERNATIONAL HISTORY REVIEW 253, 265 (2001).
- 86 See Peter Macalister-Smith, *Reflections on the Convention Establishing an International Relief Union* of July 12, 1927, 54 LEGAL HISTORY REVIEW 363, 364 (1986) (hereinafter, "Macalister-Smith, Reflections").
- 87 *Id.*
- 88 *Id.* at 365.
- 89 *Convention and Statute Establishing an International Relief Union*, July 12, 1927, League of Nations Treaty Series No. 3115 (1932) (hereinafter, "IRU Convention").
- 90 *Id.* at art. 6; Statute at art. 5.
- 91 See IRU Convention, *supra* note 89, at arts. 3-4.
- 92 See Hutchinson, *supra* note 85, at 264-65.
- 93 In a 1938 monograph about the IRU, a member of its executive committee noted that the scope of "force majeure" was debatable, but acknowledged that any move away from natural disasters would likely cause dissent among state parties. See CAMILLE GORGE, *L'UNION INTERNATIONALE DE SECOURS: SES ORIGINES, SON BUT, SES MOYENS, SON AVENIR* 31 (Union Internationale de Secours 1938).
- 94 See Hutchison *supra* note 85, at 292. In the end, the IRU was unable to take concrete action on this proposal in light of the Spanish government's decision to accept assistance only from the League of Nations' health department. *Id.* at 294-95.
- 95 *Id.* at 262.
- 96 *Id.* at arts. 9 & 11.
- 97 See IRU Convention *supra* note 89, at arts. 5 & 10; IRU Statute at arts. 14-15.
- 98 See Macalister-Smith, *Reflections*, *supra* note 86 at 370.
- 99 *Id.*
- 100 *Id.* at 372.
- 101 See David Fidler, *Disaster Relief and Governance after the Indian Ocean Tsunami: What Role for International Law?*, 6 MELBOURNE JOURNAL OF INTERNATIONAL LAW 458, 464 (2005).
- 102 In this respect, the 1938 lament of one of the IRU's executive council members is instructive: Il s'ensuit que l'Union n'a guère aujourd'hui, pour subsister, que les maigres revenus du fonds constitué par la contribution unique des gouvernements. Elle attend son Rockefeller. Mais viendra-t-il? . . . Si les choses n'ont pas évolué comme il était légitime de l'espérer, la faute en est, pour une bonne part, aux gouvernements qui ont reculé devant les sacrifices financiers qu'implique une œuvre dans laquelle on ne saurait voir qu'une sorte de geste symbolique de pitié propitiatoire. J. GORGE, *supra* note 93, at 53.
- 103 See MACALISTER-SMITH, *INTERNATIONAL HUMANITARIAN ASSISTANCE*, *supra* note 81, at 21.
- 104 Cf. J. W. Samuels, *The Relevance of International Law in the Prevention and Mitigation of Disasters*, in *DISASTER ASSISTANCE: APPRAISALS, REFORM AND NEW APPROACHES* 254 (Lynn H. Stephens & Stephen J. Green, eds., New York University Press 1979) (opining that "[t]he IRU failed because its establishment did not take into account adequately the complexity of the international relief system").
- 105 See Horst Fischer, *International Disaster Response Law: Objectives, Models and Patterns, Challenges, Proposals* (International Federation of Red Cross and Red Crescent Societies 2003), at 25, available at <http://www.ifrc.org/idrl>.
- 106 *Id.*
- 107 See Office of the United Nations Disaster Relief Coordinator, *Report of the Secretary General - Addendum: Proposed draft convention on expediting the delivery of emergency relief*, U.N. Doc. No. A/39267/Add. 2 - E/1984/96/Add.2 (June 18, 1984) (hereinafter "Draft Convention"), available at <http://www.ifrc.org/what/disasters/idrl/publication.asp>.
- 108 *Id.* at 4, para. 9.
- 109 The Draft Convention defined "disaster" as follows: "any natural, accidental or deliberate event (not being an ongoing situation of armed conflict) as a result of which assistance is needed from outside the State upon whose territory the event occurred or which has been affected by the consequences of the event." *Id.* at 6, art. 1(b).
- 110 *Id.* at 6 art. 1(f).
- 111 See Decision 1984/175, reprinted in *Resolutions and Decisions of the Economic and Social Council: Second Regular Session of 1984, Geneva July 4-27, 1983, Supplement No. 1A* (United Nations 1984) (taking note of the draft convention and referring it to the General Assembly).
- 112 See, e.g., *Summary Record of the 32nd Meeting, UNGAOR, 39th Sess., UN Doc. No. A/C.2/39/Sr.32* (Nov. 6, 1984) at 10 (Ecuador); *Summary Record of the 35th Meeting, UNGAOR 39th Sess., U.N. Doc. No. A/C.2/39/SR.35* (Nov. 7, 1984) at 3 (Indonesia); *Summary Record of the 37th Meeting, UN-*

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- GAOR 39th Sess., UN Doc. No. A/C.2/39/SR.37 (Nov. 12, 1984) at 12 (Zambia). Several states publicly called for more time for discussion on the Draft Convention. See, e.g., Summary Record of the 37th Meeting, UNGAOR 39th Sess., UN Doc. No. A/C.2/39/SR.37 (Nov. 12, 1984) at 12 (Philippines); Summary Record of the 34th Meeting, UNGAOR 39th Sess., UN Doc. No. A/C.2/39/SR.34 (Nov. 12, 1984) at 7 (Nordic states).
- 113 Summary Record of the 34th Meeting, UNGAOR 39th Sess., UN Doc. No. A/C.2/39/SR.34 (Nov. 12, 1984), at 10.
- 114 See YVES BEIGBEDER, *THE ROLE AND STATUS OF INTERNATIONAL HUMANITARIAN VOLUNTEERS AND ORGANIZATIONS: THE RIGHT AND DUTY TO HUMANITARIAN ASSISTANCE* 378 (Martinus Nijhoff Publishers 1991).
- 115 See, e.g., Mario Bettati, *Un Droit d'Ingérence ?*, 45 REVUE GENERALE DE DROIT INTERNATIONAL PUBLIC 639, 653 (1991) (« Bien qu'encore marqué d'intérêtisme ce texte a été sans doute prématurément présenté. L'organisation internationale était encore en proie à une conception de la souveraineté insensible aux considérations humanitaires. Il n'a donc pas reçu l'adhésion des Etats membres. »). Several years later, the Inter-Parliamentary Union was similarly inspired to adopt a resolution calling for the creation of a working group to draft a convention on humanitarian relief for both disasters and armed conflicts, but this effort also foundered. See BEIGBEDER, *supra* note 114 at 379.
- 116 See Victoria Bannon, *Strengthening International Disaster Response Laws, Rules, and Principles: Overview of the Current System and a Way Forward*, in *TSUNAMI AND DISASTER MANAGEMENT: LAW AND GOVERNANCE* (C. Raj Kumar & D.K. Srivastava, eds, Sweet and Maxwell Asia 2006), at 13-14.
- 117 See Arjun Katoch, *The Responders' Cauldron: The Uniqueness of International Disaster Response*, 59 JOURNAL OF INTERNATIONAL AFFAIRS 153, 157 (2006).
- 118 MACALISTER-SMITH, *INTERNATIONAL HUMANITARIAN ASSISTANCE* *supra* note 81, at 17.
- 119 See HANS HAUG, *HUMANITY FOR ALL: THE INTERNATIONAL RED CROSS AND RED CRESCENT MOVEMENT* 352-53 (Henry Dunant Institute 1986).
- 120 See BEIGBEDER, *supra* note 114 at 8-9.
- 121 *Id.* at 10.
- 122 See *id.* at 19; MACALISTER-SMITH, *INTERNATIONAL HUMANITARIAN ASSISTANCE* *supra* note 81, at 93-115.
- 123 See International Federation of Red Cross and Red Crescent Societies, *Programmes and Appeals 2006-2007; Aiming Higher*, <http://www.ifrc.org/docs/Appeals/annual06/appeal2006-3.pdf>
- 124 See Abby Stoddard, *Humanitarian NGOs: Challenges and Trends*, HPG BRIEFING, No. 12 (July 2003) (estimating that there are 260 such NGOs in the West), available at <http://www.eldis.org/static/DOC15175.htm>; IAN SMILLIE AND LARRY MINEAR, *THE CHARITY OF NATIONS: HUMANITARIAN ACTION IN A CALCULATING WORLD* 44 (Kumarian, 2004) (asserting that "although there are hundreds of NGOs, it is safe to say that 75 percent of their humanitarian spending is handled by fewer than fifteen large transnational organizations").
- 125 For example, according to a survey by the Disaster Tracking Recovery Assistance Centre, 34% of the NGOs operating in southern Thailand were formed as a result of the tsunami. See DTRAC, "Statistics", at <http://www.d-trac.org/en/statistics>.
- 126 See Katoch, *supra* note 117, at 160.
- 127 See Disasters Emergency Committee, *The Earthquake in Gujarat, India: Report of a monitoring visit for the DEC, March 2001* para. 15, available at <http://www.alnap.org>.
- 128 See International Federation of Red Cross and Red Crescent Societies, *Operational Review of the Red Cross Red Crescent Movement Response to the Earthquake in Bam, Iran (2004)* at 12 n.19, available at <http://www.ifrc.org/where/evaluation/index.asp>.
- 129 See TEC Synthesis Report, *supra* note 12, at 55.
- 130 See Feinstein International Famine Center, *Ambiguity and Change: Humanitarian NGOs Prepare for the Future* 70-71 (2004) (hereinafter "Ambiguity and Change").
- 131 See Katoch, *supra* note 117, at 158.
- 132 See Maurits Jochems, *NATO's growing humanitarian role (2006)*, at <http://www.nato.int/docu/review/2006/issue1/english/art4.html>.
- 133 See Alyon Warhurst, *Disaster Prevention: A Role for Business? (Prevention 2006)*, at 11-12, available at www.preventionconsortium.org.
- 134 See "IBM Crisis Management Services," at <http://www1.ibm.com/services/us/index.wss/offering/bcrsla1000265>; "Ericsson Response Programme," at http://www.ericsson.com/ericsson/corporate_responsibility/ericssonresponse/.
- 135 See *Ambiguity and Change*, *supra* note 130, at 67-70.
- 136 See Katoch, *supra* note 117, at 166.
- 137 See *id.* at 157.
- 138 See Statement of Dr. Johan Schaar, Special Representative of the Secretary General for Tsunami Operations, International Federation of Red Cross and Red Crescent Societies, to the European IDRL Forum in Antalya, Turkey, 25 May 2006, available at <http://www.ifrc.org/what/disasters/idrl/euro-forum.asp>.
- 139 See, e.g., Nick Childs, *Forgotten disaster problem will grow*, BBC NEWS, July 14, 2006, available at http://news.bbc.co.uk/2/hi/uk_news/5181118.stm (contrasting the donations of \$7,100 per person affected by the 2004 tsunami with the donations totalling \$3 per person affected by 2004 flooding in Bangladesh, which also left more than a million homeless). See generally, International Federation of Red Cross and Red Crescent Societies, *World Disasters Report 2006: Focus on Neglected Crises (2006)* (hereinafter, "World Disasters Report 2006").
- 140 ECOSOC Res. 2004/50, U.N. Doc. No. E/2004/INF/2/Add.2 (2004) at 134.
- 141 See BEIGBEDER, *supra* note 114, at 10 (citing Randolph Kent).
- 142 See Office for the Coordination of Humanitarian Affairs, *Quick Facts about OCHA*, at <http://ochaonline.un.org/webpage.asp?Site=facts>.
- 143 *Agreement on the organization of the international activities of the components of the International Red Cross and Red Crescent Movement* ("Seville Agreement"), reprinted in *INTERNATIONAL REVIEW OF THE RED CROSS*, no. 322, p.159-177 (1998).
- 144 See *Federation of the Future*, *supra* note 48, at 10.
- 145 See <http://www.icva.ch>.
- 146 See <http://www.interaction.org>.
- 147 See <http://www.dec.org.uk>.
- 148 See <http://www.adrrn.net>.
- 149 See <http://www.ngovoice.org>.
- 150 See <http://www.humanitarianinfo.org/iasc>.
- 151 See D. Guba-Sapir et al, *supra* note 24, at 20.
- 152 Unless otherwise noted, the statistics in this subsection are all derived from the "EM-DAT: The OFDA/CRED International Disaster Database," Université Catholique de Louvain, available at www.em-dat.net.
- 153 See Intergovernmental Panel on Climate Change Working Group II, *Impacts, Adaptation and Vulnerability (2007)*, at 14-15.
- 154 Please note that the section headings are provided for convenience only and do not necessarily represent generally recognized "branches" of international law.
- 155 For thorough discussions of international institutional mandates in humanitarian action, see MACALISTER-SMITH, *INTERNATIONAL HUMANITARIAN ASSISTANCE* *supra* note 81, and BEIGBEDER, *supra* note 114.
- 156 See UN General Assembly Res. 46/182, UN Doc. A/RES/46/182 (1991), at annex paras. 34-36.
- 157 See UN General Assembly Resolution 1714 (XVI) (1961); Food and Agriculture Organization Conference Resolution 1/61 (1961).
- 158 See Constitution of the Food and Agriculture Organization of the United Nations, Oct. 16, 1945, art. 1, 12 UST 980.
- 159 See United Nations General Assembly Resolution 57(I) (1946), at para. 1.
- 160 See Constitution of the World Health Organization, July 22, 1946, art. 2, 14 U.N.T.S. 185.
- 161 See UN General Assembly Resolution 2029 (XX) (1965).

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- 162 See UN General Assembly Resolution 2997 (XXVII) (1972).
- 163 See Statute of the Office of the United Nations High Commissioner for Refugees, UN General Assembly Resolution 428 (V) (1950).
- 164 See Constitution of the International Organization for Migration, Oct. 19, 1953 (and as amended), at art. 1.
- 165 See Constitution of the International Civil Defence Organization, Oct. 17, 1966, art. 2.
- 166 See Articles of Agreement of the International Bank for Reconstruction and Development and the International Monetary Fund, Dec. 27, 1945, 2 U.N.T.S. 134.
- 167 See, e.g., UN General Assembly Resolutions 60/196, U.N. Doc. No. A/RES/60/196 (2006), at para. 8 (stressing “the importance of close cooperation and coordination among Governments, the United Nations system, other international and regional organizations as well as non-governmental organizations and other partners such as the International Red Cross and Red Crescent Movement”); and 46/182 *supra* note 156, at annex para. 5 (affirming that “[i]ntergovernmental and non-governmental organizations working impartially and with strictly humanitarian motives should continue to make a significant contribution in supplementing national efforts”).
- 168 See Resolution 7, Amendment to the Statutes and Rules of Procedure of the International Red Cross and Red Crescent Movement, 26th International Conference of the Red Cross and Red Crescent, Geneva, 1995.
- 169 On the latter point see, for example, Achim Engelhardt et al, *The International Community’s Funding of the Tsunami Emergency and Relief* (Tsunami Evaluation Coalition 2006), at 40 (noting that an important rationale for donors in providing funding to UN agencies after the tsunami was their “clear and specific recognized UN mandate”).
- 170 Though not a human rights instrument, the Agreement Establishing the Intergovernmental Authority on Development, March 21, 1996, Doc. No. IGAD/SUM-96/AGRE, commits member states to “respect the fundamental and basic rights of the peoples of the region to benefit from emergency and other forms of humanitarian assistance.”
- 171 African Charter on the Rights and Welfare of the Child, July 11, 1990, OAU Doc. CAB/LEG/24.9/49 (1990) (hereinafter, “AfCRC”).
- 172 UN General Assembly Resolution 61/106, U.N. Doc. No. A/RES/61/106 (2007).
- 173 See, e.g., International Covenant on Civil and Political Rights, Dec. 16, 1966, article 6(1), 999 U.N.T.S. 171 (hereinafter “CCPR”); Convention on the Rights of the Child, Nov. 20, 1989, art. 6(1), 1577 U.N.T.S. 3 (hereinafter “CRC”); American Convention on Human Rights, Nov. 22, 1969, article 4(1), 1144 U.N.T.S. 123; European Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, art. 2(1), 213 U.N.T.S. 222 (hereinafter “ECHR”); and African Charter on, Human and Peoples Rights, June 27, 1981, art. 4, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982) (hereinafter, “AfCHPR”).
- 174 See, e.g., International Covenant on Economic Social and Cultural Rights, Dec. 16, 1966, art. 11(1), 999 U.N.T.S. 3, (hereinafter “CESCR”); CRC, *supra* note 173, at arts. 24(2)(c) & 27(1). Convention on the Elimination of All Forms of Discrimination against Women, 18 Dec. 1979, arts. 12(2) & 14(2), 1249 U.N.T.S. 513 (hereinafter “CEDAW”); Additional Protocol to the American Convention on Human Rights in the Area of Economic Social and Cultural Rights, Nov. 17, 1988, art. 12, O.A.S. Treaty Series No. 69 (1988), reprinted in Basic Documents Pertaining to Human Rights in the Inter-American System, OEA/Ser.L.VIII.82 doc.6 rev.1 at 67 (1992) (hereinafter “Protocol of San Salvador”); AfCRC, *supra* note 171, at art. 14(2)(c).
- 175 See, e.g., CESCR, *supra* note 174, at art. 11(1).
- 176 See, e.g., CESCR, *supra* note 174, at art. 11(1), and CRC, *supra* note 173, at art. 27(3).
- 177 See, e.g., CESCR, *supra* note 174, at art. 12; and CRC, *supra* note 173, at art. 24(1); AfCHPR *supra* note 174, at art. 16(1), Protocol of San Salvador *supra* note 174 at art. 10.
- 178 See, e.g., CESCR, *supra* note 174, at art. 6.
- 179 See, e.g., CCPR, *supra* note 173, at art. 2(1); CESCR, *supra* note 174, at art. 2(2); CEDAW, *supra* note 174; International Convention on the Elimination of All Forms of Racial Discrimination, March 7, 1966, 660 U.N.T.S. 195.
- 180 The treaty bodies are expert committees created by many of the major human rights treaties with authority to comment on both general and specific issues of state compliance. See generally Office of the High Commissioner for Human Rights, Fact Sheet No. 30: *The United Nations Human Rights Treaty System*, available at <http://www.ohchr.org>. Among them are the “Human Rights Committee,” the treaty body for the International Covenant on Civil and Political Rights, and the “Committee of Economic Social and Cultural Rights,” the treaty body for the International Covenant on Economic, Social and Cultural Rights.
- 181 See Human Rights Committee General Comment No. 6, *The right to life* (art. 6), 1982, para. 6, republished in U.N. Doc. HRI/GEN/1/Rev.6, p.131 (2003).
- 182 Notably, moreover, the right to life is non-derogable, even in situations of national emergency. See CCPR, *supra* note 173, at, art. 4(2). It is therefore one of the civil and political rights that is always applicable in situations of disaster and armed conflict.
- 183 Committee on Social, Economic and Cultural Rights, General Comment No. 12, *The right to adequate food*, U.N. Doc. No. E/C.12/1999/5 (1999), paras. 6 & 17.
- 184 *Id.* at, para. 19.
- 185 See CESCR, *supra* note 174, at art. 2.
- 186 But compare the more permissive language of paragraph 16.6 of the FAO Voluntary Guidelines to Support the Progressive Realisation of the Right to Adequate Food in the Context of National Food Security, reprinted in Report of the Intergovernmental Working Group for the Elaboration of a Set of Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security, Rome, Sept. 23, 2004, FAO Doc. No. CL 127/10-Sup.1, annex 2 (providing that states “should provide food assistance to those in need, may request international assistance if their own resources do not suffice, and should facilitate safe and unimpeded access for international assistance in accordance with international law and universally recognized humanitarian principles, bearing in mind local circumstances, dietary traditions and cultures.”).
- 187 See, e.g., Yoram Dinstein, *The Right to Humanitarian Assistance*, 53 NAVAL WAR COLLEGE REVIEW 77, 77 (2000) (stating that “[i]t is impossible to assert, at the present point, that a general right of humanitarian assistance has actually crystallized in positive international law”); Peter MacAllister-Smith, *The Right to Humanitarian Assistance in International Law*, 66 REVUE DE DROIT INTERNATIONAL DE SCIENCE DIPLOMATIQUES ET POLITIQUES 211, 224-25 (1988) (asserting that “[a] legal right to humanitarian assistance already exists in certain restricted circumstances... [b]however, extending the right to humanitarian assistance to the situations of greatest need is a difficult task which remains to be achieved”); Rohan Hardcastle & Adrian Chua, *Humanitarian Assistance: Towards a Right of Access to Victims of Natural Disasters*, INTERNATIONAL REVIEW OF THE RED CROSS no. 325, p.589-609 (1998) (considering arguments for and against the existence of a right to humanitarian assistance in existing customary international law).
- 188 See, e.g., Guiding Principles on Internal Displacement, Principle 3(2), U. N. Doc. No. E/CN.4/1998/53/Add.2 (1998) (hereinafter “Guiding Principles”); Code of Conduct of the International Red Cross and Red Crescent Movement and NGOs in Disaster Relief (1994) art. 1 (hereinafter, “RC/RC NGO Code of Conduct”, available at <http://www.ifrc.org/Docs/idrl/I259EN.pdf>); Resolution of the Institute of International Law on the Protection of Human Right and the Principle of Non-Intervention in Internal Affairs of States (Santiago de Compostela Session 1989), art 5; International Institute of Humanitarian Law, *Guiding Principles on the Right to Humanitarian Assistance* (April 1993), Principle 1, available at <http://web.iihl.org/iihl/Album/GUIDING%20PRINCIPLES.doc>; Jon Ebersole, *Mobok Criteria for Humanitarian Assistance in Complex Emergencies*, 17 HUMAN RIGHTS QUARTERLY 192 (1995).
- 189 See Report of the Twenty-Sixth International Conference of the Red Cross and Red Crescent (1995), annex IV) para. 2.1.
- 190 See Inter-Agency Standing Committee, *Protecting Persons Affected by Natural Disasters*, IASC Operational Guidelines on Human Rights and Natural Disasters (Brookings-Bern Project on Internal Displacement, 2006) (hereinafter “IASC Human Rights and Disasters Guidelines”), at 10, available at http://www.brookings.edu/fp/projects/idp/2006_IASC_NaturalDisasterGuidelines.pdf.
- 191 Committee on Social, Economic and Cultural Rights, General Comment No. 12, *The right to adequate food*, U.N. Doc. No. E/C.12/1999/5 (1999), at

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- para.36.
- 192 *Id.* at para. 38.
- 193 IASC Human Rights and Disasters Guidelines, *supra* note 190, at 9.
- 194 *Id.*
- 195 *Id.* at 13.
- 196 See Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, Aug. 12, 1949, art. 44, 75 U.N.T.S. 31 (*hereinafter*, “GC I”), (on the indicative use of the Red Cross/Red Crescent emblem by National Societies); Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts, June 8, 1977, art. 66(7), 1125 U.N.T.S. 3 (*hereinafter*, “AP I”). (on the peacetime use of the sign for civil defence); Protocol Additional to the Geneva Conventions of 12 August 1999, and Relating to the Adoption of an Additional Distinctive Emblem) 1125 U.N.T.S. 3; *hereinafter* “AP III” (on the red crystal emblem).
- 197 Geneva Convention relative to the Protection of Civilian Persons in Time of War, Aug. 12, 1949, art 59, 75 U.N.T.S. 287 (*hereinafter*, “GC IV”). While not as plainly set out, a similar duty may be implied from article 43 of Hague Convention (IV) Respecting the Laws and Customs of War on Land, Oct. 18, 1907, 36 Stat. 2277, T.S. No. 539, which requires occupying powers to “restore and ensure as far as possible public order and safety.”
- 198 GC IV at art. 59. As set out in article 59, the right of control consists of the right to regulate the timing and routes of relief shipments, to search them, and to receive satisfaction that they are in fact destined for civilian relief.
- 199 See COMMENTARY, IV GENEVA CONVENTION RELATIVE TO THE PROTECTION OF CIVILIAN PERSONS IN TIME OF WAR 320 (Jean S. Pictet, ed., International Committee of the Red Cross 1958) (*hereinafter*, “COMMENTARY GC IV”).
- 200 Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), June 8, 1977, 1125 U.N.T.S. 609 (*hereinafter*, “AP II”).
- 201 COMMENTARY ON THE ADDITIONAL PROTOCOLS OF 8 JUNE 1977 TO THE GENEVA CONVENTIONS OF 12 AUGUST 1949, 820 & 1479 (Yves Sandoz et al. eds., International Committee of the Red Cross 1987). (*hereinafter*, “COMMENTARY AP”).
- 202 The conclusion that this article refers to detained persons derives from the references in the text to “the Detaining Power” and to “places of internment.” However, an argument could be made that it was intended to apply more broadly to relief to protected person in general. As noted by the ICRC’s commentary, this section is nearly identical to article 125 of the Third Geneva Convention from which it was essentially transplanted notwithstanding the prior existence of article 30 of the Fourth Geneva Convention discussing similar issues. See COMMENTARY GC IV, *supra* note 199, at 557-58. Moreover, it was placed in Part IV concerning “Execution of the Convention” rather than in Part III section V, which discusses information bureaux. By the same token, though not mentioned by the commentary, it can be noted that the section was not including in Part III section IV which specifically addresses issues of civilian detainees. In any event, its approach is quite similar to that of article 30, and the Commentary concludes that they are complementary and should be read together.
- 203 See COMMENTARY GC IV, *supra* note 199, at 327.
- 204 See COMMENTARY AP, *supra* note 201, at 822.
- 205 ICRC Customary Law Study, *supra* note 53, rule 55 at 193 (International Committee of the Red Cross 2005).
- 206 *Id.* at 200 (Rule 56).
- 207 *Id.* at 105-11 (Rules 31 & 23).
- 208 *Id.* at 197.
- 209 Convention Relating to the Status of Refugees, July 28, art. 1, 189 U.N.T.S. 150 (*hereinafter* “Refugee Convention”).
- 210 Protocol Relating to the Status of Refugees, Oct. 4, 1967, art. 1, 606 U.N.T.S. 207.
- 211 Convention Governing the Specific Aspects of Refugee Problems in Africa, Sept. 10, 1969, art.1, 1001 U.N.T.S. 45 (*hereinafter*, “African Refugee Convention”).
- 212 Cartagena Declaration on Refugees, Nov. 22, 1984, Annual Report of the Inter-American Commission on Human Rights, OAS Doc. OEA/Ser.LJ/V/II.66/doc.10, rev. 1, at 190-93 (1984-85) (*hereinafter*, “Cartagena Declaration”).
- 213 While the reference to disturbances of public order in both the African Refugee Convention and the Cartagena Declaration are a bit vague, in light of the context, they have generally been taken to exclude natural disasters. See, e.g., Hector Gros Espiell et al, Principles and Criteria for the Protection of and Assistance to Central American Refugees, Returnees and Displaced Persons in Latin America, 83 INTERNATIONAL JOURNAL OF REFUGEE LAW 96 (1990); Micah Rankin, UNHCR Working Paper No. 113, Extending the limits or narrowing the scope? Deconstructing the OAU refugee definition thirty years on (April 2005), at 20.
- 214 See, e.g., United Nations University Press Release, As Ranks of “Environmental Refugees” Swell Worldwide, Calls Grow for Better Definition, Recognition, Support (Oct. 11, 2005), available at <http://www.ehs.unu.edu/file.php?id=58>.
- 215 It is noteworthy, however, that some disaster-related instruments do provide for certain accommodation of what might be termed “disaster refugees.” For example, the Agreement between the Government of the French Republic and the Swiss Federal Council on Mutual Assistance in the Event of Disasters or Serious Accidents, Jan. 14, 1987, art. 12, 1541 U.N.T.S. 293, provides that “[e]mergency personnel and victims who, in the course of an emergency operation, have crossed from one State to the other because of illness or accidental injury or other reason, shall be assisted by the requesting State in case of need until the earliest opportunity of their return.” Moreover, as noted above, the definition of “internally displaced persons” provided by the Guiding Principles on Internal Displacement does extend to persons displaced by disaster.
- 216 See Refugee Convention, *supra* note 209, chaps. IV & V.
- 217 See *id.* at art. 35; African Refugee Convention, *supra* note 211, at art. 8; Cartagena Declaration, *supra* note 212, at para. (e).
- 218 See UN General Assembly Resolution 58/153, “Implementing actions proposed by the United Nations High Commissioner for Refugees to strengthen the capacity of his Office to carry out its mandate”, U.N. Doc. A/RES/58/153 (2004), para. 2.
- 219 See, e.g., UN General Assembly Resolutions 51/75, UN Doc. A/RES/51/75, para. 6 (1996) (“[e]mphasiz[ing] the importance of ensuring access by the Office of the High Commissioner to asylum-seekers, refugees and other persons of concern in order to enable it to carry out its protection functions”); and 47/105, U.N. Doc. A/RES/47/105, para. 20 (1992) (calling on states to “ensure the safe and timely access for humanitarian assistance”).
- 220 See, e.g., UNHCR Executive Committee Conclusions 79 (XLVII), para (p) (47th Sess. 1996) (“stress[ing] the importance of UNHCR’s being granted access to asylum applicants and refugees in order to enable the Office to carry out its protection functions in an effective manner”); 72 (XLIV), para. (b) (44th Sess. 1993) (calling on states to “afford[] UNHCR and, as appropriate, other organizations approved by the Governments concerned prompt unhindered access” to refugees”); 73 (XLIV), para. (b)(iii) (44th Sess. 1993) (calling on states to make “arrangements facilitating prompt and unhindered access to all asylum-seekers, refugees and returnees for UNHCR and, as appropriate, other organizations approved by the Governments concerned”); 48 (XXXVIII), para. (d) (38th Sess. 1987) (asserting that “States have a duty to cooperate with the High Commissioner in the performance of his humanitarian protection and assistance functions, which can only be effectively accomplished if he has access to camps and settlements of his concern”).
- 221 See CRC, *supra* note 173, at art 22; African Charter on the Rights and Welfare of the Child, July 11, 1990, art. 23, OAU Doc. No. CAB/LEG/24.9/49 (1990). The CRC limits this obligation somewhat by stating that states should cooperate “as they consider appropriate”, however, it also refers expressly to both UN and non-governmental actors.
- 222 The increasing use of the Guiding Principles as a “standard” by “States, United Nations agencies and regional and non-governmental organizations” has been welcomed by the UN Commission on Human Rights, see Resolution on Internally Displaced Persons, U.N. Doc. No. E/CN.4/RES/2005/46 (2005), at para.7, and the General Assembly, see Protection of and assistance to internally displaced persons, UN Doc. No. A/RES/58/177 (2004), at para. 7.
- 223 The Guiding Principles define internally displaced person as “persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or

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- natural or human-made disasters, and who have not crossed an internationally recognized State border." *Guiding Principles*, *supra* note 188, at para. 2.
- 224 *Id.* at Principle 3(2).
- 225 *Id.* at Principle 25.
- 226 *Id.* at Principles 24 & 27.
- 227 See Protocol on the Protection and Assistance of Internally Displaced Persons, arts. 3(6) & (7) & 4(1)(f) (version of Nov. 30, 2006), available at http://www3.brookings.edu/fp/projects/idpl/GreatLakes_IDPprotocol_final.pdf.
- 228 See JEAN SALMON, MANUEL DE DROIT DIPLOMATIQUE 175-83 (Bruylant 1994).
- 229 Vienna Convention on Diplomatic Relations, April 18, 1961, 500 U.N.T.S. 95.
- 230 Vienna Convention on Consular Relations, April 24, 1963, 596 U.N.T.S. 261.
- 231 See JEAN SALMON, MANUEL DE DROIT DIPLOMATIQUE (1994), ch. 5; BROWNLIE, *supra* note 52, ch. 17.
- 232 The qualifier "generally" is used particularly in light of a potential argument under the concept of "special missions" for parties to the Convention on Special Missions, Dec. 8, 1969, 1400 U.N.T.S. 231. That treaty was drafted pursuant to the long tradition of states sending ad hoc diplomatic missions unaffiliated to permanent diplomatic missions. While scholars doubt that this tradition has developed customary (i.e. independently binding) status (see SALMON, *supra* note 231, at 542; BROWNLIE, *supra* note 52, at 357), the 38 state parties to the Convention on Special Missions have agreed to provide diplomatic-style privileges and immunities to persons and property involved with "a temporary mission, representing the State, which is sent by one State to another State with the consent of the latter for the purpose of dealing with it on specific questions or of performing in relation to it a specific task" (art 18a)). This broad definition could be construed to extend to disaster relief operations.
- 233 See HENRY G. SCHERMERS AND NIELS M. BLOKKER, INTERNATIONAL INSTITUTIONAL LAW 235 sec. 324 (3d ed., Martinus Nijhoff Publishers 1995).
- 234 Convention on the Privileges and Immunities of the United Nations, Feb. 13, 1946, 1 U.N.T.S. 15.
- 235 Convention on the Privileges and Immunities of the Specialized Agencies, Nov. 21, 1947, 33 U.N.T.S. 261.
- 236 See, e.g., Wilfried Remans, *The Granting of Observer Status by the General Assembly of the United Nations to the International Federation of Red Cross and Red Crescent Societies*, in INTERNATIONAL LAW: THEORY AND PRACTICE - ESSAYS IN HONOUR OF ERIC SUY 348-49 (Karel Wellens, ed., Martinus Nijhoff Publishers 1998); Paul Reuter, *La personnalité juridique internationale du Comité international de la Croix-Rouge*, in ETUDES ET ESSAIS SUR LE DROIT INTERNATIONAL HUMAINITAIRE ET SUR LES PRINCIPES DE LA CROIX-ROUGE EN L'HONNEUR DE JEAN PICTET 783 (Martinus Nijhoff, Publishers 1984); Philippe Gautier, *La personnalité juridique internationale de la Fédération internationale des Sociétés de la Croix-Rouge et du Croissant-Rouge*, 30 REVUE BELGE DE DROIT INTERNATIONAL 172 (1997); Christian Dominicé, *La personnalité juridique internationale du CICR*, in ETUDES ET ESSAIS SUR LE DROIT INTERNATIONAL HUMAINITAIRE ET SUR LES PRINCIPES DE LA CROIX-ROUGE EN L'HONNEUR DE JEAN PICTET, (Christophe Swinarski, ed., Martinus Nijhoff Publishers 1984); Gabor Rona, *The ICRC privilege not to testify: confidentiality in action*, 84 INTERNATIONAL REVIEW OF THE RED CROSS 207 (2002); Giovanni Distefano, *Le CICR et l'immunité de juridiction en droit international contemporain: fragments d'investigation autour d'une notion centrale de l'organisation internationale*, 12 REVUE SUISSE DE DROIT INTERNATIONAL ET DE DROIT EUROPEEN 355 (2002).
- 237 Tampere Convention *supra* note 21.
- 238 See MALANCZUK, *supra* note 52, at 124.
- 239 See, e.g., Convention on the Privileges and Immunities of the United Nations, *supra* note 234, at art. 21.
- 240 *Id.* at art 20.
- 241 Recommendation of the Customs Co-Operation Council to Expedite the Forwarding of Relief Consignments in the Event of Disasters, June 8, 1970, T2-423.
- 242 International Convention on the Simplification and Harmonization of Customs Procedures, May 18, 1973, T.I.A.S. 6633.
- 243 Protocol of Amendment to the International Convention on the Simplification and Harmonization of Customs Procedures of 18 May 1973, June 26, 1999, available at <http://www.ifrc.org/what/disasters/idrl/publication.asp>. This amended version (hereinafter, "Kyoto Customs Convention") has now superseded the old one for 50 of its 63 state parties and the original is expected to eventually be entirely defunct as additional state parties "switch over". See World Customs Organization Press Release, Revised Kyoto Convention Continues to Grow, Aug. 3, 2006, available at <http://www.wcoomd.org/iel/en.html>. Of the two annexes of the original version of the Kyoto Convention directly relevant to disaster relief, only one (annex E5) is currently (and probably only temporarily) still in effect during this transition period, and only between two parties, Kenya and Israel. See World Customs Organization, Position as Regards Ratifications and Accessions (at 1 July 2006): International Convention on the Simplification and Harmonization of Customs Procedures, Doc. No. PG0138E1a, July 25, 2006, available at <http://www.wcoomd.org>. Neither of the original annexes ever garnered more than a dozen state adherents. See World Customs Organization, Position as Regards Ratifications and Accessions (at 30 June 2004) : International Convention on the Simplification and Harmonization of Customs Procedures.
- 244 Kyoto Customs Convention, *supra* note 243, at specific annex B, chapter 3, recommended practice 7.
- 245 See World Customs Organization, Position as Regards Ratifications and Accessions (at 1 July 2006): International Convention on the Simplification and Harmonization of Customs Procedures (as amended), Doc. No. PG0137E1a, July 25, 2006, available at <http://www.wcoomd.org>. There is a noticeable falling off of parties that were parties to the relevant annexes in the original version of the Kyoto Customs Convention who have declined to sign on to the equivalent texts in the amended version.
- 246 The Model Customs Agreement is available at <http://www.ifrc.org/Docs/idrl/I656EN.pdf>.
- 247 See Office for the Coordination of Humanitarian Affairs, Customs Facilitation in Emergency Humanitarian Assistance, at http://www.reliefweb.int/ocha_ol/programs/response/custnet/intrd_en.html.
- 248 World Customs Organization, Kyoto Convention: Guidelines to Specific Annex J, Chapter 5 - Relief Consignments (July 2000), appendix II, available at <http://www.wcoomd.org>.
- 249 Convention on Temporary Admission, June 26, 1990 (hereinafter "Istanbul Convention"), available at <http://www.wcoomd.org>.
- 250 See World Customs Organization, Position as Regards Ratifications and Accessions (at 1 July 2006): Convention on Temporary Admission, July 25, 2006 (as amended), Doc. No. PG0139E1a, available at <http://www.wcoomd.org>.
- 251 Customs Convention on the Temporary Importation of Professional Equipment, June 8, 1961, available at <http://www.austlii.edu.au>.
- 252 Unfortunately, both treaties expressly exclude equipment usable for "the construction, repair or maintenance of buildings or earth moving and like projects." See *id.* at annex C, para. 1; Istanbul Convention, *supra* note 249, at annex B.2 art. 1(3).
- 253 See Customs Convention on the ATA Carnet for the Temporary Admission of Goods, Dec. 6, 1961, available at <http://www.wcoomd.org>; Convention on the International Transport of Goods under Cover of TIR Carnets, Nov. 14, 1975, 1079 U.N.T.S. 89 (hereinafter, "TIR Convention"). For the designation of the "TIR" acronym, see http://www.iru.org/index/en_iru_tir.
- 254 Convention on Facilitation of International Maritime Traffic, April 9, 1965, 591 U.N.T.S. 265, at annex 1, sections 5.11-5.12.
- 255 International Standards and Recommended Practices - Annex 9 to the Convention on International Civil Aviation, Facilitation (12th ed., International Civil Aviation Organization, 2005) (hereinafter, "Chicago Convention Annex 9"), at sec. 8.8.
- 256 *Id.* at sec. 8.9.
- 257 One exception at the regional level is European Council Regulation (EEC) No. 881/92 of 1992, which specifically exempts transport of "medicinal products appliances, equipment and other articles required for medical care in emergency relief, in particular for natural disasters" from requirements of carriage authorization.
- 258 Customs Convention on the Temporary Importation of Private Road Vehicles,

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- June 4, 1954, U.N. Doc. No. ECE/TRANS/107/Rev. 1.
- 259 *Customs Convention on the Temporary Importation of Commercial Road Vehicles*, May 18, 1956, U.N. Doc. No. ECE/Trans/108.
- 260 *Convention on Customs Treatment of Pool Containers Used in International Transport*, Jan. 21, 1994, U.N. Doc. No. ECE/TRANS/106.
- 261 *Customs Convention on the International Transport of Goods under Cover of TIR Carnets*, Nov. 14, 1975 (as amended as of Sept. 19, 2004), available at <http://www.uncece.org/trans/bcftir/tirconv/conv75.htm>.
- 262 See, e.g., *International Radio Telegraph Convention of 1906*, art. 9.
- 263 See, e.g., *International Radiotelegraph Convention of 1927*, art. 5.
- 264 See, e.g., *Règlement de service télégraphique international of 1928*, art. 35.
- 265 See, e.g., *General Radiocommunication Regulations of 1932*, art. 7.
- 266 *Tampere Convention* *supra* note 21.
- 267 *Id.* at art. 9.
- 268 *Id.* at art. 9(2)(e).
- 269 *Id.* at art. 9(3).
- 270 *Id.* at art. 4.
- 271 *Id.* at art. 5.
- 272 See, e.g., *UN General Resolution 54/233*, UN Doc. No. A/RES/54/233 (1999).
- 273 See, e.g., *ITU-D Resolution 32 of 2002*.
- 274 See, e.g., *World Radiocommunication Conference Resolution 644 of 2000*.
- 275 See *Final Goal 3.2.5, 28th International Conference of the Red Cross and Red Crescent*, Geneva, 2003.
- 276 *Resolution 15, 20th International Conference of the Red Cross*, Vienna, 1965.
- 277 *Resolution 9, Red Cross emergency radio communications, 23rd International Conference of the Red Cross and Red Crescent*, Bucharest, 1977.
- 278 See *ITU-R Recommendations S.1001 and ITU-R F.1105-1*.
- 279 See *ITU-R M.1637*.
- 280 See *ITU-T Recommendation E.106*.
- 281 See *ITU-R M.1041.2*.
- 282 *The Food Aid Convention is one of two components of the International Grains Agreement of 1995*, available at <http://www.igc.org.uk/en/downloads/brochure/iga1995.pdf>.
- 283 As reported by the United Nations Treaty Service, <http://untreaty.un.org/English/access.asp>.
- 284 This information was obtained from the United Nations Treaty Service website, <http://untreaty.un.org/>, downloaded on Jan. 4, 2007. By its terms, ratification or access to the treaty is limited to a prescribed list, or those approved by the Food Aid Committee. See *Food Aid Convention*, *supra* note 282, at art. 22.
- 285 See *Food Aid Convention*, *supra* note 282, at art. 8(d).
- 286 *Id.* at art. 8(a).
- 287 *Id.* at art. 3(j).
- 288 *Id.* at art. 8(b).
- 289 *Id.* at arts. 7(b) & (c).
- 290 *Id.* at art. 8(a)(iii).
- 291 *Id.* at arts. 8(a)(i) & 9(d).
- 292 *Id.* at art. 7(d).
- 293 The “eligible products” - in other words, those that a member state can report toward its agreed annual quota - are grains, grain and rice products of primary or secondary processing, pulses, edible oil, root crops, skimmed milk powder, sugar, seed for eligible products, micronutrients and, to a limited extent, other products “which are a component of the traditional diet of vulnerable groups or ... of supplementary feeding programs[.]” *Food Aid Convention*, *supra* note 282, at art. 3. The Convention does not limit contributions of other types of foods, but they cannot be counted toward the member’s quota. The Convention also includes grants of “cash to be used to purchase food for or by the recipient country.” *Id.* at art. 9(a)(i).
- 294 See *id.* at art. 8 & annex B.
- 295 See *id.* at art. 11(a). Member states are urged to give “full consideration to the advantages of directing food aid through multilateral channels, in particular the World Food Programme.” *Id.* at art. 11(b).
- 296 *Id.* at arts. 15 & 16.
- 297 See OECD Doc. DCD/DAC(2001)12/FINAL (April 25, 2001), amended by DCD/DAC(2006)25 & DCD/DAC/M(2006)3 (March 15, 2006).
- 298 See *Meeting Conclusions, International Meeting on Good Humanitarian Donorship*, Stockholm June 16-17, 2003 (hereinafter “Good Humanitarian Donorship Principles”), available at <http://www.reliefweb.int/ghd>.
- 299 See Pascal Gondrand, *The International Civil Defence Organisation (ICDO) from 1931 to 2001: Historical Background*, 8 INTERNATIONAL CIVIL DEFENCE JOURNAL 61, 63 (2001).
- 300 See *Constitution of the International Civil Defence Organization*, 985 U.N.T.S. 1975, 1976 (1975).
- 301 *Guidelines for the Development of Civil Defence Structures*, 8 INTERNATIONAL DEFENCE JOURNAL 9 (2001).
- 302 *International Charter for Voluntary Service in Civil Defence*, 8 INTERNATIONAL DEFENCE JOURNAL 35 (2001).
- 303 *Framework Convention*, *supra* note 67.
- 304 *Id.* at art. 4(b).
- 305 See *International Civil Defence Organization, Framework Convention on Civil Defence Assistance of 22 May 2000, Signatures - Ratifications - Accessions as of 1st December 2005*, at <http://www.icdo.org/pdf/org/lact-coop-frame-signatures-en.pdf>.
- 306 *Guidelines on the Use of Military and Civil Defence Assets in Disaster Relief, as revised in 2006*, available at <http://www.ifrc.org/idrl>.
- 307 *Id.* at para. 5.
- 308 *Id.* at para. 32(iv).
- 309 *World Health Assembly, Revision of the International Health Regulations*, Doc. No. WHA58.3 (May 23, 2005) (hereinafter, “Revised IHR”).
- 310 For background on the history and innovations of the revised IHR, see generally David Fidler, *From International Sanitary Conventions to Global Health Security: The New International Health Regulations*, 4 CHINESE JOURNAL OF INTERNATIONAL LAW 325 (2005); Obijiofor Aginam, *International Law and Communicable Diseases*, 80 BULLETIN OF THE WORLD HEALTH ORGANIZATION 946, 947 (2002).
- 311 In light of the current struggle against avian influenza, and the fear that it may transform into a human-transmissible virus, the World Health Assembly recently adopted a resolution calling on states to begin voluntarily applying the relevant provisions of the IHR. See *Application of the International Health Regulations (2005)*, 59th World Health Assembly, U.N. Doc. No. WHA 59.2 (May 26, 2006).
- 312 See Fidler, *supra* note 310, at 361-79.
- 313 See *Revised IHR*, *supra* note 309, at Part V.
- 314 *Agreement on the Application of Sanitary and Phytosanitary Measures*, April 15, 1994, 1867 U.N.T.S. 493.
- 315 See *WHA Resolution on “collaboration within the United Nations system and with other international organizations; Supply of controlled drugs for emergency care”*, U.N. Doc. NO. WHA4918 (May 25, 1996); *United Nations Commission on Narcotic Drugs, Resolution 39/7 (1996)*, available at <http://www.unodc.org/unodc/en/resolutions/90s.html>.
- 316 *Model Guidelines for the International Provision of Controlled Medicines for Emergency Medical Care*, U.N. Doc. No. WHO/PSA/96.17 (1996).
- 317 *WHO-PAHO Guidelines for the Use of Foreign Field Hospitals in the Aftermath of Sudden-Impact Disasters (2003)*.
- 318 *WHO Model List of Essential Medicines (15th ed. 2007)*.
- 319 *WHO, The New Emergency Health Kit (2d ed. 1998)*, U.N. Doc. No. WHO/DAP/98.10.
- 320 *Interagency List of Essential Medicines for Reproductive Health*, U.N. Doc. No. WHO/PSM/PAR/2006.1 (2006).
- 321 *Guidelines for Drug Donations (WHO, 2d ed. 1999)*, available at <http://www.who.int/medicines/en>.

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- 322 WHO Certification Scheme on the Quality of Pharmaceutical Products Moving in International Commerce available at http://www.who.int/medicines/areas/quality_safety/regulation_legislation/certification/en.
- 323 June 17, 1994, 33 I.L.M. 1328 (1994).
- 324 United Nations Framework Convention on Climate Change, 9 May 1992, 31 I.L.M. 849; Kyoto Protocol to the United Nations Framework Convention on Climate Change, Dec. 10, 1997, U.N. Doc. FCCC/CP/1997/L.7/Add.1, reprinted in 37 I.L.M. 22 (1998).
- 325 Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, March 22, 1989, 1673 U.N.T.S. 57.
- 326 Available at <http://www.ilo.org/ilolex/english>.
- 327 See R181 Prevention of Major Industrial Accidents Recommendation, 1993, available at <http://www.ilo.org/ilolex/english>.
- 328 Sept. 26, 1986, 1439 U.N.T.S. 275.
- 329 See http://www.iaea.org/Publications/Documents/Conventions/cacnare_status.pdf, last viewed on Nov. 1, 2006.
- 330 An online database on the response to the Chernobyl disaster maintained by the Swiss Agency for Development and Cooperation lists over 100 (mostly international) non-state organizations still actively involved in the response, over twenty years after the accident. See <http://www.chernobylinfo.int>
- 331 Oil Pollution Convention, *supra* note 60.
- 332 Protocol on Preparedness, Response and Co-operation to Pollution Incidents by Hazardous and Noxious Substances, adopted on March 15, 2000, available at <http://www.austlii.edu.au/au/other/dfat/treaties/notinforce/2003/9.html> (hereinafter, "Hazardous and Noxious Substances Protocol"). The protocol entered into force on June 14, 2007. See IMO website, http://www.imo.org/home.asp?topic_id=161.
- 333 See Oil Pollution Convention, *supra* note 60, at arts. 5-6; Hazardous and Noxious Substances Protocol, *supra* note 332, at arts. 3-4.
- 334 See Oil Pollution Convention, *supra* note 60, at art. 7; Hazardous and Noxious Substances Protocol, *supra* note 332, at art. 5. While not specifically stated in the text of either instrument, it appears that this provision is meant to apply to international assistance from other state parties only.
- 335 Convention on the Law of the Non-Navigational Uses of International Watercourses, May 21, 1997, art. 28, UN General Assembly Res. No. 51/229, annex, Official Records of the General Assembly, Fifty-first Session, Supplement No. 49 (not yet in force). According to its terms (art. 36), the Convention will enter into force upon ratification by 35 states. Currently, it has 15 parties. See UN Treaty Service, <http://untreaty.un.org>.
- 336 See, e.g., Agreement for Cooperation in Dealing with Pollution of the North Sea by Oil and other Harmful Substances (Bonn Agreement), Sept. 13 1983, Official Journal of the European Communities, No. L 188/9 (July 16, 1984); Cooperation Agreement for the Protection of the Coasts and Waters of the North-East Atlantic Against Pollution, Oct. 17, 1990, Official Journal L 267, (Oct. 278, 2993), at 22-28.
- 337 OECD Guiding Principles on Chemical Accident Prevention, Preparedness and Response (2d ed. 2003), paras. 16.1.7 & 16.a.8. In its Recommendation Concerning Chemical Accident Prevention, Preparedness and Response, Doc. No. C(2003)221 (Jan 15, 2004), para. II, the OECD Council called on states to implement the Guiding Principles.
- 338 See Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction, April 10, 1972, arts. 1-3, 1015 U.N.T.S. 163.
- 339 See Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction, April 10, 1972, art. 7, 1015 U.N.T.S. 163.
- 340 Sixth Review Conference of the States Parties to the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction, Draft Final Document, Dec. 8, 2006, at 14, para. 32, available at <http://www.opbw.org>.
- 341 *Id.* at 13 para. 33.
- 342 *Id.* at 14 para. 34.
- 343 *Id.* at 14 para. 36.
- 344 Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, Jan. 13, 1993, 32 I.L.M. 804
- 345 See, e.g., Agreement on the Rescue of Astronauts, the Return of Astronauts and the Return of Objects Launched into Outer Space, April 26, 1968, reprinted in United Nations Treaties and Principles on Outer Space, U.N. Doc. No. ST/SPACE/11 (United Nations, 2002), at 9.
- 346 There is also an important agreement on shared use of satellites for receiving and sharing distress signals, for purposes of rescue activities, known as the "COSPAS-SARSAT Agreement." See <http://www.cospas-sarsat.org>.
- 347 See U.N. Doc. No. A/RES/41/65 (Dec. 3, 1986), in UN GAOR 41st Sess., at 115.
- 348 The current members of the Charter are: European Space Agency, France's Centre national d'études spatiales, Canadian Space Agency (CSA), Indian Space Research Organisation, National Oceanic and Atmospheric Administration, Argentina's Comisión Nacional de Actividades Espaciales, Japan Aerospace Exploration Agency, United States Geological Survey, DMC International Imaging, Algeria' Centre National des Techniques Spatiales, Nigeria's National Space Research and Development, Turkey's Tübitak-BILTEN and the United Kingdom's Surrey Satellite Technology Limited. See http://www.disasterscharter.org/participants_e.html.
- 349 The Charter is available at http://www.disasterscharter.org/charter_e.html.
- 350 See UN GA Res. 61/110, UN Doc. A/RES/61/110 (Dec. 14, 2006), at para. 6.
- 351 Convention on the Safety of United Nations and Associated Personnel, U.N. Doc. No. A/RES/49/59 (1994).
- 352 See *id.* at arts. 1(c) & 2.
- 353 According to the United Nations Treaty Service, at <http://untreaty.un.org>.
- 354 U.N. Doc. No. A/C.6/60/L.11 (2005).
- 355 See *id.* at art. II(3).
- 356 See *id.* at art. 1(b).
- 357 As of the date of writing, the parties were Austria, Botswana, Kenya, Liechtenstein, Monaco, Netherlands, Norway, Slovakia, Spain and Sweden. See United Nations Treaty Service, at <http://untreaty.un.org>.
- 358 See, e.g., UN Security Council Res. 1564, UN Doc. No. S/RES/1564, para. 10 (2004) ("demand[ing that] all armed groups, including rebel forces, cease all violence, cooperate with international humanitarian relief and monitoring efforts and ensure that their members comply with international humanitarian law, and facilitate the safety and security of humanitarian staff"); UN General Assembly Res. 59/141, UN Doc. A/RES/59/141, para 18 (2004) (calling upon governments to ensure "safe and unhindered access of humanitarian personnel"); 58/122, UN Doc. A/RES/58/122, para. 3 (2004) (urging "all States to take the necessary measures to ensure the safety and security of humanitarian personnel").
- 359 In its early years, the General Assembly adopted a few country-specific resolutions (see, e.g., UN GA Res.1882 (XVII) (1963) concerning an earthquake in Yugoslavia; UN GA Res. 1888(XVII) (1963), concerning a hurricane in the Caribbean) as well as some resolutions on addressing worldwide food shortages (see U.N. GA Res. 1026(XI) (1957); GA Res. 827 (IX) 1(1954); U.N. GA Res. 525(VI) (1952); U.N. GA Res. 45(I) (1946).
- 360 See MACALISTER-SMITH, *supra* note 81, at 130.
- 361 UN GA Res. 2034 (XX) (1965).
- 362 See generally Arjun Katoch, International natural disaster response the United Nations, in INTERNATIONAL DISASTER RESPONSE LAWS, PRINCIPLES AND PRACTICE: REFLECTIONS, PROSPECTS AND CHALLENGES 47-56 (Victoria Bannon, ed., International Federation of Red Cross and Red Crescent Societies, 2003); and MACALISTER-SMITH, *supra* note 81, at 129-45.
- 363 See, e.g., *id.*; UN GA Res. 2435 (XXIII) (1968); UN GA Res. 2717 (XXV) (1970).
- 364 UN GA Res. 3243 (XXIX) (1974), p.p. 5.
- 365 See, e.g., UN GA Res. 41/201, U.N. Doc. A/RES/41/201 (1986).
- 366 See UN General Assembly Res. 46/182, *supra* note 156, at annex, paras 12, 33-35.

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- 367 *Id.* at para. 38.
- 368 *Id.* at para. 23, 31-32.
- 369 See UN General Assembly Res. 60/124, U.N. Doc. No. A/RES/60/124 (2006).
- 370 See Katoch, *supra* note 362 at 52-53 (citing UN Doc. Nos. A/RES/2435 (XXIII) (1968); A/RES/2717 (XXV) (1970); A/RES/2816 (XXVI) (1971); A/RES/36/225 (1981); A/RES/37/144 (1982); A/RES/38/292 (1983); A/RES/46/182 (1991); & A/RES/57/150 (2003)).
- 371 See *supra* note 167.
- 372 See UN General Assembly Resolution No. 49/139, U.N. Doc. No. A/RES/49/139 (1995).
- 373 See UN General Assembly Resolution No. 61/134, U.N. Doc. No. A/RES/61/134 (2007), at para. 5-6.
- 374 See Katoch, *supra* note 362 at 49-50.
- 375 UN General Assembly Res. 45/100, U.N. Doc. No. A/RES/45/100 (1990), pream. para. 5.
- 376 *Id.* at pream. para. 13, at operative para. 1; UN GA Res 43/131, U.N. Doc. No. A/RES/43/131 (1998), pream. para. 12, at operative para.1.
- 377 UN General Assembly Res. 45/100, at para. 2; 43/131 at para. 2.
- 378 UN General Assembly Res. 2435(XXIII) (1968), para. 6.
- 379 UN General Assembly Res. 2816 (XXVI) (1971), paras 8(b) & (c).
- 380 See 23rd International Conference of the Red Cross (1977), res. VI; ECOSOC Res. 2012 (LXIII) (1977). General Assembly
- 381 See U.N. GA Res 32/56, U.N. Doc. No. A/RES/32/56 (1977).
- 382 Report of the Secretary-General to the United Nations General Assembly, UN Doc. No. A/32/61 (1977), Annex II: Measures to expedite international relief (*hereinafter*, "Measures to Expedite").
- 383 UN General Assembly Res. 46/182, *supra* note 156, at annex, paras. 6 & 7; UN GA Res. 45/100, UN Doc. A/RES/45/100 (1990), para.4 &7.
- 384 UN General Assembly Res. 56/109, UN Doc. NO. A/RES/56/109 (2002), para. 4; UN GA Res. 54/97, UN Doc. No. A/RES/54/97 (2000), para. 3.
- 385 UN General Assembly Res. 57/150, *supra* note 75, at para 3.
- 386 See *id.* at para. 5.
- 387 United Nations Millennium Declaration, UN General Assembly Res. 55/2, U.N. Doc. No. A/RES/55/2 (Sept. 18, 2000).
- 388 *Id.* at paras. 23 & 26.
- 389 *Constructing the Millennium Declaration, the UN has articulated eight overall "Millennium Development Goals," measurable by 18 quantifiable targets and 48 indicators. The overall goals are:*
 Goal 1: Eradicate extreme poverty and hunger
 Goal 2: Achieve universal primary education
 Goal 3: Promote gender equality and empower women
 Goal 4: Reduce child mortality
 Goal 5: Improve maternal health
 Goal 6: Combat HIV/AIDS, malaria and other diseases
 Goal 7: Ensure environmental sustainability
 Goal 8: Develop a Global Partnership for Development
 See United Nations Development Programme, *About the MDGs: The Basics*, at <http://www.undp.org/mdg/basics.shtml>.
- 390 See UN General Assembly Res. 61/200, UN Doc. No. A/RES/200 (2007), para.4 (acknowledging the "adverse effects of natural disasters on... achieving the international agreed development goals, including the Millennium Development Goals").
- 391 See, e.g., REDUCING DISASTER RISK, *supra* note 70, at 15-17; United Nations International Strategy for Disaster Reduction, Millennium Development Goals and Indicators Sensitive to Disaster Risk Reduction, at <http://www.unisdr.org/mdgs-drr-dialogue/download/MATRIX-MDGgoals-indicators-and-targets.doc>; see also Patricia Grogg, *Disasters Undercut Millennium Development Goals*, INTER PRESS SERVICE NEWS AGENCY, June 24, 2006, available at <http://www.ipsnews.net/news.asp?idnews=33754>.
- 392 *Id.*
- 393 *Id.* at 11, para. 14. The full five priority areas are:
1. Ensure that disaster risk reduction is a national and a local priority with a strong institutional basis for implementation.
 2. Identify, assess and monitor disaster risks and enhance early warning.
 3. Use knowledge, innovation and education to build a culture of safety and resilience at all levels.
 4. Reduce the underlying risk factors.
 5. Strengthen disaster preparedness for effective response at all levels.
- 394 See U.N. Doc. No. A/RES/61/131 (2006).
- 395 See Statutes of the International Red Cross and Red Crescent Movement (1995), art. 8.
- 396 See Francois Bugnion, *Red Cross Law, INTERNATIONAL REVIEW OF THE RED CROSS*, no. 308, 491-519 (1995) (stating that "[t]he votes of government representatives transform what was originally a private matter into a semiprivate legal act, of a mixed nature: Conference resolutions thus impinge on the sphere of public international law because of the status of those who drafted and approved them, and any obligations they may contain may be binding on States, to an extent to be determined later").
- 397 Principles and Rules for Red Cross and Red Crescent Disaster Relief, adopted by the 21st International Conference of the Red Cross, Istanbul, 1969 - revised by the 22nd, 23rd, 24th, 25th and 26th International Conferences - Tehran, 1973, Bucharest, 1977, Manila, 1981, Geneva, 1986, and Geneva, 1995 (*hereinafter*, "Principles and Rules"). These rules have subsequently been supplemented by the Seville Agreement, *supra* note 143, and the Supplementary Measures to Enhance the Implementation of the Seville Agreement of 2005, both adopted by the Council of Delegates of the Red Cross and Red Crescent (a body that does not include governmental representatives).
- 398 Resolution 26, *The role of medical personnel in the preparation and execution of Red Cross emergency medical actions*, 24th International Conference of the Red Cross and Red Crescent, Manila, 1981.
- 399 Resolution 19, *Medical supplies in Red Cross and Red Crescent emergency operations*, 25th International Conference of the Red Cross and Red Crescent, Geneva, 1986.
- 400 Resolution 4, *Principles and action in international humanitarian assistance and protection & Annex 1, The Role of the Red Cross and Red Crescent Societies in response to technological disasters*, 26th International Conference of the Red Cross and Red Crescent, Geneva, 1995.
- 401 Resolution 9, *Red Cross emergency radio communications*, 23rd International Conference of the Red Cross and Red Crescent, Bucharest, 1977.
- 402 Resolution 5, *Issue of visas to delegates appointed in connection with appeals for assistance in time of disaster*, 23rd International Conference of the Red Cross and Red Crescent, Bucharest, 1977.
- 403 Resolution 26, *Declaration of principles for international humanitarian relief to the civilian population in disaster situations*, 21st International Conference of the Red Cross, Istanbul, 1969 (*hereinafter*, "Declaration of Principles").
- 404 Resolution 23, *Air transport in international relief actions*, 21st International Conference of the Red Cross, Istanbul, 1969.
- 405 Resolution 6, *Measures to expedite international relief*, 23rd International Conference of the Red Cross and Red Crescent, Bucharest, 1977.
- 406 See BEIGBEDER, *supra* note 114 at 379.
- 407 *International cooperation for the prevention and management of transborder natural disasters and their impact on the regions concerned*, para. 8, 108th Inter-Parliamentary Conference, Santiago de Chile, 2003.
- 408 *Id.* at para. 14.
- 409 *Natural disasters: the role of parliaments in the prevention, rehabilitation, reconstruction and the protection of vulnerable groups*, para. 12, 113th Assembly of the Inter-Parliamentary Union, Geneva, 2005.
- 410 *The International community in the face of the challenges posed by calamities arising from armed conflicts and by natural or man-made disasters: the need for a coherent and effective response through political and humanitarian assistance means and mechanisms adapted to the situation*, para 4, 93rd Inter-Parliamentary Conference, Madrid, 1995.
- 411 *International cooperation for the prevention and management of transborder natural disasters and their impact on the regions concerned*, para.4, 108th Inter-Parliamentary Conference, Santiago de Chile, 2003.
- 412 *Natural disasters: the role of parliaments in the prevention, rehabilitation, re-*

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- construction and the protection of vulnerable groups, para. 12, 112th Assembly of the Inter-Parliamentary Union, Manila, 2005.
- 413 *The need for urgent food relief in order to combat drought-induced famine and poverty in Africa, for the World's most industrialized nations to speed up aid to the continent and for particular efforts to be made to reach desperate and poor populations*, 114th Assembly of the Inter-Parliamentary Union, Nairobi, 2006.
- 414 For a representative discussion of such domestic codes, see International Center for Not-for-Profit Law, *Report and Recommendations: NGO Accreditation and Certification: The Way Forward?* (undated), available at http://www.usaid.gov/our_work/crosscutting_programs/private_voluntary_cooperation/conf_icnl.pdf.
- 415 See D.B. Verboom, *The ISO 9001 Quality Approach: Useful for the Humanitarian Aid Sector?* (2002), available at <http://www.reliefweb.int/rw/rwb.nsf/AllDocsByUNID/259cf5a7c0b4ab0c1256b4b00367719>.
- 416 See the overview provided by InterAction at <http://www.interaction.org/pvo-standards/index.html>.
- 417 Decision 17, *Humanitarian assistance in situations of natural and technological disasters*, Council of Delegates of the Red Cross and Red Crescent (1991).
- 418 For a detailed history of the development of the Code, see Peter Walker, *Cracking the code: the genesis, use and future of the Code of Conduct*, 29 *DISASTERS* 323 (2005).
- 419 See Resolution 4, *Principles and values in international humanitarian assistance and protection*, para. E(1), 26th International Conference of the Red Cross and Red Crescent, Geneva, 1995.
- 420 See International Federation of Red Cross and Red Crescent Societies, *Code of Conduct for the International Red Cross and Red Crescent Movement and NGOs in Disaster Relief List of Signatories* (Aug. 30, 2007), available at http://www.ifrc.org/Docs/pubs/disasters/codeconduct_signatories.pdf.
- 421 See Dorthea Hilborst, *Dead letter or living document? Ten years of the Code of Conduct for disaster relief*, 29 *DISASTERS* 351 (2005).
- 422 The text of the Code is available on the website of Dochás, the Irish Association of Non-Governmental Organizations, at <http://www.dochas.ie/resources10a.htm>.
- 423 SPHERE PROJECT, *HUMANITARIAN CHARTER AND MINIMUM STANDARDS IN DISASTER RESPONSE* (2004 edition) (hereinafter "SPHERE HANDBOOK"), available at <http://www.sphereproject.org>.
- 424 Available at <http://www.hapinternational.org/en/page.php?IDpage=3&IDcat=10>.
- 425 Available at http://www.hapinternational.org/pdf_word/m818-HAP%202007%20Standard.pdf.
- 426 Available at <http://www.projetqualite.org/fr/index/index.php>.
- 427 Available at <http://www.ingoaccountabilitycharter.org>.
- 428 *People in Aid Code of Good Practice in the Management and Support of Personnel* (2003), available at <http://www.peopleinaid.org/pool/files/code/code-en.pdf>.
- 429 See International Organization for Standardization, *Business Plan - ISO/TC 223: Societal Security* (ver. 1, Nov. 24, 2006), at 1.
- 430 *Id.* at 7.
- 431 See UN OCHA Press Release, *WEF/OCHA Cooperation in Davos: Facilitating Public-Private Partnership in Humanitarian Assistance* (May 2007), available at <http://www.english.un.org/News/Press/docs/2007/0705070101.html>.
- 432 International Law Association, *Report of the Fifty-Ninth Conference Held at Belgrade, August 17th, 1980 to August 23rd, 1980*, at 520-530: "Rapport spécial sur un projet d'accord-type relative aux actions de secours humanitaires" (hereinafter "ILA Draft Model").
- 433 MOHAMED EL BARADAI, *MODEL RULES FOR DISASTER RELIEF OPERATIONS* (United Nations Institute for Training and Research 1982) (hereinafter "UNITAR Model Rules").
- 434 See Max Planck Guidelines, *supra* note 63.
- 435 See Balkan National Societies meeting on IDRL - Belgrade 24-26 September 2004: *Recommended Rules and Practices on Implementation of International Disaster Response Laws, Rules and Principles in the Balkans* (hereinafter "Balkans National Societies Recommended Rules and Practices"), available at <http://www.ifrc.org/Docs/pubs/idrl/idrl-recommendations.pdf>.
- 436 See ILA Draft Model, *supra* note 432, at art 10 (offering two variants). The Special Rapporteur's note on this article explains: « Normalement, la distribution peut et doit être confiée à une organisation locale. Mais l'histoire des actions de secours montre des exemples où cette solution s'est avérée peu adéquate. Pour cette raison, le texte propose deux variantes entre lesquelles les parties pourront choisir[.] »
- 437 Cf. ILA Draft Model, *supra* note 432, at art 16; UNITAR Model Rules, *supra* note 433, Model B, Rule 14; and Max Planck Guidelines, *supra* note 63, at para. 25.
- 438 See UN General Assembly Resolution 48/57, para. 6, U.N. Doc. No. A/RES/48/57 (1993).
- 439 These documents are available at <http://www.humanitarianinfo.org/iasc>.
- 440 See Inter-Agency Standing Committee, *Implementing the Collaborative Response to Situations of Internal Displacement: Guidance for UN Humanitarian and/or Resident Coordinators and Country Teams* (2004).
- 441 See Inter-Agency Standing Committee, *Terms of Reference for the Humanitarian Coordinator* (2003), sec. 4.1(3), available at <http://www.humanitarianinfo.org/iasc>.
- 442 See Inter-Agency Standing Committee, *Guidance Note on Using the Cluster Approach to Strengthen Humanitarian Response* (2006) available at <http://www.humanitarianinfo.org/iasc>.
- 443 On the other hand, there are several multilateral instruments specifically dedicated to disaster prevention. These include the Agreement between the Government of the Republic of Botswana, the Government of the People's Republic of Mozambique, the Government of the Republic of South Africa and the Government of Zimbabwe relative to the establishment of the Limpopo Basin Permanent Technical Committee of 1986, and the Malaria Control Protocol on the Lubombo Spatial Development Initiative between the Government of the Republic of South Africa, the Government of the Kingdom of Swaziland, and the Government of the Republic of Mozambique of 1995. See Tracy-Lynn Field, *International Disaster Response Law Research Report: Southern African Region* (2003) (hereinafter "International Federation Southern Africa Study"), available at <http://www.ifrc.org/idrl>.
- 444 See International Federation Southern Africa Study, *supra* note 443 at 7. The declaration is available at <http://www.ifrc.org/Docs/idrl/I303EN.pdf>.
- 445 See Tracy-Lynn Field, *Regional (Africa) Survey of Disaster Response Laws, Policies and Principles, Background Study to the Pan-African Forum on IDRL* (2007) at 5 (hereinafter, "International Federation Africa Regional Study"), available at <http://www.ifrc.org/idrl>.
- 446 Constitutive Act of the African Union, adopted by the 36th Ordinary Session of the Assembly of Heads of State and Government, July 11, 2000, Lomé, Togo, OAU Doc. No. CAB/LEG/23.15.
- 447 See International Federation Africa Regional Study, *supra* note 445 at 5-6, 10.
- 448 *Id.* at 10.
- 449 IGAD's current members are Djibouti, Ethiopia, Kenya, Somalia, Sudan and Uganda. Eritrea announced the suspension of its membership in April 2007.
- 450 See Agreement Establishing the Inter-Governmental Authority on Development, March 21, 1996, Doc. No. IGAD/SUM-96/AGRE, at 2 "introduction", noting that: [a]lthough IGADD was originally conceived to coordinate the efforts of member states to combat drought and desertification, it became increasingly apparent that the Authority provided a regular forum where leaders of the Eastern African countries were able to tackle other political and socioeconomic issues in a regional context. Realising this the Heads of State and Government of Djibouti, Eritrea, Ethiopia, Kenya, Sudan and Uganda, at an extraordinary Summit on 18 April 1995, resolved to expand the mandate of IGADD and made a declaration to revitalise IGADD and expand cooperation among member states. The revitalised IGADD was renamed the Intergovernmental Authority on Development (IGAD).
- 451 See Inter-Governmental Authority on Development, *Disaster Risk Management Programme for the IGAD Region - Project 2: Elaboration of Supporting Policies*,

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- Legislation and Agreements for Disaster Management in IGAD Member Countries, (2002), at 18, available at <http://www.unisdr.org/africa/af-partners/docs/IGAD-vol3-disaster-risk-management-program.rtf>.
- 452 See Inter-Governmental Authority on Development, *Disaster Risk Management Programme for the IGAD Region - Project 6: Improving preparedness for impact and needs assessment and resource mobilization* (2002), available at <http://www.unisdr.org/africa/af-partners/docs/IGAD-vol7-disaster-risk-management-program.rtf>.
- 453 See International Federation of Red Cross and Red Crescent Societies, *Report of the Pan-African Forum on International Disaster Response Laws, Rules and Principles*, Nairobi, May 14-15, 2007 (hereinafter "African IDRL Forum Report"), at 13, available at <http://www.ifrc.org/idrl>.
- 454 The current members of ECOWAS are Benin, Burkina Faso, Cabo Verde, Cote d'Ivoire, Gambia, Ghana, Guinea, Guinea-Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone and Togo.
- 455 See ECOWAS Policy for Disaster Risk Management (August 2006), available at <http://www.unisdr.org/africa/af-partners/docs/ECOWAS-policy-DRR.doc>.
- 456 The current members of COMESA are Burundi, Comoros, Democratic Republic of Congo, Djibouti, Egypt, Eritrea, Ethiopia, Kenya, Libya, Madagascar, Malawi, Mauritius, Rwanda, Seychelles, Sudan, Swaziland, Uganda, Zambia and Zimbabwe.
- 457 See art. 110 of the establishing act at <http://www.comesa.int/comesa%20treaty/comesa%20treaty/view>.
- 458 See *Regional Vision for Agricultural Growth and Trade Development in COMESA*, E-COMESA No. 47 (June 30, 2006), at 3; COMESA, *Food Security in the COMESA Region: The Road to Recovery* (undated), both available at <http://www.comesa.int>.
- 459 The current members of SADC are Angola, Botswana, Democratic Republic of Congo, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, South Africa, Swaziland, Tanzania, Zambia and Zimbabwe.
- 460 See Southern African Development Community Protocol on Health, Aug. 18, 1999, available at <http://www.sadc.int>.
- 461 See Southern African Development Community, *List of SADC Protocols and other Legal Instruments*, available at <http://www.tralac.org>.
- 462 The draft version of the Regional Multi-Sectoral Disaster Management Strategy (2001) is available at <http://www.unisdr.org/africa/af-partners/docs/sadc-strategy.pdf>. See also Report of the Southern African Development Community Disaster Management Committee and Technical Seminar, 6-9 December 2000, Harare, Zimbabwe.
- 463 See *International Strategy for Disaster Reduction, Towards Sustainable Development in Africa: Report on the Status of Disaster Risk Management and Disaster Risk Assessment in Africa* (May 2004), at 17; Southern Africa: *Strengthening regional disaster management crucial*, IRIN Sept. 23, 2005.
- 464 See Statement by the Deputy Prime Minister of the Republic of Namibia, Hon. Dr. L. Amathila at the Opening of the SADC Pre-Season Disaster Management Meeting, Windhoek, Namibia, Sept. 19-20, 2005, available at http://www.grn-net.gov.na/News/Archive/2005/september/week3/disaster_rpt.htm.
- 465 *Inter-American Convention to Facilitate Assistance in Cases of Disaster*, June 7, 1991 (hereinafter "the Inter-American Convention"), available at <http://www.oas.org/legal/intro.htm>.
- 466 See *id.* at arts. 1-4.
- 467 See *id.* art. arts. 5, 6, 9 & 10.
- 468 See *id.* at arts. 7, 11 & 14.
- 469 See *id.* at art. 16.
- 470 See Organization of American States Office of International Law, *A-54 Inter-American Convention to Facilitate Disaster Assistance*, at <http://www.oas.org/juridico/english/Sigs/a-54.html>. Nicaragua and Colombia have also signed but have not ratified the convention.
- 471 See International Federation of Red Cross and Red Crescent Societies, *Report of the Americas Forum on International Disaster Response Laws, Rules and Principles*, Panama City, April 23-24, 2007, at 9-10 (hereinafter "Americas IDRL Forum Report"), available at <http://www.ifrc.org/idrl>.
- 472 See OAS General Assembly Res. 2313 (XXXVII O/07), June 5, 2007, reprinted in OAS Doc. No. AG/doc.4771/07 corr. 1, June 18, 2007.
- 473 See, e.g., OAS General Assembly Resolution Nos. AG/RES. 2165 (XXXVI-O/06) June 6, 2006; 1351 (XXV-O/95), June 9, 1995; 1403 (XXVI-O/96), June 7, 1996; 1463 (XXVII-O/97), June 4, 1997.
- 474 See OAS General Assembly Resolution No. 1327 (XXV-O/95), June 19, 1995 (adopting revised statutes for the fund).
- 475 See *Natural Disaster Reduction and Response Mechanisms*, OAS General Assembly Res. 1682 (XXIX-O/99), June 7, 1999, para. 2, available at <http://www.oas.org/juridico/english/ga-res99/eres1682.htm>.
- 476 See OAS General Assembly Resolution Nos. 1885 (XXXII-O/02), June 4, 2002 (requesting that the Committee develop the plan) and 1955 (XXXIII-O/03), June 10, 2003 (welcoming the plan), available at <http://www.oas.org/juridico/english>; Organization of American States Department of Sustainable Development, *Law of Disasters: Towards a Normative Framework in the Americas: Discussion Paper for Review and Comments at the Americas Regional Forum on International Disaster Response Laws, Rules and Principles*, April 23-24, 2007, Panama City, at 12 (hereinafter "OAS Discussion Paper").
- 477 See OAS General Assembly Resolution No. 2182 (XXXVI-O/06), June 6, 2006, at para. 2 ("declaring" that the Committee "will fulfill the duties and functions of the Inter-American Emergency Aid Committee under the Inter-American Convention to Facilitate Disaster Assistance").
- 478 See *Agreement Establishing the Caribbean Disaster Emergency Response Agency*, February 26, 1991 (hereinafter "CDERA Agreement"), available at <http://www.ifrc.org/what/disasters/idrl/publication.asp>.
- 479 See *id.* at art. 4.
- 480 See *id.* at art. 13.
- 481 See *id.* at arts 21-23.
- 482 See *id.* at arts. 18, 19 & 21.
- 483 See *id.* at art. 16.
- 484 See *id.* at 25.
- 485 CDERA's current members are Anguila, Antigua and Barbuda, Bahamas, Barbados, Belize, British Virgin Islands, Dominica, Grenada, Guyana, Jamaica, Montserrat, St. Kitts and Nevis, Santa Lucia, St. Vincent and the Grenadines, Trinidad and Tobago and Tarta and Caicos.
- 486 See the CDERA website at http://www.cdera.org/about_history.php.
- 487 See Revised CDERA agreement to be finalised, BARBADOS ADVOCATE, January 1, 2007, available at http://www.cdera.org/cineews/news/barbados/article_1791.php.
- 488 See Centro de Coordinación para la prevención de los Desastres Naturales en América Central, *Antecedentes*, at <http://www.cepredenac.org/antecedentes.htm>. CEPREDENAC's current members are Costa Rica, El Salvador, Guatemala, Honduras, Panama and Nicaragua.
- 489 See *Nuevo Convenio Constitutivo del Centro de la Coordinación para la Prevención de los Desastres naturales en América Central (CEPREDENAC)*, Sept. 3, 2003, SICA Doc. No. STD/C/071/03, available at <http://www.cepredenac.org>.
- 490 See *id.* at art. 2
- 491 Centro de Coordinación para la prevención de los Desastres Naturales en América Central, *Manual Regional de Procedimientos de las Cancillerías en Casos de Desastres*, available at <http://www.cepredenac.org/downloads/manual%20regional%20de%20procedimientos%20cancillerias.pdf>.
- 492 Centro de Coordinación para la prevención de los Desastres Naturales en América Central, *Mecanismo de Cooperación Coordinada para la Respuesta Ante Desastres*, available at <http://www.cepredenac.org/downloads/mecanismo%20de%20cooperación%20coordinada%20para%20la%20respuesta.pdf>.
- 493 The current full members of ACS are: Bahamas, Barbados, Colombia, Costa Rica, Dominica, Dominican Republic, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Suriname, Trinidad and Tobago, and Venezuela.
- 494 *Agreement between Member States and Associate Members of the Association of Caribbean States for Regional Cooperation on Natural Disasters*, April 17, 1999 (not yet in force), available at <http://www.acs-aec.org/Summits/Sum>

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- mit/English/AgmtNatDesas_eng.htm.
- 495 See *id.* at arts 4 & 7.
- 496 See *id.* at art. 3.
- 497 See *id.* at art. 10.
- 498 See Association of Caribbean States Press Release, *The Bahamas, Cuba Suriname and Venezuela ratify ACS Agreements*, July 18, 2007, available at http://www.acs-aec.org/PressCenter/NewsReleases/2007/nr0132007_en.htm.
- 499 See Association of Caribbean States Ministerial Council, *Agreement Declaring the Year 2007 as the Year for the Entry into Force of ACS Legal Instruments*, Agreement No. 13/07, January 26, 2007.
- 500 Consejo Andino de Ministros de Relaciones Exteriores, *Decisión 529, Creación del Comité Andino para la Prevención y Atención de Desastres (CAPRADE)*, Jul. 7, 2002, available at <http://www.comunidadandina.org/normativa/dec/D529.htm>. CAPRADE currently has five members (Bolivia, Colombia, Ecuador and Peru and Venezuela), led by a rotating presidency.
- 501 See *Acta de la Octava Reunion del Comité Andino para la Prevención y Atención de Desastres*, 26 y 27 de octubre 2006, at 3-4.
- 502 See Asociación Iberoamericana de Organismos Gubernamentales de Defensa y Protección Civil, *Presentación*, at <http://www.proteccioncivil.org/asociacion/aigo0.htm>.
- 503 For a description, see <http://www.proteccioncivil.org/arcel/index.html>.
- 504 See *Declaración de la Asociación Iberoamericana de Organismos Gubernamentales de Defensa y Protección Civil sobre una Estrategia Iberoamericana de Gestión de Desastres*, March 21, 2007, at para. 8.4.
- 505 The current members of ASEAN are: Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, Philippines, Singapore, Thailand and Vietnam.
- 506 See *Declaration of ASEAN Concord*, available at <http://www.aseansec.org/1216.htm>.
- 507 See *ASEAN Declaration on Mutual Assistance on Natural Disasters*, June 26, 1976, available at <http://www.aseansec.org/1431.htm>.
- 508 See *Agreement on the ASEAN Food Security Reserve*, Oct. 4, 1979, available at <http://www.aseansec.org/1315.htm>.
- 509 See *Food and Agriculture Organization, Food Insecurity and Vulnerability in Asia and the Pacific: World Food Summit Follow Up, Background Document for the Twenty-Fifth FAO Regional Conference for Asia and the Pacific*, Yokohama, Japan, Aug. 28-Sept. 1 2000, at para. 42 (hereinafter "FAO, World Food Summit Follow Up").
- 510 See *ASEAN Agreement*, *supra* note 30.
- 511 See *id.* at art. 3.
- 512 See *id.* at arts. 10-12.
- 513 See *id.* at arts. 12 & 14.
- 514 See *id.* at arts. 12-13.
- 515 See *id.* at art. 1(1).
- 516 See *id.* at art. 33.
- 517 They are Laos, Malaysia, Myanmar, and Thailand.
- 518 See *ASEAN Press Release, ASEAN to Test Regional Emergency Response and Humanitarian Assistance Capacities in a Simulated Flood Disaster in Cambodia*, Sept. 6, 2006, available at <http://www.aseansec.org/18827.htm>.
- 519 See *ASEAN Press Release, ASEAN in Action: Coordinating Emergency Response for Earthquake Victims in Indonesia*, June 7, 2006, available at <http://www.aseansec.org/18465.htm>.
- 520 The current members of SAARC are: Afghanistan, Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan and Sri Lanka.
- 521 See *Agreement on Establishing the SAARC Food Security Reserve*, Nov. 4, 1987, available at <http://www.saarc-sec.org/old/freepubs/food.pdf>.
- 522 See *FAO, World Food Summit Follow-Up*, *supra* note 509, at para. 42.
- 523 See *Agreement on Establishing the SAARC Food Bank*, April 4, 2007, available at <http://www.ifrc.org/Docs/idrl/I646EN.pdf>.
- 524 See P.G. Dhar Chakrabarti, *Emerging Framework of Regional Cooperation in Disaster Risk Reduction in South Asia*, Powerpoint presentation, Feb. 20, 2007; Aslam Alam, *Disaster Management in South Asia: A Comprehensive Regional Framework for Action 2006-2015*, Powerpoint presentation, Aug. 2, 2006. SAARC, Environment, at <http://www.saarc-sec.org/main.php?t=2.5>.
- 525 See *Male Declaration, Special Session of the SAARC Environment Ministers Meeting June 25, 2005*; *Dhaka Declaration, 13th Summit of SAARC Heads of State or Government*, Nov. 13, 2005, at para. 33.
- 526 See Chakrabarti, *supra* note 524.
- 527 See *Ninth Summit Meeting of the Economic Cooperation Organization, Baku Declaration*, May 5, 2006 at para. xi, available at <http://www.ecosecretariat.org>.
- 528 *Id.* at preambular paragraph 8.
- 529 APEC's current members are: Australia, Brunei Darussalam, Canada, Chile, People's Republic of China, Hong Kong, China, Indonesia, Japan, Republic of Korea, Malaysia, Mexico, New Zealand, Papua New Guinea, Peru, Philippines, Russia, Singapore, Chinese Taipei, Thailand, United States of America, Viet Nam.
- 530 See *Joint Statement of the Ninth APEC Ministerial Meeting, Vancouver, Canada*, Nov. 21-22, 1997, at para. 8(ii).
- 531 See *APEC Framework for Capacity Building Initiatives on Emergency Preparedness*, available at http://www.apec.org/apecapec_groups/som_special_task_groups/emergency_preparedness.html.
- 532 See *Busan Declaration of the 13th APEC Economic Leaders' Meeting, Busan, Korea*, Nov. 18-19, 2005, available at <http://www.ifrc.org/Docs/idrl/I114EN.pdf>.
- 533 See *APEC Action Plan on the Prevention and Response to Avian and Influenza Pandemics, Ministerial Meeting on Avian and Influenza Pandemics, Da Nang, Viet Nam*, May 4-6, 2006, APEC Doc. No.2006/AIPMM/014, at para. 14.
- 534 SOPAC's current full members are: Australia, Cook Islands, Fiji Islands, Guam, Federated States of Micronesia, Kiribati, Marshall Islands, Nauru, New Zealand, Niue, Palau, Papua New Guinea, Samoa, Solomon Islands, Tonga, Tuvalu and Vanuatu.
- 535 See *Proceedings of the 13th Regional Disaster Managers Meeting, June 26-29, 2007, Majuro, Republic of the Marshall Islands*.
- 536 The Pacific Island Forum's current full members are: Australia, Cook Islands, Federated States of Micronesia, Fiji, Kiribati, Marshall Islands, Nauru, New Zealand, Niue, Palau, Papua New Guinea, Samoa, Solomon Islands, Tonga, Tuvalu, Western Samoa, and Vanuatu.
- 537 See *Pacific Islands Forum, Regional Natural Disaster Relief Fund* at http://www.forumsec.org/_resources/article/files/Regional_Natural_Disaster_Relief_Fund.pdf.
- 538 See Georg Potyka and Katrien Beeckman, *The Regulatory Framework for Disaster Response Established within the European Union: A Focus on Humanitarian Aid and Civil Protection (International Federation of Red Cross and Red Crescent Societies and Austrian Red Cross, 2006)* (hereinafter, "International Federation-ARC EU Study"), available at <http://www.ifrc.org/Docs/pubs/idrl/idrl-study.pdf>.
- 539 See *International Federation-ARC EU Study*, *supra* note 538, at 6.
- 540 See *International Federation-ARC EU Study*, *supra* note 538, at 7.
- 541 *Council Regulation (EC) 1257/96 of 20 June 1996, Official Journal L 163, July 2, 1996, at 1-6.*
- 542 See *id.* at art. 1.
- 543 See *id.* at arts. 1-2.
- 544 See *id.* at arts. 5.
- 545 See *id.* at arts. 7-9.
- 546 See *id.* at arts. 3-5 & 13-17.
- 547 *Council Regulation (EC) 2258/96 of 22 November 1996, Official Journal L 306, Nov. 28, 1996, at 1-4.*
- 548 *Id.* at art. 1.
- 549 See *id.* at arts. 3 & 5.
- 550 See *id.* at arts. 4 & 6.
- 551 See *European Commission, COM(2007) 317 final, Brussels, June 13, 2007.*

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- 552 These currently consist of 79 states from these three regions. For a list see <http://www.acpsec.org/index.htm>.
- 553 See *Partnership Agreement between the Members of the African, Caribbean and Pacific Group of States, of the One Part, and the European Community and its Member States, of the Other Part, Signed in Cotonou, Benin on 23 June 2000 (hereinafter, "Cotonou Agreement")*; *Agreement Amending the Partnership Agreement between the Members of the African, Caribbean and Pacific Group of States, of the One Part, and the European Community and its Member States, of the Other Part, Signed in Cotonou, Benin on 23 June 2000, both available at <http://www.acpsec.org/en/treaties.htm>.*
- 554 See *Cotonou Agreement*, *supra* note 553, at art. 72.
- 555 *Id.*
- 556 See *European Commission, Information Note on the Revision of the Cotonou Agreement*, available at http://ec.europa.eu/development/ICenter/Pdf/negociation_20050407_en.pdf.
- 557 For a more detailed chronology, see *European Commission DG Environment, Civil Protection Legislation*, at http://ec.europa.eu/environment/civil/prote/cp02_en.htm.
- 558 See *European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities*, May 21, 1980, ETS No. 106, *Model Agreement* 2.12.
- 559 *Id.* at art. 4.
- 560 See *Resolution of the Council and of the Representatives of the Governments of the Member States, meeting within the Council of 8 July 1991 on improving mutual aid between Member States in the event of natural or technological disaster*, *Official Journal* No. C 198, July 27, 1991, at 1-3 (hereinafter, "Resolution of the Council of 8 July 1991").
- 561 See *id.* at paras 2, 3 and 8.
- 562 See *id.* at paras 5-7.
- 563 See *id.* at paras 8 and 9.
- 564 See *Council Decision 1999/847/EC of 9 December 1999, establishing the Civil Protection Action Programme within the European Communities*, *Official Journal* L 327/53 of Dec. 21 1999 (later extended twice but now expired); *Decision 2850/2000/EC of the European Parliament and of the Council of 20 December 2000*, *Official Journal* L 332/1, Dec. 28, 2000.
- 565 *Council Decision 2001/792/EC, establishing a Community mechanism to facilitate reinforced cooperation in civil protection assistance interventions of 23 October 2001*, *Official Journal* L 297/7, Nov. 15, 2001.
- 566 See *id.* at art. 3.
- 567 See *id.* at art. 4.
- 568 See *Commission Decision 2004/277/EC of 29 December 2003, Euratom*, *Official Journal* L 87/20, March 25, 2004, at arts. 29 and 35.
- 569 See *International Federation-ARC EU Study*, *supra* note 538, at 9.
- 570 See *Council Decision 2007/162/EC of 5 March 2007 establishing a civil protection financial instrument*, *Official Journal* L 71/9, March 10, 2007.
- 571 See *Proposal for a Council Decision establishing a Community civil protection mechanism (recast)*, of 6 June 2007, *Interinstitutional File: 2006/0009(CNS)*, adopted on June 12, 2007.
- 572 See *Council Regulation (EC) No. 918/83 of 28 March 1983*, *Official Journal* L 105, April 23, 1983, at 1, arts. 79-85.
- 573 See *Council Directive No 83/181/EEC of 28 March 1983*, *Official Journal* L 105, April 23, 1983 at 38, arts. 49-55.
- 574 See *Commission Regulation (EC) No 2454/93 of 2 July 1993*, *Official Journal* L 253, Oct. 11 1993, at 156.
- 575 See *Council Regulation (EC) No. 1292/96 of 5 July 1996*, *Official Journal* L 166, at 1-11.
- 576 See *Commission Regulation (EC) No. 2291/2001 of 27 November 2001*, *Official Journal* L 308, at 16-18.
- 577 See *Commission Regulation (EC) No.2519/97 of 16 December 1997*, *Official Journal* L 346, at 23-40.
- 578 *Council of Europe Committee of Ministers, Resolution 87(2)*, setting up a co-operation group for the prevention or, protection against, and organization of relief in major natural and technological disasters, March 20, 1987, available at <http://www.ifrc.org/Docs/idrl/I203EN.pdf>.
- 579 Its member states are Albania, Algeria, Armenia, Azerbaijan, Belgium, Bulgaria, Croatia, Cyprus, France, Georgia, Germany, Greece, Lebanon, Luxembourg, Malta, Moldova, Monaco, Portugal, Romania, Russia, San Marino, Spain, the former Yugoslav Republic of Macedonia, Turkey, Ukraine, and the United Kingdom.
- 580 See generally <http://www.coe.int/t/dg4/majorhazards>.
- 581 *Agreement on the Temporary Importation, Free of Duty, of Medical, Surgical, and Laboratory Equipment for Use on Free Loan in Hospitals and Other Medical Institutions for Purposes of Diagnosis or Treatment*, April 28, 1960, *Council of Europe Official Journal* L 131, May 15, 1986 (hereinafter, "COE Agreement on Temporary Importation"), at 48-49.
- 582 See *id.* at arts. 1-2.
- 583 *European Convention on the Recognition of the Legal Personality of International Non-Governmental Organizations*, April 24, 1986, *European Treaty Series* 124, available at <http://www.ifrc.org/Docs/idrl/I277EN.pdf>.
- 584 See *id.* at arts. 2-4.
- 585 See *North Atlantic Treaty Organization, NATO's Role in Disaster Assistance 14* (2001).
- 586 *Id.*
- 587 See *NATO Euro-Atlantic Disaster Response Coordination Centre, Fact Sheet: Enhanced Practical Cooperation in the Field of International Disaster Relief*, July 25, 2002, at <http://www.nato.int/eadrcc/fact.htm>.
- 588 See *Standing Operating Procedures for the Euro-Atlantic Disaster Response Unit (EADRU)*, April 16, 2007, para. 2.7, at <http://www.nato.int/eadrcc/sop/sop.htm>.
- 589 See *NATO, Model Agreement Covering the Status of National Elements of the EADRU on Mission on the Territory of a Stricken Nation* (hereinafter, "NATO Model Agreement"), available at <http://www.nato.int/eadrcc/sop/annex4.doc>.
- 590 See *Memorandum of Understanding on the Facilitation of Vital Civil Cross Border Transport*, Sept. 13, 2006 (hereinafter, "NATO MOU"); *NATO Press Release No. 2006(109), NATO Allies and Partners Agree a Memorandum of Understanding on Crises Assistance*, Sept. 13, 2006, at <http://nids.hq.nato.int/docu/pr/2006/p06-109e.htm>.
- 591 See *NATO MOU*, *supra* note 590, at art. 4.
- 592 See *id.* at para. 5.
- 593 See *id.* at pars. 3 and 7.
- 594 See *Convention on the Protection and Use of Transboundary Watercourses and International Lakes*, March 17, 1992, art. 1, 31 ILM 1312 (1992). The Convention currently has 39 parties. See http://www.ifrc.org/Docs/idrl/I446EN_I.pdf.
- 595 See *Convention on the Transboundary Effects of Industrial Accidents*, *supra* note 62, at art. 12 & annex X. The Convention currently has 36 parties. See <http://www.unece.org/env/teialparties.htm>.
- 596 See *European Agreement concerning the International Carriage of Dangerous Goods by Road*, Sept. 13, 1957 (as amended as of Jan. 1, 2007), annex A, para. 1.1.3.1(e), available at <http://www.unece.org/trans/danger/publi/adr/adr2007/07ContentsE.html>.
- 597 *Agreement among the Governments of the Participating States of the Black Sea Economic Cooperation (BSEC) on Collaboration in Emergency Assistance and Emergency Response to Natural and Man-Made Disasters*, April 15, 1998, available at <http://www.ifrc.org/Docs/idrl/I260EN.pdf>. The Agreement is in force and has 10 members.
- 598 See *id.* at art. 3.
- 599 See *id.* at arts. 9 & 10. However, the entry of relief personnel is left to the operation of existing law.
- 600 See *id.* at arts. 10 & 11.
- 601 See *id.* at arts. 3 & 13.
- 602 See *Additional Protocol to the Agreement among the Governments of the Participating States of the Black Sea Economic Cooperation (BSEC) on Collaboration in Emergency Assistance and Emergency Response to Natural and Man-Made Disasters*, Oct. 20, 2005, available at

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- <http://www.ifrc.org/Docs/idr/I1647EN.pdf>
- 603 See *Cooperation Agreement on the Forecast, Prevention and Mitigation of Natural and Technological Disasters*, July 18, 1992, arts. 4-5, available at <http://www.ifrc.org/Docs/idr/I1650EN.pdf>.
- 604 *CEI Plan of Action 2004-2006, Meeting of the Heads of Government of the Member States of the Central European Initiative*, Warsaw, Nov. 12, 2003, para. 3.1.2; *CEI Plan of Action 2007-2009, Meeting of the Heads of Government of the Member States of the Central European Initiative*, Tirana, Nov. 24, 2006, at para. 3.1.2.
- 605 *Convention for the Protection of the Mediterranean Sea against Pollution*, Feb. 16, 1976, art. 9, 1102 U.N.T.S. 45.
- 606 *Agreement for Cooperation in Dealing with Pollution of the North Sea by Oil and other Harmful Substances*, Sept. 13, 1983, art. 7, *Official Journal of the European Communities*, No. L 188/9, July 16, 1984.
- 607 See *Protocol Concerning Cooperation in Preventing Pollution from Ships and, in Cases of Emergency, Combating Pollution of the Mediterranean Sea*, Jan. 26, 2002, available at <http://www.ifrc.org/Docs/idr/I1448EN.pdf>.
- 608 See *Agreement on the Establishment of the Civil-Military Emergency Planning Council for Southeastern Europe*, April 3, 2001, available at <http://www.ifrc.org/Docs/idr/I1532EN.pdf>. The signatory states are Bulgaria, Croatia, Macedonia, Slovenia, Romania, and Turkey.
- 609 See *Nordic Mutual Emergency Assistance Agreement in Connection with Radiation Accidents between the International Atomic Energy Agency and Denmark, Finland, Norway, and Sweden*, Oct. 17, 1963, 525 U.N.T.S. 76 (hereinafter, "Nordic Radiation Assistance Agreement").
- 610 See *id.* at arts. 1, 4 & 6.
- 611 See *id.* at art. 3.
- 612 See *id.* at art. 2.
- 613 See *Agreement between Denmark, Finland, Norway and Sweden on Cooperation across State Frontiers to Prevent or Limit Damage to Persons or Property or to the Environment in the Case of Accidents*, Jan. 20, 1989, 1777 U.N.T.S. 249.
- 614 See *id.* at art. 1.
- 615 See *id.* at art. 3.
- 616 See *id.* at arts. 4 & 5.
- 617 See *League of Arab States Decision No. 39*, September 3, 1987 (hereinafter "Arab Agreement"). The discussion of the treaty in this study is based on an unofficial English translation available at <http://www.ifrc.org/Docs/idr/I1644EN.pdf>.
- 618 *Id.* at art. 3.
- 619 *Id.* at arts 7-9.
- 620 The members are the United Arab Emirates, Saudi Arabia, Kuwait, Qatar, Egypt, Palestine, Jordan, Tunis, Morocco, Oman and Libya.
- 621 See *International Federation of Red Cross and Red Crescent Societies, Report of the Middle East Forum on International Disaster Response Laws, Rules and Principles (2007)*, available at <http://www.ifrc.org/idr/>.
- 622 The database is available at <http://www.ifrc.org/what/disasters/idr/publication.asp>.
- 623 See Horst Fischer, *International Disaster Law Treaties: Trends Patterns and Lacunae*, in *INTERNATIONAL DISASTER RESPONSE LAWS, PRINCIPLES AND PRACTICE: REFLECTIONS, PROSPECTS AND CHALLENGES 25* (Victoria Bannon, ed., International Federation of Red Cross and Red Crescent Societies 2003).
- 624 See *Exchange of Notes Constituting an Agreement between the United States of America and Haiti Relating To Emergency Relief Assistance*, Dec. 28, 1956, 279 U.N.T.S. 107.
- 625 See *Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of India for the Duty Free Entry of Relief Supplies and Packages*, Oct. 20, 1964, 534 U.N.T.S. 78.
- 626 See Fischer, *supra* note 623, at 25.
- 627 See, e.g., *Agreement between the Government of the Republic of Korea and the Government of the Republic of Poland on Scientific and Technological Cooperation*, June 29, 1993, 1847 U.N.T.S. 298.
- 628 See Fischer, *supra* note 623, at 29. The 2003 study was able to locate only very few bilateral agreements in Africa, Asia and Latin America. *Id.* at 31. Likewise, a separate study commissioned by the International Federation on Southern Africa found only incidental mention of international disaster response issues in bilateral treaties focused on other issues. See *International Federation Southern Africa Study*, *supra* note 443, at 7. Subsequent research by the IDRL programme, as well requests to states associated with the 2006 IDRL have produced some additional instruments, but still quite few. It is likely that other agreements exist and have simply not yet been accessible to the programme.
- 629 See *Agreement between Sweden and Norway concerning the Improvement of Rescue Services in Frontier Areas*, March 19, 1974, 1424 U.N.T.S. 307.
- 630 See *Vertrag zwischen der Republik Österreich unter der Tschechischen Republik über die Gegenseitige Hilfeleistung bei Katastrophen oder Schwere Unglücksfällen*, Dec. 14, 1998, available at <http://www.ifrc.org/Docs/idr/I134DE.pdf>.
- 631 *Memorandum of Understanding Between the Government of the United States of America and the Government of Ukraine on Cooperation in Natural and Man-Made Technological Emergency Prevention and Response*, June 5, 2000, available at <http://www.mms.gov.ua/inter/bilateral/usafema/memorandum.en.php?p=1>.
- 632 *Agreement between the Swiss Federal Council and the Government of the Republic of the Philippines on Cooperation in the Event of Natural Disaster or Major Emergencies*, Dec. 6, 2001, available at <http://www.ifrc.org/Docs/idr/I1494EN.pdf>.
- 633 See *United States Defense Threats Reduction Agency, Foreign Consequence Management Legal Deskbook (January 2007)*, at 2-25 (hereinafter, "US-TRA Legal Deskbook"), available at <http://www.dtra.mil/documents/newservices/deskbook/pdf/FCMLegalDeskbook.pdf>.
- 634 See Fischer, *supra* note 623, at 36; *Convention between the Kingdom of the Netherlands and the Kingdom of Belgium on Mutual Assistance in Combating Disasters and Accidents*, November 14, 1984, art. 3, 1526 U.N.T.S. 42; *Convention on Mutual Assistance between French and Spanish Fire and Emergency Services*, February 8, 1973, art. 1, 951 U.N.T.S. 146; *Agreement between Sweden and Norway concerning the Improvement of Rescue Services in Frontier Areas*, *supra* note 629, at arts. 6-7; *Agreement between the Republic of Austria and the Czech Republic on Mutual Assistance in the Event of Disasters or Serious Accidents*, December 14, 1998, art. 3, available at <http://www.ifrc.org/Docs/idr/I134DE.pdf>; *Agreement between the Republic of Austria and the Principality of Liechtenstein on Mutual Assistance in the Event of Disasters or Serious Accidents*, September 23, 1994, art. 3, *Bundesgesetzblatt Nr. 758*, 1995, at 254; *Agreement Between the Government of the Republic of South Africa and the Government of the Republic of Namibia Regarding the Coordination of Search and Rescue Services*, September 8, 2000, art. 2, available at <http://www.ifrc.org/Docs/idr/I172EN.pdf>; *Agreement between the Republic of Austria and the Hashemite Kingdom of Jordan on Mutual Assistance in the Case of Disasters or Serious Accidents*, March 13, 2004, art. 4, available at <http://www.ifrc.org/Docs/idr/I1649EN.pdf>; *Agreement between the Government of the Hellenic Republic and the Government of the Russian Federation on Co-operation in the Field of Prevention and Response to Natural and Man-Made Disasters*, February 21, 2000, art. 3 & 7, available at <http://www.ifrc.org/Docs/idr/I1204EN.pdf>; *Convention between the Government of the French Republic and the Government of the Kingdom of Belgium on Mutual Assistance in the Event of Disasters or Serious Accidents*, April 21, 1981, art. 3, 1437 U.N.T.S. 46; *Agreement between Denmark and the Federal Republic of Germany on Mutual Assistance in the Event of Disasters or Serious Accidents (with Exchange of Notes)*, May 16, 1985, art. 3, 1523 U.N.T.S. 109.
- 635 See Fischer, *supra* note 623, at 36.
- 636 See, e.g., *Agreement between Denmark and the Federal Republic of Germany on Mutual Assistance in the Event of Disasters or Serious Accidents*, April 16, 1985, art. 4-5, 1523 U.N.T.S. 109; *Agreement between the Government of Canada and the Government of United States of America on Cooperation in Comprehensive Civil Emergency Planning and Management*, April 28, 1986, art. 2, available at <http://www.ifrc.org/Docs/idr/I1654EN.pdf>; *Agreement between the Government of the Republic of Mozambique and the Government of the Republic of South Africa Regarding the Co-ordination of Search and Rescue Services*, May 10, 2002, art.7, available at http://www.ifrc.org/Docs/idr/I152EN_1.pdf.

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- 637 See Fischer, *supra* note 623, at 38. See also, e.g., *Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of India for the Duty Free Entry of Relief Supplies and Packages*, October 20, 1964, art. 4, 534 U.N.T.S. 78; *Convention between the Government of the French Republic and the Government of the Kingdom of Belgium on Mutual Assistance in the Event of Disasters or Serious Accidents*, April 21, 1981, art. 8, 1437 U.N.T.S. 46; *Agreement between the Federal Republic of Germany and the Republic of Lithuania on Mutual Assistance in the Event of Disasters or Serious Accidents*, March 15, 1994, art. 10, Bundesgesetzblatt 1996 Teil II, Seite 28; *Agreement between the Kingdom of Spain and the Argentine Republic on Cooperation on Disaster Preparedness and Prevention, and Mutual Assistance in the Event of Disasters*, June 3, 1988, art. 16, 1689 U.N.T.S. 34; *Agreement on Cooperation on Disaster Prevention and Management and Civil Protection, France - Malaysia*, May 25, 1998, art. 7, available at <http://www.ifrc.org/Docs/idrl/I392FR.pdf>; *Agreement between the Government of the Republic of Mozambique and the Government of the Republic of South Africa Regarding the Co-ordination of Search and Rescue Services*, May 10, 2002, art. 6, available at <http://www.ifrc.org/Docs/idrl/I52EN.pdf>; *Convention between the Kingdom of the Netherlands and the Kingdom of Belgium on Mutual Assistance in Combating Disasters and Accidents*, November 14, 1984, art. 9.1, 1526 U.N.T.S. 42; *Agreement between the Republic of Austria and the Republic of Hungary on mutual assistance in the event of disasters and serious accidents*, April 26, 1996, art. 10, Bundesgesetzblatt Nr. 76/1998; *Agreement between Denmark and the Federal Republic of Germany on Mutual Assistance in the Event of Disasters or Serious Accidents*, May 16, 1985, art 8&10, 1523 U.N.T.S. 109.
- 638 See, e.g., *Agreement between the Government of the Republic of Finland and the Government of the Republic of Estonia on Cooperation and Mutual Assistance in Cases of Accidents*, June 26, 1995, art. 11, 1949 U.N.T.S. 135; *Agreement between the Government of the Hellenic Republic and the Government of the Russian Federation on Co-operation in the Field of Prevention and Response to Natural and Man-Made Disasters*, *supra* note 634, at art. 13; *Agreement between the Kingdom of Spain and the Argentine Republic on Cooperation on Disaster Preparedness and Prevention, and Mutual Assistance in the Event of Disasters*, June 3, 1988, art. 18, 1689 U.N.T.S. 34; *Convention between the Kingdom of the Netherlands and the Kingdom of Belgium on Mutual Assistance in Combating Disasters and Accidents*, November 14, 1984, art. 10, 1526 U.N.T.S. 42; *Convention Between the French Republic and the Federal Republic of Germany on Mutual Assistance in the Event of Disasters or Serious Accidents*, February 3, 1977, art. 9, 1214 U.N.T.S. 80; *Agreement between Sweden and Norway concerning the Improvement of Rescue Services in Frontier Areas (with Exchange of Notes)*, *supra* note 629, at art. 2; *Agreement between the Government of the Republic of Finland and the Government of the Republic of Estonia on Cooperation and Mutual Assistance in Cases of Accidents*, *supra* note 638, at art. 11; *Agreement between the Swiss Confederation and Federal Republic of Germany on mutual assistance in the event of disasters or serious accidents*, November 28, 1984, art. 11, Bundesgesetzblatt 1987 II 765; *Agreement between the Kingdom of Spain and the Kingdom of Morocco on Technical Cooperation and Mutual Assistance in the Field of Civil Defence*, January 21, 1987, art. 4, 1717 U.N.T.S. 162.
- 639 See, e.g., *Agreement between the Government of the Hellenic Republic and the Government of the Russian Federation on Co-operation in the Field of Prevention and Response to Natural and Man-Made Disasters*, *supra* note 634, at art. 8; *Agreement between the Republic of Austria and the Principality of Liechtenstein on Mutual Assistance in the Event of Disasters or Serious Accidents*, September 23, 1994, art. 9, Bundesgesetzblatt Nr. 758, 1995, Seite 0254; *Agreement between Denmark and the Federal Republic of Germany on Mutual Assistance in the Event of Disasters or Serious Accidents*, May 16, 1985, art. 7, 1523 U.N.T.S. 109; *Agreement between the Federal Republic of Germany and the Kingdom of the Netherlands on Mutual Assistance in the Event of Disasters Including Serious Accidents*, June 7, 1998, art. 5, Bundesgesetzblatt II, 1992, Seite 199; *Agreement between the Republic of Austria and the Federal Republic of Germany Concerning Mutual Assistance in the Event of Disasters or Serious Accidents*, December 23, 1988, art. 9, 1696 U.N.T.S. 65; *Agreement between Spain and the Russian Federation on Cooperation on Disaster Preparedness and Prevention, and Mutual Assistance in the Event of Disasters*, June 14, 2000, art. 9, available at <http://www.ifrc.org/Docs/idrl/I439ES.pdf>; *Agreement between the Swiss Federal Council and the Government of the Republic of the Philippines on Cooperation in the Event of Natural Disaster or Major Emergencies*, December 6, 2001, art. 9, available at <http://www.ifrc.org/Docs/idrl/I494EN.pdf>.
- 640 See, e.g., *Genscher Abkommen zwischen der Bundesrepublik Deutschland und dem Königreich der Niederlande über die gegenseitige Hilfeleistung bei Katastrophen einschließlic schweren Unglücksfällen*, June 7, 1998, Bundesgesetzblatt II, 1992, at 199.
- 641 See, e.g., *Basic Agreement between the Government of Guatemala and the United Nations/FAO World Food Programme Concerning Assistance from the World Food Programme*, July 15, 1971, 995 U.N.T.S. 72.
- 642 See Elise Baudot-Quéguiner, *The laws and principles governing preparedness, relief and rehabilitation operations: The unique case of the International Federation of Red Cross and Red Crescent Societies*, in *INTERNATIONAL DISASTER RESPONSE LAWS, PRINCIPLES AND PRACTICE: REFLECTIONS, PROSPECTS AND CHALLENGES* 128-38 (Victoria Bannon, ed., International Federation of Red Cross and Red Crescent Societies, 2003).
- 643 See Appendix 3 at 218.
- 644 See *Development Initiatives, Global Humanitarian Assistance 2006*, at 19, available at <http://www.devinit.org/PDF%20downloads/GHA%202006.pdf>.
- 645 Note that by its terms, ECHO's agreement is governed by Belgian law. See *European Commission Directorate General for Humanitarian Aid - ECHO, Framework Partnership Agreement with Humanitarian Organizations*, version 041221, at art. 24.
- 646 See *id.*
- 647 See *European Commission Directorate General for Humanitarian Aid - ECHO, Framework Partnership Agreement with International Organizations*, version 050728. See generally, *International Federation-ARC EU Study*, *supra* note 538, at 12-15.
- 648 See USAID, *Mandatory Standard Provisions for U.S., Nongovernmental Recipients: A Mandatory Reference for ADS Chapter 303*, rev. date June 14, 2006; USAID, *Mandatory Standard Provisions for Non-U.S., Nongovernmental Recipients: A Mandatory Reference for ADS Chapter 303*, rev. date Jan. 12, 2007; USAID *Mandatory Standard Provisions for Grants to Public International Organizations*, rev. date Marc 23, 2004.
- 649 Recent global studies have tended to focus exclusively on issues of disaster risk reduction. See, e.g., *United Nations Development Programme, A Global Review: UNDP Support to Institutional and Legislative Systems for Disaster Risk Management* (2007); *Tearfund, Legislating for Mainstreaming Disaster Risk Reduction* (2006).
- 650 See, e.g., *Inter-Agency Standing Committee Task Force on Natural Disasters, Review of the disaster response capacity of IASC agencies and organizations in selected disaster prone countries: Synthesis Report* (2005), at 3 (reported that four out of five disaster-prone states studied had "weak, fragmentary and generally inadequate" national legislative frameworks).
- 651 See Appendix 3 at 216-17.
- 652 See Victoria Bannon et al, *Nepal: Laws, Policies, Planning and Practices on International Disaster Response (International Federation of Red Cross and Red Crescent Societies, 2005)* (hereinafter, "International Federation Nepal Case Study") at 29, available at <http://www.ifrc.org/idrl>.
- 653 See Victoria Bannon et al, *Legal Issues in the International Response to the Tsunami in Sri Lanka (International Federation of Red Cross and Red Crescent Societies 2006)* (hereinafter, "International Federation Sri Lanka Case Study"), at 44-45 available at <http://www.ifrc.org/idrl>.
- 654 See Victoria Bannon et al, *Legal Issues in the International Response to the Tsunami in Thailand (International Federation of Red Cross and Red Cres-*

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- cent Societies 2006) (hereinafter, "International Federation Thailand Case Study"), at 25 available at <http://www.ifrc.org/idrl>.
- 655 See African IDRL Forum Report, *supra* note 453, at 7.
- 656 See International Federation Africa Regional Study, *supra* note 445, at 24.
- 657 See Turkish Red Crescent Society, *The 1999 Marmara Earthquake Case Study, Executive Summary* (2006), at 2 (hereinafter "TRC Turkey Case Study"), available at <http://www.ifrc.org/idrl>.
- 658 United States General Accountability Office, *Hurricane Katrina: Comprehensive Policies and Procedures are Needed to Ensure Appropriate Use and Accountability for International Assistance*, Doc. No. GAO-06-460 (2006).
- 659 See the remarks of Major-General Farooq Ahmed Khan, Chairman, Prime Minister's Inspection Commission in International Federation of Red Cross and Red Crescent Societies, *Report of the Asia-Pacific IDRL Forum, December 12-14, 2006, Kuala Lumpur, Malaysia*, at 4.
- 660 See Victoria Bannon et al, *Fiji: Laws, Policies, Planning and Practices on International Disaster Response* (International Federation of Red Cross and Red Crescent Societies, 2005) (hereinafter, "International Federation Fiji Case Study"), at 25, available at <http://www.ifrc.org/idrl.32>
- 661 See Mary Picard, *Legal Issues from the International Response to Tropical Storm Stan in Guatemala* (International Federation of Red Cross and Red Crescent Societies 2007) (hereinafter, "International Federation Guatemala Case Study"), at 19-20, available at <http://www.ifrc.org/idrl>.
- 662 See, e.g., Mark Dalton et al, *Study Four: Changes in Humanitarian Financing: Implications for the United Nations* (Office for the Coordination of Humanitarian Affairs, 2003), at 10 (noting that "major donors now channel the bulk of their funding directly to NGOs instead of through the UN system").
- 663 See *Radioactive Leak Discovered At Bulgaria Nuclear Reactor*, N.Y. TIMES, July 25, 1991, available at <http://query.nytimes.com/gst/fullpage.html?res=9D0CE7DA1638F936A15754CA967958260>.
- 664 See *Earthquake Registered 170km Northwest of Bulgaria's Capital*, SOFIA ECHO, Nov. 21, 2006, available at http://sofiaecho.com/article/earthquake-registered-170km-northwest-of-bulgarias-capital/id_18867/catid_66.
- 665 Note, however, that a 2005 exchange of letters between OCHA and the European Commission set out certain baselines for their cooperation in disaster settings. See *Commission of the European Communities Decision of 27 October 2004*, Official Journal L 52, Feb. 25, 2005.
- 666 See, for example, the discussion in *International Tax Dialogue*, *infra* note 1013.
- 667 On the other hand, it has also been alleged that some governments, with the complicity of some international humanitarian organizations, have exaggerated disaster impacts in order to generate international assistance. See Piero Calvi-Pariseti, *Report on findings from South Asia, Southern Africa, and Central America* (International Federation of Red Cross and Red Crescent Societies 2003), at 10, available at http://www.ifrc.org/docs/pubs/disasters/IDRL_Fieldstudies_results0303.pdf (hereinafter, "Multi-state IDRL Study").
- 668 See Rohan Hardcastle & Adrian Chua, *Humanitarian Assistance: Towards a Right of Access to Victims of Natural Disasters*, 38 INTERNATIONAL REVIEW OF THE RED CROSS 589, 589 (1998) (citing examples). In this vein, compare *North Korea rejects UN food aid*, BBC NEWS, Sept. 23, 2005, available at <http://news.bbc.co.uk/2/hi/asia-pacific/4273844.stm> (reporting North Korea's decision to abruptly end UN food aid and accusing the UN of using such aid as a political weapon) with UN talks over N Korea food aid, BBC NEWS, Dec. 15, 2005, available at <http://news.bbc.co.uk/2/hi/asia-pacific/4530710.stm> (reporting that North Korean and WFP officials were negotiating the size of the ongoing WFP presence). Refusals of aid from specific disfavoured states are more common than categorical refusals. See, e.g., *US says Cuba has declined disaster aid*, AGENCE FRANCE PRESSE (July 11, 2005), available at <http://www.reliefweb.int/rw/RWB.NSF/db900SID/MIRA-6E857A?OpenDocument>; *Castro: U.S. hasn't responded to Katrina offer*, CNN (Sept. 5, 2005), available at <http://www.cnn.com/2005/WORLD/americas/09/05/katrina.cuba>; *Yeltsin apologies for Japan snub*, TIME (June 2, 1995), available at <http://www.time.com/time/nation/article/0,8599,3987,00.html> (reporting a retraction of Russia's initial refusal of aid from Japan in response to the Sakhalin earthquake).
- 669 See, e.g., *International Federation of Red Cross and Red Crescent Societies, Fiji: Laws, Policies Planning and Practices on International Disaster Response*, 2005, at 30 ("It was noted that foreign organizations providing disaster assistance in Fiji had experienced delays in obtaining entry permission and visas for relief personnel. The systems were considered to be ad hoc and inconsistent. The length of time taken to request external assistance by the Fiji Government also resulted in delays for sending relief personnel into the country and to the affected area."); *Turkish Red Crescent Society, International Disaster Response Law: 1999 Marmara Earthquake Case Study*, 2006, at 38 (hereinafter "Turkish Red Crescent Study") ("Turkey did not make any appeals during the acute stage (which should be made through the Ministry of Foreign Affairs with the Decree of the Cabinet) (the appeal was made 2-3 days later). During this period, international relief was unable to be provided.").
- 670 See ANNE RICHARD, *ROLE REVERSAL: OFFERS OF HELP FROM OTHER COUNTRIES IN RESPONSE TO HURRICANE KATRINA 6* (Center for Transatlantic Relations 2006).
- 671 See John Soloman & Spencer Hsu, *Most Katrina Aid from Overseas Went Unclaimed*, WASHINGTON POST (April 29, 2007) at A1.
- 672 See TEC Synthesis Report, *supra* note 12, at 43.
- 673 See, e.g., *Framework Convention*, *supra* note 67, at art. 3(e) (providing that "[o]ffers of, or requests for, assistance shall be examined and responded to by recipient States within the shortest possible time"); *Oslo Guidelines on the Use of Civil and Military Assets in Disaster Relief* (as revised in 2006), para. 38 (hereinafter, "Oslo Guidelines"), available at <http://www.ifrc.org/idrl> ("If international assistance is necessary, it should be requested or consented to by the Affected State as soon as possible upon the onset of the disaster to maximize its effectiveness.").
- 674 See Peter Apps, *Floods hit Asia hard, but few states demand aid*, REUTERS (Aug. 23, 2007); *European IDRL Forum Report*, *supra* note 7, at 3; see also *Multi-State IDRL Study*, *supra* note 667, at 11.
- 675 See *Multi-State IDRL Study*, *supra* note 667, at 11.
- 676 See *id.*
- 677 See *Code of the Federal States of Micronesia, Title 41, Chapter 7, Disaster Relief Assistance Act of 1989*, available at http://www.fsmlaw.org/fsml/code/title41/T41_Ch07.htm.
- 678 See *International Federation Africa Regional Study*, *supra* note 445, at 25.
- 679 See *OAS Discussion Paper*, *supra* note 477, at 4; Candice Rochester, *Legal Challenges to International Response to Natural Disasters in Jamaica: Context of Hurricanes Ivan, Dennis and Emily* (2007), at 4, available at <http://www.ifrc.org/Docs/pubs/idrl/idrl-amforum-jcrochester.pdf>.
- 680 See *id.* at 10.
- 681 See Megan Rowley, *Does Pakistan really want international flood help?* REUTERS ALERTNET (July 2, 2007), available at <http://www.alertnet.org/db/blogs/20316/2007/06/2-170031-1.htm>; see also *Multi-State IDRL Report*, *supra* note 667, at 10.
- 682 See *Report on Wilton Park Conference WP757, "The immediate response to disasters: improving national and international frameworks"*, Sept. 13-16, 2004, at para. 19, available at <http://www.wiltonpark.org.uk/documents/conferences/WP757/pdfs/WP757.pdf>.
- 683 See *African IDRL Forum Report*, *supra* note 453, at 20.
- 684 See *id.*, at 6. See also Mohamed El Baradei, *Model Rules for Disaster Relief Operations* (United Nations Institute for Training and Research 1982), at 6-7; *Swaziland: National disaster declared*, IRIN, Feb. 19, 2004, available at <http://www.irinnews.org/report.aspx?reportid=48664> (noting that "international relief groups" had informed the Swaziland National Disaster Relief Task Force that "[t]hey have resources ready for our use, but to free them, they required a formal declaration of a state of emergency"). While UN agencies are not always completely clear as to the origin of this policy, the provision of article 2(7) of the UN Charter forbidding intervention "in matters which are essentially within the domestic jurisdiction of any State" and the conservative approach of UN GA Resolution 46/182 *supra* note 156 (as discussed below), might be cited.
- 685 See, e.g., *International Federation Sri Lanka Study*, *supra* note 1, at 4 (noting that offers began arriving in Sri Lanka the day of the tsunami); RICHARD, *supra* note 670, at 6 (noting that offers began arriving the day Hurricane Katrina struck).

End notes

- 686 See RICHARD, *supra* note 670, at 16.
- 687 See Mathew Moore and Lindsey Murdoch, *Water, not Hospitals, Needed in Aceh*, SYDNEY MORNING HERALD (Jan. 10, 2005), available at <http://www.smh.com.au>.
- 688 UN General Assembly Res. 46/182, *supra* note 156, at annex para 2.
- 689 See, e.g., *Tampere Convention* *supra* note 21, at art. 4; *Nuclear Assistance Convention*, *supra* note 59, at art. 2; Fischer, *supra* note *supra* note 623, at 34.
- 690 See, e.g., *Framework Convention*, *supra* note 67, at art. 3(a) (providing that “[only assistance requested by the Beneficiary State or proposed by the Supporting State and accepted by the Beneficiary State may take place”]; ASEAN Agreement, *supra* note 30, at art. 11(2) (providing that “[a]ssistance can only be deployed at the request, and with the consent, of the Requesting Party, or, when offered by another Party or Parties, with the consent of the Receiving Party”); *Inter-American Convention*, *supra* note 465, at arts. 1 & 2 (providing in relevant part that “[r]equests for and offers and acceptance of assistance from one state party to another shall be communicated via diplomatic channels” and “acceptance by a state party of an offer of assistance from another state party shall be considered to be a request for such assistance”); *Cotonou Agreement*, *supra* note 553, at art. 72 (providing that assistance “shall be undertaken either at the request of the ACP country affected by the crisis situation, the Commission, international organisations or local or international non-State organisations”); see also Institute of International Law, *Resolution on humanitarian assistance*, *supra* note 79, art. 4 (asserting that “States and organizations have the right to offer humanitarian assistance to the affected State”).
- 691 See Annex 2, at 14.
- 692 See *Statutes of the Red Cross and Red Crescent Movement, adopted by the 25th International Conference of the Red Cross at Geneva in October 1986 and amended by the 26th International Conference of the Red Cross at Geneva in December 1995*, arts. 2 (committing states to cooperate with the components of the Movement within the bounds of sovereignty), 3(3) (committing National Societies to provide relief internationally in armed conflict and disaster, “in the form of services and personnel, of material, financial and moral support” through the society in the affected state, the ICRC or the International Federation); & 6(4)(d) & (e) (committing the International Federation to support National Societies in their relief actions and to coordinate international relief actions pursuant to the Principles and Rules).
- 693 See *Principles and Rules*, *supra* note 397, at secs. 6.2 (providing that, “[i]n view of the solidarity binding them together they shall help one another when faced with a situation exceeding the resources of any one society”) & 14 (providing that National Societies in the affected state may directly appeal to the Federation for assistance from the Movement, and that the International Federation may also offer its assistance to the society in advance of a request).
- 694 See *Statutes of the Movement*, *supra* note 692, at art. 4(3).
- 695 See *Tampere Convention*, *supra* note 21, at art. 4; *ASEAN Agreement*, *supra* note 30, at art. 11; *Inter-American Convention*, *supra* note 465, at arts. 2 & 16.
- 696 *Cotonou Agreement*, *supra* note 553, at art. 72(6). This is also in direct contrast to article 4(7) of the *Tampere Convention*, *supra* note 21, which provides that “[a] non-State entity or intergovernmental organization may not be a “requesting State Party” and may not request telecommunication assistance under this Convention.”
- 697 See *Geneva Conventions I-IV*, art. 3 (providing that “[a]n impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict”). The ICRC Commentary on this section notes that this applies to all “impartial and humanitarian organizations” and not just the ICRC itself. See *Commentary, IV Geneva Convention Relative to the Protection of Civilian Persons in Time of War* (Jean S. Pictet, ed., International Committee of the Red Cross, 1958), at 41 (hereinafter “ICRC GC IV Commentary”).
- 698 *Guiding Principles*, *supra* note 188, at Principle 25.
- 699 *Food and Agriculture Organization Food Security and Food Assistance, Technical Background Document for the World Food Summit, November 13-17, 1996*, para 3.14.
- 700 See Daniel Costa, *Legal Issues from the International Response to the 2007 Floods in Bolivia* (publication pending by the International Federation of Red Cross and Red Crescent Societies) (hereinafter, “*International Federation Bolivia Study*”).
- 701 See *International Federation Guatemala Case Study*, *supra* note 661, at 19 & 21.
- 702 *International Federation Sri Lanka Case Study*, *supra* note 1, at 35.
- 703 *Id.* at 36.
- 704 See Claude de Ville de Goyet et al, *The Role of Needs Assessment in the Tsunami Response* (Tsunami Evaluation Coalition, 2006) at 24.
- 705 *NRC Case Study*, *supra* note 11, at 6.
- 706 See, e.g., *Pan-American Health Organization, Evaluation of Preparedness and Response to Hurricanes Georges and Mitch: Conclusions and Recommendations, February 16-19, 1999, Santo Domingo, Dominican Republic*, at 10.
- 707 See *TEC Synthesis Report*, *supra* note 12, at 57.
- 708 See, e.g., *Common Observations of the Meeting on Coordination in Humanitarian Emergencies, Feb. 26-28 2003, Montreux Switzerland*, available at http://www.reliefweb.int/cap/CAPSWG/Montreux/2003/Montreux_commonobs_26-28Feb2003_FINAL.doc.
- 709 See, e.g., *Inter-Agency Standing Committee, Consolidated Appeal Guidelines (1994); International Federation of Red Cross and Red Crescent Societies, Guidelines for Emergency Assessment (2005); SPHERE HANDBOOK*, *supra* note 423, at 29-33.
- 710 James Darcy & Charles-Antoine Hoffman, *According to need? Needs assessment and decision-making in the humanitarian sector*, HPG REPORT 15 (2003), at 7.
- 711 See UN General Assembly Res. 46/182, *supra* note 156, at annex para. 35.
- 712 See *United Nations Disaster Assessment and Coordination Team (UNDAC) Terms of Reference, Nov. 1, 2002*, at 1, available at http://www.unjlc.org/tools/FOM/supporting_docs/FOM_PUB_6_4_09_UNDAC_TORs.pdf.
- 713 See *ASEAN Agreement*, *supra* note 30, at art. 11.
- 714 See *supra* note 452.
- 715 See Irwin Arieff, *UN urges N. Korea to keep taking aid for children*, REUTERS (Sept. 23, 2005), available at <http://www.reliefweb.int/rw/rwb.nsf/db900SID/ACIO-6GHRKK?OpenDocument>.
- 716 See *John Hopkins School of Hygiene and Public Health and International Federation of Red Cross and Red Crescent Societies, Public Health Guide for Emergencies (1st ed. 2000)*, at 2-6.
- 717 As noted by OCHA: “The transition from relief to rehabilitation is rarely clear-cut. In the aftermath of emergencies and natural disasters, there is often a period between the emergency and development phases when lingering, ongoing humanitarian needs must still be met and the long-term benefits of rehabilitation and reconstruction projects are not yet fully realized... As a result, the phasing-out of relief coordination efforts must be managed carefully and take into consideration local political, economic and social conditions. While one of the goals of aid operations is to lay the groundwork for rehabilitation and reconciliation, the abrupt termination of assistance would most likely pose a threat to stability.” OCHA *Orientation Handbook* (2002), at 75.
- 718 See *International Federation Sri Lanka Case Study*, *supra* note 1, at 26 (discussing the special tax regime applied to tsunami reconstruction); *International Federation Indonesia Case Study*, *supra* note 1, at 10 (discussing the rehabilitation MOUs developed by the government for humanitarian organizations).
- 719 See, e.g., *Optional Protocol to the Convention on the Safety of United Nations and Associated Personnel*, *supra* note 354, at art. 2(1) (limiting its scope to peace-building and “emergency humanitarian assistance”); *Arab Agreement*, *supra* note 617, at art. 1(c) (defining “relief operations” in relevant part to apply to services designed “to save the lives of victims of natural disasters and people in emergency situations”); *Max Planck Guidelines*, *supra* note 63, at para. 2(a) (defining “humanitarian assistance” in relevant part as “the urgent material consignments and related services of an exclusively humanitarian character... to meet the immediate requirements of persons in need”).
- 720 See, e.g., *Nuclear Assistance Convention*, *supra* note 59, at art. 2(2); *ASEAN Agreement*, *supra* note 30, at art. 11(3); *Inter-American Convention*, *supra* note 465, at art. 2(b).
- 721 See, e.g., *Nuclear Assistance Convention*, *supra* note 59, at art. 11; *Convention on the Transboundary Effects of Industrial Accidents*, *supra* note 62, at annex 10 art. 10; *CDERA Agreement*, *supra* note 478, at art. 20.

End notes

- 722 See *Tampere Convention*, *supra* note 21, at art. 6.
- 723 See, e.g., *Food and Agriculture Organization, The State of Food and Agriculture: Food Aid for Food Security?* 48-49 (2006) (hereinafter, "FAO, Food Aid for Food Security").
- 724 See, e.g., *Pantaleo Creti and Susanne Jaspars, Cash-Transfer Programming in Emergencies* (Oxfam GB 2006).
- 725 Legal issues can also arise with regard to local purchase of goods and equipment, as noted in the sections below with regard to the entry of currency and opening bank accounts. U.N.T.S. and taxation.
- 726 See, e.g., "Dropping off the Map: Why are Some Conflicts Forgotten?" remarks by Poul Nielson, European Commissioner for Development and Humanitarian Aid, at the Conference on Forgotten Humanitarian Crises Copenhagen, Oct. 23, 2002 ("The reality is that some humanitarian crises attract more media and/or donor attention than others. And as it is easier to move a camera crew than ship in tonnes of emergency relief, the journalists often arrive before the aid agencies. A famine hits the headlines, shocking images appear on TV screens, and a concerned public pours money into aid appeals, inspiring politicians to act. This phenomenon has been dubbed the 'CNN effect.'").
- 727 See Appendix 3 at 4.
- 728 This is the figure for relief goods other than food or medicines, which also caused significant problems as discussed below.
- 729 See Fritz Institute, *Logistics and the Effective Delivery of Humanitarian Relief* (2005), at 8.
- 730 See TRC Turkey Case Study, *supra* note 657, at 50.
- 731 *International Federation Indonesia Case Study*, *supra* note 1, at 22; see also *International Federation Sri Lanka Case Study*, *supra* note 1, at 18.
- 732 See *International Federation of Red Cross and Red Crescent Societies, Programme Update: Chernobyl Humanitarian Assistance & Rehabilitation Programme (CHARP), Belarus, Ukraine and Russia* (Dec. 15, 2004), at 5.
- 733 See *From Taiwan with Love - Two Years Later*, *GUARDIAN AND MAIL ONLINE* (Aug. 20, 2007), available at http://www.mg.co.za/articlepage.aspx?area=/breaking_news/breaking_news_national/sa_good_news/&articleid=317023.
- 734 *International Federation of Red Cross and Red Crescent Societies, Programme Update - Mozambique: Special Focus on Disaster Preparedness Measures in Preparation for New Floods* (Feb 12, 2002), at 5.
- 735 See *International Federation of Red Cross and Red Crescent Societies Press Release, Red Cross Red Crescent steps up efforts on cholera prevention in Angola amid increasing cases*, May 3, 2006.
- 736 See *International Federation of Red Cross and Red Crescent Societies, Operations Update - Dominican Republic and Haiti: Floods*, July 16, 2004.
- 737 See *International Federation Bolivia Case Study*, *supra* note 700, at 17.
- 738 See, e.g., *International Federation Indonesia Case Study*, *supra* note 1, at 22.
- 739 See, e.g., *International Federation Sri Lanka Case Study*, *supra* note 1, at 18.
- 740 See, e.g., *TEC Synthesis Report*, *supra* note 12, at 52 (citing a Fritz Institute survey finding that "[m]ore than 60% of NGOs in Sri Lanka and 40% of NGOs in India reported the receipt of unsolicited supplies had been high").
- 741 See *International Federation Nepal Case Study*, *supra* note 652, at 26.
- 742 See *id.* at 52.
- 743 See *Press Release, Lutheran World Foundation, Relief Experts Call for "Responsible Response"* (Jan 3, 2005), available at <http://www.waveofgiving.org/news/010305.asp>.
- 744 See *International Federation Sri Lanka Case Study*, *supra* note 1, at 20; *International Federation Guatemala Case Study*, *supra* note 661, at 19.
- 745 *International Federation Sri Lanka Case Study*, *supra* note 1, at 15-16.
- 746 See *International Federation Indonesia Case Study*, *supra* note 1, at 23.
- 747 *International Federation Bolivia Case Study*, *supra* note 700, at 16.
- 748 See *Conor Foley, Mozambique: A Case Study in the Role of the Affected State in Humanitarian Action* (Humanitarian Policy Group 2007).
- 749 See *TRC Turkey Case Study*, *supra* note 657, at 39; *International Federation Fiji Case Study*, *supra* note 660, at 31.
- 750 See *International Federation Sri Lanka Case Study*, *supra* note 1, at 15-25, 45; *International Federation Indonesia Case Study*, *supra* note 1, 21-23.
- 751 See *European IDRL Forum Report*, *supra* note 7, at 5 (noting that participants had identified lack of training as an important factor reducing the capacity of domestic regulatory structures to address sudden large relief operations).
- 752 See, e.g., *International Federation Sri Lanka Case Study*, *supra* note 1, at 18.
- 753 See *International Federation Bolivia Case Study*, *supra* note 700, at 18.
- 754 See *Food aid held for taxes to be released, says gov't official*, *IRIN* (Aug. 16, 2005).
- 755 See *International Federation Sri Lanka Case Study*, *supra* note 1, at 20-21.
- 756 *Id.* at 18.
- 757 See *Oxfam pays \$1 million tsunami aid duty*, *BBC NEWS* (June 17, 2005).
- 758 See *TRC Turkey Case Study* note 657, at 34.
- 759 *International Federation Indonesia Case Study*, *supra* note 1, at 22.
- 760 See, e.g., *International Federation of Red Cross and Red Crescent Societies, Emergency Appeal - India/Gujarat: Earthquake* (Jan. 30, 2001), at 5 (noting that "[w]herever possible, relief items will be procured regionally, since customs formalities often make air freighting goods into India a challenging and complex undertaking"); *International Federation Thailand study*, *supra* note 6, at 18 (reporting that "[m]ost NGOs interviewed for this study had a policy of buying goods locally and had never tried to import relief goods to Thailand. This was partly because most supplies were readily available in Thailand, but also because of the anticipated difficulty of getting the goods quickly through customs");
- 761 See, e.g., *International Federation of Red Cross and Red Crescent Societies, Belarus, Moldova, Russian Federation, Ukraine: Winter Emergency 1998-1999* (Oct. 21, 1999), at 15 (noting that "[t]here are many advantages of local purchase: immediate availability of items, support to the local economy, reduction of transport, storage and insurance costs, no time and effort lost to get the shipment cleared from customs, respect of beneficiaries' habits, and improved relations between local RC branches and local enterprises").
- 762 See *International Federation Nepal Case Study*, *supra* note 652, at 26.
- 763 See *International Federation Bolivia Case Study*, *supra* note 700, at 18.
- 764 See *International Federation of Red Cross and Red Crescent Societies, Information Bulletin - Caribbean: Hurricane Michelle, August 2002*, at 2.
- 765 See *International Federation of Red Cross and Red Crescent Societies, Final Report - Ethiopia: Meningitis Epidemic* (Dec. 3, 2001), at 3.
- 766 See *Report of the workshop of lessons learnt on the national and international response to the Bam earthquake, Kerman, Iran, April 14-15, 2004* (hereinafter "Bam Workshop Report"), at 8.
- 767 See *International Federation Guatemala Case Study*, *supra* note 661, at 31.
- 768 See, e.g., *International Federation of Red Cross and Red Crescent Societies, Operations Review of the Red Cross/Red Crescent Movement Response to the Earthquake in Bam, Iran* (2004), at 23 (noting that after first two weeks, the government's "open skies" policy was rescinded, leading to delays in the entry of relief items); *International Federation Sri Lanka Case Study*, *supra* note 1, at 20 (noting the government's decision, several months after the tsunami to greatly curtail customs duties exemptions).
- 769 See *International Federation Indonesia Case Study*, *supra* note 1, at 36.
- 770 See Appendix 3 at 216.
- 771 *Id.*
- 772 See *Model Customs Agreement*, *supra* note 246, at arts. 1-2.
- 773 See Appendix 3 at 215.
- 774 According to the OCHA logistics department, these include South Korea, Nepal and Uzbekistan. Negotiations are currently underway with other governments.
- 775 See *Measures to Expedite*, *supra* note 382, at Recommendations F & G.
- 776 See <http://www.cidi.org>.
- 777 See Appendix 3 at 210.
- 778 See *International Federation Indonesia Case Study*, *supra* note 1, at 20.
- 779 *Id.*

End notes

- 780 *Tampere Convention*, *supra* note 21, at art. 9(2)(d).
- 781 ASEAN Agreement, *supra* note 30, at art. 14(b).
- 782 CDERA Agreement, *supra* note 478, at art. 16(4); Nuclear Assistance Convention, *supra* note 59, at art. 8(3)(a)(4); Nordic Radiation Assistance Agreement, *supra* note 609, at art. 1(2).
- 783 See International Federation of Red Cross and Red Crescent Societies, *Operations Update - Burkina Faso, Mali, Mauritania and Niger: Food Insecurity (July 10, 2006)*, at 6.
- 784 See International Federation of Red Cross and Red Crescent Societies, *Final Report - Bahamas: Hurricane Jeanne (April 4, 2005)*, at 4.
- 785 See UN General Assembly Res. 46/182, *supra* note 156, at annex para.7.
- 786 See Nuclear Assistance Convention, *supra* note 59, at art. 9.
- 787 See ASEAN Agreement, *supra* note 30, at art. 16.
- 788 See Arab Agreement, *supra* note 617, at art. 7.
- 789 See BSEC Agreement, *supra* note 66, at art. 5.
- 790 See Inter-American Convention, *supra* note 465, at art. 5.
- 791 See United Nations Economic Commission for Europe, *Countries with which a TIR transit system can be established*, at <http://www.unece.org/trans/bcftir/system/tir-system-countries.htm>.
- 792 See *id.* at 4.
- 793 See Kenya Revenue Authority, *Time Release Study Report (2004)*, at v.
- 794 See TEC Synthesis Report, *supra* note 12 at 52.
- 795 See United States State Department Briefing, *Remarks of Deputy Spokesman Adam Ereli, Oct. 14, 2005*, available at <http://www.globalsecurity.org/military/library/news/2005/10/mil-051014-usia04.htm>.
- 796 *Id.*
- 797 See RICHARD, *supra* note 670, at 17-18.
- 798 *Id.*
- 799 See, e.g., Ryan Parry, *Up In Flames: Tons of British Aid Donated to Help Hurricane Katrina Victims to be Burned by Americans*, THE MIRROR (Sept 20, 2005) (quoting an unnamed British relief worker charging that "[t]his is the most appalling act of sickening senselessness while people starve").
- 800 See Ceci Connolly, *Katrina Food Aid Blocked by U.S. Rules*, WASHINGTON POST, Oct. 14, 2005, available at <http://www.washingtonpost.com/wp-dyn/content/article/2005/10/13/AR2005101302084.html>.
- 801 *Id.*
- 802 See *Measures to Expedite*, *supra* note 382, at Recommendation D.
- 803 See UNITAR Model Rules, *supra* note 433, at rule 7.
- 804 *Code of Ethics for International Trade in Food*, Doc. No. CAC/RCP 20-1979 (Rev. 1-1985).
- 805 *Id.* at 2, n.2.
- 806 See *id.* at art. 4.
- 807 See *id.* at art. 6.
- 808 See FAO, *Food Aid for Food Security*, *supra* note 723, at 61.
- 809 See Oxfam, *Making the case for cash: humanitarian food aid under scrutiny*, Oxfam Briefing Note (2005), at 3.
- 810 See World Food Programme INTERFAIS, *Food Aid Monitor - 2005 Food Aid Flows (June 2006)*, at 29.
- 811 See Sophia Murphy & Kathy McAfee, *U.S. Food Aid: Time to Get it Right (Institute for Agriculture and Trade Policy 2005)*, at 14.
- 812 *Id.*
- 813 See Celia Dugger, *Kenyan Farmers' Fate Caught Up in U.S. Rules*, NEW YORK TIMES (July 31, 2007).
- 814 See TEC Synthesis Report, *supra* note 794, at 52.
- 815 Kirsten Schulze, *Between Conflict and Peace: Tsunami Aid and Reconstruction in Aceh (London School of Economic and Political Science 2005)*, at 14, available at <http://www.lse.ac.uk/Depts/global/Publications/HumanSecurityReport/Tsunami/Aceh%20Tsunami%20Response.pdf>.
- 816 See Bam Workshop Report, *supra* note 766, at 14. *Should this appear capricious, it is notable that, in the United States., broken rice at a rate higher than 4% is generally used only in dog food. See Sage V Foods, The Composition of Rice and the Various Processed Types at <http://www.sagefoods.com/MainPages/Rice101/Types.htm#broken>.*
- 817 See Actionaid, *Food Aid: An Actionaid Briefing Paper (2003)*, at 14, available at http://www.actionaid.org/docs/food_aid_briefing.pdf.
- 818 See Food Aid Convention, *supra* note 282, at art. 12.
- 819 See *supra* section 5.3.
- 820 See, e.g., John Haddinott & Marc Cohen, *Renegotiating the Food Aid Convention (International Food Policy Research Institution 2007)*, at 1.
- 821 See, e.g., FAO, *STATE OF FOOD 2006*, *supra* note 723, at 8-9; Christopher Barrett & David Maxwell, *Towards a Global Food Aid Compact*, 31 FOOD POLICY 105 (2006); Murphy and McAfee, *supra* note 811, at 33.
- 822 See David Fisher, *Fast Food: Regulating Emergency Food Aid in Sudden-Impact Disasters*, VANDERBILT JOURNAL OF TRANSNATIONAL LAW (forthcoming in 2007).
- 823 See Nicole Itano, *Even Hungry Africa Wary of Gene-Modified Food*, CHRISTIAN SCIENCE MONITOR (Aug. 6, 2002), available at <http://www.csmonitor.com/2002/0806/p01s03-woaf.html>; Angola rejects GM food aid, SciDev.net April 2, 2004, available at <http://www.scidev.net/News/index.cfm?fuseaction=readNews&itemid=1311&language=1>; see also Mike Woolridge, *US "dumped" GM Food in Orissa*, BBC NEWS (June 3, 2000), available at http://news.bbc.co.uk/1/hi/world/south_asia/775326.stm.
- 824 See Jessica Vapnek and Melvin Sprej, *Perspectives and guidelines on food legislation, with a new model food law*, FAO Legislative Study 87 (2005), at 137; Meron Michael, *Africa Bites the Bullet on Genetically Modified Food Aid*, WORLDPRESS.ORG, (Sept. 26, 2002), available at <http://www.worldpress.org/Africa/737.cfm>.
- 825 See, e.g., USAID, *Questions and Answers on U.S. Food Aid donations Containing Bio-Engineered Crops*, available at http://www.usaid.gov/locations/subsaharan_africa/africa_humanitarian_crisis/bio_questions.html.
- 826 See FAO Press Release, *UN statement on the use of GM foods as food aid in Southern Africa*, Aug. 27, 2002, available at <http://www.fao.org/english/newsroom/news/2002/8660-en.html>.
- 827 See, e.g., Africa Center for Biosafety et al, *GM Food Aid: Africa Denied Choice Again?* (2004), available at http://www.grain.org/research_files/GE-food-aid-briefing-2004-en.pdf; Greenpeace, *USAID and GM Food Aid (2002)*, available at <http://www.greenpeace.org.uk/MultimediaFiles/Live/Full-Report/5243.pdf>.
- 828 See Cartagena Protocol on Biosafety to the Convention on Biological Diversity, Jan. 29, 2000, 39 I.L.M. 1027 (2000).
- 829 *Guideline for the Conduct of Food Safety Assessment of Foods Produced Using Recombinant-DNA Microorganisms*, Doc. No. CAC/GL 46-2003 (2003).
- 830 See Lorraine Heller, *Codex and the GM trade stalemate*, CHECKBIOTECH, April 25, 2007 at http://www.checkbiotech.org/green_News_Genetics.aspx?infold=14527.
- 831 See World Food Programme Policy on Donations of Foods Derived from Biotechnology, Doc. No. WFP/EB.3/2002/4-C (2002).
- 832 See "Emergency Communications and Disaster Response," Remarks of Johan Schaar, Special Representative of the International Federation Secretary General for the Tsunami Operation, at the International Conference on Emergency Communications, in Tampere, Finland, June 19, 2006.
- 833 See Appendix 3 at 208-09.
- 834 See Multi-State IDRL Study, *supra* note 667 at 15.
- 835 See International Federation Sri Lanka Case Study, *supra* note 1, at 22-23.
- 836 See Paul Curriion, *Emergency Capacity Building Project Information Technology and Requirements Assessment Report: Pakistan Earthquake Response November-December 2005*, at 14.
- 837 See International Federation Nepal Case Study, *supra* note 652, at 26.
- 838 See International Federation Bolivia Case Study, *supra* note 700 at 18; International Federation Thailand study, *supra* note 6, at 17.

End notes

- 839 See Remarks of Hugh Peterken, International Federation Head of Information Systems, at the International Conference on Emergency Communications, in Tampere, Finland, June 19, 2006.
- 840 *Id.*
- 841 See International Federation of Red Cross and Red Crescent Societies, Programme Update - Mozambique: Special Focus on Disaster Preparedness Measures in Preparation for New Floods (2002), at 5.
- 842 See Africa IDRL Forum Report, *supra* note 655, at 7.
- 843 See Peterken, *supra* note 839.
- 844 See generally <http://www.wassenaar.org>.
- 845 See, e.g., United States Department of Commerce, 2005 Foreign Policy Controls, Annex 1: Summary of Public Comments on Foreign Policy-Based Export Controls (2005) available at <http://www.bis.doc.gov/PoliciesAndRegulations/05ForPolControls/Appendix1.htm> (reporting that “[o]n November 16, 2004, InterAction wrote to express concern about the restrictions the EAR places on humanitarian nonprofit organizations when exporting their equipment for their own internal use to countries subject to U.S. sanctions. InterAction expressed concern that such restrictions do little to further U.S. foreign policy interests in the sanctioned country, inhibit humanitarian organizations from responding effectively when humanitarian aid is needed, and force humanitarian groups to purchase non-U.S. equipment”).
- 846 See, e.g., United States Department of State Press Release, U.S Lifts Restrictions to Facilitate Humanitarian Aid for Iran (Jan. 1, 2004).
- 847 See Appendix 3 at 199–200.
- 848 See Global VSAT Forum, “Strengthening Access to Communications for Disaster Recovery and Emergency Preparedness,” background paper distributed at the International Conference on Emergency Communications, in Tampere, Finland, June 19, 2006.
- 849 See Tampere Convention, *supra* note 21, at art.1(14) & (15).
- 850 See *id.* at art. 9(2)(a).
- 851 See *id.* at art. 9(7).
- 852 See International Federation Sri Lanka Case Study, *supra* note 1, at 23.
- 853 See <http://www.itu.int/ITU-D/emergencytelecoms/events.html>.
- 854 UN General Assembly Res. No. 56/217, UN Doc. No. A/RES/56/217 (2002), at para. 28.
- 855 See, e.g., UN GA Res. No. 55/170, *supra* note 75, at para. 3; ASEAN Agreement, *supra* note 30, at art 14(a); Convention Between the French Republic and the Federal Republic of Germany on Mutual Assistance in the Event of Disasters or Serious Accidents, Feb. 3, 1977, art. 10(2)(d), 1214 U.N.T.S. 80.
- 856 See Appendix 3 at 4–5. Due to an imprecision in the wording of our questionnaire, it is not entirely clear if respondents meant to refer to problems with vehicles being shipped in or vehicles entering disaster-affected states under their own power.
- 857 See TRC Turkey Case Study, *supra* note 657, at 35 & 48.
- 858 See *id.* at 24.
- 859 See International Federation Guatemala Case Study, *supra* note 661, at 34.
- 860 See International Federation Indonesia Case Study, *supra* note 1, at 24.
- 861 See International Federation Sri Lanka Case Study, *supra* note 1, at 24.
- 862 See ASEAN Agreement, *supra* note 30, at art. 14(a).
- 863 See Kyoto Customs Convention, *supra* note 243, at Specific Annex J.5 at E.1; Istanbul Convention, *supra* note 249, at annex B.9 art.1.
- 864 See *supra* note 590 at para 1(3) (specifically including “vehicles” in its definition of relief materials). See also Agreement between the Government of the Republic of Finland and the Government of the Republic of Estonia on Cooperation and Mutual Assistance in Cases of Accidents, *supra* note 638, at art.1.
- 865 See International Federation Indonesia Case Study, *supra* note 1, at 24–25.
- 866 See, e.g., Embassy of Israel in London, Weekly Update, at http://london.mfa.gov.il/mfm/Data/73821.doc#_Apples_signal_first (reporting on the use of ICRC trucks with Swiss license plates in the transportation of goods from the Golan Heights to Syria).
- 867 See Convention on Road Traffic, Sept. 19, 1949, 125 U.N.T.S. 22; Convention on Road Traffic, Nov. 8, 1968, 1042 U.N.T.S. 17.
- 868 See Oslo Guidelines, *supra* note 673, at annex 1 para. 9.
- 869 See BSEC Agreement, *supra* note 66, at art. 9.
- 870 See ASEAN Agreement, *supra* note 30, at art. 15(3).
- 871 See Appendix 3 at 208.
- 872 See Africa IDRL Forum Report, *supra* note 655, at 9.
- 873 See International Federation of Red Cross and Red Crescent Societies; Belarus, Moldova, Ukraine: Humanitarian Assistance (Aug. 21, 2000), at 9.
- 874 See TRC Turkey Case Study, *supra* note 657, at 48.
- 875 See International Federation Indonesia Case Study, *supra* note 1, at 33; International Federation Sri Lanka Case Study, *supra* note 1, at 19. See also “Le second tsunami” a 2007 documentary produced by the French NGO Pharmaciens sans Frontières, at <http://www.psfci.org/new/index.htm>.
- 876 See H.V. Hogerzeil et al., Guidelines for drug donations, 315 BRITISH MEDICAL JOURNAL 737 (1997).
- 877 *Id.*
- 878 See World Health Organization, Essential Drugs Monitor No. 21 (1996), at 1.
- 879 See Kyoto Customs Convention, *supra* note 243, at Specific Annex J.5 at E.1; UN General Assembly Res. 46/182, *supra* note 156, at annex para. 6; United Nations General Assembly Res. 57/150, *supra* note 75, at para. 3; Istanbul Convention, *supra* note 249, at annex B.9 art. 1(a); COE Agreement on Temporary Importation, *supra* note 581.
- 880 See *supra* note 321.
- 881 See BSEC Agreement, *supra* note 66, at art. 10(3).
- 882 Resolution 19, Medical supplies in Red Cross and Red Crescent emergency operations, 25th International Conference of the Red Cross and Red Crescent, Geneva, 1986.
- 883 See, e.g., Convenio entre El Reino de España y la República Francesa en Materia de Protección y Seguridad Civil, Oct 11, 2001, art. 10, available at http://www.ifrc.org/Docs/idrl/I440ES_1.pdf; Abkommen zwischen der Bundesrepublik Deutschland und dem Königreich Belgien über die gegenseitige Hilfeleistung bei Katastrophen oder schweren Unglücksfällen, Dec. 4, 1982, art.5, available at <http://www.ifrc.org/Docs/idrl/I475FR.pdf>.
- 884 See *supra* note 316.
- 885 See Kyoto Customs Convention, *supra* note 243, at Specific Annex J.5.
- 886 See Istanbul Convention, *supra* note 249, at annex D & its appendix.
- 887 See World Organization for Animal Health, Terrestrial Animal Health Code (16th ed. 2007).
- 888 Likewise, the International Rescue Dog Organization (IRO) and the International Canine Federation (FCI), both non-governmental international networks related to dogs, have jointly adopted international testing standards for the competence of rescue dogs, however they do not address health issues. See International Testing Standards for Rescue Dog Tests of the International Canine Federation (Fédération Cynologique Internationale FCI) and the International Rescue Dog Organization IRO (2005).
- 889 See BSEC Agreement, *supra* note 66, at art. 9(2).
- 890 See Agreement between the Government of the Hellenic Republic and the Government of the Russian Federation on Co-operation in the Field of Prevention and Response to Natural and Man-Made Disasters, *supra* note 634, at art. 9.
- 891 See Agreement between Sweden and Norway concerning the Improvement of Rescue Services in Frontier Areas, *supra* note 629, at art. 1.
- 892 See Agreement between the Swiss Federal Council and the Government of the Republic of the Philippines on Cooperation in the Event of Natural Disaster or Major Emergencies, Dec. 6, 2001, art. 8, available at <http://www.ifrc.org/Docs/idrl/I494EN.pdf>.
- 893 See United Nations General Assembly Res. 57/150, *supra* note 75, at para. 3.
- 894 See Office for the Coordination of Humanitarian Affairs, INSARG Guidelines and Methodology (2007), at section F10.
- 895 See International Convention for the Suppression of Financing for Terrorism,

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- April 10, 2002, art.8, U.N. General Assembly Res. 54/109, A/RES/54/109.
- 896 See *Financial Action Task Force on Money Laundering, Special Recommendations on Terrorist Financing (2004)*, at recommendations 7 & 8, available at <http://www.fatf-gafi.org>.
- 897 See, e.g., *Convention on Privileges and Immunities of the United Nations*, *supra* note 234, at arts. 5(a) & 8(e).
- 898 See *Baudot-Quéguiner*, *supra* note 642, at 133.
- 899 See *UNITAR Model Rules*, *supra* note 433, at rule 13; *ILA, Draft Model*, *supra* note 432, at art. 8.
- 900 See, e.g., *Katoch*, *supra* note 117, at 156 (noting that, despite advances, “many disaster prone countries do not have adequate capacity to manage disasters effectively”).
- 901 See *Appendix 3* at 4.
- 902 See *International Federation Sri Lanka Case Study*, *supra* note 1, at 15.
- 903 *International Federation Indonesia Case Study*, *supra* note 1, at 16.
- 904 *Id.*
- 905 *Id.*
- 906 See *International Federation Thailand Case Study*, *supra* note 654, at 16.
- 907 *International Federation of Red Cross and Red Crescent Societies, Operations Update No. 19 Iran: Bam Earthquake; Appeal no. 25/03 (Dec. 8, 2004)*, at 7.
- 908 See *International Rescue Committee, American Aid Groups Are Being Shut Out of Iraq By U.S. Sanctions, says International Rescue Committee; President Bush Could Fix Problem With Stroke of a Pen (March 20, 2003)*, available at http://www.theirc.org/news/american_aid_groups_are_being_shut_out_of_iraq_by_us_sanctions_says_international_rescue_committee_president_bush_could_fix_problem_with_stroke_of_a_pen.html; Report of the Church World Service and Witness Unit Committee Study Group on the Humanitarian Impact of Economic Sanctions: Implications for the Ministry of Church World Service and Witness (1998), available at <http://www.nccusa.org/98galsancpol.html> (noting that sanctions against North Korea had impeded aid efforts).
- 909 See *Internal Displacement Monitoring Centre, Symptoms of complex emergencies hamper humanitarian work in most of southern and central Somalia (2004)*, available at <http://www.internal-displacement.org>.
- 910 See, e.g., *Convention on the Privileges and Immunities of the United Nations*, *supra* note 234, at art. 5.
- 911 *Id.* at art. 7.
- 912 *Measures to Expedite*, *supra* note 382, at recommendation E.
- 913 *UN General Assembly Res. 57/150*, *supra* note 75, at para. 3.
- 914 See *UN General Assembly Res. 46/182*, *supra* note 156, at annex para. 6; *Declaration of Principles*, *supra* note 403, at para. 6.
- 915 See *International Federation Thailand Case Study*, *supra* note 654 at 16.
- 916 See *International Federation Nepal Case Study*, *supra* note 652, at 23.
- 917 See *International Federation Indonesia Case Study*, *supra* note 1, at 19.
- 918 See *RICHARD*, *supra* note 670, at 19-20.
- 919 See *International Federation Bolivia Case Study*, *supra* note 700, at 20.
- 920 See *International Federation Sri Lanka Case Study*, *supra* note 1, at 25.
- 921 See *International Federation Thailand Case Study*, *supra* note 654 at 17.
- 922 See *International Federation Nepal Case Study*, *supra* note 652, at 28.
- 923 See, e.g., *Peter Goodman, For Tsunami Survivors, a Touch of Scientology, WASHINGTON POST (Jan. 28, 2005)*; *WORLD DISASTERS REPORT 2005*, *supra* note 15, at 93.
- 924 See *Regional Convention on the Recognition of Studies, Diplomas and Degrees in Latin America and the Caribbean*, July 19, 1974; *International Convention on the Recognition of Studies, Diplomas and Degrees in Higher Education in the Arab and European States bordering on the Mediterranean* Dec. 17, 1976; *Convention on the Recognition of Studies, Diplomas and Degrees concerning Higher Education in the Arab States*, Dec. 22, 1978; *Convention on the Recognition of Studies, Diplomas and Degrees in Higher Education in the States belonging to the Europe Region*, Dec. 21, 1979; *Regional Convention on the Recognition of Studies, Certificates, Diplomas, Degrees and other Academic Qualifications in Higher Education in the African States*, Dec. 5, 1981; *Regional Convention on the Recognition of Studies, Diplomas and Degrees in Higher Education in Asia and the Pacific*, Dec. 16, 1983; *Council of Europe/UNESCO Convention on the Recognition of Qualifications concerning Higher Education in the European Region*, April 11, 1997; all available at <http://www.unesco.org>.
- 925 See *Council Directive 93/16/EEC of 5 April 1993*, *Official Journal L 165*, July 7, 1993, at 1-24.
- 926 See *USDTRA Legal Deskbook*, *supra* note 633, at 5-9.
- 927 See *Oslo Guidelines*, *supra* note 673, at annex 1 para. 35.
- 928 See *International Emergency Management Assistance Memorandum of Understanding*, July 18, 2000 (hereinafter, “USA-Canada Provincial MOU”), available at <http://www.ifrc.org/Docs/idrl/I653EN.pdf>.
- 929 See *Balkans National Societies Recommended Rules and Practices*, *supra* note 435, at section B.III.14.
- 930 See *Agreement Between the Parties to the North Atlantic Treaty Regarding the Status of their Forces*, June 19, 1951, art.4, 199 U.N.T.S. 67.
- 931 See *Americas IDRL Forum Report*, *supra* note 471, at 14.
- 932 See *Shephard Forman and Rita Parhad, Paying for Essentials: Resources for Humanitarian Assistance*, *JOURNAL OF HUMANITARIAN ASSISTANCE*, December 1997, available at <http://jha.ac/2007/01/01/pre-2007-archives/>.
- 933 See *RC/RC NGO Code of Conduct*, *supra* note 188, at principle 6; *Key Factors for Development Relief, Annex 5 Resolutions of the 26th International Conference of the Red Cross and Red Crescent (1995)*, at para. 5.
- 934 See *TEC Synthesis Report*, *supra* note 12, at 99.
- 935 *Id.* at 99 n.120.
- 936 See *Appendix 3*, at 211.
- 937 See *International Federation Indonesia Case Study*, *supra* note 1, at 17.
- 938 *Id.*
- 939 See *Convention on Privileges and Immunities of the United Nations*, *supra* note 234, art. 2.
- 940 See *Oslo Guidelines*, *supra* note 673, at annex 1 para. 19.
- 941 See *NATO Model Agreement*, *supra* note 589, at para. 5.6.
- 942 See *International Federation Guatemala Case Study*, *supra* note 661, at 34.
- 943 See *International Federation Thailand Case Study*, *supra* note 654 at 18.
- 944 See *TRC Turkey Case Study*, *supra* note 657, at 52.
- 945 See, e.g., *World Food Programme, DRPK Operation: Funding Crisis Threatens More Cutbacks in Distribution of Food Aid (Jan. 7, 2003)*, available at http://www.wfp.org/newsroom/briefing/2003/Geneva/030107.asp?section=2&sub_section=2.
- 946 *UN General Assembly Res. 46/182*, *supra* note 156, at annex para. 6.
- 947 See *Cotonou Agreement*, *supra* note 553, at art. 72(2).
- 948 See *Oslo Guidelines*, *supra* note 673, at para. 60.
- 949 *Inter-American Convention*, *supra* note 465, at art. 5.
- 950 See *RC/RC NGO Code of Conduct*, *supra* note 188, at annex 1 para. 2.
- 951 See *supra* note 856.
- 952 See *UNITAR Model Rules* *supra* note 433, at 32.
- 953 See, e.g., *Council Regulation (EEC) No. 881/92 of 26 March 1992*, *Official Journal L 95*, April 9, 1992, at annex 2; *Agreement between Sweden and Norway concerning the Improvement of Rescue Services in Frontier Areas*, *supra* note 629, at art. 1; *Memorandum of Understanding between the Republic of South Africa and the Republic of Zambia on the Transportation by Road of Commodities Related to Drought Relief*, June 26, 1992, art. 7, available at <http://www.ifrc.org/Docs/idrl/I164EN.pdf>.
- 954 See *UNITAR Model Rules* *supra* note 433, at Rule 11.
- 955 See *TRC Turkey Case Study*, *supra* note 657, at 36.
- 956 See *International Federation Guatemala Case Study*, *supra* note 661, at 34.
- 957 See *Inter-American Convention*, *supra* note 465, at art. 5.
- 958 See *ASEAN Agreement* *supra* note 30, art. 14(a).

End notes

- 959 See Resolution of the Council of 8 July 1991, *supra* note 560, at art. 5.
- 960 See Appendix 3 at 209.
- 961 International Federation Nepal Case Study, *supra* note 652, at 27.
- 962 See *Transit Denial by Pak Hampering Afghan Reconstruction*, ISLAMIC REPUBLIC NEWS AGENCY (August 9, 2006), available at <http://www.irna.ir/en/news/view/menu-236/0608097142181634.htm>.
- 963 See United Nations Joint Inspection Unit, *Towards a United Nations Humanitarian Assistance Programme for Disaster Response and Reduction: Lessons Learned from the Indian Ocean Tsunami*, U.N. Doc. No. A/61/699 - E/2007/8 (2007), at para. 47 (hereinafter "JIU Report").
- 964 See International Federation Indonesia Case Study, *supra* note 1, at 23.
- 965 See International Federation Sri Lanka Case Study, *supra* note 1, at 27-28.
- 966 Chicago Convention Annex 9, *supra* note 255 at arts. 8.8 & 8.9.
- 967 Cabotage refers to transporting goods or persons between two points within the same country. Foreign carriers are sometimes restricted from practicing cabotage.
- 968 See, e.g., UN General Assembly Res. 57/150, *supra* note 75, at para. 3; Resolution of the Council of 8 July 1991, *supra* note 560, at art. 5; Resolution 23 of 21st International Conference of the Red Cross, *supra* note 404; Framework Convention, *supra* note 67, at art. (4)(a)(7); BSEC Agreement, *supra* note 66, at art. 11.
- 969 See, e.g., Agreement between the Government of the United States of America and the Government of the Republic of Belarus Regarding Cooperation to Facilitate the Provision of Assistance, July 18, 1996, art. 1(c), available at <http://www.ifrc.org/Docs/idrl/I91EN.pdf>; Convention between the Kingdom of the Netherlands and the Kingdom of Belgium on Mutual Assistance in Combating Disasters and Accidents, Nov. 14, 1984, art. 8, 1526 U.N.T.S. 42; Convention Between the French Republic and the Federal Republic of Germany on Mutual Assistance in the Event of Disasters or Serious Accidents, Feb. 3, 1977, art. 6, 1214 U.N.T.S. 80.
- 970 International Federation Indonesia Case Study, *supra* note 1, at 24.
- 971 Some demurrage costs may be due to the ship owner by contract, while others are commonly charged by the port authority for the extended use of its premises.
- 972 See International Federation of Red Cross and Red Crescent Societies, *Operations Update - Eritrea: Improving Food Security* (Sept. 30, 2003), at 4, available at <http://www.ifrc.org/docs/appeals/021330204.pdf>.
- 973 See TRC Turkey Case Study, *supra* note 657, at 36.
- 974 See International Federation of Red Cross and Red Crescent Societies, *Appeal 2002-2003: Mozambique*, at 16, available at <http://www.ifrc.org/docs/appeals/annual02/011702.pdf>.
- 975 Oslo Guidelines, *supra* note 673, at annex 1 para. 11.
- 976 See Lester Salamon & Susan Flaherty, *Nonprofit Law: Ten Issues in Search of Resolution*, in *THE INTERNATIONAL GUIDE TO NONPROFIT LAW 12* (Lester Salamon, ed. John Wiley and Sons inc. 1997). Exceptions exist, for example, with regard to unincorporated associations, which can obtain legal personality without a formal registration process in some states. *Id.*
- 977 See, e.g., M. Cerny, *Taxation and Transition: Nonprofit Organization in a Market Economy*, in *TAX NOTES INTERNATIONAL* (September 27, 1999) at 1217.
- 978 See *id.* at 23-25.
- 979 See, e.g., Convention on the Privileges and Immunities of the United Nations, *supra* note 234, at art. 1.
- 980 Susan Flaherty, *International Law of Nonprofit Organizations*, in *THE INTERNATIONAL GUIDE TO NONPROFIT LAW 47* (Lester Salamon, ed. John Wiley and Sons, inc. 1997).
- 981 See, e.g., International Federation Nepal Case Study, *supra* note 652, at 24 ("It was recognised that in general the procedures for foreign organisations obtaining the necessary legal status to work in Nepal can be time consuming - whether this be the process of forming a status agreement as an international organisation, or seeking to register as a foreign NGO under the Social Welfare Act.").
- 982 See International Federation Thailand Case Study, *supra* note 654 at 14.
- 983 See International Federation Guatemala Case Study, *supra* note 661, at 30.
- 984 See, e.g., European IDRL Forum Report, *supra* note 7, at 4; International Federation Thailand Case Study, *supra* note 654 at 14; See Africa IDRL Forum Report, *supra* note 655, at 7 (concerning problems with bank accounts in Mali).
- 985 See International Federation Indonesia Case Study, *supra* note 1, at 13; International Federation Thailand Case Study, *supra* note 654 at 14.
- 986 See also, International Federation Thailand Case Study, *supra* note 654 at 19.
- 987 See LEON IRISH ET AL., *GUIDELINES FOR LAWS AFFECTING CIVIC ORGANIZATIONS 78* (2d ed., Open Society Institute 2004).
- 988 See International Tax Dialogue, *Tax Treatment of Donor-Financed Projects* (2006), at 2-3.
- 989 See Appendix 3 at 211.
- 990 See USDTRA Legal Deskbook, *supra* note 633, at 4-14.
- 991 See, e.g., David Williams, *Value-Added Tax*, in *TAX LAW DESIGN AND DRAFTING 41* (International Monetary Fund, 1996). VAT will also be an issue on any services and goods disaster responders provide at a fee (such as medical services given in exchange for a usage fee).
- 992 See IRISH, *supra* note 987, at 83-84.
- 993 See, e.g., Bekure Herouy, *The VAT Regime under Ethiopian Law with special Emphasis on Tax Exemption: The Ethiopian and International Experience: Executive Summary* (2004) at 4, available at <http://www.crdaethiopia.org/PolicyDocuments/Executive%20Summary%20on%20VAT.pdf>.
- 994 See TRC Turkey Case Study, *supra* note 657, at 48.
- 995 See A.S. MULLER, *INTERNATIONAL ORGANIZATIONS AND THEIR HOST STATES 246-47* (Brill 1995).
- 996 See Vienna Convention on Diplomatic Relations, *supra* note 229, at art. 34(a) (excluding "[i]ndirect taxes of a kind which are normally incorporated in the price of goods or services" from diplomatic exemption).
- 997 See International Federation of Red Cross and Red Crescent Societies, *Annual Report: Belarus, Moldova and Ukraine*, July 12, 2006 at 18; available at <http://www.ifrc.org/docs/appeals/annual05/05AA071annual.pdf>.
- 998 See, e.g., International Federation of Red Cross and Red Crescent Societies, *Final Report - Vietnam: Floods and Storms*, Jan. 24, 2003, at 10 (noting with appreciation new rules in Vietnam on VAT reimbursement, but noting the need "to try to ensure that, in the future, all items procured by humanitarian organisations for relief assistance are exempt from VAT in the first place, thus negating the need for a lengthy process of reimbursement.")
- 999 See, e.g., Convention on the Privileges and Immunities of the United Nations, *supra* note 234, at art. 5, Vienna Convention on Diplomatic Relations, *supra* note 229, at art. 34.
- 1000 See, e.g., International Federation Fiji Case Study, *supra* note 660, at 22.
- 1001 Where foreign National Societies work under the mantle of the International Federation through an integration agreement, they are able to benefit from its privileges and immunities, including those related to taxes.
- 1002 See International Federation Indonesia Case Study, *supra* note 1, at 19; Sri Lanka Case Study, *supra* note 1, at 25-26.
- 1003 See International Federation Indonesia Case Study, *supra* note 1, at 18.
- 1004 See Inter-American Convention, *supra* note 465, at art. 5.
- 1005 CDERA Agreement, *supra* note 478, at art. 21(3)(a).
- 1006 See BSEC Agreement, *supra* note 66, at art. 10.
- 1007 See, e.g., Grant Agreement between the United States of America and the Islamic Republic of Pakistan concerning the assistance in the transport of relief commodities to Afghan refugee camps in Pakistan, Sept. 30, 1981, art. 6, 1543 U.N.T.S. 80.
- 1008 See, e.g., Agreement between the Government of the United States of America and the Government of the Republic of Belarus Regarding Cooperation to Facilitate the Provision of Assistance, July 18, 1996, art. 1(b), available at <http://www.ifrc.org/Docs/idrl/I91EN.pdf>; Grant Agreement between the Government of the People's Republic of Bangladesh and the United States of America for Relief and Rehabilitation, May 30, 1972, art. 8.2(b), 898 U.N.T.S. 127.
- 1009 See Oslo Guidelines, *supra* note 673, at annex 1 para. 17; NATO Model

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- Agreement, *supra* note 589, at para. 5.4.
- 1010 See Nuclear Assistance Convention, *supra* note 59, at art. 8 (providing for “exemption from taxation, duties or other charges, except those which are normally incorporated in the price of goods or paid for services rendered, in respect of the performance of their assistance functions”); Tampere Convention, *supra* note 21, at art. 5(1)(b) (calling for “exemption from taxation, duties or other charges, except for those which are normally incorporated in the price of goods or services”).
- 1011 See Oslo Guidelines, *supra* note 673, at annex 1 para. 24; Nuclear Assistance Convention, *supra* note 59, at art. 8; Tampere Convention, *supra* note 21, at art. 5(1)(b).
- 1012 See Committee of Experts on International Cooperation in Tax Matters, Taxation of donor-funded projects, U.N. Doc. No. E/C.18/2006/5 (2006) (hereinafter “Committee of Experts Report”).
- 1013 See International Tax Dialogue, Tax Treatment of Donor-Financed Projects (2006), at para. 39.
- 1014 See Committee of Experts Report, *supra* note 1012, at para. 43.
- 1015 See Committee of Experts Report, *supra* note 1012, at para. 43.
- 1016 See Appendix 3 at 202.
- 1017 See, e.g., Press Release, World Food Programme, New pirate attack on aid ship; WFP urges high-level international action against Somali piracy, May 21, 2007; Food shortages worsen as piracy slows aid delivery, IRIN (Dec. 6, 2005).
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- 1149 See *BROWNIE*, *supra* note 52, at chap. 16.
- 1150 See, e.g., *id.* at 652; *Convention on the Privileges and Immunities of the United Nations*, *supra* note 234, at arts. 2 & 5.
- 1151 In some operations, foreign national Red Cross and Red Crescent Societies integrate their activities legally with the International Federation and can thus benefit from its privileges and immunities.
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- 1153 *Id.*
- 1154 See, e.g., *Convention between France and Germany on Mutual Assistance in the Event of Disasters or Serious Accidents*, Feb. 3, 1977, art. 9, 1214 U.N.T.S. 80; *Convention between the Kingdom of the Netherlands and the Kingdom of Belgium on Mutual Assistance in Combating Disasters and Accidents*, Nov. 14, 1984, art. 10, 1526 U.N.T.S. 42; *Abkommen zwischen der Republik Österreich und der Republik Ungarn über die Gegenseitige Hilfeleistung bei Katastrophen oder Schweren Unglücksfällen*, April 26, 1996, art. 11, *Bundesgesetzblatt Nr. 76/1998*, May 15, 1998.
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- 1157 See *Nuclear Assistance Convention*, *supra* note 59, at art. 10.
- 1158 See *Convention on the Transboundary Effects of Industrial Accidents*, *supra* note 62, at annex 10 para. 7.
- 1159 See *Framework Convention*, *supra* note 67, at art. 4(a)(5).
- 1160 See *Tampere Convention*, *supra* note 21, at art. 5.

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- 1161 See *Inter-American Convention*, *supra* note 465, at art. 10.
- 1162 See *CDERA Agreement*, *supra* note 478, at arts. 21 & 23.
- 1163 See *BSEC Agreement*, *supra* note 66, at art. 14.
- 1164 See *African IDRL Forum Report*, *supra* note 453, at 11 & 36; *Inter-American IDRL Forum Report*, *Americas IDRL Forum Report*, *supra* note 471, at 33.
- 1165 John Eriksson, *The International Response to Conflict and Genocide: Lessons from the Rwanda Experience - Synthesis Report* (Steering Committee of the Joint Evaluation of Emergency Assistance to Rwanda 1996) (*hereinafter* "Rwanda Evaluation").
- 1166 *Id.* at 57.
- 1167 *Id.* at 57-58.
- 1168 See generally, Catherine Shea and Sandra Sitar, *NGO Accreditation and Certification: The Way Forward? An Evaluation of the Development Community's Experience* (2004); *Sphere Project, Fostering Accountability and Quality among Humanitarian Aid Agencies through a Process of Accreditation: History, Overview of Current Options and Potential Contribution from Sphere* (2006) (*hereinafter* "Sphere Project Accreditation Paper").
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- 1172 See *Katoch*, *supra* note 117, at 167.
- 1173 *TEC Synthesis Report*, *supra* note 12, at 120.
- 1174 See *Sphere Project Accreditation Paper*, *supra* note 1168 at 2-3.
- 1175 *NGO Impact Initiative*, *supra* note 1075 at 95.
- 1176 See *Hilhorst*, *supra* note 421, at 365.
- 1177 *Id.* at 96 & 98.
- 1178 *United Nations Secretary-General's Special Envoy for Tsunami Recovery, William J. Clinton, Lessons Learned from Tsunami Recovery: Key Propositions for Building Back Better* (2006).
- 1179 See *Chicago Convention Annex 9*, *supra* note 255 at art. 8.8.
- 1180 See *Convention on the Safety of United Nations and Associated Personnel*, *supra* note 351, at art. 1(3).
- 1181 See *Model Customs Agreement*, *supra* note 246, at art. 2, and annex.
- 1182 *Rwanda Evaluation*, *supra* note 1165, at 58.
- 1183 *TEC Synthesis Report*, *supra* note 12, at 120.
- 1184 *NGO Impact Initiative*, *supra* note 1075 at 95 & n.8.
- 1185 *The fact that international law provides nothing better for humanitarian organizations is a crucial caveat to this argument and goes far to explaining why this system would not be appropriate in situations of armed conflict when IHL applies, as discussed below in section 15.2.*
- 1186 See, e.g., *Ambiguity and Change*, *supra* note 130, at 60-61.
- 1187 See, e.g., *Katoch*, *supra* note 117, at 170.
- 1188 See *TEC Synthesis Report*, *supra* note 12, at 61-64; *TEC Coordination Report*, *supra* note 1070, at 77.
- 1189 See *Appendix 3* at 209-10.
- 1190 Angelo Gnaediger, *ICRC Director-General made this point in a 2006 speech pointing to the advantages of the diversity of the humanitarian community: [T]he space for humanitarian action has become increasingly complex, and one of its main characteristics is the great diversity of humanitarian actors. This must be taken as a given, more so even, as a constitutive element at the base of any effort to make our humanitarian community more effective. It is not realistic to expect these differences in shape, scope, identity, history, goals, and approaches to diminish. It is therefore not conceivable that this community be united under a single command, under one authority which, in addition, would be controlling the purse. We at the ICRC definitely see diversity as an asset because the conflicts and emergency situations are quite diverse in nature, intensity, and magnitude. Each of them produces a distinct mix of humanitarian needs and brings along its specific constraints. In the face of this enormous variety of humanitarian calls, the diversity of actors greatly enhances the flexibility and the appropriateness of the response. There is no "one size fits all". This is why we strongly believe in complementarity and collaboration, although we recognise it is a challenge to make it happen.* Angelo Gnaediger, *Keynote Address: The Value of Diversity*, ICVA Conference, Feb. 1, 2006, Geneva, Switzerland.
- 1191 Costanza Adinolfi et al., *Humanitarian Response Review: An Independent Report Commissioned by the United Nations Emergency Relief Coordinator & Under-Secretary General for Humanitarian Affairs, Office for the Coordination of Humanitarian Affairs* (United Nations, August 2005) (*hereinafter*, "Humanitarian Response Review").
- 1192 *Inter-Agency Standing Committee Principles Meeting 12 September 2005, Outcome Statement*, available at <http://www.humanitarianinfo.org/iasc>. As noted above, in a historic step to strengthen its collaboration with the UN and other partners, International Federation has agreed to serve as a convener for the emergency shelter cluster in disaster situations.
- 1193 *This decision has been approved in principle by the Governing Board and General Assembly subject to the signing of a formal agreement with the UN. See International Federation of Red Cross and Red Crescent Societies, 14th Session of the General Assembly, Seoul, Republic of South Korea 11-14 November 2005 Decision Sheet*, at 9 (on file at International Federation). Pending the more permanent agreement, however, International Federation has already begun serving this function, in particular with regard to the Java earthquake of July 2006. See *Natural Disasters and Humanitarian Coordination, Statement by Mr Ibrahim Osman, Deputy Secretary General, at the Humanitarian Segment of the UN Economic and Social Council, in Geneva, July 14, 2006*, available at <http://www.ifrc.org>.
- 1194 See, e.g., Sue Graves, et al., *Lost in translation: Managing coordination and leadership reform in the humanitarian system*, HPG Policy Brief 27 (2007).
- 1195 See *Principles of Partnership: A Statement of Commitment, Endorsed by the Global Humanitarian Platform*, 12 July 2007, available at <http://www.icva.ch/ghp.html>.
- 1196 See *International Federation Bolivia Case Study*, *supra* note 700, at 21-22.
- 1197 See *International Federation Thailand Case Study*, *supra* note 6, at 19.
- 1198 See *Remarks of Major-General Farooq Ahmad Khan at the "ISDR Side Event to ECOSOC 2006: Panel discussion and briefing on progress of the implementation of the Hyogo Framework for Action 2005-2015: Building Resilience of Nations and Communities to Disasters"* July 19, 2006, available at, <http://www.unisdr.org/eng/isdr-system/docs/ecosoc-19jul-Pakistan%20.ppt>.
- 1199 See *International Federation Guatemala Case Study*, *supra* note 661, at 24.
- 1200 See *International Federation Sri Lanka Case Study*, *supra* note 1, at 28-29.
- 1201 See *International Federation Indonesia Case Study*, *supra* note 1, at 26-27.
- 1202 See *Appendix 3* at 210.
- 1203 See *TEC Coordination Report*, *supra* note 1070, at 51.
- 1204 See *Appendix 3* at 212.
- 1205 See *UN General Assembly Res. 2816 (XXVI) (1971)*, at para 8(b); *Measures to Expedite International Relief*, *supra* note 382, at *Recommendation A: Principles and Rules*, *supra* note 397, at para. 8.3; *Nuclear Assistance Convention*, *supra* note 59, at art. 4; *Oil Pollution Convention*, *supra* note 60, at art. 6(i)(a); *BSEC Agreement*, *supra* note 66, at art. 6; *Arab Agreement*, *supra* note 617, at art. 6.
- 1206 See *ASEAN Agreement*, *supra* note 30, at art. 12.
- 1207 See *RC/RC NGO Code of Conduct*, *supra* note 188, at Principle 6.
- 1208 *United Nations Press Release, UN Updates Guidelines for International Military Aid in Disaster Relief Operations* (Nov. 27, 2006), available at <http://www.un.org/apps/news/story.asp?NewsID=20733&Cr=disaster&Cr1=relief>.
- 1209 See *Office for the Coordination of Humanitarian Affairs, Concluding Comments from the Re-launch of the 1994 Oslo Guidelines*, Nov. 27, 2006, Oslo, Norway, at para. 16.
- 1210 See Col. George Topic, *A Long Tradition of Cooperation and Support*, *E-JOURNAL USA, United States Department of State*, (November 2004), at <http://usinfo.state.gov/journals/itps/1104/ijpe/topic.htm>.
- 1211 See *Go Ito & Kazayuki Sasaki, The Self-Defense Forces Overseas: Japan's Les-*

End notes

- sons from the Indian Ocean Tsunami Assistance, *LIAISON*, vol. 3. no.3 (web version), at http://www.coe-dmha.org/Liaison/Vol_3No_3/Dept18.htm.
- 1212 See, e.g., Jane Barry and Anna Jeffreys, *A bridge too far: aid agencies and the military in humanitarian response*, *Humanitarian Practice Network Paper No. 37* (2002), at 7.
- 1213 Institute for Foreign Policy Analysis, *In Times of Crisis: Global and Local Civil-Military Disaster Relief Coordination in the United States and Japan* (2007), at 7.
- 1214 See *TEC Synthesis Report*, *supra* note 12, at 59.
- 1215 See *id.* at 57; Barry and Jeffreys, *supra* note 1212, at 13 (providing multiple examples in the conflict context).
- 1216 Institute for Foreign Policy Analysis, *supra* note 1213, at 7.
- 1217 See Raj Rana, *Contemporary challenges in the civil-military relationship: Complementarity or incompatibility*, 86 *INTERNATIONAL REVIEW OF THE RED CROSS* 565 (2004).
- 1218 Institute for Foreign Policy Analysis, *supra* note 1213, at 34.
- 1219 U.S. Army Maj. Tyler Fitzgerald & Italian Army Maj. Salvatore Moccia, *Lessons Learned from Pakistan : NATO Response Force Debuts, Sharpens its Focus*, *DEFENSE NEWS.COM*, Dec. 5, 2005, at <http://www.defensenews.com/story.php?F=1405428&C=commentary>.
- 1220 See, e.g., *CDERA Agreement*, *supra* note 478, at art. 15.
- 1221 See, e.g., *ASEAN Agreement*, *supra* note 30, at art. 12(2).
- 1222 See Remarks of U.S. Army Col. Mark Oswald, "Role of the Southern European Task Force in FCM," in *Defense Threat Reduction Agency, Foreign Consequence Management Legal Deskbook Workshop I Report*, Vicenza, Italy, 27-28 September 2005 (on file with author).
- 1223 See *Oslo Guidelines*, *supra* note 673, at para. 5.
- 1224 See *id.* at paras. 1 & 32.
- 1225 *Good Humanitarian Donorship Principles*, *supra* note 298, at para. 19.
- 1226 *TEC Coordination Report*, *supra* note 1070, at 46.
- 1227 See also Patrick Webb, *Food as Aid: Trends, Needs and Challenges in the 21st Century*, *World Food Programme occasional Paper No. 14* (2003), at 8 (noting that crises of displacement generated by conflict and natural hazards are "often proximate").
- 1228 For a fuller comparative discussion, see David Fisher, *Domestic regulation of international humanitarian relief in disasters and armed conflict: a comparative analysis*, forthcoming in the *INTERNATIONAL REVIEW OF THE RED CROSS*.
- 1229 See Lydia Polgreen, "Red tape imperils humanitarian efforts in Darfur," *International Herald Tribune*, March 27, 2007; Opbeera McDoom, "UN warns Darfur's aid operation may collapse," *Reuters*, Jan. 17, 2007. A 2006 "fact sheet" on this issue by the Office for the Coordination of Humanitarian Affairs (OCHA) found that "[t]he visas regime for NGOs operating in Sudan is unclear, complicated and lengthy," noting that the government had required multiple renewals of stay visas at a cost of US \$240 per person. OCHA, *Fact Sheet on Access Restrictions in Darfur and Other Areas of Sudan* (April 20, 2006), available at <http://ochaonline.un.org/GetBin.asp?DocID=4494>.
- 1230 See *Refugees International, Kosovo : Shortfalls and difficulties in food aid delivery*, Dec. 9, 1998.
- 1231 See Médecins sans Frontières Press Release, *Doctors Without Borders Calls for Immediate and Unconditional Access to Kosovar Refugees in No Man's Land on Macedonian Border* (April 5, 1999).
- 1232 See *International Federation Sri Lanka Case Study*, *supra* note 1.
- 1233 See Anuj Chopra, *Aid workers in Sri Lanka face escalating risk and red tape*, *CHRISTIAN SCIENCE MONITOR*, (Sept. 27, 2006).
- 1234 See *International Federation Indonesia Case Study*, *supra* note 1, pp. 7-8; *International Crisis Group, Aceh: A New Chance for Peace, Asia Briefing No. 40* (Aug. 15, 2005), at 4.
- 1235 Compare also article 23 of the Fourth Geneva Convention, which makes no reference to particular finding of need.
- 1236 See *Arab Agreement*, *supra* note 617, at art. 1(b).
- 1237 See *SPHERE HANDBOOK*, *supra* note 423, at 6.
- 1238 See *CDERA Agreement*, *supra* note 478, at art. art. 1(d).
- 1239 See *Oslo Guidelines*, *supra* note 673, at para. 10.
- 1240 See *Tampere Convention*, *supra* note 21, at art. 1(6).
- 1241 See *Advisory Opinion on the Legality of the Threat or use of Nuclear Weapons*, 35 I.L.M. 809 (1996), at para. 25.
- 1242 See *International Law Commission, Second report on the effects of armed conflicts on treaties by Mr. Ian Brownlie, Special Rapporteur, UN Doc. No. A/CN.4/570* (2006).
- 1243 *GERTRUDE STEIN, EVERYBODY'S AUTOBIOGRAPHY ch. 4* (1937).
- 1244 See *WORLD DISASTERS REPORT 2000*, *supra* note 19, at 145.
- 1245 See, e.g., *JIU Report*, *supra* note 963, at para. 31.
- 1246 See, e.g., *Fidler*, *supra* note 101, at 466.
- 1247 See, e.g., *JIU Report*, *supra* note 963, at para. 40.
- 1248 For a discussion of the differing approaches taken by states as to the direct application of international law in domestic legal systems, see MALANCZUK, *supra* note 52 at chap. 4.

Appendix 1

Final Goal 3.2, 30th International Conference of the Red Cross and Red Crescent (2003)

Enhance international disaster response through support for the compilation and application of the laws, rules and principles applicable to international disaster response

Actions proposed

3.2.1

All members of the Conference welcome the work undertaken by the International Federation in cooperation with National Societies, States, the United Nations and other bodies to collate and examine the effectiveness of laws, rules and principles applicable to international disaster response, as noted in United Nations General Assembly Resolution on strengthening the effectiveness and coordination of international urban search and rescue assistance (A/RES/57/150).

3.2.2

All members of the Conference recognise that improved awareness, clarification, application and development of laws, rules and principles applicable to international disaster response will assist in facilitating and improving the coordination, timeliness, quality and accountability of international disaster response activities and can therefore make a major contribution to the protection of human dignity in situations of disasters.

3.2.3

States and the components of the Movement are encouraged to work together to ensure the fullest possible consideration and application, where appropriate, of the laws, rules and principles that pertain to international disaster response, as well as the recommendations of Resolution 6 of the 23rd International Conference of the Red Cross and Red Crescent on measures to expedite international relief and United Nations General Assembly Resolution on strengthening the coordination of emergency humanitarian assistance of the United Nations and its accompanying Annex (A/RES/46/182).

3.2.4

States, recognizing the importance of the independent and auxiliary role of National Societies with respect to the public authorities in providing humanitarian services in the event of disaster, are encouraged to work in cooperation with their respective Na-

tional Societies and the International Federation to review existing disaster management laws and operational instruments at the national, regional and international levels so as to enhance harmonization with relevant laws, rules and principles, and where feasible, guidelines applicable to international disaster response.

3.2.5

States that have not yet done so are encouraged to consider acceding to and implementing the Tampere Convention on the Provision of Telecommunication Resources for Disaster Mitigation and Relief Operations in order to facilitate the effective use of telecommunications in disaster and emergency relief operations. States will, as appropriate, also implement the relevant resolutions of the International Conference of the Red Cross and Red Crescent, International Telecommunication Union and United Nations related to the use of telecommunications in disasters, as well as access and protection of disaster response and mitigation workers.

3.2.6

The International Federation and National Societies will continue to lead collaborative efforts, involving States, the United Nations and other relevant bodies, in conducting research and advocacy activities relating to the compilation of the laws, rules and principles applicable to international disaster response. This includes identifying any outstanding needs in terms of the legal and regulatory framework and the development of models, tools and guidelines for practical use in international disaster response activities. This also includes the active promotion of the awareness, dissemination, clarification and application, where appropriate, of the laws, rules and principles applicable to international disaster response, as well as applicable guidelines by States and the international community at all levels. The International Federation will submit a progress report to the International Conference of the Red Cross and Red Crescent in 2007.

Appendix 2

Studies carried out by or in coordination with the International Federation's IDRL Programme (2002-2007)

Abbreviations: GLS = General Legal Study; CLS = Country Legal Study; RLS = Regional Legal Study; OCS = Operational Case Study

| Year | Country/ region | Author and title | Type of study | Partner |
|------|--|---|------------------|---------------------|
| 2002 | France | Virginie Gueriel (unpublished) | CLS | French Red Cross |
| 2002 | Central America | International Federation Regional Delegation (unpublished) | RLS | |
| 2003 | Southern Africa | Tracy Lynn-Field, International Disaster Response Law – Research Report: Southern African Region | RLS | |
| 2003 | Germany | German Red Cross, Disaster Response in Germany: Regulations Concerning Relief Actions | CLS | German Red Cross |
| 2003 | Southern Asia | Anne Bergh et al, International Disaster Response Law Project: Report on Studies and Interviews Conducted in Norway, Sri Lanka and Vietnam | RLS | Norwegian Red Cross |
| 2003 | Mediterranean | Laurianne Tenon, International Legal Mechanisms Regulating Disaster Response in Countries of the Mediterranean Region | RLS | French Red Cross |
| 2003 | Poland | Justyna Mordwilko, International Disaster Response Law Project, Report on International Legal Mechanisms Regulating Disaster Response in Poland | CLS | Polish Red Cross |
| 2003 | Serbia and Montenegro | Bosko Jakovljevic, International Disaster Response Law: Serbia and Montenegro (unpublished) | CLS | Serbian Red Cross |
| 2003 | South Asia, Southern Africa, Central America | Piero Calvi-Pariseti, International Disaster Response Law Project: Report on Findings from South Asia, Southern Africa and Central America | OCS | GIGNOS |
| 2003 | Worldwide | Horst Fischer, International Disaster Response Law: A Preliminary Overview and Analysis of Existing Treaty Law | GLS | |
| 2003 | Worldwide | Victoria Bannon, ed., International Disaster Response Laws, Principles and Practice: Reflections, Prospects and Challenges | Book | |
| 2004 | Belgium | Jessica Lefebure, International Legal Framework Relevant to Disaster Preparedness and Disaster Response Applicable to Belgium | CLS | Belgian Red Cross |

| Year | Country/ region | Author and title | Type of study | Partner |
|------|--------------------|---|------------------|-----------------------------------|
| 2005 | Europe | Georg Potyka & Katrien Beeckman, The Regulatory Framework for Disaster Response Established within the European Union: A Focus on Humanitarian Aid and Civil Protection | RLS | Austrian Red Cross |
| 2005 | Fiji | Victoria Bannon et al, Fiji — Laws, Policies, Planning and Practices on International Disaster Response | CLS | |
| 2005 | Indonesia | Victoria Bannon et al, Indonesia — Laws, Policies, Planning and Practices on International Disaster Response | CLS | Indonesian Red Cross |
| 2005 | Nepal | Victoria Bannon et al, Nepal — Laws, Policies, Planning and Practices on International Disaster Response | CLS | |
| 2006 | Sri Lanka | Victoria Bannon et al, Legal Issues from the International Response to the Tsunami in Sri Lanka | OCS | Sri Lanka Red Cross |
| 2006 | Thailand | Victoria Bannon et al, Legal Issues from the International Response to the Tsunami in Thailand | OCS | D-TRAC |
| 2006 | Turkey | Eyüp G. sbir & F. Neval Genç, International Disaster Response Law: 1999 Marmara Earthquake Case Study | OCS | Turkish Red Crescent |
| 2007 | Africa | Tracy Lynn-Field, Regional (Africa) Survey of Disaster Response Laws, Policies and Principles | RLS | |
| 2007 | Bolivia | Daniel Costa, Legal Issues from the International Response to the Floods in Bolivia (publication forthcoming) | OCS | |
| 2007 | Guatemala | Mary Picard, Legal Issues from the International Response to Tropical Storm Stan in Guatemala | OCS | |
| 2007 | Jamaica | Candice Rochester, Legal challenges to International Response to Natural Disasters in Jamaica: Context of Hurricanes Ivan (2004), Dennis and Emily (2005) | OCS | Govt. of Jamaica |
| 2007 | Americas | Claudia de Windt, Law of Disasters: Toward a Normative Framework in the Americas | RLS | OAS |
| 2007 | Indonesia | Victoria Bannon et al, Legal issues from the International Response to the Tsunami in Indonesia | OCS | |
| 2007 | Mali | Békaye Coulibaly, Legal Issues from the International Response to the Famine and Locust Infestation in Mali (reported to the African IDRL Forum) | OCS | Mali Red Cross |
| 2007 | Middle East | UAE Red Crescent, International Disaster Response Law | RLS | United Arab Emirates Red Crescent |

Appendix 3

Report of the IDRL Questionnaire of 2006

1. Background

Since its inception in 2001, the International Federation of Red Cross and Red Crescent Societies (International Federation) has been gathering and disseminating information about legal issues in international disaster response. In addition to legal research and operational case studies, the International Federation has consulted informally with governments, National Red Cross and Red Crescent Societies, NGOs, UN agencies and other stakeholders to better understand how legal issues impact on their disaster relief operations. Through these efforts, the International Federation has received a great deal of suggestive accounts about legal problems in international disaster response and the degree to which international norms are playing a useful role at the national level. However, the information obtained has been mainly anecdotal and it was considered that a more formal survey process would be helpful in identifying broad trends.

Thus, in 2006–2007, the International Federation distributed questionnaires to governments (both as receivers and providers of international disaster assistance), national Red Cross and Red Crescent Societies, NGOs, UN and other inter-governmental entities, and private companies about their experiences of legal issues, their use of certain international instruments, and legal regimes at the national level. Their responses indicate that while legal problems are not central to every relief operation, the common core of issues have been experienced by nearly all stakeholders at one time or another and existing instruments and national laws are not doing as much as might be desired to address them. This report provides an overall summary of the results of the questionnaires and some additional data and information is provided in the text of the IDRL desk study.

1.1 The process

1.1.1 Development

International Federation field delegates with experience in dealing with legal issues in disaster operations were interviewed by telephone in November 2005 in order to develop a set of questions which could be used in questionnaires directed at a broader group of stakeholders. The draft questionnaires were then shared with all relevant departments in the International Federation secretariat; interested national Red Cross and Red Crescent Societies; and a number of humanitarian partners for input on the text.

1.1.2 Dissemination

In January 2006, questionnaires were prepared in English, Spanish, French, and Arabic, made available for response through an online format as well as in Microsoft Word and hard copy¹. They included both closed and open-ended questions, covering a range of issues relating to disaster relief operations, whether undertaken by disaster responders

¹ Blank copies of the questionnaires are available on the IDRL Programme website at <http://www.ifrc.org/what/disasters/idrl/resources/survey.asp>.

in foreign countries or in the respondent's own territory. Some of the target groups were also asked for assistance in assessing and compiling relevant national law. Respondents were invited to answer the questions "officially" on behalf of their government or organization (as appropriate).

The questionnaires were distributed by both regular and electronic mail to all governments (where possible, through their permanent missions in Geneva) and all national Red Cross and Red Crescent societies. All major humanitarian agencies of the United Nations, members of the largest humanitarian NGO networks (including the International Council of Voluntary Agencies (ICVA), VOICE and Interaction), and 25 private companies were also directly solicited for responses. Humanitarian organizations were solicited with specific questionnaires for the headquarters level, regional offices and field offices in selected disaster-prone countries. For the sake of convenience, all non-Red Cross/Red Crescent humanitarian organizations were grouped together and called "international humanitarian organizations" (hereinafter "IHOs") for the purposes of the survey.

In order to maximise the number of responses, the International Federation took the following steps:

- sought the support of governments and individual heads of humanitarian agencies/organisations by sending a letter to them from the Federation Secretary-General
- sought the support of the Inter-Agency Standing Committee Working Group members
- presented the questionnaire to permanent missions in Geneva;
- disseminated information at Red Cross/Red Crescent Council of Delegates and General Assembly meetings
- advertised on the Reliefweb and International Federation websites
- called upon International Federation field offices and national societies to bring the questionnaire to the attention of the government and international humanitarian agencies in their respective countries and
- encouraged participants in all regional IDRL forums organized in 2006 and 2007 were also invited to respond to the questionnaire.

Although the deadline for completion was initially set for early 2006, responses continued to be received through mid-2007.

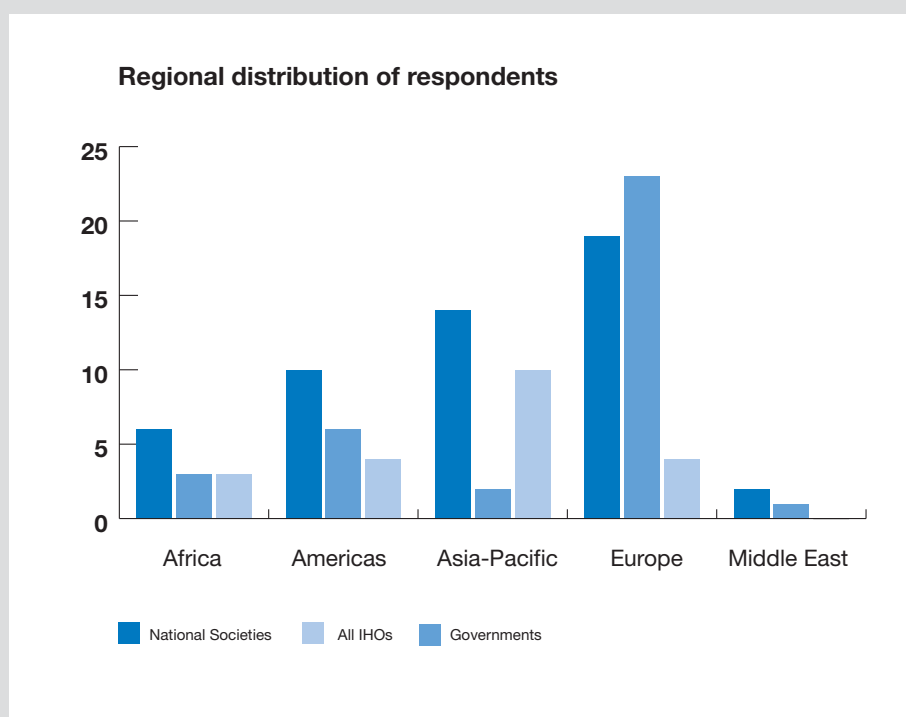
1.2 The response

The International Federation received 118 usable responses to its questionnaires, including 35 governments, 51 national Red Cross and Red Crescent societies, 36 IHOs (mostly NGOs, but also 4 UN agencies and the International Organization for Migration) with some overlap between headquarters, regional and field offices, and one private company (for the full list of respondents, see Annex A to this report).

Unfortunately, responses from governments and national societies were not very geographically representative. Particularly among governments, there was a large predominance of replies coming from Europe. Also, many of the governments and national societies that are most active in international relief activities did not respond,

while some of those that did return completed questionnaires had very little experience of international disaster operations, either abroad or in their own countries. Accordingly, it is likely that the overall figures reported here for governments and national societies understate the degree to which those active in the field encounter the problems discussed. This may partially explain some of the disparities between the responses of IHOs and national societies.

It is also unfortunate that only one private company provided a full response. Accordingly, no conclusions about the experience of the private sector can be drawn here, although relevant responses from that survey have been included in the overall results.



Still, in light of the complexity of the topics addressed and the consequently complicated internal review process many governments and agencies needed to undertake to respond, the overall level of participation was quite positive. There was, in particular, a good cross-section of NGO respondents, including both large and small organizations and NGOs specialized in a number of different sectors.

2. Issues in international disaster response

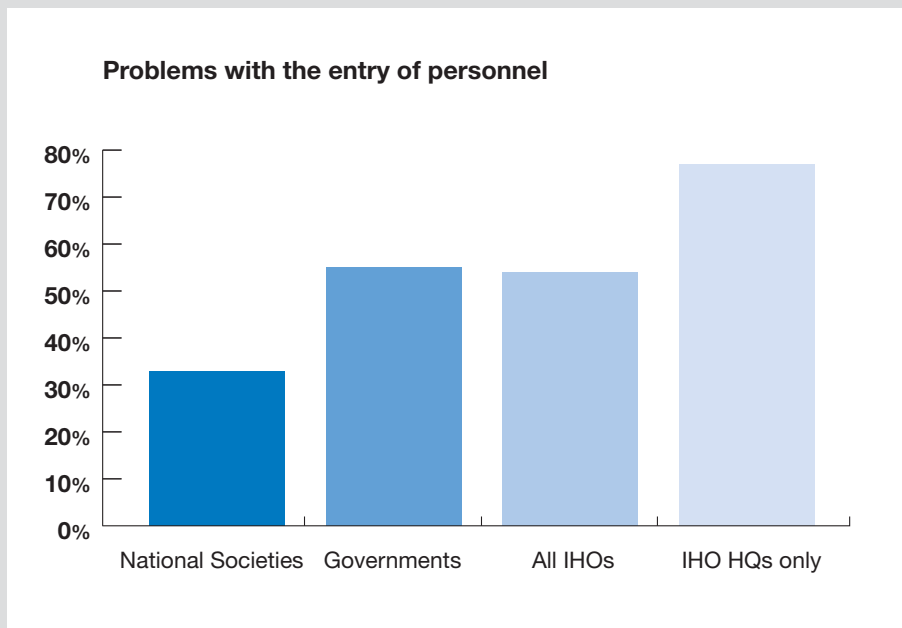
2.1 Legal and bureaucratic challenges

Each category of respondent² reported legal and bureaucratic challenges in international relief operations. IHOs reported the most such problems, particularly their headquarters offices, which drew on experiences of disaster operations around the world.

² Note that not every respondent answered each question posed. Percentages reported here have been tallied counting only those respondents who answered the question at issue.

2.1.1 Entry problems

A significant number of respondents reported difficulties obtaining entry of relief personnel, goods and equipment into disaster-affected states. Surprisingly, this was true even of governments, over half of which reported having experienced entry issues with personnel or materials when seeking to assist other states.

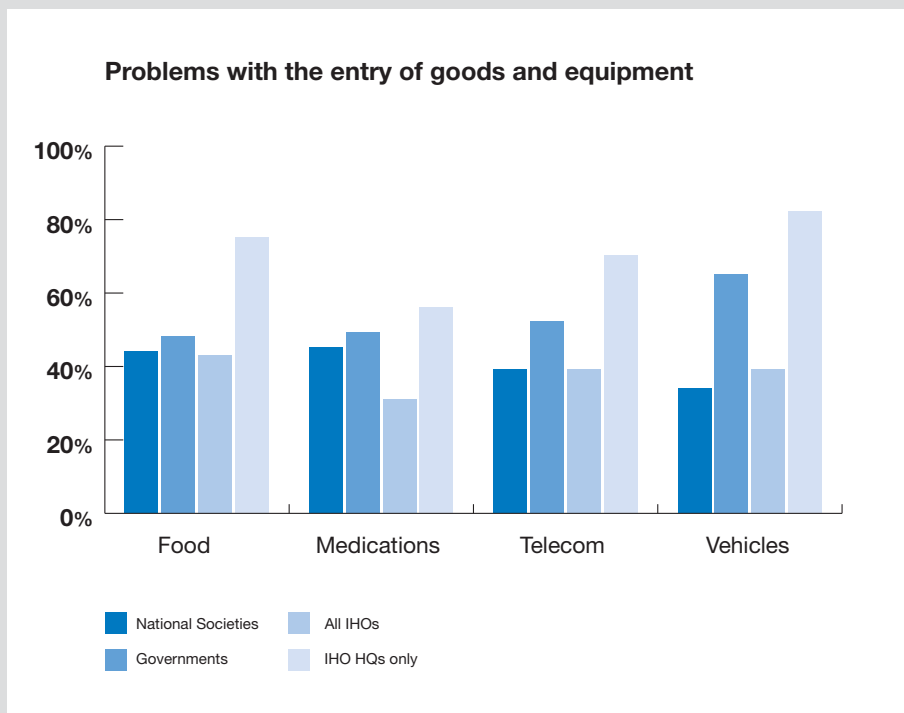


Nearly half (48 per cent) of all respondents reported problems obtaining entry permission (such as visas) for their relief personnel. Somewhat counter-intuitively, governments reported such problems more often for civilian (55 per cent) than military personnel (38 per cent). For both categories, nearly one-fifth (19 per cent for civilian, 17 per cent for military) of governments who answered stated these problems always or frequently occurred. The figures for all IHO respondents (i.e., headquarters, regional and field offices taken together) were similar (54 per cent experienced at least infrequently), but 77 per cent of IHO headquarters offices reported having had such problems at least infrequently.

Thirty-three per cent of national societies reported having had visa problems at least once, but none said they were frequent. Several noted that any initial blockages they encountered were quickly solved due to the mediation of the host national society and/or the International Federation.

With regard to relief goods and equipment: food, medications, ground vehicles and telecommunications articles encountered the most problems with customs. Over 40 per cent of all respondents had had problems at some point importing these items, and the figures were substantially higher for IHO headquarters, as indicated on the chart below. Problems cited included delays as well as prohibitive duties and tariffs.

Customs problems were most frequent with telecommunications equipment. Twenty-three per cent of all respondents and 40 per cent of IHO headquarters stated such problems were always or frequently present.

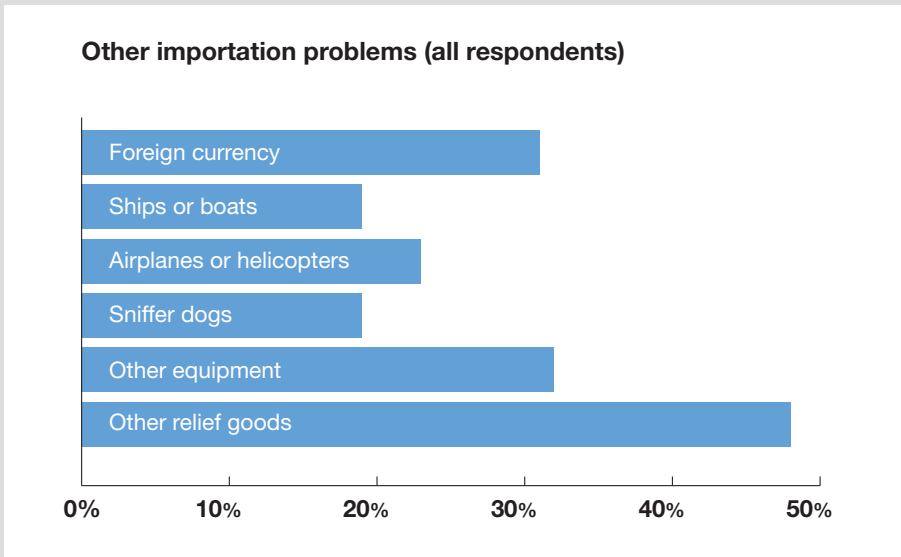


A number of respondents made particular note of the special complexities in importing medications. One government respondent stated that a shipment of medications was blocked for weeks by a tsunami-affected country. Another found that pain-relievers could not be legally imported in a country affected by a major earthquake, making it difficult to treat wounded patients. Other respondents found that medications could not be imported to certain countries unless they had been previously registered there or could not be domestically produced.

National Societies noted not only problems in obtaining entry of relief items provide for relief in foreign states, but also difficulties in receiving internationally-donated items to respond to disasters in their own countries. The most important of these were with medications (for which 40 per cent reported having encountered some importation problems and 12 per cent stated that they occurred frequently or always), vehicles (35 per cent at least infrequently and 14 per cent always or frequently) and food (33 per cent at least infrequently and 8 per cent always or frequently).

Respondents also indicated varying degrees of difficulty in importing other relief items. Governments were the most affected by problems with the entry of ships (33 per cent), aircraft (civilian 37 per cent, military 40 per cent) and sniffer dogs (35 per cent). Issues with foreign currency were most frequently reported by IHO headquarters (67 per cent).

Respondents were asked to estimate the most common time period when entry-related problems arose. Responses varied considerably, but most reported that they occurred in the first several weeks after the disaster.

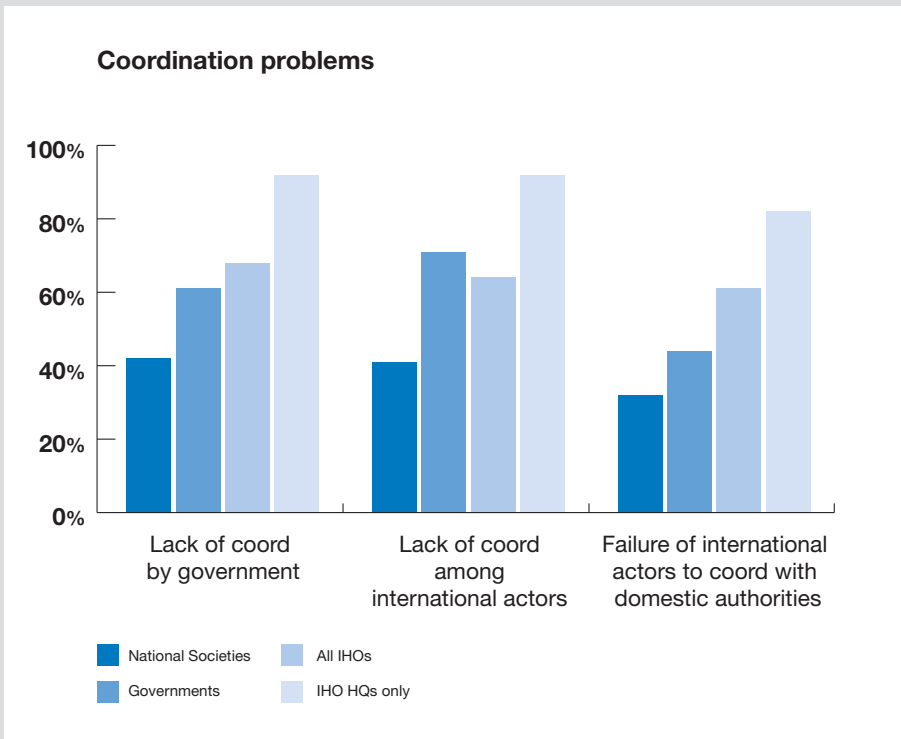


2.1.2 Operational problems

Once relief goods and/or personnel are inside the affected country, a different set of administrative problems arise.

2.1.2.1 Problems encountered by international actors

The problem most frequently cited in this survey was corruption or diversion of aid. Sixty-two percent of respondents had encountered corruption in their operations and 30 per cent encountered it frequently or always. The figures were particularly high for governments (79 per cent, of which 44 per cent frequently or always) and IHO headquarters (85 per cent, of which 15 per cent frequently or always).



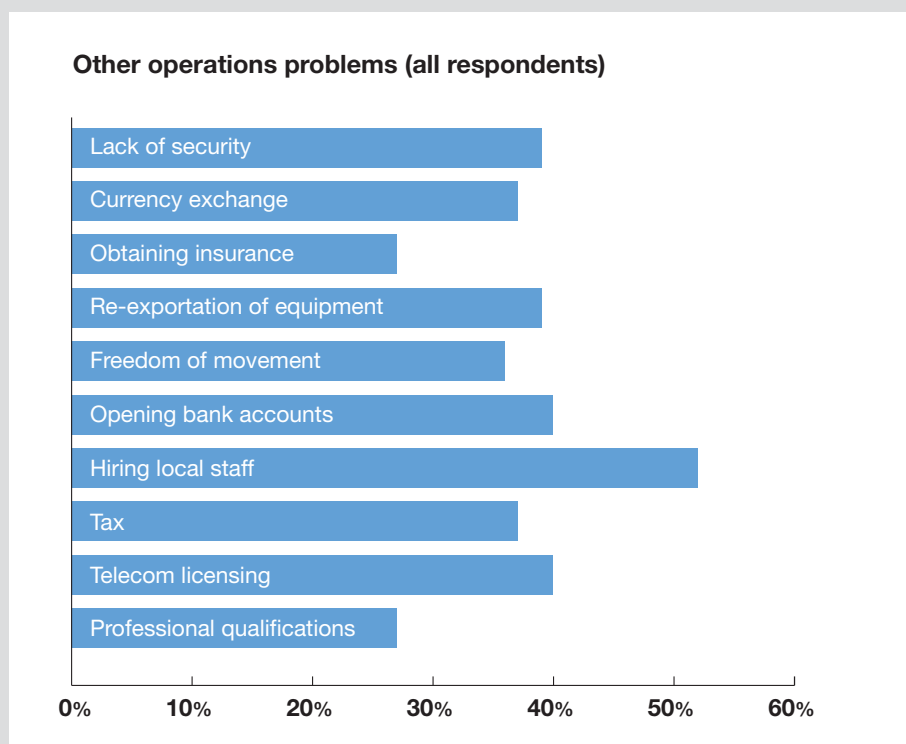
Appendix 3

Also very common were problems with coordination, including with regard to failures of the government of the affected state to provide adequate guidance (reported by 58 per cent of respondents, of which 32 per cent frequently or always), failures of coordination between international relief providers (59 per cent, of which 36 per cent frequently or always), and failures of international actors to coordinate with domestic authorities (44 per cent, of which 13 per cent frequently or always). Ninety-two per cent of IHO headquarters reported having experienced coordination problems by governments and the same proportion noted coordination problems among international actors. Eighty-two per cent reported having seen other international actors failing to coordinate with domestic authorities.

National and international coordination problems are plainly linked. As one respondent pointed out, “[t]he responsibility for effective disaster response rests with a stricken country... Without appropriate structures and procedures at the national level, international coordination is bound to fail.” Respondents reported that these gaps in coordination often led to inequitable delivery of aid, including both duplication in some areas and inadequate aid in others.

One respondent pointed out that “some agencies do not invest in understanding and accessing local NGO networks.” Nevertheless, they noted that, in many cases, local and international NGOs have consciously tried to coordinate activities. Another comment received was that differing views regarding whether or not to respond when there is no request for support from a Government creates difficulties in coordinating disaster response operations.

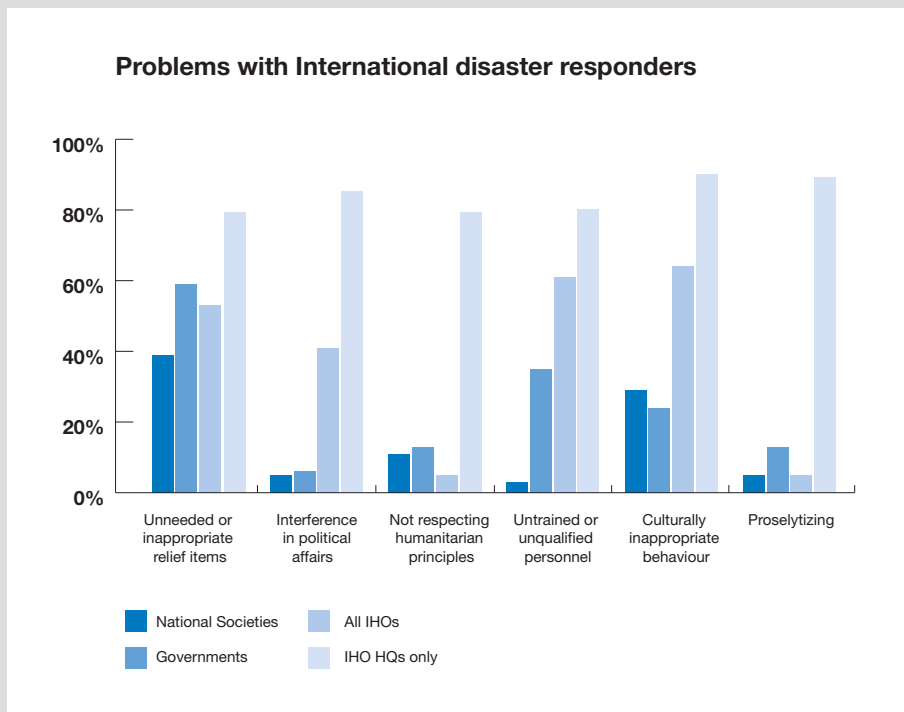
Other commonly cited legal difficulties included barriers to hiring local staff (52 per cent of respondents), opening local bank accounts (40 per cent of respondents) and re-exporting relief equipment and/or unused relief goods (40 per cent of respondents).



2.1.2.2 Quality problems

Respondents also reported on a number of problems in the quality of the assistance provided by international actors. Even more dramatically than for the types of problems discussed above, many more IHO headquarters reported seeing these behaviours than other respondents, as the chart below makes clear.

The most commonly cited problem overall was the provision of unneeded or inappropriate relief items. Forty-eight per cent of all respondents, 59 per cent of governments and 80 per cent of IHO headquarters had experienced this at some point in an international disaster operation. Many respondents complained of the provision of inappropriate types of clothing, food which was not suitable to local eating habits, and medications that were expired or labelled in a language not locally understood.



The use of untrained or unqualified personnel was noted by 42 per cent of respondents and 91 per cent of IHO headquarters. One IHO pointed out that “the use of well-meaning, motivated but untrained volunteers is commonplace in all major disaster responses.” Linked to this was the issue of culturally inappropriate behaviour by international personnel, which was identified by 41 per cent of all respondents and 91 per cent of IHO headquarters. Specific bad behaviours noted included consumption of non-authorized substances, “drinking, boisterous, disrespectful behaviour in Muslim environments,” provocative dress and inappropriate male-female relations. As one respondent observed, “in our commitment to try and get things done, we often overlook the impact of our actions on local norms.”

A number of operating national societies (i.e. those based in the affected state) noted problems of respect by participating national societies of their primary role at the national level. These included:

- the provision of direct assistance, rather than assisting the national society of the affected country

Appendix 3

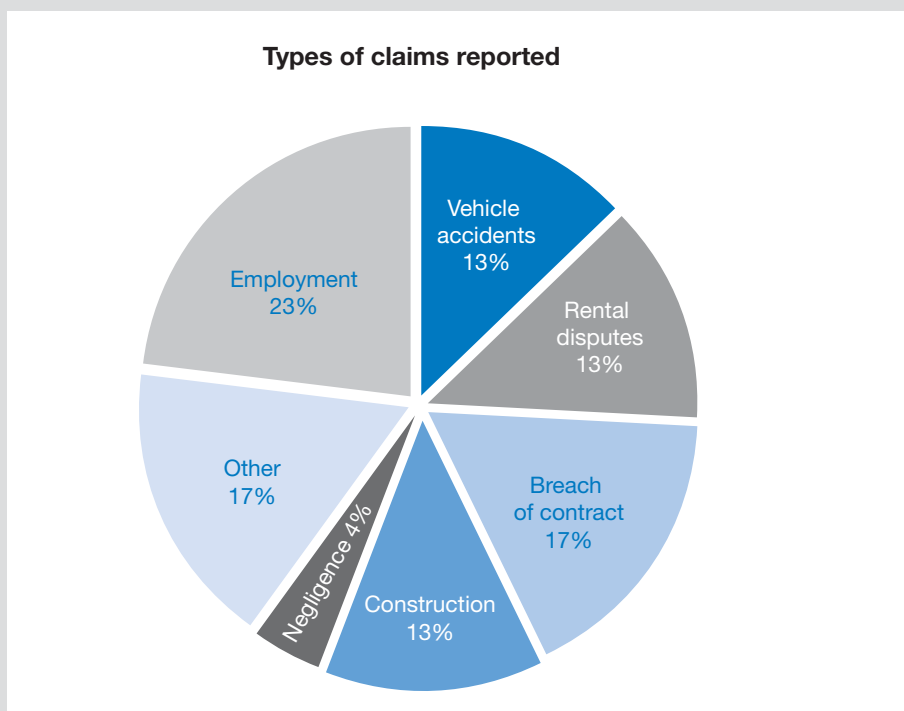
- sending relief goods to the Government, instead of to the national society, which caused a delay in their release and delivery
- a lack of communication with the operating national society in order to establish what is needed in the affected country
- a lack of respect for the volunteers of the operating national society, who were “not considered as the most important operation resource, but as the cheapest work (without any rights)” and
- entry into the field without obtaining permission/an invitation from the local national society, “which was not seen as a coordination counterpart”.

Respondents were asked to identify other challenges that arose with regard to other international disaster responders that were not already addressed in the questionnaire. One IHO noted that “visibility and the need to appear as the first organization to respond” creates situations where there is no possibility to coordinate in timely fashion with other international disaster responders. Other problems identified by national societies included the presence of various IHOs only interested in gaining funds without any genuine commitment to providing relief.

2.1.2.3 Liability issues

Overall, respondents appeared to indicate that neither civil nor criminal liability were a great concern in their operations. Only 4 per cent of all respondents and 10 per cent of IHOs indicated that the potential of civil liability had substantially impeded their operations. Similarly, only 1 per cent of all respondents and 3 per cent of IHOs reported substantial impediments from the potential of criminal investigation or arrest.

Nevertheless, 15 per cent of all respondents and 32 per cent of IHOs (including some UN agencies) had had civil claims brought against them. These were roughly equally divided between employment cases, vehicle accidents, rental disputes, other contractual issues, and construction, in addition to negligence and other types of claims.



Moreover, 6 per cent of all respondents and 19 per cent of IHOs reported that a staff member or volunteer had at one point been criminally investigated or jailed in the course of an international disaster relief operation.

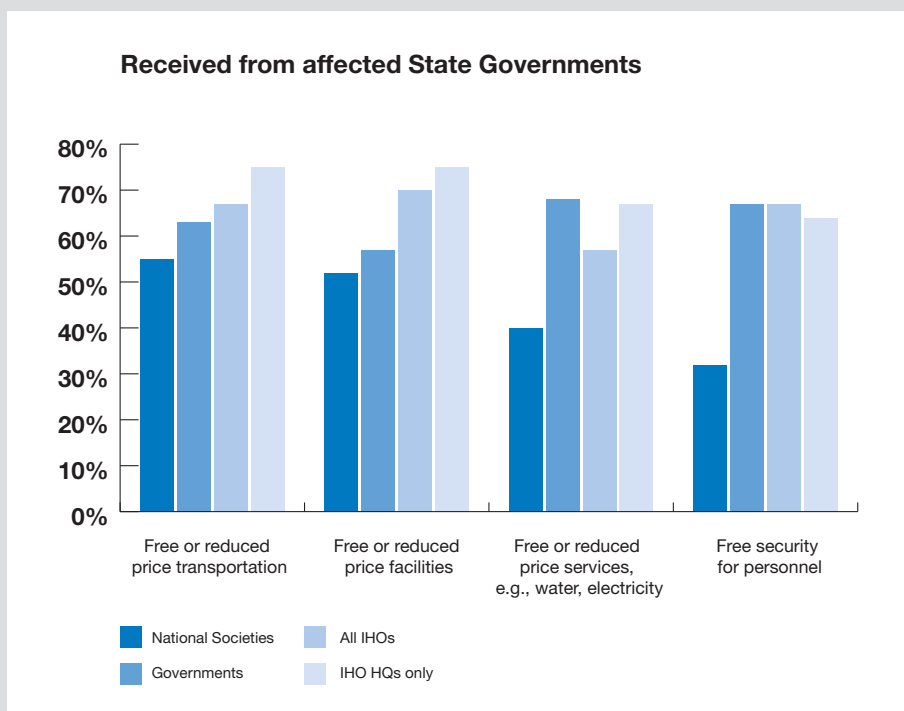
2.2 Measures to facilitate

The experience of international relief operations is certainly not only one of obstacles and opposition between international actors and domestic authorities. Respondents also identified a number of efforts by affected state governments that smoothed and facilitated disaster response operations.

Overall, 49 per cent of respondents indicated that affected state governments had at one point made exceptions to normal laws, rules or procedures in order to facilitate their disaster response operations. However, the treatment of the various groups varied substantially, with 87 per cent of governments reporting having benefited from such exceptions, 48 per cent of IHOs and only 23 per cent of national societies.

It was commonly reported that affected state governments had expedited or waived visa processes for relief personnel and that respondents had received tax and customs exemptions. One respondent also noted the facilitation and cooperation it had received from governments in transit states, which simplified border-crossing and customs procedures. Other responses included allowing exceptions concerning laws concerning movement within the territory, the provision of equipment to assist the relief effort and allowing humanitarian agencies free access to disaster sites.

Over half of the respondents had also benefited from affirmative help from the affected state governments, including free or reduced price transportation (59 per cent of respondents), free or reduced price buildings or facilities (57 per cent), free or reduced price services, such as water and electricity (53 per cent), or free security protection for their personnel (51 per cent).



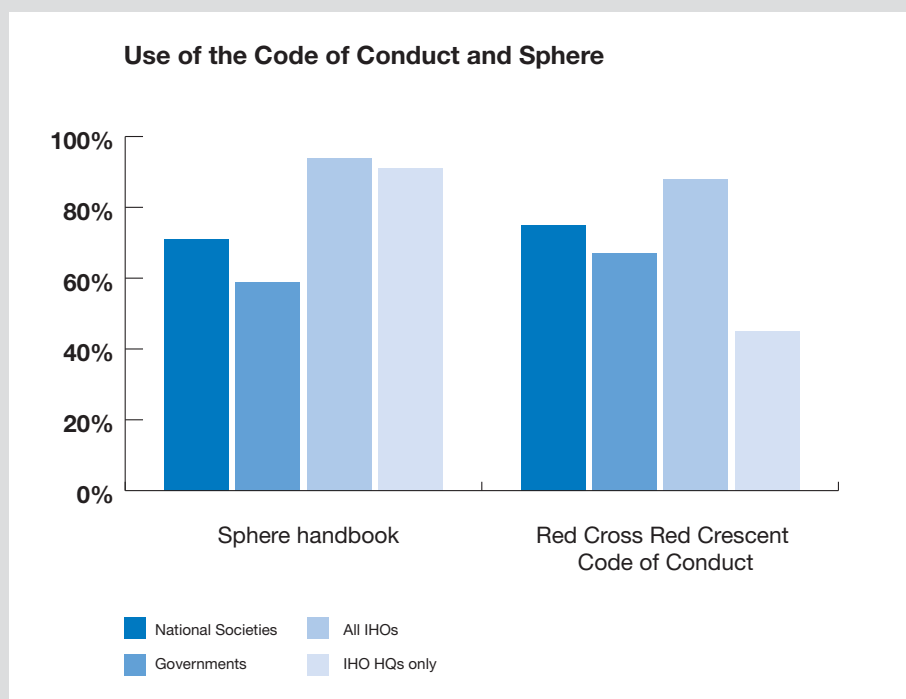
Respondents were additionally asked if their operations had been facilitated by any regional intergovernmental organization. Fifty-six percent of governments indicated that they had. Specific positive mention was made of the NATO Euro-Atlantic Disaster Response Coordinating Centre, and the Caribbean Disaster and Emergency Response Agency (CDERA). The figures were much lower for the other target groups (26 per cent of national societies, 16 per cent of all IHOs and 27 per cent of IHO headquarters), moreover, it is not clear if all of those who responded positively interpreted this question in the manner intended by the drafters, inasmuch as some of the particular organizations they listed were UN agencies, the International Federation or domestic agencies.

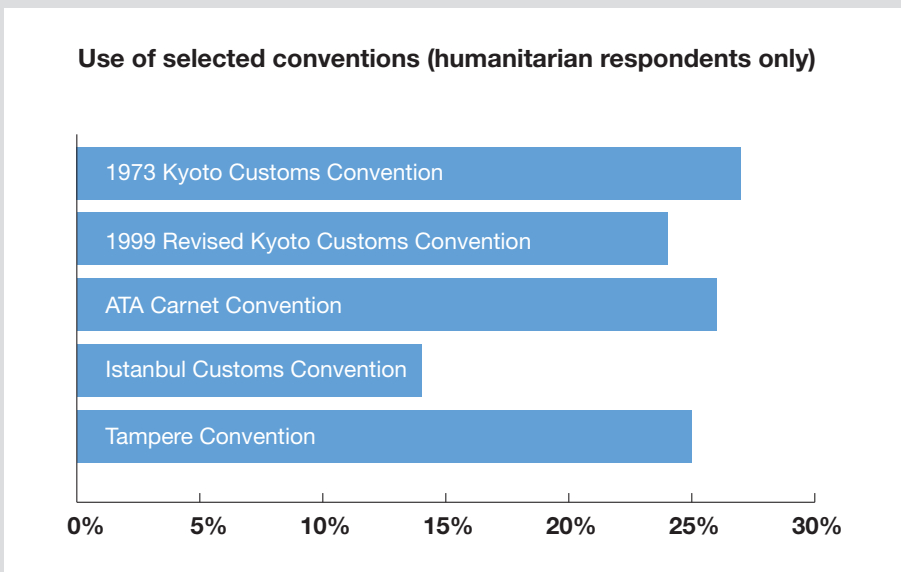
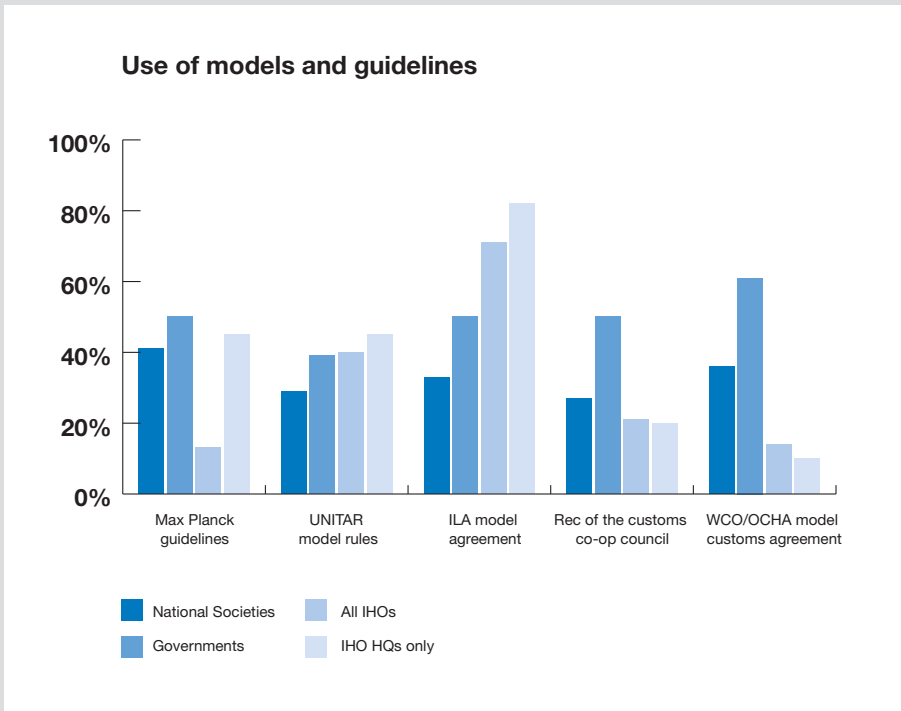
3. Existing legal frameworks

3.1 International instruments

There are a number of international instruments that address legal barriers in international response. The questionnaires referred to several of them, but not all were relevant to each group of stakeholders and a complete comparison was therefore not deemed possible for each instrument. In particular, because of the spotty ratification of most of the relevant treaties, it was considered of little use to ask generally about their employment by governments that might or might not be parties.

All respondents were asked about their use of several international codes or guides listed on the charts below. Respondents reported great use of both the Code of Conduct for the International Red Cross and Red Crescent Movement and NGOs in Disaster Relief (1994) and the Sphere Humanitarian Charter and Minimum Standards in Disaster Response (2000 and 2004). Seventy-six percent of all respondents reported using the Code, and many also stated that they used it frequently or always (61 per cent of national societies, 53 per cent of governments, 82 per cent of IHO headquarters). Likewise, 72 per cent of respondents used the Sphere Handbook, and 50 per cent



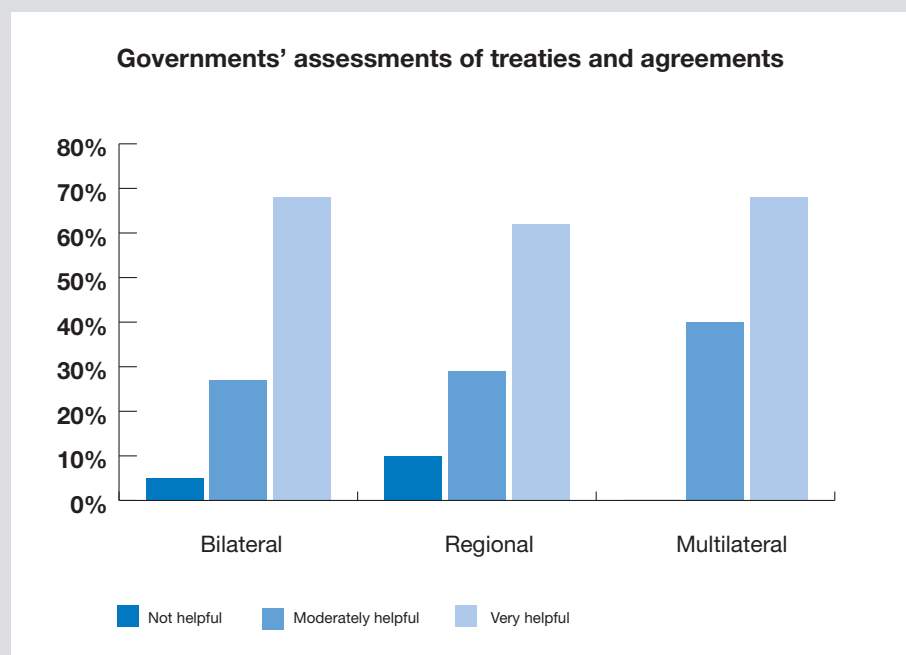


of national societies, 35 per cent of governments, and 82 per cent of IHO headquarters reported using it frequently or always.

Respondents also indicated that they had made use of some of the leading model agreements and draft rules for international disaster operations. Overall, 35 per cent had used the International Guidelines for Humanitarian Assistance Operations (Max Planck Institute, 1991), 33 per cent had used the Model Rules for Disaster Relief Operations (UNITAR, 1982), 46 per cent had used the Draft Model Agreement Relating to Humanitarian Relief Actions (International Law Association, 1982), 32 per cent had used the Recommendation of the Customs Co-operation Council to expedite the forwarding of relief consignments in the event of disasters (T2-423, 1970), and 38 per cent had used the Model Customs Agreement (World Customs Organisation and OCHA, 1996).

National societies and IHOs were also asked about their use of selected conventions related to customs or telecommunications in disaster relief operations. Overall, these were used less often than the above non-binding documents, but 24 per cent reported using Specific Annex E.5 of the Convention on the Simplification and Harmonization of Customs Procedures of 1973 (“Kyoto Convention”), 24 per cent reported using Specific Annex J.5 of the Revised Kyoto Convention of 1999, 26 per cent reported using the Customs Convention on the A.T.A. Carnet for the temporary admission of goods, 14 per cent reported using Annex B.9 of the Convention on Temporary Admission, and 25 per cent reported using the Tampere Convention on the Provision of Telecommunication Resources for Disaster Mitigation and Relief Operations.

Questionnaire responses indicate that governments generally, but not invariably, consider their existing treaties and agreements helpful in facilitating and coordinating international disaster assistance in their own countries. The majority found their bilateral (68 per cent), regional (65 per cent) and global multilateral treaties (60 per cent) “very helpful”. However, this left substantial minorities that felt that these treaties were only “moderately helpful” or “not helpful”.



3.2 National laws and policies

Governments, national societies and IHO field offices were queried about national laws and policies on international disaster relief³. Overall, 68 per cent of respondents indicated that there was disaster-specific legislation in their countries, 67 per cent stated that there was a national-level disaster response plan, and 70 per cent stated that there was a single national coordinating body for disaster relief within the gov-

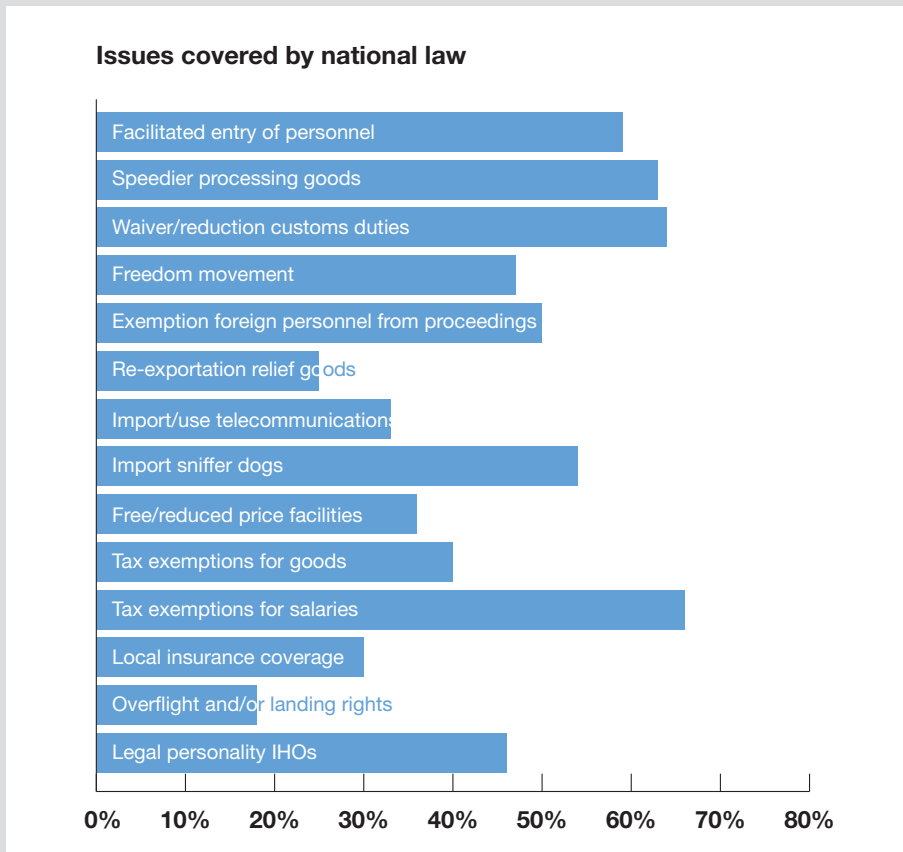
³ There was some overlap in responses; 9 national societies and governments replied from the same country as did 10 of the IHO field offices. It is notable that while their responses were mainly consistent, there were also several apparent disagreements. Overall responses provided here count each country only once and, on the assumption that governments are in the best position to describe their own laws, use the government responses in case of disagreement in overlapping answers. In case of disagreement between non-government actors, the answers were not tallied.

ernment. Fifty percent of respondents indicated that disaster relief was primarily regulated at the national level in their countries, 19 per cent at the provincial level, 24 per cent at the local level, and 7 per cent state that there was no primary level.

Substantially less than half of the respondents indicated that existing disaster-specific laws or policies:

- set out the procedures for requesting and accepting international assistance (38 per cent)
- set out a procedure for determining when international assistance is required (36 per cent) or
- regulated the quality and accountability of international disaster relief operations (25 per cent)

Respondents were also asked to indicate if national law addressed a number of specific issues that might be relevant in disaster operations as indicated on the chart below. Significantly, however, when questioned as to whether disaster-specific laws and/or policies adequately addressed the legal issues of international disaster response, the majority of national societies (54 per cent) and IHO field offices (75 per cent) thought that they did not. On the other hand, 70 per cent of national societies and 60 per cent of IHO Field Offices felt that the relevant provisions of existing laws and policies were adequately implemented when disasters occurred.

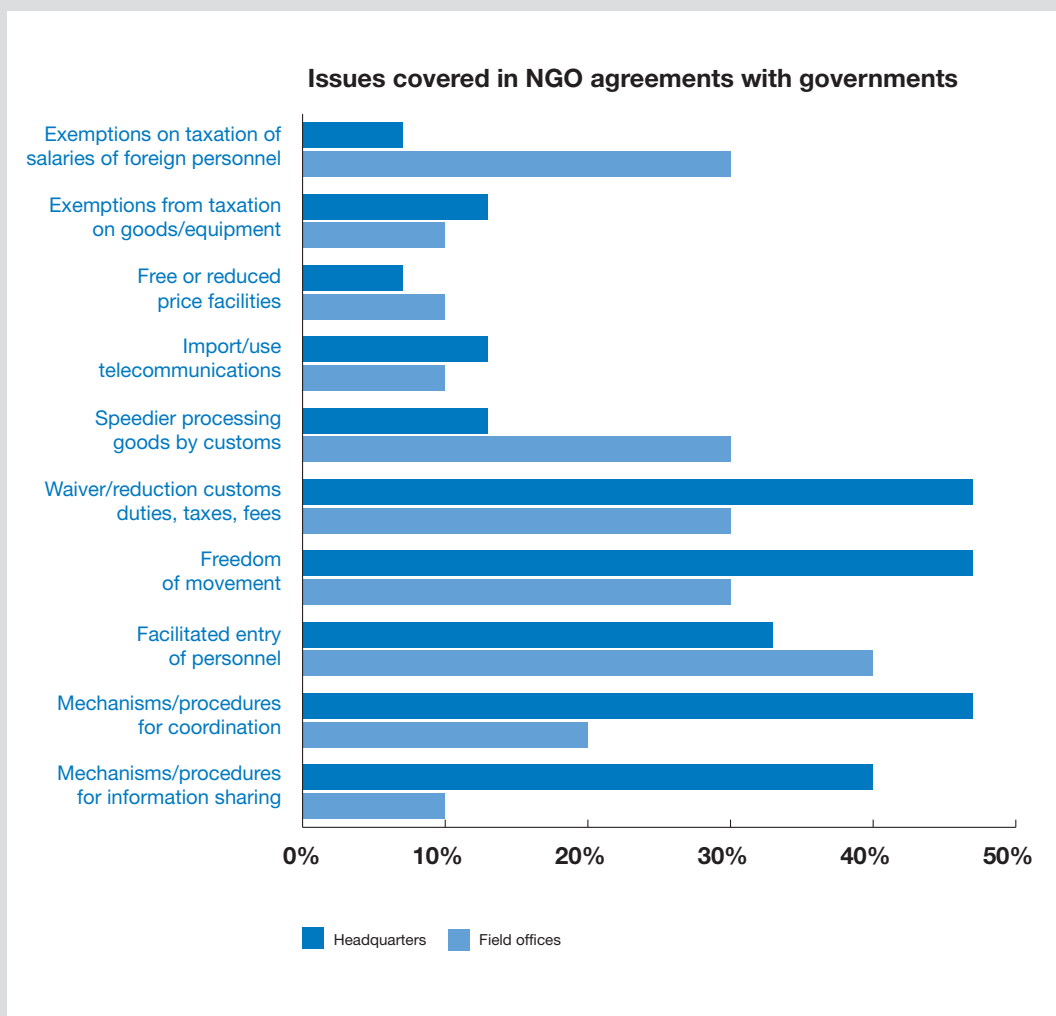


3.3 IHO agreements with governments

IHOs were asked about agreements they had signed with governments of affected states regarding their disaster relief operations. Responses showed that 80 per cent of responding regional offices and 53 per cent of Field Offices had signed specific agreements governing their disaster relief operations with the government of the countries within which they operated. Forty-seven percent of IHO headquarters stated that they frequently or always concluded such agreements.

Sixty-two percent of the IHO headquarters indicated that their agreements were usually made during rather than before disaster relief operations. Twenty-two percent of the IHO headquarters and 67 per cent of the field offices stated that these agreements generally addressed the entire mandate of the organization in the country. Responses from field offices indicated that their agreements are often held with the ministry of health or ministry of foreign affairs. A number of field offices indicated that they had two agreements: a global agreement with the government and also a specific letter of understanding for each emergency operation for the short-term.

The following graph illustrates some of the issues addressed within agreements between governments and IHO headquarters and field offices (for NGOs only).



None of agreements IHO respondents had with governments addressed recognition of foreign diplomas/professional qualifications, local insurance or over flight and/or landing rights

Even where there agreements addressed relevant problem areas, several IHO respondents noted that they were not always effective. One lamented that “nobody really referred to and most probably nobody [ever] read” its agreement. Others pointed out that, notwithstanding the Government’s undertaking in the agreement, they found that they were required to obtain additional permissions from different ministries or that the agreement was not recognized at the provincial or local level.

3.4 Briefings on legal issues

National Societies and IHOs were finally asked whether their organisations generally conducted briefings on relevant international and/or national laws for international disaster relief personnel prior to deployment in disaster relief operations. Fifty per cent of national societies and 29 per cent of IHOs reported that they did so.

Conclusion

While their impact varies by sector and actor, the above findings demonstrate that legal difficulties are a real issue for governments, national societies and IHOs in international disaster response. Particularly for IHOs, administrative barriers to entry and operations are apparently widespread. Disturbingly, a great many IHOs are also aware of other international actors providing poor quality assistance or failing to adequately coordinate with others in their work. While many states have disaster-specific laws and plans, respondents indicate that they are not adequate to address the common issues of international disaster response, and it appears that less than half of them address some of the most central issues. At the same time, many affected state governments have provided special exemptions and facilities to international actors to facilitate their work. While good use is being made of some existing international instruments – in particular non-binding codes of conduct and bilateral agreements – it appears that they are not addressing all the most pressing issues.

Annex A: Respondents to the IDRL questionnaire

Governments

Andorra, Armenia, Austria, Barbados, Brazil, Burkina Faso, Canada, Cote d'Ivoire, Croatia, Czech Republic, Republic of Croatia, Ecuador, Ethiopia, France, Georgia, Iceland, Italy, Latvia, Lithuania, Netherlands, Norway, Paraguay, Poland, Portugal, Republic of Korea, Slovak Republic, Syrian Arab Republic, Sweden, Switzerland, Tajikistan, Thailand, Tortola - British Virgin Islands, Tunisia, Turkey, Ukraine

National Red Cross and Red Crescent Societies

Austria, Azerbaijan, Belgium, Bolivia, Botswana, Brazil, Bulgaria, Cambodia, Canada, Central African Republic, Chile, China, Colombia, Comoros, Costa Rica, Czech Republic, Democratic People's Republic of Korea (DPRK), Ecuador, Egypt, Estonia, Fiji, Germany, Greece, Honduras, Jordan, Kazakhstan, Laos, Liechtenstein, Malaysia, Mexico, Moldova, New Zealand, Poland, Qatar, Republic of Korea, Romania, Russia, Slovakia, Spain, Sri Lanka, Sweden, Switzerland, Tajikistan, Thailand, Tonga, Turkey, Ukraine, UK, Uruguay,* Vietnam, Zambia

NGOs, UN agencies and other intergovernmental organizations

Field Offices: CARE (Honduras), Caritas Germany (Indonesia), International Medical Corps (IMC) East Africa (East Africa – Kenya), IOM (Timor Leste), IOM (Colombia), D-TRAC (Thailand), Malteser International (Thailand), MSF Belgium (Indonesia), MSF Belgium (Kenya), MSF France (Kenya), Plan (Pakistan), UNDP (Indonesia), UNICEF (DPRK), UN OCHA (DPRK), UN World Food Programme (DPRK), Veterinaries sans Frontières Belgium

Regional Offices: Action Contre la Faim (France), Lutheran World Foundation (El Salvador), World Vision International (Europe), Oxfam (UK), UNICEF (Panama)

Headquarters: AMURT, Green Cross International, Habitat for Humanity International, HelpAge International, Islamic Relief, Médecins du Monde, Plan (UK), Première Urgence, Oxfam (UK), Salvation Army, Save the Children USA, Tulipe, Warchild UK, World Food Programme, World Relief, World Vision International

Private companies

Ericsson

** The Uruguay Red Cross Society noted that it had never been involved in international relief either inside or outside its borders and its replies on issues related to these issues were thus not tallied.*

The Fundamental Principles of the International Red Cross and Red Crescent Movement

Humanity

The International Red Cross and Red Crescent Movement, born of a desire to bring assistance without discrimination to the wounded on the battlefield, endeavours, in its international and national capacity, to prevent and alleviate human suffering wherever it may be found. Its purpose is to protect life and health and to ensure respect for the human being. It promotes mutual understanding, friendship, cooperation and lasting peace amongst all peoples.

Impartiality

It makes no discrimination as to nationality, race, religious beliefs, class or political opinions. It endeavours to relieve the suffering of individuals, being guided solely by their needs, and to give priority to the most urgent cases of distress.

Neutrality

In order to enjoy the confidence of all, the Movement may not take sides in hostilities or engage at any time in controversies of a political, racial, religious or ideological nature.

Independence

The Movement is independent. The National Societies, while auxiliaries in the humanitarian services of their governments and subject to the laws of their respective countries, must always maintain their autonomy so that they may be able at all times to act in accordance with the principles of the Movement.

Voluntary service

It is a voluntary relief movement not prompted in any manner by desire for gain.

Unity

There can be only one Red Cross or Red Crescent Society in any one country. It must be open to all. It must carry on its humanitarian work throughout its territory.

Universality

The International Red Cross and Red Crescent Movement, in which all societies have equal status and share equal responsibilities and duties in helping each other, is worldwide.



The International Federation of Red Cross and Red Crescent Societies promotes the humanitarian activities of National Societies among vulnerable people.

By coordinating international disaster relief and encouraging development support it seeks to prevent and alleviate human suffering.

The International Federation, the National Societies and the International Committee of the Red Cross together constitute the International Red Cross and Red Crescent Movement.