



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

Summary version

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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Please note that this is a summary version of a larger study.
The full study is available at <http://www.ifrc.org/idrl>.

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Table of abbreviations

APEC	Asia Pacific Economic Cooperation
ASEAN	Association of Southeast Asian Nations
BSEC	Black Sea Economic Cooperation
CAPRADE	Andean Committee for Disaster Prevention and Assistance
CDERA	Caribbean Disaster Emergency Response Agency
CEPREDENAC	Coordination Centre for the Prevention of Natural Disasters in Central America
CERF	Central Emergency Response Fund
DREF	Disaster Relief Emergency Fund
ECO	Economic Cooperation Organization
ECOSOC	Economic and Social Council
ECOWAS	Economic Community of West African States
EU	European Union
IDP	Internally displaced person
IDRL	International Disaster Response Laws, Rules and Principles
IGAD	Intergovernmental Authority on Development
IHL	International humanitarian law
IRU	International Relief Union
ITU	International Telecommunications Union
NATO	North Atlantic Treaty Organization
NGO	Non-governmental organization
OAS	Organization of American States
OCHA	Office for the Coordination of Humanitarian Affairs
PAHO	Pan-American Health Organization
SAARC	South Asian Association for Regional Cooperation
SADC	Southern African Development Community
UN	United Nations
VAT	Value-added tax
WHO	World Health Organization



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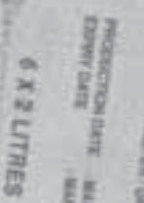
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Introduction

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.

It is also little known that there is a large number of international instruments bearing on these issues, including treaties (particularly at the regional and bilateral levels), resolutions, guidelines, codes and models. However, this international regulatory framework, increasingly known as “**International Disaster Response Laws Rules and Principles**” or “**IDRL**”, has a number of gaps. These include 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.

Meanwhile, at the national level, few regulatory systems are adequately prepared for the potential legal issues related to receiving international assistance. As a result, rule making on international disaster relief tends to take place in the charged aftermath of major disasters, just when confusion, delay and inefficiency can least be afforded.

The desk study summarized here offers an overview of existing IDRL and of the common regulatory problem areas in non-conflict disasters. It draws on an extensive process of consultations and research carried out over six years, including over 20 case studies and a global survey of governments and humanitarian organizations. Its major recommendation is the adoption and use of the draft “**Guidelines on the Domestic Facilitation and Regulation on International Disaster Relief and Initial Recovery Assistance**” which were developed through a series of formal regional forums gathering high-level representatives of governments, National Red Cross and Red Crescent Societies and humanitarian partners from 2006 to 2007. The draft Guidelines will be taken up by the International Conference of the Red Cross and Red Crescent in November 2007.

Both the draft guidelines and the full version of this desk study are available upon request to the International Federation of Red Cross and Red Crescent Societies (hereinafter “the International Federation”) or online at <http://www.ifrc.org/idrl>.

Part I: Background

In order to appreciate the international normative framework and the common regulatory problem areas, it is helpful to take both the historical and operational contexts into account.

1. Historical context

While there are some older precedents for international regulation of peacetime relief, the first serious attempts to codify rules in this area did not commence until the 19th century, with the first sanitary conventions and treaties addressing emergency telecommunications and naval vessels in distress. In 1927, a conference of 43 states organized under the League of Nations adopted the Convention and Statutes Establishing an **International Relief Union** (“IRU”). The IRU was designed to be a centralized operational agency, funnelling international funds and support in disaster settings, coordinating other actors, and promoting study and research on disaster management. However, it 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.

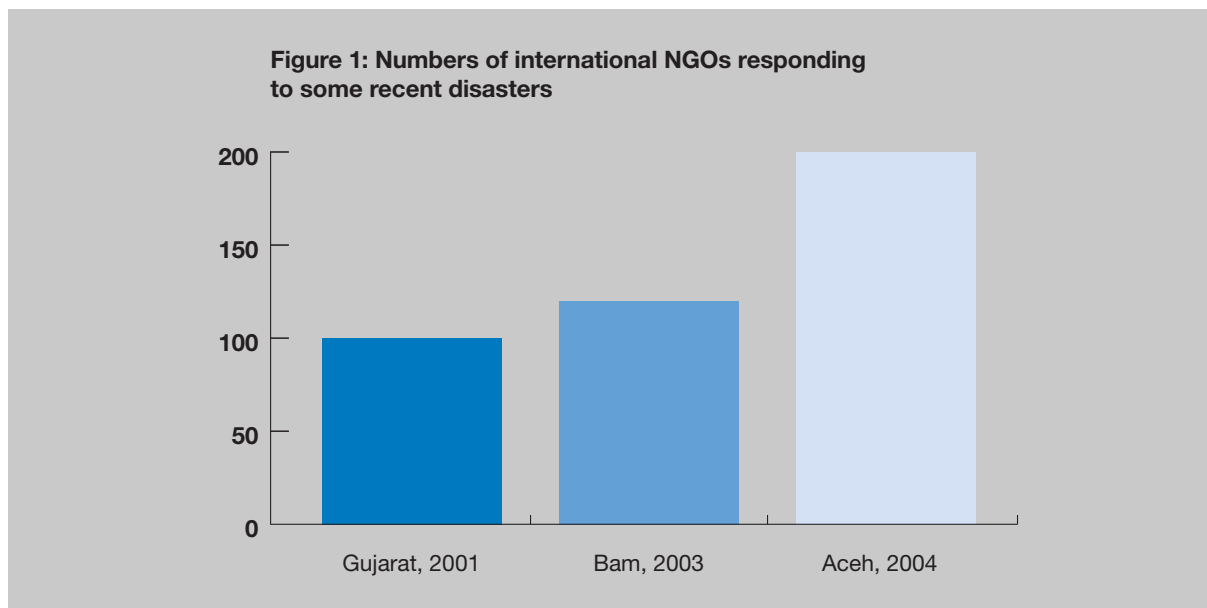
The next attempt to create a comprehensive international legal regime for international disaster assistance did not come until fifty years later, when the Office of the United Nations Disaster Relief Coordinator – predecessor to the present-day Office for the Coordination of Humanitarian Affairs (OCHA) – proposed a draft **“Convention on Expediting the Delivery of Emergency Assistance”** to the UN Economic and Social Council. The Draft Convention sought to solve a number of logistical issues, many of which still remain problematic to the present day. However, despite referral to the Second Committee by ECOSOC in 1984, the Draft Convention was never taken up by the United Nations General Assembly.

Since the 1980s, a number of sectoral and regional treaties related to disaster response have been adopted, but none with the universal scope to which the Draft Convention aspired. In the absence of such a centralized regime, international law on disaster relief has thus developed in a fragmented manner, often through the inclusion of disaster-related provisions in treaties of a more general character or through declarations or resolutions in various forums.



2. Operational context

In addition to fragmentation at the international level, the regulation of international disaster response is challenged today by recent growth both in the incidence of disasters and in the size and diversity of the international disaster response community.



In the decade of the 1970s, there were 1,231 reported disasters. 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 and maybe even accelerate, in particular due to the effects of climate change, according to the Intergovernmental Panel on Climate Change.

At the same time, the numbers and types of international actors responding to major disasters have risen substantially. More governmental actors, and particularly more militaries, are providing international disaster assistance than ever before. More National Red Cross and Red Crescent Societies, UN agencies and regional organizations, and many more NGOs (as illustrated in Figure 1) are becoming involved. Private companies are also taking an increasing interest in international relief, both in selling related products and services and in providing charitable assistance, and private individuals and civil society organizations are increasingly finding their way to disasters zones.

Taken together, these two trends are likely to further complicate regulatory issues in the coming years.

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

In the face of this complexity, the current international legal framework provides more guidance than is often realized, but it is incomplete and lacks coherence.

1. Global law and norms

At the global level, relevant instruments can be found in a number of different areas of law.

While **international humanitarian law** is not directly applicable to non-conflict disasters, its approach to humanitarian relief issues can be instructive by way of analogy.

On the other hand, **human rights law** (IHL) is applicable, though few human rights instruments directly refer to disasters. Many treaties (notably the International Covenant on Civil and Political Rights of 1966 and the International Covenant on Economic, Social and Cultural Rights of 1966) set out rights germane to international disaster assistance, such as the rights to life, food and water, housing, clothing, health, livelihood, and freedom from discrimination, among others.

Moreover, while refugee status is not recognized on the basis of disaster-induced displacement, **refugee law** instruments, including the Convention Relating to the Status of Refugees of 1951, set out rights of asylum seekers and refugees that can be relevant if their host country experiences a disaster. For their part, the non-binding Guiding Principles on Internal Displacement of 1998 do recognize internal displacement on the basis of disasters and call, among other things, for consent to offers of humanitarian assistance to internally displaced persons (IDPs) not to be arbitrarily withheld.

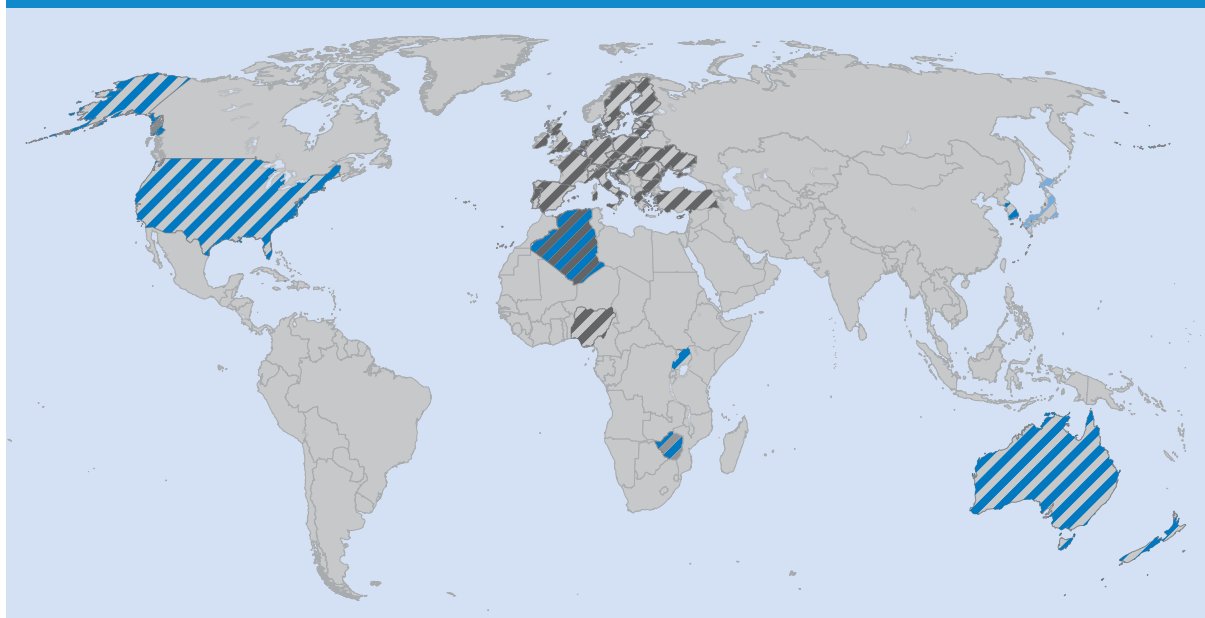
The law of **privileges and immunities** is also not directly aimed at disaster relief, but the specific entitlements it provides to some international actors – including exemptions from immigration restrictions, customs duties and regulations, and judicial process – can be very relevant to disaster response operations. These entitlements are available to diplomats, UN agencies and other inter-governmental organizations. They are also accorded to the International Federation and the International Committee of the Red Cross in bilateral status agreements with states in which they operate.

More focused responses to technical problems in international disaster response can be found in several instruments related to **customs law**. For example, both the Kyoto Convention on the Simplification and Harmonization of Customs Procedures as amended in 1999 (hereinafter “the Kyoto Customs Convention”) and the Istanbul Convention on Temporary Admission of 1990 (hereinafter, “the Istanbul Customs Convention”) include annexes specifically focused on reducing barriers to customs clearance of relief consignments and waiving associated duties and charges. However, like a number of other treaties in this area, they have relatively few parties, as illustrated by the map below.

Several treaties in the area of **transport law** also have individual provisions designed to ease the entry of disaster relief items and personnel. These include the Convention on Facilitation of International Maritime Traffic of 1965 and Annex 9 to the Convention on International Civil Aviation of 1944.

One of the best-known global instruments on disaster response relates to **telecommunications law**. The Tampere Convention on the Provision of Telecommunication Resources for Disaster Mitigation and Relief Operations of 1998

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

(hereinafter, “the Tampere Convention”) calls on state parties to reduce regulatory barriers to the use of telecommunications resources, including restrictions on import or export, the use of particular types of equipment, and the use of particular radio-frequency spectrums. Importantly, the Tampere Convention applies not only to states but also to other entities providing relief, including humanitarian organizations. Various organs of the International Telecommunications Unit (ITU) have also developed resolutions and recommendations of relevance to disaster relief.

Several instruments focusing on **donors** are also important for disaster relief. These include the Food Aid Convention as amended in 1999, which sets out not only minimal donation commitments but also progressive quality standards for food assistance, and the non-binding Principles and Practice of Good Humanitarian Donorship of 2003 (hereinafter, “the Good Humanitarian Donorship Principles”), which emphasize the responsibility of donors to provide their funding in ways supportive of equitable and appropriate relief. Assisting states are also addressed by specific instruments related to **civil defence** and **military** actors, such as the Framework Convention on Civil Defence of 2000 (hereinafter, “the Framework Convention”) and the non-binding Oslo Guidelines on the Use of Military and Civil Defence Assets in Disaster Relief, as amended in 2006.

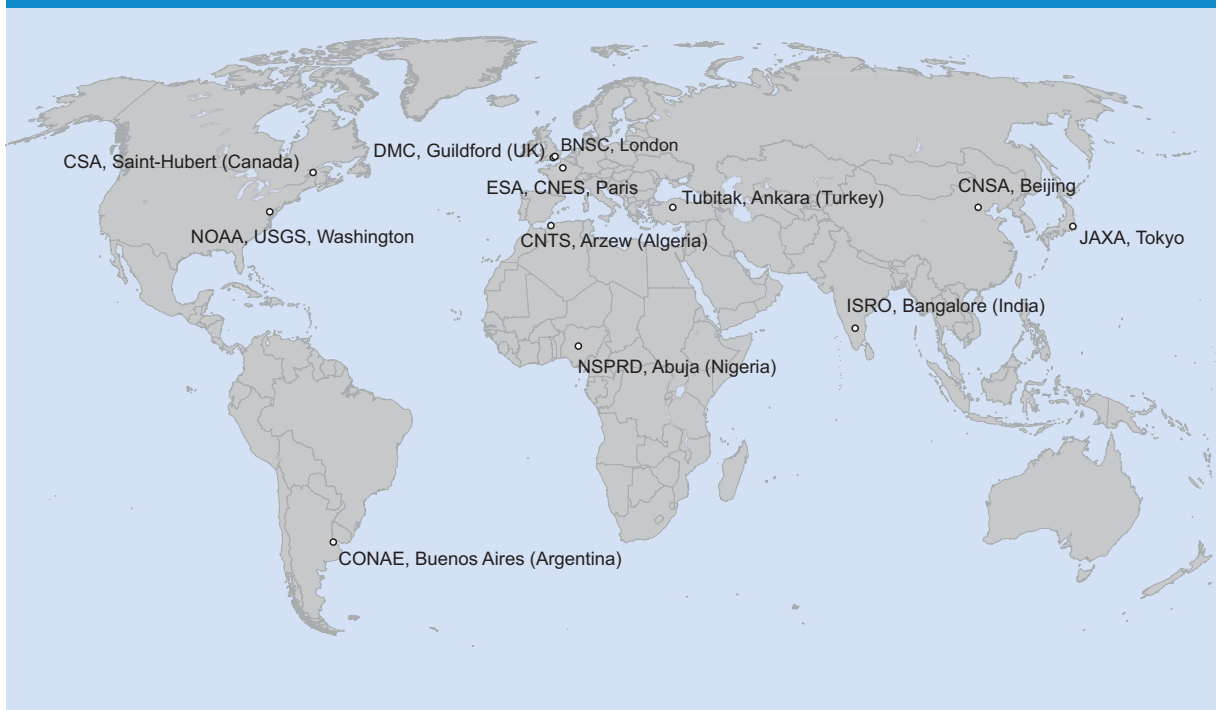
In 2005, the International Health Regulations were revised and greatly expanded, providing strong systems for the international exchange of information pertinent to prevention and response to the spread of diseases. The World Health Organization (WHO) has also been key in developing guidelines in other pertinent areas related to **health law**, including with regard to drug donations and the use of field hospitals.

Though generally not their primary focus, a number of **environmental** treaties, such as the International Convention on Oil Pollution, Preparedness, Response and Cooperation of 1990 and its Protocol on Preparedness, Response and Co-operations to Pollution Incidents by Hazardous and Noxious Substances of 2000, have provisions concerning international cooperation in disaster settings. Instruments related to **industrial accidents**, such as the Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency of 1986 (hereinafter, “Nuclear Assistance Convention”), often provide more detailed guidance.

Somewhat similar references to international assistance can be found in some **weapons control** treaties, including the Convention on the Prohibition of the Development, Production Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction of 1972 and the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction of 1993. While it might be imagined that these provisions would more likely be invoked in conflicts than in disasters (in fact, they have not been invoked at all to date), they could also be relevant in non-conflict situations, such as isolated terrorist attacks.

Some instruments, most of them non-binding, in the area of **space law** are relevant to disaster response. These include the Charter on Cooperation to Achieve the Coordinated Use of Space Facilities in the Event of Natural or Technological Disasters of 1999, (hereinafter “the International Space Charter”), which helps to ease speedy international cooperation in the use of satellites in preventing and responding to disasters.

Space agency members of the International Space Charter



Moreover, guarantees for the **security of humanitarian personnel** were extended to some disaster relief personnel by the 2005 Optional Protocol to the Convention on the Safety of United Nations and Associated Personnel.

Probably the most important and most comprehensive global instruments in this area are non-binding **resolutions, declarations, codes and guidelines**. A number of UN documents fall in this category, particularly UN General Assembly Resolutions 46/182 of 1991, 57/150 of 2002 on international urban search and rescue, and the Hyogo Framework of Action of 2005. The International Conference of the Red Cross and Red Crescent has also adopted a number of important instruments, including the Measures to Expedite International Relief of 1977 (which were also endorsed by the UN Economic and Social Council and General Assembly). The most widely used voluntary codes and guidelines in the field are the Code of Conduct of the International Red Cross and Red Crescent Movement and Non-Governmental Organizations (hereinafter, “Red Cross Red Crescent NGO Code of Conduct”) of 1994 and the Sphere Humanitarian Charter and Minimum Standards in Disaster Relief as revised in 2004 (hereinafter “Sphere Handbook”).

2. Regional law and norms

Particularly in the last several decades, there has been increased interest in developing regional accords on disaster assistance.

In **Africa**, there is no continent-wide instrument, but several sub-regional organizations have addressed disaster response issues through: individual provisions in constitutive agreements, like the Agreement Establishing the Inter-Governmental Authority on Development (IGAD) of 1995; individual provisions of broader agreements, like the Southern African Development Community's (SADC) Protocol on Health of 1999; and policies and strategies, such as the Economic Community of West African States' (ECOWAS) Mechanism for Disaster Reduction of 2006.

In the **Americas**, member states of the Organization of American States (OAS) adopted the Inter-American Convention to Facilitate Disaster Assistance in 1991. However, only three states ever ratified the Convention and it has not yet been put to use. At the sub-regional level, formal agreements have established the Emergency Caribbean Disaster Response Agency (CDERA), the Centre for Natural Disaster Prevention in Central American (CEPRE-DENAC) and the Andean Committee for the Prevention and Response to Disasters (CAPRADE), all of which have become important mechanisms for increasing inter-state cooperation.

In **Asia-Pacific**, there is also no region-wide instrument. At the sub-regional level, the most ambitious effort has been undertaken by the Association of Southeast Asian Nations (ASEAN), whose members adopted an Agreement on Disaster Management and Emergency Response in July 2005. The ASEAN Agreement is remarkable not only for its large scope but also for the inclusion of non-state actors within its provisions for legal facilities. However, it currently has only four ratifications and is not yet in force. Several other sub-regional organizations, notably the South Asian Association for Regional Cooperation (SAARC), the Economic Cooperation Organization (ECO) and the Asia Pacific Economic Cooperation (APEC), have also taken steps to address disaster response, but to a less comprehensive degree.

Europe has adopted the largest number of regional and sub-regional instruments on disaster response. These include Council of the European Union Regulation 1257/96 of 1996 setting out the European Commission's mandate on humanitarian assistance and Council Decision 2001/792/EC establishing the Community Civil Protection Mechanism, designed to facilitate civil protection assistance both inside and outside the borders of the European Union (EU). They also include a number of instruments outside the EU context, such as the Council of Europe's "EUR-OPA Major Hazards Agreement" of 1987, the Convention on the Transboundary Effects of Industrial Accidents of 1992, 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 of 1998, and the North Atlantic Treaty Organization's (NATO) Memorandum of Understanding on the Facilitation of Vital Civil Cross Border Transport of 2006.

In the **Middle East**, the central instrument is the League of Arab States' Arab Cooperation Agreement on Regulating and Facilitating Relief Operations of 1987, which has attracted 12 of the Arab League's 22 members, as illustrated in the map below.



3. Bilateral agreements

The majority of existing international agreements on international disaster response are bilateral. They include a large number of bilateral treaties between states, status agreements with international organizations, and grant agreements between donors and humanitarian organizations.

4. National law

While there is little global information about national legislation on international disaster response, the available evidence indicates that few states have existing national legislative and policy frameworks that comprehensively address the key issues in this area. Accordingly, a majority of National Red Cross and Red Crescent Societies and international humanitarian organizations responding to the IDRL survey felt that existing disaster-specific laws and policies in the countries where they worked did not adequately address the legal issues of international disaster response.

Part III: Specific legal issues for international disaster response

1. 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.

It is not unusual for governments of affected states to send ambiguous or confusing signals to the international community about the need for international relief or to delay making any statements about it at all. Delays can be caused by both political and technical factors, including inefficiencies in the needs assessment process. Sometimes, despite recognising the need for international assistance, governments have hesitated to make a request because of laws requiring them to first make a formal declaration of emergency. Some states have found a flexible solution to these types of barriers by “welcoming” offers of assistance rather than formally requesting it.

Many existing international instruments evince a preference for a formal request by the affected state as an initiating factor for disaster relief. However, in practice, offers from other states often precede any formal request. Some prominent instruments, such as the Cotonou Partnership Agreement between the EU and the African, Caribbean and Pacific Group of States as revised in 2005, Framework Convention, ASEAN Agreement and Inter-American Convention, recognize this by placing offers and requests on an equal footing, so long as there is consent from the affected state.

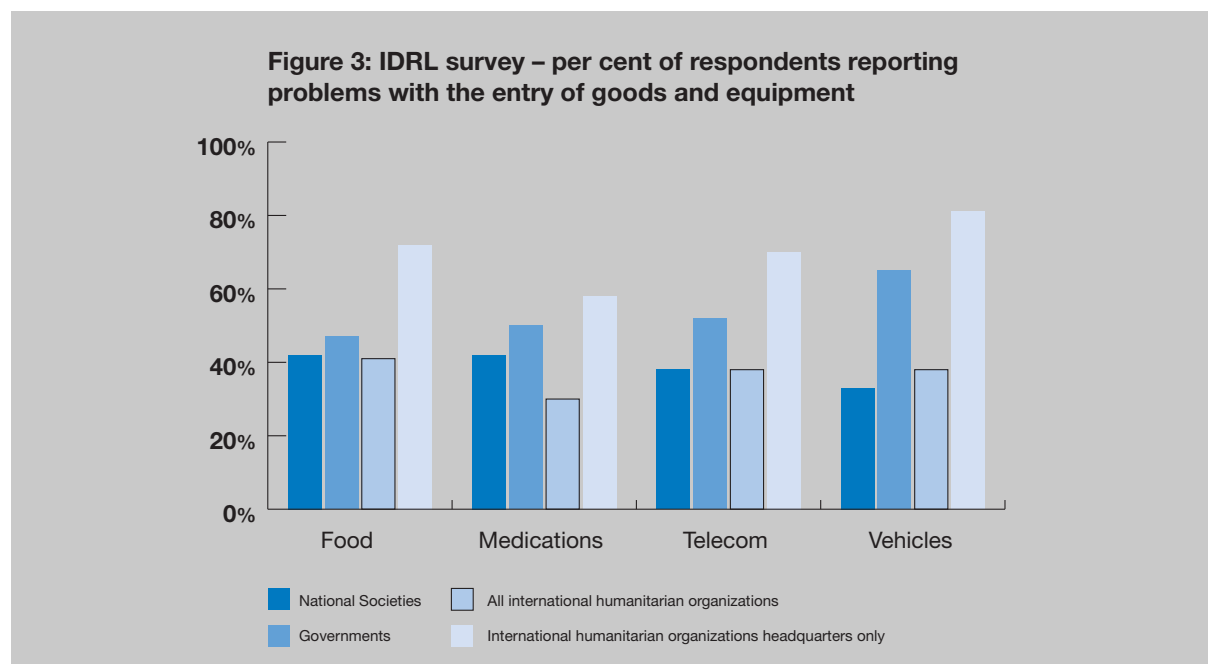
Very few instruments extend to non-governmental actors and those that do, such as the ASEAN Agreement and Tampere Convention, appear to assume that they follow the same procedures as foreign governments in initiating assistance. However, this is not the common practice, as very few non-governmental actors exchange diplomatic-style offers and acceptances with governments of affected states.

The modalities of termination of international assistance also continue to present problems. In their desire 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. 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. Existing international instruments call for appropriate joint consultation prior to termination in order to ensure an orderly transition.

2. 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.

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.



Problems in importation and use are particularly common for foreign food, medications, vehicles, telecommunications and information technology equipment, rescue dogs and foreign currency, all of which are generally subject to elaborate controls in national law. On the other hand, large disasters can also draw enormous amounts of unneeded or inappropriate relief items, including expired foods and medicines. Moreover, disaster settings are sometimes abused by criminals to ship contraband and by dishonest commercial actors to avoid duties and charges on trade goods under the guise of “relief”. This complicates customs clearance and gives domestic authorities reason to be concerned about expediting inspection procedures. Problems sometimes also arise in the country of origin (particularly with regard to barriers to the exportation of certain information technology equipment), in transit countries, or where relief actors seek to re-export unused goods and equipment from the affected state.

While existing customs treaties, such as the Kyoto Customs Convention and Istanbul Customs Convention, have limited geographical reach, a large number of more general international instruments call on states to facilitate the entry and dissemination of relief goods and equipment from approved providers. There are also several instruments specifically relevant to aid donors, such as the Food Aid Convention and the WHO’s Guidelines for Drug Donations, that encourage donors to send only appropriate and truly needed goods. The Tampere Convention refers to both exportation and importation barriers of telecommunications equipment and also calls on affected states to reduce barriers to the granting of licenses and use of radio-frequency spectrum. Accordingly, notwithstanding some gaps as to specific issues (in particular with regard to vehicles), it is possible to conclude that while there appears to be an international consensus on the need to facilitate the entry of relief goods, it is not having the impact that might be desired on the ground.

3. Personnel

As a general matter of comity, a number of states have, through bilateral or multilateral agreements, waived certain visa requirements for each other’s nationals. Unfortunately, when a particular disaster affected state or relief worker falls outside one of these agreements, problems can arise related to visas for relief providers. Occasionally, such problems have to do with refusal or delay in granting an entry visa. Much more often, international relief personnel are allowed to enter without a visa or on a tourist visa. However, such solutions are often only effective for a short period, after which normal visa (and work permit) requirements re-emerge. In some instances, this has meant that relief workers have had to periodically leave the affected country to renew visas, or submit to other time-consuming and expensive processes that greatly distracted from their work.

As with relief goods, however, there is also a tendency to send more international personnel than necessary in light of existing local capacities. Moreover, not all international personnel are experienced and competent for the tasks they undertake. On the other hand, international disaster responders also sometimes encounter legal barriers to hiring local personnel.

Specific issues also arise with regard to the recognition of foreign credentials and certificates, such as those for medical personnel. In many states, there is no mechanism for urgent assessment of such credentials and foreign doctors either cannot provide assistance or (more often) do so in technically illegal circumstances while authorities turn a blind eye. This can have dangerous ramifications if those persons are in fact not competent to provide care.

While many existing international instruments call on states to facilitate the entry of relief personnel, few address issues concerning hiring local personnel or the recognition of foreign professional qualifications and few national laws have adopted specific rules in these areas.

4. 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. 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, denial of overflight and landing rights, carriage permit requirements, transport specific charges and taxes (e.g. wharfage, demurrage and landing fees and road tolls) and immigration issues for transport vehicle crews.

The general question of access is addressed by a number of existing international instruments, and several also make specific reference to legal facilities for land, sea and air transport of disaster relief personnel, goods and equipment. However, there are relatively few provisions about the specific kinds of charges and permit issues noted above.

5. Operations

Achieving the speedy entry of appropriate relief goods, equipment and personnel can sometimes be quite a difficult process; however, arrival is only the first step. There are also a number of common legal problems related to the in-country activities of international relief operations.

Particularly for foreign non-governmental actors, difficulties in obtaining recognition of a domestic legal personality (*i.e.*, official recognition of their organization as a legal entity) in the affected state can entail a multitude of barriers and problems in operations. These include difficulties opening bank accounts, obtaining tax exemptions, engaging local personnel (as noted above) and entering into other legal agreements, all of which can be critical to operations designed to last more than just a few days or weeks. Registration procedures for obtaining such a legal personality are usually complex and time-consuming, if they are available to foreign organizations at all. This issue is currently addressed in international law only for those organizations benefiting from privileges and immunities, such as UN agencies, the International Federation and the International Committee of the Red Cross.

Taxation is a particularly important issue and not only with regard to the customs duties and transport-related taxes and charges noted above. Value-added taxes (VAT), for example, can also be quite substantial. Some international instruments, such as the CDERA Agreement and BSEC Agreement, provide for wide-ranging exemptions from taxes on relief goods and equipment, which would appear to include VAT. Others, like the Nuclear Assistance Convention and Tampere Convention exclude taxes “normally incorporated in the price of goods and services” from their call for tax exemptions. This latter approach could create a peculiar incentive to import relief goods where local VAT is high rather than purchase them locally, which would favour the recovery of the local economy.



Anna Nelson/International Federation

There is also a rising realization that security can be an issue for international humanitarian personnel in disaster settings, though most of the current international dialogue on this topic has rightly centred on situations of armed conflict. This is true both with regard to the potential for breakdowns in law and order due to the impact of a disaster as well as to the temptation that valuable relief resources may represent for criminals. Although a number of existing international instruments call on governments to protect disaster relief personnel and goods, very few (notably the Tampere Convention and ASEAN Agreement) apply to non-governmental actors. When it enters into force, the Optional Protocol to the Convention on the Safety of the United Nations and Associated Personnel will be an important step in broadening this scope of protection, but only for those acting under UN direction.

On a related topic, insurance has also been identified as a common issue for disaster operations. Many actors (including 78% of the international humanitarian organization headquarters responding to the IDRL survey) report difficulties in obtaining insurance at the global and/or local level. Accordingly, the degree of coverage many have, (for instance concerning the death and disability of their employees and for their motor vehicles), is very uneven across agencies. Only a few existing international instruments, such as the BSEC Agreement and the People in Aid Code of Good Practice, refer to insurance issues.

6. 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 of international responders.

a. Adequacy, timeliness and equity of funding

In many disaster settings, the primary problem with international relief is not that there is too much of it for domestic regulatory systems to handle, but rather too little. The neglect of some major disasters and disproportionate attention to others has been much discussed in recent years. Still, striking disparities remain the norm, as evidenced by the US\$1,000 of assistance provided per beneficiary for tsunami-affected states in 2005 as compared to the \$30 or under provided per beneficiary for disasters in Niger, Malawi, Côte d'Ivoire, Guyana and Chad that same year. Moreover, the timeliness of the availability of funds for emergency relief remains an important prob-

lem that has been only partially addressed by mechanisms such as the UN’s revitalized Central Emergency Response Fund (CERF) and the International Federation’s Disaster Relief Emergency Fund (DREF). International regulation of donors remains thin, though the development of the Good Humanitarian Donorship Principles was an important step forward.

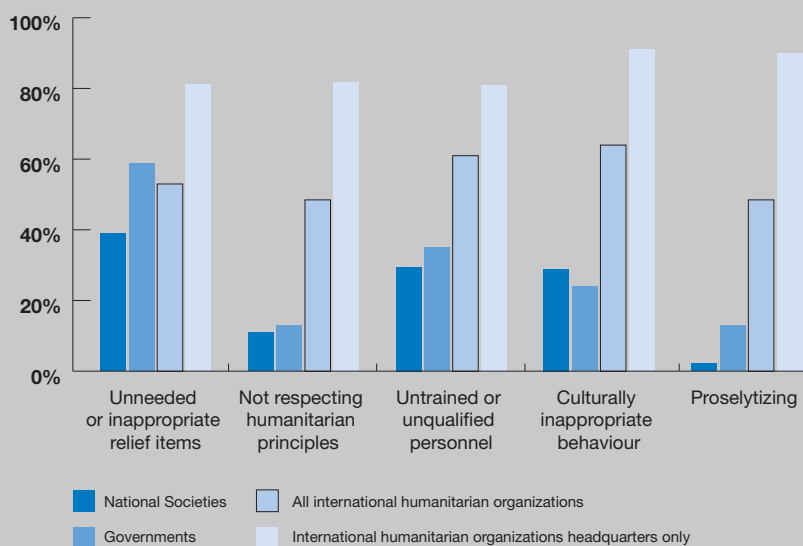
b. Appropriateness

Once relief does arrive in the affected state, it represents all too often what assisting actors want to give rather than what is really needed or appropriate. 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!” In fact, the wrong kind of assistance can do more harm than good. This is true not only in connection with the bottlenecks that a flood of inappropriate relief goods can cause in customs, but also the effects badly designed relief can have once it arrives in the country.

For example, international actors can lastingly undermine the resilience of communities if the former take over tasks that the latter could do on their own. This can happen in various ways, for instance, by “poaching” staff from domestic agencies; directly competing with local civil society actors for donor funds or for beneficiaries; and failing to coordinate with domestic actors in their operations. 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.

Inappropriate or incompetently provided goods and services can also be dangerous to disaster-affected persons (especially in the case of expired medicines or incompetent medical services) and harmful to their dignity. Similarly, culturally inappropriate behaviour by supposedly humanitarian actors, such as proselytizing, can shock and demoralize already-traumatized beneficiaries. Although, by all accounts, incompetent and unprincipled work is in the minority, it can have a disproportionately negative impact on public trust of the entire disaster response effort.

Figure 5: IDRL survey – per cent of respondents reporting having encountered quality problems



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. Some, but not all, disaster-specific treaties also make reference to humanitarian principles. Among humanitarian organizations, the most important instruments on humanitarian principles and the quality of relief are undoubtedly the Red Cross Red Crescent NGO Code of Conduct and the Sphere Handbook, which, between them cover all of the sorts of issues described above.

c. Accountability

While there are some existing international standards on the quality of international relief, 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. Most 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.

Thus, beneficiaries often have few avenues of redress if they are not satisfied or are harmed by the activities of international relief providers, in particular in light of the tendency of many of the latter to stay only very briefly in the jurisdiction of the affected state. Nevertheless, assisting state governments appear to be concerned about their exposure to liability, as evidenced by protections included in nearly every bilateral treaty and in many multi-lateral agreements. Although these types of protections do not necessarily extend to non-governmental actors, it is reported by respondents to the IDRL survey that neither actual claims nor fears of liability are actively impeding their operations.

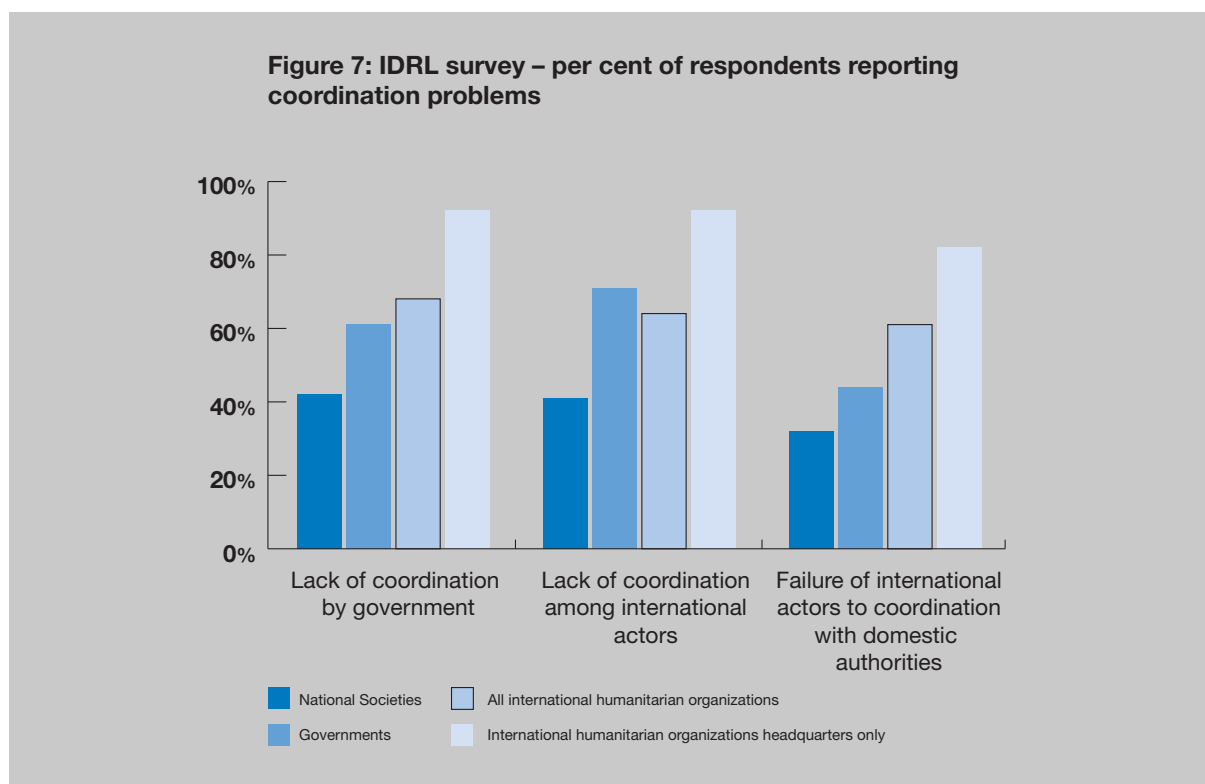
On the other hand, corruption and diversion of aid was the most frequently cited problem in the IDRL survey. While the study of corruption in disaster relief is still in its infancy, there is a great deal of anecdotal evidence that disaster situations are often an opportunity for graft and international relief organizations have reported being victimized by corrupt officials, contractors, and even their own staff. Provisions on financial transparency and monitoring are very common in bilateral IDRL agreements, particularly when related to grants but not in the multilateral instruments related to disaster.

One idea that has been proposed to increase the accountability of humanitarian organizations in particular is to institute an international system of accreditation. This idea first came to prominence in 1996 when it was included among the principle recommendations of a multi-agency joint evaluation of international assistance to Rwanda. It was later reiterated in the recommendations of the Tsunami Evaluation Coalition study of the 2004 tsunami response. Some organizations have experimented with various types of voluntary accreditation systems, the best known of which is the Humanitarian Accountability Partnership. However, there remains disagreement on basic issues about how international accreditation might work on a more general scale across the humanitarian community, including where authority should reside in such a system, what effect it might have on humanitarian independence, impartiality and neutrality, how it should be funded, and what the appropriate incentives and penalties should be.

Both the Rwanda and tsunami evaluations also recommended that affected states take a more prominent role in ensuring the accountability of international humanitarian relief, in particular by conditioning the grant of legal facilities, such as for tax exemptions, on adhering to minimal standards. This role would seem quite consonant with affected state governments' human rights obligation to ensure the quality of humanitarian relief to their citizens. Moreover, these ideas would likely be easier to put in practice, in the short term than global accreditation.

7. Coordination

Even more than quality and accountability, 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.



There are a number of IDRL treaties that seek to improve coordination, in particular by facilitating the process of request and offers for assistance between states. However, for the most part, the international community has preferred to address coordination issues by less formal means and this may very well be for the best. Building on the framework of UN General Assembly Resolution 46/182, the UN has recently been reforming its systems of cooperation among agencies to reduce gaps in coordination and to improve its inter-operability with other humanitarian organizations. In 2006, a system of humanitarian “clusters” was instituted with the collaboration of the International Federation and NGO networks to enhance cooperation in certain key sectors.

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. A common complaint is the lack of clear consensus and authority amid the many domestic ministries and levels of government concerned by disaster response operations as to the facilitation and regulation of international relief. Yet the international community has spoken on this topic. 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.” A large number of subsequent instruments, both at the global and regional levels, have reiterated this call. At the same time, some international actors deliberately bypass national coordination structures and fail to inform domestic authorities and civil society actors of their activities, thereby undermining what should be their primary role.

8. Militaries and mixed situations of disaster and conflict

a. International disaster relief by military actors

Many of the barriers and problems discussed above are also experienced by military actors, which are becoming increasingly involved in providing international disaster relief. While their important contributions have been acknowledged, foreign militaries can raise heightened sovereignty concerns for some affected states, 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.

Relatively few existing international legal instruments make specific reference to military relief, although it is reasonable to assume that many of their provisions on legal facilities would also be pertinent to military actors. The primary instrument on point is the Oslo Guidelines, which call for the use of military assets in UN associated disaster relief operations only as a last resort when no civilian actor can meet a critical need. 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 good and infrastructure support. 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, and other areas.

b. 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. In fact, many of the same kinds of access barriers and quality issues discussed above arise also in situations of armed conflict, 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. These heightened dynamics occur whether a conflict is the “only” crisis or if it coincides with a disaster.

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, which provides strong guarantees for humanitarian access, particularly in occupied territories. Beyond security controls, there is little room here for affected state authorities to coordinate, lead and ensure the quality of international relief. 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.

Conclusion

In 1937, American writer Gertrude Stein declared with regard to her home town that “there is no there there” (sic). Some commentators have come to a similar conclusion about IDRL, emphasizing the “yawning gap” at its core, pointing to the Tampere Convention as the only major development and concluding that “assisting and victim states retain virtually unfettered sovereignty in the context of natural disaster policy.” 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.

A new way out of this thicket is currently being devised. 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, which address many of the issues outlined in this desk study. The draft Guidelines draw on the multitude of existing international instruments discussed above. They 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.

To do this, the draft Guidelines set out recommended 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 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 proposes a number of other “ideas for the future” for various stakeholders that could be complementary to the use of the Guidelines. These are summarized below.

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 in-

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 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 World Customs Organization, International Civil Aviation Organization and International Maritime Organization:

- 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.

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.