The Law of International Disaster Response:
Overview and Ramifications
for Military Actors

David Fisher*

As military lawyers are well aware, the international legal framework for the protection and assistance of civilians in conflict situations is well developed and deeply integrated into the ways lawyers and laypeople think and talk about war. The Geneva Conventions of 1949, the cornerstone of international humanitarian law (IHL), have now achieved universal adhesion; over seventy nations have formed national commissions on IHL, and IHL is being studied and written about in universities, military academies and other forums around the world. In contrast, the law of international disaster response, referred to in recent years as “International Disaster Response Laws, Rules and Principles” or “IDRL,” has been described as “neglected” and “far from complete,” with no centralized regime equivalent to the Geneva Conventions, few academic resources dedicated to the issue and, until recently, little attention from the international disaster relief community.

* Senior Legal Research Officer for the International Federation of Red Cross and Red Crescent Societies' program on International Disaster Response Laws, Rules and Principles. The views and opinions expressed in this paper are those of the author and do not necessarily represent those of the International Federation.
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Yet, over the last thirty-five years, there have been over fourteen thousand non-conflict disasters worldwide, resulting in more than 2.3 million deaths and affecting an astonishing 5.8 billion persons. In the overwhelming majority of these disasters, the governments, civil society and communities of the affected States have borne the brunt of relief and recovery themselves. However, international response activities have also necessarily been frequent and are increasing in proportion to the growing number and severity of disasters in recent years. Moreover, international disaster operations can sometimes be just as legally challenging as conflict relief, commonly involving barriers to the entry and effective use of relief personnel, goods, equipment and transport vehicles, as well as regulatory dilemmas for affected States—particularly in light of the growing number and diversity of international disaster responders.

For their part, military actors have long been engaged in disaster relief, but their involvement at the international level also appears to be on the rise. This increased engagement has led to a greater concern among military lawyers about the legal pitfalls involved, as well as concerns in the humanitarian community about the consequences of the “militarization” of international disaster assistance.

This paper will sketch the history and broad outlines of the current international legal framework for transborder disaster relief and recovery and discuss some of the most common legal problems that arise in international operations. It will then look—from a civilian’s perspective—at some of the ramifications for military actors. It will conclude with some thoughts on where the international community might choose to go from here.

Historical Background

While there are early precedents for international relief in peacetime, it was not until the mid-nineteenth century that momentum slowly began to build toward international systems to address national calamities. For example, in 1851, France convened the first of a series of international sanitary conferences to negotiate agreements to combat the cross-border spread of diseases. In 1869, a resolution of the second International Conference of the Red Cross affirmed the role of national Red Cross societies in providing relief “in case of public calamity which, like war, demands immediate and organized assistance.” In the late nineteenth and early twentieth centuries, multilateral telegraph and telecommunications treaties were adopted with specific provisions about emergency communications, and maritime agreements were reached codifying customary norms on rescue and assistance to vessels in distress.
It was under the auspices of the League of Nations that the first serious attempt was made to create a comprehensive approach to international disaster relief. In 1927, a conference of forty-three States adopted the Convention and Statutes Establishing an International Relief Union (IRU).16 The Convention stipulated that the IRU should serve as a centralized operational agency, funneled international funds and support in disaster settings, coordinating other actors and promoting study and research on disaster management.17 It entered into force in 1932 and eventually attracted thirty member States. 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.18 It intervened in two disasters and sponsored several scientific studies, but by the late 1930s, the IRU had already effectively ceased to function, though it was not officially terminated until 1967.19

After the failure of the IRU, international law on disaster relief developed in a fragmented and mostly unplanned manner, and institutional mandates were shared among a number of actors. In the 1950s, several States, notably the United States, began concluding bilateral treaties regulating the delivery of relief goods.20 A second and third wave of bilateral treaties, mainly concerned with mutual assistance, were agreed upon in the 1970s and the 1990s respectively, mainly in Europe.21 Moreover, a number of multilateral treaties in other sectors of the law (such as customs harmonization,22 marine and air transport23 and environmental protection24) began to include provisions relevant to international disaster response, and recent decades have seen an upsurge in disaster-focused instruments (both “hard” and “soft”), particularly at the regional level.

A second attempt to develop a comprehensive treaty on disaster relief was made in 1984, when the United Nations Disaster Response Office (UNDRO), the forerunner to the Office for the Coordination of Humanitarian Affairs (OCHA), developed a “Draft Convention on Expediting the Delivery of Emergency Assistance” and presented it to the Economic and Social Council (ECOSOC).25 The Draft Convention sought to set out basic rules for the entry and operation of international disaster relief from States and humanitarian organizations, including with regard to visas, customs clearance, transport rules, communications and liability. ECOSOC referred the text to the UN’s Second Committee,26 which, despite expressions of support from several States,27 took no official action on it, and the convention was never adopted.
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The Current International Legal Framework

As a result of the foregoing, the current international legal and institutional framework for IDRL is dispersed, with gaps of scope, geographic coverage and precision. Still, there are a number of instruments that are worth highlighting—both for their potential uses and for their weaknesses.

Global Treaties

One of the most successful disaster law instruments in terms of ratification is the Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency of 1986 (hereinafter Nuclear Accident Convention). Adopted in the immediate wake of the Chernobyl accident, the Nuclear Accident Convention has garnered ninety-six State parties. It 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. However, as its name indicates, it is relevant only to nuclear and radiological emergencies—among the least frequent of the various types of major disasters. Moreover, by its terms, it applies only to States, the International Atomic Energy Agency (IAEA) and other "inter-governmental organizations," despite the essential role that the Red Cross/Red Crescent Movement, non-governmental organizations (NGOs) and other non-State actors have played in the recovery from the Chernobyl disaster.

In contrast, the two global customs treaties with specific provisions on disaster response both apply to "relief consignments" regardless of their source. They are thus relevant to the full range of international relief actors. Specifically, Annexes B.3 and J.5 of the Convention on Simplification and Harmonization of Customs Procedures ("Kyoto Convention") as amended in 1999 call on States to exempt "relief consignments" from many normal customs processes, duties and restrictions. Similarly, Annex B.9 of the Convention on Temporary Admission ("Istanbul Convention") of 1990 provides for exemptions from customs duties for certain types of equipment intended for re-export after a disaster relief operation. However, their membership is quite small, and, in particular, includes only a handful of the most disaster-prone States.

Another recent convention that applies to the full range of international disaster responders is the Tampere Convention on the Provision of Telecommunication Resources for Disaster Mitigation and Relief Operations of 1998. The Tampere Convention calls for the elimination or reduction of regulatory barriers to the importation and operation of telecommunications equipment and personnel for disaster response purposes. It is the only instrument of its kind that extends...
privileges and immunities, equivalent to those granted to the United Nations, to NGO personnel (though only those directly connected to relief telecommunications).40

The Tampere Convention entered into force on January 8, 2005, and its first test came in Sri Lanka (which had ratified it in 1999) with regard to the response to the December 26, 2004 tsunami. Unfortunately, it appears that its provisions were invoked neither by the government nor by international relief providers, although some of them encountered problems with regard to the import and use of telecommunications equipment.41 On the other hand, some practitioners have reported success in referring to the treaty, even with regard to operations in States not party to it, as evidence of an international consensus on the need to facilitate the use of telecommunications in relief.42 Still, like the customs conventions, membership in the Tampere Convention remains limited43 and currently includes only four of the twenty-five most disaster-prone States.44

In 2000, the International Civil Defence Organization drafted a Framework Convention on Civil Defence Assistance45 to improve mutual assistance between civil defense 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 and “necessary” privileges and immunities for responders, and commitments to facilitate transit of civil defense units. It also calls on parties to supplement its provisions with more detailed agreements to carry out its spirit.46 Though it has twenty-six signatories, to date only thirteen States have ratified or acceded to it, including no Western States.47

A further IDRL convention with limited membership (twenty-two parties, including twenty-one States and the European Community)48 is the Food Aid Convention.49 Originally adopted in 1967, it has gone through several revisions, the most recent of which was in 1999. It sets out annual quotas of certain types of food aid to be provided by each member (whether bilaterally or through NGOs or “multilateral channels”) to certain recipient States, covering both emergency and non-emergency situations. It also sets out a number of guidelines as to the type and manner in which food aid should be delivered, including adherence to “basic humanitarian principles,” international quality standards and local dietary habits, and attention to the particular needs of women and children and other vulnerable groups, as well as potential harmful effects on local harvests and markets.

Critics have charged that the Food Aid Convention fails to effectively stabilize food aid because quotas have been set very low (substantially below the total amount of food aid given by most members) and have been repeatedly renegotiated downward in periods of tight supplies and that little effort is made to monitor
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the quality requirements. The convention is currently set to expire on June 30, 2007, if it is not extended or renegotiated.

Limited membership is unlikely to be a problem for the revised International Health Regulations (IHR) adopted by the World Health Assembly in 2005 and scheduled to enter into force in 2007, inasmuch as the constitution of the assembly provides that all instruments adopted by that body will be binding on all member States unless they explicitly “opt out.” The revised IHR were prompted by communications failures in the SARS outbreak of 2003 and has been described as a radical development in international health law. It expands the scope of its predecessor instrument (which only applied to three types of disease) by obligating State parties to report on all diseases that might constitute a transborder public health threat and by greatly expanding the authority of the World Health Organization (WHO) to act upon information of outbreaks. Significantly, this includes formalizing WHO’s authority to receive and act upon reports originating from non-governmental actors. Beyond this preventive aspect, the IHR’s provisions requiring national public health restrictions on import of goods to be kept to a reasonable minimum in line with the potential threat might also be of use in a disaster response setting in which goods and personnel must quickly cross borders.

Regional Law
Each of the major regions has also adopted at least some law on disaster response, though there is great variation in its scope. As in other areas of international law, Europe boasts the most elaborate framework of agreements. These include, among others, the Fourth Lomé Convention of 1989, which sets out guidelines for assistance by Europe to African, Caribbean and Pacific States; the Council of Europe—Open Partial Agreement (EUR-OPA) Major Hazards Agreement of 1987, which created a framework of regular high-level meetings to improve cooperation in disaster response and prevention; the European Community Civil Protection Mechanism, first adopted in 2001, which helps to coordinate the extraterritorial work of civil protection offices; the Convention on the Transboundary Effects of Industrial Accidents of 1992, one of the most important treaties on man-made disasters; subregional instruments such as the 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 of 1989; and 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 (hereinafter BSEC Agreement).
In the Americas, the Inter-American Convention to Facilitate Disaster Assistance was adopted in 1996 with a number of provisions designed to lower bureaucratic and other barriers to easy entry of foreign disaster assistance; however, it was only ratified by three States. Greater success was seen with the agreements creating subregional inter-governmental mechanisms for disaster response, including the Coordination Centre for Natural Disaster Prevention in Central America (CEPREDENAC), the Andean Committee for the Prevention and Response to Disasters (CAPRADE), and the Caribbean Disaster Emergency Response Agency (CDERA).

In Africa, there has been little systematic lawmaking at the regional level on disaster response. One exception is the Inter-Governmental Authority on Development (IGAD), originally created with the primary purpose of building cooperation to address issues of drought and desertification. Moreover, in recent years, proposals have been discussed to adopt a disaster-specific instrument in the Southern African Development Community (SADC). The most recent regional IDRL treaty was adopted in Asia in the wake of the 2004 tsunami. The Association of Southeast Asian Nations' (ASEAN) South Asian Association for Regional Cooperation Agreement on Disaster Management and Emergency Response of 2005 (not yet in force) is remarkable for its broad scope—covering disaster risk reduction, relief and recovery and addressing all types of international disaster responders—as well as for its attention to some of the key problem areas, including visas, customs, transport and coordination issues in international operations. It will also create a dedicated “Asian Coordinating Centre for Humanitarian Assistance” with broad responsibilities to share information and assist in coordinating disaster assistance to member States both in the region and from international actors.

Bilateral Treaties and Agreements
The overwhelming bulk of existing international IDRL instruments are bilateral agreements between States and between States and international humanitarian organizations. There are well over one hundred bilateral treaties, most of them in Europe. In general, they tend to cover issues of initiation of assistance, entry of personnel and goods, command and control of response teams, assignment of costs (generally to the receiving State), and guarantees against liability (always in favor of the responding State). Bilateral agreements with humanitarian organizations (mostly with international organizations, such as UN agencies, but also, increasingly, with major international NGOs) tend to set out the parameters of the organization’s long-term activities in the nation as well as any applicable legal privileges.
Soft Law, Guidelines and Models

Beyond the “hard law” described above, there are an important number of relevant “soft law” instruments, such as resolutions or declarations of international bodies, as well as guidelines, models and codes developed mainly by experts or by the humanitarian community itself. Some of these, though admirably crafted, have been mainly forgotten. However, others have formed the basis for systems of international cooperation in disaster response that are certainly as important as any currently based on “hard law.”

Among the best-known resolutions are UN General Assembly Resolution 46/182 of 1991, which sets out general parameters for UN humanitarian assistance and the role of the Office for the Coordination of Humanitarian Affairs (OCHA), and 57/150 of 2002, which called on States to facilitate the entry and operation of international urban search and rescue teams in disaster settings and, in turn, called on those teams to comply with the quality standards set out in guidelines developed and facilitated by an international advisory group. The Hyogo Framework for Action, adopted by an international conference in 2005 and later affirmed by a resolution of the UN General Assembly, also includes institutional and regional preparedness for relief among its primary priorities, but this element has not been emphasized in the follow-up activities of States and the United Nations.

An important resolution that is less well known today is the Measures to Expedite International Relief, adopted by both the International Conference of the Red Cross and the UN General Assembly in 1977. This resolution discussed in some detail some of the most practical types of legal facilities governments should ensure for international disaster assistance providers. Unfortunately, it has rarely been evoked in modern operations.

A number of “off-the-shelf” models and guidelines have also been produced with the intention to speed agreements between affected States and international actors wishing to provide assistance. For military actors, the Oslo Guidelines on the Use of Military and Civil Defence Assets in Disaster Relief, as updated in 2006 and discussed in greater detail below, is the most important example. Further guidance can be found in the UNITAR Model Rules for Disaster Relief of 1996 and the Max Planck Institution Draft International Guidelines for Humanitarian Assistance of 1991. However, few of these latter documents are well known by disaster response professionals.

The most important instruments relating to the responsibilities of disaster assistance providers are the Code of Conduct of the International Red Cross and Red Crescent Movement and Non-Governmental Organizations in Disaster Relief of 1994 and the Sphere Project Humanitarian Charter and Minimum Standards in Disaster Response as updated in 2004, both developed by humanitarian
organizations to serve as minimum standards of behavior and performance in disaster relief. Both have been well disseminated, and most established humanitarian organizations have indicated that they use them. However, the absence of any formal mechanism for monitoring and verification of these claims renders an assessment of their impact difficult.

Institutional Mandates and Privileges
In addition to these disaster-specific instruments, the international community has provided a number of institutions with formal mandates to engage in humanitarian relief, including in disaster situations. The intricacies of this institutional structure have been described elsewhere and will not be explored here, except to note that they include both global and regional institutions. At the global level, these include UN agencies and organs and the Red Cross/Red Crescent Movement among others. At the regional level, organizations such as ASEAN, the South Asian Association for Regional Cooperation (SAARC), IGAD, the European Community Civil Protection Mechanism, CEPREDENAC and CDERA have also been accorded important roles with regard to the coordination of international disaster response.

To a varying extent, these entities have also been provided specific facilities pertinent to their operations. For example, the Convention on Privileges and Immunities of the United Nations of 1946 and the Convention on Privileges and Immunities of the Specialized Agencies of 1947 provide the basis for the recognition of domestic legal personality of UN entities, as well as important exemptions to normal rules concerning visas, customs, judicial oversight and other regulatory systems. Similar privileges and immunities have been accorded to the international components of the Red Cross/Red Crescent Movement in bilateral agreements with States.

Importantly, the NGO sector lacks a formal international legal mandate for its activities, although its effectiveness and prominence is large and growing, as discussed further below.

Summary
In short, there are a number of international instruments relevant to disaster response but their proliferation has not resulted in a coherent legal system. Likewise, it has been argued with regard to institutional mandates 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." OCHA is currently leading a process of reform to address structural coordination and cooperation
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problems among UN agencies and their humanitarian partners, however, the international humanitarian community has yet to pay significant attention to the harmonization of the legal framework.

Legal Problems in International Disaster Response

The absence of a comprehensive system of international law on any particular topic is not necessarily a reason for concern. The question is whether there are problems of a legal or regulatory nature that have been left unaddressed. Insofar as international disaster response is concerned, the answer to this question is that there are indeed a number of such problems that arise consistently in major international operations and constitute a substantial drag on their speed, efficiency and effectiveness. In significant part, these problems can be attributed to the absence of previously established laws, regulations and institutional structures focused on international assistance at the national level. Thus, for example, the Pakistani government has acknowledged that "Pakistan suffered from the lack of a pre-existing National Disaster Management Authority" and applicable legal structure when the earthquake struck in October 2005. Likewise, the United States Government Accountability Office issued a report in the wake of Hurricane Katrina concluding that "FEMA and other agencies did not have policies and procedures in place to ensure the proper acceptance and distribution of in-kind assistance donated by foreign countries and militarys."

Typical problems in international response can be roughly divided into two main categories: legal obstacles to the entry and operation of international relief; and failures of monitoring, coordination and regulation of international aid. Problems of both categories usually coincide in the same disaster operations. This section will provide a few recent examples.

Obstacles to Entry and Operations

The initiation of international disaster assistance can be difficult for political, rather than legal, reasons, as some governments have been reluctant to request or accept needed aid for fear of appearing weak or dependent, to avoid publicity for a disaster, and/or to demonstrate their disapproval of the offering party. Governments are likewise sometimes unwilling to provide basic information about a disaster for similar reasons, leaving potential responders at a loss as to how best to react. On the other hand, it has also been the case that foreign donors have pressured governments to accept assistance they did not really need. For example, it was reported that a large number of 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 World Health Organization that they were not required.85

Frequently, however, the problem is more technical. While many States have some provision in their law as to which department (frequently the office of the prime minister or president) may initiate a request for international disaster assistance, the lack of standardized systems for making the determination that outside help is needed has led to long delays,86 and communication about specific needs is often imperfect. Thus, for example, after Hurricane Katrina struck in August 2005, it was reported that a Swedish government plane loaded with water purification gear, blankets and telecommunications equipment was kept on a runway for eleven days awaiting clearance to fly to the United States.87 By the time permission was granted and the plane was able to depart, none of the supplies it carried were still needed.

Sometimes, entry visas for international disaster response personnel have been either delayed or refused by the governments of affected States, even after international assistance has been requested. For example, several States in Central America have refused visas to relief personnel from other parts of Latin America, in part due to heightened concerns about illegal immigration.88 In most cases, however, response personnel have been able to enter affected States on tourist or short-term visas, but problems have emerged later in the operation. For instance, international personnel responding to the 2004 tsunami in Thailand and Indonesia were required to frequently exit and re-enter those nations in order to renew short-term visas, incurring both significant expense and disruption to their operations.89

Regulations on the passage of relief transport vehicles and customs delays on incoming goods and equipment are other critical barriers in many operations.90 For example, one year after the tsunami struck Indonesia, over four hundred containers of relief goods were still awaiting customs clearance in Jakarta and Medan.91 In the meantime, many of the perishable items rotted, medicines expired, and some items that were needed at the onset of the response operation (such as tents and surgical equipment) were no longer required.92 After Hurricane Katrina struck the United States, the British Ministry of Defence sent five hundred thousand “Meals Ready to Eat” (MREs) by civil aircraft.93 However, after their arrival in Arkansas, it was determined that they contained meat products prohibited by US health regulations, and they were therefore stored in a warehouse at significant expense for a number of months pending distribution to other countries.94

Delays can also arise before goods even reach the borders of the affected nation. For example, in August 2006, after strong winds in Swaziland left thirteen thousand persons homeless and exposed to ongoing heavy rains, the IFRC’s regional delegation in Harare, Zimbabwe sent a shipment of tarpaulins and tents.95 However, the
shipment was delayed at the border with South Africa for five days before they
could proceed to the destination nation, due to problems with customs. Analog­
ously, overflight of transit States can occasionally raise difficulties, as when Paki­
stan reportedly refused to allow flights of Indian aid to Afghanistan to cross its
airspace. 96

Sometimes customs delays cause headaches over and above the obvious issue of
forestalling the intended use of the affected goods and equipment. For instance, af­
ter the 1999 earthquake in Turkey, it was reported that relief goods delayed in cus­
toms beyond the statutory storage deadline had been summarily nationalized. 97
Somewhat analogously, in Indonesia, storage fees for tsunami relief cargo awaiting
customs clearance mounted so high due to delays that they sometimes exceeded
the value of the relief consignments themselves. 98 Charges of this type, as well as
customs duties and other types of taxes, tolls and fees on disaster operations, have
dramatically increased their costs and lowered their effectiveness. In Sri Lanka, for
example, Oxfam was required to pay a £550,000 customs duty in June 2005 to im­
port twenty-five four-wheel vehicles for its tsunami rehabilitation operations. 99

Another common issue that some international disaster responders encounter
is obtaining recognition of their domestic legal status in the affected State. In Thai­
land, for example, international NGOs found the local registration process so d iff i­
cult to navigate that nearly none were successful in doing so. 100 As a result, some
had difficulty opening bank accounts, obtaining work permits, hiring local staff
and applying for tax exemptions. 101

Similarly, obtaining recognition of the foreign qualifications of medical person­
nel has frequently proven difficult. In Nepal, for instance, it was reported that

[w]hile some organisations were aware of the process of obtaining permission from
the Medical Council of Nepal, the process was a lengthy one and not easily adapted to
emergency situations. Other organisations were not aware of the necessary processes,
and in at least one instance a prominent medical NGO was asked to cease activities
altogether for failing to comply with the regulations. 102

Furthermore, foreign actors lacking diplomatic or inter-governmental privil­
eges and immunities find themselves exposed to the risk of civil and/or criminal li­
ability in unfamiliar legal systems. On the civil side, local employee recruitment
and termination reportedly provide particularly fertile ground for litigation in dis­
aster response operations as domestic labor laws generally fail to accommodate
the speedy and short-term staffing requirements of international disaster response
operations. 103 Medical malpractice has also been identified as an area of particular
concern. 104 Exposure to criminal investigation was raised as an issue by a number
of disaster responders to the 1999 earthquake in Turkey, and one that substantially affected their operations.\textsuperscript{105}

**Problems of Quality and Coordination**

Closely related to entry and operation barriers are issues of quality and adequate coordination of international relief and recovery assistance. In the absence of effective international mechanisms of control, affected State governments have often struggled to address the flood of external actors responding to those major disasters with the highest media attention.\textsuperscript{106}

Perhaps the most important quality issue is the arrival of vast quantities of unwanted, unneeded and inappropriate relief goods, which embroil customs offices, fill airports and warehouses, and block the flow of needed goods. For example, in each of the largest disaster operations of 2005 (e.g., the tsunami in Indonesia, Thailand and India; the earthquake in Pakistan; and Hurricane Katrina in the United States), heaps of used clothing appeared. In tropical Sri Lanka, these included winter coats and hats, dress shoes, pyjama tops (without bottoms) and even “thong underwear.”\textsuperscript{107} In Muzaffarabad, Pakistan, piles of useless warm-weather clothes were burned for warmth.\textsuperscript{108} As noted by the Tsunami Evaluation Coalition (TEC) report—a major multiagency study of the international response to the 2004 tsunami—“assistance” in the form of used clothes, expired or poorly labeled medicines, inappropriate food (such as canned pork sent to Muslim Indonesia), and other assorted eccentric items 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.”\textsuperscript{109}

In addition to increased shipments of goods, major disasters are attracting larger numbers of international actors on the ground. The growth in the numbers of NGOs becoming involved in disaster response has been particularly impressive. For example, after the December 2004 tsunami, it was reported that there were two hundred NGOs working in Aceh.\textsuperscript{110} In India, nearly three hundred NGOs were reported to be working in Nagapattinam District alone.\textsuperscript{111} While particularly pronounced after the tsunami, this trend can be seen in other highly televised disasters as well.\textsuperscript{112} In addition, more UN agencies, Red Cross and Red Crescent societies, private companies and unaffiliated individuals are travelling to disaster sites seeking to help.\textsuperscript{113}

Among these new actors, many are inexperienced and some act without sufficient understanding of, or regard for, international standards of quality in disaster response. As noted by the TEC report, “[t]here is general agreement that there were far too many agencies present in Indonesia and Sri Lanka. The low entry barrier to
The system permits the entry of inexperienced and incompetent actors, and while “[e]xperienced agencies are not immune from low quality work... the risks are higher with inexperienced actors.” Thus, for example, an unidentified NGO was found to have vaccinated children in a village near Banda Aceh, Indonesia after the tsunami, leaving no records and no way to determine who had been vaccinated and who had not.

Many “traditional” humanitarians in tsunami-affected nations were also shocked to find themselves working alongside “Scientologist trauma care” workers who purported to heal tsunami victims by influencing energy waves with their hands. To their dismay, and as noted in one media report from India, “[i]n the eyes of the local public, [Scientology’s] operations are indistinguishable from those of UNICEF and CARE and the Red Cross.”

Other purportedly “humanitarian” organizations were accused of proselytizing in several tsunami-affected nations, and even conditioning aid on religious conversion.

Probably the most common complaints in disaster operations revolve around problems of coordination and sharing of information between the various actors. The proliferation of international responders has done nothing to improve these problems. In the tsunami operations, for example, “[a]chieving adequate representation and consensus among even the larger, mature INGOs and Red Cross agencies was not easy; but with such a large number of smaller agencies also on the ground in the first six months, coherent joint planning and implementation was unlikely.”

Aceh was dubbed an “information black hole” where overfunded humanitarian agencies competed for beneficiaries, overserving some communities and ignoring the needs of others.

International coordination mechanisms remain largely voluntary—even among UN agencies—and have struggled to prevent irregular coverage of disaster-affected persons. For their part, national institutional frameworks for monitoring and coordination of international relief were overwhelmed in both Indonesia and Sri Lanka, leading to multiple structural changes over the course of the relief and recovery operations in both nations.

However, even with a more modest international intervention, governments of the affected States have experienced significant difficulty in the absence of strong regulatory and institutional mechanisms. For example, after Tropical Storm Stan caused massive flooding in Guatemala in October 2005, it was widely recognized that the national disaster management network “CONRED” and its secretariat were unable to track and coordinate the activities of the several dozen foreign organizations and States that arrived to provide assistance. In contrast, in Fiji, after a detailed legal and regulatory structure was put in place for international relief, few coordination problems were noted in recent disaster operations.
How does all of this relate to military actors? First, as noted above, militaries in a number of nations are becoming increasingly keen on international disaster relief, both on a bilateral and multilateral basis. As noted by the United Nations, "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." 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. Similarly, in 1996, the Canadian military created a permanent disaster response team to be used for foreign disaster operations. The US military, long mandated to participate in international disaster relief, has also increased its emphasis on "humanitarian" activities in recent years. For instance, its contribution after the 2004 tsunami was its biggest operation in the Asia-Pacific region since the Vietnam War. The Americans, Japanese and Canadians joined no less than thirty-two other national militaries that responded to the tsunami.

Similarly, in 1998 NATO created its Euro-Atlantic Disaster Response Coordination Centre (EADRCC) and has also embraced a "growing humanitarian role" in disaster response operations, including for Hurricane Katrina in the United States and the October 2005 earthquake in Pakistan. NATO has even gone so far as to negotiate its own memorandum of understanding with member States for the facilitation of civilian relief personnel and materiel. Proposals have recently been raised for regional military cooperation mechanisms in Central America and Asia to facilitate military involvement in disaster relief.

Second, military responders experience many of the same legal issues and concerns as civilian actors in disaster response operations, as well as issues uniquely related to the commonly strict domestic regulation of their mandates and roles in international operations and the special sovereignty and security concerns that the presence of foreign troops raise for affected States. As noted in one summary of the "lessons learned" from NATO’s intervention in Pakistan, "[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."

Third, military responders face a similarly patchy normative framework. Few existing disaster-related treaties make specific reference to military involvement, though many of their more general provisions (for example, on facilitating entry of goods and personnel) should also apply to military responders. Those that do have specific reference, such as the ASEAN Agreement, the BSEC Agreement, and
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the Agreement of 1974 between Sweden and Norway concerning the Improvement of Rescue Services in Frontier Areas commonly seek to address issues of the command relationship between the assisting and affected State forces, identification of foreign forces (e.g., uniforms) and the carriage of arms. When they are in place, bilateral or regional (e.g., NATO) status of forces agreements or MOUs address a number of the issues that might arise for military actors in disaster operations. However, they are limited in number and difficult to negotiate at the outset of a disaster.

The pre-eminent “soft law” instrument on military involvement in disaster relief is the Oslo Guidelines on the Use of Military and Civil Defence Assets in Disaster Relief. First developed by the United Nations and endorsed by an international conference in Oslo in 1994, the Oslo Guidelines were updated and “relaunched” at a new conference in November 2006. Particularly as updated this year, the guidelines stress that military relief assets should be considered a last resort when no civilian alternatives are available. They also encourage (though do not require) military and civil defense forces to act “under UN control” in disaster operations. They set out minimum facilities that should be offered by affected States, in areas such as legal status, customs, visas, overflight and security, and also set out coordination structures and basic principles to which military and civil defense operations should adhere. They also include a model agreement addressing these sorts of issues as an annex.

The emphasis in the Oslo Guidelines on civilian control reflects the current ambiguity in the humanitarian community about the increasing role of the military in disaster operations. On the one hand, the capacities and achievements of military actors in international disaster relief—particularly in the areas of transport and logistics—are undeniable. For instance, the international military contributions to the tsunami relief have been described as pivotal to the success in avoiding the feared “second tsunami” of starvation and disease. On the other hand, military assistance is expensive—sometimes many times more costly than when the same services are provided by civilian sources—and its identification and integration with humanitarian activities raises thorny policy issues. These are particularly acute in armed conflict settings, when military attempts to “win hearts and minds” can confuse the distinction between military and humanitarian agencies, rendering the latter more liable to attack. However, even in disaster settings, an overly close identification has been seen as dangerous for public perceptions of the neutrality of humanitarian actors. Moreover, there is concern that precedent set for close integration between military and humanitarian actors in a disaster setting may be difficult to alter in a later situation of conflict. Thus, the Oslo Guidelines call for “direct assistance” to be provided as much as possible by humanitarian
actors, with militaries instead providing “indirect assistance” (such as transport and logistical aid) and “infrastructure support” (such as rebuilding roads and generating power).\textsuperscript{147}

\textbf{Conclusion and Prospects for the Future}

It seems plain that some improvements in the way that international disaster assistance is generally facilitated and regulated would be desirable. While every disaster setting is in some ways unique, and the very nature of the enterprise (particularly in sudden-onset disasters) lends itself to some level of improvisation, the fact that a consistent set of legal problems tends to crop up in disaster settings around the world suggests that better regulation may have a role in improving the outcome of disaster relief operations.

At the national level, a workable balance still remains to be struck in most States between sufficient openness to allow quick entry and easy operation of international disaster assistance and sufficient control to ensure the quality and overall effectiveness of a relief and recovery effort. International actors (both civilian and military) and affected State governments have suffered alike from this imbalance, to the detriment of efficient support to affected persons. To address this, more governments need to thoroughly analyze such issues and adopt appropriate legislation and regulations prior to being struck by a disaster. Some—particularly those struck by major disasters in 2005\textsuperscript{148}—are beginning to do so, and others might be led to it through their activities pursuant to the Hyogo Framework.

At the international level, the dissemination and use of existing instruments could be much improved.\textsuperscript{149} Even if this occurs, however, there are significant gaps in the current framework when measured against the common problem areas. Nevertheless, one commentator, noting the spotty historical development of international norms in this area, ongoing State concerns about sovereignty, and the recently enhanced emphasis of the international community on disaster risk reduction has concluded that “the direct role of international law with respect to the policy on natural disasters will not grow significantly.”\textsuperscript{150} On the other hand, as described above, recent years have seen significant “hard” and “soft” law developments, including the ASEAN Agreement, the International Health Regulations, the entry into force of the Tampere Convention, the NATO MOU and the revision and reaffirmation of the Oslo Guidelines. In fact, there seems to be no shortage of will to address some of the relevant issues, but rather a continuing lack of coherence and comprehensiveness among current initiatives.

Looking to the future, the International Conference of the Red Cross and Red Crescent, a forum including all State parties to the Geneva Conventions as well as
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the various components of the Red Cross/Red Crescent Movement, is scheduled to take up a set of recommendations on the issues described in this paper in November 2007—particularly with regard to what States might be encouraged to include in domestic law and policy. The consultation process leading to that conference, including regional forums organized with governmental and inter-governmental partners around the globe, has already begun generating greater publicity and attention to these issues. Moreover, the International Law Commission (a UN body whose object is the “promotion of the progressive development of international law and its codification”) recently decided to place the issue of the “protection of persons in natural disasters” on its long-term program of work. There is thus reason to hope that there will be greater progress on these issues in the near future.

Notes


6. While figures for interventions by the international humanitarian sector as a whole are difficult to locate, the International Federation of Red Cross and Red Crescent Societies alone has recorded nearly two thousand international relief operations in 153 nations since its founding in 1919. See International Federation of Red Cross and Red Crescent Societies Powerpoint Presentation, To improve the lives of vulnerable people by mobilizing the power of humanity (July 2006) (on file with author).


9. For example, the United States Defense Threat Reduction Agency is currently developing a “legal deskbook” that will describe the “U.S. and international laws, regulations and policies that apply when a foreign government requests U.S. assistance after a chemical, biological, radiological or nuclear, and/or high-yield explosives (CBRNE) event[.]” United States Defense Threat Reduction Agency, Foreign Consequence Management Legal Deskbook Workshop I Report, Vicenza, Italy (Sept. 27-28, 2005) (on file with author). See also United States Defense
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13. See MACALISTER-SMITH, supra note 11, at 17-18. This role was later solidified by the Constitution of the League of Red Cross Societies (now known as the International Federation of Red Cross and Red Crescent Societies (IFRC), formed in 1919, and in Article 25 of the Covenant of the League of Nations, which called on member States to "encourage and promote the establishment and cooperation of duly authorized national Red Cross organizations having as purposes the improvement of health, the prevention of disease and the mitigation of suffering throughout the world."


17. Convention and Statute Establishing an International Relief Union, July 12, 1927, L.N.T.S. 3115 (1932) [hereinafter IRU Convention].


19. Id. at 370-72.


21. Id.


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30. The CRED EM-DAT database includes radiological emergencies and explosions as subcategories along with many other types of man-made disaster under the heading "Industrial Accidents." See EM-DAT Glossary, http://www.em-dat.net/glossary.htm#1 (last visited Nov. 1, 2006). According to the database, industrial accidents as a whole represented 7.1% of all non-conflict disasters from 1970–2006, amounting to less than half of the number of wind storms (16.1%) and of floods (19.4%). See CRED Database, supra note 5.

31. An online database on the response to the Chernobyl disaster maintained by the Swiss Agency for Development and Cooperation lists over one hundred (mostly international) non-State organizations still actively involved in the response, over twenty years after the accident. See http://www.chernobylinfo.int (last visited Nov. 1, 2006).


34. There are currently eight State parties to Specific Annex B.3, seven parties to Specific Annex J.5 of the Kyoto Convention and thirty-seven parties to Annex B.9 of the Istanbul Convention. See World Customs Organization, Position as Regards Ratifications and Accessions (as of July 1, 2006); International Convention on the Simplification and Harmonization of Customs Procedures (as amended), Doc. No. PG0137E1a; and Position as Regards Ratifications and Accessions (as of July 1, 2006); Convention on Temporary Admission (as amended), Doc. No. PG0139E1a; both available at http://www.wcoomd.org/en/Conventions/conventions.html.

35. Of the twenty-five States that have experienced the greatest number of non-conflict disasters over the last fourteen years (per the CRED Database, supra note 5), three have signed Kyoto Convention Specific Annex B.3, two have signed its Specific Annex J.5, and four have signed Annex B.9 of the Istanbul Convention. Other customs instruments, although lacking specific reference to disaster situations, might also be helpful. These include the ATA Carnet for the Temporary Admission of Goods of 1963, available at http://www.wcoomd.org, which allows for passage without inspection of goods across the borders of transit States, and the Customs Convention on the Temporary Importation of Professional Equipment, June 8, 1961, 1968 Austl. T.S. No. 6, available at http://www.austlii.edu.au, which allows for duty-free importation of "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."


37. Id., art. 4(b).


40. Id., art. V.


42. Field interviews by the author.


44. According to disaster data obtained from the CRED Database, supra note 5.

45. This information was obtained from the United Nations Treaty Service website, http://untreaty.un.org/ (last visited Jan. 4, 2007). By its terms, ratification or accession to the treaty is limited to a prescribed list, or those approved by the Food Aid Committee. See Food Aid Convention, infra note 46, art. XXII.


47. 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 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 46, at
art. III. The Convention does not limit contributions of other types of foods, but they cannot be counted toward the member's quota.


49. At its December 2006 session, the Food Aid Committee reportedly also agreed “in principle” to extend the Convention for another year beyond the June 2007 deadline, subject to confirmation at its next meeting. However, it also agreed to consider amending the treaty at that meeting. See Press Release, IGC-PAC (Dec. 14, 2006), available at http://www.igc.org.uk/downloads/pr/pr06071.pdf.


53. Unfortunately, the revised IHR does not directly provide for measures to protect or even maintain the confidentiality of these non-state whistleblowers. See David Fidler, From International Sanitary Conventions to Global Health Security: The New International Health Regulations, 4 CHINESE JOURNAL OF INTERNATIONAL LAW 325, 375 (2005).


55. Also known as the “Open Partial Agreement on the Prevention of, Protection against, and Organization of Relief in Major Natural and Technological Disasters,” established by Council of Europe Committee of Ministers Resolution 87(2) of March 20, 1987. The agreement is open to both European and non-European States and currently has twenty-five members. See http://www.coe.int/t/dgh4/majorhazards/presentation/presentation_en.asp.


62. See Nuevo Convenio Constitutivo del Centro de Coordinación para la Prevención de los Desastres naturales en América Central (CEPREDENAC), Sept. 3, 2003, SICA Doc. No. STD/C/


66. See Agreement Establishing the Inter-Governmental Authority on Development (IGAD), Mar. 21, 1996, Doc. No. IGAD/2M-96/AGRE-Do, available at http://www.igad.org/about/agreement-establishing_igad.pdf. Although IGAD has extended its activities and is now mainly known for its conflict resolution initiatives, it is still active on issues of drought. See, e.g., IGAD Council of Ministers, Resolution on the Drought and Famine Situation in the IGAD Region, Mar. 18, 2006, available at http://www.igad.org.


69. See Horst Fischer, supra note 20, at 24. These treaties have been collected and are available on the IFRC’s IDR Database at http://www.ifrc.org/what/disasters/idrl/publication.asp.


71. See id. at 17–18 (describing “Priority 5”).


73. All three instruments are available at http://www.ifrc.org/what/disaster/idrl/publication.asp.


75. See, e.g., MACALISTER-SMITH, supra note 11.


78. 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, supra note 20, at 127, 131; Gabor Rona, The ICRC’s Status: In a Class of Its Own (Feb. 17, 2004), http://www.icrc.org/web/eng/siteeng0.nsf/html/5WF9FJY.

79. See BEIGBEDER, supra note 11, at 10 (citing Randolph Kent).


81. Farooq Ahmad Khan, Remarks at the ISDR Side Event to ECOSOC 2006: Panel discussion and briefing on progress of the implementation of the Hyogo Framework for Action 2005–


84. See, e.g., Barbara Demick, Aid Groups in Dark About North Korean Flood, LOS ANGELES TIMES, Sept. 4, 2006, at A4 (reporting complaints from aid groups about the lack of information provided by the North Korean government about the effects of recent flooding).


87. See ANNE C. RICHARD, ROLE REVERSAL: OFFERS OF HELP FROM OTHER COUNTRIES IN RESPONSE TO HURRICANE KATRINA 16 (2006).

88. Based on interviews by the author with Red Cross actors in the region. For examples in other regions, see, e.g., Fiji Case Study, supra note 86, at 31 (noting delays with visas); Turkey Case Study, supra note 86, at 48 (same); Sri Lanka Case Study, supra note 41, at 14–15 (noting that the government of Sri Lanka delayed or refused visas for certain relief personnel—particularly finance staff—in order to induce responding agencies to hire local staff for those functions).


90. As a 2003 case study compiling interviews from thirteen countries in South Asia, Southern Africa and Central America noted, "[t]he import of relief goods and equipment was an issue of great concern to the various international actors. In most countries, the imposition of heavy taxes or cumbersome bureaucratic procedures on the import of goods necessary for relief efforts presented a source of constant frustration for international assistance." International Federation of Red Cross and Red Crescent Societies, International Disaster Response Law Project: Report on findings from South Asia, Southern Africa and Central America 14 (Mar. 2003) [hereinafter Multi-country Case Study].


92. Id.

93. See RICHARD, supra note 87, at 18.

94. Id. at 18–19.


97. See Turkey Case Study, supra note 86.

98. See Indonesia Case Study, supra note 89, at 22.


100. See Thailand Case Study, supra note 89, at 14.

101. Id.


103. Based on author’s interviews of legal counsel of major international NGOs.

104. See, e.g., Ruth Blackham & Karin Margolius, The Legal Standing of Disaster Relief Workers Abroad: An Australian Perspective, 2 LEGAL MEDICINE JOURNAL No. 1, Abstract 6 (July 2005).

105. See Turkey Case Study, supra note 86, at 49 (noting that over a quarter of organizations surveyed on this question had been the object of a criminal investigation, which, for most of them, had seriously hindered their operations).

106. It must be noted, however, that many disasters provoke nowhere near the attention and assistance required from the international community. This issue of “forgotten emergencies” might also be seen as a result of the anarchic international assistance “system.” They do not present a particular regulatory problem at the national level, however, and so are not discussed here in depth.


110. Id. at 55.

111. Id.


114. See TEC Report, supra note 109, at 107 & n.131.
115. INTERNATIONAL FEDERATION OF RED CROSS AND RED CRESCENT SOCIETIES, WORLD DISASTERS REPORT: FOCUS ON INFORMATION IN DISASTERS 93 (2005) [hereinafter WORLD DISASTER REPORT].


117. Id.


120. See WORLD DISASTER REPORT, supra note 115, at 89-92.


122. See Sri Lanka Case Study, supra note 41, at 3-8; Indonesia Case Study, supra note 89, at 5-7.

123. Based on interviews performed by the author in Guatemala City in November 2006 in preparation of a case study due to be published in early 2007. For a list of foreign organizations that participated in the relief effort, see the dedicated website created for the disaster by UNDP: http://www.pnudguatemala.org/stan.

124. See Fiji Case Study, supra note 86, at 31.


129. See TEC Report, supra note 109, at 60.

130. See Katouch, supra note 113, at 158.


134. For example, legal concerns regarding initiation of aid, entry of personnel, vehicles and goods, liability and coordination were prominently featured in the workshops the United States Department of Defense has organized on “Foreign Consequence Management.” See supra note 9.


136. See supra note 68.

137. See supra note 58.


140. See supra note 125.


142. Id. at para. 3.

143. See TEC Report, supra note 109, at 59.


146. See Guidance Document on Relations between the Components of the Movement and Military Bodies, para. 6, adopted by Council of Delegates of the Red Cross and Red Crescent, res. 7, Nov. 18, 2005.

147. See Oslo Guidelines, supra note 141, para. 32. The Oslo Guidelines (para. 1) define “direct assistance” as “the face-to-face distribution of goods and services”; “indirect assistance” as “at least one step removed from the population and involving such activities as transporting relief goods and personnel”; and “infrastructure support” as “providing general services, such as road repair, airspace management and power generation that facilitate relief, but are not necessarily visible to or solely for the benefit of the affected population.”

148. These include Pakistan (see supra note 81) and Sri Lanka (see Sri Lanka Ministry of Disaster Management, Towards a Safer Sri Lanka: A Roadmap for Disaster Risk Management (Dec. 2005)), among others.

149. The IFRC’s IDRL Programme has been working toward this end through training, publications and the creation of a database of existing instruments, http://www.ifrc.org/idrl.


151. For a description of these forums and their results, see http://www.ifrc.org/idrl.