



International Federation
of Red Cross and Red Crescent Societies

International Disaster Response Law

A Preliminary Overview and Analysis of Existing Treaty Law

**Summary of the study on existing treaty law prepared by
Professor Horst Fischer, Bochum University
Germany**

January 2003

Background to the IDRL Project and the Study of Existing Treaty Law

BACKGROUND

The International Federation of Red Cross and Red Crescent Societies initiated the International Disaster Response Law (IDRL) Project with the aim of reducing the vulnerability and suffering of people affected by disasters. It is hoped that this will be achieved through the promotion and development of international disaster response law mechanisms to better facilitate the provision of expedient and effective international humanitarian assistance.

The project involves several stages including the collection of relevant legal and non-legal materials for publication, a legal study to examine the current state of international law in this regard and several field studies to examine the effectiveness of existing law in an operational context. The results of these studies will be presented to the Council of Delegates and International Conference of the Red Cross and Red Crescent Movement in December 2003 along with recommendations for the further development of this important area of international law.

There are many different types of instruments, both legal and non-legal, that regulate disaster response activities in times of natural and technological disaster. These instruments include international treaties and conventions, resolutions of the United Nations and other international bodies, operational guidelines and standards for humanitarian organisations such as the Sphere Minimum Standards as well as initiatives such as the Humanitarian Accountability Project and the Working Group on International Search and Rescue. These wide ranging instruments and initiatives aim to set standards and rules for the preparedness, mobilisation, coordination, facilitation and delivery of humanitarian assistance in times of disaster.

THE IDRL LEGAL STUDY

Initiatives to create legal mechanisms applicable to natural disasters have been on the international agenda at various times since the 1880's, however there has never been a comprehensive treaty or legal framework on the subject. The International Federation's World Disaster Report 2000 contains an important chapter documenting the development of international disaster response law instruments and noted the lack of any coherent organization and analysis of these rules into a comprehensive body of law.

In 2001, Professor Horst Fischer from the Ruhr-Universität Bochum was commissioned by the Federation to collect and examine the key international treaties related to international disaster response and to identify the scope of the law as well as any patterns in their rules including commonalities, differences and lacunas. Over 130 texts have been gathered, mainly from UN repositories, consisting primarily of multilateral and bilateral treaties, as well as a sample of relevant UN resolutions.

A Preliminary Overview and Analysis of Existing Treaty Law: Summary of the report conducted by Professor Horst Fischer, Bochum University

The following is a summary of some of the main findings of this study so far. A list of some of the main documents examined is also available on this website and the full report will be available soon.

THE NATURE OF IDRL TREATIES

At the core of IDRL is a diverse and complex system of bilateral and multilateral treaties concluded between States. These treaties have been growing in number and scope since at least the end of the Second World War and have often involved agreements on the provision and or facilitation of assistance in times of natural or technological disaster. Despite the variances in their purpose, scope and content, it is possible to identify certain patterns of treaties as they have evolved over time.

Bilateral treaties

During the 1950's, in the early stages of treaty-making on issues of disaster response, the subject matter of these agreements were limited to the specific needs and circumstances of individual disaster response activities. They were used as a means to identify particular relief goods for delivery from one State to a vulnerable disaster-struck State, such as those formed between the United States of America and Japan¹ and the United Kingdom with India². These agreements also included various administrative procedures, such as customs waiver, to facilitate the import and distribution and distribution of relief items.

The 1950's also saw the emergence of treaties between neighboring countries and were based predominantly on the notion of a limited form of mutual assistance, restricted to very specific areas and functions. For example, the treaty between France and Spain of 1959 provided for a reciprocal arrangement involving the provision of fire fighting and other emergency services in the event of a serious accident or major disaster taking place in the border regions of France and Spain.³

By the 1970's bilateral treaties on mutual assistance were beginning to expand into more general agreements on disaster response. These agreements were no longer restricted to identified regions and included a wider range of disaster assistance

¹ United States Of America And Japan Exchange Of Notes Constituting An Agreement Relating To Emergency Flood, 1959

² United Kingdom Of Great Britain And Northern Ireland And India Agreement For The Duty Free Entry Of Relief Supplies, 1964

³ France and Spain on Mutual Assistance between French and Spanish Fire and Emergency Services of 14 July 1959

activities. Some also contained provisions for early-warning notification and information sharing to minimise the risk and impact of disasters.⁴

This shift towards more comprehensive mutual assistance was certainly supported at a regional level in Europe, as evidenced by the European Council's resolve in 1987 to set up a multilateral Co-operation Group for the prevention of, protection against and organisation of relief in major natural and technological disasters.⁵

The 1990's have seen an increasing prevalence of mutual assistance treaties, a network of which now covers most of central Europe. These treaties commonly contain clauses on general principles of relief including requests for offers of assistance, facilitation of entry into sovereign territory, technical cooperation, information sharing and in some cases preparedness activities and training.

Whether such a comprehensive network of treaties is reflected in regions outside of Europe is still the subject of further research. Based on the treaties currently registered with the United Nations, however, it would seem that this pattern is limited central Europe.

Multilateral treaties

The number of multilateral treaties relating to international disaster response is quite limited, particularly when compared to the proliferation of bilateral treaties as described above. They tend to lack the similarities in structure and content that characterise their bilateral counterparts and largely remain restricted to specific international issues. Many of these treaties are not specific to situations of natural disaster, but nevertheless, they are significant to the core of IDRL.

An early example of a multilateral treaty in this area is the United Nations Convention on the Privileges and Immunities of the United Nations of 1946. Whilst limited to personnel and experts related to the UN, this convention applies regardless of the characterisation of the specific operations and is therefore applicable in times of natural and technological disaster. The substance of this convention has since been reaffirmed by the International Court of Justice in the context of human rights and is also used as the model for other agreements between States regarding the protection of personnel.⁶

Another example is 1960 Agreement on the Temporary Importation, Free of Duty, of Medical Surgical and Laboratory Equipment for Use on Free Loan in Hospitals and Other Medical Institutions for Purposes of Diagnosis of Treatment of 1960. Once again, the agreement does not specifically apply to situations of natural disaster, but

⁴ For example, agreements between France and Germany 1977, France and Belgium 1981 and Switzerland and Germany 1984

⁵ Resolution (72) 6 on Precautions against Natural and other Disasters and the Planning and Provision of Disaster Relief, adopted by the Committee of Ministers of the Council of Europe on 18 February 1972

⁶ For example the Agreement between the UN, Sweden and Peru for the provision of a technical cadre unit after the 1970 earthquake

rather to the broader context of a sudden shortage of sufficient medical supplies to meet the needs of the population, which could quite foreseeably be the result of a natural or technological disaster.

There are two multilateral treaties that could be said to represent the most comprehensive treaties on international disaster response. The first is the 1986 Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency. This convention contains provisions covering a range of issues including offers of and requests for assistance, coordination of operational activities, the role of the International Atomic Energy Agency, costs, privileges and immunities of personnel and the use of facilities and the transit of equipment and property.

The second comprehensive multilateral treaty of this kind is the Tampere Convention on the Provision of Telecommunications Resources for Disaster Mitigation and Relief Operations of 1998 (not yet in force). Whilst remaining within the field of emergency telecommunications, this Convention also contains similar and even more detailed provisions pertaining to the broader activities of disaster response including offers and requests, privileges and immunities facilities, costs and coordination. In addition, it also extends some of these provisions to non-governmental organisations and non-state entities, thus extending the cope beyond the States themselves.

In this way, the Tampere Convention could be regarded as a new approach to IDRL and may be a relevant model for future initiatives. Unfortunately, the Tampere Convention has so far failed to achieve wide acceptance within the international community, reflected by the low ratification rate.

KEY SUBJECT AREAS

Despite the diversity of the type and content of treaties relating to IDRL, it is possible to identify some subject areas that are common to many of the instruments. These areas are identified below with some comments on their general content.

Offers of and requests for assistance

One of the distinct features of treaties related to IDRL is the classification of requesting and responding states. This concept is central to the way in which international disaster response activities are initiated. The “requesting” state is the state requesting from another to send relief teams, relief equipment and relief supplies. The “responding” state is the state, which in accordance with the agreement, complies with the request. It seems to be generally understood that assistance cannot be given without request and cannot be demanded without offer, but if requested it should be offered.

Responsibility and coordination

The need for the coordination of activities in times of disaster has long been recognised by the international community. The UN General Assembly has often contributed to this through the adoption of various resolutions in this theme. The need for coordination is also reflected in the treaty law, some of which attempt to specifically define the concept of coordination for the purposes of a particular treaty. With or without a specific definition, the common understanding of this term includes the general elements of interaction between the States Parties or their competent bodies, mutual assistance in the provision of technical facilities and equipment, and the planning and carrying out of activities related to emergency response.

In addition to the need for coordination, it has also been widely accepted that ultimate responsibility for assistance lies with the disaster affected State, as reflected in many of the bilateral and multilateral treaties.

Access of personnel and equipment

Most treaties contain clauses applicable to the access and entry of personnel and equipment to the disaster affected State. As a general principle, border-crossing formalities are kept to a minimum, often with exemptions from visa and passport requirements provided that certificates of participation in the disaster response operation can be verified. In urgent cases, some treaties also provide for entry into a country in locations other than at the usual border crossings, which sometimes requires the prior notification of the relevant authorities. Ordinary equipment for use in the operation is also subject to minimum entry requirements, however there are also some specific rules for the use of certain types of equipment such as airplanes.

These clauses appear to be limited to treaties in which the facilitation of disaster response is the primary objective. In treaties concluded mainly for the purposes of disaster preparedness, the access of personnel and equipment is left to the separate agreement of the Parties.

Relief goods and customs

Most of the treaties examined include a specific set of rules on the customs requirements for relief goods. The International Convention on the Simplification and Harmonization of Customs Procedures of 18 May 1973 with its amending protocol of 1999 includes a principle that consignments received as gifts by approved organizations for use or distribution should be admitted free of import duties and taxes and free of economic import prohibitions or restrictions.⁷ This rule, subject to some variations and qualifications, is also used in many bilateral disaster response treaties.

⁷ Chapter 5, Principle 3 of the Protocol of Amendments to the International Convention on the Simplification and Harmonization of Customs Procedures of 18 May 1973

The desire to convert the already existing bilateral practice on customs procedures to the multilateral level has been emphasized in a number of reports of the United Nations Secretary General on the Strengthening of the coordination of emergency humanitarian assistance.

Status, immunities and protection of personnel

There are significant variations in the rules on the status and protection of personnel within the treaties examined here. Only a few refer to specific immunities granted to personnel participating disaster response. The most explicit of these references is included in the Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency which requires the requesting state to afford to personnel of the assisting party and personnel acting on its behalf the necessary privileges, immunities and facilities for the performance of their assistance functions. These provisions include immunity from arrest, detention and legal processes as well as exemptions from taxation, duties and other charges. Significantly, this rule is replicated in the Tampere Convention, however immunities for personnel have not been included in many of the more recent bilateral treaties.

In relation to the protection of personnel, many bilateral treaties also refer to the protection of the disaster response personnel. It seems generally accepted either by explicit rules or implicitly, that the protection of the disaster response personnel is the obligation of the host state. Indeed, the most recent United Nations General Assembly resolution on the safety and security of humanitarian personnel and protection of UN personnel reaffirms the need for greater respect for the various international obligations in this area.⁸

Costs

Agreement on costs is an important feature of many bilateral and multilateral treaties dealing with disaster response. Distinction is made between costs incurred as part of the operation, costs incurred within the disaster affected state (such as the provisioning of personnel and for vehicles) and costs for the use of special equipment. Whilst there is considerable variance in the specific terms formulated under bilateral treaties, it is generally the responsibility of the assisting state to cover general operational costs, but the host state is expected to contribute to costs incurred within its territory. The use of any specialized equipment does not seem to fall under any general principles and is subject to the specific requirements of the contracting parties.

⁸ See A/Res/56/217 on the Safety and Security of Humanitarian Personnel and Protection of United Nations

CONCLUDING OBSERVATIONS

Absence of material within specific regions

Many of the treaties collected for this IDRL legal were located from UN sources. It is interesting to note that the majority of bilateral treaties have been concluded between European nations, with only limited number from other regions. In particular there is a significant absence of treaties concluded at a regional level in Asia, Africa and the Middle East. It may be that such treaties do exist but are not deposited with the UN. Or it may be that there is an absence of these types of agreements in these regions. More research will need to be undertaken to discover the reason for this absence.

Inconsistencies in regulations

Of the treaties examined so far, there are clearly identifiable areas of disaster response that tend to be regulated by treaties, and within these areas there have emerged some common trends. However in the majority of instances there are no clearly identifiable patterns that lend to the presumption of general principles. Therefore, at least where multilateral and bilateral treaties are concerned, a majority of the law relating to IDRL remains disparate and inconclusive.

Lacunae in existing laws

In addition to inconsistencies within the various subject areas, there are also some significant aspects of disaster response that remain inadequately regulated or are omitted entirely from these agreements. These areas include:

- Entry requirements
- Working permits
- Freedom of Movement
- Status of personnel and specific immunities
- Recognition of professional expertise
- Information exchange
- Treatment of consignments
- Transport in the territory of the requesting state
- Customs tariffs
- Distribution and use of relief

FUTURE STUDY OF IDRL

The present legal study is subject to various limitations including the limited category of legal documents evaluated (namely bilateral and multilateral treaties concluded between States) and the absence of materials from within different geographic regions. Therefore, it is important that further studies of IDRL are conducted to widen the scope of the legal study and to compare the principles and observations identified for different categories of legal and non-legal materials. In particular, the instruments

that govern the way in which organisations such as the UN and the components of the Red Cross and Red Crescent Movement operate in times of natural disaster. These too will need to be gathered and analysed as part of a legal study in this area.

The Federation is currently in the process of identifying and commissioning a number of academics and institutions from different regions to collect and analyse IDRL instruments within their region and results of these studies will be incorporated into the general legal findings on IDRL to be presented to Council of Delegates and International Conference in 2003.