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## Protection of persons in the event of disasters

### Memorandum by the Secretariat

#### *Summary*

Disasters affect large numbers of individuals each year, in all regions of the world, causing widespread loss of life, injury and economic loss. International cooperation in the provision of disaster relief assistance, while not a recent phenomenon, has become more prevalent in contemporary times, which has given rise to a need for enhanced legal regulation.

The present study aims to provide an overview of existing legal instruments and texts applicable to a variety of aspects of disaster prevention and relief assistance, as well as of the protection of persons in the event of disasters, focusing primarily on natural disasters. Although no generalized multilateral treaty on the topic exists, a number of relevant rules have been codified in some multilateral treaties (mostly sectoral), both at the global and regional levels, as well as in over 150 bilateral treaties and memorandums of understanding. In addition, over 100 national laws directly concerning the topic, and countless national laws which relate to a specific aspect of the topic, have been identified. The topic is further contextualized by a series of significant resolutions including General Assembly resolution 46/182, which, together with other instruments such as the resolution of the International Conference of the Red Cross on measures to expedite international relief and the Hyogo Framework for Action, constitute the central components of an expanding regulatory framework. In a significant recent development, the International Conference of the Red Cross and Red Crescent adopted the Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance in 2007. In addition, various non-binding and expository texts have been formulated by a number of other bodies.

Several core principles underpin the legal instruments related to disaster relief activities, including humanity; neutrality; impartiality; non-discrimination; cooperation; sovereignty and non-intervention; and prevention, mitigation and



preparedness. Many of these principles, while applicable to international law dealing with humanitarian assistance more broadly, appear equally applicable in the context of disaster relief.

The principles of sovereignty and non-intervention contain two important corollaries: that disaster relief carried out by assisting actors is subject to the consent of the receiving State and that the receiving State has the primary responsibility for the protection of persons on its territory or subject to its jurisdiction or control during a disaster.

It is, furthermore, increasingly recognized that issues of disaster prevention, mitigation and preparedness are crucial to disaster relief, and provisions on such issues are now regularly found alongside the more traditional provisions on disaster response. Disaster risk reduction activities serve both to build resilience to hazards and to ensure that development efforts do not increase vulnerability to those hazards. At the legal level, this involves developing and implementing a legal framework which facilitates, *inter alia*, undertaking risk assessments, developing public awareness campaigns, implementing technical and physical risk mitigation programmes and promoting the sharing of information and knowledge.

The international law governing disaster response has developed into a complex set of rules governing the initiation of relief, questions of access, issues of status and the provision of relief itself. The process of relief assistance is typically initiated on the basis of a request for assistance issued by the affected State, and is based on the consent of the affected State. Although any “duty” to provide assistance is limited to specific agreements, some recognition exists of the “right” of assisting actors to make unsolicited offers (subject to the consent of the affected State). Numerous instruments cover the question of the entry of disaster relief personnel into the territory of the receiving State, including the facilitation of entry visas for those personnel; the acquisition of work permits, or authorization; and recognition of their professional qualifications. Similarly, a number of instruments provide for the admission of goods for use in disaster relief, as well as for the facilitation of customs clearance procedures, and in some cases, requiring exemption from import duties, taxes and restrictions. The question of freedom of movement within the receiving State is addressed in instruments related to disaster relief, although provisions were identified both facilitating and restricting such movement. A number of multilateral treaties, bilateral treaties and national laws include a provision to facilitate overflight and landing rights.

On the question of status, agreements commonly address issues such as the identification of personnel engaged in disaster relief operations and their privileges, immunities and facilities. Identification provisions include those relating to the use of an internationally recognized symbol, the issuance of identity cards to individual members of disaster relief teams and the submission of personnel lists to the authorities of the receiving State. Provisions on privileges, immunities and facilities for disaster relief operations and their personnel are divided between those accorded to State officials; to intergovernmental organizations and their staff; and to non-governmental organizations. Concerning the latter group, while the extension of privileges and immunities by a State to a foreign non-governmental organization remains an exceptional occurrence, some international instruments related to disaster relief can be interpreted as taking this step.

Concerning the provision of relief, instruments related to disaster relief include provisions on the initial exchange of information between the receiving State and the assisting State, international organization, or designated focal point; the question of communications equipment and facilities; the coordination of relief activities; the use of military and civil defence assets; the issue of the quality of relief assistance; the protection of disaster relief personnel; the costs relating to a disaster response operation; liability and compensation during disasters; the settlement of disputes; and the eventual termination of assistance.

Consideration of the protection of persons in disasters is a necessary component for a complete international disaster relief regime. While it is established that protection remains the primary responsibility of the receiving State, additional actors may play an important role to the extent permitted by international law. Existing international human rights obligations lie at the core of the content of protection in the context of disasters. While several non-binding instruments suggest the existence of a specific “right to humanitarian assistance” applicable in disasters, the law remains nonetheless inconclusive on the point. Protection activities during disasters also involve securing humanitarian access to victims and establishing safe zones. Certain mechanisms, such as the concept of humanitarian space and the establishment of relief corridors, allow for the receiving State to provide a limited geographical consent to humanitarian assistance.

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## Annexes\*

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\* Annexes I (Glossary), II (List of instruments) and III (Selected bibliography) to the present document will be issued as A/CN.4/590/Add.1, Add.2 and Add.3, respectively.

## I. Introduction\*

1. Disasters affect large numbers of individuals, in all regions of the world, each year. The incidence of a “disaster” is a function of the risk process, namely the degree of exposure of people, infrastructure and economic activity to a “hazard”,<sup>1</sup> such as an earthquake or hurricane, as well as the vulnerability<sup>2</sup> of those exposed to the hazard.<sup>3</sup> Volcanoes that erupt in isolated areas have less of an impact, given the low level of exposure of communities to that hazard, than those that erupt within reach of human settlements. At the same time, an earthquake may have a more disruptive impact on a community than a similar earthquake which occurs elsewhere, owing to that community’s higher degree of vulnerability.<sup>4</sup> It is such vulnerability which gives rise to the occurrence of a “disaster”. It is also clear that disasters disproportionately affect poorer communities because of their greater vulnerability, leading, inter alia, to increased food insecurity and deepening poverty.<sup>5</sup> This is exacerbated by other factors such as growing levels of urbanization, the failure of critical infrastructure and poor governance policies.

2. While disasters frequently occur entirely within States, in some instances they lead to large-scale suffering across multiple States. Nowhere was this more evident than with the tsunami of 26 December 2004, which killed approximately 240,000 people in 12 States and left over 1 million people displaced. In 2006, there were 427 natural disasters affecting approximately 143 million people and resulting in over 23,000 deaths worldwide.<sup>6</sup> Natural disasters have caused an average of \$70 billion

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\* At its fifty-eighth session, in 2006, the International Law Commission included the topic “protection of persons in the event of disasters” in its long-term programme of work (see *Official Records of the General Assembly, Sixty-first Session, Supplement No. 10 (A/61/10)*, para. 257). At its fifty-ninth session, held the following year, the Commission decided to include the topic in its programme of work and appointed Eduardo Valencia-Ospina as Special Rapporteur (*Official Records of the General Assembly, Sixty-second Session, Supplement No. 10 (A/62/10)*, para. 375). The Commission further requested the Secretariat to prepare a background study on the topic (*ibid.*, para. 386).

<sup>1</sup> The United Nations International Strategy for Disaster Reduction (ISDR) in 2004 defined a hazard as being “a potentially damaging physical event, phenomenon or human activity that may cause the loss of life or injury, property damage, social and economic disruption or environmental degradation. Hazards can include latent conditions that may represent future threats and can have different origins: natural (geological, hydrometeorological and biological) or induced by human processes (environmental degradation and technological hazards)”.

“Living with risk: a global review of disaster reduction initiatives”, ISDR, 2004, vol. I, p. 16.

<sup>2</sup> “Vulnerability” is defined as “[t]he conditions determined by physical, social, economic, and environmental factors or processes, which increase the susceptibility of a community to the impact of hazards” (*ibid.*).

<sup>3</sup> *Ibid.*, p. 17; “Reducing the risk of disasters — helping to achieve sustainable poverty reduction in a vulnerable world: a policy paper”, Department for International Development, United Kingdom, March 2006, p. 5.

<sup>4</sup> *Ibid.*, p. 6, citing the example of an earthquake in central California in 2003, measuring 6.5 on the Richter scale, which resulted in the deaths of two people and 40 injuries, while an earthquake measuring 6.6 which struck the Islamic Republic of Iran four days later killed over 40,000 people. Both took place in heavily populated areas.

<sup>5</sup> In the Hyogo Declaration, the international community recognized that “[d]isasters have a tremendous detrimental impact on efforts at all levels to eradicate poverty; the impact of disasters remains a significant challenge to sustainable development” (A/CONF.206/6 and Corr.1, chap. I, resolution 1, para. 1).

<sup>6</sup> A/62/323, para. 2.



in damage each year between 1987 and 2006, excluding the significant economic costs associated with setbacks to development efforts.<sup>7</sup>

## A. Disasters and the law

3. International cooperation in the provision of disaster relief assistance, while not necessarily a recent phenomenon, has become more prevalent in contemporary times. The increasing involvement of the international community in the provision of such assistance has given rise to a need for enhanced legal regulation. Nonetheless, despite the large proportions and international nature of some disasters, the international law regulating activities in relation to them remains relatively underdeveloped. Currently no universal convention comprehensively governing all the main aspects of disaster relief — including prevention, response and protection — exists.<sup>8</sup> The only multilateral treaty of universal scope directly related to disaster response, the Convention and Statute establishing an International Relief Union of 1927,<sup>9</sup> is no longer in operation.<sup>10</sup> The lack of major multilateral conventional instruments applicable to disasters stands in stark relief to the extensive body of international humanitarian law applicable during armed conflicts.<sup>11</sup>

<sup>7</sup> Ibid., para. 8.

<sup>8</sup> The International Federation of Red Cross and Red Crescent Societies (IFRC) has noted that “there is no definite, broadly accepted source of international law which spells out legal standards, procedures, rights and duties pertaining to disaster response and assistance” (IFRC, *World Disasters Report 2000*, p. 145).

<sup>9</sup> The Convention and the accompanying Statute of the International Relief Union were conceived at a time of great optimism concerning the potential for expansive developments in the field of humanitarian assistance and collaboration between the League of Nations and the Red Cross. The Union, however, was never able to provide immediate relief upon the occurrence of disasters, owing to financial difficulties, and was generally limited to the elaboration of scientific studies on disaster relief. After the 1934 earthquake in Orissa, the then Indian government did not accept direct assistance from the Union but did accept that channelled through the Red Cross. Following an earthquake in Baluchistan, in 1935, seven Governments contributed relief assistance through the Union. Following the Mississippi and Ohio floods of 1937, the United States declined the assistance offered by the Union. See P. MacAlister-Smith, “The International Relief Union: reflections on establishing an International Relief Union of July 12, 1927”, *Legal History Review/Revue d’histoire du droit/Tijdschrift voor Rechtsgeschiedenis*, vol. 54 (1986), pp. 368-372.

<sup>10</sup> By the end of the Second World War its continued existence was in doubt. In 1948, resolution XLII of the 17th International Conference of the Red Cross provided for the formal withdrawal of the Red Cross from the Union. The Economic and Social Council recommended, in resolution 286 (X) of 8 February 1950, that those States Members of the United Nations that were also members of the Union take steps to terminate the Union. The Union’s Executive Committee met in 1963 and recommended the transfer of Union assets and responsibilities to the United Nations. This step was finalized by Economic and Social Council resolution 1268 (XLIII) of 4 August 1967. While a number of States subsequently withdrew from the Convention, in accordance with article 19, at the time of writing, several States (Albania, Belgium, Bulgaria, China, Ecuador, Finland, Germany, Islamic Republic of Iran, Italy, Monaco, Poland, San Marino, Sudan, Switzerland, Turkey, Venezuela and the former Yugoslavia) had not formally withdrawn from the Convention.

<sup>11</sup> Several attempts at codification have been made, without success. In 1984, the Economic and Social Council had before it a proposal for the elaboration of an international convention on the question of disaster response. At the initiative of the United Nations Disaster Relief Coordinator,

4. The absence of a generalized convention on disaster relief law is, however, somewhat misleading as to the extent of the existence of applicable law in this area.<sup>12</sup> Several pertinent sectoral multilateral conventions exist at the global level, the most relevant being the Tampere Convention,<sup>13</sup> which provides a comprehensive legal framework concerning telecommunications assistance during disaster relief operations, including the coordination of such assistance as well as the reduction of regulatory barriers, and the Framework Convention on Civil Defence Assistance,<sup>14</sup> which covers cooperation among national civil defence entities.<sup>15</sup> A series of multilateral agreements is in place at the regional level. While some cover only aspects of disaster relief, or are of tangential pertinence to the topic, several such agreements provide a more comprehensive coverage of disaster-related matters and,

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a draft convention on expediting the delivery of emergency assistance was developed, together with an extensive study on the subject, and was examined by a group of international legal experts chaired by the then Chairman of the International Law Commission, Laurel Francis, together with representatives of a number of United Nations agencies (see A/39/267/Add.2-E/1984/96/Add.2). The draft convention was submitted to the Economic and Social Council with the recommendation that it decide on further review by a group of governmental experts (*ibid.*, para. 9). No further action was taken on the initiative. In 1990, the Secretary-General noted that “donors, recipient Governments, intergovernmental and non-governmental organizations have ... expressed their opinion on the desirability of new legal instruments in order to overcome the obstacles in the way of humanitarian assistance” (A/45/587, para. 41). However, it was noted that “... a group of important non-governmental organizations has declared itself as not being in favour of such a convention. Their point of view is that all new initiatives in the field of humanitarian assistance should be judged against the ultimate criterion of effectiveness, that is, whether they represent an improvement over the present situation of disaster victims or not. In their opinion a convention would not constitute an improvement. On the contrary, it would risk weakening the progress so far achieved over the years in providing humanitarian assistance. In particular ... it is assumed that the concept of national sovereignty as interpreted by some might reinforce the insistence of Governments on the non-interference in their internal affairs and thus render a convention counterproductive” (*ibid.*, para. 44). In 2000, the Secretary-General encouraged initiatives to develop a “legal framework for international assistance in the wake of natural disasters and environmental emergencies, outlining the responsibilities of countries receiving and providing support”, and noted that “Member States may wish to consider drafting a convention on the deployment and utilization of urban search and rescue teams ... which would provide a working framework for complex issues, such as utilization of air space, customs regulations for import of equipment, respective responsibilities of providing and recipient countries, that have to be resolved *prior to* the international response to a sudden-onset natural disaster” (A/55/82, para. 135 (m) (emphasis added)). Although a draft international urban search and rescue convention was subsequently proposed, the initiative was eventually replaced by the negotiation of General Assembly resolution 57/150 of 16 December 2002, which endorsed the Guidelines of the International Search and Rescue Advisory Group.

<sup>12</sup> For a comprehensive survey of existing applicable legal norms, see David Fisher, *Law and Legal Issues in International Disaster Response: A Desk Study*, International Federation of Red Cross and Red Crescent Societies, 2007, pp. 33-87 and annex II, which contains a list of relevant instruments and texts. See also the online database established and maintained by the International Disaster Response Laws, Rules and Principles Programme of the International Federation of Red Cross and Red Crescent Societies (IFRC), at [www.ifrc.org/what/disasters/idrl/publication.asp](http://www.ifrc.org/what/disasters/idrl/publication.asp).

<sup>13</sup> Tampere Convention on the Provision of Telecommunication Resources for Disaster Mitigation and Relief Operations, 18 June 1998 (United Nations, *Treaty Series*, vol. 2296, No. 40906).

<sup>14</sup> The Convention, which entered into force in 2001, was adopted at an international conference convened in Geneva in 2000 under the auspices of the International Civil Defence Organization.

<sup>15</sup> A number of other global multilateral treaties contain provisions of relevance to the topic, or aspects thereof, and are accordingly cited throughout this study. See annex II (to be issued as A/CN.4/590/Add.2) for a complete list of such treaties.

in some cases, a legal basis for intraregional cooperation, including through the establishment of dedicated institutional mechanisms. The most recent example of the latter type of regional agreement is the ASEAN (Association of Southeast Asian Nations) Agreement, adopted in 2005,<sup>16</sup> which partly reflects contemporary thinking among policymakers on several of the key issues in the area.<sup>17</sup> In addition, there exist over 150 bilateral treaties and memorandums of understanding concerning disaster relief assistance.<sup>18</sup>

5. A number of non-binding texts have also been adopted on the topic, including resolutions of the General Assembly and the Economic and the Social Council of the United Nations and other bodies such as the International Conference of the Red Cross and Red Crescent; political declarations; codes of conduct; operational guidelines; and internal United Nations rules and regulations which provide interpretative tools for preparedness, mobilization, coordination, facilitation and delivery of humanitarian assistance in times of disaster.

6. The key contemporary resolution is General Assembly resolution 46/182,<sup>19</sup> which, together with other instruments such as the resolution of the International Conference of the Red Cross on measures to expedite international relief<sup>20</sup> and the Hyogo Framework for Action,<sup>21</sup> constitute the central components of an expanding

<sup>16</sup> ASEAN Agreement on Disaster Management and Emergency Response, 26 July 2005, ASEAN Documents Series 2005, p. 157.

<sup>17</sup> Other relevant agreements include the Agreement Establishing the Caribbean Disaster Emergency Response Agency, 26 February 1991; the Inter-American Convention to Facilitate Disaster Assistance, 7 June 1991; the Agreement among the Governments of the Participating States of the Black Sea Economic Cooperation on Collaboration in Emergency Assistance and Emergency Response to Natural and Man-made Disasters, 15 April 1998; the Agreement Between Member States and Associate Members of the Association of Caribbean States for Regional Cooperation on Natural Disasters, 17 April 1999; the Agreement on the Establishment of the Civil-Military Emergency Planning Council for Southeastern Europe, 3 April 2001; and the New Convention Constituting the Coordination Centre for the Prevention of Natural Disasters in Central America (CEPRENAC), 3 September 2003. See annex II (to be issued as A/CN.4/590/Add.2) for a complete list of regional instruments.

<sup>18</sup> See annex II (to be issued as A/CN.4/590/Add.2) for a complete listing.

<sup>19</sup> General Assembly resolution 46/182 of 19 December 1991, annex.

<sup>20</sup> Resolution 6 adopted at the 23rd International Conference of the Red Cross and Red Crescent, Bucharest, 1977, in *Handbook of the International Red Cross and Red Crescent Movement* (3d ed., 1994), pp. 811-815. Also set out in document A/32/64, annex II, and endorsed by the Economic and Social Council in resolution 2102 (LXIII) of 8 August 1977 and by the General Assembly in resolution 32/56 of 8 December 1977. See also the Principles and Rules for Red Cross and Red Crescent Disaster Relief, prepared by IFRC in consultation with ICRC, reprinted in *International Review of the Red Cross*, No. 310 (29 February 1996), annex IV; and the Declaration of principles for international humanitarian relief to the civilian population in disaster situations, resolution 26, adopted at the 21st International Conference of the Red Cross, Istanbul, September 1969, which supplements the Principles and Rules for Red Cross and Red Crescent Disaster Relief. See R. Perruchoud, *International Responsibilities of National Red Cross and Red Crescent Societies* (Geneva: Henry Dunant Institute, 1982), pp. 52-53. See also the Code of Conduct for the International Red Cross and Red Crescent Movement and Non-Governmental Organizations in Disaster Relief, annex VI to the report entitled "Principles and response in international humanitarian assistance and protection, document 95/C.II/2/1, 26th International Conference of the Red Cross and Red Crescent, Geneva, 3-7 December 1995.

<sup>21</sup> Hyogo Framework for Action 2005-2015: Building the Resilience of Nations and Communities to Disasters, adopted on 22 January 2005 at the World Conference on Disaster Reduction (A/CONF.206/6 and Corr.1, chap. I, resolution 2).

regulatory framework. In addition, several texts, containing specific dispositive provisions have been developed by different organizations and entities in recent times. These include the 1980 Draft Model Agreement on International Medical and Humanitarian Law, of the International Law Association;<sup>22</sup> the Model Rules for Disaster Relief Operations published by the United Nations Institute for Training and Research (UNITAR) in 1982;<sup>23</sup> the resolution on humanitarian assistance adopted by the Institute of International Law in 2003;<sup>24</sup> and the Inter-Agency Standing Committee (IASC) Operational Guidelines on Human Rights and Natural Disasters,<sup>25</sup> finalized in 2006.<sup>26</sup> A further significant development took place in 2007 with the adoption, by the International Conference of the Red Cross and Red Crescent, of the Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance.<sup>27</sup>

7. At least 100 States have enacted national legislation regulating disaster prevention and response, or related aspects thereof.<sup>28</sup> While several States have put

<sup>22</sup> Report of the 59th Conference of the International Law Association (Belgrade, 17-23 August 1980), pp. 520-527. See also the resolution on international medical and humanitarian law adopted at the 57th Conference of the International Law Association (Madrid, 29 August-4 September 1976), in the report of the 59th Conference of the International Law Association, pp. xlvi-xlix.

<sup>23</sup> UNITAR, *Policy and Efficacy Studies* No. 8 (Sales No. E.82.XV.PE/8).

<sup>24</sup> Adopted at the Bruges session on 2 September 2003, following 10 years of work on the topic. See *Annuaire de l'institut de droit international*, vol. 70-I (2002-2003), pp. 399-576 and vol. 71-II (2004), pp. 133-250.

<sup>25</sup> Approved by the IASC Working Group on 9 June 2006, on the basis of a proposal prepared by the Representative of the Secretary-General on the Human Rights of Internally Displaced Persons, Walter Kälin. Published by the Brookings-Bern Project on Internal Displacement, Washington, D.C., 2006.

<sup>26</sup> Additional texts cited in this study include the Draft international guidelines for humanitarian assistance operations (Heidelberg, Germany: Max Planck Institute for Comparative Public Law and International Law, 1991); the Sphere Humanitarian Charter and Minimum Standards in Disaster Response (Geneva: The Sphere Project, 2000, revised in 2004); the Guidelines on the Use of Military and Civil Defence Assets in Disaster Relief — “Oslo Guidelines”, Rev.1, 27 November 2006; and the Mohonk Criteria for Humanitarian Assistance in Complex Emergencies, reprinted in *Human Rights Quarterly*, vol. 17, No. 1 (February 1995), pp. 192-208.

<sup>27</sup> Adopted at the 30th International Conference of the Red Cross and Red Crescent, Geneva, 26-30 November 2007.

<sup>28</sup> At the time of writing the following countries or areas had been identified as having in place national legislation either concerning or relating to disasters (including civil defence) and aspects thereof: Algeria, Angola, Argentina, Armenia, Austria, Bahrain, Belarus, Belize, Benin, Bolivia, Brazil, British Virgin Islands, Cambodia, Cameroon, Canada, Chad, Chile, China, Colombia, Comoros, Costa Rica, Côte d'Ivoire, Croatia, Cuba, Czech Republic, Democratic Republic of the Congo, Ecuador, Egypt, El Salvador, Estonia, Fiji, Finland, France, Gabon, Georgia, Germany, Ghana, Greece, Guatemala, Haiti, Honduras, Hungary, India, Indonesia, Islamic Republic of Iran, Jamaica, Japan, Jordan, Kenya, Kyrgyzstan, Lesotho, Lithuania, Madagascar, Malawi, Mali, Mauritania, Mexico, Mongolia, Montserrat, Morocco, Nepal, New Zealand, Nicaragua, Niger, Norway, Oman, Pakistan, Panama, Papua New Guinea, Paraguay, Peru, Philippines, Poland, Republic of Korea, Republic of the Congo, Romania, Russian Federation, Saint Lucia, Senegal, Serbia and Montenegro, Singapore, Slovakia, Slovenia, Solomon Islands, South Africa, Spain, Sri Lanka, Sudan, Sweden, Switzerland, the former Yugoslav Republic of Macedonia, Tunisia, Turkey, Ukraine, United Republic of Tanzania, Uruguay, United States of America, Vanuatu, Venezuela, Viet Nam, Yemen, Zimbabwe and Taiwan Province of China. In addition, it should be emphasized that while many States have indeed enacted laws specific to disaster prevention and response, the corpus of national legislation relevant to the issue includes not only those laws dealing with disasters, but also relevant provisions in laws governing, for example, taxes, immigration, customs, licensing of professionals, public health and other areas which become relevant during a disaster.

in place legislation specifically related to disaster management, particularly in recent years, a large number of States regulate different aspects of disaster prevention and response through a variety of domestic laws on subjects such as protection of the environment and conservation, forestry, health, food safety, sanitation, epidemics, security, safety, protection, civil defence, immigration, customs duties and tariffs, search and rescue, emergencies, water, fire safety, prevention of industrial accidents, taxation, meteorology, spatial planning and earthquake prevention. Although such domestic legislation is not necessarily always relevant to the development of international rules, on a number of issues the national rule is determinative either by way of providing the content of an international norm (for example, while there may be an international norm requiring expedited access, it would be under the relevant national law that such a procedure would be provided) or by serving to trigger the operation of international cooperation (for example, in many States it is only upon the declaration of a state of emergency under national law that a request for international assistance may be made).

## B. Scope of the study

8. The present study aims to provide an overview of existing instruments and texts applicable to the main aspects of disaster prevention and relief assistance (including disaster response), as well as to the protection of persons in the event of disasters.<sup>29</sup> While the bulk of the study pertains to disasters emanating from natural phenomena, few of the legal instruments and texts cited maintain a clear distinction between natural and man-made disasters. Similarly, reference has been made to provisions in instruments relating primarily to man-made disasters, to the extent that such provisions are generic in nature. However, norms specific to the latter type of disaster are not covered.

9. Furthermore, most legal instruments and texts pertaining to disaster prevention, relief assistance and protection of persons do not draw a distinction between the onset of a single disaster and so-called “complex emergencies”,<sup>30</sup> as is

<sup>29</sup> No attempt has been made at providing an exhaustive accounting of all possible legal issues. It should also be noted that not all the international legal instruments cited in this study were, at the time of writing, in force, nor is a distinction made between instruments of comparatively high and low ratification rates. Indeed, many instruments cited extensively in this study are of a non-binding nature. Reference is made to all pertinent instruments, regardless of their nature and current ratification and implementation status, by way of evidence of the types of provisions which have been adopted in other codification-related exercises. Furthermore, while some previous studies have sought to make distinctions between different types of treaty arrangements (see, for example, the UNITAR Model Rules for Disaster Relief Operations, of 1982, which anticipate agreements between (a) an assisting State and a receiving State, (b) an assisting organization and a receiving State and (c) an assisting State or organization or a receiving State and a transit State, and the 1980 Draft Model Agreement on International Medical and Humanitarian Law, of the International Law Association, which also includes two models, one intended for use between the receiving State and an assisting organization and the other between the receiving State and an assisting State), no such distinctions are attempted in this study.

<sup>30</sup> “Complex emergency” has been defined as “a humanitarian crisis in a country, region or society where there is a total or considerable breakdown of authority resulting from internal or external conflict and which requires an international response that goes beyond the mandate or capacity of any single agency and/or the ongoing United Nations programme” (Working paper on the definition of complex emergency, Inter-Agency Standing Committee, December 1994 (on file with the Codification Division)).

typically done in the policy literature. Such contextual differentiation, instead, emerges as a function of the basic distinction between the applicability of the law governing disaster prevention and response, as well as the protection of persons in the context of disasters, during peacetime, as opposed to that of the rules of international humanitarian law governing armed conflict. Although the two sets of rules share a common humanitarian root (and, accordingly, analogies are drawn from the rules of international humanitarian law, where applicable), the former set of rules is the primary focus of the study, while the latter is outside its scope *ratione materiae*.<sup>31</sup> Accordingly, it is conceivable that the various norms identified in this study would be applicable in those “complex emergencies” also involving natural or man-made disasters (i.e. the law regulating disaster prevention, response and protection exists in parallel to international humanitarian law, serving to regulate not the armed conflict itself but the response to a disaster which took place alongside it).<sup>32</sup>

## II. Principles

10. Several core principles underpin legal instruments related to disaster relief activities. Many, such as the principles of humanity, neutrality, impartiality, non-discrimination and cooperation, lie at the heart of all humanitarian assistance activities, including those related to the provision of disaster relief. Others, such as the principles of sovereignty and non-intervention, are pertinent to the position of the affected State which requests and receives such assistance. A further set of principles, such as the principles of prevention, mitigation and preparedness, are particularly applicable in the context of disasters and are, accordingly, the subject of specific rules.

### A. Humanity

11. The first three principles — humanity, neutrality and impartiality — share a common foundation and are thus considered together before treating their particular aspects. They are core principles regularly recognized as foundational to humanitarian assistance efforts generally,<sup>33</sup> and as the specialized area of

<sup>31</sup> With the limited exception of those rules of international humanitarian law which establish international obligations to provide relief assistance in certain contexts such as that relating to the protection of civilians in an occupied territory. See the discussion on the initiation of assistance in sect. IV.A below.

<sup>32</sup> This would particularly be the case with the exercise of human rights protection obligations in relation to victims of a disaster which took place in the theatre of an armed conflict. See *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion of 9 July 2004, *I.C.J. Reports 2004*, para. 106 (“... the protection offered by human rights conventions does not cease in case of armed conflict, save through the effect of provisions for derogation of the kind to be found in Article 4 of the International Covenant on Civil and Political Rights. As regards the relationship between international humanitarian law and human rights law, there are thus three possible situations: some rights may be exclusively matters of international humanitarian law; others may be exclusively matters of human rights law; yet others may be matters of both these branches of international law”). See also *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, *I.C.J. Reports 2005*, 216-220, 345(3) (finding separate violations of humanitarian law and human rights law which are carried forth to the *dispositif* of the judgement).

<sup>33</sup> Alongside the principles of independence, voluntary service, unity and universality, these three principles constitute the seven fundamental principles codified in the Statutes of the International Red Cross and Red

international rules relating to disaster relief has developed within the general corpus of law relevant to humanitarian efforts, these three principles have been consistently identified as foundational to disaster relief efforts in numerous instruments. For example, the annex to General Assembly resolution 46/182 states that “[h]umanitarian assistance must be provided in accordance with the principles of humanity, neutrality and impartiality”.<sup>34</sup> General Assembly resolutions 43/131 and 45/100, on humanitarian assistance to victims of natural disasters and similar emergency situations, emphasize that “in the event of natural disasters and similar emergency situations, the principles of humanity, neutrality and impartiality must be given utmost consideration by all those involved in providing humanitarian assistance”.<sup>35</sup> Several additional instruments contain similar pronouncements reiterating these three core principles.<sup>36</sup>

12. With specific regard to the principle of humanity, the Oslo Guidelines and the Mohonk Criteria for Humanitarian Assistance in Complex Emergencies both provide that this principle embodies the notion that “human suffering must be addressed wherever it is found, with particular attention to the most vulnerable in the population, such as children, women and the elderly. The dignity and rights of all victims must be respected and protected”.<sup>37</sup> The document entitled “Principles and good practice of humanitarian donorship” provides that “humanitarian action should be guided by the humanitarian [principle] of humanity, meaning the centrality of saving human lives and alleviating suffering wherever it is found”.<sup>38</sup> The principle is further acknowledged in other instruments.<sup>39</sup>

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Crescent Movement. See Statutes of the International Red Cross and Red Crescent Movement, adopted by the 25th International Conference of the Red Cross at Geneva in 1986 (amended in 1995 and 2006).

<sup>34</sup> General Assembly resolution 46/182 of 19 December 1991, annex, para. 2.

<sup>35</sup> General Assembly resolution 43/131 of 8 December 1988, preamble; General Assembly resolution 45/100 of 14 December 1990, preamble.

<sup>36</sup> See, for example, General Assembly resolution 57/150 of 27 February 2003, preamble (“Recognizing the importance of the principles of neutrality, humanity and impartiality for the provision of humanitarian assistance”); Guiding Principles on Internal Displacement, of 2000 (see note 53 below), principle 24 (“All humanitarian assistance shall be carried out in accordance with the principles of humanity and impartiality and without discrimination”); Framework Convention on Civil Defence Assistance, 2000, art. 3 (“Assistance shall be undertaken in a spirit of humanity, solidarity and impartiality”); the Sphere Humanitarian Charter and Minimum Standards in Disaster Response (Geneva: The Sphere Project, 2000, revised in 2004), pp. 16 and 17; General Assembly resolution 48/57 of 14 December 1993, para. 18; General Assembly resolution 54/233 of 22 December 1999, preamble; and the Consolidated framework of World Food Programme policies, document WFP/EB.2/2005/4-D/Rev.1 (14 November 2005), para. 42.

<sup>37</sup> Guidelines on the Use of Military and Civil Defence Assets in Disaster Relief — “Oslo Guidelines”, Rev.1, 27 November 2006, para. 20; J. M. Ebersole, “The Mohonk Criteria for Humanitarian Assistance in Complex Emergencies”, *Human Rights Quarterly*, vol. 17, No. 1 (February 1995), pp. 192-208 at p. 196 (“Human suffering should be addressed wherever it is found. The dignity and rights of all victims must be respected and protected”).

<sup>38</sup> “Principles and good practice of humanitarian donorship”, endorsed at the International Meeting on Good Humanitarian Donorship, Stockholm, 17 June 2003, para. 2.

<sup>39</sup> See, for example, the Declaration of Principles for International Humanitarian Relief to the Civilian Population in Disaster Situations, of 1969, para. 1 (“The fundamental concern of mankind and of the international community in disaster situations is the protection and welfare of the individual and the safeguarding of basic human rights”); Consolidated framework of World Food Programme policies, document WFP/EB.2/2005/4-D/Rev.1 (14 November 2005), para. 42 (listing “humanity” as a core principle and emphasizing that “WFP will seek to prevent and alleviate human suffering wherever it is found and respond with food aid when appropriate. It will provide assistance in ways that respect life, health and dignity”).

## B. Neutrality

13. Under the principle of neutrality, the provision of humanitarian assistance takes place outside of the political, religious, ethnic or ideological context. For example, the Statutes of the International Red Cross and Red Crescent Movement provide that “in order to continue 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”.<sup>40</sup> The Oslo Guidelines and the Mohonk Criteria both state in relation to neutrality that “humanitarian assistance should be provided without engaging in hostilities or taking sides in controversies of a political, religious or ideological nature”.<sup>41</sup> The “Principles and good practice of humanitarian donorship” provide that “humanitarian action should be guided by the humanitarian [principle] of ... neutrality, meaning that humanitarian action must not favour any side in an armed conflict or other dispute where such action is carried out”.<sup>42</sup> Finally, the Consolidated Framework of WFP (World Food Programme) Policies lists neutrality as a core humanitarian principle and emphasizes that “WFP will not take sides in a conflict and will not engage in controversies of a political, racial, religious or ideological nature”.<sup>43</sup>

## C. Impartiality

14. Under the principle of impartiality, the provision of humanitarian assistance to individuals should be guided solely by their needs, giving priority to the most urgent cases of distress. For example, the Draft International Guidelines for Humanitarian Assistance Operations provide that “humanitarian assistance should be provided on an impartial basis without any adverse distinction to all persons in urgent need”.<sup>44</sup>

15. The principle of impartiality is closely related to the principle of non-discrimination discussed below, and a number of instruments concerned with disaster relief define impartiality through direct reference to non-discrimination.<sup>45</sup> It

<sup>40</sup> Statutes of the International Red Cross and Red Crescent Movement, adopted by the 25th International Conference of the Red Cross at Geneva in 1986 (amended in 1995 and 2006), preamble.

<sup>41</sup> Updated Guidelines on the Use of Military and Civil Defence Assets in Disaster Relief — “Oslo Guidelines”, Rev.1, 27 November 2006, para. 20; Mohonk Criteria for Humanitarian Assistance in Complex Emergencies, of 1995, in J.M. Ebersole, “The Mohonk Criteria for Humanitarian Assistance in Complex Emergencies”, *Human Rights Quarterly*, vol. 17, No. 1 (February 1995), p. 196.

<sup>42</sup> “Principles and good practice of humanitarian donorship”, endorsed at the International Meeting on Good Humanitarian Donorship, Stockholm, 17 June 2003, para. 2.

<sup>43</sup> Consolidated framework of World Food Programme policies, document WFP/EB.2/2005/4-D/Rev.1 (14 November 2005), para. 42.

<sup>44</sup> Peter MacAlister-Smith, Draft international guidelines for humanitarian assistance operations (Heidelberg, Germany: Max Planck Institute for Comparative Public Law and International Law, 1991), para. 6(a).

<sup>45</sup> See, for example, J. M. Ebersole, “The Mohonk Criteria for Humanitarian Assistance in Complex Emergencies”, *Human Rights Quarterly*, vol. 17 No. 1 (February 1995), p. 196 (“Impartiality: Humanitarian assistance should be provided without discriminating as to ethnic origin, gender, nationality, political opinions, race or religion. Relief of the suffering of individuals must be guided solely by their needs and priority must be given to the most urgent cases of distress”); Updated Guidelines on the Use of Military and Civil Defence Assets in Disaster Relief — “Oslo Guidelines”, Rev.1, 27 November 2006, para. 20 (“Impartiality:



should be emphasized, however, that the principles of impartiality and non-discrimination are indeed distinct legal concepts. The Red Cross has clarified this distinction:

... non-discrimination means disregarding objective differences between individuals. Impartiality in its true sense requires that subjective distinctions be set aside as well. To illustrate the difference between the two notions: a National Society that refuses to provide its services to a specific group of people, because of their ethnic origin, fails to observe the rule of non-discrimination; whereas a National Society staff member who, in the exercise of his functions, favours a friend by giving him better treatment than that given to others, contravenes the principle of impartiality.<sup>46</sup>

The Commentary to the First Protocol Additional to the Geneva Conventions discusses the distinction between non-discrimination and impartiality in similar terms, explaining that non-discrimination “refers to the real object of the action: the persons who are suffering. By contrast, the concept of impartiality refers to the agent of the action: it is a moral quality which must be present in the individual or institution called upon to act for the benefit of those who are suffering. In other words, the principle of non-discrimination removes objective distinctions between individuals, while impartiality removes the subjective distinctions”.<sup>47</sup> Thus, by regarding potential recipients from an objective rather than subjective standpoint,

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Humanitarian assistance must be provided without discriminating as to ethnic origin, gender, nationality, political opinions, race or religion. Relief of the suffering must be guided solely by needs and priority must be given to the most urgent cases of distress”; “Principles and good practice of humanitarian donorship” (Stockholm), 17 June 2003, para. 2 (“Humanitarian action should be guided by the humanitarian [principle] of ... impartiality, meaning the implementation of actions solely on the basis of need, without discrimination between or within affected populations”); Consolidated framework of World Food Programme policies, document WFP/EBB.2/2005/4-D/Rev.1 (14 November 2005), para. 42 (listing impartiality as a core humanitarian principle and then emphasizing that “WFP’s assistance will be guided solely by need and will not discriminate in terms of ethnic origin, nationality, political opinion, gender, race or religion”).

<sup>46</sup> International Committee of the Red Cross, *The Fundamental Principles of the Red Cross and Red Crescent* (Geneva: International Committee of the Red Cross, 1996).

<sup>47</sup> Claude Pilloud et al., *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949* (Geneva: International Committee of the Red Cross, 1987), paras. 2800-2801 (citing the “Proclamation of the Fundamental Principles of the Red Cross”, adopted by resolution IX of the 20th International Conference of the Red Cross, Vienna 1965; and Jean Pictet, *The Fundamental Principles of the Red Cross Proclaimed by the Twentieth International Conference of the Red Cross, Vienna, 1965: Commentary* (Geneva: Henry Dunant Institute, 1979), pp. 33-51). See also Jean Pictet, *The Geneva Conventions of 12 August 1949: Commentary* (Geneva: International Committee of the Red Cross, 1952), p. 109 (“Impartiality does not necessarily mean mathematical equality; in actual fact it hardly ever does. If a rescuer has only ten dressings to distribute to a hundred wounded the condition of impartiality certainly does not mean that he must divide each dressing into ten equal but unusable fragments, and even less that he must not distribute them for fear of being unfair. It means that he must not allow his choice to be dictated by prejudice or by considerations regarding the person of those to whom he gives or refuses assistance. The condition of impartiality is fulfilled, when the hundred wounded persons are dispersed, if the rescuer gives the dressings to the first ten wounded he is able to reach, irrespective of who they are, or, when he can reach any of them, if he is guided in his choice by the apparent gravity of the wounds, making no distinction between friends, allies and enemies. The ideal would be to be able to base the distribution of relief entirely on the actual needs”).

the provider of disaster relief upholds the principle of impartiality. By refusing to treat those potential relief recipients differently based on objective characteristics (other than need), the provider of disaster relief upholds also the principle of non-discrimination.

#### D. Non-discrimination

16. Under the principle of non-discrimination, the provision of relief is to be undertaken without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, age, disability or other status. For example, the Statutes of the International Red Cross and Red Crescent Movement provide that “[i]t 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”.<sup>48</sup> Similarly, the resolution on humanitarian assistance adopted by the Institute of International Law on 2 September 2003 states that “humanitarian assistance shall be offered and, if accepted, distributed without any discrimination on prohibited grounds, while taking into account the needs of the most vulnerable groups”.<sup>49</sup> The Framework Convention on Civil Defence Assistance states that “assistance shall be provided without discrimination, particularly with regard to race, colour, sex, language, religion, political or any other opinion, to national or social origin, to wealth, birth, or any other criterion”.<sup>50</sup> The 1984 draft convention on expediting the delivery of emergency assistance provides that “assistance shall be distributed or provided without discrimination of any kind such as race, colour, sex, language, religion, political or other opinion, national and social origin, birth or other status”.<sup>51</sup> Similar provisions are common in other multilateral conventions,<sup>52</sup> guiding principles,<sup>53</sup> bilateral treaties,<sup>54</sup> European Union laws<sup>55</sup> and national laws.<sup>56</sup>

<sup>48</sup> Statutes of the International Red Cross and Red Crescent Movement, of 1986 (amended in 1995 and 2006), preamble.

<sup>49</sup> Sect. II, para. 3.

<sup>50</sup> Framework Convention on Civil Defence Assistance, 22 May 2000, art. 3.

<sup>51</sup> A/39/267/Add.2-E/1984/96/Add.2, annex, art. 5(1)(c).

<sup>52</sup> Convention and Statute Establishing an International Relief Union, of 1927, art. 3 (“The International Relief Union shall operate for the benefit of all stricken people, whatever their nationality or their race, and irrespective of any social, political or religious distinction”).

<sup>53</sup> Walter Kälin, “Guiding Principles on Internal Displacement: Annotations”, *Studies in Transnational Legal Policy*, No. 32 (Washington, D.C.: American Society of International Law, 2000), principle 4(1) (“These Principles shall be applied without discrimination of any kind, such as race, colour, sex, language, religion or belief, political or other opinion, national, ethnic or social origin, legal or social status, age, disability, property, birth, or on any other similar criteria”).

<sup>54</sup> See, for example, Agreement between the Republic of China and the United States of America Concerning the United States Relief Assistance to the Chinese People (with exchange of notes), of 1947, art. II (“United States relief supplies ... shall be distributed by the Chinese Government and voluntary agencies without discriminating as to race, creed or political belief”); Agreement between the United Nations International Children’s Emergency Fund and Albania Concerning the Activities of UNICEF in Albania (excerpts), of 1947, art. II (“The Government undertakes to see that these supplies are dispensed or distributed equitably and efficiently on the basis of need, without discrimination because of race, creed, nationality or political belief”); and Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the

## E. Cooperation

17. The principle of cooperation is a foundational premise of the international legal order, as repeatedly recognized in the Charter of the United Nations.<sup>57</sup> It is listed as one of the seven fundamental principles of international law elaborated in the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations,<sup>58</sup> and in the discussions surrounding that resolution, the principle was variously characterized by States as “one of the fundamental principles of the United Nations”,<sup>59</sup> “one of the classic principles of peaceful coexistence”<sup>60</sup> and “the very essence of international law and healthy international relations”.<sup>61</sup> Specific references to the principle of cooperation have been made in numerous

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Government of India for the Duty Free Entry of Relief Supplies and Packages, of 1964, art. III (“Goods and standard packs imported under this Agreement shall be used solely for relief and rehabilitation or in health and social welfare projects and shall, if for distribution, be distributed free among the poor and needy of all sections of the community without discrimination on any grounds”).

- <sup>55</sup> Council of the European Union regulation No. 1257/96 concerning humanitarian aid, 20 June 1996 (*Official Journal* L 163, 2 July 1996), art. 1 (“The Community’s humanitarian aid shall comprise assistance, relief and protection operations on a non-discriminatory basis to help people in third countries, particularly the most vulnerable among them, and as a priority those in developing countries, victims of natural disasters, man-made crises, such as wars and outbreaks of fighting, or exceptional situations or circumstances comparable to natural or man-made disasters”).
- <sup>56</sup> See, for example, Disaster Management Act of 2005 (India), para. 61 (“While providing compensation and relief to the victims of disaster, there shall be no discrimination on the ground of sex, caste, community, descent or religion”).
- <sup>57</sup> Charter of the United Nations, Art. 1 (listing among the purposes of the United Nations “to achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character”), Art. 11 (“The General Assembly may consider the general principles of cooperation in the maintenance of international peace and security”), Art. 13 (“The General Assembly shall initiate studies and make recommendations for the purpose of ... promoting international cooperation in the political field and encouraging the progressive development of international law and its codification [and] promoting international cooperation in the economic, social, cultural, educational, and health fields, and assisting in the realization of human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion”), Art. 55 (“The United Nations shall promote ... international cultural and educational cooperation”) and Art. 56 (“All Members pledge themselves to take joint and separate action in cooperation with the Organization for the achievement of the purposes set forth in Art. 55”).
- <sup>58</sup> General Assembly resolution 2625 (XXV) of 24 October 1970, annex, para. 1 (“States have the duty to cooperate with one another, irrespective of the differences in their political, economic and social systems, in the various spheres of international relations, in order to maintain international peace and security and to promote international economic stability and progress, the general welfare of nations and international cooperation free from discrimination based on such differences”). For a detailed account of the principle of cooperation as codified in the Declaration, see V. S. Mani, *Basic Principles of Modern International Law* (Delhi: Lancer Books, 1993), pp. 168-199; and Bogdan Babović, “The duty of States to cooperate with one another in accordance with the Charter”, in Milan Šahović, *Principles of International Law Concerning Friendly Relations and Cooperation* (Dobbs Ferry, New York: Oceana Publications, 1972), pp. 277-321.
- <sup>59</sup> A/C.6/SR.933 (18 November 1966), para. 12 (Argentina).
- <sup>60</sup> A/AC.125/SR.35, p. 7 (Poland).
- <sup>61</sup> A/AC.125/SR.58, p. 12 (Ghana).

additional resolutions of the General Assembly,<sup>62</sup> and it has been recognized by various commentators as fundamental to many important international issues, such as the protection of the environment<sup>63</sup> and the prevention of terrorism,<sup>64</sup> and to United Nations peacekeeping efforts.<sup>65</sup>

18. In the specific context of disaster relief, the principle of cooperation is a *conditio sine qua non* to successful relief actions because of the multiple actors involved in international disaster relief efforts, usually including several States (assisting States, transit States and receiving States), as well as potentially numerous relief organizations. Indeed, in his comprehensive study on the international law related to disaster relief undertaken during the preparation of the draft convention on expediting the delivery of emergency assistance of 1984, J. Toman called the principle of cooperation “a fundamental dynamic force for the promotion of international relief”.<sup>66</sup>

19. The principle of cooperation has been reflected in multiple instruments concerned with disaster relief. For example, General Assembly resolution 46/182 provides that “the magnitude and duration of many emergencies may be beyond the response capacity of many affected countries. International cooperation to address emergency situations and to strengthen the response capacity of affected countries is thus of great importance”.<sup>67</sup> The ASEAN Declaration for Mutual Assistance on Natural Disasters provides specific areas which will require cooperation in disaster relief, including (a) improvement of communication channels for disaster warning, (b) exchange of experts and trainees, (c) exchange of information and documents and (d) dissemination of medical supplies, services and relief assistance.<sup>68</sup> The Framework Convention on Civil Defence Assistance provides an even more detailed list of the modalities of cooperation, including exchanging necessary information; sending only those relief units which are requested; reducing customs formalities; granting privileges, immunities and facilities to assisting personnel; providing protection to assisting personnel and their property; and facilitating transit.<sup>69</sup> One might add to this list the importance of cooperation in relation to questions of access for relief personnel and relief consignments and to disaster prevention and risk reduction.

## F. Sovereignty and non-intervention

20. The principle of territorial sovereignty is a cornerstone of international law. As the International Court of Justice stated in 1949, “between independent States,

<sup>62</sup> See, for example, General Assembly resolutions 1236 (XII) of 14 December 1957, 1301 (XIII) of 10 December 1958, 1710 (XVI) of 19 December 1961 and 1815 (XVII) of 18 December 1962.

<sup>63</sup> Alan E. Boyle, “The principle of cooperation: the environment”, in Vaughan Lowe and Colin Warbrick, *The United Nations and the Principles of International Law: Essays in memory of Michael Akehurst* (London: Routledge, 1994), pp. 120-136.

<sup>64</sup> David Freestone, “The principle of cooperation: terrorism”, *ibid.*, pp. 137-159.

<sup>65</sup> Alan James, “The principle of cooperation: United Nations peacekeeping”, *ibid.*, pp. 160-174.

<sup>66</sup> Convention for expediting emergency relief: report presented by J. Toman (UNDRO, 1983), p. 93.

<sup>67</sup> General Assembly resolution 46/182, annex, para. 5.

<sup>68</sup> ASEAN Declaration for Mutual Assistance on Natural Disasters, Manila, 26 June 1976, art. 1.

<sup>69</sup> Framework Convention on Civil Defence Assistance, 22 May 2000, art. 4.

respect for territorial sovereignty is an essential foundation of international relations”.<sup>70</sup> The principle of territorial sovereignty has been highlighted in numerous instruments concerning disaster relief. For example, General Assembly resolution 46/182 provides that “the sovereignty, territorial integrity and national unity of States must be fully respected in accordance with the Charter of the United Nations”.<sup>71</sup> Likewise, humanitarian assistance is to be provided “with the consent of the affected country and in principle on the basis of an appeal by the affected country”.<sup>72</sup>

21. The principle of territorial sovereignty has its complement in the principle of non-intervention.<sup>73</sup> In *Military and Paramilitary Activities in and against Nicaragua*, the International Court of Justice addressed the specific relationship between non-intervention and international humanitarian assistance, and concluded that the financial support, training, supply of weapons, intelligence and logistic support provided to the *contras*, which had been justified as “humanitarian assistance”, “constitute[d] a clear breach of the principle of non-intervention”.<sup>74</sup>

22. A review of the drafting history of pertinent General Assembly resolutions reveals that the principle of non-intervention has routinely been raised by States, which have typically expressly linked their support for General Assembly resolutions to the understanding that such resolutions were not to be interpreted as creating a duty or right to interfere in the domestic affairs of another State.<sup>75</sup>

<sup>70</sup> *Corfu Channel, Judgment* (9 April 1949), *I.C.J. Reports 1949*, p. 4, at p. 35.

<sup>71</sup> General Assembly resolution 46/182, annex, para. 3. See also ASEAN Agreement on Disaster Management and Emergency Response, 26 July 2005, art. 3 (“The sovereignty, territorial integrity and national unity of the Parties shall be respected”).

<sup>72</sup> General Assembly resolution 46/182, annex, para. 3. See, further, the discussion on requests and offers for assistance in sect. IV below.

<sup>73</sup> *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, *Merits Judgment*, *I.C.J. Reports 1986*, p. 14, at pp. 106-108, paras. 202-205. See also the Declaration on Principles of International Law Concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations (General Assembly resolution 2625 (XXV) of 24 October 1970, annex): “No State or group of States has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any other State.”

<sup>74</sup> *Military and Paramilitary Activities ...*, at p. 124, para. 242. The Court also linked the principle of sovereignty with the principles of humanity and non-discrimination discussed above, emphasizing that “if the provision of ‘humanitarian assistance’ is to escape condemnation as an intervention in the internal affairs of Nicaragua, not only must it be limited to the purposes hallowed in the practice of the Red Cross, namely ‘to prevent and alleviate human suffering’, and ‘to protect life and health and to ensure respect for the human being’, it must also, and above all, be given without discrimination to all in need in Nicaragua, not merely to the *contras* and their dependents” (*ibid.*, at p. 125, para. 243).

<sup>75</sup> For example, during the discussion of General Assembly resolution 43/131 of 8 December 1988, Brazil emphasized that “assistance could not be given without the approval of the country concerned. The affected State alone should decide whether it wished to receive such aid and from whom it wished to receive it; otherwise, even humanitarian assistance could be interpreted as interference in a country’s internal affairs” (A/C.3/43/SR.49, para. 79). Mexico noted that “there had been cases in which, under the description of humanitarian assistance, aid had been given to armed groups with a view to destabilizing the situation in a country” (*ibid.*, para. 80). Ethiopia noted that “it should be absolutely clear that all relief activities carried out by expatriates in any country must be governed by domestic law and not by resolutions or decisions of bodies or institutions which were inconsistent with the sovereignty, territorial integrity or security interests of the affected country”. It further noted that “there had been instances when

some had considered humanitarian activities to be above both national and international law. Ethiopia had never countenanced that type of behaviour and would not do so in the future” (ibid., para. 82). Peru stated that “the existence of rights or obligations with regard to assistance should not be inferred from the draft resolution and all its paragraphs should be interpreted in accordance with the principles and norms of international law and with full respect for the internal laws and regulations of the receiving State” (ibid., para. 84). The Sudan declared that “aid should never be used as a means for interfering in the internal affairs of other States” (ibid., para. 85). Nicaragua emphasized that “it was for the receiving State to accept the aid offered and to play a basic role in its distribution” (ibid., para. 86). Chile similarly emphasized that “the provisions of the draft resolution should not be interpreted as allowing interference in the internal affairs of States” (ibid. at para. 87).

Likewise, a substantial number of States emphasized respect for national sovereignty during the discussion of General Assembly resolution 46/182. China emphasized that “the assistance as such should be provided in full respect for the sovereignty of the recipient States, for otherwise it will be deprived of its intrinsic meaning” (A/46/PV.39, p. 27). Mexico stressed the importance of “one of the fundamental principles of international relations: absolute respect for the sovereignty of States.” (ibid., p. 38). Japan also reaffirmed “the principle of sovereignty” and stated that it “believes that the initiation and implementation of humanitarian assistance in its territory is the primary responsibility of the Government of the affected country and that the Government should assume responsibility for facilitating and supporting humanitarian assistance operations for members of its population who are in need” (ibid., pp. 58 and 59). France emphasized that “particular attention should be paid to the sovereignty of the States within whose territory the disaster has occurred and towards which the aid is to be directed ... Humanitarian action respects sovereignty and State authority. It can in no way be used to intervene in affairs that are essentially under the authority of the nation. That is why, in order to preserve both the principle of non-interference and the principle of free access to aid to the victims of emergencies, the General Assembly has recalled one of the main principles of humanitarian law — the principle of subsidiary function. According to this principle, it is the territorial States which, under resolutions 43/131 and 45/100, have the ‘primary role in the initiation, organization, coordination and implementation of humanitarian assistance within their respective territories’. Therefore, humanitarian assistance should be a subsidiary action that is never taken unilaterally” (ibid., p. 72). India emphasized that “these are delicate, difficult and sensitive questions that cannot be dismissed on the argument that crises demand innovative solutions. Innovation at the expense of a nation’s sovereignty or innovation calling for a reluctant abridgement of such sovereignty, must be strictly avoided. The Charter of the United Nations stresses the domestic jurisdiction of States; nobody can or should dilute this aspect of national sovereignty, even if the stakes are high” (A/46/PV.41, p. 18). Pakistan stated that “no attempt should be made to compromise national sovereignty when providing emergency assistance” (ibid., p. 24). Tunisia stated that “humanitarian assistance, which must be considered an expression of the international community’s solidarity with the countries suffering natural disasters, should in no case violate the principle of national sovereignty”. (ibid., at p. 28). Ghana stated that “the Group of 77 is slightly worried that some of us may not be sensitive to certain pleas for an abiding respect for the sovereignty of nations” (ibid., pp. 34 and 35). The Islamic Republic of Iran stated that “reform in the humanitarian assistance system should not by any means jeopardize respect for the national sovereignty of recipient States” (ibid., p. 64). Cuba stated: “We vigorously oppose any new version, and especially any widespread practice, of the so-called doctrine of limited sovereignty, a danger that may be glimpsed in notions such as the right of interference or in the interpretation that some seek to give to humanitarian assistance, to which are added deliberately confusing reassessments of the concept of sovereignty arising within processes of integration, in an attempt to provide endorsement for intervention in the internal affairs of States” (A/46/PV.42, p. 33). Iraq stated that “assistance and the means of providing it must therefore respect the sovereignty of States and peoples” (ibid., pp. 44 and 45). Switzerland stated that “all reorganizational efforts will have to take into account the sovereignty of States which have been the victims of catastrophe and to which the humanitarian emergency assistance will be directed” (ibid., p. 52).

23. A further corollary of the principle of territorial sovereignty is the recognition that the receiving State has the primary responsibility for the protection of persons on its territory or subject to its jurisdiction or control during a disaster.<sup>76</sup> There is, however, recognition, as a matter of international law, that “the provision of strictly humanitarian aid to persons or forces in another country, whatever their political affiliation or objectives, *cannot be regarded as unlawful intervention, or as in any other way contrary to international law*”,<sup>77</sup> especially in circumstances where the

<sup>76</sup> See General Assembly resolutions 38/202 of 20 December 1983, para. 4, 43/131 of 8 December 1988, para. 2, and 45/100 of 14 December 1990, para. 2, in which the Assembly reaffirmed “the sovereignty of affected States and their primary role in the initiation, organization, coordination and implementation of humanitarian assistance within their respective territories”; resolution 46/182 of 19 December 1991, annex, para. 4 (“Each State has the responsibility first and foremost to take care of the victims of natural disasters and other emergencies occurring on its territory”); ASEAN Agreement on Disaster Management and Emergency Response, 26 July 2005, art. 3(1) (“each affected Party shall have the primary responsibility to respond to disasters occurring within its territory”); and Inter-American Convention to Facilitate Disaster Assistance, of 1991, art. IV(a). See also Walter Kälin, “Guiding Principles on Internal Displacement: Annotations”, *Studies in Transnational Legal Policy*, No. 32 (Washington, D.C.: American Society of International Law, 2000), principle 25(1); Resolution No. 11 adopted by the Council of Delegates of the International Red Cross and Red Crescent Movement, Birmingham, United Kingdom, 29-30 October 1993 (*International Review of the Red Cross*, No. 297 (1993)) para. 1(b); Institute of International Law, resolution on humanitarian assistance, of 2 September 2003, sect. III, para. 1; and the Mohonk Criteria for Humanitarian Assistance in Complex Emergencies, of 1995, sect. II.1. This position is also generally reflected at the national level where most States have enacted some form of domestic legislation relating to humanitarian assistance in the context of the occurrence of a disaster (ranging from disaster management to the establishment of civil defence mechanisms), all of which envisage the provision and overall coordination of such assistance as being primarily the prerogative of the national Government.

<sup>77</sup> *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, *Merits, Judgment, I.C.J. Reports 1986*, p. 124, para. 242 (emphasis added). The provision of disaster assistance by relief organizations is supported by the “right of humanitarian initiative”, under which the Red Cross can offer its services to Governments without that offer constituting interference in the internal affairs of the State concerned. (International Committee of the Red Cross, “Participation in international humanitarian law treaties and their national implementation: achievements and activities in the Americas” (2006), p. 2: “In situations of non-international armed conflict the ICRC also has a right of initiative recognized by the States and enshrined in the four Geneva Conventions. In the event of internal disturbances and tensions and in any other situation that warrants humanitarian action, the ICRC has a right of humanitarian initiative, which is recognized in the Statutes of the International Red Cross and Red Crescent Movement and allows it to offer its services to Governments, without that offer constituting an interference in the internal affairs of the State concerned”). See Yves Sandoz, “Le Droit d’initiative du Comité International de la Croix-Rouge”, *German Yearbook of International Law*, vol. 22 (1979), pp. 352-373; Theodor Meron, *Human Rights in Internal Strife: Their International Protection* (Cambridge: Grotius Publications, 1987), pp. 105-117; and Paul de Geoufre de la Pradelle, “Une conquête méthodique: le droit d’initiative humanitaire dans les rapports internationaux”, in *Studies and Essays on International Humanitarian Law and Red Cross Principles in Honor of Jean Pictet* (Christophe Swinarski, ed., 1984), pp. 945-950. Nonetheless, a State to which ICRC offers its services in circumstances of internal disturbances or internal tensions has no formal obligation to accept them. It is therefore at the discretion of the State and on terms of confidence that ICRC is permitted to act (“ICRC, the League and the report on the re-appraisal of the role of the Red Cross (III): protection and assistance in situations not covered by international humanitarian law, comments by the ICRC”, *International Review of the Red Cross*, No. 225 (1978), pp. 205 and 212).

domestic response capacity is overwhelmed, nor should consent to the provision of international assistance be unreasonably withheld.<sup>78</sup>

## G. Prevention, mitigation and preparedness

24. The principle of prevention is known to international law. In 2001, the International Law Commission, in its draft articles on prevention of transboundary harm from hazardous activities,<sup>79</sup> considered “the well established principle of prevention” in the context of one aspect of man-made disasters, namely transboundary harm arising from hazardous activities.<sup>80</sup> The principle has been recognized in a number of multilateral treaties concerning the protection of the environment, the law of the sea, nuclear accidents, space objects, international watercourses, management of hazardous wastes and prevention of marine pollution.<sup>81</sup> It is also related to the broader “precautionary principle” which relates to prevention of harm to the environment more generally (including within national boundaries). In the context of disasters, while considerations of transboundary harm are present (for example, in the requirement that prompt notification be given to other States of impending harm),<sup>82</sup> prevention is more closely associated with a primary obligation to prevent harm to one’s own population, property and the environment generally.

25. At its core, prevention involves an obligation to act in a setting where the imperative to do so is not necessarily present. In the 2001 draft articles, the Commission presented the duty of prevention (or due diligence) as a function of technical progress and the “steadily growing” knowledge regarding the operation of hazardous activities and the “risks involved”,<sup>83</sup> and concluded by emphasizing that “prevention as a policy is better than cure”.<sup>84</sup> Likewise, in the context of other types of disasters, prevention is linked to technical capacity and knowledge of risk, and entails a duty to be proactive in managing risk. In some cases, the very adoption of appropriate legislation, putting into place the necessary institutional and policy

<sup>78</sup> See the discussion on the duty to request assistance in sect. IV below.

<sup>79</sup> *Yearbook of the International Law Commission 2001*, vol. II (part two), para. 97. The obligation to prevent is mentioned in draft article 3: “The State of origin shall take all appropriate measures to prevent significant transboundary harm or at any event to minimize the risk thereof”.

<sup>80</sup> *Ibid.*, general commentary, para. (4). See principle 21 of the Declaration of the United Nations Conference on the Human Environment, 1972; principle 2 of the Rio Declaration on Environment and Development, 1992; *Trail Smelter case* (United States/Canada), 1941, U.N.R.I.A.A., vol. III, p. 1905, at p. 1978; *Legality of the Use by a State of Nuclear Weapons in Armed Conflict*, I.C.J. Reports 1996, p. 226, para. 29; *Case concerning the Gabčíkovo-Nagymaros Project (Hungary v. Slovakia)*, Judgment, I.C.J. Reports 1997, p. 7, para. 140; and General Assembly resolution 2995 (XXVII) of 15 December 1972. See also “Consolidated Version of the Treaty on European Union and of the Treaty Establishing the European Community”, art. 174 (*Official Journal of the European Union* C 321E, 29 December 2006).

<sup>81</sup> *Yearbook of the International Law Commission 2001*, vol. II (part two), para. 98, general commentary, para. (4), note 907.

<sup>82</sup> See the discussion on notification in sect. IV below.

<sup>83</sup> The prevention principle is particularly relevant in relation to vulnerable communities where there exists a high exposure to the risk of harm by hazards, such as earthquakes, volcanoes and extreme weather phenomena.

<sup>84</sup> *Yearbook of the International Law Commission 2001*, vol. II (part two), para. 98, general commentary, para. (2).



frameworks to undertake prevention and mitigation activities, is itself a preventive measure. But, as shown in section III below, it is possible to discern additional aspects of the general obligation of prevention which have come to be included in legal texts regulating the activities of States in the context of disasters.

26. The principles of mitigation and preparedness feature prominently in various instruments. For example, the General Assembly, in resolution 46/182, treated the two as a function of international relief assistance (“International relief assistance should supplement national efforts to improve the capacities of developing countries to mitigate the effects of natural disasters expeditiously and effectively and to cope efficiently with all emergencies”) and the enhancement of the capacity of the United Nations (“The United Nations should enhance its efforts to assist developing countries to strengthen their capacity to respond to disasters, at the national and regional levels, as appropriate”), including through the development of early-warning capabilities.

27. Prevention, mitigation and preparedness activities lie on different points of the continuum of actions undertaken in advance of the onset of a disaster (and increasingly as part of recovery efforts following a disaster). While prevention focuses on the avoidance of the adverse impact of a hazard, mitigation actions concern specific structural or non-structural measures to limit an adverse impact.<sup>85</sup> Preparedness refers to those measures put into place in advance to ensure an effective response, including the issuance of timely and effective early warning and the temporary evacuation of people and property.<sup>86</sup> In addition, prevention and preparedness efforts (in advance of future potential disasters) are increasingly viewed as key aspects of the post-response recovery and rehabilitation phase.

### III. Prevention, mitigation, preparedness and rehabilitation

28. In its resolution 46/182, the General Assembly recognized prevention as one of the key components of the strengthening of the coordination of humanitarian emergency assistance of the United Nations. It stated, *inter alia*, that “in order to reduce the impact of disasters there should be increased awareness of the need for establishing disaster mitigation strategies, particularly in disaster-prone countries”.<sup>87</sup> By the mid 1990s, prevention came to be conceived as a question of disaster risk management and reduction. With the declaration of the period 1990-1999 as the International Decade for Natural Disaster Reduction,<sup>88</sup> a series of

<sup>85</sup> “Living with risk: a global review of disaster reduction initiatives”, ISDR, 2004, vol. I, p. 17.

<sup>86</sup> *Ibid.* An example of an international cooperative arrangement established to bolster preparedness in the event of the onset of a disaster is the International Search and Rescue Advisory Group (INSARAG), established in 1991 under the auspices of the United Nations as a cooperative effort between States that are prone to disasters and States and organizations that are providers of international assistance. The activities of INSARAG relate, *inter alia*, to improving emergency preparedness with a view to strengthening national response capabilities. During times of disaster, affected and responding countries apply the INSARAG methodology as detailed in the INSARAG Guidelines and Methodology, revision of 2007.

<sup>87</sup> General Assembly resolution 46/182, annex, para. 14. See also the discussion on the principles of prevention, mitigation and preparedness in sect. II above.

<sup>88</sup> General Assembly resolution 44/236 of 22 December 1989.

resolutions was adopted by the General Assembly<sup>89</sup> calling on States to institute disaster reduction policies and strategies.

## A. Disaster risk reduction

29. The shift from disaster response towards greater emphasis on disaster risk reduction culminated in the adoption in 1994 of the Yokohama Strategy for a Safer World<sup>90</sup> at the World Conference on Natural Disaster Reduction. The Strategy included the following principles:

1. Risk assessment is a required step for the adoption of adequate and successful disaster reduction policies and measures.
2. Disaster prevention and preparedness are of primary importance in reducing the need for disaster relief.
3. Disaster prevention and preparedness should be considered integral aspects of development policy and planning at national, regional, bilateral, multilateral and international levels.
4. The development and strengthening of capacities to prevent, reduce and mitigate disasters is a top priority area to be addressed during the Decade so as to provide a strong basis for follow-up activities to the Decade.
5. Early warnings of impending disasters and their effective dissemination using telecommunications, including broadcast services, are key factors to successful disaster prevention and preparedness.
6. Preventive measures are most effective when they involve participation at all levels, from the local community through the national government to the regional and international level.
7. Vulnerability can be reduced by the application of proper design and patterns of development focused on target groups, by appropriate education and training of the whole community.
8. The international community accepts the need to share the necessary technology to prevent, reduce and mitigate disaster; this should be made freely available and in a timely manner as an integral part of technical cooperation.
9. Environmental protection as a component of sustainable development consistent with poverty alleviation is imperative in the prevention and mitigation of natural disasters.
10. Each country bears the primary responsibility for protecting its people, infrastructure, and other national assets from the impact of natural disasters. The international community should demonstrate strong political determination required to mobilize adequate and make efficient

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<sup>89</sup> General Assembly resolutions 45/185 of 21 December 1990, 46/149 of 18 December 1991, 48/188 of 21 December 1993, 49/22 A of 2 December 1994, 49/22 B of 20 December 1994, 50/117 of 20 December 1995, 51/185 of 16 December 1996, 52/200 of 18 December 1997, 53/185 of 15 December 1998, 54/220 of 22 December 1999 and 56/195 of 21 December 2001.

<sup>90</sup> A/CONF.172/9, chap. I, resolution 1, annex I.

use of existing resources, including financial, scientific and technological means, in the field of natural disaster reduction, bearing in mind the needs of the developing countries, particularly the least developed countries.

30. In the Hyogo Declaration,<sup>91</sup> adopted together with the Hyogo Framework for Action 2005-2015: Building the Resilience of Nations and Communities to Disasters<sup>92</sup> at the World Conference on Disaster Reduction, held at Kobe, Hyogo, Japan from 18 to 22 January 2005, the international community recognized that “a culture of disaster prevention and resilience, and associated pre-disaster strategies, which are sound investments, must be fostered at all levels, ranging from the individual to international levels”.<sup>93</sup>

31. Such initiatives have been prompted by the growing awareness that reliance on the provision of disaster relief merely serves to perpetuate the cycle of recurring disasters, at an increasing social, economic and environmental cost.<sup>94</sup> Accordingly, the emphasis in recent decades has shifted away from disaster management, concentrating on short-term emergency contingencies, towards the adoption of disaster risk reduction (also known as “disaster risk management”) strategies focusing on prevention and mitigation activities which can contribute to saving lives and protecting property and resources before they are lost.<sup>95</sup> The goal is twofold: to build resilience to hazards and to ensure that development efforts do not increase vulnerability to those hazards.

32. Disaster risk reduction encapsulates a number of actions to be undertaken by States, with the assistance of the international community where appropriate and necessary. These range from putting into place the appropriate policy and legal framework, including through the establishment of sustainable institutional structures, to undertaking risk assessments, developing public awareness campaigns,

<sup>91</sup> A/CONF.206/6 and Corr.1, chap. I, resolution 1.

<sup>92</sup> *Ibid.*, resolution 2. See also General Assembly resolutions 58/215 of 23 December 2003, 59/233 of 22 December 2004, 60/196 of 22 December 2005 and 61/200 of 20 December 2006.

<sup>93</sup> A/CONF.206/6 and Corr.1, chap. I, resolution 1, para. 3. In the 2005 World Summit Outcome, the Heads of State and Government committed themselves “to fully implement the Hyogo Declaration and the Hyogo Framework for Action 2005-2015 ... in particular those commitments related to assistance for developing countries that are prone to natural disasters and disaster-stricken States in the transition phase towards sustainable physical, social and economic recovery, for risk-reduction activities in post-disaster recovery and for rehabilitation processes” (General Assembly resolution 60/1, para. 56 (g)). Several declarations have also been adopted at the regional level in support of the strengthening of activities dedicated to the prevention and mitigation of risks and natural disasters. See, for example, the Declaration of Panama (Association of Caribbean States, Fourth Summit of Heads of State and/or Government, Panama City, 29 July 2005), para. 20; the Busan Declaration (13th Asia-Pacific Economic Cooperation (APEC) Leaders’ Meeting, Busan, Republic of Korea, 18-19 November 2005); The Dhaka Declaration on South Asia’s Environmental Challenges and Natural Disasters, (13th Summit of the South Asian Association for Regional Cooperation, Dhaka, 12 and 13 November 2005, paras. 33-35; and the Guatemala Declaration, 20th Ordinary Meeting of the Presidents of Central America, the Dominican Republic and Belize, Guatemala City, 18 and 19 October 1999), adopting the “Strategic framework for vulnerability and disaster reduction in Central America”.

<sup>94</sup> “Reducing the risk of disasters — helping to achieve sustainable poverty reduction in a vulnerable world: a DFID policy paper”, Department for International Development, United Kingdom, March 2006, p. 5.

<sup>95</sup> See “Living with risk: a global review of disaster reduction initiatives”, ISDR, 2004, vol. I, pp. 2-10.

implementing technical and physical risk mitigation programmes and promoting the sharing of information and knowledge. Their purpose is to minimize vulnerabilities and disaster risks in order to avoid (prevention) or to limit (mitigation and preparedness) the adverse impacts of hazards, and facilitate sustainable development.<sup>96</sup>

## **B. Legal aspects of prevention and mitigation**

33. The establishment of the necessary legal and policy frameworks is a key aspect of prevention and mitigation, including disaster risk reduction.<sup>97</sup> A review of the progress in implementing the Yokohama Strategy, undertaken in advance of the Hyogo Conference, identified organizational, legal and policy frameworks, collectively referred to as “governance” issues, as one of the main areas where specific gaps and challenges existed.<sup>98</sup> While international legal regulation on disaster risk reduction exists, regulation in this area occurs primarily at the domestic level given the focus on strengthening of national capacity to manage disaster risk. This typically includes an institution-building component, as confirmed by the Hyogo Framework for Action which lists “ensur[ing] that disaster risk reduction is a national and a local priority with a strong institutional basis for implementation” as one of five priorities for action. Among the “key activities” identified for implementing that priority is “adopt[ing], or modify[ing] where necessary, legislation to support disaster risk reduction, including regulations and mechanisms that encourage compliance and that promote incentives for undertaking risk reduction and mitigation activities”.<sup>99</sup> Similarly, international coordination and assistance efforts should be geared at “assisting developing countries in strengthening their capacity” and “supplement[ing] national efforts”.<sup>100</sup>

34. Generally speaking, there exist two categories of legal instruments relevant to prevention, whether international or national: instruments dealing with disaster response or management where prevention and mitigation feature prominently or which include risk reduction and mitigation activities as a component; and instruments dealing with related matters which may include provisions of relevance to the topic of prevention and mitigation of disasters, albeit from an ancillary perspective. Given the limitation of the scope of this study to disasters, the focus will be on the first category, while only limited reference will be made to the latter category of instruments, primarily by way of a general reminder that considerations of prevention and mitigation of the effects of disasters also feature in other legal contexts.

### **1. International cooperation in the prevention and mitigation of disasters**

35. At the international level, cooperation efforts relating to mitigation and preparedness have focused, inter alia, on the establishment of early-warning

<sup>96</sup> “Guidelines: national platforms for disaster risk reduction”, ISDR, 2007, p. 2.

<sup>97</sup> See A/60/227, para. 34: “Disaster-related legislation and regulatory frameworks — within the context of strengthened national systems — are essential to creating an enabling environment for disaster risk reduction. Legal reform processes are therefore a necessary component of any disaster-related capacity-building endeavour.”

<sup>98</sup> A/CONF.206/L.1.

<sup>99</sup> A/CONF.206/6 and Corr.1, chap. I, resolution 2, paras. 14 and 16 (i) (c).

<sup>100</sup> General Assembly resolution 46/182, annex, paras. 13 and 5.

mechanisms, search and rescue arrangements and standby capacity (including contingency funding mechanisms).<sup>101</sup> These have been the subject of specific international agreements or arrangements, as in the case of early warning, and other mechanisms established at the international level through, inter alia, the United Nations.

36. The closest contemporary<sup>102</sup> global international convention dealing with the prevention and mitigation of disasters (including disaster risk reduction) is the Framework Convention on Civil Defence Assistance of 22 May 2000. The Convention defines “assistance” as “any action undertaken by the Civil Defence Service of a State for the benefit of another State, with the objective of preventing, or mitigating the consequences of disasters.”<sup>103</sup> Notwithstanding a general provision that States Parties “undertake to explore all possibilities for cooperation”<sup>104</sup> in, inter alia, the areas of prevention, forecasting and preparation, most of its substantive provisions concern assistance “in case of disaster or threat of disaster”.<sup>105</sup> The Tampere Convention,<sup>106</sup> dealing with the specific aspect of telecommunications in humanitarian assistance, envisages cooperation among States, as well as with non-State entities and intergovernmental organizations, to facilitate the use of telecommunications for, inter alia, “disaster mitigation”,<sup>107</sup> which is defined as “measures designed to prevent, predict, prepare for, respond to, monitor and/or mitigate the impact of, disasters”.<sup>108</sup>

37. At the regional level, earlier conventions, such as the Inter-American Convention to Facilitate Disaster Assistance, of 1991, focus almost exclusively on aspects of disaster response.<sup>109</sup> However, in line with recent trends, more recent regional instruments place increasing emphasis on prevention and mitigation. For example, the Agreement between Member States and Associate Members of the Association of Caribbean States for Regional Cooperation on Natural Disasters, of 1999, has as its stated objective the establishment of legally enforceable mechanisms to promote cooperation in prevention and mitigation of disasters.<sup>110</sup> The treaty includes a provision on prevention and mitigation, requiring parties, inter alia, to adopt, both individually and jointly, measures to support intraregional and interregional cooperation in the management of natural disasters, and to periodically exchange updated information.<sup>111</sup>

<sup>101</sup> See “An overview of policies and legislative trends in disaster prevention — concept paper”, Inter-Agency Task Force on Disaster Reduction, second meeting, Geneva, 10 and 11 October 2000, paras. 19-30.

<sup>102</sup> The Convention and Statute establishing an International Relief Union, of 1927, had envisaged that one of the objects of the Union would be “in a general way, to encourage the study of preventive measures against disasters” (art. 2).

<sup>103</sup> Framework Convention on Civil Defence Assistance, 22 May 2000, art. 1(d).

<sup>104</sup> *Ibid.*, art. 4.

<sup>105</sup> *Ibid.*, art. 4(a). The treaty envisages further agreements dealing with the technical modalities and other implementation procedures for facilitating international cooperation (art. 4(b)).

<sup>106</sup> Tampere Convention on the Provision of Telecommunication Resources for Disaster Mitigation and Relief Operations, 18 June 1998 (United Nations, *Treaty Series*, vol. 2296, No. 40906).

<sup>107</sup> *Ibid.*, art. 3(1).

<sup>108</sup> *Ibid.*, art. 1(7).

<sup>109</sup> See too the Agreement Establishing the Caribbean Disaster Emergency Response Agency, 1991.

<sup>110</sup> Art. 2.

<sup>111</sup> Art. 8(3). The provision further requires that “in the area of the transportation of material and equipment for natural disaster prevention and mitigation, the Contracting Parties shall take the necessary measures to obtain the cooperation of the private sector in air and maritime transportation”.

38. More recently, the ASEAN Agreement on Disaster Management and Emergency Response, adopted in 2005, takes an integrated “disaster management” approach covering activities ranging from disaster risk identification and assessment, to prevention, mitigation and preparedness, to emergency response. States Parties are required to “give priority to prevention and mitigation, and thus [to] take precautionary measures to prevent, monitor and mitigate disasters”,<sup>112</sup> and “to the extent possible, mainstream disaster risk reduction efforts into sustainable development policies, planning and programming at all levels”.<sup>113</sup> A general obligation is placed on parties to cooperate in developing and implementing measures to reduce disaster losses, including, inter alia, identification of disaster risk; development of monitoring, assessment and early warning systems; and standby arrangements for disaster relief.<sup>114</sup>

39. The general obligation to cooperate in preventing disasters is, in turn, the subject of specific provisions such as those requiring Parties to undertake risk assessments;<sup>115</sup> to monitor vulnerabilities;<sup>116</sup> to develop strategies to identify, prevent and reduce risks arising from hazards;<sup>117</sup> to undertake measures to reduce losses from disasters, including by developing and implementing legislative and other regulatory measures;<sup>118</sup> to establish, maintain and review national disaster early warning arrangements;<sup>119</sup> to cooperate, as appropriate, in monitoring hazards which have transboundary effects, exchanging information and providing early warning information;<sup>120</sup> to jointly or individually develop strategies and contingency/response plans to reduce losses from disasters;<sup>121</sup> to develop regional standby arrangements for disaster relief and emergency response;<sup>122</sup> and, on a voluntary basis, to earmark assets and capacities which may be available for regional standby arrangements for disaster relief and emergency response.<sup>123</sup> Most legal instruments dealing with the issue of prevention and mitigation of disasters establish an institutional mechanism to carry out a number of specific tasks as part of the implementation of the prevention and mitigation obligations established under the treaty.<sup>124</sup>

40. With regard to man-made disasters, the Convention on the Transboundary Effects of Industrial Accidents requires States parties to “protect human beings and the environment against industrial accidents by preventing such accidents as far as

<sup>112</sup> ASEAN Document Series 2005, p. 157, art. 3(4).

<sup>113</sup> *Ibid.*, art. 3(5).

<sup>114</sup> *Ibid.*, art. 4.

<sup>115</sup> *Ibid.*, art. 5(1)(b).

<sup>116</sup> *Ibid.*, art. 5(1)(c).

<sup>117</sup> *Ibid.*, art. 6(1).

<sup>118</sup> *Ibid.*, art. 6(2)(a).

<sup>119</sup> *Ibid.*, art. 7(1).

<sup>120</sup> *Ibid.*, art. 7(2).

<sup>121</sup> *Ibid.*, art. 8(1).

<sup>122</sup> *Ibid.*, art. 8(2)(a).

<sup>123</sup> *Ibid.*, art. 9(1).

<sup>124</sup> See, for example, the Additional Protocol to the Agreement among the Governments of the Participating States of the Black Sea Economic Cooperation (BSEC) on Collaboration in Emergency Assistance and Emergency Response to Natural and Man-Made Disasters of 1998, adopted on 20 October 2005; and the ASEAN Agreement on Disaster Management and Emergency Response, 26 July 2005, arts. 5(3)(4), 8(4)(5)(6) and 9(2)(3), as well as art. 20 which established the ASEAN Coordinating Centre for Humanitarian Assistance. The terms of reference of the Centre are annexed to the treaty.

possible”,<sup>125</sup> and to take “appropriate measures” for the prevention of such accidents, “including measures to induce action by operators to reduce the risk of industrial accidents”.<sup>126</sup> Such preventive measures include setting safety objectives, adopting legislation or guidelines concerning safety measures and standards, identifying specific hazardous activities requiring special preventive measures, undertaking risk assessments, providing pertinent information to competent authorities, applying the most appropriate technology to prevent such accidents, providing appropriate education and training, requiring the establishment of effective managerial structures and practices, and monitoring hazardous activities.<sup>127</sup>

41. At the European level, a Community mechanism to facilitate reinforced cooperation in civil protection assistance interventions was established in 2001,<sup>128</sup> putting into place a regulatory framework for cooperation between the European Community and the member States in civil protection assistance in the event of major emergencies. The decision establishing the mechanism recognizes the “significant importance” of prevention in protection against natural, technological and environmental disasters<sup>129</sup> and outlines a number of prevention and preparedness activities to be undertaken by member States, such as holding training activities; identifying in advance available or potential intervention teams, as well as assessment or coordination teams; providing advance information on the availability of resources;<sup>130</sup> establishing a monitoring capability; and establishing an emergency communication and information system.<sup>131</sup> In 2007, the Council of the European Union established a “Civil Protection Financial Instrument”,<sup>132</sup> applicable for the period from 1 January 2007 to 31 December 2013, to provide financial support and

<sup>125</sup> Convention on the Transboundary Effects of Industrial Accidents, 17 March 1992, art. 3(1).

<sup>126</sup> Ibid., art. 6(1). See also the ILO Prevention of Major Industrial Accidents Convention (No. 174), of 1993, which requires the development of a national policy “concerning the protection of workers, the public and the environment against the risk of major accidents” (art. 4(1)).

<sup>127</sup> Convention on the Transboundary Effects of Industrial Accidents, 17 March 1992, annex IV.

<sup>128</sup> Council decision 2001/792/EC, Euratom, of 23 October 2001, *Official Journal of the European Communities*, vol. 44, No. L 297, 15 November 2001. See also Commission decision 2004/277/EC, Euratom, of 29 December 2003 laying down rules for the implementation of Council decision 2001/792/EC, Euratom, *Official Journal of the European Union*, vol. 47, No. L 87, 25 March 2004. Cf. G. Potyka and K. Beeckman, “The regulatory framework for disaster response established within the European Union: a focus on humanitarian aid and civil protection” (Austrian Red Cross and IFRC International Disaster Response Laws, Rules and Principles Programme, 2005).

<sup>129</sup> Council decision 2001/792/EC, preambular para. (4). See also resolution 87(2) setting up a Cooperation Group for the Prevention of, Protection against, and Organization of Relief in Major Natural and Technological Disasters (the “European Open Partial Major Hazards Agreement”), adopted by the Committee of Ministers of the Council of Europe on 20 March 1987.

<sup>130</sup> See Council decision 2004/277/EC, Euratom (29 December 2003), art. 3 (“The participating States shall provide the Commission with ... information on the resources available for civil protection assistance interventions”).

<sup>131</sup> At the time of writing a proposal was being considered to recast the 2001 civil protection mechanism to, inter alia, expand its mandate. See “Proposal for a Council decision establishing a community civil protection mechanism”, document COM(2006)29 final, presented by the Commission of the European Communities, 26 January 2006. The proposal would involve placing increased emphasis on prevention and preparedness, including through the requirement of greater contribution to the development of early warning capacities.

<sup>132</sup> Council decision 2007/162/EC, Euratom of 5 March 2007.

complement the efforts of member States for the protection of people and the environment in the event, *inter alia*, of natural and man-made disasters,<sup>133</sup> including measures to prevent or reduce the effects of an emergency.<sup>134</sup>

42. Agreements on emergency planning have also been adopted at the subregional level, typically for purposes of establishing institutional mechanisms.<sup>135</sup> For example, the Agreement on the Establishment of the Civil-Military Emergency Planning Council for Southeastern Europe<sup>136</sup> lists among the functions of the Council “improved coordination methods for all phases of the disaster management cycle: mitigation, prevention, planning, response and reconstruction”.<sup>137</sup> 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<sup>138</sup> includes the basic principle that “the Assisting Party(s) shall help the Requesting Party by means and measures aimed at preventing ... the consequences of the Disaster.”<sup>139</sup>

43. A significant number of agreements concluded at the bilateral level include prevention and preparedness components. The most common are mutual cooperation treaties,<sup>140</sup> including on technical cooperation<sup>141</sup> (such as forecasting, monitoring

<sup>133</sup> Prevention is also the subject of regulation in the context of disasters involving dangerous substances. See Council of the European Union directive 96/82/EC of 9 December 1996 (“Seveso II”) on the control of major-accident hazards involving dangerous substances, requiring Member States to impose a number of prevention and preparedness measures on operators handling dangerous substances. The directive was subsequently extended by directive 2003/105/EC of the European Parliament and of the Council of 16 December 2003.

<sup>134</sup> Council decision 2007/162/EC, Euratom (5 March 2007), art. 1.

<sup>135</sup> Several subregional institutional mechanisms have also been established in the Latin American region: the Caribbean Disaster Emergency Response Agency, the Coordination Centre for the Prevention of Natural Disasters in Central America (CEPREDENAC), the Andean Committee for Disaster Prevention and Assistance (CAPRADE), the Inter-American Committee on Natural Disaster Reduction, the Inter-American Emergency Aid Fund (FONDEM) and the Inter-American Network for Disaster Mitigation. Several regional international organizations and entities, including the Pan-American Health Organization, the Association of Caribbean States and the Organization of American States also maintain initiatives on the topic. Cf. resolution AG/Res. 2314 (XXXVII O/07) of the General Assembly of the Organization of American States, adopted on 5 June 2007. See also, at the European level, resolution (87) 2 of the Committee of Ministers of the Council of Europe, adopted on 20 March 1987, establishing a Cooperation Group for the Prevention of, Protection against, and Organization of Relief in Major Natural and Technological Disasters. See too the discussion on coordination in sect. IV below.

<sup>136</sup> Done at Sofia on 3 April 2001.

<sup>137</sup> Art. IV.

<sup>138</sup> Adopted on 15 April 1998. See also the Additional Protocol to the Agreement, of 20 October 2005, establishing a network of liaison officers on emergency assistance.

<sup>139</sup> Art. 3(2).

<sup>140</sup> See, for example, the Convention between the Kingdom of the Netherlands and the Kingdom of Belgium on Mutual Assistance in Combating Disasters and Accidents, of 1984, art. 13 (“In order to contribute to the prevention of disasters and to ensure more effective action, the Contracting Parties shall establish permanent and close cooperation between themselves. To this end, they shall exchange all useful information of a scientific and technical nature and organize regular meetings”). See also Convention between the French Republic and the Federal Republic of Germany on Mutual Assistance in the Event of Disasters or Serious Accidents, of 1977, art. 11; Agreement between the Government of the French Republic and the Swiss Federal Council on Mutual Assistance in the Event of Disasters or Serious Accidents, of 1987, art. 13(1)(b); Agreement between the Government of the French Republic and the Government of Malaysia on Cooperation in the Field of Disaster Prevention and Management and Civil Security, 25 May 1998, arts. 2 and 3 (on file with the Codification Division); Convention between the Government of the French Republic and the Government of the Italian Republic on the Prediction and



of dangerous phenomena and exchange of technical information)<sup>142</sup> and other aspects of prevention and preparedness, such as establishing search and rescue capabilities.<sup>143</sup> Key features of such agreements include a requirement for the regular exchange of information concerning a distress (or potential distress) situation; an undertaking of mutual assistance, to the extent possible, in the conduct of search and rescue missions; agreement on mutual access to facilities while engaged in operations; an undertaking to coordinate activities, including through the development of common procedures; the requirement for exchange of information on the availability of resources as well as exchange of knowledge on risk management;<sup>144</sup> a commitment to cooperate with regard to contingency planning; periodic verification of communications links;<sup>145</sup> the establishment of notification procedures;<sup>146</sup> and a commitment to the training of specialists, the transfer of relevant state-of-the-art technology and the dissemination of information.<sup>147</sup> While most agreements identify the local authorities responsible for implementation of the agreement, other treaties establish joint institutions.<sup>148</sup>

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Prevention of Major Hazards and on Mutual Assistance in the Event of Natural or Man-made Disasters, 1992, arts. 1-4 (on file with the Codification Division); Convention between the Government of the French Republic and the Government of the Kingdom of Belgium on Mutual Assistance in the Event of Disasters or Serious Accidents, 1981, art. 11 (on file with the Codification Division); Agreement between the Ministry of the Interior of the Kingdom of Spain and the Ministry of the Interior of the United Mexican States on Scientific and Technological Cooperation and Mutual Assistance in Civil Protection and Disaster Prevention, 1997, art. 3 (on file with the Codification Division); Agreement between the Ministry of National Defence of the Eastern Republic of Uruguay and the Ministry of the Interior of the Kingdom of Spain on Scientific and Technological Cooperation and Mutual Assistance in Civil Protection and Disaster Prevention, 1997, art. 3 (on file with the Codification Division); Memorandum of Understanding between the Government of the Russian Federation and the Government of the United States of America on Cooperation in Natural and Man-made Technological Emergency Prevention and Response, 1996, art. I (on file with the Codification Division).

- <sup>141</sup> See, for example, Exchange of Notes Constituting an Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the United States of America for the Continued Operation of Hurricane Research Stations in the Cayman Islands established under the Agreement of 30 December 1958 as amended by the Agreement of 15 February 1960, 1966; Protocol between the Kingdom of Spain and the Portuguese Republic on Technical Cooperation and Mutual Assistance in the Field of Civil Defense, 1992, art. 1(2).
- <sup>142</sup> Convention between the Government of the French Republic and the Government of the Kingdom of Belgium on Mutual Assistance in the Event of Disasters or Serious Accidents, 1981, art. 11; Agreement between Denmark and the Federal Republic of Germany on Mutual Assistance in the Event of Disasters or Serious Accidents (with Exchange of Notes), 1985, art. 11.
- <sup>143</sup> See, for example, Agreement between the Government of the Republic of South Africa and the Government of the French Republic for the Coordination of Search and Rescue Services, 2001 (on file with the Codification Division); Agreement Between the Government of the Republic of South Africa and the Government of the Republic of Namibia Regarding the Coordination of Search and Rescue Services, 2000 (on file with the Codification Division).
- <sup>144</sup> See, for example, Protocol of Intentions between the Government of the United States of America and the Republic of the Philippines concerning Cooperation in Disaster Prevention and Management, 2001, art. 3(3) (on file with the Codification Division).
- <sup>145</sup> Agreement Between the Government of the Republic of South Africa and the Government of the French Republic for the Coordination of Search and Rescue Services, 2001, art. 3.
- <sup>146</sup> See, for example, the Agreement between the Government of the Republic of Finland and the Government of the Republic of Estonia on Cooperation and Mutual Assistance in Cases of Accidents, 1995, art. 5.
- <sup>147</sup> See Agreement between the Kingdom of Spain and the Argentine Republic on Cooperation on Disaster Preparedness and Prevention, and Mutual Assistance in the Event of Disasters, 1988, art. IV.
- <sup>148</sup> See, for example, Agreement between the Government of the United Mexican States and the Government of the Republic of Guatemala on Cooperation for the Prevention of and Assistance in Cases of Natural

44. At the domestic level, legislation on disaster prevention and mitigation has been in place in some States for decades, particularly laws on civil defence.<sup>149</sup> In addition, many States include aspects of disaster prevention in a variety of other domestic laws.<sup>150</sup> A significant number of countries have, in recent times, adopted specific national legislation on disaster risk management covering various aspects of prevention, mitigation and preparedness, in some cases expressly in response to developments at the international level,<sup>151</sup> or with the assistance of international organizations such as the United Nations.<sup>152</sup> The purpose of such legislation is also, in part, “[to take] cognizance of aspects disaster management contained in other legal instruments in order to avoid confusion and duplication”.<sup>153</sup> For example, the South African Disaster Management Act, of 2002,<sup>154</sup> establishes a coordinated and uniform approach to disaster management by all spheres of government. The Act envisages disaster management as a continuous and integrated multisectoral, multidisciplinary process of planning and implementing measures aimed at preventing and reducing the risk of disasters; mitigating the severity or consequences of disasters; undertaking emergency preparedness and a state of readiness to deal with impending or current disasters or effects of disasters; and maintaining a rapid and effective response to disasters with the objective of

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Disasters, 1987 (establishing a joint consultative mechanism for the purpose of reducing, so far as possible, the effects of natural disasters on populations of border areas), art. 1; Agreement between the Kingdom of Spain and the Argentine Republic on Cooperation on Disaster Preparedness and Prevention, and Mutual Assistance in the Event of Disasters, 1988, art. XXI; Agreement between the Government of the Kingdom of Spain and the Government of the Russian Federation on Cooperation in the Field of Prevention of Disasters and Mutual Assistance in the Mitigation of their Outcome, 2001, art. 5 (on file with the Codification Division); Treaty between the Kingdom of Spain and the French Republic on Civil Protection and Security, 2001, art. 4 (on file with the Codification Division); Memorandum of Understanding between the Government of the Russian Federation and the Government of the United States of America on Cooperation in Natural and Man-made Technological Emergency Prevention and Response, 1996, art. IV (on file with the Codification Division); Agreement between the Argentine Republic and the Republic of Chile on Disaster Cooperation, 1997, art. 3 (on file with the Codification Division).

<sup>149</sup> While traditionally civil defence legislation focused on preparedness and response (for example, Decree-Law No. 170 on the Civil Defence System (Cuba), art. 2: “Disaster reduction shall mean all activities relating to prevention, preparedness, response and recovery ...”), some States took a broader approach to include prevention and mitigation activities. For example, Supreme Decree No. 19386 of 11 January 1983, establishing the National Civil Defence System in Bolivia, included as its objective “to reduce ... the vulnerability of persons and communities to harm, injuries and death resulting from disasters” (art. 2(a)). See also Disaster Risk Reduction and Response Act (Bolivia), No. 2140 of 25 October 2000. See too Act No. 22 of 15 November 1982 (Panama), art. 2; and Supreme Decree No. 913-F of 17 November 1976 (Ecuador), art. 78.

<sup>150</sup> See *Disaster Prevention and Mitigation: A Compendium of Current Knowledge*, vol. 9, Legal Aspects, United Nations, New York, 1980, for examples of other types of domestic laws and regulations (such as those relating to zoning, land use and subdivision regulations, construction regulations, indemnification, taxation and insurance) which may be of relevance in the context of prevention and mitigation activities.

<sup>151</sup> See the White Paper on Disaster Management, issued by the Ministry for Provincial Affairs and Constitutional Development (South Africa), January 1999, *Government Gazette*, vol. 403, No. 19676, citing the International Decade for Natural Disaster Reduction as “increasing pressure for greater investment in prevention and mitigation actions that avert the need for expensive and often repeated assistance” (sect. 2.1.2).

<sup>152</sup> See “A global review: UNDP support to institutional and legislative systems for disaster risk management”, United Nations Development Programme, 2007.

<sup>153</sup> National Policy on Disaster Management (Botswana), 1996 (on file with the Codification Division), para. 13.

<sup>154</sup> Act No. 57 of 2002.

restoring normality in conditions caused by disasters.<sup>155</sup> The Philippine Disaster Risk Management Act, of 2006, envisages risk reduction or prevention/mitigation as “measures aimed to eliminate or reduce the intensity of [a] hazardous event. Such measures include but [are] not limited to formulation and implementation of policies, programs, projects and activities to reduce physical, social and environmental vulnerability such as the comprehensive land use planning, building and safety standards, and legislation.”<sup>156</sup> In Costa Rica, decree No. 8488, of 2005, has as its object the regulation of “ordinary actions ... which the Costa Rican Government must carry out to reduce loss of life and the social, economic and environmental losses resulting from natural and man-made risk factors”.<sup>157</sup> The Indian Disaster Management Act, of 2005,<sup>158</sup> defines “disaster management” as a “continuous and integrated process of planning, organizing, coordinating and implementing measures which are necessary or expedient for”, inter alia, prevention of danger or threat of any disaster, mitigation or reduction of risk of any disaster or its severity or consequences, capacity-building and preparedness to deal with any disaster.<sup>159</sup>

45. Additional examples of provisions on prevention which feature in domestic disaster-related legislation include the granting of authority to the State to formulate policies that encourage domestic and foreign actors to participate in activities related to forecasting, preventing and mitigating disasters;<sup>160</sup> a stipulation that both State authorities and citizens have a positive obligation to prevent and mitigate the consequences of a disaster<sup>161</sup> and to collaborate in prevention activities;<sup>162</sup> an obligation on the relevant State authorities to coordinate disaster prevention and mitigation activities<sup>163</sup> and to require the inclusion of such activities within the mandates of relevant public institutions<sup>164</sup> and in the budgetary planning process;

<sup>155</sup> See L. Buys, “An overview of the policy changes inaugurated by the South African government”, in *Know Risk*, (ISDR, 2005), p. 45.

<sup>156</sup> Sect. 3(i).

<sup>157</sup> Decree No. 8488 of 11 January 2006: National Emergency and Risk Prevention Act, art. 1.

<sup>158</sup> No. 53 of 2005.

<sup>159</sup> Sect. 2(e).

<sup>160</sup> Ordinance on Prevention and Control of Floods and Storms and Implementation Provisions (Viet Nam), art. 4.

<sup>161</sup> *Ibid.*, art. 6; Decree No. 8488 of 11 January 2006 (Costa Rica), art. 25; Act No. 2140, Risk Reduction Act, 2000 (Bolivia), art. 3(a).

<sup>162</sup> Decree No. 109-96 (Guatemala), art. 4.

<sup>163</sup> Decree No. 498 of 8 April 1976 (El Salvador); Decree No. 8488 of 11 January 2006 (Costa Rica), art. 26; The Disaster Countermeasures Basic Act, No. 223 of 15 November 1961 (Japan), art. 3 (“the State ... is responsible for bringing to bear on disaster prevention all of its organization and capacities to the fullest effect”); Legislative Decree No. 611 of 1990 (Peru), art. 91 (“All public and private national entities, and natural or legal persons are required to participate in the prevention and solution of problems arising from natural disasters”); Presidential Directive No. 33 (Colombia), art. 1 (“Disaster prevention is a planning concept. It is thus the responsibility of the various public agencies and entities to ensure that the said concept is incorporated in their plans, programmes and projects”).

<sup>164</sup> Decree No. 8488 of 11 January 2006 (Costa Rica), art. 27 (“The budget of each public institution shall include the allocation of resources for disaster risk management, considering prevention as a concept related to the development practices being promoted and implemented”); Presidential Directive No. 33 of 8 October 1990 (Colombia), art. 5; The Disaster Management Act, No. 53 of 2005 (India), sect. 35(2)(b) (“To ensure the integration of measures for prevention of disasters and mitigation by Ministries or Departments of the Government of India into their development plans and projects ...”); Sri Lanka Disaster Management Act, No. 13 of 2005, sect. 10(1) (“It shall be the duty of every Ministry, Government Department and public corporation to prepare a Disaster Management Plan with respect to such Ministry,

an obligation to identify risks and potential impact on the population;<sup>165</sup> and an obligation to include prevention and risk reduction criteria in disaster planning activities.<sup>166</sup> A common feature is the establishment of a domestic institutional mechanism entrusted with the task of developing and/or implementing national disaster plans (including disaster prevention plans) and policies and coordinating preparedness activities with domestic and international actors.<sup>167</sup>

## 2. Other relevant legal instruments

46. There exists a further set of international instruments which, although not strictly within the scope of this study, nonetheless contain provisions of relevance to prevention in the context of natural disasters. For example, the Convention on the Law of the Non-navigational Uses of International Watercourses, of 1997,<sup>168</sup> requires watercourse States to “take all appropriate measures to prevent or mitigate conditions related to an international watercourse that may be harmful to other watercourse States, whether resulting from natural causes or human conduct, such as flood or ice conditions, water-borne diseases, siltation, erosion, salt-water intrusion, drought or desertification”. In addition, watercourse States are to notify other watercourse States of an emergency and take all practicable measures to prevent, mitigate and eliminate the harmful effects.<sup>169</sup> Relevant provisions are also to be

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Government Department, or public corporation, to counter any disaster or impending disaster ...”); Disaster Mitigation Act (United States) of 2000, Public Law 106-390, 42 USC 5165, sect. 322.

<sup>165</sup> Act No. 2.615/05, 10 June 2005 (Paraguay), art. 4(b). Disaster Management Act No. 30 of 2006 (Saint Lucia), sect. 5(3)(f).

<sup>166</sup> Decree No. 93 of 13 January 1998 (Colombia), art. 6(1); Natural Disaster Management Act, No. 21 of 1998 (Fiji), art. 39; The Disaster Countermeasures Basic Act No. 223 of 15 November 1961 (Japan), art. 8(2) (listing 18 disaster prevention activities to be undertaken by local government); Act No. 95-101 of 2 February 1995 (France), art. 16; Decree No. 95-1089 of 5 October 1995 on plans for the prevention of foreseeable natural hazards (France).

<sup>167</sup> See, for example, Disaster Prevention and Response Act, 19 July 2000, as amended on 29 May 2002 (Taiwan Province of China), art. 6 (establishment of the National Disaster Prevention and Response Council), the Philippine Disaster Risk Management Act of 2006 (establishment of the National Disaster Management Council); Act No. 2.615/05, 10 June 2005 (Paraguay); Decree No. 919 of 1 May 1989 (Colombia); Decree No. 8488 of 11 January 2006 (Costa Rica); Decree No. 9-90-E of 2 December 1990 (Honduras); Act 517 of 1996 (establishment of the National Disaster Management Organisation) (Ghana); Law for Civil Protection, No. 3013/2003, 2003 (Greece); The Disaster Preparedness and Relief Act, No. 24 of 1991 (Malawi); Law on Disaster Protection, 2003 (Mongolia); Natural Disaster Management Act, No. 21 of 1998 (establishment of the National Disaster Management Council) (Fiji); Legislative Decree No. 777, 18 August 2005, National Commission for Civil Protection and Disaster Prevention and Mitigation Act (National Commission for Civil Protection Disaster Prevention and Mitigation) (El Salvador), Act of 22 August 1983 establishing the Disaster Preparedness and Rescue Organization (OPDES) (Haiti); Decree No. 156 of 12 March 2002 (Chile); The Disaster Management Act, No. 53 of 2005 (India), chap. II (establishment of the National Disaster Management Authority); The Disaster Countermeasures Basic Act, No. 223 of 15 November 1961 (Japan), chap. II (establishment of a Disaster Prevention Council); Disaster Management Act, No. 30 of 2006, establishing the National Emergency Management Organisation (Saint Lucia).

<sup>168</sup> Adopted by the General Assembly on 21 May 1997, resolution 51/229.

<sup>169</sup> Art. 28(2)(3). “Emergency” is defined as a “situation that causes, or poses an imminent threat of causing, serious harm to watercourse States or other States and that results suddenly from natural causes, such as floods, the breaking up of ice, landslides or earthquakes, or from human conduct, such as industrial accidents” (art. 28(1)). See also the Convention on the Protection and Use of Transboundary Watercourses and International Lakes, of 1992, art. 3 (“To prevent, control and reduce transboundary impact, the Parties shall develop, adopt, implement and, as far as possible, render compatible relevant legal, administrative, economic, financial and technical measures ...”).

found in various treaties and instruments, at the multilateral, bilateral and national levels, in such fields as pollution,<sup>170</sup> health,<sup>171</sup> radiological emergencies (notification and communication),<sup>172</sup> nuclear safety,<sup>173</sup> and the control of the movement of hazardous wastes.<sup>174</sup>

#### IV. Disaster response and the provision of assistance

47. The legal regulation of disaster response involves four distinct aspects. First, the response must be initiated, requiring a request for assistance (sometimes precipitated by an offer), the acceptance of that request and the establishment of conditions for the provision of assistance. Second, questions of access arise, including the entry of disaster relief personnel and goods into the receiving State and the transit and freedom of movement of disaster relief personnel. Third, questions of status must be addressed, including identification issues and questions of privileges, immunities and facilities for disaster relief personnel and organizations. Fourth, the provision of relief must be regulated on multiple levels, including the initial exchange of information between the receiving State and the assisting State, organization or designated focal point; the question of communications equipment and facilities; the coordination of relief activities; the use of military and civil defence assets; the issue of the quality of relief assistance; the protection of disaster relief personnel; the costs relating to a disaster response

<sup>170</sup> See International Convention on Oil Pollution Preparedness, Response and Cooperation, 30 November 1990, art. 6 (establishing several measures to prepare for a response to an oil pollution incident); Protocol to the International Convention on Oil Pollution Preparedness, Response and Cooperation of 1990, on Preparedness, Response and Cooperation to Pollution Incidents by Hazardous and Noxious Substances, of 2000; Convention for the Protection of the Mediterranean Sea Against Pollution, of 1976, as amended on 10 June 1995, and Protocols, art. 4(1) (“Contracting Parties shall ... take all appropriate measures ... to prevent, abate and combat pollution of the Mediterranean Sea Area ...”). See also United Nations Convention on the Law of the Sea, 1982, art. 145, which requires the International Seabed Authority to adopt appropriate rules, regulations and procedures for, inter alia, the prevention, reduction and control of pollution and other hazards to the marine environment.

<sup>171</sup> See, for example, the Basic Agreement between the Government of Antigua and Barbuda and the Pan American Health Organization, Represented by the Pan American Sanitary Bureau, Regional Office of the World Health Organization, 1982, art. III; and Agreement between the Government of the Republic of South Africa and the Government of the Federal Republic of Nigeria on Cooperation in the Field of Health and Medical Sciences, 2002 (on file with the Codification Division).

<sup>172</sup> See, for example, Exchange of Notes Constituting an Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the French Republic concerning Exchanges of Information in the Event of Emergencies Occurring in One of the Two States which could have Radiological Consequences for the other State, of 1983.

<sup>173</sup> See Agreement between the Government of the Federal Republic of Germany and the Government of the Republic of Hungary on matters of common interest relating to nuclear safety and radiation protection, of 1990, art. 4(1) (requirement to periodically inform each other of general developments in the peaceful uses of nuclear energy and on their legislation for ensuring the safety of nuclear facilities and radiation protection for workers, the population and the environment); and Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Union of Soviet Socialist Republics on Early Notification of a Nuclear Accident and Exchange of Information concerning the Operation and Management of Nuclear Facilities (with Protocol and Attachment thereto), of 1990, art. 5 (exchange of information). See also Convention on the Physical Protection of Nuclear Material of 1979 and Convention on Nuclear Safety of 1994.

<sup>174</sup> See Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, 1989.

operation; conformity with national laws, standards and regulations; liability and compensation during disasters; the settlement of disputes; and the termination of assistance. The present section addresses each of these aspects in turn.

## A. Initiation

48. The onset of a disaster or the threat of disaster may trigger a series of legal consequences for States. Under some agreements, States parties are required to provide prompt warning to other States of the disaster if it is likely to also affect those other States. In addition, the occurrence or threat of a disaster serves to initiate the operation of existing agreements for the provision of relief assistance, typically on the basis of a request for assistance from the affected State.

### 1. Notification of impending disaster

49. Most relevant international instruments focus on emergency response undertaken within the affected State. Some, however, also anticipate the possibility of a disaster affecting other States. A number of instruments require States to provide notification of the occurrence of a disaster or impending disaster.<sup>175</sup> For example, the Rio Declaration on Environment and Development, of 1992, provides that “States shall immediately notify other States of any natural disasters or other

<sup>175</sup> Convention on the Law of the Non-navigational Uses of International Watercourses, 1997, art. 28(2); Convention on Early Notification of a Nuclear Accident, 1986, art. 2; International Convention on Oil Pollution Preparedness, Response and Cooperation, 30 November 1990, art. 5(1)(c); Convention for the Protection of the Mediterranean Sea against Pollution, 1976, art. 9(2); Protocol for the Protection of the Mediterranean Sea against Pollution resulting from Exploration and Exploitation of the Continental Shelf and the Seabed and its Subsoil, 1994, art. 26(3); Protocol concerning Cooperation in Preventing Pollution from Ships and, in cases of Emergency, Combating Pollution of the Mediterranean Sea, 2002, art. 10(1)(c); Convention on the Transboundary Effects of Industrial Accidents, 1992, art. 10(2); Convention on the Protection and Use of Transboundary Watercourses and International Lakes, 1992, art. 14; World Health Organization, Revision of the International Health Regulations, 23 May 2005 (reprinted in *International Legal Materials*, vol. 44, p. 1013), art. 6; European Council decision establishing a Community mechanism to facilitate reinforced cooperation in civil protection assistance interventions, decision 2001/792/EC, Euratom, 2001, art. 2; Agreement between the United States of America and Canada on Great Lakes Water Quality, 1978, art. X(2); Agreement on Early Notification of Nuclear Accidents and Exchange of Information concerning the Operation and Management of Nuclear Facilities, United Kingdom of Great Britain and Northern Ireland and Union of Soviet Socialist Republics, 1990, arts. 2-4. See also Agreement between the Government of the Republic of Finland and the Government of the Republic of Estonia on Cooperation and Mutual Assistance in Cases of Accidents, 1995, art. 5; Agreement on Cooperation Concerning Rescue Services in the Frontier Areas between Finland and Norway, 1986, art. 2; Agreement between the Government of the Federal Republic of Germany and the Government of the Republic of Hungary on Matters of Common Interest Relating to Nuclear Safety and Radiation Protection, 1990, art. 2(1); Exchange of notes constituting an Agreement concerning Exchanges of Information in the event of Emergencies occurring in one of the two States which could have radiological consequences for the other State, United Kingdom of Great Britain and Northern Ireland and France, 1983, para. 1; draft Convention on expediting the delivery of emergency assistance, 1984 (A/39/267/Add.2-E/1984/96/Add.2, annex), art. 6(1); draft articles on prevention of transboundary harm from hazardous activities, 2001, draft art. 17; and, in the context of man-made hazardous activities, the draft principles on the allocation of loss in the case of transboundary harm arising out of hazardous activities, 2006, draft principle 5 (a).

emergencies that are likely to produce sudden harmful effects on the environment of those States”.<sup>176</sup>

50. While the notification is typically to be made by an affected State,<sup>177</sup> some instruments are broader in scope and impose the obligation on States parties which may be “aware”<sup>178</sup> of an impending emergency,<sup>179</sup> regardless of whether they are actually or potentially affected themselves. Some instruments also extend beyond emergencies of a transboundary nature<sup>180</sup> to include those which “may result in a call for assistance from [other] States”, i.e. including those occurring wholly within the State,<sup>181</sup> or within another State.<sup>182</sup> The potential addressees of such

<sup>176</sup> *Report of the United Nations Conference on Environment and Development, Rio de Janeiro 3-14 June 1992*, vol. I, *Resolutions Adopted by the Conference* (United Nations publication, Sales No. E.93.I.8 and corrigendum), resolution 1, annex I, principle 18.

<sup>177</sup> Convention on the Law of the Non-navigational Uses of International Watercourses, 1997, art. 28(2) (“any emergency originating within its territory”); Convention on Early Notification of a Nuclear Accident, 1986, art. 2; Convention on the Transboundary Effects of Industrial Accidents, 1992, art. 10(2) (“the Party of origin”); World Health Organization, Revision of the International Health Regulations, 2005, art. 6(1); European Council decision establishing a Community mechanism to facilitate reinforced cooperation in civil protection assistance interventions, decision 2001/792/EC, Euratom, 2001, art. 2(1) (“the ... State in which the emergency has occurred shall ... notify ...”); draft articles on prevention of transboundary harm from hazardous activities, 2001, draft article 17 (“The State of origin shall notify ...”); and draft principles on the allocation of loss in the case of transboundary harm arising out of hazardous activities, 2006, draft principle 5 (a). The ASEAN Agreement on Disaster Management and Emergency Response, of 2005, anticipates notification being provided in response to a request from another State party for information when the disaster is “likely to cause possible impacts on other Member States” (art. 4(b)).

<sup>178</sup> For example, the United Nations Convention on the Law of the Sea, of 1982, requires notification “when a State becomes aware of cases in which the marine environment is in imminent danger of being damaged or has been damaged by pollution” (art. 198) (emphasis added). See also International Convention on Oil Pollution Preparedness, Response and Cooperation, 1990, art. 5(1) (“Whenever a Party receives a report ...”); Convention for the Protection of the Mediterranean Sea Against Pollution, 1976, art. 9(2); Protocol for the Protection of the Mediterranean Sea against Pollution Resulting from Exploration and Exploitation of the Continental Shelf and the Seabed and its Subsoil, 1994, art. 26(3); Agreement for the Protection of the Rhine against Chemical Pollution (with annexes), 1976, art. 11 (“... becomes aware of an accident which may result in a serious threat ...”); Agreement between the United States of America and Canada on Great Lakes Water Quality, 1978, art. X(2); draft convention on expediting the delivery of emergency assistance, 1984, (A/39/267/Add.2-E/1984/96/Add.2, annex), art. 6(1) (“Parties to this Convention which obtain information about events which may lead to a disaster ... should ... notify ...”).

<sup>179</sup> The commentary to draft article 17 of the draft articles on prevention of transboundary harm from hazardous activities (*Yearbook of the International Law Commission, 2001*, vol. II (part two), para. 98) envisages that “early warning systems established or forecasting of severe weather disturbances could indicate that the emergency is imminent”.

<sup>180</sup> For example, World Health Organization; Revision of the International Health Regulations, 2005, art. 6(1), refers to “a public health emergency of international concern”.

<sup>181</sup> European Council decision establishing a Community mechanism to facilitate reinforced cooperation in civil protection assistance interventions, Decision 2001/792/EC, Euratom, 2001, art. 2(1). See also draft convention on expediting the delivery of emergency assistance, 1984, art. 6(1) (“which would assist the provision of assistance”).

<sup>182</sup> Agreement between the Government of the Republic of Finland and the Government of the Republic of Estonia on Cooperation and Mutual Assistance in Cases of Accidents, 26 June 1995, art. 5 (“accidents occurring in other States which have or may have a harmful effect on the territory of the other Party”).

notifications also vary by agreement, and may include parties to the agreement;<sup>183</sup> or more generally those States which may be “affected”,<sup>184</sup> regardless, whether they are parties to the agreement and of whether they are to be notified directly or through an intermediary;<sup>185</sup> or specified entities,<sup>186</sup> including the United Nations relief coordinator and other appropriate organizations.<sup>187</sup> The obligation is also typically qualified by the condition that the notification be made expeditiously.<sup>188</sup>

<sup>183</sup> See Convention for the Protection of the Mediterranean Sea against Pollution, 1976, art. 9(2) (“any Contracting Party likely to be affected by such damage”); Protocol for the Protection of the Mediterranean Sea against Pollution Resulting from Exploration and Exploitation of the Continental Shelf and the Seabed and its Subsoil, 1994, art. 26(3) (“other Parties”); Convention on the Transboundary Effects of Industrial Accidents, 1992, art. 10(2) (“affected Parties”); Agreement between the United States of America and Canada on Great Lakes Water Quality, 1978, art. X(2); Agreement between the Government of the Republic of Finland and the Government of the Republic of Estonia on Cooperation and Mutual Assistance in Cases of Accidents, 1995, art. 5; European Council decision establishing a Community mechanism to facilitate reinforced cooperation in civil protection assistance interventions, decision 2001/792/EC, Euratom, 2001, art. 2(1)(a) (“those Member States which may be affected by the emergency”).

<sup>184</sup> United Nations Convention on the Law of the Sea, 1982, art. 198 (“other States [the notifying State] deems likely to be affected”); Convention on the Law of the Non-navigational Uses of International Watercourses, 1997, art. 28(2) (“other potentially affected States”); Convention on Early Notification of a Nuclear Accident, 1986, art. 2(a) (“those States which are or may be physically affected”); International Convention on Oil Pollution Preparedness, Response and Cooperation, 1990, art. 5(1)(c) (“all States whose interests are affected or likely to be affected”); draft articles on prevention of transboundary harm from hazardous activities, 2001, draft article 17 (“the State likely to be affected”); draft principles on the allocation of loss in the case of transboundary harm arising out of hazardous activities, 2006, draft principle 5 (a) (“all States affected or likely to be affected”). See also draft convention on expediting the delivery of emergency assistance, 1984, art. 6(1) (“those States likely to be affected”).

<sup>185</sup> Convention on early notification of a nuclear accident, 1986, art. 2(a) (“through the International Atomic Energy Agency”).

<sup>186</sup> Convention on Early Notification of a Nuclear Accident, 1986, art. 2(a) (“and the [International Atomic Energy] Agency”); World Health Organization; Revision of the International Health Regulations, 2005, art. 6(1) (the World Health Organization); International Convention on Oil Pollution Preparedness, Response and Cooperation, 1990, art. 5(2) (the International Maritime Organization); Convention for the Protection of the Mediterranean Sea against Pollution, 1976, art. 9(2) (the International Maritime Organization); Protocol for the Protection of the Mediterranean Sea against Pollution resulting from Exploration and Exploitation of the Continental Shelf and the Seabed and its Subsoil, 1994, art. 26(3) (the Regional Marine Pollution Emergency Response Centre for the Mediterranean Sea); European Council decision establishing a Community mechanism to facilitate reinforced cooperation in civil protection assistance interventions, decision 2001/792/EC, Euratom, 2001, art. 2(1)(b) (the European Commission).

<sup>187</sup> United Nations Convention on the Law of the Sea, 1982, art. 198; Convention on the Law of the Non-navigational Uses of International Watercourses, 1997, art. 28(2) (“competent international organizations”); draft convention on expediting the delivery of assistance, 1984, art. 6(1).

<sup>188</sup> United Nations Convention on the Law of the Sea, 1982, art. 198 (“immediately”); Convention on the Law of the Non-navigational Uses of International Watercourses, 1997, art. 28(2) (“without delay”); Convention on Early Notification of a Nuclear Accident, 1986, art. 2(a) (“forthwith”); International Convention on Oil Pollution Preparedness, Response and Cooperation, 1990, art. 5(1)(c); Convention for the Protection of the Mediterranean Sea against Pollution, 1976, art. 9(2) (“without delay”); Protocol for the Protection of the Mediterranean Sea against Pollution resulting from Exploration and Exploitation of the Continental Shelf and the Seabed and its Subsoil, 1994, art. 26(3) (“timely information”); Protocol concerning Cooperation in Preventing Pollution from Ships and, in cases of Emergency, Combating



Some agreements further specify the types of information to be provided in such a notification,<sup>189</sup> as well as applicable modalities.<sup>190</sup> This obligation to notify other States exists as a corollary to the requirement, recognized by some instruments, that States are to ensure that appropriate early warning and information-sharing mechanisms are put into place.<sup>191</sup>

## 2. Requests and offers of assistance

51. The consent of the affected State is the traditional requirement for the initiation of the provision of relief assistance.<sup>192</sup> In resolution 46/182, the General Assembly confirmed the significance of consent, which it considered to be a

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Pollution of the Mediterranean Sea, 2002, art. 10(1)(c) (“immediately”); Convention on the Transboundary Effects of Industrial Accidents, 1992, art. 10(2) (“without delay”); ASEAN Agreement on Disaster Management and Emergency Response, 2005, art. 4(b) (“promptly”); World Health Organization; Revision of the International Health Regulations, 2005, art. 6(1) (“within 24 hours of assessment”); Agreement between the Government of the Republic of Finland and the Government of the Republic of Estonia on Cooperation and Mutual Assistance in Cases of Accidents, 1995, art. 5 (“immediately”); Agreement between the Government of the Federal Republic of Germany and the Government of the Republic of Hungary on Matters of Common Interest relating to Nuclear Safety and Radiation Protection, 1990, art. 2(1) (“forthwith”); European Council decision establishing a Community mechanism to facilitate reinforced cooperation in civil protection assistance interventions, decision 2001/792/EC, Euratom, 2001, art. 2(1) (“without delay”); draft articles on prevention of transboundary harm from hazardous activities, 2001, draft article 17 (“without delay”); draft principles on the allocation of loss in the case of transboundary harm arising out of hazardous activities, 2006, draft principle 5 (a) (“promptly”); draft convention on expediting the delivery of emergency assistance, 1984, art. 6(1) (“immediately”).

<sup>189</sup> Convention on early notification of a nuclear accident, 1986, art. 2(b) (“such available information relevant to minimizing ... the consequences”) and art. 5; International Convention on Oil Pollution Preparedness, Response and Cooperation, 1990, art. 5(1)(c); Agreement between the Government of the Republic of Finland and the Government of the Republic of Estonia on Cooperation and Mutual Assistance in Cases of Accidents, 1995, art. 5 (“information about the nature and location of the accident, any assistance measures that have been or will be implemented at the scene of the accident or in its environs, and any other significant circumstances”); draft articles on prevention of transboundary harm from hazardous activities, 2001, draft article 17 (“all relevant and available information”); draft principles on the allocation of loss in the case of transboundary harm arising out of hazardous activities, 2006, draft principle 5 (a) (“promptly notify [affected States] ... of the incident and the possible effects of the transboundary damage”).

<sup>190</sup> Convention on the Law of the Non-navigational Uses of International Watercourses, 1997, art. 28(2) (“the most expeditious means available”); Convention on the Transboundary Effects of Industrial Accidents, 1992, art. 10(2) (“notified at appropriate levels”); World Health Organization; Revision of the International Health Regulations, 2005, art. 6(1) (“by the most efficient means of communication available”); European Council decision establishing a Community mechanism to facilitate reinforced cooperation in civil protection assistance interventions, decision 2001/792/EC, Euratom, 2001, art. 2(2); draft articles on prevention of transboundary harm from hazardous activities, 2001, draft article 17 (“the most expeditious means”).

<sup>191</sup> See the discussion in sect. II above. See also Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance, 2007, art. 7, which considers the purpose of early warning as being, inter alia, “to minimize transboundary impacts”.

<sup>192</sup> This has been the position at least since the International Relief Union. See Convention and Statute Establishing an International Relief Union, of 1927 (no longer in force), art. 4 (the action of the Union “in any country is subject to the consent of the Government thereof”).

function of the principle of respect for sovereignty, territorial integrity and national unity.<sup>193</sup> It may also be seen as a consequence of the application of other relevant principles, such as that of non-interference in the domestic affairs of a State, and cooperation. It is also a corollary to the basic requirement that it is the primary responsibility of the State to respond to a disaster on its territory.<sup>194</sup> Consent to the initiation of relief assistance arises in the form of the acceptance of an offer of assistance made by another State, a group of States or an international organization, in response to a prior request by the affected State.<sup>195</sup> This position is almost uniformly adopted by all the instruments in the field, many of which typically

<sup>193</sup> Annex, para. 3 (“The sovereignty, territorial integrity and national unity of States must be fully respected in accordance with the Charter of the United Nations. In this context, humanitarian assistance should be provided with the consent of the affected country and in principle on the basis of an appeal by the affected country.”). See also Framework Convention on Civil Defence Assistance, 2000, art. 3(b).

<sup>194</sup> See the discussion on the principles of sovereignty and non-intervention in sect. II.F above.

<sup>195</sup> See, for example, the Framework Convention on Civil Defence Assistance, 2000, art. 3(a) (“Only assistance requested by the Beneficiary State or proposed by the Supporting State and accepted by the Beneficiary State may take place”); 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, 1998, arts. 3(2) (on the basis of a national appeal for assistance) and 4(1); ASEAN Agreement on Disaster Management and Emergency Response, 2005, art. 11(2) (“Assistance can only be deployed at the request, and with the consent, of the Requesting Party, or, when offered by another Party or Parties, with the consent of the Receiving Party”); Convention on the Protection and Use of Transboundary Watercourses and International Lakes, 1992, art. 15(1); Convention on the Transboundary Effects of Industrial Accidents, 1992, art. 12(1); Memorandum of Understanding Between the United Nations and The Government of the Hellenic Republic and the Government of the Republic of Turkey on Cooperation in the Field of Humanitarian Emergency Response, 16 September 2002, art. 2 (“following an appeal from an affected country”); Memorandum of Understanding Between the United Nations Office for the Coordination of Humanitarian Affairs and the Ministry of the Russian Federation for Civil Defence, Emergencies and Elimination of the Consequences of Natural Disasters on Cooperation in the Field of Humanitarian Response, 1998, art. 2(1); European Council decision establishing a Community mechanism to facilitate reinforced cooperation in civil protection assistance interventions, decision 2001/792/EC, Euratom, 2001, art. 5(1); Agreement on Cooperation and Mutual Assistance in cases of Accidents, between Finland and Estonia, 1995, art. 6; Agreement on Cooperation between the Kingdom of Spain and the Argentine Republic on Disaster Preparedness and Prevention, and Mutual Assistance in the Event of Disasters, 1988, art. IX; Law 25.240 of 26 January 2000, approving the Accord entered into with Chile regarding Cooperation in matters of Disasters (Argentina), art. 4(1); and Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance, 2007, art. 10 (1) (“Disaster relief or initial recovery assistance should be initiated only with the consent of the affected State and in principle, on the basis of an appeal”. Conversely, the Food Aid Convention, of 1999, does not premise the provision of food aid on a prior request for assistance. See also Geneva Convention relative to the Protection of Civilian Persons in Time of War, 1949, art. 59: “If the whole or part of the population of an occupied territory is inadequately supplied, the Occupying power *shall agree* to relief schemes on behalf of the said population, and shall facilitate them by all means at its disposal” (emphasis added). However, Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), of 1977, anticipated relief actions undertaken on the basis of prior consent; see art. 70 (“relief actions ... shall be undertaken, subject to the agreement of the parties concerned ...”). See also Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), of 1977, art. 18(2) (“subject to the consent of the High Contracting Party concerned”).

contain a provision on the request for assistance.<sup>196</sup> It is also anticipated in the national legislation of States, some of which make express provision for the request of international assistance. While this practice is established in the context of the inter-State provision of assistance (as well as that between intergovernmental organizations and States), it is less clear that it is uniformly maintained at the level of assistance provided by other humanitarian assistance entities and non-governmental organizations.<sup>197</sup>

**(a) Requests for assistance**

*(i) The request*

52. The request for assistance initiates a legal process whereby the requesting State and assisting State or States (or other international entities) seek to enter into a specific legal relationship. If the request is made under the terms of an international agreement, then the request for assistance is an attempt to transform the existing relationship from one of parties to an agreement to also that of “assistance-receiving” and “assistance-providing” States, with all the legal consequences that flow from such classification.

*(ii) Author of the request*

53. All the instruments which seek to regulate requests for humanitarian assistance provide, as a minimum, that the request should emanate from the affected State itself. In exceptional cases, some agreements recognize the possibility of requests being made by other entities. For example, the Cotonou Agreement provides that humanitarian and emergency assistance operations “shall be undertaken either at the request of the ACP [African, Caribbean or Pacific] country affected by the crisis situation, the Commission, international organizations or local or international non-State organizations”.<sup>198</sup> In Fiji, the National Disaster Management Plan of 1995 provides that “all disaster assistance is based upon a request from the Government of Fiji or from a recognized NGO” (emphasis added).<sup>199</sup>

*(iii) Addressees of a request*

54. While a number of agreements have been adopted specifically to regulate the provision of relief (following a request), an affected State is not limited to directing its requests for assistance to the other States parties to treaties to which it is a party.

<sup>196</sup> See, for example, Tampere Convention on the Provision of Telecommunication Resources for Disaster Mitigation and Relief Operations, 1998, art. 4; and Framework Convention on Civil Defence Assistance, 2000, art. 3(a). See also International Convention on Oil Pollution Preparedness, Response and Cooperation, 1990, art. 7(1) (“request of any Party affected or likely to be affected”); Protocol on Preparedness, Response and Cooperation to Pollution Incidents by Hazardous and Noxious Substances, 2000, art. 5 (1); and Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency, 1986, art. 2(1).

<sup>197</sup> David Fisher, *Law and Legal Issues in International Disaster Response: A Desk Study*, International Federation of Red Cross and Red Crescent Societies, 2007, p. 92.

<sup>198</sup> Partnership agreement between the members of the African, Caribbean and Pacific Group of States of the one part, and the European Community and its member States, of the other part, 23 June 2000, art. 72(6).

<sup>199</sup> Appendix F.

A request might be addressed only to a specific subset of parties to a treaty or, conversely, to the broader community of States (including third States).<sup>200</sup>

(iv) *Applicable legal framework*

55. A request made under an existing international agreement serves to trigger the procedures and processes established under that agreement.<sup>201</sup> Given the number of existing agreements, it is possible that multiple such instruments, at the global, regional and bilateral levels, would potentially regulate the provision of assistance in regard to a particular disaster.<sup>202</sup> Factors in making the determination of which agreement or agreements apply would include whether a specific instrument (or provisions thereof) was invoked in the request, and the context in which it was made (for example, a request addressed to a regional organization would suggest an intention to trigger the operation of a specific agreement established under the auspices of that organization) or in which the disaster took place (for example, a “complex” disaster situation also involving armed conflict would also give rise to the applicability of international humanitarian law). In those States where international (whether regional or bilateral) agreements have been incorporated into domestic law, the resort to domestic procedures established under those laws as a prelude to a request for international assistance may also serve to provide an indication as to which international agreement the requesting State intends to apply to the request for assistance.

56. A further consequence of the request constraint is that international agreements do not automatically regulate the international provision of assistance, even if a particular disaster falls within the scope of an international instrument: in most cases, the additional step of making the request is required to trigger the operation of the agreement in question. This is without prejudice to the applicability of other provisions of an agreement, such as standing arrangements for cooperation in prevention and mitigation. The consequence of the application of the principle of sovereignty, therefore, is not only to give primacy to consent, but also to give the

<sup>200</sup> See, for example, the National Disaster Management Plan of 1995 (Fiji), appendix F (an appeal for international assistance to be directed “either to specific countries or [as] a general appeal”). In addition, none of the instruments surveyed in this study condition the provision of international humanitarian assistance on the existence of official relations between the requesting and providing States. See also the resolution on international medical and humanitarian law adopted at the 57th Conference of the International Law Association, 1976, part I, para. 3.

<sup>201</sup> The Convention on the Protection and Use of Transboundary Watercourses and International Lakes, of 1992, anticipates State parties establishing specific procedures for requests for mutual assistance in “a critical situation” (art. 15(2)).

<sup>202</sup> This is anticipated in many of the international agreements which include specific provisions on their relationship with other international agreements, for example, the Tampere Convention on the Provision of Telecommunication Resources for Disaster Mitigation and Relief Operations, 18 June 1998, art. 10 (“This Convention shall not affect the rights and obligations of States Parties deriving from other international agreements or international law”); and the Framework Convention on Civil Defence Assistance, of 2000, art. 5. The Convention on the Transboundary Effects of Industrial Accidents, of 1992, expressly gives precedence to cooperation undertaken under the terms of other applicable multilateral and bilateral treaties, and provides a residual scheme of rules for such cooperation in cases where “Parties do not have [applicable] bilateral or multilateral agreements” (art. 12(1) and annex X). See also 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, art. 2.

affected State the freedom to select the legal framework under which the provision of assistance will be regulated. The significance of this may be more apparent at the micro level where differences between agreements are more apparent,<sup>203</sup> than at the macro level where all the agreements tend to operate within a common set of parameters.

(v) *Duty to request?*

57. The emphasis placed on offers being made primarily in response to requests (regardless of the possibility of unsolicited offers (discussed below)), as a function of the operation of the principles of respect for sovereignty and non-intervention, suggests that it is in the discretion of the affected State whether or not to make a request for assistance. This position, however, may be evolving towards greater recognition of a positive duty on affected States to request assistance, at least where the domestic response capacity is overwhelmed by a disaster.<sup>204</sup> This trend is in line with a growing emphasis, as a matter of international law, on the responsibility of States to protect their populations in the event of the onset of a disaster.<sup>205</sup>

(vi) *Welcoming offers*

58. A recent study, undertaken under the auspices of the International Federation of Red Cross and Red Crescent Societies (IFRC), has noted the practice of some affected States, typically those unwilling or unable to issue specific requests for international assistance in a timely manner (or because of domestic legal barriers), to instead announce that such assistance would be “welcomed”, i.e. without recourse to the request and offer process.<sup>206</sup> This practice amounts to the granting of advance consent to international assistance, including that from States and other entities not parties to any of the agreements to which the affected State is a party. Such a practice reveals the fact that, while the offer and request dynamic is the traditional approach, as a matter of treaty law and the practice of humanitarian agencies, other considerations may intercede in particular cases allowing for the lawful circumvention of the established mode for determining consent. Such “blanket” consent is still, nonetheless, subject to the affected State’s basic right to control the assistance being provided, including, for example, by rejecting that which it deems inappropriate. It is also not without its legal and policy implications since many international humanitarian agencies typically premise their offers of assistance on the existence of an expression of need, in the form of a request, usually involving a “needs assessment”. Likewise, many of the applicable agreements anticipate a

<sup>203</sup> For example, the question of the regulation of costs is treated in a variety of ways by different international agreements (see sect. IV.B below) and, in the case of a particular disaster, may also be the subject of special arrangements adopted at the bilateral level. See also David Fisher, *Law and Legal Issues in International Disaster Response: A Desk Study*, International Federation of Red Cross and Red Crescent Societies, 2007, pp. 86 and 87.

<sup>204</sup> This is implicit in General Assembly resolution 46/182, annex, para. 5. A more explicit reference is made in the Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance, 2007, art. 3(2) (“If an affected State determines that a disaster situation exceeds national coping capacities, it should seek international and/or regional assistance to address the needs of affected persons”). See also the resolution on humanitarian assistance adopted by the Institute of International Law on 2 September 2003, sect. III, para. 3.

<sup>205</sup> See the discussion in sect. V below.

<sup>206</sup> David Fisher, *Law and Legal Issues in International Disaster Response: A Desk Study*, International Federation of Red Cross and Red Crescent Societies, 2007, p. 91.

certain level of specificity in a request (as discussed below), which is not typically present in a blanket welcome.

(vii) *National requirements for the making of a request*

59. It is worth recalling that many States have in place domestic legal requirements for the triggering of the provision of disaster relief, including the request for international relief. For example, many domestic laws include the requirement of a declaration of a state of emergency or disaster by the relevant authorities as a prerequisite for the triggering of existing domestic procedures for disaster relief.<sup>207</sup> National laws may also establish specific procedures for the request of international assistance,<sup>208</sup> and typically identify a national focal point or institution entrusted with the task of coordinating the receipt of such assistance.<sup>209</sup>

<sup>207</sup> See, for example, Supreme Decree No. 19386, 17 January 1983 (Bolivia), arts. 19 and 20; Law No. 2140 of 25 October 2000 (Bolivia), arts. 23 and 24; Decree No. 919 of 1 May 1989 (Colombia), art. 19; Law 137 of 2 June 1994 (Colombia); Decree No. 8488 of 11 January 2006 (Costa Rica), art. 29; Decree No. 44 of 29 July 1988, on the procedure for declaring a national emergency (El Salvador); Natural Disaster Management Act, No. 21 of 1998 (Fiji), sect. 17; Act LXXIV of 1999 on the direction and organization of disaster protection and protection against serious accidents related to hazardous materials (Hungary), sect. 7, which distinguishes between a “state of disaster”, a “hazardous situation” and a “pressing event”; Disaster Countermeasures Basic Act, No. 223, of 15 November 1961 (Japan), art. 105; Disaster Management Act No. 2 of 1997 (Lesotho), sect. 3(1); Law 22 of 15 November 1982 (Panama), art. 7; Law No. 2.615 of 10 June 2005 (Paraguay), arts. 19-23; Disaster Risk Management Act of 2006 (Philippines), sect. 15; Disaster Management Act, No. 30 of 2006 (Saint Lucia), sect. 18; Civil Defence Act, No. 29 of 1986 (Singapore), sect. 102; Disaster Management Act, No. 57 of 2002 (South Africa), sect. 27; Sri Lanka Disaster Management Act, No. 13 of 2005, sect. 12; and Act No. 2935 of 25 October 1983 (Turkey), art. 5. However, in some cases, while a declaration is required, assistance may flow before the formal declaration if the situation warrants. See National Policy on Disaster Prevention and Management, of 1993 (Ethiopia). While typically a requirement of domestic law, a similar contingency exists at the international level in the International Health Regulations, under which the Director-General of the World Health Organization is empowered to determine the existence of a public health emergency of international concern. International Health Regulations, revision of 23 May 2005, World Health Organization, art. 12. See also Convention on the Law of the Non-navigational Uses of International Watercourses, of 1997, art. 19(1) and (2) (“formal declaration of the urgency of measures” in order to “protect public health, public safety or other equally important interests”).

<sup>208</sup> See, for example, Law No. 239 of 28 June 2000 (Czech Republic), sect. 20, para. (4); Natural Disaster Management Act, No. 21 of 1998 (Fiji), sect. 32(1) (“The National Disaster Controller may request the Minister of Foreign Affairs to call for foreign assistance in an emergency situation ...”); Act LXXIV of 1999 on the direction and organization of disaster protection and protection against serious accidents related to hazardous materials (Hungary), sect. 6(a) (“During the direction of disaster protection, the Government shall decide on the use of foreign (international) assistance”); Sri Lanka Disaster Management Act, No. 13 of 2005, sect. 4(d); and National Disaster Management Plan of 1995 (Fiji), annex F, sects. F-3 and F-4 (“An appeal for international assistance, either to specific countries or a general appeal, is made by the Prime Minister on the basis of advice by the National Disaster Controller; international assistance will be sought when the impacts of the disaster go beyond the capabilities of the local and national resources to cope ... All disaster assistance is based upon a request ... International assistance, other than to recognized NGO’s, can not be given unless there is an official appeal for international assistance”). See “Fiji: laws, policies, planning and practices on international disaster response”, IFRC, July 2005, pp. 14 and 15.

<sup>209</sup> In some cases, the competence of a national authority to request international relief assistance is established by means of a bilateral treaty. For example, the Convention between the Kingdom of

**(b) Offers of assistance**

60. While most agreements and instruments deal explicitly with requests, few provide guidance on offers.<sup>210</sup> Nonetheless, it is possible to discern certain basic considerations when coming to the offer dimension of the negotiation, as well several conditions, even if implicit, which are placed on offers (and, if accepted, on the subsequent provision) of assistance. An offer is by definition inchoate. Only upon its acceptance is the attempt to establish the assistance-beneficiary relationship (as a matter of law) perfected.

**(i) Duty to offer?**

61. Notwithstanding assertions of the existence of a generalized “right to humanitarian assistance”,<sup>211</sup> such position, to the extent that it imposes a “duty”<sup>212</sup> (as opposed to a “right”<sup>213</sup>) on the international community to provide assistance is not yet definitively maintained as a matter of positive law at the global level. The General Assembly, in resolution 46/182, limited itself to asserting the importance of “international cooperation to address emergency situations and to strengthen the response capacity of affected countries”<sup>214</sup> and urging States in proximity to emergencies “to participate closely with the affected countries in international efforts, with a view to facilitating, to the extent possible, the transit of humanitarian assistance”.<sup>215</sup> Some treaties also contain more limited obligations on States receiving requests. For example, the Tampere Convention requires a State party to respond to a request directed to it, *inter alia*, by indicating “whether it will render the assistance requested, directly or otherwise, and the scope of, and terms, conditions, restrictions and cost, if any, applicable to such assistance”.<sup>216</sup>

62. Positive obligations to provide assistance, upon request, are more typically the subject of specific agreements (including agreements adopted at the regional and bilateral levels<sup>217</sup>), such as the Food Aid Convention of 1999, by which parties

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the Netherlands and the Kingdom of Belgium on Mutual Assistance in Combating Disasters and Accidents, of 1984, provides that “the competent authorities [as established by the Convention] of each of the Contracting Parties shall be empowered to request assistance” (art. 3(2)). See also UNITAR Model Rules for Disaster Relief Operations, of 1982, annex A, rule 1.

<sup>210</sup> For example, General Assembly resolution 46/182 makes no express reference to “offers” being made, only “an appeal by the affected country” (annex, para. 3). Nor is it clear that assistance provided by non-State actors, such as non-governmental organizations, is always initiated through a formal offer and acceptance process. See David Fisher, *Law and Legal Issues in International Disaster Response: A Desk Study*, IFRC, 2007, pp. 92 and 93.

<sup>211</sup> See further the discussion in sect. V below on the right to humanitarian assistance.

<sup>212</sup> See, for example, Committee on Economic, Social and Cultural Rights, General Comment No. 12 (E/C.12/1999/5) of 1999, para. 38 (“States have a joint and individual responsibility, in accordance with the Charter of the United Nations, to cooperate in providing disaster relief and humanitarian assistance in times of emergency, including assistance to refugees and internally displaced persons”); and Mohonk Criteria for Humanitarian Assistance in Complex Emergencies, of 1995, sect. II.4 (“the international community has the right *and obligation* to protect and provide relief”) (emphasis added).

<sup>213</sup> See the discussion in para. 64 below on “unsolicited offers”.

<sup>214</sup> General Assembly resolution 46/182, annex, para. 5.

<sup>215</sup> *Ibid.*, para. 7.

<sup>216</sup> Tampere Convention on the Provision of Telecommunication Resources for Disaster Mitigation and Relief Operations, 18 June 1998, art. 4(3).

<sup>217</sup> See Protocol for the Protection of the Mediterranean Sea against Pollution Resulting from Exploration and Exploitation of the Continental Shelf and the Seabed and its Subsoil, of 1994, art. 18 (“In cases of

committed themselves in advance to providing assistance to specified categories of States in predetermined amounts. The obligation to provide assistance is usually subject to the capacity of the assisting State to do so. For example, the agreement of the Black Sea Economic Cooperation (BSEC) on collaboration in emergency assistance<sup>218</sup> provides that a party needing assistance in case of a natural or man-made disaster can “require assistance from the other Parties”,<sup>219</sup> subject to the limitation that “the Parties shall render one another assistance according to their possibilities”.<sup>220</sup>

63. A more definitive obligation also exists in the context of the responsibilities of international organizations.<sup>221</sup> This may be ascribable to the nature and mandates of those organizations, which, in some cases, specifically include the provision of assistance to member States. For example, the Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency, of 26 September 1986, provides that the International Atomic Energy Agency (IAEA) “shall respond ... to a ...

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emergency, a Party requiring assistance ... may request help from the other Parties ... which shall do the utmost to provide the assistance requested”); Protocol concerning Cooperation in Preventing Pollution from Ships and, in Cases of Emergency, Combating Pollution of the Mediterranean Sea, of 2002, art. 12(1) (“Parties so requested shall use their best endeavours to render this assistance”); Convention between the Kingdom of Denmark and the Federal Republic of Germany on Mutual Assistance in the event of Disasters or Serious Accidents, of 1985, art. 1(1) (“Each Contracting Party shall undertake to assist the Other Contracting Party in the event of disasters or serious accidents”); and Agreement between the Government of the French Republic and the Government of Malaysia on Cooperation in the Field of Disaster Prevention and Management and Civil Security, 1998, art. 5(1).

<sup>218</sup> 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, 15 April 1998.

<sup>219</sup> *Ibid.*, art. 3(2). See also art. 4(2) (“The assistance shall be provided upon request”).

<sup>220</sup> *Ibid.*, art. 3(3). See also the Convention on Mutual Assistance between French and Spanish Fire and Emergency Services, of 1959, art. I(2) (“... provided that the other Party is not already engaged in an emergency or fire-fighting operation”); 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, art. 2 (“Each contracting State undertakes, in the event of an accident or where there is immediate danger of an accident, to provide the necessary assistance *in so far as it is able to do so* and in accordance with the provisions of this Agreement”) (emphasis added); Convention between the Government of the French Republic and the Government of the Kingdom of Belgium on Mutual Assistance in the Event of Disasters or Serious Accidents, of 1981, art. 1(1) (“Each Contracting Party undertakes to assist the other Contracting Party in the event of disasters ... *to the extent of its ability*”) (emphasis added); Agreement on Cooperation between the Kingdom of Spain and the Argentine Republic on Disaster Preparedness and Prevention and Mutual Assistance in the Event of Disasters, of 1988, art. IX (“which the requested State considers feasible and available”); Agreement on Cooperation and Mutual Assistance in Cases of Accidents, between Finland and Estonia, of 1995, art. 6 (“each Party may ... *in accordance with its own resources* ... provide the assistance necessary”) (emphasis added); Convention between the French Republic and the Federal Republic of Germany on Mutual Assistance in the Event of Disasters or Serious Accidents, of 1977, art. 1(1); Convention between the Government of the French Republic and the Government of the Italian Republic on the Prediction and Prevention of Major Hazards and on Mutual Assistance in the Event of Natural or Man-made Disasters, 1992, art. 5; and Agreement between the Government of the Kingdom of Spain and the Government of the Russian Federation on Cooperation in the Field of Prevention of Disasters and Mutual Assistance in the Mitigation of their Outcome, 2001, art. 7 (“to the best of their ability”).

<sup>221</sup> See resolution on humanitarian assistance adopted by the Institute of International Law on 2 September 2003, sect. V, para. 2 (“Intergovernmental organisations shall offer humanitarian assistance to the victims of disasters in accordance with their own mandates and statutory mandates”).



request for assistance in the event of a nuclear accident or radiological emergency”.<sup>222</sup>

(ii) *Unsolicited offers*

64. Some instruments envisage the possibility of unsolicited offers: unsolicited either because the affected State has not made or cannot make a request for international assistance (for example in situations where no functioning government exists), or because no request was directed to the State making the offer. The ASEAN Agreement on Disaster Management and Emergency Response, of 26 July 2005, contemplates consent being given despite the absence of a request: “External assistance or offers of assistance shall only be provided upon the request *or with the consent* of the affected Party” (emphasis added).<sup>223</sup> That position would accord with the view that the international community, including third States, international humanitarian organizations and other actors, the right to offer assistance<sup>224</sup> even if the “duty” to do so may be more limited.<sup>225</sup> An offer of assistance under such circumstances should not be construed as an unfriendly act or interference in the affected State’s internal affairs.<sup>226</sup> It would nonetheless be for the affected State,

<sup>222</sup> Art. 2(6).

<sup>223</sup> ASEAN Document Series 2005, p. 157, arts. 3(1) and 11(2). See also the Framework Convention on Civil Defence Assistance, of 2000, art. 3(a) (“... or proposed by the Supporting State and accepted by the Beneficiary ...”); and Peter MacAlister-Smith, “Draft international guidelines for humanitarian assistance operations” (Heidelberg, Germany: Max Planck Institute for Comparative Public Law and International Law, 1991), art. 18 (“The receiving State may decide whether or not to request or *give its consent to* humanitarian assistance activities on its territory ...”) (emphasis added). See also the Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance, of 2007, art. 10(1) (“Disaster relief or initial recovery assistance should be initiated only with the consent of the affected State and *in principle*, on the basis of an appeal” (emphasis added)), which follows the language of General Assembly resolution 46/182, annex, para. 3.

<sup>224</sup> See Walter Kälin, “Guiding Principles on Internal Displacement: Annotations”, *Studies in Transnational Legal Policy*, No. 32 (Washington, D.C.: American Society of International Law, 2000), principle 25(2) (“International humanitarian organizations and other appropriate actors have the right to offer their services ...”); the resolution on humanitarian assistance adopted by the Institute of International Law on 2 September 2003, sect. IV, para. 1; Mohonk Criteria for Humanitarian Assistance in Complex Emergencies, of 1995, sect. II.4 (“Where the government or other authority is unable or manifestly unwilling to provide life-sustaining aid, the international community has the right and obligation to protect and provide relief to affected and threatened civilian populations in conformity with the principles of international law”); and Guiding Principles on the Right to Humanitarian Assistance, adopted by the Council of the International Institute of Humanitarian Law in April 1993 (*International Review of the Red Cross*, vol. 33, No. 297 (1993)), principle 5 (“National authorities ... have the right to offer such assistance when the conditions laid down in the present Principles are fulfilled. This offer should not be regarded as an unfriendly act or an interference in a State’s internal affairs”).

<sup>225</sup> See the discussion in paras. 61–63 above on the “duty to offer”.

<sup>226</sup> See Framework Convention on Civil Defence Assistance, 22 May 2000, which maintains that “[offers of] assistance should not be viewed as interference in the internal affairs of the Beneficiary State” (art. 3(b)). It may be reasonable to assume that offers made in response to a request could not, by definition, be perceived as unfriendly acts or unwarranted intervention in the domestic affairs of the requesting State, exactly because they were solicited by that State (and especially when there exists a treaty basis between the offering and requesting States for the potential provision of disaster relief assistance). This would suggest that such provisions imply that there exists a presumption that unsolicited offers in the context of a disaster should, at least, be considered by the affected State as friendly acts. See also International Law Association, resolution on international medical and humanitarian law of 1976, part I, para. 2 (“The offer of foreign emergency relief shall in no way whatsoever be considered an unlawful intervention in the domestic affairs of a State nor shall it be deemed under any circumstances to constitute an unfriendly

where possible, to decide whether to accept an unsolicited offer. If it chooses to do so, then its consent would remedy the procedural flaw arising from the lack of an earlier request.<sup>227</sup>

(iii) *Acceptance of offers*

65. Although few instruments expressly regulate the acceptance of an offer,<sup>228</sup> it is an implicit requirement in all agreements as it serves to perfect the consent of the affected State to receive international assistance. Consent, by definition, is discretionary and may be withdrawn or be subjected to conditions (discussed below). Nonetheless, the trend, identified above, in favour of an obligation on the affected State to request international assistance where its domestic response capacity is overwhelmed, would likewise constrain its ability to decline offers of assistance, and would suggest that consent should not be arbitrarily withheld.<sup>229</sup> Furthermore, the acceptance of an offer of assistance, even if premised on an existing treaty basis, does not, necessarily, establish a link of political relations between the authorities of the two States.<sup>230</sup>

### 3. Conditions for the provision of assistance

66. The existing agreements recognize a series of constraints that may be validly placed on requests and offers for assistance.

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action”); Draft International Guidelines for Humanitarian Assistance Operations, 1991, art. 10; Institute of International Law, resolution on humanitarian assistance, 2 September 2003, sect. IV, para. 1; and Declaration of principles for international humanitarian relief to the civilian population in disaster situations, resolution 26 adopted at the 21st International Conference of the Red Cross, Istanbul, September 1969, para. 4 (“Disaster relief ... by an impartial international humanitarian organisation ought not to be regarded as an unfriendly act”). See also *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Merits, Judgment, *I.C.J. Reports 1986*, p. 124, para. 242.

<sup>227</sup> See para. 64 and note 223 above.

<sup>228</sup> An exception is the ASEAN Agreement on Disaster Management and Emergency Response, 26 July 2005, which expressly requires an affected State to decide whether to accept an offer of assistance. (art. 11(5)).

<sup>229</sup> See Walter Kälin, “Guiding Principles on Internal Displacement: Annotations”, *Studies in Transnational Legal Policy*, No. 32 (Washington, D.C.: American Society of International Law, 2000), principle 25(2); A/HRC/4/38/Add.1, annex, guideline B.1.4; and Institute of International Law, resolution on humanitarian assistance, 2 September 2003, sect. VIII, para. 1. Furthermore, the commentary on article 70 of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 1977, in discussing the requirement of relief actions being “subject to the agreement of the parties concerned”, recalled that during the negotiation of the provision it was clearly stated that the reservation “did not imply that the Parties concerned had absolute and unlimited freedom to refuse their agreement to relief actions. A Party refusing its agreement must do so for valid reasons, not for arbitrary or capricious ones” (Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949, International Committee of the Red Cross, 1987, sect. 2805, p. 819). See also the commentary on Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), of 1977, art. 18 (*ibid.*, sect. 4885, p. 1479): “The fact that consent is required does not mean that the decision is left to the discretion of the parties. If the survival of the population is threatened and a humanitarian organization fulfilling the required conditions of impartiality and non-discrimination is able to remedy this situation, relief actions must take place.”

<sup>230</sup> International Law Association, resolution on international medical and humanitarian law, 1976, part I, para. 4.

**(a) Retention of national control**

67. Any request for, or acceptance of an offer of, assistance is typically subject to the caveat that the affected State retains overall control over all aspects of the provision and distribution of such assistance on its territory, including determining the moment of commencement and termination of the assistance.<sup>231</sup> The Tampere Convention, for example, stipulates that “[n]othing in this Convention shall interfere with the right of a State Party, under its national law, to direct, control, coordinate and supervise telecommunication assistance provided under this Convention within its territory”.<sup>232</sup> Control also relates to the right to refuse some or all of the offered assistance. For example, under the Tampere Convention, the “requesting State Party shall retain the authority to reject all or part of any telecommunication assistance offered pursuant to this Convention in accordance with the requesting State Party’s existing national law and policy”.<sup>233</sup>

68. The principle of retention of the exercise of control by the affected State is not, however, absolute and may itself be subject to specifications. For example, it may be specified that the assistance provided by an assisting State should nonetheless be distributed by the affected State effectively and expeditiously,<sup>234</sup> that it be used for the purpose for which it was intended,<sup>235</sup> or that it be distributed or provided by the

<sup>231</sup> Draft International Guidelines for Humanitarian Assistance Operations, art. 18. See the discussion in paras. 242-248 below on the termination of assistance.

<sup>232</sup> Tampere Convention on the Provision of Telecommunication Resources for Disaster Mitigation and Relief Operations, 18 June 1998 (United Nations, *Treaty Series*, vol. 2296, No. 40906), art. 4(8). See also General Assembly resolution 46/182 of 19 December 1991, annex, para. 4 (“... the affected State has the primary role in the initiation, organization, coordination, and implementation of humanitarian assistance within its territory”); ASEAN Agreement on Disaster Management and Emergency Response, 26 July 2005, arts. 3(2) and 12(1); Inter-American Convention to Facilitate Disaster Assistance, 1991, art. IV(a); Convention on the Transboundary Effects of Industrial Accidents, 1992, annex X, art. 1; 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, 1989, art. 2(2); European Council decision establishing a Community mechanism to facilitate reinforced cooperation in civil protection assistance interventions, decision 2001/792/EC, Euratom, 23 October 2001, art. 5(3); Agreement on Cooperation and Mutual Assistance in cases of Accidents, between Finland and Estonia, of 1995, art. 8; Agreement between the Government of the French Republic and the Government of Malaysia on Cooperation in the Field of Disaster Prevention and Management and Civil Society, 1998, art. 8(1); Convention on Mutual Assistance between French and Spanish Fire and Emergency Services, 1959, art. III; Agreement between the Government of the French Republic and the Swiss Federal Council on Mutual Assistance in the Event of Disasters or Serious Accidents, 1987, art. 9(1); and Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance, 2007, art. 3(3). Some States recognize a shared responsibility for the provision of disaster relief. For example, in Fiji, “the Government and recognized Non-Government Organizations shall provide disaster relief assistance during an emergency situation until the community has restored its self-reliance” (Natural Disaster Management Act, No. 21 of 1998, sect. 28(3)).

<sup>233</sup> Tampere Convention on the Provision of Telecommunication Resources for Disaster Mitigation and Relief Operations, 18 June 1998 (United Nations, *Treaty Series*, vol. 2296, No. 40906), art. 4(5). See also Guidelines on the Use of Military and Civil Defence Assets in Disaster Relief — “Oslo Guidelines”, Rev.1, 27 November 2006, para. 51 (“The Affected State has the right to decline the use of [military and civil defence assets] on a case-by-case basis, even though UN humanitarian agencies may have been requested by the Affected State or the UN Secretary-General to provide assistance”).

<sup>234</sup> Draft Convention on expediting the delivery of assistance, 1984, art. 5(1)(b).

<sup>235</sup> *Ibid.* See also Draft International Guidelines for Humanitarian Assistance Operations (Peter MacAlister-Smith, Max Planck Institute for Comparative Public Law and International Law, 1991), 1991, art. 8.

affected State on a non-discriminatory basis.<sup>236</sup> The ASEAN Agreement on Disaster Management and Emergency Response, of 2005, further requires the affected State to provide, to the extent possible, “local facilities and services for the proper and effective administration of the assistance”.<sup>237</sup> The Tampere Convention requires a requesting State to provide information relating to the regulation of privileges and immunities, the provision of facilities and the existence of regulatory barriers, so as to facilitate the provision of assistance by clarifying the legal basis upon which such provision would take place in the affected State.<sup>238</sup> The Inter-American Convention to Facilitate Disaster Assistance, of 1991, goes further by requiring a State which accepts assistance to “promptly notify its competent national authorities and/or its National Coordinating Authority to extend the necessary facilities to the assisting State, in accordance with the Convention”.<sup>239</sup>

**(b) Compliance with international and national laws**

69. The provision of disaster relief assistance is further qualified by the condition that it comply with international and national law.<sup>240</sup> The need for such compliance is included in some of the key declaratory texts such as General Assembly resolution 46/182.<sup>241</sup> It is also implicit in many others which make reference to principles of international law (such as non-discrimination) or which make reference to domestic procedures under national laws for the handling and distribution of assistance. The requirement of compliance with international law extends to other

<sup>236</sup> Draft Convention on expediting the delivery of assistance, of 1984 (A/39/267/Add.2-E/1984/96/Add.2, annex), art. 5(1)(c).

<sup>237</sup> ASEAN Document Series 2005, p. 157, art. 12(2). See also Inter-American Convention to Facilitate Disaster Assistance, 1991, art. IV(b) and (c); and Convention on the Transboundary Effects of Industrial Accidents, 1992, annex X, art. 2.

<sup>238</sup> Art. 4(2). See also 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, 1989, art. 6(1); and Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance, 2007, art. 10(3) (“Affected States should make available to assisting actors adequate information about domestic laws and regulations of particular relevance to the entry and operation of disaster relief or initial recovery assistance”).

<sup>239</sup> Art. II(c). See also art. IX (the Assisted State to provide “such support as the assistance personnel may require, the appropriate guidance and information, and, if necessary, translation and interpretation services”).

<sup>240</sup> See ASEAN Agreement on Disaster Management and Emergency Response, 2005, art. 13(2) (“Members of the assistance operation shall respect and abide by all national laws and regulations”).

<sup>241</sup> Annex, para. 5. See also Walter Kälin, “Guiding Principles on Internal Displacement: Annotations”, *Studies in Transnational Legal Policy*, No. 32 (Washington, D.C.: American Society of International Law, 2000), principle 27(1); Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance, 2007, art. 4(1) (“Assisting actors and their personnel should abide by the law of the affected State and applicable international law, coordinate with domestic authorities, and respect the human dignity of disaster-affected persons at all times”); and Draft international guidelines for humanitarian assistance operations, 1991, arts. 9(b) (“Humanitarian assistance shall only be provided in accordance with the principles and rules of international law”) and 22(d) (“assisting personnel [shall] respect the laws of the domestic State”). The draft convention on expediting the delivery of emergency assistance, 1984, included art. 10(2) (“An assisting State or organization shall ensure that its assistance complies with the quality, health and other relevant standards or regulations of the receiving State, except in so far as these standards or regulations are waived or modified for the duration of the relief operations”).

rules, beyond those already recognized as part of the law on disaster relief, to include, inter alia, human rights guarantees and protections; obligations arising under international law in relation to the protection of the environment and refugees and internally displaced persons; and international humanitarian law, where applicable. Nonetheless, the bulk of the international rules regarding the provision of relief assistance relate primarily to the application (or modification, as the case may be) of national laws, by, for example, recognizing specific privileges and immunities, granting other preferential legal amenities for entities providing disaster relief, and creating dedicated procedures for the provision of international assistance.

70. Compliance with national laws and standards is the key requirement underlying most of the law on disaster relief assistance. Every affected State expects, at a minimum, that international relief assistance provided within its jurisdiction or control will comply with its laws and standards. However, national laws are, generally speaking, not well-suited for the purpose of creating a “humanitarian space” in the wake of a disaster since compliance can prove onerous and costly in terms of both resources and time lost. National law and procedures relating, for example, to food quality, building codes, recognition of professional qualifications, vehicle registration and other licensing requirements, if they exist at all, may be too stringent or too irregular to allow for timely compliance.<sup>242</sup> Furthermore, information on applicable laws and procedures is not always easily ascertainable, especially when such laws may be modified in the context of a declaration of a state of emergency. Indeed, the purpose of many multilateral and bilateral treaties is to either modify or harmonize national rules so as to provide a legal basis for the expeditious provision of assistance.<sup>243</sup>

71. Provisions calling for conformity with national laws, standards and regulations are commonly found in disaster relief instruments. Such provisions most often take one of three different forms. First, certain provisions address the conduct of the disaster relief operation generally and provide that it must always be in compliance with national laws. Second, some provisions take the form of a saving clause with respect to a certain substantive provision in an instrument, emphasizing that that provision must be exercised or interpreted in accordance with national laws. Third, a select group of instruments address conformity of national and international instruments from the opposite perspective by requiring changes to national law to bring it into conformity with international law applicable in times of disaster, or to make it relevant in a time of disaster.

(i) *General compliance clauses*

72. Certain provisions in disaster relief instruments contain a general requirement that all acts of a disaster relief operation comply with national laws. For example, the ASEAN Agreement on Disaster Management and Emergency Response provides that “members of the assistance operation shall respect and abide by all national law and regulations. The Head of the assistance operation shall take all appropriate measures to ensure observance of national laws and regulations. The receiving Party shall cooperate to ensure that members of the assistance operation observe national

<sup>242</sup> See the discussion on the quality of relief assistance in sect. IV.D.5 below.

<sup>243</sup> National laws might also be modified in the context of the provision of disaster assistance through special agreements with humanitarian actors, or through the various status agreements providing the legal basis for the work of certain humanitarian entities in the State.

laws and regulations.”<sup>244</sup> Thus, within this one general clause on conformity with national law, three distinct obligations are enumerated falling on three different actors: an obligation on members of the relief operation to observe national law, an obligation on the head of the relief operation to ensure observance, and an obligation on the receiving State to cooperate to ensure observance of national law. Another such provision is found in the Inter-American Convention, which states that “[a]ssistance personnel have the obligation to respect the laws and regulations of the assisted state and of states they may cross en route. Assistance personnel shall abstain from political or other activities that are inconsistent with said laws or with the terms of this Convention.”<sup>245</sup> The Max Planck Guidelines provide that among the conditions required for the provision of humanitarian assistance is “respect for and observance of [the assisted States] laws during humanitarian assistance operations conducted on its territory”.<sup>246</sup> General Assembly resolution 46/182 provides that international cooperation to address emergency situations “should be provided in accordance with ... national laws”.<sup>247</sup> Similar provisions are also found in other instruments.<sup>248</sup>

(ii) *Saving clauses concerning conformity with regard to specific provisions or issues*

73. Certain provisions addressing the conformity of national and international law in the context of disaster relief take the form of a saving clause drafted to ensure that a certain provision is exercised or interpreted in accordance with national law. For example, the Tampere Convention incorporates a clause requiring conformity with national law in its provision on consent of the receiving State to assistance.<sup>249</sup> The Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency contains such a saving clause in its provisions on compensation and indemnity.<sup>250</sup> The Convention and Statute Establishing the International Relief Union addressed conformity with national law in its provision on the international legal personality of the Union.<sup>251</sup> Similar clauses concerning conformity with

<sup>244</sup> ASEAN Document Series 2005, p. 157, art. 13.

<sup>245</sup> Inter-American Convention to Facilitate Disaster Assistance, 1991, art. XI(d).

<sup>246</sup> Peter MacAlister-Smith, Draft international guidelines for humanitarian assistance operations (Heidelberg, Germany: Max Planck Institute for Comparative Public Law and International Law, 1991), para. 9(b). See also para. 22(d).

<sup>247</sup> Resolution 46/182 of 19 December 1991, annex, para. 5.

<sup>248</sup> See, for example, Council decision 2001/792/EC, Euratom, of 23 October 2001 establishing a Community mechanism to facilitate reinforced cooperation in civil protection assistance interventions (*Official Journal of the European Communities*, vol. 44, No. L 297, 15 November 2001), preamble, para. 8 (emphasizing that such a mechanism must be “in accordance with the principle of subsidiarity”); Agreement for the Duty Free Entry of Relief Supplies and Packages, United Kingdom of Great Britain and Northern Ireland-India, 1964, art. 1(3) (providing that it “shall not apply to any article of food which does not conform to the standards prescribed under the Indian Prevention of Food Adulteration Act and Rules”).

<sup>249</sup> Tampere Convention on the Provision of Telecommunication Resources for Disaster Mitigation and Relief Operations, 1998, art. 4(5).

<sup>250</sup> Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency, 26 September 1986, art. 10(3). See also Agreement Establishing the Caribbean Disaster Emergency Response Agency, 1991, art. 23(3) (“Nothing in this Article shall be construed to prevent compensation or indemnity available under any applicable international agreement or national law of a Participating State nor to require the requesting State to apply paragraph 2 of this Article, in whole or in part, to its nationals or permanent residents”).

<sup>251</sup> Convention and Statute Establishing an International Relief Union, 1927, art. 8. Similarly, a malaria control treaty raised conformity with national law in the context of its grant of power to

national law can be found in other instruments, in provisions as varied as those concerning protected information,<sup>252</sup> cooperation,<sup>253</sup> emergency use of telecommunications by disaster relief personnel,<sup>254</sup> disaster relief planning,<sup>255</sup> transfer of technology,<sup>256</sup> transit,<sup>257</sup> border crossing<sup>258</sup> and record-keeping.<sup>259</sup>

74. One area in which such saving clauses are found with particular frequency is with regard to freedom of movement. For example, the Tampere Convention provides that “each State Party shall, at the request of any other State Party, and to the extent permitted by its national law, facilitate the transit into, out of and through its territory of personnel, equipment, materials and information involved in the use of telecommunication resources for disaster mitigation and relief”.<sup>260</sup> The ASEAN Declaration provides that each member State shall, “on prior notification, undertake immediate internal arrangements to facilitate the transit, through their respective territories, of vessels, aircraft, authorized personnel, supplies and equipment bound for the territory of a distressed Member Country, *subject to compliance of such*

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a regional malaria control commission. Malaria Control Protocol on the Lubombo Spatial Development Initiative between the Government of the Republic of South Africa, the Government of the Kingdom of Swaziland, and the Government of the Republic of Mozambique, 1999, art. 3(a) (discussed in Tracy-Lynn Field, “International disaster response law research report: Southern African region”, January 2003, p. 10).

<sup>252</sup> Convention on the Transboundary Effects of Industrial Accidents, 1992, art. 22(1).

<sup>253</sup> Agreement between the Republic of Austria and the Federal Republic of Germany Concerning Mutual Assistance in the Event of Disasters or Serious Accidents, 1988, art. 13.

<sup>254</sup> International Law Association, Draft Model Agreement on International Medical and Humanitarian Law, 1980, art. 6.

<sup>255</sup> Council of Europe recommendation Rec(2002)3, para. 2. See annex, para. 6 (“If it is within their remit or provided for by domestic law, territorial communities or authorities should also draw up action plans and cooperate with their national authorities and with the territorial communities or authorities of neighbouring countries”) and annex, para. 9 (“The action plans should take account of the domestic legal provisions applicable to the territorial communities or authorities on either side of a shared border, with respect to their powers and available resources”).

<sup>256</sup> International Convention on Oil Pollution Preparedness, Response and Cooperation, 1990, art. 9(2) (providing that “Parties undertake to cooperate actively, subject to their national laws, regulations and policies, in the transfer of technology in respect of oil pollution preparedness and response”).

<sup>257</sup> 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, 1998, art. 5 (providing with respect to transit that “the Government of Transit State shall ensure all the necessary support during the passage of Assistance across the territory of this State according to its national legislation, international law and practice”).

<sup>258</sup> *Ibid.*, art. 9(1) (providing with respect to border crossing that “the procedure of crossing the state borders of the Requesting Party or Transit State by the members of the Assistance teams shall be determined by their national legislation, international law and the bilateral agreements of the Requesting and/or Transit State”).

<sup>259</sup> Recommended Rules and Practices, Balkan National Societies meeting on international disaster response law (Belgrade, 20-26 September 2004), art. IV(b)(3) (recommending that records be kept “in accordance with national law and the demands of the donor”). See also para. V(1) (recommending that Governments “report periodically to the donors the status of the management of the disaster relief operation, according to national law and practice”).

<sup>260</sup> Tampere Convention on the Provision of Telecommunication Resources for Disaster Mitigation and Relief Operations, 18 June 1998 (United Nations, *Treaty Series*, vol. 2296, No. 40906), art. 9(4).

*requirements or formalities as may be prescribed by its laws*".<sup>261</sup> Finally, the Inter-American Convention provides that "the states parties shall respect any restricted areas so designated by the assisted state".<sup>262</sup>

(iii) *Provisions requiring changes to national law*

75. A select group of provisions addressing the relationship between international law applicable in the context of disasters and national law does so from the opposite perspective, calling upon States to alter their national law so as to take account of international law on disasters or the state of disaster itself. For example, the 2003 resolution of the Institute of International Law on humanitarian assistance provides that "States should adopt laws and regulations and conclude bilateral or multilateral treaties providing for facilities relative to humanitarian assistance".<sup>263</sup> Similarly, the Saint Lucia Disaster Management Act of 2006 includes a provision on the application of treaties in time of disaster or emergency, which provides that "where Saint Lucia is a party to a treaty or other international agreement which the Governor-General considers relevant to the preparedness for, mitigation of, response to and recovery from emergencies and disasters in Saint Lucia, the Governor-General may during any emergency or disaster or at any other time proclaim that treaty or any part of it to be part of the Law of Saint Lucia for the duration of any emergency or disaster or any particular case or class of case of such emergency or disaster, and the provisions of that treaty or party thereof, as the case may be, shall for the duration of that emergency or disaster have effect as if enacted under this Act".<sup>264</sup>

(c) **Other conditions for the provision of relief**

76. Some texts also seek to regulate the qualitative nature of the assistance being offered and subsequently provided by assisting States.<sup>265</sup> For example, the Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief refer to the responsibility of assisting actors to ensure that assistance is, inter alia, allocated in proportion to needs;<sup>266</sup> provided without adverse distinction to all

<sup>261</sup> ASEAN Declaration for Mutual Assistance on Natural Disasters, Manila, 26 June 1976, para. III(b) (emphasis added).

<sup>262</sup> Inter-American Convention to Facilitate Disaster Assistance, 1991, art. VIII.

<sup>263</sup> Sect. VII, para. 2.

<sup>264</sup> Disaster Management Act, 2006 (Saint Lucia), art. 22.

<sup>265</sup> See also the discussion on the quality of relief assistance in sect. IV.D.5 below.

<sup>266</sup> Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance (adopted at the 30th International Conference of the Red Cross and Red Crescent, held in Geneva from 26 to 30 November 2007), art. 4(2)(a). See also Partnership Agreement between the members of the African, Caribbean and Pacific groups of States on the one part, and the European Community and its member States, on the other part, 2000, art. 72; and Food Aid Convention, 1999, art. VIII (a) ("Food aid should only be provided when it is the most effective and appropriate means of assistance"); Draft convention on expediting the delivery of emergency assistance, 1984, art. 10(1) ("An Assisting State or Organization shall ensure that its assistance is appropriate to the assessed needs and that it conforms to the traditions or usages in the Receiving State"); Draft international guidelines for humanitarian assistance operations, 1991, art. 15 ("The assisting State or organization shall ensure that the humanitarian assistance provided is suitable for meeting the assessed needs in every respect"); A/HRC/4/38/Add.1, annex, guideline B.1.2 ("Humanitarian action should be based on assessed need ..."); Mohonk Criteria for Humanitarian Assistance in Complex Emergencies, 1995, sect. III.2(a); and UNITAR Model Rules for Disaster Relief Operations, 1982, annex A,



persons in need;<sup>267</sup> provided without political, religious or commercial motives;<sup>268</sup> provided by competent and adequately trained and equipped personnel;<sup>269</sup> provided in coordination with the relevant authorities of the affected State and, where practical, with other relevant domestic and foreign actors;<sup>270</sup> and not used for purposes other than the provision of disaster relief or initial recovery.<sup>271</sup> States are also called upon to encourage members of the public to provide only those relief goods requested by the affected State and to discourage the provision of unnecessary or inappropriate goods.<sup>272</sup>

77. In addition, several agreements anticipate the provision of assistance on a specified cost basis and subject to mutually agreed rules on status and privileges and

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rule 2(2) (“[The assisting State] shall consult the designated national authority with respect to the needs of the receiving State”).

<sup>267</sup> Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance (adopted at the 30th International Conference of the Red Cross and Red Crescent, held in Geneva from 26 to 30 November 2007), art. 4(2)(a). See also Framework Convention on Civil Defence Assistance, 2000, art. 3(c); and Partnership Agreement between the members of the African, Caribbean and Pacific groups of States on the one part, and the European Community and its member States, on the other part, 2000, art. 72(2).

<sup>268</sup> Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance (adopted at the 30th International Conference of the Red Cross and Red Crescent, held in Geneva from 26 to 30 November 2007), art. 4(2)(a). See also General Assembly resolution 46/182 of 19 December 1991, annex, para. 5: (“Intergovernmental and non-governmental organizations *working impartially and with strictly humanitarian motives* should continue to make a significant contribution in supplementing national efforts”) (emphasis added).

<sup>269</sup> Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance (adopted at the 30th International Conference of the Red Cross and Red Crescent, held in Geneva from 26 to 30 November 2007), art. 4(3)(f). See also Agreement between the Government of the French Republic and the Swiss Federal Council on Mutual Assistance in the event of Disasters or Serious Accidents, 1989, art. 5 (“... emergency teams which are specially trained ... and which have the required specialized equipment for their operation shall be dispatched to the site of the disaster or serious accident”); Agreement on Cooperation between the Kingdom of Spain and the Argentine Republic on Disaster Preparedness and Prevention, and Mutual Assistance in the Event of Disasters, 1988, art. IX (“assistance shall be provided in the first instance by appropriately equipped emergency teams”).

<sup>270</sup> Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance (adopted at the 30th International Conference of the Red Cross and Red Crescent, held in Geneva from 26 to 30 November 2007), art. 4(1). See the discussion on coordination in sect. IV.D.3 below.

<sup>271</sup> Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance (adopted at the 30th International Conference of the Red Cross and Red Crescent, held in Geneva from 26 to 30 November 2007), art. 4(2). See also UNITAR Model Rules for Disaster Relief Operations, 1982, annex A, rule 3.

<sup>272</sup> Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance (adopted at the 30th International Conference of the Red Cross and Red Crescent, held in Geneva from 26 to 30 November 2007), art. 5(2). Likewise, the Guidelines propose a duty of cooperation to “prevent unlawful diversion, misappropriation, or fraud concerning disaster relief or initial recovery goods, equipment or resources” as well as to present cases for prosecution (art. 6), and the ASEAN Agreement on Disaster Management and Emergency Response, 2005, provides in art. 12(4) that “the relief goods and materials provided ... should meet the quality and validity requirements of the Parties concerned for consumption and utilisation”.

immunities; liability and settlement of disputes; and protections for relief assistance personnel, equipment and materials. These topics are dealt with separately below.

**(d) Modalities**

*(i) Procedure*

78. Most international instruments dealing with the provision of disaster relief envisage the initiation of such relief through the communication of a request for assistance, either directly to other States parties to the agreement or through a specified interlocutor. For example, the Tampere Convention on the Provision of Telecommunication Resources for Disaster Mitigation and Relief Operations, of 1998, envisages a request for assistance being directed through the United Nations Emergency Relief Coordinator serving in the capacity of “operational coordinator” for purposes of the treaty.<sup>273</sup> In some cases, a domestic interlocutor is identified.<sup>274</sup> For example, the Inter-American Convention to Facilitate Disaster Assistance, of 1991, requires that requests and offers be “communicated via diplomatic channels or the National Coordinating Authority, as the circumstances may warrant”.<sup>275</sup> Some bilateral arrangements also specify the method for communications of requests and offers, including through diplomatic channels or directly between ministries.<sup>276</sup>

*(ii) Timeliness*

79. A further common requirement is that of providing a response to a request or offer in an expeditious manner. This is considered a key requirement given the sudden onset of a disaster and the need to respond quickly. According to the Framework Convention on Civil Defence Assistance, of 2000, “offers of, or requests for, assistance shall be examined and responded to by recipient States within the shortest possible time”.<sup>277</sup> The ASEAN Agreement on Disaster Management and

<sup>273</sup> Arts. 2 and 4(1). See also Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency, 1986, art. 2(1) (requests may be directed to or through the International Atomic Energy Agency).

<sup>274</sup> Some national laws and policies also expressly appoint a domestic focal point for the coordination of international assistance. See, for example (Control) Disaster Preparedness and Response (Threatened Disaster Alert Mobilisation) Regulations, No. 80 of 2000 (Belize); Decree No. 97, of 4 October 2005 (El Salvador); Natural Disaster Management Act, No. 21 of 1998 (Fiji), sect. 32(1) (“The [National Disaster] Controller and the Emergency Committee shall coordinate all foreign assistance provided”); Decree No. 109-96 of 9 December 1996 (Guatemala), art. 17; Disaster Management Act, No. 57 of 2002 (South Africa), sect. 27(2)(o) (authority to make regulations or issue directions concerning “steps to facilitate international assistance”); and Sri Lanka Disaster Management Act, No. 13 of 2005.

<sup>275</sup> Art. II(a). See also Agreement between the Government of the French Republic and the Government of Malaysia on Cooperation in the Field of Disaster Prevention and Management and Civil Security, 1998, art. 5(4) (“The request for assistance formulated by one of the parties is transmitted simultaneously through the diplomatic channel and through the parties’ coordinating body”).

<sup>276</sup> See, for example, Law 25.240 of 26 January 2000, approving the Accord entered into with Chile regarding Cooperation in matters of Disasters (Argentina), art. 4(2) (“All communications and requests for assistance to be issued by the parties shall be channelled through their respective ministries of foreign affairs”).

<sup>277</sup> Art. 3(d). See also Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency, 1986, arts. 2(2) and 2(3) (the requested State party shall “promptly decide”), the ASEAN Agreement on Disaster Management and Emergency Response, 2005, art. 4(c) (“promptly respond”); Agreement among the Governments of the Participating States of the

Emergency Response, of 2005, further places an obligation on an affected State to which an offer of assistance has been made (regardless of whether it was requested) to “promptly decide ... whether it is in a position to accept the assistance offered, and of the scope and terms of such assistance”.<sup>278</sup> Under the Cotonou Agreement, humanitarian and emergency assistance “shall be administered and implemented under procedures permitting operations that are rapid, flexible and effective”.<sup>279</sup>

(iii) *Specificity*

80. Most instruments regulating the provision of relief assistance require a requesting State to specify the scope and type of assistance needed.<sup>280</sup> Such information is usually based on a needs assessment<sup>281</sup> undertaken by the requesting

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Black Sea Economic Cooperation (BSEC) on Collaboration in Emergency Assistance and Emergency Response to Natural and Man-made Disasters, 1998, art. 4(3) (“The Assisting Party shall immediately make a decision to provide Assistance ...”); European Council decision establishing a Community mechanism to facilitate reinforced cooperation in civil protection assistance interventions, decision 2001/792/EC, Euratom, of 23 October 2001, art. 5(2); Agreement on Cooperation and Mutual Assistance in Cases of Accidents, between Finland and Estonia, 1995, art. 6; Agreement between the Government of the Hellenic Republic and the Government of the Russian Federation on Cooperation in the Field of Prevention and Response to Natural and Man-made Disasters, 2000, art. 7 (“in the shortest possible time”); Law 25.240 of 26 January 2000, approving the Accord Entered into with Chile regarding Cooperation in Matters of Disasters (Argentina), art. 4(1) (“the other Party shall arrange in the shortest possible time for the intervention of the relevant agencies”); Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance, 2007, art. 10(1) (“The affected State should decide in a timely manner whether or not to request disaster relief or initial recovery assistance and communicate its decision promptly”). Similarly, the INSARAG Guidelines and Methodology, revision of May 2007, require an affected country to “make the request for international assistance *as soon as possible*” (emphasis added) (sect. D2.2, para. 1).

<sup>278</sup> ASEAN Document Series 2005, p. 157, art. 11(5).

<sup>279</sup> Partnership Agreement between the members of the African, Caribbean and Pacific groups of States on the one part, and the European Community and its member States, on the other part, 2000, art. 72(6).

<sup>280</sup> See the Tampere Convention on the Provision of Telecommunication Resources for Disaster Mitigation and Relief Operations, 1998, art. 4(2) (“scope and type of the assistance required”); 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, 1998, art. 4(2) (“place, time, character and scale of the Disaster, and current state of emergency in the afflicted area”, as well as the “actions already carried out, specification of the required Assistance, setting the priorities of the request Disaster relief”); the ASEAN Agreement on Disaster Management and Emergency Response, 2005, art. 11(3); Convention on the Protection and Use of Transboundary Watercourses and International Lakes, 1992, art. 15(1); European Council Decision establishing a Community mechanism to facilitate reinforced cooperation in civil protection assistance interventions, Decision 2001/792/EC, Euratom, 23 October 2001, art. 5(1); Agreement on Cooperation and Mutual Assistance in cases of Accidents, between Finland and Estonia, 1995, art. 6; Convention between the Kingdom of the Netherlands and the Kingdom of Belgium on Mutual Assistance in Combating Disasters and Accidents, 1984, art. 3(3) (“as much detailed information as possible concerning the assistance [required] and the tasks which will be entrusted to the emergency unit”); and Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance, 2007, art. 10(2) (“[r]equests and offers for assistance should be as specific as possible as to the types and amounts of goods as well as the services and expertise available or required, respectively. Affected States may also wish to indicate particular types of goods and services likely to be offered that are not needed.”).

<sup>281</sup> See Agreement among the Governments of the Participating States of the Black Sea Economic

State, on its own or jointly with another State.<sup>282</sup> The Inter-American Convention to Facilitate Disaster Assistance, of 1991, requires an assisting State to “consult with the assisted State to receive from the latter information on the kind of assistance considered most appropriate to provide to the populations stricken by the disaster”.<sup>283</sup>

## **B. Access**

81. The question of access is integral to the provision of disaster relief. The present section will examine this issue on several levels. First, it will analyse the entry of disaster relief personnel into the receiving State, including the facilitation of entry visas for those personnel; the acquisition of work permits, visas, or authorization; and recognition of their professional qualifications. Second, it will discuss the entry of goods into the receiving State, including the temporary admission regime established under the 1990 Convention on Temporary Admission; the facilitation of customs clearance under the 1999 revised Kyoto Convention; and exemption from import duties, taxes and restrictions provided in a number of instruments. Third, it will examine the transit and freedom of movement of disaster relief personnel, including transit across transit States, transit and freedom of movement within the receiving State and issues concerning overflight and landing rights in all States.

### **1. Facilitation of entry of disaster relief personnel**

82. The facilitation of entry for personnel of assisting relief organizations is a critical element in the timely delivery of disaster relief assistance, as disaster relief cannot be carried out effectively if the relevant personnel are barred entry into the affected State or otherwise prevented from doing their work through the imposition of multiple regulatory barriers. The primary aspect of this facilitation is the provision of entry visas for disaster relief personnel, and numerous instruments include provisions on this issue. Even after gaining access to the receiving State, additional facilitation measures are often required in order for disaster relief personnel to carry out their functions, in particular the issuance of work permits (or work visas), and the recognition of professional qualifications. In general, effective regimes for the entry of disaster relief personnel in times of natural disaster provide an expedited method under which every member of a disaster relief team, regardless of nationality or other status, can obtain a visa, work permit, and recognition of professional qualifications, as required under the domestic law of the affected State,

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Cooperation (BSEC) on Collaboration in Emergency Assistance and Emergency Response to Natural and Man-made Disasters, 1998, art. 3(2) (“The Assisting Party(s) shall help the Requesting Party by means and measures aimed at preventing and/or eliminating consequences of the Disaster”). See also Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance, 2007, art. 10(1) (“In order to make this decision, the affected State should promptly assess needs. Consideration should be given to undertaking joint needs assessments with the United Nations and other assisting humanitarian organisations”); and Principles of Conduct for the International Red Cross and Red Crescent Movement and Non-Governmental Organizations in Disaster Response Programmes, International Red Cross and Red Crescent Movement, resolution 6 of the Council of Delegates, Birmingham, United Kingdom, 29-30 October 1993, art. 2.

<sup>282</sup> See ASEAN Agreement on Disaster Management and Emergency Response, 2005, art. 11(3).

<sup>283</sup> Art. II(b).

quickly and efficiently, authorizing him or her to carry out all normal responsibilities associated with international disaster relief.

**(a) Entry visas**

83. The facilitation of entry visas for disaster relief personnel is considered by many to be a key issue in the overall improvement of efficient relief operations. Indeed, since at least 1975, the League of Red Cross Societies has noted that “the obtaining of visas for disaster relief delegates and teams remains a time-consuming procedure which often delays the dispatch of such delegates and teams” and has urged National Societies to “make representations to their Governments with a view to achieving an easing of governmental formalities for the entry of official League Delegates or official national teams”.<sup>284</sup>

84. A number of instruments contain provisions on entry visas. The Inter-American Convention to Facilitate Disaster Assistance, of 1991, states that each State party shall provide disaster relief personnel with the necessary immigration documents and facilities, in accordance with its laws.<sup>285</sup> Similarly, the 1984 draft convention on expediting the delivery of emergency assistance provides that the receiving State shall promptly issue, without cost, multiple transit, entry and exit visas for personnel representing assisting States or organizations.<sup>286</sup> Several other treaties are slightly less explicit in the precise entry rights conferred upon disaster relief personnel, providing for example that the receiving State shall facilitate the entry into, stay in and departure from its territory of personnel involved in assistance.<sup>287</sup> This latter type of provision, while less precise, could in effect be viewed as broader than the first, since facilitation of the stay of the disaster relief personnel could also entail assistance with the work visas and recognition of professional qualifications discussed below.

85. Regarding bilateral treaties, the UNITAR Model Rules for Disaster Relief Operations, of 1982, provide that “the receiving State shall waive requirements for entry and exit visas, provide with minimum delay visas at points of entry and exit, or issue multiple entry and exit visas, for the designated relief personnel. The assisting State shall waive requirements for, or provide[,] with the minimum delay, exit visas for its designated relief personnel.”<sup>288</sup> Several bilateral treaties have

<sup>284</sup> Resolution adopted at the 33rd session of the League of Red Cross Societies Board of Governors, Geneva, 28 October-1 November 1975.

<sup>285</sup> Art. VII(a).

<sup>286</sup> A/39/267/Add.2-E/1984/96/Add.2, annex, art. 7(2)(a).

<sup>287</sup> ASEAN Agreement on Disaster Management and Emergency Response, 2005, art. 14. See also Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency, 1986, art. 8(5) (“The requesting State shall facilitate the entry into, stay in and departure from its national territory of personnel ... involved in the assistance”); Convention on International Civil Aviation, 1944, paras. 8.8 and 8.9; Convention on Facilitation of International Maritime Traffic, 1965, paras. 5.11 and 5.12; International Convention on Oil Pollution Preparedness, Response and Cooperation, 1990, art. 7(b); Framework Convention on Civil Defence Assistance, 2000, art. 4(3); Tampere Convention on the Provision of Telecommunication Resources for Disaster Mitigation and Relief Operations, 1998, art. 9 (“The States Parties shall, when possible, and in conformity with their national law, reduce or remove regulatory barriers to the use of telecommunication resources for disaster mitigation and relief, including ... regulations restricting the movement of personnel who operate telecommunication equipment or who are essential to its effective use”).

<sup>288</sup> UNITAR, *Policy and Efficacy Studies*, No. 8 (Sales No. E.82.XV.PE/8), annex A, rule 15.

adopted such an approach. For example, a treaty between the Netherlands and Belgium provides that the “members of an emergency unit shall be exempt from the requirement to carry a valid document for crossing the frontier” if the person in charge of that unit carries a certificate issued by an authority defined in the Convention “indicating the extent and the nature of the assistance to be provided”.<sup>289</sup> It also includes a provision that “in circumstances of particular urgency, the frontier may be crossed elsewhere than at an authorized crossing point”.<sup>290</sup> Several additional bilateral treaties between States in many different regions of the world have adopted similar provisions.<sup>291</sup>

86. At the level of national legislation, the granting of visas for disaster relief personnel frequently varies according to the organizational affiliation of the individual. While it is relatively common for national laws to reiterate that certain persons will be provided entry as a part of their existing privileges and immunities

<sup>289</sup> Convention on mutual assistance in combating disasters and accidents, Netherlands-Belgium, 1984, art. 6(2)-(3).

<sup>290</sup> *Ibid.*, art. 6(4).

<sup>291</sup> See, for example, Agreement on mutual assistance in the event of disasters or serious accidents (with exchange of notes), Denmark-Federal Republic of Germany, 1985, art. 4; Agreement between the Government of the Republic of Mozambique and the Government of the Republic of South Africa regarding the Coordination of Search and Rescue Services, 2002, art. 2(2); Agreement between the Republic of Austria and the Federal Republic of Germany Concerning Mutual Assistance in the Event of Disasters or Serious Accidents, 1988, art. 6; Convention on Mutual Assistance in the Event of Disasters or Serious Accidents, France-Federal Republic of Germany, 1977, art. 4; Agreement on Cooperation and Mutual Assistance in Cases of Accidents, Finland-Estonia, 1995, art. 9; Agreement between the Government of the Republic of South Africa and the Government of the Republic of Namibia, regarding the Coordination of Search and Rescue Services, art. 7; Agreement on Cooperation for the Prevention of and Assistance in Cases of Natural Disasters, Mexico-Guatemala, 1987, art. V; Agreement between the Government of the Hellenic Republic and the Government of the Russian Federation on Cooperation in the Field of Prevention and Response to Natural and Man-made Disasters, 2000, art. 9; Agreement on Cooperation on Disaster Preparedness and Prevention, and Mutual Assistance in the Event of Disasters, Spain-Argentina, 1988, art. XIII. The issue of entry visas for disaster relief staff is also addressed in various declarations and resolutions, and guidelines. See General Assembly resolution 57/150 of 16 December 2002 (“Urges all States, consistent with their applicable measures relating to public safety and national security, to simplify or reduce, as appropriate, the customs and administrative procedures related to the entry, transit, stay and exit of international urban search and rescue teams and their equipment and materials”); resolution of the International Conference of the Red Cross and Red Crescent on measures to expedite international relief, 1977 (see note 20 above), recommendation E (“It is recommended that all Governments waive requirements for transit, entry and exit visas for relief personnel acting in their official capacity as representatives of internationally-recognized relief agencies”); Draft international guidelines for humanitarian assistance operations, 1991, art. 21 (“In order to expedite, facilitate and protect humanitarian assistance operations the receiving State shall, in particular, ... [w]aive or simplify normal visa requirements for designated personnel of the assisting State or organization so as to permit entry and exit without delay”); and Updated Guidelines on the Use of Military and Civil Defence Assets in Disaster Relief — “Oslo Guidelines”, 2006, para. 60 (“Affected States should advise the necessary ministries and local governance structures of the impending arrival of foreign [humanitarian assistance workers] and facilitate their deployment by ensuring ... [w]aiver of visa requirements.”). See also Balkans National Societies, Recommended Rules and Practices, 2004, para. B(III)(12); and International Law Association, Draft Model Agreement on International Medical and Humanitarian Law, 1980, art. 14 (“The receiving State shall extend to foreign personnel of the organization all administrative facilities for their entry and reception in the country”).

resulting from their status as a member of an intergovernmental organization,<sup>292</sup> very few national provisions were identified explicitly providing for increased access by personnel of non-governmental organizations during times of disaster. Rather, such personnel are often limited to ad hoc entry permit waiver schemes,<sup>293</sup> which can lack transparency.<sup>294</sup> At least one State was found to have agreements in place with both intergovernmental organizations and non-governmental organizations facilitating the expediting of visas and entry requirements in times of disaster.<sup>295</sup>

**(b) Work permit or visa**

87. Even when disaster relief personnel gain access to the receiving State, they may not have the status necessary to work within its territory.<sup>296</sup> While the staff of diplomatic missions, consulates and United Nations agencies may be granted official visas allowing them to work, non-governmental personnel may not be afforded this privilege. Indeed, the IFRC study of practice in South Asia, Southern Africa and Central America reported a number of cases in which the type of visa issued to disaster relief personnel was limited to tourist visas.<sup>297</sup> Similarly, it was reported that in the aftermath of tropical storm Stan in Guatemala, in October 2005, the use of international staff by some relief organizations was limited because only tourist visas were generally available for them.<sup>298</sup> Accordingly, this section examines provisions specifically addressing the ability of disaster relief personnel to work in the receiving State once that State has already provided them access to its territory.

<sup>292</sup> For example, Fiji's Immigration Act of 1971 states that "the possession of a valid [entry] permit is waived for ... (c) any person to whom immunities and privileges have been extended in Fiji under any written law for the time being in force relating to diplomatic or consular immunities and privileges, [and] any person who is on the official staff or in the household of any person to whom such immunities and privileges have been extended". Laws of Fiji, chap. 88, art. 7(1)(c). See below a discussion of privileges and immunities.

<sup>293</sup> See, for example, Fiji's Immigration Act of 1971, art. 7(3) (*ibid.*): "The Minister may, in his discretion, by order specify that any person or class of persons may be exempted from the requirement of obtaining any permit under this Act upon such conditions as the Minister may determine."

<sup>294</sup> For example, an IFRC study found that "in times of disaster the Government had been willing to reduce bureaucratic measures to enable the faster entry and movement of foreign personnel in the territory", but noted that "the ad hoc nature of these arrangements meant that official channels would sometimes be overlooked in preference to the development of individual and less transparent arrangements between personnel and government officials" ("Indonesia: laws, policies, planning and practices on international disaster response", IFRC, July 2005, p. 24).

<sup>295</sup> Tracy-Lynn Field, "International disaster response law research report: Southern African region", January 2003, pp. 12 and 13 (with respect to South Africa).

<sup>296</sup> This is particularly true with respect to full-time staff of disaster relief organizations, but may even apply to volunteers, as certain States appear to include even voluntary disaster relief assistance under a broad definition of "work", thus requiring disaster relief personnel to obtain a work visa or permit rather than a mere tourist visa in order to deliver disaster relief assistance.

<sup>297</sup> International Disaster Response Law Project field studies in South Asia, Southern Africa and Central America, in IFRC, *International Disaster Response Laws, Principles and Practice: Reflections, Prospects and Challenges* (Geneva, 2003), p. 117.

<sup>298</sup> "Legal issues from the international response to Tropical Storm Stan in Guatemala", a case study commissioned by the IFRC International Disaster Response Law Project (April 2007), p. 33. See also "Nepal: laws, policies, planning and practices on international disaster response", IFRC, July 2005, p. 24.

88. Several instruments specifically call upon receiving States to provide work permits for disaster relief personnel. The 1984 draft convention on expediting the delivery of emergency assistance requires the receiving State to “waive any work permits that may be required under its laws”.<sup>299</sup> The Draft Model Agreement on International Medical and Humanitarian Law provides that “the Government of (the receiving State) shall provide the personnel of the organization with work permits to this effect. Those permits may also be provided in the form of a stamp affixed in the documents issued by the organization”.<sup>300</sup> The Balkans National Societies Recommended Rules and Practices recommend that Governments “see that legal recognition of professional expertise and work permits [are] accorded”.<sup>301</sup>

89. Some instruments, although not specifically mentioning work permits, include provisions broad enough to take them into account. For example, the Framework Convention on Civil Defence Assistance provides that “[t]he Beneficiary State shall, within the framework of national law, grant *all privileges, immunities, and facilities necessary* for carrying out the assistance”.<sup>302</sup> Similarly, a treaty between Spain and Argentina implicitly provides that disaster relief teams can carry out their work without issuance of a work permit by stating that “[c]ontracting States undertake not to subject the entry *and stay* in the requesting State of emergency teams of the requested State ... to formalities other than those provided for in this Agreement”.<sup>303</sup> The 2003 resolution of the Institute of International Law on humanitarian assistance would appear to include work permits within the terms of its provision that “[w]hen visas *or other authorizations* are required they shall be promptly given free of charge”.<sup>304</sup>

90. Provisions concerning work permits for disaster relief personnel are also incorporated in national laws. For example, the Immigration Directions in Fiji provide that “[a]ny person temporarily or periodically employed by charitable organisations approved by the Permanent Secretary shall be entitled to work in Fiji without having obtained a permit under the Act to do so”.<sup>305</sup> The law of Taiwan Province of China states that the Ministry of the Interior will provide work permits “for the civil voluntary organizations to help carrying out Disaster Prevention and Response works”.<sup>306</sup> Other countries or areas have initiated ad hoc schemes.<sup>307</sup>

<sup>299</sup> A/39/267/Add.2-E/1984/96/Add.2, annex, art. 7(2)(e).

<sup>300</sup> Draft Model Agreement, art. 15(1). Reproduced in the report of the 59th Conference of the International Law Association (Belgrade, 17-23 August 1980).

<sup>301</sup> Recommended Rules and Practices, Balkans National Societies, meeting on international disaster response law (Belgrade, 20-26 September 2004), part III, para. 14.

<sup>302</sup> Art. 4(5) (emphasis added).

<sup>303</sup> Agreement on Cooperation on Disaster Preparedness and Prevention, and Mutual Assistance in the Event of Disasters, Spain-Argentina, 1988, art. XII (emphasis added).

<sup>304</sup> Sect. VII, para. 1 (emphasis added).

<sup>305</sup> “Fiji: laws, policies, planning and practices on international disaster response”, IFRC, July 2005 (citing Immigration Directions of 1971 (as amended in 1984), Laws of Fiji, chap. 88, sect. 3). See also Fiji Immigration Act of 1971, Laws of Fiji, chap. 88, art. 7(1)(c), allowing the Minister to specifically provide that a group of people otherwise unauthorized to do so may “enter, reside *or work*” in Fiji (emphasis added).

<sup>306</sup> Disaster Prevention and Response Act, 2000 (Taiwan Province of China), art. 50.

<sup>307</sup> For example, in the aftermath of the 2004 Asian tsunami, it has been reported that Sri Lanka initiated an expedited visa procedure for international relief personnel, under which an individual could obtain a work visa by furnishing a designation of the person, description of the project and its duration, copy of passport, curriculum vitae and job description. See “Legal issues from the international response to the tsunami in Sri Lanka”, IFRC, July 2006, p. 14.



91. In conclusion, a specific work authorization is an important component of the access of international disaster relief personnel to a receiving State, and it should not be assumed that a provision governing the entry of such personnel necessarily permits them to work upon entry. A number of disaster-related instruments have begun clarifying this point by addressing the question of work permits in a separate provision from entry visas.

**(c) Recognition of professional qualifications**

92. Even if a receiving State has granted international disaster relief personnel authorization to work in the form of a work permit or visa, additional regulatory barriers may still exist. The professionals involved in disaster relief — such as doctors, nurses, drivers and pilots — are generally subject to country-specific licensing regimes, and indeed several regional conventions have been concluded which deal with the question of recognition of foreign certificates and diplomas. For example, the Regional Convention on the Recognition of Studies, Diplomas and Degrees in Higher Education in Asia and the Pacific provides that “[t]he Contracting States agree to take all feasible steps to ensure that certificates, diplomas or degrees issued by the competent authorities of the other Contracting States are effectively recognized for the purpose of practising a profession”.<sup>308</sup> Such conventions, however, are not specific to the context of disaster relief, and thus do not address, for example, the specific need for expedited recognition which the disaster situation presents.

93. Certain disaster-related instruments have begun to translate this piecemeal regime into a generalized and expedited recognition scheme applicable in the context of disasters. For example, the Tampere Convention provides that “the States Parties shall, when possible, and in conformity with their national law, reduce or remove regulatory barriers. ... Reduction of regulatory barriers may take the form of ... recognition of foreign ... operating licenses.”<sup>309</sup> Similarly, the 1984 draft convention on expediting the delivery of emergency assistance anticipated that receiving States would “recognize university degrees, professional certificates and other certificates of competency and licences held by relief personnel and necessary for the performance of the agreed function”.<sup>310</sup> The Model Agreement Covering the Status of Military and Civil Defence Assets, annexed to the Oslo Guidelines, provides that “the Government of the Affected State agrees to accept as valid, without tax or fee, a certificate provided on request by the Head of the [military and civil defence assets] operation in respect of the technical and professional qualifications of any of its members practicing a profession or similar occupation in

<sup>308</sup> Regional Convention on the Recognition of Studies, Diplomas and Degrees in Higher Education in Asia and the Pacific, 1983, art. 5. See also Council of Europe/UNESCO Convention on the Recognition of Qualifications concerning Higher Education in the European Region, 1997; Regional Convention on the Recognition of Studies, Certificates, Diplomas, Degrees and other Academic Qualifications in Higher Education in the African States, 1981; and Convention on the Recognition of Studies, Diplomas and Degrees concerning Higher Education in the Arab States, 1978.

<sup>309</sup> Tampere Convention on the Provision of Telecommunication Resources for Disaster Mitigation and Relief Operations, 18 June 1998 (United Nations, *Treaty Series*, vol. 2296, No. 40906), art. 9(1), 9(3)(d).

<sup>310</sup> A/39/267/Add.2-E/1984/96/Add.2, annex, art. 7(2)(d).

connection with the ... operation”.<sup>311</sup> The Balkans National Societies Recommended Rules and Practices recommend that Governments “see that legal recognition of professional expertise ... is accorded”.<sup>312</sup> A Council of Europe recommendation provides that “medical staff and ambulance workers from the requested state should be authorised to administer emergency treatment in the requesting state”.<sup>313</sup>

## 2. Access of goods: customs, duties and tariffs

94. Most States require the clearance of customs and the payment of tariffs and other duties and taxes upon admission of goods into their territory. The imposition of such procedures and financial barriers on humanitarian relief goods and supplies (including relief aid and the relief materials used by relief workers), which are often the source of delay and expense, is one of the major issues of concern for humanitarian assistance providers, including third States and international organizations.<sup>314</sup>

95. The question of the facilitation and simplification of such domestic procedures, as well as the waiver of taxes and other financial requirements, is addressed in a number of agreements, international conventions and declaratory texts. Special procedures have been developed to facilitate the clearance of customs procedures and the elimination of tariff and other barriers for the importation of goods, where appropriate. In particular, a number of States apply a distinct legal regime regulating the “temporary admission” of goods into their jurisdictions, and have developed expedited procedures for the import (and export) of relief goods. Provision has also typically been made for the waiver of import (and export) duties and taxes, as well as for the waiving or easing of non-financial restrictions.

### (a) Temporary admission

96. Under article 2 of the Convention on Temporary Admission (“Istanbul Convention”), “[e]ach Contracting Party undertakes to grant temporary admission<sup>315</sup> ... to the goods (including means of transport) specified in the ... Convention ... [and] temporary admission shall be with total conditional relief from import duties and taxes and without application of import restrictions or prohibitions of economic character”. Furthermore, the Convention provides special rules

<sup>311</sup> Guidelines on the Use of Military and Civil Defence Assets in Disaster Relief — “Oslo Guidelines”, Rev.1, November 2006, annex I, para. 35.

<sup>312</sup> Recommended Rules and Practices, Balkans National Societies meeting on international disaster response law (Belgrade, 20-26 September 2004), part III, para. 14.

<sup>313</sup> Council of Europe, recommendation Rec(2002)3 of the Committee of Ministers to member States on transfrontier cooperation in civil protection and mutual assistance in the event of natural and technological disasters occurring in frontier areas, adopted by the Committee of Ministers on 6 March 2002 at the 786th meeting of the Ministers’ Deputies, para. 13.

<sup>314</sup> David Fisher, *Law and Legal Issues in International Disaster Response: A Desk Study*, IFRC, 2007, p. 98.

<sup>315</sup> The Convention on Temporary Admission (Istanbul, 26 June 1990) defines “temporary admission” as “the Customs procedure under which certain goods (including means of transport) can be brought into a Customs territory conditionally relieved from payment of import duties and taxes and without application of import prohibitions or restrictions of an economic character; such goods (including means of transport) must be imported for a specific purpose and must be intended for re-exportation within a specified period and without having undergone any change except normal depreciation due to the use made of them” (art. 1(a)).

concerning the importation of humanitarian relief consignments.<sup>316</sup> It requires that goods imported for humanitarian purposes be granted temporary admission,<sup>317</sup> subject to the requirements that: (a) the goods imported for humanitarian purposes must be owned by a person established outside the territory of temporary admission and must be loaned free of charge; (b) medical, surgical and laboratory equipment<sup>318</sup> must be intended for use by hospitals and other medical institutions which, finding themselves in exceptional circumstances, have urgent need of it, provided this equipment is not available in sufficient quantity in the territory of temporary admission; and (c) relief consignments must be dispatched to persons approved by the competent authorities in the territory of temporary admission.<sup>319</sup> Several bilateral agreements specifically apply the legal regime of temporary admission to such items of equipment, means of emergency aid and goods when employed in operations covered by the agreement in question.<sup>320</sup>

(i) *Identification of goods*

97. The Convention on Temporary Admission envisages the preparation of an inventory of goods, which would be accepted in lieu of a customs document and security with regard to the import of medical surgical and laboratory equipment. Similarly, while “the temporary admission of relief consignments shall be granted without a Customs document or security being required ... the Customs authorities may require an inventory of the goods”.<sup>321</sup> Other agreements impose similar requirements, such as presenting a declaration listing drugs materials and psychotropic substances and indicating their nomenclature and amount, at the point of entry,<sup>322</sup> as well as at the point of departure after completion of the mission,<sup>323</sup>

<sup>316</sup> Ibid., annex B.9.

<sup>317</sup> Ibid., art. 2.

<sup>318</sup> See also annex B.2 to the Convention, concerning the grant of temporary admission for professional equipment, incorporating the provisions of the Customs Convention on the Temporary Importation of Professional Equipment, 1961.

<sup>319</sup> Convention on Temporary Admission, art. 3.

<sup>320</sup> See Agreement on Mutual Assistance in the Event of Disasters or Serious Accidents (with exchange of notes), Denmark-Federal Republic of Germany, 1985, art. 5(2) (“such goods ... shall, in the territory of the requesting Contracting Party, be deemed subject to a regime of temporary admission”); Convention between Germany and Belgium on Mutual Assistance in Natural Disasters or Serious Accidents, 1980, art. 5(2); Convention on Mutual Assistance in Case of Disasters or Serious Accidents, France-Belgium, 1981, art. 5(2); Agreement on Mutual Assistance in the Event of Disasters or Serious Accidents, France-Switzerland, 1987, art. 7(1); Convention on Mutual Assistance in Combating Disasters and Accidents, Netherlands-Belgium, 1984, art. 7(1); and Agreement on Cooperation on Disaster Preparedness and Prevention, and Mutual Assistance in the Event of Disasters, Spain-Argentina, 1988, art. XIV. See also Model Agreement Concerning Measures to Expedite the Import, Export and Transit of Relief Consignments and Possessions of Relief Personnel in the Event of Disasters and Emergencies (Office for the Coordination of Humanitarian Affairs (1996), art. 3.3.2 (temporary admission of equipment).

<sup>321</sup> Convention on Temporary Admission, Istanbul, 26 June 1990, annex B.9, art. 4.

<sup>322</sup> 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, 1998, art. 10(3) (to be presented by the leader of the assistance team).

<sup>323</sup> Ibid. (“certificate on utilized drug and psychotropic substances, signed by the leader and the physician of the assistance team and certified by the representative of the Competent Body of the Requesting Party is to be presented to the customs control bodies of the Requesting Party after completion of the mission”). See also Agreement for the Duty Free Entry of Relief

and packing, classifying, marking and inspecting humanitarian assistance consignments appropriately.<sup>324</sup>

(ii) *Requirement of re-exportation*

98. Temporary admission of goods imported for humanitarian purposes is further subject to the requirement of re-exportation of the goods in question.<sup>325</sup> Under the Convention on Temporary Admission, the period for re-exportation of medical, surgical and laboratory equipment is to be determined “in accordance with ... needs”, while the period for the re-exportation of relief consignments is established as after 12 months from the date of temporary admission.<sup>326</sup> Several agreements expressly require the re-exportation of medical equipment and supplies,<sup>327</sup>

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Supplies and Packages, United Kingdom of Great Britain and Northern Ireland-India, 1964, art. II(2).

<sup>324</sup> See Draft International Guidelines for Humanitarian Assistance Operations, art. 16(a); and Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance, of 2007, art. 17(3).

<sup>325</sup> Convention on Temporary Admission, Istanbul, 26 June 1990, annex B.9, art. 4. See also 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, 1989, art. 3(3) (“upon the completion of [the] operation vehicles, rescue materials and other equipment shall be removed from the country as soon as possible”). Not only is re-exportation a requirement, some texts also treat it as an entitlement. See Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance, 2007, art. 17 (1)(d) (“affected States should ... permit re-exportation of any equipment or unused goods which the assisting State or assisting humanitarian organization owns and wishes to retain”); and David Fisher, *Law and Legal Issues in International Disaster Response: A Desk Study*, IFRC, 2007, p. 104.

<sup>326</sup> Convention on Temporary Admission, Istanbul, 26 June 1990, annex B.9, art. 5.

<sup>327</sup> 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, 1998, art. 10(3) (“The drugs and psychotropic substances unutilized during the mission shall be taken out from the territory of State of the Requesting Party”); Agreement on Mutual Assistance in the Event of Disasters or Serious Accidents (with exchange of notes), Denmark-Federal Republic of Germany, 1985, art. 5(4); Agreement on Cooperation and Mutual Assistance in Cases of Accidents, Finland-Estonia, 1995, art. 9; Convention on Mutual Assistance in Case of Disasters or Serious Accidents, France-Belgium, 1981, art. 5(4); Agreement on Mutual Assistance in the Event of Disasters or Serious Accidents, France-Switzerland, 1987, art. 7(3) and (5) (“At the end of the operation, the personnel, equipment, means of emergency assistance and operational goods which have not been distributed shall be returned to the territory of the sending State at an authorized frontier crossing point”); Agreement between the Government of the Hellenic Republic and the Government of the Russian Federation on Cooperation in the Field of Prevention and Response to Natural and Man-made Disasters, 2000, art. 10; Convention on Mutual Assistance in Combating Disasters and Accidents, Netherlands-Belgium, 1984, art. 7(4) and (5); Agreement on Cooperation on Disaster Preparedness and Prevention, and Mutual Assistance in the Event of Disasters, Spain-Argentina, of 1988, art. XIV (“Re-export ... shall not be subject to delay”); Convention on Protection and Civil Defence, Spain-France, 2001, art. 10(2); Agreement on Technical Cooperation and Mutual Assistance in the Field of Civil Defence, Spain-Morocco, of 1987, art. 2(7) (“shall return ... upon completion of the operation ... or at such time as the competent authorities of the country in whose territory the emergency operation takes place consider that the presence of the emergency services of the other Party is no longer required”); Protocol on Technical Cooperation and Mutual Assistance in the Field of Civil Defence, Spain-Portugal, 1992, art. 3(6); and Agreement on Cooperation on Disaster Preparedness and Prevention, and Mutual Assistance in the Event of Disasters, Spain-Russian Federation, 2000,

vehicles<sup>328</sup> and equipment and items that have not been used during an emergency, except where they cannot be re-exported,<sup>329</sup> in which case a different procedure is established.<sup>330</sup>

(iii) *Only necessary items*

99. Several bilateral agreements specifically limit the articles which emergency teams may carry with them to the equipment and other items necessary for emergency operations.<sup>331</sup>

(b) **Facilitation of clearance**

100. The prompt clearance of humanitarian assistance goods, in order to ensure the effectiveness of the provision of assistance, is a further common requirement in several of the relevant instruments in this field. The International Convention on the Simplification and Harmonization of Customs Procedures of 1973, as revised in 1999 (the “revised Kyoto Convention”), requires the “clearance of relief consignments for export, transit, temporary admission and import [to] be carried out as a matter of priority”,<sup>332</sup> and preferably without regard to the country of origin.<sup>333</sup>

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art. 11. See also Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance, 2007, art. 17(1)(d) and 17(4) which expands the obligation to include the “responsibility for removing or disposing of any unwanted and unused relief and initial recovery goods, particularly if they may pose a threat to human health or safety, or [to] the environment”.

<sup>328</sup> Protocol on Technical Cooperation and Mutual Assistance in the Field of Civil Defence, Spain-Portugal, 1992, art. 3(6).

<sup>329</sup> Agreement on cooperation and mutual assistance in cases of accidents, Finland-Estonia, 1995, art. 9 (“... except equipment which has been destroyed”).

<sup>330</sup> See, for example, Agreement between the Republic of Austria and the Federal Republic of Germany Concerning Mutual Assistance in the Event of Disasters or Serious Accidents, 1988, art. 7(3) (“If, owing to special circumstances, they cannot be re-exported, their type, quantity and whereabouts shall be reported to the authority responsible for the emergency operation, who shall notify the competent customs authority. In such cases, the domestic legislation of the requesting State shall apply”); and Agreement on Technical Cooperation and Mutual Assistance in the Field of Civil Defence, 1987, Spain-Morocco, art. 2(7) (“Any emergency equipment that fails to return to the country of origin without valid reason shall be subject to the customs regulations laid down in the domestic legislation of each country”).

<sup>331</sup> Agreement between the Republic of Austria and the Federal Republic of Germany Concerning Mutual Assistance in the Event of Disasters or Serious Accidents, 1988, art. 7(2); Agreement on Mutual Assistance in the Event of Disasters or Serious Accidents (with exchange of notes), Denmark-Federal Republic of Germany, 1985, art. 5(3); Convention between Germany and Belgium on the Mutual Assistance in Natural Disasters or Serious Accidents, 1980, art. 5(3); Convention on Mutual Assistance in Case of Disasters or Serious Accidents, France-Belgium, 1981, art. 5(3); Agreement on Mutual Assistance in the Event of Disasters or Serious Accidents, France-Switzerland, 1987, art. 7(2) (“The emergency teams shall bring in no goods other than the equipment, means of emergency aid and operational goods which are necessary for the success of the emergency operation ...”); Convention on Mutual Assistance in Combating Disasters and Accidents, Netherlands-Belgium, 1984, art. 7(3); and Agreement on Cooperation on Disaster Preparedness and Prevention, and Mutual Assistance in the Event of Disasters, Spain-Russian Federation, 2000, art. 11.

<sup>332</sup> Specific Annex J(5), art. 2. See also Agreement on Cooperation on Disaster Preparedness and Prevention, and Mutual Assistance in the Event of Disasters, Spain-Russian Federation, 2000, art. 11; and UNITAR Model Rules for Disaster Relief Operations, 1982, annex A, rule 5 (“absolute priority shall be granted to relief supplies”).

<sup>333</sup> International Convention on the Simplification and Harmonization of Customs Procedures,

The ASEAN Agreement on Disaster Management and Emergency Response, of 2005, requires the receiving Party to “facilitate the entry into, stay in and departure from its territory of personnel and of equipment, facilities and materials involved or used in the assistance”.<sup>334</sup>

101. The receiving State is encouraged to adopt measures, under its law,<sup>335</sup> in order to facilitate the expeditious<sup>336</sup> clearance of goods, for example, by permitting a simplified procedure<sup>337</sup> involving the lodging of a simplified goods declaration or of a provisional or incomplete goods declaration subject to completion of the

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1973, as revised in 1999, Specific Annex J(5), art. 5.

<sup>334</sup> ASEAN Document Series 2005, p. 157, art. 14(b). See also Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency, 1986, art. 8(5); Tampere Convention on the Provision of Telecommunication Resources for Disaster Mitigation and Relief Operations, 1998, art. 9(4); Inter-American Convention to Facilitate Disaster Assistance, 1991, art. V; Agreement between the Republic of Austria and the Federal Republic of Germany Concerning Mutual Assistance in the Event of Disasters or Serious Accidents, 1988, art. 7(1); Agreement on Mutual Assistance in the Event of Disasters or Serious Accidents (with exchange of notes), Denmark-Federal Republic of Germany, 1985, art. 5(2); Convention between Germany and Belgium on Mutual Assistance in Natural Disasters or Serious Accidents, 1980, art. 5(2); Agreement on Cooperation and Mutual Assistance in Cases of Accidents, Finland-Estonia, 1995, art. 9 (“Each Party guarantees that, in cases where the other Party’s relief teams cross the State border, border and customs formalities shall be completed quickly and without undue complications”); Convention on Mutual Assistance in Case of Disasters or Serious Accidents, France-Belgium, 1981, art. 5(2); Agreement on Mutual Assistance in the Event of Disasters or Serious Accidents, France-Switzerland, 1987, art. 7(1); and Declaration of principles for international humanitarian relief to the civilian population in disaster situations, resolution 26 adopted at the 21st International Conference of the Red Cross, Istanbul, September 1969, art. 5.

<sup>335</sup> See International Convention on Oil Pollution Preparedness, Response and Cooperation, of 1990, art. 7(3) (“each Party shall take necessary legal or administrative measures to facilitate”); and Updated Guidelines on the Use of Military and Civil Defence Assets in Disaster Relief — “Oslo Guidelines”, 2006, para. 60.

<sup>336</sup> See International Convention on Oil Pollution Preparedness, Response and Cooperation, 1990, art. 7(3)(b); Agreement on Technical Cooperation and Mutual Assistance in the Field of Civil Defence, Spain-Morocco, 1987, art. 2(3) (“Both Parties, recognizing that the effectiveness of emergency operations depends on the speed with which they are initiated ...”); and Protocol on Technical Cooperation and Mutual Assistance in the Field of Civil Defence, Spain-Portugal, 1992, art. 3(3) and (4).

<sup>337</sup> See 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, 1998, art. 10(2) (“The customs inspection and control of the Equipment and Goods of Assistance shall be carried out in a simplified manner on priority basis, following the notices given by the Competent Bodies of the Parties, in which a structure of Assistance teams and list of exported or imported Equipment and Goods of assistance are specified”); Agreement between the Government of the Hellenic Republic and the Government of the Russian Federation on Cooperation in the Field of Prevention and Response to Natural and Man-made Disasters, 2000, art. 10; Agreement on Technical Cooperation and Mutual Assistance in the Field of Civil Defence, Spain-Morocco, 1987, art. 2(3) (“Both Parties ... undertake to reduce frontier crossing formalities to a minimum”); draft convention on expediting the delivery of emergency assistance, 1984 (A/39/267/Add.2-E/1984/96/Add.2), art. 20(2); Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance, 2007, art. 17 (1)(c); Draft international guidelines for humanitarian assistance operations, 1991, art. 16(b); and UNITAR Model Rules for Disaster Relief Operations, 1982, annex A, rule 5.

declaration within a specified period,<sup>338</sup> and the lodging and registering or checking of the goods declaration and supporting documents prior to the arrival of the goods<sup>339</sup> and their release upon arrival; by providing for clearance outside the designated hours of business or away from customs offices and the waiver of any charges in this respect;<sup>340</sup> by examining and/or sampling goods only in exceptional circumstances;<sup>341</sup> and by waiving requirements for consular certificates of origin and invoices, and other normal commercial document requirements, with respect to relief consignments.<sup>342</sup> Some instruments impose a further requirement of notifying other States and humanitarian actors of the measures undertaken to facilitate the clearance of goods.<sup>343</sup>

102. Some States have adopted national laws addressing the duty-free entry of disaster relief consignments. For example, Viet Nam's customs law states that "goods exported and imported in the service of urgent requirements may enjoy Customs clearance before the Customs declarations and Customs dossiers documents are submitted".<sup>344</sup> It includes within the definition of such items "goods in service of the immediate overcoming of natural disaster consequences".<sup>345</sup>

103. Assisting States and other donors are, likewise, encouraged to give prompt notification to consignees of impending relief shipments,<sup>346</sup> to review the procedures for the consignment of relief shipments,<sup>347</sup> to include detailed manifests

<sup>338</sup> See Convention on Temporary Admission, 1990, annex A concerning temporary admission papers (ATA Carnets and CPD Carnets), which incorporates the provisions of the Customs Convention on the ATA. Carnet for the Temporary Admission of Goods, 1961.

<sup>339</sup> See Model Agreement Concerning Measures to Expedite the Import, Export and Transit of Relief Consignments and Possessions of Relief Personnel in the Event of Disasters and Emergencies (Office for the Coordination of Humanitarian Affairs, 1996), art. 3.3.4.

<sup>340</sup> See Recommendation of the Customs Cooperation Council to Expedite the Forwarding of Relief Consignments in the Event of Disasters, document T2-423, 1970, para. 7; and Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance, 2007, art. 17 (2)(b).

<sup>341</sup> International Convention on the Simplification and Harmonization of Customs Procedures of 1973, as revised in 1999, Specific Annex J(5), art. 3. See also Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance, 2007, art. 17 (2)(a) (waiver or reduction of inspection requirements).

<sup>342</sup> Resolution of the International Conference of the Red Cross on measures to expedite international relief, 1977 (see note 20 above), recommendation B ("on condition that adequate documentation from recognized relief agencies accompany such consignments"); and UNITAR Model Rules for Disaster Relief Operations, 1982, annex A, rule 5.

<sup>343</sup> See, for example, Tampere Convention on the Provision of Telecommunication Resources for Disaster Mitigation and Relief Operations, 1998, art. 9(5) (requiring the receiving State to provide information regarding measures taken for reducing or removing regulatory barriers and on the procedures available to States Parties, other States, non-State entities and/or intergovernmental organizations for the exemption of specified telecommunication resources used for disaster mitigation); and UNITAR Model Rules for Disaster Relief Operations, 1982, annex A, rule 5.

<sup>344</sup> Customs Law of 29 June 2001, art. 35.

<sup>345</sup> Ibid.

<sup>346</sup> See also UNITAR Model Rules for Disaster Relief Operations, UNITAR, 1982, annex A, rule 2(3).

<sup>347</sup> See Recommendation of the Customs Cooperation Council to Expedite the Forwarding of Relief Consignments in the Event of Disasters, document T2-423, 1970, para. 2 ("accept at exportation, as a general rule, the written declarations made out by the exporters of relief consignments as evidence of the contents and of the intended use of such consignments"); and Model Agreement

with each consignment<sup>348</sup> and to seek prompt acknowledgment by the consignee of the arrival of the consignment.<sup>349</sup>

104. Several bilateral agreements establish expedited procedures for the cross-border transportation of relief goods. For example, the Agreement between the Republic of Austria and the Federal Republic of Germany Concerning Mutual Assistance in the Event of Disasters or Serious Accidents, of 1988, provides that “the leader of an emergency team shall be required only to hand over to the border authorities of the requesting State a list of the equipment and items being imported”.<sup>350</sup>

**(c) Exemption from import duties, taxes and restrictions**

*(i) Financial restrictions*

105. Most instruments in the field provide specific rules relating to the requirement of payment of duties, taxes, fees, tariffs or other charges connected to the admission of relief consignments, such as equipment<sup>351</sup> and goods (including those received as gifts for distribution to victims,<sup>352</sup> those loaned to humanitarian organizations for use in disaster relief<sup>353</sup> and the possessions of disaster relief personnel<sup>354</sup>), into the

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Concerning Measures to Expedite the Import, Export and Transit of Relief Consignments and Possessions of Relief Personnel in the Event of Disasters and Emergencies (Office for the Coordination of Humanitarian Affairs, 1996), art. 3.1.2.

<sup>348</sup> See, for example, Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of India for the Duty Free Entry of Relief Supplies and Packages, 1964, art. II.2.

<sup>349</sup> Resolution of the International Conference of the Red Cross on measures to expedite international relief, 1977 (see note 20 above), recommendation H.

<sup>350</sup> Art. 7(1). See also Convention on Protection and Civil Defence, Spain-France, 2001, art. 10(1); Agreement on Technical Cooperation and Mutual Assistance in the Field of Civil Defence, Spain-Morocco, of 1987, art. 2(3); Agreement on Mutual Assistance in the Event of Disasters or Serious Accidents (with exchange of notes), Denmark-Federal Republic of Germany, 1985, art. 5(6) (“No import or export documents shall be required or issued for the items of equipment, means of emergency aid or operational goods. The leader of an emergency team shall, however, carry a brief inventory of the items of equipment, means of emergency aid and operational goods brought in, certified, except in urgent cases; by the authority to which the emergency team reports”); Convention between Germany and Belgium on the Mutual Assistance in Natural Disasters or Serious Accidents, 1980, art. 5(6); Convention on Mutual Assistance in Case of Disasters or Serious Accidents, France-Belgium, 1981, art. 5(6); Agreement on Mutual Assistance in the Event of Disasters or Serious Accidents, France-Switzerland, 1987, art. 7(1); Convention on Mutual Assistance in Combating Disasters and Accidents, Netherlands-Belgium, 1984, art. 7(2); Agreement on Cooperation on Disaster Preparedness and Prevention and Mutual Assistance in the Event of Disasters, Spain-Argentina, 1988, art. XIV.

<sup>351</sup> ASEAN Agreement on Disaster Management and Emergency Response, 26 July 2005, art. 14(a) (“use of equipment including vehicles and telecommunications, facilities and materials brought into the territory of the Receiving State for the purpose of the assistance”).

<sup>352</sup> Recommendation of the Customs Cooperation Council to Expedite the Forwarding of Relief Consignments in the Event of Disasters, document T2-423, 1970, para. 5 (“in particular where such consignments consist of foodstuffs, medicaments, clothing, blankets, tents, prefabricated houses, or other goods of prime necessity”).

<sup>353</sup> Recommendation of the Customs Cooperation Council to Expedite the Forwarding of Relief Consignments in the Event of Disasters, document T2-423, 1970, para. 6.

<sup>354</sup> Model Agreement Concerning Measures to Expedite the Import, Export and Transit of Relief Consignments and Possessions of Relief Personnel in the Event of Disasters and Emergencies (Office for the Coordination of Humanitarian Affairs, 1996), art. 3.3.1.b.



territory of an affected State.<sup>355</sup> The basic approach has been one of requiring receiving States to waive or exempt any financial import or export requirements,<sup>356</sup>

<sup>355</sup> See ASEAN Agreement on Disaster Management and Emergency Response, 26 July 2005, art. 14(a) (“and other charges of a similar nature”).

<sup>356</sup> International Convention on the Simplification and Harmonization of Customs Procedures of 1973, as revised in 1999, Specific Annex J(5), para. 5. The Convention further recommends that “relief consignments received as gifts by approved organizations for use by or under the control of such organizations, or for distribution free of charge by them or under their control, should be admitted free of import duties and taxes and free of economic import prohibitions or restrictions” (para. 6). See 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, 1998, art. 10(1); ASEAN Agreement on Disaster Management and Emergency Response, 26 July 2005, art. 14(a); Inter-American Convention to Facilitate Disaster Assistance, 1991, art. V; Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency, 1986, art. 8(3); 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, 1989, art. 3(3); Agreement between the Republic of Austria and the Federal Republic of Germany Concerning Mutual Assistance in the Event of Disasters or Serious Accidents, 1988, art. 7(5); Agreement on Mutual Assistance in the Event of Disasters or Serious Accidents (with exchange of notes), Denmark-Federal Republic of Germany, 1985, art. 5(4) (“in so far as they are used up during emergency operations”); Convention between Germany and Belgium on Mutual Assistance in Natural Disasters or Serious Accidents, 1980, art. 5(4); Agreement on Cooperation and Mutual Assistance in Cases of Accidents, Finland-Estonia, 1995, art. 9; Convention on Mutual Assistance in Case of Disasters or Serious Accidents, France-Belgium, 1981, art. 5(5); Agreement on Mutual Assistance in the Event of Disasters or Serious Accidents, France-Switzerland, 1987, art. 7(3); Agreement between the Government of the Hellenic Republic and the Government of the Russian Federation on Cooperation in the Field of Prevention and Response to Natural and Man-made Disasters, 2000, art. 10; Convention on Mutual Assistance in Combating Disasters and Accidents, Netherlands-Belgium, 1984, art. 7(4); Agreement on Cooperation on Disaster Preparedness and Prevention and Mutual Assistance in the Event of Disasters, Spain-Argentina, 1988, art. XIV; Agreement on Technical Cooperation and Mutual Assistance in the Field of Civil Defence, Spain-Morocco, 1987, art. 2(3); Agreement on Cooperation on Disaster Preparedness and Prevention and Mutual Assistance in the Event of Disasters, Spain-Russian Federation, 2000, art. 11; Agreement for Technical Assistance in the Field of Health, 1957, Sweden-Ethiopia, art. VIII; Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of India for the Duty Free Entry of Relief Supplies and Packages, 1964, art. I(1); Exchange of Notes Constituting an Agreement between the United States of America and Ecuador relating to Duty-free Entry and Exemption from Internal Taxation of Relief Supplies and Equipment, 1955, para. 1; Agreement between the Government of the United States of America and the Government of India for Duty-Free Entry and Defrayment of Inland Transportation Charges of Relief Supplies and Packages, 1951, art. 1; see also Recommendation of the Customs Cooperation Council to Expedite the Forwarding of Relief Consignments in the Event of Disasters, document T2-423, 1970, paras. 1 and 5; resolution of the International Conference of the Red Cross on measures to expedite international relief, 1977 (see note 20 above), recommendation C; Model Agreement Concerning Measures to Expedite the Import, Export and Transit of Relief Consignments and Possessions of Relief Personnel in the Event of Disasters and Emergencies (Office for the Coordination of Humanitarian Affairs, 1996), art. 3.1.1; Principles and Rules for Red Cross and Red Crescent Disaster Relief (reprinted in *International Review of the Red Cross*, No. 310 (29 February 1996)), annex IV, para. 9(5); Code of Conduct for the International Red Cross and Red Crescent Movement and Non-Governmental Organizations in Disaster Relief, 1995, annex I, para. 3; Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance, 2007, art. 17(1)(a); Institute of International Law, resolution on humanitarian assistance, 2 September 2003, sect. VII, para. 1; International Law Association, resolution on international medical and

subject to the condition that the goods are intended for the provision of assistance<sup>357</sup> and are subsequently re-exported.<sup>358</sup>

106. National laws treat the question of exemption of financial restrictions in a variety of ways. For example, in Fiji, the reduction or refund of a fiscal duty paid or payable by a person or organization in respect of goods imported into Fiji, may be obtained on the basis of a written request outlining, inter alia, the benefits to the country of the concession sought.<sup>359</sup> Under Indian law, “if the Central Government is satisfied that it is necessary in the public interest so to do, it may, by notification in the Official Gazette, exempt generally ... or subject to such conditions ... goods of any specified description from the whole or any part of duty of customs leviable thereon”.<sup>360</sup>

(ii) *Non-financial restrictions*

107. A similar approach is taken with regard to other non-economic import or export barriers,<sup>361</sup> such as prohibitions or restrictions,<sup>362</sup> regulatory barriers,<sup>363</sup>

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humanitarian law, 1976, part II, para. 2; and UNITAR Model Rules for Disaster Relief Operations, 1982, annex A, rule 6.

<sup>357</sup> Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency, 1986, art. 8(3).

<sup>358</sup> Agreement on Mutual Assistance in the Event of Disasters or Serious Accidents, France-Switzerland, 1987, art. 7(3) (if “re-exported immediately after the operation”).

<sup>359</sup> Customs Tariff (Amendment) Act 2001 (Fiji), 24 December 2001, sect. 10.

<sup>360</sup> Customs Act of 1962 (India), sect. 25(1). See also sect. 76a (envisaging the establishment of “special economic zones comprising specifically delineated areas where any goods admitted shall be regarded, in so far as duties of customs are concerned, as being outside the customs territory of India as provided in [Indian law]”); and Customs Circular No. 68/2003 dated 30 July 2003, Operationalisation of the Provision of Chapter X A of the Customs Act, 1962: Issuance of Special Economic Zone Rules and Regulations.

<sup>361</sup> International Law Association, resolution on international medical and humanitarian law, 1976, part II, para. 2 (“The articles and supplies for the use of the personnel services and objects of the mission shall be free of import restrictions”).

<sup>362</sup> International Convention on the Simplification and Harmonization of Customs Procedures of 1973, as revised in 1999, Specific Annex J(5), para. 5; Agreement between the Republic of Austria and the Federal Republic of Germany Concerning Mutual Assistance in the Event of Disasters or Serious Accidents, 1988, art. 7(3); Convention between Germany and Belgium on Mutual Assistance in Natural Disasters or Serious Accidents, 1980, art. 5(4) and (5); Agreement on Mutual Assistance in the Event of Disasters or Serious Accidents (with exchange of notes), Denmark-Federal Republic of Germany, 1985, art. 5(5) (“The prohibitions and restrictions and transfrontier traffic of goods shall not be applicable to goods which are exempt from taxes”); Convention on Mutual Assistance in Case of Disasters or Serious Accidents, France-Belgium, 1981, art. 5(5); Convention on Mutual Assistance in Combating Disasters and Accidents, Netherlands-Belgium, 1984, art. 7(6); and Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance, 2007, art. 17 (1)(b) (“... all export, transit, and import restrictions”).

<sup>363</sup> See resolution of the International Committee of the Red Cross on measures to expedite international relief, 1977 (see note 20 above), recommendation D (“... that potential recipient Governments waive — to the extent compatible with minimum standards of hygiene and animal protection — normal requirements regarding fumigation certificates and restrictions on food imports where these would impede the admission of relief items essential for the protection of disaster victims”); and UNITAR Model Rules for Disaster Relief Operations, 1982, annex A, rule 7 (“The receiving State and the assisting State shall relax to the extent compatible with standards of hygiene and animal protection normal requirements regarding fumigation and prohibitions and restrictions on food imports and exports in regard to the designated relief supplies”).

licensing or registration requirements<sup>364</sup> and the furnishing of guarantees.<sup>365</sup> For example, the Tampere Convention provides:

The States Parties shall, when possible, and in conformity with their national law, reduce or remove regulatory barriers to the use of telecommunication resources for disaster mitigation and relief, including to the provision of telecommunication assistance.<sup>366</sup>

108. Several bilateral treaties also make special provision for the waiver of importation (and subsequent re-exportation) restrictions placed on medical supplies, including narcotic drugs, subject to certain requirements, for example, that such goods may be transported only to meet an urgent medical need, that they may be used only by qualified medical personnel acting in accordance with the legislation of the Contracting State to which the emergency team belongs<sup>367</sup> or that the head of the assistance team make a declaration as to the content and nature of the medication being imported.<sup>368</sup> The importation of such goods is also typically exempted *inter se* from the scope of application of international conventions on

<sup>364</sup> Code of Conduct for the International Red Cross and Red Crescent Movement and Non-Governmental Organizations in Disaster Relief, 1995, annex I, para. 3.

<sup>365</sup> See: Agreement between the Republic of Austria and the Federal Republic of Germany Concerning Mutual Assistance in the Event of Disasters or Serious Accidents, 1988, art. 7(5) (“imported without formal procedure and without delivery of a guarantee for temporary duty-free utilization”); Recommendation of the Customs Cooperation Council to Expedite the Forwarding of Relief Consignments in the Event of Disasters, document T2-423, 1970, para. 6 (“wherever possible not require security but be content with an undertaking ... to re-export such equipment”).

<sup>366</sup> Tampere Convention on the Provision of Telecommunication Resources for Disaster Mitigation and Relief Operations, 1998, art. 9(1). The convention further provides examples of “regulatory barriers”, including regulations restricting the import or export of telecommunication equipment, the use of telecommunication equipment or of radio-frequency spectrum, the movement of personnel who operate telecommunication equipment or who are essential to its effective use and the transit of telecommunication resources into, out of and through the territory of a State Party, as well as delays in the administration of such regulations (art. 9(2)).

<sup>367</sup> Agreement between the Republic of Austria and the Federal Republic of Germany Concerning Mutual Assistance in the Event of Disasters or Serious Accidents, 1988, art. 7(4); Agreement on Mutual Assistance in the Event of Disasters or Serious Accidents (with exchange of notes), 1985, Denmark-Federal Republic of Germany, art. 5(5); Convention on Mutual Assistance in Case of Disasters or Serious Accidents, France-Belgium, 1981, art. 5(5); Agreement on mutual assistance in the event of disasters or serious accidents, 1987, France-Switzerland, art. 7(4); Agreement between the Government of the Hellenic Republic and the Government of the Russian Federation on Cooperation in the Field of Prevention and Response to Natural and Man-made Disasters, 2000, art. 10; Convention on Mutual Assistance in Combating Disasters and Accidents, Netherlands-Belgium, 1984, art. 7(6); and Convention on Protection and Civil Defence, Spain-France, 2001, art. 10(3).

<sup>368</sup> See, for example, Agreement on Cooperation on Disaster Preparedness and Prevention and Mutual Assistance in the Event of Disasters, Spain-Russian Federation, of 2000, art. 11.

narcotic drugs<sup>369</sup> prohibiting their importation (to the extent that they are applicable).<sup>370</sup>

109. At the national level, States have incorporated into their domestic laws exemption provisions for the import of relief goods. For example, in Indonesia, a 1997 decree of the Finance Minister allows for the import, by national religious, charitable, social and cultural bodies which have obtained a specific permit, of numerous items, including goods needed for building or repairing religious buildings, hospitals, polyclinics and schools; goods that are part of their permanent inventories; surgical equipment, medical devices and bandage materials used by social organizations; and food, drugs and clothing to be distributed for free for public welfare.<sup>371</sup> While Nepal's Social Welfare Act of 1992 generally imposes a pre-permission process and 45-day waiting period for the import of material by social organizations and institutions, it provides that "no pre-permission shall be required [of] those international institutions established under international Agreements [to] which His Majesty's Government is a party for assistance that relates [to] emergency relief services".<sup>372</sup>

### 3. Transit and freedom of movement

110. In order for disaster relief efforts to operate effectively, their complete freedom of movement must be assured. This general proposition entails several more specific aspects, including transit across transit States, transit and freedom of movement within the receiving State, and issues concerning overflight and landing rights. This section addresses each in turn.<sup>373</sup> Throughout this analysis, the question of transit of

<sup>369</sup> See Single Convention on Narcotic Drugs of 1961, as amended by the 1972 Protocol (United Nations, *Treaty Series*, vol. 976, No. 14152); Convention on Psychotropic Substances, 21 February 1971 (United Nations, *Treaty Series*, vol. 1019, No. 14596); and United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 20 December 1988 (United Nations, *Treaty Series*, vol. 1582, No. 27627).

<sup>370</sup> Agreement between the Republic of Austria and the Federal Republic of Germany Concerning Mutual Assistance in the Event of Disasters or Serious Accidents, 1988, art. 7(4); Convention between Germany and Belgium on the Mutual Assistance in Natural Disasters or Serious Accidents, 1980, art. 5(5); Agreement on Mutual Assistance in the Event of Disasters or Serious Accidents (with exchange of notes), Denmark-Federal Republic of Germany, 1985, art. 5(5); Convention on Mutual Assistance in Case of Disasters or Serious Accidents, France-Belgium, 1981, art. 5(5); Agreement on Mutual Assistance in the Event of Disasters or Serious Accidents, France-Switzerland, 1987, art. 7(4); Convention on Mutual Assistance in Combating Disasters and Accidents, Netherlands-Belgium, 1984, art. 7(6); and Agreement on Cooperation on Disaster Preparedness and Prevention and Mutual Assistance in the Event of Disasters, Spain-Argentina, 1988, art. XIV.

<sup>371</sup> "Indonesia: laws, policies, planning and practices of international disaster response", IFRC, July 2005, pp. 21 and 22, citing decree No. 144/KMK.05/1997 of the Finance Minister of Indonesia art. 1. See also decree No. 569/KMK.05/1998 of the Finance Minister of Indonesia, on Procedures for Granting Exemption from Imports of Goods for the Needs of International Bodies, art. 3.

<sup>372</sup> Nepal, The Social Welfare Act, 2049 (1992), art. 16.

<sup>373</sup> Some instruments deal with multiple aspects of transit (into, out of and through a State) in one provision. See, for example, International Convention on Oil Pollution Preparedness, Response and Cooperation, 1990, art. 7(3) (each Party shall take necessary legal or administrative measures to facilitate "the expeditious movement into, through, and out of its territory of personnel, cargoes, materials and equipment"); Framework Convention on Civil Defence Assistance, 2000, art. 4(a)(7) ("In case of disaster or threat of disaster ... States Parties undertake to facilitate the transit by air, land, sea or river of Civil Defence Units").

goods is analysed together with the freedom of movement of personnel, because the majority of instruments deal with both questions in the same provision.<sup>374</sup>

**(a) Transit across transit States**

111. Numerous instruments include provisions specifically addressing the question of transit through or across transit States in order to reach the receiving State. For example, parties to the 1984 draft convention on expediting the delivery of emergency assistance would “grant the right of transit across or over their territories to the relief consignments, equipment and personnel of the Assisting State or organization, and to their means of transport, proceeding to or returning from the Receiving State”.<sup>375</sup> Several other instruments go a step beyond this, requiring transit States to “facilitate” transit across their territory, or to “ensure all necessary support”,<sup>376</sup> without generally elaborating as to what this should involve.<sup>377</sup> The General Assembly, in resolution 43/131 of 8 December 1988, “urges States in proximity to areas of natural disasters and similar emergency situations, particularly in the case of regions that are difficult to reach, to participate closely with the affected countries in international efforts with a view to facilitating, to the extent

<sup>374</sup> But see, for example, Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance, 2007, art. 16(1)(d) (freedom of movement of personnel) and art. 17(1)(b)-(c) (transit of goods).

<sup>375</sup> A/39/267/Add.2-E/1984/96/Add.2, annex, art. 20(1)(a).

<sup>376</sup> 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, 1998, art. 5 (“The Government of the Transit State shall ensure all the necessary support during the passage of Assistance across the territory of this State according to its national legislation, international law and practice”).

<sup>377</sup> See, for example, Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency, 1986, art. 9 (“Each State Party shall, at the request of the requesting State or the assisting party, seek to facilitate the transit through its territory of duly notified personnel, equipment and property involved in the assistance to and from the requesting State”); Agreement Establishing the Caribbean Disaster Emergency Response Agency, 1991, art. 22 (“Participating States shall, at the request of the requesting State or the sending State, take all measures necessary to facilitate the transit through their territory of duly notified personnel, equipment and property involved in rendering assistance to and from the requesting State”); and art. 9(d) (“The Board of Directors shall ... establish and maintain systems for facilitating the movement of resources originating in or transiting a Participating State having regard to the requirements of immigration and customs authorities”); ASEAN Agreement on Disaster Management and Emergency Response, 2005, art. 16(1) (“Each Party shall, at the request of the Party concerned, seek to facilitate the transit through its territory of duly notified personnel, equipment, facilities and materials involved or used in the assistance to the Requesting or Receiving Party”); Updated Guidelines on the Use of Military and Civil Defence Assets in Disaster Relief — “Oslo Guidelines”, Rev.1, 27 November 2006, para. 63 (“Transit States, especially those bordering the Affected State, will facilitate the movement of military and civil defence assets requested by the Affected State in the same manner that they facilitate the movement of relief goods and personnel”); Declaration of principles for international humanitarian relief to the civilian population in disaster situations, resolution 26 adopted at the 21st International Conference of the Red Cross, Istanbul, September 1969, para. 5 (“All States are requested to exercise their sovereign and other legal rights so as to facilitate the transit, admission and distribution of relief supplies provided by impartial international humanitarian organisations for the benefit of civilian populations in disaster areas when disaster situations imperil the life and welfare of such populations”).

possible, the transit of humanitarian assistance”.<sup>378</sup> General Assembly resolution 46/182 provides that “States in proximity to emergencies are urged to participate closely with the affected countries in international efforts, with a view to facilitating, to the extent possible, the transit of humanitarian assistance”.<sup>379</sup> Some provisions specifically address the issue of transit visas for assisting personnel crossing a transit State.<sup>380</sup> Some instruments also impose a positive obligation to assure the security and protection of transiting relief operations.<sup>381</sup>

**(b) Transit and freedom of movement within the receiving State**

112. Freedom of movement within a receiving State is essential to the effective delivery of disaster assistance, and it should not be assumed that questions of access end after the receiving State’s borders have been crossed. An assisting actor may gain access to the receiving State but fail to gain access to the disaster area itself. In some cases, this may be the result of limitations actively placed on it by the receiving State for political or security reasons. In other cases, practical logistical concerns — such as downed bridges or washed out roads, or simply a lack of resources for large-scale transit of relief goods<sup>382</sup> — may impede the assisting actor from accessing the disaster area. In the first situation, some international instruments impose a negative obligation on receiving States not to unduly limit access to the disaster area. In the second situation, some instruments create an affirmative obligation on receiving States to facilitate transit in various ways. This section analyses each in turn.

*(i) Obligation not to unduly limit access to disaster area*

113. Multiple instruments suggest the existence of a duty on the receiving State to not unduly limit access to the disaster relief area. For example, the 1982 UNITAR Model Rules for Disaster Relief Operations provide that “[t]he receiving State shall permit the designated relief personnel freedom of access to, and freedom of movement within, disaster stricken areas that are necessary for the performance of

<sup>378</sup> General Assembly resolution 43/131 of 8 December 1988, para. 6. See also General Assembly resolution 45/100 of 14 December 1990, para. 7.

<sup>379</sup> General Assembly resolution 46/182, annex, para. 7.

<sup>380</sup> See, for example, resolution of the International Conference of the Red Cross on measures to expedite international relief, 1977 (see note 20 above), recommendation E (“It is recommended that all Governments waive requirements for transit, entry and exit visas for relief personnel acting in their official capacity as representatives of internationally-recognized relief agencies”); Code of Conduct for the International Red Cross and Red Crescent Movement and Non-Governmental Organizations in Disaster Relief, 1995, annex I, para. 2 (“Host governments should facilitate the rapid entry of relief staff, particularly by waiving requirements for transit, entry and exit visas, or arranging that these are rapidly granted”).

<sup>381</sup> See, for example, the draft convention on expediting the delivery of emergency assistance, 1984 (A/39/267/Add.2-E/1984/96/Add.2, annex), art. 20(1)(c).

<sup>382</sup> For example, a European Commission analysis of recent European practice notes that “not all civil protection authorities of the Member States own aerial transport means on which they can rely at all times. In some cases, no procedures exist to use national military means for the transport of civil protection assistance. Arranging commercial aircraft is often cumbersome and time-consuming. Member States may be competing for the same means. Moreover, the transport costs are in some cases disproportionate to the financial value of the assistance”. European Commission, proposal for a Council decision establishing a Community civil protection mechanism (recast), COM(2006)29 final, 2006, p. 7.

their specifically agreed functions”.<sup>383</sup> The International Law Association’s Draft Model Agreement on International Medical and Humanitarian Law provides that “the organization, its personnel, vehicles, ships, aircraft and equipment shall enjoy the freedom of movement necessary for their effective functioning, in particular in the zone of operations and between this zone and points of access to the (national) territory”.<sup>384</sup> The 2003 resolution of the Institute of International Law on humanitarian assistance provides that “the affected States shall permit the humanitarian personnel full and free access to all the victims and ensure the freedom of movement and the protection of personnel, goods and services provided”.<sup>385</sup> Similar provisions can be found in other declaratory texts.<sup>386</sup> In contrast, no such provisions were identified in multilateral or bilateral treaties.<sup>387</sup>

114. At the national level, different approaches are taken. Several national laws in fact restrict freedom of movement in times of disaster. The South African Disaster Management Act provides that if a national state of disaster has been declared, the relevant cabinet Minister may “make regulations or issue directions ... concerning ... the regulation of the movement of persons and goods to, from or within the disaster-stricken or threatened area”.<sup>388</sup> Similar provisions are found in other national or state laws.<sup>389</sup> The Japanese Disaster Countermeasures Basic Act

<sup>383</sup> UNITAR, *Policy and Efficacy Studies* No. 8 (Sales No. E.82.XV.PE/8), annex A, rule 16.

<sup>384</sup> Art. 9. Reproduced in the report of the 59th Conference of the International Law Association (Belgrade, 17-23 August 1980).

<sup>385</sup> Sect. VII, para. 3. See also art. VII(1) (“Humanitarian assistance missions shall be exempted from any requisition, import, export and transit restrictions and customs duties for relief goods and services”).

<sup>386</sup> Mohonk Criteria for Humanitarian Assistance in Complex Emergencies, 1995, para. 2 (calling upon Member States of the United Nations to “acknowledge and ensure the right of access by humanitarian assistance organizations to endangered populations in complex emergencies”); Model Agreement Covering the Status of Military and Civil Defence Assets (Guidelines on the Use of Military and Civil Defence Assets in Disaster Relief — “Oslo Guidelines”, Rev.1, November 2006, annex I), para. 9 (providing that “the Government of the Affected State grants to the military and civil defence operation and its members together with its vehicles, vessels, aircraft and equipment, freedom of movement within the disaster zone of the Affected State and any other area necessary for the fulfilment of its task”). The IASC Operational Guidelines on Human Rights and Natural Disasters and the Guiding Principles on Internal Displacement should also be noted, each including provisions guarantying the freedom of movement of the victims of disasters; see A/HRC/4/38/Add.1 (23 January 2006), part D.2; and “Guiding Principles on Internal Displacement: Annotations”, *Studies in Transnational Legal Policy*, No. 32 (Washington, D.C.: American Society of International Law, 2000), principle 6(2)(d).

<sup>387</sup> However, some bilateral treaties contain provisions regarding the facilitation of access and overflight and landing rights (see paras. 116-120 below).

<sup>388</sup> Disaster Management Act, 2002 (South Africa), sect. 27(2). It is noted in section 27(3), however, that such power may be exercised only to the extent that it serves specifically enumerated purposes, including assisting and protecting the public, providing relief, protecting property, preventing or combating disruption, or dealing with the destructive and other effects of the disaster.

<sup>389</sup> See, for example, Disaster Prevention and Response Act, 2002 (Taiwan Province of China), art. 31(2); Gujarat State Disaster Management Act, 2003, art. 21(2)(d) (providing that the State Relief Commissioner may “control and restrict vehicular traffic to, and from and within the affected area [and] control and restrict the entry of any person into, movement within and departure from an affected area”); An Act to Provide for the Relief Work Relating to the Natural Calamity, 1982 (Nepal), para. 4a. (“His Majesty’s Government may issue an order requiring the foreign nationals or agencies to take the approval of His Majesty’s Government to enter into any area affected by Natural Calamity for any purpose”).

provides that “when a disaster has occurred or is imminent, the mayor of the city or town, or the head of the village may, when deemed necessary to prevent danger to life or limb, establish a restricted area to which access shall be restricted or prohibited to any person other than those engaged in emergency measures, or may order any persons other than those so engaged to leave the area”.<sup>390</sup>

115. Other national laws permit greater access for disaster relief personnel. For example, Hungarian law requires the police to “take measures promoting the quick advancement on public roads of forces participating in the elimination of disasters or emergencies [and] safeguard the routes of movement of domestic and international aid deliveries and assistance teams”.<sup>391</sup> Mongolian law includes access to the disaster relief site within a list of rights of disaster relief personnel.<sup>392</sup> Czech law provides that owners, users or managers of real estate are obliged “to allow access of persons performing rescue or remedy work on estates or into buildings”.<sup>393</sup>

(ii) *Facilitation of access*

116. Some provisions concerning freedom of movement go beyond merely limiting the ability of a receiving State to hinder freedom of movement and actually require that they undertake positive steps to facilitate that movement. General Assembly resolution 46/182 is of particular relevance, stipulating that the Emergency Relief Coordinator would have the responsibility of “actively facilitating, including through negotiation if needed, the access by the operational organizations to emergency areas for the rapid provision of emergency assistance by obtaining the consent of all parties concerned, through modalities such as the establishment of temporary relief corridors where needed, days and zones of tranquillity and other forms”.<sup>394</sup> Certain other instruments call upon States to facilitate transit and freedom of movement without elaborating upon the specific modalities of this obligation.<sup>395</sup> Several instruments address the facilitation of access through the provision of free space on national airlines or other facilities. For example, a bilateral treaty between the United States and China stipulates that “the Chinese Government will permit *and facilitate* the movement of the United State representatives to, in or from China”, offering the specific obligation that it “will

<sup>390</sup> Disaster Countermeasures Basic Act, June 1997 (Japan), art. 63. See also art. 76 relating to traffic restrictions in time of disaster.

<sup>391</sup> Order No. 48/1999 (XII.15) of the Minister of the Interior on the disaster protection tasks of organs subordinated to the Minister of the Interior (Hungary), sect. 15(3)(c) and (d).

<sup>392</sup> Law on Disaster Protection (Mongolia), art. 30(2). See also Sri Lanka Disaster Management Act No. 13, 2005, para. 14(1)(a) (listing entry into the disaster area as one of the duties of disaster relief organizations, but applicable only to organizations designated by the National Council for Disaster Management).

<sup>393</sup> Law on the Integrated Rescue System (Czech Republic), 2000, sect. 25(2)(c).

<sup>394</sup> Annex, para. 35(d).

<sup>395</sup> See, for example, European Council decision (2001/792/EC) of 23 October 2001 establishing a Community mechanism to facilitate reinforced cooperation in civil protection assistance interventions (*Official Journal of the European Communities*, vol. 44, No. L 297), art. 4(h) (providing that the “Commission shall ... take measures to facilitate transport of resources for assistance intervention and other support action”); Draft international guidelines for humanitarian assistance operations, 1991, art. 21(h) (States shall both “ensure *and facilitate* freedom of access to and freedom of movement within the area of humanitarian assistance operations for the designated personnel of the assisting State or organization for the purpose of their mission”) (emphasis added).



furnish the necessary automobile transportation to permit the United States representatives to travel freely throughout China and without delay”.<sup>396</sup> Similarly, a bilateral treaty between Switzerland and the Philippines provides that “the competent authorities of the requesting state shall undertake ... to facilitate rapid transport to the location of the disaster the aid units, their dogs, equipment and aid supplies”.<sup>397</sup>

117. The UNITAR Model Rules for Disaster Relief Operations suggest that “the receiving State and the assisting State shall take all possible measures for their airlines to provide transport on a priority basis for designated relief personnel and relief supplies” and “take all possible measures so that their airlines accord free transportation or transportation at minimal fares or rates for the designated relief personnel and relief supplies”.<sup>398</sup> The Model Rules further recommend that the receiving State and the assisting State should provide free transportation for relief consignments, or levy charges that “shall not be higher than the charges applied by the State for the transport of its own supplies”.<sup>399</sup> The Principles and Rules for Red Cross and Red Crescent Disaster Relief provide that “National Societies should make every effort to obtain facilities from governmental or private transport services in their countries for the rapid transport, whenever possible free or at reduced rates, of relief supplies, including goods in transit, for disaster victims”.<sup>400</sup> The resolution of the International Conference of the Red Cross on measures to expedite international relief recommends that “all Governments authorize their national airlines — whether members of IATA or not — to accord free transportation or, if this is not possible, transportation at minimal rates to relief consignments and relief personnel wherever reasonably possible. Potential recipient Governments in particular should instruct their national airlines to accord such treatment to incoming relief personnel and relief shipments, even to the extent of deferring transport of regular passengers and commercial cargo”. The Australian Government Overseas Disaster Assistance Plan provides that “NGO resources being dispatched to meet a request for assistance from an equivalent organization in a disaster affected country may be transported by the Commonwealth Government on a ‘space available’ basis, provided that the movement has been approved by the disaster management agency of the recipient country”.<sup>401</sup>

(iii) *Overflight and landing rights*

118. Overflight and landing rights are often accorded their own provisions in instruments on disaster relief. Although such issues may arise in either of the contexts discussed in sections (a) and (b) above (i.e. in the transit State or in the

<sup>396</sup> Agreement concerning the United States relief assistance to the Chinese people (with Exchange of Notes), China-United States of America, 1947, art. V(a)-(b).

<sup>397</sup> Agreement between the Swiss Federal Council and the Government of the Republic of the Philippines on Cooperation in the Event of Natural Disaster or Major Emergencies, 6 December 2001, art. 8.2.

<sup>398</sup> UNITAR, *Policy and Efficacy Studies*, No. 8 (Sales No. E.82.XV.PE/8), annex A, rule 8.

<sup>399</sup> *Ibid.*, rule 11(2).

<sup>400</sup> Principles and Rules for Red Cross and Red Crescent Disaster Relief, para. 9.4. Reprinted in *International Review of the Red Cross*, No. 310 (29 February 1996), annex IV.

<sup>401</sup> Recommendation J (see note 20 above); Australian Government Overseas Disaster Assistance Plan, April 1998, para. 6.1.2.

receiving State), such provisions often do not make this distinction, and are rather drafted in a general manner applicable in any location.<sup>402</sup>

119. Annex 9 to the Convention on International Civil Aviation provides that “Contracting States shall facilitate the entry into, departure from and transit through their territories of aircraft engaged in relief flights performed by or on behalf of international organizations recognized by the United Nations or by or on behalf of States themselves”.<sup>403</sup> It further emphasizes that “such flights shall be commenced as quickly as possible after obtaining agreement with the recipient State” and that personnel and articles arriving on such flights shall be “cleared unnecessary delay”.<sup>404</sup> A number of bilateral treaties contain similar provisions on overflight and landing rights in disaster. Almost all bilateral treaties limit their treatment of transit and freedom of movement to such a provision without considering those issues of ground movement in the transit or receiving States discussed in the previous two sections.<sup>405</sup> Multiple resolutions also include a provision on overflight and landing rights, providing variously that “permission for overflight and staging should be granted without delay and any landing fees or related charges should be waived”,<sup>406</sup>

<sup>402</sup> But see UNITAR Model Rules for Disaster Relief Operations, 1982, annex A, rule 10 (“The *receiving State* shall grant permission for overflight and landing of aircraft transporting designated relief personnel and relief supplies”) (emphasis added).

<sup>403</sup> Convention on International Civil Aviation, 1944, para. 8.8. See also para. 8.10 (“In cases of emergency, Contracting States shall facilitate the entry, transit and departure of aircraft engaged in the combating or prevention of marine pollution, or other operations necessary to ensure maritime safety, safety of the population or protection of the marine environment”).

<sup>404</sup> *Ibid.*, paras. 8.8 and 8.9.

<sup>405</sup> See, for example, Agreement between the Republic of Austria and the Federal Republic of Germany Concerning Mutual Assistance in the Event of Disasters or Serious Accidents, 1988, art. 8; Agreement on Mutual Assistance in the Event of Disasters or Serious Accidents (with exchange of notes), Denmark-Federal Republic of Germany, 1985, art. 6; Convention on Mutual Assistance in Case of Disasters or Serious Accidents, France-Belgium, 1981, art. 6; Convention on Mutual Assistance in the Event of Disasters or Serious Accidents, France-Germany, 1977, art. 6; Agreement Between the Government of the Republic of Mozambique and the Government of the Republic of South Africa Regarding the Coordination of Search and Rescue Services, 2002, art. 5(5); Convention on Mutual Assistance in Combating Disasters and Accidents, Netherlands-Belgium, 1984, art. 8; Agreement on Mutual Assistance between Portuguese and Spanish Fire and Emergency Services, 1980 (terminated and superseded by the Protocol between the Kingdom of Spain and the Portuguese Republic of Technical Cooperation and Mutual Assistance in the Field of Civil Defence, 9 March 1992), art. 2(4)-(5); Agreement between the Government of the Republic of South Africa and the Government of the Republic of Namibia, regarding the Coordination of Search and Rescue Services, 2000, art. 5(5); Agreement on Cooperation on Disaster Preparedness and Prevention and Mutual Assistance in the Event of Disasters, Spain-Argentina, 1988, art. XV. The Protocol between the United Nations and the Government of the Republic of Uzbekistan to Facilitate the Delivery of Humanitarian Assistance from Uzbekistan to Afghanistan, 2001, paras. 1.16-1.17, establishes complementary obligations on the United Nations and the Government: While the United Nations is obliged to provide advance notice of planned overflights or landing of its aircraft and advise all international organizations and non-governmental organizations of relevant airspace regulations in Uzbekistan, the Government is obliged to grant overflight and landing rights equally among all humanitarian assistance providers.

<sup>406</sup> Draft international guidelines for humanitarian assistance operations, 1991, art. 14.

and that it “would be desirable for such authorizations to be valid for the duration of the emergency relief phase”.<sup>407</sup>

## C. Status

120. Disaster relief raises important questions of status for the personnel involved and the organizations to which they belong. This section will first consider ways to identify disaster relief operations, including the use of an internationally recognized symbol, the issuance of identity cards to individual members of disaster relief teams and the submission of personnel lists to the authorities of the receiving State. Second, it will consider the issue of privileges, immunities and facilities, including those accorded to State officials, intergovernmental organizations and their staff, and international non-governmental organizations.

### 1. Identification

121. In order for disaster relief personnel to be effective, they must be easily identifiable to victims, members of the Government of the receiving State and other disaster relief teams. In this regard, three different types of provisions concerning identification are regularly identified in disaster-related instruments. First, certain provisions authorize the use of an internationally recognized symbol to be worn by disaster relief personnel or displayed on their equipment. Second, a different type of provision deals with the specific identity of each individual member of a disaster relief team, generally through the use of identity cards. Third, some provisions deal with identification by requiring the assisting actor to submit a personnel list to the receiving State. This section will deal with each type of provision in turn.

#### (a) Distinctive sign or symbol for disaster relief operations

122. Several instruments provide for the use of a distinctive sign to identify disaster relief operations, their personnel and their equipment. The ASEAN Agreement on Disaster Management and Emergency Response provides that “[m]ilitary personnel and related civilian officials involved in the assistance operation shall be permitted to wear uniforms with distinctive identification while performing official duties”.<sup>408</sup> The Convention on the Safety of United Nations and Associated Personnel, of 1994, as extended by the Optional Protocol of 2005,<sup>409</sup> requires personnel, vehicles, vessels and aircraft involved in the delivery of emergency humanitarian assistance to be “appropriately identified unless otherwise decided by the Secretary-General of the United Nations”.<sup>410</sup> The 1984 draft convention on expediting the delivery of emergency assistance provides that “[a]ssisting States or organizations which use an internationally recognized distinctive sign should use that sign to identify their relief

<sup>407</sup> Resolution of the International Conference of the Red Cross on measures to expedite international relief, 1977 (see note 20 above), recommendation L. See also Code of Conduct for the International Red Cross and Red Crescent Movement and Non-Governmental Organizations in Disaster Relief, 1995, annex I, para. 2 (“Governments should grant over-flight permission and landing rights for aircraft transporting international relief supplies and personnel, for the duration of the emergency relief phase”).

<sup>408</sup> ASEAN Document Series 2005, p. 157, art. 15.

<sup>409</sup> See the discussion on the protection of United Nations officials and associated personnel in paras. 204-209 below.

<sup>410</sup> Convention on the Safety of United Nations and Associated Personnel (United Nations, *Treaty Series*, vol. 2051, No. 35457), art. 3(1).

consignments, equipment, means of transport, personnel and their locations as necessary” while those that do not normally use such a sign should use the international distinctive sign of civil defence.<sup>411</sup>

123. The Max Planck Guidelines recommend that “an internationally recognized distinctive sign may be used for indicative purposes to identify humanitarian assistance consignments, services and personnel” and that “the applicable rules governing the use of the United Nations flag and emblem and of the red cross and red crescent emblems shall be respected”.<sup>412</sup> The Balkans National Societies Recommended Rules and Practices recommend that Governments “permit identification of relief goods and services and relief personnel, in accordance with law, especially the use of the Red Cross/Red Crescent emblem”.<sup>413</sup> The Draft Model Agreement on International Medical and Humanitarian Law provides that “[t]he personnel of the organization shall wear uniforms/a distinctive sign”.<sup>414</sup>

124. With regard to national law, Mongolian law states that “the disaster protection serviceman shall wear the uniform with the rank and insignias according to [his] official position”.<sup>415</sup> Hungarian law on civil protection provides that “the clothes of the person performing civil protection service, as well as any vehicle, technical equipment or facility used for civil protection purposes shall be marked with the international distinguishing sign of civil protection, namely ‘The Civil Protection Service of the Republic of Hungary’”.<sup>416</sup> Similarly, Panamanian law requires that the National Civil Protection Institute identify itself with a distinct symbol, and provides a detailed description of this symbol.<sup>417</sup> United States law contains a similar provision.<sup>418</sup>

**(b) Identity cards**

125. Certain instruments address the issue of identity through the use of identity cards. Such clauses are drafted in three different ways. First, some provisions are phrased so as to place the burden of having valid identification documents on the disaster relief personnel themselves. For example, the bilateral treaty on disaster relief between Spain and Argentina provides that disaster relief personnel “must be in possession of an identity document that is valid in the requested [i.e. their own] State” as well as a certificate “issued by the coordinating body of the State

<sup>411</sup> A/39/267/Add.2-E/1984/96/Add.2, annex, art. 12(1)-(2). The draft convention further provides, in article 12(3), that all actors shall “take measures necessary to supervise the display of these signs and to prevent their misuse”.

<sup>412</sup> Peter MacAlister-Smith, Draft international guidelines for humanitarian assistance operations (Max Planck Institute for Comparative Public Law and International Law, Heidelberg, Germany 1991), art. 13.

<sup>413</sup> Recommended Rules and Practices, Balkans National Societies meeting on international disaster response law (Belgrade, 20-26 September 2004), part III, para. 15.

<sup>414</sup> Art. 15(2). Reproduced in the report of the 59th Conference of the International Law Association (Belgrade, 17-23 August 1980).

<sup>415</sup> Law on Disaster Protection (Mongolia), 2003, art. 32.

<sup>416</sup> Law on Civil Protection (Hungary), section 32.

<sup>417</sup> Act 22 of 15 November 1982 establishing the National Institute of Civil Protection (Panama), 1995, art. 33.

<sup>418</sup> United States, Federal Civil Defense Act, 1950, sect. 204.

concerned, which shall indicate the emergency operation, and the list of persons comprising the team”.<sup>419</sup>

126. Second, certain provisions are drafted so as to allow recognition of existing identity documents of the assisting actors in the receiving State. For example, an agreement between France and Belgium, using terms similar to those of numerous bilateral treaties, provides that “the leader of an emergency team shall merely be required to carry a certificate indicating the emergency operation, the type of unit and the number of persons comprising it. The certificate shall be issued by the authority to which the unit reports. The members of the emergency team shall be exempt from passport and residence permit requirements”.<sup>420</sup> Although this provision is situated within an article concerning border crossing, the language employed (the phrase “shall *merely* be required to carry ...” and as the reference to exemption from residency requirements) leaves open the interpretation that this certificate is the only documentation required of disaster relief personnel as a general matter once inside the territory of the receiving State, thus sufficing for identification purposes as well.

127. Third, some provisions require the receiving State to actively facilitate the identification of disaster relief personnel by issuing them identity cards. For example, the Inter-American Convention to Facilitate Disaster Assistance states that “the assisting state and the assisted state shall make every possible effort to provide the assistance personnel with documentation or other means by which to identify them as such”.<sup>421</sup> Similarly, the Model Agreement Covering the Status of Military and Civil Defence Assets, annexed to the Oslo Guidelines, provides that “the Head of the MCDA operation shall issue to all locally recruited personnel an identity card, which shall contain the following information: full name; date of birth; service (if appropriate); date of issue and date of expiration, and a photograph”.<sup>422</sup>

<sup>419</sup> Agreement on cooperation on disaster preparedness and prevention and mutual assistance in the event of disasters, 1988, Spain-Argentina, art. XIII. See also Convention on the Safety of United Nations and Associated Personnel, 1994, art. 3(2) (“All United Nations and associated personnel shall carry appropriate identification documents”), as extended by the Optional Protocol of 2005. See the discussion on the protection of United Nations and associated personnel in paras. 204-209 below.

<sup>420</sup> Convention on Mutual Assistance in Case of Disasters or Serious Accidents, France-Belgium 1981, art. 4(2). The Convention further states in article 4(3) that “if, in a particularly urgent case, the certificate referred to in paragraph 2 above cannot be presented, any other appropriate certificate indicating that the frontier is to be crossed for the purpose of carrying out an emergency operation shall suffice”.

<sup>421</sup> Art. VII(b).

<sup>422</sup> Guidelines on the Use of Military and Civil Defence Assets in Disaster Relief — “Oslo Guidelines”, Rev.1, November 2006, annex I, paras. 31 and 32. See also para. 33 (“Those military and civil defence personnel deployed as United Nations military and civil defence assets shall be identified by appropriate markings”); para. 6 (“The Government of the Affected State grants to the military and civil defence operation the right to display the national flag or other suitable identification at its headquarters, camps or other premises, and on its vehicles and vessels. Military and civil defence personnel deployed under the auspices of the Office for the Coordination of Humanitarian Affairs and holding the status of experts on mission for the United Nations will wear an appropriate marking”); and para. 29 (“foreign military and civil defence personnel deploying on disaster relief missions will do so ... in national uniforms”).

**(c) Personnel lists**

128. Finally, some instruments deal with the question of identification by requiring the head of a relief operation to submit a personnel list to the receiving State. For example, the bilateral treaty between Chile and Argentina provides that the assisting State shall send a list through diplomatic channels to the receiving State including the place and time of entry of its team; the names, categories, functions and identification numbers of its members; the names of the organizations of which they form part; and a description of the technical support equipment they carry.<sup>423</sup> The Australian Government Overseas Disaster Assistance Plan contains a similar list of information which disaster relief personnel should provide to the National Emergency Management Coordination Centre “to enable the Australian Head of Mission to ... issue any necessary Document of Identity”.<sup>424</sup>

**2. Privileges, immunities and facilities**

129. A number of international conventions afford privileges and immunities to certain entities and categories of individuals, such as the diplomatic and consular representatives of Governments<sup>425</sup> or intergovernmental organizations and their personnel.<sup>426</sup> These privileges and immunities vary depending on the beneficiary, but generally include facilities regarding the entry into the territory and work permits; freedom of movement and travel in the territory, subject to domestic legislation; inviolability of premises, archives and communications; exemptions from personal service, customs and taxes; immunity from personal arrest or detention and from legal process; and other facilities for the performance of the functions of the diplomatic and consular missions or international organizations. International organizations are also granted juridical personality under domestic law and thus have the capacity to contract, acquire and dispose of property and to institute legal proceedings. The above-mentioned conventions are widely ratified and it is generally recognized that at least some of the relevant rules are part of customary law.<sup>427</sup>

130. The general rules described above may be relevant in the situations contemplated by the present study. Thus, for instance, international organizations

<sup>423</sup> Agreement between the Republic of Chile and the Argentine Republic on Disaster Cooperation, 1997, art. 5(1).

<sup>424</sup> Australian Government Overseas Disaster Assistance Plan (April 1998), paras. 6.3.2 and 6.3.3.

<sup>425</sup> Vienna Convention on Diplomatic Relations, 1961; Vienna Convention on Consular Relations, 1963; Convention on Special Missions, 1969. Although the latter convention defines a “special mission” in broad terms as “a temporary mission, representing the State, which is sent by one State to another State with the consent of the latter for the purpose of dealing with it on specific questions or of performing in relation to it a specific task” (art. 1 (a)), the *travaux préparatoires* make it clear that it was aimed at regulating the phenomenon of ad hoc diplomacy (see A/CN.4/166 in *Yearbook of the International Law Commission 1964*, vol. II, paras. 11-19 and 61-119, and paragraphs 2 and 3 of the commentary of the Commission to art. 1, *Yearbook ... 1967*, vol. II, p. 348).

<sup>426</sup> Convention on the Privileges and Immunities of the United Nations, 1946; Convention on the Privileges and Immunities of Specialized Agencies, 1947; Agreement on the Privileges and Immunities of the International Atomic Energy Agency, 1959.

<sup>427</sup> On the privileges and immunities recognized by the 1961 and 1963 Vienna Conventions, see International Court of Justice, *Diplomatic and Consular Staff (United States v. Iran)*, Judgment of 24 May 1980, *I.C.J. Reports 1980*, para. 62 (see also para. 86). It is also well established that other individuals (such as State officials, in particular heads of State or Government) are also afforded certain privileges and immunities under international law.

and their staff participating in disaster relief operations will enjoy, in that particular context, the privileges and immunities granted under the relevant conventions. Nevertheless, the question arises whether the specificities of disaster relief operations may require an adaptation of the privileges and immunities normally recognized under international law. This entails two issues that have been addressed in several international and domestic instruments. The first one (*ratione materiae*) is whether the privileges and immunities that are usually granted need to be supplemented with other legal facilities better adapted to the needs of disaster relief operations. This issue has already been extensively addressed in other sections of this study, dealing with visas, entry and work permits and freedom of movement of disaster relief personnel, customs, duties and tariffs for relief consignments, communications, etc. The second issue (*ratione personae*) is whether privileges and immunities should be afforded to entities or persons involved in disaster relief operations who are normally not covered by them.<sup>428</sup>

**(a) State officials participating in international disaster relief operations**

131. The question of privileges, immunities and facilities of State officials participating in disaster relief operations on the territory of another State is the object of specific provisions in some multilateral treaties. These provisions usually impose on the receiving State an obligation to grant the privileges, immunities and facilities necessary for the performance of disaster relief work. Some instruments limit the provision of privileges and immunities to the statement of this general principle. For instance, the Framework Convention on Civil Defence provides that, in case of disaster or threat of disaster:

The Beneficiary State shall, within the framework of national law, grant all privileges, immunities, and facilities necessary for carrying out the assistance

<sup>428</sup> A number of instruments in this field contain general provisions under which the State receiving assistance is called upon to facilitate the work of the relevant entities in implementing humanitarian assistance (see, for instance, paragraph 6 of the annex to General Assembly resolution 46/182; paragraph 6 of the Declaration of Principles for International Humanitarian Relief to the Civilian Population in Disaster Situations (resolution 26 adopted by the 21st International Conference of the Red Cross in September 1969); and section 27(2)(o) of South Africa's Disaster Management Act No. 57 of 2002) or to ensure the protection of the personnel providing relief. Although privileges, immunities and other facilities are certainly to be placed in the general framework of the cooperation required from the receiving State, the present section will rather focus on the provisions in international and domestic instruments dealing specifically with the issue of privileges, immunities and facilities.

Furthermore, the present section will focus on the privileges, immunities and facilities at the international level, and will therefore not consider provisions granting immunity from legal process to national officers and employees involved in disaster relief operations (for an example of such a provision, see paragraph 74 of the Disaster Management Act No. 53 (India), 23 December 2005).

Finally, it should be noted that some national legislation contains provisions under which persons enjoying privileges and immunities under international law (such as diplomatic personnel) can not be forced to supply personal help in the context of disaster relief operations or goods covered by privileges and immunities cannot be requisitioned for the purposes of relief (see, for instance, para. 26 of chapter II (Exceptions) to part II (Rights and obligations of legal entities and natural persons in emergencies) of the Law on the Integrated Rescue System and on the Amendment of Some Laws (Czech Republic), 28 June 2000; arts. 72 (b) and 74 of the National Security Law 1987-1988 (Ecuador); or art. 19(2) of Act No. 2935 (Turkey), State of Emergency Law of 27 October 1983. Those provisions do not fall under the scope of the present section.

and shall provide protection for personnel and for property belonging to the Civil Defence Unit of the Supporting State.<sup>429</sup>

132. Other multilateral treaties, however, include more detailed provisions, including rules on the precise identification of the beneficiaries of such privileges and immunities and their corresponding obligation to respect the laws of the receiving State. For example, article 8 of the Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency, of 1986, provides that the requesting State is bound to afford to the assisting party immunity from arrest, detention and legal process and exemption from taxation, duties or other charges for the personnel of the assisting party (when duly notified to and accepted by the requesting State) in respect of the performance of assistance functions; and exemption from taxation, duties and other charges and immunity from seizure, attachment or requisition of equipment and property used for the purpose of assistance.<sup>430</sup> The Tampere Convention on the Provision of Telecommunication Resources for Disaster Mitigation and Relief Operations, of 1998,<sup>431</sup> provides that the requesting States shall,

to the extent permitted by its national law, afford to persons, other than its nationals, and to organizations, other than those headquartered or domiciled within its territory, who act pursuant to this Convention to provide telecommunication assistance and who have been notified to, and accepted by, the requesting State Party, the necessary privileges, immunities, and facilities for the performance of their proper functions.<sup>432</sup>

The Convention thus imposes an obligation (limited by the reference to the State's national law) to grant the necessary privileges, immunities and facilities to those who provide assistance relief. The provision thereafter provides a non-exhaustive list of privileges and immunities to be afforded, which include immunity from arrest, detention and legal process in respect of conduct directly related to the provision of telecommunications assistance; exemption from taxation, duties or other charges; and immunity from seizure, attachment or requisition of equipment, materials and property used for telecommunications assistance. References are also made to the duty of the requesting State to provide, to the extent of its capabilities, local facilities and services for the proper and effective administration of telecommunications assistance, and to ensure the protection of the personnel, equipment and materials involved in such assistance.

133. Provisions on privileges, immunities and facilities are also contained in regional conventions. For instance, under the Nordic Mutual Emergency Assistance Agreement in Connection with Radiation Accidents, of 1963, "the Requesting State shall afford, in relation to the assistance, the necessary facilities, privileges and

<sup>429</sup> Framework Convention on Civil Defence Assistance, 22 May 2000, art. 4, para. (a)(5).

<sup>430</sup> Paras. 2 and 3. It should be noted that States may opt out from the obligations provided for under paragraphs 2 and 3 at the time of signing, ratifying, accepting, approving or acceding to the Convention (paras. 9 and 10). It is also clarified that the requesting State is not obliged to provide its nationals or permanent residents with the listed privileges and immunities (para. 6), and that the beneficiaries of those privileges and immunities have a duty to respect its laws and regulations (para. 7). Provision is also made for a savings clause with regard to rights and obligations with respect to privileges and immunities afforded pursuant to other international agreements or customary international law (para. 8).

<sup>431</sup> Art. 5 (Privileges, immunities and facilities).

<sup>432</sup> Art. 5(1).



immunities with a view to securing the expeditious performance of functions under this Agreement”.<sup>433</sup> Under the ASEAN Agreement on Disaster Management and Emergency Response, of 2005, the requesting or receiving Party shall, in accordance with its national laws and regulations, accord to the assisting entity exemptions and facilities in respect of the provision of assistance.<sup>434</sup> Under the Inter-American Convention to Facilitate Disaster Assistance, of 1991, the assisted State undertakes to “provide, to the extent of its capabilities, local facilities and services for the proper and effective administration of the assistance” and to “make its best efforts to protect personnel, equipment, and materials brought into its territory by or on behalf of the assisting State for such purpose”.<sup>435</sup> In addition, assistance personnel “shall not be subject to the criminal, civil or administrative jurisdiction of the assisted State for acts connected with the provision of assistance”.<sup>436</sup>

134. The relevant provisions in regional conventions may also be more detailed. For example, article 21 of the Agreement Establishing the Caribbean Disaster Emergency Response Agency, of 1991, affirms the principle by which “the requesting State shall accord to personnel of the sending State and personnel acting on its behalf the necessary privileges, immunities and facilities for the performance of their functions in rendering assistance”, but also identifies a list of certain specific privileges and immunities to be granted, in analogous terms to those of the Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency.

135. Model bilateral agreements in the context of disaster relief operations tend to include specific provisions on privileges, immunities and facilities. For example, the UNITAR Model for Disaster Relief Operations Rules provide that the receiving State, in its relations with an assisting State, “shall extend to the designated relief personnel the necessary facilities with a view to securing the expeditious performance of relief functions”.<sup>437</sup> Relief personnel, for their part, have the corresponding obligation to “cooperate at all times with the appropriate authorities

<sup>433</sup> Art. VI. The provision further refers to the privileges and immunities to be granted to the International Atomic Energy Agency: “In relation to assistance provided by the International Atomic Energy Agency, the Requesting State shall apply the Agreement on the Privileges and Immunities of the Agency”.

<sup>434</sup> ASEAN Document Series 2005, p. 157, art. 14. More specifically, the requesting or receiving party shall “accord the Assisting Entity exemptions from taxation, duties and other charges of a similar nature on the importation and use of equipment including vehicles and telecommunications, facilities and materials brought into the territory of the Requesting or Receiving Party for the purpose of the assistance”, and shall “facilitate the entry into, stay in and departure from its territory of personnel and of equipment, facilities and materials involved or used in the assistance”. The receiving party is also called upon to cooperate with the ASEAN Coordinating Centre for Humanitarian Assistance on disaster management, to facilitate the processing of exemptions and facilities in respect of the provision of assistance.

<sup>435</sup> Art. IV.

<sup>436</sup> Art. XI. The provision specifies that this exemption does not apply in the case of “acts unrelated to the provision of assistance or, in civil or administrative actions, to wilful misconduct or gross negligence”. The provision further indicates that assistance personnel have the obligation to respect the laws and regulations of the assisted State and of States they may cross en route, and shall abstain from political or other activities inconsistent with the said laws and with the terms of the Convention. Finally, it is provided, under the same article, that “judicial actions brought against assistance personnel or against the assisting state shall be heard and may be decided in the courts of the assisted state”.

<sup>437</sup> UNITAR, *Policy and Efficacy Studies*, No. 8 (Sales No. E.82.XV.PE/8), annex A, rule 14.

of the receiving State to facilitate the proper administration of justice, secure the observance of police regulations and prevent the occurrence of any abuse in connection with the facilities granted".<sup>438</sup> Similarly, in its Draft Model Agreement on International Medical and Humanitarian Law, the International Law Association also recommends the inclusion of provisions on privileges and immunities in bilateral agreements between a receiving State and an entity (in particular, from a State) providing relief, and includes proposed articles on the inviolability of facilities and correspondence of the entity (article 4), exemptions from customs and taxes (article 5), as well as facilities for the entry of personnel in the territory and safety of that personnel (article 14).<sup>439</sup>

136. While some bilateral treaties are cast in general terms,<sup>440</sup> most are typically more detailed and focus on specific legal facilities relating, for instance, to the entry into the territory, the waiver of claims for compensation, the protection of communications or certain tax exemptions or immunities for the assisting State, its personnel and equipment, consignments or operational goods. For example, under an agreement between Argentina and Spain, members of emergency teams involved in assistance in the event of disasters "shall be immune from the administrative, civilian and criminal jurisdiction of the requesting State with respect to activities implemented in the performance of their duties in the territory of that State".<sup>441</sup> Under the Grant Agreement for relief and rehabilitation between the United States of America and Bangladesh, United States Government employees and their families, as well as public or private organizations under contract with or financed by the United States Agency for International Development, their personnel and

<sup>438</sup> Ibid.

<sup>439</sup> Reproduced in the report of the 59th Conference of the International Law Association (Belgrade, 17-23 August 1980). See also: Updated Guidelines on the Use of Military and Civil Defence Assets in Disaster Relief — "Oslo Guidelines", Rev.1, November 2006, para. 30 and annex I.

<sup>440</sup> See, for example, art. V ("United States representatives"), para. (c), of the United States-China Agreement concerning the United States relief assistance to the Chinese people (with Exchange of Notes), of 1947, which equates the privileges and immunities of the personnel involved in the relief operation to those of United States diplomatic personnel in China ("The United States representatives and the property of the mission and of its personnel shall enjoy in China the same privileges and immunities as are enjoyed by the personnel of the United States Embassy in China and the property of the Embassy and of its personnel"). In provisions of this kind, reference is occasionally made to the 1961 Vienna Convention on Diplomatic Relations. For example, under article II of the Agreement between the Government of the United States of America and the Government of the Republic of Belarus regarding Cooperation to Facilitate the Provision of Assistance, 1996, "Personnel of the United States Government present in the Republic of Belarus in connection with the implementation of United States assistance programs shall be accorded status equivalent to that accorded administrative and technical staff personnel" under the 1961 Vienna Convention. The provision also specifies that "nothing in this Agreement shall be construed to derogate from the privileges and immunities to which personnel are otherwise entitled."

<sup>441</sup> Art. XVIII of the Agreement on Cooperation on Disaster Preparedness and Prevention and Mutual Assistance in the Event of Disasters, Spain-Argentina, 1988. See also art. 8 of the Agreement between the Argentine Republic and the Republic of Chile on Disaster Cooperation 1997. Under the latter provision, members of a disaster relief operation by one Party shall enjoy, on the territory of the requesting State, personal inviolability, immunity from administrative, civilian and criminal jurisdiction, exemption from customs and taxes relating to personal goods during the operation and exemption from inspection of their luggage, except for justified motives. The provision further indicates that members of the disaster relief operation have the obligation to respect the national laws of the receiving State.

families (other than citizens or permanent residents), when involved in the administration or implementation of the Grant, are exempt from income, social security and similar taxes levied under the laws of Bangladesh and the payment of customs and import and export duties on personal effects, equipment and supplies.<sup>442</sup>

137. In some instances, bilateral treaties contain both a detailed provision on specific kinds of legal facilities and a residual clause ensuring that all necessary facilities are granted to personnel of disaster relief operations. Thus, under an agreement on emergency cooperation, Switzerland and the Philippines agree to “take all measures necessary to guarantee the effectiveness and necessary rapidity of the assistance”; this general undertaking is followed by more specific provisions relating to transport, identity cards, entry, storage use and re-export of equipment, movement in the territory, etc.<sup>443</sup>

138. The importance of granting privileges, immunities and facilities to entities providing relief assistance is also recognized in international instruments of a non-binding character. For example, the ASEAN Declaration for Mutual Assistance on Natural Disasters provides that “A Member Country requesting assistance shall undertake internal administrative arrangements necessary to facilitate the entry of necessary vessels, aircraft, authorized personnel, supplies and equipment free from government taxes and any other duties or charges for the purpose of rescue and relief”.<sup>444</sup> The Recommended Rules and Practice adopted by the Balkan National Societies recommend that Governments “see that the necessary facilities are accorded to relief” and “that the provisions on relief personnel, their privileges and immunities, when accorded by agreement, are respected”.<sup>445</sup>

139. Similar principles on the granting of immunities, privileges and facilities have been highlighted by private entities which have studied the question of international disaster relief. Thus, for instance, the Institute of International Law, in its 2003 resolution on humanitarian assistance, indicated that States “shall facilitate the organization, provision and distribution of humanitarian assistance rendered by other States and organizations” and “shall accord them, among other things ... necessary immunities”. The Institute further called upon States to “adopt laws and regulations and conclude bilateral or multilateral treaties providing for the above-mentioned facilities relative to humanitarian assistance”.<sup>446</sup>

140. Finally, the issue of privileges and immunities of foreign disaster relief personnel has also been considered under national legislation. It should be noted,

<sup>442</sup> Art. VIII, section 8.2 (Taxation and related matters) of the Grant Agreement for relief and rehabilitation, signed at Dacca on 30 May 1972.

<sup>443</sup> Agreement between the Swiss Federal Council and the Government of the Republic of the Philippines on Cooperation in the Event of Natural Disaster or Major Emergencies, 2001, art. 8, paras. (1) and (2).

<sup>444</sup> Art. VI of the ASEAN Declaration for Mutual Assistance on Natural Disasters, Manila, 26 June 1976.

<sup>445</sup> Recommended Rules and Practices, Balkan National Societies meeting on international disaster response law (Belgrade, 20-26 September 2004), sect. III, paras. 9 and 13.

<sup>446</sup> Sect. VII, paras. 1 and 2. See also Draft international guidelines for humanitarian assistance operations, 1991, which list a number of duties incumbent upon the State receiving assistance, including the duty to “grant to the assisting State or organization and to designated personnel the necessary privileges, protection and facilities to enable humanitarian assistance operations to be carried out effectively” (art. 21 (i)).

from the outset, that States parties to the Vienna Convention on Diplomatic Relations have generally adopted laws implementing at the domestic level the international obligations assumed by the State, and that the relevant privileges and immunities are occasionally extended in practice to foreign personnel involved in disaster relief operations.<sup>447</sup> Such foreign personnel would enjoy, in any event, the privileges and immunities granted under the specific laws dealing with disaster relief, when such laws exist; these privileges and immunities, however, tend to be more limited than those normally granted to diplomatic personnel.<sup>448</sup>

**(b) Intergovernmental organizations involved in disaster relief operations and their staff**

141. As already mentioned above, the general international conventions granting privileges and immunities to the United Nations, its specialized agencies and IAEA are construed as applying, in particular, to these organizations and their personnel when they are involved in a disaster relief operation. In a 1971 report on the legal status of disaster relief units made available through the United Nations, the Secretary-General identified the instances in which the provisions of the Convention on the Privileges and Immunities of the United Nations would apply to those units and their personnel.<sup>449</sup> Some international agreements contain specific provisions stating that the privileges and immunities provided for under those conventions shall be maintained in the particular context of disaster relief operations.<sup>450</sup>

<sup>447</sup> In a study on Nepal, for instance, it was indicated that “a government wishing to provide this type of support would already have a diplomatic mission established in the country, thus it is likely that the process would involve a direct request from that mission to the Government of Nepal to conduct those activities. If approved, those personnel would likely be covered by the Foreign States and Diplomatic Personnel’s Privileges and Immunities Act of 1970” (“Nepal: laws, policies, planning and practices on international disaster response”, IFRC, July 2005, p. 20 (emphasis added)).

<sup>448</sup> In a study on Fiji, it was noted that the extent to which the provisions on privileges and immunities of diplomatic personnel are available for temporary disaster relief personnel “may need to be clarified by the relevant Minister in advance. However, all personnel providing disaster relief under the National Disaster Management Act will have the minimum immunities under the [Act]” (“Fiji: laws, policies, planning and practices on international disaster response”, IFRC, July 2005, p. 18). Under the said act, “a person performing a role or discharging a responsibility in accordance with the National Disaster Management Plan, Agency Support Plan or any regulations which apply during an emergency situation shall not be liable for an injury or loss sustained by any other person, unless such loss or injury is caused by or arises from negligence or wilful default” (ibid., pp. 16 and 17).

<sup>449</sup> The Secretary-General identified in particular those cases in which the unit is a subsidiary organ of the United Nations, the unit has a legal status separate from that of the United Nations, and the persons serving with the unit can be regarded as “experts on missions for the United Nations”. He further noted that, where the provisions of the Convention do not apply (for instance, because the receiving State is not a party to the Convention), it would nevertheless be open to the receiving State to provide privileges and immunities similar to those accorded under the Convention, giving the example of the Swedish Technical Cadre Unit (which was not a subsidiary organ of the United Nations) serving in Peru, which was granted such privileges and immunities by the Government of Peru (E/4994, paras. 16-19, reproduced in *United Nations Juridical Yearbook* (1971), pp. 190 and 191).

<sup>450</sup> In general, these provisions take the form a “without prejudice” clause. See, for instance, art. 6 of the Model Agreement between the United Nations and Governments concerning Measures to Expedite the Import, Export and Transit of Relief Consignments and Possessions of Relief Personnel in the Event of Disasters and Emergencies, approved by the Permanent Technical

142. Provisions on privileges and immunities contained in multilateral conventions dealing with issues relating to international disaster relief are sometimes worded in such terms as to cover also intergovernmental organizations and their staff.<sup>451</sup> This is the case, for instance, with the Tampere Convention, which applies to “organizations, other than those headquartered or domiciled within [the] territory [of the requesting State], who act pursuant to this Convention to provide telecommunication assistance and who have been notified to, and accepted by, the requesting State Party”.<sup>452</sup> Similarly, the exemptions and facilities granted under article 14 of the ASEAN Agreement on Disaster Management and Emergency Response are afforded to every “Assisting Entity”, defined as “a State, international organisation, and any other entity or person that offers and/or renders assistance to a Receiving Party or a Requesting Party in the event of a disaster emergency”. The Inter-American Convention to Facilitate Disaster Assistance indicates that “governmental international organizations that provide disaster assistance may, with the consent of the assisted state, have recourse, mutatis mutandis, to the provisions of this Convention”.<sup>453</sup> The Convention on the Safety of United Nations and Associated Personnel, of 1994,<sup>454</sup> provides that “[t]he host State and the United Nations shall conclude as soon as possible an agreement on the status of the United Nations operation and all personnel engaged in the operation”,<sup>455</sup> which would typically include a provision on privileges and immunities of the personnel in question.

143. Multilateral conventions that have established international agencies specifically aimed at the provision and/or coordination of disaster relief generally regulate the privileges and immunities to be afforded to such agencies. A classical example is that of the Convention and Statute Establishing an International Relief Union, under which the contracting parties endeavoured “to accord to the International Relief Union and to the organizations acting on its behalf ... insofar as possible under the local law, the most extensive immunities, facilities and

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Committee of the World Customs Organization at its 157th-158th sessions in April 1996: “Nothing contained in this agreement shall be deemed a waiver, express or implied, of any immunity from suit or legal process, or of any privilege, exemption or other immunity enjoyed or which may be enjoyed by the United Nations and its personnel by virtue of the Convention on the Privileges and Immunities of the United Nations adopted by the General Assembly on 13 February 1946”.

<sup>451</sup> The same is true for some of the non-binding documents referred to above, both of an official character and from private sources, which often refer, in general terms, to assisting operations carried out not only by a State, but also by an “organization” (see, for example, Institute of International Law, resolution on humanitarian assistance, 2003).

<sup>452</sup> Art. 5. It should be noted that the said article indicates, in its paragraph 8, that it shall not prejudice the rights and obligations with respect to privileges and immunities granted pursuant to other international agreements, including the 1946 Convention on the Privileges and Immunities of the United Nations and the 1947 Convention on the Privileges and Immunities of the Specialized Agencies, or international law.

<sup>453</sup> Art. XVI.

<sup>454</sup> The scope of the Convention was extended to cover personnel engaged in the delivery of emergency humanitarian assistance, including disaster relief, by virtue of an Optional Protocol, adopted in 2005 (General Assembly resolution 60/42, annex). See the discussion on the protection of United Nations officials and associated personnel in paras. 204-209 below.

<sup>455</sup> United Nations, *Treaty Series*, vol. 2051, No. 35457, art. 4.

exemptions for their establishments, for the movements of their staff and supplies, for relief operations and for the publicity of appeals”.<sup>456</sup>

144. In some cases, the privileges and immunities of international organizations involved in disaster relief appear to be granted by member States only on a voluntary basis: this is the case, for example, with the privileges and immunities of the Coordination Centre for the Prevention of Natural Disasters in Central America (CEPREDENAC) under its constitutive act.<sup>457</sup> In other instances, member States undertake to afford privileges and immunities to this kind of international agency in more absolute terms. The relevant provisions may, once again, be very detailed, identifying specific privileges and immunities to be granted, in addition to the general principle in the field. Under the Agreement Establishing the Caribbean Disaster Emergency Response Agency (CDERA), the Agency shall have international legal personality and such legal capacity as may be necessary for the exercise of its functions and the fulfilment of its objectives; its property and assets enjoy in the territories of the participating States immunity from legal process (except in case of waiver), and they are immune from any form of seizure by executive or legislative action and are exempt from restrictions, regulations, controls and moratoriums of any kind; its archives are inviolable and its official communications are accorded treatment no less favourable than that accorded by each State to other international organizations.<sup>458</sup> A separate provision in the same agreement deals with exemptions from taxes and customs duties for the Agency and its assets, property, income, operations and transactions, and for the salaries and emoluments paid to the staff of the Agency and experts on mission who are not nationals of participating States.<sup>459</sup>

145. Concerning model agreements relating to disaster relief operations, the model provisions prepared by the International Law Association apply to any entity providing relief, including international organizations. The UNITAR Model Rules for Disaster Relief Operations, on the contrary, contain specific provisions on the privileges and immunities applying to assisting organizations, and distinguish among different categories of such organizations, including the United Nations, the specialized agencies and IAEA, and all other intergovernmental and non-governmental organizations.<sup>460</sup>

146. Bilateral agreements concluded between States and intergovernmental organizations (in particular, the United Nations and its agencies) for the provision of technical assistance or the establishment of national offices usually contain specific provisions relating to the recognition and legal status of the organization in the country and the granting of privileges and immunities to the organization, its

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<sup>456</sup> Art. 10 of the Convention and Statute establishing an International Relief Union, 1927.

<sup>457</sup> Under art. 15 of the New Convention Constituting the Coordination Centre for the Prevention of Natural Disasters in Central America, of 2003, “Each Member State is free to grant fiscal and customs benefits, as well as diplomatic privileges and immunities, in accordance with international law and its domestic legislation. The Centre is a regional body of the Central American Integration System (SICA), and its privileges and immunities shall be determined accordingly”.

<sup>458</sup> Agreement Establishing the Caribbean Disaster Emergency Response Agency, adopted in the context of the Caribbean Community (CARICOM), 1991, art. 26 (Privileges and immunities of the Agency).

<sup>459</sup> *Ibid.*, art. 28 (Exemptions from taxes and customs duties).

<sup>460</sup> UNITAR, *Policy and Efficacy Studies* No. 8 (Sales No. E.82.XV.PE/8), annex B, rule 14.

property and personnel. The provisions at issue are generally based on the 1946 Convention on the Privileges and Immunities of the United Nations or the 1947 Convention on the Privileges and Immunities of the Specialized Agencies. They afford, in particular, facilities regarding the entry into the territory and work permits for personnel, freedom of movement and travel, inviolability of premises, archives and communications, exemptions from personal service, customs and taxes, as well as immunity from personal arrest or detention and from legal process. Examples of this practice are provided by the agreements concluded between Fiji and the United Nations, UNICEF and UNDP,<sup>461</sup> between Indonesia and the United Nations, UNICEF and WHO,<sup>462</sup> and between Uzbekistan and the United Nations.<sup>463</sup>

147. In some instances, the issuance of a “certificate” is provided for under bilateral agreements to ensure that the privileges and immunities are granted to the organizations participating in international relief operations. Thus, for instance, the World Customs Organization Model Agreement between the United Nations and Governments concerning Measures to Expedite the Import, Export and Transit of Relief Consignments and Possessions of Relief Personnel in the Event of Disasters and Emergencies contains a “Model United Nations certificate” by which the issuing organization certifies that a certain organization, individual or team is participating in a United Nations relief operation undertaken at the request of the Government and requests the competent authorities “to extend to the bearer the facilities, privileges and immunities which pertain to and facilitate by all suitable means the execution of the mission on which [the bearer] is engaged”.<sup>464</sup>

148. Once again, provisions on privileges and immunities in bilateral agreements may be very detailed. Thus, for instance, the Basic Agreement between Antigua and Barbuda and the Pan American Health Organization grants to the latter “the legal capacity and the privileges and immunities required for the performance of its functions and accomplishment of its purposes as an international agency”. The Agreement also establishes the principle of independence and freedom of action of the Organization. The Organization and its goods, assets, premises and files enjoy immunity from legal and administrative process and exemption from all taxes and levies; its correspondence enjoys the same privileges and immunities accorded to diplomatic mail and pouches; staff and other persons working for the Organization are afforded facilities for the entry into the country as well as privileges and

<sup>461</sup> See “Fiji: laws, policies, planning and practices on international disaster response”, IFRC, July 2005, p. 7.

<sup>462</sup> See “Indonesia: laws, policies, planning and practices on international disaster response”, IFRC, July 2005, pp. 8 and 9.

<sup>463</sup> See art. 3 of the Protocol between the United Nations and the Government of the Republic of Uzbekistan to Facilitate the Delivery of Humanitarian Assistance from Uzbekistan to Afghanistan, 2001 (personnel of international organizations and international non-governmental organizations, even when identified as having bona fide humanitarian programmes in Afghanistan in connection with the Protocol, shall not be considered employees or agents of the United Nations in any respect).

<sup>464</sup> Annex to the Model Agreement between the United Nations and Governments concerning Measures to Expedite the Import, Export and Transit of Relief Consignments and Possessions of Relief Personnel in the Event of Disasters and Emergencies. The certificate also clarifies that, as a participant in a United Nations relief operation, the bearer “is entitled to the application of the Customs facilitation measures which are applied to the relief consignment(s) and/or possessions of disaster relief personnel involved in United Nations relief operations by Customs authorities at the points of entry and/or exit”.

immunities. Special provisions relate to the identification of the persons benefiting from the Agreement and on the avoidance of any abuse of the privileges, immunities and facilities afforded.<sup>465</sup>

149. Under national legislation, intergovernmental organizations involved in disaster relief are usually afforded privileges, immunities and facilities through the laws that implement the general conventions on privileges and immunities of the United Nations, specialized agencies and IAEA or the specific conventions described in the previous paragraphs.<sup>466</sup>

**(c) Non-governmental organizations involved in disaster relief operations and their staff**

150. In general terms, non-governmental organizations are not granted privileges and immunities under international law and the extension of such privileges and immunities by a State to a foreign non-governmental organization remains an exceptional occurrence.

151. However, the relevant provisions of some international instruments on disaster relief have been interpreted in such a way as to include non-governmental organizations among the beneficiaries of privileges, immunities and facilities. This has been suggested, for instance, with regard to article 5 of the Tampere Convention<sup>467</sup> or article 14 of the ASEAN Agreement on Disaster Management and Emergency Response.<sup>468</sup> A similar interpretation could be given to article 10 of the Convention and Statute establishing an International Relief Union, in the light of

<sup>465</sup> Art. VI of the Basic Agreement between Antigua and Barbuda and the Pan American Health Organization, Represented by the Pan American Sanitary Bureau, Regional Office of the World Health Organization, signed at Washington on 29 October 1982 and at Antigua on 11 May 1983. For other examples of such details provisions concerning privileges and immunities granted to international organizations in bilateral agreements, see arts. VII, VIII and XIII of the Cooperation Agreement between the Royal Government of Cambodia and the United Nations High Commissioner for Refugees, 1994; the Agreement between the United Nations High Commissioner for Refugees and the Government of the Republic of Uganda, 1994; and art. VI, sect. H, of the agreement on the programme for the strengthening of the agro-meteorological and hydrological services of the Sahelian countries and establishment of a centre for training, research and application of agrometeorology and operational hydrology between the Permanent Inter-State Committee for Drought Control in the Sahel and the World Meteorological Organization.

<sup>466</sup> See, for instance, the International Organisations (Immunities and Privileges) Act of Singapore, under which the President may by order provide that any organization declared to be an organization of which the Government and the government or governments of one or more foreign sovereign Powers are members have immunities and privileges, as well as the legal capacities of a body corporate; privileges and immunities may also be granted, through the same procedure, to the officers and employees of the organization. In the IFRC study on Fiji, it is indicated that an organization which receives a ministerial declaration that it is an “organization of which two or more States or Governments thereof are members” is recognized as being an international organization and granted the privileges and immunities contained in the Diplomatic Privileges and Immunities Act (Fiji: laws, policies, planning and practices on international disaster response”, IFRC, July 2005, p. 18).

<sup>467</sup> David Fisher, *Law and Legal Issues in International Disaster Response: A Desk Study*, IFRC, 2007, p. 40.

<sup>468</sup> An “Assisting Entity” is defined in article 1 of the Agreement as including, in addition to States and international organizations, “any other entity or person that offers and/or renders assistance to a Receiving Party or a Requesting Party in the event of a disaster emergency”.



article 5 of the Convention, under which the organizations called to cooperate with the Union (and benefiting from the privileges and immunities pursuant to article 10) included the national Red Cross Societies and all other official or non-official organizations able to undertake the same activities for the benefit of stricken populations. Furthermore, non-governmental organizations involved in the delivery of emergency humanitarian assistance in United Nations operations on the territory of a State party to the Convention on the Safety of United Nations and Associated Personnel, of 1994, and its Optional Protocol of 2005, may be classified as “associated personnel” for purposes of the Convention.<sup>469</sup> As such, they would fall within the ambit of the requisite agreement between the host State and the United Nations on the status, *inter alia*, of “all personnel” engaged in the operation,<sup>470</sup> and would, accordingly, enjoy any specific privileges and immunities extended to them by virtue of that agreement.

152. In certain cases, the provisions of the instrument explicitly envisage the situation of non-governmental organizations. Thus, under article XVI of the Inter-American Convention to Facilitate Disaster Assistance, “States and governmental international organizations that provide assistance may include private, physical, or juridical persons or non-governmental international organizations within their relief missions, which persons shall enjoy the protection afforded by this Convention”.

153. The UNITAR Model Rules for Disaster Relief Operations<sup>471</sup> are also intended to apply in this context, although the commentary’s reference to the difficulty of specifying particular privileges and immunities to be granted by the State appears to be particularly relevant for non-governmental organizations.

154. Privileges and immunities similar to those enjoyed by intergovernmental organizations are sometimes recognized bilaterally, in particular with respect to the International Federation of Red Cross and Red Crescent Societies (IFRC). The legal status agreements concluded by the Federation and receiving States usually recognize the former’s status as an international organization in the host country, enjoying privileges and immunities based on the provisions of the 1947 Convention on Privileges and Immunities of Specialized Agencies. For example, the 1997 Agreement on the Legal Status of the International Federation and its Delegation in Nepal grants the Federation facilities, privileges and immunities that include freedom of movement, except as restricted by the Government, inviolability of premises, assets and archives, freedom of financial transactions, exemptions from taxes and customs duties, freedom of communication and immunities and tax exemptions for members of the delegations and officials of the Federation during the conduct of their official duties.<sup>472</sup> Similar legal status agreements have been concluded by the Federation with various countries in South Asia, Southern Africa and Central America.<sup>473</sup>

<sup>469</sup> On the application of the Convention on the Safety of United Nations and Associated Personnel, 1994, and its Optional Protocol of 2005, see the discussion on the protection of categories of relief personnel other than United National officials, paras. 210-214 below.

<sup>470</sup> See art. 4 of the Convention (United Nations, *Treaty Series*, vol. 2051, No. 35457).

<sup>471</sup> UNITAR, *Policy and Efficacy Studies* No. 8 (Sales No. E.82.XV.PE/8), annex B, rule 14(2).

<sup>472</sup> See “Fiji: laws, policies, planning and practices on international disaster response”, IFRC, July 2005, pp. 10 and 11.

<sup>473</sup> See IFRC, *International Disaster Response Laws, Principles and Practice: Reflections, Prospects and Challenges* (Geneva, 2003), chap. 7, pp. 116 and 117.

155. Privileges and immunities are occasionally afforded to other international non-governmental organizations. For example, under a cooperation agreement concluded with Ecuador, the foreign staff of the Committee for the Coordination of Voluntary Service Organizations (an Italian non-governmental organization engaged in programmes of technical and economical cooperation) was granted the status of international civil servants and afforded exemptions from customs and duties for goods for both professional and personal use; the Committee itself was given legal personality under Ecuadorian law and enjoyed legal facilities regarding the importation of goods.<sup>474</sup>

156. Except in the case of implementation of the agreements described above,<sup>475</sup> international non-governmental organizations are not usually granted privileges and immunities under national legislation.<sup>476</sup> Some domestic laws on disaster relief, however, do provide a limited range of privileges and immunities to foreign non-governmental organizations.<sup>477</sup> For instance, under a recently enacted Indonesian law, the Chief of the Executive Body is entitled to draw up a memorandum of understanding with foreign organization or individuals (which include foreign non-governmental organizations, foreign companies, foreign universities and foreign individuals providing grants for rehabilitation and reconstruction purposes), which shall include provisions on “facilities and privileges

<sup>474</sup> See Basic Cooperation Agreement between the Government of Ecuador and the Committee for the Coordination of Voluntary Service Organizations, signed at Quito on 1 December 2000 (reproduced in Ecuador, *Official Register* No. 241, 10 January 2001, pp. 6-9). Under the same agreement the staff concerned was under the obligation to respect national laws and not to interfere in matters of internal policy; the Committee itself assumed obligations regarding its action and registration.

<sup>475</sup> The IFRC study on Fiji points out that the Government of Fiji considers that both IFRC and ICRC would be covered by the Diplomatic Privileges and Immunities Act (which is, in principle, limited to intergovernmental organizations). This is explained by the fact that both entities have concluded legal status agreements with Fiji, which contain the same or similar privileges, immunities and facilities as are found in the Convention on the Privileges and Immunities of Specialized Agencies (“Fiji: laws, policies, planning and practices on international disaster response”, IFRC, July 2005, pp. 18 and 19).

<sup>476</sup> According to the IFRC study on Nepal, for instance, it appears that organizations or entities having entered the country under the conditions of the Social Welfare Act (No. 2049 of 2 November 1992) “are not granted any specific privileges and immunities, and are fully subject to the national laws of Nepal. However, it has been reported that the government has retained the power to directly scrutinise, control and monitor the roles of non-governmental organizations and therefore may have the authority to expedite procedures and/or grant privileges, if needed” (“Nepal: laws, policies, planning and practices on international disaster response”, IFRC, July 2005, pp. 19 and 20).

<sup>477</sup> For instance, the IFRC study on Fiji notes that foreign relief workers of non-governmental organizations, while not having special security arrangements with the Fiji Government nor enjoying many blanket privileges and immunities as do international organizations and diplomatic missions, do receive limited immunity from certain liabilities under the National Disaster Management Act, which provides that “a person performing a role or discharging a responsibility in accordance with the National Disaster Management Plan, Agency Support Plan or any regulations which apply during an emergency situation shall not be liable for an injury or loss sustained by any other person, unless such loss or injury is caused by or arises from negligence or wilful default”. The study indicates, however, that it has not been examined whether this immunity has been tested or how widely it will be interpreted by a court (“Fiji: laws, policies, planning and practices on international disaster response”, IFRC, July 2005, pp. 16 and 17).

provided for donors/sponsors”.<sup>478</sup> In carrying out their programmes, the relevant foreign organizations and individuals in Indonesia may further obtain facilities, including clearance of the procedure of immigration and manpower requirements, clearance of technical requirements with respect to equipment, goods and services, and facilities regarding customs clearance, excise and taxes.<sup>479</sup>

## D. Provision of disaster relief

157. The provision of relief in a disaster is a complex process involving multiple aspects. This section will analyse each of these in turn, including the initial exchange of information between the receiving State and the assisting State, organization or designated focal point; the question of communications equipment and facilities; the coordination of relief activities; the use of military and civil defence assets, the issue of the quality of relief assistance; the protection of disaster relief personnel; the costs relating to a disaster response operation; standards and regulations; liability and compensation during disasters; the settlement of disputes; and the ultimate termination of assistance.

### 1. Exchange of information

158. The exchange of information during the disaster response phase is a key requirement for the successful provision of international relief assistance. The possibility of such exchange of information is anticipated in many of the instruments establishing disaster prevention and preparedness mechanisms.<sup>480</sup>

<sup>478</sup> See art. 2, paras. 6 and 7 (i) of the Decree of the President of the Republic of Indonesia No. 69 of 2005 concerning participation of foreign organizations/individuals in providing grants for the rehabilitation and reconstruction of the region and life in Nanggroe Aceh Darussalam Province and Nias Islands in North Sumatra Province. The definition of foreign organization/individuals is included in article 1 of the Decree.

<sup>479</sup> Other issues which arise include the recognition of separate legal personality for non-governmental organizations so as to allow, for example, for the opening of dedicated bank accounts. See David Fisher, *Law and Legal Issues in International Disaster Response: A Desk Study*, IFRC, 2007, pp. 125 and 126.

<sup>480</sup> At the first International Conference on Disaster Communications, organized by UNDRO in Geneva in 1990, the importance of the role of telecommunications in disaster relief was recognized for the first time (Report on the International Conference on Disaster Communications, UNDRO, Geneva, 1990, document 90/4GE.91-00046). See also GIGNOS Consulting, “Evaluation of OCHA’s emergency telecommunications project” (Office for the Coordination of Humanitarian Affairs, January 2003), p. 10. The Tampere Declaration on Disaster Communications, adopted at the second International Conference on Disaster Communications (Tampere, Finland, 20-22 May 1991), called “for the development of a Convention on Disaster Communications as elaborated further below and to be negotiated not later than 1993”. Subsequent resolutions continued to urge Governments to support the adoption of a convention on emergency telecommunications (see, for example, resolution 644 of the World Radiocommunication Conference (Geneva, 1997), on telecommunication resources for disaster mitigation and relief operations; the Valletta Declaration adopted by the World Telecommunication Development Conference (Valletta, 1998); and resolution 19, on telecommunication resources for disaster mitigation and relief operations, adopted at the World Telecommunication Development Conference (Valletta, 1998). This ultimately led to the adoption of the Tampere Convention by an intergovernmental conference in 1998, whose participants included 76 countries and various intergovernmental and non-governmental organizations (Euro-Atlantic Partnership Council, Civil Communications Planning Committee, “CEP [Civil Emergency Planning] Consequences of the Tampere Convention”, working paper EAPC(CCPC)WP(2202)03, 5 March 2002, p. 2). The Convention has subsequently been endorsed in numerous resolutions, including General Assembly resolution 54/233 of 25 February 2000, para. 9; resolution 36 of the ITU Plenipotentiary Conference, Minneapolis, United States, 12 October-6 November 1998 (“Urges Member States to work towards the

While it is implicit in most agreements, some instruments expressly impose a general obligation to exchange information on the implementation of the agreement in question<sup>481</sup> or refer specifically to the obligation to continually exchange information during the disaster response phase,<sup>482</sup> as a distinct obligation from that imposed on the requesting State to provide information upon seeking assistance from another State, international organization or other entity.

159. Information may be exchanged with either an assisting State or with a designated entity<sup>483</sup> or focal point,<sup>484</sup> such as the United Nations Disaster Relief Coordinator.<sup>485</sup> The obligation may be mutual, i.e. a State which obtains information of significance to an affected State would be required to share such information.<sup>486</sup> Some agreements include within the scope of exchange of information sharing information with the public.<sup>487</sup> The provision of information may also be subject to additional requirements, relating, inter alia, to specificity<sup>488</sup> and confidentiality.<sup>489</sup>

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earliest possible ratification, acceptance, approval or final signature of the Tampere Convention by the appropriate national authorities, [and] further urges Member States Parties to the Tampere Convention to take all practical steps for the application of the Tampere Convention and to work closely with the operational coordinator as provided for therein"); Economic and Social Council resolution 2002/32 of 26 July 2002, para. 7; resolution 34 of the World Telecommunication Development Conference, Istanbul, 2002; and the declaration on a permanent telecommunications link adopted at the 8th ministerial session of the Council of Europe EUR-OPA Major Hazards Agreement, Athens, 21-22 February 2000 ("The Ministers ... recommend to the member States of the ... Agreement to sign and ratify the Tampere Convention").

<sup>481</sup> See, for example, 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, 1989, art. 6(1) ("The Contracting States shall provide each other with information of importance for this Agreement").

<sup>482</sup> For example, the Framework Convention on Civil Defence Assistance, 2000, requires the beneficiary State to "provide all necessary information available relating to the situation, so as to ensure smooth implementation of the assistance" (art. 4 (a)(1)). See also 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, 1998, art. 4(4); and Convention on the Protection and Use of Transboundary Watercourses and International Lakes, 1992, art. 6.

<sup>483</sup> See, for example, World Health Organization: Revision of the International Health Regulations, 2005, art. 6(2); and International Convention on Oil Pollution Preparedness, Response and Cooperation, 1990, art. 5(2).

<sup>484</sup> Agreement on Cooperation between the Kingdom of Spain and the Argentine Republic on Disaster Preparedness and Prevention and Mutual Assistance in the Event of Disasters, 1988, art. XVII ("The coordinating bodies shall exchange all available information relating to the relief activities during which the events referred to in this article occurred").

<sup>485</sup> Draft convention on expediting the delivery of emergency assistance, 1984 (A/39/267/Add.2-E/1984/96/Add.2, annex), art. 6(3).

<sup>486</sup> *Ibid.*, art. 6(2).

<sup>487</sup> Convention on the Transboundary Effects of Industrial Accidents, 1992, art. 9(1) ("The parties shall ensure that adequate information is given to the public in the areas capable of being affected by an industrial accident arising out of a hazardous activity"). See also Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, 25 June 1998 (United Nations, *Treaty Series*, vol. 2161, p. 447).

<sup>488</sup> For example, World Health Organization: Revision of the International Health Regulations, 2005, art. 6(2) ("Following a notification, a State Party shall continue to communicate to WHO timely, accurate and sufficiently detailed public health information available to it on the notified event, where possible including case definitions, laboratory results, source and type of the risk, number of cases and deaths, conditions affecting the spread of the disease and the health

## 2. Communications equipment and facilities

160. The General Assembly has recognized the importance of communications for effective disaster relief operations since at least 1968, when it called for “preparations to meet natural disasters, including ... the development of ... means of speedy communication”.<sup>490</sup> The issue of telecommunications in disasters is particularly complex because telecommunications facilities are themselves part of the physical infrastructure of the receiving State and thus subject to destruction during a disaster. For example, in the aftermath of tropical storm Stan in October 2005 in Guatemala, it was noted that “in many cases, there was a breakdown in the most common means of communication (telephones and radios) while landslides and destroyed bridges blocked road access”.<sup>491</sup> As a result, any provision on telecommunications must not only be politically acceptable but practically feasible in light of varying disaster situations.

### (a) Facilitating disaster telecommunications

161. The primary role of telecommunications networks during disasters is to facilitate effective communications between all key players, which can in turn lead to more effective relief. In this regard, two kinds of provisions have been identified. On the one hand, some provisions purport to establish a substantive right of disaster relief personnel to effective communication, or a general duty of the receiving State to “facilitate” disaster relief communications. On the other hand, various provisions address more specific methods to facilitate disaster relief communication. The following subsections consider each in turn.

#### (i) *General provisions codifying a right to effective disaster relief communications or a duty to facilitate it*

162. Certain provisions addressing disaster relief communications codify a right of disaster relief personnel to communicate by telephone and other means. For example, the bilateral agreement between the United Nations and Pakistan concerning the United Nations East Pakistan Relief Operation (UNEPRO) emphasized that “UNEPRO personnel and associated personnel shall enjoy an unrestricted right of communication, by radio, telephone or other means, when performing duties forming part of UNEPRO”.<sup>492</sup> Similarly, the model bilateral

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measures employed; and report, when necessary, the difficulties faced and support needed in responding to the potential public health emergency of international concern”) and International Convention on Oil Pollution Preparedness, Response and Cooperation, 1990, art. 5(2).

<sup>489</sup> See Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency, 1986, art. 6; draft convention on expediting the delivery of assistance, 1984 (A/39/267/Add.2-E/1984/96/Add.2, annex), art. 6(4) (“Information provided in confidence in connection with the assistance should be protected from disclosure by the recipient of the information to the maximum extent possible and should not be misused”); and Convention on the Protection and Use of Transboundary Watercourses and International Lakes, 1992, art. 8.

<sup>490</sup> Resolution 2435 (XXIII) of 19 December 1968, para. 1. See also resolution 2717 (XXV) of 15 December 1970, para. 5 (d), inviting the Secretary-General to submit recommendations on the application of technology to the prevention and control of natural disasters.

<sup>491</sup> Legal issues from the international response to tropical storm Stan in Guatemala, a case study commissioned by the International Federation of Red Cross and Red Crescent Societies’ International Disaster Response Laws, Rules and Principles Programme (April 2007), p. 39.

<sup>492</sup> Agreement on Statement of Principles, United Nations-Pakistan, document SG/1763/IHA 93

agreement proposed by the International Law Association states that “*in the zone of operations (the stricken zone) the organization shall have the right to communicate by radio, telephone, telegraph or by any other means and to establish the necessary means for the maintenance of said communications in the interior of its facilities or between these facilities and its service units*”<sup>493</sup> (emphasis added).

163. Other instruments deal with the question of disaster telecommunications from the opposite perspective by establishing a duty to facilitate telecommunications. For example, at the level of bilateral treaties, the Agreement between the Swiss Federal Council and the Government of the Republic of the Philippines on Cooperation in the Event of Natural Disaster or Major Emergencies, of 2001, states that “the competent authorities of the requesting State shall undertake ... to facilitate the use by the aid units of existing telecommunication systems or the use of special frequencies, or both, or the establishment by the aid units of an emergency telecommunications system”.<sup>494</sup> Similarly, the agreement between Denmark and Germany states that a “special arrangement shall be concluded for the operation of radio installations with which the emergency teams are equipped or which are placed at their disposal”.<sup>495</sup> Similar provisions are found in numerous other bilateral treaties.<sup>496</sup>

164. Several resolutions also suggest the existence of a duty to facilitate disaster communications. For example, resolution of the International Conference of the Red Cross on measures to expedite international relief recommends “that potential recipient Governments take advance measures to authorize recognized relief agency

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(17 November 1971), art. F (providing also that “The United Nations may, for this purpose, establish a system of radio communication in East Pakistan connected with the United Nations radio network, which shall be operated in accordance with such international agreements, conventions and regulations as may be in force”). See also Protocol between the United Nations and the Government of the Republic of Uzbekistan to Facilitate the Delivery of Humanitarian Assistance from Uzbekistan to Afghanistan, 2001, para. 1.23 (“The Government shall facilitate the efforts of the United Nations and bona fide IGOs and INGOs to clear and register communications equipment used by their humanitarian personnel, including HF/VHF radios and satellite/mobile telephones and to have access to radio frequencies essential for security and for humanitarian activities within Afghanistan”).

<sup>493</sup> Draft Model Agreement on International Medical and Humanitarian Law, art. 6. Reproduced in the report of the 59th Conference of the International Law Association (Belgrade, 17-23 August 1980). Although not specifically related to disasters, mention should also be made of the 1980 treaty governing relations between ICRC and Nicaragua, which provides in article 9 that “the delegation shall be free to exchange postal, telegraphic, telex and radio telephone messages with the central offices of the Committee, in Geneva, with other related international organizations, Government offices or private entities”.

<sup>494</sup> Art. 8(2).

<sup>495</sup> Agreement on Mutual Assistance in the Event of Disasters or Serious Accidents (with exchange of notes), Denmark-Federal Republic of Germany, 1985, art. 10(3).

<sup>496</sup> See, for example, Convention between the Government of the French Republic and the Government of the Kingdom of Belgium on Mutual Assistance in the Event of Disasters or Serious Accidents, 1981, art. 10(3); Convention on Mutual Assistance in the Event of Disasters or Serious Accidents, France-Germany, 1977, art. 10(3); Agreement on Mutual Assistance in the Event of Disasters or Serious Accidents, France-Switzerland, 1987, art. 14; Convention on Mutual Assistance in Combating Disasters and Accidents, Netherlands-Belgium, 1984, art. 11(1)(a); Agreement on Mutual Assistance between Portuguese and Spanish Fire and Emergency Services, 1980 (terminated and superseded by the Protocol between the Kingdom of Spain and the Portuguese Republic of Technical Cooperation and Mutual Assistance in the Field of Civil Defence, 1992), art. 7(2)(d).

personnel to have access to all available telex, cable, wire, telephone and radio facilities, as disaster relief circumstances require, for their internal and external communications”.<sup>497</sup> Similarly, the conclusions of the World Telecommunication Development Conference recommend “that administrations ensure proper consideration of disaster telecommunications by the telecommunication service providers”.<sup>498</sup> Regarding similar provisions in national law, Peruvian law provides that in times of natural disaster, public and private media shall air programmes orienting the population in civil defence actions free of charge.<sup>499</sup>

(ii) *Specific provisions concerning substantive measures to facilitate disaster relief communications*

165. While the establishment of a right of relief personnel to disaster-related communication or a duty of receiving States to facilitate such communication is a useful point of departure, neither is likely to be fulfilled unless accompanied by more specific practical provisions aimed at their realization. In this regard, various instruments have adopted at least four different approaches. First, the most extensive measures propose the establishment of a dedicated disaster communications system. Second, certain instruments propose that disaster communications receive priority when they are made on existing communications networks. Third, some provisions have been identified which aim to remove regulatory barriers which may have an impact on disaster telecommunications. Fourth, certain provisions aim to facilitate disaster relief communications by establishing a dedicated disaster relief radio frequency.

**a. Establishment of a dedicated emergency operations system**

166. The most extensive provisions concerning communications facilitation in natural disasters establish an entirely separate dedicated communications system for use by disaster relief operations. For example, the Agreement Establishing the Caribbean Disaster Emergency Response Agency provides that the Coordinating Unit shall “establish, equip and maintain an emergency operations system capable of handling emergency telecommunications and facilitating coordination of emergency responses involving many services, supplies and facilities”.<sup>500</sup> Within the European Union, a Council decision of 23 October 2001 calls upon the Commission to “establish and manage a reliable common emergency communication and information system to enable communication and sharing of information between the monitoring and information centre and the contact points designated for that

<sup>497</sup> Recommendation M (see note 20 above).

<sup>498</sup> International Telecommunications Union, Recommendation 12, World Telecommunication Development Conference (Istanbul, 2002), recommendations 1 and 2.

<sup>499</sup> Environment and Natural Resources Code, chap. XV, arts. 91-95 : Prevention of Natural Disasters, in *El Peruano*, Official Gazette, vol. IX, No. 3667, p. 89515, at 89524, art. 93.

<sup>500</sup> Art. 11(c). See also International Convention on Oil Pollution Preparedness, Response and Cooperation, 1990, art. 6(2)(c) (each party shall establish “detailed plans and communication capabilities for responding to an oil pollution incident”); 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, 1998, art. 8(2) (the requesting State shall, if necessary, provide the assisting State with a means of communicating with headquarters); ASEAN Agreement on Disaster Management and Emergency Response, 2005, art. 14(a) (exempting telecommunications equipment from import taxes and duties).

purpose by the Member States”.<sup>501</sup> The Council of Europe’s recommendation Rec(2002)3 provides that “the setting up of permanent telecommunication networks between the national authorities in charge of risk management should be envisaged and/or implemented. These networks should be open to the local authorities concerned. The Edrim Programme (Electronic Discussion Group for Risk Management), which was developed within the framework of the EUR-OPA Major Hazards Agreement, could serve as a model”.<sup>502</sup>

167. Several national laws were also identified which provide for the creation of dedicated disaster communication networks or phone lines. For example, in the Czech Republic, the Law on the Integrated Rescue System of 28 June 2000 provides for the creation of and continuous operation of a standing phone line for emergency related calls, and obliges telecommunications providers to cooperate with the Ministry of Interior in its preparation, design and maintenance.<sup>503</sup> Similarly, in Mongolia, the Law on Disaster Protection of 20 June 2003 includes a detailed provision on communications establishing a special communications network and providing that all “communication, information, warning signals and warning information on disaster[s] shall be transmitted through [a] special use ... communication ... network”.<sup>504</sup>

#### **b. According priority to relief communications**

168. A common alternative to the establishment of a dedicated disaster relief telecommunications system is a provision which accords priority to disaster-related communications on the existing communications infrastructure. In this regard, numerous early telegraphic conventions contained provisions allowing telegraphic transmissions to be interrupted in the case of an emergency,<sup>505</sup> or according priority to calls of distress.<sup>506</sup> Similarly, the UNITAR Model Rules for Disaster Relief Operations provide that “the receiving State shall authorize the designated relief personnel in the performance of their duties to use *on a priority basis*, free or at rates not higher than the rates applied by the receiving State, telex, cable, wire, telephone, and other means of communication”.<sup>507</sup> Provisions for the priority use of

<sup>501</sup> European Union, Council decision 2001/792/EC of 23 October 2001 establishing a Community mechanism to facilitate reinforced cooperation in civil protection assistance interventions (*Official Journal of the European Communities*, vol. 44, No. L 297, 15 November 2001, p. 7), art. 4(b).

<sup>502</sup> Recommendation Rec(2002)3 of the Committee of Ministers to member States on transfrontier cooperation in civil protection and mutual assistance in the event of natural and technological disaster occurring in frontier areas, adopted by the Committee of Ministers on 6 March 2002 at the 786th meeting of the Ministers’ Deputies, paras. 11 and 12.

<sup>503</sup> Sect. 7, para. 6 and sect. 18, paras. 1-4.

<sup>504</sup> Art. 11.

<sup>505</sup> See, for example, Paris International Telegraphic Convention (Paris Convention, 1865), art. 11; International telegraph service rules (Brussels Revision) (1928), art. 36.

<sup>506</sup> International Radio Telegraph Convention of Berlin (Berlin Convention, 1906), art. 9; International Radiotelegraph Convention (1912), art. 9; General Regulations Annexed to the International Radiotelegraph Convention (Washington Convention) (1927), art. 11; International telegraph service rules (Brussels Revision) (1928), art. 35; International Telecommunication Convention (1932), art. 36; International Telecommunications Regulations (1989), art. 5.

<sup>507</sup> UNITAR, *Policy and Efficacy Studies*, No. 8 (Sales No. E.82.XV.PE/8), annex A, rule 12 (emphasis added). The rule further provides that “the receiving State may also authorize the designated relief personnel to establish a system of radio communication”.



telecommunications by disaster relief operations are also common in national law.<sup>508</sup>

### c. Removing regulatory barriers

169. Some provisions exist which aim to facilitate disaster relief communication by removing any existing regulatory barriers which may otherwise limit such communications. Although this approach may appear somewhat more indirect, it can sometimes prove quite effective, as regulatory barriers may constitute the main impediment to effective communications. For example, the IFRC study on Indonesian practice following the 2004 tsunami notes that “some organisations ... experienced delays in obtaining radio licenses for their equipment”.<sup>509</sup> Similarly, in Nepal, national law prohibits persons, institutions, foreign organizations or international non-governmental organizations from operating their own telecommunications systems without a license from the Telecommunications Authority, and provides no special exceptions for the case of disaster or other emergency.<sup>510</sup>

170. Regarding specific provisions which target regulatory barriers to effective telecommunications, the World Telecommunication Development Conference adopted a resolution on disaster communications, urging national Governments “to take all practicable steps for facilitating the rapid deployment and the effective use of telecommunication equipment for disaster relief by *reducing and, where possible, removing regulatory barriers*”.<sup>511</sup> This resolution was subsequently endorsed by the ITU Plenipotentiary Conference of 1994.<sup>512</sup> The result of these two resolutions was the formation of the Working Group on Emergency Telecommunications, a sub-group of the Inter-Agency Standing Committee (IASC), as a forum to increase the effectiveness of its participants related to regulatory, operational and technical aspects of telecommunications for disaster relief.<sup>513</sup> In particular, sub-group A of

<sup>508</sup> Disaster Countermeasures Basic Act (Japan), June 1997 (updating Act No. 223, 15 November 1961), sect. 79 (“When in time of a disaster it is particularly urgent to make necessary communications in implementing emergency measures, the chief officer of a designated national or local administrative organ, the prefectural governor, or the mayor of a city or town or the head of a village may, unless otherwise provided by law, use on a priority basis public electric communication facilities, or use facilities for electric communication or radio facilities installed by individuals”); Disaster Management Act of 1997 (Lesotho), art. 4(f) (giving the Government Minister responsible for administration of the Act the power, during a state of disaster, “to have access to and utilization of ... equipment and radio communications”); Disaster Management Act of 2002 (South Africa), art. 27(2)(j) (when a national state of disaster has been declared, the Minister empowered to administer the Act may “make regulations or issue directions or authorise the issue of directions concerning ... the maintenance or installation of temporary lines of communication to, from or within the disaster area”).

<sup>509</sup> “Legal issues arising from the international response to the tsunami in Indonesia”, IFRC, July 2006, p. 20.

<sup>510</sup> “Nepal: laws, policies, planning and practices on international disaster response”, IFRC, July 2005, p. 21.

<sup>511</sup> World Telecommunication Development Conference (Buenos Aires, 1994), resolution 7: Disaster communications (emphasis added).

<sup>512</sup> ITU Plenipotentiary Conference (Kyoto, Japan, 1994), resolution 36.

<sup>513</sup> Revisions to the terms of reference for the Working Group on Emergency Telecommunications adopted at the 14th plenary meeting in Geneva (20-21 February 2003). See also Euro-Atlantic Partnership working paper, EAPC(CCPC)WP(2202)03, 5 March 2002, p. 2. The Working Group includes the heads of telecommunication services of all United Nations entities involved in

the Working Group deals with regulatory issues such as the transborder use of telecommunications equipment during acute emergencies.<sup>514</sup>

**d. Harmonization of frequency**

171. Finally, some provisions aim to facilitate disaster relief communications by establishing a dedicated radio frequency for such communications. For example, a resolution of the World Radiocommunication Conference of 2000 recommends the “identification of globally/regionally harmonized frequency bands for future advanced solutions to meet the needs of public protection agencies and organizations, including those dealing with emergency situations and disaster relief”.<sup>515</sup> Similarly, recommendation No. 1 of the World Administrative Radio Conference of 1979 recommends that administrations identify frequencies for use in disasters.<sup>516</sup> Resolution 10 of the World Radiocommunication Conference of 2000 calls upon States to assign working frequencies to the Red Cross for wireless communications.<sup>517</sup>

**(b) Telecommunications and security**

172. The relationship between security concerns of the receiving State and the relief efforts of assisting States and relief organizations is particularly poignant with respect to telecommunications. Although the increasingly sophisticated telecommunications equipment of assisting actors can provide a more powerful tool in relief efforts, it also poses higher security concerns for receiving States, who may therefore refuse to allow its importation. For example, a study carried out by IFRC following the 2004 tsunami noted that relief organizations had difficulty importing telecommunications equipment during that disaster, in particular because the equipment was considered to be military grade and thus was viewed as posing potential security risks.<sup>518</sup> Similarly, studies and interviews conducted by IFRC in Norway, Sri Lanka and Viet Nam noted that some respondents had experienced difficulties obtaining approval for the usage of satellite telephones in conflict zones.<sup>519</sup>

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international humanitarian assistance, the Red Cross and major non-governmental organizations, as well as individual experts from the private and the academic sectors and representatives of Governments with specific interests in emergency telecommunications.

<sup>514</sup> The Working Group was subsequently renamed the IASC Reference Group on Information and Communication Technology, although it is still commonly referred to as the Working Group on Emergency Telecommunications (GIGNOS Consulting, “Evaluation of OCHA’s emergency telecommunications project” (Office for the Coordination of Humanitarian Affairs, January 2003)), p. 4.

<sup>515</sup> Resolution 645 (WRC-2000) on the global harmonization of spectrum for public protection and disaster relief, World Radiocommunication Conference, Istanbul, 2000.

<sup>516</sup> Recommendation No. 1 relating to the use of space radiocommunication systems in the event of natural disasters, epidemics, famines and similar emergencies, World Administrative Radio Conference, Geneva, 1979.

<sup>517</sup> Resolution 10 (WRC-2000) on the use of two-way wireless telecommunications by the International Red Cross and Red Crescent Movement, World Radiocommunication Conference, Istanbul, 2000.

<sup>518</sup> “Legal issues from the international response to the tsunami in Sri Lanka”, IFRC, July 2006, pp. 21-23.

<sup>519</sup> IFRC International Disaster Response Law Project, report on studies and interviews conducted in Norway, Sri Lanka and Viet Nam, February-May 2003, p. 7.

173. Certain provisions directly confront this link between disaster telecommunications and national security concerns. For example, the Max Planck guidelines incorporate security concerns by way of a saving clause, stating that the receiving State shall “authorize the assisting State or organization to operate its own means of communication unless serious national security interests would be prejudiced thereby”.<sup>520</sup> Other provisions address the issue of telecommunications and security more indirectly, by aiming to facilitate the use in disasters of amateur networks which may not otherwise be authorized because of security concerns.<sup>521</sup>

**(c) Other issues**

174. Several additional ITU resolutions and recommendations relating to other aspects of communication during disaster relief have been adopted. One resolution was devoted to the use of telecommunications to assure the safety and security of disaster relief personnel in the field.<sup>522</sup> Other recommendations addressed, for example, the use of satellite,<sup>523</sup> fixed wireless,<sup>524</sup> fixed satellite<sup>525</sup> and amateur satellite<sup>526</sup> infrastructures in disaster mitigation and relief, as well as a cross-border circulation of radiocommunication equipment in disasters.<sup>527</sup>

**3. Coordination of relief activities**

175. The coordination of relief activities through international cooperation is an important aspect of their overall effectiveness.<sup>528</sup> This is particularly true in large-scale catastrophes when relief is often provided by multiple actors, whether governmental or

<sup>520</sup> Peter MacAlister-Smith, Draft international guidelines for humanitarian assistance operations (Max Planck Institute for Comparative Public Law and International Law, Heidelberg, Germany, 1991), art. 21(e).

<sup>521</sup> In this regard, recommendation D-13 of the International Telecommunication Union on effective utilization of the amateur services in disaster mitigation and relief operations, January 2006, recommends that Governments “should include the amateur services in their national disaster plans and telecommunication assistance information inventories; that administrations should reduce and remove barriers to the effective utilization of the amateur services for disaster communications and related training activities; [and] that amateur and disaster relief organizations and providers of emergency response develop memoranda of understanding between themselves and with administrations as well as to cooperate, together with other concerned parties, in developing and making available model agreements and best practices in disaster telecommunications”.

<sup>522</sup> Resolution 98, ITU Plenipotentiary Conference, Minneapolis, United States, 12 October-6 November 1998.

<sup>523</sup> Use of satellite and terrestrial broadcast infrastructures for public warning, disaster mitigation and relief, recommendation ITU-R BT.1774-1 (2006-2007).

<sup>524</sup> Fixed wireless systems for disaster mitigation and relief operations, recommendation ITU-R F.1105-2 (1994-2002-2006).

<sup>525</sup> Use of systems in the fixed-satellite service in the event of natural disasters and similar emergencies for warning and relief operations, recommendation ITU-R S.1001-1 (1993-2006).

<sup>526</sup> Disaster communications in the amateur and amateur-satellite services, recommendation ITU-R M.1042-3 (1994-1998-2003-2007).

<sup>527</sup> Global cross-border circulation of radio-communication equipment in emergency and disaster relief situations, recommendation ITU-R M.1637 (2003).

<sup>528</sup> Indeed the word “coordination” appears in the title of several instruments. See, for example, Agreement Between the Government of the Republic of Mozambique and the Government of the Republic of South Africa Regarding the Coordination of Search and Rescue Services, 2002; Agreement between the Government of the Republic of South Africa and the Government of the French Republic for the coordination of search and rescue services, 2001.

non-governmental, national or international. If such efforts are not coordinated, they risk being duplicative, unnecessary or even counterproductive.<sup>529</sup> While the need for coordination was emphasized as early as 1927, it has become even more important today given the expansion of actors regularly contributing to relief efforts.

176. Coordination also raises specific legal issues, primarily related to the existence of coordination mechanisms. The key issue is where such coordination mechanisms should be centred, and in this regard a number of possibilities exist, including the United Nations, the Government of the receiving State, the Government of the assisting State or other international organizations, entities or non-governmental organizations involved in the relief effort.

**(a) Overview of coordination in the United Nations system**

177. The coordination of international disaster relief has been an important question within the United Nations for over four decades.<sup>530</sup> Coordination by the United Nations has received support both from States<sup>531</sup> and the then League of Red Cross Societies, the latter emphasizing in particular the importance of coordination between United Nations relief activities and other multilateral and bilateral aid efforts.<sup>532</sup> In 1970, the General Assembly first requested the Secretary-General to consider a “permanent office in the United Nations Secretariat responsible for the co-ordination of action related to natural disasters, epidemics, famines and similar emergency situations”.<sup>533</sup> The following year, the position of Disaster Relief Coordinator and the permanent office were officially created by the General Assembly in its resolution 2816 (XXVI).

178. The United Nations Disaster Relief Coordinator was given a central role in the overall coordination of relief.<sup>534</sup> At least 13 memorandums of understanding were

<sup>529</sup> Convention and Statute Establishing an International Relief Union, 1927, art. 2 (one of the Union’s principal purposes was “to coordinate as occasion offers the efforts made by relief organizations”).

<sup>530</sup> The Economic and Social Council first requested the Secretary-General to study the coordination of international disaster relief as early as 1964 (Council resolution 1049 (XXXVII) of 15 August 1964). This initial request resulted in the production of several studies by the Secretary-General (see, for example, A/5845, A/5883, E/4554 and E/4853).

<sup>531</sup> See, for example, *Official Records of the Economic and Social Council, Fifty-first Session*, 1786th meeting (21 July 1971), paras. 22 (United Kingdom) and 67 (Indonesia).

<sup>532</sup> *Ibid.*, 1787th meeting (21 July 1971), para. 30.

<sup>533</sup> General Assembly resolution 2717 (XXV), 15 December 1970, para. 4(c).

<sup>534</sup> This mandate included cooperation with all organizations concerned for the purpose of ensuring the most effective assistance; mobilization, direction and coordination of the relief activities of organizations of the United Nations system; coordination of United Nations assistance with assistance given by intergovernmental and non-governmental organizations, in particular the International Red Cross; receipt, on behalf of the Secretary-General, of contributions offered to him for disaster relief assistance to be carried out by the United Nations, its agencies and programmes for particular emergency situations; assistance to receiving States in assessing their relief and other needs, evaluating the priority of those needs, disseminating that information to prospective donors and others concerned, and serving as a clearing house for assistance extended or planned by all sources of external aid; study of the prevention of disasters; dissemination of information relevant to the coordination of disaster relief; deciding as to the conclusion of relief operations under his aegis; and the preparation of an annual report on disaster relief activities for the Secretary-General, to be submitted to the Economic and Social Council and to the General Assembly (General Assembly resolution 2816 (XXVI) of 14 December 1971).

concluded between the Office of the United Nations Disaster Relief Coordinator and organizations within the United Nations system concerning questions of inter-agency relief coordination.<sup>535</sup> A renewed effort to increase the effectiveness of disaster relief coordination was begun in the late 1980s when the General Assembly designated the 1990s as the International Decade for Natural Disaster Reduction<sup>536</sup> and adopted resolutions 43/131 of 8 December 1988 and 45/100 of 14 December 1990 on humanitarian assistance to victims of natural disasters. This culminated in General Assembly resolution 46/182, of 19 December 1991, which remains a foundational statement underlying United Nations coordination of disaster relief to this day.<sup>537</sup>

179. In 1996, the Field Coordination Support Section was established within the then Department of Humanitarian Affairs. Its main purpose is to develop, prepare and maintain standby capacity for rapid deployment to sudden-onset emergencies in order to support the authorities of the affected State and the United Nations Resident Coordinator in carrying out rapid assessment of priority needs and in coordinating international relief on site. The Section manages a number of tools that have been developed during the last decade to improve international coordination and cooperation in natural disasters and complex emergencies, including the United Nations Disaster Assessment and Coordination (UNDAC) team,<sup>538</sup> the International Search and Rescue Advisory Group (INSARAG),<sup>539</sup> the virtual on-site operations coordination centre,<sup>540</sup> and the International Humanitarian Partnership.<sup>541</sup>

180. In 1998, the Department of Humanitarian Affairs was reorganized into the Office for the Coordination of Humanitarian Affairs as part of the Secretary-General's programme of reform.<sup>542</sup> Within the Office, the Coordination and Response Division provides direct support to the Emergency Relief Coordinator in his or her role as principal adviser to the Secretary-General on humanitarian issues and coordinator of the international humanitarian response. The Division may also liaise with United Nations Resident/Humanitarian Coordinators — individuals designated by the Emergency Relief Coordinator as the most senior United Nations

<sup>535</sup> Peter MacAlister-Smith, *International Humanitarian Assistance: Disaster Relief Actions in International Law and Organization* (Dordrecht: Martinus Nijhoff, 1985), pp. 135 and 136.

<sup>536</sup> General Assembly resolution 42/169 of 11 December 1987, paras. 3 and 4.

<sup>537</sup> See discussion of resolution 46/182 in sect. I above.

<sup>538</sup> The UNDAC team is a standby team of disaster management professionals nominated and funded by member Governments and United Nations humanitarian agencies and who can be deployed within hours to carry out rapid assessment of priority needs and to support national authorities and the United Nations Resident Coordinator in coordinating international relief on site.

<sup>539</sup> INSARAG is a global network of more than 80 countries and disaster response organizations focused on urban search and rescue issues, established in 1991 following the Armenian earthquake of 1988. It has promulgated the INSARAG guidelines, which provide a detailed checklist for search and rescue activities in particular but also for the coordination and cooperation of disaster relief efforts more generally.

<sup>540</sup> The centre works to facilitate decision-making for international response to major disasters through real-time information exchange by all actors of the international disaster response community.

<sup>541</sup> The Partnership, created in 1995 as an informal cooperation arrangement between several national development agencies, provides logistical support to United Nations agencies especially in sudden-onset disasters.

<sup>542</sup> Its mandate was refocused to encompass three main activities: coordination of humanitarian response, policy development and humanitarian advocacy.

humanitarian official on the ground for an emergency and who act to ensure quick, effective and well-coordinated assistance. Finally, as part of the same reform programme, the Secretary-General established the Executive Committee on Humanitarian Affairs, which is chaired by the Emergency Relief Coordinator and meets on a monthly basis in New York, bringing together the humanitarian, development, political and peacekeeping pillars of the United Nations system within the context of humanitarian relief consultations.

**(b) A multiplicity of coordinating options**

181. One of the complexities in disaster relief coordination is the multiplicity of existing coordination mechanisms. In addition to the United Nations structures discussed above, additional coordinating bodies exist under the auspices of IFRC, national Governments and other key international organizations and non-governmental organizations involved in disaster relief efforts. This subsection reviews which mechanisms have been favoured by legal instruments, identifying four principle trends in this regard.

182. First, and most frequently, instruments emphasize national coordinating mechanisms.<sup>543</sup> For example, the Agreement between the Republic of Austria and the Federal Republic of Germany Concerning Mutual Assistance in the Event of Disasters or Serious Accidents, of 1988, provides quite unequivocally that “in all cases, the authorities of the requesting State shall be responsible for coordinating and directing the rescue and emergency operations” and “instructions for the emergency teams of the sending State shall be transmitted solely to their leaders, who shall brief their personnel on the plan of action”.<sup>544</sup> Similar provisions are included in several other bilateral treaties.<sup>545</sup> National coordinating mechanisms are also emphasized by the ASEAN Declaration of 1976,<sup>546</sup> and the Code of Conduct for the International Red Cross and Red Crescent Movement and Non-Governmental Organizations in Disaster Relief, of 1995.<sup>547</sup> The European Council decision of 23 October 2001 establishes an international mechanism to coordinate civil

<sup>543</sup> See, for example, Inter-American Convention to Facilitate Disaster Assistance, 1991, art. III; 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, 1998, arts. 6, 8; Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency, 1986, art. 3(a). See also Convention on the Transboundary Effects of Industrial Accidents, 1992, arts. 17-18. Although the ASEAN agreement establishes a regional coordinating mechanism, it emphasizes that the mechanism “shall work on the basis that the Party will act first to manage and respond to disasters” (ASEAN Agreement on Disaster Management and Emergency Response, 2005, art. 20).

<sup>544</sup> Art. 9.

<sup>545</sup> See, for example, Agreement on Mutual Assistance in the Event of Disasters or Serious Accidents (with exchange of notes), Denmark-Federal Republic of Germany, 1985, art. 7; Agreement on Cooperation and Mutual Assistance in Cases of Accidents, Finland-Estonia, 1995, art. 8; Convention on Mutual Assistance between French and Spanish Fire and Emergency Services, 1959, updated by Protocol of 1973, art. III; Agreement between the Swiss Federal Council and the Government of the Republic of the Philippines on Cooperation in the Event of Natural Disaster or Major Emergencies, 2001, art. 9(1); Protocol between the United Nations and the Government of the Republic of Uzbekistan to Facilitate the Delivery of Humanitarian Assistance from Uzbekistan to Afghanistan, 2001, para. 2.1 (the State will appoint a Government ministry to assist the United Nations to coordinate disaster relief efforts).

<sup>546</sup> ASEAN Declaration for Mutual Assistance on Natural Disasters, Manila, 26 June 1976, art. I.

<sup>547</sup> Annex 1, para. 4.

protection assistance between Member States,<sup>548</sup> but further states that the “requesting Member State shall be responsible for directing assistance interventions”.<sup>549</sup> It is unclear exactly how this coordinating function of the mechanism differs from the directing function of the receiving State. A large quantity of national legislation was also identified which creates wholly national coordinating mechanisms without mention of existing intergovernmental ones.<sup>550</sup> The only exception is the Indian Disaster Management Act (2005), which mentions coordination between national and international bodies, but is nevertheless clear that this role rests ultimately with the Central Government of India.<sup>551</sup>

183. Second, certain instruments name a specific international entity or office as lead coordinator. For example, the Tampere Convention establishes the United Nations Emergency Relief Coordinator as the operational coordinator under the

<sup>548</sup> European Union, Council decision 2001/792/EC of 23 October 2001 establishing a Community mechanism to facilitate reinforced cooperation in civil protection assistance interventions (*Official Journal of the European Communities*, vol. 44, No. L 297, 15 November 2001, p. 7), art. 1(1).

<sup>549</sup> *Ibid.*, art. 5(3)-5(4) (further providing that “the authorities of the requesting Member State shall lay down guidelines and, if necessary, define the limits of the tasks entrusted to the intervention teams, without giving details of their execution, which are to be left to the person in charge appointed by the Member State rendering assistance. The requesting Member State may ask the teams to direct the intervention on its behalf in which case the teams provided by the Member States and the Community shall endeavour to coordinate their interventions”).

<sup>550</sup> See, for example, Decree No. 109-96, Law creating the National Coordinating Body for the Reduction of Natural or Manmade Disasters, 9 December 1996 (Guatemala); Disaster Management Act, No. 13, 2005 (Sri Lanka), arts. 2, 12, 21 (entrusting disaster coordination to the National Council for Disaster Management without mention of international coordination mechanisms); Australian Government Overseas Disaster Assistance Plan, April 1998, paras. 5.5 and 5.9 (overseas disaster relief efforts by Australia will be coordinated by the Australian National Emergency Management Coordination Centre, the Australian Head of Mission, in conjunction with Australian Emergency Management Liaison Officers, without mention of international coordinating mechanisms); Regulations pertaining to the National Emergency Act, No. 7914: Regulations for Risk Prevention and Emergency Response, 3 February 2000 (Costa Rica), art. 19 (empowering the National Commission on Risk Prevention, in coordination with the President of the Republic and the Minister of Foreign Relations, to coordinate international disaster aid, including that of the Red Cross); Decree-Law Modifying Provisions of Decree-Law No. 369, 1974 (Chile), in *Official Gazette of Chile*, 11 August 1975, p. 1 (mandating that all coordination go through the Office for National Emergencies); Supreme Decree 19386 in *Official Gazette of Bolivia*, No. 1813, arts. 1-5 (creating the System of Civil Defense and empowering it to facilitate the “coordination and cooperation” of disaster prevention, preparedness and relief, including those relief efforts of other Governments, intergovernmental organizations and non-governmental organizations); Disaster Management Act, 2005 (India), art. 10(2)(n) (empowering the National Executive Committee to “coordinate the activities of the Ministries or Departments of the Government of India, State Authorities, statutory bodies, other governmental or non-governmental organisations and others engaged in disaster management”), and art. 35(2)(g) (“The Central Government shall take all such measures as it deems necessary or expedient for the purpose of disaster management ... [namely] ... coordination with the United Nations agencies, international organizations and governments of foreign countries for the purposes of this Act”).

<sup>551</sup> After establishing national, state, and district disaster management authorities, and entrusting each with coordinating functions within their respective jurisdictions, the Act then empowers the Central Government to handle the coordination between Indian government ministries, non-governmental organizations, United Nations agencies, international organizations and other governments. Disaster Management Act, 23 December 2005.

Convention.<sup>552</sup> The Principles and Rules for Red Cross and Red Crescent Disaster Relief emphasize the coordinating function of IFRC, noting its “position as one of the leading disaster response agencies”.<sup>553</sup> The International Convention on Oil Pollution Preparedness, Response and Cooperation gives coordinating functions to the International Maritime Organization.<sup>554</sup> Several General Assembly resolutions can also be identified which give coordinating power, for example, to the Secretary-General,<sup>555</sup> the Emergency Relief Coordinator<sup>556</sup> or the Inter-Agency Standing Committee (IASC).<sup>557</sup> International coordinating mechanisms are also emphasized in the IASC Operational Guidelines on Human Rights and Natural Disasters.<sup>558</sup>

184. Third, some agreements establish new mechanisms specifically dedicated to coordinating efforts arising out of that instrument. This option is particularly common in treaties creating regional disaster relief and response organizations, such as the coordinating unit established within the Caribbean Disaster Response Agency<sup>559</sup> and the coordinating centre for humanitarian assistance established in the ASEAN system.<sup>560</sup> It is also used in numerous bilateral treaties, which have dealt with coordination issues through the establishment of joint commissions.<sup>561</sup>

<sup>552</sup> Tampere Convention on the Provision of Telecommunication Resources for Disaster Mitigation and Relief Operations, 18 June 1998 (United Nations, *Treaty Series*, vol. 2296, No. 40906), art. 2 (empowering the operational coordinator to exercise a coordinating function with regard to specified activities).

<sup>553</sup> Principles and Rules for Red Cross and Red Crescent Disaster Relief, art. 4. Reprinted in *International Review of the Red Cross*, No. 310 (29 February 1996), annex IV.

<sup>554</sup> Art. 12.

<sup>555</sup> An early example can be found in General Assembly resolution 36/225 of 17 December 1981, which stated in paras. 9 and 10 that following a request for disaster relief from an affected State, the Secretary-General or his representative (normally the United Nations Disaster Relief Coordinator) should convene meetings to coordinate a concerted relief effort among all interested parties, and when necessary should designate a lead entity to carry out relief activities.

<sup>556</sup> General Assembly resolution 46/182, the principal resolution concerning coordination within the United Nations, contains specific provisions on coordination in the form of functions entrusted to an Emergency Relief Coordinator (annex, paras. 34 and 35). Similarly, resolution 48/57 reiterates coordination three times in the same provision, “[stressing] the essential need for improved coordination within the United Nations system, and, while reaffirming the mandate and functions of the Department of Humanitarian Affairs to that end, requests the Emergency Relief Coordinator to improve coordination and management further, both at Headquarters and at the field level, including the coordination of the work of the relevant operational agencies” (para. 4).

<sup>557</sup> For example, resolution 47/168 of 22 December 1992 emphasized “the importance of the primary role of the Emergency Relief Coordinator, including with the support of the Inter-Agency Standing Committee, in ensuring better preparation for, as well as rapid and coherent response to, natural disasters and other emergencies”.

<sup>558</sup> IASC Operational Guidelines on Human Rights and Natural Disasters (Washington, D.C.: Brookings-Bern Project on Internal Displacement, 2006), para. B.1.6 (“International organizations and agencies and other actors providing humanitarian assistance, should ensure coordination of their actions among themselves and with national and local authorities”).

<sup>559</sup> Agreement Establishing the Caribbean Disaster Emergency Response Agency, 1991, arts. 10 and 11.

<sup>560</sup> ASEAN Agreement on Disaster Management and Emergency Response, 2005, art. 20 and annex.

<sup>561</sup> Agreement between the Government of the Hellenic Republic and the Government of the Russian Federation on Cooperation in the Field of Prevention and Response to Natural and Man-made Disasters, 2000, art. 5; Agreement on Cooperation for the Prevention of and Assistance in Cases of Natural Disasters, Mexico-Guatemala, 1987, art. I; Agreement on Scientific and



185. Fourth, certain instruments simply contain provisions stating that relevant actors “shall coordinate” their activities without laying down the specific modalities of this coordination.<sup>562</sup> Other instruments deal with unique situations of coordination: the Mohonk Criteria contain a provision specifically dedicated to coordination among political, humanitarian and peacekeeping mandates in complex emergencies,<sup>563</sup> while the Oslo Guidelines elaborate provisions on civil-military coordination in natural disasters.<sup>564</sup>

186. Thus, the most common trend in the creation of disaster relief coordinating mechanisms is to prefer those established by the Government of the receiving State. However, significant international coordinating mechanisms also exist, including those under the auspices of the Office for the Coordination of Humanitarian Affairs, IFRC, regional coordinating bodies and bilateral coordinating commissions. Difficulties concerning how to streamline these national and international coordinating processes have been regularly observed. For example, an IFRC study of disaster relief law in Nepal concluded that “there was general agreement that coordination and cooperation between national and international relief providers remained inadequate”.<sup>565</sup> Similarly, an IFRC study on South Asia, Southern Africa and Central America concluded that “the overwhelming source of challenges to the fast and effective provision of humanitarian assistance related to the difficulties in achieving a coordinated response between the various local and international actors”.<sup>566</sup>

187. A common problem identified was that while national coordinating mechanisms often lack the understanding of the policies, procedures and working methods of international relief organizations that is required to coordinate them effectively, international coordinating mechanisms often have insufficient understanding of the local government and cultural issues for them to be

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Technological Cooperation, Republic of Korea-Poland, 1993, art. 4; Agreement on Cooperation in Disaster Preparedness and Prevention and Mutual Assistance in the Event of Disasters, Spain-Argentina, 1988, art. XXI.

<sup>562</sup> See, for example, World Health Organization, Revision of the International Health Regulations, 2005, art. 14; Council of Europe, Committee of Ministers resolution (72)6 on precautions against natural and other disasters and the planning and provision of disaster relief, 1972, art. I.3; Declaration of principles for international humanitarian relief to the civilian population in disaster situations, resolution 26 adopted of the 21st International Conference of the Red Cross, Istanbul, September 1969, para. 3.

<sup>563</sup> Mohonk Criteria for Humanitarian Assistance in Complex Emergencies, 1995, para. IV.

<sup>564</sup> Updated Guidelines on the Use of Military and Civil Defence Assets in Disaster Relief — “Oslo Guidelines”, 2006, paras. 48-50. See the discussion on the use of military and civil defence assets in sect. IV.D.4 below. Although it is not codified in a convention, mention might also be made of a proposal by the Euro-Atlantic Partnership Council of NATO in a ministerial session in December 1997 to create, as a complement to OCHA coordinating mechanisms, a Euro-Atlantic disaster response coordination centre. See Euro-Atlantic Partnership Council, Civil Communications Planning Committee, “CEP [Civil Emergency Planning] Consequences of the Tampere Convention”, working paper EAPC(CCPC)WP(2202)03, 5 March 2002, p. 5.

<sup>565</sup> “Nepal: laws, policies, planning and practices on international disaster response”, IFRC, July 2005, p. 27 (noting that “the absence of a central mechanism for determining which organizations have which capacities and expertise, and the lack of information about the regions in which they are operating, were seen as central challenges”).

<sup>566</sup> IFRC International Disaster Response Law Project, report on findings from South Asia, Southern Africa and Central America based on field studies commissioned by the International Federation (March 2003), p. 17.

effective.<sup>567</sup> What appears necessary is overall coordination between national and international coordinating mechanisms so that the strength of each can be emphasized and their relative weaknesses minimized. In practice, however, national and international coordinating mechanisms have often developed independently.

**(c) Coordination and flexibility**

188. The area of coordination raises unique concerns as to the relative benefits of legal certainty on the one hand and flexibility on the other. It is submitted that while in several other areas discussed in this study, the benefits of codifying a clear legal rule are more widely accepted, coordination is one area where such agreement is lacking. Indeed, the view has been expressed by multiple interlocutors in the disaster relief field that overformalization of coordinating roles could have a negative effect on flexibility in the face of actual — and unpredictable — disasters. Under this line of reasoning, when disasters occur, it could be more expedient, efficient and effective for actors or organizations already present on the scene or otherwise particularly well-disposed to assist to take on a significant coordinating role, rather than being limited by inflexible centralized coordination schemes that were previously crafted in a general manner without regard to the specific situation at hand.

189. When large-scale disasters requiring such international coordination do occur — such as the Asian tsunami in 2004 — the creation and operation of coordinating mechanisms has indeed exhibited a flexible tendency. For example, although coordination and implementation of disaster relief operations in Thailand is generally the responsibility of the Civil Defense Secretariat under the Thai Civil Defense Act of 1979, the Thai Government empowered the Thai International Cooperation Agency to coordinate the foreign aid entering Thailand following the tsunami in 2004.<sup>568</sup> However, this flexibility may also exacerbate the difficulty in delineating the roles between national and international coordinating mechanisms discussed above.

**4. The use of military and civil defence assets in disaster relief**

190. Military and civil defence assets have been used in disaster relief activities to an increasing degree in recent years. Indeed, national militaries have advanced logistical capabilities which can greatly benefit a disaster relief operation.<sup>569</sup> However, concern exists that the use of military and civil defence assets in disaster relief may compromise impartiality and neutrality, blur the critical distinction between civilian and military action, lack the cultural sensitivity required for effective disaster relief and increase overall costs.<sup>570</sup> From a legal standpoint, the

<sup>567</sup> *Ibid.*; Tsunami Evaluation Coalition, “Coordination of international humanitarian assistance in tsunami-affected countries” (July 2006), pp. 40 and 41.

<sup>568</sup> “Legal issues from the international response to the tsunami in Thailand”, IFRC, July 2006, pp. 7 and 19.

<sup>569</sup> As stated in the Australian Government Overseas Disaster Assistance Plan (April 1998), the national defence force’s “capacity for quick reaction as well as the special skills and training of its personnel, and their capacity to be self supporting in a disaster environment, mean that there may be considerable reliance on this element of Australian Government response to an overseas relief operation” (para. 5.6.1).

<sup>570</sup> These questions have been addressed in various position papers by non-governmental organizations. See, for example, Caritas Internationalis, “Relations with the military” (April

Oslo Guidelines constitute the primary contemporary reference concerning military and civil defence assets in disaster relief,<sup>571</sup> although numerous other guidelines are also relevant.<sup>572</sup>

191. The Oslo Guidelines codify the following principles and rules related to the use of military and civil defence assets in disaster relief: they should be used only as a last resort, “where there is no comparable civilian alternative and only the use of military or civil defence assets can meet a critical humanitarian need”;<sup>573</sup> the disaster relief operation “must retain its civilian nature and character”: while military and civil defence assets may remain under military control, “the operation as a whole must remain under the overall authority and control of the responsible humanitarian organization”;<sup>574</sup> the direct provision of relief should always be

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2006); Humanitarian Policy Group, “Resetting the rules of engagement: trends and issues in military-humanitarian relations” (March 2006); Ockenden International, “Bleeding boundaries: civil-military relations and the cartography of neutrality” (November 2005); Humanitarian Practice Network, “A bridge too far: aid agencies and the military in humanitarian response” (January 2002); Association of German Development Non-Governmental Organisations (VENRO), “Armed forces as humanitarian aid workers? Scope and limits of cooperation between aid organisations and Armed Forces in Humanitarian Aid” (May 2003). Several academic articles also treat the issue of military and civil defence assets in humanitarian operations. See, for example, Manuel Bessler and Kaoruko Seki, “Civil-military relations in armed conflicts: a humanitarian perspective”, *Liaison*, vol. 3, No. 3 (2006); Eric James, “Two steps back: relearning the humanitarian-military lessons learned in Afghanistan and Iraq”, *Journal of Humanitarian Assistance* (October 2003); Meinrad Studer, “The ICRC and civil-military relations in armed conflict”, *International Review of the Red Cross*, vol. 83, No. 842, pp. 367-391.

<sup>571</sup> Guidelines on The Use of Military and Civil Defence Assets In Disaster Relief — “Oslo Guidelines”, Rev.1, 27 November 2006.

<sup>572</sup> See, for example, Guidelines on the use of military and civil defence assets to support United Nations humanitarian activities in complex emergencies, Office for the Coordination of Humanitarian Affairs, March 2003; Principles on military-civilian relations, IASC, January 1995; Guidelines on the use of military or armed escorts for humanitarian convoys, IASC, September 2001; Guiding principles for civil-military interaction, Australian Council For Overseas Aid, September 2002; Guidelines for relations between United States armed forces and non-governmental humanitarian organizations in hostile or potentially hostile environments, InterAction, July 2007. Country-specific guidelines have been produced with respect to Iraq, Afghanistan, Haiti, Liberia, and the Democratic Republic of the Congo (see <http://ochaonline.un.org/>). Moreover, the Office for the Coordination of Humanitarian Affairs has maintained the Civil-Military Coordination Section (CMCS) since 1996 to deal with the issue of civil-military coordination and has undertaken several examinations of the topic: “Civil-military relationship in complex emergencies — an IASC reference paper”, IASC, 28 June 2004; “The use of military and civil defence assets in support of humanitarian operations: report of the Task Force”, IASC, 27 September 1995; “The use of military and civil defence assets in relief operations: MCDA reference manual”, Department of Humanitarian Affairs, 15 November 1995.

<sup>573</sup> Oslo Guidelines, November 2006, para. 5. See also para. 32(ii).

<sup>574</sup> *Ibid.*, 32(iii) (noting that “this does not infer any civilian command and control status over military assets”); see also para. 37. Agreement between the Argentine Republic and the Republic of Chile on Cooperation in Disaster Matters, 1997, art. 7(3) (“The personnel of the sending Party shall only seek instructions from the competent agencies of the receiving Party with respect to their collaborative efforts in cases of disaster, otherwise maintaining their operational structure, command relationship and disciplinary regime in accordance with the laws and regulations of the sending Party”); ASEAN Agreement on Disaster Management and Emergency Response, 2005, art. 12(1) (“The Assisting Entity shall, where the assistance involves military personnel and related civilian officials, designate in consultation with the Requesting or Receiving Party, a person who shall be in charge of and retain immediate operational

carried out by humanitarian organizations, and “insofar as military organizations have a role to play in supporting humanitarian work, it should, to the extent possible, not encompass direct assistance”;<sup>575</sup> military and civil defence assets engaged in “humanitarian activities should be clearly distinguished from those forces engaged in ... military missions”, including through the use of internationally recognized markings or symbols;<sup>576</sup> any use of such assets in disaster relief should be “clearly limited in time and scale”;<sup>577</sup> military and civil defence personnel engaged in disaster relief should not be armed;<sup>578</sup> and such personnel engaged in disaster relief should not also engage in the protection of disaster relief personnel, a separate unit should be engaged for this purpose.<sup>579</sup> Finally, the Oslo Guidelines emphasize that the general principles applicable to all disaster relief operations apply also to the use of military and civil defence assets,<sup>580</sup> including the precondition of the consent of the receiving State<sup>581</sup> and the principles of humanity, neutrality and impartiality.<sup>582</sup>

192. Provisions on military and civil defence assets are also found in a variety of other instruments. For example, concerning potential threats to the sovereignty of the receiving State by the operation of foreign military and civil defence personnel on its territory, one instrument was identified which prevents such personnel from

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supervision over the personnel and the equipment provided by it”); Agreement Establishing the Caribbean Disaster Emergency Response Agency, 1991, art. 15(4) (“In the absence of a contrary agreement between the requesting State and the sending State to that effect, members of the disciplined forces of the sending State shall be under the control and disciplinary authority of their commanding officer”) and art. 15(1) (military and civil defence forces to be coordinated by a Special Coordinator designated “from among the senior officers of such forces”).

<sup>575</sup> Oslo Guidelines, November 2006, para. 32(iv). The military could, for example, play a major role in the transport of assistance, making use of its logistical capacities, but leave the final delivery of aid to humanitarian actors. See Australian Government Overseas Disaster Assistance Plan (April 1998), para. 5.6.2 (“Defence Attachés and Advisers in overseas missions may be allocated specific liaison duties ... but otherwise have no direct emergencies relief responsibilities”).

<sup>576</sup> Oslo Guidelines, November 2006, paras. 39 and 40. See also ASEAN Agreement on Disaster Management and Emergency Response, 2005, para. 15(1) (“Military personnel and related civilian officials involved in the assistance operation shall be permitted to wear uniforms with distinctive identification while performing official duties”); and para. 15(3) (“Aircrafts and vessels used by the military personnel and related civilian officials of the Assisting Entity may use its registration and easily identifiable license plate without tax, licenses and/or any other permits”).

<sup>577</sup> Oslo Guidelines, November 2006, para. 32(v).

<sup>578</sup> Ibid., para. 41. See also Council of Europe, recommendation Rec(2002)3, para. 13; and ASEAN Agreement on Disaster Management and Emergency Response, 2005, art. 12(2).

<sup>579</sup> Oslo Guidelines, November 2006, para. 43. See also ASEAN Agreement on Disaster Management and Emergency Response, of 2005, art. 12(2) (“The Requesting or Receiving Party shall ... ensure the protection of personnel, equipment and materials brought into its territory by or on behalf of the Assisting Entity for such purposes. Such military personnel and related civilian officials are not to carry arms”). Compare Guidelines on the use of military or armed escorts for humanitarian convoys (IASC, September 2001), p. 10 (providing for the use of armed escorts for humanitarian convoys but emphasizing that it is considered an extreme precautionary measure to be undertaken only in exceptional circumstances).

<sup>580</sup> Oslo Guidelines, 2006, para. 32(vi).

<sup>581</sup> Ibid., para. 32(i).

<sup>582</sup> Ibid., para. 20.

becoming involved in the “maintenance of public order” of the receiving State<sup>583</sup> or participating in any extraordinary measures involving suspension of constitutional rights.<sup>584</sup> It also requires that the protection of all humanitarian personnel be carried out exclusively by military and civil defence personnel of the receiving State.<sup>585</sup> Concerning preparedness, one agreement provides that “[t]he Parties shall, as appropriate, prepare Standard Operating Procedures for regional cooperation and national action required under this Agreement including ... utilisation of military and civilian personnel”<sup>586</sup> and “each Party shall earmark assets and capacities, which may be available for the regional standby arrangements for disaster relief and emergency response, such as ... military and civilian assets”.<sup>587</sup> Concerning status under national laws, while one regional treaty provides that the activities of military and civil defence assets “will be under the legislation of the Assisting Party regulating the status of such personnel”,<sup>588</sup> a bilateral treaty provides that “where the emergency teams include military personnel, such personnel shall for the duration of the operation remain subject to the national legislation governing their status”.<sup>589</sup> Concerning consent of the receiving State, several instruments require that the receiving State specifically consent to the use of military and civil defence assets,<sup>590</sup> or to their entry onto its territory.<sup>591</sup> In addition, one instrument was identified strictly prohibiting the use of military and civil defence assets.<sup>592</sup>

193. The use of military and civil defence assets in disaster relief raises difficult questions in the increasingly common situation of complex emergencies, in which a disaster takes place in or near an armed conflict zone.<sup>593</sup> First, the risk to the impartiality and neutrality of the humanitarian operation (or at least the public perception thereof) is complicated by the simultaneous operation of some military and civil defence assets who are involved in the relief efforts and others who are parties to the conflict. In such cases, certain principles discussed above take on particular importance, such as those prescribing that military and civil defence assets involved in disaster relief be completely separate from those involved in the conflict, that they be unarmed and that they be separately identifiable. Furthermore,

<sup>583</sup> Agreement between the Argentine Republic and the Republic of Chile on Disaster Cooperation, 1997, art. 7(1).

<sup>584</sup> Ibid.

<sup>585</sup> Ibid., art. 7(3).

<sup>586</sup> ASEAN Agreement on Disaster Management and Emergency Response, 2005, art. 8(2)(b).

<sup>587</sup> Ibid., art. 9(1)(b). See also art. 11(6).

<sup>588</sup> 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, 1998, art. 9(3).

<sup>589</sup> Convention on the Prediction and Prevention of Major Hazards and on Mutual Assistance in the Event of Natural or Man-made Disasters, France-Italy, 1992, art. 10(4).

<sup>590</sup> Agreement Establishing the Caribbean Disaster Emergency Response Agency, 1991, art. 15(3).

<sup>591</sup> Agreement Concerning the Improvement of Rescue Services in Frontier Areas (with exchange of notes), Sweden-Norway, 1974, art. 3; Agreement on Cooperation and Mutual Assistance in Cases of Accidents, Finland-Estonia, 26 June 1995, art. 9.

<sup>592</sup> Agreement on Cooperation Concerning Rescue Services in the Frontier Areas Between Finland and Norway, 1986, art. 6 (“Military units, military equipment or military *matériel* may not be used in pursuance of this Agreement for rescue operations in the territory of the other State”).

<sup>593</sup> See Guidelines on the use of military and civil defence assets to support United Nations humanitarian activities in complex emergencies (Office for the Coordination of Humanitarian Affairs, March 2003); Guidelines for relations between United States armed forces and non-governmental humanitarian organizations in hostile or potentially hostile environments, InterAction, July 2007.

the use of military and civil defence assets in complex emergencies raises difficult questions with regard to the principle of distinction between combatants and non-combatants in armed conflict.<sup>594</sup> Several of the principles discussed above are also closely related to this issue, including the requirement of clearly distinguishing military and civil defence assets engaged in humanitarian operations, the emphasis on civilian control over the use of military assets, and the use of different assets for protection and assistance purposes. It should be noted, however, that under international humanitarian law, all members of the armed forces are combatants, except medical and religious personnel, an exception which would presumably not cover all military and civil defence assets engaged in disaster relief.<sup>595</sup> While the commentary to Additional Protocol I to the Geneva Conventions provides that medical and religious personnel are the only members of the armed forces who are entitled to non-combatant status,<sup>596</sup> the military manuals of certain States give non-combatant status to other members of the armed forces, which could include a broader category of military and civil defence assets involved in disaster relief.<sup>597</sup>

<sup>594</sup> See, for example, Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 1977, arts. 48, 51(2) and 52(2); Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 1977, art. 13(2); Jean-Marie Henckaerts and Louise Doswald-Beck, *Customary International Humanitarian Law*, ICRC, 2005, pp. 3-8 and 25-29. The principle of distinction is considered by the International Court of Justice to be one of the “cardinal principles” of international humanitarian law and one of the “intransgressible principles of international customary law”. *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996*, p. 226, at p. 257, paras. 78 and 79.

<sup>595</sup> Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) 1977, art. 43(2); Jean-Marie Henckaerts and Louise Doswald-Beck, *Customary International Humanitarian Law*, ICRC, 2005, pp. 11-14 (rule 3).

<sup>596</sup> See, for example, the commentary on Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 1977, p. 516, paras. 1677 and 1678 (“In any army there are numerous important categories of soldiers whose foremost or normal task has little to do with firing weapons. These include auxiliary services, administrative services, the military legal service and others. Whether they actually engage in firing weapons is not important. They are entitled to do so, which does not apply to either medical or religious personnel, despite their status as members of the armed forces, or to civilians, as they are not members of the armed forces. All members of the armed forces are combatants, and only members of the armed forces are combatants. .... Any interpretation which would allow combatants as meant in Article 43 to “demobilize” at will in order to return to their status as civilians and to take up their status as combatants once again, as the situation changes or as military operations may require, would have the effect of cancelling any progress that this article has achieved”).

<sup>597</sup> Jean-Marie Henckaerts and Louise Doswald-Beck, *Customary International Humanitarian Law*, ICRC, 2005, p. 13 (“Germany’s Military Manual explains that “combatants are persons who may take a direct part in hostilities, i.e., participate in the use of a weapon or a weapon-system in an indispensable function”, and specifies, therefore, that “persons who are members of the armed forces but do not have any combat mission, such as judges, government officials and blue-collar workers, are non-combatants”. The United States Naval Handbook states that “civil defense personnel and members of the armed forces who have acquired civil defense status” are non-combatants, in addition to medical and religious personnel”). The use of military and civil defence assets also raises difficulties of terminology. In order to clearly distinguish other concepts such as “humanitarian intervention” and “military humanism”, it was suggested in the Inter-Agency Standing Committee (IASC) that any assistance activity undertaken by military and civil defence assets avoid use of the term “humanitarian”, and the IASC reference paper on

## 5. Quality of relief assistance

194. The issue of the quality of disaster relief is handled by existing instruments in two very different ways. On the one hand, certain provisions aim to assure that disaster relief assistance is of a sufficiently high quality as to provide a benefit, rather than a potential harm, to recipients. Under this general concept of quality, many different provisions exist, including those seeking to assure that disaster relief is geographically and culturally relevant, that it is timely, and that it is coordinated so as to assure non-redundancy of assistance. On the other hand, a very different type of quality provision addresses quality from the opposite perspective, assuring that underlying regulatory regimes in a State (i.e. those not related to disasters) which seek to maintain certain quality, health or safety standards do not act as a barrier to efficiency in the course of a rapid response relief operation. This is true, for example, of provisions seeking to waive typical quarantine and fumigation requirements for perishable relief consignments.

### (a) Quality control provisions

195. Several instruments contain quality provisions aimed at assuring that international disaster relief is of a sufficient standard to be of the highest benefit to victims. Quality can be understood in a number of ways, implicating issues such as safety, nutrition, relevance and cultural appropriateness. In addition to these core areas, efforts to increase quality can take on many other forms, such as assuring the maintenance of proper vaccination records; separating disaster assistance from proselytizing or other manipulation of relief distribution for self-interested reasons; preventing organizations from undertaking projects outside their areas of expertise; avoiding corruption; preventing the importation of too many relief goods; limiting the employment of expatriate staff where local skills could have been deployed; and avoiding high turnover of disaster relief staff.<sup>598</sup>

196. The most comprehensive catalogue of such quality provisions is the Sphere Humanitarian Charter — an exhaustive codification of quality standards in disaster response developed over a period of eight years by a collaborative effort of over 400 organizations in 80 countries.<sup>599</sup> The Sphere charter includes several general minimum standards, including (a) participation of the affected population in relief efforts, (b) the undertaking of initial assessments, (c) the need for a humanitarian response, (d) targeting of humanitarian aid, (e) monitoring of assistance programmes, (f) evaluation of humanitarian actions, (g) competencies of assistance personnel and (h) supervision and management.<sup>600</sup> Minimum quality standards are also spelled out in the specific sectors of water, sanitation and hygiene; food

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the civil-military relationship in complex emergencies is careful that every wording associated with the provision of assistance by the military is termed “relief” instead of “humanitarian”. See Manuel Bessler and Kaoruko Seki, “Civil-military relations in armed conflicts: a humanitarian perspective”, *Liaison*, vol. 3, No. 3 (2006) (citing IASC, “Civil-military relationship in complex emergencies — an IASC reference paper”, 28 June 2004).

<sup>598</sup> IFRC, “Legal issues from the international response to the tsunami in Indonesia”, July 2006, pp. 30-34; International Disaster Response Law Project field studies in South Asia, Southern Africa and Central America, in IFRC, *International Disaster Response Laws, Principles and Practice: Reflections, Prospects and Challenges* (Geneva, 2003), pp. 121 and 122.

<sup>599</sup> The Sphere Project: Humanitarian Charter and Minimum Standards in Disaster Response (Geneva: The Sphere Project, 2000, revised in 2004), p. 6.

<sup>600</sup> *Ibid.*, chap. 1.

security, nutrition and food aid; shelter, settlement and non-food items; and health services.<sup>601</sup>

197. Another significant quality provision can be found in the IASC Guidelines, which provide that “during and after the emergency phase of the disaster, adequate food, water and sanitation, shelter, clothing, and essential health services should be provided to persons affected by natural disasters who are in need of these goods and services”.<sup>602</sup>

198. In addition to these expansive provisions on the quality of disaster relief assistance, the most common provision concerns the relevance of disaster relief. For example, the Cotonou Agreement provides that “humanitarian and emergency assistance shall be granted exclusively according to the needs and interests of victims of disasters”.<sup>603</sup> The Principles and Rules for Red Cross and Red Crescent Disaster Relief provide that “if a National Society wishes to send relief supplies which are not mentioned in the Appeal launched by the Federation and/or ICRC, it shall first obtain the agreement of the National Society of the stricken country or of the Federation and/or ICRC. When there has been no appeal but a National Society nevertheless wishes to send relief supplies to the Society of a stricken country, the previous agreement of that Society is also required and the Federation and/or ICRC shall be informed”.<sup>604</sup> The “Principles and good practice of humanitarian donorship” provide for the allocation of humanitarian funding “in proportion to needs and on the basis of needs assessments” and request implementing humanitarian organizations to ensure, “to the greatest possible extent, adequate involvement of beneficiaries in the design, implementation, monitoring and evaluation of humanitarian response”.<sup>605</sup> The European Commission Framework Partnership Agreement with Humanitarian Organisations provides that “quality in humanitarian aid implies a clear focus on the beneficiaries. Priority shall be given to analysis of the beneficiaries’ situation ... including assessments of the different needs, capacities, and roles that might exist for men and women within the given

<sup>601</sup> Ibid., chaps. 2-5.

<sup>602</sup> IASC, Operational Guidelines on Human Rights and Natural Disasters (Washington, D.C.: Brookings-Bern Project on Internal Displacement, 2006), para. B.2.1. The Guidelines establish a four-part requirement to determine the adequacy of disaster relief goods and services: (a) availability means that these goods and services are made available to the affected population in sufficient quantity and quality; (b) accessibility requires that these goods and services (i) are granted without discrimination to all in need, (ii) are within safe reach and can be physically accessed by everyone, including vulnerable and marginalized groups, and (iii) are known to the beneficiaries; (c) acceptability refers to the need to provide goods and services that are culturally appropriate and sensitive to gender and age; and (d) adaptability requires that these goods and services be provided in ways flexible enough to adapt to the change of needs in the different phases of emergency relief, reconstruction and, in the case of displaced persons, return. During the immediate emergency phase, food, water and sanitation, shelter, clothing and health services are considered adequate if they ensure survival to all in need of them.

<sup>603</sup> Partnership Agreement between the members of the African, Caribbean and Pacific groups of States on the one part, and the European Community and its member States, on the other part, signed in Cotonou, Benin on 23 June 2000, *Official Journal of the European Communities*, vol. 43, No. L-317 (15 December 2000), p. 3, art. 72(2).

<sup>604</sup> *International Review of the Red Cross*, No. 310 (29 February 1996), annex IV, para. 27.1.

<sup>605</sup> “Principles and good practice of humanitarian donorship”, endorsed at the International Meeting on Good Humanitarian Donorship, Stockholm, 17 June 2003, paras. 6 and 7.



situation and its cultural context”.<sup>606</sup> The 1977 resolution of the International Conference of the Red Cross on measures to expedite international relief recommends “that all Governments, intergovernmental agencies and non-governmental organizations concerned with relief operations undertake programmes to educate donors on the importance of avoiding contributions of non-essential items for relief purposes”.<sup>607</sup>

199. Certain treaties deal with the issue of relevance from the demand side, seeking to assure that relief aid is relevant by providing that “the Requesting Party shall specify the scope and type of assistance required and, where practicable, provide the Assisting Entity with such information as may be necessary for that Party to determine the extent to which it is able to meet the request”.<sup>608</sup> Similarly, certain bilateral treaties contain a provision to the effect that “the Party requesting assistance must specify the nature and scope of the assistance which it requires and must, to the extent possible, provide the other Party with the information which the other Party needs in order to determine the scope of the assistance”.<sup>609</sup>

200. Additional instruments contain provisions addressing other aspects of quality. For example, concerning health and nutrition, the Food Aid Convention provides that “all products provided as food aid shall meet international quality standards, be consistent with the dietary habits and nutritional needs of recipients and, with the exception of seeds, shall be suitable for human consumption”.<sup>610</sup> Concerning safety, the Black Sea Economic Cooperation agreement provides that “drug materials and psychotropic substances may be imported only in quantities necessary for medical

<sup>606</sup> Version 041221, art. 17 (elaborating upon multiple aspects of quality, including (a) allocating funds according to the needs and to needs assessments; (b) promoting the participation of beneficiaries in the formulation, implementation and evaluation of humanitarian aid efforts; (c) endeavouring to base humanitarian aid operations on local capacities, respecting the culture, the structure and the customs of the communities and of the countries where the humanitarian aid operations are carried out; (d) establishing the linkage between relief, rehabilitation and development; and (e) cooperating to strengthen the capacities of communities affected).

<sup>607</sup> Recommendation G (see note 20 above). See also recommendation F (“It is recommended that all donors restrict their relief contributions to those high-priority relief needs identified by appropriate relief authorities and agencies, with a view to more efficient utilization of resources and more rapid fulfilment of essential relief needs”).

<sup>608</sup> ASEAN Agreement on Disaster Management and Emergency Response, 2005, art. 11(3). See also Tampere Convention on the Provision of Telecommunication Resources for Disaster Mitigation and Relief Operations, 1998, art. 4(2); Council of Europe, Recommendation rec(2002)3 of the Committee of Ministers to member States on transfrontier cooperation in civil protection and mutual assistance in the event of natural and technological disaster occurring in frontier areas, adopted by the Committee of Ministers on 6 March 2002 at the 786th meeting of the Ministers’ Deputies, para. 2 (recommending that donor Governments “involve territorial communities or authorities, if they have the appropriate devolved powers under domestic law, in planning and implementing the measures recommended in the appendix to the present recommendation”).

<sup>609</sup> Agreement on Cooperation and Mutual Assistance in Cases of Accidents, Finland-Estonia, 1995, art. 6. See also Agreement on Cooperation for the Prevention of and Assistance in Cases of Natural Disasters, Mexico-Guatemala, 1987, art. VI (“Within the limits of the resources available to them, the parties shall establish the timetable and scope of cooperation activities”).

<sup>610</sup> Food Aid Convention, 1995, art. III(j). The Convention also addresses various quality issues of a more general nature, such as emphasizing that food aid should be “the most effective and appropriate means of assistance”, (art. VIII(a)), that it should be based on an evaluation of local needs (art. VIII(b)), and that it should be targeted for local groups (art. VIII(c)).

Assistance purposes and used only by qualified medical personnel”.<sup>611</sup> Concerning impartiality, the Code of Conduct for the International Red Cross and Red Crescent Movement and Non-Governmental Organizations in Disaster Relief provides that “aid will not be used to further a particular political or religious standpoint”,<sup>612</sup> and that it shall not act as an instrument of Government foreign policy.<sup>613</sup> Finally, concerning legitimate uses of relief shipments, a protocol between the United Nations and Uzbekistan includes a quality control provision requiring the United Nations to ensure that relief consignments do not contain illegal arms.<sup>614</sup>

**(b) Regulation-limiting quality provisions**

201. In addition to those provisions which address quality issues directly, another important group of provisions can be identified which addresses questions of quality from quite the opposite perspective by seeking to ensure that existing laws and regulations in place to assure quality in various settings do not have the effect of limiting effective disaster relief operations. One such provision requires that the receiving State waive veterinary formalities, including quarantine, for the admission of dogs used in life-saving operations.<sup>615</sup> Similarly, the resolution of the International Conference of the Red Cross on measures to expedite international relief recommends “that potential recipient Governments waive — to the extent compatible with minimum standards of hygiene and animal protection — normal requirements regarding fumigation certificates and restrictions on food imports where these would impede the admission of relief items essential for the protection of disaster victims”.<sup>616</sup> The UNITAR Model Rules for Disaster Relief Operations provide that “the receiving State and the assisting State shall relax to the extent compatible with standards of hygiene and animal protection normal requirements regarding fumigation and prohibitions and restrictions on food imports and exports in regard to the designated relief supplies”.<sup>617</sup>

<sup>611</sup> 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, 15 April 1998, art. 10(3). See also Exchange of notes constituting an Agreement between the United States of America and Ecuador relating to Duty-free Entry and Exemption from Internal Taxation of Relief Supplies and Equipment, 1955 (providing specific limits on the scope of acceptable relief goods, excluding goods such as tobacco and alcoholic beverages).

<sup>612</sup> Annex VI to the resolutions of the 26th International Conference of the Red Cross and the Red Crescent, Geneva, 1995, para. 3.

<sup>613</sup> *Ibid.*, para. 4. Similarly, see provisions on “protecting the integrity of the humanitarian mandate” in the Mohonk Criteria for Humanitarian Assistance in Complex Emergencies, 1995, para. II.

<sup>614</sup> Protocol between the United Nations and the Government of the Republic of Uzbekistan to Facilitate the Delivery of Humanitarian Assistance from Uzbekistan to Afghanistan, 2001, para. 1.7.

<sup>615</sup> Agreement between the Swiss Federal Council and the Government of the Republic of the Philippines on Cooperation in the Event of Natural Disaster or Major Emergencies, 2001, art. 8.2.

<sup>616</sup> Recommendation D (see note 20 above).

<sup>617</sup> UNITAR, *Policy and Efficacy Studies*, No. 8 (Sales No. E.82.XV.PE/8), annex A, rule. 7.

202. In summary, provisions concerning quality in international instruments<sup>618</sup> can be divided into two very distinct varieties. On the one hand, certain provisions aim to increase the quality of assistance, for example by assuring that it is relevant to the victims concerned, that it is safe and that it is timely. On the other hand, a second set of provisions deal with quite the opposite question of assuring that existing regulations concerning quality are not so onerous or inflexible so as to inhibit the provision of assistance in some way which would generally be considered undesirable. While these two kinds of provisions address seemingly opposite issues, they are not mutually exclusive, and indeed it is possible for both to appear in the same instrument. For example, the Max Planck Guidelines include a quality-control provision that “the assisting State or organization shall ... comply with quality standards and other relevant regulations applicable to humanitarian assistance consignments”,<sup>619</sup> but simultaneously include a regulation-limiting quality provision that “in order to expedite, facilitate and protect humanitarian assistance operations the receiving State shall, in particular ... waive any prohibitions, restrictions or regulations which would otherwise delay the importation of humanitarian assistance consignments, to the extent compatible with reasonable health and safety standards”.<sup>620</sup>

## **6. Protection of relief personnel**

203. The safety and security of humanitarian relief personnel is an important condition for the provision of assistance. A distinction may be drawn between the safety and security of United Nations and associated personnel, and that of other categories of relief personnel.

### **(a) United Nations officials and associated personnel**

204. United Nations officials and associated personnel are entitled to protection under the Convention on the Safety of United Nations and Associated Personnel, of 1994, which provides that “United Nations and associated personnel, their equipment and premises shall not be made the object of attack or of any action that prevents them from discharging their mandate” and that “States Parties shall take all appropriate measures to ensure the safety and security of United Nations and associated personnel”.<sup>621</sup> The protection the Convention actually affords to humanitarian relief personnel responding to a disaster is limited, however, by a requirement that the Security Council or General Assembly make a declaration of

<sup>618</sup> Concerning national legislation and relief plans, very few such provisions were identified in the national laws under review. However, it is submitted that this ostensible gap is a reflection not of a lack of such provisions in national law, but of the fact that at the national level such provisions are included not in disaster relief laws but in other laws beyond the scope of this study. For example, the IFRC report on Fiji notes that although there are no direct quality and accountability standards in Fijian law concerning disaster relief, such provisions can be found in other laws such as the Food Security and Safety Act, the Water Supply Act, the Road Safety Act, the Public Health Act (including the Building Code), the Health and Safety at Work Act, the Land Transport Act and the Marine Act (“Fiji: laws, policies, planning and practices on International Disaster Response”, IFRC, July 2005, p. 24).

<sup>619</sup> Peter MacAlister-Smith, *Draft international guidelines for humanitarian assistance operations* (Heidelberg, Germany: Max Planck Institute for Comparative Public Law and International Law, 1991), art. 16(c).

<sup>620</sup> *Ibid.*, para. 21(b).

<sup>621</sup> United Nations, *Treaty Series*, vol. 2051, No. 35457, art. 7.

exceptional risk before the Convention can apply outside the context of United Nations peacekeeping operations.<sup>622</sup>

205. In 2005, an Optional Protocol to the Convention was adopted which, inter alia, extended the protection afforded by the Convention, without the added requirement of a declaration of exceptional risk, to “all other United Nations operations established by a competent organ of the United Nations in accordance with the Charter of the United Nations and conducted under United Nations authority and control for the purposes of ... delivering emergency humanitarian assistance”.<sup>623</sup> However, the optional protocol contains an “opt-out” clause providing that “a host State may make a declaration to the Secretary-General of the United Nations that it shall not apply the provisions of this Protocol with respect to an operation ... which is conducted for the sole purpose of responding to a natural disaster”.<sup>624</sup>

206. According to the *travaux préparatoires*, the inclusion of the requirement of a declaration of exceptional risk in the Convention, and the opt-out clause in its Optional Protocol, were both motivated by a concern for the principle of sovereignty and non-intervention in the domestic affairs of the receiving State. Under the Convention regime, it was reasoned that if the situation was not considered risky by the Security Council or General Assembly, then the laws of the receiving (host) State should provide adequate protection to personnel and, accordingly, there was no need for additional protection under international law. Under the Optional Protocol, it was presumed that personnel delivering emergency humanitarian assistance would find themselves in situations of risk requiring protection.<sup>625</sup> However, it was still considered debatable whether persons responding solely to a natural disaster<sup>626</sup> would find themselves in similar circumstances, and thus — in accordance with the principle of non-intervention — the opt-out clause relating to disaster response operations proved a necessary compromise in the adoption of the Optional Protocol:

Those delegations that preferred the retention of [the opt-out clause] noted that the paragraph was necessary to reflect the reality that natural disasters also occurred in situations of minimal risk, for example, in States where there

<sup>622</sup> Ibid., art. 1(c). See also A/55/637, paras. 6-12; A/58/187, paras. 11-22, in which the Secretary-General noted the practical difficulties of the requirement of a declaration: “[T]here are not at present any generally agreed criteria for determining that there exists a situation of exceptional risk to the safety of the personnel participating in a United Nations operation” (para. 11); and A/59/226, paras. 5 and 6. Notwithstanding his reservations on the requirement of a declaration, the Secretary-General recommended that a declaration be made pertaining to the situation in Afghanistan (see A/58/187, paras. 16-22; A/59/226, para. 6). No such declaration has been made.

<sup>623</sup> Optional Protocol to the Convention on the Safety of United Nations and Associated Personnel, annexed to General Assembly resolution 60/42 of 8 December 2005, article II(1).

<sup>624</sup> Ibid., art. II(3) (providing also that such a declaration must be made prior to the deployment of the operation).

<sup>625</sup> A/C.6/60/SR.8, para. 62 (statement of Mr. Wenaweser, Chairman of the Ad Hoc Committee and of the Working Group on the Scope of Legal Protection under the Convention on the Safety of United Nations and Associated Personnel): “The concepts of peacebuilding and emergency humanitarian assistance had been introduced as an attempt to reflect properly the element of risk in United Nations operations.”

<sup>626</sup> It should be noted that the opt-out provision in the Optional Protocol refers specifically to natural disasters, and thus does not prejudge the element of risk present with respect to other types of disasters, in particular complex emergencies.

existed a stable social order. Therefore, personnel delivering emergency humanitarian assistance would be adequately protected in accordance with the domestic law of that State.<sup>627</sup>

207. Other delegations, however, were critical of the opt-out clause:

It was observed that it did not appear reasonable to include an opt-out provision in an optional protocol whose very purpose was to expand the scope of protection to a broader category of operations. The view was also expressed that use of the opt-out provision by a host State could be perceived as an unfriendly act towards the organizations providing the assistance and be a disincentive to the staff assigned to the operation. It was also pointed out that, since chaos and the deterioration of law and order often arose as a consequence of natural disasters, such situations contained an element of risk and should be covered by the scope of the draft protocol. Moreover, there was doubt as to whether or not the draft protocol would apply to situations of complex disasters, for example, where a State was affected by both a natural disaster and a risky situation requiring peacebuilding activity. The question was also raised regarding the rationale for excluding natural disasters but not other kinds of disasters, such as epidemics or man-made disasters.<sup>628</sup>

208. States remained divided on the question of protection of disaster relief personnel throughout the discussion of General Assembly resolution 60/42, to which the Optional Protocol is annexed, with one group of States expressing their support for unhindered application of the Protocol to disaster relief operations<sup>629</sup> and

<sup>627</sup> Report of the Ad Hoc Committee on the Scope of Legal Protection under the Convention on the Safety of United Nations and Associated Personnel, 11-15 April 2005, *Official Records of the General Assembly, Sixtieth Session, Supplement No. 52 (A/60/52)*, para. 32.

<sup>628</sup> *Ibid.*, para. 29.

<sup>629</sup> The United Kingdom, speaking on behalf of the 25 States members of the European Union as well as an additional 12 States aligning themselves with the European Union position, stated: "We are pleased that the Protocol applies equally to operations delivering emergency humanitarian assistance in natural-disaster situations. United Nations and associated personnel require the protection of the Convention and the Protocol in such situations. We regret the fact that some delegations felt the need for an opt-out declaration" (A/60/PV.61, p. 3). Australia stated that it "reluctantly accepted" the opt-out provision, but "we hoped it will never be used. History has shown that natural disasters can often lead to a breakdown in law and order. United Nations and associated personnel deployed in such circumstances should unquestionably enjoy the protections of the Convention" (*ibid.*, p. 5). Canada stated that it "regret[ted] that it was necessary, in order to obtain unanimity, to include an abstention option in the Protocol in situations of natural disaster" (*ibid.*, p. 6). New Zealand stated that while it was "ready to recognize the theoretical potential that a natural disaster may occur in the most stable of environments, where no particular risk is faced by United Nations and associated personnel engaged in the humanitarian response", it considered that, "in real terms, scenarios where the legal protections offered by the Convention and the Protocol are unwarranted will be exceptional" (*ibid.*, p. 6). Switzerland stated that "one of the greatest improvements introduced by the Protocol is the suppression of the mechanism requiring a declaration of risk for the application of the Convention. We therefore stress that the States parties should automatically apply the Protocol to the two categories of United Nations operations within the scope of this instrument, in other words, not only for the delivery of humanitarian, political or development assistance in peacebuilding but also in delivering emergency humanitarian assistance" (*ibid.*, p. 8). Kenya stated that it was flexible on the applicability of the Protocol to disasters, adding that the necessity for an opt-in or opt-out declaration by the host State should be carefully considered because it could create an unnecessary bottleneck in the implementation of the Protocol (A/C.6/60/SR.9, para. 3).

another group opposing the unlimited application of the Protocol in the context of natural disasters.<sup>630</sup>

209. The Convention defines “associated personnel” as “(i) Persons assigned by a Government or an intergovernmental organization with the agreement of the competent organ of the United Nations; (ii) Persons engaged by the Secretary-General of the United Nations or by a specialized agency or by the International Atomic Energy Agency; or (iii) Persons deployed by a humanitarian non-governmental organization or agency under an agreement with the Secretary-General of the United Nations or with a specialized agency or with the International Atomic Energy Agency, to carry out activities in support of the fulfilment of the mandate of a United Nations operation”.<sup>631</sup> In 2002, following a request by the General Assembly,<sup>632</sup> a model standard provision was prepared for inclusion in agreements concluded between the United Nations and humanitarian non-governmental organizations or agencies so as to clarify that persons deployed by those designated organizations or agencies in countries which are parties to the treaty would be considered “associated personnel” for purposes of the

<sup>630</sup> Cuba was of the view that “there is no exceptional risk in [disaster] situations for United Nations and associated personnel that would call for protection beyond what they would already enjoy under the national legislation of host countries and their agreements with the United Nations for the deployment of such operations” (A/60/PV.61, p. 9). The Islamic Republic of Iran stated that it believed the opt-out clause “to be a useful provision that could facilitate the universality of the Protocol” (ibid., p. 11). Pakistan stated that in cases of natural disaster, emergency humanitarian assistance operations should be carried out only with the consent of the host States. In that regard, the opt-out clause was a good basis for compromise, since it provided a procedure under which a host State could declare the non-applicability of the Optional Protocol with respect to an operation undertaken in response to a natural disaster (A/C.6/60/SR.8, para. 72). Jordan stated that, in the case of natural disasters, the sovereign State must have the right to declare that its national legal system was able to provide the necessary legal protection and that there were no specific risks associated with the relevant United Nations operation (ibid., para. 76). The Russian Federation said that it did not object to the inclusion in the scope of the draft protocol of operations for the provision of emergency humanitarian assistance in response to a natural disaster. However, the risk to personnel in such situations usually arose from consequences of the natural disaster, such as theft, looting and societal breakdown, that fell within the domestic jurisdiction of the host State. It was therefore logical to enshrine the right of such a State to make a declaration that it would not apply the draft protocol to operations conducted for the sole purpose of responding to a natural disaster (A/C.6/60/SR.9, para. 10). Venezuela stated that the draft protocol must apply only when the host country so decided. It should not apply in the case of United Nations operations to assist in natural disasters, which did not give rise to exceptional risk (ibid., para. 30). China stated that the delivery of emergency humanitarian assistance should be subject to certain restrictions: a State should have the option of declaring that the draft protocol would not be applied to United Nations operations conducted for the sole purpose of responding to a natural disaster in its territory. Moreover, China insisted on the right of the host State to make such a declaration, not with the intention of relieving the host State of the obligation to protect the personnel in question, but in order to make it clear that such operations did not necessarily entail exceptional risks (ibid., paras. 35 and 36). Argentina stated that the inclusion of natural disasters in the scope of the draft protocol would overburden the Government of the affected State, whose priority in such situations was to provide immediate relief to victims (ibid., para. 43). Uruguay stated that the opt-out clause reflected a legitimate right of the host State not to apply the Protocol in certain situations (ibid., para. 47).

<sup>631</sup> Convention on the Safety of United Nations and Associated Personnel, art. 1(b).

<sup>632</sup> General Assembly resolution 57/28 of 19 November 2002. See also resolutions 58/82 of 9 December 2003 and 59/47 of 2 December 2004.

Convention.<sup>633</sup> In addition, the Secretary-General was requested to make available to Member States the names of organizations or agencies that had concluded such agreements.<sup>634</sup>

**(b) Protection of other categories of relief personnel**

210. Only one instrument was identified which explicitly distinguished the protection of disaster relief personnel *ratione personae*. The Oslo Guidelines distinguish between “military and civil defence personnel employed exclusively in the support of United Nations humanitarian activities”, who are to be “accorded the appropriate protection by the Affected State and any combatants”,<sup>635</sup> and other military and civil defence units performing assistance missions, who “are in principle not granted any special protection other than that granted by the Affected State”.<sup>636</sup>

211. A number of instruments contain a broadly worded provision on the protection of humanitarian personnel which does not specifically include or exclude additional humanitarian actors (such as personnel of non-governmental organizations). For example, several multilateral conventions provide that the receiving State shall ensure the protection of personnel, equipment and materials brought into its territory by, or on behalf of, the assisting party.<sup>637</sup> A number of bilateral treaties provide that the authorities of the requesting party shall extend protection to the emergency teams of the assisting party.<sup>638</sup> Both sets of provisions, which relate to the protection of personnel acting on behalf of the assisting State, might conceivably include representatives of non-governmental organizations where such organizations have been engaged as part of the relief effort.

212. Some instruments contain a general clause on protection of disaster relief personnel but make this protection applicable to non-governmental organization

<sup>633</sup> See A/58/187, para. 24. The proposed standard provision reads: “For the purposes of the Convention on the Safety of United Nations and Associated Personnel, persons deployed by [the humanitarian non-governmental organization or agency] under this Agreement shall be considered ‘associated personnel’ within the meaning of article 1 (b) (iii) of the Convention.”

<sup>634</sup> See A/59/226, para. 8, for an example of the subsequent implementation of the procedure.

<sup>635</sup> Guidelines on the Use of Military and Civil Defence Assets in Disaster Relief — “Oslo Guidelines”, Rev. 1, November 2006, para. 39.

<sup>636</sup> *Ibid.*, para. 46.

<sup>637</sup> Convention on the Transboundary Effects of Industrial Accidents, 1992, annex X, para. 2; Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency, 1986, art. 3(b); Framework Convention on Civil Defence Assistance, 2000, art. 4(a)(5); Tampere Convention on the Provision of Telecommunication Resources for Disaster Mitigation and Relief Operations, 1998, art. 5(3); Agreement Establishing the Caribbean Disaster Emergency Response Agency, 1991, art. 16(5); and Cotonou Agreement (2000), art. 72(2) (the “protection of victims shall be guaranteed as well as the security of humanitarian personnel and equipment”) (emphasis added).

<sup>638</sup> Agreement on Mutual Assistance in the Event of Disasters or Serious Accidents (with exchange of notes), Denmark-Federal Republic of Germany, 1985, art. 7(3). See also Convention between the Government of the French Republic and the Government of the Kingdom of Belgium on Mutual Assistance in the Event of Disasters or Serious Accidents, 1981, art. 7(3); Convention on Mutual Assistance in the Event of Disasters or Serious Accidents, France-Germany, 1977, art. 7(3); Agreement on Mutual Assistance in the Event of Disasters or Serious Accidents, France-Switzerland, 1987, art. 9(3); Convention on Mutual Assistance in Combating Disasters and Accidents, Netherlands-Belgium, 1984, art. 5(3); and Agreement on Technical Cooperation and Mutual Assistance in the Field of Civil Defence, Spain-Morocco, 1987, art. 4(2).

personnel — regardless of the existence of a legal connection to the assisting State — through the operation of a broad definition of assisting personnel. For example, the ASEAN Agreement on Disaster Management and Emergency Response, of 2005, provides that the receiving State “shall ensure the protection of personnel, equipment and materials brought into its territory by or on behalf of the Assisting Entity”,<sup>639</sup> having previously defined “Assisting Entity” as “a State, international organisation, and any other entity or person that offers and/or renders assistance to a Receiving Party or a Requesting Party in the event of a disaster emergency”.<sup>640</sup> Similarly, the Inter-American Agreement provides that the receiving State shall “make its best efforts to protect personnel, equipment, and materials brought into its territory”,<sup>641</sup> and subsequently provides that it applies automatically to non-governmental organizations within the relief mission of States and intergovernmental organizations<sup>642</sup> and can be made applicable to a non-governmental organization outside such missions by mutual agreement between the receiving State and the organization.<sup>643</sup>

213. Furthermore, the 2003 resolution of the Institute of International Law on humanitarian assistance states that “intentionally directing attacks against personnel, installations, goods or vehicles involved in a humanitarian assistance action is a serious breach of fundamental principles of international law” and that “if such serious breaches are committed, the accused persons shall be brought to trial before a competent domestic or international court or tribunal”.<sup>644</sup> Several additional texts contain similar provisions<sup>645</sup> without distinguishing between categories of

<sup>639</sup> ASEAN Document Series 2005, p. 157, art. 12(2).

<sup>640</sup> Ibid., art. 1(1) (emphasis added).

<sup>641</sup> Inter-American Convention to Facilitate Disaster Assistance, 1991, art. IV(c).

<sup>642</sup> Ibid., art. XVI(b).

<sup>643</sup> Ibid., art. XVI(c).

<sup>644</sup> Sect. IX.

<sup>645</sup> See, for example, Peter MacAlister-Smith, *Draft International Guidelines for Humanitarian Assistance Operations* (Heidelberg, Germany: Max Planck Institute for Comparative Public Law and International Law, 1991), art. 20(c) (The receiving State shall “[p]rotect in every way necessary the humanitarian activities of the assisting State or organization and their designated personnel”); *Recommended Rules and Practices, Balkan National Societies meeting on international disaster response law* (Belgrade, 20-26 September 2004), part 1, para. III(6) (recommends that Governments “protect relief consignments and relief workers from attacks and interference in the exercise of their mission”); *Guiding Principles on Internal Displacement*, 2000, principle 26 (“[P]ersons engaged in humanitarian assistance, their transport and their supplies shall be respected and protected. They shall not be the object of attack or other acts of violence”); Council of the European Union regulation No. 1257/96 concerning humanitarian aid, 20 June 1996 (*Official Journal* L 163, 2 July 1996), art. 2(c) (“The principal objectives of ... humanitarian aid operations ... shall be ... to help finance the transport of aid and efforts to ensure that it is accessible to those for whom it is intended, by all logistical means available, and by protecting humanitarian goods and personnel, but excluding operations with defence implications”) (emphasis added); Council of Europe, recommendation Rec(2002)3 of the Committee of Ministers to member States on transfrontier cooperation in civil protection and mutual assistance in the event of natural and technological disaster occurring in frontier areas, adopted by the Committee of Ministers on 6 March 2002 at the 786th meeting of the Ministers’ Deputies, para. 13 (“Should the emergency services include military or paramilitary units, the sending State should take care they intervene unarmed, subject to specific agreements with the requesting State, especially as regards the protection of the personnel and equipment dispatched”) (emphasis added); International Law Association Draft Model Agreement, 1980, art. 14(2) (the receiving State “is required to ensure the security of the organization’s personnel”).



personnel. In some instances, specific reference is made to personnel of non-governmental organizations.<sup>646</sup>

214. At the level of national legislation, Mongolian law provides that disaster relief personnel have a right “to receive ... self-protection means during the work in disaster [assistance]”.<sup>647</sup> Colombian law provides that the Colombian civil defence force will collaborate in the maintenance of internal security during disasters.<sup>648</sup> Cuban law establishes a special provision for the protection of foreigners by the civil defence force during times of disasters, which could be extended to international relief personnel.<sup>649</sup>

## 7. Costs relating to disaster response operations

215. Provisions concerning costs related to disaster response operations can differ significantly in form and approach. Certain instruments — particularly multilateral treaties and resolutions establishing an international or regional disaster relief mechanism — generally contain provisions establishing a standby funding scheme for that mechanism, and it is in turn this mechanism which, ideally, provides funding for disaster relief operations.<sup>650</sup> Provisions in bilateral treaties, on the other hand, address the question of costs on a completely different level: without mentioning any possible standby funding, the cost provisions in these treaties take the form of a clause establishing a presumption that the costs of disaster relief operations will be borne by a certain actor, allowing for those costs to shift to another actor upon the occurrence of certain events elaborated in the treaty. With respect to these presumption-based schemes, it is worth noting that there appears to be little consistency in where the burden of payment falls: while some treaties establish a presumption that such costs will be borne by the receiving State, a similar number provide that they shall be borne by the assisting State. Finally, several instruments address the question of cost-sharing in a variety of other ways. This section will review these various provisions.

### (a) Central funding schemes

216. Several instruments have addressed the payment of costs through the creation of a central standby fund to cover all costs associated with disaster relief operations as they arise. This option is particularly popular with multilateral conventions and resolutions which simultaneously create other centralized bodies or governing mechanisms. For example, the Convention and Statute establishing an International

<sup>646</sup> See, however, the Code of Conduct for the International Red Cross and Red Crescent Movement and Non-Governmental Organizations in Disaster Relief, 1996, annex III, para. 3, which provides that “IGOs should extend security protection provided for UN organizations, to NGHAs [non-governmental humanitarian agencies]”. See also UNHCR Executive Committee conclusion No. 83(XLVIII) on the safety of UNHCR staff and other humanitarian personnel, 1997, para. (b)(i)-(ii), which calls upon States and all concerned parties “to take all possible measures to safeguard the physical security and property of the staff of UNHCR and its implementing partners, *as well as of other humanitarian personnel*” (emphasis added).

<sup>647</sup> Law on Disaster Protection (Mongolia), 20 June 2003, art. 30.

<sup>648</sup> Decree No. 919 organizing the National Disaster Prevention and Response System (Colombia), 1 May 1989, art. 68 (extending Extraordinary Decree No. 2341 of 1971, art. 4).

<sup>649</sup> Decree-Law No. 170 on the Civil Defence System (Cuba), 8 May 1997, art. 8.

<sup>650</sup> In practice, however, such mechanisms have not maintained sufficient standby funding capacity to fund large-scale relief operations without soliciting additional funding, as discussed below.

Relief Union attempted to establish a regime whereby a central body, the Union, would have the necessary standby resources to pay for disaster relief operations, such that the issue of the distribution of responsibility for costs among various actors would not arise with each disaster relief operation. The Statute provided for an initial fund,<sup>651</sup> certain additional voluntary funds provided by grants from Governments and private contributions,<sup>652</sup> and a working capital fund “to reconstitute the initial fund ... and ... to supply or supplement the relief given in cases of disasters for which no special donations are available”.<sup>653</sup> Although this particular scheme met with significant difficulties, this type of central funding mechanism has nevertheless been adopted in numerous regional disaster relief mechanisms.<sup>654</sup> It has also been adopted in the context of the United Nations in the Central Emergency Revolving Fund created by the General Assembly in resolution 46/182,<sup>655</sup> which provides that “resources should be advanced to the operational organizations of the system on the understanding that they would reimburse the fund in the first instance from the voluntary contributions received in response to consolidated appeals”.<sup>656</sup> The resources of this Fund have been significantly strained, and the General Assembly has made several attempts to supplement it,<sup>657</sup> ultimately replacing it with the Central Emergency Response Fund in 2005.<sup>658</sup>

**(b) Presumption-based schemes**

217. Rather than establish a central standby fund, numerous treaties address the question of costs of disaster relief through a clause establishing a presumption that such costs are to be paid by either the receiving State or the requesting State, allowing for those costs to shift to the other State upon the occurrence of certain specifically enumerated events. This approach is prevalent in more recent instruments. It is particularly favoured in bilateral agreements, but is also adopted in several multilateral treaties. There appears, however, to be little agreement on where the original presumption should place the burden for the payment of such costs, with

<sup>651</sup> Convention and Statute Establishing an International Relief Union, 1927, art. 9.

<sup>652</sup> *Ibid.*, arts. 11 and 12.

<sup>653</sup> *Ibid.*, art. 16. It should also be noted that the Statute, in article 14, invited the “international organizations of the Red Cross ... to provide at their expense and to the extent which they consider to be compatible with their resources, the permanent and central services of the International Relief Union”.

<sup>654</sup> See, for example, ASEAN Agreement on Disaster Management and Emergency Response, 2005, art. 24; Andean Council of Foreign Ministers, Decision No. 529 establishing the Andean Committee for Disaster Prevention and Response (CAPRADE), 2002, art. 5; New Convention establishing the Coordination Centre for the Prevention of Natural Disasters in Central America (CEPREDENAC), 3 September 2003, art. 10.

<sup>655</sup> See resolution 46/182 of 19 December 1991, annex, para. 23.

<sup>656</sup> *Ibid.*, para. 25.

<sup>657</sup> These included calling on States and private donors to increase voluntary contributions so as to assure effective disaster response, and allowing the Emergency Relief Coordinator on an exceptional basis to draw from the interest earned by the Revolving Fund to enhance rapid response coordination where insufficient capacity exists at the field level (resolution 48/57 of 14 December 1993, para. 12).

<sup>658</sup> By its resolution 60/124 of 15 December 2005, the General Assembly decided to upgrade the Central Emergency Revolving Fund into the Central Emergency Response Fund by including a grant element based on voluntary contributions by Governments and private-sector entities such as corporations, individuals and non-governmental organizations. See also the reports of the Secretary-General on the Central Emergency Response Fund, A/62/72-E/2007/73 of 4 June 2007 and A/61/85/Add.1-E/2006/81/Add.1 of 14 September 2006.

an equal number of treaties placing it on the assisting State<sup>659</sup> and on the receiving State.<sup>660</sup>

<sup>659</sup> See, e.g., Inter-American Convention to Facilitate Disaster Assistance, 1991, art. XIV (“Except for the provisions of Arts. IX [concerning support from the assisted State] and XII [concerning claims and compensation], the assistance shall be provided at the expense of the assisting state, without cost to the assisted state, except where these states agree otherwise”); Agreement Establishing the Caribbean Disaster Emergency Response Agency, 1991, art. 19; Food Aid Convention, 1995, art. X(1); Convention between the Government of the French Republic and the Government of the Kingdom of Belgium on Mutual Assistance in the Event of Disasters or Serious Accidents, 1981, arts. 8 and 10(4) (“A special arrangement shall also be concluded concerning the expenses referred to in article 8, paragraph 3, above”); Convention on Mutual Assistance in Combating Disasters and Accidents, Netherlands-Belgium, 1984, art. 9; Agreement on Mutual Assistance in the Event of Disasters or Serious Accidents (with exchange of notes), Denmark-Federal Republic of Germany, 1985, art. 8; Convention on Mutual Assistance in the Event of Disasters or Serious Accidents, France-Germany, 1977, art. 8; Convention between the Federal Republic of Germany and Belgium on Mutual Assistance in Natural Disasters or Serious Accidents, 1980, art. 8; Agreement on Cooperation on Disaster Preparedness and Prevention and Mutual Assistance in the Event of Disasters, Spain-Argentina, 1988, art. XVI; Agreement on mutual assistance between the French and Monegasque relief and civil defence services, France-Monaco, 1970, art. 3; Guidelines on the Use of Military and Civil Defence Assets in Disaster Relief — “Oslo Guidelines”, Rev. 1, November 2006, para. 27; and International Law Association, Draft Model Agreement on International Medical and Humanitarian Law, 1980, art. 12.

<sup>660</sup> See, for example, draft convention on expediting the delivery of emergency assistance, 1984, (A/39/267/Add.2-E/1984/96/Add.2, annex, art. 15; Agreement on Cooperation and Mutual Assistance in Cases of Accidents, Finland-Estonia, 1995, art. 10; Agreement between the Government of the French Republic and the Government of Malaysia on Cooperation in the Field of Disaster Prevention and Management and Civil Security, 1998, art. 7; Agreement on Technical Cooperation and Mutual Assistance in the Field of Civil Defence, Spain-Morocco, 1987, art. 4; Agreement between the Government of the Hellenic Republic and the Government of the Russian Federation on Cooperation in the Field of Prevention and Response to Natural and Man-Made Disasters, 2000, art. 12; Convention on Mutual Assistance between French and Spanish Fire and Emergency Services, 1959, updated by Protocol of 1973, art. V; Agreement on Mutual Assistance between Portuguese and Spanish Fire and Emergency Services, 1980 (terminated and superseded by the Protocol between the Kingdom of Spain and the Portuguese Republic on Technical Cooperation and Mutual Assistance in the Field of Civil Defence of 1992), art. 5(2); Nordic Mutual Assistance Agreement in connection with Radiation Accidents, International Atomic Energy Agency and Denmark, Finland, Norway and Sweden, 1963, art. III(3); Council of Europe, recommendation Rec(2002)3 of the Committee of Ministers to member States on transfrontier cooperation in civil protection and mutual assistance in the event of natural and technological disaster occurring in frontier areas, adopted by the Committee of Ministers on 6 March 2002 at the 786th meeting of the Ministers’ Deputies, para. 13(c); European Commission decision 2004/277/EC, Euratom, of 29 December 2003 laying down rules for the implementation of Council Decision 2001/792/EC, Euratom establishing a Community mechanism to facilitate reinforced cooperation in civil protection assistance interventions, art. 35 (providing that, unless agreed otherwise, costs will be borne by the receiving State, which shall also house and feed the assisting teams from participating States for the duration of the intervention, but adding that “assisting teams shall be initially logistically independent and self-sufficient for a reasonable period”); and Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency, 1986, art. 7, the latter Convention first notes in art. 7(1) that “an assisting party may offer assistance without costs to the requesting State”, but then states that “when assistance is provided wholly or partly on a reimbursement basis, the requesting State shall reimburse the assisting party for the costs incurred for the services rendered by persons or organizations acting on its behalf, and for all expenses in connection with the assistance to the extent that such expenses are not directly defrayed by the requesting State” (*ibid.*, art. 7(2)). It then further notes, however, that notwithstanding this presumption, “the assisting party may at any time waive, or agree to the postponement of, the reimbursement in whole or in part” (*ibid.*, art. 7(3)). Thus, a presumption of reimbursement by the receiving State is couched between

**(c) Territorial schemes**

218. Although less common than the previous two approaches, certain instruments adopt a territorial approach to the payment of disaster relief costs. For example, a bilateral disaster relief treaty between France and Switzerland provides that “the expenses shall be borne by the sending State when its operations take place in the frontier zone of the requesting State. Outside this zone, operational expenses shall be borne by the requesting State”.<sup>661</sup> Similarly, the Japan Disaster Relief Act of 1947 — although not discussing cost sharing between Japan and other States — addresses the issue of costs between prefectures within Japan in similar terms, providing that the costs of relief activities shall be paid by the prefecture in which the relief activities take place, and that any assisting prefecture may claim compensation from a receiving prefecture for costs incurred in relief activities.<sup>662</sup>

**(d) Other cost-sharing methods**

219. Other instruments have handled the division of costs in at least four other ways. First, the Tampere Convention contains a very detailed provision on the payment or reimbursement of costs, establishing a generally voluntary system under which “States Parties *may* condition the provision of telecommunication assistance for disaster mitigation and relief upon agreement to pay or reimburse specified costs or fees”.<sup>663</sup> When an assisting State decides to exercise its right under the Convention to so condition its assistance, the Convention provides that the conditions must be set forward in writing and include (a) the requirement for payment or reimbursement; (b) the amount of such payment or reimbursement or terms under which it shall be calculated; and (c) any other terms, conditions or restrictions applicable to such payment or reimbursement, including, but not limited to, the currency in which such payment or reimbursement shall be made.<sup>664</sup> The Convention sets out several criteria to be considered by assisting States in determining whether to condition the provision of assistance upon an agreement to

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two provisions inviting the possibility that such reimbursement may be waived by the assisting State.

<sup>661</sup> Agreement on Mutual Assistance in the Event of Disasters or Serious Accidents, France-Switzerland, 1987, art. 10.

<sup>662</sup> Disaster Relief Act (Law No. 108, 18 October 1947), arts. 33 and 34. See also Disaster Countermeasures Basic Act (Japan), 1997, chap. VII. Aside from this example, the national legislation reviewed generally did not include provisions regulating relative rights and duties concerning costs. Rather, national disaster management acts or other related laws often include provisions establishing an annual budget for disaster prevention and response. See, for example, Disaster Management Act, 2005 (India), chap. IX (“Finance, Accounts, Audit”); Natural Disaster Management Act (Fiji), No. 21, 1998, para. 16 (“Budget”); Natural Calamity (Disaster) Act (Nepal), 1982, revised in 1989 and 1992, No. 2039 B.S (1982), art. 13 (“Fund”); Disaster Management Act (Sri Lanka), No. 13, 2005, art. 17 (“Fund of the Council”); Regulations pertaining to the National Emergency Law, No. 7914: Regulations for Risk Prevention and Emergency Response, 3 February 2000 (Costa Rica), title III, chap. II (“National Emergency Fund”).

<sup>663</sup> Tampere Convention on the Provision of Telecommunication Resources for Disaster Mitigation and Relief Operations, 18 June 1998 (United Nations, *Treaty Series*, vol. 2296, No. 40906), art. 7(1) (emphasis added).

<sup>664</sup> *Ibid.*, art. 7(2).

pay or reimburse specified costs or fees as well as the amount of such costs or fees and the terms of the repayment.<sup>665</sup>

220. Second, certain instruments share overall costs among the parties, providing for certain types of costs to be regularly paid by one actor and other costs to be paid by another. For example, the bilateral treaty on disaster relief between Argentina and Chile divides expenses according to a formula under which transport costs are paid by the assisting State, personnel costs are paid by the receiving State and technical costs are divided equally.<sup>666</sup>

221. Third, one instrument was identified which determines responsibility for the payment of costs based on whether or not the receiving State initially requested the assistance: “If the action was taken by one Party at the express request of another Party, the requesting Party shall reimburse to the assisting Party the cost of its action”, but “if the action was taken by a Party on its own initiative, this Party shall bear the costs of its action.”<sup>667</sup>

222. Fourth, cost provisions in some instruments are drafted in a more general manner, and do not address the relative burdens for payment of costs directly. For example, the Code of Conduct for the International Red Cross and Red Crescent Movement and Non-Governmental Organizations in Disaster Relief, of 1995, states simply that “in order to protect our independence we will seek to avoid dependence upon a single funding source”.<sup>668</sup> An agreement between Finland and Norway states only that “each Party shall defray its costs in connection with the rescue operations and exercises covered by this Agreement”.<sup>669</sup> One instrument leaves the details about payment of costs vague, providing that in the case that the requesting party cancels its request for assistance, “the Assisting Party may claim the reimbursement of expenses which have been incurred up to [that] moment”.<sup>670</sup> Although the agreement makes clear that a receiving State must pay any costs incurred by a disaster relief operation which it cancels, it refrains from explicitly providing that receiving States are liable for costs of disaster relief operations as a general rule.<sup>671</sup>

<sup>665</sup> These criteria include: United Nations principles concerning humanitarian assistance; the nature of the disaster, natural hazard or health hazard; the impact or potential impact of the disaster; the place of origin of the disaster; the area affected or potentially affected by the disaster; the occurrence of previous disasters and the likelihood of future disasters in the affected area; the capacity of each State affected by the disaster, natural hazard or health hazard to prepare for or respond to such event; and the needs of developing countries (*ibid.*, art. 7(8)).

<sup>666</sup> Agreement between the Republic of Chile and the Argentine Republic on Cooperation in Disaster Matters, 1997, art. 6, reported in *Official Gazette of the Republic of Chile*, No. 37.470, 28 January 2003, pp. 1 and 2.

<sup>667</sup> International Convention on Oil Pollution Preparedness, Response and Cooperation, 1990, annex.

<sup>668</sup> Para. 4.

<sup>669</sup> Agreement on Cooperation concerning Rescue Services in the Frontier Areas between Finland and Norway, 1986, art. 10.

<sup>670</sup> 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, art. 13.

<sup>671</sup> An earlier provision requires the receiving State to resupply the assisting State with “all the necessary goods” to operate in the emergency area, but does not address whether this includes relief consignments themselves, or simply materials for the subsistence of the relief team. It also does not settle the question of which State bears the ultimate responsibility for the cost of the goods provided (*ibid.*, art. 8(3)).

## 8. Liability and compensation

223. Provisions concerning liability and compensation in instruments related to disaster relief address the question of allocation of liability both between States and concerning individuals. As may be expected, international instruments focus on inter-State allocation of liability and compensation, while national laws focus on liability of or compensation to individuals.<sup>672</sup> This section will investigate each in turn, and conclude with a brief examination of several other clauses commonly found in provisions on liability and compensation.

### (a) Inter-State allocation of liability and compensation

224. Instruments related to disaster relief have dealt with the question of inter-State allocation of liability in ways that are different from how it is typically conceived under general international law. First, as a matter of terminology, such instruments appear to employ the term “liability” in a general sense to designate all harm caused, whether it be as a result of an intentionally wrongful act or not, a usage which does not correspond to its specialized usage in public international law.<sup>673</sup> The remainder of this section therefore utilizes the term “liability” since it is the term used in disaster relief assistance instruments, it being understood that in some cases the more precise term under general international law would be “responsibility”.

225. Second, such instruments handle the question of attribution of wrongful conduct to a State or organization in a way that differs significantly from its treatment under general international law. In order for a State to be responsible for the acts of an individual or group under general international law, the conduct of the latter must be attributable to that State as a result of some connection existing between them. This connection is most often established by showing that the individual or group in question constitutes an organ of the State or is acting “under the direction or control of that State”.<sup>674</sup> A disaster relief unit established by the United Nations is, in principle, a subsidiary organ of the United Nations and its conduct imputable to the Organization.<sup>675</sup> Responsibility for the conduct of joint

<sup>672</sup> This discussion is distinguished from that of costs, in the preceding section, in that costs concern those expenditures which are necessarily part of the disaster operation, while liability addresses those additional unforeseen expenses brought on through negligence or malfeasance on the part of the actors involved.

<sup>673</sup> If this be the case, then unforeseen expenditures not caused by the malfeasance of one of the parties — such as an additional disaster which brings about financial harm and loss of life to a disaster relief operation — would be considered in the context of liability. If this is not the case, then the line between liability and cost is not clear in such situations.

<sup>674</sup> See articles on responsibility of States for internationally wrongful acts, 2001 (General Assembly resolution 56/83, annex, as corrected by A/56/49(Vol. I)/Corr.4), arts. 4-11.

<sup>675</sup> See text of draft articles on responsibility of international organizations provisionally adopted so far by the International Law Commission, with commentaries, in particular art. 4 (General rule on attribution of conduct to an international organization), art. 5 (Conduct of organs or agents placed at the disposal of an international organization by a State or another international organization), art. 6 (Excess of authority or contravention of instructions) and art. 7 (Conduct acknowledged and adopted by an international organization as its own), in *Official Records of the General Assembly, Fifty-ninth session, Supplement No. 10 (A/59/10)*, para. 71. Para. (9) of the commentary to draft art. 5 specifically raises the attribution of disaster relief units, stating that “the principles applicable to peacekeeping forces may be extended to other State organs placed at the disposal of the United Nations, *such as disaster relief units*” (emphasis added).

disaster relief operations would depend on which party is given operational command and control over that conduct in the arrangements establishing the operation, or which party exercises “effective control” over the operation if such formal arrangements are lacking.<sup>676</sup>

226. In contrast to the above paradigm of attribution linked to the exercise of control over the conduct in question — either provided de jure through prior formal arrangements or exercised de facto in the form of “effective control” — disaster relief assistance instruments generally adopt a liability paradigm which is simply based on prior allocation. Under an allocation paradigm, liability for any harm caused is determined not by a connection to formalized or effective control, but rather is allocated through a pre-determined formula. For example, a clear primary trend can be identified which obligates the receiving State to bear all risks and claims resulting from, occurring in the course of, or otherwise connected with the assistance rendered on its territory. With respect to multilateral conventions, such provisions are comprehensive, often including separate clauses to the effect that (a) the receiving State agrees to hold the assisting State or personnel harmless in case of any claims or liabilities in connection with the assistance provided, except in respect of liability of individuals having caused damage by wilful misconduct or by gross negligence; (b) the receiving State agrees to waive all claims for loss or damage that it could have brought against the assisting State or assisting personnel as a result of the provision of assistance; (c) the receiving State agrees to pay any claims which could be brought by third parties against the assisting State for loss or damage; and (d) the receiving State agrees to compensate the assisting State or organization for the death or injury of assisting State personnel, or damage to assisting State equipment or materials, in connection with the assistance.<sup>677</sup>

227. Some bilateral treaties adopt a similar approach of requiring blanket receiving-State liability for harm caused in the course of the disaster relief operation.<sup>678</sup>

<sup>676</sup> Indeed, a legal analysis by the Secretary-General in 1971 divides disaster relief units into those established by the United Nations and considered a subsidiary organ of the Organization, and those established by an authority other than the United Nations and not considered a subsidiary organ. The second category is further divided into two subcategories: those made available by an entity separate from the United Nations without United Nations involvement for which the United Nations need not be a party to the arrangements with the receiving country (even if in response to a General Assembly resolution), and those established by an entity separate from the United Nations through the United Nations, for which “a contractual or even a less formal relationship might obtain between the United Nations and the authority which established the disaster relief unit” “Legal status of disaster relief units made available through the United Nations, excerpt from a report of the Secretary-General (E/4994, annex III)”, in *United Nations Juridical Yearbook* (1971), p. 187.

<sup>677</sup> See, for example, Nordic Mutual Assistance Agreement in Connection with Radiation Accidents, 1963, art. IV; draft convention on expediting the delivery of emergency assistance, 1984, (A/39/267/Add.2-E/1984/96/Add.2, annex), art. 22; 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, 1998, art. 14; Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency, 1986, art. 10; Inter-American Convention to Facilitate Disaster Assistance, 1991, art. XII; Agreement Establishing the Caribbean Disaster Emergency Response Agency, 1991, art. 23.

<sup>678</sup> See, for example, Agreement between the Government of the Hellenic Republic and the Government of the Russian Federation on Cooperation in the Field of Prevention and Response to Natural and Man-Made Disasters, 2000, art. 13; Agreement between the Swiss Federal Council and the Government of the Republic of the Philippines on Cooperation in the Event of Natural Disaster or Major Emergencies, 2001, art. 10.

Others begin with a provision requiring that each contracting State waive all claims against the other State for financial losses caused by a team member of the other State in the line of duty or claims for physical injury or death of a team member in the line of duty, but then return to the receiving-State liability model with regard to compensation for third-party damage or loss.<sup>679</sup> Other treaties allow the receiving State to demand compensation for damages caused by the assisting State which were caused knowingly or through gross negligence.<sup>680</sup>

228. Behind this primary trend favouring liability of the receiving State, a secondary trend can be identified which deals with the question of liability through a territorial approach. For example, certain instruments provide that the assisting State or organization shall bear liability for damage occurring outside the territory of the receiving State, and the receiving State shall bear liability for damage occurring within its territory, regardless of who caused the damage.<sup>681</sup>

229. Additional provisions deal with liability and compensation in other ways. One treaty breaks with the predominant trend and places liability with the assisting State.<sup>682</sup> One instrument provides that the receiving State shall hold the assisting State harmless for damage that its personnel cause in the receiving State, but that the two States “shall cooperate to facilitate compensation” for damage suffered by third parties.<sup>683</sup> Two instruments tie liability for harm to the State of origin of the individual or personnel committing it.<sup>684</sup>

<sup>679</sup> See, for example, Agreement between the Republic of Austria and the Federal Republic of Germany Concerning Mutual Assistance in the Event of Disasters or Serious Accidents, 1988, art. 11; Agreement on Mutual Assistance in the Event of Disasters or Serious Accidents (with exchange of notes), Denmark-Federal Republic of Germany, 1985, art. 9; Convention on Mutual Assistance in the Event of Disasters or Serious Accidents, France-Federal Republic of Germany, 1977, art. 9; Agreement on Mutual Assistance between Portuguese and Spanish Fire and Emergency Services, 1980 (terminated and superseded by the Protocol between the Kingdom of Spain and the Portuguese Republic on Technical Cooperation and Mutual Assistance in the Field of Civil Defence, 9 March 1992), art. 6; Agreement on Mutual Assistance between the French and Monegasque Relief and Civil Defence Services, 1970, art. 4; Convention on Mutual Assistance between French and Spanish Fire and Emergency Services, 1959, updated by Protocol of 8 February 1973, art. VI; Agreement on Cooperation in Disaster Preparedness and Prevention and Mutual Assistance in the Event of Disasters, Spain-Argentina, 1988, art. XVII; Agreement between the Kingdom of Spain and the French Republic on Civil Protection and Security, 2001, art. 13 (on file with the Codification Division).

<sup>680</sup> See, for example, Agreement on Cooperation and Mutual Assistance in Cases of Accidents, Finland-Estonia, 1995, art. 11; Agreement on Cooperation in Disaster Prevention and Mutual Assistance in Mitigating the Consequences of Disasters, Spain-Russian Federation, 2000, art. 13.

<sup>681</sup> Draft international guidelines for humanitarian assistance operations (Heidelberg, Germany: Max Planck Institute for Comparative Public Law and International Law, 1991), arts. 24-25; Recommended Rules and Practices, Balkan National Societies meeting on international disaster response law (Belgrade, 20-26 September 2004), art. IV(c) (places liability in the receiving State for damages caused on its territory); Nordic Mutual Assistance Agreement in Connection with Radiation Accidents, 1963, art. IV(4); draft convention on expediting the delivery of emergency assistance, 1984 (A/39/267/Add.2-E/1984/96/Add.2, annex), art. 22(3) (providing that the assisting State bear all risks and claims in connection with damage or injury occurring in its own territory).

<sup>682</sup> Agreement between Chile and Argentina on Cooperation in Disaster-related Matters, Santiago, 2002, art. 9.

<sup>683</sup> European Commission decision 2004/277/EC, Euratom, of 29 December 2003 laying down rules for the implementation of Council decision 2001/792/EC, Euratom establishing a Community



230. Only a limited number of liability provisions in disaster relief assistance instruments allow for additional rules of attribution such as those found under general international law. Such provisions are limited to a statement that “the Parties shall support appropriate international efforts to elaborate rules, criteria and procedures in the field of responsibility and liability”,<sup>685</sup> or that “rules should be in place for dealing with ... damage caused to persons or property in the requesting state by foreign emergency services [and] damage sustained by persons or property from the requested state that provided assistance”.<sup>686</sup>

**(b) Individual liability and compensation**

231. Issues of individual liability arising out of disaster relief are addressed in numerous national laws. With regard to liability, such provisions call for civil — or in some cases criminal — liability for individuals who fail to carry out the substantive provisions of disaster relief law. For example, the Mongolian law on disaster protection of 2003 provides for penalties of up to 60,000 tugrugs for failure of officials to carry out disaster training activities, penalties of up to 250,000 tugrugs for failure of a communications network to transmit disaster-related information, and penalties of up to 25,000 tugrugs for individual citizens who fail to participate in disaster prevention, rescue, response and recovery activities according to approved procedures.<sup>687</sup> Similarly, Fijian law provides that “it is an offence to obstruct, hinder or in any way interfere with a person engaging in any activity as a member, officer or volunteer of an agency performing a role or discharging a responsibility in accordance with [Fijian disaster relief law]”, and that a police officer may “arrest without warrant any person whom he has reasonable cause to believe is acting in breach of [the above, who will be] ... liable on conviction to a fine of \$1,000 and to imprisonment for 12 months”.<sup>688</sup> Additional civil or criminal liability provisions can be found in the laws of Japan,<sup>689</sup> Saint Lucia,<sup>690</sup> Taiwan Province of China,<sup>691</sup> the Czech Republic,<sup>692</sup> India<sup>693</sup> and Lesotho.<sup>694</sup>

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mechanism to facilitate reinforced cooperation in civil protection assistance interventions, art. 36.

<sup>684</sup> International Law Association, Draft Model Agreement on International Medical and Humanitarian Law, 1980, art. 16; Agreement on Cooperation concerning Rescue Services in the Frontier Areas between Finland and Norway, 1986, art. 9 (“Compensation for damage caused by rescue service personnel or *materiel* shall be provided by the State of origin of such personnel or the State which owns the *materiel*. The settlement shall be arrived at in accordance with the legal regulations on compensation applicable in the State in which the damage occurred, unless any insurance arrangement in effect would lead to results more advantageous to the injured party”).

<sup>685</sup> Convention on the Transboundary Effects of Industrial Accidents, 1992, art. 13.

<sup>686</sup> Council of Europe, recommendation Rec(2002)3 of the Committee of Ministers to member States on transfrontier cooperation in civil protection and mutual assistance in the event of natural and technological disaster occurring in frontier areas, adopted by the Committee of Ministers on 6 March 2002 at the 786th meeting of the Ministers’ Deputies, para. 13.

<sup>687</sup> Law on Disaster Protection (Mongolia), 2003 (unofficial translation), art. 36.

<sup>688</sup> Natural Disaster Management Act (Fiji), 1998, art. 27.

<sup>689</sup> Large Scale Earthquake Countermeasures, Law No. 73, 15 June 1978 (Japan), arts. 36-39.

<sup>690</sup> Disaster Management Act, 2006 (Saint Lucia), art. 29.

<sup>691</sup> Disaster Prevention and Response Act of 19 July 2000 (Taiwan Province of China), arts. 38-42.

232. Concerning compensation, four different kinds of provisions can be identified. First, certain compensation provisions address the question of compensation of disaster relief personnel for personal monetary losses incurred or expenses paid. For example, the law of Lesotho provides that

The District Secretary shall reimburse and indemnify every volunteer and other person employed in a disaster management organization established and maintained by him for any reasonable expense or liability incurred by such volunteer or other person as a result of —

(a) Carrying out any order or performing any disaster management service in terms of this Act; or

(b) Making available for the purpose of disaster management any equipment, land, building or other property.<sup>695</sup>

Similarly, Hungarian law provides that “persons participating voluntarily and those involved in participation in disaster protection shall be entitled to compensation for costs occurred during protection as a consequence of personal participation or making available of assets or services or the use thereof which are not compensated for on the basis of insurance, and their costs arising in connection with this shall be repaid”.<sup>696</sup> It further provides that, in such a case, “the State shall be responsible for compensation and the payment of the expenses”, but “the State in turn shall be entitled to compensation from the operator of a facility or a proprietor.”<sup>697</sup> Japanese law provides that “the governor of a prefecture is required, by standards to be set by ordinance, to compensate for actual costs incurred by persons who have engaged in work under an order for work in emergency measures”.<sup>698</sup> One national provision was also identified in which firefighting units — whose services are generally provided free of charge — could receive compensation for participating in certain prevention activities.<sup>699</sup>

233. Second, certain liability provisions in national laws address the question of compensation of relief personnel for damage or injury in the course of duty. For example, the law of Taiwan Province of China provides that with regard to any person who “becomes injured, ill, handicapped or dead in the course of carrying out disaster prevention and response action ... payment(s) may be claimed according to the applicable requirement related to his/her regular job.”<sup>700</sup>

234. Third, some national compensation provisions address the compensation of individuals who are not part of the disaster relief operation, such as victims and other nationals of the receiving State, for actions by relief organizations which

<sup>692</sup> Law on the Integrated Rescue System and on the Amendment of Some Laws (Czech Republic), 28 June 2000, sect. 28.

<sup>693</sup> Disaster Management Act, 2005 (India), art. 57; Gujarat Act No. 20, Gujarat State Disaster Management Act, 2003, para. 38.

<sup>694</sup> Disaster Management Act, 1997 (Lesotho), art. 47.

<sup>695</sup> *Ibid.*, art. 44.

<sup>696</sup> Act LXXIV on the direction and organization of disaster protection and the protection against serious accidents related to hazardous materials, 1999 (Hungary), art. 44.

<sup>697</sup> *Ibid.*

<sup>698</sup> Disaster Countermeasures Basic Act (Japan), 1997, art. 88 (2).

<sup>699</sup> Law No. 15.896 of 15 September 1987 (Uruguay), Prevention and Defence against Accidents, arts. 9-11.

<sup>700</sup> Disaster Prevention and Response Act, 19 July 2000 (Taiwan Province of China), art. 47.

caused harm to them or their property. For example, the Sri Lanka Disaster Management Act of 2005 provides that “any person who suffers loss or damage to his or its property by reason of any act, omission or default [by a disaster relief organization] ... shall be entitled to compensation in respect of any loss or damage caused, of an amount determined by the Divisional Secretary of the Division within which such property is situated”.<sup>701</sup> In the Czech Republic, the Government is liable for damage inflicted upon legal entities and natural persons, arising in correlation with rescue and remedy work and training, but can be exempted by proving that the damage was inflicted by an individual.<sup>702</sup> Numerous additional laws contain similar compensation provisions.<sup>703</sup>

235. Fourth and finally, one national law was identified which deals with the question of compensation of victims in the case of natural disaster by requiring all insurance contracts to cover losses due to natural disasters.<sup>704</sup>

**(c) Other common clauses**

236. Provisions on liability and compensation also commonly include a clause to the effect that receiving and assisting States shall “cooperate” to facilitate the settlement of such claims.<sup>705</sup> Some also include a saving clause to the effect that the

<sup>701</sup> Disaster Management Act No. 13 (Sri Lanka), 2005, art. 15. See also Decree of the Government No. 179/1999 (XII.10) on the Execution of Act No. LXXIV of 1999 on the Direction and Organization of Disaster Protection and the Protection against Major Accidents Involving Hazardous Materials (Hungary), sect. 18 (“For rules of procedure of compensation for damages defined in [Hungarian disaster relief law], the provisions of the Civil Code shall apply. The State may claim the sum paid by it as compensation for damages and indemnification, in cases where the person(s) who brought about the damage is (are) known, for repayment of the sum according to the provisions of the Civil Code”).

<sup>702</sup> Law on the integrated rescue system and on the amendment of some laws (Czech Republic), 28 June 2000, sect. 30. Hungarian law makes a general *renvoi* to the civil code for issues of compensation for damage caused by relief operations; see Act XXXI of 1996 on the Protection Against Fire, Rescue Work and the Fire-Service, sect. 8 (“Regarding the refunding of the damage caused by the fire-service in the course of firefighting, the rescue work or the exercises in connection with them or of the damage incurred to the participants in the fire call, firefighting rescue work in direct connection with their participation, the requisition of their vehicles, instruments, equipment not to be recovered from other sources — except the profit lost — the provisions of the Civil Code are applicable, unless this Act makes an exception”).

<sup>703</sup> See, for example, Amiri Decree-Law No. 5 with respect to civil defence (Bahrain), 1990, arts. 12-17; Law 137 of 1994 (Colombia), art. 26; Decree 919 of 1 May 1989 (Colombia), arts. 30 and 31; Decree No. 28445-MP (Costa Rica), Regulations pertaining to National Emergency Act No. 7914, Risk Prevention and Emergency Response, 3 February 2000, chap. III; Decree No. 8488 of 11 January 2006 (Costa Rica), art. 35; Large Scale Earthquake Countermeasures Act (Japan), Law No. 73, 15 June 1978, art. 27; Disaster Countermeasures Basic Act of 1997 (Japan), art. 64; Law on the integrated rescue system and on the amendment of some laws (Czech Republic), 28 June 2000, sect. 29; Act to Provide for the Relief Work Relating to the Natural Calamity (Nepal), 1982, para. 10.

<sup>704</sup> Act No. 82-600 of 13 July 1982 on the compensation of victims of natural disasters (France), arts. 1-3.

<sup>705</sup> See, for example, Agreement Establishing the Caribbean Disaster Emergency Response Agency, 1991, art. 23(1); Inter-American Convention to Facilitate Disaster Assistance, 1991, art. XII(d); Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency, 1986, art. 10(1).

provision shall not prejudice any recourse action available under national law.<sup>706</sup> In one case, an article was included which provided that “the assisted State may take out insurance to cover the damages that the assisting State or the assisting personnel might be expected to cause”.<sup>707</sup>

## 9. Settlement of disputes

237. Dispute settlement clauses are common in a variety of instruments related to the provision of disaster relief. The vast majority of such clauses apply to disputes as to both the interpretation of the instrument at issue and to disputes over its application, that is, the actual provision of relief. The main issue which arises with respect to such clauses is the method by which such disputes are resolved. In this regard, a review of instruments related to the provision of disaster relief revealed five possible versions of such a clause.

238. First, numerous instruments — including a large number of bilateral treaties<sup>708</sup> and certain regional conventions<sup>709</sup> and draft guidelines<sup>710</sup> — provide only that

<sup>706</sup> See, for example, draft convention on expediting the delivery of emergency assistance, 1984 (A/39/267/Add.2-E/1984/96/Add.2, annex), art. 22(4); Nordic Mutual Assistance Agreement in Connection with Radiation Accidents, 1963, art. IV(6) (noting, however, that such actions under national law can only be brought against assisting personnel “in respect of damage or injury which they have caused by wilful misconduct or gross negligence”); Agreement Establishing the Caribbean Disaster Emergency Response Agency, 1991, art. 23(3) (also including other international law in the saving clause); Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency, 1986, art. 10(3) (also including other international law in the saving clause).

<sup>707</sup> Inter-American Convention to Facilitate Disaster Assistance, 1991, art. XII(e).

<sup>708</sup> See, for example, Agreement between the Republic of Austria and the Federal Republic of Germany Concerning Mutual Assistance in the Event of Disasters or Serious Accidents, 1988, art. 15; Agreement on Mutual Assistance in the Event of Disasters or Serious Accidents (with exchange of notes), Denmark-Federal Republic of Germany, 1985, art. 12; Convention on Mutual Assistance in the Event of Disasters or Serious Accidents, France-Federal Republic of Germany, 1977, art. 12; Agreement between the Government of the French Republic and the Government of Malaysia on Cooperation in the Field of Disaster Prevention and Management and Civil Security, 1998, art. 11; Agreement between the Government of the Hellenic Republic and the Government of the Russian Federation on Cooperation in the Field of Prevention and Response to Natural and Man-Made Disasters, 21 February 2000, art. 15; Convention on mutual assistance in combating disasters and accidents, Netherlands-Belgium, 1984, art. 14; Agreement between the Government of the Republic of South Africa and the Government of the French Republic for the Coordination of Search and Rescue Services, 2001, art. 10; Agreement between the Kingdom of Spain and the French Republic on Civil Protection and Security, 2001, art. 16; Agreement between the Government of the Kingdom of Spain and the Government of the Russian Federation on Cooperation in the Field of Prevention of Disasters and Mutual Assistance in Mitigating this Outcome, 2000 (on file with the Codification Division), art. 16; Agreement between the Swiss Federal Council and the Government of the Republic of the Philippines on Cooperation in the Event of Natural Disaster or Major Emergencies, 2001, art. 13.

<sup>709</sup> See, for example, 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, 1998, art. 23; ASEAN Agreement on Disaster Management and Emergency Response, 2005, art. 31.

<sup>710</sup> Peter MacAlister-Smith, draft international guidelines for humanitarian assistance operations (Heidelberg, Germany: Max Planck Institute for Comparative Public Law and International Law, 1991), art. 23 (“The assisting State or organization and the receiving State shall cooperate to resolve any irregularities, difficulties or disputes arising during the course or upon the termination of humanitarian assistance operations”).

disputes should be handled amicably, through cooperation, or through the “diplomatic channel”. This corresponds to the conclusion of the UNDR0 study undertaken in the preparation of the 1984 draft convention on expediting the delivery of emergency assistance, that it would not “be appropriate to include in our draft the detailed procedure for such settlements. It seems preferable to make a very general reference to the usual procedure for the settlement of disputes”.<sup>711</sup> Under such an approach, however, it is unclear what the presence of such a dispute-settlement clause adds to the status quo whereby States are always free to negotiate through diplomatic channels.

239. Second, some instruments adopt a more traditional compromissory clause. The most common such clause provides that disputes be settled by negotiation or arbitration, and if this fails be referred to the International Court of Justice.<sup>712</sup> Certain instruments provide for an escalating procedure for dispute settlement which includes three successive stages. For example, under the Tampere Convention, attempts are first made to resolve disputes through consultation between the disputing parties.<sup>713</sup> If this fails after six months of attempts, “the States Parties to the dispute may request any other State Party, State, non-State entity or intergovernmental organization to use its good offices to facilitate settlement of the dispute”.<sup>714</sup> If this fails after six months of attempts, then either party may request that the dispute be submitted either to binding arbitration or to the International

<sup>711</sup> Office of the United Nations Disaster Relief Coordinator, “A proposal for a convention on expediting the delivery of emergency assistance” (Geneva: UNDR0, 1983), pp. 337 and 338 (supporting this position by reference to the very general dispute-settlement clause found in the Single Convention on Narcotic Drugs of 1961, art. 48, which offers numerous options for dispute settlement including negotiation, investigation, mediation, conciliation, arbitration, recourse to regional bodies, judicial process, other peaceful means of the parties’ choice, or reference to the International Court of Justice). As a result, the 1984 draft convention on expediting the delivery of emergency assistance left open the question by including two alternatives for such a dispute-settlement clause. Each provided that attempts first be made to settle disputes concerning the interpretation or application of the convention by negotiations between the parties, but then two secondary possibilities existed: the dispute could then be settled by “such procedures as may be adopted by a [two-thirds] majority of the Parties to the Convention” (alternative one), or “submitted to arbitration if a [two-thirds] majority of the Parties to [the] Convention so agrees” (alternative two) (A/39/267/Add.2-E/1984/96/Add.2, annex, art. 31).

<sup>712</sup> See, for example, Convention on the Early Notification of a Nuclear Accident, 1986, art. 11; Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency, 1986, art. 13; Nordic Mutual Assistance Agreement in Connection with Radiation Accidents, 1963, art. IX; Convention on the Transboundary Effects of Industrial Accidents, 1992, art. 21 (settlement by negotiation or, if agreed to by the parties, by submission to arbitration or the International Court of Justice); Convention and Statute Establishing an International Relief Union, 1927, art. 14: “The High Contracting Parties agree that all disputes between them relating to the interpretation or application of this Convention shall, if they cannot be settled by direct negotiation or by some other method of amicable settlement, be referred to the Permanent Court of International Justice. The Court may be seized of the dispute, if necessary, by the application of either of the Parties” (noting also that if one of the parties to the dispute is not a party to the Protocol relating to the Permanent Court of International Justice, the dispute could instead be referred to a tribunal constituted in accordance with the Hague Convention of 18 October 1907 for the Pacific Settlement of Disputes, or to some other tribunal of arbitration).

<sup>713</sup> Tampere Convention on the Provision of Telecommunication Resources for Disaster Mitigation and Relief Operations, 18 June 1998, art. 11(1).

<sup>714</sup> *Ibid.*, art. 11(2).

Court of Justice.<sup>715</sup> Additional conventions follow a similar model.<sup>716</sup> Still others provide for an escalating arrangement of negotiation, mediation, and arbitration,<sup>717</sup> or negotiation through the “diplomatic channel” followed by arbitration.<sup>718</sup>

240. Third, some instruments provide that disputes be settled by a council or committee established under that instrument. For example, the Model Agreement Covering the Status of Military and Civil Defence Assets, annexed to the Oslo Guidelines, provides for the establishment of a claims commission to settle disputes, composed of one member appointed by each Government and a chairperson appointed jointly by the Secretary-General of the United Nations and the two Governments or, in the absence of agreement, by the President of the International Court of Justice.<sup>719</sup> Similarly, the agreement establishing the Caribbean Disaster Response Agency provides that, in the absence of a contrary agreement between the parties, disputes arising from its interpretation or application should be settled by the Council, an administrative and coordinating body established by that convention.<sup>720</sup> The Food Aid Convention of 1995 provides that the Food Aid Committee — an administrative body established by the Convention to handle coordination of food aid — shall also settle disputes which arise under the Convention.<sup>721</sup> Finally, the International Health Regulations provide that disputes concerning the interpretation or application of those regulations should first be

<sup>715</sup> *Ibid.*, art. 11(3). The Convention also notes that “in the case of a dispute between a State Party requesting telecommunication assistance and a non-State entity or intergovernmental organization headquartered or domiciled outside of the territory of that State Party ... the claim of the non-State entity or intergovernmental organization may be espoused directly by the State Party in which the non-State entity or intergovernmental organization is headquartered or domiciled as a State-to-State claim under this Article, provided that such espousal is not inconsistent with any other agreement between the State Party and the non-State entity or intergovernmental organization involved in the dispute” (*ibid.*, 11(5)).

<sup>716</sup> See, for example, the New Convention establishing the Coordination Center for the Prevention of Natural Disasters in Central America (CEPRENAC), 3 September 2003, art. 16 (providing for an escalating process of dispute resolution beginning with negotiations among the parties, then passing to good offices or mediation by the Council of Representatives, and ultimately by submission to the Central American Court of Justice).

<sup>717</sup> Agreement between the Government of the Republic of Mozambique and the Government of the Republic of South Africa regarding the Coordination of Search and Rescue Services, 2002, art. 14; Agreement between the Government of the Republic of South Africa and the Government of the Republic of Namibia regarding the Coordination of Search and Rescue Services, 2000, art. 14.

<sup>718</sup> See, for example, Agreement on Cooperation and Mutual Assistance in Cases of Accidents, Finland-Estonia, 1995, art. 12; Agreement on Mutual Assistance in the Event of Disasters or Serious Accidents, France-Switzerland, 1987, art. 15 (containing a detailed provision on the procedural regulations governing the arbitration); Agreement between the Government of the Republic of South Africa and the Government of the Federal Republic of Nigeria on Cooperation in the Field of Health and Medical Sciences, 2002, art. 7.

<sup>719</sup> Guidelines on the Use of Military and Civil Defence Assets in Disaster Relief — “Oslo Guidelines”, Rev.1, November 2006, annex I, paras. 45-48.

<sup>720</sup> Agreement Establishing the Caribbean Disaster Emergency Response Agency, 1991, art. 30.

<sup>721</sup> The Convention is vague as to precisely what powers the Committee has in this regard, stating only that it “shall meet and take appropriate action” (art. XX(a)), and that “members shall take account of the recommendations and conclusions reached by consensus by the Committee in cases of disagreement as to the application of the provisions of this Convention” (art. XX(b)).

settled by negotiation between the relevant parties, and if such efforts fail the parties may refer the dispute to the Director-General of the World Health Organization.<sup>722</sup>

241. Fourth, a study of the law governing the provision of disaster relief in the European Union revealed yet another approach, whereby a distinction was made in the dispute-settlement process on the basis of who was involved in the dispute: “While disputes with International Organisations are to be settled by arbitration in accordance with the Permanent Court of Arbitration Optional Rules for Arbitration involving international Organisations, disputes with humanitarian organisations are to be settled in accordance with Belgian law by the Court of First Instance of the European Communities and by the Court of Justice of the European Communities”.<sup>723</sup>

## 10. Termination of assistance

242. The termination of relief assistance has been handled differently by different instruments and has been redefined over time. This section approaches the question from several different perspectives, first examining the substantive scope of termination, then surveying the mechanics of termination in existing instruments, and finally discussing the evolution of the very notion of termination of assistance.

### (a) Scope of termination

243. While multiple instruments related to disaster relief contain provisions on termination, they differ with regard to what, in fact, is being terminated. On the one hand, multilateral treaties generally contain separate provisions on termination of the disaster relief operation and denunciation of the treaty itself. For example, the Tampere Convention contains separate provisions on termination of assistance<sup>724</sup> and denunciation of the convention,<sup>725</sup> and emphasizes this distinction with a provision that “States Parties engaged in providing or receiving telecommunication assistance pursuant to this Convention shall remain subject to the terms of this Convention following the termination of such assistance”.<sup>726</sup> On the other hand,

<sup>722</sup> World Health Organization, Revision of the International Health Regulations, 23 May 2005 (reprinted in *International Legal Materials*, vol. 44, p. 1013), art. 56(1)-(2). The Regulations further state that a “State Party may at any time declare in writing to the Director-General that it accepts arbitration as compulsory with regard to all disputes” (art. 56(3)). The Regulations further provide that a dispute between WHO and one or more States Parties shall be submitted to the Health Assembly (art. 56(5)).

<sup>723</sup> G. Potyka and K. Beeckman, “The regulatory framework for disaster response established within the European Union: a focus on humanitarian aid and civil protection (Austrian Red Cross and IFRC International Disaster Response Laws, Rules and Principles Programme, 2005), p. 13, n. 25.

<sup>724</sup> Tampere Convention on the Provision of Telecommunication Resources for Disaster Mitigation and Relief Operations, 18 June 1998, art. 6.

<sup>725</sup> *Ibid.*, art. 15.

<sup>726</sup> *Ibid.*, art. 6(3). See also draft convention on expediting the delivery of emergency assistance, 1984, art. 18 (termination of assistance), and art. 33 (denunciation of the treaty); Agreement Establishing the Caribbean Disaster Emergency Response Agency, of 1991, art. 20 (termination of assistance), and art. 35 (withdrawal from the treaty); Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency, 1986, art. 11 (termination of assistance), and art. 17 (denunciation); Convention on the Transboundary Effects of Industrial Accidents, 1992, annex X, para. 10 (termination of assistance) and art. 31 (withdrawal from the convention).

bilateral treaties frequently do not contain a general provision<sup>727</sup> on termination of the disaster relief operation of the kind seen in multilateral treaties. Rather, several such treaties contain only provisions governing the termination of the agreement itself, without mention of termination of the disaster relief operation per se,<sup>728</sup> in contrast to the International Law Association's model bilateral agreement, which does contain such a provision.<sup>729</sup>

**(b) Mechanics of termination**

244. The review of instruments related to disaster relief identified three distinct methods of termination of that relief. First, with respect to termination by one of the parties, the most common termination provisions accord to the receiving State and the assisting State or organization equal rights to terminate the assistance. Several treaties make it more difficult for the assisting party to terminate assistance, allowing the receiving State to terminate assistance at any time but subjecting termination by the assisting party to several pre-conditions.<sup>730</sup> Occasionally, instruments place primary responsibility concerning termination with a third party.<sup>731</sup>

<sup>727</sup> Some bilateral treaties do, however, contain highly specific provisions elaborating detailed conditions governing termination of a disaster relief operation as discussed below.

<sup>728</sup> See, for example, Agreement between the Government of the Republic of Mozambique and the Government of the Republic of South Africa regarding the Coordination of Search and Rescue Services, 2002, art. 12 (“This Agreement may be terminated by either Party giving written notice through the diplomatic channel to the other Party of its intention to terminate this Agreement. Such notice shall simultaneously be communicated to the International Civil Aviation Organization and the International Maritime Organization. The Agreement shall terminate 12 months after the date of receipt of the notice by the other Party, unless the notice to terminate is withdrawn by agreement before the expiry of this period”).

<sup>729</sup> International Law Association, Draft Model Agreement on International Medical and Humanitarian Law, 1980, art. 18.

<sup>730</sup> The Nordic Mutual Assistance Agreement in Connection with Radiation Accidents, 1963, provides that a receiving State may request termination of disaster relief assistance “at any time”, but that an assisting party may only terminate its assistance if, in its opinion, such assistance is no longer needed by the Requesting State, its domestic needs so require, and the Requesting State fails to observe the terms of the Agreement (art. x). Similarly, a China-United States agreement made in 1947 allowed the receiving State to terminate the agreement “whenever it deems that such relief assistance as is provided in this Agreement is no longer necessary”, but established a series of conditions necessary for the assisting party to terminate assistance, including non-fulfilment of the agreement, use of relief consignments to support armed forces of the receiving State, or re-export of the relief consignments from the receiving State (Agreement concerning the United States relief assistance to the Chinese people (with Exchange of Notes), 1947, art. IX). Concerning the latter, it is noted that the domestic law of the assisting State provides that its President may “terminate the provision ... relief assistance to the people of any country whenever, in his judgment, an excessive amount of supplies ... [are] being used in the maintenance of armed forces in such country” (ibid., Exchange of Notes, note 1, citing Public Law 84, 80th Congress, 31 May 1947). Thus, the issue of termination is another area in which conformity with national law becomes specifically relevant.

<sup>731</sup> In this regard, the International Health Regulations provide that the Director-General of WHO shall establish an emergency committee to provide its views on whether an event constitutes a public health emergency of international concern or when such a public health emergency of international concern has terminated (World Health Organization. Revision of the International Health Regulations, 2005, art. 48(1)(b)). Under the regime, States in whose territory such a public health emergency exists may exert influence on the process by proposing the termination of a public health emergency to the Director-General and making a presentation to that effect to



245. Second, regarding termination by a particular event, certain bilateral treaties for disaster assistance loans establish specific events triggering acceleration of loan repayments and other consequences. For example, a loan agreement between the United States and Honduras for hurricane recovery includes provisions for the acceleration of payment of United States assistance loans if Honduras fails to meet certain conditions, such as on-time payments and due diligence requirements.<sup>732</sup> It provides for suspension of disbursement on the occurrence of other events such as default, any event that the assisting State determines to be an extraordinary situation making it improbable either that the purpose of the loan will be attained or that the receiving State will perform under the agreement, or if the receiving State is not making satisfactory progress in carrying out the programme of assistance dictated by the Agreement.<sup>733</sup> If the situation continues for 60 days, the suspension can be converted to cancellation (termination) of obligations.<sup>734</sup>

246. Third, in some instruments, particularly national laws, the termination of disaster relief assistance is closely connected with its initiation by way of a declaration of disaster or emergency. In this regard, when national law requires such a declaration, it generally also provides for a time limit for such a state of disaster, or provides guidance on how to terminate it.<sup>735</sup> Another approach, found in the model bilateral agreement proposed by the International Law Association, begins by establishing a specific date upon which disaster relief shall terminate, then includes a provision for the extension of that date, and only after this includes a provision for early termination upon the request of one of the parties.<sup>736</sup> With respect to the specialized regime governing the temporary admission of disaster relief consignments, their status under the temporary admission regime may be terminated in a variety of ways, including by their re-export, by their placement in a free port or free zone with a view to their subsequent exportation or disposal, by their clearance for home use “when circumstances justify and national legislation so permits”, by accidental damage, or by disposal.<sup>737</sup>

247. It should be noted that termination provisions contain subtle differences in formulation which could have a significant impact in practice. For example, some provide that a party wishing to terminate relief may directly “terminate the assistance,”<sup>738</sup> others provide that it may “give notice of the termination of

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the emergency committee (*ibid.*, art. 49(7)). It should be noted, however, that this instrument differs slightly from the majority of texts under review in that its principal purpose is not the provision of relief.

<sup>732</sup> Loan Agreement for Hurricane Rural Reconstruction and Recovery (with annex), United States-Honduras, 1975, art. VIII, sect. 8.02.

<sup>733</sup> *Ibid.*, sect. 8.03.

<sup>734</sup> *Ibid.*, sect. 8.04. See similarly Grant Agreement for Relief and Rehabilitation, United States-Bangladesh, 1972, art. 1, sect. 2.4 and art. VII.

<sup>735</sup> See, for example, Disaster Management Act, 1997 (Lesotho), art. 3(2); Law No. 2.615 (Paraguay) creating the National Emergency Secretariat (SEN), art. 23; Disaster Management Act No. 13, 2005 (Sri Lanka), art. 11(2); Disaster Countermeasures Basic Act, 1997 (amending Act No. 223 of 15 November 1961) (Japan), art. 106(2); Decree 919 of 1 May 1989 (Colombia), arts. 19 and 23 (establishing initial three-month limit on states of disaster and providing means for their termination); Supreme Decree No. 19386 (Bolivia), 17 January 1983, arts. 19 and 20.

<sup>736</sup> International Law Association, Draft Model Agreement on International Medical and Humanitarian Law, 1980, art. 18.

<sup>737</sup> Convention on Temporary Admission, of 1990, arts. 9-14.

<sup>738</sup> See, for example, Tampere Convention on the Provision of Telecommunication Resources for Disaster Mitigation and Relief Operations, 1998, art. 6(1): “The requesting State Party or the

assistance”,<sup>739</sup> while still others provide only that it may “request” that relief be terminated,<sup>740</sup> after which both parties shall “consult with each other to make arrangements for the termination of the assistance”.<sup>741</sup>

**(c) Evolution of the notion of termination**

248. As the importance of disaster prevention, mitigation and risk reduction is increasingly recognized, the notion of termination is developing accordingly. The traditional model in which a state of disaster comes to a definite conclusion is being replaced by one in which an emergency response phase gives way to a rehabilitation period followed by an ongoing development phase. In this regard, General Assembly resolution 46/182 stresses the role of development assistance organizations in disaster relief, and emphasizes that “international cooperation and support for rehabilitation and reconstruction should continue with sustained intensity after the initial relief stage”.<sup>742</sup> Similarly, General Assembly resolution 2816 (XXVI) of 14 December 1971 provides that the Disaster Relief Coordinator will “phase out relief operations under his aegis as the stricken country moves into the stage of rehabilitation and reconstruction”, but will “continue to interest himself, within the framework of his responsibilities for relief, in the activities of the United Nations agencies concerned with rehabilitation and reconstruction”.<sup>743</sup> In this same light, the Red Cross principles and rules contain no explicit provision on termination, but provide that “goods or funds remaining on hand after the termination of a relief action may be used for subsequent rehabilitation activities”.<sup>744</sup> At the level of national law, while numerous laws retain a clear distinction between a “state of disaster” and its termination, certain laws are moving towards a continuum from emergency to relief, recovery and development. For

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assisting State Party may, at any time, terminate telecommunication assistance received or provided under Article 4 by providing notification in writing. Upon such notification, the States Parties involved shall consult with each other to provide for the proper and expeditious conclusion of the assistance, bearing in mind the impact of such termination on the risk to human life and ongoing disaster relief operations.”

<sup>739</sup> Draft convention on expediting the delivery of emergency assistance, 1984, art. 18 (“The receiving State or an Assisting State or organization may give notice of termination of assistance and where necessary the Parties to this Convention which are affected by such notice shall then arrange to bring the assistance to an orderly conclusion under the terms of this Convention”).

<sup>740</sup> See, for example, Agreement Establishing the Caribbean Disaster Emergency Response Agency, 1991, art. 20(2); Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency, 1986, art. 11; Convention on the Transboundary Effects of Industrial Accidents, 1992, annex X, para. 10.

<sup>741</sup> See, for example, Agreement Establishing the Caribbean Disaster Emergency Response Agency, 1991, art. 20(3); Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency, 1986, art. 11; Convention on the Transboundary Effects of Industrial Accidents, 1992, annex X, para. 10.

<sup>742</sup> General Assembly resolution 46/182, annex, paras. 40-42. See also para. 9 (“There is a clear relationship between emergency, rehabilitation and development. In order to ensure a smooth transition from relief to rehabilitation and development, emergency assistance should be provided in ways that will be supportive of recovery and long-term development. Thus, emergency measures should be seen as a step towards long-term development”).

<sup>743</sup> Para. 1 (i).

<sup>744</sup> Principles and Rules for Red Cross and Red Crescent Disaster Relief, para. 30. Reprinted in *International Review of the Red Cross*, No. 310 (29 February 1996), annex IV.

example, the Fijian national disaster act contains a provision for “ongoing relief assistance” rather than a provision on the termination of assistance.<sup>745</sup>

## V. Disaster relief and protection

249. Situations of disaster often leave large numbers of individuals helpless, thereby exacerbating existing inequalities and increasing the vulnerability of populations. The protection of such persons thus takes on a particular importance, and “the balance between the provision of humanitarian assistance ... and the upholding of ... human rights is crucial”.<sup>746</sup> This balance can be difficult to maintain in practice, however, as the types of actors involved in disaster relief are generally specialized in assistance rather than protection,<sup>747</sup> and because of a perception among some such actors that an emphasis on protection could compromise their neutrality and complicate their ability to provide humanitarian assistance.<sup>748</sup> Nevertheless, it is increasingly accepted that a complete regime for international disaster relief would include both protection and assistance within its scope.<sup>749</sup>

### A. Protection by whom?

250. As a function of the respect for the sovereignty and territorial integrity of the receiving State, it is the primary responsibility of each State to take care of the victims of natural disasters and other emergencies occurring on its territory.<sup>750</sup> The question arises as to what extent additional actors — including assisting States and other members of the international community (international organizations and non-governmental organizations) — ought to engage in protection activities in the context of disasters. In addition to situations where third States have an obligation, under specific agreements, to provide assistance,<sup>751</sup> outside actors may, more generally, play a significant role in protection activities in the context of disasters in circumstances where the domestic response capacity has been overwhelmed, rendering the receiving State incapable — or partially incapable — of meeting the needs of persons on its territory affected by the disaster. Outside the limited possibility of a disaster relief operation being undertaken in the context of the

<sup>745</sup> National Disaster Management Act No. 21, 1998 (Fiji), art. 31. An exception to this trend is the Gujarat State Disaster Management Act No. 20, 2003, art. 49 (containing detailed provisions concerning the dissolution of the Gujarat State Disaster Management Authority).

<sup>746</sup> Statement of the Director of the Department of Humanitarian Affairs to the UNHCR Sub-Committee of the Whole on International Protection, Executive Committee of the High Commissioner’s Programme, Geneva, 18 May 1994 (cited in E/CN.4/1995/50, para. 183).

<sup>747</sup> Brookings Institution, “Improving institutional arrangements for the internally displaced” (1995), p. 6.

<sup>748</sup> See E/CN.4/1995/50, para. 184.

<sup>749</sup> Inter-Agency Standing Committee, “Internally displaced persons: the next stage”, Geneva, 5 July 1993, acknowledging that the provision of relief must be part of a larger approach that addresses both “protection and assistance” needs (cited in E/CN.4/1995/50, para. 183).

<sup>750</sup> See the discussion in sect. II above concerning the principles of sovereignty and non-intervention.

<sup>751</sup> See the discussion on the duty to offer assistance in sect. IV above.

invocation of Chapter VII of the Charter of the United Nations,<sup>752</sup> such assistance would nonetheless remain subject to the access constraints arising out of the territorial sovereignty of the receiving State and, in principle, would be undertaken on the basis of the receiving State's consent.<sup>753</sup> It should also be noted that the concept of the "responsibility to protect",<sup>754</sup> as formulated in the 2005 World Summit Outcome,<sup>755</sup> was not conceived to apply in the context of disasters.<sup>756</sup>

<sup>752</sup> While the likelihood is admittedly remote, a large-scale disaster to which the receiving State failed to respond could conceivably be considered a threat to international peace and security, and disaster relief measures could accordingly be authorized under Chapter VII of the Charter of the United Nations; see, for example, the report of the Secretary-General on the work of the Organization (*Official Records of the General Assembly, Forty-eighth Session, Supplement No. 1* (A/48/1, para. 481): "Humanitarian emergencies, by causing the mass exodus of people, may constitute threats to international peace and security". This possibility is recognized in the resolution on humanitarian assistance, adopted by the Institute of International Law in 2003, which states that "if a refusal to accept a *bona fide* offer of humanitarian assistance or to allow access to the victims, leads to a threat to international peace and security, the Security Council may take the necessary measures under Chapter VII of the Charter of the United Nations" (sect. VIII, para. 3). See also Guiding Principles on the Right to Humanitarian Assistance, adopted by the Council of the International Institute of Humanitarian Law in April 1993, principle 7 ("The competent United Nations organs and regional organisations may undertake necessary measures, including coercion, in accordance with their respective mandates, in case of severe, prolonged and mass suffering of populations, which could be alleviated by humanitarian assistance. These measures may be resorted to when an offer has been refused without justification, or when the provision of humanitarian assistance encounters serious difficulties"). While not in the context of disasters per se, the Security Council has with increasing frequency authorized States to provide aid within a receiving State without the consent of the latter; see resolutions 688 (1991) of 5 April 1991, para. 3 (with respect to the grant of access to international humanitarian organizations in Iraq), 770 (1992) of 13 August 1992, para. 2 (with respect to the provision of humanitarian assistance in Bosnia and Herzegovina), 794 (1992) of 3 December 1992, para. 10 (concerning humanitarian relief operations in Somalia) and resolution 929 (1994) of 22 June 1994, para. 3 (authorizing distribution of relief supplies in Rwanda).

<sup>753</sup> See the discussion on requests for assistance in sect. IV above.

<sup>754</sup> See "Report of the International Commission on Intervention and State Sovereignty" (Ottawa: International Development Research Council, 2001), paras. 2.14 and 2.29; and report of the High-Level Panel on Threats, Challenges and Change (A/59/565 and Corr.1), paras. 201 and 202.

<sup>755</sup> See General Assembly resolution 60/1 of 16 September 2005, paras. 138 and 139. See also Security Council resolution 1674 (2006), of 28 April 2006, para. 4.

<sup>756</sup> The concept is limited to four specific categories of conduct, namely genocide, war crimes, ethnic cleansing and crimes against humanity. See General Assembly resolution 60/1 of 16 September 2005, para. 138. The protection issues inherent to the current topic more closely resemble those raised in academic discussions of a potential *devoir d'ingérence* ("duty to interfere"), which was conceived in the context of a broader range of situations, including natural disasters. See, for example, Mario Bettati and Bernard Kouchner, eds., *Le devoir d'ingérence: peut-on les laisser mourir?* (Paris: Denoël, 1987); special edition of *Revue Nouvelle* on *devoir d'ingérence* (Bruxelles, December 1990); Olivier Corten and Pierre Klein, "Devoir d'ingérence ou droit de réaction armée collective? Les possibilités d'actions non armées visant à assurer le respect des droits de la personne face au principe de non-ingérence", *Revue belge de droit international*, vol. 23 (1990), pp. 368-440; Mario Bettati, "Un droit d'ingérence humanitaire", *Revue Générale de Droit International Public*, vol. 95 (1991), pp. 639-670. The existence of such a *devoir d'ingérence*, however, has not generally been accepted by States. It has also been subject to criticism among commentators; see, for example, Nguyen Quoc Din, Patrick Daillier and Alain Pellet, *Droit international public* (Paris: Librairie générale de droit et de jurisprudence, 5th edition, 1994), p. 427; Michel-Cyr Djiéna Wembou, "Le droit d'ingérence

## B. Content of “protection”

251. Protection is a concept which takes on different meanings in different contexts, and there is no definition appropriate to all situations. For example, while protection may refer in refugee law, inter alia, to facilitating voluntary repatriation or assimilation,<sup>757</sup> the institution of asylum, and the principle of non-refoulement, it involves different issues in international humanitarian law, such as, inter alia, granting ICRC access to prisoners of war and civilians deprived of their liberty,<sup>758</sup> providing relief to victims of war<sup>759</sup> and appointing protecting powers.<sup>760</sup> Protection takes on still other meanings in areas such as the law of diplomatic protection<sup>761</sup> and diplomatic and consular law.<sup>762</sup> The unique situation that disasters present leads to yet another specialized conceptualization of protection, including, for example, humanitarian access to the victims, securing safe zones, the provision of adequate and prompt relief and ensuring respect for human rights.<sup>763</sup>

### 1. Existing human rights law applicable in natural disasters

252. The victims of natural disasters remain protected by existing human rights obligations of the territorial State. While the majority of human rights instruments do not make direct reference to the context of disasters, the protections they provide would apply generally. Likewise, existing principles on internally displaced persons would be applicable to the extent that the victims of a disaster are rendered internally displaced.<sup>764</sup>

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humanitaire: un droit aux fondements incertains, au contenu imprecise et à géométrie variable”, *African Journal of International and Comparative Law*, vol. 4, No. 3 (1992), pp. 570-592, at pp. 586 and 587.

<sup>757</sup> Statute of the Office of the United Nations High Commissioner for Refugees, annexed to General Assembly resolution 428 (V) of 14 December 1950, art. 8(c).

<sup>758</sup> Third Geneva Convention relative to the Treatment of Prisoners of War, 1949, art. 126; Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War, 1949, art. 143.

<sup>759</sup> Third Geneva Convention relative to the Treatment of Prisoners of War, 1949, art. 125; Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War, 1949, art. 142.

<sup>760</sup> Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 1977, art. 5. For a more complete list of the elements of protection and assistance under international humanitarian law, see Claude Pilloud, Yves Sandoz, Christophe Swinarski and Bruno Zimmermann, *Commentary on the Additional Protocols of 8 June 1977* (Geneva: Nijhoff, 1987), p. 938, paras. 3309 and 3310.

<sup>761</sup> See draft articles on diplomatic protection in report of the International Law Commission on the work of its fifty-eighth session, *Official Records of the General Assembly, Sixty-first Session, Supplement No. 10 (A/61/10)*, para. 49.

<sup>762</sup> See the Vienna Convention on Diplomatic Relations, 1961, United Nations, *Treaty Series*, vol. 500, No. 7310, p. 95; and Vienna Convention on Consular Relations, 1963, United Nations, *Treaty Series*, vol. 596, No. 8638, p. 261.

<sup>763</sup> See, for example, E/CN.4/1995/50, para. 182. Moreover, the substantive limits of this protection will differ in “simple” cases of disaster — where the focus will be on ensuring basic rights to food and shelter — as compared to complex emergencies in which questions of access predominate (*ibid.*, para. 181).

<sup>764</sup> The Representative of the Secretary-General on the human rights of internally displaced persons has noted the relevance of the Guiding Principles on Internal Displacement, of 1998, to the case of natural disasters, although they are primarily analysed in the context of displacement arising from conflict. See Walter Kälin, “Guiding Principles on Internal Displacement: Annotations”, *Studies in Transnational Legal Policy*, No. 32 (Washington, D.C.: American Society of International Law, 2000), p. 1, para. 2 (“For the purposes of these Principles, internally

253. The scope of human rights protections particularly relevant during a natural disaster is vast. For example, in the immediate aftermath of the disaster, the most commonly threatened rights would likely include the right to life,<sup>765</sup> the right to food,<sup>766</sup> the right to health and medical services,<sup>767</sup> the right to water<sup>768</sup> and the right to adequate housing, clothing and sanitation.<sup>769</sup> During the recovery phase in the long-term aftermath of a disaster, rights which may be particularly affected would include the right to education,<sup>770</sup> the right to work,<sup>771</sup> the right to religious freedom,<sup>772</sup> the right of non-discrimination,<sup>773</sup> the right to be free of arbitrary detention and arrest<sup>774</sup> and the right to free expression.<sup>775</sup> In addition to those rights protected by international conventions and customary law, some national laws on disaster relief contain provisions protecting certain human rights in the specific context of disasters. For example, the Indian Disaster Management Act of 2005 states that “while providing compensation and relief to the victims of disaster, there shall be no discrimination on the ground of sex, caste, community, descent or religion”.<sup>776</sup>

254. Two human rights conventions directly address disaster relief. First, the recently concluded International Convention on the Rights of Persons with Disabilities makes explicit reference to situations of natural disaster, providing that States parties take “all necessary measures to ensure the protection and safety of persons with disabilities in situations of risk, including ... the occurrence of natural disasters”.<sup>777</sup> Second, the African Charter on the Rights and Welfare of the Child provides that States parties ensure that children rendered refugees or internally

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displaced persons are persons or groups of persons who have been forced or obliged to flee their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of ... natural or human-made disasters, and who have not crossed an internationally recognized state border”). See also E/CN.4/1995/50, para. 119 (discussing the debate on whether to include victims of disasters within the definition of internally displaced persons); E/CN.4/1992/23, paras. 33-35; and A/60/338, para. 44 (“[A]lthough the major human rights treaties ... do not directly refer to internal displacement, the protections these instruments provide certainly apply to displaced persons, including those displaced by natural disasters”).

<sup>765</sup> See, for example, International Covenant on Civil and Political Rights, 1966 (United Nations, *Treaty Series*, vol. 999, p. 171), art. 6.

<sup>766</sup> See, for example, International Covenant on Economic, Social and Cultural Rights, 1966 (United Nations, *Treaty Series*, vol. 993, p. 3), art. 11.

<sup>767</sup> See, for example, International Covenant on Economic, Social and Cultural Rights, 1966, art. 12; William A. Gunn, “The right to health of disaster victims”, *Disaster Prevention and Management*, vol. 12 (2003), pp. 48-51.

<sup>768</sup> See, for example, Convention on the Elimination of All Forms of Discrimination against Women, 1979 (United Nations, *Treaty Series*, vol. 1249, No. 20378, p. 13), art. 14(2)(h); Convention on the Rights of the Child, 1989 (United Nations, *Treaty Series*, vol. 1577, No. 27531, p. 3), art. 24(2)(c); African Charter on the Rights and Welfare of the Child, 1990 (*Human Rights: A Compilation of International Instruments*, vol. II: *Regional Instruments* (United Nations publication, Sales No. E.97.XIV.1), sect. C, No. 39), art. 14(2)(c).

<sup>769</sup> International Covenant on Economic, Social and Cultural Rights, 1966, art. 11.

<sup>770</sup> *Ibid.*, art. 13.

<sup>771</sup> *Ibid.*, art. 6.

<sup>772</sup> International Covenant on Civil and Political Rights, 1966, art. 18.

<sup>773</sup> *Ibid.*, art. 2.

<sup>774</sup> *Ibid.*, art. 9.

<sup>775</sup> *Ibid.*, art. 19.

<sup>776</sup> Disaster Management Act, 2005 (India), para. 61.

<sup>777</sup> Convention on the Rights of Persons with Disabilities, 2006 (General Assembly resolution 61/106, annex), art. 11.

displaced by natural disasters “receive appropriate protection and humanitarian assistance in the enjoyment of the rights set out in this Charter and other international human rights and humanitarian instruments to which the States are Parties”.<sup>778</sup> Furthermore, the Committee on Economic, Social and Cultural Rights has maintained that “whenever an individual or group is unable, for reasons beyond their control, to enjoy the right to adequate food by the means at their disposal, States have the obligation to fulfil (provide) that right directly. *This obligation also applies for persons who are victims of natural or other disasters*”.<sup>779</sup>

255. In June 2006, the Operational Guidelines on Human Rights and Natural Disasters, prepared by the Special Representative of the Secretary-General on the Human Rights of Internally Displaced Persons, were approved by the Inter-Agency Standing Committee (IASC).<sup>780</sup> Based on the premise that “persons affected by natural disasters should enjoy the same rights and freedoms under human rights law as others in their country and not be discriminated against”<sup>781</sup> and that “human rights underpin all humanitarian action”,<sup>782</sup> they draw generally from human rights law. Four broad groups of human rights applicable in natural disasters are identified: (a) protection of life, security of the person, physical integrity and dignity,<sup>783</sup> (b) protection of rights related to basic necessities of life,<sup>784</sup> (c) protection of other economic, social and cultural rights<sup>785</sup> and (d) protection of other civil and political rights.<sup>786</sup> The IASC Operational Guidelines further emphasize several of the most commonly affected rights, noting that “the problems that are often encountered by persons affected by the consequences of natural disasters include: unequal access to assistance; discrimination in aid provision; enforced relocation; sexual and gender-based violence; loss of documentation; recruitment of children into fighting forces; unsafe or involuntary return or resettlement; and issues of property restitution”.<sup>787</sup>

256. While the question of derogation from certain human rights norms in times of public emergency does arise, in the context of the International Covenant on Civil

<sup>778</sup> African Charter on the Rights and Welfare of the Child, 1990, art. 23(1), 23(4). See also art. 25(2)(b), providing that States parties “shall take all necessary measures to trace and reunite children with parents or relatives where separation is caused by internal and external displacement arising from ... natural disasters”.

<sup>779</sup> General Comment No. 12 (E/C.12/1999/5), para. 15 (emphasis added). Some non-binding texts contain similar language. For example, the resolution on humanitarian assistance adopted by the Institute of International Law in 2003 states in sect. II that “leaving the victims of disaster without humanitarian assistance constitutes a threat to human life and an offence to human dignity and therefore a violation of fundamental human rights”.

<sup>780</sup> IASC Operational Guidelines on Human Rights and Natural Disasters (Washington, D.C.: Brookings-Bern Project on Internal Displacement, 2006).

<sup>781</sup> *Ibid.*, General principles, principle I.

<sup>782</sup> *Ibid.*, General principles, principle III.

<sup>783</sup> Including evacuations, relocations and other life-saving measures; protection against the negative impacts of natural hazards; protection against violence, including gender-based violence; camp security; and protection against anti-personnel landmines and other explosive devices.

<sup>784</sup> Including access to goods and services and provision of adequate food, water and sanitation, shelter, clothing and essential health services.

<sup>785</sup> Including the rights to education, property and possession, housing, livelihood and work.

<sup>786</sup> Including issues of documentation; freedom of movement and right to return; family life and missing or dead relatives; freedom of expression, assembly and association, and religion; and electoral rights.

<sup>787</sup> IASC Operational Guidelines on Human Rights and Natural Disasters, 2006, p. 8.

and Political Rights the emergency must rise to a level which “threatens the life of the nation”<sup>788</sup> before derogation is permitted. The Human Rights Committee has maintained that “not every disturbance or catastrophe qualifies as a public emergency which threatens the life of the nation, as required by article 4, paragraph 1 [of the International Covenant]”.<sup>789</sup> Likewise, the Committee on Economic, Social and Cultural Rights, in the context of the right to adequate food, has stated that “States have a *core obligation* to take the necessary action to mitigate and alleviate hunger ... even in times of natural or other disasters”.<sup>790</sup>

## 2. “Right” to humanitarian assistance

257. The potential existence of a human right to humanitarian assistance during natural disasters is a complex question. It has received significant attention notably among academic commentators,<sup>791</sup> but existing positive law on the subject remains

<sup>788</sup> International Covenant on Civil and Political Rights, 1966, art. 4.

<sup>789</sup> See Human Rights Committee, General Comment No. 29, 24 July 2001 (CCPR/C/21/Rev.1/Add.11), paras. 2, 3 and 5 (“Measures derogating from the provisions of the Covenant must be of an exceptional and temporary nature ... two fundamental conditions must be met: the situation must amount to a public emergency which threatens the life of the nation, and the State party must have officially proclaimed a state of emergency ... Not every disturbance or catastrophe qualifies as a public emergency which threatens the life of the nation, as required by article 4, paragraph 1 ... If States parties consider invoking article 4 in other situations than an armed conflict, they should carefully consider the justification and why such a measure is necessary and legitimate in the circumstances ... If States purport to invoke the right to derogate from the Covenant during, for instance, a natural catastrophe ... they must be able to justify not only that such a situation constitutes a threat to the life of the nation, but also that all their measures derogating from the Covenant are strictly required by the exigencies of the situation. In the opinion of the Committee, the possibility of restricting certain Covenant rights under the terms of, for instance, freedom of movement (art. 12) or freedom of assembly (art. 21) is generally sufficient during such situations and no derogation from the provisions in question would be justified by the exigencies of the situation”).

<sup>790</sup> General Comment No. 12 (E/C.12/1999/5), para. 6 (emphasis added).

<sup>791</sup> See, for example, “Le droit à l’assistance humanitaire: actes du Colloque international organisé par l’Unesco, Paris, 23-27 janvier 1995” (Paris: UNESCO, 1996); “Colloque sur la promotion et la diffusion des droits de l’homme, du droit international humanitaire, du droit des réfugiés, du droit des migrants et du droit de secours en cas de catastrophes naturelle: Monaco, 7-9 novembre 1985: Compte rendu”, *Annales de droit international médical*, vol. 32, pp. 11-109; “Guiding Principles on the Right to Humanitarian Assistance”, *International Review of the Red Cross*, No. 297 (November-December 1993), pp. 519-525; “Résolution sur la reconnaissance du devoir d’assistance humanitaire et du droit à cette assistance”, *Revue Générale de Droit International Public*, vol. 91 (1987), pp. 816-817; Frits Kalshoven (ed.), *Assisting the Victims of Armed Conflict and Other Disasters: Papers delivered at the International Conference on Humanitarian Assistance in Armed Conflict, the Hague, 22-24 June 1988* (Dordrecht, The Netherlands: Martinus Nijhoff, 1989); Yves Beigbeder, *The Role and Status of International Humanitarian Volunteers and Organizations: The Right and Duty to Humanitarian Assistance* (Dordrecht, Holland: Martinus Nijhoff, 1991); Rohan J. Hardcastle and Adrian T. L. Chua, “Humanitarian assistance: towards a right of access to victims of natural disasters”, *International Review of the Red Cross*, No. 325 (1998), pp. 589-609; Juan Antonio Carrillo Salcedo, “Le droit à l’assistance humanitaire: à la recherche d’un équilibre entre les devoirs des autorités territoriales et les obligations des donateurs des secours humanitaires”, in *Law in Humanitarian Crises/Le droit face aux crises humanitaires*, vol. II (Luxembourg: Office for Official Publications of the European Communities, 1995); Yves Sandoz, “‘Droit’ or ‘Devoir d’ingérence’ and the right to assistance: the issues involved”, *International Review of the Red Cross*, No. 288 (May-June 1992), pp. 215-227; René-Jean Dupuy, “L’assistance humanitaire comme droit de l’homme contre la souveraineté de l’état”, in Frits Kalshoven (ed.), *Assisting the*



unclear. This situation differs markedly from the parallel question that arises during times of armed conflict, when a right to humanitarian assistance is established in conventional law.<sup>792</sup> Different views exist among commentators over the existence of a right to humanitarian assistance: while some argue that there is currently no customary human right to humanitarian assistance in the context of natural disasters,<sup>793</sup> others find such a right and classify it as a secondary norm of international law,<sup>794</sup> and still others find that such a right is firmly established.<sup>795</sup>

258. While references to a right to humanitarian assistance are virtually non-existent in multilateral treaties,<sup>796</sup> it is included in various non-binding texts. For example the Principles and Rules for Red Cross and Red Crescent Disaster Relief provide that “the Red Cross and Red Crescent in its endeavour to prevent and alleviate human suffering, considers it a fundamental right of all people to both offer and receive humanitarian assistance”.<sup>797</sup> Similarly, the Mohonk Criteria state that “everyone has the right to request and receive humanitarian aid necessary to sustain life and dignity from competent authorities or local, national or international governmental and

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*Victims of Armed Conflict and Other Disasters* (Dordrecht, The Netherlands: Martinus Nijhoff, 1989), pp. 27-34; and Dietrich Schindler, “Humanitarian Assistance, Humanitarian Interference and International Law”, in R. St. J. Macdonald (ed.), *Essays in Honor of Wang Tieya* (London: Kluwer Academic Publishers, 1993), pp. 689-701.

<sup>792</sup> See, for example, Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War, 1949, arts. 38(1), 59, 62, and 108; Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 1977, art. 70; Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 1977, art. 18(2).

<sup>793</sup> See, for example, Hardcastle and Chua, “Humanitarian assistance: towards a right of access to victims of natural disasters”, *International Review of the Red Cross*, No. 325 (1998), p. 35; and comments of Nigel Rodley in “Le droit à l’assistance humanitaire: actes du Colloque international organisé par l’Unesco”, p. 146: “It seems clear to me that there is no right to humanitarian assistance or that, even if there ought to be one and if there were in fact one, it would not be a human right.” Rodley considers the idea of such a right redundant, arguing that “human rights have already been flouted when a person is in this situation. And it hardly seems useful ... to suggest that another human right has been violated, namely, the right to receive assistance” (*ibid.*, p. 146).

<sup>794</sup> See comments of Marie-José Domestici-Met in “Le droit à l’assistance humanitaire: actes du Colloque international organisé par l’Unesco”, p. 88: I believe that the right to humanitarian assistance must not be considered a distinct human right, but a sort of procedural substitution for human rights. Just as there is a right to reparation, there is a right to assistance, if the primary rights are not fulfilled and are violated”.

<sup>795</sup> Comments of Héctor Gros Espiell in “Le droit à l’assistance humanitaire: actes du Colloque international organisé par l’Unesco”, p. 103: “We can already affirm that the right to humanitarian aid is for the most part, in the light of current ideas and current needs, a peremptory norm of international law, recognized as such by the international community of States as a whole, according to the formulation of article 53 of the 1969 Vienna Convention on the Law of Treaties. The right to humanitarian aid would thus constitute today a case of *jus cogens*, rendering null any treaty or any international juridical act that conflicts with this right or the measures required by its application.”

<sup>796</sup> But see African Charter on the Rights and Welfare of the Child, 1990, art. 23.

<sup>797</sup> Principle 2.1 (emphasis added). Reprinted in *International Review of the Red Cross*, No. 310 (29 February 1996), annex IV.

non-governmental organizations”<sup>798</sup> and call upon the States Members of the United Nations to “recognize the right to humanitarian assistance and the responsibility to provide it”.<sup>799</sup> The resolution on humanitarian assistance adopted by the Institute of International Law on 2 September 2003 states that “leaving the victims of disaster without humanitarian assistance constitutes a threat to human life and an offence to human dignity and therefore a violation of fundamental human rights. The victims of disaster are entitled to request and receive humanitarian assistance”.<sup>800</sup> Several other texts contain similar provisions.<sup>801</sup>

### 3. Other protection mechanisms

259. A number of emerging legal concepts exist in international law establishing areas of special protection for victims and the humanitarian bodies assisting them.<sup>802</sup> Although the majority of these concepts were developed in the context of armed conflict and are thus not specifically relevant to this study, they are briefly surveyed here because certain ideas inherent to them may inform a similar concept relevant to the protection of persons in the event of disasters. For example, under the conventional regime of international humanitarian law, the parties by mutual

<sup>798</sup> Mohonk Criteria for Humanitarian Assistance in Complex Emergencies, 1995, in J. M. Ebersole, “The Mohonk Criteria for Humanitarian Assistance in Complex Emergencies”, *Human Rights Quarterly*, vol. 17, No. 1 (1995), pp. 192-208, at p. 196.

<sup>799</sup> *Ibid.*, p. 195, para. 1.

<sup>800</sup> Sect. II, paras. 1 and 2.

<sup>801</sup> See, for example, Walter Kälin, “Guiding Principles on Internal Displacement: Annotations”, *Studies in Transnational Legal Policy*, No. 32 (Washington, D.C.: American Society of International Law, 2000), principle 3 (“Internally displaced persons have the right to request and to receive protection and humanitarian assistance from [receiving State] authorities”); Guiding Principles on the Right to Humanitarian Assistance, adopted by the Council of the International Institute of Humanitarian Law in April 1993, (*International Review of the Red Cross*, vol. 33, No. 297 (1993)), principle 1 (“Every human being has the right to humanitarian assistance in order to ensure respect for the human rights to life, health, protection against cruel and degrading treatment and other human rights which are essential to survival, well-being and protection in public emergencies”); Doha Declaration on the priorities for progressive development of international law in the United Nations Decade of International Law to meet the challenges of the 21st century, in *International Legal Issues Arising Under the United Nations Decade of International Law* (The Hague: Martinus Nijhoff, 1995), pp. xv-xx, at p. xviii: “The right of victims to humanitarian assistance should be reaffirmed as a basic human right. This right ensures respect for other basic human rights to life, health and protection against cruel and degrading treatment”. One reference to such a right was also identified in national law: Act on Disaster Risk Reduction and Response, 2000 (Bolivia), art. 3(b) (“Right to Protection — All persons living in the national territory have a right to protection of their physical integrity, their productive infrastructure, their property and their environment in facing potential disasters and/or emergencies”).

<sup>802</sup> See Mohamed S. Elewa, “Genocide at the safe area of Srebrenica: a search for a new strategy for protecting civilians in contemporary armed conflict”, *Michigan State University-DCL Journal of International Law*, vol. 10 (2001), pp. 429-463, at p. 452; and Yves Sandoz, “The establishment of safety zones for persons displaced within their country of origin” and Leonardo Franco, “An examination of safety zones for internally displaced persons as a contribution toward prevention and solution of refugee problems”, in *International Legal Issues Arising Under the United Nations Decade of International Law* (The Hague: Martinus Nijhoff, 1995), pp. 899-927 and 871-897 respectively.

consent may establish demilitarized “protected zones”,<sup>803</sup> such as the neutralized zones of Dacca in 1971, the neutralized zones of Nicosia in 1974, the neutralized zones of Saigon in 1975 and the hospital and safety zone at Phnom Penh in 1975.<sup>804</sup> A similar mechanism has been more recently employed by the Security Council with its creation of “safe areas”, such as those established in northern Iraq under resolution 688 (1991) and in Bosnia and Herzegovina under resolutions 819 (1993) (with respect to Srebrenica) and 824 (1993) (with respect to Sarajevo and other threatened areas). Safe areas appear to differ from protected zones in three important respects: (a) they are not generally established with the consent of the parties concerned, but rather imposed, usually by a resolution of the Security Council;<sup>805</sup> (b) they are not required to have an exclusively civilian character;<sup>806</sup> and (c) they are not necessarily demilitarized.<sup>807</sup>

260. The “open relief centres” created by the United Nations High Commissioner for Refugees in Sri Lanka in 1990, defined as “a temporary place where displaced persons on the move can freely enter or leave and obtain essential relief assistance in a relatively safe environment”,<sup>808</sup> represent yet another unique concept. Their primary relief function has been to ensure adequate food supplies for victims, although they have also provided temporary shelter, water, and health services.<sup>809</sup> It is clear that open relief centres are distinct from safe havens and demilitarized zones, as both of the latter were considered and rejected in Sri Lanka as technically and politically not viable.<sup>810</sup>

261. Distinct from the above paradigms but adopting elements of each of them, two theoretical mechanisms are raised with increasing frequency in the context of disaster relief: humanitarian space and relief corridors. While both remain largely theoretical concepts, they are briefly treated below so as to provide a complete overview of contemporary discourse concerning the protection of persons in the context of disasters.

<sup>803</sup> See First Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, 1949, art. 23; Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War, 1949, arts. 14 and 15.

<sup>804</sup> See discussion in Sandoz, “The establishment of safety zones for persons displaced within their country of origin”, pp. 909-911.

<sup>805</sup> Ibid., pp. 917, 926; Carrillo Salcedo, “Le droit à l’assistance humanitaire: à la recherche d’un équilibre entre les devoirs des autorités territoriales et les obligations des donateurs des secours humanitaires”, p. 119; and Elewa, “Genocide at the safe area of Srebrenica: a search for a new strategy for protecting civilians in contemporary armed conflict”, pp. 452-453.

<sup>806</sup> Ibid.

<sup>807</sup> Ibid.

<sup>808</sup> W. D. Clarence, “Open relief centres: a pragmatic approach to emergency relief and monitoring during conflict in a country of origin”, *International Journal of Refugee Law*, vol. 3, No. 2 (1991), pp. 320-328, at p. 325. In terms of consent of the receiving State, UNHCR initially operated the relief centres in Sri Lanka without the formal consent of that State, although it has been argued that their establishment could be generally justified by the mandate of UNHCR in that State (B. S. Chimni, “The incarceration of victims: deconstructing safety zones”, in *International Legal Issues Arising Under the United Nations Decade of International Law* (The Hague: Martinus Nijhoff, 1995), pp. 823-854, at p. 846). More than two years after their initial creation, a formal agreement was concluded authorizing the continued operation of the relief centres (ibid., pp. 846 and 847).

<sup>809</sup> Clarence, “Open relief centres: a pragmatic approach to emergency relief and monitoring during conflict in a country of origin”, p. 327.

<sup>810</sup> Chimni, “The incarceration of victims: deconstructing safety zones”, p. 845.

**(a) Humanitarian space**

262. The concept of “humanitarian space” has been defined as “the access and freedom for humanitarian organizations to assess and meet humanitarian needs”.<sup>811</sup> A humanitarian space in the context of disaster relief serves as a compromise for the receiving State by allowing it to provide a geographically limited consent rather than a broad grant of consent to deliver humanitarian assistance. As compared to the three types of mechanisms identified above, humanitarian space in the context of disaster relief would most closely resemble open relief centres, because its primary role would be the delivery of food, water and medical assistance.<sup>812</sup>

**(b) Humanitarian relief corridors**

263. A humanitarian space for humanitarian actors to assess and attempt to meet humanitarian needs will be ineffective in the absence of essential relief materials, including food, clean water and medical supplies. In 1990, the Secretary-General noted that “there is no doubt that the unhampered access to the victims of a disaster remains one of the key issues of humanitarian assistance. The idea of establishing relief corridors for relief and rescue workers to deliver essential relief goods might be further developed. Such corridors or passages would be limited in their existence according to the specific nature of the emergency. They would also be limited in their geographic dimension, that is, they would represent the most direct access route to a disaster scene, and finally their function would be exclusively to facilitate the distribution of emergency assistance such as food and medicines. The establishment of life lines of this kind obviously has to be negotiated with affected countries taking into account the exigencies of their sovereignty”.<sup>813</sup>

264. Subsequently, the General Assembly adopted resolution 45/100 which included a substantive paragraph specifically addressing the concept of humanitarian relief corridors:

The General Assembly ... notes with satisfaction the report of the Secretary-General on the implementation of resolution 43/131 ... in particular the possibility of establishing, on a temporary basis, where needed, and by means of concerted action by affected Governments and the Governments and intergovernmental, governmental and non-governmental organizations

<sup>811</sup> Karen Guttieri, “Humanitarian space in insecure environments: a shifting paradigm”, *Strategic Insights*, vol. 4, No. 11 (November 2005) (citing the European Commission’s Directorate for Humanitarian Aid).

<sup>812</sup> During the forty-ninth session of the General Assembly in 1994, Monaco introduced a draft resolution seeking consultations on the desirability of a convention governing the establishment of safety zones, both in armed conflicts and in other humanitarian disasters. It maintained that with the creation of such spaces, “the High Commissioner for Refugees, the United Nations Children’s Fund and international charitable institutions such as the International Committee of the Red Cross or certain non-governmental organizations recognized for their humanitarian activities would be in a better position rapidly to provide protection, relief and assistance to the civilian populations afflicted by destructive conflicts and deprived of their most fundamental rights” (A/49/PV.13, p. 7). However, the draft resolution was not taken up. See: Karin Landgren, “Safety zones and international protection: a dark grey area”, *International Journal of Refugee Law*, vol. 7 (1995), p. 441.

<sup>813</sup> A/45/587, para. 26.

concerned, relief corridors for the distribution of emergency medical and food aid.<sup>814</sup>

It should be emphasized that although humanitarian corridors are often discussed in the context of armed conflict, the Secretary-General had explicitly invoked the possibility of their use in the context of natural disasters.<sup>815</sup>

265. Disaster relief corridors have also been proposed in other texts. For example, the Guiding Principles on the Right to Humanitarian Assistance state that “humanitarian assistance can, if appropriate, be made available by way of ‘humanitarian corridors’ which should be respected and protected by competent authorities of the parties involved and if necessary by the United Nations authority”.<sup>816</sup> The Guiding Principles on Internal Displacement provide that “all authorities [of the receiving State] shall grant and facilitate the free passage of humanitarian assistance and grant persons engaged in the provision of such assistance rapid and unimpeded access to the internally displaced”.<sup>817</sup>

266. Humanitarian corridors allow the receiving State the possibility of consenting to the delivery of aid as long as the relief operation does not extend beyond the narrow band created by the humanitarian corridor, so as to minimize and control the outside presence on its territory. For example, an agreement between the Sudan and the United Nations in June 1991 established a humanitarian corridor over water via the Kosti-Malakal Nassir waterway, the White Nile and the River Sobat to deliver provisions to populations in southern Sudan.<sup>818</sup> Similarly, Security Council resolution 764 of 13 July 1992 approved measures to reinforce the Sarajevo airport agreement of 5 June 1992, in which the parties had agreed “to establish security corridors between the airport and the city, under the [United Nations Protection]

<sup>814</sup> General Assembly resolution 45/100 of 14 December 1990, para. 6.

<sup>815</sup> The question was also addressed by the World Food Programme: “At its fifteenth session, held at Cairo in 1989, WFC [World Food Council] members accepted in the Cairo Declaration the proposal for an international agreement on the safe passage of emergency food aid. The proposal was understood as a contribution to the discussions at international level following, among others, Assembly resolution 43/131. The question of the safe passage of emergency food aid was discussed again at the sixteenth session of WFC, held at Bangkok in May 1990. In the conclusions the members recommended that the Executive Director of WFC should consult with concerned organizations and institutions on the development of guidelines for effective measures to ensure the passage of emergency food aid and should seek the support of the General Assembly in that respect” (A/45/587, para. 24).

<sup>816</sup> Guiding Principles on the Right to Humanitarian Assistance, adopted by the Council of the International Institute of Humanitarian Law in April 1993 (*International Review of the Red Cross*, No. 297 (November-December 1993), pp. 519-525), principle 10.

<sup>817</sup> Guiding Principles on Internal Displacement, 2000, principle 25(3). In a statement made during the General Assembly debate on the adoption of resolution 46/182, France noted that the need for humanitarian corridors “to reach the victims rapidly, while taking full account of the sovereignty of the States concerned” had also been put forward by the Independent Commission on International Humanitarian Issues (A/46/PV.39, p. 73).

<sup>818</sup> Mario Bettati, “The right of humanitarian intervention or the right of free access to victims?”, *Review of the International Commission of Jurists*, vol. 49, No. 1 (1992), p. 7 (noting that “the life line operation which had taken place previously was also a prefiguration of these corridors through which the European Community had conveyed aid in 1990 through the mediation of non-governmental organizations”).

Force's control, to ensure the safe movement of humanitarian aid and related personnel".<sup>819</sup>

267. Five limits have been proposed concerning the creation of humanitarian corridors: they could be limited in time to that period during which assistance is strictly necessary; they could be limited geographically; they could be limited in their objectives, having no function other than the supply of the most urgent humanitarian assistance; they could be deontologically limited, in particular through the requirement that the impartiality of those distributing humanitarian aid be assured; and they could be subject to further rules.<sup>820</sup>

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<sup>819</sup> These relief corridors were essential to the survival of the population of the former Yugoslavia during the whole of the year 1992. See Bettati, "The right of humanitarian intervention or the right of free access to victims?", p. 7. See also Security Council resolution 767 (1992) of 27 July 1992, para. 2 (concerning the humanitarian airlift to Somalia) and resolution 1199 (1998) of 23 September 1998 (concerning humanitarian access in Kosovo).

<sup>820</sup> It has been suggested that those limitations imposed on innocent passage in the territorial sea under article 19 of the United Nations Convention on the Law of the Sea could serve as a model (Bettati, "The right of humanitarian intervention or the right of free access to victims?", p. 7).