International Disaster Response Law and the Coordination of International Organisations

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Abstract

Natural disasters, deeply ingrained in our historical and contemporary conceptualisation of the environment, are rapidly increasing in frequency and severity. There has, however, never been a comprehensive legal framework on the provision and/or facilitation of assistance in peacetime situations of natural, industrial or technological disaster. Rather, a body of International Disaster Response Law (IDRL) has developed from a melange of binding and non-binding instruments with varying purpose, scope and content. This essay examines the patchwork body of IDRL and outlines the need for improved coordination within the sector. Two shortcomings of and potential solutions to coordination of international organisations at the inter-international level are investigated through a legal framework. The interaction of the international and domestic levels of coordination are then examined, and coordination of national and international legal structures to improve the response capacities of both spheres is proposed.

Introduction

The recent horrors of the Haiti earthquake and Australian bush fires are etched in our memories, easily recalled along with the images of destruction caused by the Myanmar cyclone, Hurricane Katrina on the United States Gulf Coast and the Indian Ocean Tsunami. Such memories reflect the exponential upward trend¹ in the prevalence and impact of disasters, particularly in the

¹ Tadanori Inomata, UN Joint Inspection Unit, *Towards a United Nations Humanitarian Assistance Programme for Disaster Response and Reduction: Lessons Learned from the Indian Ocean Tsunami*

recent decade. During the six years of 2000 – 2006 the number of disasters had reached 5287, compared to 1231 in the 1970 – 1980 decade. This year alone Relief Web has recorded 101 disasters requiring international support.²

Despite the obvious prevalence and severity of disasters, there has never been a comprehensive legal framework on the provision and/or facilitation of assistance in peacetime situations of natural, industrial or technological disaster. Rather, a body of International Disaster Response Law (IDRL) has developed from a melange of binding and non-binding instruments with varying purpose, scope and content. IDRL has thus become a minefield of legal barriers and omitted regulation, as deadly as bush fires and earthquakes themselves.

Of the many gaps left in IDRL, coordination difficulties are a ‘systemic’³ problem for the humanitarian aid regime. Indeed, inadequate coordination ‘is probably the most discussed issue’⁴ and its failures ‘remain a constant complaint’⁵ among both international actors and between international actors and their domestic counterparts in affected states. The costs of coordination failures are serious. Uncoordinated responses lead to duplication, confusion, increased expenses, inefficient use of resources, inappropriate aid and sometimes fatally result in disaster affected persons not receiving ‘the right aid at the right time, delivered in the right way.’⁶

Parts I and II of this essay examine the patchwork body of IDRL and outline the need for improved coordination within the sector. Part III appraises two shortcomings of coordination of international organisations at the inter-international level and investigates remedies through a legal framework. Part IV analyses the interaction of the international and domestic levels of coordination and proposes coordination of national and international legal structures to improve the response capacities of both spheres.

Disaster (2006), 3.

2 ‘Latest disasters’, Relief Web, <<http://www.reliefweb.int>> (10 November 2010).

3 Moore, Daniel and Eng, ‘International NGOs and the Role of Network Centrality in Humanitarian Aid Operations: Mozambique Floods Study’ (2003) 27(4) *Disasters* 305, 305.

4 David Fisher, *Law and Legal Issues in International Disaster Response: A Desk Study* (2007), 150.

5 *Ibid*, 150.

6 *Ibid*, 13.

I. IDRL

IDRL, while ‘not a new component of international law’,⁷ could be accused of sneaking up on scholars and practitioners. In response to the increasing human and economic toll taken by peacetime disasters, the area has quietly grown to become a huge patchwork of over 130 diverse binding and non-binding instruments.⁸ These include inter-state and international organisation-to-state multilateral⁹ and bilateral treaties;¹⁰ UN General Assembly (GA), International Conference of the Red Cross and Red Crescent, and Economic and Social Council (ECOSOC) Resolutions;¹¹ guidelines;¹² and frameworks.¹³

Further, while IDRL can be found in treaties, municipal law and regulations, research to date by the IFRC suggests the non-existence of a system of customary IDRL.¹⁴ As a result, there are no clear and coherent regulatory agreements dealing with various aspects of transboundary disaster management and humanitarian assistance and a clear identifiable pattern of general principles on key aspects of disaster response is lacking.¹⁵

Nevertheless, IDRL describes the body of rules and principles for international humanitarian assistance in the wake of peacetime disasters of natural, technological or industrial origin.¹⁶ As a body of law, IDRL is necessary to fill the gap left by International Humanitarian Law (IHL) which, under the

7 Michael H. Hoffman, *International disaster response laws, principles and practice: reflections, prospects and challenges* (2003), 1.

8 Inomata, above n 1.

9 For example, *Framework Convention on Civil Defence Assistance*, opened for signature 22 May 2000, (entered into force 23 September 2001), *Tampere Convention on the Provision of Telecommunications Resources for Disaster Mitigation and Relief Operations*, opened for signature 18 June 1998, (entered into force 8 January 2005) (‘Tampere Convention’). Provisions can also be found in treaties on a range of international law topics, such as *Convention on the Privileges and Immunities of the United Nations*, opened for signature 13 February 1946, (entered into force 17 September 1946), *Kyoto International Convention on the Simplification and Harmonization of Customs Procedures*, opened for signature 18 May 1973, (entered into force 25 September 1974), amended by protocol 26 June 1999.

10 *United States of America and Japan Exchange of Notes Constituting an Agreement Relating to Emergency Flood*, 1959; *United Kingdom of Great Britain and Northern Ireland and India Agreement for the Duty Free Entry of Relief Supplies*, 1964.

11 Examples: *Resolution on strengthening of the coordination of emergency humanitarian assistance of the United Nations*, GA Res 46/182, UN GAOR, 47th sess, 78th plen mtg, UN Doc A/RES/46/182 (1991); *Resolution on strengthening the effectiveness and coordination of international urban search and rescue assistance*, GA Res 57/150, UN GAOR, 57th sess, 75th plen mtg, UN Doc A/RES/57/150 (2002).

12 For example, *Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance*, 30th International Conference of the Red Cross and Red Crescent, adopted 20 November 2007.

13 For example, *Hyogo Framework for Action 2005-2015*, (2005)

14 Hoffman, above n 7, 17.

15 Inomata, above n 1, 9.

16 Hoffman, above n7, 1.

four Geneva Conventions,¹⁷ offers a universally recognised set of rules and humanitarian protections designed to alleviate human suffering in response to catastrophic international¹⁸ and internal¹⁹ armed conflict. Unlike IHL, IDRL applies to (usually) unintended disasters in a cooperative peacetime context when states or intergovernmental humanitarian or other organisations offer, request, provide or accept cross-border disaster assistance.

Taking cues from IHL, the spatial scope of IDRL can be productively applied far from a disaster's point of impact (such as in agreements facilitating information sharing and establishing early warning systems) and its temporal scope may extend beyond the emergency phase of a disaster to the pre-disaster (for example, pre-positioning relief supplies) and post-disaster (for example, procedures for review of lessons learned and information sharing) stages.²⁰ It encompasses information sharing, coordination, deployment of personnel, equipment and supplies, access and assistance to disaster victims, status of humanitarian responders and standards of conduct.

17 *Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field*, opened for signature 12 August 1949, art 2 (entered into force 21 October 1950) ('First Geneva Convention'); *Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea*, opened for signature 12 August 1949, art 2 (entered into force 21 October 1950) ('Second Geneva Convention'); *Geneva Convention Relative to the Protection of Civilian Persons in Time of War*, opened for signature 12 August 1949, art 2 (entered into force 21 October 1950) ('Third Geneva Convention'); *Geneva Convention Relative to the Treatment of Prisoners of War*, opened for signature 12 August 1949, art 2 (entered into force 21 October 1950). ('Fourth Geneva Convention').

18 *First Geneva Convention*, art 2; *Second Geneva Convention*, art 2; *Third Geneva Convention*, art 2; *Fourth Geneva Convention*, art 2; *Protocol Additional to the Geneva Conventions and Relating to the Protection of Victims of International Armed Conflict (Protocol I)*, opened for signature 12 August 1949, art 1(3) (entered into force 7 December 1978).

19 Common art 3 to the *First, Second, Third and Fourth Geneva Conventions. Protocol Additional to the Geneva Conventions of 12 August 1949, and Protocol Additional to the Geneva Conventions and Relating to the Protection of Victims of Non-international Armed Conflicts (Protocol II)*, opened for signature 12 August 1949, (entered into force 7 December 1978), art 1.

20 Hoffman, above n7, 15.

II. COORDINATION: LOST IN THE 'YAWNING GAP'²¹

Coordination is commonly understood to include,

the general elements of interaction between State Parties or their competent bodies, mutual assistance in the provision of technical facilities and equipment and the planning and carrying out of activities related to emergency response.²²

Coordination of the different elements of the complex international humanitarian network is vital to enable humanitarian aid organisations to work together effectively in response to disasters, yet remains a major missing link within the 'yawning gap'²³ at the core of IDRL.

Improving coordination has been described as 'critical to optimise the flow of resources among agencies and increase the accountability, effectiveness and impact of aid operations'.²⁴ Further, there is agreement among humanitarian actors that it is one of the most significant challenges to effective disaster response. An International Federation of Red Cross and Red Crescent Societies (IFRC) survey found that coordination problems were reported by 40 – 90% of international and national organisations (International Humanitarian Organisations experiencing the problem most severely, followed by Governments and National Societies).²⁵

Inadequate coordination can be identified at two levels of the international disaster response strata: the inter-international sphere and in the international-domestic relationship. At the inter-international level, almost 60% of respondents to the IFRC survey reported lack of coordination between international actors (such as, the UN system and Non-Governmental Organisations (NGOs)) and more than 35% encountered it 'frequently or always'.²⁶ The Humanitarian Response Review, conducted by Office for the

21 David Fisher, *Summary Version – Law and Legal Issues in International Disaster Response: A Desk Study* International Federation of Red Cross and Red Crescent Societies, Geneva, (2007) 21.

22 Hosrt Fischer, *International Disaster Response Law: A Preliminary Overview and Analysis of Existing Treaty Law* (2003), 6.

23 Fisher, *Summary Version*, above n 21, 21.

24 Moore, Daniel and Eng, above n 3, 305.

25 Fisher, above n 4, 150.

26 Ibid 151.

Coordination of Humanitarian Affairs (OCHA), found that almost 70% of donors identified strong coordination as the number one element required to improve the performance of the global humanitarian system.²⁷

The consequences of such ineffective coordination are frustrating. For example, the IFRC notes that during major disaster operations in 2004-2005 massive amounts of unneeded and inappropriate aid were brought in. International actors failed to sufficiently communicate, gather and share information about what each other would supply and what was needed, resulting in mountains of used and unsuitable clothing, expired medications, duplicative and unnecessary field hospitals, culturally unacceptable food and other inappropriate items.²⁸ Such aid is not merely 'worthless to the recipients; it has a negative value'²⁹ as it slows customs, occupies storage and transport space when it is most needed.

Uncoordinated responses between international and domestic actors (such as, governments and civil society) have similarly devastating consequences for the distribution of international assistance. For example, uncoordinated domestic regulatory systems for customs can create severe bottlenecks.

This occurred in Sri Lanka and Indonesia after the Indian Ocean Tsunami (Tsunami) where 'hundreds of containers of relief goods remained stranded long after many of the items they contained, such as tents, blankets and body bags, were no longer needed and food had perished.'³⁰

Therefore, absent effective coordination structures at the inter-international and international-domestic levels require critical attention to ensure effective disaster response and to mitigate the suffering caused to disaster-affected populations.

III. INTER-INTERNATIONAL LEVEL

Previously, the international community through the League of Nations attempted to legally impose a centralised approach to disaster relief coordination by adopting the Convention and Statutes Establishing an International Relief Union³¹ in 1927. However, the body was crippled by

27 Costanza Adinolfi, *Office for the Coordination of Humanitarian Affairs, Humanitarian Response Review* (2005), annex XII.

28 Ibid 14.

29 John Telford and John Cosgrave, *Joint Evaluation of the international response to the Indian Ocean Tsunami: Synthesis Report*, (2006), 47.

30 Adinolfi, above n 27, 13.

31 *Convention and Statute Establishing an International Relief Union*, opened for signature 12 July 1927, (entered into force 27 December 1932).

under-funding and effectively died with the demise of the League of Nations and withdrawal of Red Cross support in the late 1930s. Global coordination policies and structures have subsequently been developed mainly through non-binding instruments.

A. Ineffective UN-Centrism

1. The Problem

The existing international humanitarian coordination system operates in three networks with limited linkages between them: the UN system; the Red Cross/Red Crescent Movement (whose internal coordination mechanisms are established under the Seville Agreement);³² and NGOs.³³ Overall, however, the system is understood to be UN driven. UN GA Resolution 46/182³⁴ conferred on the UN a 'central and unique'³⁵ role in providing leadership and coordinating the efforts of the international community to support disaster-affected communities. It was expected to play an 'increasingly important role in coping with the exponential rise in diverse human and material losses caused by disasters.'³⁶ Indeed, the UN system has a comparative advantage over other channels as its leadership is based on universal membership and global political acceptance of guiding principles contained in Resolution 46/182's annex.

Essential coordination functions are discharged by the OCHA whose functions are carried out through the Interagency Standing Committee (IASC) as chaired by the Emergency Relief Coordinator (ERC), and the Humanitarian Coordinators (HCs) at the country level through the UN Country Team (UNCT). Additionally, roles are regularly played by the UN Disaster Assessment Team (UNDAC), the International Search and Rescue Advisory Group (INSARAG), the UN High Commissioner for Refugees (UNHCR), the World Health Organisation (WHO), and the UN Children's Fund (UNICEF) among others.

Despite this apparently vast UN coordination system, the effectiveness of it is a subject of 'continuing concern and debate and dissatisfaction'³⁷ within international humanitarian organisations and donor communities. Problems can be seen along many lines. An especially major issue is the overlap of various coordination agencies, particularly in the relief to recovery transition.

32 *Seville Agreement* (1997).

33 Adinolfi, above n 27.

34 *Resolution on strengthening of the coordination of emergency humanitarian assistance of the United Nations*, GA Res 46/182, UN GAOR, 47th sess, 78th plen mtg, UN Doc A/RES/46/182 (1991).

35 Inomata, above n 1, 3.

36 *Ibid* 3.

37 Adinolfi, above n 27, 46.

The IASC and Global Platform for Disaster Risk Reduction (Global Platform) (previously Interagency Task Force on Disaster Reduction (IAFT/ISDR)) are two distinct UN system interagency coordination bodies under the same authority (OCHA and the ERC). They are both key global forums for UN and non-UN partners – where IASC deals with coordination of disaster relief, Global Platform addresses disaster risk reduction. Despite UN GA Resolution 46/182³⁸ calling for an integrated smooth transition from relief to reconstruction and risk reduction, the bodies have developed guidelines and policies on humanitarian assistance and disaster reduction ‘more or less in isolation.’³⁹ Tandanori Inomata, UN Inspector to the Tsunami found that the two instruments had not been streamlined and complied systematically under a single humanitarian umbrella in a readily available and understandable format for the benefit of a wider professional humanitarian audience, particularly humanitarian actors in the disaster-affected countries.’⁴⁰

Further, Inomata wrote,

[T]he dichotomy between the IASC and the ISDR [now the Global Platform] systems represents the risk of fragmentation and waste of initiative by the numerous actors and funding sources involved along with the non-binding Inter-agency coordination provided to them.⁴¹

Under the present structure, the problems of the interagency machinery are compounded as their decisions are non-binding; most members revert to headquarters for final decisions; they do not report to ECOSOC; they have an administrative nature that prevents them from adopting a common strategy or programmes committing their respective governing bodies; and member states are not allowed to exercise governance over humanitarian assistance of diverse entities and actors.⁴²

2. Solution: An Intergovernmental Committee?

An intergovernmental committee on disaster reduction and response, as recommended by Inomata to the UN in his report,⁴³ may be the solution. No intergovernmental forum has consistently discussed disaster-related humanitarian assistance in depth, despite a call over a decade ago by the Secretary General for consolidating and grouping humanitarian and

38 *Resolution on strengthening of the coordination of emergency humanitarian assistance of the United Nations*, GA Res 46/182, UN GAOR, 47th sess, 78th plen mtg, UN Doc A/RES/46/182 (1991)

39 Inomata, above n 1, 10.

40 Ibid 10.

41 Ibid 17.

42 Ibid 18.

43 Ibid.

humanitarian-related matters under a single ‘humanitarian umbrella’⁴⁴ agenda. This stands in stark contrast to other major economic and social sectors under GA and ECOSOC governance, which have 14 functional commissions and expert bodies, including 9 intergovernmental bodies, reporting to them. Creation of such a body in the humanitarian sector is available under Article 68 of the UN Charter,⁴⁵ to assist ECOSOC in the ‘performance of its functions’ and to varying degrees advise it on system-wide coordination and mobilisation of expertise of the interagency machinery. Similarly to the bodies established in other sectors, such a body could be mandated by the GA to pursue the implementation of the outcome of the major UN conferences and summits through the consideration of experience gained and lessons learned in their fields.⁴⁶

A specialised intergovernmental body for disaster response and reduction could assist ECOSOC in a number of ways. It could review and streamline humanitarian laws and principles for emergency response and disaster reduction; ensure legislative coordination and consistency between the specialised agencies, funds and programmes in policy-making and resource management by taking advantage of the experience and expertise of these partners; and provide a framework for strategic planning and coordination of policies of the organisations of the UN system at the intergovernmental level throughout the entire disaster management process.⁴⁷ The creation of such a forum, open to main actors and benefiting from recommendations of the current interagency bodies, would enable governmental stakeholders to garner the collective will necessary to strategically manage the resources they mobilise.⁴⁸

Therefore, uncoordinated overlap in UN system functions in the humanitarian sector inhibiting the effective delivery of relief in disasters, may be remedied by the creation of an intergovernmental body, as found in other economic and social sectors. Genuine moves by the UN system to overcome the IASC and Global Platform dichotomy are still awaited. However, with mounting pressure to create a coordinated system directed at improving the accountability, effectiveness and impact of relief and recovery assistance change will no doubt occur soon.

44 *Mandating and delivering: analysis and recommendations to facilitate the review of mandates: report of the SG*, UN Doc A/60/733 (2006), para 97.

45 *United Nations Charter* (1945).

46 *Resolution on integrated and coordinated implementation of and follow-up to the outcomes of the major United - Nations conferences and summits in the economic and social fields*, GA Res 57/270B, UN GAOR, 57th sess, 91st plen mtg, UN Doc A/RES/57/270B (2003), para 46-48.

47 Inomata, above n 1, 18.

48 *Ibid.*

B. NGO Coordination

1. The Problem

The NGO network is a crucial element in the international disaster response structure. International NGOs (INGOs) are regularly cited as being 'better prepared, funded and informed than the UN',⁴⁹ even sometimes supporting traditional UN functions such as facilitating logistical capacity. The network is rapidly expanding, as reflected in the response to the Tsunami disaster where the number of INGOs 'grew unabated',⁵⁰ and includes a huge, diverse group: small, large, experienced, inexperienced, specialised, general, resource-rich, resource-poor and so on. However, despite the potentially wide-ranging benefits of such an expansive network, proliferation of INGOs has tended to cause uncoordinated disaster responses with disastrous consequences for affected communities.

Examples abound in disaster response assessments of INGOs failing to coordinate properly between themselves, share information, avoid duplication and bring consistent consensus on important issues. The Tsunami Evaluation Committee found that the INGO sector requires 'collective responsibility, representation and coordination beyond what is currently available.'⁵¹ After the Tsunami, for example, in one part of the west coast of Aceh there were 22 medical, 95 shelter, and over 60 education INGOs.⁵² Rather than spreading capacities across affected areas in response to local demand, local authorities and coordination structures were overburdened in some location and under-resourced in others. Sectoral group fragmentation of INGO coordination also inhibits integrated planning within any specified geographical area. In another post-Tsunami instance, a large INGO constructed a number of houses in an area where the community, working with another INGO, had developed a site plan for the construction of a road. The number and diversity of actors, combined with reduced incentives to coordinate due to large funding and reduced interest in coordination due to a competitive atmosphere compound to create an especially difficult coordination environment. Improved INGO disaster response coordination is vitally necessary to ensure more effective, efficient, and coherent delivery of humanitarian services.

49 John Telford and John Cosgrave, *Joint Evaluation of the international response to the Indian Ocean Tsunami: Synthesis Report* (2006), 58.

50 Ibid 55.

51 Jon Bennett, *Coordination of international humanitarian assistance in tsunami-affected countries* (2006), 29.

52 Telford and Cosgrave, above n 49, 56.

2. Potential Solutions

Attempts at INGO coordination have been made and three main platforms exist: IASC, thematic and operational. At IASC level they are represented through observer standing of three consortia: the International Council of Voluntary Agencies (ICVA) – with more than 70 members; the Steering Committee for Humanitarian Response (SCHR) – an alliance of nine of the largest INGO networks; and InterAction – a coalition of over 150 US-based INGOs. Operational networks include the Disasters Emergency Committee (DEC), Alliance 2015, and Save the Children Alliance. Thematic coordination mechanisms are also being developed, for example the Interagency Working Group (IAWG-ECB). However, these platforms have failed to ensure coordinated responses.

An InterAction report found that there needs to be a radical shift in organisational mentality. INGOs must ‘see and prioritise’⁵³ coordination as a duty and functional requirement in humanitarian response, not an option. This can be done internally by INGOs by ensuring staff are properly educated on coordination and its importance. Additionally, structural changes need to be made within IDRL. An agreed INGO representative mechanism is regularly suggested by senior coordinators.⁵⁴ At the IASC level, INGO joint bodies have no authority to make binding commitments for their members. This lack of INGO representative body with delegated authority means that each INGO usually speaks for itself, making coordination especially difficult.

The IASC could pre-establish Terms of Reference for the appointment of INGO liaison officers and establish an INGO liaison office to deal with other agencies and share information. This could overcome the problems experienced during the Tsunami response effort where no special liaison was appointed by INGOs because ICVA membership was unable to agree on technical aspects.⁵⁵ The IASC INGO consortia have also been recommended by InterAction to draft coordination guidelines and adopt performance standards and indicators on NGO-managed coordination mechanisms in humanitarian emergencies.

In response to the recommendation of the Humanitarian Response Review,⁵⁶ IASC in 2005 approved the creation of nine sectoral clusters⁵⁷ with lead organisations responsible for global coordination among its partners in the area. The clusters have been successfully employed in a number of emergencies,

53 Eric Schwartz and Samuel Worthington, *NGO Impact Initiative: An Assessment by the International Humanitarian Community* (2006), 36.

54 Bennett, above n 57, 9.

55 Ibid 61.

56 Adinolfi, above n 27.

57 In nutrition, water and sanitation, health, camp coordination and management, emergency shelter, protection, logistics, telecommunications, early recovery.

but are 'beset by growing pains',⁵⁸ including insufficient INGO involvement which can worsen INGO coordination. It has been recommended that the IASC should promote the use of these clusters as a vehicle for developing common INGO indicators, reporting and joint assessments.⁵⁹ Clusters could also be improved by the OCHA actively working to ensure the inclusion of INGOs in cluster coordination meetings.

Therefore, system-wide changes must be made to the INGO network. As a major component of the international sphere of the IDRL system, its proper coordination – through a representative body, pre-established liaison officers and/or a cluster approach – is essential to ensure that efficient delivery of relief is provided to disaster affected communities. Major inter-international level shortcomings are present in the IDRL structure at several points, especially within the UN system and the INGO network. However, despite these current problems, there is much room for improvement at overlapping organisational, structural and legal stratum and active movement towards the attainment of effective inter-international level coordination is being made.

IV. INTERNATIONAL DOMESTIC LEVEL

Current principles and guidelines for humanitarian assistance and its application have proved inadequate. While national regulatory attempts have been made for international-domestic coordination, most struggle to implement effective systems that accommodate the multiple concerned ministries, departmental and local levels of government, civil society, and INGOs. Further, there are no legally-binding guidelines for States to follow on the issue.

A. Unclear Regulatory Frameworks

The absence of clear international and national consensus and authority among and within governments has created legal barriers to coordinated relief delivery. Two of the numerous legal hurdles to effective international-domestic level coordination will be addressed here: entry of relief personnel; and customs.

⁵⁸ Fisher, above n 4, 152.

⁵⁹ Schwartz and Worthington, above n 53, 43.

1. Entry

In order for relief to be delivered to an affected population, foreign personnel must obtain permission to enter and remain in an affected country, and transit through surrounding countries. However, there is no single global regime controlling how persons temporarily cross borders. Relief workers are left to the mercy of national visa regulations that vary between states and differ based on their nationality, the international status of their employer and their country of origin. Visa processing can be laborious and take up to several weeks, preventing access of personnel until after their presence is most vitally required.

Nations rarely have specific laws relating to visa procedures for international relief personnel and ad hoc procedures are usually established immediately following a disaster. Otherwise, relief personnel must resort to utilising tourist provisions allowing for visa-free short-term stays. However, problems then arise once time-limits for visa free travel lapse.

An assortment of international standards can be drawn from a range of binding and non-binding instruments. In some bilateral borderland rescue and relief treaties states agree to waive visa requirements and passport controls for government emergency personnel from the counterpart state under appropriate circumstances.⁶⁰ Also, numerous instruments have called for the facilitation of entry,⁶¹ including UN GA Resolution 57/150 which calls on states to ‘simplify or reduce, as appropriate, the customs and administrative procedure related to the entry, transit, stay and exist of international urban search and rescue teams and their equipment and materials’.⁶² Some exemptions can also be extracted from privileges and immunities law. For example, an exemption from immigration-related restrictions and fees is contained in Article 25 of the Convention on Privileges and Immunities of the UN,⁶³ which states that visa applications for officials should be ‘dealt with as speedily as possible’. However, this merely implies that any visa application procedures be expedited, rather than proscribe that personnel necessarily be automatically exempted. Further, the UN is entitled to issue laissez-passer travel documents to its officials

60 For example, *Agreement between Denmark and the Federal Republic of Germany on Mutual Assistance in the Even of Disasters or Serious Accidents* (1985), art 5.

61 For example, *ASEAN Agreement on Disaster Management and Emergency Response*, (2005), arts 14-16; *Tampere Convention*, arts 9(2)(c); *Inter-American Convention to Facilitate Disaster Assistance*, (1984), art VII; and *Resolution on strengthening of the coordination of emergency humanitarian assistance of the United Nations*, GA Res 46/182, UN GAOR, 47th sess, 78th plen mtg, UN Doc A/RES/46/182 (1991), paras 6-7: calls on affected and transit states to facilitate the access of humanitarian organisations.

62 *Resolution on strengthening the effectiveness and coordination of international urban search and rescue assistance*, GA Res 57/150, UN GAOR, 57th sess, 75th plen mtg, UN Doc A/RES/57/150 (2002), para 3.

63 *Convention on the Privileges and Immunities of the United Nations*, opened for signature 13 February 1946, (entered into force 17 September 1946).

that do not reveal the nationality of the holder – averting restrictions on this basis. Such exemptions, however, are useless for the numerous non-UN humanitarian relief bodies.

2. Customs

The shipment of relief goods and equipment to an affected country from international sources can be similarly adversely affected by domestic customs regimes that are designed to address a variety of issues (including legitimate concerns around the regulation and taxation of international commerce and control of contraband). Nevertheless, ‘The urgent need for entry of relief goods and equipment, particularly after a sudden-onset disaster like an earthquake or tsunami, requires some deviation from normal procedures.’⁶⁴

Customs-targeted soft law instruments of ‘universal application’⁶⁵ have recommended states to expedite the forwarding of relief consignments by waiving restrictions on their import and export; simplify associated paperwork; waive duties, taxes and fees; and authorise customs clearance outside normally prescribed hours and locations.⁶⁶ Additionally, the 23rd International Conference of Red Cross and Red Crescent Societies (1977) recommended several measures to expedite international relief, including: waiving requirements for consular certificates of origin, invoices⁶⁷ and import/export licences;⁶⁸ reducing, to the minimum, requirements and restrictions relating to hygiene and animal protection;⁶⁹ instructing customs authorities in transit and recipient countries to expedite processing;⁷⁰ encouraging donors to give prompt notification to consignees, ensure detailed manifests, and seek prompt acknowledgement of relief shipment arrivals.⁷¹

64 International Federation of Red Cross and Red Crescent Society, *International standards on customs and disaster relief* (2006), 1.

65 Ibid 1.

66 *Recommendation to Expedite the Forwarding of Relief Consignments* (1970) Customs Cooperation Council.

67 *Recommendation B*, 23rd International Conference of Red Cross and Red Crescent Societies (1977).

68 *Recommendation C*, 23rd International Conference of Red Cross and Red Crescent Societies (1977).

69 *Recommendation D*, 23rd International Conference of Red Cross and Red Crescent Societies (1977).

70 *Recommendation I*, 23rd International Conference of Red Cross and Red Crescent Societies (1977)

71 *Recommendation H*, 23rd International Conference of Red Cross and Red Crescent Societies (1977).

Hard law, 'of less universal reach',⁷² can also be found in a range of binding multilateral,⁷³ bilateral⁷⁴ and regional⁷⁵ treaties, status agreements, and memoranda of understanding between states and international organisations.

Provisions can also be found amongst law on privileges and immunities,⁷⁶ and trade-related standards.⁷⁷

This disparate body of law has created serious barriers to the efficient coordination of relief efforts between international and domestic actors. A complete and coherent body of international law and guidelines are therefore require to improve international-domestic IDRL coordination.

B. A Regulatory Framework

Lessons can be learned from the telecommunications relief sector of IDRL. In clear contrast to the disparate collection of law on entry and customs, the Tampere Convention on the Provision of Telecommunication Resources for Disaster Mitigation and Relief Operations (the Convention) adopted in 1998⁷⁸ is regularly held up as 'a milestone'⁷⁹ in IDRL law. It is the first global

72 International Federation of Red Cross and Red Crescent Society, above n 64, 1.

73 For example, *Tampere Convention*, art 9 on removal/reduction of regulations restricting the import, export or transit of telecommunications equipment; *Kyoto International Convention on the Simplification and Harmonization of Customs Procedures*, opened for signature 18 May 1973, (entered into force 25 September 1974), amended by protocol 26 June 1999: reduced formalities/waived duties and fees; *Convention on Temporary Admission*, opened for signature 26 June 1990, (entered into force 27 November 1993), Annex: allows temporary admission of goods imported for humanitarian purposes to be without duties/taxes/restrictions; *Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency*, opened for signature 26 September 1986, (entered into force 26 February 1987), art 8: calls for waiver of customs duties on the property and equipment of international relief providers.

74 For example, *Convention between the French Republic and the Federal Republic of Germany on Mutual Assistance in the Event of Disasters or Serious Accidents* (1997), art 5.

75 For example, *Inter-American Convention to Facilitate Disaster Assistance* (1984), art 5; *ASEAN Agreement on Disaster Management and Emergency Response* (2005), art 14; *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* (1998), art 10.

76 For example, *Convention on the Privileges and Immunities of the United Nations*, opened for signature 13 February

1946, (entered into force 17 September 1946), art 18(g): grants many exemptions, including from customs duties and restrictions with regard to property and assets imported or exported for official use and for the personal use of officials.

77 For example, the vast majority of state parties to the WTO and *General Agreement on Tariffs and Trade* (GATT) have agreed to lower trade barriers (tariffs/duties/restrictive customs practices). However, preferences are often given to products depending on origin, especially to least developed countries, customs unions (European Economic Area, Southern Africa Customs Union), regional free trade areas (NAFTA, ASEAN), and bilateral free trade agreement signatories.

78 *Tampere Convention on the Provision of Telecommunications Resources for Disaster Mitigation and Relief Operations*, opened for signature 18 June 1998, (entered into force 8 January 2005).

79 Marco Ferrari, 'Easing the way to Disaster Mitigation: The Tampere Convention' (Paper presented at the, Telecoms for Disaster Relief: Tampere Convention World Summit on the Information Society, 22

treaty providing a comprehensive regulatory framework for international cooperation on disaster telecommunications and provides for state-to-state, inter-government, non-governmental and non- state actor assistance.

The Convention was developed from a collection of law similarly disparate to that faced by entry and customs sectors currently. Nevertheless, it has achieved a targeted effort to facilitate the provision of timely and effective telecommunication recourses and rapid, efficient information flows for disaster prevention and response. While the full benefits of the Convention are yet to be seen, it has been applied successfully in a number of disasters, including the Mozambique floods in 2000. However, problems were present during those floods. For example, telecommunication delegates from humanitarian organisations starting the installation of radio equipment on vehicles on the basis of generic local authorisations were nearly arrested by the army. The problems were resolved, but at local and personal level negotiations rather than through the law. Nevertheless, commentators have emphatically stated that such problems did not arise from the Convention itself, but from its non-entry into force, and especially, from the non-adoption of administrative procedures for its implementation on the part of the individual States at the time of the floods. In 2005, the Convention entered into force and the expectations for the results of the full application of the Convention 'are very high as they are having immediate effects on saving lives [sic]'.⁸⁰

In response to the need for a clear regulatory framework for other areas of IDRL coordination the International Conference of the Red Cross and Red Crescent adopted Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance in 2007 (Part V for example, deals with 'Legal Facilities for Entry'). However, these are merely recommendatory and non-binding. The transformation of the relevant aspects of these guidelines into an UN convention, similar to the Tampere Convention, may significantly mitigate legal barriers and improve coordination at the international-domestic level of international disaster response.

V. CONCLUSION

Disasters are becoming increasingly frequent and ferocious, requiring coordinated global responses more than ever. The international community faces significant challenges at both the inter-international and international-to-domestic levels of disaster response. Two main networks of the international system, the UN and INGOs, face particular internal coordination problems.

February 2005).

⁸⁰ Ibid 3.

Potential solutions are, however, available. These include, the establishment of an intergovernmental forum reporting directly to ECOSOC, an INGO representative body, pre-established INGO liaison officers and continued application of the cluster approach. The coordinated interaction of international and domestic legal systems also requires careful consideration. Pointless legal barriers need to be broken down, perhaps through a global regulatory system, to ensure that relief services are effectively delivered to suffering populations. The full achievement of a comprehensive alleviation of these problems will probably take many years. Nevertheless, with careful reflection on past mistakes and efforts by the international community to compile a more coherent body of IDRL, there is potential for substantial progress.

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