Chapter-4

THE INTERNATIONAL FEDERATION OF RED CROSS AND RED CRESCENT SOCIETIES AND INTERNATIONAL DISASTER RESPONSE

4.1 Introduction

The discussion in this chapter centre’s around the multilateral and bilateral treaties and their pattern under the authority of International Federation of Red Cross and Red Crescent Societies.

The chapter then discusses how the International Federation has been able to achieve the explicit recognition of its international legal personality and application of a regime of privileges and immunities for its international disaster relief operations through the conclusion of status agreements. Finally, the chapter summarizes a few of the coping methods used when a status agreement has not yet been concluded.

Since the applicable laws, in regards to both access and facilitation depends on the legal nature of the entity being governed, the first part of this chapter considers the legal personality of the International Federation and its applicable legal regime, concluding that the International Federation has a sui generis legal personality.

The International Conference of the Red Cross and Red Crescent is the highest deliberative body of the International Red Cross and Red Crescent Movement, normally meeting every four years. It is composed of representatives of each
component of the Red Cross and Red Crescent Movement but also of all state parties to the Geneva Conventions (which now includes every State, in as much as adherence to the Conventions has become universal). Thus, while not exclusively an inter-governmental body, the International Conference’s resolutions are considered to carry significant authority.

The International Conference has adopted a number of resolutions relevant to international disaster relief, some of which address solely the activities of the International Red Cross and Red Crescent Movement and others that address international relief more generally. With regard to the former category, many of the resolutions have been aimed at ensuring the coordination and high quality of the Movement’s work. Thus, for example, in 1969 the 21st International Conference adopted the Principles and Rules for Red Cross and Red Crescent Disaster Relief, setting out a detailed structure for Movement cooperation in international disaster relief operations. In 1981, the 24th International Conference adopted a resolution with measures for National Societies to take to ensure the competence of medical personnel involved in international relief. Similarly in 1986, the 25th International Conference adopted a resolution on the use of medications and medical supplies, calling for adherence to established guidelines.

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1 Francois Bugnion, Red Cross Law, International Review Of the Red Cross, no. 308, 491-519 (1995) (stating that “[t]he votes of government representatives transform what was originally a private matter into a semiprivate legal act, of a mixed nature: conference resolutions thus impinge one the sphere of public international law because of the status of those who drafted and approved them, and any obligations they may contain may be binding on States, to an extent to be determined later”).


3, “The role of medical personnel in the preparation and execution of Red Cross emergency medical actions”, 24th international Conference of the Red Cross and Red Crescent, Resolution 26 Manila, 1981.
in the donation and use of these materials as well as proper labelling and packaging. In 1995, the 26th International Conference adopted guidelines on the role of the Red Cross and Red Crescent societies in response to technological disasters, notably nuclear and chemical disasters.⁴

The International Conference has also sought to reduce the barriers faced by the components of the Movement in providing international relief. Thus, as mentioned above, in 1977 the 23rd International Conference resolutions on Red Cross emergency radio communications (calling on states and the World Administrative Radio Communications conference to find ways to increase the number of dedicated frequencies provided for emergency use by the Red Cross/Red Crescent), and on the issue of visas for Red Cross personnel (calling on National Societies to request that their governments facilitate and reduce visa formalities for personnel of the League of Red Cross and Red Crescent Societies and participating National Societies)⁵.

In many countries, the most important relief actor apart from the government is the national Red Cross or Red Crescent Society. According to the statutes of the International Red Cross and Red Crescent Movement, in order to be recognized by the movement a national society must, among other things, be recognized by national law as “auxiliary to the public authorities in the humanitarian field” while at the same time retaining “an autonomous status which allows it to operate in conformity with the Fundamental Principles of the Movement”⁶ Moreover

⁴“Principles and action in international humanitarian assistance and protection” Annex 1, The Role of the Red Cross and Red Crescent Societies in response to technological disasters, 26th International Conference of the Red Cross and Red Crescent, Resolution 4, Geneva, 1995.
⁵ Issue of visas to delegates appointed in connection with appeals for assistance in time of disaster, 23rd International Conference of the Red Cross and Red Crescent, Bucharest, 1977.
⁶ 26th International Conference of the Red Cross Resolution 5, Geneva in Dec 1995, art. 4.
National Societies are attributed a specific role in humanitarian assistance by the Geneva Conventions.

In most, but not yet all, countries, national societies have a formal role in the governmental national disaster plan. This defined role is crucial to identifying responsibilities and tasks and to ensure proper coordination with governmental authorities as well as other actors. It is also a necessary means to fulfill the required “auxillary status”. Accordingly, where national disaster plans are being formulated or updated, the role of the national society should be expressly included. Consideration should also be given to bringing in other relevant civil society actors into planning frameworks and bodies for relief activities.

For the International Federation of Red Cross and Red Crescent Societies, ensuring both short and long – term access to the territories of each of its National Societies and an operational space in which it can function in accordance with the Fundamental Principles of the International Red Cross and Red Crescent Movement is critical to the successful fulfillment of its constitutional functions.\(^7\)

As expressed in the International Disaster Response Laws (IDRL) Project Report 2002 – 2003, presented by the International Federation to the 28\(^{th}\) International Conference of the Red Cross and Red Crescent, one of the focuses of the project is the identification of laws and principles applicable to the access and facilitation of international disaster response activities.\(^8\) The project paper presents the specific

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\(^7\) Constitution of the IFRC and Red Crescent Societies as amended by the 12\(^{th}\) session of the General Assembly, Geneva (Switzerland) 23-28 October 1999, Art 3"Functions". The specific functions include:"to bring relief by all available means to all disaster victims: to assist the National Societies in their disaster relief preparedness, in the organization of their relief actions and in the relief operations themselves: to organize, coordinate and direct international relief actions, to be the official representatives of the member societies in international field"

\(^8\) The core of IDRL Project is defined as:"the laws, principles, and other instruments applicable to the access, facilitation, coordination, quality and accountability of international disaster response activities in time of non-conflict related disasters", which includes preparedness for imminent disaster and the conduct of rescue and humanitarian assistance activities.
legal regime applicable to the International Federation in terms of access and facilitation.

Access refers to an organization’s legal ability to enter and act in an affected country, including through assuring visas for personnel, importation and exportation of goods and equipment, renting premises, hiring staff, securing vehicles and communications lines, procuring needed relief items, and contracting service providers. Facilitation is the extent to which the host government ensures that the organization is able to carry out its mandate effectively and efficiently, in accordance with its governing principles and rules, free from unreasonable interference.

In 2002, the International Federation of Red Cross and Red Crescent Societies commissioned a study to collect and examine the key international treaties related to international disaster response and to identify the scope of the law, as well as any patterns in their rules including commonalities, differences and lacunae. Over 130 texts were gathered during this process, mainly from United Nations (UN) repositories, consisting primarily of multilateral and bilateral treaties, as well as a sample of relevant UN resolutions.

The International Red Cross and Red Crescent Movement have determined that this field of law needs careful consideration. Accordingly, the International Federations of Red Cross and Red Crescent Societies is conducting a systematic, scholarly examination of existing international legal sources on peacetime disaster response, and is working with states to ensure that dialogue and development in this important field progresses in an informed, practical way.

States have expected the Movement to play a leadership role in peacetime disaster relief since its earliest days. Those responsibilities expanded over time. Today they
include the responsibility to provide expert support for development of rules that expedite humanitarian operations and cooperation.

Given its role as a leader in peacetime disaster response, the International Federation is particularly well suited to lead the Movement’s IDRL work. The Movement has, in fact, asked the International Federation to take the lead in these endeavors. And recently, the United Nations (UN) General Assembly took note of the International Federation’s continuing work in the field.

4.2 The legal personality of the International Federation

The manner in which a humanitarian agency gains access to an affected territory and the rights it enjoys therein depends on the legal box in which it is placed. Apart from States and individuals, international humanitarian actors and polarized into two categories, international governmental organizations (IGOs) otherwise known as international organizations and international non–governmental organizations (NGOs).

The defining characteristic between the two is the extent of State involvement. To be considered an IGO, an agency must normally have met the following three criteria:

- be created by a collective of states through an international agreement;
- have a membership consisting entirely or principally of States; and
- be endowed with an independent personality and function.\(^9\)

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\(^9\)Restatement of the Foreign Relations law of the United States 221 defining international organizations as “an organization created by an international agreement and has a membership consisting entirely or principally of states” See among others Henry G. Schermers and Neils M.Blokker, International Law: Unity within diversity, Martinus Nijhoff Publishers,3rd edtn, 1995, para 33, defining International organizations as “forms of cooperation founded on international agreement, creating at least on organ with a will of its own, established under international law”
NGOs, on the other hand, are generally defined as non–governmental associations created by private persons under national law.

The essential consequence of this dichotomy is that IGOs, due to their unique nature, have been recognized as possessing international legal personality or being capable of holding rights and obligations under international law\(^\text{10}\).

As a corollary to international recognition, IGOs also benefit from a generally undisputed worldwide national personality – the ability to contract, possess movable and immoveable property, and bring suits within a national legal system.

Furthermore, in order to ensure that the mandate of the IGO, as agreed and governed by the collective, is not jeopardized by the acts of any one State, IGOs benefit from a regime of privileges and immunities\(^\text{11}\). Grounded in the functions of the organization, these privileges and immunities include immunity from jurisdiction, inviolability, fiscal and customs exemptions, and freedoms in regards to communications and exchange facilities\(^\text{12}\).

The legal basis for this regime of privileges and immunities is often set out in the constituent documents of the organizations. Elaboration was provided in the 1947

\(^{10}\) The International Court of Justice, advisory opinion “Reparations for injuries suffered in the service suffered in the service of the United Nations” of 11 April 1949, confirmed this recognition. For a summary of the distinction between IGOs and NGOs and the legal consequences of this distinction see Yues Beigbeder, “The Role and Status of International Humanitarian Volunteers and Organizations: The Right and duty to Humanitarian Assistance”, Martinus Nijoff Publishers(1991).

\(^{11}\) For an analysis of the meaning and consequences of the International Legal Personality and its relationship with the regime of privileges and immunities see Peter Bekker, “The Legal Position of Intergovernmental Organizations: A functional necessity Analysis of their Legal status and immunities”. TMC Asser Institute, Martinus Nijoff Publishers (1994).

\(^{12}\) “Convention on the privileges and immunities of the Specialized Agencies”, 21 November1947, 33 UNTS 261(Entered into force in 1948)
Conventions on the Privileges and Immunities of the United Nations and of its Specialized Agencies, widely considered today as customary international law\textsuperscript{13}. NGOs, on the other hand, have to date not been recognized as possessing an international legal personality in the same way as IGOs\textsuperscript{14}. These entities, organized under national legal systems, derive their rights in regards to access to affected populations and facilitation of their activities primarily from the national legal systems of the host states in which they operate.

Apart from being obliged to register with the government or to form a national subsidiary in the host State, often a complex and lengthy process\textsuperscript{15}, the agency remains subject to the vagaries of the national legal systems, including taxation regimes, import/export restrictions, immigration restrictions, and labor laws. These sometimes jeopardize the operations of the organization by placing exorbitant taxes or custom duties on its property or assets, restricting the importation of goods, or blocking visa applications. Given such threats to their operations, certain NGOs have sought to conclude private arrangements with host governments assuring the organizations ability to carry out its tasks in the country and according it a minimal level of operational facilities, including fiscal and custom exemptions\textsuperscript{16}.

\textsuperscript{15}There have been several initiatives to try and standardize the various recognition processes for NGOs. See in this regard the work of the Council of Europe, European Convention on the Recognition of the Legal Personality of International Non-Governmental Organizations, opened for signature by the member states of the council of Europe on 24 April 1986 (entered into force on 1\textsuperscript{st} January 1991); Resolution (93)38 on relation between the Council of Europe and the International Non-Governmental Organizations, adopted by the Committee of Ministers on the 18 October 1993.
\textsuperscript{16}Chris Molvor, “Applying humanitarian principles in disaster relief: a case study from Zimbabwe”. Chapter 9 in this publication. See also the study of the council of Europe tracing the common elements found in the various agreements concluded between NGOs and their host states.
Applying these legal definitions, the International Federation cannot be considered either an NGO or an IGO. Unlike IGOs, the International Federation was not founded by States through an international agreement, but as a private Swiss association upon the instigation of five National Red Cross Societies. Furthermore, the International Federation is by definition not governmental.

As defined in the Statutes of the International Red Cross and Red Crescent Movement, the International Federation is an “independent humanitarian organization which is not governmental, political, racial or sectarian in character”. The statutory principles of the Movement of which the International Federation is a component, requires autonomy from government in order that relief may be brought to the suffering “solely guided by need” disregarding nationality, race, religion, class or political opinion; and that “the confidence of all” is attained through strict impartiality, refusing to take sides in hostilities or engaging in political, racial, religious or ideological controversies.

Finally, the membership of the International Federation is not governmental. The 179 National Red Cross and Red Crescent Societies which form the membership of the organization are constituted as voluntary aid societies under the national laws of their home States and do not represent their governments.

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17 The International Federation was founded on 5 May 1919 by the American, British, French, Italian and Japanese National Societies. See Eric David, “International legal personality of the International Federation of Red Cross and Red Crescent Societies”, Legal opinion provided to the International Federation in support of its request for a status agreement with Switzerland (1995)
18 Statutes of the International Red Cross and Red Crescent Movement, adopted by the 25th International Conference of the Geneva in October 1986, para-2
19 As set out in article 1 of the statutes of the International Red Cross and Red Crescent Movement, the components include the International Federation, the International Committee of the Red Cross and the 178 National Societies.
20 Fundamental Principles of the International Red Cross and Red Crescent Movement were proclaimed by the 20th International Conference of the Red cross, Vienna, 1965(revised version in 1986).
Neither, however, is it fitting to consider the International Federation an NGO. The National Societies, though not representing their governments, are “auxiliaries of the public authorities in the humanitarian field” and as such are considered quasi–public entities. The mandate, functions, and statutory rules of the International Federation, though necessitating an independence from the public authorities to ensure neutrality and impartiality, are themselves embedded in international legal instruments and were adopted by the International Conference of the Red Cross and Red Crescent which includes all States Parties to the Geneva Conventions.

On the basis of this unique membership, the specificity of the Movement founded under international law, the fundamental principles of the Movement and its international mandate, the International Federation is considered to have a sui generis legal identity that by analogy to IGOs has led numerous States and intergovernmental entities to recognize the international legal personality of the organization. Furthermore, it has been acknowledged by these States that the successful undertaking of the International Federation’s mandate in accordance with the Movement’s governing principles required a regime of privileges and immunities similar to those enjoyed by IGOs.

In 1996, the International Federation concluded a headquarters agreement with the Swiss authorities similar to those granted to the intergovernmental organizations headquartered in Geneva. In these international legal instruments, the Swiss government explicitly recognizes the international legal personality of the International Federation and grants the International Federation the standard

\[21\] For summaries on the unique nature of the International Federation see Eric David, “International Legal Personality of the International Federation of Red Cross and Red Crescent societies.”
regime of privileges and immunities\textsuperscript{22}. To date, 58 other countries have afforded a similar recognition and regime of privileges and immunities to the International Federation through the conclusion of status agreements. In addition, the United Nations (UN) general Assembly has granted the International Federation observer status.

4.2.1 Status of Agreements of International Federation

As discussed above, unlike IGOs, the International Federation must assure the recognition of its legal identity and the applicable regime of privileges and immunities through bilateral agreements with each country in which it will have operations. This bilateral negotiation process can be long, arduous and without guarantee of success. However, where a status agreement has been concluded, the access and facilitation of the International Federation’s disaster relief operations are generally relatively protected.

Prior to the commencement of a negotiation process, the International Federation must convince the government, particularly the ministry of foreign affairs, that it has an international legal personality and has the right to benefit from and the need for a regime of privileges and immunities similar to those of inter governmental organizations. In some countries these requests are quickly accepted. In others, the leap required to assimilate the International Federation to an IGO, is hindered by political or systemic blockages.

Fear is often expressed that granting the International Federations’ request would set a precedent for NGOs to claim similar rights. In some cases, such recognition requires an act of parliament, either to amend the relevant international

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\footnotesize\textsuperscript{22} United Nations General Assembly Resolution, observer status for the International Federation of Red Cross and Red Crescent Societies in the General Assembly, A/RES/49/2 (1994).
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organizations act or to include the International Federation under it. As this stage, it is crucial to have the support of the relevant national society when often has close connections to the relevant ministries.

Once a government has accepted to negotiate such an agreement, the model text provided by the International Federation, based on the 1947 UN conventions and adapted to the International Federation’s operations and governing principles, is circulated for discussion. Reaching an agreement on the final text normally takes at least a year if not longer, depending on the extent of the changes proposed by the various ministries, the political situation in the country, and the priority the file is given.

Often the presence of an International Federation representative in the country actively following and pushing the file is crucial for assuring the continuation of negotiations. Once a final text is agreed and signed, the agreement may then need to be ratified prior to its entering into full force. Given the work and time involved, the International Federation is generally only able to begin such an Endeavour when it has or will establish a permanent presence in the country, and has secured the support of the National Society.

4.2.2 Recognition of the National and International Personality of the Federation

The recognition of the national and international personality of the International Federation is embodied in three standard clauses, which serve as the legal basis for the agreement.

23 IFRC
In the first, the government “recognizes the international legal personality” of the International Federation on the basis of its mandate set out in the statutes of the Movement.

Secondly, the government recognizes the right of the International Federation to operate in the country with the “full capacity to contract, to acquire and dispose of immoveable and moveable property and to institute legal proceedings”.

Thirdly, provides the crucial national legal personality which permits the International Federation to bring in delegates, hire staff locally, rent and purchase property, and commence legal actions to defend its rights.

Lastly, the government states that in the country, the International Federation will benefit from the “immunities, privileges, facilities and exemptions similar to those of inter governmental organizations, as laid down in the Agreement”.

Another fundamental element of status agreement in the recognition by the government of the International Federation’s ability to carry out its mandate in the country, in accordance with its constitution and through or in agreement with National Society. The government declares that the International Federation shall be free to carry out “such activities as may be necessary for the exercise of its humanitarian mission” and that “its office bearers shall be free to make use of the emblem of the Red Cross and the Red Crescent”.

Furthermore the government agrees to “facilitate, to the maximum extent possible, the humanitarian activities of the International Federation” and to apply, as far as possible, the “Measures to Expedite International Relief” adopted by the 23rd International Conference of the Red Cross and Red Crescent, including the obligation to ease importation certifications and inspections, waive importation licenses, expedite the importation of goods, waive requirements for transit, entry
and exit visas for relief personnel, and authorize national airlines to accord free transportation for relief goods.

Personnel of the organization cannot be arrested, detained or tried for their acts (including spoken or printed word) or their omissions while conducting their official functions. The archives and premises of the International Federation cannot be searched, its assets or vehicles expropriate or impounded, nor can the agency be tried under the national legal system. Immunity does not mean, however, that the organization is exonerated from its liabilities including contractual or employee claims, or persons tortuously injured. The organization has a corresponding obligation to the government to make good any valid claims against it and provide for alternative dispute settlement mechanisms.

For the most part, the final text as agreed with the government assures the above mentioned facilities and protections. However, in the interests of securing at least the basic protections and legalization of the International Federation’s activities, the organization may be forced to accept certain compromises. The more difficult provisions to secure are often fiscal exemptions and immunity from jurisdiction. Some governments are hesitant to provide for the reimbursement of value added tax, or for constitutional reasons are not able to provide income tax exemptions or other privileges to local staff. Fiscal and communications privileges may be made subject to national law, rendering the privilege virtually useless.

Claims regarding rental agreements, traffic accidents and commercial agreements may be carved out of the immunity from jurisdiction. And the inviolability of the organization or its personnel may be subjected to requirement to cooperate with local authorities. A few countries eager to keep tight control over the activities of the organization may even mandate that the International Federation provide the
government annual reports for their activities, or attempt to limit the number of vehicles or delegates the organization brings into the country.

4.2.3 Operations in the absence of a status agreement.

For various reasons, the International Federation is often forced to operate without a valid status agreement in place. The process of negotiation or ratification of the agreement may still be ongoing. An agreement may never have been requested, either because the International Federation has not had a permanent presence in the country, or its request would not have been supported by the National Society. Finally, though rare, the government may simply have refused to grant such an agreement to the International Federation.

During the negotiation of an agreement, the International Federation may be able to operate on the basis of the implicit recognition of its international legal personality and similarities to inter governmental organizations. This situation however is less than ideal. There is a general lack of clarity as to what the rights and obligations of the International Federation are on the territory especially in regards to customs duties and fiscal exemptions. This implicit personality may not be recognized by relevant authorities causing administrative hassles in regards to securing visas, opening bank accounts and importing goods. The legal ability of the International Federation to act in – country and the privileges and immunities may not be upheld in a national court, depriving the International Federation of its immunity and making it difficult for the International Federation to enforce its rights.

Where the International Federation has not requested an agreement, its request has not yet been accepted, or the government has refused that the International Federation operate on an implicit recognition, the International Federation has
three options, either itself as an NGO, restrict its activities in the country such that they do not necessitate the establishment of an office, or act through the National Society.

Registration as an NGO is incomparable with the International Federation’s legal identity. Acceptance of such status subjects the International Federation to the national legal system, making it virtually impossible for the International Federation to apply standardized internal regulations, policies and administrative procedures in regards and operations. It may jeopardize the International Federation’s ability to carry out its mandate in accordance with its constitution and the fundamental principles of the Movement.

Once registered as an NGO, unless such registration was done at the request of the ministry of foreign affairs as a temporary measure pending conclusion of a status agreement, it is more difficult to have the government recognize the international legal personality of the International Federation and its similarities to IGOs.

Legal registration in a country and the acquiring of a national legal personally is generally critical when the organization needs to establish a more permanent presence. This would include when it needs to hire staff, open a bank account, rent premises, register vehicles and the like.

In situations of disaster relief, in the immediate aftermath, the establishment of a permanent presence is not always necessary. Furthermore governments may facilitate entry of relief agency personnel and goods and waive registration requirements during the first three to four weeks of a crisis to assure that the immediate disaster relief needs can be met. In other cases, the International Federation is able to limit its activities to an advisory role in the country, necessitating only the temporary presence of a delegate for a few months at a time.
This person can be hosted and allowed to work out of the offices of the National Society.

The final option is for the International Federation to operate through the National Society. The International Federation establishes a permanent presence in the country, but the delegates of the International Federation are considered the employees of the National Society. The International Federation uses the National Society’s vehicles, and the National Society assures that the International Federation has the necessary housing and office space, communications lines and the like. The difficulty with this arrangement is that it places the full burden ad liability of the International Federation’s operations on the Natural Society and limits the privileges and immunities enjoyed by the International Federation in the country.

4.3 Trends of International Disaster Response Law Treaties

Treaties dealing with International Federation action after natural ad technological disasters are not a recent innovation. The efforts to establish the International Relief Union24 and the several bilateral treaties that were concluded after the Second World War25 indicate that states had, at the time, already discovered the necessity to deal with disaster response on the level of international law.

Today, the U General Assembly has reaffirmed the same conviction by nothing in its resolution 55/73 of 8 February 2001 on the new international humanitarian order:

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24 Convention and statute establishing an International Relief Union, 12 July 1927, 1932 UNTS 249.
25 Agreement concerning the United States relief assistance to the Chinese people , 27 Oct 1947,China-United States of America, 12 UNTS 11.
“The importance of adherence to internationally accepted norms and principles as well as the need to promote, as required, national and international legislation to meet actual and potential humanitarian challenges”.

From the available material, it seems that the UN has contributed to the regulation of disaster response in different forms since the very beginning of its existence. At various times, states have also used the UN system for setting up treaties dealing with disaster assistance or financing.

In the first decade after the Second World War, some states had already concluded treaties dealing with specific aspects of disaster relief assistance. The United States concluded several such treaties, mainly establishing an environment for the delivery of relief goods. These treaties were concluded in 1956 and 1959 by the United States with India, Peru and Japan respectively. The agreement between the United Kingdom and India in 1964 provides another example of this type of treaty.

The main purpose of the treaties was to ensure the delivery of relief items and the clarification of problems related to import and distribution. A typical rule of such treaties involves the duty free entry of the supplies, for example in the agreement between the United Kingdom and India, which states:

“The Government of India shall accord duty free entry into India to all supplies of goods and standard packs for relief and rehabilitation donated through United Kingdom relief agencies and consigned through the Medical Stores Organization of the Government of India, at the ports of Calcutta, Madras ad Bombay or at designated airports, to voluntary relief and rehabilitation organizations including branches of these agencies in India.
which have been or hereafter may be approved by the Government of India”\textsuperscript{26}.

In addition to these early treaties, states concluded agreements for limited cross border operations between neighboring countries, such as the convention on mutual assistance between French and Spanish fire and emergency services of 4 July 1959. Such agreements paved the way for another wave of treaties, which began to develop in the 1970s. These treaties established a comprehensive system of mutual assistance in cases of natural and technological disasters. They could also be seen as the result of attempts by the European Council (EC) to support and initiate rules for the prevention and protection against major natural and technological disasters and the organization of relief.

Among the first systems for mutual cross border assistance in disaster situations are the agreement between France and Germany concluded in 1977, the treaty between France and Belgium of 1981 and the treaty between Switzerland and Germany of 1984. The agreement between Mexico and Guatemala of 1977 belongs to that category as well, despite the rather limited content, which mainly concerns the setting up of a committee to analyses the situation\textsuperscript{27}.

Despite the fact that such treaties already included most aspects relevant for cross – border operations; a comprehensive bilateral treaty network has only been established in the last decade of the last century. This network is found mainly in Europe and has resulted in mutual assistance treaties between neighboring countries covering nearly every area of central Europe.

\textsuperscript{26} Agreement for the duty Free Entry of Relief Supplies, 20 October 1964, United Kingdom of Great Britain and Northern Ireland-India, 534 UNTS 119.

\textsuperscript{27} “Agreement on co-operation for the prevention of and Assistance in cases of Natural Disasters”, 10 April 1987, Mexico-Guatemala, 1509 UNTS 6.
The main advantage of these treaties, particularly the most recent examples, is that they are more comprehensive in their coverage of cross border operations. These treaties include definitions, general principles of relief and provisions regulating requests and offers for assistance. They also function as a model for treaties with other states, and are adapted according to specific circumstances and partners.

More recently, the international decade for natural disaster reduction has triggered a significant change in the nature of treaty law in this area. This has had a major impact on both the natural and international level and has resulted in several bilateral treaties to set up educational exchange programmes and committees related to disaster prevention, response and management. Most of these have been concluded between the United States and European or Asian States\textsuperscript{28}.

Reflecting on the past 50 years, it is possible to conclude that on the bilateral level, in certain geographical regions, States have changed their approach from agreements concerning specific disaster related solutions, towards the acceptance of a more general framework for mutual assistance.

4.3.1.1 Trends in multilateral treaties

Unfortunately, treaties concerning international disaster response law (IDRL) are not yet embodied in an all embracing multilateral convention dealing with natural and technological disasters. Thus, the multilateral treaty framework in this area is not well developed, although there are some exceptions. The existing multilateral treaty situation appears to reflect a view by States that such instruments should be

\textsuperscript{28} Memorandum of understanding between the Government of the United States of America and the Government of the Ukraine on cooperation in natural and man-made technological emergency prevention and response, 5 June 2000 and also the protocol of intentions between the Government of the United States of America and the Republic of the Philippines concerning cooperation and disaster prevention and management, 20 November 2001.
restricted to specific contexts, such as certain types of disasters on certain aspects of assistance.

A prominent example of an attempt to establish a multinational convention relating to IDRL was the proposed draft convention on expediting the delivery of emergency relied of 1984, which was included as an added turn to the report of the Secretary General on the Office of the United Nation Disaster Relief Coordinator. This convention, however, was not successful.

More recently, the most comprehensive multilateral treaty in this area is the Tampere Convention on the Provision of Telecommunication Resources of Disaster Mitigation and Relief Operations. This treaty contains a detailed set of rules for specific aspects of disaster relief, including definitions, the scope of provision of assistance, privileges and immunities of personnel, the use of facilities, payment and reimbursement of costs or fees. However, it is important to note that this convention deals only with one specific aspect of international disaster response law, namely the provision of telecommunications, and even then, this convention has not been accepted on a global level and has not yet entered into force.

A treaty of similar significance is the Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency, which was developed with the International Atomic Energy Agency after the Chernobyl catastrophe. It includes the same essential rules contained within the Tampere Convention as well as the

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30 List of signatories available on the web site [http://www.reliefweb.int/telecom/tampere/signatories.html](http://www.reliefweb.int/telecom/tampere/signatories.html)

31 Convention on Assistance in the case of a nuclear accident or radiological emergency, 26 September 1986, 25 ILM 1377.
addition of far reaching provisions on the privileges and immunities of assistance personnel, which could stand as a good model for other treaties.

4.3.1.2 Multilateral treaties concerning international organizations

Many multilateral treaties have been concluded between States and non State parties such as international organizations. Such treaties generally concern only limited aspects of assistance, for example the International Development Association and Zimbabwe Development Credit Agreement on Emergency Drought Recovery and Mitigation Project of 1992, and the International Development Association and Bangladesh Development Credit Agreement about the Drainage and Flood Control Project of 1978. Nevertheless, these treaties still contribute to the overall set of rules dealing with disaster response.

Some multilateral treaties are even more specific and deal with only one aspect of an assistance issue, for example the Exchange of Letters Constituting an Agreement (UN Relief and Works Agency for Palestine Refuges in the Near East) and Lebanon regarding Funds Paid for the Bayssarieh Project of 1987. This agreement only relates to the technical procedure of funding and the responsibility of one of the partners’ vis-à-vis a non State entity32.

4.3.1.3 Multilateral treaties concerning the status of personnel

A further distinct category of multilateral treaty deals with the status of personnel involved in international missions. The 1946 Convention on the Privileges and Immunities of the United Nations reserves specific immunities for UN personnel and experts on mission, independent of the nature of the UN mission. The

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32 United Nations (United Nations Relief and Works Agency for Palestine groups in the nuclear East)-Lebanon, 286 UNTS 189.
relevance of this document has been reaffirmed twice by the International Court of Justice in the human rights context. This treaty has made a positive impact on the delivery of assistance by UN personnel in disaster situations, particularly when compared to the lack of legal and other protection accorded to NGO personnel.

States have also benefited from the general objective of that convention by being able to incorporate its main rules in the formulation of separate agreements. The agreement between the UN, Sweden and Peru for the provision of a technical cadre unit of Sweden to Peru after the 1970 earthquake is an example where the immunities and privileges are similar to the convention.

The rules of the more recent 1994 Convention on Protection of United Nations and Associated Personnel have a different background, as they require states to change the national criminal law for the better protection of the identified personnel. Protection under this convention also requires a specific status of the operation and establishes certain pre conditions for protection. Nevertheless all disaster response operations could potentially fall under the convention.

Despite the fact that only a minority of states have ratified this convention, the general tendency to provide a special group of individuals with a certain protection is relevant for international disaster response law. The present debate about the ‘white helmets’ reaffirms this observation, as it encourages voluntary national and regional actions aimed at making national volunteers and other agencies in accordance with accepted UN procedures and practices, in order to provide specialized human and technical resources for emergency relief and rehabilitation. The wording of the resolution and its context shows the tendency

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33 United Nations General Assembly Draft Resolution, Participation of volunteers ,United Nations in the field of humanitarian relief, rehabilitation and technical cooperation for development -2001
to provide special voluntary manpower to disaster relief and to combine it with a certain status and image.

4.3.1.4 Multilateral treaties dealing with specific areas of disaster response

There are other forms of multinational treaties dealing with specific aspects of disasters, although these are relatively few in number. One of the older examples in the Agreement on the Temporary Importation, Free of Duty, of Medical, Surgical and Laboratory Equipment for Use on Free Loan in Hospitals and other Medical Institutions for Purposes of Diagnosis or Treatment, of 1960. Despite the fact that the term disaster does not appear in the treaty text, this lesser – known treaty has implications for emergency response, as it refers to exceptional circumstances when a state finds itself suddenly without sufficient stocks of medical, surgical and laboratory equipment to satisfy even the most urgent requirements of the affected population.

Several treaties dealing with the protection of the environment, and more specifically dealing with pollution, also include provisions on assistance in times of disaster. Typically there are no comprehensive regulations concerning assistance as exemplified in Article 10 of the 1976 Convention for the Protection of the Mediterranean Sea against Pollution\textsuperscript{34}, which states:

“Any party requiring assistance for combating pollution by oil or other harmful substances polluting or threatening to pollute in coasts may call for assistance from other parties starting with Parties, which appear likely to be

\textsuperscript{34}Protocol for the prevention of pollution of the Mediterranean Sea by dumping from ships and Aircrafts and protocol concerning co-operation in combating pollution of the Mediterranean sea by oil and other Harmfull substance in case of emergency 16 Feb 1976.
affected by the pollution. This assistance may comprise, in particular, expert advice and the supply to or placing at the disposal of the Party concerned of products, equipment and nautical facilities. Parties so requested shall use their best endeavors to render this assistance.

Where the Parties engaged in an operation to combat pollution cannot agree on the organization of the operation, the regional centre may, with their approval, co-ordinate the activity of the facilities put into operation by these Parties”.

Whereas the above mentioned treaties are adjusted to the needs of an organization or a specific problem, the Agreement on Interaction in the Field of Natural and Man – Made Emergency Prevention and response and the Agreement on Co-operation in the field of Emergency Prevention and Response\(^\text{35}\) follow a regional approach. Such agreements are presumed to contain the rules and principles relating to disaster response that are considered most important for that region.

Many of the existing mutual assistance clauses are embodied in treaties dealing with nuclear disasters. Indeed following the Chernobyl incident, several treaties, which contain assistance clauses, were concluded both on the multilateral as well as the bilateral level within the framework for the assistance of the International Atomic and Energy Agency\(^\text{36}\).

\(^{35}\) Agreements on Interaction in the Field of Natural and Man-made Emergency Prevention and Response between Armenia Agreement on Co-operation in the Field of Emergency Prevention and Response between the member states.

In addition to the nuclear disasters treaty framework there are some lesser – known treaties referring to assistance provided in the case of technological disasters. In the framework of the UN Economic Commission for Europe (ECE), the 1992 Convention on the Transboundary Effects of Industrial Accidents was drafted to include an article on mutual assistance in the case of a disaster. More importantly, Annex X contains a type of ‘mini – convention’. It addresses the provision of assistance including articles on overall direction, control, coordination and supervision of the assistance, the proper and effective administration of the assistance and the protection of personnel, equipment and materials brought into its territory by, or on behalf of, the assisting Party. This convention entered into force on 19 April 2000 and 23 States in central and Eastern Europe and central Asia are now bound by the assistance rules.

4.3.2 Bilateral treaties dealing with Disaster Response

Most of the treaties identified during the research for this study are bilateral treaties. Whilst the majority of the treaties presented here contain IDRL issues, they differ in both objective and content. First of all, there are treaties specifically dealing with response to disasters, both natural and technological, including basic rules on assistance. The United States – China agreement of 1947 is a good example of an old and very specific agreement in this area. It contains some of the basic provisions relating to international disaster response, including provisions concern the procurement, storage, transportation and shipment of relief supplies.

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37 Other treaties do not foresee such an assistance clause despite their recent conclusion, see e.g., European Agreement concerning the International Carriage of Dangerous Goods by Inland Waterways, concluded 25 May 2000
and the fact that the purchase of relief supplies are generally made by and within the donor country\textsuperscript{38}.

Other similar treaties, such as the United States – Peru agreement\textsuperscript{39}, the United States – Japan agreement\textsuperscript{40} and the Sweden – Ethiopia agreement of 1957, do not refer directly to the core problems associated with international disaster response law, but they do confer certain rights and obligations for those assisting, and sometimes include rules on privileges.

Other treaties relating to technical cooperation between countries also have a veering on IDRL because they immediately open the possibility for cooperation in areas related to disaster response or they permit the conclusion of further agreements including those on disaster response. The Poland – Republic of Korea treaty of 1993 is an example that includes both of these elements.

4.3.2.1 Bilateral treaties between neighboring states

The last 15 years have given rise to lore expanded treaties between neighboring States, mainly concluded in Europe\textsuperscript{41}. These treaties not only establish a network of IDRL treaties in that specific region, but they also contain a pattern of rules relating to many of the core areas.

It is interesting to note that in some regions outside of Europe, there are no bilateral treaties between neighbors, or at least they are not readily available through the UN system. However, as will be indicated below, there are a

\textsuperscript{38} The United States Government agencies provide for the procurement, storage, transportation and shipment to china of united States Relief Supplies, “Agreement concerning the United States relief assistance to the Chinese people”, 27 October 1947, China-United States of America, 12 UNTS 215.

\textsuperscript{39} Exchange of notes consisting on “Agreement Relatin
ging to Surplus Agricultural Commodities for the Drought Relief Assistance”, 17 April and 4-8 May 1956, United States of America-Peru, 278 UNITS 117.

\textsuperscript{40} Exchange of Notes, constituting on “Agreement relating to Emergency Flood Relief Assistance”, 12 November 1959, United States of America-Japan, 361 UNTS 27.

\textsuperscript{41} Such treaties have been developed in Central Europe for example by the Netherlands, Belgium, German, Denmark and the Slovok Republic
significant number of treaties that have been concluded on broader regional and even global levels.

4.3.2.2 Bilateral treaties concluded on a broader regional level

There are many treaties that provide examples of this type of agreement, such as the 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. Other treaties, presumably of the same type, are mentioned without the text being available so far in the UN Treaty Series:

- Agreement on Cooperation and Mutual Assistance in the Field of Catastrophes, Natural Disasters, and Other Emergencies, between Poland and Lithuania.

### 4.3.2.3 Bilateral treaties on a global level

This group of treaties was developed during the 1990s and reflects a broader connection between states from different continents or regions. The more recent treaties in this respect are those between the Russian Federation and the United States of 1996, Switzerland and the Philippines of 2002, and several agreements between the United States Federal Emergency Management Agency (FEMA) and eastern European or central Asian countries

These treaties mainly focus on the preventive and educational aspects of disaster response, such as preparedness, training, exercises, information exchange and scientific and technical cooperation. What is missing, to a certain degree, is the detailed set of rules on the actual provision of assistance and its organization. However, several of the recent United States bilateral treaties do differ from the others, in that they reflect a broader and more cooperative approach to assistance in natural and technological disasters.

### 4.3.3 Issues conflicting multilateral and bilateral treaties

Another interesting subject for analysis is the relationship and overlap between all of the above mentioned multilateral treaties and corresponding bilateral treaties, many of which cover the same subject matter. A good example is found in the

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relationship between the Nordic Mutual Emergency Assistance Agreement in connection with radiation accidents of 1963\textsuperscript{43} and the United Kingdom–Soviet Union Agreement of 1990 on Early Notification of a Nuclear Accident and Exchange of Information Concerning the Operation and Management of Nuclear Facilities, where both contain a number of similar clauses. However, this subject will require a more detailed analysis than is possible within the scope of this study. It is remarkable that on certain issues, States have been able to successfully conclude treaties on the sub-State regional level. In doing so, such treaties take into account the specific needs of trans-border incidents and the necessity of a fast response at this level.

There are also treaties dealing with specific types of assistance such as the Agreement on the Facilitation of Air Ambulance Flights in Frontier Regions between Austria and Italy concluded in 1989\textsuperscript{44}. This treaty contains rules facilitating Trans-border flights in a limited context, without extending these provisions to include situations of major disasters without creating any broader context for mutual assistance between the two countries. Interestingly, this narrowly constructed treaty represents the only example between Austria and Italy, whereas Austria has in fact concluded several other more detailed and comprehensive treaties with other neighboring countries such as Germany and Hungary.

In some instances, reliance on a single, narrowly constructed treaty is not sufficient to cover all the relevant circumstances and requires amendment. For example, the treaty between France and Spain of 1959 on the assistance of fire fighters in the

\textsuperscript{43} The reservation situation has to be tested in the future as well as the clauses on the priority of rules of the Vienna Convention on the Law of Treaties.

\textsuperscript{44} See also Common Alert Plan for Tyrol, Oberbayem, and Swabia for the co-ordination of reciprocal measures in case of massive pollution of the boundary waters and their tributaries.
border region. It does not cover situations of emergency over flights and hence was amended to allow for speedy cross border air transport assistance. The two parties granted mutual permanent over flight permits which apply to French and Spanish aircraft participating in emergency actions as described in the original agreement. In this respect the amended treaty goes beyond the scope of limiting activities to a certain area, which was the underlying rationale of the original treaty.

4.4 Patterns of international disaster response law regulations

As evident from the above discussion, IDRL treaties vary in objectives, form and content. Despite the fact that several of the treaties, particularly those concluded in the 1990s between neighboring States, do have similarities or may be almost identical, there is no obvious blueprint for an ideal multilateral or bilateral treaty. Nevertheless, it is possible to make some general observations about the content of these treaties and identify some areas common to most.

What is striking first of all is the geographical distribution of the treaties. It would appear that there are very few bilateral agreements in Africa, Asia or Latin America (not counting the Pan American health Organization agreements). Whilst this may be the result of the comparative difficulty in accessing documents from these regions, it nevertheless presents an overt absence. On the other hand, there have been many treaties concluded between States from the so called ‘North’ and states from the ‘South’ as well as the so called ‘East – West’ treaties. The UN family is also well represented.

These anomalies must be explained further before any conclusions can be drawn, however if indeed there are no agreements in these regions, then those regions could provide an opportunity for the implementation disaster response law.
One other general observation is that the treaties concluded so far have been done so according to the specific requirements of the countries or regions involved. Thus they have been influenced strongly by various local factors including: geographical position; response capacity; financial situation; the perception of international law rules; the demand for cooperation; and political and technological circumstances at the time of the conclusion of the treaty. It would therefore be unjustified to claim that there is uniformity in the treaties or even homogeneity in the content.

On the other hand, there are some obvious tendencies. Certain states perfect models for IDRL treaties, or they have changed their preferred model to suit changing circumstances, for example the treaties concluded by the United States in the post Second World War and then post Cold War periods. The same is true for the treaties concluded after the end of the Cold War in Europe.

The Switzerland – Philippines agreement recently concluded and not yet in force, is an example of another tendency to combine the broader development context with a disaster response approach. This model has also been partially followed by the European Union (EU). Thus, whilst the content of the various treaties is guided by the context and the specific objective of the treaty, it is possible to conclude that certain patterns do exist, and for certain regions a specific treaty practice has been established with potential to be transformed into customary law rules.

4.4.1 Patterns in treaty titles

While the specific wording of the titles of IRDL treaties are different, certain patterns are nevertheless identifiable in terms of the applicability of the title to the context of the treaty itself.

The titles generally refer to the overall intention of parties to cooperate in a specific field or to give technical or other types of assistance for a special problem.
The more comprehensive treaties reflect the content by referring to the mutual assistance agreed upon in addition to the disasters covered. Terms referring to either natural or technological disasters are used specifically or are sometimes replaced by other terms such as accident or by the names of specific technological disasters.

For the more generalized treaties, the trend seems to favour the combination of the terms mutual assistance, natural or technological disaster and/or accidents as exemplified by the convention between France and Belgium of 1981 on Mutual Assistance in the Event of Disasters or Serious Accidents or the agreement between Belgium and the Netherlands of 2002. It would be reasonable to suggest that treaties with titles that indicate intent of States to cooperate and/or assist each other in the case of natural or technological disasters, by nature, belong to the corpus of IDRL. This would also include treaties which cover the prevention aspects of disasters, such as the Memorandum of Understanding between the Governments of the United States of America and the Government of Ukraine on Co-operation in Natural and Man–Made Technological Emergency Prevention and Response, signed on 5 June 2002.

International organizations or States, including those specialized agencies within States that are authorized to negotiate international agreements, conclude most of the examined treaties. In some instances, the specialized agencies are mentioned only as implementing partners, others include them as parties to the treaty. Others still have identified regional bodies as parties to cross–border assistance treaties. Nevertheless, practices shows that the majority of treaties either identify the international organization or the states as treaty parties.

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45 Agreement on cooperation in the event of natural disaster as major emergencies, 6 December 2002.
4.4.2 Objectives and purpose of Treaty

The international decade for natural disaster reduction has been influential in raising awareness about the importance of disaster response, particularly as the number of those affected by natural and technological disasters is rising. The conviction of the international community as to the importance of disaster response is reflected in the treaty texts, mainly in the preambular paragraphs.

There is, for example, an almost unanimous recognition of the need for cooperation to combat the effects of disasters. The Tampere Convention expresses this conviction by outlining as one of the objectives of the treaty. “to facilitate international co-operation to mitigate the impact of disaster”.46

The preambles of other treaties refer to this sentiment either by highlighting the general positive effect of cooperation, or by describing additional effects of cooperation during disaster response operations. For example, the Finland and Estonia Agreement on Co-operation and Mutual Assistance in Cases of Accidents recognizes the need for ongoing co-operation to combat the effects of accidents occurring in the territories of the parties or of other States. Similar references are used in many of the other treaties, such as in the Germany–Poland agreement of 1998 and the United States–Ukraine memorandum of understanding of 2002.

In contrast to the similar objectives of the treaties, their specific purpose does differ from category to category within the general framework of international disaster response law. For example, the Finland and Estonia Agreement on Co-operation and Mutual Assistance in Cases of Accidents recognizes the need for

ongoing cooperation to combat the effects of accidents occurring in the territories of the parties or of other states. Similar references are used in many of the other treaties, such as in the Germany–Poland agreement of 1998 and the United States-Ukraine memorandum of understanding of 2002.\footnote{“Agreement on cooperation and mutual assistance in cases of accidents”, 26 June 1995, Finland-Estania, 1949 UNTS 134}

In contrast to the similar objectives of the treaties, their specific propose does differ from category to category within the general framework of international disaster response law. For example, the purpose of treaties providing for special relief items is alleviate deficiencies in the provision of relief after a disaster. Similarly the furnishing of funds to assist a reconstruction program after a disaster has the purpose of meeting the financial needs of a country or region. Finally, organizing a joint seminar on disaster prevention and mitigation meets the need for building local, regional and national educational expertise. Despite the fact that in all cases the specific purpose is different, the underlying rationale is the need to increase capacities to deal with the effects of disaster.

4.4.3 Request and response of Treaty

One of the distinct features of the IDRL treaty system is the classification of requesting and responding States, and the respective allocation of specific rights and obligations.

Requests and responses are both active and passive elements. It is generally understood that assistance cannot be given without a request, and such a request cannot be demanded without an offer. However, if a request is made, then a response should always be offered. This system of reciprocity, in conjunction with
the principle of sovereignty, provides the overall context for the specific rights and obligations in the fulfillment of the treaty provisions.

The relationship between requesting and responding States is demonstrated most clearly in the treaty between Germany and Poland. This treaty defines the requesting State as that which requests relief teams, relief equipment and relief supplies. The responding State is that which in accordance with the agreement, complies with the request.

In addition to these general rules, several of the treaties list specific state organs or specialized agencies that are authorized to request and initiate emergency measures on behalf of, or in lieu of, the parties to the treaty. Specific state organs and authorities in a border region may sometimes be identified as responsible partners for both parties to the treaty, if, because of the multilateral nature of the treaty, such authorities cannot be identified in advance, mechanisms an set up to make such identification possible in the case of disaster. There is not only variation concerning the number of definitions but also concerning the content of the definitions. Essential definitions refer to at least three aspects of the treaty rules and might be expressed as follows:

- Personnel of the operation – this includes the personnel specifically sent by the responding State;
- Equipment of the operation – this includes all items necessary to provide the assistance; and
- Relief supplies – supplies distributed to the affected persons.

**4.4.3 Responsibility and coordination**
The question of coordination of humanitarian assistance has been of major importance over the past decade. There are many documents dealing with humanitarian assistance that stress the utmost importance of coordination. The UN Secretary General has outlined the main challenges of coordination in the report titled Strengthening of the coordination of emergency humanitarian assistance of the United Nations of 30 May 2000. The UN General Assembly has also reiterated the central importance and role of the affected State in its resolution on international cooperation on humanitarian assistance in the field of natural disasters, from relief to development by:

Recognizing the importance of the principles of neutrality, humanity and impartiality for the provision of humanitarian assistance,

Emphasizing that the affected State has the primary responsibility in the initiation, organization, coordination and implementation of humanitarian assistance within its territory, and in the facilitation of the work of humanitarian organizations in mitigating the consequences of natural disasters,

Emphasizing also the responsibility of all States to undertake disaster preparedness and mitigation efforts in order to minimize the impact of natural disasters,

Emphasizing further, in this regard, the importance of international cooperation in support of the efforts of the affected State in dealing with a natural disaster in all its phases.

Not only do treaties assign the requesting State as being responsible for the coordination, they also occasionally define the meaning of the term coordination for the specific purpose of the treaty. For example, Spain and Argentina have set up a list defining coordination:
Co-operation with a view to disaster preparedness and prevention in connection with natural, man-made or technological incidents that threaten or harm people, property and the environment involves:

- Exchanging information, documentation, publications and teaching materials of scientific and technical nature;
- Training specialists in disaster preparedness and prevention and the provision of emergency aid;
- Providing assistance with respect to the organization, planning and operation of bodies responsible for coordinating activities in the field of disaster preparedness and prevention and emergency aid;
- Taking part in the design and implementation of exercises in the other State;
- Transferring State of the art technology;
- Organizing meetings, encounters, courses, congress and seminars;
- Awarding fellowships for professional and technical development in the institutions of each Party;
- Dispatching experts to provide consultancy or advisory services;
- Jointly preparing and implementing specific programmes and projects, which should State, inter alia, the objectives of the said programmes and projects, their duration, the obligations of each Party and the most appropriate form of financing.

Similar extensive descriptions can be found in other treaties such as the 2000 Agreement between the Government of the Hellenic Republic and the Government of the Russian Federation on Co-operation in the Field of Prevention and Response on Natural and Man-Made Disasters.
While some treaties contain very detailed description designed to meet the specific purpose of the treaty, it can also be argued that even without such an explicit list, there is an underlying understanding of the term cooperation, which is common to all. These generic elements of cooperation include: interaction between the component bodies of both parties; mutual assistance in providing technical facilities and equipment; and planning and carrying out activities related to emergency response.

4.4.5 Instructions for emergency teams

Some treaties relating to disaster response make specific provisions assist in further defining the responsibilities of the parties to the treaties and also provide additional instructions on the appropriate flow of information. Such provisions may explicit state that instructions can only be given to the leaders of emergency teams, who must be identified by the responding party for the benefit of the requesting party.

Another key feature of disaster response treaties are the rules on access. One has to distinguish between the access of personnel and ordinary equipment, and specific rules for the use of certain types of equipment such as aircraft.

Most of the treaties reflect a general intention to ensure that frontier – crossing formalities are minimized. Whilst this could not be identified as a specific rule, it seems to be justified to state that, in principle, personnel are exempted from visa and passport requirements for their entry and stay during an emergency operation, provided that a certificate and a list of the members of the disaster response team can be provided. Such a principle has been reflected in both older and more recent treaties on disaster response.

There also seems to be a generally accepted principle which exempts personnel from visa and other formalities in urgent cases when the frontier crossing is
required to take place at points other than the authorized crossing points. Sometimes this provision is qualified by the requirement of prior notice from the requesting State.

These generally accepted principles are usually applied to treaties dealing exclusively or mainly with disaster response. Treaties, in which the focus is on prevention rather than on response, do not include such clauses.

4.4.6 Relief goods and customs

Many treaties, both bilateral and multilateral, include a specific set of rules on the customs requirements for relief goods, which often provides exemptions from import duties, taxes and economic import restrictions. This principle is also found in many bilateral disaster response treaties.

There has been a desire to convert the already existing bilateral practice to the multilateral level, which has been emphasized in the report of the UN Secretary General on the strengthening of the coordination of emergency humanitarian assistance in the context of international urban search and rescue: 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. Member States may wish to consider drafting a convention on the deployment support. Member States may wish to consider drafting a convention on the deployment and utilization of international urban search and rescue teams. Such a convention would provide a working framework for complex issues, such as utilization of air space, customs regulations for import equipments, respective responsibilities of providing and recipient countries, that have to be resolved prior to the international response to a sudden – onset natural disaster.
4.5 A Critical Analysis of International Disaster Response Laws in respect of International Federation of Red Cross and Crescent Societies.

4.5.1 Inconsistencies in regulations

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

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

4.5.2 Lacunae in existing laws

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

- Entry requirements;
- Work premises;
- Freedom of movement;
- Status of personnel and specific immunities;
- Legal recognition of professional expertise;
- Information exchanges;
- Treatment of consignments;
- Transport in the territory of the requesting state;
- Customs tariffs; and
- Distribution and use of relief.

4.5.3 Future study of international disaster response law

This article is subject to limitations including the limited category of legal documents evaluated, namely bilateral and multilateral treaties conclude between States, and the absence of materials from within different geographic regions. Therefore, it is important that further studies of IDRL are conducted to widen the scope of the legal study and to compare the principles and observations identified for different categories of legal and non-legal materials. In particular, the instruments that govern the way in which organizations such as the UN and the components of the International Red Cross and Red Crescent Movement operate in times of natural disaster. These too will need to be gathered and analyzed as part of a legal study in this area.

The Movement has adopted IDRL as terminology describing the body of rules and principles of international humanitarian assistance in the wake of peacetime disasters, whether natural, technological or industrial in origin. This chapter provides a brief commentary on the scope of IDRL and comparative insights from the more familiar field of international humanitarian law (IHL). It also progressively builds a working definition of IDRL, which consists the conclusion of this chapter.
IHL, which applies during armed conflict, offers the only universally recognizes and systematically studied set of rules designed to alleviate human suffering in response to catastrophic events. It is grounded in many centuries of state experience, practice and diplomacy, and is therefore a useful source of comparison in deliberations on the future of IDRL.

IDRL can only help victim of peacetime disaster if framed in pragmatic manner. There is a wide arrange of important legal subject matter, domestic and international, that relates to IDRL but does not impact directly on humanitarian response to disaster (for example, environmental protection issues). IDRL must be defined with a fair degree if rigor. Otherwise, it could vanish into general corpus of international law with its promise and utility consequently lost.

**4.5.3.1 Conceptual scope of IDRL**

The conceptual scope of IDRL should be considered first. Comparing IHL’s scope with that IDRL, the former is largely restricted to situations involving armed conflict. Most IHL applies only while armed hostilities are underway. IHL entirely applies during international armed conflict with a subset of rules applicable during internal are conflicts. IHL evolved to regulate instance hostilities. However, in 1949 some rules were adopted for internal armed conflict as well. From then on, such conflicts would not be addressed by reference to municipal law alone.

Though rules for internal armed conflict were first incorporated into treaties in 1949, customary rules emerged in State practice as early as the 18th century. By the time such rules were incorporated into the Geneva Convention of 1949, there was already a growing consensus that humanitarian rules and constraints should apply during internal as well as internal armed conflicts.
IDRL develops in a different context. IHL imposes limits on the conduct of hostilities in order to alleviate their impact, or in other words, to mitigate human activity. However, IDRL applies in a cooperative peacetime environment. Damage inflicted during peacetime disasters is usually unintended and the concept of humanitarian constraint and restraint does not apply as it would during armed conflict. IDRL does not address belligerent acts and conduct that require limitation under international law, whereas IHL does in the context of international and internal armed conflicts alike.

Therefore it is unlikely that a sub-category of IDRL will develop for use in peacetime disaster where these are effectively alleviated without recourse to international assistance. Where such needs are net domestically, there is no need for international legal norms analogous to those developed to alleviate the effects of internal armed conflict. In other words, there is no internal international taxonomy for IDRL matching the internal – international taxonomy of IHL.

There is also another notable difference. IHL establishes humanitarian protections that alleviate armed conflict. Though diligent application of IHL may also facilitate a return to peace, it does not provide, directly, the means to facilitate an end to armed conflict. As developed to date, IDRL expedites voluntary motivate humanitarian solidarity and support. But IDRL can do more than establish the legal framework for humanitarian assistance in peacetime. If systematically developed, it could, and should, facilitate a rapid response that will bring the emergency phase to its close.

International disaster response law applies when States and inter governmental, humanitarian or other organizations offer, request, provide or accept cross border disaster assistance.
4.5.3.2 Spatial and temporal scope of IDRL

Precisely when and where does IDRL actually apply, again drawing a comparison with IHL, most rules for the latter apply at locus of armed conflict. IHL regulates the treatment of wounded, sick and shipwrecked members of armed forces in war zones, prisoners of war held by States involved in conflict, and civilians situated in the territory of a party to the conflict. Likewise, rules applicable during non-international armed conflict apply within the state where hostilities occur.

It is useful to consider the spatial scope of IDRL in similar terms. Obviously IDRL will apply at the scene of a disaster. But how does one map out, conceptually and for legal purposes, the boundaries of disaster zones. The legal subject matter of disaster could well apply in places far removed from the site of an obvious emergency.

To adopt an analogy from IHL armed forces are obliged to follow targeting rules even when weapons are fired from platforms that are located far from any contested territory. Likewise, hurricanes and tsunamis build energy far from their point of impact and IDRL can be productively applied in such circumstances, for example, in agreements facilitating information sharing and establishing early warning systems.

In what time frame does IDRL apply? The consequences of a disaster may be felt many years after the crisis has passed. The temporal scope of IHL, offers insights useful in answering this question. The rules of IHL apply in their entirety during armed hostilities, but a limited subset of IHL also applies in peacetime (both pre- and post-conflict).

The temporal parameters of IHL are sometimes intuitive; circumstances unique to armed conflict need to come to an end when conflict terminates. In this regard,
prisoners of war and civilian internees people who have only been detained because of armed conflict and whose detention would have no legal basis but for armed conflict - must be released when it ends. Logically, the time frame for application of such rules continues until such captives have been released and repatriated following termination of active hostilities.

Other IHL rules applicable in peacetime actually bolster the law during armed conflict. The Geneva Conventions require dissemination of IHL in times of peace as well as time of war. Peacetime rules on use of the emblems of the Red Cross and Red Crescent ensure that their protective impact is not diluted during armed conflict. The Geneva Conventions also commit States to try persons who have allegedly committed grave breaches of IHL. Practically speaking, this commitment extends well beyond the termination of armed conflict in some cases, decades or generations after.

Most IDRL identified in the International Federation’s research applies during the emergency phase of disasters. However, just as some IHL applies in peacetime, there are issues impacting public health and safety that reasonably come within the ambit of IDRL other than during the actual emergency. It may be useful to examine rules for the pre–disaster phase (for example, pre–positioning relief supplies), and the post-disaster phase (for example, procedures for review of lessons learned and information sharing), that may directly impact humanitarian service delivery in disasters.

The primary question to consider is: When does a disaster begin? Intuitive trigger points for application IDRL would include the moment of kinetic impact in a natural catastrophe; the moment when the effects of a vital epidemic or manmade contamination are detected; and the moment when food insecurity exacts a
measurable toll. It would be reasonable to extend this scope a bit further to include the moment when it becomes apparent that slow or sudden onset disaster will likely trigger these or other events requiring international emergency assistance and cooperation.

There are circumstances where a humanitarian challenge may be covered by IHL at one point in the time and IDRL at another. For example, humanitarian emergencies trigged by armed conflict (such as food security threats) may continue past termination of hostilities and hence past the point where be covered by IHL. Such circumstances would call for transition to, and application of, peacetime rules from IDRL.

International disaster response law applies from the moment forces of nature, human mishap, or intentionally trigged catastrophic events (other than those taking place in armed conflict) threaten imminent and adverse impact on human beings, and remains in effect until emergency assistance in no longer needed. It applies at the scene of the emergency, and at other locations as well where monitoring reporting or other forms of cooperation, coordination or assistance can mitigate the impact of events or forces inducing such calamities.

4.5.3.3 Structural and substantive scope of IDRL

Though IDRL has only recently been the subject of systematic study, it is clearly founded in the same sources of authority as other subject matter of international law. Though not as well developed as IHL, IDRL follows the same structure in that it is founded in treaties, and its application and interpretation facilitated by reference to resolutions of international organizations and conferences. Research completed to date does not suggest the existence of a system o customary IDRL, whereas customary rules are a long – established component of IHL.
Other sources also contribute to the general development of international law and thus have a role to play in shaping IDRL. These sources either contribute to the corpus of IDRL or illuminate areas where the law may need further development. They include:

- Municipal legislation;
- Memoranda of understanding between States and humanitarian organizations;
- Professional standards for humanitarian actors such as the Code of Conduct for the International Red Cross and Red Crescent Movement and NGOs in Disaster Relief; and
- Standards for humanitarian assistance such as those developed by the Sphere Project.

The International Federation’s ongoing study has identified core IDRL subject matter that appears in many relevant instruments, including guidance on offer and acceptance of humanitarian assistance, coordination of relief efforts; access to disaster sites; controls on important of relief goods; status and protection of personnel; and allocation of costs for peacetime humanitarian relief.

Though IDRL applies in circumstances quite different from those involving IHL, there is some conceptual overlap. Accordingly certain principles useful to the development of IDRL can be derived from international humanitarian law. The status, protection and responsibilities of individuals and units providing humanitarian assistance in war zones have been an important focus throughout the development of modern IHL. The Geneva Conventions of 1949 and the Additional Protocols of 1977 provide contemporary guidance in this area.
It is reasonable to assume States will maintain an interest in such matters in peacetime as well as during armed conflict. Humanitarian organizations certainly do, making this a promising area for development within the framework of IDRL. Similarly, IHL rules on Red Cross and Red Crescent emblem use found in the First Geneva Convention provide the starting point for consideration of any rules on emblem use in non-conflict disaster settings.

It is also important to consider limitations on the scope of subject matter that might be productively incorporated into IDRL. As suggested before, that is legal issues quite important to disaster reduction (for example, land use regulation and environmental protection rules) that are not directly linked to the emergency response phase. These can be addressed more productively in contexts other than that provided for by IDRL.

International disaster response law is found in treaties, municipal law and regulations. Its development is facilitated through resolutions adopted by the International Conference of the Red Cross and Red Crescent, the UN, other intergovernmental organizations, and learned societies, and through public and private codes and standards adopted to guide humanitarian action. 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.

Based on the factors explored in this chapter, the following working definition is now proposed for International disaster response law:

International disaster response law is found in treaties, municipal law and regulations. Its development is facilitated through resolutions adopted by the International Conference of the Red Cross and Red Crescent, the UN, other
intergovernmental organizations, and learned societies, and through public and private codes and standards adopted to guide humanitarian action. The rules apply when states or intergovernmental, humanitarian or other organizations offer, request, provide or accept cross-border disaster assistance. It encompasses information sharing, coordination, deployment of personnel, equipment and supplies, access and assistance victims, status of humanitarian responders and standards of conduct.

It applies from the moment forces of nature, human mishap, or intentionally trigged catastrophic events (other than those taking place in armed conflict) threaten imminent and adverse impact on human beings, and remains in effect until emergency assistance is no longer needed. It applies at the scene of the emergency and at other locations as well where monitoring, reporting or other forms of cooperation, coordination or assistance can mitigate the impact of events or forces inducing such calamities.

The International Federation is in a unique situation. It is not governmental but has been granted recognition as a subject under international law and the regime of privileges and immunities generally only reserved for inter governmental organizations. This particular recognition in the majority of the countries in which International Federation conducts disaster preparedness, relief and rehabilitation operations, has provided the agency with a relatively secure legal environment in regards to access and facilitation.

In the countries where International Federation has not yet achieved this recognition through the conclusion of a status agreement, the operational environment is less sound, forcing the International Federation to adopt coping
methods which place at risk its personnel, assets and ability to operate effectively and efficiently.

The experience of the International Federation clearly shows that governments are willing to recognize the international legal personality and apply the regime of privileges and immunities to organizations which are not governmental. However there must be a clear showing of the uniqueness of this organization in relation to NGOs, and some form of government sanction of their activities ad mandate.

It further shows that there are inconveniences to a legal regime which is dependent on bilateral negotiations. The organization may not benefit from a uniform or complete coverage in the countries of operation; concluding agreements can be a very long process, without guaranteed success; and agreements cannot be concluded on an emergency basis when needed to facilitate a disaster relief operation, but must be agreed in advance. Finally, where the International Federation has not been able to conclude a status agreement its operations are greatly impeded.

Since the applicable laws, in regards to both access and facilitation depends on the legal nature of the entity being governed, the first part of this chapter considers the legal personality of the International Federation and its applicable legal regime concluding,

The International Red Cross and Red Crescent Movement have determined that this field of law needs careful consideration. Accordingly, the International Federations of Red Cross and Red Crescent Societies is conducting a systematic, scholarly examination of existing international legal sources on peacetime disaster
response, and is working with States to ensure that dialogue and development in this important field progresses in an informed, practical way.

States have expected the Movement to play a leadership role in peacetime disaster relief since its earliest days. Those responsibilities expanded over time. Today they include the responsibility to provide expert support for development of rules that expedite humanitarian operations and cooperation.

Given its role as a leader in peacetime disaster response, the International Federation is particularly well suited to lead the Movement’s IDRL work. The Movement has, in fact, asked the International Federation to take the lead in these endeavors. And recently, the United Nations (UN) General Assembly took note of the International Federation’s continuing work in the field.