



Section Two

Tracking
the system

Towards an international disaster response law

Natural and technological disasters between 1990 and 1999 affected on average 196 million people annually, and last year alone killed 80,000 people, according to the Centre for Research on the Epidemiology of Disasters (CRED). Disasters are also becoming more expensive. Economic losses from natural catastrophes worldwide during the 1990s amounted to over US\$ 600 billion – nearly nine times more than the figure for the 1960s, according to reinsurance giant MunichRe.

On the cusp of the new millennium, earthquakes in Turkey, cyclones in India, and torrential floods in Venezuela and Mozambique devastated hundreds of thousands of lives and inflicted immense damage to property and infrastructure. As poorly planned urbanization and coastal migration push ever more people into the path of natural and technological hazards, the disaster response resources of governments and relief organizations are being stretched beyond breaking point. But humanitarian efforts to meet these challenges have not been matched by commensurate advances in international law.

While an extensive body of law has developed since the 1860s to regulate military conduct in war and provide for humanitarian assistance to its victims, remarkably we enter the 21st century with no similar body of law to help alleviate the effects of natural and technological disasters. True, there have been advances in recent decades in treaties related to environmental threats and some litigation has established that victims of such disasters may seek compensation. But outside of a narrow range of more technological or directly human-enhanced disasters, there has been limited legal progress.

Elements of law that aid our humanitarian response exist in other treaties – on civil aviation, customs regulations and ground transportation. There are legal authorities specific to disaster relief, such as the Tampere Convention covering the use of radio communications in disasters. There are United Nations (UN) resolutions and there is, of course, customary law. But these are all at the periphery of the issue. At the core is a yawning gap. There is no definitive, broadly accepted source of international law which spells out legal standards, procedures, rights and duties pertaining to disaster response and assistance. No systematic attempt has been made to pull together the disparate threads of existing law, to formalize customary law or to expand and develop the law in new ways.

Without a body of international disaster response law, there are no internationally agreed standards for donor and beneficiary government action, and no predictable mechanisms to facilitate effective response in times of natural or technological disaster. While an occasional newsworthy disaster may be flooded with relief, others go unreported and receive inadequate response, whether from the international community or from the affected state. In either situation, objective standards to measure humanitarian needs and action are lacking. Anecdotal pressure to respond should give way to systematic, swift and effective assistance to disaster victims anywhere in the world. In the absence of commonly agreed standards, the

Photo opposite page:
Weather-related natural disasters have quadrupled since the 1960s – often hitting those least able to cope. Yet no body of international law exists to guide or facilitate disaster response. Investing efforts now in developing the law will benefit future generations at risk.

Photo: Christopher Black/International Federation, Mozambique 2000.

disaster victim is at the mercy of the vagaries of humanitarian response, political calculation, indifference or ignorance.

This chapter reviews the potential development of international disaster response law against the backdrop of its nearest existing relative – international humanitarian law (IHL). It does not seek to cover all potentially relevant law, particularly that which is rapidly developing in the environmental field, but it does seek to provide a solid platform for future discussion and debate – a platform firmly based upon the needs of disaster victims.

International law – why does it matter?

Disaster response is still too often hampered by procedural confusion, and by policies that do not facilitate effective deployment of humanitarian personnel, equipment and supplies. In the wake of destruction dealt by earthquakes and floods, or contamination from a technological accident, bureaucratic obstacles can loom large as a multiplier of suffering. There are no universal rules that facilitate secure, effective international assistance, and many relief efforts have been hampered as a result.

In the aftermath of the two earthquakes which shattered north-eastern Afghanistan in February and May 1998, for example, Islamabad – separated from the epicentre by one of the highest mountain ranges in the world – became the focal point for the relief effort (see *World Disasters Report 1999*). This was due in part to authorities far more accessible to the disaster failing, for whatever reason, to facilitate relief flights. Vital airlifts of emergency supplies were seriously hampered by the refuelling, time and weather constraints of crossing a 6,000-metre barrier en route to the earthquake zone.

Laws requiring and guiding swift and constructive cross-border relief could have saved lives. But law is never a panacea. No one benefits from rules unenforced and unimplemented – as exemplified by the occasional unwillingness of states to facilitate customs waivers for relief goods destined for afflicted populations; or instances where mariners have failed to honour rules requiring rescue of shipwrecked passengers and sailors at sea. However, one cannot press for better compliance with rules before they even exist.

No one should underestimate the importance of international law. Successes are sometimes invisible to the casual observer. But the humanitarian community could not function at all without the quiet success of a rich matrix of treaty-based rules which govern, for example, civil transportation, civil aviation, telecommunications and postal services. These complex international systems are entirely founded in the routine, well-organized functioning of international legal agreements that work on the basis of voluntary compliance.

Even if international law fails, we should keep in mind that domestic laws are not always followed either. But we need the law to set standards of behaviour for governments and other actors involved. Without standards there are no grounds on which to seek compliance. With them, we have a permanent foundation and frame of reference to seek new or better rules.

States may disagree about some aspects of the law. However, the availability of well-developed rules makes it possible for state, inter-governmental and humanitarian actors to employ a

common frame of reference for negotiations and problem-solving. It also makes it possible to distinguish between problems generated by a lapse in compliance with existing law, and those rooted in genuine gaps that need to be closed by establishing new rules.

International humanitarian law and refugee law are the only well-developed, cohesive bodies of international law that apply during large-scale emergencies. Both are invaluable within their sphere. Refugee law protects those in flight from political persecution or upheaval by setting out criteria for them to secure asylum elsewhere. It applies where the claim for asylum is pressed. IHL regulates armed conflict between states, and between governments and insurgents. It is unique in being the world's only attempt at comprehensive rules for response to catastrophic events.

Many civilians, wounded and prisoners of war have been protected under IHL. During the Falklands war between Britain and Argentina in 1982, for instance, both sides carefully observed rules for protection of hospital ships and treatment of the wounded. This adherence to IHL and humanitarian cooperation was, however, overshadowed by other aspects of the conflict.

Violations of IHL draw far more attention than successes, since their consequences can be horrific. The work of journalists, human rights organizations and international criminal tribunals provides important support to prevention and response. However, voluntary compliance by combatants – supported by effective dissemination and training programmes – remains the most important mechanism for implementation, since it is the only sure way to prevent violations in the first place.

IHL as a case study

A brief overview of IHL provides a useful point of comparison with existing legal authorities relevant to international response during natural and technological disaster.

IHL, the body of rules and principles utilized to save lives and alleviate suffering during armed conflict, is rooted in customary battlefield practices that have been evolving over centuries. Over time, such practices became accepted as binding rules for all sides in a conflict. The use of a white flag, to signal surrender or a desire to speak with the other side, is one such customary rule.

The mid-19th century revolution in transportation and communication made possible the first systematic efforts at international cooperation in humanitarian action. In 1863, the International Committee of the Red Cross (ICRC) and the first national Red Cross societies were established, followed a year later by the adoption of the Convention for the Amelioration of the Condition of the Wounded in Armies in the Field.

The value of putting humanitarian standards in treaty form extended even beyond benefits accruing to victims in the field. It provided a frame of reference to identify weaknesses and gaps in the law requiring further development. The Geneva Convention of 1864 was dedicated to the protection of wounded and sick soldiers – then considered the group most likely to suffer in war – and to those who cared for them. With that treaty serving as a catalyst,

however, negotiations were already under way by 1868 to extend similar protection to maritime combatants.

The 1864 convention became the foundation for the 'Geneva law' strand of IHL – rules that govern wartime protection for the wounded, sick, captives and civilians; and that identify the duties and status of those who care for them. Geneva law now extends its protection far beyond the groups and circumstances covered by that first convention.

New treaties followed. Based on experience in World War I, a Convention relative to the Treatment of Prisoners of War was adopted for the first time, along with a new and updated Convention for wounded and sick soldiers. The horrors of World War II led to the adoption of four new Geneva Conventions in 1949. The first two conventions expanded protection for wounded, sick and shipwrecked combatants. The third did the same for prisoners of war. Fourth and entirely new was the Convention relative to the Protection of Civilian Persons in Time of War. This was the first time that civilians were singled out as special beneficiaries under Geneva law.

The other strand of IHL is known as 'Hague law', which regulates the means (weaponry) and methods (targeting and tactics) of warfare. The impetus for explicit, treaty-based rules can be traced to 1868, when the Russian government convened a diplomatic conference that adopted the famous St. Petersburg Declaration Renouncing the Use, in Time of War, of Explosive Projectiles under 400 Grammes Weight. This brief declaration paved the way for the Hague Conventions of 1899 and 1907, which marked the beginning of systematic attempts to regulate wartime military practices.

Other important legal guidelines followed, including the 1925 Geneva protocol on chemical weapons, the 1980 UN Convention on Conventional Weapons, and the 1997 Convention on the Prohibition of the Use, Stockpiling, Production, and Transfer of Anti-Personnel Mines and on their Destruction. In 1977, these Hague and Geneva strands came together when a diplomatic conference adopted two protocols additional to the Geneva Conventions of 1949.

IHL treaties provide a readily accessible source of international law. Widely published and disseminated, they are available to anyone with a personal or professional interest in the rules of war. While these rules are not always easy to implement, there is little room for disagreement about the sources of modern IHL.

As these treaties developed, so too did an institutional framework for their enforcement. State-linked armed forces are responsible for implementing these rules. Insurgents are also bound by the IHL treaty-based norms that their state has committed to, even if they are in rebellion against the authorities.

The ICRC has a special duty as guardian of the Geneva Conventions, while other components of the Red Cross Red Crescent Movement also play a role in the dissemination and implementation of IHL. The UN has emerged as a forum for discussion and action on a wide range of IHL-related challenges, and journalists, human rights organizations and non-governmental organizations (NGOs) also play a role in efforts to develop IHL.

International criminal tribunals – such as those following World War II, the 1994 genocide in Rwanda, and recent wars in the Balkans – are emerging as an increasingly important mechanism for enforcement of IHL, and they set a precedent for legal action across national borders (see Box 8.1). The law, its implementing mechanisms and those who watch over both play mutually reinforcing roles.

The effectiveness of IHL sometimes seems to be eroding in the post-Cold War era, with massive violations of the law and growing numbers of irregular combatants lacking the legitimacy and responsibilities of state actors. However, the fact that we have a well-developed body of IHL provides a stable anchor and frame of reference for dealing with new challenges.

International law and disaster response at the dawn of the 21st century

Over 130 years of work to shape and advance international humanitarian law has not been matched by corresponding efforts or achievements in response to non-conflict disasters. No similar body of wide-ranging law exists to regulate or guide international humanitarian action in the wake of natural and technological disasters, although a modest number of rules and guidelines have developed over time. We thus have an imbalance, with significant humanitarian response capacity on one side and sparse legal authority, guidance or standards on the other.

In 1869, the second International Red Cross Conference passed a resolution calling on National Societies to provide relief “in case of public calamity which, like war, demands immediate and organized assistance.” At the 1884 International Red Cross Conference, a resolution was adopted to extend the Geneva Convention of 1864 to provide for assistance to victims of natural disaster as well as war – but this was never done. International conferences have addressed assistance to victims of natural disaster ever since, but there has never been another attempt to extend the Geneva Conventions in this manner.

The League of Red Cross Societies was founded in 1919 to further humanitarian assistance in peacetime, and in 1927 a convention was adopted for the establishment of the International Relief Union. This marked the first and, to date, only instance when states attempted to launch a universal, treaty-based structure for disaster response and prevention (see Box 8.2). The Union never fulfilled its promise and perished along with the League of Nations system.

Over 40 years would pass before the issue advanced further. The 1969 International Red Cross Conference adopted the Principles and Rules for Red Cross Disaster Relief. Though these rules did not carry the same authoritative status as a treaty, they were approved by state participants at the conference as well as the Red Cross and thus made an important contribution to the development of international humanitarian practice.

A spate of institutional and legal initiatives followed in the 1980s, reminiscent of events a century earlier when new military manuals and increased diplomatic dialogue paved the way for breakthroughs in Hague and Geneva law. In 1980, the International Law Association offered a model agreement for cooperation in disaster relief, and the International Institute of Humanitarian Law sponsored a path-breaking congress on International Solidarity and

Box 8.1 Sovereignty and assistance – room for reconciliation?

The horrors of World War II prompted the first widespread rethinking of the long-held principle of a sovereign's near-absolute control within national boundaries. In 1945, the allied powers agreed to prosecute major Nazi leaders before an international tribunal at Nuremberg.

Along with crimes committed during the war, the tribunal's charter extended jurisdiction to pre-conflict crimes against humanity. The latter essentially meant crimes committed in territories where there was no armed conflict under way and no application of international humanitarian law (as it came to be called in later years.) This underscored that nations had legal obligations at home, and leaders could be held to answer for grave violations.

The UN Charter was adopted the same year, and under Chapter VII the Security Council can authorize action (including military action) to deal with "any threat to the peace, breach of the peace, or act of aggression". Over the past decade, this authority has been used to respond to war-related famine in Somalia and wartime suffering in former Yugoslavia. This suggests further erosion of sovereignty as a bar to humanitarian assistance.

Some advocates of intervention seem to suggest that sovereignty has been eclipsed and should be no obstacle when other states or humanitarian actors decide to intervene. If one accepts this premise, then there may be a role for assertive intervention in response to natural and technological disaster. Though the law is not well developed in this field, international human rights law may provide some supporting authority.

Article 3 of the Universal Declaration of Human Rights provides that "Everyone has the right to life, liberty and the security of person". Article 6 of the International Covenant on Civil and Political Rights states that: "Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life." Official indifference,

corruption or calculated neglect in the wake of natural or technological disaster may well constitute a de facto death sentence for those in need. This certainly warrants international pressure, perhaps even intervention, to respond to acute needs.

However, sovereignty cannot be treated lightly. States shoulder heavy responsibilities for national security, law enforcement, customs, public health, immigration, civil defence and agricultural quarantine sectors. These need to be respected and taken into account in shaping disaster response law and policy. Other than Chapter VII enforcement action, the UN Charter explicitly discounts an activist approach to intervention in state affairs. According to Chapter I, "Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter..."

Though sovereignty has eroded, it is still unclear which issues "essentially within domestic jurisdiction" in 1945 are now subject to international scrutiny and enforcement efforts. However, if states can be called to account for other human rights abuses, then it is reasonable to argue that they should be called to account if they frustrate humanitarian response.

Even where humanitarian efforts are obstructed, though, experience shows that states are reluctant to intervene. And there is presently no international court or similar body to which humanitarian organizations can turn for judgement on state cooperation.

With credible standards of conduct, such as those developed by the Sphere Project, humanitarian responders can now exert a moral pressure on agencies and states to cooperate in disaster relief. But a treaty establishing such specific standards would give the humanitarian community even more teeth.

Humanitarian Actions. In 1981, the League of Red Cross Societies undertook a pioneering analysis of international law and disaster relief. A year later, the UN Institute for Training and Research (UNITAR) issued its *Model Rules for Disaster Relief Operations*. In 1984, the Office of the UN Disaster Relief Coordinator issued its own *Draft Convention on Expediting the Delivery of Emergency Assistance*. Another important milestone was marked in 1985 with publication of a treatise entitled *International humanitarian assistance: disaster relief actions in international law and organisation*.

All of these initiatives and documents remain important resources and form a foundation for future efforts. However they do not constitute binding rules, only an (as yet) underutilized source of insights and experience that can be used to establish them. Other developments followed, but the intellectual momentum of the 1980s was lost, and no treaties resulted.

Some institutional development continued into the 1990s. The UN General Assembly has passed a series of resolutions that underscore its concern with disaster relief, and declared 1990-2000 as the International Decade for Natural Disaster Reduction (IDNDR). The UN Office for the Coordination of Humanitarian Affairs was established to deal with a range of disasters. International standards for disaster relief have been developed, and many humanitarian organizations have adopted the *Code of Conduct for the International Red Cross*

Box 8.2 IDL – precedents for an operational approach

Much can be achieved by developing functional, treaty-based operating procedures in support of international disaster response. By attending to these seemingly mundane details now, and demonstrating that such procedures work in practice, the way will be open later for those who may have more visionary legal goals in mind. We have two precedents available that offer very different lessons for the future.

The Convention Establishing an International Relief Union was adopted in 1927. The IRU was envisioned as an operational organization that would render assistance to victims of disaster and "encourage the study of preventive measures against disasters". This treaty had a notable weakness – it focused on parliamentary and administrative issues and offered no standards or guidance for work in the field. As the IRU never received adequate political or financial support, it could not become an effective operational organization. Even though it would never have been enough by itself, an operational treaty would have provided a useful starting point for

anyone who wanted to promote an assertive role for the IRU.

In the telecommunications sphere, a starting point for such action does exist. The Tampere Convention on the Provision of Telecommunication Resources for Disaster Mitigation and Relief Operations of 1998 provides useful procedures when states request telecommunications assistance. Among issues covered are:

- provision of privileges, immunities and facilities for telecommunications functions;
- protection of personnel, equipment and materials brought into the state for that purpose; and
- reduction or removal of regulatory barriers to emergency use of such telecommunications equipment.

It took until the end of the 20th century to produce a treaty offering universal procedures for any aspect of international disaster response. Much remains to be done. The Tampere Convention offers an interesting, even inspirational, starting point.

and Red Crescent Movement and NGOs in disaster relief (see Chapter 10). Ongoing development of the Sphere Project has drawn in hundreds of agencies to establish professional minimum standards in disaster response (see Box 8.3).

The European Union (EU) also pioneered several notable initiatives in the closing years of the century. The Fourth Lomé Convention, adopted in 1989, along with EC Council Regulation 1257/96, establishes some guidance on objectives and standards for humanitarian assistance rendered external to the EU. Beginning in 1990, the Council of the European Union also adopted the first in a series of resolutions designed to strengthen civil protection and mutual aid among member states in the event of disasters.

Although peacetime disaster response has received little attention by way of treaties devoted exclusively to that challenge, there are relevant provisions tucked away among treaties governing air traffic, customs duties, and rail and maritime transport. These treaties were negotiated across a span of almost 50 years and, in every case, the negotiation process was probably unknown to the humanitarian community. Nonetheless, lawyers and diplomats with specialized commercial portfolios took the initiative to incorporate humanitarian provisions in these agreements.

The Convention on International Civil Aviation of 1944 calls upon states to facilitate entry, departure and transit of relief flights “undertaken in response to natural and man-made disasters which seriously endanger human health or the environment...”. The Convention on Facilitation of International Maritime Traffic of 1965 provides that “Public authorities shall facilitate the arrival and departure of ships engaged in disaster relief work...”. In the Convention on the Simplification and Harmonization of Customs Procedures of 1973 we find provisions to facilitate entry of goods destined for those “affected by natural disaster or similar catastrophes”. Less specific but still significant is a provision in the Convention concerning International Carriage by Rail of 1980 that provides for reduction in rail charges for “charitable, educational or instructional purposes”. As recently as 1990, humanitarian provision was added in the customs-focused Convention on Temporary Admission, wherein guidance is furnished for temporary admission of goods to be used in relief work.

Over the years, states have made bilateral agreements on disaster relief. Regional initiatives include the Inter-American Convention to Facilitate Disaster Assistance and, from the Council of Europe, an outline model agreement on mutual aid in the event of disasters in border regions. But despite the persistent appearance of humanitarian provisions in treaties negotiated across many years, and occasional initiatives from regional organizations, it is still rare to see an organized effort to adopt disaster-focused treaties with universal reach. Two were quickly adopted, however, in response to the world’s worst nuclear accident at Chernobyl in 1986: the Convention on Early Notification of a Nuclear Accident and the Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency.

Towards the end of the century, another important treaty was adopted. It is the first, since the days of the long-vanished International Relief Union, to establish rules that can be applied in all manner of disaster relief situations. The Tampere Convention on the Provision of Telecommunication Resources for Disaster Mitigation and Relief Operations of 1998 seeks to

Box 8.3 Sphere's Minimum Standards – customary international law in the making?

A ship's captain would be hard pressed to argue he has no obligation to rescue shipwrecked sailors – it is there, with or without recourse to treaty-based rules. Such is customary international law, deriving from a historical pattern of field-based practices enjoying widespread support, which eventually becomes a binding legal norm. And when treaties gain near universal acceptance among states, standards found in them may also become customary international law. Though states can renounce the Geneva Conventions of 1949, they cannot reject their core humanitarian principles and protections.

The Sphere Project's Humanitarian Charter and Minimum Standards in Disaster Response may well be a case study for customary international law in formation. Guidance on standards for humanitarian assistance is sparse within international law. Sphere is the closest we come to a set of comprehensive standards for disaster response. In that respect, Sphere standards resemble guidance that might be found in treaties, legislation or regulations. However, they indisputably lack the force of a treaty or persuasive authority of well-established customary practice.

The Geneva Conventions of 1949 are the authoritative source for guidance on war-zone health standards, as seen in the Geneva Convention Relative to the Protection of Civilian Persons in Time of War, which sets out a public health baseline for the well-being of civilians in occupied zones. "To the fullest extent" of its available means, an occupying power must maintain "the medical and hospital establishments and services, public health and hygiene in the occupied territory... In adopting measures of health and hygiene and in their implementation, the Occupying Power shall take into consideration the moral and ethical susceptibilities of the population of the occupied territory."

A baseline is also provided in regard to civilians who are detained by the occupying power. "Daily food rations for internees shall be sufficient in quantity, quality and variety to keep internees in a good state of health and prevent the development of nutritional deficiencies. Account shall also be taken of the customary diet of the internees... Sufficient drinking water shall be supplied to internees."

For health-care professionals, such criteria are little more than a starting point. How are such standards to be implemented? Sphere offers explicit standards for wartime and peacetime alike. In regard to water, Sphere establishes standards for quality, excreta disposal, vector control, solid waste disposal and hygiene. Regarding nutrition, Sphere establishes standards for analysis of the nutritional situation, nutritional support for the general population and specially targeted needs, analysis of conditions generating food insecurity, and methods for fair and equitable distribution.

Sphere will not be a panacea. Realizing minimum standards in the field requires levels of access, security and resources beyond Sphere's ability to dictate. It could take a long time to demonstrate that these standards have actually attained customary legal status. Those who may want to see the Sphere standards attain that status need to consider some important questions.

How much field use, and state acceptance, would be essential to support a plausible claim that Sphere standards have gained the status of customary international law? If Sphere standards entered into customary international law, would there be a duty to implement them or would they, rather, have an 'aspirational' character? Would such customary standards apply equally in peacetime and in war? Would they apply only to those who are in detention or receiving emergency humanitarian assistance, or would they apply more broadly to development situations or stressed communities which may harbour refugees? If obligatory, how would the duty of implementation fall between states, insurgent groups, international organizations and the humanitarian community? How would a right to claim the benefit of these standards be enforced?

If these daunting challenges are met with convincing practice in the field and compelling, practical legal answers, then Sphere's minimum standards could someday advance into the realm of customary international law. Today they provide standards for professional performance and humanitarian achievement. Someday they may also become the standards required by international law.

facilitate use of such resources, sharing of information, and admission of foreign nationals to assist with communications during relief operations (see Box 8.2).

Even though important individually, scattered limbs of legislation do not form a body of law. In 1994, the UN Department of Humanitarian Affairs had to conduct a survey to determine what sources of law already existed that could be used in support of disaster relief operations. Without systematic organization and analysis, these rules cannot be used effectively. We may be missing many opportunities to advance the law in ways that will benefit victims of natural and technological disasters.

Some possible organizing concepts

'International disaster response law' (IDL) is proposed as a conceptual framework within which to begin shaping this amorphous body of rules and regulations. A broad-based, action-oriented concept will most effectively capture humanitarian action in all phases –

Box 8.4 IDL – areas in need of further legal development

- **Humanitarian standards of professionalism** (e.g., Sphere). Quality assurance mechanisms, impartially applied, would enhance the legitimacy of humanitarian responders seeking access to funds and disaster zones.
- **Humanitarian standards of conduct.** Humanitarian responders should abide by legal norms (e.g., respecting host nation public health and traffic regulations).
- **Transportation, immigration and customs.** A common framework of universally recognized rules granting priority transportation and entry for relief goods and personnel must be built on foundations that already exist.
- **Standards for relief goods.** Current guidelines on appropriate drug and relief donations need strengthening in order to avoid diversion of logistical resources to the delivery of inappropriate assistance.
- **Information sharing.** Rapid sharing of data on unfolding disasters, consequences and responses – internationally and locally – could greatly boost agency coordination and effectiveness.
- **Access and security.** States should cooperate with humanitarian responders and ensure that assistance is not disrupted, nor the security of aid staff threatened.
- **Contingency planning.** Rapid response to sudden disasters saves lives. But to achieve this, responders need a system to train and maintain emergency response teams, prearranged waivers to allow rapid deployment, and perhaps a system for pre-positioning of essential supplies.
- **Interface with IHL.** Complex humanitarian emergencies have blurred distinctions between peace and war. The overlap of IHL and IDL would need clarifying in situations when natural or technological disasters afflict areas where armed conflict is under way.
- **Lessons learned.** Any treaty-based approach to international disaster response should promote information sharing, so as to incorporate lessons learned and hone better rules and regulations for the future.
- **Disaster preparedness and mitigation.** To be truly effective, IDL would encompass disaster mitigation measures ranging from construction codes and environmental planning to early warning systems and evacuation procedures. Rules could facilitate information sharing and technical cooperation between states to achieve these goals.

preparedness, relief and rehabilitation. Thought and debate on the shape of IDL can and should proceed on many levels. Multiple approaches would help the law develop to meet operational and policy needs. Areas in need of further legal development are suggested in Box 8.4, while some compatible organizing concepts for IDL are offered below:

- **Operational approach to build IDL.** Much of international law relies upon an apolitical, systems-based approach to problem solving. For example, long-held customary rules for rescue and assistance at sea have been well established in international treaty law since the Brussels Conventions were adopted in 1910. Though politics play a role in all treaty-making, the world as we know it could not function without profound operational and legal cooperation in fields such as civil aviation, international postal services and commercial transport.

The Tampere Convention offers model and precedent for an operationally focused approach to international disaster response. Rather than focusing on rights or duties, we could concentrate on establishing IDL standards and procedures. However in the absence of clearly defined rights and duties, there is always a chance that standards and procedures may never make the leap from abstraction into action.

- **Regional security as a framework for IDL.** Regional structures would provide a logical starting place for stronger IDL rules. The secondary brunt of most disasters falls on neighbouring states, and timely lifesaving assistance will often need to come from those countries. Unless and until the civil defence and regional security implications of disasters are given greater consideration in a legal context, the impetus to develop regional agreements may just not be there.
- **IDL as an extension of international humanitarian law.** IHL requires cooperation even transcending armed conflict. Cooperation between Greece and Turkey following the earthquakes of 1999 extends the spirit of IHL into peacetime. Despite long-standing political and military tensions, which have sometimes involved armed conflict between them, these nations moved promptly to assist each other by dispatching rescue teams and other forms of assistance.

Some IHL rules are easily analogized to disaster response and equally useful in meeting non-conflict challenges. In fact, complex humanitarian emergencies often involve overlays of disaster response during armed conflict. Rules for safety zones ('humanitarian space') could be extended to



Cooperation between humanitarian agencies is essential in creating a body of common standards for disaster response, as the Sphere Project has shown. Moving towards an international disaster response law will require cooperation between states as well.

Photo: Christopher Black/International Federation, Mozambique 2000.

cover humanitarian response after natural and technological disasters. Rules and principles by which humanitarian organizations are authorized to provide assistance during armed conflict can also be extended, by analogy, to post-conflict and peacetime operations.

Perhaps it is time to revisit the proposal first raised at the International Red Cross Conference in 1884, and look to extend Geneva law to natural and technological disasters. However, IDL would address humanitarian response and needs in peacetime, and would be predicated on cooperation among all parties. On the other hand, IHL is predicated on the need to impose some humanitarian constraints on warring parties. The approaches found in IDL and IHL may be incompatible. To merge them in their entirety in the context of a treaty or other unified source of law may prove to be impractical.

- **International human rights law as a foundation for IDL.** Human rights law has sparked the imagination and support of many in the closing years of the 20th century, and sometimes provoked the ire of others. It has already entered prominently into thinking on humanitarian assistance through the *Humanitarian Charter* outlined by the Sphere Project as the basis for its minimum standards in disaster response.

Sphere has deliberately approached assistance based on rights, not needs, and its charter draws on key human rights authorities such as the Universal Declaration of Human Rights (1948) and the Convention on the Rights of the Child (1989). A human rights-centred approach could engage a more energetic constituency than any other, but would also be likely to generate the most resistance to further development of the law.

There is some law, then, that applies directly to international disaster response. Additionally, there are legal frameworks that can be applied by analogy. By what process can we move towards systematic development of international disaster response law?

Step forward

While any new growth in IHL remains firmly rooted in the Hague and Geneva Conventions, a similar legal foundation does not yet exist for international disaster response.

But the International Red Cross and Red Crescent Movement, by drawing upon a unique network of operational managers and lawyers specializing in humanitarian issues, could move that day closer. Some of them work domestically with National Societies, which are independent from their governments but also assist them as auxiliaries. Others work with the ICRC and the International Federation of Red Cross and Red Crescent Societies, which are likewise independent of state control, but answer to unique roles assigned them under international law. Drawing upon insights and access readily available through this network, and pioneering legal foundations set in place during the 1980s, they could design practical legal tools to strengthen disaster response around the world.

The Movement could begin a simultaneous dialogue with states, international organizations and the humanitarian community on the formation of a comprehensive, readily usable set of disaster response rules. For presentation at its next International Conference, the Movement

could then draft a model treaty or declaratory instrument (and perhaps also a model law for national legislation) that draws together existing law. Approval at the conference of such a declaratory instrument, or draft treaty, would encourage important efforts to develop the law, and could serve as a foundation for negotiating a universal treaty for IDL standards and cooperation. Parallel action within the UN system could also play a valuable role in moving forward this long-neglected facet of international law.

At the dawn of the 21st century, a cohesive approach to international disaster response law is not much further along than it was at the start of the 20th. From earliest days, the Movement has been attentive to peacetime disaster response policy, but has made no sustained effort to meet the legal dimensions of this challenge. It has fallen behind, relative to its own long record of service in the development of international humanitarian law.

Our response capacity grows, even as natural and technological disasters cut deeper and wider paths in the world. The law has grown very slowly, perhaps because earlier generations seldom encountered the same mix of humanitarian needs and means that are spread before us now. That said, it is unlikely that any other challenge looming so large in world affairs has received so little attention in the legal realm. During the early decades of the 21st century, a strong, new international law of disaster response could, and should, be counted among the International Red Cross and Red Crescent Movement's contributions to the world community.

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