

COMMENTS

When Will Help Be on the Way? The Status of International Disaster Response Law

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There is no proper rescue, no organization The whole city has collapsed. There is nothing.

—Moshin Naqvi¹

Without knowing who was doing what, and where, some communities were inevitably overwhelmed with aid, while others were neglected.

— *World Disasters Report 2005*²

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1. Somini Sengupta, *The Pakistan-India Quake: The Overview—Pakistan Appeals for Help as Rescuers Dig by Hand*, N.Y. TIMES, Oct. 10, 2005, at A1. Moshin Naqvi was a witness to the October 10, 2005, Pakistan-India earthquake relief efforts. *Id.*

2. INT'L FED'N OF RED CROSS & RED CRESCENT SOC'YS, WORLD DISASTERS REPORT 2005, at 89 (2005) [hereinafter WORLD DISASTERS REPORT 2005] (describing relief efforts in Indonesia eight days after a devastating tsunami struck).

Government failed because it did not learn from past experiences, or because lessons thought to be learned were somehow not implemented.

—*A Failure of Initiative*³

I. INTRODUCTION

In the year 2005, the world faced the fallout of some of the most horrific, deadly, and costly natural disasters in recent memory. On December 26, 2004, a magnitude 9.0 earthquake spawned several tsunami tidal waves that devastated lands in the Indian Ocean area (Indian Ocean Tsunami).⁴ On August 29, 2005, a category 4 hurricane barreled into the Gulf Coast of the United States, causing catastrophic flooding in the city of New Orleans (Hurricane Katrina).⁵ On October 8, 2005, a magnitude 7.6 earthquake shocked the disputed Kashmir region of Pakistan and India, leveling entire villages (Pakistani Earthquake).⁶

That disasters like these will occur is an uncontrollable fact of life. However, responding to the needs of disaster victims is something well within the capabilities of human civilization. Lending one another humanitarian assistance is an ideal people have expressed since antiquity.⁷ Consequently, the need for states to act together to aid the victims of warfare has developed into an extensive body of law. However, analogous laws to regulate humanitarian assistance during peacetime, which would apply to natural disasters, have suffered from limited progress.⁸ What exists today has been described as a “patchwork” of treaties and customary international law.⁹ However, there has yet to be a comprehensive agreement on international disaster response law (IDRL).

Unfortunately, the shortcomings of the current state of IDRL were highlighted in the world’s responses to major natural disasters in 2005.

3. SELECT BIPARTISAN COMM. TO INVESTIGATE THE PREPARATION FOR AND RESPONSE TO HURRICANE KATRINA, H.R. REP. NO. 109-377, xi (2006).

4. UNITED NATIONS, INDIAN OCEAN EARTHQUAKE—TSUNAMI FLASH APPEAL 1 (2005), available at <http://www.un.org/News/dh/infocus/Tsunami/tsunamiflashappeal.pdf>.

5. Joseph B. Treaster & N.R. Kleinfield, *Hurricane Katrina: The Overview; New Orleans Is Inundated as 2 Levees Fail; Much of Gulf Coast Is Crippled; Toll Rises*, N.Y. TIMES, Aug. 31, 2005, at A1.

6. Sengupta, *supra* note 1; Carlotta Gall, *Quake’s Homeless Battle Winter*, N.Y. TIMES, Feb. 2, 2006, at A1.

7. PETER MACALISTER-SMITH, INTERNATIONAL HUMANITARIAN ASSISTANCE: DISASTER RELIEF ACTIONS IN INTERNATIONAL LAW AND ORGANIZATION 17 (1985).

8. INT’L FED’N OF RED CROSS & RED CRESCENT SOC’YS, WORLD DISASTERS REPORT 2000, at 145 (2000), available at <http://www.ifrc.org/docs/pubs/disasters/WDR2000.pdf> [hereinafter WORLD DISASTERS REPORT 2000].

9. Nick Cater, *Legislating To Save More Lives*, http://www.redcross.int/EN/mag/magazine2002_3/legislating.html (last visited Sept. 9, 2006).

The Indian Ocean Tsunami, Hurricane Katrina, and the Pakistani Earthquake each proved too calamitous for any one state to cope with alone. However, while the world was willing to offer aid, the failure to organize a global plan for disaster assistance resulted in confusion, infighting, politicking, and ultimately, human suffering.

This Comment explores the status of IDRL in light of the major disaster relief efforts of 2005. Part II explains the history of IDRL, while Part III provides an overview of existing disaster-related laws. Part IV examines some of the shortcomings of current disaster response law, and Part V reflects on the international relief efforts to the victims of the Indian Ocean Tsunami, Hurricane Katrina, and the Pakistani Earthquake. Finally, Part VI examines what lies in the future for IDRL.

II. THE HISTORY OF INTERNATIONAL DISASTER RESPONSE LAW

For years, states have expressed a willingness to help each other cope with natural disasters. For example, after an earthquake toppled Lisbon in 1755, King George II asked the English parliament to send “such speedy and effectual relief as may be suitable to so afflicting and pressing an exigency.”¹⁰ However, it was not until the end of the nineteenth century that a concerted effort was made to create a large-scale international relief regime for victims of natural disasters.¹¹ In 1869, the Second International Red Cross Conference addressed the need to extend its humanitarian work to assist in peacetime disasters.¹² It adopted a resolution calling on national Red Cross societies to provide relief “in case of public calamity which, like war, demands immediate and organized assistance.”¹³ Then, in 1884, at the Third International Red Cross Conference, the American Red Cross called on the Conference to amend the Geneva Convention of 1864 to provide assistance to natural disaster victims.¹⁴ Although the resolution passed, it was never implemented.¹⁵

Renewed interest in cooperation among states for natural disaster relief came in 1919, with the establishment of the League of Nations. The Covenant of the League of Nations included a provision encouraging members to promote an organization that would improve health, prevent

10. MACALISTER-SMITH, *supra* note 7, at 17 (citation omitted).

11. *Id.*

12. WORLD DISASTERS REPORT 2000, *supra* note 8, at 149.

13. *Id.*

14. Clara Barton: Founder of the American Red Cross, <http://www.redcross.org/museum/history/claraBarton.asp> (last visited July 12, 2006).

15. WORLD DISASTERS REPORT 2000, *supra* note 8, at 149.

disease, and mitigate suffering throughout the world.¹⁶ At the same time, the various national Red Cross and Red Crescent Societies organized the League of Red Cross Societies to extend aid to those suffering from disasters in peacetime.¹⁷ Then, in the 1920s, the Red Cross focused its attention on creating a cooperative union for international disaster relief.¹⁸

In 1921, the International Conference of the Red Cross recommended the creation of a new convention that would allow the Red Cross to have a role in providing relief for the victims of natural disasters during peacetime.¹⁹ This eventually led to the Conference for the Creation of an International Relief Union.²⁰ In 1927, the Conference adopted the Convention for the Establishment of the International Relief Union (IRU), which came into force in 1932.²¹ This was the first and, so far, only instance of states establishing a treaty-based system for responding to natural disasters.²²

The IRU was created for states “to render aid to each other in disasters, to encourage international relief by a methodical co-ordination of available resources, and to further the progress of international law in this field.”²³ Its four primary objectives were to offer assistance where disasters exceeded the resources of stricken peoples, to coordinate relief organizations during public disasters, to encourage the study of disaster prevention, and to induce mutual international assistance.²⁴ Additionally, the convention’s articles incorporated two important principles: “respect for the territorial sovereignty of parties and non-discrimination in assistance.”²⁵ One weakness of the IRU was that “it focused on parliamentary and administrative issues and offered no standards or guidelines for work in the field.”²⁶

Unfortunately, the IRU never realized its potential for international natural disaster relief. Its financial resources were limited, and when it faced its first few disasters, the IRU was only able to take symbolic action.²⁷ In the years following its creation, the IRU was relegated to

16. MACALISTER-SMITH, *supra* note 7, at 18 (citing League of Nations Covenant art. 25).

17. *Id.*

18. *Id.*

19. *Id.*

20. *Id.* at 19.

21. *Id.* (citing Convention Establishing an International Relief Union, July 12, 1927, reprinted in *id.* annex 2 [hereinafter IRU]).

22. WORLD DISASTERS REPORT 2000, *supra* note 8, at 149.

23. MACALISTER-SMITH, *supra* note 7, at 19 (citing IRU, *supra* note 21).

24. *Id.* (citing IRU, *supra* note 21, art. 2).

25. *Id.* (citing IRU, *supra* note 21, art. 4).

26. WORLD DISASTERS REPORT 2000, *supra* note 8, at 151.

27. MACALISTER-SMITH, *supra* note 7, at 20.

scientific work and was never able to establish lasting inroads in IDRL.²⁸ However, the IRU still stands as evidence of states recognizing the need to use international law to work together to respond to natural disasters.²⁹

IDRL did not advance much further until major disasters, including earthquakes, floods, and drought, struck several different parts of the world in the late 1960s and early 1970s.³⁰ The difficulties in organizing large-scale relief efforts prompted the United Nations General Assembly to create the Office of the United Nations Disaster Relief Coordinator (UNDRO) in late 1971.³¹ This office was intended to be the “focal point in the United Nations system for disaster relief matters”³² and was responsible for coordinating disaster relief, assisting states in planning for disaster response, and promoting disaster prevention.³³ Although UNDRO was created to be a first responder to disasters, it was not itself responsible for carrying out relief efforts.³⁴ Instead, it was created to act as a clearinghouse that would disseminate information to other relief agencies.³⁵

In the following years, several organizations made attempts to create uniform disaster response standards. In 1969, the International Red Cross Conference adopted the Principles and Rules for Red Cross Disaster Relief.³⁶ In 1980, a model agreement for cooperation in disaster relief was created by the International Law Association.³⁷ Then, in 1982, the United Nations Institute for Training and Research issued a set of model rules for disaster relief operations.³⁸ In 1984, UNDRO drafted its own convention for the delivery of emergency assistance³⁹ and, in 1985, a treatise on disaster relief actions and international law was published.⁴⁰ Efforts to organize IDRL continued into the 1990s. In 1995, the 26th International Conference of the Red Cross and Red Crescent adopted two new sets of rules intended to guide disaster relief operations: (1) the

28. *Id.*

29. *Id.* at 21.

30. *When Disaster Strikes . . . the United Nations Response to Natural Disasters*, U.N. CHRON., Sept. 1985, at i [hereinafter *When Disaster Strikes . . .*].

31. *Id.* General Assembly Resolution 2816 established UNDRO. G.A. Res. 2816 (XXVI), U.N. Doc. A/RES/2816(XXVI) (Dec. 14, 1971).

32. G.A. Res. 2816, *supra* note 31, ¶ 3.

33. *When Disaster Strikes . . .*, *supra* note 30.

34. *Id.*

35. *Id.*

36. WORLD DISASTERS REPORT 2000, *supra* note 8, at 149.

37. *Id.*

38. *Id.* at 151.

39. Rohan J. Harcastle & Adrian T.L. Chua, *Humanitarian Assistance: Towards a Right of Access to Victims of Natural Disasters*, 325 INT'L REV. RED CROSS 589, 595 (1998).

40. WORLD DISASTERS REPORT 2000, *supra* note 8, at 151.

Code of Conduct for the International Red Cross and Red Crescent Movement and NGOs in Disaster Relief, and (2) the Principles and Rules for Red Cross and Red Crescent Disaster Relief.⁴¹

Clearly, there have been several attempts to establish uniform rules and policies for disaster response. Although several states approved one or more of these guidelines, none was widely adopted.⁴² None of the proposed standards carried the weight of a treaty, and, consequently, none of these guidelines had a binding effect on disaster responders.

Recently, the United Nations has become increasingly active in IDRL. In the 1990s, the General Assembly passed several resolutions aimed at improving disaster response operations. Resolution 46/182, passed in 1991, called for a “strengthening of the coordination of emergency humanitarian assistance of the United Nations system.”⁴³ After UNDR0 was criticized for creating a bureaucratic barrier to relief efforts,⁴⁴ the United Nations created the Department of Humanitarian Affairs, later reorganized into the Office for the Coordination of Humanitarian Affairs (OCHA).⁴⁵ OCHA subsumed UNDR0 and was created to deal with a range of humanitarian and natural disasters.⁴⁶ OCHA’s mandate included not only coordinating humanitarian response, but also policy development and humanitarian advocacy.⁴⁷ Additionally, the United Nations declared 1990 through 2000 as the International Decade for Natural Disaster Reduction.⁴⁸

Even with the recent increase in focus on coordination of disaster relief, in 2000, the International Federation of the Red Cross and Red Crescent Societies (IFRC) stated that there was a “yawning gap” in international law pertaining to disaster response.⁴⁹ There has yet to be an authoritative source for disaster response standards. Instead, IDRL is composed of a mix of various players and sources of law.

41. Hardcastle & Chua, *supra* note 39, at 597.

42. WORLD DISASTERS REPORT 2000, *supra* note 8, at 151.

43. G.A. Res. 46/182, ¶ 1, U.N. Doc. A/RES/46/182 (Dec. 19, 1991).

44. *See, e.g., Masters of Disasters*, NEW REPUBLIC, Sept. 13, 1999, at 11 (“Some of the most notorious examples of uncoordinated relief efforts . . . happened under the UNDR0 bureaucracy’s watch.”).

45. U.N. Office for the Coordination of Humanitarian Affairs, A Brief History of OCHA, <http://ochaonline.un.org> (follow “About OCHA” hyperlink) (last visited Sept. 10, 2006) [hereinafter A Brief History of OCHA].

46. WORLD DISASTERS REPORT 2000, *supra* note 8, at 151.

47. A Brief History of OCHA, *supra* note 45.

48. WORLD DISASTERS REPORT 2000, *supra* note 8, at 151.

49. *Id.* at 145.

III. EXISTING INTERNATIONAL DISASTER RESPONSE LAW

A. *Players*

There are several different actors that influence and create IDRL. First, states can provide relief goods and monetary assistance, enter into bilateral and multilateral agreements, and establish custom through their conduct. Additionally, intergovernmental organizations and regional groups, such as the North Atlantic Treaty Organization (NATO) and the European Union, are involved in rendering disaster assistance and making disaster-related agreements.⁵⁰

Nonstate actors are also central to IDRL. Currently, the United Nations, through its charter and via OCHA, is a major responder to natural disasters. Article 1 of the U.N. Charter states that one of its objectives is to achieve cooperation in solving international problems.⁵¹ There is the possibility that the United Nations Security Council could act under its chapter VII enforcement power in response to a natural disaster if it posed a threat to peace; however, this has yet to be tested.⁵² The United Nations also has several associated, specialized agencies and programs that respond to natural disasters, such as the United Nations Children's Fund, the United Nations Development Programme, and the World Health Organization.

Nongovernmental organizations (NGOs) have become increasingly important to IDRL. Most notably, the IFRC is a primary responder to major natural disasters. Additionally, the IFRC has spearheaded an IDRL research project (IDRL Project) aimed at compiling and analyzing relevant existing legal rules.⁵³ Other notable players are Médecins sans Frontières (Doctors Without Borders), which often provides immediate medical assistance after natural disasters, Oxfam International, and Save the Children.

NGOs can have a strong influence on governments and often influence decisions to ratify treaties.⁵⁴ NGOs are indispensable to providing disaster relief because they often respond faster and deploy personnel to the scene sooner than governmental actors.⁵⁵ Adding to their agility, NGOs are sometimes able to act when states or governmental

50. Hardcastle & Chua, *supra* note 39, at 596.

51. U.N. Charter art. 1, para. 3.

52. See Zama Coursen-Neff, Note, *Preventative Measures Pertaining to Unconventional Threats to the Peace Such as Natural and Humanitarian Disasters*, 30 N.Y.U. J. INT'L L. & POL. 645, 675 (1998).

53. Cater, *supra* note 9.

54. MACALISTER-SMITH, *supra* note 7, at 118.

55. *Id.* at 119.

organizations, for political reasons, cannot.⁵⁶ However, one serious limitation on NGOs is that they are not automatically granted the same privileges, facilities, or immunities as are intergovernmental organizations.⁵⁷

B. Bilateral and Multilateral Agreements

Treaties are the most common source of IDRL. There are numerous bilateral agreements on disaster assistance, and they often enable the most important contributions to relief operations.⁵⁸ However, many of the agreements are subject to political wrangling, which causes them to be narrowly tailored and restricted in focus.⁵⁹

In the 1950s, agreements on disaster relief were usually bilateral treaties that were formed in response to particular natural disasters.⁶⁰ The 1950s also produced treaties in which neighboring countries sought to prepare for disasters that might affect them both.⁶¹ However, these treaties were narrow in both focus and function.⁶² In the 1970s, disaster treaties became broader, encompassing wider regions and more assistance activities.⁶³ Although the treaties covered a range of topics, they often shared several topics in common: offers of, and requests for, assistance; responsibility and coordination; access of personnel and equipment; relief goods and customs; status, immunities, and protection of personnel; and costs.⁶⁴

In contrast, there are far fewer multilateral disaster response and prevention treaties.⁶⁵ Regional groups sometimes develop multilateral treaties. For example, in 1987, the European Council established a multilateral cooperation group for disaster response and prevention for the European region.⁶⁶ However, many of the multilateral treaties that serve natural disasters are not specific to natural disasters and, instead,

56. *Id.*

57. *Id.* at 117.

58. *Id.* at 124.

59. *Id.* at 125.

60. Int'l Fed'n of Red Cross & Red Crescent Soc'ys, *International Disaster Response Law—A Preliminary Overview and Analysis of Existing Treaty Law* 3 (Jan. 2003) (prepared by Horst Fischer), available at http://www.ifrc.org/docs/pubs/disasters/IDRL_lawtreaty.pdf [hereinafter Fischer].

61. *Id.*

62. *Id.* at 3-4.

63. *Id.* For a list of IDRL related treaties, see http://www.ifrc.org/docs/pubs/disasters/IDRL_Treaties.pdf (last visited Sept. 6, 2006).

64. Fischer, *supra* note 60, at 5-7.

65. *See id.* at 4.

66. *Id.*

deal only with particular issues.⁶⁷ One early example is the 1946 United Nations Convention on the Privileges and Immunities of the United Nations.⁶⁸ The agreement is applicable to any disaster situation but only covers U.N. personnel and experts.⁶⁹ Although multilateral agreements governing natural or technological disasters are relatively rare, two notable exceptions were adopted soon after the Chernobyl nuclear accident in 1986.⁷⁰

Some treaties have provisions that specifically deal with disaster relief work. For example, the 1944 Convention on International Civil Aviation 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.”⁷¹ Similarly, the 1965 Convention on Facilitation of International Maritime Traffic provides that public authorities shall facilitate the arrival and departure of ships engaged in disaster relief work.⁷² Other treaties are aimed at policy issues. For example, the Aarhus Convention, an environmental treaty, focuses on guaranteeing the rights of access to information, public participation in decision-making, and access to justice in the wake of environmental disasters.⁷³

One of the most recent multilateral disaster response treaties to take effect is the Tampere Convention on the Provision of Telecommunication Resources for Disaster Mitigation and Relief Operations (Tampere Convention).⁷⁴ The Tampere Convention came into force on January 8, 2005, after being ratified by thirty countries.⁷⁵ The treaty requires that participating countries help facilitate prompt telecommunications aid to

67. *Id.*

68. *Id.*

69. *Id.*

70. WORLD DISASTERS REPORT 2000, *supra* note 8, at 152. The two treaties are the Convention on Early Notification of a Nuclear Accident, Sept. 26, 1986, 1439 U.N.T.S. 275, and the Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency, Sept. 26, 1986, 1457 U.N.T.S. 133. WORLD DISASTERS REPORT 2000, *supra* note 8, at 152.

71. *Id.*

72. *Id.*

73. Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, art. 1, June 25, 1998, 2161 U.N.T.S. 447.

74. Tampere Convention on the Provision of Telecommunication Resources for Disaster Mitigation and Relief Operations, June 18, 1998, *available at* <http://www.reliefweb.int/telecoms/tampere/icet98-e.htm> [hereinafter Tampere Convention].

75. Press Release, United Nations Office at Geneva, Tampere Convention: Saving Lives Through Emergency Telecommunications (Jan. 7, 2005), *available at* http://www.reliefweb.int/telecoms/tampere/Tampere_EntryinForce_PressRelease%20final.doc.

mitigate a disaster's impact and seeks to improve disaster response by reducing the regulatory barriers that humanitarian organizations face.⁷⁶

The treaty recognizes the right of a state to direct, control, and coordinate assistance provided under the convention within its territory;⁷⁷ however, the core element of the Tampere Convention is its reduction of regulatory barriers concerning telecommunication equipment.⁷⁸ Article 9 of the convention states, "The States Parties shall, when possible, and in conformity with their national law, reduce or remove regulatory barriers to the use of telecommunication resources for disaster mitigation and relief, including the provision of telecommunication assistance."⁷⁹ This includes:

- a) regulations restricting the import or export of telecommunication equipment;
- b) regulations restricting the use of telecommunication equipment or of radio-frequency spectrum;
- c) regulations restricting the movement of personnel who operate telecommunication equipment or who are essential to its effective use;
- d) regulations restricting the transit of telecommunication resources into, out of and through the territory of a State Party; [and]
- e) delays in the administration of such regulations.⁸⁰

Some other key provisions of the treaty require that states: waive licensing requirements for telecommunication equipment;⁸¹ grant relief workers (including employees and volunteers from NGOs) immunity from arrest and detention, and exempt them from taxes and duties;⁸² and make inventories of their telecommunication assistance resources and encourage states to create an action plan to deploy those resources.⁸³

C. *Other Sources of Law*

IDRL developed from sources other than treaties is limited. Some rules, like the principle of nonintervention, are applicable to natural disaster situations. Other rules, however, are often indirect and unsubstantial. There are only a handful of international court decisions

76. Tampere Convention, *supra* note 74, art. 3, para. 1, art. 9.

77. *Id.* art. 4.

78. ReliefWeb, Tampere Convention Executive Summary, http://www.reliefweb.int/telecoms/tampere/exec_sum.htm (last visited Sept. 8, 2006).

79. Tampere Convention, *supra* note 74, art. 9, para. 1.

80. *Id.* art. 9, para. 2.

81. *Id.* art. 9, para. 3.

82. *Id.* art. 5, para. 1.

83. *Id.* art. 8.

that have implications for IDRL. Some say that natural disaster assistance falls under human rights law. Others argue that international disaster response obligations have been created through customary international law, but they remain uncertain about the scope and content of those obligations.⁸⁴ However, none of these sources has provided a broad base for IDRL.

There has yet to be a case before the International Court of Justice (ICJ) that directly implicates natural disaster response and relief. However, a handful of cases provide rules that may be analogized to humanitarian aid for natural disaster situations. For example, in *Nicaragua v. United States*, the ICJ provided guidelines as to what kind of humanitarian assistance may be imposed on a government without violating the principle of nonintervention.⁸⁵ This case helped define humanitarian assistance and could possibly be extended to natural disaster humanitarian assistance.⁸⁶ However, this is only an indirect connection, and the case does not make any direct pronouncements on natural disaster relief.

Arguments have been made that existing texts have created standards that have developed into customary international law. For example, the U.N. Charter requires “respect for human rights and fundamental freedoms.”⁸⁷ Additionally, the Code of Conduct for the International Red Cross and Red Crescent Movement and NGOs in Disaster Relief states that “[t]he right to receive humanitarian assistance . . . is a fundamental humanitarian principle which should be enjoyed by all citizens of all countries.”⁸⁸ Others argue that customary international law recognizes a right to a healthy environment as a component of the fundamental right to life.⁸⁹

However, for practice to develop into customary international law, the acts in question must involve extensive and uniform practice and a belief that the action is required by a rule of law or legal obligation

84. Hardcastle & Chua, *supra* note 39, at 598-99.

85. *Military and Paramilitary Activities (Nicar. v. U.S.)*, 1986 I.C.J. 14, 125 (June 27) (“[I]f the provision of ‘humanitarian assistance’ is to escape condemnation as an intervention in the internal affairs of Nicaragua, not only must it be limited to the purposes hallowed in the practice of the Red Cross, namely ‘to prevent and alleviate human suffering’, and ‘to protect life and health and to ensure respect for the human being’; it must also, and above all, be given without discrimination to all in need.”).

86. Hardcastle & Chua, *supra* note 39, at 604.

87. U.N. Charter art. 1, para. 3.

88. Hardcastle & Chua, *supra* note 39, at 594 (citation omitted).

89. See Jacqueline P. Hand, *Disaster Prevention Presentation from SCJIL Symposium 2003*, 1 SANTA CLARA J. INT’L L. 147, 160 (2003).

(*opinio juris*).⁹⁰ In addition, customary international law usually derives from relevant *state* practice.⁹¹ In the case of natural disaster relief, states have always responded to disasters on a case-by-case basis, tailoring their responses to the disaster. This makes it uncertain whether *opinio juris* exists.⁹² It is also doubtful that actions taken by nonstate actors like the IFRC are relevant in determining whether there has been consistent practice.⁹³ Therefore, it would be difficult to hold that customary international law exists for natural disaster relief standards.

Recognizing that inconsistent state practice has precluded the development of customary international law for disaster response, the IFRC and several NGOs have worked together to create the Sphere Project.⁹⁴ The Sphere Project seeks to create minimum standards for disaster response.⁹⁵ Further, Sphere standards are similar to guidance that might be found in treaties, legislation, or regulations.⁹⁶ Sphere offers specific standards for war and peacetime, including standards for water, solid waste disposal, and hygiene.⁹⁷ Although translating Sphere standards into customary international law for disaster relief is a long way off, there is the possibility that these standards will one day be commonly used and considered obligatory.⁹⁸

Although there are many sources that contribute to existing IDRL, there is no single definitive source. The current treaty-based system has not yet specifically addressed natural disaster relief in a comprehensive fashion. Court decisions addressing natural disaster response have been indirect and infrequent. Although customary law may exist, there has not been a comprehensive and lasting system to formalize it.

IV. GAPS IN CURRENT INTERNATIONAL DISASTER RESPONSE LAW

The IFRC *World Disasters Report 2000* lamented a “yawning gap” in international law pertaining to disaster response and prevention.⁹⁹ Several studies have been conducted to determine what exactly is missing.¹⁰⁰ The IFRC has noted several areas in need of further legal

90. North Sea Continental Shelf (F.R.G. v. Neth.), 1969 I.C.J. 3, 44 (Feb. 20).

91. Hardcastle & Chua, *supra* note 39, at 595.

92. *Id.*

93. *See id.*

94. WORLD DISASTERS REPORT 2000, *supra* note 8, at 153.

95. *Id.*

96. *Id.*

97. *Id.*

98. *Id.*

99. *Id.* at 145.

100. *See id.*; Cater, *supra* note 9; Fischer, *supra* note 60, at 2.

development, such as standards of humanitarian professionalism and conduct.¹⁰¹ This includes quality assurance mechanisms to facilitate relief responders' work and legal norms such as respecting a relief-seeking state's health and traffic regulations.¹⁰² Another commonly cited problem within this area is recognition of foreign professional credentials by a relief-seeking nation.¹⁰³

The IFRC has also called for a common framework for transportation, immigration, and customs issues associated with incoming relief workers and equipment.¹⁰⁴ Uniform guidelines are needed to create standards for relief goods to help ensure that appropriate supplies are sent to areas in need.¹⁰⁵ The IFRC also noted information sharing, access and security, and contingency planning as areas in need of further legal development.¹⁰⁶

A 2002 report by the IFRC IDRL Project also included some specific areas where uniform agreement is needed.¹⁰⁷ Difficulties in obtaining overflight or landing rights, restrictions on visas for relief workers, quarantine requirements for search and rescue animals, and registration of aid workers are all key areas where guidance is needed.¹⁰⁸ Even more abstract questions, such as how to define when a disaster begins and ends, have yet to be addressed in disaster response law.¹⁰⁹

There has also been functional criticism of treaties that are already in force. The IRU, before it was dismantled, was criticized for not having guidelines for practical implementation.¹¹⁰ This is a problem that persists in many treaties pertaining to disasters today. There may be a disconnect between what is contemplated by the law and its actual implementation on the ground.¹¹¹ Additionally, some treaties impose only procedural duties and do not require substantive action.¹¹² In sum, the current state of IDRL leaves much room for improvement.

101. WORLD DISASTERS REPORT 2000, *supra* note 8, at 154.

102. *Id.*

103. Cater, *supra* note 9.

104. WORLD DISASTERS REPORT 2000, *supra* note 8, at 154.

105. *Id.*

106. *Id.*

107. Cater, *supra* note 9.

108. *Id.*

109. *Id.*

110. WORLD DISASTERS REPORT 2000, *supra* note 8, at 151.

111. Hand, *supra* note 89, at 157.

112. *Id.* at 5.

V. REFLECTIONS ON RESPONSE TO DISASTERS IN 2005

Natural disasters may strike at any time. Many times, states are able to respond to their own victims' needs without requiring international assistance. However, because there is no uniform framework for international assistance for natural disasters, states are vulnerable when they are struck with a disaster that is too large to deal with by themselves. Over the years, the gaps in international law for responding to natural disasters have resulted in time, money, and lives lost. The year 2005 proved to be no different.

A. *Confusion and Lack of Coordination*

One of the biggest problems disaster responders face in providing relief is confusion and lack of coordination. Lack of coordination hampered relief efforts to areas affected by the Indian Ocean Tsunami in several ways. In response to the disaster, more than 200 humanitarian organizations and military troops from 12 countries descended on Aceh, Indonesia, to provide assistance.¹¹³ However, the IFRC reported that there were so many relief groups working in some areas that competition to provide aid developed among relief agencies.¹¹⁴ This led to groups refusing to share information with one another and duplicating efforts in some critical areas.¹¹⁵ One account stated that "[t]he World Health Organization sent measles vaccinations to a village [in Aceh] only to find that an unnamed organization had already vaccinated some children without leaving proper records."¹¹⁶ Another witness reported seeing "20 surgeons competing for a single patient."¹¹⁷ In a disaster, duplication of efforts can be costly in terms of both time and money when prompt action is imperative.

The IFRC cited an unlikely culprit as part of the problem: too much money.¹¹⁸ The large number of NGOs competing to spend huge private donations quickly led to an ineffective allocation of resources.¹¹⁹ Additionally, of the 200 agencies present shortly after the waves struck, only 46 submitted reports about their operations to U.N. coordinators.¹²⁰

113. WORLD DISASTERS REPORT 2005, *supra* note 2, at 81.

114. *Id.* at 98.

115. *Id.*; Tom Wright, *World Briefing Asia: Tsunami Report Criticizes Relief Efforts*, N.Y. TIMES, Oct. 6, 2005, at A14.

116. Wright, *supra* note 115.

117. WORLD DISASTER REPORT 2005, *supra* note 2, at 95.

118. *Id.* at 90.

119. *Id.* at 90, 92.

120. *Id.* at 89.

The lack of joint assessment contributed to the confusion and lack of coordination.¹²¹

Other problems emerged from disorganization with relief supplies. There were reports that in Aceh, relief goods for women were scarce in some instances because relief groups based their needs on requests from village heads who failed to ask for aid specific to women, such as underwear, headscarves, sanitary protection, and contraceptive pills.¹²² Another report stated that winter clothing was sent to Sri Lanka, which has a tropical climate.¹²³ Again, the inability to coordinate relief efforts led to a misallocation of resources, even when there was ample aid available.

Comparatively, the relief operations in the Maldives were relatively smooth. Following the Indian Ocean Tsunami, only six major international organizations were in the Maldives.¹²⁴ The Maldives government's ability to share information and coordinate has been attributed to the lack of foreigners "overcrowding the response."¹²⁵ Crucially, local government officials had time to conduct their own assessments before foreign relief agencies arrived.¹²⁶ The fact that the Maldives might have been better off *without* the help of relief organizations, at least at first, points to one of the main reasons a common framework for disaster relief efforts is necessary.

Lack of coordination might not just persist between the different agencies providing aid; the aid-seeking country itself might add to the confusion. On September 1, 2005, three days after Hurricane Katrina made landfall, President Bush indicated in a television interview that the United States could take care of the relief effort itself and did not need foreign aid.¹²⁷ However, a few days later, over the weekend of September 4, when the extent of the damage became more apparent to the Bush Administration, the United States Department of State (State Department) sent urgent requests to NATO and the United Nations for food, water, and medical supplies.¹²⁸ These mixed messages were

121. *Id.* at 90.

122. *Id.* at 95-96.

123. Barbara Slavin, *Some Foreign Attempts To Send Aid Stymied*, USA TODAY, Sept. 8, 2005, at 10A.

124. WORLD DISASTER REPORT 2005, *supra* note 2, at 117.

125. *Id.*

126. *Id.*

127. Joel Brinkley & Craig S. Smith, *Storm and Crisis: Foreign Aid; Offers Pour in, but the U.S. Is Unprepared*, N.Y. TIMES, Sept. 8, 2005, at A25.

128. *Id.*

indicative of the slow and confused response of the United States to its own disaster.

In Louisiana, fighting between local, state, and federal officials crippled the disaster response. On September 4, six days after the storm struck, New Orleans Mayor Ray Nagin stated, "We're still fighting over authority."¹²⁹ Around the same time, frustration was expressed by Louisiana Governor Kathleen Babineaux Blanco towards the Federal Emergency Management Agency (FEMA), the U.S. agency in charge of responding to natural disasters.¹³⁰ "We wanted soldiers, helicopters, food and water They wanted to negotiate an organizational chart," said the governor's press secretary.¹³¹ With federal officials uncertain over who was in charge,¹³² the United States was not prepared to begin receiving disaster aid from the foreign community, even when it was clear that aid was needed.

Foreign officials began making offers of aid soon after the devastation became apparent. However, many officials reported frustration in their attempts to transport aid to the United States.¹³³ Sweden reported waiting longer than five days for clearance to land a plane carrying relief supplies in the United States.¹³⁴ Nine days after the storm struck, several other countries reported that they were still waiting to hear where and when to send donations.¹³⁵ It took more than three weeks after the storm before flights carrying aid supplies from Peru, Finland, Chile, South Korea, Luxembourg, Slovenia, and Greece were finally allowed into the United States.¹³⁶

The State Department maintained that the reason for the delay was that they were evaluating the proposals to see if the aid offered could actually be used.¹³⁷ One State Department official noted that, because the United States is usually in the position of offering aid, and not receiving it, the United States had "no experience with situations like [these]."¹³⁸ However, the United States' slow and mixed response to foreign aid offers contributed to the delay in aid reaching those affected by the

129. Scott Shane, Eric Lipton & Christopher Drew, *Storm and Crisis: The Fallout; After Failures, Officials Play Blame Game*, N.Y. TIMES, Sept. 5, 2005, at A1.

130. *Id.*

131. *Id.*

132. *Id.*

133. Brinkley & Smith, *supra* note 127.

134. *Id.*

135. Slavin, *supra* note 123.

136. Associated Press, *Baby Food from Israel, Blankets from India* (Sept. 19, 2005), <http://www.msnbc.com/id/9363899/>.

137. Brinkley & Smith, *supra* note 127.

138. *Id.*

disaster. This shows how all states, even wealthy ones, could benefit from the creation of IDRL.

Coordination in a relief effort is essential to responding to disaster victims quickly and effectively. Without an international disaster plan or standards for relief work, even a large-scale response to a disaster, as in the case of the Indian Ocean Tsunami, may fail to aid those in need. As suggested in the *World Disasters Report 2005*, nations in need of relief have to adequately assess their needs and be able to communicate them to the world. Additionally, even developed nations can benefit from creating IDRL. A uniform international law could prompt states to reformulate their internal practices in order to accommodate international relief efforts.

B. Politics Affecting Disaster Response

Another unfortunate aspect of disaster aid is the fact that some countries insist on using it as a political weapon. Political motives infiltrating humanitarian responses can surface in many ways, from contemptuous offers of aid, to refusals of aid from certain countries. However, it is the victims of the disasters who suffer. As shown in 2005, politicking continues to be a pervasive problem.

After Hurricane Katrina devastated the Gulf Coast, the United States received many offers of aid from unlikely sources. For example, Venezuelan President Hugo Chavez, who has had a contentious relationship with the United States, offered to ship one million barrels of oil to the United States to help alleviate any oil shortages caused by Hurricane Katrina.¹³⁹ Chavez used his public offer of support to the United States as an opportunity to criticize the Bush Administration's response to the hurricane, calling President Bush the "king of vacations."¹⁴⁰ The United States ultimately accepted Chavez's offer of oil. However, another offer of oil, from Iran, came with a contingency.¹⁴¹ Iran offered the United States twenty million barrels of oil, on the condition that the United States lift economic sanctions against it.¹⁴² The United States rejected this offer.¹⁴³

Countries may also refuse offers of aid because of their own political motives. After the Pakistani Earthquake, an estimated 1,300

139. Slavin, *supra* note 123.

140. Juan Forero & Steven R. Weisman, *Storm and Crisis: Foreign Aid; U.S. Allies, and Others, Send Offers of Assistance*, N.Y. TIMES, Sept. 4, 2005, § 1, at 31.

141. Slavin, *supra* note 123.

142. *Id.*

143. *Id.*

people died in the Indian-controlled part of Kashmir and over 30,000 were left homeless.¹⁴⁴ Nevertheless, a week and a half after the disaster struck, India announced that it had no need for aid from the United Nations or any foreign agencies.¹⁴⁵ Some have speculated that India's insistence on refusing aid was motivated by its desire to be seen as a world power.¹⁴⁶ Additionally, experts cited India's unease with allowing outside intervention in the disputed Kashmir region as another reason for rejecting aid.¹⁴⁷ India's rejection of aid occurred despite government leaders from the Kashmir region calling for the Indian government to embrace international aid.¹⁴⁸ Even more telling, India was willing to offer aid to its archrival Pakistan while it continued to insist that no aid was needed for itself.¹⁴⁹

Another example of how politics may interfere with a country receiving aid happened in Cuba after Hurricane Wilma in October of 2005. The United States initially made plans to send relief specialists to affected areas in Cuba to help assess the damage.¹⁵⁰ However, the State Department later suspended the plan, stating that Cuba insisted on using the trip as a means to discuss a larger regional disaster response plan.¹⁵¹ A State Department official stated that the United States was "unwilling to turn a humanitarian mission into a political dialogue" and cancelled the mission.¹⁵² Instead, the United States said it was relying on NGOs to donate over \$100,000 in hurricane relief to Cuba.¹⁵³

In contrast, several countries offered aid to the United States after Hurricane Katrina as a way to show support and solidarity. Sri Lanka, a country hit hard by the Indian Ocean Tsunami, offered to donate \$25,000 to the American Red Cross.¹⁵⁴ Other tsunami-affected countries, such as India, Thailand, and Indonesia also made offers.¹⁵⁵

Some states insist on using aid for natural disasters as a means of political expression. They are likely unwilling to give up this powerful

144. Somini Sengupta & Hari Kumar, *Letter from Asia; Pride and Politics: India Rejects Quake Aid*, N.Y. TIMES, Oct. 19, 2005, at A4.

145. *Id.*

146. *Id.*

147. *Id.*

148. *Id.*

149. *Id.*

150. Associated Press, *National Briefing Washington: Hurricane Relief Trip to Cuba Is Suspended*, N.Y. TIMES, Nov. 3, 2005, at A18.

151. *Id.*

152. *Id.*

153. *Id.*

154. Cnn.com, *U.S. Receives Aid Offers from Around the World* (Sept. 4, 2005), <http://edition.cnn.com/2005/US/09/04/katrina.world.aid/>.

155. *Id.*

bargaining chip, making the creation of IDRL all the more difficult. However, when disasters strike, states may find it necessary to accept help from unlikely sources, such as the United States accepting oil aid from Venezuela after Hurricane Katrina. This shows that there is still room for IDRL in political agendas, perhaps in the form of minimum standards or worst-case scenario protocols. Either way, politics still stands in the way of creating IDRL.

C. *Effects of Privatization*

As described above, a large number of NGOs responded to the Indian Ocean Tsunami. This is indicative of the trend towards governments' privatizing their response to natural disasters. Governments increasingly have been willing to funnel aid through international NGOs, rather than giving the money directly to foreign governments.¹⁵⁶ For example, the United States Office of Foreign Disaster Assistance (OFDA) allocated sixty-six percent of its budget for disaster response to NGOs in 2005.¹⁵⁷ Additionally, although the United States deployed military forces with direct aid to regions affected by the Indian Ocean Tsunami, the bulk of the U.S. pledge of aid to victims was made through a donation to the International Red Cross.¹⁵⁸

Governments now rely on aid from private corporations and charitable groups to supplement their official disaster aid response. On December 27, 2004, shortly after the Indian Ocean Tsunami struck, President Bush announced that the United States would send \$4 million to the IFRC.¹⁵⁹ The U.S. pledge of aid was subsequently increased to \$15 million later that day, to \$35 million on December 28, and to \$350 million on December 31.¹⁶⁰ The United States faced sharp criticism that it was being "stingy" with its pledge of aid.¹⁶¹

Then, on January 3, 2005, President Bush announced that he had enlisted his father, former President George H.W. Bush, and former President William Jefferson Clinton to lead an effort to raise money from

156. Laura A. Dickinson, *Governments for Hire: Privatizing Foreign Affairs and the Problem of Accountability Under International Law*, 47 WM. & MARY L. REV. 135, 154 (2005).

157. U.S. AGENCY FOR INT'L DEV., OFFICE OF FOREIGN DISASTER ASSISTANCE ANNUAL REPORT FOR FISCAL YEAR 2005, at 14 (2005), available at http://www.usaid.gov/our_work/humanitarian_assistance/disaster_assistance/publications/annual_reports/pdf/AR2005.pdf.

158. Steven R. Weisman & David E. Sanger, *Asia's Deadly Waves: Assessments; In Efforts To Organize Aid, Powell and Governor Bush Will Tour Ravaged Areas*, N.Y. TIMES, Dec. 31, 2004, at A13.

159. Weisman & Sanger, *supra* note 158.

160. *Id.*

161. David E. Sanger & Warren Hoge, *Asia's Deadly Waves: Diplomacy; U.S. Vows Big Rise in Aid for Victims of Asian Disaster*, N.Y. TIMES, Jan. 1, 2005, at A1.

the private sector to aid countries affected by the Indian Ocean Tsunami.¹⁶² In announcing this effort, the current President Bush stated that “the greatest source of America’s generosity is not our government. It’s the good heart of American people.”¹⁶³ The Bush-Clinton tsunami relief efforts eventually collected over \$100 million from private donors.¹⁶⁴ However, after several weeks of criticism, the U.S. government finally increased its pledge to tsunami victims to \$950 million on February 9, 2005.¹⁶⁵

President Bush also enlisted President Clinton and his father to collect donations from the private sector in the aftermath of Hurricane Katrina.¹⁶⁶ This again demonstrates the United States depending on private funds to supplement its official response to disasters. Private aid was also figured into the U.S. response to the Pakistani Earthquake. Several weeks after the earthquake struck, the United States made a pledge of \$510 million to the relief efforts.¹⁶⁷ However, this included a target of \$100 million raised from the private sector.¹⁶⁸

In addition to the Bush-Clinton fund-raising effort, several private corporations donated to the Indian Ocean Tsunami relief effort on their own. For example, Pfizer Inc. gave \$10 million to international relief agencies and donated \$25 million worth of medicines to affected countries.¹⁶⁹ Other donations came from blue chip corporations, such as Citigroup and Mattel.¹⁷⁰

Privatization of foreign aid can have some benefits. Corporations are often credited with being able to respond to disasters more quickly than governments.¹⁷¹ In the aftermath of the Indian Ocean Tsunami, several companies that do business in affected regions were able to act quickly to provide aid. For example, Microsoft Corporation was able to wire \$220,000 to first responders in India within twenty-four hours of the

162. Richard W. Stevenson & Stephanie Strom, *Asia’s Deadly Waves: Private Aid; Bush Asks His Father and Clinton To Raise Funds*, N.Y. TIMES, Jan. 4, 2005, at A9.

163. *Id.*

164. George H.W. Bush & William Jefferson Clinton, *In Katrina, Compassion Met Adversity*, USA TODAY, Aug. 23, 2006, at 9A.

165. Elizabeth Becker, *U.S. Nearly Triples Tsunami Aid Pledge, to \$950 Million*, N.Y. TIMES, Feb. 10, 2005, at A3.

166. Bush & Clinton, *supra* note 164.

167. Somini Sengupta & David Rohde, *Pledges Exceed Goal as Pakistan Quake Relief Effort Races Against Winter*, N.Y. TIMES, Nov. 20, 2005, § 1, at 8.

168. *Id.*

169. Stephanie Strom, *Asia’s Deadly Waves: Aid; Relief Groups Hail Level of Donations by Individuals*, N.Y. TIMES, Jan. 1, 2005, at A6.

170. Stevenson & Strom, *supra* note 162.

171. *Id.*

waves striking.¹⁷² Its employees in the area identified organizations in need, which enabled the corporation to take swift action.¹⁷³

Similarly, the quick response of NGOs may be due to their established presence and ready access in countries stricken by disaster. Foreign governments are unlikely to maintain such a presence and, therefore, the same access. For example, Catholic Relief Services is a relief organization that maintained a semipermanent relief program in India.¹⁷⁴ After the Indian Ocean Tsunami struck, their network in India allowed Catholic Relief to begin providing help almost instantly.¹⁷⁵ Several NGOs and organizations with religious affiliations also played a big part in the Hurricane Katrina relief efforts.¹⁷⁶

One problem with relying on private funds and private organizations to make up a large portion of a state's disaster relief aid is the possibility of donor apathy. After the Indian Ocean Tsunami and Hurricane Katrina, the Pakistani Earthquake marked the third large-scale natural disaster that called for private donations in a short period of time. However, by the time of the Pakistani Earthquake, several people speculated that the lower-than-expected donations to earthquake relief funds were due to donors simply being exhausted.¹⁷⁷ Two weeks after the disaster struck, foreign aid donations totaled \$86 million, less than a quarter of the \$312 million that the United Nations had requested.¹⁷⁸ In contrast, eighty percent of funding the United Nations requested after the Indian Ocean Tsunami struck was financed within ten days of the disaster.¹⁷⁹

Collateral damage to other charitable groups can result from donor apathy as well. After Hurricane Katrina struck the United States, some charities unrelated to the Hurricane Katrina effort reported a decrease in donations from the year before.¹⁸⁰ This shows another problem with the increase in reliance on private donations to cover natural disaster relief efforts.

172. *Id.*

173. *Id.*

174. Eric Lipton, *Asia's Deadly Waves: Relief; Even at Charity Used to Aiding, It's a Scramble*, N.Y. TIMES, Dec. 31, 2004, at A1.

175. *Id.*

176. See SELECT BIPARTISAN COMM. TO INVESTIGATE THE PREPARATION FOR AND RESPONSE TO HURRICANE KATRINA, A FAILURE OF INITIATIVE, H.R. REP. NO. 109-377, at 319-37, 343-54 (2006).

177. Somini Sengupta & David Rohde, *Winter Is the Enemy for Quake's Homeless Millions*, N.Y. TIMES, Oct. 21, 2005, at A1.

178. *Id.*

179. *Id.*

180. Kari Haskell, *The Neediest Cases; Answering Call of Needy, and Asking Others To Follow*, N.Y. TIMES, Dec. 4, 2005, § 1, at 50.

Privatization of disaster aid can have benefits, but it can also have drawbacks. The increase in the number and size of NGOs is a trend that any new IDRL plan will have to address and accommodate. Although states may make special efforts to elicit contributions from private corporations and individuals, they may be including those donations in their government's official response. Private entities may be better positioned and may enjoy broader local access than a state government, but relief organizations do not have the same resources to respond to natural disasters that a state government has. Therefore, the effect of privatization should be closely considered when making any IDRL.

VI. PROSPECTS FOR INTERNATIONAL DISASTER RESPONSE LAW

A. *Proposals*

Although there have been several proposals for IDRL in the past, there have been very few ones recently. In 1998, Rohan Hardcastle and Adrian Chua, faculty at the University of Western Australia, published an article listing proposed principles that could be incorporated into an international agreement on disaster response.¹⁸¹ They proposed that, following the U.N. guidelines for developing international agreements for human rights, an agreement be made on the right to receive humanitarian assistance.¹⁸² The proposal also calls for a supplementary right to receive humanitarian aid from external sources.¹⁸³ The plan calls for quality standards for NGOs and would require that they register with OCHA as "qualified organizations."¹⁸⁴ The biggest obstacles identified in the plan are state sovereignty objections.¹⁸⁵

An alternate plan comes from the IFRC, which has taken a leading role in the promotion of disaster response law. The current objectives of the IFRC are to propose improvements to the patchwork of disaster related laws that exist today and to develop new laws where none exist.¹⁸⁶ Although the IFRC does not presently advocate the creation of a global convention on disaster relief,¹⁸⁷ the IFRC has outlined several different organizational concepts for IDRL.¹⁸⁸

181. Hardcastle & Chua, *supra* note 39, at 600-05.

182. *Id.*

183. *Id.*

184. *Id.*

185. *Id.*

186. *The Federation Promotes the Development of International Disaster Response Law*, 83 INT'L REV. RED CROSS 546, 548 (2001).

187. David P. Fidler, *ASIL Insight: The Indian Ocean Tsunami and International Law* (Jan. 2005), <http://www.asil.org/insights/2005/01/insights050118.htm>.

188. WORLD DISASTERS REPORT 2000, *supra* note 8, at 155-56.

The first approach focuses on the operation of disaster response mechanisms.¹⁸⁹ Instead of relying on rules based on custom or affirmed in treaties, an operational approach focuses on existing legal cooperation in “aviation, international postal services and commercial transport.”¹⁹⁰ This shifts emphasis from rights and duties to standards and procedures.¹⁹¹

The next approach considers regional security as a starting point.¹⁹² Oftentimes, it is the countries neighboring disaster-stricken areas that provide a great deal of disaster assistance.¹⁹³ Addressing concerns about defense and security is necessary to developing regional agreements on disaster response.¹⁹⁴

A third approach, similar to the 1884 Red Cross proposal to extend the Geneva Convention to victims of natural disasters, would extend current international humanitarian law to include natural disasters.¹⁹⁵ Several current humanitarian law rules could easily be applied to a peacetime disaster, given the similar circumstances surrounding humanitarian and natural disasters.¹⁹⁶

The IFRC’s final approach for developing IDRL is to focus on creating a specific human right applicable to disaster assistance.¹⁹⁷ As discussed above, current practice seems to preclude the creation of customary international law in this field.¹⁹⁸ It seems that creating a new human right may have to come through a treaty.

B. Obstacles

As discussed above, in Part IV, there are several areas of IDRL that are in need of development and several problems to consider. Creating a comprehensive disaster response treaty is an onerous task. Currently, no single text sets forth legal standards, procedures, or rights and duties for disaster response.¹⁹⁹ Inconsistent state practice makes it difficult to develop norms that could later be codified in a treaty or become part of customary law.²⁰⁰

189. *Id.* at 155.

190. *Id.*

191. *Id.*

192. *Id.*

193. *Id.*

194. *Id.*

195. *Id.*

196. *Id.* at 155-56.

197. *Id.* at 156.

198. *See supra* Part III.C.

199. *Id.* at 145.

200. *See* Hardcastle & Chua, *supra* note 39, at 598-600.

In addition to the expanse of sensitive areas in need of a legal framework, there are several other obstacles to the creation of uniform disaster response laws. An enduring problem is money. The failure of the IRU has been attributed, in part, to the fact that it was underfunded.²⁰¹ As mentioned above in Part V.B, political maneuvering also often stymies relief efforts. Security has also become a major concern. In addition to concerns about terrorism, the contemporary notion of security entails protection from poverty, infectious diseases, and environmental degradation.²⁰² One proposal cited state sovereignty and the principle of nonintervention as the biggest impediments to IDRL.²⁰³ States will not lightly give up the right to control their borders. Another report from 2002 indicated that there is a vital need for more research on existing domestic laws to understand IDRL properly.²⁰⁴ Therefore, there are many obstacles that currently stand in the way of creating IDRL.

C. Current Action

Several projects aimed at creating and promoting IDRL are currently in the works. First and foremost is the IFRC's IDRL Project. The IDRL Project plans to continue its compilation, analysis, and clarification of laws, rules, and principles through the end of 2006.²⁰⁵ In 2005, the IDRL Project began a campaign to raise awareness and improve implementation of existing IDRL.²⁰⁶ The IDRL Project also plans to continue attempts to close the gaps in current IDRL through 2007.²⁰⁷

Other notable developments in IDRL include OCHA's plans to continue its work for disaster relief and carry out its coordination role by, among other things, developing common strategies with partners both within and outside the U.N. system.²⁰⁸ Additionally, the Tampere Convention's procedure-oriented approach has been hailed as an inspirational example of what future disaster response treaties should look like.²⁰⁹ Although the Tampere Convention was not in place at the

201. MACALISTER-SMITH, *supra* note 7, at 20.

202. Fidler, *supra* note 187.

203. Hardcastle & Chua, *supra* note 39, at 602-04.

204. Cater, *supra* note 9.

205. Int'l Fed'n of the Red Cross & Red Crescent Soc'ys, Revised IDRL Strategic Plan 2005-2007, at 1-2, <http://www.ifrc.org/docs/pubs/idrl/idrl-strategy.pdf> (last visited Sept. 8, 2006).

206. *Id.* at 3.

207. *Id.* at 4.

208. U.N. Office for the Coordination of Humanitarian Affairs, Coordination of Humanitarian Response, <http://ochaonline.un.org> (follow "Coordination" hyperlink) (last visited Sept. 9, 2006).

209. WORLD DISASTERS REPORT 2000, *supra* note 8, at 151.

time of the Indian Ocean Tsunami, its effectiveness in future disasters will be closely watched. In the United States, the inquiry into what went wrong with the response to Hurricane Katrina continues. The United States will soon release plans to change FEMA. The problems associated with Hurricane Katrina have forced all states to reconsider their disaster plans, which will likely involve considerations that carry international implications.

VII. CONCLUSION

What is the future of IDRL? Without any meaningful change to the current state of IDRL, the response to the next natural catastrophe that inevitably will fall may well be “disaster as usual.” For now, states seem content to respond to natural disasters on an ad hoc basis. As a result, NGOs, rather than states, currently lead the effort to understand and develop IDRL.

Promising new multilateral agreements, such as the Tampere Convention will continue to add pieces to the patchwork of IDRL. Although there are many gaps in current laws, research is underway to learn more about existing IDRL. Projects aimed at prompting states to adopt minimum guidelines for disaster relief may one day lead to the development of customary international law in the area.

NGOs continue to play a critical part in international efforts to respond to natural disasters. Recent responses to disasters such as the Indian Ocean Tsunami, Hurricane Katrina, and the Pakistani Earthquake benefited from the quick relief efforts of private providers. However, the increase in the privatization of aid can also have a detrimental effect on relief efforts. Without proper coordination, NGOs may add to the confusion that exists after a major natural disaster.

Within states, governments are responsible for organizing their own relief efforts. If a state is unable to coordinate its own relief efforts, securing international assistance becomes increasingly difficult. This not only frustrates victims of natural disasters, but also countries that are willing and able to offer aid. Developing disaster response laws on an international level will force countries to consider their own internal disaster response mechanisms. The development of IDRL will reduce the obstacles that countries face in accepting and receiving aid before they are in the midst of a disaster of biblical proportions.

Although it may be many years before a fully realized IDRL exists, natural disasters will not wait. With continued research and cooperation among states, one day in the future, when a natural disaster strikes and

victims ask, “when will help be on the way?” the world will have a convincing and effective response.