Chapter 2
International disaster response law treaties: trends, patterns and lacunae

Horst Fischer

Introduction
In 2001, the International Federation of Red Cross and Red Crescent Societies commissioned a study to collect and examine the key international treaties related to international disaster response and to identify the scope of the law, as well as any patterns in their rules including commonalities, differences and lacunae. Over 150 texts were gathered during this process, mainly from United Nations (UN) repositories, consisting primarily of multilateral and bilateral treaties, as well as a sample of relevant UN resolutions.

The following is a summary of some of the main findings of this study.

General trends in disaster law treaty making
Treaties dealing with international humanitarian action after natural and technological disasters are not a recent innovation. The efforts to establish the International Relief Union1 and the several bilateral treaties that were concluded after the Second World War2 indicate that states had, at that time, already discovered the necessity to deal with disaster response on the level of international law.

Today, the UN General Assembly has reaffirmed the same conviction by noting in its resolution 55/73 of 8 February 2001 on the new international humanitarian order:

“...The importance of adherence to internationally accepted norms and principles as well as the need to promote, as required, national and international legislation to meet actual and potential humanitarian challenges.”

From the available material, it seems that the UN has contributed to the regulation of disaster response in different forms since the very beginning of its existence. At various times, states have also used the UN system for setting up treaties dealing with disaster assistance or financing.3

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

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

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

In addition to these early treaties, states concluded agreements for limited cross border operations between neighbouring countries, such as the convention on mutual assistance between French and Spanish fire and emergency services of 14 July 1959.

Such agreements paved the way for another wave of treaties, which began to develop in the 1970s. These treaties established a comprehensive system of mutual assistance in cases of natural and technological disasters. They could also be seen as the result of attempts by the European Council (EC) to support and initiate rules for the prevention and protection against major natural and technological disasters and the organization of relief.

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

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

The main advantage of these treaties, particularly the most recent examples, is that they are more comprehensive in their coverage of cross border operations. These treaties include definitions, general principles of relief and provisions regulating requests and offers for assistance. They also function as a model for treaties with other states, and are adapted according to specific circumstances and partners.
More recently, the international decade for natural disaster reduction has triggered a significant change in the nature of treaty law in this area. This has had a major impact on both the national and international level and has resulted in several bilateral treaties to set up educational exchange programmes and committees related to disaster prevention, response and management. Most of these have been concluded between the United States and European or Asian states.\(^{11}\)

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

**Trends in multilateral treaties**

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

**Attempts at comprehensive multilateral treaties**

A prominent example of an attempt to establish a multinational convention relating to IDRL was the proposed draft convention on expediting the delivery of emergency relief of 1984, which was included as an addendum to the Report of the Secretary-General on the Office of the United Nations Disaster Relief Coordinator.\(^{11}\) This convention, however, was not successful.

More recently, the most comprehensive multilateral treaty in this area is the Tampere Convention on the Provision of Telecommunication Resources for Disaster Mitigation and Relief Operations\(^{11}\) (see Box 2.1). This treaty contains a detailed set of rules for specific aspects of disaster relief, including definitions, the scope of provision of assistance, privileges and immunities of personnel, the use of facilities, payment and reimbursement of costs or fees. However, it is important to note that this convention deals only with one specific aspect of international disaster response law, namely the provision of telecommunications, and even then, this convention has not been accepted on a global level and has not yet entered into force.\(^{17}\)

A treaty of similar significance is the Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency\(^{11}\), which was developed with the International Atomic Energy Agency after the Chernobyl catastrophe. It includes the same essential rules contained within the Tampere Convention as well as the addition of far reaching provisions on the privileges and immunities of assistance personnel, which could stand as a good model for other treaties.

**Multilateral treaties concerning international organizations**

Many multilateral treaties have been concluded between states and non-state parties such as international organizations. Such treaties generally concern only limited aspects of assistance, for example the International Development Association and Zimbabwe Development Credit

Some multilateral treaties are even more specific and deal with only one aspect of an assistance issue, for example the Exchange of Letters Constituting an Agreement (UN Relief and Works Agency for Palestinian Refugees in the Near East) and Lebanon regarding Funds Paid for the Baysaneh Project of 1987. This agreement only relates to the technical procedure of funding and the responsibility of one of the partners vis-à-vis a non-state entity.¹⁷

**Multilateral treaties concerning the status of personnel**

A further distinct category of multilateral treaty deals with the status of personnel involved in international missions. The 1946 Convention on the Privileges and Immunities of the United Nations reserves specific immunities for UN personnel and experts on mission, independent of the nature of the UN mission. The relevance of this document has been reaffirmed twice by the International Court of Justice in the human rights context. This treaty has made a positive impact on the delivery of assistance by UN personnel in disaster situations, particularly when compared to the lack of legal and other protection accorded to NGO personnel.

States have also benefited from the general objective of that convention by being able to incorporate its main rules in the formulation of separate agreements. The agreement between the UN, Sweden and Peru for the provision of a technical cadre unit of Sweden to Peru after the 1970 earthquake is an example where the immunities and privileges are similar to the convention.²⁹

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

Despite the fact that only a minority of states have ratified this convention, the general tendency to provide a special group of individuals with a certain protection is relevant for international disaster response law. The present debate about the 'white helmets' confirms this observation, as it encourages voluntary national and regional actions aimed at making national volunteer corps available to the UN system on a standby basis. This occurs through the UN Volunteers and other agencies in accordance with accepted UN procedures and practices, in order to provide specialized human and technical resources for emergency relief and rehabilitation.²¹ The wording of the resolution and its context shows the tendency to provide special voluntary manpower to disaster relief and to combine it with a certain status and image.

**Multilateral treaties dealing with specific areas of disaster response**

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

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

"Any Party requiring assistance for combating pollution by oil or other harmful substances polluting or threatening to pollute its coasts may call for assistance from other Parties [...] starting with the Parties, which appear likely to be affected by the pollution. This assistance may comprise, in particular, expert advice and the supply to or placing at the disposal of the Party concerned of products, equipment and nautical facilities. Parties so requested shall use their best endeavours to render this assistance.

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

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

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

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

Most of the treaties identified during the research for this study are bilateral treaties. Whilst the majority of the treaties presented here contain IDRL issues, they differ in both objective and content.

Bilateral treaties dealing with disaster response in general

First of all, there are treaties specifically dealing with response to disasters, both natural and technological, including basic rules on assistance. The United States-China agreement of 1947 is a good example of an old and very specific agreement in this area. It contains some of the basic provisions relating to international disaster response, including provisions concerning the procurement, storage, transportation and shipment of relief supplies and the fact that the purchase of relief supplies are generally made by and within the donor country. Other similar treaties, such as the United States-Peru agreement and the United States-Japan agreement, and the Sweden-Ethiopia agreement of 1957, do not refer directly to the core problems associated with international disaster response law, but they do confer certain rights and obligations for those assisting, and sometimes include rules on privileges.

Bilateral treaties dealing with technical cooperation

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

Bilateral treaties between neighbouring states

The last 15 years have given rise to more expanded treaties between neighbouring states, mainly concluded in Europe. These treaties not only establish a network of IDRL treaties in that specific region, but they also contain a pattern of rules relating to many of the core areas.

It is interesting to note that in some regions outside of Europe, there are no bilateral treaties between neighbours, or at least they are not readily available through the UN system. However, as will be indicated below, there are a significant number of treaties that have been concluded on broader regional and even global levels.

Bilateral treaties concluded on a broader regional level

There are many treaties that provide examples of this type of agreement, such as the Agreement between the Government of the Hellenic Republic and the Government of the Russian Federation on Cooperation in the Field of Prevention and Response to Natural and Man-Made Disasters.

Other treaties, presumably of the same type, are mentioned without the text being available so far in the UN Treaty Series:
- Armenia-Russian Federation Agreement on Cooperation in the Prevention of Industrial Accidents, Natural Disasters, and their Relief
Agreement on Cooperation and Mutual Assistance in the Field of Catastrophes, Natural Disasters, and Other Emergencies between Poland and Lithuania
Agreement between the Government of the Republic of Bulgaria and the Government of Romania on Peace-Time Cooperation in the Field of Civil Protection in Peace-Time
Agreement between the Government of Romania and the Government of the Republic of Hungary on Cooperation and Mutual Assistance in the Area of Disasters Mitigation and the Liquidation of their Consequences
Agreement Concluded by and between the Government of the Republic of Hungary and the Government of the Republic of Turkey on the Defence Against Natural Calamities and Technological Disasters

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

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

**Relationship between corresponding or conflicting multilateral and bilateral treaties**
Another interesting subject for analysis is the relationship and overlap between all of the above-mentioned multilateral treaties and corresponding bilateral treaties, many of which cover the same subject matter. A good example is found in the relationship between the Nordic Mutual Emergency Assistance Agreement in connection with radiation accidents of 1963 and the United Kingdom-Soviet Union Agreement of 1990 on Early Notification of a Nuclear Accident and Exchange of Information Concerning the Operation and Management of Nuclear Facilities, where both contain a number of similar clauses. However, this subject will require a more detailed analysis than is possible within the scope of this study.

**Treaties for border regions or special topics of international disaster response**
It is remarkable that on certain issues, states have been able to successfully conclude treaties on the sub-state regional level. In doing so, such treaties take into account the specific needs of trans-border incidents and the necessity of a fast response at this level.
There are also treaties dealing with specific types of assistance such as the Agreement on the Facilitation of Air Ambulance Flights in Frontier Regions between Austria and Italy concluded in 1989. This treaty contains rules facilitating trans-border flights in a limited context, without extending these provisions to include situations of major disasters and without creating any broader context for mutual assistance between the two countries. Interestingly, this narrowly constructed treaty represents the only example between Austria and Italy, whereas Austria has in fact concluded several other more detailed and comprehensive treaties with other neighbouring countries such as Germany and Hungary.

In some instances, reliance on a single, narrowly construed treaty is not sufficient to cover all the relevant circumstances and requires amendment. For example, the treaty between France and Spain of 1959 on the assistance of fire fighters in the border region only deals with requests for assistance in disaster situations in the vicinity of the border region. It does not cover situations of emergency over-flights and hence was amended to allow for speedy cross-border air transport assistance. The two parties granted mutual permanent over-flight permits which apply to French and Spanish aircraft participating in emergency actions as described in the original agreement. In this respect the amended treaty goes beyond the scope of limiting activities to a certain area, which was the underlying rationale of the original treaty.

**Patterns of international disaster response law regulations**

As evident from the above discussion, IDRL treaties vary in objective, form and content. Despite the fact that several of the treaties, particularly those concluded in the 1990s between neighbouring states, do have similarities or may be almost identical, there is no obvious blueprint for an ideal multilateral or bilateral treaty.

Nevertheless, it is possible to make some general observations about the content of these treaties and identify some areas common to most.

**General observations**

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

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

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

The Switzerland-Philippines agreement⁶, recently concluded and not yet in force, is an example of another tendency to combine the broader development context with a disaster response approach. This model has also been partially followed by the European Union (EU).

Thus, whilst the content of the various treaties is guided by the context and the specific objective of the treaty, it is possible to conclude that certain patterns do exist, and for certain regions a specific treaty practice has been established with the potential to be transformed into customary law rules.

Patterns in treaty titles

Whilst the specific wording of the titles of IDRL treaties are different, certain patterns are nevertheless identifiable in terms of the applicability of the title to the content of the treaty itself.

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

For the more generalized treaties, the trend seems to favour the combination of the terms mutual assistance, natural or technological disasters and/or accidents as exemplified by the convention between France and Belgium of 1981 on Mutual Assistance in the Event of Disasters or Serious Accidents or the agreement between Belgium and the Netherlands of 2002.⁷

It would be reasonable to suggest that treaties with titles that indicate the intent of states to cooperate and/or assist each other in the case of natural or technological disasters, by nature, belong to the corpus of IDRL. This would also include treaties which cover the prevention aspects of disasters, such as the Memorandum of Understanding between the Government of

**Responsible partners**

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

**Treaty objectives and purpose**

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

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

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

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

Despite the fact that in all cases the specific purpose is different, the underlying rationale is the need to increase capacities to deal with the effects of disaster.

**Request and response**

One of the distinct features of the IDRL treaty system is the classification of requesting and responding states, and the respective allocation of specific rights and obligations.
Requests and responses include both active and passive elements. It is generally understood that assistance cannot be given without a request, and such a request cannot be demanded without an offer. However, if a request is made, then a response should always be offered. This system of reciprocity, in conjunction with the principle of sovereignty, provides the overall context for the specific rights and obligations in the fulfilment of the treaty provisions.

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

In addition to these general rules, several of the treaties list specific state organs or specialized agencies that are authorized to request and initiate emergency measures on behalf of, or in lieu of, the parties to the treaty. Specific state organs and authorities in a border region may sometimes be identified as responsible partners for both parties to the treaty. If, because of the multilateral nature of the treaty, such authorities cannot be identified in advance, mechanisms are set up to make such identification possible in the case of disaster.

**Definitions**

In addition to introducing the requesting and responding state, almost all mutual assistance treaties contain definitions about the most important terms used in the treaties.

There is not only variation concerning the number of definitions but also concerning the content of the definitions. Essential definitions refer to at least three aspects of the treaty rules and might be expressed as follows:
- personnel of the operation – this includes the personnel specifically sent by the responding state;
- equipment of the operation – this includes all items necessary to provide the assistance; and
- relief supplies – supplies distributed to the affected persons.

**Responsibility and coordination**

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

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

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

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

Emphasizing further in this regard, the importance of international co-operation in support of the efforts of the affected State in dealing with natural disasters in all its phases.\textsuperscript{13}

Not only do treaties assign the requesting state as being responsible for the coordination, they also occasionally define the meaning of the term coordination for the specific purpose of the treaty. For example, Spain and Argentina have set up a list defining coordination:

Co-operation with a view to disaster preparedness and prevention in connection with natural, man-made or technological incidents that threaten or harm people, property and the environment involves:

- Exchanging information, documentation, publications and teaching materials of scientific and technical nature;
- Training specialists in disaster preparedness and prevention and the provision of emergency aid;
- Providing assistance with respect to the organization, planning and operation of bodies responsible for coordinating activities in the field of disaster preparedness and prevention and emergency aid;
- Taking part in the design and implementation of exercises in the other State;
- Transferring state-of-the-art technology;
- Organizing meetings, encounters, courses, congresses and seminars;
- Awarding fellowships for professional and technical development in the institutions of each Party;
- Dispatching experts to provide consultancy or advisory services;
- Jointly preparing and implementing specific programmes and projects, which should state, inter-alia, the objectives of the said programmes and projects, their duration, the obligations of each Party and the most appropriate form of financing.\textsuperscript{14}

Similar extensive descriptions can be found in other treaties such as the 2000 Agreement between the Government of the Hellenic Republic and the Government of the Russian Federation on Co-operation in the Field of Prevention and Response to Natural and Man-Made Disasters.\textsuperscript{15}

While some treaties contain very detailed descriptions designed to meet the specific purpose of the treaty, it can also be argued that even without such an explicit list, there is an underlying understanding of the term cooperation, which is common to all. These generic elements of
cooperation include: interaction between the competent bodies of both parties; mutual assistance in providing technical facilities and equipment; and planning and carrying out activities related to emergency response.

**Instructions for emergency teams**

Some treaties relating to disaster response make specific provisions relating to the flow of information between the contracting parties (usually states) and the emergency response teams that will be carrying out the response tasks. These provisions assist in further defining the responsibilities of the parties to the treaties and also provide additional instructions on the appropriate flow of information. Such provisions may explicitly state that instructions can only be given to the leaders of emergency teams, who must be identified by the responding party for the benefit of the requesting party.⁶⁶

**Access of personnel and equipment**

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

Most of the treaties reflect a general intention to ensure that frontier-crossing formalities are minimized. Whilst this could not be identified as a specific rule, it seems to be justified to state that, in principle, personnel are exempted from visa and passport requirements for their entry and stay during an emergency operation, provided that a certificate and a list of the members of the disaster response team can be provided. Such a principle has been reflected in both older and more recent treaties on disaster response.⁶⁷

There also seems to be a generally accepted principle which exempts personnel from visa and other formalities in urgent cases when the frontier crossing is required to take place at points other than the authorized crossing points.⁶⁸ Sometimes this provision is qualified by the requirement of prior notice from the requesting state.⁶⁹

These generally accepted principles are usually applied to treaties dealing exclusively or mainly with disaster response. Treaties, in which the focus is on prevention rather than on response, do not include such clauses.⁷⁰

**Relief goods and customs**

Many treaties, both bilateral and multilateral, include a specific set of rules on the customs requirements for relief goods, which often provides exemptions from import duties, taxes and economic import restrictions.⁷¹ This principle is also found in many bilateral disaster response treaties.

There has been a desire to convert the already existing bilateral practice to the multilateral level, which has been emphasized in the report of the UN Secretary General on the strengthening of the coordination of emergency humanitarian assistance in the context of international urban search and rescue.
initiatives to develop a legal framework for international assistance in the wake of natural disasters and environmental emergencies, outlining the responsibilities of countries receiving and providing support. Member States may wish to consider drafting a convention on the deployment and utilization of international urban search and rescue teams. Such a convention would provide a working framework for complex issues, such as utilization of air space, customs regulations for import of equipment, respective responsibilities of providing and recipient countries, that have to be resolved prior to the international response to a sudden-onset natural disaster.

Status, immunities and protection of personnel

The rules on the status and protection of personnel vary to a certain extent, in the treaties examined here. Only a few refer to specific immunities granted to personnel used in disaster response. The most explicit of these references is contained in the Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency in Article 8, Paragraph 1 which requires the requesting state to afford to personnel of the assisting party and personnel acting on its behalf the necessary privileges, immunities and facilities for the performance of their assistance functions. More specifically, according to Paragraph 2 of that article, the requesting state shall afford the following privileges and immunities to personnel of the assisting party or personnel acting on its behalf who have been duly notified to and accepted by the requesting State:

- Immunity from arrest, detention and legal process, including criminal, civil and administrative jurisdiction, of the requesting State, in respect of acts or omissions in the performance of their duties; and
- Exemption from taxation, duties or other charges, except those which are normally incorporated in the price of goods or paid for services rendered, in respect of the performance of their assistance functions.

Despite the fact that some of the older disaster response treaties foresee immunities for personnel involved, none of the more recent bilateral treaties include a similar rule. The only similar, and in fact almost identical, rule on privileges and immunities can be found in a multilateral treaty, in Article 5 of the Tampere Convention.

The practice of the UN regarding the safety and security of humanitarian personnel does not reflect a general understanding on a multilateral level about immunities for disaster response personnel. The most recent UN General Assembly resolution on this topic, of 19 February 2002 does not mention such a practice or need.

The bilateral treaties, on the other hand, do refer to the protection of disaster response personnel. Though various terms are used, it seems to be generally accepted either by explicit rules or implicitly, that the protection of disaster response personnel is the obligation of the requesting state. As stated in the Germany-Denmark agreement: “The authorities of the requesting Contracting Party shall extend protection and assistance to the emergency teams of
the requested Contracting Party. This formula goes beyond the mere acceptance of operations on the territory and includes active protection against attacks and any other form of violence.

Such understanding is in line with the recent statements about protection in the framework of humanitarian assistance and the responsibilities of governments. In his report of 29 May 2002, the UN Secretary General stated:

“This culture demands an increased focus on human security, in which peoples' needs provide the driving force for humanitarian action, and where the legal and physical security of the individual is at its core, based on a respect for fundamental human rights. The need to create a far-reaching culture of protection that guides all of our actions and responses on behalf of victims of armed conflict has been widely recognized. Much more needs to be done to ensure that it becomes a reality. The primary responsibility for the protection of civilians rests with Governments. This is clearly set out in the provisions of international law and is stressed as one of the key guiding principles of humanitarian assistance adopted by the General Assembly in its resolution 46/182 and reiterated in other General Assembly and Security Council resolutions.”

**Costs**

Nearly all treaties examined include a chapter or article on costs, indicating its primary importance in disaster response agreements. There are several types of costs resulting from a disaster relief operation. There is a need to distinguish between the costs for the operation, the costs involved for personnel on the territory of the requesting state and costs for the use of special equipment.

The most recent treaties all accept the principle that the requesting state shall not bear the costs for the operation, as exemplified by the treaty between Spain and Portugal of 1992 in Article 4. Again it is apparent that this principle is not applied in treaties where the focus is not on response but rather on prevention and education.

There is a second aspect to the general principle concerning costs of operations. If special costs are incurred for the operation inside the territory of the requesting state, such costs should be borne by the requesting state. The treaty between Spain and Morocco is an example of this. Although it is generally accepted that the costs for the specific use of equipment should not fall under the general principle, the rules nevertheless vary in this regard.

**Concluding observations**

**Absence of material within specific regions**

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

**Inconsistencies in regulations**

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

**Lacunae in existing laws**

In addition to inconsistencies within the various subject areas, there are also some significant
aspects of disaster response that remain inadequately regulated or are omitted entirely from
these agreements. These areas include:
- entry requirements;
- work permits;
- freedom of movement;
- status of personnel and specific immunities;
- legal recognition of professional expertise;
- information exchange;
- treatment of consignments;
- transport in the territory of the requesting state;
- customs tariffs and;
- distribution and use of relief.

**Future study of international disaster response law**

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


8. See also Agreement Relating to Emergency Relief Supplies of the United States of America, Mexico, 1082 UNTS 116 (entered into force 13 June 1972).

9. Council of Europe, Resolution 726 (on precautions against natural and other disasters and the planning and provision of disaster relief, 18 February 1972, 20th Meeting of the Ministers’ Deputies).

10. Agreement on Mutual Assistance in the Event of Disasters or Serious Accidents, 2 February 1972, France-Germany, 1214 UNTS 67 (entered into force 1 December 1980).


19. Exchange of letters constituting an agreement regarding funds paid for the Beirut Relief Project, opened for signature 26 September 1982, United Nations, United Nations Relief and Works Agency for Palestinian Refugees in the Near East, 285 UNTS 190 (entered into force 11 December 1982). "As the subject of the above mentioned exchange for Beirut Relief Corp has been raised during our last meeting on 22, 29, 30", and in order to discharge the agency from responsibility concerning this matter, we believe that the advance should be returned to the Lebanese Government in the amount to which it has grown, together with the accrued interest, and deposited in the Central Bank to the credit of the Government’s Treasury. The Lebanese Government undertakes to assume all judicial consequences that might ensue towards the AO following the circulating of the advance.".


24. Other means do not foresee such an assistance device despite their recent conclusion, see e.g. European Agreement concerning the International Carriage of Dangerous Goods by Inland Waterways, concluded 25 May 2000.

25. The United States Government agencies will provide for the procurement, storage, transportation and shipment to China of United States relief supplies, except to the extent that the United States Government may authorize other means for the performance of these services in accordance with the procedures stipulated by the United States Government. United States relief supplies shall be procured in the United States except when specific approval for procurement outside the United States is given by the United States Government; Agreement concerning the United States relief assistance to the Chinese people (with Exchange of Notes), 27 October 1947.

26. Exchange of Notes Constituting an Agreement Relating to Supplies Agricultural Commodities for the Direct Relief Assistance, 17 April and 4 May 1956, United States of America, 258 UNTS 117 (entered into force 4 May 1956).


28. "Also, all ships operating Swedish personnel under this Agreement shall be exempt in Ethiopia from all Ethiopian income tax or other personal tax or property tax on personal property intended for their own use, including customs and import duties on personal effects, equipment and supplies imported into Ethiopia for their own exclusive use" Agreement for technical assistance to the field of health, 16 March 1957.

29. Agreement on Scientific and Technological Cooperation, 29 June 1950, Republic of Korea-Poland, 197 UNTS 286. "With a view to facilitating scientific and technological co-operation, the Contracting Parties shall encourage, where appropriate, the conclusion of implementing agreements between their government agencies, research institutes, universities and other relevant institutes.

30. Such treaties have been developed in Central Europe for example by the Netherlands, Belgium, Germany, Denmark, Austria, Poland, Hungary, the Czech and the Slovak Republic.


34. The reservoirs situation has to be tested in the future as well as the dances on the priority of roles of the Vienna Convention on the Law of Treaties.

35. One example is the Common Alert Plan for the Mitigation of Damages Resulting from Incidents (Schadensfallpläne) and Damage to Public Health Resulting from Communicable Diseases, with Possible Trans-border Consequences, Between the Governments of Nickelray and Oberbayern, and the Agencies of the State Governments of Oberbayern and Salzburg. See also Cordon du Europe, BRGÖV B3-E3-2000/2, Annex II, Comité Directeur sur la démolie le passage (CDP). Countries interested can see cooperation agreements that have not yet available.

36. See also Common Alert Plans for Tynd, Oberbayern, and Studies for the coordination of medical measures in case of massive pollution of the boundary waters and their tributaries.


38. Other examples of this are found within the following Agreement for the Duty Free Entry of Relief Supplies, 20 October 1964, United Kingdom of Great Britain and Northern Ireland, 24 April 1996, Austria. For the purpose of the present agreement, supplies of goods and standard products for relief and rehabilitation shall be limited to foodgrains and other foodstuffs, including milk powder, processed foodstuffs and multipurpose goods, drugs and medicines, medical equipment and supplies, agricultural implements and such other donated supplies and goods for purposes of relief and rehabilitation as may be agreed to by the Governments of India and the Government of the United Kingdom.


40. Agreement concerning mutual assistance in the event of disasters or serious accidents, 23 December 1981, Austria-Czechoslovakia, 1976 UNTS 225 and Agreement on mutual assistance in the event of disasters and serious accidents, 20 April 1996, Austria-Hungary. Other treaties in this respect are, for example, the recent agreement concluded between the Ministry of the Interior of Medellín-Venezuela and the Ministry of the Interior and Public Administration of the Republic of Poland on mutual assistance in case of disasters or serious accidents. The 1996 Pacific Northwest Emergency Management Agreement between the United States of America and Canada and the Agreement concerning the improvement of rescue services in the frontier areas (with exchange of notes), 19 March 1974, Sweden-Norway, 1424 UNTS 301 (entered into force 10 March 1974).

41. Agreement concerning mutual assistance in the event of natural disasters or major emergencies, Switzerland-Philippines (6 December 2002).

42. See also the Convention on Mutual Assistance in Combating Disasters and Accidents, 14 November 1984, Netherlands-Belgium, 1526 UNTS 41 (entered into force 1 November 1999) and other treaties concluded in the Central European region in the 1990s.

43. For example: Protocol of Intention Concerning Cooperation and Disaster Prevention and Management, United States of America-Philippines, 20 November 2001, which only mentions FEMA as implementing agency in article 4.

44. See also Protocol of Intention Concerning Cooperation and Disaster Prevention and Management, United States of America-Philippines, 20 November 2001, which only mentions FEMA as implementing agency in article 4.

45. For example: Protocol of Intention Concerning Cooperation in Natural and Man-made Technological Emergency Prevention and Response, 5 June 2000, which FEMA is referred to as a treaty party.

47. Agreement between on Mutual Assistance in the Event of Disasters or Serious Accidents, 10 April 1997, Germany-India, BG1 II, 1997, 1178. See also memoranda of understanding between the Government of the United States of America and the Government of the United Kingdom cooperation in chemical and biological technological emergency prevention and response, 5 June 2000. See also the Protocol on technical cooperation and mutual assistance in the field of civil defense, 9 March 1990, Spain-Portugal, 1700 UNTS 207 (entered into force 2 July 1992), which states in its preamble: “Considering that it is of mutual interest to stimulate and further scientific and technical research and mutual assistance, including the dispatch of relief in the event of serious accidents, emergencies or disasters”.

48. Sometimes the term “sending State” is also used. See agreement between Switzerland and the Philippines on an example: Agreement on cooperation in the event of natural disasters or major emergencies, 26 December 2001, Switzerland-Philippines.

49. See Agreement on Mutual Assistance, 26 May 1985, Denmark-Germany, 1529 UNTS 108, article 3 (entered into force 11 August 1988).

50. Temporal Council on the Provision of Telecommunications Resources for Disaster Mitigation and Relief Operations, Inter-governmental Conference on Emergency Telecommunications (ICETEL III) opened for signature 18 June 1998, Article 8 (not yet entered into force) (see Box 2.1).

51. A typical example is the definition used in the Agreement on cooperation and mutual assistance in case of accidents, 26 June 1985, France-Estonia, 4579 UNTS 152 (entered into force 31 July 1986), which states in Article 1: "The Party requesting assistance means the Party which, in accordance with this Agreement, requests that the other Party send relief teams, medical equipment and relief supplies.

52. Such core definitions can be specifically found in the treaties: Agreement on the facilitation of air ambulance flights in the frontier regions for urgent transport of injured or seriously ill persons, 21 February 1999, Austria-Italy, Agreement between the Government of the Russian Federation and the Government of the Russian Federation on Cooperation in the Field of Prevention and Response to Natural and Technological Catastrophes, 21 February 2000, Germany in its treaties with neighboring countries.


57. The wording in the Convention on mutual assistance in the event of disasters or serious accidents, 21 April 1981, France-Fiji, 1437 UNTS 33, Article 7 para. 2 (entered into force 1 February 1990) states: "Instructions for the emergency teams of the requesting Contracting Party shall be transmitted solely to their leaders, who shall brief their personnel on the plans of action. The competent authorities of the Contracting Party requesting assistance shall, if possible, specify in the request for assistance the duties which they intend to assign to the emergency teams of the requesting Contracting Party." See also the treaties concluded by Switzerland with its neighbours and article 7 of the Agreement on mutual assistance in the event of disasters or serious accidents (with exchange of notes), 16 May 1985, Switzerland-Germany, 1529 UNTS 108 (entered into force 1 August 1988).

58. See the Agreement on mutual assistance in the event of disasters or serious accidents, 26 April 1996, Austria-Hungary, BG1 II, 1997/1998, article 6 on an example of an accord treaty, and Convention on mutual assistance in the event of disasters or serious accidents, 21 April 1981, France-Belgium, 1457 UNTS 33, article 4 (entered into force 1 February 1994) on an example of older treaties.

59. Not all treaties include such an exemption clause. See for example: the Agreement on Mutual Assistance in the Event of Disasters or Serious Accidents, 16 December 1992, Germany-Russia, BG1 II, 1993, 354, article 5.
60. Agreement on Cooperation on Disaster Preparedness and Prevention, and Mutual Assistance in the Event of Disasters, 3 June 1980, Spain-Argentina, article 1(1), Agreement on Mutual Assistance, 16 May 1965, Denmark-Germany, 1523 UNTS 106, article 4 para. 4 (entered into force 1 August 1968).

61. Memorandum of Understanding between the government of the Russian Federation and the government of the United States of America on cooperation in natural and manmade technological emergency prevention and response, 16 July 1996, Article 1. "In accordance with international law and with the laws of both States, the United States shall, for the purpose of cooperative activities under this Memorandum, facilitate access to areas that are under its jurisdiction, as well as to relevant institutions, organizations, and sources of information under such reasonable conditions as the Party may establish."

62. The International Convention on the Simplification and Harmonization of Customs Procedures of 19 May 1973 with its amending protocol of 1999 includes a declaratory that "compositions received as gifts by approved organizations for use by or under the control of such organizations, or for distribution free of charge by them or under their control, should be admitted free of import duties and taxes and free of economic import prohibitions or restrictions". IAS 66-22, Chapter 5, principle 3.


64. See the 1967 US-China agreement which grants its articles' privileges and immunities to the US representatives as well as those of the US nationals are enjoyed by the personnel of the US Embassy in China: Agreement concerning the United States relief assistance to the Chinese people (with Exchange of Notes), 27 October 1967, China-US, United States of America, 12 UNTS 11 (entered into force 27 October 1967). See also the specific case mentioned in the Agreement between the Government of the United States of America and the Government of the Republic of Italy Regarding Cooperation to Facilitate the Provision of Assistance, 18 July 1996, United States-Italy, article 2.


66. Agreement on Mutual Assistance, 16 May 1965, Denmark-Germany, 1523 UNTS 108, article 7 para. 3.


69. "No payment shall be required from one Party to the other Party as reimbursement for the costs of assistance or for lost, damaged or destroyed vehicles or other equipment." See also all treaties concluded in the 1960s in Central Europe.


71. Agreement on Technical Cooperation and Mutual Assistance in the Field of Civil Defence, 21 January 1987, Spain-Morocco, 1717 UNTS 162, article 4: "The costs incurred in provisioning the emergency teams and in furnishing supplies for the functioning of the vehicles or other equipment, shall be borne, throughout the operations, by the Party receiving assistance."