International Disaster Response Law
Legal Frameworks for Least Developed Countries only?

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### Abbreviations

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<th>Abbreviation</th>
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<tbody>
<tr>
<td>ASEAN</td>
<td>Association of South-East Asian Nations</td>
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<td>CoE</td>
<td>Council of Europe</td>
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<td>DHA</td>
<td>Department of Humanitarian Affairs of the United Nations</td>
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<td>ECOSOC</td>
<td>United Nations Economic and Social Council</td>
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<td>EU</td>
<td>European Union</td>
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<td>ICRC</td>
<td>International Committee of the Red Cross</td>
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<td>IDL</td>
<td>International Disaster Law</td>
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<td>IDP</td>
<td>Internally Displaced Person</td>
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<td>IDR</td>
<td>International Disaster Response</td>
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<td>IDRL</td>
<td>International Disaster Response Law</td>
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<td>IFRC</td>
<td>International Federation of Red Cross and Red Crescent Societies</td>
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<td>ILC</td>
<td>International Law Commission</td>
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<td>IO</td>
<td>International Organization</td>
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<td>MoU</td>
<td>Memorandum of Understanding</td>
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<td>NGO</td>
<td>Non-Governmental Organization</td>
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<td>Res</td>
<td>Resolution</td>
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<td>SDGs</td>
<td>Sustainable Development Goals</td>
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<td>TFEU</td>
<td>Treaty on the Functioning of the European Union</td>
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<td>UN</td>
<td>United Nations</td>
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<td>UN GA</td>
<td>United Nations General Assembly</td>
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<tr>
<td>UNDRO</td>
<td>Office of the United Nations Disaster Relief Co-ordinator</td>
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<td>UNISDR</td>
<td>United Nations Office for Disaster Risk Reduction</td>
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1. Introduction and Challenges

One of the biggest threats to human safety and sustainable development today is represented by disasters caused by natural hazards. Only in the last decade, disasters have caused approximately 840,000 deaths and affected almost 200 million people each year. On average, the disaster-related economic damages have been estimated at US$ 162.2 billion per year.¹

There are plenty of possibilities to prevent natural hazards turning into disasters. Reducing risk and strengthening community resilience have proven to be key elements to reach this aim and are essential for creating an enabling environment for reducing disaster risks, preventing new risks from arising and making communities safer.²

International Organizations such as the United Nations (UN) and the International Federation of Red Cross and Red Crescent Societies (IFRC), collaborating with many governments and various other Non-Governmental Organizations (NGOs) have been developing and testing numerous principles and guidelines not only for strengthening resilience but also to coordinate all the different stakeholders in the event of a disaster. The latter became an important part of International Disaster Response Law (IDRL) given the fact that the number of foreign NGOs responding to a disaster has been tremendously increasing over the last years. While in 2003, 120 foreign NGOs responded to an earthquake in Iran, more than 400 tried to assist in the earthquake in Haiti in 2010.³ It is obvious that an effective disaster response needs a well-established and well-tested coordination of not only but especially these foreign International Organizations.

Foreign assisting institutions supporting countries hit by a disaster are often not only confronted with challenges originating in the disaster itself but also with a large number of legal issues. Their work is strongly influenced by the quantity and quality of these laws applicable in the affected country, addressing certain areas such as humanitarian organizations’ personnel, goods and equipment, transport, taxation or security. The missing of regulations about expedited grant or waiver of visas / work permits, recognition of professional qualifications and the freedom of

movement and access to disaster areas for relief staff can also hamper the distribution of desperately needed aid. The better rules for exemptions from customs duties and taxes, the reduction of documentation and inspection requirements and the reduction of barriers to the import and use of highly regulated items such as food, medications, vehicles and telecommunications equipment are established and implemented, the more effective international actors can assist.4

An example of how obstructive legal barriers and the lack of regulations to effective relief operations can be, depicts the situation in Sri Lanka and Indonesia after the tsunami in December 2004. Due to backlogged customs clearings in both countries, hundreds of containers of relief goods (containing tents, blankets, body bags and food) remained stranded long after they were perished or no longer needed.5 In January 2006, over 400 containers were still in customs custody in Indonesia6 (the 2004 Tsunami in Indonesia will be discussed in chapter 7.3).

Apart from that, reports piled up, that some (not exclusively) inexperienced relief actors have also provided goods of poor quality7 or services incompetently8. After the tsunami in Indonesia, an unidentified NGO reportedly vaccinated some of the children in a village near Banda Aceh, “leaving no records and no way to determine who had been vaccinated and who had not”9.

By addressing also those issues, International Disaster Response Laws do not only target to facilitate and coordinate the work of organizations responding to a disaster. They also aim to set and guarantee certain standards.

Over the last decades, numerous international legal instruments dealing with issues occurring in the event of a disaster have been developed. However, their implementation into national law often proves to be rather difficult since IDRL affects numerous other fields of national and international law and not infrequently suggests measures opposed to existing domestic regulations. The implementation of IDRL frameworks is also hampered by the inconsistent definition of the term of ‘disaster’ and the fundamental question if laws dealing with such events

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4 Cf. Guidelines for the domestic facilitation and regulation of international disaster relief and initial recovery assistance (“IDRL Guidelines”), adopted by Resolution 4, 30th International Conference of the Red Cross and Red Crescent, 26-30 November 2007.
6 Cf. IFRC, Law and legal issues in international disaster response: a desk study (Desk Study), 2007, 13.
are applicable in every situation or certain circumstances are to be omitted due to well elaborated and established international laws such as International Humanitarian Law (IHL) in armed conflict situations. Nevertheless, instruments like the IFRC IDRL Guidelines of 2007 contain profound recommendations for states to adapt their domestic legislation and are used by numerous governments all over the world. However, a significant difference between industrialized states and states listed on the United Nations list of Least Developed Countries (LDCs) relating to the implementation of International Disaster Laws (IDLs) can be observed. The Report on the Implementation of the Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance of 2015 found that while LDCs tend to have a greater willingness to adopt International Disaster Response Law frameworks, industrialized countries focus on developing domestic or regional standards. This fact is often underlined by statements of industrialized countries’ officials recognizing that international standards for disaster response are important, but rather unnecessary for their own country10 due to its high standard of development. This raises the question, if industrialized countries even need rules of IDRL or if those rules are redundant due to the states’ capability of handling all possible disasters by themselves. Based on this, the research questions of this diploma thesis are formulated: are IDRL frameworks for LDCs only? Would industrialized countries also benefit from harmonized international disaster response laws?

To give a sound answer to these questions, some fundamental definitions of IDRL are addressed first. The clarification of the notion of disaster, the demarcations of Disaster Risk Reduction, Disaster Risk Management and the meaning of the Disaster Management Cycle are the basis for profound discussions of this field of law. Chapters three deals with the development of IDRL. While international assistance to disasters was already issued in the 18th century, the emergence of International Organizations in the last hundred years have boosted the development of international standards.

Chapter four is dedicated to the fields of law interlinked with IDRL. Issues such as the initiation and termination of international assistance operations, the legal challenges for foreign personnel or the importation of goods and equipment are discussed. As already mentioned, various branches of international law are relevant to international disaster response. Human Rights, IHL and the law of refugees and internally displaced persons are only some of the areas mentioned and analysed in this chapter.

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The numerous existing legal frameworks dealing with IDRL in all their variations are part of chapter five. States have passed global, regional and bilateral agreements addressing IDR. The most important instruments such as the Code of Conduct, the Hyogo Framework for Action, the IDRL Guidelines 2007, the Sendai Framework for Disaster Risk Reduction and the latest Draft Articles on the Protection of Persons in the Event of Disasters developed by the International Law Commission (ILC) have had great impacts on domestic legislation.

After presenting the emerging new stakeholders in IDRL in chapter six, chapter seven focuses on the impacts of IDRL. IOs provide numerous tools for lawmakers to guide them through the implementation process of IDRL. Nevertheless, most of the states adopt IDRLs reactive than proactive and often a devastating disaster is needed to get states to deal with IDRL. Two case studies of the 2004 Tsunami in Indonesia and the 2005 Hurricane Katrina in the United States of America and their impacts on the respective national disaster legislation are examined and compared. The representative differences of those two countries are transferable to the general level of distinction between industrialized countries and LDCs.

The last chapter sums up the findings of this diploma thesis and deals with the research questions of whether industrialized countries even need IDRL frameworks or if they would also benefit from harmonized international standards. Based on the previous chapters, a conclusion is provided and discussed.
2. Definitions

2.1 The Notion of Disaster

A clarification of the notion of ‘disaster’, essential for an accurate description of IDRL, can be based on an examination of the various definitions used in relevant existing treaties:

Article 1 paragraph 6 of the 1998 Tampere Convention on the Provision of Telecommunication Resources for Disaster Mitigation and Relief Operations defines a disaster as:

“*A serious disruption of the functioning of society, posing a significant, widespread threat to human life, health, property or the environment, whether caused by accident, nature or human activity, and whether developing suddenly or as the result of complex, long-term process.*”\(^{11}\)

According to the 1991 passed Agreement on establishing the Caribbean Disaster Emergency Response Agency (CDERA Agreement) between the Caribbean States, a disaster is:

“*...a sudden event attributable directly and solely either to the operation of the forces of nature or to human intervention or to both of them and characterized by widespread destruction of lives or property accompanied by extensive dislocation of public services, but excluding events occasioned by war, military confrontation or mismanagement.*”\(^{12}\)

The governments of the Finnish Republic and the Russian Federation agreed in the 1994 Agreement about co-operation to avert disasters and to prevent their consequences on the following definition:

“*a disaster is understood to be an industrial accident, an explosion, a fire, a cave-in, an earthquake, a flood, or another comparable event or natural catastrophe, which causes or may cause injury or damage to people, property or the environment.*”\(^{13}\)


\(^{13}\) Agreement by and between the Government of the Finnish Republic and the Government of the Russian Federation about Cooperation to avert disasters and to prevent their consequences (adopted 9 August 1994) FAOLEX No LEX-FAOC030416 art. 1.
Even though most of the definitions provided in relevant treaties do not differ in any significant manner,\textsuperscript{14} they are far from being well elaborated or unified. The scientific community considers a “broader, more multidimensional rather than restrictive compartmentalised definitional approach”\textsuperscript{15} to be necessary. A strict demarcation between ‘natural’ and ‘man-made’ disasters should be avoided since different forms of disasters are usually interconnected. It is often even impossible to distinguish between effects triggered by man-made actions or natural events which affects the applicability of law and policies.\textsuperscript{16}

When the ILC decided to develop a legal instrument dealing with the Protection of Persons in the Event of a Disaster in 2007, Eduardo Valencia-Ospina was appointed the Special Rapporteur. In his preliminary report to the 60\textsuperscript{th} session of the ILC in 2008, he concluded that “there is [still] no generally accepted legal definition of the term [disaster] in international law”\textsuperscript{17}. All the more he stressed the importance and necessity of a comprehensive definition in his Second Report in 2009. According to his research, the definition is needed to identify situations “in which protection may or shall be invoked, as well as the circumstances under which protection will no longer be necessary” and it should help “to identify those persons in need of protection”.\textsuperscript{18} He presented three different aspects of a disaster that could form a valid definition: Disasters can be classified according to their cause, context and in terms of their duration. While earthquakes are categorized as ‘natural’ disasters, nuclear accidents and armed conflicts are caused by men and are therefore labelled ‘man-made’ disasters. The context based classification assigns a disaster as single or complex emergency. The latter is defined by Valencia-Ospina as a “total or considerable breakdown of authority resulting from internal or external conflict and which requires an international response that goes beyond the mandate or capacity of any single agency”\textsuperscript{19}. In terms of duration, hurricanes are sudden-onset while droughts and crop failures are examples for slow-onset disasters.\textsuperscript{20,21}

\textsuperscript{14} See also \textit{De Guttry Andrea}, Surveying the Law, 2012, 6.
\textsuperscript{16} Ibid.
\textsuperscript{17} Ibid 152.
\textsuperscript{19} \textit{Valencia-Ospina Eduardo}, Special Rapporteur’s Preliminary Report (n 10) 152.
\textsuperscript{20} Ibid.
\textsuperscript{21} See also \textit{Breau et al.}, Introduction, in: \textit{Breau et al.}, Research Handbook on Disasters and International Law, Cheltenham, UK, Northampton, MA, USA (Edward Elgar Publishing), 2016, 4.
The Special Rapporteur referred to already existing definitions for his own approach. In 1992, the Department of Humanitarian Affairs of the United Nations (DHA) published the internationally agreed ‘glossary of basic terms related to disaster management’ and developed the following definition:

“a disaster is a serious disruption of the functioning of society, causing widespread human, material or environmental losses which exceed the ability of [the] affected society to cope using only its resources”.\(^{22}\)

The DHA highlighted not only the requirement of actual harm, but also argued that all measures to prevent such serious disruption (as in the field of disaster preparedness or disaster resilience) should be included. The exceeding of the capacity of the effected country to respond is another requirement for the DHA. Special Rapporteur Valenica-Ospina identified an additional element: the ‘causal element’, namely a serious disruption, irrespective if ‘man-made’ or ‘natural’ events.\(^{23}\) He deviated from the strict separation between those two possible causes arguing that there is no advantage in doing so at all, since “natural phenomena merge with human agency”\(^{24}\).

The United Nations Office for Disaster Risk Reduction (UNISDR) adds the threat to human life and environment as a fourth element to the definition of a disaster:

“...serious disruption of the functioning of a community or a society causing widespread human, material, economic or environmental losses which exceed the ability of the affected community or society to cope using its own resources.”\(^{25}\)

By examining all the different approaches, Valencia-Ospina concluded that disasters arise from a complex set of factors, making its root cause extraneous for its definition. His recommendation for article 3 of the ILC’s Protection of Persons in the Event of Disasters,

\(^{22}\) UN Department of Humanitarian Affairs, Doc. DHA Internationally agreed glossary of basic terms related to Disaster Management, UN DHA/93/36 (1992).
\(^{23}\) Cf. Valenica-Ospina Eduardo, Special Rapporteur’s Second Report (n 12) 194.
\(^{24}\) Ibid.
having been adopted by the Drafting Committee on second reading in its Sixty-eighths session, defines a disaster as:

“a calamitous event or series of events resulting in widespread loss of life, great human suffering and distress, mass displacement, or large-scale material or environmental damage, thereby seriously disrupting the functioning of society.”

The question if armed conflicts should be excluded from IDRL is another highly controversial discussed topic. Even though the Special Rapporteur mentions armed conflicts in the context of complex emergencies, he is in favour of excluding such situations due to the highly developed International Humanitarian Law, dealing in detail with situations of social reality. The International Court of Justice also assessed the law applicable in armed conflicts as suitable lex specialis. In complex situations it can be difficult to strictly separate and categorize applicable legal regimes when ‘natural’ or ‘man-made’ disasters occur in the context of an armed conflict. Nevertheless, the adopted article 18 paragraph 2 of the ILC’s Protection of Persons in the Event of Disasters strictly excludes the applicability of its articles in situations to which the rules of International Humanitarian Law are applicable.

Some authors within the scientific community are criticizing the ILC’s decision not to subsume armed conflicts under the definition of disasters. The lecturer and post-doctoral research fellow at the University of Basel, Evelyne Schmid argues that the use of the term ‘disaster’ in everyday language would allow to conclude the inclusion of armed conflicts. She assumes that the impacts on human life and the environment rather than the type of cause are the key parameters in defining a disaster. Rodenhäuser and Giacca also suggest that armed conflicts lead to widespread loss of life, great human suffering and significant material damage, as well as disrupting the functioning of society and therefore meet all relevant aspects of the ILC’s definition. They also point out that International Humanitarian Law already provides a “comprehensive and concise” framework regulating “questions on the right to offer

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29 ILC, Draft Articles (2016), art. 18 para. 2.
31 Ibid., 132.
humanitarian services, humanitarian access, and the protection and facilitation of humanitarian assistance in a clear and binding manner.”\textsuperscript{32} The facts, that the exact borderline and the relationship between International Humanitarian Law and International Disaster Response Law remains underexplored as well as “from an international legal point of view armed conflicts are distinct from other man-made or natural disasters”\textsuperscript{33} are nevertheless recognized even by Rodenhäuser and Giacca. The significant role of IDRL in an IHL related context and vice versa will be discussed in greater detail in chapter 4.2.3.

A completely different approach was taken by Kristian Lauta, an Assistant Professor with the Centre for International Law and Justice at the Faculty of Law at the University of Copenhagen. She examined the definition of the term ‘disaster’ from a more sociocultural perspective and demanded to cut loose from the understanding of disasters of being some phenomena caused by God or nature. The shift from seeing disasters as dangerous hazards only to focusing on the system failing to manage disturbances caused by hazards and the fundamental change of understanding disasters during the past 50 years\textsuperscript{34} has also been stressed in her scientific works. The social perspective is being prioritized, especially in those states where disasters are rather seen as the lack of resilience than only events caused by hurricanes.\textsuperscript{35}

### 2.2 International Disaster Response Law

Isabelle Reinecke defines IDRL as “…the body of rules and principles for international humanitarian assistance in the wake of peacetime disasters of natural, technological or industrial origin. … Unlike IHL, IDRL applies to (usually) unintended disasters in a co-operative peacetime context when states or intergovernmental humanitarian or other organisations offer, request, provide or accept cross-border disaster assistance.”\textsuperscript{36} This interpretation describes in a very accurate way the acute phase of a disaster but excludes other relevant aspects that have been focused on in recent years. Rules to prevent disasters, to implement disaster risk reduction (DRR) as well as the measures necessary for early recovery

\textsuperscript{32} Ibid.
\textsuperscript{33} Ibid.
are not covered by Reinecke’s definition. Andrea de Guttry on the other hand identifies the following key features relevant for a definition of IDRL: the nature of disasters which are relevant for IDRL (man-made or natural events), the phases in response to disasters, regulated by IDRL (various phases of the disaster management cycle as being discussed in chapter 2.3), issues regulated by IDRL, relations with the host State applicability at particular times and typology of rules. He considers that the concept of IDRL needs to be updated and adopted to recent years’ developments which means a more flexible interpretation of the term “response” to cover all activities from preventing and managing disasters to early recovery activities.

2.3 Disaster Risk, Disaster Risk Reduction and Disaster Risk Management

The UNISDR defines Disaster Risk as “the potential loss of life, injury, or destroyed or damaged assets which could occur to a system, society or a community in a specific period of time, determined probabilistically as a function of hazard, exposure, vulnerability and capacity”. The term cannot be seen as an absolute, it always has to be put in the “social and economic contexts in which disaster risks occur”. It is obvious, that the perception of risks differs according to the culture and country being assessed.

Disaster Risk Reduction (DRR) has become an indispensable part of IDRL. It is “aimed at preventing new and reducing existing disaster risk and managing residual risk, all of which contribute to strengthening resilience and therefore to the achievement of sustainable development”. It is noteworthy, that not all national legislations use this term consistently. Even if laws directly refer to DRR, they are often not labelled as such. Some of the synonyms

38 Ibid., 6.
40 Ibid.
used are “prevention and control”\textsuperscript{42} in Vietnam, “hazard mitigation” and “preparedness”\textsuperscript{43} in the United States of America or “civil protection” and “civil defence”\textsuperscript{44} in New Zealand.\textsuperscript{45}

The close connection between Disaster Risk, DRR and sustainable development is also reflected by the \textit{Sustainable Development Goals} (SDGs). In the \textit{Progress Report towards the Sustainable Development Goals} of 2016, Goal 1 directly refers to DRR as it is “essential to ending poverty and fostering sustainable development”\textsuperscript{46}. The higher potential for Disaster Risk in poorer countries\textsuperscript{47} is also mentioned and will be discussed in chapter 7.

Disaster Risk Management (DRM) is the “application of disaster risk reduction policies and strategies to prevent new disaster risk, reduce existing disaster risk and manage residual risk, contributing to the strengthening of resilience and reduction of disaster losses”\textsuperscript{48}. It can be seen as a framework of mechanisms in which DRR is one of the main objectives\textsuperscript{49}. These mechanisms can be classified as prospective, corrective and compensatory (residual) DRM actions\textsuperscript{50}, indirectly linked to the Disaster Risk Management Cycle. This Cycle is an illustration of four phases related to a disaster: Prevention/Mitigation and Preparedness in the pre-disaster stage and Response and Rehabilitation/Reconstruction in the post-disaster stage. To reduce the overall disaster risk, appropriate measures, adapted to the respective phase, must be taken.\textsuperscript{51}

While most of the laws dealing with disasters had been focusing on the response phase, the importance of the other stages of the DRM Cycle has been recognized by IOs and governments in the last decades and is reflected in the latest IDRL instruments (see chapter 5).

\textsuperscript{42} Law on Natural Disaster Prevention and Control (passed on June 19, 2013) Law No. 33/2013/QH13, Vietnam.
\textsuperscript{44} IFRC, New Zealand Desk Survey, New Zealand, 2012.
\textsuperscript{46} \textit{ECOSOC}, Progress towards the Sustainable Development Goals, E/2016/75 (3 June 2016), para. 11.
\textsuperscript{47} \textit{ECOSOC}, Progress towards the Sustainable Development Goals, E/2016/75 (3 June 2016), para. 11.
3. Development of IDRL

The advantages of international cooperation and adequate standards and regulations when it comes to international assistance to respond to a disaster have not only been recognized by various stakeholders in the past decades. Early attempts to improve international cooperation to overcome calamities have been undertaken for many centuries. The cooperation of states in their fight against contagious diseases is one of the initial examples of international relief formulated in treaties.52

In addition to the obvious assets for the affected states, the Swiss lawyer and diplomat Emer de Vattel associated international cooperation with the humanitarian duty of great nations:

“when the occasion arises, every Nation should give its aid to further the advancement of other Nations and save them from disaster and ruin, so far as it can do so without running too great risk [...] if a Nation is suffering from famine, all those who have provisions to spare should assist it in its need, without however, exposing themselves to scarcity. [...] To give assistance in such dire straits is so instinctive an act of humanity that hardly any civilized Nation is to be found which would refuse absolutely to do so. [...] Whatever be the calamity affecting a Nation, the same help is due to it.”53

In his discourse “The Law of Nations”, published in 1758, the Swiss compares the essence and nature of men with the nature of nations. Since humans are unable to supply all their needs on their own, they need the support of others. It is their destiny to live in societies and to interchange mutual aid. The most promising approach to succeed is for every individual to exert his efforts – first for himself and then for others. Vettel concludes that whatever one owes to himself, one likewise owes to others, insofar they are in need and one is able to grant it. By transferring that statement to the relation between nations, “one nation … owes to another nation every duty that one man owes to another man”54. This suggests the following principle: “One state owes to another state whatever it owes to itself, so far as that the other stands in real

54 Ibid., 262.
need of its assistance, and the former can grant it without neglecting the duties it owes to itself. Such is the eternal and immutable law of nature."\textsuperscript{55, 56} Vettel argues that it is in a civilized great nation’s nature to assist its neighbour if it stands in real need and gives two examples supporting his assumption:\textsuperscript{57} After some extensive fires had destroyed certain towns and villages in Switzerland, small, neighbouring states had ordered public collections. Following not only comprehensive help for those in need, but in doing so, no differences of religion had been made.\textsuperscript{58}

In 1755, a great earthquake destroyed Lisbon and King George II of England fulfilled the duties of humanity with a noble generosity characteristic. When the British Parliament heard about the disaster that hit Lisbon, it provided a hundred thousand pounds sterling, supplemented by a considerable amount by the King. Vessels from England, containing provisions and articles of every sort which might be needed, were immediately sent to Portugal. Proofing, that not even opposition in religious belief or worship could prevent people who acknowledge the claims of humanity from providing aid.\textsuperscript{59}

### 3.1 International Relief Union

While Emer de Vettel called on and relied on the principle of humanity constituting great nations, the League of Nations (one of the first International Organizations of a general character) set up a Joint Council with the League of Red Cross Societies and the International Committee of the Red Cross (ICRC) in 1921. Their aim was to provide coordinated relief in all European countries, based on a treaty-like document. The Council sent a letter to the Member States claiming the following:\textsuperscript{60}

\textsuperscript{55} Ibid.  
\textsuperscript{56} Cf. Ibid.  
\textsuperscript{57} Ibid., 264.  
\textsuperscript{58} Ibid.  
\textsuperscript{59} Cf. Ibid.  
\textsuperscript{60} Cf. Toman, International Disaster Response Law, 2006, 2.
“1. Free transport provided by governments for supplies sent by the Joint Council to the disaster-prone countries;
2. Exemption from customs duties for all materials;
3. Facilities for the purchase of food and necessary products at reduced prices on the territory of the disaster-stricken country.”

While this request was sent to all the Member States, only Czechoslovakia responded in 1922 and granted a reduction of 50% on relief personnel and transport of materials.

Four years later, the Secretary General of the League of Nations delivered another letter to the Member States where he expressed his concerns about the missing willingness of the states to meet the Joint Council’s demands. He named certain hindrances that slow down the distribution of relief supplies such as rail transport and custom duties. Following this Secretary General’s admonishing comments, the Red Cross requested facilities for relief material and personnel in transit which lead to various governments pledging their support.

The efforts of the League of Nations led to the adoption of the Convention and Statute establishing an International Relief Union (IRU) in 1927 which came into force on December 27th, 1932. The IRU had ambitious goals as to create a multilateral mechanism dealing with all relevant phases of disaster management. Nevertheless, since it was irrelevant for all occurring disasters and as Member States started to use the withdrawal clause after World War II, the IRU was shut down in 1982. While it could not live up to the expectations, it delivered well elaborated scientific work focusing on causes for natural disasters that were adopted by the United Nations Educational, Scientific and Cultural Organization (UNESCO) in 1968.

### 3.2 The Role of the Red Cross

The development of IDRL has always been closely linked to the peacetime relief activities of the Red Cross and Red Crescent movement. Until 1919, the National Societies only operated based on resolutions of the International Conferences of the Red Cross.
It was the creation of the League of Red Cross Societies in 1919 that has led to more self-supporting National Societies, an improvement of their assistance and the adoption of the Declaration of principles relating to relief actions for the benefit of civilian populations in disaster situations on the XXIst International Red Cross Conference in Istanbul in 1969. On the same conference, the Principles and Rules for Red Cross Disaster Relief had been adopted and amended by the Conferences in Teheran (1973), Bucharest (1977), Manila (1981) and Geneva (1986).67

This Principles and Rules formulate the basis of a functioning international relief action. They summarize and contain previous resolutions and best practice techniques reported by Red Cross members. The role of the Red Cross and the delimitation to the State’s responsibilities are laid down as well as the necessity for every country to have a national relief plan. 68

As the number of disasters was increasing and not only their intensity was rising but disasters worldwide gained in complexity involving “natural, economic and often military factors”69, The Code of Conduct for The International Red Cross and Red Crescent Movement and NGOs Disaster Relief was developed. It was a response to the changing circumstances not only for the well-established NGOs but also the new emerging agencies. The non-binding document was the result of a joint effort with the International Federation of Red Cross and Red Crescent Societies (IFRC) and eight of the world’s largest disaster response agencies in 1994. It was the basic paper setting certain standards and used by many NGOs to monitor their own relief delivery as well as addressing for the first time on disaster preparedness and long-term rehabilitation.70 The Code of Conduct will be discussed in chapter 5.4.1.

In 2000, the ‘International Disaster Response Law Project’ started, aiming to develop and disseminate relevant international instruments. Its name was recently changed to ‘Disaster Law Programme’ in 201271 and it plays an important role on evaluating the implementation of IDRL.

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70 Cf. Ibid.
3.3 The United Nations

After the attempts to revive the International Relief Union, the United Nations decided to establish the Office of the United Nations Disaster Relief Coordinator (UNDRO) in December 1971\textsuperscript{72}. While the UN had always relied on the League of Red Cross Societies when it came to activities in the field of natural disasters\textsuperscript{73}, the aim of the new established office was to coordinate all the United Nations agencies that were involved in humanitarian assistance during natural disasters. The UNDRO had “no legal personality and autonomy which would seem necessary for the realization of its fundamental mission”\textsuperscript{74}.

The joint survey of UNDRO and the League in 1976, targeting methods to accelerate international relief assistance, had been discussed at the United Nations Economic and Social Council (ECOSOC) and lead to the Resolution 2102 (LXIII) on measures to expedite international relief in August 1977. Numerous requests to speak in the Council had shown, that many governments had a very positive attitude towards the UNDRO’s efforts and the Coordinator was commissioned to procure that measures designed to achieve the aim of expedited relief had been promoted. His responsibilities included an examination and report of the existing steps already taken. Supported by an informal group of experts including representatives of governmental and non-governmental organizations, he submitted the draft of his report to the ECOSOC. A planned further review by governmental experts never happened, even though the positive impact of an international document governing necessary areas for an improved and speedy delivery of emergency supplies had already been recognized and pointed out in the report of the Secretary-General in 1984\textsuperscript{75}.

Besides numerous regional and bilateral treaties that had been adopted from some courageous governments, there has not been a notable progress on binding global instruments within the United Nations ever since. It was only in 2007, when the ILC itself dedicated to the topic of the ‘Protection of Persons in the Event of Disasters’.\textsuperscript{76} After nine years of comments and observations, the final draft had been transmitted to the Secretary-General of the United Nations on January 1\textsuperscript{st}, 2016. The latest draft had been adopted in second reading in the sixty-eighth

\textsuperscript{72} UNGA Res 2816 (XXVI) (14 December 1971).
\textsuperscript{73} Cf. Toman, International Disaster Response Law, 2006, 5.
\textsuperscript{74} Ibid.
\textsuperscript{75} UNGA Res 2816 (XXVI) (14 December 1971).
session of the ILC\textsuperscript{77} and chances are good to get a binding document in the end. This draft will be examined in chapter 5.4.5.

### 3.4 Recent Developments

In 2012, over 200 international treaties governing legal matters related to disaster prevention and disaster response existed. The lack of consistent terminology as well as the ubiquitous confusion and uncertainty about blurred boundaries between soft law and hard law result in discrepancies, inconsistencies and in regulations far from being uniform. This missing uniformity and the different level of development especially concerning rules regulating international cooperation in the event of a disaster involve great challenges and often cause appreciable difficulties for the hosting nation as well as for International Organizations. Thus, significant regional differences can be observed. Latin America for example has a set of well elaborated laws ruling international cooperation in disaster prevention and disaster management, while on the African continent, the regulations are far less detailed.\textsuperscript{78}

IDRL instruments such as the \textit{IDRL Guidelines} and the latest ILC \textit{Draft Articles on the Protection of People in the Event of a Disaster} aim to eliminate this lack of uniformity and will be discussed in the following chapters.

While most of the relevant treaties regarding International Disaster Response Law are labelled as IDRLs, a considerable number of legal regimes has developed norms highly relevant to the response to disasters without being framed in such terms, for example International Human Rights Law or International Development Law. This development raises the questions if “a new corpus of ‘international disaster law’ (IDL) is evolving”\textsuperscript{79} and in which form this ‘corpus’ could emerge. One possibility is the expansion of IDRL into a self-standing legal regime. This would assume an evolution from existing treaties, rules\textsuperscript{80} and principles and their anarchic accumulation into a coherent corpus of law, comparable with the development of international criminal law. Though, a massive political would be needed that is currently far from being in sight. Therefore, the more likely scenario is the development of an “overarching ‘umbrella’

\textsuperscript{78} See De Guttry, Surveying the Law, 2012, 5.
\textsuperscript{79} De Guttry, Surveying the Law, 2012, 2.
\textsuperscript{80} Ibid., 4.
body of law”\textsuperscript{81}, trying to interconnect between existing legal regimes. This ‘umbrella’ body of law would also seek to integrate and fill the gaps between current principles and rules. The editors and contributors to the \textit{Research Handbook on Disaster and International Law}\textsuperscript{82} consider the latter the more probable.\textsuperscript{83}

\textsuperscript{81} Ibid.
\textsuperscript{82} See Breau \textit{et al.}, Research Handbook on Disaster and International Law, 2016.
\textsuperscript{83} Cf. Breau \textit{et al.}, Introduction, 2016, 2.
4. IDRL and related fields of law

The overall aims of IDRL are the abolition of bureaucratic barriers, guaranteeing the most immediate help from the most professional relief workers with the most modern and suitable equipment based on good cooperation and coordination of all stakeholders. Hence, IDRLs address topics that are regulated and falling into the sphere of numerous domestic and international laws and treaties and thus, must be implemented and developed along the lines of existing principles and legal instruments.

4.1 Specific legal issues for international disaster response

4.1.1 Initiation and termination

The process of initiation of international response to a disaster remains challenging despite over one hundred years of extensive experience in international assistance operations. Even though “the effectiveness of international relief is directly linked to the speed with which it can be delivered,” there are many rules and principles to respect before a foreign state or an IO can support domestic actors.

One of the most important principles in context with international disaster relief operations is the respect of a state’s sovereignty. It is every sovereign state’s right to determine by itself which activities and operations within its territory are acquiesced. This rule is not only reflected in numerous declarations and resolutions by the UN, but the “prohibition of intervention in domestic affairs is also recognized as a customary rule.” The principle of sovereignty also determines that “disaster response falls within the jurisdiction of the State in whose territory the catastrophic event has occurred.” International Organizations and foreign assisting states should wait for their help being requested and are only allowed to act within the frame the affected state has agreed to.

84 Cf. IFRC, Desk Study, 2007, 89.
85 Ibid.
88 Ibid., 48.
89 Cf. Ibid.
However, official requests for international assistance are an absolute exception. They only occur in the most extensive disasters. A delayed request or the lack of an official request often leads to a less effective assistance as it was the case after an earthquake in Turkey in 1999 where international assistance was requested days after the earthquake had hit the country.\textsuperscript{90} The incidents that occurred after Hurricane Katrina had affected the United States of America in 2005 are another representative example for negative effects caused by missing requests or in this specific case ambiguous statements of governments officials. President George W. Bush said in an interview that “this country is going to rise up and take care of it.”\textsuperscript{91}, while on the same day a spokesperson for the State Department clarified that “no offer that can help alleviate the suffering of the people of the affected areas will be refused.”\textsuperscript{92} These contradictory statements resulted in many declined or not used international offers\textsuperscript{93} (see chapter 7.4).

The reasons for the states demonstrating restraint in officially requesting international assistance are numerous. Even though many existing rules of IDRL are designed to facilitate affected states to speed up requesting and accepting offers from other international actors, states often do not want to damage national pride or send a signal of weakness. Another factor for the few official requests is the often equivocal, inaccurate or simply missing domestic laws regulating responsibilities for sending such an official request.\textsuperscript{94}

Some governments are legally bound to officially declare a state of disaster or emergency before being allowed to send a request for international assistance. Such a declaration could also be necessary before modifying regulations and rules relevant to international disaster relief (especially laws on taxation of relief goods, visas and customs). The official declaration of a state of emergency often comes with some undesired side effects. This is, for example, a potential for the erosion of civil and human rights which is another reason for governments to be cautious with declaring such states of emergency.\textsuperscript{95}

\textsuperscript{91} \textit{Richard Anne}, Role Reversal: Offers of Help from Other Countries in Response to Hurricane Katrina, Maryland (Centre for Transatlantic Relations) 2006, 6.
\textsuperscript{92} Ibid.
\textsuperscript{94} See also \textit{Apps Peter}, Floods hit Asia hard, but few states demand aid, in: REUTERS, Aug. 23, 2007.
\textsuperscript{95} Cf. \textit{IFRC}, Desk Study, 2007, 90.
The practical advice of the IFRC, proposed in Law and legal issues in international disaster response: a desk study for affected states is to “indicate that they would ‘welcome’ offers of assistance without actually asking for them”96. The disadvantage of this workaround is the possible resulting uncertainty which can then again have a negative effect on the effectiveness of international appeals and the aggravation for some international actors to assist. Especially UN agencies are often reliant on a clear expression before they can act. While the basic concept of waiting for offers could speed up international assistance, the number of international offers of support often exceed the domestic capacities to catalogue and respond to the offers - especially in sudden-impact disasters.97

The UN General Assembly Resolution 46/182 points out that humanitarian assistance needs to be “provided with the consent of the affected country and in principle on the basis of an appeal by the affected country”98. Many bilateral treaties as well as the “Tampere Convention on the Provision of Telecommunication Resources for Disaster Mitigation and Relief Operations” of 1998 (Tampere Convention) stress that the initial communication has to come from the affected state. Other international instruments tend to accept the placing of offers as long as the affected state does not explicitly ask to stop. This approach is the more practical one, especially in situations where formal requests are delayed. The UNGA Res 46/182 also emphasises the significant role of the OCHA’s Emergency Relief Coordinator (see pages 21, 31 and 41). The OCHA should help to coordinate requests by the affected state as well as offers from assisting states and organisations.99

The organization and initiation of foreign assistance also depends on the external actors. While it is common practise for foreign governments to officially communicate with the affected governments, this is not always the case when it comes to other international actors. Even some large NGOs do not communicate in an official manner with the responsible government, even less this is the case for private initiatives or citizens who are shipping aid directly to relatives or friends. However, the affected state can control external aid through visa and customs control as well as regulations on in-country operations.100

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96 Ibid., 91.
97 Ibid.
100 Ibid., 92.
Due to the close relationship between National Red Cross and Red Crescent Societies and their respective government as well as their often legally recognized role of auxiliaries to the public authorities, the IFRC becomes active whenever the National Society of the affected state requests to do so. This often happens without an official request by the state’s government but has nevertheless a normative basis in the Statutes of the Movement\textsuperscript{101} and the Principles and Rule of Red Cross and Red Crescent Disaster Relief\textsuperscript{102}. Both were adopted with the unanimous support of states.

The existing legal instruments suggest that other IOs would need some type of notification, even though conventions like the Tampere Convention do not set out any rules about the type and timing of communications between the affected state and the foreign organization\textsuperscript{103}.

In recent years, international instruments tend to establish a common initiation process for both governmental and non-governmental foreign actors which is criticised since stricter diplomatic-style communication could delay humanitarian assistance. The above-mentioned solution of sending a signal of welcoming foreign assistance and the linking of legal instruments such as visa and customs control to a registration system could bring significant improvement.\textsuperscript{104}

A precise assessment of needs is a crucial point for delivering the appropriate aid. It must be precisely determined to what extent international assistance and what specific relief efforts are needed. The important this measure is, the often domestic administrations are overstrained and the inconsistent approaches of international actors are. Even though a lack of an accurate assessment of needs mostly causes major problems in the field and impairs the effectiveness and quality of the relief action, many governments fear to lose control of the relief process when allowing foreign assessments. Nevertheless, a great number of donors started to insist on an independent evaluation before supporting International Organizations with money. Therefore, members of the international humanitarian community start to increase their cooperation in assessments.\textsuperscript{105}

\textsuperscript{101} Statutes of the Red Cross and Red Crescent Movement, adopted by the 25th International Conference of the Red Cross at Geneva in October 1986 and amended by the 26th International Conference of the Red Cross at Geneva in December 1995, arts. 2, 3, 6.
\textsuperscript{102} Principles and Rules, secs. 6.2, 14.
\textsuperscript{103} Tampere Convention, art. 4.
\textsuperscript{104} Cf. IFRC, Desk Study, 2007, 93.
\textsuperscript{105} Cf. Inter-Agency Standing Committee (IASC), Consolidated Appeal Guidelines, endorsed on 13 April 1994; IFRC, Guidelines for Emergency Assessment (2005); The Sphere Project, The Sphere Project. Humanitarian Charter and Minimum Standards in Disaster Response (The Sphere Handbook), United
Existing IDRL guidelines and treaties mostly advocate a joint needs assessment. The GA Resolution 46/182 recommends a “joint inter-agency needs-assessment mission”\textsuperscript{106} with the government of the affected state. The Association of Southeast Asian Nations (ASEAN) pursued a similar approach with its \textit{Agreement on Disaster Management and emergency Response} in 2005: “the Requesting Party and Assisting Entity shall, in consultation, jointly assess and decide upon the scope and type of assistance required”\textsuperscript{107}.

When a relief operation comes to its recovery phase, not all of the initial granted legal facilities are needed any longer. States tend to set too early cut-off dates for legal benefits just to recover their primary role as the main social welfare actor but also international actors often pull back unexpectedly and without coordinating it with local governments. This heavy-handed termination of programs or legal benefits often hamper sustainable recovery and development. It is obvious that expedited visa processing or customs clearance is less important in the recovery phase than during early response. But long-term activities addressing results of a disaster also benefit from facilitated access to work permits, tax exemptions or radio licenses. Sri Lanka and Indonesia took an efficient approach after the emergency period of the tsunami in 2004 had ended\textsuperscript{108}. Regulations about visas and custom clearance privileges for international actors expired but the governments had made great efforts to support their work addressing rehabilitation and reconstruction programs.\textsuperscript{109}

\subsection*{4.1.2 Personnel}

When foreign NGOs start a mission to assist disaster hit countries, they often rely on their own personnel, especially in the initial disaster response phase. Since foreign staff are trained and equipped to operate autonomous, sending them to the affected country often has organizational advantages, but also entails many legal challenges. Some states already do have special legislation in the case of a disaster concerning visas, work permits and the recognition of professional qualifications. However, many of the bilateral or multilateral agreements are only

\begin{footnotesize}
\begin{enumerate}
\item UNGA Res 46/182 (19 December 1991) para. 35 lit. c.
\item ASEAN Agreement on Disaster Management and Emergency Response (ASEAN Agreement) (26 July 2005) art. 11(3).
\item See also \textit{IFRC}, Legal Issues from the International Response to the Tsunami in Sri Lanka, 2006; \textit{IFRC}, Legal Issues from the International Response to the Tsunami in Indonesia (Indonesia Case Study), 2006.
\end{enumerate}
\end{footnotesize}
applicable to specific nationalities and when a relief workers’ nationality is not covered, problems can arise: entry visas are refused or delayed or their renewal comes with an excessive bureaucratic effort\(^{110,111}\).

While there already exist provisions and declarations for staff of International Organizations and foreign states, the emerging group of interested private companies and civic groups are facing similar legal challenges, but they are not covered by the existing provisions. Privileges and immunities law “address many of the access and operations issues identified as the most problematic\(^{112}\), but there is an inconsistency of the extend according to the holder.\(^{113}\) A distinction between “state officials, IOs and their personnel, and NGOs and their staff”\(^{114}\) must be made. IDRL instruments such as the *Declaration of principles for international humanitarian relief to the civilian population in disaster situations* and others\(^{115}\) encourage states to expedite the granting of especially exit and transit visas for relief personnel\(^{116}\).

As already mentioned above, delayed granting of visas or problematic renewal of them are not the only challenges foreign relief workers are facing. The problem of their professional qualifications being recognised by the affected state within a reasonable period could also cause considerable delays for delivering the adequate aid. Nearly every state demands some kind of licence, certificate or any other form of official approval by the government to practise as a doctor, nurse or paramedic. A system that should ensure certain quality standards could cause great problems for international staff to operate, when not having special legislation for the situation of a disaster. Even the lack of regulations for the recognition of foreign driver licenses could cause great challenges. Inadequate domestic regulations constitute barriers for international actors that often see themselves expelled to criminal liability when their staff operate without having the necessary governmental recognition of their professional


\(^{112}\) Ibid., 39.

\(^{113}\) Cf. Ibid.


\(^{115}\) See also UNGA Res 57/150 (27 February 2003); UNGA Res 46/182 (19 December 1991).

Regional treaties and bilateral agreements partially regulate expedited recognition of professional qualifications, but global regulations are still missing or recommendations are implemented in a bad manner. While domestic laws concerning recognition of qualifications are often very fragmented which leads to problematic application of international instruments, some states have already implemented very sophisticated regulations such as Uganda that grant international relief providers ‘Special Passes’. These passes permit the international staff to temporarily operate while their work permissions are being processed.

Most of the recent international soft law instruments encourage states to pass special regulations for the often fragmented legal framework of visas, work permits and recognition of professional qualifications. States should grant relief workers of international actors “any necessary work permits ideally without cost, renewable within their territory, for the time necessary to carry out disaster relief or initial recovery activities.” Governments are supported by the Model Act for the Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance (Model Act) that provides a definitive list of yearly revaluated institutions and countries from which “certificates will be expected to be particularly trustworthy.”

4.1.3 Goods and equipment

In the aftermath of a disaster, states often have difficulties to provide their population with the necessary aid. The importation of foreign goods and equipment often is the only way to ensure that their basic needs such as food, clothing, medical supplies or accommodation are covered. While the - in general - very strict regulations for foreign products coming to the national market

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117 Ibid., 119.
119 See the Agreement between the Republic of Austria and the Hashemite Kingdom of Jordan on Mutual Assistance in the Case of Disaster or Serious Accidents (13 March 2004) art. 5 para. 2.
123 IFRC, IDRL Guidelines, sec. 16.
124 IFRC, OCHA and Inter-Parliamentary Union, Model Act for the Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance (“The Model Act”), Geneva 2013, 92.
mostly aim to protect domestic economy, restrictions such as customs duties or fees could represent serious barriers to start humanitarian assistance.  

International treaties and guidelines have been addressing this issue from the very beginning of IDRL. These are often bilateral or regional agreements, a “coherent legal framework prescribing upon States clear obligations on customs matters is still lacking”\(^{126}\). Most of them are using very general terms advising states ‘to facilitate’ customs clearance. The \textit{IDRL Guidelines} that were adopted in 2007, underline the important role of the national authorities when it comes to coordinate and provide assistance including also customs matters. Even though the UN encourages states to use the regulations of the \textit{IDRL Guidelines} as a basis for domestic legislation\(^{127}\), it is still up to the states to adopt the suggested measures.\(^{128}\)

Whenever a disaster occurs in the event of an armed conflict, the situation differs from the above discussed - especially in the case of occupied territories. By article 61 of the \textit{Fourth Geneva Convention} of 1949, the occupying power is obliged to exempt relief consignments “from all charges, taxes or customs duties unless these are necessary in the interests of the economy of the territory”\(^{129}\). While a study by the ICRC concluded that the scope of the provision is not limited to a certain type of conflict and therefore also includes internal conflicts\(^{130}\), its applicability is still directly linked to the scope of the Fourth Geneva Convention.

Developments in recent years have also shown, that the import of certain relief goods – especially food – must be coordinated and regulated very strictly as a too excessive import could damage local agricultural markets. International Organizations are changing their approaches from operating with their own equipment only and relying on their own goods not merely in the early response phase but also during the rehabilitation and reconstruction process. The advantages of providing the affected population with cash, is also being recognized in the


\(^{126}\) Ibid., 535.

\(^{127}\) UN doc. A/64/331 (27 August 2009) para. 78; UN doc. A/65/356 (8 September 2010) para. 83;

\(^{128}\) Cf. \textit{Adinolfi}, Customs Obstacles to Relief Consignments Under International Disaster Response Law, 2012, 547.


last decades and well elaborated assessments of needs play a significant role in finding the right balance between sending goods and supporting with cash.\footnote{Cf. Creti Pantaleo, Jaspars Susanne, Cash-Transfer Programming in Emergencies, Oxford (Oxfam GB) 2006.}

### 4.1.4 Transport and movement

Legal obstacles for the transportation of relief items and the movement of relief workers to and inside a disaster hit country can vary in their form and to their extend. While certain types of vehicles may not be allowed in the affected country, especially in context of armed conflicts, limitations on humanitarian access could also be imposed. Nevertheless, the importance of free movement of humanitarian actors is recognized in several IDRL instruments.\footnote{Cf. IFRC, Desk Study, 2007, 122.}

As UN General Assembly Resolution 46/182 underscores the fact that the “access to victims is essential”\footnote{UNGA Res. 46/182 (19 December 1991) Annex para. 6.} for humanitarian organizations, the Cotonou Agreement suggests that “free access to … victims shall be guaranteed”\footnote{Partnership Agreement between the Members of the African, Caribbean and Pacific Group of States of the One Part, and the European Community and its Member States of the Other Part (Cotonou Agreement) (signed on 23 June 2000), art. 72 para. 4.} The Oslo Guidelines demand “free access to disaster zones”\footnote{Oslo Guidelines on the use of foreign military and civil defence assets in disaster relief (Oslo Guidelines) (1 November 2007), art. 60.} and the Code of Conduct by the IFRC and the ICRC sees free access as the basic prerequisite to act within their humanitarian principles.\footnote{Cf. Code of Conduct for the International Red Cross and Red Crescent Movement and Non-Governmental Organizations (NGOs) in Disaster Relief (Code of Conduct), adopted by the 26th International Conference of the Red Cross and Red Crescent in 1995, principle 1, at annex 1 para. 2.}

The cooperation between domestic and international actors is vital for the in-country transport of international staff. While governments often provide free transport facilities for foreign relief workers and items, the number of low-threshold barriers like tolls on ground transport have been increasing over the last decades. International agreements such as the ASEAN Agreement\footnote{ASEAN Agreement art. 14 lit. a.} or the Resolution of the Council of Europe of June 8\textsuperscript{th}, 1991\footnote{EU Council Resolution 91/c 198/01 on improving mutual aid between Member States in the event of natural or technological disaster (8 July 1991), art. 5.} specifically address these types of fees and call for a general waiver.\footnote{Cf. IFRC, Desk Study, 2007, 123.}
4.1.5 Operations

In addition to the operational challenges mentioned above (work permits, recognition of professional qualifications, transport and movement...), additional legal constraints can impede international actors to ensure speedy arrival of relief goods and personnel on the one hand and to operate in the most efficient way on the other hand.

Gaining a ‘legal personality’ in the affected state is of crucial importance for international humanitarian organizations. The recognition as such is directly linked to a “number of areas, ranging from hiring local staff and signing leases for office space as well as opening bank accounts and obtaining tax exemptions”\textsuperscript{140}.

As important an official registration and recognition as ‘legal person’ for an IO is, the different are the existing procedures. While UN agencies and intergovernmental organizations fall within the scope of the law of privileges and immunities and their recognition as domestic legal personality is guaranteed, especially for smaller NGOs it is far more difficult. Special agreements or memorandums of understanding between the organizations and the governments are possible approaches\textsuperscript{141}, but the necessary steps depend on “the laws of the particular State involved, the nationality of the particular aid workers, the international status of their employer, and/or the country from which they begin their travel”\textsuperscript{142}.

Even though the IDRL Guidelines as well as the Model Act provide useful tools for lawmakers, only few countries have addressed this topic and the greatest development can be observed at a regional and subregional level. To Stefano Silingardi, a lecturer in International Law at the University of Modena and Reggio Emilia, Italy, it is to the Security Council and the General Assembly to put the states under constant pressure. Aiming them not only to ratify the proper global conventions but to accordingly adopt the domestic laws and regulations.\textsuperscript{143}

4.1.6 Coordination

As already pointed out in chapter 1, the number of foreign actors responding to a disaster has been increasing tremendously over the past decades\textsuperscript{144}. It is therefore self-explanatory that a

\textsuperscript{140} Ibid., 126.
\textsuperscript{141} Cf. IFRC, Desk Study, 2007, 125.
\textsuperscript{142} Silingardi, The Status of Emergency Workers, 2012, 582.
\textsuperscript{143} See also Ibid.
\textsuperscript{144} IFRC, Learning Platform, IDRL – Introduction on International Disaster Response Law.
sophisticated and well elaborated mechanism for the coordination of these numerous international actors is crucial for a successful humanitarian relief operation.

Coordination has to be guaranteed at different levels. The government needs to serve as an ‘over-all’ entity that is in constant exchange of information with domestic as well as international humanitarian actors. International Organizations must be coordinated among themselves and between them and domestic actors. Many states lack regulations determining the governmental entity in charge of coordination in the case of a disaster. And even if there are some domestic rules establishing a coordinating institution, in most cases this institution neither has the necessary authority nor capacity to handle the situation and fulfil the tasks it is meant to.

Even though there already exist some international instruments providing guidelines for establishing a coordination entity, only very few states have implemented such regulations and even fewer did that correctly. Although some IDRL instruments only emphasise the affected state’s key role concerning the coordination, others could be used as blueprints.

The positive example of how to implement domestic institutions and provide them with the necessary authority is the Indonesian approach after 2007 that will be discussed in detail in chapter 7.3.

4.1.7 Quality and accountability

Many of the above-mentioned topics may create the impression that there is always too much international response to disasters. And while this assumption proves correct for certain events (especially those with huge media coverage), for most of the disasters it is “a question of too little rather than too much assistance”. To ensure certain quality standards, funding is essential. Only few international instruments deal with the topic of rapid access to funding for international relief operations. Only the Food Aid Convention and several Asian food reserve agreements are binding and stipulate the “minimum levels of contributions from states”.

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146 See IDRL Guidelines, art. 3; UN, Sendai Framework for Disaster Risk Reduction 2015-2030, art. 27 para.1.
149 Cf. IFRC, Desk Study, 2007, 133.
150 Ibid.
The installation of the Central Emergency Response Fund (CERF)\textsuperscript{151} based on the UN General Assembly Resolution 60/124 in 2005 including a mechanism for quick access for initial disaster response and the Disaster Relief Emergency Fund (DREF) are vague attempts to tackle these challenges. The non-binding \textit{Good Humanitarian Donorship Principles} of 2003 (also recognized and referred to in the \textit{European Consensus on Humanitarian Aid}\textsuperscript{152}) stressed the importance of distributing humanitarian assistance on the “basis of need”\textsuperscript{153} and a “timely funding”\textsuperscript{154}.

In addition to the adequate funding of disaster response missions, a sophisticated set of standards, rules and possibilities for monitoring are fundamental for providing assistance in high quality. While many of the world’s largest NGOs either have their own guidelines or rely on those published by the IFRC, mechanisms to improve the quality of humanitarian action and accountability of humanitarian actors referring to the emerging private and local actors are very rare.\textsuperscript{155} The \textit{Sphere Project}\textsuperscript{156} is one of the few initiatives that specifically addresses private and non-state actors and aims to serve as an instrument with principles that can be adopted by even the smallest disaster relief organization and its staff.

The increasing role of local (civil) actors and domestic humanitarian organizations even in an international context and their cooperation with international agencies pose a challenge for all parties involved. While local partners may be able to access areas where international actors have problems to do so (especially in situations of armed conflicts), they often struggle to follow the humanitarian principles of impartiality and neutrality. Moreover, large international NGOs have the necessary staff and usually also the funding to meet their self-imposed standards, while for locals it is often impossible to meet the international requirements and their very limited resources often result in the dispense of an adequate monitoring. Usually, local

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\textsuperscript{151} UNGA Res. 60/124 (15 December 2005).
\textsuperscript{153} \textit{Good Humanitarian Donorship} (GHD), 23 Principles and Good Practice of Humanitarian Donorship, principle 2.
\textsuperscript{154} Ibid., principle 5.
\textsuperscript{156} \textit{Sphere Project}, The Sphere Project, 2013.
actors do not have the possibility to participate in the development of new standards and guidelines and see themselves confronted with unattainable requirements.\textsuperscript{157}

In 2005, the Inter-Agency Standing Committee (IASC) introduced a new ‘cluster approach’, promoting the inclusion of local actors. Sectorial ‘clusters’ should improve the planning, coordination and the accountability in international response, led by selected operational agencies. The corresponding \textit{Guidance Note on Using the Cluster Approach to Strengthen Humanitarian Response} emphasizes the “key responsibility … [to] maintain appropriate links with … local civil society”\textsuperscript{158}.

The supplemental \textit{Operational Guidance for Cluster Lead Agencies on Working with National Authorities}, published in 2011, encourages international actors to “organize themselves to support or complement existing national response mechanisms rather than create parallel ones which may actually weaken or undermine national efforts”\textsuperscript{159}.

\section{4.2 Selected areas of international law relevant to international disaster response}

\subsection*{4.2.1 A State’s Responsibility to Protect}

The recent developments of IDRL, strongly influenced by the work of the IFRC and the ILC’s most recent \textit{Draft Articles for Protection of Persons in the Event of Disasters}, started to question the scope of the term ‘responsibility to protect’ and whether it is applicable for IDRL. The phrase was used by members of the International Commission on Intervention and State Sovereignty (ICISS) for the first time when dealing with state sovereignty in the 1999 Kosovo conflict. Even if the report focused on the ‘right of humanitarian intervention’ in the context of armed conflicts and was less intended to address disaster situations, the definition of state sovereignty brought up in their report can certainly be applied to disaster situations. The developed basic principles underline that “state sovereignty implies responsibility, and the primary responsibility for the protection of its people lies with the state itself.”\textsuperscript{160} Lon Fuller

\textsuperscript{158} \textit{IASC}, Guidance Note on Using the Cluster Approach to Strengthen Humanitarian Response (24 November 2006), 8.
\textsuperscript{159} \textit{IASC}, Operational Guidance for Cluster Lead Agencies on Working with National Authorities (endorsed by the IASC Working Group 1 July 2011), 2.
\textsuperscript{160} \textit{International Commission on Intervention and State Sovereignty} (ICISS), The Responsibility to Protect: Report of the International Commission on Intervention and State Sovereignty (December 2011), XI.
had already suggested a similar understanding of the essence of state sovereignty and an elaborated 'protection of the people' in 1958: “the obligation of the state to preserve life-sustaining standards for its citizens must be recognized as a necessary condition of sovereignty.”¹⁶¹ The interpretation of sovereignty as responsibility for citizens date even back to John Locke.¹⁶² In 1996, Francis Deng published the report *Sovereignty as Responsibility* and extended the responsibility by stating that “these principles impose on the international community a correlative responsibility for their enforcement”¹⁶³. Richard Lillich developed three aspects of an international responsibility: Humanity, “protection and development of the human dignity of the individual”¹⁶⁴ and the principle that not states’ benefits should be maximized but benefits “for individuals living within states”¹⁶⁵. Deng concluded, that “no government that will allow … its citizens to starve to death” or “allow them to be exposed to deadly elements”, “can claim sovereignty”¹⁶⁶.¹⁶⁷

When the ICISS presented their final report, three elements had been identified being the essence of the notion of sovereignty. First, it is the state authorities’ responsibility to protect the lives of the citizens. This responsibility is being extended to the international community through the UN and the authorities are responsible for their actions.¹⁶⁸ Consequently, it is the state that is primarily responsible for its citizens¹⁶⁹. Only when the state fails to fulfil this responsibility, it is to the international community to intervene. This responsibility to protect, mentioned by Fuller, can easily be applied to disasters as had already been done when the Cyclone Nargis hit Burma in 2008 and the government refused to provide aid. French Foreign Minister Kouchner called on this responsibility to protect. However, his approach of imposing the aid on the Burmese government was criticized by the Emergency Relief Coordinator stating that an aid invasion would not be consistent with the UN’s interpretation of the responsibility to protect¹⁷⁰.

¹⁶⁵ Ibid.
¹⁶⁷ Cf. Breau, Responses by states, 2016, 71.
¹⁶⁹ Cf. 2005 World Summit Outcome, GA Res. 60/1 (24 October 2005); Implementing the Responsibility to Protect, UN Doc. A/63/677 (Report of the UN Secretary-General, 12 January 2009).
¹⁷⁰ International Coalition for the Responsibility to Protect, Crisis in Burma.
While the first conclusion of the specific interpretation of sovereignty, the “primary responsibility for ensuring life-sustaining standards for one’s own peoples”\textsuperscript{171} is undisputed, the idea of the international community’s responsibility to intervene is being discussed very controversial. Nevertheless, there is a “growing consensus within international law literature, particularly within IHRL, international criminal law and international environmental law that supports the view that responsibility to protect peoples extends beyond national borders”\textsuperscript{172} and the responsibility has even been extended to prevent disasters, to react to disasters and to rebuild after a disaster hit the country.\textsuperscript{173}

The effects caused by climate change boosted the discussion about responsibility to protect not only within the scientific community, but also in public. In 2015, the British newspaper \textit{The Guardian} set off a discussion about the responsibility of the United Kingdom concerning flood defences due to the increasing number of heavy flooding\textsuperscript{174}. This discussion and the “evolving customary international law rules with respect to protection of persons … may … result in a complete set of responsibilities by both affected and assisting states in prevention, reaction and rebuilding after disasters”\textsuperscript{175}.

\textbf{4.2.2 Human Rights}

Responding to a disaster always means to comply with the core principles of humanitarian aid (humanity, neutrality and impartiality) and to respect the most important human rights obligations such as “the right to life, liberty, security of persons, the right to personal identity, the right to humane treatment, the right to food and water, and the right to health”\textsuperscript{176}. States are obliged not only to respect them, but also to protect and fulfil the duties resulting of the adopted human rights treaties,\textsuperscript{177} including the duty to take positive measures to maintain their protection\textsuperscript{178}. However, most of the human rights treaties contain limitations or derogation clauses. Parties to the European Convention on Human Rights can derogate from their

\begin{flushleft}
\textsuperscript{171} \textit{Breau}, Responses by states, 2016, 73.  \\
\textsuperscript{172} Ibid.  \\
\textsuperscript{173} Ibid., 89.  \\
\textsuperscript{174} Cf. \textit{The Guardian}, Storm Desmond, Cameron Promises to Review Flood Defence Plans, 7 December 2015.  \\
\textsuperscript{175} \textit{Breau}, Responses by states, 2016, 90.  \\
\textsuperscript{176} \textit{Bookmiller}, Closing “the yawning gap”? International disaster response law at fifteen, 2016, 49.  \\
\textsuperscript{177} Cf. \textit{IFRC}, Desk Study, 2007, 34.  \\
\textsuperscript{178} \textit{See Human Rights Committee}, Human Rights Committee General Comment No. 6, The right to life (art. 6), 1982, para. 6, republished in U.N. Doc. HRI/GEN/1/Rev.6, p.131 (2003).
\end{flushleft}
obligations in times of “public emergency threatening the life of the nation”\textsuperscript{179}. While certain rights such as the right to live is a non-derogable right, states can suspend rights highly important to disaster response missions (e.g. the liberty of movement). Since catastrophes can impair the ability to fully protect and respect certain rights established in various human rights treaties, it is very likely for states to declare public emergency and derogate from certain rights.\textsuperscript{180}

The necessity of developing IDRL specific, non-derogable rights has been recognized and first vague attempts had been made. The \textit{Principles and Rules of Red Cross and Red Crescent Disaster Relief} of 1995 consider “it a fundamental right of all people to both offer and receive humanitarian assistance”\textsuperscript{181}. The \textit{Operational Guidelines on Human Rights and Natural Disaster}, adopted by the IASC in 2006 claims that “international humanitarian organizations, while not directly bound by international human rights treaties, accept that human rights should underpin their actions”\textsuperscript{182}.

The Human Rights Council also acknowledges the importance of human rights law in the event of disasters\textsuperscript{183}, but only new global IDRL frameworks such as the \textit{Sendai-Framework for Disaster Risk Reduction 2015-2030}\textsuperscript{184} (Sendai Framework) and the ILC \textit{Draft Articles on the Protection of Persons in the Event of Disasters}\textsuperscript{185} explicitly refer to human rights and embed a right-based approach. New technologies, foremost social media, present disasters and how states and relief workers cope with them in a new way that could help drawing attention to the standing of human rights in such situations.\textsuperscript{186}

\begin{thebibliography}{99}
\bibitem{179} ECHR, Article 15 para. 1.
\bibitem{180} Bookmiller, Closing ‘the yawning gap’? International disaster response law at fifteen, 2016, 50.
\bibitem{181} IFRC, Report of the Twenty-Sixth International Conference of the Red Cross and Red Crescent Movement, Geneva (3-7 December 1995), annex IV, para. 2.1.
\bibitem{183} Cf. HRC, Final research-based report of the Human Rights Council Advisory Committee on best practices and main challenges in the promotion and protection of human rights in post-disaster and post-conflict situations UN Doc A/HRC/28/76 (10 February 2015).
\bibitem{184} UNGA A/RES/69/283 (3 June 2015), Guiding principle 19 lit. c.
\bibitem{185} ILC, Draft Articles (2016), art. 5.
\end{thebibliography}
4.2.3 International Humanitarian Law

While IHL applies to situations of armed conflicts only, the legal framework contains many regulations applicable in the event of disasters. Even more, a considerable number of IDRL rules are issued from IHL, given the fact that both groups of “victims of armed conflict and disaster victims are wounded, sick, displaced, in danger and in need of protection”187.

The highly controversial discussed question if IDRL is applicable in armed conflicts has already been issued in chapter 2. The IFRC Desk Study of 2007 suggests that, when a natural disaster occurs in the context of an armed conflict, IHL “prevail over other types of law as a matter of lex specialis”188. Whenever IHL addresses the “same issues confronted by IDRL”189, IHL should be looked at by “way of analogy”190.

Especially the Fourth Geneva Convention contains a significant set of rules applicable and assignable to disaster situations. Relevant for occupied territories, article 59 of the Fourth Geneva Convention declares that, “if the whole or part of the population of an occupied territory is inadequately supplied, the Occupying Power shall agree to relief schemes on behalf of the said population and shall facilitate them by all the means at its disposal”191. The protection of “impartial humanitarian organizations” and the permission of free passage of relief consignments must be ensured.192 Article 30 ensures that humanitarian organizations should be “granted all facilities”193 needed to provide assistance and article 61 requires relief consignments to be “exempt in occupied territory from all charges, taxes or customs duties unless these are necessary in the interests of the economy of the territory”194 and the Occupying Power has to “facilitate the rapid distribution”195.196

The 2005 published ICRC Study of Customary Humanitarian Law pointed out, that many of these rules have already become rules of customary law and are not only binding in

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188 IFRC, Desk Study, 2007, 36.
189 Ibid.
190 Ibid.
192 Ibid.
193 Ibid., Article 30.
194 Ibid., Article 61.
195 Ibid.
196 Cf. IFRC, Desk Study, 2007, 36.
international, but also in internal conflicts: “Parties to the conflict must allow and facilitate rapid and unimpeded passage of humanitarian relief for civilians in need, which is impartial in character and conducted without any adverse distinction, subject to their right to control”\(^{197}\) and they “must ensure the freedom of movement of authorized humanitarian relief personnel essential to the exercise of their functions”\(^{198}\). “Humanitarian relief personnel and objects must be respected and protected”\(^{199}\). The study also recognizes that it is “self-evident that a humanitarian organisation cannot operate without the consent of the party concerned. However, such consent must not be refused on arbitrary grounds”\(^{200}\). Nevertheless, “if it is established that a civilian population is threatened with starvation and a humanitarian organization which provides relief on an impartial and non-discriminatory basis is able to remedy the situation, a party is obliged to give consent”\(^{201}\).

### 4.2.4 Refugee and Internally Displaced Persons Law

Within the last century, refugee law had been subject to constant further development resulting in numerous sophisticated resolutions, conventions and rules. Even though all people forced to flee are facing similar obstacles and challenges, regardless the cause, not all of them are covered by those conventions. The *Convention and Protocol relating to the Status of Refugees* (Refugee Convention) define such a restricted notion of “refugee”, that only people fleeing the threat of persecution are covered\(^{202}\).

Most of the conventions dealing with rights of refugees are only applicable when people are fleeing from armed conflicts, generalized violence\(^{203}\) and often specifically exclude natural disasters\(^{204}\). Consequently, people who are forced to leave their country due to a natural or man-made disaster might not benefit from the fundamental rule of international refugee protection: the rule of non-refoulement. However, states have developed other forms of protection for

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\(^{198}\) Ibid., rule 56.

\(^{199}\) Ibid., rule 31.

\(^{200}\) Ibid., 197.

\(^{201}\) Ibid.


\(^{204}\) Cf. *UNHCR*, Extending the limits or narrowing the scope? Deconstructing the OAU refugee definition thirty years on, Geneva 2005, 20.
extra-Convention refugees such as subsidiary protection and recent practice demonstrated that states are willing to temporarily accept displaced persons. Considering this positive participation of neighbouring states and the fact that it is widely recognized that the principle of non-refoulement constitutes a rule of customary international law, it could become a central element of IDRL.  

Although people have always been forced to move due to the impacts of natural hazards (‘disaster displacement’) and this cannot be understood as a new phenomenon, it was only recently, that those people have been recognised “as a specific category of people who have particular protection and assistance needs”\textsuperscript{206}. While disaster-displaced people not generally fall within the scope of classic refugee law, there are aspects where it is applicable though. When a refugee’s state of residence is hit by a disaster, the Refugee Convention binds states to provide refugees the same treatment as nationals regarding all relevant disaster relief measures\textsuperscript{207}. Affected persons may also be protected as refugees when disasters trigger persecution and violence\textsuperscript{208}. Especially when governmental authority is collapsing or the government uses the chaos of a disaster to persecute opponents\textsuperscript{209}.

According to the 2015 report of the Internal Displacement Monitoring Centre, more than 184 million people were displaced between 2008 and 2014 due to natural hazards\textsuperscript{210}. This number has been constantly increasing since the 1970s\textsuperscript{211} and this trend is continuing as over 19.2 million people were displaced in 2015 in the context of sudden-onset disasters only\textsuperscript{212}. Although the number of disaster displaced exceeded those displaced due to armed conflicts in the past decade\textsuperscript{213}, established rules for their protection are still lacking.

\textsuperscript{205} Cf. \textit{Venturini}, International Disaster Response Law in Relation to Other Branches of International Law, 2012, 56-57.
\textsuperscript{206} K\text{"a}lin Walter, Chapuisat Hannah, Displacement in the context of disasters and adverse effects of climate change, in: Breau et al., Research Handbook on Disasters and International Law, Cheltenham, UK, Northampton, MA, USA (Edward Elgar Publishing), 2016, 358.
\textsuperscript{207} Cf. UNHCR, Refugee Convention, 2011, chapter IV & V.
\textsuperscript{208} Cf. McAdam Jane, Climate Change, Forced Migration and International Law, New York (Oxford University Press) 2012, 39.
\textsuperscript{209} Cf. K\text{"a}lin et al, Displacement in the context of disasters and adverse effects of climate change, 2016, 363.
\textsuperscript{210} Norwegian Refugee Council/Internal Displacement Monitoring Centre (NRC/IDMC), Global Estimates 2015: People displaced by disasters, Geneva 2015, 8.
The Intergovernmental Panel on Climate Change (IPCC) expect that the negative impacts of climate change are resulting in weather-related events that are increased in their frequency and their intensity. The IPCC concluded, that “populations that lack the resources for planned migration experience higher exposure to extreme weather events, particularly in developing countries with low income”\textsuperscript{214} and “thus face a higher risk of being displaced than persons who have the means to migrate to safer areas within the country or abroad before such disasters strike”\textsuperscript{215}.

People tend to stay as close to their homes as possible when they experience disaster displacement. As a result, the majority of disaster displacement is internal and in only few situations, people are seeking for humanitarian assistance in other countries. Most of those cross-border movements are caused by droughts and occur especially in South and Central America as well as Africa\textsuperscript{216}.

While disaster displaced people are covered by international refugee law in very limited situations only, the law of internally displaced persons (IDPs) is highly relevant. Even though non-binding, the \textit{UN Guiding Principles on Internal Displacement of 1998} (Guiding Principles) specifically extends its applicability for persons who lost their homes due to “natural or human-made disasters”\textsuperscript{217}. The Guiding Principles do not only guarantee certain rights of humanitarian law and human rights law, but also codify the right for IDPs to receive humanitarian assistance\textsuperscript{218}. As humanitarian organizations are guaranteed to offer their services,\textsuperscript{219} they are also obliged to carry out their assistance “in accordance with the principles of humanity and impartiality and without discrimination”\textsuperscript{220}.

\textsuperscript{214} \textit{Intergovernmental Panel on Climate Change} (IPPC), Climate Change 2014 Synthesis Report Summary for Policymakers, 2014, 16.
\textsuperscript{215} Kälin et al, Displacement in the context of disasters and adverse effects of climate change, 2016, 359.
\textsuperscript{218} Ibid., Principle 3 para. 2.
\textsuperscript{219} Ibid., Principle 25 para. 2.
\textsuperscript{220} Ibid., Principle 24 para. 1.
International human rights relevant for IDPs in the context of a disaster also form the basis for the 2009 adopted *Kampala Convention*\(^{221}\) and the 2006 adopted *Great Lakes IDP Protocol*\(^{222}\). Other legal documents such as *The Peninsula Principles on Climate Displacement within States*\(^{223}\) (The Peninsula Principles) provide detailed guidance helping governments to conduct planned relocations\(^{224}\) and to address “land identification, habitability and use”\(^{225}\) issues. The *Sendai Framework* focus on the prevention and mitigation of displacement and address cross-border displacement risks\(^{226}\).

The *Draft Articles on the Protection of Persons in the Event of Disasters* take the most comprehensive approach by facilitating “an adequate and effective response to disasters that meets the essential needs of the persons concerned, with full respect for their rights”\(^{227}\) and directly calling DRR measures for building resilience as the suitable instruments to prevent displacement.\(^{228}\)

### 4.2.5 International Law of Development

As already mentioned in chapter 1, disaster-related economic damages have been estimated at, on average, US$ 162.2 billion per year\(^{229}\) within the last decade only. It is therefore inevitable that disasters have a tremendous impact on a country’s development and while its complete elimination is impossible, disaster risk reduction (DRR) plays a major role in preventing disasters and ensuring sustainable development. The *Brundtland Report* of 1985 already built the bridge between disasters and development as well as disasters and poverty by stating: “All major disaster problems in the Third World are essentially unsolved development problems. Disaster prevention is thus primarily an aspect of development, and this must be a development that takes place within the sustainable limits.”\(^{230}\)

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\(^{223}\) The Peninsula Principles on Climate Displacement Within States ("The Peninsula Principles") (18 August 2013).

\(^{224}\) Ibid., Principle 10 lit. b.

\(^{225}\) Ibid., Principle 11.

\(^{226}\) UNGA A/RES/69/283 (3 June 2015), Guiding Principle 28 (d).

\(^{227}\) ILC, Draft Articles (2016), art. 2.

\(^{228}\) Cf. Kälin et al, Displacement in the context of disasters and adverse effects of climate change, 2016, 363.

\(^{229}\) Ibid.

This idea of the direct link between development and disasters has been recognized by the UN GA in its Resolution 46/182 in 1992: “Economic growth and sustainable development are essential for prevention of and preparedness against natural disasters and other emergencies.”

Advanced principles had been developed in the Rio Declaration of 1992. The right to development and the aim to build capacity for sustainable development represent the doctrine of anthropocentrism. Principle 6 of the Declaration targets developing countries and addresses their environmental vulnerability. By respecting the states’ different abilities, the principle of common but differentiated responsibilities formulates the ‘differential approach’ that became a fundamental assumption in sustainable development law. This ongoing discourse resulted in the Yokohama Strategy, adopted in 1994 and DRR became an essential component of sustainable development as “poverty alleviation is imperative in the prevention and mitigation of natural disasters.”

In the UN Secretary-General report of 2013, the link between sustainable development and DRR was once more underlined and stressed even more: “development cannot be sustainable if the disaster risk reduction approach is not fully integrated into development planning and investments.” The acknowledgment of the interrelationship between sustainable development and disasters and the realization that “disasters disproportionately affect poor communities because of their greater vulnerability” are reflected in the latest IDRL related legal frameworks such as The Sendai Framework and the Sustainable Development Goals (SDGs). Sustainable Development Goal 1 (“End poverty in all its forms everywhere”) as well as Sustainable Development Goal 13 (“Take urgent action to combat climate change and its impacts”) refer to the importance of DRR for achieving sustainable development.

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233 Ibid., Principle 3.
234 Ibid., Principle 9.
235 Ibid., Principle 7.
239 Cf. UNGA A/RES/69/283 (3 June 2015), para. 10.
240 Progress towards the Sustainable Development Goals. Report of the Secretary-General, UN Doc. E/2016/75 (3 June 2016).
This fusing of sustainable development principles and disaster response rules may result in improved frameworks for preventing disasters and therefore alleviate the effects for the affected people as well as for the environment.241

4.2.6 Privileges and Immunities Law

International privileges and immunities laws are not primarily constituted to address disaster situations. It rather formulates special treatment of diplomatic and consular representatives of foreign governments. Nevertheless, the core element of privileges and immunities, namely the objective to allow the holder an easier entry and exit as well as a greater latitude on the way operating, is highly relevant for international assistance in disaster response. The Vienna Convention on Diplomatic Relations of 1961 and the Vienna Convention on Consular Relations of 1963 codify most of the relevant customary law, but in general, international disaster relief responders do not benefit from them. International Organizations have been addressed in many bilateral treaties and conventions on disaster assistance and often similar privileges have been granted.242

While the Convention on Privileges and Immunities of the United Nations of 1946 and the Convention on Privileges and Immunities of Specialized Agencies of 1947 ensure special treatment for UN agencies and officials, the ICRC and the IFRC benefit from their unique international mandates and recognition in the Geneva Conventions and their Additional Protocols. International as well as regional intergovernmental organizations such as the European Union (EU) have also been granted privileges and immunities under international law.243

Receiving states are always permitted to undermine privileges and immunities rights and parties benefiting from special privileges need not to abuse them244. They have to take all measures necessary to respond to complaints and “to exercise good faith in cooperating with domestic authorities, where doing so would not compromise their functionality”.245

243 Ibid.
244 UNGA, Convention on the Privileges and Immunities of the United Nations (13 February 1946) 1 UNTS 15 and 90 UNTS 327, Section 21.
4.2.7 Customs Law

Chapter 4.1.3 already underlined the importance of foreign goods and equipment in international disaster response operations. Especially in the initial phase of disaster response, delayed customs clearings and high taxes for importing goods could jeopardize the mission and pose a serious threat to the people in need.

As a result of international trade, a profound body of international law addressing customs has been developed. Even though most of the regulations focus on regular trading, the importation of relief consignments can also benefit from them. A considerable number of (mostly non-binding) conventions and treaties established specific instruments in the context of disaster relief, all encouraging governments to expedite the import of foreign relief goods. The Recommendation of the Customs Co-Operation Council to Expedite the Forwarding of Relief Consignments in the Event of Disasters of 1970 suggested very specific steps. States should “waive any economic export prohibitions or restrictions, and any export duties or taxes”, “authorize as far as possible, relief consignments to be cleared outside the hours and places normally prescribed” and simplify paperwork. Based on these recommendations, the Istanbul Convention of 1990 established “temporary admissions” concerning relief equipment and items. The Model Customs Agreement of 1995 picked up the 1970 approaches by stating that states have to take “measures to expedite the import, export and transit of relief consignments and possessions of relief personnel in the event of disasters and emergencies”.

The importance of customs law in the event of a disaster is also reflected in article 15 paragraph 1 litera a of the most recent ILC Draft Articles on the Protection of Persons in the Event of Disasters that will be discussed in greater detail in chapter 5.4.5.

4.2.8 Telecommunication Law

Even though often not being prioritized in IDRL related discussions, the use of telecommunication in emergencies has not only gained in importance in the last decades due to technological progress, but was recognized even in the 19th century. The Convention

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246 Cf. Ibid.
248 Ibid., Recommendation 7.
250 UNDHA, WCO, Model Customs Agreement.
Télégraphique Internationale de Paris already guaranteed that the interruption of transmission is justified by an emergency.251 This basic principle is reflected in most of the conventions and guidelines regulating international telecommunications for example by prioritising transmission and response of distress calls252 and by reserving the wavelengths253 of such calls.

Resolutions adopted at various International Conferences of the Red Cross and World Administrative Radio Conferences between 1965 and 1994 resulted in the most important international convention relevant for telecommunications in disaster response operations: the Tampere Convention. It addresses numerous telecommunication issues relevant in disaster response and contains numerous recommendations: states should cut regulatory barriers such as restrictions for certain types of equipment and delays in the administration of particular radio-frequency spectrums254. The Tampere Convention does not only suggest to pre-clear certain telecommunication resources, but also encourages states to guarantee particular privileges to organizations providing telecommunications assistance and to exempt them from taxation and other charges.

Especially the expediting or waiving of licensing procedures and the leadership role of the United Nations Emergency Relief Coordinator255 make the Tampere Convention a very sophisticated and already well established legal instrument for telecommunications issues in disaster response.

### 4.2.9 Humanitarian Personnel Security Law


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251 Documents diplomatiques de la conférence télégraphique internationale de Paris, Convention télégraphique internationale de Paris (1865) et Règlement de service international (1865), art. 19.
252 International Radio Telegraph Convention (adopted 3 November 1906), art. 9.
253 General Radiocommunication Regulations (adopted 10 December 1932), art.7.
254 Tampere Convention, art. 9 para. 2 lit. b.
255 Cf. IFRC, Desk Study, 2007, 44.
Even though the majority of incidents have occurred in extremely violent environments of only a few regions of the world\(^{258}\), security of humanitarian personnel is increasingly important and more consideration to it had been given in the last decades.

The *Convention on the Safety of United Nations and Associated Personnel*\(^{259}\) was one of the first tackling this challenge. It obligates states to ensure physical security of those involved in certain UN-controlled missions: “peacekeeping missions not involving a Chapter VII enforcement mandate and other operations declared exceptionally risky by the Security Council or General Assembly”\(^{260}\). It is therefore not applicable in disaster related context. The protection had been extended by the General Assembly with the *Optional Protocol to the Convention on the Safety of United Nations and Associated Personnel* to humanitarian, development and political activities operating in “emergency humanitarian assistance”\(^{261}\) which generally covers situations of disasters, but article II paragraph 3 gives states the possibility to derogate from article II paragraph 1 litera b “which is conducted for the sole purpose of responding to a natural disaster”\(^{262}\).

While the Security Council and the General Assembly endeavour to ensure security of humanitarian personnel, most resolutions are solely referring to situations of armed conflicts and an elaborated legal instrument specifically addressing humanitarian personnel security in disaster related contexts is still missing. Article 16 of the ILC *Draft Articles on the Protection of Persons in the Event of Disasters* could constitute a turning point (see chapter 5.4.5).


\(^{262}\) Ibid., art. II para. 3.
5. Existing Legal Frameworks

“Humanitarian assistance is the world’s largest unregulated industry.”263

This assessment in the IFRCs World Disaster Report 2005 followed a not less dramatic diagnosis by Michael Hoffman, Director of IHL and Policy at the American Red Cross in 2000. He evaluated the legal developments regarding the handling of disasters’ impacts and concluded that “at the core [there] is a yawning gap. There is no definitive, broadly accepted source of international law which spells out legal standards, procedures, rights and duties pertaining to disaster response and assistance. No systematic attempt has been made to pull together the disparate threads of existing law, to formalize customary law or to expand and develop the law in new ways.”264

This damning verdict marked the starting point for a global initiative by the Federation Board of the IFRC: the “International Disaster Response Law (IDRL) initiative” focusing on three aims. First, the IFRC started to analyse already existing legal instruments. Second, future growth in the field should be facilitated and third, IDRL should be promoted “as a reference term for governments and other relief players.”265 The initial study examined over 300 relevant treaties and resolutions but only one of them was comprehensive in respect to relief operations with addressing natural disaster relief: the Tampere Convention of 1998266. The report about the same study concluded that “there is a prolific network of bilateral and regional treaties, but this is not reflected in regions outside of Europe”267. Significant gaps and little consistency in how the existing guidelines and treaties approached key issues were also identified.268

Many of the existing treaties and guidelines had been adopted without referencing to each other and being far from uniform. This can be explained by the fact that there are numerous different forms of possible arrangements. They differ in their regional coverage (bilateral, regional, universal), in their liability (binding, non-binding) as well as their intention (guidelines, principles, rules...).269

265 Bookmiller, Closing ‘the yawning gap’? International disaster response law at fifteen, 2016, 46.
267 Ibid., 16.
268 Cf. Ibid.
While the IDRL initiative’s biggest achievement was the publication of the non-binding *IDRL Guidelines* in 2007, the ILC had recently proposed a new major legal instrument that could result in the binding IDRL legal framework the humanitarian community had been waiting for.

### 5.1 Global Agreements

While the consequences of war and their management had been issued by the international community back in the 1850s, first attempts for international standardized disaster coping strategies were only made in the twentieth century. As the IRU had failed in creating a “specific universal treaty comprehensively regulating disaster prevention, management and recovery” (as already discussed in chapter 3.1), new trends emerged: international adopted treaties regulating specific issues in general terms. Rules addressing transport of goods, human rights or the protection of the safety and security of international personnel involved in emergency operations had often been adopted after a long process of discussion. Whereas those regulations specifically concerning the states duties in the event of a disaster were often included ad hoc what explains their mostly poor quality.

Nevertheless, starting with the *Convention on Early Notification of a Nuclear Accident* in 1986, the attempts of negotiating universal treaties dealing with disaster management have been given new impetus recently. While the *Kyoto protocol* of 1997 or the 2005 *Optional Protocol to the 1994 Convention on the Safety of United Nations and Associated Personnel* including very specific issues of disaster management are binding instruments, a parallel concept of soft law emerged (see chapter 5.4). The most recent attempt of creating a binding global treatment - the *ILC Draft Articles on the Protection of Persons in the Event of Disasters* is very promising and will be reviewed in chapter 5.4.5.

### 5.2 Regional Agreements

In contrast to the rather scarce binding global treaties, agreements dealing with disaster response on a regional level are more common. While in the early 2000s most of the treaties on

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271 *De Guttry*, Surveying the Law, 2012, 34.
273 *ILC*, Draft Articles (2016), art. 5.
a regional level had been adopted in Europe\textsuperscript{274}, the discussions at the World Conference on Disaster Reduction in 2005 resulted in the \textit{Hyogo Framework for Action: Building the Resilience of Nations and Communities to Disasters} (Hyogo Framework), giving a strong boost for regional agreements. It encourages regional organizations to “support the development of regional mechanisms and capacities for early warning to disasters”\textsuperscript{275}. The \textit{Hyogo Framework} and its successor, the \textit{Sendai Framework for Disaster Risk Reduction} (Sendai Framework) will be analysed in chapter 5.4.4.

While the level of regional cooperation differs significantly on each continent, the African, Asian and European regional agreements will be discussed in more detail.

\textbf{5.2.1 Africa}

Numerous studies indicate that “Africa is one of the most vulnerable continents to climate change”\textsuperscript{276} and the “situation is further worsened by its poor state of economic development and low adaptive capacity.”\textsuperscript{277} Droughts are already increasing in their intensity and frequency and other extreme weather events are going to challenge governments on the African continent even more. However, governments have only recently started to elaborate profound legal mechanism for disaster management and prevention.

The first result of the increasing awareness of the importance of legal instruments dealing with disaster had been adopted by the African Union (AU) in 2004: The \textit{African Regional Strategy for Disaster Risk Reduction} (African Strategy)\textsuperscript{278}. A \textit{Programme of Action for the Implementation of the African Strategy} (2005 – 2010) followed at the AU Summit 2004. This formulated the basis for the \textit{African Programme of Action for DRR}. It was developed at the first AU Ministerial Conference on Disaster Risk Reduction and approved by the AU Executive Council in 2005\textsuperscript{279}. The second AU Ministerial Conference on DRR approved an extended \textit{Programme of Action for the Implementation of the Africa Regional Strategy for DRR} (2006-}

\textsuperscript{276} The Energy and Resources Institute, \textit{Impacts of Climate Change, http://know.climateofconcern.org/index.php?option=com_content&task=article&id=105 (June 4th, 2017).}
\textsuperscript{277} Ibid.
\textsuperscript{278} \textit{African Union (AU), Africa Regional Strategy for Disaster Risk Reduction. Disaster Risk Reduction for Sustainable Development in Africa, 2004.}
\textsuperscript{279} \textit{Economic Community of West African States (ECOWAS), ECOWAS Policy for Disaster Risk Reduction, 2006.}
that was endorsed by the AU Executive Council. The Council also urged the AU Member States to ensure the earliest implementation.  

The remaining African regions developed their own DRR strategies, many of them derived from the AU approaches. The Economic Community of West African States (ECOWAS) created an internal DRR Division, while the East African Community (EAC) established a working group named the “EAC’s Partner States Head of Disaster Reduction and Management Co-ordination” to “propose practical and affordable mechanisms for co-operation in disaster preparedness and response across the region”\(^{281}\). The Intergovernmental Authority on Development (IGAD) developed a Disaster Risk Management Programme aiming the promotion of a multi-stakeholder, standardized needs assessment. It also created the IGAD Climate Prediction and Applications Centre to coordinate climate related risk reduction and to gain climate information. “Although IGAD has accepted a regional disaster risk management role, its responsibilities and policies in relation to this role have not been clearly defined.”\(^{282, 283}\)

### 5.2.2 Asia-Pacific

The special geological condition of the Asian continent results in a special vulnerability for disasters in all their manifestations and the impacts of climate change pose an additional serious threat especially to the Himalaya regions. Different regional organizations have realized the special challenges and promoted several significant instruments for disaster management. The establishing of the Asian Disaster Reduction Centre in 1998 \(^{284}\) and the Asian Ministerial conference on Disaster Risk Reduction in 2005 contributed to the development and promotion of DRR mechanisms and enhanced disaster cooperation.

The Association of South-East Asian Nations (ASEAN) has created numerous important disaster related instruments. To strengthen regional cooperation, it established the Committee on Disaster Management (ACDM) in 2003 and assigned “overall responsibility for co-ordinating and implementing regional activities”\(^{284}\) to it. A vital factor for succeeding was the

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\(^{281}\) *Continuity Central*, EAC Partner States’ heads of disaster management hold inaugural meeting in Dar Es Salaam.

\(^{282}\) *Intergovernmental Authority on Development (IGAD)*, IGAD’s Regional Perspective in Disaster Risk Management, 2009, 3.


\(^{284}\) *De Guttry*, Surveying the Law, 2012, 22;
launching of the ASEAN Regional Programme on Disaster Management (ARPDM). It formed a platform for exchange between ASEAN and various International Organizations. The Agreement on Disaster Management and Emergency Response of 2005 marked another important step. While this agreement contained many of the rules that already existed in other treaties, the ASEAN managed to implement two decisive supplements. It established the ASEAN Standby Arrangements for Disaster Relief and Emergency Response that encouraged states not only to assess their emergency response capacities they could mobilize in the event of a disaster, but to provide that information to all Member States by transferring it to an online inventory. Second, the ASEAN Co-Ordinating Centre for Humanitarian Assistance serves as competent interface between ASEAN Member States and other International Organizations such as the United Nations.

Member States of the South Asian Association for Regional Co-operation (SAARC) are facing a significant increase of heavy floods since the climate change constantly melts the large Himalaya glaciers. The SAARC Disaster Management Centre (SDMC) was established to deal with these consequences. In cooperation with the South Asian Disaster Knowledge Network (SADKN) it intends to ensure exchange of relevant information for an effective DRR, promote IDRL instruments and support governments to implement them.

The west Asia and Arab States have been very restrained regarding subregional cooperation. In 2008, this attitude changed with the signing of a Memorandum of Understanding (MoU) between the League of Arab States and the UNISDR. Based on the MoU, the Arab Academy for Science, Technology and Maritime Transport was created. The ambitious goal of the Academy was to ensure and accelerate the implementation of all measures suggested in the Hyogo Framework.

The Pacific islands, especially the Alliance of Small Island States (AOSIS), have been focusing on promoting their needs within the UN. While they have not ratified any international treaty, one major legal framework for DRM had been adopted: An Investment for Sustainable Development in the Pacific Island Countries – Disaster Risk Reduction and Disaster Management. A Framework for Action 2005-2015.\textsuperscript{285}

The 2015 Progress Report on the implementation of the *IDRL Guidelines* underlines that especially the Asian-Pacific region referred to the *IDRL Guidelines* when establishing new and adopting their existing rules on IDRL. The noticeable tendency of LDCs to implement the *IDRL Guidelines* will be analysed in chapter 7.5.

**5.2.3 Europe**

Europe has always been a continent with regional organizations paying significant attention to disaster prevention and cooperation in disaster response operations. While the UN Economic Commission for Europe as well as the Council of Europe contributed substantially to the comparably well elaborated inner-European disaster response instruments, the EU has developed the most sophisticated instrument: The *Civil Protection Mechanism* (CPM).

First important steps towards the CPM had been taken in 1985 when the Council and representatives of the Member States adopted numerous resolutions expressing the willingness of strengthening the cooperation in the area of civil protection. While these resolutions were non-binding, a Council Decision of 2001, with the establishing of the *Community Action Programme in the Field of Civil Protection* put the efforts forward and aimed to “ensure even better protection in the event of natural, technological, radiological and environmental emergencies”. In 2007, the program was adopted by the Council decision 2007/779/EC and given the new name of ‘*Civil Protection Mechanism*’. It also provided a definition of ‘disaster’ as “any situation which has or may have an adverse impact on people, the environment or property and which may result in a call for assistance under the Mechanism”. Since EC legislation on civil protection was not covered by a specific legal basis, the ‘flexibility provision’ of former article 308 Treaty Establishing the European Community (TEC) was used.

The real breakthrough in a common EU disaster response mechanism is represented by the 2009 Lisbon Treaty. The Treaty on the Functioning of the European Union (TFEU) contains various articles representing legal basis for a consistent EU approach. Article 196 TFEU, dealing with

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286 Cf. Ibid., 29-30;
civil protection as well as article 222 TFEU, representing the ‘solidarity clause’ are among the most important articles when it comes to disaster response. Article 222 paragraph 1 litera b serves as the more general rule, urging Member States to “assist a Member State in its territory, at the request of its political authorities, in the event of a natural or man-made disaster.” Even though civil protection has found its way into primary EU law, ex article 6 TFEU, the EU has only complementary competence in this area. However, article 196 TFEU spells out the Unions competences:

“1. The Union shall encourage cooperation between Member States in order to improve the effectiveness of systems for preventing and protecting against natural or man-made disasters. Union shall aim to:

a. support and complement Member States’ action at national, regional and local level in risk prevention, in preparing their civil protection personnel and in responding to natural or man-made disasters within the Union;

b. promote swift, effective operational cooperation within the Union between national civil protection services;

c. promote consistency in international civil protection work.”

This well-advanced article tackles the three main phases of the Disaster Risk Management Cycle (see chapter 2.3) and paragraph 2 of article 196 TFEU opens up the possibility of new legislative measures enacted “in accordance with the ordinary legislative procedure.”

The advanced approaches in the TFEU add new competences to the 2007 established and recast CPM. Under the chairmanship of the Commissioner responsible for International Cooperation, Humanitarian Aid and Crisis Response, it represents an operative mechanism intending to deepen the cooperation between EU Member States, manage relevant information and improve their disaster preparedness. States are encouraged to develop ‘modules’ representing predefined arrangements or resources and perform international trainings supported by the CPM. One of the most important operational institutions is the Monitoring and Information Centre (MIC) located in Brussels. It is accessible seven days a week and represents an important communication hub. While the MIC forwards and coordinates assistance requests by the

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291 TFEU, art. 196 para. 1.
292 TFEU, art. 196 para. 2.
affected Member State, it is still up to the latter to take the final decision whether to accept the assistance offered. The MIC also provides relevant information on IDRL, alerts participating states about ongoing or imminent disasters and also coordinates missions outside of the EU.293

The Lisbon Treaty therefore marks an important step to achieve the aim of developing a consistent European Disaster Response Law. Nevertheless, possible tensions could be triggered from the question if certain civil protection mechanism have their legal basis in the ‘solidarity clause’ article 222 or article 196. The latter requires an ordinary legislative procedure, article 222 needs a Council Decision based on a proposal of the Commission and the HR. The potential of that tensions will very much depend on whether Member States are willing to interpret article 222 in a broad sense or not.294

5.3 Bilateral Agreements

Bilateral agreements regulating the cooperation in natural or man-made disasters outnumber all the previously discussed forms of regional and global treaties. This is hardly remarkable, as negotiating regulations among two neighbouring states is usually easier. Expectations of only two rather than a group of parties have to be considered and most of the time there is already a close cooperation between those two states on other levels. Additionally, International Organizations often promote the adoption of such treaties by providing legal frameworks as the 1980 European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities offered by the Council of Europe. Even though bilateral treaties are ubiquitous, the tendency to such agreements is extremely higher the deeper certain states already cooperate in other branches. Resulting in a large number of bilateral regulations in Europe and America and a little less of them in Africa and Asia.

While it is hard to examine all the different arrangements (reaching from treaties to “bilateral status of forces (SOFA) and visiting forces (VFA) and their associated memoranda of understanding”295), some common elements they are targeting can be identified, all matching the issues discussed in the previous chapters.

294 Cf. Ibid., 126.
A distinction in the typology of disasters often form the basis of such bilateral agreements, following the areas of cooperation regulated and modalities how this cooperation functions in the event of a disaster. Important issues often regulated in great detail, are the chain of command of an operation and the border-crossing of relief personnel as well as of emergency equipment and goods. The cost factor is also often an integral part of the regulations, as most of the states tend to share them due to pre-defined rules 296 297.

It must be mentioned, that recently adopted bilateral agreements dealing with disaster response are no longer limited to states as parties. The number of treaties between states and International Organizations is increasing significantly298, opening new possibilities for the important stakeholder of IOs.

**5.4 Soft Law**

Well elaborated and established binding agreements among states and the international community formulate the most powerful and effective tool for an efficient disaster response, prevention and preparedness. Most of those international conventions, treaties, etc. are based on guidelines and handbooks published by IOs and other important stakeholders. This non-binding ‘Soft Law’ approach formulates a compilation of recommendations based on a myriad of field reports and studies of the scientific community. These developed instruments are intended to function as a loose collection of ideas, well elaborated blueprints or simply to raise global awareness. They also provide guidelines to help governments to adopt their domestic legal systems to international standards as well as other stakeholders of the humanitarian aid community to improve their quality. Some of the most relevant and most recent soft law instruments will be discussed in this chapter.

**5.4.1 Code of Conduct**

Referred to in many guidelines and handbooks, the *Code of Conduct for International Red Cross and Red Crescent Movement and NGOs* formulates ten core principles of humanitarian aid. Adopted at the 26th International Conference of the Red Cross and Red Crescent in 1995.

296 Cf. Wildfire Arrangement between the Department of the Interior and the Department of Agriculture of the USA and the National Rural Fire Authority of New Zealand (2001); Agreement by and between the government of the Finnish Republic and the government of the Russian Federation on co-operation to avert disasters and to prevent their consequences (1994).


298 Cf. Ibid., 11.
(and ‘welcomed’ by all state parties to the Geneva Conventions), it is “a code of conduct for individual agencies to sign and agree to abide by. Humanitarian Agencies … commit themselves to a certain standard of conduct”. Recommendations addressed to governments, donor governments and intergovernmental organizations are formulated in the three annexes and are also an expression of the IFRC’s own seven principles. The extremely high number of over 650 signatories (May 2017) underlines the relevance of this document.

5.4.2 Hyogo Framework for Action

As the international community raised their awareness of the importance of law for an effective DRR, the Hyogo Framework was adopted at the World Conference on Disaster Reduction in Kobe, Hyogo, Japan in 2005. It urges state parties to “adopt, or modify where necessary, legislation to support disaster risk reduction, including regulations and mechanisms that encourage compliance and that promote incentives for undertaking risk reduction and mitigation activities”. It directly addresses the Yokohama Strategy (see page 38) and its lessons learned are reflected in the 34 recommendations. One of these lessons is the imperative for a shift from focusing on crisis management to a greater emphasis of proactive risk management, risk reduction and safety. While over 120 countries have undergone policy reforms after the adoption of the Hyogo Framework, the “mid-Term Review of the Hyogo Framework for Action had found that only 20 countries had dedicated budget allocations to local governments for DRM, even though 65 per cent of the countries had made local governments legally responsible for this activity.” This reflects the general willingness of governments to change laws and policies, but the challenges local authorities often face when it is to them to implement those changes. Nevertheless, the Hyogo Framework had been extremely innovative in two regards: First, it recognizes the emerging private sector as “key actors and promoted the establishment of public-private partnerships in disaster risk reduction

300 IFRC, Signatories to the Code of Conduct.
301 Hyogo Framework, para. 16 Key activities lit. i, c.
activities” and second, it puts a focus on sustainable development policies in order to improve disaster prevention.

5.4.3 IDRL Guidelines 2007
As one of the IFRC’s IDRL initiative’s (see page 40) results with the most international impact, the Federation presented The Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance (IDRL Guidelines) in 2007. The document was adopted by resolution 4 of the 30th International Conference of the Red Cross and Red Crescent. Directly directed to national governments, humanitarian organizations and regional inter-governmental organizations, it is the outcome of a long consultation process with over 140 governments, their National Red Cross and Red Crescent Societies as well as 40 IOs and NGOs.

“The Guidelines are a set of recommendations to governments on how to prepare their disaster laws and plans for the common regulatory problems in international disaster relief operations. They advise them as to the minimal quality standards they should insist upon in humanitarian assistance as well as the kinds of legal facilities aid providers need to do their work effectively. While responding to today’s common problems, they are based on existing international legal and policy documents.”

Structured into five parts (and an additional “Introduction” chapter), the Guidelines address the issues of “Core Responsibilities”, “Early Warning and Preparedness”, “Initiation and Termination of International Relief and Initial Recovery Assistance”, “Eligibility for Legal Facilities” and “Legal Facilities for Entry and Operations”. Therefore, the 24 principles cover all relevant legal and organizational issues occurring in the response phase of a disaster and underline ones more the responsibility of the affected state by re-evaluating existing instruments. Guiding Principle 1 explicitly names “the United Nations General Assembly

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305 Breau et al., Introduction, 2016, 13.
306 Hyogo Framework, para. 10 lit. c, para. 12 lit. a.
307 IFRC, Introduction to the Guidelines for the domestic facilitation and regulation of international disaster relief and initial recovery assistance ("Introduction to the Guidelines"), Geneva 2011, 11.
308 Cf. Bookmiller, Closing ‘the yawning gap’? International disaster response law at fifteen, 2016, 60.
310 IFRC, IDRL Guidelines.
Resolutions 46/182 of 1991 and 57/150 of 2002, the Measures to Expedite International Relief of 1977 as well as the Hyogo Framework for Action of 2005”\textsuperscript{311}.

The \textit{IDRL Guidelines} also strengthen and define the role of National Red Cross and Red Crescent Societies as “auxiliaries to the public authorities in the humanitarian field”\textsuperscript{312} and acknowledge that “domestic civil society actors play a key supporting role at the domestic level”\textsuperscript{313}.

As in December 2015, 24 countries have adopted domestic laws or rules directly based on the IDRL Guidelines, in 20 countries bills or draft regulations are pending\textsuperscript{314} and sixteen UNGA resolutions have referred to the Guidelines\textsuperscript{315}.

\textbf{5.4.4 Sendai Framework for Disaster Risk Reduction}

Succeeding the \textit{Hyogo Framework}, the \textit{Sendai Framework for Disaster Risk Reduction 2015-2030} (Sendai Framework) was adopted at the Third UN World Conference in Sendai, Japan in 2015. Seven global targets, including the reduction of disaster mortality victims and other affected persons by 2030 had been negotiated. Unlike the \textit{Hyogo Framework} that focused on DRM laws, the \textit{Sendai Framework} reflects a more comprehensive approach and emphasizes the broadened scope of disaster risk reduction by articulating four priorities and presenting corresponding measures.

\textit{“Priority 1: Understanding disaster risk}

\textit{Priority 2: Strengthening disaster risk governance to manage disaster risk}

\textit{Priority 3: Investing in disaster risk reduction for resilience}

\textit{Priority 4: Enhancing disaster preparedness for effective response and to ‘Build Back Better’ in recovery, rehabilitation and reconstruction”\textsuperscript{316}}

Paragraph 19 litera c directly addresses human rights by requesting state parties to manage disaster risk “… while promoting and protecting all human rights, including the right to

\begin{flushright}
\textsuperscript{311} IFRC, IDRL Guidelines, Guiding Principle 1 para. 2.  \\
\textsuperscript{312} IFRC, IDRL Guidelines, Guiding Principle 3 para. 1.  \\
\textsuperscript{313} IFRC, IDRL Guidelines, Guiding Principle 3 para. 1.  \\
\textsuperscript{314} Cf. IFRC, Disaster Law Programme Annual Report 2015 – Advanced version, Geneva 2016, 4.  \\
\textsuperscript{315} See IFRC, UN General Assembly Resolutions mentioning the IDRL Guidelines.  \\
\end{flushright}
development”\textsuperscript{317} which is a consequence of the recently started discussion of the interlink between human rights and IDRL (see chapter 5.2.2). It also considers the different causes of man-made disasters as a result of climate change\textsuperscript{318} and while calling for a primary state responsibility, it also emphasises the responsibility of the international community to assist developing states\textsuperscript{319} in implementing necessary DRR measures. International cooperation is seen as an important priority as it is considered to be “essential for effective disaster risk management”\textsuperscript{320}.

The Sendai Framework is accompanied by The Handbook on Law and Disaster Risk Reduction that should help governments to review their existing disaster response laws and guide them through the implementation of the suggested measures. The role of The Handbook will be discussed in chapter 8.2.

### 5.4.5 ILC Draft Articles on the Protection of Persons in the Event of Disasters

The most recent and maybe most promising attempt to create a global legal instrument dealing with IDRL that would be recognized and adopted by a vast majority of states started in 2007, when the ILC decided to commit itself to the issue of ‘protection of persons in the event of disasters’. Eduardo Valencia-Ospina was commissioned as Special Rapporteur and from the ILC’s sixtieth session in 2008 to its sixty-sixth session in 2014, he provided seven successive reports. In the session last mentioned, the reports had been supplemented by a memorandum by the Secretariat. The OCHA and the IFRC had also handed in written supplies to questions that had been addressed to them. At this session, a set of 21 draft articles on the protection of persons in the event of disasters accompanied by the commentaries, was adopted by the Commission on first reading\textsuperscript{321}. In accordance with articles 16 to 21 of the ILC’s statute\textsuperscript{322}, these draft articles had then been transmitted to IOs, governments, the IFRC and the ICRC. By

\textsuperscript{317} Sendai Framework, para. 19 lit. c.
\textsuperscript{320} Sendai Framework, para. 13 lit. a.
\textsuperscript{321} Cf. ILC, Report of the International Law Commission on the Work of its 66th Session (5 May-6 June and 7 July-8 August 2014) UN Doc A/69/10 Supplement No. 10 paras. 55-56.
January 1st, 2016, the recipients were given the possibility to submit their comments to the Secretary General of the United Nations.323

This opportunity had been seized by many governments and organizations and some of their suggestions and remarks were included in the final draft put down in the Special Rapporteur’s eighth report. Especially considerations of the Human Rights Centre (HRC) and the Expert Meeting at Roma Tre University in June 2015 influenced the last report presented at the 66th session of the ILC. The great importance of the HRCs report can be explained by the fact that the draft articles pursue an exceptionally strong human rights approach. This was also expressed during the first reading in 2014 when the ILC emphasised its intention of putting the protection of the population affected by a disaster at the centre324 and formulated their aim as to “facilitate an adequate and effective response to disasters that meets the essential needs of the persons concerned, with full respect for their rights”325.

After taking into account the Special Rapporteur’s proposals and the received comments, the Commission adopted the “entire set of draft articles on the protections in the event of disasters, on second reading”326 at its 3310th meeting held on June 3rd, 2016. The commentaries to the draft articles were adopted at the 3332nd to 3335th meetings, from August 2nd to August 4th, 2016.327 The final eighteen draft articles were submitted to the General Assembly, recommending “the elaboration of a convention on the basis of the draft articles on the protection of persons in the event of disasters”328.

“By Resolution 71/141 of 13 December 2016, the General Assembly took note of the draft articles, invited Governments to submit comments on the recommendation by the Commission to elaborate a convention on the basis of the draft articles, and decided to include in the provisional agenda of its seventy-third session, in 2018, an item entitled ‘Protection of persons in the event of disasters’,”329.

325 ILC, Texts and titles of the draft articles adopted by the Drafting Committee on first reading (15 May 2014) UN Doc A/CN.4/L.831, draft Article 2.
327 Cf. Ibid., para 44.
328 Ibid., para 46.
While it is not foreseeable at this point in time how the General Assembly is going to adopt the articles, the HRC recognizes in its Working Paper on the ILC Draft Articles on the Protection of Persons in the Event of Disasters the substantial contribution the Draft Articles can make even as a non-binding legal framework. Nevertheless, they support the proposals of the Special Rapporteur and the ILC Secretariat and advise the General Assembly to adopt the Draft Articles in the form of a framework convention.331

Some references to the adopted articles have already been made in chapter 2. As a detailed examination would go beyond the scope of this diploma thesis, only the individual terms and issues covered are named:

Scope (article 1), Purpose (article 2), Use of terms (article 3), Human dignity (article 4), Human rights (article 5), Humanitarian principles (article 6), Duty to cooperate (article 7), Forms of cooperation in the response to disasters (article 8), Reduction of the risk of disasters (article 9), Role of the affected State (article 10), Duty of the affected State to seek external assistance (article 11), Offers of external assistance (article 12), Consent of the affected State to external assistance (article 13), Conditions on the provision of external assistance (article 14), Facilitation of external assistance (article 15), Protection of relief personnel, equipment and goods (article 16), Termination of external assistance (article 17), Relationship to other rules of international law (article 18).332

6. New Stakeholders

While the classic stakeholders of IDRL (governments, IFRC, UN and other relevant IOs) have already been mentioned in the previous chapters, new stakeholders are emerging and increasingly taking centre-stage: the so called ‘Local Actors’ and private corporations. The term of ‘local’ is a “shifting concept, … highly contextual and dependent on one’s point of view. National authorities and NGOs may be considered local in comparison to international responders in a crisis.”333 Those new stakeholders influenced international assistance to a greater extent in the aftermath of the 2004 Tsunami in the Indian Ocean for the first time334 and their major role has been recognized by the majority of the ‘old’ stakeholders335 by now. Local actors are “always the first to respond”336 after a disaster. While they also have the necessary knowledge on local contexts, geologic characteristics and cultural peculiarities,337 corporate actors are often more innovative and better equipped than traditional actors. For example, specialised businesses tend to be in a better position to integrate new technologies such as the use of new media in response to a disaster. A circumstance that even the most cautious actors, such as the EU, that have always been restraining about the role private corporate actors should play in disaster relief, now have acknowledged. Partnerships and other forms of the participation of private actors are being developed.338

Their key role in DRR has also been recognized in several international legal documents. The ASEAN Agreement on Disaster Management and Emergency Response of 2005 states that “Parties, in addressing disaster risks, shall involve … all stakeholders, including local communities, non-governmental organisations and private enterprises, utilising, among others, community-based disaster preparedness and early response approaches”339. The Hyogo Framework of the same year directly addresses those new stakeholders by calling for the “full commitment and involvement of all actors involved, including … civil society, the private sector and scientific community”340 and the 2015 Sendai Framework stresses that “it is

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334 Cf. Silingardi, Responses by private corporations, 2016, 225.
337 Cf. Ibid.
338 Cf. Silingardi, Responses by private corporations, 2016, 245 - 246.
339 ASEAN Agreement, art. 3.
340 Hyogo Framework, paras. 3 and 11.
necessary to empower local authorities and local communities to reduce disaster risk, including through resources, incentives and decision-making responsibilities”\textsuperscript{341}.

Especially the \textit{Sendai Framework} underlines the importance of local actors when it comes to preventive DRR measures. Directly linked with the success of the inclusion of the new stakeholders is their possibility to access international decision-making structures. This has already been recognized in 2005, when the UNISDR and an “inter-agency task force” was created. Their aim was to identify policy gaps and to coordinate different approaches of various UN agencies. The participation of representatives from civil society and the professional sector in the task force was an important step towards the recognition of the new stakeholders, followed by the establishment of \textit{The Global Network of Civil Society Organizations for Disaster Reduction} in 2007.\textsuperscript{342}

Nevertheless, numerous challenges for local actors and private corporations remain. They are neither completely integrated in international coordination mechanisms nor are they able to prove to humanitarian organizations’ satisfaction that they abide by the humanitarian principles of neutrality, impartiality and independence.\textsuperscript{343}

It is also noteworthy that the ILC \textit{Draft Articles on Protection of Persons in the Event of Disasters} refrain from the terms ‘civil society’ or ‘private sector’ established in the \textit{Sendai Framework}. The Draft Articles only name “other potential assisting actors” in article 11 (Duty of the affected State to seek external assistance) and article 12 (Offers of external assistance)\textsuperscript{344}.

\textsuperscript{341} \textit{Sendai Framework}, Guiding Principle 19 lit. f.
\textsuperscript{342} Cf. \textit{IFRC}, World Disaster Report 2015, 2015, 74-78.
\textsuperscript{343} Cf. Silingardi, Responses by private corporations, 2016, 245 - 246.
\textsuperscript{344} \textit{ILC}, Draft Articles, arts. 11 and 12.
7. Impacts of IDRL

7.1 Implementation

As is apparent from the previous chapters, the available instruments for states to address International Disaster Response are numerous. Governments can choose between binding or non-binding, regional or global agreements and a variety of soft law instruments are at their disposal. Considering the increasing frequency and intensity of disasters people throughout the world are facing, the results of the IFRCs Report on the survey on disaster relief, regulation and protection of 2015 may come to one’s surprise. It presents two key findings. First, not much has changed regarding the main obstacles of international humanitarian assistance when compared to the Desk Study of 2007. The issues of coordination and the entry of relief goods and equipment and personnel still cause critical and delaying problems. Second, fundamental regional differences can be observed when it comes to the implementation of international standards. While western countries tend to focus on regional cooperation, LDCs are more willing to stress the international aspect of humanitarian assistance and draw up their regulations including global stakeholders. A circumstance that can be explained by either the unfamiliarity with existing legal frameworks of domestic emergency manager, the lack of awareness or the attitude of primarily industrialized officials, that “obstacles to incoming assistance are more of an issue for other countries than their own”.

The question of how to best promote IDRL recognition and acceptance and push the implementation of IDRL is being discussed very controversial. Those calling for doubling down the IFRCs original bottom up approach through continued governments advocacy instead of waiting for a binding convention are supported by the IFRCs Third Progress Report on the Implementation of the Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance of 2015. Strong National Red Cross and Red Crescent Societies facilitate a relatively fast rate of implementing the IDRL Guidelines in domestic legislation. Nevertheless, all of this is based on the voluntarily willingness of

346 Ibid.
347 Cf. IFRC, Ready or not? Third progress report on the implementation of the Guidelines for the domestic facilitation and regulation of international disaster relief and initial recovery assistance, (“Ready or not?”) Geneva 2015, 10-14.
348 Bookmiller, Closing ‘the yawning gap’? International disaster response law at fifteen, 2016, 62.
349 Cf. Ibid.
governments and often depends on the persuasiveness of the responsible National Red Cross or Red Crescent employee. Therefore, a binding convention is recommended by numerous stakeholders as the vast number of comments to the ILCs *Draft Articles of the Protection of Persons in the Event of a Disaster* suggest (see chapter 6.4.5). Two examples of how devastating disasters can affect a country’s disaster response legislation and encourage them to implement international IDRL instruments will be discussed in this chapter.

### 7.2 Tools for lawmakers

The international community has developed several tools for lawmakers to guide them through the implementation process of IDRL. *The Model Act for the Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance* (Model Act), the *Strengthening Disaster Risk Governance: UNDP Support during the HFA Implementation Period 2005-2015*, *The Checklist on Law and Disaster Risk Reduction* and *The Handbook on Law and Disaster Risk Reduction* are only some of the latest instruments. While the Model Act is an advancement of the *IDRL Guidelines*, it also serves as a “reference tool for officials and lawmakers who wish to develop their own laws, rules or procedures”\(^ {351}\) by providing blue prints for new laws. The latter two documents refer to the *Sendai Framework* and present a two-step approach. *The Checklist* helps governments to assess their current disaster rules and to identify their gaps concerning Disaster Response Law by giving detailed instructions how to answer ten IDRL-relevant questions. *The Handbook* then guides lawmakers through the process of improving the relevant laws by giving detailed country examples and always refer to the relevant *Sendai Framework* articles.

All the available tools have been used by governments in different ways and therefore the resulting laws differ in their scope, form and applicability. The following two subchapters analyse two single incidents and the impacts of the then existing disaster laws to the international humanitarian assistance operation and to what extend the lessons learned resulted in improved international disaster response laws.

\(^{351}\) IFRC et al., The Model Act, 6.
7.3 Tsunami 2004 in Indonesia

On December 26th, 2004, a seaquake with a magnitude of 9.1 caused a massive tsunami originating in the Indian Ocean. More than 230,000 people were killed and over fourteen different countries had been affected by that natural disaster.352

When the tsunami struck the northern coast of Nanggroe Aceh Darussalam Province (Indonesia), it did not only trigger great suffering, but also a monumental relief effort from International Organizations and foreign governments. In the first seven days after the flood, more than 50 international institutions started to work in Aceh and four years later, over 200 were still involved in recovery and relief efforts. This overwhelming international response and the enormous destruction of property and infrastructure exceeded the Indonesian authorities’ capacities and the lack of an elaborated IDRL framework resulted in tremendous complications for all stakeholders involved.353 At the time of the tsunami, Indonesia neither had a statutorily entrenched national disaster management agency nor a comprehensive national disaster management law. Presidential Decrees from 1979 established a National Disaster Management Coordinating Board (BAKORNAS), responsible for the coordination of IOs and governmental agencies responding to a disaster. The BAKORNAS’ staff was to be seconded from various government departments, underlining its temporal nature. On December 26th, 2004, the president of Indonesia declared a national disaster and appointed BAKORNAS the leading agency for disaster response coordination. Indonesia was also lacking laws regulating the initiation and termination of international assistance, when the President proclaimed that Indonesia was “open to receiving assistance from international institutions to provide emergency relief”354. The following relief operations demonstrated the existing legal gaps since all stakeholders encountered enormous challenges not only but especially regarding detained consignments due to inadequate documents, complex vehicle importation, lack of coordination of large and earmarked donations and many more.355

352 Taylor Alan, Ten Years Since the 2004 Indian Ocean.
354 Ibid., 13.
355 Cf. Ibid., 13-14.
7.3.1 Lessons Learned and New Indonesian Disaster Response Laws

The devastating disaster and the lack of preparedness had a profound impact on Indonesia and lead to an extensive legal and institutional reform. Now, Indonesia has one of the “most comprehensive legal frameworks for disaster management and response in the world”\(^{356}\). The country recognized the importance of three steps: First, disaster management needs to be comprehensive and focusing on prevention. Second, it is to the government to protect and respect human rights even in disaster areas. Third, it must be recognized that it is not solely the government that is responsible for a profound disaster management, but also society has a responsibility. Based on these approaches and on the IDRL Guidelines, Indonesia became one of the first countries adopting rules specifically addressing the role of international actors.\(^{357}\)

The relevant Indonesian laws regarding IDR are: Law Number 24 of 2007 on Disaster Management (Law 24/2007), Regulations 21, 22 and 23 of 2008 and the Guideline 22 of 2010. Law 24/2007 defines disaster in a quite broad sense, including natural as well as non-natural and social disasters. It also stipulates that the national and regional governments are responsible for disaster management\(^{358}\) and underlines the necessity of a National Disaster Management Agency (BNPB) that was created in 2008. This agency’s key tasks are, inter alia, periodical reports to the President and to provide accounts for financial contributions\(^{359}\). By Regulation 8/2008, the BNPB’s scope of designation is extended since the coordination of procedures and appointments with the Regional Disaster Management Agencies (BPBDs) are assigned to it as well. The importance of the BNPB is underlined by the position of its head who is accountable to and directly operates under the President\(^{360}\). Law 24/2007 and Regulation 21/2008 also make a clear assertion about the government’s first tasks when a disaster occurs. Depending on predefined parameters, it has to decide what level of disaster it must be considered (national or regional). Once this decision is made, the BPBD benefits from ‘easy access’ to mobilization of human resources, equipment, logistics, immigration, excise and quarantine, licensing and procurement of goods/services\(^{361}\).

\(^{356}\) IFRC, World Disaster Report 2015, 2015, 80.
\(^{357}\) Cf. Palang Merah Indonesia and IFRC, IDRL in Indonesia, 2014, 14.
\(^{358}\) Law of the Republic of Indonesia Number 24 of 2007 concerning Disaster Management (enacted on April 26, 2007) Law 24/2007, Indonesia, art. 5.
\(^{359}\) Ibid., art. 12.
\(^{360}\) Presidential Regulation of the Republic of Indonesia Number 8 of 2008 concerning National Agency Disaster Management (enacted on January 26, 2008), Indonesia, art. 1.
\(^{361}\) Law 24/2007, art. 50.
The National Disaster Management Agency has a crucial role to play in all aspects of disaster management, especially when it comes to the participation of international institutions and foreign non-governmental organizations. The head of BNPB does not only control the mobilization of logistics and equipment but must also recommend granting international personnel’s visa and permits and determine the area foreign personnel has access to. He can evaluate and decide which level of international participation is necessary and IOs have to prepare a MoU, a work plan and a proposal to be accepted. However, the procedures are eased during the emergency response phase. IOs must, nonetheless, submit a complete list of their logistics, equipment, personnel and location of activities to be approved by the BNPB. The BNPB commands the international participation during the emergency response phase and supervises all international actors who must report their activities on a regularly basis.362

Guideline 22/2010 addresses the three important phases of initiation, management and termination. Whenever the magnitude of the disaster exceeds the abilities of the government, international humanitarian assistance is triggered. The government then issues a statement that it accepts international offers to assist. This procedure is followed by a very detailed and comprehensive mechanism for the entry of international assistance: the BNPB/BPBD send their rapid assessment teams and report to international institutions the type and amount of assistance needed. The Agency also determines specific entry points and provide Supporting Posts for each of these entry points. During their operations, IOs have to take note of the BNPB assessments and coordinate with their assessment teams. The different types of assistance such as funding, granting assistance, goods and experts363 are also addressed and their coordination is assigned to the BNPB. To terminate international assistance, the government can either issue a statement on termination or it sets and communicates a deadline right at the initiation. In consultation with the government, a letter stipulating a date for termination can also be issued by the BNPB.364

To summarise, a comparison of the Indonesian legal framework and the IDRL Guidelines demonstrates that the Indonesian government addresses all five issues mentioned in the Guidelines. It codifies the *core responsibilities* and assigns them to the national and regional

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governments. It is their responsibility to provide the instruments necessary for the cooperation and coordination of (an international) disaster management and to protect vulnerable groups. The establishment of the BNPB constitutes the importance of a central contact with clearly assigned tasks in the event of a disaster. Moreover, aid organizations are obligated to comply with 17 principles including humanity, impartiality and independence and national and regional governments are liable for disaster management planning documents. The development of a five-year disaster management plan and a national disaster management budget cover the requirement for an *early warning and preparedness* mechanism. Procedures for the *initiation and termination* of international assistance have been already discussed as being regulated in detail in Guideline 22/2010. The above mentioned ‘easy access’ for the BNPB coming with the decision on the emergency status and level, can be extended to international assisting actors. For example, the *eligibility* for relevant *legal facilities* such as immigration processes can be eased for foreign personnel, equipment and logistics.\textsuperscript{365} The Indonesian legal framework also provides *legal facilities for the entry and operations* including mobilization of equipment from outside Indonesia, easy visas and permits access for the personnel and exemptions from taxes for logistics and equipment.\textsuperscript{366}

The evolution of the Indonesian legal framework proves the utility of international legal instruments such as the *IDRL Guidelines*. By using them as a rough guideline for enhanced national disaster laws, experiences from numerous experts are considered and allow the Indonesian lawmakers to benefit from already existing know-how. The devastating disaster of 2004 and the difficult handling of international assistance demonstrated the necessity of a comprehensive disaster management approach based on well elaborated and communicated laws. These improved and enacted laws have already been tested twice and their applicability will be discussed in the next section.

### 7.3.2 Case Study volcanic eruption 2010

The newly enacted laws, regulations and guidelines have been on trial at the West Sumatra Earthquake\textsuperscript{367} in 2009 and in 2010 when Mount Merapi, a volcano located near the city of Yogykartay, erupted, more than 350 villagers were killed and thousands were forced to

\textsuperscript{365} Government Regulation of the Republic of Indonesia Number 21 of 2008 concerning Disaster Management (enacted on February 28, 2008) Regulation 21/2008, Indonesia, art. 32.


\textsuperscript{367} Cf. Ibid., 37.
The handling of the 2010 volcano eruption clearly demonstrates the tremendous impact the new Indonesian disaster laws have on disaster response. Precisely assigned tasks and predefined mechanisms and procedures facilitate disaster relief operations and the coordination of international disaster response. It is also necessary to ensure that all relevant stakeholders are aware of the existing rules, which can be achieved by initiatives to promote those legal frameworks and by periodic exercises. Those exercises also serve to test coordination and decision-making responsibilities and demonstrate possible areas needing a readjustment followed by improved laws. Indonesia practices this constant progress of revaluation and became therefore the standard-setting country for legal preparedness for international assistance.  

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368 Asian Disaster Reduction Centre (ADRC), Details of Disaster Information: Indonesia Volcanic Eruption 26/10/2010.  
369 Cf. Palang Merah Indonesia and IFRC, IDRL in Indonesia, 2014, 42-43.  
7.4 Hurricane Katrina 2005 in the USA

The hurricane season of 2005 pointed out, that even high developed countries like the United States of America can be confronted with situations exceeding their national capability to handle such challenges. The Tropical Storm Katrina hit the US coast on August 26th, 2005 and left a trail of destruction. An area of 90,000 square miles was affected and more than 350,000 residences have been destroyed or severely damaged.371 As over 150 nations and IOs offered their assistance, this overwhelming response of international actors triggered the typical chaos and problems occurring when regulations and legal basis for the coordination of international disaster response are lacking. While many soft law instruments providing guidelines for IDR had already been available at that time, the 1973 Kyoto Convention on the Simplification and Harmonization of Customs Procedures was one of the few ‘hard’ international instruments the United States was a party of.373 Moreover, the impacts of Katrina were tremendous as it “caused persistent flooding, a series of industrial disasters, critical evacuation challenges, widespread lethal pollution, the destruction of 90% of the essential utility networks (energy, communications, water etc.), unprecedented public safety concerns, concern over the possible loss of the port area (which is essential to the continent's economy), even uncertainty as to whether portions of the city could be saved.”374 The response was also weakened by the scattered US intergovernmental response system375 and ad hoc procedures could not even facilitate the use of cash sent by IOs and foreign governments376. The lack of IDRLs resulted in contradictory statements from state officials that hampered an effective international assistance. Some of these statements regarding the initiation of international assistance were made by President Bush and a spokesman for the State Department, three days after the hurricane struck the United States (as already mentioned in chapter 4). While the President claimed that “this country’s going to rise up and take care of it”, some hours later, spokesman Sean McCormack announced on behalf of Secretary Rice, that “no offer that can

374 Patrick Lagadec. A new cosmology of risks and crises time for a radical shift in paradigm and practice. cahier de recherche 2008-08. 2008. <hal-00338386>, 7.
help alleviate the suffering of the people of the affected area will be refused”. Hasty issued lists of needed relief items circulated by the US government and distributed through their embassies abroad including ‘meals ready to eat’ were also causing troubles. The United Kingdom offered over 500,000 of those meals and sent them to Little Rock where they were “quarantined in a warehouse because they contained British beef, banned by American health regulation”.

The concern about liability of foreign actors and the absence of a predefined list of standards resulted in the Federal Emergency Management Agency’s (FEMA; an agency of the Department of Homeland Security) decision to decline numerous international offers and also revealed how unprepared the United States of America have been and numerous investigations and studies followed this devastating disaster.

7.4.1 Lessons Learned and New U.S. Disaster Response Laws

The experiences of Hurricane Katrina proved, that the United States needed a better legal framework for international disaster response and even the White House recognized in 2006, that the “current system for homeland security does not provide the necessary framework to manage the challenges posed by 21th-Century catastrophic threats”.

When Hurricane Katrina hit the United States in 2005, the Homeland Security Act of 2002 determined the mission and organization of the Federal Emergency Agency. The Agency’s aim is “to reduce the loss of life and property and protect the Nation from all hazards by leading and supporting the Nation in a comprehensive, risk-based emergency management program”. However, only in June 2007, the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act) was passed. This document sets out procedures for the Federal Government and determines how to assist local governments and other stakeholders of a disaster. It also

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379 Bannon et al., Legal Lessons in Disaster Relief from the Tsunami, the Pakistan Earthquake and Hurricane Katrina, 2006.
addresses relevant disaster response issues: Disaster Preparedness and Mitigation Assistance (Title II), Major Disaster and Emergency Assistance Administration (Title III), Major Disaster Assistance Programs (Title IV), Emergency Assistance Programs (Title V) and Emergency Preparedness (Title VI). The provided definition of ‘major disaster’ is of a very broad spectrum and shifts the President’s assessment in the focus: it “means any natural catastrophe (including any hurricane, tornado, storm, high water, winddriven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, or drought), or, regardless of cause, any fire, flood, or explosion, in any part of the United States, which in the determination of the President causes damage of sufficient severity and magnitude to warrant major disaster assistance under this Act to supplement the efforts and available resources of States, local governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby.”383. The Act primarily coordinates Federal support to subordinate entities and is only one part of the United States approach for a comprehensive legal framework for disaster response. In 2008, the first edition of the National Response Framework (NRF) was issued. It represents one of the components of the National Preparedness System (NPS) that names the five mission areas Prevention, Protection, Mitigation, Response and Recovery. The NRF is composed of various documents, providing instruments how to best respond to all different forms of disasters. The original document adopted several fundamental elements of the National Response Plan (NRP) of 2004, that represented a framework addressing “all levels of government, the private sector, and nongovernmental organizations”384. The comprehensive approach of the NRF is reflected, inter alia, by its numerous and clearly named stakeholders who are not only part of response actions but also involved in all five mission areas. Families, households and individuals form an important basis for emergency preparedness and response385 and various NGOs are listed within the document, assigned with well-defined tasks386. Its second edition of 2013 also determines strict coordination plans and assigns key roles to relevant agencies and governmental entities. International assistance is directly addressed in the International Coordination Support Annex. This annex “provides guidance on carrying out responsibilities for international coordination in support of the Federal Government’s response to a domestic incident with an international component.”387. It provides cooperation guidelines for several departments and organizations such as the Departments of

385 Cf. Ibid., 8.
386 Cf. Ibid., 9.
387 Ibid., International Coordination Support Annex, 1.
Homeland Security, Justice, Transportation or the American Red Cross and allocates the international coordination of issues occurring in a disaster to certain agencies. For example, ‘Search and Rescue’ falls within the remit of the Department of State and the United States Agency for International Development.

Both instruments mentioned (the Stafford Act as well as the NRF) are complemented by the International Assistance System’s Concept of Operations (IAS CONOPS), prepared by the Department of Homeland Security, Department of State and the United States Agency for International Development. First published in 2010 and updated in 2015, it is a direct result of the negative findings during Hurricane Katrina in 2005 and defines standard procedures for relevant aspects of international disaster assistance. It “elaborates on the relevant sections of the NRF’s International Coordination Support Annex”\(^{388}\) and allocates certain roles and responsibilities for key agencies. The primary aim is to manage “the flow of international resources into the United States under the National Response Framework for a Presidentially-declared major disaster under the Robert T. Stafford Act.”\(^{389}\). Since the United States Government assumes that it is, in principle, able to handle occurring disasters by itself, the IAS will not be activated with every Federal response to a disaster. A so called “Pull” and “Push” approach has been established, to balance diplomatic interests and operational needs. Only when the FEMA needs help to manage international offers and to accept certain goods from foreign countries in the interest of foreign policy (“push”) or the domestic operational capacities are simply exceeded (“pull”) and the U.S. government determines that international offers of assistance should be requested or accepted, the rules and procedures of the IAS CONOPS are applicable.\(^{390}\) Those procedures address the review of international offers and the determination whether these offers should be accepted or declined, the management of the logistics of international offers (transport and distribution) as well as the international procuring of resources. The FEMA is named leading agency and it can issue Mission Assignments to the Department of State, the United States Agency for International Development, the Department of Defense, Health and Human Services and other agencies. Depending on the scale of disaster and accompanying necessary foreign assistance, the IAS CONOPS provides three different levels with different measures. This tiered approach should guarantee the most effective and most suitable method for the respective situation.\(^{391}\)


\(^{389}\) Ibid., Introductory Remark.

\(^{390}\) Cf. Ibid., iii.

\(^{391}\) Cf. Ibid., iv-v.
While the first twenty-seven pages 2010 edition of the document focused on operational procedures and the reactive approach rather than a proactive approach was recognizable\(^\text{392}\), the latest publication of 2015 represents a profound IDRL instrument. On fifty-six pages, topics of parts III to V of the *IDRL Guidelines* are covered by naming and referring to relevant legal documents regulating import of relief goods and medication, transportation issues, entry requirements for foreign disaster response personnel and many more\(^\text{393}\).

Even though the instruments of *IAS CONOPS* of 2015 have not fully been triggered yet, the comprehensive approach issuing many relevant topics of IDR reflect the increased awareness of IDRL even in high developed countries as the United States of America.

### 7.5 Differences between LDCs and industrialized countries

The extent and the impacts of a disaster highly depend on the combination of the trigger event (type of hazard), the community’s vulnerability and their capacity to reduce chances of disaster risk. While the former is often hard or impossible to influence (earthquakes, tsunamis or volcanic eruptions are resulting of geological circumstances), the latter are addressed by many disaster risk reduction measures. Especially capacity building by strengthening resilience have been important parts of states’ efforts to reduce loss of live in the aftermath of a disaster.\(^\text{394}\)

Since the capabilities for DRR measures highly depend on a country’s available financial and logistic resources, it might seem a logical conclusion that ‘richer’ countries are facing less impacts of disasters than ‘poorer’ LDCs. However, this is based on the assumption that the former in fact do invest their available resources into DRR measures which is not quite the case. As the previously examined disaster of Hurricane Katrina in 2005 demonstrated, the impact of a disaster, especially the coping of the emergency situation right after it occurred, also depends on the strength of the legal disaster response framework. Both examined disasters of 2004 and 2005 indicate that states tend to develop reactive rather than proactive legal frameworks for IDR. Indonesia and the USA are no exception but more the rule when passing laws governing international disaster response.

Nevertheless, when it comes to IDRL, there are significant differences between LDCs and industrialized countries. Those are especially reflected in the basic assumptions, the resulting approaches and their willingness to address the relevant topics. While LDCs tend to set rules applicable for global assistance, industrialized countries do not only set the focus on domestic or regional cooperation, but are often not aware of the importance of IDRL before they are struck by a disaster that exceeds their national and often regional capacities. And “even where such awareness exists, national disaster officials often consider that obstacles to incoming assistance are more an issue for other countries than their own.” This attitude is reflected, for example, in the Executive Summary of the United States’ IAS CONOPS by stating that “since the U.S. government is usually in a position to be able to fulfill its disaster response requirements domestically, typically the U.S. government will not find it necessary to utilize the IAS.”

The majority of countries adopting domestic laws or rules drawing on the IDRL Guidelines derives from the United Nations list of Least Developed Countries. This can be explained by their undoubted greater vulnerability due to geographical and geological factors (intensified by climate change), the resulting tendency for LDCs to better know their own capacities since they are challenged more frequently and the fact that LDCs are more likely to depend on international assistance when disasters occur. Only in 2015, six out of the top ten IFRC international humanitarian responses in 2015 took place in LDCs.

This reality is also reflected in various international guidelines and commitments. Thus, the connection of LDCs and higher disaster risk is also addressed in the UNDP’s Sustainable Development Goals. The ECOSOC report on the Progress towards the Sustainable Development Goals of 2016 directly draws the link between DRR and fostering sustainable development as well as the higher disaster risk in poorer countries with weaker institutions. Building “the resilience of the poor and those in vulnerable situations and reduce their exposure and vulnerability to climate-related extreme events and other economic, social and environmental shocks and disasters” is even one of the Goal 1 Targets.

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396 FEMA, DOS, USAID, IAS/CONOPS, 2015, i.
399 Cf. ECOSOC, Progress towards the Sustainable Development Goals, E/2016/75 (3 June 2016), para 11.
400 UNDP, Goal 1 Targets.
Even though the focus of IDRL programs tend to be on LDCs and industrialized countries tend to be in a better position to handle the occurrences of disasters by themselves or within their regional cooperation, it is highly desirable that all states, regardless of their development status, adequately prepare themselves for the possibility of a disaster exceeding their capacities in advance\textsuperscript{401}.

8. Conclusion

The occurrence of disasters – irrespective of its cause – will never be completely averted. It thus must be the primary aim to reduce the impact of such events to the greatest extent possible. Various factors such as overpopulation forcing people to move to areas with an innately higher risk for natural disasters due to the geological characteristics but also climate change turning populated places to uninhabitable ones resulted in a dramatically increasing number of people affected by disasters over the last decades. As the case studies demonstrated, this changing reality applies not only for LDCs, but also for the most industrialized ones. Even states like the United States of America are confronted with situations exceeding their national capacities and forcing them to request international assistance. The question raised at the beginning, whether only LDCs are in need of International Disaster Response Laws can explicitly be negated. Though, there might be some differences of how states should address the individual phases of the Disaster Risk Management Cycle. The numerous available international documents provide profound guidance for governments to adopt their legislation to a comprehensive IDRL framework. Although these international documents made a remarkable development from Emer de Vattel’s approach of appealing to a great nation’s values as basis for international assistance, states are still restrained when it comes to the phase of response to a disaster. The process is less one of offering assistance to a foreign disaster hit country, but to request and accept it. Especially industrialized countries tend to have difficulties in welcoming outside assistance as it is usually seen as admitting their failing in protecting and providing their own citizens with the necessary help. This reflects an attitude that often leads to the lack of necessary regulations resulting in obstacles hampering the distribution of international relief goods and it is of great urgency to be reconsidered.

While in the last decades states have recognized the importance of disaster laws and passed relevant regulations (even though too often ad hoc and reactive than proactive), the different approaches regarding international assistance could cause unintended troubles. The very region-focused approaches like the CPM in the European Union is considered to be sufficient in even the very rare cases it is going to be activated by the Member States. However, when a disaster occurs exceeding even the EU’s capacities, there is still a lack of international standardized procedures in the phase of the response to a disaster facilitating the distribution of aid.
The findings of this diploma thesis demonstrate the importance of this emerging field of law. While there has always been some form of international cooperation in the event of a disaster, only in the last decades IOs and states have been working on standardized regulations and legal frameworks. The latest attempt by the International Law Committee and the resulting Draft Articles on the Protection of Persons in the Event of Disasters could mark a turning point when it comes to standardized International Disaster Response Law. It is a comprehensive approach to target a majority of relevant national and international fields of law. To become the relevant IDRL framework, however, it must be adopted as a binding Convention as past has shown that most states fail to adopt their legislation based on non-binding agreements. If the United Nations General Assembly manages to follow the recommendation of numerous experts to create a framework convention out of the Draft Articles, the development of IDRL would take the necessary important step forward.
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