

Disaster Relief: Reflections on the Role of International Law

*Peter Macalister-Smith**

1. The Problem

Disasters of various types are increasing in frequency and severity and are affecting more and more people, while the need for urgent relief assistance continues to grow. The acute and chronic humanitarian situations in many countries are becoming a world humanitarian emergency. How can it be tackled, and what is the role of international co-operation in humanitarian matters? Regardless of any new and much needed emphasis on prevention, even larger relief operations may well be necessary in the near future. Attempts to identify and apply legal factors which can contribute to improving both humanitarian actions and the international humanitarian order are therefore now especially timely, if not overdue¹.

* B. A. (Hons.), Ph. D.; Member of the Editorial Committee of the Encyclopedia of Public International Law at the Institute.

Abbreviations: AJIL = American Journal of International Law; ECOSOC = United Nations Economic and Social Council; EPIL = Encyclopedia of Public International Law, ed. by R. Bernhardt; ILA = International Law Association; ILM = International Legal Materials; LNTS = League of Nations Treaty Series; RdC = Académie de Droit International de La Haye, Recueil des Cours; UNDRO = Office of the United Nations Disaster Relief Co-ordinator; UN GA = United Nations General Assembly; UNITAR = United Nations Institute for Training and Research; UNTS = United Nations Treaty Series.

¹ But see B. Morse, Practice, Norms and Reform of International Humanitarian Rescue Operations, RdC vol.157 (1977), p.125 *et seq.*; J. W. Samuels, The Relevance of International Law to the Prevention and Mitigation of Natural Disasters, in: Disaster Assistance, ed. by S. Green/L. H. Stephens (New York 1979), p.245 *et seq.*; M. Bothe, Relief Actions, EPIL Instalment 4 (1982), p.173 *et seq.*; P. Macalister-Smith, International Humanitarian Assistance (Dordrecht etc.1985).

Although principles of humanitarian assistance have received legal, moral and functional expression at the international level throughout the 20th century, the relief measures adopted in specific circumstances have often been inadequate in relation to the enormous needs which have had to be met. The present relief system functions with the participation of a wide range of international actors, including governmental and non-governmental organizations charged with responsibilities for humanitarian assistance. Provisions relating to humanitarian assistance applicable in armed conflicts have been incorporated in legal instruments which are widely accepted. Efforts have also been made to develop and codify principles and to adopt instruments relating to assistance in so-called "natural" disasters; the latest such attempt takes the form of a United Nations draft convention on expediting the delivery of emergency assistance². Moreover, far-reaching proposals for a new international humanitarian order are currently before the UN General Assembly³. While the results achieved in practice in the past do not leave room for undue optimism, the almost certain recurrence of major humanitarian problems requiring relief actions suggests that research in the area of international humanitarian assistance must give increased attention to the role of institutional and juridical factors.

Many events could be described as disasters. Problems of definition and delimitation are perhaps best resolved by emphasizing the element of humanitarian assistance provided to the countries or people affected. Briefly, disasters are viewed here as emergency situations in which there is an urgent need for international assistance to relieve human suffering. In such situations normal patterns of social and economic interaction may be disrupted, or the impact of a specific event may exceed the local capacity for response within the limits of available resources. This view of disaster encompasses a wide range of empirical situations and suggests that the common urgency of human needs in all such events should be seen as the decisive criterion for the identification of humanitarian emergencies.

In practice, humanitarian emergencies may result from a mixture of causes. They may be partly natural and partly man-made; they may have several independent causes; or they may occur as a series of linked events.

² For the text see Office of the United Nations Disaster Relief Co-ordinator, Report of the Secretary-General, Addendum, UN Doc. A/39/267/Add.2 - E/1984/96/Add.2 (18 June 1984).

³ See Request for the inclusion of an additional item in the agenda of the thirty-sixth session, New International Humanitarian Order, UN Doc. A/36/245 (1981) and A/RES/36/136 (1981); and see e. g. A/RES/38/125 (1983).

It is also apparent that a disaster caused by purely natural phenomena is no longer simply a "natural" disaster when the responsible authorities decline to acknowledge the problem or when the international community fails to respond with the assistance required. It may therefore be stated that a distinction between natural and man-made disasters is difficult to uphold. So-called natural disasters are mis-named essentially because they include a component which reflects people's relationship with the environment. This is increasingly demonstrated as more people become vulnerable to the effects of natural phenomena.

The term disaster relief is employed here as equivalent to humanitarian assistance or disaster assistance. Such assistance falls into three basic categories: assistance in kind, referring to the commodities and materials required in the course of relief; financial contributions, which may be intended to meet cash expenses or to be converted into the required goods; and the services of trained personnel. Humanitarian assistance is considered to be restricted to meeting the urgent basic requirements of individuals, and not to serve commercial or other wider purposes; it is therefore distinguished from foreign aid in a general sense by its emergency character and by its application to relieve immediate human needs.

The achievement of international co-operation as one of the purposes of the United Nations was given a place of importance in Art.1(3) of the UN Charter, explicitly including co-operation in solving international problems of a humanitarian character. Problems of drought, famine, ecological disasters and other humanitarian emergencies as well as great poverty are particularly relevant here. Despite the controversial status of the concept of an international law of co-operation, the legal significance of the emergence of these problems must be given due consideration with regard to their implications for the development of a general humanitarian law⁴.

The relevance of international law to problems of humanitarian assistance has not been thoroughly discussed by many publicists, although it is not in doubt that the ambit of humanitarian law extends to the field of relief actions. Legal problems of international disaster relief have been under consideration since 1970 by the International Law Association. The International Institute of Humanitarian Law, at San Remo in Italy, has established a commission to study the protection of victims of natural

⁴ See e.g. O. Kimminich, *Humanitäres Völkerrecht – Humanitäre Aktion* (Munich 1972); G. Fitzmaurice, *The Future of Public International Law and of the International Legal System in the Circumstances of Today*, in: *Institut de Droit International, Livre du Centenaire 1873–1973* (1973), p.196 *et seq.*

disasters. The Henry Dunant Institute, the research facility of the Red Cross in Geneva, has undertaken an examination of the existing legal framework within which new legal instruments concerned with international humanitarian assistance could be developed. In 1982 the United Nations Institute for Training and Research (UNITAR) published a detailed study concerning model rules applicable to relief operations. The recent proposals for the promotion of a new international humanitarian order and for a draft convention on expediting relief have already been mentioned. Such developments provide an indication of the extent and nature of international concern in this field and will be examined further below⁵.

At present there is no important multilateral treaty relating specifically or exclusively to humanitarian assistance beyond the context of armed conflict. However, it should be kept in mind that a convention dealing with disaster relief and setting out certain principles of action was concluded during the League of Nations period⁶. As to customary international law, it is apparent that several factors work firmly against the development of particular customary rules in this field, including the individual nature of many disaster situations, the uncertainty as to the general character of humanitarian practices, and the frequent influence of political considerations in humanitarian situations generally and in particular relief operations.

Some are of the opinion that international humanitarian assistance, rather than having any legal characteristics, is essentially a matter of comity or good neighbourliness. By definition, the rules of comity lack a legal nature, although a broad conception of comity extends so far as to include basic notions of international solidarity and co-operation. Thus, legal writers in various periods of history mention emergency relief actions in disasters as an example of comity, since assistance between States in such cases is frequently accompanied by the expression of sentiments of humanitarian obligation, albeit of a non-binding nature⁷.

⁵ For references to these developments, see *infra* notes 20, 23–33 and 35.

⁶ Convention Establishing an International Relief Union, signed on 12 July 1927, entry into force 27 December 1932, text at LNTS vol.135, p.247. See M.-A. Borgeaud, *L'Union Internationale de Secours* (Paris 1932); and P. Macalister-Smith, *The International Relief Union, Disasters*, *The International Journal of Disaster Studies and Practice*, vol.5 (1981), p.147 *et seq.* The Convention appears to be technically still in force for 16 States.

⁷ For further references see P. Macalister-Smith, *Comity*, *EPIL Instalment 7* (1984), p.41 at p.43.

On the other hand, fundamental humanitarian considerations may be recognized as legal principles in international law. A judgment of the International Court of Justice has even referred to "elementary considerations of humanity, even more exacting in peace than in war" as a general and well-recognized principle giving rise to international obligations⁸. One eminent jurist has concluded that "the view can be maintained that nowadays respect for and protection of the rights of individuals directly concerned with their existence, dignity and human development, is an obligation of States under international law, also with respect to their own nationals, and is no longer restricted to aliens"⁹. A basis for inquiry into the relevance of human rights to relief actions is the fact that most humanitarian emergencies possess a man-made component. From recognition of the role of the human agency in disaster situations, with the ready power to prevent or alleviate suffering, arises the question of responsibility for the plight of the victims.

Among the provisions of human rights instruments which take on special significance in the context of relief actions are the rights to life, health, food and shelter, and to special care for children and the sick. Nevertheless, the fact that the most basic of all human rights, the right to life¹⁰, is threatened by disasters has received insufficient attention¹¹. The relevance of basic human rights to humanitarian assistance is also apparent when rights to the minimum necessities of life are considered. Both the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights assert specific rights to food, clothing and shelter¹². The existence of a basic right to food is also recognized in other international instruments, including the Declaration of the Rights of the Child of 1959, and the Universal Declaration on the Eradication of

⁸ *Corfu Channel Case (Merits)*, Judgment of 9 April 1949, ICJ Reports 1949, p.4 at p.22.

⁹ H. Mosler, *General Principles of Law*, EPIL Instalment 7 (1984), p.89 at pp.102-103.

¹⁰ Universal Declaration of Human Rights, Art.3 (text in UN GA Res.217 A (III) 1948); International Covenant on Civil and Political Rights, Art.6(1) (text annexed to UN GA Res.2200 A (XXI) 1966).

¹¹ But cf. J. Patrignic, *Protection de la personne humaine au cours des catastrophes naturelles*, *Annales de droit international médical*, vol.27 (1977), p.16 at pp.20-21; J. W. Samuels, *Organized Responses to Natural Disasters*, in: *The International Law and Policy of Human Welfare*, ed. by R. St. J. Macdonald *et al.* (Leiden 1978), p.675 at pp. 684-685; and Macalister-Smith (note 1), pp.63-67.

¹² Universal Declaration, Art.25; International Covenant on Economic, Social and Cultural Rights, Art.11 (text annexed to UN GA Res.2200 A (XXI) 1966).

Hunger and Malnutrition adopted by the World Food Conference of 1974¹³.

However, while the question of starvation and malnutrition has become an international humanitarian concern, the practical aspects of inequity and inefficiency in the actual distribution of food in the world remain matters largely within domestic jurisdiction. Only the view that implementation constitutes the touchstone of the UN human rights system seems to lend support to the statement that: "The development of international human rights law may ultimately have an impact on the world response to natural disasters"¹⁴. Not all of the ethical and cultural values which lie at the heart of human rights norms are universally recognized, but it may still be that humanitarian principles applicable to relief actions, for example in famine, represent an area in which ideological and political differences could be most likely to be reconciled. The fact that presently available world food supplies are sufficient to provide everyone with an adequate diet thus raises a fundamental aspect of the nature of international co-operation.

The questions of human rights and humanitarian assistance approach most closely in the context of rural and economic development and world food security. Developing States not uncommonly view their vulnerability to disasters as an integral part of their underdevelopment. Whatever the legal status of the right to development, it is clear that the idea of need as a basis for entitlement is one of its central features¹⁵. Going beyond an exclusively humanitarian approach, recognition of the link between poverty and disasters provides a basis for expanding activities of both relief and reform. A co-ordinated system of humanitarian assistance should thus best be viewed as a concomitant of an ecologically sound development policy¹⁶.

¹³ Declaration of the Rights of the Child, GA Res.1386 (XIV) 1959, which also asserts that children shall be among the first to receive assistance; Declaration on the Eradication of Hunger and Malnutrition, see GA Res.3348 (XXIX) 1974. Cf. Declaration on the Protection of Women and Children in Emergency and Armed Conflict, GA Res.3318 (XXIX) 1974; and Protocol I Additional to the Geneva Conventions of 1949, Art.54(1), which prohibits starvation as a means of warfare.

¹⁴ Samuels (note 11), p.684.

¹⁵ See e.g. The International Dimensions of the Right to Development as a Human Right, UN Doc.E/CN.4/1334 (1979); *The Third World and International Law, Selected Bibliography 1955-1982*, UN Library, Geneva, Publications Series C, No.5, 1983, pp.53-54.

¹⁶ See e.g. Refugee Aid and Development, UN Doc.A/AC.96/627 (1983) and cf. Doc.A/AC.96/639 (1984), Doc.A/AC.96/645 and Corr.1 (1984), and Doc.A/AC.96/INF.169 (1984); GA Res.2816 (XXVI) 1971; A/RES/36/225 (1981), para.8; and cf. Second ACP - EEC Convention of Lomé, 31 October 1979, ILM vol.19 (1980), p.327, Arts.92(2) (d),

In the absence of a body of legal rules regulating humanitarian assistance, the question of the relationship between fundamental or general principles of international law and the achievement of solutions to humanitarian problems assumes particular relevance. Although conceptual and terminological uncertainties as well as the influence of political factors tend to produce ambiguities in this area of doctrine, many would regard the sovereign equality of States and the duty of international co-operation as most important principles of international law¹⁷. Whatever their status, these notions seem to provide both foundations for, and constraints on, international humanitarian assistance. The doctrine of sovereignty expresses the essential interest of States in protecting their freedom of action. Respect for State sovereignty is thus a central principle applicable to relief actions. However, being an attribute of equality between States, sovereignty signifies not unbridled freedom but is subject to the duty to comply with international obligations. The principle of sovereignty should thus be regarded not restrictively as a legal barrier which inhibits international humanitarian assistance, but creatively, if possible, as a necessary pre-condition for the exercise of the co-operation that is required between States in humanitarian matters as in others.

Political factors play a prominent role in international humanitarian programmes, and such factors are inevitably part of the framework not only for the conduct of particular disaster relief actions but also for the improvement of the international relief system¹⁸. Political factors in relief operations are particularly evident when victims are denied effective assistance because of the policies of any of the authorities involved. For example, there may be delays in acknowledging the occurrence of a disaster, or its full extent. In one form, the problem of acknowledgment consists in the reluctance of national authorities to permit humanitarian assistance operations or to facilitate them. However, similar problems also arise within donor States and even international relief agencies. Information may be available on impending disaster situations or on the needs arising in disas-

93(6) (d) and 137, and P. Macalister-Smith, *The EEC and International Humanitarian Assistance*, *Legal Issues of European Integration* 1981, p.89 *et seq.* See also Arts.203 to 205 of the new ACP-EEC Convention signed at Lomé on 8 December 1984.

¹⁷ Cf. W. Friedmann, *The Uses of "General Principles" in the Development of International Law*, *AJIL* vol.57 (1963), p.279 *et seq.*; M. Virally, *The Sources of International Law*, in: *Manual of Public International Law*, ed. by M. Sørensen (New York 1968), p.116 at pp.144-148; Mosler (note 9), at p.191.

¹⁸ Cf. "increasingly, humanitarian values compete with realpolitik", D. P. Forsythe, *Humanitarian Politics* (Johns Hopkins 1977), p.42.

ters which have already occurred, but those concerned may give priority to factors other than the immediate interests of the victims.

Another type of inequality in treatment resulting from political factors arises when the distribution of relief is made on a basis other than need. The conduct of assistance operations may be influenced by such considerations as internal security, regional development policy or even commercial and personal interests. Humanitarian assistance may be perceived as a political weapon of great value, especially by parties engaged in armed conflict¹⁹. The problem of impartiality in relief management is one factor which raises the need for monitoring and assessment functions, while the acknowledgment problem also raises the need for measures to ensure the initiation of humanitarian assistance operations. In both these situations it is clear that pre-disaster planning can contribute to creating a more effective basis for assistance actions.

The fact that humanitarian actions are not always carried out for purely humanitarian reasons, being partly motivated, for example, by economic or developmental considerations, may have compensations ultimately for the advancement of humanitarian objectives. Assistance is not a static process: indeed, disasters even provide opportunities for reform. A further political aspect is thus introduced, since humanitarian action carries with it an opportunity to reshape the future to some extent. In addition, the expression of humanitarian concern is itself a form of political act involving a certain political commitment, for it is not people in general but rather the victims and suffering among humankind who are the beneficiaries of such concern. Those engaged in humanitarian activities at the international level are thus engaged in a struggle to achieve the implementation of particular principles or policy, in other words in politics in the broad sense. From this point of view it is hard to reject the potential of action within the political sphere with the aim of advancing humanitarian objectives. Against this background, various proposals and studies made in recent years concerning the development of international law relating to relief actions may be briefly surveyed.

¹⁹ See e.g. L. S. Wiseberg, *Humanitarian Intervention: Lessons from the Nigerian Civil War*, *Revue des Droits de l'Homme/Human Rights Journal*, vol.7 (1974), p.61 *et seq.*; *Civil Wars and the Politics of International Relief*, ed. by M. Davis (New York 1975). Cf. G. Best, *Humanity in Warfare* (London 1980).

2. Recent Legal Proposals and Studies

Legal questions associated with international relief operations appear to arise at several levels, and include technical arrangements to expedite relief, principles of humanitarian assistance, and foundations for a broad field of humanitarian law relevant to the victims of all disasters.

The problem of technical arrangements designed to expedite relief concerns measures which may facilitate the efficient delivery of relief consignments, the movement and functioning of relief personnel and arrangements in connection with communications. These matters are closely connected with the question of a legal status for disaster relief units which may arise in cases where such units are deployed. In whatever form such relief units are made available, in association with the United Nations, the conclusion of an agreement between the United Nations and the receiving country was recommended in the Secretary-General's comprehensive report of 1971 on assistance in cases of natural disaster²⁰. An example of such a unit was the Technical Cadre Unit of the Swedish Stand-by Force for United Nations Service which was established by the government of Sweden and made available for operations in Peru following an earthquake in 1970, under a tripartite agreement between the United Nations and the governments of Sweden and Peru²¹. The provisions of such agreements should include sections recognizing the international nature and purposes of the unit, the authority responsible for its command and the relationship obtaining between the parties concerned. The tripartite agreement in favour of Peru, for example, provided that the members of the Unit were responsible solely to their commander, who submitted reports on the operations to the UN Secretary-General and the governments of Sweden and Peru. It was further provided that the United Nations would bear no operational responsibility in connection with the Unit.

Where the status of a relief unit is that of a UN subsidiary organ, the Convention on the Privileges and Immunities of the United Nations would apply²². Some provisions of the Convention would apply to UN personnel working with a relief unit irrespective of its status as a subsidiary organ, and some to experts on mission for the United Nations; these provisions,

²⁰ UN Doc.E/4994 (1971), Annex III; see also GA Res.2816 (XXVI) 1971, para.8(e).

²¹ Agreement of 29 July 1970, following the earthquake of 31 May 1970; UNTS vol.739, p.127. See also Disasters, *The International Journal of Disaster Studies and Practice*, vol.2 (1978), p.32.

²² 1946, UNTS vol.1, p.15, Cf. Nordic Mutual Emergency Assistance Agreement in Connection with Radiation Accidents, 17 October 1963, UNTS vol.525, p.75 Art. VI.

inter alia, extend certain privileges and immunities considered necessary to enable official functions to be exercised independently. In cases where a relief unit has an entirely separate legal status and where the Convention is not applicable, a special agreement could grant privileges and immunities similar to those accorded under the Convention to a unit and its members. The preparation of guidelines for such agreements was given some consideration following the 1971 report of the Secretary-General mentioned above, but despite general consensus on the need to facilitate relief operations the differing views of potential donor and recipient States as well as widely varying field conditions must be taken into account in assessing the likely scope for wider development and use of such agreements.

The International Law Association, in its committee on International Medical and Humanitarian Law, began to study legal problems of disaster relief operations in the early 1970s. The ILA has concentrated on formulating a draft model agreement intended to regulate technical questions of relief actions, based on agreements which have been used in relief situations. The parties to the model agreement, presented in a revised form in 1980²³, are intended to be the beneficiary State and either a donor State or a donor organization. In the case of assistance provided by an organization, the ILA proposal foresaw two variants: relief provided by an intergovernmental organization, and relief by a non-governmental organization. The ILA proposals recognize and make allowance for the wide variety of relief situations which may arise, but do not presume to cover the whole potential field of international relief law.

In Resolution 2816 (XXVI) of 1971, which established the Office of the United Nations Disaster Relief Co-ordinator (UNDRO), the General Assembly invited potential recipient governments to consider adopting appropriate legislative or other measures to facilitate disaster relief, referring to the problems of overflight and landing rights and necessary privileges and immunities for relief units as issues which should be tackled to further effective operations²⁴. A study of this matter, started jointly by UNDRO and the League of Red Cross and Red Crescent Societies, concentrated initially on identifying obstacles to the delivery of emergency relief supplies within disaster stricken countries. In 1977, UNDRO and

²³ ILA Report vol.59 (1980), pp.521-527. See also ILA Report vol.55 (1972), pp.317-327; vol.57 (1976), pp.309-320; vol.58 (1978), pp.461-472. And see *Le secours étranger d'urgence en cas de catastrophe naturelle devant l'International Law Association*, *Annales de droit international médical*, vol.27 (1977), p.34 *et seq.*

²⁴ UN GA Res.2816 (XXVI) 1971, para.8(e).

the League presented a report dealing with these questions in the form of a series of recommendations designed to expedite international relief by facilitating the functioning of relief personnel and the delivery of relief consignments²⁵. The recommendations were based on the premise that potential recipient governments would designate a single national relief authority to co-ordinate relief activities. The proposals included recommendations directed to potential recipient governments concerning customs requirements, visas, communications facilities and air traffic regulations. Other recommendations aimed at donors were intended to ensure greater suitability of relief contributions, a more rapid response, and correct notification of impending relief shipments.

In 1977 the Economic and Social Council recommended States to adopt the proposals by appropriate national legislative, administrative or operational measures, while the XXIIIrd International Conference of the Red Cross also endorsed the measures and the UN General Assembly subsequently reaffirmed the Economic and Social Council resolution²⁶. However, the expected progress has not yet taken place, and in a subsequent annual report on UNDRO it was stated that "international relief assistance may well continue to be subjected to unnecessary delays if the Co-ordinator cannot advance the project for some kind of international accord on this humanitarian question"²⁷. Based on a comparative survey, UNDRO reached the qualified conclusion in 1980 that "there would appear to be some hope of achieving at least a limited accord on the main points identified in the original investigation and recommendations"²⁸. Further developments were thus possibly to be expected, taking into account the parallel work of the ILA and a new study published by the United Nations Institute for Training and Research.

The proposals made by UNITAR, entitled "Model Rules for Disaster Relief Operations" were published in 1982 with the stated purpose "to contribute to closing the lacunae in international humanitarian law regarding assistance to victims of disasters" and "to overcome some of the legal restrictions and bureaucratic impediments which are often major obstacles

²⁵ For the text of the measures see UN Doc.A/32/64 (1977), Annex II.

²⁶ See ECOSOC Res.2102 (LXIII) 1977; XXIIIrd International Conference of the Red Cross 1977, Res. VI; UN A/RES/32/56 (1977), para.3.

²⁷ Office of the United Nations Disaster Relief Co-ordinator, Report of the Secretary-General, Doc.A/34/190 (1979), p.11 para.39. See also ECOSOC Res.2102 (LXIII) 1971.

²⁸ Special Economic and Disaster Relief Assistance, Office of the United Nations Disaster Relief Co-ordinator, Report of the Secretary-General, Doc.A/35/228 (1980), p.18 para.68. Cf. Doc.E/1981/16 (1981), Annex, pp.24-25 paras.60-61.

to the success of a relief operation”²⁹. The scope of application of the proposed Model Rules extends to natural and man-made disasters, but no definition of disaster was considered necessary because the Rules are designed to be brought into effect only as a result of an agreement between the parties in particular circumstances. Such an agreement could take the form of an exchange of letters specifying that a relief operation will be conducted in accordance with the appropriate set of rules, concluded upon the occurrence of a disaster or in anticipation of one.

The three types of relations envisaged in the UNITAR proposal are the following: an agreement between an assisting State and the receiving State regulating the provision of assistance; a similar agreement between an assisting organization, whether governmental or non-governmental, and the receiving State; and an agreement between an assisting State or organization or a receiving State on the one hand and a transit State on the other hand, governing the transit of assistance. The proposed Rules consist largely of practical and technical measures designed to facilitate relief operations, although the general principle that relief supplies shall be distributed without discrimination is also inserted. As the study points out, the Model Rules represent the continuation of previous research efforts aiming in the same direction, in particular the joint efforts of the League of Red Cross and Red Crescent Societies and UNDRO. Other sources of the Model Rules include the Principles and Rules for Red Cross Disaster Relief, and the Red Cross Declaration of Principles for Relief to the Civilian Population of 1969, as well as General Assembly Resolution 2816 (XXVI) of 1971. The approach of the UNITAR proposals emphasizes practical rules which are intended to be non-controversial. The Model Rules are firmly based on the assumption that relief will be provided only at the request or with the consent of the recipient State, and with cooperation between assisting and recipient parties.

A number of other proposals relating to necessary humanitarian measures and instruments which have been made in recent years deserve to be briefly referred to. The question of adopting a multilateral relief convention has been the subject of various proposals, some of which have emphasized the need for a statement of fundamental principles such as the right of disaster victims to protection and assistance or the obligation of States to provide and accept assistance when necessary, while others have given priority to technical and practical provisions addressed to States and

²⁹ M. El Baradei *et al.*, Model Rules for Disaster Relief Operations, Policy and Efficacy Studies No.8, UNITAR 1982, p.3.

organizations participating in relief actions. The scope and details of such proposals vary considerably³⁰. The recommendation of a report of the United Nations Association of the United States of America in 1977 also focused on the adoption of some form of international instrument and concluded that a relief convention would be useful to establish responsibilities of donor and recipient governments and to assert the principle that all governments should ensure relief for disaster victims³¹. Within the Red Cross, the Tansley Report also gave some attention to the question of promoting a new international relief convention applicable in natural disasters³².

In 1981 a proposal concerning the promotion of a new international humanitarian order was brought before the UN General Assembly³³. The proposal emphasized that humanitarian problems remain relatively neglected issues in international relations between States, and that the codification of international humanitarian law in the context of peacetime humanitarian actions lacks a comprehensive approach. Still in its early stages, the objective of the new international humanitarian order proposal, which is central to the work of the Independent Commission on International Humanitarian Issues, is to fill the existing gaps in basic humanitarian instruments and mechanisms for remedial action.

The tasks envisaged by the proposal for a new international humanitarian order range from increasing the awareness of the need for such an order, to creating the theoretical, legal and institutional frameworks necessary for strengthening the international response to serious humanitarian problems. One suggestion in the proposal was that a new order might

³⁰ Cf. G. Genot, *L'aide internationale d'urgence en cas de catastrophe*, *Studia Diplomatica*, vol.29 (1976), p.313 at p.355; G. Langeais, *Les Nations unies face aux catastrophes naturelles* (Paris 1977), p.13; S. Green, *International Disaster Relief* (1977), pp.66-67; T. W. Oliver, *The UN in Bangladesh* (Princeton 1978), pp.196-197; R. Perruchoud, *Les Résolutions des Conférences Internationales de la Croix-Rouge* (Geneva 1979), pp.249-251; and Borgeaud (note 6), pp.211-212.

³¹ *Acts of Nature, Acts of Man: The Global Response to Natural Disasters*, United Nations Association of the United States, Policy Studies Panel on International Disaster Relief (July 1977), cf. pp.6, 11 and 83.

³² D. Tansley, *Final Report: An Agenda for the Red Cross*, Joint Committee for the Reappraisal of the Red Cross (Geneva 1975), p.80. See also Macalister-Smith (note 1), p.158.

³³ See Request for the inclusion of an additional item in the agenda of the thirty-sixth session, *New International Humanitarian Order*, UN Doc.A/36/245 (1981); and A/RES/36/136 (1981). See also *New International Humanitarian Order*, Report of the Secretary-General, UN Doc.A/37/145 (1982); Doc.A/38/45 (1983); Report of the Third Committee Doc.A/38/691 (1983); A/RES/38/125 (1983).

be launched by framing a universal declaration of humanitarian principles, which could in turn support the development of further systems of humanitarian law beyond the humanitarian law of armed conflict³⁴.

UNDRO has also continued to consider possible legal measures which could contribute to improving the provision of disaster relief. The report of a consultant, presented in 1983, examined efforts to eliminate obstacles to relief, analysed a wide range of measures relating to the delivery of relief supplies and included a draft convention for expediting emergency relief. During 1983 the report was considered by an informal group of experts who provided further recommendations, and in 1984 the text of the proposed draft convention was annexed to the annual report on UNDRO. Later in 1984, the draft convention was placed before the Economic and Social Council and General Assembly for a possible decision on a further review by governmental experts³⁵.

3. Prospect

Many governments are concerned to improve the framework for peacetime humanitarian actions at the national and international levels, and many have already assumed some operational or legal responsibilities for action relating to relief in disaster. At the national level, the aspect of functional responsibility is frequently underestimated; in addition, many provisions relevant to disaster preparedness and relief have already been incorporated into municipal legislation and bilateral agreements³⁶. National approaches may supply useful analogies for developments at the international level but the feasibility and desirability of adopting a new international legal instrument regulating the donation, receipt and co-ordination of humanitarian assistance is still a controversial matter. No adequate conception or definition of humanitarian emergency or disaster can be found in international law. However, the diversity of humanitarian tasks carried out by the many different actors in the field both suggests that in addition to necessary political and administrative responses to problems of relief actions greater attention must be given to the potential role of international law in enabling and facilitating humanitarian solutions, and lends support to a wide definition of disaster which should be framed to take account of

³⁴ UN Doc. A/36/245 (1981), Annex, p.2 para.6.

³⁵ Draft Convention on expediting the delivery of emergency assistance, UN Doc. A/39/267/Add.2 - E/1984/96/Add.2 (18 June 1984). See Macalister-Smith (note 1), p.159.

³⁶ See Macalister-Smith (note 1), pp.124-128.

the plight of those people whose situation may be characterized as a permanent state of humanitarian emergency, in particular some of the poorest in the least developed countries.

Relief will be required in larger quantities and on a wider scale until adequate preventive measures have been formulated, applied and have taken effect. Prevention is of the greatest importance and unavoidably demands that attention be given to the root causes of humanitarian problems³⁷. However, a focus on prevention cannot hide the urgency in the short and medium term of providing the necessary relief.

Although there is no place for undue optimism, experience in the humanitarian field tends to show that international legal instruments can have an effect in alleviating the conditions of suffering individuals. Such instruments can lead to progress in a number of ways, for example through the creation and development of humanitarian institutions and their activities, in which the complementary themes of humanitarian protection and assistance and the aspects of functional and legal responsibility for humanitarian action may be united. Existing international instruments authorize an active role for international humanitarian organizations of an impartial character, for example the Red Cross and the Office of the United Nations High Commissioner for Refugees. The special experience of the Red Cross demonstrates the blending of humanitarian law and action in a unique way. However, the increase in functional humanitarian activities has not been matched by corresponding legal developments. Efforts to develop international humanitarian law applicable in time of peace have been inadequate and have yielded disappointing results. Greater efforts should therefore be made to identify the points of convergence between humanitarian interests and the wider political interests of States, with the effect that the required commitments to new humanitarian instruments and actions might be more readily forthcoming.

It is apparent that major responsibilities for planning, organization, co-ordination and implementation of relief rest with national and local authorities. However, national and international efforts are complementary and the concept of international relief co-ordination is not in doubt. The creation of the Office of the United Nations Disaster Relief Co-ordinator in 1971 was welcomed at the time as an important step forward.

³⁷ Cf. B.J. Brown, *Disaster Preparedness and the United Nations* (UNITAR 1979); UNDRO, *Disaster Prevention and Mitigation*, vol.9: *Legal Aspects* (1980); G. Hagman *et al.*, *Prevention Better Than Cure*, Report on human and environmental disasters in the Third World (Swedish Red Cross, Stockholm, Geneva 1984).

UNDRO was established in a form requiring the continuing co-operation of States and organizations concerned in order to fulfil its purposes. The moves to reaffirm and strengthen UNDRO's mandate have helped to meet the clear need to strengthen the system of co-ordination of humanitarian assistance both within and beyond the United Nations, but further moves are likely to be necessary taking into account operational experience.

The many non-governmental organizations active within the international relief system have reinforced the significance of private individual action in the humanitarian field, and some non-governmental organizations have considerably influenced the development of international humanitarian law. Particular importance lies in the fact that these actors exist on the international scene and carry out their activities. Many of the humanitarian non-governmental organizations enjoy a consultative status with the United Nations, but the difference between participation and consultation is still a fundamental one.

The question of sovereignty has been seen as an obstacle to improving humanitarian assistance, although some have argued that respect for humanitarian principles strengthens sovereignty and others have suggested that real sovereignty is strengthened by an increased practical ability to deal with humanitarian emergencies. The disparity between the symbol and the reality of sovereignty has perhaps never been greater than at present, while the need for international co-operation is correspondingly urgent. The process of co-operation is based on independence and free consent. A viable humanitarian order presupposes a spontaneous sense of responsibility and obligation. The developing relief law and organization therefore cannot seek compulsion, but must express and facilitate international co-operation in humanitarian matters. Although some disaster situations where relief is denied or unnecessarily delayed focus attention onto the problem of sovereignty in international humanitarian action, the question of sovereignty in relation to the donation, acceptance and co-ordination of relief does not seem likely to be a fundamental issue in responding to global needs for humanitarian assistance in the near future. The real question for resolution is who will be entitled to humanitarian assistance.

Disasters in which the need arises for international humanitarian assistance most frequently occur in countries in the South, though various forms of technology and science are capable of leading to large scale disasters also in industrially developed countries. In the future, disasters are almost certain to affect many of the poorest people in the least developed countries. In many situations traditional relief assistance, although urgently required, is hardly a solution and may even be detrimental to the

longer term recovery prospects of the victims. In some situations, of course, the rapid delivery of emergency relief consignments or personnel is still the essential and primary requirement. However, the emergence of chronic, mass, complex and recurrent humanitarian problems is accompanied by deeper questioning of the concept itself of relief. Instead, the so-called root causes of humanitarian problems demand emphasis in the search for preventive solutions.

The organizations responsible for humanitarian actions are not charged to deal with the root causes of humanitarian problems, but governments are fully responsible in this regard. Perhaps the idea deserves to be more widely expressed and tested, for example through the activities of the Independent Commission on International Humanitarian Issues, that the co-operative international action which is urgently required to tackle the humanitarian problems occurring in many countries may in turn engender wider international effects of a beneficial nature.

A rigid distinction between relief and reform cannot be maintained in many situations of human need. The purpose of relief actions is not simply to efficiently administer a state of destitution and dependency. If humanitarian principles are to have an appropriate effect in a period of greatly increased need for them, they must be carefully adapted to the requirements and expectations of the many recipient countries in the South. One concern of recipients is that humanitarian assistance should become less interventionist, while donors seek often for assurances that assistance will reach those in need. Finding the correct approach to establishing the appropriate principles of entitlement will be a particular concern in developing international humanitarian law and action.

Although some steps are being taken which contribute towards the construction of a framework for international action and co-ordination in the humanitarian field, it is still not clear what solutions are required or will ultimately emerge so far as law is concerned. It may seem that governments will be more willing to respond to concrete needs in particular cases by conceding authority to a competent international organization rather than by accepting legal formulations framed to cover hypothetical cases. An increase in operational activities would require relatively informal decisions on the part of States members of the appropriate organizations, as well as the necessary financial commitments.

It is also apparent, however, that an important need for further progress is to develop both the principles and technical measures applicable to relief actions. There is considerable merit in the legal approach based on relatively detailed technical rules, because progress depends ultimately on the

success of practical measures. At the same time, a comprehensive framework of principles for international humanitarian assistance would usefully supplement the technical measures which have already been formulated in some detail. More broadly, it is also appropriate to examine how to develop the foundations for international humanitarian co-operation contained in Art.1(3) of the UN Charter. The requirement for firm foundations as well as guiding principles for humanitarian action is more than ever necessary in a period of greatly increased humanitarian needs.

Although the omission of an explicit reference to humanitarian problems in Art.55 of the UN Charter has not prevented the development of the present capacity of the UN system to respond to such problems, it does suggest that new international legal measures designed to improve humanitarian actions could start with a basic statement of purpose relating to the achieving of solutions to humanitarian problems. Such a statement could refer to the duty of international co-operation set out in Art.1 of the UN Charter and in other instruments, which is accepted as being a general principle of international law. A form of humanitarian charter would be constructed to provide a basis and a frame of reference for whatever supplementary instruments could be agreed upon. As in other areas of policy, an approach to humanitarian problems based on co-operation reinforces respect for the independence of each party concerned, which is a necessary ingredient for achieving durable solutions. Such an approach could help to bridge the gap which exists at present between general approbation of principles and acceptance of particular obligations.

The problem for the development of humanitarian relief law is that it should be based on objective criteria of human need, but must also take account of the political considerations prevailing in donor and recipient States. The question of the acceptance of obligations by donor and recipient States should therefore be viewed in a realistic light, while resisting the politicization of humanitarian assistance itself. It is clear that increased international co-operation is necessary to solve humanitarian problems, but greater co-operation is also required in many other fields. Acceptance of the idea that the co-operative international action required to tackle the humanitarian problems of extreme poverty, famine, refugees and other disasters may engender wider beneficial international effects should lead to its expression in a legal formula capable of supporting the international humanitarian order in the future.

In the move towards increasing international responsibility for humanitarian assistance, the requirement for effective relief performance will take priority. The idealistic aspect of humanitarian law and organiza-

tion is the life force of their gradual establishment, but genuine advances depend on a realistic approach to operational activities in the field. Practical measures designed to expedite assistance are therefore the most important need at present, but such measures must be supported on suitable foundations. There is much room for further progress based on awareness that the development of international humanitarian law, organization and action is a reciprocating and self-reinforcing process which seeks to fulfil the purpose of bringing definite humanitarian benefits to individual people. The aim must be to seek for ways to ensure that the principle of humanity prevails – in a time of greatly increased needs, but also of greatly increased means for responding. With this in mind, the present challenge is to draw on the existing but as yet insufficiently systematic texts and approaches to achieve a closer working unity between functional and legal aspects of international relief policy.