

**THE INTERNATIONAL DISASTER RESPONSE PROGRAM:
CONSENT, COORDINATION, AND CONTINGENCY
PLANNING IN DISASTER RELIEF OPERATIONS**

*Ben Miller**

I. INTRODUCTION

In January 2010, a 7.0-magnitude earthquake struck Haiti about fifteen miles west of the country's capital, Port-au-Prince.¹ The earthquake, the worst in the region in over 200 years,² devastated a country already suffering from decades of political instability and economic stagnation.³ Based on a death toll reported at 230,000, the Inter-American Development Bank estimated the cost of recovery to be as high as \$14 billion, making it the most destructive natural disaster in modern times.⁴

Six months later, on July 22, 2010, the worst flooding in eighty years began in the Pakistani province of Baluchistan as a result of annual monsoons.⁵ As the flooding receded in the northern provinces, rivers swelled downstream, spreading the devastation to the southern part of the country.⁶ While the death toll, estimated at 1,200, was relatively

* Assistant Corporation Counsel, Commercial & Real Estate Litigation Division, The New York City Law Department; J.D. 2012, with honors, The George Washington University Law School; B.A. 2009, *summa cum laude*, Sewanee: The University of the South. The author would like to Matt Haynie and Grace Kim for their guidance and support throughout the Note-writing process.

1. *The World Factbook: Haiti*, CENT. INTELLIGENCE AGENCY, <https://www.cia.gov/library/publications/the-world-factbook/geos/ha.html> (last updated Aug. 15, 2012).

2. *See Haiti*, N.Y. TIMES (July 6, 2012), <http://www.nytimes.com/info/haiti-earthquake-2010>.

3. *The World Factbook: Haiti*, *supra* note 1.

4. *Haiti Reconstruction Cost May Near \$14 Billion, IDB Study Shows*, INTER-AM. DEV. BANK (Feb. 16, 2010), <http://www.iadb.org/features-and-web-stories/2010-02/english/haiti-reconstruction-cost-may-near-14-billion-idb-study-shows-6528.html>.

5. *2010 Pakistan Floods*, N.Y. TIMES (Nov. 16 2010), http://topics.nytimes.com/top/reference/timestopics/subjects/f/floods/2010_pakistan_floods/index.html.

6. UN OFFICE FOR THE COORDINATION OF HUMANITARIAN AFFAIRS, PAKISTAN: INITIAL FLOODS EMERGENCY RESPONSE PLAN 2010 (2010), *available at* [http://ochadms.unog.ch/quickplace/cap/main.nsf/h_Index/FlashAppeal_2010_PIFERPrev2/\\$FILE/FlashAppeal_2010_PIFERPrev2.pdf](http://ochadms.unog.ch/quickplace/cap/main.nsf/h_Index/FlashAppeal_2010_PIFERPrev2/$FILE/FlashAppeal_2010_PIFERPrev2.pdf).

low, more than 14 million people were displaced from their homes.⁷ Throughout the country, 1.7 million homes were destroyed and 5.4 million acres of arable land were damaged, leaving entire communities without a source of food or income.⁸

Following these events, the international community responded immediately, with foreign governments, intergovernmental organizations, and international aid agencies pledging humanitarian assistance in the form of food, supplies, and monetary aid.⁹ Such outreach by the international community has become commonplace when natural disasters occur in underdeveloped countries.¹⁰ Unfortunately, inefficiency and ineffectiveness in the delivery of aid to disaster-stricken countries is also typical.¹¹ Particularly when a disaster affects an underdeveloped country, already plagued by a dysfunctional government and poor infrastructure, a lack of coordination among foreign governments and agencies, politically-motivated demands tied to foreign aid, and the fleeting attention of the international community in the long term complicate the relief process and often give rise to unforeseen consequences and crises.¹² The international responses to the Haiti earthquake and Pakistan floods were no different.¹³

International law serves as a source for facilitating relief operations in the event of future natural disasters. Currently, there is no comprehensive legal framework governing the procedures, rights, and duties of state and non-state actors involved in international disaster response.¹⁴ At best, international disaster response law (IDRL) is composed of a few scattered treaties or other instruments dealing with

7. *Id.*

8. *Pakistan: 6 Months After the Floods – Millions Remain Homeless*, CANADIAN RED CROSS, <http://www.redcross.ca/article.asp?id=37899&tid=001> (last updated Feb. 1, 2011) [hereinafter *Pakistan: 6 Months After the Floods*].

9. See, e.g., *Haiti*, *supra* note 2; *2010 Pakistan Floods*, *supra* note 5.

10. See, e.g., RHODA MARGESSON, CONG. RESEARCH SERV., RL32715, INDIAN OCEAN EARTHQUAKE AND TSUNAMI: HUMANITARIAN ASSISTANCE AND RELIEF OPERATIONS 8–9 (2005), available at <http://www.fas.org/sgp/crs/row/RL32715.pdf> (describing the global relief and recovery operation following a massive earthquake and tsunami off the coast of Indonesia as the largest undertaken by the international community); *World Mobilizes to Aid U.S. Victims*, BBC NEWS, <http://news.bbc.co.uk/2/hi/americas/4210264.stm> (last updated Sept. 2, 2005) (noting that at least forty-four governments and international organizations offered aid to the United States as part of the Hurricane Katrina relief effort).

11. See, e.g., Alejandra de Urioste, Comment, *When Will Help Be on the Way? The Status of International Disaster Response Law*, 15 TUL. J. INT'L & COMP. L. 181, 194 (2006).

12. See *infra* Part II.A.

13. *Id.*

14. Nick Cater, *Legislating to Save More Lives*, MAG. INT'L RED CROSS & RED CRESCENT MOVEMENT, http://www.redcross.int/EN/mag/magazine2002_3/legislating.html (last visited Aug. 28, 2012).

narrow issues and procedures.¹⁵ A single comprehensive agreement codifying rules and procedures for international relief operations does not exist.¹⁶ The devastating catastrophes in Haiti and Pakistan, as well as the ineffective international relief operations that followed, demonstrate the need for such an agreement.

This Note proposes an international agreement that would create a legal regime to govern the responsibilities of states and non-state actors with respect to international disaster response. Part II(A) of this Note describes common obstacles to the effective delivery of international aid when a natural disaster strikes in a developing or underdeveloped country. Examples from recent events in Haiti and Pakistan illustrate the difficulties facing relief operations. Part II(B) reviews principles and sources of international law relevant to IDRL. That Section addresses the tension between principles of sovereignty and human rights, rejecting previous suggestions that the latter can outweigh the former in the context of IDRL and offering state consent as a basis for resolving the tension. Part II(B) also provides an overview of two sets of guidelines, formulated and approved by experts in the field of IDRL, that describe best practices for states and organizations involved in disaster relief operations.

Part III proposes a legal regime to govern IDRL. Part III(A) outlines the International Disaster Response Program (IDRP), which would provide for the creation of bilateral Guardianships between developed countries and at-risk developing countries, the creation of an IDRP Governing Body to approve the bilateral agreements and administer various components of the IDRP, the establishment of an IDRP Relief Fund to which all members would contribute, and the codification of guidelines for participating states, intergovernmental organizations, and international relief agencies. Part III(B) imagines how relief operations in Haiti and Pakistan would have differed under the IDRP. Finally, Part IV concludes the Note by reiterating the need for an international legal regime and the importance of adopting the IDRP.

II. BACKGROUND

A. *Obstacles to Effective International Relief Operations*

Several obstacles exist that complicate relief efforts in the aftermath of a natural disaster, including: logistical barriers to delivering aid to disaster victims; a lack of coordination among governments and relief organizations; the politicization of aid by sending countries seeking to

15. *Id.*

16. De Urioste, *supra* note 11, at 182.

achieve unrelated political goals; and donor apathy, particularly when multiple disasters occur in a short time period.

1. Logistical Problems

Developing countries are particularly vulnerable in the event of catastrophic natural disasters, not only because of the already ineffective government and general inability to conduct large-scale operations, but also because of poor infrastructure.¹⁷ Dilapidated airports, seaports, and roads—likely damaged further by the disaster itself—make transporting aid into and within the country difficult for relief workers.¹⁸

In the days following the Haiti earthquake, heavy traffic congestion at the Toussaint Louverture International Airport near Port-au-Prince prevented search and rescue teams from landing and foreign governments and relief agencies from transporting food and supplies into the country.¹⁹ Planes that were able to land often lacked fuel necessary to leave, further crowding the airport tarmac.²⁰ The dismal situation at the airport near Port-au-Prince forced most planes delivering emergency aid in the aftermath of the earthquake to Santo Domingo in the Dominican Republic, further delaying the delivery of necessary items.²¹ The main port near Port-au-Prince was also badly damaged, forcing relief arriving by sea to be diverted to the country's second-largest but distant port of Cap Haitien.²²

Transportation on the ground also proved difficult, due not only to damage caused by the earthquake, but also to the countless people trying to move about the country after being left homeless.²³ Delays in transportation left relief workers unable to transport food and medical supplies from the airports to the affected areas.²⁴ Furthermore, the inability of Haitians to move around the country led them to gather in small groups rather than large camps, making the systematic delivery of aid problematic.²⁵ As a result of the transportation barriers, the U.S. Air Force resorted to air-dropping supplies in some areas, a tactic typically

17. See INT'L FED'N OF RED CROSS & RED CRESCENT SOCIETIES, WORLD DISASTERS REPORT 12, 49–50 (2001).

18. See *id.*

19. Liz Robbins, *Haiti Relief Effort Faces 'Major Challenge'*, N.Y. TIMES (Jan. 14, 2010), <http://www.nytimes.com/2010/01/15/world/americas/15relief.html>.

20. *Id.*

21. *Id.*

22. *Id.*

23. *What Is Delaying Haiti's Aid?*, BBC NEWS, <http://news.bbc.co.uk/2/hi/americas/8472670.stm> (last updated Jan. 21, 2010).

24. See Robbins, *supra* note 19.

25. *What Is Delaying Haiti's Aid?*, *supra* note 23.

viewed as undesirable, because it is inefficient and leads to unrest on the ground as civilians struggle with each other for limited resources.²⁶ Finally, power outages and damaged Internet and phone lines rendered communication of relief workers—among themselves and with their colleagues outside Haiti—impossible at times.²⁷

Similar to the situation in Haiti, damaged infrastructure in Pakistan also made emergency relief operations following the Pakistan floods a logistical nightmare.²⁸ Delivery of aid to the isolated northwest region was made more difficult by the blockage of the few major highways leading to the area due to the flooding.²⁹ This not only prevented food and medical supplies from being delivered, but also prevented the Pakistani army from evacuating approximately 27,000 stranded people.³⁰ The continuing rains further added to the reconstruction needs within the country.³¹ Pakistani soldiers were unable to utilize helicopters provided by the United States due to the torrential rains.³² Overall, the floods destroyed more than 5,000 miles of roads and railways throughout the country, as well as 7,000 schools and over 400 health facilities.³³

2. Lack of Coordination and Cooperation

The inability or unwillingness of a developing country's government to coordinate relief operations and a lack of cooperation among contributing states, intergovernmental organizations, and non-governmental organizations are common problems in disaster response operations.³⁴ The results are confusion, inefficiency, and duplication in relief operations.³⁵

In Haiti, political infighting for control between the United States, on one hand, and the United Nations (U.N.), on the other hand, and their

26. *Id.*

27. *Id.*

28. *2010 Pakistan Floods*, *supra* note 5.

29. See Griff Witte & Haq Nawaz Khan, *Frustrations Mount in Flood-Devastated Northwestern Pakistan*, WASH. POST (Aug. 2, 2010), <http://www.washingtonpost.com/wp-dyn/content/article/2010/08/01/AR2010080101897.html?sid=ST2010080103151>.

30. *Id.*

31. *See id.*

32. Jackie Northam, *U.S. Expands Aid to Pakistan's Flood Victims*, NPR (Aug. 10, 2010), <http://www.npr.org/templates/story/story.php?storyId=129112225>.

33. *2010 Pakistan Floods*, *supra* note 5.

34. See, e.g., David P. Forsythe, *Diplomatic Approaches to the Political Problems of International Relief in Natural Disasters*, in *DISASTER ASSISTANCE: APPRAISAL, REFORM AND NEW APPROACHES* 267, 267–78 (Lynn H. Stephens & Stephen J. Green eds., 1979) (reviewing typical problems of international disaster relief).

35. *Id.*

failure to work together bred chaos in the first days of the response effort.³⁶ Some believed that the source of the tension was disagreement over priorities.³⁷ While the United States made the initial influx of military personnel, to restore order and ensure Haiti's security, the operation's top priority, the U.N. and other relief agencies felt that the delivery of food and medical supplies to civilians should come first.³⁸ A representative from the French organization Medecins Sans Frontieres commented that the rush to get troops into Haiti had been at the expense of the delivery of humanitarian aid and supplies.³⁹

The disagreement over how to handle the emergency response left the more than 4,000 relief agencies and countless personnel without a clear authority directing their operations.⁴⁰ For example, the relief organization Direct Relief International reported that, despite having over four tons of medical supplies donated by pharmaceutical companies ready to ship, difficulties negotiating with the U.N. and other government agencies caused substantial delay.⁴¹ On the ground, U.N. peacekeepers and aid workers were not properly allocated throughout the affected area.⁴² Crowding in some areas, particularly when workers remained long-term, produced extra run-off that served as part of the blame for the cholera outbreak that struck the country in October 2010.⁴³ Political instability and economic turmoil marked the months following the earthquake in Haiti, largely due to the sudden influx of foreigners.⁴⁴

In Pakistan, although the Pakistani army took the lead on directing relief efforts, its sluggish and disorganized response provoked anger in the flood victims—particularly those living in the worst affected areas of the northwest, which had already suffered in recent years from military clashes between the Pakistani army and the Taliban.⁴⁵ Even as the severity of the monsoons became clear, the government delayed in mobilizing resources and soliciting humanitarian assistance from the outside community.⁴⁶ President Asif Ali Zardari was widely criticized

36. *What Is Delaying Haiti's Aid?*, *supra* note 23.

37. *See id.*

38. *See id.*

39. *Id.*

40. Anthony Cain, *Has Foreign Aid and Involvement Hampered Haiti's Recovery?*, ATLANTA POST (Dec. 14, 2010), <http://atlantapost.com/2010/12/14/has-foreign-aid-and-involvement-hampered-haitis-recovery-efforts>.

41. Robbins, *supra* note 19.

42. Cain, *supra* note 40.

43. *Id.*

44. *Id.*

45. Witte & Khan, *supra* note 29.

46. *See id.*

for travelling to Europe on a previously scheduled trip in the days following the first floods.⁴⁷ As in Haiti, the poorly handled relief efforts, combined with a perception of favoritism and corruption in the Pakistani government and army, provoked concerns about the country's political stability.⁴⁸

3. The Politicization of Aid

Another persistent problem in the delivery of humanitarian assistance following a natural disaster is the infiltration of political motives into the response effort.⁴⁹ Contributing countries might refuse to give aid to certain countries with which they disagree on unrelated issues, or condition the provision of necessary aid on the receiving country's agreement on unrelated issues.⁵⁰ Foreign governments and relief organizations may also try to influence the internal political situation of a foreign country in the aftermath of a disaster.⁵¹

In Haiti, foreign political influence affected the political stability of the country through calls for national elections soon after the earthquake.⁵² Foreign governments and relief organizations, having collectively promised more than \$6 billion in aid through the end of 2011, wanted to see a more stable government in place to administer the continued relief operations.⁵³ The result was a rushed election on November 28, in which many still-displaced Haitians were unable to vote because their names were not on the registration lists.⁵⁴ The perception that many Haitians' voices had been shut out of the rushed elections, combined with the continued devastation of the earthquake and the ongoing cholera outbreak, led to violent protests and allegations of fraud after the national elections.⁵⁵

In Pakistan, political calculations dominated the disaster response operations after the July 2010 flooding.⁵⁶ As a central pillar of the United States' strategy to battle the Taliban, Pakistan's security, particularly in the devastated northwest where most military clashes

47. Eric Schmitt, *U.S. Offers Aid to Rescue Pakistanis and Reclaim Image*, N.Y. TIMES (Aug. 14, 2010), <http://www.nytimes.com/2010/08/15/world/asia/15pstan.html>.

48. See *2010 Pakistan Floods*, *supra* note 5.

49. See, e.g., de Urioste, *supra* note 11, at 197.

50. See *id.* at 197–98.

51. See, e.g., Cain, *supra* note 40.

52. *Id.*

53. *Id.*

54. *Id.*

55. Talea Miller, *Haiti Election Protests Grow, Airport Closes*, PBS (Dec. 8, 2010), <http://www.pbs.org/newshour/rundown/2010/12/haiti-election-riots-grow-airport-closes.html>.

56. See generally Schmitt, *supra* note 47 (discussing how the United States used aid to improve its image in Pakistan).

against the Taliban had taken place, was an important concern for the United States and its allies.⁵⁷ Prior to the flooding, a survey conducted by the Pew Global Attitudes Project revealed that 68% of Pakistanis had an unfavorable view of the United States, largely due to drone attacks carried out by American military forces against Islamic militants.⁵⁸ Thus, relief efforts by the United States and its allies involved much strategizing about how to structure aid in order to improve the United States' image in the country.⁵⁹

Extremist Islamic groups also used the disaster to gain favor with the Pakistani people. In previous disasters affecting the country, organizations with close ties to militant organizations stepped in to provide aid when the Pakistani government was unable to do so effectively.⁶⁰ After the summer 2010 floods, at least one organization providing aid to flood victims had ties to Lashkar-e-Taiba, the militant "organization blamed for the 2008 terrorist attacks in Mumbai."⁶¹

4. Donor Apathy and the Fleeting Attention of the International Community

A final category of problems associated with international disaster response operations relates to donor apathy and the fleeting nature of international relief efforts.⁶² In the immediate aftermath of the Haiti earthquake, relief agency officials and experts predicted that the emergency response operations would be one of the longest and most difficult in recent years.⁶³ Nonetheless, while the international community collectively pledged over \$6 billion through 2011, by the end of 2010, the disbursement rate among top donors was only 42%.⁶⁴ As is typical in disaster responses, the amount of funds actually donated fell far short of that originally pledged.⁶⁵

57. See *2010 Pakistan Floods*, *supra* note 5.

58. *Id.*

59. *Id.*

60. Witte & Khan, *supra* note 29.

61. Northam, *supra* note 32.

62. See, e.g., de Urioste, *supra* note 11, at 201.

63. See Robbins, *supra* note 19.

64. U.N. Office of the Special Envoy for Haiti, *New Analysis Shows 42.3 Percent Donor Disbursement Rate for Haiti Recovery*, UNITED NATIONS (Nov. 23, 2010), http://www.un.org/en/peacekeeping/missions/minustah/documents/ose_haiti_recovery_23112010.pdf. Of \$2.12 billion pledged by the top twenty-four donors for 2010 alone, only \$897 million (42.3%) was actually dispersed by November 2010. *Id.*

65. See *id.*; see also, e.g., INT'L FED'N OF THE RED CROSS, WORLD DISASTERS REPORT 2006, at 18, available at <http://allafrica.com/download/resource/main/main/idatcs/00011069:a5e3eaa1c2bbc35210bb7b704773dc43.pdf>.

Donor apathy following the Pakistan floods was far worse than that connected with the Haiti earthquake response. While the U.N. initially called for \$460 million to be donated by the international community, a month after the flooding began, only a third of this amount had been pledged or given.⁶⁶ U.K. Deputy Prime Minister Nick Clegg described the international response to the floods as “absolutely pitiful.”⁶⁷ Many attributed the relatively low donation rate to the recent Haiti earthquake and the outpouring of donations that had occurred only a few months prior to the Pakistan floods.⁶⁸ During the first ten days after the Haiti earthquake, the international community pledged over \$1 billion, compared to \$102 million a month after the Pakistani floods.⁶⁹

Other reasons for the donor apathy in Pakistan include the relatively low death toll and the slow onset of flooding compared with more immediate disasters.⁷⁰ These factors also help explain the fleeting nature of the international community’s attention to the situation in Pakistan. While the immediate damage did not amount to the same level as that of the Haiti earthquake, long-term effects in Pakistan threaten to lead to continuing devastation for years.⁷¹ The flooding submerged more than 17 million acres of Pakistan’s cropland, killed 200,000 head of livestock, and destroyed large quantities of stored commodities.⁷² This not only led to food shortages, but also caused many farmers to miss the fall planting season, increasing the likelihood of future food shortages.⁷³ Just as the severity of the long-term effects became clear, the international community’s concern for Pakistan dwindled and aid stopped being delivered when it was most needed.⁷⁴

B. *Principles Relevant to IDRL: State Sovereignty, Human Rights, and Consent*

Although there is currently no international legal regime or treaty that attempts to address the problems inherent in international disaster

66. Adam B. Ellick, *Floods Could Have Lasting Impact for Pakistan*, N.Y. TIMES (Aug. 16, 2010), <http://www.nytimes.com/2010/08/17/world/asia/17pstan.html>.

67. Alexandra Topping, *Nick Clegg Calls Response to Pakistan Floods ‘Lamentable’*, GUARDIAN (Aug. 16, 2010), <http://www.guardian.co.uk/politics/2010/aug/16/nick-clegg-pakistan-floods>.

68. See, e.g., Lydia Polgreen, *The Special Pain of Slow Disaster*, N.Y. TIMES (Nov. 10, 2010), <http://www.nytimes.com/2010/11/11/giving/11AID.html?ref=2010pakistanfloods>.

69. *Pakistan Floods Fails to Spark Strong Global Aid*, CBS NEWS (Aug. 13, 2010) <http://www.cbsnews.com/stories/2010/08/13/world/main6770489.shtml>.

70. *Id.*

71. See Ellick, *supra* note 66.

72. *Id.*

73. *Id.*

74. See, e.g., Polgreen, *supra* note 68.

response operations, several principles in international law provide a foundation for the creation of such a regime. Principles related to state sovereignty, international human rights law, and state consent can serve as the basis for an agreement aimed at facilitating the international community's response when a disaster occurs. Furthermore, existing guidelines that provide guidance to states and relief agencies can serve as a useful model for formulating binding rules to govern actors involved in international disaster response.

1. State Sovereignty: A Fundamental Principle

The basis in international law for a legal regime governing IDRL derives from various sources. The first of these is state sovereignty. The doctrine of state sovereignty is an “almost sacred principle” that forms the basis of international law.⁷⁵ The concept of state sovereignty includes several elements that any successful IDRL regime necessarily must respect.

a. Territorial Integrity and Authority

One of the most basic rights conferred on states by their sovereignty is the integrity and inviolability of their territorial domain and the right to exercise exclusive authority within it.⁷⁶ With this right comes the ability of states to regulate movements across their borders and reject unwanted foreign intrusion into their territories.⁷⁷ Article 2(4) of the U.N. Charter affirms the continued importance of territorial integrity, specifically declaring that members of the U.N. may not threaten or use force against the “territorial integrity or political independence of any state.”⁷⁸

Any IDRL legal regime must respect a state's territorial integrity. While some have suggested that other principles of international law justify humanitarian assistance by the international community even when an affected state has not so requested,⁷⁹ complete control over a state's territory does not diminish in the face of a natural disaster. State practice confirms this principle; foreign governments and international relief organizations do not generally offer humanitarian assistance until

75. See Nancy D. Arnison, *International Law and Non-Intervention: When Do Humanitarian Concerns Supersede Sovereignty?*, FLETCHER F. WORLD AFF., Summer 1993, at 199, 200.

76. 18 LOUIS HENKIN, INTERNATIONAL LAW: POLITICS AND VALUES 11 (1995).

77. See, e.g., Tyra Ruth Saechao, Note, *Natural Disasters and the Responsibility to Protect: From Chaos to Clarity*, 32 BROOKLYN J. INT'L L. 663, 668 (2007).

78. U.N. Charter art. 2(4).

79. See *infra* Part II.B.2–3.

formally requested by the home government.⁸⁰ An IDRL legal regime that attempts to mitigate or undermine state territorial integrity will fail.

b. Autonomy

A related element of state sovereignty is state autonomy. This “essential quality of statehood” suggests that a state cannot be subject to any outside authority without its consent.⁸¹ State autonomy implies an ability to enter into relations and form associations with other states, international organizations, or foreign entities and individuals.⁸² The U.N. Charter preserves state autonomy by explicitly declaring that nothing in the Charter “shall require the Members to submit [domestic matters] to settlement” by U.N. procedures.⁸³ Although in the modern world, characterized by a “tangle of interdependence,” perfect autonomy may be impossible, maintaining the maximum state autonomy possible remains a primary goal of international law.⁸⁴ Accordingly, an IDRL regime must respect the principle of state autonomy.

c. Non-intervention

The principles of territorial integrity and autonomy, as well as that of independence, imply a norm of non-intervention.⁸⁵ The scope of the norm is unclear, but in its most basic form the norm forbids the threat or use of force against another state.⁸⁶ Article 2(7) of the Charter enshrines the norm of non-intervention by declaring that the U.N. generally may not “intervene in matters which are essentially within the domestic jurisdiction of any state.”⁸⁷ An IDRL regime must respect the norm of non-intervention, and thus can require neither affected states to receive aid nor contributing states to provide aid absent a request by an affected state.

2. International Human Rights Law: The Rights of Disaster Victims

The U.N. Charter requires that Members pledge “to take joint and separate action in co-operation with the Organization for the achievement of the purposes set forth in Article 55,” which calls for the

80. HENKIN, *supra* note 76, at 108.

81. *Id.* at 11.

82. *Id.*

83. U.N. Charter art. 2(7).

84. HENKIN, *supra* note 76, at 109.

85. *See id.*

86. *Id.* at 110.

87. U.N. Charter art. 2(7).

respect and observance of human rights.⁸⁸ Following the adoption of the Charter, the U.N. General Assembly subsequently adopted a series of instruments—the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights,⁸⁹ and the International Covenant on Economic, Social and Cultural Rights⁹⁰—which together embody the so-called International Bill of Rights.⁹¹ Over time, the attraction of human rights values has spurred various movements to promote additional human rights, to varying degrees of success.⁹²

While the principle of state sovereignty imposes some necessary limits on a potential IDRL regime, human rights principles provide the basis for the international community's duty to provide assistance when it is requested and to do so effectively.⁹³ Moreover, while human rights principles cannot yet supersede fundamental principles of state sovereignty, they may imply a greater obligation on developed states, beyond providing physical aid and logistical support, to work closely with at-risk developing states in order to develop contingency plans and to implement those plans in the event of a natural disaster.⁹⁴

a. The Responsibility to Protect and Humanitarian Intervention

In the *Corfu Channel Case*,⁹⁵ the International Court of Justice established the concept of state responsibility, which recognizes international obligations toward humankind that exist during peacetime.⁹⁶ Based on the concept of state responsibility, the

88. *Id.* arts. 55–56.

89. As of the writing of this note, 167 countries have become parties to the International Covenant on Civil and Political Rights by ratification, accession, or succession. *Status of International Covenant on Civil and Political Rights*, U.N. TREATY COLLECTION, http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&lang=en (last visited Sept. 4, 2012).

90. As of the writing of this note, 160 countries have become parties to the International Covenant on Economic, Social and Cultural Rights by ratification, accession, or succession. *Status of International Covenant on Economic, Social and Cultural Rights*, U.N. TREATY COLLECTION, http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-3&chapter=4&lang=en (last visited Sept. 4, 2012).

91. See *The Core International Human Rights Instruments and Their Monitoring Bodies*, OFF. U.N. HIGH COMMISSIONER FOR HUM. RTS., <http://www2.ohchr.org/english/law/> (last visited Sept. 4, 2012).

92. See HENKIN, *supra* note 76, at 196.

93. See *infra* Part II.B.2.a–b.

94. See *id.*

95. *Corfu Channel (U.K. v. Alb.)*, Judgment, 1949 I.C.J. 4 (Apr. 9).

96. Devereaux F. McClatchey, *Chernobyl and Sandoz One Decade Later: The Evolution of State Responsibility for International Disasters, 1986-1996*, 25 GA. J. INT'L & COMP. L. 659, 664–65 (1996) (noting that the *Corfu Channel* case has generally been viewed as the source of the concept of state responsibility).

International Commission on Intervention and State Sovereignty proposed the theory of the “responsibility to protect,” which basically implies in the principle of state sovereignty a responsibility by the state to protect its people from serious harm.⁹⁷ Under the responsibility to protect, the principle of non-intervention yields to the international responsibility to protect.⁹⁸

The International Commission on Intervention and State Sovereignty discusses the responsibility to protect concept in the context of humanitarian intervention⁹⁹—that is, the responsibility to protect, if it imposes an obligation on the international community to intervene in a state’s internal affairs, arises only when the state in question is guilty of gross violations of human rights.¹⁰⁰ Nevertheless, the theory imposes a general duty on the international community to protect the safety of individuals.¹⁰¹ Such a duty, if reconciled with principles of state sovereignty, provides a basis for establishing an IDRL legal regime.

b. The Right to a Healthy Environment

The right to a healthy environment recognizes an individual right to live in an environment adequate for one’s health and well-being.¹⁰² Though not codified explicitly in the three constituent instruments of the International Bill of Rights, the right to a healthy environment has been enshrined in regional instruments¹⁰³ and articulated in U.N. General Assembly resolutions.¹⁰⁴ Furthermore, the right can be derived from specific rights enumerated in the International Covenant on Economic, Social and Cultural Rights¹⁰⁵ or from norms of customary international law.¹⁰⁶

As demonstrated in the examples from Haiti and Pakistan, natural disasters inherently pose severe health risks to affected populations.¹⁰⁷ The ability to live in a healthy environment is drastically reduced in the

97. INT’L COMM’N ON INTERVENTION & STATE SOVEREIGNTY, THE RESPONSIBILITY TO PROTECT xi (2001), available at <http://www.iciss.ca/pdf/Commission-Report.pdf>.

98. *Id.*

99. *See id.* at 11.

100. HENKIN, *supra* 76, at 119.

101. *Id.*

102. *See* G.A. Res. 45/94, ¶ 15, U.N. Doc. A/RES/45/94 (Dec. 14 1990).

103. *See, e.g.*, Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights art. 11, Nov. 14, 1988, 28 I.L.M. 161.

104. G.A. Res. 45/94, *supra* note 102, ¶ 15.

105. HENKIN, *supra* note 76, at 200.

106. *See, e.g.*, Jacqueline P. Hand, *Disaster Prevention Presentation from SCJIL Symposium 2003*, 1 SANTA CLARA J. INT’L L. 147, 160 (2003) (arguing that customary international law recognizes a right to a healthy environment as an element of the fundamental right to life).

107. *See Haiti, supra* note 2; *Pakistan: 6 Months After the Floods, supra* note 8.

aftermath of disaster in developing countries, where people generally are already more susceptible to infection and disease.¹⁰⁸ If the international community has a responsibility to protect the rights of all individuals, then such responsibility includes an obligation to ensure the right to a healthy environment by providing humanitarian assistance and support to underdeveloped states.

3. Consent: The Key to a Successful International Disaster Response Regime

Human rights norms and principles provide the impetus for wealthy developed states to provide humanitarian assistance.¹⁰⁹ Various arguments have been made that, in the context of IDRL, principles of international human rights law can supersede state sovereignty to require the offer and acceptance of assistance in the aftermath of a disaster.¹¹⁰ One such proposal, the Saechao Proposal, argues that the doctrine of state sovereignty has evolved to condition the sovereign status of a state on its ability to fulfill certain minimal obligations to its people.¹¹¹ Relying heavily on the responsibility to protect doctrine, the author argues that codifying the rights of disaster victims within international human rights law would impose on all states a legal obligation to provide humanitarian assistance to such victims.¹¹²

While the idea of an agreement codifying the rights of disaster victims may be desirable, the proposal would not impose concrete legal responsibilities on states to respect such rights. A better regime to protect disaster victims would be based on state consent, with states agreeing to be bound by the terms and obligations embodied in an international agreement.¹¹³ This Note will propose such an agreement.¹¹⁴

4. The IDRL Guidelines and the Sphere Project: Model Principles for Disaster Relief Operations.

While state sovereignty, human rights, and the principle of state consent together serve as the foundation for an international agreement

108. *See Haiti, supra* note 2.

109. *See supra* Part II.B.2.a–b.

110. *See, e.g., Saechao, supra* note 77, at 680–81; Rohan J. Hardcastle & Adrian T.L. Chua, *Humanitarian Assistance: Towards a Right of Access to Victims of Natural Disasters*, 325 INT'L REV. RED CROSS 589, 600–05 (1998) (proposing an agreement to establish a right to receive humanitarian assistance).

111. Saechao, *supra* note 77, at 669.

112. *Id.* at 698–700.

113. HENKIN, *supra* note 76, at 27.

114. *See infra* Part III.A.

for international disaster response operations, more concrete documents provide a further source for the details of such an agreement. Such an agreement should include substantive rules governing the conduct of states, intergovernmental organizations, and non-governmental organizations contributing to relief operations in an affected state.¹¹⁵ To formulate these rules, the agreement should draw upon two established sources already detailing guidelines for states and organizations—the IDRL Guidelines¹¹⁶ and the Sphere Project.¹¹⁷

In 2001, recognizing the need for improving the facilitation of aid delivery in the event of a natural disaster, the International Federation of Red Cross and Red Crescent Societies established its International Disaster Response Laws, Rules and Principles Program, aimed at identifying principles and best practices for states participating in relief efforts.¹¹⁸ The project led to the development of the Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance (IDRL Guidelines), which states and Red Cross and Red Crescent actors adopted unanimously at the 30th International Conference of the Red Cross and Red Crescent in November 2007.¹¹⁹ In 2008, the U.N. General Assembly adopted three resolutions encouraging states to utilize the guidelines.¹²⁰ Currently, the IDRL Guidelines are non-binding, but an international agreement on disaster relief would incorporate them into the legal regime governing the conduct and policies of states participating in relief operations. While the IDRL Guidelines are directed primarily at state governments, humanitarian organizations and regional inter-governmental organizations can draw upon them in drafting agreements and developing standard procedures related to disaster relief operations.

Similar to the IDRL Guidelines is the Sphere Handbook, developed by a group of humanitarian agencies and non-governmental agencies beginning in 1997 as a guide for best practices and procedures in disaster response.¹²¹ The Sphere Project was launched as an initiative to set out the standards by which the international community should

115. *Id.*

116. See INT'L FED'N OF RED CROSS & RED CRESCENT SOCIETIES, INTRODUCTION TO THE GUIDELINES FOR THE DOMESTIC FACILITATION AND REGULATION OF INTERNATIONAL DISASTER RELIEF AND INITIAL RECOVERY ASSISTANCE (2008) [hereinafter IDRL GUIDELINES], available at <http://www.ifrc.org/PageFiles/41203/introduction-guidelines-en.pdf>.

117. See SPHERE PROJECT, HUMANITARIAN CHARTER AND MINIMUM STANDARDS IN DISASTER RESPONSE (2011) [hereinafter THE SPHERE PROJECT].

118. IDRL GUIDELINES, *supra* note 116, at 4.

119. *Id.*

120. See IDRL Guidelines, INT'L FED'N RED CROSS & RED CRESCENT SOCIETIES, <http://www.ifrc.org/en/what-we-do/idrl/guidelines/> (last visited Sept. 4, 2012).

121. SPHERE PROJECT, *supra* note 117, at 4.

respond in the event of a natural disaster.¹²² In contrast to the IDRL Guidelines, the Sphere Handbook is aimed primarily toward relief agencies.¹²³ The principles embodied in the Sphere Handbook are, however, applicable to states and intergovernmental organizations as well.

III. ANALYSIS

The difficulties in delivering aid to Haiti and Pakistan following recent aftermaths in those countries demonstrate that the international community lacks an adequate process for disaster response coordination in underdeveloped countries.¹²⁴ The International Disaster Response Program (IDRP) would be an international legal regime, created by state consent, aimed at eliminating many of these problems.

Part II(B)(3) above introduced and discussed one proposal, the Saechao Proposal, for codifying the rights of disaster victims.¹²⁵ There are at least two fundamental problems with the Saechao Proposal. First, the Saechao Proposal fails to account adequately for principles of state sovereignty. Signatories to a convention codifying the rights of disaster victims might be bound to offer humanitarian assistance to disaster-stricken countries. States affected by disasters, however, would maintain their territorial integrity and autonomy, and thus could legally refuse humanitarian aid and support. A forced intervention to provide assistance, unless authorized by the U.N. Security Council, would violate the norm of non-intervention.¹²⁶ The idea that norms related to state sovereignty have evolved to such an extent is disputed.¹²⁷

Second, the Saechao Proposal relies too heavily on the responsibility to protect doctrine. As Saechao acknowledges,¹²⁸ that doctrine evolved in the context of humanitarian intervention—that is, military intervention by the international community in a state whose government is accused of carrying out or sanctioning gross violations of human rights.¹²⁹ While the underlying rationale of the responsibility to protect can be applied in the context of natural disasters, to the extent that a norm obligating states to intervene has emerged,¹³⁰ the inability of

122. See *id.* at 10.

123. *Id.* at iii.

124. See *supra* Part II.A.

125. See *supra* Part II.B.3.

126. See *supra* Part II.B.1.c.

127. See HENKIN, *supra* note 76, at 201.

128. Saechao, *supra* note 77, at 677.

129. See MICHAEL NEWMAN, HUMANITARIAN INTERVENTION: CONFRONTING THE CONTRADICTIONS 1 (2009).

130. The doctrine of humanitarian intervention as a fundamental principle of international

a state to provide quick and efficient relief to its population is not analogous to the calculated violations of human rights that typically justify humanitarian interventions.¹³¹

Any proposal that subordinates the principles of state sovereignty to important, but less established, principles of human rights will be problematic and likely unsuccessful. Such an effort is also unnecessary. As discussed above, the tension between state sovereignty and human rights in the IDRL context can be resolved by a principle that serves as the foundation of international law—state consent.¹³² Implied by state autonomy, state consent to conclude binding agreements with other states has, in effect, led to the creation of the international political system and international law.¹³³ Furthermore, while nothing can bind states to international law except their consent, states have the additional power to create law for international organizations, internal entities, and individuals.¹³⁴

Generally, international law does not forbid a state to invite military intervention by another state, for instance, to quell an unlawful insurrection by internal forces.¹³⁵ States routinely enter into compacts that guarantee mutual assistance in the event of an attack on one or more party.¹³⁶ Thus, nothing in international law impairs the ability of states to consent to an international agreement codifying the rights and duties of states (including those normally contributing substantial aid and those most at risk of a disorderly response in the event of a natural disaster), intergovernmental organizations, and non-governmental organizations in the context of IDRL. Such an agreement would fulfill obligations implied by principles of international human rights law, while simultaneously respecting the fundamental principles of state sovereignty.

Approaching the problem of IDRL from the perspective of state consent has the additional benefit of allowing signatory parties to define the contours of the IDRL regime in a manner that maximizes the possibility of delivering aid quickly and efficiently. A convention listing the rights of disaster victims, even if it could become binding in

law has not been uniformly accepted. *See, e.g.*, HENKIN, *supra* note 76, at 117 (“Some states have claimed exceptions to the absolute prohibitions of Article 2 (4) as permitting intervention by force for certain ‘benign’ purposes. None of these exceptions has been formally accepted . . .”).

131. *See generally* BRIAN C. LEPARD, RETHINKING HUMANITARIAN INTERVENTION 7–28 (2002) (providing representative cases of humanitarian intervention).

132. *See* HENKIN, *supra* note 76, at 27.

133. *Id.* at 11.

134. *Id.*

135. *Id.* at 130–31.

136. *See id.* at 121.

international law, does nothing to confront the difficulties that routinely arise in disaster response operations. This Section outlines the proposed IDR, which constitutes one possible IDRL legal regime. The IDR seeks to address the difficulties common to disaster response operations in underdeveloped countries. Although the IDR will not likely solve all problems all of the time, the codification of responsibilities by states and organizations in the event of disasters will go a long way toward facilitating international aid operations.

A. *The International Disaster Response Program (IDR)*

The IDR would be an international treaty created by state consent. The main purpose of the IDR would be to codify the responsibilities of wealthy developed states, at-risk underdeveloped states, and non-governmental relief organizations in the event of a natural disaster affecting one or more underdeveloped states.

The basic structure of the IDR would include two main features. First, the IDR would involve the establishment of Guardianships between wealthy developed states (the ‘Guardian State’) and at-risk developing states (‘Guarded State’). The purpose of these Guardianships would be to establish pre-existing relationships between the two countries that would involve contingency planning should a disaster occur. Second, the IDR would codify the duties and obligations of other signatory states, intergovernmental agencies, and non-governmental humanitarian organizations contributing money, donating food and supplies, or otherwise participating in disaster relief operations. For the latter feature, the IDR would draw heavily upon existing non-binding guidelines related to disaster response—specifically in the IDRL Guidelines¹³⁷ and the Sphere Handbook.¹³⁸

This structure is appropriate because it delegates responsibility to the Guardianship—that is, to joint decision-making power of the Guarded and Guardian States. Knowing that ultimate authority lies with these states, other states and organizations will willingly defer to them when allocating resources in aid operations. The pre-established relationship also ensures that relief operations will be planned in advance, particularly for disasters that are foreseeable. Finally, states and organizations will have legally binding rules—rather than mere guidelines—that will govern their conduct in the event of a disaster.

1. IDR Components

The IDR would consist of four main components. These include

137. See IDRL GUIDELINES, *supra* note 116.

138. See SPHERE PROJECT, *supra* note 117.

bilateral IDRP Agreements establishing the Guardianships, an IDRP Governing Body to administer various components of the program, an IDRP Relief Fund to which all signatory states would contribute, and codified rules to govern the behavior of states, intergovernmental organizations, and international relief agencies contributing to disaster response operations in affected countries.

a. Bilateral IDRP Agreements

The IDRP would provide for procedures for the formulation of bilateral IDRP agreements that would establish the Guardianships between individual Guardian and Guarded States. These agreements constitute the central feature of the IDRP. The idea would be to establish a relationship between a wealthy developed state and an at-risk underdeveloped state prior to the occurrence of a natural disaster. Ideally, the two states would already have close ties in other contexts. For instance, a signatory Guardian State may choose to conclude its bilateral agreement with a developed state with which it has an existing security agreement.

The main advantage of the IDRP agreements is to streamline the decision-making process related to the delivery of aid to the country when a disaster strikes. Ultimate authority for all such decisions should be vested in the two states, which themselves can decide what steps need to be taken in each individual context. The Guardian State, which would likely have a large effective military capable of facilitating aid and maintaining peace in the aftermath of a disaster, should be the ultimate authority for other states and the countless international humanitarian agencies contributing monetary aid, supplies, food and personnel to the relief operations. The Guarded State—which would likely already have close ties to the Guardian State of its choice—would more readily allow foreigners into a country because a trusted ally would be coordinating the relief operations.

Another advantage of the bilateral agreements is that they would facilitate contingency planning. The IDRP would require signatory states to appoint a National Disaster Response Representative (NDRR). One main duty of Guardian and Guarded State NDRRs would be to work with their counterpart—after concluding the IDRP agreement—to develop plans for delivering aid and maintaining order in the event of a disaster. The process allows the two states to consider the specific circumstances of each Guarded State when preparing for a possible disaster. For instance, if a state is particularly vulnerable to a certain type of disaster, the Guardian and Guarded States would be sure to prepare for its occurrence.

For the system to be successful, Guardian States should necessarily

partner with only one other state. That is, a Guardian State should conclude only one bilateral IDRP agreement. Multiple agreements with two or more Guarded States would undermine one of the main purposes of the system: vesting ultimate responsibility for the delivery of aid in one developed state. In contrast, wealthier developed states can and likely will serve as Guardians to more than one at-risk state.

The pre-established Guardianship, along with the contingency planning that comes with them, will help address many of the problems related to disaster response operations discussed previously. Agencies and other governments will know that they have to clear any provision of personnel and supplies with the Guardianship. Having preliminarily identified likely logistical barriers and vulnerable areas, the Guardianship will be able to specify the type of aid needed more readily. The Guardianship will also be able to direct agencies in their activities in the affected country. This will lead to greater coordination and less confusion commonly seen in the international response to natural disasters.¹³⁹

b. The IDRP Governing Body

While the bilateral IDRP agreements will create legally binding obligations between the Guarded and Guardian States with respect to possible disasters in the Guarded State, the IDRP should have a larger role in the governance of international disaster relief operations. To fulfill this role, the IDRP constituent agreement should provide for the creation of an IDRP Governing Body.

The first and most important function of the IDRP Governing Body would be to draft, vote on, and adopt the guidelines for states, intergovernmental organizations, and non-governmental organizations. While they would likely draw heavily from existing non-binding guidelines drafted by the IFRC and other humanitarian agencies,¹⁴⁰ the IDRP would have to decide which will be codified as binding on signatory states and contributing agencies. Because the IDRP would be based on consent, rules for states' and organizations' conduct in disaster response should become binding only when states expressly agree to codify them by international agreement.

The governing body should be composed of NDRRs from all signatory states. As with any new international body, the relative voting strength of each member in the Governing Body will likely be a controversial issue.¹⁴¹ Wealthier developed signatory states may want

139. *See supra* Part II.A.1–2.

140. *See infra* Part III.A.1.d.

141. *See, e.g.,* Hans Kochler, *The Voting Procedure in the United Nations Security Council:*

to adopt a system of tier-voting strength, for example, by making a member's voting power proportional to how much it contributes to the IDRPF Relief Fund.¹⁴² In contrast, underdeveloped states would argue that each member should have one vote, a voting system similar to that of the U.N. General Assembly.¹⁴³

The IDRPF should adopt the latter system for several reasons. First, many of the functions that the Governing Body will perform are similar to functions of the U.N. General Assembly. For instance, similar to the General Assembly, which approves the U.N. budget and apportions expenses among member states,¹⁴⁴ the Governing Body would be responsible for administering the IDRPF Relief Fund. Additionally, the General Assembly has the power to approve international trustee agreements for areas not designated as strategic at the time of the Charter's adoption.¹⁴⁵ Similarly, the Governing Body would approve the bilateral IDRPF agreements that establish the Guardianships.

Second, and more importantly, a system that apportions voting strength to monetary contributions is less necessary in the IDRPF context than in other international legal regimes because of its structure. The constituent agreement only binds signatory states to comply with certain minimal obligations and procedures in the delivery of humanitarian assistance. The more concrete, and likely more burdensome, obligations of states would be laid out in the bilateral IDRPF agreements. As such, wealthy states should not be discouraged from joining a regime in which voting strength is divided evenly among the member states because there would be no risk of inadvertently committing significant resources—monetary and otherwise—in the event of a future natural disaster. Finally, because the IDRPF necessarily requires Guarded States to give up some control over their territories in the event of a disaster, they should have equal voting power with other participating states.

c. IDRPF Relief Fund

A third component of the IDRPF would be the IDRPF Relief Fund. Signatory states would make an annual contribution to the fund. Like

Examining a Normative Contradiction in the UN Charter and its Consequences on International Relations, in DEMOCRACY AND THE INTERNATIONAL RULE OF LAW: PROPOSITIONS FOR AN ALTERNATIVE WORLD ORDER 85, 96 (1995) (discussing the sharp criticism and debate that the voting formula of the U.N. generated at the U.N. Conference on International Organization in the early days of the organization).

142. See *infra* Part III.A.1.c.

143. U.N. Charter art. 18, para. 1.

144. *Id.* art. 17, paras. 1–2.

145. *Id.* art. 16.

other intergovernmental organizations with specialized budgets, the IDR Relief Fund would be based on progressive principles—that is, a member state’s annual contribution would be apportioned based on the state’s overall GDP or some other indicator of relative wealth.¹⁴⁶ Besides reflecting general fairness, basing a state’s annual contribution on its individual ability to pay requires wealthier states to contribute more, which makes it more likely that sufficient funds will be available when a disaster occurs.

While some of the funds would be used to cover administrative expenses of the IDR, most of the contributions would be used to fund immediate emergency response efforts in the event of a natural disaster. Besides any specific restrictions in the bilateral IDR agreement involving the affected country, nothing would constrain states and humanitarian agencies from contributing further aid after a disaster occurs. The IDR Relief Fund, however, would provide a necessary source of financing emergency response operations immediately after a disaster strikes.

The IDR Relief Fund has several advantages over the current reliance on ad hoc contributions from various actors in the international community. First, the Relief Fund would provide an incentive for states—particularly wealthy states likely to take on Guardian status in one or more Guardianships—to join the IDR regime. In the absence of such a Relief Fund, developed states may hesitate to take on the responsibility of being a Guardian State out of a fear they would end up bearing the expense of funding relief operations. The Relief Fund assures such states that adequate financial resources would be available. Additionally, the Governing Body would have to power to re-invest member contributions, thus allowing the size of the Relief Fund to grow. Finally, the Relief Fund would eliminate two of the major problems associated with disaster relief contributions—donor apathy and the politicization of aid. A standing fund with mandatory contributions would prevent states from withholding aid when a disaster occurs soon after another major disaster, and states would no longer be able to condition aid on the receiving state’s acceptance of some unrelated terms.

d. Guidelines and Best Practices for States and Organizations

The remaining components of the IDR involve the codification of guidelines and minimum standards for all actors involved in disaster relief operations. As discussed previously, the IDR would draw upon two important sources in crafting these guidelines—the IDRL

146. See HENKIN, *supra* note 76, at 107.

Guidelines¹⁴⁷ and the Sphere Project.¹⁴⁸

The IDRL Guidelines vest primary responsibility for ensuring disaster risk reduction, relief, and recovery assistance in an affected state.¹⁴⁹ Affected states have the sovereign right to coordinate and monitor relief operations and recovery assistance provided by contributing states and humanitarian agencies.¹⁵⁰ The Sphere Handbook echoes this principle.¹⁵¹ The IDRP would preserve this sovereignty. While the bilateral agreements would likely delegate considerable responsibility to the Guardian State in coordinating the aid, this would be done only with the Guarded State's consent. In developing contingency plans, the Guarded State maintains significant control over what occurs within its territory.

With respect to contributing states, the IDRL Guidelines call upon states to abide by the laws of affected states and coordinate with the domestic authorities in the delivery of aid.¹⁵² The IDRP would not only preserve this principle, but would embody it by requiring ongoing discussions between Guardian and Guarded States. The IDRL Guidelines call for aid calculation on the basis of need alone and for aid to be provided without any adverse distinction in regards to gender, ethnicity, or class.¹⁵³ The mere process of requiring contingency planning prior to a disaster ensures that these types of principles will be honored. This is important to counter the practice of conditioning aid on the fulfillment of some unrelated political objective.¹⁵⁴

The Sphere Handbook calls upon international relief agencies to make an initial assessment of a country's situation following a disaster before attempting to provide aid.¹⁵⁵ The IDRP should include this as a guiding rule for relief organizations. Such an assessment should include a clear analysis of threats to life, dignity, health, and livelihoods, and should be performed in consultation with the relevant authorities.¹⁵⁶ In the context of the IDRP, this rule would bind agencies to consult with the Guardianship and follow their directions in activities within the

147. IDRL GUIDELINES, *supra* note 116.

148. SPHERE PROJECT, *supra* note 117.

149. IDRL GUIDELINES, *supra* note 116, at 12.

150. *Id.*

151. SPHERE PROJECT, *supra* note 117, at 20–21 (“We acknowledge that it is firstly through their own efforts, and through the support of community and local institutions, that the basic needs of people affected by disaster or conflict are met. We recognise the primary role and responsibility of the affected state to provide timely assistance to those affected . . .”).

152. IDRL GUIDELINES, *supra* note 116, at 12.

153. *Id.*

154. *See supra* Part II.A.3.

155. SPHERE PROJECT, *supra* note 117, at 61.

156. *Id.* at 61–62.

Guarded State. This process of consultation would reduce confusion and facilitate coordination in disaster response operations.

The IDRP should also include a requirement of continued review of the disaster situation following the initial response to ensure that the affected state and its population are recovering and that stability is being maintained. The Sphere Handbook calls upon agencies to evaluate operational effectiveness as long as they continue in the affected state.¹⁵⁷ This principle should be included in the IDRP, and should apply to both states and non-governmental organizations, to combat the problem of donor apathy. States and agencies would be required to continually reassess their presence in the affected state to determine whether their continued aid is necessary. The IDRP should require states and agencies to remain in the affected state as long as their help is useful, to the extent resources reasonably allow.

2. Why the IDRP is Better Than the Existing State of IDRL: Consent, Contingency Planning, and Coordination

The IDRP is better than the existing state of international disaster relief for three reasons. First, the IDRP and the Guardianships that form the centerpiece of the system are based on state consent. States will bind themselves only to certain minimal standards as codified in the IDRP constituent agreement and in subsequent resolutions passed by the IDRP Governing Body. The IDRP bilateral agreements will express the more concrete obligations—particularly those of Guarded and Guardians States.

Second, the IDRP facilitates contingency planning for likely disasters. Rather than developing a response strategy only after a disaster occurs, plans will already be in place. In the event of a disaster, the Guarded State, with the assistance of the Guardian State, will be able to respond immediately and begin delivering aid to affected people within its territory.

Finally, the IDRP streamlines the relief efforts of the numerous states and organizations providing aid and personnel to the relief efforts. The Guardianship—that is, the partnership between the Guardian and Guarded States—represents the final authority for coordinating relief efforts. This will significantly mitigate many of the logistical problems most common to international disaster relief efforts.

157. *Id.* at 70.

B. *Applying the IDRP*

1. The IDRP and the 2010 Haiti Earthquake

Under the IDRP, Haiti would have been required to enter into a bilateral agreement with a Guardian State prior to the catastrophic 2010 earthquake. Assuming that Haiti had concluded such an agreement with the United States, relief operations in the country may have been drastically different.

Prior to the earthquake, the U.S. and Haitian NDRRs would have conferred extensively on possible disasters. While the devastating earthquake would not necessarily have been foreseeable, the countries would have identified Haiti's weak infrastructure, particularly the limited capacity of its airports and roads to handle large amounts of traffic.¹⁵⁸ As a result, in the immediate aftermath of the earthquake, the U.S.-Haitian Guardianship could have identified the most important types of supplies needed and directed agencies providing such supplies to land in Port-au-Prince. The Guardianship would have directed other agencies to Santo Domingo and Cap Haitien immediately, reducing confusion and crowding at all points of entry.

Another advantage of the contingency planning in Haiti would have been the identification of campsites. The U.S.-Haitian Guardianship would have allocated resources among campsites and informed people where they should go immediately after the earthquake. Having coordinated the provision of personnel, the Guardianship would know where relief personnel were located, and thus could direct them to leave the country when their help was no longer needed. Following the IDRP rules of conduct, agencies and participating states would obey the wishes of the Guardianship.

Finally, the IDRP Relief Fund would have ensured that adequate aid was available and would have minimized the premature calls for national elections that ultimately led to violent civil unrest.¹⁵⁹ Because states would have already donated the funds, political motivations would be less likely to influence their participation in the relief operations.

2. The IDRP and the 2010 Pakistani Flooding

Relief operations following the 2010 Pakistan floods also would have been more successful under the IDRP. Assuming again that the United States acted as the Guardian State for Pakistan, the U.S.-Pakistani Guardianship would undoubtedly have foreseen the risk of flooding

158. See Robbins, *supra* note 19.

159. See Miller, *supra* note 55.

since the monsoons occur annually.¹⁶⁰ While the severity of the flooding is not an annual occurrence, the U.S.-Pakistani Guardianship would have planned for the event regardless. While the devastation caused by the floods to the roads would not be prevented, the Guardianship would have identified several alternative plans for delivering aid to the people in affected areas.

The established relationship between the two countries would also have minimized the political motivations behind the United States' response to the floods that occurred in 2010.¹⁶¹ Although the long-term effect of politicizing aid in Pakistan remains unclear, such strategizing is likely to distract from the efficient delivery of aid. While the U.S. has strong security interests in Pakistan, the focus in the disaster response—in Pakistan or any country—should remain on the quick and effective delivery of food, water, and other necessary living supplies to disaster victims, not on long-term political goals. The pre-established Guardianship would have ensured that this was the focus of relief operations in Pakistan.

Finally, the donor apathy that characterized relief operations in Pakistan following the 2010 floods¹⁶² would have been much less drastic due to the IDRP Relief Fund. Ideally, the Relief Fund would have been sufficiently large during 2010 to address relief operations in both Haiti and Pakistan. Furthermore, the Relief Fund would continue to provide relief to Pakistan for the purpose of addressing long-term effects caused by the flooding, even after the international community's attention had dwindled.

IV. CONCLUSION

The year of 2010 produced two of the most devastating natural disasters in recent memory. Despite efforts to make the delivery of aid by the international community more efficient, the situations in Haiti and Pakistan demonstrated that problems persist. In countries already suffering from weak governments and poor infrastructure, delivering aid in the wake of a catastrophe is only more difficult. The numerous states and agencies attempting to contribute to the relief efforts created confusion absent a clear source of authority. The politicization of foreign aid by wealthier states, and donor apathy when disasters occur successively, further hindered relief efforts.

This Note has proposed the IDRP, which goes a long way towards

160. *2010 Pakistan Floods*, *supra* note 5.

161. *See, e.g.*, Schmitt *supra* note 56.

162. *See* Ellick, *supra* note 66; *Pakistan Floods Fails to Spark Strong Global Aid*, *supra* note 69.

addressing many of these issues. While the IDRP cannot solve all problems, it will vest clear authority for coordinating relief operations in a dual Guardianship, create a Relief Fund to supply the necessary financial resources when a disaster occurs, and codify the rights and duties of all actors participating in relief operations. Furthermore, it will do so on the basis of state consent, with states agreeing to be bound by its terms rather than having obligations forced upon them. The sheer volume of participation in relief operations in Haiti and Pakistan demonstrates that states and agencies clearly want to help poor countries suffering the effects of natural disasters. States should go one step further and codify their duties in an international agreement like the IDRP to ensure that disaster responses are as successful as possible.