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Attribution of Conduct and Liability Issues Arising from International Disaster Relief Missions: Theoretical and Pragmatic Approaches to Guaranteeing Accountability

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Attribution of Conduct and Liability Issues Arising from International Disaster Relief Missions: Theoretical and Pragmatic Approaches to Guaranteeing Accountability

Giulio Bartolini*

ABSTRACT

This Article analyzes legal issues related to harmful activities of international disaster relief personnel, focusing on two distinct issues. On the one hand, the analysis centers on internationally wrongful acts carried out by relief personnel and uncertainties related to the attribution of conduct, due to the array of actors involved in such missions. Such an examination will be carried out through the lens of draft articles adopted by the International Law Commission on the responsibility of states and international organizations where some non-exhaustive references are made to such scenarios. On the other hand, the Article focuses on liability issues that may arise in relief operations, with a specific analysis on claims involving private third parties and solutions provided by disaster law documents in this area. However, this practice is far from being uniform and several shortcomings can be identified, thus increasing the need for relevant actors to properly address such issues avoiding the current shortsighted attitude.

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I. INTRODUCTION

Whereas international disaster relief missions are undoubtedly capable of making a decisive contribution to improving response and recovery from a disaster, it cannot be ignored that the activities of international relief personnel can also have unintended negative impacts on the affected state or local population. In order to analyze main legal issues relevant in such scenarios, the broad notion of “accountability” as proposed by the ILA¹ could be helpful to highlight the multifaceted nature of legal problems related to relief missions. In particular, this term encompasses different issues, such as “tortious liability for injurious consequences arising out of acts or omissions not involving a breach of any rule of international and/or institutional law” and narrower aspects dealing with international responsibility, properly confined to “the legal relations which arise under international law by reason of an internationally wrongful act.”²

These issues have not been specifically analyzed by the doctrine regarding relief missions and also tend to be under-evaluated by

1. See Int’l Law Association Ass’n [ILA], *Report of the Seventy-First Conference*, Int’l L. Ass’n Rep. Conf. 164, 169 (2004) (discussing accountability for the activities of international organizations); see also JAMES CRAWFORD, *STATE RESPONSIBILITY: THE GENERAL PART* 84–85 (2014) (discussing the notion that accountability has the advantage of being not limited “to responsibility towards other states under international law, but includes responsibility toward . . . individual persons, irrespective of the applicable law”). See generally V. Richard, *Les organisations internationales entre responsabilité et accountability: le régime de responsabilité esquissé par la CDI est-il adapté aux organisations internationales?*, *REVUE BELGE DE DROIT INTERNATIONAL* 190 (2013); Martin Zwanenburg, *UN Peace Operations Between Independence and Accountability*, 5 *INT’L ORG. L. REV.* 23 (2008).

2. CRAWFORD, *supra* note 1, at 84.

practice in this area, for even International Disaster Law (IDL) instruments seldom provide a comprehensive legal framework on these aspects.³ However, it would be counterproductive to keep ignoring such topics, as difficulties in settling claims in this area could undermine the respect of the rule of law, and the confidence of the local population and the accountability of assisting actors in relation to disaster relief missions, with the latter being a basic assumption of contemporary humanitarian action. Furthermore, the potential relevance of these issues is far from being purely theoretical. According to a survey elaborated by the International Federation of Red Cross and Red Crescent Societies (IFRC) in 2007, 32 percent of international humanitarian organizations, including some UN agencies, have reported having had legal claims made against them in relation to different issues, such as vehicle accidents, negligence in the performance of their activities, employment, breach of contract, construction, and rental disputes.⁴

Consequently, this Article will evaluate the theoretical aspects and legal consequences related to harmful activities of international disaster relief personnel, focusing in particular on two distinct issues. In Part II, the analysis will center on potential internationally wrongful acts carried out by relief personnel and significant problems related to the attribution of conduct, due to the array of actors involved in such missions. Specific reference will be made to articles drawn up by the International Law Commission on the responsibility of States (ARS) and International organizations (ARIO) where some non-exhaustive references are made to such scenarios. Part III will conversely focus on the liability issues that may arise in disaster relief operations, with a specific analysis on claims involving private third parties. IDL instruments could play a positive role in settling this latter issue. In particular, the main approaches in this area could be identified through a series of predefined solutions on the allocation of liability among actors involved who are capable of reducing the legal pitfalls for injured parties. However, this practice is far from being uniform, and several shortcomings can still be identified.

3. See *infra* Part II.1 for discussion of IDL instruments, which have been collected through instruments such as: the United Nations Treaty Series (UNTS), available at https://treaties.un.org/pages/Publications.aspx?pathpub=Publication/UNTS/Page1_en.xml [<https://perma.cc/2K45-FVQZ>] (archived Sept. 6, 2015), the Disaster Law Database managed by the International Federation of Red Cross and Red Crescent Societies (IFRC), available at <http://ifrc.org/en/what-we-do/disaster-law> [<http://perma.cc/BLY3-U7LK>] (archived Sept. 6, 2015), and the database elaborated by the International Disaster Law Project, available at <http://disasterlaw.sssup.it> [<http://perma.cc/YV67-YGUG>] (archived Sept. 6, 2015).

4. See Int'l Fed'n of Red Cross & Red Crescent Societies [IFRC], *Law and Legal Issues in International Disaster Response: A Desk Study* 144–45 (2007), available at <http://www.ifrc.org/PageFiles/125639/113600-idrl-deskstudy-en.pdf> [<http://perma.cc/2HXD-JMR4>] (archived Sept. 6, 2015).

Furthermore, in the common situation of a lack of binding IDL texts, disputes could arise in an unclear legal framework. In such cases, the potential impact of attribution criteria examined in Part II should be evaluated in order to identify the respondent government or international organization involved in such civil claims. As a result, the legal uncertainties characterizing this scenario can create additional legal problems for international disaster relief personnel, thus increasing the need for actors involved in relief missions to properly address such issues avoiding the current shortsighted attitude.

II. INTERNATIONAL RESPONSIBILITY AND ISSUES OF ATTRIBUTION FOR INTERNATIONALLY WRONGFUL ACTS IN THE CASE OF INTERNATIONAL DISASTER RELIEF MISSIONS

The possibility of internationally wrongful acts occurring as a result of the activities of international disaster relief personnel cannot be denied.⁵ And in this regard, due to the array of actors involved in these international scenarios, theoretical issues related to attribution of such conduct are particularly complex. Furthermore, an analysis of the so-called subjective element of wrongful international acts appears primarily relevant as it represents the preliminary legal assessment to be carried out in this area. As maintained by Brigitte Stern, a logical sequence appears to exist between the two elements identified by the ILC as “it is first necessary to ensure that an act is attributable to the State before examining whether that act is in conformity with what is required from that State under international law.”⁶ As a result, specific attention will be paid to issues of attribution in relation to the responsibility of states and international organizations within the framework of international disaster relief missions, taking into account the different categories of personnel involved in such activities.

A. *State Organs (Art. 4 ARS) and State Organs Placed at the Disposal of Another State (Art. 6 ARS)*

The most common situation involves personnel of assisting states providing support to the affected state at its request. In this regard, a

5. See generally GUGLIELMO VERDIRAME, *THE UN AND HUMAN RIGHTS: WHO GUARDS THE GUARDIANS?* 144–95 (2011) (arguing that the United Nations violated the principle of non-discrimination in relief and developments operations in Afghanistan).

6. Brigitte Stern, *The Elements of an Internationally Wrongful Act*, in *THE LAW OF INTERNATIONAL RESPONSIBILITY 201* (James Crawford, Simon Olleson & Alain Pellet eds., 2010).

plain analysis of the ARS could apparently lead to the conclusion that so far these individuals could be qualified as organs of the sending state; their conduct is attributed to this latter state under Art. 4 ARS. In this case, the institutional links between a state and its organs would be of paramount relevance for the purposes of attribution. Functions performed by relief personnel belonging to the state apparatus can easily be included among those exemplified by Art. 4.1 ARS, as they essentially perform executive functions (i.e. "the most direct manifestation of state power.")⁷ Furthermore these individuals are expected to have the status of state organs under their domestic legal order, thus fulfilling the criteria stated in Art. 4.2, according to which "an organ includes any person or entity which has that status in accordance with the internal law of the State."

In the area of international disaster relief operations, however, attention should be paid to the possibility of recognizing a transfer of attribution between the sending state and the affected state. In particular, the characteristics of international relief operations demand the evaluation of an additional attribution criteria, provided for by Art. 6 ARS, which states, "The conduct of an organ placed at the disposal of a State by another State shall be considered an act of the former State under international law if the organ is acting in the exercise of elements of the governmental authority of the State at whose disposal it is placed." The application of this provision, therefore, effectuates a transfer of attribution between the states concerned and its analysis is of paramount relevance for our purposes. In fact the ILC (according to a position already provided by Ago⁸) makes in its commentary an express reference to examples of "a section of the health service or some other unit placed under the orders of another country to assist in overcoming an epidemic or natural disaster"⁹ as an eligible area for the application of Art. 6 ARS. However, neither the commentary nor the Special Rapporteurs provided additional references or mentioned practice in this area to support this position. Art. 6 ARS and its commentary nonetheless make it possible to highlight a set of key elements to be ascertained for the application of this criterion, even if a proper analysis is made difficult by both the scarce attention paid to it by the doctrine and the vague terms used by the ILC in this context.

One basic requirement is the qualification of individuals concerned as organs of the sending states.¹⁰ As emphasized above,

7. CRAWFORD, *supra* note 1, at 119.

8. See generally Roberto Ago, *Third Report on State Responsibility*, YILC, [1971] 2 Y.B. Int'l L. Comm'n, 267, U.N. Doc. A/CN.4/2 (discussing circumstances where an "organ" of a State or international organization is lent to another state).

9. *Report of the International Law Commission*, in 2 Y.B. Int'l L. Comm'n 44, U.N. Doc. A/CN.4/SER.A/2001 [hereinafter ILC Report 2001].

10. *Id.*

Art. 4 is the source of reference in this area and excludes, as emphasized in the commentary on Art. 6 ARS, “the conduct of private entities or individuals which have never had the status of an organ of the sending State. For example, experts or advisers placed at the disposal of a State under technical assistance programmes do not usually have the status of organs of the sending State.”¹¹ Consequently, with regard to international disaster relief missions, Art. 6 ARS cannot be applied to certain individuals involved in relief operations, especially during the recovery phase, such as specialized technicians or experts acting under an ad hoc contract with the sending state and who do not belong to its apparatus. Similarly, Art. 6 ARS could not be applied to individuals empowered to exercise elements of governmental authority under Art. 5 ARS, as they lack the qualification of state organs as analyzed later on. In this case, only a different interpretation of the notion of state organs, as proposed by some scholars,¹² to include cases provided for by Art. 5 ARS within Art. 4.2 ARS, could possibly permit the transfer of attribution provided for by Art. 6 ARS.

Furthermore, the key terms of Art. 6 ARS, which requires that the organ must be “placed at the disposal” of a state, entail a series of additional requirements summarized by its commentary as “implying that the organ is acting with the consent, under the authority of and for the purposes of the receiving State.”¹³

The first element in this context is the consent to the presence and activities carried out by foreign organs in the state affected by the disaster. This condition could easily be satisfied with regard to international disaster relief operations, as it is an inherent requirement for their deployment, on the basis of the principles of sovereignty and non-intervention and as maintained by several IDL treaties¹⁴ and recently reiterated in Art. 14.1 of the ILC’s draft

11. *Id.*

12. See, e.g., Paolo Palchetti, *De Facto Organs of a State*, MAX PLANCK ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW 13 (Nov. 2010), <http://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e1394> [<http://perma.cc/6Z9C-Q8JV>] (archived Sept. 6, 2015) (arguing that the de facto link between an individual and the state structure must also be taken into account when determining the organs of a state for purposes of international law); see also PAOLO PALCHETTI, *L'ORGANO DI FATTO DELLO STATO NELL'ILLECITO INTERNAZIONALE* 269–78 (2007).

13. ILC Report 2001, *supra* note 9, at 44.

14. See SAARC Agreement on Rapid Response to Natural Disasters, art. 3, ¶ 1, Nov. 11, 2011 [hereinafter SAARC Agreement 2011], available at <http://saarc-sdmc.nic.in/pdf/SARRND.pdf> [<http://perma.cc/5K7K-NQHH>] (archived Sept. 16, 2015) (“[E]xternal assistance shall only be provided upon the request and with the consent of the affected Party.”); see also ASEAN Agreement on Disaster Management & Emergency Response, art. 3, July 26, 2005, available at <http://www.asean.org/news/item/asean-agreement-on-disaster-management-and-emergency-response-vientiane-26->

articles on the protection of persons in the event of disaster.¹⁵ Consequently, the remote cases of organs of an assisting state being involved in relief operations in the territory of the affected state without its consent would not be included within the framework of Art. 6 ARS.

The reference to “the purposes of the receiving State” makes explicit a condition maintained in the text of Art. 6 ARS, according to which the organ must act “in the exercise of elements of the governmental authority” of the state at whose disposal it is placed, thus, in our scenario, the affected state. The term “governmental authority” is a clear reference to the identical notion included in Art. 5 ARS. This latter term has not, however, been defined in clear terms by the ILC, as a common acceptance of it is lacking.¹⁶ Therefore the Commission has limited itself to claiming in relation to Art. 5 ARS that “[o]f particular importance will be not just the content of the powers, but the way they are conferred on an entity, the purposes for which they are to be exercised and the extent to which the entity is accountable to government for their exercise.”¹⁷ Nonetheless, relief activities can most likely be covered by this definition, as they represent the quintessence of governmental functions being carried out by the executive and subject to specific disaster management acts¹⁸ and contingency plans managed by public authorities. As a result, it could be inferred that once such organs carry out disaster relief actions on behalf of the affected state this sub-condition could easily be satisfied as such activities appear to be strictly related to the exercise of functions of a public nature.

Finally, as qualified by Roberto Ago, the “essential requirement”¹⁹ is the necessity for these organs to be “under the authority” of the receiving state. In this regard, the commentary spells out that the organ has “to act in conjunction with the machinery of that State and under its exclusive direction and control, rather than on instructions from the sending State,” providing as an example cases of foreign units furnishing assistance during natural disasters²⁰ without making reference to concrete practice. The

july-2005-2 [<http://perma.cc/VAG5-HMPS>] (archived Sept.16, 2015) [hereinafter ASEAN Agreement 2005].

15. See *Report of the International Law Commission*, [2014] 2. Y.B Int'l L. Comm'n. 88, UN. Doc. A/69/10 [hereinafter ILC Report 2014] (“The provision of external assistance requires the consent of the affected State.”).

16. See Luigi Condorelli, *L'imputation à l'Etat d'un fait internationalement illicite: solutions d'un fait internationalement illicite: solutions classiques et nouvelles tendances, nouvelles tendances*, RECUEIL DES COURS DE L'ACADEMIE DE DROIT INTERNATIONAL 66 (1984).

17. ILC Report 2001, *supra* note 9, at 43.

18. For a collection of national disaster management laws, see generally the Disaster Law Database managed by the IFRC, *supra* note 3.

19. Ago, *supra* note 8, at 268.

20. ILC Report 2001, *supra* note 9, at 44.

example provided by the ILC can only be validated by assessing it in light of relevant practice in this area, which is mainly represented by provisions dealing with the direction and control of foreign relief personnel included in IDL instruments. This practice provides largely similar solutions through a double set of complementary rules routinely included in the same relevant provision.

On the one hand, such treaty provisions identify the affected state as having sole responsibility for the coordination and control of relief activities in its territory, including those performed by assisting actors, according to a solution endorsed by other relevant documents, such as the 2007 IFRC Guidelines or the ILC draft articles.²¹ Notwithstanding this common approach, the wording may differ.

For instance, the most recent regional IDL treaties (SAARC Agreement on rapid response to natural disasters, ASEAN Agreement on Disaster Management and Emergency Response, Inter-American and Caribbean conventions) state in fairly similar terms that “[t]he Requesting Party shall exercise the overall direction, control, coordination and supervision of the assistance within its territory,”²² as also provided by the Tampere Convention.²³ Other bilateral treaties make a general reference to “the co-ordination and direction”²⁴ or the “*direction générale*”²⁵ exercised by local authorities

21. See ILC Report 2014, *supra* note 15, at 88 (“The affected State has the primary role in the direction, control, coordination and supervision of such relief and assistance”); *id.* at 119 (“The formula reflects the position that a State exercises final control over the manner in which relief operations are carried out in accordance with international law.”); see also IFRC, Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance, 12 (2007).

22. SAARC Agreement 2011, *supra* note 14, art. 9; Agreement Establishing the Caribbean Disaster Emergency Management Agency, art. XXII (July 4, 2008) [hereinafter CDEMA Agreement 2008]; ASEAN Agreement 2005, *supra* note 14, art. 12; Inter-American Convention to Facilitate Disaster Assistance, art. IV, June 7, 1991, O.A.S.T.S. No. A-54 [hereinafter Inter-American Convention 1991].

23. See Tampere Convention on the Provision of Telecommunications Resources for Disaster Mitigation and Relief Operations, art. 4, June 18, 1998, 2296 U.N.T.S. 5 (“Nothing in this Convention shall interfere with the right of a State Party, under its national law, to direct, control, coordinate and supervise telecommunication assistance provided under this Convention within its territory.”).

24. Agreement on Mutual Assistance in the Case of Disasters or Serious Accidents, Alb.-Austria, art. 8, Jan. 27, 2010, available at <http://faolex.fao.org/docs/pdf/bi-132513.pdf> [<http://perma.cc/Z5CE-2TUP>] (archived Sept. 16, 2015); Agreement on Mutual Assistance in the Case of Disasters or Serious Accidents, Austria-Croat., art. 8, Sept. 17, 2004, 2486 U.N.T.S. 277, available at <https://treaties.un.org/doc/Publication/UNTS/Volume%202486/v2486.pdf> [<https://perma.cc/7V72-GNVZ>] (archived Sept. 25, 2015); Agreement on Cooperation in the Event of Natural Disaster or Major Emergencies, Phil.-Switz., art. 9, Dec. 6, 2001, available at <http://www.ifrc.org/docs/idrl/I494EN.pdf> [<http://perma.cc/V337-K3V7>] (archived Sept. 16, 2015) (referring to “coordination and management”).

25. See Accord entre le Gouvernement de la République Française et le Gouvernement de la Malaisie sur la coopération dans le domaine de la prévention et de la gestion des catastrophes, et de la sécurité civile, art. 8, May 25, 1998,

toward assisting actors, as maintained by the 2013 EU Decision on a Union Civil Protection mechanism, according to which “[t]he requesting Member State shall be responsible for directing assistance interventions.”²⁶ In other cases, the wording tends to underline the absolute and primary roles of domestic actors. For instance, Art. 8 of the 2004 treaty of assistance between Austria and Jordan maintains that “[t]he co-ordination and management of rescue and relief operations is exclusively the responsibility of the authorities of the requesting state,” thus making clear reference to the model bilateral agreement on the matter of civil defense drawn up in 2002.²⁷ Relevant soft law instruments deal with this issue in a similar manner, as provided by the Guidelines developed by the International Search and Rescue Advisory Group, which state that “[t]he LEMA of the affected country is the overall responsible authority for the disaster response”²⁸ and that “[t]he international USAR Team is under the control of LEMA and will work to achieve the priorities established by LEMA.”²⁹

On the other hand, IDL instruments include provisions that regulate the practical relationship between local authorities and assisting actors, usually providing for the identification of a team leader to act as a focal point for the performance of tasks identified by domestic authorities and, possibly, for the development of forms of consultation among the actors involved.

For instance, relevant regional treaties require that “[t]he Assisting Party shall . . . designate in consultation with the Requesting Party, a person who shall be in charge of and retain immediate operational supervision over the personnel and the equipment provided by it. The designated person, referred to as the Head of the Assistance Operation, shall exercise such supervision in consultation and cooperation with the appropriate authorities of the Requesting Party.”³⁰ A partly similar solution is provided by the 2000 Framework Convention on Civil Protection, which maintains both the necessity for an informal consultation between the authorities

<http://www.ifrc.org/docs/idrl/I392FR.pdf> [<http://perma.cc/XZB5-TVHG>] (archived Oct. 22, 2015).

26. Decision 1313/2013, of the European Parliament and of the Council of 17 December 2013 on a Union Civil Protection Mechanism, art. 15.5.15, 2013 O.J. (L 347).

27. Framework Convention on Civil Defence Assistance, Geneva, Switz., May 22, 2000, art. 7.

28. U.N. Office for the Coordination of Humanitarian Affairs (OCHA), *International Search and Rescue Advisory Group: Guidelines and Methodology* 38, (Apr. 2012); see also *id.* at 19 (“LEMA is the term used to describe the Local Emergency Management Authority and is the ultimate responsible authority for the overall command, coordination and management of the response operation.”).

29. *Id.* at 44.

30. See SAARC Agreement 2011, *supra* note 14, art. 9; see also CDEMA Agreement 2008, *supra* note 22, art. 22; ASEAN Agreement 2005, *supra* note 14, art. 12.1; Inter-American Convention 1991, *supra* note 22, art. 4.

involved and the ultimate authority of the local state in the management of rescue operations. Art. 4 of this convention states that “[t]he Beneficiary State and the Supporting State shall define together the tasks entrusted to the Civil Defence Units of the Supporting State. The Beneficiary State shall direct and assume responsibility for operations after prior consultation with the Head of the Civil Defence Unit of the Supporting State.” However, it could be pointed out that this system was largely modified in the relevant model bilateral agreement developed subsequently by this organization in which the potential role of contributing states is greatly reduced, thus bringing this document more in line with actual practice developed by bilateral treaties in recent decades.³¹

In fact, bilateral treaties usually limit themselves to establishing a merely internal coordination role for the team leader, aiming to avoid the chaotic management of international relief personnel. As maintained, for instance, by Art. 8.2 of the 2010 Austria-Albania treaty, “Instructions for the emergency teams of the Assisting State shall be transmitted solely to their leaders, who shall brief their subordinate personnel on the plan of action.” This is reaffirmed by several other bilateral treaties,³² while in some cases additional reference is made to the possibility for the team leader to “decide how to implement them and instruct their teams accordingly.”³³ This functional role of team leaders is also emphasized by Art. 8.1 of the 1998 BESC Treaty,³⁴ and in a similar manner the 1313/2013 EU Decision emphasizes the different levels of authority of the actors involved, providing in its Art. 15.5 that “[t]he authorities of the requesting Member State shall lay down guidelines and, if necessary, define the limits of the tasks entrusted to the modules or other response capacities. The details of the execution of those tasks shall

31. See art. 7.2 of the Model Treaty, which elaborated in 2002, “[a]ll directives addressed to the civil defence unit are presented to the sole leader of the aforesaid unit, who gives the necessary orders to his subordinates, in order to carry out the mission.”

32. See, e.g., Agreement on Mutual Assistance in the Case of Disasters or Serious Accidents, Austria-Croat., *supra* note 24, art. 8; Agreement on Cooperation on Disaster Preparedness and Prevention, and Mutual Assistance in the Event of Disasters, Russ.-Spain, art.9, B.O.E. n. 153, June 27, 2001.

33. Agreement Between the Republic of Austria and the Hashemite Kingdom of Jordan on Mutual Assistance in the Case of Disasters or Serious Accidents, Austria-Jordan, art. 8, Mar. 13, 2004, available at <http://www.ifrc.org/docs/idrl/I649EN.pdf> [<http://perma.cc/3UTD-NNHK>] (archived Sept. 16, 2015).

34. Agreement Among the Governments of the Participating States of the Black Sea Economic Cooperation (BSEC) on Collaboration in Emergency Assistance and Emergency Response to Natural and-Man-made Disasters, art. 8, 1998, available at <http://www.bsec-organization.org/documents/LegalDocuments/agreementmous/agr4/Documents/Emergencyagreement%20071116.pdf> [<http://perma.cc/BM7E-CSCY>] (archived Sept. 16, 2015) (“The Competent Body of the Requesting Party shall coordinate, manage and supervise the activities of Assistance teams through their leaders.”).

be left to the person in charge appointed by the Member State rendering assistance.”³⁵

Consequently, IDL instruments seem to identify a command and control system that is in part similar to the one existing in multinational military operations. As it is known, in this latter scenario contributing states routinely assign the “operational control” over their troops to a foreign military commander, for instance one belonging to the lead state in a particular area of operations, retaining so-called “full command” over its national contingent. The two terms do not have a uniform meaning in military language. However, “operational command” pertains to “the authority granted to a commander to assign missions or tasks to subordinate commanders, to deploy units, to reassign forces, and to retain or delegate operational and/or tactical control,” while “full command” is qualified as “the military authority and responsibility of a commander to issue orders to subordinates.”³⁶ As mentioned above, IDL treaties tend to paraphrase such systems, as clearly exemplified in the 2000 MOU between the United States and Canada. In this treaty, Art. IV provides: “Emergency forces continue under the command and control of their regular leaders, but the organizational units come under the operational control of the emergency services authorities of the jurisdiction receiving assistance.”³⁷

It is therefore important to evaluate whether the command and control system pertaining to international disaster relief operations could satisfy the scenario provided by Art. 6 ARS, in which organs put at disposal of another state are required to be “under the authority” of the other state (i.e. “under its exclusive direction and control) rather than on instructions from the sending State”³⁸ as mentioned above.

While doctrine has not paid specific attention to this criteria, some references can be found in the recent judgment of the European Court of Human Rights in the *Jaloud* case,³⁹ where analysis of attribution issues was a necessary preliminary aspect to be resolved in order to confirm that the claimed wrongful acts were attributable to the respondent government.⁴⁰ In this judgment, the Court excluded

35. Decision No. 1313/2013, *supra* note 26, art. 15.

36. See Blaise Cathcart, *Command and Control in Military Operations*, in THE HANDBOOK OF THE INTERNATIONAL LAW OF MILITARY OPERATIONS 237 (David Fleck & Terry Gill eds., 2010) (providing a definition of “Full Command”).

37. International Emergency Assistance Memorandum of Understanding, U.S.-Can., art. 4, July 18, 2000, available at <http://www2.cdc.gov/php/docs/IEMAC.pdf> [<http://perma.cc/WN43-XRAX>] (archived Sept. 16, 2015).

38. ILC Report 2001, *supra* note 9, at 44.

39. *Jaloud v. The Netherlands*, App. No. 47708/08 Eur. Ct. H.R. (2014), available at [http://hudoc.echr.coe.int/eng?i=001-148367#{"itemid":\["001-148367"\]}](http://hudoc.echr.coe.int/eng?i=001-148367#{) [<http://perma.cc/7MSL-AHUM>] (archived Sept. 16, 2015).

40. See Marko Milanovic, *Jurisdiction, Attribution and Responsibility in Jaloud*, EUR. J. INT’L L. BLOG (Dec. 11, 2014), <http://www.ejiltalk.org/jurisdiction->

the possibility of qualifying a Dutch soldier operating a checkpoint in an area of southern Iraq under the control of the United Kingdom during the military occupation carried out by the latter state as being “placed ‘at the disposal’ of any foreign power, whether it be Iraq or the United Kingdom or any other power, or that they were ‘under the exclusive direction or control’ of any other State.”⁴¹ According to the Court, it was impossible to refer to art. 6 ARS:

While the forces of nations other than the ‘lead nations’ took their day-to-day orders from foreign commanders, the formulation of essential policy including . . . the drawing up of distinct rules on the use of force. . . remained the reserved domain of individual sending States Although Netherlands troops were stationed in an area in southeastern Iraq where SFIR forces were under the command of an officer from the United Kingdom, the Netherlands assumed responsibility for providing security in that area, to the exclusion of other participating States, and retained full command over its contingent there.⁴²

Similarly, in the *Al-Saadon* case the High Court refused to apply Art. 6 ARS with regard to the detention of this individual and his transfer to the Iraqi authorities, maintaining that British forces had an autonomous role in these decisions, a solution not at issue in front of the Strasbourg Court, which implicitly qualified such acts as attributable to the United Kingdom without any further analysis.⁴³ It could be inferred, especially from the *Jaloud* case, that a series of elements have been taken into account in order not to apply Art. 6 ARS, including the recognized margin of decision making autonomy of organs of the sending state, the exclusive exercise of some functions in certain areas, and the maintenance of full command over the troops concerned.

It is clear that if the permanence of “full command” over state organs could be assumed to be sufficient per se to maintain the attribution of conduct to the national state, it would be almost impossible to apply the transfer of attribution provided by Art. 6 ARS, even with regard to international disaster relief missions as maintained by the ILC. However, without additional elements to clarify that these assisting teams are instead acting autonomously

attribution-and-responsibility-in-jaloud/#more-12706 [http://http://perma.cc/C3JN-UJHL] (archived Sept. 6, 2015).

41. *Jaloud v. The Netherlands*, *supra* note 39, at para. 151.

42. *Id.*, para. 147-149.

43. *Al-Saadoon v. Secretary of State for Defence*, [2008] EWHC (Admin) 3098, [80]; *see also* *Al-Saadoon & Mufdhi v. United Kingdom*, App. No. 61498/08 Eur. Ct. H.R. 1, 32-33 (2010). *See generally* Francesco Messineo, *Attribution of Conduct, in PRINCIPLES OF SHARED RESPONSIBILITY IN INTERNATIONAL LAW: AN APPRAISAL OF THE STATE OF THE ART* 86-87 (André Nollkaemper & Ilias Plakokefalos eds., 2014) (discussing issues of attribution when organs are transferred).

“on instructions from the sending State,”⁴⁴ it seems difficult to deny the relevance and applicability of Art. 6 ARS in such cases.

The role played by team leaders appears quite limited, being mainly a peripheral one aimed at facilitating functional links between the lent organs and the disaster management authorities of the affected state, in order to help fulfill requests from such entities, which are in charge of the coordination and control of relief operations in their territory. Such clauses mainly attribute to team leaders a consultative function, without recognizing a significant margin of appreciation in the fulfillment of requests received or the possibility of not fulfilling them. This intermediary role therefore appears to be primarily related to the necessity of establishing efficient cooperation among the actors concerned. As for the necessity to maintain the ultimate and formal “full command” over lent organs by the sending authorities, it should be emphasized that some domestic legal systems provide that military troops can only be given orders by their national commanders. To avoid similar potential frictions with regard to relief operations, which could also include a military component, saving clauses included in IDL treaties could be helpful. Therefore, in scenarios commonly regulated by IDL treaties, the application of Art. 6 ARS could be maintained.

A case-by-case approach is nonetheless necessary to evaluate whether a temporary institutional link has effectively been established between the receiving state and organs put at its disposal, and the characteristics of that link.⁴⁵ This analysis is particularly relevant as the majority of international relief operations are carried out in the absence of binding treaties involving the states concerned. As a result, the effective command and control systems could differ from the models provided for in the current IDL treaties. Furthermore, the transfer of attribution could clearly be denied, especially in relation to foreign organs present in the territory of the affected state by virtue of its consent, but performing their activities in a substantially independent manner, without acting in accordance with instructions from the affected state. Such activities will be outside the governmental machinery of that state, thus impeding the applicability of Art. 6 ARS as “the organ ‘lent’ by another State must genuinely have been placed under the authority of the beneficiary State,” as already maintained by Ago.⁴⁶

44. ILC Report 2001, *supra* note 9, at 44.

45. Messineo, *supra* note 43, at 87.

46. Ago, *supra* note 8, at 270.

B. Individuals Empowered to Exercise Elements of the Governmental Authority (Art. 5 ARS)

Relief operations could nonetheless be carried out by other individuals, as several states maintain that the service of civil protection can also be performed by private organizations, mainly non-profits, having special relations with national disaster management authorities. Such organizations and their staff could, for instance, be mobilized for civil protection functions in the event of emergencies, as long as they are enrolled in special national lists managed by Civil Protection Departments once they satisfy basic quality standards.⁴⁷ While providing civil protection, they benefit from certain privileges granted by public authorities, including insurance coverage and work permits, and perform their activities under the authority of national disaster management authorities.

The possibility of such staff being qualified as state organs under Art. 4 ARS during ad hoc periods of mobilization seems difficult to accept according to the solution endorsed by the ILC. First, it would be hard to identify national laws providing the formal status of organs to these individuals. Second, the possibility of relying on para. 2, according to which internal practice could be relevant when such a formal qualification is not provided by the relevant internal law,⁴⁸ does not appear pertinent. According to Crawford, the criteria of Art. 4 is linked to a “structural test,”⁴⁹ seeking to refer, according to its commentary, to “all individuals or collective entities which make up the organization of the State.”⁵⁰ In relation to disaster relief activities, some elements such as the ad hoc and temporary connection with the concerned state and the separate legal nature of entities involved do not militate in favor of such personnel being identified as state organs, notwithstanding the “expansionist tendency”⁵¹ in the identification of state organs provided by Art. 4.2. In this regard, the main reference could be found in art. 5 ARS, according to which:

47. See generally Italian Red Cross and International Disaster Law Project, *International Disaster Response Law in Italy* (2015), available at <http://www.ifrc.org/PageFiles/202607/Italian%20IDRL%20Report%20ENG.pdf> [<http://perma.cc/8JBN-F2C6>] (archived Sept. 6, 2015) (describing the Italian response mechanism to national disasters and the actors involved).

48. ILC Report 2001, *supra* note 9, at 42.

49. CRAWFORD, *supra* note 1, at 127.

50. Rep. of the Int'l Law Comm'n, 53rd Sess., April 23-June 1, July 10-August 10, 2001, 40, ¶ 1, U.N. Doc. A/56/10.

51. LUIGI CONDORELLI & CLAUS, KRESS, *The Rules of Attribution in The Law of International Responsibility, in Act*, in *THE LAW OF INTERNATIONAL RESPONSIBILITY* 221, 230 (James Crawford, Simon Olleson & Alain Pellet eds., 2010).

The conduct of a person or entity which is not an organ of the State under article 4 but which is empowered by the law of that State to exercise elements of the governmental authority shall be considered an act of the State under international law, provided the person or entity is acting in that capacity in the particular instance.⁵²

In Art. 5 ARS, the main element of reference provided by the ILC is also a formal one, represented by the existence of national acts authorizing such personnel to perform “elements of the governmental authority.” As analyzed before, relief activities most likely satisfy this requirement, taking into account the public nature of such functions.

While Art. 5 ARS could possibly be applied to the activities of relief personnel in domestic disasters, some difficulties arise regarding its application in cross-border operations. An example is provided by the formal decision of the Italian Council of Ministers to allow the participation of volunteers of the Italian Red Cross—an entity with its own legal personality, albeit vested with some public prerogatives with regard to health services—in health operations abroad related to the Ebola virus.⁵³ This decision entailed a formal declaration of a state of emergency in relation to this event. As a consequence, national legislation concerning the possibility of mobilizing private entities in the event of emergencies was applied and the staff of this organization was provided with some privileges, such as insurance cover and work permits, also in relation to activities in a foreign state. In this instance, some elements provided for by Art. 5 are present, in particular the enactment of national legislation aimed to allow such individuals to perform some public functions. However, several doubts could be raised regarding the possibility of extending governmental authority to activities carried out abroad, in a context where the role of national authorities seems almost absent. Furthermore, according to the ILC, such individuals would not be recognized as state organs and, in this regard, Art. 6 ARS could not be applied.

C. Agents of International Organizations and Organs of States Placed at the Disposal of an International Organization (Arts. 6–7 ARIO)

Finally, attribution-related issues concerning the conduct of organs or agents of international organizations involved in relief operations need to be analyzed. In this case, attribution is mainly regulated by Art. 6 ARIO, which basically qualifies such acts as “an

52. ILC Report 2001, *supra* note 9, at 26.

53. See DELIBERA DEL CONSIGLIO DEI MINISTRI DELL'1 DICEMBRE 2014: DICHIARAZIONE DELLO STATO DI EMERGENZA PER LA GRAVE CRISI UMANITARIA IN ATTO NELL'AFRICA OCCIDENTALE A CAUSA DELLA DIFFUSIONE DEL VIRUS EBOLA, in *Gazzetta Ufficiale* 292 (2014).

act of that organization” when carried out by individuals in the performance of their functions, as determined by the rules of the organizations.⁵⁴ As emphasized in the Commentary, with reference to the example of the United Nations, these terms refer “not only to officials but also to other persons acting for the United Nations on the basis of functions conferred by an organ of the organization,”⁵⁵ as it is nowadays common for various individuals to act on behalf of international organizations in different ways (e.g. paid/unpaid, with permanent/temporary positions, with/without the status of officials). This provision is therefore the starting point for analyzing the activities of individuals acting on behalf of such entities in the framework of disaster relief operations, specifically in ascertaining whether their wrongful acts can be attributed to the international organizations concerned.

In this regard, it should be emphasized that Art. 6 ARIO provides for cases of organs of a state that are “fully seconded”⁵⁶ to an international organization, whose conduct will be attributed only to the receiving organization. A relevant example in the area of disaster law could be provided by Art. 17 of the EU Decision 1313/2013 on a Union Civil Protection Mechanism. Such a provision deals with the possibility for the Commission to “select, appoint and dispatch an expert team composed of experts provided by Member States” in the event of a disaster within or outside the European Union, on the basis of lists provided by Member States. In such a scenario, the possibility to apply Art. 6 ARIO could be maintained.

Furthermore, it is known that some international organizations also play a significant role in the coordination of international assistance, mainly through UN-OCHA or ECHO at the EU level. With regard to these international organizations, a last point to be addressed is the possibility of qualifying the organs of assisting states as being at the disposal of the international organization acting as key players in the coordination and management of international relief assistance. In this regard, a residual possibility is to evaluate this scenario under Art. 7 ARIO⁵⁷ where the ILC makes reference to a criterion that appears partly different from the one addressing scenarios of state responsibility. Art. 7 ARIO refers to the notion of “effective control” over the conduct in question, thus attributing a

54. See P. Jacob, *Les définitions des notions d’“organe” et d’“agent” retenues par la CDI sont-elles opérationnelles?*, REVUE BELGE DE DROIT INTERNATIONAL 17 (2013).

55. Int’l Law Comm’n, Rep. on the Work of Its Sixty-Third Session, U.N. Doc. A/66/10, at 85 (2011) [hereinafter ILC Report 2011].

56. *Id.* at 87.

57. See *id.* (“The conduct of an organ of a State or an organ or agent of an international organization that is placed at the disposal of another international organization shall be considered under international law an act of the latter organization if the organization exercises effective control over that conduct.”).

relevant role to the factual control exercised in this particular context, rather than looking for an “exclusive direction and control” over state organs put at the disposal of affected states, as maintained in the Commentary to Art. 6 ARS,⁵⁸ due to the fact that, as emphasized by Giorgio Gaja, the exclusiveness of control could never be achieved by the international organization concerned over state organs put at its disposal.⁵⁹

The relevance of Art. 7 ARIO for disaster relief missions must be analyzed while keeping in mind the reference made by its commentary to this scenario. In particular, according to the commentary:

The principles applicable to peacekeeping forces may be extended to other State organs placed at the disposal of the United Nations, such as disaster relief units, about which the United Nations Secretary-General wrote: “If the disaster relief unit is itself established by the United Nations, the unit would be a subsidiary organ of the United Nations. A disaster relief unit of this kind would be similar in legal status to, for example, the United Nations Force in Cyprus (UNFICYP)”⁶⁰

Yet the practice mentioned by the quoted report of the UN Secretary-General was not particularly pertinent as this document was mentioning a theoretical scenario, rather than describing a concrete hypothesis. This example originated from a tripartite agreement concluded between the United Nations and the Governments of Peru and Sweden.⁶¹ With the United Nations acting as an intermediary, a Swedish relief unit was made available for recovery operations in Peru after the 1970 earthquake, while the treaty maintained some conditions for the provision of assistance. In particular, according to the agreement: duties had to be determined by representatives of the two governments and assisted by the representative of the Secretary-General; members of the unit would be responsible for their functions solely to the Commander of the Unit appointed by Sweden; and the United Nations would bear no operational responsibility in connection with the unit. Furthermore, the report by the UN Secretary-General maintained that the unit had a separate legal status from the United Nations and was not created by it. Consequently, it could not be qualified as a subsidiary organ of

58. *Id.* at 87–88.

59. See generally Giorgio Gaja, *Second Report on Responsibility of International Organizations: Rep. of the Int’l Law Comm’n*, 14, U.N. Doc. A/CN.4/541 (April 2, 2004) (discussing control over state organs by international organizations).

60. ILC Report 2011, *supra* note 54, at 93.

61. See generally Agreement for the Provision of the Technical Cadre Unit of the Swedish Stand-by Force for United Nations Service to Assist in Reconstruction of Areas in Peru Devastated as a Result of the Earthquake Which Occurred on 31 May 1970, Peru-Swed., July 29, 1970, 739 U.N.T.S. 127.

the United Nations.⁶² As a result, the ILC's mention of this scenario with regard to Art. 7 ARIIO does not appear particularly significant.

In fact, it seems hard to equate the characteristics of coordination activities exercised by international organizations dealing with relief operations with more complex scenarios, such as UN peace-keeping operations. In this latter context, a significant coordination role over the state organs placed at its disposal is attributed to an international organization, as exemplified by the existence of a formally coherent command and control chain in these contexts. In relief operations, the role exercised by international organizations is usually limited, consisting of collaboration and coordination among the actors involved (including the local government) to mobilize resources and maximize their beneficial impact, as well as avoid the overlapping of activities, as exemplified in key documents such as UNGA res. 46/182.⁶³ However, this seminal resolution is clear in reaffirming that "the affected State has the primary role in the initiation, organization, coordination, and implementation of humanitarian assistance within its territory,"⁶⁴ as also reaffirmed in other pertinent resolutions, such as UNGA res. 57/150 concerning urban search and rescue teams.⁶⁵ Pertinent documents in this latter area clearly reaffirm the limited role of structures managed by international organizations. For instance, the OSOCC Guidelines maintain that "instead of taking on a command role, the role of the OSOCC is to work in close liaison with LEMA and is intended to facilitate cooperation with, and coordination of, international humanitarian assistance."⁶⁶

Furthermore, some IDL instruments include sections aiming to stress the limited coordination role played by these international actors, clearly in order to avoid issues of responsibility. A significant example is provided by EU Decision 1313/2013 on a Union Civil Protection Mechanism, in which articles 15.7 and 16.10 deal with the coordination role of the Commission in the management of assistance provided by EU states within or outside the Union, stating:

The role of the Commission referred to in this Article shall not affect the Member States' competences and responsibility for their teams, modules and other support capacities including military capacities. In particular, the support offered by the Commission shall not entail command and control over

62. See *Legal Status of Disaster Relief Units Made Available Through the United States*, 1971 U.N. Jurid. Y.B. 187-92.

63. See generally G.A. Res. 46/49, GAOR, 46th Sess., Supp. No. 49, (Vol. I), U.N. Doc. A/RES/46/182 (December 19, 1991).

64. See *id.* ¶ 4.

65. See generally G.A. Res. 150, U.N. GAOR, 57th Sess., U.N. Doc. A/RES/57/150 (February 27, 2003).

66. See OFFICE FOR THE COORDINATION OF HUMANITARIAN AFFAIRS, OSOCC GUIDELINES 4 ¶ 2.1 (2nd ed. 2009).

the Member States' teams, modules and other support, which shall be deployed on a voluntary basis in accordance with the coordination at headquarters level and on site.⁶⁷

As a result, the possibility of applying Art. 7 ARIO to activities carried out by international organizations in relation to relief missions appears generally difficult to maintain unless exceptional situations could be identified.

D. *Conduct of Private Persons*

Finally, it goes without saying that the conduct of private entities, such as non-governmental organizations, acting in response to disasters in a totally independent manner as part of their autonomous humanitarian activities, can hardly be linked to any state or international organizations for the purposes of international responsibility. For instance, the possibility to refer to other attribution criteria as exemplified by ARS, such as articles 8–10, seems too hypothetical to deserve any attention.

At the same time, activities carried out by private entities could be indirectly relevant in terms of international responsibility, taking into account failure by the relevant organs of the affected state to exercise proper due diligence with regard to these conducts. An example could be provided by the authorization granted to foreign non-governmental entities by the governmental authorities of the affected state to carry out medical or humanitarian relief activities even if these private entities are not well equipped or appropriately trained. In such a scenario, the absence of any scrutiny by local authorities with regard to conduct carried out by private entities in its territory is able to cause a significant harm for disaster victims and should be evaluated under a due diligence parameter, especially taking into account positive obligations on states in the area of human rights law.⁶⁸ For instance, in the aftermath of the Haitian earthquake, significant concerns on the quality of humanitarian assistance provided by non-governmental organizations have been raised, especially regarding the provision of medical assistance by clearly unqualified personnel.⁶⁹

67. Decision No. 1313/2013, *supra* note 26, art. 15.7, 16.10.

68. See generally Dinah Shelton & Ariel Gould, *Positive and Negative Obligations*, in THE OXFORD HANDBOOK OF INTERNATIONAL HUMAN RIGHTS LAW 562–83 (Dinah Shelton ed., 2013) (discussing how positive obligations in universal and regional systems have become a major part of human rights law); R. Pisillo Mazzeschi, *Responsabilité de l'état pour violation des obligations positives relatives aux droits de l'homme*, 333 RCADI 175 (2008).

69. ISABELLE GRANGER, INTERNATIONAL FEDERATION OF RED CROSS AND RED CRESCENT SOCIETIES, GENEVA, *IDRL in Haiti* 42 (2010).

III. LIABILITY FOR ACTIVITIES RELATED TO INTERNATIONAL RELIEF MISSIONS

Detrimental activities carried out as a result of international disaster relief missions can also have consequences that do not involve an internationally wrongful act or imply claims concerning states' and international organizations' reciprocal responsibilities. In fact, in the majority of cases such harmful conduct involves liability for injuries to third parties, where private persons seek legal redress for claims arising out of a tort (i.e. one of the levels of accountability identified by the ILA).⁷⁰ As exemplified by *Lady Fox and Webb*, third-party claims against states or international organizations are generally unrelated to instances involving internationally wrongful acts, as

[i]n general a tort in municipal law does not of itself involve State responsibility, unless there is some additional element...An act of a State official resulting from a motor vehicle accident...causing personal injuries within the forum territory does not itself ground a claim of State responsibility against the defendant State.⁷¹

IDL instruments can play a significant role in resolving such issues, as they can identify a prearranged legal regime for the proper assessment of liability issues arising from such missions. This also avoids difficulties for the victims of such activities in obtaining redress due to the application of other international law provisions, such as those on immunities. For example, in the United States private parties litigated against the United Nations demanding that the organization be held accountable for the cholera epidemic spread by peace-keeping personnel, indirectly supporting the international relief missions carried out following the 2010 Haiti earthquake. The victims were however unable to obtain redress as the litigation was stopped by claims of immunity.⁷²

As for solutions adopted by IDL instruments, the memorandum prepared by the ILC Secretariat in 2007 rightly maintains that "disaster relief assistance instruments generally adopt a liability

70. See *Accountability of International Organisations*, *supra* note 1, at 169.

71. HAZEL Fox & PHILLIPA Webb, *THE LAW OF STATE IMMUNITY* 469 (3rd ed. 2013).

72. See *Georges v. UN*, No. 13-CV-7146 JPO, 2015 WL 129657, at *12 (S.D.N.Y. Jan. 9, 2015) (dismissing plaintiffs' claims on grounds of immunity); Frédéric Mégret, *La responsabilité des Nations Unies aux temps du choléra*, RBDI 161 (2013); Bruce Rashkow, *Immunity of the United Nations: Practice and Challenges*, 10 INT'L ORG. L. REV. 332, 340 (2013); Riccardo Pavoni, *Choleric Notes on the Haiti Cholera Case*, QUESTIONS OF INT'L L. (2015), at 19, available at http://www.qil-qdi.org/wp-content/uploads/2015/07/03_Haiti-Cholera-Case_PAVONI_FIN.pdf [<http://perma.cc/X9TQ-SX3G>] (archived Oct. 22, 2015).

paradigm which is simply based on prior allocation,"⁷³ rather than allocating liability on the basis of analysis regarding control over conduct or other attribution criteria provided by the law of international responsibility. In some treaties such clauses have an encompassing character, as they tend to address all scenarios relating to harmful events regarding such missions, thus focusing both on damage caused by relief personnel against the state that require the assistance or private third-parties and compensation for injuries occurring to international relief personnel. Even if some main trends can be identified, practice still remains fragmented in this area, as very few treaties are able to address such issues in a comprehensive manner. Furthermore, significant problems may arise in the absence of such provisions and, in this regard, the possible relevance of attribution criteria as mentioned above should be taken into account in order to identify the international subjects potentially involved in such claims.

The first scenario addressed by a number of IDL concerns claims for compensation that the affected state could bring against the assisting state or its personnel as a result of the provision of assistance. A recurring feature of IDL instruments is to request each state to waive such claims, usually with the exception of cases of willful misconduct or gross negligence,⁷⁴ as also recommended by non-binding texts such as the INSARAG Guidelines⁷⁵ or NATO

73. See Secretariat, Int'l Law Comm'n, *Protection of Persons in the Event of Disasters*, 135 ¶ 226, U.N. Doc. A/CN.4/590 (Dec. 11, 2007).

74. EU Commission, Commission Implementing Decision, art. 40.1, Oct. 16, 2014 (laying down rules for the implementation of Decision No 1313/2013/EU of the European Parliament and of the Council on a Union Civil Protection Mechanism); Agreement Establishing the Caribbean Disaster Emergency Management, *supra* note 22, art. 29.2; Treaty on Security Assistance Among CARICOM Member States, art. 14, July 6, 2006; Agreement on Mutual Assistance in the Case of Disasters or Serious Accidents, Alb.-Austria, *supra* note 24, art. 8; Agreement Between the Republic of Austria and the Republic of Croatia on Mutual Assistance in the Event of Disasters on Serious Accidents, Austria-Croat., *supra* note 24, art. 10.1; Agreement Between the Republic of Austria and the Hashemite Kingdom of Jordan on Mutual Assistance in the Case of Disasters or Serious Accidents, Austria-Jordan, *supra* note 33, art. 10.3; Agreement Between the Government of the Republic of Lithuania and the Government of the Republic of Belarus on Cooperation in the Field of Prevention and Elimination of Consequences of Catastrophes, Natural Disasters and Serious Accidents, Lith.-Belr., art. 13, Dec. 16, 2003, 2339 U.N.T.S. 225; Agreement Between the Government of the Republic of Finland and the Government of the Republic of Estonia on Cooperation and Mutual Assistance in Cases of Accidents, Fin.-Est., art. 11, June 26, 1995, 1949 U.N.T.S. 138; Agreement between the Republic of Austria and the Principality of Liechtenstein on Mutual Assistance in the Event of Disasters or Serious Accidents, Austria-Liech., art. 11, Sept. 23, 1994, 1901 U.N.T.S. 122; (1994); Cooperation Agreement relating to civil protection between Italy and Russia in respect of major risks and mutual assistance in case of natural or technological catastrophes, art. 10, July 16, 1993; Inter-American Convention 1991, *supra* note 22, art. XII.

75. Guidelines and Methodology, INSARAG 17 ¶ 16.3 (2009).

documents.⁷⁶ Different solutions are nonetheless maintained by some IDL treaties, which require the assisted state to pay for any damage that occurs during the relief operation, including “damage caused to equipment or to vehicles of the sending State.”⁷⁷ Furthermore, some IDL documents are unable to settle this issue, as maintained by the ASEAN and SAARC treaties, which state:

The Assisting Party and the Requesting Party shall consult and coordinate with each other with regard to any claims, other than an act of gross negligence or contractual claims against each other, for damage, loss or destruction of the other's property or injury or death to personnel of both Parties arising out of the performance of their official duties.⁷⁸

An additional scenario concerns provisions dealing with the death or injury of relief personnel or damage to the assisting state's materials. Also, practice is far from consistent, as IDL treaties can require the assisted state to compensate the sending state or relief personnel for such damage or injuries⁷⁹ or, conversely, maintain that the states involved will renounce any claims related to such events.⁸⁰

However, the most significant hypothesis concerns claims that may be brought by third parties against the assisting state for injuries caused by its relief personnel. In this instance, the practice developed by IDL instruments is very different from the solutions adopted in other international missions, such as peacekeeping operations. Even if different solutions have been adopted in the latter

76. NATO/EAPC, *Checklist and Non-Binding Guidelines for the Request, Reception and Provision of International Disaster Assistance in the Event of a CBRN Incident or Natural Disaster*, 1–4 ¶ 16.3, May 26, 2009.

77. See Agreement on Reciprocal Assistance in Case of Disasters or Major Accidents Between Switzerland and France, Switz.-Fr., art. 11, Jan. 14, 1987, 1541 U.N.T.S. 296; see also Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency, art. 10, (1986); Model Bilateral Agreement in the Matter of Civil Defense to Follow-up the Framework CCDA, art. 9, (2002).

78. See SAARC Agreement 2011, *supra* note 14, art. 9.3; ASEAN Agreement 2005, *supra* note 14, art. 12.3.

79. See Agreement Establishing the Caribbean Disaster Emergency Management, *supra* note 22, art. 24; Agreement between the Government of the Hellenic Republic and the Government of the Russian Federation on Co-operation in the Field of Prevention and Response to Natural and Man-Made Disasters, Greece-Russ., art. 13, Feb 21, 2000; Agreement of Black Sea Economic Cooperation, *supra* note 34, art. 14; art. 11 Agreement on Cooperation and Mutual Assistance in Cases of Accidents (1995); Agreement between the Republic of Austria and the Principality of Liechtenstein on Mutual Assistance in the Event of Disasters or Serious Accidents, Austria-Liech., *supra* note 74, art. 11.2.

80. See Agreement Between the Republic of Austria and the Hashemite Kingdom of Jordan on Mutual Assistance in the Case of Disasters or Serious Accidents, Austria-Jordan, *supra* note 33, art. 10; Agreement Between Lithuania and Belarus, *supra* note 74, art. 13; Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency, *supra* note 77, art. 10; see also Model Bilateral Agreement in the Matter of Civil Defense, *supra* note 77, art. 9.4.

scenario, they usually recognize that, with regard to operations under their command and control, the international organization leading the operation (e.g., the United Nations) or the sending state in the framework of coalitions of the willing states will provide compensation for damage caused to third parties.⁸¹ As a result, institutional mechanisms designed to solve such disputes have also been developed in relation to these missions, such as claims review boards (composed of representatives of the United Nations, or contributing states in non-UN led operations), sometimes with the participation of representatives of the host State. Additionally, for claims arising from road or air accidents, an insurance mechanism is usually provided, at least in the UN system,⁸² in order to address them.

The practice developed by IDL instruments is substantially different. First, the creation of institutional mechanisms to settle this issue has constantly been avoided. Their absence can be clearly justified by considering the temporally limited nature of relief missions, which obviously discourages this hypothesis. Furthermore, the main trend is to qualify the receiving state as liable for all claims brought by third parties in relation to assistance provided in its territory in order to exempt assisting actors. For instance, as maintained by Art. XII.b of the 1991 Inter-American Convention, “[t]he assisted state shall substitute for the assisting state and for the assistance personnel with respect to claims for loss or damage that might arise from the provision of assistance and might be brought against the assisting state or the assistance personnel by third

81. See Marc Guillaume, *La réparation des dommages causés par les contingents français en ex-Yougoslavie et en Albanie*, 43 AFDI 151(1997); Daphna Shrager, *UN peacekeeping Operations: Applicability of International Humanitarian Law and Responsibility for Operations-Related Damage*, 94 AM. J. INT'L L. 406, 409–12 (2000) (discussing liability limitations for third-party claims against the United Nations during ordinary operational activities); Kristen Schmalenbach, *Third Party Liability of International Organizations: A Study on Claim Settlement in the Course of Military Operations and International Administration*, 10 INT'L PEACEKEEPING 33 (2006); Boris Kondoch, *The Responsibility of Peacekeepers, Their Sending States, and International Organizations*, in THE HANDBOOK OF THE INTERNATIONAL LAW OF MILITARY OPERATIONS 515, 518–19 (Terry D. Gill & Dieter Fleck eds., 2010); GIULIO BARTOLINI, LO STATUS DEL PERSONALE DELLE FORZE ARMATE ITALIANE OPERANTE IN MISSIONI ALL'ESTERO E IN CONTESTI DI COOPERAZIONE MILITARE 71–84, 177–190 (2012).

82. See H. Ascensio, *Les Différends opposant une Organisation internationale à des personnes privés*, in DROIT DES ORGANISATIONS INTERNATIONALES 1141 (E. Lagrange & J.M. Sorel eds., 2013); K. Grenfell, *Effective Reparation for the Victims of Wrongful Acts Committed during Peace Operations: How Does It Work Concretely?*, 42 COLLEGIUM 126, 129 (2012); Pierre Klein, LA RESPONSABILITÉ DES ORGANISATIONS INTERNATIONALES, in COLLECTION DE DROIT INTERNATIONAL 200–03 (1998); see also U.N. Secretary General, *Review of the Efficiency of the Administrative and Financial Functioning of the United Nations: Rep. of the Secretary-General*, ¶ 14, UN Doc. A/C.5/49/65, 24/4/1995 (April 24, 1995).

parties.”⁸³ This solution has been endorsed by a significant number of instruments,⁸⁴ which also usually exclude cases of gross negligence or intentionally inflicted damage from the application of these provisions. On the contrary, only in very limited cases do IDL treaties require the assisting state to compensate damages related to relief activities.⁸⁵

The provisions requiring the receiving state to compensate claims arising out of tort and caused by assisting actors have several merits, as the pragmatic pre-arranged solution adopted by IDL treaties also helps the injured parties. The latter can bring their claims directly against their own state under their domestic system, as also specified in several IDL instruments, providing that these claims will be evaluated by the requesting state “in accordance with the legislation applicable in the case of harm caused by a member of its own rescue team.”⁸⁶ Thus injured parties avoid the legal uncertainties that characterize ad hoc institutional mechanisms for the settlement of third-party claims in peacekeeping missions, such as claims review boards managed solely by sending states or the International Organization (IO) according to their own standards, which can also imply substantial limitations of liability. Furthermore, such claims also escape the difficulties related to the law of immunity

83. *Supra* note 22.

84. *See, e.g.*, Austria-Alb., *supra* note 24, art. 10; Agreement Establishing the Caribbean Disaster Emergency Management, *supra* note 22, art. 29; Treaty on Security Assistance Among CARICOM Member States art. 14, July 6 2006; Agreement Between the Republic of Austria and the Hashemite Kingdom of Austria-Jordan on Mutual Assistance in the Case of Disasters or Serious Accidents, Austria-Jordan, *supra* note 33, art. 10; Agreement Between Lithuania and Belarus, *supra* note 74, art. 13; Agreement Between the Swiss Federal Council and the Government of the Republic of the Philippines on Cooperation in the Event of Natural Disaster or Major Emergencies, Switz.-Phil., *supra* note 24, art. 10; Agreement on Cooperation on Disaster Preparedness and Prevention, and Mutual Assistance in the Event of Disasters, Russ.-Spain, *supra* note 32, art.13; International Emergency Management Assistance Memorandum of Understanding, U.S.-Can., art. 6, July 18, 2000; Agreement of Black Sea Economic Cooperation, *supra* note 34, art. 14.2; Agreement on Cooperation in Case of Disasters Between the Government of the Republic of Venezuela and the Swiss Confederation, Venez.-Switz., art. 10, Sept. 30, 1998, 2409 U.N.T.S. 14; Agreement Between the Government of the Republic of Finland and the Government of the Republic of Estonia on Cooperation and Mutual Assistance in Cases of Accidents, Fin.-Est., art. 11, June 26, 1995, 1949 U.N.T.S. 138; It.-Russ., art. 10, 1993; Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency, *supra* note 77, art. 10.

85. *See* Agreement Between the Argentine Republic and the Republic of Chile on Cooperation in Case of Disasters, Arg.-Chile, art. 9, Aug. 8, 1997 (“The sending Party shall be liable for any unlawful acts directly resulting from the actions of its personnel in case of disaster.”); *see also* Acuerdo entre el Gobierno de la República Argentina y el Gobierno de la República del Perú sobre Cooperación en Materia de Desastres, Arg.-Peru, art. 9, June 11, 2004, available at <http://www.infoleg.gov.ar/infolegInternet/anexos/115000-119999/119164/norma.htm>.

86. *See* Agreement Between Lithuania and Belarus, *supra* note 74, art. 13.

in proceedings involving foreign states and IOs. This approach nonetheless implies the inevitable result of imposing an additional financial burden upon the state already affected by the disaster.

However, it should be stressed that a large part of disaster relief missions are carried out in the absence of IDL instruments among the actors involved. Furthermore, a significant number of IDL treaties do not address this problem at all, as maintained, for instance, by the Tampere Convention or relevant bilateral or regional treaties, such as those of SAARC or ASEAN, to name but a few. Similarly, in other instances such issues, while clearly identified as being relevant, have not been settled at all. For instance, Art. 40 of the 2014 EU Commission Implementing Decision C(2014) 7489 provides, in relation to intra-EU relief operations, that “[i]n the event of damage suffered by third parties as the result of assistance interventions, the Member States requesting assistance and the Member State providing assistance shall cooperate to facilitate compensation of such damage in accordance with applicable laws and relevant frameworks.”⁸⁷ As a result, EU States have failed to reach a consensus in this area notwithstanding the EU Commission having already stressed the need to settle this issue in the 2012 EU Host Nation Support Guidelines where it maintained that “[i]n order to streamline and expedite this process of cooperation and to avoid any potential for later misunderstanding, the HN and SN should agree on the principles for compensating the potential damage suffered by third parties as early as possible, ideally already during the process of requesting, offering and accepting the international assistance.”⁸⁸ Similarly, the official commentary to Art. 4.b of the 2000 Framework Convention on Civil Protection requires that compensation issues should be addressed by involved states without, however, providing guidelines in this area.⁸⁹ The latter provisions are clearly inadequate to resolve potential claims brought by third parties in concrete terms.

In these uncertain contexts, a partial solution, capable of resolving at least some potential claims, could be provided by the subscription of insurance mechanisms. This possibility is seldom regulated by IDL instruments, and usually only in order to specify that costs related to insurance shall be addressed by the affected state. For instance, Art. XII(e) of the 1991 Inter-American Convention states that “[t]he assisted state may take out insurance to cover the damages that the assisting state or the assisting personnel might be expected to cause” a solution similarly endorsed by Art. 13 of the

87. See Commission Implementing Decision, *supra* note 74.

88. See European Commission, EU Host Nation Support Guidelines 169 ¶ 9.4.3 (commission staff working document, SWD 2012).

89. See Framework Convention on Civil Defence Assistance, *supra* note 27, at 7.

BSEC treaty according to which “The Assisting Party shall provide insurance of the members of the Assistance teams and these expenses shall be included into the total bill for the Assistance,” as also maintained by bilateral treaties.⁹⁰

Insurance mechanisms are also provided for by work contracts relating to the activities of international organizations in this area. For instance, a standard clause included in contracts for technical experts belonging to EU Member States and seconded to the European Union, on the basis of Art. 17 of Decision 1313/2013/EU, provides this relief personnel with an insurance coverage in the event of damage to any third party occurring during the performance of their activities, according to a solution recently maintained for EU humanitarian volunteers.⁹¹ However, no express mention of this issue is made in the same Decision, regarding teams of EU Member States participating in the EU assistance modules, as this point is left to the discretion of sending states. Similarly, the general policy of international organizations may be relevant. For instance, as mentioned above,⁹² the United Nations holds a commercial insurance policy with worldwide coverage, to protect itself against third party liability in respect of accidents involving vehicles operated by UN personnel for official purposes. Such a policy is a possibility that should also be workable for relief missions, such as those carried out by OCHA, UNDP, etc. As a result, in the majority of contexts the insurance policy is exclusively arranged according to the regulations of the assisting state or international organizations involved in relief assistance, as a consistent practice is far from being present in this area.

It is clear that in the absence of prearranged binding solutions on liability issues, a series of legal difficulties could be encountered by the victims of harmful activities. If they aim to bring a claim against the assisting state or an international organization in their domestic tribunals, they could encounter difficulties due to the rule of immunity, seeing a significant denial of their right to access to justice as recognized by the main human rights treaties.⁹³ Similarly, it could be very challenging for victims of harmful activities to bring a claim

90. See Agreement between Hellenic Republic and Russian Federation, *supra* note 79, art. 12; Agreement Between the Government of the Republic of Finland and the Government of the Republic of Estonia on Cooperation and Mutual Assistance in Cases of Accidents, Fin.-Est., art. 11, June 26, 1995, 1949 U.N.T.S. 138.

91. See Commission Implementing Decision, *supra* note 74, art. 46.2; see also The European Parliament and the Council of the European Union, Regulation (EU) No 375/2014 of the European Council and of the Council Establishing the European Voluntary Humanitarian Aid Corps, 2014 O.J. (L. 122) 9.

92. See *supra* note 82.

93. See generally Francesco Francioni, *The Rights of Access to Justice under Customary International Law*, in ACCESS TO JUSTICE AS A HUMAN RIGHT 1–56 (Francesco Francioni ed., 2007).

in front of the local tribunals of the assisting state. However, in this regard, specific attention should be paid to Art. 12 of the 2004 UN Convention on Jurisdictional Immunities of States and Their Property, which refers to the so-called “territorial tort exception,” as also provided in other relevant instruments dealing with state immunity.⁹⁴ According to Art. 12 of this Convention:

[A] State cannot invoke immunity from jurisdiction . . . in a proceeding which related to pecuniary compensation for death or injury to the person, or damage to or loss of tangible property, caused by an act or omission which is alleged to be attributed to the State, if the act or omission occurred in whole or in part in the territory of that other State and if the author of the act or omission was present in that territory at the time of the act or omission.⁹⁵

It is clear that for states parties to the UN Convention (not yet in force) Art. 12 could have a significant role in addressing abovementioned problems.

Furthermore, in relation to potential civil claims brought by injured private parties in front of domestic tribunals, a final theoretical problem should be addressed. Due to the previously mentioned characteristics of international relief operations, it is important to evaluate whether issues of attribution in relation to internationally wrongful acts can also have an impact on the settlement of third-party claims. Even if attribution criteria with regard to claims concerning internationally wrongful acts have mainly been discussed in relation to the reciprocal responsibility of states or International Organizations, it seems reasonable to assume that such criteria can also be relevant in solving preliminary legal issues regarding international subjects involved in tort scenarios at the domestic level.

This position could be implicitly reinforced by making reference to legal issues raised by the abovementioned Art. 12 of the 2004 UN Convention on State Immunity where the term “attributable to the State” is used to identify one of the conditions for the application of the territorial tort exception with regard to injuries to persons or damage to property. The drafting history of Art. 12 clarifies that this term was not included to make an express reference to attribution criteria provided by the law of state responsibility, as it was maintained that this element should be addressed “in accordance

94. See FOX & WEBB, *supra* note 71, at 463-78; Joanne Foakes & Roger O’Keefe, ART. 12, in THE UNITED NATIONS CONVENTION ON JURISDICTIONAL IMMUNITIES OF STATES AND THEIR PROPERTY, A COMMENTARY 209 (Roger O’Keefe & C.J. Tams eds., 2013).

95. United Nations Convention on Jurisdictional Immunities of States and Their Property, art. 12, 2004, available at https://treaties.un.org/doc/source/RecentTexts/English_3_13.pdf.

with the municipal law of the forum State⁹⁶ within the framework of evaluations on vicarious liability. Nonetheless, as emphasized by relevant doctrine, such analysis tends to overlap with international law issues as “the applicable municipal law goes about answering this question by reference to the international rules on the attribution of conduct to a State.”⁹⁷

Similarly, it could be stressed that in relation to domestic civil claims for damages incurred by individuals as a result of activities of international missions, as peacekeeping ones, one of the key preliminary issues addressed by national courts was related to the application of attribution criteria provided by international law with regard to actors involved in order to identify the respondent party. Mention could be made to the judgments of the Dutch Courts on *The Mothers of Srebrenica* and similar cases. In such proceedings the Dutch courts maintained that some unlawful actions were attributed to the Netherlands making reference to attribution rules under international law, thus requiring this latter state to provide compensation to victims.⁹⁸

In tort claims relating to domestic proceedings brought against assisting states or international organizations for damage caused by its relief personnel, attribution criteria provided by the law of international responsibility could therefore play a role in identifying the respondent party. For instance, if it can be ascertained that the transfer of attribution (as provided by Art. 6 ARS) was effective in the relief operation where damage occurred, it should be inferred that the respondent government involved in civil claims related to harmful activities carried out by international relief personnel must be the receiving state, at whose disposal the assisting state had placed its organs. This solution would also have the indirect effect of facilitating access to justice for injured parties, as they could easily introduce such claims in their domestic system without difficulties related to the law of immunities.

96. See M. Ogiso, *Preliminary Report on Jurisdictional Immunities of States and Their Property*, 2 Y.B. Int'l L. Comm'n 111 ¶ 140 U.N. Doc. A/CN.4/SER.A/1988/Add.1 (Part 1).

97. See JOANNE FOAKES & ROGER O'KEEFE, *supra* note 94, at 220 n. 70; see also XIADONG YANG, *STATE IMMUNITY IN INTERNATIONAL LAW* 224–25 (2014).

98. See OTTO SPIJKERS, *Responsibility of the Netherlands for Genocide in Srebrenica: The Nuhanović and Mothers of Srebrenica Compared*, 18 J. INT'L PEACEKEEPING 281 (2014); Jacob Katz Cogan, *Stichting Mothers of Srebrenica v. Netherlands*, 107 AM. J. INT'L L. 864, 884–85 (2013); André Nollkaemper, *Dual Attribution: Liability of the Netherlands for Conduct of Dutchbat in Srebrenica*, 9 INT'L CRIM. JUST. 1143, 1146–54 (2011). See generally Shares: Research Project on Shared Responsibility in International Law Relevant, <http://www.sharesproject.nl/?s=srebrenica> [<http://perma.cc/WJ8N-69TZ>] (archived Oct. 1, 2015) (containing links to relevant judgments).

As mentioned before, legal redress for claims arising out of a tort is fundamental, not only to improve the accountability of relief missions, but also to avoid additional legal difficulties for international relief personnel. In the event that such damage cannot be properly addressed, a further possibility for victims is to bring a civil claim directly against such personnel. This risk should not be underestimated, especially as IDL instruments, in sharp contrast with treaties dealing with military and civilian personnel involved in peace support operations, do not usually grant international relief personnel with express immunity against local civil and criminal proceedings. This immunity is present in only a very limited number of IDL treaties, such as Art. 5 of the Tampere Convention or Art. XI, letters a, b of the 1991 Inter-American Convention, which states: "Assistance personnel . . . shall not be subject to the criminal, civil or administrative jurisdiction of the assisted state for acts connected with the provision of assistance," with exceptions provided for in cases of willful misconduct or gross negligence.⁹⁹

On the contrary, in the great majority of IDL treaties no such clauses are to be found. In these scenarios, state organs involved in relief operations can only claim for functional immunity in relation to civil proceedings under general international law. However, the existence of this customary provision is much debated by scholars and practice, and diverging solutions are suggested.¹⁰⁰ As a result, it is clear that in the event of unsettled claims involving private third-parties, the possibility of ultimately bringing claims directly against international relief personnel cannot be excluded, thus creating significant legal uncertainties for them.

IV. CONCLUSION

The detrimental activities of international relief personnel can raise a series of legal issues that must be properly addressed. Concerning international responsibility, additional analysis and a proper definition of the attribution criteria to be applied in relation to relief missions is desirable, especially taking into account the need to adequately evaluate the effective characteristics of command and

99. See, e.g., Agreement Establishing the Caribbean Disaster Emergency Management, *supra* note 22, art. 27.2 (b); Agreement Between the Argentine Republic and the Republic of Chile, *supra* note 85, art. 8.

100. See generally ROSANNE van ALEBEEK, THE IMMUNITY OF STATES AND THEIR OFFICIALS IN INTERNATIONAL CRIMINAL LAW AND INTERNATIONAL HUMAN RIGHTS LAW 106–43 (2008); Riccardo Pisillo Mazzeschi, *Organi degli stati stranieri (immunità giurisdizionale degli)*, 7 ENCICLOPEDIA DEL DIRITTO ANNALI 772–75 (2014). See also the activities of the ILC on immunity of State officials from foreign criminal jurisdiction.

control mechanisms in such scenarios. In any case, the activities of international disaster relief personnel undoubtedly represent a significant test case for the attribution criteria codified by the ILC, as some references made by the Commission to this scenario seem difficult to reconcile with concrete practice in this area.

Furthermore, liability issues assume specific relevance in these contexts. The shortsighted approach of several IDL treaties (when one is present for the disaster at stake) is astonishing, as such instruments commonly fail to provide a comprehensive legal framework to address all scenarios of harmful events related to such missions. Even the recent activities carried out by the ILC on the topic of the protection of persons in the event of disaster fail to address such problems. The lack of attention to such issues is even less understandable considering the decade-long practice developed in this area with regard to other international missions, such as peacekeeping ones, where international actors have, on various occasions, been obliged to deal with similar legal problems.

Acting abroad in relief missions without a proper legal framework is totally unsatisfactory, both for the relief personnel, who may face the risk of legal proceedings, and for the local population that could be damaged by their activities, with the risk of losing local confidence in and undermining the accountability of humanitarian action. As a result, recent activities carried out in the framework of the NATO Euro-Atlantic Disaster Response Coordination Centre with the aim of developing model treaty clauses in this area highlight the increasing relevance of such issues.¹⁰¹ However, the main challenge is, of course, not to define abstract clauses, but to include effective ones in relevant instruments that are binding for the actors involved.

101. See NATO CIVIL EMERGENCY PLANNING CIVIL PROTECTION GROUP, MODEL TECHNICAL ARRANGEMENT ON THE LIABILITY OF RELIEF PERSONNEL 22–23 (2014).