

Tsunami: NGO Response: Now and the Future

by Milton Cerny and Michael W. Durham

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December 26, 2004, 8:00 a.m.: Deep below the Indian Ocean, the Burmese and Indian tectonic plates shifted off the northwest coast of Sumatra, causing an earthquake of 9.0 on the Richter scale and generating huge surges of water speeding at 400 miles an hour across the Indian Ocean to India. In its wake of 50-foot-high waves, the tsunami devastated property in 11 countries, caused destruction costing billions of dollars, and killed at least 160,000 helpless people in such distant places as Hikkaduwa, Sri Lanka; Thailand; and Banda Aceh, Indonesia. Its effect seven hours later was felt 4,000 miles away in Africa. The World Health Organization estimates that 500,000 people were injured in the Indian Ocean tidal waves, many of whom were poor and lived in ramshackle villages along the coasts of the affected nations. Thousands of vacationing tourists from all over the world perished or are still missing. The exact amount of carnage caused by this tsunami may never be known because human bodies were devoured by the sea and may never be identified. In Indonesia alone some estimate that the final toll of fatalities may exceed 200,000. The United States has reported 15 deaths, but 600 Americans are still missing and unaccounted for in the region.

As we grasp the enormity of this disaster, the outpouring of support and volunteers has been phenomenal. More than \$8 billion in pledged donations, interest-free loans, and debt relief has already been received from various governments. Criticism had been leveled at certain governments, including the United States, for being too slow and "stingy" in responding. However, we must realize that the situation needed to be assessed in areas whose infrastructure of roads and communication was totally devastated before the aid would be forthcoming. What is amazing has been the response of the nongovernmental organizations (NGOs) in the affected countries and the international NGOs, including the United Nations and the World Bank, who had committees working on the assessment and planning almost immediately. If anyone questions the usefulness of NGOs in a disaster of this magnitude this response should put those



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doubts to rest. The ability of the world community to react to this historic disaster required not only cooperation between nations, but the integration of the NGOs into the process of providing the volunteers and the catalyst necessary for delivering the needed humanitarian relief. NGOs should also be allowed to do their part in the ongoing assistance and rebuilding of the grief-stricken areas that will take months if not years to return to some type of normality.

The following discussion of NGO involvement tells us what is being done, what impediments exist, what we have learned from this disaster relief, and what the future holds for NGO involvement in other disasters resulting from both human and natural causes — Sudan, Congo and Guinea — where it is estimated that 7,000 people die daily from malaria, diarrhea, and other preventable diseases. The tsunami disaster sounds a clarion call not only to governments to reexamine their international responsibilities, but also to the international NGO community to review its coordination policies and delivery of services to the most needy throughout the world through indigenous NGOs of the countries affected. We cannot possibly gauge the future until we know the present, and thus this discussion can only be a beginning to a broader dialogue in other articles as we review the effectiveness of NGO activities that have been undertaken in the various affected countries and what lessons have been learned.

I. The Initial Relief Effort

As in any disaster, the bulk of the immediate response was mounted by local government officials, individuals, and NGOs. They were responsible for getting survivors to safety and providing immediate care for the injured. Local hospitals, Red Cross and Red Crescent chapters, and other relief organizations

swung into action, sometimes despite devastating personal losses and despite incomplete staffing and damaged facilities.¹ Indeed, because the devastation has thus far kept international aid from reaching many affected areas, local organizations in those places have had to respond to the crisis on their own for more than two weeks. When Doctors Without Borders finally got a team into the city of Sigli, they found a local hospital that was in sore need of medical supplies and improved sanitation, but still functioning.² Doubtless stories of other heroic local relief efforts are still to come.

The international NGOs' response was amazingly swift. For example, because Action Against Hunger already had a local operation in Sri Lanka, it was able to make its preliminary need assessment almost immediately, and had a planeload of water purification supplies in Colombo by Tuesday, December 28 — only two days after the catastrophe.³ By then, representatives from other organizations were performing their assessments and asking local government leaders how they could be most helpful. Days later, more planes containing hundreds of tons of materials were crowding the airports.

Shelter, water, food, and medical relief continue to be priorities, with Oxfam, Unicef, CARE, Action Against Hunger, AmeriCares, World Vision, Save the Children, and many others bringing in (or purchasing locally) supplies for hundreds of thousands of tsunami victims for the coming weeks and months. But there are other problems to be addressed, too:

Establishing distribution systems. One of the most vexing problems facing the relief effort has been the difficulty of getting the relief where it is needed most, especially in Banda Aceh. The International Organization on Migration and the Red Cross, along with many partners, have worked to set up distribution systems in the affected areas, requisitioning warehouses and trucks to manage the large quantities of aid materials flowing into the region. Military helicopters from the United States and elsewhere have been essential in distributing aid to places inaccessible by road.

Caring for children. Organizations like Unicef and Save the Children have begun to shift from focusing solely on food, hygiene, and shelter to their particular child-focused missions. Unicef has begun to construct temporary school facilities and distribute "school-in-a-box" kits, pledging to have many schools operational as soon as January 20. The Red Cross and various partners are working to vaccinate the displaced children against measles, and Save the Children has taken

steps to register child victims to help prevent their exploitation.

Post-trauma counseling. Children and adults alike may need psychological help to deal with the trauma of the disaster; in India, social workers, psychologists, and others have volunteered as counselors in the affected areas, but this is only a beginning. The Red Cross is sending more counseling professionals to the affected areas.

Locating and identifying the dead. This may be one of the largest forensic challenges of all time, with more than 20 forensic teams in Thailand alone gathering DNA samples for analysis on site or in China. Their efforts have been complicated by the need to bury corpses quickly to prevent the spread of disease.

Restoring livelihoods. The tsunami destroyed the boats of many coastal fishermen, making it impossible for them to earn a living. Already, one U.S. group has begun raising money to pay local shipwrights to replace the lost vessels, thus stimulating the local economy while allowing the fishermen to become self-sufficient once again.

Cleanup and reconstruction. NGOs on the ground in the affected areas estimate that cleanup alone could take a year or more, and obviously rebuilding infrastructure and the local economy will take even longer. While assessments are already being made, this phase of the relief is not yet at the fore.

II. Unprecedented Levels of Generosity

Governments grabbed headlines as they promised larger and larger aid packages for the affected nations (with Japan, Germany, and Australia each promising a half billion U.S. dollars or more in grants and concessional loans).⁴ But private giving was equally impressive. As of January 13, private donors and grantmakers in the United States alone had contributed some \$406 million for the affected areas, more than matching the size of the U.S. government contribution.⁵ That money went primarily to the large charities; the American Red Cross took in more than \$170 million in the first 12 days, and Unicef, Save the Children, Catholic Relief Services, Oxfam America, and Doctors Without Borders each raised more than \$20 million.⁶

Worldwide, private donations soared above \$2 billion. As of January 14, the most significant sources of private donations outside the United States were Germany (more than \$450 million), Britain (close to \$200 million) and the Netherlands (about \$150 million); Canada, France, Switzerland, Australia, and Saudi Arabia also raised more

¹See, e.g., Nicole Wallace, "After the Devastation," *The Chronicle of Philanthropy*, Jan. 6, 2005, at 45.

²See *Doctors Without Borders Surgical Team Starts Operations in Sigli, East of Banda Aceh*, at <http://www.doctorswithoutborders.org/news/2005/01-05-2005.shtml> (Jan. 5, 2005).

³See *AAH Responds to Earthquakes, Aftershocks in South Asia*, at http://www.aah-usa.org/news/release_dec27_04.html (Dec. 27, 2004).

⁴See *Tsunami Aid: Who's Giving What*, at <http://news.bbc.co.uk/1/hi/world/asia-pacific/4145259.stm> (last updated Jan. 8, 2005).

⁵See Brennen Jensen & Nicole Wallace, "\$406-Million Has Been Donated to American Charities Helping the Tsunami Victims," *The Chronicle of Philanthropy*, Jan. 13, 2005.

⁶*Id.*

than \$100 million apiece — donations that dwarf U.S. donations in per capita terms.⁷

A key ingredient in the recent outpouring has been the Internet. Links from popular Web sites like Amazon and Google generated millions in private contributions each day, and roughly half of the \$324 million in U.S. contributions were made online.⁸ But more conventional fundraisers — including telethons, benefit concerts, and collections by religious groups of every stripe — have also played an important role, raising tens of millions of dollars in the United States alone. This fundraising effort has underscored the power of a diverse civil society to mobilize resources, as many different organizations attract funds from different donor bases. Of course, as in any emergency, the wave of generosity has brought in its wake its share of fraud as well, but here again NGOs have played a leading role in educating the public about possible scams and rating various organizations' efficiency at applying donations to their charitable purpose.

Governments also have taken steps to encourage private donation. As detailed below, most of the large donor countries provide significant tax incentives for charitable contributions. In addition, Britain and Canada have pledged to match donors' private contributions. In the United States, special legislation allows January 2005 tsunami relief contributions to be counted as a deduction on 2004 tax returns.⁹ In India, the government is expected to declare the tsunami a national calamity, making contributions to tsunami relief charities 100 percent rather than 50 percent deductible.¹⁰

III. Legal Framework for Tsunami Aid: Recipient NGOs

As the initial emergency relief operation gives way to long-term reconstruction, local NGOs will become increasingly important. Local NGOs (including local chapters of international NGOs) have important advantages over their foreign counterparts, including knowledge of languages and customs and a committed staff that can stay permanently in the area. At the same time,

the huge outpouring of international support means that most of the resources for the recovery will come from foreign NGOs and governments (which may channel their aid in part through grants to NGOs). The long-term provision of aid will make ongoing cooperation between local and foreign governments and NGOs essential; it will also make the regulatory regimes affecting local NGOs and international support for those NGOs more important than ever. In some cases, legal reform may be necessary to handle the increased flow of aid to the region properly. What follows is a brief overview of a few aspects of the law most relevant to the relief efforts.

A. General Background

The basic framework for NGOs in the area is shaped in part by South Asia's colonial past. Thailand and Indonesia have civil law systems allowing for associations and foundations;¹¹ India and Sri Lanka use common-law forms (the society, the trust, and the non-profit company).¹² However, the use and character of these legal structures is informed by older philanthropic traditions and religious law. Private philanthropy, too, tends to flow in traditional channels, going first to needy individuals and then to religious institutions; more modern NGOs often struggle to attract local donors and must rely on other means of fundraising.¹³ It remains to be seen whether the Tsunami disaster will serve as a catalyst for the public to extend more significant support to the growing number of local NGOs working in the development and poverty-relief fields.¹⁴

B. Insufficient Checks on Abuse

In Sri Lanka and Indonesia, gaps in the regulatory regime have allowed some abuses in the NGO sector to go unchecked. In Indonesia, the law governing foundations until recently contained no prohibition against using foundation funds for private purposes or distrib-

⁷See *Nations Pledge Aid After Tsunami Disaster*, Jan. 11, 2005, at <http://www.alertnet.org/thenews/newsdesk/L05533984.htm>; *French Charities Amass EUR 95m in Tsunami Aid*, at <http://www.expat.com/>; Jeffrey Fleishman, "Germans Give Schroder Good Marks for Tsunami Reaction," *L.A. Times*, Jan. 13, 2005. For information on how these donations compare in per capita terms, see Emily Smith, *Private Sector Digs Deep*, at <http://edition.cnn.com/2005/WORLD/asiapcf/01/12/tsunami.privateaid/>. According to that report, the Swiss had made almost \$15 per person in private contributions, compared with U.S. per-capita private contributions of less than \$2.

⁸See Jensen & Wallace, *supra* note 5.

⁹The legislation was H.R. 241. President Bush signed the legislation January 7, 2005 and the IRS is in the process of issuing implementing guidance.

¹⁰See Noshir Dadrawala, *Donations for Tsunami Relief*, at <http://www.icnl.org/PRESS/Articles/2005/Donating%20in%20India%20for%20Tsunami%20relief.doc> (last visited Jan. 11, 2005).

¹¹See Satya Arinanto, *Indonesia*, in *Philanthropy & Law in Asia* 125, 125-27 (Thomas Silk ed., 1999); Chinchai Checharoen & Titawat Udornpim, *Thailand*, in *id.* at 332, 332-333. Unless otherwise noted, our information about Indonesia and Thailand have been drawn from those reports.

¹²See Sanjay Agarwal & Noshir Dadrawala, "Philanthropy & Law in India," in *Philanthropy & Law in South Asia* 115, 116-17, 120-23 (Mark Sidel & Iftekhar Zaman eds., 2004); Aritha Wikramanayake, *Philanthropy & Law in Sri Lanka*, in *id.* 331, 339. Unless otherwise noted, our information about India and Sri Lanka has been drawn from these reports.

¹³See Public Interest Research and Advocacy Center, "Investing in Ourselves: Giving and Fundraising in Indonesia" xiii-xiv (2002), available at <http://www.asianphilanthropy.org/appc/Indonesia.pdf>.

¹⁴As one point of comparison, the quick response of NGOs in Japan after the Kobe earthquake of 1995 triggered an outpouring of donations to them and, somewhat later, legal reform designed to create a more supportive legal environment for the organizations. See Takako Amemiya, Japan, in *Philanthropy & Law in Asia* 131, 131 (Thomas Silk ed., 2004).

uting foundation assets upon dissolution; while a 2001 law changed that, the new standards have yet to be fully understood and implemented by the public.¹⁵ In Sri Lanka, organizations can declare themselves to be charitable organizations exempt from tax and eligible to receive tax-deductible donations without any prior determination from the government, and in general there is widespread noncompliance with the tax regime. The lack of oversight has allowed a growing number of abuses that have hurt the reputation of the nonprofit sector. Weak domestic controls increase the risk of local attempts to obtain international funds fraudulently, and make it more difficult for international grantmakers to give confidently, especially to new organizations.

C. Government Control of NGOs

A perennial problem in NGO-government relations is governments' tendency to see the independence of the "independent sector" as a threat that could compromise the government's control of the public policy agenda. Although civil society is growing throughout the region, some nonprofit regimes in the tsunami-affected countries still suggest a model of strong state control rather than openness and associational freedom. Thailand, for instance, makes forming an NGO a cumbersome process requiring discretionary approvals from multiple government offices; the National Culture Act gives the National Culture Commission broad authority to decide whether to permit new NGOs or dissolve old ones. And while Sri Lanka and Indonesia inherited fairly lax standards for registering NGOs from their colonial legal systems, each has recently passed legislation giving the state more power over the registration and supervision of at least some NGOs.¹⁶ Of course, tighter controls may be necessary to curb abuse, but some in the sector remain worried that the new laws (which have not yet been fully implemented) will be used more to maintain political control than to fight corruption.¹⁷

One reason these registration requirements have not been more stifling is that many NGOs simply choose to operate without any formal legal recognition, foregoing whatever slight benefits accompany registration. Increased availability of foreign grants in the coming years will make this decision more costly,

since foreign donors may find it difficult or impossible to make grants to entities that do not formally exist. Thus, foreign aid runs the risk of increasing governmental power over the sector by increasing the value of the legal status to which government holds the key. As foreign funds attract more NGOs to the formal registration process, it will become increasingly important to make sure that registration processes are fair and reasonable.

D. Restrictions on Receiving Foreign Aid

Several of the countries in the region require government approval before foreign NGOs can operate within their borders or contribute to local NGOs. Thailand, for instance, requires such organizations to obtain approval from the Commission for Oversight and Management of Foreign Organizations; every grant, no matter how small, is subject to review by the Commission.

Other restrictions limit local organizations' ability to obtain foreign funds. For instance, Indian NGOs wishing to receive foreign funds must either obtain a special status as a qualified recipient of such funds (a status available only to organizations at least three years old) or must obtain special permission before receiving each grant (permission requests can take up to four months to process, and are not uncommonly denied without explanation). The practical effect is that most foreign funds reach only a small number of established organizations, which has discouraged the growth of new organizations. In the wake of the Tsunami, India has temporarily lifted these restrictions, but only until March 31, 2005.¹⁸

In Indonesia, a 1985 law imposes a similar pre-approval requirement on "social organizations," and even threatens dissolution if such an organization receives a foreign contribution without prior clearance. It is not clear whether this requirement applies to foundations (the predominant NGO in Indonesia), especially since the new 2001 Law on Foundations was passed, but in practice foreign donors wishing to make donations still seem to be going through the government.¹⁹ Moreover, the Indonesian government recently imposed new regulations requiring foreign aid workers to register and stay in main cities except when accompanied by an Indonesian military escort.

Without modification, these tight controls on foreign funding will limit the local NGO sectors' access to foreign funds, and will probably channel most aid into a few well-established groups or groups favored by their governments. As the mechanics of aid provision are worked out, international funders should seek to ensure that the new funds are available more widely, so that the growth of civil society is promoted.

¹⁵See Rustam Ibrahim, Abdi Suryaningati, and Tom Malik, "Country Report on Indonesia," in *Asia Pacific Philanthropy Consortium, Governance, Organizational Effectiveness and the Nonprofit Sector* 138-140, 142 (2003), available at <http://www.asianphilanthropy.org/staging/about/INDONESIA1.pdf>.

¹⁶In Sri Lanka, amendments to the 1998 Voluntary Social Services Organizations (Registration and Supervision) Act gave the government power to take control of such organizations in the event of fraud. See Wikramanayake, *supra* note 12, at 338. In Indonesia, Law No. 16/2001 for the first time gives the government control over the registration of foundations. See Ibrahim et al., *supra* note 15, at 140.

¹⁷See Ibrahim et al., *supra* note 15, at 135.

¹⁸See Dadrawala, *supra* note 10.

¹⁹See Country Note on Indonesia, at <http://www.usig.org/countrycodes/indonesia.asp> (last updated Aug. 2004).

E. Income Tax Benefits

The affected countries vary considerably in the amount and kind of tax benefits they provide for charitable NGOs. Probably the most generous is India. There, charitable organizations are exempt from income tax to the extent that they spend at least 85 percent of their income (excluding contributions), and donors can deduct 50 percent of amounts contributed to charity (up to 10 percent of their income). In addition, for projects identified as a priority to the government, the full amount of the donation can be deducted.

At the other extreme, Indonesia provides no income tax exemption for foundations and associations, although contributions and grants are not considered taxable income. And while there is a deduction for payment of *zakat* (a Muslim obligation analogous to Jewish or Christian tithes) to certain state-created entities, Indonesia provides no deduction for contributions to NGOs.²⁰

Other countries provide NGOs with tax advantages that have had limited importance in practice. Sri Lanka exempts charitable trusts from income tax, and allows certain approved charities to receive tax-deductible donations. However, the low maximum deductions for individuals (25,000 rupees, or approximately \$243), the lack of public knowledge about which charities are approved, and the reality of widespread tax evasion (less than 1 percent of the population are registered taxpayers) all limit the effect of this tax preference. In Thailand, charitable organizations certified by the Minister of Finance are exempt from income tax, and their donors (like donors to temples, schools, and hospitals) can deduct donations up to 10 percent of their income. However, because organizations cannot qualify if they have business activities or more than 25 percent in administrative expenses, only a small fraction of associations and foundations have actually been certified.

F. Customs and VAT

It is common for charitable exemptions from customs duties to be almost entirely ad hoc and within the discretion of the relevant officials. VAT rules generally leave less room for discretion. In Sri Lanka, imports of foreign charitable gifts by approved charitable organizations are exempt from VAT. India provides some charitable exemptions from sales tax but not from VAT; however, the thresholds for both taxes are high enough (\$8,700 and \$218,000, respectively) that these taxes do not generally affect Indian charities. Indonesia exempts certain basic staples like rice and salt from VAT, but exempts foreign grants from VAT only on an ad hoc basis.²¹

In the initial aftermath of the disaster, governments have been fairly willing to waive customs duties and cut down on red tape for incoming shipments. However, officials' wide discretion can lead to unexpected

results. Thus, for example, one observer reported that Sri Lankan officials were not charging customs on a planeload of emergency humanitarian relief supplies, but still insisted on applying a 200 percent duty on the vehicle sent to be used in distributing the supplies. As attention turns to medium- and long-term reconstruction and economic recovery, an increasing variety of goods and services will be needed in the relief effort. That may bring more examples of goods and services that, although they are a necessary part of relief operations, do not merit relief in the eyes of customs officials.

IV. Legal Framework for Tsunami Aid: Donors

A. Controls on Donations Abroad

Like the United States, most major donor countries allow deductions only for gifts to domestically organized charities. In the United States, Germany, and the United Kingdom, recipient domestic charities are free to spend those funds abroad, or give them to local partners. The only requirement is that the domestic charity take certain steps designed to ensure that the funds distributed abroad are in fact used for charitable purposes.

The rules are more strict elsewhere. In Australia, charitable trust funds are categorically prohibited from giving outside of Australia, and Australian public benefit institutions (roughly analogous to U.S. charitable nonprofit organizations) cannot receive deductible donations unless either (1) they make their expenditures principally within Australia or (2) they go through a lengthy process to be approved by both the Minister of Foreign Affairs and the Treasurer as "overseas aid funds."²² In practice this means that a new Australian organization set up to aid Tsunami victims, unlike an American one, probably could not expect to receive tax-deductible donations. India does not tax income on property held in charitable trust, but only so long as that income is spent in India (or to promote international welfare in which India is interested).²³ Japan requires disclosure of all foreign disbursements, and predisbursement notification to the government of any disbursement above 2 million yen.²⁴

These categorical restrictions and heightened procedural requirements do serve the valid purpose of minimizing the possibility that charitable funds will be diverted once out of the reach of the grantor country's regulators. However, their cost is a decreased amount of international aid and a more sluggish and bureaucratic system of aid delivery. The suddenness of the tsunami disaster underscores the importance of allowing the international charitable community to be as immediately responsive as possible.

²²See Myles McGregor-Lowndes, "Australia," 53 *Studies on Int'l Fiscal Law* 231, 237-38, 246 (1999).

²³See Kanwarjit Singh, *India*, 53 *Studies on Int'l Fiscal Law* 449, 461 (1999).

²⁴See *Amendments to the NPO Law and Tax Bill Bring Increased Flexibility to Nonprofits*, 8 Civ. Soc'y Monitor 2 (2003), at <http://www.jcie.or.jp/civilnet/monitor/8.pdf>.

²⁰See *id.*

²¹See *id.*

B. Tax Incentives for Contributions.

U.S. donors enjoy generous tax benefits; by giving through a domestic charity, they can claim a deduction of 100 percent of the contribution, up to 50 percent of an individual's total income (or 10 percent of a corporation's income) in the case of donations to public charities. Australia is even more generous, setting no limit on the percentage of income that can be deducted (although gifts for international relief are not normally deductible unless made to a specially registered overseas aid organization).²⁵ The gift aid system in the United Kingdom (also with no cap on the amount that can be donated) produces almost the same effect as a tax deduction, although its mechanics are somewhat different; instead of allowing a deduction, the United Kingdom requires the donor to pay tax on the gifted income and then remits the tax back to the charity.²⁶

Other countries have stricter limits. In Germany, donations for the relief of the poor can be deducted up to 10 percent of income (or 2 percent of total turnover and personnel costs), while donations for other public benefit purposes are deductible only up to 5 percent of income or not at all.²⁷ In Japan, individuals can deduct gifts of up to 25 percent of annual income, minus 10,000 yen (\$243). However, only a small percentage of NGOs organized under the Japanese Civil Code have been made eligible for tax-deductible contributions.²⁸ Moreover, many organizations are organized not under the Civil Code (which requires extensive ministry approval and supervision of the organization) but under the more recent 1998 Law to Promote Specified Nonprofit Activities. Although it has been possible for such organizations to qualify to receive tax-deductible donations since 2001, the requirements are so onerous that in the first 3 years fewer than 30 organizations have managed to do so.

V. Lessons to be Learned

One positive note in this tragedy was the degree of cooperation between local government leaders and the NGO community immediately after the disaster. With some exceptions,²⁹ the governments in the region seem to have removed many of the normal obstacles to the flow of foreign aid. India has suspended its restrictions on Indian NGOs receiving foreign aid until the end of March. After some initial delays as Sri Lankan customs

officials adjusted to the sudden influx of goods, the Sri Lankan government seems to have cleared much of the red tape, declaring unequivocally that disaster relief supplies would not be subject to import duties. Indonesia allowed a panoply of foreign relief organizations into the previously restricted Aceh region.

Unfortunately, at the time of this writing, there are some signs that this spirit of cooperation is already beginning to fade. As noted previously, Indonesia is again tightening restrictions on foreign aid workers, and requesting foreign militaries to leave by the end of March; India plans to reinstate its restrictions on foreign aid at the same time. It is becoming all too possible that foreign and local governments and NGOs will return to business as usual, putting aside the spirit of cooperation until the next disaster strikes.

The response to the tragedy has demonstrated how fruitful collaboration between international and local governments and NGOs can be. NGOs bringing medical supplies have turned them over to governments or local health departments for use in existing state-run hospitals. Local and foreign military forces, with their efficient chains of command and unique technological assets, have opened roads and distributed NGO relief supplies by helicopter. International NGOs have relied on local government officials' superior local knowledge to determine what aid is needed most urgently; with the help of the Internet, for example, charities all over the world were able to shift priorities in loading planes and containers just hours after Sri Lankan government officials reported that they had more than enough clothes. And on the other hand, NGOs have been able to provide relief in areas where political turmoil would make the presence of local government or military forces complicated.

Collaboration between international and local NGOs has also been valuable. Often, relatively small grants from foreign sources to local NGOs have furthered the relief efforts far more efficiently than a wholly foreign operation could have. For instance, an arm of the Asia Foundation made one grant to support members of a local Indonesian NGO as they provide volunteer labor for international relief operations over the next month, at a fraction of the cost of employing foreign relief workers. In some cases, humanitarian organizations affiliated with major Christian denominations have provided aid indirectly through Muslim groups to which aid recipients might be more receptive. In another case, a small Indonesian organization of radio operators obtained funds to develop a satellite radio system that could close crucial gaps in the relief workers' communication network.

One lesson that should be learned from the recent weeks is that this kind of post-disaster collaboration is not enough. Key elements of the primary relief effort came from organizations that were already well-organized locally and that had good links abroad, allowing them to mobilize foreign support quickly. Obviously, the moment after the disaster strikes is too late to encourage the formation of capable local organizations. It is also too late to establish the track records and working relationships with foreign NGOs that allow foreign NGOs to disburse funds quickly, confi-

²⁵See McGregor-Lowndes, *supra* note 22, at 244.

²⁶See John J. Dilger, "United Kingdom," 53 *Studies on Int'l Fiscal Law*, 753, 766-67.

²⁷See Michael Ernst-Pörksen and Til Pörksen, "Third Sector Organizations" in *Germany: Legal Forms and Taxation 20-21* (2004) (on file with authors).

²⁸See Amemiya, *supra* note 14, at 144.

²⁹For example, relief workers lost crucial days in getting relief to the Indian islands of Andaman and Nicobar while they waited for clearance to visit them. In addition, there were some reports of local officials in India insisting that aid be delivered to them, not directly to victims. See Rama Lakshmi, "Private Citizens Outdo Officials in Aid Efforts," *The Washington Post*, Jan. 1, 2005, at A14.

dent that they are funding legitimate, well-run operations and not hastily constructed frauds. Thus, while we applaud the current relief effort, we hope it will also provide an occasion to contemplate more permanent improvements in cooperation.

It is also worth noting the great number of organizations and individuals who have spontaneously tried to help. They stand as a testament to the genius of a vibrant civil society, which encourages, supports, and depends on this kind of spontaneous volunteerism. Indeed, an essential role of NGO law is to provide legal vehicles that facilitate this kind of spontaneous action. That is not to deny the important role of large, well-established NGOs in the relief efforts. However, there should also be room for private citizens to form new organizations that contribute in new and innovative ways. To the extent that NGO laws impose burdensome registration requirements, give overwhelming advantages to existing organizations, or otherwise discourage the formation of new organizations in response to new needs, they limit the diversity and vitality that are the hallmarks of a civil society.

VI. Conclusion

We are all numbed by the toll of human misery from this disaster. It is estimated by the World Health Organization that three to five million people in the region lack basic necessities such as food, clean drinking water and shelter with the specter of disease-related illness spreading through typhoid, cholera, and dysentery because of contaminated water systems. Today the United States government annually spends less than 1 percent of its budget on foreign aid, mainly through USAID. Even the \$350 million pledged by the United States government for this disaster relief accounts only for .003 percent of our gross national product. The oil rich kingdoms of Saudi Arabia and Kuwait, which run billion dollar surpluses in their budgets, initially gave only \$10 million each to the relief effort as compared to the \$764 million relief package announced by Australia and Germany's pledge of \$674 million and Japan's pledge of \$500 million.

Donations and pledges by individuals and companies are pouring into relief agencies such as the American Red Cross and the Red Crescent Organizations. Church-related charities are soliciting from their denominational members in unprecedented amounts. Former Presidents George H.W. Bush and William Jefferson Clinton are leading a national campaign to increase private giving to the relief effort. The IRS and Congress have made it easier for contributors to

donate to assisting charities that have a track record of providing direct humanitarian relief.

We are seeing a confluence of assistance, a spirit of cooperation and giving that has not been seen since our own human tragedy of 9/11. Some charities like Doctors Without Borders and Save the Children are overwhelmed with financial support beyond their needs and capacity to deliver needed relief and are advising contributors to make contributions to other agencies and for broader causes. How NGOs handle this outpouring of money and support may well determine how the world supports this sector in the future. We are rapidly approaching the time that once the immediate humanitarian relief is provided we must look to the future. An international relief effort will be needed to coordinate the assistance for the rebuilding of devastated communities and families. In this rebuilding and planning process the lessons learned from our experience with other disasters will be helpful but only a beginning unless we thoroughly change the process for the delivery of disaster relief.

What must be done is to continue the cooperation and building of the capacity of indigenous NGO communities so that they can become active participants when disasters of this nature occur. The scale of this tsunami tragedy offers an opportunity for international and domestic NGOs to focus on a more integrated process of relief, rebuilding, and, most important of all, reducing the vulnerability of international communities to future dangers.

NGOs need to be more proactive in advocating preemptive strategies for the next tragedy. For example, primary factors contributing to the high death toll are poverty and poor living conditions. NGOs must advocate long-term economic development and infrastructure projects including better roads, building construction, and more hospitals and clinics. NGOs must participate in economic and government reforms in the poorer countries in exchange for the support of richer nations providing more aid and favorable trade and debt reduction policies toward the affected countries. The World Bank should insist that future funding include community participation in redevelopment efforts and transparency in government action. The Bush administration's Millennium Challenge Account is another example of an attempt to fight global poverty by requiring recipient countries to meet tougher standards of good government and accountability. NGOs must remain in the forefront of advocating reform and democratic ideals under the rule of law. The world will be carefully watching to see what we have learned from this disaster.