

CONFERENCE ON SPACE LAW AND SPACE APPLICATIONS  
FOR DISASTER MANAGEMENT IN THE ASIA PACIFIC REGION  
Chiangmai, Thailand, 20-22 November 2007

**International Disaster Response Law, Rules and Principles (IDRL) Programme of the  
International Federation of Red Cross and Red Crescent Societies (IFRC)**

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**I. INTRODUCTION**

**A. The Facts on Disaster and Its Responses**

We can witness that every year millions of people are affected by natural and man-made disaster, and every year the international community is faced with the challenge of responding to crisis that exceeds the capacities of national infrastructure. Currently no well recognized and comprehensive legal instruments which identify internationally agreed rules, principles and standards for the protection and assistance of people affected by natural disaster<sup>1</sup>. Consequently many international disaster response operations are subject to ad hoc rules and systems, which vary dramatically from country to country and impede the provision of fast and effective assistance putting lives and dignity at risk<sup>2</sup>.

**B. Ideal Conditions for Disaster Preparedness**

By considering the above facts on disaster and its response, there is a need to create

ideal conditions for disaster preparedness which would: ensure preparedness both at local, national and international level; anticipate to the likely needs of the affected communities; the ability to identify potential legal and administrative challenges for the entry and coordination as a way to overcome it; and prevent unnecessary obstacles both legal, policy and institutional<sup>3</sup>.

**C. Problems in International Disaster Response**

It is important to have understanding on the problems in international disaster response in the efforts to achieve the above-mentioned ideals. The problems that commonly faced are among others:

1. Delayed or even prevented from providing initial relief and operations. One examples of it can be observed during the Tsunami in the end of 2004 where they were lacks of early warning, alert and preparedness among the affected countries<sup>4</sup>.

<sup>1</sup> Compare to David P Fidler, "The Indian Ocean Tsunami and International Law", ASIL Insight, 2005, page 1-2. He among other stated "No definite, broadly accepted sources of International Law which spells out legal standards, procedures, rights and duties pertaining to disaster management".

<sup>2</sup> See International Disaster Response Law (IDRL) Appeal No. 01.100/2004, page 1.

<sup>3</sup> Compare to the definition of "Disaster Preparedness" as formulated in Glossary of Strategy 2010, of which disaster preparedness is defines as: "Activities that contribute to the pre-planned, timely and effective response of individuals and communities to withstand, reduce the impact and deal with the consequences of a (future) disaster".

<sup>4</sup> See David P Fidler, loc.cit.

2. Ill equipped national legal and regulatory system to deal with the needs of international relief provider<sup>5</sup>.
3. Lacks of awareness among countries/governments about the importance of international cooperation that should override/overcome political/ideological differences and even legal/administrative obstacles in case of disaster (both natural and technological disaster).

## II. THE IDEA AND ESTABLISHMENT OF IDRL PROGRAMME

### A. Background

The idea of establishing IDRL programme was to response the growing concern within the international community as to the adequacy of existing legal and other mechanism to facilitate humanitarian activities in response to both natural and technological disaster. Based on a study, there were some findings concerning identified key deficiencies on existing international legal instruments relevant to disaster relief, such as<sup>6</sup>:

1. Regional disparities in the existence of treaties relevant to disaster relief;
2. Diversity in the content of treaties relating to disaster relief;
3. Disparate and inconclusive legal principles on disaster relief; and
4. Significant aspects of disaster relief not properly addressed.

<sup>5</sup> For example Indonesia, the most affected State struck by Tsunami in 2004, only have a comprehensive law on disaster management that could accommodate the interest of international relief provider in 2007.

<sup>6</sup> See International Federation of Red Cross and Red Crescent Societies, IDRL Legal Research: research into Existing IDRL Treaties, IDRL Fact Sheet No 6, March 2003.

IDRL was initiated by the International Federation of Red Cross and Red Crescent Societies (International Federation) in 2001.

### B. The Overall Goal

The overall goals of IDRL Programme are<sup>7</sup>:

1. Save losses of live caused by disaster;
2. Reduce the suffering and vulnerability of disaster victims; and
3. Reduce losses of assets and negative impact on living conditions and livelihood.

### C. The Objectives

There are some key objectives of the IDRL Programme, covering<sup>8</sup>: to raise awareness about the existing norms and standards governing international disaster response and to strengthen the international, regional and national frameworks of laws, rules, and principles that pertain to facilitation, coordination and regulation of international response to disaster; to facilitate access to legal and policy instruments form humanitarian response actors, disaster managers and policy makers; to promote the implementation of existing IDRL instruments and make their content tangible for humanitarian response actors; assist red cross/red crescent national societies in providing to their government with regard to strengthening the disaster management legal and policy framework in their country; identify problems which remain unaddressed in existing IDRL instruments and facilitate a dialogue about finding solutions.

<sup>7</sup> See IDRL Appeal No. MAA00004, 2006-2007, page 2.

<sup>8</sup> See Ibid, page 5.

## D. The Focus

The focuses of the IDRL Programme will be on the legal issues arising from international response to different types of non-conflict related disasters, as well as technological, chemical and biological disasters. In that respect IDRL Programme seeks to: raise awareness of applicable normative standards and promote their effective implementation; identify gaps and weaknesses in current regulatory structures at the national, regional and international levels; and promote dialogue in finding solutions.

## III. RELEVANT INTERNATIONAL LEGAL INSTRUMENTS RELATED TO DISASTER MANAGEMENT

There are some existing relevant international legal instruments related to disaster management, among others:

- A. Convention establishing an international relief union of 1927;
- B. Convention on assistance in the case of nuclear accident or radiological emergency of 1986;
- C. Convention on early notification of a nuclear accident of 1986;
- D. Council's of Europe Agreement on the Prevention of, Protection against, and Organization of Relief in Major Natural and Technological Disaster of 1987;
- E. Convention on Temporary Admission of 1990 (in particular annex B.9 concerning goods imported for humanitarian purposes);
- F. Inter-American Convention to Facilitate Disaster Assistance of 1991;
- G. The Tampere Convention on the Provisions of Telecommunication Resources for Disaster Mitigation and Relief Operations of 1998<sup>9</sup>.

<sup>9</sup> The Tampere Convention entered into force on 8 January 2005 following the ratification by

- H. The International Convention on the Simplification and Harmonization of Customs Procedures as amended in 1999.
- I. Framework Convention on Civil Defence Assistance of 2000.
- J. The "Seville Agreement" on the Organization of International Activities of the Components of the International Red Cross and Red Crescent Movement of 1997.

Other relevant legal documents, including but not limited to:

- A. Charter on Cooperation to Achieve the Coordinated Use of Space Facilities in the Event of Natural or Technological Disaster of 2000<sup>10</sup>.
- B. The statutes of the International Red Cross and Red Crescent Movement as amended in 1995.
- C. The Principles and Rules of Red Cross and Red Crescent in Disaster Relief as amended in 1995.
- D. The Supplementary measures to enhance the implementation of the Seville Agreement of 2005.

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30<sup>th</sup> country. The Tampere Convention is a legally binding international instrument aimed at helping relief workers brings telecommunication equipment across borders during and after an emergency, with a minimum difficulty.

<sup>10</sup> The Charter, known as International Charter "Space and Major Disaster" was initiated by the European Space Agency (ESA) and the France Space Agency (CNES) which was declared formally operational on November 1 of 2000. Some major space agencies from space faring nations such as: USA (NOAA), Canadian Space Agency (CSA), India (ISRO), Japan (JAXA) have also become members. For further information about "the Charter on Space and Major Disaster", read Joanne Gabrynowicz, "Comments on the Discussion Paper: Space Contribution for Disaster Management, Legal Framework", with Specific Emphasis on the Disasters Charter", presented at The Space Law Conference 2006, Asian Cooperation in Space Activities: A Common Approach to Legal Matters, Bangkok 2006.

- E. The Hyogo Framework for Action of 2005.
- F. The measures to Expedite International Relief of 1977.
- G. UNGA Resolution 46/182 of 1991.
- H. UNGA Resolution 57/150 of 2002.
- I. Etc.

The above-mentioned international legal documents, both in the form “hard laws” and “soft laws”, not only complementary one another but also form a harmonious and comprehensive system laws, rules and principles that eventually contribute to humanity, in particular protect and accommodate the needs and interests of victims of disasters.

#### **IV. SOME CHALLENGES IN IMPLEMENTING IDRL**

There are some challenges in implementing IDRL Programme, particularly the problems that frequently faced in the past experiences regarding international disaster relief and initial recovery assistance. Some of the problems are related to the following issues<sup>11</sup>:

##### **A. Personnel**

In practical situation personnel movement and qualification are often faced by the following situation:

1. Delayed or refused entry permission/visas for relief workers
2. Legal difficulties in hiring local staffs and volunteers
3. Lacks of legal protection, privileges and immunities for relief workers
4. Lack of recognition of professional qualifications of relief workers.

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<sup>11</sup> See IDRL Fact Sheet as quoted from [www.ifrc.org](http://www.ifrc.org).

##### **B. Legal Status of Foreign Organization**

For foreign organizations who conducting disaster relief and initial recovery assistance some difficulties shall be lifted such as:

1. Lengthy procedures for gaining legal status to operate in foreign country
2. Difficulties in transferring/exchanging money and opening bank accounts
3. Vulnerability to false legal claims, arrest, detention and seizure of property
4. Restriction in carrying out mandates.

##### **C. Goods and Equipments**

Facilitation of goods and equipment in disaster relief and initial recovery assistance is absolutely required, this is very important to overcome the following situation:

1. Delays in the import, export and transit of relief goods, medicine and equipments
2. Imposition of taxes, fees and tolls on relief activities
3. Restricted use of communication equipments
4. Difficulties with use of vehicles, aircraft and shipping.

##### **D. Coordination, Quality and Accountability**

Coordination, quality and accountability are key success factors in the whole process of disaster relief and initial recovery operation therefore certain situations shall be prevented or minimized, such as:

1. Inadequate information-sharing about disaster and the humanitarian needs
2. Sending unnecessary or inappropriate relief items and assistance
3. Undervaluing local knowledge and response capacities
4. Use of untrained or unqualified personnel
5. Lack of adherence to quality/accountability standard.

Apart from the above challenges, some other major challenges may be faced in disaster relief and initial recovery operation, particularly in implementing IDRL, these challenges would include<sup>12</sup>:

1. Inconsistent access to disaster affected people.
2. Delays and inefficiency in facilitating disaster response.
3. Gaps in the use of quality and accountability standards.
4. Lack of national and international coordination.

The above challenges should be seriously taken into considerations in the efforts to implement IDRL. Narrowing the gaps between national law and international law would be of importance to lift identified obstacles. In addition, continues dialogue will bring more mutual understanding among members of the international community. Developing a culture of caring to each others' sorrow would also help the international community to find satisfactory solutions to existing and future legal, policy and institutional constraints in providing international disaster relief and initial recovery assistance to the affected victims and areas.

<sup>12</sup> For further detail, read Nick Carter, "Legal Protection for Disaster Affected People", unpublished, page 1-2.

## V. DRAFT GUIDELINES FOR THE DOMESTIC FACILITATION AND REGULATION OF INTERNATIONAL DISASTER RELIEF AND INITIAL RECOVERY ASSISTANCE<sup>13</sup>

The purpose of the guidelines is to contribute to national legal preparedness by providing guidance to States interested in improving their domestic legal, policy and institutional framework concerning international disaster relief and initial recovery assistance<sup>14</sup>. In terms of scope, the guidelines are not intended to apply to situations of arms conflict or disasters that occur during arms conflict, or to imply changes in any rules governing relief in those contexts<sup>15</sup>. Some definitional issues are clarified by the draft guidelines, especially on some terminologies, such as: disaster; disaster relief; initial recovery assistance; goods; services; equipment; personnel; affected state; assisting state; originating state; transit state; assisting humanitarian organization; eligible assisting humanitarian organization; assisting actor; etc<sup>16</sup>.

The legal status of the proposed Guidelines would be: non-binding, complementary to the existing international law; and to fill the gap of the existing laws, rules and principles.

The draft Guidelines contain important provisions, such as:

<sup>13</sup> Version of 26 October 2007. The draft Guidelines was expected to adopted as one of the resolution of the 30<sup>th</sup> International Conference of the Red Cross and Red Crescent.

<sup>14</sup> See point 3.3 of the Guidelines.

<sup>15</sup> Ibid, point 3.4. The provisions of these Guidelines are also not intended to recommend any changes to, or affect the meaning or implementation of, any existing international law or agreements.

<sup>16</sup> For further details of the above definitions, see Draft Guidelines point 2.1- 2.14.

## A. Core Responsibilities

The responsibilities of affected States are to ensure disaster risk reduction, relief and recovery assistance in their territory<sup>17</sup>. In case a disaster situation exceeds national coping capacities, it should seek international and/or regional assistance to address the needs of affected persons<sup>18</sup>.

Meanwhile assisting actors should abide by the laws of affected States and applicable international law, coordinate with domestic authorities, and respect the human dignity of disaster affected persons at all times. Assisting actors should also conduct their activities in accordance with the principle of humanity, neutrality and impartiality<sup>19</sup>.

All States have additional responsibility to actively encourage members of the public interested in contributing to international disaster relief or initial recovery to make financial donations<sup>20</sup>. All States (parties) should cooperate to prevent unlawful diversion, misappropriations, or fraud concerning disaster relief or initial recovery of goods, equipment or resources and initiate proceedings as appropriate<sup>21</sup>.

## B. Early Warning and Preparedness

On early warning system, States should have procedures in place to facilitate the expeditious sharing of information about disasters<sup>22</sup>. Concerning legal, policy and institutional frameworks, States should adopt a comprehensive legal, policy and institutional frameworks and planning for disaster prevention, mitigation, preparedness, relief and recovery which took full account of the auxiliary role of their national red cross and red crescent

societies<sup>23</sup>. In order to promote early warning and preparedness system, there is a need for regional and international support for domestic capacities. In that respect the international community, including donors, regional and other relevant actors, should support developing States, domestic civil society actors and national red cross and red crescent societies to build their capacities to prevent, mitigate, prepare for and responds to disaster domestically<sup>24</sup>.

## C. Initiation and Termination of International Disaster Relief and Initial Recovery Assistance

Disaster relief or initial recovery assistance should be initiated only with the consent of affected States and in principle, on the basis of an appeal<sup>25</sup>. Request and offers for assistance should be as specific as possible as to the types and amounts of goods as well as the services and expertise available or required, respectively<sup>26</sup>. Affected should make available to assisting actors adequate information about domestic laws and regulations of particular relevance to the entry and operation of disaster relief or initial recovery assistance<sup>27</sup>.

In the event of initiation of military relief, military assets should be deployed for disaster relief or initial recovery assistance only at the request or with the express consent of affected States<sup>28</sup>. When the affected States or an assisting actor intends to terminate disaster relief or initial recovery operation, it should provide appropriate notification<sup>29</sup>.

<sup>17</sup> See Draft Guidelines, *ibid*, point 3.1.

<sup>18</sup> *Ibid*, point 3.2.

<sup>19</sup> *Ibid*, point 4.1 and 4.2.

<sup>20</sup> *Ibid*, point 5.2.

<sup>21</sup> *Ibid*, point 6.1.

<sup>22</sup> For further detail see *ibid*, point 7.

<sup>23</sup> See *Ibid*, point 8.1.

<sup>24</sup> See *Ibid*, point 9.1 and 9.2.

<sup>25</sup> *Ibid*, point 10.1.

<sup>26</sup> *Ibid*, point 10.2.

<sup>27</sup> *Ibid*, point 10.3.

<sup>28</sup> *Ibid*, point 11.

<sup>29</sup> *Ibid*, point 12.

#### D. Eligibility for Legal Facilities

Transit and affected States are recommended to grant legal facilities to assisting States with respect to disaster relief and initial recovery assistance<sup>30</sup>. It is the prerogative of originating, transit and affected States to determine which assisting humanitarian organizations will be eligible to receive the legal facilities with respect to their disaster relief or initial recovery assistance<sup>31</sup>. Affected States may also wish to extend, upon request, some of the legal facilities to other assisting actors, for example to private companies providing charitable relief operations of assisting humanitarian organizations or assisting States<sup>32</sup>.

#### E. Legal Facilities for Entry and Operations

For the purpose of conducting disaster relief and initial recovery assistance affected States should grant, to relevant personnel, visas and any necessary working permit, temporary licences, certificates that are necessary for the performance of disaster relief or initial recovery assistance, and also freedom of access<sup>33</sup>.

Goods and equipment shall be exempted from all customs duties, taxes, tariff or governmental fees; exempted from all export, transit and import restrictions; simplify and minimize document requirements. There must be also waived or reduced from inspections requirements. For special goods and equipments, affected States should grant temporary recognition to foreign registration and plates with regard to vehicles imported by them, they also have to grant any

applicable licenses and reduce any barriers<sup>34</sup>.

In order to facilitate transportation of goods and equipments for disaster relief or initial recovery assistance, originating, transit and effected States should grant without undue delay, permission for the speedy passage of land, marine and air vehicles operated by an assisting State or eligible assisting humanitarian organization or on its behalf, ideally waive applicable fees<sup>35</sup>. Temporary domestic legal status should be granted by affected States to relevant entities of assisting States and eligible assisting humanitarian organizations, upon entry or as soon as possible thereafter, to open bank accounts, enter into contract and leases, acquire and dispose of property and instigate legal proceedings for the purpose of providing disaster relief and initial recovery assistance<sup>36</sup>. On the taxation issues, affected States should provide exemptions to assisting States and eligible assisting humanitarian organizations from value-added and other taxes or duties directly associated with disaster relief and initial recovery assistance<sup>37</sup>.

Appropriate measures should be taken by affected States to address the safety and security of disaster relief and initial recovery personnel of assisting States and eligible assisting humanitarian organizations and of the premises, facilities, means or transport, equipments and goods used in connection with their activities<sup>38</sup>. Affected States should endeavour to ensure, when necessary, that State-operated offices and services essential to the timely delivery of international disaster relief function

<sup>30</sup> Ibid, point 13.

<sup>31</sup> Ibid, point 14.1.

<sup>32</sup> Ibid, point 15.

<sup>33</sup> Ibid, point 16.1. a, b, and c.

<sup>34</sup> For further detail, see Ibid, point 17 and 18.

<sup>35</sup> See Ibid point 19.

<sup>36</sup> Ibid, point 20.

<sup>37</sup> Ibid, point 21.

<sup>38</sup> Ibid, point 22.

outside of normal business hours<sup>39</sup>. The cost of providing international disaster relief or initial recovery assistance should normally be borne by the assisting States or assisting humanitarian organizations, but upon agreement with affected States certain cost can be reimbursed<sup>40</sup>.

## **VI. THE WAY FORWARD**

- A. There is a need for the same level of perceptions and awareness among international communities (covering both governments, international organizations and community at large) concerning the importance of international cooperation in case of disaster.
- B. There is a need for socialization to achieve the above objectives.
- C. There is a need for harmonization between national law and international law to deal with the issue of implementing IDRL.
- D. There is a need to develop IDRL as an integrated approach in dealing with disaster related issues.
- E. International community shall cooperate in finalizing guidelines for the domestic facilitation and regulation of international disaster relief and initial recovery assistance.
- F. Strong commitment from international communities lead by governments is the key factor to achieve the above goals.

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<sup>39</sup> Ibid, point 23.

<sup>40</sup> Ibid, point 24.