

## **IMPLEMENTATION OF INTERNATIONAL DISASTER RESPONSE LAWS, RULES AND PRINCIPLES IN THE BALKANS**

### RECOMMENDED RULES AND PRACTICES

#### **A. INTRODUCTION**

1. The **28<sup>th</sup> International Conference** of the Red Cross and Red Crescent (Geneva, December 2003) adopted recommendations on International Disaster Response Laws, Rules and Principles (hereafter **IDRL**). It supported the initiative of the International Federation of the Red Cross and Red Crescent Societies (International Federation, IF), expressed in IDRL Project, to examine the legal framework on which international disaster response actions are based. The 28<sup>th</sup> Conference defined further tasks, including those on the regional level, in the form of the **Agenda for Humanitarian Action**, point 3.2 (3.2.1 -3.2.6). It urged the States and components of the International Red Cross and Red Crescent Movement to implement these recommendations.
2. The IF initiative relates to **peace-time disasters**, not to those which occur in time of armed conflict, because these last ones are already regulated by **international humanitarian law**, a developed, well known and recognized branch of international law. In this case it is the ICRC that is competent to act, not the IF. There is no need and not a place to debate IHL rules. Therefore, the IF initiative is limited to peace-time disasters, and the international response in this case.
3. Distinction should be made between A. **purely Red Cross/Red Crescent** international relief operations as a part of the response, and B. these operations in which participate **various actors**: states, intergovernmental organizations, non-governmental organizations and others. In the first case there exist rules, such as Statutes of the Movement, **Principles and Rules for Red Cross and Red Crescent Disaster Relief**, the Seville Agreement, resolutions of Movement's bodies etc. There are also regional or bilateral agreements of National Societies. There is no need for new rules, the existing rules have to be applied. In the second case, the Movement's rules do not apply to non-Red Cross actors. Therefore, there is need for IDRL rules. The existing legal corpus is not adequately developed, applied and known. For these reasons the IF initiated its IDRL Project.
4. There are **many actions** that could be undertaken in order to implement the corresponding points of the Agenda (3.2.1-3.2.6). Some

of them are contained in the IF "IDRL Strategic Plan 2004-2007", there are also other actions based directly on point 3.2. of the Agenda, to help their governments in alleviating the sufferings of the victims. The point 3.2.4. proposes to the states to **review** their existing disaster management laws and operational instruments in order to enhance their **harmonization** with relevant IDRL. The task should be performed in cooperation with their National Societies and the IF. This action is essential for the success of any disaster response operation because it regulates the carrying out the international response operation at the national plan of the receiving states, but also of the assisting states. Important role is played equally by relevant international agencies. But it is these organizations that have to say what is their role and what are the rules to be followed, not the Balkans National Societies to define this. In any case, point 3.2.4 of the Agenda is an obligation for the 28<sup>th</sup> Conference participants, they are urged to fulfill it. Regional approach is underlined also under this point.

5. The **Balkans countries are faced with numerous disasters**. Therefore, their National Societies decided, at their 14<sup>th</sup> Conference, in Athens in 2003, to convene a special meeting devoted to the implementation in the region of future recommendations of the 28<sup>th</sup> Conference on IDRL. After that Conference they selected, as the first topic, point 3.2.4. of the Agenda. The meeting took place from 24-26 September 2004, in Belgrade, for which a text was prepared. The Societies concerned were informed of the proposed agenda, nobody objected to it, and on 7 July 2004 a draft text was sent to the participants. It is valid for this region or sub-region only. The text is a **compilation** of the laws, rules and principles on international disaster response (see point 3.2.6), from various sources, but also from practice of Balkan National Societies, in numerous humanitarian assistance actions of disaster response. The text is entitled RECOMMENDED RULES AND PRACTICES. It contains rules of **various legal nature** and in different phases of **development** and wider recognition: rules of international law in force, although sometimes in treaties with very limited number of ratifications, rules in the process of formation and development, regional rules, rules relating to specific cases of disaster response only, "soft law" rules, national rules and other internal legal acts, but also good practice widely accepted. For these reasons they cannot be considered obligatory but are **mere recommendations**. It could be expected that their respect and application could contribute to the general effort **to improve the legal framework** on which international disaster response operations are based, and thus improve the provision of humanitarian assistance to disaster victims, reduce their vulnerability and better protect human dignity. They are limited to cases of natural and technological disasters, as well as to relief to refugees and displaced persons, not to the victims of war, when IHL rules are applicable.
6. The **sources** on which this text of Recommended Rules and Practices is based are **numerous**, to mention some of them : the bilateral and multilateral conventions and other agreements, general or for a specific disaster response case; resolutions of UN General Assembly notably

2816/XXV, 32/56, 46/182, 57/150, etc; ECOSOC resolutions, including 2102/LXIII and resolution VI of 23<sup>rd</sup> International Red Cross Conference, of 1977 (on facilities); draft UNDRO Convention of Expediting the Delivery of Emergency Assistance of 1984; Principles and Rules for Red Cross and Red Crescent Disaster Relief of 1995, as a model Code of Conduct for the International Red Cross and Red Crescent Movement and NGOs in Disaster Relief of 1995; Tampere Convention on the Provision of Telecommunications Resources for Disaster Mitigation and Relief Operations of 1998, not yet in force; The Balkan National Societies Agreement on Mutual Assistance in Disasters of 2000, not yet in force, as a model; certain provisions of international humanitarian law, as a model; Kyoto Conventions on cooperation in customs matters; IATA recommendations; various projects of the UN on a New International Humanitarian Order; conventions on the deployment of various UN teams for humanitarian assistance actions in disasters; national legal acts; as models, various texts proposed in the doctrine (San Remo Institute, prof. Michael Bothe in International Law Association, Dr Peter McAlister-Smith, Mohamed el Baradei and others in the UNITAR publication, Dr. Boško Jakovljević etc. Most of the proposed rules have the basis in some of the above and other acts. In addition to that, there are rules from the rich experiences of the Red Cross/Red Crescent, widely accepted as good and recommended practices promoting IDRL.

7. It was considered that at their meeting the National Societies should speed up the identification of IDRL and its implementation in their area and therefore to come up with a **text of operative rules compiled** from different sources, rules which were actually applied in the wide practice of disaster response action in the Balkans region. Such an approach would be a contribution to the clarification, recognition and development of IDRL. The text encompasses the main aspects of disaster response. They are more or less well known to persons engaged in disaster relief operations, but so far not assembled in one act. Its formulations were improved by many amendments to the text during the debate. Such action would have the **advantage** of exposing the region's experience, and would embrace the main phases of relief operations in one place, permitting to obtain the view of the humanitarian action as a whole, and to detect and remove the lacunae, gaps, contradictions. The text presented did not pretend to cover all the possible aspects, problems and details of relief operations, but contained the main rules only.
8. The ultimate purpose of presenting this text is to put it at the disposal of the Balkan states for their consideration. It was considered that if the governments concerned would implement the preparatory measures and apply the recommended rules in some future disaster, this would improve specific disaster relief operation and would benefit the victims. Disaster strike unexpectedly, therefore concrete efforts to improve the legal basis of international disaster response operations should not be delayed.

9. The text is just the first step, to be followed by others undertaken by competent international bodies, in particular the International Federation.

## B. Text of **RECOMMENDED RULES AND PRACTICES**

It is recommended to states to adopt its internal laws, rules and regulations in accordance with the rules which are listed hereafter in order to demonstrate the states commitment to existing international treaties and other legal sources, to enhance the impact and effectiveness of the international response to disasters.

In the implementation of these rules the parties should act with flexibility.

### I PART ONE – RECEIVING STATES

#### I. PREPARATORY MEASURES

In advance of possible disasters it is recommended to the Governments:

1. To establish a **national plan** outlining an effective organization for relief, including the role of each actor. National Society should be a participant in the drafting and implementation of that plan.
2. The existing national disaster plan may require the Receiving State to **revise** it in order to comply with the rules listed hereafter. Revised plan should be sent to all parties and actors, specifying their roles under this plan. They should be instructed and their personnel trained how to implement it.
3. To establish an **advisory body** composed of all the structures which may be called to participate in disaster response action, as the case may be.
4. To appoint a single national coordinating authority/body or person/, hereinafter the “**national coordinator**”.
5. To consider the necessary **facilities** to be accorded to relief consignments and personnel, such as:
  - to exonerate from customs duties;
  - to instruct the customs to expedite and simplify customs procedures;
  - to decide which documents, necessary in normal times to the customs, will be waived for a disaster relief operation;
  - to regulate the possibility of provisional entry of equipment and transport means, and their return to the country of origin when they are no longer necessary;
  - to exonerate relief from other duties, taxes, licenses etc.;
  - to adopt measures so that the competent organs could issue, without delay, visas to the personnel participating in an international disaster relief operation;
  - to endeavor to reach an agreement with national airlines, railways and navigation companies to accord to relief consignments and relief

- personnel free transportation or at least minimal tariffs and the priority in transport;
- to instruct the competent organs to accord over flight and landing permits for aircraft transporting international relief and its personnel;
  - to establish an official tracing service and exonerate it from postal charges;
  - to submit the Tampere Convention on the Provision of Telecommunication Resources for Disaster Mitigation and Relief Operations of 1998 for ratification, approval, acceptance or accession;
  - to endeavor to conclude bilateral or multilateral agreements in the region, in conformity with Article 3 point 4a of the Tampere convention;
  - to instruct national communication services in how to facilitate the use of telecommunications resources in disaster response.
6. To consider **legislative and other measures** (economic, financial, administrative, organizational, material resources, provision of modern technical means) which may prevent or reduce the effects of possible future disasters, as well as improve disaster mitigation and relief operations, bearing in mind that they should be supportive of recovery and long term development.
  7. To suggest to the donors, when assistance is accorded in funds, to obtain the relief goods on the **local market**, when this is possible and economically more favorable and where it saves money and time. However, the donors may finally decide where to source the goods from.

## II. DECISION MAKING PROCESS

It is recommended to the Governments, when the disaster strikes:

1. To put into operation the **internal mechanisms** for the disaster situation.
2. To ascertain the **needs** of the victims for humanitarian assistance and their number, to designate the **categories** of beneficiaries, to ascertain the **types** of assistance and quantities for a period covering the near future, **jointly** with competent international relief agencies which offer their assistance.
3. To **decide whether** to request or accept international relief, taking into consideration the situation of the victims, the victim's right to humanitarian assistance, the expected effects of national response as well as the possible effects of international relief operation on the rehabilitation and development of the affected area.
4. If the decision is **to benefit** from an international disaster relief operation, the following steps could be taken:
  - a) to propose to their National Societies to address themselves to **other Balkan National Societies** and the Federation with the request for humanitarian assistance, in which case the Principles

and Rules for Red Cross/Red Crescent Disaster Relief and the Agreement of 15<sup>th</sup> April 2000 are applicable;

- b) to address a **request** for humanitarian assistance to key international and national agencies and to certain states; or
  - c) to **accept** the offer of these bodies.
5. To instruct the **national coordinator** in how to implement the decision to receive international relief.
  6. When necessary, to suggest to certain donors to launch **public appeals** for donations of funds or goods, in accordance with their own rules.
  7. To inform the donors and potential donors of the **national coordinator**, in cooperation with whom the relief operation will be managed.
  8. To accept the **coordinating role** of the international body, designated by the donors or prescribed by relevant rules, such as the UN Emergency Relief Coordinator /ERC/ or the International Federation.
  9. To follow the development of the situation in the disaster area and its effects and the results of the response, and accordingly to take **new decisions**, which should be in the interest of the victims. To inform the donors of these decisions, if they affect the running of the relief operation.
  10. To conclude **agreements** with foreign donors, when this is necessary, such as agreements on status of their missions.
  11. To consider legislative and **other measures** which may become necessary, especially those which were initially missing.

### III. DELIVERY OF RELIEF

In order to implement the decision to receive international relief, it is recommended to the Governments:

1. To respect the decisions of the **UN Security Council** affecting the international relief operation e.g. sanctions.
2. To receive regular **reports** from the **national coordinator** and take action, when necessary, to solve any problems that may arise.
3. To follow the development of the international disaster relief operation, and **intervene** when irregularities or obstacles, which adversely affect the ongoing operation, appear.
4. To examine the **remarks** or interventions of the international coordinator and see if they require any specific action.
5. To **keep informed** the victims, the public of the country, foreign donors and the media about the development of the relief operations. Information is to be collected from all possible sources.
6. To **protect** relief consignments and relief workers from attacks and interference in the exercise of their mission. To ensure security of relief consignments, services and personnel against theft, robbery and similar acts that may hinder the operation.

7. To make available to the donors and foreign media the necessary **telecommunications resources**, in accordance with relevant international rules.
8. To ask the donors to inform the national coordinator, in advance, of the **dispatch** of the assistance, giving the necessary details such as transport means, expected time and place of arrival and contents.
9. To see that the necessary **facilities** are accorded to relief.
10. To endeavor to solve together with the donor the problems of **transit** of humanitarian assistance.
11. To see that the **priority** of the delivery of the current relief is ensured at customs and during transportation.
12. To accord to relief personnel without cost, entry **visas** and **access** to the sites of disaster, the victims and to warehouses for the storage of relief goods and equipment.
13. To see that the provisions on **relief personnel**, their privileges and immunities, when accorded by agreement, are respected.
14. To see that legal recognition of **professional expertise** and work permits is accorded.
15. To permit **identification** of relief goods and services and relief personnel, in accordance with law, especially the use of the Red Cross/Red Crescent emblem.
16. To see that the **distribution** of goods, or provision of services, are made in conformity with the agreements in force and to the categories of beneficiaries who satisfy the criteria agreed.
17. To **involve the victims** in the delivery of relief, whenever this is possible.

#### IV. MONITORING, CONTROL AND CLAIMS

It is recommended to the Governments:

##### A. Monitoring

1. To accept the **monitoring system**, proposed by the donors, when this is agreed, or when it corresponds to the rules of the donor or international coordinator, or to the accepted practice.
2. To accord the personnel, engaged in monitoring, all the **facilities** necessary for the fulfillment of their mission. This includes **access** to all places of relief operations: customs, transportation to the warehouses or places of storage, warehouses, distribution places, places where victims receive services and where they reside, the records on relief provided, etc.
3. To **examine** the remarks, suggestions and proposals of monitors and take the necessary actions, in order to improve the operation and avoid abuses.
4. To **protect** warehouses, other places of storage, equipment, from theft and robbery but also from damage from inappropriate storage, or from other acts adversely affecting the relief operation.

5. To suggest to the donors, when applying the monitoring, that they coordinate and **rationalize** their actions amongst themselves, in order to avoid sending disproportionate numbers of monitors, who not only hinder the relief operation but also could reduce the value of the assistance, especially if their expenses are covered from the funds allocated to humanitarian assistance.

#### B. Control

1. To exercise control by **national bodies**, according to law.
2. To see that the **management** of the relief operation is done in conformity with the agreements, general rules or accepted practice.
3. To ensure **sound financial management** and that the records of goods are transparent, that they correspond to the actual state of stocks and that they are kept in accordance with national law and the demands of the donor.
4. To permit the representatives of the **donors the control** of financial and material management of the relief received, when this is agreed or contained in the rules of the donor, through which humanitarian assistance is extended.
5. To permit accounts to be **audited** by external independent auditors, as designated by the donors, when this is agreed.
6. To **examine** remarks or proposals of the bodies exercising control and inform the donors about the actions undertaken relating to these findings.
7. To demand from the organs exercising monitoring or control not to **exceed** the terms of their mandate.

#### C. Claims

1. **To bear liability** for risks and claims occurring on its territory, with the exception for any risks and claims for which the assisting state or organisation explicitly agrees to bear liability.

#### V. REPORTING AND EVALUATION

It is recommended to the Governments:

1. To **report periodically** to the donors the status of the management of the disaster relief operation, according to national law and practice. Reporting periods to be determined by agreement.
2. To report to the donors according to **their rules** (UN, the Federation, etc), if that is agreed, or contained in their rules as a condition of providing relief.
3. To submit the **final report** after the end of the operation.
4. To **evaluate** at the end of the relief operation good and bad practices, the effects of the operation, the lessons to be learned, possible



changes in the preparedness and contingency plans and in the relevant legislation.

5. To **render public** the final report and the evaluation.
6. In case of **disagreement** on the findings of the control, the management of the relief operation in violation of the agreement, or the interpretation of the agreement, to accept **arbitration** provided for in the relevant agreements.

## PART TWO – ASSISTING STATES

It is recommended to the Governments:

1. To examine seriously the **possibility** of extending humanitarian assistance to the requesting state. To this end, to contact its national coordinator or the government.  
**National Societies** of the **Balkans** shall offer assistance to disaster victims of the countries in this region.
2. To respect the **type** of assistance defined by the competent national body of the affected state and by the relevant international organisation.
3. To examine the possibility, when the assistance is accorded in funds, to obtain the relief goods on the **local market**, when this is possible and economically more favorable and where it saves money and time. However, the donors may finally decide where to source the goods from.
4. To **cooperate** with all the actors in the current operation and accept the **coordinating** role of the competent national and international coordinators.
5. To encourage states to permit **transit** of relief and, when accorded, to protect the consignments and personnel while on their territories.
6. To demand that relief personnel **do not exceed the terms of their mission** and respect the laws of the receiving state.
7. To accord as many **facilities** as possible to the delivery of relief on the territories of assisting and transit states.
8. To respect the decisions of the **UN Security Council** relating to the relief operation.
9. To encourage the Receiving States to accept **assisting states control** and to submit a **final report** on the relief operation to which they have contributed.
10. Many **duties** of the Receiving State are **rights** of the Assisting State and vice-versa.
11. Many rights of the Receiving state are duties of **international organisations** mandated to extend humanitarian assistance to the victims of disasters. **Vice-versa**, many duties of the Receiving State, are rights of the relevant international organisations.
12. To decide about the **termination** of the international disaster relief operation, alone or in agreement with the Receiving State, as provided in the relevant agreement or rules. It could also decide about the

termination of its contribution to the international disaster relief operation, which otherwise continues.

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Many of these rules and practices could be also recommended, mutatis mutandis, to the independent **national operating agency**.

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