

CD 2001/7/1
Original: English

COUNCIL OF DELEGATES
Geneva, 11-14 November 2001

INTERNATIONAL DISASTER RESPONSE LAW

Document prepared by the
International Federation of Red Cross and Red Crescent Societies

after consultation with the National Societies from

Bangladesh, Colombia, Denmark, Ethiopia, Finland, France, Germany, Greece,
Islamic Republic of Iran, Jordan, Mozambique, The Netherlands, Sweden,
Tanzania, Turkey, Turkmenistan, United Kingdom, United States,
as well as with the International Committee of Red Cross

Geneva, August 2001

Executive summary

The essence of the International Federation's International Disaster Response Law (IDRL) Project derives from a symposium convened by the International Federation on the issue in February 2001.

The main conclusion of the symposium was that there should be a study of international law relating to disaster preparedness and the provision of relief. It should be conducted by experts from all relevant fields, with a good geographic spread. One projected outcome of the study should be the publication of a compendium of the law, including treaty law and also "soft law" emanating from declaratory instruments and relevant resolutions adopted by intergovernmental meetings. This would make it easier to identify gaps and lacunae and for States and others to reach conclusions about what should be done to fill them.

The study will be accompanied by an International Federation review of international relief operations. This will make possible an assessment of whether lacunae apparent to the legal study actually have a field impact, and if so, what would be the most practical means of addressing the problem.

The outcome will be a report to the 28th International Conference of the Red Cross and Red Crescent. This will enable governments and National Societies together to determine what is necessary and how it should most productively be done. Reporting to the International Conference also safeguards the responsibility of States for the development of international law.

The International Federation took opportunities to test the concept with the representatives of States. This was done in Geneva, New York and other multilateral centres and also at other meetings which brought together State experts on law or disaster response. Fruitful discussions were also held with the international organisations responsible for disaster response, in particular the Office for the Coordination of Humanitarian Affairs. In all the discussions, it was made clear that the IDRL initiative complements, and does not replace, work now under way to on the Tampere Convention and the project for an International Urban Search and Rescue convention.

The general reaction was very positive. Several States also expressed the view that the International Federation was uniquely positioned to conduct the IDRL study and field assessment. Its role bridging governments, international organisations, Red Cross Red Crescent National Societies and civil society beyond them was seen as one of the most important assets in this specialised area of law and practice.

The Council is requested to support actively the International Federation in its initiative noting that it has financial implications of approximately CHF 100,000 per year to cover for studies, expert meetings and other consultations.

International Disaster Response Law

1. Introduction

There has been a widening international debate on the adequacy of existing mechanisms to respond to disasters and other emergencies requesting international relief activities as it is realised, that the causes and effects of disasters are becoming more and more transboundary. A chapter in the International Federation's World Disasters Report in 2000 took this debate further, and galvanised discussion among practitioners, international lawyers and government officials on the law that surrounds disaster management.

The starting point for much of this discussion is that there is no doubt that international disaster response is more effective and more efficiently co-ordinated with internationally agreed standards in place. These must include clearly identified mechanisms to facilitate response in times of natural or technological disaster. The mechanisms must be suited to the needs of disaster-stricken countries and their governments, as well as to donors, intergovernmental humanitarian agencies and NGOs. The agencies, including the International Red Cross and Red Crescent Movement, have done much to enhance and develop technical co-ordination, standards and relevant codes of conduct.

Early discussion supported the view (shared by the International Federation) that the legal framework for international disaster response requires significant improvement if it is to create genuinely favourable conditions for expedited and effective disaster response. Among the issues identified as needing urgent attention were the adaptation of laws and regulations to waive import, export and transit restrictions and duties for relief goods; waive over-flight and landing restrictions and taxes; grant landing rights; facilitate telecommunications in emergency situations; waive visa and other immigration restrictions; provide for the recognition of medical and other relevant foreign qualifications when necessary to provide directly benefit to disaster victims; and ease quarantine restrictions where possible to enable search and rescue dogs and animals to perform their functions. At the same time, in order to benefit from these measures, relief organisations and their personnel would be required to respect local laws and internationally agreed standards.

It was also recognised that although international support efforts are essential, they cannot replace the value of fully trained and equipped national personnel and local volunteers, able to act immediately after a disaster strikes. The International Red Cross and Red Crescent Movement is identified by governments the world over as the world's largest repository of this resource.

Training and other activities supporting disaster preparedness are, therefore, seen by the international community as an essential component in disaster management. For this reason, the discussion of international disaster response law encompasses preparedness and relief action in all their forms.

2. Current legal situation and perception

Many national and international (bilateral, multilateral and customary) legal instruments exist, ranging from loose recommendations or guidelines to hard treaty law invoking the responsibilities of States. This wide definition of international disaster response law covers humanitarian response to natural and technological disasters, including in the areas of disaster prevention (or risk reduction), preparedness, relief and post-disaster rehabilitation. These instruments or sometimes more accurately "isolated clauses", are scattered throughout other legal domains, such as Environmental Law, Air and Space Law,

Development Law, and the like. As a result they are sometimes too narrowly known to be of significant benefit at the time of a disaster.

Similarly, it is clear that where international law or rules have been established, they are often not well known outside the capitals of the countries themselves: this can lead to confusion at the local level when a disaster also interrupts communication and lines of authority between the capital and the disaster site.

With this in mind, and taking account of the situation described in the World Disasters Report Chapter, the International Federation's Disaster Relief Commission recommended action to support what has become known as the IDRL initiative. It is aimed at drawing together the scattered threads of hard and soft law which now exist to enable States, National Societies, humanitarian agencies and others with an interest in the subject to determine the need for action in a variety of related fields.

3. Activities undertaken and future plans

In November 2000, the International Federation's Governing Board, following a recommendation from the International Federation's Disaster Relief Commission, defined the promotion of IDRL as one of the key messages for its advocacy for disaster preparedness.

On 12 February 2001, at the invitation of the International Federation Secretariat, experts from 18 National Red Cross and Red Crescent Societies¹ gathered in Geneva under the chairmanship of Dr. Mohammed Al-Hadid, President of the Jordanian Red Crescent Society and Chairman of the International Federation's Disaster Relief Commission, together with representatives from the United Nations' Office for the Coordination of Humanitarian Affairs (OCHA), the International Committee of the Red Cross (ICRC) and Prof. H. Fischer from the Universities of Bochum (Germany) and Leiden (The Netherlands).

The meeting agreed that the International Federation, with the experience and expertise of its member Societies in disaster preparedness and relief in natural and technological disasters, is well-suited to take a lead role in promoting IDRL. This should include making recommendations to the relevant parts of the international community as to the contribution they might best make to ensure that there is coherent development of this important area of law in the future. In this sense, the meeting saw the International Federation as having a "guardianship" role for the effective development and implementation of IDRL.

Participants in the meeting considered that this position derived directly from the International Federation's mission statement to "improve the lives of vulnerable people by mobilising the power of humanity" and its Strategy 2010 which calls on all National Societies' active advocacy to mobilise people and influence decisions in its core areas of disaster preparedness and response. It is also based on the long-standing role of the International Federation, and of the Movement, in promoting the development of IDRL norms in the past (e.g. see 23rd International Conference of the Red Cross, Bucharest, 1977, Resolution VI and Annex).

Participants also noted that States and National Societies had committed themselves to work together on rapid, flexible and effective response mechanisms, dealing particularly with the needs of victims and vulnerable people (Final goal 2.2, paragraph 7 of the Plan of Action adopted at the 27th International Conference, 1999).

The meeting saw a special need for work on the concept of IDRL to ensure that States,

¹ The Societies of Bangladesh, Colombia, Denmark, Ethiopia, Finland, France, Germany, Greece, Iran, Jordan, Mozambique, The Netherlands, Sweden, Tanzania, Turkey, Turkmenistan, United Kingdom and the United States.

agencies and NGOs have a common understanding of the law which should apply when disaster strikes. Participants considered that there needed to be clear agreement that there is a body of law in place, known as IDRL, and that it carries dissemination and implementation obligations similar to other areas of international law. Another related objective is, after proper study, to propose improvements in the legal and administrative texts themselves, or to develop new ones, where weaknesses and lacunae justify it, and to promote the dissemination and faithful application of the law and the relevant norms.

Last but not least, it was agreed that the emergence and development of IDRL should not hinder the full applicability of the existing International Humanitarian Law in situations of armed conflict or of complex humanitarian disasters.

The 12 February meeting considered a "needs-based" approach essential: the International Federation's further action within this initiative must focus on those areas that field experience by humanitarian actors have identified as potentially helpful to victims and other beneficiaries of humanitarian relief.

A three-step action plan designed at the meeting provides for:

1. the compilation and publication of all existing and relevant international law, rules and other instruments,
2. the collection of field experience and an evaluation as to where existing rules do/do not respond effectively to the requirements of humanitarian actors in the field
3. the identification of ways and means to improve the law, or to address recognised difficulties in non-legal ways.

This action plan has in the meantime been transformed by the International Federation into a concrete workplan after further consultations with relevant interested National Societies and the ICRC.

The core element of this workplan is the compilation and analysis of existing laws and rules. The International Federation Secretariat is co-ordinating the work undertaken by some National Societies and a number of selected Universities around the world. In order to achieve the compilation in the most efficient and effective way, all other National Societies are invited to share their knowledge and experience in this area. The aim is to publish the compilation in 2002.

Parallel to this legal study, the International Federation will review a sample of international relief operations. So far, no clear picture exists as to whether those obstacles usually hindering relief operations have their roots in the legal framework. Therefore, it is essential to analyse past international relief operations from a legal perspective.

In a next step the findings of the field experience and the results of the legal compilation will be compared. The results will then be the basis for a future strategy.

The International Federation is conscious of the fact that international law can, by definition, only be made by States. For this reason the International Federation has been careful to keep States informed of progress on the initiative. The first direct information to States about the initiative was provided in a statement to the United Nations General Assembly in November 2000 by the International Federation's President, Dr Heiberg. More detail was supplied to the UN General Assembly in June 2001 in a statement to the Assembly's Special Session on Human Settlements, and the issues were further elaborated in a statement to the Humanitarian Segment of the UN Economic and Social Council (ECOSOC) in July 2001.

The statement at ECOSOC in July 2001 also sought to advise States that the initiative had a time frame which envisaged that they, and National Societies, would come together to discuss the outcomes of the study when they meet at the International Conference of the Red Cross and Red Crescent due to be held in Geneva in 2003. For this reason, the study phase should conclude with the publication of the collated legal and customary texts in 2002, allowing another year for further consultations and other work at regional and international levels.

State representatives at ECOSOC welcomed the information provided, with a number of them observing that the International Federation is particularly well positioned, with contacts to both governments and civil society, for a task of this order.

4. Recent examples of IDRL

It is important, when considering an issue as significant as IDRL, to note that there have been initiatives by States to improve disaster response law in respect of certain types of disaster relief or in regard to certain technical aspects (e.g. research and rescue after earthquakes, telecommunication). None of what the International Federation is doing will seek either to counter or distract from that work, but to enhance these initiatives based on the International Federation's expertise, which will even be of more value as a result of this IDRL project.

Meanwhile, the International Federation, as one of the supporters during its drafting itself, is committed to helping make the Tampere Convention², opened for signature on 18 June 1998, a reality, as it is a very good example of recent Disaster Response Law. It is our hope that it will soon receive the requisite number of States party and enter into force³.

Since 1965 International Conferences of the Red Cross and Red Crescent Movement have emphasised the importance of appropriate telecommunication facilities for humanitarian work.

The Tampere Convention 1998 and its spirit are important in our work in assisting people suffering from disasters. As one of the service providers mentioned in the Convention, components of the Red Cross and Red Crescent Movement can be granted the same privileges as those of the States Party to the Tampere Convention when providing telecommunication assistance.

Another already existing tool in this area to be mentioned is Resolution 10 of the World Radiocommunication Conference of the ITU in Istanbul 2000, which urged the telecommunication administrations to take account of the possible needs of the International Red Cross and Red Crescent Movement for two-way wireless telecommunication means when normal communication facilities are interrupted or not available, to assign the minimum number of necessary working frequencies and to protect the communication from harmful interference.

Even if the international telecommunication community at large is improving the conditions of the use of telecommunication in disaster response, the components of the Red Cross and Red Crescent Movement still encounter practical problems in this field. There are states that do not allow the import and use of radio equipment; some States insist on the use of certain types of fixed frequency radios, which makes it technically difficult to operate in changing situations, and, finally, some States charge such high fees for licences that they are not

² Tampere Convention on the Provision of Telecommunication Resources for Disaster Mitigation and Relief Operations 1998 (see annex).

³ In accordance with Art. 12, the Convention will enter into force 30 days after the thirtieth State has deposited its instrument of ratification.

proportional to the actual work of the telecommunication administration.

This shows that the legal framework for disaster law is surely improving in certain areas, but as these two examples show that implementation is still lacking often due to lack of knowledge, which hopefully will change due to our advocacy efforts. Later on, it is hoped that through the IDRL study certain basic elements of the rights and duties of the various players in disaster response will be identified.

Furthermore, the International Federation is also taking an active part, as the only non state entity invited, in the Core Group consultations now under way towards the conclusion of an International Convention on Urban Search and Rescue, after it has urged since the early 1990 to improve the standards for Search and Rescue. This issue covers parts of the subject area noted at the start of this paper as needing urgent attention, and although it may be some time before a legal instrument is in force, it is an activity which the International Federation considers of vital importance and deserving of special attention. It is, however, only one of many potential lacunae areas in IDRL, and it points to the urgent need for the completion of a fully comprehensive study.

5. Conclusion

As outlined above, the legal framework applicable in situations of natural and technological disasters is quite unknown. In addition, the relevant legal texts are far from complete, nor are their fundamental provisions universally respected. Only a few provide compliance mechanisms. They appear to contain lacunae but regardless, these instruments merit re-examination in order to ensure that they meet the requirements of today's humanitarian disasters.

It is of the utmost importance now to collect the necessary information and share this knowledge with those concerned in order to enhance the application of existing law.

The International Federation, based on its mission, is committed to mobilise in a co-ordinated manner the relevant actors in the field of IDRL to improve the lives of vulnerable people.

COUNCIL OF DELEGATES
Geneva, 11-14 November 2001

RESOLUTION 5
INTERNATIONAL DISASTER RESPONSE LAW

The Council of Delegates,

recalling Resolution VI of the 23rd International Conference of the Red Cross, Bucharest 1977 and the recommendations drawn up in its Annex "Measures to expedite international relief",

bearing in mind the Principles and Rules for Red Cross and Red Crescent Disaster Relief as taken note of by the 26th International Conference of the Red Cross and Red Crescent (International Conference), Geneva 1995,

recalling the significance for all humanitarian actors of the obligations listed in the Code of Conduct for the Movement and NGOs in Disaster Relief as endorsed by the Council of Delegates, Birmingham 1993,

noting Strategy 2010 as adopted by the General Assembly of the International Federation of Red Cross and Red Crescent Societies (International Federation) 1999,

recalling Final goal 2.2 , paragraph 7 of the Plan of Action adopted at the 27th International Conference of the Red Cross and Red Crescent, Geneva 1999,

noting the significance of the work now under way in the UN on the development of rules relating to international urban search and rescue,

acknowledging the concept of International Disaster Response Law (IDRL) as outlined in the background document CD 2001/7/1,

underlining that the full application of International Humanitarian Law in situations of armed conflict and complex humanitarian disasters should be preserved,

1. *welcomes* the International Federation's initiative to advocate for the development and, where applicable, the improvement and faithful application of International Disaster Response Law in particular, but not limited to, through the compilation and publication of existing international laws and regulations, and the evaluation of their actual effectiveness in humanitarian operations;
2. *encourages* the International Federation, with the support of all concerned National Red Cross and Red Crescent Societies (National Societies), to engage or, where applicable, continue the dialogue with governments and promote appropriate disaster response laws and regulations, allowing relief actors to meet the needs of the disaster victims in the most effective way;

3. *encourages* the International Federation to continue its work and invites it to report to the Council of Delegates and the International Conference in 2003;
4. *requests* National Societies and, as appropriate, the International Committee of the Red Cross (ICRC) to support the International Federation in the implementation of this resolution through contributions to the work plan and advocacy;
5. *invites* National Societies to encourage their respective government to become parties to the Tampere Convention on the Provision of Telecommunications Resources for Disaster Mitigation and Relief Operations of 18 June 1998 as an important contribution to enhancing International Disaster Response Law.

