

INTERNATIONAL DISASTER RESPONSE LAW, RULES AND PRINCIPLES (IDRL) PROGRAMME OF THE INTERNATIONAL FEDERATION OF RED CROSS AND RED CRESCENT SOCIETIES (IFRC)

I.B.R. Supancana
Chairman/Founder of Centre for Regulatory Research, Indonesia

ABSTRACT

In the last few years we have witnessed disasters in many parts of the world that exceeds the capacities of national infrastructures. An ideal condition for disaster preparedness must be created, both at local, national and international level. International Disaster Response, Law, Rules and Principles (IDRL) is the programme initiated by IFRC with the objectives to raise awareness about the existing norms and standards governing international disaster response and to strengthen the international, regional and national framework of laws, rules and principles, that pertain to facilitation coordination and regulation of international response to disaster. It covers the harmony between international and national legal instruments related to disaster in the name of humanity to provide speedy international relief and initial recovery assistance to the affected parties.

ABSTRAK

Dalam beberapa tahun terakhir kita menyaksikan berbagai bencana di berbagai belahan bumi yang melampaui kapasitas infrastruktur nasional untuk mengatasinya. Kondisi yang ideal bagi kesiapsiagaan menghadapi bencana perlu diciptakan baik pada tataran lokal, nasional dan internasional. Aturan, kaidah dan prinsip-prinsip tanggap bencana internasional (IDRL) adalah program yang dicetuskan oleh IFRC yang bertujuan meningkatkan kesadaran tentang norma dan standar internasional mengenai tanggap bencana serta untuk memperkuat kerangka aturan, kaidah dan prinsip-prinsip regional, nasional dan internasional yang berkaitan dengan fasilitas, koordinasi dan regulasi tanggap bencana internasional. Di dalamnya mencakup harmoni antara instrumen hukum internasional dan nasional, atas nama kemanusiaan yang memungkinkan kecepatan bantuan internasional terhadap pihak yang terkena dampak bencana.

1 INTRODUCTION

1.1 The Facts on Disaster and Its Repercussions

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 (David P. Fidler, 2005). 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 (International Disaster Response Law (IDRL), 2004).

1.2 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 (3).

1.3 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:

- 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 (David P. Fidler,2005).
- Ill equipped national legal and regulatory system to deal with the needs of international relief provider.
- 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).

2 THE IDEA AND ESTABLISHMENT OF IDRL PROGRAMME

2.1 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 (International Federation of Red Cross and Red Crescent Societies, 2003):

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

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

2.2 The Overall Goal

The overall goals of IDRL Programme are (IDRL, 2006-2007):

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

2.3 The Objectives

There are some key objectives of the IDRL Programme, covering 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.

2.4 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.

3 RELEVANT INTERNATIONAL LEGAL INSTRUMENTS RELATED TO DISASTER MANAGEMENT

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

- Convention establishing an international relief union of 1927;
- Convention on assistance in the case of nuclear accident or radiological emergency of 1986;
- Convention on early notification of a nuclear accident of 1986;
- Council's of Europe Agreement on the Prevention of, Protection against, and Organization of Relief in Major Natural and Technological Disaster of 1987;
- Convention on Temporary Admission of 1990 (in particular annex B.9 concerning goods imported for humanitarian purposes);
- Inter-American Convention to Facilitate Disaster Assistance of 1991;
- The Tampere Convention on the Provisions of Telecommunication Resources for Disaster Mitigation and Relief Operations of 1998 (The Tampere Convention, 2005);
- The International Convention on the Simplification and Harmonization of Customs Procedures as amended in 1999;
- Framework Convention on Civil Defence Assistance of 2000;
- 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:

- Charter on Cooperation to Achieve the Coordinated Use of Space Facilities in the Event of Natural or Technological Disaster of 2000 (International Charter, 2006);
- The statutes of the International Red Cross and Red Crescent Movement as amended in 1995;
- The Principles and Rules of Red Cross and Red Crescent in Disaster Relief as amended in 1995;
- The Supplementary measures to enhance the implementation of the Seville Agreement of 2005;
- The Hyogo Framework for Action of 2005;
- The measures to Expedite International Relief of 1977;
- UNGA Resolution 46/182 of 1991;
- UNGA Resolution 57/150 of 2002;
- 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.

4 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 (IDRL Fact Sheet as quoted from [www. ifrc.org](http://www.ifrc.org)).

4.1 Personnel

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

- Delayed or refused entry permission/ visas for relief workers;
- Legal difficulties in hiring local staffs and volunteers;
- Lacks of legal protection, privileges and immunities for relief workers;

- Lack of recognition of professional qualifications of relief workers.

4.2 Legal Status of Foreign Organization

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

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

4.3 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:

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

4.4 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:

- Inadequate information-sharing about disaster and the humanitarian needs;
- Sending unnecessary or inappropriate relief items and assistance;
- Undervaluing local knowledge and response capacities;
- Use of untrained or unqualified personnel;
- 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 (Nick Carter, 2006).

- Inconsistent access to disaster affected people;
- Delays and inefficiency in facilitating disaster response;
- Gaps in the use of quality and accountability standards;
- 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.

5 DRAFT GUIDELINES FOR THE DOMESTIC FACILITATION AND REGULATION OF INTERNATIONAL DISASTER RELIEF AND INITIAL RECOVERY ASSISTANCE

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 f⁴). 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. 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.

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:

5.1 Core Responsibilities

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

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.

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. 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.

5.2 Early Warning and Preparedness

On early warning system. States should have procedures in place to facilitate the expeditious sharing of information about disasters. 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. 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.

5.3 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. 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. 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.

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. When the affected States or an assisting actor intends to terminate disaster relief or initial recovery operation, it should provide appropriate notification.

5.4 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. 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. 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.

6.5 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.

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.

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. 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. 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.

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. Affected States should endeavour to ensure, when necessary, that State-operated offices and services essential to the timely delivery of international disaster relief function outside of normal business hours. 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.

6 THE WAY FORWARD

- 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;
- There is a need for socialization to achieve the above objectives;
- There is a need for harmonization between national law and international law to deal with the issue of implementing IDRL;
- There is a need to develop IDRL as an integrated approach in dealing with disaster related issues;
- International community shall cooperate in finalizing guidelines for the domestic facilitation and regulation of international disaster relief and initial recovery assistance;
- Strong commitment from international communities lead by governments is the key factor to achieve the above goals.

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