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INTERNATIONAL DISASTER RESPONSE LAWS (IDRL)

Project Report 2002-2003

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INTERNATIONAL DISASTER RESPONSE LAWS (IDRL) Project Report 2002-2003

EXECUTIVE SUMMARY

The IDRL Project Report provides an overview of the activities conducted and coordinated by the International Federation of Red Cross and Red Crescent Societies (International Federation) during the IDRL Project from June 2002 – August 2003. It also identifies the key findings arising from the research and makes recommendations for the future study and development of IDRL.

PURPOSE OF THE IDRL PROJECT

The IDRL Project was initiated by the International Federation of Red Cross and Red Crescent Societies (International Federation) in response to resolution 5 of the Council of Delegates of the International Red Cross and Red Crescent Movement in November 2001, which in particular requested the International Federation to:

- advocate for the development and, where applicable, the improvement and faithful application of International Disaster Response Law through in particular, but not limited to, the compilation and publication of existing international laws and regulations, and the evaluation of their actual effectiveness in humanitarian operations;
- 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.

METHODOLOGY

The IDRL Project research process consisted of several components:

- Legal research, to collect and analyse existing legal and other instruments relevant to IDRL
- Field studies, to examine the relationship between existing IDRL and practices in the field, with particular reference to a number of challenges experienced during disaster response operations
- Consultations and advocacy in a number of international forums to raise awareness and discussion of issues relating to IDRL
- Publication of a series of papers written by experts on topics related IDRL (due December 2003)

KEY FINDINGS

Below is a summary of the key findings relating to IDRL identified during the research process.

The scope of IDRL

Whilst the intention of the International Federation was not to define or limit the scope of IDRL as a concept, it was observed during the research and consultation processes that there was a need to narrow and refine the scope of IDRL to ensure that it maintained a unique and useful place in relation to other more developed areas of law.

Additionally, a “core” of IDRL was identified during the various research and consultation processes, which may provide a useful reference point for further work. This could be summarised as: *The laws, rules and principles applicable to the access, facilitation, coordination, quality and accountability of international disaster response activities in times of non-conflict related disasters, which includes preparedness for imminent disaster and the conduct of rescue and humanitarian assistance activities.*

The nature of existing IDRL

Existing IDRL is widely dispersed and lacks consistency throughout its various components. It was found that the existing core of IDRL comprises many different types of instruments both legal and non-legal. These include multilateral and bilateral treaties, regional agreements, inter-governmental resolutions and declarations, operational guidelines and codes of conduct. Much of the existing treaty law is not exclusive to disaster response, or alternatively, is limited in its scope and application. Other instruments, particularly inter-governmental resolutions, tend to be more comprehensive and seek to establish general principles relating to disaster response operations.

Challenges in the field

The field studies confirmed that many of the challenges experienced in the field relate to four areas:

- Inconsistency of access to disaster-affected populations
- Delays, inefficiency and inconsistency in facilitation of disaster response by states
- Lack of coordination within and between national and international disaster response structures
- Lack of implementation of quality and accountability standards, despite good knowledge and understanding of these issues

Awareness, understanding and implementation of existing instruments

Despite the large number of instruments relating to IDRL, they are largely unknown to government and field personnel and are rarely referred to or effectively utilised to alleviate the challenges encountered during disaster response operations. In contrast, national laws are generally well known and applied, but often do not adequately address many of the operational challenges of disaster response.

The link between law and practice

Despite the general lack of awareness and implementation of IDRL in the field, there were several positive examples where laws were successfully used to resolve practical issues and remove some of the barriers to effective disaster response. Such examples demonstrate that when IDRL is used appropriately, it has the potential to make a positive impact and enhance international disaster response.

RECOMMENDATIONS

These recommendations form the basis for the actions proposed for the International Conference of the Red Cross and Red Crescent in December 2003.

Recommendation 1: International understanding and acceptance of the term “IDRL”

Until recently, the existence of laws and other instruments specific to disaster response situations was relatively unknown outside of academic circles. The International Federation has made a great deal of progress in raising awareness of these instruments at the international level through the use of “IDRL” as a descriptive term to identify the various laws, regulations and principles applicable to disaster response situations.

Before any significant advances can be made in overcoming the many challenges confronting international disaster response activities and enhancing the legal and regulatory system, there needs to be a wider understanding and acceptance of this term within all levels of civil society, from diplomatic circles to local communities. Many of the current challenges relating to the lack of awareness and implementation of the various laws, rules and principles for international disaster response stem from the fact that they are dispersed and are rarely, if ever, considered in their totality. The normalising of a single term to describe the area and the development of a common understanding of its purpose and use will assist in raising awareness of this area and will help to ensure that it remains on the international agenda for years to come.

Recommendation 2: Greater understanding of the nature, scope and content of IDRL

The current research process and findings suggest that further work is required to identify the full range of instruments currently in existence at the international, regional and national levels. In particular, further research is required to identify further similarities, differences and patterns relating to the different instruments, as well as more extensive studies at the national level, including both legal and field research processes.

Such studies should involve as wide a range of contributors as possible to ensure that findings reflect the variety of perspectives on these issues.

Recommendation 3: Identification and inclusion of core principles of IDRL in all international, regional and national disaster response instruments

The dispersed nature of existing IDRL and the disparity between specific provisions of many of the instruments, particularly that of treaty law, has made it difficult to identify the full range of norms and principles that exist in this area. Nevertheless, there are a number of “soft law” instruments which do refer to principles and standards applicable to disaster response.¹ Such instruments should therefore be used and referenced in the development or improvement of IDRL instruments at all levels – local, national, regional and international - in order to create a harmonized and, where appropriate, universally applicable systems.

Recommendation 4: Improved implementation of IDRL instruments that facilitate disaster response

The studies indicate that whilst there are a number of directly relevant and potentially effective IDRL instruments already in existence, particularly in the area of soft law, they are rarely used to their full effect in operational contexts. In several instances where such instruments had been applied, they provided tangible and positive benefits to disaster response efforts. Thus, greater attention needs to be given to ensuring that where useful instruments do exist, they are understood and implemented to the greatest extent possible.

Given the operational realities of disaster situations, particularly those of sudden onset, such instruments must be understood by those participating in disaster response activities and available for reference in a format which is concise and of immediate practical use. The production of a handbook which identifies the core principles and instruments relevant to disaster situations and how they can be used would be one way of improving their implementation. In addition, efforts must be made to ensure these instruments are implemented in the preparedness and planning phases of disaster response, both by governments and responding organisations. Training, education and advisory services may also assist in achieving this.

Recommendation 5: Continued development and promotion of IDRL

The lack of awareness and implementation of existing IDRL, combined with the dispersed and divergent nature of those instruments, suggests an urgent need to advocate for the continued improvement of the system for the benefit of disaster affected populations.

¹ For the purposes of this report, soft law includes instruments such as resolutions and declarations of intergovernmental forums.

Some of the solutions to improving disaster response may relate to non-legal structural or administrative however the present studies have identified many areas in which the current legal and regulatory system could be developed and improved. Further research may reveal other areas where laws or other rules are absent, ineffective or inadequate in their current formulation. These areas could then be the subject of advocacy efforts to encourage law and policy makers to effect changes where appropriate. This shows that continued work on IDRL should remain an important part of the international agenda. It should focus on ensuring a more systematic implementation of existing principles and regulations as well as on improving the situation where deficits are identified.

The key findings and recommendations reflect some of the common themes or patterns that emerged in the various studies conducted as part of the IDRL Project. They also draw on the comments and discussions from the various consultations, including the IDRL Project Writers' Meeting.

A list of these materials is provided in the **Appendix**, and should be consulted directly to attain a more complete overview of the findings from the IDRL Project.

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BACKGROUND

Every year, millions of people are affected by natural and man-made disasters. Every year, the international community is faced with the challenge of responding to crises that exceed the capacities of national infrastructures, by assisting with essential tasks such as the rescue and protection of survivors and the immediate assistance to communities in desperate need of the most basic necessities such as food, shelter and safe drinking water. International disaster response is therefore essential for saving lives, restoring human dignity and reducing the future vulnerability of disaster-affected communities. Yet, despite the continuous need for fast and effective international disaster response, there remain many barriers which prevent or delay assistance from reaching those who need it.

Unlike situations of armed conflict, there are no well recognised and comprehensive legal instruments which identify internationally agreed rules, principles and standards for the protection and assistance of people affected by natural and technological disasters. Nor is there one single source where humanitarian workers and governments can find this information. As a result, 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.

COUNCIL OF DELEGATES 2001

The IDRL Project was initiated by the International Federation of Red Cross and Red Crescent Societies (International Federation), in response to the growing concern within the international community, including the worldwide network of National Red Cross and Red Crescent Societies (National Societies), as to the adequacy of existing legal and other mechanisms to facilitate humanitarian activities in response to natural and technological disasters.

In response to these challenges, the International Federation hosted a meeting of experts in February 2001 comprising practitioners, experts, international lawyers and academics, who discussed these issues and confirmed the need for clarification of existing laws. A work-plan was recommended for the research and collection of IDRL instruments, and the International Federation was invited to take the lead role in this process, utilising its extensive experience in the field and valuable links with communities and States through the network of National Societies.²

On the recommendation of the Disaster Relief Commission, an advisory body of the International Federation's governance, the International Federation and a number of National Societies brought these issues to the attention of the Council of Delegates of the International Red Cross and Red Crescent Movement in November 2001. The background paper presented to the Council³ described the urgent need for a clear understanding of the international legal and regulatory framework within which international disaster assistance is provided and used. There needed to be a visible and usable collection of existing principles, rules and instruments relating specifically to situations of natural and technological disasters, particularly when an international response is required. In addition to identifying the existing framework, it was also considered necessary to gather a range of experiences from the field and identify where the existing framework does or does not effectively facilitate disaster response. Finally it was considered useful to identify ways and means to improve the existing framework in a way which is sensitive to the needs of States, international organisations and local communities as well as respecting the needs of the people whose right to dignity and life itself have been impacted by disaster.

² International Federation of Red Cross and Red Crescent Societies, *First International Disaster Response Law Workshop Summary, Conclusions and Next Steps* (Geneva, February 2001)
http://www.ifrc.org/cgi/pdf_pubs.pl?disasters/IDRL_Workshop.pdf

³ Council of Delegates of the International Red Cross and Red Crescent Movement, *Background Paper : International Disaster Response Law*, CD 2001/7/1 (Geneva, December 2001)
http://www.ifrc.org/cgi/pdf_pubs.pl?disasters/IDRL_cdbgpaper.pdf

The International Federation was requested by the Council of Delegates to undertake these activities, with the assistance of National Societies, and to report back to the next Council of Delegates Meeting in 2003.⁴ As a result, the International Federation launched the "International Disaster Response Law (IDRL) Project".

OVERVIEW OF THE IDRL PROJECT

The core function of the IDRL Project was to assemble the various treaty law as well as 'soft contained' in declarations and resolutions adopted within the UN system and other inter-governmental forums relevant to disaster response. Guidelines and best practices in international disaster response legislation were also collected and examined where possible. Such a collection will provide, for the first time, a compendium of existing laws and instruments of specific relevance to disaster situations which do not involve armed conflict. The compendium will then be published in CD ROM format in November 2003.

Parallel to the legal research, the IDRL Project also facilitated a series of research and field studies in over 25 countries to assess the nature and scope of laws and instruments relevant to disaster response and the way in which they are implemented in disaster situations.

Finally, the IDRL Project has sought to bring together a number of experts from academic, disaster response, legal and policy backgrounds to conduct research and share their perspectives on different aspects relating to the concept of IDRL. This has resulted in the publication of a collection of papers on IDRL, to be published in December 2003, which will contribute to a deeper level of understanding of the existing legal and regulatory framework.

The generosity of several donors ensured that the IDRL Project could undertake and complete these tasks. These donors were:

- Ausaid via Australian Red Cross
- Emergency Management Australia
- Norwegian Red Cross
- Government of Norway via Norwegian Red Cross
- Government of Switzerland via Swiss Red Cross
- British Red Cross

⁴ Council of Delegates of the International Red Cross and Red Crescent Movement, *Resolution 5 : International Disaster Response Law* (December 2001, Geneva)

RESEARCH METHODOLOGY AND SCOPE

TERMINOLOGY AND SCOPE

In the early stages of the project, the International Federation sought to define the scope and terminology to be used throughout the IDRL Project. A distinction was made between the terms “IDRL” and the “IDRL Project”. IDRL itself was described as the body of laws and other regulations relating to disaster response, whereas the IDRL Project referred to the activities to be undertaken by the International Federation to explore the scope and content of IDRL.⁵

Working definitions were also established for the purpose of the project, which described the meanings of “international law” and “disaster response” in the context of “international disaster response law”. These definitions were as follows:

International law – includes treaty law, agreements between States and international organisations, including the International Federation and “soft law” emanating from declaratory instruments and relevant resolutions adopted by intergovernmental meetings.

Disaster response – includes preparedness, relief and rehabilitation activities in the event of natural, technological and other disasters which are not classified as armed conflict⁶

It was emphasized, however, that the International Federation was not attempting to define or limit the scope of IDRL, as the project was intended to be an exploratory process through which the scope and content of IDRL would develop over time.⁷

Indeed, as the project progressed and terms of reference for legal and field research were developed, the scope of research was further narrowed and refined to ensure that the IDRL Project would be able to produce useful results within the given timeframe.⁸ These developments are discussed further in the Overview of the Research Process and the Key Findings sections of this report.

OVERVIEW OF THE RESEARCH PROCESS

Research for the IDRL Project involved two types of processes, which reflected the purpose described in Resolution 5 of the Council of Delegates in 2001. The first process was to conduct legal research to identify and compile the various instruments that comprise IDRL. The second process involved conducting field studies to identify some of the major challenges experienced during disaster response activities and to determine the impact of existing IDRL in an operational context.

In undertaking these activities, the International Federation sought the involvement of National Societies, lawyers, academics and disaster response experts from humanitarian and government backgrounds. A number of specific research projects were undertaken in various geographical regions in accordance with the Guidelines and Terms of Reference developed by the International Federation. In addition, a number of informal research activities were undertaken spontaneously by interested National Societies and individuals in direct response to Resolution 5 of the Council of Delegates, which encouraged the support and contribution of National Societies to the work plan of the International Federation.

⁵ International Federation of Red Cross and Red Crescent Societies, *IDRL Fact Sheet Number 1: What is the IDRL Project?* (June 2002)

⁶ International Federation of Red Cross and Red Crescent Societies, *IDRL Fact Sheet Number 3: Current Issues for the IDRL Project* (June 2002)

⁷ International Federation of Red Cross and Red Crescent Societies, *IDRL Fact Sheet Number 3: Current Issues for the IDRL Project* (June 2002)

⁸ International Federation of Red Cross and Red Crescent Societies, *Guidelines for IDRL Legal Research* (June 2002) (*Guidelines*); International Federation of Red Cross and Red Crescent Societies, *IDRL Field Study Terms of Reference* (September 2002) (*Terms of Reference*)

Overview of legal research

In the first half of 2002, an initial study was undertaken by Professor Horst Fischer of the Ruhr-Universität Bochum (*Fischer Study*) for the purposes of identifying and analyzing a collection of materials which could be considered the “core” of IDRL.⁹ This study also sought to classify the various subject areas covered, to identify any patterns of rules that emerge from the collection and to make recommendations on the further research and development of IDRL.

The instruments collected during this study, numbering almost 300 in total, were primarily derived from United Nations collections of treaties and resolutions and were most prolific in the European region. Thus, one of the recommendations for further study included the broadening of the scope of legal research to include instruments other than international treaties and resolutions, as well as instruments from different geographic regions. In response to this, the International Federation commissioned a number of studies in different regions and developed *Guidelines for IDRL Legal Research (Guidelines)*¹⁰ based on the recommendations and subject areas of IDRL identified in the *Fischer Study*.

It was recognized that it would be impossible to collect every relevant document within the time available, thus the focus was placed on legal instruments with an international character, such as:

- Multilateral or bilateral treaties
- Agreements or declarations between two or more States
- Resolutions adopted by intergovernmental groups meetings and forums
- Agreements involving components of the International Red Cross and Red Crescent Movement
- Agreements between international organisations and States or other international organisations
- Agreements between international NGOs and States, international organisations or other NGOs

The *Guidelines* also encouraged the collection of other documents such as articles and books, disaster management handbooks, guidelines, codes of conduct and research reports which were seen as being relevant to the subject of IDRL, however it was recognized that the IDRL Project may not be able to consider the content of these materials in any depth within the time period available.

In addition to specifying the types of instruments to be examined, the *Guidelines* also identified the relevant content of the various instruments to be collected, based on the areas identified in the *Fischer Study*. These were described broadly as “matters relating to the conduct of disaster response operations including preparedness, relief and rehabilitation activities”. Various examples were provided:

- Visas, entry and working permits
- Recognition of professional qualifications
- Customs, duties, tariffs and quarantine
- Transportation and transit of goods
- Status, immunities and protection of personnel
- Coordination of activities
- Education, training and information exchange
- Offers and requests for assistance
- Communications
- Accountability / liability

⁹ International Federation of Red Cross and Red Crescent Societies, *International Disaster Response Law, A Preliminary Overview and Analysis of Existing Treaty Law: Summary of the study on existing treaty law prepared by Professor Horst Fischer, Bochum University, Germany* (International Federation of Red Cross and Red Crescent Societies, January 2003) (*Fischer Study*)

See also Horst Fischer, *Overview of Existing IDRL Treaties and Other Instruments* (International Federation of Red Cross and Red Crescent Societies, due for publication November 2003)

¹⁰ *Guidelines*.

Between June 2002 and August 2003, a number of studies were undertaken in regions conducted primarily by National Societies. These are listed in the table below:

Table 1: IDRL Project Legal Research Studies, list of researchers and countries

Researcher	Region	Countries	Date completed
Virginie Gueriel, French Red Cross	Europe	France	June 2002
International Federation Regional Delegation, Guatemala	Central Americas	Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, Panama	October 2002
Tracy-Lynn Field, Institute of Foreign and Comparative Law, University of South Africa*	Southern Africa	Angola, Botswana, Lesotho, Malawi, Mozambique, Namibia, South Africa, Swaziland, Zambia, Zimbabwe	January 2003
German Red Cross*	Europe	Germany	March 2003
Anne Bergh, Per Gautvik and volunteer research team, Norwegian Red Cross*^^	South Asia, South-East Asia, Europe	Norway, Sri Lanka, Vietnam	May 2003
Justyna Mordwilko, Polish Red Cross*	Europe	Poland	May 2003
Victoria Bannon and Morgan Mozas, International Federation, Geneva	World-wide	World-wide	July 2003
Lauriane Tenon, French Red Cross*	Middle East, North Africa, Europe	Egypt, Greece, Italy, Portugal, Tunisia, Turkey, Spain	July 2003
Bosko Jakovljevic, Serbia and Montenegro Red Cross*	Europe	Serbia and Montenegro	August 2003
Bosko Jakovljevic, Serbia and Montenegro Red Cross*	Europe	Effects of economic sanctions, Serbia and Montenegro	August 2003
Australian Red Cross	Pacific	Australia	August 2003

^^ Planned study in Iran was postponed due to other events occurring in the Middle-East region.

*Research reports from these studies will be made available on the International Federation website:

www.ifrc.org/what/disasters/idrl

As a result of this research a further 200-300 instruments were identified for inclusion in the CD ROM collection.

Overview of field studies

The IDRL Project field studies aimed to provide an overview of some of the major difficulties experienced by humanitarian workers and other actors during disaster response operations, to determine which legal and non-legal instruments are used and applied during disaster response operations as well as assess the impact of the presence or absence of applicable law and other regulatory instruments. The field studies were limited to the study of disaster response operations involving the participation of the International Federation that had an international character, i.e. operations in which the disaster-affected country was receiving assistance from the International Federation as well as other States, international organisations and external non-governmental organisations (NGOs).

To facilitate these studies, the International Federation developed the *IDRL Field Study Terms of Reference (Terms of Reference)*¹¹, which listed the above objectives and specified the methodology to be applied in the conduct of the studies. The methodology involved a number of phases:

- Phase 1: Literature review of previous international disaster response operations, examining existing evaluation documentation from major disaster response operations involving the International Federation over the past five years

¹¹ *Terms of Reference*.

- Phase 2: Preparatory consultations with relevant International Federation and National Society disaster management personnel
- Phase 3: Case studies of current international disaster response operations in different regions involving interviews with key personnel, gathering of literature and observation of activities in the selected countries, with approximately 1 week spent in each region
- Phase 4: Compilation of information and production of a report

The *Terms of Reference* also provided guidance as to the types of issues to be examined during the studies. The broad categories included are listed below:

- Access and involvement of the International Federation in the disaster affected country
- Relationships between the various actors involved in the response
- Identification of country-specific disaster response instruments / mechanisms
- Access to people affected by disasters by the various responding agencies
- Facilitation of disaster response activities
- Identification of the various legal and other tools used in disaster response

During 2002 and 2003, two significant IDRL Project field studies were conducted, spanning four regions and 15 countries. These are listed in the following table:

Table 2: IDRL Project Field Studies, list of researchers and countries

Researcher	Region	Countries	Date
Piero Calvi-Pariseti, Gignos Consulting, Geneva*	Southern Africa, South Asia, Central Americas	Costa Rica, El Salvador, Guatemala, India, Lesotho, Malawi, Mexico, Nicaragua, Panama, Suriname, Swaziland, Zambia, Zimbabwe	October- November 2002
Anne Bergh and Per Gautvik, Norwegian Red Cross* ^^	South Asia, South- East Asia	Sri Lanka, Vietnam	February – May 2003

* Research reports available on the International Federation website: www.ifrc.org/what/disasters/idrl

^^ Planned study in Iran was postponed due to other events occurring in the Middle-East region

Publication on IDRL

In addition to the legal research and field studies, the interest generated by the project prompted the International Federation to commission a series of papers from experts on various topics relevant to IDRL. These papers will then be published by the International Federation in a book entirely devoted to IDRL due in December 2003.

The authors and subjects confirmed for this publication as at August 2003 are listed in the table below. The authors kindly offered their contributions in a voluntary and personal capacity.

Table 3: Publication on IDRL, list of authors and topics

Author	Topic
Michael Hoffman, Director International Humanitarian Law and Policy, American Red Cross	Scope of international disaster response law
Horst Fischer, Professor of Law, Ruhr-Universität Bochum	Overview of existing treaty law relating to international disaster response law
Arjun Katoch, Chief, Field Coordination Support Section, Emergency Services Branch, United Nations Office for the Coordination of Humanitarian Affairs	International disaster response and the UN system

Tracy Field, Law Lecturer, University of Witwatersand, South Africa	Overview of existing international disaster response law in Southern Africa
Bosko Jakovljevic, Serbia and Montenegro Red Cross	Reflections on the IDRL Project in the light of experiences in the Former Yugoslavia
Elise Baudot, Senior Legal Officer, International Federation, Geneva	International Federation delegations and risk management: some operational issues
Chris Mclvor, Program Director, Save the Children (UK), Zimbabwe	Applying humanitarian principles in disaster relief: A case study from Zimbabwe
Vitit Muntarbhorn, Professor of Law, Chulalongkorn University, Bangkok	International disaster response law and displaced persons
Agnés Callamard, Director, Humanitarian Accountability Project International, Geneva	International disaster response law and humanitarian accountability

CONSULTATIONS AND INTERNATIONAL REPRESENTATION

Resolution 5 of the Council of Delegates makes several references to the need for advocacy and engaging in dialogue with governments for improved awareness and application of IDRL with the support of National Societies, in particular in relation to encourage ratification of the *Tampere Convention*¹². Thus the International Federation has actively sought to encourage support and awareness of the activities associated with the IDRL Project both within the International Red Cross and Red Crescent Movement and beyond.

Activities within the International Red Cross and Red Crescent Movement

The IDRL Project has been the subject of discussions at two Regional Conferences of the Red Cross and Red Crescent. In November 2002, the VIth Asia and Pacific Regional Conference of Red Cross and Red Crescent Societies in Manila adopted an Action Plan¹³, which included support for the IDRL Project. The Manila Action Plan commits the 49 National Societies in Asia, the Pacific and the Middle East, to a series of activities that aim to improve the lives of disaster victims, including an undertaking to encourage governments to promote a greater understanding, coherence and consistency in relation to IDRL.

Similarly, the XXVIIth Inter-American Conference of the Red Cross, comprising some 35 National Societies, undertook to “[p]romote a better understanding, and commitment to national and international disaster law among respective governments in order to facilitate better disaster prevention, preparedness and response.”¹⁴

Presentations and consultations involving National Societies took place in other forums throughout 2002 and 2003. In October 2002 the IDRL Project was the subject of a presentation and discussion by some 18 National Society representatives during the International Co-operation Symposium hosted by the Turkish Red Crescent in Ankara. In February 2003, a presentation on the IDRL Project was delivered at the Scientific Conference on Relief and Management hosted by the Iranian Red Crescent Society in Tehran. Other presentations and consultations involving National Societies have taken place on a bilateral level as well as during annually scheduled meetings such as the National Society Legal Advisers Meeting, International Federation Disaster Relief and Preparedness Commission Meetings, European Union National Societies Legal Advisers Meeting and the International Federation Meeting of Participating National Societies.

Reports and presentations from many of these events are included on the website at the following location: <http://www.ifrc.org/what/disasters/idrl/research.asp>

¹² *Tampere Convention on the Provision of Telecommunications Resources for Disaster Mitigation and Relief Operations*, opened for signature 18 June 1998 (not yet entered into force, 24 parties as at 18 August 2003) <http://www.reliefweb.int/telecoms/tampere/index.html>

¹³ VIth Asia And Pacific Red Cross And Red Crescent Conference, *Resolution I: Adoption of the “Manila Action Plan 2002”* (Manila, Philippines, November 2002) <http://www.aprc.net/map2002.htm>

¹⁴ XVII Inter-American Conference of the Red Cross, *Resolution: Adoption of the Santiago de Chile Commitment and the XVII Inter-American Conference Plan of Action* (Santiago de Chile, April 2003) http://www.ifrc.org/cgi/pdf_pubs.pl?events/interam/Commitment.pdf

Activities in the wider international community

The IDRL Project has also been the subject of several interventions by the International Federation in various other international forums, including the United Nations General Assembly and the United Nations Economic and Social Council (ECOSOC), as well as some functional commissions and in Specialised Agencies. It was first described to the UN General Assembly during the Special Session on Human Settlements in 2001, and was brought firmly into the context of the United Nations system by a reference in the Report of the Secretary-General on the *Strengthening of the Co-ordination of Emergency Humanitarian Assistance of the United Nations*.¹⁵

More recently, the work of the International Federation has been noted by the General Assembly in resolution 57/150 of 16 December 2002 on *Strengthening the effectiveness and coordination of international urban search and rescue*¹⁶, an instrument which serves as positive example of recent improvements to existing IDRL. The work done since the adoption of General Assembly resolution 57/150 has also been noted in the Secretary-General's 2003 Report on the *Strengthening of the Coordination of Emergency Humanitarian Assistance*.¹⁷ The resolution of the Inter-Parliamentary Union in April 2003 on *International Cooperation for the Prevention and Management of Transborder Natural Disasters*¹⁸ also notes the International Federation's IDRL Project and encourages parliaments to make good use of the final project report.

Other international forums at which the IDRL Project has been presented included: the 9th Ministerial Meeting of the EUR-OPA Major Hazards Agreement, Bandol (October 2002); United Nations' Vth Asian and Pacific Population Conference, Bangkok (December 2002); Santa Clara University Law School Symposium: International Disaster Response Law - Anticipating the Future (March 2003) and the World Trade Institute and American Society of International Law meeting on Trade Law and Human Rights, Berne (June 2003).¹⁹

IDRL Project Writers' Meeting, May 2003

An event of particular significance in the consultation process was the IDRL Project Writers' Meeting hosted by the International Federation in May 2003. This meeting brought together a range of experts from the academic, government and disaster response fields, including many of the contributors to the IDRL Publication, legal research and field studies, as well as from National Societies and the ICRC.

This two-day meeting provided an opportunity to review and compare the results of IDRL research on different topics and to gain a better understanding of the scope and content of existing IDRL instruments. A number of specific questions were also discussed by the group relating to the future directions for the IDRL Project and the recommendations to be submitted to the 28th International Conference of the Red Cross and Red Crescent (December 2003). A full report containing the list of participants, summaries of the presentations and discussions and overall outcomes was produced (*'Writers Meeting Summary Report'*)²⁰ and is used as one of the reference documents for the Key Findings section of this report.

¹⁵ A/57/77- E/2002/63, paragraph 23

<http://ods-dds-ny.un.org/doc/UNDOC/GEN/N02/382/91/PDF/N0238291.pdf?OpenElement>

¹⁶ A/57/L.60 and Add.1, preambular paragraph 15

http://www.ifrc.org/cgi/pdf_pubs.pl?disasters/IDRL_IUSAR_Res.pdf

¹⁷ A/58/89 – E/2003/85, paragraph 28

<http://ods-dds-ny.un.org/doc/UNDOC/GEN/N03/386/66/PDF/N0338666.pdf?OpenElement>

¹⁸ Resolution adopted unanimously by the 108th Conference of Inter-Parliamentary Union, *International Cooperation for the Prevention and Management of Transborder Natural Disasters and their Impact on the Regions Concerned* (Santiago de Chile, 11 April 2003), operative paragraph 14

<http://www.ipu.org/conf-e/108-2.htm>

¹⁹ For summaries and speeches from these events see : <http://www.ifrc.org/what/disasters/idrl/advoc.asp>

²⁰ International Federation of Red Cross and Red Crescent Societies, *IDRL Project Writers' Meeting: Summary Report* (Geneva, May 2003) ('Writers' Meeting Summary Report') <http://www.ifrc.org/what/disasters/idrl/about.asp>

Other initiatives

In addition, the International Federation launched a number of other initiatives aimed at providing up to date information on the progress of the IDRL Project and its research reports. The initiatives included the launch of an IDRL Project section of the International Federation's website (www.ifrc.org/what/disasters/idrl), the publication of a series of Fact Sheets on different aspects of the project and the establishment of a public IDRL Mailing List which provides subscribers with email updates about the latest developments.²¹

KEY FINDINGS

These key findings reflect some of the common themes or patterns that emerged in the various studies conducted as part of the IDRL Project. They also draw on the comments and discussions from the various consultations, including the IDRL Project Writers' Meeting.

A list of these materials is provided in the **Appendix**, and should be consulted directly to attain a more complete overview of the findings from the IDRL Project.

No attempt has been made thus far to draw comprehensive conclusions relating to IDRL in all its aspects. Indeed, one of the recommendations from this process is that more research and analysis is urgently needed. However, it is hoped that the key findings outlined below will provide a sound basis from which to develop further activities for the improvement of disaster response to achieve the ultimate goal of saving lives and restoring dignity

THE SCOPE OF IDRL

Whilst the intention of the International Federation was not to define or limit the scope of IDRL as a concept, it was observed during the research and consultation processes that there was a need to narrow and refine the scope of IDRL to ensure that it maintained a unique and useful place in relation to other more developed areas. Additionally, a "core" of IDRL was identified during the various research and consultation processes, which may provide a useful reference point for further work. This could be summarized as: *The laws, rules and principles applicable to the access, facilitation, coordination, quality and accountability of international disaster response activities in times of non-conflict related disasters, which includes preparedness for imminent disaster and the conduct of rescue and humanitarian assistance activities.*

There is a need to narrow and refine the scope of IDRL

It has been observed by several contributors that the scope of IDRL in its broadest formulation has the potential to span virtually every area of international law, from human rights to maritime law, from environmental law to international trade and telecommunications. IDRL could also encompass any kind of crisis, emergency or disaster, ranging from nuclear disasters and chemical spills, to economic collapse and poverty, to floods, droughts and earthquakes, to forest fires and aviation accidents. In addition, IDRL could apply to all phases of disaster including prevention, preparedness, mitigation, relief, recovery, rehabilitation and development.

However, it has also been observed that the adoption of such a broad interpretation could have the effect of rendering IDRL an amorphous concept devoid of any real meaning or relevance. Thus, it is useful to identify some features of IDRL which might distinguish it from other areas, whilst recognizing that, as with all areas of law, there will be inevitable crossovers and links.

Identification of a "core" of IDRL

A useful starting point for determining the possible "core" of IDRL is to revisit the reasoning and purpose for the initiation of the IDRL Project. As described previously, this project was prompted by a

²¹ To subscribe to this service, contact idrl@ifrc.org.

series of very practical yet fundamental challenges to the ability of rescue and relief efforts to reach the most vulnerable in times of non-conflict related disaster. These challenges were further clarified during the field studies as relating to access, facilitation, coordination, quality and accountability.

Many of the challenges identified also seemed to arise during the preparedness for imminent disasters, such as evacuation and mobilisation of response teams, and during the actual rescue and relief operations, such as urban search and rescue activities and the delivery of humanitarian assistance. Indeed, some of the participants at the IDRL Project Writers Meeting felt that these should be the parameters of IDRL, and that it should not extend to issues of mitigation, rehabilitation or development, for which other laws, principles and instruments already existed. In this way IDRL would be able to maintain a unique identity.

Thus the description of a potential “core “ of IDRL could be:

The laws, rules and principles applicable to the access, facilitation, coordination, quality and accountability of international disaster response activities in times of non-conflict related disasters, which includes preparedness for imminent disaster and the conduct of rescue and humanitarian assistance activities.

This description accords with the great majority of instruments and subjects examined during the course of the IDRL Project.

THE NATURE OF EXISTING IDRL

Existing IDRL is widely dispersed and lacks consistency throughout its various components. It was found that the existing core of IDRL comprises many different types of instruments both legal and non-legal. These include multilateral and bilateral treaties, regional agreements, inter-governmental resolutions and declarations, operational guidelines and codes of conduct. Much of the existing treaty law is not exclusive to disaster response, or alternatively, is limited in its scope and application. Other instruments, particularly inter-governmental resolutions, tend to be more comprehensive and seek to establish general principles relating to disaster response operations.

There are few comprehensive multilateral treaties relating directly to IDRL

One of the most important observations made at the commencement of the IDRL Project, which has been confirmed by the present research, is that there are no comprehensive and universally accepted multilateral treaties or conventions specifically applicable to situations of disaster in the same way as there are for situations of armed conflict. Indeed, the number of multilateral treaties relating to international disaster response is limited and where they do exist, they tend to focus on one specific subject and do not establish general principles of disaster response.

There are two multilateral treaties that could be said to represent the most comprehensive treaties on international disaster response. The first is the 1986 Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency.²² This convention contains provisions covering a range of issues including offers of and requests for assistance, coordination of operational activities, the role of the International Atomic Energy Agency, costs, privileges and immunities of personnel and the use of facilities and the transit of equipment and property.

The second comprehensive multilateral treaty of this kind is the Tampere Convention on the Provision of Telecommunications Resources for Disaster Mitigation and Relief Operations of 1998 (not yet in force).²³ Whilst remaining within the field of emergency telecommunications, this convention also contains similar and even more detailed provisions pertaining to the broader activities of disaster response including offers and requests, privileges and immunities, facilities, costs and coordination. It also extends some of these provisions to non-governmental organisations and non-state entities, thus

²² <http://www.iaea.or.at/worldatom/Documents/Infcircs/Others/inf336.shtml>

²³ <http://www.reliefweb.int/telecoms/tampere/icet98-e.htm>

extending the scope beyond the States themselves. In this way, the Tampere Convention could be regarded as a new approach to IDRL and may be a relevant model for future initiatives.

There is a prolific network of bilateral and regional treaties, but this is not reflected in regions outside of Europe

In contrast to multilateral treaties, there exists a diverse and complex system of bilateral treaties concluded between States. These treaties have been growing in number and scope since at least the end of the Second World War and have often involved agreements on the provision and/or facilitation of assistance in times of natural or technological disaster. Despite the variances in their purpose, scope and content, it is possible to identify certain patterns of treaties as they have evolved over time.

The 1990's have seen an increasing prevalence of so called "mutual assistance" treaties which, within the region of Europe, have extended into a comprehensive network of mutual cooperation including most countries in the region. Additionally, various agreements concluded under the auspices of the European Union, the United Nations Economic Commission for Europe and the North Atlantic Treaty Organization have ensured that this area is well regulated. Such agreements commonly contain clauses relating to requests for and offers of assistance, facilitation of entry into sovereign territory, technical cooperation, information sharing and in some cases preparedness activities and training. However, there are many disparities between these treaties in terms of their exact scope and content, and few if any included provisions relating to non-state actors such as international organisations, NGOs and components of the International Red Cross and Red Crescent Movement.

It would seem that the proliferation of bilateral and regional treaties is limited to Europe alone. In the other regions and countries examined, the research found comparatively few bilateral or regional instruments. Many of these agreements tended to be concluded with international organisations or NGOs, and took the form of "headquarters agreements" or "memoranda of understanding", which specified the particular terms and conditions under which an organisation could operate within the country.

For example, In Tunisia, only ten international instruments were identified, most relating to the International Maritime Organization. In Vietnam, there were several agreements between the state and international organisations and two agreements concluded with other states which related directly to IDRL, however an examination of the full range of international instruments was incomplete at the time of writing because of the need to have many of the agreements translated. In Turkey it appeared that whilst there were many disaster response activities involving other states, very few were based on formal agreements. Of the treaties identified in the Southern Africa region, which numbered approximately 30 in total, only a few related directly to disaster response, and most of those involved agreements between a disaster-affected state and an international organisation or NGO.

There are a number of subjects which are common to many international treaties, however they lack consistency

Throughout the large network of international treaties relating to IDRL, it is possible to identify some subject areas that are common to many of the instruments. These areas include:

- Offers and requests for assistance
- Responsibility for and coordination of disaster response activities
- Access of personnel and equipment and their internal movement
- Entry of relief goods and customs
- Status, immunity and protection of disaster response personnel
- Costs relating to disaster response operations
- Establishment of permanent institutions for disaster response and management

However, it is important to note that despite these areas of commonality, it is difficult to determine any consistency in the way in which these areas are regulated. This lack of consistency does not merely extend to treaties concluded between different states, but each state itself may also conclude treaties with different provisions, making it difficult to determine any firm patterns or principles.

There are a number of lacunas in existing international treaty law

In addition to a lack of clearly identified principles between the various provisions of international treaties, there remain many areas of disaster response which are absent or poorly regulated in the treaties examined. These areas include:

- Clear entry requirements for international disaster response personnel
- Freedom of movement of disaster response personnel
- Recognition of professional expertise of disaster response personnel, in particular that of medical and health workers
- The exchange of disaster-related information between states and personnel
- The status of relief consignments
- Transport within the disaster-affected state
- Distribution and use of relief goods
- Entry and operation of non-state actors such as international organisations and NGOs

There are many “soft law” instruments applicable to IDRL, which identify important principles

The research identified some 50 resolutions and declarations relating to IDRL concluded in inter-governmental forums such as the United Nations and its specialised agencies, the International Conference of the Red Cross and Red Crescent, the World Radiocommunications Conference, the World Customs Organisation and the Inter-Parliamentary Union. Resolutions from regional inter-governmental organisations were also identified including the Association of South East Asian Nations (ASEAN), the African Union, the Organisation of African Unity, the Council of Europe, the European Parliament and the North Atlantic Treaty Organisation (NATO).

Unlike much of the treaty law examined, many of these instruments relate specifically to disaster response activities and tend to reflect a more principled and consistent approach useful for general application, rather than simply addressing the needs of one specific disaster situation or topic.

Some good examples of these types of instruments include UN General Assembly Resolution 46/182 of 19 December 1991, the accompanying annex, and UN General Assembly Resolution A/57/L.60 of 10 December 2002 on *Strengthening the effectiveness and coordination of international urban search and rescue assistance*, both of which set out guiding principles for humanitarian assistance as well as the roles of state and non-state actors. Another important instrument is Resolution 6 of the 23rd International Conference of the Red Cross and Red Crescent of 1977 on *Measures to expedite international relief* which makes a series of practical recommendations to reduce many of the delays relating to the entry of humanitarian personnel and relief goods.

There are many instruments of a non-legal status which contribute to the identification of principles of IDRL

There is also a large collection of instruments which, although not legal in character, nevertheless seek to regulate and systemise international disaster response. In many cases these instruments have been developed either individually or collectively by humanitarian organisations to improve the standard of disaster response and to improve their own accountability mechanisms.

Two prominent examples of these types of instruments are the Sphere Project's Humanitarian Charter and Minimum Standards in Disaster Response, and the Code of Conduct for the International Red Cross and Red Crescent Movement and NGOs in Disaster Relief. These instruments seek to establish principles and international standards for disaster response in all facets, ranging from health and food aid programmes to cooperation with governments and respect for, and involvement of, beneficiaries.

CHALLENGES IN THE FIELD

The field studies confirmed that many of the challenges experienced in the field relate to four areas:

- Inconsistency of access to disaster-affected populations
- Delays, inefficiency and inconsistency in facilitation of disaster response by states
- Lack of coordination within and between national and international disaster response structures
- Lack of implementation of quality and accountability standards, despite good knowledge and understanding of these issues

Inconsistency of access to disaster-affected populations

The ability for international disaster response personnel to access disaster affected populations varied from country to country in the regions studied. In some countries, access depended upon the existence of a pre-negotiated agreement between the state and the assisting organisation, in others it depended upon the nature of the various national legal and policy frameworks through which international assistance could be requested and accepted. In some countries there were more ad-hoc arrangements in place, which relied on building trust and rapport with national or local authorities and were subject to frequent change.

The level of access could also depend on various political, economic or security considerations impacting the host country or region which influenced which organisations would be permitted to access affected areas and on what basis.

Delays, inefficiency and inconsistency in facilitation of disaster response by state authorities

Many of the challenges in the facilitation of disaster response related to the following:

- Delays in visa or customs processing
- Delays in gaining clearance to use certain telecommunications equipment or to access networks and frequencies
- Heavy or deliberately increased import taxes on relief goods
- Lack of legal status and protection of organisations and personnel operating in the territory
- Delays in the approval of specific disaster response programmes
- Hiring of local and expatriated staff
- Leasing of buildings
- Exchange of money and other financial transactions
- Delays in obtaining visas for expatriate staff

The causes of many of these challenges were seen to relate to high levels of bureaucracy within national structures and the inconsistent application and interpretation of rules and procedures. Alternatively, it was felt that government infrastructure was under-resourced and overwhelmed by the impact of the disaster. In some situations it was felt that authorities were taking political or financial advantage of the large international presence within the affected country.

There is a lack of coordination within and between national and international disaster response structures

The issue of coordination, particularly as it related to the central role of the host government, seemed to pose the greatest challenge to the efficiency of humanitarian efforts. There were frustrations about the inadequacy of the host government's coordination ability and a lack of understanding of the international disaster response system by governments' officials. It was also noted that many states did not have a single designated authority for coordinating disaster response activities, but had a complex system involving many different ministries and authorisation processes. Some representatives of host governments also expressed concerns about the lack of respect and cooperation received from the international responders and consequently felt their central role had been usurped.

Similar challenges were identified between the various humanitarian organisations at both the national and international levels, however the operational coordination between the various large international organisations and NGOs was seen to be improving.

There is some divergence between acknowledgement of quality and accountability standards and their application

There was a good level of knowledge about various international instruments relating to quality and accountability for disaster response; in particular of the Sphere Project's Humanitarian Charter and Minimum Standards in Disaster Response and the Code of Conduct for the International Red Cross

and Red Crescent Movement and NGOs in Disaster Relief. However these standards were not seen to be fully operational during disaster response. In this regards, some examples were noted:

- Import and distribution of too many relief goods
- Employment of expatriate staff where local skills could have been optimised
- High turn-over of expatriate staff during operations resulting in loss of organizational knowledge
- Manipulation in the targeting of relief programs and distribution of relief to certain groups by governments, funding bodies and other interest groups
- Lack of appropriate links between relief and development activities, including extended and unnecessary distribution of relief goods

AWARENESS, UNDERSTANDING AND IMPLEMENTATION OF EXISTING INSTRUMENTS

Despite the large number of instruments relating to IDRL, they are largely unknown to government and field personnel and are rarely referred to or effectively utilised to alleviate the challenges encountered during disaster response operations. In contrast, national laws are generally well known and applied, but often do not adequately address many of the operational challenges of disaster response.

Limited awareness of existing IDRL instruments

The process of identifying and gathering the various instruments relevant to IDRL during both the legal research and the field studies indicated a general lack of awareness of applicable laws and other regulatory mechanisms. Many of the government ministries approached for information and documentation, particularly those whose countries did not regularly experience large-scale disasters, had difficulty identifying relevant instruments. Similarly, many field personnel from international organisations and NGOs acknowledged that they were not aware of many, or on occasion any, international instruments applicable to situations of disaster.

IDRL instruments are rarely utilised as a means of minimising operational challenges

In some cases, the challenges encountered in the course of disaster response activities are addressed by, or are at least relevant to, a number of international legal and regulatory instruments.

For example, Resolution 6 of the 23rd International Conference of the Red Cross and Red Crescent of 1977 on *Measures to expedite international relief*, which, among other relevant provisions, recommends that governments waive requirements for transit, entry and exit visas for relief personnel, expedite the processing of relief shipments and that donors restrict relief contributions to high-priority needs. The issues of access to disaster affected populations and the facilitation of relief efforts by states are included in UN General Assembly Resolution 46/182 of 19 December 1991, as well as a number of UN General Assembly resolutions adopted both before and since.²⁴ The designation of a single relief authority by all potential recipient governments was recommended as early as 1971 in resolution 2816 (XXVI) of the United Nations General Assembly.²⁵ The need to expedite customs processes and waive import and export duties are also provided for in the Recommendations of the World Customs Organisation on the expedition of forwarding relief consignments²⁶ and the Kyoto and Istanbul Conventions, which include annexes relating to urgent consignments and goods imported for humanitarian purposes.²⁷

²⁴ See for example: UN General Assembly Resolution, *Humanitarian assistance to victims of natural disasters and similar emergency situations*, UN Doc A/Res/45/100 (1990); United Nations General Assembly Resolution, *Humanitarian assistance to victims of natural disasters and similar emergency situations*, UN Doc A/Res/43/131 (1988); UN Economic and Social Council, *Measures to expedite international relief*, UN Doc E/Res/2102 (LXIII) (1977)

²⁵ UN General Assembly Resolution, *Assistance in cases of natural disaster and other disaster situations* A/Res/2816 (XXVI) (1971)

²⁶ *Recommendation of the customs co-operation council to expedite the forwarding of relief consignments in the event of disasters*, World Customs Organization Doc T2-423 (8 June 1970)

²⁷ *International Convention on the Simplification and Harmonization of Customs Procedures* ("Kyoto Convention"), signed on 18th May 1973, entered into force on 25th September 1974; *Convention on Temporary Admission* ("Istanbul Convention"), signed on 26th June 1990, entered into force on 27th November 1993 - annex B9 deals with goods imported for humanitarian purposes.

Whilst the legal nature of these instruments and their relevance to non-adhering signatory countries may be subject to debate, the lack of awareness of international instruments, particularly those which have been developed to address precisely some of the challenges encountered in the field, pose additional barriers to resolving these situations as they arise.

Despite this general lack of awareness, there were some notable exceptions. In many of the countries examined during the field studies, the Sphere Project's *Humanitarian Charter and Minimum Standards in Disaster Response* and the *Code of Conduct for the International Red Cross and Red Crescent Movement and NGOs in Disaster Relief* were widely recognized and used by humanitarian personnel in disaster response operations, though this is subject to the qualifications relating to quality and accountability issues described previously. Similarly, in countries where international organisations had concluded a headquarters agreement with the host government, there was a clear understanding by the personnel of the organisation concerned as to the value of such an agreement.

There is a greater awareness and application of relevant national laws, but these are generally inadequate in overcoming challenges associated with international response efforts

The IDRL Project field studies revealed that there was a much higher awareness of the various national laws, policies and other instruments than for those at the international level. However, in many instances, this did not necessarily result in more efficient or expeditious disaster response activities, particularly where international response was concerned.

Many national disaster response coordination and facilitation mechanisms were found to be inapplicable to, or inadequate in dealing with, the unique requirements of international actors. Whilst they often contained comprehensive provisions relating to the coordination of disaster response at the national and community levels, few if any contained provisions relating to the accelerated processing of entry visas for personnel, expeditious customs procedures for relief goods, the identification of the relevant government coordinating body and other issues of concern for international workers. Such situations often led to the development of ad hoc arrangements which, although minimising a number of bureaucratic processes, also created confusion and mistrust when they were changed or poorly communicated, which also appeared to widen the gap between the international and national response.

In the absence of specific provisions relating to international disaster response, the national laws applicable to normal commercial activities regulated many of the relevant areas, such as immigration, importation, customs and telecommunications. Many of these laws examined by the researchers did not appear to contain any special provisions for disaster or emergency situations. Nor did they incorporate any of the guiding principles or rules derived from the various relevant international instruments.

Thus, it was found that disaster response operations could be hampered by laws and policies that did not extend in scope to account for international response efforts or, alternatively, even where they did, they were incapable of meeting the requirements of expediency and flexibility needed in disaster situations. In such instances, national laws were often ignored or bypassed, either with or without the consent of authorities, resulting in confusion and creating further delays.

THE LINK BETWEEN LAW AND PRACTICE

Whilst many IDRL instruments are not used to great effect, particularly when international and non-state actors are involved, there were several positive examples where laws were successfully used to enhance international disaster response. This suggests that there is a direct link between the existence and application of appropriate laws and policies, and the minimisation of barriers to effective disaster response.

One example was identified in Central America, where international agreements had been established in the region enabling the fast transit and delivery of relief goods in times of disaster between neighbouring countries. This was seen by international workers as having a positive impact on the speed and efficiency of disaster response activities.

In that region and also in others, efforts were being made to ensure better harmonization of disaster management laws between countries frequently impacted by shared transborder disasters. This was also viewed as a positive step towards ensuring the facilitation of international disaster response activities.

Of particular benefit to international organisations and NGOs were headquarters agreements or memoranda of understanding concluded with state authorities, which clearly defined the legal status, immunities and operational guidelines relating to the presence and activities of those organisations within the countries concerned. Such agreements enabled the establishment of delegations, the opening of bank accounts, the leasing of property, the purchase and use of equipment and the employment and immunities of personnel. Such agreements could also determine the way in which operations would be conducted and the principles upon which such activities should be based.

It was also noted that relevant laws, policies and guidelines are most effective when their development has included participation and consultation with a wide variety of stakeholders, including people who have been affected by disasters, local and national response institutions, and the various international response organisations and agencies. As noted previously, many bilateral agreements on mutual assistance in disaster response, as well as national laws and policies, do not include a role for these different groups and are therefore not adequately responsive to the wider spectrum of disaster response. Where organisations such as National Societies are included in the development and content of these instruments, in a way that clarifies their various requirements and responsibilities in times of disaster, the coordination and efficiency of the entire disaster response effort was improved.

RECOMMENDATIONS

These recommendations form the basis for the actions proposed for the International Conference of the Red Cross and Red Crescent in December 2003.

RECOMMENDATION 1: INTERNATIONAL UNDERSTANDING AND ACCEPTANCE OF THE TERM “IDRL”

Until recently, the existence of laws and other instruments specific to disaster response situations was relatively unknown outside of academic circles. The International Federation has made a great deal of progress in raising awareness of these instruments at the international level through the use of “IDRL” however further clarification is needed to ensure that its appropriate meaning is understood.

Thus, “IDRL” should be used as an acronym for “international disaster response laws” to emphasise that it is a descriptive term for the various legal and other instruments applicable to international disaster response and also to clarify that it refers to the types of instruments already in existence, rather than the creation of a new instrument.

Before any significant advances can be made in overcoming the many challenges confronting international disaster response activities and enhancing the legal and regulatory system, there needs to be a wider understanding and acceptance of this term within all levels of civil society, from diplomatic circles to local communities. Many of the current challenges relating to the lack of awareness and implementation of the various laws, rules and principles for international disaster response stem from the fact that they are dispersed and are rarely, if ever, considered in their totality. The normalising of a single term to describe the area and the development of a common understanding of its purpose and use will assist in raising awareness of this area and will help to ensure that it remains on the international agenda for years to come.

RECOMMENDATION 2: GREATER UNDERSTANDING OF THE NATURE, SCOPE AND CONTENT OF IDRL

The current research process and findings suggest that further work is required to identify the full range of instruments currently in existence at the international, regional and national levels. In particular, further research is required to identify further similarities, differences and patterns relating to the different instruments, as well as more extensive studies at the national level, including both legal and field research processes.

Such studies should involve as wide a range of contributors as possible to ensure that findings reflect the variety of perspectives on these issues.

RECOMMENDATION 3: IDENTIFICATION AND INCLUSION OF CORE PRINCIPLES OF IDRL IN ALL INTERNATIONAL, REGIONAL AND NATIONAL DISASTER RESPONSE INSTRUMENTS

The dispersed nature of existing IDRL and the disparity between specific provisions of many of the instruments, particularly that of treaty law, has made it difficult to identify the full range of norms and principles that exist in this area. Nevertheless, there are a number of soft law instruments which do refer to principles and standards applicable to disaster response. Such instruments should therefore be used and referenced in the development or improvement of IDRL instruments at all levels – local, national, regional and international - in order to create a harmonized and, where appropriate, universally applicable systems.

RECOMMENDATION 4: IMPROVED IMPLEMENTATION OF IDRL INSTRUMENTS THAT FACILITATE DISASTER RESPONSE

The studies indicate that whilst there are a number of directly relevant and potentially effective IDRL instruments already in existence, particularly in the area of soft law, they are rarely used to their full effect in operational contexts. In several instances where such instruments had been applied, they provided tangible and positive benefits to disaster response efforts. Thus, greater attention needs to be given to ensuring that where useful instruments do exist, they are understood and implemented to the greatest extent possible.

Given the operational realities of disaster situations, particularly those of sudden onset, such instruments must be understood by those participating in disaster response activities and available for reference in a format which is concise and of immediate practical use. The production of a handbook which identifies the core principles and instruments relevant to disaster situations and how they can be used would be one way of improving their implementation. In addition, efforts must be made to ensure these instruments are implemented in the preparedness and planning phases of disaster response, both by governments and responding organisations. Training, education and advisory services may also assist in achieving this.

RECOMMENDATION 5: CONTINUED DEVELOPMENT AND PROMOTION OF IDRL

The lack of awareness and implementation of existing IDRL, combined with the dispersed and divergent nature of those instruments, suggests an urgent need to advocate for the continued improvement of the system for the benefit of disaster affected populations.

Some of the solutions to improving disaster response may relate to non-legal structural or administrative however the present studies have identified many areas in which the current legal and regulatory system could be developed and improved. Further research may reveal other areas where laws or other rules are absent, ineffective or inadequate in their current formulation. These areas could then be the subject of advocacy efforts to encourage law and policy makers to effect changes where appropriate. This shows that continued work on IDRL should remain an important part of the international agenda. It should focus on ensuring a more systematic implementation of existing principles and regulations as well as on improving the situation where deficits are identified.

ANNEX LIST OF REFERENCES

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