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Chapter 7

International Disaster Response Law Project field studies in south Asia, southern Africa and Central America

Introduction

This report contains a summary and preliminary analysis of the findings of a series of field studies commissioned by the International Federation of Red Cross and Red Crescent Societies as part of the International Disaster Response Law (IDRL) Project. The field studies were carried out by Dr Piero Calvi-Parisetti of GIGNOS Consulting, from October to November, 2002. The report, including a section on methodology and accompanying annexes is available at <www.ifrc.org/disasters/what/idrl>.

The studies covered 13 countries¹ through the examination of evaluations of previous operations, interviews with disaster management personnel from headquarters and workshops, and interviews conducted with key actors in the field. Findings and feedback from these studies were provided to the International Federation and used as the basis for this report, in addition to some supplementary consultations and research.

The field studies aimed to provide an overview of some of the major difficulties experienced by humanitarian workers, and the impact of the presence or absence of applicable law and non-legal guidelines in relation to these areas.

There were three main objectives of the field studies:

- Identify the key problem areas experienced by humanitarian workers and other parties in the conduct of international disaster response activities.
- Determine which legal and non-legal instruments are understood and applied during disaster response operations.
- Determine the impact of the various instruments on disaster response operations.

Findings

The following findings reflect the key legal and operational issues identified by the interviewees during the field studies, predominantly from the Red Cross and Red Crescent perspective.

Whilst they do not reflect the full scope of the challenges in this area, nor cover all viewpoints, these findings highlight areas of particular importance for humanitarian workers and host governments during disaster response operations and raise some important observations about the national and international legal framework.

Access to disaster-affected populations

The ability of international actors to access the territory of the disaster-affected country and the disaster-affected populations themselves is central to the provision of international humanitarian assistance. For the purposes of these studies, two key areas were addressed: government requests for international assistance, which provides the legal basis for the entry of most international actors; and the various ways in which responding international actors gain access. The experiences of the International Federation secretariat and National Red Cross and Red Crescent Societies were used as examples.

Government requests for international assistance

Most governments of the countries examined had declared a state of national emergency and had made formal requests for international assistance. These requests then formed the basis for the launch of international appeals by international humanitarian organizations and other states.

In some instances, mechanisms for international assistance were incorporated into various national laws, for example in civil protection acts. In other cases there were no specific mechanisms in relation to international disaster response.

In several cases, the requests for international assistance that had been made by governments were deemed to be unnecessary, according to some interviewees, and were motivated by the government's desire to benefit from the increased economic activity and additional resources which would flow into the country. Some humanitarian organizations were also felt to be complicit in this at times, deliberately exaggerating the scale and impact of the disaster to attract funding and resources for their own activities.

In contrast however, the governments of three of the 13 countries studied had not made a formal request for international assistance, even though assistance was considered necessary by some humanitarian workers. There were different reasons given for this.

In one country, the complex, bureaucratic and politically charged process of declaring a state of calamity, coupled with outdated national legislation on foreign contributions, made it difficult to launch an official request for international assistance. These challenges were partially overcome by a government announcement that it would accept "spontaneous gestures of solidarity" from the international community, which became the basis for extensive financial and operational international assistance for the disaster.

In the other two countries, the reasons behind the reluctance to formally request international assistance were less clear. In one instance, the government had requested assistance three times in as many years and did not wish to make yet another request to the international community. Other explanations given include the preservation of national pride, a perceived ability to be

able to deal with disasters internally, mistrust of the motivations behind the provision of international assistance and concerns that international actors would usurp the primary role of the government in responding to the disaster.

Role of the National Society of the disaster-affected state

The unique structure and legal status of the International Red Cross and Red Crescent Movement distinguishes it from many other international organizations and non-governmental organizations (NGOs). In the context of major disasters outside of conflict situations, it is the National Society, often with the assistance and coordination of the International Federation secretariat that is among the first to respond.

The International Committee of the Red Cross (ICRC) predominantly responds to conflict situations. However, there is often mutual assistance and coordination between all components of the Movement, which has been formalized in the Seville Agreement.²

In many of the countries examined, the National Society of the disaster-affected country is included in some way in national disaster plans or legislation as a responding agency. These plans or legislation detail the organizations and government agencies responsible for the various activities associated with responding to declared national disasters. In most instances, the National Society is given a specific function to perform, which in some cases extends to a very broad role encompassing health, rescue, food and non-food relief and shelter.

In situations where the scale of the disaster is greater than the capacity of the National Society, a request for assistance may be made to other National Societies or to the International Federation secretariat. This is often the mechanism that triggers international assistance by other components of the Movement. However this aspect is not necessarily expressly included in the relevant government legislation, but may be subject to other agreements with the host government as described below.

Assistance of the International Federation secretariat

In times of disaster, the primary role of the International Federation secretariat is to provide assistance to National Societies through the coordination of international appeals and other assistance from National Societies. In some instances the secretariat will also play an advisory role or provide operational assistance to National Societies through the secondment of personnel to carry out disaster response activities. The International Federation's contribution requires that it act in each country through or in agreement with its member National Society.

In most instances examined in this study, the host National Society had made a direct request for the assistance of the International Federation for a specific disaster operation, which was facilitated through the International Federation delegations located in each country and the headquarters in Geneva. Whilst most of these requests were made spontaneously by the host National Society, there were some instances where requests were made at the suggestion of the International Federation secretariat.

One National Society had been prevented from requesting the assistance of the International Federation by the host government, which did not wish to receive any assistance, either directly or indirectly, from the international community.

Assistance of other National Societies

In some countries, a number of assisting National Societies had also established delegations operating in the disaster-affected country, in a similar way to the International Federation. Unlike the International Federation these National Societies are not recognized as international organizations. Some had taken the steps necessary to be recognized as NGOs, whilst others had no legal status at all.

In one instance, however, an assisting National Society did have its own agreement with the host government and were for a time actually included as an official partner in the national disaster response plans of that country, in addition to the host National Society.

Facilitation of international humanitarian assistance

In addition to access to disaster-affected populations, international actors require additional assistance from governments to ensure that access can occur quickly and efficiently. The key challenges identified by the field studies are examined below.

Status, privileges and immunities of personnel

Many of the humanitarian workers interviewed regarded the privileges and immunities of humanitarian personnel as important for the provision of effective humanitarian assistance. In particular, delegates of the International Federation placed a great deal of importance on legal status agreements.

As stated in the previous section, the International Federation acts in each country through or in agreement with its member National Society. The legal status agreements neither replace nor affect this fundamental rule. Their purpose is to define the legal status of personnel and assets for those times when the International Federation decides to operate in a country in accordance with its own internal rules and policies.

Based on its unique membership and mandate, the International Federation has been able to conclude legal status agreements that establish its status as an international organization in the host country. They are based on the provisions contained in the 1947 Convention on Privileges and Immunities of the Specialized Agencies.³

This gives the International Federation and its staff the ability to legally operate in countries. It covers areas such as financial privileges; communications; freedom of movement; ability to conduct operations; tax exemptions; import and export of goods; protection of office premises, vehicles and goods; and immunity from jurisdiction. In addition, these agreements generally protect delegates from prosecution, arrest and detention under local laws for acts or words spoken within the context of their official duties.

Such agreements had been concluded in nearly all of the countries studied and provided the legal basis for the establishment of delegations, the hiring of local staff, opening a bank account and other important aspects. Interestingly, some interviewees could give very few examples where the privileges and immunities accorded under the status agreements had been used to resolve a specific problem in the field. This is partly the preventive effect of defining the legal status of the International Federation on the basis of the status of intergovernmental organizations. Equally, the few situations of potential prosecution or arrest were said to have been resolved or prevented as a result of individual contact and negotiations with authorities.

As indicated in some of the examples below, the legal status agreements do make a significant impact on activities such as the import of goods and tax exemptions, but are not necessarily viewed this way by field personnel.

Visas for international humanitarian personnel

An important aspect of the provision of international humanitarian assistance is the ability for international personnel to be granted entry into the disaster-affected territory. In most countries studied, this involved the granting of visas by government authorities either prior to or at the point of arrival.

In many instances, visas were granted immediately upon request by the relevant authorities. In at least one instance the visa requirements for representatives of the International Federation were waived at the point of entry in response to the urgency of the situation, on the proviso that all personnel would be properly authorized at a later date. Other flexible arrangements were also implemented by some governments, either involuntarily as a result of a lack of resources to accommodate the large influx of international assistance, or as a positive measure for expediting international assistance.

However, such experiences were not enjoyed by all. Some international personnel were excluded from the special waivers on the basis of their nationality, irrespective of the organization for which they worked. Such personnel were frequently the nationals of countries within the same region as the disaster-affected country and their exclusion or admittance seemed to be based upon the political relationships between the respective countries or depended on the outcomes of protracted negotiations between organizations, embassies and customs authorities.

In a number of cases, the type of visa issued did not provide any special status for international personnel. In some cases, international disaster response personnel were admitted on tourist visas or were provided with work visas which expired after a short period of time, requiring the worker to frequently leave the country and re-enter, causing great disruption to operational activities.

Import of relief goods and equipment

The import of relief goods and equipment was an issue of great concern to the various international actors. In most countries, the imposition of heavy taxes or cumbersome

bureaucratic procedures on the import of goods necessary for relief efforts presented a source of constant frustration for international assistance.

In relation to items required for humanitarian assistance activities, frustrations were minimized to some extent for the International Federation by the existence of legal status agreements that provided for the tax-free import of relief goods and equipment. However for others, such arrangements frequently depended upon the success of ad hoc negotiations and the establishment of positive personal relationships with government officials.

Similarly, the ability to expedite the clearance of relief goods and equipment was often dependent on ad hoc arrangements agreed at the local level between government officials and humanitarian personnel. This situation prevailed despite awareness by some personnel of the recommendation on the tax-free and expeditious import of relief supplies, reached by member states of the World Customs Organization.⁴

In several countries, it was claimed that import restrictions for relief goods, in particular for certain foods, were tightened for public health and safety reasons. However, some international workers felt that their implementation had been politically motivated. Unfortunately, these restrictions coincided with the commencement of large relief operations and created considerable costs and delays of up to three months with the implementation of a new inspection system requiring humanitarian organizations to cover the costs of inspections by several different government ministries for all food consignments.

There were some positive experiences where governments temporarily waived import taxes and significantly hastened the processing of paperwork and other administrative processes relating to relief goods and equipment. In some cases, regional agreements were put in place to facilitate the import of certain goods between nearby countries. A manual was also compiled explaining procedures and guidelines for implementing the agreements for use by the respective ministries of foreign affairs. These made a very positive impact on humanitarian assistance and effectively resolved the operational challenges by enabling fast and efficient importation of relief goods within the region.

Use of government resources and facilities

In general, the experiences of humanitarian personnel in relation to the use of government facilities were favourable, although the level of support varied dramatically depending on the resources and capacity of the government involved. Such support included:

- use of military airports;
- allocation of sites for base operations;
- accommodation for international delegates;
- allocation and free use of warehouses;
- use of hospital facilities;
- helicopter access;
- discounted or free fuel, water and electricity;
- free secondment of personnel to National Societies; and
- use of military resources including logistics, transport and rescue services.

In some countries, little or no additional support was provided by the government, or was made available only for a charge, sometimes at over-inflated prices.

Telecommunications

The import of telecommunications equipment and access to networks and bandwidth were mentioned as particular areas of concern for telecommunications specialists at headquarters level. Whilst recognizing that the import of telecommunications equipment is a sensitive issue for states because of its strategic value and possible impact on national security, the number of administrative hurdles and delays can be so extreme as to prevent effective telecommunications from being established until the disaster is over.

Awareness exists of international initiatives to regulate and improve the situation relating to the use of emergency telecommunications in times of disaster, in particular through the development of the 1998 Tampere Convention on the Provision of Telecommunications Resources for Disaster Mitigation and Relief Operations⁵ (see Box 2.1). Yet it was felt by many that overcoming these barriers depended largely on personal rapport with authorities, and even then often required long and protracted negotiations.

In one case, permission to install radio equipment in vehicles was granted by local authorities but was not communicated to other relevant government departments, resulting in the temporary military arrest of the delegates. The case was eventually resolved through negotiation.

Coordination of international humanitarian assistance

The overwhelming source of challenges to the fast and effective provision of humanitarian assistance related to the difficulties in achieving a coordinated response between the various local and international actors. These challenges were mentioned by nearly all interviewees and were also reflected in the majority of the written evaluations and literature consulted.

Government

In all situations, it was recognized that the national government of the disaster-affected country was, or should have been, the primary body coordinating the response efforts of all parties. However the practical realities of this resulted in significant frustrations both on the part of international humanitarian workers and government officials, for a number of reasons.

In some instances, international workers felt that government authorities were not appropriately resourced or did not possess the necessary knowledge or skills to carry out the tasks required of them. Particularly in large-scale disasters that involved a sudden and massive influx of international assistance, many government agencies were overwhelmed and unable to meet the demands and time pressures exerted on them. This resulted in extensive delays in various administrative processes and sometimes resulted in international organizations feeling forced to deliberately circumvent these processes altogether to ensure that humanitarian activities were not adversely affected.

In addition it was felt that some local authorities had limited knowledge and experience of the international response system and lacked an understanding of the different mandates and operating procedures of the various international agencies involved. This was seen to reduce their ability to be effective coordinators and created further tensions and misunderstandings.

Conversely, some government officials criticized some international actors for not respecting the overall coordination role of the government and not recognizing the importance of complying with government administrative procedures. It was felt that the mandates and activities of international organizations were frequently changing and that unrealistic expectations and unreasonable demands were placed on government agencies, particularly on local officials who did not have the authority to override existing bureaucratic processes. Some of these concerns were also reflected in several self-evaluations conducted by international organizations themselves.

Nevertheless, there were some positive examples where governments were able to maintain effective control and coordination of humanitarian assistance, particularly in instances where there were disaster response plans or individual memorandums of understanding in place, detailing the respective roles of the different agencies involved.

Such instruments were particularly important in determining the relationship and division of responsibilities between the government and the National Society. They were generally viewed as a useful tool in achieving effective coordination provided that the provisions were clear, detailed and well understood and applied.

In some instances, ad hoc arrangements were put in place during the course of disaster response operations where the government's coordination role was delegated in whole or in part to the host National Society or a local NGO. In other instances, a new management body was established specifically for coordinating response in certain areas, comprising representatives from government and various local and/or international organizations. These were generally viewed as positive measures which enabled more effective coordination. However, concerns were raised when the responsibility for coordination was changed too frequently.

International Federation secretariat and National Societies

Many of the challenges of coordinating international humanitarian assistance on a government level were also mirrored in the relationships between the various National Societies and the International Federation secretariat.

However, there were many positive experiences of cooperation between the various components, particularly where the International Federation secretariat was able to provide a much-needed advisory role for the National Society without taking over operational activities or dominating the public profile. Some International Federation personnel also felt that their operations were significantly enhanced by close cooperation with the host National Society, finding that they encountered less administrative barriers and delays when their activities were conducted under host National Society auspices.

United Nations agencies and NGOs

The involvement of the United Nations (UN) and its specialized agencies were not examined in great detail. However, the roles of the UN Development Programme (UNDP) and the UN Office for the Coordination of Humanitarian Affairs (OCHA) in coordinating the activities of international organizations were viewed favourably. In particular, reference was made to the positive influence of these agencies in providing an interface between the international actors and the government, particularly with administrations in the capital city. However, it was also noted that improved coordination and communication was needed between the international and local actors.

At a headquarters level it was felt that coordination between the larger humanitarian organizations, NGOs and UN agencies was steadily improving at the international level. However, there were still major challenges with the coordination and involvement of numerous smaller NGOs which emerged on an ad hoc basis in response to specific disasters and operated completely independently of the major disaster response players.

Quality and accountability of international humanitarian assistance

In nearly all cases, comments on the quality and accountability of international humanitarian assistance involved reference to the Sphere Project Humanitarian Charter and Minimum Standards in Disaster Response developed in 2000 (see Box 1.2), and the Code of Conduct for the International Red Cross and Red Crescent Movement and NGOs in Disaster Relief⁶ (see Box 1.1). Generally, these instruments enjoyed wide recognition and were well regarded by humanitarian personnel as a way of improving standards of assistance to disaster affected populations.

However, in some cases they were not always well understood or effectively applied and there was little or no evidence of any organizational compliance or documentation on these standards. There was also some disagreement about the usefulness of some of the specific indicators and concerns about their compatibility in particular country settings, where the general living standards of the population were significantly higher or lower than the Sphere standards.

Nevertheless, there were instances reported where these instruments were used in the design, implementation and evaluation of disaster response activities, as well as their inclusion in dissemination and training exercises. Furthermore, the public demonstration of commitment to quality and accountability, particularly through reference to the Sphere Project and the Code of Conduct, was also considered an important strategy for raising the profile of the organization, attracting donor support and finding favour with host governments.

In terms of specific quality control issues relating to disaster response operations, several examples of poor practice were mentioned:

- import and distribution of too many relief goods;
- employment of expatriate staff where local skills could have been optimized;

- high turnover of expatriate staff during operations resulting in loss of organizational knowledge;
- manipulation in the targeting of relief programmes and distribution of relief to certain groups by governments, funding bodies and other interest groups; and
- lack of appropriate links between relief and development activities, including prolonged and unnecessary distribution of relief goods.

Conclusions

From these studies, it is possible to draw a number of useful conclusions about the relationship between the legal framework and disaster response activities based on the experiences of personnel in the field. In addition, these studies enable some preliminary conclusions to be drawn which are relevant to the IDRL Project as a whole and provide some guidance as to future initiatives that could be taken to make improvements. These are presented below.

Key challenges in the delivery of international disaster response operations

The studies indicate that the key challenges relating to the provision of international humanitarian assistance in times of natural and technological disaster relate to several key areas: the ability to access disaster-affected populations; the facilitation of humanitarian activities; the coordination of the various international and national personnel; and the quality and accountability standards of assistance.

Central to the issue of access was the inconsistency in the ways in which different organizations could legitimately obtain access to a disaster-affected state. In some instances these challenges were caused by complex political factors which unnecessarily encouraged or prevented requests for international assistance by disaster-affected states. In other instances, the challenges related more to the technicalities inherent in the legal and policy frameworks of the various governments and agencies involved.

Many of the challenges in the facilitation of humanitarian assistance stemmed from the implementation of bureaucratic procedures relating particularly to the granting of visas, the import and movement of relief goods, and use of telecommunications equipment and networks. For the most part, the challenges were caused by the inflexibility or complexity of the systems themselves, rather than deliberate obstruction by authorities, however the latter was referred to in some instances.

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. On the one hand, 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 government officials. On the other hand, some host governments expressed concerns about the lack of respect and cooperation received from the responding international actors and consequently felt their central role had been usurped. Similar challenges were identified between the various humanitarian organizations at both the national and international level.

Finally, the issues of quality and accountability raised some concerns about the difference between acknowledging appropriate standards during appeal writing and training activities, and implementing them in the course of actual operations. A few examples of areas where quality was felt to be inadequate were also provided.

Relationship between national and international law and the facilitation of international humanitarian assistance

Nearly all of those interviewed saw a strong link between many of the challenges faced in the field and the existence and quality of national laws. In instances where specific laws relating to disaster response were in place, there was a tangible difference in the efficiency and quality of international assistance. However, in many circumstances, these disaster laws were limited to encompassing only the national response system and excluded provisions for the entry and facilitation of international actors.

Frequently, national laws and administrative procedures were not specifically designed to accommodate situations of disaster. Such laws were considered by many to be inadequate for addressing the unique circumstances of international disaster response – they were overly bureaucratic and inflexible, resulting in considerable delays for disaster response activities or encouraging international actors to spend time negotiating waivers or ignoring them altogether.

Legal status agreements were considered relevant to personnel from the International Federation, who generally saw them as a means to obtain special status and privileges to facilitate the conduct of their activities, particularly with respect to the import of relief goods.

Very few regional instruments were referred to during the course of the studies. However, in one region, agreements between neighbouring countries made a significant and positive impact on the import of relief goods from those countries, particularly when they were supplemented with operational manuals.

The link between international humanitarian assistance and international laws was not immediately apparent to many of those interviewed for these studies. Several international agreements were referred to, including the Tampere Convention and the World Customs Organization recommendation on the import of goods. However their influence on the facilitation of disaster response operations was felt to be negligible because they were not being effectively implemented.

Preliminary conclusions from the field studies relevant to the IDRL Project

The field studies proved to be a useful way to gain a perspective from the field of the challenges involved in providing international humanitarian assistance from the point of view of the various international and national actors. They also demonstrate that there are still many operational barriers to contend with, which hinder the effectiveness of disaster response operations.

The studies show that, in many cases, it is national laws and regulations which have the most direct impact on the speed and efficiency of disaster response operations. Where these laws are designed specifically for disaster and emergency situations, they can make a valuable contribution to the overall coordination and effectiveness of international humanitarian assistance for both the host government and those delivering international assistance.

However, the overwhelming experience of humanitarian workers is that national laws do not adequately respond to the increased demands and time pressure that characterizes many disaster response operations, which ultimately reduces the effectiveness of international assistance and encourages poor practices and even avoidance of authorities by humanitarian workers. As a result, there may be a need to develop models which could be incorporated into existing laws and regulations by all countries. Such models could be particularly helpful for cases where immediate international assistance is needed by the stricken country and would expedite the delivery of assistance.

On the international level, the existence and relevance of law and other regulatory instruments is not well understood, particularly in the field at operational levels. Despite the existence of many different international laws, principles, resolutions, guidelines and other instruments that have been gathered during the course of the IDRL Project, they are not widely recognized or applied in practice. There could therefore be a need for better dissemination programmes and perhaps a handbook which explains the existing laws, rules and guidelines in language which can be easily used in disaster situations.

There is also very little evidence of a close relationship between existing international and national laws and regulations. This could reflect a need for assistance and information sharing for governments that wish to harmonize their national laws, as well as bilateral or regional agreements, to better reflect the international framework.

Finally, in spite of considerable improvement, there is a need for better inter-agency coordination, involving UN agencies and others, including leading NGOs, involved in the provision of disaster management and relief. This suggests a need for the systematic discussion of these issues in a forum which involves governments, international organizations, the International Red Cross Red Crescent Movement, NGOs (international and national) and other key players.

1. Costa Rica, El Salvador, Guatemala, India, Lesotho, Malawi, Mexico, Nicaragua, Panama, Suriname, Swaziland, Zambia and Zimbabwe.
2. Agreement on the Organization of the International Activities of the Components of the International Red Cross and Red Crescent Movement adopted by consensus in Resolution 6 of the Council of Delegates of the International Red Cross and Red Crescent Movement in Seville, Spain, on 26 November 1997, ("Seville Agreement").
3. Convention on the Privileges and Immunities of the United Nations and of its Specialized Agencies, 21 November 1947, 33 UNTS 261 (entered into force 1948).
4. 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).
5. 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).
6. Code of Conduct for the International Red Cross and Red Crescent Movement and Non-Governmental Organizations in Disaster Relief (1994), prepared jointly by the International Federation of Red Cross and Red Crescent Societies and the International Committee of the Red Cross, sponsored by Caritas Internationalis*, Catholic Relief Services*, International Federation of Red Cross and Red Crescent Societies*, International Save the Children Alliance*, Lutheran World Federation*, Oxfam*, The World Council of Churches*, The International Committee of the Red Cross (*Members of the Steering Committee for Humanitarian Response).