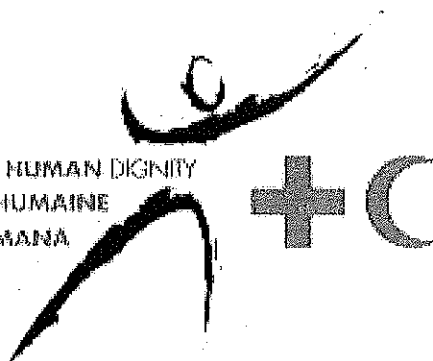


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INTERNATIONAL DISASTER RESPONSE LAWS (IDRL)

Project Report 2002-2003

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

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.

TABLE OF CONTENTS

EXECUTIVE SUMMARY.....	1
TABLE OF CONTENTS.....	5
BACKGROUND	6
COUNCIL OF DELEGATES 2001	6
OVERVIEW OF THE IDRL PROJECT	7
RESEARCH METHODOLOGY AND SCOPE.....	8
TERMINOLOGY AND SCOPE	8
OVERVIEW OF THE RESEARCH PROCESS	8
CONSULTATIONS AND INTERNATIONAL REPRESENTATION	12
KEY FINDINGS	14
THE SCOPE OF IDRL	14
THE NATURE OF EXISTING IDRL.....	15
CHALLENGES IN THE FIELD	17
AWARENESS, UNDERSTANDING AND IMPLEMENTATION OF EXISTING INSTRUMENTS	19
THE LINK BETWEEN LAW AND PRACTICE.....	20
RECOMMENDATIONS.....	22
RECOMMENDATION 1: INTERNATIONAL UNDERSTANDING AND ACCEPTANCE OF THE TERM "IDRL"	22
RECOMMENDATION 2: GREATER UNDERSTANDING OF THE NATURE, SCOPE AND CONTENT OF IDRL.....	22
RECOMMENDATION 3: IDENTIFICATION AND INCLUSION OF CORE PRINCIPLES OF IDRL IN ALL INTERNATIONAL, REGIONAL AND NATIONAL DISASTER RESPONSE INSTRUMENTS.....	22
RECOMMENDATION 4: IMPROVED IMPLEMENTATION OF IDRL INSTRUMENTS THAT FACILITATE DISASTER RESPONSE.....	23
RECOMMENDATION 5: CONTINUED DEVELOPMENT AND PROMOTION OF IDRL	23
LIST OF TABLES	
TABLE 1: IDRL PROJECT LEGAL RESEARCH STUDIES, LIST OF RESEARCHERS AND COUNTRIES.....	10
TABLE 2: IDRL PROJECT FIELD STUDIES, LIST OF RESEARCHERS AND COUNTRIES.....	11
TABLE 3: PUBLICATION ON IDRL, LIST OF AUTHORS AND TOPICS.....	11
ANNEX : LIST OF REFERENCES.....	24

For further information about this report please contact:
Ms Victoria Bannon
Coordinator, International Disaster Response Law Project
International Federation of Red Cross and Red Crescent Societies
17 chemin des Crêts, Petit-Saconnex, 1211 Geneva, Switzerland
Tel: +41 22 730 42 22 – Telefax +41 22 733 03 95 – E-mail: jdrl@ifrc.org
Website: www.ifrc.org/what/disasters/drl

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_cdbqpaper.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*.