

THE IMPACT OF REGULATORY PROBLEMS AND THE GAINS FROM LEGAL PREPAREDNESS IN RECENT RESPONSE OPERATIONS

Commissioned by the International Federation of Red Cross and Red Crescent Societies

Expert Meeting – 10 March 2015



Table of Contents

1. Introduction.....	2
1.1 Methodological note	3
2. Regulatory issues for international disaster response	4
2.1 Initiation and termination	4
2.2 Goods and equipment	8
2.3 Personnel.....	11
2.4 Transport and movement.....	13
2.5 Operations	14
2.6 Quality and accountability.....	15
2.7 Coordination.....	17
2.8 Involvement of the military and/or private sector.....	19
3. Conclusion	20
4. Bibliography.....	22
Annex I: Interviews.....	27
Annex II: Search keywords.....	32

1. Introduction¹

International cooperation to assist countries affected by natural disasters is a long-standing practice and tradition within the international community. The way disaster relief has been carried out has evolved over time and the number of actors involved has broadened while the incidence and impact of large-scale natural disasters has continued to rise in the last decade. It is worth remembering the Indian Ocean tsunami (2004); Hurricane Katrina in the US (2005); the monsoon floods in Pakistan (2010); the earthquakes in Pakistan (2005), Haiti (2010), and Japanese pacific coast, followed by a tsunami and nuclear disaster (2011); cyclone Nargis in Myanmar (2009), and typhoon Haiyan (locally known as Yolanda) in the Philippines (2013).

The large number of natural disasters, their increasing complexity² and their humanitarian consequences have called for the need for a framework which addresses the responsibilities of states and humanitarian organisations in disaster settings. The International Federation of Red Cross and Red Crescent Societies (IFRC) researched this issue extensively and brought together Governments and other key actors to provide input on how legal frameworks can contribute to improving the delivery of disaster relief. In all, over 140 governments, 140 National Red Cross and Red Crescent Societies and 40 international organizations, NGOs and NGO networks participated in a series of high-level regional forums between 2006-2007 or otherwise provided input into the drafting of the Guidelines³. The “Guidelines for the domestic facilitation and regulation of international disaster relief and initial recovery assistance” (also known as the IDRL Guidelines) were adopted by the state parties of the Geneva Conventions at the International Conference of the Red Cross and Red Crescent in 2007. Based on existing international legal and policy frameworks, the Guidelines compile existing best practice on legal facilities and offer ways to ensure both respect for sovereignty and a quick response. They in fact include a set of recommendations to states on how to prepare their laws and procedures to avoid common problems that arise when international actors offer assistance.

Since the adoption of the IDRL guidelines in 2007, the IFRC has supported National Red Cross and Red Crescent Societies to support governments in over 50 countries to assess their laws through the lens of the IDRL Guidelines. There has been growing interest in the IDRL Guidelines and in legal preparedness for international disaster response more generally. In addition to country-level advice, the IFRC has worked with partners to develop a number of additional tools on this theme, including a Model Act for the Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance (together with OCHA and IPU)⁴ and a model emergency decree on the same topic (with OCHA). These efforts have also been accompanied by attempts to promote regional cooperation on IDRL, with active engagement with many regional organizations. At the national level, various countries have adopted new laws, regulations and procedures which have been inspired

¹ This paper was commissioned by the International Federation of Red Cross and Red Crescent Societies. However, it is the product of HERE-Geneva and the views expressed do not necessarily represent those of the IFRC or its members.

² The complexity is also due to the diversity of actors responding present on the ground in response to disasters. For an in-depth analysis, cf. Schenkenberg, E., *The Jigsaw of the International Humanitarian Response System: Trends and developments in organising more effective disaster response*, January 2015.

³ IFRC (2011), *Introduction to the Guidelines for the domestic facilitation and regulation of international disaster relief and initial recovery assistance*, p. 7, available at [http://ifrc.org/PageFiles/125652/1205600-IDRL%20Guidelines-EN-LR%20\(2\).pdf](http://ifrc.org/PageFiles/125652/1205600-IDRL%20Guidelines-EN-LR%20(2).pdf)

⁴ Background report for 31st Red Cross and Red Crescent Movement Conference (2011) available at <http://www.ifrc.org/PageFiles/125652/IDRL%20progress%20report.pdf> (accessed 12 January 2015)

by the IDRL Guidelines. These efforts have led, so far, to new laws or procedures in 18 countries and draft laws pending in 15 countries⁵.

Meanwhile, over the last seven years, the International Law Commission (ILC) an organ of the United Nations has been working on “Draft articles for the protection of persons in the event of disasters.” While not yet formally decided, it is quite possible that the “Draft articles” will be presented to states in the form of a draft treaty. In August 2014, the ILC adopted an integral text and commentary of its draft articles on first reading, calling on states and international organizations to provide comments up to the beginning of 2016.

In 2011, the state parties to the Geneva Conventions and the components of the Red Cross and Red Crescent Movement affirmed the role of the quadrennial International Conference of the Red Cross and Red Crescent as “a key international forum for continued dialogue on the strengthening of disaster laws”.⁶ Accordingly, the IFRC would like to draw the attention of the participants at the 2015 International Conference both to the problem of slow progress at the national level in developing regulations for international relief and to encourage dialogue on solutions, including the possibility of further strengthening the global legal framework building upon the ILC’s efforts.

The purpose of this paper is to present new and updated and consolidated evidence to inform that discussion – in particular evidence of the degree to which previously-identified regulatory problems in operations remain common in more recent operations⁷ as well as the benefits of good legal/procedural preparedness for international assistance where applicable. The study provides case study/anecdotal information about the impact of regulatory problems and the gains from legal preparedness in recent response operations. The information presented in this paper is made of both original research and secondary data review (including IFRC literature). The present paper has made use in particular of two forthcoming reports sponsored by the IFRC as a starting point to build original evidence, namely the “Consultancy on Regulatory Issues in Recent International Disaster Response Operations” and “The Regulation of Foreign Medical Teams in the Aftermath of Sudden Onset Natural Disasters”. The paper is organised according to the structure initially used by the IFRC in its 2007 desk study used to inform discussions on the draft IDRL Guidelines at the 30th International Conference of the Red Cross and Red Crescent Movement. In particular, it covers the different areas of focus of the recommendations in the IDRL Guidelines.

1.1 Methodological note

This study used a qualitative methodology oriented around the following areas of investigation: (i) examples of regulatory problems related to international disaster response operations; (ii) examples of good practice in international disaster response operations due to existing regulatory frameworks and in reducing regulatory problems. The research included an in-depth literature review as well as semi-structured interviews with key informants, including emergency teams, logisticians and other international first-line-responders.

⁵ According to information included on the IFRC website at <http://www.ifrc.org/what-we-do/disaster-law/about-disaster-law/international-disaster-response-laws-rules-and-principles/idrl-guidelines/new-legislation-adopted-on-idrl/> (accessed 12 January 2015)

⁶ 31st International Conference 2011: Resolution 7 - Strengthening disaster law, available at <https://www.icrc.org/eng/resources/documents/resolution/31-international-conference-resolution-7-2011.htm> (accessed 12 January 2015)

⁷ Since the publication of the IFRC desk study on law and legal issues in international disaster response in 2007.

The secondary data review focused on an exhaustive literature search based on regulatory issues highlighted in the IDRL Guidelines and included documents both at the global and country level. A matrix of relevant search keywords⁸ was developed. Sources include in particular operational evaluation reports, appeals and programme reviews, news articles. Data triangulation was achieved by interviewing a range of stakeholders at different levels from a variety of institutions, and reviewing a wide range of documents. In particular, the focus of the research included the following case studies: Bohol earthquake and the 2013 Typhoon Haiyan in the Philippines; China, Sichuan Earthquake, 2008; Namibia, Floods, 2009; Israel, Forest Fire, 2010; Kenya, Drought, 2011; Pakistan, Floods, 2010-11; Chile, Earthquake, 2010; El Salvador, Floods, 2011-12; Niger, Food Security, 2012-13; Japan, Earthquake/Tsunami, 2011; the Ebola response (Liberia/Sierra Leone) 2014; Serbia-Bosnia floods, 2013-2014; Ethiopia, food security, 2011-12; Hurricane Sandy (Caribbean/US), 2012). This paper does not address earlier disasters as they were already compiled in the 2007 IFRC desk study.

Collecting anecdotal evidence through interviews with key stakeholders comes, however, with challenges as highlighted in previous reports on the same subject as well⁹. It can be quite time-consuming to set up remote telephone interviews and there is also a high turn-over of staff from one emergency to the other and identifying the right person to interview is often difficult. Specific details of a response can also be hard to collect as many of the response operations this study looked at included operations that took place a number of years ago. Despite these limitations, the study presents useful anecdotes that can be used to assess current challenges and good practices in international disaster response operations that can be linked to the presence or lack of appropriate regulatory frameworks.

2. Regulatory issues for international disaster response

In international disaster response operations, the regulatory approach taken by domestic authorities can often either enhance or limit the ability of international humanitarian actors to provide relief in a timely and effective manner. Disaster laws serve a number of critical functions. They set out clear roles and responsibilities among those involved in emergency preparations and response at the national and local level, establish funding and accountability mechanisms and help facilitate international cooperation in situations where disasters exceed domestic coping capacities. A lack of legal preparedness can negatively impact the response in many ways:

- it can cause delays in the delivery of needed aid to affected populations
- it can lead to confusions and duplications and leave gaps in the response
- it can result in inappropriate assistance and a general lack of accountability.

This section provides examples of the impact of regulatory issues in recent response operations since the adoption of the IDRL Guidelines in 2007. The research did not focus on the review and analysis of the existing legal frameworks in the countries considered. The examples below are therefore mostly related to operational details of the international disaster response operations reviewed.

2.1 Initiation and termination

⁸ An example of the matrix is available in Annex 2.

⁹ See for example the IFRC 2007 desk study and the forthcoming IFRC consultancy on regulatory issues in recent international disaster response operations.

It is a well-accepted principle that the government of the affected country should be in the lead in responding to the consequences of a disaster and that the international humanitarian community works in support and not in substitution of the affected State¹⁰. Less straightforward is the process of initiation of the international disaster response. According to the IDRL Guidelines, “if an affected State determines that a disaster situation exceeds national coping capacities, it should seek international and/or regional assistance to address the needs of affected persons”. In practice, the way affected State issue requests for international relief assistance can vary widely from context to context because of a number of reasons including procedural ambiguities in national legislation and policies.

The process of requesting international assistance can be fraught with difficulties. Once clear that the response to the disaster exceeds national capacities¹¹, governments can issue a request for international relief assistance. The timing of the request is essential in the safeguards of the lives of the affected populations.¹² The Government of China, for example, publicly stated for the first time since the response to the 1998 floods that it would welcome disaster relief assistance from the international community within three days of the destructive Sichuan earthquake on 12 May 2008¹³. All the countries and regions that have diplomatic relations with China offered help and assistance on disaster relief to China¹⁴. China initially declined foreign rescue teams reportedly because of damage to transport links in affected areas creating some frustrations¹⁵ but accepted offers of funds¹⁶ and in-kind donations¹⁷.

In the case of slow-onset disasters there may be discrepancies between the international community and the affected State on the definition of the crisis and the humanitarian caseloads as was the case for the 2008 drought in Ethiopia where the government assessed the level of the crisis as much less menacing than external humanitarian agencies¹⁸. Similarly, during the drought response in 2011, while technical needs assessments and early warning worked well between local authorities and the humanitarian community disagreements arose with national authorities and the response got stalled¹⁹.

In the case of the 2011 floods in Pakistan, while the government did not request humanitarian assistance until 7 September, approximately one month after the start of the emergency, international NGOs present in-

¹⁰ See UNGA Res. 46/182, Annex, Guiding Principle 4.

¹¹ For an in-depth analysis, cf. Schenkenberg, E., *The Jigsaw of the International Humanitarian Response System: Trends and developments in organising more effective disaster response*, January 2015.

¹² Assessing the right timeline for the response may be different in slow-onset vs. sudden-onset disasters.

¹³ CERF, Annual Report of Humanitarian/ Resident Coordinator in China on the use of CERF Grants, 2008 https://docs.unocha.org/sites/dms/CERF/China_CERF_Narrative_Report_2008.pdf

¹⁴ Asian Development Bank, People's Republic of China: Providing Emergency Response to Sichuan Earthquake, 2008, p.22: http://reliefweb.int/sites/reliefweb.int/files/resources/0D109A786BEC65A2C12575600043192A-Full_Report.pdf

¹⁵ AFP, Quake-hit China declines Australian help: official, 2008: <http://reliefweb.int/report/china/quake-hit-china-declines-australian-help-official-0> & AFP, China rejects foreign rescuers in quake catastrophe, 2008: <http://reliefweb.int/report/china/china-rejects-foreign-rescuers-quake-catastrophe>

¹⁶ Da Costa, K & Ferrero, S. (forthcoming), *Consultancy on Regulatory Issues in Recent International Disaster Response Operations*, p. 11

¹⁷ OCHA, Situation Report No. 2, Sichuan Province, China– Earthquake, 2008:

http://reliefweb.int/sites/reliefweb.int/files/resources/097B919804278D298525744900763C8F-Full_Report.pdf

¹⁸ Lautze, S., Raven-Roberts, A. & Erkinch, T., HPG Overseas Development Institute, *Humanitarian governance in the new millennium: an Ethiopian case study*, 2009, p.28: <http://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/4178.pdf>

¹⁹ Slim, H., *IASC Real-Time Evaluation of the Humanitarian Response to the Horn of Africa Drought Crisis in Somalia, Ethiopia and Kenya*, 2012, p.9 :

http://reliefweb.int/sites/reliefweb.int/files/resources/RTE_HoA_SynthesisReport_FINAL.pdf

country were convinced much earlier on of the need of a large-scale response²⁰. Many different joint and single agency assessments were carried out especially by the UN and INGOs in order to gather a more comprehensive understanding of needs. They were, however, ultimately criticised by the government of Pakistan for their lack of inter-linkages with the government's assessments and with one another and the figures rarely tallied with government's estimates²¹.

With regard to the recent and still ongoing Ebola crisis in Guinea, Sierra Leone and Liberia the international humanitarian community faced the challenge of each affected country managing the initiation of the response in a different manner. The government of Guinea as the first country affected was initially overwhelmed with the situation and did not officially acknowledge the existence of the epidemic until mid-August 2014²², which slowed down significantly the initiation of the response.²³ The governments of Sierra Leone and Liberia requested early on in the crisis international assistance and facilitated the arrival of the international humanitarian community.²⁴

States providing assistance both bilaterally or through multilateral channels generally respond to an official request or an acceptance of their offer of assistance by the affected State. In its first ever experience of receiving international disaster assistance during the 2010 forest fire, the Israeli government did not issue a general call for help but rather privileged bilateral assistance, facilitated through entities such as the European Union and the United Nations, especially for the supply of firefighting aircrafts, fire retardants and firefighters. This operation worked reportedly very smoothly²⁵. Similarly, following the 'triple disaster' in Japan in March 2011, the Japanese government accepted initially bilateral offers of assistance from 15 countries out of the 102 countries and 14 international organisations that had offered assistance²⁶. Japan benefited in particular from foreign search and rescue teams specialised in urban search and rescue and from medical teams. Aside from requested assistance from the UNDAC team, the International Atomic Energy Agency and the World Food Programme for logistical support, the Japanese government did not request support from other UN agencies. As for support from NGOs, the Government of Japan made a public statement requesting INGOs to be on stand-by: "Search and Rescue operation phase still continues in the affected areas at this moment and the access to those areas is strictly limited to rescue workers. It is also reported that there is temporary shortage of petrol in the affected area. International/foreign NGOs are recommended to wait until the situation improves so that those NGOs are able to conduct their activities in a self-sustainable way"²⁷.

On the other hand, it is not uncommon for international NGOs to activate the response without obtaining a formal agreement with the government first. In Pakistan, for example, in response to the 2011 monsoon

²⁰ House, S., ALNAP, Evaluation of Pakistan Flood Response 2011/2012: Using Oxfam GB's Global Humanitarian Indicator Tool, 2012, p.11: <http://www.alnap.org/node/11560.aspx>

²¹ Polastro, R. et al, ALNAP, Inter-Agency Real Time Evaluation of the Humanitarian Response to Pakistan's 2010 Flood Crisis, 2011, pp.29-30: <http://www.alnap.org/node/19365.aspx>

²² BBC News, Ebola outbreak: Guinea declares emergency, 14 August 2014, available at <http://www.bbc.com/news/world-africa-28787025>

²³ Interview with humanitarian personnel involved in the Ebola response.

²⁴ Ibid.

²⁵ Da Costa, K & Ferrero, S. (forthcoming), Consultancy on Regulatory Issues in Recent International Disaster Response Operations, p. 32

²⁶ OCHA, Japan Earthquake & Tsunami, Situation Report No. 4, 2011, p.3: http://reliefweb.int/sites/reliefweb.int/files/resources/B695CD6B9CF47956C12578540048D0D6-Full_Report.pdf

²⁷ OCHA, Japan Earthquake & Tsunami, Situation Report, No.6, 2011, p.3: http://reliefweb.int/sites/reliefweb.int/files/resources/8353B696BD3AF80CC12578560045B420-Full_Report.pdf

flooding, some INGOs – especially those already present in the country - activated their internal response mechanisms at the start of the crisis and about one month before the official government request of assistance²⁸. Similarly, some INGOs present in El Salvador at the time of the flooding in 2011 were concerned that the procedures put in place by the government would delay the response and they thus did not wait for an official request of assistance to activate their emergency response and assessment teams²⁹. The United Nations on the other hand, did. States have in some cases taken appropriate legal measures to regulate cases where international organisations intervene without the formal approval of the affected State. On December 27 2008, for example, the Standing Committee of China's National People's Congress passed amendments to the 1997 Law on Protecting Against and Mitigating Disasters from Earthquakes, which includes a section on relief activities carried out by foreign organisations or individuals³⁰

Challenges related to the timing of the request of international relief assistance are not the only ones that can impact adversely the response. The lack of an official request of assistance or one that appears too broad can also create confusion and hinder the response rather than facilitate it. In Chile, for example, in response to the earthquake that struck the country on 27 February 2010, there was no clear request of assistance issued by the government³¹. The government of Chile did not have real knowledge of the international relief assistance systems in place and how to channel international aid. A transfer of power at the Office of the President of the Republic at the time of the earthquake also meant a lack of clarity in the activation protocols of international humanitarian assistance. This lack of clarity had a negative impact on both the timeliness and the effectiveness of the response and led to a substantial fragmentation in both the national and international response³². In the Philippines, after Typhoon Haiyan in 2013, the authorities requested international assistance in a timely manner³³. However, the request was phrased in broad terms leading to an influx of in-kind donations which quickly overwhelmed relevant national mechanisms³⁴.

At the end of the response, in an effort to re-establish a sense of normalcy, affected States may risk declaring the end of the emergency phase prematurely. In the case of the 2010-2011 floods in Pakistan, for example, the National Disaster Management Commission initially decided that the relief phase should last three months. Despite this arbitrary target, the government eventually relied on the results of assessments conducted after

²⁸ House, S., Evaluation of Pakistan Flood Response 2011/2012: Using Oxfam GB's Global Humanitarian Indicator Tool, 2012, p.10: <http://www.alnap.org/node/11560.aspx>

²⁹ Da Costa, K & Ferrero, S. (forthcoming), Consultancy on Regulatory Issues in Recent International Disaster Response Operations, p. 72

³⁰ "Foreign organizations or individuals who, in violation of the Law's provisions, engage in earthquake monitoring activities in the territory of China or in maritime areas under China's jurisdiction without having received approval, will be ordered by the State Council departments in charge of earthquake work to halt their unlawful activities. Monitoring results and installations will be confiscated and the perpetrators will be fined from 10,000 to 100,000 yuan (about US\$1,466 to \$14,656); if the circumstances are serious, they will be fined 100,000 to 500,000 yuan (art. 86, para. 1). In addition, in accordance with the provisions of the Law on Control of Aliens' Entry and Exit, foreigners who commit such acts should have their stay in China cut short or have their credentials for residing in China revoked; if the circumstances are serious, they should be given notice to leave the country or be deported (art. 86, para. 2)", in Library of Congress, *China: Law on Earthquake Prevention and Disaster Relief Amended*, 13 January 2009, http://www.loc.gov/lawweb/servlet/lloc_news?disp3_l20540920_text

³¹ Ibid., p. 63

³² Ibid., pp. 63-64

³³ On 9 November 2013, one day after Typhoon Haiyan made landfall, the government of the Philippines welcomed offers of international assistance. See OCHA, CAP, Philippines: Typhoon Haiyan Action Plan - November 2013:

<http://www.unocha.org/cap/appeals/philippines-typhoon-haiyan-action-plan-november-2013>

³⁴ Da Costa, K & Ferrero, S. (forthcoming), Consultancy on Regulatory Issues in Recent International Disaster Response Operations, p. 90

these first three months to extend the relief phase of another six months³⁵. Some INGOs still warned, however, about the implications of the sudden disruption of emergency programmes especially where both the government and the international community lacked “adequate population tracking data to provide a clear picture of IDP movements and continuing humanitarian needs”³⁶.

2.2 Goods and equipment

Goods and equipment are an essential part of an international disaster relief operation. Goods can be part of a request for in-kind donations by the affected state and they serve to provide material assistance to affected populations. There can also be unsolicited in-kind donations by a variety of actors such as private agencies and/or individuals, private companies, donors and academic institutions. Equipment such as mobile phones, radio transmitters, medical instruments are an essential element to allow rescue teams to respond effectively. The need to regulate the entry and transit of such items to ensure their appropriateness and conformity with legal requirements must be weighed against the need to address critical needs in a timely manner. Delayed shipments due to complicated customs procedures or taxation norms, vehicles unused and in storage due to complicated registration rules³⁷ are just a few of the possible delays which can occur due to the lack of legal preparedness.

A number of processes and initiatives are in place to facilitate customs regulations, such as regional seminars on the role of customs in natural disaster relief³⁸ or regional and national simulation exercises run by regional or national stakeholders. Deutsche Post – DHL for instance runs a programme called “Get Airports Ready for Disaster” (GARD) including custom officials to explain best-practice for organizing airports to receive relief goods.³⁹ The United Nations Conference on Trade and Development (UNCTAD) implements an Automated System for Relief Emergency Consignments (ASYREC) within the already existing ASYCUDA system. ASYCUDA is an automated customs facilitation programme created by UNCTAD. The organisation is now implementing a new module specifically for relief consignments.⁴⁰

At the national level, many states have laws in place allowing for customs duty exemptions for the import of a certain type of goods including humanitarian relief and in many cases issue special arrangements on an ad-hoc basis to relax existing rules in the case of disasters. In response to the May 2008 Sichuan earthquake, China’s General Administration of Customs fast-tracked 38 overseas rescue and medical teams and 28 batches of relief supplies, including satellite phones, diesel engines, cutting machines, telecommunications equipment, and excavators⁴¹. China’s Ministry of Finance allowed foreign goods used in the relief response during the period of

³⁵ Ibid., p. 55

³⁶ Chughtai, S. & McElhinney, Oxfam, Six months into the floods. Resetting Pakistan’s priorities through reconstruction, 2011, p.6: <http://www.alnap.org/node/15890.aspx>

³⁷ IRIN News, “Global: Why International Disaster Law matters”, 16 January 2012:

<http://www.irinnews.org/report/94648/global-why-international-disaster-law-matters>

³⁸ WCO, OCHA and IFRC run a series of regional seminars about good customs practices, these seminars are attended by national customs officials and advisors (see example of Asia-pacific regional seminar:

<http://www.ifrc.org/fr/introduction/-droit-des-catastrophes/dernieres-nouvelles-et-derniers-rapports-sur-le-droit-des-catastrophes/disaster-law-newsletter-june-2012/asia-pacific-regional-seminar-examines-the-role-of-customs-in-natural-disaster-relief-58014/>)

³⁹ DP-DHL GARD Programme: http://www.dpdhl.com/en/responsibility/disaster-management/disaster_preparedness_gard.html

⁴⁰ UNCTAD’s automated system for customs data: <http://www.asycuda.org/>

⁴¹ China View, Customs speeds up entry of rescue teams, 18 May 2008, http://china.org.cn/china/wenchuan_earthquake/2008-05/18/content_15320446.htm

May 12 to August 12 to be exempt from import tariffs⁴². To facilitate another international disaster response following an earthquake in April 2013 in the same region, Chinese customs officials set up special service windows to ensure 24-hour clearance of relief materials, allowed emergency goods to pass customs without being checked as long as all required papers were submitted later and transaction fees were reduced or exempted on financial institutions in quake-hit areas in their deals on the inter-bank foreign exchange market⁴³.

The adoption of legal frameworks for disaster assistance can have a positive impact on the efficiency of the response as could be observed during the response to Typhoon Haiyan (locally know as Yolanda) in the Philippines in 2013. The Philippines have adopted a new Disaster Risk Reduction and Management Act in 2010, including a provision on international assistance and the implementing rules and regulations providing that “foreign donations and importations of humanitarian assistance shall also be guided with the International Disaster Response Law and other related guidelines as may be deemed appropriate”.⁴⁴ The response to typhoon Haiyan was overall seen as rapid and efficient. In-country regulatory issues (such as difficulties for international NGOs to register or taxation issues) were avoided. The establishment of “one-stop shops”⁴⁵ at the airports in Manila and Cebu City facilitated the entry of relief goods and equipment.⁴⁶

In the case of the international response to the floods in Namibia in 2009, a good relationship between international humanitarian actors and governmental authorities reportedly contributed to the expedited clearance of items. At the time, the Office of the Prime Minister greatly facilitated the import of relief items dispensing relief consignments to present stamp duties for clearance of goods from all the different ministries that may have had competence for it⁴⁷. Namibia adopted in 2012 a more consistent approach through the adoption of its Disaster Risk Management Act that contains a provision on the importation of relief items. Section 52(3)b provides that the Prime Minister in consultation with the Minister of Finance “must facilitate reduced and simplified customs procedures, exemption from duties, taxes and charges for donations of equipment and materials, including food, made during disaster situations”⁴⁸. In Serbia, in response to the May 2014 floods, the Customs Office Belgrade Terminal provided the presence of customs service officers around the clock to ensure timely clearance of relief aid⁴⁹. Customs posts were instructed to fill in directly the customs declaration and do the processing themselves in cases where the carrier was unable for objective reasons to hire a freight forwarder⁵⁰. The good relationship between Serbia and Germany allowed in some cases that relief items were transported as diplomatic mail from the Serbian embassy in Germany to avoid any delays with regard to customs procedures.⁵¹

⁴² China Daily, China earmarks \$9.7 b for quake relief, 19 August 2008, http://www.chinadaily.com.cn/business/2008-08/19/content_6949116.htm

⁴³ GB Times, Quicker transfer for foreign quake aid, 22 April 2013, <http://gbtimes.com/china/quicker-transfer-foreign-quake-aid>

⁴⁴ Ibid.

⁴⁵ «One-stop-shops» have been put in place in the Philippines, Indonesia and Central American countries. They were established to streamline the customs procedures for humanitarian organisations bringing relief goods into the country. Key staff from different ministries is brought together in one single location and is this way expediting custom clearances.

⁴⁶ Hofmann, C., Fisher, D., Schmidt, M., Nogra, J. (2014): DRD – Learning Review of the cooperation between the Government of the Philippines and humanitarian actors in their response to typhoon Yolanda.

⁴⁷ Da Costa, K & Ferrero, S. (forthcoming), Consultancy on Regulatory Issues in Recent International Disaster Response Operations, pp. 22-23

⁴⁸ Ibid., p. 23

⁴⁹ InSerbia News, Floods in Serbia: Humanitarian Aid Delivery Made Easier, 19 May 2014, <http://inserbia.info/today/2014/05/floods-in-serbia-humanitarian-aid-delivery-made-easier/>

⁵⁰ Ibid.

⁵¹ Interview with humanitarian personnel.

If the customs department does not employ a special regulation that applies to a disaster situation, humanitarian goods may be treated as if they are regular imports. During the operations in the Horn of Africa in 2011, the delivery of food was substantially delayed. This was due in part to delays in clearance at transit airports and the retroactive implementation of a new law concerning the imports of food. As in many other emergencies, lengthy customs inspections on arrival added to the time it takes to get the required assistance to where it needs to be⁵². Because of cumbersome regulations, the process for importing humanitarian goods into Niger in response to the 2012-2013 food insecurity crisis reportedly took 3 to 4 weeks⁵³. In Haiti, following the earthquake in 2010, water trucks remained parked for months because of the complex registration process in the country⁵⁴.

When customs procedures are already adapting to exceptional circumstances, there may be additional challenges in case of disaster responses. In Cuba, for example, following embargos by some countries and because of its planned economic system, there are certain limits to the import of products from abroad. Following Hurricane Sandy in 2012, humanitarian actors experienced delays in obtaining import permissions for relief goods despite efforts put in place by the Cuban government to facilitate importation procedures.⁵⁵ With support from the IFRC, the Cuban Red Cross (CRC) has engaged the Cuban government on the need to have an adapted legal framework for such circumstances and efforts in this sense remain a priority for the CRC⁵⁶.

Most recently, the international Ebola response in Liberia and Sierra Leone experienced similar challenges. Delays were experienced in September 2014 at the Lungi airport in Sierra Leone because of lengthy import and clearance procedures due to challenges in following the standard fast-track process⁵⁷. Landing and cargo handling fees were not waived⁵⁸. There were also reports of shipping containers of medical supplies waiting to be cleared up to two months in the port of Freetown⁵⁹ in some cases allegedly for failure of paying bribes⁶⁰. Similarly in Liberia, there were reports of relief supplies taking up to a month to be cleared from customs because of a failure of the clearing agent to sign the appropriate forms⁶¹. The Logistics Cluster in Liberia started working as soon as established in September 2014 with partners and the relevant authorities to resolve constraints faced by partners regarding access to cargo in the port and airport in Monrovia as delays and challenges were reported, due to a lack of clarity surrounding procedures required for entry⁶².

⁵² IFRC, *Disasters in Africa, The case for legal preparedness*, 2011:

http://www.ifrc.org/PageFiles/125636/Disasters%20in%20Africa_2011.pdf

⁵³ Da Costa, K & Ferrero, S. (forthcoming), *Consultancy on Regulatory Issues in Recent International Disaster Response Operations*, p. 76.

⁵⁴ IRIN News, "*Global: Why International Disaster Law matters*", 16 January 2012:

<http://www.irinnews.org/report/94648/global-why-international-disaster-law-matters>

⁵⁵ Ferrario, G., *Fortaleciendo la resiliencia de las comunidades afectadas por el huracán Sandy en Cuba, Evaluación de la operación huracán Sandy en Cuba 2012-2013*, p.9.

⁵⁶ *Ibid.*, p. 50.

⁵⁷ Logistics Cluster, *Sierra Leone Ebola Response: Meeting Minutes*, 29 September 2014,

https://www.humanitarianresponse.info/sites/www.humanitarianresponse.info/files/events/minutes/SLE_Log_Meeting%20Minutes_140929_V1.pdf

⁵⁸ *Ibid.*, p. 2

⁵⁹ New York Times, *Ebola Help for Sierra Leone Is Nearby, but Delayed on the Docks*, 5 October 2014,

http://www.nytimes.com/2014/10/06/world/africa/sierra-leone-ebola-medical-supplies-delayed-docks.html?_r=0

⁶⁰ Foreign Policy, *Sierra Leone's Ebola Epidemic is Spiraling Out of Control*, 10 December 2014,

<http://foreignpolicy.com/2014/12/10/sierra-leones-ebola-epidemic-is-spiraling-out-of-control/>

⁶¹ Interview with humanitarian personnel.

⁶² Logistics Cluster, *Ebola Outbreak: Situation Update*, 11 September 2014, p.2,

<http://www.logcluster.org/document/situation-update-11-september-2014>

Special goods or items may incur particular hurdles. “Japan's stringent customs regulations on importing animals delayed a Swiss search and rescue team from getting their nine highly trained dogs to the quake zone quickly”⁶³. In China, for example, the general rule is that pets coming from abroad need to be quarantined for more than 3 months before being allowed into the country. During the 2008 earthquake response, however, the Chinese authorities allowed entry of foreign rescue dogs relieving foreign search and rescue teams from the strict application of the general rule⁶⁴. Humanitarian organisations tend to experience particular challenges in the import and use of telecommunications and IT equipment as well, in particular with regard to newer technologies. As it happened in the international disaster response operations in previous years⁶⁵, humanitarian organisations engaged in the response to the 2010 Pakistan floods experienced serious difficulties in getting frequency allocations and the clearance of communications equipment⁶⁶. Customs delays added at least two weeks to the deployment of Very Small Aperture Terminals (VSATs)⁶⁷.

In some instances, relief goods and equipment must transit through the territory of other countries on their way to the affected state and as such they are subject to additional customs controls. Flights carrying food for drought-stricken Horn of Africa in 2011, including Somalia, Ethiopia and Kenya, were delayed because of a delay in clearance permissions in Nairobi, Kenya⁶⁸. Administrative problems that prevented immediate delivery of food aid attracted strong criticism from the humanitarian community including donors⁶⁹. During the crisis of 2012 and 2013 in Niger, the port of Cotonou in Benin and its cargo terminal experienced significant merchandise saturation which led to delays in the arrival of relief materials in Niger⁷⁰. In the Ebola response, some ports imposed restrictive measures or even bans for vessels that first stopped in an affected country port. Regional ports (such as Dakar – Senegal; Banjul – Gambia; Bissau – Guinea -Bissau; Douala – Cameroon; Pointe – Noire – Republic of Congo) implemented protective measures or even refused entry to vessels and/or crews in the case they had called at one of the three affected countries’ ports⁷¹.

2.3 Personnel

There are normally specific regulations granting entry to foreign workers into a country. Beyond the need for visas, there may be specific regulations to allow certain categories of workers wishing to practice in that country. In Israel, for example, a work permit, especially for health professionals and other technical professionals, is subject to a government official licence requiring a full revalidation procedure including

⁶³ ABC News International, Foreign Rescue Team Delayed by Japanese Bureaucracy, 13 March 2011, <http://abcnews.go.com/International/japanese-bureaucracy-delays-foreign-search-rescue-teams/story?id=13126904>

⁶⁴ Da Costa, K & Ferrero, S. (forthcoming), Consultancy on Regulatory Issues in Recent International Disaster Response Operations, p. 15

⁶⁵ See IFRC (2007), Law and Legal Issues in International Disaster Response: a desk study, p. 109.

⁶⁶ OCHA-Pakistan, Pakistan Humanitarian Bulletin, Issue 6/11, November 2010, p. 2, http://reliefweb.int/sites/reliefweb.int/files/resources/2DAF705B69A25002C12577D8004FE944-Full_Report.pdf

⁶⁷ NetHope (2011), Information and Communication Technology Usage in the 2010 Pakistan Floods, p. 22, available at <http://nethope.org/images/uploads/casestudies/ICTin2010PakistanFloods.pdf>

⁶⁸ Al Jazeera, *Red Tape Delays Africa Aid Airlift*, 27 July 2011, <http://english.aljazeera.net/news/africa/2011/07/201172771619757561.html>

⁶⁹ Devex, *Stuck in Customs: Aid to East African Drought Victims*, 28 July 2011, <http://www.devex.com/en/blogs/the-development-newswire/wfp-airlifts-food-aid-to-somalia-albeit-a-little-late>

⁷⁰ Da Costa, K & Ferrero, S. (forthcoming), Consultancy on Regulatory Issues in Recent International Disaster Response Operations, p. 79

⁷¹ Logistics Cluster, *Ebola Outbreak: Situation Update*, 11 September 2014, p.2, <http://www.logcluster.org/document/situation-update-11-september-2014>

passing an exam⁷². The 2010 Israel forest fire was mostly a military operation but the authorities did ease up visa requirements for foreign teams⁷³. Granting access to foreign aid workers can help bring in specialists in disaster and emergency relief especially when such skills lack in-country. Following Cyclone Nargis in 2008, however, Myanmar refused to grant visas to international aid workers for weeks after it struck⁷⁴. Problems also re-emerged after the initial international disaster response operations were over⁷⁵. Because visa procedures were not simplified, many humanitarian workers eventually entered China in the wake of the Sichuan earthquake in 2008 as tourists after unsuccessful attempts to secure a letter of invitation from local authorities⁷⁶.

Facilitation of visas for foreign aid workers can be dependent on ad-hoc procedures with mixed results depending on the personal dispositions of specific officials. As with customs, visa procedures in Namibia following the 2009 floods were handled and facilitated through the use of high-level diplomacy and the good relationship between aid organisations and Namibian authorities⁷⁷. Similarly, in Kenya, humanitarian organisations experienced different treatments as they counted on ad-hoc procedures or the goodwill of the authorities. In some cases, foreign medical personnel could be deployed without undergoing the lengthy process of license recognition. After the 2011 Tsunami, the Japanese Ministry of Health, Labour and Welfare (MHLW) issued a note to the Local Emergency Management Agency (LEMA) clarifying that the minimum treatment of foreign medical teams could be acceptable under the statute of criminal law which would overrule the Medical Act requiring foreign doctors to have the appropriate license in the country⁷⁸.

In other cases, humanitarian organisations experienced difficulties obtaining a visa or work permit for expatriates and preferred to hire professionals already in the country⁷⁹. In Pakistan, a country with generally strict visa procedures, the government granted visas upon arrival to the humanitarian personnel deployed following the 2010 floods⁸⁰. The Ministry of Interior as of 18 August 2010 instructed all Pakistan missions abroad to grant 3-month 'relief work' visas to foreign aid workers taking part in the floods response⁸¹. Personnel from well-known humanitarian organisations were granted a 3-month visa upon arrival free of charge by immigration authorities at the airports⁸². Humanitarian organisations engaged in a similar response in Pakistan the following year, however, did not benefit from the same facilitations⁸³. Significant constraints were also registered in Ethiopia in 2011 where the government had consistent objections to international staff

⁷² Da Costa, K & Ferrero, S. (forthcoming), Consultancy on Regulatory Issues in Recent International Disaster Response Operations, p. 36.

⁷³ Ibid., p. 15

⁷⁴ IRIN News, "Myanmar: First Visas Issued to International Relief Teams", 07 May 2008:

<http://www.irinnews.org/report/78094/myanmar-first-visas-issued-to-international-relief-teams>

⁷⁵ IRIN News, "Myanmar: Fresh Visa Headaches for Aid Workers", 29 June 2009:

<http://www.irinnews.org/report/85049/myanmar-fresh-visa-headaches-for-aid-workers>

⁷⁶ Da Costa, K & Ferrero, S. (forthcoming), Consultancy on Regulatory Issues in Recent International Disaster Response Operations, p. 16.

⁷⁷ Ibid., p. 26

⁷⁸ De Ville de Goyet, C., Perez Calderon, L, Sarmiento, J., Nobhojit R., (forthcoming), The regulation of Foreign Medical Teams in the Aftermath of Sudden Onset Natural Disasters, p.27.

⁷⁹ Da Costa, K & Ferrero, S. (forthcoming), Consultancy on Regulatory Issues in Recent International Disaster Response Operations, p. 48.

⁸⁰ IASC (2011), *Inter-Agency Real-time Evaluation of the Humanitarian Response to Pakistan 2010's Flood Crisis*, p. 33, <http://www.alnap.org/node/19365.aspx>

⁸¹ Foreign organisations and foreign workers also needed a no-objection certificate (NOC) to operate and travel within Pakistan. For more information on the NOCs please refer to the section on 'Transport and Movement' below.

⁸² Da Costa, K & Ferrero, S. (forthcoming), Consultancy on Regulatory Issues in Recent International Disaster Response Operations, p.58

⁸³ Ibid.

and handled with considerable delays the process of approval of project proposals and MoUs with international NGOs⁸⁴. In some cases the type of visa for a country varies depending on the region within the country. In Cuba for example it is necessary to obtain a different visa to visit the interior of the country, a tourist visa is not sufficient and the process for obtaining such a visa depends on the nationality of the person who is requesting it.⁸⁵

In the Philippines, the Bureau of Immigration assisted foreign aid workers and the media engaged in the Typhoon Haiyan response in expediting the processing of their respective visas. Foreign aid workers and international media were no longer asked to present a six-month valid passport and their return ticket to enter into the Philippines and the typhoon-ravaged areas⁸⁶. There were reported inconsistencies, however, in the application of these expedited practices as the length of stay allowed varied reportedly from port of entry to port of entry⁸⁷. Additionally, "a few individual cases of delay were also noted for nationals of certain countries not normally eligible for visa-free entry"⁸⁸.

The adoption of legal frameworks for disaster assistance can have a positive impact on the efficiency of the response as could be observed in the responses to the 2009 West Sumatera earthquake and the 2010 Yogyakarta volcanic eruption in Indonesia. Thanks also to the work of the Indonesia Red Cross (Palang Merah Indonesia or 'PMI') and the IFRC in the wake of the 2004 Tsunami, the Indonesian government enacted a new law on disaster management in 2007 and issued subsequent regulations and guidelines between 2008 and 2010 drawing upon the IDRL Guidelines. At the time of the earthquake and volcanic eruption, some of the legal facilities were therefore in place and put to test. In 2009, the Indonesian National Board for Disaster Management or 'BNPB' coordinated the involvement of the relevant agencies/ministries under a 'one-roof service' at Padang airport and seaport to facilitate the entry of international personnel. The 'one-roof service' was believed to have been successful in facilitating the entry of relief goods and personnel during the response and was later codified through the creation of the Supporting Post in Guideline 22/2010⁸⁹.

2.4 Transport and movement

Freedom of movement and access to the people and communities affected by a disaster are most important for humanitarian organisations to implement their work. In some cases there may be administrative/bureaucratic restrictions. In Pakistan, humanitarian organisations reported in 2010 that traffic police stopped trucks carrying relief commodities from passing through the checkpoints⁹⁰. In China, foreign aid workers were in some cases asked by the authorities to stay in Beijing for a few days - reportedly up to ten

⁸⁴ Sandison, P., Oxfam (2012), Evaluation of Ethiopia Drought Response 2011/2012: Using Oxfam GB's Global Humanitarian Indicator Tool, p. 11: <http://www.alnap.org/node/10744.aspx>

⁸⁵ Ferrario, G., Fortaleciendo la resiliencia de las comunidades afectadas por el huracán Sandy en Cuba, Evaluación de la operación huracán Sandy en Cuba 2012-2013, p.9.

⁸⁶ Philippines Bureau of Immigration, *Visa Requirements for Foreign Aid Workers to be Eased*, 14 November 2013, <http://www.immigration.gov.ph/index.php/faqs/58-november-2013-press-releases/389-visas-requirements-for-foreign-aid-workers-to-be-eased-bi>

⁸⁷ Interview with humanitarian personnel.

⁸⁸ Hofman, C., Fisher, D., Schmidt, M., Nogra, J. (2014), DRD - Learning Review of the Cooperation between the Government of the Philippines and humanitarian actors in their response to Typhoon Yolanda, pp. 17-18, <http://www.drddinitiative.org/v2/files/armadillo/media/DRDlearningreviewFINAL5Aug.pdf>

⁸⁹ IFRC (2014), International Disaster Response Law (IDRL) in Indonesia, p. 42, <http://www.ifrc.org/Global/Publications/IDRL/country%20studies/Indonesia%20IDRL%20Report%20FINAL.pdf>

⁹⁰ Logistics Cluster, Pakistan Floods, Meeting Minutes, August 2010: http://www.logcluster.org/sites/default/files/documents/meeting_minutes_peshawar_100807

days - until they received the appropriate permission for them to travel to the affected areas⁹¹. In Cuba, following Hurricane Sandy, the only foreigners allowed to visit affected communities were the delegates of the Red Cross Movement, due to the Movement's long-standing relationship with the government⁹².

Restrictions of freedom of movement are frequently experienced in situations of armed conflict or other situations of violence.⁹³ It becomes very challenging when a natural disaster occurs in a context of an armed conflict, such as the Pakistan floods in 2010. In this case the response to the floods was complicated in certain areas where humanitarian organisations were refused access.⁹⁴ A no-objection certificate (NOC) for the movement of foreigners (also known as "security clearance") was required in certain parts of Pakistan. Officially, NOCs were required for travel in all "prohibited" areas (as defined in the "List of open and prohibited areas" issued by the Ministry of Foreign Affairs). However, the actual application of this policy varied greatly across the different provinces and districts⁹⁵. Similarly, in Ethiopia in 2010, the government limited humanitarian access to the Fik zone of the Somali region while there were isolated reports of regional police or local militia blocking NGO access to particular locations on particular days, citing security concerns as the reason for such restrictions⁹⁶. Another reason for limited access to affected populations is the acceptance of humanitarian organisations, their mandate and personnel.⁹⁷ In most situations of natural disasters however there have not been any limitations to the freedom of movement for humanitarian organisations. In some situations, such as during the response to the Ebola epidemic in Sierra Leone, the government put in place travel restrictions to districts which were most affected by the virus. Humanitarian workers however received travel passes to be able to access those areas.⁹⁸

2.5 Operations

The timeliness and appropriateness of the response is dependent on a multitude of different factors. While relaxation of existing procedures and introduction of new ones specific to international disaster response may facilitate the arrival of personnel, goods and equipment in the affected state, specific provisions will also be needed for foreign humanitarian actors to work in-country.

Obtaining domestic legal personality allows organisations to benefit from special regulations like tax-exemption status and to carry out any activities that require a legal status in that country such as enter into contracts. In February 2009, the Government of Ethiopia adopted the Proclamation to Provide for the Registration and Regulation of Charities and Societies (CSP), Ethiopia's first comprehensive law governing the registration and regulation of NGOs, including INGOs. While income from grants, donations and membership fees are not subject to tax, Charities and Societies must pay tax on other items. Organizations carrying out humanitarian activities are exempt from paying custom duties on imported items, and organizations that work with international organizations that have agreements with the Ethiopian government are exempt from paying

⁹¹ Da Costa, K & Ferrero, S. (forthcoming), Consultancy on Regulatory Issues in Recent International Disaster Response Operations, p. 16

⁹² Ferrario, G., Fortaleciendo la resiliencia de las comunidades afectadas por el huracán Sandy en Cuba, Evaluación de la operación huracán Sandy en Cuba 2012-2013, p. 28.

⁹³ IFRC (2007), Law and Legal Issues in International Disaster Response: a desk study, p.122.

⁹⁴ Interview with humanitarian personnel.

⁹⁵ OCHA Pakistan (2013), Humanitarian Response Pakistan: Humanitarian access,

<http://www.pakresponse.info/PolicyGuidelines/HumanitarianAccess.aspx>

⁹⁶ US DoS (2011), Country Reports on Human Rights Practices for 2011: Ethiopia, p. 19,

<http://www.state.gov/documents/organization/186406.pdf>

⁹⁷ Ibid.

⁹⁸ Interview with humanitarian personnel.

the VAT in some circumstances⁹⁹. CSP Article 68 requires all charities and societies to register. It further requires foreign organizations to obtain a letter of recommendation from the Ethiopian Ministry of Foreign Affairs¹⁰⁰. During the response to the 2011 crisis in Ethiopia, authorities were reportedly reluctant to register new humanitarian agencies in the country¹⁰¹.

In Namibia, it was reported that humanitarian organisations were largely exempted from paying Value-Added Tax (VAT) up to 2012. A new law was reportedly passed in 2012, however, imposing the payment of VAT to humanitarian organisations¹⁰². The Philippines Bureau of Internal Revenue confirmed that “under Section 18 of Republic Act 10121 or the Philippine Disaster Risk Reduction and Management Act of 2010, international humanitarian assistance in the form of relief goods are exempt from import duties and value-added tax (VAT). Section 18 of RA 10121 authorizes imported relief goods in accordance with Section 105 of the Tariff and Customs Code of the Philippines as amended, which exempts these goods from import duties upon compliance with regulations set by the Bureau of Customs.” Foreign aid, however, was only treated as duty-exempt and VAT-free if coursed through accredited relief agencies like the Department of Social Welfare and Development (DSWD) and the National Disaster Risk Reduction and Management Council (NDRRMC)¹⁰³. As of April 2014, House Bill 4054 had been tabled for consideration by lawmakers in the Philippines’s Congress. The law would introduce a VAT exemption for all donated imported medical or educational goods, and goods donated as humanitarian relief or for similar purposes by amending Section 107 of the National International Revenue Code, which subjects goods to VAT at a ten percent rate¹⁰⁴.

While INGOs were generally de facto granted the flexibility to work in response to the Japan earthquake and tsunami of 2011 without having registered as not-for-profit organisations in the country, this meant that opening bank accounts and entering into contracts to hire local staff was not possible. Some organisations resorted to some practical solutions such as issuing contracts and make payments through their regional office¹⁰⁵. As spelled out in a recent review of the experience of an INGO response in Japan, Japanese labour laws and permit-related issues need careful attention from INGOs trying to register in the country. Japanese employment contracts are generally long-term and have embedded compulsory elements of social insurance (such as workmen’s compensation, health and employment insurance, and pension benefits)¹⁰⁶.

2.6 Quality and accountability

⁹⁹ The International Center for Not-for-Profit Law (2014), NGO Law Monitor: Ethiopia, <http://www.icnl.org/research/monitor/ethiopia.html>

¹⁰⁰ Ibid.

¹⁰¹ Da Costa, K & Ferrero, S. (forthcoming), Consultancy on Regulatory Issues in Recent International Disaster Response Operations, p. 49

¹⁰² Ibid., pp. 27-28

¹⁰³ GMA News, BIR chief: Donations are tax-exempt if coursed through right agencies, 14 November 2013, <http://www.gmanetwork.com/news/story/335482/economy/finance/bir-chief-donations-are-tax-exempt-if-coursed-through-right-agencies>

¹⁰⁴ Republic of the Philippines – House of Representatives, Solons seek VAT exemption of donated imported goods for humanitarian relief, medical and education uses, 12 April 2014, <http://www.congress.gov.ph/press/details.php?pressid=7791>

¹⁰⁵ Interview with humanitarian personnel.

¹⁰⁶ Komino, T. (2014), Role of International NGO in an Unprecedented Disaster in Japan, in Shaw, R. ed. (2014), Tohoku Recovery. Challenges, Potential and Future, pp. 13-26

There has been a limited focus in recent years on the role of affected states to regulate the appropriateness and accountability of international disaster assistance while a number of efforts have been put in place by the international humanitarian community itself¹⁰⁷. While many of the legal barriers encountered by international responders are the result of rules and regulation which predate the disaster, affected states do have legitimate concerns about who and what enters their territory as part of an international disaster response. While not the norm, examples of inappropriate assistance can be found across different international disaster response operations.

The use of in-kind donations constitutes a frequent example of inappropriate assistance when they do not respond to specific requests and/or assessed needs. Following the Haiti earthquake in 2010, a large number of relief items flooded the country. Once the ports were operational they quickly became clogged up with useless in-kind donations, such as expired medication or with goods that could not be collected because there was no way of transporting them¹⁰⁸. Similarly, in the Philippines after typhoon Haiyan, containers and aircrafts filled with clothing and medications reached the country and sometimes ended up staying for weeks at the airport. Particularly difficult to handle were donations of medicines, especially those requiring the respect of cold chain protocols during their transportation, which were extremely difficult to maintain considering the logistical challenges at the time.¹⁰⁹

The quality of the work of the international responders and the way aid is used may also be under great focus because of the lack of adequate oversight. After the earthquake and tsunami of 2011 in Japan, for example, despite reassurances from the Japanese government and the Japanese Red Cross that they had the resources needed to respond to this disaster, several organisations solicited donations and raised substantial funds for this disaster¹¹⁰. Israel is also currently considering liability issues regarding aid provided by foreign crews. For example it is not yet clear in the country what is the legal coverage should a person gets accidentally hurt following an intervention by a foreign medical doctor during a disaster¹¹¹. Based on its experience of the international disaster response to the 2010 earthquake when several dozens of humanitarian organisations entered the country, the Haitian government recently started an “NGO-Project” with the aim to better understand which actors are still present on the ground and what projects they are implementing. Consultations with NGOs are ongoing and a number of working groups have been created.¹¹² Similarly, the government of Pakistan requires international NGOs to sign a Memorandum of Understanding (MoU), which is also necessary to obtain visas for international staff, banking and other administrative issues. A new dedicated unit for NGO registration and monitoring features currently in a newly-proposed legislation.¹¹³

Overall the adequacy, timeliness and equity of international assistance will substantially affect its quality. For disasters triggered by sudden natural hazards, such as earthquakes or extreme weather events, for example,

¹⁰⁷ For an in-depth analysis, cf. Schenkenberg, E., *The Jigsaw of the International Humanitarian Response System: Trends and developments in organising more effective disaster response*, January 2015.

¹⁰⁸ GPPI/URD (2010), *IASC Real-time Evaluation in Haiti*, http://www.urd.org/IMG/pdf/Haiti-IASC_RTE_final_report_en.pdf

¹⁰⁹ Interview with humanitarian personnel.

¹¹⁰ OCHA (2013), *Unsolicited in-kind donations and other inappropriate humanitarian goods*, http://emergency-log.weebly.com/uploads/2/5/2/4/25246358/ubd_report_eng_-_final_for_printing_2.pdf

¹¹¹ Da Costa, K & Ferrero, S. (forthcoming), *Consultancy on Regulatory Issues in Recent International Disaster Response Operations*, p. 41.

¹¹² Ibid.

¹¹³ Tamminga P. & Manzoor, R., *Reviewing the Draft Certification Model: A Case Study in Pakistan*, SCHR, 13 May 2014, p.11.

the speed of response has been varying significantly over the past ten years. According to the Global Humanitarian Assistance Report for 2014, “the response in 2005 to the UN-coordinated appeal following the Indian Ocean earthquake-tsunami saw more than double the proportion of needs met in the first month than the appeal following Typhoon Haiyan in the Philippines in 2013. Again, the proportion of needs met in the first month of the Haiti appeal (49%) was more than double that at the same point following the Pakistan floods (24%). It was only around the fifth month after each of the Haiti earthquake and the Pakistan floods that the differences began to level out and both saw over 65% of their requirements met. Yet, at the same point, the proportion of needs met for Typhoon Haiyan was trailing at just above 55%”¹¹⁴.

2.7 Coordination

Coordination problems at the country level can also cause delays in the delivery of aid and/or contribute to duplications and significant gaps in the response. In the global response to the Ebola crisis in West Africa, for example, the confusion and lack of coordination have reportedly delayed shipments of much needed supplies during the last quarter of 2014¹¹⁵. The lack of a clear focal point and the inadequate coordination between the national level, the prefectures, the municipalities, civil society actors and private entities led to delays and confusion in dispatching humanitarian goods in the early days of the response to the Japan earthquake and consequent tsunami in 2011¹¹⁶. Information sharing is an important part of coordination and clear communication about available assistance in a country is of the utmost importance, especially with regard to medical facilities. In Haiti, for example, a mobile dialysis centre was operational after five days but it was however not publicized enough to receive a large number of patients.¹¹⁷

In contexts where the government shows very strong central leadership in the coordination of the response, coordination between national, regional and international actors can be seen as positive, although not always. National coordination mechanisms worked reportedly well after the earthquake in Sichuan, China and were crucial in supporting reconstruction efforts.¹¹⁸ At the beginning of the 2010 floods response in Pakistan, a State with traditionally strong central leadership, reviews found that coordination was challenging and cases of duplications for example in food distribution were common¹¹⁹. A review of the floods response by the Pakistani National Disaster Management Agency (NDMA) noted that coordination was one of the most challenging and complex aspects of the relief phase whether between centre-province, government-UN, inter-agency or within the overall humanitarian community in general¹²⁰. Data sharing improved substantially the level of coordination among the many different humanitarian actors.

¹¹⁴ Development Initiatives (2014), Global Humanitarian Assistance Report 2014, p. 82,

<http://www.globalhumanitarianassistance.org/wp-content/uploads/2014/09/GHA-Report-2014-interactive.pdf>

¹¹⁵ Sun, L. “Global response to Ebola marked by lack of coordination and leadership, experts say”, 11. September 2014: http://www.washingtonpost.com/national/health-science/global-response-to-ebola-marked-by-lack-of-coordination-and-leadership-experts-say/2014/09/11/35365264-39dc-11e4-8601-97ba88884ffd_story.html

¹¹⁶ Da Costa, K & Ferrero, S. (forthcoming), Consultancy on Regulatory Issues in Recent International Disaster Response Operations, p. 87.

¹¹⁷ De Ville de Goyet, C., Perez Calderon, L, Sarmiento, J., Nobhojit R., (forthcoming), The regulation of Foreign Medical Teams in the Aftermath of Sudden Onset Natural Disasters, p.35.

¹¹⁸ Ibid. p.42

¹¹⁹ Think Ahead (2011), Pakistan Floods 2010. The DEC Real-time Evaluation Report, p. 9, <http://www.alnap.org/node/7621.aspx>

¹²⁰ Pakistan National Disaster Management Authority (2011), Pakistan NDMA Review following 2010 floods, p. 2, <http://www.alnap.org/node/14104.aspx>

Though an extreme example, it may be helpful to consider the post-2010 earthquake response in Haiti to look at the consequences of a lack of coordination. The international actors who responded in Haiti were a varied group and OCHA estimated that 400 organisations were operational in the country already by the end of the first month of the response, i.e. by January 2010¹²¹. By December 2010 the UN health cluster alone reportedly had 420 participating organisations in the country.¹²² The international community engaged very little with national organisations, local authorities and civil society, which led in some cases to a duplication of efforts and the setting up of parallel structures¹²³.

Efforts carried out at the national level by the National Societies in collaboration with the IFRC have shown the benefits of national coordination fora dedicated to the review and implementation of IDRL-related provisions. In Colombia, for example, the efforts of the Cuban Red Cross to promote IDRL have translated in the establishment of a formal space to coordinate and discuss IDRL-related issues including the review of present challenges and anticipation of future needs¹²⁴. Since November 2014, the Colombian government has also been officially championing IDRL at the regional level in an effort to strengthen disaster regulations through a cross-border approach. At that time, in November 2014, the volcanos Chiles and Cerro Negro, which are found on the border between Colombia and Ecuador, presented increased volcanic activity causing several earthquakes and tremors and putting the lives of tens of thousands of people at risk. Colombia activated its emergency provisions according to the IDRL guidelines, including the establishment of the working group of the IDRL Commission, mainly to deal with issues related to the mobilization of humanitarian staff across the border¹²⁵.

Improving humanitarian coordination has been a major theme on the UN agenda in the past 10 years. The cluster approach was introduced as part of the international humanitarian reform in 2005¹²⁶. The clusters were meant to address gaps and strengthen the effectiveness of humanitarian response through partnerships by clarifying the division of labour among organisations, and better defining their roles and responsibilities within the different sectors. Overall, the cluster approach has received positive feedback¹²⁷. One of its major shortcomings, however, has been the failure to engage sufficiently with national and local authorities and actors. There have been examples of positive collaboration as in Myanmar where clusters have strengthened regional and national response capacities¹²⁸. In the Horn of Africa, UNICEF – as a lead for the nutrition and water, sanitation and hygiene (WASH) clusters - has played a significant role in building national capacity to coordinate humanitarian response in Kenya and Ethiopia¹²⁹. More generally, however, experience has shown a lack of alignment between the clusters and national/local actors. Lack of clear national counterparts and language barriers can also for example eventually lead to parallel government-led and international aid

¹²¹ IASC (2010), Response to the Humanitarian Crisis in Haiti, https://www.ifrc.org/docs/IDRL/Haiti/IASC-Haiti_6Mos_Review_USA-2010-005-1.pdf

¹²² The Guardian, Haiti : where help failed, 2010, <http://www.theguardian.com/commentisfree/2010/dec/28/haiti-cholera-earthquake-aid-agencies-failure>

¹²³ Ibid.

¹²⁴ Interview with humanitarian personnel.

¹²⁵ Ibid.

¹²⁶ For an in-depth analysis, cf. Schenkenberg, E., The Jigsaw of the International Humanitarian Response System: Trends and developments in organising more effective disaster response, January 2015.

¹²⁷ URD, GPPi (2010), IASC Cluster Approach Evaluation, 2nd Phase, <http://www.humanitarianresponse.info/operations/pakistan/document/cluster-approach-evaluation-2-synthesis-report>

¹²⁸ Haver, K., Foley, C. (2011), International Dialogue on Strengthening Partnership in Disaster Response: Bridging National and International Support. Humanitarian Outcomes, p. 43,

<https://www.humanitarianoutcomes.org/sites/default/files/Backgroundpaper2RegionalandInternationalInitiatives.pdf>

¹²⁹ Bellour, S., Mahoney, K. (2009), UNICEF Study on National Capacity Development for Humanitarian Action – Literature Review, UNICEF

coordination efforts as was the case in Indonesia in response to Padang earthquake of 2009¹³⁰. The clusters that registered the strongest partnerships with government were the health and education clusters where there were clear counterpart line ministries. On language, clusters adopted different strategies, but language eventually became a “key constraint in enabling government officials and national NGOs to attend and play an active part in both general coordination and cluster meetings”¹³¹.

In parallel, some humanitarian donors have also been putting in place donor coordination efforts although more at the global policy level than at the field level where donor presence and expertise vary significantly¹³². There is generally no real forum, however, where donors can discuss funding priorities, and no system for donors to avoid gaps or overlaps when supporting new or escalating emergency situations¹³³. In some cases, regional organisations have played important leadership roles in coordinating humanitarian aid. In the case of the response to Cyclone Nargis in Myanmar in 2008, for examples, ASEAN played a central role in the brokering of humanitarian assistance. ASEAN, the Government of Myanmar and the United Nations established a tripartite working-level mechanism to facilitate trust, confidence and cooperation¹³⁴. As Sir John Holmes, the Emergency Relief Coordinator at the time said: “Nargis showed us a new model of humanitarian partnership, adding the special position and capabilities of the Association of Southeast Asian Nations to those of the United Nations in working effectively with the government”¹³⁵.

2.8 Involvement of the military and/or private sector

The private sector has become increasingly involved in disaster response and humanitarian assistance in general over recent years.¹³⁶ While for some areas of the response the involvement of the private sector is seen as positive, there remain concerns with regard to companies’ interests and the sectors’ understanding of humanitarian standards.¹³⁷ When humanitarian organisations enter in partnerships with companies such as Toyota, Land Rover or Boeing, the response to natural disasters is facilitated through reduced prices for vehicles or for renting helicopters for instance.¹³⁸

The involvement of foreign military actors can also present operational challenges in international disaster response. In large-scale disasters such as the Indian Ocean and Japan tsunamis, the Pakistan earthquake and floods and the Haiti earthquake multiple foreign militaries were deployed. In the Haiti earthquake response in 2010, 26 different foreign militaries deployed assets and 19 different militaries sent personnel, often with little

¹³⁰ Harvey, P., Haver, K., Harmer, A., Stoddard, A. (2010), Humanitarian Coordination in the Asia Pacific region. Study in support of the 2010 OCHA Donor Support Group field mission. Humanitarian Outcomes, p. 15,

<https://www.humanitarianoutcomes.org/sites/default/files/resources/AsiaPacificHumanitarianCoordinationStudy1.pdf>

¹³¹ Ibid.

¹³² In June 2003, 17 donors committed to the Good Humanitarian Donorship (GHD) initiative, a set of principles, norms and good practice to inform and guide official donorship in humanitarian action both individually and collectively. With the adoption of the European Consensus on Humanitarian Aid by the European Union (EU) in December 2007 there continued to be a strong emphasis on the GHD principles and coordination.

¹³³ OECD (2013), OECD Development Cooperation Peer Review Australia 2013, p. 99, <http://www.oecd.org/dac/peer-reviews/OECD%20Australia%20FinalONLINE.pdf>

¹³⁴ UN (2009), Striving Together: ASEAN and the United Nations, p. 49.

¹³⁵ Holmes, J., Disaster Lessons, The Washington Post, 6 August 2008, <http://www.washingtonpost.com/wp-dyn/content/article/2008/08/05/AR2008080502924.html>

¹³⁶ The Guardian, Talk point: public and private sector partnership can improve aid and relief work, 19 September 2011 <http://www.theguardian.com/sustainable-business/blog/private-sector-humanitarian-emergencies-aid-relief>

¹³⁷ Interview with humanitarian personnel.

¹³⁸ Ibid.

coordination between them¹³⁹. For their part, the military are not always willing to coordinate with humanitarian actors in such contexts. In Haiti, the US military played a large role in the response but there were some reports indicating that the US military were initially reluctant to engage with the UN humanitarian coordination leadership and mechanisms until a series of ad hoc formal agreements were developed and a joint UN/US centre was established for the secure delivery of assistance¹⁴⁰. A literature review carried out by the Humanitarian Policy Group of the Overseas Development Institute also highlighted the tendency of foreign militaries and the international humanitarian community to lose sight of the central role of the national military in crisis response, especially in the Asia-Pacific region¹⁴¹. In relation to the flood response in Pakistan in 2010, for example, “at times the international humanitarian community was reluctant to coordinate with the Pakistani military, despite the fact that it dominated the national response and international actors had greater capacity to influence its strategies and behaviour than local actors and affected populations”¹⁴².

3. Conclusion

While international cooperation in the face of natural disasters is a long-standing tradition within the international community, many practical and regulatory mechanisms need to be in place for international disaster response to be timely and effective. There have been a number of disasters and consequent international response operations since the IDRL Guidelines were adopted in 2007. Since then, the International Federation of Red Cross and Red Crescent Societies (IFRC) and National Red Cross and Red Crescent Societies have worked to support governments in over 50 countries to assess their laws through the lens of the IDRL Guidelines and promote legislative preparedness. Notable progress has been achieved in different countries, which in some cases have been able to further learn from the application of their newly adopted legal frameworks on disaster management. Many good practices have been observed by humanitarian organisations involved in international disaster responses. Where regulatory frameworks are in place, they seem to provide a more consistent guidance to both national authorities and international humanitarian actors on what to expect once the response is under way. Challenges, however, still remain, notably linked to the slow pace of legislative change at the country level.

Anecdotal evidence points to persistent and generalised lack of clarity around roles and responsibilities in international disaster response which often leads to confusions and duplications. Elements inherent to governments’ requests of international assistance as well as inconsistencies and lack of agreement on the end of the emergency phase often have an impact on the timeliness and effectiveness of the international response. The timely clearance of imported goods and equipment for disaster response as well as the issuing of visas to foreign personnel often depends on ad-hoc mechanisms and personal relationships. While complicated registration rules can hinder the effectiveness of the response by international actors, the lack of adequate oversight at the domestic level can risk negatively impacting the quality of the response resulting in inappropriate approaches and distributions. Finally, coordination among all actors involved in disaster response and especially between international and domestic ones remains one of the biggest challenges. The international system has developed a large range of mechanisms, tools, and guidelines to coordinate its

¹³⁹ Metcalfe, V. et al. (2012), Trends and challenges in humanitarian civil-military coordination, HPG Working Paper, p. 17, <http://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/7679.pdf>

¹⁴⁰ The Seattle Times, "Looking for lessons in Haiti's epic tragedy", 1 March 2010, http://seattletimes.com/html/nationworld/2011223296_aphaitipostmortems.html

¹⁴¹ Metcalfe, V. et al. (2012), Trends and challenges in humanitarian civil-military coordination, HPG Working Paper, p. 17, <http://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/7679.pdf>

¹⁴² Ibid.

response. The question remains, however, on how the international humanitarian system relates to what the government has in place.

Much has been achieved since the adoption of the IDRL Guidelines in 2007 and most of the progress can be documented through the work done by national societies and the IFRC. When looking back, however, at the 2007 IFRC desk study used to inform discussions on the draft IDRL Guidelines at the 30th International Conference of the Red Cross and Red Crescent Movement, it is clear that many of the challenges remain remarkably similar. Legal problems seem also to be consistent across types of disasters – i.e. sudden vs. slow-onset disasters – and across countries, whether they have previous experience with international disaster assistance or not. At the same time, on a positive note, many states have seemed to capitalise on lessons learnt from past international disaster response operations to equip themselves with the right tools drawing upon the IDRL Guidelines and set themselves as possible examples of good practices at the regional and global levels.

Due to the impact of climate change predictions, the frequency of natural disasters may further increase in the coming years and decades. Recent trends in the increasing complexity of disasters and their humanitarian consequences are only making the need to achieve quicker results an evidence. To this end, a number of mutually reinforcing options geared towards advancing the implementation of international disaster response law may be needed. Efforts at the national level will need to be complemented by gains at the regional and global levels. The advances made at the country level through the work done by the National Societies and the IFRC have shown how crucial continued support on IDRL issues is and will continue being. Similarly, the example of the role taken up by some countries at the regional level or by regional organisations on international disaster response have confirmed the need for the promotion of regional compendia of IDRL-related legislation and for the establishment of dedicated fora to allow for formal regional discussions towards regular and systematic revisions of policies for enhanced IDRL standards and legislation. Finally, at the global level, advances might be promoted by further strengthening the international legal framework.

4. Bibliography

ABC News International, Foreign Rescue Team Delayed by Japanese Bureaucracy, 13 March 2011, <http://abcnews.go.com/International/japanese-bureaucracy-delays-foreign-search-rescue-teams/story?id=13126904>

AFP, Quake-hit China declines Australian help: official, 14 May 2008: <http://reliefweb.int/report/china/quake-hit-china-declines-australian-help-official-0>

AFP, China rejects foreign rescuers in quake catastrophe, 14 May 2008: <http://reliefweb.int/report/china/china-rejects-foreign-rescuers-quake-catastrophe>

Al Jazeera, Red Tape Delays Africa Aid Airlift, 27 July 2011, <http://english.aljazeera.net/news/africa/2011/07/201172771619757561.html>

Asian Development Bank, People's Republic of China: Providing Emergency Response to Sichuan Earthquake, 2008: http://reliefweb.int/sites/reliefweb.int/files/resources/OD109A786BEC65A2C12575600043192A-Full_Report.pdf

Background report for 31st Red Cross and Red Crescent Movement Conference (2011): Progress in the implementation of the Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance: <http://www.ifrc.org/PageFiles/125652/IDRL%20progress%20report.pdf>

BBC News, Ebola outbreak: Guinea declares emergency, 14 August 2014: <http://www.bbc.com/news/world-africa-28787025>

Bellour, S., Mahoney, K. (2009), UNICEF Study on National Capacity Development for Humanitarian Action – Literature Review, UNICEF

British Institute of International Law and Comparative Law, Flooding and Other Disasters: Assessing the Current Legal Frameworks, 16. April 2014 : http://www.biicl.org/documents/303_flooding_and_other_disasters_-_16_april_2014_-_event_report_final.pdf

CERF, Annual Report of Humanitarian/ Resident Coordinator in China on the use of CERF Grants, 2008: https://docs.unocha.org/sites/dms/CERF/China_CERF_Narrative_Report_2008.pdf

Cogan, J., American Society of International Law, The Changing Form of the International Law Commission's Work, 27 March 2014: <http://www.asil.org/blogs/changing-form-international-law-commission%E2%80%99s-work>

Chughtai, S. & McElhinney, Oxfam, Six months into the floods. Resetting Pakistan's priorities through reconstruction, 2011: <http://www.alnap.org/node/15890.aspx>

China Daily, China earmarks \$9.7 b for quake relief, 19 August 2008: http://www.chinadaily.com.cn/business/2008-08/19/content_6949116.htm

China View, Customs speeds up entry of rescue teams, 18 May 2008: http://china.org.cn/china/wenchuan_earthquake/2008-05/18/content_15320446.htm

Da Costa, K & Ferrero, S. (forthcoming), Consultancy on Regulatory Issues in Recent International Disaster Response Operations.

Development Initiatives (2014), Global Humanitarian Assistance Report 2014:

<http://www.globalhumanitarianassistance.org/wp-content/uploads/2014/09/GHA-Report-2014-interactive.pdf>

De Ville de Goyet, C., Perez Calderon, L, Sarmiento, J., Nobhojit R., (forthcoming), The regulation of Foreign Medical Teams in the Aftermath of Sudden Onset Natural Disasters.

Devex, Stuck in Customs: Aid to East African Drought Victims, 28 July 2011,

<http://www.devex.com/en/blogs/the-development-newswire/wfp-airlifts-food-aid-to-somalia-albeit-a-little-late>

Ferrario, G., Fortaleciendo la resiliencia de las comunidades afectadas por el huracán Sandy en Cuba, Evaluación de la operación huracán Sandy en Cuba 2012-2013.

Foreign Policy, Sierra Leone's Ebola Epidemic is Spiralling Out of Control, 10 December 2014,

<http://foreignpolicy.com/2014/12/10/sierra-leones-ebola-epidemic-is-spiraling-out-of-control/>

GB Times, Quicker transfer for foreign quake aid, 22 April 2013: <http://gbtimes.com/china/quicker-transfer-foreign-quake-aid>

GMA News, BIR chief: Donations are tax-exempt if coursed through right agencies, 14 November 2013,

<http://www.gmanetwork.com/news/story/335482/economy/finance/bir-chief-donations-are-tax-exempt-if-coursed-through-right-agencies>

GPPI, URD (2010), IASC Real-time Evaluation in Haiti, [http://www.urd.org/IMG/pdf/Haiti-IASC RTE final report en.pdf](http://www.urd.org/IMG/pdf/Haiti-IASC_RTE_final_report_en.pdf)

Harvey, P., Haver, K., Harmer, A., Stoddard, A. (2010), Humanitarian Coordination in the Asia Pacific region. Study in support of the 2010 OCHA Donor Support Group field mission. Humanitarian Outcomes:

<https://www.humanitarianoutcomes.org/sites/default/files/resources/AsiaPacificHumanitarianCoordinationStudy1.pdf>

Haver, K., Foley, C. (2011), International Dialogue on Strengthening Partnership in Disaster Response: Bridging National and International Support. Humanitarian Outcomes:

<https://www.humanitarianoutcomes.org/sites/default/files/Backgroundpaper2RegionalandInternationalInitiatives.pdf>

Hofmann, C., Fisher, D., Schmidt, M., Nogra, J. (2014): DRD – Learning Review of the cooperation between the Government of the Philippines and humanitarian actors in their response to typhoon Yolanda.

Holmes, J., Disaster Lessons, The Washington Post, 6 August 2008: <http://www.washingtonpost.com/wp-dyn/content/article/2008/08/05/AR2008080502924.html>

House, S., Evaluation of Pakistan Flood Response 2011/2012: Using Oxfam GB's Global Humanitarian Indicator Tool, 2012: <http://www.alnap.org/node/11560.aspx>

IASC (2011), Inter-Agency Real-time Evaluation of the Humanitarian Response to Pakistan 2010's Flood Crisis, p. 33, <http://www.alnap.org/node/19365.aspx>

IASC (2010), Response to the Humanitarian Crisis in Haiti, https://www.ifrc.org/docs/IDRL/Haiti/IASC-Haiti_6Mos_Review_USA-2010-005-1.pdf

IFRC IDRL Website : <http://www.ifrc.org/what-we-do/disaster-law/research-tools-and-publications/the-ilc-and-disasters/>

IFRC (2007), Law and Legal Issues in International Disaster Response: a desk study:
<http://www.ifrc.org/PageFiles/125735/113600-idrl-deskstudy-low-en.pdf>

IFRC (2011), Introduction to the Guidelines for the domestic facilitation and regulation of international disaster relief and initial recovery assistance: [http://ifrc.org/PageFiles/125652/1205600-IDRL%20Guidelines-EN-LR%20\(2\).pdf](http://ifrc.org/PageFiles/125652/1205600-IDRL%20Guidelines-EN-LR%20(2).pdf)

IFRC (2011), Disasters in Africa, The case for legal preparedness:
http://www.ifrc.org/PageFiles/125636/Disasters%20in%20Africa_2011.pdf

IFRC (2014), International Disaster Response Law (IDRL) in Indonesia:
<http://www.ifrc.org/Global/Publications/IDRL/country%20studies/Indonesia%20IDRL%20Report%20FINAL.pdf>

International Law Commission Website: <http://www.un.org/law/ilc/index.htm>

InSerbia News, Floods in Serbia: Humanitarian Aid Delivery Made Easier, 19 May 2014,
<http://inserbia.info/today/2014/05/floods-in-serbia-humanitarian-aid-delivery-made-easier/>

IRIN News, Global : Why International Disaster Law matters, 16 January 2012 :
<http://www.irinnews.org/report/94648/global-why-international-disaster-law-matters>

IRIN News, Myanmar : First Visas Issued to International Relief Teams, 07 May 2008 :
<http://www.irinnews.org/report/78094/myanmar-first-visas-issued-to-international-relief-teams>

IRIN News, Myanmar : Fresh Visa Headaches for Aid Workers, 29 June 2009 :
<http://www.irinnews.org/report/85049/myanmar-fresh-visa-headaches-for-aid-workers>

Komino, T. (2014), Role of International NGO in an Unprecedented Disaster in Japan, in Shaw, R. ed. (2014), Tohoku Recovery. Challenges, Potential and Future, pp. 13-26.

Lautze, S., Raven-Roberts, A. & Erkinch, T., HPG Overseas Development Institute, Humanitarian governance in the new millennium: an Ethiopian case study, 2009: <http://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/4178.pdf>

Library of Congress, China: Law on Earthquake Prevention and Disaster Relief Amended, 13 January 2009,
http://www.loc.gov/lawweb/servlet/lloc_news?disp3_l20540920_text

Logistics Cluster, Sierra Leone Ebola Response: Meeting Minutes, 29 September 2014,
https://www.humanitarianresponse.info/sites/www.humanitarianresponse.info/files/events/minutes/SLE_Log_Meeting%20Minutes_140929_V1.pdf

Logistics Cluster, Ebola Outbreak: Situation Update, 11 September 2014
<http://www.logcluster.org/document/situation-update-11-september-2014>

Logistics Cluster, Pakistan Floods, Meeting Minutes, August 2010:
http://www.logcluster.org/sites/default/files/documents/meeting_minutes_peshawar_100807

Metcalf, V. et al. (2012), Trends and challenges in humanitarian civil-military coordination, HPG Working Paper, p. 17, <http://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/7679.pdf>

Ministry of Foreign Affairs Japan (2011): Great East Japan Earthquake
http://www.mofa.go.jp/j_info/visit/incidents/index2.html#sympathy

NetHope (2011), Information and Communication Technology Usage in the 2010 Pakistan Floods, p. 22, available at <http://nethope.org/images/uploads/casestudies/ICTin2010PakistanFloods.pdf>

New York Times, Ebola Help for Sierra Leone Is Nearby, but Delayed on the Docks, 5 October 2014,
http://www.nytimes.com/2014/10/06/world/africa/sierra-leone-ebola-medical-supplies-delayed-docks.html?_r=0

OCHA-Pakistan, Pakistan Humanitarian Bulletin, Issue 6/11, November 2010, p. 2,
http://reliefweb.int/sites/reliefweb.int/files/resources/2DAF705B69A25002C12577D8004FE944-Full_Report.pdf

OCHA, Situation Report No. 2, Sichuan Province, China– Earthquake, 2008:
http://reliefweb.int/sites/reliefweb.int/files/resources/097B919804278D298525744900763C8F-Full_Report.pdf

OCHA, Japan Earthquake & Tsunami, Situation Report No. 4, 2011:
http://reliefweb.int/sites/reliefweb.int/files/resources/B695CD6B9CF47956C12578540048D0D6-Full_Report.pdf

OCHA, Japan Earthquake & Tsunami, Situation Report, No.6, 2011:
http://reliefweb.int/sites/reliefweb.int/files/resources/8353B696BD3AF80CC12578560045B420-Full_Report.pdf

OCHA, CAP, Philippines: Typhoon Haiyan Action Plan - November 2013:
<http://www.unocha.org/cap/appeals/philippines-typhoon-haiyan-action-plan-november-2013>

OCHA (2013), Unsolicited in-kind donations and other inappropriate humanitarian goods, http://emergency-log.weebly.com/uploads/2/5/2/4/25246358/ubd_report_eng_-_final_for_printing_2.pdf

OECD (2013), OECD Development Cooperation Peer Review Australia 2013:, <http://www.oecd.org/dac/peer-reviews/OECD%20Australia%20FinalONLINE.pdf>

Pakistan National Disaster Management Authority (2011), Pakistan NDMA Review following 2010 floods, p. 2,
<http://www.alnap.org/node/14104.aspx>

Philippines Bureau of Immigration, Visa Requirements for Foreign Aid Workers to be Eased, 14 November 2013,
<http://www.immigration.gov.ph/index.php/faqs/58-november-2013-press-releases/389-visas-requirements-for-foreign-aid-workers-to-be-eased-bi>

Polastro, R. et al, ALNAP, Inter-Agency Real Time Evaluation of the Humanitarian Response to Pakistan's 2010 Flood Crisis, 2011: <http://www.alnap.org/node/19365.aspx>

Republic of the Philippines – House of Representatives, Solons seek VAT exemption of donated imported goods for humanitarian relief, medical and education uses, 12 April 2014, <http://www.congress.gov.ph/press/details.php?pressid=7791>

Sandison, P., Oxfam, Evaluation of Ethiopia Drought Response 2011/2012: Using Oxfam GB's Global Humanitarian Indicator Tool, 2012: <http://www.alnap.org/node/10744.aspx>

Slim, H., IASC Real-Time Evaluation of the Humanitarian Response to the Horn of Africa Drought Crisis in Somalia, Ethiopia and Kenya, 2012: http://reliefweb.int/sites/reliefweb.int/files/resources/RTE_HoA_SynthesisReport_FINAL.pdf

Statement of the European Union at the United Nations 6th Committee: Protection of persons in disasters, 27. October 2014: http://eu-un.europa.eu/articles/en/article_15691_en.htm

Sun, L. Global response to Ebola marked by lack of coordination and leadership, experts say, 11. September 2014: http://www.washingtonpost.com/national/health-science/global-response-to-ebola-marked-by-lack-of-coordination-and-leadership-experts-say/2014/09/11/35365264-39dc-11e4-8601-97ba88884ffd_story.html

Tamminga P. & Manzoor, R. (2014), Reviewing the Draft Certification Model: A Case Study in Pakistan, SCHR.

Tamminga, P. & Evans, R. (2014), Reviewing the Draft Certification Model: A Case Study in Ethiopia, SCHR.

Tampere Convention on Emergency Telecommunications: <http://www.itu.int/ITU-D/emergencytelecoms/tampere.html>

The Guardian, Talk point: public and private sector partnership can improve aid and relief work, 2011: <http://www.theguardian.com/sustainable-business/blog/private-sector-humanitarian-emergencies-aid-relief>

The International Center for Not-for-Profit Law (2014), NGO Law Monitor: Ethiopia: <http://www.icnl.org/research/monitor/ethiopia.html>

The Seattle Times, "Looking for lessons in Haiti's epic tragedy", 1 March 2010: http://seattletimes.com/html/nationworld/2011223296_aphaitipostmortems.html

Think Ahead (2011), Pakistan Floods 2010. The DEC Real-time Evaluation Report: <http://www.alnap.org/node/7621.aspx>

UN (2009), Striving Together: ASEAN and the United Nations.

UN Document A/CN.4/L.831 Protection of persons in the event of disasters: Texts and titles of the draft articles adopted by the Drafting Committee on first reading: <http://daccess-dds-ny.un.org/doc/UNDOC/LTD/G14/030/20/PDF/G1403020.pdf?OpenElement>

UN General Assembly Resolution A/RES/46/182, strengthening of the coordination of humanitarian emergency assistance of the United Nations 1991: <http://www.un.org/documents/ga/res/46/a46r182.htm>

URD, GPPi (2010), IASC Cluster Approach Evaluation, 2nd Phase: <http://www.humanitarianresponse.info/operations/pakistan/document/cluster-approach-evaluation-2-synthesis-report>

US DoS (2011), Country Reports on Human Rights Practices for 2011: Ethiopia: <http://www.state.gov/documents/organization/186406.pdf>

Annex I: Interviews

Interviewees for this study include staff from the following institutions and organisations: ADRA, CARE, Church World Service (CWS), IFRC (Geneva, Haiti, Kenya, Liberia, Malaysia, Panama, Senegal, Thailand), Colombian Red Cross, International Medical Corps (IMC), Islamic Relief Worldwide (IRW), OCHA, Oxfam and UPS. A total of 24 interviews have been conducted for this study.

Interview questionnaire

The list of questions was used for the semi-structured interviews with key informants. The questionnaire is based on the IDRL guidelines, the questionnaire used for the IFRC 2007 desk study and the questionnaire used for the forthcoming IFRC-commissioned study. The questions attempted at obtaining two different types of information:

1. Examples of regulatory problems related to the international response to each crisis;
2. Examples of best practice in reducing regulatory problems.

The questionnaire below provides an example of the focus of the interviews and was slightly adapted based on the role/organisation of the key informants.

A. Initiation and termination

Requests and offers of assistance:

1. Did your organisation respond to a formal government's request of assistance? Who made the decision to intervene?
2. What were your organisation's protocols for the initiation of the response?
3. Did your organisation have a formal agreement with the affected government? When was this made?

Needs assessment:

4. Did your organisation base the response on a needs assessment? Whose?
5. Did your organisation undertake its own needs assessment? Why? When?

B. Goods and Equipment

1. How often, if ever, did your organisation experience legal or bureaucratic problems in obtaining international shipments of any of the following items in support of your operations?

- Food
- Medications and medical equipment
- Telecom and IT equipment
- Rescue dogs
- Vehicles

- Other relief items

2. What were they and were they resolved?

3. Customs procedures for goods and equipment:

Import:

- Did your organisation benefit from duty exemptions for importing certain goods for humanitarian relief?
- Did your organisation benefit from an expedite process and simplified documentation for importation of goods during the emergency?
- Did your organisation experience significant delays in clearing customs of disaster relief consignments?

4. Re-export:

- Did your organisation try to re-export unused relief goods (e.g. to use in another disaster)?
- If yes, did your organisation experience any problems in re-exporting unused relief goods?
- When did problems of entry of any of the above items mostly occur? (e.g. 2 weeks after disaster, 2 months)

5. Special issues:

Food:

- Did your organisation experience any delays in importing disaster food assistance? If yes, how long did it take for it to clear customs? What was the reason for the delay?

Telecommunications and IT equipment:

- Did your organisation experience any delays in importing telecommunications and IT equipment? If yes, how long did it take for it to clear customs? What was the reason for the delay?
- Did your organisation experience any problems in using the equipment once through customs? If yes, what were they?

Vehicles:

- Did your organisation experience any delays in importing vehicles? If yes, how long did it take for it to clear customs? What was the reason for the delay?
- Did your organisation experience any problems and/or delays in obtaining domestic registration and license plates? If yes, which and how long did it take?

Medications and medical equipment:

- Did your organisation experience any delays in importing medications and medical equipment? If yes, how long did it take for it to clear customs? What was the reason for the delay?

Rescue dogs:

- If the case, did your organisation experience any delays in the entry of rescue dogs? If yes, how long did it take? What was the reason for the delay?

Currency:

- Did your organisation encounter any problems bringing in foreign currency? If yes, which and how long did it take? How did you solve them?
- Did such problems impact the local purchase of disaster relief goods? How? How did you solve them?
- Did such problems impact cash-based programmes? How? How did you solve them?

C. Personnel

1. International personnel:

- Did your organisation experience any problems and/or delays in obtaining visa and work permits for its international personnel? If yes, what problems and how long did it take? What is normal?
- Did your organisation experience any problems and/or delays in having foreign credentials and certificates of technical international personnel recognised? If yes, what problems and how long did it take?

2. Local personnel:

- Did your organisation experience any legal difficulties or incentives to hire local personnel? If yes, which and how did you solve them?

D. Transport

1. Freedom of movement

- Did your organisation experience any barriers relating to the transportation of relief personnel, for example restriction on the movement of humanitarian workers?

2. Land transport/Air Transport/Sea Transport

- If applicable, did your organisation experience any barriers relating to the transportation of goods and equipment?

Examples:

- Restrictions on the operation of certain types of vehicles,
- Denial of overflight and landing rights,
- Carriage permit requirements,
- Transport specific charges and taxes (e.g. landing fees and road tolls)

E. Operations

Operations of foreign non-governmental actors

1. Domestic legal personality and banking:

- Did your organisation experience any difficulties in registering in the affected state? If yes, which and

how did you solve them? How long did it take?

- Did your organisation have difficulties opening bank accounts, obtaining tax exemptions, engaging local personnel and entering into other legal agreements?

2. Taxation:

- Did your organisation benefit from exemptions from taxes such as VAT on relief goods and equipment?

3. Security:

- Are governments asked to protect disaster relief personnel and goods, including non-governmental actors?

4. Insurance:

- Did your organisation experience any difficulties obtaining insurance at the global and/or local level?
- What degree of coverage did you obtain?

F. Quality and accountability

1. Did your organisation encounter the following problems with regard to international disaster responders in the context of the international response in question? How often?

Failure to coordinate with government and other domestic actors

Providing unneeded or inappropriate relief items

Promoting or proselytizing a particular religion among beneficiaries

Interference in domestic political affairs

Failure to respect other humanitarian principles (as provided, for example, in the Red Cross/Red Crescent NGO Code of Conduct and the SPHERE Project Humanitarian Charter and Minimum Standards)

Use of untrained or unqualified personnel

Culturally inappropriate behaviour by international personnel

2. Have there been any claims brought against your organisation or its personnel (staff or volunteers) as a result of the disaster operation in question? If yes, what type of claims were brought (e.g. employment claims, vehicle accidents, rental disputes, breach of contract, negligence)?

3. Has the potential of civil liability (i.e., exposure to lawsuits) ever substantially impeded your organisation's foreign disaster relief operations?

4. Have any of your organisation's staff or volunteers been investigated, arrested, or jailed for alleged criminal activity while participating in the disaster operation in question?

5. Has the potential of criminal investigations or arrest ever substantially impeded your organisation's response to the disaster in question?

G. Coordination and other issues

1. Did you ever experience lack of coordination by the government? (rarely/frequently/always) Has the issue been addressed?

2. Did you ever experience lack of coordination among international actors? (rarely/frequently/always) Has the issue been addressed?

3. Did you ever experience failure of international actors to coordinate with domestic authorities? (rarely/frequently/always) Has the issue been addressed?

International disaster relief by other actors:

1. Are you aware of any particular issues with relief provided by military actors?

2. Are you aware of any particular issues with relief provided by the private sector?

Annex II: Search keywords

Regulatory Issues in International Disaster Response Operations

Consultancy

Literature review – list of search terms

Name of Database:

Disaster Response Operation	Search term	Timeline	Number of results	Number of relevant ones
CHINA Sichuan Earthquake 2008 "China" AND "Sichuan" AND "earthquake" AND	"China" AND "Sichuan" AND "earthquake" AND "foreign"	2008-2014		
	"China" AND "Sichuan" AND "earthquake" AND "delay"			
	"China" AND "Sichuan" AND "earthquake" AND "allow"			
	"China" AND "Sichuan" AND "earthquake" AND "entry"			
	"China" AND "Sichuan" AND "earthquake" AND "permission"			
	"China" AND "Sichuan" AND "earthquake" AND "non-governmental" OR "NGO"			
	"China" AND "Sichuan" AND "earthquake" AND "assessment"			
	"China" AND "Sichuan" AND "earthquake" AND "government" AND "decision to stop" AND "recovery"			
	"China" AND "Sichuan" AND "earthquake" AND "customs"			
	"China" AND "Sichuan" AND "earthquake" AND "relief goods"			
	"China" AND "Sichuan" AND "earthquake" AND "transit of relief"			
	"China" AND "Sichuan" AND "earthquake" AND "disaster food assistance"			
	"China" AND "Sichuan" AND "earthquake" AND			

	"importation of telecommunications" AND "IT equipment"			
	"China" AND "Sichuan" AND "earthquake" AND "humanitarian vehicles" OR "relief vehicles"			
	"China" AND "Sichuan" AND "earthquake" AND "importations of medications" AND "medical equipment"			
	"China" AND "Sichuan" AND "earthquake" AND "rescue dogs"			
	"China" AND "Sichuan" AND "earthquake" AND "visa" AND "work permits"			
	"China" AND "Sichuan" AND "earthquake" AND "license" AND "foreign doctors"			
	"China" AND "Sichuan" AND "earthquake" AND "hiring local staff"			
	"China" AND "Sichuan" AND "earthquake" AND "humanitarian access"			
	"China" AND "Sichuan" AND "earthquake" AND "waiver of carriage permit"			
	AND "landing permission"			
	AND "setting up international NGO" OR "registration of international NGO"			
	AND "relief agencies" AND "tax"			
	AND "security problems" OR "security incidents"			
	AND "relief agencies" AND "insurance"			
	AND "relief agencies" AND "complaints"			
	AND "relief" AND "coordination" OR "humanitarian coordination"			
	AND "military aid"			