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Int’l Law Commission begins to pen potential treaty

A UN expert body has begun drafting the first articles of what might eventually be proposed to states as a draft treaty on the “protection of persons in the event of disasters.”

The International Law Commission consists of thirty-four legal experts elected by states to “promote the progressive development of international law and its codification.”

At the Commission’s 61st session in July, Special Rapporteur Eduardo Valencia-Ospina presented his second report on the topic and proposed wording for the first articles of the new instrument.

As discussed by the Commission’s drafting committee, the draft articles set out the intended scope of the instrument, which will look both to the needs and rights of persons affected by disasters. They also offer a definition of disaster similar to the one employed by the IDRL Guidelines. The draft asserts that states have a duty to cooperate, both among themselves and with actors such as the UN and the Red Cross/Red Crescent, in disaster response.

Commission members emphasized the importance of the IDRL Guidelines as a source of inspiration as well as their determination to ensure that their initiative would be complementary to ongoing efforts to implement the Guidelines.

At the request of the Commission, the IFRC offered written information to members on the role of the Red Cross and Red Crescent.

New African IDP treaty to impact disaster relief

On October 23, member states of the African Union adopted a new “Convention on the protection and assistance of internally displaced persons.” Based in large part on the UN’s Guiding Principles on Internal Displacement, it is the first region-wide treaty on this topic.

Like the Guiding Principles, the new Convention includes in its scope persons displaced by natural disasters. It also has a number of provisions of particular relevance to preventing displacement by disasters and to ensure the assistance of those affected by disasters that do occur.

These include specific duties to implement disaster risk reduction measures and early warning systems. States are also committed to facilitate “rapid and unimpeded passage of humanitarian assistance” to displaced persons.

The IDRL Guidelines may prove useful to states as a means to implement the latter requirement, particularly since the Convention requires states to incorporate their obligations under its provisions into domestic law. The Convention will enter into force once it has been ratified by 15 AU member states.
SADC disaster workshop takes up IDRL Guidelines

In early October, high-level emergency management officials from 15 member states of the Southern African Development Community (SADC) attended a workshop in Johannesburg to discuss how their countries and SADC improve their disaster preparedness.

Among the topics discussed were presentations by the Federation on its “Zambezi River Basin Initiative,” designed to increase community resilience in seven Southern African countries, and the IDRL Guidelines.

In the workshop’s conclusions, the member states identified a number of priorities for action by their own governments and the SADC secretariat. Among these was the “need to... encourage Member states to explore the incorporation of International Disaster Response Laws (IDRL) as relevant in their respective countries, which would greatly facilitate disaster response, especially the trans-boundary movement of relief assistance and the control of the spread of disasters and pest infestation.”

Declaration of Florianopolis seeks legal development

In early September, the Government of Brazil and UN OCHA convened the “Second Regional Meeting on Enhancing International Humanitarian Partnerships” in Florianopolis, Brazil. Following on the model of the first such meeting hosted by the Government of Mexico in 2008, the meeting gathered representatives from 19 governments in Latin America and the Caribbean as well as humanitarian organizations to discuss how to improve collaboration in disaster preparedness and response in the region.

Among the key topics addressed by the meeting were the regulatory measures needed for successful disaster cooperation. This was reflected in the final “Declaration of Florianopolis” adopted by the government representatives on September 4th.

The Declaration called for the development of strengthened tools to facilitate the exchange of requests and offers for disaster assistance in the region. It also sought the development of a “Regional Document” compiling regional, sub-regional and national rules and procedures related to cross-border disaster assistance.

As a “preparatory measure” for the development of the “Regional Document”, the Declaration called on states to “take stock of the existing legal and institutional mechanisms, as appropriate, for facilitating and regulating international relief, making use, inter alia, of regional manuals and the Guidelines for the domestic facilitation and regulation of international disaster relief and initial recovery assistance.”
Regional workshops in Suva, Panama, Phnom Penh and Almaty build knowledge on IDRL

They say that knowledge is power. If so, there are a lot more powerful people in recent months, as the Federation has collaborated with partners to organize another wave of regional training and dialogue workshops on IDRL.

Following on a series of trainings begun last year in Asia and Africa, the Federation organized its first IDRL workshop for Pacific Island National Societies in Suva in August. In collaboration with OCHA, it also organized similar workshops for National Societies, governments and other partners from Latin America in Panama in September, and from Central Asian countries in Almaty in October.

In each of these workshops, participants spent two days learning about how to apply the IDRL Guidelines and other international and regional norms to common regulatory issues in disasters. Through interactive scenarios, participants walked in the shoes of the various actors involved in these operations and wrestled together with the thorny issues that regularly confront all sides in ensuring the effective delivery of aid. A third day was devoted to a sharing of experiences and strategies among National Societies for effective legislative advocacy on disaster management issues.

Also in October, the Federation collaborated with the Asian Development Bank Greater Mekong Subregion Communicable Disease Project, the Cambodian Government and the Cambodian Red Cross to organize a high-level regional forum in Phnom Penh on legal preparedness for disasters and health emergencies in the Mekong Valley region. The forum followed on the completion of research projects undertaken in Cambodia, Laos and Vietnam (see page 5). Representatives of the governments and National Societies from the region joined other partners to discuss how to strengthen regional and national procedures for cooperation in combating emergencies.
Country-level workshops in Indonesia, Laos, Vietnam and Ireland address IDRL implementation

While international and regional rules and procedures are important for a well-regulated international response to disasters, it is national law and regulations that often make the difference between a smooth and chaotic operation. A series of country-level workshops facilitated by the Federation helped governments and other stakeholders to address how prepared their laws were to make that difference.

In July, the Indonesia disaster management body BNPB hosted a workshop in Jakarta facilitated by the Indonesian Red Cross and the Federation concerning the implementation of the IDRL Guidelines in their country. Participants discussed the development of a new set of national guidelines, which might be the basis for a new presidential decree (see following page).

In July and early August, high-level meetings in Vientiane and Hanoi hosted by their national governments assessed the results of national legal preparedness studies carried out by the Federation in collaboration with National Societies and the WHO. Research teams had spent over six months collecting and analysing different national and regional legal documents, policies, treaties and guidelines in the two countries. Both meetings concluded with a strong recommendation for the development of new legislation to address existing gaps and gray areas with regard to disasters and health emergencies.

In October, the Irish Red Cross organized the first Irish workshop on the IDRL Guidelines in Dublin, with participation of the Federation. Participants were introduced to the background of the Guidelines and their potential relevance to Irish authorities, both with regard to their cross-border cooperation in emergencies and as donors. The meeting finished with a recommendation for a deeper study of Irish law on the issues addressed by the Guidelines.
In this interview, four high-level members of the Indonesia's newly formed “National Disaster Management Body” (BNPB) described their thinking in hosting an IDRL workshop in Jakarta last July.

Why organize a national workshop on IDRL? Indonesia’s Disaster Management Body speaks out

What motivated BNPB to organise this IDRL Workshop?

Currently, the Government of Indonesia is focusing seriously on implementing the Law No.24, 2007 on Disaster Management, and the Government Regulation No. 23, 2008 on the Role of International Institutions and Non Government Foreign Organisations in Disaster Response. We are taking the opportunity of this workshop to get all government sectors involved during disaster operations to exchange information, discuss gaps and find ways to improve the law.

What do you expect to come out from this workshop?

Participants will give input to the Draft Guidelines, which are currently being developed. We look at the Guidelines as a preliminary document before considering other actions such as advocating for a higher level document like a presidential decree.

This is our first ever workshop related to international assistance during disaster, and we are excited about it.

How do you think IDRL Guidelines would help BNPB in this process?

The IDRL Guidelines give appropriate recommendations on almost all elements of our discussion and should be elaborated in detail.

How do you see the role of the Indonesian Red Cross (PMI) in developing the new Guidelines?

PMI is very capable in assisting BNPB to achieve this workshop’s objectives. We hope to work closely together with PMI and the Federation to produce comprehensive national guidelines or maybe a presidential decree.

It is also important to have more field testing of our operating procedures. In doing so, we should also refer to international instruments, such as the IDRL Guidelines.
New publications

First “Disaster Law Working Paper”

The Federation’s “Disaster Law Working Paper Series” has been officially launched with the publication of a paper by Dr. Bradley J. Condon and Dr. Tapen Sinha of the Instituto Tecnológico Autónomo de México on “The Effectiveness of Pandemic Preparations: Legal Lessons from the 2009 Influenza Epidemic.”

Drs. Condon and Sinha point out that both the recently revised International Health Regulations and World Trade Organization treaties include provisions designed to shield states from disproportionate trade restrictions when they are forthcoming with information on disease outbreaks. However, they also argue that these safeguards did not appear to be adequate to protect Mexico after the swine flu stuck this year. The paper is available at www.ifrc.org/idrl.

HPG report on the role of the affected state in disaster response

The Humanitarian Policy Group of the Overseas Development Institute has released a new report entitled “Towards good humanitarian government: The role of the affected state in disaster response.” The report notes that despite the verbal international consensus to the “primary role” of domestic authorities in humanitarian aid, in practice this role is often neglected by aid agencies. Building on a series of country case-studies, the report discusses how local capacity may be supported or undermined by international efforts. The importance of strong domestic legislation for facilitating and regulating international relief is also highlighted. The report is available at www.odi.org.uk.

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- OCHA for partnering with us in organizing regional training workshops in Panama and Almaty.
- Drs. Condon and Sinha for contributing our first Disaster Law Working paper.
About the Federation’s IDRL Programme

The International Federation of Red Cross and Red Crescent Societies’ IDRL Programme seeks to reduce human vulnerability by promoting legal preparedness for disasters through advocacy, technical assistance, training and research. For more information, please see our website at www.ifrc.org/idrl.


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