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## Chapter 1

# What is the scope of international disaster response law?

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### Introduction

International disaster response law (IDRL) is not a new component of international law. However, it is one that has developed with little notice taken among scholars or practitioners, despite the growing human and economic toll taken by peacetime disasters.

The International Red Cross and Red Crescent Movement has determined that this field of law needs careful consideration. Accordingly, the International Federation of Red Cross and Red Crescent Societies is conducting a systematic, scholarly examination of existing international legal sources on peacetime disaster response, and is working with states to ensure that dialogue and development in this important field progresses in an informed, practical way.

States have expected the Movement to play a leadership role in peacetime disaster relief since its earliest days.<sup>1</sup> Those responsibilities expanded over time. Today they include the responsibility to provide expert support for development of rules that expedite humanitarian operations and cooperation.<sup>2</sup>

Given its role as a leader in peacetime disaster response, the International Federation is particularly well suited to lead the Movement's IDRL work. The Movement has, in fact, asked the International Federation to take the lead in these endeavors.<sup>3</sup> And recently, the United Nations (UN) General Assembly took note of the International Federation's continuing work in this field.<sup>4</sup>

The Movement has adopted IDRL as terminology describing the body of rules and principles for international humanitarian assistance in the wake of peacetime disasters, whether natural, technological or industrial in origin. This chapter provides a brief commentary on the scope of IDRL and comparative insights from the more familiar field of international humanitarian law (IHL). It also progressively builds a working definition of IDRL, which constitutes the conclusion of this chapter.

IHL, which applies during armed conflict, offers the only universally recognized and systematically studied set of rules designed to alleviate human suffering in response to catastrophic events. It is grounded in many centuries of state experience, practice and

diplomacy, and is therefore a useful source of comparison in deliberations on the future of IDRL.

IDRL can only help victims of peacetime disaster if framed in a pragmatic manner. There is a wide range of important legal subject matter, domestic and international, that relates to IDRL but does not impact directly on humanitarian response to disasters (for example, environmental protection issues). IDRL must be defined with a fair degree of rigor. Otherwise, it could vanish into the general corpus of international law with its promise and utility consequently lost.

### **Conceptual scope of IDRL**

The conceptual scope of IDRL should be considered first. Comparing IHL's scope with that of IDRL, the former is largely restricted to situations involving armed conflict. Most IHL applies only while armed hostilities are underway.<sup>5</sup> IHL in its entirety applies during international armed conflict<sup>6</sup> with a subset of rules applicable during internal armed conflicts.<sup>7</sup> It is unlikely that IDRL will develop along similar lines.

IHL evolved to regulate interstate hostilities. However, in 1949 some rules were adopted for internal armed conflict as well. From then on, such conflicts would not be addressed by reference to municipal law alone.

Though rules for internal armed conflict were first incorporated into treaties in 1949, customary rules emerged in state practice as early as the 18<sup>th</sup> century. By the time such rules were incorporated into the Geneva Conventions of 1949, there was already a growing consensus that humanitarian rules and constraints should apply during internal as well as international armed conflicts.<sup>8</sup>

IDRL develops in a different context. IHL imposes limits on the conduct of hostilities in order to alleviate their impact, or in other words, to mitigate human activity. However, IDRL applies in a cooperative peacetime environment. Damage inflicted during peacetime disasters is usually unintended<sup>9</sup> and the concept of humanitarian constraint and restraint does not apply as it would during armed conflict. IDRL does not address belligerent acts and conduct that require limitation under international law, whereas IHL does in the context of international and internal armed conflicts alike.

Therefore it is unlikely that a sub-category of IDRL will develop for use in peacetime disasters where these are effectively alleviated without recourse to international assistance. Where such needs are met domestically, there is no need for international legal norms analogous to those developed to alleviate the effects of internal armed conflict. In other words, there is no internal-international taxonomy for IDRL matching the internal-international taxonomy of IHL.

There is also another notable difference. IHL establishes humanitarian protections that alleviate armed conflict. Though diligent application of IHL may also facilitate a return to peace, it does not provide, directly, the means to facilitate an end to armed conflict. As

developed to date, IDRL expedites voluntary assistance when peacetime disasters motivate humanitarian solidarity and support.<sup>10</sup> But IDRL can do more than establish the legal framework for humanitarian assistance in peacetime. If systematically developed, it could, and should, facilitate a rapid response that will bring the emergency phase to its close.

*International disaster response law applies when states and intergovernmental, humanitarian or other organizations offer, request, provide or accept cross-border disaster assistance.*

## Spatial and and temporal scope of IDRL

Precisely when and where does IDRL actually apply? Again drawing a comparison with IHL, most rules for the latter apply at the locus of armed conflict. IHL regulates the treatment of wounded, sick and shipwrecked members of armed forces in war zones<sup>11</sup>; prisoners of war held by states involved in conflict<sup>12</sup>; and civilians situated in the territory of a party to the conflict.<sup>13</sup> Likewise, rules applicable during non-international armed conflict apply within the state where hostilities occur.<sup>14</sup>

It is useful to consider the spatial scope of IDRL in similar terms. Obviously IDRL will apply at the scene of a disaster. But how does one map out, conceptually and for legal purposes, the boundaries of disaster zones? The legal subject matter of disasters could well apply in places far removed from the site of an obvious emergency.

To adopt an analogy from IHL, armed forces are obliged to follow targeting rules even when weapons are fired from platforms that are located far from any contested territory. Likewise, hurricanes and tsunamis build energy far from their point of impact and IDRL can be productively applied in such circumstances, for example, in agreements facilitating information sharing and establishing early warning systems.

In what time frame does IDRL apply? The consequences of a disaster may be felt many years after the crisis has passed. The temporal scope of IHL offers insights useful in answering this question. The rules of IHL apply in their entirety during armed hostilities, but a limited subset of IHL also applies in peacetime (both pre- and post-conflict).

The temporal parameters of IHL are sometimes intuitive; circumstances unique to armed conflict need to come to an end when conflict terminates. In this regard, prisoners of war and civilian internees – people who have only been detained because of armed conflict and whose detention would have no legal basis but for armed conflict – must be released when it ends. Logically, the time frame for application of such rules continues until such captives have been released and repatriated following termination of active hostilities.<sup>15</sup>

Other IHL rules applicable in peacetime actually bolster the law during armed conflict. The Geneva Conventions require dissemination of IHL in times of peace as well as time of war.<sup>16</sup> Peacetime rules on use of the emblems of the Red Cross and Red Crescent ensure that their protective impact is not diluted during armed conflict.<sup>17</sup> The Geneva Conventions also commit states to try persons who have allegedly committed grave breaches of IHL. Practically speaking,

this commitment extends well beyond the termination of armed conflict – in some cases, decades or generations after.<sup>18</sup>

Most IDRL identified in the International Federation’s research<sup>19</sup> applies during the emergency phase of disasters. However, just as some IHL applies in peacetime, there are issues impacting public health and safety that reasonably come within the ambit of IDRL other than during the actual emergency.<sup>20</sup> It may be useful to examine rules for the pre-disaster phase (for example, pre-positioning relief supplies), and the post-disaster phase (for example, procedures for review of lessons learned and information sharing), that may directly impact humanitarian service delivery in disasters.

The primary question to consider is: When does a disaster begin? Intuitive trigger points for application of IDRL would include the moment of kinetic impact in a natural catastrophe; the moment when the effects of a viral epidemic or man-made contamination are detected; and the moment when food insecurity exacts a measurable toll. It would be reasonable to extend this scope a bit further to include the moment when it becomes apparent that slow or sudden onset disasters will likely trigger these or other events requiring international emergency assistance and cooperation.<sup>21</sup>

There are circumstances where a humanitarian challenge may be covered by IHL at one point in time and IDRL at another. For example, humanitarian emergencies triggered by armed conflict (such as food security threats) may continue past termination of hostilities and hence past the point where they would be covered by IHL. Such circumstances would call for transition to, and application of, peacetime rules from IDRL.<sup>22</sup>

*International disaster response law applies from the moment forces of nature, human mishap, or intentionally triggered catastrophic events (other than those taking place in armed conflict) threaten imminent and adverse impact on human beings, and remains in effect until emergency assistance is no longer needed. It applies at the scene of the emergency, and at other locations as well where monitoring, reporting or other forms of cooperation, coordination or assistance can mitigate the impact of events or forces inducing such calamities.*

## **Structural and substantive scope of IDRL**

Though IDRL has only recently been the subject of systematic study, it is clearly founded in the same sources of authority as other subject matter of international law.<sup>23</sup> Though not as well developed as IHL, IDRL follows the same structure in that it is founded in treaties, and its application and interpretation facilitated by reference to resolutions of international organizations and conferences.<sup>24</sup> Research completed to date does not suggest the existence of a system of customary IDRL, whereas customary rules are a long-established component of IHL.<sup>25</sup>

Other sources also contribute to the general development of international law and thus have a role to play in shaping IDRL. These sources either contribute to the corpus of IDRL or illuminate areas where the law may need further development. They include:

- municipal legislation;
- memoranda of understanding between states and humanitarian organizations;
- professional standards for humanitarian actors such as the Code of Conduct for the International Red Cross and Red Crescent Movement and NGOs in Disaster Relief (see Box 1.1); and
- standards for humanitarian assistance such as those developed by the Sphere Project (see Box 1.2).

The International Federation's ongoing study has identified core IDRL subject matter that appears in many relevant instruments, including guidance on offer and acceptance of humanitarian assistance; coordination of relief efforts; access to disaster sites; controls on import of relief goods; status and protection of personnel; and allocation of costs for peacetime humanitarian relief.<sup>26</sup>

Though IDRL applies in circumstances quite different from those involving IHL, there is some conceptual overlap. Accordingly certain principles useful to the development of IDRL can be derived from international humanitarian law. The status, protection and responsibilities of individuals and units providing humanitarian assistance in war zones have been an important focus throughout the development of modern IHL.<sup>27</sup> The Geneva Conventions of 1949 and the Additional Protocols of 1977 provide contemporary guidance in this area.<sup>28</sup>

It is reasonable to assume states will maintain an interest in such matters in peacetime as well as during armed conflict. Humanitarian organizations certainly do, making this a promising area for development within the framework of IDRL.<sup>29</sup> Similarly, IHL rules on Red Cross and Red Crescent emblem use found in the First Geneva Convention provide the starting point for consideration of any rules on emblem use in non-conflict disaster settings.<sup>30</sup>

It is also important to consider limitations on the scope of subject matter that might be productively incorporated into IDRL. As suggested before, there are legal issues quite important to disaster reduction (for example, land use regulation and environmental protection rules) that are not directly linked to the emergency response phase. These can be addressed more productively in contexts other than that provided for by IDRL.<sup>31</sup>

*International disaster response law is found in treaties, municipal law and regulations. Its development is facilitated through resolutions adopted by the International Conference of the Red Cross and Red Crescent, the UN, other intergovernmental organizations, and learned societies, and through public and private codes and standards adopted to guide humanitarian action. It encompasses information sharing, coordination, deployment of personnel, equipment and supplies, access and assistance to disaster victims, status of humanitarian responders and standards of conduct.*

## Conclusions

Based on the factors explored in this chapter, the following working definition is now proposed for international disaster response law:

*International disaster response law is found in treaties, municipal law and regulations. Its development is facilitated through resolutions adopted by the International Conference of the Red Cross and Red Crescent, the UN, other intergovernmental organizations, and learned societies, and through public and private codes and standards adopted to guide humanitarian action.*

*Its rules apply when states or intergovernmental, humanitarian or other organizations offer, request, provide or accept cross-border disaster assistance. It encompasses information sharing, coordination, deployment of personnel, equipment and supplies, access and assistance to disaster victims, status of humanitarian responders and standards of conduct.*

*It applies from the moment forces of nature, human mishap, or intentionally triggered catastrophic events (other than those taking place in armed conflict) threaten imminent and adverse impact on human beings, and remains in effect until emergency assistance is no longer needed. It applies at the scene of the emergency, and at other locations as well where monitoring, reporting or other forms of cooperation, coordination or assistance can mitigate the impact of events or forces inducing such calamities.*

1. For example "To provide assistance and relief in disasters which may afflict peoples during peacetime is a condition of the vigorous development of the Societies, and a useful preparation for their wartime work. Relief Societies should therefore, in peacetime, devote themselves to humanitarian work corresponding to their wartime duties, namely...to giving relief in case of public calamity which, like war, demands immediate and organized assistance." 2nd International Red Cross Conference, Resolution 3, Berlin (1869).
2. For example, League of Red Cross and Red Crescent Societies – UN Disaster Relief Office recommendations supported in 23rd International Conference of the Red Cross, Resolution 6 on Measures to Expedite International Relief, Bucharest (1977) (see Box 3.2).
3. Council of Delegates of the International Red Cross and Red Crescent Movement, Resolution 5 on International Disaster Response Law, November (2001). The Federation has a long-standing, pioneering interest in the development of international law to meet the humanitarian challenge of non-conflict disasters. See Professor J. Patnogie, "Natural Disaster Relief Actions and International Law: The Protection of Human Beings in Disaster Situations" (1983).

4. United Nations General Assembly Resolution, Strengthening the effectiveness and coordination of international urban search and rescue assistance, *A/57/150* (2003), preamble. "Noting also that the International Federation of Red Cross and Red Crescent Societies is identifying the current state of international law relating to disaster response for a report to be presented to States and National Red Cross and Red Crescent Societies at the International Conference of the Red Cross and Red Crescent in December 2003, and emphasizing the need for intergovernmental oversight of this process, particularly with regard to its principles, scope and objectives".
5. See Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of 12 August 1949 (First Geneva Convention ), Article 2; Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea of 12 August 1949 (Second Geneva Convention), Article 2; Geneva Convention Relative to the Treatment of Prisoners of War of 12 August 1949 (Third Geneva Convention), Article 2; Geneva Convention Relative to the Protection of Civilian Persons in Time of War of 12 August 1949 (Fourth Geneva Convention), Article 2.
6. First Geneva Convention, Article 2; Second Geneva Convention, Article 2; Third Geneva Convention, Article 2; Fourth Geneva Convention, Article 2; Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts of 8 June 1977 (Protocol I), Article 1(3).
7. Article 3 common to the First, Second, Third and Fourth Geneva Conventions. See also Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts of 8 June 1977 (Protocol II), Article 1.
8. 10th International Red Cross Conference, Resolution 14, Geneva (1921).
9. Some acts of sabotage and terrorism committed by private actors take place during armed conflict and are addressed with reference to IHL, but sometimes such acts could trigger peacetime emergencies that are the subject of IDRL. The International Red Cross and Red Crescent Movement is now beginning to consider how IDRL as well as IHL would be applied to assist victims in such circumstances. See for example, statement by Dr. Oktamkhon T. Valxhidova, President of the Red Crescent Society of Uzbekistan, delivered on 8 September 2003 at the Annual Meeting of National Society Legal Advisers in Geneva, Switzerland. (The same acts, inflicted by one state against another, would likely qualify as acts of belligerency and international humanitarian law would apply rather than IDRL.)
10. For a regional survey illustrating this point, see Tracy-Lynn Field, "International Disaster Response Law Research Report: Southern African Region", pp 9-11 <[http://www.ifrc.org/cgi/pdf\\_pubs.pl?disasters/IDRL\\_sa\\_report.pdf](http://www.ifrc.org/cgi/pdf_pubs.pl?disasters/IDRL_sa_report.pdf)>.
11. First Geneva Convention, Articles 12-44; Second Geneva Convention, Articles 12-45.
12. Third Geneva Convention, Article 12. A limited exception to this principle involves guidance on transfer of wounded and sick prisoners of war for internment in neutral countries during the conflict, Third Geneva Convention, Article 109.
13. Fourth Geneva Convention, Articles 13; 35.
14. "In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions..." Article 3 common to the First, Second, Third and Fourth Geneva Conventions. See also Additional Protocol II, Article 1(1), which applies in armed conflicts "which take place in the territory of a High Contracting Party".
15. "Prisoners of war shall be released and repatriated without delay after the cessation of active hostilities." Third Geneva Convention, Article 118. "Internment shall cease as soon as possible after the close of hostilities." Fourth Geneva Convention, Article 133.
16. First Geneva Convention, Article 48; Second Geneva Convention, Article 47; Third Geneva Convention, Article 127; Fourth Geneva Convention, Article 144.
17. Jean Pictet, "Commentary on the Geneva Conventions of 12 August 1949. Volume 1: Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field", (1952) pp. 324-325. See also First Geneva Convention, Article 44.
18. "Each High Contracting Party shall be under the obligation to search for persons alleged to have committed, or to have ordered to be committed, such grave breaches, and shall bring such persons, regardless of their nationality, before its own courts." First Geneva, Article 49; Second Geneva Convention, Article 50; Third Geneva Convention, Article 129; Fourth Geneva Convention, Article 146.
19. Consider for example, IDRL rules adapted in Southern Africa, Tracy-Lynn Field, "International Disaster Response Law Research Report: Southern African Region" (2003) <[http://www.ifrc.org/cgi/pdf\\_pubs.pl?disasters/IDRL\\_sa\\_report.pdf](http://www.ifrc.org/cgi/pdf_pubs.pl?disasters/IDRL_sa_report.pdf)>.
20. Tracy-Lynn Field, "International Disaster Response Law Research Report: Southern African Region" (2003) <[http://www.ifrc.org/cgi/pdf\\_pubs.pl?disasters/IDRL\\_sa\\_report.pdf](http://www.ifrc.org/cgi/pdf_pubs.pl?disasters/IDRL_sa_report.pdf)> section 3.6.2 (Regional Malaria Control Commission).

21. For example, "Stresses that all meteorological and related data and products required to fulfill Members' obligations under WMO Programmes will be encompassed by the combination of essential and additional data and products exchanged by Members; URGES Members to: ... (3) Assist other Members, to the extent possible, and as agreed, by providing additional data and products in support of time-sensitive operations regarding severe weather warnings;" World Meteorological Organization Resolution 40: "WMO Policy and Practice for the Exchange of Meteorological and Related Data and Products Including Guidelines on Relationships in Commercial Meteorological Activities", Twelfth WMO Congress (26 October 1995).
22. See Bosko Jakovljevic, "Reflection on the International Disaster Response Law Project and experiences in Serbia and Montenegro", Chapter 6 in this book.
23. International Federation of Red Cross and Red Crescent Societies, "International Disaster Response Law: A Preliminary Overview and Analysis of Existing Treaty Law", Summary of the study on existing treaty law prepared by Professor Horst Fisher, Bochum University, Germany (January 2003) [http://www.ifrc.org/cgi/pdf\\_pubs.pl?disasters/IDRL\\_lawtreaty.pdf](http://www.ifrc.org/cgi/pdf_pubs.pl?disasters/IDRL_lawtreaty.pdf)
24. Efforts to facilitate the development of IDRL in this manner have an established history behind them. "States signatory to the Geneva Convention are asked to be good enough to make legal provision for according privileges and rights to Red Cross Societies, such as exemption from taxes and fiscal charges, postal and telegraphic charges, customs duty and others." 9<sup>th</sup> International Conference of the Red Cross, Resolution 4, Washington (1912). "The 21<sup>st</sup> International Conference of the Red Cross...urges all Governments that have not already done so to prepare and to pass the necessary legislation enabling immediate and adequate action to be taken, in conjunction with the Red Cross, along the lines of a pre-established plan based on the disaster relief rules adopted by this Conference." 21<sup>st</sup> International Conference of the Red Cross Resolution 25, Istanbul (1969) "The 23<sup>rd</sup> International Conference of the Red Cross...recommends any National Society requesting assistance following a disaster to obtain from its Government the assurance that the relief personnel sent out at the request of the League, whether official League delegates or teams made available by National Societies, will be given the advantage of simplified entry formalities, such as exemption from visa obligation, issue of visa at points of entry, or any other facility enabling this relief personnel to fulfil its mission without delay, while respecting local legislation..." 23<sup>rd</sup> International Conference of the Red Cross, Resolution 5, Bucharest (1977) "The Twenty-fifth International Conference, recognizing that technological developments in many areas constantly progress and that many States carry out nuclear activities...1. requests governments to intensify future international cooperation for the safe development and application of new technologies and to undertake efforts to conclude further bilateral and multilateral agreements on mutual, timely and comprehensive information as well as on measures for mutual assistance...5. encourages National Red Cross and Red Crescent Societies to intensify their efforts to arrive at bilateral and multilateral agreements and commitments to mutual assistance in case of major disasters of any kind." 25<sup>th</sup> International Conference of the Red Cross, Resolution 21, Geneva, (1986).
25. However, the Federation's research might yet produce evidence warranting reconsideration of this point.
26. International Federation of Red Cross and Red Crescent Societies, "International Disaster Response Law: A Preliminary Overview and Analysis of Existing Treaty Law", Summary of the study on existing treaty law prepared by Professor Horst Fisher, Bochum University, Germany (January 2003) [http://www.ifrc.org/cgi/pdf\\_pubs.pl?disasters/IDRL\\_lawtreaty.pdf](http://www.ifrc.org/cgi/pdf_pubs.pl?disasters/IDRL_lawtreaty.pdf)
27. For the evolution of such regulation prior to 1949, see Geneva Convention for the Amelioration of the Condition of the Wounded in Armies in the Field (1864), Articles 1; 2; 3; 5; Hague Convention (III) for the Adaptation to Maritime Warfare of the Principles of the Geneva Convention (1899) Articles 1; 2; 3; Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armies in the Field (1906) Articles 6; 9; 10; 11; 12; Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armies in the Field (1929), Articles 6; 9; 10; 11.
28. First Geneva Convention, Articles 19; 20; 24; 25; 26; 27; Second Geneva Convention, Articles 22; 23; 24; 25; 36; 37; Third Geneva Convention, Article 125; Fourth Geneva Convention, Articles 14; 18; 20; 21; 22; 63; Additional Protocol I, Articles 8; 12; 15; 17; 21; 22; 23; 24; 62; 81 ; Additional Protocol II, Articles 9; 10; 11; 18.
29. See "Principles and Rules for Red Cross and Red Crescent Disaster Relief" adopted by the 21st International Conference of the Red Cross, Istanbul (1969) and revised at the 22nd, 23rd, 24th, 25th and 26th International Conference of the Red Cross and Red Crescent. (see Box 4.2)
30. Jean Pictet, "Commentary on the Geneva Conventions of 12 August 1949, Volume 1: Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field", Geneva, (1952) pp. 324-325. See also First Geneva Convention, Article 44.
31. For a study that considers the broader spectrum of legal issues relating to disaster prevention and mitigation, see Jiri Toman, "Towards Disaster Relief Law: Legal aspects of disaster relief operations" in Frits Kalshoven (ed), "Assisting the Victims of Armed Conflicts and Other Disasters", Papers delivered at the International Conference on Humanitarian Assistance in Armed Conflict, The Hague (22-24 June 1988), pp.193-194.