

Extract from “International disaster response laws, principles and practice: reflections, prospects and challenges” published by the International Federation of Red Cross and Red Crescent Societies, Geneva, 2003, pp 96-105.

Chapter 6

Reflections on the International Disaster Response Law Project and experiences in Serbia and Montenegro

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Introduction

In the period 1991-2002, the former Federal Republic of Yugoslavia, now Serbia and Montenegro, experienced a series of tumultuous events. The country was faced with war, impoverishment and large population movements both within and beyond its borders. This situation amounted to a protracted, large-scale disaster.

For some months in 1991 and 1999, Yugoslavia was a party to armed conflict, during which the rules of international humanitarian law (IHL) were applicable. In the remaining period, the rules of international disaster response law (IDRL) were applicable, and these are the subject of this article. The country's name was officially changed in 2003 to Serbia and Montenegro. However, this article refers to Yugoslavia, the country's name during the period under discussion.

This article will examine the rules arising from the numerous agreements concluded between Yugoslavia and the various foreign donors who were undertaking continuous international disaster response operations and providing humanitarian assistance to the victims. These rules will be identified and examined systematically according to the different phases of relief operations.

The phases of disaster relief and IDRL

The right of victims to demand and to receive humanitarian assistance

The first phase of a relief operation begins with the existence of the right of the victims to demand and to receive humanitarian assistance when they are in need and when no other alternatives exist.¹ The main responsibility for assisting such victims lies with national actors

within their own country. In the case of Yugoslavia, however, this was not sufficient to cover the basic needs of the population, thus international assistance was called upon to join in the effort.

Whilst the rights of the victims to receive such assistance had not been recognized and proclaimed *expressis verbis* in that particular situation, it can be implied as the basis for any relief operation. This notion has since been expressed and formulated in doctrine, in particular by the San Remo International Institute of Humanitarian Law, which, in 1993, adopted the act entitled Guiding Principles on the Right to Humanitarian Assistance. In this act, the institute not only proclaimed the existence of this right, but it also established other rules necessary to give it effect. The significance of this process is made all the more compelling when considering the composition of the Round Tables and Congresses of the Institute, which involve, in particular, those directly concerned with providing humanitarian assistance.

When considering the rights of victims of disaster, it is also necessary to establish who is responsible to care for the victims.² In the first instance, it is the government authorities and other bodies of the country affected by disaster. At the international level, there is also a duty for certain international organizations to offer humanitarian assistance, when this is inscribed in their constitutional acts, such as the United Nations (UN), the European Union (EU) or the International Red Cross and Red Crescent Movement. For other international actors, such as individual states, there is no duty to offer assistance unless this is contained within a specific treaty. These usually take the form of bilateral treaties for mutual assistance in the case of disasters.

Identification of victims and their needs

The next phase of a disaster relief operation involves the identification of the victims and their needs. In Yugoslavia, this was undertaken jointly by the national authorities and the National Red Cross Society. Other international organizations also contributed to this process through their missions already present in the country or by sending delegates from their headquarters.

After the needs evaluation was completed, the various donors initiated relief operations at the request of the government. In many cases, the government of Yugoslavia or the Yugoslav Red Cross (YRC) would conclude agreements with the international organizations to regulate the way in which these operations would take place. Such agreements often consisted of framework agreements to specify the legal status of the mission or delegation of the organization involved, in particular concerning the status of their personnel. They were often concluded orally and formed between partners that had already been engaged in cooperative efforts. Where these agreements involved the YRC, they tended to include provisions based more on specific operational aspects rather than legal status.

It is these agreements which contain the rules comprising much of IDRL. They include elements such as:

- the category of beneficiaries;
- the type of assistance to be provided;
- the number of persons to be assisted;

- the quantity of goods or services;
- the duration of the assistance; and
- monitoring systems for assessing progress.

In the context of Yugoslavia, many of these elements were determined jointly by the parties, but in some cases the donor would simply offer the only type of assistance it had available, regardless of the priority of needs. The agreements were often followed by a request for funds through a public appeal or by approaching specific potential donors, particularly when the needs of the victims were great. Thus, the type and amount of assistance actually provided depended largely on the success of the appeal for funds.

The beneficiaries themselves did not generally play a significant role in the identification of their own needs. However, some groups of refugees had formed associations which enabled them to participate in both the determination of needs and in the distribution of relief goods. The participation of beneficiaries in identifying their own needs should be an important component in the realization of the right to humanitarian assistance, which in turn, should have a defined place in the human rights system.

Facilitation of disaster response operations

The decision to launch disaster response operations in Yugoslavia gave rise to many questions which required answers to be found within the rules of IDRL or, where express rules were absent, in conformity with the principles of IDRL. One question of particular importance was that of the transit of goods and personnel involved in the response operation. In many cases, the states through which transit needed to occur were not bound by the various agreements between the donors and Yugoslavia. Often, the large international organizations organizing or providing assistance were required to negotiate with transit states for permission to enable the passage of goods and services forming a consignment of relief.

This raises a number of questions:

- Is there the right to demand transit of humanitarian assistance when no other route is available?
- Can the transit be refused, and if so, under what circumstances?
- Can transit be delayed by onerous and lengthy administrative procedures?
- Should tariffs to be paid?
- Should relief personnel receive visas quickly?
- For air transport, what are the rights for over-flight?

Some of these questions are regulated by corresponding international agreements, others must be decided on the merits of each case. This process can be facilitated by conforming with the spirit of recommendations or resolution of certain international bodies such as the UN General Assembly or governing bodies of other international organizations.

In the case of Yugoslavia, once the relief consignments successfully arrived at the frontier, they were exempt from the payment of customs and duties, and importation procedures were simplified and expeditious. The tolls on road transport for the use of highways were waived, as

was the imposition of turnover tax. The railways transported relief goods free of charge and aircrafts received any necessary permits to land.

Concerning relief personnel, they were quickly granted entry visas and due privileges and immunities were accorded through the various status agreements in place. Such personnel were able to gain access to the victims and their goods were protected against theft, banditry and other assaults. The YRC was the main operative body involved in receiving the goods, storing them and preparing them for distribution, in accordance with agreements with the donors.

These various measures, often described as the granting of facilities for relief operations³, were implemented by a series of internal acts of law, many of which gave effect to a number of corresponding international instruments or recommendations. Such clauses were also included in the agreements between donors and the government of Yugoslavia or the YRC. The codification of these rules, however, would significantly improve and facilitate relief operations.

Distribution of relief goods

The distribution of goods to beneficiaries was made on the basis of the agreements concluded between the parties. Distribution would also take into account the categories of beneficiaries in greatest need, as well as the wishes or competence of the donor. For example, the UN High Commissioner for Refugees (UNHCR) provided humanitarian assistance to refugees and persons in refugee-like situations. In some cases, however, there were other groups from within the same population who were facing equally difficult situations, but some donors would insist that their criteria for assistance be respected and would request compensation in kind for any misappropriation of goods by these other groups.

The final list of recipients entitled to receive assistance was determined by the YRC, sometimes in cooperation with associations of the victims, organized according to their place or country of origin. The question was then raised as to whether the beneficiaries could sell their designated relief goods on the open market, to obtain the type of goods they most needed.

Other challenges associated with international disaster response

Economic sanctions

A complicating factor in the situation of Yugoslavia, were the severe economic sanctions imposed by the UN Security Council⁴ as a result of lack of compliance with some of its resolutions relating to peace. In their relationship with the principles and rules of IDRL, these sanctions imposed a set of rules which prevailed over others and they represented a serious obstacle to the progress of disaster relief operations. Whilst the Security Council recognized the need to exempt humanitarian relief from sanctions, the way in which they were implemented proved to be seriously deficient. The resolutions of the Security Council suspended many rules of IDRL, and even its principles. In particular it affected the efficiency, rationality and effectiveness of assistance, as described below.

The implementation of the sanctions and the decisions about humanitarian exceptions were entrusted to a Sanctions Committee, made up of 15 diplomats representing the member countries of the Security Council. This committee was equally competent to decide on other aspects relating to the sanctions including embargoes on military goods, equipment and arms. Significantly, there were no representatives to advocate for issues of humanitarian interest.

As the committee was required to consider the merits of every single item to be exempted from sanctions, there was often a large backlog in its work. In particular, the committee was required to interpret the vague definition of goods to fall within the concept of humanitarian assistance, a concept which was narrowly interpreted and resulted in relief goods being held up at borders for long periods, awaiting the permission of the Sanctions Committee. Furthermore, the procedures themselves enabled the forwarding of relief from big international organizations but discouraged medium and small donors. All of these factors had the effect of delaying and reducing the total volume of relief able to be provided.

While not questioning the right of the Security Council to impose economic sanctions, there is an equal need to respect humanitarian principles, which cannot be ignored. The sanctions, as they were applied in Yugoslavia, created havoc in the country's economy, the effects of which are still being felt. They also exacerbated the situation of displaced populations.

A large number of people in refugee-like situations had to seek shelter and assistance in private homes, where they were not able to receive adequate assistance because of the general impoverishment of the population caused by the sanctions. This was despite the fact that many of these displaced people, in other circumstances, would have been able to benefit from the provisions of refugee law, which entitles them to protection and assistance from the international community.

Thus, much greater attention to humanitarian considerations is required if sanctions are applied, both in the definition of goods and services exempted from sanctions, and in the machinery for their implementation.

International coordination

International coordination plays an important role in disaster operations, particularly when there are numerous donors involved in conducting long-term operations. In the situation of Yugoslavia, that role was played by the International Committee of the Red Cross (ICRC) and some UN bodies during the period of armed conflict. In other periods it was the International Federation of Red Cross and Red Crescent Societies who took on the coordination role, jointly with various UN organs such as the World Food Programme (WFP) and UNHCR, as the situation required.

Resolutions of the UN General Assembly suggest that the role of coordinator should in principle be performed by the UN Office for the Coordination of Humanitarian Affairs (OCHA) and the UN Emergency Relief Coordinator.⁵ However, the basis of resolutions of the UN General Assembly are not as strong as those arising from treaties. Thus, it is not easy for these bodies to attempt to coordinate large and influential organizations that have developed a long tradition of humanitarian assistance and whose actions are based on treaty law.

Therefore, the system of lead agency has evolved through practice and the various UN agencies take the lead depending on the type of assistance required and categories of beneficiaries to be assisted. This challenge requires further study to examine ways to improve international coordination of assistance in response to disasters.

The regulation of international coordination is also connected to the roles undertaken by various actors at the national level.⁶ UN General Assembly resolutions recommend the nomination of one national coordinator, body or person, which many states have not achieved. In Yugoslavia, the federal ministry of health and social welfare was designated as the main coordinator. However, there were also other bodies acting independently.

The only type of assistance that was effectively centralized was the distribution of drugs and medical equipment to health institutions and hospitals, which was determined according to the greatest need. In general, the national coordinating role could be performed by the equivalent of civil defence or civil protection services, which are created to protect the population from the effects of war or disaster.

Monitoring and accountability

Disaster relief operations are activities requiring the movement of large quantities of goods and financial resources between all parts of the world. Such activities must be accounted for. Specifically, all the participants in disaster response activities must be accountable to those who are assisted as well as to those who provide assistance. Special measures have already been designed to achieve this, such as monitoring mechanisms to prevent abuses or damages, which must be accepted by all concerned. The implementation of such measures could be considered a rule of IDRL.

In Yugoslavia, monitoring and control of activities were not only conducted by the personnel engaged in the operations but also by special teams at the national and local level, representatives of major donors and coordinating bodies, as well as Yugoslav government agencies and the YRC.

All of the large organizations had their own personnel engaged specifically in the control of phases of the operation, including warehousing, preparation for the distribution of relief goods, establishment of lists of beneficiaries and final distribution – all of which were conducted with transparency. However, these various monitoring methods created the situation whereby excessive numbers of international donor representatives circulated in the field. It would have been better to rationalize the work of monitoring through better coordination between the donors.

Accountability in relation to the provision of humanitarian assistance is based on many principles⁷, for example, good governance; transparency; rationality; access to information; sound financial management; periodic reporting and evaluation; implementation of agreements in good faith; supervision and control; access to beneficiaries; and protection of relief goods. These principles should be codified in the process of the further development of IDRL.

Participation of beneficiaries

In certain phases of relief operations, the role of the beneficiary should be increased and strengthened whenever possible. In Yugoslavia, the participation of refugees' associations in the preparation of lists of beneficiaries and also in the distribution, is a positive example. Beneficiaries should also have a say in determining the needs and types of assistance. Indeed, the whole of the response operation should be viewed from the point of view of the beneficiary. In this way, the right to humanitarian assistance could be better applied and promoted.

Future development of IDRL

The need for a sponsor for IDRL

During this discussion, many measures have been suggested to improve and strengthen IDRL. In addition to these, it is important that the whole subject of IDRL, its application and development, have a sponsor or patron organization. The role of the ICRC in initiating IHL and the struggle for its recognition, application and further development should be an example. Without such a sponsor or sponsors, IDRL would not be identified, recognized, applied and further developed. Such a role could be undertaken by the International Federation with the support of OCHA. The support of other bodies would also be welcome.

A systemized approach to IDRL

A great number of rules of IDRL are based on principles. Some of them have been identified in UN General Assembly resolutions, such as humanity, impartiality and neutrality.⁸ But there are others, notably those more related to the mode of operation, such as rationality and efficiency. In further developing IDRL, these concepts should all be identified and proclaimed as guiding principles, in the spirit of which all rules should be interpreted. The rules themselves should be presented as a system, such as the sequence of phases of disaster response operations, as proposed here.

Does IDRL already exist?

A crucial question to be raised is whether IDRL already exists. Through the examination of numerous agreements in the context of Yugoslavia, it could be stated that there is a collection of rules relating to disaster response or relief operation, which could be called 'international disaster response law'. These rules relate to the actions undertaken by the international community in response to disasters, with the purpose of reducing their impact, providing the conditions necessary for people's survival and helping the victims to recover from its effects and long-term consequences.

In the context of the events that occurred in Yugoslavia from 1991-2002 and the various disaster operations that were initiated to assist the victims, there are many aspects of these operations that deserve to be studied.

In particular, it must be determined whether the conclusions reached in this case study are also valid for actions in other parts of the world. The initiative of the International Federation to

undertake the IDRL Project represents an opportunity to focus the attention of all those concerned to this forgotten aspect of international disaster response – the applicable law.

Could IDRL be a special branch of international law?

The question may be raised as to whether this legal system, already in existence, could be considered a special branch of international law.⁹ IDRL comprises specific rules taken from various branches of law such as human rights; customs; telecommunication; transport by air, road, rail and water; cooperation of states during an emergency; and the law of international organizations. Without touching on the legal value of these rules, they all regulate the one phenomenon, international disaster response, and assist in reducing the impact of disasters and bringing humanitarian assistance to victims.

The assembly of these rules into a special branch of law would assist, not only in the academic teaching of these rules, but also in training for relief operations. It would enable a view of the whole system, in its entirety, as opposed to its segregation into specific aspects. Such an approach would also enable the identification of the weak points and contradictions, identify the various patterns of law, and assist in the review of existing laws with a view to facilitating their improvement.

There are certainly reasons against IDRL forming a special branch of international law, and such theoretical questions are best reserved for future discussions. However, it is possible that the collection of rules from various branches of international law could be considered to constitute a special legal regime.

As another approach, the rules on disaster relief operations could also be presented as a charter of rights and duties of all the main actors, as explored in a recent essay on that subject.¹⁰

Future progress of the IDRL Project

The International Federation initiated the IDRL Project following the resolution of the Council of Delegates of the International Red Cross and Red Crescent Movement in 2001.¹¹ The project proposed to examine the various laws applicable to disaster situations other than armed conflicts and complex disasters. The first task of identifying the current state of IDRL has already begun, with much work undertaken by the Ruhr University in Bochum, Germany, under the guidance and with valuable comments of Professor Horst Fischer. However, there is still much work awaiting the International Federation. In the materials collected so far, the chaotic status of IDRL is visible, and plans for future action should be elaborated.

Among the numerous issues to be addressed, the following can be identified:

- development of the right to humanitarian assistance;
- acts against relief consignments that constitute the violation of international penal law;
- the effects of UN Security Council resolutions on the application of IDRL rules;
- the right and duty to offer humanitarian assistance; and
- the limits of the right of the receiving state or of territorial authorities to consent to disaster response operations.

Similarly, there are many legal forms that may be used for future action. Some of these include:

- proclamation of the guiding principles on which this law should be based;
- elaboration of model rules or model conventions, using the models already proposed¹²;
- recommendation by high international bodies, such as additional resolutions of the UN General Assembly and the International Conference of the Red Cross and Red Crescent;
- examination of the possibility of elaborating an international instrument dealing with procedural and other matters, and to this end, re-examine the 1984 draft convention elaborated by the UN Disaster Relief Office¹³, to see its value today;
- examination of the various treaties from different branches of law, to see if they require amendments;
- promotion of the right to humanitarian assistance within human rights law;
- development of a handbook for those who participate in disaster response operations, containing existing rules and recommended practices;
- encouragement of regional solutions;
- examination of the possibility and prospects for partial codification of the rules of IDRL in preparedness, training and execution of disaster response operations; and
- encouragement of the study of questions in IDRL.

If the 21st century is to be the century of the affirmation and respect for human rights, attention should be paid to the need to identify, recognize and improve the right to humanitarian assistance. This right should apply to those situations when human rights are violated on a large scale, and when the very survival of human beings is threatened by disasters which continue to plague the world. In addition to this right, currently in formation, better implementation of existing IDRL, filling the gaps in that law and continuing its development would enhance respect for human rights in the world.¹⁴

1. See among others: Jovan Partognic, "New Issues for International Humanitarian Law Regarding Humanitarian Assistance", Dragon European Foundation, Edizioni Nagard, Milano (2000) pp. 7-9 and Bosko Jakovljevic, Report submitted at the International Institute of Humanitarian Law first Meeting of Experts on Humanitarian Protection in Non-International Conflicts, "Right to Humanitarian Assistance", San Remo (December 1999).
2. United Nations General Assembly Resolution, A/RES/ 46/182, Strengthening of the coordination of emergency humanitarian assistance of the United Nations, (1991) Annex, point 4.
3. 23rd International Conference of the Red Cross Recommendations in Resolution VI, Recommendations (1977); United Nations General Assembly, Report of the Secretary General, Office of the United Nations Disaster Relief Co-ordinator, Annex II: Measures to expedite international relief, A/32/64 (1977), United Nations Economic and Social Council Resolution, A/RES/2102(XXVI) and United Nations General Assembly Resolution, Office of the United Nations Disaster Relief Coordinator, A/RES/32/56 (1977).
4. In particular UN Security Council Resolutions 757, 760, 787 and 820.
5. In particular United Nations General Assembly Resolution, Assistance in cases of natural disaster and other disaster situations, Third Committee, A/RES 2816 (XXVI) (1971) and United Nations General Assembly Resolution, A/RES/46/182, Strengthening of the coordination of emergency humanitarian assistance of the United Nations, (1991). Prior to UN OCHA it was its predecessors, UNDRO and DHA.
6. United Nations General Assembly Resolution, Assistance in cases of natural disaster and other disaster situations, Third Committee, A/RES 2816 (XXVI) (1971), point 8b.
7. See International Law Association Report of the 70th Conference, New Delhi 2002, Committee on Accountability of International Organizations Third Report pp. 272 and following.
8. United Nations General Assembly Resolution, A/RES/46/182, Strengthening of the coordination of emergency humanitarian assistance of the United Nations, (1991), Annex, point 2.
9. See in particular Jiri Toman, "Towards a disaster relief law", in Fritz Kalshoven (ed) "Assisting the Victims of Armed Conflicts and Other disasters", Martinus Nijhoff, Dordrecht (1989) pp.181 and 199.
10. Bosko Jakovljevic, "International Disaster Relief Law", 2002, Chapter VII, pp. 31-37 (available from author).
11. Council of Delegates of the International Red Cross and Red Crescent Movement of 2001 in Resolution 5 and document CD 2001/7/1.
12. Some of the model rules: International Law Association, Committee on medical law and humanitarian law, Rapporteur Prof. Michael Bothe, Report to the 59th Conference 1980, pp. 521-527. Mohammed El Baradei and others, "Model Rules for Disaster Relief Operations", UNITAR, 1982. International Civil Defence Organization, "Framework Convention on Civil Protection Assistance" in Protection and Assistance for All in the Face of Disasters in the 21st Century", Beijing, 1998, pp. 40-42.
13. Doc. A/39/267/Add.2, 18 June 1984. See article: Bosko Jakovljevic, "The right to humanitarian assistance – Legal Aspects", in International Review of the red Cross, June 1987, pp. 469-484 pleading for the elaboration of international agreements on that subject.
14. General remark: for the implementation of IDRL in the former Federal Republic of Yugoslavia in the period 1991-2002, see the report on that case, submitted to the International Federation in August 2003.