



30IC/07/9.1
Original: English

**30th INTERNATIONAL CONFERENCE
OF THE RED CROSS AND RED CRESCENT**

Geneva, Switzerland,
26-30 November 2007

**STRENGTHENING THE LEGAL FRAMEWORKS FOR
INTERNATIONAL RESPONSE TO DISASTERS**

BACKGROUND DOCUMENT

**Document prepared by the International Federation
of Red Cross and Red Crescent Societies
in consultation with the International Committee of the Red Cross**

Geneva, October 2007

Executive Summary

The International Disaster Response Laws, Rules and Principles (hereafter "IDRL") Programme seeks to reduce the vulnerability and suffering of people affected by disasters by raising awareness on the importance of legal preparedness for disasters (excluding situations of armed conflict). Through its research and advocacy efforts with various humanitarian stakeholders, it seeks to identify appropriate avenues for strengthening the laws, rules and principles that ensure a timely, adequate and efficient international response to disasters, where international involvement is needed; and provide technical assistance towards enhanced legal preparedness.

Pursuant to its **official mandate** from the 28th International Conference of the Red Cross and Red Crescent in 2003, the International Federation and National Societies took up a **leadership role** in conducting research and advocacy efforts related to IDRL.

In the area of **research**, the International Federation carried out the following activities:

- § 15 new country and regional legal studies, and operational case studies covering 20 countries in the Americas, Africa, Asia-Pacific and Europe;
- § A global survey of States, National Societies and humanitarian organizations;
- § A searchable online database containing over 500 legal documents;
- § A comprehensive desk study documenting the current scope of IDRL regulatory frameworks and identifying key gap areas.

In the area of **advocacy** on IDRL, the IDRL Programme organised or participated in **22** IDRL events, took an active part in **53** international conferences and **17** training events. In 2006 and 2007 it organised five high-level multi-stakeholder regional consultations on IDRL geared towards finding a common understanding of the main legal challenges encountered by international and national actors involved in disaster response, as well as prioritising adequate legal avenues for addressing these. **119 National Societies, 84 Governments, 18 UN agencies, 12 regional organisations, and 18 NGOs and networks** took an active part in this process. As a direct consequence of the Movement's leadership efforts, as well as the growing global awareness of the importance of the issue of legal preparedness, increasing **high-level international recognition** has been voiced for its efforts.

As requested by the 28th International Conference, the IDRL Programme has developed **tools and guidelines for practical use** in international disaster response activities, in particular the **Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance**. They are a non-binding statement compiling the main norms and principles agreed by the international community and a technical tool of reference for States interested in improving their national legal framework. They have been shaped and refined with the input of the large majority of all major stakeholders concerned: States, National Societies, as well as IOs and NGOs.

During the period 2004-2007, the IDRL Programme has benefited from **increasingly world-wide support**, as reflected in the number of its financial contributors which rose from 6 in 2004, to **26** in 2007. It significantly scaled up its **partnerships** with States, humanitarian and academic partners.

The International Federation asks the 30th International Conference of the Red Cross and Red Crescent to **adopt the Guidelines and set out its future mandate** to enable it to operationalise the Guidelines through the provision of regionally-based technical assistance and capacity-building in close collaboration with National Societies.

STRENGTHENING THE LEGAL FRAMEWORK FOR INTERNATIONAL RESPONSE TO DISASTERS

1. Introduction

On the recommendation of the Disaster Preparedness and Relief Commission, the Governing Board of the International Federation of Red Cross and Red Crescent Societies placed International Disaster Response Law (now known as International Disaster Response Laws, Rules and Principles, hereafter "IDRL"¹) on the International Federation's list of advocacy priorities in 2000. In 2001, the **Council of Delegates of the International Red Cross and Red Crescent Movement** welcomed the IDRL initiative and called on National Societies and the ICRC to support the International Federation's work in this area.

In 2003, the International Federation produced a book on IDRL issues, composed of papers by outside experts, and compiled 300 international documents into a searchable CD-Rom.

Also in 2003, the **28th International Conference of the Red Cross and Red Crescent** adopted the Agenda for Humanitarian Action whose Final Goal 3.2 "*welcomed the work undertaken by the International Federation to collate and examine the effectiveness of laws, rules and principles applicable to international disaster response*" and shaped its **official mandate** for the next four years. The International Federation was also requested to submit a **progress report in 2007** to the International Conference of the Red Cross and Red Crescent – hence this document, reflecting the work carried out by the IDRL Programme.

Agenda For Humanitarian Action, adopted at the 28th International Conference of the Red Cross and Red Crescent

Final Goal 3.2 Enhance international disaster response through support for the compilation and application of the laws, rules and principles applicable to international disaster response

In 3.2.6., the 28th International Conference directed the International Federation and National Societies "***to continue to lead collaborative efforts***", involving States, the UN, NGOs, etc. in conducting research and advocacy efforts related to IDRL.

In this context, it underlined ***three priority areas***:

- the ***identification of outstanding needs*** in the legal and regulatory frameworks
- the development of ***models, tools and guidelines for practical use*** in international disaster response activities; and
- the ***active promotion of the awareness, dissemination, clarification and application*** of the laws, rules and principles, and guidelines, applicable to international disaster response.

The importance of IDRL and the commitment of the Movement to address it was reaffirmed in the Santiago de Chile Commitment and Manila Action Plan of 2003, **the 2005 Council of Delegates' Commission on Access to Victims and Vulnerable Persons**, the 2006 Singapore Declaration of the VIIIth Asia and Pacific Regional Conference of the International Federation of Red Cross and Red Crescent Societies, and the 2007 Inter-American Conference Plan of Action adopted in Guayaquil, Ecuador. The IDRL Programme is in line with the International Federation's Global Agenda 2006-2010, in particular goals 1 and 2.

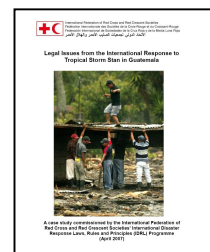
¹ The name of the IDRL Programme was changed during the 28th International Conference of the Red Cross and Red Crescent in 2003, to emphasize that the thematic scope of the programme encompassed not only hard or binding law, but equally softer, guiding instruments, such as principles, guidelines, resolutions and codes of conduct.

2. Research carried out between 2003 and 2007

Pursuant to its mandate from the 28th International Conference to lead collaborative efforts in research activities on IDRL, the IDRL Programme, together with its partners, successfully carried out a number of research initiatives on existing IDRL regulatory frameworks and the impact of legal issues on international disaster response operations. In order to contribute to more effective and speedy international response operations to disasters, the overall aim of these research activities was to clarify the substance, scope and sources of existing IDRL regulatory frameworks at the international, regional and national levels, identify outstanding needs, gaps and weaknesses as well as areas of strength and best practice.

The main research activities consisted of:

- § 15 new **country and regional legal studies, and operational case studies** covering 20 countries in the Americas, Africa, Asia-Pacific and Europe;
- § A **global survey** of States, National Societies and humanitarian organizations;
- § A comprehensive **desk study** synthesizing the survey findings and those of the legal and operational studies, documenting the current scope of IDRL regulatory frameworks and identifying key gap areas;
- § A user-friendly searchable **online database** containing over 500 legal documents;
- § 10 **academic articles** for publication.



2.1 – Country or regional legal studies and operational case studies

Country legal studies (CLS) and *regional legal studies (RLS)* provide a documentary overview of the current regulatory framework for international disaster response in a given country or region. As such, they analyse applicable international and national legal instruments and policies with a view to exposing potential **gap areas as well model elements of best practice**, which can constitute a source of reference for other countries or regions.

Operational case studies (OCS) employ both desk research and substantial field interviewing to identify the main legal challenges faced in particular operations by both providing and receiving actors of international humanitarian assistance. They explore the degree of implementation and the usefulness of existing IDRL frameworks, as well as the level of preparedness of national law. They demonstrate concretely how **law and legal issues can either greatly enhance or substantially reduce the effectiveness of response efforts**. The case studies constituted important sources for the IDRL comprehensive desk study (see 2.3. below) and the development of the Guidelines for domestic legislation (see 4. below) and have been shared with the governments and stakeholders in the examined States for their consideration and use.

The operational case studies have found that international actors frequently face regulatory, bureaucratic or administrative barriers and that affected State authorities, actors and beneficiaries encounter considerable problems in the areas of coordination, quality and accountability of the international assistance provided.

The following table collates the studies conducted from 2004 to 2007, often with the **significant substantive collaboration of partner National Societies**.

Year	Country/region	Title	Type of Study	In partnership with
2004	Belgium	International legal framework relevant to disaster preparedness and disaster response applicable to Belgium	CLS	Belgian Red Cross
2005	Europe	The regulatory framework for disaster response established within the European Union: a focus on humanitarian aid and civil protection	RLS	Austrian Red Cross
2005	Fiji	Fiji- Laws, policies, planning and practices on international disaster response	CLS	Consultant
2005	Indonesia	Indonesia- Laws, policies, planning and practices on international disaster response	CLS	Indonesian Red Cross
2005	Nepal	Nepal- Laws, policies, planning and practices on international disaster response	CLS	Consultant
2006	Sri Lanka	Legal issues from the international response to the tsunami in Sri Lanka	OCS	Sri Lanka Red Cross
2006	Thailand	Legal issues from the international response to the tsunami in Thailand	OCS	Consultant
2006	Turkey	1999 - Marmara earthquake case study	OCS	By the Turkish Red Crescent Society
2007	Africa	Regional (Africa) survey of disaster response laws, policies and principles	RLS	Consultant
2007	Bolivia	Legal issues from the international response to the floods in Bolivia	OCS	Consultant
2007	Guatemala	Legal Issues from the international response to tropical storm Stan in Guatemala	OCS	Guatemalan Red Cross & consultant
2007	Indonesia	Legal issues from the international response to the tsunami in Indonesia	OCS	Consultant
2007	Mali	Legal Issues from the international response to the famine and locust infestation in Mali	OCS	By Mali Red Cross

Please refer to reports on the studies at: <http://www.ifrc.org/what/disasters/IDRL/research/casestudies.asp>

2.2. – A global survey for the different stakeholders



In order to capture a wider picture of the viewpoints and operational challenges of major stakeholders, IDRL surveys were launched in 2006 to every National Society and Government, as well as to major NGOs and IOs involved in charitable disaster relief, obtaining 118 responses.

The responses indicate that legal difficulties are a real issue for Governments, National Societies, IOs and NGOs in international disaster response. Particularly for the latter, administrative barriers to entry and operations are apparently widespread. Disturbingly, a great many IOs and NGOs are also aware of other international actors providing poor quality assistance or failing to adequately coordinate with others. While many States have enacted disaster-specific laws and plans, a substantial majority of humanitarian respondents felt that they were not adequate to address the common issues of international response. Less than half of these addressed some of the most central issues. At the same time, many affected Governments have provided special exemptions and facilities to international actors in order to facilitate their work. The survey report is available as an annex to the desk study.

Problems caused by international actors as witnessed by Governments, National Societies and international humanitarian organisations

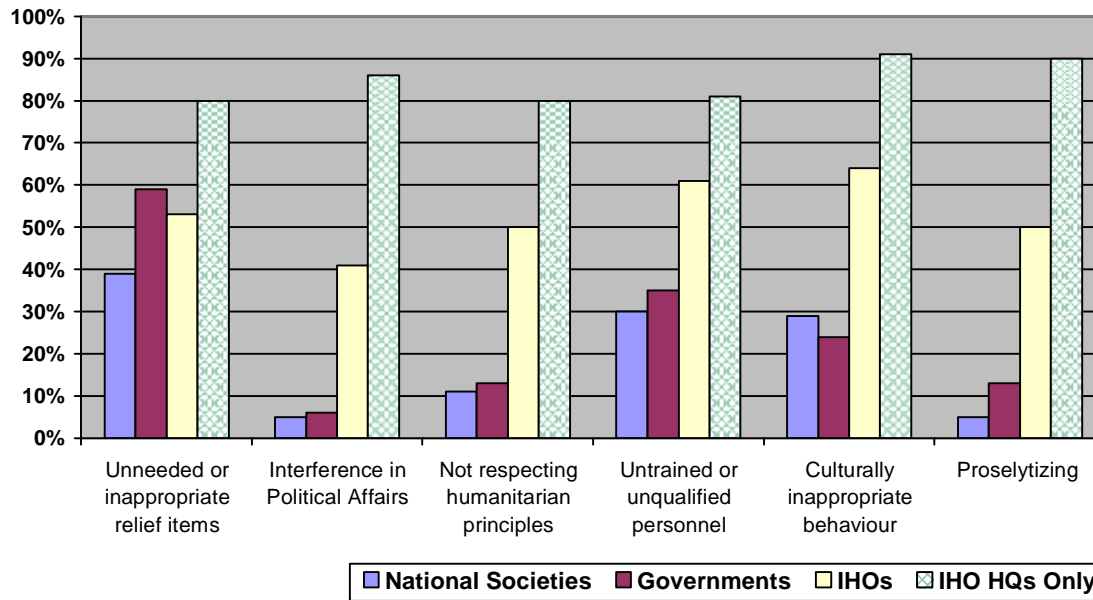


Table with some survey findings



2.3. – The comprehensive desk study

The study, entitled “Law and Legal Issues in International Disaster Response,” draws upon and synthesizes the instruments in the IDRL database, discussions of the IDRL regional forums and other consultations, case and legal studies and survey findings. It provides an analysis of the remaining gaps in the existing IDRL international and regional regulatory frameworks and sets forth recommendations for the international community on how to address these.

The study demonstrates that the framework of international laws and standards on international disaster relief and recovery remains dispersed and under-utilized and that many practitioners may be unfamiliar with it. The international and regional frameworks have a number of gaps, including in geographic reach, thematic scope and the types of actors covered. The latter gap is particularly notable in light of the increasing number and diversity of international response actors, constituting a new challenge for affected States. In addition, the study shows that there is often a lack of harmonization between national law and international standards.

The experiences of past and recent disasters confirm that there is a core set of common legal problems arising in international operations. These include logistical issues, such as visas, customs and legal personality problems, but also broader questions of how to balance the need for real local ownership of disaster mitigation and response, the desirability of speed and efficiency in international operations, and the rights and needs of affected persons. The study concludes that most of the common problems can be best addressed through legislation at the national level, which is overall well known and applied in times of disaster. Hence, it recommends adoption of the Guidelines for Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance (see 4. below).

The study was launched in October 2007 and is available to all members of the Conference, both in print and electronic formats.



2.4. – The IDRL database

The IDRL database is an innovative research and information tool for practical use which compiles laws, rules and principles applicable to international disaster response. As such, it constitutes one of the **“tools for practical use” requested in the 2003 Agenda for Humanitarian Action** (see Final Goal, 3.2.6. on page 1). It was developed after the Red Cross and Red Crescent National Societies’ legal counsels, in their annual meeting of September 2005, identified the lack of access to crucial legal information as a significant impediment for operational managers in the field.

Consequently, the IDRL Programme designed an online database which now contains over 500 international, regional and (some) national IDRL legal instruments, model agreements and guidelines. This new tool allows for user-friendly searching covering 100 thematic search items, as well as searching by type or phase of disasters and type of document. Main users are: legal counsels, disaster managers of humanitarian organizations and domestic policy makers interested in developing, strengthening or reviewing national laws and regulations in the disaster response field.

2.5. – Academic articles on IDRL

The IDRL Programme has produced a number of academic articles and book chapters for publication, ranging from analysis of legal instruments to descriptions of some of the key legal challenges facing humanitarian responders in the field. This subject has also captured the attention of a number of academics and humanitarian professionals around the world², resulting in a growing body of high quality academic writing on IDRL.

From the IDRL Programme:

- Bannon, V. and Fisher, D., “Legal lessons in disaster relief from the tsunami, the Pakistan earthquake and hurricane Katrina”, *ASIL Insight*, Vol. 10, Issue 6, 2006, 5ps.
- Bannon, V., “Strengthening Disaster Response Laws, Rules and Principles: Overview of the current system and a new way forward, in tsunami and disaster management: law and governance”, *Tsunami and Disaster Management: Law and Governance* 2006.
- Beeckman, K., “International response to non-armed conflict disasters: legal challenges encountered in light of the current regulatory framework”, *Refugee Survey Quarterly*, Vol. 25, N° 4, 2006, Pgs. 129-137.
- Bannon, V., “Red tape, grey areas, black holes: Lessons learned from the Indian Ocean tsunami”, *International Aid & Trade Review*, 2007 (publication pending)
- Beeckman, K., “IDRL and the domestic legal framework for international disaster relief and initial recovery”, *Refugee Survey Quarterly*, 2007 (publication pending).
- Beeckman, K. “Règles, lois et principes applicables aux actions internationales en cas de catastrophes: les récentes initiatives”, *Actes du Colloque de la S.F.D.I.*, Pédone (publication pending).
- Fisher, D., “Domestic regulation of international humanitarian assistance in disasters and armed conflict: a comparative analysis”, *International Review of the Red Cross*, 2007, (publication pending).

² A sampling from academic scholars and humanitarian professionals around the world is:

- Calvi-Pariseti, P., “Guiding principles for disaster response”, *Crisis Response Journal*, vol. 1, issue 3, 2005, pp. 25-26.
- Fidler, D.P., “The Indian Ocean Tsunami and International Law”, *ASIL Insight*, January 2005, The American Society of International Law.
- Fidler, D.P., “Disaster Relief and Governance after the Indian Ocean Tsunami: What Role for International Law?” *Melbourne Journal of International Law*, vol. 6, 2005, pp. 458-473.
- Jakovljevic, B., “International disaster relief law”, *Israel Yearbook on Human Rights*, 34 (2004), p. 251.
- Jakovljevic, B., “Some reflections on International Disaster Relief Law”, *International Civil Defence Journal*, vol.16, 2006, p. 32.
- Report of the International Law Commission on the work of its 58th session, Chapter III, 1. Long-term Programme of Work, topic d., 2006.
- Rosendahl, A., “International Disaster Response Law in Central America and Europe: Developing a More Effective Framework for Central America”, *Transnational Law and Contemporary Problems*, vol. 16, 2007, p. 705.
- Saechao, T., “Natural Disasters and the Responsibility to Protect: From Chaos to Clarity”, *Brooklyn Journal of International Law*, vol. 32, 2007, p. 663.
- United States Defense Threats Reduction Agency, *Foreign Consequence Management Legal Deskbook*, 2007.
- Urioste, A., “When Will Help Be on the Way? The Status of International Disaster Response Law”, *Tulane Journal of International and Comparative Law*, vol. 15, 2006, p. 181.

- Fisher, D., "International disaster relief: a growing regulatory dilemma," *Proceedings of the 100th Annual Meeting of the American Society of International Law* (publication pending)
- Fisher, D., "Regulating food aid in sudden-impact disasters", *Vanderbilt Journal of Transnational Law*, (publication pending)
- Fisher, D., "The law of international disaster response: overview and ramifications for military actors", *United States Naval War College International Law Studies Series*, 2007, (publication pending).
- Fisher, D., "Legal implementation of the right to humanitarian assistance for internally displaced persons", 2007, (book chapter -- publication pending).
- Fisher, D., "Legal implementation of human rights obligations to prevent displacement due to natural disasters", 2007, (book chapter -- publication pending).

3. Advocacy, communication and capacity building

In follow up to its advocacy-related mandate, the IDRL Programme took up numerous activities in the awareness-raising, promotion and dissemination of IDRL. Through active participation in high-level international conferences, as well as the organisation of and involvement in IDRL-specific events, such as: technical workshops, side-events, and IDRL briefings for humanitarian stakeholders (3.1.), the organisation of five multi-stakeholder regional forums on IDRL (3.2.), newly devised communication activities and tools (3.3.), the IDRL Programme has enjoyed increasing international recognition over the past four years (3.4.). The Programme also strongly engaged in training activities with various humanitarian and academic partners, and through its Asia-Pacific pilot project provided technical support on the development of disaster management legislation and policies, in close collaboration with Red Cross/Red Crescent National Societies (3.5.).

A detailed list of these different activities can be found in the IDRL Programme's annual reports of the years 2004, 2005, 2006 and Update 1 of 2007, available on the IDRL website.

3.1. IDRL events, official statements in international conferences and training

From 2004 to September 2007, the IDRL programme organised or participated in **22 IDRL events**, took an active part in **53 international conferences**, for instance through the delivery of official statements, and was involved in **17 training events**. IDRL was presented in all major RC/RC meetings (statutory, regional, sub-regional and other), in particular those held in 2006 and 2007 preparatory to the 30th International Conference of the Red Cross and Red Crescent (not listed below). Highlights include:

- | | |
|-------------|--|
| 2004 | <ul style="list-style-type: none"> § Balkan National Societies Meeting on IDRL, which approved the Recommended Rules and Practices for the Implementation of IDRL in the Balkans, hosted by the Serbia and Montenegro Red Cross Society, September § Technical workshops on IDRL, in preparation of IDRL case studies, in Fiji, Nepal, Myanmar and Indonesia |
| 2005 | <ul style="list-style-type: none"> § Webinar on Governing the Maelstrom: The Law of Disaster Relief, hosted by the American Society of International Law (ASIL) and co-sponsored by the IDRL Programme, ASIL and the American Bar Association, April § Roundtable on Hurricane Katrina and foreign disaster assistance to the U.S., organised by the United States Federal Emergency Management Agency at the initiative of the IDRL Programme in Washington, November § Wilton Park Conference on Improving Natural and Regional Disaster Response Capacity, Sussex, U.K., December |
| 2006 | <ul style="list-style-type: none"> § IDRL ECOSOC side-event on "Improving Legal Frameworks for the Facilitation, Coordination, and Regulation of Disaster Response", Geneva, July |

- § **IDRL briefing to REDCAMP**, Regional Network of Risk Reduction and Disaster Management of Central America, Panama, November
- § **Technical workshops on IDRL**, in preparation of IDRL case studies, in Guatemala, Kenya, Thailand, Turkey and Tunisia for North African National Societies
- 2007 § **IDRL briefings** to SCHR, ICVA, Sphere Board
- § **IDRL briefing to the Inter Agency Standing Committee**, Geneva, March
- § **UN/NGO/Donor workshop** on “International community’s support to the formulation of ancillary regulations for disaster management”, Jakarta, May
- § **International Consultation** on the Framework for the rules of engagement for disaster management of Thailand, Bangkok, June
- § **SOPAC**, 13th Regional Disaster Management Meeting, Marshall Islands, June
- § **Asian Development Bank** workshop on large scale emergencies, Philippines, July
- § **IDRL Open meeting for Permanent Missions and National Societies**, September

Official statements and international representation

- 2004 § **Statement to the Plenary of the UN General Assembly**, N.Y., November
- § **Institute of International Humanitarian Law**, San Remo, Italy, September
- 2005 § **World Conference on Disaster Reduction, Corporate Sector Role**, Mumbai, November
- § **World Conference on Disaster Risk Reduction, Kobe**, Japan, January
- 2006 § **International Conference on Emergency Communications**, Tampere, June
- § **International Conference on Disaster Reduction**, Davos, August
- § **IDRL Statement to the 6th Committee, UN General Assembly**, N.Y., October
- 2007 § **Aid and Trade Event**, Panel on Impact of Relief and Development, Geneva, January
- § **ASEAN Committee for disaster management meeting**, Laos, March

3.2. A consensus-building multi-stakeholder consultation on IDRL through 5 regional Forums

The IDRL Programme played an international leadership role by convening five high-level multi-stakeholder regional consultations on IDRL in preparation for the 30th International Conference. The overall purpose of these regional Forums was to engage in a dialogue with major stakeholders involved in disaster response. Through panel presentations, plenary discussions and working group sessions, participants explored the currently existing IDRL frameworks at international and regional level and analyzed the main legal challenges encountered in disaster response operations in the region.

The regional IDRL Forums were geared towards finding a common understanding of these main legal challenges and the prioritisation of adequate potential future avenues addressing these. Through this consensus building consultation process, all stakeholders world-wide benefited from an active opportunity to shape and refine the IDRL Guidelines, with a view to submitting a commonly endorsed document to the 30th International Conference (see 4 below). The ICRC took part in all forums.

Region	Place	Organizers and Host	Nat. Soc.	Gov	IO	NGO	Acad
European Forum on IDRL (24-25 May 2006) Over 70 participants	Antalya, Turkey	International Federation Turkish Red Crescent Society Turkish Government	22	11	9	4	3
Asia-Pacific Forum on IDRL (12-13 December 2006) Over 130 participants	Kuala Lumpur, Malaysia	International Federation Malaysian Red Crescent Government of Malaysia	22	10	11	6	3
Americas Forum on IDRL	Panama City,	International Federation Panama Red Cross					

(23-24 April 2007) Over 100 participants	Panama	Government of Panama OAS (Org. of American States)	28	20	17	8	4
Pan-African Forum on IDRL (14-15 May 2007) Over 110 participants	Nairobi, Kenya	International Federation Kenyan Red Cross Society Government of Kenya	38	33	16	4	2
Middle East Forum on IDRL (19-20 June) Over 60 participants	Abu-Dhabi, U.A.E.	International Federation U.A.E. Red Crescent Government of the U.A.E.	9	10	5	4	-

3.3. Communication activities

The IDRL Programme continued to elaborate **fact sheets** on its activities as well as substantive IDRL issues. Since 2003, it elaborated 4 new fact sheets, among which were one on the legal lessons learned from the international response operations to the tsunami and a revised fact sheet on the Tampere Convention. All can be viewed on the IDRL website.

In addition, in the second half of 2005, the Programme developed **2 new communication tools: the e-newsletter and the weekly IDRL news service**. Seven e-newsletters have been sent out so far, reaching currently over 2700 humanitarian professionals. Each contains programme updates as well as information on recent legal developments. The Programme has also provided a free weekly email news service of press articles relevant to IDRL. Today almost 300 people have registered for this service. The **IDRL web-site** received a significant face lift in January 2007 and has been updated on a regular basis.

3.4. International recognition of the IDRL Programme

Following the multitude of research and advocacy activities conducted by the Programme, the importance of IDRL in international humanitarian assistance has been voiced by a number of organisations, as well as the International Federation's leadership role in the area. The following documents are a sampling of international recognition of the IDRL Programme and support for IDRL efforts.



"Harmonize laws and policies to facilitate effective international response. Affected States should re-examine their disaster laws and policies in light of the tsunami, considering how well the laws and policies handled international assistance and to what extent existing structures include domestic civil society. In the process of developing new laws and policies, governments should seek to ease obstacles – such as cumbersome customs or procurement rules – to effective delivery. The International Disaster Response Law, Rules and Principles Programme can help facilitate harmonization of such policies."

UN Secretary General Report on "Strengthening emergency relief, rehabilitation, reconstruction, recovery and prevention in the aftermath of the Indian Ocean tsunami disaster", 2006



"The development of legal frameworks at the national and international levels to facilitate preparedness and response is fundamental. Governments, NGOs, and other relevant stakeholders should support the work of the International Federation of Red Cross and Red Crescent Societies in this area."

Report of the UN Special Envoy on the tsunami, Former US President Bill Clinton, 2006



"All actors should promote the development of International Disaster Response Law (IDRL) as a means of clarifying and strengthening the respective responsibilities, accountabilities and authorities of affected states and international agencies"

Tsunami Evaluation Coalition (TEC) Report, 2006



“The IDRL theme fits perfectly within the Hyogo Framework. The ISDR recognises the International Federation of Red Cross and Red Crescent Societies as an indispensable partner in encouraging States to take steps towards the improvement of legal frameworks.”

Dr. S. Briceño, Director, International Strategy for Disaster Reduction, April 2007



“The IDRL Programme of the International Federation is a significant initiative within the overall regulatory framework for relief. IDRL helps ensure our ‘legal preparedness’ and smoothes the way for more effective operations. UN OCHA will continue to support this initiative. We look forward to further collaboration with the IFRC, including on the work of the UN International Law Commission.”

Ms. M. Wahlström, UN Assistant Secretary-General for Humanitarian Affairs and Deputy Emergency Relief Coordinator, OCHA, May 2007

- § Report of the UN Secretary General to ECOSOC, 2004
- § Inter-agency Standing Committee, Humanitarian Working Group, endorses the initiative of the Draft IDRL Guidelines, March 2007
- § Organisation of American States, General Assembly Resolution 2314, June 2007
- § UN Economic and Social Council (ECOSOC), Humanitarian Affairs Segment, July 2007

3.5. Capacity building of National Societies and training

The IDRL Asia-Pacific Project has been supporting National Societies in identifying ways to achieve more effective regional cooperation for disaster response, establishing enhanced dialogue with governments and providing input into revisions of domestic disaster management legislations. As such, it has strengthened collaboration and **provided technical support on the development of new legislation and policies.**

It has worked particularly closely with disaster management personnel from National Societies of South East Asia, and supported the development of disaster management legislation in the Philippines and Indonesia. Additionally, the IDRL Asia Pacific Project team has responded to numerous requests for presentations, training and information from National Societies across the Asia Pacific region, including Afghanistan, Australia, China, India, Japan, Malaysia, Myanmar, Nepal, New Zealand, Republic of Korea and Timor Leste.

Training and academic events

- 2004 § **Annual Meeting of Heads of Field Offices** of the International Federation, Geneva, June
- § **UN Joint Logistics Unit/ UNOCHA/World Customs Organisation Training Workshop**, Brussels, December
- 2005 § **OCHA Emergency Field Coordination Training**, Chexbres, Switzerland, July
- § **Red R Australia Humanitarian Field**, Bangkok, August,
- § **Advanced Diploma for Humanitarian Emergencies**, Geneva, July
- 2006 § **Colloquium at the Université d’Aix-Marseille**, “Des avancées juridiques dans le sillage du Tsunami ?”, Aix-en-Provence, June
- § **Naval war College International Law Conference**, Providence, U.S., August
- § **UNDAC training**, Seoul, September
- § **Disaster Reduction Alliance Lecture Series**, September, Kobe
- § **FACT training**, Bangkok, October
- 2007 § **Scandinavian Civil Protection seminar**, Oslo, January
- § **Norwegian Refugee Council Training**, Geneva, January
- § **ASIL**, Annual Meeting, Washington D.C., March
- § **Société Française de Droit international**, “La responsabilité de protéger”, Colloque annuel, Paris, June
- § **Asian Disaster Preparedness Centre Training**, Bangkok, July

4. Closing the gaps: IDRL Guidelines for Domestic Legislation

One of the IDRL Programme's primary tasks under Final Goal 3.2.6 of the 2003 Agenda for Humanitarian Action was to develop "models, **tools and guidelines for practical use**" in international disaster response activities. The need and interest of States and other stakeholders in practical, internationally accepted guidelines on legal issues in international disaster response was confirmed in the IDRL programme's subsequent research and consultations, in particular the regional forums. Hence, the major product of the Programme is the draft **Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance**. They were developed, shaped, refined and revised **with the input from** targeted discussions and correspondence with approximately **100 States, over 120 Red Cross and Red Crescent National Societies, over 40 international organizations and NGOs**, and five multi-stakeholder regional consultations (see 3.2. below).

4.1 – Process of development

An initial draft of the Guidelines was elaborated after the first regional Forum on IDRL, shared with the ICRC and amended after preliminary discussions. This draft was then **circulated** between February and April 2007 to **all Red Cross and Red Crescent National Societies, as well as all Permanent Missions of States** members of the International Conference, for their feedback. In the meantime, the Asia-Pacific Forum on IDRL had analysed the document and provided comments.

In the first half of the year 2007, the IDRL Programme engaged in **briefings and bilateral discussions** with over 60 States, at capital or Permanent Mission level. An official presentation of the Draft Guidelines was made at **major Red Cross and Red Crescent regional conferences** and other meetings.³ **UN** agencies were consulted and provided input, and support for the initiative was expressed during the March 2007 meeting of the Inter-Agency Standing Committee Working Group. Relevant **NGOs** were engaged through IDRL briefings for NGO networks and boards, such as Interaction, International Council of Voluntary Agencies (ICVA), the Sphere Project Board, and the Steering Committee for Humanitarian Response (SCHR), and the draft Guidelines were also distributed to each of these networks' members for feedback.

The Guidelines were revised early July 2007 integrating the feedback from the Asia-Pacific, Americas, Pan-African and Middle East Forums, as well as all comments received from individual States, National Societies and other stakeholders. A **second mailing** was sent out to all National Societies, States, and major humanitarian stakeholders in **July**, asking them again for comments.

Over the summer and early fall, the Programme conducted **technical briefings** with humanitarian governmental experts from different regional groupings in **Geneva, Brussels, and New York** and convened **an open meeting for all Permanent Missions and National Societies** in which they were provided additional opportunities to further comment on them.

This extensive consultation process was also launched to respect the wish of States, as expressed through **UN General Assembly Resolution 57/150 on Urban Search and Rescue**, to be fully informed of developments in this field.

³ VIIIth Asia and Pacific Regional Conference of the International Federation of Red Cross and Red Crescent Societies, Singapore, November 2006; IXvth Balkan Conference of Red Cross and Red Crescent Societies, Marmaris, Turkey, November 2006; 35th Session of the General Assembly of the Arab Secretariat, Doha, February 2007; Xth Mediterranean Conference of the Red Cross and the Red Crescent Societies, Athens, March 2007; 7th European Regional Red Cross and Red Crescent Conference, Istanbul, May 2007.

4.2 – Purpose and sources of the Guidelines

The Guidelines are a **non binding document**. The Programme's consultations and research exploring the best way forward towards strengthening legal preparedness for international disaster assistance, have revealed that there is a majority support for a non-binding instrument providing guidance for States and other humanitarian actors. It was felt that a treaty making process would be too formal, lengthy and rigid. The elaboration of Guidelines promotes a bottom up approach actively involving not only States, but also National Societies, UN, NGOs and local civil society and community representatives. Their future use and integration will equally allow for more flexibility and adaptability to national contexts and local specificities.

As such, the IDRL Guidelines are a **technical tool of reference** for **those interested in legislative review** and strengthening. Their purpose is to contribute to national legal preparedness by providing guidance to States interested in improving their domestic legal, policy and institutional frameworks concerning international disaster relief and initial recovery assistance.

The Guidelines **propose practical solutions to the two main types of legal challenges consistently arising in major international disaster operations**, which the providing and receiving sides often cope with. First, legal, bureaucratic and administrative barriers (e.g. visas, customs, legal status) often delay and reduce the efficiency of international response. Second, some international actors themselves cause quality and accountability problems for national authorities and other local actors, especially aid beneficiaries (e.g. receipt of irrelevant or culturally inappropriate relief goods, arrival of untrained or incompetent relief personnel, the provision of international assistance not geared towards empowering local communities and strengthening local response capacities).

Therefore, the Guidelines propose a two way tracked solution. While affirming the principal role of domestic authorities and local civil society, the Guidelines **recommend minimum legal facilities** to be provided to assisting States and to assisting humanitarian organizations provided that are willing and able to comply with minimum standards of coordination, quality and accountability and ensure complementarity with domestic actors. The Guidelines will **enhance the quality and efficiency of international disaster relief and initial recovery assistance** in order to better serve disaster-affected persons.

The Guidelines will **not affect** existing international law, agreements or privileges. They expressly exclude situations of armed conflict from their field of application. The Guidelines are **based on a compilation of the main norms and principles relating to international disaster response to which States have committed over the past three decades**. As such they do not "reinvent the wheel", but are grounded in existing legal instruments, such as multilateral, regional and bilateral treaties, UN Resolutions, the Hyogo Framework for Action, the Red Cross/Red Crescent and NGO Code of Conduct, Principles and Practice of Good Humanitarian Donorship, *etc.* as explained in the Annotations to the Guidelines⁴.

4.3. Content of the Guidelines

The IDRL Guidelines affirm that **the Affected State has the primary responsibility to ensure disaster risk reduction, relief and recovery assistance on their territory**. In this context, they underline the **key supporting role of National Red Cross and Red Crescent Societies**, as auxiliaries to the public authorities in the humanitarian field, and domestic civil society actors.

⁴ The Annotations to the Guidelines have been circulated to the International Conference members for information only as an explanatory background paper to the Guidelines. As such, they will not be submitted for adoption.

They emphasise that **international disaster relief or initial recovery assistance should solely be initiated by the affected State**, and this either on the basis of its request or through its acceptance of an offer from an assisting actor. The Guidelines propose that affected States do so when assessing that a disaster situation exceeds national coping capacities. The Guidelines spell out the affected State's sovereign **right to coordinate, regulate and monitor** disaster relief and recovery assistance provided by assisting actors on their territory.

With a view to enhancing the quality, coordination and accountability of international response, the Guidelines enshrine **minimum quality and accountability standards as core responsibilities of assisting actors** and their personnel. These encompass, for instance, the need to: abide by applicable national and international law and respect human dignity at all times; allocate aid solely in proportion to needs and on the basis of needs assessments; provide it without any adverse distinction; not to seek to further a particular political, religious or commercial goal; involve competent and adequately trained personnel; respect applicable international standards of quality; be sensitive to cultural, social and religious customs and traditions; strengthen local capacities to reduce future vulnerabilities to disasters; minimize negative impacts on the local community, economy, job market and environment; and act transparently, sharing appropriate information on activities and funding.

In order to facilitate the speed and efficiency of international response operations, the Guidelines suggest that assisting humanitarian organisations, willing and capable to observe the minimum quality and accountability standards, benefit from **key legal facilities**. They note that it is the decision of the granting State as to which assisting humanitarian organisations are eligible to receive legal facilities, suggesting some eligibility criteria. Proposed legal facilities relate, for instance, to: personnel (e.g. expediting visa or work permit arrangements), goods and equipment (e.g. reducing import barriers), transport, domestic legal personality, taxation, security.

Since generally in the immediate aftermath of a disaster chaos rules and time is of the essence, it is not ideal to have to make decisions at that time. The Guidelines therefore emphasise the **added value of preparedness** in this context, through setting up systems for the **determination of eligibility for legal facilities prior to the disaster**. It suggests potential mechanisms such as the use of a national roster, bilateral agreements or reliance upon international or regional systems of accreditation, if available.

5. The way forward

5.1 – Immediate steps: the 30th International Conference

On Day 4 (November 29th), a Commission will be organised with the aim of organizing a general discussion on the issues raised in the proposed draft resolution and Guidelines attached thereto. A summary report on the work of the Commission will be presented in plenary in the afternoon of the same day. The Drafting Committee will be in session on the third and fourth day of the Conference and will consider the proposed draft resolution before presenting it to the plenary for adoption on the last day of the Conference, November 30th. **The International Federation recommends that the Conference pass a resolution adopting the Guidelines and setting out the future IDRL mandate.**

5.2. Key priorities, strategic directions and potential institutional arrangements

In 2008 and 2009 the IDRL activities of the International Federation and National Societies will focus on **four priority areas**:

1. Supporting the future use and integration of the IDRL Guidelines

- § Encouraging and providing technical support for the integration of the IDRL Guidelines into national policy and legal frameworks on disaster management in close collaboration with the UN, as well as other relevant international and regional partners;
- § Developing a legislators' manual and model legislation to facilitate future use and integration for the use of National Societies
- § Working in close collaboration with the UN, as well as other relevant international and regional partners to promote the mainstreaming of the Guidelines in existing legal development and disaster management and risk reduction initiatives

2. Dissemination and Advocacy for improved legal preparedness

- § Disseminating relevant international and regional legal instruments
- § Contributing to global and regional initiatives aimed at strengthening legal frameworks for disaster, such as the work of the International Law Commission
- § Advocacy in partnership with National Societies, Governments, regional organisations, UN agencies, NGOs and other organisations working in that field
- § Developing tools to support advocacy efforts, including an advocacy handbook for National Societies and the continued development of the online database

3. Training and capacity building

- § Developing of standard training modules on legal preparedness and the Guidelines
- § Promoting their integration into disaster management training programmes
- § Supporting the development of regional and national-level expertise

4. Operational technical support

- § Providing technical support to National Societies and International Federation's disaster management and health operations in the field, in terms of which IDRL instruments can facilitate access, speed and efficiency in disaster-affected countries.
- § Developing enhanced collaboration with National Societies and the International Federation's Secretariat and zonal disaster and health managers.

Regionalisation of the work on IDRL and Capacity building at the national level

Following the success of the Asia-Pacific pilot project established in Bangkok in 2005, the International Federation will continue this initiative and seek to extend its reach to other regions by establishing **Regional Coordinators in the Americas, Europe, Middle East and Africa regions**. The Regional Coordinators will be responsible for providing technical support and training to regional and national stakeholders and facilitating future use and integration of the IDRL Guidelines. They will also liaise and develop partnerships with regional bodies and platforms engaged in disaster management.

Recognising that strengthening legal preparedness and the future use and integration of the IDRL Guidelines will be a long-term process, the International Federation will **focus on a number of pilot countries** which are commencing a process of re-examining or developing new disaster management laws and policies. In collaboration with the regional coordinator, intensive advocacy, legal preparedness mapping and technical support will be provided in each priority country through the establishment of national focal points.

6. Guiding Questions for Commission C on strengthening the legal frameworks for international response to disasters (Wednesday 28 November 2007, 14:00-18:00)

*Guiding questions for Commission C will be posted on the webpages of the 30th International Conference by 31 October 2007.
(www.icrc.org, www.ifrc.org, www.rcstandcom.info)
Participants are invited to refer to these in preparing for the International Conference.*