

No red tape or black holes! International Disaster Response Law leaves no grey areas in disaster response



As the old adage goes, “Too many cooks in the kitchen spoil the broth”. Similarly, in any disaster emergency situation, the massive influx of international relief assistance, all bearing the most altruistic and philanthropic of intentions, can pose significant challenges on the affected country if not carefully coordinated and managed. Over the years, many countries have improved their ability to mitigate and respond to the effects of disasters. Nevertheless, the increasing frequency and intensity of natural hazards mean that disasters sometimes overwhelm and constrain domestic capacity to respond. International cooperation therefore remains essential in meeting the humanitarian needs of affected communities.

On January 12th, 2010, a massive earthquake recording 7.3 on the Richter Scale rocked the nation of Haiti. Final estimates tallied the loss of life at just over 230,000 persons with a further 2 million persons displaced. The government of Haiti further calculated that 250,000 residences and 30,000 commercial buildings had collapsed or were severely damaged, including the headquarters of the United Nations Stabilization Mission in Haiti (MINUSTAH). Such insurmountable losses inescapably bore debilitating repercussions on the highly centralized institutions of the country leaving them in a severely weakened state. In the immediate aftermath of the event, the international community naturally mobilized itself to provide large scale international relief. Actors from foreign governments, donor organizations, regional organizations, NGOs, religious groups, and humanitarian organizations all landed in Haiti shortly thereafter to provide much needed relief supplies and able-bodied personnel. This was further complemented by the presence of organizations previously operating in Haiti, such as the International Red Cross and Red Crescent Movements and several other NGOs charged with the mandate of ensuring citizen security and public safety. One of the challenges encountered after the earthquake however, was that international actors were unable to register promptly with Haitian authorities following the existing procedure, as this procedure was intended for NGOs carrying out long-term development aid activities in the country, rather than for a short-term emergency response.

Some of the commonly experienced set of problems that agencies face during the provision of aid, are those that they have with country bureaucracies while initiating relief operations. Some of these experiences range from red tape involving restrictions and delays in customs clearance for relief goods and equipment, to imposition of duties and other taxes on relief items, difficulty and delays in obtaining and renewing visas and permits for humanitarian personnel. Problems of obtaining legal recognition of foreign professional qualifications for specialized personnel, particularly in the medical arena, and difficulties in legal registration for foreign humanitarian organisations, lead to restrictions in opening bank accounts and hiring local staff, further compounding these issues. In addition, lack of proper coordination with local authorities has often been cited, for example, as leading to the importation of relief items which do not correspond to identified needs, the use of inadequately trained personnel, and the importation of personnel while ignoring local capacity.

It is here that the law and disaster arenas intersect to facilitate and regulate international disaster relief and initial recovery operations. Over-regulation in some areas leads to unnecessary bottlenecks thereby slowing the entry and distribution of relief while under-regulation precipitates poor quality and uncoordinated efforts. On the one hand, this means that governments are burdened by a multitude of administrative [and political] issues while on the other, aid agents are left frustrated by what they consider to be largely bureaucratic delays. When all is said and done, the principal victims of such piecemeal and ad hoc approaches remain those families that are left in need of immediate support.

In seeking to address some of these concerns, the International Federation of the Red Cross and Red Crescent Societies (IFRC) in 2001 conducted extensive consultations to draft disaster laws and plans for the regulatory problems common in international disaster relief operations. Following a number of high-level regional forums in which governments, national Red Cross and Red Crescent Societies, international organizations, and NGOs provided input, the Guidelines for the Domestic Facilitation and Regulation of International Disaster relief and Initial Recovery Assistance ("the IDRL Guidelines") were born. These non-binding guidelines, an amalgam of treaty law, soft law and customary law, are intended as a set of recommendations to governments, humanitarian organisations and regional organisations defining minimal quality standards they should insist upon in humanitarian assistance. These include the principles of humanity, neutrality, and impartiality, as well as the kinds of legal facilities aid providers need to effectively carry out their work. Also defined are the responsibilities of the affected states and assisting actors, legal facilities for entry and operations of personnel, goods and equipment, the provision of temporary domestic legal status, and the facilities for assisting humanitarian organisations, to mention but a few.

Placing disaster response in the context of societies of the Greater Caribbean is to locate it among a series of dichotomies and nuances as it confronts widely differing legal and socio-political realities. The strong primacy which has always been accorded to the military in Latin America has rendered it a decisive force in shaping legislative, political and institutional life. This history of military prestige in Latin America can be contrasted with the Anglophone Caribbean topography of response which relies heavily on volunteerism and non-military structures. Thus, when looking at disaster response, contrasting Latin America with the Caribbean begets a juxtaposition of military versus civilian mechanisms. Looking further at jurisprudence reveals disparate legal traditions in the region with Civil Law tradition being widely practiced in Latin America, and Common Law which draws from the English Common Law being adopted throughout the English-speaking Caribbean.

In the region, Colombia, Peru and Haiti have all already initiated legislative changes to improve their

legal framework for international disaster response. Jamaica is leading the English-speaking Caribbean in developing policy positions for receiving international disaster relief, while Trinidad and Tobago and Saint Lucia are in the process of conducting extensive analyses of their legislative framework in this area. In the case of Jamaica, several multi-stakeholder consultations revealed that while disaster management laws do not currently address the facilitation of international relief, many of the key elements of the IDRL Guidelines were reflected in the practices and procedures developed over time by the country's disaster response system. In addition, the country avails itself of a relatively robust disaster relief mechanism, with a plethora of tried and tested plans and procedural guidelines which stipulates how various agencies will respond in the event of a major disaster. The aim for these and all countries is to frame national context within the global perspective with the understanding that no one-size-fits-all solution exists.

The 2004 Report of the United Nations High-level Panel on Threats, Challenges and Change candidly admits that "No State, no matter how powerful, can by its own efforts alone make itself invulnerable to today's threats. Every State requires the cooperation of other States to make itself secure." It is clear that domestic response agencies and local capacity have a primary role in providing for humanitarian needs in the event of a disaster, a role that should not be subverted but rather complemented by international relief efforts. Cognizant of the need to strengthen the entire legal and institutional framework for disaster prevention, mitigation, preparedness, and relief, promotion of IDRL among Member States has been adopted as ongoing activities of the Association of Caribbean States (ACS). In 2013, the ACS formed part of a Panel of Experts alongside the IFRC to exchange the whole gamut of experiences incorporating IDRL into national legislation. The ACS also provided a platform for further consultation with Member States on the 'Draft Model Emergency Decree'. Legal preparedness offers an essential contribution to strengthening accountability in disaster response, and more importantly to issuing a timely and coordinated domestic and international response that could save lives and ensure the dignity of those considered victims.

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