

## QUAKE AND SHAKE: INTERNATIONAL DISASTER LAW SIMULATION EXERCISE

This session was convened at 3:30 p.m. on Friday, April 8, 2022, by lead facilitator and exercise developer Kirsten Bookmiller of the Department of Government, Policy, and Law at Millersville University and Chair of the Disaster Law Interest Group. The session’s co-facilitators were Amit Khardori, Attorney Advisor for the Office of the General Counsel, U.S. Agency for International Development, and Andrea Harrison, Chair of the Lieber Society on the Law of Armed Conflict.

### QUAKE AND SHAKE: AN INTERNATIONAL DISASTER LAW EXERCISE

*By Kirsten Nakjavani Bookmiller*

#### I. INTRODUCTION

More countries than ever require post-disaster international assistance in an era of accelerating climate change-driven events and intensifying risk from other threats. Accordingly, affected states must legally prepare to ensure that incoming aid is effective, appropriate, and accountable to its intended recipients. This session focused on how the Guidelines on the Domestic Facilitation and Regulation of International Disaster Assistance (IDRL Guidelines) can support governments in proactively addressing legal and other issues surrounding incoming disaster assistance.

Following a brief overview of current trends related to international disaster assistance, session participants engaged in an exercise involving a fictional country requiring international aid after a major disaster. During and after the activity, participants reflected upon regulatory and other barriers that impede incoming relief and problems relating to aid quality and coordination. The session concluded by addressing the vital importance of legal preparedness in preventing and mitigating the issues encountered and the critical role played by the IDRL Guidelines.

#### II. A GLOBAL LANDSCAPE OF INTENSIFYING DISASTER IMPACTS

Disasters occur when the elements of hazard, exposure, vulnerability, and capacity combine to destructive effect, and according to the UN Office for Disaster Risk Reduction (UNDRR), cause a “serious disruption of the functioning of a community or a society . . . leading to human, material, economic and environmental losses and impacts.”<sup>1</sup> Between 2000 and 2019, there were 7,348 disaster events stemming from biological, climate-related, geophysical, and extraterrestrial sources. Despite the international community’s increasing understanding of the nature of disasters and disaster risk in the early twenty-first century, this total denotes a dramatic increase compared to the prior two decades, when 4,212 reported events occurred.<sup>2</sup>

<sup>1</sup> United Nations Office for Disaster Risk Reduction, *Disaster*, at <https://www.undrr.org/terminology/disaster>.

<sup>2</sup> CENTRE FOR RESEARCH ON THE EPIDEMIOLOGY OF DISASTERS AND UNITED NATIONS OFFICE FOR DISASTER RISK REDUCTION, *THE HUMAN COST OF DISASTERS: AN OVERVIEW OF THE LAST 20 YEARS, 2000–2019* (2020), available at <https://reliefweb.int/report/world/human-cost-disasters-overview-last-20-years-2000-2019>.

Climate change impacts are partly to blame. For example, recent studies indicate that the number of the most potent type of tropical cyclones will increase, with greater wind speed intensification, more extreme rainfall totals, higher and deadlier storm surges, and expanded geographic range than previously.<sup>3</sup> The year 2020 provided an alarming glimpse into these broader trends. According to the World Meteorological Organization, numerous records were broken, including for heat waves in Australia, wildfires in the United States, the number of named storms and number to make landfall in the north Atlantic, the costliest tropical cyclone in the north Indian Ocean (Cyclone Amphan) and the most intensive cyclone to hit land (Typhoon Goni). Extreme flooding impacted sizeable areas of Africa and Asia, while drought caused significant economic stress, among other hardships for many South American countries.<sup>4</sup>

Disasters generated by geophysical events, such as earthquakes, are also on the rise. The rate of seismic activity has not grown. However, rapid urbanization occurring on tectonic fault lines, combined with often poorly constructed, high-density housing, has exponentially increased exposure to such hazards.<sup>5</sup>

For many countries, responding to the COVID-19 pandemic while simultaneously contending with other disaster events has brought home the reality of what Mami Mizutori, the special representative of the secretary-general for disaster risk reduction, has characterized as ever-expanding “systemic compound risk.”<sup>6</sup> In November 2020, the countries in Central America and Colombia, while deep in the throes of COVID-19, were also devastated by back-to-back Hurricanes Eta and Iota. With their attendant flooding and landslides, the tandem emergencies impacted millions in the region, including nearly half of Honduras’ entire population.<sup>7</sup> Rapidly successive events, like those of Eta and Iota, are no longer unique. Hurricanes Harvey, Irma, and Maria consecutively struck the Caribbean region and the United States within one month in 2017. In 2011, Japan experienced a cascading event, during which a powerful offshore earthquake generated a deadly tsunami wave, in turn triggering the Fukushima nuclear crisis. This growing trend of simultaneously or successively occurring crises means that more countries than ever before require international assistance.

### III. THE EXPANDING DEMAND FOR EXTERNAL HUMANITARIAN ASSISTANCE

Even those governments with significant domestic emergency management capacity—and more accustomed to playing the role of humanitarian donors—have increasingly recognized that they too have joined the ranks of aid recipients in the face of an intensifying disaster risk landscape. Following the aforementioned crises, Japan and the United States accepted considerable aid from outside sources. In fact, the United States continues to do so nearly annually, as compounding

<sup>3</sup> Maya Chung, Gabe Vecchi & Jingru Sun, *Climate Change Is Probably Increasing the Intensity of Tropical Cyclones*, SCI. BRIEF (Mar. 31, 2021), at [https://sciencebrief.org/uploads/reviews/ScienceBrief\\_Review\\_CYCLONES\\_Mar2021.pdf](https://sciencebrief.org/uploads/reviews/ScienceBrief_Review_CYCLONES_Mar2021.pdf); Matt McGrath, *Climate Change: Hurricanes to Expand Into More Populated Regions*, BBC NEWS (Dec. 29, 2021), at <https://www.bbc.com/news/science-environment-59775105>.

<sup>4</sup> WORLD METEOROLOGICAL ORG., STATE OF THE CLIMATE 2020, at 23–33 (2021), at [https://library.wmo.int/doc\\_num.php?explnum\\_id=10618](https://library.wmo.int/doc_num.php?explnum_id=10618).

<sup>5</sup> Chunyang He, Qingxu Huang, Xuemei Bai, Derek T. Robinson, Peijun Shi, Yinyin Dou, Bo Zhao, Jubo Yan, Qiang Zhang, Fangjin Xu & James Daniell, *A Global Analysis of the Relationship Between Urbanization and Fatalities in Earthquake-Prone Areas*, 12 INT’L J. DISASTER RISK SCI. 805 (2021), available at <https://link.springer.com/article/10.1007/s13753-021-00385-z>.

<sup>6</sup> United Nations Economic Commission for Latin America and the Caribbean (ECLAC) and UN Office for Disaster Risk Reduction, *The Coronavirus Disease (COVID-19) Pandemic: An Opportunity for a Systemic Approach to Disaster Risk for the Caribbean* (Mar. 2021), available at [https://repositorio.cepal.org/bitstream/handle/11362/46732/1/S2000944\\_en.pdf](https://repositorio.cepal.org/bitstream/handle/11362/46732/1/S2000944_en.pdf).

<sup>7</sup> UNDRR, UC LOUVAIN, CRED, AND USAID, 2020: THE NON-COVID YEAR IN DISASTERS (2021), available at <https://www.undrr.org/publication/2020-non-covid-year-disasters>.

events in different parts of the country (including hurricanes, wildfires, and floods) outstrip national disaster management capabilities, especially during its summer months.<sup>8</sup>

While the affected governments may appreciate this expression of global solidarity, receiving assistance poses many challenges for the host state. Especially in the wake of rapidly unfolding events that garner significant worldwide media attention, countries are often deluged with aid from fellow governments, intergovernmental and non-governmental organizations, corporations, and private individuals, among many other actors. Recognized for decades in disaster management circles as the process of “external convergence,” the impacted area is barraged by outside goods and materials (material convergence), informational inquiries and offers of assistance (informational convergence), and a significant influx of people (physical convergence).<sup>9</sup>

Accordingly, *any* government will encounter challenges in managing this inflow effectively. Therefore, governments must legally prepare their domestic laws and procedures for incoming international assistance. But in what ways? And what are the primary areas of concern?

#### IV. AN INTERNATIONAL DISASTER LAW SIMULATION EXERCISE

Session participants were organized into groups of approximately 6–8 people and provided with a scenario involving a fictional country that recently experienced a catastrophic natural disaster. During the exercise, participants were encouraged to reflect upon regulatory barriers impeding the ability of individuals and materials to enter the country and provide assistance, as well as issues relating to aid quality and coordination.

##### A. The Scenario

Country A has recently experienced a chain of three disasters in rapid succession within one particular geographic region, stemming from a mix of geophysical and extreme weather events. The impacted area has a high population density, with approximately nine million inhabitants. The impacted zone shares land borders with two other countries, Countries B and C. Early estimates are that there are approximately ten thousand fatalities, and between fifty-five thousand to upward of one hundred thousand people are injured. Nearly 50 percent of critical facilities are destroyed or have experienced extensive damage, including hospitals, schools, and commercial operations. Most power transmission and communication lines in the region are down, along with cell phone towers. Transportation systems, including major highways, have also incurred significant damage. The water supply has been heavily contaminated and is no longer potable. Nearly seven hundred and fifty thousand households are also displaced.

Country A’s capital is located a significant distance away from the devastation and therefore has been spared, with the national government fully operational. Still the impact of the event is of such a catastrophic scale that the government is straining to respond to the unprecedented level of cross-sectoral need. It recognizes international assistance will be required to meet the demand; but following global media reports of the devastation, authorities are being overwhelmed by offers—most unsolicited—from over one hundred fellow governments, the United Nations system, thousands of NGOs, and hundreds of thousands of individuals.

Country A’s neighboring countries, Country B and Country C, were largely spared from the wave of disasters, and are mobilizing an unprecedented aid response both from the public and private sectors. Country A’s Border Patrol Services (BPS) stations on the border with Country B are

<sup>8</sup> Confidential interview with U.S. Federal Emergency Management Agency official (Oct. 2021).

<sup>9</sup> CHARLES E. FRITZ & J. H. MATHEWSON, CONVERGENCE BEHAVIOR IN DISASTERS: A PROBLEM IN SOCIAL CONTROL (1957), available at [https://archive.org/stream/convergencebehav00fritrich/convergencebehav00fritrich\\_djvu.txt](https://archive.org/stream/convergencebehav00fritrich/convergencebehav00fritrich_djvu.txt).

largely intact. BPS agents have instructions from the capital that they are to enforce all visa requirements/passport controls, national and subnational regulations related to medical, engineering, and other professional credentialing, food, pharmaceutical and environmental safety, import controls on telecommunications and other equipment, animal quarantine protocols, and drivers' license requirements, to ensure the safety and security of Country A's citizenry. As a result, thousands of cars, vans, buses, and tractor-trailers carrying urban search and rescue personnel, medical professionals, private providers and "every day" individuals from Country B are backed up for kilometers at the international boundary between Country A and Country B. Similarly, supplies of water, food, powdered infant formula, medicines, hospital equipment, tents, construction materials, tools, and donated clothes are also bottlenecked on Country B's side of the border.

Meanwhile, Country A's BPS posts on the boundary with Country C have been significantly compromised, with few agents able to report for duty. Therefore, Country A's border with Country C has almost no immigration or customs checks. The situation with aid coming in from Country C into Country A is therefore the opposite of what is happening above with Country B. Thousands of Country C's citizens, some trained professionals, other concerned spontaneous volunteers, are pouring into Country A to assist with relief along with hundreds of truckloads of goods and equipment, similar to Country B's response. Further, word has gotten out internationally that other countries who want to assist Country A may be able to do so by going through Country C first as a transit point, further swelling the aid influx into Country A.

### *B. Questions for Consideration*

After reviewing the above scenario, all discussion groups were asked to discuss the following questions:

1. What types of challenges or concerns are there related to response personnel and other individuals unable to enter Country A from Country B?
2. What types of challenges or concerns are there related to response personnel and other individuals' unimpeded entry into Country A from Country C?
3. What types of challenges or concerns are there related to material resources unable to enter Country A from Country B?
4. What types of challenges or concerns are there related to material resources' unimpeded entry into Country A from Country C?
5. What are other issues that should be raised but were not addressed by the above scenario, but are still important to consider?

### *C. Challenges Highlighted by the Exercise*

The exercise highlighted the many challenges posed by aid convergence upon a receiving state, including those legal in nature.

Broader convergence challenges highlighted:

#### *Coordination*

- Coordination with and respect for domestic disaster management authorities;
- Identifiable and centralized focal points;
- Information sharing; and
- Coordination with other international actors.

*Quality*

- Appropriateness and necessity of incoming items; and
- Effectiveness and safety of incoming items.

*Accountability*

- Training and qualifications of responding personnel;
- Appropriateness of responding personnel;
- Respect for in-country capacity and culture;
- Adherence to international accountability standards; and
- Observance of relevant domestic and international legal frameworks.

Specific legal concerns raised:

*Response Personnel*

- Entry permission/visas/renewals;
- Work permits;
- Legal protection/liability; and
- Recognition of professional credentials

*Goods, Transport, and Equipment*

- Customs clearance (food, medication, telecoms, etc.);
- Radio and other licenses;
- Duties and taxes;
- Communications equipment restrictions;
- Vehicles/Drivers/Insurance;
- Landing rights; and
- Search dog entry.

*In-Country Legal Status*

- NGO registration process;
- Ability to open bank accounts/exchange money;
- Power of contract;
- Vehicle registration; and
- Ability to hire local staff.

The myriad difficulties surrounding incoming assistance often result in delayed, costly, inefficient, ineffective, and unaccountable aid. The net effect is not limited to the present episode; such negative experiences may undermine the host state's trust and, consequently, its future willingness to receive assistance.

Following the activity's conclusion, the session's final part discussed how legal preparedness might significantly address many of the concerns raised by the scenario.

## V. LEGAL PREPAREDNESS AND THE IDRL GUIDELINES

Priority 4 of the Sendai Framework for Disaster Risk Reduction 2015–2030 calls for “enhancing disaster preparedness for effective response.” Pursuing legal preparedness is one essential step toward strengthening disaster risk management, including those surrounding the domestic facilitation of external assistance. This specific domain of disaster law is known as “International

Disaster Response Law” or IDRL. For over two decades, the IFRC’s Disaster Law Program, in partnership with national governments, the national Red Cross and Red Crescent Societies, and other supportive stakeholders, has been the leader in promoting disaster law’s importance as well as advancing the field’s growth, including the development of IDRL.

One of the IFRC’s seminal contributions in establishing legal facilities for incoming assistance is the 2007 Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance (known more widely as the “IDRL Guidelines”). It is a non-binding instrument setting minimum preparedness standards within the sector. Its authority is recognized by Sendai’s Priority 4, 33(p), in which states are encouraged:

To review and strengthen, as appropriate, national laws and procedures on international cooperation, based on the Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance.

The Guidelines’ core principles include:

1. Domestic actors have the primary role in responding to the disaster;
2. International assistance providers have responsibilities for adhering to minimum standards in providing relief;
3. International actors need legal facilities to be effective in their response; and
4. The granting of some legal facilities should be conditional upon whether the responding actor adheres to minimal standards.<sup>10</sup>

In 2017 the IFRC released a supporting document to the Guidelines, *The Checklist on the Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance*.<sup>11</sup> The Checklist contains ten overarching prompts and guiding sub-questions for governments to assess legal preparedness in receiving humanitarian aid. The ten questions include:

1. Does your country have a clear legal framework for disaster risk management, which includes procedures relating to international disaster assistance?
2. Do your country’s laws and regulations clearly set out a focal point for coordinating international disaster assistance?
3. Do your country’s laws and regulations outline the roles and responsibilities of different institutions relating to international disaster assistance?
4. Do your country’s laws and regulations outline a process for requesting/welcoming offers of international disaster assistance, and for terminating international assistance?
5. Do your country’s laws and regulations provide for necessary legal facilities to be provided to international assisting actors?
6. Do your country’s laws and regulations set out quality standards for international assisting actors?
7. Do your country’s laws and regulations set out eligibility requirements for international assisting actors to receive legal facilities?
8. Do your country’s laws and regulations establish a specialized unit for expediting the entry of international disaster assistance?

<sup>10</sup> The IDRL Guidelines are available at: [https://disasterlaw.ifrc.org/sites/default/files/media/disaster\\_law/2020-09/1205600-IDRL-Guidelines-EN-LR.pdf](https://disasterlaw.ifrc.org/sites/default/files/media/disaster_law/2020-09/1205600-IDRL-Guidelines-EN-LR.pdf).

<sup>11</sup> The full Checklist is available at: [https://disasterlaw.ifrc.org/sites/default/files/media/disaster\\_law/2020-09/IDRL-Checklist-EN-LR-1.pdf](https://disasterlaw.ifrc.org/sites/default/files/media/disaster_law/2020-09/IDRL-Checklist-EN-LR-1.pdf).

9. Do your country's laws and regulations provide adequate transparency, safeguards and accountability mechanisms governing international disaster relief and initial recovery assistance?
10. Do your country's laws and regulations outline procedures for international disaster assistance sent from, and transiting through your country?

The IFRC has also issued two other reference documents, including the 2013 IDRL Model Act and the 2017 IDRL Model Emergency Decree. To learn more about these documents and to find other highly useful supporting materials covering IDRL—as well as other aspects of Disaster Law—please visit the IFRC Disaster Law's website at: <https://disasterlaw.ifrc.org>.

Thank you for your participation in this session and your interest in International Disaster Response Law.