



Legal preparedness for international and domestic responses to disasters

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IFRC Disaster Law Programme*

Outline

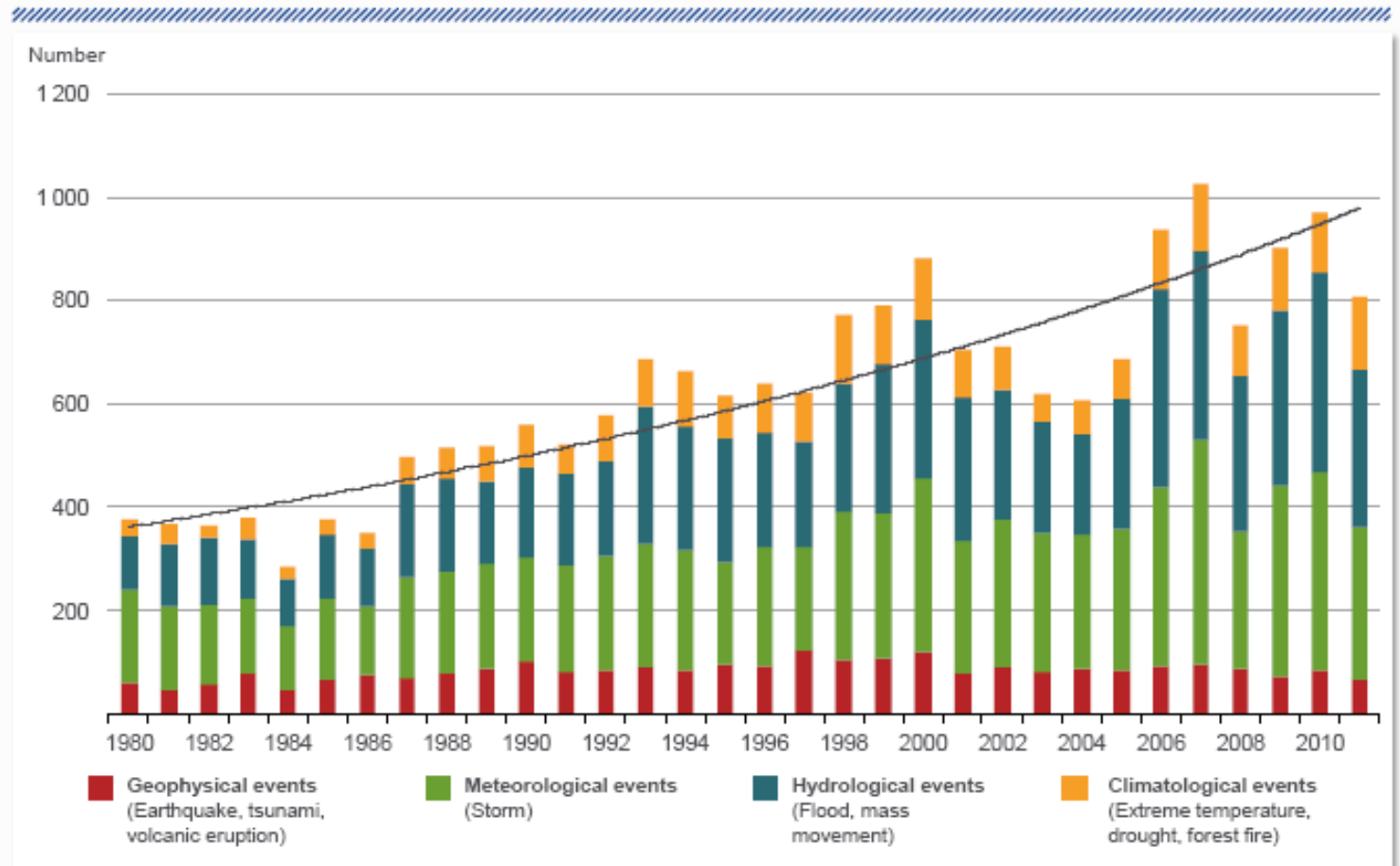
1. Do we need international law?
2. Is there any international law?
3. How about domestic law?

Do we need international law?



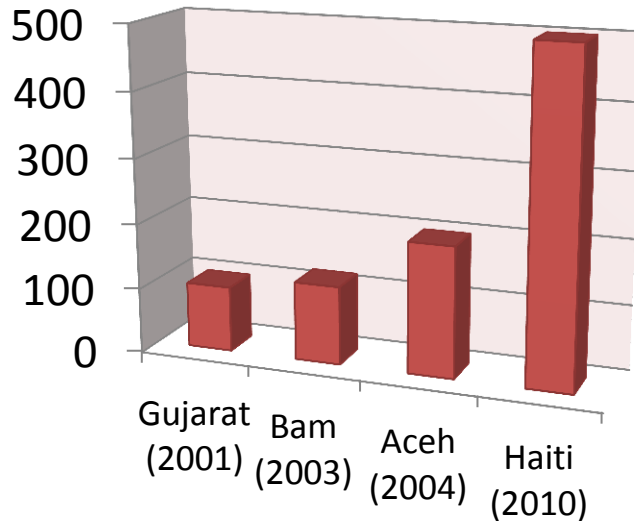
Natural catastrophes worldwide 1980 – 2011

Number of events with trend

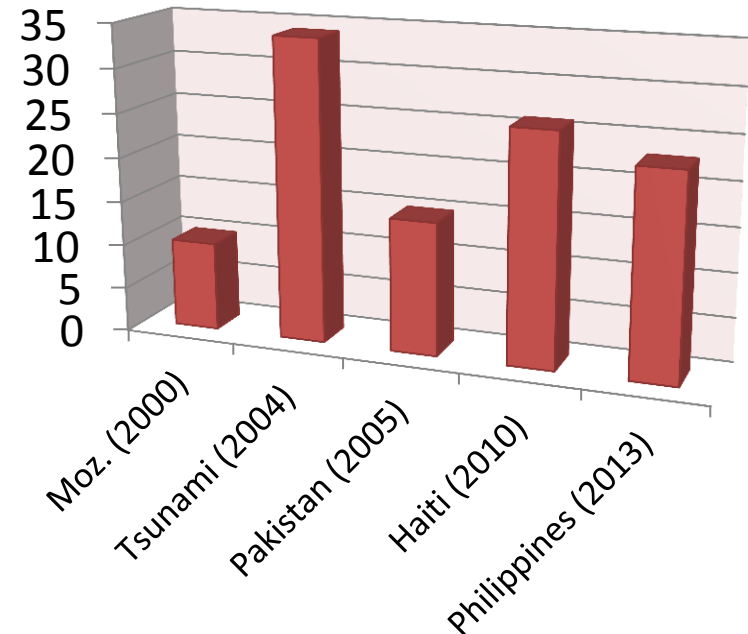


More and more varied responders

NGOs



Militaries



Regulatory problems in int'l response: a few anecdotes

1



2



3



4



5



6



The lack of legal preparedness for this complexity results in. . .



- **Barriers**

- initiation, visas, customs, taxes, specialized equipment, professional qualifications, registration, transport, liability

- **Oversight gaps**

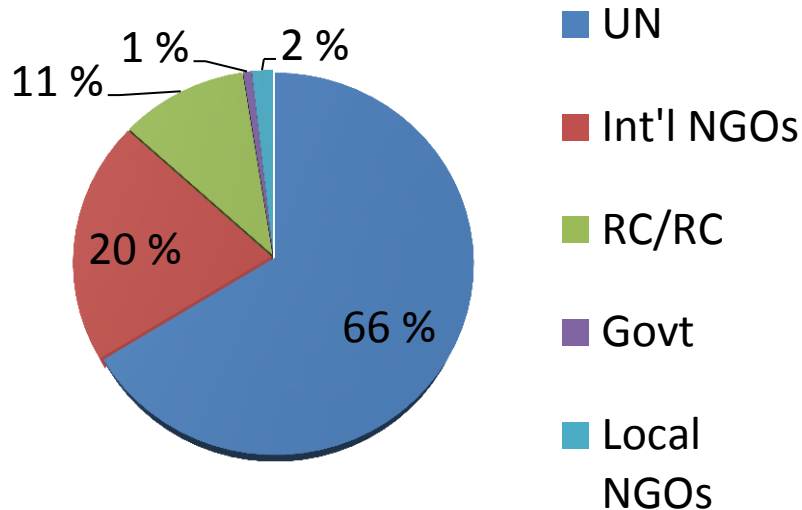
- inappropriate items, disregard for standards, poor coordination, corruption

- **Bottom line**

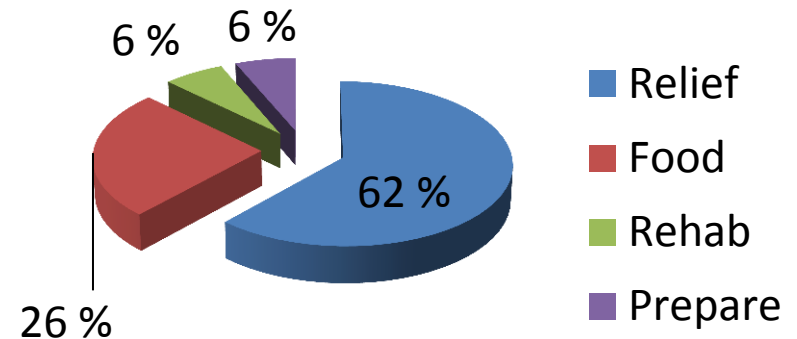
- aid is slower, more expensive, less effective, and sometimes counter-productive

How humanitarian funds are channeled

Channels: 2008-13



Purposes (2012)



Source: Global Humanitarian Assistance Report 2014

Protection issues: a few anecdotes

1



2



3



Is there any international law?



Sovereignty



- All states are considered sovereign and equal (UN Charter art. 2.1)
- Exclusive competence within their territories
- States can and do consent to give up some of that exclusivity

Humanitarian principles



- **Humanity, neutrality, impartiality**
 - UN GA Res 46/182 (1991)
 - RC/NGO Code of Conduct (1994)
 - Sphere Charter (2011) (no neutrality)

- **Independence**
 - UN GA Res 58/114 (2004)
 - Described differently than in the Code

- **4th Geneva Convention, art 59**
 - “impartial organizations”

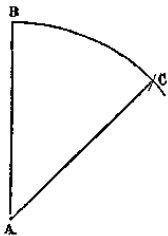
Disaster Law



**Global & Regional
Institutions**



**Human Rights
& Refugee Law**



**Sectoral
Law**

**No flagship
treaty for
disasters**



**Regional
Law**



**RC /RC
(Soft) Law**



**Soft
Law**

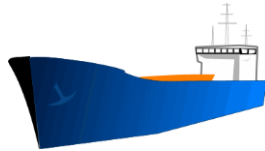


**Bilateral
Agreements**

Some “sectoral” treaties on disaster response



Kyoto Convention (rev 1999)
Istanbul Convention (1990)
Bali Agreement (??)



Convention on Maritime
Traffic (1965)



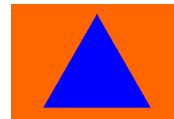
Chicago Convention,
Annex 9 (2004)



Tampere Convention
(1998)



Int'l Health Regs
(rev 2005)



Framework Convention
on Civil Defense (2000)



Food Assistance
Convention (rev 2012)

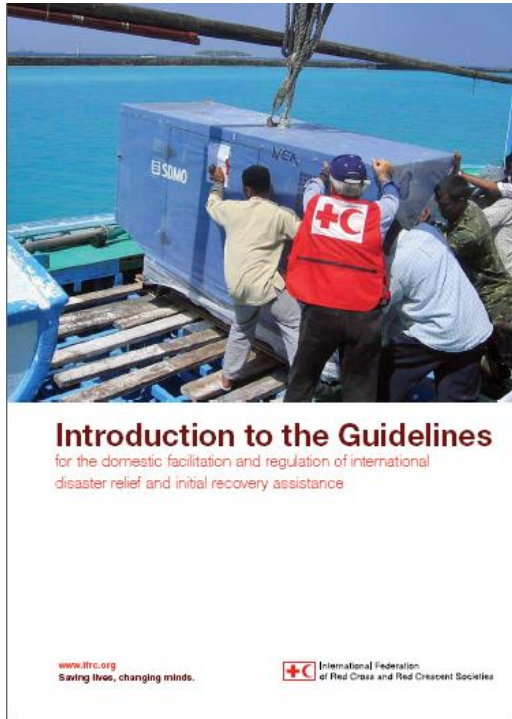


Nuclear Accident
Convention (1986)



Safety Protocol (2005)

Guidelines for the domestic facilitation and regulation of int'l relief and initial recovery



- Adopted by consensus by the state parties to the Geneva Conventions in 2007
- Recommendations to governments on how to prepare their own domestic laws and procedures for international assistance
- Projects in over 50 countries
- 21 new laws or regulations in 17 countries

Hyogo Framework for Action (2005-15)



- 5 priorities:
 1. Ensure that DRR is a priority with strong institutional base
 2. Identify, assess and monitor risks and EW
 3. Knowledge and education
 4. Reduce underlying risk factors
 5. Strengthen preparedness

- Negotiations now ongoing for a successor instrument – World Conference March 2015

Regional regimes

EU Civil Protection
Mechanism
HNS Guidelines
NATO guidance



ASEAN
Agreement
SAARC
Agreement



CEPREDENAC
Agreement

ACS
Agreement

CDEMA
Agreement

IGAD
Agreement



Arab League
Agreement

Kampala Convention



International Law Commission



- “Draft articles on protection of persons in the event of disasters”
- Mostly about international assistance
- First reading just completed
- Will probably be proposed as a draft treaty in 2016

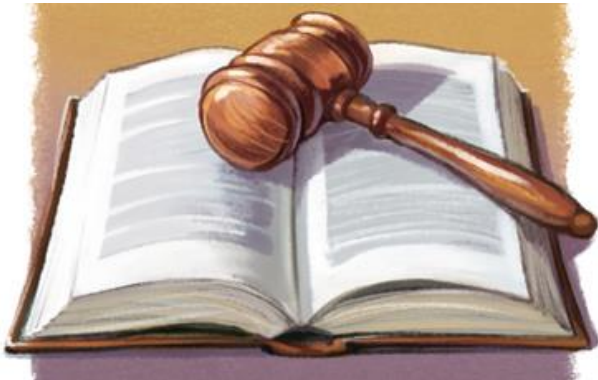


Special Rapporteur
Eduardo Valencia-
Ospina

How about domestic law?



Disaster management acts



- Most, but not all, countries have national level disaster management or civil protection legislation
- Some countries that still do not have flagship national legislation: Cambodia, Ethiopia, Kenya
- First major DM legislation recently adopted: Bangladesh, Bhutan, Namibia, Vietnam, Zambia

Institutional issues



What is the authority of the “NDMA”?

- Ghana – NADMO lower than heads of dept in Min of Interior
- Pakistan – Ministry of Climate Change
- Argentina– Overlapping mandates between civil protection/Cascos blancos

Role of local authorities

- UK Civil Contingencies – radiates up from local level
- France – ORSEC – mayors and prefects

Declarations of “emergency” and “disaster”



- **“States of emergency”**
 - Often provided in the constitution
 - More designed for full social breakdown (insurrection) than for disasters
 - Allow for setting aside other laws – “emergency powers” – including civil liberties.

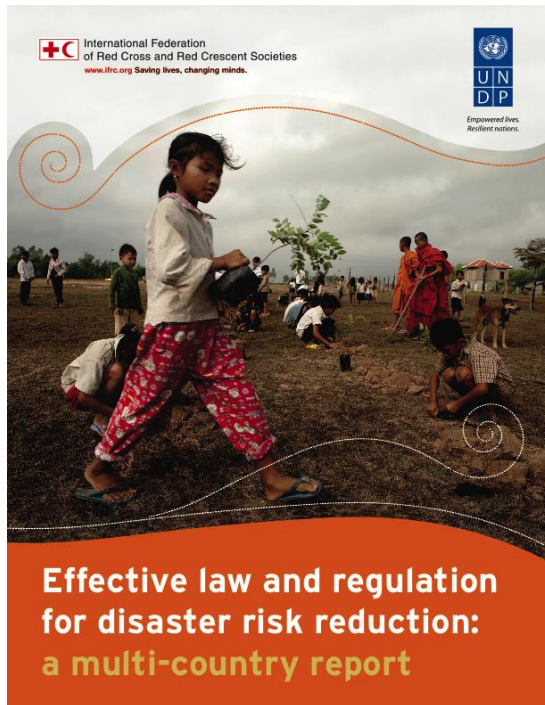
- **“States of disaster”**
 - Generally more limited powers – e.g. access to budget, mobilization of Ops Ctrs, etc.

Major trends in domestic law



- Focus on domestic response
- Focus on official action
- Inclusion of risk reduction, but with gaps
- Separation of natural and man-made and health emergencies
- Lack of specific attention to recovery issues
absent ad hoc reactions
- Generally, little attention to rights

Legislation for disaster risk reduction



Decentralized implementation

- Local government responsibility but lacks means

Funding mandates

- Even DRM funds tend to favour response

Accountability

- Few mechanisms for monitoring & oversight

Early warning & risk mapping

- Lack of clear direction on EWS

Sectoral laws are equally important



Building codes



Land Use
planning



Environment



Climate change
adaptation



Development
approvals

“Mainstreaming”

No “one-size-fits-all” for DRM acts

Country exposure to natural hazards	High	DRR priority law (high detail)	DRR priority law (high detail)	DRR priority law (low detail)
	Medium	DRR priority law (high detail)	Broad DRM law	DRR priority law (low detail)
	Low	Broad DRM law	Broad DRM law	Preparedness and response law
		Low	Medium	High
		Country disaster risk governance capacity through sectoral laws		

Take home messages



- Regulatory issues among the most challenging problems facing international assistance operations
- “Swiss cheese” international and domestic frameworks
- Rapidly improving domestic frameworks, that nevertheless still have gaps, particularly for risk reduction

FOR MORE INFORMATION, PLEASE VISIT:

<http://www.ifrc.org/dl>

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