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**31st INTERNATIONAL CONFERENCE  
OF THE RED CROSS AND RED CRESCENT**

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**Progress in the implementation of the  
Guidelines for the Domestic Facilitation and Regulation of  
International Disaster Relief and Initial Recovery Assistance**

**Background report**

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

Geneva, October 2011

## Executive Summary

As requested by Resolution 4 of the 30<sup>th</sup> International Conference, this background document provides a progress report on the implementation of the “Guidelines for the domestic facilitation and regulation of international disaster relief and initial recovery assistance” (also known as the **IDRL Guidelines**). These Guidelines were the product of seven years of research and extensive global consultations. They provide recommendations to states as to how to strengthen their own legal and institutional frameworks to avoid common regulatory problems in international disaster operations.

In the four years since the 30<sup>th</sup> International Conference, the incidence and impact of large scale natural disasters has continued to rise, from this year’s earthquake/tsunami/nuclear emergency in Japan and deadly drought in the Horn of Africa, to the earthquakes that struck Haiti in 2010 and China in 2009, to the historic floods and storms that submerged huge parts of Pakistan and Colombia in 2010 and Myanmar in 2009. Moreover, the numbers and diversity of international responders have continued to challenge the ability of affected states to effectively facilitate and regulate aid. The **need for legal preparedness** to address these challenges and ensure swift and effective aid to affected communities is as high as ever.

The International Federation of Red Cross and Red Crescent Societies (IFRC) is pleased to note growing interest in the IDRL Guidelines and in legal preparedness for international disaster response more generally. The past four years have seen **tangible progress at the national level** in several dozen countries, including nine that have already adopted new laws, regulations or procedures consistent with recommendations in the Guidelines. Moreover, a number of global fora, and at least one regional or sub-regional organization on every continent, have been active in mainstreaming the Guidelines into their work, in some cases using them as a basis to develop or strengthen their own tools and in others as an opportunity for dialogue and the agreement of plans of action for their members.

In addition, the IFRC has developed a number of new tools and capacity building opportunities for states and National Societies. These include the development of a **Model Act for the Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance**, intended as a reference tool for states finding gaps in their domestic legal frameworks. The Model Act was drafted in cooperation with the United Nations Office of the Coordination of Humanitarian Affairs and the Inter-Parliamentary Union.

However, there remains a good deal of work to be done if the goals of Resolution 4 to ensure faster, more effective and better coordinated disaster assistance are to be met. Accordingly, this report recommends that more states – particularly those already aware that they face an elevated risk of massive disasters – are encouraged to **undertake legal reviews** and to fill any gaps in their procedures for international assistance, drawing on the assistance of their National Societies, with the support of the IFRC. The report further recommends that the International Conference retain its engagement with the issue of IDRL and continue to promote and monitor the implementation of the IDRL Guidelines.

## 1. Introduction

As requested by the 30th International Conference, this background document provides a progress report on the implementation of Resolution 4 by that Conference, on “Adoption of the Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance” (also known as the “IDRL Guidelines”). It is also one of

three background documents supporting the proposed International Conference Resolution No. 31IC/11/5.5DR on “strengthening disaster laws”.<sup>1</sup>

This report begins with some background on the IDRL Guidelines and Resolution 4 and the reasons for their development. It then surveys progress in their implementation at the national, regional and global levels, noting also some parallel developments in the regulation of international relief. It describes several new tools and capacity building opportunities that have been developed with respect to the IDRL Guidelines. Finally, it offers an assessment of overall progress and proposals for next steps.

The report draws on several sources of information. They include:

- Information gained by the IFRC in its interactions with National Societies, states and other partners in promoting the IDRL Guidelines over the last four years,
- the results of a 2009 “mid-term” survey of International Conference participants about their progress with IDRL (IFRC 2009); and
- the responses to an additional survey by the IFRC and the International Committee of the Red Cross of International Conference participants concerning their activities pursuant to each of the resolutions of the 30<sup>th</sup> International Conference, which was carried out this year.

## **2. Background**

The IFRC and its member National Societies have been studying the strengths and weaknesses of regulatory frameworks for international disaster response for ten years. Pursuant to mandates from the 2001 Council of Delegates of the Red Cross and Red Crescent and the 28<sup>th</sup> International Conference, they performed extensive research and consultations on regulatory issues in international disaster operations. Through more than two dozen country case studies, surveys and interviews of hundreds of disaster response practitioners, and numerous workshops, meetings and discussions, they were able to construct a comprehensive picture of how regulatory issues impact whether and how urgent humanitarian needs are met in the aftermath of a major disaster.

This research has revealed that several factors combine to make the improvement of regulatory frameworks for international assistance an important goal.

### **a. Why focus on the facilitation and regulation of international disaster response?**

First, the numbers and impacts of natural disasters are on the rise world-wide. Just in the last four years since the 30<sup>th</sup> International Conference, the world has been shocked by a series of unprecedented calamities, from this year’s earthquake/tsunami/nuclear emergency in Japan and deadly drought in the Horn of Africa, to the earthquakes that struck Haiti in 2010 and China in 2009, to the historic floods and storms that submerged huge parts of Pakistan and Colombia in 2010 and Myanmar in 2009. Due to the effects of climate change, we can expect more disasters in the future – striking in new places and in different ways (RC/RC Climate Centre 2007). Likewise, the need for international solidarity is likely to grow and even states that have never needed outside assistance before may find themselves in a different situation in the near future.

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<sup>1</sup> The other documents are “Law and Disaster Risk Reduction at the Community Level,” Doc. No.31IC/11/5.5.2, and “Addressing Regulatory Barriers to the Provision of Emergency and Transitional Shelter Solutions in a Rapid and Equitable Manner After Natural Disasters,” Doc. No. 31IC/11/5.5.3. .

When and if they do call for such aid, they will find that the numbers and diversity of international responders have also grown enormously in the last few decades. In the past, only a handful of international actors were likely to respond to a natural disaster. Today, in highly mediatised events, help may come not only from a few neighbours but from an enormous profusion of well-wishers from distant places. For example, after this year's calamity in Japan, authorities received offers of help from 163 governments and 43 international organizations (Japan MoFA 2011). In Haiti, literally hundreds of foreign organizations, governmental agencies, military actors, church groups and other responded to the 2010 earthquake (Groupe URD 2010). Clearly, not all disasters are of this size or call out so many outside actors, but even medium-sized events may now draw help from a larger and more varied international community than ever before.

Large influxes of foreign relief providers and donations are often essential to save lives and restore dignity after a massive disaster. But they also pose a formidable challenge to affected state governments, already occupied with the difficulties in coordinating the domestic response. Unfortunately, very few states have detailed rules, procedures and institutional frameworks for facilitating and managing international disaster assistance. As a result entry barriers, such as those related to entry visas, customs clearance and duties, taxation, transport permissions and registration requirements, have frequently led to major delays and greatly increased costs. Moreover, failures of oversight have hampered coordination and complementarity between international and domestic relief efforts and allowed for the entry of irrelevant or poor quality aid. For their part, existing normative frameworks at the international and regional levels – though developing rapidly – remain incomplete, underutilised and often conflicting (IFRC 2007).

#### **b. The IDRL Guidelines and Resolution 4 of the 30th International Conference**

In light of the foregoing, in 2006-07, the IFRC spearheaded a global consultation process with states, humanitarian organizations and other stakeholders to develop the IDRL Guidelines. The IDRL Guidelines are recommendations to states as to how to prepare their legal, administrative and institutional frameworks for international disaster assistance so as to avoid the most common pitfalls of over- and under-regulation. Drawing on the many existing international instruments in the field, they set out the minimum legal facilities that assisting actors need to provide speedy and effective relief as well as the minimum standards of quality and coordination to which those actors should be held. They also recommend that states condition humanitarian organizations' ongoing eligibility of the special legal facilities on compliance with their responsibilities.

The IDRL Guidelines were unanimously adopted by the 30th International Conference in 2007. Among other things, Resolution 4 of that Conference:

- encouraged states to make use of the IDRL Guidelines to strengthen their national legal, policy and institutional frameworks and to inform bilateral and regional agreements;
- invited states, the IFRC and National Societies to bring the Guidelines to the attention of international and regional intergovernmental and non-governmental organizations; and
- invited the IFRC and National Societies, in close cooperation with the United Nations and other relevant organizations, to
  - disseminate and support the use of the Guidelines at the national level;
  - promote the mainstreaming of the Guidelines in other relevant disaster management initiatives, including the International Strategy for Disaster Reduction (ISDR); and

- continue their research, advocacy and development of tools and models for legal preparedness for disasters.

Complementing the adoption of this resolution were individual and joint pledges by 82 states and National Societies on this topic.

### 3. Progress at the national level

The main ambition of the IDRL Guidelines is to assist governments to develop their own procedures for international assistance at the national level. Since 2007, tangible progress can be seen in this regard in several dozen countries, including some that have already adopted new laws, rules or procedures.

#### a. New legislation, regulations and procedures already adopted

To our knowledge, nine countries have adopted new laws, regulations or procedures at the national level with provisions inspired by or consistent with aspects of the IDRL Guidelines since 2007. In each case, the National Society, with support from the IFRC, has been instrumental in supporting the authorities to develop the new instruments. They include:

- **Finland**, where a new Rescue Act entered into force in July 2011, with new provisions added explicitly mentioning international organizations as among the actors from whom the Ministry for the Interior may request international assistance;
- **Indonesia**, where a new law on disaster management was adopted in 2007, with a brief section on international disaster assistance and where, in February 2008, a regulation on the “Participation of International Institutions and Foreign Non-Governmental Institutions in Disaster Management,” was promulgated drawing heavily on the IDRL Guidelines;
- the **Netherlands**, whose government developed a new “Manual for Incoming Foreign Assistance” in 2009, drawing in part on the recommendations of an IDRL study carried out by the Netherlands Red Cross;
- **New Zealand**, where the Ministry for Civil Defence and Emergency Management drew on the IDRL Guidelines in developing a set of standard operating procedures, adopted in September 2009, for an “International Assistance Cell” tasked with coordinating and facilitating international relief;
- **Norway**, where a new migration regulation went into effect in January 2010 establishing an “emergency visa” category, allowing for the issuance of a visa upon arrival, which could be used for relief personnel (who are not already eligible for entry under Schengen or other rules), as the first product of a multi-ministerial review led by the Ministry of Justice and including the Norwegian Red Cross, which is examining national laws in a number of sectors in light of the IDRL Guidelines;
- **Panama**, where a new executive decree on immigration was promulgated in August 2008, which included a special visa category for international humanitarian relief personnel, as recommended by the IDRL Guidelines, and where, in April 2009, the Ministry of Foreign Affairs issued a new Manual for Procedures in the Event of Disasters, which makes brief reference to the IDRL Guidelines;
- **Peru**, where a new law creating the “National System for Disaster Risk Management” was adopted in 2011, which is specifically tasked to develop specific norms to

“facilitate humanitarian assistance operations in the country in accordance with international laws for disaster response;”

- the **Philippines**, where a landmark new Disaster Risk Reduction and Management Act was adopted in 2010, including a brief provision on international assistance and whose “Implementing Rules and Regulations” provides that “foreign donations and importations of humanitarian assistance shall also be guided with the International Disaster Response Law (IDRL) and other related guidelines as may be deemed appropriate;” and
- the **United States** whose federal government developed a new “National Response Framework,” in 2008, which included an updated “International Coordination Support Annex,” setting out clearer roles and procedures related to potential in-coming disaster assistance and which, in 2010, was supplemented by an “International Assistance System Concept of Operations,” which provides detailed guidance on the means for accepting and coordinating any incoming disaster assistance from foreign governments.

#### **b. Formal legal review processes**

In addition, to the above, the IFRC and/or National Societies have initiated formal technical assistance projects in nearly two dozen countries to assist interested governments to review their existing regulatory frameworks for international assistance in light of the IDRL Guidelines. In several cases involving partners such as OCHA, WHO or UNDP, these projects include desk research, stakeholder interviews and national workshops with relevant governmental departments and non-governmental actors (see table below). Discussions are underway with a number of other governments to launch additional such projects next year. Reports from completed projects are available at [www.ifrc.org/idrl](http://www.ifrc.org/idrl).

<b>Africa</b>	<b>Americas</b>	<b>Asia Pacific</b>	<b>Europe</b>
Mozambique	Colombia	Cambodia	Austria
Namibia	Haiti	Laos	Bulgaria
Sierra Leone	Peru	Nepal	France
Uganda		Pakistan	Germany
		Vanuatu	Kazakhstan
		Vietnam	Netherlands
			Norway
			Tajikistan
			United Kingdom

The IFRC and/or National Societies have also been invited to provide specific input related to the IDRL Guidelines on draft laws, policies and regulations that are currently pending in a number of countries (some of them overlapping with the formal projects discussed above). These include Afghanistan, Bhutan, Botswana, Bulgaria, Cambodia, Colombia, Comoros, Kazakhstan, Malawi, Mozambique, Namibia, Nepal, Pakistan, Serbia, Sierra Leone, the Seychelles, Spain, Uganda, Ukraine, and Vietnam.

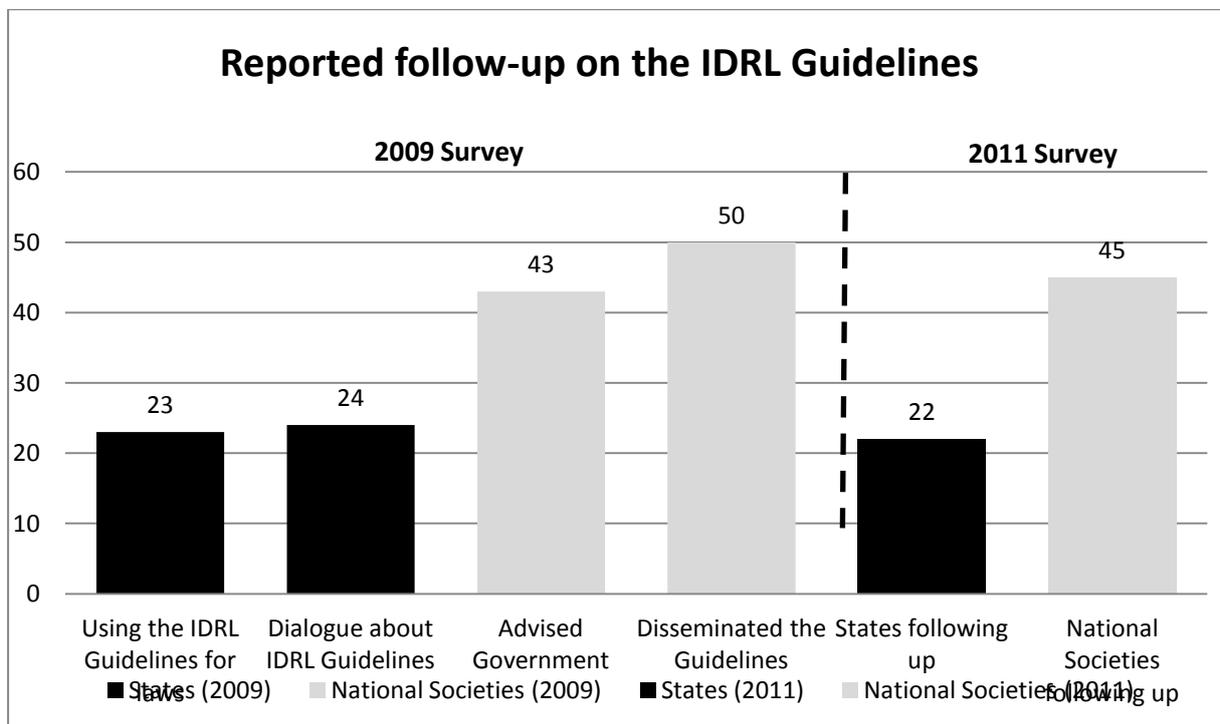
#### **c. Dissemination and dialogue**

In addition to formal projects and inputs, the majority of the states and National Societies responding to our 2009 and 2011 surveys indicated that they had undertaken dialogue and dissemination activities.

In 2009, 23 states (58% of those responding) indicated that they had begun to make use of the IDRL Guidelines to strengthen their national legal, policy or institutional frameworks and 24 (60% of respondents) stated that they had begun involving relevant stakeholders in dialogue about the IDRL Guidelines. Meanwhile, 43 National Societies (61% of those responding) stated that they had encouraged and/or assisted their governments in using the Guidelines and 50 (71% of respondents) stated that they had begun disseminating them to relevant governmental and non-governmental partners.

In 2011, 22 states (69% of those responding) and 45 National Societies (73% of those responding) stated that they have undertaken “significant follow-up” on Resolution 4 and related voluntary pledges. (See chart below.)

A majority of National Societies reporting progress highlighted their dissemination activities, including raising the IDRL Guidelines to the attention of relevant government counterparts. The Croatian Red Cross, for example, reported disseminating the IDRL Guidelines through the Croatian national platform on disaster risk reduction. The Egyptian Red Crescent reported that legal procedures related to IDRL are being considered by the Egyptian national committee on international humanitarian law. The Australian Red Cross similarly reported raising IDRL within the Australian national committee on international humanitarian law, as well as conducting roundtables on the subject together with various government departments. In addition to those engaged in the technical assistance projects discussed above, the National Societies of Armenia, Australia, Canada, Cook Islands, Finland, Indonesia, Ireland, Mongolia, the Philippines, Singapore, the Solomon Islands and Sweden all indicated that they had organized formal IDRL workshops for their authorities and partners, in many cases with support from the IFRC.



Several National Societies have also begun wider public dissemination efforts. For example, in 2008, the Japanese Red Cross discussed the IDRL Guidelines at its annual symposium, which is broadcast nationally on a programme normally watched by more than one million viewers. A follow-up discussion on the programme is planned in 2011. In 2010, the Italian

Red Cross dedicated its annual International Humanitarian Law (IHL) conference to the issue of IDRL, training over 200 volunteer IHL instructors from around the country.

For their part, numerous states reported on their experiences using and disseminating the IDRL Guidelines. For example, Germany reported having formally appointed a specific government focal point for issues related to IDRL. Laos noted that it had disseminated the Guidelines widely, include to all national committees and focal points involved with disaster management as well as to non-governmental partners. A number of others detailed in their reporting the existing institutional responsibilities or policies for managing incoming international disaster assistance – in some cases reflecting how such arrangements align with the recommendations of the IDRL Guidelines.

To assist in their dissemination, the IDRL Guidelines have now been translated in 17 languages, including Arabic, Chinese, English, French, Greek, Italian, Japanese, Khmer, Lao, Mongolian, Polish, Portuguese, Russian, Serbian, Spanish, Tajik, and Vietnamese.

#### **4. Progress at the regional level**

A number of the survey respondents, including the governments of Belgium, South Africa and Thailand, also reported on their efforts to promote regional cooperation on IDRL. Indeed, recent years have seen a rising interest among states to develop stronger regional mechanisms. Pursuant to Resolution 4, the IFRC has reached out to a number of them to bring the IDRL Guidelines to their attention.

##### **a. Africa**

The African Union (AU) is currently in the final phases of developing a Humanitarian Policy Framework, calling for the establishment of an effective coordination mechanism for humanitarian operations on the African continent, ranging from situations of armed conflict to natural and man-made disasters. With the encouragement of the IFRC, references to the IDRL Guidelines and the necessity to be legally prepared for disasters were included in the draft Framework, now pending approval by the Heads of State. The IFRC is stepping up its cooperation with the AU, and a memorandum of understanding between the two organizations has been signed to this effect. IDRL will be a major part of this cooperation.

At the sub-regional level, in October 2009, a high-level meeting of emergency management officials organised by the Southern African Development Community (SADC) called on SADC members to “explore the incorporation” of the IDRL Guidelines into their domestic laws. SADC is currently developing a policy and work plan for disaster risk reduction. The IFRC has had the opportunity to provide feedback. Among the suggestions made, was one to include in the policy objectives the development of agreements and standard operating procedures for cross-border assistance between the member states, and the development of a common policy for the reception of international humanitarian assistance from outside the sub-region, in line with the IDRL Guidelines.

Likewise, in Western Africa, the IFRC and the Economic Community of Western African States (ECOWAS) have advanced planning for a regional workshop on IDRL. The ECOWAS Disaster Risk Reduction Division, under the Humanitarian and Social Affairs Department, is proceeding with the development of programmes to facilitate the mainstreaming of disaster risk reduction into sustainable development planning and activities in West Africa. In this context, ECOWAS is looking to develop guidelines for legislation on disaster risk reduction. The IFRC has offered its assistance.

Moreover, while not directly referring to the IDRL Guidelines, the African Union’s recently adopted Convention of the Protection and Assistance of Internally Displaced Persons in

Africa of 2009 (the Kampala Convention) commits signatories to be prepared to coordinate international relief, to request it when their own resources are insufficient in the wake of disaster, and to “allow rapid and unimpeded passage of all relief consignments, equipment and personnel to internally displaced persons,” including those displaced by disaster.

Within the Red Cross and Red Crescent Movement, African National Societies reiterated their commitment to promote the IDRL Guidelines as part of the Johannesburg Commitment issued at the conclusion of the 7<sup>th</sup> Pan-African Conference of the Red Cross and Red Crescent in October 2008.

## **b. The Americas**

Most recently, in June 2011 at the 41<sup>st</sup> regular session of the General Assembly of the Organisation of American States in San Salvador, El Salvador, the Assembly adopted a resolution (Resolution 2647 (XLI-O/11)) calling on OAS member states to make use of the IDRL Guidelines “as a contribution to the development of internal legal structures with a view to generating action protocols, improving and adapting laws, closing gaps, and enlisting the involvement of the public, private, and community sectors” and requested that the OAS secretariat distribute information about the Guidelines to members states.

In April 2011, the Fourth Regional Meeting on Enhancing International Humanitarian Partnerships in Latin America and the Caribbean (EIHP) in Quito adopted a questionnaire for the creation of a Regional Compendium of Regulatory Instruments related to international disaster assistance. The project, launched the previous year at the Third Regional Meeting in Buenos Aires, draws substantially on the IDRL Guidelines, and the IFRC was invited to support the working group in the creation of the tool. Through their adopting declaration, governments extended a call to the IFRC to continue its collaboration, with other partners including UN OCHA and sub-regional organisations and the follow-up group, to provide technical support in advising and helping to build capacity for the completion of the Regional Legal Compendium. The IFRC is now preparing to facilitate a regional training workshop for the relevant government focal points on the completion of the questionnaire.

In December 2010, the IFRC and the Government of Argentina co-organised a two-day special session for members of the OAS working group on existing mechanisms for disaster prevention and response. The workshop examined common regulatory problems in international disaster relief as well as regulatory tools in the Americas. This collaboration with the OAS followed two previous presentations, one to the OAS Working Group on Existing Mechanisms for Disaster Prevention and Response in Washington DC in April 2010, and one at an OAS regional workshop on emergency laws in the Caribbean in Saint Lucia in June 2010. Following the latter workshop, in 2011, the OAS Secretariat published a substantial study on the legal and institutional framework related to states of emergency in Caribbean countries, including some discussion on international assistance (OAS 2011).

Renewed interest in the subject has also brought new life to the Inter-American Convention to Facilitate Disaster Assistance of 1991. The Dominican Republic acceded to the Convention in 2009, the first country to do so in 10 years. The following year, Nicaragua took action to ratify the Convention it had signed more than 18 years prior. There have also been calls in some regional fora for modernising the language of the Convention.

The Americas region also boasts a strong pre-existing network of sub-regional mechanisms dedicated to disaster cooperation that continues to address several of the issues raised in the IDRL Guidelines. These include:

- the Coordination Centre for the Prevention of Natural Disasters in Central America (CEPREDENAC), which has promoted a successful institutional model for facilitating international relief called “Coordination Centres for Humanitarian Assistance”
- the Caribbean Disaster Management Agency (CDEMA), which has provisions in its agreement to address certain regulatory issues in inter-state disaster operations;
- the Andean Committee for Disaster Prevention and Relief (CAPRADE), which included a reference to the IDRL Guidelines in the first edition of its regional operational guide for mutual assistance in natural disasters, published in 2008. The IFRC has supported the Ecuador Red Cross in providing technical assistance for a future revision of the guide; and
- the recently recreated Specialized Meeting on Disaster Risk Reduction, Civil Defence, Civil Protection and Humanitarian Assistance (REHU), which brings together MERCOSUR member states in a dialogue on disaster cooperation.

While not specifically dedicated to disaster cooperation, the Latin American and Caribbean Economic System (SELA), with partners UNISDR, the Ibero-American General Secretariat (SEGIB) and the Perez Guerrero Trust Fund (PGTF) of the Group of 77 organized a meeting in December 2010 on the institutional framework for Disaster Risk Reduction in Latin America and the Caribbean, Asia and Africa. The conclusions of the meeting included a recommendation to promote “the design and improvement of tools, methodologies, procedures, protocols and guidelines ... as a possible ‘roadmap’ for future work in the area of disaster risk reduction in our region, with doctrinal, thematic and instrumental components” (SELA 2010).

### **c. Asia Pacific**

In December 2009, the Association of Southeast Asian Nations’ (ASEAN) Agreement on Disaster Management and Emergency Response (AADMER) entered into force. To help operationalize the agreement, ASEAN developed a set of operating procedures, which draw substantially on the IDRL Guidelines. ASEAN has also invited the IFRC to provide ongoing assistance on IDRL issues, including through participation in annual simulation exercises, meetings of the ASEAN Committee on Disaster Management, an AADMER Visioning Workshop for 2010-2015, and a number of modules and taskforce meetings on the ASEAN Standard Operating Procedure for Regional Standby Arrangements and Coordination of Joint Disaster Relief and Emergency Relief Operations. This year, the ASEAN Secretariat additionally called on the assistance of the IFRC in developing a questionnaire for its member states on their implementation of the AADMER and in offering assistance to member states to research the pertinent information.

Also in this region, in October 2009, the Asian Development Bank and the IFRC cooperated to organise the Mekong Forum on Legal Preparedness for Disasters and Health Emergencies for representatives of governments and National Societies in Southeast Asia. The Forum adopted, as a top priority recommendation, the updating of national laws using the IDRL Guidelines and other relevant instruments.

The Asia Pacific Economic Cooperation (APEC) Summit adopted a new Strategy for Disaster Risk Reduction and Emergency Preparedness in November 2008. The Strategy refers to the IDRL Guidelines and possible cooperation with the IFRC in assisting member states make use of them. At the same summit, the governments of Australia and Indonesia announced their plan to create a new regional disaster risk reduction facility. As part of its functions, the facility would promote implementation of the IDRL Guidelines.

In South Asia, the South Asian Association for Regional Cooperation (SAARC) is currently finalizing a new treaty on mutual assistance in disasters. In order to lend its support, the

IFRC is organizing a workshop on IDRL issues for governmental and National Society representatives from South Asia later this year.

In the Pacific, OCHA has created an important space for IDRL issues to be raised and addressed in an operational context through its regional and national level contingency planning event. Similarly, the Pacific Disaster Risk Management Partnership Network in general, and the annual Pacific Platforms for Disaster Risk Management in particular, co-hosted by the United Nations International Strategy for Disaster Reduction (UNISDR) and Pacific Islands Applied Geoscience Commission (SOPAC, since 2011 a division of the South Pacific Community) have been a conduit for IDRL awareness and commitments. In July 2008, a meeting of SOPAC CEOs issued a “call to action” urging member states to take up the IDRL Guidelines and indicating a willingness to collaborate with the IFRC in promoting them.

In May 2009, the outcomes of the 4<sup>th</sup> Annual Pacific Disaster Risk Management Partnership Network meeting (now known as the Pacific Platform for Disaster Risk Reduction) included a recommendation to bring IDRL issues forward by supporting “governments to develop or strengthen national laws and policies for enhanced legal preparedness for national or international disaster response.” In August 2011, the 3<sup>rd</sup> Pacific Platform included a presentation on IDRL and in its outcome statement agreed to work towards “[s]trengthen[ing] legal arrangements at the national level to facilitate and regulate foreign disaster response, by making use of internationally recognized guidelines and the forthcoming ‘Model Act’” (described further below). The Pacific Immigration Director’s Conference Secretariat has also engaged in IDRL awareness and advocacy amongst its members, including by issuing a policy brief entitled “Disaster Response and the Role of Immigration.”

For their part, National Societies in the Asia Pacific region pledged to increase their own knowledge and understanding of IDRL, and to increase their work in advocating for stronger disaster management legislation, in the “Amman Commitment” of the 8th Asia Pacific Red Cross and Red Crescent Conference, held in Amman, Jordan in October 2010.

#### **d. Europe**

In December 2007, just following the 30<sup>th</sup> International Conference, the European Union adopted its European Consensus on Humanitarian Aid, setting out its philosophies and priorities in the humanitarian domain. The Consensus expressly “subscribed” to the IDRL Guidelines and tasked the European Commission with developing an action plan for practical measures to implement the Consensus. The Action Plan includes a specific aim for “improved EU understanding of IDRL and how its implementation can be promoted to facilitate humanitarian operations.”

In the following four years, the European Union has continued to strengthen its frameworks for disaster management cooperation. Drawing on the results of a two-year study by the IFRC and the National Societies of Austria, Bulgaria, France, Germany, the Netherlands and the United Kingdom on IDRL in the European Union (IFRC 2010), the Belgian Presidency of the European Union took up the issue of “Host Nation Support” in disasters. After workshops hosted by the Belgian Directorate for Civil Protection in September 2010 and the IFRC in October 2010, the European Council adopted its “Council Conclusions on Host Nation Support” in December 2010. These Conclusions recognize that legal and administrative requirements may be a barrier to speedy cross-border disaster assistance and thus call on member states, among other things, to “identify relevant legal issues that may constitute obstacles to the overall objective of facilitating the provision of international assistance and, if appropriate, modify their legislation with a view to facilitating the provision of assistance” and asked the European Commission to work with member states to develop European level “Guidelines on Host Nation Support.” Those guidelines are currently being drafted.

The IFRC has also engaged with the Black Sea Economic Cooperation (BSEC), in light of its several agreements on disaster cooperation and with the North Atlantic Treaty Organisation (NATO), which drew on the IDRL Guidelines in creating a “Checklist and Non-Binding Guidelines for the Request, Reception and Provision of International Assistance in the Event of a CBRN Incident or Natural Disaster” for its members in 2009.

In Central Asia, the IFRC collaborated with OCHA, UNDP and the Government and Red Crescent Society of Kazakhstan to organize regional workshops for regional governments and National Societies on IDRL in 2009 and 2011 to develop national and regional plans of action in the region. In this connection, OCHA prepared a compilation of regional treaties as well as a report on their consistency with the IDRL Guidelines. In August 2011, Kazakhstan, Kyrgyzstan and Tajikistan signed an agreement to establish a regional Centre on Disaster Response and Risk Reduction.

#### **e. The Middle East and North Africa**

As in the Americas, member states of the League of Arab States several decades ago adopted a treaty addressing many of the issues in the IDRL Guidelines, the Arab Cooperation Agreement on Regulating and Facilitating Relief Operations, but which had not been used operationally. The MENA region has also seen renewed interest in the topic in recent years. Following the adoption of the IDRL Guidelines in 2007, parties began discussing how to revive and modernise the agreement. The amended agreement has since been ratified by Jordan and approved by the Council of Ministers of Saudi Arabia.

### **5. Progress at the global level**

There has also been a significant take-up of the IDRL Guidelines at the global level. This has included welcoming resolutions and statements from key international fora as well as growing international partnerships.

#### **a. United Nations General Assembly and Economic and Social Council**

Since 2008, the UNGA has recognised the IDRL Guidelines in seven resolutions,<sup>2</sup> each time calling upon UN member states and regional organisations to take account of the IDRL Guidelines in strengthening their operational and legal frameworks for international disaster relief. Most recently, the 65<sup>th</sup> session of the UNGA included the following language in the adopted “omnibus” resolution on “strengthening of the coordination of emergency humanitarian assistance of the United Nations”:

“The General Assembly .... [*w*]elcomes the initiatives at the regional and national levels related to the implementation of the Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance, adopted at the Thirtieth International Conference of the Red Cross and Red Crescent, held in Geneva from 26 to 30 November 2007, and encourages Member States and, where applicable, regional organizations, to take further steps to strengthen operational and legal frameworks for international disaster relief, taking into account the Guidelines, as appropriate” (Res. 65/133, o.p.11).

The United Nations Economic and Social Council (ECOSOC) has included similar language in its resolutions on humanitarian affairs in each of the last four years, most recently during

<sup>2</sup> UN General Assembly Resolutions A/RES/65/264, A/RES/65/133, A/RES/64/251, A/RES/64/76, A/RES/63/141, A/RES/63/139, A/RES/63/137.

its 2011 session in Geneva.<sup>3</sup> The language on IDRL in both UNGA and ECOSOC resolutions has, over the years, enjoyed consistent and broad consensus support across UN member states and negotiating groups.

Recognition by these bodies of the importance of legal frameworks for enhancing international disaster response is strongly supported by the consistent attention of the UN Secretary-General who, for each of the last four years, has highlighted the IDRL Guidelines in his reports to the UNGA and ECOSOC on humanitarian affairs.

#### **b. International Law Commission**

The IDRL Guidelines have also served as a significant source of inspiration for the work of the International Law Commission (ILC) (an expert body of the United Nations charged with codifying customary international law). In 2007, the ILC began work on “draft articles” on the topic of “protection of persons in the event of disasters.” It is anticipated that these draft articles, once completed, may be presented as a draft convention, but this has not yet been firmly decided.

The Special Rapporteur appointed for the topic, Mr. Eduardo Valencia-Ospina, has since delivered four background reports to the ILC, often citing to the IDRL Guidelines and/or the IDRL research of the IFRC, and has presented twelve draft articles for inclusion in an eventual legal instrument. While still early in the process, it appears that the ILC’s instrument will touch on many of the same issues raised by the IDRL Guidelines. However, both the ILC itself and member states in the Sixth Committee have emphasized the importance of ensuring that the ILC’s product is complementary to the work that is already being carried out through promotion and implementation of the IDRL Guidelines. For its part, the IFRC has sought to engage with the ILC on this topic to share its experiences and those of its members. It regularly participates in debates of the Sixth Committee of the UNGA on the reports presented by the ILC.

#### **c. Global and Regional Platforms on Disaster Risk Reduction**

Resolution 4 of the 30<sup>th</sup> International Conference called for the mainstreaming of the IDRL Guidelines into the global and regional platforms of the ISDR system. Accordingly, the IFRC has sought to engage on this issue, including through hosting dedicated side events at the second and third global platforms in 2009 and 2011.

While the platforms are mainly oriented to prevention rather than response to disasters, statements by participants to the Platform, as well as outcome statements of the global- and regional-level fora have also recognised the importance of rapid disaster relief. For example, participants to the Second Session of the Regional Platform for Disaster Risk Reduction in the Americas in March 2011 adopted a communication addressed to governments “strongly encourag[ing] national, subnational and local governments to ... [among other things] ... promote strengthening of regulatory frameworks and guidelines that support the rapid, timely intervention of the international community in disasters”, referencing IDRL and the IFRC’s work in the field (UNISDR, 2011).

#### **d. World Customs Organization**

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<sup>3</sup> ECOSOC Resolutions 2011/[not yet published], 2010/1, 2009/3, 2008/36.

In past years, the World Customs Organization (WCO) (an intergovernmental organization representing 177 customs administrations around the world) has been active in seeking solutions to customs-related problems in humanitarian response operations, including through adding specific provisions on disaster situations in several treaties it has negotiated as well as developing the Model Customs Facilitation Agreement in tandem with OCHA in 1994. In cooperation with OCHA, the IFRC has engaged with the WCO in a series of meetings to encourage the organization and its members to again take a leading role in planning for issues related to the import, transit and export of relief goods and equipment in the event of disasters.

As a result, in 2010, the WCO signed MOUs with the IFRC and with OCHA and created an ad hoc working group of its members to develop an action plan. In June 2011, the WCO's Permanent Council adopted a resolution on "the role of customs in natural disaster relief," which refers to the IDRL Guidelines and sets out a series of steps for the WCO secretariat and member states to take in coordination with IFRC and OCHA to improve their preparedness for future disasters, including national reviews of existing rules and procedures, the development of global reference materials, and the convening of regional dialogues between customs administrations and humanitarian organizations.

#### **e. The Commonwealth**

Straddling the definitions between a regional and a global institution, the Commonwealth is a voluntary association of 54 countries on six continents, many of which in the world's most disaster prone areas. Following cooperative action from the British Red Cross, IFRC and ICRC, the Commonwealth has taken an increasing interest in the IDRL Guidelines. In October 2010, the "Senior Officials of Commonwealth Law Ministries" meeting in London noted in its final communiqué that "[t]here was growing interest on the part of Governments and other stakeholders in international disaster response, but the Meeting noted that some States' domestic legislation needed amendment to facilitate prompt and effective response."

Likewise, in June 2011, participants at the 3rd Commonwealth Red Cross/Red Crescent International Humanitarian Law Conference, co-convened by the ICRC, the Malaysian Red Crescent and the Government of Malaysia, agreed that "Commonwealth States and National Societies should build upon the special auxiliary . . . roles of National Societies to continue to work together in areas of mutual humanitarian concern, in particular, International Disaster Response Laws, Rules and Principles (IDRL) including the Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance."

#### **f. Additional mainstreaming**

The IDRL Guidelines have likewise been promoted in such other global fora as the Good Humanitarian Donorship Forum, the Inter-Parliamentary Union (IPU) and the International Civil Defence Organisation. For its part, OCHA has invited the IFRC to integrate its expertise on IDRL into several United Nations Disaster Assessment and Coordination (UNDAC) team preparedness missions (including to Bhutan, Cambodia, El Salvador the Comoros, Peru and Papua New Guinea), in country-level contingency planning exercises in Western Africa, as well in a series of training workshops on international law for current and perspective humanitarian coordinators. The Guidelines have likewise been presented to several humanitarian "clusters" as a tool for their dialogue with governments.

### **6. New tools and capacity building opportunities**

Collaborating with National Societies and other partners, the IFRC has developed several new tools for legal preparedness and implementation of the IDRL Guidelines and extended opportunities for training and capacity building to its members, governmental representatives and other partners.

**a. Model Act for the Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance**

In response to numerous requests from governments for specific suggestions of statutory language, the IFRC is cooperating with OCHA and the IPU to develop a “Model Act for the Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance.” Designed as a non-binding reference tool, the Model Act is intended to provide interested lawmakers with a starting point as they consider how best to integrate the recommendations of the IDRL Guidelines into their own legislation.

The text of the Model Act covers IDRL issues from the initiation through the termination of international disaster assistance, and is accompanied by a detailed commentary explaining the various provisions and also providing examples of existing legislation from various countries. States may choose to make use of the text as inspiration for a single stand-alone law, or as a series of amendments to other existing laws, as appropriate to their circumstances.

The Model Act has been drafted with technical assistance from the WCO and pro bono help from the law firms of Allen & Overy LLP, CMS Cameron McKenna, Baker & McKenzie, and the legal department of Microsoft Corporation and has benefited from the input of numerous outside experts. It is anticipated that it will be launched in a “pilot version” at the 31<sup>st</sup> International Conference.

**b. Legislative advocacy manual for National Societies**

As an additional tool for National Societies to build their capacity to provide effective advice to their governments on law related to disaster management and health emergencies, the IFRC has developed a manual on legislative advocacy. The manual integrates advice and best practices regarding international relief as well as common domestic disaster management legal issues that National Societies see as critical.

The manual development process was collaborative, involving National Societies from different regions and various relevant departments/programmes of the IFRC Secretariat. The manual will be launched at a workshop during the IFRC General Assembly in November, just preceding the 31<sup>st</sup> International Conference.

**c. Capacity building and training opportunities**

The IFRC has also collaborated at the regional level (with various partners, including OCHA the UN Joint Logistics Centre (now part of the Logistics Cluster), and UNDP, among others) to raise the capacity of National Societies, governments, NGOs and other stakeholders on the IDRL Guidelines and related instruments. Regional workshops have been organized for:

- **Asia** in Kuala Lumpur in November 2008 and Bangkok in April 2010;
- **Western Africa** in Abuja in November 2008;
- **Eastern Africa** in Nairobi in June 2009;
- the **Pacific** in Suva in August 2009;
- **the Americas** in Panama City in September 2009 and Washington in December 2010;

- **Europe** in Vienna in May 2009 and Brussels in October 2010; and
- **Central Asia** in Almaty in October 2009 and in Astana in August 2011.

At the time of completion of this report, additional regional training workshops were being planned for the Caribbean, South Asia, and Southern Africa.

Moreover, in January 2011, the IFRC together with the Danish Red Cross and the Danish Emergency Management Agency launched the first annual “Disaster Law Short Course” in Koge, Denmark. The Short course brought together senior representatives of governments and National Societies from around the world to provide a broad overview of law and legal issues in domestic response, international disaster cooperation and disaster risk reduction.

In December 2010, the IFRC launched an online training module on IDRL. Through dialogue and interactive puzzles, the module provides an overview of some of the most common legal problems in international disaster relief operations. It also presents existing international laws and norms in this area, including the IDRL Guidelines. The module is free and open to the public (link available at [www.ifrc.org/idrl](http://www.ifrc.org/idrl)). It is available in Arabic, English, French, Russian and Spanish. To date, over 1,000 persons have viewed it.

## **7. Assessment**

Many of the points made in the IFRC’s mid-term progress report on the IDRL Guidelines remain valid today (IFRC 2009). It is safe to say that the IDRL Guidelines have not been forgotten and that many participants of the 30<sup>th</sup> International Conference have taken serious steps to follow-up on their commitment. However, there is still a great deal of work remaining to be done.

### **a. Mainstreaming**

Encouragingly, we are seeing good progress in the mainstreaming of the issue of legal preparedness for international disaster response, particularly at the regional and global levels. On every continent, at least one regional or sub-regional organization has taken up the issue and has started to make use of the IDRL Guidelines. Some have been inspired to consider modernizing old and ill-used treaties, such as the Inter-American Convention to Facilitate Disaster Assistance and the Arab Cooperation Agreement Regulating and Facilitating Relief Operations. Others have drawn on the Guidelines to develop supplementary tools, like CAPRADE’s operational guide on mutual assistance, the European Union’s draft guidelines on host nation support, and ASEAN’s standard operating procedures.

At both the global and regional levels, inter-governmental organizations have issued political statements of purpose and plans of action, which can be immensely helpful to domestic champions of legal preparedness in persuading colleagues about the importance of the issue. Particularly encouraging are the initiatives in the Americas and in Southeast Asia to develop detailed surveys of states related to the issues discussed in the IDRL Guidelines, as this creates another opportunity for each participating state to consider whether they have any legal or procedural gaps to address.

On the other hand, as noted by the IFRC’s desk study in 2007, just as there has been a proliferation of international responders in recent disaster operations, there has also been a proliferation of solutions, and they are not always well articulated with each other. This tendency has continued since the 30<sup>th</sup> International Conference, with regional organizations and/or agreements setting out roles in regulation and coordination that may overlap with each other or with those of global entities (Haver and Foley 2011). Moreover, the non-state sector (including the Red Cross and Red Crescent Movement and NGOs) is still poorly

represented in most regional agreements and arrangements, even though it represents a substantial and growing proportion of the international aid that is available to meet the needs of affected communities. ASEAN's AADMER is the only regional treaty currently in use that squarely addresses the role of the non-state sector in disaster operations and few of the other regional organizations active in exercises or planning have encouraged extensive involvement in this sector.

Moreover, despite the many global and regional efforts to improve disaster cooperation, there is increasing concern in the humanitarian community about the "trust gap" that seems to be growing in relation to international relief (Harvey and Hamer, 2011). In light of the growing challenges of managing international assistance, authorities in some disaster affected states have been hesitant to seek it out. It was hoped that the UN-led humanitarian reforms of recent years, including the system of sectoral "clusters" in which the IFRC is an active participant, would not only improve horizontal coordination between agencies, but also provide domestic authorities with a manageable "one stop shop" to interact with the international responders. Unfortunately, recent reviews of the cluster system indicate that it has not yet been as effective in the latter respect as might have been expected (Steets 2010).

It is in light of these challenges that the IFRC has partnered with the Swiss Agency for Development and Cooperation (SDC), OCHA, and the International Council of Voluntary Agencies (ICVA) to launch a process of dialogue between states and humanitarian agencies to explore how to consolidate and improve the ways that the many global and regional mechanisms interact with national disaster management systems. The first step in this process, an "International Dialogue on Strengthening Partnership in Disaster Response: Bridging national and international support," will take place in Geneva in October 2011, and it is hoped that its outcomes will be useful for deliberations on the issue of IDRL at the International Conference.

Over the long term, the International Law Commission's efforts may contribute to interest in a global treaty addressing some or all of these issues. In light of this possibility, it will be advantageous for greater input to be provided by humanitarian agencies, governmental experts in disaster management, and regional organizations to assist the Commission's legal experts. For its part, the IFRC will continue to offer its advice and views and to inform its members of the Commission's progress. Should efforts at a country and regional level not continue to grow and expand in the coming years, the option of promoting such a treaty should be reviewed by the participants of the International Conference.

## **b. Implementation**

Regardless of how global or regional frameworks may evolve, however, the procedures of individual states will continue to be the deciding factor in ensuring the effective facilitation and regulation of incoming international relief. This is why they are the key focus of the IDRL Guidelines.

As described above, in the four years since the 30<sup>th</sup> International Conference, the IFRC is aware of nine countries that have now adopted new laws, regulations or procedures that draw on (or are consistent with) some of the recommendations from the IDRL Guidelines and twenty others that are actively considering drafts. In addition to their support to those countries, the IFRC and/or National Societies have participated in 11 other intensive legal reviews whose recommendations have not yet resulted in the drafting of new or amended procedures or law.

This is a good start but, in light of the joint commitment of 167 states and 179 National Societies (along with the IFRC and ICRC) at the previous International Conference, the world

can do yet better. By way of comparison, six years after the adoption of the Hyogo Framework for Action (HFA) on disaster risk reduction, UNISDR was able to identify 13 new national laws highlighting disaster risk reduction and 48 states had reported having integrated it in some way in their laws, policies or procedures (UNISDR 2011; Llosa and Zodrow 2011).

It is hoped that the new Model Act will be of some help in this regard. However, it is clear that additional dissemination and promotion of the IDRL Guidelines will be required over the coming years to ensure that the goals of Resolution 4 to ensure faster, more effective and better coordinated disaster assistance are met.

### **c. The role of the Red Cross/Red Crescent and its partners**

The capacity of National Societies to assist states in this regard has grown over the last four years. Hundreds of National Society representatives have received training on IDRL and many have offered their advice and support to their governments. Building on their historic experience in the promotion of IHL and their auxiliary role, they have worked with champions in their governments to promote legal preparedness for disasters.

For its part, the IFRC has sought to play a catalytic role, through technical advice, capacity building, advocacy and research. It has benefited from generous support from a number of donors, notably the Governments and/or National Societies of Austria, Australia, Canada, Denmark, Finland, Germany, Norway, and the United Kingdom, as well as ECHO and the Asian Development Bank. It has also benefited from increasingly strong partnerships with key global agencies, such as OCHA, UNDP, and WCO, and a number of regional organizations. It is also actively building its cooperation with the NGO and academic communities.

## **8. Conclusion and recommendations**

As with all issues related to disaster preparedness, it can be difficult to prioritize the strengthening of laws and procedures for future, hypothetical events, particularly in countries that have not recently experienced major disasters or significant complications around international assistance in the past. However, for anyone who thought that the world would never see an event as devastating as the 2004 Indian Ocean tsunami – or an international response as large and as challenging as the one following that calamity – the last four years have supplied some powerful rejoinders. The Haiti earthquake has clearly demonstrated the life-saving benefits and significant difficulties of enormous international response operations. The Japan earthquake/tsunami/nuclear emergency has shown the potential for even the world's most prepared countries both to require outside assistance and to be challenged to manage an abundance of offers. Many other disasters on all five continents have likewise proven that all states have a stake in making themselves prepared.

Strengthening legal and procedural preparedness for international disaster assistance is a low-cost step that can make a major difference in the speed, effectiveness and expense of future relief operations. Thanks to the work of many National Societies and governments, this step is starting to be taken in several dozen countries around the world. Moreover, many global and regional fora have taken up the message of the IDRL Guidelines and are providing their support to their members in integrating it into their own systems.

Little of this would have been possible without the decisions of the 28<sup>th</sup> and 30<sup>th</sup> International Conferences to promote and encourage the development of IDRL. There is still a great deal of work to be done and it is therefore the IFRC's hope that the International Conference will remain engaged with this issue over the long term.

Going forward, the IFRC offers the following recommendations for action:

- All states and National Societies should build their knowledge of IDRL, taking advantage, as appropriate, of the opportunities and learning tools developed by the IFRC and its partners.
- More states – and most particularly those already aware that they face elevated risks of future major disasters – should undertake reviews of their legal, procedural and institutional frameworks for the facilitation and regulation of international disaster assistance in light of the IDRL Guidelines, drawing on the assistance of their National Societies with support from the IFRC.
- States finding gaps in their existing legal frameworks and interested in strengthening them are encouraged to make use of the Model Act as a reference tool.
- Global and regional inter-governmental organizations are encouraged to continue to engage with the issue of legal preparedness and to ensure that international mechanisms of regulation are well coordinated.
- The International Conference should retain its engagement with the issue of IDRL, and call for a report similar to this one at its 32<sup>nd</sup> session to monitor progress.

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