



Introduction to Disaster Law – Part 1

ACE Programme 2018

Overview of the session: Part 1

Introduction to
Disaster Law

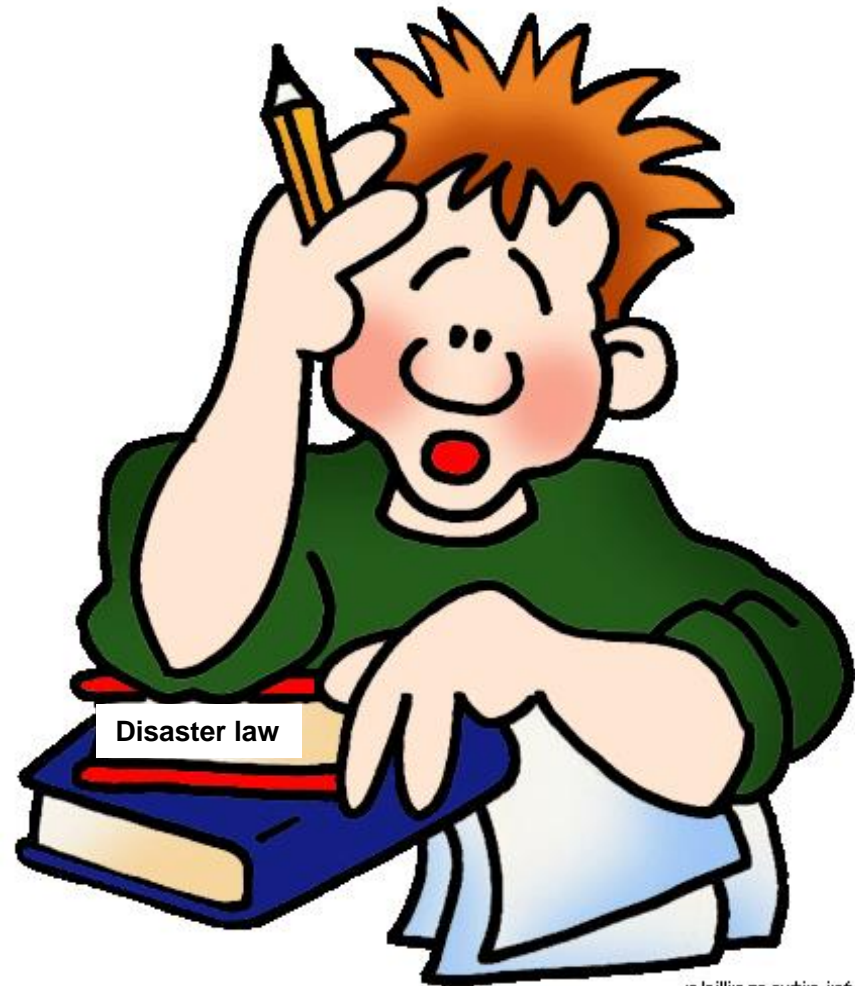
Theme 1: IDRL

What is IDRL?
Background,
tools,
commitments

IDRL scenario
exercise

**Part 2: Law and
DRR, regional
developments,
Indonesia
experience**

What is disaster law?



Disaster Law is...



- The **laws and regulations** which:
- ✓ address the **roles** and **responsibilities** to **manage** and **respond** to disasters
 - ✓ **minimise impact** of disasters
 - ✓ **reduce disaster risks**

Disaster Law themes



International Disaster Response Law (IDRL)



Law and Disaster Risk Reduction (Law and DRR)



Theme 1: International Disaster Response Law (IDRL): the laws and regulations to handle incoming international assistance

True or False?

- Disasters = chaos, confusion, there are no rules, law doesn't apply.
- Answer: False

True or False?

- IDRL is international humanitarian law

- Answer: False

True or False?

- International humanitarian workers should abide by all national laws when working in disaster affected countries.

- Answer: True

True or False?

- International relief teams need the permission of the affected state to provide humanitarian assistance.

- Answer: True

True or False?

- After requesting international assistance, the affected state must allow foreign governments to bring in any type of aid.

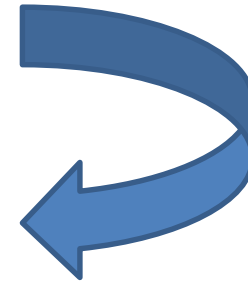
- Answer: False

Why legal preparedness for international disaster response?

More frequent
and larger natural
disasters



More and different
international
responders



**Absence of laws and procedures to regulate
an increasingly complex context**

Research shows that a lack of legal preparedness hampers international relief



- **Barriers**

- Initiation, visas, customs, radio use, taxes, professional qualifications, registration, transport, liability

- **Oversight gaps**

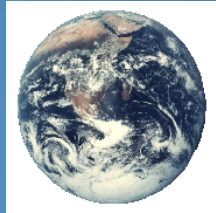
- Inappropriate items, ignoring standards, poor coordination, corruption

- **Bottom line**

- Aid is slower, more expensive, less effective, sometimes counter-productive

A few anecdotes...





**Global & Regional
Institutions**



**RC /RC
(Soft) Law**

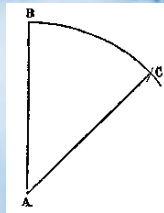


**Soft
Law**

3

**IHL, HRL and
Refugee Law**

No Comprehensive Legal Regime



**Sectoral
Law**



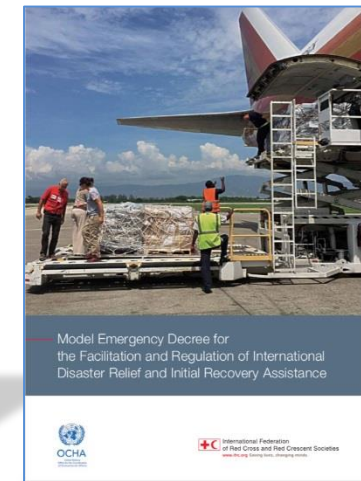
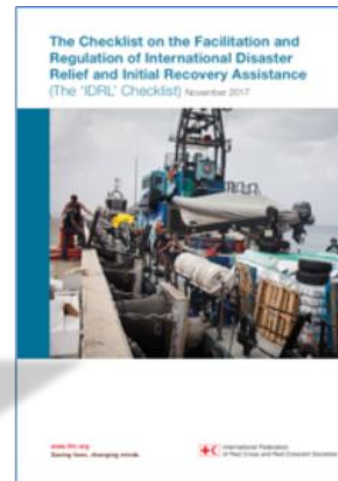
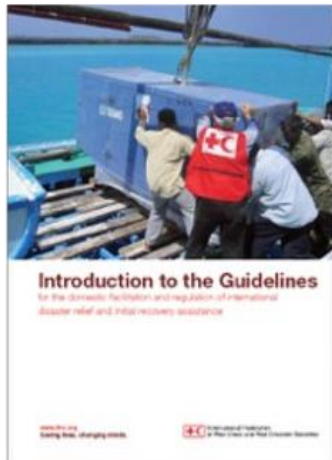
**Regional
Law**



**Bilateral
Agreements**

Disaster Law

Disaster law tools: IDRL Guidelines, “Model Act”, IDRL Checklist, “Model Emergency Decree”



- **Recommendations to governments on how to prepare domestic laws and procedures for international assistance**
- **Draw upon existing international norms and best practice**

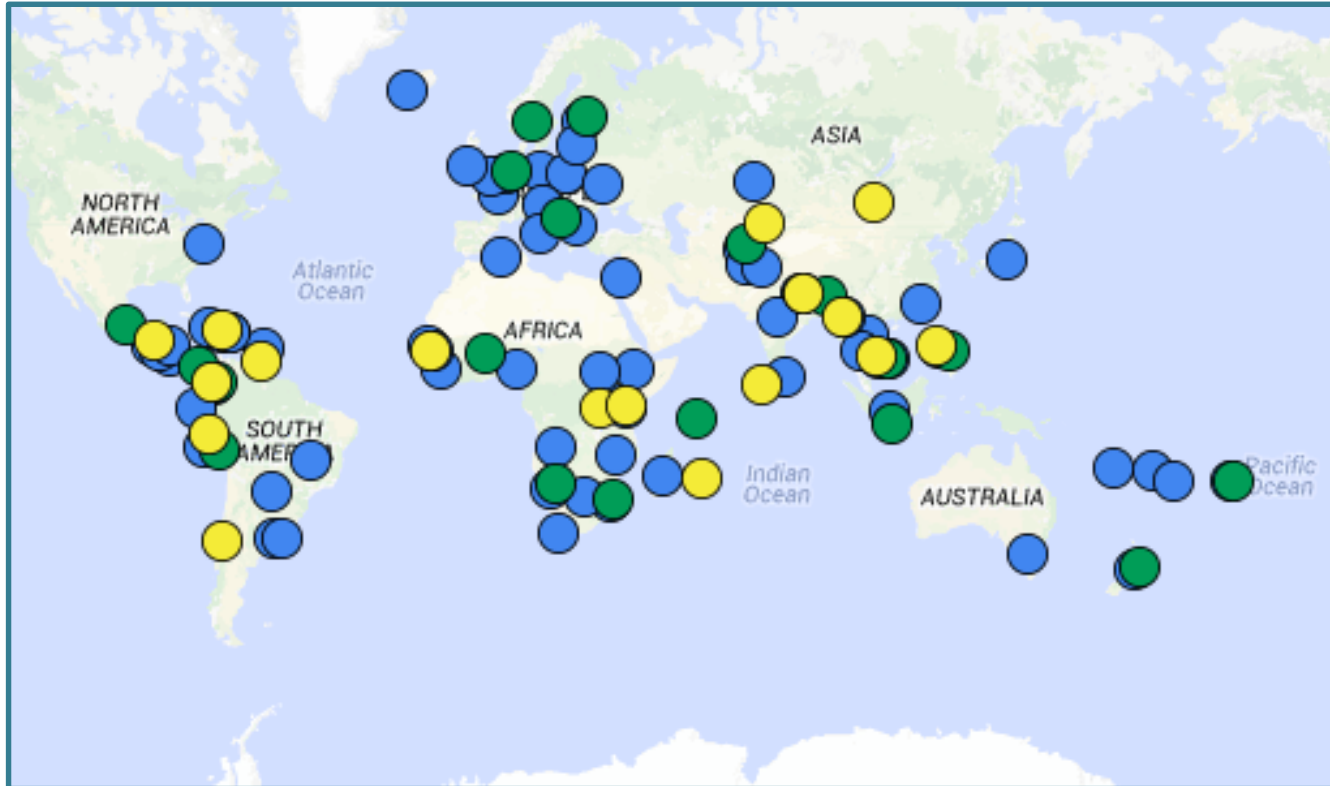
The core ideas of the IDRL Guidelines



- i. Domestic actors have the **primary role**
- ii. International relief providers have **responsibilities**
- iii. International actors need certain **legal facilities** (e.g. expedited visa and customs processing, exemptions from taxes duties and fees, priority customs clearance)
- iv. Some legal facilities should be conditional upon **compliance with humanitarian principles** and national law

Disaster
Law

Progress to date: implementing the IDRL Guidelines at the national level



Key:

Blue: # of disaster law projects (50+)

Green: # of new laws/regulations adopted (+24)

Yellow: # of new laws/regulations pending (+17)

IDRL in action: The experience of the Philippines



- Republic Act 10121 on National Disaster Risk Reduction and Management (section 16 and 18) and IRR (rule 14) refers to international assistance and IDRL
- ‘Welcomed’ international support soon after Typhoon Haiyan / Yolanda
- Established a “One-Stop-Shop” to expedite clearance of relief goods and equipment through customs; Established new immigration procedures and a Task Force
- RA10121 However, not detailed enough: many different orders and guidelines = ad hoc response
- **The Philippines has been reviewing its disaster management law, AND has developed a new government guideline on IDRL**



International Commitments

- States adopted a resolution at the 31st International RCRC Conference in 2011 which:
 - Reiterated the urgency to be prepared to facilitate international assistance
 - Renewed its call on states to use the IDRL Guidelines to examine and strengthen their laws
 - Called on regional and international organizations to use the IDRL Guidelines as well.
- A new resolution was adopted at the 32nd international conference in 2015 which states the need for states to ‘accelerate progress’ in developing procedures in line with the IDRL Guidelines and Model Act.



Regional Commitments



- **AADMER Agreement:** a binding agreement that provides a regional cooperation mechanism for disaster response
- Governments in SEA must take legislative measures to implement the AADMER e.g.:
 - *To provide assisting states with exemptions from taxation, duties and other charges of a similar nature, and facilitate entry and stay of personnel and equipment (art 14)*
- Previous AADMER work programme 2010 – 2015 references the IDRL Guidelines as a key tool for developing national legal frameworks for international assistance

IFRC - ASEAN Disaster Law Peer Learning Platform

Disaster Law Mapping (2017) : identify how national-level domestic law & policy in ASEAN MS incorporate AADMER provisions on domestic & regional preparedness and response (regional and country level snapshots)

Results :Generally, domestic DRM frameworks in ASEAN are sufficient to meet the AADMER provisions on disaster preparedness and response..

Gaps: Need to strengthen institutional mandates and resources for management of international assistance and clearer provisions relating to regional preparedness and response, including sending assistance or transit of assistance, or coordination through the AHA Centre

Research outputs seek inform peer to peer learning on disaster law in ASEAN. In addition an online platform will be created to provide a “one stop shop” for disaster law and policy information across ASEAN.

Disaster Law tool: ASEAN Disaster Law Mapping Report (2018)

- Legal mapping of **regional and domestic preparedness and response provisions** in national laws, within **AADMER framework**. These come with an updateable [online resource platform](#) hosted by IFRC Resilience Library.
- Identifies best examples of domestic/regional preparedness & response in different ASEAN states.



ASEAN DL Mapping Report: Peer Learning Recommendations

Examples of regulation of regional cooperation in relation to the AADMER

- Myanmar's inclusion of ASEAN and regional obligations
- Provisions on compliance with treaties in general: Brunei, Cambodia, and the Philippines
- Provisions on coordination of international assistance: the most detailed models for interstate cooperation as well as others are in the laws of Cambodia and Myanmar.
- Tax exemptions for humanitarian assistance are most clearly conferred in the laws of: Cambodia, Myanmar, and Viet Nam.

ASEAN DL Mapping Report: Peer Learning Recommendations

Examples of domestic preparedness and response in relation to the AADMER

Domestic preparedness:

- the Philippine training institutes for DRRM

Domestic EWS:

- Myanmar's specific legal provisions on EWS

Domestic response:

- The Philippine DRRM Act provisions for both national and local DRRM funds, including funds for DRR, preparedness, recovery and quick response:
- The Malaysia approach of having a response-ready standing forces (fire and rescue, civil defense) which already has personnel, equipment and budget.

Domestic stakeholder engagement:

- The Philippine DRRM Act provisions on representation of women, civil society organizations, private sector and Red Cross in national and local DRRM committees

	DRM System Type	Law / System Description	Where / when type used	AMS
A	Generic emergency powers – no DRM system	No special legal or institutional framework for managing disasters. Generic emergency powers under the Constitution or state of emergency law.	This has now become uncommon globally except in very low hazard countries.	None amongst AMS
B	Administrative DRM system + generic emergency powers	No special legal framework, but a DRM system established by policy and / or administrative procedures, which may also rely on generic emergency powers for crises.	This approach remains a common model in Africa, although that is now changing there, and globally, as countries undertake national reviews and opt for legislation.	None amongst AMS
C	Disaster emergency management law	A specific law on disasters, focused on emergency preparedness and response to natural hazards, some technological hazards; and may have elements of early warning and recovery.	These laws tend to be found in countries (i) with low hazard exposure, or (ii) with higher exposure but effective risk governance through sectoral laws, or (iii) with higher exposure but limited law-making and institutional capacity due to poverty and / or conflict.	Brunei Malaysia Singapore
D	Broad DRM system law(s)	Covers the full spectrum of disaster risk management: some elements of DRR, prevention, preparedness, early warning, mitigation, emergency management / response, and early recovery. Establishes specialist national institutions for DRM coordination and at least some local structures or roles.	This is the most common type of DRM law found amongst countries with medium to high exposure to hazards that have adopted DRM laws since the mid-1990s. It is not necessarily based on a single law, but may be a mix of laws, regulations and assigned ministerial roles under executive government powers.	Cambodia Indonesia Laos Myanmar Thailand Viet Nam

	DRM System Type	Law / System Description	Where / when type used	AMS
E	High DRR priority law with Broad DRM system	Broad DRM focus, with permanent DRM system, but gives DRR an especially high priority. Aims to establish a whole-of-society approach to disaster risk governance, using the DRM system as the main vehicle. Has a high degree of detail and a broad DRR mandate for the DRM institutions, across sectors, with sub-national governments, civil society and the private sector.	Most of these laws post-date the 2005 HFA and Indian Ocean Tsunami, and tend to be found in medium and high exposure countries that have not had a long tradition of risk governance through sectoral laws and local government. Hence, when seeking a major shift towards risk reduction, the DRM system is used as the main vehicle for awareness-raising and implementing change.	Philippines
F	High DRR priority law with framework DRM system	The law gives clear priority to DRR, establishes DRM institutions, but does not make them responsible for implementation of risk governance that is covered by other laws and sectors (e.g. local government, building codes).	Found in some higher income countries with a well-developed system and culture of disaster risk governance across relevant sectors and in all levels of government. The role of the DRM law is more one of coordination and leadership.	None amongst AMS

ASEAN DL Mapping Report: **Recommended Next Steps**

1. Peer learning

Peer learning activities, whether through face to face learning exchanges or active use of the online platform, will complement the findings of the Regional Synthesis Report and subsequent country-specific studies. These will provide an avenue for re-evaluation, innovation and strengthened partnership among ASEAN to strengthen DRM legal and policy frameworks, including their implementation.

2. Development of an AADMER checklist

This Report provides a pro-forma checklist (Annex 3) used in mapping National DRM laws against identified preparedness and response provisions of AADMER. This checklist is designed for a general regional survey, but will require further revision for country-specific studies.

3. Conduct of country-specific studies

More detailed country research and consultation, in partnership with relevant government agencies and other stakeholders, is necessary to better assess sub-national and sectoral laws, policies and regulations, as well as undertaking necessary consultation and verification of country-level analysis. The more detailed country specific can also assist with translation of these documents in English if not yet available.

Why is IDRL important?



- **1. For governments:**
 - Sets out procedures, roles and responsibilities
 - Controls the type of incoming assistance
 - Regulates the actions of international actors
- **2. For International assisting actors:**
 - Facilitates response operations
 - Provides 'legal facilities' to operate in country



**CHALLENGES
AHEAD**

- Law development is a long-term process: changes do not happen overnight!
- **Dissemination**
- **Implementation**

Legal preparedness is important....



...to provide the right aid, at the right time!

Questions? Comments?



- Which IDRL issues have you come across in your experience?
- Which challenges might be most relevant in your country context?
- What procedures do you know of that are already in place in your country? e.g. DM law? customs laws? Immigration laws?

FOR MORE INFORMATION, PLEASE VISIT:

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

OR CONTACT:

Gabrielle Emery
Asia Pacific Disaster Law Programme
Coordinator
Gabrielle.emery@ifrc.org

www.ifrc.org
Saving lives, changing minds.



 International Federation
of Red Cross and Red Crescent Societies