

LEARNING THE TSUNAMI'S LEGAL LESSONS

Like other major disasters before and since, the December 2004 tsunami demonstrated that legal issues are among the main challenges to an effective international response to disasters.

Ad hoc procedures can lead to costly and life-threatening delay

In the initial phase of the tsunami relief operations, affected Governments made concerted efforts to address the large-scale influx of foreign personnel, relief goods and equipment. However, there were few ready-made procedures in place to assist them and Governments were forced to quickly develop new ones to meet the need. While some of these measures were effective in simplifying existing systems, ad hoc procedures were not always effective, understood or consistently implemented.

In some cases, the Governments tried at first to implement existing procedures, but found them too cumbersome in light of the scale of the operations and the pressing humanitarian need. As a result, several revisions of the procedures were issued at different times, creating confusion and sometimes extra layers of bureaucracy and bottlenecks, at the risk of delaying the fast distribution of relief.



Where every minute counts, ad hoc procedures can critically delay humanitarian aid . . .

Photo: French Red Cross

Lack of regulation and accountability undermines aid efforts



. . . on the other hand, unregulated assistance can cause its own problems.

Photo: Yoshi Shimizu/International Federation

The scale of the human tragedy also resulted in an unprecedented number of individual and collective efforts to assist those in need. However, not all of these efforts contributed positively to the response. In fact, they revealed the pressing need to ensure that all relief providers act responsibly and adhere to humanitarian principles and minimum standards.

Huge volumes of unsolicited, unnecessary and inappropriate relief items created blockages at entry points, hampering the delivery of essential supplies. Some organisations used the opportunity to further religious, political or publicity interests. Others lacked the qualifications, expertise and local knowledge to provide effective assistance. International actors, at times, failed to respect the primary responsibility and role of the Governments of the affected countries in providing relief. Consequently, they provided assistance without knowledge or consent of the Governments, undermining their ability to craft and implement effective coordinating and regulatory policies and mechanisms.



Better disaster laws, rules and principles save lives

These initial findings by the International Federation of Red Cross and Red Crescent Societies' International Disaster Response Laws, Rules and Principles (IDRL) Programme about the tsunami experience conform to a global pattern of inadequate preparation for the legal issues that commonly arise in international assistance operations. While there are a number of relevant treaties and standards at the international and regional levels, they offer incomplete coverage and are often poorly implemented in practice. Moreover, it is very rare that national laws and coordination structures properly anticipate and provide for the possibility of international assistance. However, where appropriate regulations do exist and are implemented, aid operations flow more quickly, are better coordinated, and save more lives. "Legal preparedness" for disasters can make a difference.

Building Back Better Regulatory Structures

A window of opportunity is now open for governments, regional organizations, international organizations, donors and other stakeholders to examine current regulatory structures and "build back better" with well-considered regulatory regimes to address future disasters. The tsunami and more recent events, such as Hurricane Katrina, have shown that no state can ignore the possibility that it might, one day, be in a position to need outside help.

Among regional organizations in Asia, ASEAN has led the way with the recent adoption of its "Agreement on Disaster Management and Emergency Response," signed in Vientiane, Laos on 26 July 2005. The Agreement provides for mechanisms of cooperation among member states and international humanitarian organizations, as well as measures for facilitated access by international assistance, when requested by an affected state. A number of governments in the region – notably the Governments of Indonesia and Sri Lanka – are also considering revisions to their disaster laws and policies.

Following are some suggested actions:

At the National level



- Governments should develop or re-examine laws and policies specific to international disaster assistance to ensure that relevant issues are covered. In doing so, they should draw upon the expertise of national Red Cross and Red Crescent societies and other relevant actors.
- Governments and international relief providers should consider developing pre-disaster agreements.

At the Regional Level



- ASEAN Member States should consider ratifying the recent agreement.
- Other regional organizations should consider developing similar agreements.

At the International Level



- Donor governments, international organizations and NGOs should make greater efforts to disseminate and adhere to humanitarian principles and standards of accountability and quality.
- Donor governments should reinforce good practices by conditioning funding on adherence to such standards.

