CONCLUSION AND SUGGESTIONS

7.1 Summary of Discussions

The study and critical appraisals of the laws on international and national disaster response in the preceding chapters clearly establish that there is need for international disaster response law even though existing, need some effective changes as they are not deposited with the UN. There are clearly identifiable areas of disaster response that tend to be regulated by treaties and within these areas there have emerged some common trends. However in the majority of the instances there are no clearly identifiable patterns that lend to the presumption of general principles. A majority of the law relating to International Disaster Response Law remains desperate and inconclusive.

While any new growth in IHL remains firmly rooted in the Hague and Geneva Conventions, a similar legal foundation does not yet exist for international disaster response. But the International Red Cross and Red Crescent Movement, by drawing upon a unique network of operational managers and lawyers specializing in humanitarian issues, could move that day closer. Some of them work domestically with National Societies, which are independent from their governments but also assist them as auxiliaries. Others work with the ICRC and the International Federation of Red Cross and Red Crescent Societies, which are likewise independent of State control, but answer to unique roles assigned them
under international law. Drawing upon insights and access readily available through this network, and pioneering legal foundations set in place during the 1980s; they could design practical legal tools to strengthen disaster response around the world. The Movement could begin a simultaneous dialogue with States, international organizations and the humanitarian community on the formation of a comprehensive, readily usable set of disaster response rules. For presentation at its next International Conference, the Movement could then draft a model treaty or declaratory instrument (and perhaps also a model law for national legislation) that draws together existing law. Approval at the conference of such a declaratory instrument, or draft treaty, would encourage important efforts to develop the law, and could serve as a foundation for negotiating a universal treaty for IDL standards and cooperation. Parallel action within the UN system could also play a valuable role in moving forward this long-neglected facet of international law.

At the dawn of the 21st century, a cohesive approach to international disaster response law is not much further along than it was at the start of the 20th. From earliest days, the Movement has been attentive to peacetime disaster response policy, but has made no sustained effort to meet the legal dimensions of this challenge. It has fallen behind, relative to its own long record of service in the development of international humanitarian law. Our response capacity grows, even as natural and technological disasters cut deeper and wider paths in the world. The law has grown very slowly, perhaps because earlier generations seldom encountered the same mix of humanitarian needs and means that are spread before us now. That said, it is unlikely that any other challenge looming so large in world affairs has received so little attention in the legal realm. During the early decades of the 21st century, a strong, new international law of disaster response could, and
should, be counted among the International Red Cross and Red Crescent Movement's contributions to the world community.

Without a clearly associated remedy, articulations of rights may have more symbolic than legal force. On the other hand, the field of disaster risk reduction is unusual in that the main obstacle to its success tends to be the inability to sustain political will. Where individuals are able to base their arguments on recognized rights, they may carry more weight in the dialogue with authorities – including at the community level. More specific attention to community-level risk reduction is slowly making its way into disaster management laws in various parts of the world. The legal and cultural transition from a central to a local model of disaster management is not easy – and may be particularly difficult when carried out at the same time as a transition from a response-only to risk-included approach. Recent laws show that the goal of community-level impact and ownership on the path to resilience is taking root. However, the progress is uneven within countries and between regions and the full implementation of normative frameworks remains an ongoing challenge.

International coordination in disaster response is becoming an important topic for the international community. Respecting the dignity of disaster affected population and beneficiaries must be considered the first principle in any disaster relief operation. Victims of disasters should not be looked at only as recipient of assistance but as equal partners in the humanitarian assistance.

International humanitarian intervention should play a complementary and auxiliary role toward the local affected population, instead of establishing a new system by denying the available actual and potential capacities and resources in the affected
population. The approach of any international assistance at any stage of the operation should be capacity building and long term preparedness in the affected population, instead of creating a dependency of that community to external assistance.

In the present context it is very clear that, there is a serious threat of natural disasters globally, the trend of natural disasters shows no decrease in global scale, and there is an urgent need for all States and partner organizations to address the priority of disaster preparedness and risk reduction, especially at the community level.

The other focusing point was on evaluating the existing international legal frameworks governing international disaster response. Over the following years, the IDRL Programme continued to build its research base. It developed a comprehensive database of existing international instruments, conducted or convened and also examined the main problem areas in international relief operations, conducted a comprehensive study of states and humanitarian organizations on their experiences and hosted a series of high-level regional forums. In response to the common problem areas identified in this research, the IFRC spearheaded negotiations to develop the “Guidelines for the domestic facilitation and regulation of international disaster relief and initial recovery assistance” (also known as the IDRL Guidelines), which were unanimously adopted at the 30th International Conference in 2007.

Since then, nine countries have adopted new laws or regulations consistent with the Guidelines and nearly two dozen have been involved with their National Societies, with support from the IFRC, in formal legal review processes. Several hundred National Society representatives, humanitarian partners and governmental officials
have been trained on disaster law issues and IDRL issues have been given substantial prominence in many global and inter-governmental organizations.

The outlook offers no respite, and governments and societies across Asia Pacific realize new challenges face us in a rapidly changing world. How we responded yesterday will not meet the needs of tomorrow. With climate change and the increasing severity of meteorological events, with the increasing numbers of people living in precarious situations, with irregular migration, urbanization, environmental degradation, large scale displacement, public health crises and ever more complex emergencies – we can be sure of that. Disasters, however, are rarely natural. Only hazards are. Disasters are failures to cope with them. When a storm or volcanic eruption rains down its fury, the vulnerability of our communities, the fragility of our homes, the exposure of our lands, property and livelihoods determine whether and how much we will suffer. The human factor is the difference between a natural event and a disaster.

Good laws and legal frameworks are essential to how we reduce the risks, and how we prepare and respond. Presidents and parliaments cannot order the atmosphere to cool down or the earth to stay still but they can do a great deal to reduce the human suffering that growing disasters bring. Good legislation has the power to help communities become less vulnerable, to strengthen their ability to deal with the hazards they face and to smooth the path of rescue services, humanitarian aid and recovery help when they are needed.

Weak legal frameworks and policies, on the other hand, can put people closer to harm’s way, undermine efforts to help them and lead to unfair and unsatisfying results in the aftermath of a disaster. This is why encouraging
stronger, more inclusive, and fairer disaster legislation is so important. As independent auxiliaries to public authorities in the humanitarian field, its member National Societies are responsible for providing governments with the best advice they can gather from their long experience in dealing with disasters.

7.2 Conclusions

The development or strengthening of legislation to reduce disaster risk is among the priorities identified in the Hyogo Framework for Action, there is a immediate need to respond to natural disasters, governments may consider developing specific legislation or strengthening their disaster risk reduction legislation to adapt to law. The Red Cross/Red Crescent Movement, both with regard to the regulation of the domestic response as well as national laws affecting international assistance and solidarity, a topic of growing importance to the International Federation and its worldwide member societies.

The first element of disaster response is reducing the risk of disasters is the first instance and recognizing that risk reduction is a development concern as per the discussions in chapter 4 of the thesis. The international community has recognized this, as well as the central place of national legislation in promoting this goal, in the Hyogo Framework of Action. Law can address risk reduction from many different angles. Most obviously, these include effective urban planning, building codes, shoreline and waterway management, industrial regulation, transport rules and environmental policy. While all states have legislation in most of these areas, those laws do not always highlight disaster reduction issues. Also, though perhaps less direct, laws to address poverty, discrimination and agricultural
management should also be seen as components of an overall program to reduce vulnerability to hazards.

Another element emphasized in the Hyogo Framework is community empowerment. Law can promote this by ensuring that communities have adequate information about developing hazards, for instance through vigorous environmental impact assessment regimes for construction projects and by ensuring that disaster awareness is integrated into educational curricula. Disaster laws can also ensure that community-level institutions have prominent roles in detection and early warning systems, as highlighted in this year’s edition of the Federation’s World Disasters Report.

With regard to disaster relief, there is a necessity of well thought-out institutional structures for coordination between affected ministries and different levels of government. I will just add that enshrining at least the broad outlines of such structures in law rather than mere policy can be helpful in connecting projected roles and responsibilities with the resource allocations necessary to ensure their capacity.

It is also important that both national disaster laws and policies adequately include and to some extent define the role of non-governmental actors, particularly the national Red Cross or Red Crescent Society. In many countries, the national society represents the most important institutional capacity for certain aspects of disaster relief, yet sometimes it is not represented in national planning and coordinating structures and its role is not clearly laid out in the overall national plan.
With all the technocratic aspects of disaster response, the issues of protection and fundamental human rights are normally not specifically addressed in disaster laws. Recent post-disaster assessments have leveled criticism at both governments and aid organizations for instances of discrimination, inequity in the distribution of aid, security lapses in particular for women and children, failure to consult with aid beneficiaries and reconstruction-related property rights issues. While general constitutional and other legal protections might generally be used to address such problems, reminders of basic principles within a disaster regime can be helpful as a guide for the response system.

Another major gap in the disaster laws and policies of many countries is the failure to adequately anticipate the need for international assistance. This is not all that surprising, as contemplating the possibility that one’s country may not be able to take care of its own is not particularly politically uplifting. There is a need to promote the capacity of domestic actors to meet their own needs. However, the consequence of not planning for the eventuality of outside assistance is ad hoc decision-making, confusion, and last-minute negotiations with the myriad types of international aid providers. This leads in turn to unnecessary delay, mistrust and lack of cohesion between international and national actors, and added chaos. This is the last thing a country needs after a major disaster.

National legislation cannot solve all the problems that arise with international assistance operations, but there are some areas that can be usefully addressed. First, national law should set out clear authority and procedures for requesting and accepting offers of international aid. The law should say who in the Government can make the necessary decision and ideally it should not break up that responsibility among too many different actors. The law should also give an indication as to when the decision should be made, particularly for sudden-onset
disasters, like earthquakes, when the first 48 hours are the most crucial for life-saving intervention. The law should also set out the basis on which the decision should be made. That basis ought to be an objective assessment of the needs in relation to available national resources, with methodology appropriate to the urgency of the situation. Outside aid should only be requested when it is really needed but should not be spurned if national resources are not up to the task.

Regardless whether a government decides to accept international aid, its laws should not block domestic non-state actors from receiving help they request from foreign sources such as seconded staff, donated goods and equipment, and particularly financial assistance to support their own efforts. Of course, those efforts should be carefully coordinated within the overall domestic response. The argument for this is particularly strong for support within the Red Cross/Red Crescent Movement; although it actually arises very rarely given the close relationship national societies have with their governments. Within the Movement, we are bound by our principles to assist sister societies when they request it.

By the same token, where the domestic society is capable of handling a disaster situation on its own, neither the Federation nor any other outside national societies may intervene. This has to set out in a statute which governs cooperation between the various parts of the Movement. Given that national societies must be recognized by a national law that affirms both their auxiliary status and their capacity to abide by the Movement’s principles, and the participation of nearly all states in the International Conference of the Red Cross and Red Crescent which has approved the principles which has mentioned, Governments should facilitate that type of international solidarity that is central to the Movement. This type of support to domestic actors should be considered legally distinct from the direct
intervention by outside organizations, including foreign Red Cross and Red Crescent societies, when acting under their own organizational “flags”.

The decision to accept assistance from a particular external actor is only the beginning of the story. The mechanics of the entry and operation of international actors are commonly affected by a number of domestic legal regimes. In many of the most recent major international operations, affected Governments have modified or waived visa and work permit requirements for relief personnel soon after the disaster.

However, this has not always been the case. Moreover, some initially very open regimes changed over a short time. Even in the early stages, the implementation of facilitated entry procedures has sometimes been uneven. Putting legislation in place before the disaster that plots out a foreseeable course for the relaxation and restoration of normal visa and work permit rules can greatly reduce confusion and delay. Likewise, disaster-specific legislation can greatly ease the temporary recognition of foreign credentials and licenses for technical experts, particularly in the medical field.

The entry of relief goods and equipment can be even more complicated. Health, agricultural, trade, general customs and other restrictions can apply (sometimes all to the same item) and may be regulated by different national agencies as well as by provincial and local governments. A comprehensive disaster law should address all of these areas and clearly build in appropriate exceptions. On the other hand, not all legal restrictions on entry should be waived, even in a disaster. This is particularly true for health regulations on certain food and drugs. Furthermore, it is plain that states retain a fully justified interest in ensuring that international relief does not compromise their security.
Once relief personnel and their goods and equipment have entered a country, their effective operation is frequently hampered by the lack of specific legal provisions to enable them to act. General laws on non-profit organizations, for instance, frequently require lengthy procedures for registration before an organization can legally operate. Organizations may therefore find it impossible to open bank accounts, hire local staff, rent premises, and purchase local goods and equipment.

Many countries lack comprehensive good Samaritan laws and foreign relief personnel and organizations thus find themselves exposed to significant risk of liability for their dangerous work. Foreign actors may also be subject to double taxation on their income, unjustified criminal arrest and prosecution, and search and seizure of their property.

On the other side of the coin, problems arise when foreign actors are uninformed about the national laws, cultural mores, or the true needs of those affected and the capacities and roles of domestic actors. International coordination structures remain quite loose and competitiveness frequently arises among governments, international agencies and non-governmental organizations to be seen as doing something in the face of a high-media disaster. Yet States already have the undoubted authority to determine from whom they will accept international aid. Linking this to a “hard core” of humanitarian standards would help to ensure that that authority is not exercised arbitrarily.

The recognition of a domestic legal status is another common problem for foreign relief providers in both conflict and disaster settings, particularly for NGOs and foreign Red Cross or Red Crescent societies. All states require some type of registration process for “legal persons” before granting them legal personality. In emergency settings, these processes are frequently too slow or difficult for
international actors to negotiate. For example, after the 2004 tsunami in Thailand, foreign NGOs were mystified by domestic registration processes and were unsuccessful in finding information from governmental sources even months after the disaster struck\(^1\). Similarly, in 1998, it was reported that many humanitarian agencies in Kosovo had given up on seeking domestic registration because of the complexity and delays\(^2\).

This lack of formal legal status can have a variety of consequences. Unregistered organizations are particularly vulnerable to sudden expulsion by authorities for non-programmatic reasons. Fear of such expulsion can lead relief providers to restrict their programming and advocacy on behalf of affected persons\(^3\). Unregistered organizations also sometimes have difficulty opening bank accounts\(^4\), operating radio communication systems, hiring staff, entering into leases, purchasing vehicles and obtaining visas for their workers, and, as discussed further below, obtaining tax exemptions\(^5\). To avoid such problems UN agencies and other international organizations can call upon the laws on privileges and immunities (such as the Convention on Privileges and Immunities of the United Nations of 1946\(^6\) and the Convention on Privileges and Immunities of the Specialized Agencies of 1947\(^7\)), which require member States to recognize their legal personality. Other relief providers, including States, the international components of the Red Cross and Red Crescent movement, and some of the large NGOs, have

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2. Refugees International, Supra note 72.
addressed this issue through bilateral agreements. However, where there are no such agreements in advance of an emergency, there is little guidance on this issue at the international level beyond the general obligations to facilitate as discussed above.

7.2 Testing of Hypothesis

1. The hypothesis “There is a considerable global concern over natural disaster management which is governing through various rules and policies”, is affirmatively established in the chapters 2 & 4 which states that in the international level there is a need to balance the various institutional mechanisms for management of natural disaster.

2. The hypothesis “The historical origins of natural disaster response may be traced to the ancient rules and practices of the International Humanitarian Law”, which has positively established in the chapter 2 with discussions regarding the conceptual background of IHL.

3. The hypothesis “The Conventions and Resolutions of UN have some glimpses of Natural Disasters Management which are not adequate to meet the challenges of management of natural disasters” has been proved positively, as the Resolutions and Conventions passed by UN proved negative in the various aspects in the legal regime of natural disasters as discussed in chapter - 3.

4. The hypothesis “The International Federation of Red Cross and Red Crescent Societies has adopted a number of resolutions relevant to
International disaster relief”, also till today playing a major role with its new initiatives in managing natural disasters as discussed in chapter-4.

5. The hypothesis “The Disaster Management Act, 2005 marks the beginning of a new approach towards the disaster management in India”, with a conviction that development cannot be sustainable unless disaster mitigation is built into the development process affirmatively established in the chapter-5 which critically analyses the management of natural disasters management in India in respect the D M ACT 2005.

6. The hypothesis “Though there are many authorities, institutions, organizations, at both international and national level”, yet there are no adequate legal provisions to coordinate the role of these authorities, institutions, organizations for the management of natural disasters in India has been positively proved in the chapter-5 and also suggests that India needs to focus of the disaster management exercise should be shifted from ‘post-disaster reaction’ to ‘pre-disaster preparation’. The chalking out of disaster plans need to be ensured at the national, State and district levels.

7. The hypothesis “The role of Non-Government Organizations in managing Natural Disasters is very limited in India” as stated in chapter 6 is limited only to the management of disasters in India. In spite of collaboration of NGO with other organizations in the preparedness and response which also shared roles and responsibilities and institutionalization towards building a disaster resilient India.
7.3 Suggestions

Over 130 years of work to shape and advance international humanitarian law has not been matched by corresponding efforts or achievements in response to non-conflict disasters. No similar body of wide-ranging law exists to regulate or guide international humanitarian action in the wake of natural and technological disasters, although a modest number of rules and guidelines have developed over time. We thus have an imbalance, with significant humanitarian response capacity on one side and sparse legal authority, guidance or standards on the other. In 1869, the second International Red Cross Conference passed a resolution calling on National Societies to provide relief “in case of public calamity which, like war, demands immediate and organized assistance.” At the 1884 International Red Cross Conference, a resolution was adopted to extend the Geneva Convention of 1864 to provide for assistance to victims of natural disaster as well as war – but this was never done. International conferences have addressed assistance to victims of natural disaster ever since, but there has never been another attempt to extend the Geneva Conventions in this manner.

Even though important individually, scattered limbs of legislation do not form a body of law. In 1994, the UN Department of Humanitarian Affairs had to conduct a survey to determine what sources of law already existed that could be used in support of disaster relief operations. Without systematic organization and analysis, these rules cannot be used effectively. We may be missing many opportunities to
advance the law in ways that will benefit victims of natural and technological disasters.

‘International disaster response law’ (IDL) is proposed as a conceptual framework within which to begin shaping this amorphous body of rules and regulations. A broad-based, action oriented concept will most effectively capture humanitarian action in all phases – preparedness, relief and rehabilitation. Thought and debate on the shape of IDL can and should proceed on many levels. Multiple approaches would help the law develop to meet operational and policy needs. Much of international law relies upon a political, systems-based approach to problem solving. For example, long-held customary rules for rescue and assistance at sea have been well established in international treaty law since the Brussels Conventions were adopted in 1910. Though politics play a role in all treaty-making, the world as we know it could not function without profound operational and legal cooperation in fields such as civil aviation, international postal services and commercial transport. The Tampere Convention offers model and precedent for an operationally focused approach to international disaster response. Rather than focusing on rights or duties, we could concentrate on establishing IDL standards and procedures. However in the absence of clearly defined rights and duties, there is always a chance that standards and procedures may never make the leap from abstraction into action.

Perhaps it is time to revisit the proposal first raised at the International Red Cross Conference in 1884, and look to extend Geneva law to natural and technological disasters. However, IDL would address humanitarian response and needs in peacetime, and would be predicated on cooperation among all parties. On the other hand, IHL is predicated on the need to impose some humanitarian constraints on
warring parties. The approaches found in IDL and IHL may be incompatible. To merge them in their entirety in the context of a treaty or other unified source of law may prove to be impractical.

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