Legal Preparedness for the Facilitation of International Humanitarian Assistance in the Aftermath of Vanuatu's Cyclone Pam

Rebecca BARBER*
Save the Children, Australia
rebecca.barber@savethechildren.org.au

Abstract
This paper uses the response to Cyclone Pam in Vanuatu, 2015, as a case-study to review one country's legal preparedness to manage a large influx of international humanitarian assistance, and the international humanitarian community's respect for national laws and institutions. It describes provisions in international disaster response law and the developing international law on the protection of persons in the event of disaster regarding the role of the affected state, and juxtaposes this with what happened in the cyclone response—namely, the introduction by international actors of a range of international humanitarian tools and services that were neither described in national legislation nor rehearsed in national planning processes. It concludes by suggesting that national governments and international humanitarian responders advance their efforts to promote the inter-operability of their disaster management systems, and to develop an improved mutual understanding of each other's roles and responsibilities under international law.

Cyclone Pam, which struck Vanuatu in March 2015, was one of the worst disasters ever experienced in the Pacific. Winds gusting up to 320 kph and the flooding that followed destroyed homes, schools, health facilities, crops, and livestock, leaving more than half the population requiring emergency food assistance and almost a third requiring emergency shelter.[1]

This experience was not unique to Vanuatu. The Asia Pacific region is the most disaster-prone region in the world—in the period 2003–12 accounting for forty-three per cent of the world's disasters and eighty-one per cent of the affected population.[2]

---

*   LLB, LLM (University of Melbourne); Humanitarian Policy Advisor, Save the Children Australia. With thanks to Sarah Williams and Gabrielle Simm at the University of New South Wales for comments on earlier drafts of this paper.

1.   UN Office for the Coordination of Humanitarian Affairs, "Flash Appeal Emergency Response Plan for Vanuatu, Tropical Cyclone Pam, March–June 2015" (March 2015), online: Humanitarian Response <https://www.humanitarianresponse.info/en/operations/vanuatu/document/flash-appeal-emergency-response-plan-vanuatu-tropicial-cyclone-pam-march>.

2.   International Federation of the Red Cross and Red Crescent Societies, "World Disasters Report 2014: Focus on Culture and Risk" (2014), online: IFRC <http://www.ifrc.org/world-disasters-report-2014> at 220.

With the frequency and intensity of extreme weather events expected to increase, and sea levels rising faster than anywhere else in the world, the region is also the world's most vulnerable to climate change.[3] In short, large-scale disasters prompting large-scale responses are likely to become more common.

The scale of the devastation wrought by Cyclone Pam led the President to issue a generalized, public appeal for international assistance. Pre-existing national structures for the co-ordination of government and non-government assistance were activated, but were overtaken by a large-scale international response within a week. Scores of international NGOs flooded into the country, many of them uninvited, and many with no established relationships and minimal knowledge of national actors and institutions. A range of international humanitarian tools and services were brought in, many of them new to Vanuatu, and none of them described in national legislation or rehearsed in national planning processes. The result was significantly overlapping co-ordination structures, national actors struggling to work with unfamiliar international systems, and tensions between national and international actors.

The challenges were foreseeable. For four years running, Vanuatu had been considered the most vulnerable country in the world to disasters,[4] and the occurrence of a large-scale disaster requiring international assistance was inevitable. Had the possibility of a large influx of international aid been anticipated in national planning and legislation, and had the respective roles and responsibilities of national and international actors been more clearly spelt out in domestic law (as they are in international "soft-law" instruments), many of the challenges and tensions could have been avoided.

Based on the experience of the author in Vanuatu in the aftermath of Cyclone Pam, this paper uses the response to Cyclone Pam as a case-study to examine one country's legal preparedness for disaster, and the relevance and applicability of international law. It describes the developing international legal framework for disaster response, namely the work of the International Law Commission [ILC] on the protection of persons in the event of disaster, and the work of the International Federation of the Red Cross [IFRC] on international disaster response law, and considers some of the practical challenges to the implementation of this developing legal framework in the immediate aftermath of a rapid-onset disaster. It then describes the national and international response to Cyclone Pam—including the request for international assistance, the response by international actors, and the co-ordination and financing of international assistance—and juxtaposes what happened in practice with what is described in national law and policy and in international guidelines. It concludes with a recommendation to national governments and international humanitarian responders to ensure greater inter-operability between national and international systems, laws, and procedures, and a much better mutual understanding of the roles and responsibilities of national vis-à-vis international actors under both national and international law.

---

3. Asian Development Bank, "Addressing Climate Change and Migration in Asia and the Pacific" (2012), online: ADB <http://www.adb.org/publications/addressing-climate-change-and-migration-asia-and-pacific> at 4, 19.

4. Alliance Development Works, World Risk Reports 2011–14, online: UNU-EHS <http://www.worldriskreport.org/>.

I. THE NATIONAL CONTEXT

Vanuatu has a tiny population of just 265,000 people, spread over a vast archipelago of more than eighty islands (sixty-five of them inhabited), spanning a distance of around 1,300 square kilometres. National government capacity is limited, and the country has long fought with corruption—a battle which came to a head in 2015 when fourteen members of parliament were imprisoned for bribery.[5] Vanuatu also has a history of political instability, it being not uncommon for the position of prime minister and most cabinet positions to change hands three or four times during a parliamentary term. All of this has implications for capacities, competencies, and sustainability of effort across every aspect of national governance, including disaster management.

At the more local level, Ni-Vanuatu communities have developed a level of self-sufficiency in their preparation and response to disasters, and to cyclones in particular. The almost impossibly low national death toll following Cyclone Pam (just eleven people), and the ability of the Ni-Vanuatu people to rebuild their homes and re-establish livelihood activities in an astoundingly short timeframe (eighty-five per cent of households replanted their subsistence gardens within weeks[6]) was testament to this. One particularly inspiring example of community preparedness and self-sufficiency was on the island of Erramango. As Cyclone Pam approached, the community disaster committee (established in the years leading up to the disaster with the assistance of an NGO) set to work identifying safe houses, organizing an evacuation, mobilizing people to cut down trees so they wouldn't cause damage when they fell, and storing water in jerry cans. After the cyclone, they conducted assessments, delivered the necessary information to the relevant authorities, and cleared the airstrip so that when relief supplies were finally sent—which happened five days after the cyclone—the plane could land.[7]

As in any disaster, local actors—the communities themselves—were the first responders, drawing on existing knowledge and resources and doing what they could to survive. Supplementing this local capacity, in the years preceding Cyclone Pam, national and international government and non-government actors have invested substantial resources in establishing and strengthening Vanuatu's legal and institutional structures for disaster management. These structures have proved largely satisfactory following small- to medium-scale disasters; but what they failed to anticipate was a large influx of international aid.[8] A review of Vanuatu's legal and

5. Jenny HAYWARD-JONES, "Vanuatu: Bribery Scandal Might Yet Improve Politics" *The Interpreter* (23 October 2015), online: Lowy Institute for International Policy <http://www.lowyinterpreter.org/post/2015/10/23/Vanuatu-Bribery-scandal-might-yet-improve-politics.aspx>.

6. Vanuatu Shelter Cluster, "Shelter and Settlements Vulnerability Assessment—Final Report: Cyclone Pam Response: Vanuatu" (May 2015), online: ShelterCluster.org <http://sheltercluster.org/sites/default/files/docs/shelter_cluster_report_shelter_and_settlements_vulnerability_assessment_after_cyclone_pam_may_2015.pdf> at 3.

7. Cooperative for Assistance and Relief Everywhere (CARE), "Case Study: Ipota's Preparedness for and Response to Cyclone Pam" (Draft, May 2015), online: CARE <http://www.carenederland.org/content/uploads/2015/06/DIPECHO-Case-Study-1_Ipota_Cyclone-Pam_FINAL.pdf>.

8. For the adequacy of these structures in responding to small and medium-scale disasters, see Anna GERO *et al.*, "Disaster Response and Climate Change in the Pacific: Final Report" (2015), online: National Climate Change Adaptation Research Facility <https://www.nccarf.edu.au/publications/

institutional framework for disaster response conducted by the IFRC in 2011 warned that: "most of the [national] legislative instruments … that would regulate the logistical flow of disaster aid and relief personnel … do not … provide specifically for a major national emergency situation", and that "[t]he effectiveness of the [National Disaster] plan … has yet to be put to thorough test", including "processes related to foreign disaster assistance".[9] This finding was echoed in a report issued by Vanuatu's National Disaster Management Office [NDMO] following the Cyclone, which found that "the existing structures were not in place when international assistance was needed", that this resulted in "confusion and continued changes to procedures", and that "the current legislative framework is not supportive of effective and integrated response".[10]

Given this lack of legal preparedness for a large-scale disaster, it was inevitable that the scale and speed of international assistance following Cyclone Pam would overwhelm national co-ordination capacities, resulting in tensions between national and international actors. The remainder of this paper describes the international legal framework for disaster response, challenges to the implementation of this framework in the immediate aftermath of a rapid-onset disaster, and the actual response by national and international actors—juxtaposing the response in practice with what is described in national and international legal frameworks.

II. THE INTERNATIONAL LEGAL FRAMEWORK FOR DISASTER RESPONSE

The international law on disaster relief is still in its infancy. This contrasts with the protection of persons in times of war, which is described in a well-developed body of law tracing back to the 1949 Geneva Conventions and the 1977 Additional Protocols on the protection of victims in both international and non-international armed conflicts.[11] Some areas of international law do contain laws relevant to particular aspects of disaster relief: international human rights law imposes obligations on states in times of disaster as it does at other times; international law on refugees and internally displaced persons imposes obligations on states with regard to particular categories of

disaster-response-climate-change-pacific> at 5, 35–6; and Ingva ANDA, "Vanuatu Humanitarian Team: Program Evaluation Report" (September 2014).

9. Giovanna SOLDATESCHI, "International Disaster Response Laws, Rules and Principles (IDRL) in Vanuatu: A Study on Vanuatu's Legal and Policy Framework for Managing Foreign Disaster Response" (2011), online: IFRC: <http://www.ifrc.org/PageFiles/41170/Vanuatu%20IDRL%20Report%20(Low%20Res).pdf> . This review was conducted by the IFRC as part of its Disaster Law Programme, which works around the world to promote legal preparedness for disasters. Key activities include assisting national governments in strengthening their domestic legal preparedness for disasters, advising governments on the development of disaster management law, building partnerships at the international and regional level on legal preparedness, disseminating the IDRL Guidelines, and fostering new research. See IFRC, "About the Disaster Law Programme", online: IFRC <http://www.ifrc.org/en/what-we-do/disaster-law/about-idrl/> .

10. Government of Vanuatu National Disaster Management Organization, "Tropical Cyclone Pam—Lessons Learned Workshop Report" (2015) at 24 [NDMO Lessons Learned Report].

11. Geneva Convention Relative to the Protection of Civilian Persons in Time of War, 12 August 1949, 75 U.N.T.S. 85 (entered into force 21 October 1950); Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts, 8 June 1977, 1125 U.N.T.S. 609 (entered into force 7 December 1978).

persons; international humanitarian law arguably applies in some instances by analogy; and a number of multilateral (mostly regional) and bilateral treaties deal with particular aspects of disaster relief.[12] However, there is no binding legal instrument dealing comprehensively with the provision of humanitarian assistance in the aftermath of disaster. This gap in international law can and should be alleviated by robust domestic legislation on the facilitation and regulation of international disaster assistance and, ideally, also bilateral and/or regional agreements on international co-operation in disaster response. Where this gap is not alleviated, confusion regarding the respective rights, duties, and responsibilities of national actors and international responders (such as humanitarian NGOs or UN agencies) can result—to the detriment of an effective, efficient response to the needs of the disaster affected population. This was highlighted in the response to Cyclone Pam.

Recent years have seen increased momentum around the need for stronger international as well as domestic law on disaster relief. In 2007, recalling "the need to keep under review those topics of international law which, given their new or renewed interest for the international community, may be suitable for the progressive development and codification of international law", the ILC voted to include the "protection of persons in the event of disasters" in its long-term programme of work.[13] In 2014, the ILC adopted on first reading a set of twenty-one Draft Articles on the Protection of Persons in the Event of Disasters [Draft Articles].[14] Articles adopted thus far address, among other things, the responsibilities and rights of the affected state in disaster response vis-à-vis the duties and rights of states providing international assistance. At the time of writing, the Draft Articles remain a work in progress: comments by states are due in late 2016, following which consideration will be given to the possible adoption of an international treaty based on the Draft Articles.

The work of the ILC builds on more than a decade of work by the IFRC's Disaster Law Programme, previously called the International Disaster Response Laws, Rules and Principles Programme. Recognizing the absence of "hard law" (such as international treaties) related to disaster preparedness, the IFRC has focused its work on supporting national governments to strengthen their own domestic legal frameworks for managing disasters. The programme includes a particular focus on assisting national governments to strengthen domestic law and policy regarding the regulation and facilitation of disaster relief and recovery assistance provided by international actors. This is done through a combination of training and advice for national governments and, at the international level, through the development and promotion of

---

12. For discussion on all of these areas of law and relevance to the protection of persons in times of disaster, see *Protection of Persons in the Event of Disasters: Preliminary Report on the Protection of Persons in the Event of Disasters, by Mr. Eduardo Valencia-Ospina, Special Rapporteur*, 5 May 2008, UN Doc. A/CN.4/598, online: UN <http://legal.un.org/docs/?path=../ilc/documentation/english/a_cn4_598.pdf&lang=ESX>.

13. *Resolution Adopted by the General Assembly on 6 December 2007 [on the report of the Sixth Committee]*, 8 January 2008, UN Doc. A/Res/62/66, online: UN <http://legal.un.org/docs/?symbol=A/RES/62/66>.

14. *Protection of Persons in the Event of Disasters: Text and Titles of the Draft Articles Adopted by the Drafting Committee on First Reading*, 5 May–6 June & 7 July–8 August 2014, UN Doc A/CN.4/L.831 (2015) [*Draft Articles*].

"soft-law instruments" such as the Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance [IDRL Guidelines].[15] Adopted by the IFRC and State Parties to the Geneva Conventions in 2001, the IDRL Guidelines are based on the principles that international disaster assistance should, among other things, be complementary to the efforts of domestic actors (the principle of subsidiarity), and also to those of international actors requiring legal facilities so that they can effectively respond to humanitarian needs. Subsequent to the adoption of the IDRL Guidelines, the UN General Assembly has adopted three resolutions encouraging national governments and regional organizations to strengthen their regulatory frameworks for international disaster assistance, including by taking the IDRL Guidelines into consideration.[16]

The IDRL Guidelines were followed in 2013 by the Model Act for the Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance [Model Act], also developed by the IFRC. The Model Act is intended as a reference tool and example to law-makers as they develop legislation on managing international aid in a manner appropriate to their national circumstances.[17]

Ultimately, states are responsible for managing disasters within their own borders. In recent decades, however, as the UN-led international humanitarian system has become more organized, and as international humanitarian responders have developed increased capacity, humanitarian responses to large-scale disasters have in many cases been led by international actors. This is unsustainable. Extreme weather events are becoming more frequent and more intense, global humanitarian needs are increasing, and the international humanitarian system is becoming more stretched.[18] It is thus increasingly imperative for national governments to be able to manage their own disasters. Developments in international law, namely the finalization and dissemination of the Draft Articles, can assist in clarifying the roles, rights, and duties of affected states and states providing assistance—and indeed, the government of Vanuatu's Lessons Learned Report calls for a strengthening of "International Disaster Response Law to

---

15. International Federation of the Red Cross and Red Crescent Societies, "Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Recovery Assistance" (30 November 2007), online: IFRC <http://www.ifrc.org/en/what-we-do/idrl/idrl-guidelines/> [*IDRL Guidelines*].

16. *Strengthening Emergency Relief, Rehabilitation, Reconstruction and Prevention in the Aftermath of the Indian Ocean Tsunami Disaster*, 3 March 2009, GA Res. 63/137, UN Doc. A/RES/63/137 at para. 6; *Strengthening of the Coordination of Emergency Humanitarian Assistance of the United Nations*, 5 March 2009, GA Res 63/139, UN Doc. A/RES/63/139 at para. 8; and *International Cooperation on Humanitarian Assistance in the Field of Natural Disasters, from Relief to Development*, 10 March 2009, GA Res 63/141, UN Doc. A/RES/63/141 at para. 5.

17. International Federation of the Red Cross and Red Crescent Societies, UN Office for the Coordination of Humanitarian Affairs and the Inter-Parliamentary Union, "Model Act for the Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance (with commentary)" (March 2013), online: <http://www.ifrc.org/docs/IDRL/MODEL%20ACT%20ENGLISH.pdf> [*Model Act*].

18. Projected global humanitarian needs in 2016, at US$20.1 billion, are at a record high. Humanitarian funding provided in 2015 was also at a record high, but still insufficient to meet needs, and the funding gap is growing year on year. See UN Office for the Coordination of Humanitarian Affairs, "Global Humanitarian Overview 2016" (2016), online: UNOCHA <http://www.unocha.org/stateofaid/> at 12–13. It was recently projected that based on current trends, by 2030, humanitarian assistance would cost US$50 billion. See High Level Panel on Humanitarian Financing, "Too Important to Fail—Addressing the Humanitarian Financing Gap: Report to the Secretary General" (December 2015), online: UN <http://www.un.org/news/WEB-1521765-E-OCHA-Report-on-Humanitarian-Financing.pdf>.

ensure sovereignty and national ownership is maintained and respected".[19] However, there are some fundamental challenges that stand in the way of the developing international legal framework being adhered to in the context of a large-scale, rapid-onset disaster—practical challenges that are not related to weaknesses in the international legal framework. These are discussed in the next section. Until these challenges are addressed, it is incumbent on domestic law-makers and disaster management authorities—perhaps more so even than international law-makers—to ensure that domestic legislation regulates and facilitates the well-meaning efforts of international actors so that these efforts support, rather than undermine, the efforts of national actors.

III. PRACTICAL CHALLENGES TO THE IMPLEMENTATION OF INTERNATIONAL LAW IN DISASTER RESPONSE

Discussions with those involved in the response to Cyclone Pam highlighted four fundamental issues which challenge the principle that international humanitarian assistance should be complementary to, and subsidiary to, the efforts of domestic actors. As stated above, this is one of the key principles underpinning the IDRL Guidelines and the Model Act, as well as the developing law on the protection of persons in the event of disasters.

The first challenge, seen in the Cyclone Pam response as in other emergencies around the world, is that the systems utilized by international humanitarian responders (UN agencies and NGOs) are often simply not designed to fit within national structures or to be managed by national actors. The Emergency Preparedness and Response Plan [EPREP] developed by the Pacific Humanitarian Team [PHT], for example—a document developed to guide the response of international humanitarian actors in the Pacific—says that, in a disaster response, the UN Resident Co-ordinator should "support national efforts by leading and coordinating humanitarian action of relevant organisations in country, *whenever possible in support of and in coordination with national and local authorities*".[20] This language highlights a pervasive assumption, found not only in the EPREP but—to varying extents—throughout international humanitarian literature everywhere, that international actors will take the lead. As will be shown below, such language starkly contrasts with the language in the IDRL Guidelines and the Draft Articles regarding the role of the affected state, and with the principle of subsidiarity more generally. As international humanitarian responders are generally more familiar with their own humanitarian procedures, toolkits, and guidelines than they are with legal frameworks, until this discrepancy is resolved, adherence to the principles underpinning the legal frameworks will be an ongoing challenge—albeit a challenge that can and should be addressed through a revision of international humanitarian tools and guidelines.

---

19.   *NDMO Lessons Learned Report*, *supra* note 10 at 6.

20.   Pacific Humanitarian Team, "Emergency Preparedness and Response Plan: A Guide to Inter-Agency Humanitarian Action in the Pacific" (2013), online: Humanitarian Response <https://www.humanitarianresponse.info/system/files/documents/files/Pacific_EPREP_2013.pdf> at 66 (emphasis added).

The second challenge is that, despite the best efforts to develop national disaster management capacities, there continues to be many situations—Cyclone Pam being an example—where the international response overwhelms national absorptive and co-ordination capacities, and where international actors feel the need to bring in their own systems in order to manage and co-ordinate the response. In many cases, national structures are just not set up to manage a large influx of international aid and all of the associated co-ordination and information management tasks, nor are they set up to manage the processes associated with raising international humanitarian funds. Thus, international (UN) support with these key functions—and the use of international systems—is critical to make everything happen at speed. This too is an issue that can and should be addressed, in this case through a programme of sustained capacity building focusing on supporting national actors to better prepare for and manage a large influx of international aid. In the meantime, in rapid-onset large-scale disasters, international actors will struggle to play a subsidiary role in support of national systems that are not set up to operate at the necessary scale.

A third challenge is the lack of awareness amongst international humanitarian responders of the national and international legal framework for disaster response. The issue of the roles and responsibilities of national vis-à-vis international actors under either national or international law did not arise in any of the interviews conducted for this research—albeit that questions being put to interviewees focused on the relationship between national and international actors. In the case of non-government interviewees, very few were familiar with key national laws and policies, let alone the international legal framework for disaster response. Even national government responders had a limited understanding of the legal framework for managing international aid. One expressed surprise that the national government had the authority to decline offers of assistance from international actors;[21] it is worth noting that the government's own Lessons Learned Report, while calling for a strengthening of inter-national disaster response law to "ensure sovereignty and national ownership is main-tained and respected", did not actually reference the IDRL Guidelines, the Draft Articles, or the Model Act. Instead, what international humanitarian responders were familiar with were international humanitarian standards, guidelines, and procedures, which, as stated above, envisage a very different role for national responders than that envisaged by the IDRL Guidelines and the ILC Draft Articles. Once again, this is an issue that can be overcome through a sustained programme of awareness raising amongst both national and international actors. However, in the meantime, this lack of awareness will continue to impede adherence to international law in the context of disaster response.

A final and more intractable problem is that, in large-scale disasters such as Cyclone Pam, many international actors believe that the humanitarian imperative—the desire to prevent and alleviate human suffering wherever it is found—requires things to move at a pace that is not possible without international actors playing a strong role. In the words of one international staff member involved in the response to Cyclone Pam, "there was too much at stake, no one wanted to sit around and watch. We do operate

---

21.   Interview with member of the NDMO, Port Vila, Vanuatu, April 2015.

under a humanitarian imperative."[22] Another said that "if you asked the government what they wanted it was to slow everything down, and that can cost lives".[23] These statements reflect an inherent tension between the humanitarian imperative, reflected in international standards, and the principle underpinning the IDRL Guidelines and the ILC Draft Articles, that it is the prerogative of national actors to manage their own disasters. In some instances, adherence to the former—the requirement in the Core Humanitarian Standard that humanitarian response will be "effective and timely", for example[24]—will necessarily undermine adherence to the latter, and vice versa. In the event that the Draft Articles are eventually adopted as a treaty, international actors may need to consider whether acting in accordance with international humanitarian standards but without the full co-operation of national authorities could feasibly be in breach of this new international law (international non-government actors cannot breach international law; but the donor states that support them feasibly could). For now, with an international disaster law treaty not immediately on the horizon, this question is more of a theoretical than practical relevance. What we *are* likely to see continuing is the principle of subsidiarity coming into tension with the humanitarian imperative, and this tension being resolved in a manner that is largely dependent on the actions, attitudes, and decisions of those on the ground at the time. The remainder of this paper considers the way in which these issues have played out in the response to Cyclone Pam, examining, in turn: the request for international assistance; the offer, acceptance, and provision of humanitarian assistance; and the co-ordination of international humanitarian assistance.

IV. THE INTERNATIONAL RESPONSE TO CYCLONE PAM

A. *Request for International Assistance*

One of the most important legal issues in humanitarian response is the way in which international assistance is requested by national governments. The legal foundation for the provision of international assistance is General Assembly Resolution 46/182, which states that humanitarian assistance should be provided "in principle on the basis of an appeal by the affected country".[25] This language is reiterated in the IDRL Guidelines.[26] There is no established definition of the precise meaning of "appeal" in this context, but the IDRL Guidelines recommend that requests be "as specific as possible as to the types and amounts of goods as well as the services and expertise available or required, respectively".[27] In line with this suggestion, the Model Act provides (Article 6) that:

a. Upon the advice of the *[relevant disaster management authority],* the [President/ Prime Minister] may make a request for International Disaster Assistance.

---

22. Discussion with Sune Gudnitz, UN OCHA, Regional Office for the Pacific (via phone), May 2015.
23. Interview with international NGO staff, Port Vila, Vanuatu, April 2015.
24. Groupe URD *et al.*, "Core Humanitarian Standard on Quality and Accountability" (2014), online: CHS Alliance <http://www.corehumanitarianstandard.org/the-standard>.
25. *Resolution on the Strengthening of the Coordination of Humanitarian Emergency Assistance of the United Nations*, 19 December 1991, GA Res 46/182, UN Doc. A/Res/46/182 at annex, para. 3.
26. *IDRL Guidelines*, *supra* note 15, art. 10(1).
27. *Ibid.*, art. 10(2).

> That request may be specifically directed to particular international actors, or it may be a general request directed to the international community as a whole …

b. The request shall be accompanied by:

> i. Information as to the extent and type of assistance required, …
>
> ii. Information on the procedures for Assisting International Actors to make offers or provide assistance …[28]

Both the suggestion that the request be as specific as possible and the language proposed by the Model Act reflect experience around the world affirming that loosely defined requests for assistance encourage loosely defined responses—often including responses from agencies or individuals not in a position to offer an appropriate response to identified needs.

In practice, national governments call for assistance in a number of ways. These include generic public requests for help, formal requests issued to the UN Emergency Relief Co-ordinator detailing the nature of the assistance required (usually through the UN Resident Co-ordinator or Humanitarian Co-ordinator at the country level), and—increasingly in Southeast Asia—statements shared quietly through diplomatic channels at country level that international assistance is "welcome".[29] In some cases, practice follows what is prescribed in national legislation, but very often it does not. This is either because national legislation does not specify how international assistance will be requested, or because, in the chaotic aftermath of disaster, procedures are simply not followed.

In the case of Vanuatu, the National Disaster Plan states that:

> [t]he requirement for international assistance will be determined by the National Disaster Committee (NDC), who will submit through the Hon Minister for Internal Affairs with consultation with the Ministry of Foreign Affairs and Aid Coordination Office under the Prime Minister's Ministry. A direct consultation and contact will continue between Aid Coordination Unit and Department of Foreign Affairs to donors when international assistance requirement is made known to international community through damage and need assessment report as presented by the NDC.[30]

In the immediate aftermath of Cyclone Pam, these procedures were followed loosely, if at all. At the time the cyclone hit, the president of Vanuatu was in Japan attending (ironically) the Third UN World Conference on Disaster Risk Reduction. Immediately following the cyclone, he told the media: "I stand to appeal on behalf of the government

---

28. *Model Act*, *supra* note 17, art. 6.
29. See discussion in Rebecca BARBER, "Responding to Emergencies in Southeast Asia: Can we do better? A Review of the Humanitarian Response to the 2011 Thailand and Cambodia Floods" (September 2012), online: AADMER Partnership Group <http://www.aadmerpartnership.org/responding-to-emergencies-in-southeast-asia-can-we-do-better-a-review-of-the-humanitarian-response-to-the-2011-thailand-and-cambodia-floods/> at 4, 18; and Rebecca BARBER, "Localising the Humanitarian Toolkit: Lessons from Recent Philippines Disasters" (August 2013), online: AADMER Partnership Group <http://www.aadmerpartnership.org/localising-the-humanitarian-toolkit-lessons-from-recent-philippines-disasters/> at 1, 4, 16.
30. Government of Vanuatu, National Disaster Management Office, *National Disaster Plan: Review of 2009–2010* at s. 9.2 [*National Disaster Plan*].

and the people of Vanuatu that the global community give a lending hand in responding to these very current calamities … that have struck us."[31] The procedure set out in the National Disaster Plan, involving the NDC, the Minister for Internal Affairs, the Ministry of Foreign Affairs, and the Aid Co-ordination Office under the Prime Minister's Ministry, was not followed. In one sense this did not really matter, because there was no question that international assistance was required. There was also no question that international aid had been requested and was welcome. However, the heartfelt, sweeping, and public request prompted a rapid and poorly co-ordinated influx of actors, many of them new to Vanuatu and lacking awareness of national laws, policies, or institutions. As shown below, this influx placed an enormous burden on national co-ordination structures—exactly what the IDRL Guidelines and the Model Act seek to avoid.

B. *The Offer, Acceptance, and Provision of International Assistance*

The IDRL Guidelines, the Model Act, and the emerging international law on the protection of persons in the event of disasters set out three basic principles regarding the provision of international assistance. First, there should be an offer of assistance made by an assisting agency. Second, it is the prerogative of the affected state to determine which agencies may provide assistance. Third, it is also the prerogative of the affected state to set conditions on the provision of that assistance. While other important principles regarding the responsibility of states to seek international humanitarian assistance and not to arbitrarily withhold consent exist,[32] these were not in issue in Vanuatu because consent, far from being arbitrarily withheld, was arguably too readily given.

With regard to the offer of international assistance, the Draft Articles state that "in responding to disasters, States, the UN, and other competent intergovernmental organisations have the right to offer assistance to the affected State", and that relevant non-governmental organizations may also offer assistance to the affected state.[33] The Draft Articles do not stipulate whether the making of a formal offer is a prerequisite to the provision of assistance, but they do state that offers should be consistent with the principles in the Draft Articles, particularly the principle that "response to disasters shall take place in accordance with the principles of humanity, neutrality and impartiality, and on the basis of non-discrimination, while taking into account the needs of the particularly vulnerable".[34]

The Model Act goes somewhat further, proposing that formal offers of assistance should be a necessary prerequisite to the provision of assistance. Article 7 suggests the following for inclusion in national disaster law:

   a. Except as otherwise provided … Assisting International Actors may provide International Disaster Assistance in *[country name]* only if they have made an offer that has been accepted pursuant to this Article.

---

31. "Vanuatu President Calls for Help after Cyclone Destruction" *BBC News* (14 March 2015), online: BBC <http://www.bbc.com/news/world-asia-31887286>.
32. *Draft Articles*, *supra* note 14, arts. 13(10), 14(11).
33. *Ibid.*, art. 16(12).
34. *Ibid.*, art. 7(6).

b. Assisting States and intergovernmental organisations *[including the United Nations]* interested in providing International Disaster Assistance shall direct offers to the Ministry of Foreign Affairs … Offers should indicate, in general terms, the type, amount, means of delivery and estimated duration of assistance to be provided. The Ministry of Foreign Affairs shall then consult with the *[relevant disaster management authority]* about such offers. Upon the direction of the *[relevant disaster authority],* the Ministry of Foreign Affairs may accept such offers, in whole or in part.[35]

Article 7(d) states that, in the event of a general request for international assistance (as was made in Vanuatu), "Assisting International Actors that have previously been found or deemed eligible [by the national disaster management authority] for Legal Facilities [visas, access to disaster-affected areas, tax exemptions, etc.] … are not required to make formal offers".[36]

On the acceptance of international assistance, the Draft Articles state simply that "the provision of external assistance requires the consent of the affected State",[37] while the IDRL Guidelines state that "it is the prerogative of originating, transit and affected States to determine which assisting humanitarian organisations will be eligible to receive … legal facilities … with respect to their disaster relief or initial recovery assistance".[38]

The Draft Articles, the IDRL Guidelines, and the Model Act all either recommend or allow for the establishment of criteria for, or the placing of conditions on, the provision of international assistance. The Draft Articles state that the affected state "may place conditions on the provision of external assistance", that such conditions "shall take into account the identified needs of the persons affected by disasters and the quality of the assistance", and that "when formulating conditions, the affected State shall indicate the scope and type of assistance sought".[39] The IDRL Guidelines recommend that states establish criteria for assisting humanitarian organizations seeking eligibility for legal facilities, and that:

> [a]pplicable procedures and mechanisms should be as simple and expeditious as possible. They should be clearly described and information about them should be made freely available. They might include the use of a national roster, bilateral agreements or reliance upon international or regional systems of accreditation, if available.[40]

Again, the Model Act goes further by proposing that international actors wishing to provide assistance in the event of a disaster should have to apply for "legal facilities", unless already deemed eligible by the affected state prior to the disaster, and by

---

35. *Model Act*, *supra* note 17, art. 7(a), (b).
36. *Ibid.*, art. 7(d).
37. *Draft Articles*, *supra* note 14, art. 14(11).
38. *IDRL Guidelines*, *supra* note 15, art. 14(1).
39. *Draft Articles*, *supra* note 14, art. 15(13).
40. *IDRL Guidelines*, *supra* note 15, art. 14.

suggesting (in commentary) that "detailed criteria and processes for application for eligibility … will need to be developed by the legislating state".[41]

The language in the Draft Articles, the IDRL Guidelines, and the Model Act strongly reflect the fact that it is the primary responsibility of the government of the affected state to address humanitarian needs caused by a disaster within its borders. It also reflects an understanding that, as highlighted by the response to Cyclone Pam, not all organizations wishing to provide assistance will have the capacity to contribute meaningfully to the response. Moreover, every additional organization coming into a disaster-affected country adds to the administrative and co-ordination burden on already stretched national authorities. Thus, it is the prerogative of an affected state to assess whether organizations wishing to provide assistance can in fact contribute to the response—which generally means bringing in expertise and resources not otherwise available in country—without placing a burden on national authorities which outweighs the anticipated value of that contribution.

In Vanuatu, the procedure to be followed by international agencies wishing to provide assistance following a disaster is outlined, albeit briefly, in the National Cyclone Support Plan as follows:

> Regional and International aid agency wishing to assist Vanuatu in times of a disaster should ensure their interest is channel through the [Ministry of Foreign Affairs] and a copy to the NDMO. Regional and International organisation are subjected to direct their request and assistance following this channel referred to above.[42]

The suggestion in Article 7(d) of the Model Act, cited above, that certain actors may be deemed eligible for legal facilities, and thus exempt from the requirement to formally offer assistance, is not included in Vanuatu's legislative or policy framework. The Cyclone Support Plan does, however, encourage members of the Vanuatu Humanitarian Team [VHT]—a network of non-government actors involved in disaster preparedness and response, discussed further below—to "implement disaster management plans".[43] It notes that "whilst it is not the NDMO's responsibility to endorse or approve VHT member plans, they should integrate with the National, Provincial Disaster Management and Community Disaster Plans".[44] It recognizes that "VHT members can support Provinces and the nation with a broad and extensive range of experience and resources which can be utilised for the benefit of affected communities".[45] While this does not explicitly exempt VHT members from the requirement to channel their interest in providing disaster assistance through the Ministry of Foreign Affairs [MFA], VHT members seem to have believed that they were free to provide assistance based on pre-existing agreements with the government of Vanuatu following the cyclone.

---

41. *Model Act*, *supra* note 17, art. 22, and commentary at 87.
42. Government of Vanuatu, National Disaster Management Office, *National Cyclone Support Plan: Review 2013–2014* at 19 [*Cyclone Support Plan*].
43. *Ibid.*, at 22.
44. *Ibid.*
45. *Ibid.*

Regarding acceptance of international disaster assistance, the National Disaster Plan says only that the NDMO's Central Control Group will be accountable for ensuring that all relief assistance is distributed in accordance with guidelines governing the provision of such assistance.[46] It is appropriate and in accordance with the IDRL Guidelines that this responsibility lies with the NDMO, although it does contradict the perhaps ill-conceived statement in the Cyclone Support Plan that "it is not the NDMO's responsibility to endorse or approve VHT member plans".[47]

As stated above, the president of Vanuatu's public appeal for assistance in the aftermath of the cyclone inspired a large and sudden influx of aid—including financial assistance, material resources, and personnel—that was unprecedented in Vanuatu. Some of this aid was brought in by actors with an established presence in and/or knowledge of Vanuatu, including national and international NGOs, the diaspora, the private sector, and volunteers. However, the cyclone also encouraged a large number of organizations responding in Vanuatu for the first time. While some attempted to go through formal channels and met government authorities, seeking advice regarding what was required, others did not. As described by the government's Lessons Learned Report, "uninvited, uncertified and non-aligned individuals used the more porous border of the emergency and international response effort to enter Vanuatu illegally and to operate in-country on unapproved activities".[48] In the week following the disaster, a representative from the National Disaster Committee told the media that there were more than 100 NGOs and faith-based aid organizations in the country, and that many of them were working on their own rather than in co-operation with the government. He said the government had "spent the last three days coordinating the more than 100 agencies instead of working on getting relief to needy areas".[49] Some weeks later, one Provincial Secretary-General explained that:

> the problem is that many NGOs came and just … went straight to the field, and we'd receive reports of some people receiving tarps, and others not … You need to know who's in your own backyard, so you don't waste time and money on areas where people are already working.[50]

The rapid influx of new actors posed a significant co-ordination challenge for the national government as well as for organizations with an existing presence in Vanuatu. In the words of one NGO staff: "coordination got progressively more difficult the further you got from day zero. At the start … it was just existing actors, with their existing relationships. Once surge capacity came in, complications increased exponentially."[51] Meetings were longer than they should have been because of the

---

46.   *National Disaster Plan*, *supra* note 30, s. 9.2.

47.   *Cyclone Support Plan*, *supra* note 42 at 22.

48.   *NDMO Lessons Learned Report*, *supra* note 10 at 31.

49.   Kirsty JOHNSTON, "Cyclone Pam: Stinging Attack on Aid Agencies" *NZ Herald* (19 March 2015), online: NZ Herald <http://www.nzherald.co.nz/world/news/article.cfm?c_id=2&objectid=11419743>.

50.   Interview with Michel Kalworai, Secretary-General, Shefa Provincial Government Council, Port Vila, Vanuatu, April 2015.

51.   Interview with Tim Nelson, Save the Children, Port Vila, Vanuatu, April 2015.

sheer number of actors, many with very limited understanding of national processes and requirements; many agencies weren't co-ordinating their activities at all with the NDMO or local government; and relations between the NDMO and NGOs as a whole were tense because "everyone was tarred with the same brush".[52]

This is not to suggest that the response could or should have been handled only by the small number of agencies with an established presence. However, not all new-comers bring additional—or even welcome—resources or expertise. While new actors should ideally be expected to make decisions based on capacity to supplement the human, technical, and financial resources already available in the affected country, considerations of fundraising opportunities, public profile, and a genuine desire to help often prove paramount in reality. In short, organizations cannot always be relied upon to make decisions based on ensuring the most effective humanitarian response, nor do they need to be, because—as highlighted in disaster response law and the developing law on the protection of persons in the event of disaster—it is the prerogative of the affected state to make this determination. In other words, the government of Vanuatu had no duty to let everyone in, either under its own laws and policies or under any existing international law. As stated above, the Cyclone Support Plan requires all agencies to channel their interest through the MFA with a copy to the NDMO. This presumably implies a requirement that agencies also have their programmes *approved* by the MFA. Had this requirement been enforced and adhered to, it would presumably have led to new agencies' proposals being assessed according to the value they could add to the response. This may in turn have resulted in a significantly smaller international presence, and thus reduced strain on existing national structures.

To be effective, laws and procedures regarding international assistance must not only be in place, but also be understood both by government authorities tasked with enforcing the rules and those expected to adhere to them. The IFRC's review of Vanuatu's legal preparedness for a disaster in 2011 presciently noted that "it appears that there has been limited dissemination about the existence and content of the *National Disaster Plan*".[53] Among the international staff interviewed for this research, very few were aware of the requirement that their interest in providing assistance should be channelled through the MFA, and not one was aware of having followed the procedure. The result was a flood of new actors entering the country, putting enormous pressure on national authorities, and a feeling on the part of the government that it had wasted time on co-ordination when it could have been getting on with the relief effort.

While national governments have the prerogative to decide which organizations may provide assistance, and to set conditions on the provision of such assistance, this prerogative is not without limits. It is increasingly recognized—including in the Draft Articles—that where the response capacity of the affected state is overwhelmed, there is a duty to seek assistance.[54] Moreover, while the affected state may place conditions on the provision of assistance, such conditions should be in accordance with national and international law, and take into account the needs of the disaster-affected

---

52. Interview with Tom Skirrow, Save the Children, Port Vila, Vanuatu, April 2015.

53. Soldateschi, *supra* note 9 at 12.

54. *Draft Articles*, *supra* note 14, art. 13(10).

population.[55] This includes, as stated above, a duty not to arbitrarily withhold consent to international humanitarian assistance.[56] The above discussion regarding the prerogative—and in fact, appropriateness—of an affected state limiting access by aid agencies must be understood in the context of a national government having proactively sought assistance but subsequently having been overwhelmed by a large and unco-ordinated influx of aid. It is not to discount the existence of other contexts in which governments do not request assistance despite overwhelming humanitarian needs, and set arbitrary and prohibitive restrictions on the provision of assistance in contravention of international law.[57]

C. Co-ordination of International Humanitarian Assistance

1. International guidelines for the co-ordination of international humanitarian assistance

The Draft Articles, the IDRL Guidelines, and the Model Act all affirm that the affected state has the primary role in co-ordinating international disaster relief and recovery assistance, and that assisting actors should co-ordinate their assistance with relevant national and subnational authorities.

Specifically, the Draft Articles state that the affected state has the primary role in the "direction, control, coordination and supervision" of disaster relief and assistance on its territory.[58] The IDRL Guidelines similarly affirm that "affected States have the sovereign right to coordinate, regulate and monitor disaster relief and recovery assistance provided by assisting actors on their territory, consistent with international law".[59] The Model Act suggests that the national disaster management authority should serve as the focal point for liaison between the government and assisting international actors, and serve also as the "counterpart to applicable international or regional coordination mechanisms".[60] It suggests a number of responsibilities for the national disaster management authority with regard to the management of international assistance, including informing assisting actors of their rights and responsibilities and orienting them to "relevant laws, rules or procedures relevant to disaster relief and initial recovery assistance".[61]

The Model Act suggests several provisions to ensure preparedness, at the national level, for receiving and managing international assistance. Among other things, it proposes that the national disaster management authority "ensure that attention is paid … to potential international assistance in simulations, exercises and training",[62]

---

55. *Ibid.*, arts. 14(11), 15(13).
56. *Ibid.*, art 14(11).
57. See also Sandesh SIVAKUMARAN, "Arbitrary Withholding of Consent to Humanitarian Assistance in Situations of Disaster" (2015) 64 International and Comparative Law Quarterly 501; and Rebecca BARBER, "The Responsibility to Protect the Survivors of Natural Disaster: Cyclone Nargis, A Case Study" (2009) 14 Journal of Conflict and Security Law 3.
58. *Draft Articles*, *supra* note 14, art. 12.
59. *IDRL Guidelines*, *supra* note 15, art. 3(3).
60. *Model Act*, *supra* note 17, art. 12(a).
61. *Ibid.*, art. 12(b).
62. *Ibid.*, art. 12(e).

and that national and local authorities should "endeavour to integrate the role of Assisting International Actors into their contingency planning and mechanisms for operational coordination of Disaster Relief and Initial Recovery Assistance". It also proposes that a "Taskforce on International Disaster Assistance Preparedness" be established, with responsibility for preparing and updating "manuals, guidelines, plans or other procedures related to the entry and coordination of Disaster Relief and Initial Recovery Assistance", and compiling and updating "information on existing bilateral, regional and international coordination mechanisms".[63] The Model Act also states that international actors shall co-operate and co-ordinate with national and subnational authorities in providing assistance, including providing them with information on their assistance operations.[64]

2.   Institutional structures for humanitarian co-ordination in Vanuatu

In addition to a reasonably well-established legal and regulatory framework for disaster management—including the National Disaster Act, the National Disaster Plan, and the Cyclone Support Plan—Vanuatu has institutional structures for the co-ordination of both government and non-government assistance. Overall responsibility for disaster management and climate change sits with the Ministry for Climate Change Adaptation, Meteorology, Geo-hazards, Environment, Energy, and Disaster Management, while policies on disaster management (prevention, preparedness, response, and recovery) are set by the National Disaster Committee.[65] The NDMO is responsible for the actual implementation of disaster management strategies and plans.[66] In the event of an emergency, the National Disaster Act provides for the establishment of a National Emergency Operations Centre, headed by the NDMO director, which brings together all government agencies with disaster-related responsibilities.[67]

The activities of non-government actors involved in disaster management are co-ordinated by the VHT. The VHT was established by Oxfam in 2011 as a network of non-government humanitarian actors—including the Red Cross movement, NGOs, and UN agencies—involved in disaster preparedness and response, and its responsibilities have since been written into the NDMO's Standard Operating Procedures [SOPs].[68]

The other structure for humanitarian co-ordination in Vanuatu is the cluster system, which, as described in the Cyclone Support Plan, was "adopted by the NDMO and the VHT to strengthen effectiveness of response to emergencies and disasters".[69] The cluster system in Vanuatu is a national adaptation of a system adopted by the international humanitarian response community in 2005—and subsequently rolled out in

---

63.   *Ibid.*, art. 13(c).
64.   *Ibid.*, art. 15(b).
65.   Government of Vanuatu, *National Disaster Act No.31 of 2000* (2000), s. 5 [*National Disaster Act*].
66.   *Ibid.*, s. 6.
67.   *Ibid.*, part 3, s. 8.
68.   Government of Vanuatu, National Disaster Management Office, "Standard Operating Procedures" (January 2013), art. 9.2.10 [*NDMO Standard Operating Procedures*].
69.   *Cyclone Support Plan*, *supra* note 42 at 8.

emergency responses around the world—to improve the co-ordination, leadership, and accountability of humanitarian response. Clusters are groupings of humanitarian organizations working in the main sectors of humanitarian action (health, shelter, etc.), and generally they operate in accordance with international guidelines and are accountable to a UN "lead agency".[70] The clusters in Vanuatu differ from this international system in a number of important respects: first, they operate as permanent structures rather than being activated in response to a particular emergency; second, they operate under government leadership with VHT-member co-leads rather than under UN leadership, as they do in many other countries; and third, and most importantly, they operate in accordance with national government policy (i.e. the Cyclone Support Plan and the NDMO's SOPs) rather than international guidelines.[71]

Overall, there was a strong sense among many government and non-government actors prior to Cyclone Pam that national institutions and structures for disaster management, including the VHT and the cluster system, were satisfactory in meeting humanitarian co-ordination needs following previous small- and medium-scale disasters. Yet, these structures had never been tested in a large-scale disaster; contingency planning processes had failed to adequately anticipate the full range of humanitarian response tools and services that might be required following a large-scale disaster and a large and sudden influx of international aid.

3. *International tools and services for humanitarian response*

In addition to a large number of new actors, the international response brought with it a series of international tools for humanitarian co-ordination and financing, including the UN's Disaster Assessment and Co-ordination [UNDAC] team and humanitarian fundraising tools. Although these tools are commonly used in large-scale emergency responses around the world, and their use could reasonably have been anticipated in Vanuatu, they were neither described in the National Disaster Plan, the Cyclone Support Plan, or the NDMO's SOPs, nor had their use been anticipated in national contingency planning. This contrasts starkly with the suggestion in the Model Act, cited above, that the role of international actors should be integrated into simulations, contingency planning, and co-ordination mechanisms. As international humanitarian co-ordination and financing tools have seldom been utilized in Vanuatu, awareness and understanding of these tools amongst both government and non-government actors was minimal.[72] Thus, as noted in the government's Lessons Learned Report, "it initially proved difficult for the Government of Vanuatu and NDMO to control and coordinate international assistance".[73]

International tools and services for humanitarian response are described in a series of standards, guidelines, and procedures developed by international actors. These vary

---

70. See Inter-Agency Standing Committee, "Reference Module for Cluster Coordination at Country Level" (July 2014), online: Humanitarian Response <https://www.humanitarianresponse.info/system/files/documents/files/iasc-coordination-reference%20module-en_0.pdf>.

71. *Cyclone Support Plan, supra* note 42 at 8.

72. Interviews with national and international actors engaged in the response to Cyclone Pam, Port Vila, Vanuatu, April 2015.

73. *NDMO Lessons Learned Report, supra* note 10 at 32.

in status, from international "minimum standards" developed and endorsed by the international humanitarian community as a whole, with which compliance is expected (albeit unenforceable), to guidelines or tools developed by single agencies or coalitions of agencies for use as a reference by the wider humanitarian community, for the purpose of promoting best practice.[74] In some cases, guidelines or procedures produced at the international level have been adapted by regional actors for regional contexts. For emergencies in the Pacific, the most relevant set of guidelines is the PHT's EPREP. The PHT operates under the leadership of the UN Resident Co-ordinators in the Pacific, consisting of UN agencies, regional and bilateral organizations, national and international NGOs, faith-based and community-based organizations, and donors. National governments are not represented. The EPREP is "designed to guide inter-agency humanitarian action in the Pacific, and consolidates information on the humanitarian architecture, tools and services of the PHT".[75] For a large-scale response, the actions described in the EPREP include activating the (regional) clusters, deploying UNDAC, briefing "national government counterparts on cluster mechanism and introduc[ing] PHT cluster leads", and establishing an operations centre "with in-country cluster leads and national coordination structures".[76] Responsibility for all these things is described as residing with the UN—in most cases the Office for the Co-ordination of Humanitarian Affairs [UN OCHA] and, in some cases, the UN Resident Co-ordinator.

The National Disaster Plan does not say anything about the PHT or any of the tools for humanitarian action described in the EPREP. Although the Cyclone Support Plan does briefly discuss what it calls the "Pacific Humanitarian Coordination Team" [PHCT], the roles and responsibilities described do not really match up with the available tools and services described in the EPREP. Beyond the reference to the "PHCT", the Cyclone Support Plan does not mention any of the specific tools and services outlined in the EPREP, and which were utilized in the aftermath of Cyclone Pam.

The first of the tools and services to be activated following Cyclone Pam was the UNDAC deployment. UNDAC teams are standby teams of disaster management professionals from around the world, co-ordinated by the UN OCHA, with a mandate to support assessment, co-ordination, and information management following a disaster. They have substantial expertise in co-ordinating large numbers of international actors, including inter-cluster co-ordination and all the processes that go with mobilizing international humanitarian funds. In large-scale disasters exceeding national capacities, they have enormous value to add, as indeed they did following Cyclone Pam.

---

74. Examples of the former include: The Sphere Project, "The Sphere Project: Humanitarian Charter and Minimum Standards in Humanitarian Response" (2011), online: The Sphere Project <http://www.sphereproject.org/>; and Groupe URD et al., *supra* note 24. Examples of the latter include countless checklists, toolkits, and manuals spanning all sectors of humanitarian response, such as the Minimum Standards for Child Protection in Humanitarian Action. See Child Protection Working Group, "Minimum Standards—Child Protection AoR", online: CPWG <http://cpwg.net/minimum-standards/>.

75. Pacific Humanitarian Team, *supra* note 20 at 2.

76. *Ibid.*, at 10. These are the actions required for a Level-3 response. A Level-3 emergency is defined as a major sudden-onset humanitarian crisis triggered by a national disaster or conflict which requires system-wide mobilization or "L3 activation" to ensure a more effective response to humanitarian need.

However, there were two issues with the UNDAC deployment to Vanuatu. The first was that, although a request was sent to Pacific countries for disaster management professionals to deploy as part of the UNDAC team, only one person was available. Thus, most of the team consisted of people from other parts of the world. Most were new to Vanuatu, and they deployed with minimal understanding of existing national co-ordination structures—in contrast to the suggestion in the Model Act that the national disaster authorities should be responsible for orienting assisting actors to "laws, rules or procedures especially relevant to disaster relief and initial recovery assistance".[77]

The second issue was that there was no prior agreement regarding the roles and responsibilities of UNDAC vis-à-vis existing national co-ordination structures and institutions—namely the NDMO and the VHT. Such relationships were neither outlined in the National Disaster Plan, the Cyclone Support Plan, or the NDMO's SOPs, nor rehearsed in interagency contingency planning. While roles and responsibilities were eventually agreed between key actors, they were not understood outside a small number of individuals, and many responders—both government and non-government—expressed a very limited understanding of the hierarchy and the interplay between the various structures.[78]

Among the other international tools utilized in the Cyclone Pam response were three standard humanitarian fundraising tools: a Flash Appeal; an application to the UN's Central Emergency Response Fund; and the Humanitarian Action Plan [HAP]. As with UNDAC, these tools are described in the PHT's EPREP as tools that "may typically be offered to affected governments"[79] following a large-scale emergency. As with UNDAC, these tools were also not described in national legislation or policy, nor had they been rehearsed in contingency planning.

The HAP (or in many countries, the Humanitarian Response Plan) is a fundraising and advocacy tool used by the humanitarian response community around the world. It includes a statement of priorities, a total fundraising goal, and a list of projects that non-government humanitarian actors hope to implement. In Vanuatu, as is generally the case elsewhere, it was developed with government approval, but it was nevertheless commonly perceived by both national and international responders as an OCHA-led process.[80] One UN representative explained: "it's an automatic thing … It was presented as a process that had to be—'now it's time to do the HAP'. It wasn't debated."[81] This reflects the assumption in the EPREP (as in other international guidance notes) that HAPs will be prepared following large-scale disasters, "where possible" under government leadership, but, if not, with the OCHA "responsible for initiating and consolidating the plan".[82]

---

77.   *Model Act*, *supra* note 17, art. 12(b).
78.   Interviews with national and international actors engaged in the response to Cyclone Pam, Port Vila, Vanuatu, April 2015.
79.   Pacific Humanitarian Team, *supra* note 20 at 11.
80.   Interviews with national government and non-government responders involved in the response to Cyclone Pam, Port Vila, Vanuatu, April 2015.
81.   Interview with Jacob Kool, World Health Organization, Port Vila, Vanuatu, April 2015.
82.   Pacific Humanitarian Team, *supra* note 20 at 14.

The HAP was new for many in Vanuatu, and understanding of the process amongst national actors was limited.[83] In particular, the fact that government agencies could not themselves raise funds through the HAP unless they partnered with (and received funds through) an international agency sat awkwardly with national government actors who, according to the IDRL Guidelines, the Model Act, and the Draft Articles, were supposed to be responsible for co-ordinating relief efforts and for stipulating the conditions upon which assistance could be provided. Where considerable effort has been channelled into strengthening the capacities of national actors, and where national actors have demonstrated a strong interest in leading the response, the HAP requirement that funds be channelled through non-government agencies seems out of step with the strong affirmation in international disaster response law and the emerging international law on the protection of persons in the event of natural disasters regarding the primary role of the affected state.

International tools and processes, such as the UNDAC or the HAP, have enormous value when time is of the essence and where the national government is either overwhelmed or unwilling to take the lead. In particular, funding appeals that utilize standardized processes tend to generate more funds than localized approaches because they are recognized and understood by donors and are easier to fund. One UN representative explained, with reference to the speed with which international fundraising tools were activated: "we all knew that the window of opportunity for Vanuatu would close rapidly … we needed to get things going while there was attention to the emergency."[84] This is precisely why it is so important for national disaster law, policy, and planning to stipulate as clearly as possible which international fundraising tools will be used, whether (and if so how) they will be adapted to the local context, and how and by whom they will be managed. Similarly, international actors must anticipate that the systems with which they are familiar may not always be applied as a template, and that their application in disaster response will be prescribed by national legislation and planning. One senior UN staffer reflected that "the worst disservice that we as an international community can do is come barrelling through with new policies and approaches that are so new, all at once … it's a little unfair to ask authorities to suddenly take it all on".[85] The government's Lessons Learned Report called for "UN coordination and funding mechanisms" to be "adapted to Vanuatu's operational context" and to "support Government-led coordination efforts".[86]

Corresponding to developing national and local capacities for disaster management around the world, including strengthened national disaster management organizations and strengthened national disaster laws, there has been increasing rhetorical commitment from the international community to better support the role played by national actors in humanitarian response. The Report of the Secretary-General for the World Humanitarian Summit—a global consultation process aimed at re-shaping

---

83. *NDMO Lessons Learned Report*, *supra* note 10 at 32.
84. Discussion with Sune Gudnitz, UN OCHA, Regional Office for the Pacific (via phone), May 2015.
85. Interview with Elizabeth Christy, UN Food and Agricultural Organization, Auckland (via skype), April 2015.
86. *NDMO Lessons Learned Report*, *supra* note 10 at 6.

humanitarian action to more effectively address future humanitarian challenges, taking place at the time of writing (May 2016)—speaks of the international community's "obligation to respect and further strengthen [national] capacity and local leadership in crises, and not to put in place parallel structures that may undermine it". It calls upon international actors to "make greater effort to support and enable national and local actors, to provide expertise, good practice, and add capacity and capability rather than 'take over' and run the response".[87] This requires a reconceptualization of the role played by the international humanitarian community from a role that primarily *delivers* to one that advises, supports, and facilitates. This, in turn, requires rewriting a range of international humanitarian response frameworks and guidelines, and clear national legislation setting out exactly the processes and procedures to be followed by international actors wishing to provide support in the event of a disaster.

V. CONCLUSION

None of the preceding discussion discounts the fact that the initial stage of the Cyclone Pam response saw significant achievements. Emergency food rations were distributed in all affected areas, tens of thousands of people received drinking water and emergency shelter material, and temporary learning spaces were provided so that children could return to school.[88] These achievements would not have been possible without everyone working together with the aim of ensuring that everyone received assistance in the right way and as soon as possible. The provision of humanitarian assistance was never deliberately impeded.

Yet, what the response highlighted was that, even with goodwill on all sides, large-scale international responses are difficult to manage, and that national structures for disaster management are easily overwhelmed. This is why international actors have developed a "menu" of tools and services that can be brought in to assist. However, the experience in Vanuatu demonstrated that the use of these tools and services can be fraught with difficulties if not adequately anticipated in national planning, policy, and legislation. While responsibility for doing this lies with national governments, international actors also have a role to play in ensuring that their own guidelines and procedures reflect an assumption that they will play a subsidiary role, with international tools and services used only to support national systems and structures. Although this subsidiary role for the international system is clearly reflected in the IDRL Guidelines and the ILC Draft Articles, it is too often *not* reflected in the operational guidelines and procedures that guide international humanitarian responders in the field, as shown above.

Recent years have seen increasing calls for and commitments towards "localisation of the humanitarian response".[89] Among other things, the consultations leading up to

---

87. *One Humanity: Shared Responsibility*, Report of the Secretary-General for the World Humanitarian Summit, UN Doc. A/70/709 (2016), at 31.

88. Government of Vanuatu, "Tropical Cyclone Pam Humanitarian Action Plan" (1 May 2015), online: ReliefWeb <http://reliefweb.int/sites/reliefweb.int/files/resources/vanuatu_tc_pam_hap.pdf> at 6.

89. See for example, Barber, "Localising the Humanitarian Toolkit", *supra* note 29; Steven ZYCK and Hanna KREBS, "Localising Humanitarianism: Improving Effectiveness through Inclusive Action" (July 2015), online: Overseas Development Institute <http://www.odi.org/publications/9695-local-humanitarian-localization-red-cross-aid>; International Federation of the Red Cross and Red Crescent Societies, "World Disasters Report 2015: Focus on Local Actors, the Key to Humanitarian Effectiveness" (2015), online: IFRC

the World Humanitarian Summit elicited a "strong call … for the international community to … reinforce local and national responsibility for crisis management, with the international humanitarian community taking a support role whenever possible".[90] Cyclone Pam tested this commitment. Although there was a legal and institutional structure in place for disaster management, a mechanism (albeit imperfect) for co-ordinating international humanitarian actors, and a desire by the government to lead the response, the international community still brought in a standard suite of tools and services that had not been anticipated in national planning and legislation.

The international humanitarian system is under unprecedented strain. Global humanitarian needs are the highest they have ever been and, even though humanitarian funding is also at a record high, this funding is still vastly insufficient to meet needs.[91] With crises becoming more protracted, human displacement presently at an all-time high, current major conflicts showing no sign of abating, and an inevitable increase in extreme weather events, we can expect the strain on the system to become more pronounced. In this context of burgeoning need and diminishing resources, it is incumbent upon both national and international actors to ensure that humanitarian response systems are managed as efficiently as possible. This means ensuring that national actors and systems perform to maximum capacity, and that international tools, services, law, guidelines, and procedures support them to do so.

This paper proposes that both national governments and international humanitarian responders need to significantly advance their efforts to promote the inter-operability of their disaster management systems. For national governments, this means ensuring that national laws, planning processes, and policies describe the international tools and services that may be utilized in the event of a disaster, and precisely how and by whom these will be managed. For international actors, it means redesigning international and regional tools and services for humanitarian response so that they fit in with a multiplicity of different national legal and institutional structures for disaster management. For both international and national actors alike, this requires a mutual understanding of the roles and responsibilities of each under international law; one that could be enhanced through both the strengthening of national disaster management laws, the finalization and broad dissemination of the Draft Articles on the protection of persons in the event of disaster, and the continued dissemination of the IDRL Guidelines.

<http://ifrc-media.org/interactive/wp-content/uploads/2015/09/1293600-World-Disasters-Report-2015_en.pdf>; and Charter for Change, "Charter for Change—Localization of Humanitarian Aid", online: Charter for Change <http://charter4change.org/>.

90. World Humanitarian Summit Secretariat, "Restoring Humanity: Synthesis of the Consultation Process for the World Humanitarian Summit" (5 October 2015), online: World Humanitarian Summit <https://www.worldhumanitariansummit.org/whs_Consultation_Reports> at 90.

91. UN Office for the Coordination of Humanitarian Affairs, *supra* note 18 at 12–13.