

The Evolution of China Emergency Response Legislation

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Abstract

The Article discusses the evolution of legislation on Response Act (ERA) which is a core legislation governing the response to all types of emergency incidents in China, such as natural disasters, accidental incidents, public health incidents. The first chapter is a general introduction to the legislation process of ERA. The second chapter discusses the structure and content of ERA. The Third chapter mainly discusses the legislation background and controversies of ERA. The last chapter provides the method to improve the Act.

Key words: Component; Emergency; Legislation; Emergency response

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INTRODUCTION

Legislation and rules on emergency response were absent in China before 2003. But the situations have been changed when SARS brought chaos to the whole country. Chinese government began to consider of enacting legislation to prevent the repeat of similar mess resulting by public incidents and natural disasters. Now more than 30 administrative regulations and 50 more Acts regarding to emergency response have been enacted (Mo, 2011), among them *Emergency Response Act 2007* (ERA) was the most important legislation. Legislative process of ERA began in 2003, at that time SARS had

broken out and not totally under control of government. This legislation program was led by Legislative Affairs Office of the State Council of P. R. China. At the beginning of legislation, the purpose was to resolve the emergency issues comprehensively. However, with the research went deeply, it was found that is difficult to handle the relation between the response to general incidents regulated in the law and response to specific incidents what happen in reality; How to name the new law was also a problem. In the suggestion version and the draft, the law was suggested to be named as *State of Emergency Act* or *Emergency Response and State of Emergency Act*. At last the name was changed in to *Emergency Response Act*. The main reason given by the research team was that state of emergency is a fiction state in law. It just describes public crisis resulted by emergencies that develop into a more serious level. Declaration and implementation of state of emergency are just a follow-up step of response to emergency incidents. State of emergency is no more than a method which is special to response to serious incidents (Mo, 2011). Once the law was named *State of Emergency Act*, it is hard to cover the Articles regarding prevention of and general response to emergencies, so the name of Act would be incompatible with the content, and it also brought difficulties to legislation technique. The official formal version of Act was enacted as *Emergency response Act* with only one Article pointing out the way of solving the problem in state of emergency. According to the opinion of legislators, the name *Emergency Response Act* is correspondent to the content of the Act. The motive of final version focuses on how to practice the articles of ERA in reality.

1. CORE CONTENT AND CHAPTERS OF EMERGENCY RESPONSE ACT

The structure of the ERA was made up of seven chapters which consist of 70 articles. The first chapter

is general provisions. In this part a definition was given to Emergency incidents. In accordance with Article 3 an emergency incident in this law refer to a natural disaster, accidental disaster, public health incident or social safety incident, which takes place by accident, has caused or might cause serious social damage and needs the adoption of emergency response measures. Important elements such as basic principle, leadership of organization of emergency response, the mechanism and administration are also prescribed in this part. According to the provisions of the People's Liberation Army of China, People's Armed Police Force and militia organizations shall participate in the emergency response rescue and operations.

The second chapter is prevention and emergency response preparedness. This chapter is mainly about the making, amendment and implement of emergency response plan. According to the provision, central government and local government are responsible for making and implementing of different level plans. This part also prescribes that State shall establish and enhance an emergency response material reserve security system to improve the supervision, production, reserve, allocation and urgent distribution systems of the major emergency response materials. Government shall manage and collect resource of emergency response.

The third chapter is surveillance and warning. This chapter is about the establishment and administration of the emergency incidents information system by governments. Functions of information system are converging, storing, analyzing and transmitting information on emergency incidents, and realize the interconnection information between governments. Establish warning system is also included in this provision. Emergency incidents are divided in to four levels according to the trend, degree, development, and marked in with red, orange, yellow, and blue respectively. The criteria for division of levels of warning shall be made by the State Council or the departments appointed by the State Council. The warning is issued by government

The fourth chapter is emergency response operations and rescue. According to this provision, after emergency incidents occur government shall take measures to rescue and to control the development of situation. Rescues come from two ways, official or government organized rescue and self rescue, mutual rescue commits by citizens or enterprises. Community organizations such as the residents committee, villager committee, shall help to carry out rescue and assist in maintaining the social order according to the decisions and orders of government.

The fifth chapter is Post-Emergency Response Rehabilitation and Reconstruction. This provision is mainly about reconstruction and rehabilitation. After an emergency incident is under control or eliminated, the implementation of the measures for emergency shall be terminated. The government performs the responsibility

to restore the production, living, working and social order as soon as possible and takes the necessary measures to prevent the occurrences of secondary incidents.

The sixth chapter is legal liability. Under what circumstances people shall take legal liability and be imposed a penalty was listed in this chapter. Three types of subjects take liability for misconduct in response to emergency incidents. Local government assumes liability for failing to perform statutory obligation regulated by this law. Nongovernmental entities take responsibility for resulting incidents with failure to obey the law. Individuals and entities shall be imposed punishment for fabricates and disseminates false information on the development of situations of an emergency incident or emergency response operations, or knowingly disseminates false information on the development of situations of an emergency incident or emergency response operations.

The seventh chapter is Supplementary Provisions. According to Article 69 if emergency incidents are especially serious that cannot be eliminated or effectively controlled or mitigated by taking the emergency response operation measures as provided for in this Law and other relevant laws, the Standing Committee of the National People's Congress or the State Council shall decide entering a state of emergency in accordance with the powers and procedures as provided for by the Constitution and other relevant laws.

2. CONTROVERSIES ON PROVISION OF EMERGENCY RESPONSE ACT

Enact of ERA is deemed as a progress made by Chinese government in response to emergency incidents. Before ERA, there is not a comprehensive and high level Act governing emergency response. However, there are still critics on it for the rationality of some provisions. Main controversies are as follows:

2.1 Management System of Emergency Resonponse Is Lack of Efficiency

As Article 4 regulates, "*management of emergency response features the uniform leadership, comprehensive coordination, categorized management, graded responsibility and local management*" according to this rule leadership of the response system are taken by central and local government. State council as central government is responsible for the especially serious emergency incidents, county and higher local governments are responsible for the emergency incidents occur in local areas. This means government is the permanent organization in emergency response. Critics on this principle are that of functions and aims of government it is not suitable as a comprehensive and coordination organization of emergency response. In modern society emergency incidents have various categories, besides

natural disasters such as flood, earthquake, it also includes terrorists attack, financial crisis which is international and nontraditional. It is hard for government to handle those emergencies with absence of the professional and technique. An organization with the experiences and technique of emergency response is needed (Qi, 2010). Another issue is military force is very important rescue power in disaster relief. But the system of cooperation between government and military is absent, especially on the local level. Power of direct military is controlled by Central Military Committee. Without cooperation system, good communication should not exist. Leadership of government can not be fully realized. Similar problem happened in US, in 2005 when Hurricane Katrina devastated the Gulf coast. Owing to the absent of good cooperation and communication between the civilian leader and military, disaster area not only destructed by hurricane but also was put in to social chaos for the crime (Banks, 2006).

In fact, rules of ERA on emergency response management are as a change to appear a difference from traditional emergency management style. Before ERA was enacted, in China, the disaster response was not in a uniform system. Relief function was served by the different sectors and industries. The advantage of traditional mode is that response sectors can make professional service. But the defect is resources of response are scattered. It highly negatively influences the result of disaster relief. In order to change this circumstance, ERA sets a comprehensive leadership organization. In China all public sectors which serve disaster relief are integral parts of government, so role of comprehensive director was naturally given to government. Government, as leadership, can easily coordinate different sectors. But the how to coordinate government and military was less considered by the legislator.

2.2 Legal Status of Civilian and Nongovernmental Resoponse Force Are Not Prescribed in the Act

Making a grand social mobilization system is stated in the Act. The provision shows legislator hopes to build a cooperation system made up by government and society to responsive public crisis. However, the response system for the participation of nongovernmental organization (NGO) and volunteers is not ruled in ERA. Legal status of civilian and NGO response are not prescribed in the Act either. This affects social response when emergency incidents occur. In wenchuan earthquake 2008, in order to relief and rescue the disaster area, lots of volunteers and NGOs raised funds, collected rescue materials and items that really helped the people in earthquake areas. But owing to absent of guidance on rules and regulations regarding the nongovernmental rescue, many donations are disorganized and reduced the efficiency of contributions for helping refugees. For this reason

some people even doubt the meaning of civil donations. Public enterprises and entities such as water company, electric company and telecom company always play important roles in response, but there are no regulations of conferring the authority to those enterprises, this may stop them exerting their functions (Ma, 2009). Another example is loss sharing. According to ERA, state financial system is under requirement to support serious disaster insurance. Use insurance as a method to share loss of disaster is very common in developed countries. Insurance is a system to separate the risk. But if insurance only from the government it is not enough to support serious loss sharing, more business insurance are needed. Government takes all authority and all responsibility is hard to response to very serious emergencies, it needs separation of power. More importantly, government needs cooperation from nongovernmental organizations and citizens. Now in China private enterprise and civilians have more fortune than ever before, they have the ability to contribute in response to disasters. A cooperation system to coordinate private or nongovernmental entities for disaster response is in demand.

2.3 The Provisions of Emergency Response Plan Is Not Specific

"Failing to plan is planning to fail" (Binder, 2002) establish emergency plan is a necessary part of emergency response. ERA confers authority of establish emergency response plan to the government. As the central government, State Council makes the overall state emergency plan. Departments of State Council and local governments make emergency plans according to emergency types or areas which were governed by them. Article 17 and Article 18 are mainly articles relate to emergency plan, the content is not specific, there are no regulations of procedure and standard for the establishment of emergency plan. Practice, assessment, amendment and improvement of planning are also absent. It brings difficulties to the implementation of planning. Principle rules are hard to be a guidance to the exercise of the response plan when emergency occurs in reality. An implementation plan should be in detail. Specific rules can be both guidance and regulations for the plan maker. In addition, conflict between different plans for the same incidents is another problem. Because both Local governments and departments of the State Council have authorities to make plan, a possible consequence is that two or more plans for conflict might be produced by different plan maker in the same emergency incident. So Coordination among disaster response plans should also be regulated by the Act.

2.4 A Higher Level Act Is Needed

As we discussed in introduction part of this Article, at the beginning of enacting the ERA, one of the names of the draft was *State of Emergency Act*. But it was changed

before final version was enacted. Now some scholars still claim to enact *State of Emergency Act*. The main reason is the level of ERA is lower than *State of Emergency Act*. These two kinds of Acts have different Purpose. For ERA the purpose is to assure governments to effectively excise administrative power to response emergency incidents in order to quickly eliminate incidents through different methods. ERA addresses the leading role played by government in emergency response. However, As far as *State of Emergency Act* is concerned, it aims at, after most serious emergency incidents occur, how to effectively confer authority to state organs and nongovernmental organizations to excise power to make assure the implementation of emergency response in order to minimize the damages brought by emergency incidents. Although government is still the leading role in State of emergency Act, the cooperation from military is necessary. Above conclusion can be inferred from the Article 69, this Article prescribes that state of emergency is a state when incidents out of the control and can not be eliminated by using the emergency response. From Article 69 we know the ERA itself also acknowledges the state of emergency is a more serious state and needs higher level method to deal with. In 2008 wenchuan earthquake, governments in disaster areas were ruined by serious earthquakes. Neither government nor refugees can implement rescue and self rescue according the ERA. What they can do be waiting for the relief and rescue from outside disaster areas. In that situation the direction of response was made by State Council. Most of rescues came from military and armed police. Provisions in ERA relates to authority of local government can not be applied to emergency response. It was substituted by state of emergency plans. That is the reason why many scholar claim for making State of Emergency Act.

3. METHODS TO IMPROVE THE ACT

3.1 To Set a Permanent Organization to Substitute Government in Commanding Response for Emergency Incidents

The government might not be a good special organization to command an emergency response as we discussed previously. Reasons are, firstly, its comprehensive function makes it not eligible to in charge of a work which needs professional knowledge and human resources. Secondly, is hard to deal with cooperation with the military. So a permanent organization should be ruled in ERA to substitute government.

What kind structure is good for this permanent organization? Some scholar suggests non bureaucracy orient is better than bureaucracy orient (Xiong, 2008). However, when facing disasters a power structure with command and obedience is very important to assure execution and efficiency. So bureaucracy orient is

preferred. The committee is a proper structure for the organization of command a cooperation response from government, military and civil society. Members of the committee would come from government and military. Departments and branches with special functions should be set as affiliate of the committee to meet the technique requirements of response. This organization shall be set at different levels like governments from central to local area. The committee should be conferred territory authority, by the Act, to deal with emergency incidents occur in the local area.

3.2 Prescribing Legal Status of Civilian and Ngo Response to Improve Social Mobilization System

In order to mobilize more civilian and individuals to participate in emergency response, ERA should prescribe legal status of NGOs, entities and individual volunteers that participate in emergency responses. A system should be established to manage and direct social force in participating responses. For example regulations on charity funds of the process of money collection and donation for disaster relief should be made clear. Use of funds and liability for illegal use funds also needs to be prescribed.

Other civil organizations should be also confirmed by ERA as a cooperation force in emergency response. Functions of public entities such as Water Company, electric company, and Telecom Company can not be ignored, they supply the necessary power and resources to rescue. The law should give them temporary authority in emergency response to supply and distribute resources in their management scope. Rules of authority conferral should include: functions of these entities, relationship between government and them, what kinds of decisions they can make.

In ERA, the system of sharing losses mainly depend on state financial system, but this is not enough to share losses in very serious disaster, an insurance system is the good way to share the loss. The state should establish disaster insurance system, business insurance company should insure for disaster. People in possible disaster areas should be encouraged to pay for this insurance. The government should establish reinsurance.

3.3 To Make Response Plan Enforceable

In order to make the response plan enforceable, ERA should make provisions of response plan more specific. The standard and process of making the plan should be clear. Because response plans are made at different levels and different sectors, thus Structure of Plan making, relations between different planners should be regulated in ERA. Scholars also suggest regulating practice and amendment of plan in ERA. The question is how many articles and what kind of content relates to response plan be regulated in ERA is reasonable. In my opinion the content of the plan should be crucial, not very detail, it

can give a scheme to plan making emergency accidents, the very detail content can be left to other special laws and regulations to write.

3.4 Is State of Emergency Act a Method of Improvement to Emergency Response Act

There are claims for legislation of *State of Emergency Act*, which is deemed as a method to improve ERA. But logically two Acts solve different problems. The relation between them is not substitution or improvement but complementary. As to the opinion that only in state of emergency can military cooperate with government is not absolutely right. As we discussed previously, the cooperation also can be realized through changing the structure of command organization. Most issues discussed by scholars can be solved by adding rules or amending regulations in ERA. Currently, it seems enacting *Emergency response Act* is not necessary.

CONCLUSION

ERA is a progress in legislation of emergency law in China, but it needs to keep improving. Direction of

improvement should be taking more cooperation systems into Act to get more contribution from society. That is a way to enhance rate of success in emergency response.

REFERENCES

- Banks, W. (2006). Who's in charge: The role of the military in disaster management. *Duke Law Journal*, 56, 101-25.
- Binder, D. (2002). Emergency action plans: A legal and practical blueprint "fail to plan is plan to fail". *University of Pittsburgh Law Review*, 63, 791-814.
- Ma, H. D. (2009). Suggestions on amendment of emergency response act. *Theory Prospective*, 42-46.
- Mo, Y. C. (2011, July 7). Emergency response act and construction of China emergency legal system. *Guang Ming Daily*.
- Qi, J. G. (2010). Extraordinary emergency and innovation of China administrative response system. *Ecupl Journal*, 105-109.
- Xiong, Y. (2008). Evolution of organization in management of disaster response. *Jiangxi Social Sciences*, 217-221.