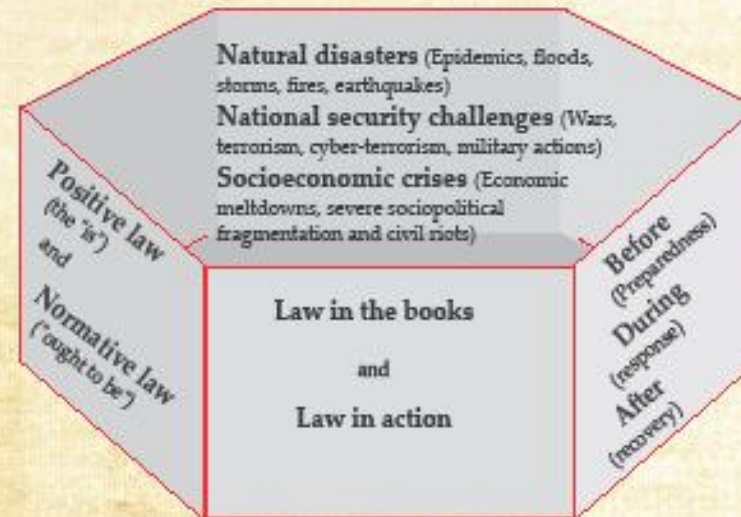


Law and Emergencies: A Comparative Overview





The Minerva Center for the Rule of Law under Extreme Conditions
University of Haifa

Law and Emergencies: A Comparative Overview

Background Materials for Discussion

Monday, February 17th, 2014

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Introduction

This booklet is a preliminary working document on the subject of legal arrangements for coping with emergencies. Information relating to constitutional and legal arrangements in eight countries (including Israel) was gathered for the purpose of preparing the document. The information was collected from primary legislation, secondary legislation, and secondary sources (such as articles). In later stages the research will examine additional aspects, including case law and the implementation of law in practice.

This document is a work-in-progress and accordingly is not exhaustive in terms of its scope or confidence level.

The information in the booklet is organized in the form of abstracts. The preface presents an overall review of the characteristic models and components of the arrangements reflected in the information gathered. The following section presents an executive abstract followed by more detailed information, though still in the form of an abstract, for each of the selected countries: Turkey, New Zealand, India, the United States, the United Kingdom, Japan, Germany, and Israel. The abstract regarding each country is in the following sub-sections:

1. The constitutional and legislative framework (constitution, generic law or specific laws);
2. Entry into an emergency (the definition of an emergency, declarations, termination, and various laws that take effect following a declaration);
3. Powers before, during, and after an emergency, including the division of powers (who is legally empowered to act or to order action in different fields);
4. Rights in an emergency (does the emergency enable the violation of protected rights and what rights may be violated).

In general terms we discuss the legal situation regarding emergencies according to two dimensions:

1. The temporal dimension:
 - Before the emergency;
 - During the emergency;

- After the emergency.
2. The type of emergency:
- Natural disaster;
 - Wars, armed conflicts, and terrorism;
 - Political and economic meltdowns.

A further dimension we will address at a later stage of the research is law-in-action as opposed to law in the books. The addition of this dimension will enable a “three-dimensional” examination of regulatory methods in extreme conditions, including identification of the manner in which public authorities and other bodies act in different types of extreme conditions.

Typical Models and Components of the Arrangements

Constitutional or Legislative Model

The scholars John Ferejohn and Pasquale Pasquino proposed a distinction between two legal models for addressing emergencies: the constitutional model and the legislative model.¹ In broad terms, each country can also be classified according to one of these models. Of the eight countries we examined, the constitutional model was found to apply in Turkey, Germany, and India, while the US, Japan, the United Kingdom, New Zealand, and Israel all apply the legislative model. While it is possible to apply such a generalized division according to these two ideal types, the actual reality is naturally more complex. As Ferejohn and Pasquino noted, no country follows either model exclusively and absolutely. Within the legislative model a further distinction can be made between a situation where a generic law exists regulating the response to extreme conditions and the dispersion of legislative attention to the subject in various

¹ John Ferejohn and Pasquale Pasquino, *The Law of the Exception: A Typology of Emergency Powers*, 2 INT'L J. CONST. L. 210 (2004). For a further example of a typology of emergency powers, see: OREN GROSS AND FIONNUALA NÍ AOLÁIN, *LAW IN TIMES OF CRISIS: EMERGENCY POWERS IN THEORY AND PRACTICE* 17ff (2006); Oren Gross, *Chaos and Rules: Should Responses to Violent Crises Always Be Constitutional?* 112 THE YALE LAW JOURNAL 1011 (2003).

specific laws. As the following table shows, countries where emergencies are regulated in the constitution have also enacted generic or specific legislation for coping with different types of emergencies. Israel, however, is the exception to the rule in terms of the level of dispersion of legislation relevant to emergencies.

Regulation in the constitution	Comprehensive/generic law	Specific laws
Turkey India Germany	India United States ² United Kingdom Turkey Japan New Zealand	Germany United States New Zealand Israel ³

The following table offers a different way of presenting this information:

	US	UK	Germany	Turkey	NZ	India	Japan	Israel
Regulation in the constitution			✓	✓		✓		
Generic law for all emergencies	✓ ²	✓		✓	✓	✓	✓	
Specific laws	✓	(*)	✓		✓		✓	✓

(*) In the United Kingdom there are also a small number of specific laws resulting from formative events – frequent disasters, or disasters that received high visibility and were perceived as requiring special or complementary attention.

² The generic law in the US, the National Emergencies Act (NEA), is unique in that it does not specify the arrangements that come into force on the declaration of an emergency by the President. Instead, the NEA defines the procedure used to activate emergency legislation dispersed in the American statute book. For details see the section on the United States.

³ The amendment to the Police Ordinance regarding a “mass disaster event” constitutes a type of generic legislation, but is not as comprehensive as the laws in the other countries mentioned in this category.

Centralization or Decentralization of Powers

While some countries concentrate attention to emergencies in a single body or a small number of bodies on the national level, others show a high level of decentralization of powers, including parallel or unique powers on the geographical level (local/regional/national).

	Unique powers on the national level	Parallel powers (national – local)
Special emergency institution	Japan	United States Germany New Zealand Turkey India
No special emergency institution	Britain	Israel (* The United Kingdom also has institutional tools for the regional/local response)

Another way of classifying the legal arrangements in different countries focuses on the types of special emergency powers that may be activated during an emergency – legislative, executive, and judicial (Wright, 2004).⁴

	Israel	Japan	India	NZ	Turkey	Germany	UK	US
Legislative powers	✓	✓	✓		✓	✓	✓	
Executive powers	✓	✓	✓	✓	✓	✓	✓	✓
Judicial powers				✓ (plague)	✓ (terror)			✓ (5 th Am.)

⁴ For a typology based on emergency powers – executive, legislative or judicial – see: Claire Wright, *Going beyond the Roman Dictator: A Comprehensive Approach to Emergency Rule, with Evidence from Latin America*, DEMOCRATIZATION 713 19(4) (2012).

Different Types, Different Times

As noted, we examine the issue of emergencies according to different times (before, during, and after the emergency) and in different types of emergencies. The following table offers a comparison between the extent to which the law in different countries addresses the different times and types of emergencies. The comparison is confined to significant regulation of the issue and not to negligible references.

Attention to different emergency times:

	US	UK	Germany	Turkey	NZ	India	Japan	Israel
Before the emergency – consultative powers, exercises, etc.	✓	✓	✓	✓	✓	✓	✓	✓
Before the emergency – specific enforcement powers in preparation for an emergency	On the state level (natural disasters)	✓	✓	✓	✓	✓		If there is a “high probability” of a mass disaster
During the emergency	✓	✓	✓	✓	✓	✓	✓	✓
After the emergency – comprehensive attention							✓	
After the emergency – specific attention		✓	✓	✓	✓	✓	✓	(partial)

Explicit references to different types of emergencies:

	US	UK	Germany	Turkey	NZ	India	Japan	Israel
Natural disaster	✓	✓	✓	✓	✓	✓	✓	✓
Nuclear	✓	✓	✓			- (partial)	✓	✓
Terrorism and war	✓	✓	✓	✓	✓	✓		✓
Socioeconomic	✓			✓		✓	✓	✓

Command and Control: Centralization versus Coordination

A further issue raised by the comparison between the countries is the system of governance in an emergency. The distinction here is between “top-down” control featuring a command and control hierarchy based on unified governmental bodies and the creation of a framework for coordination and integration of different bodies (network of authorities and organizations), including non-governmental organizations.

	Command and control	Coordination/integration
Governmental bodies	Israel Japan Turkey Germany United Kingdom	India New Zealand United States
Civil society organizations and economic corporations	Israel (Emergency Economy) Japan Turkey Germany	Israel (Evacuation-Relief-Victims – National Volunteering Council)

Additional Issues

The comparison of the different countries raised three additional interesting issues:

Comprehensive attention to recovery

As the above tables show, some of the countries have formalized explicit and distinct attention to each type of extreme condition (war and terror, socioeconomic, natural disaster). Moreover, in most countries the law explicitly addresses not only powers during the emergency but also powers granted before an emergency occurs in order to cope with it. We found interesting arrangements in Japan providing detailed attention in advance to legislation relating to recovery after an emergency, including compensation. In other countries, including Israel, comprehensive and a priori attention to this aspect is still in its infancy.

Government by network (integration of public authorities)

Another issue raised by the comparative research is attention in legislation to government by network, including the integration of networks of local authorities in order to cope with extreme conditions. In New Zealand, Germany, and India, at least, legislation explicitly discusses government by network in emergencies. This reflects a perception that this method enables a more efficient and effective response to extreme conditions, particularly on the regional level.

Checks and balances in the use of emergency powers

Each country has naturally enacted legislation preventing the abuse of emergency powers by the government. The most common restrictions are based on a detailed and limited definition of an emergency in the constitution or in law; the obligation to declare an emergency before exercising powers; restrictions on the duration of an emergency; the need for parliamentary approval in order to validate the declaration of an emergency; and special protection of rights during an emergency. Israel does not appear to be unusual in legal terms, at least with regard to law in the books (as distinct from law-in-action), despite the fact that it has not established any detailed and restricted definition of an emergency. Extreme examples of countries where the government is relatively unrestricted are

Britain, Japan, and possibly also the United States.

	US	UK	Germany	Turkey	NZ	India	Japan	Israel
Detailed definitions of an emergency		✓		✓	✓	✓		
Obligation to declare an emergency (no passive entry)	✓ Exec.		✓ Legis.	✓ Exec. + legis. (war)	✓ Exec.	✓ Exec. and legis.	✓ Exec.	✓ Exec. + legis.
Restrictions on duration and termination of an emergency	✓ 6-12 months			✓ 6 months	✓ 7 months	✓ 6 months		✓ 12 months
Built-in parliamentary ratification			✓	✓		✓	✓	✓
Special protection of rights	- (no exemption)	✓	✓	✓	✓	✓		Protection from emerg. regulations

Emergency regulation in Israel: synopsis

Legislative framework

Reference to emergencies in Israel can be found at several levels:

- On the constitutional level, reference as such can be found in the **Basic Law: The Government**, which replaced the arrangement that existed in the **Law and Administration Ordinance**, 1948.
Article 38 of the Basic Law: The Government determines how an emergency is declared and who has the authority to do so. Article 39 deals with the setting up of emergency regulation and Article 40 deals with declaration of war (see below).
- On the statutory level (primary and secondary legislation), emergency legislation includes:
 - British Mandatory law: The Defence (Emergency) Regulations, 1945, which do not depend on the existence of a state of emergency.
 - Israeli legislation, which includes:
 - Legislation depending on the declaration of a state of emergency, such as the Law Governing the Control of Commodities and Services, 1957 and Emergency Powers (Detention) Law, 1979.
 - Legislation that does not depend on the existence of a general declaration of a state of emergency: primary (Knesset) legislation that allows the declaration of specific states of emergencies, independently of the existence of a general state of emergency (e.g.: the Civil Defence Law, 1951 and the Police Ordinance [New Version], 1971 (hereinafter: the Police Ordinance)).

In addition, in many existing "regular" laws and regulations "inner" provisions regarding emergencies can be found (e.g.: the Air Navigation Regulations (Safety at Aerodromes of the Airport Authority), 1992; Section 91 of The Natural Gas Sector Law,

2002; Section 46 of The Broadcasting Authority Law, 1965 and Sections 50-51 of the Second Authority for Television and Radio Law, 1990).

Consequently, it can be seen that the regulation of emergencies is done through extensive legislation dealing with various subjects, including:

Social-economic states of emergency	Terrorist events and Wars	Natural disasters
<ul style="list-style-type: none"> • The Arrangements Law - originally presented as emergency legislation that was supposed to deal with a severe economic crisis that threatened to become an economic state of emergency.⁵ In Practice, the law exceeded its initial purpose and it is passed every year in order to achieve budget policies, independently of the existence (or absence) of a financial emergency. • No specific reference to social-economic extreme conditions was found in Israel. 	<ul style="list-style-type: none"> • Declaration of a Special situation on the home front, by virtue of the Civil Defence Law, 1951. • Fighting against terror organizations, in accordance with the Prevention of Terrorism Ordinance, 1948; the Defense (Emergency) Regulations, 1945 and provisions in the Penal Law, 1977. Note: The Counter-Terrorism Bill' 2011. • Prohibition on terror funding: Prohibition on Terrorist Financing Law, 2005. 	<ul style="list-style-type: none"> • Floods: the Drainage and Flood Control Law 1957 (hereinafter: the Floods Law). • Fires: the Firefighting Services Law, 1959; the National Fire and Rescue Authority Law, 2012 and the Prevention of Field Fires Law, 1949. • Infectious Diseases: the Public Health Ordinance, 1940. • Hazardous substances: the Hazardous Substances Law, 1993. • Earthquakes: National Master Plan for strengthening existing buildings against earthquakes (TMA 38)
<p>"Generic" legislation: "Mass Disaster Event", by virtue of the Police Ordinance [New Version [, 1971.</p>		

⁵ טל גולן, "הגירעון הדמוקרטי של חוק ההסדרים ושחיקתה של מדינת הרווחה הישראלית" **משפט וממשל** יא תשס"ה 243, 248.

Entrance into a state of emergency

Situation	Definition of an "emergency"	Who may declare the state of emergency and under what conditions?	Statutes that come into force during emergency	How does a state of emergency end?
General state of emergency	The Basic Law: The Government, does not provide a formal definition to the term "state of emergency"	<p>According to Article 38(a) of the Basic Law: The Government: "Should the Knesset ascertain that the State is in a state of emergency, it may, of its own initiative or, pursuant to a Government proposal, declare that a state of emergency exists". However, the Government itself has the power to declare a state of emergency, meeting the conditions of Article 38(c) of the Basic Law: The Government: "Should the Government ascertain that a state of emergency exists in the State and that its urgency necessitates the declaration of a state of emergency, even before it becomes possible to convene the Knesset, it may declare a state of emergency...".</p> <p>Moreover, the Knesset's rules of procedure (Chapter 6) set a number of conditions and procedures regarding the declaration (both by Government and the Knesset). For example, the Knesset's decision to declare a state of emergency will not be accepted without a recommendation from the joint committee, that includes the Knesset's Constitution, Law</p>	<p>The Validity of many laws that were passed over the years depends on the existence of a declaration of a state of emergency. If this declaration will be terminated, these provisions/laws will be repealed along with termination of the state of emergency. Hence, a state of emergency in Israel is consistently extended.⁶</p> <p>Among the above mentioned laws one can find specific provision of the Tort Ordinance; the Emergency Land Requisition (Regulation) Law, 1949; provisions of the Legal and Administrative Matters (Regulation) Law [Consolidated Version], 1970; the Emergency Powers (Detention) Law, 1979, that provides the legal framework for administrative detentions (see below); the Law Governing the Control of Commodities and Services, 1957, which enables to impose regulation on the market. The law enables that by using orders that allow for general control over commodities and services, including price control, control over sales and</p>	<p>The duration of a declaration of a state of emergency by the Knesset will be in accordance with the period prescribed in the declaration, but may not exceed one year.</p> <p>The Knesset may repeatedly declare a state of emergency (renew the declaration as stated); as mentioned, every year she does so.⁷ In fact, since the declaration of independence in 1948, Israel has been under the declaration of a state of emergency, which is yet to be revoked.⁸</p> <p>As to a declaration made by the Government, according to Article 38(c) of the Basic Law: The Government, "the declaration's validity shall expire upon 7 days from its proclamation, if not previously approved or revoked by the Knesset, pursuant to a</p>

⁶ See: <http://main.knesset.gov.il/About/Lexicon/Pages/emergency-announcement.aspx>

⁷ The Knesset declared a state of emergency for the period: 16.12.2013-31.5.2014.

⁸ מנחם הופנונג ישראל – בטחון המדינה מול שלטון החוק 1948-1991 52 (1991).

		<p>and Justice Committee and the Foreign Affairs and Defense Committee (hereinafter: the joint committee). The joint committee must submit her recommendation to the Knesset for approval. If the recommendation is regarding renewal of a state of emergency, the recommendation must be submitted to the Knesset's approval no later than 14 days before the state of emergency comes to end. If a state of emergency has been declared by the government, the government must immediately notify the Speaker of the Knesset and the chairman of the joint committee. The committee should discuss the declaration and submit the recommendation to the Knesset for approval "as soon as possible".</p> <p>According to Article 38(d) to the Basic Law: The Government, the declarations should be published in the official Gazette (Reshumot) and "should publication in Reshumot not be possible, another appropriate manner will be adopted, provided that notification thereof be published in Reshumot at the earliest possible date".</p>	<p>purchases of goods and services that were declared as "subjects to control" and control over the actions and conduct of factories engages in "crucial activity", as it is defined by the law; Prevention of Terrorism Ordinance, 1948; and more.</p>	<p>decision by a majority of its members; should the Knesset fail to convene, the Government may make a renewed declaration of a state of emergency as stated in this subsection".</p> <p>As mentioned, the Knesset has the power to terminate a declaration of a state of emergency at any time, regardless the question what branch of the government declared it (such termination should be published in Reshumot)</p>
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Situation	Definition of an “emergency”	Who may declare the state of emergency and under what conditions?	Statutes that come into force during emergency	How does a state of emergency end?
Mass Disaster Event	According to Article 90(a) of the Police Ordinance, a "Mass Disaster Event" is an "event that is causing serious harm to the public welfare, personal security or property relating to a large public or a large area, or an event that or is liable to cause such harm, including due to natural disaster, environmental hazard, hazardous substances event, chemical or biological event, radiological radiation event, accident or terrorist activity" (this Article also defines specifically the terms " hazardous substances event", " chemical or biological event" and ", radiological radiation event")	<p>In general, according to Article 90B(a) of the Police Ordinance, the power to declare "mass disaster event" is vested in the Minister of Public Security. However, regarding six specific situations, the power to declare such an event is given, instead, to the Prime Minister or the Minister of Defense, as required by the nature of the event (e.g.: in a mass disaster event originated, in whole or in part, within the area of a defense installation or in a territory held by the IDF – the power to declare a "mass disaster event" is vested in the Prime Minister or the Minister of Defense).</p> <p>In some cases, the law requires prior to the declaration, consultation with another minister, which the event falls within his legal responsibility, whether by law or by Government Decision. Basic Law: The Government, allows the Government, with the approval of the Knesset, to change, transfer, abolish, establish, unite or divide the functions of the Government among the Ministers. Notice of a declaration of a mass disaster event should be submitted to the Minister of Defense and the Inspector General of Police⁹ (in few of the specific situations mentioned above it should also be submitted to the Chief of staff of the IDF); with its submission to the latter – the declaration comes into force.</p> <p>It should be mentioned that a constable may use the</p>	No Emergency Laws that explicitly come into force during a mass disaster event were found.	The validity of a declaration of a mass disaster event shall expire upon 48 hours from its proclamation. The Minister may extend the declaration's validity, as long as the total period of extension shall not exceed 96 hours. In addition, the Government may extend the declaration's validity, as long as the total period of extension shall not exceed 7 days. With the approval of the Foreign Affairs and Defense Knesset Committee the Government has the power to extend the declaration for additional periods.

⁹ According to the Police Ordinance, an "Inspector General of Police" is the senior police officer that at that time fulfills the duties of the Inspector General of Israel Police, including the Deputy Inspector General of Israel Police".

Situation	Definition of an “emergency”	Who may declare the state of emergency and under what conditions?	Statutes that come into force during emergency	How does a state of emergency end?
		<p>powers granted to him regarding a mass disaster event (under the Police Ordinance) as long as he has the approval of a police officer and within the time prescribed in that approval, or as long as a mass disaster event declaration is in force (see: Article 90D(c) of the Police Ordinance). A police officer may grant such approval within a period not exceeding 2 days after the day in which the police became aware of the occurrence of a mass disaster event, and if a declaration of mass disaster event was given – the police officer may grant such approval as long as the declaration is valid (see: Article 90D(d)(2) of the Police Ordinance).</p> <p>Hence, it appears that during a period of 2 days a police officer may grant permission to a constable to use the powers listed in Article 90D(c) of the Police Ordinance regarding a mass disaster event, even if a formal declaration of a "mass disaster event" was not given</p>		

Situation	Definition of an “emergency”	Who may declare the state of emergency and under what conditions?	*	How does a state of emergency end?
Fires	There is no statutory obligation to formally declare a state of emergency arising from fire. When a significant emergency situation resulting from or including fire occurs, the various powers that exist in the National Fire and Rescue Authority Law, 2012 may be used. It should be noted that in 2010 an extensive forest fire occurred in northern Israel (the Mount Carmel forest fire). The relevant government officials that dealt with the fire, those responsible for the response and the preparedness for the disaster (the fire and rescue services, the Israeli Police force, Israel Nature and Parks Authority, etc.) were heavily criticized by the State Controller in his final report regarding the fire. ¹⁰ This event was one of the factors that led to the enactment of the National Fire and Rescue Authority Law. ¹¹			
Floods and Water Crises	There is no statutory obligation or authorization to formally declare a state of emergency arising from floods and water crises. According to Article 53 of the Floods Law, the Minister of Agriculture may declare, by order, that a flood affected area is to be a protected area (under certain conditions, see below). In that order or in a later order he may also prohibit the "pasture or movement of animals in the area, the cultivation of land in the area in any form or any work done on the land, including extermination, uprooting, burning or removal of any vegetation". Under section 53(a)(2) of the Floods Law, the Minister of Agriculture has the power to order the Director of the National Authority for Water and Sewage "to perform any work or action in the protected area by him or by his emissaries, which he believes is urgently needed for repairing the damage caused by flood or for its prevention in the future, provided that no land will be expropriated,	Regarding floods, as mentioned the power to declare that a flood affected area is to be a protected area is vested in the Minister of Agriculture. The authority to declare a water damage event is vested in the Director of the National Authority for Water and Sewage.		According to section 18A(c), the "Council of the National Authority shall make rules regarding the declaration of a water damage event, the means of treating such an event, the means of preventing it, stopping it, restoring the previous condition and preventing its recurrence and regulating water supply for consumers that were harmed by the event". However, according to the State Controller's report regarding the water sector preparedness for emergencies ¹² the "Council of the National Authority has yet to approve the rules regarding the declaration of a water damage event or the means of treating such an event".

¹⁰ראו דוח מבקר המדינה, דוח ביקורת על השרפה בכרמל – דצמבר 2010 – מחדלים, כשלים ומסקנות (2012).

¹¹הצעת חוק הרשות הארצית לכבאות והצלה, התשע"ב-2012, ה"ח 600, בעמ' 600.

¹² http://www.mevaker.gov.il/he/Reports/Report_113/a1eff1b1-a076-4b0f-b2fe-b3c5bb920de1/132-water-new.pdf?AspxAutoDetectCookieSupport=1

Situation	Definition of an “emergency”	Who may declare the state of emergency and under what conditions?	*	How does a state of emergency end?
	<p>nor any right concerning that land and that no building or permanent facility will be installed within it".</p> <p>In addition, under section 18A of the Water Law, 1959, the "Director of the National Authority may declare a water damage event", which is defined as an "event that is causing or which is liable to cause substantial damage to the supply of water designated for drinking, the quality of water or the ability of a water source and water infrastructure which are designated for drinking to be used for their intended purpose".</p>			

* No Statutes that come into force during fire floods or water emergency were found

Situation	Definition of an “emergency”	Who may declare the state of emergency and under what conditions?	Statutes that come into force during emergency	How does a state of emergency end?
Hazardous substances event	<p>Section 1 of the Hazardous Substances Law, 1993 defines "a hazardous substances event" as "an uncontrolled event or accident, in which a hazardous substance is involved, which endangers or is liable to endanger human beings or the environment, including a spill, leak, diffusion, evaporation, fire"; "Hazardous substance" means "a hazardous material or harmful chemical", while "Harmful chemical" is defined as " each of the substances specified in Schedule One [of the law], whether in its simple form or mixed or blended into other substances". The definition of a "mass disaster event" under section 90A of the Police Ordinance also includes, as mentioned, ""a hazardous substances event". For defining the terms "hazardous substance" and ""a hazardous substances event" the Police Ordinance refers to the Hazardous Substances Law. Consequently, in a case of a hazardous substances event that is causing "serious harm to the public welfare, personal security or property relating to a large public or a large area, or an event that or is liable to cause such harm" the Minister of Public Security may declare a "mass disaster event".</p>	<p>The Minister of Public Security has the power to declare such an event, whether of his own initiative or at the request of the Minister of Environment, and if necessary in consultation with the Minister of Environment(see: section 90A above). See also the explanation regarding a mass disaster event above.</p>	<p>No Emergency Laws that explicitly come into force during a hazardous substances event were found.</p>	<p>See above the part concerning a mass disaster event.</p>

Situation	Definition of an “emergency”	Who may declare the state of emergency and under what conditions?	Statutes that come into force during emergency	How does a state of emergency end?
Infectious Diseases	Section 20 of the Public Health Ordinance (titled "emergency powers") grants the authority to declare emergency: "if it appears that over a part of Israel hovers a danger of a terrible, local or contagious epidemic disease or it is infected by such disease, that is, plague, cholera, yellow fever, smallpox, typhoid or other disease declared by the Minister of Health as a contagious dangerous disease..."	The authority to declare that an emergency exists, and as stated in the Public Health Ordinance: that a great danger is hovering over the public's health, arising from the threat or the existence of such a disease in Israel or in neighboring territories, is vested in the Minister of Health	No Emergency Laws that explicitly come into force during an emergency arising from infectious diseases were found	The law does not specify when such declaration shall expire
Terrorist events	The Israeli legislation, as far as regarding declaration on emergency situations, does not refer specifically to states of emergency originated in a terror event. It seems that the most relevant legislation on powers in terror events is the part of the Police Ordinance dealing with a "mass disaster event" (see above)			
Natural Disasters	It should be noted that the Natural Disaster Victims Compensation Law (Compensation for damages to agriculture infrastructures) , 1989 allows the declaration of a "natural disaster", but only for purposes concerning the compensation of those in the agriculture sector who suffered damages resulting of natural disaster (for further details, see below under section 5 – regulation).			

Situation	Definition of an "emergency"	Who may declare the state of emergency and under what conditions?	Statutes that come into force during emergency	How does a state of emergency end?
War and Special situation on the home front	<p>There is no formal explicit definition to a state of emergency arising from war.¹³</p> <p>Section 9C of the Civil Defense Law allows for the declaration of a "special situation on the home front", which is defined as a situation where there is likely to occur an attack on the civilian population</p>	<p>According to Basic Law: The Government, Article 40(a), the "state may only begin a war pursuant" to a Government decision".</p> <p>Section 40(c) of the Basic Law: The Government states that "Notification of a Government decision to begin a war under the provision of subsection (a) will be submitted to the Knesset Foreign Affairs and Security Committee as soon as possible; the Prime Minister will also give notice to the Knesset plenum as soon as possible..."</p> <p>It should be noted that "notification regarding military actions as stated in subsection (b)", which states that nothing in the provisions of section 40 "will prevent the adoption of military actions necessary for the defense of the state and public security", will be submitted to the Foreign Affairs and Security Committee of the Knesset "as soon as possible".</p> <p>The power to declare a "special situation on the home front" is vested, in general, in the government, if it is convinced that it is indeed likely that an attack on the civilian population as aforementioned will occur.</p>	<p>No Emergency Laws that explicitly come into force during a special situation on the home front or war were found.</p>	<p>If the Foreign Affairs and Defense committee did not summon the relevant officials within 48 hours as aforementioned (see: section 9C(2) of the Civil Defense Law), the declaration shall expire within 5 days of the day it was given.</p> <p>The Government may extend the declaration's validity with a prior approval of the Foreign Affairs and Defense committee.</p> <p>If the aforementioned officials (the Prime Minister, the Minister of Defense or the Commander-in-chief of the IDF), which were summoned by the Committee, did not appear in front of it, or if the Committee decided not to approve the declaration, the declaration shall expire within 48 hours from the time of the proclamation.</p> <p>If the Committee approved the declaration or its extension for a certain determined period, the Government may ask once again for the Committee's approval to extend the duration of the declaration. It should be noted that the law does not impose any restriction on the number of times the government can ask for an extension.</p>

¹³ It appears that the Knesset will use its power to declare a State of Emergency under section 38 of Basic Law: The Government, also in respect to war. It should be noted that this question was discussed by the Knesset's Constitution, Law and Justice Committee. The following was stated in the Committee's protocol: "For discussion - is it appropriate to specify substantial causes for declaration (an existential threat to the state, to the public order or public safety due to war, natural disaster, armed insurrection, severe economic crisis) or whether such causes will not include all the possible conditions (inclusive or non-inclusive list)? And if not causes – is it appropriate to burden the declaration with procedures to discourage unnecessary use of this tool? Should there be a distinction between

Situation	Definition of an "emergency"	Who may declare the state of emergency and under what conditions?	Statutes that come into force during emergency	How does a state of emergency end?
War and Special situation on the home front - cont.		<p>The Government may declare that such situation exist over the whole of Israel or in a specific part of it. In general, the declaration must be approved by the Foreign Affairs and Defense committee.</p> <p>The Government must announce the declaration to the Foreign Affairs and Defense committee and the latter is entitled to summon the Prime Minister, the Minister of Defense or the Commander-in-chief of the IDF to appear before it within 48 hours from the moment of the declaration, in order to approve the declaration.</p> <p>In addition, the Minister of Defense may also declare "a special situation on the home front" in accordance with section 9C(b) of the Civil Defense Law, if there are "circumstances that justify a declaration of a special situation on the home front and the Government has not yet declared it". Such declaration should be notified to the Foreign Affairs and Defense committee.</p>		<p>A declaration by the Minister shall expire within 48 hours, unless revoked earlier by the Defense Minister or the Government. In addition, the Government may extend the duration of this declaration if it meets the conditions that apply on a Government's declaration of a special situation on the home front, subject to the required changes. Moreover, under section 9C(d)(1) to the Civil Defense Law, the Government or the Minister of Defense may, each within his own authorities, modify the declaration of a special situation on the home front; the Government may modify the Defense Minister's declaration.</p> <p>The Defense Minister may revoke his declaration, as long as the Government has not modified or extended it.</p>

Powers

Situation	Powers	Who is the power conferred to	Power exercised vis-a-vis	Conditions to be met when exercising the power
General state of emergency – the making of emergency regulations	<p>Under Article 39 of Basic Law: The Government, "During a state of emergency the Government may make emergency regulations for the defense of the State, public security and the maintenance of supplies and essential services; emergency regulations will be submitted to the Foreign Affairs and Security Committee at the earliest possible date after their enactment." In addition, "Should the Prime Minister deem it impossible to convene the Knesset, given the existence of an immediate and critical need to make emergency regulations, he may make such regulations or empower a Minister to make them".</p> <p>As for their duration, section 39(f) states that "The force of emergency regulations shall expire three months after the day of their enactment unless their force is extended by law, or they are revoked by the Knesset by law, or pursuant to a decision of a majority of the members of Knesset".</p> <p>If the state of emergency ceases to exist "the regulations enacted will remain in force for the duration of the prescribed period, however not longer than for 60 days after the termination of the state of emergency; state of emergency regulations whose force was lengthened by law shall remain in force."</p> <p>The making of emergency regulations is also possible during a state of war.</p>	<p>As aforementioned, in general the power is conferred to the Government. However in some cases (see above) the Prime Minister may make such regulation "or empower a Minister to make them" (see section 39(b))</p>	<p>According to Article 39(c) of the Basic Law: The Government, "Emergency regulations may alter any law, temporarily suspend its effect or introduce conditions, and may also impose or increase taxes or other compulsory payments unless there be another provision by law". However subsection (d) states that "Emergency regulations may not prevent recourse to legal action, or prescribe retroactive punishment or allow infringement upon human dignity."</p>	<p>According to section 39(e) of the Basic Law: The Government, "Emergency regulations shall not be enacted, nor shall arrangements, measures and powers be implemented in their wake, except to the extent warranted by the state of emergency." The regulations "shall come into force on the day of their publication in Reshumot; should publication in Reshumot not be possible, another appropriate means of publication will be adopted provided that they be published in Reshumot as soon as possible." (See section 39(g)).</p>

Situation	Powers	Who is the power conferred to	Power exercised vis-a-vis	Conditions to be met when exercising the power
Mass Disaster Event	<p>During a mass disaster event (even if no formal declaration was made – see the conditions for exercising the power), and except for an event that is subject to a declaration by the Defense Minister or the Prime Minister (instead of the Minister of Public Security), a constable is certified under section 90D(c) of the Police Ordinance (and in addition to the regular powers granted to him not during a mass disaster event in accordance with section 4A of the Ordinance) to exercise the following powers, with permission to use reasonable force against individuals or property in order to force the compliance with these provision:</p> <ol style="list-style-type: none"> (1) Order a Rescue body (as defines by the Ordinance) to act within its role and authority and operate the equipment in its possession for the purpose of carrying out its duties. (2) Order any person found within the area of the event or within an area that may be harmed as a result of the event any reasonable order. (3) Order those who have in their possession, control or supervision material or equipment to provide that material or equipment for Israel Police or the Rescue Bodies Authority. (4) Close an area or place and prevent anyone from entering or exiting it, and require any person found within the area of the event or within an area that may be harmed as a result of the event to stay where he is, leave or enter a place as he may require. 	The above mentioned powers (except for those dealing with the execution of an exercise in preparation for a mass disaster event), are conferred to a constable or a person fulfilling a role in a rescue body and also a soldier in the case of certain mass disaster events.	People and property	<p>A constable may exercise the powers mentioned in section 90D(c) with the approval of a police officer and within the time specifies in that approval or if a declaration of a mass disaster event was given – as long as the declaration stays in force. In should be noted, as aforementioned, that a police officer may grant such approval within a period not exceeding 2 days passed the day in which the police became aware of the occurrence of a mass disaster event, and if a declaration of mass disaster event was given – the police officer may grant such approval as long as the declaration is valid.</p> <p>The powers of a constable or any other person who fulfills a duty in a rescue body under section 90D(f) (entry to premises) can be exercised under the conditions that that person identified himself in front of those present in the place, informed them of the purpose of which the entry is required, and warned them that he intends to use force.</p>

Situation	Powers	Who is the power conferred to	Power exercised vis-a-vis	Conditions to be met when exercising the power
Mass Disaster Event - cont.	<p>In addition, under section 90D(f) of the Police Ordinance, in a mass disaster event a constable or any person who fulfills a duty in a rescue body may enter any place, as far as it is necessary in order to perform his duties, and use reasonable force for the purpose of exercising the above mentioned power of entry.</p> <p>Moreover, the Hazardous Substances Event Inspector is granted with some powers, which will be elaborated below under the category of "hazardous substances", during a hazardous substances event or while he acts as a rescue body under section 4A(a)(2) or Chapter Six 1 of the Police Ordinance, and during an exercise in preparation for hazardous substances event. Regarding the preparation phase to a mass disaster event, a District Commander or a region Commander has the power to order the execution of an exercise in preparation for a mass disaster event.</p> <p>In addition, under Article 90D(b) of the Ordinance, "any rescue body and any governmental office or any other body shall be empowered and responsible to take all the necessary measures for the preparation for a mass disaster event and for the prevention or reduction of damages during the occurrence of such an event in the area they are responsible for under any law"...</p>			<p>These conditions will not apply if the person that makes use of these powers believes that no one is present in the relevant place. In addition, the use of these powers, when carried out in the area of a security installation or in an area held by the IDF or in the area of the nuclear research centers under the responsibility of the Israel Atomic Energy Commission, requires the consent of the Commander-in-chief of the IDF or the head of security, as the case may be, or of who was empowered by them for this purpose.</p>

Situation	Powers	Who is the power conferred to	Power exercised vis-a-vis	Conditions to be met when exercising the power
Additional powers in a mass disaster event	<p>If a mass disaster event is declared, the Minister of Industry, Trade and Labor may:</p> <ul style="list-style-type: none"> • declare by order, after consultation with the Prime Minister, the Minister of Public Security or the Minister of Defense, as the case may be, that the provisions of Chapter D of the Emergency Labor Services Law, 1967 allowing to summon people by order to enlist to labor services, will apply within the area on which the declaration applies and on factories providing essential services that are needed for the proper functioning of the area, whether they are located inside the area or outside of it. • Allow the employment of youth after 23:00 where employees work by shifts or when the youth labor is needed due to the declaration of a mass disaster event, provided that it appears to the Minister that the conditions to maintain the safety and welfare of the youth had been ensured (see: section 25(b) to the Youth Labor Law, 1953). 	the Minister of Industry, Trade and Labor (Note: with the formation of the 33th Government the Ministry's name was replaced to "Ministry of Economy)	People	<p>In order for the Minister to exercise his powers a declaration of a mass disaster event should be in force.</p> <p>An order as aforementioned by virtue of the Emergency Labor Services Law will expire on the date which the declaration of a mass disaster event will cease to have effect in, unless revoked earlier by the Minister of Industry, Trade and Labor.</p> <p>The validity of a permit for youth employment as aforementioned will expire on the date the declaration of a mass disaster expires, or in a later time prescribed in the permit.</p> <p>The Minister's power to give such permit for youth employment is also granted to him when a declaration of a special situation on the home front exists (section 9C to the Civil Defence Law).</p>

Situation	Powers	Who is the power conferred to	Power exercised vis-a-vis	Conditions to be met when exercising the power
Additional powers in a mass disaster event	<p>Permit for local authority to perform outside its territory in order to assist another authority.</p> <p>Under Section 233A of the Municipalities Ordinance [New Version] (titled: assistance to another local authority in a state of emergency), the Minister of Interior may give a municipality a permit to perform outside its territory in order to assist another authority in fulfilling an essential duty, role or authority, all in accordance with the conditions determined by him, including of compensation of an assisting municipality when circumstances justify it, when a mass disaster event occurs or is highly likely to occur</p>	the Minister of Interior	Municipalities	<p>The Minister may carry out the power given to him by virtue of the Municipalities Ordinance if the Minister is satisfied that a mass disaster event, as defined by the Police Ordinance, is highly likely to occur or is occurring within the jurisprudence of the local authority getting the assistance; the Minister consulted with the Knesset Internal Affairs and Environment Committee's chairman; the Minister is satisfied that the following two conditions are satisfied: (1) due to the circumstances of the emergency the local authority which is getting the assistance is unable to provide its residents essential service or the service delivery was significantly damaged, (2) the performance of the assisting municipality would not be essentially harmed in fulfilling its duties by law or in providing its residents with services.</p> <p>If the Minister exercised the above mentioned power, he shall notify the Internal Affairs and Environment Committee as soon as possible.</p>

Situation	Powers	Who is the power conferred to	Power exercised vis-a-vis	Conditions to be met when exercising the power
Fires	<p>The "ordinary" powers granted to a firefighter during "a fire and rescue event", which is defined by the National Fire and Rescue Authority Law as "A fire and any other dangerous situation that the Fire and Rescue Authority takes care of, in accordance with its functions", are detailed in Part D of the law (and include: power to entry premises, powers regarding the use of property, etc.).</p> <p>In addition, according to section 25 of the law, during a fire and rescue event in which fear of immediate harm to human life or property arises, a fire and rescue officer (as opposed to a firefighter) may do the following in order to carry out actions the are urgently needed:</p> <p>Use equipment or materials that are in the possession of any person.</p> <p>Give any person orders concerning assistance and use of materials or equipment.</p>	A fire and rescue officer	people and property	<p>A fire and rescue officer may exercise this power only in special circumstances, that is, during a fire and rescue event in which arises fear of immediate harm to human life or property; and – if he is satisfied that the equipment or materials that are available to him are not sufficient for responding to such an event.</p>

Floods	<p>Under section 53 to the Floods Law, the Minister of Agriculture has the power to declare, by order, that a flood affected area is to be a protected area" and in that order or in a later order he may:</p> <ul style="list-style-type: none"> • Prohibit the pasture or movement of animals in the area • Prohibit the "cultivation of land in the area in any form or any work done on the land, including extermination, uprooting, burning or removal of any vegetation". • order the Director of the National Authority for Water and Sewage "to perform any work or action in the protected area by him or by his emissaries, which he believes is urgently needed for repairing the damage caused by flood or for its prevention in the future, provided that no land will be expropriated, nor any right concerning that land, and that no building or permanent facility will be installed within it". 	The Minister of Agriculture	People and the Director of the National Authority for Water and Sewage.	The Minister may exercise the power granted to him by virtue of section 53 of the Floods Law if it appears to the Minister that it is necessary for the purpose of preventing frequent danger that cannot be prevented in any other way, or for the purpose of preventing flood or soil erosion or for repairing damage caused by flood or erosion
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Situation	Powers	Who is the power conferred to	Power exercised vis-a-vis	Conditions to be met when exercising the power
Water Crises	Under section 18A(b) of the Water Law, once a water damage event was declared, the Director of the National Authority "may order any relevant person to take every necessary measure to deal with the event, prevent it, stop it, restore previous condition and prevent its recurrence, and to regulate the water supply for consumers that were harmed by the event, for a period of time and under conditions that he shall prescribe in the order; and all according to the rules" that will be provided by the Council of the National Authority in accordance with sub-section (c).	The Director of the National Authority for Water and Sewage	People	The Director of the National Authority for Water and Sewage can exercise this power only under the existence of a declaration of "a water damage event".

Situation	Powers	Who is the power conferred to	Power exercised vis-a-vis	Conditions to be met when exercising the power
Hazardous Substances	<p>Powers regarding hazardous substances by virtue of the National Fire and Rescue Authority Law</p> <p>Under section 28 of the National Fire and Rescue Authority Law, at the time of a hazardous substances event and during an exercise in preparation for hazardous substances event, in addition to any role, each of the bodies mentioned in subsections (1)-(2) (to this section) will be granted the power subscribed beside it:</p> <p>(1) To an employee of the National Fire and Rescue Authority, which received proper training –</p> <p>(a) Detection, identification and monitoring of hazardous substances during a hazardous substances event</p> <p>(b) Assessment of risks while a hazardous substances event is in progress</p> <p>(2) To a Fire and rescue officer, which received proper training –</p> <p>(a) Giving professional advice to a police officer or I.D.F officer, at their request, on one of the following:</p> <p>(1) on how to deal with hazardous substances in order to prevent, reduce or stop dangers to human beings and the environment</p> <p>(2) on guidelines to the public and to the rescue bodies [...]</p>	Fire and Rescue officers and the employees of the National Fire and Rescue Authority, as the case may be	People and property, along with police officers and I.D.F officers	<p>Such powers may be carried out once a hazardous substance event or an exercise in preparation for hazardous substances event occurs, or when there is suspicion regarding the existence of a hazardous substances event, as the case may be.</p> <p>In addition, an employee of the National Fire and Rescue Authority will not use the powers granted to him by virtue of section 29 of the law, unless:</p> <p>"(1) he received proper training [...] as instructed by the Commissioner and (2) he meets additional qualifications, as far as ordered by the Minister"</p> <p>(Also see above for additional conditions regarding the exercise of the powers, e.g.: powers to conduct a search without a judge's Order)</p>

Situation	Powers	Who is the power conferred to	Power exercised vis-a-vis	Conditions to be met when exercising the power
Hazardous Substances – cont.	<p>According to section 29 of the law, when there is suspicion regarding the existence of a hazardous substances event, an employee of the National Fire and Rescue Authority will be given the following powers:</p> <ul style="list-style-type: none"> (1) To demand that a person in the event area, or a person any of them has reasons to believe is connected to the event or has information about it, give his name and address and present an ID card or other official document that identifies him (2) To demand that a person in the event area, or a person any of them has reasons to believe is connected to the event or has information about it, provide any information or document that is required in order to perform his functions; in this subsection, "document" – including output, as defined in the Computer Law. (3) To conduct tests or measurements or take substance samples of any substance that he has reasonable grounds to believe is a hazardous substance. (4) To conduct a search in a place without a judge's Order, if he has reasonable grounds to believe that hazardous substances are in that place, and to seize a substance he has reasonable grounds to believe is a hazardous substance, and all as far as necessary to save human life or property or to reduce the extent or results of a hazardous substances event; a substance seized as aforesaid shall be returned to the person from whom it was seized, as far as possible and as soon as possible after the hazardous substances event 			

Situation	Powers	Who is the power conferred to	Power exercised vis-a-vis	Conditions to be met when exercising the power
Hazardous Substances – cont.	<p>Powers regarding hazardous substances by virtue of the Hazardous Substances Law.</p> <p>The Hazardous Substances Event Inspector (which is authorized by the Minister of Environmental Protection "from among the staff of his Ministry or from among the employees of the local authority with the consent of the head of that authority") is granted the following powers:</p> <ul style="list-style-type: none"> • According to section 16C2(a): <ol style="list-style-type: none"> (1)"Detection, identification and monitoring of hazardous substances during and after a hazardous substances event (2) Assessment of risks while a hazardous substances event is in progress (3) Giving professional advice to the police officer or I.D.F officer, at their request, on how to deal with hazardous substances in order to prevent, reduce or stop dangers to human beings and the environment, as well as giving professional advice as aforesaid in respect of guidelines to the public and to the rescue bodies... (4) Giving professional advice on restoring conditions in the event area to their previous state, and guidelines for the rehabilitation of the event area" • According to section 16C2(b), "for the performance of his functions under subsection (a), a Hazardous Substances Event Supervisor shall have the powers specified below: <ol style="list-style-type: none"> (1) To demand that a person in the event area, or a person the Supervisor has reasons to believe is connected to the event or has information about it, identify himself (2) To enter any place, as required, in order to treat the hazardous substances event to prevent or reduce danger to human life; (3) To demand documents, study them and take them or copies thereof; 	The Hazardous Substances Event Inspector	People and property, along with police officers and I.D.F officers	A Hazardous Substances Event Inspector (according to section 16C2(a) to the Hazardous Substances Law) shall have the powers aforesaid "at the time of a hazardous substances event or when he acts as a rescue body under section 4A(2) or Chapter Six 1 of the Police Ordinance, and during an exercise in preparation for hazardous substances event ".

Situation	Powers	Who is the power conferred to	Power exercised vis-a-vis	Conditions to be met when exercising the power
Hazardous Substances – cont.	<p>(4) To conduct a search in a place without a judge's Order, if he has reasonable grounds to believe that hazardous substances are in that place, which are liable to cause real and immediate danger to human life;</p> <p>(5) To take a sample of any substance that he has reasonable grounds to believe is a hazardous substance;</p> <p>(6) To seize a substance he has reasonable grounds to believe is a hazardous substance, as necessary to save human life or property or to reduce the extent or results of a hazardous substances event; a substance seized as aforesaid shall be returned to the person from whom it was seized, as far as possible and as soon as possible after the hazardous substances event.</p> <p>Section 16C4 of the law provides that "the provision of section 16C2 shall not apply to a hazardous substances event that originated from an area of the nuclear research centers under the responsibility of the Atomic Energy Commission, or from a defense installation or an area held by the I.D.F., as defined in section 90A of the Police Ordinance, unless the Prime Minister or the Minister of Defense, as the case may be, approved the use of the powers of the Hazardous Substances Event Supervisor said in that section"</p>			

Situation	Powers	Who is the power conferred to	Power exercised vis-a-vis	Conditions to be met when exercising the power
Infectious Diseases	<p>Once the Minister of Health declared by notice that the health of the public is seriously threatened by the existence or a threat of such a disease as aforesaid, under section 20 of the Public Health Ordinance, the Director of Health Services (or a person empowered by him) shall be authorized to regulate or ordain, whether by order, by decree or any other way, that the following will be performed:</p> <ul style="list-style-type: none"> a) Visits from house to house b) Submission of medical aid, distribution of medicines, provision of housing, care of cleanliness, ventilation and disinfection and prevention of the spreading of the disease. c) All matters or things that he may find necessary for the prevention of the disease or its mitigation; <p>In addition, the Director may impose these arrangements, in whole or in part, on the whole state or any part or parts of it and on any ships that are located within its inner shores or its territorial waters.</p> <p>Furthermore, the Director may, after issuing the declaration notice, regulate or install, whether by order, by decree or any other way, the implementation of any measure among the measures listed under this subsection [subsection (2) of section 20 of the Public Health Order] that it appears as needed for preventing the spreading or the penetration of the disease, that is:</p> <ul style="list-style-type: none"> (a) To clear, isolate, stop, provide supervision, medical examination and medical care [to] infected people and people that are in contact with them, and also people who are suspected of being recently liable to being infected, and performing all the necessary actions to get lab samples from each of the persons mentioned above. (b) To inoculate serum in public officials, pilgrims, immigrants, travelers and touch tools or people who are suspected of being recently liable to be infected 	The Director of Health Services, the governmental services or the Head of a District, as the case may be	People and property	<p>These powers, with the exception of the power regarding the regulation of burial, can be carried out only with the existence of a declaration that the public health is threatened, as aforesaid.</p> <p>The powers granted to the Head of a District regarding building destruction can be used only if an adequate request from the Director or a doctor of the government exists</p>

Situation	Powers	Power conferred to	Power exercised vis-a-vis	Conditions when exercising the power
	<p>(c) Enter at any time any public or private building and examine it in order to locate sick people and to take all necessary measures to prevent the spreading of the disease</p> <p>(d) To introduce and regulate sanitary supervision and disinfect public or private water supplies</p> <p>(e) Seize, arrest, disinfect or destroy infected objects or objects that are liable to infection or may cause infection, provided that it will be possible to compensate for objects and goods.</p> <p>(f) Bury the dead or dispose of them in any other way</p> <p>(g) To provide passengers from infected areas with medical supervision</p> <p>(h) To purchase by angary¹⁴ – for a fee – land or buildings for housing people liable to detention or isolation or people who need housing as a result of the implementation of the aforesaid measures</p> <p>(i) Seize, on a fee basis, building or lands in order to install within them temporary hospitals in connection with the measures taken for preventing or eliminating the disease</p> <p>(j) To seize by angary, on a fee basis, transport means that are required in connection with the measures taken for the elimination of the disease</p> <p>In addition:</p> <ul style="list-style-type: none"> • The Director or a governmental doctor may regulate matters regarding burial • Pursuant to a requirement of the Director or a governmental doctor, a Head District may order to destroy any building or shelter used for human or animal habitation, that for its non-sanitarian condition it constitutes, in the Director's or the doctor's opinion a spreading center of the disease., also, if an epidemic broke out in a restricted area the Head of the District may order that no man will leave the restricted area and he may take actions such as surrounding the area with a sanitarian chain or other measures, as far as he finds necessary to effectively fulfil the order, and for that purpose he may require the help of the police. 			

¹⁴ "Angary", the name given to the right of a belligerent (most commonly, a government or other party in conflict) to seize and apply for the purposes of war (or "to prevent the enemy from doing so) any kind of property on belligerent territory, including that which may belong to subjects or citizens of a neutral state.

See: <http://en.wikipedia.org/wiki/Angary>

Situation	Powers	Who is the power conferred to	Power exercised vis-a-vis	Conditions to be met when exercising the power
War and a special situation on the home front	<p>Regarding a state of war – see the part concerning emergency regulations under a general state of emergency, above.</p> <p>Powers regarding a special situation in the home front: According to section 9D of the Civil Defense Law, during a special situation in the home front or during an attack, the Commander-in-chief of the IDF; his deputy; the Head of the Israeli Operations Directorate; the Head of Civil Defense; an officer of the I.D.F, with the rank of Major General when he acts as a Major General in Command in relation to the area which they are in charge of, may issue as necessary any required order, in order to save or ensure human life or property, to any person, any type of people or the entire public, and in particular:</p> <ul style="list-style-type: none"> (a) Impose an obligation to stay in certain places, including in homes or other buildings, bomb shelters or security rooms; (b) Prohibit or restrict schooling in educational institutions (c) Give instructions regarding personal equipment for purposes of civil defense (d) Establish provisions regarding blacking-out and regarding the protection of windowpanes of any kind (e) Revoke licenses granting a right to use bomb shelter for purpose other than sheltering during an attack (f)- (h) order those who have in their possession bomb shelters and public shelters to open those shelters, clear them for any unnecessary chattels and to regulate their use. <p>In addition, during a special situation in the home front or at a time of an attack, a Civil Defense member may, for the purpose of fulfilling his duty, to use reasonable force when exercising the entry power granted to him in accordance with section 9(a) of the Civil Defense Law.</p>	<p>the Commander-in-chief of the IDF; his deputy; the Head of the Israeli Operations Directorate; the Head of the Home Front Command; an officer of the I.D.F, with the rank of Major General when he acts as a Major General in Command.</p>	<p>People and property</p>	<p>Orders by virtue of section 9D of the Civil Defence Law, as mentioned above, will expire whenever the person who gave the order revokes it or issues a different order to replace it or whenever the declaration of a special situation on the home front ceases to exist.</p>

Situation	Powers	Power conferred to	Power exercised vis-a-vis	Conditions when exercising the power
War and a special situation on the home front – cont.	<p>Section 9(e) of the Civil Defense Law details several additional powers that the law grants to an officer serving in Civil Defense during a special situation on the home front or during an attack, as far as it is necessary for saving life or property or preventing serious harm to life or property. These powers include the power to order a Civil Defense member and a volunteer in a assisting organization to perform their duties, the power to give any person in the installed territory or in the area that may be under an attack a reasonable order and more.</p> <p>Moreover, when a special situation on the home front is declared with regard to an area within a local authority's territory, the Minister of Interior may permit a municipality to act outside of its territory in order to assist another local authority to fulfil any essential duty, role or power, all in accordance with the conditions determined by him, including regarding matters dealing with compensating an assisting municipality in circumstances justifying it.</p> <p>In addition, during a special situation on the home front:</p> <ul style="list-style-type: none"> • The Minister of Industry, Trade and Labor has the power to employ teenagers after 23:00 (see above). • The Minister of Industry, Trade and Labor may declare by order, after consultation with the Minister of Defense, and if it appears to the Minister of Industry, Trade and Labor that the possibility to provide existential services to the population in the area which the declaration applies on might be harmed, or that malfunctions or real hazard might be caused to the production or the supply system providing existential services , that the provisions of Chapter D of the Emergency Labor Services Law, allowing to summon people by order to enlist to labor services, will apply for the purpose of providing the aforesaid services. The Minister may summon by orders those who are obliged to take part in the labor services, whether their place of residence/workplace/the vital factory are within the aforementioned area or outside it. • Order as such will cease to have effect the day the declaration of a special situation on the home front will come to end, unless the Order was revokes earlier by the Minister. 			

Situation	Powers	Who is the power conferred to	Power exercised vis-a-vis	Conditions to be met when exercising the power
Terrorist events	<p>The Emergency Powers (Detention) Law, 1979 provides the Government the power to perform administrative detentions:</p> <p>According to section 2(a) of the law, "where the Minister of Defense has reasonable cause to believe that reasons of state security or public security require that a particular person be detained, he may, by order under his hand, direct that such person be detained for a period, not exceeding six months, stated in the order". When the Minister Of Defense "has reasonable cause to believe that reasons of state security or public security still require the detention of the detainee, he may from time to time, by order under his hand, direct the extension of the validity of the original detention order for a period not exceeding six months" (see section 2(b)).</p> <p>The chief of General staff is also granted with similar powers and according to section 2(c) of the law "where the Chief of the General Staff has reasonable cause to believe that conditions exist permitting the Minister of Defense to order the detention of a person under subsection (a), he may, by order under his hand, direct that such person be detained for a period not exceeding 48 hours and not capable of extension by order of the Chief of the General Staff".</p> <p>Note that according to section 4 of the law "where a person is arrested by order of the Minister of Defense under this Law, he shall, within 48 hours of his arrest, or, if immediately before he was under detention by order of the Chief of the General Staff, within 48 hours of his arrest under that order, be brought before the President of a District Court..".</p> <p>If not brought before the President, "or the hearing before him is not begun, within 48 hours as aforesaid, the detainee shall be released unless some other ground for detaining him exists under any law".</p>	The Minister of Defense, the chief of General staff and Military Commanders, as the case may be		The exercise of powers by virtue of the Emergency Powers (Detention) Law, 1979 is only possible during a period in which a (general) state of emergency exists in the State. The validity of the Prevention of Terrorism Ordinance, 1948 also depends on the existence of such an emergency (meaning the Ordinance shall only apply during a period in which a (general) state of emergency is in force).

Situation	Powers	Who is the power conferred to	Power exercised vis-a-vis	Conditions to be met when exercising the power
Terrorist events – cont.	<p>In addition, the Defense (Emergency) Regulations, 1945 (British mandatory law) grant various powers to Military Commanders for fighting terror:¹⁵</p> <ul style="list-style-type: none"> • Forfeiture and demolition of property (used by terrorist for their actions), by virtue of regulation 119(1): "A Military Commander may by order direct the forfeiture to the Government of Palestine of any house, structure, or land from which he has reason to suspect that any firearm has been illegally discharged, or any bomb, grenade or explosive or incendiary article illegally thrown, or of any house, structure or land situated in any area, town, village, quarter or street the inhabitants or some of the inhabitants of which he is satisfied have committed, or attempted to commit, or abetted the commission of, or been accessories after the fact of the commission of, any offence against the Regulations involving violence or intimidation or any Military Court offence; and when any house, structure or land is forfeited as aforesaid, the Military Commander may destroy the house or the structure or anything on growing on the land..." • Imposition of curfew, by virtue of regulation 124: "a Military Commander may by order require every person within any area specified in the order to remain within doors between such hours as may be specified in the order"... • Imposition, by orders, of closure or encirclement, by virtue of regulation 122, 125 and 126. • Declaration of any area or place to be a closed area, by virtue of regulation 125. <p>In addition, the Prevention of Terrorism Ordinance, 1948 allows the closing of any place serving a terrorist organization; the declaration of a particular body of persons to be a terrorist organization and also states that "a person who is a member of a terrorist organization shall be guilty of an offence and be liable on conviction to imprisonment"...</p>			

¹⁵עמנואל גרוס, מאבקה של דמוקרטיה בטרור – היבטים משפטיים ומוסריים, שער רביעי "סמכויות מפקדים צבאיים במלחמה בטרור" (2004).

Rights in Emergencies

Below is detailed legislation that expressly addresses rights during states of emergencies. It should be emphasized that each of the aforementioned powers embodies a certain balance that constitutes a violation of human rights. Thorough discussion regarding this issue requires further deepening, especially in case law, which is yet to be reviewed at this phase of the research. Hence, the purpose of this chapter is only to demonstrate a legislative involvement regarding this issue (and not provide a detailed review concerning it).

According to Article 39(c) of the Basic Law: The Government: "emergency regulations may alter any law temporarily suspend its effect or introduce conditions, and may also impose or increase taxes or other compulsory payments unless there be another provision by law". However subsections (d) and (e) restrict to some level the scope of the regulation by stating that "emergency regulations may not prevent recourse to legal action, or prescribe retroactive punishment or allow infringement upon human dignity" and "emergency regulations shall not be enacted, nor shall arrangements, measures and powers be implemented in their wake, except to the extent warranted by the state of emergency".

Basic Law: Human Dignity and Liberty, states explicitly under section 12, that "this Basic Law cannot be varied, suspended or made subject to conditions by emergency regulations". However, this section further provides that "notwithstanding, when a state of emergency exists, [by virtue of a declaration aforesaid] [...] emergency regulations may be enacted [...] to deny or restrict rights under this Basic Law, provided the denial or restriction shall be:

- for a proper purpose and
- for a period and extent no greater than is required".

Similarly, Basic Law: Freedom of Occupation states, under section 6, that "This Basic Law shall not be varied, suspended or made subject to conditions by emergency regulations".

Regulation

Below is an initial review of regulatory arrangements of states of emergencies, divided by the following categorization: regulation through information; regulation through licensing; criminal liability; civil liability and regulation through insurance. There is also a possibility of regulation through taxation, which is not mentioned here. Once again, the purpose of this chapter is only to demonstrate the possible use of regulatory arrangements during emergencies (and not provide a detailed review concerning the subject):

- Regulation through information:** according to section 2 of the Civil Defense Law, the Civil Defense Service is granted, inter alia, the power to instruct the public regarding every concern of civil defense, and coordinate, the actions of the various government ministries, the activities of local authorities and the activities of private plants regarding all matters relating to civil defense.

Regarding earthquakes, in 1975 Israeli Standard SI 413, which deals with earthquake resistant construction was established. In 1980 it was determined that the Standard applies on structures that have been constructed from January 1, 1980 onward. It should be noted that the enforcement of the Standard is problematic.¹⁶
- Regulation through licensing:** in 2005 the "National Master Plan for strengthening existing buildings against earthquakes"¹⁷ (TMA 38) was approved. The plan's main purpose is to provide incentives for home owners, to take initiative in strengthening building foundations. TMA 38 provides home owners with building rights of an extra floor, without the need to issue or change a detailed plan that applies on the structure. The plan had been criticized for not encouraging structural strengthening of public or residential buildings in the peripheries, and its implementation meets various difficulties.¹⁸
- Criminal liability:** according to section 2 of the Protection of Employees During a State of Emergency Law, 2006, employers are not allowed to dismiss employees who could not make it to work due to emergency circumstances. According to section 7 of the law, an employer not complying with section 2 – shall be guilty of an offense and be liable for a fine under section 61(a)(2) of the Penal Code. There are also some punitive provisions dealing with matters concerning planning and building (see: sections 204-209 of the Planning and Building Law, 1965), which can be used in matters concerning structural protection, as required by the law.

Moreover, there is a general criminal liability that can be imposed on anyone who interrupts rescue forces during performances or does not comply with their orders. The latter has a particular importance during emergencies.

¹⁶ דו"ח מבקר המדינה על "עמידות מבנים ותשתיות ברעידות אדמה – תמונת מצב", מרץ 2011, עמ' 11 ו-9.

¹⁷ See section 1 of TMA 38

¹⁸ דו"ח מבקר המדינה, לעיל ה"ש 16, בעמ' 10

- **Civil liability:**

- (1) The Civil Wrongs (Liability of the State) Law, 1952 regulates the State's liability regarding Civil Wrongs, and states under section 2 of the law that "with respect to civil liability, the state shall be deemed as any incorporated body, except as provided in this law". The law provides for several exceptions, for example, in accordance with section 5 of the law that "the state is not civilly liable for an act performed through a Wartime Action of the Israel Defense Forces".¹⁹ A different exception that was embodied in the law (section 5C) regarding the civil liability of the state with respect to "damages sustained in a zone of conflict" was repealed in 2012 (it should be mentioned that a ruling²⁰ of the Supreme Court of Israel (in his rule as the High Court of Justice) declaring the annulment of the section preceded the amendment of the law that repealed section 5C).²¹ A "Wartime Action" is defined by the law as follows: "including any action of combating terror, hostile actions, or insurrection, and also an action as stated that is intended to prevent terror, hostile actions, or insurrection", which is of nature of wartime action, in view of all its general circumstances, including the purpose of the operation, the geographical location or the threat imposed on the force exercising it.
- (2) Different provisions state the State's obligation to compensate people whose property was damaged as a result of its activities during emergencies. For example, according to section 90D(a) of the Police Ordinance, if an equipment that was provided for rescue bodies during a mass disaster event, in accordance with section 90D(3) of the Ordinance, was not returned or damaged, the State Treasury shall compensate the owner, and shall pay user fees for the equipment.
- (3) In respect to civil liability, the Natural Disaster Victims Compensation (Compensation for damages that suffered agriculture infrastructures) Law, 1989 should be mentioned. Section 1A of this law allows the government to declare a "Natural Disaster", upon the recommendation of the Minister of Agriculture and Rural Development, provided that the declaration was pronounced after consultation with the Minister in charge of the Israeli Metrological Service, the Hydrological Service of Israel or the Israeli Geological Survey. This declaration grants compensation rights to those who belong to the agriculture sector and suffered from "damage resulting from natural disaster". "Damage resulting from natural disaster" is defined by the law as damage to agriculture infrastructures, resulting in the loss of income, and all due to a natural phenomenon of unusual extent or unusual intensity or abnormal duration, or due to an unusual accumulation of natural phenomena, which the acceptable measure in agriculture for its prevention and treatment were found inefficient, and that the government has declared it under section 1A to be a "natural disaster". The law states, inter alia, conditions for receiving the compensation money and restrictions regarding its amount. In addition, the law states under section 1A(b) the considerations that the government must take into account when declaring of a natural disaster:

¹⁹מרדכי קרמיניצר, יובל שני וגיא לוריא *אחריות המדינה בנויקין בגין פעולות למניעת טרור* (2009), [באתר המכון הישראלי לדמוקרטיה](#)
²⁰ בג"ץ 8276/05 עדאלה – המרכז המשפטי לזכויות המיעוט הערבי בישראל נ' שר הביטחון, סב (1) 1 (2006).
²¹ בג"ץ 8276/05 עדאלה – המרכז המשפטי לזכויות המיעוט הערבי בישראל נ' שר הביטחון, סב (1) 1 (2006).

- (1) The estimated total amount of money necessary to evaluate the damages resulted from the natural disaster ... and to pay for the damages aforementioned.
- (2) The estimated total amount of money of compensation to be paid under this law for damages resulted of the natural disaster.

By virtue of section 3(b), 4 and 7 of the law, regulations setting additional arrangement regarding the implementation of the law (regarding the entitlement to receive compensation and its amount) were made. Among other things, the regulations established that the government's declaration of a natural disaster should be published in the Reshumot and in three daily newspapers. In addition, the regulations stipulate that a compensation entitlement committee should be established, while stating explicit orders regarding how to assess and calculate the damage and the compensation.

- **Regulation through insurance:** according to the Property Tax and Compensation Fund Law, 1961, the state is responsible for the compensation of Israeli Citizens, in respect to direct and indirect damages caused to them as a result of different wartime actions. In addition, by virtue of the law compensation is also paid for damages caused by drought.²² It should be mentioned that on January 1, 2013, the Israel Tax Authority published forms and guidelines on how should business from southern Israel, that suffered from indirect damages due to military operation "Pillar of Cloud", submit a claim for compensation, in accordance with Government Decision to give such, and Property Tax and Compensation Fund Regulations (payment of compensation) (war damage and indirect damage) (temporary order), 2012.²³

In addition, according to the Property Tax and Compensation Fund Law and the regulations made under its virtue, household objects (e.g.: furniture, clothes, electricity devices, etc.) can be insured for damages resulting of war, up to a certain value, and in accordance with the regulations. The insurance does not require premium payments.²⁴

It should be mentioned, that in addition to the Protection of Employees During a State of Emergency Law, 2006, Government Decision 4575 stipulated that parents, which were absent from work in accordance with the guidelines published by the Home Front Command due to the security situation in Gaza and Southern Israel, should be given compensation.²⁵

²² האתר של רשות המיסים בישראל, משרד האוצר -

http://taxes.gov.il/EMERGENCYINFORMATIONA_COMPENSATIONFUNDPROPERTYTAX/Pages/MasRechushKerenPitzuinm.aspx

²³ שם, ב - http://taxes.gov.il/about/publicannouncements/pages/ann_010113_3.aspx

²⁴ שם, ב - http://taxes.gov.il/emergencyinformationa_compensationfundpropertytax/pages/guides/pituyimguideinshurance.aspx

²⁵ החלטת הממשלה מס' 4575 (חכ/275), מתן פיצוי להורים שנעדרו מעבודתם עקב הנחיות פיקוד העורף בעקבות המצב הביטחוני בעוטף עזה ובאזור הדרום (22.04.2012).

<http://www.pmo.gov.il/Secretary/GovDecisions/2012/Pages/des4575.aspx> (באתר משרד ראש הממשלה).

Emergency Laws and Regulations in India: Executive Summery

Legislative framework

There are two main pieces of legislation in India directly related to emergency situations; The **Constitution of India** and The **National Disaster Management Act of 2005 (NDMA)**. The former specifies provisions for National Emergency, State Emergency (also known as Constitutional Failure or the President's Rule) and Financial Emergencies. It does not, however, refer to natural disasters.

The **NDMA** provides a broader definition of disasters to include natural and man-made events which result in a substantial loss of life and destruction of property and environment. The **NDMA** constitutes the institutional framework for disaster management in India, establishing the National Institute for Disaster Management (*NIDM*) and the National Disaster Management Authority (*NDMA*). The **NDMA** also granted NIDM a statutory status. NDMA, which is headed by the Prime Minister, is responsible for implementing Disaster Management in India, promoting policies and ensure effective response to disasters.

Entrance into a state of emergency

Since the NDMA ACT provides only an institutional framework, it does not relate to declaration of emergency in cases of natural disasters. In circumstances of war, external aggression or armed rebellion (National Emergency) a state of emergency is declared by the President but is subject to written advice by the Cabinet and approval of both Houses of Parliament with a special majority within a month after the proclamation. Unless revoked, a state of National Emergency will expire after six months but may be extended. Emergencies under Failure of Constitutional Machinery are declared by the President and subjected to the approval of the Houses of Parliament within two months. Such state will expire after six months, but may be extended for six months each time and no more than three years. Proclamation of a state of Financial Emergency is subjected to the approval of both houses of Parliament within two months and once approved will remain in effect until revoked by the President.

Legal Powers

Legal powers before, during and after a natural emergency are provided mainly under the Constitution or the **NDMA Act**, and are elaborated in the report. We are familiar with at least one case in India history where the Government of India passed statue that allowed it to function as the legal representative for victims of a disaster.

Rights in emergency situations

Article 358 of the Constitution states that fundamental rights under Article 19 are suspended while a National Emergency is declared and in operation. Article 19 of the Constitution protects the rights of freedom of speech; assemble; form associations; move freely throughout the territory of India; reside and settle in any part of India and to practice any profession, or to carry on any occupation. In such an emergency, "the power of the State to make any law or to take any executive action" shall not be restricted by the protected rights in Article 19, as long as such laws or actions are in relation to the emergency. Furthermore, any such law shall cease to have effect once the proclamation terminates.

Article 359 of the Constitution provides that when a Proclamation of Emergency has been activated, an enforcement of any fundamental right may be suspended by the issue of a Presidential Order for as long as such action is in relation to the emergency and given that it is brought before both Houses of Parliament. The article excludes suspension of the rights granted under articles 20 and 21, so that the following rights are non-derogable under India constitution: the rights concerning fair trial, retrospective criminal punishment, double jeopardy, self-incrimination , right to life and personal liberty . The article excludes suspension of the rights granted under articles 20 and 21 of the Constitution, so that the following rights are non-derogable under the Constitution of India: the rights concerning fair trial, retrospective criminal punishment, double jeopardy, self-incrimination, right to life and personal liberty).

Emergency Laws and Regulations in India: Synopsis

General

With a population of approximately 1.2 billion²⁶, India has a federal system comprised of 35 jurisdictions known as states and the national Government of India at the federal level. With a long trace history²⁷ of natural disasters such as the Bengal famine²⁸, Orissa Super Cyclone²⁹, Gujarat earthquake³⁰, Bhopal chemical disaster³¹, recurring floods, the 2004 Indian Ocean tsunami³², the 2008 terror attacks and many other disasters³³ - there is "no foyer in the world with space large enough to exhibit the collective pain on the face of India"³⁴. Aside from natural disasters, India has encountered emergencies relating to internal and external threats on the grounds of the emergency provisions in the Constitution of India: National emergency, State emergency (known as Constitutional Failure or the President's rule) and Financial Emergency. Despite its record as one of the most disaster prone countries in the world and a constitutional history as described below, India seems to manages its way from its grim reality to a successful example of Emergency and Disaster management, in terms of a well-structured constitutional mechanism as well as high level preparedness for natural disasters while constantly shifting from a responding-approach to a proactive approach of prevention.

Legal framework

Two main pieces of legislation in India directly refer to an emergency situation³⁵:

²⁶ The world fact book, at <https://www.cia.gov/library/publications/the-world-factbook/rankorder/2119rank.html>

²⁷ India was one of the first countries to adopt a Famine Code back in 1883, which comprised of a series of government guidelines and regulations on how to respond to famines and food shortages

²⁸ Approx. 1.5-4M people died in Bengal in 1943, according to the famine inquiry commission report Bengal; see Ghosh, K.C.(1944) Famines in Bengal 1770-1943 (National Council of Education, Bengal, Calcutta, 2nd ed., 1987) and Dyson and Maharatna (1991) Dyson, T. and a. Maharatna, "Excess mortality during the Great Bengal Famine: a Re-evaluation" in The Indian Economic and Social History Review, Vol 28, No. 3, 1991

²⁹ 10,000 died in the Orissa Super Cyclone in 1999

³⁰ 20,000 died in Gujarat in 2001 http://earthquake.usgs.gov/earthquakes/eqarchives/year/2001/2001_01_26.php

³¹ There were about 3,828 instantaneous deaths in the **Bhopal** gas leak in 1984 - <http://www.bhopal.com/chronology>

³² 15,000 died in that tsunami, which followed the SUMATRA earthquake,

³³ See India Natural Disasters database at Université catholique de Louvain. 2009. EM-DAT: The OFDA/CRED International Disaster Database. Brussels, Belgium: Université catholique de Louvain, at <http://www.emdat.be/result-country-profile>

³⁴ Kapur Anu, Neeti, Meeta, Deeptima, Roshani, and Debanjali., Disasters in India: Studies of Grim Reality, Jaipur: Rawat Publications, 2005

³⁵ There are other laws that include emergency related provisions, yet we will not elaborate on each given scope restrictions. For further reading (non-inclusive list) see: The Indian Famine Code, 1883; The Coking Coal Mines (Emergency Provisions) Act, 1971; Bhopal Gas Leak Disaster (Processing of Claims) Act, 1985; The Environment (Protection) Act, 1986; The Public Liability Insurance Act, 1991; The national environment tribunal act, 1995; The Chemical Accidents (Emergency Planning, Preparedness and Response) Rules, 1996; Gujarat Disaster Management Act, 2003

PART XVIII of the **Constitution of India**, titled as "Emergency provisions", includes three major emergency provisions: National emergency; State emergency (Failure of Constitutional Machinery); and Financial emergency³⁶. "Emergency" is defined as *war, external aggression, armed rebellion, failure of constitutional machinery and a threat to financial stability*. The Constitution does not specifically refer to natural disasters. India has known three major periods of National emergencies due to threats to its security; In 1962 and 1971 on the basis of "external aggression" and "the Emergency" period in 1975, regarded as a low point in India's history. Furthermore, State emergency provisions have been enforced in many instances which resulted in the dissolution of states' governments due to constitutional failure.

The second piece of legislation which deals with disasters is **The National Disaster Management Act of 2005 (NDMA Act)**. According to the NDMA Act, disaster is defined as "catastrophe, mishap, calamity or grave occurrence in any area, arising from natural or man made causes.. which results in a substantial loss of life or human suffering or damage to, and destruction of property, or.. environment..."³⁷. The NDMA Act constitutes the institutional framework for disaster management in India, *inter alia*, by establishing the National Institute for Disaster Management (NIDM)³⁸ and the National Disaster Management Authority (NDMA)³⁹. NIDM aims to promote a culture of prevention and preparedness to natural disasters and is responsible for "planning and promoting training and research in the area of disaster management, documentation and development of a national level information base relating to disaster management policies, prevention mechanisms and mitigation measures"⁴⁰. The NDMA Act also granted NIDM a statutory status.

NDMA, which is headed by the Prime Minister, is responsible for implementing an integrated approach to Disaster Management in India while laying down policies and guidelines to ensure effective response to disasters. These bodies⁴¹ are part of India's well branched Disaster Risk Management Network⁴² which aims to facilitate and activate policies and guidelines⁴³ for effective Disaster Management.

³⁶ Articles 352, 356 and 360 of the Constitution of India, correspondingly.

³⁷ Disaster Management Act 2005, chapter 1, 2(d).

³⁸ UN resolution 236/44 regarding "The International Decade for Natural Disaster Reduction" (RES 236/44 of December 1989) contributed to the formation of the National Centre for Disaster Management in India (NCDM) in 1995, which was later on upgraded to the National Institute of Disaster management (NIDM) in 2003, under the Ministry of Home Affairs. Historically, NCDM was part of the public administration under The Ministry of Agriculture, Department of Agriculture and Cooperation, yet in an order of October 16, 2003 the government upgraded NCDM and established NIDM under Ministry of Home Affairs. For further read see National Institute of Disaster Management (NIDM) "Genesis and Functions" at <http://nidm.gov.in/genesis.asp>

³⁹ The National Disaster Management Authority (NDMA) is established under article 3 of The Disaster Management Act of 2005. see also <http://www.ndma.co.in/>

⁴⁰ National Disaster Management Act of 2005 article 42(8)

⁴¹ Another important aspect of the Act is that it constituted the National Disaster Response Funds under article 46 (established by the Government of India in res 32-3/2010-NDM-1 in September 2010), as well as established the National Disaster Response Force (NDRF), a high-tech national disaster response military related force under articles 44, 45 of the Act. For further read see <http://ndrfandcd.gov.in/>

⁴² <http://www.hrdp-idrm.in/e5830/>

Below is a non-comprehensive list of laws dealing with emergencies and extreme conditions in India:

Natural disasters	National security	Socio-economic meltdowns
The National Disaster Management Act, 2005	Constitution of India, Provision 352 (National Emergency)	Constitution of India, Provision 360 (Financial Emergency)
The Indian Famine Code, 1883		
The Gujarat Disaster Management Act, 2003 ⁴⁴		
The Bhopal Gas Leak Disaster (Processing of Claims) Act, 1985		
The Coking Coal Mines (Emergency Provisions) Act, 1971		
The Environment (Protection) Act, 1986		
The Public Liability Insurance Act, 1991		
The National Environment Tribunal Act, 1995		
The Chemical Accidents (Emergency Planning, Preparedness and Response) Rules, 1996		
Constitution of India provision 356 (Basket Clause – Failure of Constitutional Machinery also known as the President’s Rule)		

⁴³ See national policy on disaster management 2009 (India) and Guidelines on various disasters at: <http://ndma.gov.in/ndma/guidelines.html>

⁴⁴ The Act followed a significant earthquake in the state of Gujarat and is regarded in various sources as a fine example for disaster management and is thus stated here. However, as the Act is not on the federal level but deals with one state, it will only be addressed generally.

Declaration of a state of emergency: A Table of Analysis

Situation	Definition of an “emergency”	Who may declare the state of emergency and under what conditions?	Statutes that come into force during emergency	How does a state of emergency end?	Reference (statute and article)
Natural disasters	As mentioned in the preface – the Constitution of India does not deal with emergencies arising from natural disasters. The NDMA Act which constitutes the institutional framework for natural disasters preparedness and response defines disaster as "catastrophe, mishap, calamity or grave occurrence in any area, arising from natural or man made causes.. ". The NDMA Act does not require a declaration of emergency in order to activate the institutional response.				
War, external aggression or armed rebellion	"a grave emergency exists whereby the security of India.. is threatened, whether by <u>war</u> or <u>external aggression</u> or <u>armed rebellion</u> " ⁴⁵ (underlines are not in the original text). *The President may declare emergency to that effect for the whole of India or any part thereof, even before the actual threat occurs. **The provision of National Emergency under Article 352 was amended various times, and the 44th Amendment act is considered a landmark in that it narrowed the Article's scope in order to avoid misuse of emergency powers previously granted. ⁴⁶	The President, subjected to the Cabinet's written advice and approved by resolutions of both Houses of Parliament ("Lok Sabha" - House of the People, and "Rajya Sabha" – (Council of States) within a month of the proclamation of Emergency and on the basis of a special majority ⁴⁷ .	Have not been found during research	An approved proclamation of emergency shall, unless revoked beforehand ⁴⁸ , cease to operate on the expiration of a period of six months that may be extended for periods of six months each time ⁴⁹ .	Constitution of India, Article 352

⁴⁵ Constitution of India, Provision 352

⁴⁶ The Constitution (44th Amendment) Act, 1978. The 44th Amendment came into force on April 30, 1979, and was a direct influence of the internal emergency that was imposed and lasted in India between the years 1975-1977. Some of the alterations were: before the amendment the President could proclaim emergency on the basis of war, external aggression or *internal disturbance*, which was replaced by the term "armed rebellion" due to the danger in the phrase being too vague; before the amendment the President could proclaim Emergency on the oral advice of the Prime Minister whereas after the amendment a requirement of a written Cabinet advice was established; Another safeguard provided in the 44th Amendment is the need for Parliament's special majority to approve the proclamation of emergency.

⁴⁷ Article 352(6)

⁴⁸ May be revoked by a subsequent Proclamation 352(2) or given a resolution disapproving it 352(7)

⁴⁹ Article 352(5)

Situation	Definition of an “emergency”	Who may declare the state of emergency and under what conditions?	Statutes that come into force during emergency	How does a state of emergency end?	Reference (statute and article)
Terror events	May be regarded as a State Emergency under article 356 – Failure of Constitutional Machinery (see Punjab insurgency ⁵⁰)				
Socio-economic meltdowns	"satisfied that a situation has arisen that financial stability and credit of India or any part thereof is threatened" ⁵¹	The President, Proclamation is subjected to the approval of both houses of parliament within two months ⁵²	Have not been found during research	Within 2 months if not approved by parliament ⁵³ ; once approved till revoked by the President	Constitution of India, Article 360
Cyber	No specific legislation dealing with cyber threats has been found, however, it seems that in some cases the articles in the Constitution dealing with the three types of emergencies can be applied ⁵⁴ .				
Other - Failure of Constitutional Machinery (also known as the President’s Rule)	"a situation has arisen in which the Government of the State cannot be carried on in accordance with the provisions of this Constitution"	The President, Proclamation is subjected to the approval of both houses of parliament within two months ⁵⁵	Have not been found during research	An approved proclamation of emergency shall expire within six months. May be extended by a presidential resolution approved by both houses of parliament for additional six months each time and up to no more than three years ⁵⁶	Constitution of India, Article 356 ⁵⁷

⁵⁰ In the State of Punjab "President's Rule" has been declared several times throughout the 80' due to, *inter alia*, terror activities. For further read see: Subhash Chander Arora, *President's Rule in Indian States: A Study of Punjab* (New Delhi : Mittal Publications, 1990).

⁵¹ Article 360

⁵² Whereas declaring National Emergency under Article 352 requires a special majority, it seems that Socio-economic emergency under article 360 does not.

⁵³ Article 360 (2)(c)

⁵⁴ It should be noted that an “Indian Computer Emergency Response Team” (CERT), a national nodal agency responsible for responding to cyber security threats, exists (see:

<http://www.cert-in.org.in>).

⁵⁵ Article 356(3), similarly to article 360 concerning financial emergency, does not address special majority.

⁵⁶ In accordance with article 356(4). Note that with respect to the State of Punjab, the reference has been amendment in the Constitution and construed as a five years with regard to the proclamation issued on May 1987, see 68 amendment 68 of 1991 at <http://indiacode.nic.in/coiweb/amend/amend68.htm>

⁵⁷ Whereas the elected state government is suspended and administration is conducted by the Governor of the state (which is appointed by the president), the effective government is run by the Union. While dealing with the balance of power between state and central governments, in *S.R. Bommai vs Union of India* the Indian Supreme Court laid down guidelines for executing Article 356 in order to avoid its misuse. *Inter alia*, it stated that the powers granted under the Article are not absolute and are subjected to judicial scrutiny. See *S.R. Bommai vs Union Of India* {1994} AIR 1918, 1994 SCC (3) 1

Legal Powers (during emergency)

Situation	Powers	who is the power conferred to	power exercised vis-a-vis	Conditions to be met when exercising the power	Article in the Constitution
Earthquake	Under the National Disaster Management Act, 2005 each district is responsible for disaster preparedness, and mitigation activities. ⁵⁸ Gujarat Disaster Management Act (2003) mandates every citizen to help state administration in emergency operation. ⁵⁹				NA
Fire					
Epidemic					
Flood					
Tsunami					
Storms (tornado, hurricane)					
War, external aggression or armed rebellion	<ul style="list-style-type: none"> • Legislative powers⁶⁰ - Parliament is granted legislative powers with respect to any matter in the relevant State • Executive powers⁶¹ - State Government is brought under the effective control of the Union • Distribution of revenues⁶² - provisions of articles 268 to 279, which relate to taxation, are subjected to exceptions as seems fit by the President. 	<ul style="list-style-type: none"> • Parliament • The Union • President 		<ul style="list-style-type: none"> • a Proclamation of Emergency is in operation • a Proclamation of Emergency is in operation • a Proclamation of Emergency is in operation and the order must be laid before each House of Parliament 	<ul style="list-style-type: none"> • Article 250 and Article 353(b) • Article 353(a) • Article 354

⁵⁸ NDMA rules and responsibilities, at <http://ndma.gov.in/ndma/rolesrespons.html>

⁵⁹ Section 31 of the Gujarat Disaster Management Act, 2003

⁶⁰ Constitution of India, Articles 250 and 353(b)

⁶¹ Article 353(a)

⁶² Article 354

Situation	Powers	who is the power conferred to	power exercised vis-a-vis	Conditions to be met when exercising the power	Article in the Constitution
Terror events					
Socio-economic meltdowns	<ul style="list-style-type: none"> • Executive powers⁶³ - Powers are vested in the President to instruct and give orders to States on all financial matters, including the decrease of salaries of civil servants • Legislative power - direct the government that all financial and Money Bills passed by legislature are reserved for the President's consideration⁶⁴ 	<ul style="list-style-type: none"> • President • President 			<ul style="list-style-type: none"> • Article 360 • Article 360 (4)(a)(2)
Other – Failure of Constitutional Machinery	<ul style="list-style-type: none"> • Legislative powers⁶⁵ - State legislative functions can be assumed by the Parliament or the President • Executive powers⁶⁶ - President may take over all administrative and executive powers of the State 	<ul style="list-style-type: none"> • Parliament • President 		Proclamation of failure of constitutional machinery, by the President	<ul style="list-style-type: none"> • Article 356(1)(a) and 357 • Article 356
Other – Basket Clause ⁶⁷	Duty of the Union to protect States against external aggression and internal disturbance				<ul style="list-style-type: none"> • Article 355

⁶³ Article 360

⁶⁴ Article 360 (4)(a)(2)

⁶⁵ Article 356(1)(a) and 357

⁶⁶ article 356

⁶⁷ article 355

Legal Powers (before)

Situation	Powers	who is the power conferred to	power exercised vis-a-vis	Conditions to be met when exercising the power	Situation
Earthquake	Under the National Disaster Management Act, 2005 each district should have a disaster prevention and management plan, a district disaster management committee, training and drills. ⁶⁸ Gujarat Disaster Management Act (2003) mandates every citizen to help state administration in prevention. ⁶⁹				NA
Fire					
Epidemic					
Flood					
Tsunami					
Storms (tornado, hurricane)					
War, external aggression or armed rebellion	Declaration of emergency may be ordered even before the actual threat occurs ⁷⁰ so that all powers granted during an emergency are relevant as well (see table "during" above). Such proclamation can be made before the actual occurrence of war or of any such aggression or rebellion "if the President is satisfied that there is imminent danger thereof".				Article 352

⁶⁸ NDMA rules and responsibilities, at <http://ndma.gov.in/ndma/rolesrespons.html>

⁶⁹ Section 31 of the Gujarat Disaster Management Act, 2003

⁷⁰ Constitution of India, Article 352 of the constitution

Legal Powers (after)

Situation	Powers	who is the power conferred to	power exercised vis-a-vis	Conditions to be met when exercising the power	Situation
Earthquake	<ul style="list-style-type: none"> • Gujarat Disaster Management Act (2003) mandates every citizen to help state administration in recovery • Bhopal Gas Leak Disaster (Processing of Claims) Act 1985 allowed the Government of India to act as the legal representative for victims of the disaster, and was in use for processing of claims by victims and settlement agreements. 				Section 31 of the Gujarat Disaster Management Act, 2003 Bhopal Gas Leak Disaster (Processing of Claims) Act 1985
Fire					
Epidemic					
Flood	<ul style="list-style-type: none"> • The National Disaster Management Act of 2005 (NDMA Act) established the State Disaster Response Fund (SDRF) and the National Disaster Response Fund (SDRF) that should be "applied towards meeting the expenses for emergency response, relief and rehabilitation" • The Civil Liability for Nuclear Damage Act, 2010 promotes compensation to victims of nuclear incidents⁷¹ 				Article 46 of the National Disaster Management Act of 2005 The Civil Liability for Nuclear Damage Act, 2010
Tsunami					
Storms (tornado, hurricane)					
War, external aggression or armed rebellion	Judicial review – President's proclamation of national emergency is subjected to judicial review on the grounds of mala fide. ⁷²	Judiciary branch	Note that until the 44th amendment ⁷³ judicial scrutiny was excluded (in a landmark case regarding detention orders that were allegedly passed mala fide, the Supreme Court held that the judiciary could not be petitioned for in the event of national emergency under Article 352 of the Constitution. ⁷⁴)	a Proclamation of Emergency is in operation in accordance with article 352 of the Constitution.	Article 352 of the Constitution
Terror events					
Socio-economic meltdowns					

⁷¹ [http://lawmin.nic.in/ld/regionallanguages/THE%20CIVIL%20LIABILITY%20OF%20NUCLEAR%20DAMAGE%20ACT,2010.%20\(38%20OF2010\).pdf](http://lawmin.nic.in/ld/regionallanguages/THE%20CIVIL%20LIABILITY%20OF%20NUCLEAR%20DAMAGE%20ACT,2010.%20(38%20OF2010).pdf)

⁷² In *Minerva Mills*, the court held that there is no bar to judicial review of the validity of the proclamation of emergency issued under 352, yet judicial review is limited only to examining whether the limitations conferred by the constitution have been observed or not (See: *Minerva Mills vs Union of India* AIR 1980)

⁷³ See footnote 21

⁷⁴ *A.D.M. vs. Shivakant Shukla*, 1976 AIR 1207, 1976 SCR 172

Situation	Powers	who is the power conferred to	power exercised vis-a-vis	Conditions to be met when exercising the power	Situation
Cyber attacks					
Other – Failure of Constitutional Machinery	Judicial review	Judiciary branch	The powers vested in the President according to Article 356 of the Constitution are not absolute and subjected to judicial review, inter alia, on the grounds of mala fide. ⁷⁵		Constitution of India, Article 356
Other – Right to Information Act, 2005	Allows access to records, documents, e-mails, circulars, and any other information held by a public authority and by that gives the people the right to scrutinize performance of public officials and hold them accountable for actions that they professedly take on behalf of people.				

⁷⁵ S.R. Bommai and others vs Union of India, 1994; State of Rajasthan vs Union of India AIR 1977

Rights during emergencies

India's history shows that "times of grave national emergency demand the grant of special powers to the Executive" so that even arbitrary arrest and imprisonment were at times "legalized by Act of Parliament"⁷⁶. One example that vividly illustrates that would be the total number of detainees that were arbitrarily detained during "the Emergency" period during 1975-1977 – *without the ability to petition to courts*⁷⁷ – was approximately 100,000⁷⁸. Currently, following amendments to the Constitution, these are the provisions that relate to suspension of human rights during emergency versus rights that are non-derogable:

Article 358 states that fundamental rights under article 19⁷⁹ are suspended while National Emergency is declared and in operation (according to which the security of India is threatened due to war or external aggression⁸⁰). In such an emergency, "the power of the State to make any law or to take any executive action" shall not be restricted by the protected rights in Article 19, as long as such law or action, which transgresses upon freedoms granted by Article 19 are in relation to the emergency. Furthermore, any such law shall cease to have effect once the proclamation ceases to operate⁸¹.

Article 359 of the Constitution provides that when a proclamation of emergency has been activated, an enforcement of any fundamental right may be suspended by the issue of a Presidential Order, which may extend to the whole or any part of India, for as long as such action is in relation to the emergency and given that it is laid before both Houses of Parliament⁸². The article excludes suspension of the rights granted under articles 20

⁷⁶ E.C.S. Wade and Godfrey Phillips by inserting the following passage in their Constitutional Law, 8th Edition, Chapter 48, pp. 717, 718

⁷⁷ "The Constitution is the mandate. The Constitution is the rule of law ... The suspension of right to enforce fundamental right has the effect that the emergency provisions in Part XVIII are by themselves the rule of law during times of emergency. There cannot be any rule of law other than the constitutional rule of law. There cannot be any pre-Constitution or post-Constitution Rule of Law which can run counter to the rule of law embodied in the Constitution, nor can there be any invocation to any rule of law to nullify the constitutional provisions during the times of emergency" A.D.M. Jobalpur v. Shivakant Shukla, A.I.R. 1976 S.C. 1207 ; also see Union of India v. Bhanudas, 1977 AIR 1027, 1977 SCR (2) 719 where the Court held that the Presidential orders suspending fundamental rights "impose blanket bans on any and every judicial enquiry or investigation into the validity of an order depriving a person of his personal liberty".

⁷⁸ ANNALAL DHAR, preventive detention under Indian Constitution, pp. 144-145 (1986)

⁷⁹ Part III (articles 12 to 35) of the Constitution of India grants protections to fundamental rights. Article 19 of the Constitution protects the rights of freedom of speech; assemble; form associations; move freely throughout the territory of India; reside and settle in any part of India and to practice any profession, or to carry on any occupation.

⁸⁰ Article 358's wording refrains from referring to article 352 explicitly, yet does refers to "proclamation of Emergency declaring that the security of India or any part of the territory thereof is threatened by war or by external aggression". When comparing article 352 to 358 we can see that the grounds of "armed rebellion" for declaring national emergency does *not* fall under the right to suspense fundamental right within the scope of article 358 (omitting "armed rebellion" under 358 is one of the changes made in the 44th Amendment, see footnote 21).

⁸¹ Back in 1978 in the case of Madan Mohan Pathak the Supreme Court held that the fundamental rights granted in articles 14 to 19 are not suspended per-se during emergencies but merely their operation is, and that once the emergency is over, rights will revive. Madan Mohan Pathak vs Union Of India & Ors. Etc, 1978 AIR 803, 1978 SCR (3) 334

⁸² Article 359 (1B)

and 21 of the Constitution - the rights concerning fair trial, retrospective criminal punishment, double jeopardy, self-incrimination⁸³, right to life and personal liberty⁸⁴. The 44th Amendment⁸⁵ amended the Constitution so that these rights are non-derogable even under a declared state of emergency.

It seems that the above mentioned articles include an important distinction in terms of judicial review: Given that the suspension of the rights mentioned in Article 19 is immediate during emergency under article 358 (war or external aggression), a legislative or executive act under article 358 cannot be challenged in court even once the emergency is over. On the other hand, article 359 (Proclamation of Emergency), as it does not explicitly suspend any fundamental rights (but grants the President with the power to issue an order that suspends the right to appeal to court for enforcement of a right) means that an action under Article 359 can be challenged after the suspension is over⁸⁶. Please note that in addition to the constitutional articles, there is other legislation relevant to human rights (yet which does not specifically relate to "Emergency" in its pure sense as discussed throughout this paper): The Armed Forces Special Powers Act 1958 permits the Army to arrest suspects and conduct searches in "disturbed areas"; The National Security Act 1980 authorizes security forces to arrest and detain without warrant; The terrorist affected areas (special courts) Act, 1984; The Terrorist and Disruptive Activities (Prevention) Act, 1985 have provided the security forces with powers of search and seizure.

⁸³ Article 20

⁸⁴ Article 21

⁸⁵ See footnote 21

⁸⁶ For such an interpretation by the Supreme Court see *Makhan Singh vs State Of Punjab(And Connected)* 1964 AIR 381, 1964 SCR (4) 797

Emergency Laws and Regulations in Japan: Executive Summery

Legislative framework

Japan has established a comprehensive legal framework for disaster management with over fifty legislatives acts to manage all stages of emergencies: prevention, preparedness, response, recovery (including financial measures) and reconstruction. The **Disasters Countermeasures Basic Act of 1961 (DCBA)** is the major focus of this report but it will also briefly discuss Japan's nuclear disaster management system as well. The **DCBA** defines the protection of national land, citizens' lives and property from natural disasters as a national priority. It creates a comprehensive three layers disaster management system (national, prefectural and municipal) for disaster prevention, preparedness and recovery, by defining responsibilities for multiple agencies and systems that will work in tandem during a state of emergency. The **DCBA** provides the definition of a state of emergency, whereas the **Constitution of Japan** does not contain emergency clauses and addresses a state of "national emergency", without defining it, only in one article¹. A draft constitution endorsed by the Liberal Democratic Party in 2012 contains a whole chapter on emergency, but this documents remains for the time being only a draft.

Declaration of a state of emergency

Article 2 of the DCBA broadly defines an emergency as an extraordinary disaster whose repercussions on the national economy and public welfare are serious and far-reaching. As such, a multitude of contingencies can fall under a state of emergency. The Prime Minister has the right to declare a state of emergency provided consent is received by the Japan's bicameral legislature, the Diet, within 20 days. A state of emergency ends when it is revoked by the Prime Minister, or by a resolution passed by the Diet to refuse consent or by repeal of previously issued consent. There is a slight variation in protocol for nuclear emergencies. In this case the Prime Minister can declare a nuclear emergency without the approval of the Diet following a Cabinet Order or a report submitted by the

¹ The article concerns the Cabinet's power to convoke an emergency session of the House of Councillors in "time of national emergency" when the House of Representatives is dissolved.

competent minister. Likewise, only the Prime Minister can end a nuclear emergency after hearing findings from the Nuclear Safety Commission.

Legal Powers

Prior to a disaster, the Central Disaster Prevention Council is responsible for the basic disaster prevention plan. The chief officers of designated administrative organs or public corporations are responsible for an operational disaster prevention plan as well. City, town or village disaster prevention councils are responsible for area planning. During a natural or nuclear disaster the executive branch will establish headquarters for emergency disaster control with jurisdiction over the area covered by the state of emergency. Emergency response, rescue and recovery measures shall be implemented by the heads of the designated administrative organs. In the event of a nuclear emergency, in addition to these measures, a Joint Council for Nuclear Emergency Response and an on-site nuclear emergency manager will also be established. The Cabinet may enact ordinances during an emergency to accept assistance from other countries, ration necessary materials, as well as fix prices in the interest of emergency measures. Responsibility for rehabilitation after a disaster shall be implemented by the chief officer of a designated, national or local, administrative organ, government agency, or public corporation. Upon fixing the amount of rehabilitation, the Minister shall submit reports to the Central Disaster Prevention Council.

In addition to the **DCBA**, the **Disaster Relief Act**, 1947 aims to provide emergency relief in the event of a disaster with the cooperation of local governments and non-governmental organizations as well as the general public, in order to protect victims and maintain order.

No references to emergencies relating to war, terrorism and other security-oriented threats, were found in Japan's legal system.

Rights in emergency situations

According to the **Constitution of Japan**, human rights granted by the Constitution are inviolate; furthermore, as the Constitution is the supreme law of the land, it cannot be circumvented. Yet, human rights during emergencies are neither directly addressed by the Constitution nor by any other piece of legislation reviewed in the research. Japanese legislation's relation to human rights under states of emergency might be inferred from: **DCBA Article 82** (compensation for requisitioning property for emergency official use);

DCBA Article 84 (compensation for persons engaged in the work of emergency measures); **DCBA Article 109 (1)** (Ordinances regarding rationing of materials in critical shortage, restriction on delivery and fixing a ceiling on prices.); **DCBA Article 109 (2)** (violation of any provision of said ordinances); and **DCBA Article 63** (When deemed necessary to prevent danger to life or limb, the mayor of the city or town may declare areas prohibited).

Emergency Laws and Regulations in Japan: Synopsis

General

Japan is a constitutional monarchy with a parliamentary government². The Chief of State is the Emperor, who is a ceremonial figurehead and has very limited power³. The Head of the Government is the Prime Minister, appointed by Japan's bicameral legislature, the Diet⁴. Japan is divided into 47 prefectures, which are subnational jurisdictions on a state or provincial level, larger than cities, towns and villages⁵. Each prefecture is headed by a directly elected Governor⁶. With a population of 127 Million⁷ and unique climate and topography⁸, Japan is particularly vulnerable to natural disasters, and has managed to place itself in the international arena as a fine example of a country effectively coping with disasters, with a three layers disaster management system (national, prefectural and municipal)⁹.

The Ise Bay Typhoon in September 1959, with approximately 5,000 deaths and more than 35,000 injured, prompted the establishment of a disaster prevention system and in 1961 the Disaster Countermeasures Basic Act was enacted. A Central Disaster Prevention Council¹⁰, chaired by the Prime Minister, and comprised of the entire Cabinet, as well as heads of designated public institutions and experts, was formed under the Act, aiming to create and promote the implementation of disaster management plans, deliberate matters related to disaster preparedness and provide reports on disaster management to the Prime Minister and relevant Ministers¹¹.

The Fukushima Daiichi nuclear disaster in March 2011, triggered by the Tōhoku earthquake¹², resulted in one of the largest nuclear events in

² The World Fact Book, at <https://www.cia.gov/library/publications/the-world-factbook/geos/ja.html>

³ According to the Article 1 of Constitution of Japan, the Emperor is “the symbol of the state and of the unity of the people”.

⁴ See footnote 1 and Article 6 of Constitution of Japan.

⁵ http://en.wikipedia.org/wiki/Prefectures_of_Japan

⁶ Ibid.

⁷ See footnote 1.

⁸ For further read on Japan's disaster profile see the Asian Disaster Reduction Center (ADRC), Emergency Response Management in Japan: Final Research Report, 2011, p.5-6 at http://www.adrc.asia/aboutus/vrdata/finalreport/2011A_AZE_Emin_FRR.pdf

⁹ See “Japan's Disaster Prevention and Relief as a Foreign Policy” in its Ministry of Foreign Affairs' website:

<http://www.mofa.go.jp/policy/emergency/index.html>, and emergency disaster relief offered by JICA (Japan international cooperation agency)

http://www.jica.go.jp/english/our_work/types_of_assistance/emergency.html.

Japan is also a member of The Asian Disaster Reduction Center (ADRC) Network <http://www.adrc.asia/aboutus/index.php>

¹⁰ See the Central Disaster Management/Prevention Council in the Prime Minister of Japan official website, at http://www.kantei.go.jp/foreign/policy/index/bousai/index_e.html

¹¹ See the Minister of State for Disaster Management and Minister of State for the Nuclear Emergency Preparedness at the Cabinet Office

<http://www.cao.go.jp/en/minister/index.html>

¹² Known as The Great East Japan earthquake, one of the most powerful earthquakes in history to hit Japan with a 9.0 Richter magnitude scale. See Damage

history with approximately 20,000 deaths and over 300,000 evacuated people. It was the first time a nuclear emergency had been declared in Japan. It also revealed inadequate safety guidelines regarding crisis management¹³.

Legal framework

Throughout the years Japan has established a comprehensive legal framework for disaster management¹⁴, including laws covering all phases of disaster management. These laws include seven basic acts¹⁵, eighteen disaster prevention and preparedness acts¹⁶, three disaster emergency response acts¹⁷ and twenty three disaster recovery¹⁸ and financial measures acts¹⁹. This report will focus on the Disasters Countermeasures Basic

Situation and Police Countermeasures by National Police Agency of Japan http://www.npa.go.jp/archive/keibi/biki/higaijokyo_e.pdf and <http://edition.cnn.com/2011/WORLD/asiapcf/03/13/japan.quake/index.html?iref=NS1>

¹³ See the official report of The Fukushima Nuclear Accident Independent Investigation Commission, executive summary at http://warp.da.ndl.go.jp/info:ndljp/pid/3856371/naaic.go.jp/wp-content/uploads/2012/09/NAIIC_report_lo_res10.pdf and the main report in Japanese at http://warp.da.ndl.go.jp/info:ndljp/pid/3856371/naaic.go.jp/pdf/naaic_honpen.pdf

¹⁴ For timeline and a chronological evaluation see The Japanese Disaster Prevention, Recovery and Relief Measures: Current Status and International Cooperation, p. 11-12, online edition at http://www.preventionweb.net/files/30468_japandisasterpreventionrecoveryreli.pdf as well as the Disaster Management in Japan Report of 2011 by the Cabinet Office <http://www.cao.go.jp/en/disaster.html> (for the report: <http://www.bousai.go.jp/1info/pdf/saigaipanf.pdf>, p.5)

¹⁵ Basic acts include the **Disaster Countermeasures Basic Act (1961)**; Act on Prevention of Marine Pollution and Maritime Disaster (1970); Act on Disaster Prevention in Petroleum Industrial Complexes and other Petroleum Facilities (1975); Act on Special Measures for Large-scale Earthquakes (1978); Act on Special Measures for Nuclear Disasters (1999); Act on Special Measures for Promotion of Tonankai and Nankai Earthquake Disaster Management (2002); Act on Special Measures for Promotion of Disaster Management for Trench-type Earthquakes in the Vicinity of the Japan and Chishima Trenches (2004). These acts are addressed as "Basic" in the Japanese Government report, at <http://www.bousai.go.jp/1info/pdf/saigaipanf.pdf>, p.6

¹⁶ Disaster prevention and preparedness acts include the Erosion Control Act (1897); Building Standard Law (1950); Forest Act (1951); Act on Temporary Measures for Disaster Prevention and Development of Special Land Areas (1952); Meteorological Services Act (1952); Seashore Act (1956); Landslide Prevention Act (1958); Act on Special Measures for Disaster Prevention in Typhoon-prone Areas (1958); Act on Special Measures for Heavy Snowfall Areas (1962); River Act (1964); Act on Prevention of Steep Slope Collapse Disaster (1969); Act on Special Measures for Active Volcanoes (1973); Act on Special Financial Measures for Urgent Earthquake Countermeasure Improvement Projects in Areas for Intensified Measures (1980); Act on Special Measures for Earthquake Disaster Countermeasures (1995); Act on Promotion of the Earthquake-proof Retrofit of Buildings (1995); Act on Promotion of Disaster Resilience Improvement in Densely Inhabited Areas (1997); Act on Promotion of Sediment Disaster Countermeasures for Sediment Disaster Prone Areas (2000); Specified Urban River Inundation Countermeasures Act (2003).

¹⁷ Disaster emergency response acts include The Disaster Relief Act (1947); Fire Services Act (1948); Flood Control Act (1949).

¹⁸ Disaster recovery and reconstruction, and financial measures include Forest National Insurance Act (1937); Agriculture Disaster Compensation Act (1947); Housing Loan Corporation Act (1950); Act on Interim Measures for Subsidizing Recovery Projects for Agriculture, Forestry and Fisheries Facilities Damaged Due to Disasters (1950); Small-Medium Business Credit Insurance Act (1950); Act on National Treasury Share of Expenses for Recovery Projects for Public Civil Engineering Facilities Damaged Due to Disasters (1951); Public Housing Act (1951); Fishing Boat Damage Compensation Act(1952); Agriculture, Forestry and Fisheries Finance Corporation Act (1952); Railway Improvement Act (1953); Act on National Treasury Share of Expenses for Recovery of Public School Facilities Damaged Due to Disasters (1953); Act on Interim Measures for Financing Farmers, Woodsmen and Fishermen

Act of 1961 (hereinafter “the DCBA”) and will also briefly elaborate on Japan’s nuclear disaster management system.

The DCBA is considered a landmark in Japan’s disaster management history, as it defined protection of national land and citizen lives and property from natural disasters as a national priority²⁰. The DCBA lays out the national level framework for disaster management prevention, preparedness, response and recovery, by defining responsibilities for disaster management, disaster management organizations, a disaster management planning system, financial measures and the definition of a state of emergency. Under the DCBA, private, public and all other persons with responsibilities regarding disaster risk reduction must fulfill their responsibilities faithfully and make efforts to contribute to disaster risk reduction. Another important piece of legislation is the Fire Services Act of 1948, which established the Fire and Disaster Management Agency (FDMA)²¹ under the Ministry of Internal Affairs and Communications, a leading agency responsible for disaster prevention and response.

The Constitution of Japan does not contain emergency clauses and addresses a state of “national emergency”, without defining it, only in one article, concerning the Cabinet’s power to convoke an emergency session of the House of Councillors in “time of national emergency” when the House of Representatives is dissolved.²² It should be noted, however, that the Liberal Democratic Party (LDP) of Japan announced²³ a draft

Suffering from Natural Disasters (1955); Airport Improvement Act (1956); Small-scale Business Equipment Installation Financial Support Act (1956); Act on Special Financial Support to Deal with Extremely Severe Disasters (1962); Fisheries Disaster Compensation Act (1964); Act on Earthquake Insurance (1966); Act on Special Financial Measures for Group Relocation Promotion Projects for Disaster Mitigation (1972); Act on Payment of Solatia for Disasters (1973); Act on Special Measures for Reconstruction of Disaster-stricken Urban Areas (1995); Act on Special Measures for Reconstruction of Jointly Owned Buildings in Disaster-stricken Areas (1995); Act on Special Measures for Preservation of Rights and Profits of the Victims of Specified Disasters (1996); Act on Support for Livelihood Recovery of Disaster Victims (1998).

¹⁹ The list of laws and their category is taken from the report “Disaster Management in Japan”, by the Cabinet Office at <http://www.bousai.go.jp/1info/pdf/saigaipanf.pdf>, p. 6-7

²⁰ “For the purpose of protecting the national territory, the life and limb of the citizens and their property, this Act shall have for its aim the establishment of a machinery working through the State and local governments and public corporations and the clarification of where responsibilities lie, and provide for the formulation of disaster prevention plans and basic policies relating to preventive and emergency measures and rehabilitation programs to deal with disaster, and other necessary measures as

well as financial action, thus ensuring an effective and organized administration of comprehensive and systematic disaster prevention with a view toward the preservation of social order and the security of the public welfare” The Disasters Countermeasures Basic Act, Article 1 (provisional translation at <http://www.adrc.asia/documents/law/DisasterCountermeasuresBasicAct.pdf>)

²¹ See FDMA’s official website at <http://www.fdma.go.jp/en/>

²² See Articles 53 and 54 of the Constitution of Japan: Article 53: “The Cabinet may determine to convoke extraordinary sessions of the Diet. When a quarter or more of the total members of either House makes the demand, the Cabinet must determine on such convocation”.

Article 54. When the House of Representatives is dissolved, there must be a general election of members of the House of Representatives within forty (40) days from the date of dissolution, and the Diet must be convoked within thirty (30) days from the date of the election.

When the House of Representatives is dissolved, the House of Councillors is closed at the same time. However, the Cabinet may in time of national emergency

constitution in 2012²⁴. It proposes to incorporate a new chapter into the Constitution, according to which, in case of national emergency, including armed attacks by foreign countries and large-scale natural disasters, the Prime Minister will declare a state of emergency and take appropriate measures in response (Article 98) whereas the Cabinet will be granted legislative powers to enact orders similar to laws passed by the National Diet, Japan's bicameral legislature²⁵ (Article 99).

Natural disasters	National security	Socio-economic meltdowns
Main laws ²⁶ : The Disaster Countermeasures Basic Act, 1961 Disaster Relief Act, 1947 Fire Services Act, 1948 The Act on Special Measures Concerning Nuclear Emergency, 1999	Have not been found in the course of the research ²⁷	The Disaster Countermeasures Basic Act 1961 ²⁸ (regarding meltdowns caused by “extraordinary disasters”)

convoke the House of Councillors in emergency session. Measures taken at such session as mentioned in the proviso of the preceding paragraph shall be provisional and shall become null and void unless agreed to by the House of Representatives within a period of ten (10) days after the opening of the next session of the Diet.

²³ For the announcement of May 7, 2012 at the Liberal Democratic Party official website, see <https://www.jimin.jp/english/news/117099.html>

²⁴ Nihon-koku Kenpou Kaisei Souan {LDP-Draft-Constitution-2012 in Japanese} at <http://rijs.fas.harvard.edu/crrp/papers/pdf/LDP-Draft-Constitution-2012.pdf>

²⁵ The National Diet, Japan's bicameral legislature, is comprised of the House of Representatives and House of Councillors.

²⁶ For a comprehensive list of laws related to Natural disasters see footnotes 14-17.

²⁷ This category is addressed in the LDP draft constitution of 2012.

²⁸ Article 105 grants the Prime Minister the power to declare a state of emergency “In time of an extraordinary disaster whose repercussions on the national economy and public welfare are serious...” Our interpretation is that this article will be applicable in cases of socio-economic meltdowns, caused by “extraordinary disasters”.

Declaration of a state of emergency

Situation	Definition of an “emergency”	Who may declare the state of emergency and under what conditions?	Statutes that come into force during emergency	How does a state of emergency end?	Reference (statute and article)
Generic emergency	In time of an extraordinary disaster ²⁹ whose repercussions on the national economy and public welfare are serious and far-reaching	<p><i>The Prime Minister who needs to receive the consent of the Diet within 20 days.</i></p> <p>“The Prime Minister may, when he deems it particularly necessary in the interest of enforcing emergency measures, declare a state of emergency involving the whole or part of the affected area, upon referring the matter to a Cabinet Conference and shall put the matter before the Diet for its consent not later than twenty days from the date of declaration³⁰. When the Diet is in adjournment or the House of Representatives has been dissolved, the Prime Minister shall seek parliamentary consent at the earliest session of the Diet thereafter”.</p> <p>The declaration shall specify the area concerned, give a brief account of the situation warranting such action and set the date and time when the declaration takes effect.</p>		When there has been a resolution to refuse consent to a declaration of state of emergency, or when the Diet has voted to repeal the declaration of a state of emergency, or when there is no longer the necessity for the declaration, the Prime Minister shall promptly revoke said declaration ³¹ .	The Disaster Countermeasures Basic Act 1961, Articles 105 and 106

²⁹ “Disaster means a storm, heavy rain, heavy snow, flood, high tide, earthquake, tsunami, or other unusual natural event, or a conflagration or explosion, or any other damage of similar extent from a cause to be prescribed by ordinance.” Disaster Countermeasures Basic Act, 1961, Article 2.

³⁰ The Disaster Countermeasures Basic Act, 1961, Article 106.

³¹ The Disaster Countermeasures Basic Act 1961, Article 106 (2)

Situation	Definition of "emergency"	Who may declare the state of emergency and under what conditions?	Statutes that come into force during emergency	How does a state of emergency end?	Reference (statute and article)
Earthquake	See Generic emergency and footnotes 27 and 28				
Fire					
Epidemic ³²					
Flood					
Tsunami					
Storms (tornado, hurricane)					
War	Have not been found in the course of the research				
Terror events	Have not been found in the course of the research				
Socio-economic meltdowns	See Generic emergency and footnote 26				
Cyber	Have not been found in the course of the research				
Other - Nuclear Emergency	Nuclear emergency situation means “a situation in which radioactive materials or radiation at an abnormal level has been released outside the nuclear site of a nuclear operator (in the case of the transport of radioactive materials outside the nuclear site, by the operation of the reactor... the same shall apply)” ³³ .	Prime Minister shall declare a nuclear emergency situation when there has been a report submitted to him by the competent minister, according to which an "abnormal level of radiation" as specified by a Cabinet Order has occurred or “when an event specified by a Cabinet Order as an event that indicates the occurrence of a nuclear emergency situations has occurred”.	Evacuation orders according to Article 60 of the Basic Act on Disaster Control Measures	Once the Prime Minister finds the declaration of nuclear emergency to be no longer necessary and after hearing the opinions of the Nuclear Safety Commission	The Act on Special Measures Concerning Nuclear Emergency 1999, Article 15

³² Though epidemic is not explicitly stated in the definition of “Disaster” in Article 2, it may fall under "unusual natural event". It should be noted that this word is mentioned in the Act, in Article 50(6), when referring to epidemic control and public health and sanitation as matters related to emergency measures.

³³ The Act on Special Measures Concerning Nuclear Emergency, 1999, Article 2

Powers (during)

As mentioned above, Japan has a comprehensive legal framework concerning emergency management. The tables below focuses on the powers provided in the Disasters Countermeasures Basic Act, 1961 and the Act on Special Measures Concerning Nuclear Emergency 1999, and **should not be viewed as comprehensive**.

Situation	Powers	Who is the power conferred to	Power exercised vis-a-vis	Conditions to be met when exercising the power	Statute and Article
Generic emergency	<ul style="list-style-type: none"> Executive (Prime Minister) Executive/legislative (Cabinet) 	<ul style="list-style-type: none"> The Prime Minister shall establish headquarters for emergency disaster control with jurisdiction over the area covered by the declaration of a state of emergency; the chairman of the headquarters may give necessary instructions to the chief officer of an appropriate designated local administrative organ, local government or any other executive agency, designated national or local public corporation. The Cabinet may enact an ordinance in order to take necessary steps to accept assistance from other countries for the relief of disaster victims. 		<ul style="list-style-type: none"> Declaration of a state of emergency When unable, during times of disaster, to quickly and smoothly accept assistance from other countries for the relief of disaster victims and the Diet is in adjournment and when the situation does not allow time to call the Diet 	<ul style="list-style-type: none"> The Disaster Countermeasures Basic Act of 1961 (DCBA), Article 107 DCBA, Article 109

Situation	Powers	Who is the power conferred to	Power exercised vis-à-vis	Conditions to be met when exercising the power	Statute and Article
Generic emergency (cont.)	<ul style="list-style-type: none"> Legislative (Cabinet/Diet) 	<ul style="list-style-type: none"> Ordinances rationing materials of daily necessity in critical shortage; restriction or ban on their transfer or delivery; fixing a ceiling on prices of commodities, consideration for labor, fees for services in the interest of emergency measures, rehabilitation and a stable life for the citizens; deferment of monetary debts. 		<ul style="list-style-type: none"> In case of an urgent need to preserve the economic order of the nation and to ensure the public welfare; situation of emergency ; the Diet is in adjournment and when the situation does not allow time to call the Diet³⁴ “Upon enactment of such ordinance the Cabinet shall decide on the convocation of the Diet in extraordinary session or to seek an emergency session of the House of Counselors; it shall take further steps to enact an Act to replace such ordinance...” 	<ul style="list-style-type: none"> DCBA, Article 109
Earthquake	See Generic emergency				
Fire					
Epidemic					
Flood					
Tsunami					
Storms (tornado, hurricane)					
War	Have not been found in the course of the research				
Terror events	Have not been found in the course of the research				

³⁴ When an ordinance of such is enacted and is no longer required, the Cabinet shall immediately revoke it; unless it has expired pre-hand, shall become null and void twenty days (DCBA, Article 109).

Situation	Powers	Who is the power conferred to	Power exercised vis-a-vis	Conditions to be met when exercising the power	Statute and Article
Socio-economic meltdowns	See Generic emergency				
Cyber	Have not been found in the course of the research				
Other - Nuclear Emergency	<ul style="list-style-type: none"> • Executive (national level) • Executive (local level) 	<ul style="list-style-type: none"> • Prime Minister shall give public notice of the occurrence of a nuclear emergency; • Prime Minister shall instruct mayors of municipalities and prefectural governors who have jurisdiction over the area to make recommendation and give instructions of evacuation; • The Prime Minister shall give other relevant instructions concerning emergency measures • The Prime Minister shall establish nuclear emergency response headquarters within the Cabinet Office in order to promote emergency response; • The director of the nuclear emergency response headquarters shall manage the affairs of the nuclear emergency response headquarters and direct and supervise relevant officials; • Local nuclear emergency response headquarters and municipal headquarters for disaster control shall organize a Joint Council for Nuclear Emergency Response in order to exchange information and cooperate with one another for the emergency response measures; • The nuclear emergency preparedness manager shall have on-site organization for nuclear emergency preparedness for preventing the occurrence or expansion of a nuclear disaster; • Emergency response measures such as securing food and medicine, rescue of disaster victims, matters relating to emergency recovery and maintenance of the social order - shall be implemented by the heads of designated administrative organs; 		<ul style="list-style-type: none"> • Nuclear emergency declaration 	The Act on Special Measures Concerning Nuclear Emergency 1999, Articles 15 – 26

Powers (after)

Situation	Powers	Who is the power conferred to power exercised vis-a-vis	Conditions to be met when exercising the power	Statute and Article
Generic emergency	Executive	<ul style="list-style-type: none"> Responsibility for rehabilitation after a disaster shall be implemented by the chief officer of a designated national or local administrative organ, the chief officer of a local government, any other executive agency, a designated national or local public corporation; Upon fixing the amount of rehabilitation expenses or established standards for the implementation of a rehabilitation program, the Minister shall report a summary of his action to the Central Disaster Prevention Council; General compensation clause for persons engaged in the work of emergency measures³⁵; The Government (national and local) may allow reduction, exemption or deferment of national taxes and other assessments or take other necessary action for the benefit of disaster victims. Disaster Relief Act, 1947 aims to provide essential emergency relief in the event of a disaster through the cooperation of local governments and non-governmental organizations as well as the general public, so as to protect the disaster victims and maintain social order. 	<ul style="list-style-type: none"> Should be implemented by ordinance or under an appropriate disaster prevention plan; Shall be done appropriately and expeditiously on the basis of a report from the Governor of the prefecture, data presented by other local governments, and results of on-site investigations By an Act or ordinance 	<ul style="list-style-type: none"> DCBA, Article 87 DCBA, Article 88 DCBA, Article 89 84 (DCBA) 85 (DCBA) Disaster Relief Act, 1947

³⁵ Article 84 of the DCBA stipulates that when the mayor of a city or town or the head of a village, or a police official or a maritime safety official or a self defense force member dispatched for disaster relief has caused residents of the area of the city to work in operations related to emergency measures, and when a person has died, been injured or has become ill, or has been crippled as a result of the work, the city, town or village shall, by its ordinance and according to standards set by its ordinance, compensate the person, his surviving family, or his dependents, for the loss sustained.

Situation	Powers	Who is the power conferred to power exercised vis-a-vis	Conditions to be met when exercising the power	Statute and Article
Earthquake	See Generic emergency			
Fire				
Epidemic				
Flood				
Tsunami				
Storms (tornado, hurricane)				
War	Have not been found in the course of the research			
Terror events	Have not been found in the course of the research			
Socio-economic meltdowns	See generic emergency			
Cyber	Have not been found in the course of the research			

Situation	Powers	Who is the power conferred to	power exercised vis-a-vis	Conditions to be met when exercising the power	Statute and Article
Other - Nuclear Emergency	administrative	<ul style="list-style-type: none"> Measures for restoration from nuclear emergency shall be implemented by the heads of designated administrative organs The Act on Compensation for Nuclear Damage, 1961 aims "to protect persons suffering from nuclear damage and to contribute to the sound development of the nuclear industry by establishing the basic system regarding compensation in case of a nuclear damage caused by reactor operation etc".³⁶ 			<ul style="list-style-type: none"> Art 27 of The Act on Special Measures Concerning Nuclear Emergency 1999 The Act on Compensation for Nuclear Damage, 1961

³⁶ The Act on Compensation for Nuclear Damage, 1961, Article 1

Powers (before)

Situation	Powers	Who is the power conferred to	Power exercised vis-a-vis	Conditions to be met when exercising the power	Statute and Article
Generic emergency	Executive	<ul style="list-style-type: none"> • The Central Disaster Prevention Council is responsible for a <i>basic</i> disaster prevention plan, reviewed each year in light of research findings, conditions of disasters that have occurred, and the effect of emergency measures taken • The chief officer of a designated administrative organ³⁷ and a designated public corporation³⁸ is responsible for an <i>operational</i> disaster prevention plan • A city, town or village disaster prevention council (for a city without a council, the mayor of the city) are responsible for an area disaster prevention plan • The chief officer of a designated administrative organ is responsible for maintaining organizations for disaster prevention • Those responsible for disaster prevention as prescribed by law or disaster prevention plan are responsible to perform disaster prevention drills 		<ul style="list-style-type: none"> • The plan shall be reported to the Prime Minister, and relevant administrative organs and the public 	<ul style="list-style-type: none"> • Chapter III of The Disaster Countermeasures Basic Act 1961 (art. 34-45) deals with disaster prevention plans • Chapter IV of The Disaster Countermeasures Basic Act 1961 regarding Prevention of Disasters Article 46-49
Earthquake	See Generic emergency				
Fire					
Epidemic					
Flood					

³⁷ The Disaster Countermeasures Basic Act 1961, Article 36

³⁸ The Disaster Countermeasures Basic Act 1961, Article 39

Situation	Powers	Who is the power conferred to	Power exercised vis-a-vis	Conditions to be met when exercising the power	Statute and Article
Tsunami					
Storms (tornado, hurricane)					
War	Have not been found in the course of the research				
Terror events	Have not been found in the course of the research				
Socio-economic meltdowns	See generic emergency				
Cyber	Have not been found in the course of the research				
Other - Nuclear Emergency	Persons and organizations as specified in the Act	<p>A nuclear operator shall prepare a nuclear operator emergency action plan</p> <p>A nuclear operator shall establish an on-site organization for nuclear emergency preparedness as well as appoint a nuclear emergency preparedness manager</p> <p>A nuclear operator shall establish in its nuclear site a radiation measurement facility</p> <p>The competent Minister shall designate a facility that serves as the center for emergency response</p> <p>National Plan concerning disaster prevention drills shall be carried out based on a plan prepared by the competent Minister</p>		<ul style="list-style-type: none"> Plan shall not conflict with any regional disaster prevention plan In accordance with the requirements specified by an ordinance of the competent ministry 	<ul style="list-style-type: none"> Art 7-13 of The Act on Special Measures Concerning Nuclear Emergency 1999

Rights during emergencies

According to the Japanese Constitution, "fundamental human rights by this Constitution guaranteed to the people of Japan are fruits of the age-old struggle of man to be free" and are to be "held for all time inviolate"³⁹. Furthermore, whereas the Constitution is "the supreme law of the nation, no law, ordinance, imperial rescript or other act of government, or part thereof, contrary to the provisions hereof, shall have legal force or validity"⁴⁰. Having said that, neither the constitution nor any other piece of legislation covered by this research *directly* relates to the matter of human rights during emergency. It appears that the matter may be covered in the future in LDP draft constitution of 2012, once "state of emergency" will be defined under a constitutional framework ⁴¹.

Japanese legislature relation towards human rights under state of emergency might be inferred from the following provisions that indirectly deal with rights, however, it should be noted that our research in this regard is still preliminary:

- Compensation for loss per requisitioning property for emergency official use (DCBA, Article 82) as well as a general compensation clause for persons engaged in the work of emergency measures (DCBA, Article 84)
- An ordinance enacted regarding rationing of materials in critical shortage, restriction or ban on their transfer or delivery, fixing a ceiling on prices of commodities, and other measures specified in Article 109 (1) of the DCBA⁴² may provide that any person in violation of any provision of said ordinance shall be liable to imprisonment at hard labor for not more than two years or imprisonment of the same length without hard labor, or a fine of not more than one hundred thousand yen, detention, a police fine, or confiscation, or a combination of any two penalties (DCBA, Article 109 (2));
- When deemed necessary to prevent danger to life or limb, the mayor of the city or town may declare area to which access shall be restricted or prohibited (DCBA, Article 63).

³⁹ Constitution of Japan, Article 97

⁴⁰ Constitution of Japan, Article 98

⁴¹ Liberal Democratic Party draft 2012 Q&A Nihon-koku Kenpou Kaisei Souan (Japanese) at http://www.jimin.jp/policy/pamphlet/pdf/kenpou_qa.pdf

⁴² DCBA, Article 109 - (1) rationing of materials of daily necessity in critical shortage; restriction or ban on their transfer or delivery; (2) fixing a ceiling on prices of commodities, consideration for labor, fees for services in the interest of emergency measures, rehabilitation and a stable life for the citizens; (3) deferment of monetary debts.

Emergency Laws and Regulations in New Zealand: Executive Summery

Legislative framework

In the absence of a written formal constitution concentrated in a single document, similar to the situation in Israel, **the main and generic law** in New Zealand that regulates the general framework for dealing with states of emergency is the Civil Defense Emergency Management Act 2002 (henceforth: CDEMA). This law concerns emergency situations that arise from natural disasters, but its definition of “state of emergency” (henceforth) also refers to acts of war. Other specific laws concerning emergencies focus on issues such as epidemics, biosecurity, hazardous substances, terrorism and more. In the following review we shall detail the legislation.

Entrance into a state of emergency

According to Section 4 of CDEMA, an "emergency" occurs in the presence of the three following cumulative conditions:

- "(a) is the result of any happening, whether natural or otherwise, including, without limitation, any explosion, earthquake, eruption, tsunami, land movement, flood, storm, tornado, cyclone, serious fire, leakage or spillage of any dangerous gas or substance, technological failure, infestation, plague, epidemic, failure of or disruption to an emergency service or a lifeline utility, or actual or imminent attack or warlike act; and
- (b) causes or may cause loss of life or injury or illness or distress or in any way endangers the safety of the public or property in New Zealand or any part of New Zealand; and
- (c) cannot be dealt with by emergency services, or otherwise requires a significant and coordinated response under this Act."

It is also noteworthy that the law distinguishes between state of "local emergency" and state of "national emergency," with the power to declare either one of them vested, with a certain exception, in various parties: the power to declare a national state of emergency is vested in the Minister of Civil Defense and Emergency Management, whereas the power to declare a local state of emergency, in the relevant area, is vested in the person appointed under the Act by a Civil Defense Emergency Management Group (see below) as authorized to declare a local state of emergency in its area, or the mayor of a territorial authority, or in his absence a person designated

to act on behalf of him. The conditions for declaring a "national state of emergency" are naturally different from those that apply to declaring a "local state of emergency."

Most of the specific laws concerned with emergencies provide specific definitions for "state of emergency," depending on the matter at hand. Thus, for example, the International Terrorism (Emergency Powers) Act, 1987 provides a definition of "international terrorist emergency."

Powers

By Virtue of the CDEMA, Civil Defense Emergency Management Groups were established. These Groups perform on the regional level, in cooperation with emergency and rescue services and government agencies to help the area in which they operate to deal with states of emergency. The groups are comprised of local authorities in the relevant area, with one of their duties being preparation of a civil defense emergency management group plan that must provide for, among other things, the arrangements for coordination and cooperation with other Groups in the management of states of emergency.

CDEMA grants a number of parties (including Civil Defense Emergency Management Groups, constables and the Minister of Civil Defense and Emergency Management) a range of emergency powers both during the state of emergency and in preparation for it. For example, **a constable** has the power, during a state of emergency, to evacuate premises and places; to enter premises; to close roads and public places and so on, and **Civil Defense Emergency Management Groups** have, among others, the following powers: advice and provision of information to the public; provide for first aid to be given to disaster victims and for their transfer to hospital, other site of treatment or safe areas; provide clothing, food, shelter and any other vital service.

Rights in states of emergency

CDEMA does not refer specifically to human rights in general or the New Zealand Bill of Rights Act 1990. Nor do the other laws. It is noteworthy that this review is based only on enactments and it can be assumed that a study of case law would provide further information on the implications of emergency arrangements for human rights.

Emergency Laws and Regulations in New Zealand: Synopsis

The legislative framework

New Zealand does not have a formal "written" constitution concentrated in a single document.

References to states of emergency can be found in a series of laws, with the main and generic law regulating the general framework for dealing with states of emergency being the **Civil Defense Emergency Management Act 2002** (henceforth: CDEMA). This law concerns, broadly, natural disasters (including earthquakes, tsunamis, fires, epidemics and more), but its definition of "state of emergency" refers also to acts of war.

Alongside the aforementioned generic law, there are additional laws that regulate the issue of dealing with states of emergency. Among them are the following laws, arranged in the table below according to their subjects:¹

Natural disasters	Terrorism and war	Socioeconomic states of emergency
<ul style="list-style-type: none"> • Hazardous Substances and New Organisms Act 1996, providing for the treatment and the prevention of negative impacts of those substances and organisms. • Biosecurity Act 1993, which is the legal basis for the prevention, extermination and effective management of pests and unwanted organisms. • Epidemic Preparedness Act 2006. • Fire Service Act 1975, mainly dealing with fires and other emergencies, including emergencies caused by the eruption of a hazardous substance. • Health Act 1956, which regulates all aspects of states of emergency that relate to public health (and allows the Minister of Health to declare a drinking-water emergency). • Resource management act 1991, which regulates the management of natural resources (for instance, if a state of emergency was declared under CDEMA, the Resource Management Act excepts the application of certain restrictions in the law regarding the use of land, lakes and rivers, on acts by a person exercising emergency powers). 	<ul style="list-style-type: none"> • The International Terrorism Act (Emergency Powers) 1987. • Terrorism Suppression Act 2002. • The law added to the government's existing powers to fight terror, among other things allowing the Prime Minister to declare a "terrorist entity," forbid financing terror, participation in organizations declared as terrorist organizations and recruitment of members to such organizations. • The Immigration Act 2009, which grants powers to arrest persons that an immigration officer or constable have reasonable suspicion that they consist a "threat or risk to security" 	<p>Our research did not find laws about socioeconomic states of emergency.</p>

¹ Chris Webb and David A. McEntire, in Emergency Management in New Zealand: Potential Disasters and Opportunities for Resilience.

COMPARATIVE EMERGENCY MANAGEMENT: UNDERSTANDING DISASTER POLICIES, ORGANIZATIONS, AND INITIATIVES FROM AROUND THE WORLD Chapter 12 , 12-13 (David A. McEntire ed.). www.training.fema.gov/EMIWeb/edu/CompEmMgmtBookProject.asp.

Various emergency laws in New Zealand define “state of emergency” differently and grant numerous, varied and broad emergency powers to different parties. Other laws, on the other hand, treat states of emergency indirectly and minimally and grant only minimal meaningful powers (see for example: Local Government Act 2002).

Because of the space limit and nature of this abstract, we cannot address all the laws and therefore will focus on the main law, CDEMA, and a small number of additional examples.

By virtue of the CDEMA, Civil Defense Emergency Management Groups were established as a joint committee of local authorities to help, on the regional level, the area in which they operate to deal with all matters concerning states of emergency (including to reduce the impact from the emergency and its likelihood, respond to, be ready for and recover from it).²

Entering a state of emergency

No statutes that come into force during emergency were found in our research

Situation	Definition of an "emergency"	Who may declare the state of emergency and under what conditions?	How does a state of emergency
General	According to CDEMA, an emergency is a situation that meets the following three cumulative conditions: "(a) is the result of any happening, whether natural or otherwise, including, without limitation, any explosion, earthquake, eruption, tsunami, land movement, flood, storm, tornado, cyclone, serious fire, leakage or spillage of any dangerous gas or substance, technological failure, infestation, plague, epidemic, failure of or disruption to an emergency service or a lifeline utility, or actual or imminent attack or warlike act; and (b) causes or may cause loss of life or injury or illness or distress or in any way endangers the safety of the public or property in New Zealand or any part of New Zealand; and (c) cannot be dealt with by emergency services, or otherwise requires a significant and coordinated response under this Act".	The law distinguishes between national emergencies and local emergencies. National emergency: The Minister of Civil Defense and Emergency Management may declare a national disaster if: (a) an emergency has occurred or may occur; and (b) the emergency is, or is likely to be, of such extent, magnitude, or severity that the civil defense emergency management necessary or desirable in respect of it is, or is likely to be, beyond the resources of the Civil Defense Emergency Management Groups whose areas may be affected by the emergency. It is noteworthy that a national emergency was declared in New Zealand for the first time just The law distinguishes between a national state of emergency and a local state of emergency. National emergency: The Minister of Civil Defense and Emergency	A state of emergency, whether local or national, expires seven days after the date and time on which it comes into effect; or When a person authorized to declare a state of emergency decides to declare its termination, whether or not the declaration of the state of emergency was made by that person. The state of emergency may be extended by the Minister of Civil Defense and Emergency Management. A person authorized to declare

² Ministry of Civil Defence and Emergency Management, *Response Management: Director's Guideline for CDEM Group and Local Controllers* 11) 2008) [DGL 06/08].

Situation	Definition of an "emergency"	Who may declare the state of emergency and under what conditions?	How does a state of emergency
		<p>Management may declare that a state of national emergency exists if: "(a) an emergency has occurred or may occur; and (b) the emergency is, or is likely to be, of such extent, magnitude, or severity that the civil defense emergency management necessary or desirable in respect of it is, or is likely to be, beyond the resources of the Civil Defense Emergency Management Groups whose areas may be affected by the emergency". It is noteworthy that a national emergency was declared in New Zealand for the first time just recently, following the Christchurch earthquake on February 22, 2011.³</p> <p>The state of emergency was extended repeatedly for 10 weeks, until it was finally lifted on April 30, 2011.⁴</p> <p>State of local emergency: The power to declare a state of local emergency (in the entire area of a Civil Defense Emergency Management Group or only in a certain district or ward) is vested in a number of parties, if it appears to them that an emergency has occurred or may occur in</p>	<p>a state of local emergency is allowed to extend the declaration of the local state of emergency. An extension of a state of emergency expires seven days after the time and date on which the extension of the state of emergency comes into force.</p> <p>The law allows a further extension of an emergency after it was extended and does not limit the number of extensions.</p>

³ The Ministry of Civil Defence & Emergency Management, Background information to the Review of the Civil Defence Emergency Management Response to the 22 February Christchurch Earthquake) 2012)

www.civildefence.govt.nz/memwebsite.nsf/wpg_URL/For-the-CDEM-Sector-Publications-Review-of-the-Civil-Defence-Emergency-Management-Response-to-the-22-February-Christchurch-Earthquake?OpenDocument.

⁴ State of emergency lifted in Christchurch, News3 (May 1, 2011)

<http://www.3news.co.nz/State-of-emergency-lifted-in-Christchurch/tabid/423/articleID/209247/Default.aspx#.UnTdfhCA04I>.

Situation	Definition of an "emergency"	Who may declare the state of emergency and under what conditions?	How does a state of emergency
		<p>the relevant area:</p> <ul style="list-style-type: none"> • A person appointed by law by a civil Defense Emergency Management Group as authorized to declare a state of emergency its area. Such person must be elected out of the representatives of the authorities who are members of the Group; or • The mayor (or in his absence a substitute) of a territorial authority. <p>Likewise, the Minister of Civil Defense and Emergency Management may declare a state of local emergency when it appears to the Minister that an emergency has occurred or may occur in an area of Civil Defense Emergency Management Group, and a state of local emergency has not been declared by the aforesaid parties.</p>	

Situation	Definition of an "emergency"	Who may declare the state of emergency and under what conditions?	How does a state of emergency end?
Fire	The Fire Service Act 1975 also defines state of emergency. However, the definition does not refer to fires, as could have been expected, but rather to "hazardous substance emergency". Such a state of emergency is defined as the release or potential accidental release of any hazardous substance.	The law does not require a formal declaration of a state of emergency.	
Epidemic	The subject of epidemics is addressed in the Epidemic Preparedness Act 2006. The law does not contain a definition of emergency or the possibility to declare an emergency. However, the law does allow the issue of an epidemic notice.	"With the agreement of the Minister of Health, the Prime Minister may, by notice in the Gazette, declare that he or she is satisfied that the effects of an outbreak of a stated quarantinable disease (within the meaning of the Health Act 1956) are likely to disrupt or continue to disrupt essential governmental and business activity in New Zealand (or stated parts of New Zealand) significantly" (See section 5(1) of the Act).	<p>If the notice is not renewed, it expires on the earliest of the following (see section 5(3) of the Act):</p> <ol style="list-style-type: none"> 1. "the day 3 months after its commencement; 2. a day stated in the notice; 3. a day stated for the purpose by the Prime Minister by further notice in the Gazette." <p>After the notice expires, a new notice can be given in respect of the same disease.</p> <p>With the agreement of the Minister of Health, the Prime Minister may, by notice in the Gazette given before an epidemic notice expires, renew that notice. If renewed, an epidemic notice expires on the earliest of the following (see section 7of the Act):</p> <ol style="list-style-type: none"> 4. "the day 3 months after the commencement of the most recent notice renewing it; 5. a day stated in the most recent notice renewing it; <p>a day stated for the purpose by the Prime Minister by further notice in the Gazette".</p>

Situation	Definition of an "emergency"	Who may declare the state of emergency and under what conditions?	How does a state of emergency end?
Terrorism event	<p>The International Terrorism Act (Emergency Powers) refers to an "international terrorist emergency" and defines it, under section 2 of the Act. as" a situation in which any person is threatening, causing, or attempting to cause—</p> <ol style="list-style-type: none"> 1. the death of, or serious injury or serious harm to, any person or persons;" or 2. the destruction of, or serious damage or serious injury to any premises, vehicle, land, natural feature whose preservation is in the national interest, chattel of any kind which is of significant historical, archaeological, scientific, cultural, literary, or artistic value or importance, or any animal, "in order to coerce, deter, or intimidate the Government of New Zealand, or any agency of the Government of New Zealand, or the Government of any other country, or any agency of the Government of any other country; or any body or group of persons, whether inside or outside New Zealand, for the purpose of furthering, outside New Zealand, any political aim". 	<p>The law does not require a formal declaration of a state of emergency. However, according to section 5 of the Act, where the Commissioner of Police believes" (a) that an emergency is occurring; and (b) that the emergency may be an international terrorist emergency; and (c) that the exercise of emergency powers is or may be necessary to deal with that emergency", the Commissioner may call a meeting of not fewer than three Ministers of the Crown to be held for the purpose of considering whether to authorize the exercise emergency powers. The Ministers of the Crown, present at the meeting may, if they believe, on reasonable grounds,— "(a) that an emergency is occurring; and (b) that the emergency may be an international terrorist emergency; and (c) that the exercise of emergency powers is necessary to deal with that emergency", under section 6 of the Act, authorise the exercise, by the Police, of emergency powers.</p>	<p>According the section 6(4) of the Act, the authority to exercise emergency powers expires "once the Commissioner of Police is satisfied that the emergency is not an international terrorist emergency; or when the international terrorist emergency ends; or at the close of the day specified in the notice as the day when that notice expires; or at the close of the seventh day after the day on which the notice is given, whichever occurs first".</p> <p>However, the legislator (and in certain cases the Governor-General) may from time to time extend that authority to exercise emergency powers for a period not exceeding 7 days, as long as the extension in aggregate does not exceed 14 days. Likewise, the legislator may revoke the authority to exercise emergency powers.</p>

Situation	Definition of an "emergency"	Who may declare the state of emergency and under what conditions?	How does a state of emergency end?
Organisms and Pests	<p>The law concerning organisms and pests is the Biosecurity Act 1993.</p> <p>The law does not “formally” define a state of emergency but the definition can be extracted from the exigencies for the declaration of a "biosecurity emergency”, under section 144 of the Act.</p> <p>A state in which:</p> <p>a." it is likely that:</p> <ol style="list-style-type: none"> 1. there has been an outbreak or occurrence in New Zealand of an organism (being an organism not previously known to be established in New Zealand) that has the potential to cause significant economic loss, significant environmental loss, or both; or 2. there has been an outbreak or occurrence in New Zealand of an organism (being an organism not previously known to be established in New Zealand) that has the potential to cause significant economic loss, significant environmental loss, or both, if it becomes established in other parts of New Zealand; or 3. an organism previously thought to be of restricted distribution or abundance (or both) in New Zealand is becoming or has become so distributed and abundant in New Zealand or any part of New Zealand that it has the potential to cause significant economic loss, significant environmental loss, or both; or 4. a pest is, or threatens to be, beyond control by the application of the national pest management plan for that pest; and b. it is in the public interest that action be taken immediately to eradicate or manage the organism and sufficient powers are not otherwise available to enable the organism to be eradicated or effectively managed". 	<p>According to section 144 of the Act, "on the recommendation of a Minister, the Governor-General may, by Proclamation, declare a biosecurity emergency if satisfied on reasonable grounds after having regard to all available information" that the aforesaid conditions that establish a state of emergency are present.</p>	<p>On the recommendation of the Minister, the Governor-General may by further Proclamation extend or revoke the Proclamation.</p> <p>According to section 146 of the Act, "a declaration of biosecurity emergency ceases to have effect at the end of 4 months after it comes into force". A declaration of biosecurity emergency may be extended by the Governor-General, and then it ceases to have effect at the end of 4 months (pending additional extensions); or by a resolution of the House of Representatives, and then it is extended for the period stated in the resolution.</p> <p>Likewise, before a declaration ceases to have effect, it may be revoked by another Proclamation by the Governor-General or a resolution of the House of Representatives.</p>

Powers

The CDEMA grants broad powers to numerous parties: The powers of the Director of Civil Defense Emergency Management:⁵

The Director's powers **before the declaration of a state of emergency** include the following:

- advise in relation to, and assist in the planning, preparation, co-ordination, and carrying out of, civil defense emergency management.
- provide advice to the Minister on matters relating to civil defense emergency management:
- disseminate information and advice on matters relating to civil defense emergency management:
- enter into arrangements, including employment arrangements, with any person for the purpose of carrying out civil defense emergency management as may be agreed;
- devise, promote, and carry out, or cause to be carried out, research and investigations into matters relating to civil defense emergency management:
- issue or cause to be issued warnings of hazards:
- promote and carry out, or cause to be carried out, the training of personnel for civil defense emergency management purposes:
- identify hazards and risks that the Director considers are of national significance:
- develop, monitor, and evaluate the national civil defense emergency management plan:
- monitor and evaluate the national civil defense emergency management strategy:
- promote civil defense emergency management that is consistent with the purpose of the Act:
- develop, in consultation with the relevant persons and organisations that have responsibilities under the Act, any guidelines, codes, or technical standards that may be required for the purposes of the Act:
- monitor the performance of Civil Defense Emergency Management Groups and persons who have responsibilities under the Act:
- co-ordinate the planning of civil defense emergency management between Civil Defense Emergency Management Groups:
- require any person to give information, subject to certain conditions, he deems reasonably necessary for the exercise of civil defense emergency management
- issue guidelines, codes or technical standards to any person or organization with responsibilities under the Act.

The director's powers regarding people and property **during a national emergency** include the following (these powers do not apply to the declaration of a local state of emergency):

- Direct and control the resources available for civil defense emergency management
- Control the exercise and performance of the functions, duties and powers of civil defense emergency management groups and Group Controllers (people appointed under the Act as Group Controllers who have the power during local states of emergency to use various resources).

⁵ Civil Defence Emergency Management Act, ss 9-10 ,67.

Powers of **Civil Defense Emergency Management Groups**⁶ regarding people and property:

The powers of the CDEM groups in **"regular times" when there is no effective state of emergency**, are similar to those vested in the Director at this point, including:

- the power to request information
- identify, assess and manage hazards and risks
- raise public awareness of the Act and legislative provisions relevant to its purpose
- monitor and report on compliance within its area with the Act and legislative provisions relevant to its purpose
- recruit and train volunteers for civil defense emergency management tasks
- participate in the development of the national civil defense emergency management strategy and the national civil defense emergency management plan:
- promote civil defense emergency management within its area that is consistent with the purpose of the Act:
- develop, approve, implement, and monitor a civil defense emergency management group plan and regularly review the plan:
- conduct civil defense emergency management training exercises, practices, and rehearsals:
- issue and control the use of signs, badges, insignia, and identification passes authorized under the Act, regulations made under the Act, or any civil defense emergency management plan:
- provide communications, equipment, accommodation, and facilities for the exercise of its functions and powers during an emergency.

Powers of Civil Defense Emergency Management Groups **during a state of emergency (whether national or local)** include the following:

- "disseminate information and advice to the public":
- "carry out or require to be carried out works and/or clearing roads and other public places and/or removing or disposing of, or securing or otherwise making safe, dangerous structures and materials wherever they may be":
- "set up first aid posts, and provide for first aid to be given to casualties and for their movement to hospital, other place of treatment, or areas of safety":
- "provide for the rescue of endangered persons and their removal to areas of safety":
- "enter into arrangements, including employment arrangements, with any person for the purpose of carrying out civil defense emergency management as may be agreed":
- "undertake emergency measures for the disposal of dead persons or animals if it is satisfied that the measures are urgently necessary in the interests of public health":
- provide clothing, food, shelter and any other vital service:
- prohibit or regulate land, air, and water traffic within the area or district to the extent necessary to conduct civil defense emergency management:

⁶ Civil Defence Emergency Management Act 2002, ss 17-18 ,76 ,85.

- "provide for the relief of distress, including emergency food, clothing, and shelter";
- "provide equipment, accommodation, and facilities for the exercise" of any of the powers conferred by subsection 85 of the Act.
- According to section 94 of the CDMA, "despite anything in the Public Bodies Contracts Act 1959" the chairperson of the Group; the Group Controller; the deputy chairperson of the Group; "any employee of the Group who is authorized for the purpose in the Group's civil defense emergency management plan" may "enter into any contract on behalf of a Civil Defense Emergency Management Group for any of the purposes" of the CDEMA.

Powers of Civil Defense Emergency Management Groups **after the state of emergency**:

One of the powers of the Civil Defense Emergency Management Group is to carry out recovery activities. However, according to section 29 of the CDEMA, "if the Minister is satisfied that a Civil Defense Emergency Management Group is, or is likely to be, unable to ensure the effective carrying out of recovery activities in its area", the Minister may appoint "a suitably qualified and experienced person as the Recovery Co-ordinator for the area".

The law defines, under section 4, "recovery activities" as "activities carried out under this Act or any civil defense emergency management plan after an emergency occurs, including, without limitation:

- assessment of the needs of a community affected by the emergency
- co-ordination of resources made available to the community; and
- actions relating to community rehabilitation and restoration; and
- new measures to reduce hazards and risks"

It is noteworthy that this definition of recovery activities and the powers of the groups or recovery coordinators to execute them is one of the only specific indications found in the law (except for the Articles on the appointment of a recovery coordinator) regarding recovery activities after an emergency.⁷

The powers of **constables and Controllers**** concerning people and property:⁸

**Controller means Group Controller (above) or National Controller (a person empowered by Article 10 of the Act), and in the absence of such delegation, the Controller is the National Controller.

During state of emergency (national or local):

- the power to evacuate any premises or places
- the power of entry on premises
- the power of closing roads and public places
- the power of removal of any aircraft, hovercraft, ship or ferry or other vessel, train, or vehicle impeding civil defense emergency management;

⁷ Ministry of Civil Defence & Emergency Management, *Focus on Recovery: A holistic framework for recovery in New Zealand* 3 (2005) [IS 5/05].

⁸ Civil Defence Emergency Management Act 2002, ss 78, 86-92.

- the power to requisition any land, building, vehicle, animal, goods (food, medicines, medical supplies, food, etc.) or any other equipment, materials, or supplies
- the power to direct any person to stop any activity that may cause or substantially contribute to an emergency: or request him to take any action to prevent or limit the extent of the emergency.
- the power to carry out inspections (examine, mark, disinfect, or destroy) any property, animal, or any other thing
- Likewise, every **constable** has indirect power to enter and search any premises, not being a dwellinghouse, to obtain information if authorized by a **District Court Judge** by warrant, if the judge is satisfied by a number of conditions specified by the law.

The Minister of Civil Defense Emergency Management may, under section 84 of the CDMA, if "a state of emergency is in force, or the Minister considers that an imminent threat of an emergency exists; and the Minister considers that, having regard to all the circumstances, it is expedient" to exercise the following power, direct the Director or any Civil Defense Emergency Management Group or person to perform or cease to perform or exercise any of the functions, duties, or powers conferred on that person or Group under the Act.

Another kind of emergency powers - the making of regulations - can be found, among other places, in the Biosecurity Act 1993.

When a state of emergency is declared under the Biosecurity Act 1993, the Governor-General may, on the recommendation of the Minister of Biosecurity, make regulations by Order in Council for the eradication or management of organisms for which the state of emergency was called or to effectively manage the state of emergency.

Regarding terrorism, the International Terrorism (Emergency Powers) Act 1987 grants similar powers to those granted by the CDEMA, including the authority to evacuate premises and places; the power to enter premises, places or vehicles; the power to remove vehicles from any road or public place, and requisitioning powers. It is noteworthy that the International Terrorism Act also grants powers that the CDEMA does not, such as the power of a constable to connect "any additional apparatus to, or otherwise interfere with the operation of, any part of the telecommunications system; and intercept private communications in the area in which the emergency is occurring".⁹

There is no specific law in New Zealand that allows the arrest of persons suspected of committing acts of terrorism, but it is worth mentioning in the context of anti-terrorism the Immigration Act 2009 (which overwrote the old immigration act from 1987¹⁰), which allows the imposition of administrative detentions. The Act allows for the detention and arrest of persons "who are, on reasonable grounds, suspected by an immigration officer or a constable of constituting a threat or risk to security".¹¹ Under the Act, this power can be used to detain such a person until a deportation order is issued.

The law provides a number of conditions for arrest including:

- A person arrested by a **constable** without a warrant may be detained only as long as is necessary to achieve the purpose of the arrest,

⁹ International Terrorism (Emergency Powers) Act 1987, s 10.

¹⁰ For more about the arrangements the old law provided on this matter, see: John Ip, *Comparative Perspectives on the Detention of Terrorist Suspects*, 16 TRANSNAT'L L. & CONTEMP. PROBS. 773, 805 (2007).

¹¹ The Immigration Act provides additional grounds for arrest. See section 309 of the Act.

but must not be detained for a period longer than 96 hours (inclusive of any time during which the person was detained by an immigration officer, as follows).

When a constable is requested by an immigration officer to arrest someone (when there is legal grounds for arrest) he must perform the arrest.

- Detention of a person by an **immigration officer** will not last more than 4 hours (and must end earlier if: a constable used his power to arrest and detain that person; the person was taken into custody under the immigration act; the person is no longer liable for arrest and detention or the purpose of the detention was achieved).

Likewise, the **Fire Service Act** grants powers to a person in charge of the fire brigade in a state of fire or other emergency, including:¹²

- the power to "enter upon any land, building, or structure and, if necessary, break into any building or structure which may be on fire or otherwise endangered or which is in the near neighborhood of the emergency"
- the power to cause any "motorway, highway, road, street, private road, right of way", etc. to be closed for traffic
- the power to "remove, using reasonable force if necessary, any person who, by his presence or otherwise, interferes with operations to deal with the fire or emergency or who, in his opinion, is in danger".

Furthermore, the law allows the Minister to order the New Zealand Fire service commission in a state of war or state of emergency declared under the CDEMA, to make special provisions for (among other things) the protection of Crown property from fire.

On the matter of war, the Citizenship Act 1977 empowers the Minister to decline a person's declaration of renunciation of New Zealand citizenship (allowed under certain conditions). Furthermore, the Governor-General has certain powers under the Defense act 1990, which allow him, for example in a state of war (or in a similar state of emergency), to extend the service of soldiers in the regular army

On the matter of epidemics the Epidemic Preparedness Act 2006¹³ grants the following emergency response powers¹⁴:

- According to section 5 of the Act, with the agreement of the Minister of Health, the Prime Minister may declare "that he or she is satisfied that the effects of an outbreak of a stated quarantinable disease [...] are likely to disrupt or continue to disrupt essential governmental and business activity in New Zealand" (such declaration is titled "epidemic notice"). While the notice is in force, further notices may be given, lifting or extending its effect to stated parts of New Zealand.

While an epidemic notice is in force:

- The Prime Minister may, with the agreement of the Minister responsible for the administration of the enactment concerned, "state any matter that must be stated in order for action, or a particular action, to be taken under some other enactment referring to an epidemic

¹² Fire Services Act 1975, ss 28-29.

¹³ The Epidemic Preparedness Act contains powers referring to the emergency preparedness stage, which are not detailed herein. For further information, see sections 11-12 of the Act.

¹⁴ Epidemic Preparedness Act 2006 ss 8, 11-15, 24.

- management notice".
- The Governor-General may, by Order in Council made on the recommendation of the Minister of Health, modify "any requirement or restriction imposed by any enactment administered by the Ministry of Health".
- The Governor-General may modify any requirement or restriction imposed by the enactment, subject to certain restrictions and terms.
- Judges to whom section 24 of the Epidemic Preparedness Act applies may "in any particular cases modify any rule of court, and to any extent, that he or she thinks necessary in the interests of justice to take account of the effects of the quarantinable disease stated in the notice".

Rights in states of emergency

CDEMA does not refer specifically to human rights in general or the New Zealand Bill of Rights Act 1990, nor do the other laws. The emergency laws appear to make no clear exception for rights that may be violated, if any, or for the manner and extent of the violation. Hence, there is no indication (in the legislative framework reviewed, apart from case law study) of the extent to which the legislation infringes the New Zealand Bill of Rights Act, if at all.¹⁵ On the other hand, there are no provisions among the New Zealand legislation that specifically protect human rights in states of emergency.

It is noteworthy that a general reference to human rights in states of emergency can be found within the international law.¹⁶

¹⁵ However, it is interesting to note that the Epidemic Preparedness Act 2006 does state that while a person's rights, available remedies or courses of action, or legal situation under an enactment are affected by the effect of a modification order (see in abstract above), that a person must be told of those rights, those remedies or courses of action, or that situation, as modified by the effect of the order.

¹⁶ According to section 4(1) of the International Covenant on Civil and Political Rights (ICCPR), "In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed", the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that certain rights can not be violated, including the right to life, freedom of thought, freedom of religion, the prohibition of torture and cruel punishment, prohibition of retroactive punishment and prohibition of slavery. New Zealand's submission to the Covenant, if at all, is reflected by the fact that the New Zealand Bill of Rights is based on it and on the declarative enactments that appear therein stating the bill establishes New Zealand's commitment to the aforesaid covenant (Matthew J McKillop, *Emergency Powers of the New Zealand Government: Sources, Limitations, and the Canterbury Earthquake 32-35* (2010) (Bachelor of Laws (partial fulfillment) dissertation, University of Otago, Dunedin).

Regulation

By information and licensing:

Regulation through information in New Zealand is done through Emergency Information Management, whose objective is to "promote the effective management and exchange of information to aid decision making" before, during and after a state of emergency. Among other things, the information includes "(a) hazard and risk status information, (b) readiness information including resources and assets, (c) emergency impact assessments [...] (f) [...] contact lists, standard operating procedures, (g) reports, briefings, public notices", etc.¹⁷

In 2007 the Ministry of Civil Defense and Emergency Management first issued Public Information Management (PIM) guidelines. Public information management during an emergency "involves collecting, analysing, and disseminating information to the public. It promotes effective leadership and decision-making, and enables the people affected by the emergency to understand what is happening and take the appropriate actions to protect themselves"¹⁸. PIM actions are undertaken throughout the stages of emergency preparation and response as well as throughout the recovery stages.¹⁹ The purposes of the PIM include promoting public security through information to the public, affecting public behavior through information and increasing public security as to managing the response to the state of emergency.²⁰ The guidelines (which were updated in 2013), also provide for the review of powers and responsibilities regarding PIM, a detailed explanation of the parties responsible for providing the information and so on, in order to create a consistent approach on this matter among the various agencies in New Zealand.²¹

In the years 2005-2006, the Ministry of Civil Defense and Emergency Management managed to obtain crown funding to establish a National Public Education Programme. The long-term aim of the program is actually to improve the individual and community's preparedness and awareness for states of emergency. The program includes, among other things:²²

- A strategic framework for the Activity of the Ministry of Civil Defense and Emergency Management and the Civil Defense Emergency Management Groups.
- Media campaigns.
- A website targeted specifically at providing user-friendly information and advice for the public on what to do to be better prepared.
- Resources for schools aimed at getting the message into homes through kids at school.

¹⁷ Ministry of Civil Defence & Emergency Management, Guide to the National Civil Defence Emergency Management Plan, Section 21: Emergency information management (2006) www.civildefence.govt.nz/memwebsite.nsf/wpg_URL/For-the-CDEM-Sector-Publications-The-Guide?OpenDocument.

¹⁸ Public Information Management (PIM), from the official website of the Ministry of Civil Defense and Emergency Management) http://www.civildefence.govt.nz/memwebsite.nsf/wpg_URL/For-the-CDEM-Sector-Public-Information-Management-%28PIM%29-Index?OpenDocument (Information adapted from: Ministry of Civil Defense & Emergency Management, Public Information Management: Director's Guideline for Civil Defence Emergency Management Groups (2013) [DGL14/13]).

¹⁹ Ministry of Civil Defense & Emergency Management, Public Information Management: Director's Guideline for Civil Defence Emergency Management Groups (2013) [DGL14/13].

²⁰ FN 18 **Error! Bookmark not defined.**

²¹ Public Information Management: Director's Guideline for Civil Defence Emergency Management Groups NOTEREF _Ref371172700 \h FN 19 above, p. 1.

²² The National Public Education Programme (from the official website of the Ministry of Civil Defense and Emergency Management: www.civildefence.govt.nz/memwebsite.nsf/wpg_URL/For-the-CDEM-Sector-Public-Education-Index?OpenDocument).

- Research to understand "current national levels of awareness, understanding and preparedness" and to "evaluate the effectiveness of initiatives undertaken and identify areas for improvement".

Additional regulation can be found in the Building Code and the Building Act 2004, whose purpose, as it is stated under section 3 of the law, is "to provide for the regulation of building work, the establishment of a licensing regime for building practitioners, and the setting of performance standards for buildings" to ensure public safety.²³

Criminal liability

The CDEMA contains provisions concerning a person's liability for failure to comply with specific provisions of the law, for example a failure to comply with direction to evacuate premises or place or Requisition of his property.

Other provisions concern more general offenses, such as personation, meaning [a person] intentionally personating or falsely representing himself or herself to be the Director, a Controller, a member of a Civil Defense Emergency Management Group or any person duly authorized or employed for carrying out any provision of the Act or any civil defense emergency management plan.

It is also an offense to threaten, assault, or intentionally obstruct or hinder any person in that person's exercise or performance of a function, power, or duty under the Act.

Insurance

Regulation through insurance is undertaken by the Earthquake Commission (EQC), which is a government entity.

The EQC "provides natural disaster insurance for residential property, administers the Natural Disaster Fund [NDF], and funds research and education on natural disasters and ways of reducing their impact".²⁴

"The Natural Disaster Fund has its origins in the Earthquake and War Damage Fund", but today war damage is no longer covered, nor is disaster insurance of commercial property.

"Until the Canterbury earthquakes in 2010 and 2011, there had not been any major claims on the Natural Disaster Fund. Hundreds of millions of dollars had been paid out on claims for smaller events".²⁵

EQCover (which is not considered as private insurance) provides insurance for residential homes, land and contents against loss or damage from earthquakes, volcanic eruptions, a tsunami, hydrothermal activity and natural land slips.²⁶ It also insures residential land (within limits) against storm and flood damage and from fire resulting from any of these natural disasters.

²³ Chris Webb & David A. McEntire, 1

²⁴ About EQC (from the official EQC website): www.eqc.govt.nz/about-eqc.

²⁵ Managing the Natural Disaster Fund (from the official EQC website): www.eqc.govt.nz/about-eqc/our-role/ndf.

²⁶ EQC Insurance (from the official EQC website): www.eqc.govt.nz/what-we-do/eqc-insurance.

Emergency Laws and Regulations in Turkey: Executive Summery

Legislative framework

The general regulation of states of emergency in Turkey appears in the Constitution (1982), which provides for the declaration of states of emergency in four cases: 1) natural disasters, 2) dangerous epidemic diseases, 3) serious economic crises, and 4) widespread acts of violence and serious deterioration of public order.

The Constitution also allows for the declaration of martial law and states of war.

Besides the Constitution, extensive reference to states of emergency can be found in the State of Emergency Act 1983, which regulates all of the powers, procedures, rights and responsibilities that apply to various states of emergency. Besides the aforesaid general arrangements, numerous laws can be found both in primary and secondary legislation (regulations/decrees) concerning the management of states of emergency.

As for legislation on terrorism, there is also the Law on Fight Against Terrorism 1991 that establishes the framework for criminal liability in a range of situations connected to terror and the various criminal procedures.

Entrance into a state of emergency

The powers and terms of declaration, as specified in the Constitution, differ according to the relevant situation.

Concerning natural disasters, epidemics and economic crises, the power to declare a state of emergency in the country or some of its provinces is vested in the Council of Ministers headed by the President. The declaration must immediately submitted for approval to the Grand National Assembly of Turkey, which is the legislative branch. A state of emergency may not exceed six months. But the Grand National Assembly may change the length of the state of emergency and at the request of the Council of Ministers may extend it for a maximum of four months at a time. It may also lift the state of emergency.

Concerning acts of violence and deterioration of public order, the power to declare a state of emergency is vested in the Council of Ministers, headed by the President, after consulting the National Security Council. The decision must be ratified by the Grand

National Assembly of Turkey, with the state of emergency not exceeding six months. However, the Grand National Assembly may amend, end or extend the period by up to four months at a time.

As for war, the power to declare war is vested, generally, in the Grand National Assembly of Turkey. If the country is under sudden armed aggression, the Grand National Assembly of Turkey is adjourned or in recess, and it thus becomes imperative to decide immediately on the use of armed forces, the President of the Republic can decide on the use of the Turkish armed forces.

The power to declare a state of “**martial law**,” due to a number of exigencies specified in the Constitution, is vested in the Council of Ministers, headed by the President, after consulting the National Security Council, subject to the approval of the Grand National Assembly. A state of emergency may not exceed six months. The Grand National Assembly of Turkey has the power to shorten or lengthen the period of martial law for a period that does not exceed four months at a time or end it if it so deems necessary. In the event of a state of war, the limit of four months does not apply.

Powers

In general, the Constitution does not enumerate many powers related to emergency, but during a state of emergency (and during the effect of martial law) grants the Council of Ministers the power to issue decrees on matters required by the state of emergency (or the existence of martial law, as the case may be). These decrees must be published in the Official Gazette and must be submitted to the Grand National Assembly of Turkey for approval. As opposed to states of “routine,” in times of emergency or martial law, these decrees may also regulate matters related to basic rights, individual rights and responsibilities and political rights and responsibilities enumerated in the Constitution.

Additional powers in the Emergency Act and additional laws are detailed in the body of the review.

Rights in states of emergency

According to Article XV of the Constitution, in times of war, mobilization, martial law, or a state of emergency, the exercise of fundamental rights and freedoms may be partially or entirely suspended, or measures derogating the guarantees embodied in the

Constitution may be taken to the extent required by the exigencies of the situation, as long as obligations under international law are not violated.

However, the Constitution also provides **a number of basic rights and liberties that are inviolable even in states of emergency**: Everyone has the right to life and the right to corporeal and spiritual integrity except for death caused by actions in accordance with the rules of war. Likewise, no one may be compelled to reveal his or her religion, conscience, thought or opinion, nor be accused on account of them; the Constitution also states that offences and penalties may not be made retroactive, nor may anyone be held guilty until so proven by a court judgment.

As for the existing regulatory arrangements in Turkey (see initial list in the body of the abstract), it is noteworthy that as a lesson from the 1999 earthquake in Turkey, the government decided in 2000 to introduce **compulsory earthquake insurance**. Homeowners in all urban areas of Turkey are required as part of the arrangement to purchase earthquake insurance so that they will be eligible for housing aid from the state after an earthquake occurs.¹

¹ N. Emel Ganapati, Disaster Management Structure in Turkey: Away from a Reactive and Paternalistic Approach, in DISASTER MANAGEMENT HANDBOOK 282 (JACK PINKOWSKI ed., 2008).

Emergency Laws and Regulations in Turkey: Executive Summery

Introduction

Modern Turkey is a constitutional republic with a parliamentary democratic regime, comprised of 81 provinces. It was established in 1923, after the demise of the Ottoman Empire, by Kemal Ataturk, who introduced widespread social, legal and political reforms.

Turkey draws its civil law system from a number of European law systems (especially the Swiss Civil Code). The present Turkish Constitution was enacted in 1982 and has since undergone a number of amendments.

Turkey is a member of the European Court of human rights, even though it declared a number of derogations from the European human rights convention it ratified.²

Legal framework

The general regulation of states of emergency in Turkey is enshrined in the Constitution (1982), which provides for the declaration of states of emergency in four cases: natural disasters, dangerous epidemic diseases, economic crises, widespread acts of violence and serious deterioration of public order. The Constitution also discusses martial law and states of war.

Besides the Constitution, extensive reference to states of emergency can be found in the State of Emergency Act 1983, which regulates all of the powers, procedures, rights and responsibilities that apply during various states of emergency³.

Besides the aforesaid general arrangements, numerous laws can be found both in primary and secondary legislation (regulations/decrees) concerning management of states of emergency, including:⁴

- The Civil Defense Law of 1958, which is concerned with states of enemy assault, natural disasters and major fires. **The General Directorate of Civil Defense** was established and its powers were determined by virtue of this law.

² Turkey - The World FactBook, available at: <https://www.cia.gov/library/publications/the-world-factbook/geos/tu.html>.

³ The references to this law and its wording throughout this document are based on the translation found in Legislationline - <http://www.legislationline.org/documents/id/6974>. It is not an official Turkish translation.

⁴ The points are extracted from the tables that appear in Derin N. Ural, Emergency Management in Turkey: Disasters Experienced, Lessons Learned, and Recommendations for the Future, in "Comparative Emergency Management: Understanding Disaster Policies, Organizations, and Initiatives from Around the World," pp. 5-7 (David A. McEntire ed.), available at: <http://training.fema.gov/EMIWeb/edu/CompEmMgmtBookProject.asp>.
N. Emel Ganapati, Disaster Management Structure in Turkey: Away from a Reactive and Paternalistic Approach, in "Disaster Management Handbook 282," pp. 294-297 (Jack Pinkowski ed., 2008).

- The Disaster Law, or the Law on Measures and Assistance to be Put into Effect Regarding Disasters Affecting the Life of the General Public, was first enacted in 1959 and has undergone a number of amendments since. The law provided the legal framework for management, relief and reconstruction after states of emergency. The law deals, among other things, with establishing the rights of disaster victims, the principles to decide the impact of states of emergency, building codes for buildings in disaster-struck areas and more.
- The Extraordinary Situation Law of 1983 is concerned with the instructions that should be put into effect when it is necessary to declare a state of emergency in cases of grave violation of public order because of epidemics, serious economic recessions and widespread terrorism.
- Decree with the power of law on Acceptance of Decree on Organization of Prime Minister's Office from 1999. On the basis of this decree the **General Directorate of Emergency Management** was established and its powers were determined. In 2009 changes were made in the organizational structure of the Turkish government concerning disaster management. In December 2009, based on Law no. 5902, a new department of "Disaster and Emergency Management Presidency (DEMP)" was established under the Prime Minister's office, putting an end to the operation of the three emergency management agencies that were operating up to that point: the General Directorate of Disaster Affairs, the General Directorate of Civil Defense and the Turkey Emergency Management General Directorate, also called the General Directorate of Emergency Management. The new department replaced those departments and most of their obligations were transferred to it.⁵
- The Construction/Development Law of 1985, that sets forth the regulations and procedures for preparing urban master plans, private building licensing and building use.
- The Municipality Law of 2004, which grants municipalities, by primary legislation, powers concerning the different stages of emergency management (including emergency preparation and emergency management and relief powers). Before the 1999 earthquake, the municipalities powers were limited only to emergency mitigation.⁶
- Regulations on Emergency Response Organizations and Planning Principles for Disasters, 1988. These regulations concern the establishment of central and provincial organizations and set forth the basic principles of emergency management programs.⁷

⁵ "A New Change in the Disaster Management Structure of Turkey," Republic of Turkey Prime Ministry - Disaster and Emergency Management Presidency, available at: http://www.preventionweb.net/files/12840_anewchangeEN.pdf.

⁶ N. Emel Ganapati, FN 3 above, p. 292.

⁷ The regulation specifies the obligations of governors, military organizations and affiliates that manage emergency services and Red Cross emergency relief programs. The regulation regulates the establishment and powers of emergency relief organizations, "in order to provide, as quickly as possible, in case of emergency, first aid to the disaster area and its victims, by planning the state's resources before the disaster occurs" (Derin N. Ural, FN NOTEREF _Ref373755000 \h * MERGEFORMAT 3 above, p. 6).

- Decree on Basic Principles Related to Disasters Affecting the Life of the General Public, 1968. The Decree describes the basic criteria that need to be taken into account when declaring a disaster (number of casualties, number of damaged buildings, damage to agricultural crops and so on).
- As for legislation on terrorism, there is also the Law on Fight Against Terrorism, 1991, which establishes the framework for criminal liability in a range of situations connected to terror and the various criminal procedures.

Turkey inherited from the Ottoman Empire its tradition of dealing with states of emergency, characterized by retroactive response, centralism and hierarchy, and the ad hoc examination of each case per se. Over the years, Turkey's approach to disaster management changed from retroactive response to a more proactive approach. The first approach is reflected in the first disaster law enacted following the earthquake in Erzincan in 1939, which provided victims with financial aid, tax reliefs and construction materials, among other things, but made no reference to readiness or mitigation of a future disaster.

Turkey eventually adopted a more proactive approach of prevention, preparation and management of states of emergency. For example, following a series of floods and earthquakes, the Precautions for Prevention of Floods and Underground Waters Law, 1943 was enacted as well as the Law on Precautions to be Taken Before and After Earthquakes, 1944. Likewise, because of the urgent need for an emergency-response organizational structure, the Civil Defense Law was passed, by virtue of which the General Directorate of Emergency Management was established, as well as several other laws concerning the institutional-organizational system to treat states of emergency. The changes are also reflected in a less paternalistic approach, expressed by a number of organizational reforms, such as transferring some of the emergency management powers (such as construction inspection powers), which were traditionally concentrated by the state and the central government, to the responsibility of private companies and bodies, as well as recognition of the importance of nongovernment organizations, especially volunteer search and rescue groups.⁸

⁸ N. Emel Ganapati, FN 3 above, p. 288-292.

Declaration of a state of emergency: A Table of Analysis

Situation	Definition of an “emergency”	Who may declare the state of emergency and under what conditions?	Statutes that come into force during emergency	How does a state of emergency end?
Natural disasters, epidemics and economic crises	There is no article in the Constitution that defines state of emergency. But the definition of state of emergency can be learned from the articles that grant powers to declare a state of emergency. According to the Constitution, a state of emergency can be declared because of a natural disaster, a dangerous epidemic disease or a serious economic crisis. *The State of Emergency Act uses the same “definitions.”	The Council of Ministers, under the chairmanship of the President, may declare a state of emergency in one or more regions or throughout the country The declaration must be published in the Official Gazette and shall be immediately submitted for approval to the Grand National Assembly of Turkey, which is the legislative branch.	The study found no emergency laws that go into effect in an emergency	A state of emergency will not exceed six months. But the Grand National Assembly may change the length of the state of emergency and at the request of the Council of Ministers may extend it for a maximum of four months at a time. Likewise, it may lift the state of emergency.
Acts of violence and disruption of public order	A state of emergency can be declared when there are “serious indications of widespread acts of violence aimed at the destruction of the free democratic order established by the Constitution or of fundamental rights and freedoms, or serious deterioration of public order because of acts of violence.” *The State of Emergency Act uses the same “definitions.”	The Council of Ministers, under the chairmanship of the President of the Republic, after consultation with the National Security Council, may declare a state of emergency in one or more regions or throughout the country The declaration shall be published in the Official Gazette and shall be immediately submitted for approval to the Grand National Assembly of Turkey.		Under the Constitution, a state of emergency will not exceed six months. But the Grand National Assembly may change the length of the state of emergency and at the request of the Council of Ministers may extend it for a maximum of four months at a time. Likewise, it may lift the state of emergency. The State of Emergency Act adds to these conditions that the Council of Ministers, after declaring a state of emergency, must consult the the National Security Council before deciding to extend, expand or lift the state of emergency.

Situation	Definition of an “emergency”	Who may declare the state of emergency and under what conditions?	Statutes that come into force during emergency	How does a state of emergency end?
War	There is no definition in the Constitution.	<p>According to the Turkish Constitution, the Power to authorise the declaration of a state of war in cases deemed legitimate by international law and except where required by international treaties to which Turkey is a party or by the rules of international courtesy to send Turkish Armed Forces to foreign countries and to allow foreign armed forces to be stationed in Turkey, is vested in the Turkish Grand National Assembly.</p> <p>If the country is subjected, while the Turkish Grand National Assembly is adjourned or in recess, to sudden armed aggression and it thus becomes imperative to decide immediately on the deployment of the armed forces, the President of the Republic can decide on the mobilization of the Turkish Armed Forces.</p>	The study found no emergency laws that go into effect at a time of declaration of war.	The Constitution does not set time limits for a state of war

Situation	Definition of an “emergency”	Who may declare the state of emergency and under what conditions?	Statutes that come into force during emergency	How does a state of emergency end?
Terrorism events	<p>The Turkish Constitution does not specifically address terrorism events and definitions of terrorism can be found in the Law on Fight Against Terrorism (see table of powers below).</p> <p>There is a definition of "offenses with a terrorist objective": the law requires that the offense be committed "within the activities of a terrorist organization," and lists a number of actions that are considered offenses with a terrorist objective, including "offenses that are connected to events that led to the declaration of a state of emergency, when committed in areas where a state of emergency was declared under article 120 of the Constitution," which is about the declaration of states of emergency on account of widespread acts of violence and deterioration of public order (see definition above).</p>	<p>There is no reference to it in the Constitution but in certain cases Article 120 of the Constitution, on states of emergency on account of widespread acts of violence and deterioration of public order, may be relevant (see above).</p>		

The Turkish Constitution also provides for the declaration of a state of “martial law.” The Council of Ministers, under the chairmanship of the President of the Republic, after consultation with the National Security Council, “may declare martial law in one or more regions or throughout the country for a period not exceeding six months, in the event of widespread acts of violence which are more dangerous than the cases necessitating a state of emergency and which are aimed at the destruction of the free democratic order or the fundamental rights and freedoms embodied in the Constitution; or in the event of war, the emergence of a situation necessitating war, an uprising, or the spread of violent and strong rebellious actions against the motherland and the Republic, or widespread acts of violence of either internal or external origin threatening the indivisibility of the country and the nation.” This decision shall be published immediately in the Official Gazette, and shall be submitted for approval to the Turkish Grand National Assembly, on the same day. The Turkish Grand National Assembly may, when it deems necessary, reduce or extend the period of martial law - for a maximum of four months each time - or lift it. In the event of a state of war, the limit of four months does not apply.

Powers

* Because of space limits and the nature of this document, we cannot discuss all of the powers listed in the various emergency laws, therefore we will focus on the main powers cited in the Constitution, the State of Emergency Act and the relevant articles.

In general, the Constitution does not enumerate many powers related to emergency, but during a state of emergency (and during the effect of martial law) grants the Council of Ministers the power to issue decrees on matters required by the state of emergency (or the existence of martial law, as the case may be). These decrees must be published in the Official Gazette and submitted to the Grand National Assembly of Turkey for approval.

As opposed to states of “routine” (in which the Grand National Assembly of Turkey may also empower the Council of Ministers to issue decrees), in times of emergency or martial law, these decrees may also regulate matters related to basic rights, individual rights and responsibilities and political rights and responsibilities in the Constitution.

Situation	Powers	who is the power conferred to	power exercised vis-a-vis	Conditions to be met when exercising the power
Natural disasters or dangerous epidemics	<p>The State of Emergency Act (henceforth in this table: the Act) establishes the state's duty to take measures to rescue the victims of a natural disaster, to provide necessary monetary relief and any kind of property, whether real estate or chattel, required for damage repair and to do everything possible to meet financial and material undertakings, and so on.</p> <p>The Act states a number of measures that can be taken considering the events for which a state of emergency was imposed:</p> <p>(a) prohibition of people from residing in certain localities in the concerned region; restriction of entry into and departure from certain areas; evacuation of certain areas and transfer of people to other areas;</p> <p>(b) suspension of training at all levels of official and private education and training institutions; closure, permanently or temporarily, of student dormitories (except for the civil judiciary, military institutions, judges, prosecutors and military employees).</p> <p>(c) control and limitation of the opening and closing times, and if necessary the closure and requisition by the state, of various public</p>	<p>The duty of and authority for implementing states of emergency shall belong to:</p> <p>(a) the governor of a province, if the state of emergency covers one province;</p> <p>(b) the regional governor, if the state of emergency is declared in more than one province administratively connected to a regional governancy;</p> <p>(c) the regional governors, with co-ordination and co-operation being provided by the office of the Prime Minister, if the state of emergency is declared throughout the country or in</p>	People and property	See specification above on declaration of state of emergency in this category.

Situation	Powers	who is the power conferred to	power exercised vis-a-vis	Conditions to be met when exercising the power
	<p>places (for instance, casinos, restaurants, holiday villages, etc.).</p> <p>(d) limitation or suspension of annual vacation leave of personnel in charge of carrying out the services required under the state of emergency in a region (except for the civil judiciary, military institutions, judges, prosecutors and military employees).</p> <p>(e) requisitioning, and if necessary, seizure of all communication media and instruments within the region (except for the civil judiciary, military institutions, judges, prosecutors and military employees).</p> <p>(f) demolition of unsafe buildings, destruction of real estate and personal property which threaten public health, and of articles of food and other products which are deemed to be unhealthy;</p> <p>(g) control, limitation and if necessary prohibition of the entry into or carrying out of the affected region of certain articles of food, animals, animal fodder or animal products;</p> <p>(h) regulation of the distribution of essential goods;</p> <p>(i) requisition and control of: essential supplies of food and oil used in cooking, heating, cleaning and lighting; medicines, chemical materials, goods and materials used in construction, industry, transportation and agriculture; and closure of workplaces which are not of vital importance to the region;</p> <p>(j) control of land, sea and air traffic, and the restriction or prohibition of the transportation of vehicles into or out of the region.</p> <p>The law further provides that governors of regions where a state of emergency is declared may apply to other regional governors in their area if urgent rescue and aid organizations under their jurisdiction cannot satisfy the needs of emergency relief.</p> <p>Furthermore, regional governors, when faced with urgent emergency situations, may request aid from the highest military commandship in their region.</p> <p>Regional governors may request aid according to the power</p>	<p>provinces within the jurisdiction of more than one regional governor.</p>		

Situation	Powers	who is the power conferred to	power exercised vis-a-vis	Conditions to be met when exercising the power
	<p>provided to them by the existing legislation. In urgent cases, a regional governor may request the aide of the closest military commandship.</p> <p>The law adds that public institutions and persons within the region where a state of emergency is declared can be compelled to provide land, buildings, establishments, instruments, materials, food, medicines and medical supplies in order to fulfil the obligations imposed on them. If such necessities as food, clothing, instruments, materials, medicines and medical supplies cannot be provided from within the limits of the region, they can be requisitioned from the nearby regions in accordance with the provisions of the Act.</p> <p>The law adds that all citizens between 18 and 60 years of age, who are resident within the region where a state of emergency is declared, are obliged to perform the duties imposed on them under the state of emergency. If it is deemed necessary, the working hours, both during day and night, in work places may be increased in accordance with the nature and level of manpower needs.</p> <p>The application of provisions of the Law on Weekend Holidays, the Law on National Festival Days and General Holidays, and the Law on Midday Rest may be totally or partially suspended.</p>			
Economic crises	<p>The State of Emergency Act provides that whenever a state of emergency is declared due to a serious economic crisis, the Council of Ministers may issue decrees having the force of law to direct markets in goods, capital and services as they affect tax, monetary, credit, rent, remuneration and price policies; and to determine, regulate and implement every kind of measure and obligation in relation to labour so as to regulate and improve the economy.⁹</p> <p>The law provides for the establishment of the State of Emergency</p>	<p>The State of Emergency Co-ordination Council on Economic Affairs</p> <p>The powers of the regional or provincial governors, as mentioned above in the context of natural disasters.</p>	People and property	See specification above on declaration of state of emergency in this category.

⁹According to Article 10(1) of the Act.

Situation	Powers	who is the power conferred to	power exercised vis-a-vis	Conditions to be met when exercising the power
	<p>Co-ordination Council on Economic Affairs and grants the Council of Ministers the power to authorize the related Ministries or the Council to implement the decisions taken by it by virtue of the power conferred by decrees having the force of law.</p> <p>The powers of the regional or provincial governors, as mentioned above in the context of natural disasters and epidemics, are valid also in the case of economic crises.</p>			

Situation	Powers	who is the power conferred to	power exercised vis-a-vis	Conditions to be met when exercising the power
Acts of violence and deterioration of public order	<p>In addition to the powers mentioned above concerning states of emergency on account of natural disasters or epidemics, the law provides a number of additional powers that may be exercised in this type of emergency:</p> <p>(a) imposition of a limited or full curfew;</p> <p>(b) prohibition of any kind of assembly or procession or movement of vehicles in certain places or within certain hours;</p> <p>(c) authorisation of officials to search persons, their vehicles or property and to seize goods deemed to have evidentiary value (except for soldiers and judges);</p> <p>(d) imposition of obligation to carry identity cards by those living in or entering regions which are declared to be under a state of emergency;</p> <p>(e) Prohibition of, or imposition of obligation to require permission for, the publication (including issuance of reprints and editions) and distribution of newspapers, magazines, brochures, books, etc.; prohibition of importation and distribution of publications published or reprinted outside regions declared to be under a state of emergency; confiscation of books, magazines, newspapers, brochures, posters and other publications of which publication or dissemination has been banned;</p> <p>(f) control and, if deemed necessary, restriction or prohibition of every kind of broadcasting and dissemination of words, writings, pictures, films, records, sound and image bands (tapes);</p> <p>(g) taking or increase of special security measures for internal security of banks and sensitive public and private establishments;</p> <p>(h) control and, if deemed necessary, suspension or prohibition of the exhibition of all kinds of plays and films;</p> <p>(i) prohibition of the carrying or conveying of all types of weapons and projectiles, including those licensed by the state;</p> <p>j) prohibition, or the imposition of a requirement to obtain prior permission, for the possession, preparation, manufacture or conveying of all types of ammunition, bombs, destructive materials, explosives, radioactive materials and corrosive, caustic or ulcerating chemicals and all kinds of poisons, suffocating gases and other similar material; and confiscation of, or demand to submit [to the state], goods, instruments and</p>	See above under "Natural disasters or dangerous epidemic"	People and property	See specification above on declaration of state of emergency in this category.

Situation	Powers	who is the power conferred to	power exercised vis-a-vis	Conditions to be met when exercising the power
	<p>tools used in the preparation or manufacture of the aforesaid items;</p> <p>k) prohibition of persons or groups of persons believed to be disrupting public order or public security from entering the concerned region, expulsion of such persons or groups from the region, or imposition of a requirement on them to reside in or enter specified places in the region;</p> <p>(l) prohibition, restriction or regulation of the entry [of people] into and exit from establishments or institutions deemed essential for the security of the region;</p> <p>(m) prohibition of, postponement of, or imposition of a requirement to obtain permission for, assemblies and demonstrations in both enclosed and open spaces; regulation of the time and place of permitted assemblies and demonstrations; and supervision, and if deemed necessary dispersal, of all kinds of permitted assemblies;</p> <p>(n) Postponement of, or imposition of a requirement to obtain permission for, the retrenchment of labour for periods exceeding three months, except in cases of termination or cancellation of labour contracts at the request of workers, dismissal on grounds of immoral behaviour or breach of good faith, retrenchment on health grounds, or normal retirement.</p> <p>(o) Suspension of the activities or associations for periods not exceeding three months, after considering each individual case;</p> <p>(p) Postponement of decisions to enforce strikes and lock-outs for up to a maximum of one month;</p> <p>(q) Planning and execution of operations, in so far as they may be necessary, beyond the borders of Turkey to capture or incapacitate persons who, having carried out [disruptive] actions in Turkey, have sought refuge in a neighbouring country, subject to certain conditions in the law. This power shall only extend to an emergency declared under Article 121 of the Constitution, referring to declaration of a state of emergency on account of a natural disaster, dangerous epidemic or severe economic crisis as well as disruption of public order and violence.</p> <p>The law grants general powers to regional governors, when faced with urgent emergency situations or until aid sent to them by other nearby regional governors reaches them, to request aid from the highest military commandship in their region.</p>			

Situation	Powers	who is the power conferred to	power exercised vis-a-vis	Conditions to be met when exercising the power
	<p>If the governor of a province is faced with urgent and extraordinary circumstances or needs to take urgent measures pending the arrival of forces requisitioned by him as above, he may demand aid from the nearest military commandership.</p> <p>In cases involving a state of emergency declared in accordance with this Act, the custody periods prescribed in the Code of Criminal Procedure may be doubled on a written request made by the Public Prosecutor [to] a civil or investigation court judge if damage is likely to result from any delay.</p>			
War	<p>The Constitution provides that if the holding of new elections is found impossible because of war, the Turkish Grand National Assembly may decide to defer elections for a year.</p>			
Terrorism events	<p>The Law on Fight Against Terrorism 1991 includes different definitions of terrorism (“terrorism,” “terrorist offender,” “terrorist offences” and “offences committed with terrorist aims”).</p> <p>The law defines terrorism as “Any criminal action conducted by one or more persons belonging to an organisation with the aim of changing the attributes of the Republic as specified in the Constitution, the political, legal, social, secular or economic system, damaging the indivisible unity of the State with its territory and nation, jeopardizing the existence of the Turkish State and the Republic, enfeebling, destroying or seizing the State authority, eliminating basic rights and freedoms, damaging the internal and external security of the State, the public order or general health.”</p> <p>A “terrorist offender” is “any person, who, being a member of organisations formed to achieve the aims specified under Article 1, in concert with others or individually, commits a crime in furtherance of these aims, or who, even though does not commit the targeted crime, is a member of the organisations.”</p> <p>Furthermore, the law says “persons who, not being a member of a terrorist organisation, commit a crime in the name of the organisation, are also considered as terrorist offenders and shall be punished as members of such organisations.”</p> <p>“Terrorist offences” are defined simply by referral to the relevant articles in the Turkish Penal Code.</p> <p>The law includes many procedural provisions for investigation and trial.</p> <p>For example, in cases where the aim of the investigation may be endangered, only one</p>			

Situation	Powers	who is the power conferred to	power exercised vis-a-vis	Conditions to be met when exercising the power
	<p>relative of the detainee or the apprehended person shall be notified about his or her situation by order of the Prosecutor. Furthermore, the authorisation of the defense lawyer to investigate the contents of the file and make copies of them may be limited upon the request of the Prosecutor and by the decision of a Judge, if this could endanger the aim of the investigation.</p> <p>The law also provides that only one defense lawyer may be present during the interrogation of the suspect by the security forces; The suspect may only receive the assistance of one defense lawyer during the detention period. The right of a suspect in detention to consult a lawyer may be limited for twenty-four hours upon a request of the Prosecutor and by the decision of a Judge; however, he or she cannot be interrogated during this period.</p>			

In addition to the aforesaid powers, the Decree on Emergency Assistance Organization and Planning Related to Disasters from 1988 grants a number of powers to regional and provincial governors, which may be executed within 15 days of the disaster. The powers include the following:

1. Recruitment and assignment of tasks to men ages 18-65 (except for soldiers and judges);
2. Requisitioning private and public land, buildings, vehicles (including animals), equipment or any other public need (for instance, food, medicine and clothing);
3. Using the necessary equipment for emergency communication and marshalling emergency aid, such as telephones, radios and television stations.¹⁰

As for the powers given at this stage of emergency preparation, Turkish municipalities must by law establish aid and rescue committees which are obligated to prepare for and respond to emergencies. These committees are required by law to conduct emergency preparedness training and exercises in the units involved in this stage of response and rescue.¹¹

Rights in states of emergency

Under the Turkish Constitution, in states of “routine,” fundamental rights and freedoms may be restricted only by law and in conformity with the reasons mentioned in the relevant articles of the Constitution without infringing upon their essence. These restrictions shall not be contrary to the

¹⁰ N. Emel Ganapati, FN 3 above, p. 303.

¹¹ Ibid., p. 293.

letter and spirit of the Constitution and the requirements of the democratic order of the society and the secular republic and the principles of proportionality.

However, according to Article XV of the Constitution, in times of war, mobilization, martial law, or a state of emergency, the exercise of fundamental rights and freedoms may be partially or entirely suspended, or measures derogating the guarantees embodied in the Constitution may be taken to the extent required by the exigencies of the situation, as long as obligations under international law are not violated.

However, the Constitution also provides a number of basic rights and liberties that are inviolable even in states of emergency: everyone has the right to life and the right to corporeal and spiritual integrity except for death caused by actions in accordance with the rules of war.

Likewise, no one may be compelled to reveal his or her religion, conscience, thought or opinion, nor be accused on account of them.

The Constitution also states that offences and penalties may not be made retroactive, nor may anyone be held guilty until so proven by a court judgment.

Regulation

Following are **initial** data culled from secondary sources we examined (literature and articles):

- Legislation through licensing: the regulation of licensing for private construction and use of buildings is in the Development/Building Law. The law is concerned among other things with the preparation, enforcement and updating of development plans and uniform development of urban areas.¹²

The 2001 Law on Building Inspection is about the powers of building inspection firms and inspection committees. The Decree on Design Principles for Building in Disaster Regions establishes the principles for the design of buildings to withstand earthquakes.¹³

- Regulation through insurance: Following the August 17, 1999 earthquake, the Turkish government changed its organizational structure and adopted a less paternalistic approach. The state decentralized some of the powers it held and actually transferred part of the burden that was upon it concerning the management and response to emergencies to nongovernment organizations, private companies and households.

Furthermore, following the earthquake the state enacted obligatory earthquake insurance. Homeowners in all urban areas of Turkey are required as part of the arrangement to purchase earthquake insurance so that they will be eligible for housing aid from the state after an earthquake occurs.¹⁴

¹² FN 3 above, p. 5. Derin N. Ural

¹³ N. Emel Ganapati, FN 3 above, p. 294 and 296.

¹⁴ Ibid., pp. 282 and 292.

Two pieces of legislation are pertinent: the Decree on Working Procedures and Principles of Natural Disasters Insurance from 2001, which outlines the responsibility and principles of the administration for natural disaster insurance (under the auspices of the Treasury), and the 1999 Decree with Power of Law on the Obligatory Earthquake Insurance, which set forth the requirement to ensure against earthquakes and defined it.¹⁵ The World Bank provided Turkey with the technical and economic assistance to create the “Turkish Catastrophe Insurance Pool (TCIP).”¹⁶

- **Criminal liability:** The State of Emergency Act establishes the criminal liability of anyone who disobeys orders or does not carry out the requirements of such orders, or who provides false proof of identity or refuses to provide proof of identity when demanded, depending on the different states of emergency. Where a state of emergency has been declared on account of a natural disaster, dangerous epidemic disease or serious economic crisis, such an individual is liable (in addition to the punishment prescribed for such actions in ordinary criminal law) to imprisonment for up to three months; Anyone who does the aforementioned where a state of emergency has been declared on account of acts of violence or disruption of public order, as defined by law, is liable (in addition to the punishment prescribed for such actions in ordinary criminal law) to imprisonment for between one and six months.

¹⁵ Ibid., p. 294-295.

¹⁶ Turkish Catastrophe Insurance Pool, GFDRR, available at: http://www.gfdrr.org/sites/gfdrr.org/files/documents/DFI_TCIP_Jan11.pdf.

Legislative Arrangements for Emergencies in Britain: Executive Summary

1. Legislative Framework

Britain does not have a formal, written constitution formulated in a single document. British constitutional sources can be found both in “regular” legislation reflecting constitutional principles and in unwritten constitutional principles reflected in case law.

Accordingly, in-depth research is needed regarding the manner in which these basic principles will influence the regulation of emergencies. Moreover, Britain is also subject to the law of the European Union, which applies domestically both directly and through its absorption in British legislation (e.g. the Human Rights Act 1988). Thus, the exercise of power in an emergency should also be examined by reference to this legal framework.

The principal reference to emergencies in Britain can be found in the Civil Contingencies Act 2004 (hereinafter: “the CCA” or “the Act.”) This is a generic law that regulates the institutional planning, preparation, and provision of the response to emergencies from the state level to the regional and local levels. In addition to the CCA, other laws also include references to emergencies.¹

Entry into a State of Emergency

The definition of an “**emergency**” in the CCA relates to several situations:

- Situations **threatening serious damage to human welfare** in the United Kingdom or in a Part or region thereof. This refers to situations causing or liable to cause: loss of human life; human illness or injury; homelessness; damage to property; disruption of a supply of money, food, water, energy or fuel; disruption of a system of communication; disruption of facilities for transport; and disruption of services relating to health – all these on a scale or at an intensity constituting “serious damage.”

¹ See, for example: Flood and Water Management Act 2010; Reservoirs Act 1975; Fire and Rescue Services Act 2004; Terrorism Act 2000; Terrorism Prevention and Investigation Measures Act 2011; Terrorism Act 2006.

- Situations **threatening serious damage to the environment of the United Kingdom** or of a Part or region thereof. This refers to situations causing or liable to cause contamination of land, water or air with biological, chemical or radioactive matter or the disruption or destruction of plant life or animal life.
- Situations of war or terrorism threatening serious damage to the security of the United Kingdom.

The definition of an “emergency” in part 1 of the CCA (which discusses preparations for emergencies) differs from that in part 2 of the Act (which discusses the powers granted to government in an emergency). While the requirement in part 2 is that the relevant situation (damage to human welfare, the environment, or security) occur in the United Kingdom or in a Part or region thereof, part 1 of the Act refers to “a place in the United Kingdom.” The reason for this would seem to be that part 1 relates to preparations for an emergency on the local level and the obligations incumbent on institutions on the local level. Accordingly, the definition in this part is intended to delineate the range of events on account of which local authorities should make preparations and prepare for an emergency. Accordingly, with regard to part 1 of the CCA, the impact and place of occurrence of an emergency may be on a small and local scale, in an area of limited size (a “place”). Conversely, the requirement in part 2 of the Act regarding the scope of the event reflects the approach that emergency powers are intended only for serious and severe extreme events affecting broader areas beyond the local level.

The CCA is not based on a declaration of a state of emergency, and in order to activate the emergency powers granted by this Act – the enactment of emergency regulations – there is no need for such a formal declaration. This contrasts with the situation prior to the nullification of the preceding law: The Emergency Powers Act 1920.

Regarding **war**, the British government is entitled to declare war on the basis of royal prerogative (and not on the basis of law), without the need for the consent of Parliament. However, the strength of this prerogative would appear to have been eroded over time

and it is now unlikely that the government would go to war without the support of Parliament.²

It should be noted that Britain has numerous highly-developed legal arrangements concerning **terrorism**. Among other provisions, attention can be found to international terrorism; punitive provisions relating to manifestations of support for terrorism; and means for the investigation of individuals. Over the years a large number of laws relating to terrorism and to the detention of persons suspected of terrorism have been enacted, amended, or nullified.

Emergency Powers

The power to issue emergency regulations is granted to **the Queen**, who may issue emergency regulations by means of an Order in Council. In exercising this power, the Queen must act in accordance with the recommendation of the ministers, and particularly the recommendations of the Secretary of State for the Home Department, the cabinet minister responsible for domestic security.³ In addition, a **senior minister of the Crown** as defined in the Act may also issue emergency regulations (in the presence of the same conditions permitting the minister for domestic security to do so), if waiting for enactment by Order in Council will cause “serious delay.”

In substantive terms, the Act details the conditions for establishing the need for the enactment of regulations. These conditions reflect the principle that emergency regulations are not to be issued if it is possible to cope with the emergency by means of existing legislation.⁴

The CCA also establishes powers relating to **emergency preparations**. The Act establishes that certain bodies as detailed (such as local authorities, emergency services, and so forth) bear an obligation to assess risks, maintain plans designed to ensure their functioning in an emergency, publish relevant information, advise the public, and so forth.

² *Waging War: Parliament's role and responsibility*, 15th report of session 2005-06, Vol. 1: REPORT, paras. 1-2 & 98, available at: <http://www.publications.parliament.uk/pa/ld200506/ldselect/ldconst/236/23603.htm>

³ Civil Contingencies Act 2004, Explanatory Notes, Note 42: <http://www.legislation.gov.uk/ukpga/2004/36/notes>

⁴ Ibid., para. 46.

Regarding **terrorism**, as noted, numerous laws have been enacted over the years granting diverse powers for addressing terrorism. The recent Terrorism Prevention & Investigation Measures Act 2011 nullified the Prevention of Terrorism Act 2005 and the power established therein to issue “control orders” enabling the imposition of obligations on a person for purposes relating to the protection of the public against terror. These obligations included: prohibition or restriction of an individual’s movement; prohibition or restriction of an individual’s property or use thereof; prohibition or restriction of an individual’s place of residence and of persons having access to his place of residence; and the imposition of an obligation on the person to report to a certain person at such place and time as established.

Among other provisions, the Terrorism Prevention & Investigation Measures Act enables the Secretary of State, subject to several conditions (stipulated in section 3 of the Act), to use certain means for the prevention and investigation of terrorism as detailed in the Act by means of issuing notification thereof (TPIM Notice).

In various situations the empowering legislation grants certain authorities powers for addressing extreme situations without the power to issue emergency regulations. For example, the Flood and Water Management Act empowers the Environment Agency and local flood authorities to enter land for the purpose of performing their function.

Rights in Emergencies

- The CCA does not contain explicit reference to derogation of rights, with the exception of a provision in the Act that emergency regulations may not require a person, or enable a person to be required, to perform military service, or –
- prohibit or enable the prohibition of participation in, or any activity in connection with, a strike or other industrial action.

In accordance with Article 15 of the European Convention on Human Rights (ECHR), in time of war or other public emergency threatening the life of the nation, any High Contracting Party may take measures derogating from its obligations under the Convention to the extent strictly required by the exigencies of the situation. According to the ECHR, various rights may not be derogated even in an emergency: the right to life (except in respect of deaths resulting from lawful acts of war), the prohibition against torture or slavery,

and punishment otherwise than by law.

Following the events of 9/11, and with the goal of addressing the threat of terrorism, Britain declared a state of emergency in order to enable the derogation of the provisions of the ECHR (absorbed, as noted, in the Human Rights Act 1988) and to violate certain human rights.⁵

The Legislative Framework for Regulation Emergencies in Britain: Synopsis

Introduction

The United Kingdom of Great Britain and Northern Ireland is a constitutional monarchy that comprises several units, although Acts of Parliament, classified as Public General Acts, apply to the entire United Kingdom. The legal system is based on Common Law. The Chief of State (as distinct from the Prime Minister, the Head of Government) is Queen Elizabeth II. Britain does not have a formal constitution contained in a single document, but an unwritten constitution consisting of laws, common law, and customs.⁶

Britain's history of disasters is varied, including extreme situations caused of human origin (riots, demonstrations, etc.) and natural disasters (fires, floods, storms, etc., resulting, among other factors, from its location as an island). In addition, terrorist attacks have played a key role in the history of extreme situations in Britain. Over the years Britain has suffered a considerable number of terrorist attacks causing numerous fatalities, both in the context of its colonial past and with regard to the conflict in Northern Ireland.⁷

The Legislative Framework

The principal reference to emergencies in Britain is found in the Civil Contingencies Act 2004 (hereinafter: the CCA). This is a generic law that regulates the institutional planning, preparation, and provision of response to emergencies from the state level to the regional and local levels.⁸ The law also addresses the need for regional coordination, requiring the appointment of a "regional nominated coordinator" to be charged with

⁵ Hodaya Kin and Daphna Bar-Porat, Background Document: Legislative Arrangements Intended for the Struggle against the Financing of Terrorism – Comparative Law (Knesset Research and Information Center, 2003) (Hebrew); Human Rights Watch World Report 2002, available at: <http://www.hrw.org/legacy/wr2k2/europe21.html>

⁶ United Kingdom, *The World FactBook*, available at: <https://www.cia.gov/library/publications/the-world-factbook/geos/uk.html>

⁷ Comparative Emergency Management: Understanding Disaster Policies, Organizations, and Initiatives from Around the World, Naim Kapucu, Chapter 4, 1-2 (David McEntire ed.). Available at: <http://www.training.fema.gov/EMIWeb/edu/CompEmMgmtBookProject.asp>

⁸ Geetha Mazarelo, "Emergency Legislation in the United Kingdom," 11 *Eur Jl Reform* 323, 335 (2009).

responsibility for coordinating response efforts to an emergency on the regional level. In addition to the CCA, "regular" laws also address emergencies,⁹ and the legislature has also seen fit to enact specific laws relating to extreme situations, in addition to the institutional framework defined in the CCA. It seems that such specific laws address extreme conditions common in the UK (e.g. floods), or issues regarding which "focusing events" have occurred, such as the terrorist attacks of 9/11. The following table summarizes these various laws:

Natural disasters	Terrorism and war	Socioeconomic emergencies
<ul style="list-style-type: none"> • <u>Floods</u> – the legislative framework for addressing floods is to be found in three key acts of legislation: The CCA; the Reservoirs Act 1975; and the Flood and Water Management Act 2010.¹⁰ • <u>Fires</u> – this issue is regulated in the Fire and Rescue Services Act 2004, whose principal purpose is "to deliver a modernised Fire and Rescue Service that responds to the particular demands of the 21st Century."¹¹ 	<ul style="list-style-type: none"> • <u>International terrorism</u> – the Terrorism Act 2000 includes in the definition of the term "terrorism" an action committed outside the borders of the United Kingdom. • Punitive provisions regarding manifestations of support for terrorism in accordance with the Terrorism Act 2006. • Provisions regarding the imposition of terrorism prevention and investigation measures against an individual may be found in the Terrorism Prevention and Investigation Measures Act 2011. 	<p>Our research did not identify any specific attention in legislation to socioeconomic emergencies with the exception of the generic act, the CCA, which discusses this aspect.</p>

The CCA was enacted in 2004 following the occurrence of several incidents in Britain that could be considered "emergencies," which were addressed by means of the existing legislation or through new *ad-hoc* and *ex-post* primary legislation.¹²

⁹ For example, Section 9 of the Energy Act 1976 empowers the Queen to approve the execution of the powers stipulated in the Act in the presence of various alternate conditions, one of which is the presence of an actual or potential emergency affecting the supply of fuel or electricity, and on account of which, in the Queen's opinion, it is necessary that the government should temporarily have access to special powers enabling control of energy sources and access thereto.

¹⁰ The National Flood Emergency Framework for England, DEFRA (2011), 22.

¹¹ Civil Contingencies Act 2004, Explanatory Notes, note 4. <http://www.legislation.gov.uk/ukpga/2004/21/notes>

¹² Thus, for example, Britain responded to an outbreak of foot-and-mouth disease in 2001 on the basis of existing legislation. By virtue of the powers vested in him under the Animal Health Act 1981, the Minister of Agriculture, Fisheries and Food issued an order regulating the movement of livestock, among other aspects (see: Geetha Mazarelo, footnote 8 above, 335): The Foot-and-Mouth Disease (Amendment) (England) (No. 7) Order 2001. <http://www.legislation.gov.uk/uksi/2001/1862/made>

Entry into a State of Emergency

Situation	Definition of an “emergency”	Who may declare and under what conditions?	How does a state of emergency end?
General (according to the generic law – the CCA)	<p>The definition of an “emergency” in the CCA relates to several situations:</p> <ul style="list-style-type: none"> • Situations threatening serious damage to human welfare in the United Kingdom or in a Part¹³ or region thereof. This refers to situations causing or liable to cause: <ul style="list-style-type: none"> - Loss of human life; - Human illness or injury; - Homelessness; - Damage to property; - Disruption of a supply of money, food, water, energy or fuel; - Disruption of a system of communication; - Disruption of facilities for transport; - Disruption of services relating to health. • Situations threatening serious damage to the environment of the United Kingdom or of a part or region thereof. This refers solely to situations causing or liable to cause contamination of land, water or air with biological, chemical or radioactive matter or the disruption or destruction of plant life or animal life. • Situations of war or terrorism threatening serious damage to the 	<p>According to the CCA, there is no need for a formal declaration of a state of emergency in order to activate the powers applying in the situation defined therein (contrary to the preceding law (the Emergency Powers Act 1920)).</p>	<p>Since there is no need for the formal declaration of a state of emergency in order to exercise the powers granted by the Act, there is effectively no formal manner in which a state of emergency ends, and the matter depends in practical terms on the ongoing validity of the emergency regulations.</p> <p>The emergency regulations expire 30 days after the date on which they were issued, or at the end of the period specified in the regulations themselves, whichever is the earlier.</p> <p>The Act also establishes that the emergency regulations are to be submitted for review by Parliament as soon as possible, and that the validity of the regulations will expire seven days after they were submitted, if they were not</p>

¹³ The CCA defines this term as follows:

“(a) “Part” in relation to the United Kingdom means –

(i) England,
(ii) Northern Ireland,
(iii) Scotland, and
(iv) Wales,

(b) “region” means a region for the purposes of the Regional Development Agencies Act 1998 (c. 45), and

(c) a reference to a Part or region of the United Kingdom includes a reference to –

(i) any part of the territorial sea that is adjacent to that Part or region,
(ii) any part of the area within British fishery limits that is adjacent to the Part or region, and
(iii) any part of the continental shelf that is adjacent to the Part or region.”

Situation	Definition of an “emergency”	Who may declare and under what conditions?	How does a state of emergency end?
	<p>security of the United Kingdom.</p> <p>The definition of an “emergency” in part 1 of the CCA (which discusses preparations for emergencies) differs from that in part 2 of the Act (which discusses the powers granted to government in an emergency). While the requirement in part 2 is that the relevant situation (damage to human welfare, the environment, or security) occurs in the United Kingdom or in a Part or region thereof, part 1 of the Act refers to “a place in the United Kingdom.”</p> <p>The reason for this would seem to be that part 1 relates to preparations for an emergency on the local level and the obligations incumbent on institutions on the local level. Accordingly, the definition in this part is intended to delineate the range of events on account of which local authorities should make preparations and prepare for an emergency. Accordingly, with regard to part 1 of the CCA, the impact and place of occurrence of an emergency may be on a small and local scale, in an area of limited size (a “place”).</p> <p>Conversely, the requirement in part 2 of the Act regarding the scope of the event reflects the approach that emergency powers are intended only for serious and severe extreme events affecting broader areas beyond the local level.¹⁴</p> <p>** It should be noted that the Act permits the Secretary of State to amend and change the above-mentioned list of situations, subject to several conditions.</p>		<p>approved by both Houses of Parliament.</p> <p>In addition, Parliament (both Houses) may pass resolutions that emergency regulation shall no longer be valid and, in this instance, the validity of the regulations expires as specified in the resolutions.</p> <p>If no time is specified, the validity of the regulations will expire on the day after the resolutions of Parliament are passed.</p> <p>Parliament can also decide that the regulations will be valid subject to some specific change.</p>
War	The British government is entitled to declare war on the basis of royal prerogative (and not on the basis of law), without the need for the consent of Parliament. However, the strength of this prerogative would appear to have been eroded over time and it is now unlikely that the government would go to war without the support of Parliament. ¹⁵		

Statutes that come into force during emergency - our research did not identify any such laws

¹⁴ See: Civil Contingencies Secretariat. *Civil Contingencies Act 2004: a short guide (revised)*: <http://www.trafford.gov.uk/residents/community/community-safety/emergencies/docs/civil-contingencies-act-guide.pdf>

¹⁵ *Waging War: Parliament’s role and responsibility*, 15th report of session 2005-06, Vol. 1: REPORT, paras. 1-2 & 98, available at: <http://www.publications.parliament.uk/pa/ld200506/ldselect/ldconst/236/23603.htm>

Legal Powers

All powers are exercised vis-à-vis people and property

Situation	Powers	who is the power conferred to	Conditions to be met when exercising the power
General	<p>Section 20 of the CCA permits the enactment of emergency regulations. The Act establishes that it is possible, within the framework of the emergency regulations, to make any provision that the person making the regulations considers is appropriate in order to prevent, control, or mitigate an aspect or effect of the emergency.</p> <p>Among other purposes (the list is not exclusive), the CCA permits the enactment of regulations for the purpose of:</p> <ul style="list-style-type: none"> - Protecting human life, health, or safety - Treating human illness or injury - Protecting or restoring property - Protecting or restoring a supply of water, food, energy, or fuel, the activities of banks or other financial institutions - Protecting or restoring the activities of the various legislatures of the United Kingdom <p>The Act further establishes, in a general manner, that it is possible in the framework of emergency regulations to establish any provision that could be made by Act of Parliament or by the exercise of Royal Prerogative, noting the areas that may be arranged in the regulations (the list is not exclusive),¹⁶</p>	<p>Power is granted to several bodies:</p> <ul style="list-style-type: none"> - The Queen, who may issue emergency regulations through an Order in Council. In exercising this power the Queen must act in accordance with the recommendation of the ministers, and particularly the recommendations of the Secretary of State for the Home Department, the cabinet minister responsible for domestic security.¹⁸ - A “senior Minister of the Crown.”¹⁹ 	<p>Regarding the Queen: The exercising of a power is possible if the Queen considers that three conditions are satisfied:²⁰</p> <ol style="list-style-type: none"> 1. An emergency has occurred, is occurring or is about to occur; 2. It is necessary to make provision for the purpose of preventing, controlling or mitigating an aspect or effect of the emergency; 3. The need for the provision is urgent. <p>A senior minister: A senior Minister of the Crown²¹ may issue emergency regulations if satisfied:</p> <ol style="list-style-type: none"> 1. That the conditions in section 21 (above) are satisfied; and 2. It would not be possible, without serious delay,²² for the Queen to issue emergency regulations by means of an Order in Council. <p><u>To summarize:</u> the CCA includes three substantive conditions (“the triple lock”²³)</p>

¹⁶ Ibid., note 49.

¹⁸ Footnote 11 above, para. 42.

¹⁹ “(3) In this Part “senior Minister of the Crown” means –
(a) the First Lord of the Treasury (the Prime Minister),
(b) any of Her Majesty’s Principal Secretaries of State, and

Situation	Powers	who is the power conferred to	Conditions to be met when exercising the power
	<p>including:</p> <ul style="list-style-type: none"> • Imposing duties on, or granting powers to, government officials • Enabling the requisition or confiscation of property (with or without compensation) • Enabling the destruction of property, animal life or plant life (with or without compensation) • Prohibiting, or enabling the prohibition of, movement to or from a specified place • Requiring, or enabling the requiring of, movement to or from a specific place • Prohibiting, or enabling the prohibition of, other specified activities • Creating criminal offenses of failing to comply with an order given under the emergency regulations • Enabling the Defence Council to authorize the deployment of Her Majesty's armed forces. <p>The CCA requires the appointment of a Regional Nominated Coordinator who is required to coordinate the emergency response on the regional level when emergency powers are exercised.¹⁷</p>		<p>which must be satisfied in order for it to be possible to issue regulations:</p> <ol style="list-style-type: none"> 1. The relevant situations pose the risk of serious damage (to human welfare, the environment, or security). 2. It is essential to issue regulations rapidly in order to address the emergency (since existing legislation does not provide an adequate framework for addressing the emergency, and the urgency of the situation does not permit legislation by the usual means); and – 3. The regulations must be proportionate relative to the aspect of the emergency they address. <p>The Act details the conditions for establishing the necessity of regulations, which effectively reflect the principle that emergency regulations should not be issued if it is possible to address an emergency within the framework of existing legislation.²⁴</p>

(c) the Commissioners of Her Majesty's Treasury.”

²⁰ Stipulated in section 21 of the CCA.

²¹ “(3) In this Part “senior Minister of the Crown” means –

(a) the First Lord of the Treasury (the Prime Minister),

(b) any of Her Majesty's Principal Secretaries of State, and

(c) the Commissioners of Her Majesty's Treasury.”

²² (4) In this Part, “serious delay” means a delay that might –

(a) cause serious damage, or

(b) seriously obstruct the prevention, control or mitigation of serious damage.”

²³ Civil Contingencies Act 2004: A Short Guide, footnote 14 above, 5.

¹⁷ Ibid., 5.

²⁴ Civil Contingencies Act 2004, Explanatory Notes, footnote 6 above, note 46.

Situation	Powers	who is the power conferred to	Conditions to be met when exercising the power
			<p>Emergency regulations are essentially means of last resort. Emergency legislation is intended to address only the most serious emergencies that require an immediate response.²⁵ If specific legislation exists that can address the emergency, it should be managed within this framework.</p> <p>In addition to these conditions, the section also establishes several additional procedural conditions. For example, prior to issuing regulations, the empowered body must declare that it considers that the conditions stipulated in the Act are satisfied; that the regulations are compatible with the rights in the Human Rights Act 1998, as defined in section 1 of the European Convention on Human Rights; and so forth.</p>

²⁵ Civil Contingencies Act 2004: a short guide, footnote 14 above, 4.

Situation	Powers	who is the power conferred to	power exercised vis-à-vis	Conditions to be met when exercising the power
War	<p>In the aftermath of the two World Wars, Britain enacted numerous laws (many of which have since been nullified) granting sweeping powers to the government in wartime. Among other provisions, these laws permitted the delegation of extensive powers to the King permitting him to issue regulations.²⁶ In 1914, for example, the Defence of the Realm Act 1914 (DORA) was enacted, granting the executive the power to make regulations for public safety and for the defense of the realm. This granted the government extensive control over the national economy.</p> <p>The regulations also enabled the government:</p> <ul style="list-style-type: none"> - To detain people without trial due to “hostile origin or association” - To prohibit the holding of gatherings - To evacuate areas - To impose a curfew - To effectively restrict freedom of expression and freedom of the press <p>During the Second World War, the British Parliament enacted the Emergency Powers (Defence) Act 1939, which granted similar powers to those granted by DORA: the making of regulations for public security, defense of the realm, maintaining public order, the efficient management of the war, and ensuring the maintenance of services vital for community life.</p> <p>The regulations came into force automatically and could change or nullify existing legislation. However either House of Parliament could nullify a regulation within 28 days from the date of its issuing.²⁷</p>			

²⁶ Geetha Mazarelo, footnote 8 above, 329-30.

²⁷ Brian McGiverin, “Note: In the Face of Danger: A Comparative Analysis of the Use of Emergency Powers in the United States and the United Kingdom in the 20th Century,” 18 Ind. Int’l & Comp. L. Rev. 223 (2008), 261-6.

Situation	Powers	Who is the power conferred to	Power exercised vis-à-vis	Conditions to be met when exercising the power
Terrorism	<p>Legislation in Britain relating to terrorism dates back to as early as 1939, when Britain faced attacks by the Irish Republican Army (IRA). Britain imposed legislation for the prevention of terrorism on Northern Ireland. The Northern Ireland Parliament was suspended and in 1974 the British Parliament enacted the Northern Ireland (Emergency Provisions) Act 1973, which enabled the government to undertake detentions, introduced a judicial system without juries, and imposed special rules concerning evidence (the admission of evidence secured by means of “intensive interrogations,” the violation of the right to remain silent, and so forth).²⁸ Following a terrorist attack on a pub in Birmingham causing numerous fatalities and injuries, a new anti-terrorism law was enacted in 1974: The Prevention of Terrorism (Temporary Provisions) Act 1974. This law was essentially similar to the 1973 law, but also included provisions enabling the government to outlaw organizations that appeared to be associated with, promoting or encouraging acts of terrorism in the United Kingdom or acts connected to Northern Ireland.²⁹</p> <p>In addition, the act established:</p> <ul style="list-style-type: none"> • A penalty of up to five years’ imprisonment for membership of a group as stated • Punitive provisions regarding the manifestation of support for an outlawed organization or a criminal organization of three persons or more, in the knowledge that the meeting was for the purpose of supporting or advancing the organization’s activities or that a member of an organization as stated would participate in the meeting.³⁰ <p>In 2000 the 1974 law was replaced by the Terrorism Act 2000, which extended the definition of the term “terrorism” to include reference to international (in addition to “domestic”) terrorism.³¹ For the first time, the Act also granted powers of detainment and search to any uniformed policeperson (this power was amended several times in later legislation).³²</p> <p>However, legislation relating to terrorism was soon updated once again following the events of 9/11, this time in the form of the Anti-terrorism, Crime and Security Act 2001.³³</p> <p>The main innovation in this law were the provisions (in section 23) permitting the indefinite detention of persons who are not British subjects (suspected of committing international terror as defined in the Act).</p> <p>After the court ruled that this section of the law failed to meet the requirement of proportionality, it was nullified and replaced with the Prevention of Terrorism Act 2005, which replaced the power of detention with “control orders” against persons suspected of terrorism.³⁴ Prior to their nullification as detailed below, the “control orders” imposed obligations on a person for purposes relating to the protection of the public against terrorism, including, among other provisions:</p>			

²⁸ Ibid., 266-71.

²⁹ Ibid.

³⁰ Ibid.

³¹ Ibid.

³² Clive Walker, 2009, “Neighbor Terrorism and the All-Risks Policing of Terrorism,” 3 *J. Nat’l Security L. & Pol’y*, 121, 135.

³³ Brian McGiverin, footnote 27 above, 268-73.

³⁴ Ibid.

	<ul style="list-style-type: none"> • A prohibition or restriction on a person’s movements • A prohibition or restriction on a person’s possession or use of specified articles or substances • A prohibition or restriction on a person’s place of residence or on the persons to whom he gives access to his place of residence • A requirement to report to a specified person at specified times and places <p>In 2006 the Terrorism Act 2006 was enacted. Among other provisions, this law established that expressions that could be understood as encouraging or providing incentive to commit acts of terrorism would constitute a criminal offense. More recently, the Terrorism Prevention & Investigation Measures 2011 Act was enacted, nullifying the Prevention of Terrorism Act 2005 and the power therein to issue “control orders.” Among other provisions, and if several conditions are satisfied (see below), this law permits the Secretary of State to use certain means for the investigation and prevention of terrorism by issuing a notice thereof (“TPIM Notice.”) These means are defined in the law as “requirements, restrictions and other provisions which may be made in relation to an individual by virtue of Schedule 1” to the act. The means included in Schedule 1 include:</p> <ul style="list-style-type: none"> • Restrictions regarding an individual’s place of residence • Restrictions regarding an individual’s movement • Restrictions regarding access to financial services • Restrictions regarding property (including transfer and requirements of disclosure) • Restrictions on an individual’s ability to communicate or associate with others • Restrictions of an individual’s work or studies • Imposition of requirements on an individual to report to a particular police station at certain times • Imposition of an obligation on an individual to cooperate with various arrangements facilitating the monitoring of his actions <p>In order to exercise this power, the following (cumulative) conditions must be satisfied, as stated in section 3 of the act:</p> <ol style="list-style-type: none"> 1. The Secretary of State reasonably considers that the individual is, or has been, involved in terrorism-related activity (“the ‘relevant activity.’”) 2. Some or all of the relevant activity is new terrorism-related activity, as defined in the Act.³⁵ 3. The Secretary of State reasonably considers that it is necessary to impose terrorism prevention and investigation means on the individual, for purposes related with protecting the public from a risk of terrorism. 4. The Secretary of State reasonably considers that it is necessary to impose the terrorism prevention and investigation measures specified in the TPIM on the individual, for purposes related with the prevention or restriction of the individual’s involvement in terrorism-related activity; 5. The court has given the Secretary of State permission (under section 6 of the act) or “the Secretary of State reasonably considers
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³⁵ “(6) In this section “new terrorism-related activity” means –

- (a) if no TPIM notice relating to the individual has ever been in force, terrorism-related activity occurring at any time (whether before or after the coming into force of this Act);
- (b) if only one TPIM notice relating to the individual has ever been in force, terrorism-related activity occurring after that notice came into force; or
- (c) if two or more TPIM notices relating to the individual have been in force, terrorism-related activity occurring after such a notice came into force most recently.

	that the urgency of the case requires terrorism prevention and investigation measures to be imposed without obtaining such permission”
Floods	<p>The Reservoirs Act imposes responsibility for the security of reservoirs on the owners and requires that they appoint a qualified civil engineer to:</p> <ul style="list-style-type: none"> - Supervise the reservoirs (“supervising engineer”) - Undertake periodic inspections (“inspecting engineer”) - To design and construct new reservoirs or repair/alter existing reservoirs (“construction engineer.”) <p>As part of the changes introduced by the Flood and Water Management Act, the Environment Agency was charged with classifying reservoirs according to a safety criterion – whether they pose a danger to human life or whether they meet the requisite standards, so that the danger is not substantial.³⁶ Among other provisions, the Flood and Water Management Act:</p> <ul style="list-style-type: none"> • Empowers the Environment Agency and “lead local flood authorities” to demand information from any individual concerning the authority’s functions regarding attention to the danger of coastal erosion and floods. • Grants the power to enter land.

³⁶ The National Flood Emergency Framework for England, footnote 5 above, 22-6.

Situation	Powers	Who is the power conferred to	Power exercised vis-à-vis
Fire	<p>Regarding emergency powers, the Fire and Rescue Services Act establishes that an employee of a fire and rescue authority, as defined in the Act, who is authorized in writing, may do anything he believes to be necessary –</p> <ul style="list-style-type: none"> - If he believes a fire to have broken out or to be about to break out, for the purpose of extinguishing the fire or protecting life or property; - If he believes a road traffic accident to have occurred, for the purpose of rescuing people or protecting them from serious harm; - If he believes an emergency of another kind to have occurred, for carrying out any function conferred on the fire and rescue authority in relation to the emergency. - To prevent or limit damage to property resulting from action taken in accordance with the above-mentioned alternatives. <p>The powers granted to an employee as stated include:</p> <ul style="list-style-type: none"> - Entering premises, by force if necessary, without the consent of the owner or occupier of the premises - Moving or breaking into a vehicle without the consent of its owner - Closing a highway - Stopping and regulating traffic - Restricting the access of persons to premises or places <p>✓ Regarding fires: The act permits the fire and rescue authority to establish provisions for purposes including:</p> <ul style="list-style-type: none"> - Extinguishing fires in its area - Protecting life and property in the event of fires <p>In particular, the Act enables the authority:</p> <ul style="list-style-type: none"> - To secure the provision of personnel, services, and equipment as required - To secure the provision of training for personnel - To make arrangements for dealing with calls for help and for summoning personnel - To make arrangements for obtaining information needed for the above-mentioned purposes - To make arrangements for ensuring that reasonable steps are taken to protect property. 	<p>The said powers are granted to the fire and rescue authority and to the employees thereof. Fire and rescue authorities are defined in the Act according to the region (in Wales, for example, the county council is the fire and rescue authority for that council).</p>	<p>The powers are vested regarding persons and property as detailed above.</p>

	<p>Similar powers are granted to the fire and rescue authority regarding road accidents. The Act permits a fire and rescue authority to establish provisions for purposes including rescuing people and protecting them from serious harm in the event of road traffic accidents.</p> <p>The Act further establishes that the Secretary of State may “by order” confer powers on a fire and rescue authority “relating to emergencies, other than fires and road traffic accidents in relation to which the authority has functions” under the provisions mentioned above.</p> <p>An order as stated may, among other functions, require the fire and rescue authority –</p> <ul style="list-style-type: none"> - To secure the provision of personnel, services, and equipment - To secure the provision of training for personnel - To make arrangements for dealing with calls for help and for summoning personnel - To make arrangements for obtaining information needed for the exercising of the power - To take reasonable steps to prevent or limit damage to property resulting from the exercising of the power 		
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Conditions to be met when exercising the power were not found in our research

* Part 1 of the CCA also establishes powers relating to **contingency planning**. The Act establishes that certain bodies (local authorities, emergency services, and so forth, as detailed in parts 1 and 2 of Schedule 1 to the Act) bear a duty to assess risks, maintain plans for the purpose of ensuring that these bodies can function if an emergency occurs, publish relevant information, advise the public, and so forth. The Act also empowers a minister of the Crown to order certain bodies (stipulated in part 1 of Schedule 1 to the Act) to perform a particular function; this order may, among other provisions, require or prohibit the body (or person) to cooperate or to refrain from cooperating, to provide relevant information, and to consult with any body.

Rights in Emergencies

- The CCA does not contain explicit reference to the violation of human rights applying in “regular” times, with the exception of a reference in the Act to the fact that emergency regulations may not require a person, or enable a person to be required, to perform military service, or –
- prohibit or enable the prohibition of participation in, or any activity in connection with, a strike or other industrial action.

It should be noted that attention to rights in emergencies can be found on the international level.

In accordance with Article 15 of the European Convention on Human Rights (ECHR), in time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations.

However, in accordance with the ECHR, various rights may not be violated even in an emergency:

- The right to life (except in respect of deaths resulting from lawful acts of war)
- The prohibition against torture and the prohibition against slavery
- The prohibition against punishment otherwise than by law.

It should be recalled that following the events of 9/11, and with the goal of addressing the threat of terrorism, Britain declared a state of emergency in order to enable the derogation of the provisions of the ECHR (absorbed as noted in the Human Rights Act 1988) and to derogate certain human rights.³⁷

As noted above, following the events of 9/11 the Anti-terrorism, Crime and Security Act 2001 was enacted. This Act empowered the government to detain foreigners (not subjects) by virtue of part 4 of the Act without the need for trial³⁸ and indefinitely. The court established that this part of the act was contrary to the Human Rights Act 1988,³⁹ and in 2005 the Prevention of Terrorism Act 2005 (PTA) was enacted, nullifying and replacing the relevant provisions in the ATCSA.

Regulation

The following are regulation arrangements found during the research process, which examined secondary sources (such as articles). The list is not exhaustive and merely offers some preliminary examples:

- Insurance against floods: The government recently decided to introduce a new arrangement in the United Kingdom that has not yet come into force [the existing arrangement having expired] with the (private) insurance market concerning the coverage of flood damage. According to

³⁷ Hodaya Kin and Daphna Bar-Porat, Background Document: Legislative Arrangements Intended for the Struggle against the Financing of Terrorism – Comparative Law (Knesset Research and Information Center, 2003) (Hebrew); Human Rights Watch World Report 2002, available at: <http://www.hrw.org/legacy/wr2k2/europe21.html>

³⁸ Geetha Mazarelo, footnote 8 above, 333.

³⁹ Ibid.

the arrangement, known as “Flood Re,” a fixed levy will be imposed on every household in order to finance the fund, while houses at risk will pay premiums according to their value. The new plan will not provide insurance for the entire population (for example, properties built before 2009 will not be covered), in contrast to the situation until now.⁴⁰

Before the previous arrangement expired and was replaced by the above-mentioned new arrangement, a “gentlemen’s agreement” was introduced in the UK regarding insurance against floods. The parties to the agreement are the government, on the one hand, and the private insurance market, on the other. In the framework of the agreement, the two sides shared the burden among themselves: the government was responsible for providing means of protection against flooding, while the insurers were responsible for compensating property owners for flood damage.

The “gentlemen’s agreement” promised to provide universal insurance for the entire population. However, private insurers could still refuse to insure a property that is persistently prone to flooding. Moreover, there was no written agreement with the government regarding the insurers’ ability to refuse to grant insurance or to collect high premiums reflecting the risk in insuring properties as stated.

Furthermore, the “gentlemen’s agreement” effectively constitutes compulsory insurance (and was deposited in a common fund with insurances against other risks). Potential home buyers could not obtain a mortgage unless they secured comprehensive insurance against floods and other natural disasters.⁴¹

- Regulation through information: Part 1 of the CCA requires “category 1 responders” (local authorities, emergency services, various health services, etc., as detailed in sections 1-2 of Schedule 1 to the Act) to make various arrangements to warn the public and provide it with information and advice. The Act also establishes that the authorities must ensure the publication of emergency plans and risk assessments. However, the Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005 restrict the content of the Act to a certain degree. For example, the regulations establish that in publishing information, the importance of maintaining public calm should be taken into account (i.e. the importance of not unnecessarily alarming the public).
- Criminal liability: As noted in the section on powers, the regulations may create an offence of failure to comply with a provision of the regulations; failure to comply with a direction or order made or given by virtue of the regulations and obstruction of a person in the performance of a function by virtue of or under the regulations (subject to several restrictions imposed by the Act, such as the gravity of the penalty that may be determined and so forth).
- Mechanism for compensating terrorism victims: It should be noted that by virtue of the Criminal Injuries Compensation Act 1995, Britain effectively maintains a **permanent** compensation fund for victims of terrorism.

⁴⁰ Alistair Gray, “Ministers agree UK flood insurance deal,” *Financial Times* (June 27, 2013), 183, 192-202.
<http://www.ft.com/cms/s/0/6fc3f8dc-df15-11e2-881f-00144feab7de.html#axzz2hlyqX4gQ>

⁴¹ Aparna Kirknel Majmudar, “The National Flood Insurance Program: Maintaining Its Head above Water,” *U. Miami Int’l. & Comp. L. Rev.*, 16 192-202 (2009).

Legislative Arrangements for Emergencies in the US: Executive Summary

This summary discusses the federal constitutional framework for addressing emergencies in the United States of America (US).

Constitutional and Legislative Framework

The US Constitution includes just three mentions of emergencies. The first appears in Article 1, Section 9 and establishes that Habeas Corpus is to be suspended only in instance of rebellion or the invasion of the Republic. The second, in Article 1, Section 8, establishes that Congress has the right to declare war. The third mention appears in the Fifth Amendment to the Constitution and establishes a limitation on trial by grand jury in times of service during wartime or “public danger.”

The principal legislation on the federal level regarding emergencies is the National Emergencies Act, 1976 (the NEA), which regulates the President’s powers to declare emergencies and the ensuing procedures. The NEA is a relatively brief law and does not include substantive discussion of emergencies; neither does it provide a positive definition of what constitutes an emergency. The American legislator has included powers relating to emergencies in various laws;⁴² in order to exercise these powers, the President must declare an emergency in accordance with the NEA and specify in the declaration (or in a simultaneous or subsequent presidential order) the sections of the law in accordance with action in the framework of the emergency is requested.

The practical ramification of this is that when an emergency occurs, there is no certainty as to which legislative articles will be applied. Moreover, there is also no certainty as to whether the Administration will confine itself to the existing laws in the statute book or initiate ad hoc legislation. A further practical ramification is that the American response to significant emergencies is liable to take the form of a descent into a maelstrom of emergency powers and “tailor-made” legislation.

An emergency can be ended by means of a joint decision by both Houses of Congress or by a presidential declaration of the end of the

⁴² For example, see Sections 123, 123a, 12302, 12006, 2201, and 527 discussing military personnel matters in: US Code Title 10 – Armed Forces, Subtitle A – General military law.

emergency. Not later than six months after the date of declaration of an emergency, or of its extension, each of the Houses of Congress must convene to consider whether to reach a joint decision declaring the end of the emergency. The declaration will expire automatically each year, on the day and month on which it was made, unless the President publishes a notice of extension during the 90 days preceding the expiry date.

Until 1976 some 470 articles in American legislation addressed emergencies. Over the years many of these articles have been abolished, but even today it is possible to find numerous articles addressing emergencies and associated powers, from articles relevant to wartime⁴³ to others discussing economic restrictions in emergencies⁴⁴ and aspects relating to highways.⁴⁵

Further American legislation addressing emergencies relates to federal aid in state emergencies. According to an amendment to the Disaster Relief Act of 1974,⁴⁶ the President is empowered to declare an emergency or “major disaster” at the request of the governor of the relevant state if he recognizes that the resources of the state in coping with the disaster are inadequate or have been exhausted. During the emergency the President is entitled to order any federal agency to use resources originating in federal legislation in order to assist a specific state or in the case of a local emergency. The federal aid is included in the Federal Emergency Management Agency (FEMA).

In addition to assistance in responding to disasters, FEMA also plays a significant role in contingencies for disasters. Among other functions, the Agency provides consultation services, financing, analysis, and preparation for disasters such as hurricanes and earthquakes. The various programs operated by FEMA include insurance and damage reduction programs approved by Congress. According to the directives of the US Department of Defense, the US Army may provide assistance in cases of disaster.⁴⁷ In situations

⁴³ US Code Title 50: War and National Defense, Chapter International Emergency Economic Powers 35, which discusses economic powers granted to the President to investigate, arrange, and even prohibit, for example, commerce or financial transfers.

⁴⁴ Emergency mortgage relief in: US Code Title 12: Banks and Banking, Chapter 28 – Emergency Mortgage Relief, which establishes that if Congress notes a high rate of failure to meet mortgage payments, inter alia due to recession, it is permitted to provide emergency loan in order to prevent a foreclosure plague.

⁴⁵ Article 125 (Disaster Relief) in: US Code Title 23: Highways.

⁴⁶ 42 USC §5192: Federal Emergency Assistance.

⁴⁷ Department of Defense Directive 3025.18: Defense Support of Civil Authorities, December 29, 2010; it is worth noting that the armed forces in the US are

in which federal civilian agencies (such as FEMA) cannot provide a full response, they may ask the Department of Defense to deploy forces at the site of the disaster in order to assist in the response. The request to involve army forces may only be made by a federal agency (and not by the state itself); among other reasons, this is due to the fact that the activities of the armed forces must be financed from the budget of that authority.⁴⁸ After receiving the approval of the Department of Defense, military forces attend the place of the disaster and assist the civilian forces on the ground.

Emergency Powers

Emergency powers are dispersed in American legislation, including special and ad hoc legislation enacted following emergencies such as 9/11. Presidential powers in military and economic affairs may be found, as well as mentions of the powers of the Secretary of Health following emergencies resulting from epidemics. In this respect it is worth noting that emergencies can sometimes lead to the granting by legislation of various powers that have a “permanent” character. An example is the Patriot Act, enacted following the terrorist attacks of 9/11, which grants the legal authorities broad powers.

Human Rights in Emergencies

Since the Constitution does not include substantive discussion of emergencies, it also does not address the denial of liberties in emergencies, excluding the exception permitting the suspension of Habeas Corpus in cases of rebellion or the invasion of the Republic. Accordingly, it may be deduced that any negation of rights must be effected by way of purposeful legislation and, in some cases, must take place under judicial review. This does not imply that in practice instances have not occurred in which rights have been violated in emergencies. The most prominent example of such a violation is the internment of US citizens of Japanese origin during the Second World War.

⁴⁸ prohibited from undertaking policing tasks and from enforcing state laws by virtue of 18 USC §1385, Posse Comitatus Act.
See also the 2011 Defense Support of Civil Authorities (DSCA) Interagency Partner Guide at:
http://www.vaccines.mil/documents/1499DSCA_Interagency_Partner%20Guide.pdf

The Legislative Framework for Regulating Emergencies in the United States: A Preliminary Review

General

The United States of America (US) is a federal republic comprising fifty states and one district. The executive branch of government is headed by the President. The legislative branch is the Congress, comprising two Houses: The Senate and the House of Representatives. The following abstract will focus on the federal legislative framework.

The federal legislative framework for regulating emergencies in the US differs from methods that include the declaration of a specific emergency leading to powers and forms of response determined in legislation. The declaration of and response to federal emergencies in the US include two stages. A generic law (the National Emergencies Act, or NEA, which will be discussed in detail below) primarily regulates the procedural framework for declaring emergencies and constitutes a kind of “entrance gate” leading to other legislative articles that grant the President and governmental bodies substantive powers in emergencies. When the President decides to declare an emergency, he is required to use the “entrance gate” of the generic law: To declare an emergency and to state in a declaration (or in a simultaneous or subsequent presidential order) the legal articles in accordance with which it is requested that action be taken in the emergency.

The practical significance of this arrangement is that when an emergency occurs there is no certainty as to which legislative articles will be applied. Moreover, there is also no certainty as to whether the Administration will confine itself to the existing laws in the statute book or initiate ad hoc legislation. A further practical ramification is that the American response to significant emergencies is liable to take the form of a descent into a maelstrom of emergency powers.⁴⁹ Among other reasons, this is due to the fact that the relevant legislation is dispersed in numerous legislative articles. Moreover, the absence of any specific regulation of emergency legislation may also lead to “tailor-made” legislation such as the Patriot Act, which will be discussed below.

At this moment several declarations of emergencies are valid in the US. One example is Declaration 7463, made by President Bush following the attacks of 9/11, which remains valid to this day (having been extended several times by President Obama). In addition, declarations such as Presidential Order 12947 from 1995, impose restrictions on trade with terrorists; these have also been extended several times and continue to apply to this day. These declarations enable the President to use legal powers in order to secure certain goals, such as the prevention of terrorism. From 1976 (when the National Emergency Act came into force) through 2001, some 40 declarations of emergencies have been made in order to address

⁴⁹ Scheppele, Kim Lane, “North American Emergencies: The Use of Emergency Powers in Canada and the United States,” *INTERNATIONAL JOURNAL OF CONSTITUTIONAL LAW* 4 (2) (2006), 213-2453. Professor Arnon Gottfeld discussed this subject at the “Round Table on Democracies Coping with Emergencies” held under the auspices of the Israel Democracy Institute (January 29, 2002). He commented: “Emotional reactions, violence, and extremism are a recurring theme throughout American history in emergencies.” See: <http://www.idi.org.il/אירועים/פורום-השולחן-העגולד/מוקרטיה-במצבי-הירום> (Hebrew)

incidents such as terrorist attacks and economic crises.⁵⁰

It should be noted that as a federal republic many of the emergencies in the US, particularly those resulting from natural disasters, are emergencies on the state level, with relatively limited federal involvement. As noted, this document focuses on the federal level.

The Legislative Framework

The US Constitution includes just three mentions of emergencies. The first appears in Article 1, Section 9 and establishes that Habeas Corpus is to be suspended only in instance of rebellion or the invasion of the Republic. The second, in Article 1, Section 8, establishes that Congress has the right to declare war. The third mention appears in the Fifth Amendment to the Constitution and establishes a limitation on trial by grand jury in times of service during wartime or “public danger.” It is worth noting that the powers mentioned in the Constitution are granted to Congress.

Article II of the Constitution, which discusses the President’s authorities, makes no mention of emergency powers. The first President to assume the authority to declare an emergency was Abraham Lincoln who suspended habeas corpus in 1861 during the Civil War. Lincoln retroactively justified his decision before Congress by arguing that it had been unavoidable.

After the end of the Second World War the President’s emergency powers were extended. Fear of the Soviet nuclear superpower and a desire to ensure that the President can respond immediately to international crises led to the enactment of some 470 specific legislative articles from 1945 through to the passage of the National Emergencies Act in 1976. These powers were restricted on the enactment of the Act, but were strengthened to an unprecedented degree following the events of 9/11 after the White House demanded sweeping powers in order to cope with terrorism incidents.⁵¹

The National Emergencies Act⁵² (NEA) was enacted in 1976 on the basis of the work of a Senate committee appointed to regulate the subject of emergencies in the US. The first chapter of the NEA establishes the termination of all the states of emergency that were in effect in the US up to two years before the date on which the Act came into force. One of the purposes behind the enactment of the NEA was to restrict the use of presidential powers through regulation and by ensuring that the exercising of these powers would be public.⁵³

The NEA is a relatively brief law and does not include substantive discussion of emergencies; neither does it provide a positive definition of what constitutes an emergency. The American legislator has included powers relating to emergencies in various laws;⁵⁴ in order to exercise these

⁵⁰ An example is the declaration dated January 18, 2001 prohibiting the import of unprocessed diamonds from Sierra Leone.

⁵¹ Aziz Z. Huq, “Democratic Norms, Human Rights and State of Emergency: Lessons from the Experience of Four Countries,” *Democracy, Conflicts and Human Security: Further Readings* (2006), p. 125.

⁵² US Code, Title 50, Chapter 34.

⁵³ The committee was formed against the background of the Nixon presidency. Apart from the infamous Watergate scandal, this period was also marked by the occasional use of emergency powers in order to secure various goals, such as imposing economic arrangements.

⁵⁴ For example, see Sections 123, 123a, 12302, 12006, 2201, and 527 discussing military personnel matters in: US Code Title 10 – Armed Forces, Subtitle A – General military law.

powers, the President must declare an emergency in accordance with the NEA and state in the declaration (or in a simultaneous or subsequent presidential order) the specific section of the law in accordance with action in the framework of the emergency is requested, down to the resolution of sub-sections. In brief, the NEA effectively functions as an umbrella platform for the emergency laws dispersed throughout US legislation. Until 1976, some 470 articles in American legislation addressed emergencies. Over the years many of these articles have been abolished, but even today it is possible to find numerous articles addressing emergencies and associated powers, from articles relevant to wartime⁵⁵ to others discussing economic restrictions in emergencies⁵⁶ and aspects relating to highways.⁵⁷

The table below provides a preliminary summary of the main acts of legislation addressing emergencies in the US **on the federal level**. As we noted above, this legislation is highly dispersed and accordingly this table **should not be considered exhaustive**.

Natural Disasters	National Security	Socio-Economic Meltdowns
Mainly in the FEMA Charter	Mainly through 50 U.S. Code: War and National Defense	Mainly through ad-hoc legislation. (Sub-Prime Crisis)
Disaster Relief Act	US Constitution. Article 1, Section 9	
	US Constitution. Article 1, Section 9	
	50 U.S. Code Chapter 34: National Emergencies	

The Federal and Institutional Framework for Responding to Emergencies: The Federal Emergency Management Agency (FEMA)

Background

Until 1950 the federal government coped with disasters by means of specific legislation. This legislation, required after each individual event, focused mainly on the allocation of resources to cope with the disaster and on defining the responsibilities of various governmental bodies, primarily the army or federal economic institutions. During this period the Emergency Management Office in the White House advised the

⁵⁵ US Code Title 50: War and National Defense, Chapter International Emergency Economic Powers 35, which discusses economic powers granted to the President to investigate, arrange, and even prohibit, for example, commerce or financial transfers.

⁵⁶ Emergency mortgage relief in: US Code Title 12: Banks and Banking, Chapter 28 – Emergency Mortgage Relief, which establishes that if Congress notes a high rate of failure to meet mortgage payments, inter alia due to recession, it is permitted to provide emergency loan in order to prevent a foreclosure plague.

⁵⁷ Article 125 (Disaster Relief) in: US Code Title 23: Highways.

President in responding to such events.

Enacted in 1950, the Disaster Relief Act permitted federal agencies, after receiving instruction from the President, to assist in emergencies on the state level through the allocation of federal personnel and resources. In 1958 the Federal Civil Defense Agency (FCDA) was established under the terms of an appropriate act. The FCDA, which had a primarily preventative function, was dismantled in 1958. In the same year a reorganization plan was implemented and the FCDA's powers were transferred to the Executive Office of the President (EOP). Additional changes to these powers were introduced in 1969, particularly regarding preparations for emergencies.

After the Disaster Relief Act of 1969 came into force in that year, President Nixon began to delegate additional powers to the EOP, which coordinated attention to the field of preparations for and responses to emergencies. Further changes were made over the following years. Until this stage the federal response had centered on the White House, but the changes led to the removal of powers and paved the way for the formation of an independent agency. The Federal Emergency Management Agency (FEMA) was eventually established on April 1, 1979. FEMA functioned as an independent agency for the following 24 years. Since 2003, following the reorganization introduced in the wake of 9/11, FEMA has functioned as part of the Department of Homeland Security.

FEMA: Goals and Functions

FEMA's purpose is defined as follows:

“The primary mission of the Agency is to reduce the loss of life and property and protect the Nation from all hazards, including natural disasters, acts of terrorism, and other man-made disasters, by leading and supporting the Nation in a risk-based, comprehensive emergency management system of preparedness, protection, response, recovery, and mitigation”.⁵⁸

FEMA's secondary missions, which are also defined in legislation, state that the head of the Agency must act to prevent disasters, to prepare for them, and, of course, to provide assistance after a natural or other disaster as defined in the Agency's missions. The head of FEMA acts as the chief advisor to the President, the Secretary of Homeland Security, and the National Security Council on all issues relating to disaster management.

In order to activate FEMA and provide assistance in disaster situations, the state governor must declare an emergency. After making the declaration, the governor must ask the President to instruct FEMA to provide assistance at the disaster site. The requirement to make a formal request to the President reflects FEMA's status as a federal agency. The President's order is based on an amendment to the Disaster Relief Act of 1974⁵⁹ permitting the President to declare an emergency or “major disaster” at the request of the relevant state governor if he recognizes that the resources of the state in coping with the disaster are inadequate or have been exhausted. During the emergency the President is entitled to order any federal agency to use resources originating in federal legislation in order to assist a specific state or in the case of a local emergency. The relevant article requires the President to publish guidelines in order to assist state governors to request federal aid. The federal aid is included in

⁵⁸ 6 USC §313: Federal Emergency Management Agency.

⁵⁹ 42 USC §5192: Federal Emergency Assistance.

the Federal Emergency Management Agency (FEMA).⁶⁰

As noted, in addition to assistance in responding to disasters, FEMA also plays a significant role in contingencies for disasters. Among other functions, the Agency provides consultation services, financing, analysis, and preparation for disasters such as hurricanes and earthquakes. The various programs operated by FEMA include insurance and damage reduction programs approved by Congress.⁶¹

According to the directives of the US Department of Defense, the US Army may provide assistance in cases of disaster.⁶² In situations in which federal civilian agencies (such as FEMA) cannot provide a full response, they may ask the Department of Defense to deploy forces at the site of the disaster in order to assist in the response. The request to involve army forces may only be made by a federal agency (and not by the state itself); among other reasons, this is due to the fact that the activities of the armed forces must be financed from the budget of that authority.⁶³ After receiving the approval of the Department of Defense, military forces attend the place of the disaster and assist the civilian forces on the ground. Unlike National Guard forces, which are accountable to the relevant governor, army forces are attached and accountable to the North American Command.

Although FEMA holds extensive powers to use federal resources it cannot order army forces to perform any actions. In most cases, therefore, army forces are used only by way of a last resort, and in these instances FEMA functions as a federal agency requesting army intervention in accordance with Department of Defense directives. An example from recent years of the extensive use of army forces was the aftermath of Hurricane Katarina, which struck the southern United States in 2005.

⁶⁰ See “A Guide to the Disaster Declaration Process and Federal Disaster Assistance,” at http://www.fema.gov/media-library-data/20130726-1811-25045-8194/fema_mitigation_strategic_plan_508.pdf

⁶¹ For example, see: FEMA Insurance and Mitigation Strategic Plan, 2-12-2014, at http://www.fema.gov/media-library-data/20130726-1811-25045-8194/fema_mitigation_strategic_plan_508.pdf

⁶² Department of Defense Directive 3025.18: Defense Support of Civil Authorities, December 29, 2010; it is worth noting that the armed forces in the US are prohibited from undertaking policing tasks and from enforcing state laws by virtue of 18 USC §1385, Posse Comitatus Act.

⁶³ See also the 2011 Defense Support of Civil Authorities (DSCA) Interagency Partner Guide at: http://www.vaccines.mil/documents/1499DSCA_Interagency_Partner%20Guide.pdf

Entry into a State of Emergency

The legislative references detailed below are all from federal law, with the exception of one example taken from the statutes of the State of California. It should be reiterated that in declaring an emergency, the President must refer to the specific legislative articles he intends to use.

Situation	Source:	Definition of an “emergency”	Who may declare? under what conditions?	Emergency laws that come into effect	How does a state of emergency end?
Generic Law	50 USC § 1621 and 1622	No positive definition for “Emergency”	“With respect to acts of Congress authorizing the exercise, during the period of a national emergency, of any special or extraordinary power, the President is authorized to declare such national emergency”.	“Any provisions of law conferring powers and authorities to be exercised during a national emergency shall be effective and remain in effect (1) only when the President... specifically declares a national emergency, and (2) only in accordance with this chapter...” “When the President declares a national emergency, no powers or authorities made available by statute for use in the event of an emergency shall be exercised unless and until the President specifies the provisions of law under which he proposes that he, or other officers will act...”	The law establishes modalities and procedures for the ending of an emergency by the President or Congress: “Any national emergency declared by the President in accordance with this subchapter shall terminate if: (1) there is enacted into law a joint resolution, by both houses ⁶⁴ terminating the emergency; or (2) the President issues a proclamation terminating the emergency.” “Not later than six months after a national emergency is declared, and not later than the end of each six-month period thereafter that such emergency continues, each House of Congress shall meet to consider a vote on a joint resolution to determine whether that emergency shall be terminated.” ⁶⁵ Furthermore, the declaration will expire automatically each year, on the day and month on which it was made, unless the President publishes a notice of extension during the 90 days preceding the expiry date: “Any national emergency declared by the President in accordance with this subchapter, and not otherwise previously terminated, shall terminate on the anniversary of the declaration of that emergency if, within the ninety-day period prior to each anniversary date, the President does not publish in the Federal Register and transmit to the Congress a notice stating that such emergency is to continue in effect after such anniversary.”

⁶⁴ A procedure requires that if one house votes to terminate an emergency, the matter must be forwarded to a committee of the other house and a law must be brought to a vote therein not later than 15 days after the date on which the proposal reached the committee. See also footnote 17.

Situation	Source:	Definition of an “emergency”	Who may declare? under what conditions?	Emergency laws that come into effect	How does a state of emergency end?
Earthquake	6 USC 313: Federal Emergency Management Agency	<p>Since for this purpose the important declaration is the original declaration by the governor, we include here an example from California regarding the definition of a state of emergency and the termination thereof: “State of emergency” means the duly proclaimed existence of conditions of disaster or of extreme peril to the safety of persons and property within the state caused by such conditions as air pollution, fire, flood, storm, epidemic, riot, drought, sudden and severe energy shortage, plant or animal infestation or disease, the Governor's warning of an earthquake or volcanic prediction, or an earthquake, or other conditions.... (California Governance Code 8558)</p> <p>After the relevant governor submits the request, the President examines the need to assist the state on the basis of the following parameters:</p> <p>“Emergency” means any occasion or instance for which, in the determination of the President, federal assistance is needed to supplement State and local efforts and capabilities to save lives and to protect property and public health and safety, or to lessen or avert the threat of a catastrophe in any part of the United States.”</p>	State Governor, then requests the President that FEMA will respond.		The Governor shall proclaim the termination of a state of emergency at the earliest possible date that conditions warrant (California Governance Code 8629).
Fire					
Floods					
Tsunami					
Storms (Hurricanes, Tornados etc.)					

⁶⁵ The decision-making procedure for both houses is detailed in the proposed law attached as an appendix to this abstract, see 50 USC §1622 (c).

Situation	Source:	Definition of an “emergency”	Who may declare? under what conditions?	Emergency laws that come into effect	How does a state of emergency end?
War	US Constitution, Article 1 Section 8	Has not been found in the course of our research	“Congress shall have power to... declare war.”		
Epidemic	42 USC §247d Public Health Emergencies	“...a disease or disorder presents a public health emergency; or a public health emergency, including significant outbreaks of infectious diseases or bioterrorist attacks, otherwise exists”	Secretary of Health	Public Health Emergency Fund Temporary reassignment of state and local personnel during a public health emergency	The authority to declare the termination of an emergency rests with the Secretary of Health, who is empowered to declare the termination of the emergency, or to refrain from renewing the declaration, after a period of 30 days. “(I) The Secretary's determination that the public health emergency no longer exists. (II) Subject to clause (ii), the expiration of the 30-day period following the date on which the Secretary approved the State or Indian tribe's request for such reassignment flexibility.”

Powers in an Emergency

As noted above, federal emergency powers are dispersed throughout numerous laws, and when the President declares an emergency he must specify which laws he wishes to use. The following provisional table provides examples of various powers that appear in the statute book, but it should not be considered exhaustive.

Situation	Source:	Powers	Powers conferred to	Powers exercised vis-à-vis	Conditions to be met when exercising the power
Generic Law	50 USC § 1631 - Declaration of national emergency by executive order	“When the President declares a national emergency, no powers or authorities made available by statute for use in the event of an emergency shall be exercised unless and until the President specifies the provisions of law under which he proposes that he, or other officers will act..”	President or other officers	According to the specific law used	According to the specific law used
Data concerning powers during earthquake, fire, tsunami and storms (e.g. Hurricanes, Tornados etc.) should further be researched.					
War	US Constitution, Article 1 Section 9	Suspension of the privilege of the Writ of Habeas Corpus	Non specific	All	“The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it”
	Title 50 of U.S. Code Elaborates powers to be exercised during war and national defense				
	US Constitution, 5 th Amendment	Suspension of the right for a Grand Jury in cases of Capital or Infamous crimes	Non specific	All	Cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger

Situation	Source:	Powers	Powers conferred to	Powers exercised vis-à-vis	Conditions to be met when exercising the power
Epidemic	4 USC § 73 - Removal from seat of Government	The President may permit and direct the removal of any or all the public offices to such other place or places as he shall deem most safe and convenient for conducting the public business	President	Public offices	In case of the prevalence of a contagious or epidemic disease at the seat of government
National emergencies	42 USC § 1320b-5 - Authority to waive requirements during national emergencies ⁶⁶	The Secretary may waive any requirements in order to provide healthcare during a state of emergency (i.e. requirements that physicians and other health care professionals be licensed in the State in which they provide such services, if they have equivalent licensing in another State and are not affirmatively excluded from practice in that State or in any State a part of which is included in the emergency area)	Secretary of Health	Health System	State of emergency (not only during health crisis)
Terrorism	USA Patriot Act 2001, ⁶⁷ PATRIOT Sunsets Extension Act of 2011	Enacted following the events of 9/11, the USA Patriot Act has wide-ranging ramifications and includes sections addressing interrogation, intelligence cooperation, border arrangements, economic arrangements, and amending legal definitions concerning terrorism. Thus, for example, the Act includes sections discussing such economic aspects as a requirement for bank customers to identify themselves alongside sections discussing the authorization of wiretapping. ⁶⁸	Law Enforcement	All	There is no need to declare an emergency or to activate the Act.

⁶⁶ <http://www.whitehouse.gov/the-press-office/declaration-a-national-emergency-with-respect-2009-h1n1-influenza-pandemic-0>

⁶⁷ Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001

⁶⁸ See:
<https://www.gwcu.org/compliance/patriot-act.aspx>

Situation	Source:	Powers	Powers conferred to	Powers exercised vis-à-vis	Conditions to be met when exercising the power
Financial Crisis	50 USC Ch. 35 §1701 - Unusual and extraordinary threat; declaration of national emergency; exercise of Presidential authorities	“The President may, under such regulations as he may prescribe, by means of instructions, licenses, or otherwise— (A) investigate, regulate, or prohibit— (i) any transactions in foreign exchange, by, through, or to any banking institution, to the extent that such transfers or payments involve any interest of any foreign country or a national thereof, (iii) the importing or exporting of currency or securities”	President	People and institution	“May be exercised to deal with any unusual and extraordinary threat, which has its source in whole or substantial part outside the United States, to the national security, foreign policy, or economy of the United States, if the President declares a national emergency with respect to such threat”
Other	50 USC Appx. 2061 Defense Production Act	The Act confers upon the President authority to force private industry to give priority to defense and homeland security contracts and to allocate the resources needed	President	Private Industry	Use not only in times of war, was used by the Department of Defense to encourage creations of new technologies. ⁶⁹

http://www.fincen.gov/statutes_regs/patriot/
<http://www.justice.gov/archive/II/highlights.htm>

See also:

Department of Justice: What is the Patriot Act
 HR 3162 – The USA Patriot ACT

Reclaiming Patriotism, A Call to Reconsider the Patriot Act, ACLU, 2009.

⁶⁹ The Department of Defense encourages the promotion of new technologies by means of various articles in the Act, including the use of contracts and seed money. Among other advancements, the involvement of the Department of Defense has led to the manufacture of various materials, including barbed wire, superconductors, and other items. See: National Research Council, *Defense Manufacturing in 2010 and Beyond*, 1999, p. 7, at: http://www.nap.edu/openbook.php?record_id=6373

Situation	Source:	Powers	Powers conferred to	Powers exercised vis-à-vis	Conditions to be met when exercising the power
	12 USC § 95 - Emergency limitations and restrictions on business of members of Federal Reserve System	During such emergency period as the President of the United States by proclamation may prescribe, no member bank of the Federal Reserve System shall transact any banking business except to such extent and subject to such regulations, limitations and restrictions...	(1) President (2) Secretary of the Treasury may prescribe regulations, limitations and restrictions with the approval of the President	Any member bank of the Federal Reserve System	Emergency period as the President of the United States by proclamation may prescribe

Rights in Emergencies

With the exception concerning habeas corpus, as mentioned above, US legislation does not permit the restriction of rights in emergencies in manner different from that at other times. Any such restriction must be introduced through legislation passed by Congress.⁷⁰ In some instances such violation of rights must be approved by a judicial instance.⁷¹ This does not imply that in practice instances have not occurred in which rights have been violated in emergencies. The most prominent examples of such violations are the internment of US citizens of Japanese origin during the Second World War and the Trading with the Enemy Act, 1917 (TWEA), which on occasion led to the seizure of merchandise and the violation of the right to property.⁷²

An example of a principle requiring the restriction of human rights by way of legislation can be found in the Non-Detention Act, 1971. This law was enacted in order to nullify another law: the Detention Act, 1950. The original law permitted administrative detention, while the 1971 Act establishes that administrative detention may be used solely with explicit consent by way of legislation in Congress. The Act states:

“No citizen shall be imprisoned or otherwise detained by the United States except pursuant to an Act of Congress.”

⁷⁰ For example, see the Patriot Act, 2001.

⁷¹ A good example of this is the court established in accordance with the Foreign Intelligence Surveillance Act, 1978 (FISA). The court was established specifically in order to approve investigative actions targeting foreign citizens (50 USC Chapter 36). For further information about the court, see also: http://www.fjc.gov/history/home.nsf/page/courts-special_fisc.html

⁷² In 1971 President Nixon used the legal framework of TWEA in order to enforce a de facto economic policy imposing a “tax” of tens of percent on imports to the US. In 1977 the International Emergency Economic Act was enacted, restricting the use of TWEA solely to the wartime.

It should be noted that the Act uses the term “citizen” in restricting the authorities’ powers. In a different context, this aspect has been the subject of discussion in various articles raising the criticism that US law does not sufficiently restrict the violation of the human rights of non-citizens in emergencies.⁷³ A relevant instance occurred about the attacks of 9/11: On September 18, 2011, Congress passed a joint resolution: “Authorizing ‘use [of] all necessary and appropriate force’ against ‘nations, organizations or persons’ the president deemed responsible for the attacks.”

Appendix:
50 USC Chapter 34 (The National Emergency Law)

50 USC § 1601 - Termination of existing declared emergencies

(a) All powers and authorities possessed by the President, any other officer or employee of the Federal Government, or any executive agency, as defined in section [105](#) of title [5](#), as a result of the existence of any declaration of national emergency in effect on September 14, 1976, are terminated two years from September 14, 1976. Such termination shall not affect—

- (1) any action taken or proceeding pending not finally concluded or determined on such date;
- (2) any action or proceeding based on any act committed prior to such date; or
- (3) any rights or duties that matured or penalties that were incurred prior to such date.

(b) For the purpose of this section, the words “any national emergency in effect” means a general declaration of emergency made by the President.

50 USC § 1621 - Declaration of national emergency by President; publication in Federal Register; effect on other laws; superseding legislation

(a) With respect to Acts of Congress authorizing the exercise, during the period of a national emergency, of any special or extraordinary power, the President is authorized to declare such national emergency. Such proclamation shall immediately be transmitted to the Congress and published in the Federal Register.

(b) Any provisions of law conferring powers and authorities to be exercised during a national emergency shall be effective and remain in effect

- (1) only when the President (in accordance with subsection (a) of this section), specifically declares a national emergency, and
- (2) only in accordance with this chapter. No law enacted after September 14, 1976, shall supersede this subchapter unless it does so in specific terms, referring to this subchapter, and declaring that the new law supersedes the provisions of this subchapter.

50 USC § 1622 - National emergencies

(a) Termination methods

Any national emergency declared by the President in accordance with this subchapter shall terminate if—

⁷³ See footnote 10 above.

- (1) there is enacted into law a joint resolution terminating the emergency; or
- (2) the President issues a proclamation terminating the emergency.

Any national emergency declared by the President shall be terminated on the date specified in any joint resolution referred to in clause (1) or on the date specified in a proclamation by the President terminating the emergency as provided in clause (2) of this subsection, whichever date is earlier, and any powers or authorities exercised by reason of said emergency shall cease to be exercised after such specified date, except that such termination shall not affect—

- (A) any action taken or proceeding pending not finally concluded or determined on such date;
- (B) any action or proceeding based on any act committed prior to such date; or
- (C) any rights or duties that matured or penalties that were incurred prior to such date.

(b) Termination review of national emergencies by Congress

Not later than six months after a national emergency is declared, and not later than the end of each six-month period thereafter that such emergency continues, each House of Congress shall meet to consider a vote on a joint resolution to determine whether that emergency shall be terminated.

(c) Joint resolution; referral to Congressional committees; conference committee in event of disagreement; filing of report; termination procedure deemed part of rules of House and Senate

- (1) A joint resolution to terminate a national emergency declared by the President shall be referred to the appropriate committee of the House of Representatives or the Senate, as the case may be. One such joint resolution shall be reported out by such committee together with its recommendations within fifteen calendar days after the day on which such resolution is referred to such committee, unless such House shall otherwise determine by the yeas and nays.
- (2) Any joint resolution so reported shall become the pending business of the House in question (in the case of the Senate the time for debate shall be equally divided between the proponents and the opponents) and shall be voted on within three calendar days after the day on which such resolution is reported, unless such House shall otherwise determine by yeas and nays.
- (3) Such a joint resolution passed by one House shall be referred to the appropriate committee of the other House and shall be reported out by such committee together with its recommendations within fifteen calendar days after the day on which such resolution is referred to such committee and shall thereupon become the pending business of such House and shall be voted upon within three calendar days after the day on which such resolution is reported, unless such House shall otherwise determine by yeas and nays.
- (4) In the case of any disagreement between the two Houses of Congress with respect to a joint resolution passed by both Houses, conferees shall be promptly appointed and the committee of conference shall make and file a report with respect to such joint resolution within six calendar days after the day on which managers on the part of the Senate and the House have been appointed. Notwithstanding any rule in either House concerning the printing of conference reports or concerning any delay in the consideration of such reports, such report shall be acted on by both Houses not later than six calendar days after the conference report is filed in the House in which such report is filed first. In the event the conferees are unable to agree within forty-eight hours, they shall report back to their respective Houses in disagreement.
- (5) Paragraphs (1)–(4) of this subsection, subsection (b) of this section, and section [1651 \(b\)](#) of this title are enacted by Congress—
 - (A) as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such they are deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in the House in the case of resolutions described by this subsection; and they supersede other rules only to the extent that they are inconsistent therewith; and

(B) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner, and to the same extent as in the case of any other rule of that House.

(d) Automatic termination of national emergency; continuation notice from President to Congress; publication in Federal Register

Any national emergency declared by the President in accordance with this subchapter, and not otherwise previously terminated, shall terminate on the anniversary of the declaration of that emergency if, within the ninety-day period prior to each anniversary date, the President does not publish in the Federal Register and transmit to the Congress a notice stating that such emergency is to continue in effect after such anniversary.

50 USC § 1631 - Declaration of national emergency by Executive order; authority; publication in Federal Register; transmittal to Congress

When the President declares a national emergency, no powers or authorities made available by statute for use in the event of an emergency shall be exercised unless and until the President specifies the provisions of law under which he proposes that he, or other officers will act. Such specification may be made either in the declaration of a national emergency, or by one or more contemporaneous or subsequent Executive orders published in the Federal Register and transmitted to the Congress.

50 USC § 1641 - Accountability and reporting requirements of President

(a) Maintenance of file and index of Presidential orders, rules and regulations during national emergency

When the President declares a national emergency, or Congress declares war, the President shall be responsible for maintaining a file and index of all significant orders of the President, including Executive orders and proclamations, and each Executive agency shall maintain a file and index of all rules and regulations, issued during such emergency or war issued pursuant to such declarations.

(b) Presidential orders, rules and regulations; transmittal to Congress

All such significant orders of the President, including Executive orders, and such rules and regulations shall be transmitted to the Congress promptly under means to assure confidentiality where appropriate.

(c) Expenditures during national emergency; Presidential reports to Congress

When the President declares a national emergency or Congress declares war, the President shall transmit to Congress, within ninety days after the end of each six-month period after such declaration, a report on the total expenditures incurred by the United States Government during such six-month period which are directly attributable to the exercise of powers and authorities conferred by such declaration. Not later than ninety days after the termination of each such emergency or war, the President shall transmit a final report on all such expenditures

50 USC § 1651 - Other laws, powers and authorities conferred thereby, and actions taken thereunder; Congressional studies

(a) The provisions of this chapter shall not apply to the following provisions of law, the powers and authorities conferred thereby, and actions taken thereunder:

- (1)** Chapters 1 to 11 of title [40](#) and division C (except sections 3302, 3307(e), 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title [41](#);
- (2)** Section 3727(a)–(e)(1) of title 31;
- (3)** Section [6305](#) of title [41](#);
- (4)** Public Law 85–804 (Act of Aug. 28, 1958, [72 Stat. 972](#); [50 U.S.C. 1431](#) et seq.);

(5) Section [2304 \(a\)\(1\)](#) ^[1] of title [10](#); ^[2]

(b) Each committee of the House of Representatives and the Senate having jurisdiction with respect to any provision of law referred to in subsection (a) of this section shall make a complete study and investigation concerning that provision of law and make a report, including any recommendations and proposed revisions such committee may have, to its respective House of Congress within two hundred and seventy days after September 14, 1976.

Emergency Laws and Regulations in Germany: Abstract

General

The German constitution comprises, for various historical reasons (including the emergency clause in the Weimar Constitution), only a weak emergency constitution, which was added to the Basic Law only in 1968. One of its expressions relates to the State of Defense, which comes nearer to an emergency constitution, although it is legally configured along the lines of institutions and procedures of a democracy. The other major constitutional clause relating to emergency, allows the States (Länders) to invite assistance from other States or from the Federal government.

Legal framework

Basically there are three pillars of “emergency” situations and related laws. Their architecture, in general, depends on the design of legislative and administrative competences:

- 1) The first pillar is a **State of Defense**: The Bund (federation) is entitled to regulate all matters related to a State of Defense. In order to deal with an external emergency the Bund has issued a couple of laws called safeguarding laws (Sicherstellungsgesetze).
- 2) The second pillar is **civil protection**: The legislative competence lies with the Federation, and the administrative competences may differ. Due to the regulation in the Civil Protection Act the Federation and Länders share the administrative responsibility.
- 3) The third pillar is the **administration of catastrophes**, which falls into the competence of the länders. It is important to note, that catastrophes are defined only by the scale of possible losses and damages as well as by the necessity to pool resources to fight the catastrophe.

Declaration of a state of emergency

State of defense is defined as a determination that the federal territory is under attack by armed forces or imminently threatened with such an attack. A declaration of a State of Defense shall be made by parliament upon an application of the Federal Government and shall require a two-thirds majority of the votes cast, which shall include at least a majority of the Members of the Bundestag.

Catastrophe is defined as a situation in which life, health, the supply of the population with goods and services indispensable to life, environmental or material assets, are threatened or even damaged in such an extraordinary way that effective help and protection could only be guaranteed by a unified guidance of a catastrophe organizations of all competent authorities, organizations and resources. The counties (Landkreise) and big cities (Kreisfreie Städte) are in charge of lower scale catastrophe administration authorities. They may declare the state of emergency if the situation happens within their territory.

Powers

During a declared catastrophe all relevant authorities and organizations work under the unified guidance and hierarchical assignment of the competent catastrophe authority (Landkreis/Kreisfreie Städte). The authority can take every measure necessary to prevent the catastrophe or to fight it. It lies within its discretion to define what is necessary, but all the measures are in principal subject to judicial review (though more limited than in normal times). The powers are not really extraordinary but follow the powers of the “normal” police forces.

Rights During Emergencies

The basic rights of the citizens are non-derogable. There are two minor restrictions of rights only in the case of the state of defense, elaborated in the synopsis. In every other case there are no general suspensions or restrictions of the rights of the citizens, but there may be measures to restrict them in certain situations due to the norms of catastrophe. In a case of an emergency at some point nearly any right can be restricted in a way that looking at the individual case the right is fully eliminated, though private property is not generally abolished, and each restriction is curtailed (e.g. by the proportionality principle).

Emergency Laws and Regulations in Germany: Synopsis

**The footnotes to this synopsis can be found in the end of the document.*

General

The German constitution contains, for various historical reasons, only a weak emergency constitution. The German Basic Law of 1949 was originally enacted without an emergency constitution *sensu strictu*. It only specifies various rules for mutual assistance by the States (Länders) and also by the Federation (Bund) in cases of a catastrophe (grave accidents or natural disasters) or a threat to the security of a federal state;ⁱ a kind of legislative emergencyⁱⁱ which is not very functional; and very basic regulations concerning an internal emergency. The possible reason is that the parliamentary council, which was responsible for the draft constitution wanted to avoid any adjacency to the former Article 48 of the Weimar Constitution and the emergency powers it granted the president of the Weimar Republic.

In 1968, a kind of a weak emergency constitution was enshrined in the Basic Law. One of its rules was an extended version of states of internal emergency, specified in Article 91 of the Basic Law.ⁱⁱⁱ The other rules relate to the State of Defense, which come nearer to an emergency constitution, although for various reasons, the Parliament tried to configure this state of defense as much as possible along the lines of the institutions and procedures of democracy.^{iv}

Legal framework

Basically there are three pillars of “emergency” situations and related laws. Their architecture depends on the general design of legislative and administrative competences.

The Bund (federation) is entitled to regulate all matters related to the **state of defense**, which is the first pillar. To deal with an external emergency the Bund has issued a couple of laws called safeguarding laws (Sicherstellungsgesetze). They are related to the situations defined in Article 80a BL.^v It allows to unlock particular provisions of the BL (e.g. Art. 12a V 1^{vi}, Art. 12a VI 2,^{vii} Art. 87a III^{viii}) in situations where a so called “state of tension” is declared (which is a pre-stage to a state of defense) or if the parliament by 2/3 majority allows for the application of the specific norm. Safeguarding concerns work, traffic, economy, food and the rationale is to secure basic services and goods in those fields, e.g. the supply of energy, telecommunications, etc., and the emergency competence is to take necessary measures like storage, rules of production, reduction of consumption, etc.

The second pillar is **civil protection**. The legislative competence lies with the Federation, the administrative competence may differ according to Article 87a II BL^{ix}. According to the regulation in the Civil Protection Act, Federation and Länders share the administrative responsibility. A

central agency is entitled to carry out administrative tasks of the federation which include planning of civil protection, training of the staff responsible for civil protection, informing the population, early warning, research, etc. The *länders'* administrations, in particular those responsible for carrying out the task of the administration of catastrophes, are in cooperation with the federation, responsible for shelters (public or private), restriction of the right to move freely in the federal territory (Art. 11 BL), evacuations, planning of healthcare in case of defense, and regulation of stand-by-duties and training of healthcare assistants. All in all, this is a type of cooperative administration of the federation and the *länders*. The resources of the civil protection administration could also be used in cases of catastrophes and vice versa.

The third pillar is the **administration of catastrophes**, which falls into the competence of the *länders*. Each of them has a law of catastrophes, the modern ones integrate fire protection and rescue services as they all have to cooperate in cases of catastrophes. Their aim is the effective protection of the population in cases of fire, disasters, emergencies and catastrophes.^x Fire protection covers prevention of fires as well as firefighting and technical support to the firefighters, which might be auxiliary as well as professional services. Rescue services comprise patient transportation as well as rescue service in cases of disasters, etc. Protection against catastrophes means prevention, fighting of catastrophes as well as urgent and preliminary help in cases of damages.

It is important to note, that catastrophes are defined only by the scale of possible losses and damages as well as by the necessity to pool resources to fight the catastrophe. It is defined as follows:

“Catastrophes is a situation in which life, health, supply of the population with goods and services indispensable to life, environment or material assets are threatened or even damaged in such an extraordinary way that effective help and protection could only be guaranteed by a unified guidance of a catastrophe organizations of all competent authorities, organizations (which means public as well as private organization, honorary offices as well as professional organizations) and resources”.

According to the definition it does not matter what the cause of the situation might be. The only thing that matters is the extraordinary situation as such. Therefore there are no specific laws dealing with certain types of catastrophes.

Natural disasters	National security	Socio-economic meltdowns
Law of catastrophes in each of the <i>länders</i> .	Basic Law of Germany, Art. 115a. Safeguarding laws (Sicherstellungsgesetze).	

It should be noted that there are several statutes addressing a generic state of emergency, rather than addressing different types of emergency, but correspond with Germany's federal system. Taking a look at the statutes and other acts of legislation that might take effect in case of emergency, one has to keep in mind that Germany's legal system is characterized by high tendency of codification. Therefore, there are many pieces of

legislation which could be affected. However, these provisions are not arranged referring to a certain type of disaster or the like, but regulate a certain type of infrastructure. In this respect, “infrastructure” is meant in the broadest sense, i.e. any object or facility, which may be affected by, or is a potential source of, an emergency or a catastrophe, e.g. a nuclear power plant as well as a river or public transport.

Taking this into account, a complete analysis of potentially affected legislation is impossible, as one easily can imagine that for any infrastructure given, one can imagine a state of emergency, too, which does affect this infrastructure. Furthermore, a certain infrastructure may be both, disaster victim and a source of a catastrophe. Both aspects may be covered by the same provisions. Whereas the direct effects of a disaster caused by a certain type of infrastructure seem to be limited to a certain type— at least at first glance – e.g. a river may cause a flood, the electrical power supply plant - a blackout, the potential reasons for a disaster affecting a certain type of infrastructure are almost unlimited. For instance, the release of radiation by a nuclear power plant may be caused by countless types of malfunctions as well as by natural disasters or terror attacks.

As noted, any analysis of the German legal framework beyond the constitution and the general statutes addressing all types of emergencies (“Katastrophenschutzgesetze”) is not comprehensive. Therefore, we decided to analyze three arrays additionally to the constitution and the Katastrophenschutzgesetze. The first is an example for a certain type of infrastructure (meant in its literal sense), the second relates to a certain source of (natural) disasters, and the third is an example for a certain effect of a catastrophe. For this purpose, we took a look at the provisions relevant for (a) nuclear power plants, (b) the prevention and countering of floods and (c) a case of a blackout.

In doing so, we discovered that from Germany’s legal system’s point of view, the analysis of a certain situation does not lead to further insights, as on the one hand any situation may affect any infrastructure. On the other hand, the legislations concerning a certain type of infrastructure define a state of emergency by a certain effect on the infrastructure such as fall of voltage, irrespective of its reason.

Naturally, the countermeasures differ according to the reason, but in most cases concrete actions are not stipulated in the statutes. Precise instructions are given in manuals or guidelines, which are often crafted by private entities. From the German perspective these guidelines are not state laws. Within the statutes, we often only find provisions saying that appropriate measures have to be taken or something similar. In some places it is specified which measures are generally permitted. Sometimes the guidelines or manuals in question are mentioned in the statutes.

Declaration of a State of Emergency

Situation	Definition of "emergency"	Who may declare the state of emergency and under what conditions?	Statutes that come into force during emergency	How does a state of emergency end?
Generic Emergency	A situation in which life, health, supply of the population with goods and services indispensable to life, environment or material assets are threatened or even damaged in such an extraordinary way that effective help and protection could only be guaranteed by a unified guidance of the catastrophe organizations of all competent authorities, organizations (which means public as well as private organization, honorary offices as well as professional organizations) and resources.	The counties (Landkreise) and big cities (Kreisfreie Städte) are in charge of lower catastrophe administration authorities. They may declare the state of emergency if the situation happens within their territory.		The state of emergency ends by declaration of the same authority.

Situation	Definition of "emergency"	Who may declare the state of emergency and under what conditions?	Statutes that come into force during emergency	How does a state of emergency end?
War	Determination that the federal territory is under attack by armed force or imminently threatened with such an attack (state of defense).	Such determination shall be made by Parliament upon an application of the Federal Government and shall require a two-thirds majority of the votes cast, which shall include at least a majority of the Members of the Bundestag.	Art, 115 a ff. BL, Art. 12a BL, Art. 87a BL, Art. 96 II 2 BL Safeguarding laws (see above).	<p>Article 115l Repeal of emergency measures – Conclusion of peace]</p> <p>(1) The Bundestag, with the consent of the Bundesrat, may at any time repeal laws enacted by the Joint Committee. The Bundesrat may demand that the Bundestag reach a decision on this question. Any measures taken by the Joint Committee or by the Federal Government to avert a danger shall be rescinded if the Bundestag and the Bundesrat so decide.</p> <p>(2) The Bundestag, with the consent of the Bundesrat, may at any time, by a decision to be promulgated by the Federal President, declare a state of defense terminated. The Bundesrat may demand that the Bundestag reach a decision on this question. A state of defense shall be declared terminated without delay if the conditions for determining it no longer exist.</p> <p>(3) The conclusion of peace shall be determined by a federal law.</p>

Situation	Definition of "emergency"	Who may declare the state of emergency and under what conditions?	Statutes that come into force during emergency	How does a state of emergency end?
Nuclear (<i>brought here as an example of an emergency</i>)	<p>There is no definition of a nuclear disaster in the emergency statutes, but there are definitions in the internal guidelines of the authorities. Following the “Basic Recommendations for Disaster Control in the Vicinity of Nuclear Installations” disaster alarm shall be declared, if an accident in a nuclear facility leads to dangerous radioactive releases or if these releases are imminent. More specific: “A nuclear accident is a course of events resulting in serious radiological impact on the vicinity of the relevant nuclear facility or where such an impact is threatened. Impacts are serious if in the vicinity an effective dose of 10 mSv and a dose at the thyroid gland of 50 mSv in children and adolescents aged below 18 years as well as in pregnant women is reached or exceeded.”</p> <p>Also there are intervention reference levels for specific interventions such as evacuation.</p>	<p>The operator of a nuclear facility shall immediately alert the offices responsible for receiving alerts under the special disaster control plans if the conditions specified for an early warning or a disaster alert are fulfilled. The disaster control authorities then trigger the disaster alarm, and inform other authorities and the public (following the generic disaster control statute).</p>		

Situation	Definition of "emergency"	Who may declare the state of emergency and under what conditions?	Statutes that come into force during emergency	How does a state of emergency end?
Specific statutes reviewed in the research	In general, emergency is defined as malfunction of a certain infrastructure, which is of such degree, that it cannot be remedied by normal means, especially market-driven measures.	Two types can be identified: Statutes that define the state of emergency and do not need a special declaration to be applicable, especially those for short-term emergencies (self-executing in the case of emergency) and rules for preparedness; Rules for longer-term emergencies need declaration of a case of emergency, most times by a decree.		Only of relevance for statutes that require the declaration of the situation of emergency: Depends on the decree.

Powers

As mentioned above, during a declared catastrophe all relevant authorities and organizations work under the unified guidance and hierarchical assignment of the competent catastrophe authority (Landkreis/Kreisfreie Städte). The authority can take every measure necessary to prevent the catastrophe or to fight it. It lies within its discretion to define what is necessary, but all the measures are in principal subject to judicial review. The powers are not really extraordinary but follow the powers of the “normal” police forces, whereas the police powers remain in-tact but subordinated to orders by the catastrophe authority. Various obligations to cooperate come into force as well as obligations of the citizens to cooperate, help and to tolerate measures like demands of certain private resources, entering private properties, obligation of members of professions to help, etc. Regarding damages: There is only a provision relating to urgent and preliminary help in cases of damages. In most cases the federation and the länders constitute a fund, granting financial help for losses caused by a particular catastrophic situation, for example floods.

All measures of the catastrophe authority are subject to judicial review. But the normal suspension instruments do not apply, so that the review will normally come as an *ex post* review. This restriction is by no means a specific emergency rule but comes into play in various other situations.

As mentioned above, the German code consists of many provisions related to potential catastrophes. It is impossible to comprehensively cover them and some general insights were put forth above. With regard to nuclear disasters, in the non-binding guidelines several possible measures, that the authorities can adopt, are mentioned. Below are some of those measures, which are more or less typical also for other disasters:

- The vicinity of the nuclear facility shall be sub-divided into **zones and sectors** in order to localize measures (Central zone, Intermediate zone, Outer zone, Distal zone)
- **Analyzing existing measuring devices** (see above) and installation of **mobile ad-hoc measuring devices**.
- Distributing **iodine tablets** in accordance with a special plan and requesting to take iodine tablets,
- **Evacuation** in accordance with a special plan,
- Establishing and operating emergency stations for **decontamination and medical care** of the population and task personnel affected,
- **Warning** the population not to eat freshly harvested **groceries** and to not use **water**
- **Blocking contaminated water catchment points**.

Note: These measures are not exclusive to nuclear disasters and all these measures are possible measures regarding the generic disaster control statute.

Rights during Emergencies

The basic rights of the citizens are non-derogable at all.

There are two minor restrictions of rights only in the case of the state of defense, laid out in Art. 115 c. II of the Basic Law:

"To the extent required by circumstances during a state of defense, a federal law for a state of defense may:

1. Make temporary provisions concerning compensation in the event of expropriation that deviate from the requirements of the second sentence of paragraph (3) of Article 14;
2. Establish a time limit for deprivations of freedom different from that specified in the third sentence of paragraph (2) and the first sentence of paragraph (3) of Article 104, but not exceeding four days, for cases in which no judge has been able to act within the time limit that normally applies."

In every other case there are no general suspensions or restrictions of the rights of the citizens, but there may be measures to restrict them in certain situations due to the norms of catastrophe. In a case of an emergency at some point nearly any right can be restricted in a way that looking at the individual case the right is fully eliminated (e.g. consumption of a good in personal property), but private property is not generally abolished; each restriction is limited (e.g. by the proportionality principle). As mentioned above, there are, for example, obligations to tolerate some emergency measures like entering houses and property, demands for goods and services, etc.

Regulation

Note: since it is impossible to cover all aspects of catastrophes and emergencies covered in the German law, the list below should be seen as non-comprehensive.

A. Regulation by information: The authorities shall, as a prevention measure, inform the public about potential risks and measures to prevent or reduce damages and inform about possible measures of self protection (§ 52 SächsBRKG, §5 ZSG). The civil protection law includes the obligation of the federation to support the dignity of people as a basis of civil protection and fighting catastrophes (§ 20 ZKB).

With regard to nuclear disasters: the responsible disaster control authorities shall create a **disaster control concept** (Katastrophenschutzplan) for each nuclear power plant.^{xi} These concepts have to be made available for the public. This is not a unique characteristic of the law concerning nuclear power plants, though. These concepts have to be created for facilities and sites containing large quantities of dangerous substances that fall within the scope of the Directive 96/82/EC (Seveso-II), too.^{xii}

Furthermore, there are several regulations, which concern the powers of the authorities to gather information about the conditions inside and outside of the nuclear power plants:

- The controlling authorities have installed a remote monitoring system (Kernreaktor-Fernüberwachungssysteme, **KFÜ**), which enables them to monitor the radiological measurement by the operator of the plant. In addition, these authorities also have their own measuring system. This redundancy enables them to have live data of the radiological situation in the vicinity of the plant and to react quickly after or even before the measured values reach a critical height.

- Another instrument of gathering information is the liability of the operator of a nuclear power plant to report specific incidents occurring in the plant, which differ from the normal operation. To ensure this, there has to be a safety representative (**Atomrechtlicher Sicherheitsbeauftragter**) within the plant, who is responsible for these matters.^{xiii}

B. Regulation by licensing and permits: In the general law of catastrophe there is no regulation by licensing order permits. This might be different in laws related to specific aspects. There might be license regulations, e.g. in the urban planning laws where a license to establish a building may be prohibited in certain areas for reasons of high flooding risks, etc.

With regard to nuclear disasters: like other buildings and sites, nuclear power plants need permissions/official approval for operation. Permission requires disaster prevention concepts and meeting other safety demands.

C. Criminal liability: There are as in more or less every law some rules about administrative offences (§ 73 SächsBRKG). The fines are low (between EU 1-25.000). Of course, the general criminal legislation applies to catastrophes, disasters, etc. There are several criminal liabilities regarding radiological dangers.^{xiv}

D. Civil liability: The general norms of liability apply to situations like those discussed in the synopsis. Additionally there is a provision, which allows public authorities to demand reimbursement for expenses from those causing disasters, catastrophes etc. (§71 SächsBRKG). Those running plants with high risk potential might have to bear additional reimbursement obligations (§ 68 SächsBRKG). The civil liability for damages, which are caused by a nuclear facility, is unlimited (§ 31 AtG). This is a strong liability compared to other members of the EU, where limits of liability exist.

E. Insurance: In some fields a mandatory insurance is discussed, but – to the best of our knowledge is not implemented yet (e.g. flood risks). However, those who do not have disaster insurance might not be entitled to get money from compensation funds. With regard to nuclear disasters: There is no unlimited obligatory insurance, but there is a duty to provide financial security up to 2.5 Billion Euros (§ 13 AtG).

ⁱ Art. 35 BL reads as follows:

(1) All federal and Land authorities shall render legal and administrative assistance to one another.

(2) In order to maintain or restore public security or order, a Land in particularly serious cases may call upon personnel and facilities of the Federal Border Police to assist its police when without such assistance the police could not fulfil their responsibilities, or could do so only with great difficulty. In order to respond to a grave accident or a natural disaster, a Land may call for the assistance of police forces of other Länder or of personnel and facilities of other administrative authorities, of the Armed Forces, or of the Federal Border Police.

(3) If the natural disaster or accident endangers the territory of more than one Land, the Federal Government, insofar as is necessary to combat the danger, may instruct the Land governments to place police forces at the disposal of other Länder, and may deploy units of the Federal Border Police or the Armed Forces to support the police. Measures taken by the Federal Government pursuant to the first sentence of this paragraph shall be rescinded at any time at the demand of the Bundesrat, and in any event as soon as the danger is removed.

ii Art. 81 reads as follows: (1) If, in the circumstances described in Article 68, the Bundestag is not dissolved, the Federal President, at the request of the Federal Government and with the consent of the Bundesrat, may declare a state of legislative emergency with respect to a bill, if the Bundestag rejects the bill although the Federal Government has declared it to be urgent. The same shall apply if a bill has been rejected although the Federal Chancellor had combined it with a motion under Article 68.

(2) If, after a state of legislative emergency has been declared, the Bundestag again rejects the bill or adopts it in a version the Federal Government declares unacceptable, the bill shall be deemed to have become law to the extent that it receives the consent of the Bundesrat. The same shall apply if the Bundestag does not pass the bill within four weeks after it is reintroduced.

(3) During the term of office of a Federal Chancellor, any other bill rejected by the Bundestag may become law in accordance with paragraphs (1) and (2) of this Article within a period of six months after the first declaration of a state of legislative emergency. After the expiration of this period, no further declaration of a state of legislative emergency may be made during the term of office of the same Federal Chancellor.

(4) This Basic Law may neither be amended nor abrogated nor suspended in whole or in part by a law enacted pursuant to paragraph (2) of this Article.

iii In order to avert an imminent danger to the existence or free democratic basic order of the Federation or of a Land, a Land may call upon police forces of other Länder, or upon personnel and facilities of other administrative authorities and of the Federal Border Police.

(2) If the Land where such danger is imminent is not itself willing or able to combat the danger, the Federal Government may place the police in that Land and the police forces of other Länder under its own orders and deploy units of the Federal Border Police. Any such order shall be rescinded once the danger is removed, or at any time on the demand of the Bundesrat. If the danger extends beyond the territory of a single Land, the Federal Government, insofar as is necessary to combat such danger, may issue instructions to the Land governments; the first and second sentences of this paragraph shall not be affected by this provision.

iv **Article 115a [Declaration of state of defence]**

(1) Any determination that the federal territory is under attack by armed force or imminently threatened with such an attack (state of defence) shall be made by the Bundestag with the consent of the Bundesrat. Such determination shall be made on application of the Federal Government and shall require a two-thirds majority of the votes cast, which shall include at least a majority of the Members of the Bundestag.

(2) If the situation imperatively calls for immediate action, and if insurmountable obstacles prevent the timely convening of the Bundestag or the Bundestag

cannot muster a quorum, the Joint Committee shall make this determination by a two-thirds majority of the votes cast, which shall include at least a majority of its members.

(3) The determination shall be promulgated by the Federal President in the Federal Law Gazette pursuant to Article 82. If this cannot be done in time, promulgation shall be effected in another manner; the determination shall be printed in the Federal Law Gazette as soon as circumstances permit.

(4) If the federal territory is under attack by armed force, and if the competent federal authorities are not in a position at once to make the determination provided for in the first sentence of paragraph (1) of this Article, the determination shall be deemed to have been made and promulgated at the time the attack began. The Federal President shall announce that time as soon as circumstances permit.

(5) If the determination of a state of defence has been promulgated, and if the federal territory is under attack by armed force, the Federal President, with the consent of the Bundestag, may issue declarations under international law regarding the existence of the state of defence. Under the conditions specified in paragraph (2) of this Article, the Joint Committee shall act in place of the Bundestag.

Article 115b [Power of command of the Federal Chancellor]

Upon the promulgation of a state of defence the power of command over the Armed Forces shall pass to the Federal Chancellor.

Article 115c [Extension of the legislative powers of the Federation]

(1) The Federation shall have the right to legislate concurrently for a state of defence even with respect to matters within the legislative powers of the Länder. Such laws shall require the consent of the Bundesrat.

(2) To the extent required by circumstances during a state of defence, a federal law for a state of defence may:

1. make temporary provisions concerning compensation in the event of expropriation that deviate from the requirements of the second sentence of paragraph (3) of Article 14;

2. establish a time limit for deprivations of freedom different from that specified in the third sentence of paragraph (2) and the first sentence of paragraph (3) of Article 104, but not exceeding four days, for cases in which no judge has been able to act within the time limit that normally applies.

- (3) To the extent necessary to repel an existing or imminently threatened attack, a federal law for a state of defence may, with the consent of the Bundesrat, regulate the administration and finances of the Federation and the Länder without regard to Titles VIII, VIIIA and X of this Basic Law, provided that the viability of the Länder, municipalities, and associations of municipalities, especially with respect to financial matters, is assured.

- (4) Federal laws enacted pursuant to paragraph (1) or clause 1 of paragraph (2) of this Article may, for the purpose of preparing for their enforcement, be applied even before a state of defence arises.

Article 115d [Urgent bills]

- (1) During a state of defence the federal legislative process shall be governed by the provisions of paragraphs (2) and (3) of this Article without regard to the provisions of paragraph (2) of Article 76, the second sentence of paragraph (1) and paragraphs (2) to (4) of Article 77, Article 78, and paragraph (1) of Article 82.
- (2) Federal Government bills that the Government designates as urgent shall be forwarded to the Bundesrat at the same time as they are submitted to the Bundestag. The Bundestag and the Bundesrat shall debate such bills in joint session without delay. Insofar as the consent of the Bundesrat is necessary for any such bill to become law, a majority of its votes shall be required. Details shall be regulated by rules of procedure adopted by the Bundestag and requiring the consent of the Bundesrat.
- (3) The second sentence of paragraph (3) of Article 115a shall apply to the promulgation of such laws *mutatis mutandis*.

Article 115e [Joint Committee]

- (1) If, during a state of defence, the Joint Committee by a two-thirds majority of the votes cast, which shall include at least a majority of its members, determines that insurmountable obstacles prevent the timely convening of the Bundestag or that the Bundestag cannot muster a quorum, the Joint Committee shall occupy the position of both the Bundestag and the Bundesrat and shall exercise their powers as a single body.
- (2) This Basic Law may neither be amended nor abrogated nor suspended in whole or in part by a law enacted by the Joint Committee. The Joint Committee shall have no power to enact laws pursuant to the second sentence of paragraph (1) of Article 23, paragraph (1) of Article 24, or Article 29.

Article 115f [Use of Federal Border Police – Extended powers of instruction]

- (1) During a state of defence the Federal Government, to the extent circumstances require, may:
1. employ the Federal Border Police throughout the federal territory;
 2. issue instructions not only to federal administrative authorities but also to Land governments and, if it deems the matter urgent, to Land authorities, and may delegate this power to members of Land governments designated by it.
- (2) The Bundestag, the Bundesrat and the Joint Committee shall be informed without delay of the measures taken in accordance with paragraph (1) of this Article.

Article 115g [Federal Constitutional Court]

Neither the constitutional status nor the performance of the constitutional functions of the Federal Constitutional Court or its judges may be impaired. The law governing the Federal Constitutional Court may be amended by a law enacted by the Joint Committee only insofar as the Federal Constitutional Court agrees is

necessary to ensure that it can continue to perform its functions. Pending the enactment of such a law, the Federal Constitutional Court may take such measures as are necessary to this end. Determinations by the Federal Constitutional Court pursuant to the second and third sentences of this Article shall be made by a majority of the judges present.

Article 115h [Expiry of electoral terms and terms of office]

(1) Any electoral terms of the Bundestag or of Land parliaments due to expire during a state of defence shall end six months after the termination of the state of defence. A term of office of the Federal President due to expire during a state of defence, and the exercise of his functions by the President of the Bundesrat in case of the premature vacancy of his office, shall end nine months after the termination of the state of defence. The term of office of a member of the Federal Constitutional Court due to expire during a state of defence shall end six months after the termination of the state of defence.

(2) Should it be necessary for the Joint Committee to elect a new Federal Chancellor, it shall do so by the votes of a majority of its members; the Federal President shall propose a candidate to the Joint Committee. The Joint Committee may express its lack of confidence in the Federal Chancellor only by electing a successor by a two-thirds majority of its members.

(3) The Bundestag shall not be dissolved while a state of defence exists.

Article 115i [Powers of the Land governments]

(1) If the competent federal bodies are incapable of taking the measures necessary to avert the danger, and if the situation imperatively calls for immediate independent action in particular areas of the federal territory, the Land governments or the authorities or representatives they designate shall be authorised, within their respective spheres of competence, to take the measures provided for in paragraph (1) of Article 115f.

(2) Any measures taken in accordance with paragraph (1) of this Article may be rescinded at any time by the Federal Government, or, with respect to Land authorities and subordinate federal authorities, by Minister-Presidents of the Länder.

Article 115k [Rank and duration of emergency provisions]

(1) Laws enacted in accordance with Articles 115c, 115e and 115g, as well as statutory instruments issued on the basis of such laws, shall suspend the operation of incompatible law so long as they are in effect. This provision shall not apply to earlier law enacted pursuant to Articles 115c, 115e or 115g.

(2) Laws adopted by the Joint Committee, as well as statutory instruments issued on the basis of such laws, shall cease to have effect no later than six months after the termination of a state of defence.

(3) Laws containing provisions that diverge from Articles 91a, 91b, 104a, 106 and 107 shall apply no longer than the end of the second fiscal year following the termination of a state of defence. After such termination they may, with the consent of the Bundesrat, be amended by a federal law so as to revert to the provisions of Titles VIIIa and X.

Article 115l [Repeal of emergency measures – Conclusion of peace]

(1) The Bundestag, with the consent of the Bundesrat, may at any time repeal laws enacted by the Joint Committee. The Bundesrat may demand that the Bundestag reach a decision on this question. Any measures taken by the Joint Committee or by the Federal Government to avert a danger shall be rescinded if the Bundestag and the Bundesrat so decide.

(2) The Bundestag, with the consent of the Bundesrat, may at any time, by a decision to be promulgated by the Federal President, declare a state of defence terminated. The Bundesrat may demand that the Bundestag reach a decision on this question. A state of defence shall be declared terminated without delay if the conditions for determining it no longer exist.

(3) The conclusion of peace shall be determined by a federal law.

^v (1) If this Basic Law or a federal law regarding defence, including protection of the civilian population, provides that legal provisions may be applied only in accordance with this Article, their application, except when a state of defence has been declared, shall be permissible only after the Bundestag has determined that a state of tension exists or has specifically approved such application. The determination of a state of tension and specific approval in the cases mentioned in the first sentence of paragraph (5) and the second sentence of paragraph (6) of Article 12a shall require a two-thirds majority of the votes cast.

(2) Any measures taken pursuant to legal provisions by virtue of paragraph (1) of this Article shall be rescinded whenever the Bundestag so demands.

(3) Notwithstanding paragraph (1) of this Article, the application of such legal provisions shall also be permissible on the basis of and in accordance with a decision made by an international body within the framework of a treaty of alliance with the approval of the Federal Government. Any measures taken pursuant to this paragraph shall be rescinded whenever the Bundestag, by the vote of a majority of its Members, so demands.

^{vi} (5) Prior to the existence of a state of defence, assignments under paragraph (3) of this Article may be made only if the requirements of paragraph (1) of Article 80a are met. In preparation for the provision of services under paragraph (3) of this Article that demand special knowledge or skills, participation in training courses may be required by or pursuant to a law. In this case the first sentence of this paragraph shall not apply.

^{vii} (6) If, during a state of defence, the need for workers in the areas specified in the second sentence of paragraph (3) of this Article cannot be met on a voluntary basis, the right of German citizens to abandon their occupation or place of employment may be restricted by or pursuant to a law in order to meet this need. Prior to the existence of a state of defence, the first sentence of paragraph (5) of this Article shall apply *mutatis mutandis*.

^{viii} 3) During a state of defence or a state of tension the Armed Forces shall have the power to protect civilian property and to perform traffic control functions to the extent necessary to accomplish their defence mission. Moreover, during a state of defence or a state of tension, the Armed Forces may also be authorised to support police measures for the protection of civilian property; in this event the Armed Forces shall cooperate with the competent authorities.

^{ix} (2) In addition, federal laws concerning defence, including recruitment for military service and protection of the civilian population, may, with the

consent of the Bundesrat, provide that they shall be executed, wholly or in part, either by federal administrative authorities with their own administrative substructures or by the Länder on federal commission. If such laws are executed by the Länder on federal commission, they may, with the consent of the Bundesrat, provide that the powers vested in the Federal Government or in the competent highest federal authorities pursuant to Article 85 be transferred wholly or in part to federal higher authorities; in this event the law may provide that such authorities shall not require the consent of the Bundesrat in issuing general administrative rules pursuant to the first sentence of paragraph (2) of Article 85.

^x The design of the of the different länder law is more or less identical at least when it comes to the general principles. For the purpose of this analysis I refer to only one of them, the saxon law on fire protection, rescue services and protection against catastrophes (of 2004, (latest amendment of 2012).

^{xi} This is not regulated in the statutes themselves, but in the guidelines for the authorities, who make these requirements part of the permissions.

xii According to the disaster statutes of the federal states, e.g. § 13 a Hamburgisches Katastrophenschutzgesetz.

xiii Atomrechtliche Sicherheitsbeauftragten- und Meldeverordnung.

xiv § 307 StGB Causing a nuclear explosion; § 309 StGB Misuse of ionising radiation; § 311 StGB Releasing ionising radiation; § 312 StGB Construction of a defective nuclear facility; § 327 StGB Unlawful operation of facilities; § 328 StGB Unlawful handling of radioactive substances, dangerous substances and goods