

ZOOM IN

The question:

Disaster risk reduction: An International Law perspective

*Introduced by Giulio Bartolini and Tommaso Natoli**

Disasters are a commonplace phenomenon. According to data collected in the latest World Disaster Report elaborated by the International Federation of Red Cross and Red Crescent Societies, in the decade 2006-2016 more than 771.000 deaths could be attributed to disasters, 2 billions of individuals were affected by such events and the material damage exceeded USD 1.5 trillion.¹ Notwithstanding such impressive data, legal analysis addressing disasters has been quite limited in comparison with other areas of international law, largely due to a fragmented legal framework, usually depicted along the following lines: as international law has managed this topic 'in a confused and uncoordi-

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¹ IFRC, *World Disaster Report 2016* (2016) 232-263. Data collected in this report are based on the database managed by the Centre for Research on the Epidemiology of Disasters, University of Leuven. For a calamitous event to be entered into the database, at least one of the following criteria need to be satisfied: (a) 10 or more people are reported killed, (b) 100 or more are reported as having been affected, (c) a state of emergency has been declared, or (d) a call for international assistance has been made. Affected people comprise all individuals requiring immediate assistance during an emergency, including displaced or evacuated people. More information available at <www.emdat.be>. Even if recorded events might escape a 'legal' definition of disasters, the database provides an overview of trends in this area. For a legal analysis of the definition of disaster see: J-M Thouvenin, 'La définition de la catastrophe par la CDI: vers une catastrophe juridique?' in RA Prieto Sanjuán, J-M Thouvenin (eds), *International Law and Disasters* (Ibanez 2011) 41; G Bartolini, 'A Taxonomy of Disasters in International Law', in F Zorzi Giustiniani, E Sommaro, F Casolari, G Bartolini (eds), *Routledge Handbook of Human Rights and Disaster* (Routledge 2018) 10.

nated manner',² the result is 'a rather scattered and heterogeneous collection of instruments'.³ Furthermore, within this area of law a predominant role has been assumed by instruments (and legal analysis) addressing specific phases of the so-called 'cycles of a disaster',⁴ namely relief and recovery, while little attention has been paid to legal implications of disaster risk reduction (DRR),⁵ ie the prevention and preparedness phases. Indeed, also from a historical perspective, DRR might be qualified as a sort of 'second generation' within international disaster law, whose legal ramifications and implications are still to be fully explored.

However, even for non-international disaster law specialists, the current cross-cutting and progressive use of specific terms such as 'mitigation', 'resilience' and 'vulnerability' by international and domestic actors stands as a clear signal of how DRR informs the policies of disaster governance and cross-fertilizes other areas. Suffice it to mention here the numerous references made to DRR in the 2030 UN Agenda for Sustainable Development adopted in 2015⁶ or the initiatives promoted by the 2017 UNESCO General Conference to enhance Member States' capacity to implement the culture and heritage-related provisions included in the Sendai Framework for Action 2015-2030.⁷ These examples confirm that DRR is being mainstreamed with the aim to influence institutional and normative activities at the universal, regional/sub-regional, national and community level.

Therefore, DRR is at present of significant interest for legal researchers. On the one hand, the theoretical implications of this innovative area deserve closer scrutiny, particularly for its capacity to assess

² A de Guttry, 'Surveying the Law', in A de Guttry, M Gestri, G Venturini (eds), *International Disaster Response Law* (Springer 2012) 4.

³ D Fisher, 'Domestic Regulation of International Humanitarian Relief in Disasters and Armed Conflict: A Comparative Analysis' (2007) 89 *Intl Rev of the Red Cross* 353.

⁴ On this concept see M Nthakomwa, 'Cycles of a Disaster', in M Statler (ed), *Encyclopedia of Disaster Relief* (Sage 2011) 96.

⁵ According to the UNISDR Terminology 'Disaster risk reduction is aimed at preventing new and reducing existing disaster risk and managing residual risk, all of which contribute to strengthening resilience and therefore to the achievement of sustainable development' <www.unisdr.org/we/inform/terminology>.

⁶ UNGA Res 70/1 (21 October 2015) UN Doc A/RES/70/1.

⁷ UNESCO, General Conference, 39 C/57, Annex I (24 October 2017).



the role of informal law-making processes in international law.⁸ Indeed, law-making activities have largely been characterized by output informality and several instruments have been adopted through stakeholder consultations in conjunction with traditional intergovernmental negotiations. On the other hand, it is necessary to evaluate the potential existence, and current basis, of international obligations pertaining to this area, as recently maintained by the International Law Commission in the 2016 Draft Articles on the ‘Protection of Persons in the Event of Disasters’.⁹ The ILC finally included in this text Article 9, devoted to the ‘Reduction of the Risk of Disasters’. This provision – whose text has been criticized by some States – affirms that ‘1. Each State shall reduce the risk of disasters by taking appropriate measures, including through legislation and regulations, to prevent, mitigate, and prepare for disasters. 2. Disaster risk reduction measures include the conduct of risk assessments, the collection and dissemination of risk and past loss information, and the installation and operation of early warning systems’, thus transposing in its wording a list of measures included in the abovementioned Sendai Framework.

As a result, it appears timely to devote a Zoom-in to this topic, with the aim to assess the origin of the progressive interest of the International Community towards DRR and its legal implications. Indeed, this specific attention has been quite recent. The 1990s’ can be understood as an awareness-raising decade, in which the preliminary recognition by the UNGA of the relevance of this topic¹⁰ opened for significant activities as the proclamation of the International Decade for Natural Disas-

⁸ On such approach see J Pauwelyn, R Wessel, J Wouters (eds), *Informal International Lawmaking* (OUP 2012).

⁹ On the text of the draft articles and the commentary adopted on second reading in 2016 see ‘Report of the International Law Commission on the Work of its 68th Session’ (2 May-10 June and 4 July-12 August 2016) UN Doc A/71/10 Chapter IV. For an analysis see: D Tladi, ‘The International Law Commission’s Draft Articles on the Protection of Persons in the Event of Disasters: Codification, Progressive Development or Creation of Law from Thin Air?’ (2016) 16 *Chinese J Intl L* 425; G Bartolini, ‘Il progetto di articoli della Commissione del diritto internazionale sulla “Protection of Persons in the Event of Disasters”’ (2017) 100 *Rivista di diritto internazionale* 677.

¹⁰ See the preamble of UNGA Res 42/169 (11 December 1987) UN Doc A/RES/42/169.

ter Reduction.¹¹ The proposals of specific measures on prevention and preparedness to be adopted by the International Community,¹² paved the way for the first World Conference on Natural Disaster Reduction (Yokohama, 1994), where States were urged to develop and strengthen national capacities in this regard¹³ lacking however formal commitments by involved States.

Subsequently, the 2000s can be considered as the policy-coordination decade, in which the main efforts were put to enhance an international governance aimed at implementing a multilevel International Strategy for Disaster Reduction, also through the creation of a permanent secretariat (UNISDR),¹⁴ and at promoting a widespread culture of prevention at the domestic level. Accordingly, the outcome document of the second World Conference (Hyogo, 2005)¹⁵ favoured a strategic and systematic approach to reducing vulnerabilities and risks to hazards through the development of stronger institutions, mechanisms and capacities to build resilience, with the overall goal of an effective integration of DRR into sustainable development policies.¹⁶

At present, the 2010s are characterized by the progressive adoption of a multi-hazard and multisectoral approach, where the systematization of DRR and its practices is carried out through the identification of their numerous links and synergies with other fields, such as (international) environmental, human rights law climate change, or sustainable development. For instance the UN Conference on Sustainable Development (2012), calling for the building of resilience to disasters ‘to be addressed [...] in the context of sustainable development and poverty

¹¹ UNGA Res 44/236 (22 December 1989) UN Doc A/RES/44/236.

¹² UNGA Res 46/182 (19 December 1991) UN Doc A/RES/46/182, Annex, sections II and III.

¹³ A/CONF.172/9, chap. I, resolution I, annex I, para. 7.

¹⁴ As for its development and mandate see in particular UNGA Res 54/219 (3 February 2000) UN Doc A/RES/54/219 and UNGA Res 56/195 (21 January 2002) UN Doc A/RES/56/195.

¹⁵ For the full text of the Hyogo Framework for Action 2005-2015: Building the Resilience of Nations and Communities to Disasters see the ‘Final Report of the World Conference on Disaster Reduction’ (22 January 2005) UN Doc A/CONF.206/6.

¹⁶ UNGA Res 60/195 (2 March 2006) UN Doc A/RES/60/195 para 3.



eradication',¹⁷ stand as clear examples of this new integrated approach.¹⁸ Furthermore the new 'Framework for Disaster Risk Reduction 2015-2030' negotiated during the third World Conference on DRR (Sendai, 2015) reinforces institutional mechanisms aimed to overview the fulfilment of proposed goals. Innovations include the use of benchmark indicators, recently endorsed by the UNGA,¹⁹ and evaluation mechanisms, deemed necessary for the assessment of State progresses.

Furthermore, activities carried out at the universal level through soft-law approaches, have been coupled with an increasing relevance of DRR issues in binding international instruments, as testified by recent disaster management instruments characterising regional organisations thus permitting to clearly spell out States' obligations in this area. Accordingly, the current scope of DRR has been broadened significantly to include both natural and man-made hazards and related environmental, technological and biological hazards and risks, while a more people-centred preventive approach has been adopted, based on the principle that managing the risk of disasters is aimed at promoting and protecting human rights. Still, the possibility to connect such perspectives to fully-fledged international obligations and possible activities by States and main stakeholders must be properly explored. As a result this Zoom-in explores the current state-of-art of DRR and its relationship with international law.

As will be illustrated throughout the contributions elaborated by Flavia Zorzi Giustiniani, Emanuele Sommaro and Silvia Venier, the progressive developments and theoretical challenges posed by DRR require a continuous assessment of its legal consistency as well as of its reception by international actors. Zorzi Giustiniani's contribution provides a general overview of the development and actual content of DRR

¹⁷ UNGA Res 66/288 (11 September 2012) UN Doc A/RES/66/288, annex, para 186.

¹⁸ Similarly see the Cancun Adaptation Framework of 2010 related to the Framework Convention on Climate Change claiming actions aimed to favor resilience of developing countries, 'Report of the Conference of the Parties on its sixteenth session, held in Cancun from 29 November to 10 December 2010' FCCC/CP/2010/7/Add.1 para 14(e).

¹⁹ See 'Report of the open-ended intergovernmental expert working group on indicators and terminology relating to disaster risk reduction' (1 December 2016) UN Doc A/71/644 and UNGA Res 71/276 (13 February 2017) UN Doc A/RES/71/276.

within the international legal system, taking into account different approaches towards DRR, as universal initiatives, the regional institutionalisation of DRR policies, and the role and interaction of DRR with some branches of international law, thus reflecting the relevance that DRR has gained in the global governance discourse. Sommario's and Venier's contribution conversely focus on how States' commitments to respect and protect human rights increasingly cross their path with disaster management policies and activities. Their careful and innovative appraisal of relevant practice developed by universal and regional human rights treaty bodies, of both judicial and non-judicial nature, as well as the emphasis posed to human rights issues in DRR documents, highlights the interplay between Human Rights Law and DRR. Their combined effect is to impose on States the adoption of measures capable of tackling the vulnerabilities affecting individuals and local communities living in disaster-prone areas. Such contributions thus permit to shed light on a challenging topic which is going to assume an increasing relevance in the international legal agenda.

