



# INTERNATIONAL DISASTER RESPONSE LAW: A RESEARCH AREA ATTRACTING INCREASING INTEREST AMONG SCHOLARS AND PRACTITIONERS IN EUROPE



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## INTRODUCTION

Over the last three decades, natural and technological disasters have been increasing in terms of frequency, size, the number of people affected and material damage caused. Between 1980 and 2011, 9 916 natural disasters occurred, killing some 2.5 million people across the world (according to the data collected and elaborated by the Centre for Research on the Epidemiology of Disasters at the University of Louvain). The number of those affected by these phenomena — i.e. individuals requiring immediate assistance during a period of emergency, such as the provision of food, water, shelter, sanitation and immediate medical assistance — is even more impressive, as it reaches a figure close to 6 billion. The material damage produced has been reckoned to amount to USD 2.2 billion. Statistics are less astonishing, but still disturbing, with respect to the 6 603 technological disasters reported. In the time-span considered, over 250 000 people have died because of such events, while 4.4 million have been affected with estimated damages amounting to over USD 25 million. To provide a term of comparison, in the three decades between 1950 and 1980, the number of individuals affected by natural or technological disaster was around 730 million, while the combined economic losses caused by these events were just under USD 780 million. The total number of disasters reported in those

years was 2 216, as opposed to the 16 519 registered from 1980 to the present days, an increase of 745 %.

This trend has had a significant impact on police forces as these natural and man-made events inevitably implied the deployment of law-enforcement officers in the affected areas with increasingly complex tasks to be performed, very often under extremely difficult conditions.

## THE SLOW DEVELOPMENT OF INTERNATIONAL DISASTER RESPONSE LAW

Current international law does not offer a comprehensive legal framework to regulate intervention in disaster situations. What we refer to as international disaster response law (IDRL) is, in fact, a collection of multilateral and bilateral treaties and a wealth of soft law instruments produced by various authoritative bodies, covering a wide range of issues.

Some of these binding and non-binding instruments are explicitly devoted to issues of coordination, cooperation and assistance arising in connection to disaster situations (e.g. the Tampere Convention on the Provision

<sup>(1)</sup> The author is the editor, together with M. Gestri and G. Venturini of *'International Disaster Response Law'*, TMC Asser/Springer Verlag, 2012.



of Telecommunication Resources for Disaster Mitigation and Relief Operations, 1998). Others do not have disaster prevention and/or management as their primary aim, but are nonetheless relevant as their provisions might prove essential to provide a legal basis for relief activities or to facilitate the work of the entities and professionals therein involved (e.g. the Convention on the Safety of United Nations and Associated Personnel, 1994).

In addition, specific branches of international law are of particular importance to natural disaster situations because they:

- set out the modalities according to which assistance activities could be carried out (as is the case with international humanitarian law);
- contain indications on the legal entitlements which can be invoked by those affected by a calamitous event (as evidenced by the ongoing work of the International Law Commission on 'protection of persons in the event of disasters');
- are otherwise relevant to the forestalling and management of natural or man-made disasters (international environmental law, international 'health law', disarmament law, etc.).

The legal picture is further compounded by the existence of dozens of bilateral treaties concerned with various aspects of disaster prevention or mitigation <sup>(2)</sup>.

## THE INCREASING RELEVANCE OF INTERNATIONAL 'SOFT LAW' INSTRUMENTS

Even more numerous are the universal and regional 'soft law' instruments relevant to IDRL. The natural starting points in this regard are UN General Assembly resolutions, the first one specifically dealing with assistance in cases of natural disaster (GA Res 2034) having been adopted as early as 1965. In the following years, UN bodies strengthened their interest in disaster response, and this increased attention was reflected in the adoption of several resolutions. While initially only addressing the scope and timeliness of emergency assistance by states, these documents soon became more comprehensive, dealing with issues of task division and coordination with states and other actors <sup>(3)</sup>, the limits imposed by state sovereignty and the facilitation and quality of the assistance.

Also significant are resolutions and declarations produced by intergovernmental or similar bodies (such as the International Red Cross and Red Crescent Movement or the International Parliamentary Union) and the remarkable number of codes of conduct, operational guidelines, minimum rules concerning humanitarian emergency assistance and analogous documents adopted by bodies as diverse as the United Nations Institute for Training and Research ('Model Rules for Disaster Relief Operations', 1982), the International Law Association ('Draft Model Agreement Concerning Humanitarian Relief Operations', 1980) or the Inter-Agency Standing Committee (which has developed a large number of policies, guidelines and reference documents that, while not binding on any of the participating organisations, nevertheless carry a high level of authority). These and other soft law instruments could be considered, along with the national laws and regulations concerning disaster prevention and management, so as to try and ascertain if customary rules have emerged (or are emerging) in the area of IDRL.

<sup>(2)</sup> Examples are, the Convention in the area of the prediction and prevention of major risks and on mutual assistance in the event of natural or man-made disasters, France-Italy (1992) or, the Agreement between the Swiss Confederation and the Italian Republic on cooperation in the area of risk management and prevention and on mutual assistance in the event of natural and man-made disasters.

<sup>(3)</sup> e.g. GA Resolution 46/182 buttressing the role of the UN in 'coordinating the efforts of the international community to support the affected countries', creating the post of Emergency Relief Coordinator, and establishing the 'Inter-Agency Standing Committee'.



## THE INCREASING INTEREST OF THE EU AND ITS MEMBER STATES IN THE LEGAL FRAMEWORK OF DISASTER PREPAREDNESS, PREVENTION, RESPONSE AND RECOVERY: RECENT CHALLENGES

The recent developments that have taken place at a regional level and in particular within the European Union are of special interest. Over the last years, the EU has conceived a set of instruments to address various aspects of disaster preparedness, response and recovery. There is also a number of sector-specific initiatives covering floods, technological disasters, and oil spills, which deal with elements of disaster prevention.

Much progress has been made in the domain of civil protection through the establishment of a community mechanism for civil protection. The main role of the mechanism (established in 2001, with Council Decision 2001/792/EC, Euratom) is to facilitate cooperation in civil protection assistance interventions in the event of major emergencies that may require urgent response actions.

Finally, the Treaty of Lisbon provides the area of civil protection with a specific legal basis (Article 196 TFEU 'Civil Protection'), and formally establishes civil protection as an area in which the EU has the power to carry out actions to support, coordinate and complement actions undertaken by the Member States. The major challenges raised by this article are related to the qualification of this new EU competence as 'supporting' or 'complementary' competence which could provoke serious implementation problems among Member States. Article 222 of the Treaty also introduces a 'Solidarity Clause', according to which the Union and its Member States shall act jointly in a spirit of solidarity if a Member State is the object of a terroristic attack or a victim of a natural or man-made disasters.

There are significant differences in the position of Member States about the implementation of this 'Solidarity Clause' and its relations with the civil protection mechanism. There are several issues at stake which need to be clarified to prevent uncertainties in an extremely sensitive area: including the role of the European Commission

as a major decision-maker in mandating the deployment of national resources for a collective EU response in case of a disaster occurring in an EU country. The specific experiences of the creation of Frontex and the idea of creating a European Border Guard Team, to which Member States are basically bound to contribute, represent an interesting precedent. It has, however, to be mentioned that in the case of civil protection, the treaty entrusts the Union only with the tasks to adopt supporting or complementary measures. Any decision in this area will have a significant impact on Member States and on their internal structure coordinating emergency operations.

The attention of the EU is devoted not only to the 'internal' dimension of the disaster prevention and management but as well on the so-called 'external' dimension which involves both activities to support third states affected by a major disaster and activities to support and protect EU citizens suffering the consequences of emergencies in third countries. As far as the first dimension is concerned it has to be mentioned that the Lisbon Treaty has promoted a general reform of the existing mechanisms, with the view to reinforce their coherence, effectiveness and interoperability. Once concluded, these reforms will promote a more strategic approach to the external dimension of disaster management with significant repercussion on the national emergency systems which will have to rapidly adapt to the new scenario. As far as the second dimension is concerned, namely the protection of EU citizens abroad, the major problematic issue appears to be, at the moment, the full implementation of the rules devoted to the consular protection of EU citizens. Once more, the rules adopted at EU level in this regard represent a major challenge for all those involved in international disaster management mission, including the police component of these missions.

## CONCLUDING REMARKS

In this framework, IDRL has attracted increasing attention from both practitioners and the public. This growing awareness is due to the new complex challenges facing international relief operations as well as to the magnitude and incidence of natural and man-made disasters. As it often occupies a centre stage position under close public scrutiny, the relief organisations and



the humanitarian community have discovered the importance of better international and internal regulation of their activities, which is essential to be able to perform in a more professional manner, to deliver the requested relief services on time and to act in a more accountable way. IDRL, however, is not a self-contained regime, growing in isolation from general international law. On the contrary, it shares a number of fundamental tenets with the legal discipline of other areas that in various ways contribute to shape its form and content. This relationship may be aptly described

in terms of mutual support and cross-fertilisation. While the general principles and rules belonging to related branches of international law influence and stimulate the progress of IDRL, the latter may in turn enhance their implementation. As a matter of fact IDRL should be constructed and applied taking into account the interpretation and implementation of human rights law, international humanitarian law, refugee law, global health law, international environmental law, international criminal law, and the law of international development.