

International Disaster Response Law

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Editors

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 Springer

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Foreword

We are living in an increasingly fragile world. The frequency and intensity of natural disasters has increased dramatically over the recent decades. Last year alone brought massive floods in Australia, Thailand, and Pakistan, devastating earthquakes in Japan and New Zealand as well as famine at the Horn of Africa. The tsunami that hit Japan showed the vulnerability even of the most highly developed countries. And we should never think that Europe is in some way immune from natural disasters. Between 1999 and 2009, 100,000 Europeans were killed by natural disasters that cost the European economy €150 billion.

Experience shows that the effective implementation of disaster management policies leads to fewer deaths and less damage. In 2009, the Lisbon Treaty gave the EU important new responsibilities in this area: most notably a formal legal base to both humanitarian and civil protection policies. At the operational level, the European Commission brought together its humanitarian aid and civil protection instruments in an expanded DG ECHO in 2010. This has resulted in a single delivery platform that can deploy assistance immediately and in a coherent manner. Making this portfolio the responsibility of a single European Commissioner has also ensured a higher political visibility for disaster management inside the EU system.

The instruments we have work well—but there is still room for further improvement. In the area of civil protection we have recently tabled legislation that would move Europe away from the current ad hoc response to one which is preplanned, predictable, and immediate. Our proposals include the development of reference scenarios for the main types of disasters, the identification and mapping of key existing assets that could be made available, and the development of contingency plans for the deployment of these assets. It also includes the development of a European Emergency Response Capacity in the form of a voluntary pool of Member States' assets that are on call for operations under the Mechanism.

Response is only one part of disaster management. I believe our citizens can benefit best from a holistic approach where disaster preparedness and prevention are also fully covered. This is why our legislative proposals also call on Member States to draw up risk management plans by 2016.

The growing frequency of disasters has increased the political focus on disaster management. It has also increased the attention paid by academia. This is something that is very welcome. As we look to develop robust policies that can stand up to the challenges of the future we need critical analysis of what we have been doing—and we need creative thinking to inspire the new policy initiatives that can build a more resilient society.

This book covers the whole range of legal issues related to disaster management. As such it is an essential contribution to a debate that could not be more urgent.

Kristalina Georgieva
European Commissioner for International Cooperation
Humanitarian Aid and Crisis Response

Preface and Acknowledgments

Over the last three decades natural and technological disasters have been increasing in terms of frequency, size, number of people affected, and material damage caused. Between 1980 and 2011, 9,916 natural disasters have 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).¹ 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 2.2 billion USD. Statistics are less astonishing, but still disturbing, with respect to the 6,603 technological disasters reported. In the time span considered, over 250,000 persons have died because of such events, while 4.4 million have been affected with estimated damages amounting to over 25 million USD. 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 780 million USD. The total number of disasters reported in those years was 2,216 as opposed to the 16,519 registered from 1980 to nowadays, with an increase of 745 %. Hydrological and meteorological disasters represented about 80 % of the total disaster occurrence in the last decade while geophysical disasters accounted for about 7 % in the same period. As far as the regional distribution of disaster is concerned, in the last decade Asia accounted for about 30 % of the number of all reported disasters, the Americas 25 %, Europe and Africa about 20 % each, and Oceania less than 4 %.

¹ Guha-Sapir D, Vos F, Below R and Ponserre S, Annual Disaster Statistical Review 2010: The numbers and trends, Centre for Research on the Epidemiology of Disasters (CRED), Université Catholique de Louvain—Brussels, Belgium, 2011.

While most of these disasters were relatively small scale and only a rather small number of large disaster caught the attention of the media and public opinion, there is growing awareness of the potentially devastating consequences of the increase in frequency and scope of disasters especially for those areas most vulnerable to climate change and environmental stress. According to the Intergovernmental Panel on Climate Change, major impacts of climate change on human health are likely to occur in the next future via changes in the magnitude and frequency of extreme events, which trigger a natural disaster or emergency. As consequence, in recent years national budgets for emergency response, disaster preparedness, and mitigation have experienced rapid growth as have the activities of international agencies and NGOs directly involved in policy development related to disasters prevention and mitigation and in operational disaster response. For instance, according to OECD data on Official Development Assistance, from 1995 to 2009 financial commitments for emergency response has increased by 400 %.

Heightened awareness about the plight of disaster victims has called attention to the importance of adequate national and international legal rules and structures for disaster prevention, mitigation, and response. International Disaster Response Law has developed significantly in recent years, as shown by the increasing number of relevant treaties which have been signed and ratified worldwide. The codification of norms addressing various aspects related to disaster prevention, management, and post-disaster recovery occurred over a strikingly short period of time, very often as a reaction to new kinds of disasters. This resulted in *ad hoc* developments of IDRL, which sometimes caused significant overlapping and contradictions. The need for better synchronization and co-ordination of codification activities has been highlighted several times by scholars, and this inspired the International Law Commission to focus its attention on these issues. A special rapporteur, Mr. Eduardo Valencia-Ospina, has been therefore appointed to deal with the protection of persons in the event of disasters and so far the ILC has examined seven reports and agreed on about 10 articles.

IDRL has also 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 center-stage position under close public scrutiny, the relief organizations 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-fertilization. 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. It is the opinion of the editors and the authors of this volume that in order to fully benefit from this productive

relationship, 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.

The editors and authors of this book wish to contribute to identify the existing international rules and normative gaps, and to share reflections about the best way to address the numerous issues at stake.

To achieve these goals the book is divided into five parts: Part I presents recent trends in natural and made-made disasters and offers a survey of the present state of IDRL, while positioning this emerging body of norms within existing International Law. Special attention is devoted to the work of the International Law Commission as well to a special type of disaster, subject to *ad hoc* legal rules, namely nuclear accidents.

In Part II the focus is on EU disaster response law. As the European Union has become a major actor in dealing with disasters, the relevant decision-making mechanisms and rules are examined, regarding both disasters within and outside Europe.

In Part III the emphasis is put on issues related to liability and compensation, and on the rights and duties of States in preventing and mitigating a disaster, in facilitating access to their territory by humanitarian relief actors, both in times of peace and war. The existing obligations incumbent on disaster-affected nations relating to the hosting of international missions are carefully examined.

Disasters usually have a serious effect on human rights. Human rights obligations of the greatest importance in such situations include (but are not limited to) the right to life, the right to personal liberty and security, the right to humane treatment, the right to food, the right to health. Those rights must be respected in accordance with the fundamental principle of nondiscrimination, i.e., without any adverse distinction, and special measures need to be undertaken to protect the most vulnerable groups. Part IV examines these issues more deeply and analyzes the potential relevance of international criminal law.

The natural impulse to offer support to the population affected by a disaster has contributed to the proliferation of new players in the international humanitarian arena ready to offer their services. The development of these relief actions poses several challenges related to the design and implementation of a disaster response field operation and to the controversial and so far unresolved issue of coordination among the many actors involved. Additional topics such as the customs barriers to relief consignments (which very often delay the full operational capacity of the missions), the use of civilian and military defence assets in emergency situations, the mechanisms and procedures available to offer financial support for recovery and rehabilitation efforts, the challenges related to offering risk insurance, and the issue of corruption during disaster-related activities are specifically addressed in Part V.

In the Conclusions it clearly emerges that it is now time for fine words in treaties to be transformed into concrete measures which will achieve real co-operation and synergies in the interests of the people suffering the consequences of ever more frequent natural and man-made disasters.

This book is the result of a joint research project carried out by the Scuola Superiore Sant'Anna, the University of Milan and the University of Modena and Reggio Emilia. It has involved about 30 researchers from several Universities and a number of independent researchers/scholars. Research began at the end of 2010 and its first results were presented and discussed during an international Conference on IDRL which took place in Rome, at the Headquarters of the Italian Civil Protection Department, in November 2011. The authors of the various contributions benefited tremendously from the comments and discussions which took place during that conference, which inspired the revision and finalization of the contributions published in this volume.

We are indebted to all those who contributed to this research, and in particular to Kristalina Georgieva (EU Commissioner for International Cooperation, Humanitarian Aid and Crisis Response), who agreed to write the foreword to this Volume; to Franco Gabrielli, Head of the Italian Civil Protection Department, who strongly supported our research since the very beginning and hosted the IDRL Conference in Rome; to Emanuele Sommario for his invaluable support from the preliminary stages of the design of the research project; to Michele Gonnelli for his support in the technical preparation of the manuscript, and to Marco Colucci for the preparation of the analytical indexes.

Pisa, Modena, Milan, May 2012

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Abbreviations

AADMER	ASEAN Agreement on Disaster Management and Emergency Response
AASTMT	Arab Academy for Science, Technology and Maritime Transport
ACDM	ASEAN Committee on Disaster Management
ACHR	American Convention on Human Rights
ACP States	African, Caribbean and Pacific States
ACSAD	Arab Centre for the Studies of Arid Zones and Dry Lands
ADB	Asian Development Bank
ADPC	Asian Disaster Preparedness Centre
AECID	Spanish Agency for International Development Cooperation
AHA Centre	ASEAN Co-ordinating Centre for Humanitarian Assistance
ALNAP	Active Learning Network for Accountability and Performance
AMCDRR	Asian Ministerial Conference on Disaster Risk Reduction
AMM	Aceh Monitoring Mission
AOSIS	Alliance of Small Island States
AP1	Additional Protocol I to the 1949 Geneva Conventions
AP2	Additional Protocol II to the 1949 Geneva Conventions
ARPDM	ASEAN Regional Programme on Disaster Management
ASEAN	Association of South-East Asian Nations
ASP	Assembly of States Parties
AU	African Union
BNPB	Badan Nasional Penanggulangan Bencana
BP	British Petroleum
BSEC	Black Sea Economic Cooperation
CAP	Consolidated Appeal Process
CAPRADE	Comité Andino para la Prevención y Atención de Desastres
CARE	Citizens Consular Assistance Regulation in Europe
CARICOM	Caribbean Community
CAS	Country Assistance Strategy
CAT bonds	Catastrophic Risk bonds

CDEMA	Agencia Caribeña para el Manejo de los Desastres y la Emergencia
CDM	Comprehensive Disaster Management
CEA	European Insurance and Reinsurance Federation
CECIS	Common Emergency Communication and Information System
CEPREDENAC	Centro de Co-ordinación Para la Prevención de Desastres Naturales en América central
CERF	Central Emergency Response Fund
CESCR	Committee on Economic, Social and Cultural Rights
CFSP	Common Foreign and Security Policy
CHFs	Common Humanitarian Funds
CMCoord	UN Humanitarian Civil Military Coordination
COCON	EU Consular Working Group
CONRED	Coordinadora Nacional para la Reducción de Desastres
CoOL	Consular On Line
COREU	Correspondance Européenne
CPFI	Civil Protection Financial Instrument
CPM	Community Civil Protection Mechanism
CPR	Civil and Political Rights
CRED	Centre for Research on the Epidemiology of Disasters
CRID	Regional Disaster Information Centre (Centro Regional de Información sobre Desastres, América Latina y El Caribe)
CRSR	Convention Relating to the Status of Refugees
CSI	Commonwealth of Independent States
CWGER	Cluster Working Group on Early Recovery
DAC	Development Assistance Committee
DG ECHO	Directorate General for Humanitarian Aid and Civil Protection
DHA	Department of Humanitarian Affairs
DOS	Department of State
DPO	Disabled Persons Organization
DRC	Democratic Republic of Congo
DRR	Disaster Risk Reduction
DRRM	Disaster Risk Reduction and Management
EAC	East African Community
EADRCC	Euro-Atlantic Disaster Response Coordination Centre
EADRU	Euro-Atlantic Disaster Response Unit
EAPC	Euro-Atlantic Partnership Council
ECHO	Humanitarian Aid and Civil Protection Department of the European Commission
ECHR	European Convention on Human Rights (Convention for the Protection of Human Rights and Fundamental Freedoms)
ECommHR	European Commission of Human Rights
ECtHR	European Court of Human Rights
ECJ	European Court of Justice
ECLAC	Economic Commission for Latin America and the Caribbean

ECO	Economic Cooperation Organization
ECOWAS	Economic Community of West African States
ECR	European Court Reports
EDF	European Development Fund
EDR	European Disaster Response
EEA	European Environment Agency
EEAS	European External Action Service
EEC	European Economic Community
EECC	Eritrea-Ethiopia Claims Commission
EECR	European Emergency Response Centre
EIA	Environmental Impact Assessment
ELD	Environmental Liability Directive
ELN	National Liberation Army (Ejército de Liberación Nacional, Colombia)
EM-DAT	Emergency Events Database
ENDA	Emergency Natural Disaster Assistance
EPPR	Emergency Prevention, Preparedness and Response Working Group of the Arctic Council
ERC	Emergency Relief Coordinator
ESCR	Economic, Social and Cultural Rights
ESDP	European Security and Defence Policy
EU	European Union
EUHR	European Union High Representative for Foreign Affairs and Security Policy
EUMS	EU Military Staff
EUFFTR	EU Forest Fire Tactical Reserve
EUSC	EU Satellite Centre
EUSF	European Union Solidarity Fund
EVAC	Evacuation Operation Exercise Study
FAFA	Financial and Administrative Framework Agreement
FAO	United Nations Food and Agriculture Organization
FARC	Revolutionary Armed Forces of Colombia (Fuerzas Armadas Revolucionarias de Colombia)
FEMA	Federal Emergency Management Agency
FTCA	Federal Tort Claims Act
GAM	Gerakan Aceh Merdeka
GBV	Gender-Based Violence
GC I	1949 Geneva Convention I
GC II	1949 Geneva Convention II
GC III	1949 Geneva Convention III
GC IV	1949 Geneva Convention IV
GCCF	Gulf Coastal Claims Facility
GDP	Gross Domestic Product
GHD	Good Humanitarian Donorship
GRECO	Group of States Against Corruption

GTPL	General Third Party Liability
GURI	Gazzetta Ufficiale della Repubblica Italiana
HAR	Humanitarian Aid Regulation
HFA	Hyogo Framework for Action
HRC	Human Rights Committee
HCT	Humanitarian Country Team
IAC	International Armed Conflict
IACAC	Inter-American Convention Against Corruption
IACCommHR	Inter-American Commission on Human Rights
IAEA	International Atomic Energy Agency
IASC	Inter-Agency Standing Committee
IBRD	International Bank for Reconstruction and Development
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICISS	International Commission on Intervention and State Sovereignty
ICJ	International Court of Justice
ICPAC	IGAD Climate Prediction and Application Centre
ICRC	International Committee of the Red Cross
ICTY	International Criminal Tribunal for former Yugoslavia
ICTR	International Criminal Tribunal for Rwanda
IDA	International Development Association
IDI	Institut de Droit International
IDLO	International Development Law Organisation
IDPs	Internally Displaced Persons
IDRL	International Disaster Response Law
IEC	Incident and Emergency Centre
IEL	International Environmental Law
IFI	International Financing Institution
IFRC	International Federation of Red Cross and Red Crescent Societies
IGAD	Intergovernmental Authority on Development
IHL	International Humanitarian Law
IHR	International Health Regulations
ILA	International Law Association
ILC	International Law Commission
ILO	International Labour Organization
IMF	International Monetary Fund
INES	International Nuclear Events Scale
INSARAG	International Search And Rescue Advisory Group
IOs	International Organisations
IOM	International Organization for Migration
IRA	Irish Republican Army

IRFs	Impulse Response Functions
IRU	International Relief Union
LEMA	Local Emergency Management Authority
LRRD	Linking Relief, Rehabilitation and Development
LTTE	Liberation Tigers of Tamil Eelam
MCDA	Military and Civil Defence Assets
MDGs	Millennium Development Goals
MIC	Monitoring and Information Centre
MINUSTAH	United Nations Stabilization Mission in Haiti
MoU	Memorandum of Understanding
NATO	North Atlantic Treaty Organisation
NDMC	Natural Disaster Management Commission
NDRI	Natural Disaster Risk Index
NGHA	Non-Governmental Humanitarian Agency
NGO	Non-Governmental Organization
NIAC	Non-International Armed Conflict
NIMS	National Incident Management System
NSCI	Nuclear Safety Cooperation Instrument
OAS	Organization of American States
OAU	Organization for African Unity
OCHA	United Nations Office for the Coordination of Humanitarian Affairs
ODA	Official Development Assistance
OECD	Organization for Economic Cooperation and Development
OHCHR	Office of the High Commissioner for Human Rights
OJEU	Official Journal of the European Union
OJEC	Official Journal of the European Communities
OP	Occupying Power
OPOL	Offshore Pollution Liability Association Limited
OSOCC	On Site Coordination Centre
OSPRAG	United Kingdom Oil Spill Prevention and Response Advisory Group
POWs	Prisoners of War
PRGT	Poverty Reduction and Growth Trust
PRST	Poverty Reduction and Strategy Paper
R2P	Responsibility To Protect
RABIT	Rapid Border Intervention Team
RCD	Rassemblement Congolais pour la Démocratie
RCF	Rapid Credit Facility
REHU	Reunión Especializada de Reducción de Riesgos de Desastres Socionaturales, la Defensa Civil, la Protección Civil y la Asistencia Humanitaria del MERCOSUR
RFI	Rapid Financing Instrument
SAARC	South Asian Association for Regional Co-operation
SADC	Southern African Development Community

SADKN	South Asian Disaster Knowledge Network
SAR	Search and Rescue
SASOP	ASEAN Standard Operating Procedure for Regional Standby Arrangements and Coordination of Joint Disaster Relief and Emergency Response Operations
SDMC	SAARC Disaster Management Centre
SEGEPLAN	General Secretariat of the Executive Branch for Planning and Programming (Secretaría de Planificación y Programación de la Presidencia, Guatemala)
SICA	Sistema de la Integración Centroamericana
SIDS	Small Island Developing States
SIPRI	Stockholm International Peace Research Centre
SITCEN	Joint Situation Centre
SOFA	Status of Forces Agreement
SOPAC	Pacific Islands Applied GeoScience Commission
SOPs	Standard Operating Procedures
SPDC	State Peace and Development Council
SPILL	Securing Protections for the Injured from Limitations of Liability Act
SRSO	Special Representative of the Secretary General
TCG	Tripartite Core Group
TEC	Treaty Establishing the European Community
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
TI	Transparency International
UCPM	Union Civil Protection Mechanism
UN	United Nations
UNAMA	United Nations Assistance Mission to Afghanistan
UNCAC	United Nations Convention Against Corruption
UNCLOS	United Nations Convention on the Law of the Sea
UNCT	United Nations Country Team
UNDAC	United Nations Disaster Assessment and Coordination
UNDP	United Nations Development Programme
UNDP BCPR	United Nations Development Programme Bureau for Crisis Prevention and Recovery
UNDRO	United Nations Disaster Relief Organization
UNECOSOC	United Nations Economic and Social Council
UNEP	United Nations Environment Programme
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNFCCC	United Nations Framework Convention on Climate Change
UNFPA	United Nations Population Fund
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund
UNISDR	United Nations International Strategy for Disaster Reduction

UNODC	United Nations Office on Drug and Crime
US	United States
USAID	United States Agency for International Development
VFA	Visiting Forces Agreement
WB	World Bank
WCDR	World Conference on Disaster Reduction
WCO	World Custom Organization
WFP	World Food Programme
WHO	World Health Organisation

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