

**Andrea de Guttry, Marco Gestri and Gabrielle Venturini (eds)**

*International Disaster Response Law* (TMC Asser Press-Springer, The Hague-Berlin, 2012, xix + 740 pp, £153.00 (hb) ISBN 978-90-6704-881-1).

This is a very wide-ranging and rich book. It reviews the law not only at the level of general international law but also the relevant regional legal instruments and, to some extent even bilateral law. It concerns both man-made events (intentional and not-intentional) and those of natural origin, causing significant injuries or widespread damage or at least the risk of it to persons, property and/or the environment. In the process it addresses calamities with a technological origin as well as those caused by armed conflict and other forms of violence. In good Italian style, it covers in the broadest sense of the term the international legal regulation of the responses to such disasters. The book examines the relevant instruments and concepts of general international law, of the law of armed conflict and of (aspects of) the law of the sea (in Parts I and III), of human rights law (in Part IV), and, perhaps somewhat overdone, also gets separately into European Union law (Part II). Moreover, various specific aspects, like the role of disaster response missions, customs obstacles to relief consignments, the status of emergency workers, financial arrangements and even the role of corruption in all this, are discussed in separate chapters (Part V). Hence, this is a very substantial book containing many contributions of varied quality on a wide variety of topics.

Notwithstanding the differences in quality (and in English) the book as a whole is a very welcome addition to the rather scattered literature in respect to its ever more important subject, here called International Disaster Response Law, or IDRL. Andrea De Guttry, one of the editors, tries to bring some structure to the subject matter of the book. One of his major conclusions is that IDRL is strongest at the lower levels of regulation: ‘... at regional (and sub-regional) level there are numerous treaties regulating in a comprehensive manner all the relevant issues related to disaster prevention, mitigation, management, and early recovery, but at universal level this does not apply.’ (p. 38)

His task of putting some order in the subject matter is certainly not an easy one and he is not helped much by previous and continuing efforts of both the UN International Law Commission (discussed critically in chapter 3 by Flavia Giustiniani) and the Institut de Droit International to identify the relevant international norms. Apart from the unexpected and unpredictable aspects of disasters, a major problem is the unsystematic *ad hoc* way international society has responded to the disasters that befell it. Very often, if not usually, legally relevant reactions have *followed* a disaster. An example that comes to mind is the remarkable speed with which two IDRL conventions were concluded and

entered into force after the nightmare of the *Chernobyl* melt-down. In the area of disaster responses setting up machinery or concluding agreements on assistance and co-operation in case a disaster would happen, thus beforehand, has never been much of a success at the universal level. As a result, as the book shows convincingly the state of general international law relevant to the response to disasters is not in any way a well-structured or specific part of international law. Perhaps the failure -and closure in 1982- of the 1927 International Relief Union is symbolic. In fact, seen in the universal perspective the term IDRL is perhaps somewhat pretentious. The book contributes much to improve our understanding of the problems that hinder and have hindered the making of good legal instruments with clear and accessible duties and rights of individuals and states in respect to disasters. The current state of legal affairs is primarily one of scattered obligations and rights in various treaties joined by 'soft law' and, at best, *ad hoc* policy commitments, all in particular at the regional and sub-regional level. Successful disaster relief depends on many different factors inherent in the nature and scope of the particular calamity and the character of the society where it takes place. That makes it probably too difficult to agree on general international legal instruments to organize effectively the prevention of disasters and the relief operations if they have taken place. Even the emergence of international customary law or general principles on which such machinery can be based, cannot said to have taken place.

At the end of the book, on the basis of an overview of its chapters, Natalino Ronzitti, one of the *éminences grises* of Italian international law, observes that IDRL '... is more an issue pertaining to soft law or conventional law..' ( p. 703). Even Ronzitti's search in international customary law for such a basic duty as to provide humanitarian assistance in case of a disaster leads him to the conclusion that '[n]either State practice, nor *opinio iuris*, support the existence of such a custom'( *idem*). He concludes his chapter carefully by submitting that '[a]t present, the interpreter has to rely on a set of principles which have been developed in connection with several sectors of international law and which might also be applied to IDRL' (p. 706). In fact most of the discussions of general international law in the book witness the rather disappointing state of the law at that level.

However, as far as IDRL is concerned two particular parts of international law, in their own ways, are more sophisticated in character: humanitarian law and the law regarding nuclear accidents.

International humanitarian law can be said to have its origins in how to treat persons, in need of assistance, initially only soldiers. In the process in this field of international law the fundamental principles governing humanitarian assistance, those of humanity, impartiality and neutrality were launched.

The Red Cross was and is based on it. Gradually, these duties have been elaborated in detailed rules. In her general chapter 2 and in chapter 11 specifically on armed conflict, Gabriella Venturini explains this eloquently, including by providing examples of relief actions in some conflict areas (Eritrea and Ethiopia, Colombia, the Democratic Republic of the Congo, Indonesia and Sri Lanka). In the area of prevention of disasters in armed conflict one may also point to the detailed provisions on precautions in attack and precautions against the effects of attacks stipulated in the 1977 Protocol I additional to the 1949 Geneva Conventions.

Whereas for situations of armed conflict, in various forms, both in treaty law and under customary law a right to humanitarian assistance can be identified, not even such a basic right can be found in human rights law (Annalisa Creta in chapter 15). In the same Part on the human rights dimension, Emanuele Sommario in that respect draws attention to the derogation clauses in human rights conventions that explicitly allow states parties the possibility of temporary non-performance of many human rights obligations during public emergencies of significant magnitude. In his detailed examination he gives quite a number of examples of states which have actually done exactly that (although not necessarily in a legally acceptable way).

The editors have rightly included the discussion of the state of international law in respect to nuclear accidents in the opening Part of their book. The examination of this subject by Andrea Gioia not only provides an excellent assessment of 'Nuclear accidents and International Law' as such, it also, in a more general sense provides an answer to the question how the somewhat chaotic state of IDRL might be improved.

In respect to nuclear accidents a more or less complete international treaty framework for disaster response exists, largely, although certainly not solely, as a consequence of the Chernobyl calamity. Since this accident, international rules have been agreed upon with remarkable speed in the form of rights and duties for states in treaties on nuclear safety and security and on emergency preparedness and response proper. Already existing liability provisions for damage in case of calamities have been improved. This threefold legal approach of prevention, emergency preparedness and response, and liability seems to provide an appropriate and transparent general model for other dangerous hazardous activities with a technological origin. But also the quality of disaster responses in case of natural disasters may benefit from the example of legal instruments in this sector. In respect to 'prevention' Gioia discusses the detailed duties of the Contracting Parties to the 1994 Nuclear Safety Convention, as well as those on nuclear security, i.e., the specific obligations regarding the security of nuclear material. Much in these instruments on prevention

(and precaution) is also relevant for other high risk areas of activity or natural disaster-prone regions of the world.

Moving to Emergency Preparedness and Response, Gioia's chapter reaches the heart of the subject matter of the book. He points to the preparation and routine-testing of on-site and off-site emergency plans under the Nuclear Safety Convention and similar provisions in other conventions. Then he moves to the core of the (nuclear) matter: the 1986 Convention on Early Notification of a Nuclear Accident and the Convention on Assistance in the case of a Nuclear Accident or Radiological Emergency of the same year. These two IAEA 'Chernobyl' treaties, both with over 100 Contracting Parties in 2014, provide the detailed rules which are lacking in respect to the response to many other kinds of disasters addressed in the book. Moreover, the International Atomic Energy Agency has an important role as a permanent institution in controlling the execution of the duties of the state where the disaster happens, and those of other states.

Finally, the chapter explains the regime regarding liability for nuclear damage as agreed under the 1960 (OECD) Paris and the (global) 1963 Vienna Conventions, and their subsequent Protocols and amendments (as well as in the 1963 Brussels Convention Supplementary to the Paris Convention). The problem with this 'double' liability regime, apart from its sheer complexity, is the (very) limited number of participating parties. Although liability for disasters and the costs of relief operations is an indispensable part of IDRL, I do not think this specific part of the international law regarding nuclear accidents serves well as a model.

The detailed rules existing for nuclear disasters including for their prevention do not, of course, stop nuclear accidents in general and not even accidents at a very large scale such as the 2011 Fukushima disaster in Japan. Still, they offer what is probably the most sophisticated frame for disaster response general in international law.

The review and analysis of the state of the international law regarding disaster response in this useful and to quite some extent pioneering book, shows that international society still has a long way to go before in particular general international law on this increasingly important subject will be genuinely effective and satisfactory.

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