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IN EVROPSKE ŠTUDIJE

# The Emergence of a New Branch of International Law Dealing with Response, Assistance and the Protection of Persons in the Event of Disasters<sup>1</sup>

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*Ana Polak Petrič*

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## 1. Introduction

Every year floods, earthquakes, hurricanes and droughts in all regions of the world affect large numbers of individuals. They cause the widespread loss of life and injury, humanitarian crises, displacements, material damage, and devastation of the environment.<sup>2</sup>Recent data show that the **frequency of natural disasters has been steadily rising**. Whereas in the 1970s there were 1,231 reported disasters affecting 780 million people, in just the six years from 2000 to 2006 there were 5,287 reported disasters, affecting over one billion people around the world.<sup>3</sup>Statistics show the following trends of the occurrence of natural disasters in the 2000–2009 period: the annual average disaster occurrence is 387 natural disasters; the annual average number of victims, the sum of those killed and affected, is 227.5 million; the annual average of economic loss from natural disasters is USD 98.9 billion.<sup>4</sup>These figures show that natural disasters are some of the greatest threats to human security and development worldwide – over the last 10 years, in global terms they have affected the equivalent of one-

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<sup>1</sup> This research paper represents an integral part of the author's doctoral thesis study which deals with the law governing disaster response and the international legal protection of persons in the context of natural disasters, with a special focus on the right to humanitarian assistance. The paper was presented at the Doctoral Research Conference in Nova Gorica on 8 May 2012.

<sup>2</sup> On the day the first lines of the author's doctoral thesis were written, it was confirmed how topical and important this research would be – namely on 11 March 2011 a powerful earthquake struck Japan, triggering a massive tsunami, causing incomprehensible devastation, over 10,000 deaths and numberless injured; whole villages and cities were destroyed, people were displaced and left with nothing. Once again, it was crystal clear that when a natural disaster strikes effective and timely international assistance is urgently needed.

<sup>3</sup> Fisher, *Law and Legal Issues in International Disaster Response: A Desk Study*, Geneva, 2007, p. 31.

<sup>4</sup> Guha-Sapir, *Annual Disaster Statistical Review 2010 – The Numbers and Trends*, Brussels, 2010, p. 1.

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third of the earth's population and have created damage equivalent to approximately 16% of global GDP.

Since ancient times, people have been aware that it is moral and humane to protect and help the victims of disasters, but it is only in modern times that international cooperation has been developed and encouraged at the interstate and non-governmental level in this field. In recent years we have been witnessing another phenomenon of the **growing extent of international involvement in disaster relief efforts**. The absence of a centralised regime or institution has favoured the development of a large and diverse international disaster relief community. Today a number of global institutions have legal mandates relevant to international disaster relief and recovery and mainly form part of the United Nations (UN) system; for instance, the Office for the Coordination of Humanitarian Affairs (OCHA), the UN World Food Programme, the Food and Agriculture Organization, UNICEF, the World Health Organization, the UN Development Programme, and the UN High Commissioner for Refugees.<sup>5</sup> Besides the 'traditional' international humanitarian organisations, such as the International Red Cross and within it the International Federation of Red Cross and Red Crescent Societies (IFRC), in the last few decades numerous other non-governmental organisations have been established focusing on humanitarian relief. Most recently assistance by foreign militaries, corporate actors, private companies and individual donors has also been on the rise.<sup>6</sup>

All of these factors have led to the acknowledgment that the humanitarian efforts of States and relief organisations have developed enormously in past decades. At the same time, it was recognised that these efforts and activities have not been matched by related commensurate advances in international law. While an extensive body of law has developed in the form of international humanitarian law to regulate humanitarian assistance to victims of wars, **no similar body of law or specific branch of international law** has been widely recognised to alleviate the effects of disasters, especially natural ones. Some elements of law relevant to humanitarian assistance in peacetime are included in the

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<sup>5</sup>The mandates of the UN and its specialised agencies in the field of disaster relief are in accordance with Article 1 of the UN Charter, which spells out "fostering international cooperation in solving humanitarian problems" as one of the organisation's primary purposes.

<sup>6</sup>Fisher 2007, p. 33.

few legally binding instruments dealing specifically with disaster relief. They are mainly dispersed as part of treaties covering other areas, such as human rights law, refugee law, international humanitarian law, civil aviation, customs and duties, communications and transportation. In contrast, numerous UN resolutions, guidelines and regulations of various bodies and entities competent in disaster relief exist, but they all lack a legally binding character.

Therefore, it is still hard to speak of a definite, universally and broadly accepted source of international law that spells out the basic principles, procedures, rights and duties pertaining to disaster response and assistance.<sup>7</sup> But could it be that such a body of law, lately referred to as “international disaster response law”<sup>8</sup> (IDRL)—covering international disaster assistance and the protection of persons in the context of disasters in peacetime—is in the process of development? Could it emerge as a new, specific branch of international law and, if so, what are its major characteristics, scope and aims?

## 2. International Disaster Response Law

The idea of developing a branch of law which would include international, national and comparative legal aspects of all basic questions relating to disaster situations, the protection of victims of disasters and relief operations is not new. To summarise past debates and studies about this idea, the main purposes of such endeavours should be analysed. The primary aim is to **centralise, coordinate and harmonise the existing but dispersed provisions** in various other branches of law, which have so far constituted an obstacle to a better understanding of global legal questions related to disaster relief. Through the codification and harmonisation of these rules, they are to be examined as a system which would allow the identification and removal of the most important

<sup>7</sup> Hoffman, Towards an international disaster response law, World Disasters Report 2000, p. 145.

<sup>8</sup> The term “international disaster response law” is used to describe law related to international assistance, relief and response in peacetime disasters. It seems that through the past and anticipated future efforts of the Red Cross Movement to enhance the development of law in this field, this term is becoming ever more acceptable and used by States and other actors in humanitarian assistance and relief actions. Nonetheless, some speak rather of “international disaster relief law”, believing that it more precisely defines the scope of such law and is used in numerous UN and Red Cross documents. See, for example, Toman, Towards a Disaster Relief Law: Legal Aspects of Disaster Relief Operations, in Kalshoven (ed.): Assisting the Victims of Armed Conflicts and Other Disasters, 1989, pp. 194-195; and Jakovljević, International disaster relief law, Israel Yearbook on Human Rights 2004, p. 257.

*lacunae* and possible contradictions.<sup>9</sup> This exercise contributes to the delimitation of problems and the overall development of legislation in the disaster response field, as well as to drawing the attention of lawyers to many important legal questions. After all, it is only in this way that the possible need to develop new rules of IDRL can be identified.

Shaping and developing international disaster response law also has a significant practical impact. A comprehensive body of law in the field of disaster relief, which sets standards of behaviour for governments and other actors involved, would be extremely **beneficial to the efficiency and success of humanitarian relief efforts** in the event of natural disasters. States along with relevant intergovernmental and non-governmental organisations have frequently reported the absence of internationally agreed standards for donors and beneficiaries of humanitarian assistance and of predictable mechanisms for its effective facilitation. As a disaster strikes it is not unusual for procedural problems and confusion to occur as regards the deployment of humanitarian personnel, equipment and supplies. Although large influxes of foreign relief providers and donations are often essential to save lives and restore dignity after a massive disaster, they also pose a formidable challenge to States affected by a disaster (affected States). Since very few States have detailed rules, procedures and institutional frameworks for facilitating and managing international disaster assistance, they are often insufficiently prepared to cope with the consequences of a disaster nor to accept in an effective manner the assistance and help offered from abroad. In some cases, due to underdevelopment and the intensity of a disaster, affected States are unable to provide assistance to their citizens. However, at the same time due to political reasons they could be unwilling to accept humanitarian assistance from foreign actors, perceiving it as a weakness, a sign that they are reliant on outside help. Problems also occur on the side of assisting actors. The affected State is many times burdened with the influx of assisting non-governmental organisations and donors; it often encounters a plethora of inappropriate and unneeded help, untrained volunteers, untested or expired drugs. All of this results in a unfortunate reality: authorities are overwhelmed by relief operations and vital aid is delayed; help is less efficient and less coordi-

<sup>9</sup>Jakovljević 2004, p. 276.

nated; and victims are not fully protected and humanitarian aid is not used to its full potential.

Although disasters are traditionally seen as situations creating challenges mainly related to the provision of humanitarian assistance, attention also has to be paid to the need for **human rights protection** in this particular context. In the aftermath of natural disasters affected persons face multiple human rights challenges, especially: a lack of safety and security; unequal access to assistance, basic goods and services; discrimination in aid provision; the abuse, neglect and exploitation of children; inadequate law enforcement mechanisms; forced relocation; and the unsafe or involuntary return or resettlement of persons displaced by a disaster.<sup>10</sup> Therefore, the determination of international disaster response law as a separate set of rules of international law should primarily be in the interest of the victims of disasters. Experience shows that, when well crafted, laws can focus and strengthen governmental efforts to prevent and respond to disasters, and they can empower communities and civil society organisations to contribute effectively to these aims.<sup>11</sup> After all, only based on laws, there are solid grounds to also seek compliance.<sup>12</sup>

These seem to be sufficient reasons to prove there is a need to develop and confirm international law which at the universal level would spell out the basic principles, procedures and rights and duties pertaining to response, assistance and the protection of persons in the event of major disasters. But what should this body of law encompass? First of all, international disaster response law should be distinguished from ‘disaster law’ which is a broader term and refers to laws and regulatory frameworks at the domestic, regional and international levels that are relevant to the overall management of disasters. In contrast, “international disaster response law” (IDRL) depicts narrower and more specific area of law dealing with disasters, namely with disaster response operations *per se* and only with those that relate to cross-border or international cooperation. It still applies to all peacetime disasters, whether natural, technological or industrial in origin.<sup>13</sup>

<sup>10</sup> IASC Operational Guidelines on the Protection of Persons in Situations of Natural Disasters, <http://ochanet.unocha.org/p/Documents/Operational%20Guidelines.pdf> (1.11.2012), p. 1.

<sup>11</sup> Disaster laws, <http://www.ifrc.org/idrl> (1.10.2012), p. 2.

<sup>12</sup> Hoffman 2000, p. 146.

<sup>13</sup> It is common to differentiate among disasters according to different criteria. The most basic division, which follows an etiological approach, distinguishes between natural and man-made disasters.

The IFRC has proposed **the following definition of IDRL**: *“The laws, rules and principles applicable to the access, facilitation, coordination, quality and accountability of international disaster response activities in times of non-conflict related disasters, which includes preparedness for imminent disaster and the conduct of rescue and humanitarian assistance activities”*.<sup>14</sup> International disaster response law therefore relates to all existing rules for international disaster response operations.

### 3. Relationship with International Humanitarian Law

It is useful to compare international humanitarian law and international disaster response law since they both deal with the protection of and assistance to individuals, victims of calamitous events, the former during war and the latter during peacetime. Without elaborating on the development and scope of **international humanitarian law (IHL)**, the codification of customary battlefield practices started as early as 1864 when, just after the International Committee of the Red Cross (ICRC)<sup>15</sup> and the first National Red Cross Societies were established, the first Geneva Convention for the Amelioration of the Condition of the Wounded in Armies in the Field was adopted. A major development of the ‘Geneva Law’ came in 1949 with the adoption of the four basic Geneva Conventions which, together with their three Protocols, represent the bulk of the protection mechanism for different groups of individuals during an armed conflict.<sup>16</sup> The rules on humanitarian assistance for armed conflict situations are also included in agreements between the parties to a conflict, agreements between the ICRC and the parties to a conflict, internal legal acts and decisions

The former are those resulting solely from the effects of natural phenomena such as earthquakes, tsunamis and volcanic eruptions. The latter are caused by humans, either accidentally or by negligence (industrial and technological disasters, such as oil spills or nuclear accidents), or result from deliberate actions (armed conflicts). In many situations, disasters involve complex emergencies and it is hard to clearly delineate their causes. In any case, IDRL does not include relief activities in cases of armed conflicts per se since this area is extensively covered by international humanitarian law as a *lex specialis*.

<sup>14</sup> International Disaster Response Laws (IDRL): Project Report 2002-2003, p. 3.

<sup>15</sup> For the origins of the Red Cross Movement, see Bugnion, *From Solferino to the Birth of Contemporary International Humanitarian Law*, <http://www.icrc.org/eng/resources/documents/article/other/solferino-article-bugnion-240409.htm> (5.10.2012); and Thürer, *Dunant's pyramid: Thoughts on the "humanitarian space"*, *International Review of the Red Cross* 2007, pp. 49-51.

<sup>16</sup> The four Geneva Conventions of 1949, the two Protocols of 1977 and the Third Protocol of 2005 are all available at: <http://www.icrc.org/ihl.nsf>.

of the Red Cross Movement and other major agencies providing relief.<sup>17</sup> It is also widely accepted today that part of international humanitarian law represents the so-called 'Hague Law' or law regulating the means (weaponry and methods), targeting and tactics of warfare.<sup>18</sup>

International humanitarian law is these days an accessible, highly evolved and recognised source of international law, widely published, known and disseminated, also offering institutional frameworks for their enforcement.<sup>19</sup> Nonetheless, the almost two centuries of work put in to shape and advance international humanitarian law has not been matched by corresponding efforts or achievements in response to disasters in non-conflict situations. While a comprehensive and universally accepted international legal framework is in place for armed conflicts, the regime of disaster aid in the case of natural disasters is dispersed and relatively unknown. No similar generally recognised body of wide-ranging law exists to regulate international humanitarian action in the wake of natural disasters.

At first glance, the biggest difference between the scope of international humanitarian law and international disaster response law is that the former is largely restricted to situations involving armed conflict, those with an international character and also during internal armed conflicts. In the case of international law regulating a disaster response in peacetime there is no such matching international-internal taxonomy since it only covers those instances of disaster situation where recourse to international assistance and cooperation is needed.<sup>20</sup> Another distinction is also obvious. While international humanitarian law addresses belligerent acts and conduct that require limitations under international

<sup>17</sup> Jakovljević 2004, p. 256.

<sup>18</sup> Its foundations were laid with the Hague Conventions of 1899 and 1907. Later, States approved treaties dealing with the use of specific weapons. For example, in 1925 the Geneva Protocol on Chemical Weapons, in 1980 the UN Convention on Conventional Weapons and in 1997 the Convention on the Prohibition of the Use, Stockpiling, Production, and Transfer of Anti-Personnel Mines and on Their Destruction were adopted.

<sup>19</sup> State-linked armed forces as well as insurgents, as applicable, are responsible for implementing these rules. The ICRC has a special duty as a guardian of the Geneva Conventions, while other parts of the Red Cross and Red Crescent Movement, the UN and its agencies, human rights organisations and numerous non-governmental organisations also play an important role in the development and implementation of international humanitarian law. The most important development in recent years is without doubt the establishment of the International Criminal Court, offering justice in cases of the most serious crimes against humanity, including crimes violating international humanitarian law.

<sup>20</sup> Hoffman, What is the scope of international disaster response law?, in: *International Disaster Response Laws, Principles and Practice: Reflections, Prospects, and Challenges*, 2003, p. 14.

law in order to alleviate their impact and is based on the specific relationship between the principle of humanity and military necessity, disaster response law mainly applies in a cooperative peacetime environment since the damage inflicted during disaster is usually unintended.<sup>21</sup> Nevertheless, despite these differences there are cases where a humanitarian challenge may be covered by both international humanitarian law and international disasters response law. There are situations in between war and peace; it can happen that a natural disaster triggers an armed conflict. In such cases, it seems that both laws would apply at different times, depending on the situation and specific rules. In addition, there is also a certain conceptual overlap between both branches of law. Especially where they address similar issues, such as the provision of humanitarian assistance and the status, protection and responsibilities of assisting, certain principles useful for the development of IDRL, they can by analogy be derived from international humanitarian law.<sup>22</sup> The legal regulation of certain questions in a situation of armed conflict can usefully inspire the development of law in times of peace.

#### 4. Historical Background

Natural disasters have always been a part of human history. Cases of tragic catastrophes can be traced back to ancient times, such as the eruption of Vesuvius in 79 AD, or to Middle Ages epidemics of the plague. For a long time, people have been aware of the considerations of humanity, morality and solidarity in assisting victims of disasters. Intended victim protection and help were recorded already in the 11<sup>th</sup> century when the Knights of Malta, better known as the Order of Saint John, provided relief to those in need, including those affected by disasters.<sup>23</sup> Nevertheless, it is only in modern times as nation-states and international law emerged that international cooperation has been encouraged in this area. A famous thought of the Swiss diplomat Emer de Vattel from 1758 is often quoted here: “... *when the occasion arises, every Nation should give its aid to further the advancement of other Na-*

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<sup>21</sup> Ibid.

<sup>22</sup> Id. p. 17.

<sup>23</sup> Preliminary report on the protection of persons in the event of disasters, 2008, p. 6. For a more detailed historical background of humanitarian assistance, see Macalister-Smith, *International Humanitarian Assistance*, Dordrecht, 1985, pp. 8-10.

*tions and save them from disaster and ruin, so far as it can do so without running too great a risk... To give assistance in such dire straits is so instinctive an act of humanity that hardly any civilised Nation is to be found which would refuse absolutely to do so".<sup>24</sup>*

As mentioned, this noble idea to provide assistance and relief to the victims of disasters was first established as an international norm in the event of armed conflicts. But almost at the same time the international community started also considering the need for cooperation in offering assistance to victims of disasters other than wars. The International Red Cross played a pioneering role in this endeavour. In 1869, at the **Second International Red Cross Conference** a resolution was adopted that requested national Red Cross Societies to provide assistance and relief in disasters which may afflict people during peacetime and in cases of a public calamity which, like war, demand immediate and organised assistance. This duty was later confirmed in the Constitution of the League of Red Cross Societies in 1919, which was founded to further humanitarian assistance in peacetime. Since then, the League of Red Cross Societies, today known as the International Federation of Red Cross and Red Crescent Societies (IFRC), has become responsible for coordinating and directing humanitarian assistance to the victims of natural disasters, with the ability to access the affected State and to facilitate disaster relief activities.

Although the International Red Cross has played a dominant role in offering international assistance in practice, a need for an intergovernmental coordinating body was soon detected. In 1927 and within the framework of the League of Nations an **International Relief Union (IRU)** was established. It was supposed to be a centralised operational agency for channelling international funds and support in disasters, as well as a coordinator of other actors' efforts.<sup>25</sup> Although the IRU's establishment represented a major development and advance in international disaster relief efforts, the Union never really came to life. Its Convention attracted 30 State parties but, due to a lack of funding, the ineffectiveness of the League of Nations and eventual withdrawal of

<sup>24</sup> Preliminary report 2008, p. 6.

<sup>25</sup> The idea to develop an international organisation in order to ensure international assistance to victims of natural disasters was first developed by an Italian senator called Ciraoło already in 1921. For more on the background of the establishment and functioning of the IRU, see the Convention Establishing an International Relief Union, 1927; and Macalister-Smith, Reflections on the Convention Establishing an International Relief Union of July 12, 1927, *Legal History Review* 1986, pp. 364-366.

support of the Red Cross, the IRU effectively died already in the late 1930s.

Even after this failed attempt, the need for the greater regulation of disaster relief in international law and for the more effective organisation of relief efforts did not fade away. On the contrary, **after World War II** the achievement of international cooperation as one of the purposes of the UN was given an important place in Article 1 (3) of the UN Charter, explicitly including “*cooperation in solving international problems of an ...humanitarian character*”. In addition, numerous bilateral agreements were concluded in this field, mandates were assigned to various international agencies and non-governmental entities, and specific provisions on disaster relief were included in treaties and conventions regionally and globally in different sectors of international cooperation, such as customs, air traffic, telecommunications and transport. Although these regulatory frameworks provided norms for more adequate assistance to those affected in natural disasters, they were developed in a relatively fragmented, incomprehensive manner.

This trend continues today, especially after another unsuccessful attempt to develop and codify an international legal regime for disaster assistance and protection in a comprehensive way, this time by the Office of the United Nations Disaster Relief Coordinator (UNDRO)<sup>26</sup> which in 1984 presented the UN Economic and Social Council (ECOSOC) with a final draft of a **Convention on Expediting the Delivery of Emergency Assistance**. On one hand, since its objective was to expedite the delivery of assistance in response to disasters, it laid out detailed means by which the receiving State should facilitate the entry and operation of international relief operations in its territory. On the other hand, it required aid providers to respect the sovereignty and legislation of the receiving State, abstain from political and commercial activities and ensure appropriate and quality assistance.<sup>27</sup> Yet, due to the lack of support of States and the International Red Cross the draft Convention was never adopted.<sup>28</sup>

<sup>26</sup> UNDRO was established in 1971 by the UN General Assembly resolution 2816 (XXVI) and is a predecessor to the present-day Office for the Coordination of Humanitarian Affairs (OCHA).

<sup>27</sup> See in particular Articles 3 and 5 of the Draft Convention on Expediting the Delivery of Emergency Relief, 1984.

<sup>28</sup> It is worth mentioning that the League of Red Cross Societies and the ICRC opposed the draft Convention since they feared that it over-emphasised the sovereignty and control of receiving States; see Fisher 2007, p. 28.

## 5. Recent Developments

In the last few decades, institutional and legal initiatives in the field of international disaster relief have been enhanced as the frequency, intensity and complexity of natural disasters have risen, as well as the consciousness of international solidarity. The general desire to strengthen international cooperation to relieve the suffering caused by disasters has grown stronger. Today one can observe many different types of instruments that regulate disaster response activities and aim to set standards and rules for the coordination, facilitation and delivery of humanitarian assistance in times of disaster. Although at present ***no overreaching and universally accepted multilateral legal instrument*** specifically applicable to situations of natural disasters exists, international law is not silent on the topic. It encompasses a number of rules and provisions included in various treaties and conventions, although applicable to other areas of law—human rights law, international humanitarian law, law of internally displaced persons, customs and duties, communications, transport and privileges and immunities – but still covering specific aspects of disaster relief. In addition, two global legally binding instruments deal specifically with international disaster relief, namely the Tampere Convention on the Provision of Telecommunication Resources for Disaster Mitigation and Relief Operations (1998) and the Framework Convention on Civil Defence Assistance (2000). Although their provisions can contribute significantly to future codifications in this field since they both comprehensively deal with the provision of humanitarian assistance and the protection of victims of disasters, they are limited in their application to just one respective sector of work and to only a few States Parties.

Another recent phenomenon is the abundance of regional instruments covering international disaster relief. Noteworthy here are the EU instruments for humanitarian assistance and civil protection assistance, as well as the ASEAN Agreement on Disaster Management and Emergency Response (2005). With this in mind and acknowledging the proliferation of bilateral treaties on disaster assistance, international legal rules governing disaster response and the protection of persons in the context of natural disasters

exist but are relatively ***dispersed and scattered*** across numerous instruments.

In relation to disaster response there is a wide and ***well developed scope of 'soft law'*** acts – resolutions, declarations and other documents adopted in the framework of international organisations, mainly the UN and its General Assembly and the Red Cross and Red Crescent Movement. In comparison to legally-binding instruments, they tend to comprehensively bring together all aspects of disaster relief, including the general principles, rights and duties of the actors involved, protection of affected persons and operational matters of humanitarian assistance. Despite their non-binding character, they exercise varying levels of moral authority as evidence of international consensus and best practice or sometimes even of existing or emerging customary rules in the field of disaster relief. As a benchmark in the area of international cooperation in disaster relief efforts UN GA resolution 46/182 (1992) should be mentioned.

In the absence of a universally binding multilateral treaty in this field, many successful attempts by various academic institutes and relevant international bodies have been made to ***systemise, collect and develop standards and rules*** governing international disaster relief. To mention just a few: the Guiding Principles on the Right to Humanitarian Assistance (1993) by the International Institute of Humanitarian Law; the Draft Model Agreement Concerning Humanitarian Relief Operations (1980) by the International Law Association; the Model Rules for Disaster Relief Operations (1982) by the UN Institute for Training and Research; and the Draft International Guidelines for Humanitarian Assistance Operations (1990) by the Max Planck Institute for Comparative Public Law and International Law. Also in the framework of the International Red Cross, the Principles and Rules of Red Cross and Red Crescent Disaster Relief (1969) and the Code of Conduct for the International Red Cross and Red Crescent Movement and Non-Governmental Organisations in Disaster Relief (1995) were adopted.

In order to determine which sources of law already exist in the area of disaster response, a systematic collection and analysis of such rules was needed. With this aim in mind, namely to work on the formation of a comprehensive and usable set of existing disaster response rules, the International Federation of Red Cross (IFRC) in 2001 started with the ***International Disaster Response Laws***,

***Rules and Principles Programme.***<sup>29</sup>The project's mandate is in the first place to advocate for the development, improvement and faithful application of international disaster response law through the identification, compilation and publication of existing international laws and evaluation of their actual effectiveness in humanitarian operations.<sup>30</sup>This project proved that international disaster response law (IDRL) consists of laws, rules and principles applicable to international response activities in times of non-conflict disasters. It was recognised that the existing IDRL is widely dispersed and lacks consistency; it comprises many different types of instruments both legal and non-legal. The extensive IFRC studies showed that, despite this large number of instruments relating to IDRL, they are largely unknown to governments and civil society and are rarely referred to or effectively utilised.<sup>31</sup> International operations in disaster relief are still today often impeded by access problems; for example, bureaucratic barriers, problems with the entry of goods, equipment and personnel, as well as quality problems concerning goods and services, the lack of effective coordination and accountability.<sup>32</sup> These problems often lead to disaster-affected communities not receiving quality aid at the right time and in an efficient manner.

Following the conclusions of this comprehensive research programme, at the 30<sup>th</sup> International Conference of the Red Cross and Red Crescent Societies in 2007 **Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance** (the IDRL Guidelines) were adopted.<sup>33</sup>They are based on existing international laws, treaties and documents, and aim to help States by using these specific guidelines to strengthen their own national legal, administrative and

<sup>29</sup> The IDRL Programme was created in 2001 by resolution 5 of the Red Cross and Red Crescent Council of Delegates. Also see the Agenda for Humanitarian Action, adopted at the 28th International Conference of the Red Cross and Red Crescent in 2003. Its Final Goal 3.2. related specifically to IDRL is to: "Enhance international disaster response through support for the compilation and application of the laws, rules and principles applicable to international disaster response".

<sup>30</sup> In the framework of the IDRL Programme, the IFRC has extensively researched, collected and analysed existing legal documents and other instruments in disaster response; today, the IDRL possesses a database of more than 600 full-text international and national documents related to disaster relief. The IDRL database is available at: <http://www.ifrc.org/en/what-we-do/idrl/about-disaster-law/publication>.

<sup>31</sup> IDRL Project Report 2002-2003, p. 3.

<sup>32</sup> Fisher 2007, pp. 8-9.

<sup>33</sup> The IDRL Guidelines are available at: <http://ocha.unog.ch> (1.11.2012). For annotations on the IDRL Guidelines, see <http://www.ifrc.org/en/what-we-do/idrl/idrl-guidelines> (1.11.2012).

institutional frameworks for international disaster assistance.<sup>34</sup> The IDRL Guidelines have enjoyed broad endorsement at the international and regional levels. They have been recognised in UN General Assembly resolutions encouraging States to make use of them.<sup>35</sup> After the important progress made in implementing the IDRL Guidelines in the past few years, in 2011 the IFRC presented a **Model Act for the Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance**.<sup>36</sup> The aim of this new tool is to assist States in incorporating the recommendations of the IDRL Guidelines into their national law. The Model Act includes specific suggestions of statutory language which is intended to serve as a reference and example to lawmakers as they develop legislation on disaster relief appropriate to their national circumstances.

Also in the framework of the UN, significant work has been done and is continuing with the aim to present a comprehensive collection of rules dedicated to the field of disaster response. This task was ensured to the main UN organ dealing with international law, namely the **International Law Commission** (ILC), which is tasked with a duty of promoting the progressive development and codification of international law. Due to the urgency of the matter, as well as important legal dilemmas arising from it, the topic of "Protection of Persons in the Event of Disasters" was introduced in 2007 to the programme of work of the ILC. Since then and in accordance with the consent of the international community expressed in the UN General Assembly's Sixth Committee, the ILC has proceeded ambitiously with the

<sup>34</sup> Bridges, *A Case For the Law*, Red Cross Red Crescent 2011, p. 11. Through this practical tool the IFRC has in recent years been making an important effort to proactively address the legal problems of disaster response and recovery. It is helping governments around the world to examine their laws and policies to ensure they are ready for both the speedy entry of humanitarian aid and to adequately oversee and monitor the quality of that aid once the next natural disaster strikes. Up until 2011, nine countries had adopted new laws, regulations or procedures for international disaster relief consistent with the recommendations in the IDRL Guidelines. For more on the implementation of the IDRL Guidelines, see *Progress in the implementation of the IDRL Guidelines*, International Conference of the Red Cross and Red Crescent, 2011; *The Right Aid at the Right Time*, IFRC, 2009; *IDRL Programme: Annual Report 2010*, IFRC, 2011; and *Analysis of Law in the European Union Pertaining to Cross-Border Disaster Relief*, <http://www.ifrc.org/Global/Publications/IDRL/country%20studies/193300-Analysis-of-law-in-EU-EN.pdf> (1.11.2012).

<sup>35</sup> For example, see UN GA Res. 63/137 (2008), UN GA Res. 63/139 (2008), UN GA Res. 64/76 (2010), UN GA Res. 64/251 (2010), UN GA Res. 65/133 (2010), UN GA Res. 65/264 (2011).

<sup>36</sup> The Model Act with commentaries is available at: <http://www.ifrc.org/en/what-we-do/idrl/model-act-on-idrl> (1.10.2012). Also see, Resolution on strengthening normative frameworks and addressing regulatory barriers concerning disaster mitigation, response and recovery, adopted at the 31st International Conference of the Red Cross and Red Crescent in 2011.

preparation of a comprehensive set of draft articles on this topic. Once completed and if agreed by States, they could be presented as an international legal instrument, a draft convention. This is for the time being still unclear. The primary purpose and goal of this exercise is to provide a universal set of rules and principles for the effective protection of and assistance to the victims of disasters. Thereby, important interests of individuals, States and other actors must be taken into account, most importantly the human rights of disaster victims on one hand and the sovereignty of the affected State on the other must be balanced and respected. For the time being, the ILC has adopted 16 draft articles pertaining to the scope and purpose of the topic, the definition of a disaster, the relationship with international humanitarian law, the duty to cooperate, forms of cooperation, humanitarian principles, human dignity, human rights and the role of the affected State in disaster response, the duty of the affected State to seek assistance, the consent of the affected State to external assistance, as well as conditions on the provision, facilitation and termination of external assistance.<sup>37</sup>

## 6. Conclusion

Through the promotion and activities of the UN and the IFRC, awareness of the importance of the legal regulation of humanitarian assistance and the protection of victims of natural disasters has recently improved and there is wider acceptance of a unique and all-encompassing legal regime in this area, frequently labelled “international disaster response law”. It is hard to confirm that this term has today been widely recognised and accepted by States, international organisations, practitioners and lawyers as denoting a separate branch of international law. A major defect of this regime, which is also the main cause of the general non-recognition of a specific body of law in this field, is the lack of basic, universal groundwork at the multilateral level. Without a framework convention encompassing all the basic principles, rights and duties in international disaster relief, comparable to the Geneva Conventi-

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<sup>37</sup> For the work of the ILC on this topic, see Preliminary report on the protection of persons in the event of disasters, 2008; Report of the ILC, 2009; Second report on the protection of persons in the event of disasters, 2009; Report of the ILC, 2010; Third report on the protection of persons in the event of disasters, 2010; Report of the ILC, 2011; Fourth report on the protection of persons in the event of disasters, 2011.

ons of 1949 in international humanitarian law, the successful breakthrough of “international disaster response law” – or however else it might be called – is unlikely to happen.

As a consequence of the increased frequency of large-scale natural catastrophes and the need to provide quick, effective and coordinated humanitarian assistance to their victims, the international community should recognise the urgent need to legally regulate this area in a comprehensive and contemporary manner. Although law applicable to disaster response, assistance and protection in peacetime is not as elaborated as international humanitarian law, there is sufficient evidence of its existence in various treaties and documents. Bearing in mind past experiences, especially the failure of the effectiveness of the International Relief Union and the adoption of the UNDRD Draft Convention on Expediting the Delivery of Emergency Assistance, it seems that States are unwilling to codify this field of human action in a universal and comprehensive manner. Adopting a new international legal instrument regulating the donation, receipt and coordination of humanitarian assistance still seems to be controversial. The major problem for disaster response law is that it should be based on criteria of human need, but must also take account of the political considerations preserving the sovereignty of States. Nevertheless, this important human rights cause cannot be ignored any longer and the supreme interests of the victims and the principle of humanity must be recognised. Accomplishing this would confirm that “international disaster response law” does exist, moreover that it is needed and can be developed and recognised as a new branch of international law aimed at preserving the lives and dignity of individuals – the victims of disasters occurring in peacetime.

#### BIBLIOGRAPHY

- Agenda for Humanitarian Action, 28<sup>th</sup> International Conference of the Red Cross and Red Crescent, 2003, <http://www.icrc.org/eng/resources/documents/publication/p1103.htm> (1.11.2012).
- Analysis of Law in the European Union pertaining to Cross-Border Disaster Relief, International Federation of Red Cross and Red Crescent Societies, Geneva, 2010, <http://www.ifrc.org/Global/Publications/IDRL/country%20studies/193300-Analysis-of-law-in-EU-EN.pdf> (1.11.2012).
- ASEAN Agreement on Disaster Management and Emergency Response, 2005, <http://www.aseansec.org/17579.htm> (5.10.2012).
- Bridges Tyler, A Case for the Law, Red Cross Red Crescent, Vol. 1 (2011), pp. 10-25.
- Bugnion François, From Solferino to the Birth of Contemporary International Humanitarian Law, 2009, <http://www.icrc.org/eng/resources/documents/article/other/solferino-article-bugnion-240409.htm> (5.10.2012).

- Charter of the United Nations, <http://www.un.org/en/documents/charter/index.shtml> (1.11.2012).
- Code of Conduct for the International Red Cross and Red Crescent Movement and Non-Governmental Organizations in Disaster Relief, Annex VI, 26th International Conference of the Red Cross and Red Crescent, Geneva, 1995.
- Convention Establishing an International Relief Union, League of Nations, 1927, Treaty Series, Vol. 135, No. 3115.
- Disaster laws, Discussion paper, Sub-themes proposed for the 31st International Conference of the Red Cross and Red Crescent, Geneva, 2011, <http://www.ifrc.org/idrl> (1.10.2012).
- Draft Convention on Expediting the Delivery of Emergency Relief, UNDRO, Report of the Secretary General - Addendum: UN Document A/39/267/Add. 2 -E/1984/96/Add.2, 1984.
- Draft Model Agreement Concerning Humanitarian Relief Operations, International Law Association, Report of the 59th Conference, Belgrade, 1980.
- El Baradei Mohamed (ed.), Model Rules for Disaster Relief Operations, UN Institute for Training and Research, New York, 1982.
- Fisher David, Law and Legal Issues in International Disaster Response: A Desk Study, International Federation of Red Cross and Red Crescent Societies, Geneva, 2007.
- Framework Convention on Civil Defense Assistance, 2000, [http://untreaty.un.org/unts/144078\\_158780/16/2/7149.pdf](http://untreaty.un.org/unts/144078_158780/16/2/7149.pdf) (1.11.2012).
- Fourth report on the protection of persons in the event of disasters by Special Rapporteur, UN Document A/CN.4/643, 2011.
- Guha-Sapir Debby et al., Annual Disaster Statistical Review 2010 - The numbers and trends, Centre for Research on the Epidemiology of Disasters (CRED), Université catholique de Louvain, Brussels, 2010.
- Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance (IDRL Guidelines), 30<sup>th</sup> International Conference of the Red Cross and Red Crescent, 2007, <http://www.ifrc.org/global/publications/idrl/resources/guidelines.asp> (15.10.2012).
- Guiding Principles on the Right to Humanitarian Assistance, International Institute for Humanitarian Law, 1993, <http://www.iihl.org/iihl/Album/GUIDING%20PRINCIPLES.doc> (1.11.2012).
- Hoffman Michael, Towards an international disaster response law, World Disasters Report 2000, International Federation of the Red Cross and Red Crescent Societies, (2000), pp. 144-157.
- Hoffman Michael, What is the scope of international disaster response law?, in: International Disaster Response Laws, Principles and Practice: Reflections, Prospects, and Challenges, International Federation of the Red Cross and Red Crescent Societies (2003), pp. 13-20.
- Inter-Agency Standing Committee (IASC) Operational Guidelines on the Protection of Persons in Situations of Natural Disasters, UN Office for the Coordination of Humanitarian Affairs, 2011, <http://ochanet.unocha.org/p/Documents/Operational%20Guidelines.pdf> (1.11.2012).
- International Disaster Response Laws (IDRL): Project Report 2002-2003, 28th International Conference of the Red Cross and Red Crescent, International Federation of Red Cross and Red Crescent Societies, 2003.
- International Disaster Response Laws, Rules and Principles (IDRL) Programme: Annual Report 2010, International Federation of Red Cross and Red Crescent Societies, 2011.
- Jakovljević Boško, International disaster relief law, Israel Yearbook on Human Rights, Vol. 34 (2004), pp. 251-286.
- Macalister-Smith Peter, Disaster Relief: Reflections on the Role of International Law, Zeitschrift für ausländisches öffentliches Recht und Völkerrecht, Max-Planck-Institut, Vol. 45 (1985), pp. 25-43.
- Macalister-Smith Peter, International guidelines for humanitarian assistance operations, Max Planck Institute for Comparative Public Law and International Law, Heidelberg, 1991.
- Macalister-Smith Peter, International Humanitarian Assistance: Disaster Relief Actions in International Law and Organization, Martinus Nijhoff Publishers, Dordrecht, 1985.
- Macalister-Smith Peter, Reflections on the Convention Establishing an International Relief Union of July 12, 1927, Legal History Review, Vol. 54 (1986), pp. 363-374.
- Model Act for the Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance, Pilot Version, International Federation of Red Cross and Red Crescent Societies, 2011, <http://www.ifrc.org/en/what-we-do/idrl/model-act-on-idrl> (19.10.2012).
- Principles and Rules of Red Cross and Red Crescent Disaster Relief, 21st International Conference of the Red Cross, Istanbul 1969, amended in 1973, 1977, 1981, 1986 and 1995.
- Preliminary report on the protection of persons in the event of disasters by Special Rapporteur, UN Document A/CN.4/598, 2008.
- Progress in the implementation of the Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance, Background report, 31st International Conference of the Red Cross and Red Crescent, International Conference of the Red Cross and Red Crescent, Geneva, 2011.

- Report of the International Law Commission, Sixty-first session, 2009, General Assembly Official Records, Sixty-fourth session, Supplement No. 10, UN Document A/64/10.
- Report of the International Law Commission, Sixty-second session, 2010, General Assembly Official Records, Sixty-fifth session, Supplement No. 10, UN Document A/65/10.
- Report of the International Law Commission, Sixty-third session, 2011, General Assembly Official Records, Sixty-sixth session, Supplement No. 10, UN Document A/66/10 and Add.1.
- Resolution 5, International Disaster Response Law, Red Cross and Red Crescent Council of Delegates, 2001.
- Resolution on strengthening normative frameworks and addressing regulatory barriers concerning disaster mitigation, response and recovery, 31<sup>st</sup> International Conference of the Red Cross and Red Crescent, 2011.
- The Right Aid at the Right Time, Progress report on the Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance, International Federation of Red Cross and Red Crescent Societies, Geneva, 2009.
- Second report on the protection of persons in the event of disasters by Special Rapporteur, UN Document A/CN.4/615, 2009.
- Tampere Convention on the Provision of Telecommunication Resources for Disaster Mitigation and Relief Operations, 1998, <http://www.itu.int/ITU-D/emergencytelecoms/tampere.html> (1.11.2012).
- Third report on the protection of persons in the event of disasters by Special Rapporteur, UN Document A/CN.4/629, 2010.
- Thürer Daniel, Dunant's pyramid: Thoughts on the "humanitarian space", International Review of the Red Cross, Vol. 865 (2007), pp. 49-55.
- Toman Jifi, Towards a Disaster Relief Law: Legal Aspects of Disaster Relief Operations, in Kalshoven Frits (ed.), Assisting the Victims of Armed Conflicts and Other Disasters: Papers delivered at the International Conference on Humanitarian Assistance in Armed Conflict, The Hague, 22-24 June 1988, Martinus Nijhoff Publishers, Dordrecht, 1989, pp. 181-199.
- UN General Assembly Resolution 46/182 on Strengthening of the coordination of humanitarian emergency assistance of the United Nations, 1991.
- UN General Assembly Resolution 63/137 on Strengthening emergency relief, rehabilitation, reconstruction and prevention in the aftermath of the Indian Ocean tsunami disaster, 2008.
- UN General Assembly Resolution 63/139 on Strengthening of the coordination of emergency humanitarian assistance of the United Nations, 2008.
- UN General Assembly Resolution 63/141 on International cooperation on humanitarian assistance in the field of natural disasters, from relief to development, 2008.
- UN General Assembly Resolution 64/76 on Strengthening of the coordination of emergency humanitarian assistance of the United Nations, 2010.
- UN General Assembly Resolution 64/251 on International cooperation on humanitarian assistance in the field of natural disasters, from relief to development, 2010.
- UN General Assembly Resolution 65/133 on Strengthening of the coordination of emergency humanitarian assistance of the United Nations, 2010.
- UN General Assembly Resolution 65/264 on International cooperation on humanitarian assistance in the field of natural disasters, from relief to development, 2011.