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Abstract

This dissertation uses a subaltern perspective to examine how international law – namely, international disaster law (IDL) and international human rights law (IHRL) – may be used by marginalised people to address disaster-related vulnerability. A consideration of international law's utility for marginalised people is required because empirical evidence shows that there is a correlation between marginalisation and disaster: marginalised people are most vulnerable to disaster, as well as being the most vulnerable in post-disaster recovery situations. The concept of the subaltern refers to classes in society that, owing to various forms of prejudice, are unable to employ the modes of communication of the powerful – such as law – to bring attention to their concerns, and are thereby rendered invisible in dominant society. In legal analysis, the concept of the subaltern is used to identify how the powerless are prevented from using law, as well as to identify how such obstructions may be overcome. The subaltern concept is deployed in this dissertation by using the concept of marginalisation as an analytical lens to examine international law applicable to disaster. To conduct the review of the international legal response, Part I discusses the legal framework and literature review on international law and disaster. It establishes that the bulk of the literature and international rules applicable to disaster are preoccupied with establishing and identifying the content of intra-state obligations, although IHRL is used to "humanise" the law. On this basis, Part II considers the utility of state-centric IDL for marginalised people by examining the historical evolution of the concept of disaster in order to excavate the presence of marginalised people from these rules. It then examines how the issue of marginalisation and disaster has been obscured by discussing the historical background of prominent international disaster instruments. Part II concludes that there is a small and ambiguous legal space that recognises the agency of marginalised people exists, but that the utility of this space is questionable because of the ways in which marginalisation has been obscured in laws in the past. Part III considers how IHRL, and non-legal methods may be used by marginalised people to overcome the limitations of IDL. Part III surveys the practice and theory of IHRL with regard to disaster. It finds that it is of limited use to marginalised people because, among other things, its conceptual scope is limited so that development-related disasters are not given the same treatment as natural disaster. IHRL alone is insufficient to address IDL's flaws with regard to marginalisation and disaster, and so non-legal means of addressing the correlation between marginalisation and disaster are discussed. It is concluded that a counter-hegemonic strategy that encourages 1) academic discourse to create new understandings of marginalisation and disaster, 2) the politicisation of marginalisation and disaster issues in international relations, and 3) the use of legal mechanisms, is the best way forward for marginalised people. The dissertation concludes by discussing models of disaster and marginalisation so that the

conceptual scope of IDL and IHRL may be expanded.

CONTENTS

Abbreviations

CAT	Convention against Torture
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CRC	Convention on the Rights of the Child
CERF	Central Emergency Revolving Fund
CPRD	Convention on the Rights of Persons with Disabilities.
CRED	Center for the Epidemiology of Disasters
DFID	Department for International Development (UK)
DHA	Department for Humanitarian Affairs
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
ERC	Emergency Relief Coordinator
IACHR	Inter-American Convention on Human Rights
IACtHR	Inter-American Court of Human Rights
IASC	Inter-Agency Standing Committee
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
IDNDR	International Decade for Natural Disaster Reduction
ISDR	International Strategy for Disaster Reduction
IEL	International Environmental Law
IGO	Intergovernmental Organisation
IHRL	International Human Rights Law
IHL	International Humanitarian Law
ILC	International Law Commission
ISDR	International Strategy for Disaster Reduction
HDI	Human Development Index
HFA	Hyogo Framework for Action
NGO	Non-governmental Organisation
OAS	Organization of American States
OCHA	Office for the Coordination of Humanitarian Affairs
TWAIL	Third World Approach(es) to International Law
UDHR	Universal Declaration of Human Rights
UN	United Nations

UNDRO	United Nations Disaster Relief Co-ordinator
UNGA	United Nations General Assembly
UPR	Universal Periodic Review
WHO	World Health Organization
WSF	World Social Forum

Chapter One. Introduction

1.1 Research problem and background

In this dissertation, how marginalised people – who are often the most vulnerable to disaster, as well as being some of the most vulnerable people in post-disaster situations – may use the nascent body of international disaster law (IDL) and international human rights law (IHRL) to press for justice in relation to disaster is examined. This entails an examination and evaluation of the most relevant areas of international law to disaster and the person from a subaltern perspective, as well as extra-legal means of overcoming any obstructions that marginalised people may face in using international law. In examining this research problem, two interlinked issues will be examined: not only will practical strategies for marginalised people be explored and proposed, but the evaluation of the law's utility will facilitate discussion about the future of international law and IDL in general.

It might well first be asked why the issue of disaster should be considered in international law at all, given that measures with regard to both the prevention and relief of disastrous events have been, under traditional views of international law, confined to the domestic jurisdiction under the doctrines of sovereignty and non-interference. Despite the dominance of these doctrines, it is now widely acknowledged in international legal documents that phenomena labelled as "disaster" are international legal concerns. This is evidenced variously by international documents on the subject (for example, the United Nations General Assembly has indicated that "enhancing international cooperation on emergency assistance is essential" in recent resolutions[1]), the institutionalisation at an international level of mechanisms to deal with various aspects of disaster, as well as moves to codify existing international rules on disaster. These demonstrate beyond doubt that there is international consensus that international law is a tool that may be used to regulate inter-state, intra-state, and perhaps non-state actors such as relief organisations and international institutions organisations, with regard to disaster. Further, the trajectory of developments from the 1990s indicates that a body of rules organised on the concept of disaster is in the process of consolidation. The creation of a new disaster-related international law institution implies that the idea of disaster and its attendant institutions are being constructed to create a new "universal" idiom centralised in one treaty, in the hope that the current plurality of disparate international disaster rules will be improved upon. In addition, the people of the world are bound more and more tightly together as a result of technological developments and globalising processes, and it has become clear

[1] UNGA, *Strengthening of the coordination of emergency humanitarian assistance of the United Nations*, A/RES/65/119 (2011), preambular para.10; UNGA, *Strengthening of the coordination of emergency humanitarian assistance of the United Nations*, A/RES/67/87 (2013), preambular para. 9.

that the causes and remedies of disaster potentially lie in interactions that may transcend the traditional scales of interaction envisaged by international law – that is, the causes and solutions for rectifying disaster-related marginalisation may lie in international legal mechanisms, or in interactions and systems that lie entirely outside international law. In either case, international law often influences these interactions, or is influenced by them, and these mutual influences should be considered, given the current interest in disaster.

If it is accepted that disaster is a concept that is now widely agreed to be an international legal concern and that a body of international disaster law is in the process of materialising, why IDL should be examined from the perspective of marginalisation is a question that naturally follows. The widespread agreement that international law can be used to regulate transnational action for the benefit of people who are potentially and actually affected by disaster has not translated into clarity regarding the status and rights of people, and marginalised people in the embryonic international disaster law. Current international rules that may apply to the situation of disasters are structured such that the bulk of rules organised on the concept of disaster apply between states, and this state-centricity is addressed largely through international human rights discourse. This dynamic is not new – humanitarianism, cooperation and solidarity have been used in attempts to circumscribe the excesses of the doctrines of sovereignty and non-intervention throughout the history of international law. The use of IHRL to temper the state-centricity of international disaster rules is the latest manifestation of international law's nature of being "in between", that is, being characterised by an inherent tension between states and non-states, positivism and natural law, and horizontality and verticality.[2]

In addition to the pull between sovereignty and humanitarianism that has marked disaster's fraught regulation in international law, the linkages between disaster, marginalisation and international law themselves are not easily described. Disaster and marginalisation are concepts that are not easily defined; equally, their connections with international law are difficult to elucidate, as international law is not traditionally a mechanism that facilitates interaction between people and the international community. Despite this difficulty, which stems largely from the traditional view of international law as a tool for the regulation of intra-state relations, there is a considerable amount of empirical evidence that demonstrates the linkages between economic, social and political marginalisation with heightened vulnerability to disaster, and greater vulnerability in post-disaster situations.

[2] See generally F. Mégret, "International Law as Law" in J. Crawford & M. Koskeniemmi (eds.), *The Cambridge Companion to International Law* (New York: Cambridge University Press, 2012), 64-92.

Disaster statistics vary in their findings significantly as definitions of disaster are numerous – perhaps because a settled definition of disaster does not exist in any discipline. Even so, the general trends regarding marginalisation indicate that countries that rank low on development indices are more susceptible to being seriously affected by disaster than developed countries, and further, that those who are the most socially and economically marginalised within states also suffer the most. The International Federation of the Red Cross' (IFRC) 2001 *World Disaster Report*, citing research carried out by the Centre for the Epidemiology of Disasters (CRED), points out that an analysis of the 2,557 disasters reported from the period between 1991 to 2000 indicates that more than half of the disasters occurred in countries of medium human development,[3] while only 2 percent of disasters occurred in countries of high human development.[4] High human development countries include Japan, Australia, and the Nordic countries, while medium human development countries include China and India.[5] An analysis of the effects of disasters showed that the number of those killed as a result of disaster world-wide in the period from 1991-2002 was 752,251, and of this total number reported, 80 percent were in Asian countries, whiles 62 percent were in nations of low human development.[6] The research further indicated that while 22.5 people die per reported disaster in nations with a high human development index, in medium human development countries, this increased to 145 deaths per disaster. In low human development countries, the figure was 1052 per disaster.[7] These trends have been recognised by the international community, for example, in statements made in the United Nations General Assembly (UNGA) and the United Nations Economic and Social Council (ECOSOC),[8] and in a multitude of UNGA, ECOSOC, and other UN body resolutions throughout the years.[9]

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[3] Human development is classified by the UNDP in three clusters: high, medium and low. High human development countries are those that have a human development index (HDI) of 0.800 or above, medium human development countries are those with a HDI between 0.500-0.799, and low development countries have a HDI of less than 0.500. UNDP, *Human Development Report 2007/2008 Fighting Climate Change: Human Solidarity in a Divided World* (New York: UNDP, 2007), 222.

[4] IFRC, *World Disasters Report 2001: Focus on Recovery* (Geneva: IFRC, 2001), 162.

[5] For lists of countries for each cluster, see "Classification of countries" in UNDP, *Human Development Report 2001: Making New Technologies work for Human Development* (UNDP: New York, 2001), 257. Countries are classified annually in UNDP Human Development Reports.

[6] Id., 162, 175.

[7] Ibid.

[8] See e.g. paras. 83, 84 of the Ministerial Declaration adopted at the 36th annual meeting of the Minister for Foreign Affairs of the Group of 77 in the *Report of the Economic and Social Council Sixty-Seventh Session*, A/67/519 (2012); and paras. 601, 610 of the document issued by the 16th Summit Conference of the Movement of the Non-Aligned Countries in the *Report of the Economic and Social Council Sixty-Seventh Session*, A/67/519 (2012); preambular paragraphs 9 ("*Also expressing its deep concern* that rural and urban poor communities in the developing world are the hardest hit by the effects of increased disaster risk"), 10, 12, 19 ("*Recognizing* that efforts to achieve economic growth, sustainable development and internationally agreed development goals, including the Millennium development goals, can be adversely affected by natural disasters, and noting the positive contribution that those efforts can make in strengthening the resilience of populations to such disasters"), 21 in UNGA Resolution, *International cooperation on humanitarian assistance in the field of natural disasters, from relief to development*, A/RES/66/227 (2012) etc.

[9] See e.g. UNGA, *Assistance in cases of natural disaster,* A/RES/2717 (XXV) (1970), preambular para. 2;

However, it is not just within the community of states that this correlation exists. The link between inequality – often in the form of poverty and social exclusion – and disaster within states is illustrated by statistics and studies of the effects of disasters. Blaikie et al. neatly capture the essence of the problem:

> "People who are economically marginal (such as urban squatters) or who live in 'marginal' environments (isolated, arid, or semi-arid, coastal, or forest ecosystems) tend also to be of marginal importance to those who hold economic and political power."[10]

Blaikie et al. found that the 1976 earthquake in Guatemala killed 22,000 people living in unsafe houses in Guatemala's rural highlands and in squatter settlements within Guatemala City's slums, while it left the upper and middle classes virtually untouched.[11] This issue of class was compounded by ethnic divisions: the majority of the rural people that died were indigenous Mayan Indians. Further, post-disaster, the survivors of these areas had limited access to government assistance for rehabilitation and recovery. Blaikie et al. conclude that "The socio-economic forces that led to so many people living in unsafe conditions, and the political forces that controlled post-disaster aid, were a mirror of the society at large."[12]

Blaikie et al.'s assertions also apply to the case of the 1984 Bhopal chemical factory incident in which an estimated 3,000 died while approximately 30,000 were injured. The Bhopal tragedy occurred in the context of the national promotion of the production of insecticide for the modernisation of India, and this movement was superimposed on India's existing class and caste structure. The dead and injured belonged, for the most part, to the group of people who had, as a result of external economic and social influences,

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UNGA, *International action for the mitigation of the harmful effects of storms*, A/RES/2914 (XXVII) (1972), preambular para. 1; ECOSOC, *Office of the United Nations Disaster Relief Co-ordinator*, E/RES/1979/59 (1979), preambular para. 4; UNGA, *Office of the United Nations Disaster Relief Co-ordinator*, A/RES/41/201 (1986), preambular para. 8; UNGA, *International Decade for Disaster Reduction*, A/RES/42/169 (1987), operative paras. 1, 2, 4; UNGA, *International Decade for Disaster Reduction*, A/RES/43/202 (1988), preambular para. 1, 2; ECOSOC, *Assistance in the case of natural disasters and other disaster situations: Office of the United Nations Disaster Relief Co-ordinator*, E/RES/1990/63 (1990), preambular para. 3; UNGA, *Strengthening of the Office of the United Nations Disaster Relief Co-ordinator*, A/RES/45/221 (1990), preambular para. 1, 2; UNGA, *International cooperation to reduce the impact of the El Niño Phenomenon*, A/RES/52/200 (1998), preambular para. 3; UNGA, *International Decade for Disaster Reduction: Successor Arrangements*, A/RES/54/219 (1999), preambular para. 4, 5, operative para. 2, 10; UNGA, *International Decade for Disaster Reduction*, A/RES/56/195 (2001), preambular para. 7, operative para. 2; UNGA, *International cooperation on humanitarian assistance in the field of natural disasters, from relief to development*, A/RES/58/25 (2003), operative paras. 2, 3.

[10] P. Blaikie, T. Cannon, I. Davis & B. Wisner, *At Risk: Natural Hazards, People's Vulnerability and Disasters* (1st ed.), (London: Routledge, 1994), 24.

[11] Id., 170.

[12] Blaikie et al. citing Plant's study of 1978. Ibid.

lived in the areas surrounding the chemical factory.[13]

A more recent example of the ways that structural inequalities may affect survivors of disaster may be found in the tsunami and earthquake that struck Japan on 11 March 2011. The earthquake caused a tsunami which then struck the Fukushima Daiichi power plant and crippled it, thereby releasing radiation into the environment: this amount has been estimated to be equivalent to 168 times the radiation released by the atomic bomb dropped on Hiroshima.[14] The Japanese government designated the area within a 30 kilometre radius of the power plant as a mandatory evacuation zone, based on a 20 micro sievert per year exposure standard, which significantly exceeded the 1 micro sievert per year standard set by the International Commission on Radiological Protection.[15] The radioactive material, which included some types of caesium with long half-lives, spread over several prefectures, with the most affected area being Fukushima prefecture. In some areas of Fukushima prefecture, aerial monitoring tests found that the total amounts of both caesium 134 and 137 exceeded 30,000,000 Becquerel per square metre.[16] However, some heavily contaminated areas include cities with relatively large populations, such as Fukushima city, that fall outside the mandatory evacuation zone designated by the government. In these contaminated areas, only people who have sufficient social or financial capital were able to evacuate, as the government provided financial aid to only those whose properties lay within the initially established 30 kilometre radius mandatory evacuation zone.[17] The quality of life and the health of the people who have no choice but to remain are therefore compromised. The problem is further complicated for those who cannot afford health care, or for foreigners who may not speak Japanese sufficiently to access information and services related to the disaster. In addition, because the

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[13] S. Jasanoff, "Bhopal's Trials of Knowledge and Ignorance" 42 (2007-2008) *New England Law Review* 679, 680.

[14] Ministry of Economy, Trade and Industry Japan, *Provisional calculations comparing the radioactive materials released by the TEPCO Fukushima Daiichi Nuclear Power Plant and the atomic bomb dropped on Hiroshima* <http://meti.go.jp/press/2011/08/201108260101-1.pdf> and <http://meti.go.jp/press/2011/08/201108260101-2.pdf > (26 August 2011).

[15] The units measure different things, sievert is a unit measuring the biological impact of radiation, or the aborbed ionising radiation with compensation regarding biological effects. 1 Sievert (SV) is 1,000 milli sievert (mSv).The Becquerel (Bq) is a unit measuring radioactivity strength, and is equivalent to one nucleus disintegration per second. A radiation dose of 500 millisieverts can cause symptoms of radiation poisoning. For contrast, the average outdoor levels of amount of radon gas, a radioactive gas that causes lung cancer in many countries, is between 5-15 Becquerels per cubic metre. Higher Becquerel counts may lead to higher risk of biological impact, but the Becquerel and the sievert are fundamentally different measures.

[16] Ministry of Education, Culture, Sports, Science and Technology Japan, *Houshasenryō tō bunpai mappu* (Map of the Distribution of Levels of Radioactive Material and others), http://ramap.jaea.go.jp/map. For comparison, the amount of becquerels in a standard 100 metre square Australian home of radon gas is 3000 Bq.

[17] Human Rights Now et al., *NGO Statement: Submission of statement regarding the human rights situation of Fukushima to the United Nations Human Rights Council* (19 February 2013) <http://hrn.or.jp/activity/IWHO%20Human%20Rights%20Now%20HRC%20submission%Fukushima_jp.pdf>.

disaster-struck area exceeds over 500km from north to south, many of the foreigners residing in the Tōhoku region do not live in cities, but in farming and fishing villages, where they are geographically marginalised and disappear from view of Japanese society. Some of the most adversely affected are immigrant women who have lost their livelihoods as a result of the disasters, particularly those that do not read and write Japanese sufficiently.[18]

These statistics and testimonies show that a correlation between various forms of marginalisation and disproportionate adverse effects and risks relating to disaster exist. This correlation raises fundamental questions regarding the fairness of international law, and particularly of IDL in light of its current state of development, and how law shapes understandings and responses to disaster and marginalisation. Disasters can be seen as "essentially historically and spatially specific outcomes of the process of contemporary capitalism",[19] or alternatively, as having "institutional and political genealogies, often with a distinctive national character" that are related to the "social distribution of the exposure, vulnerability and suffering associated with catastrophes".[20] Put another way, the examples discussed above demonstrate that those who are actually or potentially most at risk from external hazards are the least able to access political, economic or social resources to protect themselves against disaster, and also to recover from them.

The social vulnerability that is exposed by disastrous phenomena suggests that existing power structures must be addressed if suffering from disastrous phenomena is to be reduced. The greatest benefit that can be derived from legal analysis from the idea of marginalisation is the ability to focus research, advocacy and knowledge on the components of disaster that can be affected by law. Evaluating law's fairness from this point of view is a measure of our achievements as "social and moral beings."[21] However, evaluating law from this point of view faces difficulty because a disjuncture inheres in the

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[18] See e.g. N. Satō, "'Ishinomaki shi chousa' ni miru gaikokujin hisaisha no kukyō (Adversity faced by foreign disaster victims as revealed by the 'Ishinomaki city survey'") in Gaikokujin jinken renrakukai (ed.), *Nihon ni okeru gaikokujin minzokuteki mainoritei jinken hakusho 2013nen* (White Paper on the Human rights of Foreigners and Ethnic Minorities in Japan 2013) (Tokyo: Gaikokujin jinken renrakukai, 2013), 15-17.

[19] B. Wisner, P. Blaikie, T. Cannon, I. Davis, *At Risk: Natural Hazards, People's Vulnerability and Disasters* (2nd ed.) (Oxon: Routledge, 2004), 321.

[20] A. Sarat & J. Lezaun (eds), *Catastrophe: Law, Politics and the Humanitarian Impulse* (Amherst: University of Massachusetts Press, 2009), 3.

[21] T. Franck, *Fairness in International Law and Institutions* (Oxford: Oxford University Press, 1998), 7-8. Procedural fairness enhances the international legal system's legitimacy, as it accommodates the belief that for a system of rules to be fair, it must be rooted in a framework of formal requirements about how rules are made, interpreted and applied. On the other hand, substantive fairness refers to the state of distributive justice brought about by a rule. Public perception of the fairness of a rule also contributes to its legitimacy and level of voluntary compliance. This is part of a broader idea of legitimacy of international legal rules which is expounded in more detail in T. Franck, *The Power of Legitimacy among Nations* (Oxford: Oxford University Press, 1990).

heart of any law that seeks to protect persons in the face of disaster. That is, IDL, as an expression of the status quo, simultaneously seeks to benefit those who are actually or potentially marginalised as a result of disaster – and therefore subsuming the marginalised – while also excluding the already socially and economically marginalised from its operation and application. Evaluation of the law should be aimed at creating a future international disaster law that takes into account this disjuncture regarding marginalisation. Regulating marginalisation in disaster requires an understanding not only of the need to accept responsibility for the impact of such vulnerability when disastrous external phenomena affect a community, but also how international law affects and limits this understanding.

In addition, the correlation between marginalisation and disaster points to the need to ensure that IDL becomes a tool that can facilitate the best outcomes in disaster-related processes for people. Only when law-making processes have taken into account the needs of people, and marginalised people, *as those people perceive their needs*, can international law become relevant and effective. This takes on greater significance if we consider disaster in terms not of the existence of an external natural geophysical phenomenon, but rather, as the effect of an external hazard on the vulnerabilities of a society. In practical terms, this means that in order to truly understand disaster, and to respond and prevent it effectively, those who are vulnerable to disaster – often the marginalised – should be able to articulate what it is that they believe makes them vulnerable in the first place. This recognises that disaster and vulnerability themselves are social constructions – that is, the product of informal and formal social negotiation. Accordingly, the significance of utilising marginalisation as a point of focus for research can lie in underscoring how important variables creating vulnerability to disaster have been neglected in disaster research, and policy and law creation. A deeper understanding of forms of marginalisation and the vulnerabilities that they give rise to can give disaster planning – which includes the planning of disaster relief actions – complexity that renders disaster-related legal processes more meaningful and relevant. Put simply, law has the potential to even power disparities and contribute to greater understandings of effective disaster management mechanisms by facilitating processes of social negotiation regarding what constitutes disaster, vulnerability, suffering and needs. In the context of post-disaster reconstruction, the UN special rapporteur on adequate housing has observed that "Relief efforts risk turning survivors into dependents of the state when large contractors and government machinery lead the process of rehabilitation without input from the people. We must recognise that resettlement and rehabilitation can be most effective only when human rights standards are met and the survivors themselves are given the opportunity to

transform their lives."[22]

These two concerns point to the crux of the problem that is addressed in this dissertation: if international law gives marginalised people (and people in general) only a limited subjecthood, and thereby handicaps marginalised people when it comes to exercising subjecthood, what use is international law for them? How can they bring their needs, views and experiences to the attention of decision-making powers about desired allocations of economic, political and social resources?

This dissertation examines the issue by considering what legal strategy could be used, under the current state of international law relating to disaster, by marginalised people, who do not traditionally have access to international law, so that their concerns, needs and ideas regarding disaster, vulnerability and solutions can be heard in forums that have traditionally excluded them. On this basis, the issue above will be examined in terms of the current manifestation of tension between sovereignty and the principle of humanity: the interplay between international rules pertaining specifically to disaster and IHRL. In this interplay, the fundamental issue, whether and how marginalised people can use international law to their advantage, is considered in a two-step process. Firstly, if marginalised people are the most disproportionately affected by disaster, and if IDL is becoming an autonomous body of international law, then how IDL's potential as a tool to reduce vulnerability to disaster, as well as reducing vulnerability in post-disaster situations, must be understood. Secondly, if IDL is not adequate for the purpose of reflecting the link between marginalisation and disaster, then other ways that international law may be used to overcome IDL's deficiencies must be examined.

The centrality of the notions of marginalisation and vulnerability lend themselves to an analysis based on the notion of subalternity. There are various understandings and usages of the concept of subalternity, but the most relevant to this dissertation is Spivak's understanding of subaltern.[23] Spivak conceived of subalterns as being those who cannot access means of social mobility. Referring to Marx's account in *The Eighteenth Brumaire* of the way in which French agrarian smallholders understood themselves to be a class, but lacked the means (for example, the ability to use the law) to articulate their interests

[22] J. Krishnadas, quoting the UN Special Rapporteur in "Rights to Govern Lives in Postdisaster Reconstruction Processes" 14 (2008) *Global Governance* 347, 347.

[23] The Subaltern Studies group was active in India in the 1970s and 1980s; they sought to reclaim Indian history from the Indian elite who perpetuated systems of colonial control in different forms, and bring to light the agency and power of the non-elite classes. Their leader, Guha, utilised a broad conceptualisation of subaltern, opining that subalternity is a "general attribute of subordination in ... society, whether expressed in terms of class, caste, age, gender, and office or in any other way." R. Guha, "Preface" in R. Guha & G.C Spivak (eds.), *Selected Subaltern Studies* (New York: Oxford University Press, 1988), 35. Subalternity, according to Guha's definition would therefore encompass any person who is subordinated in anyway.

as a class, Spivak argues that subalternity lies in the inability to perform speech functions *as a class*. Consequently, the agency of this class is not recognised.[24] In other words, subalterns are a class without an identity, and their lack of identity is created by collective social negotiation. In this dissertation, the subaltern concept is understood to have fundamental parallels to marginalisation, and therefore disaster-related vulnerability. Thus, the concept of subaltern and its analytical tools, are used in this dissertation to interrogate international disaster law and frame the examination of the ways in which law's subordinating tendencies may be subverted, as well as to structure the dissertation.

1.2 Structure of the dissertation

The analytical orientation of this dissertation is fundamentally informed by the notion of subalternity, which is informed in the legal context by the "postcoloniality" of law: international law is susceptible to power, but it also maintains an oppositional relation to power.[25] The adoption of a subaltern view requires a consideration of the ways in which law silences the subaltern, and also a consideration of the ways in which law can be subverted for the benefit of the subaltern. Recognition of the double-edged nature of law under the concept of subalternity provides the structure of this dissertation in two senses: it provides the grounding for the identification of legal and other strategies that marginalised people may use to pursue the reduction of disaster-related vulnerability on their own terms; and a broader consideration of the significance of the correlation between disaster and marginalisation imply for fairness and the future development of international law. Accordingly, the dissertation is structured in three parts; Part I discusses foundational knowledge, Part II considers whether and how IDL recognises the agency of marginalised people and therefore whether IDL can be used by marginalised people, and Part III considers how inadequacies in IDL's treatment of the concept of marginalisation may be rectified.

Part I consists of two chapters that lay the foundations for an exploration of the fairness of international disaster rules. In light of the undeveloped nature of IDL, the descriptive work carried out in Part I aims to create understanding on the current international legal norms and principles that regulate the concept of disaster. Chapter Two discusses the international legal framework on disaster and how it relates to individuals by describing the applicable law in terms of their horizontal (inter-state) or vertical (intra-state) nature. Chapter Three reviews literature on international disaster rules and individuals in order to identify general trends in academic thought. These chapters show that international law

[24] G.C. Spivak, "Scattered Speculations on the Subaltern and the Popular", 8(4) (2005) *Postcolonial Studies* 475, 476.
[25] S. Pahuja, "The Postcoloniality of International Law" 46(2) (2005) *Harvard International Law Journal* 459, 469.

pertaining to disaster and marginalised people is characterised by a split between the vertical obligations of states towards people in their territorial jurisdictions in times of disaster, and the horizontal inter-state obligations and rights that are organised on the concept of disaster. The literature review demonstrates that academic attention has considered the obligations of the state primarily in terms of disaster-related inter-state obligations, and shows that a subject/object dichotomy which positions individuals, and therefore marginalised people, as passive objects of the law as the dominant theoretical foundation on which academic discourse is conducted.

On the basis that the bulk of international rules organised on the concept of disaster are state-centric, Part II examines the potential for marginalised people to use these rules (for example, in advocacy) by considering how marginalisation is understood in them. This examination is carried out through a consideration of the history of the development of two aspects of the law: firstly, legal texts and their interpretations, as well as the drafting history of the most important international legal documents regulating the concept of disaster. How disaster has been conceptualised in international rules throughout the history of modern international law, as well as understanding how law developed in relation to voices from below, give an indication of IDL's potential utility for marginalised people. Chapter Four examines the understanding of marginalisation that exists in international disaster rules through a consideration of international disaster rules from a positivist perspective, while Chapter Five does the same through a socio- historical approach. This consideration is necessary because the state-centric nature of international disaster rules, as well as the academic emphasis on state obligations mean that there is little guidance on the legal position of people, let alone marginalised people, in international disaster rules. This means that understandings of people, and marginalised people, must first be extrapolated from international disaster rules, as by definition marginalised people do not exist in the lines of the law. Chapter Four shows that there has been a gradual progression and widening of IDL to encompass the notions that disaster may be constituted by natural and other disaster, that disaster is constituted by the coincidence of external hazards and vulnerabilities, and the importance of the local in understanding vulnerability. Chapter Five balances the positivist analysis of Chapter Four with a subaltern perspective by conducting a historiographical analysis of the social and political background of significant disaster instruments. Chapter Five suggests that the slow embrace of the notion of marginalisation in international disaster rules demonstrated in Chapter Four, although a welcome development, points to a more complicated reality. That is, the seeming expansion of the notion of vulnerability to encompass marginalisation cannot be seen as a step forward because the understanding of how vulnerability is determined is limited by the dominance of natural disaster, development,

and the helplessness and passivity of disaster survivors and marginalised people. Part II argues that international disaster rules limit the capacity of marginalised people to reduce their vulnerability to disaster as well as their vulnerabilities post-disaster, because international legal instruments entrench the application of international law from developed states to developing states, in such a way that the local is ignored. Secondly, international disaster rules do not conceptualise the status of vulnerability as the result of a process of communication, but rather as the result of unilateral decisions on the part of states, if vulnerability is considered at all.

Part III addresses the second question of the two-part problem, namely, whether or how the state-centric nature of international disaster rules can be overcome using other mechanisms of international law, or other extra-legal methods. Chapter Six considers IHRL's potential in this context. IHRL is the only international law that envisages direct use by people, and therefore marginalised people. Chapter Six proceeds on a discussion of the relationship between international human rights law and international disaster rules by discussing human rights theory and practice to understand how IHRL conceives of and addresses disaster-related vulnerability. The theory examined is academic discussion, while the practice covered is the work of human rights bodies on disaster. On this descriptive examination of theoretical and practical approaches to the question of disaster-related vulnerability in international human rights law, the contours of the gains made thus far are critiqued. The critique is informed by Third World Approaches to International Law (TWAIL), subaltern and postcolonial perspectives. It is concluded that although international human rights law goes some way to addressing the glaring holes in international disaster rules with regard to marginalisation, it is incapable of addressing the fundamental problems posed by understandings of disaster and vulnerability from the perspective of marginalisation. On this basis, Chapter Seven considers extra-legal mechanisms that might be used to supplement the potential of IHRL to bring into view the perspectives of marginalised people regarding disaster. Chapter Seven considers international relations literature that discusses the democratisation of international law, as well as counter-hegemonic strategies discussed in TWAIL literature. It concludes by proposing that a multi-pronged counter-hegemonic strategy be used, as it is the most practical position to take at this stage of the development of the law, as well as recognising that the statist structures of international law can be used strategically according to the needs of marginalised people. This conclusion is based on the recognition that international law can function as a mechanism that facilitates a conversation of sorts about vulnerability between the marginalised and the elites of the international legal milieu, as well as the fact that problems caused by disaster as well as their solutions are often, as a result of globalising processes, found in scales that

transcend the traditional categories of jurisdiction (local, national, international) imposed by international law.

1.3 Methodology

The tripartite nature of this dissertation requires the adoption of three different methodologies.

In Part I, what Simma called a "modern positivist" approach is taken in outlining the legal framework in Chapter One. Principles of international disaster rules are identified, and the material used in the examination are drawn from sources of law used in this analysis are based on the sources of law outlined in article 38J of the International Court of Justice Statute. Material used in Chapter Two is chosen on the basis of whether it is about disaster and international law if it presents itself as being so.

Part II uses the analytical tool created in postcolonial studies, TWAIL and subaltern studies of historiographical analysis. This tool is used in Chapter Four in the positivist examination of sources of law to uncover broad trends. The sources of law used in this analysis are again based on the sources of law outlined in article 38J of the International Court of Justice Statute. As the focus of this research is international law, the sources of law considered in this Part are limited to those which aim at universal application. In keeping with a subaltern approach, the positivist approach to legal analysis is supplemented with views from below through an analysis of the social, historical and political environments surrounding the creation of major international legal instruments. In this way, power relations that have informed the limited way in which international disaster rules have understood and addressed marginalisation until the present can be brought to light. Sociological studies and the drafting history of the instruments, as well as political history, are used as materials. However, given the relatively recent history of development of disaster as a subject of sociological and anthropological studies, studies of this nature are relatively limited.

In Part III, the problem of how IDL's inadequacies may be remedied by a turn to other international legal tools is considered. Chapter Six approaches the problem using an examination of both theory and practice of IHRL. This entails a discussion of literature discussing disaster and human rights law, and the approach of various UN human rights bodies to the link between disaster and human rights. These approaches are critiqued using case studies that highlight the limitations of relying on human rights law to address disaster–related vulnerability. The critique is informed by the insights of TWAIL. Chapter Seven's consideration of alternatives to international law that may help to address the

disjuncture in international disaster laws is carried out by a review of literature that seeks to understand the very same question. It then evaluates the strategies proposed by the literature from the perspective of marginalised people. The material used is largely based on literature discussing cosmopolitan democracy and the counter-hegemonic use of international law contained in international relation and international law literature.

1.4 Terminology

Some of the fundamental concepts used in this research are the notions of vulnerability, marginalisation, disaster and victims. In this research, when the word "disaster" is used, unless stated otherwise, it refers to disaster as elaborated by the hazards and vulnerability model. In this model, the social experience of disaster – that is, suffering – is understood as a result of the convergence of social vulnerability (or marginalisation) with an external environmental hazard (or catalyst). Many using the hazards and vulnerability model restrict their findings to natural disasters, but in this research, the notion of hazard does not distinguish between man-made and natural catalysts. Instead, it refers to phenomena belonging to the external physical environment. Thus, while it does not distinguish between natural and man-made disaster, it does not encompass purely social phenomena.

This definition of disaster is broad, but some limits are placed on it in this research. Firstly, the notion of disaster used in this research is primarily a social one. That is, disaster is conceived of as being the product of social negotiation, rather than an objectively identifiable fact. That is, disaster is constituted by some form of human suffering, arising from external environmental hazards, alleged to exist by marginalised groups, that is also acknowledged by others. This means that, as conceived of in this research, disaster encompasses not only the social suffering that derives from systematic social problems that are brought to the fore by sudden onset events, but also socially embedded events that are part of the everyday.[26] Secondly, disaster refers to social dysfunction that has the capacity to affect the ability of marginalised people to survive and thrive. Thus, a characteristic of disaster does not necessarily lie in the inability of a society to overcome the disaster – this notion has been decidedly disproven by sociologists and anthropologists – but rather in the inability of a society to quickly adapt to disaster. That is, if disasters are seen as being able to encompass "routine" or disasters that are part of everyday life, whether or how societies adapt to the continuing or socially embedded suffering is the key, rather than their helplessness. In this connection, it should be highlighted that it is very rare that societies and marginalised people are passive in the face of what they perceive to be disaster, and often, the pattern of these events are known,

[26] For a discussion of nonroutine versus socially embedded events, see e.g. A. Oliver-Smith, "'What is a Disaster?': Anthropological Perspectives on a Persistent Question" in A.Oliver-Smith & S.M. Hoffman (eds.), *The Angry Earth: Disaster in Anthropological Perspective* (New York: Routledge, 2002), 22.

which inspires adaptive strategies. This idea has less application to technological disasters, which, because of the newness of technologies and their potential risks, or their newness to a community to which they have been introduced, mean that societies have not had time to develop adaptive mechanisms. This can be seen in terms of phenomena such as climate change and nuclear disaster. Thirdly, disasters in this research encompass both potential and actual disasters. Finally, unless specified otherwise, the term "natural disaster" is used to connote the traditional and still dominant understanding of disaster as a natural geophysical phenomenon that strikes a society.

Succinctly stating the concept of disaster used in this research is a difficult task, owing to the fact that the base of the argument is that disaster lies in suffering, and suffering can only be communicated as a subjective experience. Thus, in clarifying the concept of disaster, it is worthwhile to contrast the idea of disaster used in this research with what it is not. Disaster in research is not limited to disaster as external natural geophysical phenomena or man-made phenomena.[27] The source of an external event, whether it is man-made or natural has little bearing for the arguments put forward in this research. In addition, disaster is not limited to sudden onset events that overwhelm the capacity of a community to respond. However, some external event must exist, although it is not the disaster *per se.* Disaster in this research based on the idea that people can and do respond to situations threatening their lives and livelihoods, even if that response may seem archaic or inadequate to western standards that are reflected in law.

The notions of vulnerability and marginalisation are central to the exploration of international disaster rules in this research. The concept of vulnerability used in this research is based on the definition of vulnerability put forward by Wisner et al., that is, the characteristics of a person or group and their situation that influence their capacity to anticipate, cope with, resist and recover from the impact of a hazard.[28] Put another way, vulnerability is related to structural social, economic or political disadvantage that results in a heightened threat of incurring disaster-related harm. Those who are more vulnerable

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[27] In this respect, the concept of disaster used in this research could potentially include war-related social suffering. It is certainly true that a major issues that arises with regard to disaster is the notion of "complex disaster" which describes situations where some kind of natural phenomena is exacerbated by armed conflict. This brings up the problem of the law applicable, as humanitarian law, which is widely deemed to be *lex specialis*, will prevail over human rights law, perceived of as *lex generalis.* However, it is also recognised that the broad notion of disaster adopted in this research is based on the existence of external environmental hazard and vulnerability. This means that there need not necessarily be a bifurcation between armed conflict as a disaster, and other types of disaster. This research does not consider this problem in detail. The author acknowledges that it poses great conceptual difficulties under traditional views of international law, one of the fundamental starting points is the a priori distinction between the law of war and the law that applies in peacetime.

[28] B. Wisner, P. Blaikie, T. Cannon, I. Davis, *At Risk: Natural Hazards, People's Vulnerability and Disasters* (2nd ed.) (Oxon: Routledge, 2004), 11.

are generally those on the fringes of society, such as class, occupation, caste, ethnicity, gender, heath status, age and immigration status, ability to use social capital, etc.[29] Vulnerability overlaps with the concept of marginalisation, which is taken to mean those who do not have access to dominant modes of communication and institutions in order to make their concerns heard. Vulnerability and marginalisation are not interchangeable, but overlap, and therefore are distinguished where necessary. The notions of vulnerability and marginalisation both encompass a temporal dimension – that is, vulnerability and marginalisation can be traced backwards in time, as well as forward to predict future vulnerability to hazards. The experience of vulnerability and marginalisation may not necessarily have any relation to temporal limits imposed by international law. It is also acknowledged that vulnerability is *caused* by external hazards, and that this is the kind of vulnerability that is implicitly the object of the law, for example, through the provision of international disaster relief. The broadness of the notion of vulnerability and marginalisation adopted opens up the possibility of acknowledging and understanding how factors such as ideologies, beliefs and daily activities of all people affect their vulnerability. This serves to highlight the depth of understanding of the particularity of the group or society that is needed for adequate response to disaster. It also serves to emphasise the fact of entrenched disadvantage, rather than as a means of seeking to identify the cause of disadvantage. This abstract definition of vulnerability and marginalisation is broad so as to acknowledge that suffering can come from a variety of sources, some of which cannot yet be articulated by law, and that what constitutes suffering can be defined only through a process of communication. The abstract quality of the notion of vulnerability here allows the research to focus the concept's function as the *raison d'être* for conceiving of international law as a mechanism which allows the communication process regarding victimhood to take place.

It must also be noted that the notions of disaster and vulnerability adopted tend towards a structural understanding of both of these concepts. There are a variety of notions of disaster, some tending to see disaster only as being the geophysical, or other, external event, while others see disaster as the result of social and cultural processes that derive from an objective external hazard, and still others that see disaster as nothing but a product generated by various historical, political, economic and social ways of understanding the world. This research takes an approach that is closer to the second notion; that is, a weak constructionist approach. The notion of disaster does not focus exclusively on social suffering; rather, it requires the existence of an external physical phenomenon to exist for disaster vulnerability to exist.

[29] Ibid.

The notion of victims that is used as a starting point in this research is based on the recognition that victim status in the context of law is a product of communication between a person who alleges that they are the primary or secondary victim of a disaster, and those around them (including decision-makers) who affirm the person's claim to victimhood.[30]

Finally, this dissertation will use British spelling, but will adopt the original spelling when using quotations.

1.5 Scope

The conception of marginalisation utilised as a focal point in this research departs from "traditional" subaltern analyses in the following respects, and these differences define the scope of the research. Firstly, the traditional subaltern concept is tightly bound to the notion of the narratives of ordinary, but marginalised people and their contributions to anti-colonial movements, as developed by the Subaltern Studies Group in their research on South-East Asia.[31] However, this research takes a broader view of vulnerability as referring not only to those who are traditionally marginalised in international society in developing states, but also encompassing those who are vulnerable within developed states. For example, the situation of vulnerable or marginalised people such as foreigners, homosexuals and women in the zones affected by the earthquake and nuclear power plant explosion would be encompassed by the notion of vulnerability and subalternity used in this research. As a result, this research does not aim to conduct a subaltern analysis of injustice caused by the continuation of, primarily economic, forms of colonialism and domination kept alive by international law. Put another way, this research aims to consider international law from a broad notion of vulnerability, utilising the various tools and insights of the concept of subaltern that will bring to light the various inequalities that are created by, and are used to create, international disaster rules. It might be argued that the use of the subaltern concept in this way is inappropriate, as the notion of the subaltern is bound tightly to the postcolonial critique of neoliberal governance. However, this research seeks to understand the concept of vulnerability in international disaster rules, and the use of the subaltern concept in this research can be seen as an evolutionary interpretation of the subaltern concept. That is, subalterns, those vulnerable people who are deprived of agency in formerly colonised states, can find their counterparts, too, in the societies of colonising and/or developed countries. There is something appropriately subversive in the notion that the subaltern concept, used by scholars of the South to expose the injustice wreaked by the North on them, can also be used to highlight

[30] See e.g. R. Strobl, "Becoming a Victim" in S.G. Shlomo, P. Knepper, M. Kett (eds.) *International Handbook of Victimology* (Boca Raton: CRC Press, 2010), 3-26.

[31] B. Rajagopal, *International Law from Below* (Cambridge: Cambridge University Press, 2003), 81.

weaknesses in developed states' treatment of their own populations.

Secondly, the broader notion of vulnerability adopted means that this research does not specifically take the traditional direction of subaltern and postcolonial critique of elucidating the links between international economic policy, neoliberal governance and international law's treatment of the vulnerable. The goal of this research is to identify the ways in which vulnerability is taken into account in international disaster rules, and as such, international techniques of economic domination do not inform the main themes of this work. The conclusions of this research parallel the general findings of traditional subaltern research, taking into account as it does vulnerability in both developed and developing nations, but the identification of economic modes of domination is secondary to the primary analysis of vulnerability in international law.

PART I

FOUNDATIONS

Chapter Two. The legal framework

2.1 Introduction

The relative recentness with which disaster has become accepted as an international legal concern, coupled with the lack of a coherent international legal framework on disaster, means that the content and contours of these international obligations are unclear. An evaluation of the law's fairness requires clarification of the current status of content of these obligations, which constitutes another reason for considering international law's treatment of human disaster-related vulnerability. As with the majority of legal analyses, the point of departure for a consideration of vulnerability in international rules that are applicable to disaster is to gain an understanding of the way in which international legal instruments presently deal with disaster. This approach to the examination of vulnerability in international law is routine, but is complicated by two factors. Firstly, there is no central treaty regime on disaster. Secondly, the concept of disaster itself, like the concept of human rights and environmental law before it, has been widely accepted into the pantheon of "organising concepts" of international law only with relative recentness. The very concept of disaster – what disaster is constituted by, the aspects of disaster that international law should address, how it relates to other areas of international law, etc. – remains uncertain.

At present, the concept of disaster is regulated under different bodies of international law, such as human rights law and environmental law, as well as instruments that pertain specifically to disaster in its relief, and prevention, mitigation and preparedness aspects. Although legal experts tend to strive for coherence and categorisation, international law's current ambiguous response to the concept of disaster should not be seen as a flaw that is fatal to its future development. Most international instruments may be described from various perspectives, and it is useful to consider disaster as a new perspective from which to view existing treaties and instruments.[1] Indeed, international law has traditionally been a body of law that sits at the interface of various tensions that draw it in different directions.[2] That is, international rules on disaster and the international legal response to disaster is characterised by the tensions that arise from attempting to expand the reach of a centralised body of rules into what was the domestic jurisdictions of states, by a community of equal sovereigns for objects (people) of the law. These are productive tensions; the law's current state of development, and the fact that it is widely acknowledged that disaster, however it is defined, can be regulated under various bodies

[1] ILC, *Fragmentation of International Law: Difficulties Arising form the Diversification and Expansion of International Law: Report of the Study Group on Fragmentation of International Law*, A/CN.4/L.682 (2006), para. 21.

[2] F. Mégret, "International Law as Law" in J. Crawford & M. Koskeniemmi (eds.), *The Cambridge Companion to International Law* (New York: Cambridge University Press, 2012), 64-92.

of international law, means that the characterisation of an instrument as a "disaster law" is indicative of certain interests, the identification of which may be useful in advocacy.

This chapter aims to provide a foundation for the discussion of vulnerability in international disaster law by outlining the operation of international rules applicable to the concept of disaster. It does so by first discussing the idea of the nascent international disaster law (IDL), and then, highlighting the indeterminate nature of the notion of disaster, presents disaster rules in terms of the beneficiaries of rights and obligations that international law establishes; that is, rules establishing inter-state and intra-state action.

This survey of the current international legal framework is conducted using sources of international law prescribed by article 38J of the International Court of Justice Statute. The Chapter aims to identify the international rules that have universal application with regard to the effect of disasters on people, and therefore include not only rules regulating international humanitarian assistance, but rules that relate to the prevention, mitigation, and recovery from disaster. As such, it takes as its primary materials those laws or rules in which the connection between disaster and human suffering is the primary topic of regulation, rather than, for example, expanding the view to include laws which primarily seek to regulate environmental aspects of disaster without a human dimension. However, to ensure that a more complete understanding of the overlapping jurisdictions that make up the international legal framework is preserved, bilateral and regional treaties will be examined where this supplements understanding of general trends in international disaster law. In addition, soft law sources will be considered to be sources of international obligation. This approach is warranted because of IDL's incipient state of development, as well as constituting an acknowledgement that there is in practice little distinction between soft law documents and treaties.[3]

2.2 International disaster law?: Terminology and scope

In contrast to normative informal labels such as the law of the sea, human rights law, among others, the label "IDL" *per se* is not widely agreed upon. That is, the terminology of international rules organised on the concept of disaster remains unsettled, including the label of the proposed body of law itself. In this research, "international disaster law" will be used and "international disaster rules" will be used almost interchangeably. The former is used to connote the proposed body of law that is organised on the broad concept of disaster that includes both disaster relief and disaster prevention, and does not create distinctions as to causation. The latter is used to highlight that existing rules on the topic do not necessarily form a coherent and unified corpus.

[3] See e.g. A. Boyle & C. Chinkin, *The Making of International Law* (Oxford: Oxford University Press, 2007).

A general trend in the use of the use of the phrase "International Disaster Response Law (IDRL)" to refer to the nascent body of law can be identified. Reinecke observes that IDRL "describes the body of rules and principles for international humanitarian assistance in the wake of peacetime disasters of natural, technological or industrial origin... [and] applies to (usually) unintended disasters in a cooperative peacetime context when states or intergovernmental humanitarian or other organisations offer, request, provide or accept cross-border disaster assistance."[4] The IFRC, previously calling its work on the topic of humanitarian assistance in the field of disaster also adopted the terminology IDRL,[5] but now terms it "International Disaster Law".[6] Hoffman stated that IDRL was adopted by the IFRC as terminology describing the body of rules and principles for international humanitarian assistance in the wake of peacetime disasters, whether natural, technological or industrial in origin.[7]

Although IDL has typically been limited to post-disaster relief, in recent years, along with the growing acceptance that disaster can be conceptualised so as to include links to development, increasing attention has been paid to the prevention, mitigation and recovery aspects of disaster. The greater generality of the new label "IDL" reflects the idea accepted among the IFRC and scholars that international rules pertaining to disaster should encompass not only international disaster relief measures but also the prevention and mitigation aspects of disaster, and to all disasters, regardless of their origin.[8] De Guttry characterises what he terms IDRL with the following elements, which operate to widen its scope. According to De Guttry, IDRL:

1) Applies whether or not a disaster is man-made or natural, and should be applied as long as some event has caused injuries to persons or damage to property or the environment;
2) Covers the disaster risk reduction to mitigation, the creation of an environment enabling disaster risk reduction measures, the disaster relief phase and the recovery phase;
3) Governs issues that include the definition of state obligation before disaster

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[4] I. Reinecke, "International Disaster Response Law and the Coordination of International Organisations", 2(2010) *The ANU Undergraduate Research Journal* 143, 145.

[5] More specifically, the IFRC used the term "International Disaster Response Laws, Rules and Principles". See e.g. D. Fisher, *Law and Legal Issues in International Disaster Response: A Desk Study* (Geneva: IFRC, 2007), 21.

[6] IFRC, "About the Disaster Law Programme" <http://ww.ifrc.org/en/what-we-do/idrl/about-idrl> (last accessed 25 March 2013).

[7] M. Hoffman, "What is the Scope of International Disaster Response Law?" in International Federation of the Red Cross, *International Disaster Response Laws, Principles and Practice: Reflections, Prospects and Challenges* (Geneva: IFRC, 2003), 13.

[8] A. De Guttry, "Surveying the Law" in A. De Guttry, M. Gestri, G. Venturini (eds.), *International Disaster Response Law* (The Hague: Springer, 2012), 6.

occurs and during disaster management activities, the rules regulating the relations between disaster-affected states and other states or international organisations, and rules dealing with the protection of human rights;

4) Covers peacetime disasters, the regulation of disasters arising directly from wartime activities being regulated by the body of international disaster law; and
5) Is comprised of soft, hard and customary law.[9]

In light of the connection between the adverse effects of disaster and economic and social inequality, if the regulation of disaster is to have coherence and legitimacy at the international level, De Guttry's characterisation of IDRL as having a scope larger than the traditional hard law focus on disaster relief holds persuasive weight.

2.3 Principles of international disaster law

International cooperation to relieve the immediate and long-term effects of, and prepare for, disasters is not a recent phenomenon, although there exists an abundance of rules and treaties that address the concept of disaster in an ad hoc manner. A recent approach to the further development of international disaster law is the identification of foundational principles.[10] These include humanity, neutrality, impartiality, non-discrimination, cooperation, and sovereignty and non-intervention.[11] The principles of humanity, neutrality, and impartiality, originally found in international humanitarian law,[12] are recognised as the foundations of international humanitarian assistance generally, and have been expressed in various international instruments, such as UNGA resolutions and IFRC guidelines.[13] Humanity is the cornerstone principle of international disaster law as it pertains to people. It constitutes a primary moral reason for the founding of IHRL, and forms the basis for IHRL's extension to other areas of international law. It has its clearest expressions in international humanitarian law, in terms of the requirement of humane

[9] Id., 7-9.

[10] This approach has been identified in more academic, rather than practice-based works on the subject (such as the work of the Red Cross), particularly in the UN and the ILC, which is currently undertaking the project of creating draft articles on the protection of persons in the event of disaster.

[11] ILC, *Protection of persons in the event of disasters: Memorandum by the Secretariat*, A/CN.4/590 (2007), 14-25.

[12] E.g. Protocol I Additional to Geneva Conventions of 1949, article 70(1); Protocol II Additional to the Geneva Conventions of 1949, article 18(2).

[13] See e.g. UNGA, *Strengthening of the coordination of humanitarian emergency assistance of the United Nations*, A/RES/46/182 (1991), "Guiding Principles", art. 2; UNGA, *Humanitarian Assistance to Victims of Natural Disasters and Similar Emergency Situations*, A/RES/43/131 (1988), preambular para. 10; UNGA, *Humanitarian Assistance to Victims of Natural Disasters and Similar Emergency Situations*, A/RES/45/100 (1990), preambular para. 14; Statues of the International Red Cross and Red Crescent Movement, adopted by the 25th International Conference of the Red Cross at Geneva in 1986 (amended 1995, 2006); *African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa* (2009), arts. 5(7), 5(8), 6(3).

treatment of civilians,[14] but is also understood to guide the development of the international law as a whole.[15] Neutrality requires those responding to disaster to abstain from acts which might be interpreted as interference with the interests of the state,[16] while impartiality is understood as encompassing non-discrimination, proportionality and impartiality proper.[17] Non-discrimination states that the provision of relief or other prevention measures are to be undertaken without discrimination of any kind. This principle is found in soft and hard international legal documents.[18] Proportionality requires that disaster-related work be proportionate to needs on the ground, and it acts as a standard for distribution of allocation of resources in disaster contexts.[19] The principle of cooperation is based on the idea of shared, international, responsibilities, and gives expression to the principle of international solidarity.[20] The principle of sovereignty is a cardinal principle of international law,[21] while non-intervention is another foundational principle of international law.[22] These two principles have been invoked in the overwhelming majority of disaster-related international instruments since the inception of modern international law.[23]

2.4 Vertical obligations and responsibilities in IDL

IDL is constituted by both public and private international law. In public law, three sources protect disaster-affected and potentially disaster-affected individuals: international human rights law, international refugee law and rules on internally displaced persons (IDPs) and international humanitarian law.

IHRL establishes rights and freedoms that position individuals as rights-holders in the international legal framework. States are under the obligation, especially as they pertain

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[14] Geneva Conventions (1949), common article 3.

[15] See e.g. International Court of Justice, *Corfu Channel Case (United Kingdom of Britain and Northern Ireland v Albania)*, 9 April 1949, *I.C. J. Reports 1949,* 22; ICJ, *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States of America)*, Merits, 27 June 1986, *I.C.J. Reports 1986*, para. 218.

[16] E. Valencia-Ospina, *Third report on the protection of persons in the event of disasters*, A/CN.4/629 (2010), para. 29.

[17] Id., para. 31.

[18] E.g. *Framework Convention on Civil Defence Assistance* (2000), art. 3(c); *Convention Establishing an International Relief Union* (1927), art. 3; UN Charter, art. 1(3).

[19] E. Valencia-Ospina, *Third report on the protection of persons in the event of disasters*, A/CN.4/629 (2010), para. 35.

[20] E.g. UN Charter, art. 1(1); Independent expert on human rights and international solidarity, *Human rights and international solidarity: Note by the UN High Commissioner for Human Rights*, A/HRC/9/10 (2008).

[21] See e.g. ICJ, *Corfu Channel Case*, 35, n17.

[22] See e.g. ICJ, *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States of America)*, paras. 202-5, n17.

[23] See e.g. Vattel, *Law of Nations*, Book II, §10; *Convention Establishing an International Relief Union* (1927); UNGA, *Assistance in Cases of Natural Disaster and Other Disaster Situations*, ARES/2816 (XXVI) (1971); UNGA, *Strengthening of the coordination of humanitarian emergency assistance of the United Nations*, A/RES/46/182 (1991), etc.

to customary and *jus cogens* norms, to protect the rights of the individuals within their jurisdiction. The relationship between IHRL and IDL has been explicitly stated in only very few international legal instruments. The Convention on the Rights of Persons with Disabilities obliges states parties to ensure the protection and safety of people with disabilities in disaster,[24] and the African Charter on the Rights and Welfare of the Child obliges states parties to ensure that children receive protection and humanitarian assistance.[25] The human rights obligations imposed by the various human rights treaties require states to respect, protect and fulfil rights. The majority of theorists take the position that rights which help to secure the survival of people in disaster, such as the rights to life, health, food, the right to adequate housing, clothing, and sanitation, and the right not to be discriminated against, are those that are the most relevant to the context of disaster.[26] Such a position is implicitly based on the idea that what constitutes "disaster" are post-disaster situations in which international aid is required. While the preoccupation of most theorists has been on rights that might ensure the preservation of life and survival in immediate post-disaster contexts, it should also be noted that the body of IHRL is comprehensive, and ostensibly universally applicable. Therefore, IHRL applies not only to the question of survival in immediate post-disaster contexts, but also to the issues of pre-disaster planning, long-term reconstruction and rehabilitation, as well as to aspects of remedies and reparations. Some of these issues regarding disaster-affected people and IHRL are beginning to be addressed in the literature.[27]

Another body of law that is directly applicable to the situation of people affected by disaster is the body of international refugee law and international rules on internally displaced persons. International refugee law, which was developed post-WWII to respond to the massive human movements that resulted from the War, establishes the rights of people to seek asylum where they have a well-founded fear of persecution from their state on one of the five Convention grounds.[28] "Disaster", however, is not one of these grounds, and the protection of people who have had to move location as a result of disaster, natural or otherwise, is covered under the authoritative norms contained in the Guiding Principles on Internal Displacement. These Principles establish responsibilities of protection and assistance on the state, and the right of people to request and receive

[24] *Convention on the Rights of Persons with Disabilities* (2008), art. 11.
[25] *African Charter on the Rights and Welfare of the Child)OAU Doc. CAB/LEG/24.9/49* (1990), art. 23(1), (4).
[26] See e.g. J.W. Samuels, "The relevance of international law in the prevention and mitigation of natural disasters" in L.H. Stephens & S.J. Green (eds.), *Disaster Assistance: Appraisal, Reform and New Approaches* (London, Macmillan, 1979), 246; E. Valencia-Ospina, *Preliminary report on the protection of persons in the event of disasters*, A/CN.4/598 (2008), para. 26;
[27] This is discussed in more detail in Chapter Two infra..
[28] The five grounds of persecution elaborated in art. 1 the Convention relating to the Status of Refugees, amended by the 1967 Protocol are: race, religion, nationality, membership of a particular social group or political opinion.

protection and assistance from the state.[29]

IDL's disaster relief aspect evolved from rules of humanitarian assistance, the Geneva Conventions of 1949 and its Additional Protocols of 1977. These rules are the basis of the provision of relief to civilians in armed conflicts. UN organs, bodies and specialised agencies such as the UN Office for the Coordination of Humanitarian Affairs (OCHA) create a large volume of internal rules on the matters of relief in situations of conflict.[30]

IDL's domestic disaster prevention aspect came to be more systematically addressed at the UN level in soft law documents from the late 1980s onwards. The principle of prevention, originating in international environmental law can be seen to have had a flow on effect to the topic of disaster.[31] Its appearance as a principle that governed the prevention aspects of disasters was consolidated with the launch of the UN International Decade for Natural Disaster Reduction (IDNDR).[32] In subsequent UN documents, it came to be perceived as a principle that addressed questions of disaster risk management and reduction.[33] Subsequent to the adoption of the Resolution establishing the IDNDR, a World Conference on Natural Disaster Reduction was held in 1994, and the Yokohama Strategy for a Safer World (Yokohama Strategy) was adopted as the conference's outcome document.[34] As such, this document can be taken to be one that expresses the will of the overwhelming majority of states, and therefore has, at the very least, the status of soft law.[35] The Yokohama Strategy affirms that "[d]isaster prevention and preparedness are of primary importance in reducing the need for disaster relief",[36] and also establishes that "[d]isaster prevention and preparedness should be considered integral aspects of development policy and planning at national, regional, bilateral, multilateral and international levels for reducing disaster relief needs as well as for reducing the vulnerability of populations."[37] The Strategy is aimed specifically at the prevention of natural disaster, although as part of the IDNDR, it acknowledges that environmental and

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[29] United Nations Commission on Human Rights, *Guiding Principles on Internal Displacement*, E/CN.4/1998/53/Add.2 (1998), principles 3, 25.

[30] B. Jakovljevic, "International Disaster Relief Law" 34 (2004) *Israel Yearbook on Human Rights* 251, 256.

[31] B. Nicoletti, "The Prevention of Natural and Man-Made Disasters: What Duties for States?" in A. De Guttry, M. Gestri, G.. Venturini (eds.), *International Disaster Response Law* (The Hague: Springer, 2012), 179. Nicoletti compares the establishment of the principle of prevention in international environmental law documents such as the Stockholm Declaration and considers how they have been incorporated into the still-consolidating international disaster law.

[32] UNGA, *International Decade for Disaster Reduction*, A/RES/44/236 (1989).

[33] United Nations Secretariat, *Protection of persons in the event of disasters: Memorandum by the Secretariat*, A/CN.4/590 (2007), 25.

[34] *Yokohama Strategy and Plan of Action for a Safer World: Guidelines for Natural Disaster Prevention, Preparedness and Mitigation,* World Conference on Natural Disaster Reduction Yokohama, Japan (23-27 May 1994). Available at <www.preventionweb.net/files/8241_6841contenido1.pdf>.

[35] As a declaration, the Yokohama Strategy does not have binding force.

[36] Id., Principle 2.

[37] Id., Principle 3.

technological disasters may also have adverse impacts on social, economic, cultural and environmental systems.[38] Principle 10 of Yokohama Strategy proposes a multi-level approach to prevention issues, which incorporates the participation of actors at the local level to the national, regional and international levels. Nicoletti observes that this Principle could potentially be used to support the need for rules which are able to address both the local, national and international aspects of disaster prevention.[39] In 2004, a review of the Yokohama Strategy was undertaken; the review reaffirmed the significance of the multi-level approach to prevention promoted by the Yokohama Strategy, and also indicated the need for greater attention to be paid to the interaction between natural and human-induced hazards, whether or not these hazards triggered natural, environmental, or technological emergencies.[40] The importance of the participation of local communities in domestic processes was also emphasised in the 2005 Hyogo Framework for Action. 2005-2015 (HFA), the outcome document of the World Conference on Disaster Reduction, held in Kobe in 2005. The aim of the HFA was the reduction in the loss of life, and social, economic, and environmental assets caused by disasters by 2015. The HFA also takes as one of its goals the integration of disaster risk considerations into development policies from the international to local levels.[41]

These disaster risk reduction instruments create state responsibilities within their territorial borders, with people, and marginalised people, as their ultimate beneficiaries. Although the soft law instruments on disaster prevention listed above are not binding, and no customary law exists on the subject, the establishment of a multi-level system under the HFA may be subsumed under the existing disaster reduction-related treaties and conventions, and thereby they have a compliance pull – that may form the basis for the creation of international custom – which can be demonstrated by the levels of compliance with reporting obligations, among others.[42]

2.5 Horizontal obligations and responsibilities in IDL

Inter-state action in universally applicable disaster instruments can generally be split into three categories: 1) disaster relief; 2) disaster preparedness, prevention and mitigation; and 3) international action in the case of specific aspects of disaster. Customary law is not

[38] Id., 8.I. of B. Assessment of the status of disaster reduction midway into the decade.

[39] B. Nicoletti, "The Prevention of Natural and Man-Made Disasters: What Duties for States?" in A. De Guttry, M. Gestri, G. Venturini (eds.), *International Disaster Response Law* (The Hague: Springer, 2012), 183.

[40] United Nations International Strategy for Disaster Reduction, *Report of the World Conference on Disaster Reduction*, A/CONF.206/6 (2005), 3.

[41] United Nations International Strategy for Disaster Reduction, *Review of the Yokohama Strategy and Plan of Action for a Safer World*, A/CONF.206/L.1 (2005), 6.

[42] A. La Vaccara, "An Enabling Environment for Disaster Risk Reduction" in in A. De Guttry, M. Gestri, G. Venturini (eds.), *International Disaster Response Law* (The Hague: Springer, 2012), 217-8.

deemed to exist in terms of international law relating to disaster, and as such, will not be discussed.[43]

2.5.1 Disaster relief

Following WWII, some of the most significant international documents pertaining to disaster relief took the form of UN resolutions, institutionalising UN response to disaster, but also creating responsibilities for states towards the international community. The first of these is the UNGA Resolution which created the United Nations Disaster Relief Co-ordinator (UNDRO),[44] and the UNGA Resolution 46/182, that stipulated principles for the UN's disaster relief activities which continue to be followed today.[45] These resolutions do not place legal obligations on states, but they demonstrate the will of states and indicate that states agree that disaster relief is an international concern. UNGA Resolution 2816 called on the UN Secretary-General to appoint a Disaster Relief Co-ordinator which would have the responsibility to mobilise, direct and coordinate UN disaster response. UNGA Resolution 46/182, strengthens the UN's disaster relief coordination efforts by replacing the UNDRO with a higher-level "Emergency Relief Coordinator" (ERC), who has a similar mandate of improving the coordination of international disaster assistance, in disaster, but also in conflict.[46] Today, UN disaster relief, based on UNGA Resolution 46/182, is carried out under the auspices of OCHA.[47]

2.5.2 Disaster prevention, preparedness and mitigation

Although the phrases "disaster prevention, preparedness and mitigation" and "disaster management" are not always employed per se, states have the obligation to provide warning of disaster. This obligation is horizontal in nature and also related to

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[43] This is the conclusion of several notable scholars in the field. See e.g. Valencia-Ospina, *Preliminary report on the protection of persons in the event of disasters*, A/CN.4/598 (2008), para. 42; M.H. Hoffman, "What is the scope of international disaster response law?", in *International Disaster Response Laws, Principles and Practice: Reflection, Prospects and Challenges* (Geneva: International Federation of Red Cross and Red Crescent societies, 2003), 16. However, the long history of disaster relief as what might be called a derivative international legal concern (that is, deriving from a sense of moral obligation, and which occupies a somewhat grey area between moral and the expression of that moral obligation into legal obligation) as well as states' traditional reluctance to reject the notion of humanitarian assistance (despite their equally traditional reluctance to provide adequate funding for permanent humanitarian assistance measures), could be used to argue that customary law on disaster relief is crystallising. The notion of disaster relief, prevention and mitigation faces more difficulty in qualifying for customary law, as it involves the domestic jurisdiction of states.

[44] UNGA, *Assistance in Cases of Natural Disaster and Other Disaster Situations*, ARES/2816 (XXVI) (1971).

[45] UNGA, *Strengthening of the coordination of humanitarian emergency assistance of the United Nations*, A/RES/46/182 (1991).

[46] UNGA, *Office of the United Nations Disaster Relief Co-ordinator*, A/RES/34/55 (1979). The UNDRO was thereafter subsumed into the United Nations Department of Humanitarian Affairs, which itself subsequently became the current United Nations Office for the Coordination of Humanitarian Affairs (OCHA).

[47] Resolutions 2816 and 46/182 will be discussed in more detail in Chapters Four and Five infra.

diplomacy.[48] One example is the *Convention on Early Notification of a Nuclear Accident,* which requires states parties to notify the International Atomic Energy Agency, and states which are, or may be, physically affected by a nuclear accident that has arisen on the state party's territory.[49]

Hard law sources regulating disaster prevention and preparedness include the 1992 *Convention on the Transboundary Effects of Industrial Accidents* (Industrial Accidents Convention),[50] which requires States Parties to take appropriate legislative, regulatory, administrative and financial measures for the prevention of, preparedness for [...] industrial accidents.[51] It also requires states parties to set up measures for the prevention of industrial accidents to induce operators to reduce the risk of industrial accidents[52] through the adoption of legislative and policy documents on safety measures and standards, among others. [53] The *Tampere Convention on the Provision of Telecommunications Resources for Disaster Mitigation and Relief Operations* (Tampere Convention) provides a comprehensive legal framework concerning telecommunications assistance during disaster relief operations for both natural and other disasters.[54] Both Conventions, however, suffer from a low number of ratifications[55] and ineffective application.[56] The *Framework Convention on Civil Defence Assistance* (2000) governs the cooperation between civil defence entities in times of disaster. At the regional level, multilateral documents such as the *ASEAN Agreement on Disaster Management and Emergency Response* (2005) (ASEAN Agreement) exist, as do non-binding agreements regarding disaster risk reduction documents at the EU level.[57]

In addition to these binding texts, environmental[58] and industrial accident treaties[59]

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[48] See generally, B. G. Ramcharan, *The International Law and Practice of Early-Warning and Preventive Diplomacy: The Emerging Global Watch* (Dordrecht: Martinus Nijhoff Publishers, 1991).
[49] *Convention on Early Notification of a Nuclear Accident* (1986), article 2(1).
[50] *Convention on the Transboundary Effects of Industrial Accidents* (1992).
[51] Id., Article 3(4).
[52] Id., Article 6.
[53] Id., Annex IV.
[54] Article 1(6) of the Tampere Convention defines disaster as "a serious disruption of the functioning of society, posing a significant, widespread threat to human life, health, property or the environment, whether caused by accident, nature or human activity, and whether developing suddenly or as the result of complex, long-term processes."
[55] The former has 41 parties, while the latter has 47. See United Nations Treaty Collection website for status of treaties. <http://treaties.un.org/pages/ParticipationStatus.aspx>
[56] E. Valencia- Ospina, *Preliminary Report*, 12.
[57] European Commission, "A Community approach on the prevention of natural and man-made disasters" (Communication) COM (2009) 82 final 23 February 2009; European Commission, "EU Strategy for supporting Disaster Risk Reduction in Developing Countries" (Communication) COM (2009) 84 final, 23 February 2009.
[58] E.g. Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification (1994), Framework Convention on Climate Change (1992).
[59] E.g. Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (1989); ILO Convention No. 147 on Prevention of Major Industrial Accidents (1994); Convention

regulate inter-state action with regard to disaster. Treaties concerning specific conceptions of disaster, such as those governing the protection of the environment, the law of the sea, nuclear accidents, space objects, international watercourses, management of hazardous wastes and prevention of marine pollution are other examples.[60] Another treaty that can be understood as addressing disaster risk reduction is the UN Framework Convention on Climate Change.[61] A non-binding document regarding inter-state action pertaining to disaster is the ILC's consideration of the principle of prevention in its deliberations on the drafting process of draft articles on the prevention of transboundary harm from hazardous activities.[62]

2.6 Other sources of IDL

A plethora of bilateral treaties, memorandums of understanding, domestic legislation, and other instruments of non-state actors, which may not explicitly refer to disaster relief or disaster preparedness, exist, but supplement the various multilateral treaties outlined above. Extensive lists have been produced elsewhere, and will not be reproduced here.[63]

It should be noted, however, that in terms of bilateral disaster relief treaties, some general trends have been observed that have bearing on the general understanding of where the law has originated from. Firstly, the themes that can be seen in bilateral treaty making show that bilateral treaties often deal with disaster response in general; they confer rights and obligations for those assisting and other obligations for privileges.[64] Bilateral treaties deal with technical cooperation,[65] and may be concluded between neighbouring states

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on Assistance in the Case of a Nuclear Accident or Radiological Emergency (1986); International Convention on Oil Pollution Preparedness, Response and Cooperation (1990); Protocol on Preparedness, Response and Co-operation to Pollution Incidents by Hazardous and Noxious Substances (2000).

[60] ILC, *Yearbook of the International Law Commission 2001*, vol. II (part two), A/CN.4/SER.A/2001/Add.1 (Part 2), para. 98, and n864. For example, the Convention for the Prevention of Marine Pollution from Land-based Sources, article 4; Convention on the Protection of the Marine Environment of the Baltic Sea Area, annex II; Protocol for the Protection of the Mediterranean Sea against Pollution from land-based sources; Convention on Environmental Impact Assessment in a Transboundary Context, appendix I, which identifies activities such as establishment of crude oil refineries, thermal power stations, installations to produce enriched nuclear fuels, etc., as possibly dangerous to the environment and require EIA's, the Convention on the Transboundary Effects of Industrial Accidents, etc.

[61] *Framework Convention on Climate Change* (1992).

[62] ILC, *Yearbook of the International Law Commission 2001*, vol. II (part two), A/CN.4/SER.A/2001/Add.1 (Part 2), para. 97; ILC, *Draft Articles on Prevention of Transboundary Harm from Hazardous Activities, with commentaries*, draft article 3, para. (4).

[63] See e.g. United Nations International Law Commission, *Protection of persons in the event of disasters: Memorandum by the Secretariat*, A/CN.4/590 (2007); D. Fisher, *Law and Legal Issues in International Disaster Response: A Desk Study* (Geneva: IFRC, 2007).

[64] Fischer cites the United States-China, United States-Peru, United States-Japan and Sweden-Ethiopia agreements as examples. H. Fischer, "International Disaster Response Law Treaties: Trends, Patterns and Lacunae" in International Federation of the Red Cross, *International Disaster Response Laws, Principles and Practice: Reflections, Prospects and Challenges* (Geneva: IFRC, 2003), 29.

[65] Ibid. Agreement on Scientific and Technical cooperation, Republic of Korea-Poland (1993).

(mostly in central Europe),[66] or between countries at regional and global levels.[67] In addition, some states conclude memorandums of understanding regarding disaster relief assistance and disaster prevention.[68]

The importance of domestic legislation for disaster preparedness, prevention and mitigation was highlighted by the UN very early in its dealings with the concept of disaster.[69] States regulate different aspects of disaster through a variety of domestic laws. The IFRC, has since 2003, building on the HFA, emphasised the disaster risk reduction aspects of its member by carrying out evaluations of disaster risk reduction legislation in various countries. It has also highlighted the importance of preparation of domestic disaster relief legislation. The studies highlight the importance of community, local government and national government interaction.[70]

2.7 Future directions for IDL: The ILC's Draft Articles

In 2007, the ILC decided to include the topic, "Protection of persons in the event of disaster" for inclusion in its long-term programme of work,[71] and appointed a Special Rapporteur. Since 2008, the Rapporteur has submitted reports to the ILC annually. Currently, the ILC has provisionally adopted 15 draft articles on the protection of persons in the event of disasters. The final form of the draft articles has not yet been determined; however, it has been observed that non-binding guidelines, a guide to practice or a framework of principles addressed to all actors may have more practical value and enjoy more widespread acceptance than a treaty.[72]

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[66] Treaties between the Netherlands, Belgium, Germany, Denmark, Austria, Poland, Hungary, the Czech and Slovak Republic. Ibid.

[67] Id., n33. E.g. Memorandum of Understanding between the government of the Russian Federation and the government of the United States of America on cooperation in natural and man-made technological emergency prevention and response (1996); Agreement on cooperation in the event of natural disaster or major emergencies Switzerland-Philippines (2002), etc.

[68] See e.g. ILC, *Protection of persons in the event of disasters: Memorandum by the Secretariat*, A/CN.4/590 (2007) (hereinafter, *Memorandum*), Annex II; H. Fischer, "International Disaster Response Law Treaties: Trends, Patterns and Lacunae" in International Federation of the Red Cross, *International Disaster Response Laws, Principles and Practice: Reflections, Prospects and Challenges* (IFRC: Geneva, 2003), 29-30.

[69] See e.g. United Nations, Secretary-General, *Assistance in cases of natural disaster: Report of the Secretary-General to the UNGA*, A/5845, 19th session, item 46of provisional agenda (1965); United Nations, Secretary-General, *Co-ordination of international assistance in cases of natural disaster: Report of the Secretary-General to the ECOSOC*, E/4036, 39th session, agenda item 4 (1965).

[70] See generally, International Federation of the Red Cross and Red Crescent Societies, *Progress in the implementation of the Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance* (Geneva, 2011); International Federation of Red Cross and Red Crescent Societies, *Better Laws, Safer Communities? Emerging Themes on how Legislation can Support Disaster Risk Reduction* (Geneva, IFRC, 2013).

[71] ILC, *Report on the work of its fifty-ninth session (7 May to 5 June and 9 July to 10 August 2007)*, A/62/10 (2007), Chapter X, Section A.3.

[72] E. Valencia-Ospina, *Fourth report on the protection of persons in the event of disasters*, A/CN.4/643 (2011), para.25.

Even if the ILC's work were to culminate in the adoption of a soft law document, the development trajectory of other relatively new bodies of international law such as international human rights law, taken with the expanding web of soft law documents with regard to all aspects of disaster, indicate that an international treaty regime is likely to be created in the foreseeable future. The ILC's work can be understood as an expression of the political will to deal with the concept of disasters at the international level. Support from organisations such as the Red Cross also provide more weight to the argument that the creation of an international treaty on disaster is a matter of time. A large amount of soft law and hard law sources already exist on various aspects of disaster, and although lacunae remain, the significance of the ILC's work lies in its role in setting general boundaries for discussion, as well as in setting overarching themes and goals for IDL. The ILC's work is highly significant for marginalised people, not in the fact of emancipating them directly, but in terms of its potential to provide the basis of future international regulation of disasters, as they affect individuals, and therefore subalterns, throughout the world.

The disparate condition of state practice led the ILC to commence the project of protection of persons in the event of disasters as an exercise in the progressive development of the law, rather than the codification of existing norms.[73] The draft articles chiefly formulate horizontal international obligations to facilitate disaster relief; the Special Rapporteur has found that it was appropriate to discuss rights and obligations of states before rights and obligations of states in relation to persons in need of protection.[74] The scope of the draft articles was initially confined to the discussion of state obligations in the emergency phase of natural disasters,[75] and was the focus of examination of the ILC and the Special Rapporteur until 2011. The Special Rapporteur has considered, among others, the state duty to cooperate in disaster,[76] the principles inspiring the state protection of persons in the event of disasters,[77] the nature of the responsibilities of disaster-affected States,[78] and state rights and obligations with regard to providing assistance and terminating assistance.[79] This has culminated in the ILC's

[73] F.Z. Giustiniani, "The Works of the International Law Commission on 'Protection of Persons in the Event of Disasters'. A Critical Appraisal" in A. De Guttry, M. Gestri, G. Venturini (eds.), *International Disaster Response Law* (The Hague: Springer, 2012), 67.
[74] E. Valencia-Ospina, *Second report on the protection of persons in the event of disasters*, A/CN.4/615 (2009), para. 27.
[75] United Nations General Assembly, *Official records of the General Assembly, Sixty-first Session, Supplement No. 10,* A/61/10, (2006), Annex C, para. 2.
[76] E. Valencia-Ospina, *Second report on the protection of persons in the event of disasters*, A/CN.4/615 (2009).
[77] E. Valencia-Ospina, *Third report on the protection of persons in the event of disasters*, A/CN.4/629 (2010).
[78] Ibid.
[79] E. Valencia-Ospina, E., *Fifth report on the protection of persons in the event of disasters*, A/CN.4/652 (2012).

adoption of 10 draft articles establishing the scope (art. 1), purpose (art.2) of the draft articles, as well as creating a definition of disaster (art. 3), and delineating the draft articles' relationship with International Humanitarian Law (art. 4). The draft articles also establish the duty of states to cooperate with each other, the UN and NGOs (art. 5); humanitarian principles in disaster response (art. 6); the principle of human dignity (art. 7), the entitlement of disaster-struck people to be entitled to respect for their human rights, and the primary role of the affected state in controlling disaster relief (art. 9) as well as the rights and duties of the disaster struck state. The disaster-struck state has a duty to seek assistance when it is unable to respond to the disaster (art. 10), and has the right to consent to offers of external assistance (art. 11). The draft articles also cover the right of states, the UN, intergovernmental and non-governmental organisations to offer disaster-struck states assistance (art. 12), although the affected state has the right to place conditions on external offers of assistance (art. 13). The disaster-struck state has the obligation to take necessary measures to facilitate the prompt and effective provision of external assistance (art. 14). The draft articles also provides the conditions under which external assistance is terminated, namely on the basis of consultation between the affected state and relevant party (art. 15).

The special rapporteur's latest report breaks with the practice of formulating horizontal rights regarding disaster relief, turning to discuss the disaster preparedness, mitigation and prevention stages of disaster.[80] Although the special rapporteur had expressed a desire to examine disaster preparation and mitigation in his preliminary report, his second report took the stance that his work would cover the disaster relief phase, without prejudice to the issues of disaster preparation and mitigation being discussed at a later stage.[81] This approach was taken by the rapporteur until his fifth report, in which he observed that a growing body of instruments referred to the duty to cooperate in disaster preparedness, prevention and mitigation,[82] and observed that there was state support in the Sixth Committee of the UNGA for an examination of disaster mitigation issues.[83]

The special rapporteur's latest report, published in May 2013, discusses IHRL and environmental law as sources of law for the state duty to cooperate in disaster prevention etc. It proposes two draft articles, 16 and 5 *ter* on the state duty to reduce the risk of disasters by adopting appropriate measures to create mechanisms to define

[80] See generally, E. Valencia-Ospina, *Sixth report on the protection of persons in the event of disasters*, A.CN.4/662 (2013).
[81] Id., paras. 6-9.
[82] E. Valencia-Ospina, *Fifth report on the protection of persons in the event of disasters*, A/CN.4/652 (2012), paras. 114-116.
[83] Statement by Poland, United Nations General Assembly, Sixth Committee, *Summary record of the 21st meeting*, A/C.6/66/SR.21 (2011), paras. 83-4.

responsibilities and accountability mechanisms, as well as institutional arrangements for the prevention, mitigation and preparation for disasters. The content of the obligation is expressed in a non-exhaustive list of examples, which include the undertaking of multi-hazard risk assessments, the collection and dissemination of risk information and the installation of early warning systems.

2.8 Concluding observations

Unsurprisingly, the foregoing has demonstrated that inter-state relations have been the historical focus of international rules pertaining to disaster. This is evidenced by the hard law instruments that have been created, or have been attempted to be created for disaster relief, and certain types of disaster which may have transboundary effects.

The growth of human rights law has led to a new focus on intra-state obligations with regard to disaster. This can be seen in the soft law instruments, particularly on the responsibilities of states to carry out "disaster reduction" measures within their territories, or the domestic prevention and preparedness for disasters. Although human rights law applies to disaster contexts, because in principle it applies in all situations save for in emergency and war, the foregoing shows that, at least in the legal instruments pertaining to disaster, the relationship between IHRL and IDL is quite weak. This trend is likely to change in the future, with an increasing number of scholars discussing how IHRL may benefit and "humanise" the state-centric tendencies of IDL.

The humanisation of IDL using IHRL is evident in the ILC's draft articles on disaster, which have expanded to cover the issue of disaster mitigation and preparedness. The issues of disaster mitigation, preparedness and prevention are addressed only on the level of horizontal international obligations between states, however, although they are ostensibly for the benefit of people. On the other hand, at least one scholar has expressed dissatisfaction with the work of the ILC, stating that the overall result is disappointing from a rights-based approach to the topic, resulting in the denial of the projected centrality of the individual.[84] The same scholar argues that the lack of explicit reference to rights of individuals, not least a lack of reference to a right of humanitarian assistance, means that the tensions between the protection of the person's rights and the respect for state sovereignty – claims for the non-intervention doctrine being repeated by delegations during plenary debates of the Sixth Committee and ILC – have been resolved in favour of the latter, as the focus has shifted from human rights to intra-state obligations.[85]

[84] F.Z. Giustiniani, "The Works of the International Law Commission on 'Protection of Persons in the Event of Disasters'. A Critical Appraisal" in A. de Guttry, M. Gestry, G. Venturini (eds.), *International Disaster Response Law* (The Hague: Springer, 2012), 83.
[85] Ibid.

The outline of international legal instruments that address disaster demonstrates that the objects of the majority of international laws applicable to disaster are potentially or actually suffering people. People themselves, however, are on the periphery of these instruments. The instruments highlight, as perhaps is inevitable, what can be done for suffering, marginalised people, without truly acknowledging the impact of these rules upon their lives, nor that people actively adapt and seek to address their disaster-related vulnerabilities, particularly in the case of potential disaster. The suffering of people is assumed to be self-evident, while the aid given is assumed to be completely beneficial. These assumptions of international law, when understood in light of the state-centric nature of international rules, as well as the silence of people in these documents, are highly questionable from the point of view of justice. Not all disaster-related measures taken by states are beneficial or appropriate, as seen from the ground, and not all suffering related to disasters is adequately addressed by states.

This overview of the international legal framework applicable to the concept disaster shows that there is a disjuncture that lies at the heart of international law pertaining to disaster. That is, under the international legal framework, people, including marginalised people, are not furnished with the means by which to demand of their governments that they be consulted with regard to prevention and preparation of disaster, and how disaster relief is undertaken. In addition, people, including marginalised people, may only voice concern with regard to domestic and international disaster action through the rubric of human rights. An orthodox and state-centric view of international law might consider that this is a self-evident truth, and further, that this is the inevitable product of a law that primarily regulates the relations between states. However, the problems of vulnerability to disaster, compounded by marginalisation, and the inability of people, let alone marginalised people, warn against complacency with regard to a new international disaster law's capacity to deal with disaster-related problems.

Chapter Three. The literature and its theoretical underpinnings

3.1 Introduction

This chapter is a literature review that supplements the previous chapter's survey of the international legal framework. The literature is presented in terms of its approach to how it considers the position of individuals in relation to international disaster rules, and demonstrates underlying biases in academic thought that explores how international law should regulate disaster. In concrete terms, this means that analysis is based on a consideration of the theoretical perspective adopted by the author regarding the way in which law regulates the relationship between disaster and the individual. The relationship between disaster and the individual, rather than disaster and marginalisation is taken here because the heightened interest in disaster as an international legal concern is relatively recent, and has tended to focus on individual-rights holders, in line with the human rights and liberal leanings of the last three decades. Equally, international legal discourse has been dominated by discussion of international law as law characterised by the tension between its subjects and objects – states and individuals,[1] rather than engagement with groups as subjects of international law.[2]

This approach is different to the objectives of much of the literature on international law and disaster. The literature tends to discuss three issues: the validity (or otherwise) of the use of international law to regulate disaster, the creation of new rights and obligations regarding disaster, or the unification of existing disaster norms. It can be seen that the inchoate nature of international disaster rules has resulted in a focus on the elaboration of the relations between proposed norms or interpretations, and their place in international law as a whole. Most of the works discussed in this chapter attempt to elaborate theories of how disaster norms should be conceptualised, and where the particular conceptualisation that is proposed fits into the existing international legal corpus. For example, some writers attempt to create new international disaster norms, and elucidate the relationship of the new norms to existing norms, such as the international human rights law, or international humanitarian law. Other writers find that disasters can be adequately addressed through existing international norms, and seek to establish disaster as a lens through which to develop existing law. In contrast, this chapter seeks to reveal how theorists have conceptualised the relationship between disaster and the individual. These dominant strands in the literature can be seen as a natural product of the ad hoc state of development of the law: disasters, as events which are delineated in a very basic

[1] F. Mégret, "International Law as Law" in J. Crawford & M. Koskeniemmi (eds.), *The Cambridge Companion to International Law* (New York: Cambridge University Press, 2012), 64-92.

[2] However, groups characterised by marginalisation have been recognised in international human rights law. This will be discussed in more detail in Chapter 6 infra.

and fundamental way by political geography, fell under the then-dominant principle of non-intervention in internal affairs, which required scholars to justify the necessity of using international law to regulate disaster as disasters occurred.

Using the perspective adopted in this research, the academic literature can be broadly divided into three groups in terms of how they envisage the relationship between international law and the individual. The first group, which is here called the "traditional" approach, examines international law from the perspective that only states may participate in disaster-related international processes, and positions the relationship between individuals and international legal norms as a non- or peripheral issue. The literature in this group approaches disaster within the matrix of state rights and obligations. Included in this body is literature on the creation of international mechanisms to deal with disaster. The second group, which I call the "limited subject" approach, views individuals as subjects of international law, considering international law to be a mechanism that can ascribe disaster-related rights to individuals. The third and smallest group, which I call the "participant" approach, can be seen to implicitly place individuals as participants in disaster-related international legal processes, and considers how individuals may utilise the existing international legal system.

The lack of an overarching legal framework that was revealed in the previous chapter has meant that many of the works examined in this chapter do not make conceptual distinctions between the creation of state, or any other actor responsibility, because they seek to apply certain areas of existing law to the creation of new disaster norms. As such, the conceptual divisions between the three types of literature that are presented in this chapter have been developed for the purpose of considering how current international debate considers the individual. Thus, the literature may not always fit neatly into the categories presented. However, as the conceptual distinctions made in this chapter allow the treatment of the individual in international law to be brought to the fore, they are still of value in an examination of the empirical literature.

In order to provide the broadest coverage of academic opinion, the material examined in this chapter is not limited to purely academic work, but includes also research and reports of UN bodies that carry out work related to international disaster rules.

3.2 The "Traditional approach": Literature examining the international rights and obligations of states

When faced with the question of what international law can do in relation to disaster-related human suffering, past efforts to develop rules and principles have not

attempted to establish that states or individuals have a right to relief. Rather, the bulk of empirical literature has sought to identify state rights and obligations with regard to offers and acceptances of disaster relief measures for natural disaster. In the last decade, and particularly after Cyclone Nargis struck Burma in 2008, the circumstances in which a disaster-struck state's sovereignty might be overcome in order to compel the provision of disaster relief has become the subject of increased debate. This body of literature takes a traditional approach to the subject/object dichotomy, and as a result, this problem is posed in terms of the regulation of inter-state relations, and accordingly, individuals' capacity to participate in disaster-related international legal processes is generally not considered to be a relevant legal issue. Literature using the traditional approach seeks to limit the extreme effects of the principles of sovereignty and non-intervention, by imposing rights or obligations on the disaster struck state, and conversely, by imposing rights and/or obligations on states that wish to assist a disaster struck state. There is also a strand of literature, based on the subject/object dichotomy advocating for the idea that disaster relief is best left to the prerogative of states and does not require international legal regulation. Each of these strands will be considered in turn.

3.2.1 Rights and obligations of the disaster-struck state

Literature that discusses the rights and obligations of a disaster-struck state is discussed on two axes: writers seek to identify the conditions under which the disaster-struck state bears obligations to the individual, and to the international community. In the "traditional approach", state rights and obligations are the focus of analysis: writers examine disaster and international law through the prism of state rights, and construct legal regimes that first and foremost respect the sovereignty of states. Accordingly, although non-state actors such as NGOs play an increasingly important role in the field of disaster relief,[3] the right to give disaster relief is not discussed. Bettati for example, notes that the right of humanitarian intervention arises from the practice of French doctors who tried to "free themselves from the rules of recognised international law which often stood in the way and prevented them to reach (sic) victims of natural, industrial or political disasters".[4] He does not, however, discuss the rights of such actors to humanitarian access, instead speaking of a "right of humanitarian intervention", or a "right of free access to victims" only in terms of inter-state relations.

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[3] See e.g. D. Fisher, *Law and Legal Issues in International Disaster Response: A Desk Study* (Geneva: IFRC, 2007), 28-32. Hereinafter *Law and Legal Issues*. For a discussion of problems that the increased numbers of international (non-state) disaster responders pose to disaster relief, see A. Katoch, "The Responders' Cauldron: The Uniqueness of International Disaster Response" 59(2) (Spring/Summer 2006) *Journal of International Affairs* 153-172.

[4] M. Bettati, "The Right of Humanitarian Intervention or the Right of Free Access to Victims?" 29 (1992) *Review of the International Commission of Jurists* 1, 1.

It is generally accepted that under the principle of sovereignty, disaster-affected states may act as they wish with regard to disaster measures for individuals within the territorial jurisdiction of the disaster-affected state.[5] The primary responsibility of disaster-struck states in the initiation, organisation, coordination, and implementation of humanitarian assistance within its territory is referred to in many United Nations General Assembly (UNGA) Resolutions.[6] This position has been supported by states since the establishment of the International Relief Union.[7] [8] The principle of sovereignty has a corollary: the negative right of non-intervention. In other words, there is a positive state right to act as it wishes in its territorial jurisdiction and a negative right not to be interfered with in its domestic jurisdiction. These rights generally do not generate any controversy in the disaster context.[9] However, it is increasingly recognised that sovereign's rights under the principles of sovereignty and non-intervention are tempered by the sovereign's duty to ensure the protection of persons and the provision of disaster relief and assistance on its territory.[10] This view can be found, for example, within the comments of the International Law Commission's (ILC) Special Rapporteur on the protection of persons in the event of disaster (Special Rapporteur). The Special Rapporteur argues that sovereignty and non-intervention have two legal consequences; firstly that relief operations must have the consent of the disaster-struck state, and the other consequence being that the disaster-struck state bears the ultimate responsibility for protecting disaster victims on its territory, and that it has the primary role in facilitating, coordinating and overseeing relief

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[5] See e.g. the opinion of Y. Beidberger, *The Role and Status of International Humanitarian Volunteers and Organizations: The Right and Duty to Humanitarian Assistance* (Leiden: Martinus Nijhoff, 1991), 372, 382, 384.

[6] See e.g. Article 3 of "I. Guiding Principles" Annex to UNGA, *Strengthening of the coordination of humanitarian emergency assistance of the United Nations*, A/RES/46/182 (1991).

[7] The International Relief Union was the first intergovernmental organisation for disaster relief, was established under the International Relief Union Convention of 1927. Article 4 states that the IRU's action in any country is subject to the consent of the government. The IRU will be examined in more detail in Chapters Four and Five infra.

[8] See e.g. debates of the Sixth Commission on the ILC's work on the protection of persons in the event of disasters. States observed that the primary responsibility for the protection of persons and provision of humanitarian assistance on an affected State's territory lie with the state (Russian Federation (A/C.6/65/SR.22, para. 85); Ireland (A/C.6/65/SR.24, para. 55)). Pakistan asserted that the primacy of affected states in the provision to disaster relief assistance is based on State sovereignty and flows from the state's obligation towards its own citizens (Pakistan (A/C.6/65/SR.23, para. 57)). States also agreed upon the idea that international assistance could only be provided with the consent of the affected state (Switzerland (A/C.6/65/SR.22, para. 38), Iran (A/C.6/65/SR.24, para. 37), Indonesia (A/C.65/SR.24, para. 68), South Korea (A/C.6/65/SR.25, para. 29)).

[9] See e.g. comments by the Special Rapporteur on the issue in his third report. However, non-state actors often take issue with the state focus of the international debate on the creation of rights with regard to disaster relief, and in particular, in what circumstances disaster relief may be given. For example, the League of Red Cross Societies and the International Committee of the Red Cross, with regard to the 1984 *Draft Convention on expediting the delivery of emergency assistance*, commented that the *Draft Convention* over-emphasised the sovereignty of states who would receive aid under the Convention if it were adopted. Y. Beidberger, *The Role and Status of International Humanitarian Volunteers and Organizations: The Right and Duty to Humanitarian Assistance* (Leiden: Martinus Nijhoff, 1991), 378.

[10] See discussion in E. Valencia-Ospina, *Third Report on the protection of persons in the event of disasters*, A/CN.4/629 (2010), paras. 23-34. Hereinafter, *Third Report.*

operations on its territory.[11] This is embodied in the ILC's draft articles on the protection of persons in the event of disasters. In Draft Article 9, the ILC finds that the principle of sovereignty establishes a responsibility to ensure the protection of persons and provision of relief and assistance on its territory. This has been met with general agreement by states.[12] From this perspective, state obligation with regard to the international community may take two forms: a positive obligation to seek assistance or to accept assistance, and a negative obligation that constrains the ability of states to refuse assistance.

Calls for the establishment of a state obligation to seek disaster assistance from the international community can be found in proposals by various non-governmental organisations, such as the resolution on humanitarian assistance adopted by the Institut de Droit International in 2003[13] and the International Federation of the Red Cross' (IFRC) guidelines on disaster relief.[14] The Bruges Resolution establishes that states "shall seek assistance from competent international organizations and/or from third States" when it cannot provide this assistance; while the IFRC Guidelines provide that where a disaster-struck states decides that a disaster exceeds its capacity to cope, then it should seek international assistance.[15] The UN Secretariat, in an extensive Memorandum prepared in 2006 following the Indian Ocean Tsunami of 2004, noted that the emphasis placed in existing law on state offers and responses regarding disaster relief are a function of the operation of the principles of respect for sovereignty and non-intervention. These documents suggest that although disaster-struck states have the discretion to request assistance under the doctrine of sovereignty. However, this discretion may be evolving towards a greater recognition of a positive duty on states to request assistance, especially where the magnitude of an emergency is beyond the response capacity of the disaster-struck state. The Secretariat cited UNGA Resolution 46/182,[16] the Bruges Resolution,[17] and the IFRC's Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance[18] to support this claim.[19] However, the Secretariat also considered that imposing an obligation on states to seek

[11] Id., para 78. The Rapporteur elaborates the proposed content of these duties in paras, 28-33.
[12] ILC, United States of America (A/C.6/66/SR.21, para. 69), Colombia (A/C.6/66/SR.22, para. 27), France (A/C.6/66/SR.23, para. 38), Netherlands (A/C.6/66/SR.23, para. 48), China (A/C.6/66/SR.25, para. 17), Ireland (A/C.6/66/SR.25, para. 21), Algeria (A/C.66/Sr.25, para. 31), Ireland (A/C.6/66/SR.21, para. 55), Pakistan (A/C.6/66/SR.25, para. 6).
[13] Institut de Droit International, *Humanitarian Assistance* (2003). (Bruges Resolution), Part III.3.
[14] IFRC, *Guidelines for the Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance*, IFRC 301C/07/R4 Annex (2007).
[15] Id., Guideline 3(2).
[16] Annex, I. Guiding Principles, para. 5.
[17] Sect III, para 3.
[18] Guideline 3(2).
[19] United Nations Secretariat, *Protection of persons in the event of disasters: Memorandum by the Secretariat*, A/CN.4/590 (2007), para. 57. Hereinafter, *Memorandum*.

assistance would constrain a disaster-struck state's capacity to decline offers of assistance, and would therefore suggest that consent should not be withheld arbitrarily.[20] This is reflected in the ILC's draft article 11 on the consent of the affected state to external assistance, which will be discussed below.

The ILC has provisionally adopted a draft article on a disaster-struck state's duty to seek assistance called the duty to cooperate. The duty as elaborated by the ILC states that, "To the extent that a disaster exceeds its national response capacity, the affected State has the duty to seek assistance from among other States, the United Nations, other competent intergovernmental organizations and relevant non-governmental organizations, as appropriate."[21] The ILC's Special Rapporteur on protection of persons in the event of disaster argued that this responsibility of states stems from the principles of sovereignty and non-intervention, which must be considered in light of the responsibilities undertaken by states in the exercise of sovereignty.[22] That is, the Special Rapporteur finds a duty to cooperate where the disaster response capacity of the affected state is overwhelmed. This is similar to the UN Secretariat's finding that the guiding principles of sovereignty etc. contained in UNGA Resolution 46/182 on humanitarian assistance, imply a duty to cooperate where a state's disaster response capacity is inadequate in its 2006 Memorandum.[23] However, both bodies note that this obligation is tempered by the right of the disaster-struck state to consent to any proposed transboundary disaster relief measures.[24] The Special Rapporteur suggests that duty of disaster-struck states to cooperate on the international plane stems from states' primary responsibility to the people within its territory under the principle of sovereignty.[25]

A somewhat stronger variation of the state duty to seek assistance is the positive duty to accept assistance. Hardcastle and Chua have advocated for the creation of a positive obligation on states to allow transboundary disaster relief operations on their territory. Their proposal is contained in a draft international agreement on principles of international relief in natural disaster situations. The relevant article provides that "the receiving state is obliged to allow" international humanitarian relief measures from "qualified organizations"[26] where disaster victims do not receive necessary assistance

[20] UN Secretariat, *Memorandum*, para 65.
[21] ILC, *Texts of draft articles 1, 2, 3, 4 and 5 as provisionally adopted by the Drafting Committee*, A/CN.4/L.578 (2009), article 5.
[22] E. Valencia-Ospina, *Fourth report on the protection of persons in the event of disaster*, A/CN.4/643 (2011), para. 31. Hereinafter, *Fourth report*.
[23] UN Secretariat, *Memorandum*, para. 57.
[24] E. Valencia-Ospina, *Fourth report*, para. 38; UNGA, *Strengthening of the coordination of humanitarian emergency assistance of the United Nations*, A/RES/46/182 (1991), Annex, para. 5
[25] Id., para. 39.
[26] While this seems to be a far-reaching obligation, it is in fact constrained by the conditions that would limit 'qualified' organisations to non-governmental organizations that are not associated with any government,

necessary to sustain life and dignity.[27] However, as Benton-Heath notes, the strong formulation of this duty, which might allow access to states and intergovernmental organisations, is unlikely to be accepted at the international level.[28]

The negative form of the obligation on states to seek assistance constrains the discretion to refuse assistance. The limitation on the sovereign right to refuse assistance reflects recent trends in thinking about sovereignty, because it is intended to apply to situations in which the disaster-struck state is unwilling or unable to provide assistance. Benton Heath, for example, in arguing for the ILC to develop just such a legal obligation, observes that recent instruments addressing humanitarian assistance operations tend to phrase the duties of the affected state not in terms of positive duties and that the negative formulation is the preferable formulation.[29] Benton Heath proposes a two-part rule that would firstly, require a state to seek assistance from other states, international organisations and NGOs where it is "unable or manifestly unwilling" to provide humanitarian assistance to people on its territory; and secondly, obligate a state not to arbitrarily withhold consent to assistance.[30] The latter requirement, would, according to Benton Heath, would create a framework for the state to publicly justify why it has refused an offer of aid. The provision of reasonable grounds for refusal provides a framework in which a state's obligations are reinforced by other international legal commitments, for example, to human rights instruments such as the ICESCR. Benton Heath claims that his proposal would open up pathways for the evaluation of state action, and thereby facilitate the "naming and shaming" of states, or justification of Security-Council authorised interventions.[31]

Benton Heath identifies subjective and objective criteria that trigger the obligation not to withhold consent to aid, one of which is the hardships suffered by the population. Hardships can be determined with regard to the usual standard of living of the population, and it is argued that the focus on the circumstances affecting a population is important because this would place the individual, or at least a group of individuals, at the centre of legal analysis, which would in turn be consistent with the rights-based approach that the

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have a proven record in effective humanitarian relief and that are placed on a roster maintained by the UN Office for the Coordination of Humanitarian Affairs. R. Hardcastle & A. Chua, "Humanitarian Assistance: Towards a Right of Access to Victims of Natural Disasters" 325 (1998) *International Review of the Red Cross* 589.

[27] R. Hardcastle & A. Chua, "Humanitarian Assistance: Towards a Right of Access to Victims of Natural Disasters" 325 (1998) *International Review of the Red Cross* 589.

[28] J. Benton-Heath, "Disasters, Relief, and Neglect: The Duty to Accept Humanitarian Assistance and the work of the International Law Commission" 43 *New York University Journal of International Law and Politics* 419, 454. Hereinafter, "Disasters, Relief and Neglect".

[29] See generally, Benton Heath, "Disasters, Relief, and Neglect".

[30] Id., 472.

[31] Id., 474.

ILC is taking to its work on protection of persons in disasters.[32] Benton Heath further notes that the creation of a negative obligation would most directly address the problem that aid often does not reach its intended beneficiaries, and might offer a way to compel international relief efforts. Benton Heath believes that his proposal, although not going so far as to assert a right to humanitarian assistance, provides a principled legal basis for asserting the existence of this right, which might form part of claims for reparation.[33] Further, he believes that it provides additional protection to individuals against the mismanagement of the aftermath of disasters,[34] and explicitly links the denial of humanitarian assistance to human rights.

Benton Heath argues that new disaster norms should be stronger so that in cases where a state has shown an unwillingness to act for disaster victims, the international community can compel access to the population. The international community may thereby assist people who have already been affected by disaster, as well as those who face the threat of disaster.[35] In summary, Benton Heath claims that his proposal balances sovereignty with human rights; that is, he argues that governments should have the right to deny offers of aid that carry untenable conditions, but at the same time, forces governments to provide justifications for any denial.[36]

The Special Rapporteur advocated a similar approach in crafting a draft article on the duty of states not to arbitrarily withhold consent. In arguing for this approach, the Special Rapporteur notes that international human rights law (IHRL) already encapsulates a balance of interests between states and the persons under its jurisdiction to a certain extent. The obligations, as part of IHRL, are not only owed to states, but also to the individuals.[37] In particular, the right to life under article 6 of the ICCPR contains the obligation to take positive measures to protect life. Thus, the Rapporteur argues, under this rule, any offer of assistance that is refused might constitute a violation of the right to life.[38] This might also apply to the obligation of each party to the ICESCR to take steps through international assistance and cooperation to achieve the realisation of the rights contained therein.[39] The Special Rapporteur also referred to the drafting process of the Additional Protocols of 1972 and 1973 of the Geneva Conventions, which contained an obligation to accept relief if the relief met requirements such as impartiality and humanity,

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[32] Id., 460.
[33] Id., 475.
[34] Ibid.
[35] Id., 461-462.
[36] Id., 475.
[37] E. Valencia-Ospina, *Fourth report,* para. 59.
[38] Ibid.
[39] Ibid.

among others.[40] The Special Rapporteur concluded that, in light of existing legal norms in IHRL, IHL, and other areas of international law, that there was an obligation on disaster-struck states not to withhold consent arbitrarily, if it was required to meet the needs of the individuals concerned, when met with offers of assistance.[41] The Rapporteur noted in particular, that the position of the persons in need in all protection regimes justifies a limitation on states' *a priori* right to refuse assistance.[42]

In this way, both Benton Heath and the Rapporteur interpret the international duty to cooperate in a way that supports the establishment of a negative obligation not to arbitrarily withhold consent. The ILC has adopted Draft Article 11(2) which stipulates that consent to external assistance by the disaster-struck state should not be withheld arbitrarily, which underlies the disaster-struck states duty and right to assist its own population.[43] This article was welcomed by a number of states in the Sixth Committee debates on the ILC's draft articles.[44] However, on the other hand, some states emphasised the principle of sovereignty, arguing that the disaster-struck state has a right to decide whether to request or accept humanitarian assistance, and rejected the existence of a state obligation to accept outside assistance as no international custom or state practice could be identified to support this.[45]

The development of the debate on the imposition of certain obligations towards both the international community and the individual seems to point in the direction of general acceptance of these obligations of the disaster-struck state. Taking the idea of obligations of the disaster-struck state to their logical conclusion, international criminal sanctions under the responsibility to protect doctrine (R2P) against states that do not provide adequate assistance, or neglect disaster struck populations on their territory in natural disasters has been proposed.[46] However, it has been argued in response that such an approach would seriously challenge the principles of sovereignty and non-intervention,

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[40] Id., para. 66.
[41] Id., para. 76.
[42] Ibid.
[43] This article reads in full:
"**Article 11**
Consent of the affected State to external assistance
1. The provision of external assistance requires the consent of the affected Sate.
2. Consent to external assistance shall not be withheld arbitrarily.
3. When an offer of assistance is extended in accordance with the present draft articles, the affected State shall, whenever possible, make its decision regarding the offer known."
[44] Finland, on behalf of the Nordic States (A/C.6/66/SR.21, para. 60), El Salvador (A/C.6/66/SR.24, para. 13), Spain (A/C.6/66/SR.23, para. 50), Colombia (A/C.6/66/SR.22, para. 27).
[45] Cuba (A/C./66/SR.24, para. 27), Indonesia (A/C.6/66/SR.24, para. 70), China (A/C.6/66/SR.23, para. 42).
[46] S. Ford, "Is the Failure to Respond Appropriately to a Natural Disaster a Crime Against Humanity? The Responsibility to Protect and Individual Criminal Responsibility in the Aftermath of Cyclone Nargis" 38 (2010) *Denver Journal of International Law and Policy* 227-276.

and that states who are prone to disaster would stress sovereignty rather than consent to the creation of rules that would require them to accept outside aid.[47] In addition, the ILC has firmly rejected the R2P doctrine's application to natural disaster in the context of its draft articles.[48]

3.2.2 Rights and obligations of non-disaster affected states

The other side of the debate discusses the situations in which the rights and obligations of states that may give aid to a disaster-affected state, which has been given attention since the 1990s, when issues of humanitarian intervention began to emerge. The starting point for this strand is the same as that of the strand discussing the international rights and obligations of the disaster-struck state: namely, the principles of sovereignty and non-intervention. However, in the context of the rights and obligations of states that have not been struck by disaster, rights and obligations of such states necessarily entail outside assistance, and the focus in this strand of debate is on the creation of obligations or duties to offer or provide disaster relief.

In terms of states' rights, as in Vattel's time, it would seem that under the principle of sovereignty, states have the right to determine whether or not to provide a disaster-struck state with relief measures.[49] More recently, however, interest has intensified on the issue of whether or not there exists a right to offer humanitarian assistance in natural disasters under international law. The Special Rapporteur, in his fourth report to the ILC, proposed the inclusion of a right to offer humanitarian assistance.[50] The Rapporteur noted in this report that such a right would be in accordance with the understanding that disaster assistance, which should be based on the principles of humanity etc., and the understanding that protection of the individual is the ultimate goal of the ILC's project.[51] Further, the Rapporteur contends that the appropriateness of creating a right to offer humanitarian assistance arises from an understanding of disasters as an interest of the community of states. One such concern that arises out of this understanding of disaster is, for example, is the requirement of states to report when an individual outside their territory is being inappropriately treated where disaster-related health hazards exist.[52] Thus, the right to offer assistance is the manifestation of international solidarity, and

[47] D. Fidler, "Disaster and Relief Governance After the Indian Ocean Tsunami: What Role for International Law?" 6 (2005) Melbourne Journal of International Law 458, 472.

[48] In a 2009 ILC debate, it was determined that applying R2P to natural disasters would "stretch the concept beyond recognition or operational utility." International Law Commission, *Summary Record of the 3019th meeting*, A/CN.4/SR.3019 (2009).

[49] E. Vattel, *The Law of Nations, or Principles of the Law of Nature Applied to the Conduct and Affairs of Nations and Sovereigns,* (1758), Book II, §5, §9.

[50] E. Valencia-Ospina, *Fourth report on the protection of persons in the event of disasters*, A/CN.4/643 (2011), paras 78-95.

[51] E. Valencia-Ospina, *Fourth report,* paras. 78, 80, 84.

[52] Id., para. 82.

arises from the recognition that protection of persons in disaster is an inherently global matter.[53]

A more extreme version of the right to offer humanitarian assistance in cases of natural disaster is the state right to military intervention to give humanitarian assistance. Debate over this right was particularly emphasised after the devastating human effects of Cyclone Nargis were further exacerbated by the Burmese junta's refusal to accept aid in 2008. Jackson, for example, writing in 2010, argues for a "kinder, gentler" right of humanitarian intervention based on the responsibility to protect (R2P) doctrine. Jackson argues that there is a growing acceptance of military humanitarian intervention, which could be applied to disaster relief. Citing the examples of the North Atlantic Treaty Organization (NATO) intervention and the Economic Community of West African States use of force against Sierra Leone, Jackson contends that since the termination of the Cold War, humanitarian intervention, which subordinates national sovereignty claims in favour of basic human rights protections, has become more common.[54]

Bettati, writing more than ten years earlier, in the period when NATO's intervention in Kosovo had become the subject of the legitimacy of military humanitarian intervention, puts forward a similar argument for the recognition of a state right of humanitarian intervention, or the right of free access to victims.[55] Taking a somewhat positivist stance regarding the creation of international legal norms, Bettati relies on the weight of the argument that a principle of free access to disaster victims (both conflict and non-conflict related disaster) already exists in legal texts, such as United Nations Security Council (UNSC) and UNGA Resolutions,[56] and that the principle enjoys ethical support from figures such as the representatives of states, and the Pope.[57] Bettati further argues that the principle of free access to victims is an obligation erga omnes, which finds its moral justification in the fact that it is not the desire of aid givers to dominate aid recipients, but is rather an essential condition to the deployment of assistance to "save" victims.[58]

The proposed right to military intervention to help victims of natural disaster was, however, firmly rejected by the Special Rapporteur in 2009. The Rapporteur stated that the ILC's project would not justify the delivery of humanitarian assistance by military

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[53] Id., para. 84.
[54] Ibid.
[55] M. Bettati, "The Right of Humanitarian Intervention or the Right of Free Access to Victims?" 29 (1992) *Review of the International Commission of Jurists* 1. Hereinafter "The Right of Humanitarian Intervention".
[56] Bettati cites UNSC Resolution 758, para. 8; Resolution 770, para. 3; 771, para. 4; Resolution 794, paras. 2, 3; *Humanitarian Assistance to Victims of Natural Disasters and Similar Emergency Situations*, A/RES/43/131 (1988).
[57] Bettati, "The Right of Humanitarian Intervention", 4-7.
[58] Id., 6.

force, noting that forced intervention is illegal under international law, and could not be justified under R2P's original narrow interpretation.[59]

The other side of the development of a state right to offer assistance is the duty to offer humanitarian assistance. In 2006, the UN Secretariat in considering whether an obligation to offer assistance in natural disaster existed, came to the conclusion that the existence of a "duty" as opposed to a "right" to offer assistance did not yet definitively exist as a matter of positive law.[60] The Secretariat further noted that such positive obligations to provide assistance are typically the subject of specific agreements, existing in treaties such as the *Food Aid Convention* (1999).[61] This duty to offer assistance seems to be envisaged to be by a state to a disaster-struck state, which would exclude the individual from any such interaction.

3.3 No rights or obligations: The argument for the dominance of state sovereignty

Another position which is taken in the literature on state rights and obligations in the context of disaster, albeit one that is in the overwhelming minority, is the idea that the rights and obligations of states with regard to disaster do not need to be elaborated. This minority view in the category of state rights and obligations is arguably redundant, as it cannot be denied that the general trend of scholarship, NGO activity and international political action regarding disaster has not only accepted that disaster is an organising concept for international cooperation, but also that it is a legitimate subject of regulation. The ILC's work and the general support for the ILC's work of states of the UNGA's Sixth Committee attest to this. However, for the purposes of this literature review, and to gain a fuller understanding of how the subject/object dichotomy with regard to state rights and obligations with regard to disaster may be manifested, it is of value to consider some of these arguments.

A proponent of this view is Fidler, who argues that the current fragmented state of international law on disaster relief is a result of the fact that natural disasters are episodic, short-lived and do not affect a state's interests in the way that war, trade and technological developments do. The episodic short lived nature of natural disasters correlates with the interests of giving and receiving states and means that each state has a strong interest in maintaining as much sovereign discretion as possible. Fidler notes that as in Vattel's time almost 300 years before the present assisting and victim states retain virtually unfettered

[59] Benton Heath, "Disasters, Relief and Neglect", 423, note 18. The author cites a speech made by the Special Rapporteur in the ILC's 2009 Plenary Debates on the topic. A summarised version of the speech can be found in International Law Commission, *Report on the work of its sixty-first session*, A/64/10 (2009), para. 178.
[60] UN Secretariat, *Memorandum*, para. 61.
[61] Id., para. 62.

sovereignty in the context of natural disaster policy.[62] This situation provides little prospect for the development of rules of law designed to maintain sovereignty, because states typically craft international law where their interests converge on the need to regulate sovereignty.[63]

In assessing the future role of international law in international disaster relief, Fidler argues that international law has little prospect for development because of the policy dynamics of this age. These dynamics lie in three general trends: firstly, disasters are being reconceptualised as part of systemic state interests (in other words, as the part of the high politics of international relations),[64] secondly, the general trend in disaster management is towards an in-depth governance which requires the calibration and re-calibration of domestic laws,[65] and thirdly, the complex nature of contemporary disaster relief requires the elaboration of lengthy and detailed instruments that require states to take on correspondingly complex obligations. Such instruments are likely to require further incursions into sovereignty by requiring extensive technical obligations to facilitate humanitarian assistance. The creation of such complex legal and administrative infrastructure may be beyond the capacities of many countries.[66]

Fidler concludes that the focus is now on domestic law and governance rather than on international law, and that international law will play little role in the future development of natural disaster relief. He further notes that developments in the area of natural disaster policy are unlikely to lead to the creation of comprehensive binding rules on states.[67] Fidler argues further that, if states do not understand their own self-interests in disaster governance resilience, multilateral treaties on the provision of disaster relief that are complex and economically demanding may have an opposite effect on state desire to furnish aid.[68]

3.4 The "Limited subject" approach: The rights of non-state actors with regard to disaster

The limited subject approach has enjoyed greater attention in recent years. In this approach, not only the international rights and obligations of states, but those belonging to non-state actors become the basis for analysis. In contrast to the "traditional" approach, the literature attempts to ascribe international rights and obligations to non-state actors by

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[62] D. Fidler, "Disaster and Relief Governance After the Indian Ocean Tsunami: What Role for International Law?" 6 (2005) Melbourne Journal of International Law 458, 466. Hereinafter "What Role for International Law?"
[63] Id., 461.
[64] Id., 467-9.
[65] Id., 469-70.
[66] Id., 471-2.
[67] Id., 473.
[68] Ibid.

finding a place for non-state actors within the traditional state rights framework. For individuals, rights are sought to be ascribed through the prism of human rights. Under western-oriented human rights, human emancipation is viewed through the prism of what governments do to individuals, and thus the issue of the international duties of the individual, nor the issue of individual's duties to the state, do not arise in the literature. However, these rights are often interpreted in terms of states obligations to fulfil, protect and respect them. Rights and obligations are discussed in terms of the rights and obligations of non-state actors such as international organisations,

3.4.1 The rights of intergovernmental organisations and non-governmental organisations

The capacity for intergovernmental organisations to act in situations of disaster has been accepted on the international plane since at least the late 1920s, with the establishment of the International Relief Union.[69] This was reaffirmed with the creation of the United Nations Disaster Relief Co-ordinator (UNDRO) under UNGA resolution 2816 (XXVI) of 1971.[70] Other resolutions which call attention to the UN's capacity to act in disaster situations by recognising the competence of the Secretary-General to call on states to offer assistance to natural disaster victims, are UNGA Resolutions 43/131 (Humanitarian assistance to victims of natural disasters and similar emergency situations), and 36/225 (Strengthening the capacity of the UN system to respond to natural disasters and other disaster situations).

The World Health Organization (WHO), under the International Health Regulations, is vested with the power to offer assistance if a global health hazard arises. The International Atomic Energy Agency is given the power to offer its good offices where there has been a nuclear accident or radiological emergency.[71]

Perhaps in recognition of the existing state of practice with regard to intergovernmental organisations, non-governmental bodies such as the Institut de Droit International, have included provisions on offers of humanitarian assistance in their works. For example, Article V of the Institut's 2003 Resolution on Humanitarian Assistance provides a positive intergovernmental organisation duty:

> "2. Intergovernmental organizations shall offer humanitarian assistance to the victims of disaster in accordance with their own mandates and statutory mandates."[72]

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[69] *Convention Establishing an International Relief Union* (1927).
[70] UNGA, *Assistance in Cases of Natural Disaster and Other Disaster Situations*, ARES/2816 (XXVI) (1971).
[71] Article 5(d), *Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency* (1986).
[72] Institut de Droit International, *Humanitarian Assistance* (2003). (Bruges Resolution).

While the capacity of intergovernmental organisations to offer assistance to disaster-struck states is accepted, the capacity of NGOs and other non-state actors to do the same has been less recognised. Beigberder, in 1991, considered the problem of the role and status of humanitarian NGOs and volunteers in international law in the context of situations other than armed conflict. He came to the conclusion that there is a moral duty of humanitarian assistance, which extends to the international level on the ground of solidarity. On the other hand, there is also a right for the sick and wounded to be cared for. However, he concluded that in international law, these facts did not result in legal rights and duties for NGOs and volunteers to give assistance, as sovereigns have the right to accept or reject international offers of humanitarian assistance.[73]

The position on the legal right of NGOs to offer assistance seems to be changing, however. The UNGA has, for example, through the adoption of resolutions, recognised that NGOs play important roles in disaster response. In UNGA Resolution 43/313 for example, the UNGA:

> "3. Stresses the important contribution made in providing humanitarian assistance by intergovernmental and non-governmental organizations working with strictly humanitarian motives;
>
> 4. Invites all States in need of such assistance to facilitate the work of these organizations in implementing humanitarian assistance, in particular the supply of food, medicines and health care, for which access to victims is essential;
>
> 5. Appeals, therefore, to all States to give their support to these organizations working to provide humanitarian assistance, where needed, to the victims of natural disasters and similar emergency situations."[74]

Further, the Special Rapporteur in proposing non-state actors' right to offer assistance, justified the establishment of such a provision by arguing that the protection of persons in the event of disasters is a "project of the international community as a whole",[75] and that the international legal structure built, which hinges on the primary responsibility of the disaster-affected state, is framed by the principles of humanity, neutrality, impartiality, non-discrimination and underpinned by solidarity.[76] The Special Rapporteur, noting that there was an extensive and consistent international practice of international and

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[73] Y. Beidberger *The Role and Status of International Humanitarian Volunteers and Organizations: The Right and Duty to Humanitarian Assistance* (Leiden: Martinus Nijhoff, 1991), 384.
[74] UNGA, *Humanitarian Assistance to Victims of Natural Disasters and Similar Emergency Situations*, A/RES/43/131 (1988).
[75] Valencia-Ospina, *Fourth report*, paras. 80, 96.
[76] Ibid.

non-governmental organisations making offers of assistance to states such as Japan and the United States of America, concluded that the right to offer assistance applies not only to non-affected states but also to international organisations and other humanitarian organisations. The Special Rapporteur recognised IGOs and NGOs as participants that contribute to achieving the interest of the international community in protecting people in disasters.[77] The Rapporteur concluded by proposing the following draft article:

> **"Draft Article 12**
>
> **Right to offer assistance**
>
> In responding to disasters, States, the United Nations, other competent intergovernmental organizations and relevant non-governmental organizations shall have the right to offer assistance to the affected State."

The ILC, at the time of writing, had not yet adopted this draft article. Many states in the Sixth Committee agreed with the proposal, maintaining that it acknowledged the interest of the international community in the protection of persons in the event of a disaster, which was complementary to the primary responsibility of the disaster-struck state.[78] However, it was also stressed in the drafting debates in the ILC that this was a right to offer, not to provide, assistance, and the disaster-struck state still had the prerogative to accept, in whole or in part, any offers of assistance.[79]

3.4.2 The rights of the individual

Writing in 1979, a time when international human rights law was still in its formative stages, Samuels argued that states' general responsibility regarding natural disasters fell within the realm of human rights law. He pointed out that natural disasters have a significant impact on the right to adequate food, clothing, and housing and to the continuous improvement of living conditions, and that states would not be able to take steps to realise this right without taking into account the GNP which is lost to natural disasters. Samuels viewed this as being a violation of these rights.[80] Samuels argued that states have legal obligations to assist another state in times of natural disaster, to prepare for disaster relief within its own territory and take preventive measures in order to minimise the suffering resulting from natural disasters, and an obligation to accept relief

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[77] Id., paras .105-6.

[78] E. Valencia-Ospina, *Fifth report on the protection of persons in the event of disasters*, A/CN.4/652 (2012), para. 44.

[79] Slovenia (A/C.6/66/SR.20, para. 12), Finland (on behalf of the Nordic States) (A/C.6/66/SR.21, para. 60), Poland (A/C.6/66/SR.21, para. 86), Mexico (A/C.6/66/SR.22, para. 20), Czech Republic (A/C.6/66/SR.23, para. 19), Austria (A/C.6/66/SR.25, para. 19), Egypt (A/C.6/66/SR.25, para. 36).

[80] J.W. Samuels, "The relevance of international law in the prevention and mitigation of natural disasters" in L.H. Stephens & S.J. Green (eds.), *Disaster Assistance: Appraisal, Reform and New Approaches* (London: Macmillan, 1979), 245, 248.

for its people from other state after the occurrence of a natural disaster.[81] Samuels concluded that states have obligations to prevent and mitigate natural disasters under the ICESCR.[82] In a similar vein, Alston claimed that humanitarian assistance could be included as a third generation human right.[83]

Samuels and Alston were writing at a time when the ICCPR, ICESCR, the Convention on the Elimination of Racial Discrimination (CERD) had been adopted approximately a decade before, and when the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Convention on the Rights of the Child (CRC) had either very recently been adopted or were in their respective drafting processes. Since then, the content of the binding norms contained in these human rights conventions has been elaborated, not only by scholars, but also by the treaty bodies of each human rights treaty. The treaty bodies have come to play a large role in the interpretation and dissemination of human rights law through examinations of state practice and publications of their opinions. It might be said that human rights law has come of age; it is now interwoven into the fabric of international relations. Its place is signified not only by the passive acceptance of transboundary actors, but also by its active use as a dominant language of contemporary international relations. Thus, IHRL, as a "vocabulary of power",[84] now occupies a much different place in the international legal system than it did thirty years ago. In this context, new directions for the elaboration of the nexus between disaster, human rights and the individual have developed. Contemporary literature that discusses disasters in the context of individual rights does so in one of two ways: they seek to identify a new human right (or body of human rights) related to disaster, or to interpret existing human rights in the context of disaster.

An example of the former is Jakovljevic who writes that one of the key legal questions in the new field of disaster relief law is whether victims have a human right to humanitarian assistance.[85] According to Jakovljevic, although there is no definition of the right and no such right explicitly exists in the human rights canon, this right could be made up of two elements: the right to demand that assistance is provided, and the right to receive such assistance, whether demanded or offered without a demand. He argues that the existence of the right to humanitarian assistance is already in the consciousness of relief providers: "The subjects of international law are aware of the belief that the victims [of disaster]

[81] Id., 263.
[82] Ibid..
[83] P. Alston, "A third generation of solidarity rights: Progressive development or obfuscation of international human rights law?" 29 (1982) *Netherlands International Law Review* 307, 309.
[84] D. Kennedy, "Reassessing international humanitarianism: The dark sides" in A. Orford (ed.), *International Law and its Others* (Cambridge: Cambridge University Press, 2006), 135.
[85] B. Jakovljevic, International Disaster Relief Law" 34 (2004) *Israel Yearbook on Human Rights* 251, 257.

themselves have a right to humanitarian assistance. These subjects not only tolerate such a belief, but by their action manifest that they are fulfilling an obligation when they endeavour to help the victims concerned."[86] Jakovljevic argues that this is supported by the fact that denying the right to humanitarian assistance in wartime disaster contexts is punished under the Geneva Conventions.[87] He notes that the punishment of the obstruction of the provision of humanitarian aid is proof that such a right exists because humanitarian actions are not a purpose in themselves: they are protected under international law because they are intended to ensure the realisation of the basic rights of victims through humanitarian assistance, which in times of war and other disasters are the ways in which we protect life and health.[88] Jakovljevic further contends that the existence of the right has been recognised at the highest levels as is represented in the adoption of the International Institute of Humanitarian Law's Declaration on the "Guiding Principles on the Right to Humanitarian Assistance".[89] The implicit existence of the right to humanitarian assistance makes the case for the development of disaster relief stronger, and throws into relief the following: the interests of victims, expressed in their rights should be placed in the centre of all law developing processes.[90] Having argued that the right to humanitarian assistance already exists in international law, Jakovljevic concludes, using similar reasoning to the writers calling for the creation of rights and obligations of states regarding disaster, that the right to humanitarian assistance is a universal right, like the rules on human rights and humanitarian law, and is thus a concern of everybody which invokes solidarity.[91] However, somewhat confusingly, while Jakovljevic argues that the right already exists, at the same time he acknowledges that it is not yet recognised, noting that many new human rights have been created since the conclusion of the Universal Declaration of Human Rights (UDHR) and pointing out that there is no reason why this new right would not be recognised.[92]

Similarly, Hardcastle and Chua make the case for the creation of a human right to humanitarian assistance. They believe that humanitarian assistance consists in the provision of commodities and materials required during a natural disaster relief operation, and point out that the inadequacy of the current international regime necessitates the

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[86] Id., 258.
[87] I.e. if deprivations of basic relief goods and medical services causes causing serious bodily or mental harm to members of a group (article 6(b)), great suffering, if there is serious injury to disaster victims' mental or physical health (article 7(1)(k) defining crimes against humanity), among others Jakovljevic also points to articles 8(b)(ii) on war crimes, 8(b)(xxiv) on intentional attacks against any buildings, medical units etc with the emblem of the Geneva conventions, and 8(b)(xxv) on intentionally causing starvation as a method of warfare by wilfully impending relief supplies.
[88] Id., 259.
[89] Ibid.
[90] Id., 260.
[91] Id., 261.
[92] Id., 260.

development of the right to humanitarian assistance. Their starting point is that a document protecting the right to humanitarian assistance in natural disaster is necessary because there already exist documents on rights of war victims in IHL. Using the criteria contained in UNGA Resolution 41/120 regarding the development of human rights,[93] Hardcastle and Chua consider the feasibility of adopting an international document that establishes the right to humanitarian assistance. They conclude by proposing a set of draft "Principles of international relief in natural disaster situations", which provides, in article 1, that "Every person has the right to request and receive the humanitarian aid necessary to sustain life and dignity in natural disasters from governmental organizations or qualified organizations."[94]

In considering the existence of the right to humanitarian assistance, the UN Secretariat noted that commentators are split on the idea of the existence of the right to humanitarian assistance. The Secretariat pointed out that although Hardcastle and Chua do not believe that no right currently exists, others like Jakovljevic find this right and classify it as a secondary norm of international law, and still others find that the right is already firmly established.[95]

The ILC Special Rapporteur touched on the subject in his preliminary report, noting that from the "standpoint of the victims of disasters" the creation of international disaster norms is not only a matter of IHL, but also of IHRL, which includes the existence, or not, of a right to humanitarian assistance.[96] However, the Special Rapporteur did not take any particular stance on the relevance of the right to the scope of the topic, merely noting that the right was implicit in IHRL, but also that its nature was unclear. The Special Rapporteur suggested that using the right to humanitarian approach to the topic would create tension with the principles of sovereignty and non-intervention.[97]

States, with regard to the issue of the inclusion of the right to humanitarian assistance in the scope of the ILC's topic, parallels the unsettled situation of the literature. Some members pointed to the fact that to the extent that sovereignty and non-intervention entailed negative and positive obligations, it would be necessary to consider the issues that are implicated by the right to humanitarian assistance.[98] Other members stated that a right to humanitarian assistance which allowed the imposition of assistance on a state did

[93] R. Hardcastle & A. Chua, "Humanitarian Assistance: Towards a Right of Access to Victims of Natural Disasters" 325 (1998) *International Review of the Red Cross* 589, 593-603.
[94] Id., Annex, 607-8.
[95] UN Secretariat, *Memorandum*, para. 258.
[96] Valencia-Ospina, *Preliminary report,* para. 54.
[97] Ibid.
[98] ILC, *Report on the work of its sixtieth session,* A/63/10 (2008), para 241.

not exist, and urged the Special Rapporteur to commence work on this assumption.[99] Other states interpreted the right to humanitarian assistance as a state right to provide assistance,[100] and still others viewed the right as an individual human right, which is typically exercised collectively: non-fulfilment of which was considered a violation of the fundamental rights to life and human dignity.[101] Other states noted that the subject was rightfully one that could be analysed by the Rapporteur at a later stage.[102]

A slightly different approach to codification of disaster-related human rights is one which calls for the creation of not just a single right to humanitarian assistance, but for the codification of disaster victims' rights. Saechao, for example, using an approach similar to Hardcastle and Chua's, examines the feasibility of establishing a human rights instrument for natural disaster victims. Saechao's argument is that the R2P doctrine should be applied to the context of peacetime disaster (or more generally, natural disaster), and she asserts that there is an emerging global recognition of the responsibility of all states to provide protection to natural disaster victims, which implies that the victims have rights within the context of disaster. She further argues that recognising and codifying the rights of disaster victims within the field of international human rights law would impose on all states a legal duty to protect disaster victims, which would justify the responsibility to protect.[103] In supporting this claim, Saechao argues that acknowledging the applicability of human rights to natural disaster victims would expand the scope of international human rights and reinforce the international human rights regime.[104] She also points to the fact that recognising the human rights and disaster victims link would mean that states would have a legal responsibility to protect natural disaster victims by preventing and mitigating adverse effects from disasters, reacting to the needs of disaster victims by providing and accepting needed humanitarian assistance, and rebuilding disaster stricken communities.[105] She therefore believes that a human rights instrument elaborating rights for disaster victims is necessary. Unfortunately, Saechao does not specify the content of such a document, but references the right to an adequate standard of living contained in article 25 of the UDHR and article 11 of the ICESCR,[106] and cites UNGA Resolution 45/100 which states that neglect of natural disaster victims constitutes

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[99] Id., para. 242.
[100] Id., para. 243.
[101] Id., para. 244.
[102] Id., para. 245.
[103] T.R. Saechao, "Natural Disasters and the Responsibility to Protect" 32 (2007) *Brooklyn Journal of International Law* 663, 699.
[104] Id., 700.
[105] Ibid.
[106] Id., 701. It should be noted that the provisions do not have the same content. The UDHR's provision includes references to health, food, clothing, housing, medical care, social services, and social security, while the ICESCR's provision refers to adequate food, clothing, housing, and continuous improvement of living conditions.

a threat to human life and dignity.[107] It might be concluded then, that Saechao believes that a human rights instrument on the rights of disaster victims might at least include these rights and principles. However, she does not offer any explanations on how these rights and principles could be interpreted in terms of disaster, and it is difficult to see how this would substantively differ from the second approach, which calls for the interpretation of existing human rights in the context of disaster.

Kent too, calls for the conclusion of a treaty articulating human rights regarding disaster. However, in Kent's view, the important task is not only limited to human rights on disaster with regard to disaster relief, but also to the prevention and mitigation of disasters. According to Kent, the problem now is to articulate entitlements under the rubric of a "human right to disaster protection", which would require the creation of institutional arrangements to ensure that governments are made accountable to national and international agencies for inadequate preparation of disaster.[108]

The second approach, which seeks to apply existing human rights law to the context of disaster, can be seen to fill in the gaps of proposals such as Saechao's and Kent's by providing concrete interpretations of human rights norms in disaster contexts. Although international human rights law does not address the right to relief and protection from disasters, its application in disasters is argued to be implicit in human rights law itself. Kent, for example, claims that: "The *Universal Declaration of Human Rights* puts it this way in article 3, 'Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family... Disasters are conditions under which an individual may face 'circumstances beyond his control'. The right to an adequate standard of living is not suspended in disasters."

The application of human rights law to disaster situations is also justified under the "inclusivist dynamic of human rights" which challenges the objectivity and neutrality of law,[109] based on the idea of vulnerability. Gunn, for example, discussing the right to health of disaster victims, argues that:

> "[W]e must humbly admit that more often than not disaster victims fall by the wayside in may ways, and in the heat of the emergency, perhaps unwittingly... we concentrate more on their needs and less on their rights. Yet disaster victims do have tights, the same rights that they have

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[107] Ibid.
[108] G. Kent, "The human right to disaster mitigation and relief" 3 (2001) *Environmental Hazards* 137, 137-8.
[109] E. Brems, "Children's Rights and Universality" in J.C.M. Willems (ed.), *Developmental and Autonomy Rights of Children: Empowering Children, Caregivers and Communities* (Antwerp: Intersentia, 2007), 12, 14.

outside of a disaster situation."[110]

Similarly, Gould, considering the problem of post-disaster housing recovery from a human rights perspective, says the following:

> "Considering housing recovery from a rights perspective shifts the moral framework for action from charity to justice... Why tamper with a system that brings forth such an outpouring of goodwill and compassion; that unites men and women and women in a common understanding of the human condition? ... The answer lies in the escalating need... in the limited effectiveness of the current approach to restore housing for the most vulnerable."[111]

All human rights could be interpreted through the lens of disaster, but it is obvious that some rights seem to have more immediate application than others. The right to life, for example, is one that would seem to demand attention in all aspects of disaster situations, not just the disaster relief phase. Thus, although the mitigation and prevention aspect of disaster is not often discussed as a legal issue in general, Kälin and Haenni Dale, discussing the European Court of Human Rights judgments in the Öneryldiz and Budayeva cases[112] argue that the individual right to life and the corresponding state obligation to protect life require that with regard to natural disasters, states should, *inter alia*, enact and implement laws dealing with all relevant aspects of disaster risk mitigation and establish necessary, take necessary administrative measures, inform the population about dangers and risks, evacuate potentially affected populations, conduct criminal investigations and prosecute those responsible for negligence, compensate relatives of victims.[113]

Kent makes a similar argument for what he calls the "human right to disaster mitigation and relief", noting that no under the UDHR and ICESCR, governments have an obligation to take positive action to protect lives and ensure an adequate standard of living in normal times and in crisis, even if they have a limited capacity to protect the rights contained therein.[114] Thus, Kent asserts that governments have a positive obligation to prepare for disasters, and should take measures to mitigate the effects of those that cannot be prevented.[115]

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[110] S.W.A. Gunn , "The Right to Health of Disaster Victims" 12(1) (2003) *Disaster Prevention and Management* 48, 48.
[111] C. Gould, "The Right to Housing Recovery after Natural Disasters" 22 (2009) *Harvard Journal of Human Rights* 169, 173.
[112] These cases are discussed in more detail in Chapter 6 infra.
[113] W. Kälin & C. Haenni Dale, "Disaster risk mitigation – why human rights matter" 31 (2008) *Forced Migration Review* 38, 39.
[114] G. Kent, "The human right to disaster mitigation and relief" 3 (2001) *Environmental Hazards* 137, 137.
[115] Ibid.

Gunn considers how the right to health might be applied to disaster. Gunn bases his statements on the UDHR, the Constitution of the World Health Organization, the UN Declaration of the Rights of the Child, the Red Cross Conventions, and the mission of the International Association for Humanitarian Medicine.[116] Gunn points to article 25 of the UDHR on the right to health, and then to articles 3, 5, 13, and 14, which elaborate the rights to life, prohibition on torture, principles of refugee disaster, and the right of asylum respectively. He notes that torture is a "vile, man-conceived disaster", and that refugee disasters and human displacements are "disasters in themselves,[117] whether caused by war, internal conflict, catastrophic floods, earthquake, a dam burst or famine."[118] Further, he writes that "a disaster or major emergency affects and destabilises the 'mental and social well-being'" of victims, and even if the person who has experienced disaster is not physically injured, A disaster still "encroaches upon the health right of the victim."[119] Gunn concludes by stating that "If health is a human right, and human rights are for all humans... then health too must be for all."[120] He claims that there has been a progression from a broad right to health, to better access to health, tangible equity in health, and to health as a bridge to peace. He also notes that poverty is a major cause of ill-health and disaster, and advocates for poverty alleviation as a disaster prevention measure.[121]

Another interpretation of existing human rights standards in the context of disaster is found in Gould's work. Gould starts from the position that although the human rights conceptual framework that guides responses on subjects such as post-conflict recovery is well-developed, there is a far less developed framework in the context of natural disaster, despite the prevalence of human rights violations following them.[122] From this starting point, Gould goes on to discuss the right to housing, which is one human right that is in jeopardy following a natural disaster. Following a discussion of the still-developing content of the right to housing in the international and regional human rights frameworks, Gould considers what the content of the right to housing means in the disaster context. Gould notes that the theory of disaster adopted shapes the arguments for protecting the right to housing. For example, the degree to which human intervention is seen as a causative factor, and how predictability of disasters, and the vulnerability of people is seen, determines the legal approach to recovery. Given that the way that scientific and

[116] S.W.A Gunn, "The Right to Health of Disaster Victims" 12(1) (2003) *Disaster Prevention and Management* 48, 48.
[117] Id., 48
[118] Ibid.
[119] Id., 49.
[120] Id., 50.
[121] Id., 51.
[122] C. Gould, "The Right to Housing Recovery after Natural Disasters" 22 (2009) *Harvard Journal of Human Rights* 169, 170.

humanitarian communities approach issues of vulnerability,[123] and the manner in which human and physical aspects of globalisation as causative factors in natural disaster have changed in the last thirty years, he argues for a theory of disaster that allows for community participation.[124] Gould proposes the Pinheiro Principles on restitution as a tool to guide the interpretation and implementation of the right to housing in post-disaster housing recovery.[125] Alternatively, he proposes a right to disaster mitigation that includes specific housing rights. The proposed right to disaster mitigation is based on an argument that might be available under international law to disaster victims where the state can be shown to have breached a specific obligation that was a cause of the housing loss. Thus, for example, the failure of a state for speedy and effective disaster recovery might constitute a breach of duty. In this way, a right to disaster mitigation could be built up slowly.[126] Finally, he notes the urgency of the issue of implementing post-disaster housing rights, noting that those in a state of poverty or are otherwise marginalised face greater obstructions in having their right to housing fulfilled, and ties this to the discrimination that is prohibited by ICERD.[127]

The Special Rapporteur and ILC have also considered the application of human rights norms to their work on the protection of persons in disaster. The Special Rapporteur considered the application of human rights to disaster, considering that a rights-based approach to the elaboration of disaster norms was desirable.[128] The rights-based approach recommended by the Special Rapporteur was not met with any particular opposition within the Commission, nor from states in the Sixth Committee.[129] However, some members expressed doubt about a taking a rights-based approach, suggesting that it might not be realistic in light of the prevailing state of international law, and might lead to the duplication of existing human rights instruments.[130]

The Special Rapporteur, in outlining the importance of the rights-based approach, noted that the protection of persons topic implied the perspective of the individual, which

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[123] Gould does not provide an explicit explanation of how he conceptualises vulnerability. However, given that he suggests that disasters are expected features of communities, and links this to the idea of community participation in community planning, it is arguable that he considers vulnerability as being influenced by political orientations, and as the product of access (or lack thereof) of economic, political and social power. Gould, "The Right to Housing Recovery after Natural Disasters" 22 (2009) *Harvard Journal of Human Rights* 169, 181-4.

[124] Id., 198-9.

[125] Id., 195-8.

[126] Id,. 198-9.

[127] Id., 204.

[128] E. Valencia-Ospina, *Preliminary Report*, para. 218.

[129] See generally, ILC, *Report on the work of its sixtieth session,* A/63/10 (2008), paras. 227-9; ILC, *Topical summary of the discussion held in the Sixth Committee of the General Assembly during its sixty-third session, prepared by the Secretariat,* A/CN.4/606 (2009), para. 83.

[130] Ibid.

therefore suggested that a rights-based approach to drafting was necessary.[131] Further, he noted that IHRL comprised the rights and freedoms enjoyed by the individual, and bestowed individuals with the status of "rights-holder".[132] As such, states are under an obligation to provide protection to those on their territory under human rights instruments that they are a party to, and customary international law.[133] The Special Rappporteur considered that the rights to life, food, health and medical services, water, adequate housing, and clothing were particularly important in the context of disaster.[134] Although there was some confusion within the ILC about the requirements of a rights-based approach,[135] the ILC eventually adopted a draft article on human rights in 2010. The article reads:

> "**Article 8**
>
> **Human Rights**
>
> Persons affected by disasters are entitled to respect for their human rights."[136]

The Chairman of the Drafting Committee, in a statement on the adoption of the article, noted that the provision had its origins in draft article 7 on human dignity. The Chairman acknowledges that the draft article is a simple formulation which intends, rather modestly, only to indicate the general existence of human rights, without going into detail regarding content of the implicitly indicated obligation to protect those human rights.[137] The rationale for this formulation lay in the Committee's idea that one of the key issues with regard to human rights and disaster is how to properly disaggregate the differing human rights obligations of the various actors falling within the scope *ratione personae* of the draft articles. The Chairman noted that the extent of the obligation of the affected state would vary from the obligations of assisting states, and further that these would be different from the obligations of international organisations and NGOs, or perhaps even multinational corporations.[138] The formulation was further justified under the reasoning that customary international human rights law should also be respected. Thus the Drafting Committee's draft article 8 is one that reaffirms that human rights apply in disaster contexts, and that the reference to human rights incorporates substantive rights and

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[131] E. Valencia-Ospina, *Preliminary Report,* para. 12.
[132] Id., para. 25.
[133] Ibid.
[134] Id.,para. 26.
[135] ILC, *Report on the work of its sixtieth session,* A/63/10 (2008), para. 83.
[136] Article 8, International Law Commission, *Texts and titles of draft articles 6, 7, 8 and 9 provisionally adopted by the Drafting Committee on 6, 7 and 8 July 2010,* A/CN.4/L.776 (2010).
[137] ILC, Drafting Committee on the Protection of Persons in the Event of Disasters, *Statement of the Chairman of the Drafting Committee 2010* <http://untreaty.un.org/ilc/sessions/62/DCChairman_statement4th_protection.pdf> (21 July 2010), 8.
[138] Id., 7-8.

limitations as recognised by existing IHRL.[139]

The ILC affirmation regarding the relationship between the draft articles and human rights would seem to indicate that the ILC considers that the draft articles on disaster norms have a separate existence to that of human rights, although they may be related and apply at the same time.

The ILC's approach has however, received criticism on the grounds that the draft articles on human dignity and human rights in disaster add nothing to the existing discussion. Giustiniani points out that the ILC's vague formulation has meant that the ability of rights-holders to claim their rights, one of the key features of a rights-based approach, is left ambiguous.[140] Giustiniani further contends that the ILC's work is inadequate from a rights-based perspective, arguing that an unambiguous reference to rights which are relevant for the protection of persons in a disaster situation should have been made, such as particular economic and social rights.[141] She further asserts that the primary responsibility of affected states in protecting people's rights is not adequately reflected in the draft articles, concluding that draft articles 7 and 8 do not exceed rhetoric, and are not informed by a rights-based approach.[142]

Although the conceptual divisions between the rights and obligations of states and the rights of individuals has been made in this chapter, it must be noted at this point that the line between human rights and state obligations with disaster is not so clearly drawn, as state obligations and rights related to disaster can be framed in terms of human rights, and human rights themselves are, on an orthodox view, the obligations of states. Samuels, for example, argued that the relationship between human rights and the rights of disaster victims would create three state obligations that are parties to human rights treaties. Firstly, the obligation to assist another in time of natural disaster; secondly, the obligation to prepare for disaster relief within its own territory and to take preventive measures in order to minimise the suffering resulting from natural disaster; and thirdly, where its own resources are inadequate, the obligation to accept relief from other states after the occurrence of a natural disaster.[143] Macalister-Smith took a similar approach to Samuels with regard to the development of an international disaster law:

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[139] Id., 8.
[140] F.Z. Giustiniani, "The Works of the International Law Commission on 'Protection of Persons in the Event of Disasters'. A Critical Appraisal" in A. de Guttry, M. Gestry, G. Venturini (eds.), *International Disaster Response Law* (The Hague: Springer, 2012), 73.
[141] Ibid.
[142] Id., 73-4.
[143] J.W. Samuels, "The relevance of international law in the prevention and mitigation of natural disasters" in L.H. Stephens & S.J. Green (eds.), *Disaster Assistance: Appraisal, Reform and New Approaches* (London: Macmillan, 1979), 245.

> "The general provisions of the Universal Declaration [of Human Rights] would themselves support important principles of humanitarian assistance, including the principle that one State should assist another in emergency; that States should prepare for disasters within their territory and take measures designed to minimize suffering following a disaster; and that States should accept relief after the occurrence of a disaster if their own resources are inadequate."[144]

3.5 The participant approach: Literature that considers individuals as participants in international legal processes

The focus of research carried out until the present has focused on the rights of states, both the affected state, and states unaffected by the disaster, in addition to the maintenance of the principle of sovereignty in the international legal framework. However, there are examples of the use of a "participant" approach. What is called the participant approach here refers to approaches that consider individuals not only as international rights-holders with regard to disaster, but also as subjects that may involve themselves with legal processes.

The point of departure from previous analyses and ways of thinking is the distancing from the traditional subject/object dichotomy of international law, in favour of an approach informed by the idea of the individual as having the capacity to participate in legal processes to do with disaster. This thinking occasionally appears in the literature considering the human rights of individuals in times of disaster, as can be seen in the work of, Giustiani and in particular, Gould.

Perhaps the most developed example of this approach to international law is in the work of Nifosi-Sutton. Nifosi-Sutton discusses the scope of disaster victims' rights to a remedy and reparation under IHRL, and advocates for the creation of domestic systems for redress for disaster victims' human rights. She concludes that under current interpretations of the law, disaster victims whose human rights have been violated by the state in relation to a disaster situation have essential procedural and substantive dimensions of the right to a remedy as established under IHRL.[145] Further, state practice indicates that disaster victims have exercised the core procedural component of the right to a remedy, the right of access to justice, and the substantive dimension of the right to a

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[144] P. Macalister-Smith, *International Humanitarian Assistance Relief Actions in International Law and Organization* (Dordrecht: Martinus Nijhoff, 1985).

[145] I. Nifosi-Sutton, "Contour of Disaster Victims' Rights to a Remedy and Reparation Under International Human Rights Law" in A. de Guttry, M. Gestri, G. Venturini (eds.), *International Disaster Response Law* (The Hague: Springer, 2012), 418-423.

remedy which requires that victims of human rights violations use remedies that are likely to provide effective relief.[146] Nifosi-Sutton concludes that the most desirable state of affairs is to maximise domestic forms of relief by incorporating some of the reparations provided for in IHRL. Namely, where possible, reparations such as rehabilitation or damages should be combined with reparations that purport to rectify violations of human rights which have had a detrimental impact on groups and prevent future occurrences.[147] In this way, Nifosi-Sutton believes that disaster victims' rights would be vindicated, and their sense of justice satisfied, while more effective societal responses to disaster could be made.[148]

A common point between the literature examined above is that the interpretation and application of human rights in disaster contexts is explored through the idea of the participation of the individual, but this participation is largely limited to participation in the domestic sphere, rather than in international legal forums.

3.6 Concluding observations

The legal literature has been examined from the perspective of the individual's role in international legal processes. All of the literature grapples with the problem of creating a just international legal framework that appropriately balances the interests of the stakeholders involved, that is, potentially and actually disaster-affected individuals, states both affected by disaster and those who wish to give assistance, and other non-state bodies such as IGOs and NGOs that wish to give assistance. However, the way that writers construct legal frameworks indicate how they see the relationship between individuals and international law.

Most of the literature, which falls into the category of the "traditional approach", advocates for the creation of, or discusses preferable forms of, legal frameworks for rights and obligations of states. Thus, the literature revolves largely around two aspects of the collision between principle of sovereignty and disaster: that is, the identification of the conditions under which disaster-struck states can refuse international offers of assistance, and, conversely, the identification of the conditions under which states can overcome the sovereignty of a disaster-affected state and impose disaster relief measures. In this literature, rights and obligations of the states making up the international community with regard to disaster are generally determined not on the basis of extra-territorial obligations of states to disaster-struck populations, but on the basis of states' duties as members of the international community who have an interest in ensuring that disaster-struck

[146] Id., 437.
[147] Id., 433-7.
[148] Id., 438-9.

communities are given appropriate disaster relief. Thus, the duty is seen in terms of inter-state duties.

A common point that can be identified in this category is that individuals are not presented as having agency, or any capacity to act on that agency. Descriptions of disaster-affected individuals in the literature are limited to their status as victims; the literature does not treat them as actors. Rather, they are the objects of state action, both of the disaster struck state and the assisting states. It can be concluded then, that the existence of a disastrous event and the victims that such an event produces are the impetus for the creation of a legal framework within which states can act. As the legal frameworks proposed in this literature are limited to the rights and the obligations of states, it can be concluded that the theoretical underpinnings of the traditional approach lie in the subject/object dichotomy of international law. That is, international law in the context of disaster is seen as a tool of states. It is used by states to pursue their common interest of assisting victims of disastrous (natural) events.

In contrast, the "limited subject" approach of some writers' reflects a shift in thinking about the international legal system. This body of literature does away with the fiction that international law is by and for states, and is based on the idea that non-state actors may also have some capacity to act in international legal processes. This can be seen in the arguments that rights may be given to non-state actors, such as human rights that are tailored to the disaster context, or the New Haven School recognition that it is not only states that act on the international plane, but also intergovernmental organisations and NGOs. However, a divergence regarding the capacity to act can be seen in the literature: while intergovernmental organisations and non-governmental organisations have been recognised as actors – that is, the literature discusses their right to offer assistance, or in other words, the right to act – in the international sphere, individuals are not given any right to act. Rather, their status as subjects is affirmed through the ascription of human rights with regard to disaster, whether it be a right to disaster mitigation or a right to humanitarian assistance. However, this limited subject status requires the actions of the state (or perhaps IGOs or NGOs) for fulfilment. It might be concluded then, that the subject/object dichotomy still deeply informs this strand of the literature.

The final strand, of which there are the least examples, addresses the problem of balancing the relationship between disaster-affected individuals, non-state actors and the state by focusing on the capacity of the individual to act with regard to international law. In this strand, the individual is not only a rights-holder with a limited subject status, but is acknowledged as being a rights-holder with agency and the capacity to act. This can be

seen in discussion about community participation in Gould's work, and the capacity of individuals to use international legal norms to push for justice in Nifosi-Sutton's article. However, as can be seen in these works, the capacity of individuals to participate in international legal processes is viewed through the prism of human rights, which, from a traditional view, positions the state as the body which protects, respects, and fulfils human rights obligations. Further, the capacity to participate, which is seen as accompanying human rights, is limited to participation in legal processes, which are based on international legal standards, in the domestic sphere, as is demonstrated by both articles.The literature is characterised by the use of IHRL and its centralisation of individuals to humanise the state-centricity of international disaster rules and literature. It therefore, as a general rule, does not take discuss account group or community rights. Neither are abstract concepts such as marginalisation, which may inform theories of human rights in disaster, part of the literature. The literature also shows that the subject/object dichotomy of international law, which positions individuals as passive objects, is the dominant theoretical viewpoint in legal discourse on disaster and international law. This viewpoint is however problematic if considered from the ultimate goal of creating new international disaster norms: achieving a state of justice for people who are, or may be affected by disaster. It is widely accepted in disaster research that individuals affected by disaster, and particularly those who have not yet been affected by disaster, retain their agency and can make decisions.[149] If we accept that it is not states as an abstract entity, but rather individuals and groups of individuals that are affected by disaster, as seems to be the agreement among the authors, and further, if we accept that individuals are not helpless in the face of disaster but retain their agency and capacity to act, then the currents of international legal debate on the creation of disaster norms seems to have overlooked a vital component of the puzzle of how to understand disaster from an international legal point of view. The next step for the development of legal discourse on the topic of disasters and individuals is therefore the problem of ensuring the fairness and utility of international disaster law for individuals.

[149] See e.g. N. Middleton & P. O'Keefe, *Disaster and Development: The Politics of Humanitarian Aid* (London: Routledge, 1994); K. Hewitt, "Excluded Perspectives in the Social Construction of Disaster" in E.L. Quarantelli (ed.), *What is a Disaster? Perspectives on the Question* (London: Routledge, 1998), 71-88; F.C. Cuny, *Disasters and Development*, (America: Oxford University Press, 1983); A. Oliver-Smith, "Global Changes and the Definition of Disaster" in E.L. Quarantelli (ed.), *What is a Disaster? Perspectives on the Question* (London: Routledge, 1998), 179-196.

PART II

INTERNATIONAL DISASTER LAW

Chapter Four. The evolution of the concepts of disaster and disaster victim

4.1 Introduction

Part I established the state-centric nature of the majority of international norms, the nascent state of the norms relating specifically to international disaster law, and the preoccupation with the state as the primary actor in international rules pertaining to disaster, as revealed in academic discourse. In this way, the disjuncture between law and the experience of that regulation on the ground, namely, the disconnect between international law's self-proclaimed application to the situation of vulnerable people in disaster and the reality that vulnerable people themselves are almost peripheral in its creation, interpretation and application, was highlighted. Part I also showed that the majority of international rules, and much of the academic discourse on the concept disaster, have for the most part, elucidated horizontal intra-state norms, while neglecting to acknowledge the life experience and the agency of the disaster victim herself. On this understanding of the current international legal framework pertaining to disaster, Part II evaluates the potential of international rules organised on the concept of disaster to be used by marginalised people. The disjuncture of international law – that is, the gap between the law-makers and law-takers – will be taken into account in this evaluation through a textual analysis, and then an analysis of the law that takes into account surrounding social forces. Accordingly, Chapter Four seeks to find the presence of marginalisation from international disaster rules, as marginalised people by definition are also marginal to the concerns of law makers. Chapter Five then identifies the ways in which the most prominent legal texts have obscured the agency and presence of marginalised people through interdisciplinary research and a consideration of drafting histories of documents. Chapter Four uses a positivist approach, examining vulnerability as it can be excavated in international legal instruments. Chapter Five uses a multidisciplinary approach to analysing IDL that utilises findings of fields such as anthropology and sociology, to add the voices of subalterns to legal discussion.

The concept of disaster is the foundation on which international disaster rules are built, and in this Chapter, the evolution of the concept of disaster in international disaster rules is examined from international law's inception. This is done in order to better understand the related concepts of disaster-related victimisation, vulnerability, and therefore, marginalisation. Through this examination, how international disaster rules have understood and address the relationship between marginalisation and disaster will be clearly understood.

This Chapter uses a positivist textual approach to analysis to identify changes in disaster

definitions, and therefore the concept of disaster victims and the marginalised contained in international disaster rules throughout history. This is necessary, because no holistic historical consideration of the legal concepts of disaster and disaster-related vulnerability (and therefore marginalisation has been undertaken before. This approach to revealing the presence of the subaltern through the consideration of definitions of disaster is conducted by examining the sources of law established by article 38J sources contained in the International Court of Justice Statute. Any universally applicable international document that presents itself as being disaster-related will be treated as material for examination. The time frame for the legal analysis begins from the founding of modern international law.[1]

A preliminary issue that should be considered briefly before entering into the main examination is the indeterminacy of the definition of disaster. A definition of disaster is the fundamental condition upon which disaster victims are defined. A legal approach to the concept of disaster, which is evident in most discussions of disaster, would be likely to treat the issue as self-evident and requiring little explanation, or rest on the argument that disaster is what the law says it is. However, this approach tends to rely on consensus regarding the status quo, which obscures power relations that privilege certain conceptions of disaster over others. Therefore, recognising that different ideas regarding disaster should form the starting point to consider how law has understood vulnerability in disaster.

In seeking to understand how definitions of disaster have been employed in international disaster rules, it is worthwhile to consider how disaster has been defined in related disciplines. The issue of disaster definitions has been the subject of vigorous debate by scholars in the fields of disaster anthropology and disaster sociology in the last three decades.[2] This debate has not resulted in an immutable definition of disaster; rather, scholars, examining the definition of disaster throughout the history of sociological and anthropological studies, have characterised various paradigms of construction in different ways.[3] Gilbert, for example, in his examination of trends in conceptual trends in disaster

[1] It is acknowledged that origins of modern international law are a contested issue (see e.g. S.C. Neff, "A Short History of International Law" in M.D. Evans. (ed.), *International Law* (3rd ed.), (Oxford: Oxford University Press, 2010), 3-31; G. Simpson, "International Law in Diplomatic History" in J. Crawford. & M. Koskeniemmi (eds.), *The Cambridge Companion to International Law* (New York: Cambridge University Press, 2012) 25-46), but in this research it will be taken to be the Treaty of Westphalia.

[2] See e.g. E.L. Quarantelli, "What Should we Study? Questions and Suggestions for Researchers About the Concept of Disasters," 7(3) (1987) *International Journal of Mass Emergencies and Disasters* 243-251; E.L. Quarantelli (ed.), *What is a Disaster? Perspectives on the Question* (London: Routledge, 1998); R.W. Perry & E.L. Quarantelli (eds.), *What is a Disaster? New Answers to Old Questions* (USA: Xlibris Corp, 2005).

[3] R.W. Perry, "What is a disaster?" in H. Rodriguez, E.L. Quarantelli, R.R. Dynes (eds.), *Handbook of Disaster Research* (Springer, 2007), 1-15; E.L. Quarantelli, "A Heuristic Approach to Future Disasters and Crises: New, Old and In-Between Types" in H. Rodriguez, E.L. Quarantelli, R.R. Dynes (eds.), *Handbook of*

research since it its beginnings, identifies three paradigms in construing disaster. These paradigms are: 1) disaster as modelled on patterns of war, 2) disaster as social vulnerability, and 3) disaster as uncertainty.[4] In the first paradigm, the effects of disaster are seen as analogous to those of war; disasters are imputed to uncontrollable external agents to which human communities react. This paradigm holds great persuasive power even to this day because the causality it espouses is simple and common sense: the evidence of our senses is that war or disaster cause disaster.[5] Even in this paradigm, however, it should be noted that the subjects of study were not these external events, but the social disruptions that these catalysts caused.[6] In the 1970s, US researchers made a turning point in conceptualising disaster to embrace the idea of disaster as social vulnerability.[7] In this paradigm, disaster is a result of the structures of the community, of inward and social community processes and their intersection with hazards.[8] This paradigm of disaster disposes of the concept of the external agent, moving disaster from an effect to disaster as a result of the underlying logic of the affected community.[9] In the final paradigm, disaster is interpreted as being the community's fall into a state of uncertainty. In this paradigm, disaster is tied to the upsetting of usual systems that a community uses to make meaning: disaster is a crisis in communication within a community – that is, as a difficulty for someone to get informed and to inform others.[10] The anarchical profusion of information is the core of uncertainty since it affects the system of meaning that is linked to the modes of organization of administrative, political and scientific fields.[11] In other words, this can be seen as a disruption of "social needs" for physical survival, social order and meaning."[12]

The three paradigms identified by Gilbert cannot be applied directly to legal analysis, as

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Disaster Research (New York: Springer, 2007), 16-41; A. Oliver-Smith, "'What is a Disaster?': Anthropological Perspectives on a Persistent Question" in A. Oliver-Smith & S.M. Hoffman (eds.), *The Angry Earth: Disaster in Anthropological Perspective* (New York: Routledge, 2002),18-34.

[4] C. Gilbert, "Studying disaster: Changes in the main conceptual tools" in E.L. Quarantelli (ed.), *What is a Disaster? Perspectives on the Question* (London: Routledge, 1998). 11.

[5] Id., 12-3. See also W.R Dombrowsky, "Another step toward a social theory of disaster" Preliminary Paper #70 (Newark: Disaster Research Centre, University of Delaware, 1981) for a consideration of how disaster research is dependent on war narratives.

[6] R.W. Perry, "What is a disaster?" in H. Rodriguez, E.L. Quarantelli, R.R. Dynes (eds.), *Handbook of Disaster Research* (Springer, 2007), 5.

[7] C. Gilbert, "Studying Disaster: Changes in the Main Conceptual Tools" in E.L. Quarantelli (ed.) *What is a Disaster? Perspectives on the Question* (London: Routledge, 1998). 13.

[8] See e.g. K. Hewitt, "Excluded Perspectives in the Social Construction of Disaster" in E.L. Quarantelli (ed.), *What is a Disaster? Perspectives on the Question* (London: Routledge, 1998), 71-88; D. Alexander, "What is Disaster?" in R.W. Perry & E.L. Quarantelli, *What is a Disaster: New Answers to Old Questions* (America: Xlibris, 2005), 25-38.

[9] C. Gilbert, "Studying disaster: Changes in the main conceptual tools" in E.L. Quarantelli (ed.), *What is a Disaster? Perspectives on the Question* (London: Routledge, 1998). 14.

[10] Id., 16.

[11] Id., 17.

[12] A. Oliver-Smith, "Global Changes and the Definition of Disaster" in E.L. Quarantelli (ed.), *What is a Disaster? Perspectives on the Question* (London: Routledge, 1998), 186.

the sociological goal of the study of human behaviour lies at their foundations, and this does not align neatly with law's objective of creating normative frameworks. Even so, the idea that disaster is less objective fact than social construction leads to two insights salient to international legal analysis: first, definitions of disaster have functions which are dictated by the goals of the person defining disaster, and second, the concept of disaster, reflected in definitions, is malleable and has changed throughout history. In other words, understanding disaster as an expression of the intent of the person who defines means that disaster must be understood as a specific perception of a problem, as well as what the definer intends to do about that problem.[13] It thus becomes clear that international legal instruments construct definitions of disaster which reflect law-makers' objectives and views, and these objectives and views are influenced by political exigencies, power structures and identities over time. Equally, definitions of disaster can be changed to reflect the interests of the non-elite, because they are not fixed, but contingent.

4.2 Disaster and marginalisation throughout the history of international legal instruments

It is difficult to find traces of a concept of disaster in international legal documents preceding the 19th century. Instead, the use of language and the regulation of certain events and problems that we might now file under the rubric of disaster can be identified. Some of these aspects include international legal norms based on the ideas of "calamity" and "calamity in war", and other emergency situations which were deemed to require international cooperation, such as infectious diseases and maritime emergencies. In light of this, the examination of the evolution of the concept of disaster in international legal instruments pertaining to disaster will be split into three chronological periods. These chronological periods follow international law's gradual acceptance of people as subjects of international: the period before the establishment of the League of Nations (LoN), the period between the LoN's establishment and the end of WWII, and from the establishment of the UN.

4.2.1 Disaster and disaster victims before the establishment of the LoN

Diplomatic interaction relating to disasters has a long history, and developments from the diplomatic field have often been reflected in international legal norms. Perhaps the only example of interstate interaction reflected in international legal norms prior to the 19th century is Vattel's *The Law of Nations*. Vattel cites two examples of what we would now call bilateral aid in expounding the duty of all states to assist other states which have been

[13] W.R. Dombrowsky, "Again and again: Is a disaster what we call a 'disaster'?" in R.W. Perry & E.L. Quarantelli (eds.), *What is a Disaster? New Answers to Old Questions* (USA: International Research Committee for Disaster, 2005), 19.

afflicted by "calamity,"[14] as far as they do not injure themselves in doing so.[15] Vattel's examples are the donations given by England and Spain to Portugal on the occasion of the Great Lisbon Earthquake of 1755, which destroyed a large part of Lisbon.[16] Vattel also gives the example of Swiss states that established public collections for towns of neighbouring countries which suffered damage from fires. In this provision, Vattel justifies the giving of aid from one country to another on the basis that, "To give assistance in such extreme necessity is so essentially conformable to humanity, that the duty is seldom neglected by any nation that has received the slightest polish of civilization."[17] Since nations ought to perform the duty to give assistance to nations afflicted with calamity, but not by force,[18] towards each other when there is a need, and given that under the principle of sovereignty nations can freely decide their actions, each state has the responsibility to "consider whether her situation warrants her in asking or granting any thing on this head" and therefore, "Every nation has a perfect right to ask of another that assistance and those kind offices which she conceives her self to stand in need of."[19] Vattel goes on to say that any application which is made without necessity is a breach of duty, so every nation therefore, "has a right to ask for these kind offices, but not to demand them."[20] Conversely, because these kind offices are due only in necessity, the nation that has been requested to provide aid has a right to judge whether they are really necessary, and whether they are able to provide aid without injuring their own interests.[21] Thus, the right to which a nation has to the right to international assistance is "imperfect" and cannot be enforced. A nation that unreasonably refuses to give aid is thus not deemed to be doing an injustice, although it is less civil.[22]

Other phenomena that was regulated at the international level, which may also indicate how disaster was conceptualised was the problem of infectious diseases. Infectious diseases were regulated internationally before the end of the 19th century.[23] Fidler shows

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[14] The translation of *The Law of Nations* used in this work is the 1883 English translation by J. Chitty and G. Ingraham. The author notes that other translations have been used by researchers, most notably the ILC's Special rapporteur on the protection of persons in the event of disaster, Valencia-Ospina. The special rapporteur uses the 1916 translation by G. Fenwick, which uses the words "disaster and ruin" instead of "calamity" in Book II, §5 of *The Law of Nations* (cited below). In the interests of undertaking a coherent examination , I will examine how the translated word "calamity" reflects state interests and international law infra.

[15] E. Vattel, *The Law of Nations, or Principles of the Law of Nature Applied to the Conduct and Affairs of Nations and Sovereigns,* (1758). Book II, §5. (Hereinafter, *Law of Nations*).

[16] Ibid.

[17] Ibid.

[18] Id., §7.

[19] Id., §8.

[20] Ibid.

[21] Id., §9.

[22] Id., §10.

[23] Many researchers and advocates from a variety of disciplines include epidemics in lists of events associated with "disasters," such as fire, flood, etc. See for example, Ciraolo, Article 1 of "1. Letter of July

that states began to use international cooperation and international law from the mid 19th century to deal with the threat of the importation of infectious diseases into Europe.[24] From 1851, states convened a number of international sanitary conferences to negotiate conventions on infectious diseases. Before the beginning of the 20th century, at least eleven conventions on health regulations were negotiated, although many were not ratified by the negotiating parties.[25]

International law was also used to deal with maritime emergencies; Toman and Macalister-Smith note that treaties concluded on certain aspects of rescue at sea are examples of the early development of international law regarding emergency assistance.[26] Macalister-Smith notes that the duty to assist persons and vessels in distress at sea has long been emphasized in the case law of some maritime States, which were reflected in treaties on maritime rescue adopted in the first decade of the 20th century.[27]

The *Law of Nations* – the document with the most comprehensive elucidation of disaster and its significance in the international legal framework – established international law as a tool that created a site for states to contest their definitions of disaster as a precursor to inter-state interaction. Thus the issues addressed by international law in this period is establishing the conditions under which states define disaster in order to ask for assistance, or define disaster in order to provide assistance in response to sudden natural events.

18th, 1922, from Senator Ciraolo, with text of the proposal" in International Federation for Mutual Assistance in the Relief of Peoples overtaken by Disaster (League of Nations), *Documents Relating to the Scheme of Senator Ciraolo* (Geneva: Imp. Kundig, 1923); International Law Commission, *Yearbook of the International Law Commission 1958, Volume II: Documents of the tenth session including the Report of the Commission to the General Assembly*, A/CN.4/SER.A/1958/Add.1 (1958), 51; E. Valencia-Ospina, *Preliminary report on the protection of persons in the event of disasters*, A/CN.4/598. 14; J. Toman, "International Disaster Response Law: Treaties Principles, Regulations and Remaining Gaps" (7 April 2006), 2 (available from http://ssrn.com/abstract=1312787); D.P. Coppola, *Introduction to International Disaster Management* (2nd ed.), (Amsterdam: Butterworth-Heinemann, 2011).
However, other researchers do not associate epidemics with disaster for reasons such as that they are "slow onset," (e.g., J. Benton Heath, "Disasters, Relief, and Neglect: The Duty to Accept Humanitarian Assistance and the Work of the International Law Commission", 43 (2011) *International Law and Politics* 419-477, n20, 424), or because they see international law relating to epidemics as a separate strand of international law (e.g. D. Fidler, "Disaster, Relief and Governance After the Indian Ocean Tsunami: What Role for International Law?" 6(2) (2005) *Melbourne Journal of International Law* 458)).

[24] D. Fidler, *International Law and Infectious Diseases* (New York: Oxford University Press, 1999), 27-8.

[25] Id., 22, 25-6. Fidler argues that despite the impetus that states created in the development of numerous international rules and bodies for the control of infectious diseases, international rules on infectious disease control were fragmented and ineffective as a result of the bifurcation of international law-makers into the Inter-American region and the European region, and the lack of a universal regime for infectious disease control.

[26] P. Macalister-Smith, *International Humanitarian Assistance Relief Actions in International Law and Organization* (Dordrecht: Martinus Nijhoff, 1985), 67-8; J. Toman, "International Disaster Response Law: Treaties Principles, Regulations and Remaining Gaps" (7 April 2006), 2. <http://ssrn.com/abstract=1312787>.

[27] P. Macalister-Smith, *International Humanitarian Assistance Relief Actions in International Law and Organization* (Dordrecht: Martinus Nijhoff, 1985), 68.

The doctrine of sovereignty, the cornerstone of legal thinking, excludes individuals from international subjecthood. This is reflected in law which enables only interstate interaction *for* the citizens of other states, on the basis of mutual state agreement. The laws above describe vulnerability only in terms of suffering created by external, natural events, but this suffering is considered only in an abstract sense. The alleviation of abstracted suffering is justified on the basis of the description of the Other – that is, that only uncivil states would ignore the abstract masses of disaster victims. In other words, vulnerability arising from disaster is linked to civility, one of the conditions of statehood at that time.

4.2.2 Disaster and disaster victims from the establishment of the LoN to the end of WWII

Institutionalised international, rather than bilateral, cooperation began to be utilised to address the effects of calamitous events, whether as a result of war or not, from the 20th century. In this era, international law began to be used as a mechanism to establish international institutions that would coordinate international cooperation for disaster relief. The only multilateral treaty organised on the concept of disaster in this period was the Convention of the International Relief Union (1927) (IRU Convention), which established an International Relief Union (IRU).[28] The IRU was an intergovernmental organisation with a mandate to undertake and coordinate disaster relief operations.[29] [30]

The establishment of a permanent international relief organisation was initially proposed by the President of the Italian National Red Cross Society, Ciraolo, to the ICRC in 1921, and thereafter proposed by the ICRC to the League of Nations in 1922. This culminated

[28] The IRU Convention was ratified by 19 countries: (in ascending order of the date of ratification) Ecuador, Italy (including Italian colonies), Egypt, Romania, India, Finland, Hungary, Belgium, Monaco, Venezuela, Germany, San Marino, Albania, Poland and Free City of Danzig, Greece, Bulgaria, Czechoslovakia, Turkey, France; it was acceded to by Sudan, New Zealand, Great Britain and Northern Ireland (not including any colonies or protectorates), Luxembourg, Switzerland, Yugoslavia and Persia. P. Macalister-Smith, *International Humanitarian Assistance Relief Actions in International Law and Organization* (Dordrecht: Martinus Nijhoff, 1985), 200-1.

[29] Entered into force 27 December 1932. The Convention was accompanied by a Statute which prescribed the IRU's organizational matters.

[30] There are two other examples of international disaster relief institutions in this period. They are not considered because they did not apply universally; their mandates were limited temporally or geographically. One was the Commission for Relief in Belgium (initially called the "American Committee for the Relief of Belgium). The Commission was established under agreements obtained by Hoover from the United States, German and British governments.[30] This was not a universal treaty, and the CRB's mandate was limited to relieving the effects of World War I on the people of Belgium. The other was the UN Relief and Rehabilitation Administration (UNRRA) created under an international agreement signed by more than 40 governments in 1943 (Macalister-Smith, *International Humanitarian Assistance*, 12-4). The UNRRA was mandated with the relief, rehabilitation and resettlement of victims of war in any area under the control of the UN. The UNRRA was active from 1943 to 1948, but terminated officially in 1947. The CRB was an NGO, but the UNRRA had intergovernmental organisation status (Y. Beidberger, *The Role and Status of International Humanitarian Volunteers & Organizations: The Right and Duty to Humanitarian Assistance* (Dordrecht: Martinus Nijhoff, 1991).

in the adoption of the IRU Convention in 1927. Ciraolo's proposed two draft texts, which were discussed in committees of the League of Nations between 1923 and 1925. In July 1927, a Conference for the Creation of an International Relief Union was convened, in which the final text of the IRU Convention was adopted. The final text mandated the IRU with the following:

> "(1) In the event of any disaster due to *force majeure*, the exceptional gravity of which exceeds the limits of the powers and resources of the stricken people, to furnish to the suffering population first aid and to assemble for this purpose funds, resources and assistance of all kinds; (2) In the event of any public disaster, to co-ordinate as occasion offers the efforts made by relief organisations, and, in a general way, to encourage the study of preventive measures against disasters and to induce all peoples to render mutual international assistance."[31]

The Convention entered into force in 1932, attracting approximately thirty states parties. However, due to its inability to command regular contributions from member states, it was never able to effectively give immediate relief upon the occurrence of disasters, and in practice, its work was largely confined to scientific studies.[32] The IRU was impeded, among other things, by political problems, as relief assistance was politically charged. One of the causes of the politicisation of relief assistance (and therefore disaster) was the ambiguity of the term *force majeure*; a member of the IRU's Executive Committee, Camille Gorge, noted that the scope of *force majeure* was debateable, but acknowledged that any move away from natural disasters would be likely to cause dissent among states parties.[33] By the 1930s, the IRU had essentially ceased to function,[34] and its assets were eventually transferred to the UN Educational, Scientific and Cultural Organization after the end of WWII.[35]

The IRU, the only multilateral instrument on disaster created in the era of the LoN, demonstrated a more coherent concept of disaster than did Vattel's work. However, in its drafting, competing ideas of disaster were proposed. The first text proposed by Ciraolo did not distinguish between causes of disasters, and extended to actual and potential

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[31] *Convention Establishing an International Relief Union* (1927), article 2.
[32] P. Macalister-Smith, *International Humanitarian Assistance Relief Actions in International Law and Organization* (Dordrecht: Martinus Nijhoff, 1985), 19; D. Fisher, *Law and Legal Issues in International Disaster Response: A Desk Study* (Geneva: International Federation of Red Cross and Red Crescent Societies, 2007), 27. The IRU's ability to carry out its mandate is discussed in more detail in Chapter Five infra.
[33] Fisher cites the opinion of a member of the IRU's Executive Committee (established under article 6 of the IRU Convention) regarding the debate around *force majeure.* D. Fisher, *Law and Legal Issues in International Disaster Response: A Desk Study* (Geneva: International Federation of Red Cross and Red Crescent Societies, 2007), n93. (Hereinafter, Law and Legal Issues), 166.
[34] Ibid.
[35] ECOSOC, *Transfer to the United Nations of the responsibilities and assets of the International Relief Union*, E/RES/1153(XLI) (1966).

disaster-related suffering. This broad formulation was narrowed slightly to include the following elements in the next major draft of the Convention. Disasters could be constituted by external natural forces, infectious diseases, or a society's internal social conditions which affect the cycle of "normal" existence. The victims, therefore, were those who suffered as a result of one of these. If one of these conditions existed then the IRU could act where there was also an inability on behalf of the victimised communities to continue their survival. The IRU Convention that was ultimately adopted opted to describe disasters "events of *force majeure*", which threw the concept of disaster into greater obscurity. Disaster as it was espoused in the final text of the IRU Convention cannot be considered to be anything other than an empty concept: as the French term suggests, disaster was a mystery, unable to be anticipated and uncontrollable. The IRU Convention positioned disaster as an international concern, and created an intergovernmental body to deal with it. However, the lack of content in the idea of *force majeure* or public disaster meant that a fundamental element of the IRU's *raison d'être* — the existence of a disastrous event which causes unmanageable human suffering — dangled in a conceptual void. "Disaster due to *force majeure*" and "public disaster," are entirely manipulable, as can be seen in the facts that these were not defined, and that contracting states and Committee Members acknowledged the indeterminacy of disaster in the Convention. The disaster concept adopted in the final IRU Convention is fundamentally indeterminate, meaning that the identification of disaster victims is similarly indeterminate and dependent on a state's assertion of such. In this document, the idea of systemic marginalisation which is linked to disaster-related suffering cannot be said to exist. Rather, the IRU had the capacity to act when an event of *force majeure* struck, and a group of "people" within the borders of a state was deemed to lack the capacity to act to alleviate their own suffering. The IRU Convention definition and the draft definitions show that disaster victims were not characterised by any particular kind of suffering: the idea of victims is highly dependent on the discretion of states to define those who suffer (those in the territorial jurisdiction of a disaster-struck state), as well as what constitutes those sufferings. The concept of suffering is broad and vague, but the IRU Convention and its drafts build a relationship of suffering with the inability to extend and continue physical and social life as a group. This can be seen in the references to first aid, as well as reference to the life of a community. Thus it can be seen that while the collective dimension of the idea of suffering is brought to the fore, the idea of the preservation of individual lives lies in the background.

Disaster, and the corresponding notion of disaster victims, shows a change from disaster in Vattel's time in its emphasis on the idea of the suffering of the community, rather than the state. Although disaster was expanded to included non-natural disasters, in practice,

only natural disaster was likely to have been agreed upon to constitute disaster.

4.2.3 Disaster from the end of WWII

The UN was established after WWII, and became a central forum for international law-making processes, for both hard and soft law sources, and will thus be the focus of this section. The concept of disaster, which had been until the UN's establishment, an amorphous legal concept despite its development since the time of Vattel, began to solidify in a growing number of legal documents. However, the increasing creation of soft law on the topic of disaster did not translate to regulation of disaster through the development of hard law. Hard law documents, or universal multilateral treaties on disasters have not yet been concluded under the auspices of the UN, despite one attempt to create a convention prescribing international obligation on disaster, and the ILC's current efforts.

4.2.3.1 Conventions on disaster

As the ILC's Special Rapporteur on the protection of persons in the event of disaster notes, "disaster" is not yet a term of art and there is a lack of a single accepted definition.[36] Some treaties eschew providing a definition of disaster altogether.[37] Instead, the rapporteur observes that two general methods have been used in international instruments with regard to the definition of disaster: one is the specific approach which understands disaster as a specific event that requires emergency treatment, and the other is a broader definition of disaster that establishes elements that characterise a disaster.[38]

An example of the former approach can be found in universally applicable instruments such as the 1986 Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency, which establishes the cooperation to be taken by the contracting states in the case of a nuclear accident or radiological emergency.[39] Other examples might include the 1990 *International Convention on Oil Pollution Preparedness, Response and Cooperation*, the 1992 *United Nations Framework Convention on Climate Change,* the

[36] E. Valencia-Ospina, *Second report*, para. 31.

[37] Ibid. Compare definitions contained in legal instruments discussed with the understanding of disaster outlined by actors such as the UN Secretariat, which stated in 2006 that "disaster" is a function of the risk process. The risk process is the degree of exposure of people, infrastructure and economic activity to a hazard. United Nations International Law Commission, *Protection of persons in the event of disasters: Memorandum by the Secretariat*, A/CN.4/590 (2007), para. 1. This is similar to the UN International Strategy for Disaster Reduction's definition, which stipulate that disaster is a "potentially damaging physical event, phenomenon or human activity that may cause the loss of life or injury, property damage, social and economic disruption or environmental degradation. (United Nations International Strategy for Disaster Reduction, *Living with Risk: A Global Review of Disaster Reduction Initiatives* (Geneva: UNISDR, 2004), 16).

[38] E. Valencia-Ospina, *Second report*, para. 32.

[39] *Tampere Convention on the Provision of Telecommunication Resources for Disaster Mitigation and Relief Operations* (1998).

1994 *United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification*, the 1989 *Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal* and the 1994 *International Labour Organization Convention No. 147 on Prevention of Major Industrial Accidents*.

The Tampere Convention on the Provision of Telecommunication Resources for Disaster Mitigation and Relief Operations of 1998 is the first global treaty to provide a comprehensive framework for international cooperation in telecommunications in the context of disaster, and can be seen to adopt the latter approach to the definition of disaster, defining disaster thus:

> "6. 'Disaster' means a serious disruption of the functioning of society, posing a significant, widespread threat to human life, health, property or the environment, whether caused by accident, nature or human activity, and whether developing suddenly or as the result of complex, long-term processes."

Similarly, the Framework Convention on Civil Defence Assistance expands the idea of harm to include threatened loss:

> "'Disaster' is an exceptional situation in which life, property or the environment may be at risk."[40]

Another example of the general and broad approach to definition is the Charter on Cooperation to Achieve the Coordinated Use of Space Facilities in the Event of Natural Technological Disasters, which states that,

> "The term 'natural or technological disaster' means a situation of great distress involving loss of human life or large-scale damage to property, caused by a natural phenomenon, such as a cyclone, tornado, earthquake, volcanic eruption, flood or forest fire, or by a technological accident, such as pollution by hydrocarbons, toxic or radioactive substances."[41]

The variety of conceptions of disaster within even this small sample of disaster definitions demonstrates that notions of disaster, and therefore notions of disaster victims, are contingent on state will. These definitions are notable, for the most part, for encapsulating broad notions of disaster, finding that disaster constitutes in the coincidence

[40] *Framework Convention on Civil Defence Assistance* (2000), article 1(c).
[41] *Charter on Cooperation to Achieve the Coordinated Use of Space Facilities in the Event of Natural or Technological Disasters* (1999), Article 1.

of external catalyst(s) and attendant social suffering. The idea of marginalisation and disaster does not exist in these definitions, although disaster relief is premised on the vulnerability and marginalisation (compared to non-affected sectors of global and national society) of those who are affected by disaster. It can be said that the treaties focus on international cooperation for the abstract concept of disaster victims (as determined by the definitions of disaster in the respective treaties), and that therefore disaster-related marginalisation within societies per se is not taken as a concern. This is underscored by the treaties' neglect of the idea of victims. For example, the Tampere Convention does not provide a definition of victims, although its definition of "Relief operations", namely, "those activities designed to reduce loss of life, human suffering and damage to property and/or the environment caused by a disaster"[42] imply that victimising acts are loss of life and suffering. Similarly, the Civil Defence Assistance Framework Convention does not explicitly contain a concept of victim. Its preambular paragraph 6 the existence of victims establishes that: "Considering the need for the development of international co-operation in the field of Civil Defence in terms of prevention, forecasting, preparedness, intervention and post-crisis management, both in the interests of disaster victims and in order to safeguard property and the environment", placing disaster victims as the beneficiaries of the legal framework it creates.

4.2.3.2 Soft law sources on disaster: UN resolutions

In the last ten years alone, UN bodies have adopted approximately ten resolutions on the topic of disaster annually; the profusion of resolutions on disaster precludes an in-depth chronological examination of all those adopted since the UN's establishment. Instead, the resolutions will be examined in terms of their objectives. This section will demonstrate that the main elements of international regulation of disaster prior to WWII, namely, the facilitation of inter-state action for ad hoc disaster relief to be given to states for (primarily natural) disasters, has diversified greatly. There are four interlinked evolutions of the elements of this starting line. Firstly resolutions show that there has been a move away from the notion of natural disaster – disaster definitions have begun to emphasise the social suffering element of disaster, and vulnerability to disaster, rather than the solely on the natural external catalyst. Secondly, suffering has come to be expressed as the result of the vulnerability to disaster of individuals and communities, as well as states. Thirdly, "disaster" increasingly refers not only to disaster relief, but also to disaster prevention, mitigation and preparedness. Fourthly, this is reflected in the expansion of law's role regarding disaster: law not only facilitates the provision of ad hoc disaster relief, but now is used as a tool to institutionalise international action relating to disaster, as well as maintaining it. These interlinked themes are discussed below.

[42] Tampere Convention (1998), article 12.

4.2.3.2.1 Suffering as a primary element of disaster and its diversification

The concept of disaster has gradually expanded since the UN's establishment. Immediately following WWII, the ECOSOC adopted resolutions on the establishment of an institution (the Sub-Commission for the Economic Reconstruction of Devastated Areas) to address the "devastated areas" or "physical devastation" caused by the war.[43] These resolutions tied the concept of disaster relief (or rehabilitation and reconstruction of devastated areas) to disaster as a result of war and economic recovery. Such resolutions established programmes for Palestinian refugees, and rehabilitation in Korea.[44] Resolutions which construed problems of famine as being exacerbated by "natural accidents" were also adopted.[45]

The UN's attention to the concept of disaster, other than war-related devastation, in its early years was limited.[46] However, from the mid-1960s, the UNGA and ECOSOC began to consider issues raised by sudden onset natural disaster. A survey of resolutions passed in the UNGA and ECOSOC in the 1960s shows that disaster as conceptualised by these bodies included earthquakes,[47] hurricanes,[48] volcanic eruptions,[49] and flooding.[50] However, from the early 1970s, resolutions of the UNGA and ECOSOC began to include "other disaster situations".[51] Despite the apparent expansion of the scope of the UN's disaster related, and disaster relief activities to the realm of non-"natural disaster", neither the UN's disaster research nor disaster relief activities covered "technical" or "man-made" disasters. A notable exception is the Chernobyl disaster – the UN's disaster research activities on Chernobyl are ongoing[52] – even while the Three Mile Island disaster of 1973 was not referred to in the context of disaster by neither the UNGA or ECOSOC.

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[43] ECOSOC, *Temporary Sub-Commission on the Economic Reconstruction of Devastated Areas,* E/RES/6(II) (1946), *Economic reconstruction of devastated areas*, E/RES/5(III) (1947).

[44] A/RES/376(V) (1950).

[45] A/RES/525(VI) (1952).

[46] See e.g. R.C. Kent, *Anatomy of Disaster Relief: The International Network in Action* (London: Frances Pinter, 1987), Chapter 2; Fisher, *Law and Legal Issues*, 52-3.

[47] See e.g. UNGA, *Measures to be adopted in connexion with the earthquake in Iran*, A/RES/1753(XVII) (1963); ECOSOC, *Measures to be adopted in connexion with the earthquakes in Morocco*, E/RES/746(XXIX) (1960)

[48] ECOSOC, *Measures in connexion with the hurricane which has just struck the territories of Cuba, the Dominican Republic, Haiti, Jamaica and Trinidad and Tobago,* A/RES/1888(XVIII) (1963).

[49] ECOSOC, *Earthquake relief to Libya; Flood relief to Morocco, Relief to Indonesia consequent to the volcanic eruption in Bali*, E/RES/930(XXXV) (1963).

[50] ECOSOC, Action to be taken following the flooding of the river Euphrates, E/RES/1212(XLII) (1967).a

[51] Variously called "other emergency situations", "other disasters" and "other disaster situations". See e.g. ECOSOC, *Assistance in cases of natural disaster and other emergency situation,* E/RES/1612(LI), (1971); UNGA, *Assistance in cases of natural disaster and other disaster situations*, A/RES/2959(XXVII) (1973).

[52] E.g. UNGA, Strengthening of international cooperation and coordination of efforts to study, mitigate and minimize the consequences of the Chernobyl disaster, A/RES/65/131 (2010), para 22, which mandates the Secretary-General to submit a report to the UNGA at its 68th session, including an action plan on Chernobyl to 2016.

Particular mention should be made of the resolutions regarding measures to be taken with regard to drought and desertification in Africa. ECOSOC and the UNGA adopted numerous resolutions throughout the 1970s and 1980s regarding the implementation of a medium-term and long-term recovery programme in the Sudano-Sahelian region of Africa, which had suffered a prolonged drought.[53] These resolutions, in addition to the 1970 Interim Report of the Secretary-General,[54] acknowledged that not only sudden onset events, such as earthquakes and cyclones constitute disaster, but that creeping events such as drought could also come under the rubric of disaster, thereby necessitating international relief or other forms of aid. These resolutions show that the link between economic disadvantage at the state level and disasters began to be seen not only as external factors causing damage to a society, but in terms of the convergence of a physical external process with the economic disadvantage of developing states. This can be seen in the acknowledgement in resolutions that drought caused, inter alia, loss of food-stuffs, human life and livestock, and economic damage,[55] which resulted in a need for international aid to ensure economic expansion.[56] In this way, the concept of disaster and its adverse effects began to be tied to economic development, a systemic interest of the state. The economic development aspect of disasters was further emphasised in resolutions during and subsequent to the IDNDR,[57] which noted the symbiotic relationship between sustainable development and disaster prevention.

It can be seen that from this time, the idea of disasters as being the convergence of hazards and vulnerability began to be expressed in international documents, this thinking is particularly in a strand of UNGA and ECOSOC resolutions from the 2000s entitled "Natural disasters and vulnerability". The IDNDR, Yokohama Strategy and HFA in no small part contributed to the visibility of the popularity of the concepts vulnerability and disaster reduction, and will be discussed infra. Disaster reduction is linked to the

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[53] See e.g. UNGA, *Aid to the Sudano-Sahelian populations threatened with famine*, A/RES/3153 (XXVIII) (1974); UNGA, *Consideration of the economic and social situation in the Sudano-Sahelian region stricken by drought and measures to be taken for the benefit of that region,* A/RES/3054 (XXVIII) (1974) ; ECOSOC, *Implementation of the medium-term and long-term recovery and rehabilitation programme in the Sudano-Sahelian region and implementation of the Plan of Action to Combat Desertification in the Region*, E/RES/2103 (LXIII) (1977); ECOSOC, *Assistance to the drought-stricken areas in Djibouti, Somalia, The Sudan and Uganda*, E/RES/1980/70 (1980); UNGA, *Plan of Action to Combat Desertification*, A/RES/39/168 (1985); UNGA, *Plan of Action to Combat Desertification*, A/RES/42/189 (1988).

[54] *Interim Report of the Secretary General,* Doc E/4853, 1.

[55] See e.g. UNGA, *Consideration of the economic and social situation in the Sudano-Sahelian region stricken by drought and measures to be taken for the benefit of that region,* A/RES/3054 (XXVIII) (1974), preambular paras. 6 and 7.

[56] Id., preambular para. 9.

[57] See e.g. UNGA, *International Decade for Natural Disaster Reduction*, A/RES/49/22A (1994), preambular para. 4; UNGA, *International Decade for Natural Disaster Reduction*, A/RES/49/22B (1994), preambular para.8; UNGA *International cooperation on humanitarian assistance in the field of natural disasters, from relief to development*, A/RES/56/103 (2002), operative para.8.

reduction of vulnerability of disasters, and is in turn argued to contribute to the achievement of sustainable development in these resolutions.[58] In accordance with the IDNDR, Yokohama Strategy and HFA documents, the idea of vulnerability to disaster is linked to environmental degradation, which compounds and exacerbates social and economic "vulnerabilities" in developing countries.[59] After the HFA was adopted, resolutions continued to consider the vulnerabilities of developing countries, but began to recognise the need to understand and address underlying risk factors such as socio-economic factors that exacerbate the vulnerability of societies to natural hazards, together with effects on sustainable development and economic growth in developing countries.[60] However, despite the new focus on the idea of vulnerability to disaster, and the recognition that social and economic vulnerabilities play a large role in the creation of a disaster, the focus of the resolutions is to call for cooperation between scientific and academic communities, to transfer technology, early warning systems based on expertise, among other recommendations.[61] The resolutions fail to specify what social and economic vulnerability is constituted by, and how it should be addressed. Rather the focus is on the ad hoc and uncontrollable aspects of disaster, the geophysical and other natural phenomena.

On the other hand, it has been acknowledged since almost the beginning of the UN's engagement with the issue of vulnerability and disaster, and, in particular, that poverty of developing countries is linked to the seriousness of the adversity that they encounter.[62] In addition, the idea of vulnerability of different groupings within states is found in resolutions of the last fifteen years. Resolutions have variously noted the plight of children,[63] refugees and displaced people (and the women and children among them),[64] displaced persons,[65] the rural and urban poor,[66] the elderly,[67] persons with disabilities,[68]

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[58] See e.g. UNGA, *International Strategy for Disaster Reduction*, A/RES/58/214 (2004), preambular paras.3, 6, 7, 8; UNGA, *Natural disasters and vulnerability*, A/RES/58/215 (2004); UNGA, *Natural disasters and vulnerability,* A/RES/59/233 (2005).

[59] See e.g. UNGA, *Natural disasters and vulnerability*, A/RES/58/215 (2003), preambular para. 3; UNGA, *International Strategy for Disaster Reduction*, A/RES/58/214 (2004), premabular para. 3.

[60] See e.g. UNGA, *Natural disasters and vulnerability*, A/RES/60/196 (2005), preambular paras. 6, 12; UNGA, *Natural disasters and vulnerability*, A/RES/63/217 (2009), preambular para. 5.

[61] See e.g. UNGA, *Natural disasters and vulnerability*, A/RES/63/217 (2009), operative paras., 9, 11,12, 15, 16.

[62] See e.g. UNGA, *Consideration of the economic and social situation in the Sudano-Sahelian region stricken by drought and measures to be taken for the benefit of that region,* A/RES/3054 (XXVIII) (1974), which acknowledges the relative poverty of the country.

[63] See e.g. UNGA, *Strengthening of international cooperation and coordination of efforts to study, mitigate and minimize the consequences of the Chernobyl disaster*, A/RES/46/150 (1991), preambular para. 4.

[64] See e.g. UNGA, *Assistance to refugees, returnees and displaced persons in Africa*, A/RES/47/107 (1992), preambular paras. 7, 31.

[65] See e.g. UNGA, *International assistance for the rehabilitation and reconstruction of Nicaragua: Aftermath of the war and natural disasters*, A/RES/48/8 (1993), preambular para. 5.

[66] See e.g. UNGA, *International cooperation on humanitarian assistance in the field of natural disasters, from relief to development*, A/RES/64/251 (2010), preambular para. 8.

indigenous peoples,[69] and societies living in mountain regions,[70] among others.

4.2.3.2.2 Individuals and communities as victims and potential victims

The dominant conception of victim in the immediate post-war phase until the 1970s was the idea of the victim as a component of the state. More precisely, victims as a collective were represented in terms of their affiliation with the state. Consideration of the immediate-post war resolutions of the ECOSOC and the UNGA show that people suffering as a result of disastrous (most often, natural) events were represented as abstractions, a "population", one of the legal requirements for statehood; individuals who suffered from disaster were not given corporeal form in many resolutions. A representative example of the agreed wording of such provisions can be found in the following:

> "*Noting* with deep regret the tragic consequences of the hurricane which struck the Caribbean area - especially the territories of Cuba, the Dominican Republic, Haiti, Jamaica and Trinidad and Tobago - resulting in the loss of thousands of lives and causing considerable material damage."[71]

From the late 1960s and early 1970s, in a period when an increasing number of appeals for international aid to the UN were made, the notion of the victim began to shift, inhabiting the bodies of people. While the idea of the loss of life as a result of disaster was repeated, those who had died were generally not represented in terms of "victimhood", although reference to deaths as a result of disasters had been a feature of UN resolutions pertaining to disaster from the beginning. Rather, resolutions falling into this category began to speak of relieving or alleviating the suffering or distress of individuals. For example, The ECOSOC stated in 1967 that it:

> "1. Conveys its sympathy to the peoples and governments of Iraq and Syria for the tragic loss of life and damage;
>
> 2. Appeals to Members States to provide such assistance as they may be in a position to make

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[67] See e.g. UNGA, *Humanitarian assistance, emergency relief, rehabilitation, recovery and reconstruction in response to the humanitarian emergency in Haiti, including the devastating effects of the earthquake*, A/RES/65/135 (2011), preambular para. 6.

[68] See e.g. HRC, *Adequate housing as a component of the right to an adequate standard of living in the context of disaster settings*, A/HRC/RES/19/4 (2012), PP6.

[69] UNGA, *Humanitarian assistance for the rehabilitation of El Salvador and Guatemala*, A/RES/60/220 (2005), preambular para. 6.

[70] UNGA, *Sustainable mountain development*, A/RES/62/196 (2007), operative para.11.

[71] For other examples, see ECOSOC, *Measures to be adopted in connexion with the earthquake of Skopje, Yugoslavia*, E/RES/970(XXXVI) (1963), preambular para.3; A/RES/1888 (XVII) (1963), preambular para.1, operative para. 1; ECOSOC, *Emergency aid to Costa Rica*, E/RES/1014 (XXXVII) (1963), preambular para.1.

available to relieve the distress in the areas concerned",[72]

Similarly, the UNGA stated in 1968 noted with satisfaction the:

> "arrangements provided for in General Assembly resolution 2034 (XX) and the assistance extended to governments by the Secretary-General under that resolution have contributed towards relieving the distress and hardships which follow natural disasters".[73]

Although what "suffering" or "distress" means is not elucidated, and is treated as being self-evident, some of the realities of the scale of the damage wreaked on individuals' lives by disaster began to emerge in resolutions of this type, by, for example, detailing the number of lives lost and the number of homes destroyed.[74]

Suffering and distress is able to be extrapolated from the type of relief that was deemed necessary for the people who were the implicit targets of inter-state interaction. From the 1970s, the term "victim" began to be used to refer to survivors of the disastrous events who required aid. The objective of aid as often elaborated as being the restoration of normal living conditions.[75] Supplementing this idea was regular reference to people's "needs", which became more prominent in the 1980s.[76] In particular, the idea that the aid provided should be specific to the needs of the particular became more prominent, indicating that the priorities of the states concerned should be given consideration in the provision of aid.[77] In addition, victims were those who had survived some event, and the aid that was given spoke to what the content of that suffering was, namely, the inability to maintain the state of being alive.[78]

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[72] ECOSOC, *Action to be taken following the flooding of the River Euphrates*, E/RES/1212 (XLII) (1967), operative paras. 1, 2.

[73] UNGA, *Assistance in cases of natural disaster*, A/RES/2034 (XX), (1965), preambular para.3.

[74] See e.g. UNGA, *Assistance to Iran in Connexion with the earthquake of August 1968*, A/RES/2378 (XXIII) (1968), preambular para.1; ECOSOC, *Proposal for the establishment of an emergency fund for disasters*, E/RES/1533 (XLIX) (1968), preambular para. 3.

[75] See e.g. ECOSOC, *Assistance to Turkey in connexion with the earthquake in Kutahya Province*, E/RES/1478 (XLVIII) (1970), preambular para.3; ECOSOC, *Assistance to Yugoslavia in connxion with the earthquake at Banja Luka*, E/RES/1469 (XLVIII), (1970), preambular para. 3; UNGA, *Assistance to Pakistan in connexion with the cyclone and tidal bore of November 1970*, A/RES/2643 (XXV) (1970), preambular para. 3.

[76] See e.g. ECOSOC, *Emergency assistance to the drought victims in Djibouti*, E/RES/1984/6 (1984), preambular para. 4; UNGA, *Assistance to the drought-stricken areas of Djibouti, Ethiopia, Kenya, Somalia, the Sudan and Uganda*, A/RES/39/205 (1984), operative para. 5(a).

[77] See e.g. ECOSOC, *Strengthening the capacity of the United Nations system to respond to natural disasters and other disaster situations*, E/RES/1983/47 (1983), operative para. 5; UNGA, *Strengthening the capacity of the United Nations system to respond to natural disasters and other disaster situations*, A/RES/38/202 (1983), operative para. 4.

[78] Namely, this referred to (at least) the disaster-affected state's efforts to save lives. See e.g. UNGA, *Assistance to the drought-stricken areas of Ethiopia*, A/RES/40/228 (1985); UNGA, *Emergency assistance to Jamaica*, A/RES/43/7 (1988), preambular para.3; UNGA, *Emergency assistance to El Salvador*,

However, while the scope of the notion of the individual victim of disaster has expanded and is more prominent, their status of victimhood is often considered through the lens of affiliation to the state, rather than suffering as an individual or community experience. This is demonstrated by the oft-repeated provision on the sovereignty of the state with regard to disaster relief and disaster reduction. This can be seen in one of the most important resolutions of disaster relief, UNGA resolution 46/182, which takes as one of its guiding principles, the following:

> "4. Each State has the responsibility first and foremost to take care of the victims of natural disasters and other emergencies occurring on its territory. Hence, the affected State has the primary role in the initiation, organization, coordination, and implementation of humanitarian assistance within its territory."

The principles contained in UNGA resolution 46/182 continue to be endorsed in resolutions today.[79]

The notion of prevention of disasters had been considered by UN bodies as early as the 1960s, but the resolution which created UNDRO, UNGA resolution 2816 (XXVI), mandated UNDRO with promoting the study, prevention, control and prediction of natural disasters,[80] and assisting governments with pre-disaster planning,[81] thereby asking that international attention be given to the issues. As a result, the notion of the potential victim, although implicit in all documents since this time, has come to be acknowledged in the international arena. This notion of the potential victim has perhaps received its greatest boost from the institutionalisation of disaster risk reduction, in the form of the IDNDR and the ISDR, which have (or had) as their aims, the reduction of disasters and as a corollary of this, the reduction in the lives lost or disruption as a result of disaster. States are therefore encouraged to mitigate loss of life and other human suffering by, among other things, adopting and implementing effectively, "necessary legislative and other appropriate measures to mitigate the effects of natural disasters and integrate disaster risk reduction strategies into development planning,"[82] The idea of

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A/RES/41/2 (1986), preambular para. 2; UNGA, *Short-term, medium-term and long-term solutions to the problems of natural disasters in Bangladesh*, A/RES/43/9 (1988), preambular para. 6.

[79] See e.g. UNGA, *International cooperation on humanitarian assistance in the field of natural disasters, from relief to development*, A/RES/64/251 (2010), preambular para. 1; UNGA, *Humanitarian assistance, emergency relief, rehabilitation, recovery and reconstruction in response to the humanitarian emergency in Haiti, including the devastating effects of the earthquake*, A/RES/65/135 (2011), preambular para. 1.

[80] UNGA, *Assistance in Cases of Natural Disaster and Other Disaster Situations*, ARES/2816 (XXVI) (1971), operative para. 1(f).

[81] Id., operative para. 1(g).

[82] See e.g., *International cooperation on humanitarian assistance in the field of natural disasters, from relief to development*, A/RES/64/251 (2010), operative para. 4;

helplessness is often drawn into statements regarding mitigation, in statements such as the following, and is used to justify the regulation of this aspect of disasters:

"Expresses deep concern at the increasing number and scale of natural disasters, resulting in massive losses of life and property worldwide, in particular in vulnerable societies lacking adequate capacity to mitigate effectively long-term negative social, economic and environmental consequences of natural disasters"[83]

4.2.3.2.3 Inclusion of disaster prevention, mitigation and preparedness

The UNGA and ECOSOC have called for disaster preparedness and prevention measures since the 1960s. An early example is an ECOSOC resolution drawing the attention of Member States to the importance of seismological research and its connection with the creation of building regulations, and requesting the Secretary-General and other UN bodies to promote such research.[84] From the 1970s onwards, the importance of scientific research and technology, and domestic pre-disaster planning in mitigating the impact of disasters was emphasised.[85] The emphasis on science was linked to the UN's potential role with regard to disasters.[86] An example is UNGA Resolution 3345 (XXIX),[87] which requested the Secretary-General to take measures to provide facilities for co-ordinated multidisciplinary research aimed at synthesising, integrating and advancing existing knowledge on the interrelationships between population, resources, environment and development. Following the establishment of UNDRO, from the 1980s, disaster preparedness and prevention became regular subjects of provisions in resolutions on disaster; these provisions ranged from those recognising the importance of preparedness and prevention,[88] to those calling for states and UN bodies such as UNDRO to provide certain preparedness and prevention measures in specific disaster situations.[89]

The growing recognition of the importance of disaster preparedness and prevention

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[83] See e.g. UNGA, *International cooperation on humanitarian assistance in the field of natural disasters from relief to development*, A/RES/54/233 (1999), operative para. 1; UNGA, *International cooperation on humanitarian assistance in the field of natural disasters from relief to development*, A/RES/55/163 (2000), operative para. 1; UNGA, *International cooperation on humanitarian assistance in the field of natural disasters from relief to development*, A/RES/56/103 (2001), operative para. 2; UNGA, *International cooperation on humanitarian assistance in the field of natural disasters, from relief to development*, A/RES/58/25 (2003), operative para. 2.

[84] E.g. ECOSOC, *International co-operation in the field of seismological research*, E/RES/912 (XXXIV) (1962), operative paras. 2,3.

[85] See e.g. UNGA, *Assistance in cases of natural disaster*, A/RES/2435 (XXIII) (1969).

[86] ECOSOC, *Assistance in cases of natural disaster and other emergency situations*, E/RES/1612 (LI),operative paragraph 1(e), (f).

[87] UNGA, *Research on the interrelationships between population, resources, environment and development*, A/RES/3345 (XXIX) (1974).

[88] See e.g. ECOSOC, *Office of the United Nations Disaster Relief Co-ordinator*, E/RES/1984/60 (1984), operative paragraph 12.

[89] See e.g. UNGA, *Long-term and effective solution of the problems caused by natural disasters in Bangladesh*, A/RES/40/231 (1985), operative paragraphs 4, 5.

measures was given new form in the late 1980s, with a resolution establishing an international decade for disaster reduction, which would commence on 1 January 1990.[90] The resolution noted the link between developing countries, economic development, disasters and disaster mitigation, and noted the importance of international action for the reduction of natural disasters. The objective of the decade for natural disaster reduction was to reduce the loss of life, property damage, social and economic disruption, especially in developing countries, through international action.[91] Subsequently, the UNGA and ECOSOC adopted annual resolutions on the Decade from 1989 to 2002. Under early resolutions organisation arrangements for the decade, as well as a framework for international co-operation on natural disaster reduction were established.[92] The IDNDR called upon governments to: among other things, formulate disaster-mitigation programmes as well as economic, land use and insurance policies for disaster prevention, establish national committees in co-operation with scientific communities to achieve the objectives and goals of the decade, increase awareness of damage risk probabilities and enhance community preparedness, pay attention to the impact of natural disasters on health care, etc. The Framework also prescribed the action to be taken by the UN system in disaster preparedness, prevention, relief and short-term recovery. During the decade, the first World Conference on Natural Disaster Reduction was held in 1994, culminating in the adoption of the Yokohama Strategy for a Safer World: Guidelines for Natural Disaster Prevention, Preparedness and Mitigation and its Plan of Action, which will be discussed infra.[93]

In 2000, the UNGA and ECOSOC adopted resolutions on the successor arrangements for the IDNDR,[94] creating the International Strategy for Disaster Reduction, further fixing the importance of disaster preparedness and prevention within the UN. The UNGA has passed resolutions annually since 2002 on the International Strategy for Disaster Reduction.[95] A further development is the endorsement of the Hyogo Framework for Action (adopted at the 2005 World Conference on Disaster Reduction), in various UNGA and ECOSOC resolutions on the strengthening of the UN's emergency relief and rehabilitation measures,[96] natural disaster and vulnerability,[97] the International Strategy

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[90] UNGA, *International Decade for Disaster Reduction*, A/RES/42/169 (1987); UNGA, *International Decade for Disaster Reduction*, A/RES/44/236 (1989).
[91] Id., operative para. 4.
[92] UNGA, *International Decade for Disaster Reduction*, A/RES/44/236 (1989), Annex: "International Framework of Action for the International Decade for Natural Disaster Education, Section B, article 3(a)-(g).
[93] International Decade for Natural Disaster Reduction, *Yokohama Strategy and Plan of Action for a Safer World*, (1994).
[94] UNGA, *International Decade for Natural Disaster Reduction*, A/RES/54/219 (2000).
[95] E/RES/2007/3 (2007), A/RES/56/195 (2002), A/RES/57/256 (2003), A/RES/58/214 (2004), A/RES/59/231 (2005), A/RES/60/195 (2006), A/RES/61/198 (2007),
[96] A/RES/62/94 (2008), E/RES/2008/36 (2008), A/RES/63/137 (2009), A/RES/63/139 (2009), A/RES/64/76 (2010), E/RES/2010/1 (2010), A/RES/64/200 (2010).

for Disaster Reduction,[98] and international cooperation on disasters from relief to development,[99] among others.

4.2.3.2.4 The institutionalisation of international action in response to disaster

Resolutions of the UNGA and ECOSOC on disaster took on the issue of the institutionalisation of international disaster relief, while also creating and maintaining institutions for disaster prevention, mitigation and preparedness.

In recognition of the concern that the multiplicity of UN organisations having a complete or partial role in providing disaster relief since the UN Relief and Rehabilitation Administration's (UNRRA) termination[100] had provided excessive or inadequate relief in the 1960s, and that there was a need to strengthen and make the UN's capacity to assist countries stricken by natural disasters,[101] the UNDRO was established under UNGA Resolution 2816 in 1971. The UNGA, recognising that governments might need assistance at a time of "natural disaster or other disaster situation",[102] mandated UNDRO with, *inter alia*, mobilizing, directing and coordinating the relief activities of the various UN organisations, co-ordinating UN assistance with IGO and NGO assistance, assisting government's stricken by disaster to assess relief needs, promoting research on prevention, control and prediction of natural disasters, and acquiring and disseminating information relevant to disaster planning and relief.[103]

UNDRO was intended to be a focal point for relief organisation within the UN, but it was beset with bureaucratic problems and funding problems from the start,[104] as Resolution 2816 did not provide a clear division of responsibilities for UN agencies with a disaster

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[97] A/RES/60/196 (2006), A/RES/61/200 (2007), A/RES/63/217 (2009).

[98] A/RES/60/195 (2006), A/RES/62/192 (2008), A/RES/63/216 (2009), A/RES/64/200 (2010), A/RES/65/157 (2011), A/RES/66/199 (2012).

[99] A/RES/61/131 (2007), A/RES/62/92 (2008), A/RES/63/141 (2009), A/RES/65/251 (2010), A/RES/65/264 (2011), A/RES/66/227 (2012).

[100] Although the UNRRA was terminated in 1947, many of the organisation's goals remained uncompleted. Its functions were divided and its incomplete work was carried out by separate successor organisations in the subsequent years: the United Nations Children's Fund (now UNICEF), the Food and Agriculture Organization, the World Health Organization (Beidberger, *The Role and Status*, 26; Macalister-Smith, *International Humanitarian Assistance*, 14). Following this, other UN organisations, such as the UN High Commissioner for Refugees (and its predecessor, the International Refugee Organization), the International Organization for Migration, International Labour Organisation, the World Meteorological Organisation, the UN Environment Programme, UN Educational, Scientific and Cultural Organization, the UN Development Programme etc., all carried out different work in certain aspects of disaster relief. See generally, Beidberger, *The Role and Status*, 25-48.

[101] See e.g. ECOSOC, *Assistance in cases of natural disaster*, E/RES/1546 (XLIX) (1970), preambular para. 6.

[102] UNGA, *Assistance in cases of natural disaster and other disaster situations*, A/RES/2816 (XXVI), preambular para. 15.

[103] Id., operative para. 1.

[104] See e.g. Macalister-Smith citing the 1973 report of the Secretary-General in *International Humanitarian Assistance* at 134-5, and Beidberger, *The Role and Status*, 47.

mandate, nor did it account for conflicts and gaps between these responsibilities. The UNGA reviewed the UNDRO's structure sixteen times prior to creating the Department of Humanitarian Affairs (DHA) in 1991.[105] UNDRO's slow demise began in the early 1980s, with two UN reports making negative evaluations of UNDRO's activities.[106] In light of the consistent lack of faith in UNDRO since its establishment, a new humanitarian assistance organisation was proposed. This new organisation, the DHA, was established under UNGA Resolution 46/182 in 1991. The resolution called on the Secretary-General to designate a high-level official backed by a coordination entity. The high level official would have the title of the Under-Secretary-General of the DHA, and would take on responsibilities for humanitarian assistance (disaster relief) formerly held by the UNDRO and the Special Representatives of the Secretary-General under the old dual system. The Under-Secretary-General would hold the positions of Emergency Relief Coordinator (ERC) and the Under-Secretary-General at the same time, and would represent a combination of UNDRO and other offices dealing with complex emergencies.[107] The same resolution also called for the establishment of an Inter-Agency Standing Committee (IASC) under the Chairmanship of the Under-Secretary-General,[108] and called for the establishment of a central funding mechanism to ensure the adequate provision of resources to address emergencies in their initial phase.[109] Resolution 46/182 recommended that the Under-Secretary-General (and ERC) advise the Secretary-General regarding proposals for special coordination arrangements.[110] Given all of these structural changes to improve upon the UN disaster relief system, Sheridan observes that Resolution 46/182 made a serious attempt to develop the ERC's credibility as the Secretary-General's primary advisor in coordinating disaster response.[111]

In terms of structure, the institutional arrangement for disaster relief (or as it became known, humanitarian assistance) created by Resolution 46/182 was not significantly different to that of UNDRO.[112] Thus, in 1997, along with the UN's Programme of Reform,

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[105] L.M.E. Sheridan, "Institutional Arrangements for the Coordination of Humanitarian Assistance in Complex Emergencies of Forced Migration" 14 (2000) *Georgetown Immigration Law Journal* 941-984, 944 (hereinafter, "Institutional Arrangements").These resolutions were: A/RES/2816 (XXVI), A/RES/3243 (XXIX), A/RES/3340(XXX), A/RES/3532 (XXX), A/RES/33/429 (1978), A/RES/34/55 (1979), A/RES/35/107 (1980), A/RES/36/225 (1981), A/RES/37/144 (1982), A/RES/38/202 (1983), A/RES/39/207 (1984), A/RES/41/201 (1986), A/RES/42/433 (1987), A/RES/43/131 (1988), A/RES/43/204 (1988), A/RES/45/221 (1990).

[106] These were the 1980 UN Joint Inspection Unit Report, *Evaluation of the Office of the UNDRO* (JIU/RES/80/11) and the 1981 report entitled "International Efforts to Meet Humanitarian Needs in Emergency Situations" (Doc.E1981/16).

[107] A/RES/46/182, operative para. 36.

[108] Id., para. 38.

[109] Id., para. 32.

[110] Id., para. 35(b).

[111] Sheridan, "Institutional Arrangements", 964.

[112] Id., 978.

was implemented under former Secretary-General, Kofi Annan. The DHA was reformed into the Office for the Coordination of Humanitarian Affairs (OCHA) in 1997. It was noted that the ERC needed a better support structure in order to perform better, and focus the role of the ERC on three core functions in support of the Secretary-General.[113] In order to allow the ERC to focus on these core functions, the functions relating to the coordination of natural disaster relief would remain with the ERC, while disaster prevention, mitigation and preparedness functions would be transferred to the UNDP.[114] OCHA now carries out humanitarian assistance in situations of humanitarian emergency, under which natural disaster and complex emergencies are subsumed; its role is reaffirmed under resolutions such as UNGA Resolution 66/119.[115]

In addition to OCHA's role as a focal institution for the provision of disaster relief, various UN institutions have been created to engage with the issues of disaster prevention, mitigation and preparedness.[116] As noted above, the UN designated the decade of the 1990s as the International Decade for Disaster Reduction in 1989,[117] which was intended to reduce loss of life, property damage, and social and economic disruption caused by natural geophysical phenomena such as earthquakes, windstorms, tsunamis, floods, drought, and other calamities of a natural origin.[118] In this, UNDRO was initially accorded a central role in assisting to mainstream the IDNDR goals into the work of the various UN agencies,[119] as well as establishing a Secretariat for the Decade.[120] Before the Decade concluded, successor arrangements were made to maintain the work carried out during the IDNDR.[121] Under UNGA Resolution 54/219, the GA endorsed the Secretary-General's proposal to establish an inter-agency task force and inter-agency-secretariat for disaster reduction under the authority of the Under-Secretary-General for Humanitarian Affairs.[122] In 2001, it was decided that the Inter-Agency Task Force for Disaster Reduction, set up under UNGA Resolution 54/219 should continue its functions in a modified form, and serve as a forum within the UN for disaster reduction policy and strategy, in addition to the continuation of the secretariat.[123] The ISDR and its secretariat, the UNISDR, has continued its work to the present. Since

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[113] UNGA, *Renewing the United Nations: A Programme for Reform*, A/RES/51/950 (1997), paras. 185, 190.
[114] Id., para. 187.
[115] UNGA, *International cooperation on humanitarian assistance in the field of natural disasters ,from relief to development,* A/RES/65/264 (2011); UNGA, *Strengthening of the coordination of emergency humanitarian assistance of the United Nations*, A/Res/66/119 (2012), preambular paras. 3, 11
[116] This is also termed "disaster risk reduction".
[117] UNGA, *International Decade for Disaster Reduction*, A/RES/44/236 (1989).
[118] Id., Annex, A. Para. 1,
[119] Id., Annex, C., 5.
[120] Id., Annex, D, para. 14.
[121] UNGA, *International Decade for Disaster Reduction: Successor Arrangements*, A/RES/54/219 (1999).
[122] Id., operative paras. 3, 4.
[123] UNGA, *International Decade for Disaster Reduction*, A/RES/56/195 (2001), operative paras. 3-5.

then, the UNISDR has engaged with the implementation of the HFA. In 2006 the GA established the Global Platform for Disaster Risk Reduction (Global Platform) as a successor arrangement to the Inter-Agency Task Force for Disaster Reduction, which would have the same mandate.[124] The Global Platform is a biennial meeting for the exchange of information and discussion regarding disaster risk reduction, the latest being held in May 2013.

4.2.3.3 Other soft law sources: The Draft Convention on Expediting the Delivery of Emergency Assistance

A comprehensive international legal regime to tackle the disaster relief aspect of the disaster concept, entitled the *Convention on Expediting the Delivery of Emergency Assistance*, was proposed in 1984 by UNDRO (the Draft Convention). This convention, as the name suggests, was drafted purely to tackle immediate post-disaster situations, and as such does not consider the longer-term social problems, or indeed, power imbalances that help to exacerbate the effects of external physical catalysts. As such, the consideration of marginalisation in this section is limited to the effects of marginalisation in the allocation of disaster relief resources

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This proposed convention followed a joint study conducted by UNDRO and the League of Red Cross Societies in 1976 regarding legal problems in international disaster relief activities, and a subsequent UNDRO study on remaining problems and solutions.[125] UNDRO determined on the basis of the latter study that a convention could be necessary and submitted a draft text to ECOSOC in 1984.

The Draft Convention's scope ratione materiae was disaster, defining it thus:

> "...any natural, accidental or deliberate event (not being an ongoing situation of armed conflict) as a result of which assistance is needed from outside the State upon whose territory the event occurred or which has been affected by the consequences of the event."[126]

Disaster in the Draft Convention included natural or manmade disasters but excluded situations of ongoing armed conflict. It can be seen that the Draft Convention's definition of disaster is circular: a man-made or natural disaster is a disaster because it requires disaster assistance. The Draft Convention's scope of application was the assistance provided by states (the "assisting state" in the Draft Convention) or other organisations,

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[124] UNGA, *International Strategy for Disaster Reduction*, A/RES/61/198 (2006).
[125] Fisher, *Law and Legal Issues*, 27-8.
[126] *Draft Convention on Expediting the Delivery of Emergency Assistance*, A/39/267/Add.2 (1984), Article 1(b).

including NGOs, to a disaster struck state (the "receiving state"),[127] and provided practical prescriptions on international disaster relief measures (termed "emergency assistance", abbreviated to "assistance"), to be undertaken by states, such as the protection of relief personnel, the facilitation of communication methods by the receiving state deemed necessary by the assisting state, the international exchange of information regarding disaster etc. The Draft Convention obligated relief providers with respecting the sovereignty of the disaster affected state and to obey local laws, and ensure that assistance was appropriate to the assessed needs and compliant with domestic standards on health etc. However, the Draft Convention did not state the terms under which it would have effect; that is, it did not specify when a "disaster" which necessitated "emergency assistance" would begin to exist. Would a disaster exist when a state which suffered some kind of damage requested the international community, or another state for help? Or would a disaster, which would necessitate the international community's assistance, exist automatically when the conditions contained in article 1(b)'s definition of disaster were deemed to exist by the international community or another state?

Even a brief glance at the text of the Draft Convention reveals that it sought to regulate the practical aspects of the provision of disaster relief – the provisions prescribe action for things such as the exchange of information, communications between states, notification of details of assistance, packaging labelling and marking of relief goods, among others. It is a document that is first and foremost aimed at regulating the delivery of assistance between states. As a result, there is little focus on the idea of marginalised people, relying on the notion that marginalisation lies in needing disaster assistance in the first place. It defines "Relief Consignments" as "vehicles, foodstuffs, seeds and agricultural equipment, medical supplies, blankets, shelter materials or other goods of prime necessity, forwarded as assistance to those affected by disasters"[128] The relief goods envisaged as being transported show an emphasis on people directly affected by disasters, such as those who have been made homeless. However the seeds and agricultural equipment indicate that the drafters of the Convention were also considering longer-term relief. It cannot be said that there is a coherent concept of victim, let alone marginalised victims, elaborated in the Draft Convention – it has a state-centric focus which places the sole discretion for deciding who is a victim of disaster or not entirely up to the states receiving and providing assistance. This contention was made also by the League of Red Cross Societies and the ICRC.[129] However, a corollary of this is that those who are marginalised, by virtue of being less human or less equal, or other prejudice, may not be recognised as

[127] Id., Article 4.
[128] Id., Article 1(c).
[129] Y. Beidberger, *The Role and Status of International Humanitarian Volunteers and Organizations: The Right and Duty to Humanitarian Assistance* (Leiden: Martinus Nijhoff, 1991), 378.

needing more help in disaster relief situations.

Ultimately, the Draft Convention was not adopted. Although three states supported it,[130] the UN's Second Committee failed to take action on it. The League of Red Cross Societies and the ICRC were against the Draft Convention, being of the opinion that the Draft Convention over-emphasised the sovereignty of the receiving state.[131] In the end, reasons for the failure of the Draft Convention to progress are unclear, and Fisher notes that there were feelings amongst relevant actors that it was premature to create a Convention on the topic.[132]

4.2.3.4 Other soft law sources: The Yokohama Strategy and the Hyogo Framework for Action

The Yokohama Strategy and Plan of Action for a Safer World (Yokohama Strategy) and the Hyogo Framework for Action (HFA) are documents that have been adopted at the first and second World Conferences on Natural Disasters. Although the Yokohama Strategy and the HFA are documents are not traditionally viewed as international legal documents per se, their status as being expressions of the will of states, taken together with the numerous UNGA resolutions outlined above that affirm both documents, mean that they can be taken as being soft law sources. The HFA's importance as an expression of international consensus regarding disaster risk reduction is also demonstrated by the references to the consensus in the HFA, as well as the Hyogo Declaration,[133] another outcome document of the second World Conference, in the ASEAN Agreement on Disaster Management,[134] as well as at the EU level.[135]

The Yokohama Strategy was adopted in 1994 following the first World Conference on Natural Disasters. The document, as its title states, was aimed specifically at prevention and preparedness for natural disasters. However, the Yokohama Strategy explicitly acknowledged the role that the vulnerability of societies played in the effect of natural disasters, affirming that:

> "1. The impact of natural disasters in terms of human and economic losses has risen in recent

[130] UNGA, *Summary Record of the 32nd Meeting*, A/C.2/39/SR.32 (1984) Statement of Ecuador, 10; UNGA, *Summary Record of the 37th Meeting*, A/C.2/39/SR.37 (1984), Statement of Indonesia, 3; UNGA, *Summary Record of the 39th meeting, A/C/39/SR.39* (1984), Statement of Zambia, 12.
[131] Bediberger, *The Role and Status*, 378.
[132] Fisher, *Law and Legal Issues*, 28.
[133] World Conference on Disaster Reduction, *Hyogo Declaration*, A/CONF.206/6 (2005).
[134] *ASEAN Agreement on Disaster Management and Emergency Response* (2005).
[135] European Commission, "A Community approach on the prevention of natural and man-made disasters" (Communication) COM (2009) 82 final 23 February 2009; European Commission, "EU Strategy for supporting Disaster Risk Reduction in Developing Countries" (Communication) COM (2009) 84 final, 23 February 2009.

years, and society in general has become more vulnerable to natural disasters. Those usually most affected by natural and other disasters are the poor and socially disadvantaged groups in developing countries as they are the least equipped to cope with them."[136]

The Yokohama Strategy noted the link between socio-economic vulnerability and disaster, emphasising the political context in which disaster reduction was being considered, and therefore marking a significant shift in the political context in which disaster reduction was being considered.

At the end of the period covered by the Yokohama Strategy, the ISDR conducted a review of the Yokohama Strategy.[137] The review found that while the principles of the Yokohama Strategy remained valid and there was a greater official and public understanding of the threat of combined political, economic and environmental consequences of disasters, a greater commitment to addressing vulnerability to risks was required.[138] The Yokohama Strategy Review was submitted at the World Conference on Disaster Reduction in 2005, and formed the basis of the formulation of the Hyogo Framework for Action (HFA). The HFA can be seen as a further consolidation of the idea that social and economic vulnerability play a large part in the concept of disaster although it does not explicitly define disaster per se, instead elaborating a concept of disaster risk:

"3. Disaster risk arises when hazards interact with physical, social, economic and environmental vulnerabilities. Events of hydrometeorological origin constitute the large majority of disasters."[139]

Hazard is defined as "A potentially damaging physical event, phenomenon or human activity that may cause the loss of life or injury, property damage, social and economic disruption or environmental degradation."[140] While natural disasters are seen to be without a doubt "disasters", the concept of disaster elaborated in the HFA may also include disastrous events that arise from human action, and adds the element of economic, social and environmental vulnerability. Disasters are conceptualised as consisting in the existence of some event *and* vulnerability, which creates "loss of life or injury, property

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[136] Yokohama Message of the *Yokohama Strategy* after the chapeau.
[137] The ISDR was stablished in 1999 under UNGA, *International Decade for Disaster Reduction: Successor Arrangements*, A/RES/54/219 (1999), and becoming the focal point in the UN system for the coordination of disaster risk reduction under UNGA, *International Decade for Disaster Reduction*, A/RES/56/195 (2001).
[138] ISDR, *Review of the Yokohama Strategy and Plan of Action for a Safer World*, A/CONF.206/L.1 (2005), paras. 24, 25.
[139] ISDR, *Hyogo Framework for Action 2005-2015: Building the Resilience of Nations and Communities to Disasters* (A/CONF.206/6) (2005).
<http://www.unisdr.org/files/1037_hyogoframeworkforactionenglish.pdf>, section A, para. 3.
[140] ISDR, *Living with Risk: A Global Review of Disaster Reduction Initiatives* (Geneva: UNISDR, 2004).

damage, social and economic disruption or environmental degradation."[141]

The HFA further provides important recognitions of the link between social and economic forms of marginalisation in the priorities of action that it formulates. It places reduction of "underlying risk factors" as one of its five priorities for action,[142] and ensuring "that disaster risk reduction is a national and *a local priority* with a strong institutional basis for implementation (emphasis added)" (Priority 1),[143] as well as the identification of disaster risks (Priority 2), the starting point of which is "the knowledge of hazards and the physical, social ,economic and environmental vulnerabilities to disasters that most societies face, and of the ways in which hazards and vulnerabilities are changing in the short and long terms, followed by action taken on the basis of that knowledge."[144]

With regard to the priority of reduction of underlying risk, the HFA stipulates that "Disaster risks related to changing social, economic, environmental conditions and land use, and the impact of hazards associated with geological events, weather, water, climate variability and climate change, are addressed in sector development planning and programmes as well as in post-disaster situations."[145] Key activities that this priority recommends are the promotion of food security, the integration of disaster risk reduction planning into the health sector, and the strengthening of the implementation of social safety-net mechanisms to assist the poor, the elderly and the disabled and other populations affected by disasters.

The mid-term review of the HFA observed that the link between ensuring local and community participation in implementing Priority 1, and reducing underlying risk as elaborated by Priority 4, is critical in ensuring a holistic approach to reducing vulnerability. However, the mid-term review focused on issues of governance arrangements that fail to integrate management of risk drivers, because those issues – land tenure, rural development policy, housing, economic and urban development, among others – are spread across different bureaucratic structures.[146] The mid-term review further noted that the responding states had noted that Priority 4, the reduction of

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[141] ISDR, *Hyogo Framework for Action 2005-2015: Building the Resilience of Nations and Communities to Disasters* (A/CONF.206/6) (2005).
<http://www.unisdr.org/files/1037_hyogoframeworkforactionenglish.pdf>, n2, 1.
[142] Priority 4.
[143] ISDR, *Hyogo Framework for Action 2005-2015: Building the Resilience of Nations and Communities to Disasters* (A/CONF.206/6) (2005).
<http://www.unisdr.org/files/1037_hyogoframeworkforactionenglish.pdf>, section B, para 14.
[144] Id., Section B, para. 17.
[145] Id.,, Section III, B, para 19.
[146] ISDR, *Hyogo Framework for Action 2005-2015: Building the Resilience of Nations and Communities to Disasters Mid-Term Review 2010-2011* (2011) <http://www.preventionweb.net.files/18197_midterm.pdf>, 44.

underlying disaster risks, accounted for the least progress in implementation, with little progress reported in the 2007, 2009 and 2011 reviews.[147] It was noted that the implementation reported sometimes displayed an inadequate understanding of the priorities, particularly in the case of the reduction of underlying risk factors.[148]

The Yokohama Strategy and HFA are sources of soft law that articulate state responsibility with regard to risk reduction. In this sense, the temporal jurisdiction of these documents is oriented towards the mitigation and prevention of future damage, and they therefore elaborate the concept of the individual, or marginalised individual, as potential victims of natural disaster.

The Yokohama Strategy affirms that community involvement and active participation should be encouraged in order to gain insight into the individual and collective perception of development and risk.[149] The Introduction notes that human loss is rising as a result of natural disasters, and that states have a shared responsibility to "save human lives, protect human and natural resources, the ecosystem and cultural heritage",[150] while inviting all countries to defend individuals from physical injuries and traumas, protect property and contribute to ensuring progress and stability.[151] In other words, the Yokohama Strategy recognises that disaster-related prevention, mitigation and preparedness strategies are for the benefit of all individuals, and implies that those who are victims are those who lose their lives, lose their property, are injured or suffer other trauma, and those societies whose stability is disturbed.

Marginalisation and disaster is elaborated in the Yokohama Strategy thus:

> "In all countries the poor and socially disadvantaged groups suffer most from natural disasters and are least equipped to cope with them. In fact disasters contribute to social, economic, cultural and political disruption in urban and rural contexts, each in its specific way. Large-scale urban concentrations are particularly fragile because of their complexity and the accumulation of population and infrastructures in limited areas."[152]

The Strategy further supplements this notion of the individual and particularly disadvantaged individual potential, noting their agency:

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[147] Id., 27
[148] Id, 44.
[149] ISDR, *Review of the Yokohama Strategy and Plan of Action for a Safer World*, A/CONF.206/L.1 (2005).
[150] Id., operative para. 1
[151] Id., operative para. 2.
[152] Id., I. Principles, Section A. Basis for the Strategy.

> "7. Notwithstanding the full continuum, disaster prevention is better than disaster response and achieving the goals, objectives and targets of the Decade as adopted by the relevant resolutions of the General Assembly would result in greatly reducing disaster losses. This requires *maximum participation at community level* which can mobilize considerable potential and traditional expertise in the application of the preventive measures."[153]

The Strategy further encourages participation at the local level in its recommendations, which encourages states to "Give due consideration to the role of local authorities in the enforcement of safety standards and rules...",[154] "consider making use of NGO support for improved disaster reduction at the local level",[155] and aim to apply traditional knowledge, practices and values of local communities for disaster reduction.[156]

The HFA did not delve more deeply into the notion of the potential individual and marginalised victim of disaster contained in the Yokohama Strategy, instead placing emphasis on the modalities of implementing the HFA. It does, however, add to the concept of vulnerable groups by explicitly encouraging gender perspectives to be incorporated into disaster risk management policies, plans and decision-making processes,[157] and encouraging actors implementing the Framework to take into account cultural diversity, age and other types of vulnerability when disaster risk reduction is planned.[158] It also encourages the reduction of underlying risk factors, which are related to social, economic, environmental conditions and land use by promoting food security, better environmental resources management policies, integrating risk reduction into the health sector and other public infrastructure such as schools, hospitals, water, power plants, etc.[159]

The HFA strongly emphasises the ideas of the reduction of underlying risk factors, and community consultation and local participation, the mid-term review noted that local level implementation of the HFA was an area requiring further attention. The review noted that local level action was consistently noted as in need of improvement, observing also that the HFA is not as well understood as a tool at the country-level, as it is at the international level.[160] Other problems cited were that some countries had passed laws

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[153] Ibid.
[154] Id., II. Plan of Action, A. Recommendations for Action, 11(G).
[155] Id., 11(H).
[156] Id., 11(R).
[157] HFA, III. Priorities for action 2005-2015, A. General Consideration, 13(d).
[158] Id., 13(e).
[159] Id., para. 19.
[160] United Nations International Strategy for Disaster Reduction, *Hyogo Framework for Action 2005-2015: Building the Resilience of Nations and Communities to Disasters Mid-Term Review 2010-2011* (2011) <http://www.preventionweb.net.files/18197_midterm.pdf>, 47.

assigning local governments with legal responsibility for disaster risk reduction management without passing budget allocations for such responsibility, and that multi-stakeholder consultations and sharing of knowledge at national and local levels were not effective.[161] The review further noted that multi-stakeholder consultative mechanisms and the involvement of community organisations were necessary for the effective implementation of the HFA.[162] However, an NGO report noted that "reports of progress fade as activities get closer to vulnerable people" and that overall progress at community level is limited.[163]

4.3 The future of disaster and marginalisation: The ILC's Draft Articles

The ILC special rapporteur on the protection of persons in the event of disasters, approving of the Tampere Convention definition, proposed that disaster should mean "a serious disruption of the functioning of society, excluding armed conflict, causing significant, widespread human, material or environmental loss."[164] This definition builds on the elements that can be observed in the concepts of disaster – namely, the disruption of society's functioning, and the rather general notions of human, material and environmental loss – repeated in documents since the time of Vattel, and particularly in the soft law sources on disaster created after WWII.

The ILC debates on the definition of disaster proposed by the special rapporteur show that while support was expressed for a definition framed in terms of the effect of the harm incurred, other members expressed a preference for defining disaster in terms of an event.[165] Further, ILC members suggested that the definition include causal elements to exclude political and economic crises,[166] as well as limiting the definition to situations of actual loss, as opposed to imminent threats of harm,[167] and references the damage and destruction of property and environment also considered insofar as such damage affected persons.[168]

Ultimately, the ILC provisionally adopted the following definition of disaster:

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[161] Ibid.
[162] Id., 48.
[163] Global Network of Civil Society Organisations for Disaster Reduction, *Views from the Frontline: Beyond 2015 Recommendations for a post-2015 disaster risk reduction framework to strengthen the resilience of communities to all hazards* (2013) <http://www.globalnetwork-dr.org/images/documents/VFL2013/vfl2013%20reports/GNFULL%2013%20ENGLISH%20FINAL.pdf>, iv-v.
[164] E. Valencia-Ospina, *Second Report*, para. 45.
[165] United Nations International Law Commission, *Report on the work of its sixty-first session*, A/64/10 (2009), para. 169.
[166] Id., para. 170.
[167] Id., para. 171.
[168] Ibid.

"'Disaster' means a calamitous event or series of events resulting in widespread loss of life, great human suffering and distress, or large-scale material or environmental damage, thereby seriously disrupting the functioning of society."[169]

The Commentary to the Draft Articles states that the definition is tightly linked to the scope of application of draft articles, so that the Draft Articles could not be applied to other emergencies such as economic and political crises.[170] The ILC attempted to achieve this by amending the Rapporteur's definition so that emphasis would be placed on the existence of an event which caused the disruption of a society,[171] as well as the inclusion of the phrases "calamitous", "widespread loss of life, or great human suffering and distress, or large-scale material or environmental damage." [172] Thus under the provisionally adopted definition, the conditions of the existence of an event and the serious disruption in the functioning of society as a result of one of the three outcomes, must be fulfilled in order for the event to come into the scope of the Draft Articles.[173]

The Special Rapporteur initially restricted the scope of the project to the consideration of the formulation of draft articles on transnational disaster relief[174] in the disaster proper and post-disaster phases, observing that extending the study to disaster risk reduction processes as elaborated under the HFA, could be overly ambitious at the present stage. However, this was proposed without prejudice to the ILC studying at a later stage international obligations with regard to disaster risk reduction,[175] which proved a prescient statement, as the debates on the ILC's draft articles in the Sixth Committee showed some support for the ILC's work to cover a wider range of pre-disaster activities relating to risk reduction, preparedness and mitigation.[176] The most recent of the rapporteur's reports proposes a state duty to prevent disasters:

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[169] Draft article 3.
[170] Commentary (1), United Nations International Law Commission, *Report on the work of its sixty-second session*, A/65/10 (2010).
[171] Id., Commentary (2).
[172] Id., Commentary (3).
[173] Id., Commentary (4).
[174] The scope of the draft articles includes NGOs working with states. Draft article 10 refers to the duty of the disaster-affected state to seek assistance from competent IGOs and relevant NGOs in the case that the disaster exceeds its national response capacity. Draft article 12 refers to the capacity (not right) of relevant NGOs to offer disaster-affected states assistance. See United Nations International Law Commission, *Texts and titles of draft articles 10 and 11 provisionally adopted by the Drafting Committee on 19 July 2011*, A/CN.4/L.794 (2011); *Texts and titles of draft articles 5* bis, *12, 13, 14 and 15, provisionally adopted by the Drafting Committee from 5 to11 July 2012*, A/CN.4/L.812 (2012).
[175] Valencia-Ospina, E., *Second report on the protection of persons in the event of disasters*, A/CN.4/615 (2009), para. 29.
[176] E. Valencia-Ospina, *Sixth report on the protection of persons in the event of disasters*, A.CN.4/662 (2013), para. 9.

"Draft article 16.

Duty to prevent

1. States shall undertake to reduce the risk of disasters by adopting appropriate measures to ensure that responsibilities and accountability mechanisms be defined and institutional arrangements be established, in order to prevent, mitigate and prepare for disasters.
2. Appropriate measures shall include, in particular the conduct of multi-hazard risk assessments, the collection and dissemination of loss and risk information and the installation and operation of early warning systems."[177]

The duty to cooperate was extended to the issue of disaster reduction.[178] At the time of writing, the Drafting Committee had not released its consideration of the Special Rapporteur's report. This will be the subject of future attention.

In defining the boundary of his work, the ILC's special rapporteur, Valencia-Ospina, opined that the title of the project, "Protection of persons in the event of disasters", implied the perspective of the victim of disaster and therefore suggested a rights-based approach to the treatment of the topic.[179] He further elaborated on this opinion, noting that it was not necessary for a rights-based approach to be used exclusively in the examination of the topic, and that such an approach could be supplemented by other considerations, such as the needs of disaster victims, where appropriate.[180] The precise scope of the victim perspective in the work of the ILC remains unclear, but the following draft article on the purpose of the Draft Articles on the Protection of Persons in the Event of Disasters, which compromises between the rights- and needs-based approaches has been adopted:

"2. The purpose of the present draft articles is to facilitate an adequate and effective response to disasters that meets the essential needs of the persons concerned, with full respect for their rights."

It can be seen in this formulation of the objective of the Draft Articles that the perspective of the victim is taken into account because it articulates that both rights and needs must be considered. However, what this means is unclear because the Draft Articles are oriented towards the regulation of disaster relief actions. Thus, the position of the individual, and for marginalisation is unclear. For example, while vulnerability, human dignity, and

[177] E. Valencia-Ospina, *Sixth report on the protection of persons in the event of disasters*, A.CN.4/662 (2013), para. 162.
[178] Proposed article 5 *ter.*
[179] E. Valencia-Ospina, *Second report on the protection of persons in the event of disasters*, A/CN.4/615 (2009), para. 12.
[180] ILC, *Report on the work of its sixty-first session*, A/64/10 (2009), para. 154.

human rights are taken into account,[181] it can be said that the Draft Articles do not envisage the mechanics of incorporating the actions required by the concepts of vulnerability, human dignity and human rights of disaster victims, because they are silent on these points, and also on the idea of remedies or accountability for victims of disaster. Further, the idea of potential victims, as prevention, mitigation and preparedness is not the focus of the work.[182]

4.4 Summary and observations

It can be seen that the idea of disaster has expanded since international law's inception in the laws of the three periods examined above. Vattel's *Law of Nations* dealt with the concept of disaster as it referred to sudden onset, external natural hazards in the first period, an understanding of disaster as external mostly physical hazards in the period of the IRU, which was linked to the idea of the community's capacity to withstand various external phenomena.

Finally, the third period shows that disaster encompasses both of these ideas, and the idea of disaster being the coincidence of hazard and vulnerability; however, the notions of hazard and vulnerability, as indicated by the text of the HFA and general trend of UN resolutions indicates that hazards are still largely based on sudden onset, "natural" disaster. This conclusion aligns with the understanding of disaster as a socially (or in the case of law, legally) constructed phenomenon – rather than an immutable fact – that is contingent on the interests of decision-makers, whose definitions are influenced by their interests and desires.

The expansion of the notion of disaster has been accompanied by the expansion of concept of the disaster victim. The notion of disaster victim has changed from the understanding of victims merely as a component of the state or the state as being the victim of disaster, to the recognition that communities within states suffer as a result of external physical phenomena, and the inclusion of IHRL-based notions of vulnerability, and potential victims in the rubric of victimhood. The expansion of the notion of disaster to emphasise disaster's social suffering aspect, as well as the prevention of primarily natural hazards, together with its increasing emphasis on the suffering of people and individuals in disaster, rather than states or citizens of states, follows the general trajectory of the development of international law in its treatment of human beings. The

[181] Draft articles 6, 7, 8 respectively.

[182] States have agreed with the view that the ILC should focus on immediate response and long-term rehabilitation and leave discussions of disaster preparedness and prevention to later stages (China (A/C.6/64/SR.20, para. 22), Ireland (A/C.6/64/SR.22), Portugal (A/C.6/64/SR.20, para. 83), Spain (A/C.6/64/SR.21, para. 48), France (A/C.6/64/SR.21, para. 20), although other States have asserted the importance of the topic of prevention (Chile (A/C.6/64/SR.20, para. 28), Ghana (A/C.6/64/SR.22, para. 11), Poland (A/C.6/64/SR.21, para. 75), Russian Federation (A/C.6/64/SR.20, para.46).

expansion of disaster from a notion expressing only an external natural hazardous event, to the understanding that it is a convergence of hazards and vulnerability accords with how scholars in other disciplines have understood disaster within their disciplines also.

The period in which Vattel's work was dominant was a period in which the doctrines of state sovereignty and non-intervention were foundational legal principles. Following WWI, "an inkling of the idea of certain minimal rights for certain human beings,"[183] through the development of international humanitarian law, and the LoN's protection of minorities, began to grow in international law. The creation of the UDHR and the UN Charter, and the treaties that followed, demonstrates that the domestic actions of a state in relation to its people is a matter of international legal concern that can be judged against the standards of IHRL. The gradual expansion of the notion of victim, to include not only states, but communities and individuals, the notion of vulnerability and the centralisation of the idea of suffering of people, can be seen as developments in line with changing ideas about the position of the individual in international law. The idea of vulnerability and hazards is just one conception that now fits into the rubric of disaster espoused in various international legal instruments.

International law began to be used as a tool for the creation of international institutions to deal with disaster from the adoption of the IRU Convention. This use of international law is in accordance with the growing sophistication of the international legal system's treatment of the individual and groups. The IRU and its mandate, proceeded from the empty notions of "public disaster" and "events of *force majeure*", indicating that disaster be interpreted to align with state intention, but that under the will of states, disasters were had become a topic for international legal concern. Even so, it began to be recognised that communities could be affected, and the content of disaster relief and international disaster action was elaborated more concretely than in the time of Vattel.

In the period after WWII, the number of potentially universally-applicable international instruments created to regulate the organising concept of disaster mushroomed, together with the acceptance of soft law sources as expressions of international law. The notion of disaster in international treaties is largely based on ad hoc approaches to external environmental phenomena that threaten the interests of states and people – radiological accident, climate change, among others. In addition to an ad hoc response to certain kinds of phenomena falling under the rubric of disaster, some universal treaties also address the issue of preparation for intra-state cooperation in the event of disaster. These are, most

[183] D. Moeckli, S. Shah, S. Sivakumaran, (eds.), *International Human Rights Law* (Oxford: Oxford University Press, 2010), 27.

notably, the Tampere Convention and the Civil Defence Treaty. It is difficult to generalise, but it can be said that the treaties created post-WWII on disaster are invariably state-centric, with disaster definitions that are geared towards addressing state interests, rather than addressing the suffering of people.

Soft law instruments created after WWII, despite international law's initial sluggish response to the notion of disaster, along with UN expansion and confidence, demonstrate a steadily growing interest in the notion of disaster from the 1960s. Conceptualisations of disaster in the UNG and ECOSOC resolutions have encompassed various types of phenomena that are external to society, as sudden onset geophysical phenomena, to technological disaster, and, during the era of the New International Economic Order, even as economic problems that are internal to a society. Further, the idea of first, the economic vulnerability of developing states to disaster as a prominent thread in the disasters. The last two decades have seen the development of this idea, noting that economically and socially disadvantaged groups such as indigenous peoples, children, women, etc., are disproportionately adversely affected by disaster. Accordingly, the resolutions begin to consider the concept of the prevention of disaster, rather than just relief of its effects. However, the resolutions maintain the conceptual split between disaster relief, and disaster prevention, mitigation and preparedness is maintained, even though there is recognition that the distinction is more difficult to maintain in practice. Further, they show that conceptions of disaster are still rooted in the distinction between man-made and natural disasters. A survey of titles of resolutions alone throughout the years indicates the UNGA, ECOSOC and Human Rights Council's attention to the issue of disasters with "natural" origins, and their link to development.[184] UNGA and ECOSOC efforts to tackle these disaster relief, and disaster prevention, are notable for their turn to institutionalisation. This level of consensus regarding international cooperation in the form of institutionalisation for disaster issues is notable in the history of international law.

The HFA is certainly revolutionary in terms of its recognition that vulnerability linked to marginalisation should be addressed by states in disaster risk reduction. However, the text of the HFA, as well as the discussion contained in the mid-term reviews, show that the

[184] See e.g., UNGA, *The Right to Food*, A/RES/63/187, preambular paras. 11, 13; UNGA, *Humanitarian Assistance, emergency relief and rehabilitation effort for El Salvador as a result of the devastating effects of Hurricane Ida*, A/RES/64/74 (2010); HRC, *Adequate housing as a component of the right to an adequate standard of living in the context of disaster settings*, A/HRC/RES/19/4 (2012), preambular para. 8: "Expressing its deep concern at the number and scale of natural disasters and extreme climate and weather events and their increasing impact in the context of climate change and urbanization, as well as other factors that might affect the exposure, vulnerability and capacity to respond to such disasters, which have resulted in massive loss of life, homes and livelihoods, together with forced displacement and long-term negative social, economic and environmental consequences for all societies throughout the world."; UNGA, *International cooperation on humanitarian assistance in the field of natural disasters, from relief to development*, A/RES/66/227 (2012).

notion of vulnerability, which is implicitly recognised to overlap with marginalisation (references to the elderly, disabled and the poor indicate at least a glimmer of recognition of the link between marginalisation and disaster), and uncovering the sources of that vulnerability are not the focus of concern of the document. Rather, the emphasis on the strengthening of the health systems, land tenure systems, etc., indicate that the HFA embodies preconceived notions about the links between vulnerability and disaster. Therefore, even if the HFA was adequately implemented, what makes people vulnerable, and the relations between this and hazards, may not be addressed. The HFA's emphasis on local and community participation is thought to supplement the ambiguity inherent in the HFA's notion of vulnerability. Local level implementation lies in the promotion of mapping local hazards and vulnerabilities, creating two-way communication between local and national levels, and strengthening participatory planning approaches, among others.[185] However, it should be borne in mind that local and community participation in itself has been found to be problematic in the HFA's implementation.[186] What has been found to be problematic are the problems of "ownership", that is, in the ambiguity regarding responsibility for the implementation of the HFA,[187] as well as ambiguity regarding how participation should be implemented in itself. Numerous studies have been conducted to consider ways in which participation may be strengthened, not only in terms of the HFA, but in terms of disaster prevention, preparedness etc, in general.[188] The term of the HFA is nearing its close, however, and whether or not these strategies are effective in the HFA's implementation will be a point for future examination in both reviewing the HFA, and in looking forward to the next programme.[189]

The ILC's work on the protection of persons in the event of disaster was initially widely

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[185] ISDR, *Hyogo Framework for Action 2005-2015: Building the Resilience of Nations and Communities to Disasters Mid-Term Review 2010-2011* (2011) <http://www.preventionweb.net.files/18197_midterm.pdf>, 63.

[186] Global Network of Civil Society Organisations for Disaster Reduction, *Views from the Frontline: Beyond 2015 Recommendations for a post-2015 disaster risk reduction framework to strengthen the resilience of communities to all hazards* (2013) <http://www.globalnetwork-dr.org/images/documents/VFL2013/vfl2013%20reports/GNFULL%2013%20ENGLISH%20FINAL.pdf>, 24-6.

[187] ISDR, *Hyogo Framework for Action 2005-2015: Building the Resilience of Nations and Communities to Disasters Mid-Term Review 2010-2011* (2011) <http://www.preventionweb.net.files/18197_midterm.pdf>, 43.

[188] See e.g. T. Mitchell, "An Operational Framework for Mainstreaming Disaster Risk Reduction" (Benfield Hazard Research Centre, 2003); A. Serra, J.David Tabara, I. Chabay, *Assessing the role of vertical and horizontal communication in disaster risk reduction learning and planning: The case of the Spanish Tous dam-break, 1982 (A report for the UNISDR for the mid-term review of the Hyogo Framework for Action)* (2011).<http://www.preventionweb.net/files/18197_204chabayetal.assessingtheroleofver.pdf>.

[189] The possibility that there is enough political will and momentum to create a binding legal document on disaster risk reduction is a topic of discussion. United Nations International Strategy for Disaster Reduction, *Hyogo Framework for Action 2005-2015: Building the Resilience of Nations and Communities to Disasters Mid-Term Review 2010-2011* (2011) <http://www.preventionweb.net.files/18197_midterm.pdf>, 65-6. The website for a post-2015 disaster risk reduction framework can be accessed at <www.preventionweb.net/posthfa/>.

welcomed by advocates and states alike. The notion of disaster embodied in the ILC's document is a wide one, which does not distinguish between the various origins of disaster. However, it must be seen whether, as with the IRU, political interests will block the application of disaster to man-made disasters. Human rights and the principle of human dignity also informs the text of the Draft Articles, which incorporates the notions of the human being as the centre of concern, and the capacity for individuals (and groups) to perform acts of speech – that is, utilising the various IHRL mechanisms to appeal to the international community – into an otherwise state-centric document. However, the notion of disaster is limited by the failure of the draft articles to explicitly link the notion of disaster to vulnerability in disaster, and therefore the idea of marginalisation. It can be seen that the ILC's work elucidates state obligations in disaster that are "cosmetic" in nature – that is, they are largely oriented towards fixing the immediate effects of disaster, rather than addressing the underlying causes of what causes the disaster in the first place.

Thus, it can be concluded that the expansion of the interlinked concepts of disaster, disaster victim and disaster-related vulnerability throughout history has culminated in some international disaster rules that take into account the correlation between disaster and marginalisation. The numerous conceptualisations of disaster that are encapsulated by the various sources of law created post-WWII reflect the diversification of international actors: from Western states in the LoN and pre-LoN era, to the decolonisation of states, the growing power and presence of international institutions (particularly those belonging to the UN), and the growing dominance of the concepts of human rights and (sustainable) development. This has in turn, resulted in a widening of the understanding of those who are vulnerable before and after disaster, and thereby has incorporated the notion of marginalisation in international disaster rules to a certain degree. In short, the Yokohama Strategy, HFA and ILC's Draft Articles have created a small but ambiguous legal space in which the linkages between disaster, disaster-related vulnerability and marginalisation are recognised.

Even so, the number of instruments that regulate short-term international cooperation measures for addressing the symptoms of disaster far exceeds the international legal instruments that seek to understand and address the causes of disaster. The historical evolution of the notion of disaster, and disaster victims therefore indicates that the primary legal concern has been problems in immediate post-natural disaster settings, and scientific solutions to address these. The persistent pursuit of technical or scientific solutions to natural disaster might be explained as part of a broader trend towards the professionalisation of risk and the development of languages to express disaster that are

different to the lay experience of disaster.[190] From Vattel's time to the present, understandings of disaster moved from the use of myth and metaphor at the community level, to preventable social phenomenon that requires expert knowledge. The expert-centred response that has accompanied the rise of the modern state has become dominant; the law as it stands encapsulates the language barrier between lived experience and technical knowledge. Further, while law centres on state capacity to implement expert knowledge, it has not taken into account the existence of globalisation that has resulted in transcalar causes of disaster, and the survival strategies marginalised people adopt. Causes of disaster and adaptive strategies have an existence that is separate state boundaries and international legal jurisdiction.

The regulation of disaster prevention, mitigation and preparedness is relatively new, and might be explained in terms of the fact that disaster-related vulnerability in terms of economic and social marginalisation have traditionally been seen as issues of domestic jurisdiction. However, the notions of disaster prevention, mitigation and preparedness, or disaster risk reduction, offer new ways of thinking about disaster. This new emphasis on prevention and mitigation may allow the law to come closer to expressing and addressing the situation of individuals who are potentially or actually affected by environmental hazards.

The expansion of the notion of disaster and disaster victim, and therefore of vulnerability, in international law has not, however, been accompanied by the recognition of the socially and legally contingent nature of disaster. Neither have vulnerability's links to marginalisation been widely, nor explicitly recognised in legal instruments. Rather, the notion of vulnerability is largely restricted to IHRL's categories of vulnerability. This might be argued to be natural, as international law is circumscribed not only by the interests of states, but by its limitations as a tool of the elite that curtail its capacity to understand and address marginalisation. No matter the cause of the failure, it is clear that the relatively inflexible notions of disaster and disaster-related vulnerability are determined unilaterally by those who wield the power to create and interpret law. How the root causes of vulnerability – that is, marginalisation – may be addressed is not evident, therefore, in the international documents examined above. This is most obvious in documents on disaster mitigation, such as the HFA, which are ambiguous regarding the issue of the negotiation of understandings of disaster, vulnerability and marginalisation. This is troubling, as the only way that the marginalisation that lies at the root of disaster-related suffering can be addressed is through an understanding of what those

[190] P. Barnes, "Approaches to Community Safety: Risk Perception and Social Meaning" Autumn (2002) *Australian Journal of Emergency Management* 15, 15-6.

causes are in the first place.

Future work on IDL should address the imbalance between, to quote Ryngaert and Noortman, "law-makers" and "law-takers"[191] in being able to establish what disaster and vulnerability mean. This requires consideration of both the vertical and horizontal aspects of international law with regard to addressing marginalisation within and among states, and further, requires a deep understanding of the historical processes that have created various forms of marginalisation in the first place. It also entails recognising that addressing marginalisation requires the law to facilitate "conversations" between the marginalised and the privileged.

[191] M. Noortman, & C. Ryngaert (eds.), *Non-State Actor Dynamics in International Law: From Law-Takers to Law-Makers* (Surrey: Ashgate, 2010).

Chapter Five. Evolving expressions of compassion in international disaster rules

5.1 Introduction

One way of identifying the potential, if any, for the legal space that recognises the correlation between marginalisation and disaster to be used by marginalised people is by considering how in the past the interests of people and marginalisation was obscured in the law. Accordingly, possible future uses or strategies to overcome it might be understood. In this chapter, therefore, the genealogies of the notions of disaster and vulnerability, including views of people and marginalised people where possible, will be discussed to counterbalance the previous Chapter's positivist discussion. That is, the political, economic and social forces that were instrumental in the creation of landmark instruments but are invisible in their lines, will be discussed in this Chapter. The subjects for examination are instruments of primary importance in the history of IDL, that is, those instruments that have marked or created significant changes in ways of thinking or addressing disaster that have come about with the ostensibly universal approval regarding international cooperation to address disaster. From the time of the IRU, this has often meant the creation of international institutions. Thus, Vattel's *Law of Nations*, the IRU Convention that of the League of Nations (LoN) era, the resolutions creating UNDRO and establishing the principles of humanitarian assistance (UNGA Resolution 46/182), and the resolution establishing the International Decade for Disaster Reduction (IDNDR) are examined.[1]

Historical records, sociological, historical and anthropological studies are used to reveal the existence of the people who live between the lines of the law. However, this method faces some limitations, particularly as regards the *Law of Nations* and the IRU Convention because of the lack of systematic study of the issue of disaster at the relevant times, as well as by the limitations on access to documents by the relevant record preserving bodies.

5.2 Vattel's Law of Nations

Vattel's *Law of Nations* creates the impression of order and consensus on the high-minded ideals informing disaster relief for sudden onset natural disaster as demonstrated by the extended reference to the earthquake that levelled Lisbon in 1755. The relevant provision praises the King and Parliament of England's provision of bilateral aid to Portugal.[2] Vattel neglects to mention, however, other European sovereigns' failure to provide aid.

[1] The ISDR, Yokohama Strategy and Hyogo Framework are not discussed here because they are derived from the IDNDR.

[2] E. Vattel, The Law of Nations, or Principles of the Law of Nature Applied to the Conduct and Affairs of Nations and Sovereigns, (1758). Book II, §5.

Calvinist Holland, for example, seeing the earthquake as a divine punishment on Roman Catholic Portugal, provided no aid to Portugal.[3] Portugal's nearest neighbour, France, too, sent nothing. The failure of some states to respond to the Lisbon earthquakes might be explained by the dominant understanding of earthquakes as being punishments or lessons from the Divine to sinners.[4] In contrast to the religious view, at this time, notable intellectuals and statesmen, such as Kant and Pombal, took more pragmatic and secular approaches to the issue of disaster, considering disasters to be just another part of the natural order.[5] In particular, Pombal, the Prime Minister to Portugal's King Joseph I, took this thinking to its logical conclusion by encouraging the construction of earthquake-proof buildings.

Vattel links disaster relief to the principle of humanity, and uses it as a measure of the state's civility, as well as establishing as system revolves around a sovereign's "imperfect right" to request assistance in disaster. The *Law of Nations* thus can be seen as a body of rules that uses gentle religious and legal pressure to encourages the provision of inter-state disaster relief. The presence of people, nor indeed, the idea of marginalisation can be detected in this document.

5.3 The IRU Convention

Ciraolo's 1921 proposal for the establishment of a permanent international disaster relief body was inspired by the devastation of the 1908 earthquake in Messina. The acceptance of Ciraolo's proposal should not be understood merely as a sudden and inexplicable interest in humanitarianism on the part of the international community: rather, as Haskell argues, concerted action, such as that which resulted in the creation of the IRU, happens only when interested groups are presented with clear and durable plans for humanitarian intervention.[6] Thus, IRU's creation should be understood in light of incremental changes in attitude regarding ideas of suffering and victimisation that had taken hold in the decades prior to the 1920s, as well as the apparent feasibility of Ciraolo's plan.

One of the most important changes in perception and attitude that created conducive conditions for the creation of the IRU Convention was the gradual acceptance of the idea of charity in the West: those who were the objects of humanitarian concern were those to whom were born into disadvantaged states, or developed conditions that resulted in suffering, such as the result of birth, moral lapse, loss of reason, or the perversion of the

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[3] T.D. Kendrick, *The Lisbon Earthquake* (1956), 23, cited in J. Hutchinson, "Disasters and the International Order: Earthquakes, Humanitarians, and the Ciraolo Project" 22 (2000) *International History Review* 1, 5.
[4] Id. 5-6.
[5] Id., 6.
[6] T. Haskell, "Capitalism and the origins of the Humanitarian Sensibility", 90(2) (1985) *American Historical Review* 339, 342.

notion of property, or wounding in accident and war.[7] Notably, these examples implied no fault on the part of the victim. Humanitarian concern for the guiltless began to be institutionalised among non-state actors at the beginning of the 19th century, as can be seen in the founding of the Red Cross and its proliferation across the globe, and the St John Ambulance association.[8] The institutionalisation of charity and help for people who were not at fault for their suffering was a condition without which the proposal of the IRU would not have enjoyed popular support.

The IRU's direct origins lie in the presentation of Ciraolo's proposal at the 1921 International Red Cross Conference in Geneva.[9] However, little action was taken, and Ciraolo presented his proposal again at an international economic conference in Genoa in 1922. This proposal, consisting of five articles, asked that the States members of the LoN set up an International Organisation for relief overtaken by "public calamities" such as wars, natural disasters, epidemics, famine etc.[10] The organisation was described as an "arrangement between civilised Governments for the protection of all populations threatened with or overtaken by some calamity."[11] The proposal, which had little to do with the purpose the conference was politely received; however, responses sidestepped Ciraolo's call to action. A British delegate, noting that the conference, already had enough work, suggested that the proposal should be referred to the LoN.[12]

The LoN subsequently invited Ciraolo to present his proposal again, and accordingly, Ciraolo, outlined his project to the League of Nation's (LoN) Supreme Council in September 1922. Ciraolo's proposal was a rather breathtaking one at the time: namely, that the LoN set up an international insurance scheme funded by governments to provide a financial basis on which a private institution, the Red Cross, could prepare for disasters and provide disaster relief.[13] The insurance scheme would rely on a central fund of

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[7] J. Hutchinson, "Disasters and the International Order: Earthquakes, Humanitarians, and the Ciraolo Project" 22 (2000) *International History Review* 1, 7.

[8] Id., 7-8.

[9] Delegates called upon the ICRC to persuade governments to sign a new international convention providing for wider recognition of the Red Cross' role in peace, taking into account the possibility of a mutual insurance scheme for disaster. Id., 17.

[10] "Proposal of Senator Ciraolo", International Federation for Mutual Assistance in the Relief of Peoples overtaken by Disaster (League of Nations), *Documents Relating to the Scheme of Senator Ciraolo* (Geneva: Imp. Kundig, 1923).

[11] Ibid.

[12] J. Hutchinson, "Disasters and the International Order: Earthquakes, Humanitarians, and the Ciraolo Project" 22 (2000) *International History Review* 1, 18.

[13] Ciraolo used the examples of typhus-related suffering in Poland and the 1921 famine in Russia to underscore the failings of ad hoc measures improvised after the fact of disaster. P. Macalister-Smith, *International Humanitarian Assistance Relief Actions in International Law and Organization* (Dordrecht: Martinus Nijhoff, 1985), 17-9; 'Memorandum on the Plan for an International Relief Organization', League of Red Cross Societies, box 19688, file IRU Disaster Studies, cited J. Hutchinson, "Disasters and the International Order: Earthquakes, Humanitarians, and the Ciraolo Project" 22 (2000) *International History*

contributions from states, and would be managed by the LoN; however, the Red Cross organisation would use this fund freely in "public calamities".[14] Records reveal that the great powers wanted little to do with the idea. Britain raised doubts about the suitability of modelling the proposed organisation on the Red Cross' structure.[15] Further, the British delegate questioned the project's feasibility given that governments could not control how the funds of the insurance scheme were spent. In addition, in response to Ciraolo's argument that responses to health disasters prior to the proposal's presentation were ad hoc and inadequate, the British delegate noted that governments had done nothing for their people even in the face of imminent danger.[16] Asking governments to put money forward for an unspecified future disaster would, therefore, be utopian.[17] The French delegate observed that the two elements of contemporary insurance, risk and indemnity could not be applied easily to disaster relief. First, public calamities such as epidemics and wars would leave underwriters unable to calculate risk. Secondly, the scheme provided people with help rather than paying indemnities.[18] In addition, internal conflict between the ICRC and LRCS threatened to slow the impetus of Ciraolo's scheme.[19] Despite these unfavourable conditions, the proposal was given support by Mussolini, who supported the scheme unreservedly, hoping to expand Italy's international profile.[20] Further, the ICRC and LRCS, knowing that the issue could not be ignored, decided to carry out studies on disaster prone countries.[21] In this ambiguous environment, Ciraolo became aware that the LoN, which did not look at the Red Cross in a particularly favourable or friendly light, was beset by its own financial problems.[22]

A worried Ciraolo, therefore, acting on an informal invitation from the LoN secretariat to revise and extend his project to the LoN in June 1923, produced a draft statute, consisting of sixteen articles, for "An International Organization of Mutual Aid among the Nations for Succour and Assistance to People Stricken by Calamities".[23] The text stipulated that

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Review 1, 20.

[14] Ibid.; J. Hutchinson, "Disasters and the International Order – II: The International Relief Union" 23 (2001) *International History Review* 253, 262.

[15] J. Hutchinson, "Disasters and the International Order: Earthquakes, Humanitarians, and the Ciraolo Project" 22 (2000) *International History Review* 1, 31-2

[16] Id., 20.

[17] Id., 31-2.

[18] Id., 20-1.

[19] The tensions between the ICRC and LRCS during this period arose as a result of the ambiguity regarding the Red Cross' role after the end of WWI. Widespread support within the Red Cross was essential to ensure that the LoN, who were suspicious of the Red Cross, took the proposal seriously.

[20] J. Hutchinson, "Disasters and the International Order: Earthquakes, Humanitarians, and the Ciraolo Project" 22 (2000) *International History Review* 1, 21.

[21] Ibid.

[22] Id., 24.

[23] *"An International Organization of Mutual Aid among the Nations for Succour and Assistance to Peoples Stricken by Calamities"* in International Federation for Mutual Assistance in the Relief of Peoples overtaken by Disaster (League of Nations), *Documents Relating to the Scheme of Senator Ciraolo* (Geneva: Imp.

proposed body was to be neutral, and to unite mankind for the mutual insurance of civilised nations and for cooperation against the devastation of "whole tracts of land or whole bodies of people by suffering and death."[24] However, it excluded the provision of aid political crises, unless a state requested the body for aid.[25] The proposed organisation would bring into action "immediate action prompt, adequate and appropriate relief for peoples collectively overtaken by disasters, which .... they cannot confront unaided with the means which are normally available on the spot and the ordinary resources of the State",[26] where there was or were:

> "A disturbance of the physical conditions which govern the life of a community as a result of upheavals due to natural forces;
> A disturbance of the hygienic conditions which govern the life of a community as the result of the spread of dangerous epidemics;
> A disturbance of the social conditions which govern the life of a community which unexpectedly cuts off the minimum supplies indispensable for normal existence ...
> The consequences of wars, in so far as they may have deprived a people of the resources or the power to meet, without assistance, the immediate needs of its collective life;
> The threatened exhaustion of the race through the lack, in the hour of danger, of the barest provision for the safety of its children."[27]

This text also provided for the proposed body's actions in two phases of disaster: in the first phase, information that would be exchanged with the Red Cross and LoN authorities,[28] and in the second, the LoN or the authorities of the proposed disaster relief organisation,[29] would have the discretion to decide whether further measures or aid would be given.[30]

Ciraolo's text was subsequently presented to the LoN's Fourth Assembly, and approved for communication to governments for consideration. Ciraolo's revised text was revolutionary: he pleaded the cause of distressed peoples, and sought international action

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Kundig, 1923).
[24] Id., Article II – Neutrality of the Federation.
[25] Ibid.
[26] Article III – Aims of the Federation in "2. Revised proposal of Senator Ciraolo forwarded to the Secretary General of the League of Nations on June 23rd 1923: Draft Statute or Fundamental Covenant", in League of Nations, *International Federation for Mutual Assistance in the Relief of Peoples overtaken by Disaster, Documents Relating to the Scheme of Senator Ciraolo* (Geneva: Imp. Kundig, 1923).
[27] Ibid.
[28] Id., Article XI – Relief work in the first phase of the disaster.
[29] Id., Article V – Organs of the Federation. The Federation was to occupy an ambiguous position under the LoN, which would advise and supervise it. However, the in Ciraolo's vision, the body's disaster relief work would not be interfered with by the LoN. Id., Article IV – The Federation and the LoN.
[30] Id., Article XII – Arrangments for the second stage of relief work.

on their behalf. In this sense, he sought to reconceptualise international law in terms of human vulnerability caused by a disastrous event – almost any disastrous event – rather than legal rights or obligations stemming from state affiliation. As Hutchinson observes, even the Geneva Conventions provided aid to wounded soldiers on the basis of their affiliation with states, rather than their humanity.[31] The text also introduced the idea of the helplessness of disaster victims as communities and peoples, whereas Vattel had referred only to the plight of states.

Most delegates looked at Ciraolo's scheme favourably at the first consideration of the text at the Fifth Committee of the LoN in 1923. However, the great powers, which had other interests, were again opposed to the proposal. British and Swedish delegates, for example, objected to the scope of the plan and questioned its practicality.[32] British representatives were of the opinion that the scheme offered no benefit to Britain, which was not visited by disasters, and therefore that taxpayer money should not be used to fund the scheme.[33] The American Red Cross, displaying the schism between the European and American organisations, found the scheme's ideas of mutual assistance ideologically repugnant;[34] this was a reflection of the Monroe Doctrine, which sought to keep European ideas such as mutual assistance out of Latin America.[35] The American Red Cross' view was also in line with the emphasis on indirect, non-governmental aid initiatives, and the guarantee of international order through private capitalism rather than public funding, that characterised the prevailing philosophy of American diplomacy at the time.[36]

In light of this opposition, Ciraolo proposed a Preparatory Committee to further refine his proposals. Uruguay sponsored a resolution that created such a committee; the resolution gave the preparatory committee a loosely worded mandate of establishing when the new organisation would act, evaluating the organisation's financial needs, and estimating how much each member state would have to contribute. This was adopted by a majority, with

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[31] J. Hutchinson, "Disasters and the International Order: Earthquakes, Humanitarians, and the Ciraolo Project" 22 (2000) *International History Review* 1, 25.
[32] Id., 34.
[33] Notes of Britain's League of Nations section of the foreign office indicate a hostile and ridiculing attitude towards the scheme, even though Britain's involvement in the LoN meant that they could not ignore the proposal as the United States of America did. J. Hutchinson, "Disasters and the International Order – II: The International Relief Union" 23 (2001) *International History Review* 253, 254-5.
[34] J. Hutchinson, "Disasters and the International Order: Earthquakes, Humanitarians, and the Ciraolo Project" 22 (2000) *International History Review* 1, 29-31.
[35] Id., 31.
[36] Id., 27, 30. An example of this principle in the context of disaster relief can be found in the struggle between the governor of California and the mayor of San Francisco and President Roosevelt after the 1906 San Francisco earthquake. The governor and mayor had formed a committee of local businessmen and professionals to organise relief measures, but Roosevelt, who was keeping in mind funds for military needs, overrode the local response, decreeing that contributions to disaster relief should be channelled through the American Red Cross.Id.,10.

only Britain, Sweden and India voting against.[37] Hutchinson observes that those who supported the proposal no doubt hoped that disaster relief would create habits of cooperation that would spill over into other fields of international relations.[38]

The Preparatory Committee took advantage of the loose wording of the mandate, and began working on an international disaster relief organisation, rather than conforming closely to the Fifth Committee's vision of their work.[39] The debates of the Preparatory Committee resulted in a heavily revised version of Ciraolo's proposal. These revisions were the Preparatory Committee's attempts to elicit wider support for the proposed IRU in the Fifth Committee. These attempts resulted in three major changes to Ciraolo's ideas regarding the responsibility of states with regard to funding, the nature of the moral source of international action, and the scope of the proposed organisation's duties.

Firstly, the issue of the insurance scheme –the risks that would be covered, how premiums would be calculated, how the sums needed for indemnities be obtained – was one that could not be resolved and was ignored by the Preparatory Committee. The Committee instead chose to take a fanciful view that financial institutions in Europe or America could be prevailed upon to offer loans to the IRU, and that private charity could be relied upon for funds. It was acknowledged that the insurance scheme was impossible legally because of the difficulty of estimating risks and because countries were not at equal risk of disaster.[40] Hutchinson asserts that the Preparatory Committee, in its desire to placate governments, created their reports and texts on specious beliefs regarding the role of private charity and the better management of funds in keeping the financial side of the system afloat.[41] The Preparatory Committee decided to maintain the idea of a reserve fund, however, showing confidence in Ciraolo's awareness of the difference in the public generosity in disasters; events such as the Russian famine of 1921 and the Tokyo earthquake of 1923 drew attention and funds, while epidemics were responded to with

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[37] Id., 35.
[38] Ibid.
[39] It is unclear how the Preparatory Committee was selected, but a list of humanitarian luminaries was gathered. They included René Cassin, Baron Edmond Carton de Wiart (a Belgian financier and philanthropist), Paul G. Laurin of Sweden , Colonel Robert Olds (wartime head of the American Red Cross Commission to Europe, Algernon Maudslay (member of the Council of the British Red Cross society), Benjamin Fernandez y Medina (the Uruguayan delegate to the Fifth Committee of the LoN who had proposed the resolution for the preparatory committee) André Mater of France (a Barrister and former member of the French delegation to the LoN), Georges Werner of the ICRC and Sir Claude Hill of the League of Red Cross Societies J. Hutchinson, "Disasters and the International Order – II: The International Relief Union" 23 (2001) *International History Review* 253, 256-7.
[40] Id., 263-4.
[41] For example, but claiming that private charity would take up the bulk of voluntary cobtributions, the contributions of states would necessarily be reduced, and therefore needed less new funds. They relied on the opinion that the lack of coordination among the various relief bodies and the duplication of aid that it produced would be remedied by the management of such funds. Therefore it did not find that detailed examination of past disasters and their costs necessary. Id., 268.

indifference, unless the disease in question was thought to represent an imminent threat of death.[42] Instead of requiring governments to make contributions to an international disaster relief fund, governments were asked only for a modest payment for an initial fund, which would thereafter be augmented by voluntary contributions.[43] The initial sum that was proposed was £25,000, which Ciraolo observed to be a tiny sum that was not commensurate with the scale of the enterprise, and would cripple it from the outset.[44]

Secondly, Ciraolo's idea that people struck by calamity should automatically receive international assistance was weakened significantly in the revised draft. One proposed text stated that: "In the event of a calamity, all peoples have an equal right to international mutual aid, without distinction according to race, nationality, or religion."[45]

However, in later deliberations, the Preparatory Committee rejected such a strong statement, with one member opining that if disaster victims thought that assistance was given to them not as charity, but as their right, that those who received less would be discontent, which would in turn have a negative effect on the attitudes of contributors.[46] The Preparatory Committee, attempting to strike a balance between Ciraolo's ideals and political pragmatism, ultimately made the following statement in their final report:

> "It is not a question of introducing international relations a positive obligation that would entail sanctions, but rather of accepting the notion that assistance should neither be given nor received as charity but as a matter justice."[47]

Thirdly, the scope of the proposed body's work was based on the definition of disaster. The following definition of disaster was proposed during the Preparatory Committee's deliberations:

> "misfortunes and disturbances due to *force majeure* (act of God), when they affect entire populations, when their consequences are such as to exceed the normal provisions of even a provident Government, and when they are of an exceptional character in the stricken countries."[48]

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[42] Id., 269.
[43] J. Hutchinson, "Disasters and the International Order – II: The International Relief Union" 23 (2001) *International History Review* 253, 259.
[44] Id., 260.
[45] Id., 261.
[46] Proposal by Laurin. Id., 262.
[47] Hutchinson citing notes taken by Ciraolo, ibid.
[48] Report of the Preparatory Committee, League of Nations, Official Journal, 6th year, no. 9, September 1925, 1268 cited id., 264.

This greatly limited Ciraolo's vision of public calamities introduced in his initial proposal, which sought to eliminate wars and revolutions. Ciraolo advocated retaining the word "disturbances" in place of "political turmoil", but this was opposed on the basis that the scope of disasters could then be interpreted to include riots or communist uprisings.[49] Ciraolo's obstinacy on the point that the suffering of innocent civilians be recognised led to the adoption of an ambiguously worded article: "Wars and revolutions shall not be considered disasters within the meaning of these Statutes, except in respect of such ensuing consequences thereof as may affect the population or portions thereof which have remained outside the struggle. In this event, the action of the IRU shall be characterised by the principles of neutrality."[50] The role of the Red Cross was also weakened by the Preparatory Committee so that other organisations might also participate.[51]

When the Second Committee of the Sixth Assembly considered the report of the Preparatory Committee in September 1925, states opposed it on the grounds that: 1) the definition of disasters had explicitly exclude periodic floods and recurrent famines;[52] 2) the text asserted a right to humanitarian assistance; 3) the size of the proposed initial fund of £25,000 was deemed too large; 4) there was a lack of clarity regarding the obligations of governments if the fund needed replenishing; 5) the role of the Red Cross in carrying out the IRU's relief work was too prominent; among others.[53] The Preparatory Committee, meeting after the second draft text's consideration at the LoN, argued on the point of wording of the definition of disaster. One member noted that war was an act between states, and therefore not a case of force majeure, except insofar as it affected individuals. Ciraolo noted in reply that "so far as people were concerned, war was a case of *force majeure*."[54] This provided a stark contrast between what ordinary people, and their governments would define as calamities.[55] However, the draft that was produced by the Preparatory Committee restricted the definition and scope of disaster to mean "public misfortunes due to *force majeure* (an act of God), the exceptional gravity of which exceeds the limits of the powers or resources of the stricken people."[56]

The Preparatory Committee's final draft text was sent to governments in December 1925, together with estimations of what each government would be expected to contribute:

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[49] Id., 265.
[50] Report of the Preparatory Commtitee, League of Nations, Official Journal, 6th year, no. 9, Septermber 1925, 1268, cited ibid.
[51] Ibid.
[52] Objections voiced by China and India, both periodical subject to such incidents.
[53] Id., 275.
[54] Minutes, Preparatory committee, 18 November 1925, LN 12/4858, box/4137, box R688, 1,20, cited id. 276.
[55] Id., 276.
[56] Id., 275.

Great Britain was to contribute 70,000 Swiss francs, France approximately 52,000, and Italy and Japan at more than 40,000 each.[57] Italy's government responded promptly and positively, while America replied that relief, being the domain of the private American Red Cross, meant that the United States government could not contribute to the scheme. The British government was also reluctant to participate, stating that it would await "practically unanimous acceptance" before inviting the British Parliament to vote on the provision of the funds. Britain was of the opinion that the IRU relief operations should be confined to member countries.[58] The French reply was guardedly positive; it praised the scheme, but asked that it be understood that insurance could not in be adopted as the legal basis of the Statutes.[59]

By September 1926, thirty governments had replied to the circulation of the table of funds and the draft statutes, the great majority of which were in favour.[60] The League Council affirmed that the founding conference of the IRU Convention be held during 1927. The American government and American Red Cross continued to distance themselves from the proposal, refusing to participate in the conference. In July 1927, the Conference for the Creation of an International Relief Union was convened, in which the final text of the IRU Convention was amended and adopted by states.

The IRU was ratified by 19 countries,[61] but found itself to be of little utility during its lifetime. It was beset by financial problems, and its work was limited by the condition established by the Convention that states must be unable to address the disasters themselves in order for the IRU to have competence to undertake disaster relief work.[62] This was due to the fact that states were unwilling, as a general rule, to admit publicly that they did not have the capacity to address disasters. As a result, while there were floods in Poland, China, the USA, and earthquakes in Greece, Italy and India in 1936, the

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[57] Circular letter from the Secretary General to states members and non-members of the League, 23 January 1926, cited id., 277.
[58] Id, 279-80.
[59] Id., 280.
[60] Ibid.
[61] (In ascending order of the date of ratification) Ecuador, Italy (including Italian colonies), Egypt, Romania, India, Finland, Hungary, Belgium, Monaco, Venezuela, Germany, San Marino, Albania, Poland and Free City of Danzig, Greece, Bulgaria, Czechoslovakia, Turkey, France; and acceded to by Sudan, New Zealand, Great Britain and Northern Ireland (not including any colonies or protectorates), Luxembourg, Switzerland, Yugoslavia and Persia. P. Macalister-Smith, *International Humanitarian Assistance Relief Actions in International Law and Organization* (Dordrecht: Martinus Nijhoff, 1985), 200-1.
[62] Article 2 stated that "The objects of the IRU are: (1) In the event of any disaster due to *force majeure*, the exceptional gravity of *which exceeds the limits of the powers and resources of the stricken people*, to furnish to the suffering population first aid and to assemble for this purpose funds, resources and assistance of all kinds. (emphasis added)" This, taken in conjunction with the principle of sovereignty as provided in article 4, "Action by the IRU in any country is subject to the consent of the Government thereof", meant that in practice, states were unwilling to admit that they were incapable of addressing disasters themselves, and were unwilling to forfeit their control over disasters occurring in their territories.

governments concerned asserted in response to offers of aid from the IRU that no international appeals were necessary because they were able to deal with the disasters.[63] In the Orissa earthquake in 1934, the Indian government initially refused the IRU's offer to launch an international appeal. The IRU later offered £10,000 with the League of Red Cross Societies, however, which India accepted, although the IRU's contribution was not publicised. This incident demonstrates that the political interests of states, as well as the relations between non-state relief organisations, shaped the implementation of the IRU's mandate as well as its drafting process.

The generally accepted reasons for the IRU's demise are the Great Depression, isolationism, rearmament, its lack of funds and government reticence to unite on issues of humanitarianism, are suggested as the primary factors in the IRU's demise.[64] Hutchinson provides a contrasting opinion; he argues that the IRU's ineffectiveness was not a result of the Depression, but rather "reflects perfectly the intentions of those who sought to create the illusion of having brought the Ciraolo project to life when in reality it had been laid firmly to rest."[65] It was, after all, envisaged as an organisation that asked states, through law, to fulfil people's needs on the basis of humanitarian considerations rather than state interest, as well proposing institutionalised cooperation for this purpose. They also failed to consider the obligations between states and citizens.

The final IRU Convention diluted Ciraolo's original vision by removing references to a right to assistance, humanitarian motives, international legal obligations owed to people, mutual insurance and the disastrous consequences of wars and revolutions,[66] as well as avoiding the establishment of an international mutual insurance scheme. The final document did not have universal scope; rather, it relied on the discretion of states to join. The convention created an IRU whose capacity to act was limited to the highly indeterminate conceptions of events of *force majeure* and public disaster, and only in the territory of member states. The IRU Convention became a document that privileged sovereignty and financial pragmatism over the abstract notion of the inevitability of human suffering. Thus while the appearance of the IRU created the appearance of a new style of international cooperation for humanity, the provisions that governed when and how such international cooperation would be undertaken were ambiguous and allowed actors with power to do as they wished. In effect, the IRU preserved Vattel's model for

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[63] J. Hutchinson, "Disasters and the International Order – II: The International Relief Union" 23 (2001) *International History Review* 253, 291.
[64] E.g. P. Macalister-Smith, "The International Relief Union of 1932" 5(2) (1981) *Disasters* 147, 152; D. Fisher, *Law and Legal Issues in International Disaster Response: A Desk Study* (Geneva: IFRC, 2007), 27.
[65] J. Hutchinson, "Disasters and the International Order – II: The International Relief Union" 23 (2001) *International History Review* 253, 295.
[66] Id., 286.

intra-state relations on disaster. The IRU's emasculation is the mark left by realist drafters and states, and the swirl of political machinations that arose in the complicated world of international diplomacy between member states of the LoN and the various organisations of the Red Cross.

5.4 UNGA Resolution 2816

UNGA Resolution 2816 has its roots in the treatment of disasters and development following the close of WWII. The number of non-governmental organisations for the relief of war victims grew after the close of the war, along with the establishment of new inter-governmental organisations (IGOs) to replace the disbanded UN Relief and Rehabilitation Agency: Food and Agriculture Organization (FAO) (1945), the United Nations International Children's Emergency Fund (1946), World Health Organization (WHO) (1946) and the International Refugee Organization (1948).[67] The plight of the war-afflicted in Europe was a central concern of the newly established UN and the NGOs, resulting in a general preoccupation with the post-war reconstruction of Europe, famine and disease. Kent opines that two assumptions that underpinned the post-war relief and reconstruction efforts in Europe: firstly, that Europe could quickly be restored to normalcy with short-term provisions of assistance; and secondly, that countries had the capacity to deal with their own crises.[68] These two assumptions set the tone and orientation of the UN's future actions with regard to disaster and disaster relief; subsequent relief assistance tended to embody Western cultural assumptions following the success of the European programmes.[69]

After the close of activities for war rehabilitation, development aid, from the 1950s onwards, began to occupy more of the international political imagination, while disaster relief was pushed to the background. Disaster was not entirely neglected by the IGOs, but large-scale infrastructural development projects were given priority.[70] From the 1960s, NGOs began to fill the void created by the neglect of IGOs and states regarding disaster-related issues, creating a patchwork of ad hoc NGO, IGO and bilateral activities for disaster-related issues.

Several reasons have been proposed for this state of affairs: decolonisation is a significant one amongst them. The UN had 122 Member States by 1955, of which 87 were developing countries. The Least Developed Countries (LDCs) were seen to require

[67] Regional/country organisations were also set up, such as the UN Relief and Works Agency (1949) to assist Palestinian refugees, and the UN Korean Reconstruction Agency .
[68] R.C. Kent, *The Anatomy of Disaster Relief: The International Network in Action* (USA: Pinter Publishing, 1987), 36.
[69] Id., 38.
[70] Id., 40-4.

international development aid, while measures to recover from disaster were seen as part of the domestic jurisdiction. This meant that LDCs turned private banking institutions for disaster relief needs. However, such measures were inadequate, and led LDCs to plead their cases to multilateral organisations.[71] Secondly, the geopolitical environment of the Cold War also resulted in development aid being used as a tool of foreign policy. Kent notes that there was a benign neo-colonialism, tied to geopolitics, at work. It was implicitly understood that the United States of America would help its Latin American neighbours, while the former colonies of France and England would be aided by their erstwhile colonial masters.[72] Finally, rising levels of affluence in developed counties, as well as the higher visibility of suffering in less developed nations due to media, has been put forward as another reason that development aid was given more prominence.[73] The international community's attitudes regarding the notion of disaster can be seen in the lack of comprehensive UN action with regard to disaster, and in the cookie-cutter resolutions of the UNGA which made general calls for governments to help disaster-struck nations that were adopted until the mid-1960s.[74]

The great numbers of newly independent developing countries allowed more attention to be given to disaster-related issues in the UN. The initiation of a more coordinated UN approach to disaster together with the UN's emphasis on development aid in developing countries in the early 1960s coincided with a coalescing Third World consciousness, which was embodied by movements such as the emergence of the Group of 77 in 1963, and the establishment of the United Nations Conference on Trade and Development in 1964. The emergence of this solidarity meant that the problems of former colonies were no longer relegated to affairs of the empire; issues of disaster and development faced by the Third World became more visible, as did the linkages between disaster and development.[75]

In this environment, the ECOSOC requested the Secretary-General to create a report on how improvements to the UN's humanitarian assistance could be made in 1963.[76] This

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[71] Id., 39.
[72] Id., 44.
[73] Id., 40.
[74] See e.g. UNGA, *Measures in connexion with the earthquake at Skoplje, Yugoslavia*, A/RES/1882 (XVIII) (1963); UNGA, *Measures in connexion with the hurricane which has just struck the territories of Cuba, the Dominican Republic, Haiti, Jamaica and Trinidad and Tobago*, A/RES/1888 (XVIII) (1963);ECOSOC, *Earthquake relief to Libya, Flood relief to Morocco, Relief to Indonesia consequent on the volcanic eruption in Bali*, E/RES/930 (XXXV) (1963); ECOSOC, *Measures to be adopted in connexion with the earthquake of Skopje, Yugoslavia*, E/RES/970(XXXVI) (1963); ECOSOC, *Emergency aid to Costa Rica*, E/RES/1014 (XXXVII) (1964).
[75] R.C. Kent, *The Anatomy of Disaster Relief: The International Network in Action* (USA: Pinter Publishing, 1987), 45.
[76] Id., operative paras. 1, 2, 3.

request was a response to a spate of disasters and appeals by governments of developing countries to the UN for disaster aid,[77] a recognition that the future would require relief measures, [78] and in particular, to the "misunderstandings" that "reached the Secretary-General... that false hopes ... that there were large available resources that could be redistributed, and that ... the total costs of rehabilitation could thus be met by the international organizations".[79] As a result, in 1965, the UN Secretary-General reported twice to the ECOSOC and UNGA on the coordination of disaster relief mechanisms in the UN.[80] The Secretary-General's reports show the UN's reluctance to be involved in disaster issues. The report argued that under the UN's then-contemporary arrangements, there was an almost complete absence of resources that the UN could mobilise to meet emergency needs of disaster struck states. Further, the League of Red Cross Societies, rather than the UN should continue to assume major responsibility for disaster relief, and finally, the UN's greatest utility to disaster-prone states lay in technical assistance in disaster planning.[81] In his second report to the ECOSOC, the Secretary-General again asserted that the greatest service that the ECOSOC could render to member states was to urge countries to create planning and operating machinery that would in turn create environments conducive to the fast provision of disaster relief.[82] The Secretary-General was of the opinion, in light of the IRU's failure, that the establishment of a permanent international relief fund was inappropriate for the UN. Rather, it would be best to invest in the provision of temporary shelter and relief of the devastated areas, as well as long-range reconstruction and development of new areas and resettlement of homeless people.[83] UNGA Resolution 2034 (XX) was adopted later in the same year. It encouraged member states to set up disaster plans and legislative frameworks to make clear the degree and character of relief required, and to set up national Red Cross or Red Crescent societies. This resolution also, however, gave the Secretary-General the authority to

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[77] These were the earthquake at Skolpje, Yugoslavia, hurricane Flora, which struck Cuba, the Dominican Republic, Haiti, Jamaica and Trinidad and Tobago, a flood in the Piave River valley, Italy.

[78] See e.g. UNGA, *18th session, 1238th plenary meeting, Friday, 11 October 1963, New York*, A/PV.1238 (1963), Statement of Bulgaria, para. 36; Romania, para. 133 (regarding UN concerning itself with earthquake mitigation).

[79] UNGA, *Assistance in cases of natural disaster: Report of the Secretary-General*, A/5845 (1965), para. 5.

[80] United Nations, Secretary-General, *Assistance in cases of natural disaster: Report of the Secretary-General to the UNGA*, A/5845, 19th session, item 46of provisional agenda (1965); United Nations, Secretary-General, *Co-ordination of international assistance in cases of natural disaster: Report of the Secretary-General to the ECOSOC*, E/4036, 39th session, agenda item 4 (1965).

[81] United Nations, Secretary-General, *Assistance in cases of natural disaster: Report of the Secretary-General to the UNGA*, A/5485, 19th session, item 46of provisional agenda (1965), paras. 6-13, 16, 17, 19; United Nations, Secretary-General, *Co-ordination of international assistance in cases of natural disaster: Report of the Secretary-General to the ECOSOC*, E/4036, 39th session, agenda item 4 (1965), para. 8.

[82] United Nations, Secretary-General, *Co-ordination of international assistance in cases of natural disaster: Report of the Secretary-General to the ECOSOC*, E/4036, 39th session, agenda item 4 (1965), para. 7.

[83] Id., para. 8.

withdraw up to $100,000 from the Working Capital Fund for disasters in one year, with a ceiling of $20,000 for any one disaster.[84]

The growing acceptance of a UN disaster relief role can be observed by the late 1960s. The UNGA adopted resolution 2435 (XXIII) unanimously in 1968, which noted that UNGA assistance might be of wider use and benefit to developing countries if its conditions were broadened. At the same time it reiterated the importance of pre-disaster planning to mitigate natural disasters and scientific knowledge in preventing disasters.[85] Notably, it increased the Secretary-General's role in disaster by requesting him to cooperation with the UN agencies and the LRCS to consider ways of expanding assistance to governments.[86] It also permitted him to use up to $100,000 from the Working Capital Fund in any one year, and up to $20,000 per disaster.[87]

By 1970, with the Biafra War (1967-1970), the Ancash earthquake in Peru, and a hurricane which exacerbated the civil war in Bangladesh, it had become increasingly obvious that the arms-length stance that the UN had previously advocated regarding disaster relief, all the while embracing development aid for states, was no longer tenable. Further, it can be seen that there was general dissatisfaction with national, and sometimes international, aid after disaster, which was seen as creating a persuasive argument for a comprehensive UN disaster relief response.

These disasters also showed that NGOs had become a force to be reckoned with in international disaster issues, and had to be considered in international law documents and relations. They tended to be politically neutral first responders in possession of in-country resources, with greater freedom to act as they were not burdened by bureaucracy or politics.[88]

UNGA Resolution 2816 owes its genesis most directly to two reports submitted by the Secretary-General to the ECOSOC in 1970 and the UNGA in 1971.[89] They provide

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[84] UNGA, *Assistance in cases of natural disaster*, A/RES/2034 (XX), (1965), operative paras. 1, 5.
[85] UNGA, *Assistance in cases of natural disaster*, A/RES/2435 (XXIII), (1968), preambular paras. 5, 6, 7; operative paras. 1, 2.
[86] Id., operative paras. 3,10
[87] Id., operative para. 8. In 1969, the ceiling that UNGA Res 2435 established for the amount that the Secreatry-General was permitted to withdraw from the Working Capital Fund was increased to $150,000, under UNGA, *Unforeseen and extraordinary expenses for the financial year 1970*, A/RES/2614 (XXIV) (1969).
[88] D. Van Niekerk, "From Disaster Relief to Disaster Risk Reduction: A Consideration of the Evolving International Relief Mechanism" 4(2) (2008) *The Journal for Transdisciplinary Research in Southern Africa* 355, 361; see generally F.C. Cuny, *Disasters and Development*, (America: Oxford University Press, 1983).
[89] Respectively, United Nations, Secretary-General, *Assistance in cases of natural disaster: Interim report of the Secretary-General to the ECOSOC*, E/4853, 49th session, agenda item 22 (1970); United Nations,

evidence that UN's understanding of its role in disaster had changed markedly by 1971. These two reports argued that the UN was already discharging its responsibilities towards member states established under Resolution 2435 (XXIII), although the resolution itself does not, apart from directions to the Secretary-General, imply any responsibilities of the UN regarding disaster relief in general.[90] The first report emphasised the inability of developing countries to recover from costs to life and property incurred by natural disasters.[91] The later report to the UNGA emphasised scientific and technical solutions for the prevention of disasters, observing that natural phenomena were not themselves disasters but might cause them.[92] However, both reports took the common position that the damage caused by disasters was less justifiable in light of advances of science and technology, which had made it possible to predict and prevent some natural disasters.[93] The reports conclude by noting that although "responsibilities" were already being discharged by the various organs and agencies of the UN, the needs for a focal point for coordination,[94] as well as the need for greater funds earmarked for disaster relief were becoming more acute.[95]

UNGA Resolution 2816 (XXVIII) established the United Nations Disaster Relief Co-ordinator (UNDRO) as the focal point for the coordination of UN approaches to disaster. It was very much a product of the conflicting understandings about disaster and what was needed to rectify it, as well as of geopolitics. The resolution's draft was prepared in the ECOSOC in July 1971. The summary records of these meetings show that the geopolitics of the Cold War affected even this ostensibly apolitical humanitarian endeavour. The draft was sponsored by the United Kingdom, and the United States of America, among others, with many substantive additions from Turkey. The notion of

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Secretary-General, *Assistance in cases of natural disaster: Comprehensive report of the Secretary-General to the ECOSOC*, E/4994, fifty-first session, agenda item 15 (1971).

[90] Id., 51.

[91] United Nations, Secretary-General, *Assistance in cases of natural disaster: Interim report of the Secretary-General to the ECOSOC*, E/4853, 49th session, agenda item 22 (1970), 1.

[92] United Nations, Secretary-General, *Assistance in cases of natural disaster: Comprehensive report of the Secretary-General to the ECOSOC*, E/4994, fifty-first session, agenda item 15 (1971), paras. 25, 28: "A natural phenomenon is not itself a disaster, although it may cause one... If the disastrous effects of natural phenomena cannot be prevented or controlled, it may be possible to mitigate their impact by predicting their occurrence."

[93] United Nations, Secretary-General, *Assistance in cases of natural disaster: Interim report of the Secretary-General to the ECOSOC*, E/4853, 49th session, agenda item 22 (1970), 50; United Nations, Secretary-General, *Assistance in cases of natural disaster: Comprehensive report of the Secretary-General to the ECOSOC*, E/4994, fifty-first session, agenda item 15 (1971), paras. 25-34.

[94] United Nations, Secretary-General, *Assistance in cases of natural disaster: Comprehensive report of the Secretary-General to the ECOSOC*, E/4994, fifty-first session, agenda item 15 (1971), paras. 106-8; United Nations, Secretary-General, *Assistance in cases of natural disaster: Interim report of the Secretary-General to the ECOSOC*, E/4853, 49th session, agenda item 22 (1970), 50-1.

[95] United Nations, Secretary-General, *Assistance in cases of natural disaster: Comprehensive report of the Secretary-General to the ECOSOC*, E/4994, fifty-first session, agenda item 15 (1971), para. 40.

development and its relation to disaster mentioned in the plenary meetings,[96] although the idea of solidarity seemed to eclipse this concern, and it was noted also that the proposed UNDRO would work mainly for situations of post- (natural) disaster relief, its work might also be applicable to other, unforeseen circumstances.[97] While the subject matter of disaster relief, and its connections to life were such that it would not be in political interests to oppose humanitarian interests manifested as pleas for the establishment of a UN disaster relief co-ordinator, the politics of the Cold War manifested in other ways: the Soviet bloc were against the establishment of the UNDRO, advocating instead for the continuation of the then-current system in which disaster relief coordination was carried out under the UN Secretariat.[98] Disaster-prone third world countries such as Haiti, Ceylon (Sri Lanka), Pakistan, Chile, Peru, Lebanon, Brazil, Greece and Ghana, as well as strong supporters of the USA, such as New Zealand were in favour of the establishment of the separate office of the UNDRO.[99] The notion of the UNDRO's mandate to "mobilize, direct and coordinate", and the French translation of "direct" were the subjects of debate. "Direct" was argued to be neutral by America; UNDRO's mandate to direct was likened to a policeman directing traffic.[100]

The ECOSOC's resolution was adopted without substantial amendment, but the contours of the debate of the ECOSOC were echoed in the UNGA. Other writers have noted that the main points of debate arose over the wording of "mobilize, direct and coordinate", and in particular, the meaning of "direct", whether the UNDRO would have the capacity to act in only natural disaster or also man-made disaster, including armed conflict,[101] and also over the problem of whether an UNDRO should be created at all.[102] However, the last position, taken by the USSR and Eastern European countries, was by far in the minority. Concerns over the scope of the UNDRO's work over were raised, in particular by France, which sought to diminish UNDRO's mandate by proposing that UNDRO be a disaster relief operation only, and proposing that the title contain reference to only natural

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[96] See e.g. statements of Chile, paras. 4,6; Peru, para. 14, United Nations Economic and Social Council, *Summary record of the 1786th meeting*, E/SR.1786 (1971).
[97] Id., Statement of UK, para. 31.
[98] See e.g. United Nations Economic and Social Council, *Summary record of the 1787th meeting*, E/SR.1787 (1971), Statement of Hungary, para. 14; United Nations Economic and Social Council, *Summary record of the 1790th meeting*, E/SR.1790 (1971), statement of USSR, para. 32.
[99] See generally United Nations Economic and Social Council, *Summary record of the 1787th meeting*, E/SR.1787 (1971)
[100] United Nations Economic and Social Council, *Summary record of the 1787th meeting*, E/SR.1787 (1971), Statement of USA, para. 38.
[101] T.W. Stephens, "Between Expectation and Endeavor: UNDRO and the Problems of International Relief Coordination" in L.H. Stephens & S.J. Green (eds.), *Disaster Assistance: Appraisal, Reform and New Approaches* (Baltimore: Macmillan, 1979), 31; R.C. Kent, *The Anatomy of Disaster Relief: The International Network in Action* (USA: Pinter Publishing, 1987), 53-54.
[102] United Nations General Assembly, *Official records of the General Assembly, Twenty-sixth session*, 3rd Committee, 1888th meeting (1971), statement of the USSR, para. 58.

disaster. Only the former proposal was accepted, being reflected in the final draft, while the latter was not. At the plenary meeting for adoption, operative paragraphs 2, 3, 4 and 10 were put up to vote. Operative paragraphs 2, 3, and 4 established the rank of the officer heading UNDRO (Under-Secretary-General), an endorsement of the proposal for the establishment of the UNDRO, and the location of the UNDRO's office in Geneva. Operative paragraph 10 gave the Secretary-General the authority to withdraw $200,000 from the Working Capital Fund for emergency assistance in one year, with a $20,000 cap for any one disaster. The vote on operative paragraph 2 was not recorded, but recorded votes were taken for the remaining paragraphs. Unsurprisingly, the USSR and Eastern European countries voted against paragraphs 3, 4, and 10.[103] The resolution was then put to a vote, with no countries against.[104] This indicated that the UNGA resolution was a representation of the geopolitical interests and third world interests, even though the acknowledgement of the experience and agency of people cannot be detected in the debates or the text.

The UNDRO ended, much as its predecessor the IRU had, in quiet failure. Under UNGA Resolution 46/182 it was incorporated into the Department of Humanitarian Affairs. During its lifetime, it was dogged by its unclear mandate, its limited funds, as well as institutional competition it faced amongst the UN specialised agencies and organs. Accordingly, it could not carry out its role as a "focal point" of UN disaster relief effectively.[105]

The five year-period between 1965 and 1970 and its culmination in the adoption of Resolution 2816 marks a turning point for disaster in international relations, and therefore international law. Not only was a UN role in disaster issues accepted, but the idea of disaster had begun to be understood not solely as an event of *force majeure*, but rather as natural phenomena, the effects of which were entirely preventable or able to be mitigated,

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[103] Results of the votes were as follows:
Operative paragraph 3
Against: Bulgaria, Byelorussian Soviet Socialist Republic, Czechoslovakia, Hungary, Poland, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics
Abstentions: Burma, Ceylon, Dahomey, France
Operative paragraph 4
Against: Bulgaria, Byelorussian Soviet Socialist Republic, Czechoslovakia, Hungary, Mongolia, Poland, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics
Abstentions: Barbados, Burma
Operative paragraph 10
Against: Bulgaria, Byelorussian Soviet Socialist Republic, Czechoslovakia, Hungary, Mongolia, Poland, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics
Abstentions:Japan

[104] However the socialist bloc countries, as well as Ceylon, Dahomey and Mongolia abstained.

[105] See e.g. Joint Inspection Unit (UN), *Evaluation of the Office of the UN Disaster Relief Co-ordinator*, JIU/RES/80/11 (1980).

as well as being related to development. However, although disaster began to be addressed as part of the systemic interests of states from the 1970s, international law continued to neglect disaster-related vulnerability as it was experienced by people. Rather, the focus of development and disaster relief was a product of Cold War politics, creating political, economic and military support for friendly developing countries. Van Niekerk observes that most of the aid programmes to developing nations offered by countries such as the USA, Great Britain and France, were aimed towards purchasing the security, and propping up shaky regimes, rather than the promotion of their long-term social and economic development.[106] In this, the UN and its soft-law making function were used as toolsl for the promotion of political interests.

Where does this discussion leave people, and the correlation between marginalisation and disaster? On the middle ground between the elites and disaster survivors, UNDRO was supported by NGOs such as the LRCS; Kent is of the opinion that this support grew out of the recognition by NGOs that there was a need for coordination in international relief.[107] Equally, however, NGOs' confidence in giving support to the beleaguered UNDRO marked their growing confidence in the field of disaster relief; their confidence stemmed from the fact that their actions were seen to be more effective, relevant and appropriate by people on the ground.[108]

Kent's assertion that the significance of NGOs increased significantly in this period is buttressed by sociological studies which have found that disaster victims, who did not trust their own government's responses in disaster, had more faith in NGOs. For example, after the Ancash earthquake, which killed 70,000, injured 140,000, destroyed 160,000 buildings and left 500,000 homeless, the government's poor distribution of aid gave rise to the saying, "First the earthquake, then the disaster."[109] In addition, the example of Ancash earthquake survivors shows that the dominant approach of short, sharp injections of aid, based on the European experience of the 1950s, aimed at creating a return to normality did not target what people saw as the causes of their problems. The people of the affected regions called the earthquake the "five-hundred year earthquake" in acknowledgement of the ongoing effects of the Spanish invasion of the Andes in the 16th century, which destroyed indigenous adaptation to disaster. The adaptive responses that

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[106] D. Van Niekerk, D "From Disaster Relief to Disaster Risk Reduction: A Consideration of the Evolving International Relief Mechanism" 4(2) (2008) *The Journal for Transdisciplinary Research in Southern Africa* 355, 360.

[107] R.C. Kent, *The Anatomy of Disaster Relief: The International Network in Action* (USA: Pinter Publishing, 1987), 54.

[108] Ibid.

[109] A. Oliver-Smith, "Peru's Five-Hundred Year Earthquake: Vulnerability in Historical Context" in A.Oliver-Smith & S.M. Hoffman (eds.), *The Angry Earth: Disaster in Anthropological Perspective* (New York: Routledge, 2002), 75.

atrophied included the choice of sites for building, the structure of settlements themselves, and therefore the socio-economic structures of, and overarching objectives for, the Andean communities that had developed in this disaster-prone region.[110] The very idea of short-term disaster relief which sought to rectify an abnormal situation to return the "normal" order, therefore, seemed to bypass people's concerns. It can be seen that the reaction of people to international aid is not a concern that informs the ECOSOC or UNGA debates on Resolution 2816, although how people reacted to the provision of NGO, international and national aid however has been considered by various sociological and anthropological studies.[111]

The link between disaster and development, which was based on the notion of the economic marginalisation of developing and ex-colonised states, did not extend to a consideration of resource allocation related to disaster aid, or indeed the causes of disaster. The Third World countries' rhetoric with regard to the link between development and disaster relied on a conflation of state interests with the interests of the people in its territory. Thus, only the notion of inter-state marginalisation and its relation to disaster was an international legal concern in the creation of Resolution 2816.

5.5 IDNDR: UNGA Resolution 42/169

The international community had recognised impacts of natural disasters could be mitigated or reduced by technological advances had since the beginnings of international cooperation for disaster. However, it was not until the late 1980s that this notion became a part of systematic international cooperation in the form of the UNGA Resolution 42/169 on the International Decade for Natural Disaster Reduction.

Early international recognition of the notion of disaster preparedness and mitigation can be seen in the IRU mandate to conduct studies on disaster, as well as early resolutions of UN bodies that facilitate studies to study mitigation.[112] Technological understandings turned to pre-disaster emergency procurement and shipment procedure for food, and other

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[110] See generally A. Oliver-Smith, "Peru's Five-Hundred Year Earthquake: Vulnerability in Historical Context" in A.Oliver-Smith & S.M. Hoffman (eds.), *The Angry Earth: Disaster in Anthropological Perspective* (New York: Routledge, 2002).

[111] See e.g. P.L. Doughty, "Plan and Pattern in Reaction to Earthquake: Peru, 1970-1988" in A.Oliver-Smith & S.M. Hoffman (eds.), *The Angry Earth: Disaster in Anthropological Perspective* (New York: Routledge, 2002), 234-256; A. Oliver-Smith, "Traditional Agriculture, Central Places, and Postdisaster Urban Relocation in Peru" 4(1) (1977) *American Ethnologist* 102-116; A. Oliver-Smith, "Post-Disaster Consensus and Conflict in a Traditional Society: The 1970 Avalanché of Yungay, Peru" 4 (1979) *Mass Emergencies* 39-52; A. Oliver-Smith, A., "Disasters, Social Change, and Adaptive Systems" in E.L. Quarantelli (ed.), *What is a Disaster? Perspectives on the Question* (London: Routledge, 1998), 231-233.

[112] See e.g. ECOSOC, *International co-operation in the field of seismological research,* E/RES/767 (XXX) (1960); ECOSOC, *International co-operation in the field of seismological research,* E/RES/912 (XXXIV) (1962).

necessities; international concern for this was phrased in terms of "stockpiling" during the 1960s.[113] This aspect of preparedness highlighted the importance of preparation for disaster relief, such as the compilation of contingency plans, setting up of disaster relief teams.[114]

The 1970s to the 1980s saw the emergence of various developments that precipitated the creation of Resolution 42/169. The disaster events in this period highlighted the need for a better global system of disaster preparedness; in addition, a more comprehensive notion of disaster preparedness and management that was not based solely on the provision of relief emerged. In the early part of the 1970s, the term "disaster prevention" was used in an unsystematic way,[115] but by the early 1990s the recognition that disasters could not be prevented, only mitigated, took hold.[116] The adoption of Resolution 42/169 can also be seen as being due to the efforts of the Group of 77 and the Soviet bloc, who framed questions relating to disaster as problems that were inextricably linked to the world economic situation, and the place of developing countries within it.[117] The success of the Group of 77 in highlighting issues of development and their relation to disasters in the 1970s and 1980s was coeval with the attention of scholars who located the causes of disaster in vulnerability, which was in turn linked to the absence of development.[118]

Gradual progress in technology from the 1960s onwards led to greater emphasis on international coordination for early warning in international law.[119] This coincided with the acknowledgement by the Secretary-General in a report to the UN in 1987, which, taking into account the persistent criticisms of the UNDRO and the growth of the UN's role in economic and social areas,[120] opined that its mandate should focus on natural

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[113] United Nations, Secretary-General, *Assistance in cases of natural disaster: Report of the Secretary-General to the UNGA*, A/5845, 19th session, item 46of provisional agenda (1965); United Nations, Secretary-General, *Co-ordination of international assistance in cases of natural disaster: Report of the Secretary-General to the ECOSOC*, E/4036, 39th session, agenda item 4 (1965).

[114] D. Van Niekerk, "From Disaster Relief to Disaster Risk Reduction: A Consideration of the Evolving International Relief Mechanism" 4(2) (2008) *The Journal for Transdisciplinary Research in Southern Africa* 355, 367.

[115] P. Blaikie, T. Cannon, I. Davis & B. Wisner, *At Risk: Natural Hazards, People's Vulnerability and Disasters* (London: Routledge, 1994); D. Van Niekerk, "From Disaster Relief to Disaster Risk Reduction: A Consideration of the Evolving International Relief Mechanism" 4(2) (2008) *The Journal for Transdisciplinary Research in Southern Africa* 355, 367.

[116] United Nations Disaster Relief Co-ordinator, *Mitigating Natural Disasters: Phenomena, Effects and Options A Manual for Policy Makers*, UNDRO/MND/1990 Manual (New York: United Nations, 1991).

[117] See e.g. UNGA, *Summary Record of the 16th meeting, Second committee,* Agenda item 1 held on Monday, 19 October 1987, A/C.2/42/SR.16 (1987), Statement of USSR, para. 24.

[118] See generally F.C. Cuny, *Disasters and Development*, (America: Oxford University Press, 1983); R.C. Kent, *The Anatomy of Disaster Relief: The International Network in Action* (USA: Pinter Publishing, 1987).

[119] For a broad assessment of the state of law on early warning in the 1990s, see generally B.G. Ramcharan, *The International Law and Practice of Early-Warning and Preventive Diplomacy: The Emerging Global Watch* (Dordrecht: Martinus Nijhoff Publishers, 1991).

[120] UNGA, Secretary-General, *Co-ordination in the United Nations and the United Nations System: Report*

disasters and on preparation and prevention measures.[121]

These developments created a heightened international awareness of disaster prevention, mitigation and preparedness issues, which began to be phrased in terms of hazard, risk and disaster management in the 1980s.[122] Under the new paradigm of hazard, risk and disaster management the focus was on vulnerability and the coincidence of multiple risk issues; this was in contrast to the focus on disaster relief, or "emergency assistance" which focused on natural hazards as single event scenarios.[123] UN agencies, such as UNESCO, actively took on the hazards paradigm of disaster.[124] The acceptance of the hazard and risk paradigm within the UN, in October 1987, Japan and Morocco put forward a draft resolution for the "International Decade for Natural Hazard Reduction".[125] This draft resolution recognised that disasters might damage the fragile economic infrastructure of developing countries, especially least developed and island developing countries,[126] and recognised that scientific knowledge should be prepared with a view to preventing natural disasters or minimising their effects.[127] The operative paragraphs declared that the UNGA decided that the Decade's objective was to "reduce catastrophic loss of life, property damage, and social and economic disruption caused by natural hazards such as earthquakes, windstorms, floods, landslides, volcanic eruptions and fires. Its goals were the development and dissemination of scientific knowledge regarding measures of assessment, prediction, prevention and mitigation of natural hazards.[128] A revised draft resolution was tabled a few weeks after the initial draft resolution. Japan and Morocco produced the first draft, which was sponsored by many of the developing disaster-prone countries.[129] The resolutions were substantively similar: they declared an

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of the Secretary-General, A/42/232 (1987), paras 7-9.

[121] UNGA, Secretary-General, *Implementation of General Assembly Resolution 41/201: Report of the Secretary-General*, A/42/657 (1987), paras. 19, 21-23.

[122] D. Van Niekerk, "From Disaster Relief to Disaster Risk Reduction: A Consideration of the Evolving International Relief Mechanism" 4(2) (2008) *The Journal for Transdisciplinary Research in Southern Africa* 355, 368.

[123] Jeggle quoted ibid.

[124] See e.g. United Nations General Assembly, *Summary Record of the 25th meeting, Second committee,* agenda item 12 held on Monday, 19 October 1987, A/C.2/42/SR.25 (1987), Statement of UNESCO, para. 69.

[125] A/C.2/42/L.32 (1987).

[126] Id., preambular para. 4.

[127] Id., preambular para. 5.

[128] Id., operative para.4.

[129] A/C.2/42/L.32/Rev.1. The draft resolution was co-sponsored primarily by disaster-prone countries: Angola, Antigua and Barbuda, Bahamas, Bangladesh, Barbados, Belize, Benin, Bolivia, Burkina Faso, Cameroon, Cape Verde, Central African Republic, Chad, Chile, Colombia, Comoros, Congo, Costa Rica, Cuba, Czechoslovakia, Democratic Yemen, Ecuador, El Salvador, Equatorial Guinea, Fiji, France, Gabon, Gambia, Grenada, Guatemala, Guinea, Guinea-Bissau, Guyana, Haiti, Honduras, Hungary, Indonesia, Iran , Jamaica, Japan, Jordan, Kenya, Lao People's Democratic Republic, Lebanon, Lesotho, Liberia, Madagascar, Mali, Mauritania, Mauritius, Morocco, Nepal, Nicaragua, Pakistan, Panama, Paraguay, Peru, Philippines, Poland, Romania, Rwanda, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Sao Tome and Principle, Saudi Arabia, Senegal, Seychelles, Sierra Leone, Somalia, Sudan, Suriname, Swaziland,

international decade for natural disaster reduction, kept the wording of "International Decade for Natural Hazard Reduction", emphasised geophysical processes and scientific and technical solutions to prevent these, and highlighted the importance of communicating these solutions to developing countries.[130] This draft resolution was adopted by consensus.[131] Subsequently, the draft resolution was revised in informal consultations; its title became the "International Decade for Natural Disaster Reduction". The resolution was adopted by consensus, but Jamaica, a co-sponsor of the second draft resolution, stated that it would have preferred the original title, as the former title retained the understanding that mankind was not in a position to reduce natural disasters, as was implied by the final version.[132] This indicates that divergent views regarding the nature of disaster had not been resolved.

The relative ease and speed with which the resolution was adopted was due to the fact that thorny political issues, such as those regarding the protection of sovereignty and non-intervention, were avoided. Rather, the resolution's focus on the scientific and technical aspects of natural disaster served to depoliticise the issue of disaster risk reduction. This position was subsequently revised slightly in Priority Four of the HFA, which recognises the notion of underlying risk. The notion of vulnerability is reflected in this resolution and its drafting processes only as the economic marginalisation of developing states.

5.6 Principles of Humanitarian Assistance: UNGA Resolution 46/182

Trinidad and Tobago, Tunisia, Turkey, Uganda, Uruguay, Vanuatu, Venezuela, Yemen, Yugoslavia, Zaire, Zambia and Zimbabwe.

[130] E.g. Operative para. 2. "Recognizes further that scientific and technical understanding of the causes and impact natural disasters and of ways to reduce both human and property losses has progressed to such an extent that a concerted effort to assembly, disseminate and apply this knowledge through national, regional and world-wide programmes could have very positive effects in this regard particularly for developing countries," and Operative para. 4. "Decides that the objective of the Decade is to reduce, especially in developing countries, loss of life, property damage, and social and economic disruption caused by natural hazards, such as earthquakes, windstorms.... and that its goals are:
(a) to improve the capacity of each country to mitigate the effects of natural disasters expeditiously and effectively, paying special attention to assisting developing countries in the establishment, when needed of early warning systems;
(b) To devise appropriate guidelines and strategies for applying existing knowledge, taking into account the cultural and economic diversity among nations;
(c) To foster scientific and engineering endeavours aimed at cloning critical gaps in knowledge in order to reduce loss of life and property;
(d) To disseminate existing and new information related to measures for the assessment, prediction, prevention and mitigation of natural hazards;
(e) To develop measures for the assessment, prediction, prevention and mitigation of natural hazards through programmes of technical assistance and technology transfer, demonstration projects, and education and training, tailored to specific hazards and locations, and to evaluate their effectiveness;"

[131] It was adopted under agenda item 12, which covered issues contained in the annual ECOSOC report

[132] United Nations General Assembly, *Summary Record of the 44th meeting, Second committee,* agenda item 12 held on Monday, 19 October 1987, A/C.2/42/SR.44 (1987), Statement of Jamaica, para. 12.

In comparison to the smooth adoption of Resolution 42/169, UNGA Resolution 46/182's adoption was fraught. The adoption of Resolution 46/182 is generally attributed UNDRO's incompetence in fulfilling its mandate. UNDRO's unclear mandate, its inadequate staffing and funding, lack of in-country capacity, lack of support from other UN agencies, as well as its lack of credibility with donor countries led to an almost constant barrage of criticism from the start;[133] many of the problems that beset the IRU had also plagued the UNDRO, and led to its demise. By the late 1980s UN humanitarian assistance informally worked under a dual system for disaster relief and development. One arm, in which the primary actors were UNDRO, NGOs and other specialised agencies and organisations, managed relief for "routine" natural disasters. The other arm, which by-passed UNDRO, was an ad hoc response to long-term and complex disasters, set in motion by the Secretary-General who would appoint Special Representatives for particular disasters. UNDRO's demise is also attributed to its ineffective work in the Gulf War. UNDRO had been requested to coordinate humanitarian programmes undertaken by the UN during the Gulf Crisis. However, by September of the same year, the Secretary-General had relieved UNDRO of this mission, which was subsequently entrusted to a Special Representative. Beidberger is of the opinion that this action could only be interpreted as distrust in UNDRO's capacity to perform in complex operations, particularly in relation to third-country nationals.[134] It was also acknowledged that the UN's assistance to displaced persons during the Gulf War led to duplication of efforts.[135] The consensus adoption of UNGA Resolution 46/182 on the principles of humanitarian assistance can be seen as an acknowledgement of the complexity of the informal UN disaster response system that had operated from the 1970s; the reason provided for reforming the UN disaster relief and rehabilitation system is often touted as being the UNGA's acknowledgement of the need to strengthen the coordination for rapid response to humanitarian emergencies. This reform merged the two UN response systems into one, and formalised the latter of the two "arms".

However, the larger context for Resolution 46/182 can be seen to lie both in its historical approach to humanitarian assistance, as well as the more direct effects of the pull between sovereignty and humanity/cooperation in international response to the Gulf War. Kent posits that assumptions about the causes of humanitarian crises and the UN's role

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[133] See e.g. Y. Beidberger, *The Role and Status of International Humanitarian Volunteers and Organizations: The Right and Duty to Humanitarian Assistance* (Leiden: Martinus Nijhoff, 1991), 54; L.M.E Sheridan, "Institutional Arrangements for the Coordination of Humanitarian Assistance in Complex emergencies of Forced Migration" 14 (1999-2000) *Georgetown Immigration Law Journal* 941-984.

[134] Y. Beidberger, *The Role and Status of International Humanitarian Volunteers and Organizations: The Right and Duty to Humanitarian Assistance* (Leiden: Martinus Nijhoff, 1991), 54.

[135] OCHA, *OCHA on Message: General Assembly Resolutions 46/182* (2012) <http://docs.unocha.org/sites/dms/Documents/120402_OOM-46182_eng.pdf>.

changed significantly from the 1980s. This was in no small part a result of the Cold War's end, and the resulting decline in economic and political support to fragile and disaster-prone countries, which began the era of complex emergencies.[136]

The early 1990s witnessed an increase in humanitarian action and funding by major donor governments. One such example was that of the Kurdish refugee crisis during the Gulf War. Turkey's refusal of entry to Kurdish asylum seekers, which left them stranded on exposed, high altitude sites on the Iraqi border side. Security Council Resolution 688 sought to respond to this problem by requesting Iraq to allow immediate access to those who were in need of the assistance of international humanitarian organisations. Britain, the USA, France and the Netherlands, supporting the resolution, aimed to establish no-fly zones within northern Iraq so that Kurds could move to more sheltered sites where they would be protected from attack by Iraqi forces. Further, Security Council Resolution 688 legitimised, under USA's, Britain's and France's influence, the use of military force to provide humanitarian relief and support for humanitarian corridors. The Security Council resolution, taken together with the use of the military to provide relief signal that in this period, dominant players of the international community were willing and able to use force to provide humanitarian relief.

Developing countries were wary of the interventionist trend, which they saw as diverting resources that could be used for development, as well as potentially infringing on sovereignty.[137] The interventionist approach taken in Security Council Resolution 688 was countered by UNGA Resolution 46/182, which espoused a softer approach to humanitarian assistance for natural and other emergencies.[138] This softer approach highlighted the importance of sovereignty,[139] while simultaneously seeking to reinforce international solidarity for humanitarian assistance.[140] In October 1991, the Secretary-General submitted a report on the early warning, prevention, preparedness and stand-by capacities, and the consolidated appeals system. The Secretary-General observed

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[136] R.C. Kent, "The United Nations' Humanitarian Pillar: Re-focusing the UN's Disaster and Emergency Roles and Responsibilities" 28(2) (2004) *Disasters* 216, 218-9.
[137] Id., 219.
[138] UNGA, *Strengthening of the coordination of humanitarian emergency assistance of the United Nations*, A/RES/46/182 (1991), Section I. Guiding principles, para. 1. "Humanitarian assistance is of cardinal importance for the victims of natural disasters and other emergencies."
[139] Id., Section I. Guiding principles, paragraph 3. "The sovereignty, territorial integrity and national unity of States must be fully respected in accordance with the Charter of the UN. In this context, humanitarian assistance should be provided with the consent of the affected country and in principle on the basis of an appeal by the affected country."; see also para.4. "Each State has the responsibility first and foremost to take care of the victims of natural disasters and other emergencies occurring on its territory. Hence, the affected State has the primary role in the initiation, organization, coordination, and implementation of humanitarian assistance within its territory."
[140] UNGA, *Provisional verbatim record of the 78th meeting held at Headquarters, New York, on Thursday, 19 December 1991*, A/46/PV.78 (1992), Statement of Sweden, 38.

that the UN was increasingly called upon to play the role of framing international response, acknowledging the increased power that the UN had in a post-Cold War world.[141] The Secretary-General saw the issue at hand as being one of coordinated and timely response.[142] Just as it had been used in proposals for the IRU and UNDRO, coherency in the face of ad hoc measures was put forward as the reason for a new structure.[143] On this basis, the report made recommendations regarding early warning, prevention (which was connected to the IDNDR, and taken to mean technological solutions as prevention), [144] and preparedness, consolidated appeals and greater coordination and leadership. Resolution 46/182 created a mechanism somewhat similar in philosophy to Ciraolo's insurance scheme, the Central Emergency Revolving Fund (CERF);[145] the appointment of a high-level official who had the title of "Emergency Relief Coordinator" (ERC); and the creation of an inter-agency standing committee (IASC) to advise on the use of the CERF.

The Secretary-General's technical and scientific approach to disaster, with its emphasis on technical solutions such as stockpiling and the enhancement of early warning mechanisms that required expert knowledge, was supported by countries of the North, and the European Community in particular.[146] The European Community proposed the inclusion of the strengthening of humanitarian assistance into the UNGA's agenda in its 46th session. The plenary debates in the UNGA show that in these debates, the notion of "emergency", rather than "disaster" was used. "Emergency", which was acknowledged to lack a precise definition,[147] was used to mean something more than the concept of natural disaster; given the context in which the discussion occurred emergencies can only be taken to have encompassed disasters of human origin such as armed conflict.[148] It is clear, therefore, that resolution 46/182 was intended to apply to at least to natural disaster and man-made disaster, including armed conflict.

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[141] UNGA, *Report of the Secretary-general on the Review of the Capacity, Experience and Coordination Arrangements in the UN system for Humanitarian Assistance*, A/46/568 (1991), para.2.
[142] Ibid.
[143] Id., para. 5.
[144] Id., para. 11.
[145] Id., paras. 14-18. The CERF proposed by the Secretary-General was envisaged as a cash-flow mechanism to respond to the initial phases of a disaster, managed by the Secretary-General. Resources would be advanced to the operational organisations on the understanding that they would reimburse the fund in the first instance from voluntary contributions received in response to consolidated appeals.The Secretary-General would be advised on the use of the fund by an inter-agency committee, which would address inter-agency cooperation for each complex emergency on questions relating to the use, allocation and reimbursement of the fund.
[146] UNGA, *Provisional verbatim record of the 39th meeting*, 46th session, agenda item 143, A/46/PV.39 (1991), Statement of Norway, 6; Statement of the Netherlands, 11; Liechtenstein, 61-63.
[147] UNGA, *Provisional verbatim record of the 39th meeting*, 46th session, agenda item 143, A/46/PV.39 (1991), Brazil, 50-1.
[148] See e.g. UNGA, *Provisional verbatim record of the 39th meeting*, 46th session, agenda item 143, A/46/PV.39 (1991), Statement of Norway, 7; Netherlands, 12; Yemen, 32.

The twelve countries of the EC, and the Netherlands, Norway and France, supported the Secretary-General's conclusions in proposing the future Resolution 46/182. The debates show that opinions were split along North/South lines: tension arose between the donor countries of the North,[149] who supported the opening of humanitarian corridors in the Gulf Crisis, and disaster-prone countries of the South, most notably, those belonging to the Group of 77. This general division played out over three main issues: the proposals for the creation of a new disaster relief coordinating structure, through the creation of the post of Emergency Relief Coordinator, the IASC, and the CERF. Countries of the North, the donor countries and those supporting humanitarian intervention and corridors were largely in favour, while countries of the South, particularly those belonging to the Group of 77 were largely unreceptive to the proposal for the ERC as a measure of strengthening the UN system. The debates show that the action of western states in the Gulf Crisis informed the concerns of the South, and that the primary concern of those opposing the Secretary-General's proposals was to prevent the entrenchment of political intervention in the guise of humanitarian assistance.[150]

The South sought to ensure that sovereignty, the primacy of development, and the linkage between medium- and long-term development aid and disaster relief were not obscured by a controversial proposal for a new UN humanitarian assistance structure that carried a whiff of military action and the infringement of sovereignty.[151] Many delegations of the South therefore downplayed the need for a new disaster relief coordination structure within the UN,[152] instead emphasising the link between lack of development and disaster-proneness, the need to address the "root causes" of underdevelopment, the moral duty of the rich to give to the poor, and the importance of sovereignty for ex-colonies.[153]

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[149] According to statistic provided by Australia, Belgium, Canada, The Federal Republic of Germany, Iceland, Japan, Spain, UK, and USA, the "Western" developed countries provided approximately 87% of the voluntary contributions to the UN in 1985, while developing countries provided 12 %and the USSR and Eastern European countries provided only 1%. Letter circulated at the 42nd session of the UNGA and 2nd regular session of ECOSOC in 1987, Letter dated 3 July 1987 from the representatives of Australia, Belgium, Canada, the Federal Republic of Germany, Iceland, Japan, Spain, the UK, USAW addressed to the Secretary-General, A/42/381 (1987).

[150] See e.g. UNGA, *Provisional verbatim record of the 41st meeting held at Headquarters, New York, on 5 November 1991*, A/46/PV.41 (1992), Statement of India, 20; Pakistan, 24.

[151] See e.g. UNGA, *Provisional verbatim record of the 39th meeting*, 46th session, agenda item 143, A/46/PV.39 (1991): Statement of Mexico, 37; Egypt, 42-3; Brazil, 48; China, 25-26; USSR, 29; UNGA, *Provisional verbatim record of the 41st meeting held at Headquarters, New York, on 5 November 1991*, A/46/PV.41 (1992), Statement of Pakistan, 24, 26.

[152] UNGA, *Provisional verbatim record of the 39th meeting*, 46th session, agenda item 143, A/46/PV.39 (1991): Statement of Mexico, 38; Egypt, 41; Brazil, 51; UNGA, *Provisional verbatim record of the 41st meeting held at Headquarters, New York, on 5 November 1991*, A/46/PV.41 (1992), Tunisia, 29-30; India, 21.

[153] The statement of Ghana, which was the representative of the Group of 77, encapsulated these arguments, as well as drawing links between poverty, underdevelopment, and the "root causes" of underdevelopment.UNGA, *Provisional verbatim record of the 41st meeting held at Headquarters, New York,*

The North, employing arguments similar to those used in debates over UNDRO's creation, highlighted their responsibilities as donors,[154] emphasised the proposed Emergency Relief Coordinator's neutrality and function as a sharer of information, and stressed the need for technological solutions to natural disasters, At the same time, the problems that would be posed by this application to man-made disasters were not mentioned.[155]

In the drafting history of Resolution 46/182, it can be seen that the primary concern of the debate was the negotiation of the scope of the doctrine of sovereignty to realise state will regarding the provision and acceptance of aid. Arguments regarding this dominant concern were justified by both sides by resorting to arguments about the impartial and apolitical nature of humanitarian assistance,[156] as well as the neutral nature of scientific and dissemination of technical knowledge as fixes to disaster vulnerability.[157] Vulnerability itself was largely confined to the notion of economically underdeveloped states in the debates. An understanding of the experience of disaster on the ground can be glimpsed, however, in the acknowledgement of countries of both the North and South regarding the media as a way of portraying post-disaster vulnerability. Specifically, the media's representations of vulnerable people post-disaster were seen as part of the humanitarian assistance machinery, as visceral portrayals of human suffering were acknowledged to contribute to raising awareness of disasters, thereby potentially increasing the amount of donations.[158] It is notable that the people's lived reality is characterised only by their use to the improvement of the humanitarian assistance machinery. The dominant notion of vulnerability is once again primarily that of the economic underdevelopment, and therefore marginalisation, of states: that is, economic setbacks, infrastructure damage, and property damage.

5.7 The ILC's Draft Articles on the Protection of Persons in the Event of Disasters

The resolutions establishing the IDNDR and the principles of humanitarian assistance continued to enjoy widespread approval and support following their adoption, and remain in place today. The IDNDR was succeeded by the arrangement for the UN International Strategy for Disaster Reduction (ISDR) in 2000.[159] The ISDR has helped to frame global conversation on the issue of natural disaster reduction, as can be seen in the creation of the Yokohama Strategy, as well as the HFA. The mechanisms established in Resolution

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on 5 November 1991, A/46/PV.41 (1992), Ghana, 33-5.

[154] See e.g. UNGA, *Provisional verbatim record of the 39th meeting*, 46th session, agenda item 143, A/46/PV.39 (1991): Norway, 9-10.

[155] Id., Statement of France 68-70.

[156] Id., Statements of Brazil, 46, 51-2; Egypt, 43; France, 72.

[157] Id., Statements of Egypt, 42-3; Yemen, 33.

[158] Id. Statement of France, 71.

[159] UNGA, *International Decade for Disaster Reduction: Successor Arrangements*, A/RES/54/219 (1999); UNGA, *International Decade for Natural Disaster Reduction*, A/RES/54/219 (2000).

46/182, the CERF, IASC, the merger of UNDRO with the UN Department of Humanitarian Affairs (which is now OCHA), as well as the creation of the ERC, continue in much the same form.[160] Further, Resolution 46/182 has been reaffirmed in different contexts.[161]

The years between the early 1990s and the late 2000s saw the increasing dominance of languages of human rights in international discourse, which was commensurate with the growing sophistication of the various UN human rights mechanisms. These developments filled the space created by the absence of Cold War geopolitics, and allowed the UN's humanist side to come to the fore.[162] In addition, greater numbers of NGOs began to use the language of rights for international lobbying and advocacy, as did the IGOs and the UN itself. The institutional reform of the UN instituted by Secretary-General Annan in 1997 also took into account the newfound importance of human rights, calling for the UN system to mainstream human rights approaches.[163] The Secretary-General's call for mainstreaming of human rights continues to be carried out under the UN Development Group's inter-agency Human Rights Mainstreaming Mechanism today.

In addition, the human rights-based approach is not only prominent in the work of the UN, but has become dominant in the work NGOs and UN agencies in the field of development. OHCHR has defined the human rights-based approach as being:

> "A conceptual framework for the process of human development that is normatively based on international human rights standards and operationally directed to promoting and protecting human rights. It seeks to analyse inequalities which lie at the heart of development problems and redress discriminatory practices and the unjust distributions of power that impede development progress."[164]

The rights-based approach as conceptualised in development is based on the notion that

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[160] See e.g. OCHA, *OCHA on Message: General Assembly Resolutions 46/182* (2012) <http://docs.unocha.org/sites/dms/Documents/120402_OOM-46182_eng.pdf>.

[161] See e.g. UNGA, *International cooperation on humanitarian assistance in the field of natural disasters, from relief to development*, A/RES/63/141 (2009); UNGA, *Strengthening the Coordination of emergency humanitarian assistance of the United Nations*, A/RES/64/139 (2009); International Federation of the Red Cross and Red Crescent Societies, *Guidelines for the Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance*, IFRC 301C/07/R4 Annex (2007).

[162] R. Falk, "The United Nations and Cosmopolitan Democracy: Bad Dream, Utopian Fantasy, Political Project" in D. Archibugi, D. Held, M. Köhler, (eds.), *Re-imagining Political Community: Studies in Cosmopolitan Democracy* (Oxford: Polity Press, 1998), 320.

[163] United Nations, Secretary-General, *Renewing the United Nations: A Programme for Reform*, A/51/190 (1997).

[164] OHCHR quoted in F.Z. Giustiniani, "The Works of the International Law Commission on 'Protection of Persons in the Event of Disasters'. A Critical Appraisal" in A. de Guttry, M. Gestry, G. Venturini (eds.), *International Disaster Response Law* (The Hague: Springer, 2012), 70.

the failure to incorporate rights in development processes could prejudice the fulfilment of the human rights of people affected by development projects. Further, a rights-based approach is based on the idea that the meaning of development is found in the human being as a subject, not an object.[165]

The increasing scope of both human rights as law and as political discourse, which entails concern for the individual, as well as the expanding scope of international political discourse on disaster,[166] have coincided at a time in which technology has created a heightened visibility of disaster. In this way, the effects of disaster, and the recalcitrance or inability of some states to address natural disaster-related suffering have become the objects of attention of not only states, but people around the world. Disasters which led to an increased focus on international human rights law as mechanisms to solve the complications created by the doctrines of sovereignty and non-intervention were, for example, the 2004 Indian Ocean earthquake and tsunami and Cyclone Nargis in 2008. The former raised problems that brought up problems of early warning and the cooperation of states, while the latter raised the problem of limits to sovereignty in rejecting aid.

Against this background, which demonstrates the power of human rights law discourse, it seems particularly timely that an ILC member, Mr. M. Kamto, proposed that the ILC study the international protection of persons in critical situations.[167] Subsequently, the ILC's Codification Division submitted this proposal to the Working Group under the title "International disaster relief law" again in 2006.[168] At the same session, the ILC endorsed without discussion, the topic, now entitled "The Protection of persons in the event of disasters" into the ILC's programme of work,[169] In 2006, the UN Secretariat prepared an extensive memorandum on the protection of persons in the event of disasters,[170] and in 2007, the Commission decided to include the topic in its current programme and appointed Eduardo Valencia-Ospina as special rapporteur.[171] No substantive explanations can be found for the change, and the rapporteur observed that there were no official records that would throw light on the reasons that might have led the ILC to single out "protection of persons" over "relief" or "assistance", which left the

[165] Ibid.
[166] This can be seen in, for example, the pastiche of mechanisms to deal with various aspects of disaster (most notably, the ISDR, the HFA, Yokohama Strategy, and Resolution 46/182).
[167] This is not a publically available document. See n3 of E. Valencia-Ospina, *Preliminary report on the protection of persons in the event of disasters*, A/CN.4/598 (2008).
[168] United Nations General Assembly, *Official records of the General Assembly, Sixty-first Session, Supplement No. 10,* A/61/10, (2006), para 261.
[169] Id., para. 257.
[170] ILC, *Protection of persons in the event of disasters: Memorandum by the Secretariat*, A/CN.4/590 (2007).
[171] UNGA, *Official records of the General Assembly, Sixty-second Session, Supplement No. 10,* A/62/10, (2007), para. 375.

scope of the work to be determined through discussion.[172]

The rapporteur, in discussing what the protection of persons might mean for disaster, noted that disaster could not, in many cases, be described to a unique causal factor, and that a need for protection existed in all disaster situations.[173] In light of the adoption process of Resolution 46/182, this is not a particularly revolutionary notion. However, it faced some resistance from some ILC Drafting Committee members, who supported the idea that disaster was constituted by the external hazards paradigm, namely, that disaster is an external hazard,[174] or what Gilbert might call the pattern of war.[175] As has been noted in Chapter 4, however, the definition that was ultimately adopted was adopted on the basis of a discussion that echoes the plenary debates regarding Resolution 46/182. One noticeable difference to the debate of the 1990s regarding the scope of the notion of disaster is the attempted depoliticisation of disaster relief measures of the state, IGOs and NGO (and to a limited extent in disaster prevention, mitigation and preparedness), through the deliberate exclusion of the armed conflict from the jurisdiction of the draft articles.[176] This seems to restrict the field of application of a new IDL to technological and natural disasters.

The perpetual negotiation of the limits of the doctrine of sovereignty emerged in the ILC debates on the Draft Articles in the form of the introduction of a rights-based, or needs-based approach, as a means of guiding the work; how the Draft Articles should incorporate IHRL, as well as implicit limitations on sovereignty. The special rapporteur advocated taking a rights-based approach to the drafting of the articles with regard to the first issue.[177] ILC members discussing this proposal, expressed both support and disagreement towards the suggestion of the adoption of a rights-based approach.[178] Members in favour noted that such an approach would take into account all categories of rights, and that there was no dichotomy that existed between needs- and rights-based approaches. On the other hand, other members disagreed with the equation of rights and needs, maintaining that while rights was a legal concept, needs was not, and that a rights-based approach might undermine the sovereignty of the state by requiring the state to accept disaster relief when it was offered.

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[172] E. Valencia-Ospina, *Preliminary report on the protection of persons in the event of disasters*, A/CN.4/598 (2008), para. 10.
[173] Id., para 49.
[174] ILC, *Report on the work of its sixty-first session*, A/64/10 (2009), paragraph 169.
[175] See Chapter 4 supra.
[176] E. Valencia-Ospina, *Preliminary report on the protection of persons in the event of disasters*, A/CN.4/598 (2008), para. 47.
[177] E. Valencia-Ospina, *Preliminary report on the protection of persons in the event of disasters*, A/CN.4/598 (2008).
[178] Id., paragraphs 159-165.

The second issue centres on how the relationship between IHRL and the Draft Articles was to be described in the Draft Articles. The rapporteur noted, for example, that the domestic jurisdiction of states is not absolute and that where the health, life and bodily integrity of individuals are concerned, human rights law demonstrates that principles such as sovereignty and non-intervention are only a starting point for analysis, but not the conclusion.[179] However, the limits of IHRL are also noted in the debate, which has considered the differences between a rights-based approach and needs-based approach to the creation of the draft articles. [180] The rapporteur sought to address this potential conflict by stating that needs and rights were inter-related – "two sides of the same coin"[181] – because the draft articles dealt with both intra-state obligations to people and inter-state obligations to other states (and non-state actors). The provisional draft document attempts to strike a compromise between the doctrine of sovereignty and a needs-based/rights-based approach by locating the purpose of the Draft Articles in the facilitation of "an adequate and effective response to disasters that meets the essential needs of the persons concerned, with full respect for their rights."[182] Draft article 8 addresses the notion of human rights, somewhat generically providing that "Persons affected by disasters are entitled to respect for their human rights." Draft article 7 addresses the principle of human dignity in disaster response, requiring all responders to respect the same.

The third issue is the elucidation of the ways in which IHRL affects the sovereign rights of the state to propose, reject and accept disaster relief, as well as the state obligation to prevent disaster. The tensions created by the use of IHRL to address the primacy of sovereignty are recognised by the rapporteur as resulting in two general conclusions. The first conclusion is that it must be recognised that the affected State bears the ultimate responsibility for protecting disaster victims on its territory and that it has the primary role in facilitating, coordinating and overseeing relief operations on its territory. Second, international relief requires state consent.[183] This view led the rapporteur to propose a provision on the primary responsibility for the protection of persons and provision of humanitarian assistance, and the right of the State to direct, control, coordinate and

[179] E. Valencia-Ospina, *Third report on the protection of persons in the event of disasters*, A/CN.4/629 (2010), para 74.
[180] F.Z. Giustiniani, "The Works of the International Law Commission on 'Protection of Persons in the Event of Disasters'. A Critical Appraisal" in A. de Guttry, M. Gestry, G. Venturini (eds.), *International Disaster Response Law* (The Hague: Springer, 2012), 71.
[181] ILC, *Report on the work of its sixty-first session*, A/64/10 (2009), para. 155.
[182] E. Valencia-Ospina, E., *Third report on the protection of persons in the event of disasters*, A/CN.4/629 (2010), para. 9, draft article 2.
[183] Id., para. 78.

supervise this assistance.[184] However, the ILC's Drafting Committee did not adopt the notion of primary responsibility; some members observed that such a view might imply the existence of secondary responsibilities and thereby lead to intervention in states.[185] The text on state responsibility that was adopted by the Drafting Committee provides for the following responsibilities:

> "Role of the affected state
>
> 1. The affected state, by virtue of its sovereignty, has the duty to ensure the protection of persons and provision of disaster relief on its territory.
> 2. The affected state has the primary role in the direction, control, coordination and supervision of such relief and assistance."

The dilution of the notion of "primary responsibility" implies a less weighty responsibility of states. This was offset by the adoption of the duty to seek assistance, which was thought to imply a negotiated approach to disaster relief provision, on which ILC members were largely in agreement: "To the extent that a disaster exceeds its national response capacity, the affected state has the duty to seek assistance from among other States, the UN, other competent intergovernmental organisations and relevant nongovernmental organizations, as appropriate."[186] This duty was understood by the ILC members as deriving from IHRL, which therefore could be said to reflect customary law.[187]

The ILC debates on the right to reject offers of assistance reflected the traditional notions of sovereignty and non-intervention. The issue of state obligation for disaster prevention was considered in the rappporteur's sixth report. The obligation of states to prevent disaster was asserted by the rapporteur as being based partly on the positive obligation to prevent human rights violations.[188] This idea, however, was diluted by the Drafting Committee. The Drafting Committee chairman observed that the revised version of the rapporteur's proposal implies measures taken at the domestic level, primarily in terms of adjustments in the domestic legal framework severally in the obligation to reduce risk, rather than international cooperation for disaster prevention measures, but used the word "shall" to imply legal obligation.[189] The Chairman omitted mention of human rights in

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[184] Ibid

[185] ILC, *Report on the work of its sixty-second session*, A/65/10 (2010), para. 318.

[186] ILC, *Texts and titles of draft articles 10 and 11 provisionally adopted by the Drafting Committee on 19 July 2011*, A/CN.4/L.794 (2011).

[187] ILC, *Report on the work of its sixty-third session*, A/66/10 (2011), para, 289.

[188] E. Valencia-Ospina, *Sixth report on the protection of persons in the event of disasters*, A.CN.4/662 (2013), paras. 42-3.

[189] ILC, Drafting Committee, *Statement of the Chairman of the Drafting Committee*, A/CN.4/L.815 (2013), 3.

his statement, distancing the revised draft articles from the rapporteur's framing of the question.[190] At the time of writing, the ILC's annual report had not yet been published, and therefore the detailed positions of states have not yet been made public.

Finally, the importance of non-state actors in the development of the law has been recognised explicitly by the special rapporteur, who noted the importance of the International Federation of Red Cross' guidelines on disaster response to the work at the outset, thereby elevating and entrenching the importance of non-state actors in the creation of law.[191] The IFRC's Guidelines and the ILC's Draft Articles can be seen as complementary instruments, one laying down principles and standards for non-state actors, while the latter regulates the relations between states on action taken for the benefit of disaster victims.

5.8 Summary and concluding observations

The dynamic created by the clash of human compassion, the doctrine of sovereignty, and the political and economic interests of states can be observed in the genealogies of landmark international instruments on disaster since the beginning of international law. Thus, in Vattel's time, the imperfect obligation to provide relief was based on widely held religious beliefs about humanity and disaster. The lofty ideals that had propelled the establishment of the IRU were eventually worn down by political and financial pragmatism, and the prevailing interests and policies of powerful states. The creation of Resolution 2816 was precipitated by the acknowledgement that the UN could not be seen to do nothing in the face of pressure created by a burgeoning Third World consciousness, and the mechanism it created was rendered ineffective by its ambiguous mandate. The IDNDR was adopted without controversy because it was not seen as an instrument that infringed on sovereignty, or any other major political or economic state interests. This contrasted sharply with the adoption process of Resolution 46/182, the debates of which pushed to the fore the tension between sovereignty, compassion and pragmatism. The controversy stemmed from political tensions surrounding the then-contemporary use of military force to deliver humanitarian intervention; ensuring that humanitarian assistance continued to preserve sovereignty thus became an issue of symbolic significance for developing countries, many of which were ex-colonies. Finally, the ILC's Draft Articles, which are still in the process of creation, demonstrate again that the tension between IHRL's concern with the individual, and the doctrine of sovereignty more often than not result in a watering down of the expression of compassion in legal documents. In the histories of all of these instruments, the following themes that are relevant to the

[190] Id., 4-5

[191] ILC, *Protection of persons in the event of disasters: Memorandum by the Secretariat*, A/CN.4/590 (2007), para. 6.

correlation between marginalisation and disaster can be observed: arguments resorting to compassion as neutrality, and the notion of vulnerability as the economic marginalisation of states as linked to compassion.

The content of the argument of neutrality, a principle that is often linked to compassion, has varied according to political needs and tools available at the time. Thus, in Vattel's time, the imperfect obligation to provide relief was based on widely held religious beliefs about right conduct in response to suffering. In the time of the IRU, popular acceptance of the institutionalisation of charity for blameless victims created conducive conditions for Ciraolo's ideas about the universal duty to address the universality of human suffering through a mutual insurance scheme. The neutrality that was instrumental in the creation process of the IRU Convention was found in the contention that the IRU would be an organisation that would provide aid where the stricken community could not recover using their own resources. This notion did not appear in Ciraolo's initial proposal, which highlighted a broad notion of suffering that did not distinguish between types of disaster; it was introduced in the drafting process, and adopted in the final text as article 2(1), which stated that the IRU would act in disasters, the "exceptional gravity of which exceeds the limits of the powers and resources of the stricken people". In the drafting of UNGA Resolution 2816, the humanitarian nature of UNDRO's assistance, as well as its subordinate position in relation to sovereignty were highlighted to overcome geopolitical problems of the Cold War. State concern regarding the scope of UNDRO's mandate – in what disasters UNDRO would act – was allayed by the argument that UNDRO's function would consist largely in information gathering and sharing. As such, its role as the UN's focal point for the direction of disaster relief measures would be akin to that of a "traffic cop", thereby preserving the doctrine of sovereignty, as well as furthering the expression of compassion. In the era of complex emergencies created in the void left by Cold War tensions, scientific and technological fixes to natural disasters, were readily agreed to without heated political debate by the international community. The complexity of the political environment in the Gulf War, the ambiguous political situation following the end of the Cold War, as well as Third World recognition that economic marginalisation was connected to disaster, ensured that UNGA resolution 46/182 was not adopted with ease. In Resolution 46/182, institutional reform, as well as technological and scientific solutions for "emergencies", were put forward as necessary neutral measures to create an effective expression of compassion in the UN. The ILC Draft Articles, which are based on debates over law and not politics, resort to the notion of neutrality less. Rather, the ideas of moral and legal obligations imposed by IHRL are used in attempts to counter humanise the doctrine of sovereignty. It can be concluded that the dynamic created by the pull between sovereignty, compassion and pragmatism, and the resort to "measures of

neutrality" is an unpredictable one, the form of which is decided by dominant political powers and donor countries.

The second theme, the negotiation of the content of disaster-related vulnerability, which was linked to moral calls for actions based on compassion, has also shifted form throughout history. Vulnerability created by disaster, in the form of damage and interruption of normality, has been accepted as the starting point for disaster-related vulnerability from Vattel's time to the present. The correlation between marginalisation and disaster has, since the New International Economic Order of the 1970s, been expressed as the economic marginalisation of Third World states. This was particularly prominent in the drafting of Resolution 2816 and Resolution 46/182. Ghana's statement with regard to the proposal to create a new humanitarian assistance structure in 1991 encapsulates the concern of Third World states with disasters and development:

> "Whatever we propose must, apart from its adaptive dynamism, envisage a broader perspective of human suffering and misery and project a larger framework for human development in all parts of the globe. Within this framework, not only sudden and dramatic catastrophes will rivet our attention, but also, more deeply, the grinding, relentless and tragically repetitive cycle of human misery engendered by acute poverty and exacerbated by natural disasters should engage our deepest compassion... The most lasting humanitarian assistance mechanism we can forge is when we collectively develop the will to eradicate global poverty in a world that can, if it has that will, clothe, feed and cure all our inhabitants. "[192]

How are these two recurring themes to be construed from the perspective of marginalisation, in light of Chapter Four's finding that a small legal space that recognises the correlation between disaster and marginalisation exists in the law? Firstly, it can be said that the unpredictability of the argument of neutrality as a justification for legal reform means that the notion of marginalisation is not easily utilised by marginalised people, who do not necessarily have the same political, social, and economic interests as powerful donor states. Sovereignty and the need for political neutrality has meant that principles regulating allocation of aid, or the identification of the meaning of disaster-related vulnerability within states, is an issue that is not touched upon in the histories of the various documents. Secondly, the dominant notion of vulnerability as the economic underdevelopment of states has an existence that does not necessarily converge with the experience of vulnerability of people. People, and particularly marginalised

[192] UNGA, *Provisional verbatim record of the 41st meeting held at Headquarters, New York, on 5 November 1991*, A/46/PV.41 (1992), Ghana, 33-5.

people, are often adversely affected precisely by domestic efforts to create development. The 1984 Bhopal gas leak is one example of this, as are the Japanese Minamata disease cases.[193] The linkages that are drawn between disproportionately adverse effects of disaster and development rely on a conflation of state interests with that of people inhabiting the state. This argument obscures the presence of marginalised people, who, by definition, are excluded from the social, political and economic resource benefits arising from development. This suggests that while the notion of economic marginalisation between states has been a driving feature of international disaster rules since the 1970s, marginalisation in other forms, and within states, has not occupied much space in international legal or international political thought. The silence of marginalised people, as opposed to marginalised states, is entrenched by the emphasis of all the instruments on the notion of natural disaster. Natural disaster itself is politically neutral; on traditional understandings of disaster, states who are struck by geophysical events are innocent victims of nature's indiscriminate wrath. Their helplessness, as developing countries that are economically marginal, is assumed.

Chapter Four showed that international disaster rules create a space that recognises marginalisation. This indicated that there was some hope that marginalised people could use IDL to express their interests at the international level. However, Chapter Five has demonstrated, through tracing the genealogies of major international disaster instruments, shows that the two themes that provided the impetus for widening international legal regulation on disaster, neutrality and vulnerability, are notions that are liable to "capture" by states. Further, the arguments that have underwritten of neutrality and vulnerability rely on arguments about the requirements of compassion that can be changed according to state interests, as well as relying on the conflation of state interests with the interests of people. In light of this state-centric history, it cannot be concluded that the legal space identified in Chapter Four lends itself to use by marginalised people to reduce what they experience as disaster-related vulnerabilities.

IDL's utility to marginalised people may be summarised thus. Firstly, IDL is a law that governs relations between states, as well as governing the institutions of the UN, and therefore does not provide much scope for use by marginalised people. Secondly, the

[193] Minamata disease is a neurological syndrome caused by severe mercury poisoning. The Chisso corporation, which began its operations in 1932, in the beginning of Japan's period of economic development, was producing one quarter to one third of Japan's acetaldehyde output annually by 1951. The catalyst used to produce acetaldehyde was mercury sulphate, and the chemical process created an organic mercury compound. Waste water containing this compound was dumped into Minamata bay. People living in fishing hamlets along the bay were among the first to exhibit symptoms from 1956. See e.g. Minamata Disease Archives <nimd.go.jp>; and Boston University Sustainability, "Minamata Disease" <ww.bu.edu/sustainability/minamata-disease/>.

notions of disaster are ones that are largely restricted to notion of natural disaster, which is in turn affected by state notions of economic development. Accordingly, disaster victims and vulnerability are also limited. Thirdly, the development of state-centric IDL is defined by the tensions between sovereignty and humanitarianism that can only be overcome by recourse to advocating for some kind of politically neutral measure to soften the effects of sovereignty. What is politically neutral depends, as can be seen, heavily on political interests, and relies on the silence of the people that it purports to help. These notions suggest that IDL is not directed by any identifiable theory of vulnerability; rather it has been a rudderless ship throughout the history of law, floating wherever the winds of political interests have blown it.

PART III

ADDRESSING INTERNATIONAL DISASTER LAW'S LACUNAE

Chapter Six. Marginalisation and disaster in international human rights law

6.1 Introduction

Part II concluded that the scope for marginalised people to use international disaster rules to reduce their vulnerability to disaster was limited, not only because international disaster rules do not give people legal status, but also because international disaster rules are rooted in state concerns; the creation of disaster rules arises from the tension between compassion and sovereignty, and arguments regarding vulnerability and neutrality are given content only by reference to state interests. On the basis of this finding, Part III turns to examine what international legal means and non-legal means might address IDL's neglect of the correlation between marginalisation and disaster. In Chapters Six and Seven, therefore, international human rights law (IHRL), and the democratisation of international legal processes as methods of giving voice to marginalised people are examined for their utility in addressing the disaster-marginalisation correlation.

This Chapter discusses how, and whether, the state-centricity of international disaster rules identified by Part II may be addressed through IHRL. IHRL is the focus of analysis in this chapter because it is the humanist counterbalance to IDL's state-centrism: IHRL's concern is the plight of those who are the victims of violations, and therefore, vulnerable and marginalised people. This means that IHRL is the most accessible field of international law for people at the international level, and is potentially able to complement IDL as it addresses the concerns of marginalised individuals.[1] In examining how IHRL might be utilised by people to address IDL's lacunae, as any appeal to IHRL in the UN treaty system relies on a mélange of advocacy and academic discourse, the academic discourse of IHRL on disaster, and the engagement of human rights and disaster of the human rights treaty bodies with the issue of disaster are discussed. Finally, an analysis and critique of IHRL's potential utility for marginalised people is conducted, utilising the perspective afforded by conceiving of law as a language that facilitates the speech of the marginalised.

The discussion of theoretical and practical approaches to the relationship between disaster-related marginalisation in this Chapter has the objective of understanding the vertical human rights obligations of states in their application to disaster, and therefore, conversely, how international law may be used by people. The materials for the examination of human rights law, disaster and marginalisation are selected on the basis of

[1] Individual rights are firmly established in international human rights law, whereas the scope and application of group rights is as yet ambiguous. This brings up complex questions of accessibility to international human rights law mechanisms by marginalised groups or communities, whose group affiliations are a component of their suffering (for example, indigenous peoples).

how people may utilise the law in communicating their potential or actual disaster-related suffering on the international plane. However, the relatively recent comprehensive consideration of disaster as an organising concept means that the materials used are those that refer specifically to the concept of disaster, as well as documents that address phenomena that are generally agreed to constitute disaster, such as earthquakes.

6.2 Nature of the relationship between IDL and IHRL

A preliminary issue that bears discussion is the relationship between international human rights law and international disaster rules, or the developing body of IDL.[2] Koskenniemi has observed that conflicts of international law can arise from different policy objectives of treaties or sets of rules, which may affect how rules are interpreted or applied.[3] In the context of disaster-related vulnerability it can be seen that the objectives of international disaster rules and international human rights law, are in at least one respect in accord. Of the multitude of policy objectives that could be assigned to these two sets of rules, a fundamental common point is the idea of state obligations and duties regarding disaster-related vulnerability. The idea of vulnerability can be seen to encompass both marginalisation caused by disaster, as well as marginalisation exacerbated by external "disastrous" events, and can be seen in the underlying rationales of IDL and IHRL. Firstly, how law performs the imperative of aiding the disaster-struck has constituted the starting point of the regulation inter-state interaction to address post-disaster vulnerability in law. As a result, most legal discourse has revolved around what legal means can be used to override the doctrine of sovereignty for this purpose. This concern manifests itself in, for example, the dominance of the applicability of the doctrine of the responsibility to protect where intransigent states fail to address the suffering of a population,[4] particularly since the 1990s, when interest in humanitarian assistance and humanitarian corridors surged.

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[2] Although the discussion in this Chapter is considered only in terms of international human rights law and international disaster law, as they are the means by which vulnerable people may directly access international legal forums, it is worth noting that the risks of fragmentation notwithstanding, IDL shares fundamental tenets with the disciplines of other areas, such as health law, humanitarian law, refugee law, and international environmental law, among others, that may contribute to shaping its development while also contributing to their evolution. G. Venturini, "International Disaster Response Law in Relation to Other Branches of International Law" in A. De Guttry, M. Gestri, G. Venturini (eds.,) *International Disaster Response Law* (The Hague: Springer, 2012), 61-62.

[3] ILC, *Fragmentation of International Law: difficulties Arising form the Diversification and Expansion of International Law: Report of the Study Group on Fragmentation of International Law*, A/CN.4/L.682 (2006), para. 24.

[4] See e.g., T. Jackson, "Bullets for Beans: Humanitarian Intervention and the Responsibility to Protect in Natural Disasters" 59 (2010) *Naval Law Review* 1; M. Bettati, "The Right of Humanitarian Intervention or the Right of Free Access to Victims?" 29 (1992) *Review of the International Commission of Jurists* 1. See also M. Nishiumi, "Jindōteki kyūenken no hōteki kōsei no kokoromi – furansugoken no shogakusetu wo tegakarari ni shite (Finding the legal construction of humanitarian assistance – Following the work of theorists of the French-speaking world)" 102 (1996) *Chūo daigaku hōgaku shinpō* (*Chuo University Law Review*) 1, for a thorough analysis of the approaches of French-speaking theorists to the issue of humanitarian intervention and assistance. Nishiumi's work focuses on armed conflict situations, but is also stated to apply to the case of natural and other man-made disasters.

Secondly, in the context of international disaster rules that deal with "disaster reduction" or mitigation and preparedness, many texts depend on the notion of the coincidence of hazards and vulnerability and the state's duty to rectify vulnerabilities identified within its territory. Finally, IHRL, which seeks to address the power imbalance between vulnerable individuals and the state ostensibly applies at all times, including in times of disaster.[5] Thus, although the natures of the obligations in these areas of law differ in terms of the subjects of the treaties and their binding qualities, their subject matters converge. IDL and IHRL may create fragmentation as a result of the interpretation and application of the obligations they impose. Their common concern, however, creates a relationship that can usefully be conceived of as one of fruitful cross-fertilisation. This cross-fertilisation can be seen in, for example, the ILC's discussion on rights-based approaches in the drafting of the Draft Articles on the protection of persons in the event of disasters.[6]

Even so, the nature of the *mutual* influence of the bodies thus far is not obvious. International disaster rules, which took into its purview the relations between states rather than relations between individuals and states, have existed in a codified state for a longer period than international human rights rules. The increasing focus on the development and expansion of disaster rules to become a body of international law has been coeval with, and influenced by, the growing sophistication and expanding reach of international human rights law; IHRL has clearly influenced the development of IDL. Justification for adopting international human rights law principles and norms into IDL creation and interpretation processes rests largely on IHRL's claim to universality. Bizarri writes, for example, "[I]rrespective of specific nationality and vulnerability, disaster-affected people are entitled to the rights and freedoms recognised by international human rights law that apply to all at all times, without discrimination as to age, gender, ethnic origin, disability, language, religion, political, and other opinion, and so on."[7] Perhaps as a result of IDL's nascent state, however, IDL cannot be said, as yet, to have contributed greatly to the expansion or refinement of IHRL.

6.3 Approaches to human rights, marginalisation, and disaster in the literature

The impetus for the creation of IHRL was the suffering caused by WWII, the sheer magnitude of which had never been experienced before. This core objective has informed the development of the law, which expanded steadily as a result of its application to

[5] For a consideration of the issue of derogations from human rights in disaster contexts, see E. Sommario, "Derogation from Human Rights Treaties in Situations of Natural or Man-Made Disasters" in De Guttry, A., Gestri, M., Venturini, G., (eds.) *International Disaster Response law* (The Hague: Springer, 2012), 323-352.

[6] See e.g. discussion in paras. 154, 159-165 of United Nations International Law Commission, *Report on the work of its sixty-first session*, A/64/10 (2009).

[7] M. Bizarri, "Protection of Vulnerable Groups in Natural and Man-Made Disasters" in A. De Guttry, M. Gestri, G. Venturini (eds.), *International Disaster Response Law* (The Hague: Springer, 2012), 389.

various crises throughout the world. A revolutionary feature of IHRL, in addition to its remarkable influence in many areas of international law,[8] is that individuals who believe that their rights have been violated may appeal to human rights bodies to evaluate their claims and establish whether there has been a violation. The tendency of many theorists and activists to celebrate these humanist and revolutionary aspects of IHRL should be treated with caution, but it is nevertheless true that international human rights treaties do seek to prevent people from becoming victims of certain types of violations, even if their actual implementation may at times have unexpectedly discriminatory or adverse effects.

A survey of human rights literature on disaster shows that there are two general approaches to addressing disaster situations; firstly, the interpretation of existing law to disaster-related vulnerability, and secondly, advocacy for the creation of new norms to address protection gaps in the international disaster law framework.

6.3.1 Application of existing human rights norms to disaster-related vulnerability

Samuels, in 1978, in one of the earlier writings on international human rights law and its relevance to disaster, observed that international law might play a role in ordering the global response to disasters in terms of the general responsibility of states in the face of natural disasters. This would encompass obligations, before, during and after disaster, involving the responsibility of affected states and also donor states relief. In discussing the general responsibility of states, Samuels noted that the relationship between natural disasters and human rights had not (at that time) been adequately recognised in human rights documents. Samuels spoke in particular of the failure to recognise the paramount importance of right to an adequate standard of living as established by article 11 of the ICESCR to disaster.[9]

The approach of incorporating disaster-specific interpretations of human rights into international legal documents continues to dominate human rights discourse regarding disaster-related vulnerability today. This can be seen in various studies of human rights and disaster that consider the content and contours of human rights in disaster situations.[10]

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[8] This is evident in the movement towards mainstreaming human rights, which was begun in the Programme of Reform of the United Nations report in 1997. United Nations, *Report of the Secretary-General*, A/51/950 (1997), paras. 78-9.

[9] J.W. Samuels, "The relevance of international law in the prevention and mitigation of natural disasters" in L.H. Stephens & S.J. Green (eds.), *Disaster Assistance: Appraisal, Reform and New Approaches* (London, Macmillan, 1979), 247-8.

[10] See e.g. C. Gould, "The Right to Housing Recovery after Natural Disasters" 22 (2009) *Harvard Journal of Human Rights* 169-204; S.W.A. Gunn, "The Right to Health of Disaster Victims" 12(1) (2003) *Disaster Prevention and Management* 48-51; M. Bizarri, "Protection of Vulnerable Groups in Natural and Man-Made Disasters" in A. De Guttry, M. Gestri, G. Venturini (eds.), *International Disaster Response Law* (The Hague: Springer, 2012), 381-414; R. Masai, "Saigai to josei no jinken: Hanshin Awaji daishinsai no keiken ha ikasaretanoka (Disaster and the human rights of women: Was the experience of the Hanshin Awaji

The growth of international human rights law and mechanisms in the last thirty years has generated a greater volume of academic reflection on how these rights might be implemented in the context of immediate post-disaster and recovery resource allocation. This has culminated in, for example, calls for the disaggregation of data on disaster victims by sex, age, and other socioeconomic factors in order to create better disaster reduction strategies.[11] In addition, the notion of vulnerability is often delineated by traditional human rights categories, such as women, children, indigenous groups, among others, in both law[12] and academic discourse regarding disaster risk reduction and post-disaster resources strategies.[13] Another sign of the growing sophistication of human rights discourse can be seen in the consideration of issues that push at the boundaries of the theoretical scope of IHRL. The consideration of derogation of human rights in disaster situations,[14] discussion of the potential for IHRL to provide a path for victims of disaster to claim remedies and reparations under IHRL,[15] as well as consideration of the linkage between human rights, disasters and the responsibility to protect,[16] provide some examples of this sophistication.

A recent example of the application of human rights law in the context of disaster is the sixth report of the ILC's special rapporteur on the protection of persons in the event of disasters, which considers the application of human rights to disaster prevention, mitigation and preparedness.[17] This is a break from the traditional focus on disaster relief

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Earthquake used effectively?"), 667 (2012) *Buraku Kaihō* (Buraku Liberation) 74-81; S. Kan, "Mainoriti to higashi nihon daishinsai: Naijitsu towareru 'tabunka kyousei' – darenimo hitoshiku arasoi kakaru saigai (Minorities and the Great East Japan Earthquake: The inside reality of multicultural coexistence questioned – Disasters which assail all equally) ", 278 (2011) *Hyūman raitsu* (Human Rights) 14-18.

[11] M. Bizarri, "Protection of Vulnerable Groups in Natural and Man-Made Disasters" in A. De Guttry, M. Gestri, G. Venturini (eds.), *International Disaster Response law* (The Hague: Springer, 2012), 389.

[12] See e.g. on persons with disabilities, HRC, *Adequate housing as a component of the right to an adequate standard of living in the context of disaster settings*, A/HRC/RES/19/4 (2012), PP6; on children, UNGA, *Strengthening of international cooperation and coordination of efforts to study, mitigate and minimize the consequences of the Chernobyl disaster*, A/RES/46/150 (1991), PP4; on indigenous peoples, UNGA, *Humanitarian assistance for the rehabilitation of El Salvador and Guatemala*, A/RES/60/220 (2005), PP6; the notion of gender perspective in the Yokohama Strategy and the HFA, etc.

[13] See e.g. M. Bizarri, "Protection of Vulnerable Groups in Natural and Man-Made Disasters" in A. De Guttry, M. Gestri, G. Venturini (eds.), *International Disaster Response law* (The Hague: Springer, 2012), 381-414; R. Hardcastle & A. Chua, "Victims of Natural disasters: The Right to Receive Humanitarian Assistance" 1(4) (Winter 1997) *International Journal of Human Rights* 35-49; R. Hardcastle & A. Chua, "Humanitarian Assistance: Towards a Right of Access to Victims of Natural Disasters" 325 (1998) *International Review of the Red Cross* 589-609.

[14] See e.g. E. Sommario, "Derogation from Human Rights Treaties in Situations of Natural or Man-Made Disasters" in A. De Guttry, M.Gestri, G. Venturini (eds.), *International Disaster Response law* (The Hague: Springer, 2012), 323-352.

[15] See e.g. I. Nifosi-Sutton, "Contours of Disaster Victims' Rights to a Remedy and Reparation under International Human Rights Law" in A. De Guttry, M. Gestri, G. Venturini (eds.), *International Disaster Response Law* (The Hague: Springer, 2012), 415-440.

[16] See e.g. T.R. Saechao, "Natural Disasters and the Responsibility to Protect" 32 (2007) *Brooklyn Journal of International Law* 663; T. Jackson, "Bullets for Beans: Humanitarian Intervention and the Responsibility to Protect in Natural Disasters" 59 (2010) *Naval Law Review* 1-20

[17] E. Valencia-Ospina, *Sixth report on the protection of persons in the event of disasters*, A.CN.4/662 (2013),

and human rights. The rapporteur observes, in line with current dominant understandings of human rights that human rights involves the protection, fulfilment and respect of human rights, and that protection involves the State obligation to prevent violations.[18] This means that the protection of rights such as the rights to life, food, health, medical services, water supply, adequate housing, clothing and sanitation and the right not to be discriminated against, among others, extends to taking measures aimed at preventing and mitigating the effects of potential violations of the same.[19] The rapporteur argues that the positive interpretation of the protection of rights gives rise to an international obligation to prevent and mitigate disasters, based on the universality of human rights.[20] The rapporteur proposes a state duty to prevent disasters which stems from IHRL and environmental law. The duty requires states to 1) take measures to ensure that responsibilities and accountability mechanisms are defined and institutional arrangements; and, based on the HFA and Yokohama Strategy, 2) conduct multi-hazard risk assessments.[21]

6.3.2 The creation of disaster-specific human rights

A second approach to human rights law and disaster-related vulnerability is the extension of the human rights law-creating project to disaster. That is, advocacy for creating rights that address adverse human experiences of disaster directly. This approach to the relationship between disaster and IHRL is most often expressed as support for the creation of a right to humanitarian assistance, or humanitarian intervention.

The right to humanitarian intervention was passionately advocated for during the 1990s, perhaps as a result of the Gulf War. The inchoate nature of the right has meant that although the term "right to humanitarian assistance" was used by various authors, precisely what it meant to each differed. Some consider the right to be a horizontal state right of free access to victims, and others discuss it as an international right of disaster-affected people to receive international and domestic assistance. In terms of the former, generally speaking, a state right to humanitarian assistance is argued to be

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14-19. See also, W. Kälin, & C. Haenni Dale, "Disaster risk mitigation – why human rights matter" 31 (2008) *Forced Migration Review* 38-9 which outlines the European Court of Human Rights' recent decisions in the Öneryildiz case and the Budayeva case, and contends that the Court's interpretation of the right to life under the European Convention on Human Rights would be followed by other jurisdictions in similar cases. The work was cited by the ILC special rapporteur in his Sixth Report on the protection of persons in the event of disasters. The authors argue that the right to life and the state obligation to protect life requires that with regard to disasters, including climate change, states should enact laws dealing with disaster risk mitigation, inform the population about dangers and risks, evacuate potentially affected populations, conduct criminal investigations and prosecute those responsible for causing death by neglect or omission, among others.

[18] E. Valencia-Ospina, *Sixth report on the protection of persons in the event of disasters*, A.CN.4/662 (2013), para. 42.

[19] Id., para. 46.

[20] Ibid.

[21] Id., paras. 123-130, 162.

necessary when a government is unable or unwilling to address the adverse effects of a disaster and armed conflict that people in its territory suffer, and further, does not permit external humanitarian assistance to victims. The Myanmar government's reaction (or lack of reaction) to Cyclone Nargis in 2008 is one such example.[22] In such a situation, it is generally argued that the current legal regime is inadequate, and that the preservation of life requires that such a right, and accompanying legal infrastructure to ensure expeditious responses is necessary.[23] A resurgence of interest in the right to humanitarian intervention following the 2004 Indian Ocean tsunami can be identified in the literature from the mid 2000's. A particular characteristic of the academic discourse on the right to humanitarian intervention in this period is the examination of a potential linkage between a right to humanitarian assistance or intervention, human rights, and the doctrine of the responsibility to protect.[24] However, the ILC, in its work on the protection of persons in the event of disaster has judged that the responsibility to protect doctrine does not apply in disaster relief, otherwise known as humanitarian assistance.[25]

On the other hand, discussion of a human right of people to receive humanitarian assistance has been more limited, perhaps as a result of the difficulty in garnering sufficient political acceptance to establish such a right. Some theorists agree that there is a need for an international human right of individuals (and groups) to receive humanitarian assistance, but also acknowledge the as-yet inchoate nature of the right, and therefore, the indeterminacy regarding the fundamental issues of content, and the identification of rights-holders.[26] In arguing that a right to humanitarian assistance, or intervention, in the

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[22] For discussion of this issue, which does not reference human rights, but rather considers the connection between disasters, international criminal law and the responsibility to protect doctrine, see S. Ford, "Is the Failure to Respond Appropriately to a Natural Disaster a Crime Against Humanity? The Responsibility to Protect and Individual Criminal Responsibility in the Aftermath of Cyclone Nargis" 38 (2010) *Denver Journal of International Law and Policy* 227-276.

[23] See e.g. M. Bettati, "The Right of Humanitarian Intervention or the Right of Free Access to Victims?" 29 (1992) *Review of the International Commission of Jurists* 1-11; R. Hardcastle & A. Chua, "Victims of Natural disasters: The Right to Receive Humanitarian Assistance" 1(4) (Winter 1997) *International Journal of Human Rights* 35-49; R. Hardcastle & A. Chua, "Humanitarian Assistance: Towards a Right of Access to Victims of Natural Disasters" 325 (1998) *International Review of the Red Cross* 589-609.

[24] See e.g. T.R. Saechao, "Natural Disasters and the Responsibility to Protect" 32 (2007) *Brooklyn Journal of International Law* 663; Z. Coursen-Neff, "Preventive measures pertaining to unconventional threats to the peace such as natural and humanitarian disasters" 30 (1998) *New York University Journal of International Law and Politics* 645-707; T. Jackson, "Bullets for Beans: Humanitarian Intervention and the Responsibility to Protect in Natural Disasters" 59 (2010) *Naval Law Review* 1-20.

[25] The ILC's opinion is based upon the Secretary-General's view that the responsibility to protect falls outside the scope of the topic of protection of persons in the event of disaster, and applies only to the international crimes of genocide, war crimes, ethnic cleansing and crimes against humanity. See E. Valencia-Ospina, *Fifth report on the protection of persons in the event of disasters*, A/CN.4/652 (2012), para. 16.

[26] See e.g. A. Creta, "A (Human) Right to Humanitarian Assistance in Disaster Situations? Surveying Public International Law" in A. De Guttry, M. Gestri,G. Venturini (eds.), *International Disaster Response Law* (The Hague: Springer, 2012), 353-380; B. Jakovljevic, "The Right to Humanitarian Assistance: Legal Aspects" in 27(26) (1987) *International Review of the Red Cross* 469-484; P. Macalister-Smith, *International Humanitarian Assistance Relief Actions in International Law and Organization* (Dordrecht: Martinus Nijhoff, 1985),159-161.

stronger wording of some, should be established, scholars point to the idea that if humanitarian assistance arises from existing human rights obligations, or is a corollary of human rights such as the rights to life and health, among others, then the next step is to delineate the content of such a right. In this sense, although the rights-holders are not yet determined, it is argued that the right to humanitarian assistance must be a right of individuals, which generates a duty for states to protect the right.[27] However, others have delineated a concept of humanitarian assistance that establishes a conceptual framework for the content of the right, a strategy to garner political agreement on the topic, and a plan for its implementation.[28] Yet another writer has proposed that IDL should build its own catalogue of non-derogable rights in disaster, which would include the basic needs of human beings in terms of the economic, social and cultural rights, such food, water, health and the protection of vulnerable groups.[29]

In very recent years, proposals for the establishment of a human right to disaster mitigation and preparedness have appeared. The adoption of the human rights approach to disaster reduction issues is very new. For example, UNDRO, ostensibly the focal point of the UN system for disasters at the time, published a compendium of current knowledge on legal aspects of disaster in 1980,[30] and a manual for policy makers on mitigating natural disasters a decade later,[31] neither of which refer to a connection between IHRL and disaster. In contrast to the relative abundance of discussion on the topic of a human right to humanitarian assistance, little has been put forward about a universal human right to disaster risk mitigation, preparedness and prevention until very recently. One scholar considers that the right to life, elaborated under the UDHR, ICCPR and ICESCR, requires all people to have a right to disaster protection as a matter of principle, and that poverty of a state cannot be an excuse for state inaction regarding disaster reduction.[32] This may change, however, with the ILC special rapporteur's discussion of the topic in his sixth report, together with the jurisprudence of the European Court of Human Rights' found in

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[27] A. Creta, "A (Human) Right to Humanitarian Assistance in Disaster Situations? Surveying Public International Law" in A. De Guttry, M. Gestri, G. Venturini (eds.), *International Disaster Response Law* (The Hague: Springer, 2012), 367.

[28] See e.g. R. Hardcastle & A. Chua, "Victims of Natural disasters: The Right to Receive Humanitarian Assistance" 1(4) (Winter 1997) *International Journal of Human Rights* 35-49; R. Hardcastle & A. Chua, "Humanitarian Assistance: Towards a Right of Access to Victims of Natural Disasters" 325 (1998) *International Review of the Red Cross* 589-609.

[29] G. Venturini, "International Disaster Response Law in Relation to Other Branches of International Law" in A. De Guttry, M. Gestri, G. Venturini (eds.), *International Disaster Response Law* (The Hague: Springer, 2012), 50.

[30] UNDRO, *Disaster Prevention and Mitigation: A Compendium of Current Knowledge, Volume 9. Legal Aspects* (New York: United Nations, 1980).

[31] UNDRO, *Mitigating Natural Disasters: Phenomena, Effects and Options A Manual for Policy Makers*, UNDRO/MND/1990 Manual (New York: United Nations, 1991).

[32] G. Kent, "The human right to disaster mitigation and relief" 3 (2001) *Environmental Hazards* 137-8.

Budayeva and *Öneryildiz*.[33]

6.4 Approaches to human rights and disaster in practice

It is clear recent years have seen an increase in attention to human rights and disaster in academic discourse. This trend is echoed in the practice of human rights bodies, which despite certain textual limitations, have begun to address the topic more widely. As theorists writing have observed, the whole corpus of human rights potentially applies to various facets of disaster. However, the only universal human rights treaty that explicitly refers to disaster is the Convention on the Rights of Persons with Disabilities, which provides that states parties must, in accordance with their obligations under international human rights law, take all necessary measures to ensure the protection and safety of persons with disabilities in emergencies including natural disasters.[34] One of the rights that is stated to have the most importance in disaster contexts is the right to life (ICCPR, art.6), which has been interpreted by the Committee on Human Rights to include positive measures for its fulfilment.[35] Other rights that might be impacted by disaster are the rights to liberty, food and water, and the right to health. These rights are created, monitored and enforced through various mechanisms that are distinct to the body of human rights law, and these mechanisms, which take into account the participation of the people affected to varying degrees, are distinct to IHRL. Individuals and groups may, in very limited ways, access IHRL's law-making processes in the Human Rights Council (HRC), or request relevant human rights bodies to make judgments on whether human rights violations have occurred through various monitoring mechanisms. Human rights bodies may also authoritatively interpret IHRL without the input of people (for example, in General Comments). How human rights bodies in the UN have understood and addressed the relationship between disaster and marginalisation will be considered below. The examination of the disaster and marginalisation in IHRL practice proceeds on the discussion of IHRL mechanisms that people cannot use, to ones that they can. The creation and interpretation of law with people is the main focus of discussion, but the capacity of human rights bodies to create authoritative interpretations is discussed briefly in terms of its effect on the development of a more participatory IHRL.

6.4.1 Disaster in human rights law-making and law-interpretation processes

The UN human rights bodies may create authoritative interpretations of various facets of human rights law. For example, The HRC is engaged in the process of the promotion of

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[33] *Budayeva v Russia*, 15339/02, 21166.01, 20058/02, 11673/02, 15343/02 (Judgment of 2008); *Öneryildiz v Turkey*, 48939/99 (Judgment of 2004).

[34] *Convention on the Rights of Persons with Disabilities* (2008), article 11. However, the Committee on the Rights of Persons with Disabilities (CRPD), which was established only in 2009, has not yet dealt with this particular issue.

[35] United Nations, Human Rights Committee, *General Comment 6: The Right to Life* (1982).

human rights, and one way in which it carries out this mandate is the creation of soft law norms. Treaty bodies may issue General Comments,[36] which provide authoritative interpretations on general treaty obligations. Public participation in the creation of these documents is significantly limited, but they nevertheless play an important role in directing the development of law, as the resolutions of the HRC, and interpretive guides of the treaty bodies may impact on whether and how marginalisation and disaster is construed in the law.

6.4.1.1 Resolutions of the HRC

The HRC is a body established under the UN Charter for international cooperation to ensure respect for human rights.[37] One of its primary activities is the adoption of resolution for the promotion of human rights, and NGOs with the appropriate qualifications may participate in this law-making process, although representatives do not have any power to vote in the final resolution adoption process. Participation of NGOs takes the form of formal interventions in plenary meetings, and informal lobbying of delegations and the undertaking of awareness-raising activities during Council sessions. People who are potentially or actually adversely affected by disasters might use this forum, through representation by an NGO. However, the benefits of the adoption of a resolution might not be tangible on the ground, although resolutions are significant for the progressive development of law and theory.

In its short history, the HRC has adopted two resolutions on disaster. One is a procedural resolution which requests the HRC's Advisory Committee to create a report on best practices and challenges in protecting human rights through the provision of humanitarian assistance in post-disaster and post-conflict situations, and present the same at the HRC's 26th session in 2014.[38]

The other resolution considers adequate housing as a component of the right to an adequate standard of living in disaster settings.[39] This Resolution voices the Council's concern that deterioration in the general housing situation "disproportionately affects persons living in poverty, low-income earners, women, children, persons belonging to

[36] In the case of CERD and CEDAW, these are called "General Recommendations"

[37] The HRC replaced the UN Human Rights Commission in 2006 under UNGA Resolution 60/251. It is established under articles 1 (one of the purposes of the UN is ensuring respect for human rights), 55 and 56 (Member states undertake to carry out joint and several action to ensure respect for and observance of human rights and fundamental freedoms). See *Charter of the United Nations* (1945). It is mandated to promote universal respect for the protection of human rights and fundamental freedoms, and to address situations of violatons of human rights, including gross and systematic violations and to make recommendations on them.

[38] HRC, *Promotion and protection of human rights in post-disaster and post-conflict situations*, HRC/RES/22/16 (2013).

[39] HRC/RES/19/4 (2012).

minorities and indigenous peoples, migrants, internally displaced persons, tenants, the elderly and persons with disabilities, and increases the need for them to be supported against extreme natural disaster".[40] The Resolution recognises that vulnerable persons are disproportionately susceptibly to displacement, evictions without adequate remedies and exclusion from meaningful consultation and participation during disaster risk reduction, prevention and preparedness, as well as in the phases of disaster response and recovery, which may affect the enjoyment of the right to adequate housing.[41] The resolution also urged states in to recognise that short-term humanitarian response and early recovery phases are based on needs, and to respect protect and fulfil the right to adequate housing without discrimination of any kind, and in doing so, among other things:

- Give priority to the realisation of the right for the most disadvantaged and vulnerable by respecting the principles of non-discrimination and gender equality;[42]
- Aim to ensure access to ensure information and meaningful consultation and participation of affected persons and communities in planning and implementing shelter and housing assistance,[43]
- Ensure that tenure rights of people without individual or formally registered property ownership recognised in restitution, compensation, reconstruction and recovery programmes, and considering the most vulnerable people by taking measures to support repossession of or alternative access to housing or land;[44]
- Ensure that measures are taken to make alternative shelter available to those who are unable to provide for themselves;[45] and
- Make remedies, available, including legal advice and legal aid, and guarantee a fair hearing to all persons threatened with, or subject to, eviction.[46]

Drafting records of this resolution are not accessible, as negotiations were carried out in informal and closed meetings. The resolution was adopted by consensus, however, which can be seen as universal agreement on the topic. From the point of view of marginalisation the significance of this resolution lies in consensus on the notion of information sharing and consultation with affected persons and communities for the planning of re-building and housing assistance. The resolution may, in conjunction with other similar instruments, create an awareness of the idea of vulnerability in disaster, and how it should be addressed in IHRL.

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[40] Id., preambular para. 6.
[41] Id., preambular para. 9.
[42] HRC, *Adequate housing as a component of the right to an adequate standard of living in the context of disaster settings*, A/HRC/RES/19/4 (2012), Operative para. 4(c).
[43] Id., Operative para. 4(e).
[44] Id., Operative para.4(f).
[45] Id., Operative para.4(i)
[46] Id., Operative para.4(j)

It should be noted that while the resolution is a development that acknowledges the importance of the thoughts and needs of people on the ground in disaster-related processes, and in particular, "vulnerable people", several fundamental concepts referred to in it are indeterminate. One of these is the idea of vulnerability, and another is the concept of needs. How these are determined, and who determines them, are issues that should be given consideration if this soft law source is to become an instrument that avoids legitimating the re-creation of the status quo in post-disaster settings. The instrument does not provide any suggestions for ways that this can be carried out, although it takes the step of recognising the importance of local conditions and knowledge in the implementation of global rights.

The general rules placed on participation in the HRC leads to the conclusion that it suffers from the same disjuncture that IDL rules do; namely, it is unlikely that individuals or disaster-affected communities participated themselves in the creation of this instrument. Their participation could only be ensured through the conduit of an NGO that had the appropriate qualifications to participate in HRC sessions, and agreed to take up their cause.

6.4.1.2 General Comments of treaty bodies

Human rights treaty bodies carry out the functions of interpreting and clarifying the law. Thus, for example, the Committee on Economic, Social and Cultural Rights (CESCR), in its General Comment 12, established that the right to adequate food could not be derogated from, even in cases of natural disaster. [47] General Comment 12 also affirmed that the right to adequate food is inseparable from social justice and requires the adoption of economic, environmental and social policies at the national and international levels.[48] CESCR thereby linked systemic disasters and discrimination with national and international law-making.

6.4.2 Human rights monitoring processes and disaster

Several monitoring and complaints processes have been established under the HRC, as well as the human rights treaty bodies. The mechanisms that may be used by subalterns, if they are able to utilise the language of international law, are human rights treaty body mechanisms such as periodic state reports, inquiries, and individual complaints mechanisms. They may also be able to use the HRC's special procedures, the UPR and the HRC's complaint procedure. How these have been used to address disaster-related

[47] CESCR, *General Comment 12: The Right to Adequate Food*, E/C.12/1999/5 (1999)
[48] Id., para. 4.

issues is discussed infra.

6.4.2.1 Human rights treaty bodies – periodic state reports

There are three types of procedures that those who wish to allege that they have suffered rights violations may utilise under the human rights treaties. These are periodic state reports, inquiries, and individual complaints.

All treaties establish periodic reporting mechanisms, while only the Human Rights Committee, Committee on the Elimination of Discrimination Against Women (CEDAW), Committee against Torture (CAT), Committee on the Elimination of Racial Discrimination (CERD), Committee on the Rights of Persons with Disabilities (CRPD), Committee on Enforced Disappearances (CED), and the Committee on Economic, Social and Cultural Rights (CESCR) establish the individual communications process.[49] The individual communications mechanisms of the Convention on Migrant Workers (CMW) and the Convention on the Rights of the Child (CRC) have not yet come into force. Another mechanism which may be used by people and marginalised people is the inquiry procedure that the CAT (art. 20), CEDAW (Optional Protocol to CEDAW, art. 8), CRPD (Optional protocol to CRPD, art. 6), CESCR (Optional Protocol to ICESCR, art. 11), and the CRC (Optional protocol to CRC, art. 13)[50]. The inquiry process allows CAT (art. 20 Convention Against Torture), CEDAW (Optional Protocol to CEDAW, art. 8), CRPD (Optional Protocol to CRPD, art. 6), CED (Convention on Enforced Disappearances, art. 33), CESCR (Optional Protocol to CESCR, art. 11(8)) and CRC (Optional Protocol to CRC, art. 13)[51] to initiate inquiries in a state party if the Committees receive information that a State Party that has recognised the relevant committee's competence, is committing serious, grave or systematic violations. To date, neither the individual communications process, nor the inquiries process has been utilised to consider human rights in the context of disaster. Thus, only periodic state reports and their consideration of disaster and marginalisation will be discussed below.

State parties to treaties undertake to report regularly on their implementation of the relevant treaty at the domestic level. State reports are prepared at the national level, and once they are submitted to a treaty, to which the relevant treaty body will prepare "Concluding Observations" in reply. Despite a lack of explicit legal authorisation to do so, most treaty bodies have instituted formal mechanisms for NGO consultation, and as a

[49] Furthermore, treaty bodies may only consider individual communications if States Parties have agreed to the relevant instruments. In the case of the ICCPR, for example, this would mean the ratification of the ICCPR's First Protocol.

[50] This Optional Protocol was not in force at the time of writing.

[51] This Optional Protocol was not in force at the time of writing.

result, NGOs may submit "alternative" or "parallel" reports to treaty bodies. It is in this treaty body-NGO interaction that individuals or groups may participate in the interpretation of international law, not least by ensuring that their stories and suffering are heard on an international stage.

Only in recent years have treaty bodies begun to address the concept of "disaster", as opposed to earthquakes, floods, nuclear accidents, etc. While only a minority of treaty bodies have referred explicitly to the concept of disaster, they have generally taken one of two approaches: disasters are referred to in acknowledgement that their adverse effects have also impinged upon the ability of the state to implement the relevant convention,[52] or have been linked to systemic problems in the implementation of the convention. The latter approach can be identified only in very recent years. This trend accords with Fidler's observation that views of disaster have changed: disaster, previously a random and unpredictable event, is increasingly viewed as being intertwined with development and other systemic state interests.[53] Thus for example, the Committee on the Elimination of Discrimination Against Women has begun to focus not only on the effects of disaster, but has begun to refer to national planning for the mitigation, preparedness and prevention aspects of disaster. CEDAW has discussed the need for this approach by linking these issues to the systemic disadvantage suffered by rural women.[54]

Similarly, CESCR, in its 2013 concluding observations on Japan, drew a similar link between the specific forms of disaster-related suffering and vulnerability, voicing its concern that the specific needs of disadvantaged and vulnerable groups, such as older persons, persons with disabilities, and women and children, were not sufficiently met during the evacuation and in the rehabilitation and reconstruction efforts.[55] It requested Japan to provide disaggregated data on the management of the Great East Japan Earthquake, and information about victims' rights during evacuation and in rehabilitation and reconstruction works.[56]

The Human Rights Committee, in considering disaster-related problems following the

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[52] CRC, *Concluding Observations on the Sudan*, CRC/C/15/Add.10 (1993), para. 8; *Concluding Observations on Bangladesh*, CRC/C/15/Add.39 (1997), para. 10; *Concluding Observations on Ukraine*, CRRC/C/15/Add.191 (2002), para 6; *Concluding Observations on Grenada*, CRC/C/GRD/CO/2 (2010), para 3; *Concluding Observations on Guatemala*, CRC/C/GTM/CO/3-4 (2010), para. 10.

[53] D. Fidler, "Disaster and Relief Governance After the Indian Ocean Tsunami: What Role for International Law?" 6 (2005) Melbourne Journal of International Law 458, 471.

[54] CEDAW, *Concluding Observations on Indonesia*, CEDAW/C/IDN/CO/5 (2007), paras 38-9; *Concluding Observations on Tuvalu,* CEDAW/C/TUV/CO/2 (2009), paras. 55-6; *Concluding Observations on Grenada,* CEDAW/C/GRD/CO/1-5 (2012), paras. 35-6; *Concluding Observations on Jamaica,* CEDAW/C/JAM/CO6-7 (2012), paras. 31-2.

[55] CESCR, *Concluding Observations on Japan*, E/C.12/JPN/CO/3 (2013), para 24.

[56] Ibid.

2004 Indian Ocean Tsunami in Thailand, noted that migrant workers were disproportionately affected by the tsunami, and surviving workers were not provided with adequate humanitarian assistance as a result of their lack of legal status.[57] In 2006, in connection with race, the Human Rights Committee noted that the rights to life and to equal treatment before the law were violated in the case of poor African-Americans, who became more vulnerable under rescue and evacuation, and reconstruction plans after Hurricane Katrina. The Committee directed the American government to keep in mind the right to life and prohibition of discrimination in disaster response, prevention and mitigation measures, in particular in terms of the rights to health and education in reconstruction plans.[58]

6.4.2.2 The HRC's special procedures

Special procedures mechanisms were developed under the Human Rights Commission, and the mechanisms continue to be used today under the HRC. These mechanisms consist of Independent Experts who address either country-specific situations or thematic issues by engaging in country visits and fact-finding missions, and reporting on their findings to the HRC and UNGA. Most mandate holders examine complaints from individuals, groups, or other persons. Some mandate holders conduct research, thereby developing authoritative opinions and standards, send communications to states in order to bring alleged violations or abuses to the attention of states, among other activities.[59]

In terms of standard-setting, the special rapporteur on extreme poverty and human rights submitted a draft of guiding principles on her mandate to the HRC in 2012. The draft Guiding Principles are premised on the idea, similarly to the moral foundations of disaster relief that were used in the time of Vattel and the IRU, that eradicating extreme poverty is a moral duty and a legal obligation.[60] The special rapporteur refers to disasters in elaborating the rights to adequate food and nutrition, observing that marginalised people have a limited capacity to access productive resources, among others, and that therefore states should put in place early-warning mechanisms to prevent or mitigate natural or man-made disasters for people living in poverty in remote and marginalised areas.[61] Further, in terms of the right to adequate housing, the rapporteur noted that disproportionate exposure to natural disasters or environmental hazards threaten the lives

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[57] Human Rights Committee, *Concluding Observations on Thailand,* CCPR/CO/84/THA (2005), para 23.
[58] Human Rights Committee, *Concluding Observations on the United States of America,* CCPR/C/US/CO/3/Rev.1 (2006), para 26.
[59] See OHCHR, "Special Procedures of the Human Rights Council" <www.ohchr.org/EN/HRBodies/SP/Pages/Welcomepage.aspx>
[60] Special Rapporteur on extreme poverty and human rights, *Final draft of the guiding principles on extreme poverty and human rights*, A/HRC/21/39 (2012), para. 1.
[61] Id., paras. 75-6.

and the health of those in poverty, and recommended that states design and implement disaster risk reduction policies and programmes in relation to housing, taking into consideration the rights of those living poverty.[62]

Disasters, as they have touched on thematic or country mandates, have been reported on as incidental issues by mandate holders.[63] A recent example of reporting that centralises disaster is the work of the special rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. The rapporteur conducted a fact-finding mission in Japan in 2012, and reported his findings to the HRC in 2013. The rapporteur, in discussing the adequacy of Japan's protection of the right to health after the Fukushima Daiichi nuclear accident, considered specifically the situation of the right to health of groups such as children and women. Further, the participation of vulnerable groups and affected communities was discussed with regard to the right to health. Although the idea of vulnerable groups was not elaborated by the rapporteur, examples of groups who were more susceptible to ill effects of disasters were older persons, children, women and persons with disabilities, and the importance of participation of the population with regard to national health frameworks were emphasised.[64] The rapporteur ultimately recommended that the Japanese government ensure effective community participation, particularly of vulnerable groups, in relation to decision-making processes related to nuclear energy policy.[65]

Other examples of this approach can be found in the reports of the special rapporteur on adequate housing as a component of the right to an adequate standard of living, who observed in 2010 that the Maldives faced climate-change related problems, such as the more frequent visitation of various natural hazards such as rainstorms and hurricanes. The rapporteur recommended that post-disaster reconstruction and disaster prevention plans be designed using a human rights based-approach.[66]

6.4.2.3 Universal Periodic Review

The Universal Periodic Review (UPR) was established under UNGA resolution 60/251 in 2006. The UPR was created as a form of "peer review" of all UN Member States action in

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[62] Id., paras. 79-80.

[63] See e.g., Special rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, *Report of Special rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, on her mission to the United States of America*, A/HRC/13/20/Add.4 (2010), para 30.

[64] HRC, *Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Anand Grover*, A/HRC/23/41/Add.3 (2013), paras. 70, 72, 73-4

[65] Id., para 82.

[66] Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, *Mission to Maldives*, A/HRC/13/20/Add.3 (2010), para.71.

the implementation of human rights. In this process, every member state is reviewed once every four years. The review is conducted by a UPR Working Group which consists of all members of the HRC, and is based on three different reports: a report from the country under review, a compilation of UN information, and a report compiled by relevant stakeholders. The review is an interactive dialogue between the State and UPR Working Group, in which HRC members and other observers may participate. After this process, a final report is submitted to the HRC. People may use the UPR, albeit in a very limited way, to communicate their experiences of suffering at the international level through NGOs. NGOs may submit information to the relevant stakeholders report, as well as making statements in the HRC sessions in which the outcomes of the state reviews are considered.[67]

Disasters have been considered in some UPR reports. The abbreviated nature of the reports, as well as the speed with which the process itself must be conducted,[68] results in a process in which interconnections and influences between reports of the stakeholders, the UPR reports and the recommendations by states are easily obscured.

Six UPR outcome documents that deal with the concept of disaster have been adopted since the UPR's commencement. The countries in which recommendations were made regarding disasters are Bangladesh,[69] Estonia,[70] Maldives,[71] Nauru,[72] Sri Lanka,[73] and Viet Nam.[74] Of these, the most detailed in terms of their interpretation of the connection between human rights and disasters, are those of Nauru and Maldives, and are an indication of the complicated nature of interactions between global, national and local entities. For example, the outcome report of the Maldives shows that a focal point of the UPR dialogue was the issue of the government of Maldives' work to address climate change, and climate change-related natural disasters.[75] Recommendations were made to the Maldives to take measures to take a human-rights based approach to post-disaster

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[67] OHCHR, "Basic facts about the UPR", <http://www.ohchr.org/en/hrbodies/upr/pages/BasicFacts.aspx>.
[68] UPR dialogues with the state under review, the UPR Working Group, other HRC member states and observer states, are conducted over three hours, precluding in-depth discussion of issues.
[69] HRC, UPR Working Group, *Report of the Working Group on the Universal Periodic Review: Bangladesh*, A/HRC/11/18 (2009).
[70] HRC, UPR Working Group, *Report of the Working Group on the Universal Periodic Review: Estonia*, A/HRC/17/17 (2011).
[71] HRC, UPR Working Group, *Report of the Working Group on the Universal Periodic Review: Maldives*, A/HRC/16/7 (2011).
[72] HRC, UPR Working Group, *Report of the Working Group on the Universal Periodic Review: Nauru*, A/HRC/17/3 (2011).
[73] HRC, UPR Working Group, *Report of the Working Group on the Universal Periodic Review: Sri Lanka*, A/HRC/8/46 (2008).
[74] HRC, UPR Working Group, *Report of the Working Group on the Universal Periodic Review: Viet Nam*, A/HRC/12/11 (2009).
[75] See e.g., paras. 41-45,50, 58,63, 85, 95, 99 of HRC, UPR Working Group, *Report of the Working Group on the Universal Periodic Review: Maldives*, A/HRC/16/7 (2011).

reconstruction and adaptation to climate change, through consultation with affected communities and with particular attention to vulnerable groups such as women, children and persons with disabilities.[76] In contrast to this emphasis in the inter-state dialogue, the stakeholder's report mentions climate change only to underscore that it is one of the gravest threats to the Maldives, and that although the government of the Maldives has the primary responsibility for the protection of human rights of people in the Maldives, those countries who have historically been responsible for the greatest proportion of greenhouse emissions, as well as the international community, have a responsibility to prevent climate change from undermining human rights in the Maldives.[77]

Nauru's outcome report, similarly to that of the Maldives, demonstrates a similar international concern with climate change.[78] The UPR outcome report contains recommendations for the adoption of a human rights-based approach for addressing climate change challenges and disaster mitigation, among others.[79] In contrast, the stakeholder report did not refer to disasters explicitly, but noted that climate change measures should be undertaken from a human rights approach. The stakeholder report observed that climate change was not solely a responsibility of the Nauru government, and that climate change would affect all aspects of life for people in Nauru. This included its affect on the fishing industries, which would affect the right to be free from hunger, the right to an adequate standard of living and the right to culture and traditional knowledge.[80]

These examples show that the UPR is a mechanism that can introduce concerns from below to the international level. However, the state-driven nature of the process means that the UPR dialogue at the horizontal state level isolates the government's human rights responsibilities to its territorial jurisdiction, and fails to tackle broader, transnational issues of justice and cooperation for the protection of human rights.

6.5 Analysis and critique

The significance and potential utility of IHRL for addressing potential and actual disaster-related suffering in political, academic, and quasi-legal ways is indicated in its use in forums like the HRC, the General Comments and Concluding Observations of

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[76] Id., 100.124

[77] HRC, UPR Working Group, *Summary prepared by the OHCHR in accordance with paragraph 15(c) of the annex to HRC resolution 5/1*, A/HRC/WG.6/9/MDV/3 (2010), paras. 42-3.

[78] HRC , UPR Working Group, *Report of the Working Group on the Universal Periodic Review: Nauru*, A/HRC/17/3 (2011), paras. 29 (Algeria), 30 (Cuba), 31 (China),49 (United Kingdom), 60 (Chile), 68 (Mauritius).

[79] Id., paras. 79.80 (Chile), 79.84 (Canada), 79.86 (UK).

[80] HRC, UPR Working Group, *Summary prepared by the OHCHR in accordance with paragraph 15(c) of the annex to HRC resolution 5/1*, A/HRC/Wg.6/NRU/3 (2011),paras 37-8.

treaty bodies, as well as general academic discourse. All of these strands are reinforced by the others: political and academic interest provides impetus for legal examination, which in turn shapes academic and political discourse, and so on in perpetuity. Even so, the gathering momentum created by the interaction of the political, legal and academic spheres engaged in human rights, as well as the appeal to IHRL from victims below, means that IHRL, by virtue of its placement of the individual (and in some cases collectives of groups) as a subject of international law, may play a role in addressing the state-centric nature of IDL. It may also be used, in its political, academic and legal aspects to address the problem of the limited descriptions of disaster-related vulnerability, and therefore, various forms of disaster-related marginalisation. IHRL, by virtue of its existence, partially addresses the lacuna that can be found in IDL with regard to representation of agency of people who have been affected by disaster. It provides a common language for elites and the marginalised to speak about disaster in, various systems have been established in which the marginalised can bring their concerns to the attention of the elites, and thirdly it has a limited capacity to provide redress.[81]

It is, however, an unpredictable and slow-moving system that requires the creation of momentum through political lobbying, and a detailed knowledge of how the whole system works. In addition, a certain amount of insider knowledge and familiarity with treaty body practices is required for effective use of the treaty body mechanisms. More fundamentally, the use of IHRL in both theory and practice has implicitly relied on the assumption that by achieving the protection, respect and fulfilment of IHRL justice is assured. Concannon and Lindstrom's argument provides a neat example:

> "The recent devastation suffered from hurricanes and tropical storms is not a result of Haiti's location...Rather it is a result of human-made rights violations that make Haiti disproportionately vulnerable to flooding and damage resulting therefrom. Deforestation has over time reduced Haiti's ability to withstand heavy rains, making it extremely vulnerable to flood. Deforestation is, in turn, a result of the inability of Haiti's poor to enforce basic economic and social rights...
> The failure of the Haitian government to protect even the most fundamental rights necessary for survival is thus directly connected with deforestation to meet economic needs and the resulting vulnerability to flooding...

[81] However, in the context of disaster, the contours and content of the right to redress for disaster-related vulnerability, especially in terms of the concept of disaster discussed in this research, are unclear. C.f., Nifosi-Sutton's discussion of the human rights to reparation and remedy under international law for violations of human rights. The subjects of Nifosi-Sutton's discussion range from government negligence, omission, or inadequate implementation of domestic law in terms of disaster prevention or early warning, procedural fairness in justice systems post-disaster, the right to a remedy following violations of rights caused by the state's post-disaster operations, etc. "Contours of Disaster Victims' Rights to a Remedy and Reparation under International Human Rights Law" in A. De Guttry, M. Gestri, G. Venturini (eds.) *International Disaster Response Law* (The Hague: Springer, 2012), 415-440.

> Violations of the right to food are not the responsibility of the Haitian government alone, however...International trade policies have thus contributed to Haiti's vulnerability, in violation of counties' extranational obligations to respect, protect, and facilitate the right to food. (citations omitted)"[82]

The assumption that can be drawn from these claims is that if governments would or could just guarantee economic, social and cultural rights, then disasters would not occur. However, what this plea does not make explicit are the linkages between the achievement of rights for whom, and by whom, and what kind of political and economic choices regarding the distribution of assets that are required. Who enforces these rights? An individual farmer who fights for survival in the everyday flooding, and therefore has no time to pursue justice, nor study the language of the law to do so? Should they be "enforced" by an individual, a group of farmers, or farmers in the whole of Haiti? Who carries out the obligations sought to be enforced by the farmer/s? The crippled state of Haiti? Or the army of NGOs, IGOs etc. providing aid, companies who might be responsible for the disaster in the first place? How is it decided that the rights of some flood victims are privileged over the rights of other flood victims? These ambiguities in the assumption that IHRL is a panacea for disaster show that the notion of the person or persons whose rights have been violated is not precise enough to answer the hard questions about what vulnerability and disaster means for the allocation of legal, social, and economic capital using law.[83]

The instability of the assumption that IHRL equates to justice profoundly influences how we use IHRL with regard to disaster. IHRL's importance for potentially and actually disaster affected people does not simply lie in its capacity to express human rights violations regarding disaster relief, and disaster prevention, mitigation and preparedness. Rather, its true capacity lies in its function as an instrument for amplifying voices from below, and rendering their speech comprehensible to decision-makers above is what may give it significance for marginalised people. Disaster, a product of social negotiation, requires stakeholder input in order to correct the bias in legal and policy frameworks of elites to influence decisions regarding the definition of disaster, and therefore the identification of potential and actual victims and measures necessary to address them. Put another way, the true measure of IHRL's potential to address IDL's omissions regarding marginalisation lies in testing IHRL's capacity to give expression to disaster-related

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[82] B. Concannon (Jr.) & B. Lindstrom, "Cheaper, Better, Longer-lasting: A Rights-based Approach to Disaster Response in Haiti" 25 (2011) *Emory International Law Review* 1145, 1161-4.

[83] This is based on David Kennedy's argument regarding the replacement of political and economic power with law in modern day governance. D. Kennedy, *The Dark Sides of Virtue* (Princeton: Princeton University Press, 2004), Chapter 5.

vulnerability in terms of its causes in underlying economic, social, and political inequalities.

From the perspective of IHRL's use on the ground, the turn to IHRL to remedy IDL's lacunae can be an inappropriate vehicle for pursuing justice in the context of disaster for the following reasons. Firstly, IHRL may perform no appreciable function in the situations of marginalised people, thereby circumscribing its potential utility. This is a result of IHRL's structure, which rests on the assumptions that individuals are able to use the law, and that the state in which the violation occurs is the primary obligation bearer. This structure faces difficulty where there are situations of extreme marginalisation, the state is unable to perform its functions as an IHRL duty-bearer, where the state has lost the confidence of the people, and where the causes and solutions of disaster are transboundary in nature. Secondly, IHRL's utility in disaster for marginalised people is circumscribed because its links with development result in situations where economic, political and social violence incurred under the rubric of development are excluded from IHRL's scope. Thirdly, underlying social inequalities cannot be expressed because of limitations inherent in the architecture of the various human rights mechanisms.

6.5.1 IHRL's irrelevance to disaster-related marginalisation and the primacy of the state-individual relationship

IHRL's positioning of the state as a duty bearer in the context of the use of IHRL means that in certain situations, it cannot express the underlying inequalities that give rise to vulnerability because they simply are irrelevant to the situation of marginalised people in their relationship to the state. Firstly, IHRL lacks appreciable function in cases of extreme marginalisation. Secondly, the state may be unable to carry out its duties under IHRL, particularly in cases where a stable government does not exist; thirdly, the use of IHRL runs into problems where the causes and solutions to disasters have a transboundary nature; and fourthly, people may not trust the state and therefore be unwilling to utilise IHRL.

With regard to the first problem, when powerful interests in development and profit collide with situations of extreme economic, social and political marginalisation, the practical effect of rights and their relation to justice is limited, or non-existent. An example can be found in the "everyday disasters" that Haiti's poor face daily: acute deforestation, itself a result of the dependence of Haiti's poor on wood and charcoal for the survival needs given the high costs of oil and other fuel sources, has led to the creation of an environment in which even slight rain causes flooding.[84] Rights in this

[84] B. Concannon (Jr.) & B. Lindstrom, "Cheaper, Better, Longer-lasting: A Rights-based Approach to

situation, given the extreme poverty of the region coupled with the constant barrage of disaster, are unusable by people whose survival is threatened in immediate ways.

Examples of the irrelevance of rights also abound in the context of technological disasters, or creeping technological disasters, of which the 1984 Bhopal disaster is just one. The larger context in which Bhopal's gas leak disaster arose was India's desire to achieve independence from food imports, which required the manufacture of pesticides, and which in turn, led India to invite Union Carbide to establish a plant in Bhopal. Bhopal, the capital of Madhya Pradesh after India gained independence in 1947, was historically an underdeveloped area.[85] The Union Carbide plant was located in one of the poorest areas of Bhopal; many of the inhabitants of the areas close to the plant were Muslims and low-caste Hindus.[86] Many of the people in the areas that the gas covered were not in optimal states of health to begin with, owing to malnourishment and previous exposure to fumes from the plant.[87] Prior to, and following the gas leak, there was a lack of transparency regarding the properties of MIC gas, a lack of governmental power or will to protect the right to know about the effects of the plant, and a lack of recognition regarding the right to participate in decision-making regarding the plant.[88] As Baxi has observed, "Bhopal is a testimony to the fact that there is no functional equivalent of the right to information, or governance transparency worth mentioning", as it took place in the larger context of development which led India to invite the Union Carbide company to establish the hazardous manufacture in Bhopal in the first place.[89] Furthermore, Bhopal underscores the inadequacies and limitations of rights talk in expressing the manifold sufferings of people affected directly and indirectly. Baxi has opined that the movement for justice "remains best provided ... by the vivid discourse of justice in/of the flesh – the experience of lived individual bodies, and not of any abstract or species bodies."[90] That

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Disaster Response in Haiti" 25 (2011) *Emory International Law Review* 1145, 1161; Global Network of Civil Society Organisations for Disaster Reduction, *Views from the Frontline: Beyond 2015 Recommendations for a post-2015 disaster risk reduction framework to strengthen the resilience of communities to all hazards* (2013) <http://www.globalnetwork-dr.org/images/documents/VFL2013/vfl2013%20reports/GNFULL%2013%20ENGLISH%20FINAL.pdf>.

[85] P. Shrivastana, P., "5. Long-term Recovery from the Bhopal Crisis" in Mitchell, J.K. (ed.), *The Long Road to Recovery: Community Responses to Industrial Disaster* (Tokyo: UNU Press, 1996). <archive.unu.edu/unupress/unupbooks/uu21le/uu21le00.htm#Contents>.

[86] S. Jasanoff, "Bhopal's Trials of Knowledge and Ignorance" 42 (2007-2008) *New England Law Review* 679, 680.

[87] Ibid.

[88] See e.g. Special rapporteur on the adverse effects of toxic dumping, Okechukwu Ibeanu, who considered that it is important for individuals, communities, and neighbouring countries to have information regarding hazardous materials and conditions at industrial facilities located in their vicinity in order to undertake disaster risk reduction and preparedness, if there is a risk of large scale accidents such as in the case of Bhopal. O. Ibeanu, *Special rapporteur on the adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights*, A/HRC/7/21 (2008), para. 37.

[89] Id., 14.

[90] U. Baxi, "Writing about impunity and the environment: The 'Silver Jubilee' of the Bhopal Catastrophe"

is, the "talk" of law may not – indeed, in some cases, cannot – create a state of justice that will be experienced by the bodies of victims permanently disabled by disaster.

An example of the second problem, the lack of adequately functioning state systems, can be found even where there is a robust human rights culture, such as in the case of Öneryildiz v Turkey in the jurisdiction of the European Court of Human Rights.[91] In this case, even though the applicants ostensibly had human rights, they could not exercise, them, and further, even when their human rights were vindicated by the courts, they faced no appreciable difference in situation. In Öneryildiz, a household-refuse tip, which was used by four district councils, had been in operation in a slum area since the 1970s and ultimately came under the jurisdiction of the national authority. It had been brought to the attention of the district councils in 1991 that there was a risk of methane explosions at the tip. Steps to undertake litigation on the matter were taken, but before the cases appeared in the courts, an explosion occurred at the tip in April 1993 and the refuse erupting from the pile of waste engulfed the slum dwellings, built without authorisation, below. As a result, 39 people died, among which were nine of the applicant's close relatives. In 1996, two mayors of were given prison sentences and fines for neglect of their duties. Their sentences were subsequently commuted to fines, the enforcements of which were suspended. The applicant brought an action for damages in a higher Turkish Court (the Istanbul Administrative Court), and was awarded damages, which were not paid. The European Court of human rights noted that the regulatory framework in Turkey had proved defective in that the tip had been allowed to open and operate without a coherent supervisory system. This was exacerbated by Turkish authorities' failure to provide the applicant with information about the risks of living in the slums. However, the Court acknowledged that the provision of such information would have been of little use to the applicant in any case, because the Turkish government had failed to undertake more practical measures to avoid risks to the slum inhabitant's lives. This case demonstrates that where marginalisation exists, marginalised people's use of IHRL is circumscribed by knowledge, as well as passivity by governments with regard to traditionally excluded groups.

Haiti is an example of the second and third problems in using IHRL to articulate underlying marginalisation in relation to disaster. The earthquake that struck Haiti in January 2010 destroyed much of Haiti's central infrastructure. Prior to this, the Haitian government had been disempowered by international relations under the debt,

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(2009) <http://upendrabaxi.net/documents/Writing%20About%20impunity%20-%20Bhopal%202009.pdf>, 17.

[91] *Öneryildiz v Turkey*, 48939/99 (Judgment of 2004).

international trade and aid policies, and autocratic leaders, among others.[92] Authors writing on the issue of Haiti, by bypassing discussion of the IHRL responsibilities of the state of Haiti, often treat it as axiomatic that the state of Haiti lacks the adequate capacity to respect, protect and fulfil human rights obligations.[93] Concannon and Lindstrom acknowledge this fact, but argue that the rights-based approach requires that Haiti's capacity to realise human rights of Haitians be developed, noting that the delivery of international assistance in Haiti has reinforced the weaknesses of the state, rather than building its capacity as a rights-bearer.[94] They therefore argue, using an approach similar to that of the Maastricht principles, that states have a responsibility under IHRL norms to fulfil rights extraterritorially.[95] However, in the nation of NGOs that is Haiti, IHRL provides no way to determine about accountability of aid providers, nor the rights and duties between NGOs, IGOs, Haiti and states providing bilateral aid from a legal point of view. As a result, it is difficult to understand how a person could "enforce" their rights with regard to NGO, IGO and bilateral aid providers. This is a situation that does not fit neatly into IHRL's structure of state-implemented rights, and is further complicated by the insertion of multinational corporations.

The third problem, often related to the first, and also to the lack of substantive effect of the right to information discussed infra in section 6.5.2, is the lack of trust between governments and people, particularly if they are affiliated with groups that have traditionally been ostracised or marginalised by mainstream society and the state, that can cause rejection of government attempts to fulfil rights. Trust between the government authorities and the people is an instrumental characteristic in surviving disaster as well as in rebuilding. A lack of trust in the state means that even if the government provides disaster-related services, people may choose to reject government provisions, which render IHRL meaningless. For example, after the 2010 Haitian earthquake, the approach of Hurricane Tomas in November 2010 raised the fear that the 8000 people who were living in the then sole government-established displacement camp, Camp Corail-Cesselesse, would be affected by flooding. Immediately preceding the hurricane, government and aid workers began an effort to evacuate residents from the Camp, instructing residents to leave. Of the 8000 residents, only a few hundred agreed to leave.

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[92] B. Concannon (Jr.) & B. Lindstrom, "Cheaper, Better, Longer-lasting: A Rights-based Approach to Disaster Response in Haiti" 25 (2011) *Emory International Law Review* 1145, 1173.

[93] See e.g. S.E. Jordan, "The Aftershock of Haiti's Earthquake:Response Efforts in the Wake of Natural Disasters Perpetuate the Violation of Internally Displaced Persons' Human Rights" 42(2011) *California Western International Law Journal* 221-263.

[94] B. Concannon (Jr.) & B. Lindstrom, "Cheaper, Better, Longer-lasting: A Rights-based Approach to Disaster Response in Haiti" 25 (2011) *Emory International Law Review* 1145, 1172-3.

[95] O. De Schutter, A. Eide, A. Khalfan, M. Orellana, M. Salomon & I. Seiderman, "Commentary to the Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights" 34 (2012) *Human Rights Quarterly* 1084, 1151-2.

Conversations with residents of the Camp later revealed the fear that the evacuation was actually an eviction from the camp. It was well known that there had been a rash of forced convictions from Haiti's displacement camps, carried out with a lack of transparency, as was the fact that private landlords and government agents had begun evicting displaced people off land after the January earthquake in 2010.[96] IHRL does not take into account this deep scepticism that many of the most marginalised have towards the beneficent state as the duty bearer of IHRL.

The fourth problem, that of the transboundary nature of the causes and solutions to disasters that is not easily expressed in IHRL, has been prominent particularly in situations of disasters with man-made origins that implicate non-state third parties. One example is the case of Bhopal. The dearth of reliable information regarding the causes and effects of Bhopal's 1984 gas leak created asymmetries of knowledge and power, which are reflected in the international legal response to the gas leak. The push for justice by the survivors of the gas leak offered were diverse, and encompassed many strategies, of which legal methods constituted just one part. The preoccupation of those who did use legal strategies for compensation and rehabilitation was the issue of justice in terms of health care and economic compensation:[97] claims were framed in terms of justice, rather than in terms of human rights.[98] Ultimately, the path of transnational litigation was chosen, and in February 1985, the Indian government passed the Bhopal Gas Leak Disaster Ordinance, under which the Parliament of India authorised the government of India to take responsibility as the sole representative of all victims of the gas leak to bring an action against the parent Union Carbide company in New York,[99] suing the Union Carbide company in March 1985 under the Alien Tort Claims Act.[100] The Alien Tort Claims Act grants federal district courts the jurisdiction to hear civil actions by aliens for torts, committed in violation of the law of nations or a treaty of the United States.[101] India argued that the New York District Court had jurisdiction to hear the case under

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[96] B. Concannon (Jr.) & B. Lindstrom, "Cheaper, Better, Longer-lasting: A Rights-based Approach to Disaster Response in Haiti" 25 (2011) *Emory International Law Review* 1145, 1183-4.

[97] U. Baxi, "Writing about impunity and the environment: The 'Silver Jubilee' of the Bhopal Catastrophe" (2009) <http://upendrabaxi.net/documents/Writing%20About%20impunity%20-%20Bhopal%202009.pdf>, 16-7.

[98] Ibid.

[99] P. Shrivastana, "5. Long-term Recovery from the Bhopal Crisis" in Mitchell, J.K. (ed.), *The Long Road to Recovery: Community Responses to Industrial Disaster* (Tokyo: UNU Press, 1996). <archive.unu.edu/unupress/unupbooks/uu21le/uu21le00.htm#Contents>.

[100] This litigation was challenged by victim activists, who were not consulted about legal matters or settlement possibilities; Shrivastava suggests that this dissolved the victims' identity as a constituency separate from the government and disempowered them. P. Shrivastana, "5. Long-term Recovery from the Bhopal Crisis" in Mitchell, J.K. (ed.), *The Long Road to Recovery: Community Responses to Industrial Disaster* (Tokyo: UNU Press, 1996). <archive.unu.edu/unupress/unupbooks/uu21le/uu21le00.htm#Contents>.

[101] United States of America, *Alien Tort Claims Act*, 28 U.S.C §1350

international human rights law, among other torts. Keenan J of New York's Federal District Court ultimately dismissed the case on the grounds of forum non conveniens, holding that the Indian nationality the majority of plaintiffs, many of which were in India (which entailed problems with testimony, discovery and other administrative problems), the heavy judicial burden that would be borne by America and the lack of benefit for American citizens, as well as the risk of "imperialism" were the case to be decided in America, were decisive factors in Keenan J's reasoning.[102] In this way, the scope of IHRL's transboundary application was curtailed by the American Court, which did not see the case as containing any interest for America. As Baxi has observed, the judgment failed to see the case in terms of a "community of concern", framing the problems in terms of state units and state interests: "Judge Keenan simply fails to perceive the significance of the Bhopal catastrophe as raising humanitywide issues of global concern, raised so acutely by the sovereign state of India appearing as a complainant before a District Court in the United States."[103] Since this time, Bhopal has remained on the periphery of IHRL discourse.[104]

6.5.2 IHRL and development

A deeper, epistemological problem is encountered in the use of IHRL to express disaster-related vulnerability. If marginalised people were to succeed in performing the speech act of bringing their claim in the language of human rights law, to treaty body mechanisms or in political forums, they would face the problem of the comprehension of their claims by the adjudicating bodies. The comprehension of their speech would depend on the knowledge and views taken by the treaty members; one of the most fundamental knowledges in this regard is the understanding of the scope of human rights. The triumphalism of dominant human rights discourse results in a situation where practitioners and academics often cannot "see" the violence wreaked by human rights discourse. As Baxi has observed, "the discourse about rights is ... always, and everywhere, the discourse concerning justified violence."[105]

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[102] *In re Union Carbide Corporation Gas Plant Disaster at Bhopal, India in December, 1984*, 634 F.Supp 842, United States District Court, S.D. New York (1986). <http://leagle.com/decision/19861476634FSupp842_11342.xml/IN%20RE%20UNION%20CARBIDE%20CORP.%20GAS%20PLANT%20DISASTER>.

[103] U. Baxi, "Introduction" in U. Baxi and A. Dhanda, *Valiant Victims and Lethal Litigation: The Bhopal Case* (Bombay: N.M. Tripathi, 1990) <http:upendrabaxi.net/documents/Valiant%20victims%20and%20letahl%20litigation%20the%20other%20Bhopal%20case.pdf>, 4.

[104] Subsequent to the 1986 decision, the scope of the Alien Tort Claims Act with regard to torts/international human rights violations committed by multi-national corporations has been curtailed drastically by the Kiobel decisions, which ruled that the Alien Tort Claims Act does not apply extraterritorially, as corporations do not have subject status under customary international law, and only norms of international law that are specific, universal and obligatory may be applied to the determination (*Kiobel v Dutch Petroleum Co.* 621 F. 3d 111 (2d Cir. 2010); *Kiobel v Dutch Petroleum Co.* 133 S. Ct. 1659 (2013)).

[105] B. Rajagopal citing Baxi in *International Law from Below* (Cambridge: Cambridge University Press,

Why should some forms of violence be sanctioned, while others are ignored? Rajagopal considers that there is no theory of the violence of human rights law that can be used as a guide to predict the kind of suffering that is permissible violence. Rather, the exclusion of certain issues from human rights discourse is dependent on dominant understandings of the role of the state in the economy, related to development.[106] Economic violence is one of these forms of violence, and claims that bring attention to human rights' blind spot with regard to economic violence are unlikely to be understood as human rights issues by the legal experts hearing them.[107] Thus, the idea of disaster as the convergence of hazard and vulnerability rooted in social, political and economic factors cannot be fully articulated in human rights law: the deep tissues of the body of a disaster that lie in controllable social factors cannot be taken to be so in IHRL. An example of the failure to categorise certain disasters as disasters can be seen in Bhopal's "erasure"[108] from consideration in human rights theory and practice. In addition, it can be seen that the problems that arise from the use of nuclear power has received only a lukewarm response in IHRL.[109]

These examples point to the difficulty that IHRL faces in articulating rights that cannot be framed as individual rights, particularly when it comes to collective problems, health and poverty problems,[110] as well as environmental problems. Doing so is not only politically charged – the treaty bodies perpetually walk the fine line between openly challenging state behaviour thereby causing alienation, and pandering to states without substantively addressing issues – but is also structurally impossible. This in turn leads to the acknowledgement that the restriction of notions of disaster to natural external causes, as well as the concomitant technocratic and neutral solutions such as early warning

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2003) 195.

[106] Ibid.

[107] Rajagopal proposes the following reasons for the exclusion of economic forms of violence from sanctioned violence under human rights law: the nature of law and its formative relationship to violence – law must constitute itself as the opposite of violence to be legitimate, while it must use violence to preserve its power; second the ideology of development in Third World States, particularly in the 1950s meant that any anti-development activity was also seen as anti-national; thirdly, the idea of "human" is that of a human being who is rational and attempts to realise her full potential within the moral possibilities of the state and the market, which means that any person or community falling outside of this narrative remains outside of the bounds of human rights law. B. Rajagopal, *International Law from Below* (Cambridge: Cambridge University Press, 2003), 197-202.

[108] U. Baxi, "Writing about impunity and the environment: The 'Silver Jubilee' of the Bhopal Catastrophe" (2009) <http://upendrabaxi.net/documents/Writing%20About%20impunity%20-%20Bhopal%202009.pdf>, 11.

[109] For a thorough consideration of the failure to take nuclear power as a concern of IHRL, see A. Kohki, "Genshiryoku saigi to jinken (Nuclear disasters and human rights)" 32 (2013) *Sekaihō nenpō (Yearbook of World Law)* 23-61.

[110] D. Kennedy, "Reassessing international humanitarianism: The dark sides" in A. Orford (ed.), *International Law and its Others* (Cambridge: Cambridge University Press, 2006), 131.

mechanisms, is inevitable in the use of IHRL.

6.5.3 Limitations of IHRL legal mechanisms

Marginalised people may utilise IHRL's legal aspect, the treaty bodies their individual communications and reporting processes, and in addition to the limitation noted in section 6.5.2, IHRL's capacity to describe the suffering of people is circumscribed by the fact that as a general rule, to allege that one has become a victim of human rights, an internationally wrongful act or omission must be asserted post facto.[111] Thus for example, the cases of *Budayeva* and *Öneryildiz* would have been difficult to bring before the disasters occurred. Legal systems, including systems for the enforcement of rights under human rights treaties, are mechanisms used to assert victimhood, and are also used to designate a status from which rights and benefits flow. Shelton describes this split in the function of the "victim" concept in terms of the substantive and procedural aspects of remedies:

> "The word 'remedies' contains two separate concepts, the first being procedural and the second substantive. In the first sense, remedies are the processes by which arguable claims of human rights violations are heard and decided, whether by courts, administrative agencies, or other competent bodies. The second notion of remedies refers to the outcome of the proceedings, the relief afforded the successful claimant."[112]

In other words, a variety of procedures may be instituted to obtain redress for human rights violations, but the acquisition of that redress is predicated upon the recognition existence of a violation and therefore the ascription of victim status.

The machinery of the monitoring systems of human rights bodies moves slowly, and relies on the motivation of the state. Seeking victim status in them would be unsuitable for quickly changing situations, as can be found in disaster relief phases, or the political phases of ensuring, for example, civil and political rights during the negotiation of disaster risk reduction measures. They may be more suited to addressing the systemic aspects of marginalisation that cause and exacerbate suffering after the experience of an external hazardous event. However, the fine line that treaty bodies perpetually tread

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[111] CAT and CERD have the competence to carry out early warning/urgent action procedures where human rights may be violated. However, whether or not these may be able to utilised in the contexts of sudden onset disaster is questionable. C.f with Cançado Trindade, who argues that the notion of the potential victims is in the process of being established. Cançado Trindade however, refers only to the jurisprudence of the ECtHR and the ACtHR. It is difficult to determine whether the notion of potential victims is also taking hold within the UN system. A.A. Cançado Trindade, *The Access of Individuals to International Justice* (Oxford: Oxford University Press, 2011), 125-131.

[112] D.Shelton, *Remedies in International Human Rights Law* (2nd ed.) (Oxford: Oxford University Press, 2006), 7.

between demanding too much and demanding too little of governments manifests itself in the cosmetic fixes that the treaty body system often recommends: broad recommendations and requests for more information. They address the symptoms of problems rather than their root causes, which are admittedly diffuse. For example, twenty fours years after the fact, the CESCR adopted Concluding Observations on India's implementation of the rights of the IESCR which noted that the effects of the Bhopal gas leak were ongoing, and that State efforts to provide rehabilitation and monetary compensation have been inadequate,[113] as well as recommending that India take measures to provide adequate compensation and rehabilitative measures to Bhopal survivors.[114] The difficulty of using human rights law monitoring mechanisms to address disaster-related issues of prevention, preparedness and mitigation is also demonstrated from another by creeping issues such as climate change: OHCHR, for example, declined to conclude that climate change violates human rights law, and this opinion could obstruct the use of human rights treaty monitoring mechanisms to address the deeper issues of marginalisation underlying vulnerability to disaster.[115] In addition, "everyday disasters", the cumulative impact of the constant coincidence f small-scale hazards with vulnerability. Those who are most affected by such disasters are poor households in rapidly expanding urban centres, who live in informal settlements and work in the informal economy, for which limited data is available.[116]

The individual communications function is more suited to asserting victim status due to structural, systemic aspects of marginalisation and disaster in disaster relief and disaster preparedness, mitigation and prevention. However, one pre-requisite for this kind of use of the individual communications mechanism is theorists who are aware of, and willing to engage with, the linkages between marginalisation, disaster, vulnerability and IHRL. The other pre-requisite of this use is the knowledge of marginalised people of those linkages, for such a use. In this sense, those who are on the fringes of society become dependent on the "translations" of their experience into the language of law. Given that current dominant interpretations emphasise the aspects of marginalisation, underlying economic, social and political factors in disaster less, while concentrating on scientific and technocratic means to preventing and relieving disaster-related suffering, this would

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[113] CESCR,*Concluding Observations of the Committee on Economic Social and Cultural Rights: India*, E/C.12/IND/CO/5 (2008), para. 36

[114] Id., para. 76.

[115] For a discussion of the issue, see generally e.g. J.H Knox, "Linking Human Rights and Climate Change at the United Nations" 33 (2009) *Harvard Environmental Law Review* 477-498.

[116] Global Network of Civil Society Organisations for Disaster Reduction, *Summary Report: Views from the Frontline: Beyond 2015 Recommendations for a post-2015 disaster risk reduction framework to strengthen the resilience of communities to all hazards*
(2013) .<http://www.globalnetwork-dr.org/images/documents/VFL2013/vfl2013%20reports/GN%20SUMMARY%2013%20ENGLISH.pdf>, 7-8.

require a sea change in the thinking of the academic community. That survivors of the Bhopal disaster and activists, for the most part, chose not to use human rights languages as a medium is significant because it shows that while on the one hand people may not even desire to, access languages of law, and their reactions are shaped by their mistrust of power, their legal advisors may also be blinkered by their own understandings of the law's possibilities, as well as their notion of disaster. However, even the use of the individual communications function may be restricted, if, as in the case of Bhopal, the number of survivors wishing to utilise it are so numerous that they override the capacities of the already over-burdened treaty bodies.

6.6 Analysis and Conclusions

Any law that seeks to have utility for vulnerable people in disaster must perform two functions: it must firstly address social, economic and political disparity by creating a space that enables marginalised people to be heard, and secondly, and secondly, it must act as a language through which those who are actually or potentially affected may communicate with those in control of resources, in order to discuss the distribution of various resources. IHRL, by its very placement of the individual at the centre of legal concern, addresses in some part these two problems, as well as widening the notion of post-disaster vulnerability found in IDL. This can be seen in the growing attention of actors in the IHRL legal, advocacy and political spheres to the problem of disaster. The discussion of the literature's approach to IHRL and disaster reveals that for the most part, academic discourse assumes that "vulnerability" is constituted by vulnerability in the face of sudden onset natural disaster, which threatens the rights to life and health. As a corollary, vulnerability in relation to disaster is treated as self-evident – those who are direct victims of disaster are the vulnerable, and they are the ones who states and other outsiders have international obligations to assist. Within the vulnerable, there are the even more vulnerable, those who are in the categories of rights that international human rights law has developed, namely, children, women, the poor, the disabled, etc. The application of international human rights law to the social effects of sudden onset disasters, and the promotion of the notion of vulnerability, particularly the vulnerabilities of children, women, indigenous peoples, among others, is undoubtedly positive. The benefits of using IHRL to highlight the disaster-related vulnerability of these categories of people lies in the fact that people are able to use IHRL as a tool of national and international advocacy, if they can access IHRL mechanisms and experts. It can be seen, through appeals to human rights body mechanisms such as the special rapporteur on the adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights, that although the architecture of human rights treaty body mechanisms seems to preclude a deep consideration of the social, economic and political

issues that undergird disaster-related vulnerability, there may be more hope in the political and academic aspects of IHRL to open up the possibilities of discussion about such marginalisation. This potential is demonstrated, by, for example, the reports of special procedures such as the Human Rights Council's Special Rapporteur on the adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights, which widens the scope of discussion.[117] The Special Rapporteur has discussed the right to life and the right to information and participation, in the context of low-level, chronic exposure to toxic chemicals.[118]

These attempts, however, will remain circumscribed by the problems noted in 6.5.1 and 6.5.2, in terms of connecting disaster to systemic economic, social and political inequalities that can be expressed as human rights violations. It is inviting to embrace the celebratory discourse of IHRL to address the disembodied and state-centric nature of international law as well as the blind spots that such a conception of law entails. The approaches to IHRL disaster are based on the notion that international human rights law can be a tool for the disenfranchised, and in this sense it takes on the acceptance of human rights law in a way that is typical of a celebratory and quasi-religious "belief" in IHRL.[119] Not unreasonably, academic theory and IHRL practice does not question IHRL's internal inconsistencies or hidden biases, instead championing IHRL's capacity to bring to light the disaster-related vulnerability of certain groups, as well as of people in general. However, its general contours reveal that the problem of how the disenfranchised are understood or recognised under IHRL, nor the implementation of their rights – created through the communication processes between the local, national and global – are not considered. This is perhaps unsurprising, given the inchoate state of IDL, and indeed in the implicit assumptions of much of the discourse which considers that "disaster" as a legal issue refers to disaster relief. At the risk of labouring the obvious, it is because the nature of what is experienced as disaster is so indeterminate that the concept of vulnerability is in itself indeterminate. But what of those whose vulnerability does not lie in accepted categories of IHRL? Or, what of those whose experience of suffering lies in problems that are two or three times removed from the disastrous catalyst? An example might be secondary victims of disaster, such as the farmers of Fukushima prefecture, Japan, who face overwhelming difficulty in selling their products as a result of the

[117] See e.g. O. Ibeanu, *Special rapporteur on the adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights*, A/HRC/7/21 (2008).
[118] Human Rights Commission, O. Ibeanu, *Special rapporteur on the adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights*, E/CN.4/2006/42 (2006), paras. 33, 36.
[119] For a discussion of different scholarly approaches to the idea of human rights, see generally M-B. Dembour. *Who Believes in Human Rights? Reflections on the European Convention* (Cambridge: Cambridge University Press, 2006); M.B Dembour, "What are Human Rights? Four Schools of Thought" 32(1) (2010) *Human Rights Quarterly* 1-20.

nuclear scare, and thus incur great economic loss.

The foregoing discussion demonstrates that relying on IHRL as the sole discourse for "humanising" IDL is untenable. IHRL's flaws mean that it does not – indeed, cannot – address IDL's inadequacies. This is in addition to IHRL's potential to be a tool of hegemonic international law, as it has throughout history, reinforcing pre-existing imperial tendencies in world politics.[120] The celebratory nature pervading much of the IHRL-disaster discourse, as well as IHRL's deep connection to development which renders the acceptance of social, economic and political deprivations linked to development unlikely, place IHRL actors in danger of becoming blind to the multifarious nature of disaster and vulnerability, and therefore marginalisation.

In order to be useful, IHRL must bridge the gap between understandings of vulnerability created at the international level about disaster-related marginalisation, and the experience of marginalisation on the ground. This requires a flexible understanding of marginalisation and disaster, and a recognition that for the purposes of law, both concepts are socially constructed. Rather than using a legal strategy that consists in calling for the centralisation of the notion of vulnerability under IHRL on the assumption that IHRL *is* justice, understanding the effects and causes of a particular type of vulnerability in a particular type of disaster provides a concrete basis on which to discuss marginalisation and the situation of justice that is required. This, in turn, increases the persuasiveness of legal argument and effectiveness of legal strategy, creating more realistic expectations of about IHRL's effectiveness, which adds to the ongoing quest to achieve states of justice. On the foregoing discussion it must be concluded that IHRL's inherent limitations neutralise its power to address deeper issues of marginalisation, and therefore, disaster-related vulnerability.

The limited nature of IHRL to address the problems of IDL demonstrated in this chapter, suggests that international law is of limited utility in addressing the problems of marginalisation and the representation of marginalisation in disaster relief, and disaster preparedness, mitigation and prevention measures. In addition, it must be acknowledged that the IHRL system, as indeed are most legal systems, dependent on the ability of

[120] See e.g. D. Kennedy, "Reassessing International Humanitarianism: The Dark Sides" in A. Orford (ed.), *International Law and its Others* (Cambridge: Cambridge University Press, 2006), 134-5; B.S. Chimni, "Third World Approaches to International Law: A Manifesto" 8 (2006) *International Community Law Review* 3, 11, 16; B. Rajagopal, *International Law from Below* (Cambridge: Cambridge University Press, 2003), Chapter 7; D. Otto, "Subalternity and International Law: The Problems of Global Community and the Incommensurability of Difference", 5(3) (1996) *Social and Legal Studies* 337-364; B. Rajagopal, "Counter-hegemonic International Law: Rethinking Human Rights and Development as a Third World Strategy" in R. Falk, B. Rajagopal, J. Stevens (eds.), *International Law and the Third World* (Oxford: Routledge-Cavendish, 2008), 65-71.

people to be proactive in using them. All this is not, of course, to denigrate IHRL's potential and actual contribution. Even with these flaws, the fundamental ethos of human rights may influence policy or international law-making on disaster relief, and more recently, on disaster risk reduction, so that IHRL's categories of vulnerability are given a more central place in political and legal discussion. It has already done so in documents such as the ILC's draft articles on the protection of persons.

Even so, IHRL's own blind spots and biases are a reminder of the importance of thoroughly considering the geographical, cultural and temporal significance of IHRL's from the point of view of suffering. In this way, any use of IHRL by, or on behalf of, marginalised people transcends mere critique of government strategy. The very definition of the subaltern, or the marginalised, precludes them from access to dominant languages, of which law is one, to communicate suffering and request redress or aid. In light of the limited, but still significant use of international law to address the problem of marginalisation and disaster, the next Chapter considers how legal strategies may be used with extra-legal strategies to project the voice of subalterns into disaster-related international discussion.

Chapter Seven. Utilising international law's transformative possibilities

7.1 Introduction

The foregoing chapters have shown that international law pertaining to disaster cannot always be said to operate, nor used in the interests of marginalised people. IDL creates and maintains an asymmetry between rights holders and the objects of the law – those who are most affected by elite law are those with the least power to influence the law's creation and implementation – that cannot be adequately remedied by a turn to IHRL. A differential access to power lies at the heart of the creation and implementation of IDL in its disaster relief, and disaster mitigation, preparedness and prevention aspects, and the political meaning of international law in disaster is what it has seen fit to highlight, at the expense of grappling with ideas such as participation, social justice, and power relations. The overall orientation of international law's engagement with the issue of disaster has been to address the vulnerability *immediately created* by disaster, rather than the vulnerability that far precedes, and is a cause of disaster, and subsequent social conflict in the allocation of all sorts of resources after the initial shock.

The issue of disaster-related marginalisation in international legal discourse should be the larger framework for discussion of disaster issues, given that all efforts in disaster relief, preparedness, mitigation, and prevention are in effect efforts for prevention. However, there is a general lack of engagement with this issue in international legal discourse, and in international relations. This tendency has been observed in the context of the implementation of the HFA in a recent study by the Asia-Pacific branch of the UNISDR, which considered gender and participation under the HFA in countries of the Asia-Pacific. The UNISDR observed that:

> "There is still more to be done before it can be said that the countries in the region are looking into the issues of social vulnerability in a systematic and comprehensive manner. Social vulnerability issues are excluded from many disaster management policies and plans in the region, and where they have been included, there is no clear understanding if there are mechanisms in place for their implementation."[1]

The lack of engagement with this issue can be seen in the IDL and IHRL frameworks that neglect to equip people with the capacity to communicate their experiences to decision-making elites about vulnerability that causes, and is caused by, disaster. It has already been shown that IDL and IHRL frameworks are not adequate to this end. In the

[1] United Nations International Strategy for Disaster Reduction Asia-Pacific, *Background paper: Issues of Vulnerability with Specific Reference to Gender in the Asia Pacific: Post-2015 Framework for Disaster Risk Reduction Consultations* (UNISDR: Geneva, 2013), 2-3.

implementation of the HFA, which establishes a starting point for engaging with the issue of the reduction of underlying disaster risk, mid-term reviews indicate a sense of resignation in dealing with the notion of underlying vulnerability because methods for the incorporation of local views into national and global processes are not clear. Expanding the scope of the sources of international law has been touted as one way of bringing voices from the bottom to the attention of those at the top, by, for example, including the codes of conduct of international organisations, such as the Code of Conduct for the International Red Cross and Red Crescent Movement and NGOs in Disaster Relief, as sources of law under article 38 of the ICJ Statute.[2] However, as the problems of IDL and IHRL are structural, this method of expanding law's understanding of "below" is not discussed at length here because it is not an approach that embraces the possibility of law coexisting with the subaltern, which is by definition, outside of the epistemology of the law. Rather, it seeks to bring them into the fold of the law, thereby mainstreaming. In addition, such a proposal is implicitly predicated on the notion that NGOs are the bodies that represent the interests of the people in global civil society. However, the interests and orientations of NGOs may not necessarily align with those of the marginalised people that they purport to represent, and are, by definition, institutional actors who derive their legal identity from the national systems where they are incorporated.[3]

The failure to develop IDL as an inclusive form of international law suggests that neither rectifying IDL's passive engagement with issues of marginalisation, nor addressing IHRL's structural linkages with the concept of development (among its other structural problems in disaster) are sufficient approaches to overcome international law's problems in its treatment of marginalisation and disaster. Rather, the fundamental problem seems to lie in the inability to use international law to recognise the contingency of disaster and disaster-related vulnerability, particularly from the vantage point of the marginalised. If the methods by which international law comes to recognise and address disaster cannot be relied upon to reveal the structural nature of social, economic and political marginalisation, then the correlation between marginalisation and disaster must be politicised. This implies a shift in perspective from which disaster-related legal processes have traditionally been theorised and analysed. This shift could be given various labels: "a view from the experience of the victims", "a new perspective from the exterior of Western modernity", and "a view from the reality of the coloniality of power", among

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[2] See e.g. P. Muchlinski, "Multinational Enterprises as Actors in International Law: creating 'Soft Law' Obligations and 'Hard law' Rights" in M. Noortman, C. Ryngaert (eds.), *Non-State Actor Dynamics in International Law: From Law-Takers to Law-Makers* (Surrey: Ashgate, 2010), 9-40; L. Davarnejad, "The Impact of Non-State Actors on the International Law Regime of Corporate Social Responsibility: Blessing or Curse?" in M. Noortman, C. Ryngaert (eds.), *Non-State Actor Dynamics in International Law: From Law-Takers to Law-Makers* (Surrey: Ashgate, 2010), 41-68.

[3] B. Rajagopal, *International Law from Below* (Cambridge: Cambridge University Press, 2003), 258, 262.

others.[4] In this chapter, the discussion centres on how IDL and IHRL, which purport to *a priori* know disaster and vulnerability by creating top-down legal mechanisms, may be challenged and supplemented through radical revisions of international law and the narrative about disaster and marginalisation it creates. This entails examining how international law may take into account the linkages between the local, national, and international levels, without first placing the local into the cosmology of traditional international law. Falk calls the order that such an international law may operate in the "post-Westphalian world order",[5] while de Sousa Santos terms the transcendence of the neoliberal globalisation that international law supports "counter-hegemonic globalisation".[6]

An international law that does not revolve around the sun of the state and redistributes "material, social, political, cultural, and symbolic resources"[7] can be seen to have been approached in two ways: institutional approaches and extra-institutional approaches. In terms of the former, international law has been considered in terms of the democratisation of international deliberative processes, guaranteed by international law. This is understood to mean the ways in which the international legal system may create deliberative processes in which local interests may be linked to international politics. In the latter, the potential of social movements is discussed. Lastly, these approaches are evaluated for their utility in the context of disaster-related marginalisation.

7.2 Terminology: The concept of the local

Before entering this discussion, it is necessary to consider briefly the the idea of the local that is used in this research. The local is taken to be constituted by those communities, social movements and individuals who engage in political and legal issues that involve international issues. The word "local" is used to emphasise that although disasters may be conceptualised in various ways, the unchanging and essential aspect of disaster is that people, not abstractions, suffer in concrete, localised ways as a result of their vulnerabilities, and work from their locale to address the disaster-related problems in ways that may transcend the different levels of legal jurisdictions in any – the local council, national law, regional law, international law. Their existence on the fringes of

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[4] B. De Sousa Santos & C.A. Rodriguez-Garavito citing Dussel, Mignolo and Quijado respectively in "Law, Politics, and the Subaltern in Counter-hegemonic Globalization" in B. De Sousa Santos & C.A. Rodriguez-Garavito (eds.), *Law and Globalization from Below: Towards a Cosmopolitan Legality* (Cambridge: Cambridge University Press 2005), 14.

[5] R. Falk, "International Law and the Future" in R. Falk, B. Rajagopal, J. Stevens, *International Law and the Third World* (eds.) (London: Routledge-Cavendish, 2008), 9-22.

[6] B. de Sousa Santos, "Beyond Neoliberal Governance: The World Social Forum as Subaltern Cosmopolitan Politics and Legality" in B. De Sousa Santos & C.A. Rodriguez-Garavito (eds.), *Law and Globalization from Below: Towards a Cosmopolitan Legality* (Cambridge: Cambridge University Press 2005), 3.

[7] Id., 29.

most of these scales of law means that they may address their problems in dimensions that are beyond the comprehension of international law. That is, their activities are not conceived in terms of international law's divisions of jurisdiction, and therefore may transcend, or exist separately from them. What Santos calls these subaltern "transcalar" actions find a resonance in the nature of disaster itself. Disasters, depending on their conceptualisation, may be seen as social sufferings that are entirely local and several, as in the case of earthquakes and landslides. They may also be seen as having their causes and solutions in the transnational or the regional, as a result of globalisation and development processes such as in the cases of climate change and nuclear accidents. Accordingly, what is sought to be encapsulated by the notion of the "local" here is the idea that non-state actors, and in particular, what is called here the local, may act to solve the disaster-related problems that they perceive in ways that may be unrelated to the notions of legal jurisdiction, based on certain notions of time and space, that constitute the foundations of international legal analysis and practice.

This notion of the local draws from the notions of civil society, global civil society, and transnational social movements, and recognises that the relationship between the social and legal domains is not one that is constituted by the imposition of law's values and goals to society; rather, it is a dialectical relationship - every day practices impact the law just as much as law regulates the every day. This requires the acknowledgement that there are forms of social mobilisation that cannot be comprehended within the systems of knowledge created by international law. The necessity of considering how international law's account of the interaction between the local, national and international finds support in Falk's assertion that the future of international law lies in the power of various political actors, including (global) civil society actors, to legitimise and delegitimise behaviour.[8]

The idea of civil society, encompassing both individuals and associations, as found in Gramsci's writing for example, positions it between the market and the state, and is frequently associated with the accountability of state and limits to power.[9] Global civil society is the notion, growing in prominence since the 1990s that signifies transnationally active, informal networks and formal institutions, with a global orientation, global membership, or global scope.[10] Global civil society has been defined as "the realm of non-coercive collective action around shared interests and values that operates beyond the

[8] R. Falk, "International Law and the Future" in R. Falk, B. Rajagopal, J. Stevens, *International Law and the Third World* (eds.) (London: Routledge-Cavendish, 2008), 21-2.
[9] K. Anantram, C. Chase-Dunn, C. & E. Reese, "Global Civil Society and the World Social Forum" in B.S. Turner (ed.), *The Routledge International Handbook of Globalization Studies* (Oxon: Routledge, 2010), 605, 607.
[10] Id.,608.

boundaries of nation states."[11] Finally, the idea of social movements has become an important part of the notion of collectives in international law's development, and encompasses in some ways both the notions of civil society and global civil society. Rajagopal, a proponent of the idea of the importance of social movements in international law, notes that views on what constitutes social movements themselves are multitudinous and span disciplines including sociology, anthropology and critical development studies.[12] [13] Diani proposes the social movements have the following elements:

1. They involve networks of informal interactions between a plurality of actors;
2. They engage in political or cultural conflicts; and
3. They organise on the basis of shared beliefs and collective identities.[14]

Rajagopal, discussing Diani's elements, observes that they are all contestable, and they raise more issues for consideration; for example, the notion of identities gives rise to the problem of understanding how such identities are formed in the first place.[15] In particular, he notes that NGOs or NGO networks, which have dominated discussions about global civil society, may lead social movements, but do not constitute social movements in themselves.[16]

The notions of civil society, global society and social movements are analytical lenses through which new cultural politics can be expressed, transcending the limitations of discourse about states (through a realist or positivist focus) or individuals (a liberal or natural law orientation). Although the collective orientations of these analytical lenses undeniably open up new ways of seeing law, the individual is also encompassed by the notion of the local in this research. The reason for this is that, as was demonstrated by, for example, Ciraolo's actions for the IRU, in rare cases, the actions of individuals with political, economic and social capital may also leave their mark on international law. The notion of community, too, informs the local, as it can be seen that highly localised groups

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[11] K. Anantram, C. Chase-Dunn & E. Reese citing the *Global Civil Society* yearbook (2006), ibid.
[12] B. Rajagopal, *International Law from Below* (Cambridge: Cambridge University Press, 2003), 238.
[13] It is also worth noting that some scholars distinguish transnational advocacy networks from social movements. Keck and Sikkink, for example, define "transnational social movements as requiring regular cross-national interaction, mass mobilizations, shared understandings of issues, a common form of political discourse, and a collective identity. (Keck and Sikkink cited in K. Anantram, C. Chase-Dunn & E. Reese, "Global Civil Society and the World Social Forum" in B.S. Turner (ed.), *The Routledge International Handbook of Globalization Studies* (Oxon: Routledge, 2010), 612). They define transnational advocacy networks as including "those actors working internationally on an issue, who are bound together by shared values, a common discourse, and dense exchanges of information and services." M.E. Keck & K. Sikkink, "Transnational Advocacy Networks in International and Regional Politics" 51(159) (1999) *International Social Science Journal* 89, 89.
[14] Rajagopal citing Diani in *International Law from Below* (Cambridge: Cambridge University Press, 2003), 238-9.
[15] Id., 239-40.
[16] Id., 239.

of people, such as the community in Bhopal, or the avalanche-affected in the towns of Ancash, Peru, banded together for a common cause to interact with international institutions of law and politics.

7.3 Inclusion in existing institutions: Participation in international deliberative processes

Debates on democracy in modern international law, rooted in doctrines of state sovereignty and non-intervention, have largely been confined to two topics: the adequacy of democratic rights (such as the assurance of voting rights, the adequacy of elections, and so on) within nation states,[17] and ensuring democracy (in other words, equality of nation-states) within the international sphere.[18] However, the progression of globalisation has, in the last twenty years, blurred the traditional demarcations of the topic of democracy in international legal discourse, and led scholars to consider how the local may participate in institutionalised international deliberative processes to address the "democratic deficit" that has developed.[19]

The limitations that have dogged the international legal debate have led to considerations of international law's interactions with international relations. The discussion international law's role with regard to democracy can, in the opinions of these scholars, broadly be stated to lie in law's capacity to create institutions and in its power to provide legitimacy for new political structures, and the enforcement of rights. Franck, for example, in a consideration of the history of international law from the era of the LoN, considers that international law is moving towards global governance, in part of his argument that an institutional extension of the individual international entitlement (in his words) of democracy is coming into being. Franck considers that collective security can be taken as an example of the development of international governance, arguing that the UN Security Council is becoming an international legislature.[20] This can be seen in the fact that the Security Council's acts are legally binding on all states, and therefore erode state sovereignty. In addition, Franck argues that the development of the law of war is emblematic of the development of the entitlement to democracy, as it has progressively

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[17] Some examples of this type of discourse are F.R. Téson, "The Kantian Theory of International Law" 92(1) (1992) *Columbia Law Review* 53-102; G.H. Fox, "The Right to Political Participation in International Law" in G.H. Fox and B.R. Roth (eds.), *Democratic Governance and International Law* (Cambridge: Cambridge University Press, 2000), 48-90; R. Post, "Democracy and Equality" *Yale Faculty Scholarship Series*, Paper 177 (2005) <http://digitalcommons.law.yale.edu/fss_papers/177>.

[18] See e.g. J. Crawford & S. Marks, "The Global Democracy Deficit: an Essay in International Law and its Limits" in D. Archibugi, D. Held, M. Köhler (eds.), *Re-imagining Political Community* (Oxford: Polity Press, 1998) 72-3; Y. Kiriyama, *Minshushugi no kokusaihō* (*International Law of Democracy*), (Tokyo: Yūhikaku, 2001), 237-240.

[19] See e.g. J. Crawford & S. Marks, "The Global Democracy Deficit: an Essay in International Law and its Limits" in D. Archibugi, D. Held, M. Köhler (eds.), *Re-imagining Political Community* (Oxford: Polity Press, 1998) 72-3; R. Falk & A Strauss, "Toward Global Parliament" 80 (2001) *Foreign Affairs* 212-220.

[20] T. Franck, "Chapter 7" in *Fairness in International Law and Institutions* (Oxford: Oxford University Press, 1998), 218-244.

undermined the concept of state sovereignty.[21] On the basis of the gradual disintegration of the doctrine of sovereignty that is represented by the developments in the Security Council and the law of war are signifiers of the emerging governmental character of international law, Franck proposes that a second chamber to the UNGA, directly elected by the people of the world, be established in order to achieve fair global governance through international decision-making institutions.[22]

Another prominent proponent of the democratisation of international law is Held, who considers that the concept of democracy must be rethought so as to accommodate the various processes of globalisation, such as trade, finance, environmental problems, multinational corporations and security problems.[23] According to Held, the traditional notion of democracy can no longer be sustained by the new nature of international society; the existence of multiple and overlapping networks of power that involve welfare, culture, economy, and coercive relations causing problems that cannot be addressed in the Westphalian model of world order:[24]

> "We are compelled to recognize that we live in a complex interconnected world where the extensity, intensity and impact of issues (economic, political or environmental) raise questions about where those are appropriately addressed. Deliberative and decision-making centres beyond national territories are appropriately situated when those significantly affected by a public matter constitute a cross-border or transnational grouping, when 'lower' levels of decision-making cannot manage and discharge satisfactorily transnational or international policy questions, and when the principle of democratic legitimacy can only be properly redeemed in a transnational context."[25]

Held posits that democracy must be rethought so that it can be secured in the pursuit and enactment of various civil, political and social rights in intergovernmental and transnational power structures that are "an element of, and yet cut across the territorial boundaries of the nation-state";[26] cosmopolitan democracy is his solution. Unlike the traditional notion of democracy, cosmopolitan democracy is not based on locality and

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[21] Id., "Chapter 8", 245-283.
[22] Id., 483.
[23] See e.g. D. Held, "Democracy and Globalization" in D. Archibugi, D. Held & M. Köhler (eds.), *Re-imagining Political Community* (Stanford: Stanford University Press, 1998), 14-21.
[24] D. Held, "Democracy and the New International Order" in D. Archibugi & D. Held (eds.), *Cosmopolitan Democracy: An Agenda for a New World Order* (Cambridge: Polity Press, 1995), 99-109; D. Held, *Democracy and the Global Order: From the Modern State to Cosmopolitan Governance* (Cambridge: Polity Press, 1995), 272.
[25] D. Held, "Democracy and Globalization" in D. Archibugi, D. Held & M. Köhler (eds.), *Re-imagining Political Community* (Stanford: Stanford University Press, 1998), 22.
[26] D. Held, "Democracy and the New International Order" in D. Archibugi & D. Held (eds.), *Cosmopolitan Democracy: An Agenda for a New World Order* (Cambridge: Polity Press, 1995), 106.

place, but rather on the idea that governance issues may require responses from various jurisdictions, one of which is the transnational networks of power that govern the various facets of people's lives.[27] Cosmopolitan democracy involves reform of international law and political process. In terms of the latter, Held proposes that cosmopolitan law would require rules for political decision-making to be enshrined within national and international parliaments and assemblies, and the extension of the jurisdiction of international courts so that groups and individuals would be able to sue political authorities to ensure implementation and enforcement of rights and obligations.[28] Global law would be bound by a transnational legislative and executive, which would involve the creation of regional parliaments so that their decisions become recognised as legitimate sources of regional and international regulation.[29] He proposes the creation of a second UN chamber, the compulsory jurisdiction before the International Court of Justice, the creation of a new international Human Rights Court in the short term.[30] Further, he proposes that the achievement of autonomy must be conceived as being based not in a hierarchical system of power, but one that is based on the implementation of rights and obligations in an array of political, economic and social spheres.[31]

Held, as one of the most prominent proponents of the idea of cosmopolitan democracy, has faced criticism regarding his vision of law and its role in linking the voices from below to international decision-making above. Crawford and Marks, for example, doubt whether the jurisdiction of the International Court of Justice compulsory would assist in realising global democracy. They argue that such an enhancement would not necessarily mean that the Court would fulfil the democratic roles of enforcing law and safe-guarding rights that have been infringed by government action, as individuals would first need to be given standing to make a petition to the court in the first place. The court would in turn require an expansion in size and facilities in order to play an effective role.[32] Alston has made similar arguments with regard to the recent proposal for an International Court of Human Rights.[33] Crawford and Marks further consider that the elevation of UNGA resolutions to a source of international law has already been widely recognised, but that it must also be borne in mind that the UNGA acts as an executive and not a legislative

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[27] Id., 112-3.
[28] D. Held , *Democracy and the Global Order: From the Modern State to Cosmopolitan Governance* (Cambridge: Polity Press, 1995), 272.
[29] Id., 273.
[30] Id., 279.
[31] Id., 276.
[32] J. Crawford & S. Marks, "The Global Democracy Deficit: an Essay in International Law and its Limits" in D. Archibugi, D. Held, M. Köhler (eds.), *Re-imagining Political Community* (Oxford: Polity Press, 1998), 83.
[33] P. Alston, "Against a World Court for Human Rights". Paper presented at the Fourth Conference of the Japan Chapter of the Asian Society of International Law (2013). Paper on file with the author.

organ of the UN.[34]

These, among other criticisms,[35] have not deterred scholars from recognising the significance of the work of Held and Falk for those who are excluded by international law from law's creation, interpretation and implementation. Al Attar and Thompson, for example, elucidate a plan for "multi-level democracy" as one way in which TWAIL's commitment to reforming the international order that facilitates inequity can be expressed. Rather than a reliance on the "passive" act of participation in elections for proposals such as Falk's global parliament,[36] they seek to reinforce the idea of global citizenship via deliberation and participation in international law-making processes.[37] Based largely on Held's writings, they endorse the injection of elements of citizen participation in international law-making through cosmopolitan democracy. They argue that a plural democratic public forum must be established to realise the self-determination of peoples, such as can be found in the Bolivarian Alliance for the Americas (ALBA), a regional organisation comprised of Venezuela, Cuba, Bolivia, Ecuador, Nicaragua, Dominica, Antigua and Barbuda, and St. Vincent and the Grenadines. ALBA features a Council of Social Movements, which links national councils represented by delegates from local community groups of member-states. The Council operates with the top-level Council of Ministers in order to channel popular opinion into ALBA work. This structure brings the local closer to regional and national scales. Al Attar and Thompson, who give some other examples to demonstrate the workability of decentralising and localising management and deliberative processes, argue ultimately that democratic governance can transcend the bounds that international law has thus far posed.[38]

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[34] J. Crawford & S. Marks, "The Global Democracy Deficit: an Essay in International Law and its Limits" in D. Archibugi, D. Held, M. Köhler (eds.), *Re-imagining Political Community* (Oxford: Polity Press, 1998), 83.

[35] For example, Kiriyama cites the criticism of Zolo, who points out that in assessing Held's argument, problems that have a global character and problems that can only be solved by an extra-state transnational political authority should be distinguished. The latter is a weak argument for intervention, because it requires from a centralised power, a decentralised, non-hierarchical order. Zolo posits that Held's discussion of cosmopolitan democracy is implicitly predicated on an analogy between domestic civil society and global society, which is inherently problematic. Globalisation does not create uniform cultural characteristics; it often has the opposite of effect of reinforcing cultural identity. Further, Zolo believes that the gap between economic and political development should be considered: globalisation, an element of production, is not necessarily the same as global socio-economic integration, and further, globalisation runs in parallel to the concentration of political and legal power. Legal globalisation is turning into a juridical internationalism, as can be seen in the establishment of the International Criminal Court, and the deployment of NATO troops. In this way, cosmopolitan democracy retains its links to European, Christian, and natural law hegemony. T. Kiriyama, *Minshushugi no kokusaihō (International Law of Democracy)*, (Tokyo: Yūhikaku, 2001), 250.

[36] M. Al Ataar, R. Thompson, "How the Multi-Level Democratisation of International Law-Making Can Effect Popular Aspirations Towards Self-Determination" in 3(1) (2011) *Trade, Law and Development* 65, 93-4

[37] Id., 91.

[38] Id. 99-100.

7.4 Embracing Otherness: The strategic use of international law by the local

Santos is of the view that "subaltern cosmopolitan legality is never formulated as a legal strategy but rather as a political strategy that comprises legal components" and moreover, they do not just focus on the redistribution of social qualities, but also recognise that a balance must be struck between equalities and differences.[39] The "extra-institutional approaches"[40] reviewed here encourage the interaction of subaltern and international legal knowledge through the politicisation of subaltern issues, in which international law comprises only one component.

Prominent among scholars advocating an extra-institutional approach to the expression of subaltern consciousness is Falk, who emphasises the importance of the role of transnational networks of grassroots organisations as participants of civil society,[41] since the debut of the non-state actor, and in particular, the participation of NGOs in international conferences from the 1970s.[42] This new development initiated a new era in global policy, in which political participation can no longer be reduced to governments acting on behalf of people, allowing the humanist activities of the UN, its human rights institutions, among others, to become more prominent.[43] He points out that without deepening democracy in response to the realities of the interdependence of the world, the changing nature of democracy that is implied by the growing role of non-state actor participation in global policy will remain just the sign of a different type of democracy and nothing more.[44] Falk's ultimate vision is the achievement of humane governance[45] – which is defined to be the achievement of rights for all people, and the most vulnerable, as a way of seeking to resolve conflict and establish order without violence[46] – of which one dimension is the achievement of cosmopolitan democracy. Cosmopolitan democracy according to Falk provides the basis for creating procedures and practices that link individuals and groups with institutions.[47] In pursuing humane governance and therefore, cosmopolitan democracy, an integral part of the struggle is global civil society, which

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[39] B. De Sousa Santos, "Beyond Neoliberal Governance: The World Social Forum as Subaltern Cosmopolitan Politics and Legality" in B. De Sousa Santos & C.A. Rodriguez-Garavito (eds.), *Law and Globalization from Below: Towards a Cosmopolitan Legality* (Cambridge: Cambridge University Press 2005), 61.

[40] Here, the word "institution" refers to the institutions related to the existing state-centric international legal system and international relations.

[41] E.g. R. Falk, *On Humane Governance: Toward a New Global Politics* (Cambridge: Polity Press, 1995).

[42] R. Falk, *Law in an Emerging Global Village: A Post-Westphalian Perspective* (Transnational Publishers: New York, 1998), 221.

[43] R. Falk, "The United Nations and Cosmopolitan Democracy: Bad Dream, Utopian Fantasy, Political Project" in D. Archibugi, D. Held, M. Köhler, (eds.), *Re-imagining Political Community: Studies in Cosmopolitan Democracy* (Oxford: Polity Press, 1998), 320-1.

[44] Id., 323-4.

[45] The elements of human governance are the agreement of citizens, the rule of law, human rights, participation, accountability, common good, and non-violence.

[46] E.g. R. Falk, *On Humane Governance: Toward a New Global Politics* (Cambridge: Polity Press, 1995), 9.

[47] Id., 254.

plays a part in ensuring democracy and the implementation of international rights and obligations initiatives, putting various abuses on the political agenda of major states and international institutions.[48] Falk considers that the European Union may be an appropriate model for the transformation of the international system,[49] but does not give concrete ideas for the achievement of his vision. Falk and Strauss, however, in 2001 suggested that the requisite raw political will for the establishment of a global parliament already existed. Their proposed body would be constituted by the global citizenry. Members would not be bound by the international legal doctrine of *pacta sunt servanda*, and therefore would not be able to opt out of collective efforts, such as those aimed at protecting the environment.[50] Falk and Strauss respond to anticipated criticism that the proposed body would be so diverse as to be inherently unstable by pointing to the example of the European Union.[51]

The World Social Forum (WSF) was established in 2001 as a response to the World Economic Forum, a forum of corporate and political elites who meet in Davos, Switzerland, to consider problems that are exacerbated by globalisation. The WSF, initially organised by the Brazilian labour movement and the landless peasant movement, was first held in 2001, has some parallels in terms of goals of, and justifications for, the global parliament that Falk and Strauss envisioned. The WSF, in its most technical definition, is an annual meeting of civil society organisations, and is the largest annual international gathering of participants in the global justice movement. Its aim is to show that there are alternatives to neoliberal globalisation.[52] Santos describes it as "the set of initiatives of transnational exchange among social movements and NGOs, articulating local, national, or global social struggles conducted... against all the forms of oppression brought about or made possible by neoliberal globalization."[53] The WSF is the set of forums organised on its Charter of Principles, but also includes the other forums that have meetings in parallel to the WSF such as the Forum of Local Authorities, the World Parliament Forum, the World Education Forum, the World Forum of Judges, the World Trade Unions Forum, the World Water Forum, the World Choral Forum, the World Junior Forum, and the Forum of Sexual Diversity, and includes the initiatives that have taken

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[48] Id., Chapters 6 and 7.
[49] R. Falk, *Law in an Emerging Global Village: A Post-Westphalian Perspective* (Transnational Publishers: New York, 1998).
[50] R. Falk & A. Strauss, "Toward Global Parliament" 80 (2001) *Foreign Affairs* 212, 216.
[51] Id., 217.
[52] K. Anantram, C. Chase-Dunn & E. Reese, "Global Civil Society and the World Social Forum" in B.S. Turner (ed.), *The Routledge International Handbook of Globalization Studies* (Oxon: Routledge, 2010), 615.
[53] B. De Sousa Santos, "Beyond Neoliberal Governance: The World Social Forum as Subaltern Cosmopolitan Politics and Legality" in B. De Sousa Santos & C.A. Rodriguez-Garavito (eds.), *Law and Globalization from Below: Towards a Cosmopolitan Legality* (Cambridge: Cambridge University Press 2005), 44.

place under the auspices of each of these forums.[54] The WSF is a phenomenon that is difficult to describe, not being a scholarly conference, an NGO, or social movement; further, it is not structured according to any of the models of modern political organization, such as democratic centralism, representative democracy, or participatory democracy.[55] Participation is voluntary and is minimalist in its conditions for participation: only groups or movements advocating violence are excluded under its Charter of Principles. In 2005, Santos opined that the WSF "holds no clearly defined ideology, in determining either what it rejects or what it asserts",[56] thereby creating a space for new expressions of the political. Despite being optimistic about the WSF's potential, Santos acknowledged that there were "cleavages" within the WSF, such as that between the Western and non-Western political cultures;[57] participants from the North and South, resulting in difference between the white Latin American and North Atlantic organisations, and the indigenous, African and Asian organisations and movements.[58] By contrast, in 2013, Conway holds a markedly different view of the WSF's significance. Conway is of the opnion that:

> "The WSF is simultaneously among the finest expressions of the emancipator traditions of western modernity and a site for the reproduction of their contradictions, hierarchies, and exclusions. The WSF is producing 'others' who are consigned to its edges... The WSF is a product and an expression of the emancipatory traditions of Western modernity. It is a site for the contentious interplay of liberalisms, socialisms, anarchisms and feminisms under historically new conditions of global network society, aggressive neoliberal capitalist expansion, and neo-imperialist violence in the name of anti-terrorism. With the appearance of the World Social Forum, we see a new modality of the political that breaks in significant with modern rationalities on the left and is transformative for its participating movements."[59]

In evaluating the WSF, Conway finds that it remains an "open space" that is too unwieldy and too diffuse to be captured by statist interests, or institutions, and it has enabled subalterns to become protagonists on the stage of global justice.[60] However, Conway concludes that the price of this uncontainable plurality is paid by subalterns in another form of subordination: partial inclusion which results in the inability to fully access the WSF, and thereby become protagonists over the terms of the WSF.[61]

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[54] Id., 44-5.
[55] Id., 46.
[56] Id., 46.
[57] Id., 49
[58] Id., 49.
[59] J.M. Conway, *Edges of Global Justice: The World Social Forum and its 'Others'* (Oxon: Routledge, 2013), 2.
[60] Id., 145.
[61] Ibid.

In spite these emerging drawbacks in the counter-hegemonic vision of the WSF, it cannot be denied that it holds significance as a method for the local connect and exchange information regarding their areas of concern. This function can be understood from the point of view of international law as being an indicator of view of the legitimacy of international legal regimes from below that cannot, and should not, be ignored. The politicisation of issues that the WSF facilitates may be seen as a source from which the process of deep revision of international law's foundations and origin story may begin.

The strategic use of the "pluralisation of normative opportunities for contestation"[62] is another way of challenging the status quo manifested and maintained by international law. More specifically, on this approach to subaltern politics and law, local, national and international spaces are used strategically to find paths to justice that stay outside the bounds of institutions, and are therefore not restricted to operation in any one level of jurisdiction.[63] That is, as with most problems related to globalisation, issues are regulated through "myriad public and private arrangements that constitute a legal kaleidoscope rather than a legal system" in the absence of effective transnational governance institutions.[64] Thus for example, in considering the anti-sweatshop movement's struggle over labour rights in Mexico, Rodriguez-Garavito notes that in the battlefield between hegemonic and counter-hegemonic actors, both take advantage of the kaleidoscopic nature of the legal landscape, strategically utilising soft and hard law sources and the gaps and inconsistencies created by overlapping jurisdictions in order to establish a hierarchy of interpretation of legal norms.[65] Similarly, Arriscado et al. explore the social movement in Brazil against co-incineration in terms of Santos' vision of cosmopolitan legality. Arriscado et al. discuss the case of a social movement, the Committee for Struggle Against Co-Incineration, which opposed the creation of co-incineration facilities advocated for by two cement companies in Portugal. Initiatives taken by local citizens involved petitions to parliament, requests for government decisions to be revoked, initiatives by the Committee for discussion of the drafting of legislation regarding co-incineration with members of Parliament, demonstrations, litigation, advocacy for

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[62] J. Arriscado Nunes, M. Matias, S. Costa, "Bottom-up Environmental Law and Democracy in the Risk Society: Portuguese Experiences in the European Context" in B. De Sousa Santos & C.A. Rodriguez-Garavito, (eds.), *Law and Globalization from Below: Towards a Cosmopolitan Legality* (Cambridge: Cambridge University Press 2005), 375.

[63] B. Rajagopal, "Limits of Law in Counter-Hegemonic Globalization: The Indian Supreme Court and the Narmada Valley Struggle" in B. De Sousa Santos & C.A. Rodriguez-Garavito (eds.), *Law and Globalization from Below: Towards a Cosmopolitan Legality* (Cambridge: Cambridge University Press 2005), 183.

[64] C.A. Rodriguez-Garavito, "Nike's Law: The Anti-Sweatshop Movement, Transnational Corporations, and the Struggle Over International Labor Rights in the Americas" in B. De Sousa Santos & C.A. Rodriguez-Garavito (eds.), *Law and Globalization from Below: Towards a Cosmopolitan Legality* (Cambridge: Cambridge University Press 2005), 65.

[65] Id. 64-91

reform to existing legislation at both the local and national levels, the strategic use of European Commission directives on waste management etc.[66] Arriscado et al. find that the Committee's use of the law of the hegemony, e.g. litigation for freedom of information, and for contesting the legitimacy of actions taken by hegemonic forces such as the government and the companies, are expressions of the counter-hegemonic use of the law.[67]

However, in contrast to these relatively positive views on the capacity of international legal tools to be subverted by subalterns, Rajagopal considers that "there are important forms of Third World resistance that remain beyond the discursive framework of international law."[68] Rajagopal, discussing the case of India's Working Women's Forum (WWF), considers that the importance of international social movements and international NGOs is increasingly highlighted in counter-hegemonic uses of the law, as for example, expressed in Franck's right to democratic governance. Even so, the praxis of the WWF, which is limited largely to the domestic domain, shows that the predictions of many scholars are as yet premature.[69] Equally, the political and economic models that are promoted by the West, such as India's adoption of economic policy that reflects Washington policy that encourages privatisation, marketisation, liberalisation, etc., is likely to have adverse effects on the everyday lives of Indian women. India's Washington-based policy will make integral parts of the WWF's work in helping Indian women exponentially more difficult, by, for example, increasing transport costs and lowering access to resources and information.[70]

7.5 Evaluation: Subaltern strategies, international law and disaster

The approaches to international law and subalternity that are outlined above show that the knowledge and worlds of marginalised people at the local level already interact with the international law's knowledge system. Further, as the examples of the WSF and the strategic use of international legal tools and weakness demonstrate, those marginalised by the dominant expressions of economic, political and social power are not passive victims in the face of their suffering. In the same way, victims of disaster are not passive in the face of the suffering unleashed by the coincidence of their vulnerabilities with external catalysts.

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[66] J. Arriscado Nunes, M. Matias S. Costa, "Bottom-up Environmental Law and Democracy in the Risk Society: Portuguese Experiences in the European Context" in B. De Sousa Santos & C.A. Rodriguez-Garavito, (eds.), *Law and Globalization from Below: Towards a Cosmopolitan Legality* (Cambridge: Cambridge University Press 2005), 371-6.
[67] Id., 377-8.
[68] B. Rajagopal, *International Law from Below* (Cambridge: Cambridge University Press, 2003), 284.
[69] Id., 285.
[70] Ibid.

The central problem for justice in international disaster law lies in the correlation between marginalisation and the heightened risk of being adversely affected in disaster. This correlation is, for the most part, overlooked by the current and proposed IDL, in that it creates a system of knowledge about disaster. In IDL, what is needed to address and prevent disaster that is state-centric, and does not enable or recognise that people, let alone marginalised people may protest the imposition of state-defined rights and needs. The current discourse on inclusive disaster risk reduction strategies tends to focus on building the resilience of vulnerable groups. Though it is acknowledged that the context in which vulnerable groups live is critical and that there are many social, political and economic factors that conspire to perpetuate vulnerability, this type of thinking is rarely reflected in the planning or in the implementation of disaster risk reduction strategies.[71] The examples above show that there are alternatives to IDL's cosmology; subaltern subversion of the law is a tangible possibility.

In terms of practical use, the extra-institutional approaches are the only strategies usable by marginalised people at this stage of the development of law and institutions. Furthermore, the approaches of Franck and Held, while revolutionary in terms of the wish to institutionalise methods for subalternity to speak in the political world, will create more categories of exclusion. The WSF, a body created to be an all-inclusive, "open space", is an example of the problems of institutionalisation of opportunities for marginalisation. This indicates that creation of international rights or obligations that facilitate the actions, or the "speech" of marginalised people in relation to disaster, being grounded in a system that is founded on the "Other", is ultimately subject to the same weaknesses.[72]

What have been called extra-institutional approaches in the preceding discussion show that there is no one strategy that should be used by marginalised people in politicising the issue of disaster-related marginalisation. Rather, a multi-pronged strategy that incorporates international law as one element of raising political awareness of local issues of marginalisation and creating political pressure for change should be used. Such a strategy is based on the knowledge that the meaning of disaster is determined at least in part by people, and more often by the marginalised. Further, while causes and solutions may be transnational in nature, the experience of disaster that solutions are aimed at addressing may only be determined by first understanding that experience of disaster

[71] United Nations International Strategy for Disaster Reduction Asia-Pacific, *Background paper: Issues of Vulnerability with Specific Reference to Gender in the Asia Pacific: Post-2015 Framework for Disaster Risk Reduction Consultations* (UNISDR: Geneva, 2013), 5.

[72] See e.g. A. Anghie *Imperialism, Sovereignty and the Making of International Law* (Cambridge: Cambridge University Press, 2004).

and/or marginalisation and the risk of disaster. Thus, an understanding of international law as a means of facilitating speech, and the necessity of "translators", that is, academics who are fluent in the language of international law, and are open to the idea that the status of victimhood as a result of disaster is the product of a process of communication between the elites using international law at the national and international levels are necessary.

This wider view of the role of law in people's, and in particular, marginalised people's, lives, is arguably closer to the lived experience of international law relating to disaster than the discussions of international rights and state obligations that the current international debate on disaster is occupied with. The products of that debate, which may include state obligations to addressing disaster-related marginalisation, may be of future benefit to marginalised people. The "kaleidoscopic" nature of the legal landscape, with all of its attendant ambiguities and contradictions should be exploited by people to achieve more just outcomes. In particular, the absence of the element of participation by people and, in particular, the marginalised, in the ILC's draft articles regarding disaster relief, as well as the HFA's vague commands on mitigation, prevention and preparedness for natural disaster, could strategically be used by those marginalised people on the outside of their local society, as well as national and international society.

However, at least two problems with this approach to IDL can be foreseen. Firstly, not all the actions emanating from the local may be progressive, or in the interests of the marginalised. Further, what may be of benefit for one movement or group or individual may not be of benefit for another. This is multiplied when considered on the global scale. Secondly, a problem that cuts to the heart of the argument that IDL and its relationship to the marginalised should be left ambiguous, is that the law is quite unambiguous in its jurisdiction: the history of the development of the law, such as Camille Gorgé's admission in the time of the IRU that any disaster other than natural disaster would cause political controversy, and the overall emphasis on natural disaster in international documents since the time of Vattel, shows that political opinion is against the adoption of definitions of disaster that are not natural, particularly where it would clash with disasters related to processes of development. Specifically, technological accidents, such as Bhopal's gas leak, which occurred as a result of the Indian government's promotion of a Western ideal of development, as well as the Fukushima Daiichi nuclear plant accident in Japan, show the political difficulty in garnering acceptance of disasters that are linked to the desire for economic advantage. However, the effect of the ILC's draft articles, which does not distinguish between man-made and natural disasters, will be. It opens up new possibilities for use by subalterns, if taken in conjunction with the lack of elucidation of space for

subalterns in the legal schema it envisions.

Despite these problems, it can be seen that disaster, its victims and solutions for it, are a contestation of ideas in which international law is just one weapon. In order to maximise the effectiveness of international law pertaining to disaster for the benefit of marginalised people, the marginalised themselves are of course, the start and end point, but academics and legal experts as "translators" are also indispensible. Academics play critical roles in drawing attention to and generating knowledge of the multifariousness of the concept of disaster, and therefore the forms of disaster-related marginalisation. Social movements, communities, and, in rare cases, individuals, all those that make up the abstract concept of the local, can challenge the institutions that underlie the political reasons for marginalisation, and rework the cultural politics of marginalisation, while also helping those who are marginalised in concrete ways. Thus, the local, in conjunction with elites, such as academics, that can speak the language of international law, play important roles in occupying the spaces outside international law, in order to change knowledge about what disaster is, who suffers as a result, and what should be done about it, in order to make its operation fairer. In this way, also, the limitations of IHRL as the sole mechanism for subalterns to speak in international law may be overcome.

Chapter Eight. Conclusions: What is international law good for?

It is now possible to answer the questions posed at the beginning of the dissertation regarding whether, and to what extent international law, in the form of international disaster rules and IHRL, address the correlation between marginalisation. Firstly, with regard to IDL's potential to address the concerns of marginalised people in disaster, it can be seen that although international disaster rules have, throughout history, primarily regulated intra-state interaction in the immediate aftermath of sudden onset natural disasters, documents such as the Yokohama Strategy, HFA and the ILC's Draft Articles on the Protection of Persons recognise the correlation between disaster and marginalisation. Even so, these documents do not elaborate the legal ramifications of this recognition, leaving the significance of this legal space ambiguous. Recent IDL documents therefore seem to leave an opening for these instruments to be used, via advocacy, lobbying, or academic discourse etc., to address the correlation between marginalisation and disaster. However, a historical examination of major international disaster instruments demonstrates that there exists a tension between the doctrine of sovereignty, financial and political pragmatism, and compassion in the creation and application of instruments that has been resolved by resorting to arguments of neutrality and vulnerability. In considering how the arguments of neutrality have been made, it can be seen that the content of neutrality has been captured almost solely by the will of powerful donor states. Similarly claims regarding vulnerability have remained state-centric: they are defined in terms of vulnerability immediately following disasters, or the economic underdevelopment of developing countries. IDL is therefore too open to capture by states, and creates an epistemology of disaster that only ever exists alongside the interests of people; never converging with them. IDL can be concluded to be of limited potential utility in addressing the correlation between marginalisation and disaster.

IHRL has been used by theorists and practitioners alike to counter the state-centricity of disaster in the past decade. IHRL seems favourably positioned to carry out this role; it places the individual at the centre of legal concern, provides a language and mechanisms that individuals can use to bring the attention of elite law-makers to their plight, and recognises certain forms of vulnerability. The practice and theory of IHRL show that IHRL can be used to bring to light things that fit into the rubric of disaster to a certain degree. However, for subalterns, who exist outside dominant society, IHRL is ineffective in certain circumstances, such as in cases of extreme marginalisation, when its concerns run parallel to the interests of potential and actual disaster victims, but never fully expresses their concerns. It is also ineffective in the sense that IHRL's scope, which is ineluctably linked to development discourse, is limited where development-related

disasters are concerned. The scope of IHRL is also greatly reduced by the presumption that only the relationship between states and individuals is legally relevant: the causes and adaptations to disaster in current globalising processes play out on scales that have no relation to the neat categorisations of jurisdiction of international and domestic action envisaged by IHRL. Thus, the use of IHRL to address disaster-related marginalisation also faces serious limitations, although the potential scope for its utility and effectiveness exceeds that of IDL. However, these limitations should warn against perceiving of IHRL as the sole, or even the primary, method of countering the state-centrism of IDL.

Thus, IDL and IHRL create systems of knowledge that preclude their use by marginalised people; IDL and IHRL do not recognise or address the multifarious forms of disaster and marginalisation. One way forward is the politicisation of disaster and marginalisation issues. An examination of extra-legal means of changing dominant currents of thought surrounding disaster, vulnerability and access to law by those excluded from mainstream forms of legal communication shows that the "democracy deficit" in international law might be addressed through the creation of a new, cosmopolitan democracy, or "counter-hegemonic globalisation". The former may constitute a solution for the correlation between marginalisation and disaster by institutionalising spaces for the local in deliberative political processes. The latter is constituted by the strategic use of international law as it dictated by the needs of marginalised people. In evaluating these methods for their utility in addressing the correlation between marginalisation and disaster, it can be said that the creation of a cosmopolitan democracy remains an unlikely development in the near future. Thus, the strategy of counter-hegemonic subaltern strategies by marginalised people, using both international legal advocacy and academic thought seems to be the most appropriate way of adapting to marginalised peoples' experience of disaster. This is because the causes and solutions of disaster, as they are understood by marginalised people who are not passive in the face of their suffering, may transcend the traditional compartmentalisations imposed by the orthodox view of international law. That is, the nature of disaster as it is experienced by marginalised people and how they understand the causes of disaster, as well as the way that they solve their problems, may transcend or be entirely separate from the notions held individuals, NGOs, IGOs and states working in the legal spaces created by IDL and IHRL.

The preceding examination has left a final question unanswered: for subalterns struggling with disasters, what is international law good for? International law shows potential to be a powerful tool in relation to disaster for marginalised people, but it also has its own biases and flaws that mean that it is, by and large, a tool with limited utility. Rather, as Chapter Seven argued, it seems to be more practical to pursue "counter-hegemonic

globalisation", by using law strategically, as one among many other tools of survival.

The dissertation's conclusion about the utility of international law is deeply informed by what was referred to in Chapter One as the "postcoloniality" of law; that is, the potential and the limitations of using law to rectify the problems derived from dominant understandings of marginalisation and economic, social and political distribution. It is recognised that there is an asymmetry inherent in international legal efforts with regard to disaster and marginalised people: those who are most affected by disastrous events have only partial status in international law and are handicapped when it comes to using these rules to pursue justice at the international level to address disaster. Disaster has been understood as the convergence of external hazard and vulnerability, while vulnerability is any form of marginalisation that hinders the proactive use of the law as a tool on the part of marginalised people to mitigate their vulnerability to disaster as they experience or understand it. If disaster is understood as the convergence of hazard and vulnerability, then the definitions of hazards and vulnerabilities are critical. Given that definitions are contingent upon the decision-makers interests and knowledge, and are therefore social constructions, understanding *how* hazards and vulnerabilities are seen and negotiated is the essential part of the equation from a legal perspective. What this underscores is the importance of the application of a theory of vulnerability that takes into account the socially negotiated nature of disaster. Put another way, disasters are socially contingent and are therefore as multitudinous as there are forms of vulnerability and hazards, therefore requiring an understanding of the objectives of particular patterns of distribution of economic, political and social resources.

This dissertation has assumed that law is a tool that can be used to reduce vulnerability to disaster; that law's coercive and normative power can make environments safer for people, and marginalised people in particular. On the other hand, it has also acknowledged that such efforts are limited by social, political and economic inequalities. The existence of marginalisation and different types of knowledge of disasters means that no coincidence of agreement between stakeholders, such as governments, experts and marginalised people, should be assumed to exist regarding understandings of hazards and vulnerabilities. The state-centric nature of international law and legal discourse has often relied on the conflation of the interests of marginalised people with the interests of the state in which they reside. However, understanding disaster as a process of social negotiation regarding ideas about vulnerability and hazards means that disaster must be construed as the product of conflict about the distribution of social, economic and political capital that creates vulnerability and hazards. This is accentuated by the fact that it has been acknowledged since at least the 1970s in both academic literature and

international politics, that the most marginalised – often conceived of as being the poorest, within states and among states – are generally those that are the most vulnerable following a disaster in terms of allocation, and (in many cases, of their own accord, in order to survive) live in ways that heighten vulnerability to disaster. However, their very marginalisation, their "lack of identity", results in the inability or reluctance, or both, to use law to reduce these two senses of vulnerability. Instead, people use extra-legal adaptive strategies to survive and thrive.

In recognition of this social reality, it is arguable that law's greatest significance is found in the negotiation of disaster definitions, and therefore who should be helped and how. In this, law has the capacity to facilitate the process of defining disasters. This means that law's significance in addressing the correlation between disaster and marginalisation lies in its power to create and regulate the authority that identifies some phenomenon or other as being vulnerability or hazard, the authority that creates the hierarchy of preferences in deciding which definitions of vulnerabilities and hazards should be adopted, as well as the that authority establishes action that should be taken to remedy that notion of disaster. On this view, law's inherent double-edged nature as a tool that serves to legitimate the violence of the powerful, and a tool that delegitimises that violence for the benefit of the legally powerless, is brought to the fore. In other words, law may be seen as the medium that facilitates conversation between the various stakeholders about what vulnerability, disasters, disaster victims, hazards, etc. are, by addressing unequal power relations. However, this function requires the recognition that there may be various theories of vulnerability and marginalisation that will clash and require resolution.

The foregoing chapters have shown that legal thought has been dominated by bland assumptions that have been made about law's capacity to address disaster-related damage and risk. The epistemological scope of international law is insufficient to address the problems of disaster, because international law is empty and at the mercy of states and the elite; it is assumed that the expansion of international law through the elucidation of more rules will create a better system. However, this has not been accompanied by detailed considerations of actual implementation of the law. This can be seen in, for example, the mid-term reviews of the HFA. Put another way, although international disaster rules and IHRL have highlighted the importance of vulnerability that precedes, and is subsequent to disaster, no theory of vulnerability that explains why some forms of vulnerability and some forms of disaster are privileged over others can be identified. The dominant legal discourse regarding the content of the nascent IDL and IHRL relies on the simplification of the concept of disaster and a simplification of understandings of what makes disaster victims. In IDL and IHRL, this is reflected in the assumption that victimhood and disaster

can be identified easily and unilaterally. In IHRL, an even more dangerous reduction of the notion of disaster can be found in the pervasive and unquestioned assumption that IHRL's victim-centrism exempts it from the pitfalls of other areas of international law, and that IHRL itself is the expression of justice. The idea that expansion of the law, or that the achievement of IHRL by itself, will address vulnerability are empty promises at best, and fallacious views at worst. They avoid the hard questions about the economic and political choices that must be made to address marginalisation and disaster. Kennedy has aptly summarised these problems in the context of IHRL, but his observation is relevant to this dissertation's consideration of both IDL and IHRL: "[T]he international human rights movement often acts as if it knows what justice means, always and for everyone; all you need to do is adopt, implement and interpret these rights. But justice is not like that. People must build it anew each time, struggle for it, imagine it in new ways."[1]

It is in the imagination of new ways of seeing justice that the futures of IDL and IHRL might be developed so that they more usefully deal with marginalisation. This can be done by taking into account marginalisation in creating theories of disaster vulnerability. IDL as it stands has little potential to be used for marginalised people, owing to its state-centric focus, but its undeveloped state means that there is still chance that different understandings can be incorporated into the creation and interpretation of future legal norms. An IDL that is based on some theory of vulnerability could contribute to IHRL by expanding IHRL's understandings of vulnerability, thereby creating wider understandings of a concept fundamental to it.

If the strategic use of international law is pursued, along with parallel, extra-legal strategies for survival and advocacy, then the circulation of new ideas and information about previously unrecognised forms of vulnerability and marginalisation are essential. Academics and advocates play a significant role in the creation of what has been called supra "theories of vulnerability"; they act as translators between the elites above and the subalterns below, mediating and communicating understandings of marginalisation, suffering and disaster from below, so that elites above may hear the subaltern's speech. In this, it is essential to bear in mind the social meanings of disaster, and carry an awareness that the technical, mathematical languages that experts speak in is quite different to lay understandings of disaster, which may be infused with religion, and different again from political understandings, which cover disaster-related governance issues.[2] It is also

[1] D. Kennedy, "Reassessing International Humanitarianism: The Dark Sides" in A. Orford (ed.), *International Law and its Others* (Cambridge: Cambridge University Press, 2006), 134.

[2] For a discussion of social meanings of disaster and how they may be addressed in policy, see P. Barnes, "Approaches to Community Safety: Risk Perception and Social Meaning" Autumn (2002) *Australian Journal of Emergency Management* 15-23.

important to perceive marginalised people not as helpless, passive victims, but rather as people that have more often than not used adaptive strategies to cope with disasters, so as to open further the margins of legal response. In this way, local responses, in the sense used in Chapter Seven, as well as transcalar solutions, might be used to open international law's boundaries.

How are understandings of vulnerability to be changed? In creating new understandings of disaster and vulnerability, understandings of causes of disaster in other disciplines, such as those in disaster anthropology and disaster sociology are of particular use. Some examples can be found in Wisner et al.'s Pressure and Release (PAR) model,[3] Oliver-Smith's political ecology model,[4] and Kasperson and Pijkawa's ideas regarding disaster management for technological (and natural) disaster.[5]

The PAR model posits that the causes of vulnerability can be traced back from unsafe conditions, through economic and social pressures to underlying root causes, and describes a chain of causation of vulnerability. In the PAR model, disasters are understood as interactions between vulnerability and hazards. Vulnerabilities are understood as arising from three levels: root causes, dynamic pressures and unsafe conditions. Root causes encompass general and widespread processes in a society, that are spatially or temporally distant, or distant in the sense of being profoundly bound up with cultural assumptions and social relations that they are invisible and taken for granted.[6] They reflect the exercise and distribution of power in a society, and the allocation of distribution of resources among different people, and legal definitions and enforcement of rights. Thus people who are economically marginal, or live in environmentally marginal places (such as mountainous regions, isolated regions, etc), are often vulnerable to disaster because of these processes. Dynamic pressures are processes and activities that translate the effects of root causes into unsafe conditions, and they are the most immediate manifestations of general underlying economic, social and political patterns.[7] An example that Wisner et al. give of dynamic pressures is that of neo-liberalism, which is the particular form that capitalist relations have taken since the 1970s and 1980s. In the 1980s neo-liberal structural adjustment policies were imposed on less developed countries,

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[3] B. Wisner, P. Blaikie, T. Cannon, I. Davis, *At Risk: Natural Hazards, People's Vulnerability and Disasters* (2nd ed.) (Oxon: Routledge, 2004), Chapter 2.
[4] A. Oliver-Smith, "Global Changes and the Definition of Disaster" in E.L. Quarantelli (ed.), *What is a Disaster? Perspectives on the Question* (London: Routledge, 1998), 179-196.
[5] R.E. Kasperson & K.D. Pijawka "Societal response to Hazards and Major Hazard Events: Comparing Natural and Technological Hazards" Special Issue: Emergency Management, A Challenge for Public Administration (1985) *Public Administration Review* 7-15.
[6] B. Wisner, P. Blaikie, T. Cannon, I. Davis, *At Risk: Natural Hazards, People's Vulnerability and Disasters* (2nd ed.) (Oxon: Routledge, 2004)., 52.
[7] Id., 53.

which were thought to have resulted in the deterioration of health and education services in certain of these countries.[8] Dynamic pressures such as structural adjustment policies, channel root causes into particular forms of unsafe conditions that must be considered in relation to different types of hazards. Unsafe conditions are the specific forms in which the vulnerability of a population is expressed in time and space with a hazard, such as unsafe housing conditions, residence in hazardous locations, engaging in dangerous livelihoods, etc.[9] Wisner et al.'s PAR model is supplemented by the "access model", which allows the interactions between environment and society that create the disaster to be examined.[10]

Oliver-Smith's political ecology model draws attention to the cultural construction of the relationship between people and the environment, and the material production of conditions that create vulnerability. The goal of the political ecological model of disasters is to understand how society's vulnerability, which Oliver-Smith terms "adaptive failure", is an essential element of disaster. Oliver-Smith, similarly to Wisner et al., defines disaster as the historically produced pattern of vulnerability, evidenced in the location, infrastructure, socio-political structure, production patterns, and ideology that characterise a society.[11] In Oliver-Smith's view, a political ecology situates the point of research in understanding how internal differences in societies distribute the benefits of adaptational effectiveness in the short and the long term. An examination carried out under the political ecological model requires combining an ecological framework with an analytical strategy that encompasses the interaction of environmental features, processes and resources with the nature, forms, and effects of the patterns of production, allocation and internal social differentiation of society, as well as apprehending that complex societies are controlled by contesting interests that privilege the interests of some sectors of society over others.[12] An example of this approach can be found in his works on the 1970 Ancash Earthquake in Peru.[13]

The previous two models focused on the natural disasters, but Kasperson and Pijawka provide one of the few models of vulnerability and disaster management that seek to

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[8] Id 53-4.
[9] Id., 55.
[10] B. Wisner, P. Blaikie, T. Cannon, I. Davis, *At Risk: Natural Hazards, People's Vulnerability and Disasters* (2nd ed.) (Oxon: Routledge, 2004), "Chapter 3. Access to resources and coping in adversity".
[11] A. Oliver-Smith, "'What is a Disaster?': Anthropological Perspectives on a Persistent Question" in A.Oliver-Smith & S.M. Hoffman (eds.), *The Angry Earth: Disaster in Anthropological Perspective* (New York: Routledge, 2002), 29.
[12] Ibid.
[13] See e.g. A. Oliver-Smith, "Global Changes and the Definition of Disaster" in E.L. Quarantelli (ed.), *What is a Disaster? Perspectives on the Question* (London: Routledge, 1998), 179-196; A. Oliver-Smith, "Peru's Five-Hundred Year Earthquake: Vulnerability in Historical Context" in A.Oliver-Smith & S.M. Hoffman (eds.), *The Angry Earth: Disaster in Anthropological Perspective* (New York: Routledge, 2002), 74-88.

encompass natural and other disaster. Their model elaborates a chain model, based on hazard evolution to approach disaster management in prevention stages. The basis of analysis is the "downstream" management model, which considers human needs, human wants, choice of technology, initiating events, release of materials and human or biological consequences. In their model, the disaster management process is conceptualised as a loop of activity, around this downstream causal sequences of the hazard, under which four activities, hazard assessment, control analysis, control strategy, and implementation and evaluation are carried out.[14]

These models might form a starting point for advocates and academics to think about ways in which various forms of marginalisation can be illuminated, thereby increasing the chance that international law perform more useful functions for marginalised people. This dissertation's conclusions about the fairness and utility of IDL and IHRL in addressing the correlation between marginalisation and disaster highlight the double-edged nature of law: international law, the handmaiden of government elites, also possesses a subversive and revolutionary capacity. This dissertation has showed that subalterns can grasp it to further their own ends, even if this use is use is partial, one among many others that they use to survive and reduce vulnerability. The nature of the subaltern is to be perpetually on the outside; law's fundamental purpose in creating rights is to facilitate the distribution of resources in the furtherance of some vision of the good ensures that some form of marginalisation will always exist. However, by viewing international law as a tool of conversation and sporadic strategic intervention, there is hope that law's potential to be employed for and by subaltern to pursue justice can be brought to the fore.

[14] R.E. Kasperson & K.D. Pijawka "Societal response to Hazards and Major Hazard Events: Comparing Natural and Technological Hazards" Special Issue: Emergency Management, A Challenge for Public Administration (1985) *Public Administration Review* 7, 8-10.

Bibliography

Books and articles

Al Ataar, M., Thompson, R., "How the Multi-Level Democratisation of International Law-Making Can Effect Popular Aspirations Towards Self-Determination" in 3(1) (2011) *Trade, Law and Development* 65-102.

Alexander, D., *Confronting Catastrophe: New Perspectives on Natural Disasters* (New York: Oxford University Press, 2000).

Alexander, D. "What is Disaster?" in R.W. Perry & E.L. Quarantelli, *What is a Disaster: New Answers to Old Questions* (America: Xlibris, 2005), 25-38.

Alfredsson, G., "Human Rights and Victims' Rights in Europe" in Danieli, Y., Stamatopoulou, E., Dias, C.J. (eds.), *The Universal Declaration of Human Rights: Fifty Years and Beyond* (New York: Baywood Publishing Company, 1999), 309-317.

Allott, P., *Eunomia: A New Order for a New World* (Oxford: Oxford University Press, 1990).

Alston, P., "A Third Generation of Solidarity Rights: Progressive Development or Obfuscation of International Human Rights Law?" 29 (1982) *Netherlands International Law Review* 307-322.

American Society of International Law, "McDougal's Jurisprudence: Utility, Influence, Controversy", 79 (1985) *American Society of International Law Proceedings* 266-273.

Anantram, K., Chase-Dunn, C. & Reese, E., "Global Civil Society and the World Social Forum" in B.S. Turner (ed.), *The Routledge International Handbook of Globalization Studies* (Oxon: Routledge, 2010), 604-621.

Anghie, A, "Francisco De Vitoria and the Colonial Origins of International Law", 5(3) (1996) *Social and Legal Studies* 321-336.

Anghie, A, *Imperialism, Sovereignty and the Making of International Law* (Cambridge: Cambridge University Press, 2004).

Anghie, A., "TWAIL: Past and Future" 10 (2008) *International Community Law Review* 479-81.

Anghie, A. & Chimni, B.S., "Third World Approaches to International Law and Individual Responsibility in Internal Conflicts" 2 (2003) *Chinese Journal of International Law* 77-103.

Archibugi, D. & Held., D. (eds.), *Cosmopolitan Democracy: An Agenda for a New World Order* (Cambridge: Polity Press, 1995).

Archibugi, D., Held, D., Köhler, M. (eds.), *Re-imagining Political Community: Studies in Cosmopolitan Democracy* (Oxford: Polity Press, 1998).

Arriscado Nunes, J., Matias, M., Costa, S., "Bottom-up Environmental Law and Democracy in the Risk Society: Portuguese Experiences in the European Context" in B. De Sousa Santos & C.A. Rodriguez-Garavito, (eds.), *Law and Globalization from Below: Towards a Cosmopolitan Legality* (Cambridge: Cambridge University Press 2005), 363-384.

Bankoff, G., "Rendering the World Unsafe: 'Vulnerability' as Western Discourse" 25(1) (2001) *Disasters* 19-35.

Bannon, V. (ed.), *International Disaster Response Laws, Principles and Practice: Reflections, Prospects and Challenges* (Geneva: International Federation of the Red Cross and Red Crescent Societies, 2003).

Barnes, P., "Approaches to Community Safety: Risk Perception and Social Meaning" Autumn (2002) *Australian Journal of Emergency Management* 15-23.

Bassiouni, M.C., "International Recognition of Victims' Rights" 6 (2003) *Human Rights Law Review* 203-280.

Baudot-Quéguiner, E., "Chapter 8. The laws and Principles Governing Preparedness, Relief and Rehabilitation Operations: The Unique Case of the International Federation of Red Cross and Red Crescent Societies" in Bannon, V. (ed.), *International Disaster Response Laws, Principles and Practice: Reflections, Prospects and Challenges* (Geneva: International Federation of the Red Cross and Red Crescent Societies, 2003), 127-137.

Baxi, U., "Introduction" in U. Baxi and A. Dhanda, *Valiant Victims and Lethal Litigation: The Bhopal Case* (Bombay: N.M. Tripathi, 1990) <http:upendrabaxi.net/documents/Valiant%20victims%20and%20letahl%20litigation%20the%20other%20Bhopal%20case.pdf>.

Baxi, U., "Voices of Suffering and the Future of Human Rights", 8 (1998) *Transnational Law and Contemporary Problems* 125-169.

Baxi, U., "Writing about impunity and the environment: The 'Silver Jubilee' of the Bhopal Catastrophe" (2009) <http://upendrabaxi.net/documents/Writing%20About%20impunity%20-%20Bhopal%202009.pdf>.

Bebbington, A., "Social Movements and the Politicization of Chronic Poverty" 38(5) (2003) *Development and Change* 793-818.

Beidberger, Y., *The Role and Status of International Humanitarian Volunteers and Organizations: The Right and Duty to Humanitarian Assistance* (Leiden: Martinus Nijhoff, 1991).

Benton Heath, J., "Disasters, Relief, and Neglect: The Duty to Accept Humanitarian Assistance and the work of the International Law Commission" 43 *New York University Journal of International Law and Politics* 419-477.

Bettati, M., "The Right of Humanitarian Intervention or the Right of Free Access to Victims?" 29 (1992) *Review of the International Commission of Jurists* 1-11.

Bizarri, M., "Protection of Vulnerable Groups in Natural and Man-Made Disasters" in A. De Guttry, M. Gestri, G. Venturini (eds.), *International Disaster Response Law* (The Hague: Springer, 2012), 381-414.

Bolin, B., "Race, Class, Ethnicity, and Disaster Vulnerability" in H. Rodriguez, E.L. Quarantelli, R.R. Dynes (eds.), *Handbook of Disaster Research* (Springer, 2007), 113-129.

Boyle, A. & Chinkin, C., *The Making of International Law* (Oxford: Oxford University Press, 2007).

Blaikie, P., Cannon, T., Davis, I. & Wisner B., *At Risk: Natural Hazards, People's Vulnerability and Disasters* (London: Routledge, 1994).

Bloomfield, D., Barnes, T., Huyse, L, *Reconciliation after Violent Conflict: A Handbook* (Stockholm: International Institute for Democracy and Electoral Assistance, 2003).

Bratspies, R M., "Rethinking Decision-making in International Environmental Law' A Process-Oriented Inquiry into Sustainable Development", 32 (2007) *Yale Journal of International Law* 363-391.

Brems, E., "Children's Rights and Universality" in J.C.M. Willems (ed.), *Developmental and Autonomy Rights of Children: Empowering Children, Caregivers and Communities* (Antwerp: Intersentia, 2007).

Buchanan, A., "Democracy and the Commitment to International Law" 34 (2005-2006) *Georgia Journal of International and Comparative Law*305-332.

Button, G.V., "The Negation of Disaster: The Media Response to Oil Spills in Great Britain" in A.Oliver-Smith & S.M. Hoffman (eds.), *The Angry Earth: Disaster in Anthropological Perspective* (New York: Routledge, 2002), 113-131.

Cahill, K. (ed.), *Basics of International Humanitarian Missions* (New York: Fordham University Press, The Center for International Health and Cooperaton, 2003).

Cahill, K. (ed.), *Traditions, Values and Humanitarian Action* (USA: The Center for International Cooperation, 2003).

Cançado Trindade, A.A., *Co-existence and Co-ordination of Mechanisms of International Protection of Human Rights (At Global and Regional Levels)*, Recueil des Cours, Tome 202 (Dordrecht: Martinus Nijhoff Publishers, 1987).

Cançado Trindade, A.A., *The Access of Individuals to International Justice* (Oxford: Oxford University Press, 2011).

Caron, D.D & Leben, C. (eds.), *The International Aspects of Natural and Industrial Catastrophes* (The Hague: Martinus Nijhoff, 2001).

Caron, D.D., "Addressing Catastrophes: Conflicting Images of Solidarity and Separateness" in D.D. Caron & C. Leben (eds.), *The International Aspects of Natural and Industrial Catastrophes* (The Hague: Martinus Nijhoff, 2001), 3-30.

Chakrabarti, S., *The Impact of the Postcolonial Theories of Edward Said, Gayatri Spivak, and Homi Bhabha on Western Thought: The Third-World Intellectual in the First-World Academy* (Lewiston: The Edwin Mellen Press, 2010).

Chakrabarty, D., "Radical Histories and Question of Enlightenment Rationalism: Some Recent Critiques of *Subaltern Studies*"30(14) (1995) *Economic and Political Weekly* 751-759.

Charlesworth, H., & Chinkin, C. (eds.), *The Boundaries of International Law: A Feminist Analysis* (Manchester: Manchester University Press, 2000).

Cheng, T.H., "Positivism, New Haven Jurisprudence and the Fragmentation of International Law" in T. Weiler & F. Baetens (eds.), *New Directions in International Economic Law* (The Hague: Martinus Nijhoff, 2011), 411-438.

Chimni, B.S., "Third World Approaches to International Law: A Manifesto" 8 (2006) *International Community Law Review* 3-27.

Chimni, B.S., "Legitimating the International Rule of Law" in J. Crawford & M. Koskeniemmi (eds.) *The Cambridge Companion to International Law* (Cambridge: Cambridge University Press, 2012), 290-308.

Collins, A. E., *Disaster and Development*, (London: Routledge, 2009).

Concannon, B. (Jr.) & Lindstrom, B., "Cheaper, Better, Longer-lasting: A Rights-based Approach to Disaster Response in Haiti" 25 (2011) *Emory International Law Review* 1145-1192.

Condry R., "Secondary Victims and Secondary Victimization" in S.G.. Shoham, P. Knepper, M. Kett (eds.), *International Handbook of Victimology* (London: CRC Press, 2010), 219-249.

Conway, J.M., "Transnational Feminisms and the World Social Forum: Encounters and Transformations in Anti-globalization Spaces" 8(3) (2007) *Women's Bodies, Gender Analysis and Feminist Politics at the Fórum Social Mundial* 49-70.

Conway, J.M., *Edges of Global Justice: The World Social Forum and its 'Others'* (Oxon: Routledge, 2013).

Coppola, D., *Introduction to International Disaster Management* (2nd ed) (Amsterdam: Elsevier 2011).

Coursen-Neff, Z., "Preventive Measures Pertaining to Unconventional Threats to the Peace Such as Natural and Humanitarian Disasters" 30 (1998) *New York University Journal of International Law and Politics* 645-707.

Crawford, J., *Democracy in International Law* (Inaugural Lecture) (Cambridge: Cambridge University Press, 1993).

Crawford, J. & Marks, S., "The Global Democracy Deficit: an Essay in International Law and its Limits" in D. Archibugi, D. Held, M. Köhler (eds.), *Re-imagining Political Community* (Oxford: Polity Press, 1998), 72-90.

Crawford, J. & Koskeniemmi, M. (eds.), *The Cambridge Companion to International Law* (New York: Cambridge University Press, 2012).

Cryer, R., Friman, H., Robinson, D., Wilshurst, E. (eds.), *An Introduction to International Criminal Law and Procedure* (Cambridge: Cambridge University Press, 2010).

Cullen, H., "The Role of History in Thomas Franck's Fairness in International Law and Institutions" 13(4) (2002) *European Journal of International Law* 927-940.

Cuny, F.C., *Disasters and Development*, (America: Oxford University Press, 1983).

Danieli, Y., Stamatopoulou, E., Dias, C.J. (eds.), *The Universal Declaration of Human Rights: Fifty Years and Beyond* (New York: Baywood Publishing, 1999).

Davarnejad, L., "The Impact of Non-State Actors on the International Law Regime of Corporate Social Responsibility: Blessing or Curse?" in M. Noortman, C. Ryngaert (eds.), *Non-State Actor Dynamics in International Law: From Law-Takers to Law-Makers* (Surrey: Ashgate, 2010), 41-68.

De Casadevante Romani, C.F., *International Law of Victims* (Heidelberg: Springer, 2012).

De Kock, L., "Interview with Gayatri Chakravorty Spivak: New Nation Writers Conference in South Africa" 23(3) (1992) *A Review of International English Literature* 29-47.

De Schutter, O, Eide, A., Khalfan, A., Orellana, M., Salomon, M. & Seiderman, I., "Commentary to the Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights" 34 (2012) *Human Rights Quarterly* 1084-1169.

De Sousa Santos, B. & Rodriguez-Garavito, C.A. (eds.), *Law and Globalization from Below: Towards a Cosmopolitan Legality* (Cambridge: Cambridge University Press 2005).

De Sousa Santos, B. & Rodriguez-Garavito, C.A., "Law, Politics, and the Subaltern in Counter-hegemonic Globalization" in B. De Sousa Santos & C.A. Rodriguez-Garavito (eds.), *Law and Globalization from Below: Towards a Cosmopolitan Legality* (Cambridge: Cambridge University Press 2005), 1-26.

De Sousa Santos, B., "Beyond Neoliberal Governance: The World Social Forum as Subaltern Cosmopolitan Politics and Legality" in B. De Sousa Santos & C.A. Rodriguez-Garavito (eds.), *Law and Globalization from Below: Towards a Cosmopolitan Legality* (Cambridge: Cambridge University Press 2005), 29-63.

De Guttry, A., Gestri, M., Venturini, G. (eds.), *International Disaster Response Law* (The Hague: Springer, 2012).

De Guttry, A., "Surveying the Law" in A. De Guttry, M. Gestri, G. Venturini (eds.), *International Disaster Response Law* (The Hague: Springer, 2012), 3-44.

De Urioste, A., "When Will Help Be on the Way? The Status of International Disaster Response Law" 15 (2006) *Tulane Journal of International and Comparative Law* 181-206.

Dembour, M-B., *Who Believes in Human Rights? Reflections on the European Convention* (Cambridge: Cambridge University Press, 2006).

Dembour, M-B., "What are Human Rights? Four Schools of Thought" 32(1) (2010) *Human Rights Quarterly* 1-20.

Dickinson, L.A, "Toward a 'New' New Haven School of International Law?" 32 (2007) *Yale Journal of International Law* 547-552.

Dombrowsky, W.R, "Another Step Toward a Social Theory of Disaster" Preliminary Paper #70 (Newark: Disaster Research Centre, University of Delaware, 1981).

Dombrowsky, W.R, "Again and Again: Is a Disaster What We Call a 'Disaster'?" in E.L. Quarantelli (ed.) *What is a Disaster? Perspectives on the Question* (London: Routledge, 1998). 19-30.

Doughty, P.L., "Plan and Pattern in Reaction to Earthquake: Peru, 1970-1988" in A.Oliver-Smith & S.M. Hoffman (eds.), *The Angry Earth: Disaster in Anthropological Perspective* (New York: Routledge, 2002),

234-256.

Elias, R., *The Politics of Victimization: Victims, Victimology, and Human Rights* (New York: Oxford University Press, 1986).

Evans, M.D. (ed.), *International Law* (3rd ed.) (Oxford: Oxford University Press, 2010).

Falk, R., "On Treaty Interpretation and the New Haven Approach: Achievement and Prospects" (1967-1968) *Virginia Journal of International Law* 323-355.

Falk, R., *On Humane Governance: Toward a New Global Politics* (Cambridge: Polity Press, 1995).

Falk, R., "The World Order between Inter-State Law and the Law of Humanity: the Role of Civil Society Institutions" in D. Archibugi & D. Held (eds.), *Cosmopolitan Democracy: An Agenda for a New World Order* (Cambridge: Polity Press, 1995), 163-179.

Falk, R., *Law in an Emerging Global Village: A Post-Westphalian Perspective* (Transnational Publishers: New York, 1998).

Falk, R., "The United Nations and Cosmopolitan Democracy: Bad Dream, Utopian Fantasy, Political Project" in D. Archibugi, D. Held, M. Köhler, (eds.), *Re-imagining Political Community: Studies in Cosmopolitan Democracy* (Oxford: Polity Press, 1998), 309-331.

Falk, R., "Reviving Global Civil Society After September 11" in K. Cahill (ed.), *Traditions, Values and Humanitarian Action* (USA: The Center for International Cooperation, 2003), 344-367.

Falk, R., "International Law and the Future" in R. Falk, B. Rajagopal, J. Stevens, *International Law and the Third World* (eds.) (London: Routledge-Cavendish, 2008), 9-22.

Falk, R. & Strauss, A., "Toward Global Parliament" 80 (2001) *Foreign Affairs* 212-220.

Farber, D.A., "The Case for Climate Compensation: Justice Climate Change Victims in a Complex World" 2008(2) (2008) *Utah Law Review* 377-413.

Fattah, E.A., "The Evolution of a Young, Promising Discipline: Sixty Years of Victimology, a Retrospective and Prospective Look" in S.G. Shlomo, P. Knepper, M. Kett (eds.) *International Handbook of Victimology* (Boca Raton: CRC Press, 2010), 43-94.

Fidler, D., *International Law and Infectious Diseases* (New York: Oxford University Press, 1999).

Fidler, D., "Disaster and Relief Governance After the Indian Ocean Tsunami: What Role for International Law?" 6 (2005) Melbourne Journal of International Law 458-473.

Fidler, D., "Governing Catastrophes: Security, Health and Humanitarian Assistance" 89(866) (2007) *International Review of the Red Cross* 247-270.

Fischer, H., "International Disaster Response Law Treaties: Trends, Patterns and Lacunae" in International Federation of the Red Cross, *International Disaster Response Laws, Principles and Practice: Reflections, Prospects and Challenges* (Geneva: IFRC, 2003), 24-44.

Fisher, D., *Law and Legal Issues in International Disaster Response: A Desk Study* (Geneva: IFRC, 2007).

Ford, S., "Is the Failure to Respond Appropriately to a Natural Disaster a Crime Against Humanity? The Responsibility to Protect and Individual Criminal Responsibility in the Aftermath of Cyclone Nargis" 38 (2010) *Denver Journal of International Law and Policy* 227-276.

Fox, G.H., "The Right to Political Participation in International Law" in G.H. Fox and B.R. Roth (eds.), *Democratic Governance and International Law* (Cambridge: Cambridge University Press, 2000), 48-90.

Franck, T., *The Power of Legitimacy among Nations* (Oxford: Oxford University Press, 1990).

Franck, T., "The Emerging Right to Democratic Governance" 86(1) (1992) *American Journal of International Law* 46-91.

Franck, T., *Fairness in International Law and Institutions* (Oxford: Oxford University Press, 1998).

Furedi, F., "The Moral Condemnation of the South" in C. Thomas & P. Wilkin,(eds.), *Globalization and the South* (London: MacMillan Press, 1997), 76-89.

Furedi, F., "The Changing Meaning of Disaster", 39(4) (2007) *Area* 482-489.

Gaikokujin jinken renrakukai (ed.), *Nihon ni okeru gaikokujin minzokuteki mainoritei jinken hakusho 2013nen* (Tokyo: Gaikokujin jinken renrakukai, 2013).

Gathii, J.T., "The Limits of the New International Rule of Law on Good Governance" in E.K. Obiora & O.C. Quashigah (eds.) *Legitimate Governance in Africa: International and Domestic Legal Perspectives* (The Hague: Kluwer Law International, 1999), 207-233.

Gathii, J.T., "Imperialism, Colonialism, and International Law" 54(4) (2007) *Buffalo Law Review* 1013-1066.

Gathii, J.T., "TWAIL: A Brief History of its Origins, its Decentralized Network, and a Tentative Bibliography" 3(1) (2011) *Trade, Law and Development* 26-64.

Ghosh, B., "The subaltern at the edge of the popular" 8(4) (2005) *Postcolonial Studies* 459-474.

Gilbert, C., "Studying disaster: Changes in the main conceptual tools" in E.L. Quarantelli (ed.) *What is a Disaster? Perspectives on the Question* (London: Routledge, 1998). 11-18.

Ginige, K., "Disaster Risk Reduction and is Relationship with Sustainable Development" in D. Amartunga & R. Haigh (eds.), *Post-disaster Reconstruction of the Built Environment Rebuilding for Resilience* (Oxford:

Wiley-Blackwell, 2011), 287-303.

Giustiniani, F.Z., "The Works of the International Law Commission on 'Protection of Persons in the Event of Disasters'. A Critical Appraisal" in A. de Guttry, M. Gestri, G. Venturini (eds.), *International Disaster Response Law* (The Hague: Springer, 2012), 65-84.

Global Network of Civil Society Organisations for Disaster Reduction, "VFL 2009" <http://www.globalnetwork-dr.org/views-from-the=frontline/vfl-2009.html>.

Global Network of Civil Society Organisations for Disaster Reduction, *Summary Report: If We Do Not Join Hands... Views from the Frontline Local Reports of progress on implementing the Hyogo Framework for Action* (2011) <http://www.globalnetwork-dr.org/images/documents/vfl2011_report/summary_report_en.pdf>.

Global Network of Civil Society Organisations for Disaster Reduction, *Views from the Frontline: Beyond 2015 Recommendations for a post-2015 disaster risk reduction framework to strengthen the resilience of communities to all hazards* (2013) <http://www.globalnetwork-dr.org/images/documents/VFL2013/vfl2013%20reports/GNFULL%2013%20ENGLISH%20FINAL.pdf>.

Gould, C., "The Right to Housing Recovery after Natural Disasters" 22 (2009) *Harvard Journal of Human Rights* 169-204.

Green, S., *International Disaster Relief: Toward a Responsive System* (New York: McGraw-Hill, 1977).

Greenpeace, *The Bhopal Legacy*, (Exeter: Greenpeace Research Laboratories, 1999).

Greenpeace International, *Lessons from Fukushima* (2012) <http://www.greenpeace.org/internationa/en/publications/Campaign-reports/Nuclear-reports/Lessons-from-Fukushima/>.

Guha, R. (ed.), *Subaltern Studies V: Writings on South Asian History and Society* (London: Oxford University Press, 1987).

Guha, R., "Chandra's Death" in R. Guha (ed.), *Subaltern Studies V: Writings on South Asian History and Society* (London: Oxford University Press, 1987), 135-165.

Guha, R. & Spivak, G.C. (eds.), *Selected Subaltern Studies* (New York: Oxford University Press, 1988).

Gunn, S.W.A., "The Right to Health of Disaster Victims" 12(1) (2003) *Disaster Prevention and Management* 48-51.

Hafner, G., "Risks Ensuing from Fragmentation of International Law," *Official Records of the General Assembly, Fifty-fifth session, Supplement No. 10* (A/55/10), Annex, 143-150.

Hand, J., "Disaster Prevention Presentation" 1 (2003) *Santa Clara Law Journal* 147.

Handl, G., "State Liability for Accidental Transnational Environmental Damage by Private Persons" 74 (1980) *American Journal of International Law* 525-565.

Hardcastle R. & Chua, A., "Victims of Natural disasters: The Right to Receive Humanitarian Assistance" 1(4) (Winter 1997) *International Journal of Human Rights* 35-49.

Hardcastle R. & Chua, A., "Humanitarian Assistance: Towards a Right of Access to Victims of Natural Disasters" 325 (1998) *International Review of the Red Cross* 589-609.

Harper, E., *International Law and Standards Applicable in Natural Disaster Situations* (International Development Law Organisation: Rome, 2009).

Harroff-Tavel, M., "Do Wars Ever End? The Work of the International Committee of the Red Cross when the Guns Fall Silent" 85(851) (2003) *International Review of the Red Cross* 465-496.

Haskell, T., "Capitalism and the origins of the Humanitarian Sensibility" 90(2) (1985) *American Historical Review* 339-361.

Hathaway, O A, "The Continuing Influence of the New Haven School" 32 (2007) *Yale Journal of International Law* 553-558.

Heintze, H-J. & Zwitter, A., (eds.), *International Law and Humanitarian Assistance: A Crosscut Through Legal Issues Pertaining to Humanitarianism* (Dordrecht: Springer, 2011).

Held, D., "Law of States, Law of Peoples: Three Models of Sovereignty" 8 (2002) *Legal Theory* 1-44.

Held, D., "Cosmopolitanism: Globalisation tamed?" 29(4) (2003) *Review of International Studies* 465-480.

Held, D., *Democracy and the Global Order: From the Modern State to Cosmopolitan Governance* (Cambridge: Polity Press, 1995).

Held, D., "Democracy and the New International Order" in D. Archibugi & D. Held (eds.), *Cosmopolitan Democracy: An Agenda for a New World Order* (Cambridge: Polity Press, 1995), 96-120.

Held, D., "Democracy and Globalization" in D. Archibugi, D. Held & M. Köhler (eds.), *Re-imagining Political Community* (Stanford: Stanford University Press, 1998), 11-27.

Held, D., *Models of Democracy* (3rd ed.) (Cambridge: Polity Press, 2006).

Hewitt, K., "Excluded Perspectives in the Social Construction of Disaster" in E.L. Quarantelli (ed.), *What is a Disaster? Perspectives on the Question* (London: Routledge, 1998), 71-88.

Higgins, R., *Problems and Process: International Law and How we Use it* (Oxford: Oxford University

Press, 1994).

Hoffman, M.H., "What is the Scope of International Disaster Response Law?" in International Federation of the Red Cross, *International Disaster Response Laws, Principles and Practice: Reflections, Prospects and Challenges* (Geneva: IFRC, 2003), 13-20.

Horimi, Y., "Kokusaihō ni okeru 'saigai' no gainen ni kansuru joronteki kōsatsu (Preliminary Examination of the Concept of 'Disaster' in International Law)" in T. Ueki (ed.), *Gurōbaruka jidai no kokusaihō (International Law in the Era of Globalisation)*, (Tokyo: Shinzansha, 2012), 159-200.

Howland, T., "Can International Law Prevent Another Bhopal Tragedy" 15 (1986-1987) *Denver Journal of International Law and Policy* 301-316.

Human Rights Now, *Kesennuma kasetsu jūtaku genchi chōsa hōkokusho (Report of the Field Investigation into temporary housing structures in Kessennuma)*, (April 2012) <http://hrn.or.jp/activity/2012/05/03/気仙沼仮設住宅現地調査報告書_201204_HRN.pdf>.

Human Rights Now et al., *NGO Statement: Submission of statement regarding the human rights situation of Fukushima to the United Nations Human Rights Council* (19 February 2013) <http://hrn.or.jp/activity/IWHO%20Human%20Rights%20Now%20HRC%20submission%Fukushima_jp.pdf>.

Hutchinson, J., "Disasters and the International Order: Earthquakes, Humanitarians, and the Ciraolo Project" 22 (2000) *International History Review* 1-36.

Hutchinson, J., "Disasters and the International Order – II: The International Relief Union" 23 (2001) *International History Review* 253-298.

Institut de Droit International, *Humanitarian Assistance* (2003). (Bruges Resolution)

Inter-Agency Standing Committee, Protecting Persons Affected by Natural Disasters: IASC Operational Guidelines on Human Rights and Natural Disasters (Brookings-Bern Project on Internal Displacement: Washington DC, 2006).

Inter-Agency Standing Committee, *Human Rights and Natural Disasters: Operational Guidelines and Field Manual on Human Rights Protection in Situations of Natural Disaster* (Brookings-Bern Project on Internal Displacement: Washington DC, 2008).

Inter-Agency Standing Committee, *Disaster Preparedness for Effective Response: Guidance and Indicator Package for Implementing Priority Five of the Hyogo Framework* (Brookings-Bern Project on Internal Displacement: Washington DC, 2008).

Inter-agency Task Force on Disaster Reduction, *Framework for Action for the Implementation of the International Strategy for Disaster Reduction* (2001) <http://www.ifrc.org/docs/idrl/I331EN.pdf>.

International Federation of the Red Cross and Red Crescent Societies, *World Disasters Report 2000: Focus on Public Health* (Geneva: IFRC, 2000).

International Federation of the Red Cross and Red Crescent Societies, *International Disaster Response Laws, Principles and Practice: Reflections, Prospects and Challenges* (Geneva: IFRC, 2003).

International Federation of the Red Cross and Red Crescent Societies, *World Disasters Report 2003: Focus on Ethics in Aid* (Geneva: IFRC, 2003).

International Federation of the Red Cross and Red Crescent Societies, *Guidelines for the Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance*, IFRC 301C/07/R4 Annex (2007).

International Federation of the Red Cross and Red Crescent Societies, *How to Do a VCA: A Practical Step-by-step Guide for Red Cross, Red Crescent Staff and Volunteers* (Geneva: IFRC, 2007).

International Federation of the Red Cross and Red Crescent Societies, *Law and Legal Issues in International Disaster Response: A Desk Study* (Geneva: IFRC, 2007).

International Federation of the Red Cross and Red Crescent Societies, *Progress in the Implementation of the Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance* (Geneva, 2011).

International Federation of Red Cross and Red Crescent Societies, *Better Laws, Safer Communities? Emerging Themes on how Legislation can Support Disaster Risk Reduction* (Geneva, IFRC, 2013) <www.ifrc.org/PageFiles/49635/IFRC_better-laws-safer-communities_2013.pdf>.

Jackson, T, "Bullets for Beans: Humanitarian Intervention and the Responsibility to Protect in Natural Disasters" 59 (2010) *Naval Law Review* 1-20.

Jakovljevic, B, "The Right to Humanitarian Assistance: Legal Aspects" 27(26) (1987) *International Review of the Red Cross* 469-484.

Jakovljevic. B, "International Disaster Relief Law" 34 (2004) *Israel Yearbook on Human Rights* 251-285.

Jasanoff, S., "Bhopal's Trials of Knowledge and Ignorance" 42 (2007-2008) *New England Law Review* 679-692.

Jennings, R., Watts, A., *Oppenheim's International Law* (9th ed.) (Oxford: Oxford University Press, 1997).

Jordan, S.E., "The Aftershock of Haiti's Earthquake: Response Efforts in the Wake of Natural Disatsers

Perpetuate the Violation of Internally Displaced Persons' Human Rights" 42(2011) *California Western International Law Journal* 221-263.

Kälin, W. & Haenni Dale, C., "Disaster Risk Mitigation – Why Human Rights Matter" 31 (2008) *Forced Migration Review* 38-9.

Kan, S., "Mainoriti to higashi nihon daishinsai: Naijitsu towareru 'tabunka kyousei' – darenimo hitoshiku arasoi kakaru saigai (Minorities and the Great East Japan Earthquake: The inside reality of multicultural coexistence questioned – Disasters which assail all equally)" 278 (2011) *Hyūman raitsu* (Human Rights) 14-18.

Kapur, R., "Too Hot to Handle: The Cultural Politics of 'Fire'", 64 (2000) *Feminist Review* 53-64.

Kapur, R., "The Tragedy of Victimization Rhetoric: Resurrecting the 'Native' Subject in International/Post-Colonial Feminist legal Politics" 15 (2002) *Harvard Human Rights Journal* 1-34.

Kapur, R., "Travel Plans: Border Crossings and the Rights of Transnational Migrants" 18 (2005) *Harvard Human Rights Journal* 107-138.

Kasperson, R.E. & Pijawka K.D., "Societal response to Hazards and Major Hazard Events: Comparing Natural and Technological Hazards" Special Issue: Emergency Management, A Challenge for Public Administration (1985) *Public Administration Review* 7-15.

Katoch, A., "The Responders' Cauldron: The Uniqueness of International Disaster Response" 59(2) (Spring/Summer 2006) *Journal of International Affairs* 153-172.

Keck, M.E. & Sikkink, K., "Transnational Advocacy Networks in International and Regional Politics" 51(159) (1999) *International Social Science Journal* 89-101.

Kennedy, D., *The Dark Sides of Virtue* (Princeton: Princeton University Press, 2004).

Kennedy, D., "Reassessing International Humanitarianism: The Dark Sides" in A. Orford (ed.), *International Law and its Others* (Cambridge: Cambridge University Press, 2006), 131-155.

Kent, G., "The Human Right to Disaster Mitigation and Relief" 3 (2001) *Environmental Hazards* 137-8.

Kent, R.C., *The Anatomy of Disaster Relief: The International Network in Action* (USA: Pinter Publishing, 1987).

Kent, R.C., "The United Nations' Humanitarian Pillar: Re-focusing the UN's Disaster and Emergency Roles and Responsibilities" 28(2) (2004) *Disasters* 216-233.

Khoury, N., "Hague Academy Examines the International Law of Catastrophe" (27 February 2012), <http://www.ifrc.org/en/what-we-do/idrl/latest-news/disaster-law-newsletter-february-2012/hague-academy-of-international-law-seminar-on-the-legal-challenges-of-catastrophes/>.

King, H., "Corporate Accountability Under the Alien Tort Claims Act" 9(2) (2008) *Melbourne Journal of International Law* <http://www.law.unimelb.edu.au/files/dmfile/download156e1.pdf.>.

Kirchhoff, G.F., "History and a Theoretical Structure of Victimology" in S.G. Shlomo, P. Knepper, M. Kett (eds.) *International Handbook of Victimology* (Boca Raton: CRC Press, 2010), 95-125.

Kiriyama, T., *Minshushugi no kokusaihō* (*International Law of Democracy*), (Tokyo: Yūhikaku, 2001).

Knop, K., "Statehood: Territory, People, Government" in J. Crawford & M. Koskeniemmi (eds.), *The Cambridge Companion to International Law* (New York: Cambridge University Press, 2012), 95-116.

Knox, J.H., "Horizontal Human Rights Law" 102(1) (2008) *American Journal of International Law* 1-47.

Knox, J.H., "Linking Human Rights and Climate Change at the United Nations" 33 (2009) *Harvard Environmental Law Review* 477-498.

Koh, H. J., "Is there a 'New' New Haven School of International Law?" 32 (2007) *Yale Journal of International Law* 559-573.

Kohki, A. "Genshiryoku saigi to jinken (Nuclear disasters and human rights)" 32 (2013) *Sekaihō nenpō (Yearbook of World Law)* 23-61.

Koskenniemi, M., "The Politics of International Law – 20 Years Later" 20(1) (2009) *European Journal of International Law* 7-19.

Koskenniemi, M., *The Politics of International Law* (Oxford: Hart Publishing, 2011).

Koskenniemi, M., "'The Lady Doth Protest Too Much': Kosovo, and the Turn to Ethics in International Law" in M. Koskenniemi, *The Politics of International Law* (Oxford: Hart Publishing, 2011), 112-130.

Koskeniemmi, M., "International Law in the World of Ideas" in J. Crawford & M. Koskeniemmi (eds.), *The Cambridge Companion to International Law* (New York: Cambridge University Press, 2012), 47-63.

Krishnadas, J., "Rights to Govern Lives in Postdisaster Reconstruction Processes" 14 (2008) *Global Governance* 347-367.

La Vaccara, A., "An Enabling Environment for Disaster Risk Reduction" in A. De Guttry, M. Gestri, G. Venturini (eds.), *International Disaster Response Law* (The Hague: Springer, 2012), 199-220.

Lasswell, H D. & McDougal, M S., "Jurisprudence in the Policy-Oriented Perspective" (1967) *(Yale University) Faculty Scholarship Series*, Paper 2582 <http://digitalcommons.law.yal.edu/fss_papers/2582>.

Lauterpacht, H., *International Law and Human Rights* (United Kingdom: Stevens, 1950).

Levit, J K, "Bottom-up International Lawmaking: Reflections on the New Haven School of International

Law", 32 (2007) *Yale Journal of International Law* 393-420.

Lyotard, J-F., *The Postmodern Condition: A Report on Knowledge* (Manchester University Press: Manchester,1989).

Macalister-Smith, P., "The International Relief Union of 1932", 5(2) (1981) *Disasters* 147-154.

Macalister-Smith, P., *International Humanitarian Assistance Relief Actions in International Law and Organization* (Dordrecht: Martinus Nijhoff, 1985).

Macalister-Smith, P., "The International Relief Union: Reflections on the Convention Establishing an International relief Union of July 12, 1927", 54 (1986) *International Relief Union* 363-374.

Marks, S., "False Contingency" 62(1) (2009) *Current Legal Problems* 1-21.

Maruyama, S., "2. Responses to Minamata Disease" in J.K. Mitchell (ed.), *The Long Road to Recovery: Community Responses to Industrial Disaster* (Tokyo: UNU Press, 1996). <archive.unu.edu/unupress/unupbooks/uu21le/uu21le00.htm#Contents>.

Masai, R., "Saigai to josei no jinken: Hanshin Awaji daishinsai no keiken ha ikasaretanoka(Disaster and the human rights of women: Was the experience of the Hanshin Awaji Earthquake used effectively?") 667 (2012) *Buraku Kaihō* (Buraku Liberation) 74-81.

McCorquodale, R., "The Individual and the International Legal System" in M.D. Evans (ed.), *International Law* (3rd ed.), (New York: Oxford University Press, 2010), 284-310.

McDougal, M. S., Lasswell, H. D., Reisman, W. M., "Theories About International Law: Prologue to a Configurative Jurisprudence" 8 (1967-1968) *Virginia Journal of International Law* 188-299.

McEntire, D.A., "Development, Disasters and Vulnerability: A Discussion of Divergent Theories and the Need for their Integration" 13(3) (2004) *Disaster Prevention and Management* 193-198.

McEntire, D.A., "Why vulnerability Matters: Exploring the Merit of an Inclusive Disaster Reduction Concept" 14 (2005) *Disaster Prevention and Management* 206-222.

Mégret, F., "International Law as Law" in J. Crawford & M. Koskeniemmi (eds.), *The Cambridge Companion to International Law* (New York: Cambridge University Press, 2012), 64-92.

Melup, I., "The United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power" in Y. Danieli, E. Stamatopoulou, C.J. Dias (eds.), *The Universal Declaration of Human Rights: Fifty Years and Beyond* (New York: Baywood Publishing Company, 1999), 53-65.

Meredith, V.M., "Victim Identity and Respect for Human Dignity: A Terminological Analysis" 91(874) (2009) *International Review of the Red Cross* 259-277.

Meron, T., *The Humanization of International Law* (Leiden: Martinus Nijhoff Publishers, 2006).

Middleton N. & O'Keefe, P., *Disaster and Development: The Politics of Humanitarian Aid* (London: Routledge, 1995).

Ministry of Education, Culture, Sports, Science and Technology Japan, *Houshasenryō tō bunpai mappu* (Map of the Distribution of Levels of Radioactive Material and others), <http://ramap.jaea.go.jp/map>.

Ministry of Economy, Trade and Industry, *Preliminary comparison calculations of the radioactive materials released by the TEPCO Fukushima Daiichi Nuclear Power Plant and the Hiroshima atomic bomb* <http://meti.go.jp/press/2011/08/201108260101-1.pdf> and <http://meti.go.jp/press/2011/08/201108260101-2.pdf > (26 August 2011).

Mitchell, J.K. (ed.), *The Long Road to Recovery: Community Responses to Industrial Disaster* (Tokyo: UNU Press, 1996). <archive.unu.edu/unupress/unupbooks/uu21le/uu21le00.htm#Contents>.

Moeckli, D., Shah, S., Sivakumaran, S. (eds.), *International Human Rights Law* (Oxford: Oxford University Press, 2010).

Morton, S., *Gayatri Spivak: Ethics, Subalternity and the Critique of Postcolonial Reason* (Cambridge, Polity Press, 2007).

Muchlinski, P., "Multinational Enterprises as Actors in International Law: creating 'Soft Law' Obligations and 'Hard law' Rights" in M. Noortman, C. Ryngaert (eds.), *Non-State Actor Dynamics in International Law: From Law-Takers to Law-Makers* (Surrey: Ashgate, 2010), 9-40.

Mutua, M., "Critical Race Theory and International Law: The View of an Insider-Outsider" 45(2000) *Villanova Law Review* 842-853.

Mutua, M., "What is TWAIL?" 94 (2000) *American Society of International Law Proceedings* 31-38.

Mutua, M., "Savages, Victims and Saviors: The Metaphor of Human Rights" 42(1) (2001) *Harvard International Law Journal* 201-245.

Nanda, V.P., "For Whom the Bell Tolls in the Aftermath of the Bhopal Tragedy: Reflections on Forum Non Conveniens and Alternative Methods of Resolving the Bhopal Dispute" 15 (1986-1987) *Denver Journal of International Law and Policy* 235-254.

Nash, A., "Victims by Definition" 85 (2007-2008) *Washington University Law Review* 1419-1461.

Neff, S.C., "A Short History of International Law" in M.D. Evans (ed.), *International Law* (3rd ed.), (Oxford: Oxford University Press, 2010), 3-31.

Newport, J.K. & Jawahar G.G.P, "Community participation and public awareness in disaster mitigation"

12(1) (2003) *Disaster Prevention and Management* 33-36.

Nicoletti, B., "The Prevention of Natural and Man-Made Disasters: What Duties for States?" in A. De Guttry M. Gestri G.. Venturini (eds.), *International Disaster Response Law* (The Hague: Springer, 2012), 177-198.

Nifosi-Sutton, I., "Contours of Disaster Victims' Rights to a Remedy and Reparation under International Human Rights Law" in A. De Guttry, M. Gestri, G. Venturini (eds.) *International Disaster Response Law* (The Hague: Springer, 2012), 415-440.

Nishiumi, M., "Jindōteki kyūenken no hōteki kōsei no kokoromi – furansugoken no shogakusetu wo tegakarari ni shite (Finding the legal construction of humanitarian assistance – Examining the work of theorists of the French-speaking world)" 102 (1996) *Chūo daigaku hōgaku shinpō* (*Chuo University Law Review*) 1-54.

Noortman, M. & Ryngaert C. (eds.), *Non-State Actor Dynamics in International Law: From Law-Takers to Law-Makers* (Surrey: Ashgate, 2010).

Okafor, O.C., "Critical Third World Approaches to International Law (TWAIL): Theory, Methodology, or Both?" 10 (2008) *International Community Law Review* 371-8.

Okuwaki, N., "Shizensaigai to kokusaikyōryoku: Hyōgo sengen to nihon nokōken (Natural disasters and international cooperation: The Hyogo Declaration and Japan's contributions)" 1321 (2006) *Jurisuto* (*Jurist*) 66-72.

Oliver-Smith, A., "Traditional Agriculture, Central Places, and Postdisaster Urban Relocation in Peru" 4(1) (1977) *American Ethnologist* 102-116.

Oliver-Smith, A., "Post-Disaster Consensus and Conflict in a Traditional Society: The 1970 Avalanche of Yungay, Peru" 4 (1979) *Mass Emergencies* 39-52.

Oliver-Smith, A., "Global Changes and the Definition of Disaster" in E.L. Quarantelli (ed.), *What is a Disaster? Perspectives on the Question* (London: Routledge, 1998), 179-196.

Oliver-Smith, A., "Disasters, Social Change, and Adaptive Systems" in E.L. Quarantelli (ed.), *What is a Disaster? Perspectives on the Question* (London: Routledge, 1998), 231-233.

Oliver-Smith, A., "'What is a Disaster?': Anthropological Perspectives on a Persistent Question" in A.Oliver-Smith & S.M. Hoffman (eds.), *The Angry Earth: Disaster in Anthropological Perspective* (New York: Routledge, 2002),18-34.

Oliver-Smith, A., "Peru's Five-Hundred Year Earthquake: Vulnerability in Historical Context" in A.Oliver-Smith & S.M. Hoffman (eds.), *The Angry Earth: Disaster in Anthropological Perspective* (New York: Routledge, 2002), 74-88.

Oliver-Smith, A., "The Brotherhood of Pain: Theoretical and Applied Perspectives on Post-Disaster Solidarity" in A.Oliver-Smith & S.M. Hoffman (eds.), *The Angry Earth: Disaster in Anthropological Perspective* (New York: Routledge, 2002), 156-172.

Onuma, Y., *Kokusaiho: Hajimete manabu hito no tame no* (*International Law for Beginners*) (Tokyo: Toshindo, 2008).

Orr., J.J., "Victims and Perpetrators in National Memory: Lessons from Post-World War Two Japan" 57(1) (2007) *Revue Suisse d'Histoire* 42-57.

Osofsky, H.M., "Learning from Environmental Justice: A New Model for International Environmental Rights" 24 (2005) *Stanford Environmental Law Journal* 71-147.

Otto, D., "Subalternity and International Law: The Problems of Global Community and the Incommensurability of Difference" 5(3) (1996) *Social and Legal Studies* 337-364.

Otto, D., "Rethinking Universals: Opening Transformative Possibilities in International Human Rights Law" 18 (1997) *Australian Yearbook of International Law* 1-36.

Otto, D., "Postcolonialism and Law?" (1998-1999) *Third World Legal Studies* vii-xvii.

Pahuja, S., "The Postcoloniality of International Law" 46(2) (2005) *Harvard International Law Journal* 459-470.

Palliyaguru, R.S. & Amaratunga, R.D.G, "Linking Reconstruction to Sustainable Socio-economic Development" in *Rebuilding for Resilience: Post-Disaster Reconstruction of the Built Environment* (Oxford: Wiley-Blackwell, 2011), 268-283.

Parekh, B., "Non-ethnocentric Universalism" in T. Dunne & N. J. Wheeler (eds.), *Human Rights in Global Politics* 'Cambridge: Cambridge University Press, 1999), 128-159.

Patnaik, D.S., "Towards an International Legal Framework for the Protection of Individuals in the Event of Disasters: An Initial Inquiry" in H-J Heintze &A. Zwitter (eds.), *International Law and Humanitarian Assistance: A Crosscut Through Legal Issues Pertaining to Humanitarianism* (Heidelberg: Springer, 2011), 129-141.

Paul, B.K., "Disaster Relief Efforts: An Update" 6(3) (2006) *Progress in Development Studies* 211-223.

Pelling, M. (ed.), *Natural Disasters and Development in a Globalizing World* (New York: Routledge, 2003).

Pelling, M. & Holloway, A., *Legislation for Mainstreaming Disaster Reduction* (2006)

<http://www.tearfund.org/webdocs/website/Campaigning/Policy%20and%20research/DRR%20legislation.pdf>

Perry, R.W. & Quarantelli, E.L. (eds.), *What is a Disaster?: New Answers to Old Questions* (USA: Xlibris, 2005).

Perry, R.W. "What is a disaster?" in H. Rodriguez, E.L. Quarantelli, R.R. Dynes (eds.), *Handbook of Disaster Research* (Springer, 2007) 1-15.

Philipose, P., "Bhopal's Children: Generation II <infochangeindia.org/environment/features/bhopals-children-generation-ii.html> (June 2010).

Porfiriev, B.N., "Issues in the definition and delineation of disasters and disaster areas" in E.L. Quarantelli (ed.) *What is a Disaster? Perspectives on the Question* (London: Routledge, 1998), 56-72.

Post, R., "Democracy and Equality" *Yale Faculty Scholarship Series*, Paper 177 (2005) <http://digitalcommons.law.yale.edu/fss_papers/177>.

Prakash, G., "Subaltern Studies as Postcolonial Criticism" 99(5) (1994) *The American Historical Review* 1475-1490.

Pronto, A., "Consideration of the Protection of Persons in the Event of Disasters by the International Law Commission" 15(2) 2009 *ILSA Journal of International and Comparative Law* 449-457.

Pureza, J.M., "Defensive and Oppositional Counter-hegemonic Uses of International Law From the International Criminal Court to the Common Heritage of Mankind" in B. De Sousa Santos & C.A. Rodriguez-Garavito (eds.), *Law and Globalization from Below: Towards a Cosmopolitan Legality* (Cambridge: Cambridge University Press 2005), 267-280.

Quarantelli, E.L., "What should we study? Questions and suggestions for researchers about the concept of disasters," 7(3) (1987) *International Journal of Mass Emergencies and Disasters* 243-251.

Quarantelli, E.L. (ed.), *What is a Disaster?:A Dozen Perspectives on the Question* (New York: Routledge, 1998).

Quarantelli, E.L., "Emergencies, Disaster and Catastrophes are Different Phenomena", University of Delaware Disaster Research Centre Preliminary Paper #304 (2000) <http://swlgema.com/uploads/SWLGEMA/2012_conference/Scot%20Phelps%20Emergencies%20Disasters%20%20Catastrophes.pdf>.

Quarantelli, E.L., *What is a Disaster? New Answers to Old Questions* (USA: Xlibris Corp, 2005).

Quarantelli, E.L., "Catastrophes are Different from Disasters: Some Implications for Crisis Planning and Managing Drawn from Katrina" <http://understandingkatrina.ssrc.org/Quarantelli> (11 June 2006).

Quarantelli, E.L., "A Heuristic Approach to Future Disasters and Crises: New, Old and In-Between Types" in H. Rodriguez, E.L. Quarantelli, R.R. Dynes (eds.), *Handbook of Disaster Research* (New York: Springer, 2007), 16-41.

Rajagopal, B., *International Law from Below* (Cambridge: Cambridge University Press, 2003).

Rajagopal, B., "Limits of Law in Counter-Hegemonic Globalization: The Indian Supreme Court and the Narmada Valley Struggle" in B. De Sousa Santos & C.A. Rodriguez-Garavito (eds.), *Law and Globalization from Below: Towards a Cosmopolitan Legality* (Cambridge: Cambridge University Press 2005), 183-217.

Rajagopal, B., "Counter-hegemonic International Law: Rethinking Human Rights and Development as a Third World Strategy" in R. Falk, B. Rajagopal, J. Stevens (eds.), *International Law and the Third World* (Oxford: Routledge-Cavendish, 2008), 63-80.

Ramcharan, B.G., *The International Law and Practice of Early-Warning and Preventive Diplomacy: The Emerging Global Watch* (Dordrecht: Martinus Nijhoff Publishers, 1991).

Ramcharan, B.G., "A Victim's Perspective on the International Human Rights Treaty Regime" in Y. Danieli,E. Stamatopoulou, C.J. Dias (eds.), *The Universal Declaration of Human Rights: Fifty Years and Beyond* (New York: Baywood Publishing Company, 1999), 27-35.

Ratner, S.R. & Slaughter, A-M., "Appraising the Methods of International Law: A Prospectus for Readers" 93 (1999) *American Journal of International Law* 291.

Ravi Rajan, S., "Bhopal: Vulnerability, Routinization, and the Chronic Disaster" in A.Oliver-Smith & S.M. Hoffman (eds.), *The Angry Earth: Disaster in Anthropological Perspective* (New York: Routledge, 2002), 257-277.

Reisman, M., "The View from the New Haven School of International Law" 86 (1992) *American Society of International Law Proceedings* 118-125.

Reisman M., Wiessner S., Willard, A R., "The New Haven School: A Brief Introduction" 32 (2007) *Yale Journal of International Law* 575-582.

Reinecke, I., "International Disaster Response Law and the Coordination of International Organisations", 2(2010) *The ANU Undergraduate Research Journal* 143-162.

Rodriguez-Garavito, C.A., "Nike's Law: The Anti-Sweatshop Movement, Transnational Corporations, and the Struggle Over International Labor Rights in the Americas" in B. De Sousa Santos & C.A. Rodriguez-Garavito (eds.), *Law and Globalization from Below: Towards a Cosmopolitan Legality*

(Cambridge: Cambridge University Press 2005), 64-91.

Rusimbi, M. & Mbilinyi, M., "Political and Legal Struggles over Resources and Democracy: Experiences with Gender Budgeting in Tanzania" in B. De Sousa Santos & C.A. Rodriguez-Garavito (eds.), *Law and Globalization from Below: Towards a Cosmopolitan Legality* (Cambridge: Cambridge University Press 2005), 283-209.

Saberi, H., "Love it or Hate it but for the Right Reasons: Pragmatism and the New Haven School's International Law of Human Dignity" 35(1) (2012) *Boston College International and Comparative Law Review* 59-143.

Saechao, T.R., "Natural Disasters and the Responsibility to Protect" 32 (2007) *Brooklyn Journal of International Law* 663.

Sagav, M., "The Interface Between Earthquake Planning and Development Planning: A Case Study and Critique of the Reconstruction of Huaraz and the Callejon de Huaylas, Ancash, Peru, Following the 31 May 1970 Earthquake" 3(3) (1979) *Disasters* 258-263.

Said, E., *Orientalism* (Toronto: Random House, 1979).

Samuels, J.W., "Organized Response to Natural Disasters" in R. Macdonald, D.M. Johnston, G.L. Morris (eds.), *The International Law and Policy of Human Welfare* (Sijthoff & Noordhoff: Leiden, 1978), 675- 690.

Samuels, J.W., "The Relevance of International Law in the Prevention and Mitigation of Natural Disasters" in L.H. Stephens & S.J. Green (eds.), *Disaster Assistance: Appraisal, Reform and New Approaches* (London: Macmillan, 1979), 245.

Sarat, A. & Lezaun, J. (eds), *Catastrophe: Law, Politics and the Humanitarian Impulse* (Amherst: University of Massachusetts Press, 2009).

Satō, N., "'Ishinomaki shi chousa' ni miru gaikokujin hisaisha no kukyō (Adversities faced by foreign disaster victims as shown by the 'Ishinomaki city survey'") in Gaikokujin jinken renrakukai (ed.), *Nihon ni okeru gaikokujin minzokuteki mainoritei jinken hakusho 2013nen* (White Paper on the Human Rights of Foreigners and Ethnic Minorities in Japan 2013) (Tokyo: Gaikokujin jinken renrakukai, 2013), 14-18.

Schmidt, M., "Chapter 18. United Nations" in D. Moeckli, S. Shah, S. Sivakumaran (eds.), *International Human Rights Law* (Oxford: Oxford University Press, 2010).

Scobbie, I., "Tom Franck's Fairness" 13(4) (2002) *European Journal of International Law* 909-925.

Seow, F.,"Disaster and Disaster Relief in International Law: The Past and the Future", 21 (2012) *Kanagawa daigaku hōgaku kenkyū ronshū* 37-84.

Serra, A., David Tabara, J., Chabay, I, *Assessing the role of vertical and horizontal communication in disaster risk reduction learning and planning: The case of the Spanish Tous dam-break, 1982 (A report for the UNISDR for the mid-term review of the Hyogo Framework for Action)* (2011), <http://www.preventionweb.net/files/18197_204chabayetal.assessingtheroleofver.pdf>.

Shelton, D., *Remedies in International Human Rights Law* (2nd ed.), (Oxford: Oxford University Press, 2006).

Sheridan, L.M.E., "Institutional Arrangements for the Coordination of Humanitarian Assistance in Complex Emergencies of Forced Migration" 14 (1999-2000) *Georgetown Immigration Law Journal* 941-984.

Shoham, S.G., Knepper, P., Kett, M. (eds.) *International Handbook of Victimology* (London: CRC Press, 2010).

Shrivastana, P., "5. Long-term Recovery from the Bhopal Crisis" in Mitchell, J.K. (ed.), *The Long Road to Recovery: Community Responses to Industrial Disaster* (Tokyo: UNU Press, 1996). <archive.unu.edu/unupress/unupbooks/uu21le/uu21le00.htm#Contents>.

Simma, B. & Paulus, A L., "The Responsibility of Individuals for Human Rights Abuses in Internal Conflicts: A Positivist View" 93 (1999) *The American Journal of International Law* 302.

Simpson, G., "International Law in Diplomatic History" in J. Crawford & M. Koskeniemmi (eds.), *The Cambridge Companion to International Law* (New York: Cambridge University Press, 2012), 25-46.

Sommario, E., "Derogation from Human Rights Treaties in Situations of Natural or Man-Made Disasters" in A. De Guttry, M. Gestri, G. Venturini (eds.), *International Disaster Response Law* (The Hague: Springer, 2012), 323-352.

Spivak, G.C., "A Literary Representation of the Subaltern: Mahasweta Devi's 'Stanadayini'" in R. Guha (ed.), *Subaltern Studies V: Writings on South Asian History and Society* (London: Oxford University Press, 1987), 91-134.

Spivak, G.C., "Subaltern Studies: Deconstructing Historiography" in G.C. Spivak, *In Other Worlds: Essays in Cultural Politics* (London: Routledge, 1987), 197-221.

Spivak, G.C., "Can the Subaltern Speak?" (1988) *Marxism and the Interpretation of Culture* 271-313.

Spivak, G.C., "Scattered Speculations on the Subaltern and the Popular", 8(4) (2005) *Postcolonial Studies* 475-486.

Sonorajah, M., "Power and Justice: Third World Resistance in International Law" 10 (2006) *Singapore Year*

Book of International Law 19-57.

Srikantiah, J., "Perfect Victims and Real Survivors: The Iconic Victim in Domestic Human Trafficking Law" 87 *Boston University Law Review* (2007), 157-211.

Sridhar Patnaik, D., "Towards an International Legal Framework for the Protection of Individuals in the Event of Disasters: An Initial Inquiry" in H-J. Heintze, A. Zwitter (eds.), *International Law and Humanitarian Assistance: A Crosscut Through Legal Issues Pertaining to Humanitarianism* (Dordrecht: Springer, 2011), 130-141.

Stephens, T.W., "Between Expectation and Endeavor: UNDRO and the Problems of International Relief Coordination" in L.H. Stephens & S.J. Green (eds.), *Disaster Assistance: Appraisal, Reform and New Approaches* (London: Macmillan, 1979), 28-48.

Strobl, R., "Becoming a Victim" in S.G. Shlomo, P. Knepper, M. Kett (eds.) *International Handbook of Victimology* (Boca Raton: CRC Press, 2010), 3-26.

Téson, F.R., "The Kantian Theory of International Law" 92(1) (1992) *Columbia Law Review* 53-102.

Toman, J., "International Disaster Response Law: Treaties, Principles, Regulations and Remaining Gaps", paper from Centennial Regional Meeting of ASIL Golden Gate University School of Law Sixteenth Annual Fulbright Symposium on Current International Legal Issues (7 April 2006) <http://ssrn.com/abstract=1312787>.

Twining, W., "Upendra Baxi" in W. Twining, *Human Rights, Southern Voices* (Cambridge: Cambridge University Press, 2009), 157-210.

Tyagi Y.K. & Rosencranz, A. "Some International Law Aspects of the Bhopal Disaster" 27(10) (1988) *Social Science and Medicine* 1105-112.

Ueki, T. (ed.), *Gurōbaruka jidai no kokusaihō* (*International Law in the Era of Globalisation*), (Tokyo: Shinzansha, 2012).

Upadhyaya, P., "Human Security, Humanitarian Intervention, and Third World Concerns" 33 (2004) *Denver Journal of International Law and Policy* 71-91.

Van Boven, T., "The Perspective of the Victim" in Y. Danieli, E. Stamatopoulou, C.J. Dias (eds.), *The Universal Declaration of Human Rights: Fifty Years and Beyond* (New York: Baywood Publishing, 1999), 13-26.

Van Boven, T., "Introduction: Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law" (2008) <http://untreaty.un.org/cod/avl/ha/ga_60-147/ga_60-147.html>.

Van Boven, T., "Categories of Rights" in D. Moeckli, S. Shah, S. Sivakumaran (eds.), *International Human Rights Law* (Oxford: Oxford University Press, 2010), 173-188.

Van Niekerk, D., "From Disaster Relief to Disaster Risk Reduction: A Consideration of the Evolving International Relief Mechanism" 4(2) (2008) *The Journal for Transdisciplinary Research in Southern Africa* 355-376.

Varma R. & Varma, D.R., "The Bhopal Disaster of 1984" 25 (2005) *Bulletin of Science, Technology & Society* 37-43.

Vattel, E., *The Law of Nations, or Principles of the Law of Nature Applied to the Conduct and Affairs of Nations and Sovereigns* (1758).

Venturini, G., "International Disaster Response Law in Relation to Other Branches of International Law" in A. De Guttry, M. Gestri, G. Venturini (eds.), *International Disaster Response Law* (The Hague: Springer, 2012), 45-64.

Wang, T., "The Third World and International Law" in R.St.J. Macdonald & D.M. Johnston (eds.), *The Structure and Process of International Law: Essays in Legal Philosophy Doctrine and Theory* (Dordrecht: Martinus Nijhoff Publishers, 1983), 955-976.

Wallace, H. & Roberson, C., *Victimology: Legal, Psychological, and Social Perspectives* (3rd ed.), (Boston: Prentice Hall, 2011).

Wemmers, J-A., "The Meaning of Justice for Victims" in S.G. Shlomo, P. Knepper, M. Kett (eds.) *International Handbook of Victimology* (Boca Raton: CRC Press, 2010), 27-42.

Wisner, B., "Changes in Capitalism and Global Shifts in the Distribution of Hazard and Vulnerability" in M. Pelling (ed.), *Natural Disasters and Development in a Globalizing World* (New York: Routledge, 2003), 43-57.

Wisner, B., Blaikie, P., Cannon, T., Davis, I., *At Risk: Natural Hazards, People's Vulnerability and Disasters* (2nd ed.), (Oxon: Routledge, 2004).

Woodward, A., "Jean-François Lyotard (1924-1998)" in *Internet Encyclopaedia of Philosophy* (2005) < http://www.iep.utm.edu/lyotard/>.

Young, R.J.C, *Postcolonialism: A Very Short Introduction* (Oxford: Oxford University Press, 2007).

Zaman, M.Q., "Vulnerability, Disaster and Survival in Bangladesh: Three Case Studies" in A.Oliver-Smith & S.M. Hoffman (eds.), *The Angry Earth: Disaster in Anthropological Perspective* (New York: Routledge,

2002), 192-212.

Primary materials – International Treaties

African Charter on the Rights and Welfare of the Child)OAU Doc. CAB/LEG/24.9/49 (1990).
Agreement between Member States and Associate Members of the Association of Caribbean States for Regional Cooperation on Natural Disasters (1999).
ASEAN Agreement on Disaster Management and Emergency Response (2005).
Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (1989).
Charter of the United Nations (1945).
Charter on Cooperation to Achieve the Coordinated Use of Space Facilities in the Event of Natural or Technological Disasters (1999).
Convention Establishing an International Relief Union (1927).
Convention for the Prevention of Marine Pollution from Land-based Sources.
Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency (1986).
Convention on Early Notification of a Nuclear Accident (1986).
Convention on Environmental Impact Assessment in a Transboundary Context.
Convention on Facilitation of International Maritime Traffic (1965).
Convention on International Civil Aviation (1944).
Convention on Privileges and Immunities of the United Nations (1946).
Convention on Privileges and immunities of the Specialized Agencies (1947).
Convention on Temporary Admission (1990).
Convention on the Elimination of All Forms of Discrimination against Women (1979).
Convention on the Elimination of Racial Discrimination (1965)
Convention on the Protection of the Marine Environment of the Baltic Sea Area.
Convention on the Protection of the Rights of All Migrant Workers and members of their Families (1990).
Convention on the Rights of the Child (1989).
Convention on the Rights of Persons with Disabilities (2008).
Convention on the Safety of United Nations and Associated Personnel (1994).
Convention on the Simplification and Harmonization of Customs Proceedures (adopted 1973, amended 1999).
Convention on the Transboundary Effects of Industrial Accidents (1992).
Convention Relating to the Status of Refugees (1951).
Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification (1994).
Draft Convention on Expediting the Delivery of Emergency Assistance, A/39/267/Add.2 (1984).
Food Aid Convention (1999).
Framework Convention on Civil Defence Assistance (2000).
Framework Convention on Climate Change (1992).
Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (1949).
Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (1949).
Geneva Convention Relative to the Treatment of Prisoners of War (1949).
Geneva Convention Relative to the Protection of Civilian Persons in Time of War (1949).
Guiding principles on Internal Displacement
International Convention for the Protection of All Persons from Enforced Disappearance (2006).
International Convention on Civil and Political Rights (1961).
International Convention on Economic, Social and Cultural Rights (1958).
International Convention on Oil Pollution Preparedness, Response and Cooperation (1990).
International Health Regulations (1951, revised 2000 and entered into force 2007).
International Labour Organization Convention No. 147 on Prevention of Major Industrial Accidents (1994).
Kyoto Protocol (1997).
Montevideo Convention on the Rights and Duties of States (1934).
Optional Protocol to the Convention on the Safety of United Nations and Associated Personnel (2005).
Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Adoption of an Additional Distinctive Emblem (Protocol III) (2005).
Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) (1977).

Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of non-International Armed Conflicts (Protocol II) (1977).
Protocol for the Protection of the Mediterranean Sea against Pollution from land-based sources.
Protocol on Preparedness, Response and Co-operation to Pollution Incidents by Hazardous and Noxious Substances (2000).
Protocol Relating to the Status of Refugees (1969).
Rome Statute of the International Criminal Court (2002).
Statute of the International Court of Justice (1945).
Tampere Convention on the Provision of Telecommunication Resources for Disaster Mitigation and Relief Operations (1998)
United Nations Framework Convention on Climate Change (1992)
United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification (1994)
Vienna Convention on Diplomatic Relations (1961).
Vienna Convention on Consular Relations (1963).

Primary materials – International Declarations

Universal Declaration of Human Rights (1948).
Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States
Hyogo Declaration
Millennium Declaration
Yokohama Strategy and Plan of Action for a Safer World: Guidelines for Natural Disaster Prevention, Preparedness and Mitigation (1994).

Primary materials – UN Resolutions

ECOSOC, *Measures to be adopted in connexion with the earthquake in Ecuador*, E/RES/254 (IX) (1949).
ECOSOC, *Measures to be adopted in connexion with the earthquakes in Morocco*, E/RES/746 (XXIX) (1960).
ECOSOC, *Measures to be adopted in connexion with the earthquakes in Chile*, E/RES/766 (XXIX) (1960).
ECOSOC, *International co-operation in the field of seismological research,* E/RES/767 (XXX) (1960).
ECOSOC, *International co-operation in the field of seismological research,* E/RES/912 (XXXIV) (1962).
ECOSOC, *Earthquake relief to Libya, Flood relief to Morocco, Relief to Indonesia consequent on the volcanic eruption in Bali*, E/RES/930 (XXXV) (1963).
ECOSOC, *Measures to be adopted in connexion with the earthquake of Skopje, Yugoslavia*, E/RES/970(XXXVI) (1963).
ECOSOC, *Assistance in cases of natural disaster*, E/RES/1049 (XXVIII) (1964).
ECOSOC, *Emergency aid to Costa Rica*, E/RES/1014 (XXXVII) (1964).
ECOSOC, *Transfer for Responsibilities and Assets of International Relief Union to United Nations* E/RES/1153 (XLI) (1966).
ECOSOC, *Rehabilitation and reconstruction following natural disasters*, E/RES/1211 (XLII) (1967).
ECOSOC, *Action to be taken following the flooding of the River Euphrates*, E/RES/1212 (XLII) (1967).
ECOSOC, *Rehabilitation and reconstruction following natural disasters*, E/RES/1222 (XLII) (1967).
ECOSOC, *Natural disasters in Turkey, Colombia, Venezuela and Pakistan*, E/RES/1254(XLIII) (1967).
ECOSOC, *Natural disaster in Romania and Hungary,* E/RES/1508(XLVIII) (1970).
ECOSOC, *Proposal for the establishment of an emergency fund for disasters*, E/RES/1533 (XLIX) (1968).
ECOSOC, *Assistance in cases of natural disaster*, E/RES/1546 (XLIX) (1970).
ECOSOC, *Assistance to Turkey in connexion with the earthquake in Kutahya Province*, E/RES/1478 (XLVIII) (1970).
ECOSOC, *Assistance to Yugoslavia in connexion with the earthquake at Banja Luka*, E/RES/1469 (XLVIII), (1970).
ECOSOC, *Assistance in cases of natural disaster and other emergency situation,* E/RES/1612(LI), (1971).
ECOSOC, *Measures to be taken following the natural disaster in the Philippines*, E/RES/1704 (LIII) (1972).
ECOSOC, *Measures to be taken following the floods in Tunisia*, E/RES/1736 (LIV) (1973).
ECOSOC, *Measures to be taken following the cyclones and floods in Madagascar,* E/RES/1982/5 (1975).
ECOSOC, *Strengthening the capacity of the United Nations system to respond to natural disasters and other disaster situations*, E/RES/1983/47 (1983).
ECOSOC, *Measures to assist Guatemala following the earthquake of 4 February 1976*, E/RES/1984 (LX) (1976).

ECOSOC, *Measures to be taken following the cyclones and drought in Madagascar*, E/RES/1985 (LX) (1976).
ECOSOC, *Assistance in cases of natural disaster and other emergency situations*, E/RES/1612 (LI) (1979).
ECOSOC, *Office of the United Nations Disaster Relief Co-ordinator*, E/RES/1979/59 (1979).
ECOSOC, *Emergency assistance to the drought victims in Djibouti*, E/RES/1984/6 (1984).
ECOSOC, *Assistance in the case of natural disasters and other disaster situations: Office of the United Nations Disaster Relief Co-ordinator*, E/RES/1990/63 (1990).
ECOSOC, *Strengthening of the coordination of emergency humanitarian assistance of the United Nations*, E/RES/2009/3 (2009).
HRC, *Human rights and international solidarity*, A/HRC/RES/15/13 (2010).
HRC, *Promotion and protection of human rights in post-disaster and post-conflict situations*, HRC/RES/22/16 (2013).
HRC, *Adequate housing as a component of the right to an adequate standard of living in the context of disaster settings*, A/HRC/RES/19/4 (2012).
HRC, Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, *Mission to Maldives*, A/HRC/13/20/Add.3 (2010).
HRC, Special Rapporteur on extreme poverty and human rights, *Final draft of the guiding principles on extreme poverty and human rights*, A/HRC/21/39 (2012).
HRC, Special Rapporteur on the right of everyone to *Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health: Mission to Japan, Anand Grover*, A/HRC/23/41/Add.3 (2013).
HRC, UPR Working Group, *Report of the Working Group on the Universal Periodic Review: Sri Lanka*, A/HRC/8/46 (2008).
HRC, UPR Working Group, *Report of the Working Group on the Universal Periodic Review: Bangladesh*, A/HRC/11/18 (2009).
HRC, UPR Working Group, *Report of the Working Group on the Universal Periodic Review: Viet Nam*, A/HRC/12/11 (2009).
HRC, UPR Working Group, *Report of the Working Group on the Universal Periodic Review: Estonia*, A/HRC/17/17 (2011).
HRC, UPR Working Group, *Report of the Working Group on the Universal Periodic Review: Maldives*, A/HRC/16/7 (2011).
HRC, UPR Working Group, *Report of the Working Group on the Universal Periodic Review: Nauru*, A/HRC/17/3 (2011).
HRC, UPR Working Group, *Summary prepared by the OHCHR in accordance with paragraph 15(c) of the annex to HRC resolution 5/1*, A/HRC/WG.6/9/MDV/3 (2010).
HRC, UPR Working Group, *Summary prepared by the OHCHR in accordance with paragraph 15(c) of the annex to HRC resolution 5/1*, A/HRC/Wg.6/NRU/3 (2011).
UNGA, *Measures to be adopted in connexion with the earthquake in Iran*, A/RES/1753 (XVII) (1962).
UNGA, *Measures in connexion with the earthquake at Skoplje, Yugoslavia*, A/RES/1882 (XVIII) (1963).
UNGA, *Measures in connexion with the hurricane which has just struck the territories of Cuba, the Dominican Republic, Haiti, Jamaica and Trinidad and Tobago*, A/RES/1888 (XVIII) (1963).
UNGA, *Assistance in cases of natural disaster*, A/RES/2034 (XX), (1965).
UNGA, *Assistance in cases of natural disaster*, A/RES/2435 (XXIII), (1968).
UNGA, *Assistance to Iran in Connexion with the earthquake of August 1968*, A/RES/2378 (XXIII) (1968).
UNGA, *Unforeseen and extraordinary expenses for the financial year 1970*, A/RES/2614 (XXIV) (1969).
UNGA, *Assistance to Pakistan in connexion with the cyclone and tidal bore of November 1970*, A/RES/2643 (XXV) (1970).
UNGA, *Assistance in cases of natural disaster,* A/RES/2717 (XXV) (1970).
UNGA, *Assistance in Cases of Natural Disaster and Other Disaster Situations*, ARES/2816 (XXVI) (1971).
UNGA, *International action for the mitigation of the harmful effects of storms,* A/RES/2914 (XXVII) (1972).
UNGA, *Assistance in cases of natural disaster and other disaster situations*, A/RES/2959(XXVII) (1973).
UNGA, *Consideration of the economic and social situation in the Sudano-Sahelian region stricken by drought and measures to be taken for the benefit of that region,* A/RES/3054 (XXVIII) (1974).
UNGA, *Aid to the Sudano-Sahelian populations threatened with famine*, A/RES/3153 (XXVIII) (1974).
UNGA, *International assistance for the rehabilitation, reconstruction and development of the Dominican Republic*, A/RES/34/18 (1979).
UNGA, *Office of the United Nations Disaster Relief Co-ordinator*, A/RES/34/55 (1979).
UNGA, *Strengthening the Capacity of the United Nations system to respond to natural disasters and other*

disaster situations, A/RES/36/225 (1981).
UNGA, *Office of the United Nations Disaster Relief Co-ordinator*, A/RES/37/144 (1982).
UNGA, *Strengthening the Capacity of the United Nations system to respond to natural disasters and other disaster situations*, A/RES/38/202 (1983).
UNGA, *Assistance to the drought-stricken areas of Djibouti, Ethiopia, Kenya, Somalia, the Sudan and Uganda*, A/RES/39/205 (1984).
UNGA, *Report of the Secretary-General*, A/RES/39/267/Add.2 (1984).
UNGA, *Summary Record of the 32nd Meeting*, A/C.2/39/SR.32 (1984).
UNGA, *Summary Record of the 37th Meeting*, A/C.2/39/SR.37 (1984).
UNGA, *Summary Record of the 39th meeting, A/C/39/SR.39* (1984).
UNGA, *Assistance to the drought-stricken areas of Ethiopia*, A/RES/40/228 (1985).
UNGA, *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*, A/RES/40/34 (1985).
UNGA, *Long-term and effective solution of the problems caused by natural disasters in Bangladesh*, A/RES/40/231 (1985).
UNGA, *Emergency assistance to El Salvador*, A/RES/41/2 (1986).
UNGA, *Office of the United Nations Disaster Relief Co-ordinator*, A/RES/41/201 (1986).
UNGA, *International Decade for Disaster Reduction*, A/RES/42/169 (1987).
UNGA, *Emergency assistance to Jamaica*, A/RES/43/7 (1988).
UNGA, *Humanitarian Assistance to Victims of Natural Disasters and Similar Emergency Situations*, A/RES/43/131 (1988).
UNGA, *International Decade for Disaster Reduction*, A/RES/43/202 (1988).
UNGA, *Short-term, medium-term and long-term solutions to the problems of natural disasters in Bangladesh*, A/RES/43/9 (1988).
UNGA, *International Decade for Disaster Reduction*, A/RES/44/236 (1989).
UNGA, *International Decade for Disaster Reduction*, A/RES/45/185 (1990).
UNGA, *Strengthening of the Office of the United Nations Disaster Relief Co-ordinator*, A/RES/45/221 (1990).
UNGA, *International Decade for Disaster Reduction*, A/RES/46/149 (1991).
UNGA, *Strengthening of international cooperation and coordination of efforts to study, mitigate and minimize the consequences of the Chernobyl disaster*, A/RES/46/150 (1991).
UNGA, *Strengthening of the coordination of humanitarian emergency assistance of the United Nations*, A/RES/46/182 (1991).
UNGA, *Assistance to refugees, returnees and displaced persons in Africa*, A/RES/47/107 (1992).
UNGA, *Declaration on the Protection of All Persons from Enforced Disappearance*, A/RES/47/133 (1992).
UNGA, *Report of the Secretary-general on the Review of the Capacity, Experience and Coordination Arrangements in the UN system for Humanitarian Assistance*, A/46/568 (1991).
UNGA, *International assistance for the rehabilitation and reconstruction of Nicaragua: Aftermath of the war and natural disasters*, A/RES/48/8 (1993).
UNGA, *International Decade for Disaster Reduction*, A/RES/48/188 (1993).
UNGA, *International Decade for Disaster Reduction*, A/RES/49/22A (1994).
UNGA, *International Decade for Disaster Reduction*, A/RES/48/22B (1994).
UNGA, *International Decade for Disaster Reduction*, A/RES/50/117 (1995).
UNGA, *International Decade for Disaster Reduction*, A/RES/51/185(1996).
UNGA, *International Decade for Disaster Reduction*, A/RES/52/200 (1997).
UNGA, *International cooperation to reduce the impact of the El Niño Phenomenon*, A/RES/52/200 (1998)
UNGA, *International Decade for Disaster Reduction*, A/RES/53/185 (1998).
UNGA, *International cooperation on humanitarian assistance in the field of natural disasters from relief to development*, A/RES/54/233 (1999).
UNGA, *International Decade for Disaster Reduction*, A/RES/54/220 (1999).
UNGA, *International Decade for Disaster Reduction: Successor Arrangements*, A/RES/54/219 (1999).
UNGA, *International Decade for Natural Disaster Reduction*, A/RES/54/219 (2000).
UNGA, *United Nations Millennium Declaration*, A/RES/55/2 (2000).
UNGA, *International cooperation on humanitarian assistance in the field of natural disasters from relief to development*, A/RES/56/103 (2001).
UNGA, *International Decade for Disaster Reduction*, A/RES/56/195 (2001).
UNGA, *Implementation of the International Decade for Disaster Reduction*, A/56/68-E/2001/63 (2001).
UNGA, *International cooperation on humanitarian assistance in the field of natural disasters, from relief*

to development, A/RES/58/25 (2003).
UNGA, *Natural disasters and vulnerability*, A/RES/58/215 (2003).
UNGA, *Natural disasters and vulnerability*, A/RES/59/233 (2004).
UNGA, *Humanitarian assistance for the rehabilitation of El Salvador and Guatemala*, A/RES/60/220 (2005).
UNGA, *International Strategy for Disaster Reduction*, A/RES/60/195 (2005).
UNGA, *Natural disasters and vulnerability*, A/RES/60/196 (2005).
UNGA, *Strengthening emergency relief, rehabilitation, reconstruction, recovery and prevention in the aftermath of the Indian Ocean tsunami disaster: Report of the Secretary-General*, A/60/86 (2005).
UNGA, *Natural disasters and vulnerability*, A/RES/60/196 (2005).
UNGA, *Sustainable mountain development*, A/RES/60/198 (2005)
UNGA, *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, A/RES/60/147 (2006).
UNGA, *International Strategy for Disaster Reduction*, A/RES/61/198 (2006).
UNGA, *Natural disasters and vulnerability*, A/RES/61/200 (2006).
UNGA, *Report of the Governing Council of the UNEP on its twenty-third session*, A/RES/60/189 (2006).
UNGA, *International Strategy for Disaster Reduction*, A/RES/62/192 (2007).
UNGA, *Report of the International Law Commission on the work of its fifty-ninth session*, A/RES/62/66 (2007).
UNGA, *Sustainable mountain development*, A/RES/62/196 (2007).
UNGA, *International Strategy for Disaster Reduction*, A/RES/63/216 (2008).
UNGA, *International cooperation on humanitarian assistance in the field of natural disasters, from relief to development*, A/RES/63/141 (2009).
UNGA, *Natural disasters and vulnerability*, A/RES/63/217 (2009).
UNGA, *Strengthening the Coordination of emergency humanitarian assistance of the United Nations*, A/RES/64/139 (2009).
UNGA, *Humanitarian Assistance, emergency relief and rehabilitation for El Salvador as a result of the devastating effects of Hurricane Ida*, A/RES/64/74 (2010).
UNGA, *International cooperation on humanitarian assistance in the field of natural disasters, from relief to development*, A/RES/64/251 (2010).
UNGA, *Strengthening of the coordination of emergency humanitarian assistance of the United Nations*, A/RES/65/119 (2011).
UNGA, *Humanitarian assistance, emergency relief, rehabilitation, recovery and reconstruction in response to the humanitarian emergency in Haiti, including the devastating effects of the earthquake*, A/RES/65/135 (2011).
UNGA, *International cooperation on humanitarian assistance in the field of natural disasters, from relief to development*, A/RES/65/264 (2011).
UNGA, *Global Health and Foreign Policy*, A/RES/66/115 (2012).
UNGA, *International cooperation on humanitarian assistance in the field of natural disasters, from relief to development*, A/RES/66/227 (2012).
UNGA, *Strengthening of the coordination of emergency humanitarian assistance of the United Nations*, A/RES/67/87 (2013).
UNGA, *International Strategy for Disaster Reduction*, A/RES/67/209 (2012).

Primary materials – Domestic Legislation

Australia, *Emergencies Act 2004* (Australian Capital Territory).
Australia, *State Emergency and Rescue Management Act 1989* (New South Wales).
Australia, *Disasters Act 1982* (Northern Territory)
Australia, *Disaster Management Act 2003* (Queensland)
Australia, *Emergency Management Act 2004* (South Australia)
Australia, *Emergency Management Act 1986* (Victoria)
Australia, *Emergency Management Act 2005* (Western Australia)
Brazil , *Law 12,304/201.*
Namibia, *Disaster Risk Management Act, 2012.*
United States of America, *Alien Tort Claims Act*, 28 U.S.C §1350

Primary materials – International, regional and domestic case law

Budayeva v Russia, 15339/02, 21166.01, 20058/02, 11673/02, 15343/02 (Judgment of 2008).
In re Union Carbide Corporation Gas Plant Disaster at Bhopal, India in December, 1984, 634 F.Supp

842, United States District Court, S.D. New York (1986). < http://leagle.com/decision/19861476634FSupp842_11342.xml/IN%20RE%20UNION%20CARBIDE%20CORP.%20GAS%20PLANT%20DISASTER>.

Kiobel v Dutch Petroleum Co. 621 F. 3d 111 (2d Cir. 2010).

Kiobel v Dutch Petroleum Co. 133 S. Ct. 1659 (2013).

Öneryildiz v Turkey, 48939/99 (Judgment of 2004).

Union Carbide Corporation v Union of India and others, All India Reports 1990 SC 273.11

Primary materials – Other UN, LoN and regional sources

CESCR, *General Comment 12: The Right to Adequate Food*, E/C.12/1999/5 (1999).

CESCR, *Concluding Observations of the Committee on Economic Social and Cultural Rights: India*, E/C.12/IND/CO/5 (2008)

CESCR, *Concluding Observations on Japan*, E/C.12/JPN/CO/3 (2013).

CEDAW, *Concluding Observations on Indonesia*, CEDAW/C/IDN/CO/5 (2007).

CEDAW, *Concluding Observations on Tuvalu,* CEDAW/C/TUV/CO/2 (2009).

CEDAW, *Concluding Observations on Grenada,* CEDAW/C/GRD/CO/1-5 (2012).

CEDAW, *Concluding Observations on Jamaica*, CEDAW/C/JAM/CO6-7 (2012).

ECOSOC, *Summary record of the 349 meeting*, E/AC.24/SR.394 (1970).

ECOSOC, *Summary record of the 1773rd meeting*, E/SR.1773 (1971).

ECOSOC, *Summary record of the 1786th meeting*, E/SR.1786 (1971).

ECOSOC, *Summary record of the 1787th meeting*, E/SR.1787 (1971).

ECOSOC, *Summary record of the 1790th meeting*, E/SR.1790 (1971).

European Commission, "A Community approach on the prevention of natural and man-made disasters" (Communication) Com (2009) 82 final 23 February 2009.

European Commission, "EU Strategy for supporting Disaster Risk Reduction in Developing Countries" (Communication) COM (2009) 84 final, 23 February 2009.

Human Rights Commission, *Guiding Principles on Internal Displacement*, E/CN.4/1998/53/Add.2 (1998).

Human Rights Commission, Ibeanu, O., *Special rapporteur on the adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights*, E/CN.4/2006/42 (2006).

Human Rights Committee, *General Comment 6: The Right to Life* (1982).

Ibeanu, O., *Special rapporteur on the adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights*, A/HRC/7/21 (2008).

ILC, *Yearbook of the International Law Commission 1958, Volume II: Documents of the tenth session including the Report of the Commission to the General Assembly*, A/CN.4/SER.A/1958/Add.1 (1958).

ILC, *Yearbook of the International Law Commission 2001*, vol. II (part two), A/CN.4/SER.A/2001/Add.1 (Part 2).

ILC, *Report of the Study Group on Fragmentation of International Law: Difficulties arising form the Diversification and Expansion of International Law*, A/CN.4/L.644 (2003).

ILC, *Report of the Study Group on Fragmentation of International Law: Difficulties arising form the Diversification and Expansion of International Law*, A/CN.4/L.663/Rev.1 (2004).

ILC, *Report of the Study Group on Fragmentation of International Law: Difficulties arising form the Diversification and Expansion of International Law*, A/CN.4/L.676 (2005).

ILC, *Fragmentation of International Law: difficulties Arising form the Diversification and Expansion of International Law: Report of the Study Group on Fragmentation of International Law*, A/CN.4/L.682 (2006).

ILC, *Report of the Study Group on Fragmentation of International Law: Difficulties arising from the Diversification and Expansion of International Law*, A/CN.4/L.682 (2006).

ILC, *Protection of persons in the event of disasters: Memorandum by the Secretariat*, A/CN.4/590 (2007).

ILC, *Report on the work of its sixtieth session,* A/63/10 (2008).

ILC, *Topical Summary of the discussion held in the Sixth Committee of the General Assembly during its sixty-second session, prepared by the Secretariat*, A/CN.4/588 (2008).

ILC, *Report on the work of its sixty-first session*, A/64/10 (2009).

ILC, *Summary Record of the 3019th meeting*, A/CN.4/SR.3019 (2009) <http://www.ifrc.org/PageFiles/41203/IDRL%20progress%20report.pdf>.

ILC, *Texts of draft articles 1, 2, 3, 4 and 5 as provisionally adopted by the Drafting Committee*, A/CN.4/L.578 (2009)

ILC, *Topical summary of the discussion held in the Sixth Committee of the General Assembly during its sixty-third session, prepared by the Secretariat*, A/CN.4/606 (2009).

ILC, *Report on the work of its sixty-second session*, A/65/10 (2010).

ILC, *Texts and titles of draft articles 6, 7, 8 and 9 provisionally adopted by the Drafting Committee on 6, 7*

and 8 July 2010, A/CN.4/L.776 (2010).

ILC, *Report on the work of its sixty-third session*, A/66/10 (2011).

ILC, *Texts and titles of draft articles 10 and 11 provisionally adopted by the Drafting Committee on 19 July 2011*, A/CN.4/L.794 (2011).

ILC, *Texts and titles of draft articles 5* bis, *12, 13, 14 and 15, provisionally adopted by the Drafting Committee from 5 to11 July 2012*, A/CN.4/L.812 (2012).

ILC, Drafting Committee on the Protection of Persons in the Event of Disasters, *Statement of the Chairman of the Drafting Committee 2010* <http://untreaty.un.org/ilc/sessions/62/DCChairman_statement4th_protection.pdf> (21 July 2010), last accessed 5 December 2012.

ILC, Drafting Committee on the Protection of Persons in the Event of Disasters, *Statement of the Chairman of the Drafting Committee*, A/CN.4/L.815 (2013).

Inomata, T. (UN Joint Inspection Unit), *Towards a United Nations Humanitarian Assistance Programme for Disaster Response and Reduction: Lessons Learned form the Indian Ocean Tsunami Disaster* (2006).

International Criminal Court, *Rules of Procedure and Evidence* (2013) <http://www.icc-cpi.int/enmenus/icc/legal%20texts%20tools/official%20journal/Documents/RulesProcedureEvidenceEng.pdf>.

International Federation for Mutual Assistance in the Relief of Peoples Overtaken by Disaster (League of Nations), *Documents Relating to the Scheme of Senator Ciraolo* (Geneva: Imp. Kundig, 1923).

ISDR, *Living with Risk: A Global Review of Disaster Reduction Initiatives* (Geneva: UNISDR, 2004).

ISDR, *Review of the Yokohama Strategy and Plan of Action for a Safer World*; A/CONF.206/L.1 (2005).

ISDR, *Report of the World Conference on Disaster Reduction*, A/CONF.206/6 (2005).

ISDR Asia-Pacific, *Background paper: Issues of Vulnerability with Specific Reference to Gender in the Asia Pacific: Post-2015 Framework for Disaster Risk Reduction Consultations* (UNISDR: Geneva, 2013).

Joint Inspection Unit (UN), *Evaluation of the Office of the UN Disaster Relief Co-ordinator*, JIU/RES/80/11 (1980).

OCHA, *OCHA on Message: General Assembly Resolutions 46/182* (2012) <http://docs.unocha.org/sites/dms/Documents/120402_OOM-46182_eng.pdf>.

UNDP, *Report of the Governing Council*, E/4884/Rev.1, tenth session (1970).

UNDP, *Human Development Report 2001: Making New Technologies work for Human Development* (UNDP: New York, 2001).

UNDP, *Reducing Disaster Risk: A Challenge for Development*, (2004).

UNDP, *Human Development Report 2007/2008 Fighting Climate Change: Human Solidarity in a Divided World* (New York: UNDP, 2007).

UNDRO, *Disaster Prevention and Mitigation: A Compendium of Current Knowledge, Volume 9. Legal Aspects* (New York: United Nations, 1980).

UNDRO, *Mitigating Natural Disasters: Phenomena, Effects and Options A Manual for Policy Makers*, UNDRO/MND/1990 Manual (New York: United Nations, 1991).

UNGA, *18th session, 1238th plenary meeting, Friday, 11 October 1963, New York*, A/PV.1238 (1963).

UNGA, *18th session, 1254th plenary meeting, Friday, 1 November 1963, New York*, A/PV.1240 (1963).

UNGA, *Official records of the General Assembly, Twenty-sixth session*, 3rd Committee, 1888th meeting (1971).

UNGA, *Official records of the General Assembly, Twenty-sixth session*, 3rd Committee, 2018th meeting (1971).

UNGA, *International Decade for Natural Disaster Reduction: Revised Draft Resolution*, A/C.2/42/L.32 (1987).

UNGA, *Summary Record of the 16th meeting, Second committee,* agenda item 12 held on Monday, 19 October 1987, A/C.2/42/SR.16 (1987).

UNGA, *Summary Record of the 25th meeting, Second committee,* agenda item 12 held on Monday, 19 October 1987, A/C.2/42/SR.25 (1987).

UNGA, *Summary Record of the 43rd meeting, Second committee,* agenda item 12 held on Monday, 19 October 1987, A/C.2/42/SR.43 (1987)

UNGA, *Summary Record of the 44th meeting, Second committee,* agenda item 12 held on Monday, 19 October 1987, A/C.2/42/SR.44 (1987).

UNGA, *Provisional verbatim record of the 39th meeting*, 46th session, agenda item 143, A/46/PV.39 (1991).

UNGA, *Official records of the General Assembly, Sixty-first Session, Supplement No. 10,* A/61/10, (2006).

UNGA, *Official records of the General Assembly, Sixty-second Session, Supplement No. 10,* A/62/10, (2007).

UNGA, Sixth Committee, *Summary record of the 21st meeting*, A/C.6/66/SR.21 (2011).

UN Secretary-General, *Assistance in cases of natural disaster: Report of the Secretary-General to the UNGA*, A/5845, 19th session, item 46of provisional agenda (1965).

UN Secretary-General, *Co-ordination of international assistance in cases of natural disaster: Report of the Secretary-General to the ECOSOC*, E/4036, 39th session, agenda item 4 (1965).

UN Secretary-General, *Assistance in cases of natural disaster: Interim report of the Secretary-General to the ECOSOC*, E/4853, 49th session, agenda item 22 (1970).

UN Secretary-General, *Assistance in cases of natural disaster: Comprehensive report of the Secretary-General to the ECOSOC*, E/4994, fifty-first session, agenda item 15 (1971).

UN Secretary-General, *Co-ordination in the United Nations and the United Nations System: Report of the Secretary-General*, A/42/232 (1987).

UN Secretary-General, *Implementation of General Assembly Resolution 41/201: Report of the Secretary-General*, A/42/657 (1987).

UNGA, *Provisional verbatim record of the 39th meeting held at Headquarters, New York, on 4 November 1991*, A/46/PV.39 (1992)

UNGA, *Provisional verbatim record of the 41st meeting held at Headquarters, New York, on 5 November 1991*, A/46/PV.41 (1992).

UNGA, *Provisional verbatim record of the 42nd meeting held at Headquarters, New York, on 5 November 1991*, A/46/PV.42 (1992).

UNGA, *Provisional verbatim record of the 78th meeting held at Headquarters, New York, on Thursday, 19 December 1991*, A/46/PV.78 (1992).

UN Secretary-General, *Renewing the United Nations: A Programme for Reform*, A/51/190 (1997).

UN Secretary-General, *Report of the Secretary-General*, A/51/950 (1997).

Valencia-Ospina, E., *Preliminary report on the protection of persons in the event of disasters*, A/CN.4/598 (2008).

Valencia-Ospina, E., *Second report on the protection of persons in the event of disasters*, A/CN.4/615 (2009).

Valencia-Ospina, E., *Third report on the protection of persons in the event of disasters*, A/CN.4/629 (2010).

Valencia-Ospina E., *Fourth report on the protection of persons in the event of disasters*, A/CN.4/643 (2011).

Valencia-Ospina, E., *Fifth report on the protection of persons in the event of disasters*, A/CN.4/652 (2012).

Valencia-Ospina, E., *Sixth report on the protection of persons in the event of disasters*, A.CN.4/662 (2013).

World Conference on Disaster Reduction, *Hyogo Declaration*, A/CONF.206/6 (2005).

World Conference on Disaster Reduction, *Hyogo Framework for Action 2005-2015: Building the Resilience of Nations and Communities to Disasters* (A/CONF.206/6) (2005). <http://www.unisdr.org/files/1037_hyogoframeworkforactionenglish.pdf>.

World Conference on Natural Disaster Reduction, *Hyogo Framework for Action 2005-2015: Building the Resilience of Nations and Communities to Disasters Mid-Term Review 2010-2011* (2011) <http://www.preventionweb.net.files/18197_midterm.pdf>.