Routledge Handbook of Human Rights and Disasters

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Introduction and Acknowledgments

Publication details
https://www.routledgehandbooks.com/doi/10.4324/9781315115238-1
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Published online on: 26 Mar 2018

Accessed on: 04 Oct 2023
https://www.routledgehandbooks.com/doi/10.4324/9781315115238-1

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Empirical evidence points to the increased frequency and destructive potential of natural and technological disasters. From data collected at Leuven University by the Centre for Research on the Epidemiology of Disasters (CRED), we know that 11,713 disasters have taken place between 2000 and 2016, killing more than 1.4 million people, injuring almost 5 million, and leaving almost 38 million homeless. More than 3.6 billion people have been affected, and the material damage has exceeded USD 2 trillion. Notwithstanding a slight decrease in the number of at-atmospheric events over the last few years, the overall trend shows a clear surge in their incidence and in the economic damage caused.

Against this background, it may seem surprising that the existence of disaster-risk drivers – and more broadly the role of humans in transforming a natural hazard into a disaster – had already been anticipated by Jean-Jacques Rousseau in the wake of the Lisbon earthquake of 1755, with the ensuing tsunami and massive fire. This event set off the first major debates on natural catastrophes and their effects on human beings. The human toll and material damage caused by the event were terrific. Nonetheless, the fact that it struck on All Saints’ Day, in a city that was deeply Catholic, but also troubled and awash with corruption and vice, prompted some to attribute the event to the will of God. This stood in stark contrast to the position of Rousseau, who, categorically rejecting the notion that human behaviour had nothing to do with the event, keenly observed that it was hardly nature who assembled there twenty-thousand houses of six or seven storeys. If the residents of this large city had been more evenly dispersed and less densely housed, the losses would have been far lighter or perhaps none at all.

He then noted here, after the quake, many lives were lost to a disorganised evacuation: ‘[H]ow many unfortunates perished in this disaster for wanting to take – one his clothing, another his papers, a third his money?’

History has proven Rousseau right. For it is now apparent that human activity weighs significantly in shaping the types of disasters that take place and their number. Leaving aside technological disasters – whose impact, though substantial, is negligible compared to that of natural disasters – statistics show that floods, storms, and droughts are the phenomena that most severely affect individuals and property. As a result, all three types of hazards are considered to be linked

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to climate change, which in turn fuels its primary cause: human-made greenhouse gas emis-
sions. In its 5th Assessment Report, the Intergovernmental Panel on Climate Change (IPCC) unani-
mously confirmed this connection, stating that: ‘Human influence on the climate system is clear, and recent advancements have raised greenhouse gases to the highest levels in history. Recent climate changes have had widespread impacts on human and natural systems.’

The Assessment Report went on to identify the rising frequency of natural disasters as contrib-
tuting to the adverse impact of climate change and pointed out that the vulnerability of human and natural systems will multiply the impact of extreme events. According to the report, vulnerability is ‘the product of structural processes that result in inequalities in socio-economic status and income, as well as in exposure. Such social processes include, for example, discrimina-
tion on the basis of gender, class, ethnicity, age and (dis)ability. It is now evident that disasters disproportionately affect vulnerable communities because of their greater vulnerability and significantly impede progress towards sustainable development’.

The situation is exacerbated by other disaster-risk drivers, such as unplanned and rapid urbanisation and poor land management, along with various compounding factors (demographic change, weak institutions, policies that do not take risks into account, etc.).

It is now established beyond doubt that disasters are never completely ‘natural’ and that human behaviour plays a role in both their occurrence and their consequences. For a long time, however, the kinds of response these events have been regarded as calling for was humanitarian. Many of the treaties concluded over the last few decades to facilitate cooperation between States in times of disaster – and forming what is now commonly referred to as International Disaster Law (IDL) – were exclusively predicated on this assumption, and little or no consideration was given to the human rights ramifications of disaster events. However, in recent years it has come to be recognised that human rights need protection even in these contexts and that relief aid is but one of the means that States have at their disposal to meet their international obligation to respect and protect human rights. In addition, it is now widely accepted that the role of human rights is not limited to disaster response. In fact, States have positive obligations to ensure effective disaster prevention and preparedness activities, so as to minimise the harms that disasters can do to a population.

The extent to which disasters exacerbate the inequalities inherent in life and society signif-
icantly turns on the question of how governments and humanitarian actors integrate human
 rights into their disaster prevention and response plans. The purpose of this volume is precisely to consider whether and to what extent the human rights discourse has been mainstreamed into disaster prevention and response activities. It is widely recognised that appropriate actions at all stages in the so-called disaster management cycle lead to greater preparedness, better warnings, and reduced vulnerability and that an approach that is sensitive to human rights can mitigate the effects of disasters on people, property, and the environment. It is in framing and implementing these policies that international law – interpreted by international bodies – should play a role in ensuring that human rights concerns are given due weight in the process.

In this volume, the editors and authors have approached disaster management through the lens of international law, looking at human rights treaties and at the practice of their monitoring bodies and of other authorities to assess the extent to which these bodies and authorities have held States and other relevant actors to account in matters involving natural and technological disasters and to determine how international law can be used to influence the conduct of such actors in these matters in the future.

In particular, the present volume seeks to provide a comprehensive assessment of the main legal issues and challenges concerning the implementation of International Human Rights Law (IHRL) in disaster situations and the role that body of law can play in shaping the obligations of States and
other actors involved in preventing and responding to natural and human-made disasters and in ensuring preparedness. Significantly, over the last few years many treaty-monitoring bodies and other human rights protection mechanisms (UN Special Rapporteurs, the Universal Periodic Review, international courts, etc.) have focused their attention on disaster-related issues, highlighting the central role of human rights in this domain. In addition, in 2016 the International Law Commission (ILC) adopted the final version of its Draft Articles on the Protection of Persons in the Event of Disasters (ILC Draft Articles), where provisions dealing with human dignity and human rights have been included, and a full range of soft law instruments on the rights of disaster victims have been adopted at the global and regional levels. There is therefore abundant material deserving careful study.

Despite the many developments in the practice of human rights bodies, relief agents, and other stakeholders, we still lack a thorough academic investigation of these topics, as shown by the absence of monographs or edited volumes specifically devoted to them. This stands in stark contrast to the increasing attention the humanitarian and academic communities accord to the subject of disasters. This volume thus intends to bridge this gap and provide a careful appraisal of the important role that human rights play in disaster situations, while addressing the main legal issues involved in their implementation in such contexts.

Yet IHRL is not the only branch of international law that comes to bear in disaster settings. Issues concerning state sovereignty and the principle of non-intervention in the internal affairs of States have been central to the debate on disaster response. In addition, the International Humanitarian Law (IHL) applicable to armed conflict may also become relevant, both because of the possibility that a disaster should strike a war-beleaguered State and because of the measures on humanitarian aid contained in IHL treaties. These and other general topics (starting from the legal definition of the term “disaster” in international law) are addressed in the present volume.

At the same time, it is necessary to consider how IHRL operates in disaster settings. More to the point, the questions that need to be considered are how and to what extent this body of law entitles disaster victims to additional protection and what the role of States and non-state actors is in implementing disaster prevention and response measures. Equally important is an appraisal of the circumstances and conditions under which States can limit or suspend the enjoyment of certain rights and take extraordinary measures to deal with an emergency.

A comprehensive survey of the extent to which the human rights discourse is likely to shape IDL cannot ignore how IHRL affects the enjoyment of specific rights or categories of rights in disaster scenarios. In this respect, the volume takes up important questions such as the content of minimum guarantees that need to be examined for affected individuals and their right not to suffer discrimination in the enjoyment of all or certain specific rights that become particularly critical in disaster contexts, such as the right to shelter or the right to be informed. At the same time, attention needs to be devoted to the role of certain rights when there is a disaster setting that has not been extensively explored, like privacy, to societal and social rights, cultural rights, and rights that are functional to the enjoyment of other rights, like the right to liberty. Moreover, the volume also highlights that certain classes of individuals are more exposed to the targeting effects of disasters and tend to suffer more than others. This applies to vulnerable groups in general, but particularly to groups that suffer from specific types of disadvantages that make them especially vulnerable to disasters. In this respect, it is particularly important to inquire into the legal protections available to those who have been displaced by a disaster, both internally and across international borders.

The analysis carried out in this volume is structured into four complementary parts preceded by a foreword by the ILC Special Rapporteur on Human Rights and Disasters, Eduardo Valencia-Ospina.

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and Disasters in the Framework of Public International Law’ (Part I), ‘Role and Application of Human Rights Law in Disaster Settings’ (Part II), ‘Categories of Rights of Particular Relevance in a Disaster Context’ (Part III), and ‘Protection of Vulnerable Groups in Disaster Settings’ (Part IV).

Part I (Chapters 1–4) sets the stage for the other contributions, as it explains the topicality of the subject and describes how the international rules involved may interact with other principles and bodies of international law, such as the principle of state sovereignty and International Humanitarian Law. In the first chapter, Giulio Bartolini explores the preliminary question of the contours of the notion of disaster in international law so as to identify the material scope of the relevant sets of rules and thus ascertain who and what is entitled to legal protection. Subsequently, Karen da Costa provides an overview of the ‘responsibility to protect’ doctrine and reflects on the suitability of extending this doctrine to the area of disasters, thereby identifying the main advantages and shortcomings at both the conceptual and the practical levels. The contributions by Sarah Williams and Gabrielle Simm consequently outline the way that IHL bears on the provision of aid to disaster victims in armed conflicts and the relation between IDL and IHL in such mixed contexts.

Part II (Chapters 5–10) then focuses on the role and application of IHRL in disaster settings. We start out with Marlies Hesselman, who looks at the purported existence of a right to receive international (humanitarian) aid in a disaster context under IHRL by analysing some recent key legal initiatives and developments concerned with this issue. An appraisal of the ILC’s approach to human rights in its work on the protection of persons in the event of disasters is then carried out by Róisín McCormack, who among other questions addresses the ambiguous concept of protection deployed by the ILC and illustrates the tensions between sovereignty and human rights that can be discerned in the ILC-Draft Articles. Providing assistance to disaster victims can be controversial, particularly when the disaster takes place in a situation of international or non-international armed conflict. Emanuele Sommario’s chapter then focuses on the international legal framework on limitations on human rights and derogations from human rights treaties in disaster situations and then — looking at the practice of the main relevant judicial treaty bodies — proceeds to assess how these prerogatives have been employed in such contexts. The relevance of a human rights approach in the context of prevention and disaster risk reduction is then assessed by Mirko Sossai, who specifically evaluates the implications of this approach by reference to the relevant case law and to the provisions adopted by the ILC-Draft Articles. In the next chapter, Annalisa Creta illustrates how human rights standards and principles can be integrated into disaster management policies in order to strengthen prevention, preparedness, and recovery efforts, while maintaining the protection of the affected individuals and communities. Lastly, Tommaso Natoli’s contribution turns to the practices of humanitarian actors (intergovernmental and non-governmental humanitarian bodies) as its aims are to provide a consistent implementation of human rights in conflict-laden settings and to the extent possible, to explain how aid policies and programmes can be aligned with human rights norms.)

Subsequently, Part III (Chapters 11–17) ‘zooms in’ and assesses how certain rights or categories of rights may become relevant in disaster scenarios. Specific attention is here devoted to those sets of guarantees which become critical in disaster settings and the specific challenges and problems posed by their implementation are thoroughly analysed. The discussion starts with Marco Inglese, who lays out the concept of the ‘subsistence rights’ that need to be ensured in the aftermath of a disaster, and through a top-down method, he sets out to identify those rights through the practice of the main relevant judicial bodies and international human rights instruments. Subsequently, Part III (Chapters 11–17) ‘zooms in’ and assesses how certain rights or categories of rights may become relevant in disaster scenarios. Specific attention is here devoted to those sets of guarantees which become critical in disaster settings and the specific challenges and problems posed by their implementation are thoroughly analysed. The discussion starts with Marco Inglese, who lays out the concept of the ‘subsistence rights’ that need to be ensured in the aftermath of a disaster, and through a top-down method, he sets out to identify those rights through the practice of the main relevant judicial bodies and international human rights instruments. Subsequently, Part III (Chapters 11–17) ‘zooms in’ and assesses how certain rights or categories of rights may become relevant in disaster scenarios. Specific attention is here devoted to those sets of guarantees which become critical in disaster settings and the specific challenges and problems posed by their implementation are thoroughly analysed. The discussion starts with Marco Inglese, who lays out the concept of the ‘subsistence rights’ that need to be ensured in the aftermath of a disaster, and through a top-down method, he sets out to identify those rights through the practice of the main relevant judicial bodies and international human rights instruments. Subsequently, Part III (Chapters 11–17) ‘zooms in’ and assesses how certain rights or categories of rights may become relevant in disaster scenarios.

This document is a part of a larger work that explores various aspects of international law in the context of disasters. It highlights the importance of understanding the legal frameworks that govern the protection of individuals and communities affected by disasters, both in times of armed conflict and in other situations. The contributions by various authors provide a comprehensive overview of the legal principles and practices that are relevant in such contexts, including the role of humanitarian law, international human rights law, and disaster risk reduction. The document aims to contribute to a more effective and coordinated approach to protecting individuals in times of disaster.
in keeping with the principle of non-discrimination. An assessment of this principle’s legal scope of application in disaster scenarios is then offered by Federico Casolari, who analyses the different approaches taken in the relevant legal instruments and then focuses on the solutions adopted by the ILC and on its possible added value. Giovanna Adinolfi’s chapter is instead concerned with the right to a healthy environment within the specific context of IDL. Her chapter discusses the impact of the measures that States take to protect and promote this right in the prevention phase as well as in a post-disaster situation. In the following chapter, Alice Riccardi investigates the nature of the right to know prior to a disaster, examining in particular whether the right can be deemed a freestanding right or whether it is an instrumental obligation dependent on the prevention of other human rights violations. The focus then shifts to economic and social rights. Ellen Nohle and Gilles Giacca survey the practice of human rights treaty-monitoring bodies and of other national and international courts and find that IDL special procedures in order to illustrate here and in what extent economic and social rights remain applicable in disaster settings to afford legal protection to affected groups and individuals. The last contribution of Part III is instead devoted to the little-examined area of culture and cultural rights in times of disaster by taking on these cultural rights that were more prominent when a disaster strikes. Elia Polymenopoulou explores the role of culture in disaster risk prevention and management from a legal perspective.

Finally, Part IV (Chapters 18 – 22) looks at groups of persons who (a) may be particularly vulnerable in disaster-stricken areas or (b) have been displaced as a consequence of a disaster. Liquid Nifosi-Sutton starts us off by laying out the way the vulnerability of disaster-affected people has been conceptualized by the UN Committee on Economic, Social and Cultural Rights (CESCR) and applying this vulnerability paradigm to the housing situation of internally displaced women in post-quake Haiti. Subsequently, Kristin Hausler analyses the changing role of indigenous communities in disaster management, looking in particular at the case law of human rights bodies that have upheld the rights of indigenous groups in the context of disaster risk reduction and prevention. Alice Sironi and Lorenzo Guadagno then address the specific condition of vulnerability that migrants are exposed to in disaster situations. They begin with a critical study of the role played by States of origin and destination and then turn to recent initiatives, notably the ongoing Migrants in Countries in Crisis (MICIC) Initiative, so as to assess their role in effectively reducing such vulnerability. Flavia Zorzi Giustiniani then provides an overview of the main temporary protection measures which are or may be applied at the national, regional, and international levels to protect migrants struck by disaster. Her aim is to assess the current legal framework and to explain the advantages and shortcomings of the measures identified. Lastly, Walter Kälin discusses how the international community has tried to cope with the reality of mass displacement under the UN Humanitarian Protection Agenda for People Displaced by Disasters across Borders. The discussion covers the process that led to the adoption of this instrument, the key legal issues at stake, and its achievements so far.

The volume closes with a final chapter in which Gabriella Venturini, in light of the preceding analyses, offers a broad assessment of the role of human rights in disaster scenarios. This volume is the final research output of the IDL Project, financed by the Italian Ministry of Education, University, and Research under the FIRB funding scheme “Futuro in Ricerca” 2012. The Project was brought to completion between 2013 and 2016 by four research units coordinated by Giulio Bartolini (Roma Tre University), Roberto Cardoni (University of Bologna), Emanuele Sommario (Scuola Superiore Sant’Anna), and Flavia Zorzi Giustiniani (Uninettuno University), who also served as the Project’s national coordinator. Its focus was on an international law mechanism dealing with disaster prevention and management, and its purpose was to make these mechanisms more effective in the belief that a more thorough legal regulation may help
reduce the destructive potential these phenomena have on humans and on the material resources they rely on.

Several activities carried out under the IDL Project have been instrumental in bringing out this volume. In particular, the initial research results were presented and discussed at the international conference titled ‘The Protection of Persons in Times of Disasters: International and European Perspectives,’ held on 3–4 March 2016 in Rome at the Representation of the European Commission and the European Parliament in Italy. The authors of many of the chapters included in this volume presented their interim findings at the conference, drawing great benefit from the ensuing discussions.

In addition, the authors were able to take advantage of two innovative open-access databases created and managed by the project’s team. One is the International Disaster Law Database, which collects international instruments (treaties, secondary law produced by international organizations, and soft law documents) relating to the various phases of the disaster cycle and making it possible to perform full-text searches on all the content. The second is the Human Rights Protection and Disasters Database, systematising the practice of international and regional human rights bodies dealing with disasters and their impact on the enjoyment of the relative human rights.

The editors wish to thank all partners of the IDL Project for their invaluable contribution in making this volume possible. These are the International Federation of Red Cross and Red Crescent Societies, the Italian Red Cross, the International Institute of Humanitarian Law (Sanremo), the Italian Department of Civil Defence, and the Action Learning Network for Accountability and Performance in Humanitarian Action (ALNAP). We also owe a debt of gratitude to all research fellows involved in the IDL Project—Mauro Gatti, Chiara Macchi, Claudia Morini, Tommaso Natoli, Alice Riccardi, and Susanna Villani—for their precious support at all stages of the research.

Many thanks go as well to the academic and research institutions that hosted us in the course of the research project, providing excellent environments that proved very fruitful in conceiving and finalising the present volume, namely, the Australian National University (Canberra), the British Institute of International and Comparative Law (London), the Geneva Centre for Security Policy (Geneva), the Graduate Institute of International and Development Studies (Geneva), and the Kalshoven-Gieskes Forum on IHL at Leiden University (Leiden).

A debt of gratitude is owed to all those who have contributed to this study and to all the chairs and speakers who, while not appearing in this volume, have taken part in the events that made it possible. We are deeply grateful to Eduardo Valencia-Ospina, who agreed to write the foreword to this volume. A special thank goes to Claudia Morini and Alice Riccardi for their assistance in the editorial process leading to the completion of this edited volume, and to Chris Callan, Anna Hadjikyriakou, and Filippe Tecchio for the language revision of the manuscript. We also acknowledge that the language revision of the volume was partly funded under the Jean Monnet module ‘International and European Disaster Law’ of the Erasmus+ Programme managed at Roma Tre University by Giulio Bartolini. The publication process has been greatly facilitated by the smooth cooperation with Routledge.

Last but not least, we are indebted to Professors Andreas de Guttry (Scuola Superiore Sant’Anna), Marco Gestri (University of Modena and Reggio Emilia), and Gabriella Venturini (University of Milan), whose work, especially in International Disaster Response Law, has earned them a place among the academic pioneers of the discipline of International Disaster Law and who have encouraged us to continue our research on these stimulating and constantly evolving subjects.
Notes

1. The CRED runs the Emergency Events Database (EM DAT), a global database on natural and technologically driven disasters that contains data on the occurrence and effect of more than 21,000 disasters starting from 1900. For a disaster to be entered into the database, at least one of the following criteria need to be satisfied: (a) 10 or more people are reported killed, (b) 100 or more are reported as having been affected, (c) a state of emergency has been declared, or (d) a call for international assistance has been issued. More information available at www.emdat.be/, accessed on 10 July 2017.


4. Ibid.

5. In 2016, out of 344 natural disasters reported, 260 (75%) were either droughts, floods, or storms, which affected over 110 million people and cost over USD 100 billion in damages. By comparison, 50 years earlier (in 1966) the total number of individuals affected by all types of natural disasters was 7 million, and the material damage was estimated at USD 19 billion (inflation-adjusted).


7. Ibid 2.

8. Ibid 54.


10. Ibid art 6.


