Introduction

Akin to catastrophes occurring in situations of armed conflict, disasters may affect not only human lives and households but also cultural heritage: archaeological sites and monuments, memorials, cultural landscapes or even non-museums, sculptures and precious cultural assets bear the impact of earthquakes, cyclones, storms, floods and droughts.

The role of culture and cultural rights, however, goes way beyond the need to safeguard tangible cultural heritage. Culture defines the way that people feel, understand and ultimately confront and respond to disasters. The confrontation and management of disasters therefore is not the same in Pakistan and North Carolina, as it is not the same in the Arctic and the islands in the Indian Ocean. In many parts of the world, for instance, people believe that disasters are God- or spirit-sent punishments for their sinful behaviour: the 2004 tsunami, for example, has been perceived as ‘divine punishment’; the floods of the River Kosi in Northern India as the fault of Goddess Kosi; the earthquake in Haiti as punishment for the voodoo ceremonies that were taking place on the island (as a result, almost entirely marginalized after the earthquake struck); and even Hurricane Katrina as ‘God’s punishment for sinful behaviour in New Orleans’.

At the same time, a people’s cultural identity as manifested in cultural expressions and living traditions is the feature of ‘culture’ that is endangered the most when disasters strike. By way of example, following the earthquakes in Yogyakarta in 2006 and Nepal in 2015, the local populations suffered significant damages in their local tourist industry. This encompassed not only important tourist attractions in the destroyed sites (for instance, the temple complexes of the Kathmandu valley) but also local intangible cultural heritage, including the making of wayang shadow-theatre puppets and batik textiles in Indonesia, as well as the know-how related to mountaineering guides in Nepal.

The role of culture in disasters is therefore twofold. On the one hand, it indicates the impact of disasters and the destruction of cultural heritage visible after every tragedy – including destruction of monuments, impact on tourism and folk industry and the general demoralization of the population affected. On the other hand, it refers to cultural and religious beliefs as well as social
representations that are directly relevant to the way that disasters are conceived. Although it seems quite evident that ‘without a good understanding of the cultural environment, interventions for risk reduction can fail’, the ‘cultural factor’ is one that has only recently started being explored. This exploration has been based on expertise in different fields, particularly environmental sciences, anthropology, geography, human security, biosciences, ethnology and cultural studies.

The present chapter examines the role of culture in relation to disasters from a legal perspective, focusing on those cultural rights that could be pertinent in disaster risk reduction and response. It further highlights the links between cultural rights and sustainable disaster management, exploring approaches to prevention and management built upon the notions of cultural evidence. In order to do so, firstly it underlines the importance of including culture in the disaster discourse.

Secondly, it analyses those cultural rights that appear to be more affected in times of disaster – focusing on cultural identities and living traditions, as well as cultural perceptions on gender roles. Then, it explores the preservation of group rights in relation to cultural vulnerabilities, focusing on indigenous livelihoods and indigenous traditional knowledge. Finally, the chapter explains the transition in policy matters from cultural rights to the more generic notion of ‘cultural resilience’.

The protection of cultural rights as part of the disaster agenda

Preliminary observations: cultural rights that may be pertinent when disasters strike

It is undisputed that all human rights are applicable in times of natural or other disasters. Distinguishing which rights are pertinent in the wake of natural disasters however is a challenging exercise. The challenge is twofold. Firstly, as Symonides argues already in 1999, the scope of cultural rights depends on the very meaning that one offers to the term ‘culture’: culture may be perceived as ‘creative artistic and scientific activities’ as well as, in a broader sense, ‘the totality of human activities, the totality of values, knowledge and practice’. Yet, under international law, only five human rights are expressly labelled as ‘cultural’:
The right to education; the right to participate in cultural life; the right to enjoy the benefits of scientific progress and its applications; the right to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which the person is the author, and the freedom of scientific research and creative activity.

From these rights, prima facie, only a few are pertinent when disasters strike – the right to education for instance could be seen, in the eyes of an education that takes into account appropriate disaster management. Secondly, cultural rights have been typically considered as a species of rights involving obligations that are not immediate but, rather, only ‘progressively realized’. As a result, the safeguarding of cultural rights as a whole would not ordinarily be considered urgent in times of disasters – for the very meaning of ‘disasters’ is commonly associated with something urgent, affecting chiefly human security more than anything else.

Including ‘cultural heritage’ in the definition of ‘disasters’

This said, several developments in international human rights law that took place in the new millennium have resulted in the ‘enlargement’ of cultural rights. The ‘right to participate in cultural life’ in particular has been gradually interpreted to broadly mean to include a right of access to and enjoyment of ‘cultural heritage’.
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of the International Covenant on Economic, Social and Cultural Rights (ICESCR) as a starting point that guarantees the right to participate in cultural life. This development coincides with the adoption of General Comment No. 21 by the Committee on Economic, Social and Cultural Rights (CESCR), the United Nations treaty body that is mandated to monitor the ICESCR, in which it acknowledged a right of access to cultural heritage as included within Article 15 of the ICESCR. Such a recognition is significant given that the protection of cultural heritage has already been, for many parts of the States-parties’ periodic reviews in relation to Article 15 of the ICESCR, especially the promotion of awareness and enjoyment of the cultural heritage of national, ethnic, cultural and indigenous peoples. At the same time, the United Nations (UN) agenda on disaster relief has been progressively developed and efforts to include the ‘cultural dimension’ in the disaster agenda multiplied. These efforts have focused primarily on the safeguarding of (tangible) cultural assets. Thanks to expert advocacy, the protection of the latter has even been included in the definition of disasters. Hence, the ILC Draft Articles that were adopted in a second reading in 2016, contrary to those adopted in a first reading in 2014, contain references to the destruction of (tangible) heritage. Firstly, the ‘large-scale material or environmental damage’ that was excluded by the Commission in the definitions of disasters on an unprecedented scale damage not only to property and livelihoods but also to cultural assets. Secondly, Draft Article 9 on the reduction of the risk of disasters also contains references to cultural heritage, namely the protection of cultural assets of persons, businesses, communities and countries. The preservation of (individual) cultural assets is also present among the aims of the more recent the Sendai Framework for Disaster Risk Reduction 2015–2030 (Sendai Framework). Evidence indicates that exposure of persons and assets in all countries has increased faster than vulnerability has decreased, thus generating new risks and a steady rise in disaster-related losses, with a significant economic, social, health, cultural and environmental impact in the short, medium and long term, especially at the local and community levels. Likewise, at the European level, cultural heritage is part of the definition of ‘disaster’. Council Decision No. 1313/2013 of the European Union establishing the Union Civil Protection Mechanism defines disaster as any situation which has or may have a severe impact on people, the environment and property, including cultural heritage (Article 4, paragraph 1). Likewise, the Ethical Principles on Disaster Risk Reduction and Resilience issued by the Council of Europe (CoE) highlight the fact that disasters pose a major threat not only to the survival of populations and societies at a world level but also to the dignity and safety of individuals and to the preservation of the natural, cultural and environmental heritage.

While all agree on the importance of such references, they must not be overstated. In fact, the very term ‘disaster’ is relativized, not in international law and only specifically referred to in the UN human rights law discourse, while many refer to it as a threat on cultural heritage. These include documents such as the 2015 Human Rights Council (HRC) Resolution on post-disaster and post-conflict situations (acknowledging that the human rights and fundamental freedoms of millions of people around the world are affected in different ways by humanitarian crises, including armed conflict, natural disasters and mass displacement, as well as during the stages of recovery and rehabilitation) or the HRC Resolution on climate change and human rights. The recent 2015 UN General Assembly resolution on ‘cooperation on humanization assistance in the field of natural disasters’.
Cultural heritage and the disaster agenda

The safeguarding of tangible cultural heritage

Several authors have elaborated the idea that the legal framework that is applicable in situations of armed conflict may provide guidance to disaster responses. This means that instruments such as the 1954 Hague Convention (that addresses "damage to cultural property belonging to any people whatsoever means damage to the cultural heritage of all mankind") and the provisions of the additional Protocols to the Geneva Convention pertaining to cultural property that are applicable in event of armed conflict could be applicable by analogy also in times of disasters. As long as there is no overlap between the two regimes (i.e. a so-called humanitarian list and the list on disaster management), such application does not seem to be problematic. It is in fact in this spirit that the HRC Advisory Committee report on disaster prevention highlights the need for accountability mechanisms in both situations: "a human rights-based approach to post-disaster and post-conflict situations epitomises measurable and enforceable obligations through two human rights instruments." The same approach is adopted by the CESCR Committee that highlights in General Comment No. 21 that cultural heritage should be protected in times of armed conflict and disasters alike.

Furthermore, provided that the cultural property in question fulfils the requirements of "great importance to the cultural heritage of every people" or that of "outstanding universal value from the point of view of history, art or science," the legal regime established by the UNESCO World Heritage Convention could be applied. The benefit of such analogy is obvious as States would benefit from the UNESCO protective regime including therefore technical assistance in the "identification, protection, conservation, presentation and rehabilitation of the cultural and natural heritage" and international assistance (including therefore cooperation with civil society actors, NGOs and the International Federation of the Red Cross and Red Crescent Societies).

Initiatives for the safeguarding of heritage that are based on soft law rather than binding legal norms may equally be successful. These are typically based upon the concept of "cultural resilience" in "cultural built heritage" (CBH) and urban planning. The latter is in fact an important aspect of cultural heritage management and preservation. At international level, the UN "Making Cities Resilient" campaign addresses issues of local governance and urban risk, while campaigns on safer schools and hospitals have also developed in the context of the UN-Habitat World Urban Campaign 2009–2013. The Hyogo Framework for Action, which set the agenda until 2015 was also one of the key reference points, referring to the "Building the Resilience of Nations and Communities to Disasters" and recommending action by various State actors, including local government.

Cultural identities: intangible heritage and living traditions

Recent legal initiatives on disaster prevention and management redefine "culture" as a dimension that shall be taken into account by the international agendas. Such initiatives were first visible at the European level, not only within the EU (for instance, with the aforementioned Union Civil Protection Mechanism), but also within the aforementioned CoE’s ethical principles (2011). In enunciating the principles that should be implemented following a disaster, these principles neither only to the protection of property and cultural heritage, but also to the preservation of culture, traditions and customs and mitigation of the impact of the environment. Even the
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‘ceremonies for the dead’ should be organized ‘in accordance with the respective traditions and religions’. 43 At the international level, the guidelines adopted by the International Federation of Red Cross (IFRC) states in the ‘IFRC Guidelines’ provide that disaster relief and initial recovery assistance should be mindful of ‘cultural, social and religious customs and traditions’. 44 Likewise, the ILC Draft Article adopted on second reading in 2016 (ILC Draft Article 2016), in addressing the protection of human rights in times of disasters made reference to communities, specifying that the latter have the right by their voice on the planning and execution of risk reduction, response and recovery initiatives.45

Such references are important given that there is nothing on the protection of intangible heritage and livelihoods in disaster scenarios in the UNESCO 2003 Convention for the safe-guarding of intangible cultural heritage (ILC Convention). The ILC Convention omits reference to disasters: while discussing Article 17 in relation to heritage ‘in need of urgent safeguarding’ in particular, the emphasis was placed on the need to safeguard rather than the nature of the threat.46

Limiting cultural identities: the example of gender (in)equality

Cultural identities (and traditions) however may also need to be reformed or even limited – especially when clashing with the preservation of right to life and other rights associated to a people’s survival. In these cases, disaster management should point to the need of reforms for such cultural traditions, limiting the rights stemming from ‘cultural identities’.

A typical example is gender in patriarchal societies where women have significantly less chances to survive than men. The reason is that emergency involve dynamism and quick decision-making that are only rarely promoted among women within non-liberal cultural (and religious) traditions. In terms of illustration, it is estimated that, in the 1991 cyclone that hit the region of Chakaria and Kutubdia in Bangladesh, approximately three or four women died for every one man.47 Many of these women waited for their husbands and other male relatives to return home prior seeking refuge or taking evacuation decisions.48 The practice of wearing a saree and having long hair have also been causally blamed for increased vulnerability.49 While the observation that pregnant women are even more vulnerable during disasters also acquires significant cultural weight in poor rural areas where at least one out of six women is either pregnant or breastfeeding50 or where forced and early-age marriages are common practice, justified by cultural and religious norms.51 Other problematic cultural and religious traditions include the observation of non-flexible religious norms – especially Muslim norms that prescribe that women should veil or entirely cover themselves, or be accompanied by a male family member when in public, and expecting permission to leave home (purdah). As noted by the Norwegian Refugee Council following the flood in the Sindh province of Pakistan, understanding the practice of purdah is key if humanitarian organizations are to ensure that women’s right to participate in decision-making related to their needs is respected and that access to assistance is ensured.52 Some regional instruments also make explicit reference to the protection of these individuals that are particularly vulnerable during disasters. For instance, the 2009 African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention, Article 1); the 2006 Great Lakes Protocol on the Protection and Assistance to Internally Displaced Persons (Article 5); and the 1990 African Charter on the Rights and Welfare of the Child (Article 29). Furthermore, while discussing the ILC Draft Articles on first reading and particularly Article 6 (in relation to responses to disasters in accordance with humanizes
principles, delegates have highlighted that "there exist possible divergences, and conflicts among States", inter alia, cultural ones, that "could impede efforts to deliver timely and effective assistance". The references became explicit in the ILC Draft Articles adopted on second reading, directly pointing to gender inequalities that exist in different cultural contexts. In contrast, most binding international legal instruments on the matter do not explicitly address these traditions as clashing with the need for humanitarian assistance, neither do they refer to individuals that are particularly vulnerable — as in the case of Article 6 of the ILC Draft Articles. In terms of enforceable instruments, the special needs of persons with disabilities are protected in situations of emergency during which women may be either more vulnerable targets or discriminated against. The Committee on the Elimination of Discrimination against Women (CommCEDAW) has amended this omission in relation to armed conflict and subsequent forced displacement by issuing General Recommendation No. 30, yet, there has been no particular effort to ensure that women are able to participate in rescue and recovery efforts and in community-based decision making processes following disasters and other environmental situations. Likewise, the Convention on the Rights of Child (CRC) contains no relevant provisions on disasters — even though it is clear that contracting parties' obligations in other emergency scenarios (e.g. armed conflict).

Group rights: indigenous traditional ecological knowledge and disaster management

Extreme climate change-related phenomena striking rural and coastal areas and other types of natural disasters are endangering not only the life of animals and plants, but also indigenous populations. A relevant example is that of indigenous peoples of the Arctic circle who have been — or still be — forced to migrate due to climate change. The region has experienced the highest temperature rise over land since the beginning of the 20th century, affecting indigenous peoples of the region such as Inuit, Yupik and Sami. Culture is again directly affected as indigenous livelihoods are largely based on the maintenance of the ecosystem, as well as the specific geomorphology and climate of the region where they live. Traditional practices such as fishing and hunting will have to be redefined in an urban context, posing a threat for biodiversity. This said, indigenous peoples' knowledge of the area's natural environment — called traditional ecological knowledge (TEK) — may be a valuable source of risk reduction and reducing vulnerability. This knowledge has been defined by the Arctic Council (2015) as "a systematic way of thinking and knowing that is elaborated and applied to phenomena across biological, physical, cultural and linguistic systems". In fact, in many cases, indigenous traditional knowledge related to the environment appears to have a positive impact on adapting to climate change-related phenomena. This ranges from practices of bringing together community members to survival strategies in Kenya and Uganda for instance, to the creation of a community-based early warning system in Kenya and Uganda for instance, to the creation of a community-based early warning system in Kenya and Uganda for instance.
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Traditional and indigenous communities live in constructions that are mythically believed to resist the force of cyclones when disasters strike (namakals). Bushfires and fire management plans

A good illustration of the role of indigenous traditional knowledge in disaster management is the debate over fire management plans in Australia. Bushfires, whose risks are increasing due to the extensive heat waves throughout the continent, have sparked an interesting controversy which is also an illustration of a conflict between public interests and indigenous cultural rights. Research reveals that fire risk management plans in many parts of Australia – in terms of preparation, response and recovery – are overall inadequate, not only affecting Aboriginal livelihoods, but further having an adverse effect on the atmosphere, allowing the release of larger amounts of greenhouse gases (GHG) emissions. In contrast, there is a spiritual meaning for many indigenous Australians. Ancient Aboriginal knowledge suggests that it would be better to regularly set small fires to break out in controlled savannah areas, in order to prevent larger and uncontrolled ones. At the same time, this could improve forest access and increase the size of hunting grounds. It would therefore make sense to develop legislation that allows certain peoples to be exempt from the regulations, while being in line with sustainable environmental management strategies. Aborigines are in fact already exempt from some Australian regulations related to wildlife hunting and wildlife conservation (apart from endangered species), precisely to be able to continue their traditional use of that land, for the purpose of hunting, fishing and food gathering. The extent to which these exemptions are valid however are still controversial and a matter of control by national jurisdictions.

Tsunamis and knowledge about the marine environment

Likewise, indigenous knowledge could contribute to the understanding of disasters related to the marine environment and ecosystem, particularly tsunamis and underwater earthquakes. For example, studies of indigenous responses to the 2004 Tsunami in the region of the Asia-Pacific suggest that most indigenous peoples – most strikingly living in different islands – identified the Tsunami signs and survived it unharmed. Their survival and admirable management of the disaster was attributed to their know-how and ancient wisdom about previous tsunamis that allowed them to act in a coordinated manner and reach high ground before the tsunami struck. Certainly, these results should be read in context (for instance, non-indigenous local populations, contrary to tourists, may equally have knowledge that enables them to identify signs of tsunami), as well as in combination with other aspects of indigenous living (for instance, the fact that indigenous home constructions such as namakals or even longhouses made with wood or bamboo may not always be earthquake-resistant). In fact, the risk assessment for the various peoples and ultimately the effective disaster management is largely dependent on various factors – including high poverty rates, lack of infrastructure, governance deficits and corruption, as well as ecological and geographical factors (particularly extreme weather conditions related to climate change or a region’s geological position and landscape). It is also indicative that research findings on the matter are controversial in another case study regarding the 2007 earthquake in the Solomon Islands. Down suggests that indigenous knowledge and local traditions alone are inadequate and that a hybrid approach to risk reduction is very much preferred. No matter where the truth lies, the only certainty is that disregarding a cultural identity in times of disaster leads to unsustainable responses.
From ‘cultural rights’ to ‘cultural resilience’

The consideration of disasters in the human rights law discourse has typically held migration and forced displacement as starting point especially by invoking the main instrument, the UN Guiding Principles on Internal Displacement. Following up with the protection of social and economic rights (food, shelter, health). The CESCR, in particular, has highlighted that the rights contained in the ICESCR, such as the right to the highest attainable standard of health, the right to the highest attainable standard of living, the right to food, and the right to rest and leisure are applicable even in the event of disasters. 

Over the last few years, however, there has been a shift towards the inclusion of culture in these responses, particularly given the emerging concepts of cultural resilience and human security. This shift has coincided with the gradually perceivable claim to hold individuals, or even States or corporations, criminally accountable in the aftermath of a disaster. Hence, in General Comment No. 21, the CESCR has highlighted that the obligations to protect cultural heritage continue during disasters and that such obligations include the care, preservation and restoration of historical sites, monuments, works of art and literary works, among others. Other obligations stemming from the ICESCR may also be particularly relevant during disasters. For instance, those pertaining to minorities and indigenous rights (including land rights and their right to traditional knowledge and expressions) as well as those to ‘persons living in poverty’.

Likewise, the FAO Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food provide that food and other types of assistance should be done bearing in mind local circumstances, dietary traditions and cultures. This means that, in safety operations undertaken by emergency management professionals, enough space should be accorded to cultural considerations, including the respect for gender and religious sensitivities and the accommodation of food preferences. Such guidelines are in fact present in voluntary initiatives such as the Sphere standards. The Sphere Humanitarian Charter (2014) in particular suggests concrete ways to provide humanitarian help in a way that connects local and cultural norms. For instance, the Sphere standards suggest that ‘projects [should be designed] to enhance the capacity of local people, to accommodate and respect local cultural spiritual and traditional practices important to local people’.

In addition, cultural resilience is part of three out of four priorities of the Sendai Framework:

- Priority 1(d), on the understanding of disaster risk, mandates that States should systematically evaluate, record, share and publicly account for disaster losses and understand the economic, social, health, education, environmental and cultural heritage impacts, in particular, in the context of disaster-specific adaptation and vulnerability information. This means that States should maintain lists to register their cultural losses.

- Priority 2, on mainstreaming disaster risk reduction for sustainable development, emphasizes that public and private investment in disaster risk prevention and reduction through structural and non-structural measures should be enhanced to enhance the economy, social, health and cultural resilience of persons, communities, countries and local areas, as well as the environment, and goes on explaining that these measures are cost-effective and instrumental to save lives, prevent and reduce losses and ensure effective recovery and rehabilitation. It further provides that States should take measures to protect or support the protection of cultural and collecting institutions and other sites of historical, cultural, religious and significant cultural and environmental assets. While there is no further clarification of the meaning of such protection and support, the Framework guidelines do explain that ‘managing the risk of disaster is aimed at protecting people and their property, health, livelihoods and productive assets, as well as cultural and environmental assets, while preparing and protecting all human rights, including the right to development’.
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• Priority 4, on ‘enhancing disaster preparedness for effective response’ and the ‘Build Back Better’ methods in recovery, rehabilitation and reconstructions include Gender Considerations in Early Warning Systems according to cultural requirements. According to the Framework, it is essential that at a national and local level it is important to invest in, develop, maintain and strengthen people-centred multi-hazard, multi-sectoral forecasting and early warning systems, disaster risk and emergency communications mechanisms, social technologies and hazard-monitoring telecommunications systems; develop such systems through a participatory process; tailor them to the needs of men, including social and cultural requirements, in particular gender.

A ‘cultural perspective’ of policies in relation to disaster management is also expressly predicted in its guiding principles:

[...]

Conclusion

Earthquakes, cyclones, droughts, floods, famines and other issues associated with climate change and El Niño phenomena should no longer be considered the fault of nature alone: human senselessness, supported by large corporations and business interests, play their part in increasing risks. While few exceptions, such disasters strike substantially generally rural or coastal areas when people live in conditions of extreme poverty. While it is by now clear that ‘human beings [should be] at the centre of concern for sustainable development’ it is equally clear that their human beings should be protected not as abstract entities but rather within the social and cultural contexts they live in. An approach for disaster risk reduction and management that excludes the collective human factor is therefore shown to be unsustainable.

Hence, not all aspects of culture necessarily correspond to cultural rights: several cultural and religious practices, including those (e.g., female genital mutilation) are the causes for increased vulnerability of women and children in many parts of the world. At the same time, collective cultural rights such as the right of Independence to maintain and protect their traditional knowledge with respect to the countries could, eventually, provide an essential input to risk reduction mechanisms. The examples of bushfire management in Australia and the Indian Ocean tsunami demonstrate how effective this input has indeed been successfully explored.

Yet, cultural rights – apart perhaps from the right to access and preservation of cultural heritage – are still not considered ‘urgent’ in environmental and humanitarian emergencies. The protection of collective cultural identities is not only to be brought forward, but more to happen through with less restrictions. It is a positive trend however that awareness aims have been increased both the ILC Draft Articles adopted in 2016 the Sphere Humanitarian Charter (2014), as well as the 2015–2030 Sendai Framework marked important steps in this respect. The latter in particular has formally introduced the concept of cultural resilience in the disaster discourse – a concept that allows to local governments more flexibility to create more sustainable and culturally resistant cities and peoples. Hopefully more such initiatives will follow.
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Selected bibliography


M. Kelly, D. Caron and A. Teleetsky (eds), The International Law of Disaster Relief (CUP 2014).


S. Borelli and F. Lenzerini (eds), Cultural Heritage, Cultural Rights, Cultural Diversity (Brill, 2012).

E. Stamatopoulou, Cultural Rights in International Law (Martinus Nijhoff Publishers, 2007).

Notes


3 E. Stamatopoulou, 'Right to Take Part in Cultural Life' (article 15 (1) (a) of the Covenant), Background paper submitted to the CESCR, E/C.12/40/9 (9 May 2008) and generally, S. Borelli and F. Lenzerini (eds), Cultural Heritage, Cultural Rights, Cultural Diversity (Brill, 2012); E. Stamatopoulou, Cultural Rights in International Law (Martinus Nijhoff Publishers, 2007).

4 ICESCR, art 2 para 2. See also the relevant discussion the HRC, Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, UN Doc. A/HRC/31/52 (2016) para 47.

11 According to Merriam-Webster dictionary, ‘disasters’ are ‘something (such as a flood, tornado, fire, plane crash, etc.) that happens suddenly and causes much suffering or loss to many people’.

12 Art. 15 (1) (c) of the Covenant, Background paper submitted to the CESCR, E/C.12/40/9 (9 May 2008) and generally, E. Stamatopoulou, ‘Right to Take Part in Cultural Life’ (article 15 (1) (a) of the Covenant), Background paper submitted to the CESCR, E/C.12/40/9 (9 May 2008) and generally, S. Borelli and F. Lenzerini, Cultural Heritage, Cultural Rights, Cultural Diversity (Brill, 2012); E. Stamatopoulou, Cultural Rights in International Law (Martinus Nijhoff Publishers, 2007).

13 For a thorough discussion on this issue, see E. Stamatopoulou, Cultural Rights in International Law (Martinus Nijhoff Publishers, 2007).

14 According to Merriam-Webster dictionary, disasters are ‘something (such as a school, a river, a famine, etc.) that causes much suffering or loss to many people’.
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15 Ibid para 15, insisting that the right to participate in cultural life consists of four key components: namely, participation in, access to, and contribution to cultural life. The Committee has noted that, in situations of armed conflict, the protection of cultural life should be a key component of humanitarian protection as part of the protection of human dignity and the protection of human rights. See also the relevant ILC draft articles (2014), adopted by the ILC Drafting Committee at its 66th Session (2014) on first reading and presented at the UN General Assembly on 14 May 2015, UN Doc. A/69/10 (2015), available at http://legal.un.org/ilc/reports/2014/ at 316, para 309 (presented at the UN General Assembly on 14 May 2015, UN Doc. A/69/10 (2015), available at http://legal.un.org/ilc/reports/2014/).

16 Ibid para 15 (b), in which the CESCR flagged that the right to participate in cultural life contains three key components: namely, participation in, access to, and contribution to cultural life. See the relevant ILC draft articles (2014), adopted by the ILC Drafting Committee at its 66th Session (2014) on first reading and presented at the UN General Assembly on 14 May 2015, UN Doc. A/69/10 (2015), available at http://legal.un.org/ilc/reports/2014/).


20 See for instance ILC, Eighth report of the ILC Special Rapporteur on Disasters, Eduardo Valencia-Ospina, at para 15, in which the CESCR flagged that the right to participate in cultural life consists of four key components: namely, participation in, access to, and contribution to cultural life. See also the relevant ILC draft articles (2014), adopted by the ILC Drafting Committee at its 66th Session (2014) on first reading and presented at the UN General Assembly on 14 May 2015, UN Doc. A/69/10 (2015), available at http://legal.un.org/ilc/reports/2014/).

21 The ‘Sendai Framework for Disaster Risk Reduction’ (2015–2030), Sendai (Japan) 24–25 June 2015 was adopted following the World Conference on Disaster Risk Reduction, Sendai (Japan) 14–18 March 2015. See for instance ILC, Eighth report of the ILC Special Rapporteur on Disasters, Eduardo Valencia-Ospina, at para 15, in which the CESCR flagged that the right to participate in cultural life consists of four key components: namely, participation in, access to, and contribution to cultural life. See also the relevant ILC draft articles (2014), adopted by the ILC Drafting Committee at its 66th Session (2014) on first reading and presented at the UN General Assembly on 14 May 2015, UN Doc. A/69/10 (2015), available at http://legal.un.org/ilc/reports/2014/.)

22 Ibid Draft art 3: ‘Use of Terms’ and Commentary on art 3, subparagraph (a), 24 (9).

23 The ‘Sendai Framework for Disaster Risk Reduction’ (2015–2030), Sendai (Japan) 24–25 June 2015 was adopted following the World Conference on Disaster Risk Reduction, Sendai (Japan) 14–18 March 2015.

24 Ibid Draft art 3: ‘Use of Terms’ and Commentary on art 3, subparagraph (a), 24 (9).


26 See UN Doc. A/HRC/RES/22/16 (n. 8).


29 See for instance ILC, Eighth report of the ILC Special Rapporteur on Disasters, Eduardo Valencia-Ospina, at para 15, in which the CESCR flagged that the right to participate in cultural life consists of four key components: namely, participation in, access to, and contribution to cultural life. See also the relevant ILC draft articles (2014), adopted by the ILC Drafting Committee at its 66th Session (2014) on first reading and presented at the UN General Assembly on 14 May 2015, UN Doc. A/69/10 (2015), available at http://legal.un.org/ilc/reports/2014/.


33  See UN Doc. A/HRC/28/76 (n. 17) para 40.
34  CESCR, General Comment No. 21 (n. 14) para 50: ‘States have the obligation to respect and protect cultural heritage in all its forms, in times of war and peace, and natural disasters’.
36  See, on this, also Riccardi (n. 29) 6.
37  UNESCO World Heritage Convention, art 23.
38  Ibid.
Efforts to secure respect for [economic, social and cultural rights] should give priority to the right to medical and psychological assistance, education, protection of property and the cultural heritage, housing and means of subsistence, preservation of culture, traditions and customs and restoration of the quality of the environment.
43  Cf. also HRC, Advisory Committee Report, UN Doc. A/HRC/28/76 (n. 17) para 77 undercited Heritage (cultural values).
44  Ibid paras 4–6. See also the subsequent SNGA Resolution, notably SNGA, Res. 48/133 (1999), encouraging States to follow them.
49  Ibid.
51  On child marriages see e.g. S. Steel, ‘The Impacts of Floods on Peruvian Children under 5’ The International Journal of Children’s Rights (1998) 6 (4) 1–16.
53  See ILC Draft Articles (n. 18) 316, para 309.
54  See ILC Draft Articles (n. 19) 36 (commentary on art 6).
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69  Ibid 130.


71  Ibid.

72  See this complexity in the example of the 2010 earthquake in Haiti, for instance at DKKV Report (n. 2) 11.

73  Ibid 184.


75  CESCR, General Comment No. 4: The Right to Adequate Housing (Art. 11(1) of the Covenant), UN Doc. E/C.12/1999/5 (1999), in relation to the right to housing. See Fisher (n. 74) 556; Cubie and Hesselman (n. 8) 9, 11 and 20.


77  Ibid 83.


80  Thomalla, Smith and Schipper (n. 10) 13.

81  Ibid 83.


92  Thomalla, Smith and Schipper (n. 10) 13.

93  Ibid.


95  Ibid.


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of Risk Regulation (2015) 244; The International Law of Disaster Relief (n. 33); P. Green, 'Disaster by Design: Corruption, Construction and Catastrophe' 45 British Journal of Criminology (2005) 528 (focusing on the earthquakes in Turkey and arguing that it is important to develop a political criminology of natural disasters — which might reflect on the roles of State organizations and business in shaping conditions conducive to disaster); E. Deakin, 'The Role of International Law in Disaster Risk Reduction' 118 Yale Journal of International Law (2013) 672; J. Knox, 'Mapping Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment', in J. Knox, B. Vallhonrat and J. Gore (eds), The Human Right to a Healthy Environment: The International Covenant on Economic, Social and Cultural Rights (2015). 77


Ibid paras 36–7 and also 56. 79


The Sendai Framework sets four priorities: (i) understanding disaster risk; (ii) strengthening disaster risk governance to manage disaster risk (for prevention, mitigation, preparedness, response and rehabilitation); (iii) investing in disaster reduction for resilience and; and (iv) enhancing disaster preparedness for effective response. 83 Sendai Framework (n. 23) 18, para 29. 84 Ibid 18, paras 29 and 30(d). 85 Guiding principles with regard to Priority 3, 19(d)(g). 86 Ibid 21, para 33(b). 87 Sendai Framework (n. 23) 19(c) and (d). 88 UN Conference on Environment and Development, Report of the United Nations Conference on Environment and Development, Rio de Janeiro, UN Doc. A/CONF.151/26 (Vol. I) (3–14 June 1992) Principle 1. 89

This right has been recognized by the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), particularly art 31(1) thatprovides indigenous peoples’ right to maintain, preserve and develop their traditional knowledge, traditional expressions and intangible cultural heritage (as well as the right to benefit from the corresponding IP rights).