Introduction

As the purpose of this volume is to address the legal challenges posed to the protection of human rights by events loosely qualified as 'disasters', a preliminary question to be explored is the identification of the term's legal contours under international law. However, as emphasized by the International Law Commission (ILC) Special Rapporteur Eduardo Valencia-Ospina, within the framework of activities related to the Draft Articles on the protection of persons in the event of disasters (ILC Draft Articles): 1 'there is no generally accepted legal definition of the term in international law'. 2 Indeed, it would be challenging to pinpoint a single instrument of international law capable of providing the authoritative and guiding legal parameter for this term. In this regard no are experiencing similar challenges to other areas of law in which standardized definitions are lacking and significant interpretative efforts are consequently required to navigate among different instruments towards the identification of common criteria. 3 The relevance of this interpretative exercise should not be underestimated, as such a definition will help identify the situations in which protection may or shall be invoked, as well as the circumstances under which protection will no longer be necessary. Describing the contours of 'disaster' will also help identify the persons in need of protection and thus ascertain who is entitled to protection. 4

Hence, with the aim of providing a pertinent terminological framework for this volume, in the subsequent paragraphs, we will explore the taxonomy 5 of disasters and seek to better identify the legal contours and implications of this notion.

A first brief reference will be made to the terminology issues addressed by disaster studies, in which specific emphasis is placed on the social and sociological dimensions of events that might represent a disaster, or are being to 'transform what until recent such references could be translated into legal paradigms or capable of influencing them'. Subsequently, we will focus our attention on the international legal dimensions of this term, conducting a critical assessment of the main approaches in this area as identifiable in relevant practice. In particular, the law-making techniques adopted in treaties and soft-law documents could be grouped according to four diverging perspectives (or international instruments avoiding the taxonomy challenge, hence addressing

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relevant legal issues arising in the event of disaster without trying to define this term or, con-
versely, (b) documents illustrating the distinctive features events should possess in order to be
classified as a disaster. This second approach can be traced back to one of the earliest definitions
of disaster in international law provided in the Convention establishing the Interna-
tional Relief Union in 1927 (IRU Convention). In this latter context attention will be paid
to current and recurring key issues in the terminology dilemma, thus permitting us to identify
trends and converging elements. This analysis will also take into account the definitions of disas-
ter included in the most recent and relevant documents in this area, namely the aforementioned ILC Draft Articles and the Report of the open-ended intergovernmental expert working group
on indicators and terminology relating to disaster risk reduction, elaborated to measure global
progress in the implementation of the Sendai Framework on Disaster Risk Reduction (Sendai
Framework), as endorsed by the United Nations (UN) General Assembly in February 2017
(Report on DRR terminology). Finally, some concluding remarks will build upon this analysis
in order to highlight the potential relevance of these terminology issues to the protection
of individuals under human rights law.

A brief foray into the terminological challenges pertaining to disaster studies

Although our focus will be on the international law dimension of the term ‘disaster’, we should
emphasise that the ‘definitional minefield’ related to the notion of disaster is a contentious
issue in disaster studies too. As recently recognised, indeed, ‘the existing taxonomies of disaster
matter . . . [as they] . . . might have far-reaching consequences for disaster policy’ (footnote omitted). Over the
last few decades, both to advance a comparison to the terminology debate among international law
scholars and to cast a light on some of the limitations of revising the traditional narrative according to which such events (as minimally defined) were to blame for the destruction caused by disasters. The position that ‘there is no such thing as a natural disaster’ is a current leitmotiv of disaster studies scholars and might now be considered
as the starting point for our terminological analysis in this area.

This emphasis permits us to conclude that it is ‘hard to identify catastrophic events which
result purely from “natural” causes’, as ‘the human contribution to disasters must be acknowledged
and recognised’. Based on such assumptions, disaster studies tend to emphasize that ‘[d]isaster
events is the intersection of the physical and social environments’, and note conclusively that ‘[t]he
human element is identified as a crucial component in defining the socio-environmental causes
and consequences of disasters’. From the sociological perspective, disasters appear to be the consequences of human or biophysical events ‘where final adverse effects are the product of interactions among potentially damaging physical events but secondarily and dominantly conditioned by
social, cognitive, and normative processes’. From the perspective of disaster management, the vulner-
ability of human societies to disasters is measured by the capacity of affected communities to
be resilient and cope with them. In brief, the consequences of a hazard are at least as much a function of where and how we live as they are a function of the hazard itself. Such positions have also been espoused through various hypotheses of equations seeking to optimize the distinguishing elements of disaster risk and hence predict the possibility of adverse effects caused by a hazard. For instance, according to some,

\[
\text{Disaster Risk} (R) = \text{Vulnerability} (V) \times \text{Exposure} (E) \times \text{Capacity} (C)
\]
Such nuanced elements focus in particular on the social and sociological implications of such events, as emphasised by scholars who have adumbratively and succinctly qualified disaster as 'social events in social time'. However, the translation of such elements into legal terminology remains complex. First, it should be recognised that even within disaster studies the possibility of identifying a common terminology is far from being accepted, as recognised by leading treaties in the area. The ever-evolving nature of the process of refining the term has been captured by Kroll-Smith and Gunter, according to whom 'the more we know about specific disasters, the more definitions of disaster are registered in the literature'. Second, even if it were accepted that the aforementioned shift in focus has obvious implications for law in general and human rights in particular, it must also be recognised that international law practice, dealing with the terminology issue, appears to have evolved primarily according to its own trend and regardless of the concurrent debate in disaster studies, as can be revealed through an assessment of such practice.

As a result, even if current international legal terminology could be criticised as not being fully capable of fully reflecting the social implications of disaster and the need to address the causes underlying such events, it still represents the primary point of reference for the identification of a workable definition of disaster in this branch of law. For this reason we will engage in the following paragraphs in an empirical assessment of current definitions of disaster as provided by international law instruments, so to grasp their main elements of reference. However, a plea could be made for a more osmotic approach among areas of research regarding disaster scenarios, as some elements of the current terminological reflections pertaining to disaster studies might also help to provide a broad theoretical picture and better address the same issue under a legal lens, for example regarding the thorny issue of separating natural or man-made disasters in relevant legal definitions.

The definition of 'disaster' in international law practice

As mentioned above, the terminology issue can also be addressed from the perspective of international law, according to solutions endorsed in treaties or soft-law documents. In this context the primary references for terminological analysis are provided by instruments pertaining to the emerging body of law qualified as international disaster law. Although its legal contours are still under debate, this term can be said to include rules and policies aiming to comprehensively address the legal and operational issues pertaining to the cycles of a disaster - commonly distinguished into the phases of mitigation, preparedness, relief and recovery - hence adopting a holistic approach towards the main legal, institutional and policy challenges raised by disaster in its temporal phases. Of particular relevance to our analysis are instruments in which, thanks to their specific focus, the large majority of general legal definitions of disaster can be found, as we shall explore later. For the purpose of our analysis, within the rather scattered and heterogeneous collection of instruments pertaining to the area of law, other instruments not addressing the terminology issue or having a limited scope of application and thus not contributing to the identification of common trends in this context are of little relevance.
In this latter regard, in fact, it could be underlined that the triggering mechanisms of several treaties and other documents have been tailored to their specific scope of application where matter, and consequently a general definition of disaster is lacking in such instruments. These texts do not dwell on an abstract definition of the term but interpret it as a specific kind of event that warrants assistance activities in and of itself. Reference could be made, for instance, to the term ‘disaster’ included in the WHO International Health Regulations, ‘oil pollution incident’ provided by the 1990 International Convention on Oil Pollution Preparedness, Response and Co-operation, or ‘nuclear accident or radiological emergency’ in the 1996 Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency. Even if related events might eventually lead to a situation of disaster according to the potential general definitions emerging jurisprudentially, the limited scope of application of these instruments has an impact on the possible use of their constitutive elements to identify criteria for the more comprehensive term of art. Similarly, reference could be made to treaties pertaining to different subject matters but including specific provisions whose application is triggered by the occurrence of a ‘disaster’. However, such documents do not provide autonomous definitions of the term, probably under the assumption that it is self-evident, or not wishing to embark on a lengthy law-making process in relation to definitions of less relevance for their purpose. An example of this latter trend may be provided by universal treaties regulating customs, such as Article 1(B) of Annex B.9 to the 1990 Istanbul Convention, intended to facilitate the temporary admission of relief consignments ‘to those affected by natural disasters and similar catastrophes’, or other treaty clauses making reference to ‘natural disasters’ or ‘catastrophes’ for their application, without however defining such terms.

Consequently, for the purposes of this contribution, specific attention will be paid to international instruments that expressly include a general definition of disasters, so as to verify recent evaluations according to which ‘[a] closer examination of the content of several conventions makes it possible to argue that the definitions of the term “disaster”, where provided in the treaties, are almost identical or at least do not differ in any significant manner’. In this regard, looking at the genealogy of the legal definition of disaster, the first example may be provided by one of the earliest instruments in this area, namely Article 2(1) IRU Convention. According to this provision, the purpose of the organisation was

![image]


Hence this first general definition of disaster in international law does appear to focus on certain key elements in the debate.

First, the ‘force majeure’ more restrictive “Acts of God” emphasis provided by the IRU Convention apparently points to the unavoidable and unexpected character of disaster, a trend being preserved by the current instruments in disaster studies. Second, for an event to be qualified as a disaster for the IRU’s purposes it should be able to overwhelm the capacity of affected communities and States. This element is easily associated with the very raison d’être of the IRU, intended ‘to co-ordinate as occasion offers the efforts made by relief organisations . . . and to induce all peoples to render mutual international assistance’. This emphasis on the involvement of international assistance in order to tackle a calamitous event may be partially significant for the application of treaties devoted to this area of cooperation, although it can hardly be prescribed as a requirement for the definition of a disaster, as emphasised by subsequent practice. Finally, it could...
also be argued that the IRU substantially considered the notion to be self-explanatory, taking into account that the treaty provides only basic indications on the characteristics events should have in order to be qualified as a disaster. While this early definition suffered somewhat the lapse of time since its original drafting, it is nonetheless significant as already able to highlight the difficulties and certain trends in the elaboration of a legal qualification of disaster. Subsequent attempts at dealing with this definition in relevant international instruments have followed two diverging methodologies, namely: (a) avoidance of the terminology issue, thus addressing relevant problems without providing a definition of the term; or (b) a descriptive approach, aiming to illustrate the distinctive features events should possess in order to be qualified as a disaster.

The first trend can be considered a minority one. Only in a few instances a definition specifically addressing the disaster cycle provides no legal qualification of this term in the text. In this regard mention could be made of the 1993 Inter-American Convention to Facilitate Disaster Assistance 38 and certain bilateral treaties developed in the 1970s and 1980s. 39 It is not unusual in law-making processes to omit a detailed definition of key terms, with the implicit aim of maintaining some flexibility and preventing States from escaping from the literal interpretation of the proposed criteria to escape from the application of relevant treaties. Examples are provided by the notions of ‘armed conflict’ in international humanitarian law or ‘outstanding universal value’ in the 1972 World Heritage Convention. However, in the area of disaster law such a trend may be due to an opposing rationale. In particular, the fact that the application of such treaties of assistance depends primarily on the concrete willingness of States involved to act in a spirit of cooperation and solidarity has reduced the need to set stringent requirements regarding the exact definition of the treaty’s scope of application. This element is particularly emphasised by the Inter-American Convention to Facilitate Disaster Assistance where, although a reference to disaster situations is made in the Preamble, its Article 1 devoted to ‘ applicability’ simply states that ‘this Convention shall apply whenever a state party furnishes assistance in response to a request from another state party, except as they otherwise agree’. While this radical approach has not been replicated in many contexts, significant room for flexibility has also been provided in treaties that do provide a definition of disaster. In some cases, for instance, even if the relevant document includes criteria to qualify certain events as a disaster, the definition includes clauses intended to potentially enlarge its scope of application according to the nature of parties involved. Reference could be made for instance to the 1997 Agreement between Argentina and Chile on cooperation in case of disasters, where Article 1, apart from describing the characteristics events should have to be qualified as a disaster, also provides that “[d]isaster” shall mean any event as described by the Party requiring assistance.” 41

However, as mentioned above, the large majority of international instruments addressing disasters usually include a definition of this term through certain descriptive elements and general criteria. As a result, terms like “disaster”, set in a term of art and as such lack one single accepted definition, 42 especially since the 1970s and 1980s an increasing body of practice has built up in the regard. Such practice comprises certain common elements and qualifiers, preventing the delineation of certain ongoing trends despite the efforts of incorporating terms of art into definitions. Herein, before looking at the recurring common criteria over the last decades it may be helpful to draw attention to the definitions of disaster included in the most recent and relevant documents in the area, namely the ILC Draft Articles and the Report on DRR terminology, which already emphasise common elements in the debates and highlight the shift that practice in this area has undergone since the early definition provided in the 1927 IRU Convention. According to Draft Article 3(a) of the ILC Draft Articles, “disaster” means a calamitous event or series of events involving in widespread loss of life, great human suffering and damage, even...
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displacement, or large-scale material or environmental damage, thereby seriously disrupting the functioning of society." Indeed, for the Report on DRR terminology, which has led the UN Office for Disaster Risk Reduction (UNISDR) to update its definition, a disaster is

[a] serious disruption of the functioning of a community or a society at any scale due to hazardous events interacting with conditions of exposure, vulnerability and capacity, leading to one or more of the following: human, material, economic and environmental losses and impacts.

These texts capture current trends and key converging elements in relation to terminology but nonetheless present some differences; for instance, the emphasis in the Report on DRR terminology on elements such as pre-existing vulnerabilities and exposures, that addressing aspects present in disaster studies but not international law practice. Such definitions obviously do not come out of the blue but are expressions of the significant practice developed over the last decades, presenting identification of the main and recurring complexities related to the terminology issue, as will be explored subsequently. In particular, the current definitions of disaster pivot on two main axes, upon which we can place the most frequently recurring features emphasized by practice, namely: the origin of disasters and the effects of such calamitous events. A series of sub-questions could also be formulated in relation to these features.

Origin of disasters

First, practice tends to categorize disasters according to their origins and causal elements, thus explicating, as the normative arena the basic dilemma faced by disaster studies. As underlined above, disaster studies consider it almost impossible to make clear distinctions regarding the nature of disasters, namely to focus only on natural disasters as compared to those of man-made origin. In fact, disasters often result from a complex web of factors in which no single sufficient cause can be identified, especially once natural phenomena merge with human agency, in the birth and expansion of calamitous events.

Despite this basic assumption, in some limited cases treaties have expressly restricted their scope of application to natural disasters, as mainly exemplified by Article 1.3 of the 2011 South Asian Association for Regional Cooperation Agreement on Rapid Response to Natural Disasters (SAARC Agreement). Conversely, the vast majority of relevant instruments do not include a qualifier in this regard (probably on the assumption that an explicit reference to causation may be unnecessary) or clearly affirm, through similar expressions, that a disaster might be caused by exposure to the operation of the forces of nature or to human intervention. This approach is also confirmed by the Commentary to Draft Article 3(A) of the 2016 ILC Draft Articles, which emphasizes that "no limitation is included concerning the origin of the event, that is whether it is natural or human-made, in recognition of the fact that disasters often arise from complex sets of causes that may include both wholly natural elements and contributions from human activities," according to the position already endorsed by the Special Rapporteur. In a similar manner this approach can be inferred from the reference to "hazardous events" included in the definition of disaster of the Report on DRR Terminology, as it makes explicit reference to "the operation of the forces of nature or to human intervention." Natural hazards, or natural disasters, are induced entirely or predominantly by natural processes and phenomena. Anthropogenic hazards, or human-induced hazards, are induced entirely or predominantly by human activities and choices. 51
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The first element of this qualification also calls for the analysis of certain related issues. In particular, ‘disasters of human-made origin’ may apply to several scenarios, as exemplified by scholars seeking to include within this term ‘financial’, ‘natural’ and ‘man-made’ events (including armed conflicts). However, from our perspective, such a very broad interpretation risks completely undermining a potentially autonomous notion of disaster in international law and does not appear to be supported by international practice.

In particular, several instruments specify that armed conflict does not fit within the legal definition of disaster. This approach has been expressly endorsed by treaties and other relevant documents in this area. For example, the ICRC’s Draft Convention on Expediting the Delivery of Emergency Assistance and subsequently included in the International Federation of the Red Cross and Red Crescent Societies’ Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance emphasize that armed conflict does not qualify as a disaster. This approach is also shared by the Report on DRR terminology, which maintains, in relation to anthropogenic hazards, that ‘the term does not include the occurrence or risk of armed conflicts and other situations of social instability or tension which are subject to international humanitarian law and national legislation’. Such express limitations are especially relevant in identifying the contours of an autonomous definition of disaster, as armed conflicts could otherwise easily fulfill any proposed criteria due to their significant impact and negative consequences. The reasoning behind this latter approach can clearly be justified by the desire to make a clear distinction from a branch of international law, namely the law of armed conflicts, that is already extensively regulated at the universal level according to its own rationale. Moreover, it reflects the recognition of ‘important differences between the context of conflict and peacetime disaster’, a solution also endorsed by disaster studies.

In a similar vein, with the aim of avoiding definitions which are too broad, the Commentary to Draft Article 3(a) of the ILC Draft Articles maintains that the term ‘disaster’ does not include ‘other serious events, such as political and economic crises, which may also undermine the functioning of society, but which are outside the scope of the draft articles’. Nonetheless, it could also be pointed out that, in certain circumstances, the relatively flexible approach adopted in some definitions has ultimately implied that mechanisms originally envisaged to deal with common scenarios related to disaster situations have effectively been used to address other public emergencies. For example, the European Union (EU) Civil Protection Mechanism was activated in response to the recent migrant crisis and the phenomenon of internally displaced persons present in non-EU States in relation to scenarios of armed conflict. Such extensive use of the Mechanism has been met with criticism in the doctrine focusing on the ad hoc nature of the solution, which has responded mainly to internal EU policies rather than to the scope of the Civil Protection Mechanism itself.

Effects of disasters

Second, definitions of disaster usually include references to the effects calamitous events should have in order to be qualified as such. In particular, reference is made to the effects of disasters on people, property and the environment. In a very limited number of instruments reference is also made to cultural heritage as a distinctive element potentially suffering the effects of disasters, with the clear intention of emphasizing the relevance of cultural assets and their intrinsic relationship to human beings and the need to preserve these for future generations from the effects of disasters. Hence events may well trigger a series of consequences, frequently included through several broad

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examples in the ILC definition, such as loss of life, human suffering and distress, mass displacement, or material or environmental damage. This has been instrumental in the terminology used in international practice, where reference is made, for instance, to prejudices to the ‘health’ of humans and animals, ‘material damage’, ‘economic losses’, ‘human losses’, ‘environmental losses’ or ‘social damage’. Such emphasis on different kinds of effects seeks to comprehensively underline the many significant impacts disasters might have on affected communities, not being limited to the direct prejudice against human life but covering the entire ‘disaster impact’. For instance, the emphasis on environmental damage – as an element that has more recently been routinely included in the definitions of disaster – should be welcomed as a recognition, also in this area, that the environment is not an abstraction but represents the living space, the quality of life and the very health of human beings, including generations unborn, according to the position maintained by the International Court of Justice.

In order to avoid over-restrictive definitions, it should be emphasised that relevant provisions consider such criteria as being alternative ones. Therefore it is not necessary to ascertain the occurrence of all the aforementioned effects together, as the existence of one of them is sufficient to fulfill the criterion. Similarly, it can also be emphasised that a transboundary nature of disasters is not considered necessary in this practice. Therefore even if the events in question are of a wholly domestic nature they can still be relevant for the definition of a disaster, as maintained by the Commentary to Draft Article 3(a) of the ILC Draft Articles.

As emphasised above, for a claimed result to be a disaster implies its capacity to impact people, property or the environment. However in order to avoid classifying any sort of event as a disaster, international practice routinely employs certain qualifications so that only significant matters are contemplated for instance, effects of hazards must be ‘severe’, ‘widespread’, ‘significant’ or ‘serious’. Such elements clearly aim to differentiate between the common difficulties that communities may experience and a proper international legal definition of disaster. In fact, even if the term should be vested with some flexibility due to its mutable nature, the risk of its over-application or indefinite character is quite evident, as emphasised by some very isolated and isolated practice in this area seeking to deal not only with technological and natural disasters but also with accidents de la vie quotidienne et de la circulation routière.

However, it remains complex to effectively establish a threshold for such qualifications and effects of disasters. The difficulties are illustrated for instance, by Draft Article 3(a) of the ILC Draft Articles, whose reference to criteria capable of ‘seriously disrupting the functioning of society’ has expressly been used to create ‘only extreme events’ and to fix ‘a high threshold’. In order to ensure that the occurrence of severe detrimental effects alone, as exemplified in the first part of the same definition, could not be considered sufficient to fulfill this term. This latter reasoning is expressly included in the Commentary, where it is specified that the nature of the event is further qualified by the requirement that any of all the four possible outcomes, as applicable, result in the serious disruption of the functioning of society in other words, as event that would not, for example, large-scale material damage, but did not seriously disrupt the functioning of society would not, accordingly, satisfy the threshold requirements. However, the Commentary fails to spell out which criteria should be used to ascertain the disruption of society. Accordingly, some scholars have suggested that the additional element should be deleted in order to avoid establishing too high a threshold or have understood that the societal disruption element would not be fit for some types of disasters, such as environmental ones.

Furthermore, it could be pointed out that the sole reference to ‘society’ in this definition could potentially be misleading. Even if the term is also present in other instruments, such as the Tampere Convention on the Provision of Telecommunication Resources for Disaster Mitigation.
and Relief Operations (Tampere Convention) or the IDRL Guidelines, other trends are also identifiable. In particular, other treaties include an additional reference to the term ‘community’ along with ‘society’ [10] or make reference to more geographically defined entities such as disaster impacting local communities [11] or being of a spatial limited nature. [12] For example, according to a ‘definite area’, “immediately affected by the disaster or in accident” or in an internal limited manner, with the implied consequence of also affecting events with a more limited impact. Presumably, the latter practice seeks to avoid the potential interpretative difficulties related to the term ‘society’, a notion not qualified in international instruments and one that might imply the assessment of the detrimental effects on a very large scale. The Report on IDDR terminology, however, adopts a different solution, how the definition of disaster specifies [13] serious disruption of the functioning of a community or a society at any scale and the related assumptions emphasize that the criteria is satisfied when the events ‘test or exceed the capacity of a community or society to cope using its own resources, and therefore may require assistance from external sources, which could include neighboring jurisdictions, or those at the national or international levels.’ [14] In the latter case, therefore, the disruption of a community or society is primarily linked to the presence of events of any scale that exceed the response capacity of the entity affected. This concept appears in several treaties, presumably with the aim of avoiding the shortcomings among the descriptive criteria otherwise used for the identification of a disaster.

It is clear that increased harmonization should be favored in future international practice in order to clarify this element, which is largely motivated by different perspectives behind the two instruments: the definition provided by Draft Article 3(a) of the ILC Draft Articles has been accompanied by the usual caveat, according to which Draft Article 3 on the ‘use of terms’ has been provided “for the purposes of the present draft articles.” As the purpose of the Draft Articles is primarily to regulate cooperation at the international level between the affected State and external assisting actors, usually driven by large-scale disasters, it does not appear unusual that the ILC moved toward a definition intended to identify international provisions with a high threshold in relation to events. Conversely, the Sendai Framework appears to adopt a very comprehensive approach, being intended to apply to the risk of small-scale and large-scale, frequent and infrequent, sudden and slow-onset disasters caused by natural or man-made hazards. [15] From our perspective, and in the light of relevant practice, a broader definition should be favored in the identification of ‘disaster’ as a legal term of art, at least making reference to community along with society in order to ensure that the interpretative challenges related to the societal disruption element do not result in an excessively limitative notion.

The aforementioned detrimental effects can be recorded and evaluated according to different time scales, and in this regard reference is usually made to notions such as sudden-onset (such as volcanic eruption) or slow-onset emergencies (such as drought). Recognition of the different temporal context of disasters has progressively been encapsulated in legal definitions addressing this term. For instance, a very limited number of international treaties expressly limit their field of application to sudden-onset disasters, as was the case with the original version of the 1991 Treaty establishing the Caribbean Disaster Emergency Response Agency, which specified situations involving ‘[a] sudden event’. [16] However, this limitation has been deleted from the new 1998 treaty updating this entity, [17] and the majority of international instruments do not include this qualification. Conversely, certain relevant instruments even expressly include slow-onset disaster as their scope of application, such as the Tampere Convention [18] and the IDRL Guidelines. [19] This position has recently been shared by the ILC in its Commentary to Draft Article 3(a), according to which the draft articles apply equally to sudden-onset events (such as an earthquake or tsunami) and to slow-onset events (such as drought or sea-level rise), as well as frequent small-scale events (floods or landslides), hence expanding the definition in a series of events that...
on their own, might not meet the necessary threshold, but that, taken together, would constitute a calamitous event for the purposes of the draft articles. 

In a similar vein the Annotations to the definition of disaster in the Report on DRR terminology make reference to both categories of disasters. While a slow-onset disaster is "one that emerges gradually over time. Slow-onset disasters could be associated with, e.g. drought, desertification, sea-level rise, epidemic disease", a sudden-onset disaster is "one triggered by a hazardous event that emerges quickly or unexpectedly. Sudden-onset disasters could be associated with, e.g. earthquake, volcanic eruption, flash flood, chemical explosion, critical infrastructure failure, transport accident".

Finally, it should also be emphasised that various definitions do not limit this notion to the effective occurrence of negative consequences. Indeed, several international instruments emphasise that the definition could be satisfied in legal terms even before the occurrence of the disaster scenarios hypothesised, mainly in order to permit the timely activation of relevant assistance treaties and reduce the negative consequences therefore. In several treaties, a disaster is considered as such in the presence of an event which "threatens" or "may cause" the abovementioned detrimental effects, a position shared by Article 1(C) of the 2000 Framework Convention on Civil Protection Assistance, which requires only the threat of loss in order to identify a disaster by Decisions 1313/2013/EU, and by other treaties. It appears clear, especially in relation to treaties on assistance, that the prompt activation of cooperation among States and other assisting actors may help to avert potential detrimental effects. Similarly, the relevance of protection issues linked with human rights standards can hardly be limited to actual victims of disasters without paying attention to potential ones. However, this element has not been expressly included in the definition of the Commentary to Draft Article 3(a), in line with the original proposal of the ILC Special Rapporteur.

Conclusions

This taxonomy of the definitions of disaster provided by international law instruments allows us to identify several elements that converge towards the identification of the term of art, relating in particular to the origins of disasters, the effects such events might have and relevant limitations. As a result, even if certain criteria have not yet been properly addressed, the legal boundaries of this notion are increasingly well defined.

As mentioned above, the protection of human rights in disaster scenarios obviously represents one of the key legal paradigms to be taken into account. Indeed, the same terminology may be of some relevance in this context as will be explained in the following chapters.

First, the definition of the term "disaster", according to international law practice, helps to clarify which events and related legal issues fall outside the parameters of this notion. A particular mention could be made of armed conflicts, which per se do not represent a disaster, according to relevant documents such as the ILC Draft Articles and the Report on DRR Terminology, as well as other practice. Also, for the purposes of the present volume, armed conflicts have been excluded from any specific analysis, unless relevant international humanitarian law provisions might provide insights to help solve certain challenges, for example in the case of disasters occurring in complex emergencies, namely situations where a State should affected by an armed conflict.

Second, defining the term "disaster" can prompt the identification of specific categories related to the protection and respect of human rights which arise in such particular scenarios. As rightly underlined by Kälin, "human rights are never more important for people than in times of particular need and vulnerability, and they therefore have an important role to play in times of disaster." The provisions of the latter definition with these elements could therefore help States, international organisations and non-state actors to better clarify the specific context of
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obligations inherent in general human rights guarantees as applied in disaster contexts. This perspective is endorsed by the ILC Special Rapporteur Valencia-Ospina, according to whom '[s]uch a definition will help identify the situations in which protection may or shall be invoked'115 and clarify who needs protection in such specific circumstances. In particular, the context-based character of these challenges to the applications of human rights obligations in the case of disasters implies that clarification of this definition might contribute to the better identification of situations where additional or specifically tailored measures could be requested as compared to common scenarios, as explored by the authors of this volume.116 From the integration of the rights-based approach into the disaster management perspective, as championed by some actors,117 it can obviously benefit from the identification of situations in which suggested actions and legal and operative paradigms should be considered relevant.

Furthermore, this link between the terminology issue and substantive human rights provisions could also be explored in relation to certain specific elements. For instance, while we have seen that the origin of a disaster (i.e., human-made or natural) is no longer appropriate for terminology purposes, as both typologies are commonly covered by relevant instruments, it could easily be shown that this distinction still has an impact in terms of the substantive human rights obligations States are expected to fulfill. Examples could be provided, in relation to different standards that States are requested to comply with, under a due diligence paradigm, in relation to the prevention of natural or anthropic disasters.118 Conversely, on the basis of the conceptual terminological analysis, criticisms could be made regarding the limited scope of application of instruments specifically intended to address challenges to the protection of human rights solely in case of natural disasters, such as the Operational Guidelines on Human Rights and Natural Disasters drawn up by the Human Rights Working Group.119 As discussed above, especially on the basis of these analytical results within the framework of disaster studies confirmed by relevant practice, such a distinction is hardly tenable, as similar challenges to human rights protection might also be expected to occur in the event of human-made disasters. Finally, terminology issues might also impact limitations and derogations to human rights treaties. In fact, especially in relation to events capable of fulfilling the high threshold criteria provided by Draft Article 3(a) of the ILC Draft Articles, States may be able to consider such disasters as situations representing public emergencies and hence demand extraordinary measures, as will be explored subsequently.120

As a result, the possibility of qualifying an event as a disaster might have the added value of underlining the specific and multifaceted peculiarities that such situations can imply and therefore properly guarantee positive and negative human rights obligations. Even if human rights law is naturally not dependent, from the point of view of its relevance, upon the existence of a disaster, identifying the proper content of the latter term could nonetheless help to better frame the guarantees protecting fundamental values within this specific context.

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Notes

14. Sun (n. 8) 30.
17. According to the Report on DRR terminology, a hazard is ‘[a] process, phenomenon or human activity that may cause loss of life, injury or other health impacts, property damage, social and economic disruption or environmental degradation’. As for hazardous events, see ibid 20.
18. Sun (n. 8) 31.
21. For more information see ibid 9.
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27 See ILC Report 2016 (n. 1) 19, para 4.

28 According to art 1 of the WHO Health Regulations "disease" means an illness or medical condition, determined by public authorities, which presents or could present significant harm to humans.

29 As for the IRU see P. Macalister-Smith, 'The International Relief Union' in K.B. Penuel and M. Statler, 'Legislators, Interpreters and Disasters: The Importance of How as Well as What in Disaster Law' (Cambridge University Press, 2014) 49 ff.

30 International Convention on Oil Pollution Preparedness, Response and Cooperation (adopted 30 November 1972, entered into force 17 December 1975) 1037 UNTS 152, art 21, according to which the World Heritage Committee is requested to provide priority consideration for international assistance to States Parties to which public authorities must facilitate the arrival and departure of vessels engaged in natural disaster relief activities.

31 Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency (adopted 26 September 1996, entered into force 10 June 1999) 1891 UNTS 78, art 2.2.

32 See, along similar lines, the Annex to the Convention on Facilitation of International Maritime Traffic (adopted 9 April 1965, entered into force 5 March 1967) 591 UNTS 265, arts 5.11 and 5.12 according to which a State shall, according to its possibilities, assist vessels arrived in such vessels.

33 See Convention for the Protection of the World Cultural and Natural Heritage (adopted 16 November 1972, entered into force 17 December 1975) 1097 UNTS 60, art 2, which provides for the World Heritage Committee to consider, with due regard for the scale or nature of the damage, whether the emergency must result in the withdrawal of the property from the list of properties considered for inscription, and the recovery of the damage, in accordance with the criteria for inscription.

34 See article 9, which deals with the term "disaster" as defined in disaster law.

35 See, for instance, the pre-disaster phase, which falls within the scope of the pre-disaster prevention and mitigation activities.

36 K.N. Bookmiller, 'Closing “the Yawning Gap”? International Disaster Response Law at Fifteen' in Breau and Samuel (eds) (n. 11) 50.

37 See art 2.2.
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62 ILC Second Report (n. 4) 194, para 37.


66 See: CDEMA Agreement, art 1 according to which a disaster ‘excludes events occasioned by war or military confrontation’; Accord entre le Gouvernement de la République française et le Gouvernement de la Malaisie sur la coopération dans le domaine de la prévention et de la gestion des catastrophes, et de la sécurité civile (adopted 25 May 1998) art 1.a, which qualifies as a disaster ‘un événement autre que la guerre’, available at www.ifrc.org/Docs/idrl/I392FR.pdf, accessed on 7 July 2017.


69 See CDEMA Agreement, art 1, according to which a disaster ‘excludes events occasioned by war or military intervention resulting in widespread destruction of human, economic or environmental losses and impacts, which exceeds the ability of the affected community or society to cope using its own resources’; available at www.unisdr.org/files/7817_UNISDR Terminology on Disaster Risk Reduction.pdf, accessed on 7 July 2017.

70 See CDEMA Agreement, art 1, according to which a disaster ‘excludes events occasioned by war or military intervention resulting in widespread destruction of human, economic or environmental losses and impacts, which exceeds the ability of the affected community or society to cope using its own resources’, available at www.unisdr.org/files/7817_UNISDR Terminology on Disaster Risk Reduction.pdf, accessed on 7 July 2017.

71 ILC Report 21, where the relevant Commentary is also present.

72 Article I, where the definition excluded ‘an ongoing situation of armed conflict’.

73 ILC Second Report (n. 4) 194, para 37.

74 ILC Report 2016 (n. 1) 23, para 4.

75 Report on DRR Terminology 18.


77 Article I, where the definition excluded ‘an ongoing situation of armed conflict’.

78 See CDEMA Agreement, art 1, according to which a disaster ‘excludes events occasioned by war or military intervention resulting in widespread destruction of human, economic or environmental losses and impacts, which exceeds the ability of the affected community or society to cope using its own resources’; available at www.unisdr.org/files/7817_UNISDR Terminology on Disaster Risk Reduction.pdf, accessed on 7 July 2017.


80 Article I, where the definition excluded ‘an ongoing situation of armed conflict’.

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82 See CDEMA Agreement, art 1, according to which a disaster ‘excludes events occasioned by war or military intervention resulting in widespread destruction of human, economic or environmental losses and impacts, which exceeds the ability of the affected community or society to cope using its own resources’, available at www.unisdr.org/files/7817_UNISDR Terminology on Disaster Risk Reduction.pdf, accessed on 7 July 2017.


84 Agreement between the Republic of Korea and the Kingdom of Belgium on Mutual Assistance in Combating Disasters and Accidents (adopted 14 November 1999) art 1.3, which makes reference to ‘a natural hazard event’.


56. IHL Guidelines art 2.1, according to which the definition is aimed at 'excluding armed conflict'.

57. ILC Report 2016 (n. 1) para 2.


60. This approach has also been criticised in the area of disaster studies. For instance, Sun (n. 8) 47, maintains that "blurring the traditional lines between natural and technological disasters by recognizing that they exist along a continuum of human contribution might also open the door to grouping natural disasters not just with technological disasters like toxic releases and industrial accidents, but with the intentional man-made crises such as terrorism and war. This blurring of the boundaries between disasters, terrorism, and war might prove problematic for a number of reasons.

61. ILC Report 2016 (n. 1) para 2.


64. See for instance: Decision No. 1313/2013/EU, art 4.1; Agreement between the Republic of Austria and the Republic of Albania, art 2; CDEMA Agreement, art 1; IDRL Guidelines, art 2.1; Agreement between the Government of the Republic of Lithuania and the Government of the Republic of Belarus, art 1.3; Tampere Convention, art 1.6.

65. Ibid.


68. See for instance: IDRL Guidelines, art 2.1; Agreement between the Government of the Republic of Lithuania and the Government of the Republic of Belarus, art 1.3; Tampere Convention, art 1.6.


70. See, for similar expressions making reference to economic or material losses: ASEAN Agreement, art 1.3.

71. See: SAARC Agreement, art 1.3; Agreement between the Republic of Austria and the Republic of Albania, art 2; ASEAN Agreement, art 1.3.

72. See, for instance, SAARC Agreement, art 1.3.

73. Regarding losses to the environment see, for instance: Decision No. 1313/2013/EU, art 4.1; SAARC Agreement, art 3; Framework Convention, art 1.5; Framework Convention, art 1; Tampere Convention, art 1.6; BSEC Agreement, art 2.

74. BSEC Agreement, art 2.

75. Regarding this term see the Report on DRR terminology, 13, where ‘disaster’ includes economic, human and environmental impacts, and may include deaths, injuries, disease and other negative effects on human physical, mental and social well-being.


77. ILC Report 2016 (n. 1) para 5.

78. Decision No. 1313/2013/EU, art 4.1.

79. See: SAARC Agreement, art 1.3; CDEMA Agreement, art 1; ASEAN Agreement, art 1.3; IDRL Guidelines, art 2.1; Tampere Convention, art 1.6.

80. BSEC Agreement, art 2; Agreement between the Republic of Austria and the Republic of Albania, art 2.

81. Agreement between Argentina and Chile, art 1.
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83 ILC Report 2016 (n. 1) 22, para 4.
84 Ibid 24, para 10.
85 Such effects are ‘widespread loss of life, great human suffering and distress, mass displacement, or large-scale material or environmental damage’.
86 ILC Report 2016 (n. 1) 23, para 5.
88 T. Stephens, ‘Disasters, International Environmental Law and the Anthropocene’ in Breau and Samuel (eds) (n. 11) 155, who criticises the ILC definition as, under international environmental law, calamities can involve damage to the environment per se and need not involve societal disruption (i.e. ‘pure environmental harm’).
89 IDRL Guidelines, art 2.1.
90 See: ASEAN Agreement, art 1.3, making reference to ‘[a] serious disruption of the functioning of a community or a society’; ANRE Agreement, art 1.3.
91 See art 14 of the 1994 Accord entre le Gouvernement de la République française et le Gouvernement de la Malaisie making reference to events which have caused damage or the extent of collective harm.
93 For (AER) Agreement, art 2.
96 See, for instance, SAARC Agreement, art 1.3, which makes reference to a situation ‘which exceeds the capacity of the affected country or countries to cope using its own resources’. For similar criteria: Agreement between the Republic of Armenia and the Republic of Azerbaijan, art 2.
97 Tampere Convention, art 1.6 makes reference to events ‘developing suddenly or as the result of complex, long-term processes’.
98 See IDRL Guidelines, art 2.1.
100 Ibid.
101 See Williams and Simm’s chapter in this volume.
102 For a criticism see Thouvenin (n. 87) 49–50.
103 Ibid.
108 For a critique see Simeoni (n. 87) 94–96.
109 Decision 1313/2013/EU, art 4.1.
111 For a critique see Simeoni (n. 87) 94–96.
112 Ibid 22, para 4.
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115 ILC Second Report (n. 4) 193, para 31.
116 See the chapters by Hesselman, McDermott, Rolnik, Casolari, Adinolfi, Riccardi, Giacca, Polymenopoulos, and Creta in this volume.
117 See Sossai’s chapter in the volume.
118 See Sossai’s chapter in this volume.
120 See Sommar’s chapter in this volume.