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Human Rights Law (HRL) first developed in domestic jurisdictions and, second, in the international legal system through treaties and customary law. It is based on the rule of law, meaning that States have a precise set of obligations to respect towards individuals under their jurisdiction. The primacy of international law over national laws on human rights matters largely derives from the extensive and detailed elaboration developed by human rights bodies and courts, which over the years have set principles and rules common to the universal and regional systems.

The normative framework of disaster response has also primarily developed under the domestic laws, and it has only recently been covered by a variety of international law instruments to form the present body of International Disaster Law (IDL).

The encounter of HRL and IDL has given rise to a number of issues which continue to provide challenges to the international, national, municipal and community actors as well as topics for discussion among scholars.

Indeed, that human rights must be respected and protected in the event of a disaster sounds like a truism. Of course, human rights matter much, and the more so when life and security are seriously endangered by natural or human-made calamities. Therefore, the respect for human rights shall guide all actions to be taken in response to disasters. Yet things are not so simple, as past events and current disasters can demonstrate.

One critical issue is the multiplicity of rights that are at risk in times of disaster. Some of them, such as the rights to life, liberty, security of person, freedom of movement or freedom of assembly belong to the catalogue of civil and political rights; others, equally or even more numerous, are economic, social and cultural rights such as the right to work, the right to social security and assistance, the right to an adequate standard of living, which includes adequate food, water, sanitation and housing; the right to the highest attainable standard of health, and the right to education. The need to prioritise emergency response as well as recovery and restoration of activities can lead, if not to competing options, at least to selective choices that ultimately privilege some and not others.

The International Covenant on Civil and Political Rights (ICCPR) imposes upon States the obligation to achieve specific results, i.e. to respect and to guarantee to all individuals the rights recognised in the Covenant. The International Covenant on Economic, Social and Cultural Rights (ICESCR), instead, contains duties of best efforts, meaning that economic, social and cultural (ESC) rights are to be realised progressively through steps taken by the States concerned. Moreover,
both civil/political and ESC rights have certain inherent limitations. They allow restrictions to safeguard the public interest that are typically invoked in times of disaster. In this respect, it is of paramount importance that the States abide by the opinion of the Human Rights Committee and avoid, as far as possible, using derogations, even in cases where there would be a possibility. It is an open question whether individuals have a right to humanitarian assistance in times of disaster, resulting in the legal entitlement of certain persons being identified as the victims of a disaster, to receive certain services, as defined in the appropriate legal instruments. The core human rights treaties do not mention such a right. However, it could be inferred from the existing obligations by way of interpretation. These can be used to derive that the government of a State affected by a disaster has an obligation to provide assistance and relief to all persons under its jurisdiction. Should it fail to meet its obligations, legal means of recourse would be available at the domestic level. Yet, what of the affected State’s response capacity in such cases? Would the victims of a disaster be entitled to assistance from third States, international intergovernmental or non-governmental organisations, or even the international community as a whole?

As a matter of fact, obligations stipulated in bilateral and multilateral treaties relating to humanitarian assistance are typically owed to other States, not to individuals. Therefore recognizing that individuals are entitled to, claim international assistance directly would extend the scope of international law too far, and it is not currently supported by State practice. The force of HRL, however, gives ground for envisaging that international law should evolve towards a more individual-centred approach whereby disaster victims would have the right to request and receive humanitarian assistance, not only from their government, but also from third States and international organizations. This could also be derived from some international agreements concerning the protection of internally displaced persons, as well as by a number of soft law instruments. The more a true right-based approach is focusing on the situation and the needs of individual victims is adopted, the more all institutions and entities will be held accountable towards those who are vulnerable to and affected by disasters.

Disaster exacerbates vulnerabilities of individuals and groups. Women, children and adolescents, older persons, persons with disabilities and those living with chronic diseases, minority groups and indigenous peoples, internally displaced persons, refugees and migrants all have different situations and problems — and especially intersectional vulnerabilities such as those of disabled children, older migrants and similar — that need to be addressed in response to disasters by targeted actions based on previous assessment, specialized training of relief personnel and timely response.

To give an example, gender inequalities are likely to cause a higher death toll among women while risks of rape and other forms of violence increase when gender-blind assistance does not meet the needs of women. The remedy is to address these concerns by way of measures to ensure that women’s needs are met, such as the provision of food, shelter and sanitation programs; the provision of safe sanitation facilities in camps and collective shelters; and other actions that are recommended not only by the main soft law instruments, but also by the human rights bodies and especially by the Committee on ESCR. Another aspect which must not be neglected is the vulnerability of disaster victims caused by the loss of their cultural heritage. Not unlike armed conflict, disaster often involves the destruction of buildings and monuments of religious or historic significance representing the cultural heritage of peoples, communities and groups which are also deprived of those objects and spaces that define their sense of identity and continuity as an essential dimension of their human rights. Such situations require not just special care in emergency relief, but also continued attention during the recovery, rehabilitation and reconstruction phases.

One of the most interesting aspects of the human rights-based approach in disaster-related issues is the role of soft law as a set of rules and procedures that define the behaviour of those

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whose task is to provide help to disaster victims – domestic authorities, foreign States, inter-
governmental organisations or private actors. These rules consist of principles incorporated in
United Nations General Assembly (UNGA) resolutions on humanitarian emergency assistance,
strategic frameworks endorsed by States as a result of international conferences concerning the
prevention of disasters, operational standards and guidelines adopted by intergovernmental bodies
as well as codes of conduct developed by non-governmental organisations. In fact, based on the
current trend, both IGOs and NGOs show great resourcefulness not only in providing help –
thus performing a role complementary to that of States – but also in forming compliance with
the rules applied domestically and even in influencing the development of international custom
to guarantee the rights of disaster victims. The comprehensive and detailed guidelines and codes
of conduct governing their actions in the area affected by a disaster represent the most compre-
hensive framework for humanitarian activities. As such, they also contribute to an improvement
in the provision of humanitarian assistance in armed conflicts that is governed by International
Humanitarian Law (IHL) on the basis of international conventions, but it is often hindered by
the reluctance of States to allow humanitarian organisations to carry on their activities in the
conflict areas. Since IHL and IDL share the fundamental principles of humanitarian assistance,
the inherent set of rules should evolve in parallel and essentially merge to ensure that the victims
of both disaster and armed conflict are given the best possible care.

The Human Rights-Based Approach (HRBA) to disaster response therefore results from a
series of factors that effectively involve civil society organisations alongside States, public author-
ties and intergovernmental organisations. Conceptualising the HRBA was the task of human
rights bodies and special rapporteurs who analysed the relevant practice and highlighted not only
the immediate needs of those affected by disasters, but also their legitimate aspirations to regain
a sense of hope for a better quality of life in the future. In this context, the work of the Internation-
al Law Commission (ILC) on the Protection of persons in the event of disasters has become central.
Although the overall result does not represent something revolutionary, it nonetheless makes a
fundamental contribution to the progressive development of IDL insofar as it has addressed in a
systematic way the main legal questions pertaining to the dialectics between human rights pro-
tection and the principles of State sovereignty and non-interference. By deciding to recommend
the elaboration of a convention on the basis of the Draft Articles, the ILC reminds States of their
inherent responsibility to meet the essential needs of the persons concerned, with full respect for
their rights. Setting the duty of affected States to seek external assistance when a disaster exceeds
their national response capacity, and the duty of all States to cooperate in the response to disasters,
the Commission adopts a vision focusing on a solidaristic approach in international relations.
By introducing the obligation to take appropriate measures to pre-
vent, mitigate and prepare for disasters, it keeps IDL at the forefront of international law, and it
constructively challenges governmental and domestic authorities in order to open new paths for
protection of people against natural and human-made catastrophes.

As is often the case for international norms, IDL implementation mainly relies upon the
adoption of domestic measures by national authorities. Without this support, any international
custom loses its content. The ILC Draft Articles on the Protection of persons in the event of disas-
sers explicitly require the affected States to “take the necessary measures to facilitate the prompt
and effective provision of external assistance” (Article 15, paragraph 1) and to ensure that all relevant
legislative and regulatory measures are independently accessible to facilitate compliance with
international law” (Article 15, paragraph 2). All States shall take “appropriate measures”, including
legislations and regulations, to reduce the risk of disasters through the conduct of risk assessments,
the collection and dissemination of risk and post-loss information, and the installation and opera-
tion of early warning systems (Article 9). The two Articles not only

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impose obligations of means, but they also set in detail the national measures to be taken (to ensure accessibility of domestic legislation, to conduct risk assessments, etc.). While complying with these obligations, States are expected to behave with due diligence so as to fulfill the standards and principles of good governance. Therefore, the implementation of the international norms effectively fosters the improvement of living conditions for the benefit of individuals.

Whatever form the ILC Draft Articles will take following their consideration by States and by the UNGA in 2018, what matters the most is that they have a significant impact on the way in which governments shape their policies and priorities in the domestic systems, with a view to ensuring a better level of human rights protection even in the most difficult disaster situations.

Conclusions