Introduction

On 9 October 1963, 260 million cubic metres of rock broke off from the top of Mount Toc on the border between the two regions of Veneto and Friuli Venezia Giulia, in north-east Italy. It fell into the reservoir of the Vajont Dam, producing an enormous wave of at least 50 million cubic metres of water. Although the dam did not suffer any serious damage, flooding destroyed the towns of Longarone and other satellite villages in the Piave valley. Nearly 2,000 people died. What at first appeared to be no more than a totally unexpected natural disaster, in reality was the result of a combination of decision-making errors, failures to assess the degree of risk, and lack of effective early warning. The subsequent domestic trial attracted much public attention regarding the predictability of the landslide as well as the specific responsibilities for the tragedy. 1

In estimating the impact of disasters in modern societies, the application of human rights standards has fostered the paradigm shift from the evaluation of impact of the hazard as such towards the assessment of States’ negligence of risks. If the essence of disasters is then lack of preparation and social vulnerability in the first place, 2 preventative action becomes a key element of disaster management. In this regard, the development of the doctrine of positive obligations in the field of human rights law has contributed to clarifying that States have to take all reasonable measures to prevent a foreseeable breach of the rights of those within their jurisdiction.

It is significant that the 2015 Sendai Framework 3 establishes a fundamental link between disaster risk reduction (DRR) and the protection of human rights: the principles contained therein require that in taking all the necessary measures to prevent and reduce disaster risk, States and all other stakeholders prevent and protect all human rights. 4 A focus on international human rights law offers an objective legal and analytical framework to better understand the trajectory in disaster management from emergency response to DRR. This chapter is aimed at identifying the implications of human rights-based approaches within the context of prevention and DRR, by taking into account the relevant case law, particularly that of the European Court of Human Rights (ECtHR), as well as the solutions found in the relevant provisions of the International Law Commission Draft Articles on the protection of persons in the event of disasters (ILC Draft Articles).
Although one might even agree that a rule imposing States to engage in specific DRR strategies has not yet emerged under general international law, 5 it is still important to assess the role of existing human rights obligations in clarifying the steps States should take in order to prevent and to reduce the exposure to disasters. The concept of due diligence becomes relevant in this regard, since ‘an impossible or disproportionate burden must not be imposed’ 6 on States’ authorities: given that the elements of knowledge of the risk (the State ‘knew or ought to have known’) and capacity (the State employed all means that were ‘reasonably available’ and ‘within its power’) are essential in the assessment of compliance, it is possible to identify standards of conduct expected of States in a more comprehensive way. Still, in determining the appropriate measures to be taken in the pre-disaster phase, what emerges is that States are under an obligation not only to protect the life and property of those under an imminent risk of disasters through timely warnings and evacuations, but also to reduce the risk of disasters, through a variety of measures and policies, including what the Sendai Framework calls ‘preparations’.

**Disaster risk reduction as a human rights issue**

The elaboration of risk reduction strategies is based on the assumption that disasters could have not only a direct impact on human rights – such as the threat that extreme weather events may pose to the right to life – but also indirect and more progressive effects, particularly on the enjoyment of economic and social rights, like housing, health, land rights and access to food. 7 The Sendai Framework still follows the fundamental relationship under international human rights law between the human beings affected by disasters as right-holders and the State as the main duty-bearer, 8 by stating that ‘each State has the primary responsibility to prevent and reduce disaster risk’, although it emphasizes the involvement of a variety of stakeholders. 9 The reduction of disaster risks is described as a ‘common concern for all States’, a concept which points not only to the global nature of the challenges posed by disasters, inspiring collective action, but also to the collective benefits for all States of such an approach. 10 In this respect, the Sendai Framework consolidates a community-oriented approach in dealing with the prevention of disasters, which combines the international concern with human rights and the protection of the environment. 11 It is not by chance that the United Nations Office for Disaster Risk Reduction (UNISDR) has emphasized the interlinkages between DRR priorities for action and the Sustainable Development Goals. 12

The utility of adopting a human rights-based approach 13 in relation to DRR has been discussed in the light of the following statement contained in the Guiding principles of the Sendai Framework: ‘Managing the risk of disasters is aimed at protecting persons and their property, health, livelihood and productive assets, as well as cultural and environmental assets, while preventing and protecting all human rights, including the right to development’. 14 In other words, this added value of a human rights perspective lies in the idea that the protection of human rights is not only a moral imperative, but also an instrument to ensure the protection of the environment, which should not be seen as a natural resource whose exploitation is justified by the need to meet the demands of the population. 15 Therefore, international human rights law should not only be seen as a guiding parameter during the implementation of DRR measures, but also as a source of legal obligation to take action in this field.

The two concepts of exposure and vulnerability are interrelated, although the former focuses on a spatial element whereas the latter refers to the specific conditions of certain individuals and groups. Indeed, the notion of vulnerability, which is applied in the field of DRR, focuses on the conditions determined by physical, social, economic, and environmental factors of exposure which increase the susceptibility of an individual, a community, a system, or society to the impacts of hazards. 16 Hence, as well as Article 31 of the Convention on the Rights of Persons with
Disabilities represents one of the first provisions containing explicit protection obligations vis-à-vis vulnerable people in disaster situations. In recent years, the issue of the inter-relationship between vulnerability — as a social and ethical notion in the first place — and human rights has attracted much attention in the literature. Even if vulnerability remains a rather kaleidoscopic concept, it has been argued that its appearance in human rights case law has represented a crucial step towards the recognition of equality as substantive equality in terms of participation, transformation, redistribution, and recognition.

One might wonder to what extent similar multi-dimensional characterizations of substantive equality based on the principle of non-discrimination, might find applications in the realm of DRR. Previous analyses have suggested that effective implementation of human rights law has had an impact on the prevention and reduction of disaster in three critical areas: by developing States’ capacity, by promoting the participation of individuals and communities affected and by inducing greater accountability in cases of negligence.

Although human rights law cannot substitute the detailed development of effective regulation, still obligations incumbent on States can foster capacity-building initiatives, by setting out minimum standards. A review of the practice concerning the application of human rights to environmental issues in the context of their procedural obligations (which include risk assessment, information and early warning, as well as public participation measures); substantive obligations (taking steps to prevent and reduce exposure to hazards); and obligations relating to those in vulnerable situations.

The existence of procedural obligations suggests how crucial information and participation both are. The Sendai Framework provides for inclusive, accessible and non-discriminatory participation, putting special attention to people disproportionately affected by disasters, especially the poor, and at-risk and vulnerable populations. The United Nations Guidelines have relied on the notion of empowerment of individuals and communities affected by disasters. A human rights approach not only offers guidance in taking the most appropriate actions particularly vis-à-vis the most vulnerable groups, including indigenous peoples, with a view to avoiding discrimination based on gender, age, ethnicity, or social origin, but it also enables such groups to perform DDR initiatives. For purifying them as active agents of change for achieving effective and equitable resilience. DRR has been seen as an enabler of human rights, inter alia in terms of participation in decision-making and of affected groups in decision-making processes. The Expert Mechanism on the Rights of Indigenous Peoples, for example, has identified three sets of duties: procedural obligations (which include risk assessment, information and early warning, as well as public participation measures); substantive obligations (taking steps to prevent and reduce exposure to hazards); and obligations relating to those in vulnerable situations.

The dynamics between the State as the main duty-bearer and individuals and collective right-holders in the specific field of prevention and reduction of disaster risks can be therefore

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envisaged as a complementary relationship between a top-down approach on the part of the State through legislation and other implementation measures and a bottom-up approach in which non-state actors mobilise and strengthen local capacities. Finally, the conceptualisation of a failure to take preventive action as a human rights issue leads to the establishment of responsibility, as already confirmed by existing case law of the ECtHR. Even human rights mechanisms at the UN level - though limited to investigating complaints and issuing legally non-binding decisions - may still have real strengths, particularly as they remain independent of governmental control. 27

The duty of establishing a legislative and administrative framework

The previous paragraph has demonstrated that awareness has grown on the importance of integrating a human rights-based approach in prevention and reduction of disasters. In addition to the duty of prevention as developed by international environmental law, 28 human rights law has been identified as a fundamental source of obligations for taking preventative measures by the ILC. The current wording of Draft Article 9(1) ILC Draft Articles recognises the existence of a number of obligations aimed at DRR by establishing that States ‘shall reduce the risk of disasters by taking the necessary and appropriate measures, including through legislation and regulations, to prevent, mitigate and prepare for the disaster’. 29 The ILC Special Rapporteur had identified prevention, mitigation and preparedness as lying on different points of the continuum of actions for the purpose of DRR, covering measures that need to be taken in the pre-disaster phase. 30 It follows that, in his view, mitigation and preparedness could be regarded as ‘specific manifestations of the overarching principle of prevention’. 31

It is not always an easy task to clarify the content and scope of the obligation to prevent, in order to determine exactly the concrete measures such duty requires. In general terms, there seems to be a general undercurrent international/human rights law towards a more comprehensive understanding of the notion of prevention so that it aims to eliminate risk factors and establish a legal, administrative and policy framework which tackles present violations. 32 There is a constant element at a time in which the traditional perception of disasters as episodic events has been supplanted by the growing consciousness that they are ‘events touching upon the “persistent” interests of States to such an extent and with such costly consequences that international legislative action . . . has flourished’. 33

The case law of relevant human rights courts and mechanisms makes it possible to identify some common features and approaches to prevention, 34 particularly as regards the existence of a ‘primary duty’ placed upon States to put in place a legislative and administrative framework for both human-made 35 and natural disaster. 36 Awareness is increasing in the sense that the obligation to protect requires States parties of the relevant human rights treaties to adopt a legal framework imposing business entities to ensure human rights due diligence in order to identify, prevent, mitigate and account for the negative impacts caused by their activities. 37

In this context, the ILC significantly stressed that legislation is meant to be understood in broad terms to cover as many manifestations of law as possible, it being generally recognised that such law-based measures are the most common and effective way to facilitate . . . the taking of disaster risk reduction measures at the domestic level. 38

Following the authoritative position taken by the International Court of Justice (ICJ) with regard to the crime of genocide, one might be tempted to conclude that the duty to prevent, in
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all circumstances, is an obligation of conduct rather than one of result, as it requires States only to deploy their best efforts, i.e. to do all in their power to achieve a result, but without ultimate commitment.39 Such distinction between the two categories of obligations is relevant since it may assist in ascertaining when a breach has occurred: 40 it is notoriously based on the crucial concept of due diligence. 41 However, under international human rights law, even the duty to prevent is composed of a number of elements, only some of which are obligations of due diligence:42 in particular, the duties to adopt both a dedicated legislative framework and an institutional apparatus are positive obligations of result.43 Even the obligations requiring the ‘progressive realization’ of economic, social and cultural rights can be viewed in terms of a combination of immediate obligations of result and obligations of best efforts.44

Of course, a matter of due diligence is how the administrative apparatus then functions: whereas both the enactment of laws dealing with all relevant aspects of disaster risk mitigation and the set up of the necessary mechanisms and procedures are the object of an obligation of result, on the contrary the obligation to use that institutional capacity to prevent is one of conduct, in the sense that a State cannot be under an obligation to succeed, whatever the circumstances, in preventing the impairment of human rights stemming from natural and man-made disasters. 45 Such two-step approach in which legislation anticipates the taking of ‘appropriate measures’ has also been endorsed by the ILC in the Commentary to Draft Article 9, where it is stated that ‘the general obligation to reduce the risk of disasters would also include an obligation to put such a legal framework into place and to ensure for the taking of the “appropriate measures”.’ 46 As a corollary, the existence of a legal framework represents a “condicio sine qua non” also for the establishment of an accountability mechanism at a domestic level in case of non-performance. 47

The 2005 Hyogo Framework for Action considered DRR as ‘a national and a local priority with a strong institutional basis for implementation’, particularly through ‘policy, legislative and institutional frameworks for disaster risk reduction’. 48 As other commentators have already observed, the Hyogo Framework prompted the obligation of ‘a significant amount of legislation to many countries’, although the level of priority given to risk reduction in domestic regulations still depends on a variety of variables, including the prevailing risk context, the level of understanding of DRR and the specific regulatory need and gaps in the country.49

It goes without saying that, under International Human Rights Law States enjoy a certain degree of discretion regarding the content of the normative tools they are required to use. However, in the area of dangerous industrial activities, the ECtHR stated that domestic regulations should include ‘the licensing, setting up, operation, security and supervision of the activity’.50 Moreover, both hard and soft law instruments in the specific field of DRR could provide clear guidelines for the enactment of further legislative measures.51 In this respect, the goal of the 2015 Sendai Framework is much more comprehensive than the previous document, as it is aimed at the ‘substantial reduction of disaster risk and losses’, through the implementation of integrated and inclusive economic, social, human, cultural, educational, environmental, technological, political and institutional measures that prevent and reduce disaster risk exposure and vulnerability, increase preparedness for response and recovery, and thus strengthen resilience.52 Still, ‘national and local frameworks for laws and regulations’ serve as a ‘clear and precise tool by which they guide these measures, tools and responsibilities, and provide for coordination across the relevant institutions, but they are also aimed at reducing risks of exposure and vulnerability by developing, implementing and enforcing building codes, environmental and resource management and health and safety standards’.53

It is important to consider the impact of the growing importance attached to the adoption of a coherent legislative and administrative framework to reduce disaster exposure, as well as of the non-binding efforts taken in specifying which measures are needed. To the extent that the
diffusion of a DRR paradigm is able to influence both States’ capacity and their knowledge of the risk, this might have implications also for the determination of negligence, and therefore responsibility, in a specific case.

The relevance of the due diligence standard

The mere existence of domestic legislation concerning natural disasters, including legislation relating to DRR, is an essential starting point but may not be sufficient for guaranteeing full compliance with the obligations to prevent. States are expected to use such a normative and institutional framework with diligence. This is how the ILC Commentary to the Draft Articles should be read too, where it construes the duty to reduce risk as one of conduct and not result: ‘in other words not to completely prevent or mitigate a disaster, but rather to reduce the risk of harm potentially caused thereby’. 55

Draft Article 9 is consistent with the position taken by the ECtHR as regards the scope of the positive obligation ‘to take appropriate steps to safeguard the lives of those within their jurisdiction’. 56 This approach moves from the premise that disasters constitute threats to the right to life. 57 As a consequence, a classical understanding of the duty to prevent, as developed by the Osman case, applies in this kind too. The Court individuated the rationale for ‘best efforts’ obligations as follows: ‘an impossible or disproportionate burden must not be imposed on the authorities without consideration being given, in particular, to the operational choices which they must make in terms of priorities and resource’. 58

The standard of due diligence, which applies to this kind of primary obligations, serves as a criterion for assessing compliance with the specific duty to prevent. 59 Due diligence is linked to the concept of negligence and the general principle ad impossibilia nemo tenetur. 60 It has been described as a standard of care, which requires ‘a value judgment of what could and should have reasonably been done’. 61 Diligence entails using capacity at the disposal of a State in an effective manner to respond to known and knowable threats. It means that, in order to assess whether the State was negligent, two essential factors must be evaluated: whether the State knew or ought to have known the degree of risk; and whether it used all the ‘available means’. 62

The importance of the knowledge of risk, as an element for the evaluation of diligence, found confirmation in the Öneryildiz case, which concerned methane explosions in a municipal rubbish dump. The ECtHR held that Turkish authorities had a positive obligation to prevent as they ‘knew or ought to have known that there was a real and immediate risk to a number of persons’. 63 This specific understanding of risk is based on the elements of foreseeability and imminence, given, the dangerous character of the industrial activity, and the quantity of persons potentially affected. 64 In the subsequent Budayeva case, which specifically concerned natural disasters, the Court considered a variety of factors in order to assess the knowledge of risk, including ‘the imminence of a natural hazard’, whether it concerned a recurring calamity, ‘the origin of the threat’ and the extent to which one or the other risk is susceptible to mitigation. 65 It is noteworthy that the Court evaluated the risk on the basis of the imminence and the frequency of the threat, the characteristics of the natural hazard, the state of knowledge, the state of current techniques of prevention and mitigation. 66 The Court concluded that it was foreseeable that the town ‘was situated in an area prone to mudslides’, that it could be ‘reasonably assumed that a mudslide was likely’ and that the authorities ‘were aware that any mudslide, regardless of its scale, was capable of causing devastating consequences’. 67

Finally, the relevance of the subsequent case Kolyadenko v. Russia lies in the combination of the foreseeability of the hazard and the existence of an obligation to use best efforts to gain knowledge. In relation to a large-scale release of toxic waste from a reservoir near the city of Novokuznetsk, the Court pointed out that the authority should have foreseen the likelihood as well as the potential
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consequences of releases of ‘water from the reservoir’, since they had the obligation ‘to assess all the potential risks inherent in the operation of the reservoir’. While assessment has become part of a specific duty under human rights law, at the first step remains any possible recourse to reduce the risk of disaster. A greater understanding is needed available on the predictability of events. As a consequence, the criteria of ‘imminence’ and ‘visibility’ are less important for the knowledge of the threat, and therefore States bear the obligation under the ECtHR to proactively undertake disaster reduction activities, particularly in the field of preparedness measures. The ‘available means’ standard is the second factor to be considered in the evaluation of compliance with due diligence obligations: once ‘State officials and authorities did not do everything within their power to prevent [human rights]’, in other words, if State capacity to prevent constitutes a sort of limit in establishing responsibility, it is important to take into account various aspects, including whether ‘the State has the financial, technical or human resources available to put its institutional capacity to good use’. The Inter-American Commission on Human Rights, in granting precautionary measures on behalf of the inhabitants of Omoa in Honduras, at risk because of a liquid petroleum gas storage facility, asked the State to take the steps necessary to ensure the company’s effective observance of the environmental regulations and laws in place in Honduras, and to adopt the measures needed to reduce the danger to the lives and persons of the inhabitants of the community of Omoa to an acceptable level.

Significantly, capacity has been identified in the DRR framework as ‘the combination of all the strengths, attributes and resources available within an organization, community or society to manage and reduce disaster risks and strengthen resilience’. The reasoning of the ECtHR in this series of cases is based on the notion of negligence attributable to the State: in Budayeva, the Court found that the State authorities neither allocated financial resources nor took concrete steps for the ‘restoration of the defence infrastructure’ after the previous mudslide. Moreover, they failed ‘to show all possible diligence in informing the civilians and making advance arrangements for the emergency evacuation’, as they could have ‘set up temporary observation posts in the mountains’. In Kolyadenko, the Court established a causal link between the negligence attributable to the State and the endangering of the lives of those living in the vicinity of the reservoir by finding that the main reason for the flood was the authorities’ failure to take measures to keep the river channel clear.

The case law of the ECtHR seems to concur with the view that reasonableness is ‘a golden thread in determining which measures States should take to act in a duly diligent manner’. As observed also by the ICJ with respect to the crime of genocide, it is difficult to determine in abstracto what a ‘reasonable preventive action’ is: this leaves States a degree of flexibility in the choice of means and the allocation of resources. Nonetheless, various authors have noted that international law has moved away from the **diligentia quam in suis** principle, to a more objectivised standard, which the obligation to establish a legislative and institutional framework seems to imply, which guarantees a minimum standard to be upheld. The ILC, drawing on principles emanating from international human rights law but identifying a category of DRR measures, namely the conduct of risk assessments, the collection and dissemination of risk and past loss information and the establishment and operation of early warning systems.

As for the scope of the States’ margin of appreciation in taking the most appropriate measures, the European Court’s view still seems to depend on the importance of the rights involved as well as on the nature of the disaster itself, whether the right to life or a different right might be impaired and, second, whether the specific circumstances are to be qualified as a natural or

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than a man-made disaster. The net result is that much more discretion is left to the States when, for instance, they decide ‘what measures to take in order to protect private possessions from weather hazards’. One might wonder what the implications of the position taken by the Court are, particularly if it considered that meteorological events do not call for the same extent of State involvement as the dangerous activities of a man-made nature, because they are ‘beyond human control’. Criticism has been levelled against this approach, since it might entail a lower standard of protection for natural disasters under international human rights law, ‘especially in the preparation and prevention stage’.

However, the apparently strong statement made by the Court needs to be read in the light of the definition of disasters as the result of the interaction between hazardous events with conditions of exposure, vulnerability and capacity ‘to go without seeing that natural disasters are not as much beyond human control’. In this regard, the still limited jurisprudence cannot yet be definitively settled yet. Moreover, it has been observed that the approach of the Court regarding the magnitude of responsibility in the series of cases here considered is understandable, because none of the four events would have fallen within the definition of disasters under the ILC Draft Articles.

To conclude, what emerges for the previous analysis that, even assuming that States are not expected to succeed in preventing the effects of disasters in all circumstances, still the standard of care increases where the risks are known to be particularly significant, in terms of ‘harmfulness of the dangerous activities’ and ‘impossibility of the risks to life’; hence, the specific measures State authorities could reasonably be expected to take vary in accordance with the risks of serious human rights impact. There is no doubt that the concept of the case law of the ECtHR has been that of clarifying the scope of positive obligations particularly vis-à-vis infringements of the right to life in situations of natural and man-made disasters. At the same time, a focus on the right to life might even be counterproductive, in so far as it tends to reduce disaster reduction to the very limited sphere of individual interest, rather than that of the welfare of the society as a whole. It remains that specific obligations to respect, protect and fulfil arise from economic, social and cultural rights, including the right to an adequate standard of living (food and housing) and the right to health. Finally, the situation changes once a legal framework on DRR exists at an international level: indeed, the degree of flexibility diminishes when specific regulatory regimes provide for specific actions.

Conclusion

Prevention, mitigation and preparedness for disasters represent ‘a cornerstone’ of the ILC Draft on the protection of persons in the event of disasters, ‘rendering it capable of complementing non-binding approaches pursued at the international level such as the Sendai Framework’. As various States expressed doubts as to the existence of an obligation to prevent the risk of disaster under customary international law, one has to refer to the relevant literature to conclude that States have positive obligations under international human rights law to take preventive action once they have knowledge of disaster risks. When international environmental law has offered a valuable contribution in identifying procedures which could be applied for preventing the occurrence of disasters, including a duty to cooperate, a human rights approach allows one to achieve the comprehensive scope of DRR, particularly as regards the reduction of vulnerabilities. Identifying the specific conduct required by the duty to prevent was the source of controversy among States for a long time. The ECtHR has contributed to clarifying the scope of positive obligations of prevention, based on a two-step approach in which legislation anticipates the taking of ‘appropriate measures’. In addition to approving a legislative framework and establishing
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An administrative apparatus, States are required to use them with diligence. The ILC too has construed the obligation to reduce disasters as an obligation of conduct, subject to the due diligence standard. It follows that, in order to assess whether a State was negligent, an evaluation must be made on both its knowledge of the risk and on the use of ‘all available means’. The jurisprudence developed by the ECtHR in the series of cases concerning situations qualified as disasters cannot be considered as definitely settled even though an evolution in the understanding of the concept of risk has already emerged. In particular, the assessment of the foreseeability of a hazard needs to take into account the existence of a specific due diligence obligation to gain knowledge, through a risk assessment activity. As a consequence, if the criteria of ‘imminence’ and ‘visibility’ are less relevant in considering a disaster risk as certain, States are not only under a procedural obligation to disseminate information and operate early warning systems, but also must proactively enact DRR measures, in order to reduce exposure and vulnerability.

In the specific area of disaster prevention, international law is still fragmented and presents gaps. On the assumption that ‘human vulnerability in a time of disasters can be caused by both immediate pre-disaster, or by long-term poor governance’, the degree of flexibility still left to States in deciding the most appropriate action is counterbalanced by the increasing acceptance of the specific legislative and policy measures contained in hard and soft law instruments, including the Sendai Framework, particularly those addressing resilience and preparedness for the purpose of preventing and mitigating such risks.

Selected bibliography


Notes


6  Budayeva and Others v. Russia, App. No. 15339/02, 21166/02, 20058/02, 11673/02 and 15343/02 (ECtHR, Judgment of 20 March 2008) para 135.


10  For the notion of ‘community interest’, of course, see B. Simma, ‘From Bilateralism to Community Interest in International Law’ in Breau and Samuel (eds) (n. 2) 152.

11  On the issue of the ‘human role’ in the narrative of disasters, see e.g., J. Peel and D. Fisher, ‘The Role of International Environmental Law in Disaster Risk Reduction’ (UNFCCC 2014) 95-107.


13  See Knox, ‘Afterword’ (n. 21) 468.
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31 Ibid para 40.


44 See R. Pisillo Mazzeschi, ‘Responsabilité de l’Etat pour violation des obligations positives relatives aux droits de l’homme’ 333

45 ILC, Commentary to draft art 5, para 12.


48 ILC, Commentary to draft art 5, para 12.

51. Öneryildiz (n. 35) para 10.

52. See the comprehensive presentation of the international instruments covering disaster prevention in E. Valencia-Ospina (n. 30) 25 ff. The ILC Commentary to the Draft Art 9 contains a list of multilateral, regional and bilateral instruments concerned with reducing the risk of disasters.


54. Ibid para 27.

55. ILC Commentary to draft Art 9, para 10.

56. Budayeva (n. 6) para 128.


63. See G. Bartolini, T. Natoli and A. Riccardi, Report of the Expert Meeting on the ILC’s Draft Articles on the Protection of Persons in the Event of Disasters 3 International Law and Disasters Working Papers Series (2015) 44. See also Kichwa Indigenous People of Sarayaku v. Ecuador, IACtHR, Ser. C, No. 245 (2012) para 155: it is clear that a State cannot be held responsible for all situations in which the right to life is at stake. Bearing in mind the difficulties involved in the planning and execution of public policies and the uncertainties that must be faced according to the present and the evidence available, the State’s positive obligations must be interpreted in such a manner that an impossible or disproportionate burden is not imposed upon the authorities. For this positive obligation to arise, it must be demonstrated that at the time the event occurred the authorities knew or should have known about the existence of a situation that posed an immediate and certain risk to the life of an individual or of a group of individuals, and that they did not take the necessary measures available to them that could essentially prevent or at least mitigate the risk.


65. Öneryildiz (n. 35) para 135.


68. Ibid para 147.

69. Ibid para 149.

70. Kolyadenko and Others v. Russia, App. Nos. 17423/05, 20534/05, 20678/05, 23263/05, 24283/05 and 35673/05 (ECtHR, Judgment of 28 February 2012).

71. ILC Commentary to draft Art 9, para 20.

72. Öneryildiz (n. 35) para 28.

73. Öneryildiz (n. 35) para 101.
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76 UN Doc. A/71/644 (n. 16) 12.
77 Budayeva (n. 6) para 149.
78 Ibid para 154.
79 Kolyadenko (n. 71) para 215.
81 Genocide (n. 39) para 430.
83 Those supporting an objective standard of due diligence usually refer to A.V. Freeman, ‘Responsibility of States for Unlawful Acts of Their Armed Forces’ 88 *Recueil des Cours* (1955-II) 263, 277-278; such a standard would require ‘nothing more nor less than the reasonable measures of prevention which a well-administered government could be expected to exercise under similar circumstances’.
84 ILC Commentary to draft art 9, para 17. See also the analysis of the substantive elements of state negligence below, paras 9-10.
85 See also Budayeva (n. 6) para 135.
87 See Cubie (n. 29) 171. On the argument that the four situations examined by the ECtHR could hardly fall within the definition of disaster under the ILC, draft articles, see G. Bartolini, ‘La definizione di disastro nel progetto della Commissione del diritto internazionale’ 98 *Rivista di diritto internazionale* (2015) 155, 159.
88 See Romano (n. 60) 397.
90 See also Aronsson-Storrier and Salama, ‘Tackling Water Contamination: Development, Human Rights and Disaster Risk Reduction’ in Breau and Samuel (eds) (n. 2) 319.
92 See Bartolini (n. 93).
93 See Nicoletti (n. 33) 196.