

Yearbook of International Disaster Law

Volume 1 (2018)

Edited by

Giulio Bartolini (*Editor-in-Chief*)

Dug Cubie

Marlies Hesselman

Jacqueline Peel



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Editorial



Charting an Emerging Subject: The Role of the Yearbook of International Disaster Law

*Giulio Bartolini**

Disasters caused by natural and technological hazards are a commonplace phenomenon causing extensive negative impacts on affected communities. According to the 2018 World Disasters Report elaborated by the International Federation of Red Cross and Red Crescent Societies, in the last decade (2008-2017) around 770.000 deaths can be attributed to disasters, while 2 billion people have been affected and damages have amounted to US\$1.65 trillion. Regardless of such shocking data, it would be hard to claim that the international legal implications of disasters, as opposed to the humanitarian impact of such events, have been at the forefront of concern or area of specific interest for international organisations, States, humanitarian organisations, stakeholders and academics. However, in the past years a progressive shift can be identified, through some converging elements still in need of consolidation.

The first point to note is that a significant body of practice has emerged at the international and national levels devoted to addressing the legal and institutional issues relevant in disaster settings. Binding and non-binding standard-setting activities have been progressively developed by States and international organisations, as complemented by further informal law-making activities involving other relevant actors (e.g. NGOs, Red Cross Red Crescent Movement, expert groups). As a result, a significant number of hard and soft-law instruments now exist, a plethora of tools from which core elements, relevant principles and institutional structures addressing the different phases of the disaster-cycle (prevention, preparedness, mitigation, response and recovery) can be pinpointed. Additionally, other branches of international law (e.g. human

* Editor-in-Chief of the Yearbook of International Disaster Law. Associate Professor of International Law, Department of Law, Roma Tre University.

rights law, climate change law, trade law, law of the sea, international environmental law, migration law, nuclear law) and customary law provisions have been tested against disaster scenarios. Consequently, it is now possible to define the international legal perimeters of reference addressing challenges posed by disasters, as complemented by the significant role played by regional and national regulations in this area, with these latter having a particular role to contribute in terms of facing the challenges posed by disaster settings. Nevertheless, the patchwork nature of the evolving legal framework presents several elements of concern in terms of coherence and effectiveness, resulting in the need for critical analysis and identification of theoretical and practical challenges posed by disasters.

The second point to note is that academics and practitioners have progressively paid more attention to legal and institutional challenges raised by disasters. Since the early 2000s, international legal scholars have increasingly been attracted by this emerging area of research – trying to identify its contours, theoretical implications and practice-oriented impact. Similarly, the legal dimensions of response and disaster risk reduction activities continue to represent a challenge for practitioners and policy-makers operating in the area of disaster management and humanitarian action. Thus, as a core tool of international and domestic policies and actions, the law can help and/or hinder the performance of the functions, as well as the impact of the activities performed by these stakeholders toward affected communities.

Against this background, the aim of the Yearbook of International Disaster Law is to foster the debate on legal, institutional and humanitarian issues relevant to disasters. Even if ‘disasters’ cannot yet be qualified as a term of art under international law, converging elements provided by practice and academic debate have progressively shaped this notion in order to include within its contours a wide range of natural and technological hazards which seriously affect human beings, property or the environment, while excluding armed conflicts and other potential crises, such as political and economic turmoil or terrorist activities. The Yearbook will therefore primarily address the international legal dimensions of natural and technological hazards, with a specific interest on the ways in which different areas of international law and relevant institutions tackle disaster settings, alongside critical analysis of regional and national practice relevant for the development of legal and policy initiatives in this area. This publication is open to contributions from academics and practitioners from a range of disciplines with an interest in the legal implications of any phase of the disaster-cycle in order to promote a beneficial mutual dialogue and cross-fertilization of knowledge and expertise.

These objectives have been reflected in the overall structure of the Yearbook. The Yearbook will annually host a 'Thematic Section' devoted to an in-depth analysis of a specific topic: for this inaugural issue the choice was made to address the International Law Commission's Draft articles on the protection of persons in the event of disasters, a choice made in light of the ILC's proposal to transform this text into a treaty, an issue which will be discussed, for the second time, by the UN General Assembly in 2020. This thematic focus is complemented by a 'General Section' which contains papers addressing various issues pertaining to international disaster law. A specific feature of the Yearbook will be the 'International Disaster Law in Practice' section managed by members of the Editorial Committee. It collects short overviews and critical assessments on relevant practice for the year in review (namely 2018 for this inaugural issue) concerning both the universal and regional levels, including insights on some relevant national practice, and from the perspective of some specific branches of international law. By annually recording and reviewing the main legal developments pertaining to 'disasters', this section provides the opportunity to assess over time the increasing relevance of international disaster law in contemporary law-making, and in various institutional and operational activities. It is also hoped that this section will become a useful reference for researchers and practitioners alike, to find the latest developments, to develop further research in this area, or to determine where more action is needed. The growing interest in understanding the legal implications of disasters is also reflected in the 'Bibliography of International Disaster Law Publications' from the year in review, as complemented by selected book reviews.

The Yearbook is a collective work and could not be managed without the crucial contributions of academics, legal advisers and practitioners acting through different roles and responsibilities, which reflects the ambition of this project to mix different perspectives. The editors (Giulio Bartolini, Dug Cubie, Marlies Hesselman and Jacqueline Peel) have fundamentally benefitted from the support provided by members of the Advisory Board and the Editorial Committee, this latter coordinated by Tommaso Natoli. Without their inputs, encouragement and friendship, lots of critical issues could not have been solved. A particular thanks goes to the support provided by the Disaster Law Programme of the International Federation of Red Cross and Red Crescent Societies (IFRC) which has provided financial support to facilitate some editing activities and for the 'International Disaster Law in Practice' section to be made available as an open-access source. The IFRC Disaster Law Programme, also through its regional offices, has also been instrumental to facilitate the identification of some relevant practice for the abovementioned section, along

with helpful comments and feedback received by several international organisations. The editors are also grateful to Laura Di Gianfrancesco and Honor Tuohy for their support in the editing phases.

The Yearbook thus aims to represent a hub for critical debate on this emerging area of research and policy. Through an increasing dialogue among academics, practitioners, stakeholders and policy-makers, we hope that such legal analysis will contribute to the creation of an enabling environment to explain and critique the role of law in disasters. Law cannot be the definitive solution in this regard but is part of the multifaceted efforts to promote the protection of individuals and affected communities across the globe. We look forward to you joining us, as a future contributor or as an interested reader, to this collective effort.