



PRESENTAZIONE DEL VOLUME

Informazioni generali

Autore: **Susanna Villani**

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A Legal Assessment**

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Informazioni sul volume

The book explores the legal nature of solidarity within EU disaster response law in order to offer a different reasoning regarding its normative effect by exploring the existence of specific obligations on Member States and on the Union in the event of serious disasters occurring within the Union. It is also the occasion for a further reflection on the (controversial) legal status of solidarity in the EU legal order.

Chapter I presents the theoretical premises and illustrates the state of the art of International Disaster Response Law (IDRL), by confirming the fragmentation of international law in this field and the limits of the Draft Articles on the Protection of Persons in the Event of Disasters adopted by the International Law Commission in 2016. Moreover, it stresses that the opportunity to regulate the reciprocal obligations of solidarity upon States in situations of disaster appears really problematic and subjected to the traditional principle of State

sovereignty while the notion of solidarity has not yet found an adequate place in the international framework.

Chapter II focuses on the nature of solidarity within the whole political and legal structure of the European Union. Over the years, the concept of solidarity has played the role of the engine of the functional integration process, by representing the paradigm of reference of the structural configuration of the EU legal order. Indeed, the EU system responds to a strong integration dynamic fuelled, *inter alia*, by the notion of solidarity which – both as an objective and as an “*esprit constitutif*” of the EU legal order – justifies, develops, and adjusts the exercise of public authority in favour of a common interest, separate and separable from the sum of the individual interests. The Lisbon Treaty has certainly contributed to giving impetus to the legal concept of solidarity by assuring it a special position as a notion with a variable capacity serving as core value, objective, and principle to be respected and pursued in some specific sectors. This particular character renders solidarity a concept that permeates the whole EU legal order thus informing the action of both the EU institutions and the Member States. However, this has not spared it from being object of multiple discussions and evaluations from a legal point of view concerning its real status and value. Indeed, the different expressions solidarity acquires at the same time make it an amorphous concept whose contours change radically depending on the actors and the legal areas involved thus rendering it a weak concept from a legal perspective. As a matter of fact, the legal dimension of solidarity has essentially suffered from the fact that it is also a politically loaded concept thus often being an element of friction in the latent and evident conflicts among Member States on the opportunity to show or not major solidarity, including in exceptional situations, by activating specific mechanisms of assistance.

Chapter III is dedicated to the existing instruments providing direct financial assistance in the event of a disaster – namely the EU Solidarity Fund and the Emergency Support Instrument – and to the analysis of the recent initiatives concerning the provision of assistance to face the consequences of the Covid-19 pandemic. In addition, it addresses the EU rules concerning the adoption of State aids to support companies hit by a calamitous event. Indeed, EU solidarity in the case of disasters affecting a Member State manifests itself not only through direct financing instruments, but also through a number of derogations progressively adopted for the general legal framework concerning State aids and fiscal policies. In this chapter, particular emphasis is put on the relationship between solidarity and conditionality which comes into play when dealing with EU financial assistance instruments.

Chapter IV explores the Union Civil Protection Mechanism (UCPM) which represents the main instrument providing in-kind assistance and considering a more cooperative attitude among

Member States, by rendering the EU a catalyst of solidarity. The chapter is developed around the main normative and institutional steps that have been adopted on the long path towards the creation of a more effective and functional mechanism of civil protection at the EU level. The inclusion of a specific legal basis in this field (Article 196 TFEU) as well as the adoption of Decision 1313/2013/EU and Decision (EU) 2019/420 have marked the latest steps of the 'institutionalisation' of the EU civil protection system that could be further reinforced by forthcoming revisions. The chapter ends with an overview of its main operational and legal characters by investigating the relevance of solidarity for the effectiveness of the UCPM.

Chapter V is aimed at evaluating one of the main novelties of the Lisbon revision, that is the so-called 'solidarity clause' enshrined in Article 222 TFEU which requires both the Union and the Member States to act "in a spirit of solidarity" in assisting another Member State affected by a disaster. Therefore, its content and implementation by the Union and the EU Members are also evaluated by exploring its (unused) potential in the face of the COVID-19 emergency. Moreover, since it could be the synthesis and the link between all the examined instruments, the interactions between the solidarity clause and the illustrated solidary mechanisms are assessed. Finally, it is illustrated the real legal value of the solidarity clause and its implications in terms of duties imposed.

Against this background, the author proposes some general evaluations on the establishment of a complex EU disaster management system that – despite some remaining inconsistencies and gaps – is based on a high level of cooperation and solidarity. However, the analysis also demonstrates that this concept is still characterised by a dark side which prevents it from expressing all its potential and its overriding trait as a specialised principle operating in the field of disaster response. Indeed, despite the arguments of solidarity being very pronounced and *de facto* applied, none of the legal instruments at the basis of the explored tools – be they the EU Solidarity Fund, the Emergency Support Instrument, or the Union Civil Protection Mechanism – reflect a compulsory character in their early activation thus establishing duties of solidarity (in the form of a duty to provide assistance) in favour of the affected State. Rather, the provision of financial and in-kind assistance remains in the sphere both of the rights of the States and of the Union and, therefore, subjected to their final will and discretion. Accordingly, within the mechanisms provided to respond to internal emergencies, the voluntary element and the creeping logic of State discretion are predominant over compulsory rules. Ultimately, solidarity within EU disaster response law (even though it can also be extended to all the other emergency situations) can be thought of as characterised by a 'bright side' and a 'dark side'. While the former manifests itself in the existence of specific instruments for disaster response, the latter is linked to the fact that their functioning is not

supported by specific duties of solidarity. This notwithstanding, the evolving practice and the building of a system with a deeper nature, once consolidated and based on a structural logic, will make it easier to create a legal framework for the configuration of true and proper obligations to be ancillary to the further improvement of the existing system in the near future.