The International Legal Framework for Disaster Response and Recovery Activities

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Abstract

This chapter offers a comprehensive analysis of the international legal framework governing disaster response and recovery activities, identifying existing instruments and highlighting current normative gaps. It begins by clarifying key concepts such as disaster, disaster response, and disaster recovery, noting definitional variations across treaties and soft law instruments, as well as the importance of thresholds, state capacity, and temporal factors in triggering applicable legal regimes. The analysis then turns to the typical provisions found in disaster response frameworks, focusing on the primary role of the affected state; mechanisms for information sharing; the entry and transit of personnel and goods; and the treatment of relief personnel, including questions of privileges, immunities, and recognition of professional titles. It also examines cost-sharing arrangements and liability issues for damage that may be caused by foreign first responders. The chapter underscores how sovereignty remains a central principle in disaster management, with assistance invariably contingent upon the consent of the affected state. The second part of the chapter addresses the less developed field of disaster recovery, focusing on non-binding instruments such as UNGA Resolution 46/182, the Sendai Framework for Disaster Risk Reduction, and the Sustainable Development Goals. The chapter concludes by discussing the potential for a comprehensive treaty on disaster risk management, noting the UN General Assembly's 2024 decision to initiate negotiations based on the recent work of the International Law Commission. While

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acknowledging legal and political hurdles, the chapter highlights the growing necessity of a unified, binding framework in light of the increasing frequency and impact of disasters worldwide.

Keywords

International disaster law • Response • Recovery • Sovereignty • Cross-border assistance

4.1 Introduction

As evidenced in the Introduction, the increasing frequency and intensity of disasters, whether natural or human-made, have underscored the necessity for a robust international legal framework to guide Disaster Risk Management (DRM) activities throughout the disaster cycle. Recent events have shown that disasters can significantly disrupt social, economic, and political structures, leading to dire humanitarian crises. The international community has recognised the need for a structured response to such crises, resulting in the development of various legal instruments and frameworks aimed at enhancing disaster management. The present chapter will address the norms pertaining to disaster response and recovery activities, while the following chapter will address the remaining phases of the disaster cycle.[1] In particular, we will here focus on the definitions of key terms (Sect. 4.2), the typical contents of disaster response instruments (Sect. 4.3), a description of the (still under-developed) framework concerning recovery activities (Sect. 4.4), and ways forward in enhancing these frameworks through the possible adoption of a new, comprehensive treaty on DRM (Conclusions).

4.2 Defining the Terms *Disaster*, *Disaster Response*, and *Disaster Recovery*

To establish a comprehensive understanding of the international legal framework for disaster response and recovery, it is crucial to define the key terms involved. Starting with the term 'disaster', different treaties contain different definitions and only become operative when such a definition is met.[2] Eduardo Valencia Ospina—Special Rapporteur of the International Law Commission (ILC) on the topic of the protection of persons in the event of disasters—reminds us that 'disaster is not a term of art and, as such, lacks one single accepted definition'.[3] However, definitions are of essential importance as they are

[1] See the Introduction to this volume for a description of the disaster management cycle.

[2] For a general overview see Bartolini (2018), pp. 10–16.

[3] ILC, Second Report on the Protection of Persons in the Event of Disasters by Mr. Eduardo Valencia-Ospina, Special Rapporteur (7 May 2009), UN Doc A/CN.4/615, p. 193, para 31.

key in identifying the situations in which specific treaties may be invoked, as well as the circumstances under which they cease to be applicable. A definition should also fix reasonable limits on the scope of the subject matter at stake, excluding events such as armed conflict or minor accidents. For the purpose of the present chapter, we will conduct a survey of the definitions contained in legally binding instruments (both bilateral and multilateral) as well as in soft law documents of recognised importance in the area of disaster management.

4.2.1 Disaster

While there is no uniform approach on definitional issues, the large majority of international instruments addressing disasters typically include a definition of this term through certain descriptive elements and general criteria. The elements normally considered concern: (a) the origin of the hazard that might prompt the disaster (natural, human-made, etc.); (b) the consequences of the hazard's impact, i.e. the scale of the damage that must be caused; (c) the values and assets that deserve protection (human life, livelihood, cultural property, natural environment, etc.); (d) the actual or imminent nature of the threat, with some treaties only addressing hazards that have already materialised, and others including incumbent hazards; (e) the requirement that the affected State cannot cope with the consequences of the disaster by using only the human and material resources at its disposal. Most of the time, these elements are combined in the definitions provided. What follows are examples highlighting some of these elements.

We mentioned earlier that 'there is no such thing as a natural disaster',[4] as it is very difficult to draw clear distinctions between natural and human-made disasters. These phenomena are always the result of a complex mix of factors and no single element can be identified as decisive in the start and expansion of a calamitous event. Yet many treaties maintain said distinction in setting out their material scope of application. A good example is the Agreement between Member States and Associate Members of the Association of Caribbean States for Regional Cooperation on Natural Disasters, which defines its scope of application *ratione materiae* as including 'damage caused by any natural phenomenon (hurricane, tornado, storm, tidal wave, flood, tsunami, earthquake, volcanic eruption, landslide, forest fire, epidemic, epizootics, agricultural plague and drought, among others)'.[5] On the other hand, there is no scarcity of treaties that exclusively address certain human-made disasters. For instance, the Convention on Early Notification of a Nuclear Accident is only applicable 'in the event of any accident involving facilities or activities of a State Party or of persons or legal entities under its jurisdiction or control (…) from which a

[4] Hartman and Squires (2006).

[5] Agreement Between Member States and Associate Members of the Association of Caribbean States for Regional Cooperation on Natural Disasters (Caribbean Agreement), 17 April 1999, Art. 1.1.

release of radioactive material occurs or is likely to occur'.[6] Indeed, this treaty avoids providing a definition of *disaster* altogether, and instead establishes a duty of cooperation in case of a nuclear accident, which is deemed to be a disaster in and of itself.

Many definitions make specific mention of the seriousness of the hazardous event, which needs to achieve a certain threshold of destructiveness. For instance, the Agreement on the Establishment of the Civil-Military Emergency Planning Council for Southeastern Europe requires that a disaster causes destruction with the capability to 'seriously endanger the public health, safety and welfare of populations'.[7] Other instruments clearly define the type of destruction or damage that needs to occur to trigger their application, which may involve damage to different types of goods or assets. For instance, according to the Agreement among the Governments of the Participating States of the Black Sea Economic Cooperation (BSEC) on Collaboration in Emergency Assistance and Emergency Response to Natural and Man-Made Disasters, a disaster is an event 'which may cause or have caused significant *physical, social, economic and cultural damage to human lives or environment*'.[8]

While certain definitions assume that the disaster has already impacted a given community, others leave room for preventive action, as they allow measures to be taken even when the calamity is only imminent. For instance, a mutual assistance agreement between Denmark and Germany becomes applicable when the event 'harms *or threatens* the life or health of a large number of people'.[9] Lastly, numerous definitions include a gravity component in that they require that the national response capacities of the affected State are overwhelmed. The above-mentioned definition of the Caribbean Agreement states that the damage caused by the natural hazard must be such that it goes 'beyond the local response capacity' and requires 'regional assistance'.[10]

It must be highlighted that some treaties omit the definitional conundrum altogether, leaving it to the State parties to decide if the situation warrants the application of the agreement. The Inter-American Convention to Facilitate Disaster Assistance, for instance, establishes that it 'shall apply whenever a state party furnishes assistance in response to a request from another state party, except as they otherwise agree'.[11] Finally, several

[6] Convention on Early Notification of a Nuclear Accident, 26 September 1986, Art. 1.1.

[7] Agreement on the Establishment of the Civil-Military Emergency Planning Council for Southeastern Europe, 3 April 2001, Art. II.

[8] Agreement among the Governments of the Participating States of the Black Sea Economic Cooperation (BSEC) on Collaboration in Emergency Assistance and Emergency Response to Natural and Man-Made Disasters, 15 April 1998, Art. 2 (emphasis added).

[9] Agreement on Mutual Assistance in the Event of Disasters or Serious Accidents between Denmark and the Federal Republic of Germany, 16 May 1985, Art. 1.1 (emphasis added).

[10] Caribbean Agreement, Art. 1.

[11] Inter-American Convention to Facilitate Disaster Assistance, 7 June 1991, Art. I.a. This deference to the parties' will is made even clearer in other instruments, which explicitly subordinate the application of the treaty to a determination made by one of them that an event amount to a 'disaster'. For instance, the Agreement between the Argentine Republic and the Republic of Chile on Cooperation

instruments explicitly exclude armed conflicts and other situations of violence from the legal definition of ‘disaster’. The Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance developed by the International Federation of the Red Cross and Red Crescent Societies (IFRC), for example, make it clear that their definition does not include armed conflict situations.[12] The reasons behind this choice are due to the different operational challenges posed by armed violence situations, as well as by the fact that armed conflicts are already extensively regulated—including with respect to humanitarian activities—by a specific branch of international law, namely, International Humanitarian Law (IHL), which prevails over other legal regimes as *lex specialis*.[13]

For the sake of completeness, it is worth mentioning the definition of disaster developed by the ILC in its Draft Articles (DAs) on the Protection of Persons in the Event of Disaster. According to DA 3(a), ‘disaster’ means ‘a calamitous event or series of events resulting in widespread loss of life, great human suffering and distress, mass displacement, or large-scale material or environmental damage, thereby seriously disrupting the functioning of society’.[14] It is interesting to note that the definition adopts a holistic approach as it includes both natural and human-made hazards. Furthermore, the reference to a ‘calamitous event’ serves to establish a threshold whereby only extreme events are covered.[15] According to the ILC Commentary, the definition equally covers ‘sudden-onset events (such as an earthquake or tsunami) and […] slow-onset events (such as drought or sea-level rise), as well as frequent small-scale events (floods or landslides)’.[16] Based on the above survey it can be concluded that there is no single definition of the term, and that the applicability of each instrument must be assessed on the basis of the specific terms employed in its provisions.[17]

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in Case of Disasters, adopted on 8 August 1997, states that the term *disaster* ‘shall mean any event so described by the Party requiring assistance’, Art. 1.

[12] IFRC, Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance (2007) (IDRL Guidelines), 2.1.

[13] ILC, Draft articles on the protection of persons in the event of disasters, with commentaries, UN Doc A/71/10, p. 46, para. 9. On the legal regime applicable to disasters occurring in areas affected by armed conflicts, see Zorzi Giustiniani (2021), pp. 39–49.

[14] ILC, Draft articles on the protection of persons in the event of disasters, p. 5.

[15] Ibid., p. 6.

[16] Ibid.

[17] Significantly, one important author reminds us that there is no international consensus ‘on how great a catastrophe has to be in order to be considered a disaster for legal purposes, nor is there any agreement on what criteria should be used to measure its scale’, Focarelli (2021), para. 8.

4.2.2 Disaster Response

Moving to 'disaster response', it is commonly considered to encompass activities focused on the immediate and short-term needs of disaster-affected communities. However, even in this case, there is no scarcity of legal definitions. The Caribbean Agreement defines the term as involving 'the activities carried out immediately following the disaster, and includes, inter alia, rescue and response activities, the provision of health services, food, shelter, water, sanitation facilities and other basic necessities for survival'.[18] The UN Report on Disaster Risk Reduction (DRR) terminology describes it as '[a]ctions taken directly before, during or immediately after a disaster in order to save lives, reduce health impacts, ensure public safety and meet the basic subsistence needs of the people affected', also including in the definition measures taken shortly before the disaster strikes aimed at mitigating its effects.[19] Other instruments use different terms to indicate the same notion. The IDRL Guidelines, for instance, choose the term 'disaster relief' to indicate '[g]oods and services provided to meet the immediate needs of disaster-affected communities'.[20] Furthermore, what is not entirely clear-cut is the division between disaster response and the subsequent recovery phase. Indeed, some response actions, such as the provision of temporary housing and water supplies, 'may extend well into the recovery stage'.[21]

4.2.3 Disaster Recovery

Looking at the notion of 'disaster recovery', even this term lacks a universally agreed definition. The UN Expert Working Group on DRR defines 'recovery' as '[t]he restoring or improving of livelihoods and health, as well as economic, physical, social, cultural and environmental assets, systems and activities, of a disaster-affected community or society, aligning with the principles of sustainable development and 'build back better', to avoid or reduce future disaster risk'.[22] Other definitions appear to identify different stages in the recovery phase, depending on the chronological proximity to the disastrous event. The

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[18] Caribbean Agreement, Art. 1.10.

[19] UN General Assembly (UNGA), Report of the Open-Ended Intergovernmental Expert Working Group on Indicators and Terminology Relating to Disaster Risk Reduction (1 December 2016) UN Doc A/71/644, p. 22.

[20] IFRC, IDRL Guidelines, 2.2.

[21] UN International Strategy for Disaster Reduction (ISDR), UNISDR Terminology on Disaster Risk Reduction (31 December 2009) p. 25.

[22] UNGA, Report of the Open-Ended Intergovernmental Expert Working Group, p. 21. The concept of 'build back better' is described in the same document as '[t]he use of the recovery, rehabilitation and reconstruction phases after a disaster to increase the resilience of nations and communities through integrating disaster risk reduction measures into the restoration of physical infrastructure and societal systems, and into the revitalization of livelihoods, economies and the environment', ibid., p. 11.

IDRL Guidelines, for example, mention the notion of 'initial recovery assistance', which refers to the 'means, goods and services intended to restore or improve the pre-disaster living conditions of disaster-affected communities, including initiatives to increase resilience and reduce risk, provided for an initial period of time, as determined by the affected State, *after the immediate needs of disaster-affected communities have been met*'.[23] Similarly, the Cluster Working Group on Early Recovery introduces the notion of 'early recovery', defined as 'a multidimensional process of recovery that begins in a humanitarian setting' which, guided by development principles, seeks to 'catalyse sustainable development opportunities'.[24] This component of recovery is sometimes also referred to as 'rehabilitation' and overlaps with disaster response.[25] It is followed by measures aimed at fully rebuilding and restoring functionality across all sectors and aspects of society, a phase that may be referred to as 'reconstruction' or 'long-term recovery'.

While no unified definition of the term 'recovery' has emerged, it is reasonable to maintain that recovery activities begin soon after the emergency phase has ended and aim at restoring or improving livelihoods and health, as well as the economic, physical, social, cultural, and environmental assets, systems, and activities of a disaster-affected community. Moreover, they should ideally be geared towards reducing the risk of future disasters, and hence linked to the prevention, preparation, and mitigation agendas.

4.3 Typical Contents of a Disaster Response Law Instrument

As mentioned, although no flagship treaty has been established so far to regulate disaster response, international law has not remained silent on the matter. In fact, the international legal framework on disaster relief has evolved on multiple fronts at the global and regional levels, spanning various sectors of international law.[26] Additionally, numerous *soft law* instruments, including resolutions, declarations, codes, models, and guidelines, have emerged. While these are not legally binding, they still carry significant weight, reflecting international consensus and best practices. Numerous issues pertaining to disaster response are regulated by international disaster law instruments. While some are specific to particular agreements, some issues are a recurrent feature and will be briefly presented in the next paragraphs. Our analysis will follow the successive phases of a typical cross-border disaster response mission.

[23] IFRC, IDRL Guidelines, 2.3 (emphasis added).

[24] Cluster Working Group on Early Recovery, Guidance note on Early Recovery, April 2008, p. 6. Note that the document concerns both disaster and armed conflict situations.

[25] IFRC, Disaster Risk Governance Guidelines. Strengthening Laws, Policies and Plans for Comprehensive Disaster Risk Management, 2024, p. 49.

[26] de Guttry (2012), p. 3 ff.

4.3.1 The Primary Role of the Affected State

In determining the appropriate response of an affected State to a disaster event, it is important to stress that even in such circumstances international action is constrained by the core principles of State sovereignty and non-intervention. The International Court of Justice (ICJ) describes mutual respect for territorial sovereignty between States as an essential pillar of international relations.[27] UN General Assembly (GA) Resolution 46/182 affirms that in the context of disaster response, 'the sovereignty, territorial integrity and national unity of States must be fully respected in accordance with the Charter of the United Nations'.[28] Hence, the initiation and implementation of international relief assistance are contingent upon the consent of the affected State, whose authorities have the primary responsibility for assisting the victims of disasters that occur within their territory. This means that national authorities have the primary role in the direction, control, coordination, and supervision of the provision of disaster assistance. The primacy of the affected State derives both from its sovereign prerogatives and from its responsibility towards the affected population within its territory.[29] The idea that the affected State retains control over all aspects of the provision and distribution of assistance on its territory, including determining the moment of commencement and termination of the assistance, is explicitly enshrined in several treaties. The ASEAN Agreement on Disaster Management, for example, stipulates that '[t]he Requesting or Receiving Party shall exercise the overall direction, control, co-ordination and supervision of the assistance within its territory'.[30]

4.3.2 Early Phases of the Disaster: Requests and Offers of Assistance

If a disaster has materialised or is imminent, the affected State may issue a request for assistance. Virtually all disaster law instruments include specific provisions on the topic, which may include details on which authority within the State is entitled to issue the request, to whom, in what form, and on the scope of the assistance required. For instance, the Tampere Convention on the provision of telecommunication assistance in disaster settings stipulates that '[a] State Party requiring telecommunication assistance for disaster mitigation and relief may request such assistance from any other State Party, either directly

[27] ICJ, Corfu Channel case (United Kingdom of Great Britain and Northern Ireland v. Albania), Judgment of 9 April 1949, I.C.J. Reports 1949, p. 4.

[28] UNGA, Strengthening of the coordination of humanitarian emergency assistance of the United Nations, UN Doc. A/RES/46/182 (19 December 1991) para 3.

[29] Institut de Droit International, Humanitarian assistance, Bruges Session (2 September 2003), Art. III.1.

[30] ASEAN Agreement on Disaster Management and Emergency Response, 26 July 2005, Art. 3.2.

or through the operational coordinator'.[31] Before issuing its requests, the affected State should promptly assess existing needs. In doing so, consideration should be given to undertaking joint needs assessments with the United Nations, the EU, and other assisting humanitarian organisations.[32]

A request made under a specific treaty serves to trigger the procedures and processes established under that agreement. Given the number of existing agreements, it is possible that multiple such instruments, at the global, regional, and bilateral levels, would potentially regulate the provision of assistance with respect to a particular disaster.[33] However, under general international law, receiving a request for assistance does not automatically oblige the addressees to provide it. Obligations to provide assistance, upon request, may instead be found in some specific treaties. Art. 222 of the Treaty on the Functioning of the EU, for instance, imposes an obligation to assist on both the Union and its member States, if the political authorities of a disaster-affected Member State so request.[34] But in the absence of specific treaty obligations, there is no legal duty of solidarity vis-à-vis the State struck by a calamity. According to the ILC's DAs on the protection of persons in the event of disaster, the addressee of a request for assistance is only required to 'expeditiously give due consideration to the request and inform the affected State of its reply'.[35]

On the other hand, a State affected by a disaster invariably receives offers of assistance from other States, international organisations, and NGOs. The ILC's DA 12 ('Offers of Assistance') establishes that 'in the event of disasters, States, the United Nations and other potential assisting actors may provide assistance to the affected State'. The provision is mainly intended to highlight that such offers cannot be regarded as interference in the affected State's internal affairs.[36] On the other hand, the ILC has expressly maintained that '[s]uch offers (…) are essentially voluntary and should not be construed as a recognition

[31] Tampere Convention on the Provision of Telecommunication Resources for Disaster Mitigation and Relief Operations, 18 June 1998, Art. 4.1.

[32] IFRC, IDRL Guidelines, 10.1.

[33] Indeed, many agreements include specific provisions on their relationship with other international agreements. For example, the Tampere Convention establishes that it 'shall not affect the rights and obligations of States Parties deriving from other international agreements or international law', Art. 10.

[34] Treaty on the Functioning of the European Union (TFEU), 13 December 2007, Art. 222. It should be stressed, however, that according to the Declaration on Article 222 of the Treaty on the Functioning of the European Union' (no. 37), annexed to the Final Act of the Lisbon Conference, 'none of the provisions of Article 222 is intended to affect the right of another Member State to choose the most appropriate means to comply with its own solidarity obligation towards that Member State'. In other terms, each Member State, even if under a duty to assist the victim State, will maintain the right to choose, in good faith, the concrete modalities of assistance. See Gestri (2012), p. 114.

[35] ILC, Draft articles on the protection of persons in the event of disasters, Art. 10.2.

[36] ILC, Report of the International Law Commission: Sixty-Eighth Session (2 May–10 June and 4 July–12 August 2016), UN Doc A/71/10, 2016, p. 57, para. 3.

of the existence of a legal duty to assist'.[37] Hence, the ILC confirmed that no legal obligation to provide assistance exists unless provided for by a specific treaty.

4.3.3 Entry in the Territory of a Disaster-Affected State

Once an international assistance mission has gained access to the territory of a disaster-affected State, a series of legal obstacles could arise capable of slowing down operations and jeopardising their effectiveness. To prevent this, several treaties impose obligations to facilitate the speedy provision of foreign assistance. According to the ILC's DA 15 ('Facilitation of external assistance').

[t]he affected State shall take the necessary measures, within its national law, to facilitate the prompt and effective provision of external assistance, in particular regarding:

(a) relief personnel, in fields such as privileges and immunities, visa and entry requirements, work permits, and freedom of movement; and,
(b) equipment and goods, in fields such as customs requirements and tariffs, taxation, transport, and the disposal thereof.

In the following pages, we will survey the solutions identified in different international legal instruments to address some of the issues at hand.

4.3.3.1 Visas

Starting with the issue of visas, it must be stressed that many States have, by bilateral or multilateral agreement, waived certain requirements to gain access to the respective territories for each other's nationals.[38] However, when a particular disaster-affected State falls outside one of these agreements, problems of access can arise for relief providers. While international relief personnel are frequently allowed to enter without a visa or on tourist visas, these temporary arrangements may not prove effective beyond the immediate response phase, when normal rules (e.g. the requirement for work permits) become applicable again.[39] For this reason, international agreements establishing specific obligations in this area are particularly helpful. The Inter-American Convention, for instance, states

[37] Ibid., para 2.

[38] A good example is the Schengen Area, through which EU and associated States have created a system which allows their legal residents to travel across the Area's internal borders without being checked or having to show their passports, https://home-affairs.ec.europa.eu/policies/schengen/schengen-area_en.

[39] For the practical problems faced by humanitarian agencies in these circumstances, see Fisher (2007), pp. 116–117.

that each State party 'shall provide disaster relief personnel with the necessary immigration documents and facilities'.[40] Similarly, the 1984 Draft Convention on Expediting the Delivery of Emergency Assistance provides that the receiving State shall promptly issue, without cost, multiple transit, entry, and exit visas for personnel representing assisting States or organisations.[41] Other treaties ask the requesting State to waive any visa requirement altogether. For instance, the treaty between the Netherlands and Belgium provides that the 'members of an emergency unit shall be exempt from the requirement to carry a valid document for crossing the frontier'.[42]

4.3.3.2 Access of Goods and Equipment

Humanitarian assistance and relief during a disaster may require the affected State to import essential goods and equipment to meet the needs of its population. This phase can present significant challenges that hinder the timely delivery of aid, including customs delays, the absence of exemptions from duties, restrictions, and compliance with standard customs procedures.[43] While a substantial body of law has emerged to smooth these procedures, the identified solutions remain diverse, with variations in scope and content.[44]

The issue of the facilitation and simplification of border formalities, as well as the waiver of taxes and other financial requirements, is addressed in several agreements and soft law documents. Special schemes have been developed to facilitate the clearance of customs procedures and the elimination of tariffs and other barriers for the importation of goods. As far as customs duties are concerned, a number of States apply a distinct legal regime regulating the 'temporary admission'[45] of goods into their jurisdictions and have developed expedited procedures for the import (and export) of relief items. Provision has also typically been made for the complete waiver of import (and export) duties and taxes, as well as for the waiving or easing of non-financial restrictions.

The prompt clearance of humanitarian assistance goods, which is key to ensuring the timely provision of assistance, is a further common requirement. For instance, the 1973

[40] Inter-American Convention, Art. VII.a.

[41] Draft Convention on Expediting the Delivery of Emergency Assistance, UN Doc. A/39/267/Add.2, 18 June 1984.

[42] Convention on Mutual Assistance in Combating Disasters and Accidents, Netherlands-Belgium, 14 November 1984, Art. 6.3.

[43] Fisher (2007), p. 98.

[44] For an overview, see Adinolfi (2012).

[45] The term 'temporary admission' is defined as 'the Customs procedure under which certain goods (including means of transport) can be brought into a Customs territory conditionally relieved from payment of import duties and taxes and without application of import prohibitions or restrictions of an economic character; such goods (including means of transport) must be imported for a specific purpose and must be intended for re-exportation within a specified period and without having undergone any change except normal depreciation due to the use made of them', see Convention on Temporary Admission, 26 June 1990, Art. 1(a).

International Convention on the Simplification and Harmonization of Customs Procedures requires the 'clearance of relief consignments for export, transit, temporary admission and import [to] be carried out as a matter of priority',[46] and preferably without regard to the country of origin. Other measures that may be envisaged to facilitate the clearance of goods include allowing simplified procedures, such as the submission of a shortened or incomplete goods declaration,[47] to be completed within a specified timeframe; enabling clearance outside designated business hours or away from customs offices[48]; and providing waivers for the examination of goods.[49]

Numerous bilateral treaties include specific provisions for the exemption of import and re-export restrictions on medical supplies, including narcotic drugs, under certain conditions.[50] These conditions often stipulate that such supplies may only be transported to address an urgent medical need, used exclusively by qualified medical personnel in compliance with the laws of the Contracting State to which the emergency team belongs, or that the head of the assistance team must formally declare the contents and nature of the imported medication.[51] Additionally, the importation of these goods is typically exempt, in mutual relations, from the applicability of international conventions regulating narcotic drugs, insofar as such conventions would otherwise prohibit their importation.

4.3.4 Work Permits and Professional Qualifications

Closely connected to the issuance of visas is the issue of work permits.[52] Assuming that foreign disaster relief personnel gain access to the affected State, they may not have the status necessary to work within its territory. Sometimes this is due to the specific type of visa they enter the country on, which does not allow them to carry out any paid activity. Several instruments recommend that receiving States facilitate or lift the requirement of obtaining work permits for disaster assistance personnel. For instance, the Draft Model

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[46] International Convention on the Simplification and Harmonization of Customs Procedures, 18 May 1973, as revised on 26 June 1999, Specific Annex J(5), Art. 5.

[47] Convention on Temporary Admission, Annex A concerning temporary admission papers (ATA Carnets and CPD Carnets), Art. 2.

[48] Recommendation of the Customs Cooperation Council to Expedite the Forwarding of Relief Consignments in the Event of Disasters, document T2–423, 8 June 1970, para. 7.

[49] Convention on Customs Procedures, Specific Annex J(5), Art. 3.

[50] See, for instance, Netherlands-Belgium, Convention on Mutual Assistance in Combating Disasters and Accidents, 14 March 1984, Art. 7.6; or the Convention entre le Gouvernement de la République française et le Gouvernement du Royaume de Belgique sur l'assistance mutuelle en cas de catastrophe ou d'accidents grave, 21 April 1981, Art. 5.5.

[51] Agreement between the Republic of Austria and the Federal Republic of Germany Concerning Mutual Assistance in the Event of Disasters or Serious Accidents, 23 December 1988, Art. 7(4).

[52] For a general overview of the issue, see Silingardi (2012a), pp. 565–568.

Agreement on International Medical and Humanitarian Law provides that 'the Government of (the receiving State) shall provide the personnel of the organization with work permits to this effect. Those permits may also be provided in the form of a stamp affixed in the documents issued by the organization'.[53] In other cases, international instruments contain broad provisions that, although not specifically mentioning work permits, can be interpreted as including their issuance within their scope. The Framework Convention on Civil Defence Assistance, for instance, provides that '[t]he Beneficiary State shall, within the framework of national law, grant all privileges, immunities, and facilities necessary for carrying out the assistance'.[54] In conclusion, a specific work authorisation is an important component of operational activities of international disaster relief personnel in the receiving State, and it should not be assumed that a provision governing the entry of such personnel necessarily permits them to work upon entry.

Even if a receiving State has granted international disaster relief personnel permission to work through a specific permit, there may still be additional regulatory hurdles. Professionals involved in disaster relief, such as doctors, nurses, drivers, and pilots, are typically subject to licensing requirements specific to each country. Several regional agreements have been established to address the recognition of foreign certificates and diplomas, but they rarely take into account the need for expedited recognition, which the disaster situation presents.[55] Some disaster-related instruments have begun to address the issue, asking for a generalised and expedited recognition scheme. For example, the 1984 Draft Convention on Expediting the Delivery of Emergency Assistance established that receiving States would 'recognise university degrees, professional certificates and other certificates of competency and licences held by relief personnel and necessary for the performance of the agreed function'.[56] Moreover, broad provisions asking the requesting State to afford facilities to intervening actors might be interpreted to also include a waiver on the requirement of recognising foreign degrees and other titles.

4.3.5 Transit and Freedom of Movement

For disaster relief efforts to be effective, unrestricted freedom of movement for humanitarian actors should be guaranteed. This overarching principle encompasses several specific

[53] International Law Association, Draft Model Agreement on International Medical and Humanitarian Law, Art. 15(1), reproduced in the Report of the 59th Conference of the International Law Association (Belgrade, 17–23 August 1980).

[54] Framework Convention on Civil Defence Assistance, 22 May 2000, Art. 4.5.

[55] See for instance the Regional Convention on the Recognition of Studies, Diplomas and Degrees in Higher Education in Asia and the Pacific, 16 December 1983, Art. 5.

[56] UNDRO Secretary-General, Proposed Draft Convention on Expediting the Delivery of Emergency Assistance, A/39/267/Add.2-E/1984/96/Add.2, 18 June 1984, annex, Art. 7.2.d.

aspects, including the right to transit through third-party states and unimpeded movement within the affected state.

With respect to the first issue, several instruments specifically address the passage of goods through the territory of States that are not directly affected by a disaster. For example, the above-mentioned Draft Convention on Expediting the Delivery of Emergency Assistance asks States to ‘grant the right of transit across or over their territories to the relief consignments, equipment and personnel of the Assisting State or organization, and to their means of transport, proceeding to or returning from the Receiving State’.[57] Other instruments go even further, requiring transit States to facilitate transit across their territory, or to ‘ensure all necessary support’.[58]

Freedom of movement within the territory of a receiving State is a critical condition for the effective delivery of disaster assistance. Access challenges do not necessarily end at the national border; an assisting actor may be permitted entry into the receiving State yet be unable to reach the actual disaster-affected area. In some instances, such impediments may stem from deliberate restrictions imposed by the receiving State for political or security reasons. In others, they may arise from practical logistical difficulties, such as destroyed infrastructure or insufficient capacity to support the large-scale transport of relief supplies. In cases involving deliberate restrictions, certain international instruments establish a negative obligation on the receiving State to refrain from unduly obstructing access to the affected area. Conversely, where logistical challenges are at issue, some instruments impose a positive obligation on the receiving State to facilitate transit through appropriate means.

As far as deliberate restrictions are concerned, several soft law instruments suggest the existence of a duty on the receiving State not to unduly limit access to the disaster relief area. For example, the UNITAR Model Rules for Disaster Relief Operations provide that ‘[t]he receiving State shall permit the designated relief personnel freedom of access to, and freedom of movement within, disaster-stricken areas that are necessary for the performance of their specifically agreed functions’.[59] Similarly, according to the Institute of International Law, the receiving State shall grant humanitarian organisations ‘full and free access to all the victims and ensure the freedom of movement and the protection of personnel, goods and services provided’.[60]

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[57] Ibid., Art. 20.1.a.

[58] See, for example, the Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency, 26 September 1986, Art. 9. UNGA Resolution 46/182 provides that ‘States in proximity to emergencies are urged to participate closely with the affected countries in international efforts, with a view to facilitating, to the extent possible, the transit of humanitarian assistance’, Annex, para. 7.

[59] United Nations Institute for Training and Research (UNITAR), Model Rules for Disaster Relief Operations, 1982, Rule 16.

[60] Institute of International Law, Resolution on Humanitarian Assistance, Adopted at the Bruges session on 2 September 2003, Sect. VII, para. 3.

Some provisions concerning freedom of movement require that the authorities of the receiving State undertake positive steps to facilitate the free circulation of relief workers and their goods and equipment. For instance, GA Resolution 46/182 stipulates that the UN Emergency Relief Coordinator has the responsibility of 'actively facilitating, including through negotiation if needed, the access by the operational organizations to emergency areas for the rapid provision of emergency assistance by obtaining the consent of all parties concerned, through modalities such as the establishment of temporary relief corridors where needed, days and zones of tranquillity and other forms'.[61]

4.3.6 Privileges and Immunities of Foreign Relief Workers

Disaster relief operations give rise to significant legal questions concerning the status of both the personnel involved and the organisations to which they belong. Key issues in this regard include the identification of relief personnel, the use of internationally recognised distinctive emblems, and the issuance of identification cards to individual members of disaster response teams. Among the most important issues raised, however, is the extent to which privileges, immunities, and other legal facilities are granted to relief workers. This issue is frequently addressed in international disaster law instruments, and relevant provisions can also be found in broader legal frameworks that are not exclusively focused on natural or human-made disasters.

In fact, several international conventions grant privileges and immunities to specific entities and categories of individuals, including diplomatic and consular representatives of governments,[62] as well as intergovernmental organisations and their personnel.[63] The scope of these privileges and immunities varies depending on the beneficiary but generally encompasses facilitation of entry and work permits; freedom of movement within the host state; and the inviolability of premises, archives, and communications. Additionally, these protections often include exemptions from personal service obligations, customs duties, and taxation, as well as immunity from arrest, detention, and legal proceedings.[64] Furthermore, international organisations are typically endowed with juridical personality under domestic law, granting them the capacity to enter into contracts, acquire and dispose of property, and initiate legal proceedings.

The general rules outlined above may be applicable to the scenarios addressed in the present chapter. For example, international organisations and their personnel involved in disaster relief operations are, in principle, entitled to the privileges and immunities

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[61] UNGA Resolution 46/182, Annex, para. 35.d.

[62] See, for instance, the Vienna Convention on Diplomatic Relations, 18 April 1961; and the Vienna Convention on Consular Relations, 24 April 1963.

[63] See the Convention on the Privileges and Immunities of the United Nations, 13 February 1946, and the Convention on the Privileges and Immunities of Specialized Agencies, 21 November 1947.

[64] On the topic of immunities see Shaw (2021).

conferred by the relevant international conventions. However, this raises the question of whether the particular characteristics of disaster relief operations warrant a tailored approach to the privileges and immunities ordinarily recognised under international law. In particular, it is asked if these prerogatives should be afforded to entities or persons involved in disaster relief operations who are normally not covered by them, such as state officials participating in international relief operations, or the foreign personnel of humanitarian NGOs.[65]

Starting with the first category, their privileges and immunities are the object of specific provisions in some multilateral treaties. These provisions usually impose on the receiving State an obligation to grant certain entitlements deemed necessary for the performance of disaster relief work. For example, Article 8 of the Convention on Assistance in the Case of a Nuclear Accident provides that the requesting State is bound to afford to the assisting party immunity from arrest, detention and legal process and exemption from taxation, duties, or other charges for the personnel of the assisting party in respect of the performance of assistance functions. Also included is an exemption from taxation, duties and other charges and immunity from seizure, attachment, or requisition of equipment and property used for the purpose of assistance.[66] Bilateral agreements almost invariably contain similar clauses. For instance, under the agreement between Argentina and Spain, members of emergency teams involved in assistance in the event of disasters 'shall be immune from the administrative, civilian and criminal jurisdiction of the requesting State with respect to activities implemented in the performance of their duties in the territory of that State'.[67]

Moving to the staff of NGOs involved in disaster relief, they are generally not granted privileges and immunities under international law.[68] However, the relevant provisions of some instruments have been interpreted in such a way as to include non-governmental organisations among the beneficiaries of privileges, immunities, and facilities. For instance, according to the Tampere Convention, the requesting States shall, within the limits of its national law, 'afford to persons, other than its nationals, and to organizations, other than those headquartered or domiciled within its territory (…) the necessary privileges, immunities, and facilities for the performance of their proper functions'.[69] The language used would seem to provide for the possibility of extending such rights to NGO personnel, as long as they are engaged in telecommunications assistance.[70]

Against this background, it must be recalled that privileges and immunities are not absolute in nature. Receiving States retain the sovereign right to deny entry or operation

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[65] Fisher (2007), pp. 39–40.

[66] Convention on Assistance in the Case of a Nuclear Accident, Art. 8, paras. 2 and 3.

[67] Agreement on Cooperation on Disaster Preparedness and Prevention and Mutual Assistance in the Event of Disasters, Spain-Argentina, 3 June 1988 Art. XVIII.

[68] Silingardi (2012b), p. 479.

[69] Tampere Convention, Art. 5.

[70] Fisher (2007), p. 40.

within their territory to an organisation and may declare a specific official or representative persona non grata, thereby excluding them from the territory. Moreover, entities and individuals benefiting from such privileges and immunities are bound by the relevant legal instruments to refrain from their abuse. Finally, the immunities granted to officials may be waived by the sending State or organisation.[71]

4.3.7 Protection of Relief Personnel

The safety and security of humanitarian relief personnel is an important condition for the provision of assistance. Several instruments contain broadly worded provisions on the protection of humanitarian personnel, including the staff of NGOs. For example, some multilateral conventions provide that the receiving State shall ensure the protection of personnel, equipment, and materials brought into its territory by, or on behalf of, the assisting party.[72] Several bilateral treaties stipulate that the authorities of the requesting party must ensure the protection of emergency teams deployed by the assisting party.[73] These provisions, which pertain to the safeguarding of personnel acting on behalf of the assisting State, may also be interpreted to encompass representatives of non-governmental organisations, provided such entities have been formally engaged in the disaster relief effort.

Certain legal instruments include a general clause concerning the protection of disaster relief personnel, and extend this protection to individuals affiliated with NGOs, irrespective of any formal legal connection to the assisting State. This is made possible through the use of a broad definition of the notion of ‘assisting personnel’, which may encompass NGO staff operating within the framework of the relief effort. For example, the Inter-American Convention obliges the receiving State to make its best efforts to protect the personnel, equipment, and materials brought into its territory as part of a relief operation.[74] It further stipulates that its provisions apply automatically to NGOs that are part of a State or intergovernmental organisation’s relief mission.[75] Additionally, the treaty allows for its application even to NGOs operating independently of such missions, provided there is mutual agreement between the receiving State and the organisation.[76]

[71] See, for instance, the Convention on the Privileges and Immunities of the United Nations, Art. 20.

[72] See e.g. the Convention on Assistance in the Case of a Nuclear Accident, Art. 3.b.

[73] See for instance the Convention entre le Gouvernement de la République française et le Gouvernement du Royaume de Belgique sur l’assistance mutuelle en cas de catastrophe, Art. 7.3.

[74] Inter-American Convention, Art. IV.c.

[75] Ibid., Art. XVI.b.

[76] Ibid., Art. XVI.c.

4.3.8 Costs Relating to Disaster Response Missions

Provisions addressing the allocation of costs in disaster response operations vary considerably in both structure and substance. Multilateral treaties and resolutions that establish international or regional disaster relief mechanisms often include clauses creating funding arrangements intended to finance relief operations through the mechanism itself.[77] In contrast, bilateral treaties typically approach cost-sharing from a different angle. Rather than establishing pre-existing funding structures, they commonly contain clauses that create a presumption regarding which party will bear the operational costs. These presumptions may be subject to modification based on specific circumstances outlined in the treaty. Notably, there is no uniform practice regarding the default allocation of financial responsibility: while some treaties presume that the receiving State will cover the costs, others place this obligation on the assisting State.[78] Within the framework of the EU Civil Protection Mechanism, the relevant rule provides that '[u]nless agreed otherwise, the requester of assistance shall bear the costs of assistance provided by Member States', although the provision specifies that the assisting State may 'offer its assistance entirely or partially free of charge' and 'also waive all or part of the reimbursement of its costs at any time'.[79]

4.3.9 Liability and Compensation

International disaster response operations entail a number of dangers to response personnel and material due to unfortunate events such as accidents or disease. Moreover, many activities involved in disaster response may carry a high risk of criminal or civil liability, as relief personnel could cause damage to the assets of the receiving State or to private persons present in its territory.[80] Provisions concerning liability and compensation in instruments related to disaster relief address the question of allocation of liability both between States and with respect to individuals. As may be expected, international instruments frequently focus on inter-State allocation of liability and compensation, while only a few instruments address liability of or compensation to individuals.

Under the majority of instruments, liability for any harm caused is based on a predetermined formula. For example, many treaties obligate the receiving State to bear all risks and claims resulting from, occurring in the course of, or otherwise connected with

[77] See, for example, ASEAN Agreement on Disaster Management and Emergency Response, Art. 24; or the Andean Council of Foreign Ministers, Decision No. 529 establishing the Andean Committee for Disaster Prevention and Response (CAPRADE), 7 July 2002, Art. 5.

[78] This is, for instance, what is established by the Agreement Establishing the Caribbean Disaster Emergency Response Agency, 26 February 1991, Art. 19.

[79] Commission Implementing Decision 2014/762/EU of 16 October 2014 laying down rules for the implementation of Decision No 1313/2013/ EU, Art. 39.

[80] See ILC, Memorandum of the Secretariat, Protection of Persons in the Event of Disasters, 31 March 2008, A/CN.4/590, p. 134 ff.

the assistance rendered on its territory. With respect to multilateral conventions, such provisions often include additional clauses to the effect that the receiving State agrees to hold the assisting State or personnel exempted from obligations that could arise in case of claims in connection with the assistance provided, except in respect of liability of individuals having caused damage by wilful misconduct or by gross negligence.[81] In other cases, the receiving State agrees to pay any claims which could be brought by third parties against the assisting State for loss or damage.[82]

If the relief operation is conducted within the framework of a treaty that does not address the issue of the civil and criminal liability of first responders, the rules applicable need to be traced within the national legal framework of the receiving State. As far as members of national civil protection agencies are concerned, it is accepted in customary international law that they could benefit from a certain level of immunity from process in the courts of the receiving State. However, neither the precise extent of that immunity nor the degree to which it would protect governmental relief personnel is entirely clear.[83]

4.3.10 Additional Relevant Rules

While disaster response law instruments may provide the answer to many of the legal questions connected to cross-border assistance operations, it must be borne in mind that other branches of international law might play a decisive role in shaping disaster response activities. These include the law of international organisations, especially if they have legal mandates relevant to disaster management.[84] International Human Rights Law (IHRL) is likewise absolutely central to disaster activities as it sets out rights germane to disaster relief and recovery assistance, such as the right to life, to food and water, to health, to livelihood and freedom from discrimination, that need to be respected by the affected State. Moreover, IHRL provides for limitations on the type of restrictions States can impose on individual rights to tackle the effects of disasters and other emergencies.[85]

International Humanitarian Law (IHL) must also be considered. While its application is generally restricted to situations of armed conflict, it may still play a role in facilitating disaster assistance. For example, IHL treaties allow National Red Cross and Red

[81] This is, for instance, the approach taken within the EU Civil Protection Mechanism; see Commission Implementing Decision 2014/762/EU, Art. 40.

[82] Convention on Assistance in the Case of a Nuclear Accident, Art. 10.2.b.

[83] Crawford (2012), pp. 489–491.

[84] Reference must be made to the UN and its numerous agencies, but also to regional organizations such as the EU. Article 6(f) of Treaty on the Functioning of the European Union (Lisbon Treaty), 13 December 2007, sets forth in general terms a competence of the Union ‘to carry out actions to support, coordinate or supplement the actions of the member States’ inter alia in the area of civil protection. The competence is then spelled out in Title XXIII of the TFEU, entitled ‘civil protection’ (Art. 196).

[85] Sommario (2018), pp. 99–111.

Crescent Societies, as well as national civil protection authorities, to use their respective emblems and signs during both peacetime and wartime.[86] Furthermore, when natural disasters occur alongside armed conflict, IHL will apply and its provisions on the facilitation of humanitarian assistance could also prove useful to tackle the effects of the disaster. In any case, it is useful to draw analogies with IHL when addressing issues also encountered by International Disaster Law as there are many similarities in terms of the needs of the affected population and of the possible legal obstacles that first responders might face.[87] Other relevant areas of international law include International Environmental Law (IEL), Global Health Law (with respect to State obligations concerning pandemics), and International Trade Law (especially with regard to the customs regimes), to name a few.[88]

4.4 The (Scant) International Legal Framework on Disaster Recovery

The traditional emphasis on the facilitation of assistance in the aftermath of a disaster has meant that international disaster law prioritised immediate response and initial recovery over other phases of the disaster cycle. Over the last three decades, the temporal scope of the field has expanded to encompass pre-disaster activities, particularly those focused on risk reduction and preparedness. In contrast, the post-disaster phase of recovery—and its rehabilitation and reconstruction components—has mostly been addressed by other actors and governed by separate, mainly domestic, legal, and policy frameworks.[89] However, while it is recognised that current international law does not provide a solid framework specifically dedicated to disaster recovery,[90] several legal instruments, principles, and frameworks collectively regulate and guide these activities. The regulation spans multiple branches of international law but primarily involves some disaster-specific soft law instruments and a few IEL treaties.[91]

86 See, for instance, Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, 12 August 1949, Art. 44, and Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts, 8 June 1977, Art. 66.7.

87 Venturini (2012), p. 52.

88 For a review of the relevant areas see Fisher (2007), pp. 33–52.

89 Pronto (2021), p. 573.

90 Note, however, that the rehabilitation phase is explicitly mentioned in some binding disaster law agreements. For instance, Art. 17 of the ASEAN Agreement on Disaster Management and Emergency Response demands that State parties ‘develop strategies and implement programmes for rehabilitation as a result of a disaster’ and that they ‘promote, as appropriate, bilateral, regional and international co-operation for rehabilitation as a result of a disaster’.

91 As in other phases of the disaster cycle, IHRL maintains its relevance in informing interventions even during the recovery phase. This means that all actions must incorporate approaches that are participatory, gender-responsive, culturally sensitive, accountable, and non-discriminatory. These approaches should also adhere to the principles of universal design, accessibility, inclusiveness, and

4.4.1 Disaster-Specific Soft Law Instruments

While different non-binding documents could be considered applicable to the recovery phase, for the purpose of the present section we will focus on the contribution of the three instruments more relevant to these activities, i.e. the above-mentioned UNGA Resolution 46/182, the Sendai Framework for Disaster Risk Reduction, and the UN Sustainable Development Goals.

UNGA Resolution 46/182 addresses the coordination of United Nations humanitarian emergency assistance and is widely regarded as a landmark instrument. The resolution 'establishes the framework within which international disaster relief activities are undertaken'. Although the text does not centre specifically on recovery, it contains several provisions that are directly relevant to post-disaster rehabilitation efforts. In particular, it recognises a 'clear relationship between emergency, rehabilitation and development',[92] and emphasises that 'emergency assistance must be provided in ways that will be supportive of recovery and long-term development'.[93] Furthermore, it states that 'international cooperation and support for rehabilitation and reconstruction should continue with sustained intensity after the initial relief stage', further noting that rehabilitation presents 'an opportunity to restructure and improve facilities and services destroyed by emergencies'.[94] These provisions collectively underscore the Resolution's broader vision of integrating emergency response with longer-term recovery and development goals.

The *Sendai Framework for Disaster Risk Reduction 2015–2030* is a 15-year, voluntary, and non-binding international agreement adopted at the Third United Nations World Conference on Disaster Risk Reduction, held in March 2015 in Sendai, Miyagi, Japan.[95] It succeeds the Hyogo Framework for Action 2005–2015: Building the Resilience of Nations and Communities to Disasters.[96]The Sendai Framework has been characterised as an international disaster law instrument that simultaneously addresses disaster risk reduction (DRR), sustainable development, and climate change adaptation.[97] The text reaffirms that States bear the primary responsibility for disaster risk management, including post-disaster recovery, but also calls for shared responsibility among a broad array of

the 'do no harm' principle. See Human Rights Council, Final research-based report of the Human Rights Council Advisory Committee on best practices and main challenges in the promotion and protection of human rights in post-disaster and post-conflict situations, UN Doc A/HRC/28/76, 10 February 2015.

[92] UN Doc A/RES/46/182, para. 9.

[93] Ibid., para. 40.

[94] Ibid., para. 41.

[95] Sendai Framework for Disaster Risk Reduction 2015–2030, UN Doc A/CONF.224/CRP.1, 18 March 2015.

[96] Hyogo Framework for Action 2005–2015: Building the Resilience of Nations and Communities to Disasters, Extract from the Final Report of the World Conference on Disaster Reduction, UN Doc A/CONF.206/6, 16 March 2005.

[97] Peel and Fisher (2016), pp. 13–14.

stakeholders, including local authorities, the private sector, and civil society.[98] While it contains principles encouraging international cooperation, the primary focus is on actions to be undertaken by States within their own jurisdictions.[99]

The Sendai Framework outlines four priority areas, with Priority 4 ('Enhancing disaster preparedness for effective response and to 'build back better' in recovery, rehabilitation and reconstruction') being directly relevant to recovery efforts.[100] To implement this priority, the Framework enumerates 8 global and regional actions and 17 national- and local-level actions. Among the most significant of these for the recovery phase are

1. Adopting policies that empower public authorities to strengthen coordination and establish funding mechanisms for recovery and reconstruction.[101]
2. Promoting both horizontal and vertical coordination across institutions and levels of governance.[102]
3. Integrating disaster risk reduction and sustainable development into recovery efforts, including in land use planning, infrastructure relocation, and the application of improved structural standards.[103]
4. Facilitating the sharing of expertise and experiences in recovery programming, building upon lessons from the Hyogo Framework.[104]
5. Enhancing recovery frameworks through the inclusion of psychosocial support and mental health services.[105]

Through these provisions, the Sendai Framework establishes a comprehensive and forward-looking approach to post-disaster recovery, positioning it as a key component of broader resilience-building and development agendas.

The United Nations Sustainable Development Goals 2015 ('SDGs') were adopted in a resolution by the UNGA as part of the 2030 Agenda for Sustainable Development.[106] These goals are non-binding and are only generally applicable to DRM. However, given their prominence and near-universal acceptance, they are included here as a key international soft law instrument. Some of the SDGs are particularly relevant to disaster recovery. Goal 9 asks States, inter alia, to build 'resilient infrastructure', while Goal 11 demands that

[98] Sendai Framework, para. 19(e).
[99] Ibid., para. 27.
[100] Ibid., para. 33.
[101] Ibid., para. 33.e.
[102] Ibid., para. 33.i.
[103] Ibid., para. 33.j.
[104] Ibid., paras. 33.j–k.
[105] Ibid., para. 33.o.
[106] UNGA, Transforming our world: the 2030 Agenda for Sustainable Development, UN Doc A/RES/70/1, 21 October 2015.

they '[m]ake cities and human settlements inclusive, safe, resilient and sustainable'.[107] Lastly, Goal 13 requires that they take 'urgent action to combat climate change and its impacts'.[108] These three SDGs taken together underline the need to bring reconstruction and rehabilitation efforts in line with the development agenda.

4.4.2 International Environmental Law and Disaster Recovery

While there are no IEL instruments that deal exclusively with the post-disaster recovery phase, several instruments are highly relevant due to their emphasis on environmental protection, climate change, and sustainability, all of which are integral to responsible and resilient recovery practices. Among the key instruments in this respect are the 1992 Rio Declaration on Environment and Development,[109] the United Nations Framework Convention on Climate Change (UNFCCC)[110] and, related to the latter, the 2015 Paris Agreement.[111]

The Rio Declaration, alongside its accompanying action plan, the Agenda 21,[112] represents the core framework for international environmental governance. Although considered a soft law instrument, it has had a profound influence on the development of international treaties and on both domestic and international environmental policies.[113] The Declaration sets out 27 principles of sustainable development. Some are particularly relevant to disaster recovery and the concept of 'build back better'. In particular, Principle 15 articulates the precautionary approach, providing that where there is a risk of serious or irreversible environmental harm, a lack of full scientific certainty shall not be used as a reason to postpone cost-effective measures to prevent environmental degradation.[114] Also of relevance is Principle 17, which calls for environmental impact assessments to be conducted for activities that are likely to have a significant adverse effect on the environment and are subject to the decision of a competent national authority.[115] Together, these principles underscore the importance of integrating environmental considerations

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107 In particular, Target 11.b encourages recovery planning as part of holistic disaster risk management, in line with the Sendai Framework, which includes recovery as a core pillar.

108 Target 13.1 calls upon States to strengthen resilience and adaptive capacity to climate-related hazards and natural disasters and invites them to implement adaptive recovery efforts after disasters and climate-related shocks.

109 Rio Declaration on Environment and Development, UN Doc A/CONF.151/26 (Vol. I), 12 August 1992.

110 United Nations Framework Convention on Climate Change, 4 June 1992.

111 UNFCCC Conference of the Parties, Adoption of the Paris Agreement, UN Doc FCCC/CP/2015/L.9/Rev./1, 12 December 2015.

112 Agenda 21, UN Doc A/CONF.151/26 (Vol. II), 13 August 1992.

113 Morin et al. (2023), pp. 486–487.

114 Rio Declaration, Principle 15, p. 6.

115 Ibid.

into recovery strategies, not only to avoid further harm but also to enhance resilience and sustainability in the aftermath of disasters.

The UNFCCC is the foundation of the UN climate change regime and aims at the 'stabilisation of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system'.[116] It establishes a number of institutions to facilitate its work, including its Conference of the Parties (COP), mandated to 'make the decisions necessary to promote the effective implementation of the Convention'.[117] In 2015, the State parties to the UNFCCC adopted the Paris Agreement, whose core aim is to tackle climate change by '[h]olding the increase in the global average temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels'.[118]

Of critical relevance to recovery is the parties' commitment under Article 7 of the Paris Agreement to 'establish the global goal on adaptation of enhancing adaptive capacity, strengthening resilience and reducing vulnerability to climate change'. The wording appears to suggest that reconstruction efforts need to be aligned with the requirements of climate change adaptation. Another relevant feature of the Paris Agreement is its 'loss and damage' mechanism. Article 8 of the treaty acknowledges the need to avert, minimise, and address the 'loss and damage associated with the impacts of climate change, including extreme weather events and slow-onset events'. These impacts often cause irreversible harm and long-term disruption, which are core concerns of disaster recovery processes. The same provision establishes the Warsaw International Mechanism for Loss and Damage, which focuses on enhancing the understanding of climate impacts, strengthening dialogue and coordination, and promoting action and support, including finance, technology, and capacity-building. These functions align closely with disaster recovery needs, especially where countries lack the institutional capacity to respond and rebuild effectively. At COP27 in 2022, the State parties agreed to establish a Loss and Damage Fund, with the goal of providing financial assistance to developing countries facing climate-induced losses.[119] Although the details are still being operationalised, the fund is expected to support post-disaster recovery, including reconstruction of infrastructure, restoration of livelihoods, and rehabilitation of affected ecosystems.

[116] UNFCCC, Art. 2.

[117] UNFCCC, Art. 7.

[118] Paris Agreement, Art. 2.1.a.

[119] UNFCCC, Decision 2/CP.27: Funding arrangements for responding to loss and damage associated with the adverse effects of climate change, including a focus on addressing loss and damage (2022) UN Doc FCCC/CP/2022/10/Add.1, 20 November 2022, and UNFCCC, Decision 2/CMA.4: Funding arrangements for responding to loss and damage associated with the adverse effects of climate change, including a focus on addressing loss and damage (2022) UN Doc FCCC/PA/CMA/2022/10/Add.1, 20 November 2022.

4.5 Conclusion: A New Comprehensive Treaty on Disaster Risk Management?

As evidenced while describing the international legal framework pertaining to DRM, the international community still lacks a comprehensive, legally binding instrument of universal scope setting out rules applicable in the various phases of the disaster cycle. However, recent events, including the COVID-19 pandemic, have awakened an appetite for such an instrument, which might soon become a reality. The initial driver in this process was the 2004 Indian Ocean tsunami, a disaster which was transboundary in nature and resulted in a massive loss of life, exposing the international community's lack of preparedness for calamities of such scale. In the aftermath of the event, the ILC initiated its examination of the topic 'Protection of Persons in the Event of Disasters', formally including it in its programme of work in 2007 and appointing Eduardo Valencia-Ospina as Special Rapporteur. As is known, in 2016 the ILC adopted a set of DAs[120] and the document was then transmitted to the UNGA, together with a recommendation that an international convention be concluded on the basis of its text.[121] The recommendation of the Commission has since then been considered several times in the Sixth (Legal) Committee of the UNGA. In December 2024, the UNGA adopted by consensus Resolution 79/128, through which it decided to 'elaborate and conclude a legally binding instrument on the protection of persons in the event of disasters (…) by the end of 2027 at the latest'.[122] The UNGA also invited Governments to submit to the UN Secretary-General any proposal for amendments to the DAs by the end of 2025, 'with a view to preparing the consolidated text that will serve as the basis for the negotiations of the legally binding instrument'.[123]

In their current version, the DAs are made up of 18 provisions, preceded by a preamble. The preamble aims at providing a conceptual framework, setting out the general context in which the topic has been elaborated and furnishing the rationale for the text. DA 1 and DA 2 set out the scope and purpose of the text, which is 'to facilitate the adequate and effective response to disasters and reduction of the risk of disasters, so as to meet the essential needs of the persons concerned, with full respect for their rights'. DA 3 includes definitions for the various terms used in the document, including a definition of the notion of 'disaster'.[124] DAs 4 to 6 address the relationship between the victims of disasters and assisting actors, linking relief action to respect for human rights and humanitarian principles. On the other hand, DAs 7 to 17 focus on the relationship between the affected State and assisting actors, addressing key issues such as the duties and role of the affected State in disaster response and disaster risk reduction activities, consent to

[120] Yearbook of the International Law Commission, 2016, vol. II (Part Two) para. 48.

[121] Ibid., para. 47.

[122] UNGA, Protection of persons in the event of disasters, UN Doc A/RES/79/128, 12 December 2024, OP 4.

[123] Ibid., OP 6.

[124] See Sect. 4.2.1.

assistance, offers and requests of assistance, and operational provisions governing relief operations. Finally, its final provision (DA 18) articulates the relationship between the DAs and other rules of international law, including IHL.

While we do have a roadmap which should lead to the conclusion of an agreement by the end of 2027, negotiations will not be easy as a series of legal issues divide States and striking a compromise might prove arduous.[125] One problematic provision is DA 11, which imposes on the affected State a duty to seek assistance from external actors if the disaster 'manifestly exceeds its national response capacity'. China, for instance, argued that such an obligation is not part of customary international law, suggesting that it might not favour the provision.[126] Also the object of some criticism is DA 13, whose second paragraph established that '[c]onsent to external assistance shall not be withheld arbitrarily'. A number of States have expressed perplexity as they maintain that the term 'arbitrarily' is not sufficiently clear.[127]

Despite these and other controversies, the time is ripe for the adoption of a treaty that could provide a degree of certainty about what governments can expect from other governments and humanitarian organisations following a disaster and clarify what facilitation measures must be adopted if external assistance is provided. It would also bring some order to the regulation of disaster management, with existing provisions being scattered across many different instruments of varying status. The duty is unavoidable as disasters will only increase as a consequence of climate change, as will the number of victims and the material damage caused. An effective legal framework is an essential point of departure to reduce the risk of disasters and, when they occur, to provide quick and effective relief to affected communities.

Main Takeaway Messages

- **The Central Role of State Sovereignty**—International disaster response is grounded in the sovereignty of the affected State, meaning that external assistance is only permissible with that State's consent, which retains primary responsibility for disaster management.

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125 See Bartolini (2024).

126 UNGA, Sixth Committee. Summary record of the 20th meeting, UN Doc A/C.6/71/SR.20, 11 November 2016, para. 64.

127 See, for instance, the positions of Israel, UNGA, Sixth Committee. Summary record of the 23rd meeting, UN Doc A/C.6/66/SR.23, 14 November 2011, para. 33; and of the United Kingdom, ibid. para. 45.

- **The Lack of a Universally Accepted Definitions**—There is no universally accepted definition of 'disaster', and various legal instruments use differing criteria, such as the magnitude of damage, the nature of the threat, and the coping capacity of the State, to trigger legal obligations.
- **The Scarcity of Binding Instruments Concerning Disaster Recovery**—While disaster response law is relatively well developed, disaster recovery remains under-regulated, relying mostly on non-binding frameworks like the Sendai Framework and the Sustainable Development Goals.
- **The Fragmentation of the Legal Framework**—A multitude of legal issues (including entry of personnel, visas, customs, liability, recognition of qualifications) arise in cross-border disaster response and are addressed by a patchwork of treaties and soft law instruments.
- **The Future Adoption of a Flagship Treaty**—Efforts are underway to develop a comprehensive and binding international treaty on disaster risk management, following the UNGA's 2024 resolution to negotiate such an instrument based on the International Law Commission's *Draft articles on the protection of persons in the event of disasters.*
- **The Call for a More Effective Legal Framework**—As climate change increases the frequency and severity of disasters, the need for a unified, predictable, and legally robust global framework is more urgent than ever.

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