

Recent developments in International Disaster Response Laws: ILC's Work and IDRL Rules in Disaster Relief

Angelica Fanaki

PhD Candidate, Public International Law Department, Athens University Law School;
Public Relations Department, Hellenic Red Cross (and Deputy Secretary General,
Employees Union)
angelicafanaki@gmail.com

Abstract

The paper is based on the initiative by the ILC for an international legal framework for the protection of individuals in the event of disasters. It comprises a description of the broad field of disaster relief law and, following, how sovereignty and individual rights issues are situated within the current work of the ILC. In addition, the so-called IDRL Guidelines are examined in the paper. Since these non-binding international documents play a key role in the disaster relief field at present, their determinant role in the development of an accepted international legal framework for disaster victims and humanitarian relief operations is imprinted in the paper.

Keywords

international disaster law; International Law Commission; IFRC; sovereignty; human rights; humanitarian assistance

1. Introduction

Natural disasters occur often and constantly with ever increasing effects in terms of consequences, having stimulated legal interest in international disaster relief. As a result, issues of coordination of international humanitarian assistance and disaster response have been at the epicenter of both national and international consultations, while international organizations and institutions have been trying to structure a systematic approach to this fragmented field of law, using both hard and soft-law tools.

Attempts for a robust international legal framework on disaster relief have also been made in the past.¹ The most recent initiatives come from both the United Nations (UN) International Law Commission (ILC), which included in its work program ‘the protection of persons in the event of disasters’,² and from the International Federation of Red Cross and Red Crescent Societies (IFRC), through the development of the International Disaster Response Laws (IDRL).³

The IDRL resulted from the urgent need for proper procedure in and regulation on international response and humanitarian relief operations in non-conflict situations. Moreover, it was deemed necessary to gather the main rules and principles of this body of law. The task of organizing and codifying an increasing number of issues, related to emergency operations, has also received full support and encouragement from UN Secretary-General Ban Ki-Moon.⁴

¹ ‘Convention Establishing An International Relief Union (adopted 12 July 1927, entered into force 27 December 1932) 35 L.N.T.S.’ and a ‘Proposal for the Negotiation of an International Convention on Expediting the Delivery of Emergency Assistance’ were presented to the United Nations Economic & Social Council (ECOSOC) in 1984. Both of them, however, were not successful in their course. Arnold Pronto, Senior Legal Officer, Codification Office, Office of Legal Affairs UN & Member of ILC Secretariat, on the IDRL Guidelines: ‘...this instrument constitutes the most significant pronouncement on the topic to date...’, Arnold Pronto, ‘Consideration of the Protection of Persons in the Event of Disasters by ILC’ (2009) 15 *JICL* 2, 449.

² The ILC at its 58th session in 2006, on the basis of the recommendations of the Working Group on the long-term programme of work, identified the topic ‘Protection of Persons in the Event of Disasters’: ILC, ‘Report of the International Law Commission on the Work of its 58th Session’ (1 May-9 June and 3 July-11 August 2006) UN Doc A/61/10, Annex C; ILC, ‘Draft Treaty on the Protection of Persons in the Event of Disasters’ (fifteen draft articles up to date). *See further*: ILC, Report of the International Law Commission on the Work of its 66th Session’ (26 April-3 June and 4 July-12 August 2011) UN Doc A/66/10, 245-270 and ILC, Report of the International Law Commission on the Work of the 67th Session (7 May-1 June and 2 July-3 August 2012), 80-92.

³ The ‘Guidelines on the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery’, were drafted by the International Federation of the Red Cross/Red Cross Societies (IFRC/RC). They were unanimously adopted by all Member States of the Geneva Convention at the International Conference of the Red Cross in 2007 (Resolution 4). On 30 November 2007, the State Parties to the Geneva Conventions and the International Red Cross Red Crescent Movement unanimously adopted the ‘Guidelines for the domestic facilitation and regulation of international disaster relief and initial recovery assistance’ (the ‘IDRL Guidelines’) at the 30th International Conference of the Movement. In 2008, the UN General Assembly adopted three resolutions (UN Res. 63/139, UN Res. 63/141, and UN Res. 63/137) encouraging States to make use of them. *See more at*: <<http://www.ifrc.org/en/what-we-do/idrl/idrl-guidelines/>> accessed 26 June 2013.

⁴ Ban Ki Moon paid an official visit to IFRC on July 6th 2007, whereby he underlined the work of IFRC on National preparedness through IDRL.<<http://w3.ifrc.org/Docs/News/07/07060801/index.asp>> accessed 26 June 2013.

The interplay of instruments of hard and soft law currently presents a solid basis for building an international legal framework on disaster response.⁵ However, the scope of this paper is limited to the examination and commentary of the two prevailing projects, prepared by the ILC and IFRC respectively, focusing on aspects and general principles of humanitarian assistance in natural disasters – in particular sovereignty and non-intervention, humanity and neutrality and international responsibility.

2. IDRL and ILC Draft Articles: Legal and Operational Aspects

The IDRL Guidelines of the IFRC have been the initial reference point for the ILC since the launching of its work on the topic.⁶ The IDRL Guidelines have been accepted both at international and regional levels.⁷ A number of regional organizations, ranging from ASEAN (Association of Southeast Asian Nations) to CAPRADE (Comité Andino para la Prevención y Atención de Desastres), from SOPAC (Applied Geoscience and Technology Division of the Secretariat of the Pacific Community) to NATO (North Atlantic Treaty Organization), and from SADC (Southern African Development Community) to the European Union, have made use of the IDRL Guidelines in developing their own regional mechanisms for improving legal preparedness for cross-border disaster response.⁸

Nine resolutions of the UN General Assembly (UNGA) have encouraged States to strengthen their regulatory frameworks for international disaster assistance, taking the IDRL Guidelines into account.⁹ On November 30th

⁵ See more in: Pronto (n 1) 451.

⁶ The topic was brought to the attention of the ILC in 2006 and was put in its agenda a year later under the heading 'protection of persons in the event of disasters'. See Flavia Zorzi Guistiani, 'The Works of the ILC on Protection of Persons in the Event of Disasters: A critical appraisal' in Andrea de Guttry, Marco Gestri and Gabriella Venturini (eds), *International Disaster Response Law*, (TMC Asser Press, The Hague 2012) 67.

⁷ Pronto (n 1) 449.

⁸ International Federation of Red Cross and Red Crescent Societies (IFRC) 'Legal Preparedness for International Disaster Response' (*IDRL Fact sheet*, 2012) <<https://www.ifrc.org/PageFiles/41197/IDRL%20Fact%20Sheet%20revised.pdf>> accessed 26 June 2013.

⁹ Since their adoption the IDRL Guidelines have been recognized in no fewer than nine resolutions of the UN General Assembly, each time calling upon UN member states and regional organizations to take account of the IDRL Guidelines in strengthening their operational and legal frameworks for international disaster relief: UNGA Res 65/264 (21 June 2011) UN Doc A/RES/65/264, para 7; UNGA Res 65/133 (13 March 2011) UN Doc A/RES/65/133, para 11; UNGA Res 64/251 (30 April 2010) UN Doc A/RES/64/251, para 7; UNGA Res 64/76 (2 February 2010) UN Doc A/RES/64/76, para 10; UNGA Res 63/141 (10 March 2009) UN Doc

2011, the IFRC and the UN Office for the Coordination of Humanitarian Affairs (OCHA) signed a new agreement to strengthen their cooperation on IDRL.¹⁰

The response to the Indian Ocean tsunami of 2004 challenged the development of the IDRL Guidelines and upheld its regulatory framework, meaning that any problems assessed – both by affected states and by international assistance providers – contributed to their global visibility.

The recognition of IFRC's sufficiency on disaster response regulation is widely known¹¹ and its expertise has been recognized both by states and humanitarian partners.¹² The organisation has worked also on the expansion of other normative instruments in the area, such as the Declaration of Principles for International Humanitarian Relief to the Civilian Population in Disaster Situations,¹³ the Measures to Expedite International Relief,¹⁴ the Code of Conduct for the Red Cross and Red Crescent Movement and Non-Governmental Organizations in Disaster Relief.¹⁵ Furthermore, IFRC's

A/RES/63/141, para 5; UNGA Res 63/139 (5 March 2009) UN Doc A/RES/63/139, para 8; UNGA Res 63/137 (3 March 2009) UN Doc A/RES/63/137, para 6, and more specifically in UNGA Res 63/139 (3 March 2009) UN Doc A/RES/63/136; IFRC, 'Legal Preparedness for International Disaster Response' (n 8).

¹⁰ During a plenary session of the 31st International Conference of the RC/RC, the two agencies signed a Memorandum of Understanding (MoU) to formalize and extend their many areas of collaboration in promoting legal preparedness for international disaster assistance. The text of the Model Act covers IDRL issues from the initiation through the termination of international disaster assistance, and is accompanied by a detailed commentary explaining the various provisions and also providing examples of existing legislation from various countries. States may choose to make use of the text as inspiration for a single stand-alone law, or as a series of amendments to other existing laws, as appropriate to their circumstances. ICRC, 'Pilot version of Model Act on IDRL released' (*ICRC*, 5 December 2011) <<http://www.ifrc.org/en/what-we-do/idrl/latest-news/idrl-newsletter-december-2011/pilot-version-of-model-act-on-idrl-released/>> accessed 26 June 2013.

¹¹ See more analysis in Elyse Mosquini, 'Are Lawyers Unsung Disaster Heroes? The importance of well-prepared domestic legal & regulatory frameworks for effective disaster response' (2011) 25 *ELR* 1228.

¹² See, e.g., ECOSOC, ESC Res 2006/5 (18 July 2006) UN Doc E/RES/2006/5; UNGA Res 46/182 (19 December 1991) UN Doc A/Res/46/182, annex para 9; GAOR, 46th Session, Supp No 49 (Vol. I); UN Doc A/46/49 (Vol I); ICRC, 'Protecting Human Dignity: 28th International Conference of RC/RC' (*ICRC*, 2003) <http://www.icrc.org/eng/assets/files/other/icrc_002_1103.pdf> accessed 26 June 2013.

¹³ International Conference of the Red Cross, 'Declaration of Principles for International Humanitarian Relief to the Civilian Population in Disaster Situations', Res no 26 (September 1969) <<http://www.ifrc.org/Docs/idrl/I49EN.pdf>> accessed 26 June 2013.

¹⁴ Adopted by the ICRC and the ECOSOC. See Report of the Secretary-General, 'Measures to Expedite International Relief' (1977) UN Doc A/32/61, para 3.

¹⁵ Developed by IFRC together with the members of the Steering Committee of Humanitarian Response and the International Committee of the Red Cross in 1994, and

global network of National Red Cross and Red Crescent Societies, in their capacities as auxiliaries to the public authorities, provides a significant advantage to its access capabilities.¹⁶

Following six years of systematic study and wide consultations, the IDRL Guidelines were adopted by consensus at the 30th International Conference of the Red Cross and Red Crescent in November 2007, “a conference which brought together all the components of the International Red Cross and Red Crescent Movement and the States Parties to the Geneva Conventions”.¹⁷

The IDRL Guidelines are recommendations to governments on how to address the most common regulatory issues arising in international disaster response and on how to enhance their legal preparedness.¹⁸ While not legally binding, the IDRL Guidelines are comprehensive. They are global in geographic scope, are relevant for all sectors of response and for all types of natural disasters, address both State and non-State actors, and have broad international support. The practical impact of the IDRL Guidelines can be evaluated by their degree of implementation.

The IDRL Guidelines are meant to assist governments to become better prepared for the common legal problems in international response operations. Using the Guidelines, governments can avoid needless delays in the dissemination of humanitarian relief while at the same time ensure better coordination and quality of the assistance provided.¹⁹ Their main ambition is to support governments in developing their own procedures for international assistance at the national level.²⁰

welcomed by the 26th International Conference of the Red Cross and Red Crescent in 1995. See, IFRC and ICRC, ‘The Code of Conduct for the International Red Cross and Red Crescent Movement and Non-Governmental Organizations in Disaster Relief’ (26th International Conference of RC/RC, 1995), Annex VI, <<http://www.ifrc.org/Docs/idrl/I259EN.pdf>> accessed 26 June 2013.

¹⁶ The auxiliary role of National Societies constitutes one of the defining characteristics that distinguish them from other humanitarian actors. For an elaboration of the auxiliary role of Red Cross and Red Crescent National Societies, see: <http://www.icrc.org/eng/assets/files/other/icrc_002_1108.pdf> accessed 26 June 2013.

¹⁷ ICRC, ‘Together for humanity’ (2007) <http://www.rcrcconference.org/docs_upl/en/31C_Intro_follow-up_reports_EN.pdf> accessed 26 June 2013.

¹⁸ See IFRC and ICRC, ‘Introduction to the Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance’ (IFRC, 2011), <[http://www.ifrc.org/PageFiles/41203/1205600-IDRL%20Guidelines-EN-LR%20\(2\).pdf](http://www.ifrc.org/PageFiles/41203/1205600-IDRL%20Guidelines-EN-LR%20(2).pdf)> accessed 26 June 2013.

¹⁹ *Ibid.*, at 1.

²⁰ IFRC ‘Progress in the Implementation of the Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance’ (31st

The nature of the IDRL Guidelines has been identified as operational, since they cover, among others, a wide range of practical and logistical aspects of disaster relief²¹ such as: the granting of visas for international relief personnel, exemption from custom duties taxes and tariffs for relief goods and equipment, minimising legal and administrative barriers to importation of telecommunications equipment and medical supplies etc. Notwithstanding their technical and non-binding nature, their global recognition strongly influences the development of regional and national legislation on disaster response.

As mentioned before, the IDRL Guidelines have served as a significant source of inspiration for the work of the ILC. In 2007, in the Secretariat's Memorandum, the ILC argued - on the occasion of the purpose of the study - that there should be an examination on the existing instruments and texts applicable to the main aspects of disaster prevention and relief assistance (as well as disaster response).²² In this regard, as stated before, the ILC began working on 'draft articles' on the topic of 'protection of persons in the event of disasters'.

The Special Rapporteur has since delivered five background reports to the ILC, often citing the IDRL Guidelines and/or the IDRL research by the IFRC. While still early in the process, it appears that the ILC's instrument will touch on many of the same issues raised by the IDRL Guidelines – such as the primary role of the State. However, both the ILC itself and Member States in the Sixth Committee have emphasized the importance of ensuring that the ILC's product is complementary to the work that is already being carried out through promotion and implementation of the IDRL Guidelines. For its part, the IFRC has sought to engage with the ILC on this topic to share its experiences and those of its Members. It regularly participates in debates of the Sixth Committee of the UNGA on the reports presented by the ILC in its capacity as permanent observer. In these debates, UN Member States have repeatedly recalled the relevance of the IDRL Guidelines to the Commission's work and the importance of drawing on the prior work of IFRC.²³

International Conference RC/RC, 2011), at 4 <http://www.ifrc.org/PageFiles/93534/IC31_5_5_1_IDRLReport_2Oct_EN.pdf> accessed 26 June 2013.

²¹ Cubie Dug, 'An Analysis of Soft Law Applicable to Humanitarian Assistance: Relative normativity in action?' (2011) 31 *JIHLS* <<http://ssrn.com/abstract=1891826>> accessed 26 June 2011.

²² ILC, Protection of persons in the event of disasters: Memorandum by the Secretariat' (5 May-6 June and 7 July-8 August 2008) UN Doc A/CN.4/590, 13.

²³ See UN GAOR, 65th Session (1 December 2010) UN Doc A/C.6/65/SR.25; UN GAOR, 65th Session (1 December 2010) UN Doc A/C.6/SR.22, discussing the Commission's work on the protection of persons in the event of disasters, which was itself influenced by the IDRL Guidelines and the IFRC's work in general.

The IFRC and the Commission maintain close engagement in areas where their work is related. There is greater convergence in their work than divergence. The Commission has drawn on the IDRL Guidelines and research products by IFRC in its own study of the issues.²⁴ In this way, the potential for these two initiatives to be mutually reinforcing is supported.

Over the long term, the ILC's efforts may contribute to interest in a global treaty addressing some or all of disaster law and disaster preparedness issues. In light of this possibility, it will be advantageous for greater input to be provided by humanitarian agencies, governmental experts in disaster management, and regional organizations to assist the Commission's legal experts. For its part, the IFRC will continue to offer its advice and views and to inform its Members of the Commission's progress.

Should efforts at a country and regional level not continue to grow and expand in the coming years, the option of promoting a global treaty would have to be reviewed by the participants of the International Conference.²⁵ The ILC should address whether an additional non-binding instrument would ameliorate the results on the protection of persons in disaster situations.²⁶ The ultimate legal framework, in case it is defined within a convention form, could then be attached to the IDRL Guidelines and other relative subsidiary agreements for the improvement of disaster relief. As it has been rightly argued,²⁷ the key debate at the international level remains the interplay between rights-based and technical approaches to humanitarian assistance.

3. International Law Commission and International Disaster Law: 'Draft Articles on the Protection of Individuals in the Event of Disasters'

3.1. ILC's Work – Past and Current Trends

The issue of humanitarian assistance has not yet been regulated within an international binding legal instrument, except in armed conflict situations.

²⁴ Ibid.

²⁵ IFRC, 'Progress in the Implementation of the Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance' (n 20).

²⁶ Accordingly, '(...) It may not be entirely correct to portray to a state the status of a particular instrument as being "non-binding" when some of its provisions may actually be binding on it at the international level, either by virtue of an existing treaty arrangement or a customary rule, or binding internally by virtue of its domestic law. Some of the provisions of the IFRC Guidelines are based on provisions in international treaties or reflect domestic legal practice.' Pronto (n 1) 456.

²⁷ Cubie, 'An Analysis of Soft Law Applicable to Humanitarian Assistance' (n 21) 32.

The ILC, however, provides through its project the potential to create binding obligations for States in disaster situations as already stated.²⁸

The articles provide for a definition of a disaster,²⁹ the recognition of the inherent dignity of each human being, the duty of international cooperation, and the relation between the Draft Articles and international humanitarian law.³⁰ Therefore, *ipso facto* impacts of issues of sovereignty and individual rights, as referred and perceived in the articles, should be examined within the ILC'S work.

Unavoidably, the global shock caused in the aftermath of the Indian Ocean Tsunami in 2004, where the massive tsunami crushed on 13 countries, tested the limits of international humanitarian assistance in natural disasters and revealed gaps in international law. The IFRC's initiative in promoting disaster response laws through the IDRL Guidelines was determinant for the ILC to add in its programme of work the topic of the protection of persons in the event of disasters.

The topic was included in the Commission's agenda after the proposal of the ILC's Secretary-General in 2006.³¹ More specifically, the Secretary-General pointed out the need to focus on the protection of persons in natural disasters,³² and overviewed existing legal instruments and texts applicable to issues of disaster prevention and relief assistance not excluding persons in the event of disasters.³³

The primal proposal was entitled international 'disaster relief law' motivated by the IFRC's approach on international disaster response law.

²⁸ Surprisingly, although the ILC being an UN agency responsible for the promotion and codification of international law, until 2006 it had not included in its work programme the elaboration or examination of issues of state response to disasters, see: Dug Cubie, 'An Enchanted Tool? Humanitarian assistance and the Draft Articles on the Protection of Persons in the Event of Disasters' (2009-2010) 4/5 *IYIL* 9.

²⁹ Draft article 3 defines 'disaster' as 'a calamitous event or series of events resulting in widespread loss of life, great human suffering and distress, or large scale material or environmental damage, thereby seriously disrupting the functioning of society': ILC, Report of the International Law Commission on the 63th Session, (26 April–3 June and 4 July–12 August 2011) UN Doc A/65/10, at 321.

³⁰ Cubie 'An Enchanted Tool?' (n 28) 1.

³¹ *Ibid*, fn 2 1.

³² ILC, Report of the International Law Commission on the Work of its 58th Session' (n 2) para 1 at 464.

³³ For a detailed reference on this, see: Dubirru Sridhar Patnaik 'Towards an International Legal Framework for the Protection of Individuals in the Event of Disasters: Some reflections on work of ILC' in Hans-Joachim Heintze & Andrej Zwitter (eds) *International Law & Humanitarian Assistance: a Crosscut through Legal Issues Pertaining to Humanitarianism* (Springer Press, Heidelberg 2011) 129.

There upon, the Working Group on the Long-Term Programme of Work altered the heading to 'Protection of persons in the event of disasters', and the Commission decided to include the topic in its work programme.³⁴ At the same session, the Commission requested the Secretariat to prepare a background study on the topic, which focused on and was limited to 'natural disasters only'.³⁵ The Special Rapporteur has since then presented a Preliminary Report and five reports on the topic.

The ILC discussed the Preliminary Report of the Special Rapporteur in 2008 at its 60th session. Two topics were at stake: the concept and classification of disasters and the concept of protection of persons.³⁶ The scope of the first topic *ratione materiae* was initially focused on natural disasters or natural disaster components of broader emergencies. Hence, natural disasters were put forefront at the processing of the topic.³⁷ The Special Rapporteur however, proposed for an expanded approach covering both natural and man-made disasters, since such diversity of disaster types would serve with more expediency, for the purposes of the topic of the protection of persons.³⁸ In his Preliminary Report, he explicitly noted that a lot of calamitous events could not be ascribed to a unique casual factor. He also regarded as inappropriate the distinction between different disaster types because of different origin; therefore, a widening of the scope of the analysis to all kinds of disasters was considered - excluding armed conflict.³⁹

³⁴ The first proposal to study the topic at issue, entitled 'International protection of persons in critical situations', was formulated by Mr. M. Kamto and it was submitted to the consideration of the 'Working Group in the Long Term Programme of Work.' Notably, Mr. Eduardo Valencia-Ospina was appointed as a Special Rapporteur for the topic: Giustiniani, (n 6) 67.

³⁵ Read more detailed analysis in: AALCO Secretariat, 'Protection of Persons in the Event of Disasters' (Inter-Sessional Meeting of Legal Experts to Discuss Matters Relating to ILC, 10 April 2012) <<http://www.aalco.int/Protection%20of%20Persons%20in%20the%20event%20of%20Disasters%2010%20April%202012.pdf>> accessed 26 June 2013.

³⁶ ILC Special Rapporteur, 'Preliminary report on the protection of persons in the event of disasters' (5 May-6 June and 7 July-8 August 2008) UN Doc A/CN.4/598, paras 44-49 & 50-55.

³⁷ Accordingly, 'the more immediate need may be for a consideration of activities undertaken in the context of natural disaster', idem, Annex C at 2.

³⁸ He noted more specifically that 'the need for protection can be said to be equally strong in all disaster situations', idem, para 49; ILC, 'Report of the International Law Commission on the Work of its 60th Session' (5 May to 6 June and 7 July to 8 August 2008) UN Doc A/63/10, para 230.

³⁹ This approach was reflected in draft article 3 as provisionally adopted by the Committee, whereby 'disaster means a calamitous event or series of events resulting in widespread loss of life, great human suffering and distress, or large scale material or

In the second topic, the *ratione personae*, the Special Rapporteur and other members underlined the speciousness of a rights-based approach with an attached importance to basic human needs.⁴⁰ Insomuch the concept of the ‘protection of persons’ is wide, the burden could also be put on issues of relief or assistance,⁴¹ which also entail both the concept of the protection of persons as victims of disasters, and rights resulting from being a disaster victim.⁴² This approach raised the question whether response to assist victims of disasters could be examined under the spectrum of relief and assistance or as a one-piece effort to stretch the right to relief and assistance and the deduced obligations and responsibilities of the society towards individuals.⁴³

The preliminary report of the Special Rapporteur further traced the evolution of the protection of persons in the event of disasters, identifying the sources of law on the topic, the prior efforts towards codification and development of the law in the area, and a broad outline on various aspects of the general scope with a view to identifying the main legal questions.

The second report of the Special Rapporteur was considered during the 61st session (2009),⁴⁴ and analysed the scope of the topics *ratione materiae*, *ratione personae* and *ratione temporis* along with issues relating to the definition of ‘disaster’⁴⁵ for purposes of the topic, as well as undertaking a

environmental damage, thereby disrupting the functioning of society.’ See more in Giustiniani (n 6) 68.

⁴⁰ ILC Special Rapporteur, ‘Preliminary report on the protection of persons in the event of disasters’ (n 36), paras 51 and 218. See more details in: ILC, ‘Protection of Persons in the Event of Disasters: Text of Draft Articles 1, 2, 3, 4 and 5 as Provisionally Adopted by the Drafting Committee’ (24 July 2009) UN Doc A/CN.4/L.758; ILC Special Rapporteur, ‘Second Report on the Protection of Persons in the Event of Disasters’ (7 May 2009) UN Doc A/CN.4/615, paras 16-17; ILC Special Rapporteur, ‘Preliminary Report on the Protection of Persons in the Event of Disasters’ (n 36), paras 12, 25–26 (discussing a “rights-based approach” as defining not only needs but also societal obligations in the disaster context). The rights-based approach to development and humanitarian assistance emphasizes the participation of the local population, transparency and accountability, and targeting the systemic causes of poverty and vulnerability through information gathering, consultation with the local population, and policy advocacy: J. Benton Heath, ‘Disasters, Relief and Neglect: the Duty to Accept Humanitarian Assistance and the Work of the ILC’ (2011) 43 JILP 449.

⁴¹ ILC, ‘Report of the International Law Commission on the Work of its 60th Session’ (n 38) paras 213 and 221.

⁴² See more in Sridhar Patnaik (n 33) 132.

⁴³ ILC, ‘Report of the International Law Commission on the Work of its 60th Session’ (n 38), para 227.

⁴⁴ ILC Special Rapporteur, ‘Second Report on the Protection of Persons in the Event of Disasters’ (n 40).

⁴⁵ The term “disaster” has been given a range of definitions. This paper adopts, as a working definition, the language employed by the ILC, ‘Protection of Persons in the Event of

consideration of the basic duty to cooperate. The report further contained proposals for Draft Articles 1 on 'Scope', 2 on 'Definition of 'disaster', and 3 on 'Duty to cooperate'.

The third report of the Special Rapporteur (2010)⁴⁶ was considered during the 62nd session of the Commission and contained the draft articles on 'humanitarian principles in disaster response', which includes the principles of neutrality, impartiality and humanity as the basic principles of humanitarian concern during disasters.⁴⁷ Draft article 8 deals with the primary responsibility of the affected State which addresses the issue of sovereignty and non-intervention.

The fourth report of the Special Rapporteur⁴⁸ dealt in detail with draft articles 10, 11 and 12. Draft articles 10 and 11 contain the 'Duty of the affected State to seek assistance' and 'Duty of the affected State not to arbitrarily withhold its consent'. In addition, the issue of consent is dealt with in the fourth report,⁴⁹ where it states that the consent requirement is connected with (a) the obligation of the affected State's responsibility to seek assistance where its national response capacity is exceeded⁵⁰ and (b) the

Disasters: Text of Draft Articles 1, 2, 3, 4 and 5 as Provisionally Adopted by the Drafting Committee' (n 40). Note that this definition refers to technological as well as natural disasters, and that it refers only to sufficiently severe events. In addition, this paper provisionally assumes that the term 'event or series of events' can be read narrowly to exclude slow-onset events or long-lasting conditions, such as climate change, desertification, the HIV/AIDS epidemic, and economic depressions. Heath (n 40) 424.

⁴⁶ ILC Special Rapporteur, 'Third report on the protection of persons in the event of disasters' (31 March 2010) UN Doc A/CN.4/629.

⁴⁷ Impartiality and non-discrimination are referred to separately by the current ILC draft in article 6, A/CN.4/L.7576, 14th July 2010. Further, these principles were considered, because humanitarian assistance must comply with the requirements to balance the interests of the affected State and the assisting actors.

⁴⁸ ILC Special Rapporteur, 'Fourth Report on the Protection of Persons in the Event of Disasters' (11 May 2011) UN Doc A/CN.4/643.

⁴⁹ At its sixty-third session (2011), the Commission provisionally adopted draft articles 6 to 9, at the 3102nd meeting, held on 11 July 2011. The Commission had before it the fourth report of the Special Rapporteur (n 48) containing, *inter alia*, a consideration of the responsibility of the affected State to seek assistance where its national response capacity is exceeded, the duty of the affected State not to arbitrarily withhold its consent to external assistance and the right to offer assistance in the international community. Proposals for the following three further draft articles were made in the report: draft articles 10 (Duty of the affected State to seek assistance), 11 (Duty of the affected State not to arbitrarily withhold its consent) and 12 (Right to offer assistance). The Commission provisionally adopted draft articles 10 and 11 at the 3116th meeting, held on 2 August 2011. See ILC, Report on the Work of its 64th Session (7 May-1 June and 2 July-3 August 2012) UN Doc A/67/10, Chapter V, para 52.

⁵⁰ This was confirmed in his proposal of the provisions of article 10 whereby 'the affected state has the duty to seek assistance, as appropriate, from among third states, the United

affected State's duty not to withhold its consent arbitrarily to external assistance.⁵¹

In the fifth report⁵² of the 64th Session of the ILC, the Special Rapporteur elaborated further on the topic of the duty to cooperate, since the ILC had already developed a useful framework for addressing the issue of consent in its background study on the topic. Draft article 2 grounds the work in the rights of individual persons, and the Special Rapporteur has argued that this provision reflects a 'rights-based approach' to the topic. Additionally, central to the project is the duty of States to cooperate with each other, with the UN, and with civil society to protect individuals affected by a disaster (draft article 5).

The report also contained a discussion of the conditions for the provision of assistance and the question on the termination of assistance. Proposals for the following three further draft articles were made in the report: draft articles 5a (Elaboration of the duty to cooperate),⁵³ 13 (Conditions on the provisions of assistance),⁵⁴ and 14 (Termination of assistance).⁵⁵

Suggestions for improvement included the specification that, upon termination, the respective parties should cooperate to allow for the repatriation of goods and personnel. It was also suggested that reference could be made to the need for a procedure for termination, to be agreed upon by the affected State and assisting actors.

Nations, other competent intergovernmental organisations if the disaster exceeds its national response capacity'. The formulation of the article was influenced by the corresponding provision of the Burges resolution. ILC Special Rapporteur, 'Fourth Report on the Protection of Persons in the Event of Disasters' (n 48) para 44; ILC, Report of the International Law Commission on the Work of its 66th Session' (n 2) para 289 (Article 10).

⁵¹ ILC Special Rapporteur, 'Fourth Report on the Protection of Persons in the Event of Disasters' (n 48).

⁵² ILC Special Rapporteur, 'Fifth Report on the Protection of Persons in the Event of Disasters' (9 April 2012) UN Doc A/CN.4/652.

⁵³ *Ibid.* More analytically, the Special Rapporteur proposed: 'to elaborate further on the duty of cooperation, which was the subject of draft article 5.

⁵⁴ *Ibid.* The matter was examined under three perspectives: compliance with national laws; identifiable needs and quality control; and limitations on conditions under international law and national law.

⁵⁵ At its 3142nd meeting, on 6 July 2012, the Commission referred draft articles A, 13 and 14 to the Drafting Committee. At its 3152nd meeting, on 30 July 2012, the Commission received the report of the Drafting Committee and took note of draft articles 5 *bis* and 12 to 15, as provisionally adopted by the ILC Draft Committee, 'Protection of persons in the event of disasters Texts and titles of draft articles 5 *bis*, 12, 13, 14 and 15, provisionally adopted by the Drafting Committee from 5 to 11 July 2012' (12 July 2012) UN Doc A/CN.4/L.812.

3.2. *Sovereignty Issues*

In public international law the principle of sovereignty implies that every sovereign State has the right to conduct its affairs without interference from other States.⁵⁶ As a result, the prohibition of intervention in domestic affairs is a customary rule having general application i.e. the International Court of Justice case law.⁵⁷

In principle, the exercise by a State of any element of sovereignty in a territory of a foreign State is a wrongful act. Only valid consent may preclude wrongfulness.⁵⁸ In the context of disasters, whenever they take place, the affected State remains sovereign. Nonetheless, in draft article 5 the ILC refers to the duty of States to cooperate among themselves, along with the UN and other intergovernmental and non-governmental organizations in order to assist with relief. In addition, draft article 10 states the obligation of the State affected by a disaster to seek assistance if the situation exceeds its national capacity. Draft article 11 restates the concept of consent to external assistance and recognises that such consent should not be refused arbitrarily.⁵⁹

Moreover, in the wake of Cyclone Nargis the public discourse and the intense debate over sovereignty issues considered the application of the idea of Responsibility to Protect (R2P) to the disaster response environment. Accordingly, the following question was addressed: to what extent R2P can be addressed or applied in the aftermath of a natural disaster?⁶⁰

⁵⁶ Read more about International Disaster response law and state sovereignty in: Gabriella Venturini, 'International Disaster Response Law in relation to other Branches of International Law: State Sovereignty, Non-Intervention, and Consent' in Andrea de Guttry, Marco Gestri & Gabriella Venturini (eds), *International Disaster Response Law* (TCM Asser Press, The Hague 2012) 47.

⁵⁷ *Nicaragua v. United States of America* [1986] ICJ Rep 1986, 202-209.

⁵⁸ Draft Articles on responsibility of States for Internationally Wrongful Acts in ILC, Report of the International Law Commission on the Work of its 53rd Session' (23 April–1 June and 2 July–10 August 2001) UN Doc A/56/10, Article 20.

⁵⁹ ILC, 'Protection of Persons in the Event of Disasters: Text of Draft Articles 1, 2, 3, 4 and 5 as Provisionally Adopted by the Drafting Committee' (n 40); ILC, Protection of Persons in the Event of Disasters: Texts and Titles of Draft Articles 10 and 11 Provisionally Adopted by the Drafting Committee on 19 July 2011' (20 July 2011) UN Doc A/CN.4/L.794.

⁶⁰ In Myanmar (Burma), May 2008, a powerful cyclone resulted in 130,000 deaths and affected 2.4 million people. UN Office for the Coordination of Humanitarian Affairs, 'Myanmar Cyclone Nargis: OCHA Situation Report No. 34' (*OCHA*, 23 June 2008), para 1 http://www.burmalibrary.org/docs5/OCHA-Situation_Report34-2008-06-23.pdf, accessed 26 June 2013.

States unanimously adopted R2P at the UN World Summit in 2005, and in paragraphs 138 and 139 of the Summit's Outcome Document.⁶¹ In addition, the UN Secretary-General made explicit that

[T]he responsibility to protect applies, until Member States decide otherwise, only to the four specific crimes and violations: *genocide, war crimes, ethnic cleansing and crimes against humanity*. To try to extend it to cover other calamities, such as HIV/ AIDS, climate change or *the response to natural disasters*, would undermine the 2005 consensus and stretch the concept beyond recognition or operational utility.⁶²

In 2008, in his Preliminary Report, the Special Rapporteur mentioned the relevance of R2P, referring to the ILC's proposal of 2006 that connected R2P and protection of persons, and, more specifically, he argued:

[t]he traditional State system is currently witnessing the emergence of various concepts related to the responsibility of States. As the Secretariat noted in its proposal for the topic, the protection of persons may be located within contemporary reflection on an emerging principle entailing the responsibility to protect.⁶³ The latter concept entails the responsibility to prevent, react and rebuild, corresponding, respectively, to the three phases of a disaster situation.⁶⁴

⁶¹ On the evolution of the agreed formulation and elaboration of R2P we should in fact look back, starting in the '90s, when UN Secretary-General Kofi Anan called forth the international community after the Kosovo situation and NATO intervention, as well as the remissness in Rwanda dominating foreign policy discussions, to come to a consensus on the controversial issues of "right of humanitarian intervention" or "right of intervention for human protection services". Canada's response to this call constituted the 12th member body of the International Commission on Intervention and State Sovereignty (ICISS) in 2000, with a mandate to address the question of *when, if ever, it is appropriate for States to take coercive- and in particular military- action against another State for the purpose of protecting people at risk in that other State*. ICISS in its report elaborated the concept of responsibility to protect comprised of three components: responsibility to prevent, responsibility to react and responsibility to rebuild; natural disasters situations were not included in the list of cases that the circumstances would justify responsibility to react on the part of the international community. The report was released in 2001 and three years later its central theme had entered the lexicon of UN. Read more in Joanna Harrington, 'R2P and Natural Disasters' in W. Andy Knight, Frazer Egerton (eds) *The Routledge Handbook of the Responsibility to Protect*, (Routledge Press, New York 2012) 141.

⁶² Report of the Secretary-General, 'Implementing the Responsibility to Protect' (2009) UN Doc A/63/677, para 10(b). (Emphasis Added)

⁶³ Sara E. Davies 'A Responsibility to Protect Persons in the Event of Natural Disasters?' in Luke Glanville, Sara E. Davies (eds) *Protecting the Displaced: Deepening the Responsibility to Protect*, (Martinus Nijhoff Publishers, Leiden 2010).

⁶⁴ ILC Special Rapporteur, 'Preliminary report on the protection of persons in the event of disasters' (n 36) 19.

Until 2009, however, it was evident that the ILC would not support an interventionist approach to the delivery of disaster relief and aid under the R2P principle. It concluded on a cooperative approach based on the recognition of the affected State's dominant responsibility (but not exclusive) to protect persons affected by a disaster on its territory.⁶⁵ This is in line with the UN Secretary-General's 2009 report where he concluded that the concept of R2P did not apply to natural disasters;⁶⁶ the affected State's '*duty to cooperate*' with other States was the focus of ILC efforts, however the affected State retained its right to refuse assistance from abroad.⁶⁷

The Special Rapporteur has rejected the direct applicability of the R2P to this topic. In analysing the role and responsibility of the affected State, he noted that

[A] State affected by a disaster has the freedom to adopt whatever measures it sees fit to ensure the protection of the persons found within its territory. As a consequence no other State may legally intervene in the process of response to a disaster in unilateral manner: third parties must instead seek to cooperate with the affected state in accordance to article 5, as provisionally adopted by the Drafting Committee.⁶⁸

However, he considered that when it comes to the rights to life or health and body integrity of individuals 'humanitarian law and human rights law demonstrate that principles such as sovereignty and non-intervention constitute a starting point for the analysis, not a conclusion',⁶⁹ implying that these principles in disaster cases are set within a primary responsibility framework of the affected State for the protection of persons in its territory.⁷⁰ The issue of primary responsibility, though, was put under the neutral title 'Role of the Affected State', in draft article 9.

The concept of State sovereignty in the event of disasters should be examined as responsibility towards the affected population. The R2P, on the other hand, applies where there are gross human rights violations

⁶⁵ Harrington (n 61)¹⁴⁷; ILC, 'Report of the International Law Commission on the 63th Session' (n 29), ch.VII.

⁶⁶ *Ibid*, para. 164.

⁶⁷ *Ibid*, paras. 290-331.

⁶⁸ ILC Special Rapporteur, 'Third report on the protection of persons in the event of disasters' (n 46) para. 74

⁶⁹ *Ibid*, at 70.

⁷⁰ 'First is the recognition that the affected state bears the ultimate responsibility for protecting disaster victims on its territory and that it has the primary role in facilitating, coordinating and overseeing relief operations on its territory. The other general conclusion is that international relief operations require the consent of the affected state.' *Ibid*, para. 78. Giustiniani (n 6) 75.

which lead to one of the four international law crimes (*i.e.* genocide, ethnic cleansing, war crimes, and crimes against humanity), outside the subject matter of disaster relief of non-conflict situations.⁷¹ Potential invocation of R2P applies only to clear situations where a connection may be established with the world's most serious international crimes. In the case of natural disasters, attention should be brought on cooperation issues;⁷² corresponding efforts have thus been undertaken both by ILC and IFRC respectively.⁷³

Whenever supporting the promotion of international cooperation towards the protection of human rights at the expense of the exercise of sovereignty by a State (like in the extreme cases of Burma), the ILC should elaborate on specific developments on the obligation of a State to accept humanitarian assistance.⁷⁴ Moreover, an evaluation of the actual circumstances of the affected population puts this specific vulnerable group of individuals into legal analysis, in line with the rights-based approach of the ILC.⁷⁵ At this point, the IDRL Guidelines may serve as a development, especially when it comes to the issue of a State's duty to seek humanitarian assistance. The Guidelines clearly make reference to such duty when 'it determines that a disaster situation exceeds national coping capacities'.⁷⁶

⁷¹ It is reminded that only the Security Council has the right to exercise R2P and authorize intervention: UNGA, '2005 World Summit Outcome' (24 October 2005) UN Doc A/RES/60/1, para 139; Heath (n 40) 431.

⁷² This was evident in the ILC Special Rapporteur, 'Fifth Report on the Protection of Persons in the Event of Disasters' (n 52). In commenting on the approach taken by the Commission in the draft articles previously adopted, a view was expressed indicating a preference for not analysing the relationship between the affected State and third States in terms of rights and duties, but rather from the perspective of cooperation.

⁷³ This includes elaboration on States obligations on natural disasters both at legal and operational level, such as relaxation of customs, improvements on early warning systems, facilitation in the movement of aid workers. It is relevant to comment in this regard that the Special Rapporteur further indicated his intention to spend most of his next report on disaster risk reduction, including the prevention and mitigation of disasters. That report might extend to the protection of humanitarian assistance personnel. He, also, plans to propose a draft article on the use of terms, as well as other miscellaneous provisions. ILC Special Rapporteur, 'Fifth Report on the Protection of Persons in the Event of Disasters' (n 52).

⁷⁴ *Ibid.*, 427-228.

⁷⁵ 'the rights-based approach merely created a space to assess the prevailing legal situation, in light of both the State's rights as a sovereign subject of international law, and of its duty to ensure the rights of individuals in its territory', ILC, 'Report of the International Law Commission on the Work of its 61st Session' (4 May to 5 June and 6 July to 7 August 2009) UN Doc A/64/10, para 178.

⁷⁶ On humanitarian assistance, see: IFRC and ICRC, 'The Code of Conduct for the International Red Cross and Red Crescent Movement and Non-Governmental Organizations

3.3. *Individual Rights Issues in the Draft Articles*

The concept 'protection of persons' is not new in international law. Through international humanitarian law, international human rights law, and international refugee law, it may apply simultaneously to the same situation because these set of laws essentially complement each other. In a disaster setting, however, it reflects a particular relationship between the qualification of persons and the rights and obligations attached thereto.

The Special Rapporteur stated that 'the focus on the individual as a victim of a disaster implied that certain rights accrued to that individual, suggesting the need for a rights-based approach which would inform the operational mechanisms of protection'.⁷⁷ The Rapporteur also referred in his Preliminary Report that 'there is a general, all-encompassing concept of protection which includes protection in a strict sense, denoting a rights-based approach, and other concepts, in particular assistance'.⁷⁸

At present, it is vague whether existing international law assesses all legitimate needs of persons affected by a disaster, or whether there are gaps in the law in this respect. As mentioned before, in other fields of public international law like international humanitarian law, the right to protection has been recognized as a matter of law. In disaster situations, however, it appears that no legal instruments explicitly acknowledge the existence of such a right.⁷⁹

Notwithstanding, it should be noted that the ILC has put some effort in this regard. The Working Group's proposals were worded in terms of specific rights of the victims: right to protection, safety and security, right to disaster relief and basic needs, as well as a reference to the importance of economic and social rights in case of disasters, as stated within the Commentary to draft Article 10.⁸⁰

Non-discrimination is also an important principle within the Draft Articles, and is laid down in draft article 6 on 'humanitarian principles in disaster response':

in Disaster Relief' (n 15), Princ.1 'the right to receive humanitarian assistance and offer it is a fundamental humanitarian principle which should be enjoyed by all citizens of all countries...'

⁷⁷ ILC, Report of the International Law Commission on the Work of its 60th Session' (5 May-6 June and 7 July-8 August 2008) UN Doc A/CN.4/598, Chapter IX para 218.

⁷⁸ Ibid, para 52.

⁷⁹ Ibid, para 54.

⁸⁰ ILC, 'Report of the International Law Commission on the Work of its 63rd Session' (26 April-3 June and 4 July-12 August 2011) UN Doc A/61/10 paras 289 and 481; Giustiniani (n 6) 73.

Response to disasters shall take place in accordance with the principles of humanity, neutrality and impartiality, and on the *basis of non-discrimination*, while taking into account the needs of the particularly vulnerable.

What should be noted within an emergency context of disasters is that human rights could be subject to limitations and derogations. While a number of social, economic or cultural rights are especially relevant in emergency situations, as stated before, non-derogable rights should be extended to certain obligations such as to secure basic needs (food, water etc.).⁸¹ On the other hand, the ILC's work on human rights has been characterized as inadequate:

The primary responsibility of the State in protecting people's right is not adequately reflected in the draft articles...Far from clarifying the different roles and responsibilities of the various stakeholders, draft Articles 7 & 8 end in a rhetorical affirmation of the need to protect human rights and dignity of those affected by a disaster. In this respect the ILC limited itself to specify, in the Commentary that 'distinct obligations will be held by affected states, assisting States and various other assisting actors respectively'.⁸²

Moreover, the role of third parties was poorly framed. It is worth mentioning a comment in this regard:

(...) the debate in the Sixth Committee over the reports of the ILC in relation to the item of the protection of victims of natural disasters, has shown how still differing are the positions both in relation to a recognition of the right of individuals to receive assistance and *vis-à-vis* the duties of States to accept offers of aid from the outside. This shows that there is still no *opinio iuris* on the topic. States are still reluctant to affirm the existence of a right of victims of disasters to request and receive humanitarian assistance.⁸³

What is worth stating is the fact that the IFRC explicitly refers to the right of humanitarian assistance as well as to the role of third actors.⁸⁴

The practice of humanitarian assistance to victims of natural disasters is thus reflected in the work of the IFRC. Under Article 5 of the Agreement on

⁸¹ Venturini, (n 56) 50.

⁸² ILC 'Report of the International Law Commission on the Work of its 63rd Session' (n 80) para 289.

⁸³ Annalisa Creta, 'A (Human) Right to Humanitarian Assistance' in Andrea de Guttry, Marco Gestri, Gabriella Venturini (eds) *International Disaster Response Law* (TMC Asser Press, The Hague 2012) 375.

⁸⁴ See, Rohan J. Hardcastle and Adrian T. L. Chua, 'Humanitarian Assistance: towards a Right of Access to Victims of Natural Disasters'(1998) 325 IRRR; IFRC and ICRC, 'Introduction to the Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance' (n 18).

the Organization of the International Activities of the Components of the International Red Cross and Red Crescent Movement, the IFRC acts as the lead agency in managing international operational activities in the event of natural disasters occurring in peacetime, while the International Committee of the Red Cross acts as the lead agency in times of armed conflict, which may be concomitant with a natural disaster.

4. Conclusion

On the whole, the advances already made by the ILC could qualify as an early framework⁸⁵ for the international regulation of disaster response. It is based, in general terms, on human rights, and is geared towards international cooperation, without, however, infringing on the principles of State sovereignty and territorial integrity.

Although several hard law instruments on protection (international humanitarian law, international human rights law and refugee law) share a relative scope, the drafting of a specific legal framework for the protection of persons in natural disasters, attached with global humanitarian values,⁸⁶ may alter the concept of assistance for the beneficiaries to a legitimate claim, and then victims may acquire and be vested with defined rights.

The most common criticism⁸⁷ on the work of the ILC relates to the inadequacy in its text to attach specific rights to the victims, such as the right to humanitarian assistance or the role of third actors of the international community. In addition, it has been argued that many aspects of disaster response are highly technical, requiring a specialized knowledge, and that such knowledge the members of the ILC do not possess.⁸⁸

⁸⁵ A doubt was expressed in ILC, Report of the International Law Commission on the Work of its 64th Session' (n 49) paras 64-65 Chapter V, about the usefulness of the adoption of draft articles in the form of a convention. It was proposed that the Commission consider formulating a model instrument for humanitarian relief operations in the event of disasters patterned on a Status of Forces Agreement (SOFA) which could be annexed to the draft articles and which could serve a practical purpose. As to the question of the final form of the draft articles, the Special Rapporteur recalled that the approach of developing draft articles was simply the usual practice of the Commission, and was without prejudice to the final form in which they were going to be adopted. He remained open-minded on the matter and preferred to defer it until a later stage of consideration.

⁸⁶ ILC, 'Report of the International Law Commission on the Work of its 60th Session' (n 38) para 223.

⁸⁷ Guistiniani (n 6) 83.

⁸⁸ Heath (n 40) 448.

Notwithstanding, regardless the final form the draft articles may take, the ILC should elaborate on attaching clarity to the different topics of the related areas in disaster relief - from risk reduction approaches and responses in the aftermath of a disaster, to human rights protection or visas issues. In this respect the IDRL Guidelines could contribute by giving added value to ILC's work piece.⁸⁹

The diversity of the existing legal instruments about disaster settings, and their drawback as being dispersed have emerged, requiring for a concrete legal text which should rather act as an internationally accepted regulatory framework for all States in the event of a potential disaster. The emerging number of disasters and especially natural disasters called upon States to realise the legal, as well as operational and technical alertness they should display in this regard.

The ILC, in being the competent organisation for such an admittedly difficult task, should take into consideration both realities and attach in its work the elements which fit best for the implementation of an international legal framework sufficiently responsive for disaster relief. If diversity is viewed as plurality and emergence as challenge, then the scholarly discussion on the merging of international, regional and national legal frameworks on disaster relief can indeed reach a certain point. Nonetheless, the ILC's efforts to develop international law in this regard either through codification or progressive development should not be undermined.⁹⁰

At present the ILC should leverage upon the deficiencies attributed to its work and set a specific agenda where there would be an elaboration on significant pending issues before it, which would ultimately lead to the desired context of an international legal framework on disaster relief.

⁸⁹ However, the need to avoid duplications was highlighted by Dutch representative of ILC, Dr. Liesbeth Lijnzaad, Legal Adviser; Sixth Committee, Part III, 31/10/2008; Guistiani (n 6) 69.

⁹⁰ The term 'progressive development' refers to 'the preparation of draft conventions on subjects which have not yet been regulated by international law or in regard to which that law has not yet been sufficiently developed...'; UNGA, 'Statute of the International Law Commission' (1947) UN Doc A/519, art. 15; Heath (n 40) 424.