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# **Humanitarian Principles in International Disaster Response Law**



**Outline for a Dissertation Project**

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## A. Introduction

Human response to natural and man-made disasters constitutes one of the main concerns of the international community and is likely to develop regarding its impact and demand of attention in the decades to come. Due to the global warming and the increasingly hazardous activities carried out by humans, the number and dimension of disasters are continuously growing. This attaches considerable importance to the cooperation of states in their efforts to prevent the outbreak of disasters and curtail their consequences on individuals. In 2007, the International Law Commission (ILC) started to work on a codification of the customary international law governing the protection of persons in the event of disasters. So far, Special Rapporteur *Valencia Ospina* has presented seven reports dealing with sources, the definition of disaster, humanitarian principles, responsibilities of the affected state, other states, international organisations and NGOs, the provision of external assistance, the duty to reduce the risk of disasters, and the protection of relief personnel as well as of their equipment and goods.

The ILC Drafting Committee has adopted 21 articles covering these issues. The outlined dissertation mainly pursues three objectives: First, it aims to explore and screen the sources of international disaster response law independently from the work of the ILC as well as to produce a survey of the existing international treaties and customary rules on the topic. Secondly, it intends to analyse the ILC articles, to describe their legal content and to assess whether they draw up the existing customary law in a suitable way. Thirdly, it shall attempt to illustrate difficulties of their interpretation, answer legal questions raised by them and offer solutions for problems which they do not address.

## B. Topics

### 1. Disasters and Public International Law

Although international cooperation in the field of disaster relief has become more prevalent in recent years, the international law governing the activities in response to large-scale disasters remains comparatively underdeveloped.<sup>1</sup> The discussion on humanitarian assistance across national boundaries, however, is not just a contemporary one, as is demonstrated by *Emer de Vattel*, who already in 1758 called upon states to save each other from disaster and ruin. Historically, disaster response law has to be seen in the context of international humanitarian law, which relates to

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<sup>1</sup> Protection of Persons in the Event of Disasters, Memorandum by the Secretariat of the International Law Commission (A/CN.4/590), para. 9.

armed conflict as a certain form of disaster. International assistance to victims of disasters other than armed conflict started to gain more attention in the 20<sup>th</sup> century with the occurrence, dimension and impact of natural disasters consistently rising. The continuous emergence of legal frameworks regulating the provision of assistance reflect that international law-making and organisational developments have rather taken a pragmatic approach. According to a desk study of the International Federation of Red Cross and Red Crescent Societies (IFRC), the body of international and national law regulating disaster relief contains provisions on access, facilitation, coordination, quality and accountability of international disaster response activities.<sup>2</sup>

The rules and principles governing disaster protection and assistance are based on three different sources: international humanitarian law, international human rights law and international law on refugees and internally displaced persons. Although international humanitarian law is limited to the particularly critical emergency situations of armed conflict, it features to consider the individual as its ultimate beneficiary. In that respect, it may not only inspire rules on the protection of persons in the event of disasters, but even be applied by analogy.<sup>3</sup> The connection between human rights law and the problems associated with disaster situations has not yet been included in any of the relevant international conventions. An approach to protection and assistance based on the rights of the individual would however significantly contribute to a stronger emphasis on the immediate requirements of the most directly affected victims of disasters.<sup>4</sup> In the same way as international humanitarian law, international law on refugees is limited to the displacement of persons caused by persecution on certain grounds. It should, however, be noted that in most cases disasters force many thousands of individuals into migration.<sup>5</sup>

The delimitation of the scope *ratione materiae* is determined by four considerations: (1) the concept and classification of disasters; (2) the concept of protection of persons; (3) the rights and needs of victims; and (4) the dual nature of the protection of persons in the event of disasters. First, disasters are generally characterised by the particular vulnerability of persons when they are exposed to hazards.<sup>6</sup> Secondly, the approach referring to the protection of persons emphasises the relationship between individuals affected by disasters and the rights and obligations emerging therefrom.<sup>7</sup> Thirdly, the rights and needs of persons in the event of disasters constitute decisive criteria against which the development of disaster response law can be assessed.<sup>8</sup> Fourthly, in the

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<sup>2</sup> Valencia Ospina, Preliminary Report on the Protection of Persons in the Event of Disasters (A/CN.4/598), paras. 14–18.

<sup>3</sup> *Ibid.*, paras. 21–24.

<sup>4</sup> *Ibid.*, para. 26.

<sup>5</sup> *Ibid.*, paras. 27 f.

<sup>6</sup> *Ibid.*, para. 45.

<sup>7</sup> *Ibid.*, para. 52.

<sup>8</sup> Valencia Ospina, Second Report on the Protection of Persons in the Event of Disasters (A/CN.4/615), para. 16.

same way as the 1948 Genocide Convention and the 1963 Vienna Convention on Consular Relations, disaster response law does not only establish rights and obligations of states in relation to one another, but also in relation to individuals in need of protection.<sup>9</sup> The personal scope comprises states as well as international organisations, NGOs, commercial entities and individuals.<sup>10</sup> The temporal dimension encompasses prevention and mitigation in the pre-disaster phase, the fulfilment of urgent needs in the disaster proper phase and, finally, rehabilitation activities after the immediate consequences of the disaster having calmed down.<sup>11</sup>

An essential point in the on-going deliberations of the ILC is the definition of disaster. While the Special Rapporteur suggested that disaster meant ‘a serious disruption of the functioning of society, excluding armed conflict, causing significant, widespread human, material or environmental loss’,<sup>12</sup> the Drafting Committee adopted another definition, considering 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.’<sup>13</sup> Although, it did not maintain the exclusion of armed conflict as proposed by the Special Rapporteur, it inserted another article, according to which disaster response law does not apply to situations which are covered by the rules of international humanitarian law.<sup>14</sup>

## 2. Humanitarian Principles in Disaster Response Law

The activities undertaken to provide humanitarian assistance in the event of disasters are subject to certain requirements in order to balance the interests of the affected state and the actors providing assistance. These are met by the principles of humanity, neutrality, impartiality and non-discrimination.<sup>15</sup> According to the IFRC, the principle of humanity consists in the effort ‘to prevent and alleviate human suffering wherever it may be found (...), to protect life and health and to ensure respect for the human being.’<sup>16</sup> The principle of neutrality was defined as the duty to refrain from ‘engaging in hostilities or taking sides in controversies of a political, religious or ideological nature’.<sup>17</sup> Impartiality reflects the idea that the provision of humanitarian assistance should only depend on the needs of the affected individuals, giving preference to the most urgent

<sup>9</sup> *Valencia Ospina*, Second Report (A/CN.4/615), para. 19.

<sup>10</sup> *Valencia Ospina*, Preliminary Report (A/CN.4/598), para. 56.

<sup>11</sup> *Ibid.*, paras. 57 f.

<sup>12</sup> *Valencia Ospina*, Second Report (A/CN.4/615), para. 45.

<sup>13</sup> Draft Article 3 (A/CN.4/L.758, p. 1).

<sup>14</sup> Draft Article 4 (A/CN.4/L.758, p. 2).

<sup>15</sup> Cf. *Valencia Ospina*, Third Report on the Protection of Persons in the Event of Disasters (A/CN.4/629), para. 15; Secretariat Memorandum (A/CN.4/590), para. 10.

<sup>16</sup> Resolution IX of the 20<sup>th</sup> International Conference of the Red Cross (Vienna, 1965).

<sup>17</sup> *Ibid.*

cases of suffering.<sup>18</sup> On the basis of the principle of non-discrimination, humanitarian assistance has to be provided without distinction as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, age, disability or other status.<sup>19</sup>

The effective protection of persons in the event of disasters can hardly be realised without the active cooperation of the international community. Therefore, states are required to cooperate among themselves, with the UN and other competent international organisations, the IFRC, the ICRC, and with relevant NGOs.<sup>20</sup> Cooperation includes humanitarian assistance, coordination of international relief actions and communications, making available relief personnel, equipment and supplies, and scientific, medical and technical resources.<sup>21</sup> The relevant international actors shall not only join forces in cases of disaster response, but also extend their efforts to the taking of measures intended to reduce the risk of disasters.<sup>22</sup> Two more concepts which inevitably stand in the focus of disaster relief activities are the inviolability of human dignity and the respect for human rights.<sup>23</sup>

### 3. Prevention, Mitigation and Preparedness

In recent decades, the development and progress of international disaster response has been accompanied by great efforts to focus on the reduction of disasters and the risk of disasters as well as on the remedy of their long-term consequences. The ILC articles impose the duty on states to reduce the risk of disasters by taking the necessary and appropriate measures to prevent, mitigate and prepare for disasters.<sup>24</sup> The concepts of prevention, mitigation and preparedness refer to the pre-disaster phase. The principle of prevention is well established under international law. In the context of this topic, it can be explained as the general obligation of states to avoid the harmful impact of disasters to one's population, property and the environment.<sup>25</sup> Mitigation, on the other hand, has been characterised as the aiming at structural and non-structural measures to limit the adverse effects of a disaster.<sup>26</sup> Preparedness finally encompasses the knowledge and capacities 'to effectively anticipate, respond to, and recover from the impacts of likely, imminent

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<sup>18</sup> Secretariat Memorandum (A/CN.4/590), para. 14.

<sup>19</sup> *Ibid.*, para. 16; cf. Articles 1(3) and 55(c) UN-Charter.

<sup>20</sup> Draft Article 5 (A/CN.4/L.758, p. 2).

<sup>21</sup> Draft Article 5bis (A/CN.4/L.812, p. 1).

<sup>22</sup> Draft Article 5ter (A/CN.4/L.812, p. 1).

<sup>23</sup> Draft Articles 7 and 8 (A/CN.4/L.776, p. 1).

<sup>24</sup> Draft Article 16(1) (A/CN.4/L.815, p. 1).

<sup>25</sup> Secretariat Memorandum (A/CN.4/590), para. 24.

<sup>26</sup> „Living with Risk: A Global Review of Disaster Reduction Initiatives“, in: ISDR, Vol. I (2004), p. 17; cf. Secretariat Memorandum (A/CN.4/590), para. 27; *Valencia Ospina*, Sixth Report on the Protection of Persons in the Event of Disasters (A/CN.4/662), para. 39.

or current hazard events'.<sup>27</sup> Disaster risk reduction measures include the conduct of risk assessments, the collection and dissemination of risk and past loss information, and the installation and operation of early warning systems.<sup>28</sup> The taking of measures intended to reduce the risk of disasters also appears among the cooperation duties imposed upon states.<sup>29</sup>

#### 4. Requests for and Offers of Assistance

Many international agreements provide for an obligation of states to immediately notify other states that might be affected by an occurring or impending disaster.<sup>30</sup> While this obligation primarily applies to affected states, under some agreements also states which are aware of an impending disaster are required to provide prompt warning.<sup>31</sup> The ILC has identified the duty of the affected states to seek assistance whenever a disaster exceeds the national response capacity of that state. Requests for assistance shall be made towards other states, the United Nations, other competent international organisations and relevant non-governmental organisations as appropriate.<sup>32</sup> Without prejudice to some exceptional agreements which also accord this right to certain international organisations or NGOs, the request has to emanate from the affected state itself.<sup>33</sup>

In responding to disasters, states, the United Nations, other competent international organisations and NGOs have the right to offer assistance to the affected state.<sup>34</sup> The provision of external assistance requires the consent of the affected state.<sup>35</sup> This precondition inevitably results from the sovereignty of states. The affected state, however, is called upon not to withhold its consent to external assistance arbitrarily.<sup>36</sup>

#### 5. Conditions on the Provision of Assistance

As a general rule, the provision of external assistance is subject to the consent of the affected state.<sup>37</sup> However, the affected state may also place additional conditions on the provision of assistance at its own discretion. Such conditions have to be in accordance with the rules and principles of international disaster response law, the applicable rules of international law, and the na-

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<sup>27</sup> UNISDR Terminology on Disaster Risk Reduction ([www.unisdr.org/files/7817\\_UNISDRTerminologyEnglish.pdf](http://www.unisdr.org/files/7817_UNISDRTerminologyEnglish.pdf); 14.05.2014).

<sup>28</sup> Draft Article 16(2) (A/CN.4/L.815, p. 1).

<sup>29</sup> Draft Article 5ter (A/CN.4/L.815, p. 1).

<sup>30</sup> Secretariat Memorandum (A/CN.4/590), paras. 48 f.

<sup>31</sup> *Ibid.*, para. 50.

<sup>32</sup> Draft Article 10 (A/CN.4/L.794, p. 1).

<sup>33</sup> Secretariat Memorandum (A/CN.4/590), para. 53.

<sup>34</sup> Draft Article 12 (A/CN.4/L.812, p. 1).

<sup>35</sup> Draft Article 11(1) (A/CN.4/L.794, p. 1).

<sup>36</sup> Draft Article 11(2) (A/CN.4/L.794, p. 1).

<sup>37</sup> Draft Article 11(1) (A/CN.4/L.794, p. 1).

tional law of the affected state. Furthermore, they have to take into account the identified needs of the persons affected by disasters and the quality of the assistance. When formulating conditions, the affected state shall indicate the scope and type of assistance sought.<sup>38</sup>

The affected state may accept the offer of assistance under the condition that it retains overall control over the provision and distribution of assistance on its territory.<sup>39</sup> The assisting state, however, may require the affected state to distribute the assistance given effectively and expeditiously, that it be used for the intended purpose or that it be distributed on a non-discriminatory basis.<sup>40</sup> As long as the organs of the assisting state are staying within the affected state carrying out their assistance activities, they are bound to comply with international law and the national law of the affected state.<sup>41</sup> Although states may legitimately rely on the compliance with their laws and standards, national regulations and procedures regularly turn out to be too stringent or unconventional to be fully observed under the imperative distress of disaster situations.<sup>42</sup>

The observance of international and national law is normally ensured by the adoption of general compliance clauses, saving clauses concerning conformity with regard to specific provisions or issues, and provisions requiring changes to national law.<sup>43</sup> Pursuant to general compliance clauses, the conduct of disaster relief operations has to respect the national laws of the affected state.<sup>44</sup> Saving clauses are intended to ensure that certain substantive provisions in international instruments are interpreted and exercised in accordance with national law.<sup>45</sup> Provisions requiring changes to national law aim at the adaption of national regulations in line with the standards of international disaster response law.<sup>46</sup>

## 6. Access of Disaster Relief Personnel and Goods

It is the duty of the affected state to ensure the protection of persons and provision of disaster relief and assistance on its territory.<sup>47</sup> The affected state has the primary role in the direction, control, coordination and supervision of such relief and assistance.<sup>48</sup> For that purpose, the affected state shall take all necessary measures to facilitate the prompt and effective provision of external

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<sup>38</sup> Draft Article 13 (A/CN.4/L.812, p. 1).

<sup>39</sup> Secretariat Memorandum (A/CN.4/590), para. 67.

<sup>40</sup> *Ibid.*, para. 68.

<sup>41</sup> *Ibid.*, para. 69.

<sup>42</sup> *Ibid.*, para. 70.

<sup>43</sup> *Ibid.*, para. 71.

<sup>44</sup> *Ibid.*, para. 72.

<sup>45</sup> *Ibid.*, para. 73.

<sup>46</sup> *Ibid.*, para. 75.

<sup>47</sup> Draft Article 9(1) (A/CN.4/L.776, p. 1).

<sup>48</sup> Draft Article 9(2) (A/CN.4/L.776, p. 1).



assistance. On the one hand, this comprises civilian and military relief personnel, in fields such as privileges and immunities, visa and entry requirements, work permits, and freedom of movement.<sup>49</sup> On the other hand, it encompasses goods and equipment, in fields such as customs requirements and tariffs, taxation, transport, and disposal thereof.<sup>50</sup>

Since the provision of immigration documents and facilities entails a delaying and time-consuming process, it is up to the affected state to ensure the rapid issuance of transit, entry and exit visa for disaster relief personnel.<sup>51</sup>

## 7. Privileges and Immunities of Disaster Relief Operations

The obligation of the affected state to facilitate external assistance does not only concern the issuance of visa and work permits to disaster relief personnel, but also the granting of privileges and immunities.<sup>52</sup> An essential prerequisite for the proper performance of their tasks is that disaster relief personnel must unmistakably be identifiable to victims, organs of the affected state and other disaster relief teams.<sup>53</sup> Disaster relief and personnel and equipment therefore have to display a distinctive sign to identify themselves as members of a certain disaster relief operation.<sup>54</sup> Moreover, they have to be in possession of identity cards. The burden of obtaining identity cards can either rest with the disaster relief personnel themselves or with the affected state which can recognise existing identification documents or actively facilitate the issuance of identity cards.<sup>55</sup> The head of a relief operation may be required to produce a list of the disaster personnel list involved in a certain operation.<sup>56</sup>

The privileges and immunities of disaster relief personnel vary considerably depending on their affiliation.<sup>57</sup> Whenever state officials are involved in the conduct of disaster relief operations, the scope of the privileges, immunities and facilities that have to be granted is defined by the necessity for the proper performance of disaster relief work.<sup>58</sup> This can imply immunity from arrest, detention and legal process, exemption from taxation, duties or other charges for the personnel and exemption from seizure, attachment or requisition of the equipment and property used for the purpose of assistance.<sup>59</sup> Regarding international organisations, the privileges and

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<sup>49</sup> Draft Article 14(1)(a) (A/CN.4/L.812, p. 2).

<sup>50</sup> Draft Article 14(1)(b) (A/CN.4/L.812, p. 2).

<sup>51</sup> Secretariat Memorandum (A/CN.4/590), para. 84.

<sup>52</sup> Draft Article 14(1)(a) (A/CN.4/L.812, p. 2).

<sup>53</sup> Secretariat Memorandum (A/CN.4/590), para. 121.

<sup>54</sup> *Ibid.*, paras. 122–124.

<sup>55</sup> *Ibid.*, paras. 125–127.

<sup>56</sup> *Ibid.*, para. 128.

<sup>57</sup> *Ibid.*, para. 129.

<sup>58</sup> *Ibid.*, para. 131.

<sup>59</sup> *Ibid.*, para. 132.

immunities accorded to them by virtue of general international conventions are interpreted to also apply to their personnel participating in disaster relief operations.<sup>60</sup> Although under international law, privileges and immunities are not conferred upon NGOs, the relevant provisions of some international instruments have been construed as extending to include NGOs among their beneficiaries.<sup>61</sup>

## 8. Communication and Coordination

The exchange of information during the relief operation is essential for the successful and constructive provision of assistance. States have to continually exchange information on the measures they take to reduce the risk of disasters, on the nature and impact of an actual disaster when they seek assistance, and on the course of events during the disaster relief operation.<sup>62</sup> Information has to be exchanged on a two-way road, thus also obliging the assisting actors to communicate relevant perceptions to the affected state.<sup>63</sup> Since the exchange of information among the participants of a relief operation is dependent on the existence and function of reliable communications networks, relief personnel are accorded a right to transmit information by radio, telephone, telegraph or other means.<sup>64</sup> In consequence, the affected state is under an obligation to facilitate disaster communications either by allowing the assisting actors to use existing telecommunications networks or by establishing appropriate networks themselves.<sup>65</sup>

To the extent of their technical and financial opportunities, states are primarily obliged to establish an entirely separated communications system which remains exclusively reserved for use in the event of disasters.<sup>66</sup> In so far as the affected state is not in a position to establish such a system, an acceptable alternative is to put the use of any existing communications infrastructure on a priority basis according to the needs of the assisting actors, thereby also interrupting communications between regular users if necessary.<sup>67</sup> In respect of states which can neither dispose of the former nor of the latter, all regulatory barriers to the unimpeded use of existing communication networks have to be removed.<sup>68</sup> As a residual measure, the affected state may resort to the harmonisation of radio frequencies in order to facilitate relief communications.<sup>69</sup> The operation

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<sup>60</sup> Secretariat Memorandum (A/CN.4/590), para. 141.

<sup>61</sup> *Ibid.*, paras. 150 f.

<sup>62</sup> *Ibid.*, para. 158.

<sup>63</sup> *Ibid.*, para. 159.

<sup>64</sup> *Ibid.*, para. 162.

<sup>65</sup> *Ibid.*, para. 163 f.

<sup>66</sup> *Ibid.*, para. 166.

<sup>67</sup> *Ibid.*, para. 168.

<sup>68</sup> *Ibid.*, para. 169.

<sup>69</sup> *Ibid.*, para. 171.

by an assisting state of its own means of communication may be precluded on behalf of the affected state if national security interests so demand.<sup>70</sup>

The principles of sovereignty and non-intervention lead inevitably to the result that the primary role to coordinate the provision of disaster relief and assistance rests with the affected state.<sup>71</sup> The coordination tasks of the affected state especially concern the preparation of guidelines and setting of possible limits for the relief operations<sup>72</sup> as well as the direction of emergency teams at the site of the accident.<sup>73</sup> By way of derogation from this principle, a considerable number of multilateral instruments delegate the coordinating function to a central body under the auspices of the UN, the IFRC, or to particular entities of international law created for that purpose.<sup>74</sup> As a general instance ensuring overview of coordination the UN General Assembly has established the office of the UN Disaster Relief Coordinator.<sup>75</sup>

## 9. The Provision of Disaster Relief

The other corollary that follows from the principles sovereignty and non-intervention is the duty of the affected state to ensure the protection of persons and provision of disaster relief on its territory.<sup>76</sup> Problems regularly arising in the disaster proper phase concern the use of military and civil defence assets, the quality of relief assistance, the protection of relief personnel, and the costs relating to disaster response operations. The use of military and civil defence assets poses a challenge to the principles of impartiality and neutrality, pushes the boundaries between civilian and military action, does not respect the sensibilities of disaster situations and contributes significantly to the increase of costs.<sup>77</sup> Therefore, military and civil defence assets may only be used as a last resort, and only under the conditions that military personnel cannot be deployed for the maintenance of public order in the affected state, that the actual protection of disaster relief personnel remains in the sole responsibility of affected state and that the latter gives its separate consent to their involvement.<sup>78</sup>

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<sup>70</sup> Secretariat Memorandum (A/CN.4/590), para. 173.

<sup>71</sup> Draft Article 9(2) (A/CN.4/L.776, p. 1).

<sup>72</sup> Article XI Agreement on Cooperation on Disaster Preparedness and Prevention, and Mutual Assistance in the Even of Disasters, Spain and Argentina (UN Treaty Series, Vol. 1689, No. 29123).

<sup>73</sup> Article 3(2) Agreement on Cooperation Across State Frontiers to Prevent or Limit Damage to Persons or Property or to the Environment in the Case of Accidents, concluded among the Nordic Countries (UN Treaty Series, Vol. 1777, No. 31001).

<sup>74</sup> Secretariat Memorandum (A/CN.4/590), para. 181.

<sup>75</sup> UN General Assembly Resolution 2816 (XXVI).

<sup>76</sup> Draft Article 9(1) (A/CN.4/L.776, p. 1).

<sup>77</sup> Secretariat Memorandum (A/CN.4/590), para. 190.

<sup>78</sup> *Ibid.*, paras. 191 f.

Quality control provisions envisage the compliance with sufficient standards and the fulfilment of the needs and interests of the victims of disasters,<sup>79</sup> whereas regulation-limiting quality provisions seek to ensure that existing laws and regulations do not constitute an impediment to the successful completion of assistance activities.<sup>80</sup> As the Special Rapporteur is going to propose to the ILC during its 66<sup>th</sup> session, the affected state also has to take all necessary measures to protect relief personnel, equipment and goods present in its territory for the purpose of providing external assistance.<sup>81</sup> This includes civilian and military organs of the assisting states, relief personnel committed by international organisations, staff of the IFRC and the ICRC and personnel of NGOs participating in the relief operations.<sup>82</sup> A major challenge for any affected state will be the prevention of criminal activities directed against disaster relief personnel, their equipment and goods.<sup>83</sup>

Regarding the costs of disaster relief operations, multilateral instruments typically establish a central standby fund which bears the expenses of the assistance activities.<sup>84</sup> Another alternative is the inclusion of a presumption clause, which imposes the costs either upon the affected state or upon the assisting state allowing for those costs to be passed on to the other in the event of certain conditions.<sup>85</sup> Other cost-sharing methods place the provision of assistance under the condition of reimbursement of costs, divide certain types of costs between the actors involved, or attach the costs to the initial request of the affected state.<sup>86</sup>

## 10. Responsibility and Compensation

Under general international law, a state is responsible for the breach of an international obligation, when the act constituting the breach is attributable to that state<sup>87</sup>. This includes the conduct of state organs,<sup>88</sup> persons or entities exercising elements of governmental authority,<sup>89</sup> organs exceeding their authority or contravening instructions,<sup>90</sup> or the conduct of persons and groups which are either directed or controlled by that state.<sup>91</sup> In contrast to these principles, most of the multilateral conventions on disaster response law provide for a system of responsibility depend-

<sup>79</sup> Secretariat Memorandum (A/CN.4/590), paras. 195 and 198.

<sup>80</sup> *Ibid.*, para. 201.

<sup>81</sup> *Valencia Ospina*, Seventh Report on the Protection of Persons in the Event of Disasters (A/CN.4/668), para. 50.

<sup>82</sup> *Ibid.*, para. 25.

<sup>83</sup> *Ibid.*, para. 37.

<sup>84</sup> Secretariat Memorandum (A/CN.4/590), para. 216.

<sup>85</sup> *Ibid.*, para. 217.

<sup>86</sup> *Ibid.*, paras. 219–221.

<sup>87</sup> Article 2 on the Responsibility of States for Internationally Wrongful Acts (ARSIWA).

<sup>88</sup> Article 4 ARSIWA.

<sup>89</sup> Article 5 ARSIWA.

<sup>90</sup> Article 7 ARSIWA.

<sup>91</sup> Article 8 ARSIWA.

ing on prior allocation by virtue of specific treaty articles rather than on formal attribution. Pursuant to such allocation clauses, the receiving state takes the responsibility for any harm affecting the assisting actors, their personnel and equipment in connection with the provision of humanitarian assistance. Furthermore, the receiving state reimburses to the assisting actors any claims or liabilities filed against them by third parties, except for situations of wilful misconduct or gross negligence of their personnel. The receiving state, however, is not entitled to compensation for loss or damages resulting from the provision of assistance.<sup>92</sup>

In line with the duty to cooperate,<sup>93</sup> the receiving state and the assisting actors shall facilitate the settlement of responsibility disputes and damages claims.<sup>94</sup> Depending on the nature of the actors involved, the methods of dispute settlement to be employed in the context of disaster relief operations range from amicable resolutions or negotiations through the diplomatic channel to arbitration. Some instruments contain traditional compromissory clauses referring the dispute to the ICJ.<sup>95</sup>

## 11. Termination of Assistance

The affected state, the assisting states, and as appropriate other assisting actors, are called upon to consult each other with respect to the termination of external assistance and the modalities of termination. Any of the actors involved wishing to terminate shall provide appropriate notification.<sup>96</sup> The issue of termination of assistance is determined by three principles mentioned above: First, disaster response law recognises the prerogative of the affected state to direct, control, coordinate and supervise the provision of relief and assistance.<sup>97</sup> Secondly, the affected state also has the right to refuse an offer of assistance,<sup>98</sup> albeit not arbitrarily.<sup>99</sup> Thirdly, the affected state and the assisting actors are obliged to cooperate among themselves,<sup>100</sup> which necessarily also involves the context of termination of assistance. On the one hand, the interplay of these principles leads to the result that an affected state which gives its consent to the provision of external assistance, also keeps control over the duration for which assistance is provided. Therefore, the assist-

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<sup>92</sup> Secretariat Memorandum (A/CN.4/590), para. 226.

<sup>93</sup> Draft Article 5 (A/CN.4/L.758, p. 2).

<sup>94</sup> Secretariat Memorandum (A/CN.4/590), para. 236.

<sup>95</sup> *Ibid.*, paras. 238 f.

<sup>96</sup> Draft Article 15 (A/CN.4/L.812, p. 1).

<sup>97</sup> Draft Article 9(2) (A/CN.4/L.776, p. 1).

<sup>98</sup> Draft Article 11(1) (A/CN.4/L.794, p. 1).

<sup>99</sup> Draft Article 11(2) (A/CN.4/L.794, p. 1).

<sup>100</sup> Draft Article 5 (A/CN.4/L.758, p. 2).

ing actors are obliged to leave the territory of the affected state whenever the latter requests them to do so.<sup>101</sup>

On the other hand, the right of the assisting actors to terminate the assistance and the right of the affected state to request termination are subject to the conditions of mutual cooperation.<sup>102</sup> As a first step, the party wishing to terminate has to notify the others of its intention in this respect. The notification shall give the other parties the opportunity to timely prepare for the withdrawal of one of the partners or for the general breaking off of the disaster relief operation. Subsequently, the termination of assistance must be preceded by a process of consultation that allows the parties to make the necessary arrangements for the proper conclusion of the assistance.<sup>103</sup>

## 12. The Right to Humanitarian Assistance

Persons affected by disasters are entitled to full respect for their human rights.<sup>104</sup> Fundamental rights which are of particular significance in the context of disaster situations include the right to life,<sup>105</sup> the right to food,<sup>106</sup> the right to health and medical services,<sup>107</sup> the right to the supply of water,<sup>108</sup> the right to adequate housing, clothing and sanitation,<sup>109</sup> and the right not be discriminated against.<sup>110</sup> However, there can be no treatise on disaster response law which does not address the fundamental question whether under international law, the individual is accorded a self-contained right to humanitarian assistance. Whereas such a right has been constituted by the relevant treaties applicable to situations of armed conflict,<sup>111</sup> teachings are still not conclusive as to the existence of such a right in the event of natural disasters.<sup>112</sup>

Currently, there are two provisions international human rights instruments which are directly applicable to disaster situations. First, Article 11 of the International Convention on the Rights of Persons with Disabilities stipulates that states shall take ‘all necessary measures to ensure the protection of persons with disabilities in situations of risk, including situations of armed conflict, humanitarian emergencies and the occurrence of natural disasters.’ Secondly, Article 23

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<sup>101</sup> *Valencia Ospina*, Fifth Report (A/CN.4/652), para. 182.

<sup>102</sup> *Ibid.*, para. 182.

<sup>103</sup> *Ibid.*, paras. 184–186.

<sup>104</sup> Draft Article 8 (A/CN.4/L.776, p. 1).

<sup>105</sup> Article 6 International Covenant on Civil and Political Rights (ICCPR).

<sup>106</sup> Article 11 International Covenant on Social, Economic and Cultural Rights (ICESCR).

<sup>107</sup> Article 12 ICSECR.

<sup>108</sup> Article 14(2)(h) Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

<sup>109</sup> Article 11 ICSECR.

<sup>110</sup> Article 2 ICCPR.

<sup>111</sup> Articles 38(1), 59, 62, and 108 Geneva Convention IV; Article 70 Additional Protocol I; Article 18(2) Additional Protocol II.

<sup>112</sup> Secretariat Memorandum (A/CN.4/590), para. 257.

of the African Charter on the Rights and Welfare of the Child guarantees that children seeking refugee status ‘receive appropriate protection and humanitarian assistance’ and defines its scope also extending to children internally displaced through natural disaster.

In order to assess whether a right to humanitarian assistance in the event of disaster exists, it is necessary to examine the aims and structures of international human rights and the legal consequences of the relevant provisions in disaster relief instruments. International human rights seek to confer upon individuals the status of rights holder by obliging states to ensure the objective set out therein.<sup>113</sup> The obligation of states takes effect on three levels: respect, protection and fulfilment.<sup>114</sup> The establishment of a right to humanitarian assistance therefore is dependent on whether disaster response law constitutes a body of law from which the conferral of a separate entitlement can be derived and whether the obligations imposed upon states operate on all three of these levels.

### C. Research Questions

The first chapter of the dissertation shall be dedicated to a brief history of natural disasters, the development of disaster response law, its sources, and its scope. It shall present the concept and classification of disasters as well as the concept of protection of persons. Furthermore, it shall analyse the delimitation between disaster response law and international humanitarian law. In that context, it shall be examined whether the current state of international humanitarian law properly addresses all situations requiring the protection of persons in disasters resulting from armed conflicts. The second chapter shall illustrate the principles underlying disaster response law. It shall clarify to what extent these principles exist under customary international law, and what their accurate content is. Furthermore, it shall explore in what relation to one another they operate and how they affect the specific provisions of disaster response law. Particular attention shall be paid to the duty to cooperate and the protection of human dignity.

In the light of the principle of prevention, the thesis shall elaborate on the duty of states to reduce the risk of disasters. It shall give a survey of the historical development of disaster risk reduction, analyse the principle of prevention with regard to international human rights law and environmental law, and summarise the most important multilateral and bilateral instruments on international cooperation on prevention. In the context of privileges and immunities of the assisting actors, it shall be discussed to what extent NGOs involved in disaster relief operations are

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<sup>113</sup> *Valencia Ospina*, Preliminary Report (A/CN.4/598), para. 25.

<sup>114</sup> *Ibid.*, par. 26.

entitled to the same privileges and immunities granted to state officials and organs of international organisations under Draft Article 14(1)(a).

Particular emphasis shall be laid on the different situations where damages claims may arise and demonstrate which of the parties involved has to take responsibility for them. The Special Rapporteur is going to propose the insertion of another article stipulating that the applicable rules of international law continue to govern matters related to disaster situations to the extent that they are not regulated by the ILC articles on protection of persons in the event of disasters.<sup>115</sup> This raises interesting questions as to the relationship between the legal regime as described above and the general international law on state responsibility. The thesis shall explore whether the allocation paradigm as stipulated in several multilateral conventions has itself become part of customary international law or whether it only applies to the parties of such conventions. Regarding the latter case, it shall be established whether damages claims arising in disaster situations shall be governed by general international law on state responsibility.

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<sup>115</sup> *Valencia Ospina*, Seventh Report (A/CN.4/668), para. 78.



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