

Work needs to begin on finding places for these people to go. Complicating the situation is the fact that most of the habitable areas in the world are already inhabited; it is not as if we can find large swaths of habitable land with no occupants and recreate a displaced nation. There is one very prominent example in modern history where a displaced and oppressed people were relocated to an area that already had an existing population, and whatever else one says, it has not gone smoothly.

Hopefully, the world community would not tolerate the prospect of nightly news images of wave after wave of boats carrying people fleeing flooded areas, and being turned away at every shore; but preparations need to be made far in advance

The topic of this panel is: “Can international law save us from natural disasters?” My response is that international law is completely failing to save us from the natural disasters that will be caused or worsened by climate change. Finding the will to reduce GHG emissions enough to avoid the nightmare scenarios spelled out by the IPCC, and finding the funds to cope with the climate change disasters that will happen, are mostly a matter of domestic politics, and the domestic politics of most of the key nations are not amenable to meeting these tasks.

International law has not begun to grapple with the consequences of that failure. The current trends of increasing GHG emissions, if they continue, will completely overwhelm our systems of disaster relief and humanitarian assistance. I realize that this is a very gloomy prospect, but I believe that it fairly represents the latest scientific thinking, and I hope that it will serve as a call for all of us to wake up to this grave threat.

REMARKS BY INGRID NIFOSI-SUTTON*

The question of whether international law can save us from natural disasters is intriguing and, perhaps more importantly, very relevant in light of the highly destructive natural disasters that have struck different regions and countries of the world since 2004. I will approach our provocative question by offering some thoughts to prove my main conclusion that while, quite obviously, international law cannot help us avoid natural disasters *tout court*, international law can do three very useful things for us when it comes to tackling these emergencies. First, international law can contribute to a better understanding of the role that states and the international community must play when managing natural disasters; second, international law can improve a state’s performance for the purposes of reducing the adverse effects of natural disasters and responding to them; and finally, international law can bring about the enforcement of the human rights of victims of natural disasters.

In order to prove my first thesis that international law can contribute to a better understanding of the role that states and the international community must play when managing natural disasters, I will stress that international law incorporates multiple regulatory frameworks of norms detailing how governments and international organizations have to tackle natural disasters. Some of these frameworks are contained in international treaties adopted under the auspices of regional organizations, for instance, the 2005 ASEAN Agreement on Disaster Management and Emergency Response. Other frameworks are set forth in international conventions detailing cooperation among states and among states and international organizations that address very specific aspects and dimensions of disaster management. Examples of these conventions include the 2000 Framework Convention on Civil Defence Assistance

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and the 1998 Tampere Convention on the Provision of Telecommunication Resources for Disaster Mitigation and Relief Operations.

The regulatory framework I wish to explore here has a more general scope in the sense that it may apply to all aspects of the management of highly destructive natural disasters. This framework is emerging from the work of the United Nations International Law Commission which, since 2007, has been drafting articles on the protection of persons in the event of disasters. In light of a meticulous analysis of state practice, international conventions on disaster management, and various principles and bodies of international law, the Commission has thus far extrapolated a cluster of sixteen norms that clarify what states and the international community must do in order to deal with highly destructive man-made and natural disasters.¹ Specifically, these norms (1) set out the primary duty and role of the disaster-affected state regarding the protection of disaster victims and the management of disaster relief operations; (2) contain a state duty to reduce the risk of man-made and natural disasters; (3) spell out a state duty to cooperate for the purpose of disaster response and disaster risk reduction; and (4) list requirements for seeking international disaster assistance and the provision of this type of assistance.² Moreover, the International Law Commission's Articles provide that disaster victims are entitled to internationally recognized human rights, thereby implicating state responsibilities relevant to the protection of these rights during natural disasters.³ Hence, this description of the contents of the Articles the International Law Commission has thus far provisionally adopted exemplifies my first thesis that international law can shed light on the role that states and the international community have to play when managing natural disasters.

But what is the real legal significance of the International Law Commission's Articles? While most of the Articles are reflective of customary international law, their very significance will depend on whether they will be eventually incorporated into an international treaty, which ideally should create a mechanism for the monitoring of state compliance. This development would be desirable for two main reasons. First, it would lead to the consolidation of various international law norms that apply generally to the overall management of highly destructive natural disasters in one single legal text. Second, the monitoring procedure under the treaty, if taken seriously by governments, may help competent authorities identify obstacles that hinder effective management of natural disasters and devise measures to perform better when it comes to mitigating the effects of natural disasters or reacting to them once they have occurred.

The Hyogo Framework for Action 2005–2015 (HF), adopted by the 2005 World Conference on Disaster Reduction, is another development showing that international law can help us better understand how states and the international community should manage natural disasters.⁴ The HF is an excellent example of how the international community can come together and devise a comprehensive and coherent plan informed by international law norms that are relevant to mitigation of highly destructive disasters and which are contained in the International Law Commission's Articles. These norms are concerned with the state duty to reduce

¹ Report of the International Law Commission on the Work of Its Sixty-Third Session, 26 April to 3 June and 4 July to 12 August 2011 (A/66/10), at 261–70; Report of the International Law Commission on the Work of its Sixty-Fifth Session, 6 May to 7 June and 8 July to 9 August 2013 (A/68/10), at 73–92.

² *Id.*

³ Report of the International Law Commission on the Work of Its Sixty-Third Session, *supra* note 1, at 260–61.

⁴ Hyogo Framework for Action 2005–2015, <http://www.unisdr.org/we/inform/publications/1037> (last visited Apr. 25, 2014).

the risk of man-made and natural disasters, the state responsibility to protect people on its territory from man-made and natural hazards, and the duty to cooperate in the field of disaster risk reduction. Broadly speaking, the HF aims to give effect to these norms by detailing three strategic goals, five priorities for action, and specific measures that states and international organizations are expected to implement in order to enhance domestic capacities in the field of disaster risk reduction.⁵ The goals concern: (1) the effective integration of disaster risk considerations into sustainable development policies; (2) the development and strengthening of institutions, mechanisms, and capacities that can systematically contribute to building resilience to disasters; and (3) the systematic incorporation of risk reduction approaches into the design and implementation of disaster preparedness, response, and recovery.⁶ The priorities for action include: (1) ensuring that disaster risk reduction is a national and a local priority; (2) the identification, assessment, and monitoring of disaster risks and the setting up of early warning mechanisms; (3) the creation of a culture of safety and resilience; (4) the reduction of the underlying risk factors; and (5) the strengthening of disaster preparedness for effective disaster response at all levels.⁷ In an effort to achieve these goals and priorities, states are expected to establish various measures such as the adoption of legislation and policies on disaster risk reduction, the conduction of baseline assessments of the status of disaster risk reduction, the setting up of early warning mechanisms, and the integration of disaster risk reduction with climate change strategies.⁸ International organizations are also expected to carry out several tasks including provision of international assistance to states and the strengthening of disaster management training.⁹ Thus, the HF constitutes a non-legally binding platform that draws upon international law norms and that illuminates concrete measures that states and international organizations pledge to adopt for the purposes of reducing the risk of disasters, including the risks associated with natural disasters. Stated differently, the HF confirms my first thesis that international law can contribute to a clearer understanding of the functions that states and international organizations have to perform when managing natural disasters.

Furthermore, the ongoing monitoring process of the implementation of the HF shows that, since 2011, sixty-four states have adopted specific policies on disaster risk reduction; that in sixty-four countries disaster-prone communities receive timely and understandable warnings of impending hazards, especially those of natural origin such as tsunamis and volcanos; and that eighty countries have adopted platforms with a strong focus on natural disasters, mainstreaming disaster risk reduction into development plans, legislation, and policies.¹⁰ These data confirm the second thesis informing my main conclusion holding that international law norms can improve a state's ability to reduce the effects of natural disasters, especially when they are taken seriously by governments and implemented by them.

The international community is heading towards the end of the HF and is planning to convene a new global conference on disaster risk reduction in Japan in March 2015. The conference will consider the Post-2015 Framework for Disaster Risk Reduction. Preparatory

⁵ See the summary chart of the Hyogo Framework for Action at <http://www.unisdr.org/we/inform/publications/8720> (last visited Apr. 25, 2014).

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ International Law Commission, Sixth Report on the Protection of Persons in the Event of Disasters, May 3, 2013 (A/CN.4/662), at 42; Hyogo Framework for Action 2005–2015 Mid-Term Review 2010–2011, at 24. An overview of the national platforms is available at <http://www.unisdr.org/partners/countries> (last visited Apr. 25, 2014).

initiatives consisting of consultations among relevant stakeholders and various events at the UN, regional, and domestic levels are currently taking place. It remains to be seen whether the outcome of the conference will be an international treaty spelling out concrete obligations of states to be fulfilled for the purposes of disaster mitigation or a relevant UN Declaration. Should one of these scenarios occur, efforts will have to be devoted to harmonize the post-2015 framework with the final form of the International Law Commission's Articles. These endeavors would seem necessary by virtue of the fact that the Articles can complement and reinforce the post-2015 framework and in order to avoid duplication of UN standard-setting exercises that may undermine the effectiveness of relevant international law norms on disaster management.

Finally, in an effort to demonstrate the last prong of my main conclusion, namely, the fact that international law can contribute to the enforcement of the rights of victims of natural disasters, I will emphasize that under international human rights law, these persons can exercise the right to a remedy in cases where they have suffered violations of rights attributable to the disaster-affected state. State practice shows that through this exercise, victims of natural disasters have been able to institute or participate in legal proceedings against competent authorities before domestic courts and international human rights monitoring bodies such as the European Court of Human Rights, and obtain adequate reparation.¹¹ This being so, in some instances international law can be an effective tool for the enforcement of the rights of victims of natural disasters in enabling these persons to seek and obtain justice.

¹¹ *Budayeva and Others v. Russia*, App. Nos. 15339/02, 21166/02, 20058/02, 11673/02 & 15343/02 (Mar. 20, 2008).