

IDL in Practice Section



Developments within the UN System (2019)

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1 Introduction

This section analyses developments relevant to disaster law that occurred within generalist and specialised United Nations (UN) bodies during the course of 2019. In particular, it will address 1) the adoption of some UN General Assembly (GA) Resolutions and the connected debates; 2) the inclusion by the International Law Commission – the subsidiary organ of the UN General Assembly tasked with the promotion of the progressive development of international law and its codification – of the issue of sea-level rise in its programme of work.

2 Developments at the UN General Assembly

Between 16 and 19 December 2019, at its seventy-fourth session, the GA adopted several humanitarian-focused resolutions, concerned primarily with the strengthening of the coordination of United Nations humanitarian and disaster relief assistance actions.¹ At the beginning of the session, the President of the GA commented on the dire humanitarian situation many regions experienced in 2019, stressing that climate emergencies and environmental degradation have exacerbated crises and have placed some of the most vulnerable populations in even more precarious situations. Current trends of global emissions of greenhouse gases will cause further global warming and human beings will suffer the impact of severe and extreme weather events.²

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1 Links to the texts of all the resolutions adopted by the GA at its 74th session are available at <<https://www.un.org/en/ga/74/resolutions.shtml>> last accessed (as any subsequent URL) on 29 July 2020.

2 UNGA, 'Strengthening of the Coordination of Humanitarian and Disaster Relief Assistance of the United Nations, including Special Economic Assistance – Statement by H.E. Tijjani Muhammad Bande, President of the 74th Session of the United Nations General Assembly' (16 December 2019) <<https://www.un.org/pga/74/2019/12/16/streng>

Four of the resolutions focusing on humanitarian issues were devoted also (or entirely) to disasters caused by natural or human-made hazards (with the exclusion of armed conflicts). These are Resolution 74/118 on 'Strengthening of the coordination of emergency humanitarian assistance of the United Nations';³ Resolution 74/115 on 'International cooperation on humanitarian assistance in the field of natural disasters, from relief to development';⁴ Resolution 74/218 on 'Disaster Risk Reduction';⁵ and Resolution 74/114 on 'Persistent legacy of the Chernobyl disaster'.⁶ The contents of these documents and their adoption processes will be the object of a brief analysis.

2.1 *Resolution 74/118 on 'Strengthening of the Coordination of Emergency Humanitarian Assistance of the United Nations'*

The Resolution on 'Strengthening of the coordination of emergency humanitarian assistance of the United Nations' does not differ significantly from the eponymous resolution adopted in 2018. From a legal perspective, the text underscores the importance of international law and humanitarian principles as the basic framework setting out State obligations in emergency settings and offering guidelines to be followed in humanitarian response activities. Moreover, it emphasizes the growing number of Member States and regional organisations that have taken steps to promote the implementation of the Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance (IDRL Guidelines),⁷ and welcomes the support provided to Governments in that respect by national Red Cross and Red Crescent societies and by the International Federation of the Red Cross.

thening-of-the-coordination-of-humanitarian-and-disaster-relief-assistance-of-the-united-nations-including-special-economic-assistance/>.

- 3 UNGA, 'Strengthening of the coordination of emergency humanitarian assistance of the United Nations' (16 December 2019) UN Doc A/RES/74/118. The Resolution was adopted in light of the Report of the Secretary General: UNGA, 'Safety and security of humanitarian personnel and protection of United Nations personnel' (27 September 2019) UN Doc A/74/464.
- 4 UNGA, 'International cooperation on humanitarian assistance in the field of natural disasters, from relief to development' (16 December 2019) UN Doc A/RES/74/115. The Resolution was adopted in light of the Report of the Secretary General: UNGA, 'International cooperation on humanitarian assistance in the field of natural disasters, from relief to development' (20 August 2019) UN Doc A/74/319.
- 5 UNGA, 'Disaster Risk Reduction' (19 December 2019) UN Doc A/RES/74/218.
- 6 UNGA, 'Persistent legacy of the Chernobyl disaster' (16 December 2019) UN Doc A/RES/74/114.
- 7 International Federation of Red Cross and Red Crescent Societies, 'Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance' (30 November 2007) 30IC/07/R4.

While the Resolution was adopted by consensus, the process was marked, as in the previous year,⁸ by an attempt by the United States delegation to remove references to sexual and reproductive health from the text.⁹ According to the head of the US delegation, the above reference could be taken to 'promote abortion or suggest a right to abortion',¹⁰ a viewpoint which the current pro-life US administration strongly opposes. The GA rejected the amendment by a recorded vote of 4 in favour (Guatemala, Nigeria, Qatar, United States) to 112 against, with 26 abstentions.¹¹ From a purely legal perspective, it is interesting to record the official explanation by the US delegation of the vote it cast. According to their statement, 'General Assembly resolutions are non-binding and do not create rights or obligations under international law. In addition, they do not change the current state of conventional or customary international law'.¹² To further clarify its position with regard to references to sexual and reproductive health, the United States stated that '[t]here is no international right to abortion'.¹³

2.2 *Resolution 74/115 on 'International cooperation on Humanitarian Assistance in the Field of Natural Disasters, from Relief to Development'*

Resolution 74/115 recognizes the clear relationship between emergency response, rehabilitation and development, reaffirming that emergency assistance must be provided in support of short- and medium-term recovery, and must be conducive to long-term development. It also places particular emphasis on climate change, stressing the need for increased efforts in building community capacities to manage natural disasters through effective

8 See Emanuele Sommario, 'United Nation Bodies (2018)', (2019) 1 Yearbook of International Disaster Law, 305–313.

9 The contested passage encourages States 'to ensure that women and girls have access to basic health-care services, including reliable and safe access to sexual and reproductive health-care services and mental health and psychosocial support'. UNGA Res 74/118 (n 3) 13, para. 59.

10 UNGA, 74th session, 49th plenary meeting (16 December 2019) UN Doc A/74/PV.49, 13.

11 *Ibid.*, 12.

12 *Ibid.*, 13.

13 *Ibid.* Note that the Human Rights Committee clearly advocates the existence of a right to abortion, at least in certain circumstances, e.g. when the life of the pregnant women is at risk, see CCPR, 'General Comment No. 36, Article 6: right to life' (2 November 2018) UN Doc CCPR/C/GC/36, para. 8. See Livio Zilli, 'The UN Human Rights Committee's General Comment 36 on the Right to Life and the Right to Abortion' (Opinio Juris, 6 March 2019) <<http://opiniojuris.org/2019/03/06/the-un-human-rights-committees-general-comment-36-on-the-right-to-life-and-the-right-to-abortion/>>.

prevention, preparedness and response actions. In particular, it underlines the importance of taking early action to minimize and mitigate the consequences of such disasters, recognizing the contribution of healthy ecosystems to reduce risk and build resilience.

In terms of legal actions, the Resolution invites States to sign, ratify or implement certain key international instruments, notably the United Nations Framework Convention on Climate Change¹⁴ and the Tampere Convention on the Provision of Telecommunication Resources for Disaster Mitigation and Relief Operations.¹⁵ As did Resolution 74/118, the document invites Member States to strengthen operational and legal frameworks for international disaster relief and initial recovery, as well as to adopt and implement relevant national laws and regulations. States are also encouraged 'to reduce the impact of the underlying drivers of disaster risk and vulnerability, and to adopt comprehensive rules and procedures for the facilitation and regulation of international disaster assistance, drawing, as appropriate, on the Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance'.¹⁶

2.3 *Resolution 74/218 on 'Disaster Risk Reduction'*

Resolution 74/218 was based on an earlier report by the UN GA Economic and Financial Committee (Second Committee),¹⁷ which included the text of the Resolution at hand as an annex and recommended its adoption by the GA. The text recognizes the need for a broader and a more people-centred preventive approach to disaster risk and for disaster risk reduction practices that are multi-hazard, multisectoral, inclusive and accessible. The role of climate change as one of the drivers of disaster risk is explicitly acknowledged, as are its contribution to environmental degradation and extreme weather events that may trigger disaster-induced human mobility. The Resolution asks for increased attention towards disaster-prone developing countries, in particular the least developed countries, small island developing States, landlocked developing countries and African countries, in view of their higher vulnerability and risk levels, which often undermine their capacity to prepare for and react to disasters.

14 United Nations Framework Convention on Climate Change, 9 May 1992.

15 Tampere Convention on the Provision of Telecommunication Resources for Disaster Mitigation and Relief Operations, 18 June 1998.

16 UNGA Res 74/115 (n 4) 8, para. 18.

17 UNGA, 'Sustainable development: disaster risk reduction – Report of the Second Committee' (5 December 2019) UN Doc A/74/381/Add.3.

Probably also foreshadowing the COVID-19 emergency, the Resolution also recognizes that biological hazards require strengthened coordination between disaster and health risk management systems in the areas of risk assessment, surveillance and early warning. The key role of resilient health infrastructures and strengthened health systems in implementing the International Health Regulations (2005)¹⁸ is also highlighted, as a means to increase ‘the overall capacity of health systems, reduce overall disaster risk and build disaster resilience’.¹⁹

2.4 *Resolution 74/114 on ‘Persistent Legacy of the Chernobyl Disaster’*

Resolution 74/114 was adopted on the occasion of the thirty-fifth anniversary of the Chernobyl nuclear fallout, after the Assembly took note of a Report of the Secretary General bearing the same title.²⁰ As is known, on 26 April 1986 a dreadful accident occurred in a nuclear powerplant in Chernobyl, Ukraine (formerly the Soviet Union). A fire in the nuclear power plant released massive amounts of radioactive material into the air. The nuclear accident at Chernobyl is the worst of its kind in human history with severe negative environmental, health and socio-economic effects. The radioactive cloud directly impacted more than 300.000 lives and contaminated large areas of the Ukraine, the Russian Federation and Belarus. In fact, all countries of the northern hemisphere have been reported to be affected by this nuclear disaster.

The disaster also prompted the reaction of the global community and profoundly changed the attitude of nations to nuclear safety. After the accident, new standards and strategies for improving nuclear and radiation safety, emergency response and disaster mitigation were developed. Before the Chernobyl disaster, nuclear energy law consisted mostly of international technical recommendations, which were not binding unless they were incorporated into domestic law or bilateral or multilateral treaties.²¹

Since the Chernobyl accident the International Atomic Energy Association (IAEA) has adopted many security related legal instruments to increase nuclear

18 The Regulations (which are legally binding on all WHO Member States) have been adopted under the auspices of the World Health Assembly in accordance with art. 21(a) of the WHO Constitution (adopted on 22 July 1946). Their latest version has been approved in 2005 and entered into force on 15 July 2007. For the text see WHO, ‘Revision of the International Health Regulations’ (23 May 2005) WHA58.3.

19 UNGA Res 74/218 (n 5) 5, para. 14.

20 UNGA, ‘Persistent legacy of the Chernobyl disaster – Report of the Secretary-General’ (27 September 2019) UN Doc A/74/461.

21 See Andrea Gioia, ‘Nuclear Accidents and International Law’, in Andrea de Guttry et al (eds), *International Disaster Response Law* (TMC Asser Press 2012) 85.

safety and security on a global and domestic level.²² While nuclear safety is above all a responsibility of individual states, international cooperation is also necessary as a nuclear accident could result in transboundary harm and therefore impact on other States. In the immediate aftermath of the Chernobyl accident the IAEA brokered the conclusion of two treaties, namely the Convention on Early Notification of a Nuclear Accident²³ and the Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency.²⁴ In 1994 a third major instrument was adopted, namely the Convention on Nuclear Safety.²⁵

By the terms of Resolution 74/114, the Assembly stresses the need to continue the environmental and health monitoring of Chernobyl-affected regions and communities for the purpose of assessing the efficiency of international assistance. It also requests the General Assembly President to convene on 26 April 2021 a special commemorative meeting in observance of the thirty-fifth anniversary of the disaster.²⁶

22 See Anguel Anastassov, 'Some Aspects of the Effectiveness of the International Regulatory Framework to Ensure Nuclear Safety', in Jonathan L Black-Branch and Dieter Fleck (eds), *Nuclear Non-Proliferation in International Law – Volume III: Legal Aspects of the Use of Nuclear Energy for Peaceful Purposes* (TMC Asser Press 2016) 215–246.

23 Convention on Early Notification of a Nuclear Accident, 26 September 1986. The treaty establishes a notification system for nuclear accidents from which a release of radioactive material occurs or is likely to occur and which has resulted or may result in an international transboundary release that could be of radiological safety significance for another State.

24 Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency, 26 September 1986. The Convention sets out an international framework for cooperation among States Parties and with the IAEA to facilitate prompt assistance and support in the event of nuclear accidents or radiological emergencies.

25 Convention on Nuclear Safety, 17 June 1994. The Convention aims to commit contracting parties operating land-based civil nuclear power plants to maintain a high level of safety by establishing fundamental safety principles to which States would subscribe.

26 A few days earlier the GA also adopted a further Resolution concerning the effects of nuclear radiation, in which it praised the work of the United Nations Scientific Committee on the Effects of Atomic Radiation (UNSCEAR), an expert body established by the GA in 1955 to assess and report the levels and effects of exposure to ionizing radiation. Inter alia, the Resolution expressed appreciation for UNSCEAR's activities in investigating and evaluating the levels and effects of radiation exposure due to the nuclear accident occurred in Fukushima (Japan) in 2011; see UNGA 'Effects of atomic radiation' (13 December 2019) UN Doc A/RES/74/81, 3, para. 7.

3 Developments at the International Law Commission

At its seventy-first session the International Law Commission (ILC) decided to include the topic 'sea-level rise in international law' in its programme of work.²⁷ The Commission also decided to establish an open-ended Study Group on the topic, to be co-chaired by five of its members. The topic had already been referred to in the Fourth Report on the Protection of the atmosphere,²⁸ examined during the 69th session of the Commission in 2017. On that occasion, several members of the Commission suggested that the issue of sea-level rise be treated in a more comprehensive manner, as a matter of priority, as a separate topic in the Commission's agenda.

Sea-level rise is relevant to the broader area of disaster law considering the wide scope of the notion of 'disaster' that the ILC has adopted. Indeed, the Commission's 'Draft articles on the protection of persons in the event of disasters'²⁹ defined the term as 'a calamitous event or series of events resulting in widespread loss of life, great human suffering and distress, mass displacement, or large-scale material or environmental damage, thereby seriously disrupting the functioning of society'.³⁰ The commentary to the provision then specifies that the notion also embraces slow-onset events, 'such as drought or sea-level rise'.³¹

As the Maldives have highlighted in their submission to the ILC,³² the impacts of sea-level rise on small-island States will be wide-ranging. Sea-level rise is likely to cause salt-water intrusion into already vulnerable groundwater sources, undermining water security, as well as salt-water intrusion into arable land, hindering the ability to grow food. It will exacerbate storm surges and

27 ILC, 'Provisional summary record of the 3467th meeting' (1 July 2019) UN Doc A/CN.4/SR.3467, 3. See also Patrícia Galvão Teles, 'Sea-Level Rise in Relation to International Law: A New Topic for the United Nations International Law Commission', in Marta Chantal Ribeiro, Fernando Loureiro Bastos and Tore Henriksen (eds), *Global Challenges and the Law of the Sea* (Springer 2020) 145–157.

28 ILC, 'Fourth report on the protection of the atmosphere by Shinya Murase, Special Rapporteur' (31 January 2017) UN Doc A/CN.4/705, paras. 66–67.

29 For the text of the DAs and the related commentaries, see ILC, 'Report of the International Law Commission: Sixty-Eighth Session (2 May–10 June and 4 July–12 August 2016)' UN Doc A/71/10, 13–73.

30 *Ibid.*, 14.

31 *Ibid.*, 23. See also Giulio Bartolini, 'A taxonomy of disasters in international law', in Flavia Zorzi Giustiniani et al (eds), *Routledge Handbook of Human Rights and Disasters* (Routledge 2018) 18.

32 ILC, 'Sea-level rise in relation to international law. A submission by the Republic of Maldives' (31 December 2019) <https://legal.un.org/docs/?path=../ilc/sessions/72/pdfs/english/slr_maldives.pdf&lang=E>.

coastal flooding during extreme weather events. Beach erosion and flooding of islands also pose a serious risk to homes and infrastructure, which are most often located close to the coastline due to the small size of many islands. The risk of inundation resulting in loss of territory and large-scale displacement is also a very real one.³³ Quite clearly, the threshold of gravity envisaged by the ILC's definition of disasters may, in some cases, be reached.

More generally, it cannot be denied that climate change and the resultant sea-level rise might soon pose crucial challenges for international law.³⁴ Central aspects of international law depend on the general stability of geographical features. The very concept of statehood is premised on the presence of a (more or less) defined territory and coastal geography constitutes a fundamental element on the basis of which the rights of States to maritime zones are determined, and maritime delimitation disputes are resolved. In the coming years, the appropriateness of those aspects of international law are likely to be put to the test. Other issues, such as the fate of human communities living on that territory, will certainly gain prominence and become the object of attention from different disciplinary perspectives, including human rights law.

Indeed, the topic of sea-level rise has already been the object of research by the International Law Association (ILA), which established an ad hoc Committee on the subject in 2012.³⁵ The Committee's work consisted of two parallel streams of study: one on issues relating to the law of the sea and the other on the issues of migration and human rights.³⁶ The ILC Study Group will be adding a further topic, namely that of statehood.³⁷ It will be interesting to observe if and how far the ILC's work will be influenced by the principles it identified in its work on the protection of persons in the event of disasters.

33 *Ibid.*, 3.

34 Davor Vidas, 'Sea-Level Rise and International Law: At the Convergence of Two Epochs', (2014) 4 *Climate Law*, 70.

35 The Committee on International Law and Sea Level Rise was established by the ILA in 2012, see: ILA, 'Minutes of the Meeting of the Executive Council' (London, 10 November 2012) 5.

36 ILA, 'International Law and Sea level Rise' (Sydney Conference, 2018) <https://www.ila-hq.org/images/ILA/DraftReports/DraftReport_SeaLevelRise.pdf>. The Report includes the text of twelve draft principles in a document entitled the 'Sydney Declaration of Principles on the Protection of Persons Displaced in the Context of Sea Level Rise', 25–40. Each principle is accompanied by a commentary.

37 ILC, 'Report of the International Law Commission: Seventy-first Session (29 April–9 June and 8 July–9 August 2019)' UN Doc A/74/10, 340, para. 269.