



Research on the Jurisprudence and Practice of International Disaster Relief

Aifen Xing¹, Aisheng Ma², Ilyas Khan³

Abstract

Presently, international disaster relief assistance has become a crucial means and approach for humanity to cope with increasingly frequent and severe disasters. It is evident that disasters represent a shared threat to the global population, requiring a unified effort from the international community to address. However, the issue of international disaster relief assistance, which might seem self-evident, has always been contentious and problematic both theoretically and practically, mainly focusing on two aspects: firstly, whether the seek of international disaster relief by affected state is a right or a duty; secondly, a series of issues arise when affected state consent international disaster relief assistance. While consensus within the international community remains elusive, the Draft Articles on the Protection of Persons in the Event of Disasters—adopted by the United Nations International Law Commission upon its second reading and subject to ongoing annual discussion—serves as a guiding principle of international soft law that merits our utmost respect and consideration. On this basis, countries need to strengthen communication, reach more consensus, and actively address various obstacles and issues that may arise in international disaster relief assistance in their domestic legislation and practices. Furthermore, the Belt and Road Initiative, proposed by China, necessitates the development of an international disaster relief framework specifically tailored for the nations situated along its path.

Keywords: Disaster, International Disaster Relief assistance, draft articles on the protection of persons in the event of disasters, disaster assistance mechanism, the belt and road national initiative.

Introduction

Catastrophes are a universal ordeal that the entire human race confronts, demanding collaborative action by the global community. In the face of disasters, no country can remain unscathed. Particularly in recent years, with abnormal volcanic activity, global climate degradation, and various other factors, the types of disasters humanity faces have been increasing. In the face of large-scale disasters, the scope of disaster relief has often surpassed the capabilities of the affected nations, leading to the inclusion of international aid as a standard practice. A number of challenges in international disaster relief, spanning from theoretical considerations to practical implementations, remain unresolved, particularly those concerning the conduct of affected states within the framework of international disaster relief efforts.

¹ Professor of International Law, Law School of Beijing Normal University. Email: afxing@126.com

² LLM student, Law School of Beijing Normal University. Email: 924008223@qq.com

³ Assistant Professor, School of Law, Bahria University Islamabad. Email: ilyas.buic@bahria.edu.pk

Overview of the Obligations of Disaster-Affected Countries Regarding International Disaster Relief

International emergency assistance is different from aid of a general nature. It refers to the sudden occurrence of large-scale force majeure events in the territory of a country, such as earthquake, tsunami, volcano, mudslide, etc., or the occurrence of unpredictable unexpected events, such as disease, plague, war or armed conflict, and these disasters or events exceed the capacity of the country to help itself. Humanitarian motives compel the global community to offer support to nations in need. While the existing international aid legal framework includes a range of instruments such as global conventions, regional conventions, bilateral treaties, pertinent international legal documents and domestic laws, issues revealed in the implementation of international emergency aid suggest that there is a need for ongoing refinement of these legal mechanisms. Moreover, the Belt and Road Initiative, a paramount strategy of China, involves countries situated in areas with intricate geological and climatic conditions, many of which are ill-equipped to manage disasters independently. When large-scale disasters suddenly break out, international emergency assistance is needed. Building a positive and effective international emergency aid legal system in the region is of great significance to advancing the Belt and Road Initiative.

International law currently lacks a consistent definition for what constitutes a disaster. As time passes by, the concept of disaster has continually evolved. When examining the definitions of disaster in current international legal documents, two general approaches can be identified. The first approach focuses on specific types of disasters, excluding the abstract nature of the term and placing it within a particular category of disaster or specifically referring to natural disasters. For example, within the framework of the 'Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency' (1986), the term 'disaster' is specifically applied to instances of nuclear accidents or radiological emergencies. The second approach highlights the overarching and universal nature of disasters. According to various disaster-related conventions, Article 1, Paragraph 6 of the 'Tampere Convention' (1998), a 'disaster' is defined as a severe interruption of societal operations, leading to extensive losses to human life, property, or the environment that surpass the capacity of the affected community to handle solely with its own resources, irrespective of whether it is the result of accidents, natural events, or human actions, and regardless of whether it happens abruptly or unfolds over an extended period (International Telecommunication Union, 1998). The Agreement Establishing the Caribbean Disaster Emergency Response Agency (1991) characterizes a 'disaster' as an unforeseen incident that is solely the result of natural phenomena, human activities, or a mix of these, leading to extensive damage to lives or property and a major interruption in public services, not including those caused by warfare, military confrontations, or poor administration (Caribbean Community, 1990). This indicates that as international law evolves, there is a trend towards examining the general and universal aspects of disasters and the factors that define them, without making a distinction between those caused by human actions and those of natural origin. The United Nations International Law Commission has embraced a broad definition of disasters in its 'Draft Articles,' treating both natural

catastrophes and human-induced disasters under the same umbrella (International Law Commission, 2016).

As long as there are serious impacts on people, the physical environment, and social order, these can be classified as disasters, and thus fall within the scope of the Commission's study on this topic. Although natural disasters are a primary focus, no distinction is made between the two under this topic. However, it is important to emphasize that while wars and armed conflicts can also have serious adverse effects on people, the physical environment, and social order, these are not included in the study, as international humanitarian law specifically governs this area of legal relations.

Definition of International Disaster Relief

The term 'international disaster relief' denotes the assistance rendered by global aid organizations in the form of personnel, supplies, equipment, and services to a nation or area stricken by a significant disaster. In accordance with current international legal standards and the perspectives of various delegations within the International Law Commission, international relief efforts are subject to specific conditions that must be fulfilled.

First, it is essential to secure the consent of the impacted nation. Adhering to the principles of state sovereignty and the respect for non-intervention in domestic matters, international disaster relief initiatives must be undertaken with the approval of the affected state, and this requirement is primarily reflected in international law as follows: The Tampere Convention does not explicitly stipulate that disaster relief must have the consent of the affected State, but it clearly expresses that no assistance can be provided without such consent (International Telecommunication Union, 1998). Article 3(a) of the Framework Convention on Civil Defence Assistance, which relates to consent, reads: "Assistance shall be provided only at the request of the assisted State or at the offer and acceptance of the assisted State by the supporting State." The ASEAN Agreement on Disaster Management and Emergency Response also states that " Assistance can only be deployed at the request, and with the consent, of the Requesting Party, or, when offered by another Party or Parties, with the consent of the Receiving Party." (Association of Southeast Asian Nations, 2005). Both provisions explicitly state that member states cannot offer international assistance to an affected state without obtaining its consent (Gao, 2014).

Second, the affected state maintains authority over the direction, management, coordination, and oversight of the relief efforts. The ability of the affected State to retain these powers is primarily rooted in its national sovereignty, which must be affirmed and respected within its territory. This is also provided for in various conventions. Article 3(a) of the Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency, Article 4(a) of the Inter-American Convention to Facilitate Assistance in the Case of Disasters, and Article 3(2) of the ASEAN Agreement on Disaster Management and Emergency Response all contain provisions affirming these powers of the affected State.

Thirdly, the provision of international aid must be prompt. It is widely acknowledged that a significant disaster challenges the capacity of the

impacted nation and the international community to mount a swift response. If rescue operations are delayed or information is not transmitted quickly enough, the lives and property of the affected persons, the physical environment, and social order will not be sufficiently safeguarded. Hence, it is imperative that international relief operations are conducted promptly to safeguard the rights of those affected, the environment, and societal order effectively. The Tampere Convention's Article 3(2)(c) mandates the expeditious provision of telecommunication support to alleviate disaster impacts. Additionally, the Framework Convention on Civil Defence Assistance under Article 1(2) necessitates that the State receiving aid promptly inform the assisting State of the specific actions it requires (United Nations, 2000). Article 4 of the Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency stipulates that parties to the convention must promptly inform the relevant authorities upon receiving information related to disaster relief (International Atomic Energy Agency, 1986).

In instances where a disaster's magnitude surpasses the capacity of the affected State to manage alone, or when the disaster's severity hinders the delivery of swift and effective relief, or when the disaster threatens the safety of people, property, and the environment in neighboring countries and regions, international cooperation is crucial for safeguarding lives and property in the affected area. Therefore, international assistance is necessary in times of disaster.

The Nature of the Obligation for Affected Countries to Accept International Disaster Relief

In English, both "duty" and "obligation" can be translated as "duty" in Chinese, but they differ in meaning. "Duty" emphasizes self-imposed psychological compulsion, while "obligation" stresses external forces. "Duty" often refers to actions driven by moral or benevolent sentiments, whereas "obligation" is more commonly associated with commitments under promises, contracts or laws. "Duty" usually denotes the action itself, without the implication of punishment for non-compliance, whereas "obligation" frequently implies legal duty, with enforcement mechanisms that impose adverse consequences for non-compliance. Therefore, many contemporary treaties and conventions use the term "obligation". As they establish international legal standards, transforming duties into binding obligations, signatory nations are subject to adverse repercussions for breaching their commitments under these treaties (Brandt, 1964).

When addressing the obligations that states hold in international law, it is imperative to consider their international obligations. The UN Charter and the 1970 Declaration on Principles of International Law stress the necessity of honoring these obligations and clarify that any transgression against them will undoubtedly engender international responsibility. There are different classifications of international obligations based on their nature. (1) Obligations of Conduct and Obligations of Result. Obligations of Conduct (also known as means obligations) refer to specific actions a state must take to meet the requirements of an international obligation. If a state's specific behavior does not conform to these requirements, it violates the corresponding international obligation. Obligations of Result require that a state must attain

the precise outcome stipulated by international law, with the state having complete autonomy to determine the methods to be used. Failure to achieve the required result constitutes a violation of the obligation. (2) Bilateral Obligations and Multilateral Obligations. Bilateral Obligations involve only two states. Multilateral Obligations encompass commitments that extend across multiple nations, entailing responsibilities carried out either by a collective of states or by the entire international community (Li, 2003).

It is also necessary to explain de jure obligations and de facto obligations. When examining de jure and de facto obligations, it is essential to grasp the concepts of de facto and de jure aspects of law. The de facto aspect pertains to the current reality of legal practices, whereas the de jure aspect pertains to the ideal or prescribed nature of the law. The former describes the actual state of the law, and the latter describes the ideal state of the law. The de jure state of the law should reflect the nature, conditions, and laws of objectively existing social relations, whereas the de facto state of the law mainly refers to existing positive law or "legal law," which can be directly referred to as law. Extending the concepts of de jure and de facto to obligations, we can derive de jure obligations and de facto obligations. De facto obligations are those actually prescribed by law or recognized by customary law, while de jure obligations are those that ought to be borne based on the nature, conditions, and laws of social relations, possessing legitimacy and reasonableness. In the practical legal field, some obligations, though legitimate and reasonable, have not or are not suitable to transform into de facto obligations for various reasons (Li, 1997).

Issues in the Theory and Practice of International Disaster Relief

Important legal aspects of international release to disaster affected country concern at least following questions:

- (i) Questions concerning the activation of international emergency assistance
- (ii) Questions concerning standards for international emergency assistance personnel
- (iii) Import and export of international emergency aid materials
- (iv) Transport issues relating to international emergency assistance
- (v) Security issues related to international emergency assistance
- (vi) Issues relating to military assistance in international emergency assistance
- (vii) Questions relating to the termination of international emergency assistance

The concept of international disaster relief, while seemingly straightforward, has long been a subject of debate and controversy in both theoretical discourse and practical application. These disputes and issues can be summarized under the following two main areas:

The Issue of Consent by the Affected State in Initiating International Disaster Relief

The matter of obtaining consent from the affected nation to initiate international disaster relief encompasses two specific inquiries:

Firstly, whether an affected state is obligated to seek international disaster relief under certain circumstances; in other words, whether seeking

international disaster relief constitutes a duty of the state. Secondly, whether the refusal by an affected state to consent to international disaster relief, thereby causing affected populations to miss more timely and effective assistance, constitutes a violation of the fundamental human rights of those populations (He, 2013).

Faced with a significant disaster, the impacted nation generally implements proactive relief efforts, barring exceptional circumstances. However, the least desirable scenario often occurs when an affected state, due to inadequate capacity or unwillingness to conduct relief operations, refrains from seeking or outright rejects international assistance, thus placing the rights to life, health, and property of the affected individuals at significant risk.

Issues of Cooperation between the Affected State and International Relief Providers

Even when an affected state consents to receive international disaster relief, challenges may still arise in the cooperation between the affected state and international relief providers. Specifically: Firstly, there is the issue of how the affected state cooperates with various relief providers. This matter is largely due to the diverse legal statuses of entities providing international aid, especially when it comes to collaborations between the affected state and NGOs. An absence of robust collaboration frameworks can reduce the efficacy of NGOs in disaster relief endeavors and potentially impede the autonomous recovery initiatives of the affected state's administration.

Secondly, despite provisions in numerous conventions and guidelines require that affected states should ease the access and functioning of relief workers and supplies, in reality, such resources frequently experience deployment hold-ups, often due to the intricacies of the affected state's domestic legal structure. This can impede the timely and effective execution of disaster relief efforts.

Analysis of the Above Issues

The reasons for the above problems are mainly rooted in two aspects.

The core of the initial issue lies in the affected state's inability to balance national sovereignty with human rights during a disaster. The challenge of reconciling national sovereignty with the protection of human rights in disaster scenarios has garnered international attention. In 2008, tens of thousands of people were killed by Cyclone Nargis in Myanmar. Myanmar had little capacity to deal with the disaster, but it firmly refused to external assistance. Such actions by the Myanmar government have further worsened the situation in the disaster-stricken areas. After this incident, Former French Foreign Minister Kouchner proposed extending the scope of "responsibility to protect" to international relief assistance for major disasters. The idea that the "responsibility to protect" applies to international disaster relief assistance has aroused heated debate in the international community. As far as the "responsibility to protect" theory itself is concerned, it is a people-oriented and idealistic construction of supervising state power, but there will be deviations in practice. This means that the "responsibility to protect" theory itself is unstable. Furthermore, the 2005 World Summit Outcome explicitly defines the "responsibility to protect" as applying to instances of genocide, war crimes,

ethnic cleansing, and crimes against humanity, excluding major disasters from its scope. During its sixtieth session, the International Law Commission, while evaluating the conditions for relief entities' involvement in international disaster relief, clarified that the "responsibility to protect" should not extend to the draft articles' purview regarding such relief efforts (Valencia-Ospina, 2008).

The primary cause of the second issue stems from the deficiency of robust international legal standards. Although various international legal instruments address the provision of international disaster relief, these treaties, agreements, and non-binding norms are often localized to specific regions or facets of disaster relief, and they lack the authority to adequately tackle the aforementioned challenges. For example, the Tampere Convention on the Provision of Telecommunication Resources for Disaster Mitigation and Relief Operations (hereinafter referred to as the Tampere Convention) is a framework treaty that specifically provides for the provision of electronic resources for international disaster relief assistance. The Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency is tailored to address nuclear or radiological emergencies that have extensive international implications. The Framework Convention on Civil Defence Assistance governs the entirety of civil defence collaboration among its member states. Meanwhile, Regulation No.1257/96 of the European Union Ministers outlines the responsibilities of the European Community's Humanitarian Aid Department, highlighting its role in providing assistance during crises (Wang, 2003). The ASEAN Agreement on Disaster Management and Emergency Response is recognized as the first legally binding regional treaty in the world focused on disaster relief. The Inter-American Convention on Facilitation of Disaster Assistance establishes a framework for enhancing disaster response and mitigation efforts across the Americas. Additionally, the Guidelines for Domestic Coordination and Management of International Disaster Response and Initial Recovery Assistance serve as non-binding soft law, providing recommendations for effective coordination and management during disaster situations. Conversely, international humanitarian law in the context of armed conflict is characterized by more structured and codified regulations. This contrast underscores the pressing need for legislative action concerning disasters in our present society, prone as it is to a myriad of disasters.

The Relevant Purposes and Principles of the Draft Articles

The International Law Commission addressed the subject of "Protection of Persons in the Event of Disasters" during its sixtieth session, and this subject has continued to be an agenda item in part for subsequent annual discussions. In 2016, during its second round of consideration, the International Law Commission endorsed the Draft Articles on the Protection of Persons in the Event of Disasters (hereinafter referred to as the Draft Articles).

The Purpose of the Draft Articles

Over the recent years, the incidence of catastrophic events has risen sharply, posing significant challenges to nations regardless of their level of

development, and leading to severe infringements on the human rights of those affected. To address the fundamental needs of disaster victims and enhance the safeguarding of their rights, the International Law Commission, during its sixtieth session, deliberated on the issue of "Protection of Persons in the Event of Disasters," aiming to formulate and advance relevant principles and standards for international disaster relief. Subsequently, the Commission has produced a series of eight reports elaborating on this subject. In 2016, the Drafting Committee approved the Draft Articles upon second review. By governing disaster response and risk mitigation, the Parties are enabled to more comprehensively address disasters, more efficiently lower the risks associated with them, and ultimately satisfy the fundamental needs of disaster-affected individuals while fully upholding their rights.

Principles of the Draft Articles

The Draft Articles relate to two broad principles. 1. Principle of State sovereignty. The doctrine of state sovereignty constitutes the foundational principle within the realm of international law. In 1949, the International Court of Justice stated that respect for the territorial sovereignty of States was an essential basis for international relations. While the Draft Articles do not explicitly designate state sovereignty as the fundamental principle guiding international disaster relief, they underscore this principle by reasserting the primary responsibility of affected states to deliver aid and by stipulating the necessity of their consent for any external assistance to be rendered (International Law Commission, 2016). 2. The principles of humanity, neutrality, and impartiality. Stemming from International Humanitarian Law and the foundational tenets of the Red Cross, these guidelines have been broadly embraced in the field of disaster response. They are now central to the ethos of humanitarianism and are acknowledged as the fundamental basis for undertaking disaster relief efforts. Consequently, the Draft Articles have integrated this principle for the safeguarding of individuals in disaster scenarios. In tandem with this, the Draft Articles have also incorporated the principles of non-discrimination and the safeguarding of those who are especially vulnerable.

Directions For Improving International Relief in The Event of Disasters

The Draft Articles, endorsed by the ILC during its second reading in 2016, continue to represent the most significant and authoritative international norm in the realm of soft law, prioritizing human rights protection and outlining key components in disaster situations, particularly the role of the affected State in international disaster relief. To enhance the safeguarding of individuals in disaster-stricken regions, the Commission has delineated the affected State's obligations in international disaster relief, predicated on respect for state sovereignty and humanitarian principles. These include the obligation to seek international assistance, the obligation to refrain from arbitrarily denying aid, and the obligation to engage in cooperation (Xu & Gu, 2023). Draft Articles 7 and 8 highlight the significance of international collaboration among nations in disaster response and detail various cooperation areas. These articles serve as references and guidelines for the coordination of international disaster relief efforts. They advocate for the

affected State to seek and cooperate with international disaster relief without interfering in the State's internal affairs, thereby safeguarding the lives, health, and property of those in the affected area. However, it is acknowledged that certain aspects of the aforementioned issues are still not resolved within the Draft Articles, and some content is too broad, necessitating further refinement and specificity.

During the 78th session of the General Assembly in 2023, the Chinese delegate addressed the Sixth Committee on the subject of "Protection of persons in the event of disasters," articulating China's perspective. He noted the lack of a unified opinion on developing an international convention based on the draft, with ongoing disagreements concerning several draft articles. Specifically, he observed that the draft overemphasized the obligations of the affected State without adequately balancing these with the rights and obligations of the rescuing entities. Article 11 of the draft, which obligates the affected State to request international aid, was criticized for its lack of support in global practice and legal precedent. Article 13's directive that a State in crisis should not arbitrarily deny external help was also contentious due to the ambiguity around the term "arbitrarily," which could potentially enable unjustified interference in a State's internal matters under the guise of assistance. The delegate emphasized the need for enhanced global dialogue on these issues. Furthermore, he highlighted that many nations had yet to establish comprehensive disaster response laws, indicating a pressing need for legislative advancement, particularly in light of the draft articles' adoption, which presents all countries with the challenge of refining their legal frameworks and policies pertaining to international disaster relief.

Mechanism and Positive Case

Establish an International Disaster Relief Mechanism for Countries Along the Belt and Road

As the Belt and Road Initiative's construction projects advance, the scope of collaboration between China and the nations along its routes continues to broaden. Enhancing connectivity stands as a central pillar of this initiative, with the prevention of unforeseen disasters and the establishment of systems for disaster reduction and relief emerging as critical components of the Belt and Road partnership. The intricate geographical settings of nations along the "Belt and Road" lead to frequent unforeseen natural disasters, introducing a multitude of uncertainties and potential risks to the local investment and developmental landscape. As a result, the need for a systematic international emergency response has become more urgent (Cai, 2023). On November 3, 2021, the Belt and Road Ministerial Forum on International Cooperation in Natural Disaster Prevention and Emergency Management convened in Beijing, resulting in the adoption of the Beijing Declaration on International Cooperation in Natural Disaster Prevention and Emergency Management along the Belt and Road. This declaration encompasses the management of sudden disasters and major public crises as pivotal areas of cooperation within the Belt and Road Initiative. It proposes consensus norms regarding strategic policies, emergency relief measures, post-disaster reconstruction efforts, and

financial commitments, thereby establishing a framework for international relief operations in the countries along the Belt and Road (Qian, 2023).

A Positive Case: International Relief to Tonga After Earthquake and Tsunami

On January 14, 2022, Tonga, a country along the "Belt and Road" in the Pacific Ocean, erupted a submarine volcano, triggering a violent earthquake and tsunami (The World Bank, 2022). Following the disaster, a range of international governmental and non-governmental entities, including the International Committee of the Red Cross and various NGOs, collaborated to establish a multifaceted system for international relief efforts (Zhou & Hou, 2023). This collaboration spans a broad spectrum of cooperative endeavors, encompassing everything from disaster prevention and mitigation to recovery and reconstruction efforts. There are three important lessons to be learned from the international rescue efforts in Tonga. First, international intergovernmental organizations have played a coordinating role. International relief needs to be multi-faceted, but the many UN agencies have fragmented functions and lack the coordination to act within the region. Therefore, the Pacific Humanitarian Group (PHT) has played a role in this operation as a "middle station", acting as a central agency bringing together UN organizations and other intergovernmental international organizations, coordinating the resources and information of each organization, and providing telematics support for emergency relief efforts (International Monetary Fund, 2023). Second, pertinent nations have initiated proactive rescue measures, establishing a tiered response system with Australia and New Zealand at its core, and China, Japan, the United Kingdom, France, and the United States constituting the outer ring of this collaborative effort (Field, 2022). China was also the first to organize the dispatch of supplies, send naval forces to carry out rescue missions, give full play to the humanitarian spirit, and fulfill the major responsibility of safeguarding security and stability along the Belt and Road. The third is the extensive engagement of NGOs in the response efforts. In the Tonga relief operation, NGOs (including the International Federation of Red Cross and Red Crescent, CARE-Emergency Foundation, etc.) quickly connected relief units at all levels and provided much-needed material support for social security. It has assumed a role that is indispensable within the realms of disaster mitigation and relief operations (Li & Li, 2024).

Conclusion

Is there a binding obligation for the affected nation to accept international assistance? Would the refusal to accept international aid, thereby exacerbating the plight of disaster victims, constitute a breach of international human rights law? Should the government of the affected country be considered responsible for breaches of mandatory law due to the infringement of the fundamental human rights of its own disaster victims? These problems seem very serious. The cause of these problems is nothing more than the government of the affected country refusing international assistance out of various considerations (which could include consideration of national security, government dignity, collateral responsibility, etc.). Ultimately, the government

of the affected country is asserting its national sovereignty, yet there exists a tension and conflict between this assertion and the human rights of those affected. The interplay between sovereignty and human rights remains a fundamental and enduring issue within the realm of international relations and law. The core of this issue transcends legal boundaries and delves into the realm of international politics. Regardless, as the trend of humanizing international law gains momentum, governments will increasingly prioritize the human rights of victims, and the diverse concerns and specific technical challenges faced by governments will be mitigated by advancements in science and technology. The legal obligations for disaster-affected countries to engage with international relief are becoming increasingly explicit, and the collective action of the global community in response to disasters is increasingly characterized by a shared commitment and consensus. In practical application, the establishment of an international disaster relief framework for countries along the "Belt and Road" serves as a paradigmatic solution to such issues.

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