

# Yearbook of International Disaster Law

# Yearbook of International Disaster Law

VOLUME 5 (2022)

---

## *Board of Editors*

Giulio Bartolini (*Editor-in-Chief*), *Roma Tre University* – Dug Cubie, *University College Cork* – Emanuele Sommario, *Scuola Superiore Sant'Anna (Pisa)* – Marie Aronsson-Storrier, *University College Cork* – Anastasia Telesetsky, *Cal Poly*

## *Advisory Board*

Kirsten Nakjavani Bookmiller, *Millersville University* – Gian Luca Burci, *Graduate Institute of International and Development Studies* – David Fisher, *International Federation of Red Cross and Red Crescent Societies* – Isabelle Granger, *International Federation of Red Cross and Red Crescent Societies* – Marlies Hesselman, *University of Groningen* – Walter Kälin, *University of Bern* – Jane McAdam, *UNSW Sydney* – Jacqueline Peel, *University of Melbourne* – Arnold Pronto, *UN Office of Legal Affairs* – Ki Gab Park, *Korea University, ILC Member* – Fausto Pocar, *Sanremo International Institute of Humanitarian Law* – Marco Sassoli, *Geneva University* – Eduardo Valencia-Ospina, *ILC Member* – Gabriella Venturini, *University of Milan* – Rob Verchick, *Loyola University New Orleans* – Frans Viljoen, *University of Pretoria*

## *Editorial Committee*

Federico Casolari, *University of Bologna* – Hugo Washington Cahueñas Muñoz, *University San Francisco de Quito* – Karen Da Costa, *University of Gothenburg* – Carlo De Stefano, *Roma Tre University* – Sophie Gambardella, *CNRS, Aix-Marseille Université* – John Hopkins, *University of Canterbury* – Stefan Kirchner, *University of Lapland* – Kristian Cedervall Lauta, *University of Copenhagen* – Rosemary Lyster, *University of Sydney* – Carlon Mendoza, *Climate Analytics* – Tommaso Natoli (Head of the Editorial Committee), *International Federation of Red Cross and Red Crescent Societies and Italian Red Cross* – Stefania Negri, *University of Salerno* – Nicholas Wasonga Orago, *University of Nairobi* – Matthew Scott, *Raoul Wallenberg Institute of Human Rights and Humanitarian Law* – Andrew R. Slaten, *Millersville University* – Emika Tokunaga, *Osaka University* – Diego Zannoni, *University of Padova* – Flavia Zorzi Giustiniani, *Link Campus University*

The titles published in this series are listed at [brill.com/yidl](http://brill.com/yidl)

# Yearbook of International Disaster Law

*Volume 5 (2022)*

*Edited By*

Giulio Bartolini  
Marie Aronsson-Storrier  
Dug Cubie  
Emanuele Sommario  
Anastasia Telesetsky



BRILL | NIJHOFF

LEIDEN | BOSTON

Typeface for the Latin, Greek, and Cyrillic scripts: "Brill". See and download: [brill.com/brill-typeface](https://brill.com/brill-typeface).

ISSN 2666-2531

ISBN 978-90-04-69303-6 (hardback)

DOI 10.1163/26662531\_00501

Copyright 2024 by Koninklijke Brill BV, Leiden, The Netherlands, except where otherwise stated.

Koninklijke Brill BV incorporates the imprints Brill, Brill Nijhoff, Brill Schöningh, Brill Fink, Brill mentis, Brill Wageningen Academic, Vandenhoeck & Ruprecht, Böhlau and V&R unipress.

All rights reserved. No part of this publication may be reproduced, translated, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise, without prior written permission from the publisher. Requests for re-use and/or translations must be addressed to Koninklijke Brill BV via [brill.com](https://brill.com) or [copyright.com](https://copyright.com).

This book is printed on acid-free paper and produced in a sustainable manner.

# Contents

Editorial Issue No. 5 (2022) IX

## *Thematic Section: Human Rights and Disasters*

YIDL Dialogues with Practitioners #2: Dr Volker Türk, UN High Commissioner for Human Rights 3

*A Dialogue with Marie Aronsson-Storrier and Emanuele Sommario*

Trafficking in Persons in the Context of Climate-Related Disasters and Displacement: a Failure of Protection and Prevention 11

*Siobhán Mullally and Keelin Barry*

Lessons from COVID-19 with Respect to the Positive Obligations of States to Protect Older Persons in the Event of Disasters 32

*Susan Breau*

Emergencies in the Inter-American Human Rights System: the Example of Ecuador in Times of COVID-19 58

*Christina Binder*

A Human Rights-Based Approach to Disaster Risk Management in Greenland: Displacement, Relocation, and the Legacies of Colonialism 77

*Miriam Cullen, Benedicte Sofie Holm, and Céline Brassart-Olsen*

The Prevention of Disasters Related to Natural Hazards in the Practice of Human Rights Courts and Treaty Bodies: towards a DRR Approach 101

*Federica Passarini*

Sexual and Gender Minorities and the Right to Non-discrimination: a Shortfall of Disaster Risk Reduction? 133

*Holly A. Seglah and Kevin Blanchard*

Exploring the Role of the National Human Rights Commission in Climate-Induced Disaster Displacement in India: Lessons from Sri Lanka and the Philippines 163

*Stellina Jolly and Chhaya Bhardwaj*

Human Rights Restrictions Prompted by the COVID-19 Pandemic:  
Uncertainties and Differences in the Practice of ECHR Parties 197  
*Kumush Suyunova*

### ***General Section***

Legal Form and Competing Framings of Cross-Border Disaster Displacement  
in the Context of Climate Change 227  
*Tuomas Palosaari*

The Impact of the COVID-19 on Contested Territorial Entities of Eastern  
Europe: between Isolation and Cooperation 255  
*Natalia Cwicinskaja*

International Disaster Law in Honduras: the Role of the Red Cross and IFRC  
in Integrating International Guidelines into the Domestic Legal System 291  
*Rebeca Isabel Muñoz Arosemena*

### ***International Disaster Law in Practice***

Developments within the UN System (2022) 317  
*Emanuele Sommario*

UN Office for Disaster Risk Reduction (2022) 330  
*Marie Aronsson-Storrier*

Non-State Humanitarian Actors (2022) 337  
*Tommaso Natoli*

Asia (2022) 347  
*Emika Tokunaga*

Africa and MENA Regions (2022) 353  
*Nicholas Wasonga Orago*

Europe (2022) 368  
*Federico Casolari*

- North and Central America (2022) 378  
*Andrew R. Slaten*
- Caribbean (2022) 387  
*Carlton Mendoza*
- South America (2022) 395  
*Hugo Cahueñas*
- Pacific (2022) 404  
*Silke Clausing and W. John Hopkins*
- Polar Regions (2022) 414  
*Stefan Kirchner*
- Climate Change Law (2022) 421  
*Rosemary Lyster*
- International Human Rights Law (2022) 435  
*Marlies Hesselman*
- Regional Human Rights Bodies (2022) 456  
*Flavia Zorzi Giustiniani*
- International Cultural Heritage Law (2022) 465  
*Flavia Zorzi Giustiniani*
- International Economic Law (2022) 468  
*Carlo de Stefano*
- South Sudan (2021–2022) 482  
*Stella Ngugi*
- Sources of IDL: Focus on General Principles of Law 493  
*Dug Cubie*
- International Environmental Law (2022) 502  
*Sophie Gambardella*

- International Health Law (2022) 510  
*Stefania Negri*
- Law of the Sea (2022) 523  
*Anastasia Telesetsky*
- Law and Human Mobility (2022) 531  
*Matthew Scott*
- Space Law (2022) 541  
*Diego Zannoni*
- Review of Books***  
*Edited by Tommaso Natoli*
- Marie Aronsson-Storrier and Rasmus Dahlberg (eds.), *Defining Disaster – Disciplines and Domains* 551  
*Karen da Costa*
- Jonathan Verschuuren (ed.), *Research Handbook on Climate Change Adaptation Law* 559  
*Tommaso Natoli*
- Andrea de Guttery, Micaela Frulli, Federico Casolari, Ludovica Poli (eds.), *International Law and Chemical, Biological, Radio-Nuclear (CBRN) Events – Towards an All-Hazards Approach* 566  
*Daniel Rietiker*
- Bibliographical Index of International Disaster Law (2022) 577  
*Edited by Giulio Bartolini*
- Index 584



## Editorial Issue No. 5 (2022)

With the publication of this fifth volume of the Yearbook of International Law, disasters unfortunately continue to feature as a consistent part of national experiences. No country is immune from disasters. As marked by the publication in 2022 of the new edition of the World Disaster Report elaborated by the IFRC, not only has the COVID-19 pandemic been the biggest disaster in living memory, on almost any measure, but data collected in relation to disasters that occurred during the last decade confirms the rising proportion of disasters linked to climate and weather and disease outbreaks. As a consequence, it is becoming increasingly common for disasters to overlap in time and/or space with multiple disasters occurring simultaneously or in rapid succession.

Behind all of these statistics of quantification are real people struggling in the aftermath of an event while piecing together their individual and community lives that have been forever changed by catastrophic losses. Both during and after a disaster, individuals face many forms of instability including not just loss of community but also potential discrimination and violence as individuals attempt to rebuild and recover. This year's volume is therefore dedicated to understanding the human rights impacts associated with disaster risk reduction, disaster relief, and disaster-related displacement.

In particular, the contributions to the thematic section of the yearbook on 'Human Rights and Disaster Law' seek to understand how States can implement Article 5 of the International Law Commission's draft articles on the protection of persons in the event of disasters which recognises that 'Persons affected by disasters are entitled to the respect for and protection of their human rights in accordance with international law'. Given the increase in large-scale disasters, what does this respect for and protection of human rights look like in practice? What obligations does a State have to regulate activities likely to increase the exposure of individual residents to disaster risks or to warn individuals of potential risks? While much of existing disaster law focuses on the operational applications of the law, when human rights law intersects with disasters then the implementation of disaster law becomes not only more complex but also more personal and, arguably, socially relevant.

In the second of our series of Dialogues with Practitioners, the new UN High Commissioner for Human Rights, Volker Türk reflects on his career within the UN system, the global response to the COVID-19 pandemic, and the centrality of human rights in the ILC draft articles on the protection of persons in the event of disasters. He also stresses the interconnections between human rights

law, refugee law, and the increasing levels of climate change-related migration and displacement seen globally.

The thematic section on human rights and disasters commences with an article by Siobhán Mullally, UN Special Rapporteur on trafficking in persons, especially in women and children, and Keelin Barry examining the increased risks of trafficking in persons arising as a result of sudden onset disasters, in particular climate-related disasters. The article highlights the obligations of States to prevent and respond to the trafficking of persons and emphasises that the heightened risks of trafficking in such situations are rooted in existing and persistent inequalities, poverty and discrimination. The article flags the specific risks faced by particular groups, such as women and children, LGBT persons and persons of diverse gender identities, and persons with disabilities. In particular, the article recognises that understanding 'the intersections of discrimination and exclusion that exacerbate the negative impact of climate-related disasters is essential to the effective prevention of trafficking in persons'.

The COVID-19 emergency inevitably features in many of this year's contributions. The restrictions States had to impose on many fundamental rights begged once more the question of the delicate balancing between individual rights and collective interests. Susan Breau's contribution examines the response to COVID-19 in Canada, the United States and the United Kingdom to illuminate the existing lacunae concerning older persons in disaster law and international human rights law. Breau persuasively argues for greater attention to be paid to the ways in which older persons (over 65 years of age) are considered in international law and criticises both the ways in which their deaths during the COVID-19 pandemic occurred, and how they have been reported and analysed since.

In her article, Christina Binder describes the policies implemented by Ecuador, in light of the legal framework established under the American Convention on Human Rights. She emphasizes the role of the Ecuadorian Constitutional Court in upholding checks and balances and securing effective judicial-constitutional control in times of emergency. The Court's judicial activism could indeed serve as a model of how domestic courts should oversee and control the Executive's use of emergency powers, while at the same time drawing on international human rights standards to define the relevant legal parameters.

Taking into account the increasing disaster risk in the Arctic, Miriam Cullen, Benedicte Sofie Holm, and Céline Brassart-Olsen explore how the historical colonial relationship between Greenland and Denmark affects current approaches to disaster risk reduction and argue for human rights-based

approaches as an avenue towards advanced resilience. Using the example of the 2017 Karrat Fjord tsunami, the article illuminates the challenges associated with ensuring equity and non-discrimination between rights-holders in the context of disaster within legal arrangements between a State and a self-governing territory.

A proper protection of victims of disasters might also imply the need for an increased cross-fertilisation between specific inputs provided by global initiatives dealing with disaster risk reduction, particularly the Sendai Framework, and the interpretation of human rights norms given by international human rights courts and bodies in cases of individuals' exposure to hazards. In this regard Federica Passerini argues that, traditionally, such bodies were not in line with disaster risk reduction approaches resulting from the Sendai Framework. However, some trends are emerging from more recent practice, which points to an approach which more consistently corresponds with that in the Sendai Framework by properly factoring the risk of hazards into the assessment of human rights obligations of States parties.

Holly Seglah and Kevin Blanchard use queer legal theory to challenge the heteronormativity of international disaster law. Focusing predominantly on DRR instruments, their article argues that these instruments fail to protect sexual and gender minorities from discrimination in disasters, and calls for further promotion of the right to non-discrimination in DRR law, policy and practice.

The important role played by national human rights institutions is examined in Stellina Jolly and Chhaya Bhardwaj's article, which focuses on the lessons which can be learnt from the work of the Sri Lanka and Philippines national institutions. In particular, Jolly and Bhardwaj examine the extensive internal displacement within India arising from sudden and slow-onset climate-related disasters, with an estimated 44 million people likely to be displaced annually by 2059. Their article explores the role of the Indian National Human Rights Commission in locating and securing the human rights of communities by investigating and monitoring the Government's responses to climate-induced disasters and consequent internal displacement.

Kumush Suyunova focuses instead on a much-debated issue, namely if and how far derogating from human rights treaties was really necessary to introduce restrictive measures capable of dealing with the COVID-19 pandemic. She carries out her analysis in light of the case law of the European Convention of Human Rights, and interestingly concludes that the choice between ordinary limitations and derogations does not exclusively depend on the type of threat that governments are confronting, but also on the level of preparedness of each of the affected states.

The general section of this year's volume commences with an analysis of how the issue of climate displacement has been framed in international discourse and institutions. Tuomas Paalosari's article provides an in-depth critique of the framing of climate displacement via an examination of the Global Compact on Safe, Orderly and Regular Migration and the Task Force on Displacement under the UN Framework Convention on Climate Change, and argues that the extensive use of informal international law (IN-LAW) within these regimes reinforces and subdues specific framings, but also allows for the development of transformative understandings of climate change displacement.

Disasters do not recognise borders. However, as analysed by Natalia Cwiczinskaja, this is not the case for international law as experienced with the complex response to COVID-19 carried out by a series of contested territorial entities present in Eastern Europe. This scenario raises a series of legal issues both regarding the legal framework concerning the responsibility of relevant actors under international law, as well as the degree of openness of the concerned de facto authorities to cooperation with States to which their territory formally belongs and international organisations.

Rebecca Munoz finally brings theoretical reflections into real domestic regulatory dynamics, identifying and illustrating actors and processes that led the Republic of Honduras to adopt the first 'International Disaster Response Law' of its kind in the entire American region. As will be illustrated, the development and adoption of the law follows many years of research and advocacy by the Honduras Red Cross (HRC) and the technical support provided by the International Federation of Red Cross and Red Crescent Societies' Disaster Law Program (IFRC DL)

Issue no. 5 is also enriched by more than 20 contributions present in the section 'International Disaster Law in Practice'. Through dynamic reviews of practice pertaining to 2022 by international and regional actors, as well as by thematic focuses, this section provides a comprehensive overview of legal and policy initiatives in this area of law. In this regard the current issue is also characterised by a new section devoted to the Caribbean in order to mark the relevant contribution provided to international disaster law by multiple regional and national actors operating in this region.

Finally, the volume is complemented by the review of scholarship dealing with international disaster law published in 2022 and three book reviews focusing on collaborative volumes. Through cross-disciplinary approaches to the definition of disasters, a comprehensive analysis of legal implications of climate change adaptation and a focused analysis on chemical, biological, radiological, or nuclear (CBRN) events, these volumes will certainly be able to

shape the legal debate in their areas of research. As usual, the editors are particularly grateful to the fundamental support provided by Dr. Tommaso Natoli, head of the Editorial Committee, for his generous assistance in the management of this issue.

Giulio Bartolini (Editor-in-chief)  
Marie Aronsson-Storrier,  
Dug Cubie,  
Emanuele Sommario,  
Anastasia Telesetsky