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# Humanitarian Assistance and International Law (2019)

*Dug Cubie**

## 1    Overview of Humanitarian Assistance in 2019

The extensive bushfires which devasted huge areas of territory in Australia between October 2019 and January 2020 came to symbolize both the increased risks arising from climate change which the world is facing but also the lack of political will to tackle the root causes of such risks.[1] A total of 34 people were killed in the fires, including three US firefighters who died when their plane crashed, as well as an estimated one billion wild animals.[2] Earlier in the year, southern Africa was struck by an unprecedented two tropical cyclones in quick succession.[3] Mozambique was particularly badly affected when Cyclone Idai hit in March 2019, followed by Cyclone Kenneth the next month. A total of 1.276 people were killed across Mozambique, Zimbabwe and Malawi, while over 2.2 million people required humanitarian assistance in Mozambique alone.[4] In addition to major flooding in Iran, China and India, 2019 saw a series of epidemics with Ebola continuing to rage in the Democratic Republic of Congo and outbreaks of measles in the Philippines.[5] Meanwhile, the first reports of

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1    Lenore Taylor, 'If the bushfires won't force climate policy change, we need to circumvent Scott Morrison', The Guardian (Syndey, 16 January 2020) <https://www.theguardian.com/australia-news/2020/jan/17/if-the-bushfires-wont-force-climate-policy-change-we-need-to-circumvent-scott-morrison> last accessed (as any subsequent URL) on 20 March 2020.

2    Centre for Disaster Philanthropy, '2019–2020 Australian Bushfires' (17 February 2020) <https://disasterphilanthropy.org/disaster/2019-australian-wildfires/>; Damien Cave and Isabella Kwai, '3 U.S. Firefighters Die in Plane Crash as Australia's Blazes Intensify', The New York Times (New York, 23 January 2020) <https://www.nytimes.com/2020/01/23/world/australia/plane-crash-fires.html>; Lisa Cox, 'A billion animals: some of the species most at risk from Australia's bushfire crisis', The Guardian (Sydney, 13 January 2020) <https://www.theguardian.com/australia-news/2020/jan/14/a-billion-animals-the-australian-species-most-at-risk-from-the-bushfire-crisis>.

3    UNOCHA, 'Cyclones Idai and Kenneth' (no date) <https://www.unocha.org/southern-and-eastern-africa-rosea/cyclones-idai-and-kenneth>.

4    Figures from Centre for Research on the Epidemiology of Disasters, International Disaster Database (EM-DAT) <https://www.emdat.be/>.

5    Christian Aid, Counting the Cost 2019: A Year of Climate Breakdown (December 2019) 11–14; UNOCHA, Global Humanitarian Overview 2020 (Geneva, 10 December 2019) 19.

a new flu-like infection in Wuhan, China emerged in December 2019, in what came to be known as COVID-19.[6]

UNOCHA's 'Global Humanitarian Overview 2020' highlighted the fact that climate change is leading to an increasing number of extreme weather events, which in turn exacerbates vulnerability to future humanitarian crises, in particular hunger and global food crises.[7] In fact, UNOCHA acknowledged that due to the increasing number of armed conflicts and extreme climate events, it had underestimated the likely humanitarian needs for 2019.[8] On a slightly more positive note, as the global insurance company Munich Re noted in their end of year report, the recent trend of reducing fatalities as a direct result of disasters was evident during 2019, with total fatalities well below the 30-year average. However, the financial impact of disasters has increased dramatically over the same period, and the total cost of disasters in 2019 was only lower than the past three years.[9] These trends highlight the positive impacts of disaster risk prevention, mitigation and reduction measures on saving lives, but also have implications for the types of humanitarian assistance and longer-term recovery and rehabilitation activities which may be required.

It is important to note two issues which can complicate an analysis of the extent of humanitarian assistance provided for disasters, whether geophysical, hydrometeorological or technological. First of all, due to the existence of complex inter-linked emergencies in many countries, it can be hard to separate humanitarian assistance which is aimed at tackling the effects of armed conflict or population displacement from that provided for disasters. The second issue which can complicate direct comparisons is the fact that due to the reporting timetables of many organisations, the final statistics for the preceding year are often only available many months later. As a result, some of the relevant reports regarding humanitarian action published during 2019 relate to events that occurred in 2018. Conversely, UNOCHA's 'Global Humanitarian Overview 2020' (published in December 2019) identifies trends from 2019 and projects these forward for future planning purposes.

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6   UN World Health Organisation, Report of the WHO-China Joint Mission on Coronavirus Disease 2019 (COVID-19) (16–24 February 2020).

7   UNOCHA (n 5) 17.

8   *Ibid.*, 4.

9   Petra Löw, 'Tropical Cyclones Cause Highest Losses: Natural Disasters of 2019 in Figures', Munich Re (9 January 2020) <https://www.munichre.com/topics-online/en/climate-change -and-natural-disasters/natural-disasters/natural-disasters-of-2019-in-figures-tropical -cyclones-cause-highest-losses.html>.

Keeping these caveats in mind, one of the most comprehensive statistical analyses of governmental and non-governmental humanitarian funding and activities is found in the 'Global Humanitarian Assistance Report' (GHA report), which is written and researched by the NGO Development Initiatives. The 2019 GHA report recorded a headline figure of US $28.9 billion for all humanitarian activities in 2018, which was a marginal increase from 2017.[10] However, this follows a period of strong growth in humanitarian assistance funding which has seen an overall increase of 30% over the past five years. Despite this growth, the need for humanitarian assistance remains acute and underfunded with only 61% of the UN's consolidated appeal for 2018 receiving funding from donors.[11] Of the 40 countries which had the largest populations in need of humanitarian assistance in 2018, 27 experienced forced displacement while 24 suffered from armed conflict and 18 faced disasters. Reflecting the complex interaction of different types of humanitarian crisis, of those 40 countries facing the highest humanitarian needs, 23 experienced more than one type of humanitarian crisis, and six experienced all three types.[12]

As a proxy measure of the different levels of humanitarian assistance for armed conflict, displacement and disasters, one can compare the funding received by the International Committee of the Red Cross (ICRC), which works primarily in armed conflict settings, and the International Federation of Red Cross and Red Crescent Societies (IFRC) which is responsible for preparation for and response to disasters. In 2018, the ICRC received US $1.7 billion, and has seen an increase of 29% in funding since 2014, while the IFRC received US $372 million, a growth of 10% since 2014.[13] Of note, reflecting the adage that prevention is better than cure, the 2019 GHA report identified a positive trend of donors earmarking funding specifically for disaster risk reduction (DRR) measures. Examining the figures for the period 2014–17, the GHA report noted a 25% increase in dedicated DRR funding – from US $8.3 billion in 2014 to US $10.4 billion in 2017. Moreover, there was a 62% increase in the amount of DRR funding going to high-risk countries – from US $3.5 billion in 2014 to US $5.7 billion in 2017.[14]

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10    Development Initiatives, Global Humanitarian Assistance Report 2019 (2019) 10–11.
11    *Ibid.*, 12.
12    *Ibid.*, 22.
13    *Ibid.*, 35.
14    *Ibid.*, 60.

## 2       Key Issues in Humanitarian Policy and Practice

### 2.1       *Aid Worker Security*

As in previous years, the threats that humanitarian staff face were starkly to the fore during 2019. The 'Aid Worker Security Report 2019' (AWS report) recorded a total of 405 aid workers affected by major violence in 226 separate incidents, resulting in 131 aid workers killed, 144 injured and 130 kidnapped.[15] Incidents included: attacks on health workers tackling the Ebola outbreak in the Democratic Republic of Congo;[16] the execution of four staff of Action Against Hunger in Nigeria's north-eastern Borno State in December 2019 after being held captive for five months;[17] and an assault and robbery of staff in the Relief International offices in Bunj, South Sudan.[18] The AWS report 2019 specifically focused on the threat of sexual violence against aid workers, and flagged the limited available data on sexual violence and gender differentiation of attacks on aid workers. The report highlighted that the Aid Worker Security database has only recorded 29 incidents of sexual violence against female aid workers since 1997, which clearly does not accurately reflect the number of attacks which female aid workers will have suffered.[19] As a result, the report stressed that: 'Much of what we think we know about gender-based risks and appropriate mitigation strategies is based on assumptions that lack empirical support'.[20] Moreover, the report also highlighted that sexual violence is one of the few forms of attacks on aid workers where the perpetrator may be a colleague within their own organisation.[21]

### 2.2       *Sexual Exploitation and Abuse*

Following the wide-spread condemnation of sexual violence perpetrated by aid workers that was reported during 2018,[22] the AWS report also highlighted

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15    Humanitarian Outcomes, Aid Worker Security Report 2019 – Updated (August 2019) 3–5.

16    *Ibid.*, 6.

17    UNOCHA, 'Nigeria: The Humanitarian Coordinator condemns the reported killing of four aid workers', Press release (13 December 2019).

18    UNOCHA, 'Humanitarian Coordinator condemns attacks on aid workers in South Sudan', Press release (2 December 2019).

19    Humanitarian Outcomes (n 15) 9. See also: European Interagency Security Forum, Managing Sexual Violence Against Aid Workers: Prevention, Preparedness, Response and Aftercare (2019).

20    *Ibid.*, 10.

21    *Ibid.*, 2.

22    See Dug Cubie, 'International Law and Humanitarian Assistance 2018', (2019) 1 Yearbook of International Disaster Law, 409, 413–4.

the dearth of information on the scale of sexual exploitation and abuse of disaster-affected populations by aid workers. As part of the UN response to sexual exploitation and abuse (SEA) by aid workers, in May 2019 the Inter-Agency Standing Committee published a summary of good practices on tackling SEA based on three key elements: 1) Encouraging victims to come forward and a speak-up culture; 2) Improving quality, survivor centred support and protection; and 3) Strengthening vetting, reference-checking, investigation processes and disciplinary measures.[23] In September 2019, the UN Secretary General published a bulletin for UN staff on addressing discrimination, harassment, including sexual harassment, and abuse of authority;[24] while the UN Protocol on the Provision of Assistance to Victims of Sexual Exploitation and Abuse, first developed in 2017 by the UN's Conduct and Discipline Service and UNICEF, was endorsed by the UN's High-level Steering Group on sexual exploitation and abuse on 12 December 2019.[25] This new Protocol supplements the UN Protocol on Allegations of Sexual Exploitation and Abuse involving Implementing Partners which was finalised in March 2018.

## 2.3      *International and Regional Policy and Practice*

The UN Convention on the Rights of Persons with Disabilities (CRPD), adopted in 2006, is currently the only global human rights law instrument which includes a specific reference to humanitarian assistance and disasters. Article 11, entitled 'situations of risk and humanitarian emergencies', states:

> States Parties shall take, in accordance with their obligations under international law, including international humanitarian law and international human rights law, all necessary measures to ensure the protection and safety of persons with disabilities in situations of risk, including situations of armed conflict, humanitarian emergencies and the occurrence of natural disasters.[26]

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23    Inter-Agency Standing Committee, Summary of IASC Good Practices: Preventing Sexual Exploitation and Abuse and Sexual Harassment and Abuse of Aid Workers (May 2019).

24    UN Secretariat, Secretary General's Bulletin: Addressing discrimination, harassment, including sexual harassment, and abuse of authority (10 September 2019) UN Doc: ST/SGB/2019/8.

25    For full details, see UN, Factsheet on the Secretary-General's initiatives to prevent and respond to sexual exploitation and abuse (20 December 2019) <https://www.un.org/en/pdfs/Fact%20sheet%20UN%20System-wide%20SEA%20Initiatives_20191220.pdf>.

26    UN General Assembly, Convention on the Rights of Persons with Disabilities (24 January 2007) UN Doc. A/RES/61/106.

Reflecting the specific situation and potential vulnerability of persons with disabilities in disaster settings, in July 2019 the UN Inter-Agency Standing Committee (IASC) published detailed guidelines on the inclusion of persons with disabilities in humanitarian action.[27] The guidelines have four specific objectives: 1) to provide practical guidance; 2) to increase capacity among humanitarian stakeholders; 3) to highlight accountability and describe the roles and responsibilities of humanitarian stakeholders; and 4) to increase and improve the participation of persons with disabilities and organisations in preparedness, response and recovery.[28] In elaborating the legal and policy framework applicable, the guidelines stress that the rights set out in the CRPD, including Article 11, should be incorporated into all humanitarian interventions.[29] Additionally, the text highlights applicability of the relevant bodies of international law, such as human rights, humanitarian and refugee law, alongside policy frameworks such as the UN's Agenda 2030 and Sustainable Development Goals, the Sendai Framework on Disaster Risk Reduction (2015–2030), and the outcome documents of the 2016 World Humanitarian Summit.[30]

Meanwhile, during its 74th session in December 2019, the UN General Assembly (UNGA) adopted and updated a series of resolutions relating to humanitarian assistance. In particular, UNGA Resolution 74/115 encouraged Member States to:

> strengthen operational and legal frameworks for international disaster relief and initial recovery, to adopt and implement national laws and regulations, as appropriate, 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.[31]

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27    Inter-Agency Standing Committee, Guidelines on the Inclusion of Persons with Disabilities in Humanitarian Action (July 2019) – compiled by the IASC Task Force on the Inclusion of Persons with Disabilities in Humanitarian Action and endorsed by the IASC in October 2019.

28    *Ibid.*, 1.

29    *Ibid.*, 5.

30    *Ibid*, 6–7.

31    UN General Assembly, Res. 74/115, International Cooperation on Humanitarian Assistance in the field of Natural Disasters, from Relief to Development (16 December 2019) UN Doc. A/74/115, para.18.

At the global level, UNGA Resolution 74/118 requested that the UN Emergency Relief Coordinator continue his efforts to strengthen the coordination and accountability of humanitarian assistance and leadership within the UN humanitarian response system, and emphasised the need for enhancing the accountability of humanitarian actors at all stages of humanitarian assistance.[32]

Two major conferences which occurred during 2019 were the Global Platform for Disaster Risk Reduction and the 33rd International Conference of the Red Cross and Red Crescent. The Global Platform for DRR is a biennial multi-stakeholder forum established by the UN General Assembly to review progress, share knowledge, and discuss the latest developments and trends in reducing disaster risk. Organised by the UN Office for Disaster Risk Reduction (UNDRR), the Global Platform is also a critical component of the monitoring and implementation process of the Sendai Framework for DRR. As noted in the Co-Chair's summary of the conference, 'international cooperation and multilateral action remain essential to manage the global and systemic nature of disaster risk and to provide the necessary support to developing countries'.[33] Additionally, various countries at the conference called on donors and international financial institutions to integrate DRR activities into their development assistance, including dedicated mechanisms for vulnerable and exposed countries in debt distress.[34]

In December 2019, the 33rd International Conference of the Red Cross and Red Crescent brought together the different components of the international RCRC Movement with state parties to the 1949 Geneva Conventions, as well as other humanitarian actors. Of particular relevance were two of the resolutions adopted at the conference – Resolution 2 addressing the mental health and psychosocial needs of people affected by armed conflicts, natural disasters

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32    UN General Assembly, Res. 74/118, Strengthening of the Coordination of Emergency Humanitarian Assistance of the United Nations (16 December 2019) UN Doc. A/74/118, paras. 2 & 14.

33    Global Platform for Disaster Risk Reduction, Co-Chairs' Summary, *Resilience Dividend: Towards Sustainable and Inclusive Societies* (13–17 May 2019), para. 37. For more details on the Global Platform, see: <https://www.unisdr.org/conference/2019/globalplatform/home> and the contribution by Marie Aronsson-Storrier on the UN Office of Disaster Risk Reduction in this issue.

34    *Ibid.*, para. 29.

and other emergencies,[35] and Resolution 7 on disaster laws and policies that leave no one behind.[36] Of note, the disaster law resolution reiterated:

> the importance of strong laws and policies on the facilitation and regulation of international disaster relief and on domestic risk reduction, and the usefulness of the IDRL Guidelines and the Checklist on Law and Disaster Risk Reduction as non-binding assessment tools to help States, when applicable, to review domestic legal frameworks for, respectively, the management of international assistance and disaster risk reduction at the national, provincial and local level.[37]

At a regional level, in January 2019 the European Union's External Action Service published a working paper on 'Effective CIVMIL Coordination in Support of Humanitarian Assistance and Disaster Relief.'[38] Building on the EU's 2007 'Consensus on Humanitarian Aid',[39] and the UN's 'Oslo Guidelines' on civil-military cooperation in disaster relief,[40] the paper aims to provide concise practical and operational guidance to military and civilian actors working in disaster relief. The paper emphasises the importance of effective civil-military cooperation and adherence to humanitarian principles,[41] as well as the need to promote respect for international law. In particular, the paper highlights the

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35    33rd International Conference of the Red Cross and Red Crescent, Resolution 2: Addressing mental health and psychosocial needs of people affected by armed conflicts, natural disasters and other emergencies (9–12 December 2019) 33IC/19/R2. For more details on the 33rd International Conference, see the contribution by Tommaso Natoli in this issue.

36    33rd International Conference of the Red Cross and Red Crescent, Resolution 7: Disaster laws and policies that leave no one behind (9–12 December 2019) 33IC/19/R7.

37    *Ibid.*, para. 5. See also: IFRC, The Checklist on Law and Disaster Preparedness and Response (Geneva, November 2019); IFRC, Law and Disaster Preparedness and Response: Multi-Country Synthesis Report (Geneva, November 2019); IFRC, Law and Disaster Preparedness and Response: Literature Review (Geneva, November 2019); and IFRC, Fourth Progress Report on the Implementation of the Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance (Geneva, November 2019).

38    Council of the European Union (European Union Military Committee), EU Concept on Effective CIVMIL Coordination in Support of Humanitarian Assistance and Disaster Relief (30 January 2019) 5536/19 – EEAS (2018) 1293 REV5.

39    European Union, European Consensus on Humanitarian Aid (2007) OJEU 2008 C25 01.

40    UN Office for the Coordination of Humanitarian Affairs, Guidelines on the Use of Foreign Military and Civil Defence Assets in Disaster Relief (Revision 1.1, November 2007).

41    CEU, Effective CIVMIL Cooperation (n 38) 7.

important role played by international humanitarian and human rights law, gender sensitivity and UN Security Council Resolution 1325 on Women, Peace and Security, and the protection of civilians.[42]

Staying within the European region, in advance of the 33rd International Conference of the Red Cross in December 2019, the Council of Ministers of the European Union adopted a series of conclusions on humanitarian assistance and international humanitarian law.[43] Alongside a reaffirmation of the EU's strong commitment to respecting international humanitarian law and the Geneva Conventions, the Council Conclusions reiterated the importance of protecting the humanitarian space and that 'all states and parties to armed conflicts respect their obligation to allow and facilitate the rapid and unimpeded passage of humanitarian relief'.[44] In the context of disasters, the Council Conclusions highlight that the implementation of the Sendai Framework for DRR is a key objective for the EU, as well as reiterating the benefits of prevention and anticipatory action in saving lives and in reducing material damage, and acknowledging the humanitarian impact of climate change.[45]

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42    *Ibid.*, 14–15.
43    Council of the European Union, Humanitarian Assistance and International Humanitarian Law – Council Conclusions (25 November 2019) 14487/19. See also Council of the European Union, General Secretariat, Working Party on Public International Law (COJUR), Report on the EU Guidelines on Promoting Compliance with International Humanitarian Law: July 2017 – December 2018 (Brussels, June 2019).
44    *Ibid.*, 4. See also ACAPS, CrisisInSight: Humanitarian Access Overview (Geneva, May 2019).
45    *Ibid.*, 7.