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2. Identifying Principles of International Disaster Law

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Abstract: There is still debate as to whether or not international disaster law can or should be viewed as a distinct branch of international law. This chapter argues that identifying key legal principles applicable to disasters can provide one way of clarifying some of the contours and limitations of international disaster law. The chapter commences with a discussion of principles as a source of international law from the perspective of general principles of law. It then explores the role of specialised principles of international law, including analysis of principles found within established branches of the law, such as international humanitarian law and international environmental law. The chapter concludes by considering potential principles which might be applicable in the context of disasters and the next steps for expanding our understanding of the sources of international disaster law.

Keywords: International disaster law; principles of international law; sources of international law; general principles of law; evolution of international law; disasters

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1. INTRODUCTION

Over the past 20 years, a wide range of national, regional and international laws relating to disasters have emerged – primarily driven by the desire of states and non-state humanitarian actors for greater legal clarity in disaster prevention, response and recovery.[1] In parallel with this expanding *corpus* of specialised laws applicable in disasters, the emerging field of international disaster law has faced increasing academic scrutiny and analysis.[2] As Giulio Bartolini noted in the Editorial to the inaugural volume of the *Yearbook of International Disaster Law*: "it is now possible to define the international legal perimeters of reference addressing challenges posed by disasters."[3] However, he continued: "Nevertheless, the patchwork nature of the evolving legal framework presents several elements of concern in

[1] Arguably, the modern field of international disaster law can be traced to the call for the establishment of an "international disaster response law" in the 2000 World Disasters Report. See: International Federation of Red Cross and Red Crescent Societies (IFRC), 'World Disasters Report: Focus on Public Health' (IFRC 2000), Chapter 8 'Towards an International Disaster Response Law', 154-157.
[2] As evidenced by the publication of the first edition of this Handbook in 2016, and this subsequent second edition.
[3] Guido Bartolini, 'Editorial – Charting an Emerging Subject: The Role of the Yearbook of International Disaster Law' (2018) 1 Yearbook of International Disaster Law 1, 1.

terms of coherence and effectiveness, resulting in the need for critical analysis and identification of theoretical and practical challenges posed by disasters."[4]

Indeed, there is still debate as to whether or not international disaster law can or should be viewed as a distinct branch of international law. For example, there is currently no universal binding treaty on international disaster law (comparable to, say, the Geneva Conventions in the field of international humanitarian law),[5] and despite extensive state practice of providing humanitarian assistance to states in crisis, further research is required to discern whether there exists the necessary *opinio juris* required to elevate such practice into binding customary international law.[6] Moreover, as this current Handbook clearly shows, the laws relating to disasters are much broader than just the immediate emergency response phase; which in turn begs the question, what role (if any) do rules relating to disaster risk reduction or post-disaster recovery and rehabilitation play in the field of international disaster law? Recognising this state of flux, one can argue that disaster law is a discipline which is searching for consensus as to its applicability and reach.[7] Therefore, this chapter utilises the following definition:

> International disaster law (IDL) focuses on the legal issues arising from the prevention of, response to and recovery from different natural hazards, such as earthquakes or storms, as well as human-made disasters such as large-scale industrial accidents.[8]

To identify the substantive content and boundaries of this new field of law, it is helpful to return to basics – namely the sources of international law set out in Article 38(1) of the Statute of the International Court of Justice (ICJ).[9] As most introductory texts on public international law

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[4] Ibid.

[5] See for example: Giulio Bartolini, 'A Universal Treaty for Disasters? Remarks on the International Law Commission's Draft Articles on the Protection of Persons in the Event of Disasters' (2017) 99 International Review of the Red Cross 1103.

[6] The International Law Commission's work on identification of general principles of law has noted the close relationship between customary international law (CIL) and general principles. For discussion, see: UN General Assembly (UNGA), 'Third report on general principles of law', Marcelo Vázquez-Bermúdez, Special Rapporteur (18 April 2022) UN Doc A/CN.4/753 – Part Three 'The functions of general principles of law and their relationship with other sources of international law', 14-53.

[7] As Susan Breau and Katja Samuel noted in the Preface to the first edition of this Handbook, "Law governing disasters is undergoing a formative period … the current Handbook is regarded as another step in the journey of normative discovery." Susan C Breau & Katja L H Samuel (eds), *Research Handbook on Disasters and International Law* (Edward Elgar 2016) xiii.

[8] Taken from: 'International Disaster Law Information Sheet' (Feb 2018), Centre for Criminal Justice & Human Rights, School of Law, University College Cork & Irish Red Cross Society found at: <www.ucc.ie/en/media/academic/law/ccjhr/disasterlaw/IDL-Information-Sheet-No.1-IDL-February-2018.pdf> accessed 17 July 2023.

[9] UN, *Statute of the International Court of Justice* (18 April 1946).

explain, the primary sources of international law are: a) international conventions, whether general or particular; b) international custom, as evidence of a general practice accepted as law; c) general principles of law; and, as a subsidiary means of determining the applicable rules, d) judicial decisions and teachings of the most highly qualified publicists of various nations.[10] As Hilary Charlesworth has argued, international law's recurring focus on its sources may arise from a lack of confidence in its own status as a branch of law (in contrast to the recognised legitimacy of domestic legal systems) – "[i]t is as if pinning down the well-springs of international law will provide certainty and authority for the discipline."[11] In which case, understanding the sources utilised by the ICJ, as the pre-eminent global judicial body, is clearly of direct relevance for determining the scope and boundaries of the evolving field of international disaster law.

It is not possible in this chapter to address how all the sources of international law apply in the context of disasters. Instead, the chapter will argue that identifying key legal principles (whether general or specialised) applicable to disasters can provide one way of clarifying some of the contours and limitations of international disaster law.[12] The chapter will commence with a discussion of principles as a source of international law from the perspective of general principles of law as per Article 38(1)(c) of the ICJ Statute. The next section will explore the role of specialised principles of international law, with examples of principles found within established branches of the law, such as international humanitarian law and international environmental law. The chapter concludes by considering potential principles which might be applicable in the context of disasters and the next steps for expanding our understanding of the sources of international disaster law.

2. GENERAL PRINCIPLES AS A SOURCE OF INTERNATIONAL LAW

[10] See for example: Jan Klabbers, *International Law* (3rd edn, Cambridge University Press 2020) Chapter 2 'The Making of International Law' 24.

[11] Hilary Charlesworth, 'Law-making and Sources' in James Crawford, Martti Koskenniemi and Surabhi Ranganathan, *The Cambridge Companion to International Law* (Cambridge University Press 2012) 187. Charlesworth also cogently highlights critiques by Third-World and feminist scholars of the inherently biased structure of the sources of international law due to their original development by a narrow range of colonial powers and the on-going under-representation of women and other groups within norm-generating institutions in the international community, at 188.

[12] For a series of short articles exploring different sources, see: Dug Cubie 'Sources of International Disaster Law: The New IFRC Disaster Law Database' (2020) 3 Yearbook of International Disaster Law 637; Dug Cubie, 'Sources of International Disaster Law: Focus on Case Law' (2021) 4 Yearbook of International Disaster Law 640; and Dug Cubie, 'Sources of International Disaster Law: Focus on General Principles of Law' (2022) 5 Yearbook of International Disaster Law (forthcoming).

The International Law Commission (ILC) is the UN body tasked with promoting the codification and progressive development of international law.[13] Reflecting on the first few years of the ILC's work in 1955, Hersch Lauterpacht commented that the Commission would have little work to do if codification was understood to mean giving precision and systematic order to rules of international law that were *already* subject to extensive state practice.[14] In other words, there will always be conflicting views on the legal status of norms and state practice in the topics analysed by the ILC; and despite public international law's traditional focus on the importance of state practice (i.e. treaties and custom), Lauterpacht acknowledged the role that principles play in international law. For example, in the context of the law of treaties, he identified some of the key principles which remain at the core of treaty interpretation and implementation to this day, such as good faith and *pacta sunt servanda* (agreements must be observed).[15] However, experience has shown that even if there is a consensus of opinion between states on broad principles, there is often little agreement on individual rules or their application to specific issues. Therefore, an examination of the sources of international law has remained at the heart of the ILC's work since its establishment. From the seminal Vienna Convention on the Law of Treaties adopted in 1969[16] to their more recent work on the fragmentation of international law[17] and customary international law,[18] the ILC has aimed to overcome the "sorry tale"[19] of the lack of certainty and agreement regarding the sources of international law.

Despite a delay of nearly 70 years, and of particular relevance to this chapter, in 2018 the ILC commenced a programme of work examining the topic of "general principles of law" as set out in Article 38(1)(c) of the ICJ Statute, which states:

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[13] UNGA *Statute of the International Law Commission*, Resolution 174 (II) of 21 November 1947, as amended by UNGA resolutions 485 (V) of 12 December 1950, 984 (X) of 3 December 1955, 985 (X) of 3 December 1955 and 36/39 of 18 November 1981, Article 1(1).
[14] Hersch Lauterpacht, 'Codification and Development of International Law' (1955) 49 American Journal of International Law 16, 17.
[15] Ibid.
[16] Vienna Convention on the Law of Treaties, 23 May 1969, in force 27 January 1980.
[17] UNGA, 'Fragmentation of International Law: Difficulties arising from the Diversification and Expansion of International Law', Report of the Study Group of the International Law Commission, Martti Koskenniemi, Special Rapporteur (13 April 2006) UN Doc A/CN.4/L.682.
[18] See for example: UNGA, First report on formation and evidence of customary international law, Sir Michael Wood, Special Rapporteur (17 May 2013) UN Doc A/CN.4/663.
[19] Lauterpacht (n 14) 19.

1. The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply:

   […]

   c) the general principles of law recognised by civilised nations.[20]

General principles of law can play a variety of specific roles in international legal regulation and decision-making; although it is generally accepted that their primary role is to ensure the avoidance of a situation of *non liquet* (no applicable law) whereby the ICJ is unable to adjudicate in a case before it due to a gap in the rules of international law.[21] Yet the exact meaning of "general principles of law" remains contested.[22] As Shaw notes, the phrase can be interpreted to include either a general principle of law appearing in a municipal legal system or alternatively a general principle of international law itself.[23] Klabbers has observed that the fact the ICJ has never decided a case solely on the grounds of a general principle of law highlights the Court's own uneasiness in relying on a contested source of international law.[24] Meanwhile, Charlesworth has argued that: "The sources of international law reflect [the] tension between the political reality that state consent is integral to the efficacy of the international legal system and the idealistic force of abstract principles such as justice and fairness."[25]

Despite such misgivings, the concept of general principles of law continues to exert a strong pull for those aiming to understanding the normative development of international law. In 1990, M. Cherif Bassiouni optimistically argued that principles were likely to become "the most important and influential source of international law in this decade."[26] He identified the most

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[20] *Statute of the ICJ* (n 9). The ILC Special Rapporteur has highlighted the consensus that the phrase "civilised nations" is anachronistic and should be avoided. See: UNGA, 'Report of the International Law Commission', 71st session (20 August 2019) UN Doc A/74/10, 337, para 259.

[21] See: Prosper Weil, '"The Court Cannot Conclude Definitively ..." *Non Liquet* Revisited' (1997) 36 Columbia Journal of Transnational Law 109.

[22] For example, Antonio Cassese defined general principles of law as "inchoate custom that does not require support by state practice." Antonio Cassese, *International Law*, (1st edn, Oxford University Press 2005) 160-161.

[23] Malcolm Shaw, *International Law* (6th edn, Cambridge University Press, 2008) 99. See also: Hugh Thirlway, 'The Sources of International Law' in Malcolm Evans, *International Law*. (3rd edn, Oxford University Press 2010) 95, 108-9.

[24] Jan Klabbers, *International Law* (1st edn, Cambridge University Press, 2013) 34-35.

[25] Charlesworth (n 11) 190. Charlesworth continues by noting: "This renewed interest in general principles as a source of international law can be also understood as a way of finding a recognised legal umbrella for the vast array of soft law instruments … Soft law is not a source of law in the sense of article 38(1) of the ICJ Statute, but rather a category of principles, articulated through instruments or documents not binding as such, whose status is more contested and negotiable than those of hard legal norms," 197-198.

[26] M Cherif Bassiouni, 'A Functional Approach to "General Principles of International Law' (1990) 11 Michigan Journal of International Law 768, 769.

pressing issues of the day as human rights, the environment, economic development and international criminality – which all had underdeveloped conventional and customary law frameworks.[27] Hence his interest in general principles. In particular, Bassiouni lamented the varied terminology, noting that "scholarly definitions of 'General Principles' abound, even though they are frequently so general and self-evident that they add little to the plain meaning of the very words they intend to define."[28] He therefore concluded that what was needed was a treaty to codify general principles of law.[29]

It may have taken over 30 years, but Bassiouni's wish looks like it might be granted soon. Over the course of three reports, the ILC Special Rapporteur on the topic of general principles of law, Marcelo Vázquez-Bermúdez, has developed a set of draft conclusions on general principles and intends to finalise the topic in 2024.[30] As Vázquez-Bermúdez noted in his first report: "the term 'general principles of law' … makes reference to norms that have a 'general' and 'fundamental' character. They are 'general' in the sense that their content has a certain degree of abstraction, and 'fundamental' in the sense that they underlie specific rules or embody important values."[31] These two components of abstraction and values help explain the enduring focus on principles, both in general international law and in specialised branches of law.

Central to the work of the Special Rapporteur has been the elaboration of rules for the identification of general principles of law. There was overall consensus amongst states and members of the ILC that a general principle of law can be derived from national legal systems. To ascertain the existence and content of such a general principle, comparative analysis should show:

a) the existence of a principle common to the various legal systems of the world; and

[27] Ibid. Unfortunately, the same issues remain at the forefront of global concerns today.
[28] Ibid 770.
[29] Ibid 818.
[30] Third report (n.6) para148. See also: UNGA, 'First report on general principles of law', Marcelo Vázques-Bermúdez, Special Rapporteur (5 April 2019) UN Doc. A/CN.4/732; and UN General Assembly, 'Second report on general principles of law', Marcelo Vázques-Bermúdez, Special Rapporteur (9 April 2020) UN Doc. A/CN.4/741.
[31] First report, ibid, para 153.

b) its transposition to the international legal system.[32]

The more contentious issue identified by the Commission was whether a general principle of law can be formed directly within the international legal system. In other words, whether international legal texts can themselves lead to the creation of a general principle of law. While some states disagreed, the Special Rapporteur argued that there was sufficient consensus on this point to justify its inclusion in the draft conclusions.[33] In particular, draft Conclusion 7 notes that such a general principle can be identified if it:

a) is widely recognised in treaties and other international instruments;
b) underlies general rules of conventional or customary international law; or
c) is inherent in the basic features and fundamental requirements of the international legal system.[34]

Examples provided by the Special Rapporteur of general principles formed within the international legal system included the Nürnberg Principles established via the Charter of the Nürnberg Tribunal after the Second World War, and the limitations on the types of reservations which can be made to the 1948 Genocide Convention.[35] The 1945 Nürnberg Principles[36] provide the foundation for key aspects of modern international criminal law, as reflected in the 1998 Rome Statute of the International Criminal Court.[37] In particular, Principle I sets out individual responsibility for international crimes, while Principle III confirms that there is no sovereign immunity for a Head of State or government officials accused of committing international crimes, and Principle V affirms the accused's right to a fair trial. Likewise, in the *Reservations to the Convention on Genocide* advisory opinion, the ICJ argued that the crime of genocide shocks the conscience of humankind and results in great losses to humanity. As a result, the Court pronounced that: "the first consequence arising from this conception is that

[32] See Conclusions 4 & 5 in Third report (n 6) para 3. The comparative analysis should be wide and representative, including different regions of the world, and include analysis of national laws and decisions of national courts, and other relevant materials.
[33] Although, in his second report, the Special Rapporteur did acknowledge that "the terminology employed in practice is admittedly imprecise." Second report (n 30) para 116.
[34] Third report (n 6) para 20.
[35] Second report (n 30) paras 123-130.
[36] Charter of the International Military Tribunal annexed to the London Agreement of 8 August 1945 for the Prosecution and Punishment of the Major War Criminals of the European Axis, 8 August 1945.
[37] Statute of the International Criminal Court, 17 July 1998, in force 1 July 2022; as amended in 2010.

the principles underlying the Convention are principles which are recognised by civilised nations as binding on States, even without any conventional obligation."[38]

As these two examples show, the ILC has acknowledged that general principles of law can be created via decisions of international institutions such as the UN General Assembly and the International Court of Justice. The ICL's analysis of general principles remains a work in progress, although following the completion of his first three reports the Special Rapporteur has now proposed a set of 14 draft Conclusions on the topic. At the end of his third report, the Special Rapporteur noted his intention to finalise the topic by the Commission's 2024 session following a detailed review of the discussions and comments raised in the 2022 session.[39]

So, what does this mean in the context of international disaster law? First of all, recognised general principles of law are equally applicable in a disaster context, such as the requirement for states to act in good faith in regard to treaty obligations or to adhere to the duty of international cooperation to solve problems of a humanitarian character as set out in the UN Charter.[40] Secondly, the ongoing development of international disaster law is likely to lead to an improved understanding of the application of general principles of law (either those common to national legal systems or from within the international legal system) in the specific context of disasters. For example, Imogen Saunders has argued that Article 38(1)(c) forms a "forgotten source" of international law with regards to disaster risk reduction, since it is a means of identifying domestic regulations and practices of relevance to disasters.[41] In particular, Saunders undertook a case study of wildfires and the importance of indigenous knowledge and practices of fire prevention strategies, and has argued that "an emerging norm could require that governments be actively involved in disaster risk reduction, and specifically engage in prescribed burning to prevent and reduce the risk of wildfires."[42] Likewise, the principle of

[38] *Reservations to the Convention on Genocide, Advisory Opinion of 28 May 1951*, ICJ Reports 1951,15. See also: UN General Assembly, Convention on the Prevention and Punishment of the Crime of Genocide, 9 December 1948, in force 12 January 1951.
[39] Third report (n 6) para 148.
[40] Article 1 of the UN Charter reads: "The purposes of the United Nations are: … (3) To achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character …" UN, Charter of the United Nations, 26 June 1945, in force 24 October 1945.
[41] Imogen Saunders, 'International Disaster Relief Law and Article 39(1)(c) of the Statute of the International Court of Justice: The Forgotten Source of International Law' in David Caron, Michael Kelly & Anastasia Telesetsky, *The International Law of Disaster Relief* (Cambridge University Press 2014) 29.
[42] Ibid 43.

human dignity forms a foundation for human rights law,[43] and was described by the International Criminal Tribunal for the Former Yugoslavia as "of such paramount importance as to permeate the whole body of international law."[44] The central role played by this principle of international law is reflected in the 2016 ILC Draft Articles on the Protection of Persons in the Event of Disasters which include an operative article on human dignity, which is discussed in more detail in section 4 below.[45]

Before further exploring legal principles in the context of disasters, it is instructive to examine the application of principles in other branches of international law. So, having briefly examined *general* principles of law in the context of Article 38(1)(c), we now turn to consider the question of *specialised* principles of international law.

3. SPECIALISED PRINCIPLES OF INTERNATIONAL LAW

3.1 Specialised principles as a source of coherence

Reflecting the diversity of subject matters regulated by international legal frameworks, it is generally recognised that specialised principles can play an important role in delineating the contours of legal rights and obligations in specific branches of international law – although it should be noted that the terminology in this area is not settled. In the context of armed conflicts, the International Committee of the Red Cross (ICRC) has distinguished between general principles of international law as per Article 38(1)(c) and the "general principles" of international humanitarian law (IHL).[46] So it would appear that the ICRC takes a narrow view of Article 38(1)(c), defining general principles of international law as "those principles of domestic law which are common to all legal orders"; while noting that general principles of IHL "are not based on a separate source of international law, but on treaties, custom and general

[43] As the first sentence of the Preamble to the Universal Declaration of Human Rights states: "Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world." UN General Assembly, Universal Declaration of Human Rights, 10 December 1948, 217 A (III).

[44] *Prosecutor v Anto Furundžija*, Judgment of 10 December 1998 (IT-95-17/1-T), Trial Chamber, Judicial Reports 1998, para183.

[45] International Law Commission, *Draft Articles on the Protection of Persons in the Event of Disasters 2016*, Report of the International Law Commission on the work of its sixty-eighth session' (2 May-10 June and 4 July – 12 August 2016) UN Doc. A/71/10 (hereafter Draft Articles). Article 4 is entitled 'Human Dignity' and reads: "The inherent dignity of the human person shall be respected and protected in the event of disasters."

[46] ICRC, Fundamentals of IHL', 'Section III. Fundamental Principles of International Humanitarian Law' (2023) found at: <https://casebook.icrc.org/law/fundamentals-ihl#d_iii> accessed 17 July 2023.

principles of law."[47] Separately, a key multilateral environmental treaty refers to the polluter pays principle as a "general principle of international environmental law."[48] Meanwhile, Nicholas de Sadeleer developed the concept of "directing principles" of environmental law, which he argued are derived from framework conventions or framework laws, in contrast to general principles derived from case-law.[49]

To avoid terminological confusion, this chapter employs the phrase "specialised principles of international law" to mean those principles which are foundational and/or particularly relevant for a specific branch of international law, in contrast with general principles of international law which may be applicable and/or generalisable to multiple branches of international law. This distinction is important since, irrespective of the terminology used, specialised principles can provide a practical mechanism for elaborating and interpreting the legal rights and obligations within a particular branch of international law.[50] Moreover, as Judge Trindade argued in the *Pulp Mills* case, it is principles that "confer cohesion, coherence and legitimacy upon the legal norms and legal system as a whole."[51] It follows that specialised principles can help legitimise a normative framework, such as international disaster law, particularly in its' early stages of development. The principles in turn can gain legitimacy from their acceptance by states and other international actors, thereby promoting legal certainty and coherence. In the context of international human rights law, Bruno Simma and Philip Alston have noted the importance of state sovereignty and consent in the development of that branch of law, given that: "the acceptance of principles in the human rights field … is a decidedly consensual process, giving a 'sufficient expression in legal form' to the underlying humanitarian considerations."[52]

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[47] Ibid.

[48] UN, International Convention on Oil Pollution Preparedness, Response and Cooperation, 30 November 1990, in force 13 May 1995. See also: Rio Declaration on Environment and Development, 12 August 1992, UN Doc A/CONF.151/26 (Vol. I), Principle 16.

[49] Nicolas de Sadeleer, 'Environmental Principles, Modern and Post-Modern Law', in Richard Macrory, Ian Havercroft and Ray Purdy (eds), *Principles of European Environmental Law: Proceedings of the Avosetta Group of European Environmental Lawyers* (Europa Law Publishing 2002).

[50] In 1963, Wolfgang Friedman distinguished between "principles … that can serve as general guideposts to the interpretation and evolution of international legal rights and duties" and those that can "form the raw material for developing substantive branches of international law." See: Wolfgang Friedmann, 'The Uses of General Principles in the Development of International Law' (1963) 57 American Journal of International Law 279, 289.

[51] *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, Judgment, I.C.J. Reports 2010, 14. Separate Opinion of Judge Cançado Trindade, 210, para 201.

[52] Bruno Simma and Philip Alston, 'The Sources of Human Rights Law: Custom, *Jus Cogens*, and General Principles' (1988-1989) 12 Australian Yearbook of International Law 82, 107. In the context of investor-State settlement disputes, an ICSID arbitral tribunal has discussed the high bar required to confirm consensus: "in general, [general principles of law] have been understood as general rules on which there is international consensus to consider them as universal standards and rules of conduct that must always be applied and which, in

In assessing the differing functions which principles can play in the context of international environmental law, Gilles Martin has argued that "[Principles] may have a symbolic, orienting and thus political function, by confirming values which are recognised in a society … Often a programmatic and strategic function is added to this orienting and symbolic dimension, which aims at orienting the evolution of positive law."[53] Martin continues by identifying three specific aspects of the relationship between principles and subsidiary rules, namely: 1) the principle initiates or legitimises the rule; 2) the principle gives coherence to a set of rules; and 3) the principle helps interpret the rule.[54] Focusing specifically on the second of these points, Martin highlights that coherence can apply both to the field as a whole (in this case, international environmental law) but also at a lower level by providing coherence to the set of rules which adhere to the principle.[55] In a similar manner, Milligan and Macrory have described principles as the "connective glue" within a legal system, and defined them as "general norms that provide a degree of underlying coherence to law."[56] In the context of disasters, one could argue that – as an emerging field of academic study and practical application – identification of the core legal principles underpinning national, regional and international disaster laws will help to provide coherence to the diverse range of rules applicable to all phases of disaster risk management.[57]

However, not everyone supports such a privileged position for specialised rules. Martti Koskenniemi noted in his analysis of the fragmentation of international law and self-contained regimes that authors such as Ian Brownlie and Alain Pellet were critical of placing too much

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the opinion of important commentators, are rules of law on which the legal systems of the States are based." See: *Inceysa Vallisoletana S.L. v. Republic of El Salvador*, ICSID Case No. ARB/03/23, Award of 2 August 2006, para 227.

[53] Gilles Martin, 'Principles and Rules' in Ludwig Krämer and Emanuela Orlando (eds), *Principles of Environmental Law* (Edward Elgar 2018) 17, 17-18.

[54] Ibid 18-22.

[55] Similarly, the ILC Draft Conclusion 14 on the specific functions of general principles asserts that "general principles of law may serve … to ensure the coherence of the international legal system." *Third report* (n 6) para.147. Martin's argument is that specialised principles can help ensure the coherence of a branch of international law; while the ILC's argument is that general principles can help ensure the coherence of the entire structure of international law.

[56] Ben Milligan and Richard Macrory, 'The History and Evolution of Legal Principles Concerning the Environment' in Krämer & Orlando (n 53) 26.

[57] For an example of a comparative study of the laws in three countries, see: Karina Vink & Kuniyoshi Takeuchi, 'International Comparison of Measures Takes for Vulnerable People in Disaster Risk Management Laws' (2013) 4 International Journal of Disaster Risk Reduction 63. The online IFRC Disaster Law Database also provides a wealth of sources of national, regional and international laws and policies for comparative analysis <https://disasterlaw.ifrc.org/disaster-law-database> accessed 17 July 2023.

emphasis on the speciality of fields such as human rights law.[58] Koskenniemi himself queried the assumption that the principles of international environmental law or international human rights law somehow differ from what general international law provides for analogous situations.[59] He did acknowledge, however, that: "A self-contained regime in this third sense [i.e. when referring to a whole field of functional specialisation] has effect predominantly through providing *interpretative guidance and direction* that in some way deviates from the rules of general law."[60]

While acknowledging such doubts, it is nevertheless instructive to consider some of the recognised principles in other branches of international law before making any conclusions regarding possible specialised principles of international disaster law. Two relevant branches of international law, both of which are proximate to the question of law and disasters, draw heavily on specialised principles: international humanitarian law and international environmental law (IEL). Indeed, some of their specialised principles, such as the principles of humanity or prevention of risk, are also of relevance in disasters. The next two sub-sections therefore explore armed conflicts and the environment, before we conclude the chapter with discussion of specialised principles in international disaster law.

3.2 Specialised principles in international humanitarian law (IHL)

As one of the oldest branches of international law,[61] IHL (or the laws of war) has extensive experience in the elaboration and implementation of specialised principles of law. At the core of IHL are two competing (or some might say balancing)[62] sets of principles: those relating to military objectives and those relating to humanitarian objectives. The ICRC has identified four "general principles of IHL" for military actors: humanity, distinction, proportionality, and military necessity.[63] These principles all originated in international conventions, for example the principle of humanity was first set out in the Martens clause at the 1899 Hague Peace

[58] 'Fragmentation of International Law' (n 17) 70 para133.
[59] Ibid 68, para 129.
[60] Ibid 70, para 132 (emphasis added). For a critique of self-contained regimes, see: Bruno Simma and Dirk Pulkowski, 'Of Planets and the Universe: Self-Contained Regimes in International Law' (2006) 17 European Journal of International Law 483.
[61] See Daniel Palmieri, 'An Institution Standing the Test of Time? A Review of 150 Years of the History of the International Committee of the Red Cross' (2013) 95 International Review of the Red Cross 1.
[62] See for example: Michael N Schmitt, 'Military Necessity and Humanity in International Humanitarian Law: Preserving the Delicate Balance' (2010) 50 Virginia Journal of International Law 795.
[63] 'Fundamentals of IHL' (n 46).

Conference,[64] but have since obtained the status of general (i.e. specialised) principles of IHL due to their wide-spread inclusion in international, regional and national laws relating to armed conflicts. Perhaps due to IHL's long history, all of these principles can be clearly traced back to binding international law commitments which states have adopted at some point over the past 160 years.

Understandably, states have a direct interest in elaborating the legal obligations of parties to an armed conflict. Therefore, the set of principles relating to military objectives are intended to regulate the conduct of hostilities and use of force.[65] But in times of armed conflict, humanitarian organisations often operate in the same theatre of conflict as armed forces and combatants. Consequently, a series of core humanitarian principles are recognised as guiding the operational practices of humanitarian actors.[66] In particular, UN General Assembly Resolution 46/182 of 1991 sets out that: "Humanitarian assistance must be provided in accordance with the principles of humanity, neutrality and impartiality."[67] These principles have been widely (although not universally) recognised by governmental and non-governmental humanitarian actors as the guiding principles of humanitarian action applicable in both conflicts and disasters.[68] However, their legal status – i.e. the legal implications for a humanitarian actor should they breach one of these principles – remains unclear. As noted in the Humanitarian Charter of the Sphere Handbook (a leading operational guide for humanitarian actors): "These principles are reflected in international law but derive their force ultimately from the fundamental *moral* principle of humanity."[69]

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[64] For contrasting viewpoints from two of international law's leading actors, see Antonio Cassese, 'The Martens Clause: Half a Loaf or Simply Pie in the Sky?' (2000) 11 European Journal of International Law 187 (in which Cassese refers to the Martens clause as a "diplomatic gimmick"); and Theodor Meron, 'The Martens Clause, Principles of Humanity, and Dictates of Public Conscience' (2000) 94 American Journal of International Law 78. (Meron describes the Martens clause as an "enduring legacy").

[65] See generally: Theodor Meron, 'The Humanization of Humanitarian Law' (2000) 94 American Journal of International Law 239; and Yoram Dinstein, *The Conduct of Hostilities under the Law of International Armed Conflict* (4th edn, Cambridge University Press 2022).

[66] See: Jeremie Labbe and Pascal Daudin, 'Applying the Humanitarian Principles: Reflecting on the Experience of the International Committee of the Red Cross' (2015) 97 International Review of the Red Cross 183.

[67] UNGA, 'Strengthening of the Coordination of Humanitarian Emergency Assistance of the United Nations' (19 December 1992) UN Doc A/RES/46/182, Annex, I. Guiding Principles para 2.

[68] The application of these principles in disasters is discussed further in section 4 below. For discussion of the application of these principles, see: UNOCHA, OCHA on Message: Humanitarian Principles (July 2022) found at: <www.unocha.org/sites/unocha/files/OOM_Humanitarian%20Principles_Eng.pdf> accessed 17 July 2023; Sphere Project, *The Sphere Handbook: Humanitarian Charter and Minimum Standards in Humanitarain Response* (3rd edn, The Sphere Project 2018); and Hugo Slim, 'Relief Agencies and Moral Standing in War: Principles of Humanity, Neutrality, Impartiality and Solidarity' (1997) 7 Development in Practice 342. For analysis of challenges faced by humanitarian organisations, see: T Vaux, 'Humanitarian Trends and Dilemmas' (2006) 16 Development in Practice 240.

[69] Sphere Handbook, ibid, 28 (emphasis added).

3.3 Specialised principles in international environmental law (IEL)

Moving from the field of armed conflict, another branch of law which relies heavily on specialised principles is IEL. Principles such as the precautionary principle and the principle of common but differentiated responsibilities of states have played a key role in the application of IEL for decades.[70] Indeed, a recent edited collection identified at least 25 different existing or emerging principles of environmental law, covering issues such as state sovereignty over natural resources, the principle of sustainable development, public participation in decision-making, and access to information.[71] Moreover, the editors noted that there is no definitive list of environmental principles, not least since they can be found in both non-binding soft law texts and in binding international law.[72] This uncertainty and indeterminacy to the extent, let alone content, of such principles could be seen as a strong argument against their recognition as specialised principles having legal affects. However, recognising the systemic and organisational importance of specialised principles, Krämer and Orlando argue that:

> Principles can perform a significant role in framing the evolution and development of environmental law as a legal system. They contribute a theoretical foundation to the relatively new discipline of environmental law, while at the same time providing it with a common normative ground that transcends jurisdictional boundaries (both vertically and horizontally) to reflect the interdependent, holistic and global dimension of environmental issues.[73]

In the closely connected field of climate change law, Article 3 of the UN Framework Convention on Climate Change (UNFCCC) is expressly framed around five principles drawn from environmental law, namely: intergenerational equity, common but differentiated responsibilities, the precautionary principle, sustainable development, and the principle of international cooperation.[74] Yet no equivalent legally binding text on environmental principles

[70] See for example: Eloise Scotford, *Environmental Principles and the Evolution of Environmental Law* (Hart Publishing 2017).
[71] Krämer and Orlando (n 53).
[72] Ludwig Krämer and Emanuela Orlando, 'Introduction to Volume VI' in Krämer & Orlando, ibid 2. Krämer and Orlando also highlighted that environmental principles represent an "open and dynamic category, whose loose boundaries allow them to adapt and evolve to deal with changing circumstances and novel environmental problems."
[73] Ibid 3.
[74] UNGA, United Nations Framework Convention on Climate Change, 20 January 1994, in force 21 March 1994.

exists. The extensive range and uncertain legal status of international environmental principles led to the establishment of a group of experts, chaired by Yann Aguila (a former senior member of the French Council of State), to commence work on drafting a 'Global Pact for the Environment' in late 2016.[75] The resultant text aimed to codify a list of 20 specialised principles of environmental law, alongside two 'source' principles, namely the right to an ecologically sound environment and the duty to take care of the environment. This in turn prompted the UN General Assembly to call on the UN Secretary-General to produce a "technical and evidence-based report" on the gaps in international environmental law and related instruments.[76] The subsequent report noted there was no single overarching normative framework which set out specialised principles of environmental law, and that while some principles were well-established, there was neither clarity nor judicial consensus on the application of other claimed principles.[77]

So far, it has proved impossible to realise the original ambition of developing a binding international treaty on international environmental law principles due to a lack of agreement amongst states. This highlights the challenge of securing global consensus for the codification of specialised principles in any branch of international law. Consequently, a political declaration was issued in March 2022 to commemorate the 50th anniversary of the establishment of the United Nations Environment Programme (UNEP).[78] While the declaration reaffirms key principles set out in the 1992 Rio Declaration on Environment and Development,[79] the style and form of the declaration are markedly different to the planned Global Pact.[80] Although their disappointment at the lack of agreement on a binding text is clear, Aguila and Chami have argued that: "[The Global Pact] crystallizes the opinion of the most eminent jurists of the various nations on the identity and content of the main principles of international environmental law ... [and] the Pact remains a valuable asset

[75] For detailed discussion, see: Sandrine Maljean-Dubois, 'Was the Global Pact for the Environment a Good Idea?' (2019) 2 Yearbook of International Disaster Law 283.
[76] UNGA, 'Towards a Global Pact for the Environment' (7 May 2018) UN Doc A/RES/72/277.
[77] UNGA, 'Gaps in International Environmental Law and Environment-related Instruments: Towards a Global Pact for the Environment', Report of the Secretary-General (30 November 2018) UN Doc A/73/419.
[78] UN Environment Assembly of the UN Environment Programme (UNEP), 'Draft political declaration of the special session of the United Nations Environment Assembly to commemorate the fiftieth anniversary of the establishment of the United Nations Environment Programme' (1st March 2022) UN Doc UNEP/EA.5/L.26.
[79] Rio Declaration (n 48).
[80] Yann Aguila and Laura Chami, *The Global Pact for the Environment? Where to?* (17 March 2022) Jus Mundi blog found at: <https://blog.jusmundi.com/global-pact-for-the-environment-where-to/> accessed 17 July 2023.

in judicial decision-making as a concise and authoritative source of recognized principles of environmental law."[81] In her analysis of the Global Pact, Sandrine Maljean-Dubois notes that:

> General principles facilitate harmonisation and establish a common thread in the vast web of instruments. They provide guidance in the interpretation of positive law, but also influence the practice of States and guide the negotiation of treaty rules and of decisions by Conferences of the Parties (COPs).[82]

As can be seen from the fields of IHL and IEL, a key attribute of specialised principles is their ability to act as a means of promoting coherence within a specific branch of international law and to align different legal regimes from the domestic to the global.[83] They can also provide interpretative guidance and direction, which may be particularly helpful at a stage when legal rights and obligations are still in flux and under development. As such, they have the potential to play a particularly important role in systematising an evolving branch of international law such as international disaster law. Therefore, for the final section of this chapter, we will explore some of the general and specialised principles which may be of particular relevance to the field of international disaster law.

4. IDENTIFYING PRINCIPLES OF INTERNATIONAL DISASTER LAW

International disaster law lacks the longevity and depth of experience of modern international humanitarian law, which can be traced back to the original 1864 Geneva Convention,[84] or international environmental law, which arguably coalesced following the 1972 Stockholm Earth Summit.[85] Nevertheless, there are a series of both general and specialised principles

[81] Ibid. In a similar manner, the UN Special Rapporteur on Human Rights and the Environment, John Knox, has published a set of non-binding Framework Principles on Human Rights and the Environment. See: UN Human Rights Council, 'Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment' (24 January 2018) UN Doc A/HRC/37/59.
[82] Maljean-Dubois (n 75) 286.
[83] See for example: Dug Cubie and Tommaso Natoli, 'Coherence, Alignment and Integration: Understanding the Legal Relationship between Sustainable Development, Climate Change Adaptation and Disaster Risk Reduction' in Stephen Flood, Martin Le Tissier, Yaren Jerez Columbié and Barry O'Dwyer (eds), *Creating Resilient Futures: Integrating Disaster Risk Reduction, Sustainable Development Goals and Climate Change Adaptation Agendas* (Palgrave Macmillan 2021) 45.
[84] Convention for the Amelioration of the Condition of the Wounded in Armies in the Field (adopted 22 August 1864, in force 22 June 1865).
[85] UN, 'Report of the United Nations Conference on the Human Environment', Stockholm, 5-16 June 1972, UN Doc: A/CONF.48/14/Rev.1. Some would argue that IEL has a much longer provenience. For example, Philippe Sands and Jaqueline Peel have posited that the 1941 Trail Smelter case represents a "crystallising moment" for international environmental law. See: Philippe Sands *et al*., *Principles of International Environmental Law* (4th

which have already been identified as of specific relevance in the context of disasters. There is also cross-over with principles identified above in the fields of IHL and IEL, such as the principles of humanity and international cooperation, which highlights the need for greater research into whether such principles are also a source of legal rights and obligations in disasters.

4.1 Specialised Principles in the ILC Draft Articles on the Protection of Persons in the event of Disasters

The principle of human dignity is provided a privileged position in the 2016 ILC Draft Articles on the Protection of Persons in the event of Disasters as it has its own separate article, Article 4, which reads: "The inherent dignity of the human person shall be respected and protected in the event of disasters."[86] Due to the importance placed on this principle by the Commission, it is worth quoting the accompanying Commentaries at length:

> In the context of the protection of persons in the event of disasters, human dignity is situated as a guiding principle for any action to be taken in the context of the provision of relief assistance, in disaster risk reduction and in the ongoing evolution of applicable laws. The Commission considered the centrality of the principle to the protection of persons in the event of disasters as sufficient justification for the inclusion of "human dignity" in a separate, autonomous provision in the body of the draft articles.[87]

The Commentaries stress that the principle of human dignity is the ultimate foundation of human rights law, originating in both the UN Charter and the Universal Declaration of Human Rights, and is included in most multilateral human rights and humanitarian law treaties.[88] It is also notable that the Commentaries expressly highlight that human dignity should be a guiding principle in the ongoing evolution of international disaster law – thereby presenting human dignity as foundational for the entire discipline. It is hard to contest the central role played by the principle of human dignity throughout the post-World War Two international legal and institutional framework. However, in most cases human dignity is simply referenced in the

edn, Cambridge University Press 2018) 25 and *Trail Smelter Case* (US v Canada) 3 UN Rep. Int'l Arb. Awards 1905 (1941).

[86] Draft Articles (n 45), Draft Article 4: Human Dignity, 28.

[87] Ibid 28, para 1.

[88] Ibid 28, para 2.

preamble to an international instrument, whereas in the ILC draft articles it is given a specific operative article. This raises interesting questions regarding justiciability.[89] What are the exact legal obligations of a state in the context of ensuring human dignity in disasters? The Commentaries provide a partial explanation, namely that "… the terms 'respect' and 'protect' connote a negative obligation to refrain from injuring the inherent dignity of the human person and a positive obligation to take actions to protect human dignity."[90] But how should this legal principle be applied in practice? For example, can an individual whose human dignity is not respected or protected in a disaster setting make a legal claim against a state or non-state actor? In what forum would such a claim be brought, what levels of harm must be proved, and what remedies would be available?[91] Alternatively, should human dignity be considered simply as an interpretative guide to understand the extent of other rights and obligations in disaster prevention, response and recovery? Moreover, human dignity is not the only legal principle which may be applicable in such situations.

In addition to the operative article on human dignity, the ILC draft articles include a dedicated article on humanitarian principles, Article 6, which states:

> Response to disasters shall take place in accordance with the principles of humanity, neutrality and impartiality, and on the basis of non-discrimination, while taking into account the needs of the particularly vulnerable.[92]

This is of particular importance as a means of building a bridge between the legal obligations of states and the operational practices of humanitarian actors. The Commentaries to draft Article 6 set out the rationale for the inclusion of these three principles in the context of both disaster relief and disaster risk reduction activities. In particular, they highlight that the

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[89] For analysis of the differential interpretation of the concept of human dignity in domestic jurisdictions, see: Christopher McCrudden, 'Human Dignity and Judicial Interpretation of Human Rights' (2008) 19 European Journal of International Law 65.

[90] Draft Articles (n 45) 30 para.6.

[91] For discussion of the increasing importance of judicial decisions in elaborating the legal rights and obligations in disasters, see: Kristian C Lauta, 'Disasters and Responsibility. Normative Issues for Law Following Disasters' in Donal P O'Mathúna, Vilius Dranseika and Bert Gordijn (eds), *Disasters: Core Concepts and Ethical Theories* (Springer 2018) 43-53.

[92] Draft Article 6: Humanitarian Principles, Draft Articles (n 45) 33-36. See also the African Union's Kampala Convention which places a legal obligation on all state parties to: 'Respect and ensure respect for the principles of humanity and human dignity of internally displaced persons.' Of note, the Kampala Convention definition of internal displacement includes displacement arising from disasters. Art 3(1)(c), African Union, *Convention for the Protection and Assistance of Internally Displaced Persons in Africa* ('Kampala Convention') (adopted 22 October 2009, entered into force 6 December 2012).

principle of humanity "stands as the cornerstone of the protection of persons in international law" and cite its importance in both international humanitarian law and international human rights law.[93] The Commentaries then acknowledge that, while originating in the laws of war, the principle of neutrality is "nonetheless applicable in other branches of the law."[94] They next divide the principle of impartiality into three components, namely: non-discrimination, proportionality and impartiality proper.[95] To justify their specific inclusion of these principles, the Commentaries draw on authoritative sources such as the ICJ *Corfu Channel* case,[96] Jean Pictet's classic commentaries on the principles of the Red Cross Movement,[97] and non-binding texts such as the Mohonk Criteria for Humanitarian Assistance in Complex Emergencies.[98]

Considering the recognised role played by humanity, neutrality and impartiality in the provision of humanitarian assistance,[99] and the importance of non-discrimination in human rights law, their inclusion as specialised principles of international disaster law is not such a radical proposal. However, as Walter Kälin has noted: "Article 6 does not define the principles but simply refers to them. This is more problematic than the reference to human rights in article 5 insofar as no definitions exist in binding international law."[100] A similar argument was made by the Greek delegation during debates on the draft articles in the UN General Assembly Sixth Committee, where they stated that although the principle of humanity may constitute a "motivating factor and an overarching idea in all disaster-response operations, [it] was scarcely measurable in legal terms."[101] It is significant, but perhaps understandable, that the ILC expressly declined to determine whether the principles of humanity, neutrality and impartiality were general principles of law in the context of disasters, despite their own conclusion that they were "core principles recognised as foundational to humanitarian assistance."[102] The subsequent ILC analysis of the topic of general principles of law, which commenced two years

[93] Draft Articles, ibid 33, para.3.
[94] Ibid 33-34, para.4.
[95] Ibid 34, para.5.
[96] *Corfu Channel case, Judgment of April 9th, 1949*: ICJ Reports 1949 4 at 22.
[97] Jean Pictet, *The Fundamental Principles of the Red Cross Proclaimed by the Twentieth International Conference of the Red Cross, Vienna 1965: Commentary* (Henry Dunant Institute 1979) 21-27.
[98] See: Jon M. Ebersole, 'The Mohonk Criteria for Humanitarian Assistance in Complex Emergencies: Task Force on Ethical and Legal Issues in Humanitarian Assistance' (1995) 17 Human Rights Quarterly 192, 196. The ILC's reliance on non-binding texts as a source of legal principles raises interesting questions but it is outside the scope of this chapter.
[99] See also their inclusion in the seminal UNGA Res 46/182 (n 67).
[100] See: Walter Kälin, 'Protection of Victims of Disasters: The 'Vertical' Dimension of the Draft Articles on the Protection of Persons in the Event of Disasters' (2018) 1 Yearbook of International Disaster Law 28, 33.
[101] 'Summary of 22nd UNGA Sixth Committee Meeting 2010' (1 December 2010) UN Doc A/C.6/65/SR.22, para.50.
[102] Draft Articles (n 45) 33, para.1.

after the conclusion of the draft articles on disasters, may shed additional light on the mechanisms for future determination of whether these or other principles relevant to disasters can be classified as general or specialised principles of law.[103]

4.2 Other Potential Principles of International Disaster Law

In addition to the express references to humanitarian principles in Articles 4 and 6 of the ILC Draft Articles, other potential principles of disaster law can be identified. For example, the original explanatory Memorandum produced by the ILC Secretariat in 2007 analysed the principles of non-discrimination, cooperation, sovereignty and non-intervention, as well as prevention, mitigation and preparedness.[104] Many of these points were subsequently discussed during the ILC deliberations, and the final version of ILC draft articles includes the duty of states to cooperate in both disaster response and risk reduction, and re-affirms that the duty to cooperate is recognised as a general principle of law.[105] As noted above, the duty to cooperate in humanitarian issues is one of the four objectives set out in Article 1 the UN Charter,[106] and is expressly included as one of five key principles in the UN Framework Convention on Climate Change.[107]

Beyond those contained in the ILC draft articles, there are a range of other general or specialised principles which require further elaboration in the context of disasters. For example, the general principle of solidarity in disaster prevention, response and recovery has recently been the subject of detailed doctoral research from both a regional and a global perspective.[108] Likewise, in the context of disaster risk reduction, Marie Aronsson-Storrier has explored the

[103] See, Third report (n 6).
[104] UNGA, 'Protection of Persons in the Event of Disasters: Memorandum by the Secretariat' (11 December 2007) UN Doc A/CN.4/590. In the context of armed conflicts, Theodor Meron previously noted the tendency of international judicial bodies "to assume that noble humanitarian principles that deserve recognition as the positive law of the international community have in fact been recognised as such by states." T. Meron, 'The Geneva Conventions as Customary Law' (1987) 81 American Journal of International Law 348, 361.
[105] Draft Article 7: Duty to Cooperate, Draft Articles (n 45) 36, para.1.
[106] UN, *Charter* (n 40).
[107] *UNFCCC* (n 81). From a historical perspective, the duty to cooperate in disaster prevention and response was also included in Article 2(2) of the League of Nations 1927 *Convention and Statute establishing an International Relief Union* (adopted 12 July 1927, entered into force 27 December 1932).
[108] Susanna Villani, *The Concept of Solidarity within EU Disaster Response Law: A Legal Assessment*, doctoral thesis submitted to the University of Bologna, Italy (2018); and Tomas Mulder, *Cooperation and Assistance in Times of Emergency: A Case for Solidarity in International Disaster Response Law*, doctoral thesis submitted to the University of New South Wales, Australia (February 2023). Copies on file with author.

interconnected principles of prevention, mitigation and preparedness in international law.[109] Through an analysis of the terminology and concepts across disaster law, international environmental law and international human rights law, Aronsson-Storrier argues that the principle of prevention has developed in several branches of law (albeit with differing interpretations), while the principles of mitigation and preparedness are more specifically grounded in disaster law and policy. However, she concludes that all three foundational principles, as currently formulated in policy language, are "not suitable to establish legal obligations," and that the principles of mitigation and preparedness are in fact better understood as activities to prevent or minimise disaster losses.[110]

There are also clear parallels in the humanitarian requirements of armed conflicts and disasters, so comparative research on the similarities, and potential differences, in the legal principles underpinning the obligations of states and non-state actors in both settings could be particularly enlightening.[111] Likewise, environmental risks and climate change feed directly into the increasing risk of hydrometeorological disasters,[112] and so disaster lawyers have much to learn from the extensive analysis of the legal and policy implications of principles in international environmental and climate change law. For example, how does the precautionary principle in the context of land use intersect with disaster risk reduction measures to prevent building on flood plains?[113] International disaster law also currently relies upon key non-binding texts, such as the Sendai Framework on Disaster Risk Reduction,[114] so identifying the authority of such texts and how they influence state practice and the crystallisation of legal principles will add further nuance to our understanding of the field of international disaster law.[115]

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[109] Marie Aronsson-Storrier, 'Exploring the Foundations: The Principles of Prevention, Mitigation, and Preparedness in International Law' in Katja Samuel, Marie Aronsson-Storrier & Kirsten Nakjavani Bookmiller (eds.), *The Cambridge Handbook of Disaster Risk Reduction and International Law* (Cambridge University Press 2019) 52.

[110] Ibid.

[111] For analysis of an '*acquis humanitaire*' (i.e. a general law of humanitarian assistance), see: Dug Cubie, *The International Protection of Persons in Humanitarian Crises: Exploring the Acquis Humanitaire* (Hart Publishing 2017).

[112] See for example: Rosemary Lyster, *Climate Justice and Disaster Law* (Cambridge University Press 2015).

[113] See for example: Sani Abubakar Mashi, Obaro D Oghenejabor and Amina I Inkani, 'Disaster Risks and Management Policies and Practices in Nigeria: A Critical Appraisal of the National Emergency Management Agency Act' (2019) 33 International Journal of Disaster Risk Reduction 253, 261.

[114] Sendai Framework for Disaster Risk Reduction 2015-2030 1 (18 March 2015) UN Doc A/CONF.224/CRP.

[115] See for example: Marie Aronsson-Storrier, *Sweden and the Sendai Framework for Disaster Risk Reduction 2015-2030: A Gap Analysis* (Swedish Civil Contingencies Agency 2021). The ILC recently commenced an analysis of Article 38(1)(d) of the ICJ Statute, namely subsidiary means as a source of international law, which will be relevant to such considerations. See: UNGA, 'First report on subsidiary means for the determination of rules of international law', Charles Chernor Jalloh, Special Rapporteur (13 February 2023) UN Doc A/CN.4/760.

5. CONCLUSION

Even this brief overview of the role played by general and specialised principles of law highlights the need to examine in more detail the core legal principles applicable in disaster settings, and for greater consideration of the inter-disciplinary learning across different branches of international law. It is not my contention that all of the general or specialised principles referred to in this chapter are currently, or should be in the future, legally binding in the context of a disaster. However, the increasing analysis by the ILC, academics and practitioners on these points is to be welcomed. Balancing the requirements of specialised regimes, such as international disaster law, with the risks of fragmentation and the creation of isolated disciplinary siloes is a challenge for all branches of international law – so defining the boundaries of each field helps to promote legal clarity and certainty. As the field of international disaster law expands its scope of application, the exploration of general and specialised principles of law provides one means of delineating the core and peripheral legal obligations of states and other actors in the context of disasters.

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