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Sources of IDL

The New IFRC Disaster Law Database

*Dug Cubie**

1 Introduction

Identifying the canon, or key sources, of any branch of law is a fundamental first step to understanding the obligations, liabilities, rights and potential gaps which exist in regard to a particular subject matter.[1] As a relatively new and evolving area of legal practice and scholarship, there is an even greater need to ensure easy access to sub-national, national, regional and international texts of relevance to disaster law as a means of disseminating the growing body of knowledge and practice on the legal implications of disasters. As the seminal IFRC World Disasters Report of 2000 highlighted, despite the extensive development of international humanitarian law since the 1860s, there was no similar body of law relating to natural and technological disasters.[2] Moreover, the Report lamented the fact that '[n]o systematic attempt has been made to pull together the disparate threads of existing law, to formalize customary law or to expand and develop the law in new ways'.[3]

This proved to be a clarion call, and over the past 20 years a wealth of legal sources relating to disasters have been identified and developed at the national, regional and international levels. The International Federation of Red Cross and Red Crescent Societies (IFRC) has been at the forefront of promoting a systematic understanding of the need for legal frameworks to be in place before a disaster strikes.[4] Many governments and other international organisations

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1 See for example, Bruna Simma & Philip Alston, 'The Sources of Human Rights Law: Custom, Jus Cogens, and General Principles' (1988–1989) 12 Australian Yearbook of International Law, 82–108.

2 IFRC, World Disasters Report 2000 (2000), Chapter 8 'Towards an international disaster response law', 145.

3 *Ibid*. For an excellent overview of the development of international disaster law since the 2000 World Disasters Report, see: Kirsten Nakjavani Bookmiller, 'Closing "the Yawning Gap"? International Disaster Response Law at Fifteen' in Susan Breau & Katja Samuel (eds.), Research Handbook on Disasters and International Law (Edward Elgar 2016) 46–68.

4 See for example: Horst Fischer, International Disaster Response Law: A Preliminary Overview and Analysis of Existing Treaty Law, IFRC (Geneva 2003); IFRC, Law and Legal Issues in International Disaster Response: A Desk Study (Geneva 2007); IFRC, Introduction to the

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have also recognised the need for a more comprehensive and coherent approach to the legal implications of disasters, as seen during the work of the International Law Commission on the Draft Articles in the Protection of Persons in the Event of Disasters.[5]

As greater focus has been placed on identifying the legal implications of natural and technological hazards, there has been a concomitant need to easily access domestic, regional and international legal texts and commentaries on the interconnecting legal frameworks applicable in disaster settings.[6] As a result, a variety of different online legal databases and reference tools have been developed over the past 10 years to assist policy-makers, practitioners, civil society and scholars. However, the global community of disaster lawyers is proportionally small, and it is important to ensure that such databases are as comprehensive and as up-to-date as possible. Consequently, in early 2020, the IFRC and Roma Tre University entered into partnership to develop an online resource on disaster law to bring together the disparate legal texts and publications into one central database.[7]

2 The IFRC Disaster Law Database

Following extensive consultation over the course of 2020, the project team in the IFRC and Roma Tre University mapped out the planned substantive content and technological requirements for the new Disaster Law Database, which is available online at <https://disasterlaw.ifrc.org/disaster-law-database>. The team was led by Professor Giulio Bartolini of Roma Tre University and Isabelle Granger of IFRC Disaster Law, with support from Dr. Eleonora Branca and Dr. Carlo De Stefano (Roma Tre University), Dr. Dug Cubie (University College

Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance (2008).

5 UN General Assembly, Report of the International Law Commission, 68th Session (2 May–10 June and 4 July–12 August 2016) Supplement No.10, UN Doc. A/71/10.

6 For discussion of the interconnections between some of the relevant legal frameworks, see, Dug Cubie & Tommaso Natoli, 'Coherence, Alignment and Integration: Understanding the Legal Relationship between Sustainable Development, Climate Change Adaptation and Disaster Risk Reduction' in Stephen Flood et al (eds), Creating Resilient Futures: Integrating Disaster Risk Reduction, Sustainable Development Goals and Climate Change Adaptation Agendas (Palgrave Macmillan 2021–forthcoming).

7 Specifically, the Disaster Law Database is an initiative of IFRC Disaster Law and Roma Tre University's EU-funded Jean Monnet Project 'Disseminating Disaster Law for Europe' (<www.dilaw4.eu/>). The objectives of the DILAW4E project are to support information activities, disseminate knowledge and promote research debate on the crucial implications of disaster law for the European, international and national institutions and to assess its impact on humanitarian activities of relevant stakeholders.

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Cork) and Rachel Macleod (IFRC Disaster Law). As a global collaborative project, additional partners have contributed to specific sections, including the work of identifying and summarising cases for the case law section undertaken by teams of academics and postgraduate students led by Dr. Susan Breau in the School of Law, University of Victoria, BC, Canada, Dr. John Hopkins in the Faculty of Law, University of Canterbury, New Zealand, and Dr. Dug Cubie in the School of Law, University College Cork, Ireland.[8]

Drawing on the existing experience in disaster law and associated branches of international law, in particular the international environmental law database 'EcoLex',[9] the new Database is intended to bring together in one place the resources needed for practitioners and academics working in the field of disaster law. The materials in the Database come from across the international, regional and domestic levels, and from a wide range of actors including states, international organisations, the IFRC, and academic institutions. A central design feature of the Database was to provide a simple means of searching for different types of legal sources, from national disaster management legislation to specialised international treaties and judicial decisions relating to disasters. Consequently, the Database brings together the world's largest collection of documents relating to disaster law and currently includes over 1.200 searchable texts. All documents are available in PDF format, and the Database includes documents in multiple languages.

In particular, the Database covers eight different types of texts including binding legal sources, practitioner reports, and academic commentaries, namely: i) case law; ii) documents of international organisations; iii) documents of transnational private actors, including reports from non-governmental organisations and bodies such as the International Law Association and the Inter-Parliamentary Union; iv) documents of treaty bodies (global and regional); v) literature, such as academic articles and books; vi) national documents; vii) Red Cross Red Crescent (RCRC) documents; and viii) treaties. As would be expected, in addition to a general search bar, a variety of filters are available to narrow a researcher's search terms, including by keyword, region, country, and language. Additional filters are available in certain sections to

8 The project team would like to acknowledge the invaluable support provided by the following postgraduate students: Laura Braid and Alex Davies (University of Canterbury); Love Babajide and Ratana Ly (University of Victoria); and Ciara Desmond, Katie Fowler, Luke Haugh, Kelly McEveney, Emily O'Driscoll and Katie O'Leary (University College Cork).

9 The EcoLex database is an information service on environmental law, operated jointly by the Food and Agriculture Organisation (FAO), the International Union for the Conservation of Nature (IUNC) and the UN Environment Programme (UNEP), available at <www.ecolex.org/>.

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refine a search by way of issuing body, international organisation, type of publication, or disaster law area (including topics such as protection, disaster risk reduction, and public health).

As a work in progress, the Database will continue to add new documents and legal texts on an ongoing basis. At the time of writing, the sections on Literature and National Documents remain to be activated on the website, although this will occur in due course. In particular, reflecting the open access nature of the IDL in Practice section of this Yearbook, all these reports will soon be available in the Literature section thereby providing easily accessible information on the practical application of disaster law across different regions and thematic topics. Currently, the largest sections are the reports and publications from international organisations and the RCRC Movement. Notably, there are already nearly 200 international treaties contained within the Database and 45 documents emanating from treaty bodies, such as regional and UN human rights monitoring bodies, and reports by various inter-governmental bodies, including from the Conference of the Parties (COP) of the UN Framework Convention on Climate Change. The case law section to date contains summaries of over 40 judicial decisions from eight national jurisdictions (so far: Australia, Canada, India, Ireland, New Zealand, Papua New Guinea, South Africa, and the United States of America) and two regional human rights courts, and provides a new means of comparative analysis of the legal reasoning and decisions made by judges across the world on issues such as civil liability for compensation, criminal responsibility for negligence, and the human rights obligations of different actors.[10]

3 Areas for Future Development

The launch of the IFRC Disaster Law Database provides an important new means to access a wide range of legal texts, and provides a comprehensive attempt to pull together the disparate threads of existing disaster law. As with any online database, there is a need to ensure that new documents and texts are continually uploaded, and for the community of disaster lawyers and practitioners to bring such texts to the notice of the Database coordinators. To truly deepen and broaden the utility of the Database, there is a need to ensure that

10 As the Database expands, it is intended to increase the number of institutions contributing to the case law section to ensure a truly global approach. Anyone interested in contributing to this section should contact Dr. Dug Cubie in the School of Law, University College Cork, Ireland (d.cubie@ucc.ie).

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documents from all countries across the world are included, and that they are provided in multiple languages wherever possible.

At a more fundamental level, by bringing together this wealth of legal texts, the Database can provide a guide to the sources of international disaster law. Article 38(1) of the Statute of the International Court of Justice famously sets out the sources of international law, covering international conventions, custom, general principles, and judicial decisions and publications.[11] Additionally, national legal systems draw on their constitutions, legislation, case law and other recognised legal sources based on their own specificities, such as whether the legal system comes from the common law or civil law tradition. Moving beyond the current content of the IFRC Disaster Law Database, the field of disaster law can only benefit from a greater level of debate as to its core texts and legal sources. Questions remain as to whether or not it is possible to identify any customary international law relating to disasters,[12] as well as what legal principles (if any) can be classified as general principles of disaster law.[13] Twenty years on from the call to develop a systematic overview of disaster law, by providing a one-stop-shop to access a multitude of disaster law texts, the new IFRC Database can act as a springboard to the next phase in the evolution of disaster law as a distinct branch of law, namely the identification and application of the sources of disaster law.

11 For discussion in the context of disaster law, see: Imogen Saunders, 'International Disaster Relief Law and Article 38(1)(c) of the Statute of the International Court of Justice: The Forgotten Source of International Law' in David Caron, Mark Kelly and Anastasia Telesetsky (eds), The International Law of Disaster Relief (Cambridge University Press 2014) 29–45.

12 For example, the IFRC World Disasters Report 2000 noted that the Sphere Handbook's minimum standards might be a case study of customary international law in the making, see: IFRC (n 2)153.

13 See for example, 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) 52–70.

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