

International Disaster Response Law Course Syllabus

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Learning Objectives

International disaster response and protection of disaster victims are becoming topical issues in International Law, made increasingly relevant after a number of major disasters that occurred in the last eight years such as the 2004 Indian Ocean tsunami, Hurricane Katrina, the 2010 earthquakes in Haiti and Chile, and the recent earthquake and tsunami in Japan. The UN International Law Commission's 2007 decision to draft articles on the protection of victims of disasters further bears out the significance of the topic.

The course is designed to provide students with an overview of the international legal regime that governs disaster response and discuss challenges and achievements of international disaster response.

The learning objectives of this course are:

1. To analyze international law principles and norms on disaster response;
2. To elucidate duties of disaster-affected states and third states and highlight the role international organizations play in disaster situations;
3. To examine the protection of victims of disasters through a perusal of relevant international human rights law and the practice of regional human rights bodies and domestic courts;
4. To tackle controversial legal issues such as the existence under international law of a state obligation to seek and/or accept humanitarian relief and a human right to humanitarian assistance;
5. To analyze case-studies with a view to show students how international disaster response law has worked in practice; and
6. To stimulate a critical assessment of the international legal regime that governs disaster response.

Course Description

The course will first analyze the definition of disaster put forward by the International Law Commission, the contexts and causes of disasters and the strictly related concept of displacement of populations. We will then look at the normative content of international disaster response law (IDRL) and analyze international instruments on disaster response. We will explore the extent to which other germane bodies of international law such as international human rights law and refugee law are applicable to disaster situations.

After sketching out the legal framework of IDRL, we will examine principles informing disaster relief and elucidate rights and obligations of states affected by disasters. We will tackle the question of whether an obligation to seek and/or accept international assistance and a duty to prevent disasters exist under international law. Subsequently, we will examine the responsibility of states vis-à-vis victims of disasters that occurred in foreign countries and determine whether these states have an obligation to provide humanitarian relief. We will critically analyze the concept of the “Responsibility to Protect” and discuss whether the scope of this responsibility should be expanded to cover disaster situations. The analysis of state responsibility vis-à-vis disaster situations will be complemented by a discussion on the role the UN and other international organizations play in disaster-stricken countries.

The situation of disaster victims will come under examination, too. We will analyze human rights and international instruments that are relevant to the situation of disaster victims alongside protection needs of disaster-affected individuals. We will pay particular attention to the situation of women during disaster situations. The enforcement of disaster victims’ human rights will be examined with reference to the practice of the Constitutional Court of South Africa, the European Court of Human Rights and the Inter-American Commission on Human Rights. Finally, we will discuss challenges in the protection of disaster victims and the controversial question of whether a “right to humanitarian assistance” exists under international human rights law.

Course Requirements

- 1) **Class participation.** Active class contribution is important to success in this course. Students will contribute weekly to class discussion. Students are expected to be prepared to discuss assigned reading material in class. Assigned reading material is made available in the handout room (Room 465) of the WCL.
- 2) **Class Attendance.** Students are expected to attend class regularly, at a minimum 75% of the time, to receive credit. (The maximum number of classes from which they can be excused is 3). Students who fail to comply with the attendance requirement may not be allowed to receive credit for the class.
- 3) **Final Paper.** Students will choose a topic of special interest subject to the instructor’s approval. The paper should be 20-25 pages. It must not exceed 25 pages. *Students are advised that if their paper exceeds the length limit the instructor will not consider or read additional pages.*
- 4) **Independent Studies and Upper-Level Writing Requirement.** Students who wish to write an independent study are welcome to do so. They are required to write 20-25 more pages on top of the 20-25 pages normally required. They are expected to write a 40-50 page study. The paper must not exceed 50 pages. Students who wish to write a paper to satisfy the upper-level writing requirement are also welcome to do so. In this case the paper should be no less than 30 pages. It must not exceed 50 pages. *Students are advised*

that in case their study/paper exceeds the length limit the instructor will not consider or read additional pages.

- 5) **The deadline for submitting the paper topic is Tuesday, October 2, 2012.** Students are required to inform the instructor about their paper topic via e-mail.
- 6) **The deadline for submitting the paper/independent study/upper-level writing paper is Monday, December 3, 2012 by 11 pm. Late submissions will be penalized with half-letter grade deduction per day.** Students are required to submit their papers through the drop box of the course webpage on MyWCL.
- 7) **Final Grade.** The Final grade will result from the following:
Class participation: 15%
Final Paper: 85%
- 8) **Office Hours.** The instructor's office hours are Tuesdays and Thursdays from 10 am to 11 am in Room 113 (Adjunct Center located in the library) and other times by appointment.

Weekly Topics

Week 1: Introduction to the course and preliminary discussion on the concept of "disaster".

- Assignment on the definition of "disaster".

Week 2: The concept of disaster: analysis of the UN International Law Commission's definition of disaster; causes and contexts of disasters and introduction to the concept of displacement; challenges and issues at stake in disaster situations. Case-study: the March 2011 Japan earthquake and tsunami.

- "Defining Disaster", in Second report on the protection of persons in the event of disasters, by Eduardo Valencia-Ospina, Special Rapporteur, International Law Commission, May 7, 2009, A/CN.4/615, Part II, Section D, pp.11-16.
- *Biggest quake in Japanese history triggers widespread destruction and nuclear threat*, available at <http://www.unocha.org/top-stories/all-stories/biggest-quake-japanese-history-triggers-widespread-destruction-and-nuclear-t>
- *Freezing temperatures and fuel shortages complicate emergency relief operations*, available at <http://www.unocha.org/top-stories/all-stories/freezing-temperatures-and-fuel-shortages-complicate-emergency-relief-operati>
- *Food safety issues an added dimension to the earthquake and tsunami emergency* available at <http://www.unocha.org/top-stories/all-stories/food-safety-issues-added-dimension-earthquake-and-tsunami-emergency>

Week 3: International Disaster Response Law (IDRL) and its relationship with other germane bodies of international law.

- Preliminary report on the protection of persons in the events of disasters, by Eduardo Valencia-Ospina, Special Rapporteur, International Law Commission, 5 May 2008, A/CN.4/598, pp. 6-15.
- David Fisher, “Overview of Current Legal Frameworks Applicable to International Disaster Response”, “Bilateral Treaties and Agreements” in *Law and Legal Issues in International Disaster Response: a Desk Study* (International Federation of Red Cross and Red Crescent Societies), pp. 39-50 and 80-81.
- 2005 ASEAN Agreement on Disaster Management and Emergency Response **(to be read and discussed in class)**.

Recommended readings:

- The 1998 Tampere Convention on the Provision of Telecommunication Resources for Disaster Mitigation and Relief Operations, Articles 2, 3, 4 5, 6 and 9.
- The 2000 Framework Convention on Civil Defence Assistance.

Week 4: Principles informing disaster relief; rights and duties of affected states, the controversial duty to seek and/or accept international assistance. Case-studies: the 2008 Myanmar cyclone and the 2009 Italian earthquake.

- Third report on the protection of persons in the event of disasters, by Eduardo Valencia-Ospina, Special Rapporteur, International Law Commission, 31 March 2010, A/CN.4/629.
- Magdalena Sepúlveda “Obligations regarding International Assistance and Cooperation”, “Developing States”, in *The Nature of Obligations under The International Covenant on Economic, Social and Cultural Rights*, 2003, pp. 370-371 and 376-377.
- Jarrod Wong, “Reconstructing the Responsibility to Protect in the Wake of Cyclones and Separatism”, *Tulane Law Review*, Vol. 84, No. 2, 2009, pp. 242-244.

Week 5: Duties of third states: the obligation to provide humanitarian relief.

- “Solidarity and Cooperation”, in Second report on the protection of persons in the event of disasters, by Eduardo Valencia-Ospina, Special Rapporteur, International Law Commission, May 7, 2009, A/CN.4/615, Part III, pp.16-25.
- Committee on Economic, Social and Cultural Rights General Comment No. 3 on the Nature of State Parties Obligations, paragraphs 13-14; General Comment No. 12 on the Right to Adequate Food, E/C.12/1999/5, paragraphs 36, 38-39; General Comment No. 14

on the right to health, E/CN.12/2000/4, paragraph 40; General Comment No.15 on the right to water, E/C.12/2002/11, paragraph 34.

Week 6: Duties of third states: reinterpreting the “Responsibility to Protect” to cover disaster situations.

- Jarrod Wong, “Reconstructing the Responsibility to Protect in the Wake of Cyclones and Separatism”, *Tulane Law Review*, Vol. 84, No. 2, 2009, pp. 219-236 and 242-263.

Week 7: The role of the UN: legal framework, operational and political dimension; the role of the International Federation of the Red Cross and Red Crescent Societies.

- “The legal Framework of Humanitarian Assistance in the UN System”, *Presented by Lance Bartholomeusz, Legal Officer, Department of Legal Affairs, UNRWA HQ (Gaza) at the 7th AIDA IHL Forum, 10 May 2006, Al-Ram.*
- The Role of the UN High Commissioner for Refugees (UNHCR) in the aftermath of the earthquake in Haiti.

Week 8: Protection of disaster victims: rights and protection needs.

- Chris Kromm and Sue Sturgis, *Hurricane Katrina and the Guiding Principles on Internal Displacement, A Global Human Rights Perspective on a National Disaster*, Institute for Southern Studies, Special Report, Vol. XXXVI, No. 1 and 2, 2008, pp. 6-9, 11-15, 16-18, 23-24, and 26-27.
- Guiding Principles on Internal Displacement (**to be read and discussed in class**).

Week 9: Persons in need of special protection: women.

- Fionnula Ni Aolain, “Women, Vulnerability and Humanitarian Emergencies”, Transitional Justice Institute, Research Paper No. 10-15, pp. 1-9 and 13-16.
- Erica Harper “Protecting the Rights of Vulnerable Groups in Disaster Situations”, in *International Law and Standards Applicable in Natural Disaster Situations*, International Development Law Organization, 2009, pp. 71-79.

Week 10: Enforcing disaster victims' rights: the practice of the Constitutional Court of South Africa.

- *Minister of Public Works and Others v Kyalami Ridge Environmental Association and Others* (Mukhwevho Intervening) (CCT 55/00) [2001] ZACC 19; 2001 (3) SA 1151 (CC); 2001 (7) BCLR 652 (CC) (29 May 2001).

Week 11: Enforcing disaster victims' rights: the practice of the European Court of Human Rights.

- *Budayeva and others v. Russia*, Applications nos. 15339/02, 21166/02, 20058/02, 11673/02, 15343/02, Judgment of 20 March 2008.

Week 12: Enforcing disaster victims' rights: the practice of the Inter-American Commission on Human Rights.

- PM 367-10 - Forced Evictions from Five Camps for Displaced Persons, Haiti
- Nicole Phillips, Kathleen Bergin, Jennifer Goldsmith and Laura Carr, "Enforcing Remedies from the Inter-American Commission on Human Rights: Forced Evictions in Post-Earthquake Haiti", *Human Rights Brief*, vol. 19, issue 1, Fall 2011, 13-18.

Week 13: Challenges in the protection of disaster victims. Does a "right to humanitarian assistance" exist under international human rights law?

- Roberta Cohen and Megan Bradley, "Disasters and Displacement: Gaps in Protection", *Journal of International Humanitarian Legal Studies*, vol. 1, 2010, pp.1-12 and pp.18-20.
- *Protecting Persons Affected by Natural Disasters*, UN Inter-Agency Standing Committee Operational Guidelines on Human Rights and Natural Disasters, June 2006, pp.15-32.

Week 14: Review of weekly topics. Exercise: visualizing disaster situations and disaster victims.