

The Right to Health in Emergencies: Natural or Man-Made Disasters

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Introduction: Overview of natural disasters

Recent emerging and re-occurring natural and man-made disasters around the world reinforce the potency of the forces of humanity's destruction as depicted by 'The Four Horsemen of the Apocalypse – Conquest, War, Famine/Pestilence/Drought/Mass Starvation, and Death.'¹ Examples of the devastation caused by disasters abound in every region of the world. The Hanshin Earthquake ("Kobe earthquake" as it is commonly known outside of Japan) of 17 January 1995 with its epicentre in the Awaji Island, Japan, claimed over 6000 lives, and devastated the city of Kobe. This was the worst earthquake in Japan since the Kanto earthquake of 1923 that claimed 140 000 lives. The Indian Ocean tsunami of December 2004, with its epicentre off the west coast of Sumatra, Indonesia, triggered a series of devastating tsunamis on the Indian Ocean coasts killing over 200 000 people. As one of the deadliest natural disasters in history, it caused massive damage and claimed thousands of lives in Indonesia, Sri Lanka, India, and Thailand. In August 2006, hurricane Katrina, one of the deadliest hurricanes in the history of the United States, devastated the city of New Orleans, caused extensive damage along the entire Mississippi coast, and led to the loss of over 1500 lives. In May 2008, cyclone Nargis flattened buildings, claimed over 100 000 lives, and rendered over 1 million people homeless in Myanmar. The recent earthquake in China, past and recurring hurricanes and

tornadoes in the Americas and the Caribbean, flood, famine and drought in parts of Africa, have brought in their wake complex questions about realizing the right to health in emergencies.

Natural or man-made disasters: Cyclone, tornado, hurricane, flood, tsunami, earthquake, volcanic eruption, forest fire, chemical spills, and climate change-induced drought, famine, rainfall variations, and the shrinking of fresh watercourses, result in unimaginable human suffering, mass starvation, and unquantifiable humanitarian catastrophe. These are crises that often bring together the two components of human security: “freedom from fear” (as in the case of Myanmar) where the state constitutes an impediment to humanitarian assistance from the international community, and “freedom from want” where disasters lead to mass starvation, breakdown of public health infrastructure, hunger, and lack of the essential necessities of life.²

This chapter assesses the challenges of promoting and realizing the right to health in natural and man-made disasters, and suggests practical ways of achieving the “right of everyone to the highest attainable standard of health” in emergencies. The promotion of the right to health in natural or man-made disasters is of particular concern to the international community, especially in the light of recent disasters such as the Indonesian tsunami, the earthquake in China, and the cyclone Nargis in Myanmar. Both in normal times and during disasters, the overwhelming burden of health problems, disease, hunger, starvation, and death lies on vulnerable groups who are least able to afford medical treatment and preventive measures, and whose governments have the least capacity to meet these urgent needs. Simultaneously, the human cost of climate change and related natural disasters is especially severe in developing countries. Disasters raise serious human security questions for the international community. In situations like the Indonesian tsunami, although international humanitarian response was remarkable, serious problems were encountered in distributing humanitarian aid. So where does the right to health fit in emergencies?

Overview of the right to health in international legal instruments

International legal instruments, including human rights treaties, contain numerous provisions that protect and promote the right to health. This chapter highlights, as examples, a few of the key international legal instru-

ments that codify the right to health. First, early in the history of the United Nations, the Universal Declaration of Human Rights (1948) affirmed that:

“Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing, and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.”³

Second, the Constitution of the World Health Organization (WHO), one of the first specialized agencies to be established within the United Nations system provides that:

”[T]he enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, political belief, economic or social condition.”⁴

Third, Article 12(1) of the International Covenant on Economic, Social, and Cultural Rights (ICESCR) 1966 recognizes the “right of everyone to the enjoyment of the highest attainable standard of physical and mental health”, and lists the steps to be taken by States Parties to the ICESCR to achieve the full realization of this right. With respect to other health-related economic and social issues, especially food and housing, Article 11 of the ICESCR recognizes “the right of everyone to an adequate standard of living ... including adequate food, clothing and housing, and to the continuous improvement of living conditions.” Everyone has a fundamental right to be free from hunger.

Fourth, in the specific context of children, the Convention on the Rights of the Child (1989) provides that “States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.”⁵

Although normative provisions on health abound in international legal instruments, realizing, protecting, enforcing, and promoting the right to health both in ordinary times, and in emergencies, has proved exceedingly complex. As the outgoing United Nations Special Rapporteur on the Right

to Health Paul Hunt rightly observed, the key next step is to foster an understanding “... that the right to the highest attainable standard of health is not just a rhetorical device, but a tool that can save lives and reduce suffering, especially among the most disadvantaged.”⁶ And the most powerful tool it provides is that of accountability – accountability that does not seek to blame and punish, but one that sets standards and seeks to discover what works and what can be improved.⁷

Accountability for the right to health in emergencies

In an emergency situation of a natural or man-made disaster, the right to health can be used to monitor the humanitarian response by local, regional, national and international actors. Every international legal instrument that provides for the right to health stresses the need for “international assistance and cooperation”. This is because disasters often overwhelm local capacity and infrastructure for health-care delivery. A disaster, as observed by the WHO Collaborating Centre for Research on the Epidemiology of Disasters (CRED), is “... a situation or event, which *overwhelms local capacity*, necessitating a request to national or international level for *external assistance*.”⁸ As unforeseen and often sudden events, disasters cause “great damage, destruction and human suffering.”⁹ The key questions remain: is there an obligation on the affected state to accept external “humanitarian” assistance without delay where a significant percentage of its population is vulnerable to starvation, unnecessary suffering, and imminent death? Do other states have an obligation to offer humanitarian assistance to a state hit by a disaster?

The Guiding Principles for the provision of humanitarian assistance, as set out in UN General Assembly Resolution 48/182 (1991), affirm that “the sovereignty, territorial integrity and national unity of States must be fully respected in accordance with the Charter of the United Nations. In this context, humanitarian assistance *should be provided with the consent of the affected country and in principle on the basis of an appeal by the affected country*.”¹⁰ However, even though “[e]ach State has the responsibility first and foremost to take care of the victims of natural disasters and other emergencies occurring on its territory,”¹¹ what happens if that State cannot or does not take care of its own population? Here the international community has to grapple with the tension between state/territorial sovereignty,

and humanitarian intervention which has now been addressed in the emerging norm of the “Responsibility to Protect”.¹² This scenario, as exemplified in the attitude of the government of Myanmar towards international humanitarian assistance after cyclone Nargis, presents a difficult conundrum in realizing the right to health in emergencies. In the wake of cyclone Nargis, opinions were sharply divided on whether the norm of Responsibility to Protect should be invoked to deliver food, medicine and other essential supplies to the affected population in Myanmar.

The French Foreign Minister and co-founder of the humanitarian non-governmental organization, Médecins sans Frontières, Bernard Kouchner, and Lloyd Axworthy, former Canadian Foreign Minister and now President of the University of Winnipeg, strongly called for the invocation of the Responsibility to Protect norm to protect the people of Myanmar who were at risk, not only from natural disaster, but also from their government’s neglect by wilfully blocking the delivery of humanitarian aid: Food, medicines, and other essential supplies. According to Axworthy, “there is no moral difference between an innocent person being killed by machete or AK-47, and starving to death, or dying in a cholera epidemic that could have been avoided by proper international response.”¹³

Gareth Evans, former Australian Foreign Minister and now head of the International Crisis Group, and Ramesh Thakur, former Senior Vice Rector, United Nations University and now distinguished fellow at the Centre for International Governance Innovation (CIGI), Waterloo, Canada, were ambivalent about invoking the Responsibility to Protect in the Myanmar case. Both Evans and Thakur were part of the Canadian-sponsored International Commission on Intervention and State Sovereignty (ICISS) that put forward the Responsibility to Protect norm. Thakur points out that, while the original Responsibility to Protect concept included issues surrounding natural disasters, the need to build international consensus on the concept at the UN World Summit in 2005 restricted the circumstances for invoking the norm to large scale killings and ethnic cleansing, not death caused by natural disasters.¹⁴ According to Evans, the norm is about protecting vulnerable populations from genocide, war crimes, ethnic cleansing and crimes against humanity. Even in such cases, the norm allows the use of military force only with the authorization of the UN Security Council.¹⁵

Calling for some form of action, Knight and Popovski advocated for the categorization of the (in)action of the government of Myanmar as a crime

against humanity. Doing so would have bolstered the case for discussion in the UN Security Council about invoking the norm in the Myanmar case. To do otherwise would portray the international community as more concerned about preserving the norm than protecting the vulnerable Myanmar people.¹⁶ As the case of Myanmar has demonstrated, the international community must find ways to deal with “overwhelming natural and environmental catastrophes” within the Responsibility to Protect doctrine. While there is little room for shuttle diplomacy in emergency situations, simply because people are dying by the minute, in situations like Myanmar, where the government wilfully blocks humanitarian aid, it is imperative that the use of good offices of top diplomats, even at the level of the UN Secretary-General as Ban Ki-moon did with his visit to Myanmar, could persuade the government to shift its position.¹⁷ In other emergency situations, where governments accept external humanitarian assistance, difficult questions remain on the coordination and implementation of humanitarian assistance.

The role of the international community in promoting the right to health in emergencies

The question whether one state owes an obligation to promote the right to health of populations in another state, albeit complex in the context of state sovereignty, seems to find support in Article 2 of the ICESR which contemplates that states do have obligations to those in other countries. Although this question reflects the realities of the state-centric international system, Professor Louis Henkin, one of the most influential human rights scholars of our time, has rightly argued that:

“[A]nother state can help to give effect to some economic-social rights – the right to food, education, health-care and an adequate standard of living – without forcible intervention, merely by financial aid to the local government ... and as the Third World has insisted on its campaign for a new International Economic Order ... wealthy states are therefore morally obligated and should be legally obligated to help the poorer states.”¹⁸

Despite this persuasive view, difficult questions still need to be answered. As Gostin and Archer queried, “... if States have the capacity to assist less developed States (while continuing to fulfil their obligations to the health

of their own citizens), to what extent do they have a well-defined legal or ethical responsibility to do so?"¹⁹ The problem remains that while states' responsibilities to assist other states may derive from law, political commitments, ethical values, and national interests, international human rights law currently does not provide clear direction to states in order to operationalize this responsibility.²⁰ This is partly because of the weak enforcement mechanisms for international human rights treaties. But there is no reason why the principle of sovereignty should not give ground to human need in order to, as Gostin and Archer argue, "enlarge the political space for developing a forum of consensual international cooperation."²¹ At the moment, as pointed out by Hardcastle and Chua, there exists no multilateral treaty like the Geneva Conventions (applicable in times of armed conflict) that provides for the right of victims of national disasters to receive humanitarian assistance.²²

Because of the lack of a political space to operationalize the responsibilities of states during disasters, it becomes extremely difficult to determine the scope of such responsibilities. This is also complicated by the real challenges that the right to health in international law faces: Definition, scope, benchmarks for identification of a violation, and enforcement. In order to deal with such problematic issues, and give meaning to the language of the ICESCR, the Committee on Economic, Social and Cultural Rights (CESCR) has produced a number of General Comments which were intended to, and indeed do, have significant normative force. In 2000, the CESCR clarified that under Articles 12(1) and 2(1), states do have an international legal obligation to be active in respect of the right to health (and its violations), and where resources are available, they "should facilitate access to essential health facilities, goods and services in other countries, wherever possible and provide the necessary aid when required."²³ This is particularly relevant in the context of disasters, where "State parties have a joint and individual responsibility, in accordance with the Charter of the United Nations and relevant resolutions of the United Nations General Assembly, and of the World Health Assembly, to cooperate in providing disaster relief and humanitarian assistance in times of emergency ..."²⁴ In fact, the CESCR went so far as to state:

"[For] the avoidance of any doubt, the Committee wishes to emphasize that it is particularly incumbent on States parties and other actors in a position to assist, to provide 'international assistance and cooperation, especially

economic and technical' [Article 2(1) ICESCR] which enable developing countries to fulfil their core and other obligations ..."²⁵

While there are still instances where states do refuse external humanitarian assistance, most notably North Korea, Iran after the 1990 earthquake, Afghanistan after the 1998 earthquake, and most recently Myanmar after cyclone Nargis, the CESCR has emphasized that in order to comply with its core obligations under the ICESCR, a state must demonstrate not only that it is using the maximum of its own available resources, but that it has attempted to use the maximum of the international community's available resources.²⁶

National sovereignty is indeed an increasingly weak defence against intervention when a government is failing to fulfil its responsibilities to its own people. In this context, some legal scholars have expressly called for a significant shift towards recognizing the right to health in emergencies, especially during natural and man-made disasters within the emergent Responsibility to Protect norm.²⁷ Perhaps the broader issue is whether or not a legal enforcement mechanism would be helpful at all. There is a strong case to suggest that were it actually possible to create such a mechanism, it would not improve the current effectiveness of pressuring governments to rectify individual privations and to provide humanitarian assistance or to accept it in times of disaster.²⁸

Towards a better disaster response framework:

The way forward

"Intervention", even when its overwhelming mission is to deliver humanitarian assistance in times of emergency, can be extremely politicized. Because of "national interests" and ideological and other differences, the governments of Iran, Myanmar, and Afghanistan under the Taliban, for instance, would flatly refuse any humanitarian assistance from the United States and the major powers in Europe. With the end of the Cold War, the world moved away from hard state security issues, like nuclear threats, to soft human security issues, like infectious diseases, hunger and environmental threats. Despite this transformation, differences still remain. Humanity will continue to live with natural disasters: Cyclones, tornados, hurricanes, floods, tsunamis, earthquakes, volcanic eruptions, forest fires, chemical spills, and other climate-change-induced calamities. The question

is how to cope with and mitigate their impact on vulnerable populations within the territories of nation-states.

As a basic first step, the international community must re-think how to improve the effectiveness of humanitarian assistance and how to better coordinate response to disasters. Academic and policy debate, thus far, has narrowly focused on the impediments of state sovereignty to the right to health provisions in international legal instruments, as well as the right to intervene to deliver humanitarian assistance. The right of access to victims of natural disasters has operated on a patchwork of laws and frameworks. In a recent exhaustive and insightful study, the International Federation of Red Cross and Red Crescent Societies comprehensively articulated the law and legal issues in international disaster response.²⁹ This ambitious work points the way forward on most of the difficult issues that impede the delivery of humanitarian assistance: Problems with visas and work permits for doctors, nurses, and other humanitarian workers, customs procedures for clearance of relief materials and essential supplies like medicines, food and water, transportation and movement of equipment, as well as how to balance sovereignty and humanitarian concerns using both hard law and soft law approaches. The study also includes a survey of the relevant treaties and soft-law provisions that aid humanitarian work and the challenges of using these mechanisms in various regions of the world, given each region's specific social and economic context. The study also highlighted lessons learned from responses to past disasters as a way to improve future responses by the international disaster response community. All of these issues have to be addressed holistically by all actors: States, international organizations, and non-state actors that work on response to natural disasters.

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 - 2 Commission on Human Security, *Human Security Now* (New York: Commission on Human Security, 2003); Report of the UN Secretary-General, Kofi Annan, *In Larger Freedom* (New York: United Nations, 2005).
 - 3 Article 25(1) of the Universal Declaration of Human Rights (1948).
 - 4 Preamble, Constitution of the World Health Organization, signed on 22 July 1946, and entered into force on 7 April 1948.
 - 5 Article 24.
 - 6 Paul Hunt, 'Poverty, Malaria and the Right to Health: Exploring the Connections', Annual Lecture on Malaria and Human Rights, 10 December 2007, at 6, available at http://www.malariaconsortium.org/data/files/10_dec_2007_malaria_paper_with_footnotes__18_dec_07_.pdf.
 - 7 *Ibid.*, at 5.
 - 8 CRED's 'EMDAT: International Emergency Disasters Database' website, <http://www.emdat.be/ExplanatoryNotes/glossary.html>.
 - 9 *Ibid.*
 - 10 'Strengthening of the coordination of humanitarian emergency assistance of the United Nations', General Assembly Resolution A/RES/46/182, 19 December 1991, Annex, para. 3 (emphasis added), available at <http://www.un.org/documents/ga/res/46/a46r182.htm>.
 - 11 UN Resolution 46/182, para. 4.
 - 12 See *The Responsibility to Protect*, Report of the International Commission on Intervention and State Sovereignty (Ottawa: IDRC, 2001)
 - 13 Lloyd Axworthy, 'It's time to Intervene', *Ottawa Citizen*, Ottawa, 13 May 2008.
 - 14 Ramesh Thakur, 'Should the UN Invoke the "Responsibility to Protect"', *The Globe and Mail*, Toronto, 8 May 2008.
 - 15 Gareth Evans, 'Facing up to Our Responsibilities', *The Guardian*, London, 12 May 2008.
 - 16 W. Andy Knight and Vesselin Popovski, 'Putting People Ahead of Protocol', *The Edmonton Journal*, Edmonton, 4 June 2008.
 - 17 On the use of the good offices of the UN Secretary General, and his role as a norm entrepreneur, see Thomas Franck, 'The Secretary General's Role in Conflict Resolution: Past, Present, and Pure Conjecture' 6 *European Journal of International Law* (1995), 360–387; T. M. Franck and G. Nolte, 'The Good Offices Function of the UN Secretary-General' in Adam Roberts and Benedict Kingsbury (eds.), *United Nations, Divided World* (Second edition, New York: Oxford University Press, 1993) 143–182; Simon Rushton, 'The UN Secretary-General and Norm Entrepreneurship: Boutros Boutros Ghali and Democracy Promotion' 14(1) *Global Governance* (2008), 95–110.
 - 18 Louis Henkin, *The Age of Rights* (New York: Columbia University Press, 1990) 4.
 - 19 Lawrence O. Gostin and R. Archer, 'The Duty of States to Assist Other States in Need: Ethics, Human Rights, and International Law', *Journal of Law, Medicine & Ethics* (2007) 526–533, at 530.
 - 20 *Ibid.*
 - 21 *Ibid.*, at 531.
 - 22 Rohan Hardcastle and Adrian Chua, 'Humanitarian Assistance: Towards a Right of Access to Victims of Natural Disasters' 38 *International Review of the Red Cross* (1998), at 589.
 - 23 Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 14*, UN Doc. E/C.12/2000/4, 4 July 2000, at para. 39, available at [http://www.unhchr.ch/tbs/doc.nsf/\(symbol\)/E.C.12.2000.4.En?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(symbol)/E.C.12.2000.4.En?OpenDocument).
 - 24 *Ibid.*, at para. 40.
 - 25 *Ibid.*, at para. 45.
 - 26 CESCR, *General Comment No. 12 on the right to adequate food*, UN Doc. E/C.12/1999/5, 26 April – 14 May 1999, at para. 17, available at <http://www.unhcr.org/refugees/refugees.html>.

unhchr.ch/tbs/doc.nsf(symbol)/CESCR+General+comment+3.En?OpenDocument.

- 27** See C. Stahn, 'Responsibility to Protect: Political Rhetoric or Emerging Legal Norm?' 101 *American Journal of International Law* (2007) 99–120, at 101.
- 28** Michael J. Dennis and David P. Stewart, 'Justifiability of Economic, Social and Cultural Rights: Should There Be an International Complaints Mechanism to Adjudicate the Rights to Food, Water, Housing and Health?' 98 *American Journal of International Law* (2004), at 462–515.
- 29** See the recently released study by the International Federation of Red Cross and Red Crescent Societies, *Law and Legal issues in International Disaster Response: A Desk Study* (Geneva: International Federation of Red Cross and Red Crescent Societies, 2007).

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All rights reserved. The designations employed and the presentation of the material in this publication do not imply the expression of any opinion whatsoever on the part of the World Health Organization concerning the legal status of any country, territory, city or area or of its authorities, or concerning the delimitation of its frontiers or boundaries. Dotted lines on maps represent approximate border lines for which there may not yet be full agreement.Â Natural disasters are catastrophic events with atmospheric, geologic and hydrologic origins. They include earthquakes, volcanic eruptions, landslides, tsunamis, floods and drought. Natural disasters can have rapid or slow onset, and serious health, social and economic consequences. Most of the disasters have a natural origin, however, some disasters are manmade as well. On this basis, disasters can be broadly classified into two groups: ADVERTISEMENTS: Natural disasters: When disasters occur due to natural forces they are called natural disasters, over which man has hardly any control.Â Prevention and Mitigation: Despite the advances made by modern science, the exact time and place where an earthquake may strike cannot be predicted. Hence, the occurrence of an earthquake cannot be prevented. However, there are certain regions that are earthquakes prone and so the administration must work before hand to minimize the damages due to occurrence of earthquakes in such areas. Trends in emergency situations of natural and technogenic disasters in 2011. Introduction.Â Emergency - violation of normal life and activity of people in a facility or area, caused by an accident, disaster, natural disaster or other dangerous events that led/may lead to peopleâ€™s death and/or significant material damages. Causes of emergencies appearance: - Accidents; - Disasters; - Natural disastersÂ The most significant centers of landslides in Ukraine recorded on the right bank of the Dnieper, on the Black Sea coast, in Zakarpattia and Chernivtsi region.Â Large areas between the southern and south-western parts of the region are naturally flooded, the rest of flooding is man-made and are evolving under the influence of economic activity.