Responsibility to Protect and the Protection of Persons in the Event of Disasters

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R2P and the Protection of Persons in the Event of Disasters

Disasters frequently occur in all regions of the world and affect large numbers of individuals. They may have a disruptive impact on people, infrastructure and economies. Disasters in times of peace or war endanger life, health, and the physical integrity of human beings. They have disproportional consequences in vulnerable poorer societies because they deepen their poverty. In 2006, the UN counted 227 natural disasters resulting in over 23,000 deaths worldwide.¹ The 2004 Indian Ocean Tsunami was one of the worst disasters of the last century. It manifested the shortcomings of the international reaction concerning international protection of persons in critical situations. Disasters like cyclone Nargis that struck Myanmar in 2008 or the earthquake in Haiti in 2010 exposed a range of problems relating to domestic and international response. The legal dimension depends on the severity of the humanitarian crises that the disaster has caused. However, there is no international consent “on how great a catastrophe has to be in order to be considered a disaster for legal purposes, nor is there any agreement on what criteria should be used to measure its scale.”² This fact has important consequences because the question arises whether there is an obligation or entitlement for the international community to have access to the victims and to offer or even enforce humanitarian assistance. Some authors argue that humanitarian assistance is “nowadays...a necessary element to reach, in the words of the UN Secretary General, ‘Global Peace’, which requires the solution of social, economic, cultural and humanitarian problems. Therefore, any obstacle to the delivery of aid is correctly considered a danger to international peace and security.”³

Even if one does not share the far reaching interpretation of the UN practice concerning obstacles to the delivery of humanitarian assistance by Giuffrida,

¹ UN Doc. A/62/323, para. 3.
there is no doubt that the victims of natural and man-made disasters need immediate help. Thus, their protection has been a subject of concern since time immemorial. De Vattel observed as early as 1758 that all those who have provisions to spare should assist nations suffering from famine as an instinctive “act of humanity.”

This humanitarian assistance covers both the help provided from the affected State itself as well as the assistance coming from abroad. The non-action of States can, in such emergency situations, amount to a violation of international law, the principle of humanity and fundamental human rights. Therefore, very often the question of an international involvement arises which entails fundamental legal problems. The assistance to victims of disasters occurs according to the principle of humanity and the lack of a major multilateral treaty on this issue is somehow contradictory since there is an extensive body of international humanitarian law applicable to victims of armed conflicts. Several codification attempts have been made in the 1980s without success. In 1990 the UN assessed that donors, recipient governments and international organisations have expressed their opinion “on the desirability of new legal instruments in order to overcome the obstacles in the way of humanitarian assistance.” However, some non-governmental organisations argued that such an initiative carries the risk of weakening the progress already achieved over the years in providing humanitarian assistance. These organisations assumed that some governments would reinforce the insistence on the concept of national sovereignty and thus render a codification counterproductive. The proposal of a convention on the deployment and utilisation of urban search and rescue teams was subsequently drafted, but in 2002 it was replaced by the General Assembly Resolution A/57/150 which contains the Guidelines for the International Search and Rescue Advisory Group. Thus, the entire discussion on the issue has been dominated by the insistence of some governments on the principle of non-interference in their internal affairs. The work of the private International Law Association, too, in the 1980s did not tackle the big problems of sovereignty, especially the question as to whether States have a duty to undertake or accept relief. Recent developments in the field of human rights law like R2P pose challenges to the principles of State sovereignty and non-interference and raise the question as

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5 UN Doc. A/45/587, para. 41.
6 Ibidem para. 44.