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**Expert Meeting**

**“Is International Disaster Law Protecting Us?”**

 **Monday 4/10/2021 and Tuesday 5/4/2021**

**Roma Tre University, Department of Law**

(Hybrid format: in presence/virtual meeting)

in cooperation with the Yearbook of International Disaster Law (Brill), the Disaster Law Interest Group of the American Society of International Law, and the Jean Monnet Project ‘Disseminating Disaster Law for Europe’

# Report of the Expert Meeting

# Overview

On Monday 4 October and Tuesday 5 October 2021, at the occasion of the launch of the call for abstracts for Issue no. 4 (2021) of the *Yearbook of International Disaster Law* (Brill), the Jean Monnet Project ‘Disseminating Disaster Law for Europe’ organized, in cooperation with the Disaster Law Interest Group of the American Society of International Law, the Expert Meeting: ‘Is International Disaster Law Protecting Us?’.

The event was hosted by Roma Tre University – Department of Law and was offered in hybrid format, both in presence and as a virtual meeting.

**Opening remarks**

**Prof. Giulio Bartolini** (Editor-in-Chief of the Yearbook of International Disaster Law, Roma Tre University) presented the activities undertaken in the context of the Jean Monnet Project “Disseminating International Disaster Law for Europe” and introduced the works of the Expert Meeting.

**Prof. Giuseppe Palmisano** (Roma Tre University, General Rapporteur of the European Committee of Social Rights), also in its capacity of Head of the Department of Law Research Commission of Roma Tre University, welcomed the speakers and the participants of the Expert Meeting.

**Dr. Frank Mohrhauer** (International Federation of Red Cross and Red Crescent Societies - IFRC) presented the role of the IFRC in disasters and stressed the relevance of international disaster law. The partnership between Roma Tre University and the IFRC in the context of the Jean Monnet Project “Disseminating International Disaster Law for Europe” was also illustrated.

**Session I**

**The Long Covid Effect on the International Health Law System: Prospects and Challenges for the IHRs and the Pandemic Treaty**

# List of Speakers

* Steven Solomon (Principal Legal Officer, WHO)
* Gian Luca Burci (Adjunct Professor of International Law, Graduate Institute of International and Development Studies, Geneva, Former Legal Counsel, WHO)
* Mutoy Mubiala (Professor, University of Kinshasa, Guest Editor of the African YIL)
* Ginevra Le Moli (Assistant Professor of Public International Law, Leiden University)
* Pedro Villarreal (Senior Research Fellow, Max Planck Institute of International and Comparative Law, Heidelberg)
* Rachel Macleod (Senior Disaster Law Officer, IFRC)
* Flavia Zorzi Giustiniani (Associate Professor of EU Law, Link Campus University)
* Benjamin Mason Meier (Professor of Global Health Policy, University of North Carolina at Chapel Hill)
* Fausto Pocar (Honorary President, Sanremo IIHL, Member of the Institut de droit international, Commission on ‘Epidemics and International Law’)
* Stefania Negri (Associate professor of international law, University of Salerno), **as chair**

The chair of the session was **Stefania Negri** who addressed in general the topic of Covid-19 in the purview of International Health Law.

**Steven Solomon** illustrated the ongoing debate in the World Health Organization dealing with the proposals of reform on pandemic preparedness and response.

**Gian Luca Burci** presented an overall assessment on the challenges posed by Covid-19 to Global Health Security.

**Mutoy Mubiala** discussed the issue of International Health Law in light of the questions raised by Covid-19 from a Global South perspective.

**Ginevra Le Moli** focused on the specific issue of prevention, dealing in particular with containment measures to highlight the shortcomings of the International Health Regulations in this field.

Eventually, **Pedro Villarreal** reflected on the numerous risks posed by the pandemic and the role International Law may play in addressing them.

**Session II**

The second session of the first day saw the participation of **Rachel Macleod**, **Flavia Zorzi Giustiniani** **Prof. Benjamin Mason Meier**. The panellists addressed several crucial aspects of disaster management and prevention in the current health crisis, namely the shortcomings of the Covax initiative and the human rights implications of a possible pandemic treaty.

After the speakers’ presentations a Q&A session took place.

**Fausto Pocar** presented to the audience the concluding remarks of the first day of the Expert Meeting.

**Session III**

**A Practitioner’s Perspective on International Disaster Law: Roundtable on the Role of Law in Managing/Preventing Disasters**

# List of Speakers

* Isabelle Granger (Global Coordinator Legislative Advocacy, Disaster Law Programme, IFRC)
* John Grahaman (World Food Programme, Legal Office)
* Francesco Pontiroli Gobbi (Legal and Policy Officer, Directorate-General for European Civil Protection and Humanitarian Aid Operations – ECHO, European Commission)
* Fabio Iannaccone (Head Legal Officer, Italian Civil Protection Department)
* Giulio Bartolini (Editor-in-Chief of the YIDL, Associate Professor of International Law, Roma Tre University), **as moderator**.

# Introduction

**Giulio Bartolini** introduced the session and the speakers. Bartolini highlighted that the aim of this session was to engage in a discussion with legal and policy officers of different entities which play a role in the management and prevention of disasters, with a view to discuss the role of disaster law with regard to their activities. More specifically, the first round of the session purported to allow practitioners to illustrate whether law plays a positive role in their activity, whether it is a supporting element or an obstacle in the work of institutions.

**First Round**

**Isabelle Granger** recalled that the reason why the IFRC started to investigate the area of international disaster law back in 2001 was to address actual problems IFRC personnel faced worldwide in international disaster relief, which resulted in significant delay in the organization’s response to disasters. At present, even though significant progress has been made with regard to defining the applicable legal framework and allowing IFRC personnel to be legally prepared, a lot remains to be done. Covid-19, in particular, has created new problems: restrictions introduced by States to curb the spread of the disease have often prevented humanitarian actors and volunteers from fulfilling their humanitarian mandate. Granger stressed that the IFRC has been a strong contributor to the development of international disaster law and has produced numerous guidelines to support law- and policy-makers to strengthen their domestic legal frameworks for effective disaster risk governance, the most recent being the Guidance on Law and Public Health Emergency Preparedness and Response and the Checklist on Disaster Preparedness and Response. IFRC also cooperates with State authorities in an effort to strengthen the protection of actors engaged in disaster relief operations.

**John Grahaman** provided an overview of the WFP mandate and activities, specifically in relation to disasters. Man-made disasters, more than natural disasters, are those which have raised the most significant legal issues for the WFP. Grahaman highlighted the practical difficulties of the WFP to operate effectively in disaster scenarios, focusing in particular on donor conditionality.

**Francesco Pontiroli Gobbi** illustrated the origins and legal framework of the EU civil protection mechanism, which aims to strengthen cooperation between EU member States and six participating States to improve prevention, preparedness and response to disasters. The mechanism is rapidly evolving, creating opportunities but also challenges. Reality may, at times, show the limits of the legal framework in place. Covid-19, for instance, proved the pre-existing implementing framework insufficient, pushing towards the need to change implementing rules and add new ones during the emergency. Pontiroli Gobbi finally highlighted that, irrespective of the progress made, the mechanism still faces gaps with respect to procedures to timely address disasters, particularly in non-EU member States. Host nation support is crucial to effectively operate on the ground.

**Fabio Iannaccone** acknowledged the importance of addressing disasters before they occur. Accordingly, it is important to have national legislation in place addressing emergency scenarios. Iannaccone further addressed the role of the Italian civil protection in international disasters and confirmed that the EU dimension is increasing. Currently, EU member States rarely intervene individually in international emergencies. As for the critical aspects, Iannaccone highlighted some practical difficulties deriving from differences in national systems concerning, inter alia, recognition of specialist qualifications, custom procedures or drug authorizations.

# Second Round

**Giulio Bartolini** introduced the second round of interventions by speakers, asking practitioners their suggestions for potential reforms in this area.

**Francesco Pontiroli Gobbi** focused on host nation support, highlighting some lessons learned from previous experience. First, good practices at national level should be exchanged within the country but also with other countries, particularly non-EU member States. Second, it is necessary to promote further training on the concept of host nation support. Third, it is important to foster and increase, at all levels, knowledge of the EU civil protection governance and procedures. Finally, the host nation support guidelines, which are currently non-binding, could be included in national civil protection legislations, besides being reviewed and updated.

**Isabelle Granger** underlined three main points. First, the importance of laws and policies to be updated – based on international good practices and the draft articles on the protection of persons in the event of disasters – and fit for purpose; second, the importance of effective implementation at the domestic level, including through subsidiary legislation, procedures and plans; finally, the need to adopt a comprehensive approach to disaster risk management, integrating it with climate change adaptation and sustainable development. Granger also expressed the IFRC support for the idea of adopting a new treaty on the protection of persons in the event of disasters.

**John Grahaman** addressed the potential solutions to the issues caused by donor conditionality. He underlined the need to obtain more flexibility from legal systems at the legislative level. This could be achieved through humanitarian cave-outs and exceptions. Although States have spoken about their intention to reduce conditionality, such commitment is not yet reflected in practice.

**Fabio Iannaccone** reaffirmed the need of harmonizing national legislations so as to reduce obstacles to the effective performance of relief operations. An ambitious goal would be to achieve harmonization through international instruments. At the EU level, however, such harmonization could be more easily achieved. For instance, the host nation support guidelines could boost this process. Soft law tools could work effectively in this respect.

**Sylvie Wabbes Candotti** addressed the importance on disaster legislation in the entire agri-food system. FAO is struggling in disaster resilience due to the lack of a common approach of legislations in terms of risk management. Resilience is the main element in the path to sustainability, and coherent legislation is needed at all levels. The UN Common Guidance on Resilience should serve as a reference for bringing coherence between the global and the local action.

# Closing Remarks

**Giulio Bartolini** closed the session by thanking the panelists and recalling the importance of reducing the distance between academics and practitioners in order to foster common interests and common areas of research and activities for a better legal and policy framework.

**Session IV**

**‘What’s next?’ Emerging or Neglected Questions in International Disaster Law**

# List of Speakers

* Kirsten Bookmiller (Professor, University of Millersville, Vice-Chair of the Disaster Law Interest Group, American Society of International Law)
* Federico Casolari (Associate Professor of EU Law, University of Bologna)
* Hugo Washington Cahueñas Muñoz (Professor, University San Francisco de Quito, Chair of the Disaster Law Interest Group, American Society of International Law)
* Marlies Hesselman (Lecturer of International Law, Groningen University, Editor YIDL)
* Rachel Macleod (Senior Disaster Law Officer, IFRC)
* Anastasia Telesetsky (Professor, Califorma Polytechnic State University)
* Robert Verchick (Gauthier-St. Martin Eminent Scholar and Chair in Environmental Law, Loyola University, New Orleans)
* Diego Zannoni (Research Fellow in International Law, University of Padova)
* Tommaso Natoli (Head of the Editorial Committee of the YIDL, Consultant IFRC, Disaster Law), **as chair**.

The session was chaired by **Tommaso Natoli**, who introduced the speakers and the session’s topic.

**Kirsten Bookmiller** addressed the issue of regional perspectives on emerging and neglected questions on international disaster law. With particular regard to the Covid-19 response, Bookmiller emphasized the significant role played by regional disaster governance mechanisms and legal frameworks, particularly in the African continent and in the Caribbean. Those regional mechanisms relied on their past experience in responding to epidemics to define the current trajectory in the response to Covid-19. Bookmiller further emphasized the importance of solidarity: whereas there have been instances of lack of solidarity, particularly at the global level, regional approaches have been often shaped by strong currents of solidarity, emerging as a result of cultural, historical or political contexts.

**Federico Casolari** addressed the reform of the EU civil protection mechanism, focusing on the introduction of the mechanism of rescue capacities, and analyzed it in light of the EU competence dilemma. Although, in principle, the civil protection cooperation at the EU is a supporting competence, Casolari illustrated how the introduction of rescue capacities, a new mechanism allowing the EU to exercise a coordination power, allowed the EU competence in the civil protection domain to evolve and grow. Casolari emphasized that there must be a balance between the need to preserve the role of member States and the need to render the mechanism a more centralized one. The several revisions that this mechanism has gone through reflect the effort to find an appropriate balance between those needs.

**Hugo Washington** **Cahueñas Muñoz** discussed recent developments in disaster law in South America. The speaker illustrated recent resolutions, declarations and other actions undertaken by regional organizations in South America, namely the OAS (Organization of American States), the PROSUR (Forum for the Progress and Development of South America), the Andean Community, the MERCOSUR (Southern Common Market) and the Pacific Alliance. In his conclusive remarks, Cahueñas Muñoz highlighted that whereas these regional organizations call for solidarity among the members, solidarity shall not only focus on response, but also on prevention, mitigation as well as cooperation and financial support for the recovery stage of disasters. He also advocated for the integration of a human rights approach to cooperation and response.

**Marlies Hesselman** discussed the idea of creating an independent expert on human rights and disasters as part of the Special Procedures of the Human Rights Council. Hesselman presented the key arguments in favour of the institution of such figure: first, a UN independent expert could play a guardian role in relation to Article 5 of the ILC Draft articles on the protection of persons in the event of disasters; second, this figure could represent a focal point for human rights and disasters within the UN system, bringing together the currently unsystematic practice related to human rights and disasters; third, this could enhance norm-setting, norm-consolidation and, when necessary, norm-clarification.

**Rachel Macleod** discussed the Report on Law and Public Health Emergency Preparedness and Response – Lessons from the Covid-19 Pandemic and the related Pilot Guidance. After providing a background to the research process behind the Report, Macleod illustrated the general content of the Report, explaining that it provides very comprehensive recommendations on how domestic laws and policies can support preparedness and response for public health emergencies. Macleod further discussed the new Guidance to the Report, which consists of nine high-level questions, each addressing a key topic, complemented by a brief discussion and a set of more detailed questions. Due to its structure, the Guidance can be a useful tool for States to evaluate their legal and policy frameworks.

**Robert Verchick** addressed the issue of climate-induced disasters and electricity infrastructure. Verchick started by observing that no State has a grid that is robust enough to resist the climate impacts of the next decades, and that such inefficiency of electrical infrastructure also has a justice impact as it more severely affects the most vulnerable groups. The speaker proceeded to illustrate three tools to enhance grid resilience: first, the plan has to be forward-looking, namely it shall evaluate future risk, including by considering climate projections; second, the plan must be fit for function; third, it has to be well-financed by the centralized governmental structure of each State.

**Diego Zannoni** discussed the issue of proliferation of space debris from an international law perspective. Zannoni highlighted that sustainability of space activities is a prerequisite for an enduring freedom to explore and use outer space. At present, however, there is no international treaty on space debris mitigation. Some States have argued that such a treaty would not be necessary nor desirable; others, instead, favour such an instrument, which would foster predictability and uniformity. According to Zannoni, however, Article 9 of the Outer Space Treaty, read in light of the no harm rule, already allows to identify obligations on States to mitigate the risks associated with space debris, including the obligation to carry out and Environmental Impact Assessment and the obligation to notify and consult.

**Tommaso Natoli** closed the session by thanking all speakers and participants.

**Session V**

**Climate Change and Sea-Level Rise: Protection Issues**

# List of Speakers

* Patricia Galvão Teles (Member of the UN International Law Commission, Autonomous University of Lisbon)
* Matthew Scott (Head of People in the Move Thematic Unit, Raoul Wallenberg Institute of Human Rights and Humanitarian Law)
* Annalisa Savaresi (Associate Professor of International Environmental Law, University of Eastern Finland)
* Margaretha Wewerinke-Singh (Associate Professor of International Law, Leiden University)
* Giuseppe Nesi (Professor of International Law, Trento University, Former Legal Adviser to the President of the UN General Assembly), as **chair**

The chair of the session was Prof. **Giuseppe Nesi**, who addressed in general the topic of climate change and sea-level rise and introduced the speakers.

Prof. **Patricia Galvão Teles** illustrated the works of the International Law Commission on sea-level rise especially in relation to the protection of the persons affected by this phenomenon. She emphasized the importance of selecting relevant practice (both international and national) on this phenomenon in the current activities of the ILC and remarked that the specific focus on sea-level rise as an element of climate change corresponded to the inputs received by the ILC from UN Member States.

Prof. **Matthew Scott** addressed the topic of the integration of international human rights law into national and sub-national disaster risk reduction and climate change adaptation laws. In particular, Prof. Scott focused on the role of soft law instruments in this matter.

Prof. **Annalisa Savaresi** illustrated the issue of human rights bodies and climate litigation. In particular, she focused on the role of NGOs in the field of climate change litigation before human rights bodies, taking into account the gaps the are present in terms of effectivity in the Paris Agreement.

Prof. **Margaretha Wewerinke-Singh** addressed the role of the International Court of Justice (ICJ) in tackling the climate change crisis. Notably, she focused on the suitability of an advisory opinion by the ICJ on the topic of climate change, as requested by the Republic of Vanuatu in September 2021. Prof. Wewerinke-Singh submitted that in general an advisory opinion on climate change could clarify States’ obligations to protect people and planet against climate impacts in light of current scientific understanding; provide baseline for achieving climate justice by bringing together human rights and climate obligations; inform assessment of adequacy of actual and pledged climate action to date.

After the speakers’ presentations a Q&A session took place.

**Session VI**

**Toward UN Climate Change Conference COP 26: A Policy and Legal Conversation**

# List of Speakers

* Christina Voigt (Professor of International Law, University of Oslo, Co-Chair of the Paris Agreement Implementation and Compliance Committee)
* Rosemary Lyster (Professor of Climate and Environmental Law, University of Sydney)
* Stephen Gethins (Professor of Practice in International Relations, University of Saint Andrews, Former Vice Chair of the All-Party Group on Climate Change in the UK Parliament)
* Dug Cubie (Lecturer of Law, University College Cork, Editor of the YIDL), as **chair**

The session was chaired by Prof. **Dug Cubie**, who introduced the conversation and the speakers.

Prof. **Christina Voigt** focused on the relationship between the COP 26 and the Paris Agreement goals.

Prof. **Rosemary Lyster** focused on the issue of climate justice. Notably, she illustrated five types of responsibility: (i) for emissions reduction to meet the temperature goal; (ii) for adaptation and disaster risk reduction at the national level; (iii) for climate finance; (iv) for compensation; (v) for climate displaced persons.

Prof. **Stephen Gethins** addressed the policy aspects surrounding the COP 26, with reference to governmental and business actors as well as NGOs.

After the speakers’ presentations a Q&A session took place.

Prof. **Giulio Bartolini** (Editor-in-Chief of the YIDL, Associate Professor of International Law, Roma Tre University) finally addressed the closing remarks of the Expert Meeting.