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Webinar Report

A Snapshot of the Thematic Section of Issue no. 2: “Disasters and...: Exploring New Areas of Research”

(29th September 2020)

Overview

On the occasion of the launch of the call for abstracts of Issue no. 3 (2020) of the *Yearbook of International Disaster Law* (YIDL), published by Brill, the Editors organized three live webinars, in cooperation with the American Society of International Law Disaster Law Interest Group and the Jean Monnet Project DILAW4EU. The first was held on Tuesday 15 September about “The ILC DAS on the Protection of Persons in the Event of Disasters: A Follow-up of the Thematic Section of Issue No.1”. This second webinar took place on Tuesday 29 September (18-19.15 CEST) on the topic of “Disasters and...: Exploring New Areas of Research”. The third will be held on Tuesday 13 October (15-16-15 CEST) about “Covid-19: An International Disaster Law Perspective”.

List of Speakers

- Giovanna Adinolfi (Milan University)
- Dan Farber (Berkeley University)
- Jonathan Todres (Georgia State University)
- Tommaso Natoli (University College Cork)
- Anastasia Telesetsky (University of Idaho) **as moderator**

Introduction

Anastasia Telesetsky introduced the webinar, the speakers and their presentations. This webinar related to the main topic of the second volume of YIDL, dedicated to the connections between disasters and other relevant fields of international law. The speakers were also contributors of this second volume of the YIDL, so they presented the main findings and discussed it in light of the current debate. The conveners addressed the following topics: the interplay between international

trade law and disaster law; the influence of climate change law on disaster law; the role of human rights of the children for the development of disaster law; and the emerging practice of cross-fertilization between disaster law and other branches of international law.

First Round

Giovanna Adinolfi addressed the relationship between trade law and disasters. She illustrated how the body of trade law could play a complementary role next to international disaster law. She presented a research published by the WTO at the end of last year that focused on the trade policy implications of disasters, namely arising in the middle of the response phase. For example, in the current pandemic-situation many States have suspended the application of custom duties on the importation of medical equipment, and they have introduced at the same time restrictions on the exportation of medical equipment, to reserve those goods to the domestic market. In the recovery stage, these types of measures have an impact on trade laws, either by way of promoting or by negatively affecting trade. Another relevant example can be found in the policies of subsidies undertaken at the domestic level during the current pandemic, where these measures might have a detrimental impact on the competition of the global market. The WTO research highlighted to what extent international trade law, and in particular the WTO regime, may contribute to the definition of national strategies on disaster preparedness. The speaker offered several examples of obstacles and facilitations to trade that may impact on disaster management at the domestic level. Some agreements have been concluded under the aegis of the WTO with the purpose of removing tariffs on trade, e.g. the Information Technology Agreement. Following this example, the EU is fostering the negotiations of an agreement on the importation of medical equipment and selected drugs in time of emergency. Moreover, the Trade Facilitation Agreement, whose rationale is to expedite customs' formalities, may have a positive impact in disaster situations, especially for most vulnerable countries. Similarly, it was suggested that States may resort to international standards to shape their domestic regulations in order to avoid obstacles to trade, also in the event of disasters. In conclusion, the speaker stressed how resilience strategies may be developed under the framework of the WTO regime and how the implementation of trade law may have a positive impact also on national regulations addressing disaster preparedness.

Dan Farber dealt with the intersections between international disaster law and climate change law. There is a strong link between climate change and disasters, namely because of the climate change likelihood of increasing the severity and frequency of extreme events. The speaker offered several examples, including heat waves in Western Europe and in Russia; the hurricane *Harvey* and recent California wildfires. The importance of taking timely precautions to limit the amount of harm and to adequately respond to these events was stressed. Even if most of the focus on climate law rests on reducing emission, the scientific community is conscious that we are going to witness inevitable climate change regardless. Therefore, climate negotiations are also focusing on climate change adaptation. This aspect naturally connects with disasters' precautions to prevent flooding, strengthening public health system, and to protect people from storm damages and drought. An eminent example of this trend can be found in the Cancun Agreement and in the climate negotiations undertaken since the Paris Agreement, where an obligation for States to prepare for climate change has been set forth. This leads us to consider that climate law can contribute in particular to the area of DRR in international disaster law. As it concerns the response phase, certain tools developed under climate change law may contribute to disaster law as well, namely insurance mechanisms to assist governments in the phase of post-disasters

rebuilding, as for example the Warsaw mechanism. These mechanisms may help in filling the gap of the lack of funding in this area. The speaker concluded by stating that a closer alliance between this two bodies of law is foreseeable and that a greater attention shall be paid to the allocation of economic support to vulnerable States by the international community.

Jonathan Todres spoke about the interplays between human rights of the children and disasters. The panelist addressed the impact of disasters on children, highlighting that the effects of disasters on children are higher than on adults, as they negatively influence several aspects of children's rights, including health care, education, access to social services, safe housing, etc.. Moreover, children are more vulnerable to disasters both physically (see for example respiratory issues) and mentally, considering that disasters may affect the development of children with lifelong consequences. Children represent a third of the world population, however they are largely overlooked in IDL strategies, that are often written with no reference to children at all, or with a limited approach generally concerning education and access to social services. Moreover, children are not even mentioned as relevant actors in disaster policies, plans and reports. Rather they are included in the broader category of "other vulnerable groups". An exception to this trend can be identified in the Sendai Framework that mentions children and references them as "agents of change". The speaker pointed out how this gap can be filled by a sounder and consistent reference to human rights law in disaster law. The Convention on the Rights of the Child – the most world-wide-ratified Convention – offers solutions to most of these issues and it is therefore capable of properly addressing the protection shortcomings faced by children in disasters. Considering that HRL, including children's right, applies at all times, this branch of law can strengthen States' resilience in disasters. The speaker noted that the use of pictures of children is more than frequent to attract donations in emergency situations, while children rights are largely overlooked in disasters policies. This calls us upon to consider that a mind-set-shift is needed for a more coherent approach to children rights in disasters, whereby children shall be taken seriously, paying attention also to adolescences and youth groups. In conclusion, the speaker suggested to incorporate children rights' perspective in the design, implementation, monitoring and evaluations phases. In sum, children rights shall be mainstreamed in every sectors of the society, as it has happened for women's rights.

Tommaso Natoli offered an overview of the practice section of the Yearbook. Some interesting trends and patterns can be identified by a comparative analysis of the first two issues of the Yearbook. An increasing use of shared terms and references across diverse sectors can be acknowledged. Some visible evidences can be found for example in climate law, especially concerning climate adaptation, as already pointed out by Prof. Farber. Moreover, elements of convergence and cross-fertilization can be identified by looking at the practice of international human rights law. The speaker mentioned in particular the contribution made by the Human Rights Committee and the case brought by a group of indigenous people against Australia in 2019. It is interesting to note that the applicants claimed a violation of their human rights for a number of reasons, including the Australia's insufficient targets and plans for greenhouse gas mitigation, and also for the failure to adequately fund costs of defence and resilience measures on the island. While the case is still pending, the applicant succeeded in securing a significant amount of money from the government to build critical infrastructure to prevent and reduce the risk of natural disasters. Another significant example of cross-sectoral convergence can be identified in the views expressed in October 2019 by the Human Rights Committee in the case *Teitiota vs. New Zeland*, that clarified the scope of the *non-refoulement* principle under Art. 6 ICCPR. While the claim has

been dismissed, it is important to stress that the Committee has undertaken a more progressive approach in recognising that the right to life applies to life with dignity in the context of environmental degradation, climate change, and unsustainable development, even if those situations does not result in the loss of life.

Second Round

Anastasia Telesetsky introduced the second round of intervention, addressing to the speakers the open-end question on what direction the young filed of international disaster law will be evolving towards.

Jonathan Todres stressed how it will be difficult to correctly apportion the thin financial resources available to the broad field of disasters. There is a risk of reducing the attention to certain fields at the expenses of others. In sum, children rights shall always be considered part of the picture in disaster law.

Giovanna Adinolfi suggested that the direction in which disaster law will be evolving will depend on who will negotiate future disaster law agreements. The composition of delegations will be extremely relevant. We are witnessing an opening of trade law towards disaster issues, at least on a bilateral basis. For example, two recent trade agreements show a trend of including references to disasters, namely the 2019 Bilateral Agreement USA-China and the Agreement between the EU and Singapore.

Dan Farber found that the intersections between international disaster law and other fields of law are very promising. However, he noted a need to develop better mechanisms to involve people from outside the specific area of disaster, including from the sector of human rights and climate change. Above all, the organizational framework of disaster law shall be strengthened to build a sound intuitional capacity.

Tommaso Natoli focused on law-making processes and in particular on the interplay between hard law and soft law. Some guiding, but also worrying elements, can be traced from the recent developments of the practice of disaster law and environmental law. Both sectors seem to suffer from similar problems, namely the lack of a flagship global treaty and the fragmentation of regional and sectoral agreements. A single instrument may promote the coherence of international disaster law, as suggested by the International Law Commission in 2018. However, we should bear in mind the current crisis of multilateralism which could provoke further shifts from hard to soft law.

Q&A

Anastasia Telesetsky opened the floor to Q&A. Questions by the audience addressed the following topics: the need for a reform of the WTO and its dispute settlement system, the impact of COVID-19 on children's mental health and wellbeing, climate change adaptation and disaster risk reduction, COVID-19 as a disaster.

Closing Remarks

Anastasia Telesetsky closed the webinar presenting the main takeaways of the debate and underlying the importance of the dialogue and the synergies between the different branches of law and disasters. The moderator thanked the panelists, the YIDL contributors and the participants. She reminded the call for abstracts for the forthcoming volume of the YIDL, dedicated to COVID-19. Finally, the moderator reminded the forthcoming webinar of this series of 13 October 2020 on the issue of “Covid-19 and disaster law”.