

CONFERENCE ON SPACE LAW AND SPACE APPLICATIONS
FOR DISASTER MANAGEMENT IN THE ASIA PACIFIC REGION
Chiangmai, Thailand, 20-22 November 2007

**The Principles of State Responsibility and Humanitarian Assistance in the Context
of Disaster Management**

R. M. R. B. Nawinne
LLM (Hons) (International Air and Space Law), Leiden University

1. INTRODUCTION

The Asia Pacific, the region relating to which the theme of this conference has been dedicated, has experienced several types of natural disasters¹, man made disasters² and technological disasters³. Several countries in the Asia Pacific Region that were hit by the Indian Ocean Tsunami suffered significant human, social, economic damage and loss. There were earthquakes, hurricanes, floods, landslides in this region that caused irreparable loss and damage to human lives and property. Several technological and man made disasters took place in this region. It was evident that most of the countries affected by the Indian Ocean Tsunami and other major natural disasters were not prepared to meet such a catastrophe in the context of disaster management and humanitarian assistance. As the happening of a natural disaster is unpredictable, the humanitarian assistance and disaster management has become a complex issue, in particular to the developing nations. The high probability of this un

predictability requires States to be prepared for such disasters in order to prevent and/or mitigate the damage that may cause to human lives and their property by such disasters and the assistance required to be rendered to the people. Although an occurrence of a disaster may be predicted, it would not be possible to avert such disasters completely. Therefore, it is imperative for the States to formulate policies and laws relating to post disaster management. On the other hand, States may, wherever necessary, coordinate with other States, international organizations or non governmental institutions in disaster management.

**2. STATE RESPONSIBILITY IN
THE CONTEXT OF
DISASTER MANAGEMENT**

State responsibility is a fundamental principle of international law, arising out of the nature of the international legal system and the doctrine of State sovereignty and equality of States. The essential characteristics of responsibility depend on certain factors, such as:

- (a) the existence of an international legal obligation in force as between two particular States;

¹ Cyclones, floods, landslides, earth quakes, drought, tsunami, forest fire, tornadoes etc.

² Bomb explosions, human displacement due to conflicts etc.

³ Chemical and nuclear disasters, building structure failure etc.

- (b) there has occurred an act or omission which violates that obligation and which is imputable to the State responsible;
- (c) loss or damage has resulted from the unlawful act or omission.⁴

The techniques relating to early identification of natural disasters has developed. There is in place, advance technology⁵ and institutions⁶ to share such information among the States that would probably be affected by such disasters.

There are Conventions, Principles and/or Charters that has laid down several principles and/or obligations relating to natural and/or technology disasters. The Conventions relating to technological disasters had been developed as a result of the major technological disasters⁷. These provisions would undoubtedly assist States to prevent and/or mitigate the damage that may be caused as a result of an technological disaster. They have made provisions for the disseminating of information, inter national cooperation etc., relating to such disasters. Undoubtedly, legal principles so formulated would not be able to prevent a natural disaster, but would be able to create a framework for early warning and for humanitarian assistance.

(a) Duty to warn or duty of information

⁴ International Law, 4th Ed. Malcom N. Shaw, p. 542

⁵ i.e. satellite imagery,

⁶ NOAA Pacific Early Warning Centre

⁷ Chernobyl nuclear plant accident

In the recent past, the information received in respect of natural disasters through satellite imagery or any other mode has been disseminated to the States concerned. Although, an early warning cannot completely avoid the occurrence of a natural disaster, it would provide for mitigation and such information made available on a disaster could provide for a framework, such as, assessment of damage and post disaster recovery. The few diplomatic conferences held in the recent past had felt the urgent need for the formation of a policy and the creation of a system for early warning of natural disasters, in particular Tsunami alert.

Convention on the Early Notification of Nuclear Accident⁸, adopted after the Chernobyl nuclear plant accident has made provisions for notification and information in the event of a nuclear accident to those States which are or may be physically affected and such information available relevant to the minimization of the radiological consequences.⁹

Principle XI of the Principles Relating to Remote Sensing of the Earth from Outer Space¹⁰ has made specific reference that remote sensing shall promote the protection of mankind from natural disasters. It has also made provisions that the States participating in remote sensing shall transmit processed data or analyzed information that may be useful to States affected by natural disasters or likely to be affected by impending natural disasters. These provisions

⁸ Adopted by the General Conference of the International Atomic Energy Agency meeting in special session at Vienna on 26.11.1986

⁹ Article 2

¹⁰ UN Resolution 41/65 (1986)

impose an obligation to the States that possess information relating to a natural disaster or impending natural disaster to transmit such information promptly as possible to those States concerned. Principles Relevant to the use of nuclear power sources in outer space has laid down principles to address safety concerns, such as radiation protection and nuclear safety in the use of nuclear power in outer space activities. These principles governing the activities of the States in the exploration and use of outer space adopted by the United Nations General Assembly (UNGA) provide for an interrelationship between space technology and disaster management.

The Rio Declaration of Environment and Development has recognized the responsibility of States to notify the other States of any natural disaster¹¹.

The principles laid down in the "Principles governing the use by States of Artificial Earth Satellites for international direct television broadcasting"¹² would oblige those involved in such broadcasting to disseminate or mutually exchange vital information available to them in relation to natural, man made and technological disasters. Telecommunication¹³ and broadcasting plays a vital role in providing communication and/or information services to improve the safety of the people and in the post disaster management.

The Tampere Convention on the Provisions of Telecommunication Resources for Disaster Management and

Relief Operation (Tampere Convention) provides that, a State Party requiring telecommunication assistance for disaster mitigation and relief may request such assistance from any other State Party, either directly or through the operational coordinator. If the request is made through the operational coordinator, the operational coordinator shall immediately disseminate this information to all other appropriate States Parties. If the request is made directly to another State Party, the requesting State Party shall inform the operational coordinator as soon as possible¹⁴.

(b) International cooperation

Amongst the purposes of the United Nations, it has been laid down, inter alia, "to achieve international cooperation in solving international problems of an economic, social, cultural or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion; and..."¹⁵ UNGA in its resolutions has reiterated the importance of international cooperation. The principle of international cooperation has been reflected in the Outer Space Treaty¹⁶ and the Remote Sensing Principles¹⁷. In principle VIII of the remote Sensing Principles, it is recognized that United Nations and the agencies coming under its preview shall promote international cooperation, including technical

¹¹ Principle 18

¹² Principle A(2).

¹³ Chapter VII, Article 46 of the ITU Constitution

¹⁴ Article 4

¹⁵ Chapter I, Article 1(3)

¹⁶ Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and the Other Celestial Bodies

¹⁷ Preamble, Principle VIII

assistance and coordination in the area of remote sensing. The Vienna Declaration on Space and Human Development¹⁸ recognizes, *inter alia*, that the applications in natural disaster management and space technology are essential tools for sustainable development. This declaration outlines the importance of strengthening the UN Space Activities and promoting international cooperation. Amongst the main recommendations of the Vienna Declaration and action plan included, the implementation of a global system to manage natural disaster mitigation and to provide relief and prevention efforts through space activities.

The Tampere Convention provides that, the States Parties shall cooperate among themselves and with non-State entities and intergovernmental organizations, in accordance with the provisions of this Convention, to facilitate the use of telecommunication resources for disaster mitigation and relief.¹⁹

(c) Responsibility for damage caused by satellite based information

As stated above an act or omission which violates an obligation and which is imputable to the State responsible could be called liable for damage caused by such act or omission. The French Space Agency (CNES) and European Space Agency (ESA) mooted a coordinated effort to use space resources for global disaster management and environment protection and the Charter on Cooperation to achieve the Coordinated Use of Space Facilities in the event of natural or technological

disasters was signed by these two Agencies²⁰. The Indian Space Research Organization (ISRO), National Oceanic and Atmospheric Administration (NOAA), The Argentina Space Agency (CONAE), Japan Aerospace Exploration Agency (JAXA), Canadian Space Agency (CSA), United States Geological Survey (USGS), British National Space Centre/Disaster Monitoring Constellation (BNSC/DMC) and China National Space Administration (CNSA) has joined as members to the Charter. Its aim is to provide a unified system of space data acquisition and delivery to those affected by natural or technological disasters through "Authorized Users". The aforesaid members have committed their resources to support the provisions of the Charter and thus helping to mitigate the effects of disaster on human life and property.

The above charter, a legal document based on Good Samaritan Principle has waived off liability. In particular, it provides that: The parties shall ensure that associated bodies which, at the request of the country or countries affected by a disaster, call on the assistance of the parties undertake to: confirm that no legal action will be taken against the parties in the event of bodily injury, damage or financial loss arising from the execution or non-execution of activities, services or supplies arising out of the Charter.²¹ The said Charter does not impose any legal responsibility on the States or its members for any damage that would cause as a result of providing satellite based information. The Charter was recently activated by the UNOOSA for World Food Programme and UNOSAT on

¹⁸ Adopted by UNISPACE III, Final Meeting (AM&PM) and round up, 30.07.1999

¹⁹ Article 3(1)

²⁰ Signed on 20.06.2000

²¹ Article V, 5.4

16.11.2007 in relation to the floods and cyclone that took place in Bangladesh.

(d) Duty to protect the people and their property from natural disasters

As per the list of space objects registered in the UN²², on the information provided by the States in terms of Article 5 of the Rescue Agreement²³ relating to the space objects recovered within their jurisdiction, over 50 objects have been discovered since 1968. The issues relating to the collision of space objects, including those with nuclear power sources had been discussed by the UNGA. The COSMOS 954, a Soviet Union Nuclear powered surveillance satellite crashed in to the Northwest Territories of Canada on 24.01.1978 and thereby caused radio activity over an area of about 124,000 sq. km.

The Principles relevant to the use of nuclear power sources in outer space has provided for a framework for safe use²⁴. These provisions recognize that such States have a duty to protect.

There has been an asteroid that has passed “exceptionally close” to the earth²⁵. There are scientific researches carried out to identify potential impact of asteroids with the earth²⁶. Possibilities of such impact, if any, should be detected well in advance and remedied.

²²

<http://www.unoosa.org/oosa/natact/sdnps/unlfd.html>

²³ Agreement on the Rescue of Astronauts, the Return of Astronauts and the Return of Objects launched into outer space

²⁴ Principle 3

²⁵ Asteroid 2001 YB5

²⁶ CNN.com/Science & Space

In this regard, the question can be asked, who will protect the earth from such impact? Is it the State(s) that are likely to be affected by such an impact? or Is it the State(s) that have the capacity to prevent such an impact? Should the questions relating to financing of such researches and remedial measures be addressed by the individual States or the States acting under one umbrella, such as, UNOOSA and that it would find remedial measures to prevent a situation. Although, there isn't any exact scientific finding of such an event taking place, it would be prudent to find solutions to meet such situations.

3. HUMANITARIAN ASSISTANCE IN THE CONTEXT OF DISASTER MANAGEMENT

J. W. Samuels has suggested that the general responsibility concerning natural disasters falls within the realm of the international law of human rights. In particular, States bear obligations to prevent and mitigate natural disasters as part from responsibility issuing from Article 11 of the International Covenant on Economic, Social and Cultural Rights. The agreed rights of all persons “to an adequate standard of living, including adequate, good clothing and housing, and to continuous improvement of living conditions,” and the continuous obligations of the States “to take appropriate steps to ensure the realization of this right,” ought to translate in to three fold developing responsibility:

- (i) A State's legal obligation to assist another in time of natural disaster;

- (ii) A State's legal obligation to prepare for disaster relief within its own territory and to take preventive measures in order to minimize the suffering resulting from natural disaster;
- (iii) A State's obligation to accept relief for its people from other States after the occurrence of a natural disaster, if its own resources are inadequate.²⁷

Humanitarian assistance is widely required in the event of damage caused by a natural or technological disaster. It is an accepted principle that the affected State has the primary responsibility in the initiation, organization, coordination and implementation of humanitarian assistance within its territory, and in the facilitation of the work of humanitarian organizations in mitigating the consequences of natural disasters. The role of the international community is secondary.

Common occurrences of an aftermath of a natural disaster are the loss of lives, damage to property and displacement of affected people. These displaced people, irrespective of their colour, gender, race, religion, possess a wide range of social, economic, cultural, political rights, right to humanitarian assistance, right to be protected from physical violence, right to education, freedom of movement and residence etc., Such displaced persons have the right to resettlement, recovery of possession of lost property, family reunion as well. In this regard it is the responsibility of the respective Governments to provide assistance to these people.

²⁷ Assisting the Victims of Armed conflicts and other disasters, Edited by Frits Kalshova, p 185

It is also the responsibility of the affected State, in the post disaster management, to have a proper control in receiving and coordination of international humanitarian assistance. There should also be transparency and non discriminatory basis in the provision of humanitarian assistance. It is the responsibility of each State to establish a sound legal framework for the implementation of national disaster management policies, that may include, risk identification and monitoring, disaster prevention and preparedness, emergency response and disaster relief, international cooperation and relief coordination, capacity building etc., Right based approaches would ensure that the governments are constantly evaluated and are accountable to people and the international community on disaster preparedness and mitigation. The use of telemedicine and distance learning with the use of space technology would be of immense help in post disaster management in the areas of humanitarian assistance. Number of the countries in the Asia Pacific region have in place, disaster management framework. Several countries have established such framework from the lessons learned from the Indian Ocean Tsunami in 2004.

There can be instances where some Governments may not be in a position to provide adequate assistance to displaced people. In such situation, these Governments should facilitate the intervention of other States, International Organizations and Non Governmental Organization. (NGO) The concerns of NGO's may differ from the government, the international community and aid agencies. Therefore, in the

implementation of post disaster management policies, it is important to consider issues, such as: need of the people as a primary issue, cooperation between the government and such institutions or organizations based on humanitarian principles, transparency and accountability of funds raised or received etc.,

(a) Framework established by the United Nations

As a result of the UNGA resolution 2816(XXVI) of 14.12.1971, the Office of the United Nations Disaster Relief Coordinator (UNDRO) was established. The UNDRO and the League of Red Cross Societies jointly worked to identify measures that could be taken to expedite international relief assistance. In this process the UNGA adopted several resolutions relating to the protection and assistance to the victims of disasters and their human rights²⁸.

The UNGA resolution 45/100 has declared that the abandonment of victims of natural disasters without humanitarian assistance constitutes “a threat to human life and an offence to human dignity”. While reaffirming the sovereignty of affected States, the UN General Assembly Resolution invited all states whose populations are in need of humanitarian assistance to “facilitate the work of organizations in implementing humanitarian assistance”. Several other UNGA resolution have been adopted, in particular, on the International Decade for Natural Disaster Reduction (IDNDR) which provides to curb growth in the number of human, material and economic losses caused by natural

disasters²⁹, Resolution 46/162 that recommends an integral approach to natural disaster management, Resolution 46/182 which led to the creation of the Department of Humanitarian Affairs (DHA) to enable the strengthening of the coordination of emergency humanitarian assistance of the UN System. The Annex to Resolution 46/182 provides for guiding principles, prevention, preparedness, stand-by-capacity, consolidated appeals, coordination, cooperation and leadership and continuum from relief to rehabilitation and development. There are Resolutions that provides for International Cooperation on humanitarian assistance in the filed of natural disasters, from the relief development³⁰.

In the UNGA resolutions the General Assembly has emphasized that the affected State has the primary responsibility in the initiation, organization, coordination and implementation of humanitarian assistance within its territory, and in the facilitation of the work of humanitarian organizations in mitigating the consequences of natural disasters. It has further emphasized the responsibility of all States to undertake disaster preparedness, response and mitigation efforts in order to minimize the impact of natural disasters while recognizing the importance of international cooperation in support of the efforts of affected countries which may have limited capacities to fulfill this requirement.

There is also the Inter Agency Contingency Planning Guidelines for

²⁸ *Ibid* p 184

²⁹ 44/236

³⁰ UNGA resolutions 56/103 and 59/212

Humanitarian Assistance³¹ that were developed to address the need for the development of a common intra-agency methodology for contingency planning which would provide a basis of common planning parameters.

The report titled “Towards a United Nations Humanitarian Assistance Programme for Disaster response and reduction”³² provides useful information and/or proposals in respect of Humanitarian Assistance for disaster response.

(b) Framework established within the Asia-Pacific Region

The Asian Agreement on Disaster Management and Emergency Response was entered into by the members to the Association of Southeast Asian nations (ASEAN) in Vientiane, Lao PDR on 26.05.2005. The objective of this agreement is to provide effective mechanism to achieve substantial reduction of disaster losses in lives and in social, economic and environmental assets of the Parties, and to jointly respond to disaster emergencies through concerted national efforts and intensified regional and international cooperation.³³ The parties to this agreement is governed by the principles laid down in Article 3, which requires the parties to respect the sovereignty, territorial integrity and national unity of the parties, the exercise of overall direction, control and cooperation and supervision of the assistance is with the requesting or receiving party, strengthening

³¹ Prepared by the Inter Agency Standing Committee

³² Prepared by Tadanori Inomata, Joint Inspection Unit

³³ Article 2

cooperation and co-ordination to achieve the objectives of the agreement, parties should give priority to the prevention and mitigation, parties should mainstream disaster risk reduction efforts and the parties in addressing disaster risks should involve all stake holders.

(c) Other International institutional frameworks

The International Red Cross and Red Crescent Movement together with a group of non governmental organizations framed a humanitarian charter and identified minimum standards to be attained in disaster assistance. The aforesaid Charter³⁴ is based on the principles and provisions of international humanitarian law, international human rights law, refugee law and the Code of conduct for the International Red Cross and Red Crescent Movement and the Non Governmental Organizations.

This Charter sets out the legal responsibilities of States and warring parties to guarantee the right to protection and assistance.

The purposes of the Charter on Cooperation to Achieve the Coordinated Use of Space Facilities in the Event of Natural or Technological Disasters has an element in the humanitarian assistance³⁵.

4. CONCLUSION

The States are obliged under customary international law to prevent, mitigate and assist affected States in the event of

³⁴ Humanitarian Charter and Minimum Standards in disaster response

³⁵ Article II

natural disasters and technological disasters. In this regard, the space technology plays an important role in the early warning and post disaster management. Cooperation amongst States, international institutions, NGO's is essential in the mitigation and recovery. It is the primary objective of the affected State to provide humanitarian assistance to those in need. The States should respect the human rights of the displaced people. The international community, NGO's should cooperate with such Governments in providing humanitarian assistance. The governments that do not have the capacity to handle post disaster management issues, including financial assistance, on its own, should not prevent access by such institutions and/or organization in providing humanitarian assistance to those in need and remove restrictions that may exist in that regard.