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The Decision to Act – A Human Rights based approach to Disaster
Management and Response

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Extended Abstract—

Introduction

The application of a human-rights based approach to humanitarian action and natural disasters provides novel avenues in the development, enhancement, and enactment of disaster management and response strategies under a multilateral framework for planetary defense. Under international law, states bear the continuing duty to respect, protect, and fulfill human rights extraterritorially and across their activities - including during instances of armed conflict and natural disaster.¹ Within the context of humanitarian action and crises, human rights play a significant role in empowering vulnerable groups in preserving their rights, in strengthening the accountability of duty bearers to meet their human rights obligations, and in upholding respect for individual dignity.

The notion of planetary defense involves the process of detecting and mitigating impact threats from potentially hazardous near-earth objects (NEOs), primarily encompassing asteroids and comets.² This addresses NEOs which pose potential impact hazards, disrupting the near-earth environment and carrying the capacity to cause significant large-scale environmental damage and human casualties upon collision with the earth.³ The threats posed by NEOs as a natural disaster phenomenon place unparalleled strain upon existing frameworks and institutions. This includes early warning mechanisms for decision makers and the public, disaster response strategies, and measures for leveraging and coordinating public resources. The implementation of public measures to address the threat of NEOs is

underlined by the development of a wider humanitarian crisis.

As part of the wider process in creating a planetary protection policy, it is incumbent upon the international community and individual UN member-states to invest in exploring examples of good practice in the implementation of a realistic Human Rights-Based Approach (HRBA) at the legal, policy, and programmatic levels of humanitarian action and natural disaster response.

Context

It has become increasingly evident that humanitarian interventions must integrate human rights dimensions to ensure the most appropriate response to victims before, during, and after natural disasters. Natural disasters almost invariably result in immense human suffering, threats and violations of international human rights law and international humanitarian law.⁴ Pre-existing concerns about protections may trigger a crisis or exacerbate the situation and its impact on affected populations.

Where humanitarian crises almost invariably result in immense human suffering, threats, and violations of both international human rights law (IHRL) and international humanitarian law (IHL), the integration of human rights considerations into the international community's planning, preparedness, response, and recovery efforts is warranted. The IHRL system provides a robust framework for protecting the human rights of populations adversely affected by natural and man-made disasters – underscoring the primary responsibility of states to guarantee protection, facilitate humanitarian assistance, and promote durable solutions.

Human rights represent universal, inherent, and indivisible rights possessed by all peoples – regardless

¹ OHCHR, 'What are Human Rights?' on OHCHR (2020) <<https://www.ohchr.org/en/issues/pages/whatarehumanrights.aspx>>.

² NNSA, 'Planetary Defense – National Nuclear Safety Administration' on NNSA (2021) <<https://www.energy.gov/nnsa/planetary-defense>>.

³ NASA, 'Planetary Defense Coordination Office' on NASA (2021) <<https://www.nasa.gov/planetarydefense/overview>>.

⁴ Elizabeth Ferris, 'A Human Rights-Based Approach and District Disaster Management Plans' on Brookings (1 July 2012) <<https://www.brookings.edu/articles/a-human-rights-based-approach-and-district-disaster-management-plans/>>.

of sex, ethnicity, religion, or any other status. Human rights represent a moral and legal construct formalized in the international system through a range of legal and diplomatic instruments, deriving their authority from the voluntary agreement of sovereign states. The utility of human rights is centered upon the health, well-being, dignity and worth of the individual - providing for fundamental rights and freedoms considered essential to the individual's ability to achieve to life, liberty and the pursuit of happiness.⁵

The universality of such rights is premised upon their origins from many diverse traditions and made robust through uniform codification at law. Second, these rights are inherent in their applicability to all people by virtue of their existence as human beings. Third, these rights are indivisible in the sense that the deprivation of one right adversely affects the others, and it is thus not possible to simply follow some human rights principles and disregard others.

The formation and enforcement of these rights are contingent upon an established framework, codified through a series of international agreements at the UN level, and maintained through a collection of UN-dedicated treaty bodies. This includes the collection of several foundational international documents referred to as the International Bill of Rights – including the 1948 Universal Declaration of Human Rights (UDHR); International Covenant on Civil and Political Rights (ICCPR); and the International Covenant on Economic, Social and Cultural Rights (ICESCR).

Where the primary concern of IHRL is focused upon the relationship between the individual and the state in times of peace, its direct application to situations of armed conflict or violent insecurity has been interpreted as limited. Noting the principle of *lex specialis*, the wide applicability and binding nature of IHL values and principles upon both states and non-state actors appears more relevant. Regardless, neither IHL nor international human rights law alone provides an adequate legal framework for the protection of human rights during situations of conflict and natural disaster.⁶ This has been recognized by the UN Inter-Agency Standing Committee (IASC), UNICEF, and the UN Human Rights Up Front (HRUF) initiative – which have collectively sought the integration of HRBA in relation to development cooperation and programming.⁷

The protection of human rights has not been systematically or adequately integrated as a strategic

consideration across contemporary humanitarian analyses, planning, policy and decision-making fora. Across disaster and crisis situations, the human rights situation is often not adequately monitored, and information is not consistently channeled to relevant decision-makers and stakeholders. Consequently, if humanitarian assistance is not based on a human rights framework, there is a risk that: A) the focus of any relief proposals will be too narrow; B) that the basic needs of the victims will not be integrated into a holistic planning process; and C) that factors important for recovery and reconstruction will be overlooked. It is resolved that human rights must comprise the legal underpinning of all humanitarian work pertaining to natural disasters.

Human Rights-Based Approach

Where humanitarian crises often result in or exacerbate human rights concerns, the implementation of a HRBA in the creation of a disaster management and response strategy, under an international program of planetary defense, must be considered. HRBA provides an effective means for operationalizing IHRL and international agreements into concrete action. The HRBA methodology is outlined within the 2003 *UN Development group's Common Understanding* document - providing a consistent approach to common programming processes at the global, regional, and national level. This mandates that:⁸

1. All programs concerning development cooperation and technical assistance should prioritize the realization of human rights;
2. That human rights instruments should guide development cooperation and programming; and
3. That development cooperation should contribute to duty bearer's capacity to meet obligations of rights-holders.

Within the context of disaster management and response, this draws attention to the following considerations.⁹ Firstly, the importance of cultural considerations in humanitarian action and disaster response - including how to approach cultural practices that may not be in line with IHRL norms. Second, the role of humanitarian actors in a context where the state does not fulfill its human rights obligations to its citizens. Fourth, the challenges of information gathering on

⁵ Michael Freeman, *Human Rights – Third Edition* (Polity Press, 2017) 5.

⁶ Lin Cotterrell, 'Human Rights and Poverty Reduction - Approaches to human rights in humanitarian crisis' on ODI (October 2005) <<https://odi.org/documents/1912/4345.pdf>> 4.

⁷ Ibid 5.

⁸ Cap-Net, 'Human Rights-Based Approach to Integrated Water Resources Management' on Cap-Net (2017) <<https://cap-net.org/human-rights-based-approach-to-integrated-water-resources-management/>> 21-22.

⁹ UNDP, *Integrating Human Rights in Natural Disaster Management in the Pacific – Workshop Report* (UNDP, 2007).

human rights issues within disaster areas and amongst hazardous conditions. Fifth, the challenges of formulating strategies to prevent, protect against, and address human rights abuses within affected areas. Sixth, the challenges of resource allocation and prioritization during a response when UN agency resources are limited.

The utility of human rights lies in its broadly endorsed normative and legal framework which sets minimum standards for governance and clarifies the rights and duties of governments and rights holders. The specific benefits attributed to HRBA in the humanitarian context include its ability to drive participation, accountability, non-discrimination and equality, empowerment, and legality.¹⁰

In the formation of a disaster management and response strategy, HRBA secures the participation of the affected population in preparedness, response, and recovery efforts; ensures equitable access for all to assistance and protection; and acts as a bridging function across phases of a crisis and in bolstering inter-agency and international cooperation.¹¹ A consideration of human rights values and principles draws attention to several measures and principles relevant to promoting a HRBA to disaster management and response.

Humanitarian Assistance and Disaster Relief

The application of HRBA is central to advancing the effectiveness of Humanitarian Assistance and Disaster Relief ('HADR'), balancing the necessity for humanitarian action versus state sovereignty through the prioritization of human rights obligations. HADR forms a crucial framework for contemporary disaster response efforts, coordinated through a foundation of principles embedded into soft international law frameworks.¹² The founding principles of humanitarian assistance are interpreted as founded on the principles of humanity, neutrality, and impartiality¹³ - given the imperative on focusing efforts to meet the needs of vulnerable communities. Additionally, the right to receive humanitarian assistance is codified in the framework of

the International Red Cross Movement.¹⁴ Aware of these guiding principles, the integration of HRBA can guide HADR actors in the provision of effective and equitable relief to vulnerable communities.

An affected state is under a permanent obligation to protect its citizens in the event of a disaster.¹⁵ The International Law Commission has prepared Draft articles on the protection of persons in the event of disasters ('Draft Articles') to provide a framework for response to disasters that promotes HRBA upon HADR.¹⁶ The Draft Articles enshrine a state's duty to protect its citizens and promote state sovereignty as an element of effective HADR, by affording the affected state the primary role in coordinating the provision of aid and the overall response.¹⁷ Where HADR actors acknowledge the potential for politicization of disaster relief,¹⁸ assisting actors must thus ensure that all activities are designed solely to reinforce the role of the affected state in providing an effective aid response.¹⁹

International law balances the competing norms of sovereignty versus the need to render assistance. The two principles are acknowledged in UNGA Res 36/225,²⁰ reaffirming both sovereignty of states and the need for the international community to respond to disaster situations. The practical implementation of sovereignty has remained a concern for the international community, with the Responsibility to Protect in natural disasters ('R2P') receiving criticism as a potential masquerade for intervention.²¹

¹⁰ Australian Human Rights Commission, 'Human rights based approaches' on Australian Human Rights Commission (2021) <<https://humanrights.gov.au/our-work/rights-and-freedoms/human-rights-based-approaches>>.

¹¹ OHCHR, 'Protecting human rights in humanitarian crises' on OHCHR (2021) <<https://www.ohchr.org/EN/Issues/HumanitarianAction/Pages/Crises.aspx>>.

¹² William Stefanov, 'The International Space Station: New Capabilities for Disaster Response and Humanitarian Aid' *National Aeronautics and Space Administration* (Report, 2013) <<https://ntrs.nasa.gov/api/citations/20120007415/downloads/20120007415.pdf>>.

¹³ *Strengthening of the coordination of humanitarian emergency assistance of the United Nations*, UNGA Res 46/182, UN GAOR, 78th plen mtg (19 December 1992), para 2.

¹⁴ Red Cross and Red Crescent Movement, 'Code of Conduct for the International Red Cross and Red Crescent Movements and Non-Governmental Organisations (NGOs) in Disaster Relief' *Steering Committee for Humanitarian Response* (Code of Conduct, 1992) <<https://www.icrc.org/en/doc/assets/files/publications/icrc-002-1067.pdf>> ('Code of Conduct')

¹⁵ Maria Giovanna Pietropaolo, 'A Human Rights-Based Approach to Humanitarian Assistance' (2016) 7(2) *Journal of International Humanitarian Legal Studies* 257, 258.

¹⁶ International Law Commission, *Draft articles on the protection of persons in the event of disasters*, A/71/10, 68th sess (2016) ('Draft Articles'), art 2.

¹⁷ *Ibid*, art 10.

¹⁸ Code of Conduct (n _____).

¹⁹ Lottie Lane and Marlies Hesselman, 'Governing Disasters: Embracing Human Rights in a Multi-Level, Multi-Duty Bearer, Disaster Governance Landscape' (2017) 5(2) *Politics and Governance* 93, 96.

²⁰ *Strengthening the capacity of the United Nations system to respond to natural disasters and other disaster situations*, UNGA Res 36/255, UN GAOR, 103rd plen mtg (17 December 1981).

²¹ See, for example, Alpaslan Özerdem 'The 'responsibility to protect' in natural disasters: another excuse for intervention? Nargis Cyclone, Myanmar' (2010) 10(5) *Conflict, Security & Development* 693.

When sovereignty is perceived as the capacity to exclude external state interference,²² the right to refuse humanitarian assistance from states represents an exercise of sovereignty.²³ To mitigate the concerns of the affected state and preclude the rejection of humanitarian assistance on the grounds of state sovereignty, IHRL agreements and HADR frameworks reinforce the notion of primacy. Primacy refers to the role of the affected state as the primary coordinator of assistance in the area, precluding concerns that an assisting state will violate sovereignty. Primacy also shifts the perspective of the exercise of sovereignty to request assistance, as the affected state must consent to the intrusion into the territory.²⁴ Scholars have identified six criteria that justify intervention against consent: just cause, right intention, last resort, proportional means, and reasonable prospects.²⁵ Balancing state sovereignty versus the need to preserve human life represents a tenuous endeavor, given the often-politicized nature of disaster relief, and must be tempered by the concept of Primacy and recognition of a state's obligation to respect, protect and fulfill human rights.

Furthermore, the military's role in confronting non-traditional security threats, encompassing the provision of HADR, must be addressed.²⁶ To provide aid and coordinate an effective response, affected states engage in Civil-Military Coordination ('CIMIC') - sharing information, providing situational awareness, coordinating on asset deployment, and providing structure for aid coordination.²⁷ Absent strong institutions, CIMIC may be perceived as a political exercise which facilitates elevated human rights concerns during periods of natural disaster and humanitarian crises²⁸ - where CIMIC has been criticized

for its incongruity with the HADR principles of impartiality and neutrality.²⁹ Consequently, enshrining IHRL obligations promotes a people-first response which prevents an abuse of power, provides effective relief for the community, and ensures that all stakeholders are able to engage in post-disaster reconstruction.³⁰

Fundamental Human Rights in Disaster Management and Response

The application of HRBA to disaster management and response and HADR underlines the need for states to promote human rights throughout all stages of the disaster management cycle - including preparedness, response and recovery. IHRL principles should guide disaster risk management, including pre-disaster mitigation and preparedness measures, emergency relief and rehabilitation, and reconstruction efforts. Affected and displaced populations must be provided with adequate protection and assistance and need to be able either to return in safety and in dignity to their place of origin, or to be assisted to integrate locally in the area to which they have fled. Additionally, at-risk populations must be continuously protected against the risk of violence and abuse.

These requirements allude to a general human Right to Humanitarian Assistance (RHA) in cases of emergency within international customary law.³¹ In 1993 the International Institute of Humanitarian Law in San Remo drafted the "Guiding Principles on the Right to Humanitarian Assistance" - outlining the existence of a right to request and receive humanitarian aid.³² Consequently, it has come to be understood that RHA is implied in the entire system of basic human rights, as a supplementary right which serves to ensure the maintenance of associated basic human rights within instances of humanitarian crisis or natural disaster.³³ Such component rights of RHA encompass the right to life; right to water; the protection of associated economic, social and cultural rights; and the rule of law.

²² *Corfu Channel (United Kingdom of Great Britain and Northern Ireland v. Albania) (Judgment)* [1949] ICJ Rep 4, 43 (Judge Alvarez).

²³ Matias Thomsen, 'The Obligation Not to Arbitrarily Refuse International Disaster Relief: A Question of Sovereignty' (2015) 16(2) *Melbourne Journal of International Law* 484, 503.

²⁴ Jürgen Haacke, 'The ASEAN Regional Forum: from dialogue practical security cooperation?' (2009) 22(3) *Cambridge Review of International Affairs* 427, 439

²⁵ Hugh Breakey, 'The responsibility to protect: Game change and regime change' in Angus Francis, Vesselin Popovski and Charles Sampford (Eds) in *Norms of protection: Responsibility to protect, protection of civilians and their interaction* (United Nations University Press, 2013), 14.

²⁶ Laura-Ance Parepa, 'Challenges for Civil-Military Cooperation in Peace Support Operations: Examining the Framework of Comprehensive Approaches' 2(1) *United Nations Peace and Progress* 23, 24.

²⁷ Regional Consultative Group, *Humanitarian Civil-Military Coordination in Emergencies: Towards a Predictable Model* (Report, 2017) 13.

²⁸ Kendra Roddis, 'The Art of WAR Listening: An Examination of the New Zealand Defence Force's Civil-Military Coordination in

Pacific Disaster Relief Responses' (Master of Philosophy in Defence and Security, Massey University), 27.

²⁹ Steering Committee for Humanitarian Response, 'SCHR Position Paper on Humanitarian-Military Relations' (Position Paper, January 2010)

<https://reliefweb.int/sites/reliefweb.int/files/resources/C05620DB85A3AD42C12576D200383803-SCHR_Jan2010.pdf>.

³⁰ Damian Lilly, *The Peacebuilding Dimension of Civil-Military Relations in Complex Emergencies* (Briefing Paper, 2002), 22.

³¹ Giovanna Pietropaolo, Maria, 'A Human Rights-Based Approach to Humanitarian Assistance' (2016) 7 *Journal of International Humanitarian Legal Studies* 264.

³² ICRC, 'Practice Relating to Rule 55. Access for Humanitarian Relief to Civilians in Need' on ICTC (2021) <https://ihl-databases.icrc.org/customary-ihl/eng/docs/v2_rul_rule55_sectiond>.

³³ Bosko Jakovljevic, 'The right to humanitarian assistance: legal aspects' (1987) 27(260) *International Review of the Red Cross* 472.

The Right to Life (RTL) encompasses the protection of life, security and physical, mental and moral integrity within humanitarian crises and natural disasters.³⁴ As outlined within Article 3 of the UDHR, this encompasses the general duty to protect, obligating the state to refrain from taking life and to take appropriate steps to safeguard lives within its jurisdiction. Applicable RTL principles include recognition that every human being has the inherent right to life which is protected at law, the right to dignity and moral integrity, the right to protection against acts of violence, the right to liberty and security of the person, the right to liberty of movement, the right to protection from forced or compulsory labor and slavery, and the protection of children against economic exploitation and hazardous or harmful work.

The Right to Water (RTW) ties into the protection of rights related to the basic necessities of life.³⁵ As outlined within UN Resolution 64/292, as an element of customary international law, all persons are entitled to have access to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic use – including drinking, personal sanitation, washing of clothes, food preparation, and personal and household hygiene. Applicable IHRL principles relating to RTW include: A) prohibiting discrimination of any kind in the provision of humanitarian assistance; B) ensuring that every person has the right to an adequate standard of living – including essential food and water, basic shelter and housing, and appropriate clothing; and C) the right to health – including the right to receive essential medical services and sanitation.

The Right to Education (RHE), Right to Property (RTP), and Right to Work (RTW) relates to the protection of other economic, social and cultural rights.³⁶ Firstly, under Article 26 of the UDHR everyone has the right to education. As soon as conditions permit, children affected by humanitarian crises and natural disasters have the right to receive education that is free and compulsory at the primary level. Second, under Article 17 of the UDHR everyone has the right to own property, and no one shall be arbitrarily deprived of their property. Within the context of a humanitarian crisis or natural disaster, everyone has the right to the recovery of lost or dispossessed property and possessions, to the fullest possible extent. Third, under Article 23 of the UDHR, everyone has the right to work, to just and favorable conditions of work, and protection against unemployment and discrimination. Projects to restore economic activities, opportunities and livelihoods

disrupted by natural disaster should start as soon and as completely as possible.

Finally, the Rule of Law (ROL) is relevant to the promotion and protection of the common normative framework - providing a structure through which the exercise of power is subjected to agreed rules, guaranteeing the protection of human rights.³⁷ ROL is alluded to across several fundamental human rights – including equality under the law (UDHR Article 7), prohibitions on discrimination (UDHR Article 2), and right to judicial recourse (UDHR Article 8). This ties into the need to establish mechanisms which enable communities to give feedback and raise complaints or grievances on the disaster relief, recovery and reconstruction response; receive information pertaining to decisions affecting their rights; and to participate in governance and the political process.³⁸

³⁴ Walter Kalin & John Holmes, *HUMAN RIGHTS AND NATURAL DISASTERS - Operational Guidelines and Field Manual on Human Rights Protection* (Brookings-Bern Project on Internal Displacement, 2008) 19.

³⁵ *Ibid* 29.

³⁶ *Ibid* 40.

³⁷ United Nations, 'Rule of Law and Human Rights' on United Nations (2021) <<https://www.un.org/ruleoflaw/rule-of-law-and-human-rights/>>.

³⁸ Kalin & Holmes, above n34, 60.