

# Natural disasters and the issue of responsibility for the victim states

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Are natural disasters an entirely national phenomenon, or can their effects be minimised by concerted international action?

## 1. INTRODUCTION

After the Asian Tsunami came Katrina followed by Rita, with these two hurricanes causing severe damage to certain parts of the United States. The victims of these natural disasters suffered helplessly, and even the Government of the United States witnessed them with awe. Rehabilitation of the victims is time-consuming; in the meantime, wage earners have lost their incomes, and many families have lost their loved ones. The natural disasters were short-lived, but the miseries of the affected people will be long-lasting.

The question of what preventative measures may be taken against such disasters remains. The extent of curative measures depends on: (a) the capability of the affected rich country; and (b) in the case of poor countries, the speed with which foreign aid and assistance may arrive. Katrina and Rita definitely confirmed that natural disasters do not discriminate against any country. Its causes are predictable; they do not take place accidentally. Thus, the issue of taking precautionary measures becomes relevant. This article attempts to examine whether natural disasters are an entirely national phenomenon or whether by concerted international action the incidence of such disasters could be minimised.

## 2. NATURAL DISASTERS AND NATIONAL RESPONSIBILITY

Victim countries are usually aware that natural disasters strike them occasionally or on a regular basis. For example, flood has become a common phenomenon in Bangladesh during the monsoon season (June – September). In the West, Florida in the United States is often struck by severe weather, and in Japan, earthquakes are not uncommon. Somalia and Ethiopia often become victims of draughts. Thus, states which are struck by disasters often do have prior knowledge, and hence the duty of care, in the form of preventative and curative measures, arises.

The Bhopal incident in India, an industrial disaster in 1984 for which a foreign company (Union Carbide in the US) accepted liability, also gave rise to responsibility for the Government of India in respect of the victims, both Indians and foreigners (if any). The consequences of natural disasters are obvious; and yet, sufficient priority is not accorded to them. One of the unavoidable consequences of natural disasters is that the poor suffer most. Their houses will be flattened or badly damaged and they do not have sufficient means to re-build them. They become homeless, and lose their usual source of income. Their lack of education means they cannot find any new employment.

Consequences of natural disasters are mostly felt by the less-advantaged, who usually live by the sea in houses with weak foundations. They become displaced persons, and eventually become victims of cyclical poverty. This is where the issue of state responsibility arises – whether a state which often experiences the consequences of natural disasters does not have a duty to manage and control disasters. Policy-oriented disaster management and control systems should be adopted, but this depends upon what level of priority has been accorded to the issue. In general, developing countries either cannot prioritise, or even if they do, their efforts are rendered meaningless by the lack of funds or technical assistance.

States have also the responsibility for protecting their cultural heritage from the effect of natural disasters, otherwise, from a legal standpoint, people can hold the state responsible in negligence. In this respect, the state concerned has also the responsibility to take preventative and curative measures, which again, is an issue of prioritisation. In developing countries, natural disasters and their consequential effect do not, in general, seem to receive much priority, as in most cases people are required to “get used” to such disasters. In this way, a vicious cycle is formed: by virtue of living in poor-quality houses, disasters affect the poor most; and because they will be

victims of such disasters, no good quality houses are built for them. This is where policy-making by governments is essential (see further UN Report *entitled Shelter and Disaster: Guidelines for Assistance*, New York, United Nations (1982)).

In most developing countries, disaster-stricken people are not provided with any financial assistance from the government, and if provided at all, relief will be inadequate to build houses with good foundations. Thus, disaster-stricken people eventually become “camp-people” with all its attendant consequences: no regular income, children with no school education, and diseases predominantly caused by bad sanitation and the lack of purified water. The scale of suffering often goes unrecorded; in most cases, data on disasters and the resulting death-toll are not available.

The system of operating insurance schemes to cover disaster risks is also unknown to most of the developing countries. On the other hand, in the event of very extensive losses as an aftermath of disaster – such as those caused by Katrina in New Orleans – full monetary damages may not be provided by insurance companies.

These are some aspects of national responsibility facing a government towards its own nationals or residents in relation to natural disasters.

### 3. NATURAL DISASTERS AND INTERNATIONAL RESPONSIBILITY

International responsibility arises for aliens in a disaster-stricken area, irrespective of the duration of their stay in that country, but not residents. The term “international responsibility” has a specific meaning: it entails satisfying the requirements of the international minimum standard and the national standard. In the context of natural disasters, the international minimum standard would require the host state to take special care for the protection of foreign visitors, be they tourists or business people by providing safe accommodation, health and medical care, if necessary after a disaster has taken place. By the same token, in the event of a host country receiving an early warning as to an impending natural disaster, she has an obligation to restrain foreign visitors from visiting that country by providing sustainable reasons.

“National standard”, on the other hand, requires a state to provide the same standards of protection, care and medical help to nationals, residents and aliens, without any discrimination.

Under current practice, the vast majority of developing countries are unable to meet the requirements of the principle of international responsibility under international law in relation to natural disasters. The system of providing insurance policies by Western insurance companies to tourists does not take away the responsibility from a host country. Furthermore, the liability of insurance companies rises when disasters are not

controlled and managed by the affected countries. Katrina in New Orleans has created a liability to the tune of about £300 billion for Lloyd’s.

It is acknowledged that most developing countries lack the financial capacity to provide appropriate protection to foreign tourists in the event of a natural disaster, but in the wake of the such disasters – particularly over the past five years or so – this issue has assumed importance. In the absence of any workable and effective protection scheme, the tourist and investment industries, to name but a few, will be adversely affected.

Coastal states prone to flood or other forms of natural disasters (eg.cyclones, typhoons etc) should seriously consider whether tourists resorts should be built close to their coasts, and if built, they should be built with good foundations, and with flood and storm protection plans (the Tsunami in 2004 destroyed most of the coastal resorts in Indonesia, Sri Lanka and Thailand). Given the extensive nature of the aftermath resulting from Katrina, this issue should be considered by both developed and developing countries. Natural disasters know no discrimination. If a country experiences natural disasters from time to time, then they become a foreseeable risk, and failure to take precautionary and control measures entails responsibility. This responsibility is promoted to the status of international responsibility when foreign tourists and other visitors in the country concerned become victims. The contrary argument may be that foreign tourists and visitors volunteer to encounter risks by deciding to visit disaster-prone countries, but the legal position is clear – the host country concerned has nevertheless the duty to satisfy the requirements of the principle of state responsibility.

It should be borne in mind that the right to visit a country whether as a tourist or business person is based on the reciprocal treaty obligations emanating from the treaty concerned between the home and host states, and the treaty is governed by the Vienna Convention on the Law of Treaties, 1969. Thus, a foreign tourist has the right to be espoused by his/her government to file a claim against the host country on the grounds of the breach of the principle of state responsibility. This sounds harsh, but that is the position in law.

### 4. WHERE INTERNATIONAL RESPONSIBILITY MAY NOT ARISE

There are certain obvious grounds on which a host country may claim dispensation from international responsibility:

- if sufficient notice was served drawing the attention of tourists, or other foreign visitors;
- if the tourists or foreign visitors undertook risks despite such notice;
- if the disaster unusually took place fortuitously, without giving any warning to the host country; and

- if the natural disaster was all-pervasive, that is, engulfing the entire country, leaving no safe place for sheltering everybody in the area/town/city.

Where international responsibility may not arise for the state concerned, the issue of providing some remedies to the victims remains but these may only be provided by insurance companies in appropriate cases. However, compensation from insurance companies may not provide remedies for the loss of lives. In other words, families concerned may not resort to any real remedial measures.

Although from a strict legal standpoint international responsibility may not arise in the situations identified above, the moral responsibility for providing some remedies may remain. It is appreciated that “moral responsibility” is a vague measure for the quantification of damages, but it is believed that moral responsibility will at least demonstrate the gesture of international responsibility by the affected state towards foreign nationals. In fact, elements of state responsibility are founded on moral responsibility. Whereas moral responsibility is not quantifiable, international responsibility is. Thus, exoneration from international responsibility may be regarded as an unethical act; as international responsibility remains for the host country concerned.

International responsibility is compromised by referring to the helpless situation in which a victim country may find herself. Countries prone to natural disasters thus have a duty to prepare themselves for withstanding the rigours of such disasters. International responsibility may not be shaken off by referring to poverty and/or inability to provide remedies to the victims of disasters from various foreign countries. From this standpoint, international responsibility towards foreign tourists or visitors also remains for rich countries in similar circumstances.

## 5. WHAT TYPE OF AID FOR NATURAL DISASTERS?

Aid in this context may be divided into two categories: (a) institutional; and (b) non-institutional. Whereas institutional aid will include aid provided by international organisations, non-governmental organisations and governments, individual contributions will represent non-institutional aid. Financial aid from truly-international organisations, namely, the International Bank for Reconstruction and Development including the IDA (the International Development Agency) will have to be sought by the government concerned, which may not be instantaneous, although the same may not be true about non-governmental organisations, such as Oxfam or the International Red Cross. In relation to the recent earthquake in Kashmir, Pakistan, the government of the United Kingdom granted aid, both financial and non-financial, extremely promptly. Financial aid is also provided

by philanthropic individuals, as was done in the case of the recent Tsunami in Asia in December 2004.

But what purpose does aid serve? Aid, financial or otherwise, certainly has an important role in providing emergency relief to the affected people. This relief may also include temporary shelter, in addition to providing emergency medical relief and treatment. Such aid cannot have a lasting effect. Ironically, although such aid proves to be essential for emergency relief, they may have a perpetrating effect particularly in developing countries (See further, C Chatterjee, “The Tsunami: a wake-up call for North and South”, 59 *Amicus Curiae* (2005) 24–32 at 25). For example, people, including children, are usually provided shelter in temporary camps, which eventually become their homes, and camp life deprives them of the privileges which all human beings should have – education, appropriate medical facility etc.

This is where appropriate and timely assistance for their rehabilitation becomes necessary. Aid provides temporary relief; unless temporary relief is graduated to the rehabilitation of the affected people, aid can, ironically, precipitate misery. This is not to suggest that aid does not perform any function, but it must be accompanied by technical assistance enabling the affected people to rehabilitate themselves. In other words, aid alone is not enough to treat damage caused by natural disasters; it must be followed up by technical assistance from experts to help the affected people return to normal life, and ensure that rebuilt properties withstand the rigour of future natural disasters. It is re-iterated that financial aid in the form of donations is essential for meeting the demands of everyday situations.

The most appropriate term in this context would be “aid and assistance”, which entails two stages: aid first, followed by technical assistance. The latter should be aimed at building or re-building, as the case may be, the infrastructure, or houses, or whatever may be needed. Whereas aid may be provided by any sources, including donations by individuals, assistance should be provided by expert institutions, not necessarily by individual governments. Such assistance must be what may be described as “disinterested” assistance, that is, without any selfish interest or ulterior motive. This can be achieved only through assistance from truly international or non-governmental organisations.

Finance may be provided by these organisations and even by philanthropic individuals. There should be “disinterested” third parties who would act as a “watchdog” for the proper utilisation of finance and the implementation of the rehabilitation programme. In the rehabilitation process, both the local government and local people must be allowed to participate, as they must also acquire knowledge and skills in carrying out rehabilitation programmes. After all, they are most familiar with the local conditions and requirements (See further B Wisner and P

Walker, "A Proactive Look at the World Conference on Disaster Reduction", a report prepared for the Swiss Department of Humanitarian Aid, May 2005 at 5 and 7).

## 6. LIMITS TO INTERNATIONAL AID IN THE CONTEXT OF NATURAL DISASTERS

As stated earlier, aid is the most effective way to deal with emergency situations. Non-institutional aid may be emotion-based, without knowing how the money might be utilised or whether the money would reach the victims at all. From this standpoint, aid may not serve any purpose, although it is psychologically fulfilling.

Institutional aid is different from non-institutional aid in that the former may be controlled by the aid-provider; but the latter has usually no control over its application and distribution. Whereas institutional aid is granted by institutions, often with conditions attached, aid from philanthropic institutions or individuals is given to governments without any conditions attached.

Financial aid should come with technical assistance which would allow people to re-build what has been lost or destroyed. Aid can never have a lasting effect, unless it is accompanied by technical assistance to develop skills of the indigenous people in the affected country concerned. Skills must be provided for "capacity building", which should have spill-over effect whereby other similar programmes can benefit. Aid without supervision by the donors may not produce the desired result. Supervision should be carried out by "disinterested" experts, preferably third parties; otherwise, it may in certain cases be difficult to keep control over the appropriate utilisation of the funds, and the implementation of the project.

If aid is allowed to implement a project designed by the aid-provider it may not contribute to the development process as it may not be relevant to the socio-economic conditions of the beneficiary country, unless the aid-provider has a thorough knowledge of those conditions. Hence it is worth considering whether foreign aid, irrespective of its source, should not be distributed and utilised by a third party but the local people must be involved in materialising the programme. If aid is not short-lived, a dependency effect may become evident. Aid-appraisal during the post-aid period is important, otherwise the possible adverse effect of aid on particular programmes will not be recorded. Aid, unless allowed for emergency purposes, should be granted for infrastructural development of the beneficiary country.

Aid in the context of this article may be classified as: (a) that what is given on a temporary basis for emergency purposes; and (b) long-term aid. Whereas aid for emergency purposes is not required to have any long-term objectives, long-term aid must have a far-reaching objective for the beneficiary country, which must be allowed to set the objective. The utilisation of long-term aid should operate as a learning process for that country.

Thus, in long-term aid-giving process three parties should be involved: (a) the aid-giver; (b) the government of the beneficiary country; and (c) a "disinterested" group of experts drawn from both the aid-giver and the beneficiary country to carry out surveillance and supervision. The beneficiary country must remain accountable to the aid-giver.

Limits to long-term aid may become evident in the form of the absence of infrastructure or a lack of the essential pre-requisites, namely, the basic foundation for the project or materials in the beneficiary country. Thus, the pre-requisite for any foreign aid is a well-prepared and thoroughly-reasoned feasibility study, including risks, by the prospective aid-giver. Aid must be provided responsibly. The scope of aid may also be limited by the aid-giver's lack of expertise. An aid provider should not rely solely on the expertise that may be available in the beneficiary country concerned. Expertise on behalf of the aid-giver will also enable it to minimise risks and develop an appropriate feasibility study, as well as assisting the completion of the project.

Limits to aid may also be set by the governmental bureaucracy in the beneficiary country. It is elementary that an aid-giver cannot reform bureaucracy in the beneficiary country; thus participation by a third party (committee of experts) might be useful for the completion of the project by the stipulated period of time, and indeed, under supervision.

Aid without technical assistance may not bear any fruit. Aid-giving must have a plan to contribute to the socio-economic issues in a beneficiary country. It must contribute to the capacity building of the country, including technical education, and the building of human resources, in addition to leading to the industrialisation of the country. Not all of these may be achieved in one attempt, but these should be progressively achieved. In other words, aid-giver has a responsibility towards the beneficiary country, it must not leave everything to the latter. The issue of encroachment upon the sovereignty of the beneficiary country should be dealt with before aid is allowed by the donor.

Excessive financial aid may have a crippling effect on the beneficiary country concerned in that the latter may develop what may be described as "aid dependency". Aid must be diluted with training whereby self-sufficiency in particular sector of the economy or industry may be achieved. Where possible, foreign aid should be substituted by foreign technical assistance, because whereas the former may have a crippling effect on the beneficiary country, the latter should create new ideas and skills in the recipient country. It is recognised that a contribution of both in most cases is the most appropriate approach to developing a country's economy.

Foreign aid must be considered along with the capability of and requirements for the country concerned; in certain



cases, this aid may have to be provided progressively as capacity-building of the country improves. Thus, the usual connotation attached to the term “aid” may not be applied if the donor has as its objective the improvement of the socio-economic condition of the country concerned through aid. Aid should not be perceived as a gesture of charity, which is often emotion-driven. Foreign aid of any form should entail technical assistance.

## 7. UNDEMOCRATIC REGIMES, POVERTY AND NATURAL DISASTERS

Undemocratic regimes do not seem to pay much attention to the issue of poverty elimination. Thus, a large poor section of the population live in what is known as “shanty towns” and ghettos. Often they live by the waters, as fishing provides them their livelihood. Undemocratic regimes are fully aware that a large percentage of the poor often become victims of natural disasters; thus, the issue of responsibility arises, which would include, inter alia, preventative measures or, in the context of this topic, being prepared with remedial measures.

Interestingly enough, although natural disasters often strike many poor countries, namely, Bangladesh, Ethiopia, Somalia and Burkina-Faso, to name but a few yet the issue remains unprioritised. Often it is taken for granted that poverty is an integral part of a society, particularly in the developing world. In other words, there exists a policy of neglect towards the poor.

Undemocratic regimes do not allow people their basic rights and freedoms, namely, right to education, right to freedom of speech etc in consequence of which they cannot seek highly-paid employment to improve their standards of living. They are denied opportunities to improve their life style. Thus, undemocratic and oppressive regimes directly contribute to poverty in consequence of which the poor are made unable to cope with the miseries of disasters.

In undemocratic regimes no plans exist to prepare people for managing and controlling the effect of natural disasters; the neglected suffer most; they become victims of disasters; the death toll rises. The only possible means of providing some relief would be by seeking external assistance in the form of financial aid from charitable and/or humanitarian institutions, including the United Nations. As stated earlier, this form of assistance provides only temporary relief, and does not contribute to any preventative work. Undemocratic and oppressive regimes tend to heighten their expectation of foreign assistance whenever such disasters may take place; in other words, they indulge in indifference to their own people by not prioritising the issue of natural disasters, and this indifference deepens dependency on external aid and assistance.

Undemocratic and oppressive regimes do not have plans for integration, rather they tend to segregate poor people

in the community. By special efforts a minority may manage to escape the spiral effect of deprivation, but the majority will be living in the vicious cycle of poverty, and they usually become the victims of natural disasters.

Unless these regimes themselves change their attitude towards the sufferings of the poor and take preventative and curative measures, the prospects of bringing any change in this regard are remote. Perhaps the international community through the intervention by the United Nations may persuade such regimes to change their attitudes and priorities, but this must be achieved by peaceful means. Lack of education and fundamental freedoms and rights perpetrate poverty, which has a direct effect on the country’s capacity to cope with the misfortunes brought about by natural disasters. The nexus between undemocratic and oppressive regimes, poverty and the incapability to deal with the consequences of natural disasters is clear and direct.

## 8. CONCLUSIONS

Although periodic devastation by natural disasters has become a predictable phenomenon in many developing countries, these are not uncommon in certain developed countries either. Here, joint action between developed and developing countries for preventative and curative measures is essential, bearing in mind that disasters do not discriminate between different countries.

Natural disaster issues should not be seen in isolation from other related issues such as poverty, including the lack of employment and education. It should also be borne in mind that in developing countries most of the victims of natural disasters have a poor living and that they usually live by the coasts or in villages (see further World Food Programme, *Impact of the Tsunami on the Lives and Livelihood of People in Myanmar with Special Focus on Labatta Township, Ayeyamwaddy Division* 11–26 January at 6 and 9).


In tackling natural disasters the role of financial aid should be strictly kept confined to emergency situations for providing medical aid, food and shelter. Along with aid, technical assistance should be sought from international organisations for the purpose of rehabilitating the victims of natural disasters. Technical assistance should be channelised through one source; in other words, all other agencies, governmental, inter-governmental or non-governmental should deposit their contributions with one fund. Both aid and technical assistance should be placed under the supervision of a responsible third party. Parties engaged in providing aid and technical assistance should remain accountable to that responsible and “disinterested” third party.

Local people must be allowed to be involved in implementing technical assistance, namely training, in order to allow them to earn skills and experience. The host governments must also be involved particularly for facilitating the implementation of technical assistance

rather than obstructing the progress by rigidly invoking national sovereignty (See further paper entitled *Aim and Scope of Disaster Management* published by the Disaster Management Center, University of Wisconsin, 2005).

Natural disasters and their consequences should be regarded as truly matters of “international concern”, thus all states, rich or poor alike, should develop a strategy and plan for dealing with them by means of an international convention. More importantly, action should be taken to implement this convention as a matter of urgency. Implementation must be participatory, that is, with the participation of the local people at all levels, technical, managerial, planning and control. As large amounts of finance are needed in dealing with the consequences of natural disaster, let alone human miseries and death, an effective “early warning system” should be devised (see the work of the International Early Warning Programme – IEWP ([isdr-ppew@un.org](mailto:isdr-ppew@un.org))). There should also be co-ordination between states and international organisations, namely, the UN Office for the Coordination of Humanitarian Affairs (OCHA), World Trade Organisation, World Food Programme, UN Environment Programme, World Meteorological Organisation, the International Red

Cross (a non-governmental body) and other important non-governmental, inter-governmental institutions.

All countries, rich or poor alike, should be required to undergo disaster management training programme including risk-minimisation techniques in providing relief to disaster-stricken people (On the issue of a disaster management training programme, see the Report entitled *Disaster Assessment* prepared by UNDP, 2nd edition (1994)). The rehabilitated people’s progress should be monitored too on a regular basis, and where necessary, further technical assistance from international organisations should be sought. Natural disasters entail responsibility both at domestic and international levels. Self-reliance in dealing with the consequences of natural disasters is essential as international aid often proves to be inadequate to deal with them. According to the World Food Programme, although they needed over £56 million to transport aid, including food to victims of earthquake in Kashmir, they received just £5.5 million from donors. 

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