

# **THE ROLE OF THE STATE IN THE FIELD OF PROTECTION AND ASSISTANCE IN CASE OF DISASTERS**

Man has at all times been faced with extremely violent natural events which have resulted in heavy losses to the surrounding populations.

Protecting citizens from disasters and accidents was for long the concern of the population itself which, with the support of the religious orders, set up patrols mainly to prevent and fight fires; other disasters were looked upon as inevitable.

Since then, as the notion of the State gradually asserted itself, it has become aware of its responsibilities. The State, much as the family or local unit in the past, has the duty to ensure the safety of its citizens. This leads it notably to protect its population through adequate means from the disasters and risks to which it may be subjected (I).

In the same way, humanity has always shown great solidarity in the face of natural events. The State gradually became concerned about the disasters which occurred first in its neighborhood then at the other end of the world. This concern soon showed itself, notably by offers of international assistance from one State to another on whose territory a disaster had occurred (II).

## **I. The State and national assistance**

That every State bears the responsibility for assisting disaster victims on its territory is accepted by nearly everyone today. “This responsibility for facing disasters is a political one which has its roots in the very notion of the State: to organise the individuals which make up the community and supply some of their vital needs first amongst which are the safeguard of life, property and the environment”<sup>1</sup>.

This obligation, arising from international common law, has, over the last 30 years been repeatedly brought to the attention of States at the United Nations General Assembly.

On the basis of Resolution 2034 (XX) of 7 December 1965, the General Assembly called upon the UN’s Member States to “envisage the possibility of establishing an appropriate national planning and operational system best adapted to their particular situation, with a view to defining the scope and nature of the assistance required and to centralise the management of rescue operations”.

Similarly, on the basis of the full report of the Secretary-General of 13 May 1971 on “Assistance in case of natural disasters” the General Assembly adopted a resolution inviting governments to: “establish forecast plans of dangerous situations with the appropriate assistance of the coordinator of assistance in case of disasters, stock supplies for emergencies, such as tents, blankets, pharmaceutical products and non-perishable food; take the necessary

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<sup>1</sup> “World action plan for the development of Civil Defence” ICDO, XIth World Conference on Civil Defence, 1998, Beijing, China.

measures for the training of administrative and operational personnel ; improve their national alarm systems”<sup>2</sup>.

The principle that “it is, in the first instance, incumbent on each State to assist victims of disasters or similar emergency situations”<sup>3</sup> has since been constantly reaffirmed.

Faced with this fundamental mission, the State must therefore establish an appropriate structure able to respond as effectively as possible to the needs of the population as regards its security and that of its property. This entails the creation or strengthening of adequate legislation defining this structure’s organisation and tasks.

In this context, and in accordance with its Constitution<sup>4</sup>, the ICDO is actively campaigning for the promotion of national civil defence/civil security/management of emergency by unceasingly reminding States, notably through the Beijing Declaration adopted during the 11th World Conference on Civil defence, of their duties as regards disasters<sup>5</sup>.

This effort which the State must make as regards risk management must relate in particular to the topics presented briefly below:

## **1. Prevention**

It is not pointless to insist on the importance for States to develop the preventive aspect, given the increasing cost of disasters: prevention’s aim is to avoid the occurrence of a disaster and to limit its consequences to the extent possible.

Prevention requires an analysis of the dangers and risks to which a country is subject. This must lead the State to adopt regulations destined to suppress or at the very least to reduce the probability of a certain risk occurring, by, for example, limiting the number of buildings in areas exposed to natural risks or setting up security areas around dangerous installations. It is also means taking into account seismic risks when establishing building regulations.

Besides these “passive measures” and since zero risk does not exist, it is also necessary to prevent crises by establishing in advance a rescue organisation adapted to the reality of risks. This anticipation of risks through planning is a fundamental factor in their control. Be they general or specific, rescue plans make it possible to avoid hazardous interventions and pragmatic or empiric measures necessitated by an exceptional situation.

## **2. Forecasting**

Forecasting risks aims at measuring the probability of a risk occurring so as to inform and alert the population.

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<sup>2</sup> Resolution 2816 (XXVI) of 14 December 1971.

<sup>3</sup> Resolution 43/131 of 8 December 1988.

<sup>4</sup> Art.2 (b) “ to encourage the establishment and development of a Civil Defence organisation in countries where such an organisation does not exist, in particular in developing countries, and to assist countries, upon their request, in establishing and developing organisations for protection and rescue of the populations and property ”.

<sup>5</sup> “Considering that the creation of national civil defence structures, the responsibility of which is incumbent upon States in the first instance...” 11<sup>th</sup> World Conference on Civil Defence, as above.

Apart from earthquakes and certain volcanic eruptions, forecasting is based on ever more reliable methods. Meteorology has become indispensable to-day in the fight against forest fires, the forecast of tempests and cyclones, of floods, etc.,

As for technological risks, forecasting enables the consequences these could have on the population residing in the geographic zone in question to be foreseen.

### **3. Crisis management**

Crisis management requires a rapid and appropriate response to disaster. Rescue should be organised through prior planning.

Crisis management therefore involves a command structure and a sharing of responsibilities between the various protagonists. In view indeed of the increasing number of actors likely to be more or less closely involved in the disaster, (firemen, civil defence services, private sector, those called up, volunteers, international teams) only a command unit is capable of ensuring the utmost efficiency of rescue operations.

### **4. Post-crisis**

After a disaster, and in view of the population's disarray, the State must promote post-crisis reconstruction and rehabilitation of the disaster area. It must also, in collaboration with local authorities, assist and ensure moral and material support to the victims (psychological follow up, compensation, etc.).

Finally, the post-crisis stage is an opportunity for those who have played a part in fighting the disaster to organise a debriefing so as to identify the positive and the negative aspects of the rescue operation. The conclusions must lead to an improvement in the dysfunction which may have thus been identified in matters of prevention, forecasting, and in the organisation of rescue, and must incite the State to bring about the necessary modifications through its civil defence/civil security/management of emergency structures.

### **5. Informing the population**

Informing the population of the dangers to which it is exposed is an important element of prevention and a duty of the State.

The "Right to information" of the citizen is recognised by the authorities concerned who publish information material which can be consulted by the public and design posters about the security instructions it should obey in case of disasters. The local level, which holds the role of initiator in the matter, is best placed to organise, with the support of the State, the modalities of information of the population.

Finally the distribution of pamphlets aiming at rendering the public, and notably children, aware of risk prevention must be encouraged<sup>6</sup>. The teaching of risk prevention at school will make for an early awareness of future generations of the risks to which they may be subjected.

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<sup>6</sup> At ICDO's initiative, the theme of Civil Defence World Day in 1999 was: "Civil Defence at school".

Long neglected for fear of needlessly alarming the population, information is to-day a major element of risk management and must be encouraged at all levels<sup>7</sup>.

## **6. Training**

Sound basic training and on-going training of rescue teams is the best guarantee of highly effective crisis management. To this end, the establishment of a training centre or a national school for firemen, for civil defence personnel or others is a prime requirement for ensuring standardised training at the national level.

The State's responsibility for training may be complemented by bilateral collaboration with other States<sup>8</sup>, or with an international organisation such as the ICDO which is most active in this field, be it in its Regional Training Centres or in Switzerland<sup>9</sup>.

The State is thus responsible for the rescue of, and assistance to, the population. But what if the State concerned faces great difficulties in assuming this responsibility?

Only an external assistance, requested or offered, can then support the efforts made by the State to control the consequences of the disaster.

## **II. The State and International assistance**

Is there, together with the international obligation falling on States to assist victims of disasters occurring on their territory, ("international obligation of national assistance") an "obligation of international assistance"<sup>10</sup>? In other words is there a general obligation for each State to assist?

To date, the answer can only be negative. "The operation of international solidarity responds certainly to moral obligations but not to legal ones"<sup>11</sup>. The only obligation of States to assist arises from bilateral or multilateral mutual assistance agreements between neighboring States. These agreements lay down in advance the nature and type of assistance to be provided by the solicited State to the beneficiary State. Apart from these agreements, there exists no general obligation of international assistance by States, despite various attempts to draft an international legal instrument of general scope to regulate this type of activity.

Certainly there exist agreements on the activities of the specialised agencies of the United Nations, or concerning specific questions such as accelerated customs formalities or facilities

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<sup>7</sup> For example at the international level with, notably the 1998 campaign of the International Decade for the Prevention of Natural Disasters (IDNDR) : « Prevention starts with information ».

<sup>8</sup> For example training of foreign rescue teams at the Ecole nationale supérieure des officiers de sapeurs-pompiers (Higher national school for fireman officer) at Nainville- les- Roches, France.

<sup>9</sup> Moreover, as per the agreement of 1989 between the ICDO and the United Nations Organisation (UNDRO now renamed OCHA), the ICDO is responsible for training managers, instructors and national civil defence services personnel at the international level.

<sup>10</sup>The two expressions "international obligation of national assistance" and "obligation of international assistance" are used by M. J.M. Thouvenin, Maître de conference (senior lecturer) at the University of Maine and at the I.E.P. in Paris, in his article "L'internationalisation des secours en cas de catastrophe naturelle" (The internationalisation of assistance in case of natural disasters). *Revue générale de droit international public*, 1998-2.

<sup>11</sup> Article by M. Thouvenin quoted above.

for assistance sent by air, but on the other hand there is no framework for all aspects of an assistance operation.

As for the ICDO, it has drafted a framework Convention on civil defence assistance, (adopted by the 11th World Conference on Civil Defence, mentioned above) whose final text was adopted on 22 May 2000, in Geneva, with the aim of defining the general principles which must govern all assistance actions and whose modalities will be decided later by way of agreements. This framework convention highlights the primordial role of the State as regards assistance to disaster victims and the solidarity of the civil defence services of all signatory states in assisting victims. The object of this convention is to encourage assistance in all matters covered by civil defence (prevention, forecasting, preparation, intervention, post-crisis management...) and to overcome the differences in conception and organisation which may hinder international cooperation in this field. In this regard, the framework convention invites States to respect the guiding principles (see art. 3) which rule all international cooperation in the field of disaster assistance.

The expressed will is to apply at the international level the fundamental principles which govern the organisation of assistance at the national level, the first of which is, notably, the speedy intervention of rescue teams.

Indeed, it is only planning, or at least “previous understanding” between States established before the disaster, which can meet this imperative for speedy reaction in the sending of international rescue teams.