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A COMPARATIVE STUDY ON INTERNATIONAL DISASTER LAW APPLICABLE TO SPAIN AND THE PHILIPPINES*

Un estudio comparado sobre el Derecho Internacional de Catástrofes aplicable a España y Filipinas

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Resumen

Debido al gran número de víctimas que dejan y a sus nefastas consecuencias, las catastrofes naturales constituyen hoy en día uno de los problemas más importantes. Sin embargo, la regulación internacional en este ámbito se caracteriza por tener considerables vacíos legales, y está compuesta principalmente de normas regionales y nacionales. Tanto España como Filipinas se ven afectados por estas catastrofes, si bien es cierto que este último ocupa el primer puesto en el ranking de número de muertes en el sudeste asiático. Este documento tiene como objetivo analizar el marco normativo aplicable en ambos Estados en relación con esta materia, exponiendo sus principales fortalezas y debilidades.

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Palabras clave

ASEAN; estudio comparativo; Derecho Internacional sobre catastrofes naturales; Ley 17/2015; España; Filipinas; Ley de la República No. 10121 de 2010.

Abstract

Disasters constitute nowadays one of the most relevant issues due to its large number of victims and its harmful consequences. However, the international disaster regulation contains considerable legal weaknesses and it is comprised eminently of regional and municipal rules. Both Spain and The Philippines are affected by disasters, albeit the latter constitutes the top State in number of death in Southeast Asia. This paper aims to analyse the applicable normative framework in both States regarding natural disasters, setting forth its main strengths and weaknesses.

Keywords

ASEAN; Comparative study; International Disaster Law; Law 17/2015; Spain; The Philippines; Republic Act No 10121 of 2010.

Sumario: I. Introduction. II. Conventional International Disaster Law Applicable to Spain and The Philippines. 1. *Multilateral Level.* 2. *Regional Level*. 3. Domestic Level. III. Conclusions. *Bibliograpy*.

I. INTRODUCTION

Disasters constitute a threat to both national and international security. Its effects may destroy or reduce significantly one country welfare state, produce state budgetary constraints, restriction to human rights, etcetera. The effects of a catastrophic situation depends on many factors, but mainly, the occurrence of these phenomena or the degree of vulnerability of the society, the country's level of development and the improvement of disaster management systems within its territory and at international level.

The Southeast region is one of the most affected areas by disasters around the world. Special reference has to be made to The Philippines, which holds a prominent position compared to its neighbour States.[1] In fact, data shows that this State has a huge trouble to deal with, and that it has been a constant issue in its history.[2] Tables below shows data of natural disasters occurred in Spain and the Philippines from 2010 to 2017. If we compare these numbers, the Philippines has had more than one hundred catastrophic events than Spain, resulting in 75.145.098 people affected (almost the double of Spanish population). This is one of the reasons why disaster management is of vital importance for the Philippines.

[1] See data collected in *Country Profile*, Guha-Sapir, D., Below, R., Hoyois, Ph., *EM-DAT: The CRED/OFDA International Disaster Database*, Université Catholique de Louvain, Brussels, Belgium, available at www.emdat.be.

[2] See a list of relevant disasters occurred in The Philippines history in http://www.ultimahora.com/los-10-desastres-naturales-mas-mortiferos-filipinas-n740168.html.

Natural Disasters in Spain 2010-2017

Year	Disaster Subtype	Occurrence	Total Deaths	Injured	Affected	Homeless	Total Affected	Total Damage
2010	Extra-tropical storm	1	3					340000
2010	Riverine flood	1	2		30		30	
2011	Ground movement	1	10	300		15000	15300	200000
2011	Riverine flood	1	1		2400		2400	
2012	–	1	4	6			6	
2012	Riverine flood	1	10	35	600		635	395000
2013	Extra-tropical storm	1						
2013	Flash flood	1			600		600	
2014	Convective storm	1	3					
2015	Flash flood	2	8		150		150	
2016	–	1	5		150		150	
	Total	**12**	**46**	**341**	**3930**	**15000**	**19271**	**935000**

Source: *Country Profile*, GUHA-SAPIR, D., BELOW, R., HOYOIS, PH., *EM-DAT: The CRED/OFDA International Disaster Database*, Université Catholique de Louvain, Brussels, Belgium, available at *www.emdat.be*.

Natural Disasters in the Philippines 2010-2017

Year	Disaster Subtype	Occurrence	Total Deaths	Injured	Affected	Homeless	Total Affected	Total Damage
2010	Ash fall	1			14161		14161	
2010	Flash flood	4	118	22	2059840		2059862	50589
2010	Landslide	1	2	2	925		927	78
2010	Riverine flood	5	44		787073		787073	
2010	Tropical cyclone	3	212	133	2595412		2595545	284420
2010	Viral disease	1	737	123939			123939	
2011	Ash fall	2			33931		33931	
2011	Bacterial disease	2	23	200	617		817	
2011	Flash flood	7	33		162272		162272	179247
2011	Ground movement	1		3	25		28	
2011	Landslide	3	29	19	870		889	
2011	Riverine flood	8	89	190	2056366		2056556	23540
2011	Tropical cyclone	12	1782	6291	9462385		9468676	527238
2011	Viral disease	1	33		6778		6778	
2012	Bacterial disease	1	30		3158		3158	
2012	Flash flood	2	1		13000		13000	
2012	Ground movement	3	114	123	353034		353157	12144
2012	Landslide	1	75	16	7		23	

Year	Disaster Subtype	Occurrence	Total Deaths	Injured	Affected	Homeless	Total Affected	Total Damage
2012	Riverine flood	6	156	16	4565850	35762	4601628	75330
2012	Tropical cyclone	9	2039	2724	7557756		7560480	918137
2013	Flash flood	1	10		507769		507769	2800
2013	Ground movement	1	230	976	3221248		3222224	51459
2013	Riverine flood	4	95	59	3992510		3992569	2231988
2013	Tropical cyclone	8	7415	28858	17915713		17944571	10136563
2014	–	2	1		102720		102720	
2014	Flash flood	1	4		3770		3770	
2014	Riverine flood	1			99185		99185	
2014	Tropical cyclone	9	326	2269	13066714		13068983	1062899
2015	–	4	44		230429		230429	200
2015	Drought	1			181687		181687	84399
2015	Riverine flood	1	9		880		880	
2015	Tropical cyclone	10	148	131	3602774	3300	3606205	1881367
2016	–	2	26		1271907		1271907	9320
2016	Tropical cyclone	6	10	2	1069297		1069299	67093
	Total	**124**	**13835**	**165973**	**74940063**	**39062**	**75145098**	**17598811**

Source: *Country Profile*, GUHA-SAPIR, D., BELOW, R., HOYOIS, PH., *EM-DAT: The CRED/OFDA International Disaster Database… op. cit.*

Furthermore, disaster management regulation has to face problems such as the misleading and overcomplicated terminology.[3] In that sense, there is no uniformity on defining the term "disaster". Doctrinal debate still goes on, but some definitions where provided by international instruments and academia.[4] The United Nations International Law Commission (ILC) ended up its work on the protection of persons in the event of disaster defining the term as "a serious disruption of the functioning of a society".[5] For its part, the *2005 Vientiane Agreement*[6] gives a similar definition.[7] The *Philippine Disaster Risk Reduction and Management Act of 2010*[8] provide a large notion of the term, as follows:

> "A *serious disruption of the functioning of a community or a society* involving widespread human, material, economic or environmental losses and impacts, which exceeds the ability of the affected community or society to cope using its own resources. Disasters are often described as a result of the combination of: the exposure to a hazard; the conditions of vulnerability that are present; and insufficient capacity or measures to reduce or cope with the potential negative consequences, Disaster impacts may include loss of life, injury, disease and other negative effects on human, physical, mental and social well-being, together with damage to

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[3] This problem is not new, as it was pointed out, in the field of sociology, long time ago in Porfiriev 1995: 286.

[4] Authors that have work on this topic are, inter alia, Auly, Laymond, Prat y Veiga 2012; Caron y Leben 2001: 33; United Nations 2009: 13-14; Park 2014: 291-307; Pérez de Armiño 2000; Prieto Sanjuán y Thouvenin 2011: 41-50.

[5] See article 3(a) of *Draft articles on the protection of persons in the event of disasters*, adopted by the International Law Commission at its sixty-eighth session, in 2016, and submitted to the General Assembly as a part of the Commission's report covering the work of that session (A/71/10), paragraph 48. The report is reproduced in United Nations, *Yearbook of the International Law Commission*, 2016, vol. II, Part Two. See academic debate on the ILC proposal in Thouvenin 2011: 41-50; Bartolini 2015: 184-191.

[6] 2005 Association of Southeast Asian Nations (ASEAN) Agreement on Disaster Management and Emergency Response, signed in Vientiane 26 July 2005, entered into force 24 December 2009, reproduced in *ASEAN Documents Series 2005*, available at http://agreement.asean.org/.

[7] Emphasis added; Article 1 paragraph 3.

[8] Republic Act No. 10121, An Act Strengthening the Philippine Disaster Risk Reduction and Management System, Providing for the National Disaster Risk Reduction and Management Framework and Institutionalizing the National Disaster Risk Reduction and Management Plan, Appropriating Funds therefor and for Other Purposes, Official Gazette 27 May 2010, available at http://www.gov.ph/2010/05/27/republic-act-no-10121/. See also the Republic Act No. 10821, An Act Mandating the Provision of Emergency Relief and Protection for Children before, during, and after Disasters and other Emergency Situations, 27 July 2015, Official Gazette 18 May 2016, available at http://www.gov.ph/2016/05/18/republic-act-no-10821/.

property, destruction of assets, loss of services, social and economic disruption and environmental degradation".[9]

In the European scene a similar definition can be found in the European Union (EU) legislation and in domestic law of its Member States (MS). The Decision No. 1313/2013/EU on a Union Civil Protection Mechanism (UCPM)[10] set out the following definition: "Disaster means *any situation which has or may have a severe impact* on people, the environment, or property, including cultural heritage". Also, the Spanish national law defined disaster (*catástrofe*) as "a situation or event that disrupts the functioning of a community".[11]

Therefore, taking into account the similarities between definitions described, one of the main idea is that disaster reflects in some way a "serious disruption of the functioning of a community".

International disaster law (IDL) regulates a wide array of issues during the various phases of natural, anthropogenic or hybrid disasters.[12] These matters are, inter alia, "the obligation of the States to prevent or mitigate a disaster and to appropriately give assistance, the relations between the disaster-affected State and other States or international organizations, the way of request and offer assistance, the status of relief personnel".[13] Likewise, IDL has to give an adequate response to these matters during all the phases of the so call *disaster management cycle* which includes: prevention, preparedness, response and reconstruction.[14]

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[9] Sec. 3, Paragraph (h).

[10] Decision No. 1313/2013/EU, of the European Parliament and of the Council of 17 December 2013, on a Union Civil Protection Mechanism (Text with EEA relevance), OJ L 347 of 20 December 2013. See also: Commission Implementing Decision of 16 October 2014, laying down rules for the implementation of Decision No 1313/2013/EU of the European Parliament and of the Council on a Union Civil Protection Mechanism and repealing Commission Decisions 2004/277/EC, Euratom and 2007/606/EC, Euratom, (notified under document C (2014) 7489) (Text with EEA relevance) (2014/762/EU), OJ L 320 of 6 November 2014.

[11] Article 2 paragraph 6 of Law 17/2015, of 9 July, *del Sistema Nacional de Protección Civil*, BOE No 164 of 10 July 2015.

[12] According to the inception of the hazard, disasters could be classified in three different kinds: natural, anthropogenic (or man-made) or hybrid. The latter is also known as *Natech* or *Na-Tech* accidents; they are defined as "accidents initiated by a natural hazard or disaster which result in the release of hazardous materials [...]. This includes releases from fixed chemical installations and spills from oil and gas pipelines"; see http://enatech.jrc.ec.europa.eu/. This classification has been used by academia, inter alia, Pérez de Armino 2000; Institut de Droit International 2003: 3-4; International Law Commission 2008: 16; Fernández Liesa y Olivia Martínez 2012: 19.

[13] See Guttry, Gestri y Venturini 2012: 9

[14] There are many activities that fall under these four main phases, such as, disaster risk reduction (DRR), mitigation and early recovery. See on this issue Guttry, Gestri y Venturini 2012: 8-9

II. CONVENTIONAL INTERNATIONAL DISASTER LAW APPLICABLE TO SPAIN AND THE PHILIPPINES

The sources of Public International Law (PIL) are treaties, international custom, general principles of law, judicial decisions and academia scientific publishing, among others.[15] The bound of the present paper does not allow a comprehensive research of all aforementioned sources of law; thereby we will focus on conventional rules applicable to the Philippines and to Spain.

Some other general rules may be applicable even if they could not be enforced.[16] These include United Nations (UN) documents, particularly its General Assembly Resolutions (UNGA Res.),[17] Disaster Risk Reduction

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[15] As classically stated by article 38 of the Statute of International Court of Justice (established by the *Charter of United Nations*, signed 26 June 1945), similar to the previous criteria of article 38 of the Statute of the Permanent Court of International Justice *(Protocol of Signature relating to the Statute of the Permanent Court of International Justice provided for by Article 14 of the Covenant of the League of Nations*, done in Geneva 16 December 1920, LNTS, vol. 6, nº. 170 (1921)). See about sources of PIL, inter alia, Rodríguez Carrión, A.-J., *Lecciones de Derecho Internacional Público*, 6ª edición, Tecnos, Madrid, 2006, particularly pp. 141-145; González Campos, J.-D., Sánchez Rodríguez, L.-I. y Andrés Sáenz de Santa María, P., *Curso de Derecho Internacional Público*, 4th ed., Thomson-Civitas, Navarra, 2008, pp. 167-189; Daillier, P., Forteau, M., Pellet, A., *Droit International Public*, L.G.D.J., Paris, 8th ed., 2009, pp. 124-126; Remiro Brotóns, A. *et al*, *Derecho Internacional. Curso General*, Tirant lo Blanch, Valencia, 2010, pp. 175-236; Jiménez Piernas, C., *Introducción al Derecho Internacional Público: práctica de España y de la Unión Europea*, Tecnos, Madrid, 2011, pp. 91-93; Abass, A., *International Law. Text, Cases, and Materials*, Oxford University Press, 2012, pp. 26-64; Casado Raigón, R., *Derecho Internacional. Parte General*, 2nd ed., Tecnos, Madrid, 2014, pp. 148-153; Salinas de Frias, A. (dir.), Alcaide Fernández, J., Expósito González, P., García Rico, E.-M., García San José, D., Torres Cazorla, M.-I., *Lecciones de Derecho Internacional Público*, Tecnos, Málaga, 2015, pp. 111-162; Casanovas, O., y Rodrigo, A.-J., *Compendio de Derecho Internacional Público*, 5ª edición, Tecnos, Madrid, 2016, pp. 55-74; Andrés Sáenz de Santa María, P., *Sistema de Derecho Internacional Público*, 4th ed., Thomson Reuters-Civitas, Navarra, 2016, pp. 109-230. Also see the relevant work of the ILC, specifically on the topics: "Law of treaties", "Identification of customary international law" and "Peremptory norms of general international law (*Jus cogens*)", available throw http://legal.un.org/ilc.

[16] With the exception of the UN Security Council Resolutions, General Assembly Resolutions and other UN documents do not represent mandatory rules of PIL, but may be considered significant evidence of an ongoing customary rule or principle.

[17] See the following latest key documents, among many others, UN Secretary-General Reports A/54/132-E/1999/80, 21 July 1999 (The Geneva Mandate on Disaster Reduction), A/57/578, 29 October 2002 (International cooperation on humanitarian assistance in the field of natural disasters, from relief to development); A/71/230, 29 July 2016 (on implementation of the International Strategy for Disasters Reduction); UNGA Resolutions A/RES/46/182, 19 December 1991 (Strengthening of the coordination of humanitarian emergency assistance of the United Nations), A/RES/59/279, 28 January 2005 (Strengthening emergency relief, rehabilitation, reconstruction and prevention in the af-

Declarations comprising the Sendai Framework[18] and the Hyogo Framework,[19] climate change agreements (such as the Paris Agreement[20]), and the recent work of the ILC on this subject.[21]

1. *Multilateral level*

We could find two key multilateral universal agreements related to natural disasters: the 1998 Tampere Convention on the Provision of Telecommunication Resources for Disaster Mitigation and Relief Operations[22] (hereinafter the Tampere Convention) and the 2000 Framework Convention in Civil Defence Assistance[23] (henceforth, the Framework Convention in Civil Defence).

Spain accessed to the Tampere Convention on 27 February 2006,[24] but the Philippines have not signed not ratified the agreement to date. Regarding the

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termath of the Indian Ocean tsunami disaster), A/RES/63/217, 18 February 2009 (Natural disasters and vulnerability), A/RES/70/204, 23 February 2016 (International Strategy for Disaster Reduction).

[18] The Sendai Framework for Disaster Risk Reduction 2015-2030, adopted at the Third UN World Conference on Disaster Risk Reduction in Sendai, Japan, on March 18, 2015, endorsed by the UNGA Res. 69/283, 3 June 2015.

[19] The Hyogo Framework for Action 2005-2015: Building the Resilience of Nations and Communities to Disasters (HFA), endorsed by the UNGA Res. 60/195, 2 March 2006.

[20] Done in Paris 12 December 2015, endorsed by Decision 1/CP.21, doc. FCCC/CP/2015/10/Add.1, of 29.1.2016, Annex, pp. 23-40; entered into force on 4 November 2016, entered into force in Spain on 11 February 2017 (BOE No 28 of 2 February 2017). See about the relationship of this agreement and International Disaster Law in Bautista-Hernáez, A., "The 2015 Paris Agreement and Disaster Prevention: Progress and Challenges", in press.

[21] See *Draft articles on the protection of persons in the event of disasters*, adopted by the International Law Commission at its sixty-eighth session, in 2016.

[22] *Tampere Convention on the Provision of Telecommunication Resources for Disaster Mitigation and Relief Operations*, adopted 18 June 1998, entered into force 8 January 2005, United Nations, *Treaty Series*, vol. 2296, p. 5.

[23] *Framework Convention in Civil Defence Assistance*, adopted 22 May 2000, entered into force 23 September 2001, United Nations, *Treaty Series*, vol. 2172, p. 213. The latter was developed within the International Civil Defence Organization (ICDO). This Organization has its origin back in 1931 when Surgeon-General Saint-Paul founded the "*Association des Lieux de Genève*" that in 1958 became a Non-Governmental Organization. With the adoption of the *Constitution of the International Civil Defence Organization (with Statutes dated 10 January 1958)*, Concluded at Monaco on 17 October 1966 (United Nations, *Treaty Series*, vol. 985, No. 14376), and entered into force 1 March 1972, it acquired the status of international intergovernmental organization.

[24] Accession made with the following Reservation (as well as others EU Member States) "To the extent to which certain provisions of the Tampere Convention on the Provision of Telecommunication Resources for Disaster Mitigation and Relief Operations

Framework Convention in Civil Defence it has been ratified only by four States: Jordan, Libyan Arab Jamahiriya, Tunisia and Ukraine; all of them MS of the ICDO, except Ukraine. In that sense, despite the importance and a truly lack of other universal agreements on this topic, the Framework Convention in Civil Defence has not been ratified neither by Spain not by the Philippines. Probably this decision is related to the fact that they are not MS of ICDO,[25] however nothing would impede the ratification of the Agreement if they really intended to do so.

It can therefore be concluded that only Spain is compelled by a set of international obligations due its ratification to the Tampere Convention, and none of the above agreements is applicable to the Philippines.[26] However, the Tampere Convention's purpose is not an all-encompassing regulation of disasters. It only contains rules regarding the procedures for the provision and request of telecommunication support in the event of a disaster. Albeit, this treaty recognizes the right of a State to give their consent prior to receive assistance within its territory and the right to control and to coordinate aid provided.[27]

2. *Regional level*

Regarding the Philippines, disasters regulation has been strongly developed within the regional sphere,[28] in particular, throw the Association of

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fall within the area of responsibility of the European Community, Spain cannot implement those decisions unless the European Community becomes a party to the Convention". Up to date, the European Union is not part of this Convention, thus we may find a lack of implementation of related decisions due to a distribution of competences. See the full text of declarations and reservations at https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXV-4&chapter=25&lang=en.

[25] See the list available at http://www.icdo.org/en/about-icdo/members/member-states.

[26] See the status of signatures, accessions and ratifications of both treaties at United Nations Treaty Collection, online resource available throw https://treaties.un.org.

[27] Fernández Liesa y Olivia Martínez 2012: 27.

[28] Many problems related to disaster and international law in the Southeast region have been studied by academia, i.e., in Loevy, K., "The Legal Politics of Jurisdiction: Understanding ASEAN's Role in Myanmar's Disaster, Cyclone Nargis (2008)", *Asian Journal of International Law*, vol. 5, Issue 1 (2015), pp. 55-93; Barber, R. "Legal Preparedness for the Facilitation of International Humanitarian Assistance in the Aftermath of Vanuatu's Cyclone Pam", *Asian Journal of International Law*, (2016), pp. 1-23; Lewis, B. and Maguire, R., "A Human Rights-based Approach to Disaster Displacement in the Asia-Pacific", *Asian Journal of International Law*, vol. 6, Issue 2 (2016), pp. 326-352; Simm, G., "Disaster Response in Southeast Asia: The ASEAN Agreement on Disaster Response and Emergency Management", *Asian Journal of International Law*, (2016), pp. 1-27; Ramsden, M., "Uniting for MH17", *Asian Journal of International Law*, vol. 7, Issue 2 (2017), pp. 337-360.

Southeast Asian Nations (ASEAN).[29] The latter is based on the purposes of to promote active collaboration and mutual assistance on matters of common interest, inter alia, in the economic, social, cultural, technical, scientific and administrative fields.[30] Bearing this in mind, ASEAN constitutes the most appropriate sphere for regional disaster management. There are a number of instruments adopted within this Organisation regulating catastrophe-related issues, such as, the mutual assistance,[31] emergency food supply,[32] and disaster management itself.

There are two basic instruments applicable for managing disasters: the 2005 Vientiane Agreement and the 2011 Bali Agreement.[33] The former, regulate regional and international cooperation at the various stages of disaster, but mainly on prevention,[34] preparedness[35] and response.[36] One of the most relevant aspects of this instrument is the creation of the *ASEAN Standby*

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[29] The ASEAN was established by the *ASEAN Declaration* (Bangkok Declaration) done in Bangkok on 8 August 1967 (United Nations, *Treaty Series*, vol. 1331, p. 243) by the founding fathers, namely Indonesia, Malaysia, the Philippines, Singapore and Thailand. Currently, the Organization has ten MS: the five founding members and Brunei Darussalam (joined on 7 January 1984), Viet Nam (on 28 July 1995), Lao Peoples Democratic Republic's and Myanmar (on 23 July 1997), and Cambodia (on 30 April 1999). The ASEAN Secretariat is based in Jakarta, Indonesia. Later in 2007 the ASEAN Member States adopted the Charter of the Association of Southeast Asian Nations, on 20 November 2007, entered into force 15 December 2008. Currently, the Philippines hold the presidency of ASEAN for 2017; see http://www.asean2017.ph/. About this international organization and its international personality see Chesterton, S., "Does ASEAN exist? The Association of Southeast Asian Nations as an International Legal Person", *Singapore Yearbook of International Law*, vol. 12 (2008), pp. 199-211.

[30] See Bangkok Declaration, article Second, paragraph 3.

[31] The ASEAN Declaration on Mutual Assistance on Natural Disasters of 26 June 1976 and the ASEAN Agreement on Transboundary Haze Pollution of 10 June 2002.

[32] Agreement on the ASEAN Food Security Reserve of 4 October 1979. This instrument allows the storage of rice in the case of a crisis. Food security is of vital importance in the region and has been studied by scholars, for instance, Bello, A.L., "Ensuring Food Security: A Case for ASEAN Integration", *Asian Journal of International for Agriculture and Development*, vol. 2 (2010), pp. 1-2; Briones, R.M., "Regional Cooperation for Food Security: The Case of Emergency Rice Reserves in the ASEAN Plus Three", *ADB Sustainable Development Working Paper Series*, Asian Development Bank, 2011.

[33] Agreement on the Establishment of the ASEAN Coordinating Centre for Humanitarian Assistance on Disaster Management, signed in Bali 17 November 2011, entered into force 7 April 2014, reproduced in *ASEAN Documents Series 2011*, available at http://agreement.asean.org/.

[34] Regulating: risk identification, monitoring (article 5), mitigation (article 6) and early warning systems (article 7).

[35] Setting out of regional contingency/response plans and standard operating procedures for regional actions (article 8).

[36] Procedure for requesting assistance is regulated in article 11.

Arrangements for Disaster Relief and Emergency Response (article 9); it provides equipment and human resources earmarked for disaster response. It is established on a voluntary basis by each State Party, and must be listed by the ASEAN Coordinating Centre for Humanitarian Assistance on disaster management. The Bali Agreement creates the ASEAN Coordinating Centre for Humanitarian Assistance on disaster management (AHA Centre) based on the Terms of reference included as Annex in the 2005 Vientiane Agreement.[37] The AHA Centre serves as a requesting point throw which disaster relief could be applied for; but also it could be demanded directly to another State Party. In my opinion, it seems not to be very effective since there is not a specific pooling of command and control of disaster management. For that reason, in practice, the AHA Centre constitutes a kind of "voluntary" liaison point between MS, lacking efficiency and effectiveness in managing a rapid response to disasters.

Spain, as member of the EU shares its disaster related competencies with this regional Organization. EU regulation on disaster mainly concerns civil protection, which implement the solidarity clause under article 222 of the Treaty of Functioning of the European Union (FTEU).[38] Civil protection policy culminated in Decision No. 1313/2013/EU on a Union Civil Protection Mechanism,[39] in force since 2014. It brought many enhancements from the

[37] The AHA Centre is located in Jakarta (Indonesia). This instrument lays down the rules governing its functioning, its governing bodies and its legal personality in the territory of the host country.

[38] For studies on the solidarity clause see Bou Franch, V. (dir.), *Introducción al Derecho de la Unión Europea*, Thomson Reuters, Cizur Menor, 2014, pp.463-464; Escobar Hernández, C. (dir.), *Instituciones de la Unión Europea*, 2nd ed., Tirant lo Blanch, Valencia, 2015, pp. 83-84; Kaczorowska-Ireland, A., *European Union Law*, 4th ed., Routledge, Abingdon & New York, 2016, pp. 42, 125, 164, 177, 219, 848 and 1061.

[39] See about EU legislation on disaster, inter alia, Kotzur, M., "European Union Law on Disaster Preparedness and Response", *German Yearbook of International Law*, Vol. 55 (2012), pp. 253-278; Bautista-Hernáez, A., "Recientes avances en la regulación de la Unión Europea en materia de catástrofes: el Mecanismo de Protección Civil de la Unión", in García San José, D., Sánchez Patrón, J.-M. y Torres Cazorla, M.-I. (cords.), *Bioderecho, Seguridad y Medioambiente. Biolaw, Security and Environment*, Tirant lo Blanch, Valencia, 2015, pp. 173-194; Torres Cazorla, M.I., "¿Lecciones aprendidas? El papel de la Unión Europea en materia de prevención y coordinación en caso de catástrofe", in García San José, D., Sánchez Patrón, J.-M. y Torres Cazorla, M.-I. (cords.), *Bioderecho, Seguridad y Medioambiente… op. cit.*, pp. 151-173; Bautista-Hernáez, A., "La relación entre la Unión Europea y sus Estados miembros en la respuesta a las catástrofes: el papel de España en el mecanismo europeo de protección civil", en Alcaide Fernández, J. y Petit de Gabriel, E.W. (eds.), *España y la Unión Europea en el orden internacional*, Valencia, Tirant lo Blanch, 2017, pp. 1187-1198.

previous Community mechanism for Civil Protection.[40] The Decision focuses on prevention, preparedness and response phases of disaster management. The EU disaster management creates the European Emergency Response Capacity[41] which aims to improve response relief. It also established a coordination centre (the Emergency Response Coordination Centre[42]) with more and best-defined functions and powers than its ASEAN counterpart (the AHA Centre).

Both regions have in common a number of security challenges, besides disaster management, that requires a nearest cooperation between them.[43] Spanish and Philippines regional mechanisms are based on solidarity between their neighbouring states, as a mean of promoting amity assistance to disasters. Both systems creates a coordination focal point with pooling capacities and specific budgetary resources (within the text or deferred for upcoming one), but only the EU brought in an specific evaluation system of the Decision.[44]

3. *Domestic level*

Philippines municipal regulation on disasters was adopted as the *Philippine Disaster Risk Reduction and Management Act of 2010* (Republic Act No. 10121 of 2010), and it is implemented by Implementing Rules of 27 September 2010.[45] These set down the legal basis for national disaster management in

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[40] See Council Decision 2007/799/EC, Euratom of 8 November 2007 establishing a Community Civil Protection Mechanism, OJ L 314, 1 December 2007, and Council Decision 2007/162/EC, Euratom of 5 March 2007 establishing a civil Protection Financial Instrument, OJ L 71, 10 March 2007.

[41] Provided under Article 11 of Decision No. 1313/2013/EU, it is formed by a voluntary pool of capacities from the MS, as well as the *ASEAN Standby Arrangements for Disaster Relief and Emergency Response*.

[42] It is regulated by article 8 of Decision No. 1313/2013/EU. It serves as coordination and monitoring focal point, operating 24/7, and attached to the Directorate-General for European Civil Protection and Humanitarian Aid Operations (ECHO), formerly known as the European Community Humanitarian Aid Office.

[43] See Wahlers 2006: 53

[44] See article 34 of Decision No. 1313/2013/EU.

[45] See Implementing Rules and Regulations of Republic Act No. 10121, also known as "an act strengthening the Philippine Disaster Risk Reduction and Management System, providing for the National Disaster Risk Reduction and Management Framework and institutionalizing the National Disaster Risk Reduction and Management Plan, appropriating funds therefor and for other purposes", 27 September 2010, available at http://www.ndrrmc.gov.ph/attachments/article/95/Implementing_Rules_and_Regulartion_RA_10121.pdf. See also DRR rules regarding the Philippines at: http://www.ndrrmc.gov.ph/13-disaster-risk-reduction-and-management-laws.

the State. The mechanism is based in two main pillars: the National Disaster Risk Reduction and Management Framework (NDRRMF) and the National Disaster Risk Reduction and Management Plan (NDRRMP).[46] It also provides two different bodies: the Office of Civil Defence (OCD) and the National Disaster Risk Reduction and Management Council (NDRRMC).[47] The former has the function of formulate, implement, and harmonize policies, while OCD is in charge of operational powers.[48] The NDRRMF is developed by the NDRRMC and provides a "comprehensive, all-hazard, multi-sectorial, interagency and community-based approach to disaster risk management".[49] The NDRRMP, that brings goals and specific objectives for disaster risk reduction,[50] is conveyed and implemented by the OCD.

Philippine domestic legislation takes actions in the four phases of disaster management cycle by providing policies and plans throw the NDRRMP.[51] Also, an information and monitoring mechanism (the Emergency Response Integration Centre) has been established for gather pieces of information to be used in relief operations.[52]

Spanish key legislation on national disaster management was amended in 2015, creating the National Civil Protection System (NCPS).[53] It repealed the previous Law 2/1985 of 21 January on Civil Protection.[54] The law adopted

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[46] The latest Plan comprising the period 2011-2018 could be fund in *The National Disaster Risk Reduction and Management Plan (NDRRMP) 2011-2018*, available at http://www.ndrrmc.gov.ph/attachments/article/41/NDRRM_Plan_2011-2028.pdf.

[47] Its webpage is accessible at http://www.ndrrmc.gov.ph/.

[48] By setting up the National Disaster Risk Reduction and Management Operations Center (NDRRMOC), operating 24 hours, see Republic Act No. 10121 of 2010, Sec. 9 (n).

[49] See Republic Act No. 10121 of 2010, sec. 3 (y).

[50] Sec. 3 (z), Republic Act No. 10121 of 2010. The NDRRMP "aims to strengthen the capacity of the national government and the local government units (LGUs), together with partner stakeholders, to build the disaster resilience of communities, and to institutionalize arrangements and measures for reducing disaster risks, including projected climate risks, and enhancing disaster preparedness and response capabilities at all levels"; see Sec. 2 (e), Republic Act No. 10121 of 2010.

[51] It has a broad scope of action, taking measures: "to all aspects of disaster risk reduction and management, including good governance, risk assessment and early warning, knowledge building and awareness raising, reducing underlying risk factors, and preparedness for effective response and early recovery"; see Republic Act No. 10121 of 2010, sec. 4.

[52] It has also been put in place a mobile alert system in the event of a disaster by Republic Act No. 10639, *an Act mandating the telecommunications service providers to send free mobile alerts in the event of natural and man-made disasters and calamities*, 20 June 2014, available at http://www.ndrrmc.gov.ph/attachments/article/2570/Republic_Act_No_10639.pdf.

[53] See Law 17/2015.

[54] BOE No. 22 of 25 January 1985.

responds to the commitments undertaken by the UCPM at the European level in terms of national monitoring and risk assessment.[55] The main purpose of the Spanish instrument is to put accent in prevention, integration, inter-administrative coordination and effectiveness on disaster response. To achieve these goals a national coordination centre (in Spanish: *Centro Nacional de Seguimiento y Coordinación de Emergencias de Protección Civil*) was established.[56] It will perform and manage disaster response on a national level. The NCPS may take actions on all emergency cycle (forecast,[57] prevention,[58] planning,[59] intervention,[60] recovery[61] and general coordination[62]).

Both States set down very important pieces of legislation. For the very first time, the Spanish law included an article dedicated to terminology. Philippines law comprised eight pages of definitions of key concepts. This reflects the importance of this issue in disaster management. They also include penalty clauses to avoid infringements of regulations. Regarding the ways of financing of national mechanisms, Philippines law include a budget provision covering one billion pesos (approx. 18 million Euros). Albeit, Spanish law did not include any budgetary restraint; quite astonishingly, it stated that "the measures included within this law must not mean an increase of budget appropriations".[63] In my opinion, this imposes a lack of efficacy in implementation of disaster management policies due to economic necessities.

Despite the relevance of instruments for disaster management within regional integration organization, we found no specific mention to the ASEAN mechanism in Philippine law. There is only a generic clause in Sec. 6 (q) about the functions of the NDRRMC that states as follows: "Coordinate or oversee the Implementation of the *country's obligations with disaster management treaties to which it is a party*…".[64] On the other hand, Spanish laws include particular dispositions referred to the Mechanism. This is probably due to the closest relationship between EU and States Members, which are not the same that in ASEAN and Philippines.

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[55] See Bautista-Hernáez, A., "La relación entre la Unión Europea…" *op. cit.*, p. 1197.

[56] Regulated in article 18 of Law 17/2015.

[57] Articles 12 paragraph 3 and 14 paragraph 1 of Law 17/2015.

[58] Regulated under Title II chapter II, Law 17/2015.

[59] Covered in Title II chapter III, Law 17/2015.

[60] Inmediate emergency response is regulated in Title II chapter IV, Law 17/2015.

[61] Regulated in Title II chapter V, Law 17/2015.

[62] One of mechanisms through the general coordination is implemented is the declaration of a "national concern emergency", regulated in Title II chapter VII, Law 17/2015.

[63] Seventh additional provision, Law 17/2015.

[64] Emphasis added.

III. CONCLUSIONS

This paper has addressed the conventional and domestic legal rules applicable to disaster management in Spain and in the Philippines. It was made clear that instead the lack of general international treaties, regional and national regulation prevail to date.

With regard to the regional system, there are differences in the commitments undertaken between the national and the supranational organizations, which are reflected in the legislation adopted. Spain, member of the EU, has specifics obligations due to a deeper transfer of sovereignty; its national law was updated but also it had to integrate obligations set forth by the UCPM to the States Members. The Philippines, in the other hand, is part of a regional system (the ASEAN); however, its national law of 2010 did not set up specific measures to implement regional assignments. It only contains a general provision for ensuring alignment with international agreements adopted by the State.

Both regional systems highlight the cooperation between Member States as one of the key element of disaster management, albeit we could find an even more refined coordination instrument in the European field. In fact, the Vientiane Treaty of 2005 did not create the ASEAN Coordinating centre; it was established by the 2011 Bali Treaty (in force since 2014), almost 10 years later.

In my opinion, a strong domestic system is crucial to face the challenge of disaster phenomena. It is necessary not only to adopt series of principles and "proclaiming rights and duties" but also set up structural mechanism and take clear actions in prevention, preparedness, response and reconstruction. Both national laws allow performing activities in the four phases of disaster management cycle, including recovery. They also lay down evaluating procedure to assess deficiencies and enhance the mechanisms.

In conclusion, disasters are a menace not only of welfare state but of the individual itself in all its ways of live. International law has to give adequate answers to this matter. As a corollary, we bring the words of the former UN Secretary General Mr Ban Ki-Moon pronounced in the 2016 international day for disaster reduction:

"We can replace material possessions, but we cannot replace people. I am repeatedly appalled at how many people die in disasters. The majority of victims are invariably the poor and vulnerable".[65]

In this sense, the challenge is to give an effective and efficient response to disasters under a humanize international law.

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[65] See press release about this event at https://www.un.org/press/en/2016/sgsm18187.doc.htm.

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