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## **Background**

Increased attention has been given in recent years by both governments and international organisations to the formulation of suitable policies and the legal aspects of efforts aimed at disaster reduction.

Consequently, several reports dealing with the legal aspects of disaster prevention have been prepared by international organisations, most notably the United Nations. Similarly, a number of governments have also adopted policies and legislation on the subject.

The present document provides an overview of policies and legislative trends in disaster prevention and illustrates some of the work that has been carried out in this area in order to facilitate discussion within the Task Force.

The document highlights current international practice in disaster prevention, particularly within the United Nations System, including the former International Decade for Disaster Reduction (IDNDR) Secretariat. It also provides an overview of some of the national legislation enacted in the domain of disaster prevention. The last part of this document presents a summary of proposals for consideration by the Task Force.

### **I- Policies and Legislative Initiatives on Disaster Prevention Undertaken at the International Level**

#### **A) Within the United Nations System**

1- In 1980, in accordance with the General Assembly resolution 2816, the Office of the United Nations Disaster Relief Co-ordinator (UNDRO) published a compendium of legal arrangements for disaster prevention and mitigation. This document was the first legal framework initiated by the former UNDRO,<sup>1</sup> in order "to provide the international community with a comprehensive review of existing knowledge of causes and characteristics of national phenomena as well as with the prevention measures which may be taken to reduce or eliminate their impact on disaster prevention-prone developing countries."

2- In 1983, a report was presented at the meeting organised by UNDP/UNESCO/UNDRO in Athens (11-14 January) on earthquakes and their social, economic and legal implications. It was emphasised that "in countries where the incidence of natural disaster is high, it seems desirable to establish a disaster preparedness planning unit. The legislation establishing the disaster preparedness planning unit should clearly outline its power and duties, its principal role being the preparation and the periodic review of the plan, and ensuring that it is operational."<sup>2</sup>

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<sup>1</sup> Office of the United Nations Disaster Relief Co-ordinator, Disaster Prevention and Mitigation, a Compendium of Current Knowledge, Vol. 9. Legal Aspects, Disaster Legislation, United Nations, New York, 1980.

<sup>2</sup> J. Drakopoulos, S. Tassos, Earthquake and Their Social, Economic and Legal Implications, Proceedings of the Seminar on Earthquake Preparedness organised jointly by UNDP/UNESCO/UNDRO, Athens, 11-14 January 1983. p. 183.

3- The International Convention on the Law of the Sea (1982) raised the question of prevention in Article 145 on the protection of the marine environment, from both technological and environmental disasters, and stated that “necessary measures shall be taken in accordance with the Convention [...] to ensure effective protection for the marine environment from harmful effects which may arise from such activities.” To this end, the International Seabed Authority shall adopt appropriate rules, regulations and procedures to ensure, inter alia:

- a) The prevention, reduction and control of pollution and other hazards to the marine environment [...] particular attention being paid to the need for protection from harmful effects of such activities as drilling, dredging, excavation, disposal of waste, construction and operation or maintenance for installation, pipes lines and other devices related to such activities;
- b) The protection and conservation of the natural resources of the area and the prevention of damage to the flora and fauna of the marine environment.”

5- Moreover the question of liability in disaster prevention has witnessed a conceptual evolution, particularly since the Ministerial Declarations of the Second and the Third Conferences on the Protection of the North Sea held respectively in London in 1987 and in 1987 and in the Hague in 1990. The need for a precautionary principle was explicitly recognised as a means of ensuring disaster prevention. The Ministerial Declaration of the Second Conference emphasises the fact that “in order to protect the North Sea from possibly damaging effects of the most dangerous substances, a precautionary approach is necessary which may require action to control inputs of such substances even before a causal link has been established by absolutely clear scientific evidence.” This principle has been progressively consolidated in international environmental law and iterated in various environmental instruments.<sup>3</sup>

6- The Rio Declaration (June 1992) considered, in Principle 15, prevention as being a precautionary measure to protect the environment. This principle is generally stated in the following terms: “In order to protect the environment, the precautionary approach shall be applied by States according to their capabilities. Where there are threats of serious or irreversible damages, lack of full scientific certainty shall not be used as a reason for postponing cost- effective measures to prevent environmental degradation.”

7- This principle is re-stated more specifically in the framework of the Convention on Biological Diversity. The Preamble (points 8 and 9) states that “it is vital to anticipate, prevent and attack the causes of significant reduction or loss of biological diversity at source”, and “when there is a threat of a significant reduction or loss of Biological

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<sup>3</sup> The Ministerial Declaration of the second Conference on the protection of the North Sea (1987) states that “in order to protect the North Sea, from possibly damaging effects of the most dangerous substances, a precautionary approach is necessary, which may require action to control inputs of such substances even before a causal link has been established by absolutely clear scientific evidence”. A new Ministerial Declaration was adopted at the third International Conference on the Protection of the North Sea/1990. It elaborates out the earlier Declaration, stating that “the participants [...] will continue to apply the precautionary principle, that is to take action to avoid potentially damaging impacts of substances that are persistent, toxic and liable to bioaccumulate even where there is no scientific evidence to prove a causal link between emissions and effects.” See Commission of the European Communities, Communication from the Commission on the Precautionary Principle, Brussels, of 02 February 2000, Com (2000) 1 p 26 and François Ewald, “la précaution, une responsabilité de l’Etat”, the French news paper “le Monde” of 11 March 2000, p 1 and 19.

Diversity, lack of full scientific certainty should not be used as a reason for postponing measures to avoid or minimise such a threat.”

The precautionary principle has been recently confirmed in the Protocol on Bio-Safety of 2000 in the preamble (point 5) and Article 2 (paragraph 2) which states that “Lack of scientific certainty due to insufficient relevant scientific information and knowledge regarding the extent of the potential adverse effects of a living modified organism on the conservation and sustainable use of biological diversity in the Party of import, taking also into account risks to human health, shall not prevent that Party from taking a decision, as appropriate, with regard to the import of the living modified organism in question as referred to in paragraph 3 above, in order to avoid or minimise such potential adverse effects.” In addition, the Article 2 (paragraph 2) states that “the parties shall ensure that the development, handling, transport, use, transfer and release of any living modified organisms are undertaken in a manner that prevents or reduces the risks to biological diversity, taking into account risks to human health”.<sup>4</sup>

8- The precautionary principle was also asserted in Article 3 (paragraph 3) of the Convention on Climate Change. In this article, it states that “the parties should take precautionary measures to anticipate, prevent, or mitigate or minimise the causes of climate change and mitigate its adverse effects. Where there are threats of serious or irreversible damage, lack of full scientific certainty should not be used as a reason for postponing such measures, taking into account that policies and measures to deal with climate change should be cost-effective so as to ensure global benefits at the lowest possible cost”. The term “precautionary” is used here in a sense that is clearly close to the idea of prevention.<sup>5</sup>

The precautionary principle has acquired a broad meaning in national legislation and the definition adopted in such legislation closely corresponds to that being used in international law. It is broadly based on the following three elements:

- A serious or irreversible damage risk,
- An absence of absolute scientific certainties;
- An obligation to take prevention measures.

9- Another principle namely, “preventive action in disaster and priority correction at source” which affects negatively the environment has been developed in the European Community law (Article 174) as well as in the international law. According to this principle, States should take measures to ensure that activities undertaken on their territories should not affect other countries. This principle was initially established to deal with pollution but was subsequently extended to include technological and natural disasters.<sup>6</sup>

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<sup>4</sup> The Protocol of Bio-safety was adopted in Montreal on 29 January 2000.

<sup>5</sup> See in this regard, Maurice KAMTO, *les nouveaux principes du Droit International de l'Environnement*, R.J.E 1-1993, p. 16

<sup>6</sup> This principle was included in Rio Declaration (principle 13) and in Article 21 of the Declaration of Stockholm. It was also highlighted in the paragraph 140 of the judgement of the International Court of Justice of September 25, 1997 (Gabcikovo-Nagymaros case between Hungary and Slovakia)

10- The Convention of Transboundary Effects of Industrial Accidents was signed in Helsinki on 17 March 1992. The objective, as stated in Article 6 of this Convention, was to take appropriate measures to induce action by operators as a means of reducing the risk of industrial accidents. Such measures may include preventive ones, but are not limited to those referred to in Annex IV of the Convention. One of these preventive measures listed in this annex "is the adoption of legislative provisions or guidelines concerning safety measures and safety standards."

11- On 22 June 1993, the International Labour Conference adopted at its 84<sup>th</sup> Session the C174 Prevention of Industrial Accidents Convention. The purpose of this Convention was the prevention of major accidents involving hazardous substances and the limitation of the consequences of such accidents. Under the Convention, employers are obliged to establish and maintain, in accordance with Article 9, a document system for major hazard control, which includes provision, *inter alia*, for the preparation of effective site emergency plans and procedures.

12- The Tampere Convention on the Provision of Telecommunication Resources for Disaster Mitigation and Relief Operations of 18 June 1998 focused on the use of Telecommunication resources for disaster mitigation and relief. It states in Article 3 (Paragraph 5) that "The States Parties shall cooperate among themselves to improve the ability of governmental organisations, non-State entities and intergovernmental organisations to establish mechanisms for training in the handling and operation of equipment, and instruction courses in the development, design and construction of emergency telecommunication facilities for disaster prevention monitoring and mitigation."

13- A directory was prepared, in 1994, by the Department of Humanitarian Affairs (DHA), which in effect represents a compilation of national offices, plans and legislation as well as regional and sub regional agreements for disaster emergency management.<sup>7</sup>

14- A Framework Convention on Civil Defence was signed on 22 May 2000 under the auspices of the International Civil Defence Organisation. It is the first Convention that deals exclusively with one aspect of disaster prevention, i.e. civil defence. In article 4 of this Convention, "the State Parties undertake to explore all possibilities for co-operation in the areas of prevention, forecasting, preparation, intervention and post-crisis management".

This Convention is a step, in international practice towards the consideration of disaster prevention as a holistic problem that affects all countries.

15- During the last decade, a number of initiatives were launched under the auspices of the International Decade for Natural Disaster Reduction (IDNDR) Secretariat (1990-2000).

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<sup>7</sup> Department of Humanitarian Affairs (DHA), Directory, National offices, plans and legislations, and regional/sub - regional agreements for disaster emergency management, 1994 edition

- A case study on the legal aspects of national disaster prevention was prepared in 1996. The study aimed at showing how financial instruments - such as mortgage policies, loans, subsidies, insurances and other economic incentives for housing purposes - could be useful levers, for the prevention of natural disasters.<sup>8</sup>
- A study was also prepared on trends in disaster reduction in Africa. This work stressed the necessity to improve government policy and commitment through the adoption of appropriate legislation. A summary of the assessments carried out by the national committees on disaster reduction was annexed to the Study.<sup>9</sup>

Other meetings, such as the Yokohama Conference (23-27 May 1994) and the IDNDR regional meetings, also adopted recommendations to improve policy legislation on disaster reduction:

- The Yokohama Conference formulated a Strategy (Action Plan for a Safer World for the Year 2000 and Beyond). The Conference called for an accelerated implementation of the plan of action which can be developed, *inter alia*, from an “effective national legislation and administrative action, higher priority at the political decision-making level.”

As a recommendation, it stressed the need to develop comprehensive national disaster management plans with emphasis on disaster reduction and to incorporate disaster reduction prevention or mitigation in socio-economic development planning based on the assessment of risk.<sup>10</sup>

- The Yerevan Declaration of the Commonwealth of Independent States (Yerevan, Armenia, 15-21 September 1998) recommended that “for the development and realisation of Government policies in the field of seismic risk reduction, co-ordination and management bodies at both national and international levels are necessary.”<sup>11</sup>
- The Bangkok Declaration of the IDNDR-ESCAP Regional Meeting for Asia of 26 February 1999 states that the “adoption of structured approaches/policies for risk assessment, integration of mitigation and prevention practices into national development and planning processes [...] will not only substantially reduce human suffering and property losses but also it will enhance Community resilience and promote political and socio-economic stability.”
- The Declaration of Valencia for the Mediterranean (Valencia, 4-7 May 1999) noted that “strengthened regional co-operation plays an important role in the prevention and mitigation of the consequences of natural disaster through common rules and procedures for improved mutual assistance”.

<sup>8</sup> Legal Aspects of Natural Disaster Prevention, IDNDR, October, 1996.

<sup>9</sup> Achievement and trends in disaster reduction on the African continent, IDNDR Secretariat (1990-2000), p 10-19

<sup>10</sup> IDNDR 1990-2000, “Yokohama Strategy and Plan of Action for a Safer World”, p 9 and paragraphs D and I of the activities at the community and national levels, p 11

<sup>11</sup> IDNDR 1990-2000, Declarations from IDNDR Regional Meeting, p. 1- 3

- The San Jose Declaration (San Jose, Costa Rica, 1-5 June 1999) recommended the introduction of “disaster reduction measures in national legal and institutional frameworks, taking into account the different requirements and objectives of prevention and mitigation as well as those of preparedness and disaster management...”
- The IDNDR-UNEP regional meeting for Africa (Nairobi, 18-21 May 1999) adopted a Declaration in which it was recommended in paragraph 3 that “African countries engaged in sound disaster prevention policies should be given due recognition and enabling support by the international community in order to achieve their set goals.”

16- On 1 January 2000, the International Strategy for disaster Reduction (ISDR) was established as the successor arrangement to the International Decade for Natural Disaster Reduction and as the international platform within the United Nations for policy development and the co-ordination of activities for the prevention of environmental and technological disasters. The implementation of this Strategy will focus, *inter alia*, on global information exchanges [...] linked by agreed communication standards and protocols to facilitate interchange.

## **B) Regional and Sub-Regional Agreements in Disaster management**

A number of legal instruments which aim in whole or in part, at preventing or mitigating disasters have been established at the regional and sub-regional levels.

1- On 18 February 1972, the Council of Europe adopted its first resolution, (72) 6, on natural disaster prevention and other disasters, on assistance to be given in these cases, and on the planning measures that should be adopted in this domain. Substantial progress in the harmonisation and streamlining of legislation has been achieved in Europe through the adoption in 1982 and 1996 of the Seveso guidelines related to technological disasters.<sup>12</sup>

The Seveso guidelines focuses on the following issues:

- a) Prevention: protection of workers, classification and the grant permission for the establishment of hazardous industries, management of hazardous industries, risk planning, and population awareness;
- b) Organisation of relief;
- c) Rehabilitation.

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<sup>12</sup> The Western European countries established on 24 June 1982 the Seveso guidelines 82/501/EEC related to major hazards caused by certain industrial activities Seveso I. In June 9, 1996, they adopted the Comah guidelines 96/82/EC related to the control of major hazards: Seveso II.

2- In addition, the European Community Treaty has incorporated, in its new version provisions, already introduced by the Maastricht Treaty of 1992, and more specifically by article 174 thereof, which states:

“Community policy on the environment shall aim at a high level of protection taking into account the diversity of situations in the various regions of the Community. It shall be based on the precautionary principle and on the principles that preventive action should be taken, that environmental damage should as a priority be rectified at source and that the polluter should pay...”<sup>13</sup>

3- The Council of the European Communities also adopted on 23 July 1992, regulation 2158-92 relating to the prevention of forest fires. Article 1 of this regulation emphasises, *inter alia*, the necessity to create and improve the existing system of prevention, in particular the establishment of infrastructure for protection.

4- The Eur - Open Partial Agreement (EUR-OPA) was adopted in March 1987 by the Council of Europe. The purpose of this agreement is to promote closer co-operation among member states on preventing and responding to natural and technological disasters. It recommends a co-operation platform between Eastern Europe, the Mediterranean South and Western Europe in the field of natural disasters and major technological risks.<sup>14</sup>

5- The Council of Europe and the representatives of the Governments of Member States adopted on 8 July 1991 resolution 91/C198/01 on improving mutual assistance between Member States in the event of natural or technological disaster.

6- The Convention on the Transboundary Effects of Industrial Accidents in the context of the Economic Commission for Europe (ECE) of the United Nations was adopted in Helsinki on 17 March 1992. The community is a contracting party to this Convention which is applicable to the prevention of, preparedness for and response to industrial accidents capable of causing transboundary effects.

7- Another Agreement on the forecast, prevention and mitigation of natural and technological disasters was concluded in 1996 between Austria, Croatia, Hungary, Italy, Poland and Slovenia. The European Commission has an observer status within this co-operation agreement.<sup>15</sup>

8- In this context, the Central and East European countries elaborated, in 1999, a draft Framework emergency response legislation covering prevention, risk evaluation, management of emergency situation and rehabilitation. In the introduction, this agreement states that “in the countries of the former Soviet Union and of Eastern Europe

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<sup>13</sup> Commission of the European Communities, Communication from the Commission on the precautionary principle, Brussels, 02.02 2000,

p. 23

<sup>14</sup> The EUR-OPA Major Risks Agreement counts 21 signatories, i.e. Albania, Algeria, Armenia, Azerbaijan, Belgium, Bulgaria, Spain, France, Georgia, Greece, Italy, Luxembourg, Macedonia, Malta, Morocco, Monaco, Portugal, Russia, San Marino, Turkey, Ukraine. See National Structures of Civil Protection, EUR-OPA Major Hazards Agreement, Council of Europe 1998, Forward by Jean-Pierre Massué, Executive Secretary of EUR-OPA Major Hazards Agreement

<sup>15</sup> This co-operation includes exchange of scientific and technical information and relevant data on a regular basis, common research programs on civil protection and disaster management.



there was a unitary system of management. Now, new societal relations and new sharing of responsibility appear in these countries. As a result the emergency response management lost its legislative basis. Sustainable human protection in these countries urgently requires the development of new harmonised legislation on emergency response.”

9- In addition, several other agreements were concluded to deal with the issue of disasters prevention:

- Co-operation between the European Union and Poland, the Czech Republic and Hungary in the field of disaster management;
- Treaty between the Federal Republic of Germany and Poland on co-operation in water resources management in the watercourses along the frontier. In this context, the German IDNDR Committee stressed the need for having a universal Strategy for forecasting and flood defence between the Federal Republic of Germany, Poland, and the Czech Republic, along the entire course of the Oder in order to prevent floods similar to those which occurred in the summer of 1997.
- The Federal Republic of Germany has concluded an agreement with all neighbouring countries as well as with the Russian Federation and Lithuania about mutual assistance in case of disasters.<sup>16</sup>
- In Latin America, several agreements were concluded to enhance co-operation in dealing with disasters. In November 1999, an Inter-American Committee on Natural disasters was established under the chairmanship of the Organisation of American States (OAS).

Other centres, such as the Caribbean Disaster Emergency Response Agency (CEDERA), Pan-American Health Organisation (PAHO/WHO), the Association of Caribbean States (ACS), the Centre for the Co-ordination of Natural Disaster Prevention of Central America (CEPREDENAC) and the Regional Disaster Information Centre (CRID) have been increasingly engaged in the co-ordination of strategies and programmes for disaster reduction. The ACS, for example, acts as a focal point for sustaining political commitment for the agenda of disaster management throughout the Caribbean Basin. In advocacy at policy level, ACS identifies joint positions of its member States in order to secure a stronger position for the sub-region in wider fora. In addition, the ACS is seeking the development of action programmes for the insertion of disaster management in town and country planning policies.<sup>17</sup>

- The Asian Centre for Disaster Reduction which was established in Kobe in 1998 is designated to promote multinational co-operation in disaster reduction through

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<sup>16</sup> Germany concluded agreements in this field with Belgium in May 1980; France in 1980, Luxembourg in December 1981; Denmark in August 1988; Switzerland in December 1988, Austria in October 1992, Russian Federation in 1995; Lithuania in September 1996, Netherlands in March 1997; Hungary in September 1998; Poland in March 1999 and is likely to complete an agreement with the Czech Republic in the second half of 2000.

<sup>17</sup> ACS Draft Regional Co-operation Mechanism For Disaster Prevention, Mitigation and Preparedness, p. 3

enhancing the exchange of disaster reduction techniques between experts and concerned bodies, the compilation and dissemination of information on disaster reduction, and carrying out research into multinational disaster reduction co-operation.<sup>18</sup>

- Regional and sub-regional arrangements for disaster in Africa are still inchoate.

## **II) Disaster prevention in national legislation**

National legislation on disaster prevention has sporadically grown in interest over the past two decades in a number of countries. The following examples briefly illustrate some aspects of national legislation in a few selective countries.

a) In **France**, for almost twenty years, a policy of prevention of risks generated by natural phenomena has been formulated with respect to landslides, earthquakes, avalanches, floods, forest fires, cyclones etc. This policy was launched on 13 July 1982 and is known as the "Plan of Major Natural Hazards Exposure".<sup>19</sup>

The relevant legal provisions on insurance aspects are designed to develop national solidarity in order to compensate the victims of natural phenomena. They also address the planning of urbanisation and activities in case of natural phenomena exposure.<sup>20</sup> It was followed by another law,<sup>21</sup> adopted on 22 July, 1987, providing for the organisation of civil protection, to prevent forest and other major risks. At the same date, France also introduced the Seveso guidelines of 1982 into its domestic law with a view to identifying the zones of risk surrounding the most hazardous industrial areas and to submit to prior administrative control urban development plans.

On the 2 February 1995, France enacted the "Barnier law", which is a prevention plan for foreseeable natural hazards. The intention of this law is to simplify disaster planning through the establishment of a single regime instead of the four previous regulations on this issue.<sup>22</sup>

The precautionary principle was also outlined in article L.200-1 of the rural code of 2 February 1995. According to this principle, the absence of certainties with regard to scientific and technical knowledge should not delay the adoption of effective and proportional measures with a reasonable economic cost in order to protect the environment from serious and irreversible risk damage.

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<sup>18</sup> Establishment of the Asian Disaster Reduction Center, National Land Agency, Japanese Government, p. 1 The Center is composed of following member countries and observers: Bangladesh, Cambodia, China, India, Indonesia, Japan, Kazakhstan, Lao People's Democratic Republic, Malaysia, Mongolia, Myanmar, Nepal, Papua New Guinea, Philippines, Republic of Korea, Russian Federation, Singapore, Sri Lanka, Tajikistan, Thailand, Uzbekistan and Viet Nam

<sup>19</sup> Law no 82-600 du 13 juillet 1982

<sup>20</sup> Damage compensation related to natural disasters is not warranted unless the victims have respected the constraints generated by the Plan which establishes three zones in which impose some limitations on urban settlement and various activities depending on the degree risk exposure

<sup>21</sup> Law no 87-565 du 22 juillet 1987

<sup>22</sup> The four previous regulations are the following: The plan of submerged surface in Vallies (1937), the zone of natural risks created by the Prefect according the article R 111-3 of the urbanism Code, the plan of Major Natural Hazardous Exposure of 1982 and the plan of vulnerable zones to fire (Agriculture Law of 1991).

In this regard, domestic law in France includes another element (not entailing excessive cost) to moderate the implementation of this principle so that it should not delay the adoption of effective and proportional measures not entailing excessive cost.<sup>23</sup>

Moreover, France adopted on 3 May 1996 the evolutionary law no 96-369 called “the emergency and fire fighting services”. This law ensures an intermediary service between the Mayor and the Prefect to provide the necessary tools to local communities in case of disaster (Article 3). The Departmental Services assume the responsibility to manage disaster, subject to payment/contribution provided by the commune, public institutions for co-operation between communes, and the Department (Article 35).<sup>24</sup>

Despite the adoption of these regulations, the French legislation has been the subject of criticism. The Audit Court in its public report of 1999 pointed out, for example, that flood risk affects more than 2 million people. The report indicates that the population is not aware of its vulnerability with respect to flooding due to the frequent absence of risk planing in urban areas liable to flooding and uncontrolled urbanisation around the riverbanks. The report asserts the general inefficiency of the mechanism due to the obsolescence of the basic legal framework, the confusion of competencies, the inadequacy of defence against floods and the unresponsive character of the compensation regime for victims.<sup>25</sup>

The Court inquiry highlights the necessity for comprehensive legal reform.<sup>26</sup>

b) In **South Africa**, the civil Protection Act of 1997 and the Fund Raising Act of 1978 are two pieces of legislation that deal with disasters.

According to the Green Paper on disaster management issued by the Ministry for Provincial Affairs and Constitutional Development,<sup>27</sup> these two Acts do not provide an adequate or a comprehensive legislative framework for dealing with disasters in a holistic and proactive way. It seems that the existing legislation refers only to civil defence issues. It emphasises the consequences of disasters but not disregards the proactive approach required for disaster management.

The importance of planning and setting standards is highlighted in the above paper. It also emphasises that such planning should take into account both socio-economic and cultural diversity that exist in the country (and which have implications for disaster

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<sup>23</sup> This new element (not entailing excessive cost) is included out in many regulations in France such as the law of 19 June 1976 on the Installations Classified for Environment Protection and the Decree for its implementation of 21 September 1977. This element is also included in the EC Law, in particular in the Seveso guidelines of 1996 under the regime entitled. Best Available Techniques not Entailing Excessive Cost/BATNEEC and in the PRIP guidelines of 1996 on the Prevention and Integrated Reduction of Pollution.

<sup>24</sup> A Department in France is the subdivision administrated by the Prefect.

<sup>25</sup> Audit Court, Public Report of 1999 (French version), Chapter 6, Floods Prevention in France, p.1-15. The report refers to the law of 1807 and cites that the Government recognizes the essential role of communities facing disasters.

<sup>26</sup> Id at 15

<sup>27</sup> The Green Paper on disaster management issued by the Ministry for Provincial Affairs and Constitutional Development, February 1998, p 54

management), as well as others factors that can reduce the impact of recurrent threats (building dams or improving water storage capacity in the face of El Niño).<sup>28</sup>

The South African Green Paper also identifies a need for guidelines and standards such as co-ordination between departments and agencies undertaking certification and the issuing of licences and permits in order to set criteria for products which meet the risk - reduction criteria that departments set for disaster management. To overcome these difficulties, a National Disaster Management Act has been introduced. This Act sets out the reasons for establishing a new policy of disaster management, outlines the process to be used in drafting the legislation and locates it in a constitutional context. This legislation could serve as a guide for other Governments in developing plans to meet their requirements.<sup>29</sup>

In addition, the Government recently elaborated a draft "Disaster Management Bill". The objective is to provide an integrated and co-ordinated disaster management by all segments of government and to fill the gaps, which existed in previous Acts and regulations in this domain. It, thus, gives effect to the White Paper on disaster management which was published in January 1999 and which advocated a new approach to disaster management. Unlike the policies contained in existing legislation that focus predominantly on relief and recovery efforts, the White Paper emphasises the importance of measures to avoid and minimise human and economic losses and establishes prevention and mitigation as the core principle of a future disaster management policy.

c) In **Germany**, the precautionary principle "*Vorgzprinzip*" was introduced as a measure of disaster prevention in 1980.<sup>30</sup> But the main legislation on this issue at the level of the Federal State (*Bundesländer*) is provided by the Disaster Protection Act of the State of Brandenburg of 11 October 1996.<sup>31</sup>

The division of legislative competencies between the Federal Republic and the Federal State (*Bundesländer*) has resulted in some parallel developments in the 16 *Länder*. Thus, there are different civil protection laws at the *Länder* level, so-called *Katastrophenschutzgesetz*, which are only partially harmonised.

In disaster prevention, there are also framework laws at the Federal level, such as those dealing with regional planning, but according to the report presented by the German

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<sup>28</sup> The Green Paper on Disaster management, Ministry for Provincial Affairs and Constitutional Development, Pretoria, February 1998, p 71.

<sup>29</sup> The National Disaster Management Act states in the preamble that, "New national legislation needs to streamline and unify disaster management and promote a risk reduction approach, particularly at the provincial and local levels. The legislation should also eliminate the confusion around disaster declaration and address current legislative gaps". See The White Paper on disaster management issued by the Ministry For Provincial Affairs and Constitutional Development, January 1999, p. 52. Department of Constitutional Development, Pretoria

<sup>30</sup> See Catherine Giraud, "le droit et le principe de précaution leçons d'Australie", *Revue juridique et de l'environnement* 1/1997, p 22.

<sup>31</sup> The paragraph 1 of this legislation defines the term "disaster" as follows. "Within the meaning of this Act, disaster shall be construed to mean a naturally occurring event, or an event caused by persons or technology, leading to the impairment or direct endangering of the lives or well-being of a group of persons, to damage to material assets, and disruption of essential accommodation or supply chains, and at the same time leading to considerable disruption or direct endangering of public safety or order, that cannot be damaged within a reasonable time-span using the powers of the emergency services or fire brigade despite assistance from neighbouring institutions and thus necessitating the deployment of disaster protection teams and structures under one unified command". See German IDNDR Committee for National Disaster Reduction, the causes, progression and consequences of the River Oder Floods in Summer 1997 including remarks on the Existence of Risk Potential, German IDNDR - Series no 10 e, p. 14

ISDR Committee to the Warsaw Meeting on disaster prevention (13 - 14 June 2000), the focus of public interest is on civil protection and the preparedness of reactive measures and not on disaster prevention in the proper sense.<sup>32</sup>

The German ISDR Committee considers that there is a need to focus political and public interest on disaster reduction as a priority issue and to achieve an integrated approach of disaster prevention.

For this purpose, the German Committee emphasises - in its assessment on this issue - the need to convene its political leaders and deputies in order to establish stronger links between the different laws dealing with disaster reduction and to compel the authorities who are responsible for the implementation of law to co-operate more closely and to seek to identify interdisciplinary and cross-institutional solutions. For example, flood mitigation can only be tackled effectively if the various tiers of the Federal and *Lender* administrations as well as those of districts and independent cities co-operate and bring, into play, the entire spectrum of instruments at their disposal.<sup>33</sup>

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<sup>32</sup> German Committee for Disaster Reduction, Legal aspects of natural disaster management in Germany, Report prepared for the Central European Disaster Prevention Forum Meeting- Warsaw/Poland, June13/14, 2000, p 3

<sup>33</sup> German Committee for Disaster Reduction, The Causes, Progression and Consequences of the River Oder Floods in the Summer of 1997 including Remarks on the Existence of Risk Potential, German IDNDR- Series no 10 e, p. 17 and 39

## Conclusion

Over the last 20 years, progress has been made, both at the international and the national level, in the development of policies and legal instruments designated to prevent and mitigate the effects of natural and technological disasters. The precautionary approach, as a means of disaster prevention has been recognised in international environmental law, particularly the Conventions on Climate Change and Biological Diversity, the Declarations of Rio of 1992 and the Conferences on the Protection of the North Sea (1987 and 1990). Other regional agreements such as EUR-OPA Major Hazards Agreement and the Sieves guidelines are devoted to technological risks management are designated to enshrine mutual assistance as well as establish an integrated approach to hazards. Efforts at the national level have also led to the adoption of regulations on disaster prevention and the enshrinement of the precautionary principle in many national laws.<sup>34</sup>

Nevertheless, these instruments are inadequate for dealing with disasters at international level. Since the fact that disaster prevention is referred to in several agreement, it remains an issue that is very much in its infancy

Moreover, the current legislative framework in many countries can be a source of confusion, with continuing lack of clarity regarding the distribution of responsibility among various governmental authorities. The diversity of national law and the absence of comprehensive legal system reforms and risk planning constitute major problems in disaster management.

In developing countries, the implementation of a national legal framework is also hampered by inadequate human and institutional capacity, and by the absence of the technology and research on which to build an appropriate legal framework.

The goal of effective national planning and legislation cannot be achieved in the absence of a comprehensive framework of holistic and proactive action at the international level. Such a framework would need to include clear guidelines and policies for promoting co-operation among countries under an international legal framework for disaster prevention.

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<sup>34</sup> At the time of the Rio Declaration, explicit recognition of the precautionary principle was also made in domestic law and policy in Australia. Thus this principle was included in 1991 in article 6-2/a of the law of the South New-Wales State called "Protection of the Environment Administration Act". This principle was also included in article 10-1/b/iv of the Act of South Australia of 1993 on Environment protection. See G Giraud *le Droit et le principe de précaution leçons d'Australie*, R J E 1/97, p 24.

### **Topics on which further recommendation would seem useful**

The Task Force may wish to consider the establishment of a Working Group to explore the extent to which the development of a normative framework at the international level might help to advance international co-operation in disaster prevention as well as the development of national instruments for disaster prevention.

The following questions might be considered by such a Working Group:

- a) Should there be a review of international legislation on disaster prevention?
- b) What actions could be taken to improve the existing legislation on disaster reduction? How could pro-active approaches be developed?
- c) What is the relationship between the legal aspects of liability and disaster prevention policy?
- d) What is the role of legislation in the advancement of community education for disaster prevention?
- e) How could an integrated and comprehensive policy of disaster prevention be developed, which would take into account the impact of disasters on vital social sectors such as schools, housing, hospitals, population displacement, epidemic risk, hunger and malnutrition, environmental degradation and the protection of culture heritage?
- f) Is it necessary to establish guidelines that would assist Member States to engage discussions with insurance companies and private business in order to promote disaster prevention by means of incentive measures?
- g) Could funds be allocated for disaster prevention within national budgets of countries, most vulnerable to disasters such as earthquakes, floods, storms and drought as an integral part of social development programmes?
- h) What are the critical issues that would need to be addressed for risk reduction planning?
- i) Should there be a policy, which makes it obligatory for local authorities to provide, in their respective local area, a risk inventory on disaster prevention for the public such as tourists and citizens?

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## INTER-AGENCY TASK FORCE ON DISASTER REDUCTION

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