/

Panacea or Producer? Analysing the Relationship between International Law and Disaster Risk

A Thesis submitted for the degree of Doctor of Philosophy

School of Law, University of Reading

Liam Bagshaw

September 2023

Declaration

Declaration: *I confirm that this is my own work and the use of all material from other sources has been properly and fully acknowledged.*

Liam Bagshaw

Acknowledgements

This thesis was the work of five long years, and throughout that period I have been fortunate to be surrounded by many wonderful people who are all deserving of my sincerest gratitude. I could not have got to the point of writing these acknowledgements without them all.

My first thanks must go to my supervisors. I was fortunate enough to have four over the course of my PhD, and they have all contributed to the final thesis in different but important ways. Thanks foremost to Dr Marie Aronsson-Storrier who first introduced me to disasters and international law during my LLM and who was my primary supervisor during that degree and for the majority of the PhD. I would not have started this degree without her sparking my interest in the topic and giving me the confidence to pursue a PhD, and I certainly would not have finished it without her help and support. Her mentorship and advice have been invaluable over the last six years, and she has always been generous with her time and in offering me important opportunities to improve myself and my research.

Likewise, I would also like to sincerely thank Dr Anne Thies for all her guidance during her time as my second supervisor. Although our areas of research did not entirely overlap, she was always kind in checking in and willing to help, give me advice, and offer opportunities to improve my academic skillset. I am also very grateful to Professors Chris Hilson and Aleardo Zanghellini for taking over as supervisors during my final year. They offered many insightful comments, ideas, and literature recommendations, and helped significantly to transform a rough set of chapters into the completed thesis before you. I can only apologise again for all the comma splices they were forced to endure while reading my work. Overall, I cannot speak highly enough of my supervisory team, the positive impact they had on both this thesis and myself as a researcher, and their willingness to offer help and support, and for that they have my highest gratitude.

Outside of my supervisors I would also like to thank the other staff and fellow research students at the University of Reading Law School, particularly those within the GLAR division, who contributed to my time there and helped to create such a welcoming and fun environment. Thanks, in particular, to Professor Thérèse Callus for the support and kindness she offered to the PGR community and to Dr Matthew Windsor for assisting with this. I am also very grateful to Dr Windsor for his input during monitoring meetings (alongside Professor Hilson), for

helping to shape the eventual direction of the project, and for many other kind acts throughout the PhD. Likewise, fellow members of the PGR cohort have also helped to make the last five years bearable through their solidarity and the inspiring and interesting research they have shared. Special thanks to Dr Chris Evans and Rebecca Nocella for sharing much of this journey with me.

Outside of the university I am also extremely grateful for the generosity of the Modern Law Review in recognising this project and awarding me a scholarship in 2020 and 2021. The completion of this thesis would have been significantly harder without their assistance, and the improvements to financial security it offered.

I would also like to thank my friends and family for their unfailing support, generosity, and patience, and for only asking sparingly when I would be finished (even while it took me five years to write this thesis!). Special thanks to Simon, Jonathan, Dan, Wes, and Chris, I could not have asked for a better set of friends during this journey and the difficult years it contained. Likewise, my whole family have been invaluable to me, but in particular I am extremely grateful to my stepdad Luke, for too many things to mention here, my grandmother Marion and grandad Robin for all their help and uncountable conversations about the thesis over coffee, and to my aunt and uncle, Lisa and Simon, for always taking an interest in the project and for their important insights on international law.

Last of all, my final and greatest thanks go to my wonderful mother, Alison, to whom I owe everything, and who sadly passed away midway through the PhD. This thesis is dedicated to her.

Abstract

This thesis seeks to critically analyse the relationship between international law and disaster risk. Despite the increasing global threat that disasters present, international law's engagement with their prevention remains at a relatively nascent stage compared to the development of other areas of the law. However, the progress that has been made since the United Nation's International Decade for Natural Disaster Reduction in the 1990s suggests that international law is widely viewed as a valuable tool in addressing the issue and reducing the risk of disasters. In contrast to this, however, relatively little attention has been paid to the ways that international law itself may also play a role in the creation of disaster risk.

It is here that the project makes an important and original contribution, by interrogating this presupposition and analysing the ways that international law itself may be culpable in the creation and exacerbation of risk. Through a novel, compound theoretical lens combining Marxist and Third World approaches to international law and insights from disaster theory, the thesis highlights the longstanding complicity of international law in the production of disaster risk. The thesis draws on understandings of disasters as processes that reach back through time, and thus begins its analysis with an examination of the early history of international law and the role of its colonial doctrines in the historic construction of vulnerability and hazards. It then turns to modern international law, particularly within the realm of international economic law, to examine the continuing legacies of these early developments and the ongoing role of international law in disaster risk creation.

Overall, the thesis offers an original contribution to conversations on the connection between international law and disaster risk. Rather than focusing only on the positive role that international law can have in the reduction of disaster risk found in the majority of the literature, it seeks to highlight more pathological aspects of the relationship between the two and the implications of this. It ultimately concludes that unless the burgeoning field of international disaster law engages more with such critical accounts of international law and their understandings of the harm the law produces, then it will remain blind to a major source of disaster risk creation and be unsuccessful in achieving its normative aims.

Table of Contents

Introduction

This thesis is concerned with the relationship between international law and disasters.[1] It seeks to contribute to discussions on the development of international disaster law (IDL) and the role of international law in the prevention of disasters. However, in contrast to the majority of scholarship and conversations on this topic, it argues against the idea that international law is just a beneficial tool in the armoury of those attempting to reduce the risk of disasters. Instead, this thesis seeks to expose the role that international law itself has played both historically and contemporarily in the creation and exacerbation of disasters across the world. It will be argued that far from being solely a remedy, international law contributes to many of the issues it purports to want to alleviate. In this way the thesis intends to make an original contribution to literature and discussions on international law and disasters by highlighting the disaster risk producing role of international law, not just the part it can play in governing the prevention of and response to disasters.

This introductory chapter begins by highlighting the importance of this research by sketching out the background context of disasters across the globe. It describes a world recovering from a devastating pandemic and suffering from an ever-increasing number of disasters each year, driven in part by the existential threat of climate change which continues to progress in intensity. This research matters not only because of this destruction being wrought by disasters, much of which is preventable, but also because the effects of these catastrophes are not distributed equitably, and it will be argued that international law has a hand in the root causes of many of

[1] While many regional and domestic laws can also play vital roles in disaster management, this thesis will focus specifically on laws at the international level. For a discussion on the development of regional disaster laws within different areas of the world see the *Yearbook of International Disaster Law*'s annual articles, for example Emika Tokunaga, 'Asia (2021)' (2023) Vol. 4 No. 1 *Yearbook of International Disaster Law* 502; Nicholas Wasonga Orago, 'Africa and MENA Regions (2021)' (2023) Vol. 4 No. 1 *Yearbook of International Disaster Law* 510; Kirsten Nakjavani Bookmiller, 'North America, Central America and the Caribbean (2021)' (2023) Vol. 4 No. 1 *Yearbook of International Disaster Law* 521; Hugo Cahueñas and Felipe Idrovo, 'South America' (2023) Vol. 4 No. 1 *Yearbook of International Disaster Law* 533; W. John Hopkins and Leanne Avila, 'Pacific (2021)' (2023) Vol. 4 No. 1 *Yearbook of International Disaster Law* 543; Federico Casolari, 'Europe (2020)' (2022) Vol. 3 No. 1 *Yearbook of International Disaster Law* 453. See also W. John Hopkins, 'Soft Obligations and Hard Realities: Regional Disaster Risk Reduction in Europe and Asia' in in Katja L. H. Samuel, Marie Aronsson-Storrier, and Kirsten Nakjavani Bookmiller (eds.) *The Cambridge Handbook of Disaster Risk Reduction and International Law* (Cambridge University Press, 2019) 219; Dug Cubie, 'Embracing Regionalism: Lessons from the UN Regional Seas Programme for UNISDR and the Sendai Framework' in in Katja L. H. Samuel, Marie Aronsson-Storrier, and Kirsten Nakjavani Bookmiller (eds.) *The Cambridge Handbook of Disaster Risk Reduction and International Law* (Cambridge University Press, 2019) 239.

these disasters and in the distribution of their impacts, and that it does so in a pathological manner.

With this context established, the section then highlights that, despite the urgent need to counter the prevalence and devastation of disasters, international legal frameworks designed to achieve this goal remain in a relatively nascent and incomplete state compared to other areas of international law. While this is an issue, a further problem which the section identifies is how the current development of IDL contains the aforementioned blind spot in relation to the role international law itself may be playing in the creation of disaster risk. It will be argued that without IDL scholars and practitioners confronting this pathological side of international law, comprehensive reductions in the risk of disasters will not be possible and the current damaging state of affairs will continue.

With the contextual background and importance of the research established, the next section will then give a short history of the relationship between disasters and international law and the eventual development of IDL as a corpus of law in of itself to give a brief assessment of the current state of IDL. It will also include a short discussion on the relationship between international environmental law (IEL)[2] and international human rights law (IHRL) and disasters, and their *ad hoc* role in filling current protection gaps in the current IDL regime. Although the analysis here is succinct for reasons of space, it will be argued that discussions on the use of these regimes for the management of disasters suffer from a similar blind spot to those on international law and disasters more widely, presupposing the usefulness of the law without interrogating its negative aspects. Critical literature on IHRL and IEL point towards pathologies present within these regimes and discussions on their use in the management of disasters fail to contend with these and the wider negative impacts of international law. It is therefore posited that this results in similar issues to those found in conversations on IDL and disasters and international law more widely which the thesis deals with.

With the context and background of the research established the final section of this introductory chapter will then discuss further the original contribution that this thesis will make to scholarship on disasters and international law. It will also elaborate the structure of the thesis, giving a breakdown of how the chapters will proceed and their interrelation with one another.

[2] To avoid confusion, within this thesis International Environmental Law will use the acronym of 'IEL' while International Economic Law will be shortened to 'IEcL.'

The Background Context of Disasters

Disasters represent a major threat to human security, development, and wellbeing, with data for 2022 showing 185 million individuals being affected across the world, contributing to the loss of 30,704 lives (that we know of)[3] and US$223.8 billion in economic losses.[4] The threat they pose has been typified most prominently recently by the SARS-CoV-2 pandemic which, while not included in the previous figures, was the worst recorded disaster in over seventy years.[5] The pandemic has killed over 6.5 million people in the three years since its emergence,[6] and been estimated to cost the global economy US$13.8 trillion by the end of 2024.[7] While the pandemic has drawn large amounts of attention, disasters resulting from more conventional hazards have continued and are happening more frequently across the world, rising from under 100 annually in the 1970s to around 300 per year in the last decade.[8] Climate change appears to be contributing to this growth as it increases in severity, with 90.3% of recorded disasters resulting from natural hazards being climate- or weather- related, up from 76% in the 1960s,[9] a trend that is likely to grow worse as the effects of climate change become more pronounced.

From these figures and the experiences of many across the world it is clear that disasters represent a major issue. However, despite the damage and misery that they inflict globally, and their increasing prevalence, international law related to their management is underdeveloped

[3] For a discussion on issues around the recording and attribution of disaster losses see Michael D. Cooper, 'Seven Dimensions of Disaster: The Sendai Framework and the Social Construction of Catastrophe' in Katja L. H. Samuel, Marie Aronsson-Storrier, and Kirsten Nakjavani Bookmiller (eds.) *The Cambridge Handbook of Disaster Risk Reduction and International Law* (Cambridge University Press, 2019) 17, 42-44; Ben Wisner, Piers Blaikie, Terry Cannon, and Ian Davis, *At Risk* (Routledge, 2004, Second Edition) 65-66. Cooper himself draws heavily on Richard Keller, *Fatal Isolation: The Devastating Paris Heatwave of 2003* (University of Chicago Press, 2015).

[4] Centre for Research on the Epidemiology of Disasters (CRED), '2022 Disasters in Numbers' (CRED, 2023) available at <https://cred.be/sites/default/files/2022_EMDAT_report.pdf> accessed 31 March 2023.

[5] International Federation of the Red Cross (IFRC), 'World Disasters Report 2022' (International Federation of Red Cross and Red Crescent Societies, 2023) available at <https://www.ifrc.org/sites/default/files/2023-01/2022_IFRC-WDR_EN.pdf> accessed 30 March 2023, 16.

[6] World Health Organisation (WHO), 'WHO Coronavirus (COVID-19) Dashboard' (undated) < https://covid19.who.int/> accessed 30 March 2023. The IFRC note that this is likely an under-reporting of mortality from the virus due to gaps in reporting data and the actual figure is probably higher than that given by the WHO (IFRC (n5) 211)

[7] Gita Gopinath, 'A Disrupted Global Recovery' (*IMF Blog* 25 January 2022) < https://www.imf.org/en/Blogs/Articles/2022/01/25/blog-a-disrupted-global-recovery> accessed 30 March 2023. Cited in IFRC (n5) 3.

[8] IFRC (n5) 222.

[9] IFRC (n5) 225.

compared to other areas, mostly remaining at a 'nascent stage.'[10] This state of affairs led the International Federation of the Red Cross (IFRC) in its *World Disasters Report 2000* to decry that 'it is unlikely that any other challenge looming so large in world affairs has received so little attention in the legal realm.'[11] Since this call for action progress has been made, as will be discussed shortly; however, many of the international legal frameworks continue to be limited to the realm of soft law or to the area of disaster response,[12] which remains the most developed phase of a disaster[13] in terms of law. As it stands there is still no legally binding, overarching international law framework governing disasters.

Despite the initial focus on disaster response, it has since become acknowledged within international disaster law circles that disasters can be prevented (as will be discussed). This insight is drawn from the study of disaster within social studies, which currently remains ahead

[10] Jonathan Todres, 'Mainstreaming Children's Rights in Post-Disaster Settings' (2011) Vol. 25 *Emory International Law Review* 1233, 1244.

[11] International Federation of the Red Cross (IFRC), *World Disaster Report 2000* (IFRC, 2000) 157.

[12] For a relatively recent account of the history and current state of International Disaster Response Law (IDRL) see Kirsten Nakjavani Bookmiller, 'Closing "the Yawning Gap"? International Disaster Response Law at Fifteen' in Susan C. Breau and Katja L. H. Samuel (eds.) *Research Handbook on Disasters and International Law* (Edward Elgar Publishing, 2016) 46, 46. For additional discussions on it see David D. Caron, Michael J. Kelly, and Anastasia Telesetsky (eds.), *The International Law of Disaster Relief* (Cambridge University Press, 2014); Andrea Guttry, Marco Gestri, and Gabriella Venturini (eds.) *International Disaster Response Law* (T.M.C. Asser Press, 2012); David Fisher, 'The Future of International Disaster Response Law' (2012) Vol. 55 *German Yearbook of International Law* 87. On how an international law of disaster relief emerged and the techniques involved see Sandesh Sivakumaran, 'Techniques in International Law-Making: Extrapolation, Analogy, Form and the Emergence of an International Law of Disaster Relief' (2018) Vol. 28 No. 4 *The European Journal of International Law* 1097.

[13] Disasters are often conceptualised as a continuum of different phases that form a cycle. While variations exist between different versions, the one introduced into the legal realm by Daniel Farber consists of Risk Mitigation, Disaster Event, Emergency Response, Compensation and Insurance, and Rebuilding (which feeds back into Risk Mitigation). See Daniel A. Farber, 'International Law and the Disaster Cycle' in David D. Caron, Michael J. Kelly, and Anastasia Telesetsky (eds.) *International Law of Disaster Relief* (Cambridge University Press, 2014) 7, 9-10. In more simple terms, there is the pre-disaster prevention phase, the mid/immediately post-disaster response phase, and the post-disaster rebuilding phase. The pre-disaster phase is sometimes broken down into sub-phases, of mitigation and preparedness, however, as will be discussed, there is some conceptual confusion over what exactly each of these terms mean, with some being used interchangeably. For an analysis see Marie Aronsson-Storrier, 'Exploring the Foundations: The Principles of Prevention, Mitigation, and Preparedness in International Law' in Katja L. H. Samuel, Marie Aronsson-Storrier, and Kirsten Nakjavani Bookmiller (eds.) *The Cambridge Handbook of Disaster Risk Reduction and International Law* (Cambridge University Press, 2019) 52. The disaster cycle model has recently come under criticism for being an overly simplistic conceptualisation of disasters which focuses on disasters as events rather than long-standing processes with root causes. See, for example, Lee Bosher, Ksenia Chmutina, and Dewald van Niekerk, 'Stop Going Around in Circles: Towards a Reconceptualisation of Disaster Risk Management Phases' (2021) Vol. 30 No. 4/5 *Disaster Prevention and Management* 525.

of international law in the depth of its understanding,[14] and argues that far from being 'natural,'[15] disasters result when a hazard ('natural' or human-made) comes into contact with vulnerabilities within a society. It is these two components that make up disaster risk (Disaster Risk = Hazards x Vulnerabilities).[16] The presence of these human-made vulnerabilities are what cause the impacts of an earthquake or hurricane etc. to turn into a disaster. Through alleviating these vulnerabilities, the strike of a hazard can often be prevented from resulting in widespread death, damage, and disruption.

The continuing efforts to use and develop international law frameworks for the prevention of, response to, and rebuilding after disasters suggests that the law is widely viewed as a beneficial tool in this management of disasters and disaster risk. Indeed, even more critical literature within the disaster law field tends to focus on the shortcoming of the current regime rather than adopting a critical approach to international law itself.[17] As a result, relatively little attention[18] has been paid to the ways that international law itself may be culpable in the creation of disaster risk[19] and disasters. It is here, as will be discussed, that this thesis makes an original contribution to research on disasters and international law, by analysing the disaster risk producing potential of international law, not just its possible role in disaster risk reduction (DRR).[20] The identification of this more negative relationship is very important if DRR efforts are to be effective, as being blind to this production of disaster risk will mean that attempts at reduction cannot be fully comprehensive. As Linarelli, Salomon, and Sornarajah write, '[i]nternational law

---

[14] Marie Aronsson-Storrier, 'Beyond Early Warning Systems: Querying the Relationship Between International Law and Disaster Risk (Reduction)' (2020) Vol. 3 *Yearbook of International Disaster Law* 51. A more detailed discussion on the concepts and theories of disaster studies (broadly conceived) can be found in Chapter 2 of the thesis.

[15] The 'natural disaster' misnomer is discussed in Chapter 2 of the thesis.

[16] Wisner *et al.* (n3) 49.

[17] See for example, Michael Eburn, Andrew E. Collins, and Karen da Costa, 'Recognising the Limits of International Law in Disaster Risk Reduction as Problem and Solution' in Katja L. H. Samuel, Marie Aronsson-Storrier, and Kirsten Nakjavani Bookmiller (eds.) *The Cambridge Handbook of Disaster Risk Reduction and International Law* (Cambridge University Press, 2019) 107.

[18] Examples which seek to galvanise conversations on this topic and to which this thesis is indebted are Aronsson-Storrier (n14); and Marie Aronsson-Storrier, 'Sendai Five Years On: Reflections on the Role of International Law in the Creation and Reduction of Disaster Risk' (2020) Vol. 11 *International Journal of Disaster Risk Science* 230.

[19] As mentioned, this concept is explored in more detail in Chapter 2 of the thesis which focuses on legal definitions of disaster and the terminology surrounding it such as vulnerability, hazards, resilience, and capacities. In short it represents the potential damage that could occur as a result of a disaster and is a function of its components of hazards and vulnerability. Disaster risk reduction is a process aimed at preventing the creation of new disaster risk and reducing risk that already exists.

[20] On the role of international law in disaster prevention and DRR generally see, for example, Marie Aronsson-Storrier and Karen da Costa, 'Regulating Disasters? The Role of International Law in Disaster Prevention and Management' (2017) Vol. 26 No. 5 *Disaster Prevention and Management* 502; Giulio Bartolini and Tommaso Natoli, 'Disaster Risk Reduction: An International Law Perspective' (2018) Vol. 49 *Questions of International Law, Zoom-in* 1.

alone cannot end underdevelopment and eradicate poverty and unjustifiable material inequality, but it is a precondition of achieving those objectives that the means by which law creates wrongs are removed';[21] and it is the same for disasters.

In order to properly situate the contributions of the thesis within wider discussions, the next section will briefly detail the history of the relationship between international law and disasters, beginning with the International Relief Union in 1927, through the International Decade for Natural Disaster Reduction, and into the most recent disaster focused international legal instruments. This will then be followed by a section detailing further the contribution of the thesis and its structure.

Disasters, International Law, and International Disaster Law

International law's engagement with disasters remains relatively new compared to other areas of the law. In the aforementioned *World Disasters Report 2000* the IFRC highlighted that that despite the consistent development of international humanitarian law (IHL) since the 1860s there had been no parallel efforts relating to disasters of a natural and technological nature.[22] Likewise, there had been no systematic attempt to 'pull together the disparate threads of existing law, to formalize customary law or to expand and develop the law in new ways'[23] in relation to disasters.

Legal instruments that mentioned disasters or had some applicability to them did exist prior to this; however, they remained limited and disparate with little institutional guidance to direct them. For example, preparedness as a concept had long been part of disaster management because of its intimate connection with humanitarian relief; but many early regulations on this shared international law's focus on armed conflict and neglect of disasters specifically.[24] Meanwhile, as Marie Aronsson-Storrier identifies,[25] the prevention of disasters had been first codified in the 1927 Convention Establishing the International Relief Union,[26] which contained

[21] John Linarelli, Margot E. Salomon, and Muthucumaraswamy Sornarajah, *The Misery of International Law* (Oxford University Press, 2018) 1.
[22] Dug Cubie, 'Sources of IDL: The New IFRC Disaster Law Database' (2022) Vol. 3 No. 1 *Yearbook of International Disaster Law* 637, 637. See IFRC (n11) 145.
[23] IFRC (n11) 145. Quoted in Cubie (n22) 637.
[24] Aronsson-Storrier (n13) 57.
[25] Ibid.
[26] Convention and Statute Establishing an International Relief Union (adopted 12 July 1927, entered into force 27 December 1932) 3155 LNTS 247 (Convention Establishing the International Relief Union). For further discussion

an objective stating 'in the event of any public disaster, to co-ordinate as occasion offers the efforts made by relief organisations, and, *in a general way, to encourage the study of preventive measures against disasters* and to induce all peoples to render mutual international assistance.'[27]

However, the International Relief Union was ultimately ill-fated, and it was not until the 1960s that a focus on disasters would make a comeback in international legal frameworks.[28] During this period several United Nations General Assembly (UNGA) resolutions focused on disasters made mentions of early ideas for DRR.[29] Resolution 1753 (XVII) on the 1962 earthquake in Iran, for example, called for 'the study of the origin and mechanism of earthquakes of the type which devastated North-Western Iran and *in the improvement of protective measures* which can be taken in earthquakes as well as the remedial measures designed to repair damage caused by them.'[30] The 1970 UNGA Resolution 2717 (XXV) on 'Assistance in cases of natural disasters'[31] featured paragraphs inviting the Secretary General to submit recommendations on pre-disaster planning at the national and international levels and on the application of technology and scientific research to the 'control of natural disasters, or a mitigation of the effects of such disasters.'[32] Furthermore, this resolution also acknowledged the connection between disasters and poverty, a link which is central to modern conceptualisations of disaster risk.[33]

These resolutions demonstrate that an acknowledgement that disasters could be prevented, or their effects at least mitigated had begun to solidify within international law circles.[34] This was institutionalised further by the 1971 establishment of the United Nations Disaster Relief Office which was tasked with advising governments on pre-disaster planning and promoting the prevention, study, and control of 'natural' disasters.[35] The end of the decade saw an expert group initiated by the Office conclude that 'the actual and potential consequences of natural hazards

---

on the convention see P. Macalister-Smith, 'The International Relief Union of 1932' (1981) Vol. 5 No. 2 *Disasters* 147.

[27] Convention Establishing the International Relief Union (n26) Art. 2(2) [emphasis added].

[28] Aronsson-Storrier (n13) 58.

[29] Ibid.

[30] United Nations General Assembly (UNGA), 'Resolution 1753 (XVII), Measures to be Adopted in Connexion [sic] with the Earthquake in Iran' (5 October 1962) UN Doc. A/RES/1753 (XVII), Para. 7 [emphasis added]. Quoted in Aronsson-Storrier (n13) 58.

[31] UNGA, 'Resolution 2717 (XXV), Assistance in Cases of Natural Disaster' (15 December 1970) UN Doc. A/RES/2717 (XXV).

[32] Ibid., Paras. 5(b) and 5(d). See Aronsson-Storrier (n13), 58-59.

[33] Aronsson-Storrier (n13) 59.

[34] Ibid.

[35] Ibid.

are becoming so serious and so increasingly global in scale, that much greater emphasis will henceforth have to be given to pre-disaster planning and prevention.'[36] Further developments in the decade that followed[37] eventually led to the General Assembly in 1987 declaring the 1990s as the International Decade for Natural Disaster Reduction,[38] with the resolution demonstrating further the emergence of disaster prevention and DRR as principles.[39]

As a result of the International Decade, the 1990s saw several improvements in the regulatory progress for DRR. While many of these efforts still focused primarily on agreements of cooperation related to the preparation of relief operations, there was also a growing understanding of the importance of reducing disaster risk from the standpoint of protecting development progress.[40] Several more General Assembly Resolutions followed that contained provisions on disaster prevention.[41] Then, most importantly, 1994 saw the introduction of the Yokohama Strategy for a Safer World,[42] containing guidelines on disaster prevention, preparedness, and mitigation. This framework was the first of three sequential instruments focused on DRR, being followed in 2005 by the Hyogo Framework for Action 2005-2015,[43] and then the most recent 2015 Sendai Framework for Disaster Risk Reduction 2015-2030.[44] The Yokohama Strategy demonstrated the continued shift in emphasis towards prevention, mitigation, and preparedness over just response in managing disasters and achieving the objectives of the International Decade.[45] Coming two years after the 1992 Rio Declaration,[46] a key instrument in IEL, the Yokohama Strategy embraced the important link between

---

[36] Office of the United Nations Disaster Relief Co-ordinator (UNDRO), 'Natural Disasters and Vulnerability Analysis: Report of Expert Group Meeting (9-12 July 1979)' (August 1980) UN Doc. UNDRO/EXPGRP1, iii. Quoted in Aronsson-Storrier (n13) 59.

[37] For further discussion see Aronsson-Storrier (n13) 59.

[38] UNGA, 'Resolution 42/169, International Decade for Natural Disaster Reduction' (11 December 1987) UN Doc. A/RES/42/169. This resolution was followed by Resolution 44/236 which included an international framework for action for the based on this declaration.

[39] Aronsson-Storrier (n13) 59.

[40] Aronsson-Storrier (n13) 59.

[41] See Ibid., 59-60.

[42] United Nations, 'Yokohama Strategy and Plan of Action for a Safer World: Guidelines for Natural Disaster Prevention, Preparedness and Mitigation' (27 May 1994) (Yokohama Strategy).

[43] United Nations International Strategy for Disaster Reduction (UNISDR), 'Hyogo Framework for Action 2005-2015: Building the Resilience of Nations and Communities to Disasters' (22 January 2005) UN Doc. A/CONF.206/6 (Hyogo Framework).

[44] UNISDR, 'Sendai Framework for Disaster Risk Reduction 2015-2030' (18 March 2015) UN Doc. A/CONF.224/CRP (Sendai Framework).

[45] Aronsson-Storrier (n13) 60. See the chapter more widely for a discussion on these concepts.

[46] Report of the United Nations Conference on Environment and Development (1992) UN Doc. A/CONF.151/26 (Vol. I) (Rio Declaration).

development and disaster management,[47] stating that 'disaster prevention, mitigation, preparedness and relief are four elements which contribute to and gain from the implementation of sustainable development.'[48]

Overall, the International Decade, Yokohama Strategy, and establishment of the International Strategy for Disaster Reduction and its office UNISDR[49] show that there was clear progress in the 1990s in strengthening the relationship between international law and disasters, and particularly in the emphasis on disaster prevention and the reduction of disaster risk. Despite these advances, however, the words of the IFRC at the start of the next decade clearly demonstrate that there was still a significant way to go in developing IDL and the relationship between international law and disasters further. Fortunately, the last twenty years has seen a number of disaster-related legal sources identified and developed at all levels of the law, with the IFRC promoting the vital need for disaster-focused legal frameworks to be in place before catastrophes strike.[50]

The IFRC itself has done a lot of work in this regard, developing guidelines and seeking to clarify disaster-relevant obligations in existing frameworks.[51] More recently, starting in 2020, the IFRC also worked with Roma Tre University in Italy and other disaster practitioners to produce a disaster law database to provide a comprehensive resource that brings together disparate publications and legal texts into one location.[52] The database remains a work in progress, but provides an important central nexus for international organisation documents, texts from non-state actors like non-governmental organisations, case law, academic literature, global and regional treaty body documents, domestic legislation, Red Cross Red Crescent documents, and treaties,[53] helping to fulfil the tasks called for by the IFRC in 2000.

---

[47] Aronsson-Storrier (n13) 60.
[48] Yokohama Strategy (n42), 'Yokohama Message,' Para. 3. Quoted in Aronsson-Storrier (n13) 60.
[49] This is now the United Nations Office for Disaster Risk Reduction (UNDRR) however some instruments retain the old name such as the Hyogo Framework and Sendai Framework above.
[50] Cubie (n22) 637.
[51] Cubie (n22) 637-638 cites the following examples: Horst Fischer, 'International Disaster Response Law: A Preliminary Overview and Analysis of Existing Treaty Law' (IFRC, 2003); IFRC, 'Law and Legal Issues in International Disaster Response: A Desk Study' (IFRC, 2007); IFRC, Introduction to the Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance' (IFRC, 2008).
[52] For further discussion on the database and its creation see Cubie (n22). The database itself can be accessed at IFRC, 'IFRC Disaster Law Database' <https://disasterlaw.ifrc.org/disaster-law-database> accessed 11 April 2023.
[53] Cubie (n22) 639.

While the IFRC has been carrying out this work, the United Nations Office for Disaster Risk Reduction (UNDRR, formerly UNISDR) has continued its own work.[54] As discussed, the Yokohama Strategy was followed by the Hyogo Framework and then most recently the Sendai Framework which is generally considered the 'central international policy instrument for DRR.'[55] The prevention of disasters and reduction of disaster risk is very much at the heart of this framework as is the acknowledgement of the interrelation of disaster risk, poverty, and sustainable development, with Paragraph 2 stating a 'commitment to address disaster risk reduction and the building of resilience to disasters with a renewed sense of urgency within the context of sustainable development and poverty eradication.'[56]

Further notable provisions in the Framework which are encouraging include Priority 1 which calls for a more comprehensive understanding of disaster risk, expressing the need for an 'understanding of disaster risk in all its dimensions of vulnerability, capacity, exposure of persons and assets, hazard characteristics and the environment.'[57] This focus on vulnerability, capacity, and exposure is important in the face of criticisms that IDL instruments can focus too much on the hazards side of the disaster risk equation and technocratic approaches to managing these, while leaving socio-economic pathologies that increase vulnerabilities unresolved[58] (though this criticism has still been levelled at the Framework).[59] Additionally, Priority 1 also importantly mentions the need to make use of local and indigenous knowledge and practices in DRR,[60] which is an important and often overlooked aspect of reducing disaster risk. The framework therefore demonstrates something of a deepening in understandings of disaster risk and how it can be reduced; however, it still fails to properly deal with the root causes of disaster, highlighting that there is still a significant way to go.[61]

---

[54] For an overview of the recent work of UNDRR see Marie Aronsson-Storrier, 'UN Office for Disaster Risk Reduction (2021)' (2023) Vol. 4 *Yearbook of International Disaster Law* 485.

[55] Aronsson-Storrier (n18) 233.

[56] Sendai Framework (n44) Para. 2.

[57] Sendai Framework (n44) Para. 23.

[58] Aronsson-Storrier (n18) 235; Aronsson-Storrier (n14) 68.

[59] See Ilan Kelman, 'Climate Change and the Sendai Framework for Disaster Risk Reduction' (2015) Vol. 6 *International Journal of Disaster Risk Science* 117.

[60] Sendai Framework (n44) Para. 24(i).

[61] Ben Wisner, 'Five Years Beyond Sendai – Can We Get Beyond Frameworks?' (2020) Vol. 11 *International Journal of Disaster Risk Science* 239, 239. A full discussion on the Sendai Framework and its strengths and weaknesses is unfortunately not possible in such a brief section, for greater analysis see Wisner (above); Aronsson-Storrier (n18); Kelman (n59).

Additional important instruments since the IFRC's clarion call include the 2000 Framework Convention on Civil Defence Assistance,[62] considered an 'important milestone' in the development of IDL.[63] It regulates the response to disasters and also requires state parties to 'undertake to explore all possibilities for co-operation in the areas of prevention, forecasting, preparation, intervention and post-crisis management.'[64] In 2007 a more significant step was taken when the International Law Commission (ILC) began the project of codifying regulations relating to the protection of persons in the event of disasters,[65] resulting in the 'Draft Articles on the Protection of Persons in the Event of Disasters' being adopted in 2016.[66] The Draft Articles feature a direct obligation to reduce disaster risk in Draft Article 9, which has great potential as a foundational obligation; however, it is also an obligation of 'conduct and not result'[67] meaning that like the Sendai Framework the Draft Articles remain in the realm of soft law.[68] Even getting DRR included as draft article proved to be a challenge,[69] so its inclusion alone is progress; however, it remains limited in scope and 'must not set the outer limits for enquiries into the relationship between international law and disaster risk.'[70] Therefore, while the Draft Articles are an important step forward in the development of international rules around disasters, they demonstrate that there is still work to be done and are not without their criticisms.[71]

With disaster specific instruments continuing to be limited to the realm of soft law, disaster scholars and practitioners have instead turned to other areas of international law and existing

---

[62] International Civil Defence Organisation (ICDO), 'Framework Convention on Civil Defence Assistance' (adopted 22 May 2000, entered into force 23 September 2001) 2172 UNTS 213 (Framework Convention).
[63] Aronsson-Storrier (n13) 62.
[64] Framework Convention (n62) Art. 4. Quoted in Aronsson-Storrier (n13) 62.
[65] Aronsson-Storrier (n13) 63.
[66] International Law Commission (ILC), 'Draft Articles on the Protection of Persons in the Event of Disasters' (15 May 2014) UN Doc A/CN.4/l.831 (ILC Draft Articles).
[67] Ibid., Article 9, Commentary Para. 10.
[68] Aronsson-Storrier (n13) 64.
[69] Aronsson Storrier (n14) 55.
[70] Ibid., 51.
[71] Length constraints do not allow for proper analysis of the Draft Articles, for further discussion on the them and their development see Aronsson-Storrier (n13) 64; Aronsson-Storrier (n14); Arnold N. Pronto, 'The ILC's Articles on the Protection of Persons in the Event of Disasters and Disaster Risk Reduction – A Legislative History' in in in Katja L. H. Samuel, Marie Aronsson-Storrier, and Kirsten Nakjavani Bookmiller (eds.) *The Cambridge Handbook of Disaster Risk Reduction and International Law* (Cambridge University Press, 2019) 71; Eduardo Valencia-Ospina, 'The Work of the International Law Commission on the "Protection of Persons in the Event of Disasters"' (2019) Vol. 1 *Yearbook of International Disaster Law* 5; Thérèse O'Donnell, 'Vulnerability and the International Law Commission's Draft Articles on the Protection of Persons in the Event of Disasters' (2019) Vol. 68 *International and Comparative Law Quarterly* 573; Walter Kälin, 'Protection of Victims of Disasters: The "Vertical" Dimension of the Draft Articles on the Protection of Persons in the Event of Disasters' (2019) Vol. 1 *Yearbook of International Disaster Law* 28. For more recent developments see Arnold N. Pronto, 'Developments on the Draft Articles on the Protection of Persons in the Event of Disasters (2021)' (2023) Vol. 4 *Yearbook of International Disaster Law* 467.

customary international law[72] in search of binding obligations that can be applied to disasters.[73] The two key areas in this regard are IHRL[74] and IEL.[75] Due to the many overlaps between disasters and climate change, the latter of these also includes climate change adaptation (CCA) and climate change mitigation (CCM) instruments.

[72] As Aronsson-Storrier (n18) 234 writes, the commentary to Draft Article 9 of the ILC's Draft Articles (particularly Commentary Paragraphs 9(5) and 9(6)) highlight the legal foundation of the Draft Article being drawn from consistent state practice in committing to reducing the risk of disasters through the adoption of treaties and the incorporation of DRR measures into domestic policies. See ILC Draft Articles (n66) Commentary on Draft Article 9. Cubie (n22) 641 meanwhile describes the contention of the IFRC *World Disaster Report 2000* (n11) that minimum standards in the Sphere Handbook may be a case study of customary international law in the making. See The Sphere Project, *Humanitarian Charter and Minimum Standards in Disaster Response* (The Sphere Project, 2000).

[73] For a discussion on the sources of international law within the context of IDL (though mainly focused on response) see Imogen Saunders, 'International Disaster Relief Law and Article 38(1)(c) of the Statute of the International Court of Justice: The Forgotten Source of International Law' in David D. Caron, Mark Kelly, and Anastasia Telesetsky (eds.) *The International Law of Disaster Relief* (Cambridge University Press, 2014) 29.

[74] On the relationship between disasters, DRR, and IHRL see, for example, Flavia Zorzi Giustiniani, Emanuele Sommario, Federico Casolari, and Giulio Bartolini (eds.), *The Routledge Handbook of Human Rights and Disasters* (Routledge, 2020); Kristian Cedervall Lauta, 'Human Rights and *Natural* Disasters' in Susan C. Breau and Katja L. H. Samuel (eds.) *Research Handbook on Disasters and International Law* (Edward Elgar, 2016) 91; Marie Aronsson-Storrier and Haythem Salama, 'Tackling Water Contamination: Development, Human Rights and Disaster Risk Reduction' in Susan C. Breau and Katja L. H. Samuel (eds.) *Research Handbook on Disasters and International Law* (Edward Elgar, 2016) 319; Jean Connolly Carmalt, 'Human Rights for Disaster Risk Reduction Including Climate Change Adaptation' in Ilan Kelman, Jessica Mercer, and JC Gaillard (eds.), *The Routledge Handbook of Disaster Risk Reduction including Climate Change Adaptation* (Routledge, 2017) 140; Walter Kälin, 'The Human Rights Dimension of Natural or Human-Made Disasters' (2012) Vol. 55 *German Yearbook of International Law* 119; Dug Cubie and Marlies Hesselman, 'Accountability for the Human Rights Implications of Natural Disasters: A Proposal for Systemic International Oversight' (2015) Vol. 33 No. 1 *Netherlands Quarterly of Human Rights* 9; Karen da Costa and Paulina Pospieszna, 'The Relationship Between Human Rights and Disaster Risk Reduction Revisited: Bringing the Legal Perspective into the Discussion' (2015) Vol. 6 *Journal of International Humanitarian Legal Studies* 64; Karen da Costa, 'Can the Observance of Human Rights of Individuals Enhance Their Resilience to Cope with Natural Disasters?' (2014) Vol. 18 *Procedia Economics and Finance* 62; Marlies Hesselman, 'International Human Rights Law (2020)' (2022) Vol. 3 *Yearbook of International Disaster Law* 536.

[75] On the relationship between disasters, DRR, and IEL (including climate change) see, for example, Jacqueline Peel and David Fisher (eds.), *The Role of International Environmental Law in Disaster Risk Reduction* (Brill, 2016); Rosemary Lyster, *Climate Justice and Disaster Law* (Cambridge University Press, 2016); Stephen Flood, Yairen Jerez Columbié, Martin Le Tissier, and Barry O'Dwyer (eds.), *Creating Resilient Futures: Integrating Disaster Risk Reduction, Sustainable Development Goals and Climate Change Adaptation Agendas* (Palgrave Macmillan, 2022); Ilan Kelman, Jessica Mercer, and JC Gaillard (eds.), *The Routledge Handbook of Disaster Risk Reduction including Climate Change Adaptation* (Routledge, 2017); Tim Stephens, 'Disasters, International Environmental Law and the Anthropocene' in Susan C. Breau and Katja L. H. Samuel (eds.) *Research Handbook on Disasters and International Law* (Edward Elgar, 2016) 153; Kelman (n59); Daniel A. Farber, 'The Intersection of IDL and Climate Change Law' (2021) Vol. 2 *Yearbook of International Disaster Law* 87; Sophie Gambardella, 'International Environmental Law (2020)' (2022) Vol. 3 *Yearbook of International Disaster Law* 585; Rosemary Lyster, 'Climate Change (2020)' (2022) Vol. 3 *Yearbook of International Disaster Law* 512. On the crossover between DRR and sustainable development see Tahmina Karimova, 'Sustainable Development and Disasters' in Susan C. Breau and Katja L. H. Samuel (eds.) *Research Handbook on Disasters and International Law* (Edward Elgar, 2016) 177; Flood *et al* (above).

A full discussion on the use of these regimes in DRR and disaster response is not possible within this thesis. However, to offer a brief overview: in terms of IHRL, the Universal Declaration is a useful resource as many of its provisions have been incorporated into customary international law,[76] while several treaties also contain potentially useful provisions. In terms of rights, the floor and progressive realisation provided by many economic, social, and cultural rights can go some way towards reducing vulnerability and therefore disaster risk.[77] Likewise, the right to life and right to respect for private and family life also have clear application to disaster situations as has been confirmed by the European Court of Human Rights in its *Öneryildiz v Turkey*[78] and *Budayeva v Russia*[79] cases; though these do tend to focus on technocratic approaches to mitigating foreseeable hazards rather than showing a deeper understanding of disaster risk and its drivers. Treaties focused on the protection of groups[80] who suffer from greater vulnerability to hazards, such as women[81] and children,[82] can also be useful in DRR efforts, while the Convention on the Rights of Persons with Disabilities makes specific mention of disasters in Article 11.[83]

---

[76] Hurst Hannum, 'The UDHR in National and International Law' (1998) Vol. 3 No. 2 *Health and Human Rights* 144.

[77] For a discussion on the utility of economic, social, and cultural rights to disaster risk reduction see Ellen Nohle and Gilles Giacca, 'Economic and Social Rights in Times of Disaster: Obligations of Immediate Effect and Progressive Realization' in Flavia Zorzi Giustiniani, Emanuele Sommario, Federico Casolari, and Giulio Bartolini (eds.), *The Routledge Handbook of Human Rights and Disasters* (Routledge, 2020).

[78] *Öneryildiz v Turkey* [2004] ECtHR App No. 48939/99 Reports of Judgments and Decisions 2004-XII (*Öneryildiz v Turkey*). For a discussion on this case see Kälin (n74); Susan C. Breau, 'Responses by States' in Susan C. Breau and Katja L. H. Samuel (eds.) *Research Handbook on Disasters and International Law* 69. Article 1 of Protocol 1 is also of importance in this case in relation to property rights, informal dwellings, and the requirement of the state to protect these. See for example, European Court of Human Rights, 'Guide on Article 1 of Protocol No. 1 to the European Convention on Human Rights' (31 August 2022) <https://www.echr.coe.int/Documents/Guide_Art_1_Protocol_1_ENG.pdf> accessed 17 May 2023, Paras. 195-196.

[79] *Budayeva and Others v Russia* [2008] ECtHR App No. 15339/02 and others Reports of Judgments and Decisions 2008 (extracts) (*Budayeva v Russia*). For a discussion of this case see Kälin (n74).

[80] For a wider discussion on the protection of vulnerable groups within disaster see Mary Crock, 'The Protection of Vulnerable Groups' in Susan C. Breau and Katja L. H. Samuel (eds.) *Research Handbook on Disasters and International Law* (Edward Elgar, 2016) 383; Marieangela Bizzarri, 'Protection of Vulnerable Groups in Man-Made Disasters' in Andrea Guttry, Marco Gestri, and Gabriella Venturini (eds.) *International Disaster Response Law* (T.M.C. Asser Press, 2012) 381.

[81] Convention on the Elimination of Discrimination Against Women (adopted 18 December 1979, entered into force 3 September 1981) UNTS 1249 p.13 (CEDAW).

[82] Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) UNTS 1577 p. 3 (CRC).

[83] Convention on the Rights of Persons with Disabilities (adopted 30 March 2007, entered into force 3 May 2008) UNTS 2515 p. 3 (CRPD). Article 11 reads 'State Parties shall take, in accordance with obligations under international law, including international humanitarian law and international human rights law, all necessary measures to ensure the protection and safety of persons with disabilities in situations of risk, including situations of armed conflict, humanitarian emergencies and the occurrence of natural disasters.'

IEL, meanwhile, is primarily useful for managing the hazards side of the disaster risk equation, with many of its frameworks being useful in preventing overtly human-made disasters such as those stemming from industrial accidents. There has long been an affinity between the two regimes, and IEL itself has been 'profoundly shaped by disasters, with many of the main elements of this area of international law emerging directly in response to crises.'[84] As with IHRL there is not space for a full discussion on links between the two areas of law, but some examples of useful frameworks within IEL for DRR include climate change instruments, such as the 1992 United Nations Framework Convention on Climate Change (UNFCCC)[85] and its 1997 Kyoto Protocol,[86] as well as the 2015 Paris Agreement;[87] the 1994 United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification (UNCCD);[88] the 1993 International Labour Organization Convention No. 147 on Prevention of Major Industrial Accidents,[89] and the 1989 Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal.[90] Likewise, treaties linked to atmospheric[91] and biodiversity[92] protection also have applications in disaster prevention.

There is therefore scope within IHRL and IEL for helping to fill the protection gaps that currently exist within IDL, though this is far from a perfect system. Each of these regimes have their own shortcomings, which can hinder their application and performance, and the frameworks are rarely designed directly for DRR purposes; so, they represent imperfect fillers which will need to be replaced with proper, bespoke disaster instruments. For example, IEL

---

[84] Stephens (n75) 153.
[85] United Nations Framework Convention on Climate Change, (entered into force 21 March 1994) 1771 UNTS 107 (UNFCCC).
[86] Kyoto Protocol to the United Nations Framework Convention on Climate Change (adopted 11 December 1997, entered into force 16 February 2005) 2303 UNTS 162 (Kyoto Protocol).
[87] Conference of the Parties, Adoption of the Paris Agreement (12 December 2015) UN Doc. FCCC/CP/2015/L.9/Rev/1 (Paris Agreement).
[88] United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification (adopted 14 October 1994, entered into force 26 December 1996) 1954 UNTS 3 (UNCCD).
[89] International Labour Organization (ILO), 1993 International Labour Organization Convention No. 147 on Prevention of Major Industrial Accidents (adopted 22 June 1993, entered into force 3 January 1996) 1967 UNTS 231 (ILO Convention No. 147).
[90] Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (adopted 22 March 1989, entered into force 5 May 1992) 1673 UNTS 57 (Basel Convention).
[91] See for example the 1985 Vienna Convention and 1987 Montreal Protocol to protect the Earth's Ozone layer, as described by Jaqueline Peel and David Fisher, 'International Law at the Intersection of Environmental Protection and Disaster Risk Reduction' in Jacqueline Peel and David Fisher (eds.), *The Role of International Environmental Law in Disaster Risk Reduction* (Brill, 2016) 1, 4.
[92] Convention on Biological Diversity (adopted 29 Jan 2000, entered into force 11 September 2003) 2226 UNTS 208 (CBD). It also has Protocols of relevance, as described by Peel and Fisher (n91) 4.

suffers from institutional and instrumental fragmentation as there is no general obligation to protect the environment or overarching body tasked with coordinating the development of the regime.[93] The result is a lack of coherence within IEL that can create issues for convergence within the regime itself, but also produces problems when attempting to facilitate greater integration with other regimes, such as IDL. Shortcomings of IHRL in relation to disasters, meanwhile, includes the issue that many states remain sceptical of the IHRL regime as the universalisation and imposition of Western culture and ideology.[94] This attitude can impact the implementation of IHRL frameworks and therefore their disaster management potential.

In addition to these issues, critical literature on these areas of law[95] can highlight the pathologies present within these regimes and their inability to effectively rein in the more negative outcomes of the international legal system more widely which undermines their ability to fully reduce disaster risk. Discussions on the use of IEL and IHRL suffer from similar blind spots to those

---

[93] Emily Jones, 'Posthuman International Law and the Rights of Nature' (2021) Vol. 12 Special Issue *Journal of Human Rights and the Environment* 76, 77.

[94] Lauta (n74) 107.

[95] Aside from discussing issues of compliance and realisation, critical literature on IHRL also points to its connection with and potential co-option by neoliberalism and IEcL and its inability to address structural sources of harm. Samuel Moyn for example has labelled human rights as a 'powerless companion' to neoliberalism (see 'A Powerless Companion'), while Jessica Whyte has argued for a greater connection, stating that the language of human rights has been mobilised in defence of neoliberalism and that these proponents instead constituted 'enthusiastic and influential fellow travellers' who pioneered a 'distinctly neoliberal human rights discourse' ('Powerless Companions or Fellow Travellers?', 26). As this thesis will argue at length, neoliberalism is a major driver of disaster risk, and this entwining and potential co-option between neoliberalism and human rights results in a failure to effectively contest the harms of the former and IEcL and the disaster risk they produce. Furthermore, it also risks legitimising them. Therefore, a failure of discussions around IHRL and DRR to take account of these connections and issues risks exacerbating them further. See for example, Samuel Moyn, 'A Powerless Companion: Human Rights in the Age of Neoliberalism' (2014) Vol. 77 No. 4 *Law and Contemporary* Problems 147; Samuel Moyn, *Not Enough: Human Rights in an Unequal World* (Harvard University Press, 2018); Jessica Whyte, 'Powerless Companions or Fellow Travellers? Human Rights and the Neoliberal Assault on Post-Colonial Economic Justice' (2018) Vol. 2 No. 2 *Radical Philosophy* 13; Jessica Whyte, *The Morals of the Market: Human Rights and the Rise of Neoliberalism* (Verso, 2019); Upendra Baxi, *The Future of Human Rights* (Oxford University Press India, 2008); Linarelli, Salomon, and Sornarajah (n21) Chapter 7.
Critical literature on IEL meanwhile is discussed to a greater extent in the Hazards section of Chapter 3. However, to summarise, a key issue identified is in the conceptualisation of nature in international law, and its connection to the ideological roots of the discipline formed within Europe during the colonial era. This conceptualisation sees international law largely treating the natural world as a series of commodities external to human societies that are available for unfettered exploitation in the name of human development and progress. This fundamental failing to understand the symbiotic relationship between human societies and the environment has profoundly detrimental consequences for both humanity and the natural world, including climate change and the creation and exacerbation of disasters. See, for example, Usha Natarajan and Julia Dehm (eds.), *Locating Nature: Making and Unmaking International Law* (Cambridge University Press, 2022); Jones (n93); Anna Grear, 'Deconstructing *Anthropos*: A Critical Legal Reflection on "Anthropocentric" Law and Anthropocene "Humanity"' (2015) Vol. 26 *Law and Critique* 225; Karin Mickelson, 'South, North, International Environmental Law, and International Environmental Lawyers' (2000) Vol. 11 No. 1 *Yearbook of International Environmental Law* 52.

on IDL in presupposing the beneficial role of the law in DRR while failing to account for its potential part in the creation of disaster risk. Therefore, the discussions of the thesis on issues within conversations on disasters and international law can equally be applied to those on the utility of IHRL and IEL. However due to length constraints, these will not be dealt with in detail.

Contribution, Originality, and Structure

This brief history of the development of the relationship between international law and disasters shows the progress that has been made and direction in which the development of IDL is moving. In particular, there is an understandable focus on developing and expanding the law and in trying to move towards disaster prevention instead of just response, and in analysing the current protection gaps that exist and how they might be filled. However, while this expansion is occurring there has been a relatively little introspection about international law itself. Instead, it is largely uncritically presupposed that the law is a beneficial tool in managing disasters, and this is the extent of the relationship. Likewise, the fragmentation of international law means that attention is generally only paid to other areas of the law when they can be utilised in DRR efforts, such as IHRL and IEL as discussed above; comparatively little attention is paid to how other areas of the law may be culpable in the creation of disaster risk and undermining the goals of IDL.

It is here, therefore, that this thesis seeks to make a unique contribution to the field of disasters and international law. Through a sustained, critical analysis of their relationship, it aims to highlight and analyse the ways that international law as a structure, as a result of its historical and ideological foundations and ongoing development from these roots, has contributed to the creation and exacerbation of disaster risk, both historically and contemporarily. While much of the analysis of the thesis will discuss international law generally, it will also seek to demonstrate how some individual fields of international law, particularly those within international economic law contribute to this process. As Aronsson-Storrier writes,

> [t]he identification, or mapping, of existing DRR obligations is an essential exercise as international law can play a vital role in enforcing aspects of the Sendai Framework. However, while much work remains to be done in order fully to identify and understand how existing legal obligations can be applied and interpreted in relation to DRR, it is

> time for legal scholars to move beyond this mapping exercise and also engage more critically with the relationship between international law and disaster risk.[96]

This thesis makes an important contribution to discussions on the relationship between international law and disaster risk in this regard. Through a novel synthesis of disaster theory and critical approaches to international law it will highlight the role of international law in the creation and exacerbation of disaster risk, arguing that the law contributes to and potentially constitutes root causes of vulnerability and hazards. It is hoped that this analysis will inform the further development of IDL and conversations between both practitioners and scholars. This is an important exercise to prevent the development of IDL being stunted by this blind spot and the potential failure to achieve its normative aims which may result. It is vital that IDL is aware of disaster risk creation in all its dimensions even if this means confronting difficult questions about the history and nature of the international legal system. As the discussion above has revealed, the negative position of international law in its relationship with disaster risk has received very little attention in the literature and this needs to be addressed.

It is not the contention of this thesis that all disaster risk stems from international law, or even that international law necessarily plays a role in all disasters – only that it does contribute to the creation and exacerbation of disaster risk. The aim is to shine a light on this process. Secondly, it is not an objective of the thesis to call for the complete renunciation of international law or to dismiss the important work that is ongoing in developing IDL. International law can certainly be a useful tool in the quest of DRR, and the contention of the thesis is simply that the development of IDL alone is not enough – that attention also needs to be paid to the ways that international law is 'taking away' with one hand while IDL attempts to provide with the other. In this sense the thesis opts for a pragmatic rather than nihilistic view of the international legal system and engagement with it.

While many Marxist scholars may advocate for a more nihilistic position, arguing that international law is beyond redemption,[97] TWAIL scholars have persistently sought to reform the law along more just and cosmopolitan lines from within. Early TWAIL scholars were

---

[96] Aronsson-Storrier (n18) 230.

[97] China Miéville for example writes that he sees 'no prospect of any systematic progressive political project or emancipatory dynamic coming out of international law' and that 'the recourse to law can only ever be of limited emancipatory value,' see China Miéville, 'The Commodity-Form Theory of International Law' in Susan Marks (ed.) *International Law on the Left: Re-examining Marxist Legacies* (Cambridge University Press, 2008) 92, 130.

optimistic that the international system could be changed; R. P. Anand and T. O. Elias, for example, 'while condemning international law for justifying colonialism, saw this fact as arising from an aberration, the misapplication of an international law whose proper purpose was the promotion of international peace and justice.'[98] While the continuing imperial character of the law and failure of attempts at a New International Economic Order (NIEO)[99] suggested that the faith of early TWAIL scholars in the amenability of the international system to be change may have been misplaced, TWAIL scholars have nonetheless continued to attempt to reform it from within.[100]

This thesis adopts a similar position. It may well be that a wholesale dismantling and rebuilding of the international system is needed to fully address the many harms it perpetrates; however, the feasibility of this is limited and it is clearly not without its own risks. Therefore, for the time being, attempting reform from within remains the only recourse. While such tinkering within the system does risk legitimising and seeing efforts subsumed by the current system, it is also 'tinkering that prevents war, makes people less hungry, recognizes local culture,'[101] and for our purposes protects people from disasters. Despite being a burgeoning regime, IDL already does some work to help protect people from disasters, and a greater awareness of the disaster risk producing pathologies within the international system and measures to counter them could improve these efforts further and work towards the transformation of current structures. While wholesale change within the international legal system and a dismantling of long-standing processes is necessary to truly address the production of disaster risk and achieve DRR, the few gains that have been made and protection of some lives in the meantime is ultimately better than nothing. It stands to reason that gains made by a regime of IDL more aware of the pathologies of international law could make a vital difference in helping to offset the harms produced.

At this juncture it is also important to clarify what this thesis means by 'international law' in its analysis. The thesis adopts a broad view of international law. Under this umbrella it considers not just specific treaties and their provisions, customary international law, or the actions of states, but also international institutions and their structures and policies, decisions of

---

[98] Antony Anghie, 'Rethinking International Law: A TWAIL Retrospective' (2018) Vol. 34 No. 1 *European Journal of International Law* 1, 18.

[99] Attempts by newly independent states at a NIEO are discussed in greater detail in Chapter 4.

[100] Anghie (n98) 18.

[101] Margot E. Salomon, 'Nihilists, Pragmatists and Peasants: A Dispatch on Contradiction in International Human Rights Law' (2018) *IILJ Working Paper 2018/5 (MegaReg Series)* 1, 4.

international courts and tribunals and the legal frameworks that imbue them with powers and jurisdiction (particularly within the international foreign investment architecture), and wider aspects of the international system, including its foundational concepts and the ideologies and norms these, and the system more widely, institutionalise and reproduce. A key aspect the thesis will examine is the allocation of legal rights and personality under international law and the processes behind these distributions and their role in producing systems of power. Furthermore, the thesis will also consider the impact of international law in both a positive and negative sense; in some instances, the presence of international law will contribute to the creation and exacerbation of disaster risk, while in other cases, such as in relation to the failure to effectively regulate multinational corporations, it will be more conspicuous and complicit by its absence and the lacunas it leaves. In this respect the thesis makes use of a pluralist[102] understanding of international law. It considers the international legal system to not just be the sole domain of states, but also of other actors including courts, tribunals, international institutions, and other non-state actors including multinational corporations and non-governmental organisations. The construction of international law is a social process, and a wide variety of actors contribute to this 'world constitutive process'[103] of producing international norms and rules. Thus, a wide range of aspects of international law should be considered when examining its relationship with disaster risk.

This approach results in several different elements of international law being considered throughout the thesis. Chapter Three, for example, examines the arguments and reasoning of early international legal jurists in colonial doctrines and the impact of this on the development of core concepts within international law such as statehood, territory, property, and sovereignty. It also considers how the universalisation of European values and gatekeeping of international law-making by European states led to Eurocentricity and specific structures and ideological underpinnings within the international system, which have impacted the further development of the law. Chapter Four then examines the legal architecture of IEcL, focusing particularly on the structure of its institutions, the policies they espouse, and their ideological preoccupations. It also examines some trade and investment frameworks to demonstrate the pathologies within these that result from the specific character of the international legal system, and their potential role in disaster risk creation. Chapter Five, meanwhile, focuses on the international law of

[102] For an account of pluralist approaches to international law see Paul Schiff Berman, 'A Pluralist Approach to International Law' (2007) Vol. 32 *The Yale Journal of International Law* 301; William Burke-White, 'International Legal Pluralism' (2004) Vol. 25 No. 4 *Michigan Journal of International Law* 963.
[103] Berman (n102) 306.

foreign investment. It considers the content and character of international investment treaties and the make-up, ideology, and decisions of investment arbitrations that are granted power under Investor-State Dispute Settlement systems codified within these agreements. This chapter also focuses on issues associated with the absence of international law; particularly its failure to effectively regulate multinational corporations and transnational liability for their actions. Finally, Chapter Six examines the historic relationship between Haiti and international law. Within this context international law's involvement comes in several forms. It begins with the role of the law in facilitating colonialism on the island and in granting European states the power to deny Haiti a place within international society through the nature of international rules on recognition. Within the more modern era, international law then plays a role in facilitating foreign interference within Haiti through the law of foreign investment, the policies and powers of international financial institutions, and the enabling of interventions by powerful states through Section VII powers under the UN Charter. It is argued that these many aspects of international law are all responsible for the creation and exacerbation of disaster risk in a number of ways.

A final caveat to the analysis of international law within the thesis is that, as mentioned, due to length constraints the analysis of specific areas of the law will focus on particularly problematic regimes of international law (primarily within international economic law (IEcL)); space precludes a detailed engagement with IDL, IHRL, or IEL frameworks.[104] It is not the intention of the thesis to specifically cherry-pick the more problematic areas of the law and ignore the more humane ones. Rather, with the limited number of words available, and as a starting point for discussions on international law and disaster risk creation, it is more important to highlight the especially problematic areas before moving on to the problems this poses for more socially and environmentally conscious regimes and their related shortcomings. Critical approaches to international law certainly have important things to say about IDL, IHRL, and IEL,[105] and these will be hinted at within discussions on the pathologies within international law more widely. However, a detailed enquiry on each of these regimes is beyond the bounds of this thesis. The analysis will point towards issues within the current developmental direction of IDL from a conceptual point of view, but length constraints prevent a detailed doctrinal exposition of specific IDL texts and their provisions.

[104] The conclusion of the thesis will have some discussion of where these regimes fit in the overall theoretical framework of the thesis, but unfortunately more detailed analysis is not possible during the PhD.
[105] For a brief discussion see FN95.

In order to demonstrate this disaster risk producing potential of international law, the thesis will make extensive use of critical approaches to international law – currently a relatively rare exercise within discussions on disasters and law.[106] The analysis will primarily draw on a combination of Marxist and Third World Approaches to International Law (TWAIL) to highlight the inherent connections between international law and imperialism, (neo-)colonialism, and capitalism, and how these cause the law to contribute to disaster risk. These theoretical frameworks will be discussed in the first chapter of the thesis. While the thesis primarily aims to contribute to discussions around disasters and international law and the development of IDL, it is also hoped that its analysis using a disaster lens may also prove insightful to TWAIL and Marxist scholars. It is here that the thesis can make a further novel contribution to international law literature. While the links between global capitalism, colonialism, and climate change[107] feature in TWAIL and Marxist scholarship, there is relatively less discussion on their connection to disasters and disaster risk. In this respect, the thesis can also contribute to and spark new conversations in these areas of literature.

Structurally, the thesis will proceed as follows: Chapter One is dedicated to elaborating the main critique of international law that the thesis will adopt, discussing the Marxist and TWAIL theoretical frameworks being used, and the interconnection between these two lenses. It will also further discuss the parameters of the thesis; what it seeks to analyse and what it is unable to and why.

Chapter Two will then properly unpack the various disaster-related terms that the thesis makes use of, such as disaster risk, vulnerability, hazards, capacities, and resilience. It will also discuss the conceptualisation and definition of disaster that will be used and will discuss the Pressure and Release (PAR) model theoretical framework for understanding disaster risk that the analysis of the thesis will draw on. Of particular interest will be the model's conceptualisation of the root causes of vulnerability, as it is within these that I will argue that international law's influence on

[106] Exceptions include Aronsson-Storrier (n14); Aronsson-Storrier (n); Upendra Baxi, 'Disasters, Catastrophes and Oblivion: a TWAIL Perspective' (2021) Vol. 2 *Yearbook of International Disaster Law* 72 who discusses disasters and TWAIL and the need for TWAIL scholars to have a greater engagement with 'the jurisprudence of catastrophes,' but does not connect international law to disaster risk creation in the same way this thesis will; and Gabrielle Simm, 'Disasters and Gender: Sexing International Disaster Law' (2021) Vol. 2 *Yearbook of International Disaster Law* 144, who applies a feminist lens to the field of IDL.

[107] See for example Olumide Abimbola, Joshua Kwesi Aikins, Tselane Makhesi-Wilkinson, and Erin Roberts, 'Racism and Climate (In)Justice: How Racism and Colonialism Shaped the Climate Crisis and Climate Action' (2021) *Heinrich Böll Siftung* available at < https://us.boell.org/en/2021/03/19/racism-and-climate-injustice-0> accessed 13 April 2023.

the creation of disaster risk is most clear. Also key to the analysis of the thesis is the understanding that disasters are long-reaching processes rather than just events and that they manifest as a result of social, political, and economic factors rather than 'natural' ones.

Chapters Three, Four, and Five will then work together to synthesise the different theoretical frameworks discussed in the first two chapters into a composite lens to analyse how international law plays a role in the creation of disaster risk, both in the modern day and historically. Chapter Three will begin this process by examining the origins of international law in the colonial era and its complicity in European colonialism and the Transatlantic Slave Trade and how this has contributed to the root causes of disaster risk, which continue to have consequences in the modern day. It will use the example of Anthony Oliver-Smith's '500-year earthquake' in Peru to demonstrate how historical pathologies can be transmitted into and produce disaster risk in the future.[108] Furthermore, the chapter will also analyse how the universalisation of European thought in this period and beyond through the development of international law has resulted in specific, and pathological framings of the relationship between human societies and nature. As a result, the natural world has become more hazardous to humans, demonstrating the role of international law in the creation and exacerbation of hazards as well as vulnerability.

Chapter Four will also continue this analysis into the post-United Nations era and modern day, highlighting how despite formal decolonisation many of the pathologies inherent within international law from the colonial era continue to persist today, contributing to the creation of disaster risk. The chapter will also discuss how these roots have influenced the development of regimes within IEcL and how distributions of power and wealth constructed within the colonial era have helped to facilitate the ideological capture of several important international institutions. The chapter will then identify examples of how this is leading to disaster risk creation.

Chapter Five then provides a more detailed analysis of the issues previously discussed, examining international foreign investment law to demonstrate this argument further. Several examples will be used to highlight the role of foreign investment in the creation and exacerbation of disaster risk, including Texaco/Chevron in Ecuador and Union Carbide's role in the Bhopal disaster in India. The chapter will demonstrate how a perverse system of investor-state dispute settlement and the failure of international law to effectively regulate multinational corporations and the

[108] Anthony Oliver-Smith, 'Peru's Hundred Year Earthquake: Vulnerability in Historical Context' in Anthony Oliver-Smith and Susanna Hoffman (eds.) *The Angry Earth: Disaster in Anthropological Perspective* (Routledge, 2019) 74.

liability for their actions have resulted in a system where corporations are able to constrain state action and produce disaster risk in host countries with relative impunity.

Finally, Chapter Six of the thesis will attempt to pull together the analysis of all the previous chapters and place the insights into an empirical context using the 2010 earthquake in Haiti as an illustrative example of the arguments of the thesis. It will trace the history of Haiti from being a French colony, through being the first free black republic and its struggle for recognition, to the 2010 Earthquake and subsequent cholera outbreak as a result of MINUSTAH. Alongside this history, the role of international law is examined, and specifically the ways in which it potentially contributed to disaster risk and the devastating 2010 earthquake disaster analysed. This single, detailed illustrative example was chosen to bring into sharp focus how the analysis offered in this thesis enables us to unveil and appreciate the role played by international law in compounding disaster risk in concrete contexts.[109]

Having set out the novel contribution and structure of the thesis, the next chapter will proceed to discuss the critical theoretical framework it adopts by examining the utility of TWAIL and Marxist approaches to international law.

[109] If given more space, an interesting further illustrative example to consider could be the 2010 earthquake in Chile which occurred five weeks after the one in Haiti. Despite being several-hundred times more powerful than the one that hit Haiti, the damage was nowhere near as severe and because of this Anthony Oliver-Smith uses comparisons between the two earthquakes and different histories of the countries involved to analyse the historic construction of vulnerability. Therefore, a similar exercise could be carried out comparing and contrasting the relationship of the two countries to international law and the role of this in the creation and reduction of disaster risk in their territories. For Oliver-Smith's insightful analysis see Anthony Oliver-Smith, 'Haiti and the Historical Construction of Disasters' (*Nacla,* 1 July 2010) <https://nacla.org/article/haiti-and-historical-construction-disasters> accessed 11 April 2023.

Chapter One: Theoretical Framework – Disasters as Planned Misery

1.1 Introduction

This chapter of the thesis will unpack the Marxist and Third World Approaches to International Law (TWAIL) critical frameworks that the thesis will be using and discuss the overall critique that the thesis will be advancing. It will lay out the arguments put forward by these critical approaches and discuss their differences and potential connections, drawing on Robert Knox's concept of 'stretched Marxism'[1] to attempt to reconcile them into a coherent overall framework. Through this the chapter aims to give a theoretical overview of the historical and current pathologies within the international legal system that the rest of the thesis will draw on.

Before getting into these individual theoretical frameworks, the first section of the chapter starts with a general critique of public international law, drawing on the works of Susan Marks and Jason Beckett. It will introduce the concept of 'false contingency',[2] which will frame the arguments of the thesis. This highlights how while some areas of the law (for our purposes, international disaster law (IDL), international human rights law (IHRL), and international environmental law (IEL)) are working to alleviate and prevent the conditions that result in disasters, the pathologies that will be identified within international law more widely serve to preclude the realisation of these normative aspirations. Marks's concept of 'planned misery' will then be drawn on to argue that in many respects disasters are an inherent outcome of the current configuration of the world, being the 'misery that belongs with the logic of particular socio-economic arrangements.'[3] The connection between these arrangements and the misery they inflict is often masked or underexamined. The sections on specific frameworks will then follow this in order to shine a light on the specific pathologies that contribute to this process and their root causes in an attempt to counter this.

The ultimate argument of the chapter, and the thesis more widely is that far from a neutral body of rules that emerged out of the need to regulate relations between European states, international law has instead been closely connected to (neo-)colonialism, imperialism, and the spread of the

[1] Robert Knox, 'Valuing Race? Stretched Marxism and the Logic of Imperialism' (2016) Vol. 4 No. 1 *London Review of International Law* 81.
[2] See Susan Marks, 'False Contingency' (2009) Vol. 62 No. 1 *Current Legal Problems* 1; Susan Marks, 'Human Rights and Root Causes' (2011) Vol. 74 No. 1 *The Modern Law Review* 57.
[3] Marks (n2) 75.

capitalist mode of production throughout its history, and this has often had highly deleterious consequences for many people across the world. Not only were international law and its intimate connections with colonialism, constructions of race, and the spread of capitalism and other European practices and ideologies instrumental in shaping and facilitating specific hierarchies of wealth and power within the international system; but international law, for the most part, also continues to serve the interests of those powerful states that have historically used the international legal system for their benefit at the expense of others. Building on this chapter, the rest of thesis will elaborate on how these pathologies within the international system have had a profound impact on the creation of disaster risk throughout history, contributing to the root causes of vulnerability and the creation and exacerbation of hazards.

The chapter begins by discussing the concepts of 'false contingency' and 'planned misery' in the section below, before moving onto an analysis of TWAIL and Marxist approaches to international law to highlight precisely how international law undermines its own normative aspirations and often precludes the beneficial potential of its more socially conscious regimes.

1.2 False Contingency and Planned Misery

The arguments of TWAIL and Marxist scholars detailed in the sections following this one will highlight how, far from being a neutral, apolitical set of rules and institutions, international law serves to subjugate and dispossess the citizens of certain states for the benefit of others. Due to the intimate connection between imperialism and colonialism[4] and international law throughout much of their histories, it can be argued that modern public international law contains an awkward dichotomy of being anti-colonial in form but neocolonial in function.[5] Formal

[4] The terms imperialism and colonialism will both be used within this thesis. As Gathii has highlighted, exact definitions of imperialism can vary, however a central feature is 'dominating, restructuring, and having authority over colonial peoples,' that the relationship between people subject to imperialism and those imposing it on them is defined by 'power, domination, hegemony, and control' (Gathii, 1016). Some understandings of imperialism also tie it intimately to the expansion of capitalism and search for markets and the use of violence to facilitate this (Ibid), as the brief discussion on Rosa Luxembourg's work later in this chapter will demonstrate. For the purposes of this thesis therefore imperialism is the process of one society dominating, controlling, and transforming another for their own gain, generally as a feature of capitalism. Colonialism meanwhile is 'the territorial annexation and occupation of non-European territories by European states' (Gathii, 1014), this is an activity in its own right, but is also a potential feature of the process of imperialism and the two are closely related. For a fuller discussion of different conceptualisations of imperialism and colonialism see James Thuo Gathii, 'Imperialism, Colonialism, and International Law' (2007) Vol. 54 No. 4 *Buffalo Law Review* 1013.

[5] Jason Beckett, 'Yes, International Law Really is Law' (*Critical Legal Thinking,* 12 July 2021) <https://criticallegalthinking.com/2021/07/12/yes-international-law-is-really-law/> accessed 15 April 2023.

independence was realised in part through international law and discursively the discipline is generally staunchly anti-colonial, therefore creating the appearance that it has progressed from its colonial past. However, as the analysis of the thesis that follows will discuss, international law functionally facilitates neocolonialism in a number of ways, continuing to 'materialize the colonial functions of disciplining and plundering the under-developed world.'[6] In this way there are both performative and actualised systems of public international law; while the former speaks of normative goals, the latter, highly actualised, operates to preclude many of these goals in its functioning.[7] In this way, as will be argued, it is an international law of 'poverty, debt peonage, and enforced under-development, [that] maintains and directs flows of wealth and poverty in our radically unjust world.'[8] It is the functional law of passports and visa controls, international postal services, the internet, and shipping lanes, for example, but also of trade liberalisation which regulates the distribution and concentration of resources globally.[9] This role of the law in distributional processes will be an important aspect of the arguments made in subsequent chapters.

Beckett argues that this awkward dichotomy can be effectively analysed by elaborating on Marks's concept of 'false contingency.'[10] While Marks' own work on the concept uses it to discuss the manner in which the root causes of phenomena are often masked and not investigated sufficiently deeply (as will be discussed shortly), Beckett argues a further use of the concept which is based on the idea that a 'contingency is a possibility, something that may or may not happen. It remains contingent until it is either realised or precluded. A false contingency is an apparent possibility that is already precluded by systemic factors.'[11] It is therefore argued that many of the ethical and progressive impulses of public international law are false contingencies, already precluded by the international legal system more widely, especially in the realm of International Economic Law (IEcL). As Marks writes, '[w]hile current arrangements can indeed be changed, change unfolds within a context that includes systemic constraints and pressures.'[12] In this vein, Usha Natarajan and Kishan Khoday, for example, criticise IEL for shaping knowledge on the correlation between international law and nature in misleading ways, 'systematically emphasiz[ing] the discipline's protective potential and conceal[ing] its destructive

[6] Ibid.
[7] Ibid.
[8] Ibid.
[9] Ibid.
[10] Marks (n2).
[11] Beckett (n5).
[12] Marks (n2) 2.

role.'[13] This is one of the primary arguments of the thesis in relation to IDL: that developments within international disaster law will ultimately be unsuccessful if the regime fails to also come to terms with the impacts of international law more widely on disaster risk. Any changes wrought by the regime of IDL will be occurring within the context of the current system and its constraints and pressures. Therefore, its development within the existing structures of international law – and drawing on its foundations without properly interrogating or reforming these – risks incorporating pathologies into its own system of laws or being subsumed into the greater system and legitimising it.[14]

This occurs in part due to the fragmentation of international law,[15] which artificially separates different regimes from one another and can mask the character of the international system as a whole. As Beckett argues, public international law is a 'fragmented discourse of legal texts, decisions, and arguments, sketching ideal worlds while ignoring the constraints of reality.'[16] Part of this is how 'the regimes of international economic law rely on the fabricated bifurcation, both in theory and institutional practice, of distinct economic and (so-called) non-economic realms.'[17] This process of fragmentation has seen the economic spheres insulated from other areas of international law,[18] largely placing them outside the scope of regimes like IHRL. The result is that many areas of international law often sit within their own institutional siloes with little direct interaction with or awareness of the workings of other areas of the law.[19] The failure of IHRL

[13] Usha Natarajan and Kishan Khoday, 'Locating Nature: Making and Unmaking International Law' (2014) Vol. 27 *Leiden Journal of International Law* 573, 575-576. For more detailed in this relationship between international and nature see Chapter 3.

[14] A brief discussion on how this is potentially the case with IHRL and IEL can be found later in the conclusion of the thesis.

[15] On this fragmentation see Martti Koskenniemi, 'Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law' (2006) International Law Commission UN Doc. A/CN.4/1.682.

[16] Beckett (n5).

[17] John Linarelli, Margot E. Salomon, and Muthucumaraswamy Sornarajah, *The Misery of International Law* (Oxford University Press, 2018) 2.

[18] Ibid., 3.

[19] This creates issues even with like-minded regimes such as disaster risk reduction and climate change frameworks where differences in terminology and institutional directions can hinder cooperation between areas of law which should have a natural affinity with one another. On this see International Federation of the Red Cross (IFRC), 'Global Synthesis Report on Law and Policies for Climate Resilience: Enhancing Normative Integration Between Climate Change Adaptation and Disaster Risk Reduction' (IFRC, 2021) available at <https://disasterlaw.ifrc.org/sites/default/files/media/disaster_law/2021-08/20210803_DRR_CCA_FinalDoc_ONLINE.pdf > accessed 7 June 2022; Tommaso Natoli, 'Improving Coherence Between Climate Change Adaptation and Disaster Risk Reduction through Formal and Informal International Lawmaking' (2022) Vol. 13 No. 1 *Journal of International Humanitarian Legal Studies* 78. On issues over terminology see Anne Siders, 'Resilient Incoherence – Seeking Common Language for Climate Change Adaptation,

and IEL to achieve their normative aims is often then painted as an issue of compliance and lack of enforcement rather than being ascribed to wider structural issues undermining them and the delimiting of contingency.[20] This is a trap that IDL is potentially at risk of falling into. The focus on developing IDL with one hand, while being blind to what other regimes of international law may be doing with the other means that IDL risks never fully realising its normative aims of properly reducing disaster risk reduction and preventing the disasters that stem from it.

The concept of false contingency therefore helps us to render visible the laws that are fully actualised and consistently, materially impact the world and those that are not, with many progressive frameworks often falling into the latter camp to a greater or lesser extent.[21] It also explains why these laws are not actualised; as discussed, public international law takes place within a wider system of laws, and it is this larger system which dictates which visions of the law will be realised and which will not.[22] As Linarelli, Salomon, and Sornarajah write, '[t]oday, international law – from international economic regulation to human rights – is shaped by an economic project premised on the private accumulation of transnational capital, and on its arrogation of the common wealth, social values, and the structures that sustain them.'[23] The key point is that the preoccupations of IEcL are given primacy over competing concerns in other areas of international law. Beckett argues that while discursively IEcL is part of the regular normative framework of public international law, being an indeterminate battleground contested by different ideologies, in practice it is an actualised and institutionalised legal system comprised of the International Monetary Fund, World Bank, World Trade Organisation, and the system of International Investment Arbitration.[24] In contrast to the relatively weak enforcement mechanisms of IHRL and IEL, all four of these IEcL institutions possess actualised, coercive authority over laws with real tangible impacts, and the ability to enforce their decisions; this is also complemented by an ideological homogeneity which serves to produce a legal order that stands in contrast to much of the rest of public international law.[25] It dictates social and economic policy in the developing world, enforcing these commands with the threat of robust economic sanctions, therefore straddling both the performative and actualised normative orders

Disaster Risk Reduction and Sustainable Development' in Jacqueline Peel and David Fisher (eds.) *The Role of International Environmental Law in Disaster Risk Reduction* (Brill, 2016) 101.

[20] Beckett (n5).

[21] Ibid.

[22] Ibid.

[23] Linarelli, Salomon, and Sornarajah (n17) 2.

[24] Beckett (n5).

[25] Ibid.

of public international law.[26] In short, discursively IEcL is indeterminate and part of the performed order of public international law, but in practice it is an institutionalised legal system that is very much actualised.[27]

This can be contrasted with the frameworks of 'progressive' public international law, which generally contain less robust enforcement mechanisms, or are relegated to the realm of soft law or duties with progressive realisation rather than concrete commitments (economic, social, and cultural rights within IHRL, for example). Such soft law is denied the status of binding law 'by embracing a positivist conceptualisation of law that is on the one hand de-linked from underlying social relations, and on the other hand, obsessed with (pseudo-) clarity of obligations and the availability of (unreflective) sanctions.'[28] Because of this, it remains 'marginal to the operation of the international legal system.'[29] With the limited exception of civil and political rights protected by regional human rights courts, which necessarily have geographically limited jurisdictions, and the individual complaints procedure for international frameworks, which still have only rudimentary enforcement procedures,[30] many progressive areas of public international law lack proper actualisation, in contrast to the wide and deep penetration of those that control the global economy.[31]

This is particularly problematic when, as will be argued, the regimes and institutions of IEcL are responsible for policies and processes which can immiserate and dispossess individuals across the world, result in grotesque inequalities between the rich and poor, and produce a range of other pathologies that create disaster risk. As Linarelli, Salomon, and Sornarajah write succinctly, IEcL 'enriches the few at the expense of everyone else, it wrongs women with particular efficiency, and is environmentally destructive and unsustainable.'[32]

---

[26] Ibid. This is not to suggest that these institutions and the regimes they govern are able to act with total impunity or without pushback; recent decades have seen resistance against the WTO and the current exodus from the Energy Charter Treaty suggests that states, including those in the Global North, are noticing the detrimental impact of these frameworks and taking action accordingly. For a fuller discussion on these regimes and institutions and their issues see Chapter 4.

[27] Ibid.

[28] B. S. Chimni, 'An Outline of a Marxist Course on Public International Law' (2004) Vol. 17 *Leiden Journal of International Law* 1, 16.

[29] Ibid.

[30] Ilias Bantekas and Lutz Oette, *International Human Rights Law and Practice* (Cambridge University Press, 2016, Second Edition) 322.

[31] For a more detailed discussion of international economic law and its institutions see Chapter 4.

[32] Linarelli, Salomon, and Sornarajah (n17) 1.

A regime of IDL that fails to make visible or attempt to remedy the wrongs perpetrated by other areas of international law risks failing to properly understand the ultimate causes behind many disasters. While a conceptual understanding of disasters and disaster risk has become integral to IDL, as it has moved beyond just disaster response, a failure to contend with the disaster risk creation of international law and the global economy masks their role in disasters across the world, leading to an inability to properly reduce disaster risk. Instruments can talk of the need to alleviate 'the consequences of poverty'[33] to reduce such risk, but this is insufficient on its own – IDL also needs to properly explore the root causes of this poverty[34] and attempt to address this if it is to truly achieve its aims.

The tendency of IDL to address disaster without taking cognizance of the role played by IEcL in disaster creation or exacerbation is a special case of a broader phenomenon afflicting international law. Susan Marks and Hilary Charlesworth have examined this phenomenon in terms of the blindspots of IHRL, which has shown a tendency not to interrogate the root causes of human rights crises, which are often related to economic policies. Drawing on the work of Naomi Klein,[35] Marks has astutely highlighted the historical tendency for this phenomenon within the IHRL regime. Klein explains, for example, how a 1976 Amnesty International report on human rights abuses in Argentina highlighted a range of incidences of state-sponsored violence; however it made no mention of the fact that 'at the same time as it was engaging in systematic torture and disappearance, the junta was in the process of restructuring the country's economy along radically neo-liberal lines.'[36] Indeed, Marks describes how the report lists a multitude of civil liberty violations but makes no reference to the wider context of the situation driving this, such as 'laws that led wages to be lowered and prices increased' or to 'the abrupt abrogation of social protection and redistributive schemes' that resulted in a deepening of poverty.[37] Such context is important in understanding 'why such extraordinary repression was necessary, just as it would have explained why so many of Amnesty's prisoners of conscience were peaceful trade unionists and social workers.'[38] There was therefore a failure to interrogate

[33] See Paragraph 6 of the Sendai Framework. Other paragraphs also speak of 'poverty eradication' but again do not speak of the need to examine the processes that produce poverty. See UNISDR, 'Sendai Framework for Disaster Risk Reduction 2015-2030' (18 March 2015) UN Doc. A/CONF.224/CRP (Sendai Framework).
[34] For a fuller discussion on 'poverty as a legal regime' see Jason Beckett, 'Creating Poverty' in Anne Orford and Florian Hoffman (eds.) *The Oxford Handbook of the Theory of International Law* (Oxford University Press, 2016) 985.
[35] Naomi Klein, *The Shock Doctrine* (Penguin Books, 2007).
[36] Marks (n2) 58.
[37] Ibid.
[38] Klein (n35) 119-120.

the root causes of these events going on in Argentina, to properly understand the drivers of the documented human rights abuses. Without such scrutiny these abuses and other miseries like poverty, and as will be argued, disasters, risk becoming 'random, free-floating bad events, drifting in the political ether,'[39] detached from their causes.

Hilary Charlesworth has also discussed this phenomenon within international law more widely, writing that the discipline's focus on crises 'is technically limited because it rests on truncated and selective understandings of events; it also diverts attention from structural issues of global justice.'[40] This myopic preoccupation with a shallow understanding of crises serves to leave root causes and wider injustices unexamined. The preoccupation with great crises rather than the politics of everyday means that 'international law steers clear of analysis of longer-term trends and structural problems.'[41] In this way discussions on disasters and international law risk focusing only on the event as a technical problem and how it should be managed and not on the longer-term processes and the role of law in these.

Indeed, in reading Marks' analysis of root causes of human rights crises, potential parallels with international law's current approach to disasters can also be found. She writes for example, that 'attention is directed at abuses, but not at the vulnerabilities that expose people to these abuses. Or there is discussion of vulnerabilities, but not of the conditions that engender and sustain those vulnerabilities.'[42] The word 'abuses' could be replaced with 'disaster' and this quote would be neatly reflective of some criticisms directed at IDL and its historical focus on hazards over vulnerability, the response to disasters as events rather than processes, and its current failure to more deeply interrogate the root causes of vulnerabilities that cause the impacts of hazards to become disasters. Likewise, Marks also argues in the context of human rights that when focus is turned onto the conditions 'that engender and sustain vulnerabilities' it remains blind to the 'larger framework in which those conditions are systematically reproduced.'[43] This is precisely the argument that this thesis is making in relation to disasters – that IDL focuses on its own discrete area without analysing international law more widely and in a critical manner.

[39] Ibid., 120.
[40] Hilary Charlesworth, 'International Law: A Discipline of Crisis' (2002) Vol. 65 No. 3 *Modern Law Review* 377, 382.
[41] Ibid., 389.
[42] Marks (n2) 71.
[43] Ibid., 71.

While connected, in this respect Marks's concept of false contingency works in the opposite direction to Beckett's conceptualisation. While Beckett's is forward looking and discusses the preclusion of the realisation of future eventualities by systemic factors, Marks's conceptualisation is more backwards looking; it focuses on the concealment of the systemic causes behind particular phenomena. The contingency behind human rights abuses, or for our purposes disasters, is masked, leading to '[t]he systemic context of abuses and vulnerabilities [being] largely removed from view.'[44] As mentioned this can lead to bad events like disasters and human rights violations appearing random, accidental, or arbitrary, and such a framing impacts the prospects for countering them as they may feel inevitable and unavoidable – just a natural part of the world.[45] It is precisely this sort of mindset and the misnomer of 'natural' disasters[46] that disaster studies has been attempting to counter for decades. However, while international law certainly accepts that disasters are preventable and has frameworks that seek to achieve this goal, the failure to critically interrogate the root causes of disaster risk, including the role of international law and the global economy, means that there still remains a vestige of the attitude of inevitability towards disasters.

Marks herself has termed this phenomenon 'planned misery.' She is quick to stress that this does not necessarily denote misery that is intentionally inflicted, though this may be the case; rather, it is 'misery that belongs with the logic of particular socio-economic arrangements.'[47] Such arrangements include international law, particularly international economic law, and the functioning of the global economy. This thesis will therefore seek to highlight the role of the law in contributing to the root causes of vulnerability and the creation and exacerbation of hazards, resulting in the 'misery' of disasters. In this respect, the failure in current discussions on disasters and international law to connect international law to the creation of disaster risk or to attempt to remedy this relationship means accepting this disaster risk creation as a natural part of the world and the miseries that it produces as inevitable side effects of how the world must be ordered. Disasters can therefore be considered planned misery, devastating consequences of the current international order, either deemed unfortunate externalities of a necessary socio-economic

[44] Ibid., 75.
[45] Ibid., 75.
[46] Ksenia Chmutina, Jason von Meding, and Lee Bosher, 'Language Matters: Dangers of the "Natural Disasters" Misnomer' (2019) at <https://www.preventionweb.net/publications/view/65974> accessed 20 April 2023. This misnomer is discussed in greater detail in Chapter 2.
[47] Marks (n2) 75.

system, or with their root causes obfuscated by the fragmentation of international law, the 'natural disaster' misnomer, and other shallow understandings of disasters and their causes.[48]

To summarise, it is precisely this framing and false contingency that this thesis seeks to counter. By shining a spotlight on the pathologies within international law, their genealogies, and how they contribute to disaster risk, it hopes to draw out the contingencies and demonstrate how disasters are not largely inevitable. Instead, it is argued they are in part a result of specific structures, institutional ideologies, and processes within the international legal system. In order to begin this process, the following sections will now discuss the theoretical frameworks that the thesis will use in its analysis and how they highlight and explain the pathologies within international law both historically and in the modern day.

1.3 TWAIL and Marxist Approaches to International Law

While the preceding section has sought to highlight the two normative orders of public international law, and how the more pathological, actualised one often undermines the aims of the other through its functioning, this section will now seek to theorise and describe in greater detail the exact nature of these issues within the international legal system and where they stem from. To do this, the analysis makes use of both TWAIL and Marxist approaches to international law. While these theoretical approaches share some similarities in their criticisms of international law and its connection to imperialism, there are also clear differences between the two. The individual explanatory focus of each will be discussed in their appropriate sections, before a third section on Robert Knox's concept of 'stretched Marxism' will discuss how rather than being competing approaches, the two can be reconciled to produce a synthesised framework containing the important insights of both.

[48] On the need for IDL to engage more significantly with critical disaster studies scholarship see Marie Aronsson-Storrier, 'Beyond Early Warning Systems: Querying the Relationship Between International Law and Disaster Risk (Reduction)' (2020) Vol. 3 *Yearbook of International Disaster Law* 51.

1.3.1 Third World Approaches to International Law (TWAIL)[49]

TWAIL scholars argue that the international legal system is unjust, that it 'is a predatory system that legitimizes, reproduces and sustains the plunder and subordination of the Third World by the West.'[50] While the term 'Third World'[51] may once have been used as a category of denigration, it has evolved to become one of solidarity for the perspectives of those communities experiencing disadvantage at the hands of the West and the international legal system. Because of this, '[t]he term "Third World" was deliberately and boldly chosen' it 'refers not only to a geographical entity but also, variously, to a project of solidarity, a heuristic to understand the plight of disadvantaged communities and the structures that bring about exclusion and inequality and a politics of anti-subordination.'[52]

TWAIL scholars therefore seek to expose how international law has been complicit in imperialism, colonialism, slavery, and other forms of exploitation and subjugation of non-European peoples. They argue that this dynamic has occurred throughout the history of international law, and indeed was foundational to the origins of the discipline.[53] For TWAIL scholars therefore, far from being incidental to international law, colonialism is intimately intwined with the development of the international legal system.

---

[49] Chapter 3 and 4 of the thesis draw extensively on TWAIL analysis of international law, so for the sake of length constraints and avoiding repetition this section provides a brief, general overview of the themes and arguments of TWAIL literature and its scholars rather than highly in-depth analysis. A comprehensive list of TWAIL literature can be found in the appendix of James Thuo Gathii, 'The Promise of International Law – A Third World View' (2020) *Grotius Lecture Presented at the 2020 Virtual Annual Meeting of the American Society of International Law June 25, 2020.*

[50] Makau Mutua and Antony Anghie, 'What Is TWAIL?' (2000) Vol. 94 *Proceedings of the Annual Meeting (American Society of International Law)* 31, 31.

[51] While accepting that there are distinctions between the terms, the thesis will use the terms 'Third World' and 'Global South' relatively interchangeably to refer to regions in Asia, Central and South America, Africa, and Oceania, particularly those that suffered under European imperialism. These are not necessarily fixed categories, as Luis Eslava writes, '[t]he categories of South and North are used in TWAIL scholarship not as hard markers of differentiation, but to analyse the evolution – and the continuities and discontinuities – of global economic, political, and legal relations.' See Luis Eslava, 'TWAIL Coordinates' (*Critical Legal Thinking,* 2 April 2019) < https://criticallegalthinking.com/2019/04/02/twail-coordinates/> accessed 27 April 2023.

[52] Antony Anghie, 'Rethinking International Law: A TWAIL Retrospective' (2023) Vol. 34 No. 1 *European Journal of International Law (EJIL Foreword)* 1, 2. On the Third World as a category see Balkrishnan Rajagopal, 'Locating the Third World in Cultural Geography' (2000) Vol. 15 No. 2 *Third World Legal Studies* 1.

[53] See, for example, Antony Anghie, 'Francisco de Vitoria and the Colonial Origins of International Law' (1996) Vol. 5 No. 3 *Social & Legal Studies* 321; Antony Anghie, *Imperialism, Sovereignty, and the Making of International Law* (Cambridge University Press, 2005).

While Third World approaches has grown as a critical scholarly network and become more prominent since the late 1990s,[54] it is not an entirely recent phenomenon, but emerged out of the decolonisation movement following the Second World War.[55] Contemporary scholarship develops and builds on work carried out by pioneering Third World jurists, particularly those of the Group of 77 and Bandung Conference.[56] In many ways it is a political project as much as it is an intellectual approach.[57] It also shares objectives and some theoretical overlap with other critical regimes like feminist and Marxist approaches to international law and critical race theory (CRT), and is a coalitionary movement in this respect.[58] As Anghie notes, the name is Third World 'Approaches' rather than a Third World 'Approach,' demonstrating the encouragement of plurality within the movement.[59]

In general TWAIL scholars seek to dispel the traditional, parochial narrative of the origins of international law emerging from the 1648 Peace of Westphalia, and instead argue that it emerged out of the colonial encounter and the need to subjugate and exploit communities outside of Europe and the rationalisations and justifications for this activity.[60] As Jennifer Pitts writes, '[i]nternational law, together with structures of international governance, is in important respects a product of the history of European imperial expansion.'[61] Historically it 'supplied justifications for the actions of imperial states and their agents: from the conquest of territory, to the seizure

[54] James Thuo Gathii, 'TWAIL: A Brief History of Its Origins, Its Decentralized Network, and a Tentative Bibliography' (2011) Vol. 3 No. 1 *Trade Law and Development* 26, 27. As the title suggests Gathii provides a history of the TWAIL network beginning with a group of Harvard Law School graduate students in 1996. A detailed history of TWAIL can also be found in Anghie (n52).

[55] Mutua and Anghie (n50) 31.

[56] Ibid., 39. As Mutua describes (ibid, 32) the Group of 77 was formed by Third World states as a forum for discussing issues and remedies to the current international political and economic order. The 1955 Bandung Conference meanwhile was a meeting of newly independent states seeking to articulate their position on international relations and international law and to discuss solutions for the issues they faced. It is discussed in more detail in Chapter 4. Such Jurists include R. P. Anand, Mohammed Bedjaoui, and T. O. Elias. For some of their writings, see for example: R. P. Anand, *New States and International Law* (Vikas Publishing House, 1972); Mohammed Bedjaoui, *Towards a New International Economic Order* (Holmes & Meir Publishers/UNESCO, 1979) available at <https://unesdoc.unesco.org/ark:/48223/pf0000035806> accessed 13 August 2021; Taslim O. Elias, *Africa and the Development of International Law* (A. W. Sijthoff, 1974).

[57] Antony Anghie, 'Imperialism and International Legal Theory' in Anne Orford and Florian Hoffmann (eds.) *The Oxford Handbook of the Theory of International Law* (Oxford University Press, 2016) 156, 165.

[58] Mutua and Anghie (n50) 38; B. S. Chimni, 'Third World Approaches to International Law: A Manifesto' (2006) Vol. 8 No. 1 *International Community Law Review* 3, 22.

[59] Anghie (n53) 3.

[60] Linarelli, Salomon, and Sornarajah (n17) 78. For accounts of the history of international law in geographies beyond Europe see, for example, Bardo Fassbender, Anne Peters, and Simone Peter (eds.), *The Oxford Handbook of the History of International Law* (Oxford University Press, 2014).

[61] Jennifer Pitts, *Boundaries of the International: Law and Empire* (Harvard University Press, 2018) 2.

of other powers' ships, to the imposition of unequal or discriminatory trade regimes.'[62] In addition to this historical approach TWAIL scholars also seek to highlight how international law continues to subordinate the people of the Global South for the benefit of the Global North in the modern day, arguing that international law's imperialist character persists despite formal decolonisation and progress that has been made by post-colonial states.

In the arguments of TWAIL scholars, international law is not a neutral, universal set of rules, but is instead comprised of Eurocentric structures and foundations that were originally developed to subjugate and exploit people outside of Europe. Despite its claims to universality, international law's founders themselves unambiguously asserted its Christian and European character and roots, with Hugo Grotius tracing the origins of the discipline to the Sixteenth Century Spanish Christian scholar and theologian Francisco de Vitoria.[63] Antony Anghie in particular has highlighted how Vitoria's own work emerged out of the encounter between the Spanish and American 'Indians,' and the perceived need to regulate relations between these two differing societies.[64] Through his juridical arguments Vitoria sought to universalise Spanish social and cultural practices and impose these on the indigenous American societies as a universal framework of law.[65] Because of these origins and the history of the further development of international law, Third World jurists have argued that 'international law is premised on Europe as the center, Christianity as the basis for civilization, capitalism as innate in humans, and imperialism as a necessity.'[66] The spread of international law through colonialism therefore saw 'the assimilation of […] non-European peoples into a system of law which was fundamentally European in that it derived from European thought and experience.'[67] In this respect international law is universal only in geographic terms, not normative ones.[68] The presence of these European ideologies within the DNA of international law is one key pathology which the thesis will look at in detail, examining its impact on disaster risk.

---

[62] Ibid., 3.
[63] Mutua and Anghie (n50) 33. Vitoria and his work are discussed in greater detail in Chapter 3.
[64] Anghie (n53) 15.
[65] Ibid., 20-21.
[66] Mutua and Anghie (n50) 33. For further discussion on the Eurocentricity of international law see James Thuo Gathii, 'International Law and Eurocentricity' (1998) Vol. 9 *European Journal of International Law* 184; Arnulf Becker Lorca, 'Eurocentrism in the History of International Law' in Bardo Fassbender and Anne Peters (eds.) *The Oxford Handbook of the History of International Law* (Oxford University Press, 2012) 1034.
[67] Anghie (n53) 33.
[68] Mutua and Anghie (n50) 31.

The universalisation of European thought through international law occurred due to the perceived superiority of European culture and its political, economic, and social practices when compared to other areas of the world. European states were argued to be the apex of civilisation to which all other communities should aspire, and different forms of organisation and practices were considered to be backwards and savage, primitive steps on a continuum that ended with European society.[69] It was this 'dynamic of difference' judged using the 'standard of civilisation'[70] that was used to separate the people of the world into different categories.[71] As argued by Anghie, key to this process and the colonisation that followed was the notion of sovereignty, which was central in managing and justifying colonialism by rendering non-European societies as 'unsovereign', as a result of their cultural and societal deficiencies which saw them denied entry to the civilised international society.[72] Indeed,

> [t]he colonial confrontation was not a confrontation between two sovereign states, but between a sovereign European state and a non-European state that, according to the positivist jurisprudence of the time, was lacking in sovereignty. Such a confrontation poses no conceptual difficulties for the positivist jurist who basically resolves the issue by arguing that the sovereign state can do as it wishes with regard to the non-sovereign entity, which lacks the legal personality to assert any legal opposition.[73]

The content of what constituted 'civilised' was set by European states based on their own perceived superiority.[74] As Mutua writes, 'sovereign statehood, as defined by the European powers, was the difference between freedom and the conquest and occupation of a people or a society.[75] It was also through this process that international law played a role in the construction of race, using this as a system for administering differing rights under international law and using the artifices of purported racial differences to justify colonial activities.

---

[69] Anghie (n53) 3-4.

[70] For a detailed discussion on the 'standard of civilisation' see, for example, Ntina Tzouvala, *Capitalism as Civilisation* (Cambridge University Press, 2020); Gerrit Gong, *The Standard of 'Civilization' in International Society* (Oxford University Press, 1984).

[71] Anghie (n53) 37.

[72] Ibid., 58-60.

[73] Ibid., 34. Quoted in Mutua and Anghie (n50) 33.

[74] Chapter 3 of the thesis examines the content of the concept of 'civilisation' in greater detail. For a further discussion see also Tzouvala (n70) Chapters 1 and 2.

[75] Mutua and Anghie (n50) 33.

Racialisation followed inevitably from the distinction between civilised and uncivilised peoples which was achieved through a racialised scientific lexicon.[76] This racialisation then infected the vocabulary of positivists, with the distinctions described above becoming integrated into the very foundations of the discipline within ostensibly neutral concepts like 'sovereignty,' 'law,' and 'society.'[77] Understandings of who was civilised and who was not were based on racial constructs, and this was used to justify colonial practices and transformations. As Ntina Tzouvala writes,

> [t]his imaginary of the non-European world as inherently stationary and needing to be dragged into civilisation kicking and screaming naturally gravitated towards biological explanations of power relations. Within this context, invocations of racial, gendered and infantilising tropes were not just distasteful transgressions or individual eccentricities, but rather a way of justifying the imposition and monitoring of a wide range of juridical practices of domination and disciplining.[78]

In this way international law was also intimately tied to imperialism, with positivist language towards non-European peoples 'presenting them as suitable objects for conquest, and legitimizing the most extreme violence against them all in the furtherance of the civilizing mission – the discharge of the white man's burden.'[79] Not only was discourse around uncivilised societies as rendered by international law used to justify violence and plunder, but it was also justified as good for the affected people, forcibly bringing them closer to the European civilisational ideal.

Eventually the end of the Second World War witnessed the collapse of European empire and many former colonies achieved decolonisation and formal independence under international law. However, as TWAIL scholars continue to argue, many post-colonial states found that this independence was largely illusory, with their societies still bound legally, economically, and politically to the former imperial powers.[80] Mutua for example points towards the dominance of the Security Council, which contains three Western powers as permanent members, over the

---

[76] Anghie (n53) 66.
[77] Ibid., 101-102.
[78] Tzouvala (n70) 68.
[79] Anghie (n53) 38.
[80] Mutua and Anghie (n50) 34. Chapter 4 of the thesis discusses the persistence of many of the colonial era pathologies within international law and Third World responses to these in greater detail.

more democratic General Assembly where every state gets an equal vote, in maintaining the hegemony of the West.[81] Furthermore, as will be discussed in detail in Chapter Four, newly-independent states found their economic independence constricted by international financial institutions and the multinational corporations of powerful states.[82] Globalisation has often had a highly detrimental effect on the welfare of people in the Global South, with neoliberal[83] orthodoxy advanced by these institutions and their wealthy backing states undermining their economic and political independence.[84] TWAIL scholars also argue that racial characterisations of savagery and backwardness persist in modes of argumentation on human rights, international criminal law, and foreign interventions.[85]

Based on this history of international law and the identification of its many pathologies, Third World approaches are therefore driven by three interrelated objectives:

> The first is to understand, deconstruct, and unpack the uses of international law as a medium for the creation and perpetuation of a racialized hierarchy of international norms and institutions that subordinate non-Europeans to Europeans. Second, it seeks to construct and present an alternative normative legal edifice for international governance. Finally, TWAIL seeks through scholarship, policy, and politics to eradicate the conditions of underdevelopment in the Third World.[86]

Important to these objectives is challenging the limited geography of places and ideas within international law, 'characterized by the law of Geneva, the law of Strasbourg, the law of New York and that of Washington DC.'[87] As Gathii writes, these are the places that produce international law that is then celebrated as the benchmark for efficacy and that influences and

---

[81] Imbalances in international law-making and the non-binding nature of General Assembly Resolutions are also discussed in Chapter 4.

[82] Mutua and Anghie (n50) 35.

[83] Neoliberalism, and international law's embrace of it, is discussed in greater detail in Chapter 4. However, to briefly summarise, for the purposes of the thesis the term refers to an economic system premised on the superiority of the market as an arbiter for human needs which sees its realisation through policies including privatisation, austerity, and the liberalisation of trade. For a more detailed discussion see Section 4.3.

[84] Chimni (n58) 3.

[85] Tzouvala (n70) 70. See, for example, Makau Mutua, 'Savages, Victims, and Saviors: The Metaphor of Human Rights' (2001) Vol. 42 *Harvard International Law Journal* 201; Sujith Xavier and John Reynolds, 'The Dark Corners of the World: International Criminal Law and the Global South' (2016) Vol. 14 *Journal of International Criminal Justice* 959; Robert Knox, 'Civilizing Interventions? Race, War and International Law' (2013) Vol. 26 *Cambridge Review of International Affairs* 111.

[86] Mutua and Anghie (n50) 31.

[87] Gathi (n49) 2.

reinforces understandings.[88] This state of affairs perpetuates the inequitable history of international law that saw the law produced in the West and imposed on others as passive recipients. In response, therefore, TWAIL scholars argue that the Third World is an 'epistemic site of production and not merely a site of reception of international legal knowledge.'[89] Such an argument is important in countering conventional narratives of international law and ensuring that the accounts of the history of the discipline and its pathologies detailed above are heard. It is also important in the democratisation of the law; only by dismantling knowledge hierarchies can the long-standing Eurocentricity of international law be countered and a more cosmopolitan and just order be created.

The above discussion has been a necessarily brief overview of the arguments of TWAIL scholarship; however, it is indicative of the main themes and arguments in the writing of its scholars and Chapters Three and Four of the thesis will pick up and continue many of these threads in greater detail. The next section will discuss the other radical critical approach the thesis will be using: Marxist approaches to international law. Many connections can be found with TWAIL scholarship, such as a preoccupation with international law and imperialism, but also differences, which the section after the next aims to reconcile through the concept of 'stretched Marxism.'

1.3.2 Marxist Approaches to International Law

In contrast to TWAIL scholarship's focus on race and the establishment of hierarchies based on this, Marxist scholarship is concerned with the role of economic value, and the expansion and increase of this, in regulating relations between different actors. They understand imperialism as being driven by the imperatives of capitalism and the need of capitalists to extract increasing amounts of value. This quest for greater capitalist value results in a need to expand beyond national borders to avoid falling profit rates, overaccumulation, and a lack of effective demand.[90] As will be discussed below, imperialism served as a tool to facilitate this expansion and to violently overcome the limits and contradictions within capitalism that could prevent this.[91]

[88] Ibid.
[89] Ibid.
[90] Knox (n1) 86.
[91] Ibid.

While the work of Karl Marx and Friedrich Engels themselves paid relatively little attention to law, and international law even less so due to the 'modern' incarnation not crystallising until the near the end of their lives,[92] their ideas have still proven useful to analyses of the international legal system. Indeed, the decline of state socialism has, inversely, seen an increase of interest in Marxist thought rather than a decline, likely due to the global dominance of capitalism and the important analysis of this offered by Marx and his interpreters.[93] This analysis is useful in highlighting the inherent linkages between international law and capitalism, and how this serves to produce imperialism and perpetuate the hegemonic position of certain powerful, wealthy states, a process which this thesis is concerned with.

Marxist analysis is based around the concept of 'historical materialism,' the idea that history is to be understood in material terms.[94] Marx himself gives a summary of what this entails in his *Preface to a Critique of Political Economy* where he writes: 'legal relations as well as forms of the state are to be grasped neither from themselves nor from the […] general development of the human mind' but rather have 'their roots in the material conditions of life.'[95] These material conditions of life are therefore to be grasped with reference to a historically specific mode of production and its relations.[96]

Under Marxist analysis, law really came to be developed in society when modes of production based on communal ownership gave way to those based on that of individuals and it was necessary to regulate such property relations between them.[97] As Marx and Engels write in *The German Ideology* '[c]ivil law develops simultaneously with private property out of the disintegration of the natural community.'[98] The shift towards industrialisation and trade resulted in an exponential rise in private property and the need for law to regulate this.

---

[92] Robert Knox, 'Marxist Approaches to International Law' in Anne Orford and Florian Hoffman (eds.) *The Oxford Handbook of the Theory of International Law* (Oxford University Press, 2016) 306, 306.
[93] Susan Marks, 'Introduction' in Susan Marks (ed.) *International Law on the Left: Re-examining Marxist Legacies* (Cambridge University Press, 2008) 1, 1.
[94] Ibid., 2.
[95] Karl Marx, 'Preface to a Contribution to the Critique of Political Economy' in R. C. Tucker (ed.) *The Marx-Engels Reader* (WW Norton and Company, 1978, Second Edition) 3, 4.
[96] Marks (n93) 2.
[97] Ibid.
[98] Karl Marx and Friedrich Engels, 'The German Ideology' in R. C. Tucker (ed.) *The Marx-Engels Reader* (WW Norton and Company, 1978, Second Edition) 146, 187.

While Marx and Engels traced this development of law alongside the proliferation and systematisation of private property, they stressed that these property relations were not the result of law.[99] They argued instead that ownership and its associated benefits were in fact rooted in social relationships, not just an abstract legal title.[100] Therefore, when new forms of social intercourse arose, the law was compelled to admit them.[101] Evidence of social relations producing law, rather than the other way around, can be seen in the societal shift from feudal societies to modern capitalist-based ones. In *On the Jewish Question*, Marx understood 'modern' societies as being split between a 'political community' where people act as communal beings, and 'civil society' where they act as private individuals.[102] However, this was not always the case. Generally, throughout history, 'civil society had a *directly political* character'[103] due to the political nature of its various aspects such as property and the family, with these taking the form of lordships, castes, and guilds.[104] As a result, production, ownership, and appropriation were tied directly to these forms of status and their political makeup.[105]

However, this shifted under capitalism where there no longer exists a direct link between an individual's formal status-based position and the appropriation of their value, as there would be under a system like feudalism; this is mediated through the market instead.[106] The dissolution of the above divided civil society into independent individuals, and the consequent inability of relationships between them to be mediated through privilege and status meant that law needed to fill the void to mediate relations between such parties.[107] Through this analysis Marx and Engels therefore highlight the structural link between the emergence of capitalism and the increasing dominance of law and legal relations.[108]

The interlinking of law with capitalism can also be seen in the creation of the conditions required for a capitalist society. In this way law played a role in 'primitive accumulation' and the transformation of feudal populations into proletarians.[109] In order for this to have been

---

[99] Ibid.
[100] Ibid.
[101] Ibid.
[102] Ibid.
[103] Karl Marx, 'On the Jewish Question' in R. C. Tucker (ed.) *The Marx-Engels Reader* (WW Norton and Company, 1978, Second Edition) 26, 44.
[104] Knox (n92) 309.
[105] Ibid, 310.
[106] Ibid.
[107] Ibid.
[108] Ibid.
[109] Ibid., 311.

accomplished, customary land use rights had to be abolished and the practices of begging and vagabondage needed to be banned so that people could only gain their subsistence through seeking employment.[110] This was carried out through Acts of Parliament and demonstrated that the law was also an important tool in the hands of the emerging bourgeoisie.[111]

While the above paragraphs give an account of Marxist theory and its relation to the domestic sphere, the question is how this relates to international law[112] and the purposes of this thesis. The above discussion is relevant because it is mirrored in many ways within the international realm. This is because, as noted above, '[t]he development of law as a system was evoked not by the requirements of the state, but by the necessary conditions for commercial relations.'[113] As trade between states began to flourish, like individual property holders in the domestic sphere, they required laws to mediate the process of commodity exchange. International law therefore served to codify the laws of property and contract which are the bedrock of capitalism. As Evgeny Pashukanis (who will be discussed in more detail shortly) wrote, '*modern international law is the legal form of the struggle of the capitalist states among themselves for domination over the rest of the world.*'[114]

The key insight here is that the relationship between states in the international system is analogous to individual property owners under capitalism. As China Miéville writes, 'since its birth, and in the underlying precepts of international law, states, like individuals interact as property owners.'[115] The property in question is their sovereign territory, conceptualised as estates.[116] Capitalism was therefore integral to the development of international law in producing the flowering and extension of commodity exchange internationally, and also by creating the independent sovereign state.[117] This emerged by separating it as an entity from the private realm

[110] Ibid. For a good summary of this process and the history of capitalism more widely see Ellen Meiksins Wood, *The Origin of Capitalism: A Longer View* (Verso, 2017).
[111] Knox (n92) 311.
[112] For a succinct overview of the insights of Marxist thought for international law see Antonios Tzanakapoulos, 'The Master's Tools and the Master's House: Marxist Insights for International Law' in Anne van Aaken, Pierre d'Argent, Lauri Mälksoo, and Johan Justus Vasel (eds.) *The Oxford Handbook of International Law in Europe* (Oxford University Press, Forthcoming) available at < https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4544488> accessed 28 August 2023.
[113] China Miéville, 'The Commodity-Form Theory of International Law' in Susan Marks ed. *International Law on the Left: Re-examining Marxist Legacies* (Cambridge University Press, 2008) 92, 115.
[114] Evgeny B. Pashukanis, *Selected Writings on Marxism and Law* (Translated by Peter B. Maggs, Edited and Introduced by Piers Beirne and Robert Sharlet, Academic Press Inc., 1980) 169 (emphasis in original).
[115] China Miéville, *Between Equal Rights: A Marxist Theory of International Law* (Brill, 2004) 54.
[116] Ibid.
[117] Knox (n92) 316.

and individuals who bore state authority.[118] The economic power and expansion of European states under imperialism in the Seventeenth Century witnessed the formation of international law tied to this spread of capitalism.[119] Pashukanis describes this himself, writing '[t]he spread and development of international law occurred on the basis of the spread and development of the capitalist mode of production.'[120]

This is the logic behind Pashukanis's own commodity form theory of international law. He argues that legal subjects relate to each other through contract and the formalisation of mutual recognition by equal subjects.[121] It was during the Seventeenth and Eighteenth Centuries that there was an explosion of international trade and such activity was central to the capitalist structure of the powerful European states.[122] It was therefore during this period that international law was truly formed, as the international order became a legal one in order to facilitate these trade relations.[123] While each commodity owner recognised one another as an equal in an abstract, formal sense, within any exchange there is the possibility of dispute, and thus law arises as a way to resolve these.[124] The principles of international law today continue to reflect this, presupposing the legal concepts of private property and the arrangements to protect and profit from them, while the formal equality of states serves to mask the material and substantive inequality of the international order (as will be discussed in Chapter Four).[125]

However, there was a lacuna within this transfer of the system of commodity exchange relations from the domestic sphere to the international: the lack of an overarching authority to enforce and regulate the process. The state of anarchy in the international system due to a lack of higher sovereign is a key tenet of realist theory in international relations and has led to questions over whether or not international law is really law given that it has no enforcer. Miéville, drawing on Pashukanis, responds to this by arguing that the coercive power to enforce legal obligations regarding ownership and regulate the exchange comes from the legal subjects themselves.[126] Pashukanis himself wrote that '[l]egal intercourse does not "naturally" presuppose a state of

---

[118] Ibid.
[119] Margot E. Salomon, 'Nihilists, Pragmatists, and Peasants: A Dispatch on Contradiction in International Human Rights Law' (2018) *Institute for International Law and Justice Working Paper 2018/5 (MegaReg Series)* 2, 3.
[120] Pashukanis (n114) 171-172
[121] Knox (n92) 316.
[122] Ibid.
[123] Ibid.
[124] Ibid.
[125] Salomon (n119) 3.
[126] Miéville (n113) 116.

peace, just as trade does not, in the first instance, preclude armed robbery, but goes hand in hand with it.'[127] Robbery (non-consensual possession of the commodity of another) is therefore linked with trade (the consensual possession of the commodity of another), and as a result violence is implicit in the commodity and the legal form which it produces.[128]

This is because the very idea of private property implies some kind of force to keep it being yours and prevent it from becoming someone else's; hence coercion is fundamental to this theory of the legal form.[129] This system therefore builds in disputation and contestation, and the coercion implied in defence of private ownership is at the heart of the commodity-form.[130] In the absence of a third party to carry out the role, the only regulatory violence able to uphold the legal form is that of its participants.[131] The result of this is that '[m]odern international law includes a very considerable degree of self-help (retaliatory measures, reprisals, war and so on).'[132] This inherent coercion means that it is the competition between capitalist states that underpins international law, and it has always reflected this fight for greater coercive power among participants that are unequal.[133]

Miéville summarises this situation well with a quote from Marx stating that, 'between equal rights, force decides.'[134] Under the modern international system, states enjoy the principle of formal sovereign equality; however, this equality does not extend materially or militarily, with some states able to exert or threaten far greater force than others. As Miéville describes it, '[a]lthough both parties are formally equal, they have unequal access to the means of coercion, and are not therefore equally able to determine either the policing or the content of the law.'[135] As a result, weaker states are often only able to offer passive resistance in such disputes or are forced to concede.[136] Pashukanis also wrote about this himself, stating that:

---

[127] Evgeny B. Pashukanis, *Law and Marxism: A General Theory* (Translated by Barbara Einhorn, Edited and Introduced by Chris Arthur, Inks Links Ltd, 1978) 134.
[128] Miéville, (n113) 116.
[129] Ibid.
[130] Linarelli, Salomon, and Sornarajah (n17) 21.
[131] Miéville (n113) 117.
[132] Pashukanis (n127) 134.
[133] Linarelli, Salomon, and Sornarajah (n17) 21.
[134] Miéville (n113) 117, quoting Karl Marx *Capital: Volume 1* (Penguin Classics, 1990) 344.
[135] Ibid., 120.
[136] Ibid.

> bourgeois international law in principle recognizes that states have equal rights but in reality they are unequal in their significance and power […] These dubious benefits of formal equality are not enjoyed at all by those nations which have not developed capitalist civilization and which engage in international intercourse not as subjects but as objects of imperialist state's colonial policy.[137]

As a result of this, Marxist accounts argue that due to this state of affairs and the law's interlinkage with capitalism, imperialism is a natural part of international law, rather than being accidental, or an unfortunate side-effect.[138] It is argued that 'international law's constituent forms are constituent forms of global capitalism, and therefore of imperialism.'[139] This structural connection between international law and imperialism is summarised by Knox as existing in two ways: that the international legal form is bound up with the proliferation of global capitalism, and that only the violence of imperialism can effectively resolve legal arguments.[140] The system of equal right-holders arbitrated by unequal powers of coercion means that the winner of such a dispute is usually a foregone conclusion. Although the disputes are argued legally by both sides and the outcome is expressed in legal terms, the actual outcome is rarely in doubt given the military coercion that one side can use to enforce its own interpretation of the law.[141]

Miéville draws on Koskenniemi when discussing this phenomenon and the commodity-form theory, focusing on the argument that international law is indeterminate.[142] Koskenniemi himself concludes that 'international law is singularly useless as a means for justifying or criticizing international behaviour. Because it is based on contradictory premises it remains both over- and under-legitimizing.'[143] He argues that it is over-legitimising as it can ultimately be invoked to justify any behaviour, and it is under-legitimising because it is incapable of providing a legitimising argument for any practices.[144] He describes how this is the case because rules and concepts in international law 'travel in opposites' with contradictory 'ascending' and 'descending' arguments.[145] The descending argument is based in world community and order, while the

---

[137] Pashukanis (n114) 178.
[138] Miéville (n113) 120; Linarelli, Salomon, and Sornarajah (n17) 22; Marks (n93) 12.
[139] Miéville (n113) 120.
[140] Knox (n192) 319.
[141] Miéville (n113) 121-122.
[142] Miéville (n115) Chapter 2.
[143] Martti Koskenniemi, *From Apology to Utopia: The Structure of International Legal Argument* (Cambridge University Press, 2005) 48.
[144] Ibid.
[145] Miéville (n115) 50.

ascending one is focused on state will and interest.[146] Both of these sets of arguments are mutually exclusive and exhaustive, which results in an incoherent argument which constantly shifts between the two opposing positions and remains open to challenge by the former when inhabiting the latter, and vice-versa.[147] This tension is a result of the international order which is comprised of independent sovereign states which can only be bound voluntarily (state will or 'apology'), while at the same time international law needs to bind states even when they do not desire to be bound in order to properly function (world order or 'utopia').[148] Under this system, both types of argument are equally legitimate but also in opposition to one another, meaning that international law is unable to provide an 'answer' on its own terms,[149] hence the indeterminacy thesis.[150]

This leads to a stalemate in the content of law when trying to resolve disputes. As described above, when both sides can demonstrate equal rights (and in this case equally legitimate, directly oppositional arguments), then it is force that decides. With no higher power to arbitrate these arguments, it comes down to the potential force exerted by the parties to the dispute, which means that the powerful states in the international system continue to have the advantage in application of the law and can ensure that it continues to serve their interests, even to the detriment of others. In this way the indeterminacy of international law also serves to incentivise imperialism as the means to exert this force.

Imperialism is also inherent to the expansionist logic of capitalism as it searches for new markets and commodities and relies on this use of forceful coercion to achieve its aims. As Marx and Engels wrote in *The Communist Manifesto,* '[t]he need of a constantly expanding market for its products chases the bourgeoisie over the face of the globe. It must nestle everywhere, settle everywhere, establish connections everywhere.'[151] In *The Accumulation of Capital* Rosa Luxemburg discusses this expansionism of capitalism and the dynamics of its spread across the globe. She

---

[146] Ibid. This is based on the contradiction inherent to liberalism and the need to temper individual rights and freedoms with those of others and the 'public good.'

[147] Koskenniemi (n143) 41-42.

[148] Knox (n92) 318.

[149] Ibid., 319.

[150] Wider arguments on the issues that conflicting values within the law can produce that the 'indeterminacy thesis' shares similarities with are not without their critics. On the issues within this claim in critical legal studies more generally see Denise Meyerson, 'Fundamental Contradictions in Critical Legal Studies' (1991) Vol. 11 No. 3 *Oxford Journal of Legal Studies* 439. Despite this the indeterminacy of international law and violence that stems from it remains a key idea within Marxist approaches.

[151] Karl Marx and Friedrich Engels, *The Communist Manifesto* (Penguin Books, 2002) 223. Quoted in Miéville (n113) 122.

describes how, when capitalism came into contact with pre-capitalist societies, it faced issues as there was no pre-existing market in which to compete,[152] and there was: 'no demand, or very little for foreign goods, and also, as a rule, no surplus production, or at least no urgent need to dispose of surplus products […] A natural economy thus confronts the requirements of capitalism at every turn with rigid barriers.'[153] Such limits could potentially stymie the continued expansion of capitalism and increased extraction of capitalist value.

The result of this is that the continued expansion of capitalism requires it to break these barriers in order to penetrate the new frontier. Luxemburg describes this as a 'battle of annihilation' against the natural economy, and that the annihilation is literal: '[e]ach new colonial expansion is accompanied, as a matter of course, by a relentless battle of capital against the social and economic ties of the natives, who are forcibly robbed of their means of production and labour power.'[154] With the insight of Marxist theory it can therefore be seen how international law is complicit in this arrangement by incentivising the use of such force, serving the needs of powerful capitalist states, and facilitating the arrangements of new economies being brought into the global capitalist one, often exploitatively and under coercion. Such imperialism is not coincidental to international law, but fundamentally connected to it.[155] It also demonstrates how within Marxist explanations imperialism goes hand-in-hand with the need of capitalists to extract greater amounts of economic value, being driven by process. This transformation of many societies and their uneven incorporation into the global economy will be a key consideration in the historical construction of vulnerability discussed in Chapter Three.

In sum, according to Marxist theories, international law was derived from the needs of capitalism to spread beyond domestic borders; it was created by powerful, capitalist states to serve these interests; and it continues to benefit them through its indeterminacy and inherent requirements of coercion. As Linarelli, Salomon, and Sornarajah write '[t]he DNA of international law as a capitalist, commercial, coercive enterprise was set up to facilitate the political-economic interests of the day and continues to give authoritative expression to dominant interests.'[156] Because they have the power to enforce their will, international law continues to be a normative order used by

[152] Marks (n93) 11.
[153] Rosa Luxemburg, *The Accumulation of Capital* (Routledge, 2003) 349. Quoted in Marks (n93) 11.
[154] Ibid., 350.
[155] Knox (n92) 319.
[156] Linarelli, Salomon, and Sornarajah (n17) 22.

powerful states to further their power and interests rather than restraining them.[157] The tenets of contract and private property continue to underpin the rules of finance and international economic law and commodification is melded into the very fabric of international law, resulting in its voracious need for new methods of private appropriation and material opportunities for the investment of capital.[158] These power relations and the distributional processes they produce are very important in the production and allocation of vulnerability, as the next chapter will discuss. In this way international law is not a neutral body of rules, and this continues to be reflected in its content.

While several similarities can be observed between the two theoretical frameworks discussed, there is some divergence between their primary focus, with TWAIL emphasising the role of race while Marxist approaches seek to highlight the part of capitalist value in the development of international law and behaviour of international actors. The section that follows will discuss how these two lenses can be reconciled to produce a more comprehensive understanding of the relationship between international law, capitalism, colonialism, and imperialism.

1.4 Reconciling TWAIL and Marxist Approaches: 'Stretched Marxism'

Knox[159] begins his article on 'stretched Marxism' by highlighting the frequent absence of race within the analysis of Marxist scholarship on international law.[160] In contrast to this, as discussed, TWAIL accounts of international law place race centrally, with the result that 'the two most prominent radical strands in thinking about imperialism in international law frequently talk past each other.'[161] It is this problem which this thesis hopes to avoid in its analysis, synthesising the insights of both frameworks together for improved insight.

Knox seeks to resolve this issue by discussing the tradition of Third World Marxism to provide a 'stretched Marxism' alternative 'in which race and value are seen as co-constitutive.'[162] As he points out, race has been very prominent in the history of imperialism, with the process largely being 'characterised by white, European states expanding into and subordinating non-white,

[157] Ibid., 39.
[158] Salomon (n119) 4.
[159] Knox (n1).
[160] Ibid., 84.
[161] Ibid.
[162] Ibid.

non-European societies.'[163] Though some rising powers within the international system are non-white and non-European, contemporary divisions of labour continue to largely mirror historical patterns,[164] as do constellations of wealth and power for the most part. Such hierarchisation and the juridical processes that went hand in hand with it will be discussed in greater detail in Chapter Three. However, at this point it should be noted that though the expansion of capitalism was a key driver of imperialism, the dispossession of many communities in the Global South was based on explicit arguments of the superiority of Europe over racial constructions of other societies, whose purported inferiority was rationalised on a racialised basis.[165] It was this perceived inferiority of non-white societies and their practices that was used to justify the theft of land and resources, not to mention the facilitation of the commodification of human beings to be used in the slave trade.

Progress made by the anti-colonial movement has meant that such explicit racism is no longer evident; however Knox argues that modern forms of imperialism still contain components of race, suggesting that such hierarchies still exist.[166] As Tzouvala writes, 'explicitly (biological) racist justifications of inequalities of wealth and power' have given way to 'cultural difference,' comprised of 'objective' indexes like 'their credit-worthiness, or their purported (un)willingness to deal with terrorism.'[167] Knox points, for example, towards the peripheral countries being the prime targets of international financial institutions,[168] military interventions reproducing racial assumptions about non-European societies,[169] and the fact that the international criminal court has focused almost exclusively on African countries.[170] Despite this, these issues are missing from much of contemporary Marxist literature, and instead some scholars[171] actively separate such analysis on race from their own explanations as though they are competing explanations rather than intertwined ones.[172] Indeed, in these accounts *'[e]ither* imperialism is about value, and

---

[163] Ibid., 98.
[164] Ibid.
[165] For fuller discussion see Section 3.2 of Chapter 3.
[166] Knox (n1) 99.
[167] Tzouvala (n70) 4-5.
[168] Targeting and prescriptions are said to draw on racial stereotypes of such countries being 'lazy' and 'corrupt,' as argued by James Thuo Gathii, 'Representations of Africa in Good Governance Discourse: Policing and Containing Dissidence to Neo-Liberalism' (1998) Vol. 18 *Third World Legal Studies* 65. Cited in Knox (n1) 99.
[169] It is argued that such interventions reproduce assumptions of 'savagery,' see Mutua (n85); Antony Anghie, 'The War on Terror and Iraq in Historical Perspective' (2005) Vol. 43 *Osgoode Hall Law Journal* 45. Cited in Knox (n1) 99.
[170] Knox (n1) 99.
[171] Knox uses the examples of Miéville (n115) and Mark Neocleous, 'International Law as Primitive Accumulation; Or, the Secret of Systematic Colonization' (2012) Vol. 23 *European Journal of International Law* 941.
[172] Knox (n1) 100.

international law can be understood as articulating the requirements of capital accumulation, *or* imperialism is a cultural process of "othering," with international law serving to manage "cultural difference.'"[173]

As Knox notes, one scholar who bridges this divide and offers 'an extremely suggestive way forward' is Chimni, who self-identifies with both Marxist and TWAIL schools of thought.[174] For Chimni '[t]he category of "class" is not to be viewed in opposition to that of gender and race.'[175] He has also written that 'in many respects colonialism and patriarchy represented two sides of the same coin,'[176] and in this statement Knox notes a possible solution for the unification of capitalist value and race in explanations of imperialism: rather than being competing explanations they are two parts of the same process.[177] Race was used to appropriate and distribute capitalist value. It is this intertwining of the two lenses that this thesis will make use of in its analysis, understanding both race and value to be important components in the process of imperialism and co-constitutive of each another.

Despite this apparent blind spot in Marxist scholarship on international law, many radical anti-colonial Marxists in the Third World made such arguments and Marxist analysis was important to many national liberation movements.[178] Third World Marxism was forged from specific issues that its thinkers had to contend with, including the impact of the actions of imperial powers in colonial and post-colonial societies, the need to create conditions conducive to revolution, and an international labour system continuing to be defined by divisions wrought by racial domination and uneven processes of modernisation.[179] This state of affairs led to the production of what Knox labels 'syncretic Marxism' which saw questions of race and value as mutually intertwined.[180] While this tradition included many thinkers heralding from non-European societies, Knox argues that the most prominent was Frantz Fanon, whose biography was 'emblematic of this syncretic Marxism.'[181]

---

[173] Ibid., 100-101 [Emphasis in original].
[174] Ibid., 101.
[175] B. S. Chimni, 'Prolegomena to a Class Approach to International Law' (2010) Vol. 21 No. 1 *European Journal of International Law* 57, 63. Quoted in Knox (n1) 101.
[176] Ibid., 75. Quoted in Knox (n1) 101.
[177] Knox (n1) 101.
[178] Ibid., 101-102.
[179] Ibid. 102.
[180] Ibid.
[181] Ibid., 103.

In his work Fanon posits an understanding of race that is 'deeply rooted in the logic of capitalist value.'[182] In *The Wretched of the Earth* for example, he writes that

> [w]hen you examine at close quarters the colonial context, it is evident that what parcels out the world is to begin with the fact of belonging to or not belonging to a given race, a given species. In the colonies the economic substructure is also a superstructure. The cause is the consequence; you are rich because you are white, you are white because you are rich.[183]

Knox argues that this highlighting of race did not dismiss the traditional Marxist idea that imperialism was driven by the logic of capitalist expansion, but instead suggested that something was missing from this explanation.[184] In Knox's view, Fanon's argument is, instead, that in the context of colonialism 'race served a role in structuring the distribution of the political and economic benefits of imperialist exploitation. It was by virtue of their race that white settlers gained access to the material benefits of colonial capitalism.'[185] The coloniser were defined by their race and their ability to place themselves in opposition to the natives, the 'others.'[186] In this way Fanon 'stretched' the traditional Marxist understanding, deploying a materialist analysis that saw race as a social form.[187]

Race was therefore constructed to facilitate the colonial exploitation of non-white societies and to extract value from them; the European powers constructed racial categories and justifications to facilitate the process of controlling colonised populations that capitalist accumulation demanded.[188] The very process of colonialism requires subjugating others and positioning them as inferior; as Fanon wrote, any country that 'lives, draws its substance from the exploitation of other peoples, makes those people inferior.'[189] This construction of race allowed for the exploitation of such societies and the justification of withholding the benefits of exploitation from them, extracting it away to white metropoles instead.[190] It also justified the transformation

---

[182] Ibid.
[183] Frantz Fanon, *The Wretched of the Earth* (Penguin Books, 2001 (originally published 1961)) 30-31. Quoted by Knox (n1) 103.
[184] Knox (n1) 104.
[185] Ibid.
[186] Fanon (n183) 31.
[187] Knox (n1) 104.
[188] Ibid., 106.
[189] Frantz Fanon, *Toward the African Revolution: Political Essays* (Grove Press, 1988) 41. Quoted in Knox (n1) 106.
[190] Knox (n1) 106.

of non-European societies to facilitate colonialism and the expansion of capitalism, by characterising non-European ways of life as inferior and backwards; in this way 'native culture had to be cast as *intrinsically* flawed throughout all its history.'[191] The customs and traditions of colonised people were purported to be signs of their 'poverty of spirit and of their constitutional depravity.'[192] This characterisation also allows for the establishment and reproduction of European ideological and epistemological hegemony and the use of this to subjugate the Global South, as described by TWAIL scholars. It is this process that helps to shape the international system towards the interests of European states, concretising their power.

Ultimately, for Fanon and Knox, race and value are not counterposed but, instead, race is central to every moment of the process of capital accumulation, in justifying the dispossession of non-European societies and the transfer of value from the colonised periphery to the imperial core.[193] Furthermore, racialised categories are also integral to the societal transformation required for capitalist accumulation and the governing of colonial territories.[194] Native societies are painted as deficient and in need of 'civilisation' through the instalment of European practices and structures. The institution of slavery also required the rendering of intrinsic differences between different people in order to theorise and justify why some human beings could be rendered as property and others could not. Constructions of race were not fixed, however, nor were its targets; instead it varied based on which societies were subject to exploitation.[195] Likewise, different forms of racialisation resulted from varying techniques of production and regimes of accumulation.[196]

Here we can therefore see how the construction of race went hand in hand with traditional Marxist understandings of the position of imperialism in capitalist expansion. The role of international law in this construction of race and rendering of a hierarchy within the international system is discussed fully in Chapter Three; however, a useful example can be found in the relationship between race and private property as rendered by the law. Not only is property central to the capitalist mode of production and Marxist understandings of the law, but its

[191] Ibid.
[192] Fanon (n183) 32.
[193] Knox (n1) 108.
[194] Ibid.
[195] Ibid., 107.
[196] Ibid.

specific conceptualisation also permitted the dispossession and enslavement of non-European societies, again highlighting the relationship between international law, race, and imperialism.

Indeed, '[t]he treatment of people as objects through the institution of slavery calls attention to the relationship between property as a legal form and the formation of an ontology that is in essence, racial.'[197] Under the law of property established in the colonial period certain people were designated as capable of owning property and others were rendered as property themselves, and an individual's position within these categories was often mediated through constructions of race. The same social relations that constructed racial identities to justify slavery also had implications for how property was conceptualised.[198]

Instead of a system based around use or possession, property came to be 'rooted in a "metaphysical" idea of entitlement'; dependent on certain people being legal subjects and having the right to own property; it became based around abstractions.[199] Both the law and race serve as modes of abstraction in this respect, with the former abstracting concrete entities into legal subjects entitled to property rights, and the latter abstracting individuals and their societies from their physical existence and inserting them into hierarchies defined by constructions of difference.[200] The abstract notions of property ownership that emerged from these produced two racialised figures: '[t]he first of these were indigenous peoples, who were conceived of as lacking any notion of private property and so were able to be *dispossessed* of their common-land. The second were African slaves who, despite being living human beings, were nonetheless transformed into property because of their race.'[201] Contrasted with these was the category of whiteness which enjoyed full property rights, including over slaves commodified into property. In this way the abstract commodity owner under capitalist law was both white and European (and male[202]) and formal equality could be found only between these individuals at the top of the hierarchy.[203] It was through this commodification of human beings under slavery that white

[197] Brenna Bhandar, 'Property, Law and Race: Modes of Abstraction' (2014) Vol. 4 No. 1 *UC Irvine Law Review* 203, 204-205.
[198] Cheryl I. Harris, 'Whiteness as Property' (1993) Vol. 106 No. 8 *Harvard Law Review* 1707, 1718.
[199] Knox (n1) 108, drawing on Bhandar (n197) 210.
[200] Knox (n1) 109, drawing on Ruth Wilson Gilmore, 'Fatal Couplings of Power and Difference: Notes on Racism and Geography (2022) Vol. 54 *The Professional Geographer* 15. 16.
[201] Knox (n1) 109 [Emphasis in original].
[202] Anna Grear, 'Deconstructing *Anthropos*: A Critical Legal Reflection on "Anthropocentric" Law and Anthropocene "Humanity"' (2015) Vol. 26 *Law Critique* 225, 232. There were also clearly intersectionalities between these categories. While women in Europe were also therefore disadvantaged in terms of property, they were comparatively better off than those in the Global South.
[203] Knox (n1) 109.

identity was merged with property and a form of property contingent on race was produced.[204] This therefore demonstrates the role of race in the conceptualisation of property, a key focus of Marxist approaches to international law.

To summarise, this section has used the work of Knox to attempt to demonstrate how TWAIL and Marxist approaches can be reconciled, and how, far from being competing approaches, their individual analyses are deepened through the incorporation of insights of the other. By examining them together it becomes clear that distributions of power in the international system were rendered through both wealth and constructions of race and that these were constitutive of one another. Furthermore, imperialism and the extraction of wealth and resources from communities in the Global South was facilitated through the construction of racial hierarchies which served as a distributional structure for its benefits.

1.5 Conclusion

This chapter has discussed the critiques of international law that the thesis is advancing. Primarily, these critiques argue that the foundations of international law were developed for and based in the colonial conquest of communities in the Global South by the European imperial powers, and that despite some gains being made, the law, particularly in the realm of international economic law, persists in reflecting these roots. As a result of this, the international legal system continues to contain a number of ideologies and processes which serve to often dispossess and immiserate many worse-off countries for the benefit of powerful, wealthy states, and poor individuals for the benefit of rich ones.

The next chapter will complement the analysis of this one by providing the disaster risk focused, final part of the composite theoretical lens that the thesis uses. In line with the above discussion on false contingency, it will focus particularly on the root causes of vulnerability, namely: distributions of power, wealth and resources, the existence of certain ideological hegemonies, and the legacies of colonialism and conflict and how these progress along the chain of causation into vulnerabilities directly responsible for disaster. It will also discuss the role of certain ideologies, and the activities they incentivise in the production and exacerbation of hazards, therefore encompassing both sides of the disaster risk equation (hazards and vulnerabilities).

[204] Bhandar (n197) 206, drawing on Harris (n198) 1716.

With this upcoming analysis in mind, the salient points to draw from this chapter and filter through the analysis of the next one are the role of international law in producing hierarchies of race and the connection of power to this and (through colonialism) wealth in the international system, the purported superiority of European culture and spread of capitalism, as well as the intimate connection between international law and imperialism and transformation of non-European societies associated with it. These insights and the early history of international law will then all be discussed in further detail through a fully formed TWAIL/Marxist/disaster risk lens in Chapter Three.

Chapter Two: Disasters, Vulnerability, Hazards, and Disaster Risk

2.1 Introduction

While the previous chapter discussed one half of the compound analytical lens the thesis will be using through an examination of Marxist and Third World Approaches to International Law, this chapter will now complete that process by unpacking the various disaster concepts and terminology that the thesis relies on. This will include an examination of the concept of disaster risk and its components of vulnerability and hazards – the interrelation of which is responsible for disasters occurring. As part of the analysis, and to deepen the understanding of these concepts, the chapter will feature a discussion on the Pressure and Release (PAR) model[1] (also known as the 'Disaster Crunch Model'), a key framework for understanding disaster risk and its origins. The model seeks to theorise an understanding of the interaction between vulnerability and hazards in the construction of disaster risk and how vulnerability forms and progresses. In this way, the insights of the model feed into much of the discussion on other disaster-related concepts. Furthermore, an understanding of the process-nature of disaster risk and disasters that the PAR model helps to elucidate is very important to the analysis of the thesis and informs the chapters that follow. These chapters offer a longitudinal view of the development of international law and its relationship with the construction of disaster risk past and present based on these insights.

The chapter will begin by setting out what a disaster is and what definition the thesis will use, drawing on disaster theory and a range of legal definitions. This will then be followed by sections that unpack the concepts of disaster risk, its components of vulnerability and hazards, and the PAR model, to discuss the creation and progression of these and how they interact. The chapter will then end by analysing in less detail the other disaster-related terms of resilience, capacity, and exposure and their usefulness to the analysis of the thesis. While these terms are largely not key to the theoretical framework of the thesis, they do feed into understandings of disaster risk and hence need to be considered, even if only briefly.

[1] This model originated in Ben Wisner, Piers Blaikie, Terry Cannon, and Ian Davis, *At Risk* (Routledge, 2004, Second Edition) 49. An updated version which this thesis will be using was published in Ben Wisner, JC Gaillard, and Ilan Kelman, 'Framing Disaster: Theories and Stories Seeking to Understand Hazards, Vulnerability, and Risk' in Ben Wisner, JC Gaillard, and Ilan Kelman (eds.) *The Routledge Handbook of Hazards and Disaster Risk Reduction* (Routledge, 2012) 18, 23.

2.2 Disasters

An important understanding to note early in this chapter is that disasters are not natural. Regardless of the source of the hazard(s) there is a human component to all disasters in producing the conditions that cause the presence of the hazard to result in a disaster. In this respect '[d]isasters and disaster risk causality is deeply rooted in the history of societies, their structure and organisation.'[2] Despite the prevalence of the 'natural disaster'[3] misnomer the 'naturalness' of disasters has been questioned by disaster researchers for decades,[4] and was even being questioned by philosophers as far back as 1756.

This was a result of the Lisbon Earthquake in 1755, which turned out to be a core event for thinking about disasters,[5] estimated by some to have been 9.0 on the Richter Scale.[6] The earthquake caused particular devastation in Lisbon when it occurred during mass and led to many parishioners being buried beneath the rubble of their churches and cathedrals.[7] The French Enlightenment philosopher Voltaire took umbrage with the narrative of the time that the earthquake was divine retribution for the sins of the people of Lisbon, questioning 'can this

---

[2] Irasema Alcántara-Ayala *et al.*, *Disaster Risk* (Routledge, 2023) 17.

[3] The idea that disasters are events beyond human comprehension and control can be seen in the etymology of the word which can be traced back to the Middle French term *désastre* and the Sixteenth Century Italian term *disastro*. Both of these words refer to 'ill-starred event' ('dis-' expressing negation and 'astro' meaning star, from the Latin *astrum*), a calamity based on an unfavourable position or aspect of a star or planet. While different to the language used now, the origins of the idea that disasters are beyond human control (in this case the result of heavenly bodies) can be seen.
For further discussion see Rajarshi DasGupra and Rajib Shaw, 'Disaster Risk Reduction: A Critical Approach' in Ilan Kelman, Jessica Mercer, and JC Gaillard (eds.) *The Routledge Handbook of Disaster Risk Reduction Including Climate Change Adaptation* (Routledge, 2017) 12; Michael D. Cooper, 'Seven Dimensions of Disaster: The Sendai Framework and the Social Construction of Catastrophe' in Katja L. H. Samuel, Marie Aronsson-Storrier, and Kirsten Nakjavani Bookmiller (eds.) *The Cambridge Handbook of Disaster Risk Reduction and International Law* (Cambridge University Press, 2019) 17.

[4] See for example: Nicole Ball, 'The Myth of the Natural Disaster' (1975) Vol. 10 No. 5 *The Ecologist* 368; Phil O'Keefe, Ken Westgate, and Ben Wisner, 'Taking the Naturalness Out of Natural Disasters' (1976) Vol. 260 *Nature* 566; Neil Smith, 'There's No Such Thing as a Natural Disaster' (2006) at <http://blogs.ubc.ca/naturalhazards/files/2016/03/Smith-There%E2%80%99s-No-Such-Thing-as-a-Natural-Disaster.pdf> accessed 21 January 2020; Ksenia Chmutina, Jason von Meding, and Lee Bosher, 'Language Matters: Dangers of the "Natural Disasters" Misnomer' (2019) at <https://www.preventionweb.net/publications/view/65974> accessed 21 January 2020; Ilan Kelman, 'Natural Disasters Do Not Exist (Natural Hazards Don't Either)' (Version 3, 2010) at <http://www.ilankelman.org/miscellany/NaturalDisasters.doc> accessed 21 January 2020. See also the more recent #NoNaturalDisasters campaign: < https://www.nonaturaldisasters.com/>.

[5] It was also after the Lisbon Earthquake that Vattel recognised a duty for states to provide humanitarian aid as part of International Law, as described by David P. Fidler, 'Disaster Relief and Governance After the Indian Ocean Tsunami: What Role for International Law?' (2005) Vol. 6 No. 2 *Melbourne Journal of International Law* 458, 461.

[6] Cooper (n3) 39.

[7] Ibid.

really be God's punishment for the crimes of these victims? What crimes? What fault have these children committed, crushed and bleeding on their mothers' breast?'[8] While he rejected the notion of the disaster being an act of God, he nevertheless still ascribed it to natural forces, in essence just blaming another external force beyond human control.

However, a different Enlightenment thinker, Rousseau, when responding to Voltaire's *Poème sur le Désastre de Lisbonne,* astutely noted the human aspect of the disaster. In a letter to Voltaire, he wrote 'concede, for example, that it was hardly nature who assembled there twenty-thousand houses of six or seven stories. If the residents of this large city had been more evenly dispersed and less densely housed, the losses would have been fewer or perhaps none at all.'[9] He contrasts this point by saying '[y]ou would have liked – and who would not have liked – the earthquake to have happened in the middle of some desert, rather than Lisbon. […] desert earthquakes have little effect on the animals and scattered savages who inhabit such spots – and who have no reason to fear falling roofs or tumbling buildings.'[10] Through these passages, Rousseau highlights the interaction between urbanisation and disasters – the fact that it was humans who built their settlement in an area affected by earthquakes (and comprised of buildings that were vulnerable to the shocks) – and also the separation between the occurrence of a hazard and a disaster event. As Fladwel Rawinji succinctly writes, echoing this, '[a]n earthquake that occurs in a desert, a place with neither human population nor economic, social, and environmental assets (thus, no vulnerability), will not cause a disaster.'[11]

This shift in thinking related to disasters sees them now conceptualised as processes with social, human components rather than naturally occurring or divinely imposed events humanity is powerless to stop. Indeed, as Neil Smith writes, '[i]t is generally accepted […] that there is no such thing as a natural disaster. In every phase and aspect of disaster – causes, vulnerability, preparedness, results and response, and reconstruction – the contours of disaster and the

---

[8] Ibid.

[9] J. A. Leigh (ed.), *Correspondence complète de Jean Jacques Rousseau,* Vol. 4 (Geneva, 1967) 'Rousseau to Voltaire, 18 August 1756', 37-50 translated by R. Sprang. Available at <http://www.indiana.edu/~enltnmt/texts/JJR%20letter.html> accessed 20 March 2019.

[10] Ibid.

[11] Fladwel Rawinji, 'Claiming the Human Right to Protection from Disasters: The Case for Human Rights-based Disaster Risk Reduction' at <https://www.preventionweb.net/files/submissions/31225_righttodisasterprotection.pdf > accessed 20 March 2019, 3. A caveat should be noted that extensive environmental damage can potentially result in a disaster even if there are no human assets there.

difference between who lives and who dies is to a greater or lesser extent a social calculus.'[12] The identification of the prominent role social forces and conditions play in disasters and the distribution of their impacts is therefore very important and there are two key implications of this: First, an understanding of the processes and conditions that cause disasters creates the possibility that they may be prevented. Social forces are human-made and therefore within the control of humans, and if the appropriate conditions are prevented from manifesting, then the presence of a hazard does not have to result in a disaster. For our purposes, law can play a significant part in this due to its role in constructing social conditions and ordering society. It is through this understanding that causal processes can be identified and stopped that the concept of disaster prevention has been born.

Secondly, a more holistic understanding of the forces behind disasters also allows the possibility of responsibility being ascribed beyond nature. While natural forces have historically been blamed for earthquakes and tsunamis etc,[13] the social aspect of disasters can be more easily ascribed to human agency when the appropriate activities or processes can be identified.[14] This means that those culpable in the creation of disasters can, in theory, be identified and held responsible for their actions. Holding individuals or other entities like corporations responsible is important in ensuring remedies and justice for the victims of disasters and in helping to deter behaviours that may cause disasters from occurring in the future.

While this altered conception of disasters as non-natural, social processes is largely accepted within the social sciences, a universally agreed upon definition of what a disaster is has not been reached.[15] This indeterminacy continues in the realm of international law, with the Special Rapporteur on the Protection of Persons in the Event of Disasters, Eduardo Valencia-Ospina,

---

[12] Smith (n4).

[13] It should be noted here that the idea that natural hazards are not impacted or created by human activities is coming under increasing scrutiny, see the 'Hazards' section of this chapter for more details.

[14] As discussed in the introduction to this thesis, several cases under the auspice of the European Court of Human Rights have attributed responsibility to states for failing to take action to protect citizens from foreseeable disasters. Although these cases focus on the failure of the state to protect from the hazard rather than examining the social conditions that also led to the disasters (such as individuals living within a rubbish tip), it is a start for disaster-based litigation and an acceptance that such events can produce liability. See for example, *Budayeva and Others v Russia* [2008] ECtHR App no 15339/02 and others Reports of Judgments and Decisions 2008 (extracts) (*Budayeva v Russia); Öneryildiz v Turkey* [2004] ECtHR App no 48939/99 Reports of Judgments and Decisions 2004-XII (*Öneryildiz v Turkey).*

[15] See E L. Quarantelli's edited volume for a range of opinions on this very topic: E. L. Quarantelli (ed.), *What is a Disaster? Perspectives on the Question* (Routledge, 1998). For more contemporary discussions see also Marie Aronsson-Storrier and Rasmus Dahlberg (eds.), *Defining Disaster: Disciplines and Domains* (Edward Elgar, 2022).

stating in 2008 that 'there is no generally accepted legal definition of the term [disaster] in international law.'[16] This remains the case today, with divergent definitions being used by different organisations (although common elements can be picked out between them).[17] Examples include the work of the United Nations Office for Disaster Risk Reduction (UNDRR),[18] the International Law Commission's (ILC) 'Draft Articles on the Protection of Person's in the Event of Disaster,'[19] and the International Federation of the Red Cross's (IFRC) 'Introduction to the Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance.'[20]

An accurate and accepted definition is clearly important to the development of law around disasters. As Valencia-Ospina writes,

> a definition will help identify the situations in which protection may or shall be invoked, as well as the circumstances under which protection will no longer be necessary. Describing the contours of "disaster" will also help identify the persons in need of protection and thus ascertain who is entitled to protection. A definition should also fix reasonable limits on the scope of the topic, excluding events such as armed conflict.[21]

---

[16] Eduardo Valencia-Ospina, 'The Special Rapporteur's Preliminary Report on the Protection of Persons in the Event of Disaster (International Law Commission)' (5 May 2008) UN Doc. A/CN.4/598, 152. He is cited by Katja L. H. Samuel and Susan C. Breau in the introduction to their 2016 edited volume who come to a similar conclusion. See Susan C. Breau and Katja L. H. Samuel, 'Introduction' in Susan C. Breau and Katja L. H. Samuel (eds.) *Research Handbook on Disasters and International Law* (Edward Elgar Publishing, 2016) 1, 3.

[17] For a more detailed discussion on various definitions of disaster in international instruments and their important components see Eduardo Valencia-Ospina, 'The Special Rapporteur's Second Report on the Protection of Persons in the Event of Disasters', (2009) UN Doc. A/CN.4/615. Breau and Samuel (n16) also discuss this in their introduction.

[18] United Nations Office for Disaster Risk Reduction (UNDRR), 'Terminology' at < https://www.undrr.org/terminology/disaster> accessed 10 September 2020. Defined as 'A serious disruption of the functioning of a community or a society at any scale due to hazardous events interacting with conditions of exposure, vulnerability and capacity, leading to one or more of the following: human, material, economic and environmental losses and impacts.'

[19] International Law Commission (ILC), 'Draft Articles on the Protection of Persons in the Event of Disasters' (15 May 2014) UN Doc A/CN.4/l.831 (ILC Draft Articles), Art. 3(a). Defined as 'a calamitous event or series of events resulting in widespread loss of life, great human suffering and distress, mass displacement, or large-scale material or environmental damage, thereby seriously disrupting the functioning of society.'

[20] International Federation of the Red Cross (IFRC), 'Introduction to the Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance' (IFRC, 2008). Defined as 'a serious disruption of the functioning of society, which poses a significant, widespread threat to human life, health, property or the environment, whether arising from accident, nature or human activity, whether developing suddenly or as the result of long-term processes, but excluding armed conflict.'

[21] Valencia-Ospina (n19) 193.

A useful parallel can be found in International Humanitarian Law (IHL) which has specific conditions that classify a situation as an 'armed conflict' and activate its frameworks.[22] A similar delineation of the boundaries of what constitutes a disaster is necessary so that appropriate provisions and actors may be mobilised.

A full discussion on the varying definitions and their potential merits is not possible due to length limitations, but for the purposes of this thesis the UNDRR definition will be used. It defines a disaster as '[a] serious disruption of the functioning of a community or a society at any scale due to hazardous events interacting with conditions of exposure, vulnerability and capacity, leading to one or more of the following: human, material, economic and environmental losses and impacts.'[23] This definition will be used because it is relatively broad and explicitly mentions conditions of vulnerability which are very important to the arguments of this thesis.

While the ILC's definition is a widely used one, it is less useful for a number of reasons related to its (necessarily) more limited scope. The commentary on the Draft Articles comments that the definition has been 'delimited so as to properly capture the scope of the draft articles.'[24] Because of this, the commentary also notes that despite considering the approach taken in the Tampere Convention,[25] the Commission 'decided to shift the emphasis back to the earlier conception of "disaster" as being a specific event' in contrast to conceptualizing a disaster as 'being the consequence of an event, namely the serious disruption of the functioning of society caused by that event, as opposed to being the event itself' as the Tampere Convention does.[26] Given that this thesis aims to examine the process-nature and distal root causes of disasters, a definition that conceptualises them solely as events is unhelpful to this endeavour and risks producing myopic understandings discussed in the previous chapter of disasters as untethered and free-standing events with their root causes masked. In short, focusing on disasters only as events in this manner serves to restrict the temporal boundaries and make viewing it as a process more challenging. Because of this, the UNDRR definition which treats the hazard as an event coming

[22] For a discussion on how an 'armed conflict' is classified and when IHL is activated see, for example, Jann K. Kleffner, 'Scope of Application of International Humanitarian Law' in Dieter Fleck (ed.) *The Handbook of International Humanitarian Law* (Oxford University Press, 2021, Fourth Edition) 50; Yoram Dinstein, *The Conduct of Hostilities under the Law of International Armed Conflict* (Cambridge University Press, 2016) Chapter 1.
[23] UNDRR (n18).
[24] ILC Draft Articles (n19) (with commentary), Art. 3 Para. (2).
[25] Tampere Convention on the Provision of Telecommunication Resources for Disaster Mitigation and Relief Operations (18 June 1998) 2296 UNTS 5 (Tampere Convention).
[26] ILC Draft Articles (n19) (with commentary), Art. 3 Para. (3).

into contact with vulnerabilities which then produce a disaster is more suited to the analysis of the thesis. However, it should also be noted that treating hazards as events is also imperfect as, in many ways, these often also represent processes, whether geological, climactic, or social.

This conceptualisation of disasters as processes rather than simply events is therefore important in being able to effectively identify and address the underlying causes. While an event is something that happens within clearly defined temporal boundaries that separate it from what came before or after,[27] stopping the analysis of the causes at these boundaries risks missing out on more deep-rooted drivers. A fuller appreciation of time and the past reveals how these vulnerabilities are constructed over longer periods, even if they only properly manifest as part of the event part of a disaster.[28] It is because of this that the thesis takes a historical approach to international law, examining its relationship to disaster risk over several centuries. Viewing disasters as processes aids in this analysis as a process in this context indicates 'a continuum that stretches from the past through the present to the future ad infinitum. It has no clearly delineated beginning or end because, at any point, the horizon stretches either before or away in either direction. Events occur along this continuum when trajectories or timelines of different actors or agents intersect at precise moments.'[29] Therefore viewing disasters as both events of intersection and wider processes is important for a comprehensive understanding of vulnerability and disaster risk and the conditions that drive them, as the discussion on the PAR model will elaborate. Furthermore, looking further down the length of the process rather than at just the immediate causes also allows more patterns between separate disaster events to be identified, leading to improved understanding. The examination of more distal and structural drivers of disaster risk is integral to the arguments of this thesis that global capitalism and international law contribute to the creation of such risk.

In understanding how the event and process are separated from one another temporally but still remain interconnected, the Chernobyl disaster represents a useful example. The *event* of the disaster occurred at 1:23AM on 26th April 1986 when the core of Reactor 4 at the Chernobyl nuclear power plant exploded.[30] While we have a scientific explanation of the factors that physically caused this explosion to happen, the causes that led to the Russian Revolution and

[27] Greg Bankoff, 'Historical Concepts of Disaster and Risk' in Ben Wisner, JC Gaillard, and Ilan Kelman (eds.) *The Routledge Handbook of Hazards and Disaster Risk Reduction* (Routledge, 2012) 37, 43.
[28] Ibid.
[29] Ibid.
[30] 'Chernobyl Disaster' at < https://www.britannica.com/event/Chernobyl-disaster> accessed 4 September 2019.

establishment of a communist state, the particular social and cultural dynamics of the Soviet Union, and the geopolitical paradigm of the Cold War are far more diffuse and long reaching. These factors all had a hand in the disaster though, from impacting the materials used to build the reactor, to the culture of the society that prompted attempts at a cover up and communicating that the risk was minimal even as the disaster was still unfolding. These are all important in understanding the disaster and its causes but are not immediately tied to the disaster event itself.

A true understanding of disasters as processes and something that humans cause through their actions and structures is therefore crucial because, if we continue to conceptualise them as natural or divinely imposed events, then 'we enable those who create disaster risk by accepting poor urban planning, increasing socioeconomic inequalities, non-existent or poorly regulated policies, and lack of proactive adaptation and mitigation to avoid detection.'[31] In this way international law's role in producing these conditions may also be masked. Therefore, an understanding of what disaster risk is and how it is produced is very important, and the section that follows will focus on this issue.

2.3 Disaster Risk

The understanding of the conditions that cause disasters and the chances of one occurring is termed disaster risk. The term 'risk' is used in a variety of disciplines with different connotations; however, it generally refers to the probability of an event and its resulting negative consequences.[32] It is used in a similar way in relation to disasters, being defined by UNDRR as '[t]he potential loss of life, injury, or destroyed or damaged assets which could occur to a system, society or a community in a specific period of time, determined probabilistically as a function of hazard, exposure, vulnerability and capacity.'[33] It is the chances of a disaster occurring and the losses that could be inflicted as a result of a hazard coming into contact with the vulnerabilities within a community that make them more susceptible. This is calculated as a function of hazards, vulnerability, exposure, and capacity and a disaster requires both hazard(s) and

[31] Ksenia Chmutina and Jason von Meding, 'A Dilemma of Language: "Natural Disasters" in Academic Literature' (2019) Vol. 10 No. 3 *International Journal of Disaster Risk Science* 283, 283-284.
[32] United States Agency for International Development (USAID), 'Introduction to Disaster Risk Reduction' (2011) at < https://www.preventionweb.net/files/26081_kp1concepdisasterrisk1.pdf> accessed 10 August 2019.
[33] United Nations Office for Disaster Risk Reduction (UNDRR), 'Terminology' at < https://www.undrr.org/terminology> accessed 29 January 2020.

vulnerability to exist in order to occur; they are a result of an interaction between the two.[34] If there is a hazard but limited to no vulnerabilities within the society affected then it is unlikely that there will be a disaster. Likewise, a highly vulnerable community that is not impacted by a hazard will not experience what is defined as a disaster event (though high levels of vulnerability likely points to multiple other detrimental issues within the society). Disaster risk reduction (DRR) measures seek to reduce the chance of a disaster by alleviating vulnerability and taking measures against the hazardousness of nature and to prevent human-made hazards, therefore decreasing disaster risk.

As mentioned, disaster risk occurs as a result of social processes which can include pathological practices and structures such as:

> social constructions and manifestations of unresolved development problems and indicators of skewed unsustainable development processes and practices caused by historically produced intersecting patterns of vulnerability; these are derived from power structures and political and economic systems that have shaped the transformation of societies with an imbalance in the relationship between the natural and the built environment.[35]

Key drivers include 'urbanisation and overcrowding, deforestation, inequality, poverty, unsafe conditions, illiteracy, insalubrity, lack of planning, corruption, failed risk governance and climate change,'[36] many of which can impact both sides of the disaster risk equation.

The interaction of the components of disaster risk is usually short-handed as Disaster Risk = Hazards x Vulnerability (or DR = H x V),[37] and as mentioned above points to how a removal or reduction of these components, and therefore the resulting disaster risk, can be used to prevent disasters from occurring. The authors of the mnemonic cite a desire to ensure that the vulnerability side of the equation was given sufficient attention. Explaining their motivation for producing the mnemonic, they write that '[i]t is a reminder to enquire about both vulnerability (V) and hazard (H) – correcting a long-standing bias toward physicalist or hazard-focused

[34] Wisner, Blaikie, Cannon, and Davis (n1) 49.
[35] Alcántara-Ayala *et al.* (n2) 48.
[36] Ibid., 17.
[37] Wisner, Gaillard, and Kelman (n1) 24 It is important to note that this is just a shorthand mnemonic, not a mathematical formula.

research and policy.'[38] Indeed, many government agencies still generally deal with disasters as though they are equivalent to the hazard that catalysed them, with the underlying reasons for the situation deemed too peripheral, diffuse, or even irrelevant.[39] As will be discussed throughout this thesis, this trend is a common one in discussions around disasters, and risks reducing our understanding of them and the prevention measures we are able to take; by focusing only on the hazard that catalyses the disaster we miss half of the equation. This approach can also be found in international law instruments on disasters, many of which have been characterised by technocratic approaches to dealing with hazards rather than a holistic view of disasters which also examines the socio-economic vulnerabilities of the people involved.[40] As Marie Aronsson-Storrier writes:

> In order to reduce – and successfully regulate – disaster risk, we must first pay attention to the nature and causes of such risk. […] [B]eyond technocratic measures reducing the impact of hazards, understanding disaster risk requires us to examine the economic and political structures that regulate the creation and intensification of numerous hazards, as well as the vulnerability to them.[41]

As discussed above, this requires a longitudinal understanding of disaster risk and the factors behind it. While the event component of a disaster can either occur rapidly (sudden-onset: as is usually the case with an earthquake or tsunami), or in a more protracted fashion (slow-onset: as is usually the case with events like famines and droughts), in either case the conditions that result in the disaster and the chances of it occurring will likely have been gestating for some time.[42] Indeed, often the processes that result in a particular disaster precede the event itself by several decades,[43] and these societal deficiencies are laid bare particularly sharply when a hazard strikes. Because of this, whether or not such a binary classification of the temporality of disasters is correct or helpful is debatable, but in either case it is important to note that disasters rarely occur suddenly and 'out of the blue.' These categories of suddenness and slowness are therefore better used to describe the hazard event that catalyses the disaster rather than the disaster itself.

---

[38] Ibid.

[39] Wisner, Blaikie, Cannon, and Davis (n1) 61.

[40] See FN14 on the European Court of Human Right's approach to disaster litigation as an example of this.

[41] Marie Aronsson-Storrier, 'Beyond Early Warning Systems: Querying the Relationship between International Law and Disaster Risk (Reduction)' (2019) Vol. 1 No. 1 *Yearbook of International Disaster Law* 51, 64.

[42] See Cooper (n3) 26-30 who discusses the many different ways and forms time plays a role in disaster and the need to consider different types of time such as human time versus geological time.

[43] Alcántara-Ayala *et al.* (n2) 17.

Overall, disaster risk is 'a dynamic condition that reflects a state of potential adverse consequences for humanity, built on a series of processes, decisions, and practices constructed and unfolded over time.'[44] Understanding the vulnerability side of the equation is important in recognising the root causes and drivers of disaster risk which are 'processes or conditions related to historical aspects of development, associated with political, economic and territorial decisions and practices that have occurred throughout history.'[45] It is because of this understanding of disaster risk that the thesis takes a historical approach in its analysis, beginning with early international law and its role in European colonialism.

As mentioned above, in understanding disaster risk, the PAR model offers an important framework for conceptualising how the different components interact and progress. The next section will discuss this in detail and offer further insight into the complexities of disaster risk.

2.4 The Pressure and Release Model

Based on the conceptualisation of disaster risk detailed above, Ben Wisner, Piers Blaikie, Terry Cannon, and Ian Davis in *At Risk* formulated the PAR model.[46] It demonstrates how disaster risk is a function of hazards and vulnerability and how both these intersecting forces place pressure on people that results in a disaster.[47] Each of these components comprises a side of the model, with the left being social and underlying processes that generate vulnerability (with some being quite removed from the disaster event itself), and the right the impact or severity of the hazard.[48] The release aspect of the model refers to the ability to reverse the direction and relieve the pressure on people by removing vulnerabilities and/or reducing the severity of the hazard (where possible), and therefore reducing disaster risk. The (slightly updated) model is below:

[44] Ibid.
[45] Ibid.
[46] Wisner, Blaikie, Cannon, and Davis (n1) 51.
[47] Ibid., 50.
[48] Ibid.

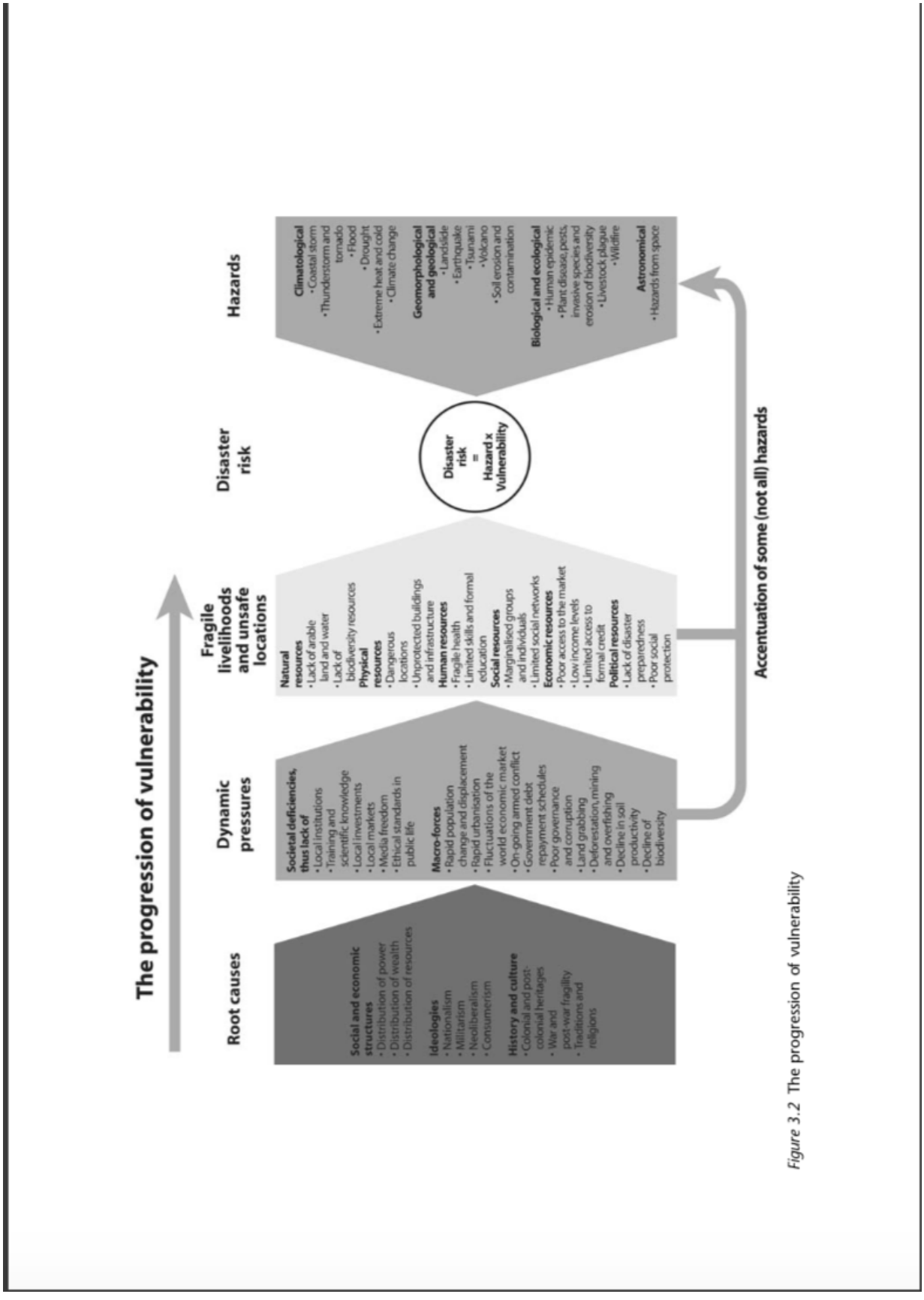

Figure 3.2 The progression of vulnerability

Figure 1: The Pressure and Release Model.[49]

[49] Wisner, Gaillard, and Kelman (n1) 23.

It should be noted that although they occupy different sides of the diagram, hazards and vulnerability are not hermetically sealed from one another. As the bottom arrow indicates, human activities and social progressions can also serve to accentuate some hazards. For example, one of the macro-forces listed under dynamic pressures is deforestation. This can result in an increase in the risk and severity of mudslides as trees act as anchors for the earth around them, so their removal can lead to less stable ground that is more susceptible to shifting. Likewise, pathological understandings of nature as a commodity and unfettered exploitation of this stemming from certain ideological hegemonies that act as root causes of vulnerability (discussed in detail in the next chapter) can also lead to environmental degradation that impacts hazards. Examples include:

> mining that destroys local habitats and pollutes water and soil, hydro-electric power development that floods valuable agricultural lands without compensating those affected, and deforestation that can destroy the habitats of forest dwellers, damage farming systems that use the forest for nutrient transfers to agricultural land, and downstream can cause problems such as flooding or the silting of rivers and irrigation canals.[50]

Hazards can also impact upon vulnerability by affecting the availability of resources, damaging infrastructure and housing, or impacting livelihoods.[51] Furthermore, hazard impacts that precede a particular disaster but whose impacts do not necessarily reach the thresholds of being a disaster themselves may do sufficient damage to increase the vulnerability of a community and make them more susceptible to future hazard strikes. Their impacts can also encourage or force people into practices that worsen their vulnerability.[52] These are usually the result of desperate measures taken in order to survive in the short term such as farming inappropriately, rapid deforestation, or increased overcrowding in already strained housing arrangements.[53] Indeed, a failure to recover properly from previous disasters can also lead to an increase in vulnerability and can result in a vicious circle where subsequent hazards continually increase the vulnerability of a community as recovery stalls. Understanding the need to comprehend and engage with both of these aspects of disaster risk, and their interrelationship, is therefore critical to the prevention and mitigation of disasters.

---

[50] Wisner, Blaikie, Cannon, and Davis (n1) 54. Chapter 5 will discuss issues around multinational corporations creating these issues in host countries and the problems of regulation to prevent this.
[51] Ibid., 52.
[52] Ibid.
[53] Ibid.

The model is particularly useful for understanding vulnerability and its progression, breaking down the process of vulnerability construction into three phases that interlink with one another: root causes, dynamic pressures, and fragile livelihoods and unsafe conditions. The progression of vulnerability from these root causes, via dynamic pressures, into unsafe conditions is referred to as the 'chain of explanation'[54] which seeks to understand their relationship and how to reverse this process. Travelling backwards up this chain allows us to analyse how the conditions of a particular disaster formed, beginning at the most proximate and clear causes of a specific event, through to more distal and structural ones.

The most distal aspect of vulnerability found in the left-most column under the model is 'Root Causes' which are comprised of social and economic structures, ideologies, and history and culture.[55] This includes how power, wealth, and resources are distributed and the processes behind this, the prevalence of certain ideologies such as neoliberalism and consumerism and the activities and schools of thought they inform, and the legacies of certain histories including conflict and colonialism.[56] These are a widespread, general, and interconnected set of processes within a society and also the global economy.[57] Such processes are detached from individual disaster events in one or more ways, including spatially (arising from a centre of economic or political power that is distant) or temporally (being historic).[58] Alternatively, they can also be distant in a more complex manner, 'being so profoundly bound up with cultural assumptions, ideology, beliefs and social relations in the actual lived existence of the people concerned that they are "invisible" and "taken for granted."'[59]

It is these root causes that the thesis is particularly concerned with, and I will argue at length that international law contributes to and constitutes several of these root causes of vulnerability, with the international legal system serving to universalise certain ideologies, structure hierarchies of international actors, and produce distributional processes through its trade and investment architecture that allocate wealth and resources in a specific manner. Likewise, the next chapter will also discuss in detail the role of the law in colonialism and the legacies that stem from this. International law's role in the construction of international society means that it plays a key part

[54] Ibid., 52.
[55] See Figure 1.
[56] Ibid.
[57] Wisner, Blaikie, Cannon, and Davis (n1) 52.
[58] Ibid.
[59] Ibid.

in structuring relations between states and non-state actors and producing the structures that undergird this system that may act as root causes of vulnerability.

It is these root cause factors that are the most important in giving rise to vulnerability and reproducing it over time due to the impact on the availability of resources among different people.[60] In general, root causes reflect the exercise and distribution of power within a society, and usually the people that experience the brunt of vulnerability are those that are marginal economically or who live in environmentally 'marginal' environments (those more prone to hazard), and who are of marginal importance to those who wield and exercise power.[61]

The second phase of vulnerability is 'Dynamic Pressures.' The PAR model defines these as 'processes and activities that "translate" the effects of root causes both temporally and spatially into unsafe conditions.'[62] These pressures are not necessarily distinct from root causes; indeed, the authors note that, depending on the circumstances, some factors could fall under either category.[63] Overall though, they represent more immediate or contemporary, conjunctural manifestations of the underlying, general social, economic, and political patterns that fall under root causes.[64] The broad headings of dynamic pressures are 'Societal Deficiencies' and 'Macro-forces'. The first points to a lack of local institutions, investments, markets, training and scientific knowledge, media freedom, and ethical standards in public life.[65] The macro-forces are processes like rapid population change/displacement, rapid urbanisation, land grabbing, depletion of natural resources through deforestation, mining, and overfishing, decline of biodiversity, and fluctuations of the world economic market etc.[66]

As with root causes, the hand of global capitalism, which international law plays a fundamental role in sustaining and reproducing, can be seen in a number of these dynamic pressures, due to its role in distributional processes and economic thought and policy. This offers a useful illustration of how dynamic pressures can translate root causes into unsafe conditions: the authors of the model highlight Structural Adjustment Programmes[67] as being potentially problematic, writing that in some countries they are 'widely regarded as being responsible for the

[60] Ibid.
[61] Ibid., 53.
[62] Ibid.
[63] Ibid., 85.
[64] Ibid., 53.
[65] See Figure 1.
[66] Ibid.
[67] The role of international law in these policies is discussed in Chapter 4.

decline of health and education services which in our parlance suggests they are a root cause of vulnerability.'[68] Such policies were manifestations of the ideology of neoliberalism (a root cause), translating its logics into the physical effect of reduced access to local institutions through privatisation and austerity prescriptions (dynamic pressures) that then made people more unsafe due to fragile health and limited formal education (unsafe conditions).

The final aspect in the progression of vulnerability is 'Unsafe Conditions.' This is also elaborated as 'Fragile Livelihoods and Unsafe Locations' in the diagram of the updated PAR model[69] used in Figure 1 and represents the most proximal and easily attributable causes of a particular disaster event. The creators of the model define unsafe conditions as 'the specific forms in which the vulnerability of a population is expressed in time and space in conjunction with a hazard.'[70] Various characteristics make up this aspect related to natural, physical, human, social, economic, and political resources. Within these are dangerous locations, fragile health, marginalised groups and individuals, low-income levels, lack of disaster preparedness, poor social protection etc.[71]

Overall, while accepting its own limitations, the PAR model offers a detailed framework for understanding the construction and progression of vulnerability and how disaster risk is produced, giving some insight into the processes behind disasters. The authors of the model describe their motivations for constructing the model as being a result of the tendency to focus on more shallow and proximate explanations of vulnerability without delving deeper and examining the root causes of fragile health or low-income levels in a given situation. They lament that '[t]he factors involved in linking root causes and dynamic pressures to vulnerability are seen as too diffuse or deep-rooted to address. Those who suggest they are crucial may be labelled as unrealistic or overly political.'[72] The connection of these arguments to those on false contingency and planned misery in the previous chapter are clear, with both calling for a deeper interrogation of causal factors. A failure to properly address the root causes will mean that disasters continue to occur in increasingly costly forms unless these underlying issues are addressed.[73]

[68] Wisner, Blaikie, Cannon, and Davis (n1) 54.
[69] See FN1.
[70] Ibid., 55.
[71] See Figure 1.
[72] Wisner, Blaikie, Cannon, and Davis (n1) 61.
[73] Ibid.

2.5 Vulnerability

While the previous section offered a useful understanding of vulnerability within the context of the PAR model, this one will elaborate on the concept further. In general terms vulnerability refers to 'a risk that a "system" such as a household, region, or country, would be negatively affected by "specific perturbations that impinge on the system" or to the probability of a "system" undergoing negative change due to a perturbation.'[74] Like the concept of risk, it originated in other disciplines, but was eventually developed and applied to disasters. It was Robert Chambers who first formally introduced the term 'vulnerability' into the analysis of rural poverty.[75] It was one of five interlocking elements – the others being political powerlessness, physical weakness, income poverty, and isolation – that contributed to the 'deprivation trap' from which it was difficult to remove one's self.[76] Piers Blaikie and Harold Brookfield then built on this in their work on society and land degradation,[77] before Blaikie worked with Wisner, Cannon, and Davis on *At Risk* and its PAR model.[78]

In relation to disasters, vulnerability is defined by UNDRR as 'the conditions determined by physical, social, economic, and environmental factors or processes which increase the susceptibility of an individual, a community, assets or systems to the impact of hazards.'[79] This is the primary definition used within DRR, being stated in the Hyogo Framework for Action[80] and the Sendai Framework for Disaster Risk Reduction.[81] In short, it refers to 'the degree of predisposition of people and systems to be affected by different types of hazards due to their particular characteristics, susceptibility and situations, largely derived from social, economic,

---

[74] Wim Naudé, Amelia U. Santos-Paulino, and Mark McGillivray, 'Measuring Vulnerability: An Overview and Introduction' (2009) Vol. 37 No. 3 *Oxford Development Studies* 183, 184. They are quoting in part from Gilberto C. Gallopín, 'Linkages Between Vulnerability, Resilience, and Adaptive Capacity' (2006) Vol. 16 No. 3 *Global Environmental Change* 293, 294.

[75] Wisner, Gaillard and Kelman (n) 22. See Robert Chambers*, Rural Development: Putting the Last First* (Longman, 1983) 112.

[76] Ibid.

[77] Piers Blaikie and Harold Brookfield, *Land Degradation and Society* (Routledge, 1987).

[78] Wisner, Blaikie, Cannon, and Davis (n1) 11.

[79] UNDRR (n33).

[80] United Nations International Strategy for Disaster Reduction (UNISDR), 'Hyogo Framework for Action 2005-2015: Building the Resilience of Nations and Communities to Disasters' (22 January 2005) UN Doc. A/CONF.206/6 (Hyogo Framework) 1.

[81] UNISDR, 'Sendai Framework for Disaster Risk Reduction 2015-2030' (18 March 2015) UN Doc. A/CONF.224/CRP (Sendai Framework) 10.

cultural, political, and institutional processes, conditions and contexts."[82] The ultimate focus of this thesis is on the role of international law in these processes.

To briefly explain the categories in UNDRR's definition, physical vulnerability refers to the interaction between living things, structures, and the physical forces of hazards.[83] In this way it is defined by the choices that societies make in relation to how and where structures and populations are placed in or out of harm's way.[84] Meanwhile, social vulnerability is a measure of the political, social, and cultural factors that increase or decrease a population's likelihood to experience harm due to hazard exposure.[85] Wisner, Gaillard, and Kelman elaborate on this in their definition of vulnerability, stating that it is 'the degree to which one's social status (eg. culturally and socially constructed in terms of roles, responsibilities, rights, duties and expectations concerning behaviour) influences differential impact by natural hazards and the social processes which led there and maintain that status.'[86] This can include factors such as gender,[87] age, physical and mental health status, occupation, marital status, sexuality, race, ethnicity, religion, and immigration status.'[88] The outcome of this is that certain groups[89] such as

[82] Alcántara-Ayala *et al.* (n2) 17.
[83] Damon P. Coppola, *Introduction to International Disaster Management* (Butterworth-Heinemann, 2015) 194.
[84] Ibid.
[85] Ibid.
[86] Wisner, Gaillard, and Kelman (n1) 22.
[87] For a list of works on gender and disaster see UCL Centre for Gender and Disaster, 'Gender and Disaster: Bibliography & Reference Guide Volume 1' (2020) available at < https://www.ucl.ac.uk/risk-disaster-reduction/sites/risk-disaster-reduction/files/gender_disaster_reference_guide_vol_1.pdf> accessed 1 July 2023.
[88] Wisner, Gaillard, and Kelman (n1) 22.
[89] For a general examination if disasters and vulnerable groups see: Mary Crock, 'The Protection of Vulnerable Groups' in Susan C. Breau and Katja L. H. Samuel (eds.) *Research Handbook on Disasters and International Law* (Edward Elgar Publishing, 2016) 383; Mariangela Bizzarri, 'Protection of Vulnerable Groups in Man-Made Disasters' in de Guttry, Gestri, and Venturini (eds.) *International Disaster Response Law* (TMC Asser Press, 2012) 381.

the elderly,[90] children,[91] disabled persons,[92] women,[93] and LGBTQIA+ individuals,[94] for example, are more vulnerable than others, and intersectionalities exist between these groups.

Membership in many of these groups is also a factor within economic vulnerability which measures the financial capabilities of individuals and communities to protect themselves from the impacts of disasters,[95] and in many ways disasters 'arise from the global economy, the increase of capitalism and the consequential marginalisation of poor people.'[96] Finally, environmental vulnerabilities refer to the relationship between humans and the natural world, being embedded in the welfare and health of the environment and how this can impact upon disaster risk, with poor environmental policies such as deforestation increasing it.[97]

While the creation of vulnerability is clearly complex and multifaceted, and a result of a number of overlapping processes, several key drivers and conditions can be identified within this. One such vector is marginalisation. As Wisner observes, often those with high vulnerability are 'also politically marginal (no voice in decisions that affect them), spatially marginal (resident in urban squatter settlements or in remote rural locations), ecologically marginal (livelihoods based on access to meagre natural resources or living in degraded environments), and economically marginal (poor access to markets).'[98] This marginalisation potentially leads to the creation of three sources of vulnerability that are often mutually reinforcing:

> Firstly, if people only have access to livelihoods and resources that are insecure and unrewarding, their activities are likely to generate higher levels of vulnerability. Secondly, they are likely to be a low priority for government interventions intended to deal with

---

[90] Ehren B. Ngo, 'Elderly People and Disaster' in Ben Wisner, JC Gaillard, and Ilan Kelman (eds.) *The Routledge Handbook of Hazards and Disaster Risk Reduction* (Routledge, 2012) 447.
[91] See: Jonathan Todres, 'Mainstreaming Children's Rights in Post-Disaster Settings' (2011) Vol. 25 *Emory International Law Review* 1233; Agnes A. Babugura, 'Children, Youth, and Disaster' in Ben Wisner, JC Gaillard, and Ilan Kelman (eds.) *The Routledge Handbook of Hazards and Disaster Risk Reduction* (Routledge, 2012) 436.
[92] David Alexander, JC Gaillard, and Ben Wisner, 'Disability and Disaster' in Ben Wisner, JC Gaillard, and Ilan Kelman (eds.) *The Routledge Handbook of Hazards and Disaster Risk Reduction* (Routledge, 2012) 413; Akiko Ito, 'Disasters, International Law, and Persons with Disabilities' in David D. Caron, Michael J. Kelly, and Anastasia Telesetsky (eds.) *The International Law of Disaster Relief* (Cambridge University Press, 2014) 208.
[93] Maureen Fordham, 'Gender, Sexuality, and Disaster' in Ben Wisner, JC Gaillard, and Ilan Kelman (eds.) *The Routledge Handbook of Hazards and Disaster Risk Reduction* (Routledge, 2012) 424.
[94] Ibid.; Holly Seglah and Kevin Blanchard, 'LGBTQIA+ People and Disasters' (2021) available at < https://irp.cdn-website.com/cde3424c/files/uploaded/LGBTQIA%2B%20report-3.pdf> accessed 1 July 2023.
[95] Coppola (n83) 194.
[96] Alcántara-Ayala *et al.* (n2) 34.
[97] Coppola (n83) 194.
[98] Ben Wisner, 'Disaster Risk and Vulnerability Reduction' in Linda Sygna, Karen O'Brien, and Johanna Wolf (eds.) *A Changing Environment for Human Security* (Routledge, 2013) 257, 258. Quoted in Alcántara-Ayala *et al.* (n2) 127.

> hazard mitigation. Thirdly, people who are economically and politically marginal are more likely to stop trusting their own methods for self-protection, and to lose confidence in their own local knowledge.[99]

Furthermore, even if they retain confidence in their own abilities, the materials or labour required to service these may have disappeared as a result of their economic or political marginality.[100] Such marginalisation is in part a function of power relations; it results from inequalities in wealth and power that sees individuals excluded from access to the political sphere or economic opportunities. Indeed, economic marginalisation is generated by economic systems which allocate incomes and access to resources in a certain manner, affecting an individual's physical and intellectual abilities and ability to resist the impacts of hazards.[101] Marginalisation is also rooted in allocations of resources and land and through the function of market dynamics that serve to exclude and burden some while benefitting others.[102] Such dynamics can include the exploitation of people for cheap labour or commodities to service the global economy, or other impacts of globalisation including the displacement of individuals from their land and livelihoods when they are unable to compete with imported goods[103] or as a result of activities like deforestation and development projects.

Part of this marginalisation, and many other vulnerabilities, also stems from the legacies of colonialism and reproduction of its dynamics.[104] As Irasema Alcántara-Ayala *et al* write, 'contemporary vulnerability often originates from the process of invasion, conquest and colonisation that subsequently provided the structure for later development models and social hierarchies in postcolonial societies.'[105] This will be discussed in the chapters that follow, which highlight how many Third World states remain peripheral within the international system, and have inequitable access to power, resources, and wealth while also suffering under the lion's share of global disaster risk. Within these societies, particular groups also remain marginal,

---

[99] Wisner, Blaikie, Cannon, and Davis (n1) 53.
[100] Ibid.
[101] Alcántara-Ayala *et al.* (n2) 127.
[102] Ibid.
[103] Ibid.
[104] On the impact of the legacies of colonialism on disasters in modern times see, for example, Anthony Oliver-Smith, 'Haiti and the Historical Construction of Disasters' (*Nacla,* 1 July 2010) <https://nacla.org/article/haiti-and-historical-construction-disasters> accessed 11 April 2023; Anthony Oliver-Smith, 'Peru's Five-Hundred-Year Earthquake: Vulnerability in Historical Context' in Anthony Oliver-Smith and Susanna M. Hoffman (eds.) *The Angry Earth: Disaster in Anthropological Perspective* (Routledge, 1999) 74; Yarimar Bonilla, 'The Coloniality of Disaster: Race, Empire, and the Temporal Logics of Emergency in Puerto Rico, USA' (2020) Vol. 78 *Political Geography* 1.
[105] Alcántara-Ayala *et al.* (n2) 129.

especially indigenous communities, who continue to find their way of life largely disregarded by the international legal architecture and its institutions. Not only do we see the reproduction of colonial patterns of dislocation, disadvantage, and displacement,[106] but vulnerability is also further increased through the denigration of indigenous knowledge and its potential role in reducing disaster risk.[107] The illustrative case study example of the 2010 Haiti earthquake in Chapter Six offers a detailed example of how vulnerabilities constructed in the colonial era continue to be transmitted to and reproduced in the modern day, while Chapters Three and Four also seek to analyse this process.

Poverty is also a major signifier and cause of vulnerability that results from inequality and economic marginalisation. Although vulnerability and poverty are not directly synonymous with one another they are 'highly correlated,'[108] and '[i]n many cases reducing vulnerability is about dealing with the awkward issue of poverty in society.'[109] Those in poverty are often already immiserated and will struggle to handle and recover from the shock of hazard impacts when compared to those with greater wealth and resources. Furthermore, low levels of economic resources 'prevent people from having a choice about the location of households, being able to afford preventive measures, or investing in education, healthcare or safe assets.'[110] There are a wide range of determinants behind people finding themselves in such conditions that need to be addressed, and it is important to focus on the fact that many people are vulnerable because they have inadequate livelihoods which are not resistant to perturbations and are often poor as a result.[111] Indeed, people are generally poor because, within the prevailing political economy, they suffer from specific relations of unequal bargaining, exploitation, and discrimination, while there may also be historical reasons why their livelihoods and homes are located in areas which are resource-poor.[112]

A key process behind the production of marginalisation, poverty, and many other forms of vulnerability is therefore the global economic system and its neoliberal[113] underpinnings. Because of its significant impacts on vulnerability, the thesis will place considerable attention on

---

[106] Ibid.
[107] For further discussion on this see Chapter 3.
[108] Wisner, Blaikie, Cannon, and Davis (n1) 78.
[109] Ibid., 50.
[110] Alcántara-Ayala *et al.* (n2) 175.
[111] Wisner, Blaikie, Cannon, and Davis (n1) 50.
[112] Ibid.
[113] As mentioned previously, neoliberalism is discussed in more detail in Chapter 4, see Section 4.3.

neoliberalism, its role in the development of international economic law and the global economic system, and the production of disaster risk.[114] Many criticisms of neoliberalism and the global economy within disaster theory hint at the role of international law in the production of vulnerability. For example, while criticisms began with structural adjustment policies, they have since been broadened to include international financial institutions like the World Trade Organisation and their ideology of free trade.[115]

As such criticisms highlight, neoliberalism can be responsible for the production of vulnerability in a number of ways. Its ideological foundations serve to atomise and disconnect humans from one another and the natural world, resulting in impoverished understandings of the connections between these, with negative consequences for disaster risk. Unfettered exploitation of natural resources for export production to service foreign debt, further incentivised through a mentality of infinite growth, often results in degradation of the environment[116] such as deforestation, overfishing, and declines of soil productivity and biodiversity, with consequences for the vulnerability of local communities. Likewise, many development projects purportedly aimed at increasing economic development 'turned prime agricultural land or coastal areas into industrial and commercial areas without community consultations, resulting in displacement of local communities.'[117] This lack of consultation demonstrates the role political marginalisation can play in producing other vulnerabilities, such as spatial and ecological marginalisation, with many affected communities losing their land, homes, livelihoods, and identities.[118] Trade liberalisation meanwhile can also have damaging impacts on livelihoods for many people who become unable to compete with imports; while influxes of global capital can also see individuals dispossessed or displaced from their homes and forced into more marginal locations or overpacked urban environments.

Neoliberalism's emphasis on privatisation and austerity can also be responsible for many of the societal deficiencies listed under dynamic pressures and unsafe conditions, as public spending is cut back or access to services reduced due to the shrinking of the public sector, leading to a potential decline in local services and institutions. Furthermore, such a focus on the alleged

[114] See Chapters 4 and 5.
[115] Wisner, Blaikie, Cannon, and Davis (n1) 24.
[116] Ibid., 81.
[117] Alcántara-Ayala *et al.* (n2) 158.
[118] Greg Bankoff, 'Remaking the World in Our Own Image: Vulnerability, Resilience and Adaptation as Historical Discourse' (2019) Vol. 43 No. 2 *Disasters* 221, 225.

efficiency of private companies over public ownership can also additionally result in unsafe conditions due to unprotected buildings and infrastructure and a lack of disaster preparedness in certain areas. This can occur due to increased privatisation that has seen public services outsourced to private actors who often under-invest in disaster risk reduction measures. Such companies operate under a profit motive and competitive pressures rather than in the public interest, and because disaster risk is difficult to quantify and returns from such spending are not always immediately or ever seen, such firms tend to underinvest chronically in vulnerability reduction and resilience building.[119] This can be particularly detrimental when the company in question is in charge of critical infrastructure like water, electricity or sewerage.[120] The result is infrastructure that is more vulnerable to hazards than might be the case if it was managed differently, and conditions that put the wider community at greater risk. This is a prominent issue given that the private sector builds, owns, and operates the majority of infrastructure across the world.[121]

While the private operation of such infrastructure and the logic of neoliberalism can result in this failure to invest in measures to protect it from hazards, private corporations themselves can also be responsible for the creation of vulnerability and hazards. This issue is discussed in greater detail in Chapter Five on the law of foreign investment, which facilitates 'myopic self-interest' on the part of private actors focusing only on the gains that they will make without considering costs that may be imposed on others as a result.[122] Neoliberalism and the legal regimes that it underpins within international economic law largely endorse this ideological outlook, considering social and environmental concerns to be generally beyond their remit. They incentivise short term financial gain at the cost of long-term human, environmental, and property losses.[123] As a result, short-sighted planning or incomplete information about the consequences of activities may also lead to the practice of placing the burden of the risk on others.[124] This can create

---

[119] Philip E. Auerswald, Lewis M Branscomb, Todd M. La Porte, and Erwann O. Michel Kerjan, *Seeds of Disaster, Roots of Response: How Private Action Can Reduce Public Vulnerability* (Cambridge University Press, 2006) 5.
[120] Joanne R. Stevenson and Erica Seville, 'Private Sector Doing Disaster Risk Reduction Including Climate Change Adaptation' in Ilan Kelman, Jessica Mercer, and J C Gaillard (eds.) *The Routledge Handbook of Disaster Risk Reduction Including Climate Change Adaptation* (Routledge, 2017) 363, 367.
[121] UNISDR, 'Disaster Risk Reduction Private Sector Partnership: Post 2015 Framework – Private Sector Blueprint Five Private Actor Visions for a Resilient Future' (2015) at <https://www.preventionweb.net/files/42926_090315wcdrrpspepublicationfinalonli.pdf> accessed 24 February 2020, 6.
[122] Stevenson and Seville (n120) 367-368. A minority profiting while the risk of their actions is placed onto the back of others is also discussed in the next chapter when looking at global finance.
[123] Stevenson and Seville (n120) 368.
[124] Ibid.

particular issues in terms of regulation when the parent company of the corporation responsible and its victims reside in different jurisdictions,[125] as will be discussed in Chapter Five.

In this way, a lack of interest in considering the creation of disaster risk by private companies can be seen as rational economically (at least in the short-term) but irrational socially and environmentally.[126] The atmosphere created by privatisation and delegation to the market as an arbiter means that self-interested, profit-driven actions are incentivised for business survival even when the outcomes are less optimal for wider society.[127] Furthermore, the neoliberal emphasis on deregulation and need for governments to abstain from interfering with the market can mean that they fail to address this issue. The result of this inability to consider wider, and more long-term impacts further reduces the chances of companies taking measures to reduce disaster risk and increases their chances of contributing to it.

Neoliberalism can also have a pernicious impact on disaster risk in the aftermath of disaster through 'disaster capitalism'. A term introduced by Naomi Klein,[128] this practice sees the destruction wrought by disasters exploited by wealthy states, corporations, and individuals as an opportunity for societal transformation and capital accumulation at the expense of local populations. Klein argues that it is a strategy pioneered by the economist Milton Friedman, a key advocate of the spread of neoliberalism, that involves 'waiting for a major crisis, then selling off pieces of the state to private players while citizens were still reeling from the shock, then quickly making the "reforms" permanent.'[129] Those involved include consulting firms, NGOs, engineering companies, international financial institutions, and government and UN aid agencies.[130] They exploit the violent rupture created by the disaster to impose transformations before normality returns.

---

[125] Alan Berger, Case Brown, Carolyn Kousky, and Richard Zeckhauser, 'The Five Neglects: Risks Gone Amiss' in Howard Kunreuther and Michael Useem (eds.) *Learning from Catastrophes: Strategies for Reaction and Response* (Pearson Education, Inc., 2010) 83. The authors also note that there is a climate justice element to this separation between risk creators and victims also, as such a divide can also occur across the boundary of generations.

[126] Ibid. Such issues are of course not limited solely to the private sector, however public bodies have a greater responsibility to their citizens that can help to disincentivise this risk-producing behaviour.

[127] Ibid.

[128] See Naomi Klein, *The Shock Doctrine: The Rise of Disaster Capitalism* (Penguin, 2008); Naomi Klein, 'The Rise of Disaster Capitalism' (*The Nation*, 14 April 2005) < https://www.thenation.com/article/rise-disaster-capitalism/> accessed 3 November 2019.

[129] Ibid., 6. On the colonial continuities within these practices see Bonilla (n104).

[130] Klein (n128).

This exploitation can occur in many forms. It can involve private companies acquiring lucrative contracts in engineering and supply to help rebuild infrastructure, resulting in aid funds potentially being siphoned into private profit rather than local people affected by disaster, undermining humanitarian principles.[131] Klein also cites examples from Indonesia, Iraq, Haiti, and Afghanistan where despite urgent need the work of such contractors was painfully slow or did not occur at all.[132] Likewise, the destruction and displacement that follows a disaster can also be used to dispossess local communities of valuable land for the benefit of wealth investors, as will be discussed shortly.

The aftermath of disasters also represents an opportunity for a unique form of structural adjustment; the affected people and their government are often in such a dire position that they are willing to acquiesce to any conditionalities in order to secure aid.[133] As Klein writes, it is 'a predatory form of disaster capitalism that uses the desperation and fear created by catastrophe to engage in radical social and economic engineering.'[134] This can allow for the remodelling of disaster-struck countries through policies of privatisation, the rolling back of the state, and increased foreign investment in many areas previously operated by the government.[135] It is often international financial institutions such as the World Bank and International Monetary Fund that are involved in the imposition of such reforms,[136] highlighting the culpability of the international legal system in this process of disaster capitalism and its institutionalisation of neoliberal ideology. While changes to disaster-affected societies in the aftermath of a disaster are often necessary in order to address the disaster risk that resulted in the catastrophe, it is rare for such imposed transformations to be carried out with a concern for DRR in mind. Instead, disaster capitalists see the carnage and wreckage that follows a disaster as a blank slate to be shaped towards their interests, with Klein going as far as to describe disasters as the new *terra nullius*.[137] This can result in the rebuilding after a disaster increasing the vulnerability of affected communities rather than reducing it.

---

131 Erik Cohen, 'Tourism and Land Grab in the Aftermath of the Indian Ocean Tsunami' (2011) Vol. 11 No. 3 *Scandinavian Journal of Hospitality and Tourism* 224, 225.
132 Klein (n128).
133 Ibid.
134 Ibid.
135 Ibid.
136 Ibid.
137 Ibid.

One such example occurred in the aftermath of the 2004 Indian Ocean Tsunami, following the displacement of a number of coastal communities in the affected countries due to the destruction of their homes. While they were still recovering from the shock and bereavement of the disaster, several manoeuvres were carried in attempts to dispossess them of their land which was now deemed a clean slate and valuable for the tourism industry.[138] Erik Cohen describes how these landgrabs came in two forms: 'predatory' attempts carried out by private individuals and corporations, and 'strategic' ones carried out forcibly by the national and local governments to open up the land for tourist development.[139] In predatory landgrabs the dispossession of individuals affected by the tsunami were carried out through evictions, land purchases while the owners were under duress, and investors rapidly registering land ownership claims.[140] The strategic landgrabs meanwhile involved the use of legal tools such as zoning plans, ordinances, and rehabilitation plans by the government to prevent affected communities from rebuilding their homes, and to relocate them to areas distant from their livelihoods.[141]

As mentioned above, landgrabs, displacement, and loss of livelihoods are all components of vulnerability. As a result, Cohen argues that the vulnerability of the people affected increased significantly in the aftermath of the disaster. Indeed, the dispossession has been referred to as 'a second tsunami of corporate globalization and militarization.'[142] Rather than rebuilding efforts serving local communities in putting their lives back together, they were exploited for the private benefit of corporations and investors. This therefore demonstrates a further negative impact that neoliberalism can have on disaster risk: co-opting the recovery process for its own furtherance and interests rather than the needs of disaster-affected communities. Once again, several of the international legal system's institutions are complicit in this process, both by reproducing neoliberal orthodoxy and in helping to directly inscribe potentially detrimental policies and transformations into affected states. An international law that is truly concerned with disaster risk reduction must reject these neoliberal forms of disaster reconstruction and reshaping and instead ensure that rebuilding processes are focused on the needs and wellbeing of the communities affected by the disaster.

[138] Cohen (n131) 225.
[139] Ibid., 226.
[140] Ibid.
[141] Ibid.
[142] Klein (n128).

The 'vulnerability paradigm' within disaster theory therefore points towards the 'various ways in which social systems operate to generate disasters by making people vulnerable.'[143] In this way vulnerability is 'deeply rooted, and any fundamental solutions involve political change, radical reform of the international economic system, and the development of the public policy to protect rather than exploit people and nature.'[144] Therefore, as will be discussed in subsequent chapters of the thesis, law plays an intrinsic role in the process of vulnerability production through its position in the international economic system and the exploitation of humans and the environment. It is only through reform of the pathological role of international law in the social processes that produce vulnerability that the law overall can play a comprehensive role in disaster risk reduction.

2.6 Hazards

The second component of the disaster risk equation is hazards,[145] defined by UNDRR as 'a process, phenomenon or human activity that may cause loss of life, injury or other health impacts, property damage, social and economic disruption or environmental degradation.'[146] It is the hazard that usually serves as the kinetic component to a disaster – the spark to the kindling of vulnerability. UNDRR break down hazards into three categories: natural, anthropogenic, or socionatural, depending on their origins. Natural hazards are 'predominantly associated with natural processes and phenomena', anthropogenic ones are 'induced entirely by or predominantly by human activities and choices' (though this excludes armed conflict),[147] and socionatural ones are 'associated with a combination of natural and anthropogenic factors,

---

[143] Piers Blaikie, Terry Cannon, Ian Davis, and Ben Wisner, *At Risk: Natural Hazards, People's Vulnerability and Disasters* (Routledge, 1994, First Edition) 11. Quoted in Alcántara-Ayala *et al.* (n2) 35.

[144] Ibid., 233. Quoted in Alcántara-Ayala *et al.* (n2) 36.

[145] While various hazards represent their own individual challenges, due to length constraints this section will discuss them only in a general fashion. For more detailed discussions on specific hazards see, for example, chapters in Wisner, Blaikie, Cannon, and Davis (n1); Alcántara-Ayala *et al.* (n2); Ben Wisner, JC Gaillard, and Ilan Kelman (eds.), *Routledge Handbook of Hazards and Disaster Risk Reduction* (Routledge, 2011).

[146] UNDRR (n33).

[147] The relationship between armed conflict and disasters can be quite complex. An armed conflict can be considered a disaster in itself and can also create disasters through damage to infrastructure and depletion or destruction of resources, with such situations where there is a disaster and armed conflict occurring simultaneously being referred to as complex emergencies. However, several definitions of disaster explicitly exclude armed conflict due to the fact that it already has its own high developed area of law in International Humanitarian Law, see: Valencia-Ospina (n16) 153.
For a discussion on the relationship between disasters and armed conflict and complex emergencies see: Tilman Rodenhäuser and Gilles Giacca, 'The International Humanitarian Law Framework for Humanitarian Relief During Armed Conflict and Complex Emergencies' in Susan C. Breau and Katja L. H. Samuel (eds.) *Research Handbook on Disasters and International Law* (Edward Elgar, 2016) 132.

including environmental degradation and climate change.'[148] The UNDRR terminology also includes further taxonomies of biological, environmental, geological or geophysical, hydrometeorological, and technological hazards.[149] It can therefore be observed that the term 'hazard' encompasses a wide range of different events and processes.

While these categories are helpful in demonstrating all the different phenomena that fall under the umbrella of the term, it is questionable whether differentiating between 'natural' and 'anthropogenic' hazards is helpful. There are several reasons for this, one being that such phenomena are only hazardous because humans have made them and consider them to be so.[150] In this way, although existing as physical phenomena, hazards are socially constructed by humans. As Rousseau considered, the Lisbon Earthquake was only a hazard to the humans there because they had built their city in the earthquake zone and failed to construct buildings capable of resisting its forces; and a river only becomes a flooding hazard when humans place assets near it; etc.

A further reason to reject the natural/anthropogenic dichotomy is the impact of human activities in producing or worsening hazards that fall under the 'natural' column, particularly in the era of anthropogenic climate change. As a result of this, many events once considered entirely natural are now being reappraised with the impact of human activities in mind. It is this connection that the thesis is particularly interested in, and through which the link between hazards and international law will be analysed.

Human activities can impact a range of different hazards. For example, 'creeping environmental changes' produced by human activities that lead to hazards can include 'soil erosion due to intensive farming, salinization of fresh water supplies due to excessive draw-down, and slow subsidence of land due to water or fossil fuel pumping.'[151] The environment is typically not entirely 'natural,' but influenced by human activities,[152] and in this way the environmental

---

[148] UNDRR (n33).

[149] Ibid.

[150] Kelman (n4) 3. He writes that '[n]ature does not create hazards; we decide that they can be hazardous to us. In the same way that natural disasters do not exist because society constructs situations where disasters can occur, perhaps environmental phenomena are interpreted as "natural hazards" only because society constructs situations where nature's events are hazardous to us.'

[151] Ilan Kelman, Jessica Mercer, and JC Gaillard, 'Vulnerability and Resilience' in Ilan Kelman, Jessica Mercer, and JC Gaillard (eds.) *The Routledge Handbook of Disaster Risk Reduction Including Climate Change Adaptation* (Routledge, 2017) 47.

[152] Wisner, Gaillard, and Kelman (n1) 20.

degradation caused by human activities can lead to the creation and exacerbation of hazards which are traditionally considered 'natural' in origin. The next chapter discusses the institutionalisation and perpetuation of harmful views of nature within international law that contribute to this process.

In looking beyond the 'naturalness' of hazards it is important to understand the 'dual-faced character of nature,' which sees the environment conceptualised as 'the origin of both a series of possible opportunities and a series of possible hazards.'[153] However, 'crucially humans are not equally able to access the resources and opportunities; nor are they equally exposed to the hazards.'[154] The distribution of these opportunities and risks is decided by social processes which have a powerful impact on who is susceptible to hazards and who is not.[155] While this thesis generally argues for the need for a greater focus on the role of vulnerability in the creation of disasters, understanding the social processes that distribute these opportunities and risks is also an important exercise in tackling both sides of the disaster risk equation (hazards and vulnerabilities). Therefore, in addition to focusing on technological solutions to hazards such as early warning systems and defensive infrastructure, it is also important that we mitigate our own actions that play a role in hazards and interrogate the imperatives behind these.

A prominent example of human actions playing a role in the creation and exacerbation of hazards can be seen in the increase in zoonotic diseases, such as the recent Covid-19 pandemic. This can be traced to human actions which result in the reservoirs of these viruses coming into closer proximity with human societies. As Elizabeth Maruma Mrema, the acting executive secretary of the UN Convention on Biological Diversity has stated, '[b]iodiversity loss is becoming a big driver in the emergence of some of these viruses. Large-scale deforestation, habitat degradation and fragmentation, agriculture intensification, our food system, trade in species and plants, anthropogenic climate change – all these are drivers of biodiversity loss and also drivers of new diseases.'[156] It is therefore our actions that have made the natural world more hazardous to ourselves and the potential for these diseases more likely.

---

[153] Ibid.

[154] Wisner, Blaikie, Cannon, and Davis (n1) 6.

[155] Ibid.

[156] Patrick Greenfield, 'Ban Wildlife Markets to Avert Pandemics, says UN Biodiversity Chief' (6 April 2020, *The Guardian*) < https://www.theguardian.com/world/2020/apr/06/ban-live-animal-markets-pandemics-un-biodiversity-chief-age-of-extinction?CMP=share_btn_tw> accessed 20 September 2020.

Many practices related to resource extraction, incentivised by the way our societies have been structured, produce this biodiversity loss and the environmental degradation that plays a role in producing and exacerbating hazards. In addition to the illustration of zoonotic diseases, and as mentioned earlier, deforestation may also lead to mud and landslides when felled trees no longer anchor the earth sufficiently, mining can lead to the earth collapsing and the pollution of nearby water sources, and 'fracking' often results in earthquakes.[157] Many of these practices are incentivised by social processes resulting from the logic of commodification within the system of neoliberal global capitalism. This logic serves to alter how we view the natural world and our relationship with it. As Wendy Brown writes, neoliberalism has served to 'transmogrif[y] every human domain and endeavour, along with the humans themselves, according to a specific image of the economic. All conduct is economic conduct: all spheres of existence are framed and measured by economic terms and metrics, even when those spheres are not directly monetized.'[158] The result of this is that we come to view the environment as a series of commodities to be exploited in order to feed our pursuit of endless growth, rather than the interconnected life support system of all creatures on the planet.

The outcome of this attitude and the continued emphasis on continued growth and disregard for long-term consequences has resulted in humanity being in danger of exceeding the planetary boundaries of Earth, making our own planet increasingly hazardous to us. Recent research into this has shown that human economic activity has 'transgressed critical thresholds in terms of biodiversity loss, chemical loading, land-use change, and global warming.'[159] As a result of this excessive resource use, promoted by the logic of neoliberal capitalism and the growth paradigm, a terrible picture has begun to unfold among a range of key registers. As Jason Hickel notes:

> Over the past sixty years, more than half of our planet's tropical rainforests have been destroyed. Forty percent of agricultural soil is seriously degraded, mostly as a result of intensive industrial farming practices. Around 85 percent of global fish stocks are over-exploited or depleted, and the same pattern can be seen across the living world: up to 140,000 species of plants and animals are disappearing each year due to over-exploitation

[157] Greer, Wu, and Murphy describe how areas of Oklahoma experience one or more earthquakes per day as a result of hydraulic fracturing in the area. See Alex Greer, Hao-Che Wu, and Haley Murphy, 'Household Adjustment to Seismicity in Oklahoma' (2020) *Earthquake Spectra* 1, 2.
[158] Wendy Brown, *Undoing the Demos: Neoliberalism's Stealth Revolution* (Zone Books, 2015) 9-10. The roots of this objectification of nature can be found in the work of Enlightenment thinkers, as the next chapter will discuss.
[159] Jason Hickel, 'The Imperative of Redistribution in an Age of Ecological Overshoot: Human Rights and Global Inequality' (2019) Vol. 10 No. 3 *Humanity* 416, 417.

> of the Earth's ecosystems. This rate of extinction is one hundred to one thousand times faster than before the Industrial Revolution.[160]

This environmental degradation is produced by our actions and has direct consequences for the production and exacerbation of hazards. By pursuing these practices and policies we are serving to make the natural environment more hazardous to ourselves and our planet more inhospitable. Therefore, as emphasised, in addition to tackling these actions we also need to address the social processes incentivising and underpinning them if we are to comprehensively engage with the hazards side of the disaster risk equation, and this is where international law is bound up with the process.

When discussing the human impact on hazards it is also critical to discuss climate change – a prominent consequence of economic development focused on industrialisation and the environmental degradation that comes with this. As discussed previously, this phenomenon is having a profound effect on a range of hazards we experience, and this is only likely to get worse as global heating progresses further. The potential implications include heatwaves and drought, along with 'increased frequency and severity of tropical cyclones, with storm damage, landslides and flooding, raised sea levels and coastal inundation, and the shift of epizootics and epidemics to new locations.'[161] Understanding the impact this will have on weather events can be seen in the two approaches used by climate scientists.[162] These are the attributable-risk approach and the attributable-magnitude approach.[163] The former questions the impact of climate change on the likelihood of such an event occurring, while the latter considers the effects of climate change on the event's severity.[164] Human activities can therefore potentially have two different impacts on a natural event: making them more frequent and/or more extreme.

Farber uses the example of a heatwave to demonstrate this, stating that we might question how much climate change increased the likelihood that temperatures would remain over a certain threshold for a week (attributable-risk approach), concluding that such an event would happen every 500 years without climate change, but as frequently as every 50 with it.[165] Alternatively, we

---

[160] Ibid., 422.
[161] Wisner, Blaikie, Cannon, and Davis (n1) 136.
[162] Daniel Farber, 'Disaster Law in the Anthropocene' in Jacqueline Peel and David Fisher (eds.) *The Role of International Environmental Law in Disaster Risk Reduction* (Brill Nijhoff, 2016) 49, 65.
[163] Ibid.
[164] Ibid.
[165] Ibid.

might ask how much climate change increased the temperatures of that specific heatwave, therefore pushing it above the threshold of a 'once every 500 years' event (attributable-magnitude approach).[166]

While this chapter, and the thesis more widely, argues heavily in favour of a greater focus on vulnerability within DRR efforts, this is not to say that the hazards side should be neglected. As the discussion on disaster risk and the PAR model above discussed, disasters are very much the result of the two components of hazards and vulnerability, so both are of importance. However, in line with the focus on vulnerability argued for, it is important that the impact of human activities as root causes in the creation and exacerbation of hazards are properly interrogated and addressed if DRR efforts are to be successful. As with vulnerability, this involves an examination of the social processes at the heart of this, which includes international law.

2.7 Resilience, Capacities, and Exposure

In addition to disaster risk, vulnerability, and hazards, several other connected concepts are also used in discussions on disaster theory: resilience, capacities, and exposure. While they are useful to discuss for a comprehensive understanding of the factors behind the creation and reduction of disaster risk, they are not as key as those detailed above and so will not be employed widely within the thesis where the focus will be on the main concepts. As a result, they will be given only a cursory explanation below.

2.7.1 Resilience[167]

Resilience refers to the resistance of an individual or community to the impacts of hazards. UNDRR define it as '[t]he ability of a system, community or society exposed to hazards to resist, absorb, accommodate, adapt to, transform and recover from the effects of a hazard in a timely and efficient manner, including through the preservation and restoration of its essential basic structures and functions through risk management.'[168] It is therefore a concept focused around individual characteristics that make a person or community vulnerable or resistant to a given hazard. However, it should be noted that vulnerability and resilience are not opposites of one

[166] Ibid.
[167] This is a necessarily short discussion on the concept; for a more detailed one see Alcántara-Ayala *et al.* (n2) 400-442; Kelman, Mercer, and Gaillard (n151).
[168] UNDRR (n33).

another or two ends of a single spectrum; such understandings fail to appreciate the complexities of the two concepts.[169] While the level of vulnerability in a system can be mitigated to enable resilience, and building resilience can reduce vulnerability to shocks, it is not a directly connected relationship.[170] It is possible for reductions of vulnerability in a system to produce unintended consequences that also reduce resilience.[171] For example, communities may adapt their resilience towards a particular system that is generating vulnerabilities, and an alteration of this system in the name of reducing vulnerability may result in the undermining of their resilience.[172] Therefore greater considerations of the complex relationship between the two is needed.

Resilience as a concept certainly has use in trying to help make individuals and communities more resistant to hazards and reduce the chance of disasters. A key strength of the term has also been in its ability to facilitate the bridging of 'the lacuna between different disciplines, such as climate change adaptation, development, and DRR'[173] and potentially to allow for: 'greater impact by law and policies; more efficient use of available resources (both human and material); and more effective action in reducing vulnerabilities.'[174] This breaching of the siloes between different institutions and regimes focused on complex, overlapping issues is clearly important in producing combined approaches and inter-institutional coherence.

However, while there have been some positive outcomes of the concept, overall, there has been ambivalence towards it.[175] Indeed, while its nebulous quality served as a potential advantage in helping to bridge different siloes of institutional thinking, it has also resulted in it being criticised over issues of conceptual coherence. The main criticism of the term however, and one that is important to the preoccupations of this thesis, is the fact that it has been accused of having a 'depoliticising effect by reframing issues in a way that makes populations affected by shocks and stresses responsible for securing themselves.'[176]

---

169 Alcántara-Ayala *et al.* (n2) 409.
170 Ibid.
171 Ibid.
172 Ibid. The authors use the example of Zimbabweans under the political system of Robert Mugabe.
173 Hanna A. Ruszczyk, 'Ambivalence Towards Discourse of Disaster Resilience' (2019) Vol. 43 No. 4 *Disasters* 818, 819.
174 Tommaso Natoli, *Literature Review on Aligning Climate Change Adaptation (CCA) and Disaster Risk Reduction (DRR)* (International Federation of the Red Cross | University College Cork, 2019) 1.
175 Ruszczyk (n173).
176 Thomas Tanner, Aditya Bahadur, and Marcus Moench, *Challenges for Resilience, Policy, and Practice (Working Paper 519)* (Overseas Development Institute, 2017) 3.

In effect, the concept argues that it is down to individuals or communities to harden themselves against the status quo rather than addressing the status quo itself, or put succinctly '[p]eople, power, and politics are lost in this grand plan of (disaster) resilience.'[177] As Tanner, Bahadur, and Moench write, a possible result of this focus on resilience and individual responsibility may be that it helps to 'absolve industrialised nations of their responsibility towards the vulnerable populations in the global South by framing issues in a way that makes populations affected by climate change responsible for securing themselves.'[178] Given the focus of this thesis on structural and long ranging mechanisms, the role of power and politics in the production of disaster risk, and the need to dismantle these structures, this rather liberal conceptualisation of resilience is obviously anathema to the arguments being made. It is again indicative of an approach that focuses on symptoms and fails to properly interrogate and tackle wider structures and processes that are the root causes of harms. For many people, their vulnerability is not of their own making, but is caused by and imposed on them by the actions and inactions of exogenous actors, usually those in positions of power.[179] Rather than because of directly personal failings or defects, they are caused to be at risk by processes that work to favour a minority rather than the majority such as 'discrimination, displacement, impoverishment by others' self-seeking expenditure, denial of access to resources and personal siphoning of public money meant to be spent for public good.'[180]

This is not to argue that individual people are powerless in the face of their vulnerability or to construe them as passive victims (as will be discussed shortly when looking at capacities). However, a concept which focuses heavily on the need for individuals to make changes rather than confronting the structural issues and political and power dynamics around them will not properly realise aims of disaster risk reduction, it will instead serve only to avoid more difficult questions over the sources of disaster risk and reinforce and prevent interrogation of the damaging status quo. As Yarimar Bonilla writes, '[w]e certainly want our buildings and bridges to be resilient, but do we really our communities to become well-adapted to structural (and infrastructural) violence?'[181] While the resilience of communities is undoubtedly a desirable

[177] Ruszczyk (n173) 833.
[178] Tanner, Bahadur, and Moench (n176) 17.
[179] Kelman, Mercer, and Gaillard (n151) 50. Based on James Lewis, 'Cultures and Contra-Cultures: Social Divisions and Behavioural Origins of Vulnerabilities to Disaster Risk' in Fred Krüger, Greg Bankoff, Terry Cannon, Benedikt Orlowski, and Lisa F. Schipper (eds.) *Cultures and Disasters: Understanding Cultural Framings in Disaster Risk Reduction* (Routledge, 2015) 109.
[180] Ibid.
[181] Bonilla (n104) 2.

characteristic for DRR, this must not come at the cost of allowing the structural infliction of vulnerability and other impoverishment to become entrenched and framed as inevitable. In tacking disaster risk the priority must be first and foremost dismantling the processes responsible for its production, rather than just raising bulwarks against them.

The recovery aspect of resilience is also problematic in this respect, through its suggestion of a return to 'normal' in the wake of the disaster. The fact that a disaster occurred suggests some level of vulnerability which will not be addressed by simply returning to the pre-disaster status quo; therefore returning to 'normal' may mean maintaining conditions of poor development, vulnerability, and poverty, rather than 'building back better'.[182] As a result, despite the popularity of the term, a focus on narratives of resilience within disaster risk reduction efforts likely means locking ourselves into the current status quo and masking the possibility of more substantial changes that could be made. Indeed, as Lewis writes, '[o]ver-emphasis on resilience serves to obscure root causes of disastrous consequences it seeks to ameliorate.'[183] In this thesis I will argue at length that current arrangements within the international system are producing disaster risk and distributing it in a highly inequitable manner, and thus any DRR efforts that fail to address this issue and instead mask its role in destruction and immiseration will not achieve their normative goals.

2.7.2 Capacities

A further piece of terminology linked to vulnerability to be considered briefly[184] is the concept of 'capacity.' It is this which helps to avoid conceptualising people affected by disasters as helpless victims, as everyone has capacities in some form which help them to manage the risks they face. UNDRR define this as '[t]he combination of all the strengths, attributes and resources available within an organization, community or society to manage and reduce disaster risks and strengthen resilience.'[185] It emerged from the fact that people are knowledgeable and resourceful and thus should be key participants in disaster risk reduction efforts.[186] It is this knowledge and those

[182] Kelman, Mercer, and Gaillard (n151) 50. On this and issues with the term 'Build Back Better' see Ksenia Chmutina and Wesley Cheek, 'Build Back Better for Whom? How Neoliberalism (Re)creates Disaster Risks' (22 January 2021, *Current Affairs*) < https://www.currentaffairs.org/2021/01/build-back-better-for-whom-how-neoliberalism-recreates-disaster-risks> accessed 1 July 2023.
[183] Ibid., 50.
[184] For a fuller discussion of the concept see Alcántara-Ayala *et al.* (n2) 191-222.
[185] UNDRR (n33).
[186] Kelman, Mercer, and Gaillard (n179) 57.

resources that make up their capacities. They are individual and collective attributes – a relatively unique set of skills, resources, and knowledges that everyone has to some degree and may share aspects of with relatives and others around them based on their circumstances.[187]

While connected to and in many ways serving to help offset vulnerabilities, it should be noted that as with vulnerability and resilience, vulnerability and capacity do not comprise two ends of the same spectrum.[188] This is because, as noted above, vulnerabilities are driven mainly by exogenous factors beyond the individual's control such as the distribution of resources and power, whereas capacities are generally much more down to the individual and their specific circumstances.[189] Evidence of this can be seen in the fact that two people with similar levels of vulnerability may display completely different levels of capacity, and it is entirely possible for someone with low vulnerability to have lower capacities than someone who is much more vulnerable.[190]

While this thesis primarily focuses on vulnerability and the way that this is being generated, it is important that the concept of capacity is taken note of, so that people affected by disasters are not conceptualized entirely as helpless victims. As the authors of *At Risk* note, a focus on vulnerability 'is essential, but it tends to emphasise people's weaknesses and limitations, and is in danger of showing people as passive and incapable of bringing about change. There is a need to register the other side of the coin: people do possess significant capabilities as well.'[191]

2.7.3 Exposure[192]

Exposure meanwhile is a concept that tends to be paired with vulnerability, and it is important to consider the former when attempting to understand the latter.[193] It is defined by UNDRR as '[t]he situation of people, infrastructure, housing, production capacities and other tangible human assets located in hazard-prone areas.'[194] It is generally the case that vulnerable households

[187] Ibid.
[188] Ibid.
[189] Ibid.
[190] Ibid.
[191] Wisner, Blaikie, Cannon, and Davis (n) 14.
[192] As with Resilience and Capacities, this is a relatively short account of the term. For a more detailed discussion see Alcántara Ayala *et al.* (n2) 191-222.
[193] Alcántara Ayala *et al.* (n2) 160.
[194] UNDRR (n33).

are more exposed to and less protected from risk, and such exposure can be developmental, structural, or environmental in nature.[195] Structural exposure 'requires considering the likelihood of a hazard occurring as well as the nature of construction, building use, materials, population density and so forth.'[196] It largely refers to the physical construction of the built environment and the effect that this has on the level of risk experienced by affected communities. Well-regulated and constructed housing and buildings can help to mitigate this exposure to risk.

Structural exposure, however, is only one aspect, as many hazards, such as droughts and epidemics, do not damage structures but impact communities in other ways instead.[197] Developmental exposure refers to how risk is connected to growth, and how this can change as a society undertakes development processes.[198] Alcántara-Ayala *et al.* give the example of the rapid expansion of buildings with insufficient implementation of building regulations or appropriate materials.[199] Rapid developments in urban areas can therefore result in increased exposure to risk if not implemented in the correct fashion. Likewise, the act of making land available for developments but with little consideration of environmental impacts can also result in greater exposure to risk,[200] such as from flooding, wildfires, or landslides.

Finally, environmental exposure refers to the role of particular environments in relation to the specific risk communities face. This exposure can occur as a direct result of the likelihood of hazards, such as flood-prone areas, or more indirectly through obstacles the environment presents.[201] On the latter of these, remote areas, for example, may increase the exposure of its residents to risk as physical and political factors can limit access and reduce the effectiveness of disaster response or access to services for those living in the region.[202]

Overall, exposure and its connection to vulnerability again demonstrates the complexity and intersecting nature of the various processes and factors that make up disaster risk and the construction of disasters. While vulnerability and hazards and their role in disaster risk will be the main focus of the thesis, it is important to also take note of the role of exposure in this and its

[195] Alcántara-Ayala *et al.* (n2) 160.
[196] Ibid.
[197] Ibid., 161.
[198] Ibid.
[199] Ibid.
[200] Ibid.
[201] Ibid. 162.
[202] Ibid.

part in the distribution of risk. As the chapters that follow will identify, international law is complicit in a number of processes that can serve to displace and dispossess people. This can result in them being pushed towards living in overcrowded and poorly constructed areas or environmentally marginal locales, increasing their exposure to hazards.

2.8 Conclusion

This chapter has sought to detail the disaster concepts that will inform the analysis of the rest of the thesis. Their analysis demonstrates and emphasises the key role that social processes and conditions play in increasing the chance and potential magnitude of disasters. As a result, if disaster risk is to be reduced it is important to identify damaging structures and the negative outcomes they produce. Disasters are manifestations of these pathologies, and in this way they 'don't simply bring about suffering – they expose it.'[203] It is hoped that, through the analysis in this chapter and the previous one, many of the interconnections and similarities between the pathologies identified within the international legal system and drivers of disaster risk can begin to be made. The chapters that follow this one will begin the task of properly crystalising these connections and the negative outcomes they produce, drawing extensively on the analysis of disaster risk and its creation detailed in this chapter.

The analysis of the role of international law in the structures, conditions, and processes that give birth to and progress vulnerability and create and exacerbate hazards will begin in the next chapter. This will examine the role of international law in facilitating European colonialism, in specific constellations of wealth and power, the marginalisation of indigenous communities, and in the root causes of other enduring legacies. The universalisation of European ideology through the Continent's perceived cultural superiority and gatekeeping of international law-making will also be analysed, to show how specific attitudes towards the environment that proliferated from this are serving to make the natural world more dangerous to humans.

The chapters that follow will then continue to trace the persistence and reproduction of these root causes into modern international law, and particularly the law and institutions governing the global economy. The interconnection of international law and its institutions with neoliberalism will once again be raised, and the role of this interlinkage in the production of disaster risk analysed. Likewise, the role of corporations and their lack of social and environmental

[203] Chmutina and Cheek (n182).

conscience on disaster risk will also be considered, with many issues within the law of foreign investment discussed. Through this analysis that draws on the discussions of this chapter it is hoped that greater attention to the insights of disaster theory can be encouraged in discussions on international law and disasters.

Chapter Three: Colonial International Law and the Historic Construction of Disaster Risk

3.1 Introduction

The first chapter of this thesis served to highlight the inherent interconnection between international law, capitalism, and imperialism, and to detail some of the pathologies and genealogies produced by this relationship. The second chapter has then served to elaborate the theoretical framework related to disaster risk that the thesis will be using, detailing the Pressure and Release Model and its components of vulnerability and hazards. This chapter will now synthesise the insights of these two chapters together to offer a critique of early international law and demonstrate its role in the historic construction of disaster risk.

To do this, it will attempt to demonstrate the role of international law in the historic construction of the root causes of vulnerability identified in the previous chapter. These are primarily distributions of wealth, power, and resources, the spread, reproduction, and dominance of certain ideologies, and colonial and post-colonial heritages.[1] These do not exhaust the full spectrum of vulnerability that international law has had a hand in creating or compounding. However, given the spatially and temporally distant nature of root causes to a specific society or disaster, and that they are a 'function of economic, social, and political structures, and also legal definitions and enforcements of rights, gender relations and other elements of the ideological order,'[2] this aspect of vulnerability seems the most fitting starting point for an enquiry into the relationship between international law and the creation of vulnerability.

The previous chapter discussed how disasters result from specific social arrangements and relations between actors within a society; this chapter aims to demonstrate the role of historic international law in this process. It will discuss the part that international law has played in rendering legal hierarchies and the pathological distributional processes and marginalisation that resulted from this. It will also discuss how the origin of international law as an almost exclusively European domain, due to the denial, to other societies, of access to law-making processes,

[1] See the discussion on the Pressure and Release Model and its components in the previous chapter for more information on these.

[2] Ben Wisner, Piers Blaikie, Terry Cannon, and Ian Davis, *At Risk: Natural Hazards, People's Vulnerability, and Disaster* (Routledge, 2004, Second Edition) 47-48.

resulted in the universalisation of European values and ideology and the Eurocentricity of the law. The impact of the hegemony and proliferation of these schools of thought on social arrangements, activities, and modes of thinking will also be analysed.

In order to do this, the chapter will begin by looking at the colonial roots of international law and the ways that colonialism and its justifications led to the establishment of arrangements of wealth and power that heavily privileged people in the European core[3] at the expense of others. As mentioned, it will be argued that this served to help globalise and promote certain (European) ideologies and socio-economic organisational structures (the nation-state and the capitalist mode of production,[4] for example), and laid the seeds for hierarchies that still exist in the modern day. This will then be followed by a section examining the role that this unfolding international law played, and continues to play, in the historical and contemporary production of vulnerability. The analysis will include a short example examining the 1970 earthquake in Peru and the historical processes that resulted in the vulnerabilities that caused a disaster. The chapter will then end with a discussion on how the hegemony of Western ideology and its anthropocentric view of nature serves to potentially produce and exacerbate hazards, thereby considering the interaction of international law with the hazards side of the disaster risk equation as well as the vulnerability one. The chapter starts by examining the early history of international law and its close connection with European colonialism.

3.2 Imperial International Law – Colonialism, Dispossession, and the Legal Rendering of Hierarchy

Although the Westphalian peace that followed the Thirty Year War in 1648 is generally taken as the origin of modern international law, an arguably more appropriate and less parochial beginning to be considered comes in the form of the rationalisations given for colonisation and empire.[5] In contrast to the purely European order formed by the Treaty of Westphalia, justification and jurisprudence for colonial conquest were truly global in nature, focusing on the

[3] While this chapter largely assumes a dichotomy between Europe as imperial powers and societies outside of the continent as victims of imperial policy, it should be acknowledged that this binary does not encompass the full situation. Ireland, for example, despite being a white, European society was subject to imperialism by the English during this period. For reasons of space, and the wider arguments of the thesis, however, the chapter will focus on the dichotomy mentioned above, while noting here that there were exceptions to this.

[4] This will be covered further in the sections that follow, but for an expanded thesis see Ntina Tzouvala, *Capitalism as Civilisation* (Cambridge University Press, 2020).

[5] John Linarelli, Margot E. Salomon, and Muthucumaraswathy Sornarajah, *The Misery of International Law* (Oxford University Press, 2018) 78.

subjugation of indigenous peoples in Asia, the Americas, and Africa.[6] As noted previously, '[i]nternational law, together with structures of international governance, is in important respects a product of the history of European imperial expansion.'[7]

As the TWAIL and Marxist accounts discussed in Chapter One detailed, in its earlier stages, international law was used to define the European centre and its laws and ideologies, and the territories and peoples outside of this who were subject to different, more disadvantageous rules, thereby establishing a hierarchy within the international system. This bifurcation between core and periphery produced an 'inside' where rights including law protecting property applied, and an 'outside' where indigenous communities were largely deemed to not possess such rights and protections, allowing for dispossession and, in a number of instances, the liquidation of their populations.[8] As Sven Beckert writes:

> [w]ar capitalism relied on the capacity of rich and powerful European states to divide the world into an "inside" and an "outside". The "inside" encompassed the laws, institutions, and customs of the mother country, where state-enforced order ruled. The "outside" by contrast, was characterised by imperial domination, the expropriation of vast territories, decimation of indigenous peoples, theft of their resources, enslavement, and the domination of vast tracts of land by private capitalists with little effective oversight by distant European states. In these imperial dependencies, the rules of the inside did not apply.[9]

International law was used to articulate the interests of and to solidify the political and economic partnerships of certain states,[10] expressing these inter-imperialist rivalries while also allowing them to dominate what they regarded as the global periphery.[11] It was the allocation of differing legal rights and personalities to different societies based on civilisational and racial hierarchies

---

[6] Ibid. The authors cite Ramon Hernandez, 'The Internationalization of Francisco de Vitoria and Domingo de Soto' (1992) Vol. 15 No. 4 *Fordham International Law Journal* 1031.

[7] Jennifer Pitts, *Boundaries of the International: Law and Empire* (Harvard University Press, 2018) 2. While other imperial projects no doubt had an impact on the creation of disaster risk within the communities they were colonising, due to length constraints and its relatively unique impact on the development of international law this chapter will focus specifically on European imperialism.

[8] Robert Knox, 'Valuing Race? Stretched Marxism and the Logic of Imperialism' (2016) Vol. 4 No. 1 *London Review of International Law* 81, 90.

[9] Sven Beckert, *Empire of Cotton: A Global History* (Penguin Books, 2015) 38.

[10] David Kennedy, 'Law and the Political Economy of the World' (2013) Vol. 26 *Leiden Journal of International Law* 7, 42.

[11] Knox (n8) 89-90.

that was used to facilitate this dispossession of communities outside of Europe. In this way, 'international law offers a normative vocabulary of entitlements that constitutes and structures relations among actors, interests, and ideas in ways which leave some at the periphery and honours others as central.'[12] European states and their culture were centralised and privileged within the international system while the rest of the world was marginalised. This hierarchisation was essential to the process of colonisation and in producing systems of power. As will be discussed shortly, the class structure of the international system and international law that produced this distinction between the core and the periphery, the inside and the outside, was eventually 'revealed in the concept of "civilisation," which allowed imperialist states to relate with each other, while the rest of the world was "considered as a simple object of their completed transactions."'[13] It was this concept and that of sovereignty,[14] a central doctrine of international law, that acted as the tools used to render hierarchy within the international system.

It is the contention of this chapter that many of the disaster risk-producing pathologies within international law have their roots in the jurisprudence of this period and the imperial activity that stemmed from it. Furthermore, it is argued that in many ways these have continued to be reproduced throughout the ongoing development of the law. As will be described, due to their privileged position European states were able to use the concept of sovereignty to codify their power through the law while also using it to circumscribe the power of other communities. Power within the international legal system, in the form of the ability to obtain and exercise rights and contribute to the establishment of norms, was limited to European states and gatekept from other communities. This law was then used to facilitate the colonial plunder of resources from communities outside of Europe, ensuring the movement of wealth from the legally-rendered periphery to the imperial core, often resulting in the immiseration of indigenous societies and the destruction of their way of life. This saw the establishment of a global economy built on the exploitation of the Global South, producing highly pathological distributional processes. The impact of these policies on these communities directly led to increases in vulnerability due to the marginalisation, dispossession, loss of access to wealth and resources, and impoverishment that resulted. Furthermore, the ensuing transformations of these societies

[12] Kennedy (n10) 42. As will be discussed one legacy of this is the privileging of European international law and Western voices in the interpretation and creation of new laws in the modern day.
[13] Knox (n8) 90. Quoting Evgeny B. Pashukanis, *Selected Writings on Marxism and Law* (Translated by Peter B. Maggs, Edited and Introduced by Piers Beirne and Robert Sharlet, Academic Press Inc., 1980) 172.
[14] See Anthony Anghie, *Imperialism, Sovereignty, and the Making of International Law* (Cambridge University Press, 2005), which this chapter will draw on extensively.

to facilitate this process and in pursuit of being 'civilised' also undermined many indigenous Disaster Risk Reduction (DRR) practices, as will be discussed. These histories and their legacies continue to transmit disaster risk into the present in many cases, as this chapter and the one that follows aim to highlight.

3.2.1 International Law's Colonial Beginnings – Francisco de Vitoria and Beyond

Antony Anghie traces the origins of this nature of international law to the work of Francisco de Vitoria, a Sixteenth Century Spanish theologian and jurist.[15] Although Hugo Grotius is generally considered to be the forerunner of modern international law, its primitive origins[16] can be traced to Vitoria, and Grotius is indebted to his insights.[17] Vitoria is a complex figure. While he is considered by many to have championed the rights of 'Indians'[18] his work can also be read as an especially insidious justification for their treatment due to the way it is couched in terms of 'liberality and even equality.'[19] His two essays *De Indis Noviter Inventis* and *De Jure Bellis Hispanorum in Barbados* are primarily concerned with the encounter between the Spanish and American 'Indians' and the rules regulating the relationship between the two.[20]

Vitoria's jurisprudence in these essays is constructed around his attempts to resolve legal issues stemming from the discovery of indigenous people in the Americas. While he does draw on

---

[15] Antony Anghie, 'Francisco de Vitoria and the Colonial Origins of International Law' (1996) Vol. 5 No. 3 *Social & Legal Studies* 321, 321; Anghie (n14) 13. See also China Miéville, *Between Equal Rights: A Marxist Theory of International Law* (Brill, 2004) 173-178; Robert A. Williams, Jr., *The American Indian in Western Legal Thought: The Discourses of Conquest* (Oxford University Press, 1990). These viewpoints are of course not without their critics, see for example Georg Cavallar, 'Vitoria, Grotius, Pufendorf, Wolff and Vatell: Accomplices of European Colonialism and Exploitation or True Cosmopolitans?' (2008) Vol. 10 *Journal of the History of International Law* 181; Pablo Zapatero, 'Legal Imagination in Vitoria: The Power of Ideas' (2009) Vol. 11 *Journal of the History of International Law* 221.

[16] On the primitive origins of international law and its early scholars see David Kennedy, 'Primitive Legal Scholarship' (1986) Vol. 27 No. 1 *Harvard International Law Journal* 1. Cited in Anghie (n14) 13.

[17] Anghie (n14) 13.

[18] Vitoria and the rest of the 'School of Salamanca' (including Bartolomé las Casas who will be discussed in the final chapter) were highly critical of the initial conquests carried out by the Spanish in the Americas, see Martti Koskenniemi, 'Empire and International Law: The Real Spanish Contribution' (2011) Vol. 61 No. 1 *University of Toronto Law Journal* 1, 6.

[19] Anghie (n14) 28.

[20] Anghie (n14) 13-14. These essays can be translated as 'On the Indians Lately Discovered' and 'On the Law of War Made by the Spaniards on the Barbarians'. They can both be found in Franciscus de Victoria, *De Indis et de Ivre Belli Relectiones* (Ernest Nys (ed.), John Pawley Bate (trans.), The Carnegie Institution of Washington, 1917) 115 and 163 respectively. Within the text he will be referred to as 'Vitoria' as this is how he is more commonly referred in the literature.

existing doctrines in the service of this, he also reconceptualises these and introduces new ones.[21] International law that existed at the time could not easily resolve the issue of Spanish-Indian relations, so instead international law was created in order to deal with the issues created by this encounter.[22] As the British Foreign Secretary quoted in 1884, 'it is obvious that the discovery of America […] naturally gave rise to a vast numbers of disputes which the scanty International Code of the Middle Ages was quite unable to settle.'[23]

While a classical issue within international law was the dilemma of creating order among sovereign states, Vitoria's work does not proceed from this premise as it does not characterise the 'Indians' as sovereign.[24] His issue instead is how to create a system of law to regulate relations between two culturally divergent societies with differing ideas of governance and custom.[25] In this way Vitoria's work becomes central to the colonial encounter, acting as a justification and framework for relations between these two different cultural orders. It was through the relationship of appropriation that emerged between America and Europe that international law was developed.[26]

The conventional way of accounting for Spanish titles over the Americas would have been through utilising jurisprudential doctrine developed by the church to deal with the Saracens (a term commonly used to refer to Arab Muslims), thereby characterising the 'Indians' as non-Christian heathens and determining their rights and duties accordingly.[27] However, Vitoria initially criticised this framework that had emerged from centuries of confrontation between Christians and 'heathens,' and sought to replace it with his own, displacing the primacy of divine law and the Pope in favour of natural law administered by a secular sovereign.[28] Previously this divine law had granted the Pope universal jurisdiction through his divine mission to spread Christianity, however Vitoria rejected this view.[29]

---

[21] Anghie (n14) 14-15. For a detailed discussion on the role of Roman legal concepts in European expansion see Lauren Benton and Benjamin Straumann, 'Acquiring Empire by Law: From Roman Doctrine to Early Modern European Practice' (2010) Vol. 28 No. 1 *Law and History Review* 1.
[22] Ibid., 15.
[23] C. H. E. Carmichael, 'Grotius and the Literary History of the Law of Nations' (1884) (Text of a speech issued as a pamphlet). Cited in Miéville (n15) 169.
[24] Anghie (n14) 15.
[25] Ibid., 16.
[26] Miéville (n15) 169.
[27] Anghie (n14) 17.
[28] Ibid., 17-18.
[29] Koskenniemi (n18) 8.

Vitoria begins his construction of new jurisprudence by questioning whether or not indigenous people, as non-Christians, could own property, writing, 'I ask first whether the aborigines in question were true owners in both private and public law before the arrival of the Spaniards; that is, whether they were true owners of private property or possessions.'[30] Under divine law, as non-believers, they would be denied such rights; however because of Vitoria's focus on natural law instead, this was not automatically the case.[31] He instead concludes that '[u]nbelief does not destroy either natural law or human law; but ownership and dominion are based either on natural or on human law; therefore they are not destroyed by want of faith. […] Hence it is manifest that it is not justifiable to take anything that they possess from either Saracens or Jews or other unbelievers as such, that is, because they are unbelievers.'[32] Here we can see some of the reasoning Vitoria is praised for in promoting the rights of indigenous people. At this stage he treats Christians and non-Christians equally in a legal sense under international law.[33]

Vitoria also dismissed the idea of the church's universal authority in his analysis, arguing that the Pope's authority is limited to 'the spiritual dimension of the Christian world.'[34] As a result, the Christian world and that of the 'Indians' are not currently bound by a universal, overarching system but instead consist of two different orders which need to be bridged in order to resolve the problem of the status of the latter people.[35] In order to address this issue of jurisdiction Vitoria proceeds in two steps: he begins with an examination of the personality character of the 'Indians' then elaborates a new system of universal natural law.[36] In contrast to many other writers at the time who dismissed non-European indigenous populations as heathens, slaves, and barbarians, Vitoria offers a more sympathetic, though paternalist, assessment of them and their societies.[37] He writes that:

> the true state of the case is that they are not of unsound mind, but have, according to their kind, the use of reason. This is clear, because there is a certain method in their affairs, for they have polities which are orderly arranged and they have definite marriage

[30] Victoria (n20) 120. Cited in Anghie (n14) 18.
[31] Anghie (n14) 18.
[32] Victoria (n20) 123.
[33] Carl Schmitt, 'The Land Appropriation of a New World' (1996) Vol. 109 *Telos* 29, 47. Cited in Miéville (n15) 174.
[34] Anghie (n14) 19.
[35] Ibid.
[36] Ibid.
[37] Ibid.

> and magistrates, overlords, laws, and workshops, and a system of exchange all of which call for the use of reason; they also have a kind of religion.[38]

Vitoria therefore recognised a common humanity in the indigenous people of the Americas, and a clear, coherent order and functioning within their societies. It is because of this insistence that he is lauded in many ways as a protector of native people against colonial exploitation.[39] However, this identification of the indigenous people as fellow reason-possessing human beings also meant that they were bound by his new universal natural law system of *jus gentium,* and so this became the international law governing their relations.[40]

Under this system of law, Vitoria argues that the Spanish have a universal right to 'travel and sojourn' and trade in the lands of the 'Indians'; and provided they are not violent the latter cannot stop them.[41] This is based on the ideas that trade and commerce were part of the natural communication and partnership between human beings and of the existence since the beginning of time of a right for everyone to visit and travel through any lands they desired.[42] While these were advanced as universal rights that should not be infringed by anyone, the encompassing regime of *jus gentium* largely serves to legitimate the preoccupations and practices of the Spanish in penetrating American society and their establishment of a system of commerce for trade.[43] In this way the Spanish forms of political and economic life are universalised through their support in Vitoria's system of universal law, appearing to be derived from the sphere of natural law, while little attention is paid to the perspectives of the indigenous Americans.[44] With both societies bound by this universal law, the gap between the two cultures ceases to exist, and instead their behaviour can be assessed under this new framework.[45]

On the surface the universality of this framework appears to make the relations equal and reciprocal in nature.[46] Indeed, '[t]he Indian who enters the universal realm of commerce has all the acumen and independence of market man, as opposed to the timid, ignorant child-like

---

[38] Victoria (n20) 127. Cited in Anghie (n14) 20.
[39] Anghie (n14) 20.
[40] Ibid.
[41] Ibid.
[42] Koskenniemi (n18) 26.
[43] Anghie (n14) 21.
[44] Ibid.
[45] Ibid.
[46] Ibid.

creatures Vitoria presents earlier.'[47] However, this supposed equality and reciprocity at the heart of the scheme must be understood within the context and asymmetry in which relations between the two societies occurred.[48] As Jörg Fisch writes, 'Vitoria's right to settlement and commerce is only *formally reciprocal*, while it is *materially unilateral* or at least extremely one-sided. There was little chance in Vitoria's day that American Indians would paddle in their canoes to Europe in order to claim their natural right of settlement.'[49] It is Spanish perspectives and interests that are incorporated into the law and imposed on American societies. Despite its universal nature, little attention is paid to 'Indian' customs and viewpoints and the potential for their inclusion, denying them input into the law to which they are to become bound. Here we can see the beginnings of the Eurocentricity of international law despite its increasingly global nature.

Vitoria's conceptualisation of natural law and its doctrines therefore actually serves to endorse relentless unilateral incursions by the Spanish into 'Indian' society, with the seemingly innocuous articulation of rights to 'travel' and 'sojourn' leading to a system of norms which are imposed on the natives and inevitably, and understandably, broken by them.[50] Under Vitoria's system the infringement of these rights is considered an act of war. He writes that:

> to keep certain people out of the city or province as being enemies, or to expel them when not already there, are acts of war. Inasmuch, then, as the Indians are not making a just war on the Spaniards (it being assumed that the Spaniards are doing no harm), it is not lawful for them to keep the Spaniards away from their territory.[51]

This therefore serves to bind the indigenous people further; if they do not placidly entertain excursions by the Spaniards into their territory and societies then it is them in the wrong and they invite retaliation by the Spanish, resulting in greater levels of penetration and expansion of the invaders' territory.[52] This therefore creates a vicious bind for the native populations: understandable resistance to the presence of the Spanish only invites greater retaliation by them. Furthermore, Vitoria's assessment of the indigenous people as possessing reason combined with the universality of Spanish (European) practices under *jus gentium* results in a gap between the

---

[47] Ibid.

[48] Ibid.

[49] Jörg Fisch, 'The Role of International Law in the Territorial Expansion of Europe, 16th-20th Centuries' (2000) Vol. 3 No. 1 *ICCLP Review* 4, 8 [Emphasis in original]. Cited in Miéville (n15) 177.

[50] Anghie (n14) 21.

[51] Victoria (n20) 151.

[52] Anghie (n14) 22.

customs of the 'Indians' and the norms Vitoria has declared them bound by.[53] As a result of this, '[t]he discrepancy between the ontologically "universal" Indian and the socially, historically, "particular" Indian must be remedied by the imposition of sanctions which effect the necessary transformation."[54] Their failure to live up to and abide by standards unilaterally imposed on them and rooted in Spanish societies and their customs leaves them open to coercion in order to resolve this. Here we see a disregard of indigenous culture and early actions by European powers to transform indigenous societies along lines more amenable to them and their interests.

In this way. early international law was used coercively at the behest of the Spanish. Despite the supposed equality of the Spanish and American people under natural law, it is the practices of the Spanish not the 'Indians' which are universalised through its all-encompassing frameworks. It is the interests of the Spanish, in being able to continue their commerce and penetration of indigenous American society, that are given primacy, not those of the indigenous population in being able to protect their people and territory from incursion. This screw is then tightened further as acts contrary to the framework Vitoria has created leave the indigenous people open to repercussions, while even their traditional behaviour and customs come under assault for failing to match the idealised ones of the Spanish. This latter issue is used to regulate relations between the 'Indians' themselves, granting the Spanish an extraordinary right to intervene within indigenous society and act on behalf of individuals seen as victims of 'Indian' rituals.[55] Transgressions of the universally binding norms of *jus gentium* was therefore used to justify colonial conquest.[56]

The ability of the Spaniards to justly retaliate to 'Indian' acts of aggression in denying them their natural rights and the wars that follow was the preoccupation of Vitoria's second lecture. It is through war that the aforementioned transformation of the indigenous people is to be achieved. Now that Vitoria has outlined his secular *jus gentium* which is administered by the sovereign he begins to reintroduce what were previously Christian norms (such as the right to proselytisation and the inviolability of Christian ambassadors), authorising them under this law of nations.[57] In this way the Christian practices which Vitoria previously dismissed are recharacterized as having

[53] Ibid.
[54] Ibid.
[55] Ibid.
[56] Williams (n15) 97.
[57] Anghie (n14) 23.

originated in *jus gentium* not divine law.[58] This means that resistance by the 'Indians' to conversion and the adoption of universal (Spanish) practices is a cause for war under *jus gentium* instead of divine law.[59] As non-Christians many of the exclusions applied to 'Saracens' can be extended to 'Indian' societies.[60] Vitoria elaborates the many ways in which war can now be justified:

> If, after the Spaniards have used all diligence, both in deed and in word to show that nothing will come from them to interfere with the peace and well-being of the aborigines, the latter nevertheless persist in their hostility and do their best to destroy the Spaniards, then they can make war on the Indians, no longer as on innocent folk, but as against forsworn enemies, and may enforce against them all the rights of war, despoiling them of their goods, reducing them to captivity, deposing their former lords and setting up new ones, yet withal with observance of proportion as regards the nature of the circumstances and of the wrongs done to them.[61]

It can easily be observed how this will potentially result in endless conflict. Having contrived a reason for the initial use of war under Vitoria's newly elaborated framework, the framework then allows for inevitable further conflicts as a result of continued resistance from the indigenous peoples to this increasing aggression by the Spanish justified under Vitoria's system. As Anghie[62] describes, this position of endless war against pagan 'Indians' is endorsed by Vitoria who writes that:

> Sometimes it is lawful and expedient to kill all the guilty. The proof is that war is waged in order to get peace and security. But there are times when security can not be got save by destroying all one's enemies: and this is the case against unbelievers, from whom it is useless ever to hope for a just peace on any terms. And as the only remedy is to destroy all of them who can bear arms against us, provided they have already been in fault.[63]

---

[58] Ibid.
[59] Ibid.
[60] Ibid., 26.
[61] Victoria (n20) 155. Cited in Anghie (n14) 24.
[62] Anghie (n14) 27.
[63] Victoria (n20) 183.

He also describes how 'war with pagans', which appears defined in contrast to conflict against fellow Christians, so may include the 'Indians' as non-believers, is 'perpetual and that they can never make amends for the wrongs and damages they have wrought.'[64]

While, in terms of commerce, Vitoria's *jus gentium* at least had an illusion of equality and reciprocity, when it comes to the power to wage just wars his framework is considerably more one-sided. Rather than examining issues of the doctrine of just war and subjective belief, Vitoria begins by establishing the proposition that the 'Saracens' as a people (and by extension now the 'Indians') are incapable of waging a just war as they are not ruled by Christian sovereigns.[65] Instead, only Christians are able to wage a just war, and given that the ability to wage a just war is the prerogative of the sovereign under Vitoria's framework, it follows that 'Saracens' and 'Indians' cannot be fully sovereign.[66] Therefore, despite having organised polities of their own, which Vitoria had previously identified and described, the indigenous people of the Americas are not considered to be governed by sovereigns and exist instead as 'objects against which Christian sovereignty may exercise its power to wage war,' as violators of the law under Vitoria's framework.[67] In this respect 'hierarchical subjugation of the Indian' which he had rejected under divine law now became acceptable when necessitated under his natural law framework.[68]

This lack of sovereignty on the part of the 'Indians' potentially allows for unfettered violence against them, including the enslaving of women and children, which is usually prohibited under just war principles.[69] Vitoria himself writes that:

> when the war is at that pass that the indiscriminate spoliation of all enemy-subjects alike and the seizure of all their goods are justifiable, then it is also justifiable to carry all enemy-subjects off into captivity, whether they be guilty or guiltless. And […] it is

---

[64] Ibid., 181.

[65] Anghie (n14) 26. Vitoria (n20, 173), for example, uses the seemingly exceptional scenario of 'even Turks and Saracens' being able to wage just war on Christians as an example to demonstrate his arguments that simple belief in the justness of a war is insufficient to make it so. This suggests that his understanding of a universal criteria for the justness of a war precludes the ability of these societies to engage in just war against Christians regardless of the circumstances. Likewise, further on in his lecture (p. 174) he writes that ignorance of the actual injustice of a war may not be an excuse as 'otherwise unbelievers would be excused when they follow their chieftains to war against Christians,' again suggesting that he cannot envisage a scenario where such a war would be just.

[66] Ibid. This creation of hierarchies of sovereignty is a theme that is threaded throughout international law's history, as the discussion on the positivist turn below describes further.

[67] Ibid.

[68] Williams (n15) 103.

[69] Anghie (n14) 26.

> indubitably lawful to carry off both the children and women of the Saracens into captivity and slavery.[70]

Here then, far from his previous arguments against characterisations of indigenous people as slaves, Vitoria is now permitting their women and children being forced into bondage once the all-encompassing and mandatory obligations of *jus gentium* have been breached. The status of 'Indians' as objects of Vitoria's natural law can also be observed in the way that new aspects and powers of sovereignty, which the 'Indians' themselves are excluded from, are discovered through relations between them and the Spanish.[71] This includes aspects such as the powers to wage war and acquire title over alien people and territories.[72] A denial of sovereignty is therefore used to heavily reduce the power indigenous American societies have in the international realm.

Therefore, it can be observed how, in the end, these arguments of Vitoria and his system of *jus gentium* were ultimately a rationalisation and justification for European conquest of overseas territories, in a similar way to how notions of consent, contract, and voluntary exchange mask the imposition of the interests of the powerful today.[73] In this way '[t]he foundations of international law of the modern state are in justifications for the use of force in support of European commercial interests to compel non-European peoples to trade and in the conquest of the land and resources of non-European peoples.'[74] International law was used to construct differing levels of power through the asymmetric distribution of legal rights and personality and this served to legitimise the extraction of wealth from non-European territories to European ones and to transform their societies to improve this process.

Similar arguments to those of Vitoria were also made by other founders of international law such as Alberico Gentili and Hugo Grotius,[75] and many writers on philosophy, politics, and law at the time, including John Stuart Mill and Grotius himself were themselves directly involved in colonisation or overseas trading enterprises.[76] These figures also developed many of their ideas

---

[70] Vitoria (n20) 181.
[71] Anghie (n14) 27-28.
[72] Ibid.
[73] Linarelli, Salomon, and Sornarajah (n5) 115.
[74] Ibid., 112. As the authors note, different constructions of the origin of international law are possible, however the dominant story is Eurocentric. For an examination of 'the road less travelled' and an attempt at a truly global history see Bardo Fassbender and Anne Peters (eds.) *The Oxford Handbook of the History of International Law* (Oxford University Press, 2012).
[75] Linarelli, Salomon, and Sornarajah (n5) 114.
[76] Andrew Fitzmaurice, *Sovereignty, Property and Empire, 1500-2000* (Cambridge University Press, 2017) 11.

through the lens of the experiences of empire, leading to arguments, such as those detailed in this chapter, that the architecture of Western political thought is inherently disposed towards Western interests and values and the process of empire.[77] As has been, and will continue to be discussed, far from being neutral and ahistorical, the development of international law has been carried out to suit the interests and values of Western states at the expense of others. As Miéville describes:

> [t]he colonial encounter is central to the development of international law. But this centrality is not reducible to the colonialism of *content*, the fact that certain legal categories were invested with Western bias, though the fleshing out of such historical specificities is important. Colonialism is in the very *form,* the structure of international law itself, predicated on global trade between inherently unequal polities, with unequal coercive violence implied in the very commodity form. This unequal coercion is what forces particular content into the legal form.[78]

International law was used to render power dynamics between different societies and to impose transformations onto those outside of Europe in order to bring them closer to European ideals and facilitate the plunder of wealth and resources. It was also used to universalise European customs and denigrate the practices of indigenous societies by denying the inclusion of their perspectives within the law that applied universally. These processes, and their genealogies in the later development of international law, all contributed to specific distributions of power, wealth, and resources, and the hegemony of certain ideologies that act as root causes of disaster risk. They also directly contributed to the operation of colonialism and the vulnerability stemming from its legacies. These preoccupations and processes within the law did not end when its development shifted away from natural law and Vitoria's jurisprudence, as the next section on positivism will discuss.

3.2.2 Positivism, Civilisation, and Formal Empire

When international law shifted from a natural law basis to a positivist one in the Eighteenth Century, it was the concept of sovereignty which was again used to continue this process of bifurcation between Europe and the rest of the world. While, previously, many European states

[77] Ibid.
[78] Miéville (n15) 178 [Emphasis in original].

had not had formal control over overseas territories and had mediated their rule and activities through private actors like the English and Dutch East India Companies, this changed in around the 1700s.[79] Where the colonies had previously been a source of tribute, the advancement of capitalism meant that they needed to be transformed into markets to absorb the increasing glut of products from factories.[80]

While the naturalist international law of the Sixteenth and Seventeenth Centuries asserted to an extent that a universal international law stemming from human reason applied to all people, positivist international law of the Nineteenth Century was more selective; it distinguished between civilised states and non-civilised ones, with the contention that international law and the powers it endowed only applied to the sovereign states that made up the 'family of nations' comprised of the former.[81] The links with Vitoria's work described above can be seen, and 'an elaborate vocabulary' of denigration was developed by positivists for non-European persons in order to present them as suitable objects for conquest and to legitimise their lack of sovereignty and the colonial violence against them.[82]

For positivists, the sovereign state served as the foundation of international law, and they completely rejected the idea that such states were bound by an overarching natural law or morality.[83] Instead, the sovereign, as the highest authority in the international sphere, could only be bound to what it had agreed,[84] and the only relevant source of international law was the practice of states.[85] This shift from the idea that law was given under the naturalist conception to one where it was created by human societies and institutions allowed for the fencing off of law-making and legal personality, as '[o]nce the connection between "law" and "institutions" had been established it followed from this premise that jurists could focus on the character of institutions, a shift which facilitated the racialization of law by delimiting the notion of law to very specific European institutions.'[86] Henry Wheaton, a jurist from the United States, wrote, for example, '[i]s there a uniform law of nations? There certainly is not the same one for all nations

[79] Knox (n8) 94.
[80] Ibid.
[81] Anghie (n14) 35.
[82] Ibid., 38.
[83] Ibid., 43.
[84] Ibid.
[85] Pitts (n7) 118.
[86] Anghie (n14) 55. For a further discussion on international law in the construction of race see Knox (n8).

and states of the world. The public law, with slight exceptions, has always been, and still is, limited to the civilized and Christian people of Europe or to those of European origin.'[87]

International law therefore became the exclusive realm of European states, meaning that only they were considered to have sovereignty under this system and the rights and powers that came with this. Once this distinction was made it allowed for different standards to be applied to the different categories of people – those within the European, sovereign core, and those outside it. Therefore, 'once non-European states were excluded from the realm of sovereignty, they were precluded from making any sort of legal claim in the realm of international law because only sovereign states were able to participate as full members with all the attendant rights and powers.'[88]

This legally rendered bifurcation[89] therefore served to exclude non-European states from the process of law-making in international law and full legal personality, and was used to place them below sovereign, European states in terms of rights and powers. As mentioned, this division was achieved through the notion of 'civilisation,' a concept articulated most strongly by the Scottish lawyer, James Lorimer.[90] His articulation of the concept stemmed from his 'hierarchical and deeply racist view of human communities,'[91] dividing humanity into categories of 'civilised', 'barbarous', and 'savage'.[92] In relation to these, he argued that 'civilised' nations possessed three respective levels of recognition for these different categories: plenary political recognition for the civilised, partial political recognition for the barbarous, and mere human recognition for those considered savage.[93] In this respect, he argued that jurists are 'not bound to apply the positive law of nations to savages or even to barbarians as such,'[94] highlighting their exclusion from international law. Such division and hierarchisation became commonplace in the writings of

---

[87] Henry Wheaton, *Elements of International Law* (Little Brown and Company, 1866, Eighth Edition) 17-18.
[88] Anghie (n14) 55.
[89] In some schools of thought, such as that of James Lorimer, there was considered to be a tripartite division: civilised, semi-civilised, and uncivilised peoples, with semi-civilised people able to enjoy some international legal personality. For a discussion on this see Tzouvala (n4) 51. Lorimer's work itself, as cited by Tzouvala, can be found at James Lorimer, 'La Doctrine de la Reconnaissance, Fondement du Droit International' (1884) Vol. 16 *Revue de Droit Internationale et de Législation Comparée* 333. His school of thought is also the subject of Martti Koskenniemi, 'Race, Hierarchy, and International Law: Lorimer's Legal Science' (2016) Vol. 27 No. 2 *The European Journal of International Law* 415.
[90] Tzouvala (n) 51.
[91] Koskenniemi (n) 416.
[92] James Lorimer, *The Institutes of the Law of Nations: A Treatise of the Jural Relations of Separate Political Communities, in Two Volumes, Vol. I* (William Blackwood and Sons, 1883) 101.
[93] Ibid.
[94] Ibid., 102.

Nineteenth Century international lawyers, with these jurists and European states as the key arbitrators of civilisation.[95]

In this way, positivist international law was used to further crystallise a hierarchy of power within the international system and to justify practices which were used to violently transfer wealth and resources from states rendered peripheral to those within the core with consequences for the production of vulnerability. This led to distributions of wealth resembling those constructed in terms of power, as those with power took from those without. The exclusively European nature of international law also meant that these dynamics continued to be reproduced as the law was used to articulate the interests of only these states at the expense of others, resulting in the hegemony of European thought and the ongoing construction of structures reflective of this. Overall, the transformations in global trade enabled by this bifurcation and the practice of war capitalism[96] had a profound effect on the distributions of wealth and power: 'A multipolar world increasingly became unipolar. Power long spread across multiple continents and through numerous networks increasingly became centralized through a single node, dominated by European capitalists and European states.'[97]

Several justifications for depriving 'non-civilised' people of sovereignty were proposed by positivist jurists. One such criterion was the requirement of control over territory,[98] with arguments being made that wandering tribes could not be sovereign as they failed to control territory due to their nomadic nature.[99] However, other supposedly 'uncivilised' societies did meet this requirement, so instead a concept of society was used; only those people who were part of the civilised international society could enjoy the full powers of sovereignty concomitant with this.[100] This allowed jurists to link legal status to the distinctions in culture of different

---

[95] Tzouvala (n4) 52.

[96] Beckert describes 'war capitalism' as being the foundation from which industrial capitalism evolved by helping to facilitate the primitive accumulation of capital that later incarnations rested on. He argues that in contrast to the forms that followed which relied on wage workers, contracts, and property rights, war capitalism was instead defined by the use of violent coercion, expropriation, and slave labour to achieve its goals. It was a form of capitalism enabled by juridical rendering of an inside/outside distinction which allowed territories in the latter to be subject to plunder due to the absence of sovereignty and legal rights. See Beckert (n9) xvi; 29-82.

[97] Ibid., 39.

[98] Control over territory remains part of the criteria of statehood today. See Montevideo Convention on the Rights and Duties of States (adopted 26 December 1933, entered into force 26 December 1934) 165 LNTS 19 (Montevideo Convention), Art. 1(b). As will be discussed in the section on hazards at the end of this chapter, this idea had its roots in European ideals around the correct usage of land and need to avoid 'waste.'

[99] Anghie (n14) 58.

[100] Ibid.

societies, and therefore to claim that sovereignty and society posed two different tests, with membership in international society being the decisive issue when it came to truly possessing the comprehensive range of powers exercised by sovereigns in Europe.[101] This therefore permitted the legally justified exclusion and marginalisation of societies considered uncivilised even when they held territory and were politically organised. In some cases, this resulted in societies which had previously enjoyed the full rights of sovereignty, including the ability for their behaviour to constitute practice and precedent in giving rise to doctrines and rules of international law, having these rights taken away.[102] Endorsing the idea that non-European societies had legal personality clashed with the need to transform and subjugate them,[103] so the ultimate conclusion of this distinction was that '[a]ll non-European societies, regardless of whether they were regarded as completely primitive or relatively advanced, were outside the sphere of law, and European society provided the model which all societies had to follow if they were to progress.'[104]

With non-European societies successfully excluded from international law, Anghie writes about positivists were left the task of defining the methods and terms through which they were to be assimilated back into the framework of law.[105] He argues that this importantly allowed the re-entry of non-European people to take place on terms which subordinated and disempowered them, maintaining the hierarchy.[106] This again resulted in the imposition of transformations within these societies, which, as will be discussed in the next section, often had profound effects on the levels of disaster risk they faced.

Ntina Tzouvala argues that the 'standard of civilisation' to which uncivilised states were made to aspire if they wished to join this family of nations contained (and continues to contain) two different, oscillating poles: the logic of improvement and the logic of biology.[107] The logic of improvement is based on the idea that uncivilised states can earn membership into the family of nations if they reform their societies to meet European standards of civilisation, particularly the

[101] Ibid., 58-59.
[102] Ibid., 59. Examples given by Anghie (p. 58) include communities in India and elsewhere in the East Indies and kingdoms in Africa such as Mali, Ethiopia, and Benin. These were sophisticated polities with traditions and legal systems, and, in the case of the latter, recognised sovereigns with whom Europeans had established diplomatic relations. While they therefore clearly met many of the requirements of sovereignty, positivists worked hard to argue that while they could be formally sovereign, their lack of inclusion within the civilised international society meant that they could not access the range of powers afforded to the European states that comprised this society.
[103] Knox (n8) 95.
[104] Anghie (n14) 62.
[105] Ibid., 66.
[106] Ibid.
[107] Tzouvala (n4) 2.

capitalist mode of production.[108] Under this logic, the attributes that make a state civilised are fixed and identifiable, including transformations such as '[t]he legalisation of social affairs, the adoption of a legal system centred around notions of individualism, private property, and judicial independence, as well as the bureaucratisation and territorialisation of state power,' again demonstrating the universalisation and dominance of European ideology.[109] The idea behind this particular logic is that non-European states were in a more primitive state of development, but if they advanced closer to the European model, which was viewed as the endpoint of a timeline of advancement, then they could eventually be considered civilised.

The logic of biology meanwhile points towards 'purportedly immutable difference between "the West and the rest"' which means that the barriers to uncivilised states joining the family of nations are insurmountable.[110] It 'perpetually confin[ed] non-Western political communities into a lesser position within the architecture of international law,'[111] thus concretising the hierarchy of people established and the vulnerability produced by this marginalisation. In its earlier stages this logic was explicitly racist, with civilisation being automatically associated with white societies, while other polities were considered economically and politically backwards and morally inferior.[112] Such racist justifications have waned in more recent years; however the idea of 'cultural differences' and 'objective' metrics in indexes such as creditworthiness have appeared instead to fill the void as largely insurmountable obstacles.[113] This logic served to justify the hierarchy and colonial practices against non-European persons, with both assimilation to or destruction under European imperialism being seen as signs of their civilisational inferiority.[114] While the structure of the standard of civilisation has remained constant, what constitutes 'civilisation' has evolved in order to maintain its credibility.[115]

The elaboration of this hierarchy of civilised, sovereign and uncivilised, non-sovereign peoples was important when it came to facilitating and justifying the acquisition of resources, and particularly territory. While European states did sometimes enter into uneven treaties with the

[108] Ibid.
[109] Ibid., 45.
[110] Ibid., 2.
[111] Ibid., 45.
[112] Ibid., 68.
[113] Ibid., 4-5.
[114] Ibid., 69.
[115] Ibid., 2.

leaders of non-European societies,[116] they also frequently obtained land and resources through more directly violent means. Italian jurist Pasquale Fiore, for example, wrote that '[c]ertainly as a matter of principle, colonisation and colonial expansion cannot be questioned […] civilised countries in order to find new outlets for their ever increasing activity, need to extend their present possessions and to occupy these parts of the earth which are not of any use to uncivilised peoples.'[117] Since people outside of Europe had been stripped of their legal personality, they generally lacked the same rights and powers as Europeans, and thus European states were often able to assert sovereignty over their territory.[118] For international lawyers at the time, such as John Westlake, 'it was absurd to think of native possession in terms of sovereignty, or colonial expansion, as conditional upon treaties with native chiefs.'[119] Because of this colonial title of possession was always considered original, being produced from the qualification of the acts of European powers under European law, rather than being derived from cession of ownership by the natives.[120] How, exactly, a state would come to control such territory became a key question, and the conceptual framework offered by property law was influential in establishing several doctrines relating to this.[121] Two such doctrines that emerged and that had historical precedent in international law were 'conquest' and 'occupation.'[122]

Conquest involved seizing territory by force, by militarily defeating an opponent and claiming sovereignty over the vanquished opponent's territory.[123] William Edward Hall, for example, defined it as 'the appropriation of the property in, and of the sovereignty over, a part or the whole of the territory of a state, and when definitively accomplished vests the whole rights of property and sovereignty over such territory in the conquering state.'[124] As Anghie writes, the recognition of a right to conquest was contrary to the concept of law as it legitimated outcomes decided by force rather than legal principle.[125] However, under the hierarchy established by

---

116 Anghie (n14) 71.
117 Pasquale Fiore, *International Law Codified and its Legal Sanction* (translated from the 5th Italian edition by Edwin M. Borchard, Baker, 1918) 46, as cited in Tzouvala (n4) 52.
118 Sharon Korman, *The Right of Conquest: The Acquisition of Territory by Force in International Law* (Oxford University Press, 1996) 42. She draws upon Bedjaoui in International Court of Justice (ICJ), 'Pleadings Oral Arguments, Documents: *Western Sahara* Volume IV' (1975), 452-494.
119 Martti Koskenniemi, *The Gentle Civilizer of Nations: The Rise and Fall of International Law 1870-1960* (Cambridge University Press, 2001) 127.
120 Ibid., 128.
121 Anghie (n14) 82.
122 Ibid., 83.
123 Ibid.
124 William Edward Hall, *A Treatise on International Law* (Clarendon Press, 1884, Second Edition) 522.
125 Anghie (n14) 83.

positivist international law, non-European states existed outside of the family of nations and therefore this rule of law, allowing conquest to be given legal sanction.[126] Due to the relative military superiority of European states at the time, and this legal permissibility, it was inevitable that conquest would be used by European states to acquire territory abroad.[127] Indeed, the doctrine was heavily relied upon as the basis for formal control over territory.[128]

While the doctrine of conquest did inherently accept the fact that indigenous people controlled their territory (while arguing that it could be taken from them by force), the concept of 'occupation' served to erase them altogether. This was a result of the emphasis on property rights and the positivist view that 'uncivilised' persons were not legal entities, so did not have rights under the law.[129] Therefore, European states, as sovereigns under the law who did have rights, were able to claim ownership of these territories by settling on them and carrying out 'an act equivalent to a declaration that a particular territory had been seized as property, and a subsequent continuous use of it either by residence or by taking from it its natural products.'[130]

Anghie therefore argues that positivist international law legitimised conquest and dispossession, and in many ways, sovereignty was actually constituted through colonialism.[131] As a result of this logic of positivist jurists, the colonial encounter was not one between two sovereign states which may have been more difficult to resolve – it was instead 'between a sovereign European state and an amorphous uncivilized entity.'[132] The exact method used to appropriate land and resources from indigenous persons depended on their organisation, with wandering tribes being subject to occupation and those with more organised polities experiencing conquest.[133]

In either case, as discussed, the law was used to render some people and territories as sovereign with the associated rights, and others as outside of this sphere and legally powerless, allowing for the material extraction of wealth from the latter to the former, producing specific arrangements of power, wealth, and resources. Meanwhile the legal marginalisation and denial of international law-making powers of uncivilised persons served to double down on this hierarchy, resulting in

[126] Ibid.
[127] Ibid.
[128] Korman (n118) 66.
[129] Anghie (n14) 83.
[130] Hall (n124) 98.
[131] Anghie (n14) 37-38.
[132] Ibid., 64.
[133] Ibid., 84.

the development of international law coming to reflect the interests, preoccupations, and ideological understandings of the European states capable of creating international doctrines. The section that follows will now discuss the impact of these pathologies and genealogies on the creation of disaster risk and undermining of its reduction.

3.3 Power, Wealth, Ideology, Colonial Legacies, and the Root Causes of Vulnerability

Having established the role of early international law in processes of colonialism, wealth and power distribution, the dispossession of communities from their land and resources, and privileging and universalisation of certain ideologies, this section now examines the impact this has had on disaster risk. The analysis of the previous chapter has highlighted the role of power dynamics, the distribution of resources, ideologies like neoliberalism and consumerism, and post-colonial heritages as root causes of disaster risk. It is these structures and histories that generate vulnerability which then progresses along the chain of explanation into unsafe conditions via dynamic pressures. As the authors of the PAR Model advise us, it is therefore important to remember that disasters are processes with roots stretching back through time, allowing for structures and arrangements produced during the colonial period to continue transmitting vulnerabilities into the present and beyond. In this sense 'disasters have historical roots, unfolding presents, and potential futures.'[134] Therefore, '[t]o recognise what makes people, households, communities and societies vulnerable or resilient in the present, you need to appreciate what made them that way over time.'[135] Otherwise historical, pathological social processes that remain unresolved will continue to produce disaster risk in the present and beyond. As Wisner and Mascarenhas write:

> impoverishing and displacing processes at work in the twenty-first century can be understood by considering the use and misuse of economic, political and cultural power over several centuries. For many formerly colonised people in countries that gained independence after WWII, misuse of economic and political power has negated whatever dreams and plans they had envisaged for a better life for the generations to come.[136]

---

[134] Anthony Oliver Smith, 'Haiti and the Historical Construction of Disasters' (*Nacla,* 1 July 2010) < https://nacla.org/article/haiti-and-historical-construction-disasters> accessed 20 October 2022.
[135] Greg Bankoff, 'Historical Concepts of Disaster and Risk' in Ben Wisner, JC Gaillard, and Ilan Kelman (eds). *The Routledge Handbook of Hazards and Disaster Risk Reduction* (Routledge, 2012) 37, 37.
[136] Adolfo Mascarenhas and Ben Wisner, 'Politics, Power, and Disasters' in Ben Wisner, JC Gaillard, and Ilan Kelman (eds.) *Routledge Handbook of Hazards and Disaster Risk Reduction* (Routledge, 2011) 48, 49.

As the previous sections detailed, international law played a key role in rendering power distributions and then facilitating its misuse for the benefit of European states and to the detriment of societies in the Global South. European states were able to use the law and their conceptualisation of sovereignty to codify their power, universalise their interests, and deny other communities access to both law-making and even rights and protections under international law. The establishment of these power differentials and their exercise has had an important impact on disaster risk as '[s]ocial processes generate unequal exposure to risk by making some people more prone to disasters than others, and these inequalities are largely a function of the power relations operative in every society.'[137] Distributions of power affect the allocation of disaster risk and the resources used to reduce risk:[138] those with greater power are able to place risk onto those with less. Evidence of this dynamic in action can be observed in the 'high correlation between disaster proneness, chronic malnutrition, low income, and famine potential [that] has led many researchers to the conclusion that the root cause of disasters can be attributed the structural imbalances between rich and poor countries.'[139] The colonial period, linked with and aided by international law, produced specific social, legal, and economic arrangements and structures that have contributed to this process. The role of the law in structuring international society and relations between actors has granted it a role in these imbalances, and this thesis argues that many of its structures continue to reproduce such inequalities.

The power hierarchies rendered through international law impacted upon processes of distribution of wealth and resources as inequality in legal rights and powers were used to facilitate colonial policies of extraction and contribute to these imbalances further. Under this system, resources, land, and even human beings were stripped from their communities rendered peripheral under the international system and used for the wealth generation of privileged states occupying the centre. The process of wealth production through colonialism necessarily results in some states becoming rich at the expense of others, leaving them worse off, and contributing to pathological distributions that produce vulnerability. As Jason Beckett describes when

---

[137] Dorothea Hilhorst and Greg Bankoff, 'Introduction: Mapping Vulnerability' in Greg Bankoff *et al.* (eds.) *Mapping Vulnerability: Disasters, Development, and People* (Taylor and Francis, 2004) 1, 1.

[138] Mascarenhas and Wisner (n136) 48.

[139] Anthony Oliver-Smith, 'Peru's Five-Hundred-Year Earthquake: Vulnerability in Historical Context' in Anthony Oliver-Smith and Susanna M. Hoffman (eds.) *The Angry Earth: Disaster in Anthropological Perspective* (Routledge, 1999) 74, 74.

discussing theorisations of poverty, '[p]overty is a by-product of the creation of wealth. Wealth is the *concentration* of resources; poverty is the *absence* of resources.'[140] In this manner the conditions that result in severe poverty 'benefit some groups of people, even as they massively disadvantage others.'[141] Colonising states generated their wealth through the immiseration of native populations, increasing their vulnerability and stifling their ability to alleviate this increase in disaster risk.

A key aspect of European colonialism that exploited the denial of legal personality to non-European societies and contributed to this process was the slave trade.[142] While slavery as an institution has largely existed throughout the world in all cultures and societies,[143] for the purposes of this thesis the focus is on European slavery and its impacts, due to its relationship with colonial international law. Indeed, as with colonialism more widely, '[i]nternational law was central to the establishment, expansion, and consolidation of the racialized institutions of slavery and the slave trade on which the West was built, materially and ideologically.'[144]

While many accounts focus on the role of international law in ending the slave trade, or as Anghie describes it, tales of 'valiant battles waged by enlightened and humane Europeans and Americans – usually white men – to liberate the slaves,'[145] relatively less attention has been paid to the role of international law in justifying and facilitating the slave trade itself prior to this. This celebration of efforts by white men to abolish the slave trade distracts from how it was sustained by international law, and also how this late turn against the practice was not a rejection of the white supremacist and racial capitalist underpinnings of the discipline, but a refiguration.[146] Indeed, antislavery eventually became a new vehicle for imperialism in many respects, as 'the White Mythology of "antislavery" enabled abolitionists, European colonial officials, and international lawyers to develop "New International [Legal] Machinery" necessary to refigure

---

[140] Jason Beckett, 'Creating Poverty' in Anne Orford and Florian Hoffman (eds.) *The Oxford Handbook of the Theory of International Law* (Oxford University Press, 2016) 985, 985.
[141] Susan Marks, 'Human Rights and Root Causes' (2011) Vol. 74 No. 1 *Modern Law Review* 57, 69. Quoted in Beckett (n140) 985.
[142] While this section contains only a short discussion on the impact of the slave trade on vulnerability, the final chapter of the thesis on the history of Haiti and the 2010 earthquake disaster offers a more detailed analysis of this relationship.
[143] Seymour Drescher and Paul Finkelman, 'Slavery' in Bardo Fassbender and Anne Peters (eds.) *The Oxford Handbook of the History of International Law* 890, 890.
[144] Christopher Gevers, 'Slavery and International Law' (2023) Vol. 117 *AJIL Unbound* 71, 73.
[145] Antony Anghie, 'Slavery and International Law: The Jurisprudence of Henry Richardson' (2017) Vol. 31 No. 1 *Temple International and Comparative Law Journal* 11, 15. Quoted in Gevers (n144) 71.
[146] Gevers (n144) 72.

slavery as a problem outside the West and predominantly in Africa, and beseeching Western *colonial* intervention.'[147] Despite having hugely benefitted from slavery themselves, therefore, the European powers were able to recast it as a further justification for the interference in and restructuring of non-European societies.

Prior to abolition, the position of international law in processes of marginalisation, racialisation, and dispossession in the name of colonialism described in the previous sections were also the foundations of its role in the slave trade. Far from prohibiting the practice, early international law thinkers, including Hugo Grotius, agreed that the law of nations sanctioned slavery.[148] As discussed previously in Chapter One, Robert Knox draws on Brenna Bhandar[149] to discuss the close relationship between the commodity form of international law and racialisation, and how this was typified in the emergence of property.[150] To reiterate, it is argued that capitalist property law is centred around abstractions rooted in a 'metaphysical' idea of entitlement rather than actual possession or use.[151] These abstract notions of ownership emerged in relation to two racialised figures: 'The first of these were indigenous peoples, who were conceived of lacking any notion of private property and so were able to be *dispossessed* of their common-land. The second were African slaves who, despite being living human beings, were nonetheless transformed into property because of their race.'[152] In this respect '[e]mergent forms of property ownership were constituted with racial ontologies of settler and native, master and slave.'[153]

Here, therefore, we can see the role of international law in rendering human beings into property on the basis of the colour of their skin. Categories of racialisation constructed in part through international law were used to justify this practice, with Wheaton, for example, writing that African slaves were 'better fitted by their physical constitutions to endure the toil of cultivating,

[147] Gevers (n144) 75 [Emphasis in original]. Quoting Suzanne Miers, *Slavery in the Twentieth Century: The Evolution of a Global Problem* (AltaMira Press, 2003) 58. On 'Antislavery imperialism' see also Christopher Gevers, 'Refiguring Slavery Through International Law: The 1926 Slavery Convention, the "Native Labor Code" and Racial Capitalism' (2022) Vol. 25 No. 1 *Journal of International Economic Law* 312.
[148] Drescher and Finkelman (n143) 897.
[149] Brenna Bhandar, 'Property, Law, and Race: Modes of Abstraction' (2014) Vol. 4 *UC Irvine Law Review* 203; Brenna Bhandar, 'Disassembling Legal Form: Ownership and the Racial Body' in Matthew Stone, Illan rua Wall, and Costas Douzinas (eds.) *New Critical Legal Thinking: Law and the Political* (Birkbeck Law Press, 2012) 112.
[150] Knox (n8) 108.
[151] Ibid., drawing on Bhandar (n149) 210.
[152] Knox (n8) 109.
[153] Bhandar (n149) 212.

under a burning sun, the rich soil.'[154] The fact that slavery was not used within Europe itself but in areas beyond the imperial core instead was emblematic of the legal rendering of an 'inside' and 'outside' discussed above, and the distinction between these. In promoting the slave trade, therefore, European states 'employed those techniques and principles of International Law that were favourable and specifically developed others to facilitate it.'[155] In addition to the structures and hierarchies produced through international law described above, direct treaty-making was also involved in facilitating the slave trade. The 1713 Anglo-Spanish Treaty of Utrecht for example raised transactions on African slaves into international obligations, allowing Britain to gain a valuable monopoly.[156]

The process of slavery had profound social, economic, and geographical effects, both in the places the enslaved were stripped from and at their destinations.[157] The intense marginalisation, immiseration, and shearing of rights and freedoms associated with bondage clearly resulted in those affected suffering from high levels of vulnerability. To say that the hardship of slave labour would affect the physical health and well-being of those subject to it is an understatement. The institution of slavery would also impose intersecting legal, social, political, and economic marginalisation and vulnerabilities upon them. Furthermore, in many respects there continue to be legacies of vulnerability from this, with many structures of hierarchisation and discrimination persisting today and race, ethnicity, and caste continuing to play an important role in levels of poverty and vulnerability.[158]

While the vulnerability and exposure to hazards of those taken as slaves was clearly affected, the process of the slave trade also had important implications for the well-being of communities that such individuals were stripped from. As Walter Rodney writes, '[c]aptives were shipped outside instead of being utilized within any given African community for creating wealth from nature […] slaving prevented the remaining population from effectively engaging in agriculture and

---

[154] Henry Wheaton, *History of the Law of Nations in Europe and America: From the Earliest Times to the Treaty of Washington, 1842* (Gould, Banks, 1845) 587. Quoted in Gevers (n144) 73.

[155] U. O. Umozurike, 'The African Slave Trade and the Attitudes of International Law Towards It' (1971) Vol. 16 No. 2 *Howard Law Journal* 334, 341.

[156] Ibid.

[157] On the latter of these and the history of Haiti see Chapter 6.

[158] Irasema Alcántara-Ayala *et al.*, *Disaster Risk* (Routledge, 2023) 168. See for example struggles faced by black communities in the United States, demonstrated prominently by the situation before and after Hurricane Katrina disaster in New Orleans. For an overview see Alice Fothergill, Enrique Maestas, and Joanne Derouen, 'Race, Ethnicity and Disasters in the United States: A Review of the Literature' (1999) Vol. 23 No. 2 *Disasters* 156.

industry.'[159] He argues that an essential condition for economic development is maximising the use of a country's resources and labour.[160] So, the removal of the latter so that they could toil for European wealth accumulation meant that '[q]uite apart from the moral aspect and the immense suffering that it causes, the European slave trade was economically totally irrational from the viewpoint of African development.'[161] In short, the dispossession of working age individuals from their communities in Africa and subjection to slave labour producing value for European societies had important implications on comparative levels of wealth, resources, and disaster risk. It further contributed to the process of Europe manufacturing its wealth through the plunder and underdevelopment of communities in the Global South, helping to produce and sustain pathological global distributions which act as root causes of vulnerability.

It is also important to note that while many arrangements and structures produced in this period continue to result in disaster risk today, many of these legacies also stem from the impact colonial policies had at the time, being responsible for the deaths of millions of people either directly or through a confluence with hazards leading to disaster. Mike Davis, for example, writes about the famines in the Nineteenth Century that resulted from a combination of imperial policies and *El Niño* climate disturbances.[162] He begins with the great drought of 1876-1879, which was then followed by dry years in 1889-1891 and a failure of monsoons in 1896-1902, affecting a range of countries from Africa, Asia, and South America.[163] Famines resulted in several places including India, Korea, Brazil, and Ethiopia and the Sudan where it is estimated up to a third of the population died.[164] Epidemics followed in the wake of these famines, killing millions of people who had already been weakened by the impacts of the climactic disturbances.[165] The overall human toll of these catastrophic droughts, famines, and epidemics is estimated by Davis to have been between thirty and fifty million people.[166]

Although these phenomena were natural in origin their impacts were exacerbated by the activities of imperial powers in Europe and the United States who 'rapaciously exploited the opportunity to wrest new colonies, expropriate communal lands, and tap novel sources of

[159] Walter Rodney, *How Europe Underdeveloped Africa* (Verso, 2018) 113.
[160] Ibid.
[161] Ibid.
[162] Mike Davis, *Late Victorian Holocausts: El Niño Famines and the Making of the Third World* (Verso, 2017).
[163] Ibid., 6-7.
[164] Ibid., 7.
[165] Ibid.
[166] Ibid., 8.

plantation and mine labour',[167] mirroring in many ways the behaviour of disaster capitalists[168] in the modern day. Their existing control of territories affected by the droughts also contributed to the dry periods, resulting in famine through the incorporation of labour and products within these areas into the world economy.[169] To quote Davis again, '[m]illions died not outside the "modern world system" but in the very process of being forcibly incorporated into its economic and political structures. They died in the golden age of Liberal Capitalism; indeed, many were murdered […] by the theological application of the sacred principles of Smith, Bentham and Mill.'[170] While the water shortages and associated crop failures were of a deadly magnitude, there were grain surpluses elsewhere in the country of empire which could have potentially rescued those suffering.[171] Instead, the incorporation of these societies into the world economy meant that commodity markets and price speculation produced further scarcity and the misallocation of resources.[172] There was therefore a mutually reinforcing relationship between disasters and imperialism during this period.[173]

As Amartya Sen has written, famines are not the result of a lack of food but a lack of *access*.[174] Rather than being a purely natural effect, a drop in food supply making individuals more prone to famine occurs because 'social processes are determining that those who need whatever food is available are unable to get it.'[175] It is not a lack of food but a lack of ability to obtain it. In this we can see the distribution of resources as a root cause of vulnerability, and therefore disaster risk. The incorporation of affected societies into global commodity markets and their subjection to colonial economic priorities had served to destroy the pre-existing arrangements for food security.[176] It was therefore the strategies of the imperial powers which decided access to food,

---

167 Ibid., 7-8.

168 On 'disaster capitalism' see, for example, Naomi Klein, *The Shock Doctrine* (Penguin Books, 2007); Antony Loewenstein, *Disaster Capitalism: Making a Killing Out of Catastrophe* (Verso, 2017).

169 Davis (n162) 9.

170 Ibid.

171 Ibid., 12.

172 Ibid.

173 It should be noted that such a phenomenon was not limited solely to the Global South. The Irish Potato Famine, for example, offers another poignant example of a hazard (potato blight) and imperial policy combining to produce a disaster. In this case, within a European country. As noted previously, it also demonstrates how while there was largely a dichotomy between Europe as imperialists and the rest of the world as the conquered there were exceptions to this binary.

174 See for example Amartya Sen, *Poverty and Famines: An Essay on Entitlement and Deprivation* (Oxford University Press, 1983).

175 Wisner, Blaikie, Cannon, and Davis (n2) 138.

176 Susan Marks, 'Introduction' in Susan Marks (ed.) *International Law on the Left: Re-examining Marxist Legacies* (Cambridge University Press, 2008) 1, 12-13.

with the emerging Victorian global economy, its colonial policies (including heavy taxation of new colonies), and the exigencies of the marketplace all affecting this.[177] This process was enabled by global distributions of power facilitated in part by arrangements of legal rights, powers, and personality under international law. Davis draws on Karl Polanyi who similarly concludes that:

> Failure of crops, of course, was part of the picture, but despatch of grain by rail made it possible to send relief to the threatened areas; the trouble was that the people were unable to buy the corn at rocketing prices, which on a free but incompletely organized market were bound to be a reaction to a shortage. In former times small local stores had been held against harvest failure, but these had been now discontinued or swept away into the big market.[178]

It was the transformations wrought by the imperial powers that compounded the crop failures, with the destruction of traditional community practices and institutions occurring as a result of these dominated societies being moulded towards the interests of their colonisers rather than their populations. Indeed,

> [t]he catastrophe of the native community is a direct result of the rapid and violent disruption of the basic institutions of the victim […] These institutions are disrupted by the very fact that a market economy is foisted upon an entirely differently organised community; labor and land are made into commodities, which, again, is only a short formula for the liquidation of every and any cultural institution in an organic society.[179]

These accounts therefore describe how imperial policies, enabled by international law, contributed directly to disasters during the colonial period. As described, such catastrophes had profound impacts on the affected societies, with the disaster events themselves also likely contributing to legacies that included a deepening of vulnerability that risked consecutive disasters[180] in the wake of the ones described. Likewise, the immiseration that resulted from the

---

[177] Wisner, Blaikie, Cannon, and Davis (n2) 136.

[178] Karl Polanyi, *The Great Transformation* (Beacon Press, Second Edition, 2001 (originally published 1944)) 167. Quoted in Davis (n162) 10.

[179] Polanyi (n178) 167. Quoted in Davis (n162) 10.

[180] 'Consecutive disasters' refers to the phenomenon where a community can fail to recover sufficiently from one disaster and the increased vulnerability that results from it before the impact of further hazards. This can result in a vicious circle where consecutive catastrophes prevent a society from being able to return to a baseline state of

policies that helped trigger the disasters also has legacies that continue into the present. In many cases communities with lower wealth and power endowments as a result of colonial international law continue to find themselves in similar positions within the hierarchy of international society and suffering the negative consequences that result from these pathological distributions, such as greater levels of disaster risk.[181]

The root causes of the vulnerabilities leading to these disasters can be observed in the inequitable distributions of power, wealth, and resources that left these societies prone to famine and subjected to colonial policies that worsened the situation and undermined historic coping practices. These policies and the formation and make-up of the world economy which they were detrimentally incorporated into was informed by a specific Western ideology of liberal capitalism which had gained prominence through the spread and universalisation of European international law and the power of European states over territories rendered without effective sovereignty. As the section on hazards at the end of this chapter will discuss, this ideology and the undermining of indigenous understandings of the relationship between humanity and nature had important impacts on the hazard side of the disaster risk equation, as well as the vulnerability one.

While this discussion has briefly touched on the impacts of international law's historic pathologies at the time, as noted, the structures and processes formed during this period have continued to produce vulnerability in the future, including the modern day. This transmission of historic vulnerabilities resulting from colonisation is well analysed by Anthony Oliver-Smith who examines the 1970 Earthquake in Peru, arguing that it was a disaster five-hundred years in the making.[182] The earthquake, which occurred on May 31st 1970, resulted in the deaths of 65,000 people.[183] Oliver-Smith argues that the disaster actually began in many respects 500 years before when the colonisation of Peru by the Spanish introduced societal transformations that subverted the indigenous peoples' cultural adaptations that granted some resilience against earthquakes.[184]

---

resilience, with each disaster resulting in increases in vulnerability. See Marleen C. de Ruiter *et al.*, 'Why We Can No Longer Ignore Consecutive Disasters' (2020) Vol. 8 No. 3 *Earth's Future* 1.

[181] The 2021 World Risk Report, for example, points heavily to the highest levels of disaster risk continuing to be experienced by countries within the Global South. See Bündnis Entwicklung Hilft, Ruhr University Bochum, and Peace and Armed Conflict (IFHV), *World Risk Report 2021* (Bündnis Entwicklung Hilft, 2021) available at <https://weltrisikobericht.de/wp-content/uploads/2021/09/WorldRiskReport_2021_Online.pdf> accessed 14 November 2022. While exposure clearly plays a role in these rankings, it is important to note that the states most at risk are also classified as having very high levels of vulnerability, while countries like Japan and Trinidad and Tobago demonstrate the role low vulnerability can play in mitigating exposure.

[182] Oliver-Smith (n134). For a more detailed account see Oliver-Smith (n139).

[183] Ibid.

[184] Oliver-Smith (n134).

These adaptations included patterns of urban settlement, surplus distributions, and the use of certain construction materials and designs.[185] While not a conscious process by the colonising Spanish, the undermining of these adaptations helps to explain the vulnerability of communities to the earthquake despite frequent, long-standing seismic activity in the region.

Oliver-Smith argues that colonial policies such as 'concentrating indigenous people in new settlements for purposes of social control and indoctrination, together with their methods of urban planning and building construction, created extremely dangerous and vulnerable conditions in a seismically active region.'[186] Rather than the spaced out, dispersed settlement designs that the Incas had used, the Spanish colonists moved indigenous people into towns based around Spanish town planning, which were more concentrated and included buildings with multiple stories.[187] This, combined with a change in construction plans and materials, severely increased the susceptibility of towns to damage from earthquakes. Such a forceful re-structuring of the physical geography of these communities continues to have implications in the modern day.

Furthermore, and in a similar manner to the famines Davis draws on discussed previously, the extraction of surpluses and the insertion of the Americas into the developing world economy resulted in underdevelopment and severe vulnerability.[188] The economic system in the colony shifted to one focused on producing value for European imperialists at the expense of native labour through market exchange, and this extraction diverted resources out of communities resulting in poverty and systemic hardship.[189] Such extraction also circumscribed previous practices of using *qollqas* to store surplus resources and a system of redistribution which had historically helped to serve as a safeguard against poverty induced by hazards and the vulnerabilities stemming from this.[190] As Oliver-Smith writes, 'the colonial institutions' assiduous extraction of surpluses left the population both destitute and vulnerable to hazards for centuries to come, as the Andean zone was inserted into the developing world system, resulting in Peru's severe economic underdevelopment.'[191] Overall, the impact of European colonisation on

---

[185] Oliver-Smith (n134). For a further discussion on the adaptations to hazards made by communities in the pre-Columbian Andes see Oliver-Smith (n139) 77-80.
[186] Oliver-Smith (n134).
[187] Oliver-Smith (n139) 81.
[188] Oliver-Smith (n134).
[189] Oliver-Smith (n139) 83.
[190] Ibid., 79.
[191] Oliver-Smith (n134).

Peruvian society cannot be overstated, with the first century of colonialism estimated to have resulted in a demographic collapse of 98 percent of the population.[192] As described at length above, international law played a key role in the process of colonisation and is complicit in many of these harms stemming from it.

The ongoing consequences of these historical transformations on disaster risk can be understood on the basis that 'a disaster is made inevitable by the historically produced pattern of vulnerability, evidenced in the location, infrastructure, sociopolitical structure, production patterns, and ideology that characterizes a society.'[193] These historical processes produce vulnerabilities including:

> vulnerable settlement patterns in areas of high risk, lack of building codes or their enforcement within largely informal housing sectors, poor health conditions undermining individual, family, and societal resilience, rural and urban environmental degradation and pollution, lack of institutional capacity, corruption and generalized impunity before the law, patterns of social domination, and radically skewed distributions of wealth.[194]

Historical colonisation served to contribute to these processes and the vulnerabilities they produce, impoverishing and under-developing people rendered peripheral under international law through the extraction of labour and resources. The transformations of their societies enacted either through violent coercion, or demanded for their acceptance into the family of nations under the logic of improvement, served to undermine indigenous knowledge and adaptations. Such transformations were designed to facilitate the transfer of wealth and resources, rather than for the benefit of the local population. Disasters are deeply rooted in an individual society's economic, social, and environmental histories[195] and for many communities, including those in Peru, their historical relationship with international law starting in the Sixteenth Century was one of subjugation and plunder. These transformations further increased disaster risk and because of the legacies of this, the society that the earthquake struck in 1970 was one suffering from major vulnerabilities such as:

---

[192] Oliver-Smith (n139) 80.
[193] Oliver-Smith (n134).
[194] Ibid.
[195] Ibid.

> an economy characterized by acute boom-and-bust cycles and chronic maldistribution, a rigified productive system skewed towards foreign exchange generating commercial cash crops as opposed to much-needed foods, an infrastructure which served to articulate only a portion of the nation, a pattern of land distribution only slowly emerging from the nineteenth century, a small and vulnerable industrial sector, rates of illiteracy approaching 60 percent, chronic poverty with all the attendant features of malnutrition.[196]

As described, the root causes of many of these modern vulnerabilities can be found in historically produced, unjust distributions of power and wealth that both facilitated and resulted from the immiseration of the Peruvian people, and specific ideologies which re-structured their society in a disaster risk illiterate manner for the benefit of colonial extraction rather than the wellbeing of the local populations. International law had a hand in facilitating much of this process, and therefore in the disaster risk that resulted leading up to the 1970 earthquake. As Marie Aronsson-Storrier highlights, the role of law in disaster risk includes 'the regulation of land use, and the extent to which the law allows for the extraction of natural resources by domestic and international actors, and the extent to which laws and policies account for and values the knowledge of, and protect the rights of, local communities.'[197] The law of the colonial period addressed each of these aspects in a pathological manner, resulting in increases in disaster risk and catalysing long-reaching processes that led to a catastrophe.

3.4 International Law, Anthropocentrism, and Hazards

While the analysis of the chapter thus far has focused on the role of historic international law in the creation of disaster risk primarily through the vulnerability side of the equation, it is important to note that the development of international law has also affected the hazards side. In their updated version of the PAR Model, Ben Wisner, JC Gaillard, and Ilan Kelman highlight that the dynamic pressure and unsafe conditions aspects of vulnerability can accentuate some hazards.[198] However, it is the contention of this chapter that many of the root causes previously discussed and their interactions with international law can also impact the hazards side of the risk equation, leading to either their creation or exacerbation. This occurs primarily because of the

---

[196] Oliver-Smith (n139) 84.

[197] Marie Aronsson-Storrier, 'Beyond Early Warning Systems: Querying the Relationship Between International Law and Disaster Risk (Reduction)' (2020) Vol. 3 *Yearbook of International Disaster Law* 51, 68.

[198] Ben Wisner, JC Gaillard, and Ilan Kelman, 'Framing Disaster: Theories and Stories Seeking to Understand Hazards, Vulnerability, and Risk' in Ben Wisner, JC Gaillard, and Ilan Kelman eds. *The Routledge Handbook of Hazards and Disaster Risk Reduction* (Routledge, 2012) 18, 23.

ideological hegemonies that have been established as a result of power and wealth distributions historically privileging European states following colonialism, their transformation of other societies, and the universalisation of their ideology through the law. As Usha Natarajan and Kishan Khoday highlight, critical scholars have sought to demonstrate how, 'the discipline is justified and dynamized by the continuous assertion of universal values, followed by the identification of those places and people that remain unaware of such values, thus necessitating the creation of international laws to enlighten them.'[199] The previous sections discussed how this process was used to justify colonialism, and an interlinked operation also occurred with regard to the conceptualisation of the environment and the 'correct' way for humans to interact with it, with the European model once again being regarded as the apex of civilisation to which others should aspire.

The most important aspect of the connection between international law and hazards is therefore in how the law and international society's hegemonic ideologies frame the relationship between humans and nature, leading to specific attitudes and practices which impact upon the hazardousness of the environment.[200] Our relationship with nature, and how this is conceptualised, plays a key role in the creation of disaster risk through the production and exacerbation of hazards and environmental vulnerabilities, and international law has played a role in cementing and universalising a particular view of nature. Therefore, although the PAR Model separates hazards from social processes, they are not hermetically sealed from one another and in reality 'nature forms a part of the social framework of society' being 'intertwined with human systems in affecting the pattern of assets and livelihoods among people'[201] and it is important to acknowledge this symbiotic relationship between the two.

The manner in which the environment is conceptualised within international law emerged from Enlightenment thought on the relationship between humans and the natural world.[202] During this period an adversarial view between human societies and nature manifested in response to

---

[199] Usha Natarajan and Kishan Khoday, 'Locating Nature: Making and Unmaking International Law' (2014) Vol. 27 *Leiden Journal of International Law* 573, 584. Examples of critical international law scholars who argue in this vein given are Anghie (n14) and Peter Fitzpatrick, *Modernism and the Grounds of Law* (Cambridge University Press, 2014).

[200] As Ilan Kelman writes, hazards are often only so because humans have rendered them hazardous, see Ilan Kelman, 'Natural Disasters Do Not Exist (Natural Hazards Do Not Exist Either)' (Version 3, 9 July 2010 (Version 1 26 July 2007)) available at <https://www.ilankelman.org/miscellany/NaturalDisasters.doc> accessed 9 March 2023, 3.

[201] Wisner, Blaikie, Cannon, and Davis (n2) 92.

[202] Natarajan and Khoday (n199) 586.

the growing global economic system, stemming from scientific and philosophical discourses which began to view human culture and society as 'ontologically distinct from nature,' with nature serving as category which human identity could be positioned against.[203] Under this system of thought, 'the transformation of nature came to be seen as a primordial act, transforming chaos into order, imbuing the environment with human form – a divine-like act to craft a new world and a new reality.'[204] This conceptualisation also helps to explain the use of the 'natural disaster' misnomer. Nature was viewed as chaotic and savage, with disasters manifesting when its primal fury and disorder disrupted the order and civility of human societies.[205] As a result '[t]his has led to a construction of hazards as disorder – as interruptions or violations of order by a natural world that is at odds with the human world.'[206]

However, such a view of nature was not always the case, nor was it shared by much of the world.[207] In the medieval period nature and humanity were commonly considered to be in partnership with one another.[208] Likewise, many indigenous societies have a non-anthropocentric view of nature. While they do use and take advantage of natural resources, they recognise nature as 'a living being, towards which humanity has obligations and responsibilities.'[209] Within this conceptualisation humans do not stand apart or above nature but are part of a highly interconnected system. The Maori indigenous people of Aoteroa New Zealand, for example, have such a connection to the natural world that they believe rivers and other environmental landmarks to be their ancestors.[210] The intertwining between human beings and water under this worldview is encapsulated by common tribal sayings, such as 'the river belongs to us just as we belong to the river.'[211] In this respect there is 'a genealogical link between all living things,

---

[203] Anthony Oliver-Smith, 'Theorizing Vulnerability in a Globalized World: A Political Ecological Perspective' in Greg Bankoff, Georg Frerks, and Dorothea Hilhorst (eds.) *Mapping Vulnerability: Disasters, Development, and People* (Taylor and Francis, 2004) 10, 13.
[204] Mircea Eliade, *The Myth of the Eternal Return, or Cosmos and History* (Princeton University Press, 1965) 10-11. Cited in Natarajan and Khoday (n199) 586.
[205] Oliver-Smith (n203) 13.
[206] Ibid.
[207] Ibid.
[208] Oliver-Smith (n203) 12.
[209] Erin O'Donnell, Anna Poelina, Alessandro Pelizzon, and Cristy Clark, 'Stop Burying the Lede: The Essential Role of Indigenous Law(s) in Creating Rights of Nature' (2020) Vol. 9 No. 3 *Transnational Environmental Law* 403, 413. As O'Donnell *et al.* discuss, it is this worldview that has helped to spur attempts at granting legal personality to natural landmarks.
[210] James D K Morris and Jacinta Ruru, 'Giving Voice to Rivers: Legal Personality as a Vehicle for Recognising Indigenous Peoples' Relationship to Water?' (2010) Vol. 14 No. 2 *Australian Indigenous Law Review* 49, 49.
[211] Ibid.

including rivers and people.'[212] Similarly, the Anishinaabek First Nation peoples of Canada also have a worldview based around interconnected relationships and the idea that all things exist 'contingently, in respect of one another.'[213] They also consider everything to be alive, including relatively inert, inorganic matter such as rocks, and this understanding informs their decisions over land use and resource extraction.[214] Many of these cultures therefore see agency in both human and non-human entities; all elements of nature are imbued with souls, consciousness, culture, and language.[215]

The shift to an anthropocentric view of nature that in many ways denies this connection began with Christian abolition of pagan animism, which shifted the relationship from mutuality to one where the impact of human activities on nature was disregarded.[216] This separation of humans from the environment then led to the objectification of nature as a trove of resources to be exploited, dominated, and transformed to suit the whims of humanity. The concepts of 'improvement,' referring to the 'enhancement of the land's productivity for profit,'[217] and 'waste' which referred to land that is left in a natural state and not utilised for profit, stemmed from this attitude. These concepts can be found in the work of Enlightenment philosophers such as John Locke who wrote that 'land that is left wholly to nature, that hath no improvement of pasturage, tillage, or planting, is called, as indeed it is, waste; and we shall find the benefit of it amount to little more than nothing.'[218] This then informed attitudes over how land should be used correctly. Such viewpoints can also be found in the work of early thinkers within international law such as Vitoria, Gentili, and Grotius, whose doctrines remain embedded in the structure of international law.[219]

Vitoria for example, while initially arguing that that the indigenous populations of the Americas had property rights to the territory they inhabited, was nevertheless happy for the Spanish to dispossess them of this land due to them not using it productively under the European

---

[212] Ibid., 58.
[213] Wapshkaa Ma'iingan (Aaron Mills), 'Aki, Anishinaabek, kaye tahsh Crown' (2010) Vol. 9 No. 1 *Indigenous Law Journal* 109, 110.
[214] Ibid., 115-117.
[215] Kishan Khoday, 'Decolonizing the Environment: Third World Approaches to the Planetary Crisis' (2022) Vol. 19 No. 2 *Indonesian Journal of International Law* 189, 203.
[216] Oliver-Smith (n203) 13.
[217] Ellen Meiksins Wood, *The Origin of Capitalism* (Verso, 2017) 106.
[218] John Locke, *Second Treatise of Government* (Barnes & Nobles Books, 2004 (originally published 1690)) 25, Para. 42.
[219] Ileana Porras, 'Appropriating Nature: Commerce, Property, and the Commodification of Nature in the Law of Nations' (2014) Vol. 27 No. 1 *Leiden Journal of International Law* 641, 643.

understanding.[220] He wrote for example how people indigenous to the Americas were 'unsuited to governing even their own households; hence their lack of letters, of arts and crafts (not merely liberal, but also mechanical), *of systemic agriculture, of manufacture, and of many other things useful, or rather indispensable, for human use.*'[221] He also suggests that '[i]n this respect, there is scant difference between the barbarians and madmen; they are little or no more capable of governing themselves than madmen, or indeed wild beasts. They feed on food no more civilized and little better than that of beasts. On these grounds, they might be handed over to wiser men to govern.'[222] The unfettered exploitation of nature in this way was linked to the self-realisation of human beings, a connection which continues to this day through the concept of development.

This view of nature as something to be dominated and controlled by humans was therefore intimately connected with similar thought patterns that justified colonialism, so it is not unsurprising to find it in the doctrines of early international legal thinkers. As Abimbola *et al* write:

> [i]t is no coincidence that anthropogenic climate change and racism both emerged during the genocidal conquest of the Americas. From a decolonial perspective, the construction of the "conquering ego" to justify and normalize genocidal violence on an unprecedented scale during the first wave of colonization of what was to become Latin America laid the foundation for the "cartesian ego" of modern Western thought. The cartesian ego is characterised by its mind-body dualism, and its view of nature as an object to be dominated.[223]

The Enlightenment conceptualisation of nature and its themes of domination and exploitation therefore went hand in hand with colonialism and its 'othering' of other human beings who were to be subjugated. Indeed, 'the transformation of human-nature relationships from embeddedness to domination, and the establishment of the non-white "other" and women as part of nature, belong to the same dynamic.'[224] As described in the previous sections, the level of ecological

---

[220] Karin Mickelson, 'The Maps of International Law: Perceptions of Nature in the Classification of Territory' (2014) Vol. 27 No. 1 *Leiden Journal of International Law* 621, 627.
[221] Vitoria (n20) 290 [emphasis added]. Cited in Mickelson (n220) 627.
[222] Ibid., 290-291. Cited in Mickelson (n220) 627.
[223] Olumide Abimbola, Joshua Kwesi Aikins, Tselane Makhesi-Wilkinson, and Erin Roberts, 'Racism and Climate (In)Justice: How Racism and Colonialism Shape the Climate Crisis and Climate Action' (2021) *Heinrich Böll Stiftung* Framing Paper < https://us.boell.org/en/2021/03/19/racism-and-climate-injustice-0> accessed 5 August 2021, 6.
[224] Ibid.

imprint that non-European societies had on their environments was used to decide their method of dispossession: subjecting nomadic societies to occupation while more static communities suffered conquest at the hands of settlers. As Karin Mickelson writes:

> To the extent that the indigenous worldview treads lightly on and reveres the non-human, it may well leave itself more vulnerable to being trampled in the drive to make the land productive according to "civilized" standards. In other words, the lighter the ecological footprint of the indigenous peoples in question, the less likely the colonizers were to see the land as "inhabited" or "owned".[225]

Nomadic people in particular were furthest from the European ideal as they did not make consistent productive use of the land through practices like agriculture or appear to 'control' their territory at all in ways recognisable to Europeans, which led to the territory they inhabited potentially being deemed *terra nullius* and ripe for European conquest.[226] Here again then, European thought and practices were universalised and used as a standard to judge, control, and dispossess other societies. European states decided how the environment should be used and when they found other communities using it differently, they used this to justify taking it for their own to ensure it was used correctly. In short, 'if nature was not harnessed or controlled it was open to appropriation by others.'[227]

The dominance of this ideology and the denial of input into the early development of international law for many communities means that it has a profound effect on how the environment and human relationships with it are conceptualised within international law, including in the modern day. It impacted the development of the law during the colonial era and has bled into modern international law, which has its roots in that period and suffers from the continued dominance of many of the same ideologies. Because of this many of the discipline's concepts have evolved in ways that mirror Enlightenment understandings of nature.[228] This has profound effects as the environment ultimately underlies every area of international law due to

---

[225] Mickelson (n220) 626.

[226] Natarajan and Khoday (n199) 587. As Mickelson (n220, p. 624-625) identifies, there is some debate over the application of *terra nullius* and whether or not it was used to completely deny claims of ownership by indigenous societies. In either case, however, it was highly influential in the colonial mindset and in producing asymmetrical interactions between colonisers and the colonised that viewed non-European peoples as inferior and therefore not possessing the same level of legal rights.

[227] Mickelson (n220) 626.

[228] Natarajan and Khoday (n199) 586.

its role in providing the basis for life.[229] However, it is a harmful understanding of nature that is at the centre of the discipline, which sees the law implicitly or explicitly objectifying the natural world as a resource for the extraction and generation of wealth, while also universalising and normalising this attitude.[230] Because of this,

> [t]hrough particular disciplinary conceptualizations of sovereignty, development, property, economy, human rights, and other central disciplinary tenets, international lawyers have helped normalize a world-view where nature is understood predominantly as a natural resource, where humanity is at the centre of the environment and privileged above all else, where progress is defined by our degree of control over nature, and where the capacity to control is believed to be limitless.[231]

It is therefore an anthropocentric view of the nature which obfuscates the connections of our shared environment. This results in international law which 'plays a crucial role in transforming a unified planet into discrete sovereign territories, in converting nature into exchangeable property, in turning connected ecosystems into realms of infinite commodification and exchange, and in extracting and conceptually separating an atomized human individual from the intertwined mesh of life.'[232] As a result, rather than producing regulatory solutions, the law's isolation from the natural world results in it helping to create and foment environmental harms that result in disasters.[233]

The concept of sovereignty, for example, can reveal the presence of this ideology in a central tenet of international law as a discipline.[234] As described previously the possession of sovereignty by a population was adjudicated by European states using the nebulous standard of civilisation. An aspect of the European ideal of progress against which different peoples were measured was the ability to harness and exploit the environment; it served to discern between those considered 'civilised' and those still in a feral 'state of nature.' Therefore, communities seeking the full rights and powers of sovereignty and admittance into the family of nations that comes with it were

---

229 Usha Natarajan and Julia Dehm, 'Where is the Environment? Locating Nature in International Law' (*TWAILR Reflections 3/2019*, 30 August 2019) <https://twailr.com/where-is-the-environment-locating-nature-in-international-law/> accessed 22 September 2021.
230 Natarajan and Khoday (n199) 575.
231 Ibid., 586.
232 Natarajan and Dehm (n229).
233 Ibid.
234 For a discussion on issues that also surround the concept of 'development' in this manner see Natarajan and Khoday (n199) 588-591.

incentivised to follow this European understanding of the relationship between humans and nature and the practices it entails. Once the aforementioned logic of improvement was formed, sovereignty became conditioned, in part, on the ability of a society to make productive use of the environment.[235] In this way '[c]olonialism universalised European notions of nature as a commodity for human exploitation while creating a global economy that systematically subordinated the global South.'[236] Sovereignty over territory became intimately tied to perceptions of how the environment should be utilised and controlled; in order to attain it communities were made to transform their societies along European lines of development and away from indigenous understandings of human-environment relationships. This has resulted in the spread and perpetuation of the objectification of the environment and activities that are responsible for the creation and exacerbation of hazards.

It served to universalise European thought on productive relationships with the environment and marginalise and denigrate other understandings of the connection between humanity and nature, producing specific patterns of activity and organisation. The assumptions around sovereignty constructed at this time continued to shape the League of Nations' Mandate system, and then the decolonisation process.[237] As a result, in order to gain equality and access to international law, newly independent states were made to transform their domestic spheres in order to accommodate the exploitation of their natural resources through the incorporation of European systems of contract, torts, private property, and land tenure etc.[238] and to pursue paths of industrial development. International law and its institutions continue to incentivise this process even in the face of ecological breakdown. Indeed, this exploitation of nature is encouraged and encoded within international law to the point that modern international regimes for fishing explicitly mandate that the state in question extract the maximum sustainable yield from ocean within their territory or they must surrender such rights to others until such yields are achieved.[239]

---

[235] Natarajan and Khoday (n199) 586-587.

[236] Carmen G. Gonzalez, 'Bridging the North-South Divide: International Environmental Law in the Anthropocene' (2015) Vol. 32 No. 2 *Pace Environmental Law Review* 407, 411-412.

[237] Natarajan and Khoday (n199) 587.

[238] Ibid.

[239] Natarajan and Khoday (n199) 588. See UNCLOS Arts. 61-72. For example, Art. 62(2) states that '[t]he coastal State shall determine its capacity to harvest the living resources of the exclusive economic zone. Where the coastal State does not have the capacity to harvest the entire allowable catch, it shall, through agreements or other arrangements […] give other States access to the surplus of the allowable catch.'

The main focus of international law is therefore on 'economic expansion at the cost of ecological decline'[240] and the increasing hazardousness of nature that comes with this. The idea that growth can be infinite is a uniquely Western idea not shared by the majority of the world.[241] However, international law and its institutions, drawing on these ideological roots, push states towards practices that result in the degradation of the environment and therefore the creation and worsening of hazards and environmental vulnerabilities in the name of development. Anthropogenic climate change is the most prominent example of how humankind's activities are producing negative environmental and hazard-related consequences, but mining, fracking, deforestation, and many other activities involved in the extraction of commodities from nature also typically results in degradation and biodiversity loss that makes the natural world more dangerous to humans.

As Oliver-Smith writes, '[s]ocial and material practices combine with natural processes and evolve into novel forms of hazard – both potential and actual disasters. Environmental degradation, driven by the quest for profit or by people subsumed disadvantageously in that quest, is now linked with accentuated vulnerability to both natural and technological hazards around the world.'[242] Far from being distinct from each another, the histories of the environment and humankind are inseparable, both being implicated in the evolution and relative vulnerability or resilience of the other.[243] As a result, the continued expansion of human activities is now straining natural resilience limitations,[244] which in turn is having negative impacts on human societies as the environment becomes increasingly hazardous to them, a process which international law is culpable in. Because of these anthropocentric attitudes towards the environment, 'a spectrum of problems is emerging, caused by human effects on air, land and water that slowly gather momentum until they trigger rapid alterations in local systems that affect the health of populations, the renewability of resources and the wellbeing of communities.'[245]

In this way, therefore, international law has played an key role in the universalisation of specific dogmas that acts as barriers to imagining ways of life that are sustainable.[246] This includes conceptualisations of human rights, property, sovereignty, and development, for example, which

[240] Natarajan and Khoday (n199) 592.
[241] Ibid., 588.
[242] Oliver-Smith (n203) 16.
[243] Ibid., 20.
[244] Ibid., 21.
[245] Ibid., 23-24.
[246] Natarajan and Khoday (n199) 586.

normalise an ideological lens where nature is a natural resource, humanity is at the centre of the environment and to be privileged above all else, and progress is defined by a society's ability to control nature.[247] Here we can see the role of the structural character in potentially undermining the normative objectives of some of its regimes. Unless these root causes at the heart of the international legal system are recognised as drivers of environmental degradation and disaster risk and addressed, then not only will regimes like IDL and IEL fail to achieve their normative goals of protecting people and the environment, but international law itself will continue making the problem worse. The role of humanity, especially those in the Global North to a significant extent, in the destruction and breakdown of the environment because of ideological assumptions propagated and sustained by international law cannot be clearer. As Carmen Gonzalez writes,

> [i]n the name of development, the world's most affluent humans have disrupted the climate, destroyed forests, polluted air and water, produced unprecedented rates of species extinction, depleted freshwater supplies, degraded soil, damaged the ozone layer, overexploited fisheries, dumped plastic waste in oceans, and rendered land unfit for human habitation. The consequences are unprecedented hurricanes, wildfires, droughts, floods, locusts, crop failures, pandemics, death, disease, and growing numbers of people without basic necessities.[248]

Steps will not be taken to alleviate this issue and the disasters it creates until our relationship with nature is reimagined. However, the very ideology, structure, and fragmented nature of international law serves to proscribe this process. As a result, any current attempts to alleviate environmental destruction and the negative impacts it produces must do so within these structures that exacerbate the issue and thus are unlikely to achieve their normative aims until widescale reforms are enacted. Indeed, due to the embeddedness of this ideology within the international legal system, even when the matter under consideration is the protection of the environment, it remains rendered as an object rather than a subject.[249] This stems directly from the capitalist and colonial roots of the international system, resulting in law that 'explicitly or

---

[247] Ibid.

[248] Julia Dehm, Carmen Gonzalez, and Usha Natarajan, 'Meltdown! International Law Praxis During Socio-Ecological Crises' (*TWAILR: Dialogues #9/2021*, 9 September 2021) < https://twailr.com/meltdown-international-law-praxis-during-socio-ecological-crises/> accessed 12 June 2023.

[249] Emily Jones, 'Posthuman International Law and the Rights of Nature' (2021) Vol. 12 Special Issue *Journal of Human Rights and the Environment* 76, 82. While this remains the case within international law, some domestic jurisdictions have begun granting legal subjecthood to nature. Jones also discusses this and its potential shortcomings in the above article.

implicitly treats nature as a resource for wealth generation in order for societies to continually develop, [while] environmental degradation is dealt with as an economic externality.'[250] The conceptualisation of this degradation as an externality to be mitigated and internalised through international environmental agreements means that only the pathological symptoms of the international order are confronted, not the root causes, leading to a perpetuation of the problem.[251] Usha Natarajan and Julia Dehm, for example, point towards IEL's focus on regulating waste rather than consumption in this regard,[252] with the latter instead being incentivised through international law's focus on industrial development, capitalist accumulation, and consumerism. This once again recalls the discussion on 'false contingency' within public international law in Chapter One as 'the very design of the law itself is fundamentally predisposed to environmental degradation and forms part of a dysfunctional global legal architecture which cannot achieve environmental sustainability.'[253] If this root cause of environmental breakdown is not remedied then it is likely that only the symptoms of this dysfunctional understanding of the world will be addressed, and environmental degradation and disasters will continue to occur until our life support systems are irrevocably damaged.

In addition to directly creating and exacerbating hazards through environmental degradation and ecological breakdown as described above, the forced universalisation of European ideology also served to supplant and destroy indigenous culture and knowledge which offered disaster risk reduction benefits. An example, as mentioned previously, can be seen in the role of Spanish colonisation in destroying cultural adaptations to increase resilience against earthquakes by the indigenous people of Peru.[254] Indigenous people generally had, and continue to have, a greater understanding of their local environment than settlers arriving from distant lands, or more contemporarily international institutions and powerful donor states from different parts of the world. This knowledge, which has often been denigrated, is vital in helping to protect communities from disaster.

Greg Bankoff argues that the belated understanding of the fact that non-Western societies developed complex strategies throughout history to reduce insecurity and the emphasis on the

[250] Natarajan and Khoday (n199) 575.
[251] Gonzalez (n236) 420; Prue Taylor, *An Ecological Approach to International Law* (Routledge, 1998) 3.
[252] Natarahan and Dehm (n229).
[253] Stephen J. Turner, *A Global Environmental Right* (Routledge, 2014) 32. Quoted in Jones (n249) 82.
[254] Oliver-Smith (n134).

power of local knowledge in this regard demonstrates a realisation of this issue.[255] Prior to this, indigenous strategies had been considered too primitive, ineffective, or inefficient to deal with hazards, and such an attitude helps to explain the prevalence of technocratic approaches to dealing with disaster risk; that only external actors with scientific expertise could correctly identify issues and provide solutions.[256] This in many ways has stemmed from racist assumptions over the value of indigenous knowledge and the superiority of Western understanding,[257] an issue connected to the colonial period. Indeed, despite the acceptance of indigenous practices and local knowledge in dealing with disaster risk, it still remains marginalised.[258] Likewise, this is also often the case within discussions on climate change, despite indigenous populations being at the forefront of loss and damage caused by this.[259] Unlike the Western model of technocratic and scientific approaches which have been universalised and proliferated, local knowledge and strategies remain geographically limited to the particular territories that the relevant people live in.[260] Historically little effort has generally been made by the international community to learn from these practices and attempt to apply them more widely, including in Western states. In this way indigenous understandings of disaster risk and human relationships with nature have largely remained demeaned and seen as epistemologically inferior to Western knowledge,[261] with impacts on disaster risk as a result.

Despite this, a potentially encouraging example of the shift towards incorporating local knowledge and coping strategies can be found in the Sendai Framework.[262] Paragraph (i) of Priority 1 on understanding disaster risk states the importance of using 'traditional, indigenous, and local knowledge and practices, as appropriate, to complement scientific knowledge in disaster risk assessment and the development and implementation of policies, strategies, plans and programmes of specific sectors.'[263] Likewise, when discussing climate change adaptation the Paris Agreement also mentions the need to take into consideration 'traditional knowledge,

---

[255] Greg Bankoff, 'The Historical Geography of Disaster: "Vulnerability" and "Local Knowledge" in Western Discourse' in Greg Bankoff, Georg Frerks, and Dorothea Hillhorst (eds.) *Mapping Vulnerability: Disasters, Development, and People* (Earthscan Publications, 2004) 25, 32.
[256] Ibid.
[257] Abimbola *et al.* (n223) 16.
[258] Bankoff (n255) 33.
[259] Abimbola *et al.* (n223) 14, 20.
[260] Bankoff (n255) 33.
[261] Ibid.
[262] UNISDR, 'Sendai Framework for Disaster Risk Reduction 2015-2030' (18 March 2015) UN Doc. A/CONF.224/CRP (Sendai Framework)
[263] Ibid., Priority 1.

knowledge of indigenous peoples and local knowledge systems.'[264] While the inclusion of these provisions is encouraging and points towards Bankoff's claim that the importance of local knowledge in DRR and elsewhere is finally being recognised, significantly more needs to be done to properly incorporate them further and end the epistemic imperialism that sees them devalued and relegated behind Western technocratic understandings and measures.[265]

3.5 Conclusion

Overall, this chapter has sought to demonstrate the role of the foundations of international law and its early development in the historical construction of vulnerability and in the creation and exacerbation of hazards through the reproduction of a specifically harmful ideology on human-environmental relations. It has aimed to demonstrate the intimate connection between the development of international law and European colonialism and how this is also tied to certain anthropocentric attitudes towards the environment. In this sense, there is 'a fundamental interconnection between the attitudes towards indigenous inhabitants of land and towards the land itself.'[266] Following this, the chapter has built on the theoretical frameworks of disaster risk in the previous chapter to demonstrate the impact of these connections and the histories that stemmed from on the construction of disaster risk historically, and the ongoing legacies of this. This has involved an analysis of the role of international law and its justifications and rationalisations of colonialism in the root causes of vulnerability including specific patterns of wealth, power, and resource distribution, certain ideological hegemonies, and the other legacies of colonialism. It has then explained the role of international law in the poverty and marginalisation that results from these and the vulnerability it produces, using the example of the 1970 Peru earthquake to demonstrate the role that historically constructed vulnerabilities can have in the present.

Through this the chapter has argued that, unless the structures responsible for sustaining these long-standing root causes of disaster risk within the international legal system are dismantled, then they will continue to transmit disaster risk into the future, a phenomenon the chapters that

---

[264] Conference of the Parties, Adoption of the Paris Agreement (12 December 2015) UN Doc. FCCC/CP/2015/L.9/Rev/1 (Paris Agreement) Art. 7(5).

[265] An example of such indigenous practices that can be used to help reduce the risk of wildfires can be found in 'Cool Burning' that is used by the Aboriginal people of Australia, see 'Aboriginal Fire Management: What is Cool Burning?' (*Watarrka Foundation*, [undated]) < https://www.watarrkafoundation.org.au/blog/aboriginal-fire-management-what-is-cool-burning> accessed 28 July 2023.

[266] Mickelson (n220) 626.

follow will discuss. As Marie Aronsson-Storrier writes, '[w]hile international law cannot change the past, we can acknowledge the extent to which it allows for historic inequalities to be transmitted into the present.'[267] This chapter and the ones that follow aim to contribute to and further this understanding, together they demonstrate the roots of many pathologies and then their continued position within the international legal system.

As has been discussed, in many ways, the continued production of disaster risk in the present is the result of the same dynamics responsible for the construction of vulnerability historically. Colonialism and racial capitalism,[268] aided by international law, 'subordinates the well-being of humans and nature to profit-making through a predatory, extractivist logic that destroys ecosystems, exploits labor, and loots society's natural and collectively produced wealth.'[269] The same processes that are destroying the foundations of life are also responsible for the immiseration of people across the world, both historically and contemporarily, and the increases in vulnerability that come with this. Only by recognising and confronting the past of international law, its pathological aspects, and the ongoing genealogies of these, can work on dismantling longstanding processes of oppression, immiseration, and risk creation begin.

[267] Aronsson-Storrier (n197) 67.
[268] Dehm, Gonzalez, and Natarajan (n248).
[269] Ibid.

Chapter 4: Decolonisation, Modern International Law, and Disaster Risk

4.1 Introduction

While the previous chapter sought to demonstrate the role of the international law of the colonial era in the historic construction of disaster risk, this chapter traces the development of international law following the establishment of the United Nations (UN) and beyond. It will analyse events such as decolonisation, the attempts at a New International Economic Order (NIEO), and then the rise of neoliberalism and the Washington Consensus and modern International Economic Law (IEcL)[1] to discuss the impact of these on structures and hegemonies produced under colonialism and their role in the creation of disaster risk. It will be argued that despite formal decolonisation and equality under the UN system, many states continue to suffer from domination and exploitation that is instrumentalised through the law and that results in the creation and exacerbation of disaster risk. Overall, the chapter will seek to build on the analysis of the previous one by discussing the persistence of the pathologies identified previously and how their genealogies continue to shape and be sustained and reproduced by modern international legal regimes and institutions.

The first section of the chapter will describe the developments around decolonisation and the NIEO and discuss how, while some gains were made for Third World states, in substantive terms this did not ultimately improve their position in a number of ways. This will be followed by a section that highlights the role of neoliberal capitalism, the Washington Consensus, and structural adjustments in immiserating many people and leading to heightened disaster risk across the globe. The chapter will the end by discussing IEcL institutions like the World Trade Organisation (WTO), International Monetary Fund (IMF), and World Bank and their potential role in reproducing colonial wealth and power distributions and increases in disaster risk. Due to length constraints, this chapter will discuss the functioning of IEcL and the global economy in relatively general terms; however, the chapter that follows will take a more focused and detailed

[1] This chapter takes a critical stance on the relationship between international economic law and disaster risk. For a discussion instead on its potential role in assisting disaster risk reduction rather than in the production of disaster risk see Giovanna Adinolfi, 'Strengthening Resilience to Disasters through International Trade Law: The Role of WTO Agreements on Trade in Goods' (2019) Vol. 2 No. 1 *Yearbook of International Disaster Law* 3; Giovanna Adinolfi, 'International Economic Law (2021)' (2023) Vol. 4 No. 1 *Yearbook of International Disaster Law* 571.

approach, closely examining the international foreign investment regime to analyse how frameworks in this realm lead to the creation of disaster risk.

Overall, the chapter seeks to demonstrate that many of international law's pathological roots continue to impact its development today, and that, for the most part, the specific constellations of power, wealth, and resources, and ideological hegemonies produced through colonialism continue to be reproduced in the international system and exploited for the benefit of powerful states, their corporations, and wealthy individuals. Whether or not the harm that results from the structures of international law is intentional or not, the international system has been constructed in a specific manner with these pathologies inherent within it. As Lee writes, '[t]he harm is *structural* because it is a product of the way we have organized our social world; it is *violent* because it causes injury and death.'[2] A failure to properly identify, dismantle, and more justly rebuild these structures means that international law continues to produce disaster risk despite the normative aims of discrete areas of the law tasked with protecting humans and the environment and preventing disaster.

Before the main analysis of the chapter begins, it is also important to note that while this chapter and the others of the thesis focus on communities within the Global South, many of the pathological structures identified may also impact people within the Global North, affecting their levels of disaster risk. This phenomenon is not something that the thesis seeks to deny. Indeed, the current exodus from the Energy Charter Treaty (ECT)[3] and *Rockhopper v Italy* case[4] discussed in the next chapter highlight the harms that the current foreign investment regime can perpetrate even against very wealthy states and the growing consciousness of this fact. As Anthony Anghie writes, 'the legal technologies of dispossession that were developed and applied to the Third World are now globalized – that is, they now affect the lives of people in the West itself and, as such, contribute to the social dislocation, insecurity and inequality afflicting communities in rich

---

[2] Bandy X. Lee, 'Causes and Cures VII: Structural Violence' (2016) Vol. 28 No. 1 *Aggression and Violent Behaviour* 109, 110.

[3] Energy Charter Treaty (adopted 17 December 1994, entered into force 16 April 1998) EECH/A1/X 1 (ECT). At the time of writing France, Germany, the Netherlands, Poland, and Spain have announced plans to leave the treaty and the European Union as a whole look poised to leave off the back of this, see Kate Abnett, 'Brussels Says EU Exit from Energy Charter Treaty "Unavoidable"' (7 February 2023, *Reuters*) < https://www.reuters.com/world/europe/brussels-says-eu-exit-energy-charter-treaty-unavoidable-2023-02-07/> accessed 22 June 2023.

[4] *Rockhopper Italia S.P.A., Rockhopper Mediterranean Ltd, and Rockhopper Exploration PLC v Italian Republic* (14 April 2017) ICSID Case No. ARB/17/14 (*Rockhopper v Italy*).

First World countries themselves."[5] However, given the TWAIL lens of the thesis and the disproportionate manner that societies in the Global South continue to be affected by the pathologies of international law and their overall greater levels of disaster risk, the focus will remain on these communities rather than those in the Global North.

4.2 Decolonisation and the New International Economic Order

4.2.1 Persistence of the Seeds of Empire

Following the Second World War and the wave of decolonisation, formerly colonised states were eventually able to obtain independence and formal equality within the international system. However, despite this purported equality, they emerged into a framework of law which was highly Europeanised and which for the most part they had been denied a hand in shaping and thus rarely represented their interests and experiences. This formal equality also served to mask continuing substantive power and wealth differentials and more insidious forms of control and coercion. Many newly independent states therefore struggled to build independent economies and continued to suffer from less direct forms of control such as colonial debt or currency dependency, exploitation of their resources, and external corporate control.[6] As Linarelli, Salomon, and Sornarajah write:

> the end of colonialism did not lead to the dismantling of techniques and rules of a system that maintains unequal relationships, a divide between equal participants making international law and those who can only passively be subject to it. The continuation of the seeds of empire within international law ensures the maintenance of the historical divisions that had been created at earlier periods of history.[7]

---

[5] Anthony Anghie, 'Rethinking International Law: A TWAIL Retrospective' (2023) Vol. 34 No. 1 *European Journal of International Law* 1, 5. As Luis Eslava notes, 'The South Moves,' see Luis Eslava, 'TWAIL Coordinates' (*Critical Legal Thinking,* 2 April 2019) < https://criticallegalthinking.com/2019/04/02/twail-coordinates/> accessed 27 April 2023.

[6] Carsten Stahn, 'Reckoning with Colonial Injustice: International Law as Culprit and Remedy?' (2020) Vol. 33 *Leiden Journal of International Law* 823, 826.

[7] John Linarelli, Margot E. Salomon, and Muthucumaraswathy Sornarajah, *The Misery of International Law* (Oxford University Press, 2018) 79. There have however been some moves towards justice and transformation, for a discussion on some of the positive moves in international law towards addressing these past injustices see Stahn (n6) 827-828.

Newly independent states therefore emerged into a realm of international law which was inextricably linked with colonialism, comprised of doctrines that had developed to justify this practice in areas such as state responsibility, the acquisition of territory, and rules of recognition.[8] As a result, many newly independent states continued to experience marginalisation within the international system and were defensive about their recently acquired sovereignty, contesting classical international law norms developed during colonial times.[9] While General Assembly resolutions, which could have offered a more democratic means of forwarding and developing laws, were relegated to the realm of soft law, traditional tools of international law-making continued to contain inherent imbalances that often disadvantaged newly independent states. Despite the formal equality of the UN system, some states continue to hold greater sway than others in the making of international law, allowing wealthy and powerful states to misuse their positions to preserve much of the status quo and continue to gatekeep international law-making (as will be discussed in relation to the NIEO shortly).[10] This means that many aspects of the hierarchies of power established within the colonial era that act as a root cause of vulnerability remain embedded within the international legal system. The law continues to service the will of powerful states, working for their benefit and to protect their power, while producing outcomes that increase vulnerability in for many other communities.

Customary international law is particularly egregious in this respect, due to the mechanism of its formation, the fact it binds all states, and that it is largely focused on preservation of the status quo, reflecting and crystallising past realities.[11] It also contains inherent power dynamics within its formation and coverage. Formation occurs through two components: state practice and *opinio juris*.[12] As the name suggests the former of these is based on the behaviour of states while *opinio juris* refers to a psychological component; the establishment of the fact that a state is acting in a particular manner because it believes it is under a legal obligation to do so.[13] While in theory every state can now contribute to the formation of customary international law under the formal

[8] B. S. Chimni, 'An Outline of a Marxist Course on Public International Law' (2004) Vol. 17 *Leiden Journal of International Law* 1, 7.
[9] George Rodrigo Bandeira Galindo and César Yip, 'Customary International Law and the Third World: Do Not Step on the Grass' (2017) Vol. 16 No. 2 *Chinese Journal of International Law* 251, 253-254.
[10] Galindo and Yip (n9) 256; Chimni (n8) 15. A good example can be found in the doctrine of self-defense under the use of force by states like the United States, United Kingdom, and Israel, see Ntina Tzouvala, 'How to Run an Empire (Lawfully)' in Ilan rua Wall, Freya Middleton, Sahar Shah, and CLAW (eds.) *The Critical Legal Pocketbook* (Counterpress, 2021) 56, 58.
[11] Galindo and Yip (n9) 254. They draw on Georges Abi-Saab, 'The Newly Independent States and the Rules of International Law: An Outline' (1962) Vol. 8 *Howard Law Journal* 95, 106.
[12] Malcolm N. Shaw, *International Law* (8th Edition, Cambridge University Press, 2017) 55.
[13] Ibid.

equality of the UN system, in reality it remains impacted by distributions of power and wealth. As Malcolm N. Shaw writes, in the formation of custom 'it is inescapable that some states are more influential and powerful than others, and that their activities should be regarded as of greater significance.'[14] Likewise, for a rule of custom to be recognised it must be accepted by the major powers in that particular field.[15] Power and wealth differentials therefore impact the role of both state practice and *opinio juris* respectively in the formation of customary international law.

This means that powerful states have more sway in the creation of customary international law than smaller, less-powerful ones, allowing them to potentially misuse this power for their own benefit to ensure that these laws reflect their interests over those of others. This hinders efforts to make the law more cosmopolitan. Likewise, powerful, wealthy states also have an advantage in evading the universally binding nature of customary rules they do not like through the current form of the persistent objector doctrine. This stems in part from the fact that for a state not to be bound by emerging custom under the persistent objector doctrine it is required to constantly register its objections. This is a burdensome practice even for states able to employ an army of lawyers; however, for developing states who may not have the resources to constantly keep up with the proliferation of new rules and obligations, this is very tough.[16] This means that, although states in international society are formally equal, substantive material differences continue to impact just how equal relations are, allowing certain states greater power in shaping the international order and its rules and potentially ensuring the preservation of the status quo.

The existence of historic rules and their automatic imposition on the newly independent states therefore resulted in them having to comply with a normative order in which they had had little say because of their own past practice being stripped of the legal personality required to form customary rules under the standard of civilisation. As a result of their undemocratic origins under colonialism, many customary rules were considered biased in terms of geography, economics, religion, and politics by the newly-independent states,[17] being 'framed in the pre-UN era by a handful of Western states in their own interests and without the participation of the

[14] Ibid., 58.
[15] Ibid., 59.
[16] Tzouvala (n10) 58. This issue demonstrates that despite formal equality under the international system substantive material differences in terms of resources and expertise continue to impact international law-making and the obligations imposed on developing states. A similar phenomenon occurs within World Trade Organisation negotiations as will be discussed.
[17] Galindo and Yip (n9) 254.

Asian-African States.'[18] This is not to say that all laws of customary international law worked against the interests of developing states; but because of the lower impact that many of them have on the formation of custom and the existence of the persistent-objector doctrine, customary international law in the post-UN era also often continues to reflect the concerns of powerful states and to be imposed on others. B. S. Chimni, for example, cites the principle of prompt, effective, and adequate compensation and norm of humanitarian intervention as customary international law rules that are often 'against the rights of subaltern peoples.'[19]

Chimni is also critical of treaties in this respect, arguing that they largely reflect and concretise the established order and are prone to uneven negotiation.[20] He draws on Pashukanis, who argues that '[a] treaty obligation is nothing other than a special form of the concretization of economic and political relationships.'[21] Likewise, another Soviet jurist, Korovin, argues that '[e]very international agreement is the expression of an established social order, with a certain balance of collective interests.'[22] Such a concretisation often occurs within the context of unjust and inequitable relations, as detailed in the chapters of this thesis, leading to the sustaining and reproduction of such hierarchies and their dynamics. Furthermore, despite the doctrine of formal sovereign equality, the negotiation of treaties is rarely an even affair free from coercion; instead, 'bargaining frequently takes place in a world of uneven resources and opportunity costs,'[23] or, as previously discussed, 'between equal rights force decides.'[24] In this way treaties can come to codify the pathological power distributions of the international system rather than working against them for a fair and equitable society. Rules on treaty negotiation in the Vienna Convention on the Law of Treaties[25] do not prevent this, requiring only formal adherence to

---

[18] Rahmat Mohamad, 'Some Reflections on the International Law Commission Topic "Identification of Customary International Law"' (2016) Vol. 15 No. 1 *Chinese Journal of International Law* 41, 41. For more on 'Third World' states questioning the validity of these norms from nearer the time see Jorge Castañeda, 'The Underdeveloped Nations and the Development of International Law' (1961) Vol. 15 No. 1 *International Organization* 38; R. P. Anand, 'Role of "New" Asian-African Countries in the Present International Legal Order' (1962) Vol. 56 No. 2 *American Journal of International Law* 383.

[19] Chimni (n8) 15.

[20] Chimni (n8) 12.

[21] Evgeny B. Pashukanis, *Selected Writings on Marxism and Law* (Translated by Peter B. Maggs, Edited and Introduced by Piers Beirne and Robert Sharlet, Academic Press Inc., 1980) 181.

[22] Eugene A. Korovin, 'Soviet Treaties and International Law' (1928) Vol. 22 No. 4 *American Journal of International Law* 753, 763. Cited in Chimni (n8) 12.

[23] Lea Brilmayer, *American Hegemony: Political Morality in a One-Superpower World* (Yale University Press, 1997) 75.

[24] China Miéville, 'The Commodity-Form Theory of International Law' in Susan Marks ed. *International Law on the Left: Re-examining Marxist Legacies* (Cambridge University Press, 2008) 92, 117, quoting Karl Marx *Capital: Volume 1* (Penguin Classics, 1990) 344.

[25] Vienna Convention on the Law of Treaties (adopted 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331 (VCLT).

deliberative democratic rules, which does not prohibit the quiet coercion of one state by another.[26] While the international system is ostensibly built on a framework of consent, this formality masks the actual realities of relations between actors. Current rules around the conclusion of treaties can therefore risk serving the interests of the powerful and preserving existing inequitable and unjust arrangements that are detrimental to many people.

Further to these forms of international law, the very notion of statehood itself is potentially problematic, leading as it did to many former colonies being forced into accepting obligations and a framework of law they had little say in, as discussed above.[27] Indeed, while international law offered a language in which claims of independence could gain a hearing, it also locked in nation-statehood as the only way to claim legal personality; therefore, the price of being heard was statehood and 'the universal historical narrative in which that form was situated.'[28] This served to marginalise other forms of political community,[29] in a similar manner to the logic of improvement under imperialism. As Tzouvala writes, '[t]he state-centrism of international law does not simply reflect this reality of the world. International law contributed to this proliferation of statehood by incentivizing peoples struggling against empires and colonialism to organize themselves in the form of states in order to enjoy the rights and privileges afforded to this form of political community by the law.'[30] This was a result of (European) international law already being globalised and successfully asserted as the sole juridical arrangement governing the world.[31]

This focus on the nation-state was therefore problematic to the extent that "'self-determination" took place through a contradictory relationship to the categories of international law that became "truly" universal only by granting formal legal status to new subjects by rendering them commensurable with its forms.'[32] European thought and culture was once again universalised, and the rest of the world was made to contort themselves to fit within it. This meant that former colonies could only access rights under international law by accepting the established legal system and all the baggage that came with it; it also meant that independence was premised on

[26] Chimni (n8) 12.
[27] Sué González Hauck, 'It's the System, Stupid! Systematicity as a Conceptual Weapon' (*Völkerrechtsblog,* 29 December 2020) < https://voelkerrechtsblog.org/its-the-system-stupid/> accessed 13 February 2021.
[28] Sundhya Pahuja, *Decolonising International Law* (Cambridge University Press, 2011) 45.
[29] Tzouvala (n10) 57.
[30] Ibid.
[31] Pahuja (n28) 57.
[32] Ibid., 58.

organising society in a specific manner. As described in the previous chapter, this involved accepting a certain understanding of human-nature relations, a focus on industrial development, and the structuring of society to facilitate this.[33] As a result, '[w]hile postcolonial states adopted varied stances on the spectrum between capitalism and communism, including non-alignment, any society that dared to disavow industrial development altogether was denied sovereignty, as evidenced most clearly by the ongoing struggles of many tribal and Indigenous peoples for self-determination.'[34]

As will be described in the next section, attempts at reforming this system that newly independent societies were forced into to be more equitable and cosmopolitan were met with heavy resistance. This meant the preservation of the existing order for the most part, despite the end of formal colonialism. It also demonstrates the continued hegemony of European ideology within international law through the continued weaponisation of the concept of sovereignty, dictating even the manner in which newly independent peoples should organise themselves and order their societies, with implications for disaster risk.

Returning again to the question of vulnerability, it can be observed that, despite the collapse of active colonialism and the remaining European empires, many of the structures, doctrines, and dynamics within international law that had been formed during this process continued to persist, and the law failed to remedy their continuing impact on international relations. As a result 'colonial heritage, unequal power relationships, unfair developmental policies as well as neoliberal interests makes some communities and individuals less able to deal with disasters.'[35] The result of the continuation of these structures and processes has often been further imposed underdevelopment, poverty, and other forms of marginalisation, despite the end of overt colonialism. In this way, '[i]nequality, poverty, and underdevelopment do not come about because of inherent cosmic imbalances or (only a) lack of efficiency in government among some peoples but because of the continuation or imposition of rules and ideologies ensuring that affluent states maintain their dominance over others.'[36]

---

[33] Usha Natarajan and Julia Dehm, 'Where is the Environment? Locating Nature in International Law' (*TWAILR Reflections 3/2019*, 30 August 2019) <https://twailr.com/where-is-the-environment-locating-nature-in-international-law/> accessed 22 September 2021.
[34] Ibid.
[35] Irasema Alcántara-Ayala *et al.*, *Disaster Risk* (Routledge, 2022) 158.
[36] Linarelli, Salomon, and Sornarajah (n7) 79.

A failure to reform the international legal system to be more substantively equal and cosmopolitan meant that distributions of power that act as a root cause of vulnerability were not significantly altered and, for the most part, European thought remained hegemonic and institutionalised within the international legal system, continuing to impact other communities, limit their freedom, and produce disaster risk. Furthermore, as will be discussed shortly, many other post-colonial heritages continued to affect states in the Global South as a failure to effectively reform the international system meant that the harms of colonialism largely went unremedied. All these factors mean that many of the pathologies within international law and disaster risk-producing dynamics discussed in the previous chapter remain ultimately unresolved and continue to transmit disaster risk into the present and to distribute it in a specific manner – generally onto states in the Global South who have less wealth and power than those in the Global North.

In short, wealthy developed states were able to use the law to help codify their power and the failure to properly democratise international law-making following decolonisation means that communities disadvantaged by the current system are unable to use their numbers to restructure arrangements in a more equitable fashion. Likewise, the persistent objector doctrine and conceptualisation of *opinio juris* serves to protect the minority of powerful states from customary international law that threatens their interests, and they can bring their power to bear in the negotiation of treaties, ensuring that the international system continues to reflect their needs, often at the expense of others.

As a result of these legacies from the colonial era, newly independent states found that, although they had obtained (formal) political independence, in many respects they remained in a position of exploitation in relation to the global economy. As Mohammed Bedjaoui (a key player in the NIEO efforts discussed shortly) wrote:

> The world economy is organized on the basis of asymmetrical relationships between the dominant 'centre' and the dominated 'periphery', the exploiting and exploited countries being integrated in this inequitable system, and finding themselves indissolubly linked. This system, based on the theory of development of some countries thanks to the underdevelopment of others, is now vigorously condemned.[37]

[37] Mohammed Bedjaoui, *Towards a New International Economic Order* (Holmes & Meir Publishers/UNESCO, 1979) available at <https://unesdoc.unesco.org/ark:/48223/pf0000035806> accessed 13 August 2021, 23-24. On

It therefore occurred to the newly independent states that political independence would be relatively meaningless without economic independence, with many of them experiencing economies that continued to be controlled by multinational corporations established during empire.[38] Key areas of their economies that citizens relied upon had been built up by the imperial powers based on their own needs of extraction rather than those of the local population. Meaningful independence therefore required that the people of the state should be able to shift this arrangement towards one that fulfilled their needs and not those of an external power.[39]

4.2.2 The NIEO

In order to change this state of affairs, newly independent states began to fight for a New International Economic Order that was more just and equitable, reflecting the interests of states in the Global South as well as those in the Global North, and dismantling the legacies of colonialism in the international economic system. Bedjaoui wrote on the subject, '[t]he intention is to replace [the world economy], in the framework of a new international economic order, by a theory of accumulation on a world scale, operating both at the centre and on the periphery, through reciprocal relations established as part of an integrated development of the globe.'[40] Such an effort would also be important in seeking to dismantle pathological distributional processes within the international system responsible for unjust constellations and flows of wealth and resources that contribute to the production of vulnerabilities.

The first-generation leaders of many of the newly independent states in Africa and Asia therefore attended the 1955 Bandung Conference and sought to articulate the position of their states to international relations and international law and to resolving these issues.[41] The declaration that emerged from the conference did not seek to displace international law, but to change it from within to make it more equitable for the newly independent states. It reasserted the principles of sovereignty and equality but aimed to see them more meaningfully applied.[42] The Bandung

---

Bedjaoui and his legacy see Umut Özsu, "'In the Interests of Mankind as a Whole": Mohammed Bedjaoui's New International Economic Order' (2015) Vol. 6 No. 1 *Humanity* 129.

[38] Linarelli, Salomon, and Sornarajah (n7) 90.

[39] Ibid. As Knox discusses, this dynamic also resulted in a heavy focus on narrow extractive industries, see Robert Knox, 'Valuing Race? Stretched Marxism and the Logic of Imperialism' (2016) Vol. 4 No. 1 *London Review of International Law* 81, 87.

[40] Bedjaoui (n37) 23-24.

[41] Linarelli, Salomon, and Sornarajah (n7) 91.

[42] Ibid.

Declaration[43] also spoke of a need for the newly independent states to cooperate economically, and they began to advocate for economic self-determination, of a right for people to use their natural resources and control their economic wealth.[44] Calls for these rights began appearing in General Assembly Resolutions from 1952 onwards, eventually culminating in the Resolution on Permanent Sovereignty over Natural Resources in 1962.[45]

Many newly independent countries therefore argued for reforms to international law in the realm of international economic relations.[46] To reach this goal they demanded 'control over economic activity within their own borders; for participation in the governance of the globalizing economy; for fair access to technology, international trade, finance and investment; and for international cooperation from industrialized states – with the status of legal obligation – toward their development aspirations.'[47] Further resolutions were adopted in the pursuit of this, including the Declaration on the Establishment of a New International Economic Order,[48] along with a Programme of Action, and the Charter of Economic Rights and Duties of States.[49] There were also attempts to implement international codes of conduct to regulate transnational corporations and the transfer of technology.[50] Through this, the newly independent states sought remedy for the injustice and deprivation of colonialism, to incorporate a notion of justice that required the redistribution of wealth as reparations for this and to help alleviate the resulting poverty in developing nations.[51] Such an initiative would also have helped to arrest the role of the international legal system in the creation of unjust distributions of wealth and resources that act as a root cause of vulnerability. The Charter articulated several general norms that the political order should contain, including:

[43] See 'Final Communiqué of the Asian-African Conference of Bandung' (24 April 1955) available at < https://www.cvce.eu/en/obj/final_communique_of_the_asian_african_conference_of_bandung_24_april_1955-en-676237bd-72f7-471f-949a-88b6ae513585.html> accessed 23 June 2023.
[44] Linarelli, Salomon, and Sornarajah (n7) 92.
[45] Ibid. See United Nations General Assembly (UNGA), 'Permanent Sovereignty over Natural Resources' UNGA Res. 1803 (XVII) (14 December 1962).
[46] Margot E. Salomon, 'From NIEO to Now and the Unfinishable Story of Economic Justice' (2013) Vol. 62 No. 1 *The International and Comparative Law Quarterly* 31, 36.
[47] Ibid.
[48] UNGA, 'Declaration on the Establishment of a New International Economic Order' UNGA Res. 3201 (S-VI) (1 May 1974).
[49] UNGA, 'Charter on Economic Rights and Duties of States' UNGA Res. 3281 (XXIX) 12 December 1974).
[50] Salomon (n46) 37.
[51] Linarelli, Salomon, and Sornarajah (n7) 93.

> peaceful coexistence (taken out of the Bandung Declaration), equal rights and self-determination of peoples (taking a people-centred approach), remedying of past injustices brought about by force (requiring distributive justice in the light of colonial exploitation), respect for human rights (insisting that economic and political interstate relations are governed by human rights), exclusion of hegemonic power and influence, promotion of international justice, cooperation for development and access to the sea for land-locked countries.[52]

However, despite these aspirations, the advocates of the NIEO faced heavy resistance from the former imperial powers, who endeavoured to preserve their positions of power and a system of law that privileged their interests. They sought to stymie international law-making by states in the Global South and, as a result, the two codes on transnational corporations and technology transfer underwent interminable discussion and were never formally approved.[53] The General Assembly Resolutions, meanwhile, were not binding and many Global North states put forward reservations.[54] Once again, any means for the Global South to bring their strength of numbers to bear was thwarted. Future citations of these resolutions and their obligations were met with continued reiteration that they were not binding, and the refusal of powerful, industrialised states to agree on the substance of these new standards prevented the formation of new customary international law.[55] This meant that a vital attempt to dismantle some of the vulnerability-producing processes within the international legal system went unfulfilled due to the continuing unjust character of international law-making.

Eventually a variety of factors, including this intransigence by wealthy states, served to subvert the NIEO principles and the solidarity of newly developed states, meaning they were ultimately unsuccessful in their attempts at creating a more just and equitable international order.[56] A key issue that arose for newly-independent states was the petrodollar sovereign debt crisis and the rise of financialisation under neoliberalism that exploited this issue.[57] The crisis occurred when

---

[52] Ibid., 94-95.
[53] Ibid.
[54] Ibid.
[55] Ibid., 37-38.
[56] In spite of this pessimistic pronouncement, the authors of *The Misery of International Law* argue that many of the concepts have been absorbed into other fields such as international human rights law and that their legacy lives on. See Linarelli, Salomon, and Sornarajah (n7) 96-98. On this progression from the NIEO to IHRL see Antony Anghie, 'Inequality, Human Rights, and the New International Economic Order' (2019) Vol. 10 No. 3 *Humanity* 429.
[57] Linarelli, Salomon, and Sornarajah (n7) 99.

developing states were unable to service high interest loans given to them by banks in Europe and the United States, creating a sovereign lending crisis during the 1980s.[58] Due to difficulties associated with this, developing states were forced to look to foreign direct investment (FDI) in order to help them to alleviate the situation.[59] This resulted in a breakdown in solidarity between the developing states and the jettisoning of many NIEO principles, as these states were forced to court multinational corporations and create inviting environments within their territory in order to attract investment.[60] As a result '[t]here was a compulsion to go soft on the NIEO and to go hard on global capitalism.'[61]

This was combined with the rise of neoliberalism, particularly its embrace by Ronald Reagan and Margaret Thatcher in the United States and United Kingdom respectively. As noted in Chapter Two, neoliberalism is a potentially powerful driver of vulnerability. It is an economic project premised on rapacious expansion and uncompromising commitment to profit, emphasising policies such as 'private enterprise (expressed in privatization), aggressive liberalized trade, investment, and finance (and the spread of globalization) and property rights and laissez-faire (expressed in so called deregulation).'[62] Neoliberalism is also closely associated with austerity and the dismantling of the welfare state based on the logic that everything is a commodity (including land, labour, education, and things essential to life such as water and health) and that the market is the best arbiter of allocative decisions related to these.[63] As discussed in Chapter Two, the implementation of many of these policies has had deleterious impacts for a number of communities and is often connected to increases in vulnerability.

The ascendancy of neoliberalism led to a fall in foreign aid spending as the state was cut back, compounding the petrodollar crisis.[64] The supremacy of free markets was then concretised by the collapse of the Soviet Union and rise of the United States as the sole global hegemon, leading to market capitalism becoming the dominant philosophy and any alternatives condemned.[65] This ideology was internalised by various international institutions and in particular came to be advanced by key financial institutions such as the World Bank and International Monetary Fund,

[58] Ibid., 100.
[59] Ibid.
[60] Ibid.
[61] Ibid.
[62] Ibid., 8.
[63] Ibid.
[64] Ibid., 99.
[65] Ibid., 101.

in a set of doctrines known as the Washington Consensus[66] (discussed shortly). Here we can see the connection of international law through its institutions and the policies they promote to the ideology of neoliberalism and the negative impacts it produces.

The rise of neoliberalism and the petrodollar crisis therefore saw the eclipse of the NIEO[67] and many of its principles. Wealthy developed nations were able to exploit the crisis to undermine Third World solidarity, maintain their positions of privilege, and further oppress developing states. The failure of the NIEO meant that disaster risk-creating structures within the international system were not dismantled and an unjust international order and its negative consequences continued to persist. The failure of many of the newly independent states to be able to win even modest reforms, aimed at expanding the number of people able to benefit from the current system rather than overturning it, is an indictment of the international system.[68] Even worse, the debt crisis allowed powerful states to deepen their control over other countries and to further the penetration of foreign capital through the prescription of economic policies attached to loans to resolve the issue.

From a disaster risk perspective, powerful states were able to largely maintain their power and ideological hegemonies within international law and to preserve distributional processes that result in wealth and resources being distributed in a specific manner beneficial to their interests. Newly independent states were unable to overcome many of their postcolonial heritages due to the character of international law and reticence of powerful states. This meant that, rather than a reformed, more equitable international system that could have dismantled structures responsible for the production of disaster risk, and therefore helped to reduce the unjust dissemination of this, the current risk-creating system remained in place. The role of this system in the continuing to production of disaster risk is discussed in the next section.

---

[66] Ibid.

[67] Despite the apparent defeat of the NIEO efforts towards it do continue, most recently a draft resolution 'Towards a New International Economic Order' was submitted by Qatar see United Nations General Assembly (UNGA), 'Towards a New International Economic Order: Draft Resolution Submitted by the Vice-Chair of the Committee, Abdulrahman Abdulaziz Fahad Al-Thani (Qatar), on the Basis of Informal Consultations on Draft Resolution A/C.2/77/L.2' (15 November 2022) UN Doc. A/C.2/77/L.46.

[68] Linarelli, Salomon, and Sornarajah (n7) 79.

4.3 The Washington Consensus, International Economic Law, and International Institutions

Instead of the NIEO fought for by Third World states, the 1980s saw the ascendancy of neoliberal capitalism and the Washington Consensus. While the emergence of newly independent states into a colonial system of international law resistant to change meant that the existing hierarchies of power, wealth, and ideology were largely sustained, as discussed above, the emergence of this neoliberal world order in many cases served to further entrench inequalities and consolidate the power of wealthy states and their corporations. Once again international law was instrumental in this process, serving to preserve and legitimise the 'deep structures that entrench rules and systems of belief which sustain the domination of subaltern states and peoples.'[69] International financial institutions continue to support and reproduce neoliberal orthodoxy responsible for increases in vulnerability. Its capture of the international economic law regime results in a wide range of pathologies with implications for disaster risk.

The Washington Consensus consisted of a range of *laissez-faire*, neoliberal policies including a focus on the liberalisation of trade, privatisation of public infrastructure, austerity, foreign investment, and an emphasis on the sanctity of private property and contract.[70] These were imposed on many developing states through structural adjustment conditionalities attached to loans issued by international financial institutions, and in this way international law was once again used to universalise Western economic ideology. Post-colonial fragilities and a debt crisis have been exploited by international financial institutions to inscribe policies and carry out social and economic engineering based on this ideology within states in the Global South. While the coercion involved has been less-directly violent than in the colonial era, international law has again been used to transform states along Western lines of development based on arguments that this is the best way forward for all societies.

While some states have benefitted from such policies, for many they have been so deleterious that the authors of the PAR Model consider their imposition to be a root cause of vulnerability.[71] In many cases the imposition of these policies by international financial institutions has resulted

[69] Chimni (n8) 2.

[70] Linarelli, Salomon, and Sornarajah (n7) 101.

[71] Ben Wisner, Piers Blaikie, Terry Cannon, and Ian Davis, *At Risk: Natural Hazards, People's Vulnerability, and Disaster* (Routledge, 2004, Second Edition) 54. '[S]tructural adjustment policies are widely regarded as being responsible for the decline of health and education services which in our parlance suggests they are a root cause of vulnerability.' The negative impacts of many of these policies was also discussed in Chapter 2.

in increases in vulnerability. As will be discussed, they have hit the poor particularly hard and reduced their ability to cope with additional stresses such as hazards, and despite efforts to soften their impact, their core components and the damage they inflict largely remains the same.[72] The servicing of the debt from these loans also resulted in a pressure to export at any cost which led to ever increasing exploitation of natural resources, with consequences of environmental degradation on soil and forests that has increased disaster risk.[73] Neoliberalism itself – the political and economic ideology behind these policies – is also a root cause of vulnerability according to the PAR model (as discussed in Chapter Two), and its capture of many international institutions has resulted in international law playing a role in proliferating its ideological assumptions and sustaining and reproducing the vulnerability it produces. This included other such negative outcomes:

> Health care, nutrition of the poorest, investment in human capital through education, all declined. Public infrastructure was neglected and public works programmes (upon which the poorest relied most heavily for safety and for employment) were cut back. Safety regulations at work and pollution standards were reduced to attract foreign investors, further increasing vulnerability.[74]

The inscription of such policies by international financial institutions can therefore be directly connected to increases in vulnerability. This capture also operates at less overt levels with the World Bank's 'good governance' and 'legal reform' packages and the WTO's emphasis on breaking down trade barriers and establishing a global property rights regime reproducing this neoliberal ideology.[75] In many ways this represents the emergence of a new logic of improvement; neoliberal reforms and the increase in vulnerability that comes with them were either imposed on states through structural adjustment conditionalities or heavily incentivised through the promise of foreign investment[76] and improved economic development. In this respect, globalisation and the neoliberal orthodoxy underpinning it is suffused with narratives of inevitability, progress, and universality.

---

[72] Ibid., 51.
[73] Ibid., 76.
[74] Ibid., 77.
[75] Knox (n39) 97. Knox draws on Tor Krever, 'Quantifying Law: Legal Indicator Projects and the Reproduction of Neoliberal Common Sense' (2013) Vol. 34 No. 1 *Third World Quarterly* 131.
[76] As mentioned, the next chapter will cover the law of foreign investment in more detail.

Heather Hughes, for example, discusses the idea of the 'sublime' in relation to commercial law.[77] She writes on how sublimity is 'the experience of feeling pleasure and fear at the same time in the face of something much larger than ourselves' and how '[t]his sense of sublimity fuels dominant views of (1) the [Uniform Commercial Code] as facilitating a glorious, unstoppable capitalist machine, and (2) constant expansion of commercial activity as naturalized or a force of nature.'[78] Similar orthodoxies back other applications of neoliberal thought. As Linarelli, Salomon, and Sornarajah discuss, neoliberalism has come to embody the There is No Alternative (TINA) doctrine,[79] which pronounces it is the best system to serve all humanity, marginalising alternatives. This process is assisted by terms like 'free market', which feeds into force of nature narratives, suggesting 'a natural, non-political ordering process that operates independently of human will.'[80] The conceptualisation of the market as a natural entity masks the structures and process that cause them to take specific forms and prioritise specific interests. Such narratives have been endorsed and institutionalised by much of the international economic law architecture. Through these dynamics and the enduring power and wealth differentials within the international system, it becomes clear why many states have signed up to reforms and policies that end up disadvantaging them and producing disaster risk.

Indeed, work by scholars critical of neoliberalism can illuminate further its influence on the deepening of vulnerability. David Harvey for example, refers to the ultimate outcome of many neoliberal policies as being 'accumulation by dispossession,' a process engineered through practices including:

> the commodification and privatization of land and the forceful expulsion of peasant populations […] conversion of various forms of property rights (common, collective, state, etc.) into exclusive private property rights (most spectacularly represented by China); suppression of rights to the commons; commodification of labour power and the

[77] Heather Hughes, 'Aesthetics of Commercial Law – Domestic and International Implications' (2007) Vol. 67 No. 3 *Louisiana Law Review* 690. It is not possible to have a detailed engagement with international commercial law and global finance within this chapter, for some discussion on the pathologies inherent within this system see Hughes (ibid.); Linarelli, Salomon, and Sornarajah (n7) Chapter 6.

[78] Ibid., 730. A further example of this narrative of inevitability, progress, and iniversality can be found in Francis Fukuyama's declaration of the 'end of history' in the 1990s, see Francis Fukuyama, *The End of History and the Last Man* (Free Press, 1992).

[79] Linarelli, Salomon, and Sornarajah (n7) 27.

[80] Brad R. Roth, 'Marxian Insights for the Human Rights Project' in Susan Marks (ed.) *International Law on the Left: Re-Examining Marxist Legacies* (Cambridge University Press, 2008) 220, 235-236. Quoted in Linarelli, Salomon, and Sornarajah (n7) 27.

> suppression of alternative (indigenous) forms of production and consumption; colonial, neocolonial, and imperial processes of appropriation of assets (including natural resources); monetization of exchange and taxation, particularly of land; the slave trade (which continues particularly in the sex industry); and usury, the national debt and, most devastating of all, the use of the credit system as a radical means of accumulation by dispossession.[81]

He breaks down 'accumulation by dispossession' into four key features: Privatisation and commodification, financialisaton, the management and manipulation of crises, and state redistributions.[82] This involves the policies discussed above of corporatisation, commodification, and privatisation of various domains and public assets which were once considered beyond the boundaries of the market and profitability.[83] The aim of this is to open up new fields of capital accumulation including public utilities, social welfare provision (including social housing and healthcare), public institutions (including universities), and even the armed forces through the increasing role of private military companies.[84]

The outcome of this privatisation and commodification is the enclosure of many public services and facilities; it sees public assets once belonging to (and originally paid for by) citizens transferred to the private and privileged class sphere.[85] As discussed previously,[86] a focus on the profit motive and short-term economic gains often results in such infrastructure becoming less-willing to invest in disaster reduction measures, therefore making it more prone to damage and service failures when hazards strike. Privatisation can also impact access to services, with many losing their universality, as profit concerns and market forces result in varying charges for individual users. The result is the poorest in society often having to either pay more for access to services or to forego the benefits, reducing their quality of life and increasing their vulnerability. Likewise, austerity enforced by structural adjustment measures or foreign debt repayment schedules may also contribute to public services still under government control being severely underfunded. This can lead to key deficiencies in the state, which result in increased

---

[81] David Harvey, *A Brief History of Neoliberalism* (Oxford University Press, 2007) 159.
[82] Ibid.
[83] Ibid., 160.
[84] Ibid.
[85] Ibid., 161. It should be noted that such assets could end up owned by pension funds which in a way means they remain owned by some of the public (those enrolled in the scheme), however they will still operate within the private sector and suffer from many of the pressures and shortcomings that come with this.
[86] See Chapter 2.

vulnerability, such as a lack of local institutions and investment, poor disaster preparedness and social protections etc. Overall, the shift towards these policies has 'been premised on increasing privatization through dispossession and displacement of peasants and indigenous populations, including the destruction of non-market access to food and self-sustenance.'[87]

An example of this can be found in the commodification and privatisation of land once in the public domain, particularly areas used previously for subsistence agriculture. This brings its own forms of immiseration, with land-grabbing serving as a dynamic pressure on the progression of vulnerability. Such activities have 'driven many small farmers and pastoralists off their land either because they cannot compete with food imported into the country […] or because their land has been annexed in one or another legal manoeuvre, or their access to forest products, pasture and other formerly common property resources has come to be regulated by the state.'[88] A process known as 'depeasantisation', this sees land effectively stolen from the poor or nature as its value increases,[89] a practice where once again an asset which once was available and beneficial to a number of people comes to instead benefit only a small, privileged minority. Not only does this reduce food security for the communities who are forced off the land, but it can also contribute to the decline in rural livelihoods and movement of these communities to urban areas or more environmentally marginal locales such as 'hazardous neighbourhoods exposed to flood, landslides, coastal storms, pollution and insect-vectored and water-borne disease.'[90] All key aspects of vulnerability. This process has also contributed to the fact that more than half of humanity are now living in cities, with one third of these being in informal settlements,[91] a further driver of vulnerability should a hazard strike. The dispossession of land from communities therefore increases vulnerability when alternative forms of livelihood or housing are limited as '[t]he lost land can represent a lost livelihood, lead to a loss of identity (eg. spiritual or otherwise), result in the displacement of community or in homelessness or inadequate housing.'[92] Such displacement can also remove advantages gained through local knowledges of

[87] Linarelli, Salomon, and Sornarajah (n7) 14-15.
[88] Adolfo Mascarenhas and Ben Wisner, 'Politics, Power, and Disasters' in Ben Wisner, JC Gaillard, and Ilan Kelman (eds.) *Routledge Handbook of Hazards and Disaster Risk Reduction* (Routledge, 2011) 48, 51.
[89] Fred Magdoff, 'Multiple Crises as Symptoms of an Unsustainable System' (2010) Vol. 33 No. 2 *Review (Fernand Braudel Centre) Special Issue on Food, Energy, Environment: Crisis of the Modern World-System* 103, 107.
[90] Mascarenhas and Wisner (n88) 52.
[91] Linarelli, Salomon, and Sornarajah (n7) 15.
[92] Alcántara-Ayala *et al* (n35) 177.

specific locales which may have played a role in helping to reduce disaster risk, leading to a loss of capacities[93] or resilience tied to place.

Critics of structural adjustments and neoliberal policies also argue that in addition to the immiseration (and in our analysis, disaster risk) they have caused, they have also in many cases failed to produce the growth their proponents claim they are supposed to. Both David Harvey and Henrietta Moore, for example, argue that countries in the Global South that adopted neoliberal policies such as privatisation, trade liberalisation, and fiscal discipline through the 1990s actually saw their economic growth end up lower both in absolute terms and relative to other states that did not carry out such reforms or did so only partially.[94] Despite this and worsening inequality within the international system being attributed to such policies, they continue to be prescribed in the name of growth and development by international institutions, powerful states, and 'newly indoctrinated or docile governing elites.'[95]

International law, through its institutionalisation, reproduction, and imposition of neoliberal ideology and policy is complicit in all of these vulnerability-producing and exacerbating processes. They begin with the root causes which international law has and continues to have a hand in producing and sustaining; from supporting the ideological hegemony of neoliberalism, to pathological distributions of wealth and power that are produced and guarded by an international legal system that also allows for their misuse. Also key to these disaster risk-producing processes are the legacies stemming from colonialism which was aided by early international legal doctrines. The confluence of these root causes can be observed in how debt in developing countries – a product of pathological wealth distributions and post-colonial heritages – has been leveraged in order to impose neoliberal policies on them as conditionalities on loans from institutions like the International Monetary Fund and World Bank. It is pathological power and wealth distributions, produced, entrenched, and protected by the international legal system, that have allowed for the ideological capture of these institutions by wealthy Western states, resulting in the disaster risk-producing policies they impose on others reflecting their interests.

---

[93] Ibid., 178.

[94] Harvey (n81) 154; Henrietta Moore, 'Global Prosperity and Sustainable Development Goals' (2015) Vol. 27 *Journal of International Development* 801, 807-808.

[95] Georges Abi-Saab, 'The Third World Intellectual in Praxis: Confrontation, Participation, or Operation Behind Enemy Lines?' (2016) Vol 37 No. 11 *Third World Quarterly* 1957, 1960.

As the discussion on structural adjustments above demonstrated, these institutions serve to directly inscribe policy into the domestic space of states, causing them cede their powers in key areas of political, economic, and social life to international law and its institutions.[96] In this way many states are seeing their levels of power and policy-making space reduced further as it is taken over by international institutions, who dictate policies based on specific ideologies they have internalised. A further area in which this is occurring, identified by Chimni, is in the imposition of uniform global standards in international trade.[97] As he writes, globalisation 'requires the replacement of *numerous national laws and jurisdictions* by *uniform global standards* in order to remove the barriers to capital accumulation at the global level.'[98] This results in institutions dictating policy in areas including intellectual property, agriculture, and the regulation of foreign investment.[99]

While the ceding of sovereign powers to institutions to facilitate the formation and functioning of global markets is not necessarily problematic on the face of it – and there are potential incentives for states to do so – issues surround power imbalances and who is able to decide the policy of these institutions. In many cases it is powerful states who are again able to hold greater sway and ideologically capture important financial institutions, influencing policy and marginalising alternatives.[100] This turns such institutions into structures which concretise the power of certain states, working to enhance their wealth further and propagate and universalise their potentially disaster risk-producing ideologies. The IMF and World Bank for example – both institutions responsible for imposing structural adjustment reforms – have a weighted voting system that grants states greater force in decisions based on their financial contributions.[101] This clearly privileges wealthy states, who have greater financial resources available to donate, and will therefore have a greater say in the policies of institutions, ensuring that they are more reflective of their own interests. The United States, for example, exercises 17 percent of the vote, while China and India have roughly 3 percent each.[102] Wealth is therefore used to render a power hierarchy within these institutions, and despite their purported aims of improving development across the world, their policies often reflect the interests of their wealthy backers at the expense

---

[96] Chimni (n8) 6-7.
[97] B. S. Chimni, 'International Institutions Today: An Imperial Global State in the Making' (2004) Vol. 15 No. 1 *European Journal of International Law* 1, 7.
[98] Ibid. [Emphasis in original].
[99] Ibid.
[100] See, for example, the discussion on neoliberalism above.
[101] Antony Anghie, *Imperialism, Sovereignty, and the Making of International Law* (Cambridge University Press, 2005) 259.
[102] Ibid.

of smaller states which are made to enact their reforms. Evidence of this can be seen in criticisms of 'one size fits all' policies towards developing states, which fail to take into account 'the complexity and diversity of individuals, aspirations, experiences, capacities and circumstances.'[103]

Likewise, the World Trade Organisation, despite having a more equitable one-state-one-vote policy, is also set up in a way that favours the developed states over developing ones, with the root causes of inequality within the international system continuing to undermine its formal equality. Despite the power that WTO agreements have,[104] negotiations there have been criticised for failing to recognise a lack of proper democracy, instead allowing power and wealth differentials to be exploited to the advantage of some states and disadvantage of others in the formation of agreements. For example, unlike wealthier and more powerful states, 'many Third World countries lack the research and information base to effectively participate in the negotiation of complex agreements'; they also may not have sufficient staff to attend ever-increasing meetings in Geneva.[105] Due to the small size of the WTO's Secretariat, member states themselves must cover the cost of research and representation and '[t]he result is that power hierarchies outside get translated into the negotiating politics of the WTO, where the most powerful members […] are best equipped and able to negotiate deals to their advantage.'[106]

Here we can therefore see the functioning of international financial institutions in reproducing the power and wealth differentials within the international system. It is through the greater input by certain states on the policies of these institutions and the deals they help negotiate that international law contributes to sustaining inequitable power distributions which act as a root cause of vulnerability. The role of many financial institutions within the architecture of international distributional processes also means that the greater voice in policy and agreements these states possess allows them to disproportionately shape the movement of wealth and resources globally. Given that the distribution of disaster risk is in part a function of power

---

[103] Moore (n94) 807.

[104] Anghie has, for example, has described the WTO as 'a sort of global economic constitution, one that both complemented and yet competed with the UN in terms of its institutional structure, reach and global impact.' See Anghie (n5) 8.

[105] B. S. Chimni, 'World Trade Organization, Democracy and Development: A View from the South' (2006) Vol. 40 No. 1 *Journal of World Trade* 5, 15.

[106] South Centre, 'WTO Decision-Making and Developing Countries' (Working Papers 11, November 2001) available at <https://www.iatp.org/sites/default/files/WTO_Decision-Making_and_Developing_Countries.htm> accessed 14 November 2022, Section II.2.

relations in a society,[107] an institution that functions in such a manner is culpable in allowing for this pathological distribution of risk to occur and be codified within the agreements that it helps negotiate. While substantive wealth and resource differences between states are clearly inevitable to an extent due to their different sizes, geographies, and histories, the fact that international law has been arranged in ways that continue to allow this to impact international relations in a significant manner severely undermines its claims of equality and disaster risk-reducing potential.

While there is not space in this chapter for a full examination of the role of specific international trade law stemming from the WTO in producing and exacerbating disaster risk, two brief examples related to intellectual property are illustrative in demonstrating the impact of these power and wealth dynamics and the pernicious impact of neoliberalism. The first of these relates to seed patents and damage to food security resulting from a removal of access to non-market food sources. Margot E Salomon highlights this issue using the example of India in 1998 when the World Bank Structural Adjustment Programme made the country open up its seed sector to multinational corporations.[108] This led to seeds that farms had saved being replaced by ones (including genetically modified products) from Monsanto and other multinational corporations, which required fertilisers and pesticides.[109] These seeds could not be saved due to patents and genetic engineering, which meant they were not renewable and instead died.[110] As a result, rather than being able to save some seeds each harvest as a free resource that also allowed biodiversity, farmers were forced to buy new seeds each year, which drove up their costs.[111] Additional issues including poor yields led to poverty, desperation, and a spate of suicides.[112]

Here we can therefore observe again the role of international law in reproducing power structures, maintaining wealth dynamics, and institutionalising ideological hegemonies that can result in disaster risk. The functioning of an international legal framework negotiated within a system fraught with disadvantages for developing states, and working for the benefit of wealthy corporations, is responsible for contributing to damage to the livelihoods of farmers, pushing them into poverty, and increasing their vulnerability. The policies responsible for this

---

[107] Dorothea Hilhorst and Greg Bankoff, 'Introduction: Mapping Vulnerability' in Greg Bankoff et al (eds.) *Mapping Vulnerability: Disasters, Development, and People* (Taylor and Francis, 2004) 1, 1.
[108] Margot E. Salomon, 'Nihilists, Pragmatists, and Peasants: A Dispatch on Contradiction in International Human Rights Law' (2018) *Institute for International Law and Justice Working Paper 2018/5 (MegaReg Series)* 2, 9.
[109] Ibid.
[110] Ibid.
[111] Ibid.
[112] Ibid.

immiseration were imposed by the World Bank and informed by an economic ideology promoted by powerful states able to have a greater say in the institution's policy direction.

A second more contemporary example relates to the intellectual property regime and access to medicines, characterised most recently by the 'vaccine imperialism' that has occurred during the Covid-19 pandemic. While the global spread of the SARS-CoV-2 virus was able to galvanise the rapid development and production of vaccines to protect against it, the eventual distribution of these was highly inequitable. Here the Trade Related Intellectual Property Rights (TRIPS) Agreement[113] was a key culprit in a process that served to increase the vulnerability of communities in the Global South, who were largely unable to access the vaccine while it was hoarded by rich states in the Global North. The agreement itself was formulated primarily by the twelve chief executive officers of the United States-based Intellectual Property Committee (IPC) and its counterparts in Europe and Japan, demonstrating the potential power of wealthy corporations in the development of international economic law that affects lives all over the globe.[114]

While the agreement does contain some flexibilities in relation to medicines,[115] the neoliberal foundations of the agreement stemming from its development means that contract and property rights are prioritised above other concerns such as the public good and environmental concerns (as discussed in the previous chapter, this prioritisation has its roots in the doctrines and thought that formed early international law), which are relegated to non-market externalities beyond the remit of economic agreements.[116] As Amaka Vanni writes:

> [TRIPS] is a transplant of the Euro-American model of property, driven by multinational corporations who used their respective national governments to underwrite and export their domestic IP claims. Therefore it is unsurprising that this international legal regime

---

[113] Agreement on Trade-Related Aspects of Intellectual Property Rights (15 April 1994) 1869 U.N.T.S. 299 33 I.L.M. 1226 (TRIPS Agreement).

[114] Susan K. Sell, *Private Power, Public Law: The Globalization of Intellectual Property Rights* (Cambridge University Press, 2003) 1-2.

[115] Amaka Vanni states that although these flexibilities exist, the onerous process of actually initiating them and fear of reprisals from the US through The United States Trade Representative (USTR) 'Special 301' Report means that many developing countries are reluctant to actually utilise them for public health purposes. See Amaka Vanni, 'On Intellectual Property Rights, Access to Medicines and Vaccine Imperialism' (*TWAIL Review: Reflections #32/2021,* 2021) available at <https://twailr.com/on-intellectual-property-rights-access-to-medicines-and-vaccine-imperialism/> accessed 14 December 2022.

[116] Linarelli, Salomon, and Sornarajah (n7) 111-112.

> employed to advance the interests of particular classes, nations and regions at the expense of others continues to reproduce extreme inequality with human costs.[117]

From the very beginning the regime established by TRIPS produced imbalances between interests like market monopoly and medicines access because it failed to take into account developmental needs and health burdens of the wide range of countries that make up the WTO.[118] This issue is exacerbated further by many trade agreements containing so-called 'TRIPS-plus' provisions which impede access to health technologies even further and undermine what few flexibilities there are in the TRIPS Agreement.[119] The issues produced by the current IP regime are therefore quite widespread, and its pathologies are not solely limited to Covid-19. A similar situation unfolded in relation to HIV/AIDS and the unaffordability of antiretroviral drugs in developing countries shortly after the agreement's entry into force, with TRIPS once again protecting property rights at the expense of human lives.[120] Bandy X. Lee discusses this when describing structural violence, writing that AIDS-related deaths in low-income countries result not from natural causes but from poverty, due to 'the inability of individuals suffering from AIDS to afford to pay for the medicines that could save their lives and currently are saving millions of lives of similar victims in high-income countries.'[121] In this sense it is the failure of distributive structures to function in an equitable manner that are inflicting vulnerability on these individuals and, in concert with the virus, reducing their opportunities in life.

To make matters worse, when the South African government intervened to reduce the cost of anti-retrovirals by amending its domestic patent laws, the Pharmaceutical Research and Manufacturers of America industry group attempted to sue them.[122] Despite the fact that South Africa was acting within the 'national emergency' exception allowed by the TRIPS Agreement,[123] the United States government acted on behalf of these companies to place heavy pressure on the South African Parliament through sanctions including a suspension of foreign aid to the country

---

117 Vanni (n115).
118 Ibid.
119 United Nations Secretary General's High Level Panel on Access to Medicines, 'Report of the United Nations Secretary-General's High-Level Panel on Access to Medicines: Promoting Innovation and Access to Health Technologies' (September 2016) < https://static1.squarespace.com/static/562094dee4b0d00c1a3ef761/t/57d9c6ebf5e231b2f02cd3d4/1473890031320/UNSG+HLP+Report+FINAL+12+Sept+2016.pdf> accessed 20 January 2023, 7-8.
120 Linarelli, Salomon, and Sornarajah (n7) 143.
121 Lee (n2) 110.
122 Vanni (n115).
123 TRIPs Agreement (n113) Art. 32.

and denial of certain tariff breaks.[124] This demonstrates the lengths that corporations and their government backers will go to in order to protect profits and property rights, even in the face of a public health emergency that had caused millions of potentially preventable deaths.

In terms of Covid 19, we see many echoes of what unfolded with HIV/AIDS medicines. As a result of the neoliberal character and corporate capture of the Agreement, and despite calls from the UN that 'no one is safe, until everyone is,'[125] the profits and intellectual property rights of pharmaceutical companies continued to be put ahead of the lives and wellbeing of billions of people. The law itself 'consistently shelters capital and operates as an expression to further corporate pharmaceutical interests,'[126] creating an artificial scarcity. This had a major impact on the distributions of the vaccines, with the use of markets to disseminate them allowing wealthier states to buy up large stockpiles while many poorer countries went without.[127] In this way it again 'created a privileged societal class with access to lifesaving medication distinguishing them from those excluded from access.'[128] As will be discussed more fully in the next chapter on foreign investment law, this once again highlights the tension between the public interest and the commercial interests of powerful corporations, and how the law generally operates in defence of the latter rather than the former, granting them greater power. By failing to distribute vaccines in a more equitable manner international law was complicit in increasing the vulnerability of communities unable to access it.

Indeed, Western pharmaceutical companies were even able to resist calls to temporarily loosen or suspend IP protections to allow generic manufacture and greater dissemination of the vaccines in the short-term to help contain and control the virus for the benefit of everyone.[129] Once more, powerful states intervened in defence of their corporations, blocking a TRIPS waiver proposal[130] put forward by South Africa and India at the WTO and supported by 57 countries.[131] In this respect wealthy and powerful states were able to continue leveraging their

---

[124] Natsu Taylor Saito, 'From Slavery and Seminoles to AIDS in South Africa: An Essay on Race and Property in International Law' (2000) Vol. 45 No. 5 *Villanova Law Review* 1135, 1188-1189.
[125] United Nations Department of Economic and Social Affairs, 'No One is Safe, Until Everyone is' < https://www.un.org/en/desa/%E2%80%9Cno-one-safe-until-everyone-%E2%80%9D> accessed 20 January 2023.
[126] Vanni (n115).
[127] Ibid.
[128] Ibid.
[129] Ibid.
[130] Council for Trade-Related Aspects of Intellectual Property Rights, 'Waive from Certain Provisions of the TRIPS Agreement for the Prevention, Containment and Treatment of COVID-19' (2 October 2020) WTO Doc. IP/C/W/669 (TRIPS Waiver).
[131] Vanni (n115).

power to protect commercial interests at the expense of an increase in disaster risk stemming from vulnerability to the Covid-19 virus. The failure of international law to rein in this corporate greed is a vital failure that will potentially have repercussions in the face of novel zoonotic diseases in the future.

Vanni argues that the imbalances in vaccine distribution represents a reproduction of the colonial origins of international law, describing it as 'imperial continuities manifesting in the present.'[132] It is her contention that these pathological origins of international law create 'a set of structures that continually repeat themselves at various stages.'[133] This thesis has sought to highlight something similar in relation to the disaster risk-producing potential of these structures, which continue to be sustained and reproduced. Vanni also argues that even when frameworks contain provisions aimed at improving development, such as TRIPS's objectives of technology transfer, the incorporation of these into international legal structures serves to constrain their potential and instead reproduces North-South power imbalances.[134] As noted in Chapter One, there can be a case of 'false contingency' at play when the normative objectives of individual international law provisions and frameworks are precluded by the existing structures of the law. Vanni herself writes that this is often because 'development objectives are circumscribed by capitalist imperial structures, adapted to justify colonial practices and mobilized through racial differences' and '[t]hese structures are the essence of international law and its institutions even in the twenty-first century.'[135] In this way TRIPS not only fails to promote structural reform, but also itself produces asymmetries resulting in inequality.[136]

The result is therefore increased vulnerability to the virus in states unable to equitably access the vaccine, but also a prolonging of the pandemic and the disasters it triggers as the virus is able to continue circulating among unprotected populations producing new variants. In this way the drafting and functioning of the TRIPS Agreement serves to crystalise the power and wealth dynamics of the international system, distributing disaster risk according to this hierarchy. This state of affairs is not limited only to HIV/AIDS and Covid-19; people across the world die from many other preventable illnesses due to the unaffordability of medicines, a result in part of the machinations of international law. The increasing rise of zoonotic diseases, driven in part by the

[132] Ibid.
[133] Ibid.
[134] Ibid.
[135] Ibid.
[136] Ibid.

imperatives of global capitalism that degrade the environment and push human societies into greater contact with nature, means that Covid-19 is also unlikely to be the last virus where such vaccine imperialism occurs. This highlights the potential role of international law also in the generation of the viral hazard through its position in propagating and sustaining the engine of global capitalism that incentivises this process (as discussed above).[137] This therefore demonstrates the urgent need to dismantle these root causes of disaster risk within the international system and their expression in various legal frameworks governing distributional structures.

4.4 Conclusion

This chapter has sought to demonstrate how the root causes of vulnerability connected to international law that were established during the colonial period (and discussed in the previous chapter) continue to have legacies in the structure and formation of international law and the international system today. In addition to highlighting the presence of these colonial continuities within international law, the chapter also analysed how states in the Global North were able to leverage their greater power within the international legal system to deny attempts at reforming it along more equitable and cosmopolitan lines that would have potentially helped to dismantle many of its disaster risk-producing aspects. The chapter then highlighted how the preservation of existing arrangements allows for states within the Global North to have greater input in the policies of international financial institutions and the agreements they help to negotiate. This allows for international distributional processes and policy inscriptions imposed on developing states to often be moulded towards the benefit of powerful states, ensuring the continuation of inequitable wealth distributions that benefit them.

In connection to this role of international law in sustaining pathological distributions of wealth and power, the chapter also built on the discussion of the disaster-risk producing capacity of neoliberalism from Chapter Two to analyse now neoliberal thought underpins much of the international economic law architecture and to examine the complicity of international law in sustaining and reproducing this ideology and the vulnerabilities it produces. The chapter then sought to offer examples of how the issues identified above have impacted and informed the

[137] Julia Dehm, Carmen Gonzalez, and Usha Natarajan, 'Meltdown! International Law Praxis During Socio-Ecological Crises' (*TWAILR: Dialogues #9/2021*, 9 September 2021) < https://twailr.com/meltdown-international-law-praxis-during-socio-ecological-crises/> accessed 12 June 2023.

development of frameworks within international economic law by giving some illustrative examples within the realm of intellectual property. While it has offered only a general and relatively brief account of international economic law, the next chapter will contain a closer and more detailed analysis of the foreign investment architecture to demonstrate these arguments in a more depth.

The key point of this chapter and the one that follows is to highlight the importance of discussions on the relationship between international law and disaster risk in all their dimensions, not just on discrete fields of law and how they might be used to reduce risk. International economic law and its institutions represent a major driver of disaster risk and it is only through a holistic process that takes account of pathologies both historical and current that the wrongs perpetuated by the law may be resolved and international law's aims of DRR achieved, as '[w]hile international law cannot change the past, we can acknowledge the extent to which it allows for historic inequalities to be transmitted into the present.'[138] Only by confronting this past, the darker side of international law, and its colonial continuities can work on dismantling longstanding processes of oppression, immiseration, and risk creation begin.

[138] Marie Aronsson-Storrier, 'Beyond Early Warning Systems: Querying the Relationship Between International Law and Disaster Risk (Reduction)' (2020) Vol. 3 *Yearbook of International Disaster Law* 51, 67.

Chapter 5: Foreign Investment and Disaster Risk

5.1 Introduction

While the previous chapter analysed the relationship between International Economic Law (IEcL), its institutions, and disaster risk in general terms, this chapter will now examine a specific regime of IEcL in greater detail in the form of the international law of foreign investment. Through the use of more directly attributable connections between the law, the actions of multinational corporations it permits and facilitates or fails to regulate, and the creation of disaster risk, this chapter seeks to add increased clarity and weight to the analysis of the previous two chapters, and the law of foreign investment offers an important example. This regime has come under increased scrutiny over the last few decades; however, while its most concerted and prominent criticisms relate to its negative interactions with attempts at mitigating and adapting to climate change[1] – typified most prominently by discussions around the Energy Charter Treaty (ECT)[2] – the relationship of the regime with the disaster risk has been much less directly examined.[3]

The chapter will begin by briefly outlining the international law of foreign investment and some of its history and the connection of this to international law and its development more widely. The chapter will then look at different aspects of the international foreign investment regime deemed problematic and discuss how they are culpable in the creation of disaster risk, and even disasters themselves. In this analysis it will be argued that international foreign investment law is culpable in the problems identified both by the presence of its architecture, and issues within this, but also by its absence. In many cases the problems identified are produced by a failure of international law to effectively regulate the actions of multinational corporations and hold them liable for the negative consequences of their operations. In several respects its absence can be just as destructive as its presence. As with discussions in the previous chapter, genealogies of law from the colonial period can also be identified in the current make up of international foreign

[1] See, for example, Stephan W. Schill, 'Do Investment Treaties Chill Unilateral State Regulation to Mitigate Climate Change?' (2007) Vol. 24 No. 5 *Journal of International Arbitration* 469; Kyla Tienhaara and Lorenzo Cotula, *Raising the Cost of Climate Action? Investor-State Dispute Settlement and Compensation for Stranded Fossil Fuel Assets* (International Institute for Environment and Development, 2020).

[2] Energy Charter Treaty (adopted 17 December 1994, entered into force 16 April 1998) EECH/A1/X 1 (ECT).

[3] For some discussion on this topic see Marie Aronsson-Storrier, 'Sendai Five Years on: Reflections on the Role of International Law in the Creation and Reduction of Disaster Risk' (2020) Vol. 11 *International Journal of Disaster Risk Science* 230.

investment law and its lacunas, and these continuities contribute to the problems that will be discussed, highlighting the persistence of these root causes of disaster risk.

The case of Texaco/Chevron in Ecuador[4] will be used as a starting point to give a general view of the various pathologies in the regime and how these can contribute to a continuation of colonial dynamics, environmental degradation, large-scale increases in vulnerability, and a failure to remedy the consequences of these. The examples that follow will then flesh out further two of the pathologies identified in the Texaco/Chevron example. This will begin with the case of the Union Carbide and the Bhopal disaster[5] in India and the absence of effective international law through its failure to properly regulate the actions of the corporation or offer effective remedy in the aftermath of the catastrophe. The chapter will then end with a discussion on issues that can arise when the law is present through the controversial investor-state dispute settlement (ISDS) system within foreign investment, its potential role in constraining the policy-making space of states, and the impact of this on disaster risk reduction (DRR) measures. This will involve an examination of a range of cases including the *von Pezold* case[6] and *Rockhopper v Italy*[7] to discuss the impact of this system in both developing and developed states. The former of these cases will examine how ISDS arbitrations can be complicit in colonial continuities and compelling state governments to take action that risks increasing the vulnerability of its citizens, while the latter is an example of how ISDS, or its threat, can curtail the ability of governments to undertake DRR measures to protect their populations.

The crux of the issues with foreign investment hinges on asymmetries in the rights and duties that are ascribed to multinational corporations under international law and the problems that stem from this. Currently, corporations are able to enter host states – often under privileged circumstances as developing countries are encouraged to create environments conducive to foreign investment in the name of development – and enjoy relative impunity from liability for many of the negative consequences of their operations, as will be discussed. In addition to this

---

[4] This case now spans multiple courts and jurisdictions, but litigation began initially with *Aguinda v Texaco, Inc.* [1994] 850 F. Supp. 282 (S.D.N.Y. 1994).

[5] For an overview of this disaster and the legal battles that followed see Upendra Baxi, 'Human Rights Responsibility of Multinational Corporations, Political Ecology of Injustice: Learning from Bhopal Thirty Plus?' (2015) Vol. 1 No. 1 *Business and Human Rights Journal* 21; Shyami Fernando Puvimanasinghe, 'The Bhopal Case: A Developing Country Perspective' (1994) Vol. 6 *Sri Lanka Journal of International Law* 185.

[6] *Von Pezold v Zimbabwe* (28 July 2015) ICSID Case No. ARB/10/15, Award (*von Pezold* case).

[7] *Rockhopper Italia S.P.A., Rockhopper Mediterranean Ltd, and Rockhopper Exploration PLC v Italian Republic* (14 April 2017) ICSID Case No. ARB/17/14 (*Rockhopper v Italy*).

advantaged position with regard to liability, foreign corporations also enjoy rights unavailable to domestic businesses operating in the same territories, such as the ability to sue host governments in opaque ISDS arbitrations. This system of ISDS allows multinational corporations to ascribe liability to states for policies that they believe unlawfully damage their profits, regardless of the public interest origin or mandate of these policies. This serves to curtail the policy-making space of states, which may be particularly damaging in the case of climate change and DRR policies, and to give corporations perverse levels of power over their host states.

The inability for states to exert the same level of control over foreign companies operating in their territories as they would their domestic counterparts, or to bring arbitrations against them as the companies can against states, has its roots in the idea that multinational enterprises are able to function without liability in international law as they are deemed not to have international legal personality.[8] In this way 'the role of private power in the making of international law […] has been possibly deliberately screened from view in international legal texts', despite the economic and financial power multinational corporations are able to wield.[9] This becomes particularly problematic when the activities of the company in question, especially in the case of extractive industries, are producing disaster risk.[10] While activities like logging, mining, and fracking can lead to environmental degradation that destroys livelihoods and homes, and may produce or exacerbate hazards, pressure from international capital and financial institutions to create conditions conducive to obtaining and retaining foreign investment can also result in poor wages and labour regulation for local workers which increases vulnerability in socio-economic terms.

The power dynamics at play in this can be seen in the fact that such companies usually headquarter themselves in powerful, developed states while 'their economic activities' adverse social and environmental impacts occur in the peripheral countries, especially in South America,

---

[8] John Linarelli, Margot E. Salomon, and Muthucumaraswamy Sornarajah, *The Misery of International Law* (Oxford University Press, 2018) 147.

[9] M. Sornarajah, 'A Law for Need or a Law for Greed?: Restoring the Lost Law in the International Law of Foreign Investment' (2006) Vol. 6 No. 1 *International Environmental Agreements: Politics, Law, and Economics* 329, 333.

[10] For examples of some cases of foreign investment which have produced negative environmental and social consequences such as toxic waste from mining, killing crops and causing health conditions, and companies intimidating and assaulting local people, see Lora Verheecke, Pia Eberhardt, Cecilia Olivet, and Sam Cossar-Gilbert, *Red Carpet Courts: 10 Stories of How the Rich and Powerful Highjacked Justice* (Friends of the Earth Europe and International, the Transnational Institute (TNI), and Corporate Europe Observatory, 2019). The piece also discusses how the Investor-State Dispute System has been weaponised by companies to extract repercussions from states trying to protect their citizens and environment.

Africa, and Asia.'[11] This therefore offers an example of how the distribution of disaster risk is a function of power relations, with the brunt of the negative impacts of these activities being felt by more marginalised communities in the Global South while the profits are often repatriated to where the corporation is headquartered in the Global North. In several of the cases discussed below we will see examples of corporations exploiting weaker regulatory regimes in Global South countries to prioritise profit over the wellbeing of local environments and communities. Echoes of colonial enterprises like the East India Companies[12] can be observed in the ability of these corporations to travel freely around the world prioritising their private profits (which are extracted away from the host country) at the expense of the people and environments of the territories they operate in, with little remedy available for these harms.[13] Indeed, writing on the Dutch East India Company, Dangerman and Schellhuber argue that this has always been the objective of the corporate form: '[t]hen and now, companies serve as legal vehicles for generating immediate profits for shareholders and allowing investors to reap the benefits of expansion […] without being confronted by the consequences of such harvesting dynamics.'[14] It is this attitude which helps to enable multinational corporations to prioritise profits over the wellbeing of local communities and escape responsibility when they are adversely affected, with negative consequences for disaster risk.

---

[11] Fernanda Frizzo Bragato and Alex Sandro da Silveira Filho, 'The Colonial Limits of Transnational Corporations' Accountability for Human Rights Violations' (2021) Vol. 2 *TWAIL Review* 34, 35.

[12] On the role of these trading companies on the development of international law see, for example, Kate Miles, 'International Investment Law: Origins, Imperialism and Conceptualizing the Environment' (2010) Vol. 21 No. 1 *Colorado Journal of International Law and Policy* 1. On the role of corporations in international law and the colonial project more widely see Grietje Baars, *The Corporation, Law, and Capitalism* (Haymarket, 2020); Doreen Lustig, *Veiled Power: International Law and the Private Corporation* (Oxford University Press, 2020).

[13] Bragato and Filho (n11) 44. It should be noted that a recent case in the UK has seen the Supreme Court rule that communities in the Niger Delta affected by environmental harms resulting from oil extraction operations can bring legal claims against Royal Dutch Shell in England (where the company is registered) despite the corporation's arguments that it cannot be held liable for harms caused by its Nigerian subsidiary. As the discussions on Texaco/Chevron in Ecuador and the Bhopal disaster later in this chapter will demonstrate, the ability for corporations to shield themselves from liability by using subsidiary companies has highly detrimental effects on justice and remedy for the victims of disaster, so this decision is a potentially positive step in ascribing greater responsibility to multinational companies. For details on the case see *Okpabi and others (Appellants) v Royal Dutch Shell Plc and another (Respondents)* [2021] UKSC 3 available at <https://www.supremecourt.uk/cases/uksc-2018-0068.html> accessed 20 June 2023.

[14] A.T.C. Jérôme Dangerman and Hans Joachim Schellhuber, 'Energy Systems Transformation' (2013) Vol. 110 No. 7 *PNAS* E549, E556. Quoted in Elena Blanco and Anna Grear, 'Personhood, Jurisdiction and Injustice: Law, Colonialities and the Global Order' (2019) Vol. 10 No. 1 *Journal of Human Rights and the Environment* 86, 107.

5.2 The Law of Foreign Investment

Growing from these colonial roots, the modern law on foreign investment largely began with relations between the United States and Latin American countries and the international law on state responsibility for violation of the rights of the alien investor.[15] It took on a truly global form following decolonisation when the previous colonial system was no longer able to facilitate investments and investors needed to ensure their capital was protected in newly-independent states.[16] It was therefore during the 1950s and 60s that the more modern, global regime was constructed, an effort which M. Sornarajah argues was carried out by utilising 'low order' sources of international law such as arbitral awards and the 'writings of highly qualified publicists' to ensure the creation of a body of law favourable to multinational corporations.[17] In this way, despite the purported lack of legal personality of corporations, the law of foreign investment was actually constructed based on the interests of private power with little input by states in a process which was largely shrouded in silence for some time.[18] Indeed, '[t]he multinational corporations themselves must be seen as distinct bases of power capable of asserting their interests through the law. Their individual economic resources far exceed those of many sovereign states.'[19] While states did eventually re-enter the picture to establish the system through treaties, the role of private power in the primitive construction of the regime once again demonstrates the asymmetrical relationship which multinational corporations enjoy with international law, being able to influence its formations while evading obligations. It also highlights the root character and pre-occupations of the law on foreign investment, being formed with the interests of these corporations in mind.

The investment treaty regime which this chapter examines is comprised of three main components: investment treaties; the sets of rules and institutions governing arbitration of these treaties; and the decisions of these arbitral tribunals in applying and interpreting the treaties.[20] The treaties take the form of international investment agreements (IIAs), whose objectives are the promotion of foreign investment as a route to development and the protection of these

[15] Sornarajah (n9) 332-333.
[16] Sornarajah (n9) 332. This is a necessarily short history of the foreign investment regime, for a more detailed history see M. Sornarajah, *The International Law on Foreign Investment* (Cambridge University Press, 2010), Chapter 2.
[17] Ibid., 333.
[18] Ibid.
[19] Sornarajah (n16) 5.
[20] Jonathan Bonnitcha, Lauge N. Skovgaard Poulsen, and Michael Waibel, *The Political Economy of the Investment Treaty Regime* (Oxford University Press, 2017) 3.

investment for investors from political and economic risks and instabilities in the host countries.[21] The latter of these objectives is generally the primary one, and practically all IIAs contain protections against uncompensated expropriation and discrimination, while many go further including rights to transfer capital and protections against unfair treatment and losses from war.[22] They most often take the form of bilateral investment treaties (BITs) between two states while many new free trade agreements, particularly regional ones, also include chapters on investment.[23] BITs, which proliferated massively in the 1990s,[24] are a further example of international law historically being formally equal and reciprocal while in many ways ignoring the substantive differences between states. As Antony Anghie writes, '[s]trictly speaking, of course, both developed and developing countries enjoyed equal rights under bilateral the treaties. In reality, however, developing countries – almost by definition – lacked the resources to invest in any meaningful way in developed countries, and so the rights they putatively possessed were rarely exercised.'[25]

The impact of power relations on the formation of the regime can further be seen in the fact that the arbitration system is monopolised by a group of lawyers from developed countries, who work to ensure that the law remains largely focused on investment protection and the interests of developed countries and their corporations at the expense of all else. Different treaties refer to a number of arbitration centres for the resolution of these disputes; however the most prominent institution is the International Centre for the Settlement of Investment Disputes (ICSID) established by the World Bank-sponsored Convention for the Settlement Disputes between States and Nationals of Other States.[26]

---

[21] Leïla Choukrune, 'Disasters and International Trade and Investment Law – The State's Regulatory Autonomy Between Risk Protection and Exception Justification' in Susan C. Breau and Katja L. H. Samuel (eds.) *Research Handbook on Disasters and International Law* 204, 209.

[22] Bonnitcha, Skovgaard Poulsen, and Waibel (n20) 3.

[23] Ibid., 211.

[24] The United Nations Commission on Trade and Development reported that the number rose from 900 treaties at the start of the decade to 2,900 by the end. Sornarajah (n16) 3.

[25] Antony Anghie, 'Rethinking International Law: A TWAIL Retrospective' (2018) Vol. 34 No. 1 *European Journal of International Law (EJIL Foreword)* 1, 9. As Sornarajah discusses this is not necessarily the case for all developing states, and the distinction between capital-importing and capital-exporting states has blurred somewhat. This has also led to some states on the Global North taking more protectionist approaches as they have begun to experience some degree of foreign investment related issues previously limited to the developing world. See Sornarajah (n16) 24-24.

[26] Sornarajah (n16) 276. The Convention itself can be found here: <https://icsid.worldbank.org/sites/default/files/ICSID_Convention_EN.pdf> accessed 22 June 2023. The ISDS system is discussed in greater detail in the final section of the chapter.

The current foreign investment regime continues to be justified through arguments of positive economic growth and development in host states. It is argued that creating conditions conducive for multinational companies and allowing them to operate within the territory of a state will be beneficial for economic advancement and providing jobs.[27] Through a focus on an economic framing of the relationship between these companies and developing states, negative social and environmental consequences are set aside, being tolerated as side-effects to the important goal of development.[28] In this way it can be argued that the philosophies at the heart of imperialism live on within the current foreign investment regime, having shifted from discourses around 'civilisation' to 'sophisticated theories of development'[29] and the need for developing countries to subscribe to these. Vulnerabilities that were constructed historically therefore continue to be translated into the modern day and contemporary legal regimes. As will be demonstrated, private corporations of powerful states are frequently able to act with relative impunity within the territories of developing states, with their presence justified on grounds of helping to advance 'backward' host states towards a state of modernity typified by the powerful states. In exchange for such foreign investment, developing states are often forced to accede to the demands of these corporations and their backers including international financial institutions, potentially at the expense of the direct needs and wellbeing of their own people. While the regime focuses on reducing potential risks to investments, it is unconcerned with the increases in risk that local populations often experience.

In addition to these negative consequences stemming from foreign investment, there is also increasing evidence that assumptions over the positive impact of such investments to the host country may be false, with their supposed benefits cultivated by neoliberal dogma and the institutions and individuals that support it.[30] Indeed, evidence has shown that the net results of foreign investment are often not beneficial, with eventual outflows of profit and resources being higher than the initial investment brought in.[31] As a result, the 'trickle down' effects of foreign

[27] Bragato and Filho (n11) 35-36.
[28] Ibid., 36.
[29] Linarelli, Salomon, and Sornarajah (n8) 147.
[30] Linarelli, Salomon, and Sornarajah (n8) 151. For a discussion on how Western actors persuaded developing countries to adopt bilateral investment treaties and to enshrine similar protections into their domestic law see Chapter 4 of Lauge N. Skovgaard Poulsen, *Bounded Rationality and Economic Diplomacy: The Politics of Investment Treaties in Developing Countries* (Cambridge University Press, 2015) 71-109.
[31] Linarelli, Salomon, and Sornarajah (n8) 151.

investment to local populations is disputed, even in richer countries.[32] The extractive industries are particularly bad in this regard, leading to the idea of a 'resource curse' whereby abundant natural resources has been correlated with poor economic performance, because of 'economic, political, and historical dynamics that undermine the development trajectory of countries specializing in the extraction of natural resources.'[33] Such poor economic performance can contribute to dispossession and reduced socioeconomic standards and prospects for already marginalised sections of the population,[34] resulting in increases in vulnerability. Other negative outcomes of high resource levels can include:

> the concentration of welfare associated with natural resources, the creation of narrow based niches that have few linkages promoting the development of the rest of the economy, the volatility of prices with cyclical busts and booms and secular downward trend of commodities if compared to other goods and services, the use of natural resources as collateral to promote indebtedness by opportunistic policy makers, environmental impacts that undermine other sectors, conflict and corruption, the establishment of rent seeking economies where redistributive activities crowed out productive investment.[35]

Therefore, foreign investment may lead to increases in disaster risk through detrimental impacts on the social, economic, and environmental well-being of host states and their aspirations, as well as the human rights of their citizens, while producing little in the way of purported economic benefits.[36] Indeed, while employment is usually created by investments, the way labour is treated may not be to accepted standards, making it less beneficial to local citizens than promised or even downright harmful.[37] The activities of foreign companies may also risk depleting the environment, and as a result negative impacts 'on local livelihoods, access to food, and the traditional way of life of pastoralist and other communities is […] well documented.'[38]

---

[32] Lorenzo Pellegrini, Murat Arsel, Martí Orta-Martínez, and Carlos F. Mena, 'International Investment Agreements, Human Rights, and Environmental Justice: The Texaco/Chevron Case from the Ecuadorian Amazon' (2020) Vol. 23 *Journal of International Economic Law* 455, 463.

[33] Murat Arsel, Barbara Hogenboom, and Lorenzo Pellegrini, 'The Extractive Imperative in Latin America' (2016) Vol. 3 *The Extractive Industries and Society* 880, 882.

[34] Pellegrini *et al.* (n32) 463. On the 'resource curse' see also Frederick van der Ploeg, 'Natural Resources: Curse or Blessing?' (2011) Vol. 49 No. 2 *Journal of Economic Literature* 366.

[35] Arsel, Hogenboom, and Pellegrini (n33) 882.

[36] Linarelli, Salomon, and Sornarajah (n8) 151.

[37] Ibid.

[38] Ibid. As cited, see, for example, United Nations Human Rights Council (UNHRC), 'Report of the Special Rapporteur on the right to food, Olivier De Schutter: Large-scale land acquisitions and leases: A set of minimum

Overall, '[t]he clear majority of the citizens of the developing countries into which such investments flow do not benefit from them. Rather, they must shoulder the disadvantages such as displacement (without compensation), lower labour standards, environmental pollution that foreign investors cause, and corruption that they all too often facilitate.'[39]

The implications of these disadvantages for disaster risk should be readily apparent in light of the analysis in the previous chapters. They can be connected to a number of aspects of vulnerability including rapid population changes and displacement, poor governance and corruption, declines in the local environment and resources, and low-income levels, for example. As noted, and will be discussed further below, these impacts on disaster risk are allowed and even facilitated by an international foreign investment regime that is comprised of treaties, institutions, and arbitrators that focus on the protection of profits and capital for corporations while externalising the social and environmental consequences of their operations. How these power dynamics play out, the ways in which corporations are able to evade liability and infringements on their activities, and the other pathologies of foreign investment are portrayed well in the case of Texaco (now Chevron) in Ecuador, which is discussed in the section that follows.

5.3 Texaco/Chevron v Ecuador

Between 1964 and 1992 Texaco/Chevron carried out activities in Ecuador, mainly consisting of oil exploration.[40] This process involved drilling deep wells which produce toxic waste, and rather than utilising technology to diminish the potential adverse effects of dumping this into the surrounding landscape, the company sought to save production costs by using a rudimentary drainage system instead.[41] This was despite guidelines setup by the American Petroleum Institute and the fact that the company itself had patented the most advanced waste remediation technology of the time.[42] The peripheralization of Ecuador and role of power dynamics is visible in the fact that, when carrying out similar activities in the United States Texaco took more

principles and measures to address the human rights challenge' (28 November 2009) UN Doc. A/HRC/13/33/Add.2.

[39] Ibid.

[40] Bragato and Filho (n11) 37.

[41] Ibid.

[42] Nathalie Cely, 'Balancing Profit and Environmental Sustainability in Ecuador: Lessons Learned from the Chevron Case' (2014) Vol. 24 *Duke Environmental Law & Policy Forum* 353, 361.

stringent measures as it wanted to avoid the consequences of polluting in a developed country with related rules and standards.[43] Overall,

> [a]s a result of its operations, huge pools of toxic materials were dumped into the wild and thus contaminated the surrounding rivers and soil, without the company taking any steps to remedy the problem even after its activities were completed. […] 450,000 hectares of forest were destroyed, 60,000 million liters of toxic water [were] dumped into rivers.[44]

The untreated discharge of these materials is known to result in severe environmental and public health impacts, and the contaminated soil and water was used by the local populations for subsistence practices like fishing and farming.[45] This had a range of negative consequences for life in the region. Studies conducted found circumstantial evidence of increased morbidity and mortality; people living in the area also experienced higher-than-normal cancer and childhood leukaemia rates and a rise in pregnancies resulting in spontaneous abortions.[46] Unmentioned in many of these accounts is the impact of this on non-human species, which is likely to have been significant. Internal memos obtained from Texaco demonstrate a wilful desire to cut costs at the expense of the environment, and to deliberately underreport oil spills and other environmental hazards.[47]

At this stage it can therefore be observed how a foreign company from a powerful state was able to conduct activities in a poorer one with little oversight or regulation by the government or international law. While the corporation was formally required to minimise its impacts on the environment and human health, in practice regulatory frameworks in Ecuador were sufficiently weak at the time that Texaco was able to cut corners in the name of profit, in contrast to standards and performance within its home state.[48] This poor regulatory environment was largely a result of the power differentials at play in the arrangement, with Texaco itself being left to set

---

[43] Ibid.

[44] Homa – Centre of Human Rights and Business, 'Reflexões sobre o Decreto 9571/2018 que estabelece Diretrizes Nacionais sobre empresas e Direitos Humanos' (2019) Vol. 1 No. 7 available at < http://homacdhe.com/wp-content/uploads/2019/01/An%C3%A1lise-do-Decreto-9571-2018.pdf> accessed 24 November 2021. Cited and translated in Bragato and Filho (n11) 37.

[45] Pellegrini *et al.* (n32) 459.

[46] Ibid., 460.

[47] Ibid. This involved, for example, instructions not to line waste pits to prevent contamination as this would be too costly.

[48] Ibid.

its own standards and police itself, resulting in successive governments failing to implement and enforce environmental regulations.[49] Much of this was an issue of the Ecuadorian government at the time not having sufficient technological and technical expertise to fully understand the environmental impacts of oil exploration.[50] The government relied on Texaco for this expertise, however the company pursued profit motive over other social and environmental factors.[51]

This highlights one of the main issues of international law's failure to effectively regulate multinational corporations: despite the fact that many such companies are more powerful than the host states which they operate in, as was arguably the case in Ecuador, the absence of international law means that it is down to these same host states to regulate against the various harms these corporations may be producing.[52] This potential power asymmetry is further complicated by the fact that states may feel dependent upon such investment for development and are often incentivised to lower environmental and labour standards in order to court multinationals. This, and other factors, such as governmental corruption, asymmetries in technical capacities and knowledge (as mentioned above), and underdeveloped legal systems ill-equipped for the complexities of litigating against multinational corporations can result in companies evading regulations in weaker states.[53] This means that in cases where the operations of a corporation is producing disaster risk or other harms to a state's citizens, the government in question may unwilling or not able to take action to prevent and remedy this, demonstrating further the role of pathological power distributions as a root causes of vulnerability. The failure of international law to offer any regulation of its own in this respect means that it does little to address the problems that stem from this issue. As a result, the role of the international legal system in often working at the behest of the rich and powerful is once again revealed, as is the potential complicity of international law in the creation of disaster risk through its absence. Its dereliction in acting as a check on the damaging activities of multinational corporations allows for the potentially unfettered creation of disaster risk.

---

[49] Judith Kimerling, 'Indigenous Peoples and the Oil Frontier in Amazonia: The Case of Ecuador, Chevron Texaco, and Aguinda v. Texaco' (2006) Vol. 38 No. 3 *New York University Journal of International Law and Politics* 413, 434-436. Kimerling also writes how despite arguing for stable laws in order to foster investment, international oil companies simultaneously continued to pressure the government to change laws and contracts to suit their interests. The country's dependency on foreign companies for exploration and production and reliance on oil revenues gave such corporations huge power in relations with the government.

[50] Ibid., 438-441.

[51] Ibid.

[52] Sarah Joseph, 'Protracted Lawfare: The Tale of Chevron Texaco in the Amazon' (2012) Vol. 3 No. 1 *Journal of Human Rights and the Environment* 70, 88.

[53] Ibid.

The discovery of oil was meant to be the saviour of the Ecuadorian economy, an asset that would pull the country out of the 'underdevelopment' and chronic poverty it had been facing.[54] Instead, 'Texaco's work crews meant destruction rather than progress. [The indigenous peoples'] homelands were invaded by outsiders with unrelenting technological, economic, and political power.'[55] Ecuador found its natural assets degraded and the health and livelihoods of local people severely harmed for generations, increasing their vulnerability and the risk of hazards. Indeed, as a result of Texaco's activities, the Tagaeri people, whose ancestral lands were colonised by the oil operations, found their home so degraded that they were unable to return and have since disappeared as a distinct group.[56] The indigenous Huaorani people lost their homes and land, political sovereignty, and natural resources. They also face extinction as a people, having been dispossessed of their lands and resources, and pushed into poverty as a result of Texaco's activities.[57] In short, the people of the Amazon 'have borne the costs of oil development without sharing in its benefits and without participating in a meaningful way in political and environmental decisions that affect them.'[58] This is a textbook example of the 'dual-faced character' of nature discussed in Chapter Two; a rich minority were able to reap the opportunities of the environment while burdening the wider local people with the resulting risk.

A re-examination of the PAR Model can demonstrate the level of risk that has been placed onto the indigenous people of the Amazon as a result of Texaco's actions. Distributions of power and wealth, capitalist ideology, and post-colonial heritage root causes have resulted in a lack of local scientific knowledge and expertise related to oil exploration and the human and environmental consequences of these activities. These root causes and societal deficiencies have then led to highly negative macro forces for the inhabitants of the affected areas, such as displacement, deforestation, mining, decline in soil productivity, and a decline of biodiversity, as the pollution from Texaco's activities have heavily degraded the surrounding environment. This has finally led to unsafe conditions for the indigenous people in the area including a lack of arable land, water, and biodiversity resources, locations that are physically dangerous, fragile health due to the rise in cancers and miscarriages, poverty and poor economic resources due to the loss of ancestral lands and food sovereignty, and continued marginalisation as indigenous people that has resulted

[54] Kimerling (n49) 414-415.
[55] Ibid., 415.
[56] Ibid., 463.
[57] Ibid., 463-464.
[58] Ibid., 416.

in their near extinction. All these factors make these people at greater risk of suffering a disaster should a hazard strike, while many of these vulnerabilities themselves also risk accentuating potential hazards, therefore increasing risk on both the vulnerability and hazards sides of the disaster risk equation.[59] The role of international law in producing the root causes that precede these more proximal aspects of vulnerability has been discussed at length in this and the previous chapter. Such a discussion helps to explain the impunity with which Texaco was able to act within Ecuadorian territory, while more modern law around foreign investment has served to facilitate this further, as will be discussed below.

While a range of pathologies, such as post-colonial heritages, legally rendered power dynamics, the make-up of the foreign investment regime, and the functioning of the global economy contributed to this destruction of the Ecuadorian environment and its people, when remedy was sought for these harms, the continuing imperial character of international law was revealed once again, as it failed to have an answer to the phalanx of jurisdictional defences[60] and retaliatory lawfare[61] used by the company to shield itself from any liability or remediation for its actions. This failure to address the impunity of multinational corporations and offer remedy to harmed communities demonstrates who the international legal system has been designed to serve.[62] This, as will be discussed, limits the ability of the Ecuadorian government to attempt to undo some of these harms and protect its citizens by reducing the disaster risk that has been created, while

[59] It could in many ways be argued that what the affected communities are currently facing is a disaster in itself, albeit a slow-onset industrial one.

[60] Once again, the recent *Okpabi and others v Royal Dutch Shell Plc and another* (n13) case in England encouragingly suggests that transnational law may be shifting to undo some of these defences and pierce the corporate veil in order to hold corporations more liable for the actions of their subsidiaries.

[61] The term 'lawfare' is a portmanteau of 'law' and 'warfare'. While the term had been used elsewhere prior, the version generally used within international law circles is widely regarded to have originated in an essay written by Major General Charles J. Dunlap Jr. in 2001. In a later article written in 2008 he refined the definition of lawfare to be 'the strategy of using – or misusing – law as a substitute for traditional military means to achieve an operational objective' (p. 146). While the term is still widely used in a military context it can also be used in a broader manner to refer to the use or misuse of the law by a variety of actors to achieve objectives or impede the objectives of others. For a discussion of this within the specifics of the Ecuador v Texaco/Chevron context see Joseph (n52). For Dunlap's work see Charles J. Dunlap Jr., 'Law and Military Interventions: Preserving Humanitarian Values in 21st Century Conflicts' (2001) Harvard University's Carr Center for Human Rights Policy available at <https://people.duke.edu/~pfeaver/dunlap.pdf> accessed 2 August 2023; Charles J. Dunlap, Jr., 'Lawfare Today: A Perspective' (2008) Vol. 3 No. 1 *Yale Journal of International Affairs* 146. For a wider discussion on the roots and origins of the term and its contemporary uses see Susan W. Tiefenbrun, 'Semiotic Definition of Lawfare' (2010) Vol. 43 No. 1 *Case Western Reserve Journal of International Law* 29.

[62] On this 'moral disorder' within the international legal system see Linarelli, Salomon, and Sornarajah (n8) Chapter 2.

those that extracted wealth from the destruction of indigenous land are able to continue operating free from consequences.

Litigation on the matter began in 1993, once Texaco/Chevron's three decades of activity on Ecuador had ended. 30,000 indigenous Ecuadorians and small farmers filed a class action lawsuit against the company in the United States in order to try and impose liability for its actions.[63] The plaintiffs filed the lawsuit in White Plains, New York, as prior to its recent merger with Chevron this is where the company's headquarters were located and where it was argued 'policies, procedures, and decisions' were made.[64] Further reasons for pursuing the litigation in New York included the belief that attempting legal action within Ecuador itself could be subject to corruption and collusion between the government and Texaco/Chevron, and that the country's court system was ill-equipped for such a complex case.[65]

However, the suit was dismissed in 1996 under the *forum non-conveniens* principle, a discretionary doctrine allowing a US court to decline to hear a case on the grounds that a different forum would be more appropriate.[66] Following a reprieve from a Court of Appeal, the case was again dismissed under *forum non-conveniens* in 2001.[67] It was argued that the claimants should file the lawsuit in the country where the alleged damage had occurred and that Texaco/Chevron should litigate the issue there.[68] The claimants attempted this within Ecuador in 2003, demonstrating grounds for liability and seeking compensation. Under pressure the Sucumbíos Provincial Court in 2012 held Chevron liable and ordered the paying of $8.6 billion in damages to local communities, a ruling upheld by the Ecuadorian Court of Justice.[69] This sum rose to $18 billion once legal costs and punitive damages were factored in.[70] Despite this decision being enforceable under Ecuadorian law Texaco/Chevron refused to make payment. As the company had no assets left in Ecuador the plaintiffs were forced to initiate new legal proceedings in other countries where the company was present in order to try and obtain the compensation and remediations.[71]

---

63 Bragato and Filho (n11) 38.
64 Kimerling (n49) 477.
65 Joseph (n52) 72.
66 Ibid.
67 Ibid., 73.
68 Kimmerling (n49) 477. For details of the judgment see *Aguinda v Texaco* (n4).
69 Ibid.
70 Ibid.
71 Pellegrini *et al.* (n32) 461.

However, Texaco/Chevron had also engaged in legal action of its own, suing the Ecuadorian State before the Hague Permanent Court of Abritration in 2009 in an attempt to interrupt an Ecuadorian lawsuit.[72] As Sarah Joseph argues, it appeared that the corporation was aiming to pre-empt domestic court proceedings using a more favourable forum that was inaccessible to the plaintiffs due to the nature of ISDS arbitrations.[73] This risked setting a dangerous precedent as it would mean 'arbitral panels, made up of private citizens with commercial rather than judicial backgrounds, […] claiming jurisdiction to rule on the fairness of domestic proceedings, even though most lack human rights expertise.'[74] The willingness of an international arbitration tribunal to potentially rule on the application of Ecuadorian domestic law as part of their decision highlights key pathologies within the international foreign investment regime related to these arbitrations, the perverse power corporations are granted over states, and how they can unjustly constrain domestic actors. This has important implications for the ability of states and individuals to reduce and seek remedy for disaster risk and disasters produced by the actions of corporations.

In 2011 Chevron also filed a Racketeer Influenced and Corrupt Organisations (RICO) lawsuit in the United States against the US lawyer who had represented the Ecuadorian plaintiffs in the Ecuadorian court, Steven Donziger.[75] In a controversial decision in 2014 the court found that Donziger and his team had obtained the decision in Ecuador through corrupt means including fabricated evidence and bribes; as a result the lawyer and plaintiffs were barred from collecting the money awarded in the judgment.[76] Additionally, in 2019 in another controversial decision Donziger was sentenced to home detention for criminal contempt charges arising from the previous judgment, and then disbarred in 2020.[77] While these cases were a question of transnational rather than international law, the lengths that Texaco/Chevron were able to go to

[72] Bragato and Filho (n11) 38.
[73] Joseph (n52) 83. For further consideration of this issue see the discussion on the *von Pezold* case in Section 5.5.
[74] Ibid. Issues surrounding these tribunals and their potential judicial overreach and failure to show deference to other judicial forums are discussed further in Section 5.5.
[75] Bragato and Filho (n11) 39. The case can be found at *Chevron Corp. v Donziger* [2014] 974 F. Supp. 2d 362 (S.D.N.Y. 2014). This is an example of a Strategic Lawsuit Against Public Participation (SLAPP), a form of lawfare often used to threaten and shutdown protest, particularly those from environmental and climate change movements. For an analysis of these and examples of when they have backfired within the UK context see Christopher J. Hilson, 'Environmental SLAPPs in the UK: Threat or Opportunity?' (2015) Vol. 25 No. 2 *Environmental Politics* 248.
[76] Business & Human Rights Resource Centre, 'Texaco/Chevron Lawsuits (re Ecuador)' (7 May 2013) < https://www.business-humanrights.org/en/latest-news/texacochevron-lawsuits-re-ecuador-1/> accessed 29 November 2021.
[77] Bragato and Filho (n11) 39.

in order to discredit and harm the plaintiffs, and the ability of US domestic courts to rule on events and decisions of courts in Ecuador[78] is again reflective of the power dynamics generated within the international system and rendered through law.

As mentioned, the Ecuadorian plaintiffs themselves were forced to go to other jurisdictions in order to try and enforce the decision to award compensation. While a lower state court in Ontario did uphold their claim of a connection between the parent company and its Ecuadorian subsidiary, the Ontario Court of Appeal overturned this due to a lack of relationship between this subsidiary and the Canadian one.[79] A similar sequence of events occurred in Argentina, with a lower court granting a provisional measure allowing for the extension of the Ecuadorian decision to their country and allowing the seizure of compensation, and while this decision was upheld by a higher court, in the end Chevron appealed to the Supreme Court and it was overturned.[80] This decision was delivered due to the impossibility of lifting the corporate veil to hold the parent company liable and allegations of a violation of the right to defence in Ecuador, stemming from the fraud and corruption allegations which prevented recognition of the Ecuadorian decision.[81] Attempts at a new lawsuit then hit the same subsidiary-parent company relationship obstacles as those launched in Canada.[82] Finally, the plaintiffs submitted lawsuits to courts in Brazil, where once again these allegations and a purported violation of public order, a lack of jurisdiction, and parent company-subsidiary fragmentation were used to deny the enforcement of the request.[83] The Brazilian Court itself did not independently verify the existence of the alleged fraud and illegality within the Ecuadorian proceedings, but instead 'seemed to presume a US judgment naturally more reliable and truthful than an Ecuadorian one or, worse, that a peripheral State's ruling is not worthy of regard.'[84] Here again, we see the role of power relations affecting the distribution of justice in favour of the rich and powerful over those with less.

[78] Several attempts were made to overturn this decision, arguing that a US Court was required to recognise a ruling for a foreign jurisdiction, however these were both unsuccessful. See Business & Human Rights Resource Centre (n76) above.
[79] Bragat and Filho (n11) 39.
[80] Ibid., 40.
[81] Ibid.
[82] Ibid.
[83] Ibid., 41.
[84] Ibid.

The final nail in the coffin of attempts at redress, which serves to highlight further who the law typically works for, came from the Permanent Court of Arbitration in The Hague. Chevron had launched a dispute through the Investor-State Dispute Settlement Mechanism using the Ecuador-US Bilateral Investment Treaty, an agreement signed in 1993 *after* Texaco/Chevron had ceased activities in the country, meaning that the treaty is being applied to historic events *a posteriori*.[85] The application of the treaty in this manner is therefore creating an even greater asymmetry than normal; not only does Texaco/Chevron have a unilateral ability to take the state to arbitration, but it also has a seemingly unlimited backwards temporal boundary for claims of liability while the state itself is unable to pursue the company for the future or past impacts of its activities. In this way, 'the treaty is devoid of substantive rationale since the Ecuadorian state is abdicating rights without any benefit in exchange,'[86] and once again the balance of power rests with the foreign company. This is demonstrated further through the manner in which Texaco/Chevron was able to choose the forum and jurisdiction of the proceedings to benefit itself. After arguing previously that a court in the United States was not an appropriate forum for the dispute, and that instead Ecuador was the most appropriate location for litigation, the company was now arguing that the latter judiciary lacked sufficient independence and institutional ability to adjudicate on a case so highly politicised in nature.[87]

The arbitration is divided into different tracks, with some disputes still ongoing. A partial award of the second track was decided in 2018, when the Ecuadorian government were ordered to 'take immediate steps, of its own choosing, to remove the status of enforceability of the court decision against Texaco/Chevron.'[88] Meanwhile a third track focusing on compensation that the Ecuadorian state may have to pay Texaco/Chevron for alleged damage to the company is still being deliberated.[89] In this way the Investor-State Dispute Settlement was able to take the onus and potential liability away from Texaco/Chevron's actions and instead focus on procedural elements of the judgment in Ecuador.[90] Once again, mismatched power dynamics within the law have been used to shield a powerful and wealthy company from liability for its actions, allowing for the extraction of wealth and violation of human rights and the integrity of the environment without repercussions. International capital is able to take advantage of legal devices such as

[85] Pellegrini *et al* (n32) 464.
[86] Ibid.
[87] Ibid.
[88] Ibid.
[89] Ibid.
[90] Ibid.

fragmented legal personalities to avoid ramifications, and if this is insufficient, they are able to launch discrediting campaigns against victims and their lawyers and supporters, resulting in a 'broad and well-structured scheme of impunity.'[91] As Kimerling writes, '[t]he use of the rule of law to promote and impose oil development, but not to control or remedy the injury it causes, is fundamentally unfair and reflects and reinforces gross inequalities in law and governance.'[92] This state of affairs is both a product of, and continues to sustain, legally rendered hierarchies within the international system that contribute to disaster risk.

The discussion above highlights two key issues within the current foreign investment architecture which are exploited by corporations to the detriment of states, their citizens, and disaster risk reduction efforts. The first is the significant failure of international law to effectively regulate multinational corporations and address the use of subsidiaries and jurisdictional loopholes to evade responsibility despite the harm and injustice this is causing. This allows for the creation of disaster risk and other impoverishments by the actions of multinational corporations to go unremedied, a failure which results in international law being complicit in increases in disaster risk. The second is the current setup of the ISDS architecture and the ability of corporations to punitively sue states and circumscribe their policy space, inhibiting DRR efforts. These will both be discussed in greater detail in their own sections below with further examples, starting with the 1984 Bhopal Disaster and an examination of the ways Union Carbide was able to evade responsibility for the disaster stemming from their plant there.

5.4 The Bhopal Disaster and the Evasion of Responsibility

The 1984 industrial disaster in the city of Bhopal, in Madhya Pradesh, India, represents a further poignant example of how multinational corporations are able to evade responsibility for the negative outcomes of their activities in host states through the current deficient construction of international law. It also highlights again the ability of wealthy corporations to leverage their power to exploit weaker regulatory environments in the name of profit with disastrous consequences, and international law's failure to address this. The disaster occurred when a pesticide plant operated by the US company Union Carbide suffered a leak from a storage tank that released forty tons of highly toxic methyl isocynate (MIC) gas into the atmosphere.[93] The

[91] Bragato and Filho (n11) 42.
[92] Kimerling (n49) 663.
[93] Puvimanasinghe (n5) 185.

events that followed the leak on 3 December 1984 resulted in over 5,000 people dying and another 500,000 being injured.[94] However the disaster did not end with the event; in addition to its direct toll on the health of communities living in the area, the gas released in the accident and buried as part of the plant's operations severely polluted the soil and groundwater in the region.[95] As a result, there have since been over 100,000 children born with serious birth defects due to their parents' exposure to the gas, and immense damage to livelihoods, the local environment, and other forms of impoverishment of local residents.[96] So catastrophic was this industrial disaster and so long-reaching were its impacts that Shyami Puvimanasinghe has gone as far as to describe it as an 'industrial Hiroshima.'[97]

Parallels with the impact of Texaco/Chevron's activities in the example of the previous section can be seen; like in that case, Union Carbide's safety standards in its US plants were far higher, with the one in Bhopal suffering from malfunctioning or shut down safety measures and a disabled emergency warning siren in efforts to save costs.[98] Once again then, weaker regulatory structures in a developing country and a failure of international law to effectively regulate corporations were exploited and increased profits were put ahead of human welfare concerns. This again highlights issues around corporations not investing in disaster risk reduction measures when profit is their overriding motive. Not only did Union Carbide fail to establish the same levels of health and safety measures it had in plants operating elsewhere, but it also appeared to deliberately undermine what few safety precautions there were in the name of corporate greed.

Despite these clear failings by the corporation to protect its workers and the communities living in the vicinity of the plant, attributing some form of liability for the disaster raised several similar conundrums to the *Texaco/Chevron* case over who was responsible and what forum was most appropriate for remediation. The issues involved are complex, straddling several areas of law including foreign investment law; however, they illustrate what Upendra Baxi has called 'geographies of human rightlessness',[99] resulting from power dynamics in the international system and from how jurisdictions, human rights obligations, and other responsibilities have

---

[94] Shyami Puvimanasinghe, *Foreign Investment and the Environment: A Perspective from South Asia on the Role of Public International Law for Development* (Brill, 2007) 1.
[95] Ibid., 2.
[96] Ibid., 1.
[97] Puvimanasinghe (n93) 185.
[98] Puvimanasinghe (n94) 1.
[99] Upendra Baxi, 'Some Newly Emergent Geographies of Injustice: Boundaries and Borders in International Law' (2016) Vol. 23 No. 1 *Indiana Journal of Global Legal Studies* 15, 15.

been conceptualised. Thus, in this case, international law is pathological and conspicuous through its absence: its omission in effectively regulating the activities and liability of multinational corporations operating abroad allows for harms and injustices to be perpetrated and go unremedied. As it stands, neither multinational corporations themselves nor their activities are effectively regulated by a comprehensive and binding international instrument,[100] allowing for the creation of disaster risk and other harms without mitigation or liability. The analysis that follows succinctly frames scholarship on these issues in private international law and business and human rights[101] within a disaster risk framework to demonstrate the important role of disaster analysis in driving or illuminating conversations on the regulation of multinational corporations.

In the aftermath of the disaster, views differed over who should bear responsibility – the Indian subsidiary of Union Carbide, the company's shareholders (including its counterpart in the United States, which owned a 50.9% majority of shares), the victims, or the regulatory authorities (including the local and state governments in India, but also the government of the United States).[102] Several of the victims filed for compensation; however, they were generally excluded from direct interaction with the process themselves through the Indian government passing the 1985 Bhopal Gas Disaster (Processing of Claims) Act, which allowed them to assume a *parens patriae* role in the litigation.[103] Using this, the Indian government attempted to sue the parent Union Carbide company in a United States District Court in New York.[104] This was likely the preferred jurisdiction for the litigation in the eyes of the Indian government because the American judicial system had a history of issuing high damage awards in tort liability cases and because it was hoped it could circumvent two of Union Carbide's potential defences, namely that no negligence could be attributed to the company and that the parent company was separate from, and therefore not liable for, its subsidiary's acts.[105] However, similarly to the

[100] Puvimanasinghe (n94) 146.
[101] See for example, David Bilchitz, *Fundamental Rights and the Legal Obligations of Business* (Cambridge University Press, 2021); Nadia Bernaz, *Business and Human Rights: History, Law and Policy – Bridging the Accountability Gap* (Routledge, 2016); Florian Wettstein, *Business and Human Rights: Ethical, Legal, and Managerial Perspectives* (Cambridge University Press, 2022); Anita Ramasastry, 'Corporate Social Responsibility Versus Business and Human Rights: Bridging the Gap Between Responsibility and Accountability' (2015) Vol. 14 No. 2 *Journal of Human Rights* 237; Tara Van Ho, 'Defining the Relationships: "Cause, Contribute, and Directly Linked To" in the UN Guiding Principles on Business and Human Rights' (2021) Vol. 43 No. 4 *Human Rights Quarterly* 625.
[102] Puvimanasinghe (n93) 185.
[103] Michael R. Anderson, 'Litigation and Activism: The Bhopal Case' (1993) Vol. 1993 *Third World Legal Studies* 177, 179-180.
[104] Puvimanasinghe (n93) 185.
[105] Ibid., 189.

Texaco/Chevron case discussed previously, the New York court refused to hear the case, citing *forum non conveniens* and arguing that an Indian court was the more appropriate forum.[106] While on the face of it this is not necessarily problematic, Puvimanasinghe writes that in this case this began a sequence of events that 'resulted in the effluction of time; and for the victims of Bhopal, this could only mean prolonged suffering.'[107] Furthermore, leaving decisions of this importance to the discretion of individual domestic courts highlights the absence of an overarching international framework for regulating such issues, often to the detriment of those affected by disaster and seeking justice.

In line with the decision of the New York court, in September 1986 the Union of India sued Union Carbide in the Bhopal District Court for the Indian equivalent of US$3 billion in damages, with the judge making an interim payment award equivalent to US$270 million.[108] While this lawsuit eventually came to a standstill due to issues over discovery, incomplete lists of authentic claimants, and appeals, a claim launched in the Madhya Pradesh High Court (the state in which Bhopal is located) ordered the interim payment of US$192 million, a 30% reduction.[109] Eventually the Bhopal case reached the Supreme Court of India and in February 1989, five years after the event of the disaster, it induced the Indian Government and Union Carbide to accept an overall settlement of all claims for a compensatory payment of US$470 million.[110] This would be a full and final settlement, for all past, present, and future claims, and led to the Supreme Court terminating all other proceedings related to the disaster pending in subordinate courts.[111] The actual victims of the disaster were rarely consulted in this process, with their lived opinions and needs not being properly considered.[112] The court also attempted to grant complete criminal immunity to Union Carbide through this settlement, until it was eventually pressured into dropping this aspect of its decision.[113] The settlement decided by the court was so devastating for the prospects of the affected communities that Upendra Baxi, who has written extensively on Bhopal, has labelled it 'The Second Bhopal Catastrophe.'[114]

---

[106] Ibid., 185.
[107] Ibid.
[108] Ibid., 186.
[109] Ibid.
[110] Ibid.
[111] Ibid.
[112] Anderson (n103) 180.
[113] Baxi (n5) 29.
[114] Ibid.

Because of this and the eventual sum, the settlement received mixed reactions from the people of India. Former Chief Justice Bhagwati, for example, wrote in *India Today* that '[t]he Bhopal case has come to a disturbing end in an abrupt and unprecedented manner. The multinational has won and the people of India have lost.'[115] He derides the manner in which the court arrived at the $470 million figure, arguing that it did not have any material about the amounts that would be required to rehabilitate the victims and the government itself did not consult with the victims before accepting the sum.[116] Bhagwati then argued that Indian lives were being valued at 'a ridiculously low figure', pointing to cases in the United States where $2.5 billion was paid to 60,000 claimants by John Manville Corporation for asbestos related injuries and AH Robins Company settled 9,450 injury claims relating to contraceptives by paying $520 million.[117] In contrast to these amounts rendered by courts in the US, and considering the immediate and chronic suffering inflicted on the victims and their ongoing needs, the amount awarded in the Bhopal case seemed paltry. The International Coalition for Justice in Bhopal, for example, estimated that US$4,600 million would be required for healthcare alone (based on $4,100 per person for 200,000 victims over 30 years)[118] not including other factors, such as damages and losses in livelihood etc. Bhagwati also criticised the Court for losing the opportunity to hold a parent multinational corporation liable for its activities in the Global South and to advance human rights jurisprudence from a Third World viewpoint.[119]

Viewing the events of the disaster and the litigation that followed (which is still ongoing), it can clearly be argued that the outcome was highly detrimental and unjust for the victims. The settlement amount was reached without a proper consultation with the affected individuals and a consideration of their long-term needs and, given the overall revenues of Union Carbide, was an unreasonably low figure. The corporation, through acts of commission and omission, had directly created disaster risk within Bhopal, which led to the disaster. Without adequate support and compensation, the impacts of the catastrophe risked leaving the local communities with significantly increased vulnerabilities due to the impacts on their health, livelihoods, and the local environment. As Baxi writes, '[k]nowing full well that certain decisions (the switching off of a refrigeration plant, the decaying and inapposite safety systems, the storage of large quantities of a

[115] P. N. Bhagwati, 'Supreme Court Judgement on Bhopal Gas Tragedy' *India Today* (15 March 1989) <https://www.indiatoday.in/magazine/guest-column/story/19890315-supreme-court-judgement-on-bhopal-gas-tragedy-815886-1989-03-14> accessed 27 January 2023.
[116] Ibid.
[117] Ibid.
[118] Puvimanasinghe (n93) 187.
[119] Ibid., 186.

poisonous chemical gas […]) will contribute, and even cause, mass disasters, the MNC insists for a strict legal proof of the agent of harm and that it had the means or capacity to prevent this.'[120] Unfortunately this injustice is characteristic of the impunity for human rights abuses and other damages, including the creation and exacerbation of disaster risk, which multinational corporations are able to enjoy in their operations in host states. Indeed,

> MNCs are said neither to be morally obligated or legally bound by human rights law and jurisprudence: not being usually resident in all jurisdictions and operating through a network of regional and local subsidiary companies, they comply with the local law through their subsidiaries and seek to escape direct liability for their acts and omissions.[121]

Baxi goes on to comment that if those harmed for their activities do manage to reach the domain of the parent company, then the doctrine of *forum non conveniens* kicks in (as it did in the two previously discussed cases) to dismiss the suit and protect the parent company, and allow for the judgment of the local court appointed as an appropriate forum to be subject to recognition and enforcement by the foreign one.[122] The current arrangements of international and transational law therefore serve currently to largely shield corporations from liability for their actions and to ensure that they face the lower repercussions for their actions than they might in a more developed state where their parent companies operate.[123]

In terms of disaster risk, there is very little incentive for multinational corporations to take risk reduction measures or ensure their activities are not causing harm to local populations and environments, particularly if it would impact profits. As Baxi wrote, '[t]he plain global fact is that MNCs do not regard themselves as either under a moral obligation or legal responsibility for preventing mass disasters they cause.'[124] The operations of multinational corporations can have terrible impacts on the wellbeing, livelihoods, and health of local populations and their environments and therefore in the creation and reduction of disaster risk. However, attempts to

---

[120] Baxi (n5) 27.
[121] Ibid., 25. Likewise, as mentioned previously, there is no overarching, binding international framework regulating multinational corporations.
[122] Ibid.
[123] Again, the case of Nigerian communities being able to bring litigation against Shell in England suggests that we may be witnessing changes for the better in this dynamic within transnational law.
[124] Baxi (n5) 25.

impose human rights obligations on corporations are relegated to the realm of soft law,[125] and, as has been discussed, the character of international law and power dynamics of the international system mean that the law of foreign investment has been constructed in a manner that often grants corporations power over host states and leaves them beyond reproach. The law has largely therefore been produced to allow corporations based in rich and powerful states to operate in territories across the world and has been designed to protect their freedoms, rights, and property rather than the well-being of the citizens and governments of the states in which they operate. Here we can observe root causes of vulnerability based in distributions of power and wealth and the prioritisation of Western, neoliberal ideology being translated along the chain of vulnerability through the way these structures have impacted the formulation of foreign investment frameworks.

Overall, then, the failure of international law to effectively counter these issues or hold multinational corporations accountable for disasters and other negative impacts they have produced, particularly in developing countries, means that there is very little deterrent to prevent these companies from continuing to act in this manner. Instead '[t]hey are above any obligations to people and environs they hurt and harm; operating in a "morals free zone," they remain beyond the sanctions and cultures of guilt and shame and continue to live in a world of "corporate Neanderthalism.'"[126] A failure to effectively tackle this issue, therefore, means that increases in disaster risk and their accompanying catastrophes created by the activities and negligence of multinational corporations in their host states is likely to continue and remain unremedied.

The Bhopal disaster highlights the pathological asymmetry within foreign investment, which sees multinational corporations being granted exceptional powers with very little in the way of responsibility. It also illustrates the limitations of certain disaster frameworks when they focus on the state as the bearer of disaster risk reduction obligations while paying relatively little attention to exogenous drivers of risk. As this case highlights, due to the structure and functioning of international law outside of international disaster law, state governments for a number of reasons may have limited powers to properly regulate and hold liable other actors operating within their territories. This means that despite their attempts at the implementation of policies designed to

[125] See, for example, United Nations Office of the High Commissioner on Human Rights, 'Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework' (2011) UN Doc. HR/PUB/11/04 (Ruggie Principles).
[126] Baxi (n5) 25-26.

reduce disaster risk, these efforts may be undermined by the activities of other actors relatively outside of their control like multinational corporations and other states. The next section on the ISDS system will discuss further the negative impact multinational corporations can have on such disaster risk reduction policies through the investor-state dispute settlement system.

5.5 Investor-State Dispute and the Constraint of DRR Policy

While the previous section dealt with disaster-risk related issues arising from the absence of international law, this one will focus on a central pathology stemming from the functioning of the international foreign investment architecture, and its impact on levels of disaster risk. The investor state dispute settlement system, through its ability to constrain state action and reduce the power of states even in the face of human rights violations and environmental destruction, can be highly detrimental to disaster risk reduction efforts. It can result in the interests of corporations being put ahead of the welfare of a state's citizens and its obligations to them. Indeed, the rights of investors are sufficiently privileged and insulated from the human rights of affected local populations that they do not even register on the scales of deliberation in arbitrations, even when protections given to investors would detract from human rights.[127] The *Texaco/Chevron* case also demonstrates issues that can arise regarding access to justice and accountability: the arbitration award ordering the Ecuadorian state to render its court's final judgment unenforceable deprived the victims of Texaco/Chevron's activities their only forum for restitution, while also creating a crisis of competence between the executive and the judiciary.[128] In this way a problematic[129] arbitration tribunal is able to make a decision with massive impacts on the power and constitutional integrity of a state and essential rights of its citizens, leaving the government in an impossible position. It is also a further example, as discussed in the previous chapter, of states having their sovereign power to make policy decisions impaired by international institutions.

This conundrum serves to highlight many of the issues at the heart of the foreign investment regime and its ISDS system, which are in many ways reflective of pathologies within international law more widely. The arbitrators involved in ISDSs, who have often served as legal representatives for corporations and who personally profit from the regime,[130] make important

[127] Pellegrini *et al.* (n32) 465.
[128] Ibid.
[129] A discussion on the nature of these arbitrations and their judges follows shortly.
[130] Linarelli, Salomon, and Sornarajah (n8) 149.

decisions affecting large numbers of people, despite having no real accountability. They are able to oversee the exercise of sovereignty and 'decide the legality of legislative, executive or judicial acts as well as the scope of their own authority.'[131] The awards they make, despite being beyond the review of any courts in most cases, are widely enforceable, essentially unilaterally deciding the permissible role and conduct of states and fiscal liability of large populations.[132]

The scope of the authority of arbitrators is broad, covering in principle any decision by the state that affects a foreign-owned asset subject to that authority.[133] The asymmetrical nature of the system makes proceedings more akin to judicial review than a regular commercial or inter-state adjudication.[134] However, at the same time there is not usually the need for claimants to exhaust domestic remedies or for the arbitrators to show judicial restraint through deference or relative capacity etc. like other judicial institutions might.[135] Indeed, a study of 196 arbitrations found no evidence in any case that arbitrators discussed the relative accountability of a legislature to its citizens on matters of public concern as a possible reason for restraint, and only three cases where the tribunal appeared to take a general position of deference, balancing, or abstention.[136] A similar lack of restraint was also demonstrated when considering the relative capacity of governments, such as its comparative expertise in a policy area; while only limited restraint was shown over the overlapping role of another adjudicative forum, such as those based in contracts or other treaties, that could have led to the dispute being directed to these instead.[137] The overall findings indicated an unrestrained approach when compared to the practice of many other courts, the assuming of far-reaching powers, and the ability to oversee decision-making despite their role overlapping with other contract- and treaty-based adjudicators and domestic courts.[138] As a result of these findings, Van Harten goes as far as to argue that arbitrators sought to leverage their authority in order to expand their powers of review further, and that they took an unrestrained approach despite arguments for restraint by respondent states, actively choosing

---

[131] Gus Van Harten, *Sovereign Choices and Sovereign Constraints: Judicial Restraint in Investment Treaty Arbitration* (Oxford University Press, 2013) 1.
[132] Ibid.
[133] Ibid., 7.
[134] Ibid.
[135] Ibid., 3-8.
[136] Ibid., 15.
[137] Ibid., 16. Van Harten notes that overlaps with other adjudicative forums were so prevalent that if the tribunals had exercised restraint on these grounds and stayed their own proceedings then a large number of investment treaty disputes would have been considered by other forums instead (at least in the first instance).
[138] Ibid., 17. Van Harten found that the arbitrator's record of restraint was mixed when they found their role overlapping with that of domestic courts. However, when it came to other contract-and treaty-based adjudicators they declined overwhelmingly to show restraint.

not to pursue such an approach.[139] As he writes, '[i]t was not expected that the arbitrators would exercise restraint in all cases or in a precise way. Yet it was striking that, in spite of the many opportunities to signal restraint, *en masse* the arbitrators did not do so.'[140]

These tribunals are therefore highly unaccountable, seek to further the extent and reach of their powers, and do not observe the usual judicial awareness of deference and the wider societal context in which they operate found in other adjudicative forums. Indeed, a candid quote taken from an arbitrator highlights the startling power that these tribunals possess:

> When I wake up at night and think about arbitration, it never ceases to amaze me that sovereign states have agreed to investment arbitration at all… Three private individuals are entrusted with the power to review, without any restriction or appeal procedure, all actions of the government, all decisions of the courts, and all laws and regulations emanating from parliament. […] Politicians have never given such authority to a national court, and no state has given an international court nearly so much power.[141]

This state of affairs is upheld by an epistemic community which works to ensure that the system survives challenges made to it based on notions of justice.[142] This community is comprised of 'academic lawyers, but in particular practitioners, arbitrators, and judges who willingly subscribe to the norms of the regime as they are not only socialized into its norms but reap personal profits through its operation.'[143] The setup and operation of this regime is once again a function of power distributions within the international system. As Sornarajah writes, 'I call it the law of greed simply because of the fact that it is built on accentuating only one side of the picture of foreign investment so as to benefit the interests of multinational corporations which exist to seek profits for their shareholders.'[144] A law which only protects the investments of foreign companies, and not the states which they operate in is arguably deserving of this title.[145]

---

[139] Ibid.
[140] Ibid., 18.
[141] S Perry, 'Stockholm: Arbitrator and Counsel: The Double-hat Syndrome' (2012) Vol. 7 No. 2 *Global Arbitration Review*. Cited in Van Harten (n131) 8.
[142] Linarelli, Salomon, and Sornarajah (n8) 149.
[143] Ibid.
[144] Sornarajah (n9) 331.
[145] Ibid., 332.

The relevance of these arbitrations to disaster risk reduction efforts can be seen in the areas of policy within which they have concerned themselves. Of 196 cases studied by Gus Van Harten, one third arose over disputes relating to public utilities or essential services including energy, social security, and water and sewerage.[146] As discussed previously, policy relating to the operation of this infrastructure can be a key driver in increasing or decreasing vulnerability. Therefore, having a trio of private individuals heavily invested in the investment regime and its emphasis on corporate rights rather than the wellbeing of host state citizens deciding disputes over such infrastructure risks being highly detrimental from a disaster risk perspective. Furthermore, another prominent theme in the arbitrations examined was public health and environmental protection including disputes on environmental health, land or biodiversity conservation, pollution control, mining remediation, hazardous waste disposal, and supply of drinking water.[147] Again, these are all areas of policy with important implications for disaster risk which were ultimately being decided by unaccountable arbitrators at the behest of foreign companies seeking to protect their profits.

The nature of ISDS arbitrations is clearly problematic: arbitrators lack accountability, and their awards are not subject to appeal, arbitrations are asymmetrical, arbitrators appear invested in expanding their own powers, and regularly disregard principles of judicial restraint. However, the damaging powers of arbitrators are made worse by the overall character of the investment regime and its treaties. As noted above, these international agreements began to be made after 1959, when states sought to concretise the nature of foreign investment protection between themselves, with around 300 such agreements being signed between then and 1990.[148] During the 1990s the proliferation of bilateral investment treaties exploded with the ascent of neoliberalism and globalisation following the end of the Cold War, and the number of treaties in effect rose to over 2000 over that decade.[149] These treaties focused heavily on liberalisation and the protection of foreign investments, endowing multinational corporations with rights while giving little regard for factors considered extraneous, such as concerns for the environment and

[146] Van Harten (n131) 10. It should be noted that the arbitrations studied were only those with information publicly available and only went up until midway through 2010.
[147] Ibid.
[148] Sornarajah (n9) 337.
[149] Ibid. Since this time and as the fervour over neoliberalism has subsided the number of such agreements being signed has waned, with many beginning to question whether they deliver on the promises they deliver. However, despite a decline in the number of these treaties and some scepticism over their usefulness, many of those that were signed contain clauses keeping their provisions in effect for some time, as will be discussed shortly.

human rights.[150] This focus on private property rights above all other considerations is particularly problematic when the dispute system means that it is ultimately these tribunals that make decisions over balancing the public interest and property rights.[151]

Whereas in the case of domestic companies it is down to the government to make such deliberations over this balance when the two come into conflict, the punitive and coercive nature of dispute resolutions means that in the case of foreign companies the state is ultimately beholden to foreign arbitrators to set the limits of their policy, and a pathological emphasis on property rights within the foreign investment regime and international law more widely means that it is rarely the public interest that wins out.[152] As Stiglitz writes, '[t]here are good reasons that governments have not provided these guarantees to domestic firms – and there are good reasons that they should not be provided to international firms.'[153]

In the case of *AWG Group Ltd v The Argentine* Republic[154] for example, following a financial crisis in 2001-2003, the Argentinian government cut tariffs payable to providers of public services and began terminating contracts with investors.[155] This was justified under the necessity of the state meeting its human rights obligation to provide clean water for its citizens.[156] However, this argument was rejected by the arbitration tribunal as some economists argued that different measures could have been taken, negating the argument of necessity and allowing the tribunal to

---

[150] Ibid., 338. As Sornarajah discusses, an exception to this is the *Methanex* case where environmental legislation in California to ban the use of a chemical substance that contaminated groundwater was ruled to be a regulatory taking not requiring compensation. Sornarajah argues that while this case has potentially impacted the balance between environmental concerns and investment protection through its departure from the pattern of law, the change in the position of the law only really occurred because it negatively affected a powerful country in the form of the United States. There are a number of other cases where less powerful states were not granted such room to manoeuvre despite the environmental protection goals of their policies suggesting once again that distributions of power within the international system remain reflected within international law. See Sornarajah (n9) 342-343. For the *Methanex* case see *Methanex Corporation v United States* (19 August 2005) Final Award on Jurisdiction and Merits (UNCITRAL) 44 ILM 1345 (*Methanex* case).

[151] Ibid., 344.

[152] On the crisis between the public interest and global capitalism more widely, but also including in the case of foreign investment, see Chris Newdick, 'Global Capitalism and the Crisis of the Public Interest' in Susan C. Breau and Katja L. H. Samuel eds. *Research Handbook on Disasters and International Law* (Edward Elgar Publishing, 2016) 23.

[153] Joseph E. Stiglitz, 'Regulating Multinational Corporations: Towards Principles of Cross-Border Legal Framework in a Globalized World Balancing Rights with Responsibilities' (2007) Vol. 23 No. 3 *American University International Law Review* 451, 468.

[154] *AWG Group Ltd v The Argentine Republic* (Decision of Liability, 30 July 2010) International Centre for Settlement of Investment Disputes Case No. ARB/03/19.

[155] Newdick (n152) 34.

[156] Ibid.

reject the public interest defence in order to protect private rights.[157] In this way the margin of discretion afforded to the government in order to respond to a crisis was not considered; instead the tribunal stated that the government was duty bound to comply with both its human rights and foreign investment obligations simultaneously, arguing that they were 'not inconsistent, contradictory, or mutually exclusive.'[158] This is a dubious proposition, and the primacy of private rights in the balancing of these potentially competing obligations highlights the priorities inherent in the foreign investment regime. The lack of leeway afforded to the government in the middle of a crisis is also problematic and could lead to highly negative outcomes in disasters and other exceptional situations,[159] where even human rights obligations are able to be derogated from within the bounds of their framework.

As Chris Newdick writes, these many substantive issues are compounded further by a *procedural* bias within the arbitration system, which sees them often operated in secret.[160] There is a distinct lack of transparency within the system, with arbitrations taking place behind closed doors, therefore precluding input by third parties, and with judges who are often private practitioners appointed by the parties themselves rather than an impartial judiciary.[161] As mentioned previously, the arbitrators involved may have an interest in attracting further work from those appointing them, or may have parallel ongoing private work with them, thus resulting in unresolved conflicts of interest.[162] Despite these clear procedural issues, tribunals are able to award eye watering sums of compensation to corporations. This may explain why many states opt to settle rather than risk even greater losses as a result of the highly biased arbitration system.[163] Meanwhile, the people affected by the decisions of these arbitrations and the development of foreign investment rules more generally are excluded from these processes and must simply live with the consequences of the broken system.[164]

---

[157] Ibid., 35.

[158] *AWG Group v The Argentine Republic* (n154) Para. 262. Cited in Newdick (n152) 35.

[159] Disasters have come up in several investment arbitrations in arguments by both investors and states as reasons for and against the fulfilment of obligations. In a study of arbitrations Carvosso has found that the majority of these have occurred within the realm of procedure rather than affecting substantive claims, however he argues that this may well change in the future. On this and the relationship between disasters and investment arbitrations see Rhys Carvosso, 'The Role of Investment in Arbitration' (2022) Vol. 3 No. 1 *Yearbook of International Disaster Law* 374. See also Choukroune (n21).

[160] Newdick (n152) 36.

[161] Ibid.

[162] Ibid.

[163] Ibid.

[164] Aronsson-Storrier (n3) 231.

A particularly egregious example of this exclusion, which also demonstrates colonial continuities within international law, can be found in the *von Pezold* arbitration.[165] This case saw the indigenous people at the centre of a dispute – the Chikukwa, Nogorima, Chinyai, and Nyaruwa peoples of the Chimanimani region of Zimbabwe – completely denied participation in ISDS arbitrations on the matter.[166] The case revolved around a land reform programme and ancestral lands that had been stolen by the British during colonisation.[167] Chimanimani is a mountainous region where the livelihoods of people generally relied on tending small fields of crops and raising goats and cattle.[168] However, after British colonisation in the Nineteenth Century the most fertile areas were taken by white settlers, displacing the indigenous communities from their productive ancestral lands.[169] Following Zimbabwe's independence in 1980, the ancestors of these dispossessed people moved back to their traditional territories, now controlled by Border Timbers Limited (BTL), a successor of the British South Africa Company, which had led the colonisation process.[170] The 2000s then saw the aforementioned land reforms, part of which involved the indigenous peoples of the Chimanimani region attempting to negotiate a 'Joint Forest Management' system that would allow BTL to continue its operations but with a share of its income going to the local community and permitting them access to their ancestral lands.[171]

This proposal was vociferously rejected by the majority owner of BTL, the Austrian-Swiss-German landholder Heinrich von Pezold, who instead launched a barrage of harassment, violence, and court cases against the indigenous families.[172] This violence included forcibly evicting them and having BTL security guards burn down homes and their possessions, which resulted in three children dying due to exposure.[173] In 2010 the Von Pezold family and BTL sued Zimbabwe under its BITs with Switzerland and Germany, challenging the land reform actions of the Zimbabwean government, expropriation of property, and their failure to protect the land of the von Pezolds from settlers.[174]

---

165 *Von Pezold* case (n6).
166 Sergio Puig, *At the Margins of Globalization: Indigenous Peoples and International Economic Law* (Cambridge University Press, 2021) 100.
167 Verheecke *et al.* (n10) 39.
168 Ibid., 40.
169 Ibid.
170 Ibid.
171 Ibid.
172 Ibid.
173 Ibid.
174 Ibid., 41.

Zimbabwe lost both these disputes and was ordered to return the land to the von Pezolds and forcibly remove any settlers, who had been referred to as 'invaders' by the tribunal.[175] The government was also ordered to pay US$65 million in compensation, plus interest, or US$196 million if no restitution was made.[176] While the tribunal did not find Zimbabwe internationally responsible for the actions of the squatters, it did find the state in violation of its obligation to offer full protection and security to foreign investors, rejecting the government's arguments on the colonial origins of the landlessness and instability that made suppression of the occupations difficult.[177] The tribunal also found the process of expropriation in the country to have been racially discriminatory against white people, which contributed to their decision to order restitution of the land back to its 'original' owners, despite the fact that this is not a common remedy within international investment law.[178] In this vein they also sided with Heinrich von Pezold in awarding him moral damages for the intimidation and violence that accompanied the occupations.[179] This was again an unusual decision within the international investment context, as was the tribunal's choice to rely almost exclusively on testimony from von Pezold himself to establish the specifics and justify this award.[180] While von Pezold's statements were accepted without corroboration, as mentioned above the tribunal refused to allow the indigenous communities at the heart of the dispute to submit even a written statement.[181] In this way the arbitrators decided that the rights and perspectives of the indigenous communities were outside the scope of the dispute,[182] demonstrating again the pathological focus on property rights and refusal to consider social or environmental factors in many arbitrations. This led to the Special Rapporteur on the rights of indigenous peoples to decry the arbitrator's position as amounting 'to the subordination of indigenous peoples' rights to investor protections, with no option provided for participation or appeal.'[183]

---

[175] Ibid.

[176] Ibid.

[177] Ntina Tzouvala, 'Invested in Whiteness: Zimbabwe, the von Pezold Arbitration, and the Question of Race in International Law' (2022) Vol. 2 No. 2 *Journal of Law and Political Economy* 226, 229.

[178] Ibid., 229-230.

[179] Ibid., 230.

[180] Ibid.

[181] Ciaran Cross, '"Whatever Owns the Land, the Natives Do Not": In Re Southern Rhodesia' (26 July 2018, *Critical Legal Thinking*) < https://criticallegalthinking.com/2018/07/26/whoever-owns-the-land-the-natives-do-not-in-re-southern-rhodesia/> accessed 28 June 2023.

[182] Puig (n166) 79.

[183] 'Report of the Special Rapporteur on the Rights of Indigenous Peoples, Human Rights Council Thirty-Third Session' (11 August 2016) UN Doc. A/HRC/33/42, Para. 66. Quoted in Vorheecke (n10) 42.

This case therefore highlights further several pathologies within the foreign investment regime and ISDS system with implications for disaster risk. As a starting point this case demonstrates the persistence of colonial continuities within international law, with the denial of indigenous rights and sovereignty and the award of restitution to those who had obtained the land as a result of colonial conquest, rather than the native communities who had been on the land long before. The government was effectively prevented from remedying harmful legacies of colonialism, which also could have decreased the disaster risk of the affected communities, in order to protect the property of those who had benefitted from it. Likewise, as Ntina Tzouvala has argued,[184] race played a clear role in the decision of the tribunal demonstrating the persistence of this within international law. The arbitrators essentially sided with the white settlers, seeing them as discriminated against and victims of violence, rather than the native people, who had been forcibly displaced from their ancestral lands and way of life and had their property and homes burned. As Tzouvala writes, '[a]ll in all, the main findings of the tribunal not only sided with the white investors, but they did so by equating whiteness with productivity, trustworthiness and vulnerability, while blackness was equated with violence, anarchy, and brutality.'[185]

In terms of disaster risk, the orders of the international tribunal on behalf of the investors has no doubt had important implications for the vulnerability of the affected people. The Texaco/Chevron case discussed above has already demonstrated the highly negative impact that displacing indigenous peoples from their land can have on vulnerability. This case further illustrates how people dispossessed in this manner lose access to their homes, livelihoods, and way of life and are forced to move into more environmentally marginal locales putting them at greater risk, as demonstrated by the tragic deaths of the three children following the destruction of their homes. Furthermore, as discussed in previous chapters, marginalisation, whether economic, political, social, or legal in nature, is a key driver of many forms of vulnerability. The *von Pezold* case illustrates precisely how, through the arbitration procedures enabled by treaties on foreign investment and arbitration, a complete marginalisation of indigenous peoples was effected: they continued to be denied effective standing and personality under the law, as demonstrated by the tribunal's complete disregard of their rights and perspectives. As the Special Rapporteur on indigenous rights wrote, 'at its core, the investor-State dispute settlement system

[184] Tzouvala (n177).
[185] Tzouvala (n177) 231.

is adversarial and based on private law, in which affected third-party actors, such as indigenous peoples, have no standing and extremely limited opportunities to participate.'[186]

The current state of foreign investment law and the ISDS system can therefore serve to create a situation where a government is unable to govern effectively in the public interest and in ways that reduce or prevent the creation of disaster risk due to the ensnarement of investment frameworks and the threat or actualisation of dispute resolutions by corporations that may be affected by such policies. Particularly egregious in this regard are so called 'stabilisation' and 'survival/sunset' clauses, two different legal devices with similar effects in potentially constraining a government's policy-space.

'Stabilisation clauses' are used to address issues relating to the changes in the law of a host state during the period an investor is operating in the country.[187] Not all investment contracts have such provisions, but they are particularly common in investments in extractive industries and public infrastructure.[188] There are two types of stabilisation clauses. The first is 'freezing clauses' which 'freeze' the law at the time of the contract's execution for that particular investor, insulating them from changes in regulation or legislation that may come after.[189] The second is 'economic equilibrium clauses' which involve either the host state indemnifying the investor for its compliance with subsequent changes in legislation or a commitment to future negotiations to recalibrate the agreement in light of changes in the law.[190] The aim of these clauses is to ensure the predictability and stability of the regulatory environment which investors will be operating in.[191]

'Survival clauses' meanwhile are used to extend the application of the provisions of a treaty in the host state after it has been terminated.[192] In this respect, their role is also to help ensure

---

[186] Report of the Special Rapporteur (n183), Para. 67.
[187] International Finance Corporation (IFC) and the United Nations Special Representative to the Secretary General on Business and Human Rights, 'Stabilization Clauses and Human Rights' (11 March 2008) available at <https://media.business-humanrights.org/media/documents/files/reports-and-materials/Stabilization-Clauses-and-Human-Rights-11-Mar-2008.pdf> accessed 3 August 2023, 4.
[188] Ibid.
[189] Annalise Nelson, 'Investments in the Deep Freeze? Stabilization Clauses in Investment Contracts' (*Kluwer Arbitration Blog*, 9 November 2011) < https://arbitrationblog.kluwerarbitration.com/2011/11/09/investments-in-the-deep-freeze-stabilization-clauses-in-investment-contracts/> accessed 3 August 2023.
[190] Ibid.
[191] Ibid.
[192] Catharine Titi, 'Most-Favoured Nation Treatment, Survival Clauses and Reform of International Investment Law' (2016) Vol. 33 No. 5 *Journal of International Arbitration* 425, 434.

stability in the host state and to prevent an overnight change in the legal regime covering investments.[193] They generally have a duration of between 5 and 25 years.[194] Such clauses can therefore be used to keep investment agreements in effect for up to a quarter of a century past their termination date, despite the fact that advancements in scientific understanding and other research may render the activities of a company undesirable or even damaging to the host state during this time.[195]

As Marie Aronsson-Storrier has discussed,[196] these clauses can be highly problematic for the implementation of disaster risk reduction policies. They may freeze some regulatory powers of the state in the past or leave them unable to effectively apply new legislation and regulations to foreign corporations, restraining their ability to respond to scientific advancements in our understanding of disasters, environmental protection, and climate change. As a report on stabilisation clauses and human rights[197] identified, such clauses can therefore play a role in investor rights being prioritised over human rights with detrimental impacts for local communities. There is also some disparity in the application of these clauses, with them being used more robustly and broadly within non-OECD countries than wealthier states that are members of the Organisation for Economic Co-Operation and Development (OECD).[198] This includes clauses that have permitted investors to 'avoid compliance with *all* new laws that might affect the [them] – including regulations that promote a host states's environmental, social or human rights goals.'[199] While the inclusion of such clauses may be argued as being important due to the varying stability of investment environments in different states, the ultimate outcome is that countries in the Global South suffer from a greater circumscribing of their regulatory powers at the behest of multinational corporations and other investors, impacting their ability to fulfil human right and DRR obligations to their citizens. This protection of private actors and the superiority of their rights over those of the citizens within the host state highlights once again this malignant thread within international law and how it can impact the ability for states to take measures to tackle disaster risk.

[193] Ibid.
[194] Ibid,
[195] Newdick (n152) 33-34.
[196] Aronsson-Storrier (n3).
[197] 'Stabilization Clauses and Human Rights' (n187).
[198] Nelson (n189).
[199] Ibid.

This legal right for businesses to continue operating without disruption may result in state governments being unable to implement important policy and infrastructure changes to protect the wellbeing of its own citizens, notably, though not exclusively, through disaster risk reduction measures.[200] It also serves to make the state potentially powerless should the activities of the corporation in question be found to be creating disaster risk due to freezing and survival clauses that insulate investors from potential changes in the state's regulatory environment. Furthermore, should a state be able to effectively apply new legislation to such a disaster risk-producing investor then it would also have to risk incurring significant damage to public funds through an ISDS arbitration. Ultimately, the foreign investment regime appears to have been constructed to protect multinational companies 'from the control of developing states in their capacity to advance the interests of their public,'[201]

While foreign investment does take place within Global North states, and there have been concerns raised by such states about the current regime,[202] it is generally states in the Global South which experience the rawest deal of the current setup. As the discussion above details, problematic clauses are often applied in a more disadvantageous manner to states in the Global South than their counterparts in the Global North. In this way international law, through specific clauses within investment treaties, contributes to increases in disaster risk. It is directly responsible for limiting the power of host states to regulate foreign corporations that may be producing disaster risk, or to effectively enact DRR policies that may affect these companies. Given that the host state is designated as the bearer of disaster risk reduction and human rights obligations under international law, this constriction of their power and ability to make changes is highly detrimental.

As mentioned above, the existence of 'survival clauses' means that even when a state recognises this interference and the deleterious impact a particular foreign investment treaty may be having on the health of their environment and wellbeing of their citizens, reasserting control may not be as easy as simply terminating the treaty in question. As Aronsson-Storrier highlights when examining the Energy Charter Treaty and the case of *Rockhopper v Italy,*[203] these clauses may ensure the endurance of a treaty's provisions for several decades.[204] In the case of *Rockhopper v*

[200] A prominent example of this can be found in the *Rockhopper* case which is discussed shortly.
[201] Linarelli, Salomon, and Sornarajah (n8) 147.
[202] Sornarajah (n16) 24-25.
[203] *Rockhopper v Italy* (n7).
[204] Aronsson-Storrier (n3) 232.

Italy, the Italian government in 2016 had refused to grant Rockhopper Exploration the right to oil and gas exploration in the Ombrina Mare field of the Adriatic Sea as a result of the reintroduction of a ban on new oil and gas activities within 12 miles of the Italian coastline.[205] The reintroduction of this ban had been carried out in the public interest of the citizens of Italy, following worries over earthquake risks, concerns for the environment and livelihoods based in tourism and fishing, and resistance by the public pushing for a ban.[206] In this way the government was acting on behalf of and in the best interests of its citizens. In response to this, Rockhopper filed a claim against Italy with the International Centre for Settlement of Investment Disputes in March 2017 under the Energy Charter Treaty.[207] Despite Italy having withdrawn from the treaty at the beginning of 2016, Article 47(3) of the ECT stipulates that:

> [t]he provisions of this Treaty shall continue to apply to Investments made in the Area of a Contracting Party by Investors of other Contracting Parties or in the Area of other Contracting Parties by Investors of that Contracting Party as of the date when that Contracting Party's withdrawal from the Treaty takes effect for a period of 20 years from such date.[208]

This survival clause meant not only that, despite having left the treaty, Italy was still bound by many of its provisions, but also, as is common in such disputes, that Rockhopper was able to claim not just compensation for actual losses but also for hypothetical benefits that could have been generated had Italy granted the company the Production Concession.[209] If we compare this with the *Chevron/Texaco v Ecuador* case previously discussed, we can see that such foreign investment agreements again permit large temporal jurisdictions for the relationship between state action and a business's profits to be scrutinised, very much to the benefit of the latter.

The arbitration's award was published in November 2022 at 185 million euros (which would rise to 240 million with interest).[210] While it has understandably received important criticism based on the incompatibility of the ECT with tackling climate change,[211] it also raises several issues in

[205] Ibid.
[206] Ibid.
[207] Ibid.
[208] ECT (n2) Art. 47(3).
[209] Aronsson-Storrier (n3) 232.
[210] Toni Marzal, 'Polluter Doesn't Pay: The Rockhopper v Italy Award' (*EJIL: Talk!,* 19 January 2023) < https://www.ejiltalk.org/polluter-doesnt-pay-the-rockhopper-v-italy-award/> accessed 8 February 2023.
[211] Ibid.

terms of the relationship between international law and DRR. The Italian government had decided to halt fossil fuel exploration and production following consultation and pressure from its citizens, with reasons given for this aversion to such activities including negative impacts on livelihoods and environmental, climate change, and earthquake concerns. A cursory understanding of vulnerability and hazards demonstrates how such negative consequences are implicated in the production of disaster risk. Loss or damage to livelihoods can be a key driver of vulnerability (though less so in this case compared with similar situations in less wealthy countries) while the drilling may also produce environmental degradation and hazards such as earthquakes.

As a result, Rockhopper's activities risk increasing the vulnerability of Italian citizens living in proximity to its operations, who may have less capital available to deal with stresses should their livelihoods be affected (though, again, not as significantly as those impacted by such operations in Global South countries), while at the same time potentially increasing their exposure to hazards. It is therefore quite understandable why these people, and the Italian government acting in their name, sought to terminate such activities in order to reduce or prevent an increase in their disaster risk. However, their room for manoeuvre has been hindered by international structures seeking to sustain and reproduce neoliberal ideology, protect foreign investments above all else, and encroach on the power of states to dictate their own laws and policies. The Italian state has effectively been forced to choose between either taking DRR measures and suffering punitive litigation and a consequent severe loss of public funds or leaving its citizens with higher levels of disaster risk. Additionally, this is not just a short-term issue: Italy is bound by the risk of arbitration for two decades after leaving the ECT, meaning that its space for governing remains constrained for a further long period. This case is a clear example of international law potentially serving to increase disaster risk and hinder steps that might be taken to reduce it.

The analysis of this subsection therefore demonstrates how the current configuration of the ISDS and its underlying laws serve to limit the amount of control states have over foreign corporations operating in their territory, which as the chapter more widely has discussed, may be problematic depending on the impact of its activities. However, in addition to this, and as has been widely criticised in relation to climate change legislation, it also constrains the policy-making space of states or may potentially compel them to tolerate measures that are harmful to their citizens. This can potentially prevent states from being able to enact policies even when

they have a democratic mandate to carry them out or they are legally obligated to do so under another regime such as international human rights law. As a result, the private profits of corporations are often prioritised over the rights and wellbeing of the state's citizens and the environment. In the case of disaster risk, these two issues may combine to prevent a government from being able to stop a foreign company from producing disaster risk within its territory and to enact DRR measures which might impact the profits of any multinational corporations, with the attribution of such liability often being given wide latitude by arbitrators. The current setup of the ISDS is therefore highly detrimental to DRR efforts, and if international law is seriously concerned with the reduction of disaster risk, then this must be addressed.

5.6 Conclusion

This chapter has sought to demonstrate more overtly the connection between international economic law and the creation and exacerbation of disaster risk. By discussing the pathologies within the foreign investment regime, related to both its commission and omission, and using cases to showcase their negative impacts in action, it has highlighted the connection between specific aspects of international investment law and disaster risk. The key pathologies within the regime in this regard are the asymmetries in rights and duties ascribed to multinational corporations, which allows for their investments and property to be prioritised and heavily protected by the law, while the negative consequences of their operations remain unregulated and are seen as outside the purview of the foreign investment. As the *von Pezold* case demonstrates, the lawyers and scholars making up the arbitration tribunals consider such matters as the violation of human rights and environmental harm, and in a connected sense DRR, to be the domain of separate legal regimes and not relevant to the law of foreign investment. This selective bracketing out therefore means that once again international law is conspicuous in its destructive absence.

The failure of international law to effectively regulate the actions of multinational corporations also means that companies are able to exploit differing environmental and labour standards to maximise their profits with relative impunity and little regard for the negative impacts on local communities, including increases in disaster risk. Indeed, while the law is heavily preoccupied with the facilitation of foreign investment and protecting these assets from potential risks, it is significantly less concerned with the risks faced by the local populations within the territories that such corporations operate. As a result of international law's dereliction in regulating them, corporations are often able to act free from liability in reaping financial benefits and repatriating

away profits, while burdening others with the ensuing disaster risk. As the Bhopal example demonstrates, this can be the case even when the corporation is heavily complicit in the direct creation of a disaster affecting hundreds of thousands of people.

These issues related to the absence of international law are then exacerbated further by its presence in the form of stabilisation and survival clauses within investment agreements and the ISDS system, which collectively allow corporations to constrain the policy-making space of states, obtain immunity from regulation, or to take punitive action against governments who enact policy they dislike. As the dispute settlement cases discussed and the many criticisms of the regime in regard to its interaction with climate change mitigation/adaptation demonstrate, this is particularly pernicious in precluding states from being able to take action to reduce disaster risk or to prevent its creation by corporations operating in their territory. It is a key example of how international law, through its investment instruments and their arbitrations, is complicit in the creation of and failure to reduce disaster risk.

The side-lining of concerns such as the human rights, the natural world, and DRR within the foreign investment architecture is indicative of the pathological DNA of IEcL more widely, and its interference with the normative aspirations of regimes focusing on the protection of people and the environment, as discussed in Chapter One. If it is to counter this issue, International Disaster Law (IDL) must look beyond the nation-state and come to terms with exogenous sources of disaster risk, including risk being produced by other regimes within international law. It is important that the fragmentation of the international legal system is not allowed to mask this process from its attention. Unless the current international foreign investment regime is reformed to operate in a less sociopathic and environmentally harmful manner, that properly takes into account matters like human rights, environmental protection, and DRR rather than treating them as externalities, then it will continue to undermine the battle against disaster risk and lead to a continuation of the scourge of disasters.

Chapter 6: Anatomy of a Disaster – Haiti, International Law, and the 2010 Earthquake

6.1 Introduction

While the previous chapters have analysed the history of international law in order to demonstrate its potential role as a root cause of vulnerability and disasters, this final chapter will seek to apply this analysis to an illustrative, empirical example. The 2010 earthquake in Haiti and ensuing cholera outbreak will be examined, to illustrate the role of international law in the production of the conditions that contributed to the disaster. The analysis will focus on the events leading up to the earthquake rather than the event itself and its aftermath, being framed in this way due to the fact that the earthquake and its aftermath has already been extensively covered by literature.[1] Furthermore, such a focus on just the event would go against the argument of disasters as processes which this thesis is advocating. The chapter will therefore focus on the history of Haiti leading up to the earthquake and the role of this in the historical construction of vulnerabilities that led to the disaster. Haiti presents a particularly poignant example due to its past as a French colony and then the first free black republic. Despite once being 'the jewel of the Caribbean,'[2] Its history is one of underdevelopment and poverty imposed by other states, which this chapter will discuss.

The chapter will begin with a brief description of the earthquake disaster itself and the damage it caused. This will then be followed by an examination of the history of the island and its relationship with international law in order to elaborate the role of this process in the creation of disaster risk. The history will be broken into four main sections which had a key impact on the politics, society, and economy of Haiti: its time as a French colony, its independence and search for recognition from the international community, the US occupation in 1915, and the period between the 1980s and the earthquake, incorporating the imposition of structural adjustment measures and the United Nations intervention in the country in 2004.

Once these key periods in Haiti's history and their relationship with international law have been mapped out, the chapter will then turn to a detailed analysis of the role of these in producing the

[1] See, for example, literature cited in section 6.2.
[2] Robert Knox, 'Valuing Race? Stretched Marxism and the Logic of Imperialism' (2016) Vol. 4 No. 1 *London Review of International Law* 81, 117.

disaster risk that led to the 2010 earthquake disaster. It will begin with the root causes of vulnerability and discuss how international law was used throughout Haiti's history to impede its economic independence and sovereignty, resulting in reduced distributions of wealth and power. Further root causes in the form of neoliberal ideology enforced by international financial institutions and additional post-colonial heritages such as the specific political culture in Haiti that stems from its colonial past and has seen power and state investment heavily centralised, will also be considered. The analysis will then discuss the progression of these root causes into further vulnerabilities that the earthquake so catastrophically laid bare. This will include, for example, analysing the role of Haiti's history, international law, and the root causes previously identified in the emaciated condition of the Haitian state and the impact of this on state infrastructure, rural to urban migration, and the regulation of housing construction and planning.

Through this analysis the chapter aims to use the illustrative example of the Haiti earthquake to highlight the prominent and long-reaching role of structures and processes beyond the territorial bounds of individual nation-states in creating and exacerbating disaster risk, and how one such exogenous driver is international law. The earthquake also presents a powerful example of arguments on the historical construction of disaster risk and process nature of disasters, with the discussions on Haiti, international law, and disaster risk beginning with events five centuries before the earthquake struck. The analysis below therefore draws together and offers an illustrative example of many of the arguments made throughout the thesis.

6.2 The 2010 Earthquake

At 4:53PM on Tuesday 12th January 2010 a Richter 7.0 earthquake occurred with an epicentre thirteen kilometres below the surface of Léogâne and just twenty-five kilometres west-south-west of the nation's capital, Port-au-Prince.[3] Earthquakes of this severity are relatively rare, only occurring a few times per month across the world.[4] To make matters worse, this high magnitude was combined with a shallow depth, making it especially devastating from a geological point of view. It meant that the force of the energy released was not cushioned by the layers of the earth, so that the force on the surface was the same as at the point of occurrence.[5] The damage resulting from this seismic activity was catastrophic. In the arrondissement of Léogâne, in closest

[3] Ilan Kelman, *Disaster by Choice* (Oxford University Press, 2020) 1.
[4] Ibid., x.
[5] Jean-Germain Gros, 'Anatomy of a Haitian Tragedy: When the Fury of Nature Meets the Debility of the State' (2011) Vol. 42 No. 2 *Journal of Black Studies* 131, 134.

proximity to the epicentre over 80 percent of the buildings were destroyed.[6] What little infrastructure there was in many rural areas was demolished, with dirt roads disappearing in landslips and pupils and staff being entombed in schools.[7] When the shockwaves reached Port-au-Prince they resulted in thousands of buildings collapsing or slipping down hills into ravines.[8]

The result was at least 150,000 dead,[9] with some sources estimating double this.[10] On top of this over 300,000 people were injured, an issue exacerbated by the fact that most hospitals, schools, and ministries in the Port-au-Prince area were destroyed.[11] As a result of infrastructure deficiencies predating the earthquake and the level of destruction it caused, there were no ambulances and fire engines coming to offer aid and rescue in the immediate aftermath. Instead, night fell on a country facing '1.5 million homeless, 120% of the gross domestic product destroyed, [and] virtually all of the symbols of the Haitian state liquified.'[12]

While the magnitude and location of the earthquake made it a particularly devastating hazard, it does not bear total responsibility for the destruction wrought. To reiterate from previous chapters, how we order our societies has a profound impact on the damage hazards are able to inflict, and the structure of Haitian society had a wide range of longstanding pathologies. Prior to the disaster Haiti was already the poorest country in the Western hemisphere.[13] Poor infrastructure, inequality, poverty, and lack of building codes all contributed to the disaster that resulted from the earthquake, and it is these factors for which humans bear responsibility. However, the poor shape of the Haitian state was not a recent development, it was instead the result of centuries of enforced underdevelopment, exploitation, and structural violence by other

[6] Kelman (n3) 2.
[7] Ibid.
[8] Ibid.
[9] Ibid., 4.
[10] Oliver-Smith for example writes of 300,000 casualties, see Anthony Oliver-Smith, 'Haiti and the Historical Construction of Disasters' (*Nacla,* 1 July 2010) < https://nacla.org/article/haiti-and-historical-construction-disasters> accessed 25 January 2021. As previously noted, accurately tallying deaths as a result of disasters can be very difficult so the actual number may never be known.
[11] International Monetary Fund (IMF), 'Public Information Notice: IMF Executive Board Concludes 2010 Article IV Consultation with Haiti' (6 August 2010) <https://www.imf.org/en/News/Articles/2015/09/28/04/53/pn10112> accessed 9 March 2021.
[12] Gros (n5) 132.
[13] Ibid., 144.

states and the ruling class of the country – what Milne has referred to as 'calculated impoverishment.'[14]

The history of this impoverishment will be discussed in the subsequent sections of this chapter, but it should be noted that this state of affairs unfortunately continued in the aftermath of the earthquake with catastrophic consequences for the Haitian people. While aid of around US$13 billion was pledged by aid organisations and the international community, politics over the island hindered its delivery to the actual people of Haiti.[15] The United States commandeered the airport at Port-au-Prince in order to prioritise the arrival of troops, resulting in several aid organisations including the World Food Programme and Medecin sans Frontieres having their planes turned away and Haitians being left needing basic supplies.[16] This prioritisation of military personnel over aid potentially resulted in the disaster causing even more deaths.[17]

What little aid did arrive was also not necessarily fit for purpose. Flimsy tents were erected only to blow away in moderate winds and 'privacy, security, dignity, and safety were not always significant considerations in setting up the temporary settlements.'[18] This led to a large number of sexual assaults.[19] As the months after the earthquake dragged on and the promised reconstruction of housing did not materialise, many of these Haitians were forcibly evicted from the temporary settlements and went from barely anything to nothing.[20] Sadly things only got worse from here.

Nine months after the earthquake struck the Haitian government declared an outbreak of cholera – a disease not seen on the island for over a century.[21] Since then over 10,000 people have died from the illness.[22] It was able to rapidly spread through the population as a result of the poor sanitation caused by vulnerabilities preceding the disaster, the damage of the earthquake, and then the faltering reconstruction process. However, the origin of the disease was

[14] Seumas Milne, 'Haiti's Suffering is a Result of Calculated Impoverishment' (*The Guardian*, 20 Jan 2010) <https://www.theguardian.com/commentisfree/cifamerica/2010/jan/20/haiti-suffering-earthquake-punitive-relationship> accessed 9 March 2021.
[15] Kelman (n3) 5.
[16] Milne (n14).
[17] Ibid.
[18] Kelman (n3) 5.
[19] Ibid.
[20] Ibid.
[21] Ibid., 6.
[22] Ibid.

eventually linked back to Nepalese peacekeepers,[23] who had been deployed by the United Nations to assist in the post-earthquake reconstruction. Haphazard sanitation infrastructure at their base in Méyè meant that sewage contaminated the nearby tributary of the Artibonite River, a water source used by many Haitians for drinking, cooking, and bathing.[24]

The UN initially attempted to avoid responsibility for the outbreak; however an independent report they commissioned concluded that the source of the outbreak had been the peacekeepers and their insufficient methods for handling and disposing of human waste.[25] Claims for compensation by those affected were 'met with intransigence up to the level of Secretary-General' with claims of diplomatic immunity being invoked to avoid legal responsibility.[26] Finally in August 2016 the UN admitted responsibility and then Secretary-General Ban Ki-moon issued an apology.[27] 'Material assistance' was also offered to those affected as part of a US$400 million initiative, which also pledged to eradicate the bacteria and improve the country's water and sanitation infrastructure.[28] However, despite this initiative, little has actually happened to alleviate the issue and cholera still plagues Haitians,[29] becoming a further source of vulnerability when other hazards such as hurricanes strike.

Haiti presents a striking example of the impact of international law and the international system on vulnerability. Even in just this snapshot of one disaster we see the role that a military focus by the United States and poorly managed multilateral action under the auspices of the United Nations has had in exacerbating the situation and making the country more vulnerable to future hazards. Unfortunately, this is a trend which has gone back centuries, playing a role in the construction of the very vulnerabilities that led to the 2010 earthquake disaster, as the following sections will detail.

---

[23] For a report of the situation and evidence of linkages between the outbreak of the disease and UN peacekeepers see Yale Law School, Yale School of Public Health and Association Haitïenne de Droit l'Environment, 'Peacekeeping Without Accountability: The United Nations Responsibility for the Haitian Cholera Epidemic' (2013) <https://law.yale.edu/sites/default/files/documents/pdf/Clinics/Haiti_TDC_Final_Report.pdf> accessed 10 March 2021.

[24] Ibid., 1.

[25] Kelman (n3) 6.

[26] Ibid. For a discussion on the matter and its implications in terms of human rights see Rosa Freedman and Nicolas Lemay-Herbert, "'Jistis ak Reparasyon pou Tout Viktim Kolera MINUSTAH": The United Nations and the Right to Health in Haiti' (2015) Vol. 28 *Leiden Journal of International Law* 507.

[27] Kelman (n3) 6.

[28] Ibid.

[29] Ibid., 7.

While this chapter focuses on the construction of vulnerability within Haiti, it does not seek to portray the Haitian people as 'vulnerable' or only as victims and objects of immiseration. As mentioned in Chapter Two on Disaster Risk concepts and terminology, when talking about vulnerability it is also important to talk about the capacities of people. Despite the focus of the discussion of structural harms, people are not entirely helpless victims of forces beyond their control. The revolutionaries that founded Haiti performed a feat almost unimaginable at the time, and the resonance caused by their act of independence and the threat it posed to the colonial status quo can clearly be measured in the misery inflicted on the country in response during the centuries after. Indeed, '[b]y defeating the French forces, they created a space where former slaves could exercise cultural and social autonomy to a degree unknown anywhere else in the Americas. While Dessalines and other Haitian leaders eloquently articulated a passionate refusal of slavery, it was the people of Haiti who truly gave content to that refusal.'[30]

The spirit and social cohesion produced by this history could be seen in the aftermath of the earthquake. With the liquidation of the state as a result of the destruction, and caricatures that had been painted of the Haitian people, many outside observers expected complete societal breakdown and looting.[31] What was seen instead, for the most part, was social solidarity with communities rapidly organising to deliver mutual aid, and continuing to support one another even after the initial rescue work had been completed.[32] It was not the government that offered post-disaster relief, but networks of ordinary people that crisscross the country working together.[33]

[30] Laurent Dubois, *Haiti: The After Shocks of History* (Picador, 2012) 16.
[31] Ibid., 12.
[32] Ibid; Anthony Oliver-Smith, 'Haiti and the Historical Construction of Disasters' (2010) Vol. 43 No. 4 *NACLA* 32, 36. Oliver-Smith contrasts this with an earthquake five weeks later in Chile which, despite causing significantly less damage due to vulnerability differentials, saw greater levels of social violence and looting in the face of an inadequate government response.
[33] Dubois (n30) 12.

6.3 A Brief History of Haiti and International Law

6.3.1 Colonialism, Independence, and the Search for Recognition

6.3.1.1 Colonialism

The territory now known as Haiti, named 'Ayti' by its native Taino people, was the location of Christopher Columbus's first landing in 1492.[34] It was part of an island which he named 'Hispaniola' after practicing the symbolic and legalising ceremony of the Spanish Crown to claim it in their name.[35] As Chapter Three denoted,[36] much thought was given to the role of the law of nations in arbitrating the encounter between Europeans and natives and their property, and it was the same here. The encounter was initially informed by Spain's approach to dealing with Muslim cultures designated 'the Moors', and their centuries long war, justified under the mission of converting these 'heathens.'[37] The Spanish, considering themselves the superior civilisation, justified their presence on Hispaniola on similar, racialised grounds.[38] However, when it became clear that the 'Indians' were different to the Moors, this led to different debates over how they should be treated.

By 1550, however, the Taino and Arawak natives of the island had been decimated by disease and harsh working conditions imposed by the settlers.[39] This was a result of the *encomienda* system, under which natives were seen as 'wards' of the Spanish, who needed to be civilised.[40] A settler would be designated as a trustee of a group of wards, and in exchange for evangelising the population, would be entitled to a lifetime of rights to the product of indigenous labour and tribute.[41] The brutality of this system led to several Spanish 'humanitarians' opposing the system, including the Dominican Friar Bartolomé de las Casas, who argued that the labour conditions

[34] Knox (n2) 112.
[35] Liliana Obregón, 'Empire, Racial Capitalism, and International Law: The Case of Manumitted Haiti and the Recognition of Debt' (2018) Vol. 31 *Leiden Journal of International Law* 597, 600.
[36] For greater detail on the jurisprudence and juridical processes involved in facilitating colonialism and the slave trade see Chapter 3.
[37] Knox (n2) 112.
[38] Ibid.
[39] Obregón (n35) 601.
[40] Knox (n2) 113.
[41] Ibid.

violated the rights of the native people and verged on slavery.[42] He proposed that they be protected by labour regulations.[43]

However, these proposals clashed with the objectives of colonial conquest to maximise 'Indian tribute and mineral wealth extracted through the *encomienda* system.'[44] Any reduction in this rate of exploitation would require compensation; so, in response, las Casas came up with the 'solution' of importing slaves to recompense the settlers for the Indian labour they were losing.[45] This was advantageous from a legal point of view as slaves had been 'justly' enslaved meaning that no legal issues would arise from subjecting them to the sort of labour conditions that had first concerned las Casas.[46] Here we can see again the beginnings of the role of juridical arguments in establishing hierarchies and constructions of race: while las Casas argued that the native people should be legally protected against slavery, no such protections existed for African slaves who were further down in the hierarchy of rights.

Las Casas's proposals were not enacted in full; however they did result in 4,000 slaves from the African coast being brought to the Indies.[47] Although associations between blackness and slavery had not yet fully crystalised, these slaves were deemed particularly 'efficient' at the production of sugar, which was in high demand within Europe.[48] This created a dynamic wherein increased demand for sugar led to an increase in the need for slaves, who were primarily to be found within Africa, serving to concretise a relationship between slavery and blackness which would have implications in Haiti and elsewhere.[49] Through this, again, we see the early establishment of a racialised hierarchy rendered through law and the distribution of rights, as discussed in previous chapters. While Europeans were at the top of this and enjoyed a full quota of legal rights and sovereignty over their territory, there existed a further hierarchy within subjugated peoples. 'Indians' possessed some legal rights, which needed to be protected (such as labour regulations, as detailed above) – though not at the same level of Europeans and not to the point that it prevented them from suffering dispossession – others who were designated as slaves (and were largely from Africa) possessed no legal personality or rights, meaning they could be

[42] Ibid.
[43] Ibid.
[44] Alejandro Colás, *Empire* (Polity Press, 2006) 58. Cited in Knox (n2) 113.
[45] Knox (n2) 113.
[46] Ibid.
[47] Ibid.
[48] Ibid., 114.
[49] Ibid.

subjected to working conditions that 'Indians' could not. The establishment of this racialised hierarchy meant that accumulation could continue to be guaranteed and would have implications for Haiti later on as it fought for independence.

While the earliest encounter between Europe and the island which Columbus named Hispaniola saw it subject to colonisation by the Spanish, the area now known as Haiti eventually became a colony of France. In 1625 French buccaneers arrived in the region settling the nearby Tortuga Island, and in 1697 the Spanish divided Hispaniola with France under the Treaty of Ryswick to form the colonies of Saint Domingue and Saint Domingo.[50] The French controlled section of the island, Saint Domingue, became the most productive colony in the hemisphere due to the permanent import of African slaves, 25,000-40,000 of whom died each year as a result of the working conditions, punishments, disease, and suicide.[51] Some reforms were suggested to arrest this rate of mortality; however 'it was cheaper to let slaves die and buy more from Africa, so that is what the planters did.'[52]

As discussed in Chapter Three, the European powers dividing up the island among themselves was based on and facilitated by the legal foundation that the native population lacked sufficient legal personality to assert sovereignty over their territory. The origin of international law is 'inextricably bound up with colonialism' and it was during this period that doctrines and rules of customary international law relating to areas such as the acquisition of territory (as just mentioned), the rules of recognition, and law of state responsibility were shaped in order to respond to and justify colonialism.[53] As discussed, legal doctrines relating to property were also key in the process of colonialism and were heavily linked to the racialised hierarchy which had been produced.

In line with this, by the late 1600s, the character of slavery completed its transition from being along religious lines[54] to explicitly racialised ones and was legally consolidated in a French

[50] Obregón (n35) 601.
[51] Ibid.
[52] Dubois (n30) 21.
[53] B. S. Chimni, 'An Outline of a Marxist Course on Public International Law' (2004) Vol. 17 *Leiden Journal of International Law* 1, 7.
[54] Prior to this, from a European perspective at least, it was non-Christians such as pagans and 'Saracens' who were open to enslavement. In 1452, for example, the papacy granted Portugal 'full and free permission to invade, search out, capture and subjugate the Saracens and pagans and any other unbelievers and enemies of Christ wherever they may be.' See John Francis Maxwell, *Slavery and the Catholic Church* (Barry Rose, 1975) 53, quoted in Seymour Drescher

context through the 1685 *Code Noir* passed by King Louis XIV.[55] The Code contained sixty articles regulating 'religion, security, communication, food, clothing, punishments and slave manumission' with the aim of maximising profit from the slave system.[56] It also served to establish and legitimise a race-based hierarchy that granted different legal, social, and economic positions to the various populations within Saint Domingue.[57] Prior to the revolution, the colonial structure was governed by a French governor general and an intendant who operated based on instructions from Paris.[58] Below this were around 30,000 white French plantation owners who shared their privilege with a similar number of mixed race (known as *mulattos* or *petit blancs*) artisans and business owners.[59] The majority of the rest of the population was made up of 500,000 African slaves, who were also divided into their own hierarchies including domestic mulatto slaves versus those with darker skin who worked in the fields.[60] As can readily be observed, this hierarchy was very much dictated by skin colour, with complexion lightening as one progressed further up the strata of the society.

It can therefore be seen that Haiti's (known then as Ayti, Hispaniola, and Saint Domingue) earliest encounter with international law was one of exploitation, dispossession, genocide, immiseration, and the commodification of human beings as property. International law contributed to these processes through the juridical arguments of jurists at the time and the ways that key concepts such as sovereignty, territory, property, and race came to be conceptualised, as discussed in Chapter Three. The island's relationship with colonialism and the Transatlantic Slave Trade served to inform its status and relationship with the rest of the world. International law was used to justify interactions between settlers and natives, and to establish a hierarchy of legal personality between these groups through constructions of race and the inequitable allocation of legal rights. This in turn was used to facilitate the exploitative and extractive nature of the colonial encounter. As Robert Knox writes, 'France's position in the global economy was dependent upon a form of racialised labour discipline, constituted and maintained by juridical relations, on both the domestic and international scale.'[61]

---

and Paul Finkelman, 'Slavery' in Bardo Fassbender and Anne Peters (eds.) *The Oxford Handbook of the History of International Law* (Oxford University Press, 2012) 890, 896.

[55] Knox (n2) 115.

[56] Obregón (n35) 601. Manumission refers to the rules around freeing slaves in a given society.

[57] Ibid., 601-602.

[58] Ibid., 602.

[59] Ibid.

[60] Ibid.

[61] Knox (n2) 116.

International law was used to facilitate the slave trade at this time,[62] as described in Chapter Three, with 'European states employ[ing] those techniques and principles of International Law that were favourable and specifically develop[ing] others to facilitate it.'[63] Indeed, the trade 'was once not only considered a lawful but desirable branch of commerce, participation which was made the object of wars, negotiations, and treaties between different European states.'[64] Additionally, despite the abhorrent nature of slavery and the slave trade, the fact that European nations and the United States had been carrying out the practice for two centuries without opposition or censure precluded arguments that it could be made illegal under customary international law, or that those engaged in it should be punished or deprived of their 'property'.[65] Therefore international law for a considerable amount of time at best failed to prohibit the slave trade, and at worst actively facilitated it, again demonstrating its complicity in potential causes of disaster risk through both its omission and commission.

In terms of the process of international law's role in the creation of disaster risk throughout the history of Haiti, the pertinent points to note at this point are the colonial relationship with France of subjugation, dispossession, and extraction, and the establishment of a colonial hierarchy within the country itself. Furthermore, the fact that the population of the colony largely came to be slaves of African descent and that this coincided with a construction of blackness as being tied to slavery and other racialised stereotypes, concretised in part through international law, also had implications for the country as it sought recognition. As Liliana Obregón writes, '[t]he generalized belief among Europeans was that as slaves or freedmen, Africans did not have the capacity to be sovereign over themselves, let alone over a nation.'[66] This racist characterisation and its implications for the concept of sovereignty would therefore

---

[62] It should be noted that international law was eventually used to abolish the trade, in part due to Britain engaging itself in 'hundred years war of penitence against the trade.' By the 1860s a rule of international law banning the trade was generally recognised (though this did not prevent breaches or address the centuries of harm that had preceded it), and the 1885 Treaty of Berlin (General Act of the Conference of Berlin, signed February 26, 1885) featured an article (IX) specifically on the matter. For an account of the progression of the prohibition of the trade in international law see U. O. Umozurike, 'The African Slave Trade and the Attitudes of International Law Towards It' (1971) Vol. 16 No. 2 *Howard Law Journal* 334, 341-347. However, as discussed in Chapter 3, this anti-slavery movement while a good thing came after a sustained period of Europeans benefitting from the practice and also served as a potential vehicle for further imperialism, being used to discipline non-European countries.

[63] Umozurike (n62) 341.

[64] Henry Wheaton, *Elements of International Law* (Little Brown and Company, 1866, Eighth Edition) 199. Cited in Umozurike (n62) 341.

[65] Ibid.

[66] Obregón (n35) 602.

come to have an important impact following the revolution when Haiti was seeking recognition, and beyond, as will be discussed shortly.

6.3.1.2 Revolution and the Search for Recognition

Slave revolts had periodically occurred within Saint Domingue for some time; however in 1791, following France's own revolution, a full scale one occurred in the colony as black slaves demanded the abolition of racialised slavery.[67] This was initially resisted by white settlers who worried that concessions could deal a death blow to the institution of slavery itself.[68] However against the background of the French Revolution and its opposition to oppression of all types, this attitude became difficult to maintain.[69] Eventually, in February 1794 France's new National Convention abolished slavery in all of its colonies.[70] Touissant L'Ouverture, who emerged as a chief figure of the revolution, proclaimed a new constitution for Saint Domingue in 1801, abolishing slavery and all racial hierarchies, and sent this to France.[71] This constitution continued to recognise the French connection of the colony by making Catholicism the main religion, however.[72] By the time this reached France, Napoleon had come to power and was intent on restoring slavery within the colonies, recognising it as vital to French prosperity.[73] With this in mind he sent an army to reclaim Saint Domingue and restore its status as a colony. Following the defeat of this army, Jean-Jacques Dessalines declared a new independent state of Haiti at the beginning of 1804, with the proclamation '[i]n the end we must live independent or die.'[74]

Haiti had been born; however, its status as an independent state was not readily welcomed by the European powers. This isolation was a key challenge – the new nation could only survive to the extent that it made formal legal contact with other states and received reciprocal recognition as an independent entity.[75] However, this was undermined by the fact that Haiti's very existence

---

[67] Knox (n2) 116. This is a necessarily brief account of the Haitian revolution, for a more detailed discussion of its events see Carolyn E. Fick, *The Making of Haiti: The Saint Domingue Revolution from Below* (University of Tennessee Press, 1990).
[68] Ibid.
[69] Ibid.
[70] Ibid.
[71] Ibid.
[72] Ibid. For an analysis of this constitution and its tension between its 'radical emancipatory and anti-democratic currents' see Philip Kaisary, 'Hercules, the Hydra, and the 1801 Constitution of Toussaint Louverture' (2015) Vol. 12 No. 4 *Atlantic Studies* 393.
[73] Knox (n2) 116-117.
[74] Dubois (n30) 15.
[75] Knox (n2) 117.

posed a potential threat to the other colonies of the European powers, who saw the new state as a beacon of hope. It was therefore vital to many of the colonial powers, particularly France, that Haiti failed as an independent state and was forced back under the 'protection' of a colonial power.[76] Because of this, international rules of recognition and the criteria of acceptance into the family of nations became important to Haiti and its detractors. As a result, France refused to recognise Haiti, attempted to 'rupture established networks of trade,' and 'attempted to put external constraints on the lifelines of the island.'[77] Britain, meanwhile, had given some military aid to Haiti during the revolution in order to damage France, who they were at war with; however, they also did not wish to grant the newly-independent nation full recognition.[78] Instead, '[w]hile Haitian leaders expected to be able to join the community of the Atlantic World as equals, the British […] continued to explore ways that Haiti could remain independent from France but not entirely independent of foreign influence and control.'[79] They persisted in letting their merchants trade with Haiti, but refused to grant them recognition lest it jeopardise the slavery within their own colonies.[80]

Likewise, the United States, despite being a former set of colonies itself, also refused to recognise Haiti.[81] Knox argues that this was down to both the key role of slavery in its own economic power and to the fact that the US's own position as a newly independent former colony meant that it needed to maintain a character of whiteness for its own internal social cohesion and position on the international stage.[82] Therefore, support could not be offered to Haiti, as 'its population was black and the temper of the southern states would not permit such a reward to a revolted slave population.'[83] Like Britain, the United States largely continued to trade with Haiti, but denied it the privilege of recognition, similarly fearing for the fate of its own slave plantations should it show support to Haiti's cause.

Haiti therefore found itself as somewhat of a pariah within the international system, a position of marginalisation facilitated by international law and driven by imperatives of race and value. While

---

[76] Ibid.
[77] Julia Gaffield, *Haitian Connections in the Atlantic World: Recognition after Revolution* (University of North Carolina Press, 2015) 57.
[78] Knox (n2) 117.
[79] Gaffield (n77) 91.
[80] Dubois (n30) 71.
[81] Knox (n2) 117.
[82] Ibid.
[83] Frederic L. Paxson, *A Tripartite Intervention in Hayti, 1851* (University of Colorado Studies, 1904). Cited in Obregón (n35) 604.

the major powers felt the need to trade with Haiti, their economic positions were built on legalised racial hierarchies embodied in slavery and colonial occupations.[84] Therefore, '[t]o recognise Haiti, and contribute to its success, threatened to turn it into an example which might undermine those racial hierarchies, and thus threaten their profits. This was mediated through international law: there was a minimal form of contact, through trade treaties, but a withholding of full recognition.'[85] Norms of international law around recognition were therefore weaponised to maintain the marginalisation of Haiti and reduce its power within the international system.

The previous chapters have discussed how international law was galvanised to produce a hierarchical international system, and Haiti offers a prime example of this process in action. Despite claims that territories outside of Europe could not govern themselves and needed to be civilised by Europeans as a result of the 'dynamic of difference,'[86] on paper Haiti appeared to meet many of the criteria of statehood evangelised by Europe and its civilised societies. Indeed, as a Port-au-Prince newspaper wrote in 1821, Haiti had concretised its sovereignty by using:

> force against force; defense against attack; proclamation of independence against vain and illusory pretentions of transatlantic sovereignty; establishment of a republican government; formation of a liberal constitution; legal codes tailored to the country; consolidation of religion; everything, in a word, has been implemented so that Haiti would not be ashamed to see its name appear in the classification of the civilized and independent states of the world.[87]

It can therefore be observed that Haiti contained many of the features of a state including a constitution, legal system, formal Christian religion, and ability to defend its people and territory. Indeed, a British Officer, Marcus Rainsford, appeared to recognise this, remarking that the Haitian people possessed a territory with organised government and resources, and that the British could engage in agreements with them as they would any other less powerful country.[88] Despite this, Haiti continued to be refused entry to the 'family of nations,' struggling to receive recognition from both European states and the Catholic church.

---

[84] Knox (n2) 118-119.
[85] Ibid., 119.
[86] See Antony Anghie, *Imperialism, Sovereignty, and the Making of International Law* (Cambridge University Press, 2005.
[87] 'Port-au-Prince' (1821) No. 32 *Le Télégraph*, 2-4. Cited in Julia Gaffield, 'The Racialization of International Law after the Haitian Revolution: The Holy See and National Sovereignty' (2020) Vol. 125 No. 3 *The American Historical Review,* 841, 841.
[88] Gaffield (n77) 91.

The latter, for example, carried out an insulting visit by a bishop in 1821. Despite the Haitian constitution naming Roman Catholicism as the religion of the people and the state, the bishop had arrived without invitation under the title of 'apostolic vicar' to 'Saint-Domingue,' one that undermined Haiti's self-definition as 'Haiti'.[89] According to the constitution of Haiti, a diplomatic visit from Rome should only follow from an express invitation by the president; furthermore, the use of 'Saint Domingue' rather than Haiti in the bishop's title suggested that the church did not recognise Haiti's independence or consider themselves as requiring an invitation.[90] This insult was further reinforced by the term 'vicar' in the bishop's title, which was a role traditionally reserved for envoys sent to allegedly heathen jurisdictions.[91] Despite Haiti explicitly and officially naming itself a Catholic country in its constitution, it was not recognised as such by the papacy.

This dynamic, alongside the issues Haiti had in getting its independence recognised by other states, highlight the previously discussed standard of civilisation and logics of improvement and biology in action. This standard 'provided a doctrinal rationale for limiting recognition in international law to candidate countries which "recognizing states, rightly or wrongly, regarded as being civilized."'[92] The standard was generally focused on cultural and religious differences or distinct internal legal systems, with divergences in these being used to justify exclusion. However, as dictated by the logic of improvement, Haiti had structured its new state to contain many of the features prized by the 'civilised' nations and had made its official religion Christianity, a trait once itself a primary bearing on the civility of a peoples. As Julia Gaffield writes, '[l]eaders in Port-au-Prince understandably expected the Holy See to recognize Haiti as an independent Catholic country, since Haiti now met many of the apparent social, economic, and political criteria for membership in the family of nations.'[93] Why then did it continue to find itself excluded, including by the Catholic church?

As Ntina Tzouvala has described, the content of the standard often oscillated between this logic of improvement (which Haiti had followed) used to impose transformations on aspirant societies

[89] Gaffield (n87) 841.
[90] Ibid., 841-842.
[91] Ibid, 842.
[92] Gaffield (n87) 842, quoting Gerrit W. Gong, *The Standard of 'Civilization' In International Society* (Oxford University Press, 1984) 24.
[93] Gaffield (n87) 843.

and the logic of biology which suggested permanent immutable differences between Europe and the rest of the world.[94] Eventually, when the criteria of civilisation were made more explicit it became increasingly tied to whiteness.[95] This helps to explain why Haiti, ostensibly an independent state by many of the technical criteria offered by those within the 'family of nations', failed to be recognised as such. Racial characterisations crystallised during the transatlantic slave trade, and sustained in part through international law, served to determine Haiti's position in the world in the eyes of the European states. The content of norms of recognition and the membership criteria for the family of nations had been constructed by European states and this was used to maintain the marginalisation of communities outside of this continent, including the newly independent Haiti.

In search of the recognition and formal acceptance of its independence which it was being denied, Haiti was forced to enter into negotiations with France.[96] Within France, a protracted political, legal, and publicity pressure campaign had been launched by plantation and slave owners who had survived the Haitian Revolution and felt they had been robbed of their 'property.'[97] They lobbied the government to reconquer Haiti, reinstate slavery, and return their possessions to them.[98] There were several rounds of negotiations throughout a period of around eleven years. In an attempt to ward off further attempts at recolonisation, Haiti offered to pay a 'reasonable pecuniary indemnity' as compensation for the loss of land, but attached the condition of France recognising its independence.[99] This was rejected by France, and such a dynamic persisted for some time. Haiti was governed by Jean-Pierre Boyer during this period, a former General and one of the leaders of the revolution. A pamphlet printed by his government in 1825, towards the end of the negotiations, summarised well the history of the discussions thus far:

> In 1814 they wished to impose upon us the absolute sovereignty of France; In 1816, they were satisfied with a Constitutional sovereignty; In 1821, only a simple suzerainty was demanded; In 1823, during the negotiation of General Boyer, they confined themselves

[94] Ntina Tzouvala, *Capitalism as Civilisation* (Cambridge University Press, 2020) 2.
[95] Gaffield (n87) 843.
[96] This section will contain a necessarily brief description of the negotiations, for a more detailed account see Obregón (n35).
[97] Obregón (n35) 604.
[98] Ibid.
[99] Ibid., 605.

> to claiming sine qua non, the indemnity which we had previously offered: by what return to a spirit of domination, did we, in 1824, subject ourselves to an external Sovereignty?[100]

While Boyer continued to look for other sources of recognition, in 1825 King Charles X of France delivered a unilateral ultimatum to Haiti.[101] This imposition was designed to grant the desired recognition to Haiti but at the same time humiliate and destroy its capital, converting the island (unified under one government at this point) into a dependent commercial colony of France.[102] The royal ordinance that was signed by Charles X containing the proposal would concede 'full and entire independence' to Haiti on the condition that French ships would pay half price docking rights for future commerce and the island would compensate former plantation owners with F150 million, the maximum that the Haitian government had stated it would be willing to pay in the initial negotiation.[103] This amount of money was colossal, being five times France's total annual budget and ten times the price agreed for the Louisiana Purchase.[104] The proposal was delivered via gunboat diplomacy, with a squadron of French warships ready to blockade the island until the terms were accepted.[105] Faced with the options of accepting the ordinance or fighting a devastating conflict in a city that lacked the physical fortifications to defend itself against such a threat, Boyer was forced to accept on July 7 1825.[106]

Given that the act was not so much a bilateral agreement as a unilateral exaction by France, commentary from the time viewed the indemnity as an imposition on and capitulation by Haiti.[107] This legal form of an ordinance rather than a treaty was, of course, a deliberate choice by France, essentially treating the island as a wayward colony rather than an independent sovereign nation.[108] Boyer was widely criticised for accepting it; Haitians felt betrayed at having to accept this new form of colonial burden.[109] In agreeing to compensate the slave holders for the loss of their property, the Haitian government also necessarily recognised the legality and legitimacy of the racialised slave trade and of individuals as property.[110]

---

[100] Jeane-Pierre Boyer, *Pièces Officielles Relatives aux Négotiacions du Gouvernment Français avec le Gouvernment Haïtien, pour Traiter de la Formalité de la Reconnaisance de l'Indépendance d'Haïti* (1824). Cited in Obregón (n35) 609.
[101] Obregón (n35) 610.
[102] Ibid.
[103] Ibid.
[104] Ibid.
[105] Dubois (n30) 101.
[106] Obregón (n35) 610-611.
[107] Ibid., 611.
[108] Knox (n2) 119.
[109] Obregón (n35) 611.
[110] Knox (n2) 119.

The island was unable to pay the first instalment and was therefore forced to take an F30 million loan from a French bank with a 6 percent annual interest rate and fee of F6 million just to receive the money.[111] As a result, only F24 million made it to the French government to compensate its former slave owners.[112] This resulted in a 'double debt' whereby Haiti was obligated to pay money back to both the French government and French banks it was using to fund the initial debt, progressively increasing the original indemnity amount through fees and interest.[113] In this respect Haiti 'suddenly became a debtor nation, an unlucky pioneer of the woes of postcolonial economic dependence.'[114] For the second instalment Haiti was once again forced to turn to French banks, taking out a loan for F227 million which would be paid back in 35 annual instalments of F6.5 million.[115] Unfortunately Haiti defaulted after the first two instalments and Boyer was forced to enact several unpopular reforms such as a rural tax base, the issuing of paper money, and forced overproduction.[116]

After some negotiation over changing the amount of the indemnity and continued pressure from the former slave owners within France, in the end a new agreement, 'Traité D'Amité', was reached in 1838, though once again the presence of French warships deployed in Haitian waters meant that this was not entered into particularly freely.[117] Either way, this agreement brought the total indemnity down to F60 million to be paid over 30 years (of course via loans from French banks with exorbitant fees) and granted Haiti full recognition by France.[118] The debt was eventually paid in 1910 after nearly a century of debt; however, in order to do so Haiti was forced to borrow over F166 million, with more than half of this being used to pay bank commissions, interest, and similar fees rather than the actual indemnity.[119]

The former slave owners and their descendants therefore received a paltry sum compared to what they believed the value of their property to have been; however, in the process of obtaining this, their concerted efforts served to bind the newly independent Haiti into a neo-colonial

---

111 Dubois (n30) 102.
112 Obregón (n35) 612.
113 Dubois (n30) 102.
114 Ibid.
115 Obregón (n35) 612.
116 Ibid.
117 Anthony Phillips, 'Haiti, France and the Independence Debt of 1825' (2008) available at < https://canada-haiti.ca/sites/default/files/Haiti,%20France%20and%20the%20Independence%20Debt%20of%201825_0.pdf> accessed 20 July 2023, 5.
118 Obregón (n35) 613.
119 Ibid.

relationship of dependency with France and stymie the ability for it to flourish as a free state. Haiti itself did not demand nor receive any compensation from France for events during its colonisation and the misery inflicted on those enslaved, those who had died as a result, and the three centuries of free labour they had provided.[120] Not only did this unjust state of affairs throttle the ability of the newly independent Haitian state to grow and develop properly, this tie to France was also used by other states to justify refusing recognition to the island. Some states claimed that the existence of the debt meant that Haiti was not properly independent, while others failed to offer recognition due to their own connections with France and hopes of profiting themselves if France reclaimed the former colony.[121] Other states used the lack of recognition in order to send a message to their own slave populations that black people could not rule themselves and that any attempts to do so would fail.[122]

It can therefore be observed how international law was used to try and stymie the aspirations of the first free black republic. Recognition criteria and admittance into the 'family of nations' and the sovereignty and other legal rights and entitlements that came with it were weaponised in order to uphold the global system of colonialism and slavery. A perverse conceptualisation of property also meant that Haiti found itself liable for emancipating its people from their former slaveholders and undoing one of the greatest tragedies in human history, rather than receiving compensation itself for the dispossession, death, and exploitation it had faced as a colony of France.

Returning once again to the topic of disaster risk creation, this marginalisation and neo-colonial exploitation will all have impacted the vulnerabilities faced by Haitians with resonances in the modern day. Racialised characterisations and the construction of acceptance criteria meant that Haiti was not admitted into the family of civilised nations despite fulfilling many of the technical criteria based on the structure of its government and society. It was instead subjected to a deliberate campaign by the imperial powers (especially France) to sabotage the new state and make it an example to other colonies. This left Haiti severely marginalised in the international community, having its wealth and power constrained by this peripheralization and the lack of international sovereignty that accompanied it. The indemnity was used by France to economically cripple the new nation further and force it back within its orbit and into a state of

[120] Ibid., 614.
[121] Ibid.
[122] Ibid.

dependence. Significant amounts of it's the state's treasury being forcibly taken to service this post-colonial debt meant that fewer funds were available for building the state and improving the lives of Haitians, resulting in calculated under-development. As Laurent Dubois writes, while this indemnity was not solely responsible for the poor shape of the Haitian state's treasury at this time (a bloated military and corruption also sapped away significant funds), the indemnity did mean that the island's population 'watched as money that could have been used to build roads, ports, schools, and hospitals simply vanished.'[123] In addition to the misery it inflicted at the time, this would also have profound consequences on vulnerabilities when the earthquake struck.

6.3.2 The 1915 Occupation

Despite France's eventual recognition of Haiti in 1825, other states did not immediately follow suit. One of these was the United States, which continued to withhold recognition throughout much of the 1800s due to Haiti's status as a Black republic.[124] It was not until 1862 that the United States finally recognised Haiti's independence, partly because it believed the country could serve as a bulwark against the Dominican Republic,[125] which had claimed the Eastern half of Hispaniola and seceded from Haiti. This began US interest in the country, and as a result of Haiti's perennial debt, its national bank ended up being bought out by two US ones in 1909 with US capital beginning to penetrate its economy.[126] Far from bringing relief, the introduction of US capital and its disruption to peasant agriculture resulted in social and political instability, which continued to be exacerbated by debt payments.[127]

Due to the volatile situation in Haiti, US policymakers worried that it might be forced to default on its debts again. President Woodrow Wilson had adopted a paternalist approach to Latin and South America, and he included Haiti in his belief that these states lacked the ability for effective self-governance and that it was down to the United States to shoulder the burden of helping them.[128] Once again, the role of longstanding foreign interference in sabotaging the Haitian state was ignored in favour of the established narrative of racialised tropes.

[123] Dubois (n30) 103.
[124] Knox (n2) 120.
[125] Ibid.
[126] Ibid.
[127] Ibid.
[128] Ibid.

The killing of Haitian President Vilbrun Sam on 27 July 1915 proved to be the final straw for the United States, resulting in the deployment of US marines to Haiti and the beginning of an occupation.[129] This was justified under the grounds of preserving national order, protection of US diplomatic and economic personnel and property, and infringement of the Monroe Doctrine as a result of French "intervention."[130] The latter of these was especially tenuous as France had only sent a small force to reinforce its embassy in Haiti.[131] Paternalist logic informed by racialised characterisations crept into the legal justifications for the occupation and in the provisions of the bilateral treaty that emerged from the it, once again demonstrating the proclivity for international law to construct hierarchies and be used to the advantage of more powerful states against less powerful ones. Knox[132] for example highlights how the Associate Editor of the *American Journal of International Law*, Philip Marshall Brown, paradoxically argued that the treaty between Haiti and the United States that resulted from the occupation 'guards against the cession of territory by Haiti to any foreign government, or the impairment of its independence.'[133] This is despite writing in the previous sentence that the same treaty provides 'for a financial advisor possessing very extensive powers to be nominated by the United States, and for a native constabulary under American officers.'[134]

In this way the United States' own imperialism was masked by a paternalistic concern that other states might take advantage of Haiti, or its duty to act 'as an elder brother of these less fortunate republics.'[135] Elsewhere Brown also argued, when defending the intervention against criticism, that '[c]ertain peoples in a retarded stage of political development cannot reasonably be held to rigid interpretations either of constitutional law or international law.'[136] He writes further about his belief in the application of different standards to the 'baffling conditions' in these countries by stating that any 'attempt to apply to Haiti and Santo Domingo the same standards of procedure as might be invoked in Rhode Island is as unjust as it is unwise.'[137] This again

---

[129] Ibid.
[130] Ibid., 120-121. Citing Julia Leininger, 'Haiti, Conflict' in *Max Planck Encyclopaedia of International Law* (October 2008), available at <https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e1293> accessed 16 June 2023.
[131] Leininger (n130).
[132] Knox (n2) 121.
[133] Philip Marshall Brown, 'The Armed Occupation of Santo Domingo' (1917) Vol. 11 No. 2 *The American Journal of International Law* 394, 398.
[134] Ibid.
[135] Ibid., 399.
[136] Philip Marshall Brown, 'International Responsibility in Haiti and Santo Domingo' (1922) Vol. 16 No. 3 *The American Journal of International Law* 433, 434.
[137] Ibid.

demonstrates the use of hierarchy within international law and its application, with some societies being able to enjoy greater powers and more equal relations than others, usually along racialised lines. These power relations came to be codified within the content of the treaty between the two nations, which was agreed under significant duress.

The treaty, 'ominously titled' the 'Treaty Between Haiti and the United States Regarding the Finances, Economic Development and Tranquillity of Haiti', was drafted by the United States following the occupation and after it had ensured its supported candidate, Philippe Dartiguenave, won the next election.[138] In addition to the previously mentioned aspects that saw a US appointed 'General Receiver' take control of all customs revenues and the establishment of a US backed constabulary, the Treaty also contained an article ensuring that the Haitian government would never cede any land to a foreign power.[139] The effective outcome of the occupation was the United States taking control of the Haitian state treasury and customs houses.[140] Haiti was once again forced to sign an agreement imposed through military force and with another country that showed little regard for its sovereignty. International law, through the treaty, had arguably been used to formally concretise an imperialist relationship between the two states.

The Treaty naturally produced opposition within Haiti, and when this happened the US declared martial law and banned anti-US newspapers under the guise of needing to preserve human rights.[141] Eventually, after immense pressure, the agreement was ratified by the Haitian senate, setting in stone the idea that the Haitian people were unfit to manage their own affairs.[142] As with much of Haiti's history, this state of affairs was reached through heavy coercion by another state and embedded within ideas of racial inferiority; it was also instrumentalised via international law. The agreement of the Treaty, and the conceptualisation of Haitians as unfit to govern themselves, created space for the United States to reshape the Haitian economy under the guise of assisting the country towards good governance.[143] It directly impaired the power and independence of Haiti, and in the wake of the occupation there came several reforms, including the penetration of greater levels of US capital and the creation of the Gendarmerie, a military

[138] Knox (n2) 121.
[139] Ibid.
[140] Dubois (n30) 213.
[141] Knox (n2) 122.
[142] Ibid.
[143] Dubois (n30) 244.

and police force officered by US marines.[144] The result was greater levels of control by the United States and the ability for the country to mould the Haitian state into an image more amenable to US interests with little consideration for the local populace. This meant that little was done to address or prevent the exacerbation of poverty that many Haitian people faced and the vulnerabilities that stemmed from this.

However, the United States was initially unable to fully enact a transformation of Haiti due to the anti-colonial spirit embedded within its constitution, which forbade foreign ownership.[145] Any attempt to remove this clause was understandably heavily resisted in Haiti, and thus the United States resorted to dissolving the Assembly and putting a newly drafted constitution to a questionable referendum, which passed.[146] Under this new regime, the role of foreign capital greatly increased, particularly within agriculture.[147] In order to quell resistance, the United States imported its Jim Crow racial segregation laws and any unrest was dealt with brutally by the Gendarmerie.[148] The result was once again a legally rendered regime of hierarchy, which designated all Haitians as black, and therefore inferior and open to force from the Gendarmerie as a result of their savagery.[149] These conceptualisations would have echoes during the 2004 intervention discussed in the next section.

The 1915 intervention and its aftermath demonstrated the continued impact of the slave trade and its racial categorisations on Haiti. Despite its formal independence and sovereignty, it continued to be marginalised and denied full equality within the international system because of these racial characterisations and the legacies of its debt dependency with France. Instead of recognising it as a sovereign peer, the United States could only regard Haiti and the relations between the two countries with a paternalist slant. Constructions of race and the nation's debt dependency were therefore used to undermine the sovereignty of Haiti and construe its people as being incapable of governing themselves, justifying an occupation. International law in the form of an exploitative bilateral treaty, agreed under intense coercion, was then used to concretise a neo-imperial relationship between the two nations. Far from helping the Haitian people, which was a purported objective of the occupation, the intervention instead facilitated

[144] Knox (n2) 122.
[145] Dubois (n30) 244.
[146] Ibid., 245-247.
[147] Knox (n2) 122.
[148] Ibid.
[149] Ibid.

further rounds of capital accumulation to aid US economic interests at the expense of Haiti.[150] As with much of the history of the island from its first encounter with Europeans, international law and its role in constructions of race helped to facilitate the misuse of pathological power and wealth differentials to ensure that the economic activity of Haiti was manipulated towards supporting the economies of other states rather than the Haitian people. The inability of the Haiti to be economically independent and to direct funds into building its state would have highly detrimental impacts on vulnerability, as will be discussed shortly.

6.3.3 International Institutions, Multilateralism, and the 2004 Intervention

The United States eventually left Haiti in 1934. This followed an incident known as the 'Massacre of Cayes' that saw US forces kill Haitians rising up against the occupation, and the increasing inability of the occupiers to install client-presidents.[151] It had become increasingly apparent that the Haitian people, across class and regional lines, were united in their opposition to American presence after two decades of struggle against occupation.[152] While political leaders declared 1934 the country's 'second independence,'[153] it did not bring an end to the issues the country faced. While the marines had left the island, the occupation by the US, instrumentalised in part through the treaty between the two nations, had profoundly altered and reshaped the country from the political and economic order that been established during the Nineteenth Century.[154] This resulted in a deepening of rural poverty and increased strengthening and centralisation of governmental authority,[155] both of which would have harmful legacies for vulnerability when the earthquake arrived in 2010 (as will be discussed below). Because of this, continued debt and economic development focused on primary commodities meant that Haiti suffered badly during the Great Depression.[156] As mentioned previously, the occupation carried out by the US gave a glimpse into how Haiti would be treated by the international community in the future, and while overt racism began to fade away, 'a tight nexus of racialised stereotypes and debt-dependency continued to allow global capital into Haiti.'[157] As with many developing countries, Haiti also suffered at the hands of structural adjustments enforced by international

[150] Ibid., 123.
[151] Leininger (n130).
[152] Dubois (n30) 266.
[153] Ibid.
[154] Ibid., 267.
[155] Ibid.
[156] Knox (n2) 123.
[157] Ibid.

financial institutions like the International Monetary Fund (IMF) and World Bank when these began to be imposed later in the century.

Indeed, international law and its financial institutions can be argued to have produced, or at least contributed towards, a 'double whammy negative effect' in Haiti, resulting in weak economic performance and the hollowing out of the Haitian state.[158] This has served to stifle growth and inhibit the ability of the state to address issues within the economy,[159] further exacerbating vulnerabilities. The content of and issues that arise from structural adjustment policies were discussed in Chapter Four, but to summarise: they are largely focused on strategies such as reductions in government spending, privatisation, trade liberalisation, deregulation of financial markets, and deference to the market as the most appropriate arbiter of human needs. In 1986 such orthodoxy took the form in Haiti of IMF-ordered currency reform and trade liberalisation, which saw the country adopt 'some of the lowest tariff regimes in the Caribbean.'[160]

The currency reform sought to undo the historical pegging of the Haitian gourde at a 5:1 ratio with the US dollar, based on the argument that the former currency was overvalued and that was stifling Haitian agricultural exports.[161] Rather than devaluing the gourde by adjusting the exchange rate between the two currencies it was instead left to free float, leading to an immediate drop to a 7:1 ratio and it hitting 12:1 just two years later.[162] At the time of writing the rate is around 80:1. This policy led to a rise in inflation and a decline in the real value of wages, resulting in the Haitian people becoming poorer.[163] Additionally, as a result of various factors including 'demographic pressure, environmental degradation, deterioration of rural infrastructure, lack of capital to upgrade production facilities, and foreign competition,' the measure also failed in its aims of stimulating Haitian agricultural exports.[164] Therefore, not only was the focus on the overvaluing of the gourde as an answer to a complex problem entangled with 'property rights, inheritance practices, the environment, population growth, and globalization'[165] a myopic understanding of the problem, but the policy of currency reform itself

[158] Jean-Jermain Gros, 'Indigestible Recipe: Rice, Chicken Wings, and International Financial Institutions. Or Hunger Politics in Haiti' (2010) Vol. 40 No. 5 *Journal of Black Studies* 974, 974-975.
[159] Ibid.
[160] Ibid., 979-981.
[161] Ibid., 979.
[162] Ibid.
[163] Ibid.
[164] Ibid., 979-980.
[165] Ibid., 980.

also served to create further issues for the Haitian people. Neoliberal policies imposed by international financial institutions therefore directly contributed to the impoverishment of the people of Haiti and the concomitant rises in vulnerability.

The trade liberalisation enforced by the IMF also served to have negative consequences and potential increases in vulnerability. Until 1986 Haiti had protected certain industries and used taxes on trade as a large source of revenue for the state.[166] This helped to protect Haitian industries and livelihoods from unfair competition from foreign producers, who often enjoyed subsidies from their government and meant that Haiti was largely self-sufficient in the production of rice.[167] As mentioned above, this changed when the IMF forced Haiti to open its markets and adopt very low tariffs. The country was inundated with cheap, government-subsidised rice from the United States (known as Miami Rice), which flooded the market and pushed out Haitian producers who could not compete with the prices (the Haitian government had also been advised to remove what little assistance it did offer rice farmers).[168] While the increased affordability of rice certainly benefited many people in Haiti initially, it occurred through dispossessing native rice farmers of their livelihoods, a key driver of vulnerability. This depression of rice prices also did not last forever: by 2008 they had risen almost 40% and this, combined with continued wage stagnation, led to food riots as a result of structural adjustment measures hindering the ability of the Haitian government to manage supply and demand.[169] Furthermore, this was not merely a result of the function of capitalism, with one more efficient producer displacing another, but was enforced policies serving to benefit a powerful state at the expense of a less powerful one, highlighting again the role of power differentials and their impact on institutional policy as a root cause of vulnerability. As Gros writes:

> inefficient rice producers in the United States feed on government subsidy, which allows them to dump surplus rice on one of the world's poorest countries, whose farmers receive no subsidy and whose government was forced to open its market by drastically slashing import duties on rice. This [was] not the invisible hand of the free market working its magic; it [was] the heavy hand of one state applying pressure on another through the velvet glove of proxies (international financial institutions).[170]

[166] Ibid.
[167] Ibid.
[168] Ibid., 981.
[169] Ibid., 982-985.
[170] Ibid., 981.

A similar story unfolded with chicken in Haiti, with industrially farmed American chickens squeezing out their free-range Haitian counterparts.[171] This invasion of American poultry came just a few years after a consortium of foreign governments and international institutions including the International Development Bank and the United States Agency for International Development (USAID) had forced the country to cull its Kreyòl pig population in the name of fighting African swine fever.[172] Kreyòl pigs 'served as bank accounts' for many families in Haiti, allowing them to pay for many essentials like food, education, and clothing.[173] The eradication of these pigs at the behest of the US government and several international institutions, without also ensuring the disbursement of the promised compensation, was therefore devastating for the Haitian people. It resulted in rural families having to flock to the capital, Port-au-Prince, to try and escape starvation.[174] This again demonstrates the role of other states and international institutions in impoverishing the Haitian people and displacing them towards the capital, with profound effects when the earthquake struck, as will be discussed below. The cull combined with the influx of US poultry also led to accusations that Haitian diets were being Americanised.[175]

In addition to this negative effect on the Haitian economy as a result of structural adjustments, the measures also failed to recompense the loss in revenue to the state from tariff reductions. The main solution available to Haiti was further loans from the IMF which came with further structural adjustment conditionalities, thus creating a vicious cycle.[176] The forced privatisation of state-owned enterprises and this slashing of tariffs had a significant impact on the finances of the government and its ability to manage the state. The influx of foreign capital had little positive impact on this issue, due to the 'tax holidays' which were part of what incentivised them to setup there (alongside low wages and a lack of labour unions),[177] highlighting again the potentially negative role that the current foreign investment regime can play as a result of its neoliberal underpinnings and focus on the interests of corporations over the wellbeing of host states. Rather than providing protections to local communities, the investment architecture instead

---

171 Ibid., 983.
172 Marlene L. Daut, 'What's the Path Forward for Haiti?' *The New Yorker* (18 March 2023) available at <https://www.newyorker.com/news/annals-of-inquiry/whats-the-path-forward-for-haiti> accessed 9 August 2023.
173 Ibid.
174 Ibid.
175 Gros (n158) 983.
176 Ibid.
177 Ibid., 984.

emphasises the defence of investment and often actively promotes the creation of environments conducive to foreign capital even when this may produce detrimental effects for the local populace. It can therefore be observed how structural adjustment programmes imposed by the IMF served to hollow out the Haitian state for the benefit of powerful states and multinational corporations, with little benefits from these adjustments and the influx of investments being felt by the Haitian people themselves. They instead largely experienced unemployment and wage stagnation and the rises in vulnerability that comes with these. Likewise, the hollowing out of the Haitian state also had profound impacts on the state's infrastructure and its ability to provide services and regulation.

Further interference in the country by the international community under the auspices of international law occurred during the UN peacekeeping intervention in 2004. The events of the intervention are roughly as follows: in February 2004 President and leader of the left-wing Fanmi Lavalas movement, Jean-Bertrand Aristide, was overthrown and replaced by Boniface Alexandre, the Chief Justice of the Supreme Court.[178] At Alexandre's request for international support as Interim-President the Security Council passed Resolution 1529,[179] expressing deep concern for the deteriorating political, security, and humanitarian situation in the country.[180] The Resolution authorised the immediate deployment of a 'Multinational Interim Force' to the country under the auspices of Chapter VII powers of the UN Charter in order to 'contribute to a secure and stable environment' and to 'support the constitutional political process under way in Haiti.'[181] Further objectives of the peacekeeping force included offering assistance to the Haitian police and coastguard in order to 'establish and maintain public safety and law and order and to promote and protect human rights.'[182]

While, to many, the intervention seemed unexceptional and a model example of Chapter VII powers, especially after the debacle of the Iraq invasion the year before, Miéville[183] takes issue with the official narrative of events. It is Miéville's contention that Aristide's portrayal as a 'brutal tinpot dictator' was 'a risible misinterpretation.'[184] He argues that the removal of Aristide and the

[178] Knox (n2) 81.
[179] UNSC Res. 1529 (29 February 2004) UN Doc. S/RES/1529.
[180] Knox(n2) 81.
[181] UNSC (n179) 2.
[182] Ibid.
[183] China Miéville, 'Multilateralism as Terror: International Law, Haiti, and Imperialism' (Birkbeck ePrints, 2009) available at <https://eprints.bbk.ac.uk/id/eprint/783/2/HaitiBirk.pdf> accessed 1 April 2021.
[184] Miéville (n183) 27.

ensuing intervention was a coup by the Haitian elite backed by the US, France, and Canada, and that the intervention actually legitimised the coup by providing political and military support to the new regime.[185] According to this account, Aristide posed a threat to the Haitian elite and foreign capital within Haiti due to his aspirations to shift power towards the grassroots of the country, with his movement attempting to build 'Poverty with Dignity' and protect what social programmes and labour standards still existed.[186]

In his criticism of the intervention, Miéville is effectively arguing that multilateralism barely differs from imperialism, and that powerful imperialist states were able to use international law to further their own interests and intervene in the politics of the country.[187] When a Haitian leader threatened the interests of these states and sought to enact measures strengthening the Haitian working class, he was violently ousted with the support of these states and the United Nations.[188] Despite possessing sovereignty as a nation-state, the intervention in Haiti was facilitated through provisions within the UN Charter which permitted and legitimised powerful states directly interfering in the country. Furthermore, during the intervention, thousands of anti-Lavalas movement murders were perpetrated by anti-Lavalas organisations sheltered by the UN; UN peacekeepers themselves also attacked slums supporting the movement.[189] Here then, rather than protecting a weaker state from potential neo-imperialism of powerful ones, a central international institution was arguably working in the service of the powerful to directly and violently interfere in the political environment of another state. The language used to justify the intervention was very similar to that of the 1915 one, arguing on the basis of the inability of Haitians to govern themselves and the need to restore law and order.[190]

In this intervention we can see once again how international law was put towards the ends of powerful states and their corporations at the expense of Haiti. This served to sustain conditions that resulted in vulnerability, while stymying attempts at reforms by the Aristede government that may have helped to remedy this. As with the 1915 intervention, a paternalist view of Haiti prevailed, with the international community arguing that it knew what was best for the country, while supporting the deleterious status quo that fails to serve the Haitian people. The events

[185] Knox (n2) 82.
[186] Miéville (n183) 27-28.
[187] Knox (n2) 82.
[188] Ibid.
[189] Miéville (n183) 31.
[190] Knox (n2) 125.

discussed in this section also highlight an example of the arguments detailed in Chapter Four on the potentially problematic impact of many neoliberal policies imposed by international financial institutions. The loss of livelihoods from the importation of rice and poultry from the United States, rolling back of the Haitian state, and displacement of rural communities served to enrich external actors while further impoverishing the Haitian people. These issues all led to rises in vulnerability, as the next section will analyse.

6.4 Haiti, Disaster Risk, and the Progression of Vulnerability

Now that these key periods in the history of Haiti and the relationship of international law to them has been mapped out, the question left to answer in more detail is in what way they contributed to disaster risk and the devastation of the 2010 earthquake. It should first be noted that in no way is this chapter claiming that international law is solely responsible for the vulnerabilities that led to the disaster or that the causes are entirely exogenous in nature; as previous chapters discussing vulnerability have demonstrated, it is a complex tangle of drivers and factors. However, it is important to highlight the potential role that international law has played, and certainly to draw attention to the pathologies within this system. Through reading the previous sections on the history of Haiti, it should be immediately clear how the country has been kept in a state of underdevelopment, with its economy being bent towards the interests of external actors rather than the people of Haiti themselves for much of its history. This, combined with the hollowing out of the state and a political culture with roots in the colonial period, has led to increasing levels of vulnerability in the country, as will be discussed below.

If we begin with the root causes aspect of the progression of vulnerability, then Haiti's time as the colony of Saint Domingue looms large. As discussed in the previous chapters, international law can be argued to have played a key role in historic distributions of wealth, resources, and power, which have largely been reproduced in the modern day. The island's native population were wiped out by the Spanish and replaced by African slaves forced to labour in abhorrent conditions for the benefit of colonial masters, a process facilitated by juridical arguments and constructions of sovereignty, territory, race, and property, as described previously. As a result of this, the colony was able to produce vast amounts of wealth, becoming France's most valuable colony and at one point being 'responsible for more than 40 per cent by value of the foreign

trade of France.'[191] However, this wealth did not go to the enslaved people of Saint Domingue, who were ground down in the process, but was instead extracted by France. Thus, despite being able to produce vast amounts of valuable commodities such as sugar, coffee, and indigo, the process of colonisation facilitated by international law meant that the colony itself had a low endowment of wealth, with any money remaining on the island resting with a small number of slaveholders rather than the majority population, who were completely alienated from the products of their labour.

This low wealth endowment continued after independence through the indemnity price which France placed on recognition under international law. As mentioned earlier in this chapter, this served to stymie the growth of the newly independent Haiti and continue the transfer of resources from the island to France, thus maintaining colonial distributions of wealth. This lack of economic independence then persisted in the Twentieth Century as a result of the US occupation and the policies imposed by international financial institutions. The lack of recognition and the way that this was gatekept by European states and the US, and particularly weaponised by France, meant that the newly independent Haiti was also not considered properly sovereign and had a lower level of power within the international community, despite meeting many of the requirements of statehood. Instead, Haiti still found itself within the 'uncivilised' category and an object of colonial interest rather than enjoying the rights of sovereignty to which it was entitled. As with other states marginalised by the European powers, its place at the periphery was largely a result of racialised assumptions and the desire of imperial states to maintain the system of slavery and colonialism from which they profited. We can therefore see the role of international law in producing and sustaining low endowments of wealth and power for Haiti and its continued marginalisation, with consequences for its development and disaster risk.

Several scholars writing on Haiti have also discussed further post-colonial heritages stemming from this history of the nation, arguing that '[t]he material and historical inheritance of the colonial period and slaves' struggle for emancipation weigh heavily on the present.'[192] The heritages from the state's time as a colony and the events following its independence have impacted the political economy and political culture of Haiti, with negative results. French

[191] Robert I. Rotberg and Christopher K. Clague, *Haiti: The Politics of Squalor* (Houghton Mifflin Company, 1971) 32. Cited in Mats Lundahl, *The Political Economy of Disaster: Destitution, Plunder, and Earthquake in Haiti* (Routledge, 2013) 8.
[192] Robert Fatton Jr., 'Haiti in the Aftermath of the Earthquake: The Politics of Catastrophe' (2011) Vol. 42 No. 2 *Journal of Black Studies* 158, 158-159.

colonialism and the plantation system served to embed an authoritarian tradition in the country, with '[p]atterns of despotism [marking] Haitian politics since the inception of the republic in 1804.'[193] Aside from a few exceptions, the majority of Haiti's many constitutions have centralised power in one individual.[194] Toussaint Louverture himself, who abolished slavery on the island, also used a heavy hand in creating laws and appointing military personnel, demanded loyalty to himself, and became governor 'for the rest of his glorious life.'[195] The process of throwing off the shackles of slavery also imbued Haitian politics with a zero-sum nature ,where there is a reticence to share or surrender power to other parties.[196]

Robert Fatton argues that this authoritarian character of politics within the country is a result of the 'global and domestic historical and material structures within which Haiti gained and preserved its independence.'[197] In the aftermath of independence, aspirations for freedom, universality, and equality were sadly contested and overwhelmed by the unforgiving context into which Haiti emerged.[198] Material scarcity at home and constant threats of imperial aggression and sanctions from abroad swallowed such aspirations before they could properly grow.[199] The international legal system, largely constructed by the European powers, was actively used in a hostile manner towards Haiti's very existence. Indeed:

> The legacies of French colonial despotism and the violence of the revolutionary struggle for emancipation have decisively shaped the Haitian authoritarian habitus. Colonial society was conflict ridden; the profound antagonism between slave and master, the huge chasm among Whites, Blacks, and mulattoes, and the deep divide within these groups themselves had a determinant impact on the making of the postcolonial order. Haiti was bound to inherit the wounds of racial and class enmity. Moreover, after defeating the French and gaining their independence, Haitians confronted for more than a century the unmitigated hatred of White supremacist powers.[200]

[193] Ibid., 159.
[194] Ibid.
[195] Ibid.
[196] Ibid., 161; Gros (n5) 138.
[197] Fatton (n192) 159.
[198] Ibid.
[199] Ibid.
[200] Ibid., 160.

The founding fathers of Haiti therefore felt they had little choice but to embrace militarisation to confront these external threats at the expense of any sustained process of democratisation.[201] The need to import weapons and ammunition to ensure the security of the new republic led to some citizens being put back to work on the plantations under the supervision of the Haitian military.[202] The dilemma that early Haitian leaders faced therefore was the conflict between preserving the emancipation by supporting former slaves in becoming independent peasants, resulting in material underdevelopment, or promotion of immediate economic recovery through the imposition of military discipline.[203] These military leaders also sought to preserve and expand their own power which required the maximisation of revenues and foreign exchange, policies incompatible with subsistence farming.[204] As a result, the plantation system was restored which allowed for the collection of taxes and privileging of the ruling class, resulting in gross material inequalities and political despotism.[205] The context of the revolution and the world which the newly independent Haiti emerged into produced pressures that helped to drive this process, resulting in an 'unbridgeable gap between the state structure, which was a military one, and the rural agrarian base of the nation.'[206] Politics that had been shaped in part during colonisation and revolution and pressures imposed by the international system contributed to an overturning of the will of the majority of Haitians. This is not to suggest that all of the pathologies within Haitian politics stem from exogenous sources and the colonial period, however the struggle for independence certainly had a profound influence on its development. While the analysis of the thesis has focused on the role of pathological power and wealth constellations at the international level, problematic distributions at all levels of a society serve as root causes of vulnerability and these were all informed by the international realm.

This gap between the government and its citizens has largely continued with rulers attempting to supress subordinate groups, while enriching themselves and rewarding cronies, resulting in widespread corruption, with the state apparatus being used to enrich the ruling class.[207] Convinced that the majority of Haitians were not ready to participate in political life, the governing elites crafted state institutions that excluded the masses from formal political

[201] Ibid., 161.
[202] Lundahl (n191) 13.
[203] Fatton (n192) 161.
[204] Ibid.
[205] Ibid., 162.
[206] Fick (n67) 23. Cited in Fatton (n192) 162.
[207] Fatton (n192) 162.

involvement.[208] Fatton argues that this reflects *la politique du ventre* or the 'politics of the belly,' 'whereby different factions of the Haitian political class have traditionally fought with each other to "eat" the limited fruits of power.'[209] The battle for emancipation and the political culture that followed has meant that Haitian rulers came to conceive political power as a brutal and indivisible currency which could be won collectively but had to be kept and exercised in singular, absolute terms.[210] The constraint of Haiti's economic potential and power discussed above has impacted on this phenomenon, reducing the resources available and increasing the chances of competition over what little there is.

This led to the zero-sum nature of Haitian politics mentioned previously. There is a fight to the death to monopolise sinecures of political power, and those who gain it rapaciously consume public resources for their own private gains at the expense of others.[211] Overlapping forces compel this type of behaviour and also mean that peacefully relinquishment of power rarely occurs.[212] Indeed, constitutional structures established in the Nineteenth Century, themselves a further colonial legacy, have resulted in difficulties voting leaders out of office, causing government to frequently change hands via extraconstitutional and violent means.[213] The drive to obtain and cling to political power is a result of freedom in Haiti being historically constrained by material factors as a result of its colonial history, meaning that political power is one of the only routes of social and material advancement.[214] The role of international law in the constraint of Haiti's economic power and the emaciated conditions of the state has been detailed at length in the sections above.

This political culture has been propped up by neo-imperialism on the part of the United States, particularly during the Cold War as a bulwark against communism. The notoriously brutal and kleptocratic regimes of François 'Papa Doc' Duvalier and his son Jean-Claude, for example, were both backed by the United States.[215] Likewise, the previous sections on the 1915 and 2004 interventions have shown how the US and other states can be mobilised to ensure that certain

[208] Dubois (n30) 6-7.
[209] Fatton (n) 162.
[210] Ibid., 161.
[211] Ibid.
[212] Ibid., 163.
[213] Dubois (n30) 7.
[214] Fatton (n192) 163.
[215] Dubois (n30) 9.

favourable regimes are able to obtain and secure power, regardless of how it affects the ordinary people of Haiti.

Overall, these pathological distributions of wealth and power, in both the domestic and international spheres, and the other post-colonial heritages Haiti has inherited have all heavily impacted the vulnerability of the country to hazards. As Fatton summarises:

> Haiti's political history, from the revolutionary period through independence in 1804 to the contemporary post-Duvalier era, reflects the predatory nature of the dominant class that has persistently refused to ground its rule in a meaningful system of accountability. The dominant class has controlled the state for its exclusive benefit to extract resources from the poor majority. […] The whole system functioned within an international political economy that has historically been hostile to Haiti's autonomy and development. The intersection of domestic and global interests has had profoundly deleterious consequences for the overwhelming majority of the population.[216]

As a result, these root causes, the specific political culture they contribute to, and the impoverished condition of the Haitian state and its people that results, mean that vulnerabilities continue to be transmitted into the present. While the above analysis has largely concentrated on these temporally and spatially distant root causes of vulnerability that Haiti's historic relationship with international law have produced – namely poor distributions of wealth and power at the international level, pathological concentrations of this at the domestic scale, and other post-colonial heritages such as ideologies of militarism and a problematic political culture – we can also attempt to chart the progression of these into the unsafe conditions that produced the earthquake disaster. While the authors of the PAR model concede that the exact transmission between the different aspects of vulnerability is often difficult to identify,[217] we can usefully speculate on the process.

The 'authoritarian habitus' of the country and corruption among the ruling class has combined with external impacts on available public funds to completely cripple the Haitian state. The desire of the ruling class to enrich itself at the expense of the newly independent peasants, and the tension between these two groups, combined with the brutal indemnity debt to France that

---

[216] Fatton (n192) 164.
[217] Ben Wisner, Piers Blaikie, Terry Cannon, and Ian Davis, *At Risk* (Routledge, 2004, Second Edition) 61.

was leveraged through rules on recognition, mean that few state funds were available and much of what existed was extracted by those in charge for their own gain. This was then exacerbated further by structural adjustment reforms imposed by international financial institutions, which forced Haiti to liberalise its trade and, in the process, destroyed the public funds obtained through tariffs (as described previously). This led to even less money available for the state to fulfil its role in creating and maintaining infrastructure and effectively enforcing regulations.

Indeed, the GDP of Haiti in 2009, the year before the earthquake, was 7 billion US dollars, with 10% of this going to the state treasury resulting in a budget of US$700 million for a population of 9.15 million people.[218] Assuming all this went towards delivering public goods, it would be the equivalent of US$76 per citizen – wholly inadequate in delivering services, especially so in a country with little existing infrastructure.[219] However, this issue is exacerbated further by the fact that not even the majority of this sum went towards public goods, with corruption and venality among officials meaning that, on average, 80% of the budget of Haitian ministries went towards salaries, while just 20% was used for actually delivering services.[220]

Additionally, the zero-sum state of politics in Haiti has led to massive centralisation of power and public spending, largely in the capital. Indeed, '[w]hen faced between maintaining control and a moribund bureaucracy and losing some control and an active bureaucracy, many rulers have chosen the first pair.'[221] This has meant that the limited state assets and resources will only be deployed where the leaders themselves can personally oversee them. As a result, 'all of the services provided by the modern state – that is, policing, justice, sanitation, clean water, health care, education, even birth certificates – will be limited to the core or capital city, where the ruler resides.[222] This, inversely, means that areas outside of this core suffer from chronic underdevelopment, existing only as an object of exploitation to feed the core. Not only does the Haitian state struggle to project power on a sustainable basis throughout the entirety of its territory due to budgetary constraints, but such decentralisation also risks capture by the opposition due to the nature of politics in the country.[223] Focusing assets at the core close to the leader therefore serves to allow for the monitoring of those assets, to reward friends close to the

[218] Gros (n5) 138.
[219] Ibid.
[220] Ibid.
[221] Ibid., 137.
[222] Ibid.
[223] Ibid., 139.

leader, and punish enemies who are not.[224] In this practice we can see the self-serving and zero-sum nature of Haitian politics made manifest. The role of international law in contributing to the penury of the Haitian treasury that results in this has been discussed above.

The result is several processes of importance for vulnerability. The neglect and marginalisation of the periphery means that these areas have little in the way of state institutions and infrastructure, while the concentration of the limited amount of spending to one specific location causes people to move from the periphery to the core of the country.[225] The result of this rapid rural to urban migration, which was accelerated by the aforementioned USAID-sponsored swine culling programme and agricultural practices which have caused deforestation and soil depletion, is overpopulation in the capital and what limited infrastructure is available there being overwhelmed. This results in institutional and infrastructure access issues within the capital also. It is this phenomenon that also helped to contribute to the poor housing many Haitians were living in when the earthquake struck, with many citizens building their homes on mountainsides and in riverbeds.

Indeed, Gros estimates that Port-au-Prince could at maximum properly accommodate 250,000 people – a figure reasonable for the early-mid Twentieth Century population of the country of fewer than 5 million people.[226] However, as a result of the factors detailed above, in the three decades prior to the earthquake this number swelled to 2.5-3 million residents, or a third of the population of Haiti at this point.[227] Despite being the exclusive target of spending, the corruption and low levels of public funds detailed above meant that infrastructure like roads, the electrical grid, telephone lines, and sewerage systems remained largely unchanged from the earlier time of lower population density.[228] This, ironically, meant that the amenities that had attracted people to the capital became entirely inadequate under the population pressures and served to increase vulnerability through their allure instead of reducing it.

[224] Ibid.
[225] Ibid.
[226] Ibid., 140.
[227] Ibid.
[228] Ibid.

While residence in the capital theoretically made it possible to find employment, send children to school, be connected to the power grid, and receive medical care etc., pathologies within the state also made living there dangerous.[229] For example, living there also involved

> bribing state officials to acquire construction permits, unknowingly buying substandard materials such as reinforcement steel bars, sand, and cement (because of lax regulation), hiring incompetent craftsmen (because no system of licensing existed), living in congested space (because of the absence of urban planning), breathing dirty air, and exposing oneself to crime.[230]

The increases in vulnerability stemming from this should be readily apparent. Physical infrastructure like schools and government buildings and the homes of the residents of Port-au-Prince were shoddily constructed and medical facilities were understaffed and poorly equipped, barely prepared for everyday function, let alone the damage of a disaster.[231] This transformation of the capital in the three decades prior to the disaster, from 'sleepy tropical capital to ramshackle metropolis' was underwritten by issues within the politics of Haiti and the logics of capitalist development.[232] Indeed, as Gros writes:

> the devastation wrought by the earthquake is rooted in two interrelated Haitian phenomena: the tendency of Haitian rulers to hold national resources hostage […] and the natural response of desperate Haitians to this strategy, which was to rush towards Port-au-Prince. The geography and geology – in sum, the science – of the earthquake caused the simultaneous destruction of the state assets and hundreds of thousands of people because the pathologies of Haitian politics had needlessly concentrated both.[233]

The outcome was unimaginable destruction in Port-au-Prince and the effective decapitation of the Haitian state, as there were no state resources available elsewhere in the country to come to the aid of the capital.[234]

---

[229] Ibid., 142.
[230] Ibid.
[231] Ibid., 143.
[232] Ibid.
[233] Ibid., 139-140.
[234] Ibid., 143.

In the analysis above, we can see how the seeds of vulnerability sown by the root causes progressed into dynamic pressures identifiable in the PAR model, such as a lack of access to local institutions (either through their absence or insufficiencies), and ethical standards in public life due to the political 'habitus' of the country that stemmed in part from its colonial history and battle for independence and recognition. The political culture that followed the revolution and the years after can also be linked to macro-forces such as poor governance and corruption, which in turn resulted in rapid urbanisation and population change, as people from rural areas were compelled to move to the capital to gain some semblance of access to the Haitian state. External pressures from international financial institutions emphasising a path to development focused on 'export-oriented urban enclaves dependent on ultracheap labour' based around textiles and an assembly industry have also contributed to this process through the imposed neglect of the country's agricultural sector (outside of mangoes and coffee for export).[235] As discussed above, such a reliance on imports for food began with reforms enforced by the United States during its 1915 occupation which had enacted transformations for the benefit of foreign corporations rather than the Haitian people. This included, for example, the dispossession of land from rural farmers which was then leased to American companies who monopolised local resources.[236] This resulted in the loss of livelihoods and displacement of rural communities, creating further incentives to move towards the capital.

These pressures of overpopulation and corruption and poor governance then resulted in the unsafe conditions that allowed the earthquake to inflict so much damage. As detailed by Gros above, the situation in the capital meant that most residents were living in dangerous locations among unprotected buildings and infrastructure. Furthermore, despite improved access to employment, there remained low-income levels within the city. Finally, the poor state of public finances and venality of state officials meant that state infrastructure could barely accommodate day to day pressures, let alone allow room for disaster preparedness and social protections. Infrastructure outside the capital, meanwhile, was in an even worse state. This all resulted in conditions which made the Haitian people highly vulnerable to the earthquake when it struck.

As Anthony Oliver-Smith writes,

[235] Fatton (n192) 174.
[236] Dubois (n30) 269.

> [a] lack of building codes, together with informal settlements, widespread undernourishment and hunger, disease, poor access to clean water or electricity, inadequate educational and health facilities and services at the national municipal levels, and crime and corruption led to the construction of extreme vulnerability.[237]

Had urban planning and building construction been better regulated, or the state infrastructure less decrepit and limited, or the people and public funds less highly centralised, then it is likely that the earthquake would have inflicted significantly less damage. While these pathologies are largely within the purview of the domestic sphere, the emaciated condition of the Haitian state that precluded effective regulation of construction and provision of many services was heavily impacted by exogenous, international factors.

Powerful states and international financial institutions have contributed to the skeletal nature of the Haitian state and its inability to produce and enforce effective regulations through structural adjustment policies (as discussed) and the channelling of developmental aid into NGOs rather than state-building efforts. This is due in part to the history of governmental corruption within Haiti, but is also due to 'a blind ideological commitment to the market' under neoliberalism that has seen the state bypassed in favour of the private sector.[238] The state has been made to liberalise its trade, resulting in a loss of revenue from tariffs, and forced to privatise previously state operated enterprises like the telecommunications company TELECO and electricity company Electricité d'Haiti leading to further emasculation and loss of income.[239] The impoverished nature of the country cannot therefore wholly be blamed on governmental incompetence when the state itself has seen very little money. Neoliberal reforms have resulted in large cuts to public funds and a donor culture that favours external actors has resulted in the government receiving little of the aid money pledged to the country.

As a result, since the 1980s over 10,000 NGOs have been doing 'development work' in Haiti, acting as the privileged partners of international financial institutions and donor states.[240] While the work of NGOs can have a positive effect on the lives of ordinary Haitians, there is an issue with them fulfilling services meant to be administered by the state. The fragmentation of service delivery into various NGOs who have little coordination or coherence among themselves means

---

[237] Oliver-Smith (n32) 35.
[238] Fatton (n192) 172. It should also be noted that NGOs are not themselves immune to corruption.
[239] Gros (n5) 145.
[240] Fatton (n192) 173.

that they are generally only able to offer palliative relief, rather than enacting long-reaching structural reforms to truly improve the lives of Haitians and build up the capacity of the state.[241] Rather than aid going directly to the Haitian people, it is instead mediated through these organisations. Furthermore, 'civil society and NGOs do not spring from mid air and cannot magically detach themselves from the old structures of power, privilege, and wealth. They are embedded in these structures and they reflect all the contradictions that the interaction between global capitalism and Haiti's state and society embodies'[242] In many ways, their presence is a symptom of the progression of vulnerability rather than an alleviation of these, and their continued primacy over the Haitian state will not lead to reductions in vulnerability that are direly needed as their presence prevents the state from receiving funds and developing its own agency and expertise.

6.5 Conclusion

This chapter has pulled together the insights offered in the preceding chapters to analyse the history of Haiti and the role of its historical interactions with international law in helping to produce the conditions of vulnerability that led to the 2010 earthquake disaster. It is hoped that such a long-reaching analysis will demonstrate the process nature of disasters and dispel the typical view of them as being isolated events. Haiti's present situation is profoundly impacted by its colonial past and the backlash against its position as the only successful slave revolution and first free black republic, and this lineage has affected the disaster risk the country faces in a number of ways.

The chapter has also sought to highlight the role of international law in contributing to the structures and processes that act as root causes of vulnerability and help to progress these into dynamic pressures and unsafe conditions. In this respect, the analysis seeks to demonstrate, by way of a concrete illustration, the need for a modus operandi that challenges specifically state-centred approaches to disaster risk reduction which do not take structural factors into account properly. The case of Haiti offers a powerful illustration of the exogenous nature of many drivers, both historic and contemporary, of the vulnerability faced by a range of countries exposed to hazards. It also shows how one such exogenous (and in Haiti's case, one particularly powerful) driver is international law itself. As discrete areas of international law increasingly

[241] Ibid.
[242] Ibid.

orient themselves towards DRR, it is essential to the effectiveness of these instrumental uses of international law that the discipline comes to terms with the legacies of vulnerability that it has itself had a significant hand in producing.

Conclusion

The Legal Rendering of Catastrophe[1]

Disasters are highly complex phenomena involving a number of intersecting factors, and the analysis of them is reflective of this in straddling a number of different disciplines. A full, comprehensive analysis of the relationship between international law and disasters, even within the relatively generous bounds of a thesis, is therefore a challenge. Despite this, the analysis of this thesis has sought to offer a novel contribution to such enquiries by drawing attention to the relatively unexplored negative aspects of the relationship between the two and highlighting some of the most prominent features of this.

This endeavour began by synthesising together a novel compound analytical lens using Marxist and Third World Approaches to International Law (TWAIL) and insights from concepts and theoretical frameworks within disaster theory such as the Pressure and Release (PAR) model. By bringing these different theories and frameworks together and picking out the links between them, a lens for viewing the pathologies within international law and their role in the creation and exacerbation of disaster risk can be produced. This has involved an examination of issues arising both from international law's presence and, in some cases, its absence.

While this thesis made use of Marxist and TWAIL approaches to international law to do this, these are not the only critical lenses that can offer insights into the problems within international law and their connection to disaster risk. As the section on vulnerability within Chapter Two discussed, social constructions of gender and sexuality, their intersectionalities, and systems of power, for example, are key components in making people more vulnerable to the effects of hazards and more precarious in their aftermath. Therefore, feminist[2] and queer approaches to international law could also potentially offer important insights into this relationship between the international legal system and disaster risk. The section on hazards in Chapter Three also highlighted the importance of feminist approaches in countering anthropocentric narratives and

[1] Section title inspired by the name of Chapter 1 of John Linarelli, Margot E. Salomon, and Muthucumaraswamy Sornarajah, *The Misery of International Law* (Oxford University Press, 2018).
[2] For an example of this see Gabrielle Simm, 'Disasters and Gender: Sexing International Disaster Law' (2021) Vol. 2 *Yearbook of International Disaster Law* 144.

epistemic hierarchies[3] in our understanding of the environment and undoing the harms that result from this.

Within the thesis's analysis several overlapping features could be picked out which represented novel contributions to discussions on the relationship between international law and disaster risk. This began with an examination of the root causes of vulnerability and its attention to distributions of power, wealth and resources, and the hegemony of certain ideologies such as neoliberalism and consumerism. Insights from Marxist and TWAIL theories both point towards the role of international law in structuring power relations between different communities in the international system, in institutionalising and reproducing certain, facilitating imperialism, and in producing distributional structures and processes from this that allocate wealth and resources in a specific manner.

In this way the international legal system, through both its presence and absence in certain areas, contributes to and potentially constitutes some of these root causes. Historically, international law was used to render hierarchies of people within the international system and to facilitate the plunder, displacement, and even the commodification of people under European colonialism. This served to transfer vast amounts of wealth from the Global South to the Global North and also contributed to several enduring structures of marginalisation and discrimination, such as constructions of race and a heavily Eurocentric system of international law. This impacted the construction and development of key international legal concepts like property, territory, and sovereignty. As Chapter Three discussed, colonial policy and the transformation of indigenous societies to facilitate this had negative impacts on levels of disaster risk at the time and many modern societies continue to suffer from the legacies of this. The discussion on the work of Antony Anghie[4] and others demonstrated that it was through legally rendered power hierarchies that these transformations were justified and facilitated.

When international law progressed into its more modern incarnation and witnessed the collapse of formal European empires, many of these dynamics continued to persist, despite the formal equality won by newly independent states. International economic law and its institutions, key

[3] On the use of feminist lenses in exposing systems of power within the context of climate change and knowledge production see Natalia Urzola Gutiérrez, 'Gender in Climate Litigation in Latin America: Epistemic Justice Through a Feminist Lens' (2023) Vol. XX *Journal of Human Rights Practice* 1.

[4] See for example, Anthony Anghie, *Imperialism, Sovereignty, and the Making of International Law* (Cambridge University Press, 2005).

pieces of architecture in global distributional processes, continue to allocate wealth and resources in a pathological manner, in part because of legacies from the colonial period. Not only has there been little in reparations for the crimes of colonialism and slavery,[5] and the huge transfers of wealth that these facilitated, but the foreign investment regime, through its failure to effectively regulate the activities of multinational corporations, largely allows for the continued plunder of resources and labour from states in the Global South with impunity. Due to this persistence of problematic dynamics and processes the global direction of wealth transfer continues to largely be from the poor to the rich, from South to North. This thus sustains pathological distributions of wealth that act as a root cause of vulnerability.

Oxfam, for example, report that the richest 1% have now accumulated more wealth than the rest of the world put together.[6] Linarelli, Salomon, and Sornarajah meanwhile point towards the continuation of specific directions of wealth transfer: while in 1976 developed market-based economy countries containing 20% of the world's population enjoyed 66% of total world income, by the Twenty-First Century this shifted to them receiving around 85% of total world income.[7] Therefore while there have been some transformations within international law and in the global balance of wealth, for the most part the distributional processes of the international system continue to function in a similar way, just through different means. This results in the continued production of vulnerability, with many communities continuing to face economic marginalisation and poverty as the machinations of the global economy function to disadvantage them in the service of the rich and powerful.

One manner in which these distributional processes are reinforced discussed by the thesis is through the hegemony of neoliberalism and the narratives that surround it. As the analysis of the PAR model and discussions in Chapters Two and Four of this thesis have demonstrated, this is a major source of disaster risk across the world. Despite the claims of its proponents and some

---

[5] For a discussion on reparations in the context of the slave trade see Thomas Craemer, 'International Reparations for Slavery and the Slave Trade' (2018) Vol. 49 No. 7 *Journal of Black Studies* 694. On reparations for slavery and colonialism and the obligation for states to do this under international human rights law see 'Report of the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Racial Intolerance' (21 August 2019) UN Doc. A/74/321; On the ongoing case for reparations and its increased necessity in the light of climate change see Olúfémi O. Táíwò, *Reconsidering Reparations* (Oxford University Press, 2022).

[6] Oxfam, 'An Economy for the 1%' (18 January 2016) < https://oxfamilibrary.openrepository.com/bitstream/handle/10546/592643/bp210-economy-one-percent-tax-havens-180116-en.pdf;jsessionid=FF9DCF5C20F62488122D62030A1FBD61?sequence=47> accessed 26 October 2019, 2.

[7] Linarelli, Salomon, and Sornarajah (n1) 13.

limited successes, for the most part the rise of neoliberalism has been highly detrimental to many people on a range of metrics from poverty to the well-being of the environment.[8] Both David Harvey and Henrietta Moore, for example, have concluded that countries in the Global South that adopted neoliberal policies such as privatisation, trade liberalisation, and fiscal discipline through the 1990s actually saw their economic growth become lower both in absolute terms and relative to other states that did not carry out such reforms or did so only partially.[9] Like the transformations of the colonial era, neoliberal policies were imposed on many states, either through active coercion in structural adjustment programmes which exploited post-colonial economic fragilities, or through the less-direct incentive of foreign investment and purported improvements in economic development. International law institutionalised this ideology and offered the machinery through which these policies were enacted and imposed. Power dynamics within the international system and the ideological capture of international financial institutions were key in this process and in sustaining its dominance, as will be discussed shortly.

As a result of neoliberal thought and the proliferation of its policies and ideological lens both vulnerability and environmental degradation – resulting in the creation and exacerbation of hazards – have increased. On the latter, for example, Harvey writes that several catastrophic environmental events can be traced to the rise of neoliberalism, with its hegemonic era also being the period of the fastest mass extinction of species in the planet's recent history.[10] While the problematic framing of human and environmental relations within international law began during the Enlightenment period, the unfettered exploitation of nature demanded by the imperatives of neoliberalism has drawn from this and compounded it further. In addition to this, as has been discussed, policies of austerity, privatisation, trade liberalisation, and marketisation have proved highly detrimental to livelihoods, poverty levels, and societal institutions in a number of cases, while influxes of global capital have also displaced people from their homes and environmental assets they rely upon for survival, further increasing levels of vulnerability. Overall, neoliberalism, enabled through international economic law's trade and investment architecture, engenders an unjust global economy which generally serves to immiserate the majority of the world's people and increase their vulnerabilities while transferring large amounts of wealth to rich states, corporations, and individuals.

---

[8] See David Harvey, *A Brief History of Neoliberalism* (Oxford University Press, 2005).
[9] Harvey (n8) 154; Henrietta Moore, 'Global Prosperity and Sustainable Development Goals' (2015) Vol. 27 *Journal of International Development* 801, 807-808.
[10] Harvey (n8) 173.

Neoliberalism is intimately connected to international law, and the law has played a key role in its proliferation and reproduction. As Harvey writes, proponents of neoliberalism now 'occupy positions of considerable influence in education (the universities and many "think tanks"), in the media, in corporate boardrooms and financial institutions, in key state institutions (treasury departments, the central banks), and also in those international institutions such as the International Monetary Fund (IMF), the World Bank, and the World Trade Organisation (WTO) that regulate global finance and trade.'[11] Its ideological assumptions therefore underpin much of the law that constructs the global economy and leads to problematic assumptions such as the isolation of economic structures from the social and environmental damage they cause, which are instead deemed to be the purview of other regimes to manage.[12] International law's continuing infatuation with neoliberalism therefore means that it is complicit in the widespread disaster risk creation that has and continues to stem from its hegemony and application.

Connected to this is the fact that, alongside the continuation of pathological distributions of wealth and resources, power within the international system also remains inequitably allocated despite the formal equality of its participants. As Chapter Four discussed, international law continues to be largely Eurocentric, with many doctrines from the colonial era persisting. Furthermore, attempts at reforming international law-making to be more democratic and cosmopolitan were met with heavy resistance by states that benefitted from the status quo, resulting in the non-binding nature of General Assembly resolutions and failure of the New International Economic Order. As a result of this, international law largely continues to 'reflect the dominance of certain states and to favour their interests while upholding a system of ideas and practices that extends their privileges,'[13] contributing to unjust distributions of power that acts as a root cause of vulnerability. It is because of these power relations that poverty, marginalisation, disaster risk, and other negative outcomes of the international system are distributed in a specific inequitable manner.

Overall, therefore, international law throughout its history, including in the modern day, has been culpable in the legal rendering of catastrophe. It has served to contribute to structures and processes that have created and exacerbated hazards and made people across the world more

[11] Ibid., 3.
[12] As Linaelli, Salomon, and Sornarajah (n1, 2) write, 'In furthering the values of this particular economic project, the regimes of international economic law rely on the fabricated bifurcation, both in theory and institutional practice, of distinct economic and (so-called) non-economic realms.'
[13] Linarelli, Salomon, and Sornarajah (n1) 1.

vulnerable to their impacts. It has also, in many cases, served to undermine attempts at reducing disaster risk through its pathological focus on the rights and interests of corporations, as Chapter 5 demonstrated. Greater light needs to be shone on this connection by both scholars working on disasters and international law and those working within the TWAIL and Marxist traditions, and it is in this respect that the thesis is able to make an original contribution of interest to these different areas of scholarship.

While its analysis is important for scholars within IDL so that a body of law mindful of these wider disaster risk producing pathologies can be constructed, it is also relevant to critical scholars in demonstrating a further way that international law and its connection to capitalism and imperialism is responsible for misery in states across the world, but especially in the Global South. It has offered important, sustained analysis on this connection between international law and the creation of disaster risk which remains largely unconsidered in IDL scholarship[14] and practitioner circles.[15] Furthermore, by synthesising TWAIL and Marxist frameworks together with disaster theory understandings and the PAR model, the thesis has also offered a novel application of these approaches to international law to highlight how the international legal system, whether through omission or commission, has been, and continues to be, culpable in the production of disaster risk.

As it stands the fragmentation of international law helps to obfuscate both these connections and the 'false contingency' that many more socially and environmentally conscious regimes of international law face as a result of the functioning of international law more widely, masking their presence. It is only through a holistic, comprehensive analysis of disaster risk and the international legal system and its roots that such dynamics can be identified and addressed. This thesis has offered an original contribution to these areas of study that can serve as a key starting point for the larger project of such an endeavour.

[14] As mentioned previously, exceptions include Marie Aronsson-Storrier, 'Beyond Early Warning Systems: Querying the Relationship Between International Law and Disaster Risk (Reduction)' (2020) Vol. 3 *Yearbook of International Disaster Law* 51; Marie Aronsson-Storrier, 'Sendai Five Years On: Reflections on the Role of International Law in the Creation and Reduction of Disaster Risk' (2020) Vol. 11 *International Journal of Disaster Risk Science* 230.
[15] As noted by David Fisher, Manager of Policy and Disaster Law at the International Federation of the Red Cross, in a conversation with the author.

The Future of Disasters and International Law

Temporality and genealogy are key features which the thesis has sought to emphasise. As discussed in Chapter Two, disasters are processes with drivers that stretch back far into the past. Therefore, successfully understanding the factors behind any particular event requires tracing these roots. Because of this the thesis has sought to marry this understanding of disaster risk with a historical study of international law, examining not just the role of international law in the creation of disaster risk in the modern day, but also how it has played a role in the construction and ongoing legacies of this throughout time. This has also required a more pluralist understanding of international law which includes the choices of states and the norms informing these, arguments of jurists, international institutions and their structures and policies, decisions by international courts and tribunals, distributions of rights and the processes behind this, and foundational concepts of the discipline. The roots of many disasters experienced in the present burrow deep into the past of the colonial era, and international law itself experiences a similar phenomenon of historical transmission. Therefore, dismantling longstanding structures and processes of disaster risk creation also requires reckoning with the history of international law. Without such an interrogation and deconstruction, disasters will remain as 'planned misery'[16] of the current arrangements of the international system with their catastrophic impacts on people across the world continuing unabated.

This intergenerational aspect of disasters and their connection to international law also raises interesting questions over responsibility for disasters. As has been stressed, identifying the exact causal factors behind individual disasters is a very difficult process. However, the contention of the thesis that powerful states, through international law, have been responsible for widescale imposition of disaster risk on states in the Global South raises questions of reparations and compensation. There clearly remain strong arguments for reparations for colonial wrongs and this thesis has elaborated on how the horrors of that period were also responsible for the ongoing creation of disaster risk, suggesting a further temporal aspect of these arguments. Furthermore, arguments on climate justice,[17] for example within the context of the 'loss and

[16] Susan Marks, 'Human Rights and Root Causes' (2011) Vol. 74 No. 1 *The Modern Law Review* 57, 75.

[17] On this topic broadly see, for example, Livia Ester Luzzatto, *Intergenerational Challenges and Climate Justice: Setting the Scope of Our Obligations* (Routledge, 2022); Malgosia Fitzmaurice and Agnes Viktoria Rydberg, 'Using International Law to Address the Effects of Climate Change: A Matter for the International Court of Justice?' (2023) Vol. 4 No. 1 *Yearbook of International Disaster Law* 281; Simon Caney, 'Cosmopolitan Justice, Responsibility, and Global Climate Change' (2005) Vol. 18 No. 1 *Leiden Journal of International Law* 747; Rosemary Lyster, *Climate Justice and Disaster Law* (Cambridge University Press, 2015).

damage' element of the Paris Agreement, can also represent an interesting parallel for such explorations. Similar dynamics feature with states in the Global North having built vast wealth off the back of exposing communities in the Global South to greater levels of disaster risk,[18] and thus in line with the climate justice movements there are potentially moral and legal arguments for Global North states paying to help address this situation. While beyond the bounds of this particular thesis, it is a potential starting point for future research.

In terms of the continuing development of international disaster law (IDL), as mentioned in the introduction to the thesis, it is not argued or assumed that international law is solely responsible for all production and deepening of disaster risk. However, I believe that the findings of the thesis have important implications for the understandings of the relationship between disasters and international law and the development of this relatively nascent regime. Through the analysis of the thesis, it is clear that international law has played a role in the structures and processes responsible for the creation and exacerbation of disaster risk, and therefore this issue cannot be addressed without coming to terms with the connection between the two. It is here, therefore, that the thesis's criticisms of the current development of IDL can be found.

A continuing focus only on only the relationship between a few discrete areas of law (IDL, International Human Rights Law (IHRL), and International Environmental Law (IEL))[19] and disasters and an uncritical presupposition of the law as a solely beneficial tool is insufficient for comprehensive disaster risk reduction (DRR). Likewise, an acceptance of the mainstream, parochial narrative of the origins of international law and its relationship to horrors like colonialism and slavery means failing to grasp the historical process-based nature of disasters and longer-term relationships between international law and disaster risk. Accepting and operating within the existing narratives and structures of international law without interrogating these further or examining how they may be undermining its normative aims will heavily hinder the development of an effective corpus of IDL. As a result of this, it is the view of this thesis that IDL scholars and practitioners need to engage significantly more with critical approaches to international law and the insights and perspectives that they offer.

---

[18] Many indigenous scholars consider climate change to be an intensification of colonialism; a further step in a process that began with the earlier stages of colonialism under European empire, the spread of capitalism, and the industrialisation that these facilitated. Arguments can be made, supported by the analysis of this thesis, that disasters represent a similar phenomenon, being intimately intertwined with climate change and possessing many of the same roots. On this thought within indigenous scholarship see Kyle Whyte, 'Indigenous Climate Change Studies: Indigenizing Futures, Decolonizing the Anthropocene' (2017) Vol. 55 No. 1-2 *English Language Notes* 153.

[19] These areas of law are also not without their own disaster risk-relevant pathologies, as discussed shortly.

As mentioned in the introduction, it is here that this thesis is making a unique contribution to discussions on international law and disasters. There is a dearth of engagement with critical accounts of international law and an examination of the wider connections of the discipline to disasters. In this way it is hoped that the findings of the thesis will spur more introspection on this matter and how it affects DRR. While the further development of IDL is clearly of great importance, it is also vital that this evolution of the regime occurs in a manner that is not blind to the pathologies within international law and its problematic history. A failure to develop in this way risks IDL falling into the trap that IHRL and IEL have arguably found themselves in of being co-opted and subsumed by the existing structures of international law to the detriment of their normative aims.

Many critical IEL scholars, for example, point to problematic constructions and assumptions related to the environment within international law that IEL often inadvertently helps to uphold and reproduce, undermining its normative aims and credentials.[20] Indeed, 'IEL fashioned in the aftermath and shadow of disaster has suffered from […] fixating on discrete incidents and the risk of recurrence, rather than larger structural shortcomings in the international order that are enabling global environmental decline.'[21] Likewise, IHRL is not without its critics for a number of reasons, and part of the issues raised with the regime is its connection to neoliberal thought and potential co-option by regimes within IEcL,[22] which may be harmful to its role in DRR. This has led to criticisms over the emancipatory potential of IHRL, with some going as far as to describe human rights as 'nothing but elementary concessions that in the final analysis serve to

[20] This was also discussed briefly in the Introduction of the thesis. For expanded discussion see, for example, Emily Jones, 'Posthuman International Law and the Rights of Nature' (2021) Vol. 12 Special Issue *Journal of Human Rights and the Environment* 76; Louis J. Kotzé, Louise du Toit, and Duncan French, 'Friend or Foe? International Environmental Law and its Structural Complicity in the Anthropocene's Climate Injustices' (2021) Vol. 11 No. 1 *Oñati Socio-Legal Series* 180; Anna Grear, 'Deconstructing *Anthropos*: A Critical Legal Reflection on "Anthropocentric" Law and Anthropocene "Humanity" (2015) Vol. 26 *Law and Critique* 225; Usha Natarajan and Julia Dehm (eds.), *Locating Nature: Making and Unmaking International Law* (Cambridge University Press, 2022).

[21] Tim Stephens, 'Disasters, International Environmental Law and the Anthropocene' in Susan C. Breau and Katja L. H. Samuel eds. *Research Handbook on Disasters and International Law* (Edward Elgar Publishing, 2016) 153, 154.

[22] See, for example, Samuel Moyn, 'A Powerless Companion: Human Rights in the Age of Neoliberalism' (2014) Vol. 77 No. 4 *Law and Contemporary* Problems 147; Samuel Moyn, *Not Enough: Human Rights in an Unequal World* (Harvard University Press, 2018); Jessica Whyte, 'Powerless Companions or Fellow Travellers? Human Rights and the Neoliberal Assault on Post-Colonial Economic Justice' (2018) Vol. 2 No. 2 *Radical Philosophy* 13; Jessica Whyte, *The Morals of the Market: Human Rights and the Rise of Neoliberalism* (Verso, 2019); Upendra Baxi, *The Future of Human Rights* (Oxford University Press India, 2008); Linarelli, Salomon, and Sornarajah (n1) Chapter 7.

pacify and thus to further stabilise the system by serving as absorbers of discontent.[23] As a result, far from effectively countering or dismantling the pathologies within the international legal system, IHRL may instead be guilty of offering only palliative solutions while sustaining the wider system and the disaster risk it continues to produce by inhibiting wholesale reform. Therefore, while these regimes are often heralded as potential salves against disasters and gap fillers for the still nascent IDL regime, these pathologies within them risk undermining this role and the benefits they can provide and represent a cautionary tale for the development of IDL.

Further Research and Concluding Thoughts

As the introduction of the thesis discusses, a key limitation of this piece of work is in the range of areas of international law and aspects of disaster risk it has been able to analyse within its length constraints. Therefore, in terms of further research that could be carried out in this area, there is much that can be done. While this thesis has focused primarily on the root causes of vulnerability and given some attention to the role of international law in the creation and exacerbation of hazards, these are far from the full driving force behind disaster risk. Much more analysis can therefore be carried out on international law's role in the other aspects of vulnerability (dynamic pressures and unsafe conditions) and how it helps to progress vulnerability from the root causes through to these.

Likewise, as alluded to in the introduction of the thesis, due to length constraints this text has only been able to consider international law in relatively general terms, with only the foreign investment regime as an area of law receiving more specific, forensic attention. There is therefore much opportunity for greater analysis of individual areas of international law and their relationship to disaster risk. While the regimes of International Economic Law (IEcL) are prime targets for such analysis,[24] due to their relationship with neoliberalism and role in distributional processes and impacts on livelihoods and land tenure among other aspects of vulnerability, it is also equally important to interrogate the purportedly more socially and environmentally conscious areas of international law which operate within the existing, potentially pathological structures, norms, and doctrines of the international legal system.

---

[23] Antonios Tzanakapoulos, 'The Master's Tools and the Master's House: Marxist Insights for International Law' in Anne van Aaken, Pierre d'Argent, Lauri Mälksoo, and Johan Justus Vasel (eds.) *The Oxford Handbook of International Law in Europe* (Oxford University Press, Forthcoming) available at < https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4544488> accessed 28 August 2023, 14..

[24] As demonstrated in the analysis of Chapter 4.

In a similar vein, as touched on above, examinations of the newer field of IDL also need to be carried out. While this area of law is still growing and is relatively immature compared to the other international regimes discussed, it is important that the urgent need for greater regulation of disaster risk does not see its frameworks accepted uncritically. Given the damaging pathologies within the international legal system more widely and IDL's use of these foundations, we must pay close attention to the ways that this regime may also be unwittingly sustaining, reproducing, and legitimising harmful ideological assumptions and practices. The aim is not to stymie the development of such a crucial field, but instead to ensure that it is not blind to the complex and multifaceted process of disaster risk creation and that it can truly achieve its normative aims by offering a comprehensive analysis and remedy to these. IDL will not achieve its normative aims of preventing disasters and protecting people across the world if it accepts and upholds problematic structures and processes rather than seeking their dismantlement.

Bibliography

Primary

Arbitrations and Cases

Aguinda v Texaco, Inc. [1994] 850 F. Supp. 282 (S.D.N.Y. 1994).

AWG Group Ltd v The Argentine Republic (Decision of Liability, 30 July 2010) International Centre for Settlement of Investment Disputes Case No. ARB/03/19.

Budayeva and Others v Russia [2008] ECtHR App No. 15339/02 and others Reports of Judgments and Decisions 2008 (extracts) (*Budayeva v Russia*).

Chevron Corp. v Donziger [2014] 974 F. Supp. 2d 362 (S.D.N.Y. 2014).

Methanex Corporation v United States (19 August 2005) Final Award on Jurisdiction and Merits (UNCITRAL) 44 ILM 1345 (*Methanex* case).

Okpabi and others (Appellants) v Royal Dutch Shell Plc and another (Respondents) [2021] UKSC 3 available at <https://www.supremecourt.uk/cases/uksc-2018-0068.html> accessed 20 June 2023.

Öneryildiz v Turkey [2004] ECtHR App No. 48939/99 Reports of Judgments and Decisions 2004-XII (*Öneryildiz v Turkey*).

Rockhopper Italia S.P.A., Rockhopper Mediterranean Ltd, and Rockhopper Exploration PLC v Italian Republic (14 April 2017) ICSID Case No. ARB/17/14 (*Rockhopper v Italy*).

Von Pezold v Zimbabwe (28 July 2015) ICSID Case No. ARB/10/15, Award (*von Pezold* case).

European Court of Human Rights Documents

European Court of Human Rights, 'Guide on Article 1 of Protocol No. 1 to the European Convention on Human Rights' (31 August 2022) <https://www.echr.coe.int/Documents/Guide_Art_1_Protocol_1_ENG.pdf> accessed 17 May 2023.

Instruments

Agreement on Trade-Related Aspects of Intellectual Property Rights (15 April 1994) 1869 U.N.T.S. 299 33 I.L.M. 1226 (TRIPS Agreement).

Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (adopted 22 March 1989, entered into force 5 May 1992) 1673 UNTS 57 (Basel Convention).

Conference of the Parties, Adoption of the Paris Agreement (12 December 2015) UN Doc. FCCC/CP/2015/L.9/Rev/1 (Paris Agreement).

Convention and Statute Establishing an International Relief Union (adopted 12 July 1927, entered into force 27 December 1932) 3155 LNTS 247 (Convention Establishing the International Relief Union).

Convention on Biological Diversity (adopted 29 Jan 2000, entered into force 11 September 2003) 2226 UNTS 208 (CBD).

Convention on the Elimination of Discrimination Against Women (adopted 18 December 1979, entered into force 3 September 1981) UNTS 1249 p.13 (CEDAW).

Convention on the Rights of Persons with Disabilities (adopted 30 March 2007, entered into force 3 May 2008) UNTS 2515 p. 3 (CRPD).

Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) UNTS 1577 p. 3 (CRC).

Energy Charter Treaty (adopted 17 December 1994, entered into force 16 April 1998) EECH/A1/X 1 (ECT).

General Act of the Conference of Berlin (signed 26 February 1885).

International Centre for the Settlement of Investment Disputes (ICSID), 'Convention on the Settlement of Investment Disputes Between States and Nationals of Other States (adopted 18 March 1965, entered into force 14 October 1966) available at <https://icsid.worldbank.org/sites/default/files/ICSID_Convention_EN.pdf> accessed 22 June 2023.

International Civil Defence Organisation (ICDO), 'Framework Convention on Civil Defence Assistance' (adopted 22 May 2000, entered into force 23 September 2001) 2172 UNTS 213 (Framework Convention).

International Labour Organization (ILO), 1993 International Labour Organization Convention No. 147 on Prevention of Major Industrial Accidents (adopted 22 June 1993, entered into force 3 January 1996) 1967 UNTS 231 (ILO Convention No. 147).

International Law Commission (ILC), 'Draft Articles on the Protection of Persons in the Event of Disasters' (15 May 2014) UN Doc A/CN.4/l.831 (ILC Draft Articles).

Kyoto Protocol to the United Nations Framework Convention on Climate Change (adopted 11 December 1997, entered into force 16 February 2005) 2303 UNTS 162 (Kyoto Protocol).

Montevideo Convention on the Rights and Duties of States (adopted 26 December 1933, entered into force 26 December 1934) 165 LNTS 19 (Montevideo Convention).

Report of the United Nations Conference on Environment and Development (1992) UN Doc. A/CONF.151/26 (Vol. I) (Rio Declaration).

Tampere Convention on the Provision of Telecommunication Resources for Disaster Mitigation and Relief Operations (18 June 1998) 2296 UNTS 5 (Tampere Convention).

United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification (adopted 14 October 1994, entered into force 26 December 1996) 1954 UNTS 3 (UNCCD).

United Nations Framework Convention on Climate Change, (entered into force 21 March 1994) 1771 UNTS 107 (UNFCCC).

United Nations International Strategy for Disaster Reduction (UNISDR), 'Hyogo Framework for Action 2005- 2015: Building the Resilience of Nations and Communities to Disasters' (22 January 2005) UN Doc. A/CONF.206/6 (Hyogo Framework).

UNISDR, 'Sendai Framework for Disaster Risk Reduction 2015-2030' (18 March 2015) UN Doc. A/CONF.224/CRP (Sendai Framework).

United Nations Office of the High Commissioner on Human Rights, 'Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework' (2011) UN Doc. HR/PUB/11/04 (Ruggie Principles).

United Nations, 'Yokohama Strategy and Plan of Action for a Safer World: Guidelines for Natural Disaster Prevention, Preparedness and Mitigation' (27 May 1994) (Yokohama Strategy).

Vienna Convention on the Law of Treaties (adopted 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331 (VCLT).

International Court of Justice Documents

International Court of Justice (ICJ), 'Pleadings Oral Arguments, Documents: *Western Sahara* Volume IV' (1975).

Other

'Final Communiqué of the Asian-African Conference of Bandung' (24 April 1955) available at < https://www.cvce.eu/en/obj/final_communique_of_the_asian_african_conference_of_bandung_24_april_1955-en-676237bd-72f7-471f-949a-88b6ae513585.html> accessed 23 June 2023.

United Nations General Assembly Resolutions

'Resolution 1753 (XVII), Measures to be Adopted in Connexion [sic] with the Earthquake in Iran' (5 October 1962) UN Doc. A/RES/1753 (XVII).

'Resolution 2717 (XXV), Assistance in Cases of Natural Disaster' (15 December 1970) UN Doc. A/RES/2717 (XXV).

'Resolution 42/169, International Decade for Natural Disaster Reduction' (11 December 1987) UN Doc. A/RES/42/169.

United Nations General Assembly (UNGA), 'Permanent Sovereignty over Natural Resources' UNGA Res. 1803 (XVII) (14 December 1962).

UNGA, 'Declaration on the Establishment of a New International Economic Order' UNGA Res. 3201 (S-VI) (1 May 1974).

UNGA, 'Charter on Economic Rights and Duties of States' UNGA Res. 3281 (XXIX) 12 December 1974).

UNGA, 'Towards a New International Economic Order: Draft Resolution Submitted by the Vice-Chair of the Committee, Abdulrahman Abdulaziz Fahad Al-Thani (Qatar), on the Basis of Informal Consultations on Draft Resolution A/C.2/77/L.2' (15 November 2022) UN Doc. A/C.2/77/L.46.

United Nations Security Council Resolutions

UNSC Res. 1529 (29 February 2004) UN Doc. S/RES/1529.

United Nations Reports

Eduardo Valencia-Ospina, 'The Special Rapporteur's Preliminary Report on the Protection of Persons in the Event of Disaster (International Law Commission)' (5 May 2008) UN Doc. A/CN.4/598.

Eduardo Valencia-Ospina, 'The Special Rapporteur's Second Report on the Protection of Persons in the Event of Disasters', (2009) UN Doc. A/CN.4/615.

International Finance Corporation (IFC) and the United Nations Special Representative to the Secretary General on Business and Human Rights, 'Stabilization Clauses and Human Rights' (11 March 2008) available at <https://media.business-humanrights.org/media/documents/files/reports-and-materials/Stabilization-Clauses-and-Human-Rights-11-Mar-2008.pdf> accessed 3 August 2023.

Martti Koskenniemi, 'Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law' (2006) International Law Commission UN Doc. A/CN.4/1.682.

Office of the United Nations Disaster Relief Co-ordinator (UNDRO), 'Natural Disasters and Vulnerability Analysis: Report of Expert Group Meeting (9-12 July 1979)' (August 1980) UN Doc. UNDRO/EXPGRP1.

'Report of the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Racial Intolerance' (21 August 2019) UN Doc. A/74/321.

'Report of the Special Rapporteur on the Rights of Indigenous Peoples, Human Rights Council Thirty-Third Session' (11 August 2016) UN Doc. A/HRC/33/42.

United Nations Human Rights Council (UNHRC), 'Report of the Special Rapporteur on the right to food, Olivier De Schutter: Large-scale land acquisitions and leases: A set of minimum principles and measures to address the human rights challenge' (28 November 2009) UN Doc. A/HRC/13/33/Add.2.

United Nations Secretary General's High Level Panel on Access to Medicines, 'Report of the United Nations Secretary-General's High-Level Panel on Access to Medicines: Promoting Innovation and Access to Health Technologies' (September 2016) < https://static1.squarespace.com/static/562094dee4b0d00c1a3ef761/t/57d9c6ebf5e231b2f02cd3d4/1473890031320/UNSG+HLP+Report+FINAL+12+Sept+2016.pdf> accessed 20 January 2023.

World Trade Organisation Documents

Council for Trade-Related Aspects of Intellectual Property Rights, 'Waive from Certain Provisions of the TRIPS Agreement for the Prevention, Containment and Treatment of COVID-19' (2 October 2020) WTO Doc. IP/C/W/669 (TRIPS Waiver).

Secondary

Blog and Web Posts

Abnett, Kate, 'Brussels Says EU Exit from Energy Charter Treaty "Unavoidable"' (7 February 2023, *Reuters*) < https://www.reuters.com/world/europe/brussels-says-eu-exit-energy-charter-treaty-unavoidable-2023-02-07/> accessed 22 June 2023.

Beckett, Jason, 'Yes, International Law Really is Law' (*Critical Legal Thinking,* 12 July 2021) <https://criticallegalthinking.com/2021/07/12/yes-international-law-is-really-law/> accessed 15 April 2023.

Chmutina, Ksenia and Cheek, Wesley, 'Build Back Better for Whom? How Neoliberalism (Re)creates Disaster Risks' (22 January 2021, *Current Affairs*) < https://www.currentaffairs.org/2021/01/build-back-better-for-whom-how-neoliberalism-recreates-disaster-risks> accessed 1 July 2023.

Cross, Ciaran, "'Whatever Owns the Land, the Natives Do Not": In Re Southern Rhodesia' (26 July 2018, *Critical Legal Thinking*) < https://criticallegalthinking.com/2018/07/26/whoever-owns-the-land-the-natives-do-not-in-re-southern-rhodesia/> accessed 28 June 2023.

Daut, Marlene L., 'What's the Path Forward for Haiti?' *The New Yorker* (18 March 2023) available at <https://www.newyorker.com/news/annals-of-inquiry/whats-the-path-forward-for-haiti> accessed 9 August 2023.

Dehm, Julia, Gonzalez, Carmen, and Natarajan, Usha, 'Meltdown! International Law Praxis During Socio-Ecological Crises' (*TWAILR: Dialogues #9/2021*, 9 September 2021) < https://twailr.com/meltdown-international-law-praxis-during-socio-ecological-crises/> accessed 12 June 2023.

Eslava, Luis, 'TWAIL Coordinates' (*Critical Legal Thinking,* 2 April 2019) < https://criticallegalthinking.com/2019/04/02/twail-coordinates/> accessed 27 April 2023.

Gopinath, Gina, 'A Disrupted Global Recovery' (*IMF Blog* 25 January 2022) < https://www.imf.org/en/Blogs/Articles/2022/01/25/blog-a-disrupted-global-recovery> accessed 30 March 2023.

Hauck, Sué González, 'It's the System, Stupid! Systematicity as a Conceptual Weapon' (*Völkerrechtsblog,* 29 December 2020) < https://voelkerrechtsblog.org/its-the-system-stupid/> accessed 13 February 2021.

Klein, Naomi, 'The Rise of Disaster Capitalism' (*The Nation*, 14 April 2005) < https://www.thenation.com/article/rise-disaster-capitalism/> accessed 3 November 2019.

Marzal, Toni, 'Polluter Doesn't Pay: The Rockhopper v Italy Award' (*EJIL: Talk!,* 19 January 2023) < https://www.ejiltalk.org/polluter-doesnt-pay-the-rockhopper-v-italy-award/> accessed 8 February 2023.

Natarajan, Usha and Dehm, Julia, 'Where is the Environment? Locating Nature in International Law' (*TWAILR Reflections 3/2019*, 30 August 2019) <https://twailr.com/where-is-the-environment-locating-nature-in-international-law/> accessed 22 September 2021.

Nelson, Annalise, 'Investments in the Deep Freeze? Stabilization Clauses in Investment Contracts' (*Kluwer Arbitration Blog*, 9 November 2011) <

https://arbitrationblog.kluwerarbitration.com/2011/11/09/investments-in-the-deep-freeze-stabilization-clauses-in-investment-contracts/> accessed 3 August 2023.

Oliver-Smith, Anthony, 'Haiti and the Historical Construction of Disasters' (*Nacla,* 1 July 2010) <https://nacla.org/article/haiti-and-historical-construction-disasters> accessed 11 April 2023.

Smith, Neil, 'There's No Such Thing as a Natural Disaster' (2006) at <http://blogs.ubc.ca/naturalhazards/files/2016/03/Smith-There%E2%80%99s-No-Such-Thing-as-a-Natural-Disaster.pdf> accessed 21 January 2020.

Vanni, Amaka, 'On Intellectual Property Rights, Access to Medicines and Vaccine Imperialism' (*TWAIL Review: Reflections #32/2021,* 2021) available at <https://twailr.com/on-intellectual-property-rights-access-to-medicines-and-vaccine-imperialism/> accessed 14 December 2022.

Books

Alcántara-Ayala, Irasema, Gomez, Christopher, Chmutina, Ksenia, van Niekerk Dewald, Raju, Emmanuel, Marchezini, Victor, Cadag, Jake Rom, and Gaillard, JC, *Disaster Risk* (Routledge, 2023).

Anand, R. P., *New States and International Law* (Vikas Publishing House, 1972).

Anghie, Antony, *Imperialism, Sovereignty, and the Making of International Law* (Cambridge University Press, 2005).

Aronsson-Storrier, Marie and Dahlberg, Rasmus (eds.), *Defining Disaster: Disciplines and Domains* (Edward Elgar, 2022).

Auerswald, Philip E., Branscomb, Lewis M, La Porte, Todd M., and Kerjan, Erwann O. Michel, *Seeds of Disaster, Roots of Response: How Private Action Can Reduce Public Vulnerability* (Cambridge University Press, 2006).

Baars, Grietje, *The Corporation, Law, and Capitalism* (Haymarket, 2020).

Bantekas, Ilias and Oette, Lutz, *International Human Rights Law and Practice* (Cambridge University Press, 2016, Second Edition).

Baxi, Upendra, *The Future of Human Rights* (Oxford University Press India, 2008).

Beckert, Sven, *Empire of Cotton: A Global History* (Penguin Books, 2015).

Bedjaoui, Mohammed, *Towards a New International Economic Order* (Holmes & Meir Publishers/UNESCO, 1979) available at <https://unesdoc.unesco.org/ark:/48223/pf0000035806> accessed 13 August 2021.

Bernaz, Nadia, *Business and Human Rights: History, Law and Policy – Bridging the Accountability Gap* (Routledge, 2016).

Bilchitz, David, *Fundamental Rights and the Legal Obligations of Business* (Cambridge University Press, 2021).

Blaikie, Piers and Brookfield, Harold, *Land Degradation and Society* (Routledge, 1987).

Bonnitcha, Jonathan, Poulsen, Lauge N. Skovgaard and Waibel, Michael, *The Political Economy of the Investment Treaty Regime* (Oxford University Press, 2017).

Brilmayer, Lea, *American Hegemony: Political Morality in a One-Superpower World* (Yale University Press, 1997).

Brown, Wendy, *Undoing the Demos: Neoliberalism's Stealth Revolution* (Zone Books, 2015).

Caron, David C., Kelly, Michael J., and Telesetsky, Anastasia (eds.), *The International Law of Disaster Relief* (Cambridge University Press, 2014).

Chambers, Robert, *Rural Development: Putting the Last First* (Longman, 1983).

Colás, Alejandro, *Empire* (Polity Press, 2006).

Coppola, Damon P., *Introduction to International Disaster Management* (Butterworth-Heinemann, 2015).

Davis, Mike, *Late Victorian Holocausts: El Niño Famines and the Making of the Third World* (Verso, 2017).

de Victoria, Fransiscus, *De Indis et de Ivre Belli Relectiones* (Ernest Nys (ed.), John Pawley Bate (trans.), The Carnegie Institution of Washington, 1917).

Dinstein, Yoram, *The Conduct of Hostilities under the Law of International Armed Conflict* (Cambridge University Press, 2016).

Dubois, Laurent, *Haiti: The After Shocks of History* (Picador, 2012).

Eliade, Mircea, *The Myth of the Eternal Return, or Cosmos and History* (Princeton University Press, 1965).

Elias, Taslim O., *Africa and the Development of International Law* (A. W. Sijthoff, 1974).

Fanon, Frantz, *The Wretched of the Earth* (Penguin Books, 2001 (originally published 1961)).

Fanon, Frantz, *Toward the African Revolution: Political Essays* (Grove Press, 1988).

Fassbender, Bardo, Peters, Anne, and Peter, Simone (eds.), *The Oxford Handbook of the History of International Law* (Oxford University Press, 2014).

Fick, Carolyn E., *The Making of Haiti: The Saint Domingue Revolution from Below* (University of Tennessee Press, 1990).

Fiore, Pasquale, *International Law Codified and its Legal Sanction* (translated from the 5th Italian edition by Edwin M. Borchard, Baker, 1918).

Fitzmaurice, Andrew, *Sovereignty, Property and Empire, 1500-2000* (Cambridge University Press, 2017).

Fitzpatrick, Peter, *Modernism and the Grounds of Law* (Cambridge University Press, 2014).

Flood, Stephen, Columbié, Yairen Jerez, Le Tissier, Martin, and O'Dwyer, Barry (eds.), *Creating Resilient Futures: Integrating Disaster Risk Reduction, Sustainable Development Goals and Climate Change Adaptation Agendas* (Palgrave Macmillan, 2022).

Fukuyama, Francis, *The End of History and the Last Man* (Free Press, 1992).

Gaffield, Julia, *Haitian Connections in the Atlantic World: Recognition after Revolution* (University of North Carolina Press, 2015).

Giustiniani, Flavia Zorzi, Sommario, Emanuele, Casolari, Federico and Bartolini, Giulio (eds.), *The Routledge Handbook of Human Rights and Disasters* (Routledge, 2020).

Gong, Gerrit, *The Standard of 'Civilization' in International Society* (Oxford University Press, 1984).

Guttry, Andrea, Gestri, Marco, and Venturini, Gabriella (eds.) *International Disaster Response Law* (T.M.C. Asser Press, 2012).

Hall, William Edward, *A Treatise on International Law* (Clarendon Press, 1884, Second Edition).

Harvey, David, *A Brief History of Neoliberalism* (Oxford University Press, 2007).

Keller, Richard, *Fatal Isolation: The Devastating Paris Heatwave of 2003* (University of Chicago Press, 2015).

Kelman, Ilan, *Disaster by Choice* (Oxford University Press, 2020).

Kelman, Ilan, Mercer, Jessica, and Gaillard, JC (eds.), *The Routledge Handbook of Disaster Risk Reduction including Climate Change Adaptation* (Routledge, 2017).

Klein, Naomi, *The Shock Doctrine* (Penguin Books, 2007).

Korman, Sharon, *The Right of Conquest: The Acquisition of Territory by Force in International Law* (Oxford University Press, 1996).

Koskenniemi, Martti, *From Apology to Utopia: The Structure of International Legal Argument* (Cambridge University Press, 2005).

Koskenniemi, Martti, *The Gentle Civilizer of Nations: The Rise and Fall of International Law 1870-1960* (Cambridge University Press, 2001).

Leigh, J. A. (ed.), *Correspondence complète de Jean Jacques Rousseau,* Vol. 4 (Geneva, 1967) 'Rousseau to Voltaire, 18 August 1756', 37-50 translated by R. Sprang. Available at <http://www.indiana.edu/~enltnmt/texts/JJR%20letter.html> accessed 20 March 2019.

Linarelli, John, Salomon, Margot E., and Sornarajah, Muthucumaraswamy, *The Misery of International Law* (Oxford University Press, 2018).

Locke, John, *Second Treatise of Government* (Barnes & Nobles Books, 2004 (originally published 1690)).

Loewenstein, Antony, *Disaster Capitalism: Making a Killing Out of Catastrophe* (Verso, 2017).

Lorimer, James, *The Institutes of the Law of Nations: A Treatise of the Jural Relations of Separate Political Communities, in Two Volumes, Vol. I* (William Blackwood and Sons, 1883).

Lundahl, Mats, *The Political Economy of Disaster: Destitution, Plunder, and Earthquake in Haiti* (Routledge, 2013).

Lustig, Doreen, *Veiled Power: International Law and the Private Corporation* (Oxford University Press, 2020).

Luxemburg, Rosa, *The Accumulation of Capital* (Routledge, 2003).

Luzzatto, Livia Ester, *Intergenerational Challenges and Climate Justice: Setting the Scope of Our Obligations* (Routledge, 2022).

Lyster, Rosemary, *Climate Justice and Disaster Law* (Cambridge University Press, 2016).

Marx, Karl, *Capital: Volume 1* (Penguin Classics, 1990)

Marx, Karl and Engels, Friedrich, *The Communist Manifesto* (Penguin Books, 2002).

Maxwell, John Francis, *Slavery and the Catholic Church* (Barry Rose, 1975).

Miers, Suzanne, *Slavery in the Twentieth Century: The Evolution of a Global Problem* (AltaMira Press, 2003).

Miéville, China, *Between Equal Rights: A Marxist Theory of International Law* (Brill, 2004).

Moyn, Samuel, *Not Enough: Human Rights in an Unequal World* (Harvard University Press, 2018).

Natarajan, Usha and Dehm, Julia (eds.), *Locating Nature: Making and Unmaking International Law* (Cambridge University Press, 2022).

Pahuja, Sundhya, *Decolonising International Law* (Cambridge University Press, 2011).

Pashukanis, Evgeny B., *Law and Marxism: A General Theory* (Translated by Barbara Einhorn, Edited and Introduced by Chris Arthur, Inks Links Ltd, 1978).

Pashukanis, Evgeny B., *Selected Writings on Marxism and Law* (Translated by Peter B. Maggs, Edited and Introduced by Piers Beirne and Robert Sharlet, Academic Press Inc., 1980).

Paxson, Frederic L., *A Tripartite Intervention in Hayti, 1851* (University of Colorado Studies, 1904).

Peel, Jacqueline and Fisher, David (eds.), *The Role of International Environmental Law in Disaster Risk Reduction* (Brill, 2016).

Pitts, Jennifer, *Boundaries of the International: Law and Empire* (Harvard University Press, 2018).

Polanyi, Karl, *The Great Transformation* (Beacon Press, Second Edition, 2001 (originally published 1944)).

Poulsen, Lauge N. Skovgaard, *Bounded Rationality and Economic Diplomacy: The Politics of Investment Treaties in Developing Countries* (Cambridge University Press, 2015).

Puig, Sergio, *At the Margins of Globalization: Indigenous Peoples and International Economic Law* (Cambridge University Press, 2021).

Puvimanasinghe, Shyami, *Foreign Investment and the Environment: A Perspective from South Asia on the Role of Public International Law for Development* (Brill, 2007).

Quarantelli, E. L. (ed.), *What is a Disaster? Perspectives on the Question* (Routledge, 1998).

Rodney, Walter, *How Europe Underdeveloped Africa* (Verso, 2018).

Rotberg, Robert I. and Clague, Christopher K., *Haiti: The Politics of Squalor* (Houghton Mifflin Company, 1971).

Sell, Susan K., *Private Power, Public Law: The Globalization of Intellectual Property Rights* (Cambridge University Press, 2003.

Sen, Amartya, *Poverty and Famines: An Essay on Entitlement and Deprivation* (Oxford University Press, 1983).

Shaw, Malcolm N., *International Law* (8th Edition, Cambridge University Press, 2017).

Sornarajah, M., *The International Law on Foreign Investment* (Cambridge University Press, 2010).

Táíwò, Olúfémi O., *Reconsidering Reparations* (Oxford University Press, 2022).

Taylor, Prue, *An Ecological Approach to International Law* (Routledge, 1998).

Turner, Stephen J., *A Global Environmental Right* (Routledge, 2014).

Tzouvala, Ntina, *Capitalism as Civilisation* (Cambridge University Press, 2020).

Van Harten, Gus, *Sovereign Choices and Sovereign Constraints: Judicial Restraint in Investment Treaty Arbitration* (Oxford University Press, 2013).

Wettstein, Florian, *Business and Human Rights: Ethical, Legal, and Managerial Perspectives* (Cambridge University Press, 2022).

Wheaton, Henry, *Elements of International Law* (Little Brown and Company, 1866, Eighth Edition).

Wheaton, Henry, *History of the Law of Nations in Europe and America: From the Earliest Times to the Treaty of Washington, 1942* (Gould, Banks, 1845).

Whyte, Jessica, *The Morals of the Market: Human Rights and the Rise of Neoliberalism* (Verso, 2019).

Williams, Jr., Robert A., *The American Indian in Western Legal Thought: The Discourses of Conquest* (Oxford University Press, 1990).

Wisner, Ben, Blaikie, Piers, Cannon, Terry, and Davis, Ian, *At Risk: Natural Hazards, People's Vulnerability and Disasters* (Routledge, 1994, First Edition).

Wisner, Ben, Blaikie, Piers, Cannon, Terry, and Davis, Ian, *At Risk: Natural Hazards, People's Vulnerability and Disasters* (Routledge, 2004, Second Edition).

Wisner, Ben, Gaillard, JC, and Kelman, Ilan (eds.), *Routledge Handbook of Hazards and Disaster Risk Reduction* (Routledge, 2011).

Wood, Ellen Meiksins, *The Origin of Capitalism: A Longer View* (Verso, 2017).

Book Chapters

Alexander, David, Gaillard, JC and Wisner, Ben, 'Disability and Disaster' in Ben Wisner, JC Gaillard, and Ilan Kelman (eds.) *The Routledge Handbook of Hazards and Disaster Risk Reduction* (Routledge, 2012) 413.

Anghie, Antony, 'Imperialism and International Legal Theory' in Anne Orford and Florian Hoffmann (eds.) *The Oxford Handbook of the Theory of International Law* (Oxford University Press, 2016) 156.

Aronsson-Storrier, Marie, 'Exploring the Foundations: The Principles of Prevention, Mitigation, and Preparedness in International Law' in Katja L. H. Samuel, Marie Aronsson-Storrier, and Kirsten Nakjavani Bookmiller (eds.) *The Cambridge Handbook of Disaster Risk Reduction and International Law* (Cambridge University Press, 2019) 52.

Aronsson-Storrier, Marie, and Salama, Haythem, 'Tackling Water Contamination: Development, Human Rights and Disaster Risk Reduction' in Susan C. Breau and Katja L. H. Samuel (eds.) *Research Handbook on Disasters and International Law* (Edward Elgar, 2016) 319.

Babugura, Agnes A., 'Children, Youth, and Disaster' in Ben Wisner, JC Gaillard, and Ilan Kelman (eds.) *The Routledge Handbook of Hazards and Disaster Risk Reduction* (Routledge, 2012) 436.

Bankoff, Greg, 'Historical Concepts of Disaster and Risk' in Ben Wisner, JC Gaillard, and Ilan Kelman (eds.) *The Routledge Handbook of Hazards and Disaster Risk Reduction* (Routledge, 2012) 37.

Bankoff, Greg, 'The Historical Geography of Disaster: "Vulnerability" and "Local Knowledge" in Western Discourse' in Greg Bankoff, Georg Frerks, and Dorothea Hilhorst (eds.) *Mapping Vulnerability: Disasters, Development, and People* (Earthscan Publications, 2004) 25.

Beckett, Jason, 'Creating Poverty' in Anne Orford and Florian Hoffman (eds.) *The Oxford Handbook of the Theory of International Law* (Oxford University Press, 2016) 985.

Berger, Alan, Brown, Case, Kousky, Carolyn, and Zeckhauser, Richard, 'The Five Neglects: Risks Gone Amiss' in Howard Kunreuther and Michael Useem (eds.) *Learning from Catastrophes: Strategies for Reaction and Response* (Pearson Education, Inc., 2010) 83.

Bhandar, Brenna, 'Disassembling Legal Form: Ownership and the Racial Body' in Matthew Stone, Illan rua Wall, and Costas Douzinas (eds.) *New Critical Legal Thinking: Law and the Political* (Birkbeck Law Press, 2012) 112.

Bizzarri, Marieangela, 'Protection of Vulnerable Groups in Man-Made Disasters' in Andrea Guttry, Marco Gestri, and Gabriella Venturini (eds.) *International Disaster Response Law* (T.M.C. Asser Press, 2012) 381.

Bookmiller, Kirsten Nakjavani, 'Closing "the Yawning Gap"? International Disaster Response Law at Fifteen' in Susan C. Breau and Katja L. H. Samuel (eds.) *Research Handbook on Disasters and International Law* (Edward Elgar Publishing, 2016) 46.

Breau, Susan C., 'Responses by States' in Susan C. Breau and Katja L. H. Samuel (eds.) *Research Handbook on Disasters and International Law* 69.

Breau, Susan C. and Samuel, Katja L. H., 'Introduction' in Susan C. Breau and Katja L. H. Samuel (eds.) *Research Handbook on Disasters and International Law* (Edward Elgar Publishing, 2016) 1.

Carmalt, Jean Connolly, 'Human Rights for Disaster Risk Reduction Including Climate Change Adaptation' in Ilan Kelman, Jessica Mercer, and JC Gaillard (eds.), *The Routledge Handbook of Disaster Risk Reduction including Climate Change Adaptation* (Routledge, 2017) 140.

Choukrune, Leïla, 'Disasters and International Trade and Investment Law – The State's Regulatory Autonomy Between Risk Protection and Exception Justification' in Susan C. Breau and Katja L. H. Samuel (eds.) *Research Handbook on Disasters and International Law* 204.

Cooper, Michael D., 'Seven Dimensions of Disaster: The Sendai Framework and the Social Construction of Catastrophe' in Katja L. H. Samuel, Marie Aronsson-Storrier, and Kirsten Nakjavani Bookmiller (eds.) *The Cambridge Handbook of Disaster Risk Reduction and International Law* (Cambridge University Press, 2019) 17.

Crock, Mary, 'The Protection of Vulnerable Groups' in Susan C. Breau and Katja L. H. Samuel (eds.) *Research Handbook on Disasters and International Law* (Edward Elgar, 2016) 383.

Cubie, Dug, 'Embracing Regionalism: Lessons from the UN Regional Seas Programme for UNISDR and the Sendai Framework' in in Katja L. H. Samuel, Marie Aronsson-Storrier, and Kirsten Nakjavani Bookmiller (eds.) *The Cambridge Handbook of Disaster Risk Reduction and International Law* (Cambridge University Press, 2019) 239.

DasGupra, Rajarshi and Shaw, Rajib, 'Disaster Risk Reduction: A Critical Approach' in Ilan Kelman, Jessica Mercer, and JC Gaillard (eds.) *The Routledge Handbook of Disaster Risk Reduction Including Climate Change Adaptation* (Routledge, 2017) 12.

Drescher, Seymour and Finkelman, Paul, 'Slavery' in Bardo Fassbender and Anne Peters (eds.) *The Oxford Handbook of the History of International Law* 890.

Eburn, Michael, Collins, Andrew E., and da Costa, Karen, 'Recognising the Limits of International Law in Disaster Risk Reduction as Problem and Solution' in Katja L. H. Samuel, Marie Aronsson-Storrier, and Kirsten Nakjavani Bookmiller (eds.) *The Cambridge Handbook of Disaster Risk Reduction and International Law* (Cambridge University Press, 2019) 107.

Farber, Daniel, 'Disaster Law in the Anthropocene' in Jacqueline Peel and David Fisher (eds.) *The Role of International Environmental Law in Disaster Risk Reduction* (Brill Nijhoff, 2016) 49.

Farber, Daniel A., 'International Law and the Disaster Cycle' in David D. Caron, Michael J. Kelly, and Anastasia Telesetsky (eds.) *International Law of Disaster Relief* (Cambridge University Press, 2014) 7.

Fordham, Maureen, 'Gender, Sexuality, and Disaster' in Ben Wisner, JC Gaillard, and Ilan Kelman (eds.) *The Routledge Handbook of Hazards and Disaster Risk Reduction* (Routledge, 2012) 424.

Hilhorst, Dorothea and Bankoff, Greg, 'Introduction: Mapping Vulnerability' in Greg Bankoff *et al.* (eds.) *Mapping Vulnerability: Disasters, Development, and People* (Taylor and Francis, 2004) 1.

Hopkins, W. John, 'Soft Obligations and Hard Realities: Regional Disaster Risk Reduction in Europe and Asia' in in Katja L. H. Samuel, Marie Aronsson-Storrier, and Kirsten Nakjavani Bookmiller (eds.) *The Cambridge Handbook of Disaster Risk Reduction and International Law* (Cambridge University Press, 2019) 219.

Ito, Akiko, 'Disasters, International Law, and Persons with Disabilities' in David D. Caron, Michael J. Kelly, and Anastasia Telesetsky (eds.) *The International Law of Disaster Relief* (Cambridge University Press, 2014) 208.

Karimova, Tahmina, 'Sustainable Development and Disasters' in Susan C. Breau and Katja L. H. Samuel (eds.) *Research Handbook on Disasters and International Law* (Edward Elgar, 2016) 177.

Kelman, Ilan, Mercer, Jessica, and Gaillard, JC, 'Vulnerability and Resilience' in Ilan Kelman, Jessica Mercer, and JC Gaillard (eds.) *The Routledge Handbook of Disaster Risk Reduction Including Climate Change Adaptation* (Routledge, 2017) 47.

Kleffner, Jann K., 'Scope of Application of International Humanitarian Law' in Dieter Fleck (ed.) *The Handbook of International Humanitarian Law* (Oxford University Press, 2021, Fourth Edition) 50.

Knox, Robert, 'Marxist Approaches to International Law' in Anne Orford and Florian Hoffman (eds.) *The Oxford Handbook of the Theory of International Law* (Oxford University Press, 2016) 306.

Lauta, Kristian Cedervall, 'Human Rights and *Natural* Disasters' in Susan C. Breau and Katja L. H. Samuel (eds.) *Research Handbook on Disasters and International Law* (Edward Elgar, 2016) 91.

Leininger, Julia, 'Haiti, Conflict' in *Max Planck Encyclopaedia of International Law* (October 2008), available at <https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e1293> accessed 16 June 2023.

Lewis, James, 'Cultures and Contra-Cultures: Social Divisions and Behavioural Origins of Vulnerabilities to Disaster Risk' in Fred Krüger, Greg Bankoff, Terry Cannon, Benedikt Orlowski, and Lisa F. Schipper (eds.) *Cultures and Disasters: Understanding Cultural Framings in Disaster Risk Reduction* (Routledge, 2015) 109.

Lorca, Arnulf Becker, 'Eurocentrism in the History of International Law' in Bardo Fassbender and Anne Peters (eds.) *The Oxford Handbook of the History of International Law* (Oxford University Press, 2012) 1034.

Marks, Susan, 'Introduction' in Susan Marks (ed.) *International Law on the Left: Re-examining Marxist Legacies* (Cambridge University Press, 2008) 1.

Marx, Karl, 'On the Jewish Question' in R. C. Tucker (ed.) *The Marx-Engels Reader* (WW Norton and Company, 1978, Second Edition) 26.

Marx, Karl, 'Preface to a Contribution to the Critique of Political Economy' in R. C. Tucker (ed.) *The Marx-Engels Reader* (WW Norton and Company, 1978, Second Edition) 3.

Marx, Karl and Engels, Friedrich, 'The German Ideology' in R. C. Tucker (ed.) *The Marx-Engels Reader* (WW Norton and Company, 1978, Second Edition) 146.

Mascarenhas, Adolfo and Wisner, Ben, 'Politics, Power, and Disasters' in Ben Wisner, JC Gaillard, and Ilan Kelman (eds.) *Routledge Handbook of Hazards and Disaster Risk Reduction* (Routledge, 2011) 48.

Miéville, China, 'The Commodity-Form Theory of International Law' in Susan Marks (ed.) *International Law on the Left: Re-examining Marxist Legacies* (Cambridge University Press, 2008) 92.

Newdick, Chris, 'Global Capitalism and the Crisis of the Public Interest' in Susan C. Breau and Katja L. H. Samuel eds. *Research Handbook on Disasters and International Law* (Edward Elgar Publishing, 2016) 23.

Ngo, Ehren B., 'Elderly People and Disaster' in Ben Wisner, JC Gaillard, and Ilan Kelman (eds.) *The Routledge Handbook of Hazards and Disaster Risk Reduction* (Routledge, 2012) 447.

Nohle, Ellen and Giacca, Gilles, 'Economic and Social Rights in Times of Disaster: Obligations of Immediate Effect and Progressive Realization' in Flavia Zorzi Giustiniani, Emanuele Sommario, Federico Casolari, and Giulio Bartolini (eds.), *The Routledge Handbook of Human Rights and Disasters* (Routledge, 2020).

Oliver-Smith, Anthony, 'Peru's Hundred Year Earthquake: Vulnerability in Historical Context' in Anthony Oliver-Smith and Susanna Hoffman (eds.) *The Angry Earth: Disaster in Anthropological Perspective* (Routledge, 2019) 74.

Oliver-Smith, Anthony, 'Theorizing Vulnerability in a Globalized World: A Political Ecological Perspective' in Greg Bankoff, Georg Frerks, and Dorothea Hilhorst (eds.) *Mapping Vulnerability: Disasters, Development, and People* (Taylor and Francis, 2004) 10.

Peel, Jaqueline and Fisher, David, 'International Law at the Intersection of Environmental Protection and Disaster Risk Reduction' in Jacqueline Peel and David Fisher (eds.), *The Role of International Environmental Law in Disaster Risk Reduction* (Brill, 2016) 1.

Pronto, Arnold N., 'The ILC's Articles on the Protection of Persons in the Event of Disasters and Disaster Risk Reduction – A Legislative History' in in in Katja L. H. Samuel, Marie Aronsson-Storrier, and Kirsten Nakjavani Bookmiller (eds.) *The Cambridge Handbook of Disaster Risk Reduction and International Law* (Cambridge University Press, 2019) 71.

Rodenhäuser, Tilman and Giacca, Gilles, 'The International Humanitarian Law Framework for Humanitarian Relief During Armed Conflict and Complex Emergencies' in Susan C. Breau and Katja L. H. Samuel (eds.) *Research Handbook on Disasters and International Law* (Edward Elgar, 2016) 132.

Roth, Brad R., 'Marxian Insights for the Human Rights Project' in Susan Marks (ed.) *International Law on the Left: Re-Examining Marxist Legacies* (Cambridge University Press, 2008) 220.

Saunders, Imogen, 'International Disaster Relief Law and Article 38(1)(c) of the Statute of the International Court of Justice: The Forgotten Source of International Law' in David D. Caron, Mark Kelly, and Anastasia Telesetsky (eds.) *The International Law of Disaster Relief* (Cambridge University Press, 2014) 29.

Siders, Anne, 'Resilient Incoherence – Seeking Common Language for Climate Change Adaptation, Disaster Risk Reduction and Sustainable Development' in Jacqueline Peel and David Fisher (eds.) *The Role of International Environmental Law in Disaster Risk Reduction* (Brill, 2016) 101.

Stephens, Tim, 'Disasters, International Environmental Law and the Anthropocene' in Susan C. Breau and Katja L. H. Samuel (eds.) *Research Handbook on Disasters and International Law* (Edward Elgar, 2016) 153.

Stevenson, Joanne R. and Seville, Erica, 'Private Sector Doing Disaster Risk Reduction Including Climate Change Adaptation' in Ilan Kelman, Jessica Mercer, and J C Gaillard (eds.) *The Routledge Handbook of Disaster Risk Reduction Including Climate Change Adaptation* (Routledge, 2017) 363.

Stiglitz, Joseph E., 'Regulating Multinational Corporations: Towards Principles of Cross-Border Legal Framework in a Globalized World Balancing Rights with Responsibilities' (2007) Vol. 23 No. 3 *American University International Law Review* 451.

Tzanakapoulos, Antonios, 'The Master's Tools and the Master's House: Marxist Insights for International Law' in Anne van Aaken, Pierre d'Argent, Lauri Mälksoo, and Johan Justus Vasel (eds.) *The Oxford Handbook of International Law in Europe* (Oxford University Press, Forthcoming) available at < https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4544488> accessed 28 August 2023.

Tzouvala, Ntina, 'How to Run an Empire (Lawfully)' in Ilan rua Wall, Freya Middleton, Sahar Shah, and CLAW (eds.) *The Critical Legal Pocketbook* (Counterpress, 2021) 56.

Wisner, Ben, 'Disaster Risk and Vulnerability Reduction' in Linda Sygna, Karen O'Brien, and Johanna Wolf (eds.) *A Changing Environment for Human Security* (Routledge, 2013) 257.

Wisner, Ben, Gaillard, JC, and Kelman, Ilan, 'Framing Disaster: Theories and Stories Seeking to Understand Hazards, Vulnerability, and Risk' in Ben Wisner, JC Gaillard, and Ilan Kelman (eds.) *The Routledge Handbook of Hazards and Disaster Risk Reduction* (Routledge, 2012) 18.

Journal Articles

Abi-Saab, Georges, 'The Newly Independent States and the Rules of International Law: An Outline' (1962) Vol. 8 *Howard Law Journal* 95.

Abi-Saab, Georges, 'The Third World Intellectual in Praxis: Confrontation, Participation, or Operation Behind Enemy Lines?' (2016) Vol 37 No. 11 *Third World Quarterly* 1957.

Abimbola, Olumide, Aikins, Joshua Kwesi, Makhesi-Wilkinson, Tselane, and Roberts, Erin, 'Racism and Climate (In)Justice: How Racism and Colonialism Shaped the Climate Crisis and Climate Action' (2021) *Heinrich Böll Siftung* available at < https://us.boell.org/en/2021/03/19/racism-and-climate-injustice-0> accessed 13 April 2023.

Adinolfi, Giovanna, 'International Economic Law (2021)' (2023) Vol. 4 No. 1 *Yearbook of International Disaster Law* 571.

Adinolfi, Giovanna, 'Strengthening Resilience to Disasters through International Trade Law: The Role of WTO Agreements on Trade in Goods' (2019) Vol. 2 No. 1 *Yearbook of International Disaster Law* 3.

Anand, R. P., 'Role of "New" Asian-African Countries in the Present International Legal Order' (1962) Vol. 56 No. 2 *American Journal of International Law* 383.

Anderson, Michael R., 'Litigation and Activism: The Bhopal Case' (1993) Vol. 1993 *Third World Legal Studies* 177.

Anghie, Antony, 'Francisco de Vitoria and the Colonial Origins of International Law' (1996) Vol. 5 No. 3 *Social & Legal Studies* 321.

Anghie, Antony, 'Inequality, Human Rights, and the New International Economic Order' (2019) Vol. 10 No. 3 *Humanity* 429.

Anghie, Antony, 'Rethinking International Law: A TWAIL Retrospective' (2018) Vol. 34 No. 1 *European Journal of International Law* 1.

Anghie, Antony, 'Slavery and International Law: The Jurisprudence of Henry Richardson' (2017) Vol. 31 No. 1 *Temple International and Comparative Law Journal* 11.

Anghie, Antony, 'The War on Terror and Iraq in Historical Perspective' (2005) Vol. 43 *Osgoode Hall Law Journal* 45.

Aronsson-Storrier, Marie, 'Beyond Early Warning Systems: Querying the Relationship Between International Law and Disaster Risk (Reduction)' (2020) Vol. 3 *Yearbook of International Disaster Law* 51.

Aronsson-Storrier, Marie and da Costa, Karen, 'Regulating Disasters? The Role of International Law in Disaster Prevention and Management' (2017) Vol. 26 No. 5 *Disaster Prevention and Management* 502.

Aronsson-Storrier, Marie, 'Sendai Five Years On: Reflections on the Role of International Law in the Creation and Reduction of Disaster Risk' (2020) Vol. 11 *International Journal of Disaster Risk Science* 230.

Aronsson-Storrier, Marie, 'UN Office for Disaster Risk Reduction (2021)' (2023) Vol. 4 *Yearbook of International Disaster Law* 485.

Arsel, Murat, Hogenboom, Barbara, and Pellegrini, Lorenzo, 'The Extractive Imperative in Latin America' (2016) Vol. 3 *The Extractive Industries and Society* 880.

Ball, Nicole, 'The Myth of the Natural Disaster' (1975) Vol. 10 No. 5 *The Ecologist* 368.

Bankoff, Greg, 'Remaking the World in Our Own Image: Vulnerability, Resilience and Adaptation as Historical Discourse' (2019) Vol. 43 No. 2 *Disasters* 221.

Bartolini, Giulio and Natoli, Tommaso, 'Disaster Risk Reduction: An International Law Perspective' (2018) Vol. 49 *Questions of International Law, Zoom-in* 1.

Baxi, Upendra, 'Disasters, Catastrophes and Oblivion: a TWAIL Perspective' (2021) Vol. 2 *Yearbook of International Disaster Law* 72.

Baxi, Upendra, 'Human Rights Responsibility of Multinational Corporations, Political Ecology of Injustice: Learning from Bhopal Thirty Plus?' (2015) Vol. 1 No. 1 *Business and Human Rights Journal* 21.

Baxi, Upendra, 'Some Newly Emergent Geographies of Injustice: Boundaries and Borders in International Law' (2016) Vol. 23 No. 1 *Indiana Journal of Global Legal Studies* 15.

Benton, Lauren and Straumann, Benjamin, 'Acquiring Empire by Law: From Roman Doctrine to Early Modern European Practice' (2010) Vol. 28 No. 1 *Law and History Review* 1.

Berman, Paul Schiff, 'A Pluralist Approach to International Law' (2007) Vol. 32 *The Yale Journal of International Law* 301.

Bhandar, Brenna, 'Property, Law and Race: Modes of Abstraction' (2014) Vol. 4 No. 1 *UC Irvine Law Review* 203.

Blanco, Elena, and Grear, Anna, 'Personhood, Jurisdiction and Injustice: Law, Colonialities and the Global Order' (2019) Vol. 10 No. 1 *Journal of Human Rights and the Environment* 86.

Bonilla, Yarimar, 'The Coloniality of Disaster: Race, Empire, and the Temporal Logics of Emergency in Puerto Rico, USA' (2020) Vol. 78 *Political Geography* 1.

Bookmiller, Kirsten Nakjavani, 'North America, Central America and the Caribbean (2021)' (2023) Vol. 4 No. 1 *Yearbook of International Disaster Law* 521.

Bosher, Lee, Chmutina, Ksenia, and van Niekerk, Dewald, 'Stop Going Around in Circles: Towards a Reconceptualisation of Disaster Risk Management Phases' (2021) Vol. 30 No. 4/5 *Disaster Prevention and Management* 525.

Bragato, Fernanda Frizzo and Filho, Alex Sandro da Silveira, 'The Colonial Limits of Transnational Corporations' Accountability for Human Rights Violations' (2021) Vol. 2 *TWAIL Review* 34.

Brown, Philip Marshall, 'International Responsibility in Haiti and Santo Domingo' (1922) Vol. 16 No. 3 *The American Journal of International Law* 433.

Brown, Philip Marshall, 'The Armed Occupation of Santo Domingo' (1917) Vol. 11 No. 2 *The American Journal of International Law* 394.

Burke-White, William, 'International Legal Pluralism' (2004) Vol. 25 No. 4 *Michigan Journal of International Law* 963.

Cahueñas, Hugo, and Idrovo, Felipe, 'South America' (2023) Vol. 4 No. 1 *Yearbook of International Disaster Law* 533.

Caney, Simon, 'Cosmopolitan Justice, Responsibility, and Global Climate Change' (2005) Vol. 18 No. 1 *Leiden Journal of International Law* 747.

Carvosso, Rhys, 'The Role of Investment in Arbitration' (2022) Vol. 3 No. 1 *Yearbook of International Disaster Law* 374.

Casolari, Federico, 'Europe (2020)' (2022) Vol. 3 No. 1 *Yearbook of International Disaster Law* 453.

Castañeda, Jorge, 'The Underdeveloped Nations and the Development of International Law' (1961) Vol. 15 No. 1 *International Organization* 38.

Cavallar, Georg, 'Vitoria, Grotius, Pufendorf, Wolff and Vatell: Accomplices of European Colonialism and Exploitation or True Cosmopolitans?' (2008) Vol. 10 *Journal of the History of International Law* 181.

Cely, Nathalie, 'Balancing Profit and Environmental Sustainability in Ecuador: Lessons Learned from the Chevron Case' (2014) Vol. 24 *Duke Environmental Law & Policy Forum* 353.

Charlesworth, Hilary, 'International Law: A Discipline of Crisis' (2002) Vol. 65 No. 3 *Modern Law Review* 377.

Chimni, B. S., 'An Outline of a Marxist Course on Public International Law' (2004) Vol. 17 *Leiden Journal of International Law* 1.

Chimni, B. S., 'International Institutions Today: An Imperial Global State in the Making' (2004) Vol. 15 No. 1 *European Journal of International Law* 1.

Chimni, B. S., 'Prolegomena to a Class Approach to International Law' (2010) Vol. 21 No. 1 *European Journal of International Law* 57, 63.

Chimni, B. S., 'Third World Approaches to International Law: A Manifesto' (2006) Vol. 8 No. 1 *International Community Law Review* 3.

Chimni, B. S., 'World Trade Organization, Democracy and Development: A View from the South' (2006) Vol. 40 No. 1 *Journal of World Trade* 5.

Chmutina, Ksenia and von Meding, Jason, 'A Dilemma of Language: "Natural Disasters" in Academic Literature' (2019) Vol. 10 No. 3 *International Journal of Disaster Risk Science* 283.

Chmutina, Ksenia, von Meding, Jason, and Bosher, Lee, 'Language Matters: Dangers of the "Natural Disasters" Misnomer' (2019) at <https://www.preventionweb.net/publications/view/65974> accessed 20 April 2023.

Cohen, Erik, 'Tourism and Land Grab in the Aftermath of the Indian Ocean Tsunami' (2011) Vol. 11 No. 3 *Scandinavian Journal of Hospitality and Tourism* 224.

Craemer, Thomas, 'International Reparations for Slavery and the Slave Trade' (2018) Vol. 49 No. 7 *Journal of Black Studies* 694.

Cubie, Dug, 'Sources of IDL: The New IFRC Disaster Law Database' (2022) Vol. 3 No. 1 *Yearbook of International Disaster Law* 6.

Cubie, Dug and Hesselman, Marlies, 'Accountability for the Human Rights Implications of Natural Disasters: A Proposal for Systemic International Oversight' (2015) Vol. 33 No. 1 *Netherlands Quarterly of Human Rights* 9.

da Costa, Karen, 'Can the Observance of Human Rights of Individuals Enhance Their Resilience to Cope with Natural Disasters?' (2014) Vol. 18 *Procedia Economics and Finance* 62.

da Costa, Karen, and Pospieszna, Paulina, 'The Relationship Between Human Rights and Disaster Risk Reduction Revisited: Bringing the Legal Perspective into the Discussion' (2015) Vol. 6 *Journal of International Humanitarian Legal Studies* 64.

Dangerman, A.T.C. Jérôme and Schellhuber, Hans Joachim, 'Energy Systems Transformation' (2013) Vol. 110 No. 7 *PNAS* E549.

de Ruiter, Marleen C., Couasnon, Anaïs, van den Homberg, Marc J. C., Daniell, James E., Gill, Joel C., and Ward, Philip J., 'Why We Can No Longer Ignore Consecutive Disasters' (2020) Vol. 8 No. 3 *Earth's Future* 1.

Charles J. Dunlap Jr., 'Law and Military Interventions: Preserving Humanitarian Values in 21st Century Conflicts' (2001) Harvard University's Carr Center for Human Rights Policy available at <https://people.duke.edu/~pfeaver/dunlap.pdf> accessed 2 August 2023.

Dunlap, Jr., Charles J., 'Lawfare Today: A Perspective' (2008) Vol. 3 No. 1 *Yale Journal of International Affairs* 146.

Farber, Daniel A., 'The Intersection of IDL and Climate Change Law' (2021) Vol. 2 *Yearbook of International Disaster Law* 87.

Fatton Jr., Robert, 'Haiti in the Aftermath of the Earthquake: The Politics of Catastrophe' (2011) Vol. 42 No. 2 *Journal of Black Studies* 158.

Fidler, David P., 'Disaster Relief and Governance After the Indian Ocean Tsunami: What Role for International Law?' (2005) Vol. 6 No. 2 *Melbourne Journal of International Law* 458.

Fisch, Jörg, 'The Role of International Law in the Territorial Expansion of Europe, 16th-20th Centuries' (2000) Vol. 3 No. 1 *ICCLP Review* 4.

Fisher, David, 'The Future of International Disaster Response Law' (2012) Vol. 55 *German Yearbook of International Law* 87.

Fitzmaurice, Malgosia and Rydberg, Agnes Viktoria, 'Using International Law to Address the Effects of Climate Change: A Matter for the International Court of Justice?' (2023) Vol. 4 No. 1 *Yearbook of International Disaster Law* 281.

Fothergill, Alice, Maestas, Enrique, and Derouen, Joanne, 'Race, Ethnicity and Disasters in the United States: A Review of the Literature' (1999) Vol. 23 No. 2 *Disasters* 156.

Freedman, Rosa and Lemay-Herbert, Nicolas, '"Jistis ak Reparasyon pou Tout Viktim Kolera MINUSTAH": The United Nations and the Right to Health in Haiti' (2015) Vol. 28 *Leiden Journal of International Law* 507.

Gaffield, Julia, 'The Racialization of International Law after the Haitian Revolution: The Holy See and National Sovereignty' (2020) Vol. 125 No. 3 *The American Historical Review,* 841.

Galindo, George Rodrigo Bandeira and Yip, César, 'Customary International Law and the Third World: Do Not Step on the Grass' (2017) Vol. 16 No. 2 *Chinese Journal of International Law* 251.

Gallopín, Gilberto C., 'Linkages Between Vulnerability, Resilience, and Adaptive Capacity' (2006) Vol. 16 No. 3 *Global Environmental Change* 293.

Gambardella, Sophie, 'International Environmental Law (2020)' (2022) Vol. 3 *Yearbook of International Disaster Law* 585.

Gathii, James Thuo, 'Imperialism, Colonialism, and International Law' (2007) Vol. 54 No. 4 *Buffalo Law Review* 1013.

Gathii, James Thuo, 'International Law and Eurocentricity' (1998) Vol. 9 *European Journal of International Law* 184.

Gathii, James Thuo, 'Representations of Africa in Good Governance Discourse: Policing and Containing Dissidence to Neo-Liberalism' (1998) Vol. 18 *Third World Legal Studies* 65.

Gathii, James Thuo, 'The Promise of International Law – A Third World View' (2020) *Grotius Lecture Presented at the 2020 Virtual Annual Meeting of the American Society of International Law June 25, 2020*.

Gathii, James Thuo, 'TWAIL: A Brief History of Its Origins, Its Decentralized Network, and a Tentative Bibliography' (2011) Vol. 3 No. 1 *Trade Law and Development* 26.

Gevers, Christopher, 'Refiguring Slavery Through International Law: The 1926 Slavery Convention, the "Native Labor Code" and Racial Capitalism' (2022) Vol. 25 No. 1 *Journal of International Economic Law* 312.

Gevers, Christopher, 'Slavery and International Law' (2023) Vol. 117 *AJIL Unbound* 71.

Gilmore, Ruth Wilson, 'Fatal Couplings of Power and Difference: Notes on Racism and Geography (2022) Vol. 54 *The Professional Geographer* 15.

Gonzalez, Carmen G., 'Bridging the North-South Divide: International Environmental Law in the Anthropocene' (2015) Vol. 32 No. 2 *Pace Environmental Law Review* 407.

Grear, Anna, 'Deconstructing *Anthropos*: A Critical Legal Reflection on "Anthropocentric" Law and Anthropocene "Humanity"' (2015) Vol. 26 *Law and Critique* 225.

Greer, Alex, Wu, Hao-Che, and Murphy, Haley, 'Household Adjustment to Seismicity in Oklahoma' (2020) *Earthquake Spectra* 1.

Gros, Jean-Germain, 'Anatomy of a Haitian Tragedy: When the Fury of Nature Meets the Debility of the State' (2011) Vol. 42 No. 2 *Journal of Black Studies* 131.

Gros, Jean-Jermain, 'Indigestible Recipe: Rice, Chicken Wings, and International Financial Institutions. Or Hunger Politics in Haiti' (2010) Vol. 40 No. 5 *Journal of Black Studies* 974.

Gutiérrez, Natalia Urzola, 'Gender in Climate Litigation in Latin America: Epistemic Justice Through a Feminist Lens' (2023) Vol. XX *Journal of Human Rights Practice* 1.

Hannum, Hurst, 'The UDHR in National and International Law' (1998) Vol. 3 No. 2 *Health and Human Rights* 144.

Harris, Cheryl I., 'Whiteness as Property' (1993) Vol. 106 No. 8 *Harvard Law Review* 1707.

Hernandez, Ramon, 'The Internationalization of Francisco de Vitoria and Domingo de Soto' (1992) Vol. 15 No. 4 *Fordham International Law Journal* 1031.

Hesselman, Marlies, 'International Human Rights Law (2020)' (2022) Vol. 3 *Yearbook of International Disaster Law* 536.

Hickel, Jason, 'The Imperative of Redistribution in an Age of Ecological Overshoot: Human Rights and Global Inequality' (2019) Vol. 10 No. 3 *Humanity* 416.

Hilson, Christopher J., 'Environmental SLAPPs in the UK: Threat or Opportunity?' (2015) Vol. 25 No. 2 *Environmental Politics* 248.

Hopkins, W. John, and Avila, Leanne, 'Pacific (2021)' (2023) Vol. 4 No. 1 *Yearbook of International Disaster Law* 543.

Hughes, Heather, 'Aesthetics of Commercial Law – Domestic and International Implications' (2007) Vol. 67 No. 3 *Louisiana Law Review* 690.

Jones, Emily, 'Posthuman International Law and the Rights of Nature' (2021) Vol. 12 Special Issue *Journal of Human Rights and the Environment* 76.

Joseph, Sarah, 'Protracted Lawfare: The Tale of Chevron Texaco in the Amazon' (2012) Vol. 3 No. 1 *Journal of Human Rights and the Environment* 70.

Kaisary, Philip, 'Hercules, the Hydra, and the 1801 Constitution of Toussaint Louverture' (2015) Vol. 12 No. 4 *Atlantic Studies* 393.

Kälin, Walter, 'Protection of Victims of Disasters: The "Vertical" Dimension of the Draft Articles on the Protection of Persons in the Event of Disasters' (2019) Vol. 1 *Yearbook of International Disaster Law* 28.

Kälin, Walter, 'The Human Rights Dimension of Natural or Human-Made Disasters' (2012) Vol. 55 *German Yearbook of International Law* 119.

Kelman, Ilan, 'Climate Change and the Sendai Framework for Disaster Risk Reduction' (2015) Vol. 6 *International Journal of Disaster Risk Science* 117.

Kelman, Ilan, 'Natural Disasters Do Not Exist (Natural Hazards Don't Either)' (Version 3, 2010) at <http://www.ilankelman.org/miscellany/NaturalDisasters.doc> accessed 21 January 2020.

Kennedy, David, 'Law and the Political Economy of the World' (2013) Vol. 26 *Leiden Journal of International Law* 7.

Kennedy, David, 'Primitive Legal Scholarship' (1986) Vol. 27 No. 1 *Harvard International Law Journal* 1.

Khoday, Kishan, 'Decolonizing the Environment: Third World Approaches to the Planetary Crisis' (2022) Vol. 19 No. 2 *Indonesian Journal of International Law* 189.

Kimerling, Judith, 'Indigenous Peoples and the Oil Frontier in Amazonia: The Case of Ecuador, Chevron Texaco, and Aguinda v. Texaco' (2006) Vol. 38 No. 3 *New York University Journal of International Law and Politics* 413.

Knox, Robert, 'Civilizing Interventions? Race, War and International Law' (2013) Vol. 26 *Cambridge Review of International Affairs* 111.

Knox, Robert, 'Valuing Race? Stretched Marxism and the Logic of Imperialism' (2016) Vol. 4 No. 1 *London Review of International Law* 81.

Korovin, Eugene A., 'Soviet Treaties and International Law' (1928) Vol. 22 No. 4 *American Journal of International Law* 753.

Koskenniemi, Martti, 'Empire and International Law: The Real Spanish Contribution' (2011) Vol. 61 No. 1 *University of Toronto Law Journal* 1.

Koskenniemi, Martti, 'Race, Hierarchy, and International Law: Lorimer's Legal Science' (2016) Vol. 27 No. 2 *The European Journal of International Law* 415.

Kotzé, Louis J., du Toit, Louise, and French, Duncan, 'Friend or Foe? International Environmental Law and its Structural Complicity in the Anthropocene's Climate Injustices' (2021) Vol. 11 No. 1 *Oñati Socio-Legal Series* 180.

Krever, Tor, 'Quantifying Law: Legal Indicator Projects and the Reproduction of Neoliberal Common Sense' (2013) Vol. 34 No. 1 *Third World Quarterly* 131.

Lee, Bandy X., 'Causes and Cures VII: Structural Violence' (2016) Vol. 28 No. 1 *Aggression and Violent Behaviour* 109.

Lorimer, James, 'La Doctrine de la Reconnaissance, Fondement du Droit International' (1884) Vol. 16 *Revue de Droit Internationale et de Législation Comparée* 333.

Lyster, Rosemary, 'Climate Change (2020)' (2022) Vol. 3 *Yearbook of International Disaster Law* 512.

Ma'iingan, Wapshkaa (Mills, Aaron), 'Aki, Anishinaabek, kaye tahsh Crown' (2010) Vol. 9 No. 1 *Indigenous Law Journal* 109.

Macalister-Smith, P., 'The International Relief Union of 1932' (1981) Vol. 5 No. 2 *Disasters* 147.

Magdoff, Fred, 'Multiple Crises as Symptoms of an Unsustainable System' (2010) Vol. 33 No. 2 *Review (Fernand Braudel Centre) Special Issue on Food, Energy, Environment: Crisis of the Modern World-System* 103.

Marks, Susan, 'False Contingency' (2009) Vol. 62 No. 1 *Current Legal Problems* 1.

Marks, Susan, 'Human Rights and Root Causes' (2011) Vol. 74 No. 1 *The Modern Law Review* 57.

Meyerson, Denise, 'Fundamental Contradictions in Critical Legal Studies' (1991) Vol. 11 No. 3 *Oxford Journal of Legal Studies* 439.

Mickelson, Karin, 'South, North, International Environmental Law, and International Environmental Lawyers' (2000) Vol. 11 No. 1 *Yearbook of International Environmental Law* 52.

Mickelson, Karin, 'The Maps of International Law: Perceptions of Nature in the Classification of Territory' (2014) Vol. 27 No. 1 *Leiden Journal of International Law* 621.

Miéville, China, 'Multilateralism as Terror: International Law, Haiti and Imperialism' (2008) Vol. 19 *Finnish Yearbook of International Law* 81.

Miles, Kate, 'International Investment Law: Origins, Imperialism and Conceptualizing the Environment' (2010) Vol. 21 No. 1 *Colorado Journal of International Law and Policy* 1.

Mohamad, Rahmat, 'Some Reflections on the International Law Commission Topic "Identification of Customary International Law"' (2016) Vol. 15 No. 1 *Chinese Journal of International Law* 41.

Moore, Henrietta, 'Global Prosperity and Sustainable Development Goals' (2015) Vol. 27 *Journal of International Development* 801.

Morris, James D K and Ruru, Jacinta, 'Giving Voice to Rivers: Legal Personality as a Vehicle for Recognising Indigenous Peoples' Relationship to Water?' (2010) Vol. 14 No. 2 *Australian Indigenous Law Review* 49.

Moyn, Samuel, 'A Powerless Companion: Human Rights in the Age of Neoliberalism' (2014) Vol. 77 No. 4 *Law and Contemporary* Problems 147.

Mutua, Makau, 'Savages, Victims, and Saviors: The Metaphor of Human Rights' (2001) Vol. 42 *Harvard International Law Journal* 201.

Mutua, Makau and Anghie, Antony, 'What Is TWAIL?' (2000) Vol. 94 *Proceedings of the Annual Meeting (American Society of International Law)* 31.

Natarajan, Usha, and Khoday, Kishan, 'Locating Nature: Making and Unmaking International Law' (2014) Vol. 27 *Leiden Journal of International Law* 573.

Natoli, Tommaso, 'Improving Coherence Between Climate Change Adaptation and Disaster Risk Reduction through Formal and Informal International Lawmaking' (2022) Vol. 13 No. 1 *Journal of International Humanitarian Legal Studies* 78.

Naudé, Wim, Santos-Paulino, Amelia U., and McGillivray, Mark, 'Measuring Vulnerability: An Overview and Introduction' (2009) Vol. 37 No. 3 *Oxford Development Studies* 183.

Neocleous, Mark, 'International Law as Primitive Accumulation; Or, the Secret of Systematic Colonization' (2012) Vol. 23 *European Journal of International Law* 941.

O'Donnell, Erin, Poelina, Anna, Pelizzon, Alessandro, and Clark, Cristy, 'Stop Burying the Lede: The Essential Role of Indigenous Law(s) in Creating Rights of Nature' (2020) Vol. 9 No. 3 *Transnational Environmental Law* 403.

O'Donnell, Thérèse, 'Vulnerability and the International Law Commission's Draft Articles on the Protection of Persons in the Event of Disasters' (2019) Vol. 68 *International and Comparative Law Quarterly* 573.

O'Keefe, Phil, Westgate, Ken, and Wisner, Ben, 'Taking the Naturalness Out of Natural Disasters' (1976) Vol. 260 *Nature* 566.

Obregón, Liliana, 'Empire, Racial Capitalism, and International Law: The Case of Manumitted Haiti and the Recognition of Debt' (2018) Vol. 31 *Leiden Journal of International Law* 597

Oliver-Smith, Anthony, 'Haiti and the Historical Construction of Disasters' (2010) Vol. 43 No. 4 *NACLA* 32.

Orago, Nicholas Wasonga,'Africa and MENA Regions (2021)' (2023) Vol. 4 No. 1 *Yearbook of International Disaster Law* 510.

Özsu, Umut, "'In the Interests of Mankind as a Whole": Mohammed Bedjaoui's New International Economic Order' (2015) Vol. 6 No. 1 *Humanity* 129.

Pellegrini, Lorenzo, Arsel, Murat, Orta-Martínez, Martí, and Mena, Carlos F., 'International Investment Agreements, Human Rights, and Environmental Justice: The Texaco/Chevron Case from the Ecuadorian Amazon' (2020) Vol. 23 *Journal of International Economic Law* 455.

Perry, S, 'Stockholm: Arbitrator and Counsel: The Double-hat Syndrome' (2012) Vol. 7 No. 2 *Global Arbitration Review*.

Phillips, Anthony, 'Haiti, France and the Independence Debt of 1825' (2008) available at < https://canada-haiti.ca/sites/default/files/Haiti,%20France%20and%20the%20Independence%20Debt%20of%201825_0.pdf> accessed 20 July 2023.

Porras, Ileana, 'Appropriating Nature: Commerce, Property, and the Commodification of Nature in the Law of Nations' (2014) Vol. 27 No. 1 *Leiden Journal of International Law* 641.

Pronto, Arnold N., 'Developments on the Draft Articles on the Protection of Persons in the Event of Disasters (2021)' (2023) Vol. 4 *Yearbook of International Disaster Law* 467.

Puvimanasinghe, Shyami Fernando, 'The Bhopal Case: A Developing Country Perspective' (1994) Vol. 6 *Sri Lanka Journal of International Law* 185.

Rajagopal, Balkrishnan, 'Locating the Third World in Cultural Geography' (2000) Vol. 15 No. 2 *Third World Legal Studies* 1.

Ramasastry, Anita, 'Corporate Social Responsibility Versus Business and Human Rights: Bridging the Gap Between Responsibility and Accountability' (2015) Vol. 14 No. 2 *Journal of Human Rights* 237.

Rawinji, Fladwel, 'Claiming the Human Right to Protection from Disasters: The Case for Human Rights-based Disaster Risk Reduction' at <https://www.preventionweb.net/files/submissions/31225_righttodisasterprotection.pdf > accessed 20 March 2019.

Ruszczyk, Hanna A., 'Ambivalence Towards Discourse of Disaster Resilience' (2019) Vol. 43 No. 4 *Disasters* 818.

Saito, Natsu Taylor, 'From Slavery and Seminoles to AIDS in South Africa: An Essay on Race and Property in International Law' (2000) Vol. 45 No. 5 *Villanova Law Review* 1135.

Salomon, Margot E., 'From NIEO to Now and the Unfinishable Story of Economic Justice' (2013) Vol. 62 No. 1 *The International and Comparative Law Quarterly* 31.

Salomon, Margot E., 'Nihilists, Pragmatists and Peasants: A Dispatch on Contradiction in International Human Rights Law' (2018) *IILJ Working Paper 2018/5 (MegaReg Series)* 1.

Schill, Stephan W., 'Do Investment Treaties Chill Unilateral State Regulation to Mitigate Climate Change?' (2007) Vol. 24 No. 5 *Journal of International Arbitration* 469.

Schmitt, Carl, 'The Land Appropriation of a New World' (1996) Vol. 109 *Telo* 29.

Simm, Gabrielle, 'Disasters and Gender: Sexing International Disaster Law' (2021) Vol. 2 *Yearbook of International Disaster Law* 144.

Sivakumaran, Sandesh, 'Techniques in International Law-Making: Extrapolation, Analogy, Form and the Emergence of an International Law of Disaster Relief' (2018) Vol. 28 No. 4 *The European Journal of International Law* 1097.

Sornarajah, M., 'A Law for Need or a Law for Greed?: Restoring the Lost Law in the International Law of Foreign Investment' (2006) Vol. 6 No. 1 *International Environmental Agreements: Politics, Law, and Economics* 329.

Stahn, Carsten, 'Reckoning with Colonial Injustice: International Law as Culprit and Remedy?' (2020) Vol. 33 *Leiden Journal of International Law* 823.

Tiefenbrun, Susan W., 'Semiotic Definition of Lawfare' (2010) Vol. 43 No. 1 *Case Western Reserve Journal of International Law* 29.

Titi, Catharine, 'Most-Favoured Nation Treatment, Survival Clauses and Reform of International Investment Law' (2016) Vol. 33 No. 5 *Journal of International Arbitration* 425.

Todres, Jonathan, 'Mainstreaming Children's Rights in Post-Disaster Settings' (2011) Vol. 25 *Emory International Law Review* 1233.

Tokunaga, Emika, 'Asia (2021)' (2023) Vol. 4 No. 1 *Yearbook of International Disaster Law* 502.

Tzouvala, Ntina, 'Invested in Whiteness: Zimbabwe, the von Pezold Arbitration, and the Question of Race in International Law' (2022) Vol. 2 No. 2 *Journal of Law and Political Economy* 226.

Umozurike, U. O., 'The African Slave Trade and the Attitudes of International Law Towards It' (1971) Vol. 16 No. 2 *Howard Law Journal* 334.

Valencia-Ospina, Eduardo, 'The Work of the International Law Commission on the "Protection of Persons in the Event of Disasters"' (2019) Vol. 1 *Yearbook of International Disaster Law* 5.

van der Ploeg, Frederick, 'Natural Resources: Curse or Blessing?' (2011) Vol. 49 No. 2 *Journal of Economic Literature* 366.

Van Ho, Tara, 'Defining the Relationships: "Cause, Contribute, and Directly Linked To" in the UN Guiding Principles on Business and Human Rights' (2021) Vol. 43 No. 4 *Human Rights Quarterly* 625.

Whyte, Jessica, 'Powerless Companions or Fellow Travellers? Human Rights and the Neoliberal Assault on Post-Colonial Economic Justice' (2018) Vol. 2 No. 2 *Radical Philosophy* 13.

Whyte, Kyle, 'Indigenous Climate Change Studies: Indigenizing Futures, Decolonizing the Anthropocene' (2017) Vol. 55 No. 1-2 *English Language Notes* 153.

Wisner, Ben, 'Five Years Beyond Sendai – Can We Get Beyond Frameworks?' (2020) Vol. 11 *International Journal of Disaster Risk Science* 239.

Xavier, Sujith, and Reynolds, John, 'The Dark Corners of the World: International Criminal Law and the Global South' (2016) Vol. 14 *Journal of International Criminal Justice* 959.

Zapatero, Pablo, 'Legal Imagination in Vitoria: The Power of Ideas' (2009) Vol. 11 *Journal of the History of International Law* 221.

Newspaper Articles

Bhagwati, P. N., 'Supreme Court Judgement on Bhopal Gas Tragedy' *India Today* (15 March 1989) <https://www.indiatoday.in/magazine/guest-column/story/19890315-supreme-court-judgement-on-bhopal-gas-tragedy-815886-1989-03-14> accessed 27 January 2023.

Greenfield, Patrick, 'Ban Wildlife Markets to Avert Pandemics, says UN Biodiversity Chief' (6 April 2020, *The Guardian*) < https://www.theguardian.com/world/2020/apr/06/ban-live-animal-markets-pandemics-un-biodiversity-chief-age-of-extinction?CMP=share_btn_tw> accessed 20 September 2020.

Milne, Seumas, 'Haiti's Suffering is a Result of Calculated Impoverishment' (*The Guardian*, 20 Jan 2010) <https://www.theguardian.com/commentisfree/cifamerica/2010/jan/20/haiti-suffering-earthquake-punitive-relationship> accessed 9 March 2021.

Other

Boyer, Jeane-Pierre, *Pièces Officielles Relatives aux Négotiacions du Gouvernment Français avec le Gouvernment Haïtien, pour Traiter de la Formalité de la Reconnaisance de l'Indépendance d'Haïti* (1824) (Pamphlet).

Carmichael, C. H. E., 'Grotius and the Literary History of the Law of Nations' (1884) (Text of a speech issued as a pamphlet.

'Port-au-Prince' (1821) No. 32 *Le Télégraph*.

Reports

Bündnis Entwicklung Hilft, Ruhr University Bochum, and Peace and Armed Conflict (IFHV), *World Risk Report 2021* (Bündnis Entwicklung Hilft, 2021) available at <https://weltrisikobericht.de/wp-content/uploads/2021/09/WorldRiskReport_2021_Online.pdf> accessed 14 November 2022.

Centre for Research on the Epidemiology of Disasters (CRED), '2022 Disasters in Numbers' (CRED, 2023) available at <https://cred.be/sites/default/files/2022_EMDAT_report.pdf> accessed 31 March 2023.

Fischer, Horst, 'International Disaster Response Law: A Preliminary Overview and Analysis of Existing Treaty Law' (IFRC, 2003).

Homa – Centre of Human Rights and Business, 'Reflexões sobre o Decreto 9571/2018 que estabelece Diretrizes Nacionais sobre empresas e Direitos Humanos' (2019) Vol. 1 No. 7 available at < http://homacdhe.com/wp-content/uploads/2019/01/An%C3%A1lise-do-Decreto-9571-2018.pdf> accessed 24 November 2021.

International Federation of the Red Cross (IFRC), 'Global Synthesis Report on Law and Policies for Climate Resilience: Enhancing Normative Integration Between Climate Change Adaptation and Disaster Risk Reduction' (IFRC, 2021) available at <https://disasterlaw.ifrc.org/sites/default/files/media/disaster_law/2021-08/20210803_DRR_CCA_FinalDoc_ONLINE.pdf > accessed 7 June 2022.

IFRC, 'Introduction to the Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance' (IFRC, 2008).

IFRC, 'Law and Legal Issues in International Disaster Response: A Desk Study' (IFRC, 2007).

IFRC, *World Disaster Report 2000* (IFRC, 2000).

IFRC, 'World Disasters Report 2022' (International Federation of Red Cross and Red Crescent Societies, 2023) available at <https://www.ifrc.org/sites/default/files/2023-01/2022_IFRC-WDR_EN.pdf> accessed 30 March 2023.

Natoli, Tommaso, *Literature Review on Aligning Climate Change Adaptation (CCA) and Disaster Risk Reduction (DRR)* (International Federation of the Red Cross | University College Cork, 2019).

Oxfam, 'An Economy for the 1%' (18 January 2016) < https://oxfamilibrary.openrepository.com/bitstream/handle/10546/592643/bp210-economy-one-percent-tax-havens-180116-en.pdf;jsessionid=FF9DCF5C20F62488122D62030A1FBD61?sequence=47> accessed 26 October 2019.

Seglah, Holly and Blanchard, Kevin, 'LGBTQIA+ People and Disasters' (2021) available at < https://irp.cdn-website.com/cde3424c/files/uploaded/LGBTQIA%2B%20report-3.pdf> accessed 1 July 2023.

South Centre, 'WTO Decision-Making and Developing Countries' (Working Papers 11, November 2001) available at <https://www.iatp.org/sites/default/files/WTO_Decision-Making_and_Developing_Countries.htm> accessed 14 November 2022.

Tanner, Thomas, Bahadur, Aditya, and Moench, Marcus, *Challenges for Resilience, Policy, and Practice (Working Paper 519)* (Overseas Development Institute, 2017).

The Sphere Project, *Humanitarian Charter and Minimum Standards in Disaster Response* (The Sphere Project, 2000).

Tienhaara, Kyla and Cotula, Lorenzo, *Raising the Cost of Climate Action? Investor-State Dispute Settlement and Compensation for Stranded Fossil Fuel Assets* (International Institute for Environment and Development, 2020).

University College London (UCL) Centre for Gender and Disaster, 'Gender and Disaster: Bibliography & Reference Guide Volume 1' (2020) available at < https://www.ucl.ac.uk/risk-disaster-reduction/sites/risk-disaster-reduction/files/gender_disaster_reference_guide_vol_1.pdf> accessed 1 July 2023.

UNISDR, 'Disaster Risk Reduction Private Sector Partnership: Post 2015 Framework – Private Sector Blueprint Five Private Actor Visions for a Resilient Future' (2015) at <https://www.preventionweb.net/files/42926_090315wcdrrpspepublicationfinalonli.pdf> accessed 24 February 2020.

Verheecke, Lora, Eberhardt, Pia, Olivet, Cecilia, and Cossar-Gilbert, Sam, *Red Carpet Courts: 10 Stories of How the Rich and Powerful Highjacked Justice* (Friends of the Earth Europe and International, the Transnational Institute (TNI), and Corporate Europe Observatory, 2019).

Yale Law School, Yale School of Public Health and Association Haitïenne de Droit l'Environment, 'Peacekeeping Without Accountability: The United Nations Responsibility for the Haitian Cholera Epidemic' (2013) <https://law.yale.edu/sites/default/files/documents/pdf/Clinics/Haiti_TDC_Final_Report.pdf> accessed 10 March 2021.

Web Pages

'Aboriginal Fire Management: What is Cool Burning?' (*Watarrka Foundation*, [undated]) < https://www.watarrkafoundation.org.au/blog/aboriginal-fire-management-what-is-cool-burning> accessed 28 July 2023.

Business & Human Rights Resource Centre, 'Texaco/Chevron Lawsuits (re Ecuador)' (7 May 2013) < https://www.business-humanrights.org/en/latest-news/texacochevron-lawsuits-re-ecuador-1/> accessed 29 November 2021.

Chernobyl Disaster' at < https://www.britannica.com/event/Chernobyl-disaster> accessed 4 September 2019.

International Federation of the Red Cross (IFRC), 'IFRC Disaster Law Database' <https://disasterlaw.ifrc.org/disaster-law-database> accessed 11 April 2023.

International Monetary Fund (IMF), 'Public Information Notice: IMF Executive Board Concludes 2010 Article IV Consultation with Haiti' (6 August 2010) <https://www.imf.org/en/News/Articles/2015/09/28/04/53/pn10112> accessed 9 March 2021.

'No Natural Disasters' < https://www.nonaturaldisasters.com/> accessed 21 January 2020.

United Nations Department of Economic and Social Affairs, 'No One is Safe, Until Everyone is' < https://www.un.org/en/desa/%E2%80%9Cno-one-safe-until-everyone-%E2%80%9D> accessed 20 January 2023.

United Nations Office for Disaster Risk Reduction (UNDRR), 'Terminology' at < https://www.undrr.org/terminology/disaster> accessed 10 September 2020.

United States Agency for International Development (USAID), 'Introduction to Disaster Risk Reduction' (2011) at < https://www.preventionweb.net/files/26081_kp1concepdisasterrisk1.pdf> accessed 10 August 2019.

World Health Organisation (WHO), 'WHO Coronavirus (COVID-19) Dashboard' (undated) < https://covid19.who.int/> accessed 30 March 2023.