

YIDL Dialogues with Practitioners #2

Dr Volker Türk, UN High Commissioner for Human Rights

A Dialogue with Marie Aronsson-Storrier and Emanuele Sommario

Dear Dr Türk, thank you for accepting our invitation to be part of the second 'Dialogue with Practitioners' hosted by the Yearbook of International Disaster Law. The underlying idea behind this section is to connect the reflections on international disaster law (IDL) that form the Yearbook's substance with developments underway in practice. We are convinced that this is a domain of study where keeping "a foot on the ground" is the best way to ensure practical and realistic analysis of the law to enhance research impact.

1) Starting from the beginning, it would be wonderful to hear what inspired you to start working for the UNHCR and the story of how you moved from there to the Executive Office of the UN Secretary-General and to your current position as the UN High Commissioner for Human Rights. Could you please tell us a little about your journey?

I was born in Austria twenty years after the end of the Second World War. Like many of my generation, I was shocked by what had happened, including in my own country. I struggled very personally with the question of how such a cataclysmic calamity could have come to pass in what many had considered modern times. I found deep inspiration and hope in the Universal Declaration of Human Rights and its implicit promise of "never again," as well as in the profound social transformations taking place in the post-war period for social justice, feminism, LGBTIQ+ rights, international solidarity and equity, as well as the anti-apartheid, decolonisation and environmental struggles. These early influences have shaped my outlook on life.

Inspired by the promise of human rights, I have dedicated my career to the search for a better world – a world that learns from history, that values every single human being in freedom, openness, equality, and diversity, that overcomes division and strives for equity and justice. For me, human rights represent a common language of our shared humanity, a unifying force at the heart of which lies human dignity and the consequent duty of care for another human being, irrespective of circumstances.

The United Nations (UN) has become my professional home because of what it stands for in terms of principles and values and what it has been able to achieve for people and the planet all around the globe. For over thirty years, I have worked to help advance the rights of some of the most vulnerable and dispossessed people on earth: refugees, the internally displaced, and stateless people. They represent a microcosm of the human rights world in all its dimensions. Specifically, as Assistant High Commissioner with responsibility for protection at the United Nations High Commissioner for Refugees (UNHCR), I worked with teams around the world to ensure that protection and respect for human rights became central to the organization's responses to complex humanitarian challenges and its nexus to development. This work has also brought home to me the inextricable link between human rights and the international protection of refugees. Listening to their stories has taught me what can happen when a world in disarray is not tempered by the rule of law and respect for human rights.

Over the last couple of years in senior positions in the UN I have worked to advance the human rights cause through my UN system-wide strategic coordination responsibilities and global policy work. I led the policy responses to the COVID-19 pandemic using a human rights lens, I worked closely with the UN Secretary-General to develop the Call to Action for Human Rights, a blueprint for the UN system to put human rights at the centre of our work, and I also led the work on Our Common Agenda, the Secretary-General's vision for better international cooperation to respond to humanity's most pressing challenges.

I have now stepped into the role of United Nations High Commissioner for Human Rights at a time of intense global turmoil. This is a position with a unique power – vested in it by Member States – to call international attention to both obvious and forgotten crises that carry enormous human costs, and to press for sustained engagement to address them. With an eye to the past as well as to the future, in the spirit of “never again” and in the interest of inter-generational justice, it is critical that we rekindle today the spirit, impulse and vitality that led to the Universal Declaration of Human Rights 75 years ago. We need to forge a new worldwide consensus on human rights, broadening its base of support, rebuilding trust in each other, and moving forward together with a deep recognition that humanity may be on the brink of extinction and that our very survival depends on finding our way back to that common language.

2) *The COVID-19 pandemic has had, and still has, a huge impact on the enjoyment of human rights worldwide, both in terms of the effects of the virus and States' response thereto. With an international treaty on pandemic prevention, preparedness and response now being negotiated within the WHO, many argue that human rights law should be mainstreamed in this new instrument. In your opinion, what role can, and should, human rights play in the new Pandemic treaty?*

With nearly 6.9 million deaths, millions of jobs lost and an exponential increase in the number of people living in poverty, the COVID-19 pandemic exacted a human toll that is almost unfathomable. In almost every country, the pandemic exposed the profound inequalities entrenched in our societies. It left the marginalised far more vulnerable, not only to the risk of infection, but also to very serious socio-economic consequences, impacting also on their rights to education, to work, to housing, and to water and sanitation.

COVID-19 has taught us – among many lessons that call for humility and self-reflection – that protecting human rights is the key not only to responding to pandemics, but to preventing them, preparing for them and, ultimately, to recovering well.

The new pandemic treaty presents us with an opportunity to incorporate this vital lesson. International human rights law can and should play a foundational role – truly taking stock of the human rights dimensions of this pandemic will better equip us to address the next one. The world needs to come together to achieve an effective treaty that better equips us for what, there is no doubt, will again come at us in the future.

As negotiations on the treaty continue, and during the treaty drafting process, it is crucial that civil society engages freely and actively. Participation during these processes needs to reflect the diversity of society and ensure those most underrepresented are involved. From LGBTIQ+ communities, to persons with disabilities, older persons, children, indigenous peoples, minorities, migrants, and persons in detention, these voices will be crucial to ensuring a holistic approach to the human rights impacts of future pandemics.

The health of our societies and communities is not only a matter of access to health services, it is a matter of social justice. Strengthening the protection of economic, social and cultural rights is vital to effective pandemic prevention, preparedness and recovery. For instance, universal social protection systems build resilience and help protect the right to an adequate standard of living even in the midst of a public health emergency, ensuring other fundamental rights such as food, water, housing, and education.

In addition to the massive loss of life caused by the pandemic, COVID-19 brought health systems around the world to near collapse – hospitals were overflowing, and health staff were exhausted, overworked and at breaking point. Non-discriminatory access to health goods, facilities and services, guaranteed through human rights-based models of universal health coverage, must therefore be part of all future efforts. We cannot repeat the stark injustice that played out in the distribution of COVID-19 vaccines, where rich countries were the first to access them, holding large stockpiles in the initial phases of the pandemic, while poorer countries mostly went without. The occupational health and safety of healthcare personnel must also be prioritized, including the ready availability of mental health services.

As a global community, we have to do better. With renewed and revitalised multilateralism and international solidarity, we can ensure that every nation, rich or poor, can prioritize human rights as part of comprehensive and effective pandemic prevention and response. COVID-19 has shown that we need a global and coordinated approach, committed to leaving no one behind and reaching those most in need, first.

These are just some of the many human rights approaches that should play a central role in pandemic prevention, preparedness and response. If this treaty can provide a solid legal and rights-focused framework, and if the international community can act together, we will have every tool at our disposal to protect and uphold human rights even in the face of a future pandemic.

3) In 2016, the International Law Commission adopted the draft articles on the Protection of persons in the event of disasters, explicitly endorsing a human rights-based approach to disasters (Draft Article 5). The document is now under discussion at the UN General Assembly and may serve as the basis for an international convention on the topic. To what extent would you consider it useful to have a comprehensive international treaty on disasters and what role do you think IHRL should play in such a treaty?

For the millions of people affected each year, disasters can and do gravely impact the enjoyment of a wide array of civil, political, economic, social, and cultural rights. Protecting them requires that human rights are front and centre of disaster prevention and response. It is imperative that international human rights law has a central role in any legal instrument regulating the protection of individuals in the event of disasters.

This is largely already reflected throughout the draft articles and in the accompanying commentaries by the International Law Commission (ILC), much beyond draft article 5. Draft article 2, for example, refers to the need to

meet the essential needs of the people concerned, with full respect for their rights. In draft article 4, the concept of human dignity is introduced, which the ILC describes as 'the ultimate foundation of human rights law'. The ILC's reference to humanitarian principles, including the protection of vulnerable people and the principle of non-discrimination, are also extensively regulated in international human rights law. Lastly, as noted by the ILC, the principle of humanity is an element both of international humanitarian law and international human rights law.

The ILC further relied on international human rights treaties and practice by human rights bodies in support of the more specific obligations contained in the draft articles. This includes the duties to cooperate, to take measures to reduce disaster risks, to seek external assistance, and the prohibition of arbitrarily withholding consent to receive external assistance.

These examples are a helpful reminder not only of the centrality of human rights, but also that the draft articles, to a considerable extent, rely on and express pre-existing obligations under international law, including international human rights law. Even where States commit to adopting a treaty, other areas of international law, including international human rights law, will continue to regulate the protection of individuals in the event of disasters. This being said, an international treaty setting out the protection of persons in the event of disasters could play a vital role in several ways:

- by giving expression to and consolidating in one legal instrument pre-existing State obligations under international human rights law applicable to people caught up in disasters, and providing an occasion for States to reaffirm their commitment to comply with these obligations;
- by allowing States to establish and go beyond pre-existing obligations to facilitate an adequate and effective response to disasters, and to reduce the risk of them occurring; and
- by serving as a powerful tool for improved and sustained State action in disaster response and risk reduction.

I support the initiative to negotiate the adoption of a treaty on the basis of the ILC's proposal. I reiterate the need to maintain the centrality of human rights protection as part of the object and purpose of the treaty, and to reaffirm the importance of human rights compliance. It is also key to accentuate the relevance of human rights protection and international human rights law in the interpretation of the obligations of such a treaty.

4) You have worked extensively to improve the rights of refugees and stateless persons around the world, including your significant contribution to the 2018 Global Compact on Refugees, which, while not applying directly to persons displaced by

peacetime disasters, does acknowledge that disasters can lead to displacement. At the same time, the issue of “environmental refugees” is becoming increasingly urgent, and the existing international legal framework seems to grant an unsatisfactory degree of protection to these individuals. Based on your experience, what would be the most effective strategy to improve the situation?

The global challenges created by climate change and its impacts on human rights and human mobility demand a global response. The warnings are clear: the current level of international inaction is driving humanity towards the biggest human rights crisis of our times.

Data paints a worrying picture. In 2021, disasters – many of which were related to the adverse effects of climate change – triggered more than 62 per cent of newly recorded displacements (23.7 million); the rest (some 14.4 million) were due to conflict and violence.¹

And displacement is only the beginning. Climate change has serious impacts on the effective enjoyment of many rights, including the rights to health, water, sanitation, food, housing, self-determination, and even the right to life. Climate change-related threats combine with other factors to drive displacement and migration, often in situations that are precarious, irregular, and unsafe.

Respect for and fulfilment of human rights must be the cornerstone of all climate, displacement and migration policies. What do we see happening today? While most people who move in the context of climate change and disasters remain inside their own country – where the State has an obligation to protect their human rights, including by operationalising the Guiding Principles on Internal Displacement – many are also compelled to move across borders.

All people who leave their countries because of climate change and disasters are protected by international human rights law, regardless of their nationality and migration status. Under international human rights law, States must take steps to ensure their dignity and safety, and uphold their rights, including through the provision of food and clean water, access to adequate housing, and health care. States also need to uphold the principles of *non-refoulement* and the prohibition of collective expulsion.

International human rights and international refugee law can, in certain circumstances, provide grounds for admission and stay to people who are crossing borders in the context of the adverse effects of climate change. But we remain far from a world where all people who are compelled to move due to climate change are ensured regular admission and stay.

1 IDMC, Global Report on Internal Displacement (2022), available at <<https://www.internal-displacement.org/global-report/grid2022/>>.

Given these gaps, international and regional cooperation and solidarity, and the use of the State's discretion in immigration matters, are crucial for adequate policy responses to human mobility in the context of climate change. Within relevant global frameworks, including the Global Compact on Refugees and the Global Compact for Safe, Orderly and Regular Migration, States around the world need to take individual and collective action, in accordance with international human rights and other applicable international law.

Having been involved in the Global Compact on Refugees, I would like to point out that the framework of international cooperation, solidarity and international burden- and responsibility-sharing contained in the Compact offers a blueprint that could easily be applied to scenarios involving the external displacement of people en masse due to sudden onset disasters.

As a global community, we need to ensure that safe, regular and human rights-based migration is available as an adaptation response to climate change. To do this, we must explore opportunities to make existing safe and regular pathways accessible to those who experience situations of vulnerability. We can either do this now, while we can effectively take collective action, or when nature – which will not afford us the luxury of more time – forces it upon us.

We must also ensure that people displaced across borders in the context of adverse effects of climate change are properly assessed and provided international protection under international and regional refugee law instruments, where these apply. People seeking international protection in this context may have valid claims for refugee status. Whether a claim for international protection arises from sudden or slow-onset effects of climate change or disasters, States are bound to ensure access to a fair and efficient asylum procedure under which the need for international protection is assessed.²

States can also consider specific new complementary pathways, as well as regular stay arrangements, for individuals at risk due to climate change, including on human rights and humanitarian grounds. And at all stages of migration or displacement, States need to uphold the rights to health, food, water, sanitation, housing, education, and essential services for all migrants, including through international cooperation and assistance.

My Office is making this a priority. We are working closely with Member States, UN partners, and civil society to advance a human rights-based approach to migration and displacement in the context of climate change. One example is in the Sahel region in Africa, where our teams are identifying protection gaps

2 UN High Commissioner for Refugees (UNHCR), Legal considerations regarding claims for international protection made in the context of the adverse effects of climate change and disasters, 1 October 2020 available at <<https://www.refworld.org/docid/5f75f2734.html>>.

faced by communities affected by the consequences of climate change, and measures to uphold their rights. Around the world, we are also advocating for the right to a healthy environment, recently recognized by the Human Rights Council and the UN General Assembly, and we are providing technical assistance and guidance on aligning climate action with human rights.

As the climate crisis intensifies, a human rights-based approach to climate change-related migration and displacement is paramount, and urgent. If we can advance towards this, we can ensure safe, dignified and regular pathways and access to justice and fundamental rights for those compelled to move.

Thank you very much for your time, High Commissioner, and all the best for your mandate.

Thank you!

Acknowledgement

This contribution was made possible through funding coming from the Jean Monnet Chair “European and International Human Rights Standards in Conflicts and Disasters” (GA 101127519), co-funded by the European Union. Views and opinions expressed are however those of the authors only and do not necessarily reflect those of the European Union or EACEA. Neither the European Union nor the granting authority can be held responsible for them.