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Italy's Contribution to a More Robust International Architecture for the CBRN Legal Landscape

A Critical Appraisal

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Abstract

During the last decades, the landscape of Chemical, Biological, Radiological and Nuclear ("CBRN") threats has significantly evolved. In the light of this, it does not come as a surprise that several initiatives have recently been put in place both at universal and regional level to deal with such threats, trying to introduce a more robust legal framework for CBRN events. The present article provides a global assessment on the role played by Italy in identifying and/or strengthening international obligations related to CBRN events. In the light of the piecemeal CBRN legal landscape, the article will not discuss each and every initiative put in place by Italy; rather, the analysis will be focused on the contribution given by Italy to multilateral initiatives which are likely to produce cross-cutting or horizontal impacts on the discipline.

Keywords

CBRN events – Italy – disaster management – legal preparedness – pandemics – health emergencies – cybersecurity

1 Introduction

During the last decades, the landscape of Chemical, Biological, Radiological and Nuclear ("CBRN") threats has significantly evolved.[1] Not only have concerns related to potential CBRN terrorism increased since the 9/11 attacks,[2] but issues related to the use of banned weapons, both by State and non-State actors, have also gained momentum in the light of the ongoing conflicts around the world (including the current war in Ukraine)[3]. The incumbent threat of industrial accidents leading to release of CBRN agents – such as in the case of the 2011 accident at the Fukushima Daiichi Nuclear Power Station[4] and the 2020 Beirut port explosion – ,[5] together with the increase of risks and occurrence of disasters and other calamitous events having CBRN implications (starting from the COVID-19 pandemic),[6] have further exacerbated concerns about a proliferation of CBRN events.[7] Also, the impact of cyber threats, as well as that of criminal activities implying the use – or leading to the release – of CBRN agents, have become more worrying than ever.[8]

In parallel, academics have started paying more attention to the legal implications flowing from CBRN events.[9] A recent scholarly work edited by

1 See FRULLI, "The Challenge of Outlining the CBRN Definitional Framework", in DE GUTTRY et al. (eds.), *International Law and Chemical, Biological, Radio-Nuclear* (*CBRN*) *Events. Towards an All-Hazards Approach*, Leiden-Boston, 2022, p. 3 ff., stressing the difficulties caused by such evolution in identifying a unitary approach towards CBRN events' management.

2 See PERRONE, "Response and Recovery in the Event of CBRN Terrorism", in DE GUTTRY et al. (eds.), *cit. supra* note 1, p. 141 ff.

3 WAKEFIELD and LEWIS, "Ukraine: Is a Chemical or Biological Attack Likely?", Chatham House, 30 March 2022, available at: <https://www.chathamhouse.org/2022/03/ukraine-chemical-or-biological-attack-likely>.

4 See VENIER, "The Fukushima Disaster", Factsheet, available at: <http://www.cbrn-italy.it/sites/default/files/Factsheet_Fukushima.pdf>.

5 VENIER, "Rising from the Ashes, Once Again? The Beirut Port Explosion and International Disaster Law", Yearbook of International Disaster Law (2020), 2022, p. 325 ff.

6 DE GUTTRY, "Preparedness Rules Applicable to Naturally Occurring CBRN Incidents with Special Emphasis on Biological Events", in DE GUTTRY et al. (eds.), *cit. supra* note 1, p. 294 ff.

7 For an impressive series of data concerning disasters occurred in the last years, see the database managed by the Centre for Research on the Epidemiology of Disasters, University of Leuven (available at: <www.emdat.be>). See also International Federation of Red Cross and Red Crescent Societies, *World Disaster Report 2020. Come Heat or High Water*, Geneva, 2020, available at: <https://www.ifrc.org/sites/default/files/2021-05/20201116_WorldDisasters_Full.pdf>.

8 FARNELLI, "New Technologies and CBRN Events: International Obligations in the Cybersecurity Domain", in DE GUTTRY et al. (eds.), *cit. supra* note 1, p. 561 ff.

9 See, among others, COLE, *The Changing Face of Terrorism. How Real Is the Threat from Biological, Chemical, and Nuclear Weapons?*, London, 2011; MEULENBELT and

a network of Italian academics, adopting an "all-hazards approach" towards CBRN threats[10] – that is, an approach covering both the intentional and accidental release of CBRN substances –, has carried out a comprehensive mapping exercise on relevant international obligations by relying on the different phases of the disaster cycle (namely, prevention, preparedness, response and recovery),[11] leading to the conclusion that "it is currently difficult to envisage the rapid development of a coherent set of customary and/or treaty rules covering all aspects of CBRN risk management".[12]

In the light of the foregoing observations, it does not come as a surprise that several initiatives have recently been put in place at international level to deal with such threats, trying to introduce a more robust legal framework for CBRN events. The present article provides a global assessment on the role played by Italy in identifying and/or strengthening obligations related to CBRN events. Due to space constraints, the present article will not discuss each and every initiative launched (or supported) by Italy to strengthen the CBRN legal landscape. Indeed, it is undisputed that this legal landscape still remains highly fragmented, being composed by a plethora of binding and non-binding instruments having different material and/or personal scopes of application.[13] This circumstance explains why the decision has been made to focus the analysis on the contribution given by Italy to multilateral initiatives which are likely to produce (or contribute to produce) cross-cutting or horizontal impacts on the discipline. To this end, the article is structured into four more sections. Section 2 looks at the contribution given by Italy to strengthening the disaster management legal framework. Section 3 zooms in on the role played by Italy in reinforcing legal preparedness for health emergencies. Section 4 considers

NIEUWENHUIZEN, "Non-State Actors' Pursuit of CBRN Weapons: From Motivation to Potential Humanitarian Consequences", International Review of the Red Cross, 2015, p. 831 ff.; MARTELLINI and MALIZIA (eds.), *Cyber and Chemical, Biological, Radiological, Nuclear, Explosives Challenges*, Cham, 2017; TIGNINO, "Technological Hazards during Armed Conflicts. The Case of the SAFER Oil Tanker in Yemen", Yearbook of International Disaster Law (2020), 2022, p. 297 ff. Needless to say, particular attention has been paid in legal literature to the challenges posed by the COVID-19 pandemic: see *infra* Section 3.

10 DE GUTTRY et al. (eds.), *cit. supra* note 1.

11 See NTHAKOMWA, "Cycles of a Disaster", in PENUEL and STATLER (eds.), *Encyclopedia of Disaster Relief*, New York, 2011; FARBER, "International Law and the Disaster Cycle", in CARON et al. (eds.), *The International Law of Disaster Relief*, Cambridge, 2014, p. 7 ff.

12 GIOIA, "Concluding Remarks", in DE GUTTRY et al. (eds.), *cit. supra* note 1, p. 643 ff., p. 647.

13 See again GIOIA, *cit. supra* note 12, stressing the "patchwork impression" resulting from that landscape.

the State's contribution to the reflection carried out on cybersecurity. Section 5 concludes the paper, summarizing its main findings.[14]

2 The Italian Contribution to a (Soft) Global Treaty on Disaster Management

As already mentioned, a recurrent analytical scheme to assess the effectiveness of the international law regime applicable to CBRN events consists of carrying out a taxonomy of relevant obligations in the light of the different phases of the disaster cycle. This is easily understandable if one considers that CBRN events mainly refer to situations that are likely to be classified as natural or man-made disasters.[15]

In considering the Italian contribution to the elaboration of CBRN universal legal frameworks, it is thus apt to begin with the role played by Italy in the elaboration of a flagship treaty for disaster law. Since 2007, building upon the piecemeal approach characterizing the international law instruments devoted to disaster management,[16] the United Nations International Law Commission ("ILC") decided to include in its program of work the topic concerning the

14 This paper has been realized within the framework of the Research Project of National Relevance "International legal obligations related to Prevention, Preparedness, Response and Recovery from CBRN events and status of their implementation in Italy – CBRN in Italy", funded by the Italian Ministry of the University (ref. 20175M8L32).

15 Pursuant to the 2016 International Law Commission Draft Articles on the Protection of Persons in the Event of Disasters, the term "'disaster' means 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" (Draft Article 3(a)). A similar definition is enshrined in the 2003 Bruges Resolution of the Institute of International Law on humanitarian assistance, maintaining that such term "means calamitous events which endanger life, health, physical integrity, or the right not to be subjected to cruel, inhuman or degrading treatment, or other fundamental rights, or the essential needs of the population" (Institute of International Law, *Yearbook*, Vol. 70, Part II, Session of Bruges, 2003, p. 263). On the definition of disaster under international law, see BARTOLINI, "A Taxonomy of Disasters in International Law", in ZORZI GIUSTINIANI et al. (eds.), *Routledge Handbook of Human Rights and Disasters*, Abingdon, Oxon, 2018, p. 10 ff.

16 DE GUTTRY, "Surveying the Law", in DE GUTTRY et al. (eds.), *International Disaster Response Law*, Den Haag, 2012, p. 3 ff.; CLEMENT, "International Disaster Response Law, Rules, and Principles: A Pragmatic Approach to Strengthening International Disaster Response Mechanisms", in CARON et al. (eds.), *cit. supra* note 11, p. 67 ff., pp. 69–70; ZORZI GIUSTINIANI, *International Law in Disaster Scenarios. Applicable Rules and Principles*, Cham, 2021, pp. 6–7.

protection of persons in the event of disasters.[17] Such an effort has led to the adoption – in 2016 – of a series of 18 Draft Articles ("DAs") on the Protection of Persons in the Event of Disasters and related Commentary.[18] The importance of the text elaborated by the ILC is clearly illustrated by the circumstance that in this case, contrary to a well consolidated trend in the activity of the ILC, consisting in adopting informal texts – such as guidelines and recommendations – as the final outcome of its work on a specific topic,[19] the UN body has elaborated a text which should represent the basis for the adoption of a multilateral convention.[20] Before the DAs on the Protection of Persons in the Event of Disasters, the only other case in the last decade where the ILC decided to recommend to the General Assembly the immediate drafting of a convention was represented by the work leading to the Draft Articles on Diplomatic Protection.[21]

As indicated in DA 2, the text elaborated by the ILC in 2016 has a twofold objective: on the one hand, the DAs aim at facilitating an adequate and effective response to disasters; on the other, they intend to promote the reduction of the risk of disasters. The DAs are thus intended to introduce a general legal framework applicable to all phases of disaster management – even though 11 DAs out of 18 are clearly intended to be mainly applied to respond to disasters.[22] The circumstance that the DAs adopt a holistic approach towards the

17 ILC, Report of the International Law Commission: Fifty-Ninth Session (7 May–5 June and 9 July–10 August 2007), UN Doc. A/62/10 (2007), p. 230, para. 375, and UN GENERAL ASSEMBLY, UN DOC. A/RES/62/66 (2007)

18 ILC, Report of the International Law Commission: Sixty-Eighth Session (2 May–10 June and 4 July–12 August 2016), UN Doc. A/71/10 (2016), pp. 13–73.

19 See also COGAN, "The Changing Form of the International Law Commission's Work", in VIRZO and INGRAVALLO (eds.), *Evolutions in the Law of International Organizations*, Leiden-Boston, 2015, p. 275 ff.; BARTOLINI, "A Universal Treaty for Disasters? Remarks on the International Law Commission's Draft Articles on the Protection of Persons in the Event of Disasters", International Review of the Red Cross, 2017, p. 1103 ff., p.1107.

20 ILC, Report of the International Law Commission: Sixty-Eighth Session, *cit. supra* note 18, p. 13, para. 46.

21 ILC, Report of the International Law Commission: Fifty-Eighth Session (1 May-9 June and 3 July-11 August 2006), UN Doc. A/61/10 (2006), para. 46.

22 See DAs 5 ("Human rights"), 6 ("Humanitarian principle"), 8 ("Forms of cooperation in the response to disasters"), 10 ("Role of the affected State"), 11 ("Duty of the affected State to seek external assistance"), 12 ("Offers of external assistance"), 13 ("Consent of the affected State to external assistance"), 14 ("Conditions on the provision of external assistance"), 14 ("Facilitation of external assistance"), 16 ("Protection of relief personnel, equipment and goods") and 17 ("Termination of external assistance"). The fact that the center of gravity of the DAs is the response to disasters has also been recognized by the ILC in the Commentary to DA 2 (ILC, Report of the International Law Commission: Sixty-Eighth Session, *cit. supra* note 18).

disaster cycle is counterbalanced by the strict definition of its material scope of application. The notion of "disaster" they enshrine, indeed, is particularly qualified, even if it is intended to cover both natural and man-made events. First, DA 3(a) defines a "disaster" as a calamitous event (or series of events) causing a serious disruption in the functioning of society: this implies that only events having a significant magnitude may be covered by the proposed legal framework. Such a conclusion is further strengthened by the inclusion in the definition of qualifying expressions as to the possible outcomes of the event(s) – i.e. "widespread loss of life", "great human suffering and distress", "mass displacement" and "large-scale material or environmental damage" – which contribute to raise the threshold requirement.[23] As a result, not all CBRN threats and events can be qualified *per se* as a "disaster" for the purposes of the DAs.[24]

More broadly, the entire scope of the DAs seems to be the result of a general balancing exercise. The ILC's text is indeed built upon two major pillars: while the first pillar is related to the rights and obligations of States in relation to one another, the second one concerns the rights and obligations of States in relation to persons in need of protection.[25] Clear illustrations of the first pillar may be found in several DAs. One may cite, *inter alia*, the need to respect the primary responsibility of the affected State for the protection of its population (and of the individuals under its jurisdiction) and for the direction, control, coordination and supervision of relief assistance (DA 10), as well as the emphasis put on the strict respect of affected State's sovereignty, which implies the consent of that State to external assistance (DA 13(1)), and the possibility to place conditions on the provision of external assistance (DA 14).[26]

23 For a critical reading of such an approach, see THOUVENIN, "La définition de la catastrophe par la CDI: Vers une catastrophe juridique?", in SANJUAN and THOUVENIN (eds.), *International Law and Disasters: Studies on Prevention and Assistance to Victims*, Bogotá, 2011, p. 41 ff.

24 On a different note, the possibility to consider pandemics as "disasters" according to the ILC's DAs has been discussed in the legal literature, also considering the circumstance that the ILC DAs and commentaries do not explicitly refer to pandemics. See OZTURK, "COVID-19: Just Disastrous or the Disaster Itself? Applying the ILC Articles on the Protection of Persons in the Event of Disasters to the Covid-19 Outbreak", ASIL Insight, 2020, available at: <https://www.asil.org/insights/volume/24/issue/6/covid-19-just-disastrous-or-disaster-itself-applying-ilc-articles>.

25 For further details on these two dimensions, and the solutions enshrined in the DAs they have inspired, see BARTOLINI, *cit. supra* note 19; VALENCIA-OSPINA, "The Work of the International Law Commission on the 'Protection of Persons in the Event of Disasters'", Yearbook of International Disaster Law (2018), 2019, p. 5 ff.

26 As clearly stated in para. 5 of the Preamble of the DAs and in the corresponding Commentary, "the principle of the Sovereignty of States [...] is a core element of the Draft Articles. The reference to Sovereignty [...] provides the background against which

On the other hand, the necessity of protecting the human dignity (DA 4) and human rights (DA 5) of persons who are victims of a disaster and the strict respect of humanitarian principles in the response to disasters (DA 6) may be referred to the second pillar upon which the DAs are based.[27] In between, we may find an intersectional space where the two pillars partially overlap, and the States' sovereignty is balanced with a view to strengthening the rights of the individuals concerned. In particular, such balancing imposes upon the States and other international actors involved in disaster management a general duty to cooperate (DAs 7 and 8) and significantly limits the discretion regarding the affected State's consent to external assistance. More precisely, that State is required to: *i*) seek external assistance, provided that the disaster manifestly exceeds its national response capacity (DA 11), *ii*) withdraw the consent to external assistance only when reasonable, appropriate, or justified (DA 13(2)), and *iii*) facilitate a prompt and effective external assistance (DA 15). On the other hand, when external assistance is sought by the affected States, the potential assisting actor is required to expeditiously give due consideration to the request and inform the requesting State of its decision (DA 12(2)).

The final result of the balancing exercise among the two pillars of the DAs clearly reflects the difficulties of the task carried out by the ILC. The text of the DAs appears sometimes too vague (if not elusive)[28] – this is the case, for instance, of the provisions dedicated to the duty to cooperate (DAs 7 and 8), which is understood as a fundamental obligation in disaster management.[29] The structure of the DAs is also not completely satisfactory. Not only, as already mentioned, the great majority of the provisions are intended to deal with the

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the entire set of Draft Articles is to be understood" (ILC, Report of the International Law Commission: Sixty-Eighth Session, *cit. supra* note 18).

27 In this sense, the DAs reflect the "broad entitlement to human rights protection held by those persons affected by disasters" (Commentary to DA 5, ILC, Report of the International Law Commission: Sixty-Eighth Session, *cit. supra* note 18).

28 BARTOLINI, *cit. supra* note 19, p. 1109.

29 According to the former Special Rapporteur on the Protection of Persons in the Event of Disasters, that duty, which is "central to the whole project", has a multifaceted nature. It "may vary depending on the actor and the context in which the assistance is being sought and offered" (VALENCIA-OSPINA, *cit. supra* note 25, pp. 13–14). For some criticisms on the formulation of that duty see the Introduction by Casolari and the General Debate, in BARTOLINI et al. (eds.), *Report on the Expert Meeting on the ILC's Draft Articles on the Protection of Persons in the Event of Disasters* (*Roma Tre University Department of Law – 8 and 9 June 2015*), International Law and Disasters Working Papers Series, Vol. 3, 2015, p. 35 ff., available at <http://disasterlaw.sssup.it/wp-content/uploads/2014/01/Bartolini-Natoli-Riccardi-Report-of-the-Expert-Meeting-2015-DEF.pdf>.

response to disasters (DA 9 is the sole provision expressly focused on the duty to reduce the risk of disasters), but their systematization is partly incomplete, lacking sections and parts. Moreover, the formulation of the "without prejudice" clause contained in DA 18 is unsatisfying, as it excludes, *inter alia*, the application of the DAs to the extent that the response to a disaster is governed by the rules of international humanitarian law, suggesting thus, at first sight, that the legal framework elaborated by the ILC cannot be applied in cases of armed conflicts. Such a reading is, however, contradicted in the Commentary to the DAs, clarifying that [t]he present draft articles would [...] contribute to filling gaps in the protection of persons affected by disasters during an armed conflict while international humanitarian law shall prevail in situations regulated by both the draft articles and international humanitarian law.[30]

In this sense, the rules of international humanitarian law should be applied as *lex specialis*, taking thus precedence over the general legal framework introduced by the DAs.[31]

Anyway, be that as it may, as rightly pointed out by the former Special Rapporteur on the Protection of Persons in the Event of Disasters, the viability of the ILC's final outcomes "depends on their acceptability to States".[32] Upon request of the UN General Assembly Resolution 71/141, the UN Member States have thus been invited to submit their comments on the solutions adopted by the ILC.[33] Unsurprisingly, in the light of the foregoing observations on the DAs, the positions assumed by States are far from being homogeneous.[34] For present purposes, it is particularly relevant to consider here the position expressed by the Italian delegation in the General Assembly Sixth Committee. At the 70th session of the UN General Assembly, the Italian representative made an initial assessment of the DAs.[35] While stressing the need to carry out a codification introducing a general legal framework for disaster management, he welcomed the DAs as an instrument delivering "much needed clarity, coherence,

30 ILC, Report of the International Law Commission: Sixty-Eighth Session, *cit. supra* note 18.

31 For a critique to the solution adopted in the DAs' "without prejudice" clause, see ZORZI GIUSTINIANI, *cit. supra* note 16, pp. 48–51.

32 VALENCIA-OSPINA, *cit. supra* note 25, p. 21.

33 See UN General Assembly, Protection of Persons in the Event of Disasters, UN DOC. A/RES/73/209 (2018), inviting governments that have not yet done so to submit comments on the ILC's DAs and deciding to include the item "Protection of persons in the event of disasters" in the provisional agenda of its 75th session.

34 For a general survey see BARTOLINI, *cit. supra* note 19, p. 1130 ff.

35 See "Statement by Min. Plen. Andrea Tiriticco", New York, 24 October 2016, available at: <https://www.un.org/en/ga/sixth/71/pdfs/statements/ilc/italy.pdf>.

guidance and effectiveness of action".[36] Such an enthusiastic reaction, probably due to the traditional support Italy showed to international cooperation in disaster management,[37] was mainly based on a (rather) positive assessment of the compromise between "the conflicting principles of a rights-based approach and State sovereignty" incorporated into the DAS, on the one hand, and, on the other, on some positive solutions identified by the ILC (namely, the emphasis DAS put on the needs of most vulnerable individuals, the recognition of risk prevention duties and the inclusion of a general principle of cooperation among the States).[38]

At the 73rd session, the Italian representative, after having recalled anew the need to elaborate a "stable regulatory framework for international cooperation" in disaster management,[39] introduced some interesting reflections on the possible institutional solution to be found to transform the DAS into a convention.[40] In particular, the argument was made to set up a framework convention enshrining "the fundamental rules and principles of international cooperation in *disaster response*".[41] Such an instrument could be used by States as a point of reference for the elaboration of more detailed and operational instruments at bilateral and regional level. Moreover, as for the internal functioning of the framework convention, the Italian representative proposed the introduction of a soft institutional structure, possibly including a secretariat, a meeting of the parties and/or a technical body.[42]

Even if the solution proposed by Italy was functional to overcome the *impasse* within the UN General Assembly – where divergent views on the ILC's DAS were expressed and several States still had to submit their opinions – ,[43]

36 *Ibid.*, p. 1.

37 Also considering the circumstance that "Italy is at constant high risk of disasters" (*ibid.*, p. 2). In this respect, it is not surprising that the first attempt to create a multilateral cooperation pattern for disaster scenarios, tracing back to the establishment of the International Relief Union (created by means of a Convention concluded in Geneva on 12 July 1927), was mainly the outcome of a model elaborated by the President of the Italian Red Cross, Senator Giovanni Ciraolo. See HUTCHINSON, "Disasters and the International Order: Earthquakes, Humanitarian, and the Ciraolo Project", The International History Review, 2000, p. 1 ff.

38 "Statement by Min. Plen. Andrea Tiriticco", *cit. supra* note 35, p. 2.

39 UN General Assembly Sixth Committee, Summary Record of the 31st Meeting, UN DOC. A/C.6/73/SR.31, (2019). See also "Statement by Amb. Stefano Stefanile, Deputy Permanent Representative", New York, 1 November 2018, available at: <https://www.un.org/en/ga/sixth/73/pdfs/statements/disasters/italy.pdf>.

40 "Statement by Amb. Stefano Stefanile", *cit. supra* note 39, p. 2.

41 *Ibid.*; emphasis added.

42 *Ibid.*

43 BARTOLINI, *cit. supra* note 19, p. 1131.

it presents some shortcomings that deserve to be mentioned. First, one cannot ignore the inconsistency it shows with the Italian position expressed in 2016, that latter welcoming the inclusion of prevention duties in the DAs. The 2019 position seems to completely ignore such a dimension, consequently suggesting a significant limitation of the scope of application of the multilateral instrument, which should basically be focused on States' response duties. As it has already been stressed, there is no doubt that those duties are also prevailing in the DAs. However, it is also true that the text of the ILC aims at introducing a horizontal discipline, contributing in turn to the elaboration of cross-cutting obligations. Such an element, which undoubtedly represents an added value of the ILC's work, risks being undermined by the Italian proposal. On a different note, the proposal to introduce a certain margin of flexibility, by means of bilateral or regional implementing instruments, could risk downsizing the harmonizing role a flagship treaty should produce, further strengthening the actual fragmentation of the legal landscape applicable to disasters and CBRN events.

At the 75th session, the Italian position was further specified and partly amended.[44] Even if the idea of the creation of "a standing mechanism that would enable the parties to develop operational, technical protocols and practical tools" was still present,[45] the possibility of limiting the scope of application of the universal convention was no longer supported. On the contrary, the ILC's decision to include a DA on disaster prevention – DA 9 – as an expression of the progressive development of international disaster law was particularly welcomed;[46] what it is more, the Italian delegation expressly recognized, particularly in the light of the challenges posed by climate change, that the conclusion of a legally binding instrument would improve "planning and practical arrangements in the preparation for disasters".[47] It is difficult not to see here the impact of the lessons learnt from the outbreak of the COVID-19 that showed the lack of effectiveness of preparedness and prevention mechanisms at national, regional, and international level. Particularly worth mentioning is also the position expressed by the Italian delegation at the 76th session. While urging the adoption of a multilateral legal framework to strengthen "certainty, predictability and preparedness",[48] the delegation shed some further light on

44 "Statement of Italy", 23 October 2020, available at: <https://www.un.org/en/ga/sixth/75/pdfs/statements/disasters/17mtg_italy.pdf>.

45 *Ibid.*, p. 5.

46 *Ibid.*, p. 4.

47 *Ibid.*, pp. 3–4.

48 "Statement of Italy", 18 October 2021, available at: <https://www.un.org/en/ga/sixth/76/pdfs/statements/disasters/12mtg_italy.pdf>, p. 5.

the role that the framework should play in the international legal order. More precisely, it aims to provide

> "[…] a universal legal framework, which should play a subsidiary and practical function – when regional and bilateral treaties and specialized instruments are not in place with regard to a specific disaster – and which should inspire future bilateral, regional and sectorial agreements, leading to a convergence of legal solutions and arrangements".[49]

No doubt, the support showed by Italy to the adoption of a universal treaty on disaster management built upon the solutions elaborated by the ILC in its DAs places the country among the front-runners for the codification of international disaster law.[50] Even though it is too early to assess whether or not such efforts will be successful, one cannot ignore a first concrete result: pursuant to its Resolution 76/119, adopted on 9 December 2021, the UN General Assembly has decided to consider further the recommendation of the ILC to promote the elaboration of a convention on the basis of the DAs.[51] At its 78th and 79th sessions, a working group of the Sixth Committee will be convened to discuss possible recommendations to the Assembly as to any further action to be taken in respect of the DAs.

In the meantime, it would be useful to further elaborate at inter-State level the discussion on both the content and the role of that universal treaty. Besides the need to better define some of the solutions proposed by the ILC, starting from shedding light on the formulation of the DAs devoted to the duty to cooperate, as well as to the interaction with international humanitarian law, the very nature of such a treaty should be unequivocally clarified. In this respect, the position expressed by the Italian delegation at the 76th session – consisting of attributing to the universal treaty an ancillary and residual role, giving precedence to the solutions elaborated in bilateral, regional or sectorial treaties – has an undeniable appeal from a pragmatic point of view: it contributes, indeed, to downsizing the possible impact of that treaty on the existing legal landscape, providing thus a first answer to doubts expressed by some States as to its adherence to general international law in force.[52] However, two points

49 *Ibid.*, p. 6.

50 See also the concurrent position of Bangladesh, Philippines, El Salvador, Portugal, Jamaica (focusing on issues related to natural disasters) and Thailand: UN General Assembly Sixth Committee, Summary Record of the 17th Meeting, UN Doc. A/C.6/75/SR.17 (2020).

51 UN General Assembly, Protection of Persons in the Event of Disasters, UN Doc. A/RES/76/119 (2021).

52 See, for instance, the position of Cuba, Malaysia, and Russian Federation: Sixth Committee, Summary record of the 17th meeting, *cit. supra* note 50.

raise questions as regards its feasibility. Firstly, as already stressed, the "framework convention" approach, which does not represent *per se* an innovation in terms of international law making,[53] seems to further raise the (already high) level of fragmentation of the legal landscape dedicated to disaster management, in so far as it emphasizes the multilevel structure of that landscape. Secondly, by implying the primacy of bilateral, regional or sectoral instruments, the Italian position seems to suggest that the universal treaty should limit itself to introduce a general legal framework (possibly composed of non-self-executing provisions), something that is hardly reconcilable with the idea that it should also play a "practical function" in managing disaster scenarios.[54]

3 The Italian Contribution to Enhancing Legal Preparedness for Health Emergencies

Another context where Italy has showed a significant proactive role on the international scene for a further development of the legal landscape applicable to CBRN events is represented by the management of health emergencies. Admittedly, the COVID-19 pandemic has revealed all the shortcomings and weaknesses of existing legal instruments, starting from the 2005 International Health Regulations ("IHR"), requiring thus a thorough reflection on how to achieve a satisfactory level of legal preparedness across the world,[55] that is, the

53 Further examples of such an approach are represented, *inter alia*, by the United Nations Framework Convention on Climate Change (1992), the United Nations Convention against Transnational Organized Crime (2000), and the WHO Framework Convention on Tobacco Control (2003).

54 See UNECE, Framework Convention Concept. Note by the secretariat, 3 and 4 October 2011, pp. 1–2, where the argument is made that "a framework convention does not contain concrete targets", elevating thus "the political will for action and leav[ing] room for consensus on the details of the action itself for a later stage". See also MATZ-LÜCK, "Framework Agreements", Max Planck Encyclopedia of Public International Law, 2011.

55 See BURCI and ECCLESTON-TURNER, "Preparing for the Next Pandemic: The International Health Regulations and World Health Organization during COVID-19", Yearbook of International Disaster Law (2019), 2020, p. 261 ff.; BURCI and HASSELGÅRD-ROWE, "Through the Rule of Law Looking Glass. The World Health Organization's Role in Health Emergencies and Its Response to COVID-19", International Organizations Law Review, 2021, p. 307 ff.; BAKKER and FARINA, "Response and Recovery Related to Naturally Occurring CBRN Events: Focusing on Epidemic Outbreaks, including COVID-19", in DE GUTTRY et al. (eds.), *cit. supra* note 1, p. 294 ff., esp. p. 303 ff.; BARTOLINI, "The Failure of 'Core Capacities' under the WHO International Health Regulations", International and Comparative Law Quarterly, 2021, p. 233 ff.; BOSCHIERO, "COVID-19 Vaccines: The

capacity to elaborate legal frameworks that are able to manage health emergency prevention, preparedness and response.[56]

The Italian contribution to the advancement of legal preparedness for health emergencies (including pandemics) has been mainly developed during its G20 Presidency (1 December 2020 – 30 November 2021).[57] Following the adoption of Resolution WHA73.8 in November 2020, where the World Health Assembly urged the strengthening of preparedness for health emergencies within the framework of the IHR,[58] the G20's leaders met in Riyad for

Right Global Governance for the Current Pandemic", in ANNONI et al. (eds.), *Il diritto internazionale come sistema di valori. Scritti in onore di Francesco Salerno*, Napoli, 2021, p. 79 ff.; TOEBES et al. (eds.), *Global Health Law Disrupted. COVID-19 and the Climate Crisis*, Den Haag, 2021; VILLAREAL, "Pandemic Risk and International Law. Laying the Foundations for Proactive State Obligations", Yearbook of International Disaster Law (2020), 2022, p. 154 ff.; WONG et al., "The Potential Effectiveness of the WHO International Health Regulations Capacity Requirements on Control of the COVID-19 Pandemic: A Cross-sectional Study of 114 countries", Journal of the Royal Society of Medicine, 2021, p. 121 ff.; International Federation of Red Cross and Red Crescent Societies, *Law and Public Health Emergency Preparedness and Response. Lessons from the COVID-19 Pandemic*, Geneva, 2021, available at: <https://disasterlaw.ifrc.org/media/3010>. See also WHO, *WHO's work in health emergencies. Strengthening preparedness for health emergencies: implementation of the International Health Regulations (2005)*, A74/9 Add.1 (2021), available at: <https://apps.who.int/gb/ebwha/pdf_files/WHA74/A74_9Add1-en.pdf>.

56 On the notion of "legal preparedness", see MOULTON et al., "What is Public Health Legal Preparedness?", Journal of Law, Medicine & Ethics, 2003, p. 672 ff. (defining the expression as "the readiness of a public health system [...] to respond to specified health threats"; *ibid*., p. 673) and HODGE et al., "From [A]nthrax to [Z]ika: Key Lessons in Public Health Legal Preparedness", Indiana Health Review, 2018, p. 23 ff. According to the Global Health Security Agenda, a group of more than 70 countries, international organizations, non-government organizations, and private companies working together to fight against global health threats, the expression "public health emergency legal preparedness" identifies "the capability to map, develop, refine, and utilize legal frameworks and to ensure the availability of a trained workforce to enable the implementation of public health capacities and measures [...], especially during unpredictable and large-scale emergencies" (source: <https://ghsagenda.org/legal-preparedness/>). For a collection of recommendations adopted over the past three years on the improvement of legal preparedness in the context of the COVID-19 pandemic, see the WHO dashboard of COVID-19 related recommendations, available at: <https://app.powerbi.com/view?r=eyJrIjoiODgyYjRmZjQtN2UyNi00NGE4LTg1YzMtYzE2OGFhZjBiYzFjIiwidCI6ImY2MTBjMGI3LWJkMjQtNGIzOS04MTBiLTNkYzI4MGFmYjU5MCIsImMiOjh9&pageName=ReportSection729b5bf5a0b579e86134>.

57 BOTTI and GRECO, "La presidenza italiana del G20", in DESSÌ and NELLI FEROCI (eds.), *Il governo Draghi e il nuovo protagonismo internazionale dell'Italia. Rapporto sulla politica estera italiana*, Roma, 2022, p. 68 ff., available at: <https://www.iai.it/sites/default/files/9788893682367.pdf>.

58 WHO, *Strengthening preparedness for health emergencies: implementation of the International Health Regulations (2005)*, WHA73.8 (2020).

a summit and adopted a Declaration which, while confirming the full commitment "to advancing global pandemic preparedness, prevention, detection and response" in full compliance with the IHR and emphasizing the role played by UN organizations and agencies in supporting the global response to the pandemic, commended the Saudi Presidency for initiating a discussion on the long-term solutions to be adopted to address gaps in global pandemic preparedness and response, looking forward to continuing such a discussion during the Italian Presidency.[59]

By strongly underlining the crucial role of multilateralism in finding common responses to pandemics,[60] Italy promoted, in partnership with the European Commission, the organization of a Global Health Summit. Its outcome – also known as "Rome Declaration"[61] – has been conceived as a sort of compass for future initiatives in the government of public health emergencies. It sets out principles and guiding commitments to improve preparedness, early warning, prevention, detection, coordinated response, resilience and recovery with respect to the COVID-19 pandemic and future public health emergencies. Yet, the Rome Declaration only contains some general commitments about the enhancement of the existing multilateral health architecture, without identifying specific solutions. A similar approach is also visible in the text of the G20 Rome Leaders' Declaration, adopted on 31 October 2021, where the Heads of State and government of participating States simply reaffirmed their commitment "to strengthening global health governance".[62] However, these statements – which shall be seen alongside those of the G7[63] – have surely contributed to pave the way for a broader consensus on the need to strengthen the capacity of the World Health Organization ("WHO") to prepare for, and

59 G20, G20 Leaders' Declaration, Riyadh Summit, 21 November 2020, available at: <http://www.g20.utoronto.ca/2020/2020-g20-leaders-declaration-1121.html>. See also, YATES, "The Health Priority for Italy's G20 Presidency: Immunise the World, Equitably", IAI Commentaries, March 2021, available at: <https://www.iai.it/sites/default/files/iaicom2108.pdf>.

60 G20, Rome Summit, Prime Minister Draghi's opening address, 30 October 2021, available at: <https://www.governo.it/en/articolo/g20-rome-summit-prime-minister-draghi-s-opening-address/18389>.

61 Global Health Summit, Rome Declaration, 21 May 2021, available at: <https://www.governo.it/sites/governo.it/files/documenti/documenti/Approfondimenti/GlobalHealthSummit/GlobalHealthSummit_RomeDeclaration.pdf>.

62 G20, G20 Leaders' Declaration, Rome Summit, 30–31 October 2021, available at: <http://www.g20.utoronto.ca/2021/211031-declaration.html>.

63 G7, Carbis Bay G7 Summit Communiqué. Our Shared Agenda for Global Action to Build Back Better, 11–13 June 2021, available at: <https://www.g7uk.org/wp-content/uploads/2021/06/Carbis-Bay-G7-Summit-Communique-PDF-430KB-25-pages-3.pdf>.

respond to, health emergencies, which has led in turn to the adoption of the World Health Assembly's Resolution WHA74.7 (2021),[64] establishing a Member States Working Group on Strengthening WHO Preparedness and Response to Health Emergencies ("WGPR"), and to the decision to prioritize the assessment by the Working Group of the benefits of developing a WHO convention thereon.[65]

At the Second special session of the World Health Assembly held in Geneva from 29 November to 1 December 2021, also relying on the activity carried out by the WGPR,[66] the Italian representative expressed the Government's support for a "swift adoption of an international and intergenerational approach with a view to developing a new global health governance",[67] contributing thus to the "historical"[68] decision to establish, in accordance with Rule 41 of the World Health Assembly, an Intergovernmental Negotiating Body to draft and negotiate under Article 19 of the WHO Constitution a WHO convention, agreement or other international instrument on pandemic prevention, preparedness and response.[69]

Alongside this, in line with the twofold approach elaborated by the WGPR towards the reform of the global regime for pandemics,[70] Italy co-sponsored,

64 WHO, Strengthening WHO preparedness for and response to health emergencies, WHA74.7 (2021).

65 WHO, Special Session of the World Health Assembly to consider developing a WHO convention, agreement or other international instrument on pandemic preparedness and response, WHA74(16) (2021).

66 WHO, Report of the Member States Working Group on Strengthening WHO Preparedness and Response to Health Emergencies to the special session of the World Health Assembly. Report by the Director-General, 23 November 2021, SSA2/3. See also WHO – Member States Working Group on Strengthening WHO Preparedness for and Response to Health Emergencies (WGPR), Secretariat analysis for consideration to further identify the incentives for a new instrument on pandemic preparedness and response and the options for strengthening the effectiveness of the International Health Regulations (2005), including a consideration of the benefits, risks and legal implications, A/WGPR/3/6 (2021).

67 WHO, World Health Assembly Second Special Session, 29 November-1 December 2021, WHASS2/2021/REC/1, p. 35. See also the "Statement" available at: <https://apps.who.int/gb/statements/WHASSA2/PDF/Italy-2.pdf>.

68 WHO, "World Health Assembly agrees to launch process to develop historic global accord on pandemic prevention, preparedness and response", 1 December 2021, available at: <https://www.who.int/news/item/01-12-2021-world-health-assembly-agrees-to-launch-process-to-develop-historic-global-accord-on-pandemic-prevention-preparedness-and-response>.

69 WHO, The World Together: Establishment of an intergovernmental negotiating body to strengthen pandemic prevention, preparedness and response, 1 December 2021, SSA2(5).

70 See WHO, *Report of the Member States Working Group on Strengthening WHO Preparedness and Response to Health Emergencies*, *cit. supra* note 66, para. 27: "The WGPR assesses [...]

together with the other Member States of the European Union, an initiative led by the United States of America aiming to propose targeted amendments to the IHR, in accordance with their Article 55, and to address specific issues and gaps related to their effective implementation.[71]

As of this writing, the proposed amendments have still to be examined by the World Health Assembly.[72] Nonetheless, for present purposes, some of them deserve to be briefly mentioned here, starting from measures aiming at enhancing Contracting Parties' legal preparedness capacity. In this respect, a proposal for introducing a periodic review through the Universal Health Periodic Review of States' surveillance obligations has been made (Article 5(1) IHR). Moreover, it is requested that the WHO develop its own early warning criteria for assessing and progressively updating national, regional, or global risks posed by an event of unknown causes or sources (Article 5(5) IHR). Secondly, information duties are reinforced. To do this, the proposal extends the list of international subjects to be notified of events which may constitute a public health emergency of international concern (Article 6(1) IHR) and requires States to also communicate genetic sequence data, together with other available information.[73] On the other hand, verification and information duties of the WHO are also strengthened, by introducing specific period limits

that the way forward should include as part of a comprehensive and coherent approach a process or processes for: (a) developing a WHO convention, agreement or other international instrument on pandemic preparedness and response, and (b) strengthening the IHR (2005), including through implementation, compliance, support for IHR (2005) core capacities, and potential targeted amendments to the IHR (2005)".

71 US Mission to International Organizations in Geneva, Strengthening WHO preparedness for and response to health emergencies, 26 January 2022, available at: <https://geneva.usmission.gov/2022/01/26/strengthening-who-preparedness-for-and-response-to-health-emergencies/>. The text of the proposed amendments may be found in WHO, Strengthening WHO preparedness for and response to health emergencies. Proposal for amendments to the International Health Regulations (2005), A75/18 (2022). With its Decision EB150(3), the Executive Body of the WHO urged Member States to consider potential amendments "with the understanding that this would not lead to reopening the entire instrument for renegotiation": WTO, Strengthening the International Health Regulations (2005): a process for their revision through potential amendment, EB150(3) (2022).

72 They will be discussed at the 75th session of the World Health Assembly (22–28 May 2022).

73 For an illustration of the shortcomings related to notification duties under the IHR, emerging from the COVID-19 scenario, see VENIER, "Prevention Obligations Applicable to Naturally Occurring CBRN Events", in DE GUTTRY et al. (eds.), *cit. supra* note 1, p. 264 ff., p. 272.

and requesting the WHO to annually report to the Health Assembly thereon (Article 11).

Significant are the proposed changes to a crucial provision of the IHR, that is, Article 12, dealing with the determination of a public health emergency of international concern ("PHEIC"). First, the proposal better clarifies and strengthens the role the Director-General may play in case a potential or actual PHEIC is occurring (Article 12(2) IHR). The thinking is clear: the strengthening of the Director-General prerogatives should bring (more) clarity and ensure (more) effectiveness to such mechanism – the lack of which was identified as one of the key shortcomings in the WHO's response to previous health emergencies.[74] Secondly, and more importantly perhaps, the proposal introduces new categories of qualified public health emergencies. Where the event has not been determined to meet the criteria for PHEIC to be declared but the Director-General has determined it requires "heightened international awareness and a potential international public health response", the Director-General may decide to issue an intermediate public health alert. Also, a Regional Director may determine that an event constitutes a public health emergency of regional concern, providing guidance to States concerned (Article 12(7) IHR). Such a determination may be made either before or after the notification of an event that may constitute a PHEIC.

Concerning the response duties, it is worth mentioning first the new version of Article 13, where it is now clearly stated that WHO shall offer assistance to a State Party in the response to public health risks – the current text only states that "WHO shall collaborate in the response to public health risks". Moreover, the State concerned shall accept or reject such an assistance within 48 hours, and, in case of rejection, shall provide a statement of the reasons for the rejection. The same obligations are applicable in the case of an occurring PHEIC. In this case, when on-site assessments shall take place, the State party concerned "shall make reasonable efforts to facilitate short-term access to relevant sites". The denial of access shall be justified. Interestingly, the obligations incumbent upon the State concerned echo the obligations enshrined in the ILC DAS 13(2)-(3) and 15.[75] However, the amendments to the IHR seem to further strengthen the legal landscape concerning the offer of assistance emerging from the DAS.

74 See GOSTIN et al., "Has Global Health Law Risen to Meet the COVID-19 Challenge? Revisiting the International Health Regulations to Prepare for Future Threats", Journal of Law, Medicine & Ethics, 2020, p. 376 ff.

75 On the interplay between international health law and international disaster law, see DIXIT, "Synergising International Public Health Law and International Disaster Law", European Journal of Risk Regulation, 2022, p. 45 ff.

Indeed, while DA 12 only establishes that "the United Nations, and other potential assisting actors *may offer* assistance to the affected State",[76] the amendments to Article 13 IHR introduce an obligation for the WHO to offer assistance.

Major changes have also been proposed to Article 18 IHR, concerning persons, baggage, cargo, containers, conveyances, goods and postal parcels. Lessons learned during the COVID-19 pandemic have shown indeed how important the movement of health care workers and essential medical products is in the event of an emergency.[77] This is why the amendment proposed to this Article states that temporary recommendations issued by the Director-General should facilitate their exclusion from travel and trade restrictions. Likewise, in implementing health measures in the light of the IHR, States Parties should facilitate the movement of health care workers and supply chains (Article 18(3) IHR).

To enhance the enforcement of the IHR, the introduction of a new chapter is proposed (Article 53*bis-quater*), establishing a Compliance Committee, which should promote the implementation of, and compliance with, obligations under the IHR, and monitoring, advising and assisting States Parties. In this way, the proposal intends to offer a first answer to criticisms expressed on the IHR compliance mechanism.[78] While contributing to the effectiveness of relevant obligations, the proposed changes are, however, unlikely to produce a significant shifting in the State Parties' attitude for the Compliance Committee is not entitled to adopt binding decisions.

Lastly, the proposal tries to speed up the entry into force and the "opt-out" mechanism governing the approval of formal IHR amendments. Pursuant to Article 59(1*bis*) IHR, amendments to the IHR should come into force 6 months after the notification of their adoption by the Director-General (now a 24-month wait is required), and States Parties may reject or file reservations to them within 6 months from such notification (now they have whole 18 months at disposal).

Besides its convinced support to the reform of the global governance of health emergencies, Italy has contributed to the development of more pragmatic solutions in the light of the existing legal landscape applicable to health emergencies, with a view to improving the legal preparedness of the

76 Emphasis added.

77 The Italian example was extremely illustrative (and sad) in this respect: see BEAUCILLON, "International and European Emergency Assistance to EU Member States in the COVID-19 Crisis: Why European Solidarity Is Not Dead and What We Need to Make It both Happen and Last", European Papers. European Forum, 2020, p. 387 ff., pp. 388–391.

78 WHO – WGPR, Secretariat analysis, *cit. supra* note 66, para. 31. See also DE GUTTRY, *cit. supra* note 6, p. 289.

international community. A first example of such pragmatism is represented by the initiative taken under the Italian Presidency of G20 to establish a joint Finance-Health Task Force to pandemic prevention, preparedness and response. On 29 October 2021, acknowledging the importance of strengthening funding and financing capacities to face health emergencies,[79] G20 Finance and Health Ministers committed to establish a Joint Task Force promoting the exchange of experience and best practices, developing coordination arrangements between Finance and Health Ministries, and encouraging effective availability of resources for pandemic prevention, preparedness and response.[80] A second illustration of the Italian pragmatism is represented by the initiatives carried out to operationalize the One Health approach, which is firmly based on the interconnection between people, plants, animals and their shared environment, raising thus the awareness that protection of ecosystem balance and biodiversity are priority actions to reduce the risk of pandemics.[81] On the occasion of the 2021 G20 Leaders' Summit in Rome the commitment has been adopted to pursue a One Health approach at global, regional and local levels, by enhancing global surveillance, early detection and early warning systems and addressing risks emerging from the human-animal-environment interface.[82]

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79 See Global Health Summit, Rome Declaration, *cit. supra* note 61, para. 15, where the participants stressed the "need for enhanced, streamlined, sustainable and predictable mechanisms to finance long-term pandemic preparedness, prevention, detection and response, as well as surge capacity", and the *Report of the Pan-European Commission on Health and Sustainable Development* elaborated in September 2021, available at: <https://www.euro.who.int/__data/assets/pdf_file/0015/511701/Pan-European-Commission-health-sustainable-development-eng.pdf>. See also DE GUTTRY, *cit. supra* note 6, pp. 287–288, stressing the fragmented nature of funds available for preparedness measures.

80 G20, Joint G20 Finance and Health Ministers meeting. Communiqué, 29 October 2021, available at <https://www.mef.gov.it/inevidenza/2021/article_00067/G20-Joint-Finance-and-Health-Ministers-Communique-29-October-2021.pdf>. See also G20, G20 Leaders' Declaration, Rome Summit, *cit. supra* note 62, para. 6.

81 See *Report of the Pan-European Commission on Health and Sustainable Development*, *cit. supra* note 79, pp. 12–14; G20 Task Force 1 Global Health and COVID-19, *One Health-based Conceptual Frameworks for Comprehensive and Coordinated Prevention and Preparedness Plans Addressing Global Health Threats*, Policy Brief September 2021, available at: <https://www.t20italy.org/wp-content/uploads/2021/09/TF1_PB05_LM02.pdf>.

82 G20, G20 Leaders' Declaration, Rome Summit, *cit. supra* note 62, para. 7. The employment of the One Health approach's looking glass to identify pandemic risk prevention mechanisms and regulations is more and more recurrent in the analysis of the relevant legal landscape: see, among others, VINUALES et al., "A Global Pandemic Treaty Should Aim for Deep Prevention", The Lancet, 2021, pp. 1791–1792, maintaining that the global

4 The Italian Position on Cybersecurity

Another domain where Italy has actively contributed to the promotion of a more robust legal landscape for CBRN-related threats and events is represented by cyber law. No doubt, cyberspace and its governance have acquired a terrific momentum in the legal discourse at international level.[83] The COVID-19 pandemic has shown how relevant the consequences can be of malicious activities seeking to exploit vulnerabilities in times of emergency.[84] Moreover, an increased risk of cyberattacks from Russian actors is likely to represent a spillover effect of the ongoing conflict between Russia and Ukraine.[85] For the purposes of this article, initiatives put in place to strengthen cybersecurity are particularly relevant for they may prevent unauthorized access or malicious uses of Information and Communication Technologies ("ICTs") that could put in danger critical infrastructures and CBRN facilities.[86]

In the light of the above, it is particularly apt to look at the role played by Italy within the Open-ended working group on developments in the field of information and telecommunications in the context of international security ("OEWG"), which was established by means of the UN General Assembly Resolution 73/27, to further develop rules, norms and principles aiming at preventing ICT practices that are acknowledged to be harmful or that may pose threats to international peace and security.[87] The outcome of the work of the OEWG is represented by a Final Substantive Report submitted in March 2021,

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pandemic treaty to be negotiated at WHO level should be focused on reducing risks of pathogens transmitted from animal to humans (a focus that the authors name "deep prevention"); VILLAREAL, *cit. supra* note 55. More generally, on the environment-health nexus, see NEGRI (ed.), *Environmental Health in International and EU Law. Current Challenges and Legal Responses*, London-New York, 2020.

83 SCHMITT, "Cybersecurity and International Law", in GEISS and MELZER (eds.), *The Oxford Handbook of the International Law of Global Security*, Oxford, 2021, p. 661 ff.

84 For a general survey of cyber-attacks occurred during the pandemic, see LALLIE et al., "Cyber Security in the Age of COVID-19: A Timeline and Analysis of Cyber-crime and Cyber-attacks during the Pandemic", Computers & Security, 2021, p. 1 ff.

85 Cerulus, "NATO Steps Up Intelligence-sharing 'in Preparation' for Russian Cyberattacks", POLITICO, 24 March 2022, available at: <https://www.politico.eu/article/nato-steps-up-intelligence-sharing-in-preparation-of-russian-cyberattacks/>.

86 FARNELLI, *cit. supra* note 8.

87 UN General Assembly, Developments in the Field of Information and Telecommunications in the Context of International Security, UN Doc. A/RES/73/27 (2018). Further elements on the Italian views on cybersecurity may be found in the statements submitted to the Secretary-General on the issue of ICTs in the context of international security, which are collected in the annual reports by the Secretary-General to the General Assembly (available at: <https://www.un.org/disarmament/ict-security/>).

where participant States have reached conclusions and identified recommendations to address ICT threats and to promote a more open, secure, stable, and peaceful ICT environment.[88]

Significantly, as expressly stated in the Report, its content is not meant to replace or modify States' obligations or rights under existing international law; rather, it should provide further (non-binding) guidance on a responsible State behavior in the use of ICTs.[89] Such an open approach is perfectly reflected in the recommendations elaborated by the OEWG on the application of international law to ICTs where the Group urges States to continue cooperating in order to build a "common understanding of how international law applies to the use of ICTs by States", and to "contribute to building consensus within the international community".[90] In this sense, the crucial role of confidence-building measures, as an expression of international cooperation, is stressed, as well as the main role that the UN could play in supporting their elaboration.[91] Also relevant is the role that States' ICT-related capacity building efforts in international security may play. The Report mentions the principles that should guide States' behavior in this respect: the process and purpose of capacity-building activities should be transparent, evidence-based, politically neutral, accountable, and without conditions. Moreover, the principle of State sovereignty should be fully respected.[92] Capacity-building activities should be based on mutual trust, and their development should ensure the involvement of all relevant parties with shared but differentiated responsibilities while preserving the conditionality of national policies and plans.[93] Lastly, capacity-building mechanisms should be operationalized in full respect of human rights and fundamental freedoms, without any discrimination.[94] The Report concludes States should continue to develop a regular institutional dialogue on the topic, also throughout the platforms available at UN level,[95] starting from the Open-Ended Working Group on security of and in the use of information and communication technologies 2021–2025, established by means of the UN General Assembly Resolution 75/240.[96]

88 OEWG, Final Substantive Report, A/AC.290/2021/CRP.2 (2021).
89 *Ibid.*, para. 25.
90 *Ibid.*, para. 39.
91 *Ibid.*, paras. 41–53.
92 *Ibid.*, para. 56.
93 *Ibid.*
94 *Ibid.*
95 *Ibid.*, paras. 70 and 73.
96 UN General Assembly, Developments in the Field of Information and Telecommunications in the Context of International Security, Un Doc. A/RES/75/240 (2021).

By and large, the Italian contribution to the activity of the OEWG is characterized by a significant level of pragmatism – something which, as seen in previous Sections, seems to be largely recurrent in the way in which Italy contributed to the realization of the legal landscape applicable to CBRN threats and events.

In its comments to the initial "pre-draft" Report, Italy, while fully supporting the initiative, stressed its basic assumption: international law, and in particular the UN Charter *in its entirety*, "fully applies in cyber space".[97] As a consequence, Italy has shared the position expressed by a considerable number of States, rejecting the need for elaborating a new binding treaty. This latter perspective, indeed, "will lead to lengthy and divisive negotiations which in turn might provoke uncertainty on the applicability of existing international law during those foreseen negotiations".[98] In commenting a quasi-final version of the Report, Italy has further emphasized "the distinction and order of appearance between International Law [...] and the Rules, Norms and Principles [...] of the Report":[99] the latter do represent (nothing but) guiding instruments to shape the States' behavior. Borrowing from the words of the Italian representative, the Report should thus constitute a further "pragmatic, neutral and non-confrontational way"[100] towards the strengthening of cybersecurity, exactly as the initiative launched by Italy in 2020, together with other 42 States and the European Union, for the establishment of a Programme of Action for advancing responsible State behaviour in cyberspace, that is, a shared platform to create a framework for political commitment on recommendations, norms and principles already agreed, organize implementing meetings, and set up new cooperation and capacity building mechanisms.[101]

More recently, Italy has further defined its views concerning the application of international law to cyberspace, by elaborating a Position Paper on

97 See Comments from Italy to the Initial "Pre-draft" Report of the Open-ended Working Group on Developments in the Field of Information and Telecommunication in the Context of International Security, 16 April 2020, available at: <https://front.un-arm.org/wp-content/uploads/2020/04/2020-04-16-italy-comments-on-the-oewg-pre-draft.pdf>, p. 2.

98 *Ibid.*

99 Ministero degli Affari Esteri e della Cooperazione internazionale, OEWG Informal Session (18-19-22 February 2021) – Italy's interventions, available at: <https://front.un-arm.org/wp-content/uploads/2021/02/ITALY-OEWG-INFORMALS-Feb-2021.pdf>, p. 4.

100 *Ibid.*, p. 2.

101 See "The future of discussions on ICTs and cyberspace at the UN", 10 August 2020, available at: <https://front.un-arm.org/wp-content/uploads/2020/10/joint-contribution-poa-future-of-cyber-discussions-at-un-10-08-2020.pdf>.

"International Law and Cyberspace" that has been submitted to the UN.[102] The crucial point of the State's approach is expressed in a preliminary passage of the Position Paper, which reads as follows:

> While Italy has no doubt as to *whether* international law applies to the cyberspace, it is aware that *how* existing rules and principles of international law apply gives rise to significant difficulties inherent in the technical features of cyberspace. Such difficulties require responses that the international community is currently developing. Italy thus welcomes and supports the ongoing process of exchange of views, study and cooperation amongst States to that end.[103]

Building on that assumption, which was already present in the Italian contribution to the activity of the OEWG, the Position Paper considers a number of issues related to the application of international cyberspace. In particular, the following topics are discussed: *i*) the protection of the sovereignty in cyberspace and violations of the principle of non-intervention; *ii*) the application of the law of the international responsibility of States to activities carried out in cyberspace; *iii*) cyber operation and the use of force; *iv*) the application of international human rights law; *v*) the role of private stakeholders; and *vi*) international cooperation in cyberspace.

Due to space constraints, it is not possible to enter here in an in-depth analysis of the Paper. Suffice it to mention the main arguments made by the Italian Government. Building on the primary rule of the principle of sovereignty, the Paper firstly maintains that States' cyber operations employing "coercive means to compel another State to undertake or desist from a specific action, in matters failing under its domain réservé" do represent a violation of the customary principle of non-intervention in the internal affairs of other States.[104] Particularly relevant is the position expressed by Italy on the attribution of responsibility of wrongful acts consisting in cyber activities – a topic which admittedly implies complex technical assessments.[105] Italy maintains that the

102 See *Italian Position Paper on "International Law and Cyberspace"*, September 2021, available at: <https://www.esteri.it/mae/resource/doc/2021/11/italian_position_paper_on_international_law_and_cyberspace.pdf>.

103 *Ibid.*, p. 3.

104 *Ibid.*, pp. 4–5.

105 DELERUE, "Attribution to State of Cyber Operations Conducted by Non-State Actors", in CARPANELLI and LAZZERINI (eds.), *Use and Misuse of New Technologies. Contemporary Challenges in International and European Law*, Cham, 2019, p. 233 ff.; DELERUE, *Cyber Operations and International Law*, Cambridge, 2020, p. 51 ff.; TSAGOURIAS and FARRELL, "Cyber Attribution: Technical and Legal Approaches and Challenges",

attribution should be based "on a sufficient level of confidence on the source of the cyber activities in question and on the identity of the actor(s) responsible".[106] A particular emphasis is put on the role transparency should play in the process leading to the attribution of responsibility: such an attribution should indeed be "reasonable and credibly based on factual elements".[107] Also significant is the position expressed by Italy about due diligence obligations applicable in cyberspace for it seems that the State supports a general applicability of due diligence obligations to cyber activities,[108] something which was already debated within the Group of Governmental Experts ("GGE") instituted by the General Assembly Resolution 58/32 to study threats posed by ICTs to cybersecurity,[109] and further discussed in the context of the OEWG.[110] The emphasis placed on due diligence obligations is not without consequences for the application of the law of States responsibility to activities in cyber space. Indeed, by invoking the so-called "due diligence standard of attribution" Italy maintains that every State should be considered responsible for allowing its cyberspace to be used for acts contrary to the rights of other States, as well as for breaches of human rights. Here again we can appreciate the pragmatic attitude of Italy towards relevant international law: by so arguing, indeed, Italy seems to imply that some of the difficulties concerning the attribution of cyber activities violating international law could be (partially) overcome.[111] On a different note, the Position Paper recognizes that cyber operations may lead to

European Journal of International Law, 2020, p. 941 ff.; BANKS, "Cyber Attribution and State Responsibility", International Law Studies, 2021, p. 1039 ff.

106 See *Italian Position Paper on "International Law and Cyberspace"*, *cit. supra* note 102, p. 5.

107 *Ibid*.

108 *Ibid*., p. 6: "[…] due diligence requires States to take all reasonable measures concerning activities in cyberspace falling under their jurisdiction in order to prevent, eliminate or mitigate potentially significant harm to legally protected interests of another State, or of the international community as a whole".

109 UN General Assembly, Developments in the Field of Information and Telecommunications in the Context of International Security, UN DOC. A/RES/53/70 (1999). See in particular the UN GEE Norm 13(c), providing that States should not knowingly allow their territory to be used for internationally wrongful acts using ICTs, which was however indicated as a voluntary, non-binding norm: Group of Governmental Experts on Developments in the Field of Information and Telecommunications in the Context of International Security, Note by Secretary-General, A/70/174 (2015); and Group of Governmental Experts on Developments in the Field of Information and Telecommunications in the Context of International Security, Note by Secretary-General, A/76/135 (2021).

110 For a general survey on the positions expressed by States thereon, see DELERUE, *Cyber Operations and International Law*, *cit. supra* note 105, p. 353 ff.; and FARNELLI, *cit. supra* note 8, p. 569 ff.

111 On the role played by due diligence obligations in the law of States' responsibility, see PISILLO MAZZESCHI, *"Due Diligence" e responsabilità internazionale degli Stati*, Milano, 1989. The potential role such obligations may play in the cyberspace is stressed,

the use of force in the sense of Article 2(4) of the UN Charter when their scale and effects are comparable to those of a conventional use of force, resulting thus in material damage.[112] As a consequence, international humanitarian law should be considered as fully applicable to cyberspace.[113] Likewise, according to Italy, international human rights law should apply to cyberspace in the same way it is applicable off-line.[114]

5 Concluding Remarks

This article has provided an overview of the role played by Italy in contributing to the creation of a more robust legal landscape for CBRN-related events and threats. Previous Sections have told a tale of three different (although significantly intertwined) domains – i.e. disaster management, health emergencies governance, and cyberspace security – where Italy has actively supported multilateral initiatives playing as a front-runner in the development of international cooperation.

All in all, a trend is clearly visible, showing a pragmatic attitude of the State in supporting those initiatives: the proposal to adopt a "framework convention" concept to elaborate a universal treaty on disaster management, the initiative for targeted revisions to the IHR, the attempt to reshape the understanding of existing international law instruments and norms by introducing practical solutions and innovative cooperation schemes and initiatives to strengthening States' commitment – such as the proposal for the establishment of a Joint Task Force between Finance and Health Ministries dealing with health threats and the support to open cooperation platforms in cybersecurity domain – are all examples of that pragmatic stance.

Though not always fully convincing, the solutions inspired by Italian pragmatism have the merit to facilitate (and increase) the international cooperation and multilateral dialogue on legal preparedness related to CBRN threats and events. Time will tell how effective they will be.

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among others, by CHIRCOP, "A Due Diligence Standard of Attribution in Cyberspace", International and Comparative Law Quarterly, 2018, p. 643 ff.; FARNELLI, *cit. supra* note 8, pp. 569–570.

112 See *Italian Position Paper on "International Law and Cyberspace"*, *cit. supra* note 102, p. 8. On the contrary, the qualification of cyber operations merely causing loss of functionality seems to be controversial. See also ROSCINI, *Cyber Operations and the Use of Force in International Law*, Oxford, 2014, p. 45 ff.; DELERUE, *Cyber Operations and International Law*, *cit. supra* note 105, p. 273 ff.

113 See *Italian Position Paper on "International Law and Cyberspace"*, *cit. supra* note 102, p. 9.

114 *Ibid.*, p. 10.