

SAARC Regional Disaster Law

Need for Progressive Development

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1 Introduction

The South Asian Association for Regional Cooperation (SAARC) reports that since the 1990s, more than 1.625 major disasters have hit South Asia, taking the toll of more than 12 million lives and overall damages of more than 100 trillion dollars.¹ It also reports that nearly 23% of the global population lives in SAARC Countries, which is exposed to numerous hydro-meteorological and geophysical hazards.² Against this background, the SAARC has been instrumental in developing mechanisms, action plans and legal frameworks for the region to allow member states to reduce the loss arising due to disasters in the region. However, there is a long way to go. The lack of any concerted regional effort by the SAARC member states underscored the gaps in existing disaster mechanism in SAARC³ and the need for progressive development.

The main aim of this paper is to frame, analyse and understand international disaster law in the SAARC region under the relevant regional treaty – ‘the SAARC Agreement on Rapid Response to Natural Disasters’ (SARRND) adopted in 2011. It first illustrates the origin, history, and subsequent relevant developments of the SAARC activities in the area of disaster law, allowing the readers to understand the complexity of establishing and operationalising this organisation. Then, the paper explains the membership and governance structure of the SAARC, with an aim to understand where the decision-making power lies and how countries can ensure regional consensus. The third part of the paper examines the SARRND as a legally binding treaty and the operationalisation of the legal provisions it contains. The fourth part analyses the national action plans of SAARC member states and their coherence with the regional

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1 Mondira Dutta, *Disaster and Human Trafficking* (Springer 2021) 107–132.

2 *Ibid.*

3 Saneet Chakradeo, ‘Neighbourhood first responder: India’s humanitarian assistance and disaster relief’ (Policy Brief 082020-01, New Delhi: Brookings Institution India Centre, August 2020) 5.

and international commitments. Subsequently, the paper discusses success and challenges to operations under the SARRND, if any, followed by conclusive remarks and recommendations on the way forward for SARRND and SAARC in disaster management, risk reduction and overall international disaster law.

2 The History of South Asian Association for Regional Cooperation (SAARC) and Disasters in the Region

South Asia is highly vulnerable to hazards and disasters and has lost billions of dollars since 2004 due to hazards and disasters.⁴ The climatic and extreme weather events in South Asia are dominated by the *El-niño* phenomenon, also known as the Monsoon in the Indian-subcontinent.⁵ Some SAARC nations like Bangladesh are highly vulnerable to disasters and extreme weather events, and thus are also more prepared than other nations.⁶ The economically and politically disadvantaged countries like Afghanistan are not only more vulnerable to disasters, but also have less resources to prepare and adapt to their consequences.⁷ Moreover, before the birth of SAARC, the British managed a large part of the region as British India, including the now sovereign nations of India, Pakistan and Bangladesh.⁸ In most cases, the colonial power ignored the needs

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- 4 'Six ways Southeast Asia strengthened disaster risk management' (Asian Development Bank, 04 May 2021) available at <<https://www.adb.org/news/features/six-ways-southeast-asia-strengthened-disaster-risk-management#:~:text=Southeast%20Asia%20is%20one%20of,floods%20drought%20and%20earthquakes>> last accessed (as any subsequent URL) on 3 July 2022; Rajesh K. Mall et al., 'Disaster Risk Reduction Including Climate Change Adaptation Over South Asia: Challenges and Ways Forward' (2019) 10 *International Journal of Disaster Risk Science*, 14; UNESCAP, 'The Disaster Riskscape across South and South-West Asia: Key Takeaways for Stakeholders' (2020) ST/ESCAP/2879, available at <<https://www.unescap.org/sites/default/files/IDD-APDR-Subreport-SSWA.pdf>>, 5.
- 5 Pulak Guhathakurta, 'Observational Analysis of Heavy Rainfall During Southwest Monsoon over India' in Kamaljit Ray et al. (eds), *High-Impact Weather Events over the SAARC Region* (Springer 2015).
- 6 Musabber A. Chisty et al., 'Sendai Framework for Disaster Risk Reduction (SFDRR) and disaster management policies in Bangladesh: How far we have come to make communities resilient?' (2022) 76 *International Journal of Disaster Risk Reduction*, 103039.
- 7 Mohammad K. Naseri et al., 'A Primary Assessment of Society-Based Earthquake Disaster Mitigation in Kabul City, Afghanistan' (2017) 12/1 *Journal of Disaster Research*, 158.
- 8 Rachel Fell McDermott et al. (eds), *Sources of Indian Traditions: Modern India, Pakistan, and Bangladesh* (Columbia University Press 2015³).

of Indians in case of disasters,⁹ especially during the malaria epidemics¹⁰ and the 1943 famine in West Bengal.¹¹ Major countries in South Asia have had a shared past under the British Colonial rule, within the Non-Aligned Movement and the Commonwealth, economic integration and consequent interdependence on each other.¹² However, the withdrawal of the empire from the region gave rise to unsettled conflicts, political struggles and a reimagined sense of nationalism after these states engaged in the arduous task of nation-building.¹³

After the 1971 Indo-Pakistan War, the role of India in the liberation and creation of Bangladesh caused growing fear over Indian hegemony in South Asia.¹⁴ As a solution, the idea of SAARC was tabled in 1979 by late Bangladeshi President Zia-Ur-Brahman¹⁵ and finally established through the SAARC Charter¹⁶ in 1985 at Dhaka, Bangladesh.¹⁷ The SAARC Charter is a legally binding treaty, signed by the eight member nations of South Asia. The SAARC was late in realizing the benefits of regional integration, unlike the European Community established in 1957 (and later transformed into a European Union) and the Association of South East Asian Nations (ASEAN) established in 1967.¹⁸ It was a 'major intellectual leap for cooperation for member states, relations between some of which have been characterised by mutual hostilities, including war'.¹⁹

For the reasons illustrated above, the SAARC is considered as an institution that served political, economic and cultural decolonisation of the region.²⁰

9 *Ibid.*

10 *Ibid.*

11 *Ibid.*

12 Rajkumar Singh, 'Relevance of SAARC in South Asian Context' (2009) 70/1 *The Indian Journal of Political Science*, 239.

13 John A. Hobson, *Imperialism: A Study* (Routledge 2018).

14 Mavara Inayat, 'The South Asian Association for Regional Cooperation' (1986) 14/6 *Asian Profile*, 541.

15 Raman K. Pillai, 'Tensions Within Regional Organizations: A Study of SAARC' (1989) 50/1 *The Indian Journal of Political Science*, 18.

16 South Asian Association for Regional Cooperation (SAARC) Social Charter (4 January 2004) available at <<https://www.refworld.org/docid/595c933c4.html>>.

17 Smruti S. Pattanaik, Medha Bisht and Kartik Bommakanti, 'SAARC: A Journey through History' (Institute for Defense Studies 2010).

18 Niaz A. Naik, 'SAARC – From Association to Community: Prospects and Problems' (1999) 6/2 *South Asian Survey*, 333.

19 Dipankar Banerjee (ed), *SAARC in the Twenty-first Century: Towards a Cooperative Future* (India Research Press 2002) 5.

20 Geetha Ganapathy-Doré, 'Nationalist versus Social Revolution – A Comparative Study of Ritwik Ghatak's *Subarnarekha* (1965) and Ken Loach's *The Wind that Shakes the Barley* (2006)' in Geetha Ganapathy-Doré and Michel Olinga (eds), *Images of Decolonization/ Images de la Décolonisation* (SARI 2013).

The vision of SAARC regional cooperation has not fully materialised yet, due to which some scholars consider it as a failure.²¹ Many scholars recommend that SAARC needs more regionally integrated approaches, specifically to protect environment, natural resources, ecology,²² human rights²³ and cultural heritage of the region (among other things).²⁴

3 SAARC Members, Structure and Governance

The SAARC members had a “step-by-step” approach to regional cooperation that included setting up a “functional, intergovernmental” institutional set-up for SAARC.²⁵ A Secretariat was established in Kathmandu during the second SAARC Summit in India (1986).²⁶ Currently, there are eight country members of SAARC namely, Afghanistan, Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan and Sri Lanka.²⁷ The SAARC is not a secretariat-driven organisation like ASEAN,²⁸ and its member states ‘separates other members from each other’, which means that the ‘involvement with the others will only be at the most general and very loose level of speculative regionalism’.²⁹ However, SAARC has a built-in system in place, allowing all member states to contribute in the decision-making and cooperation on regional issues, doing away with speculative regionalism as far as possible. The creation and development of SAARC promises regional cooperation within South Asia to eradicate poverty, manage significant environmental challenges, and ensure the region’s energy security,³⁰ and the organisation has been described as a ‘manifestation of the determination of the peoples of South Asia to cooperate regionally, to work

21 Aparna Pande (ed), *Routledge Handbook on South Asian Foreign Policy* (Routledge 2021).

22 Shyam Saran, ‘South Asia’s Mounting Ecological Challenge: Regional Cooperation is the Only Answer’ (2014/2015) 41/3–4 *India International Centre Quarterly*, 61.

23 Aishath Velezinee, ‘Developing a Regional Human Rights Mechanism’ (2014/2015) 41/3–4 *India International Centre Quarterly*, 203.

24 Rajiv Kumar and Omnia Goyal (eds), *Thirty years of SAARC: Society, Culture and Development* (SAGE Publications India 2016).

25 Inayat (n 14).

26 Ross M. Hussain, ‘SAARC 1985–1995: Review and Analysis of Progress’ (1996) 3/1–2 *South Asian Survey*, 7.

27 Hafiz W. Akram, Daoud Ciddikie and M. Altaf Khan, ‘India’s Trade Relationship with SAFTA Countries: A Review’ (2014) 2/1 *Journal of Indian Research*, 46.

28 Banerjee (n 19) 14.

29 Michael Antolik, ‘ASEAN and SAARC revisited: more lessons’ (1987) 9/3 *Contemporary Southeast Asia*, 221.

30 Kumar and Goyal (n 24).

together towards finding solutions to their common problems in a spirit of friendship, trust and understanding and to create an order based on mutual respect, equality and shared benefits'.³¹

The Annual summit meetings of the Heads of state or governments is the apex decision-making authority.³² They are followed by a Council of Ministers, who formulate policies, review progress in cooperation and establish mechanisms as necessary.³³ In parallel to the Council of Ministers acts a 'Standing Committee' that comprises of foreign secretaries and that reports its work to the Council.³⁴ Both the Council of Ministers and the Standing Committee meet twice a year, even though extraordinary sessions can be agreed by the SAARC members.³⁵ Additionally, there are 'Technical Committees' responsible for 'the implementation, coordination and monitoring of the programmes in their respective areas of cooperation'.³⁶ Technical Committees reports to the Standing Committee³⁷ and allows experts to contribute to the work of SAARC,³⁸ including SAARC's work on environment and disasters.³⁹ The SAARC Secretariat is headed by a Secretary General who is appointed by the Council of Ministers,⁴⁰ and is supported by eight directors and other officers.⁴¹

4 The SAARC and Regional Disaster Management

Since the SAARC inception, the "Environment, Natural Disasters and Bio-technology" has been identified as one of its core areas of cooperation.⁴² The collective work on the environment and natural disasters was launched in the 1987 Third SAARC Summit that commissioned a regional study on the

31 Singh (n 12).

32 Inayat (n 14).

33 Charter of the South Asian Association for Regional Cooperation (8 December 1985) available at <<https://www.saarc-sec.org/index.php/resources/agreements-conventions/46-saarc-charter-provisional-rules-of-procedure/file>>, art. IV.

34 *Ibid.*, art. v.

35 *Ibid.*

36 *Ibid.*, art. VI.

37 *Ibid.*, art. VI(3).

38 *Ibid.*, art. VI(5).

39 See Section 3 of the article for more detailed analysis.

40 Muhammad J. Iqbal, 'SAARC: Origin, Growth, Potential and Achievements' (2006) 27/2 Pakistan Journal of History and Culture, 127.

41 *Ibid.*

42 Rama Rao Bonagani, 'The Significance of SAARC in the South Asia Region: A Theoretical Study' (2021) 12/2 Research Journal of Humanities and Social Sciences, 93.

'Consequences of Natural Disasters and the Protection and Preservation of the Environment'.⁴³ This is allegedly due to the fact that the South Asian region witnessed an increase in disasters since 1985.⁴⁴ The 1987 study concluded in 1991 with an 'intention to initiate the process of dealing with the causes and consequences of natural disasters'.⁴⁵ Since then, the SAARC laid increasing emphasis on protection from natural disasters and preservation of the environment.⁴⁶ In the 1980s "SAARC Food Bank" was established as a regional mechanism to support SAARC member countries during a crisis that may trigger shortage of food.⁴⁷ The 1988 Fourth SAARC Summit initiated a joint study on the 'Greenhouse Effect and its Impact on the Region'.⁴⁸ These studies were directed to understand the state of the environment in the SAARC nations and provided a solid scientific background to future regional action plans, declarations and treaties on the environment and natural disasters. 1992 was celebrated as the 'SAARC Year of Environment',⁴⁹ and that year environmental and natural disaster formed the corpus of the work by the Environment Ministers of each SAARC nation as well as of the Technical Committee on Environment.⁵⁰

The first SAARC Environment Action Plan was adopted in 1997 by the SAARC Environment Ministers, in Maldives.⁵¹ The Action Plan aimed at environmental assessment of member states particularly affected by natural disasters and climate change.⁵² This plan also acknowledged the 'need to strengthen the

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- 43 Suman Sharma, 'Reaching the 7th Millennium Development Goals (MDG) on Environmental Sustainability: the South Asian Response' in Amita Singh, E.T. Gonzalez and S.B. Thomson (eds), *Millennium Development Goals and Community Initiatives in the Asia Pacific* (Springer 2013).
- 44 Raghav Gaiha, Kenneth Hill and Ganesh Thapa, 'Natural Disasters in South Asia' (ASARC Working Paper 2010/06, 17 February 2010).
- 45 South Asian Association for Regional Cooperation, 'Kathmandu Declaration' (4 November 1987) available at <<https://www.saarc-sec.org/index.php/resources/summit-declarations/21-third-saarc-summit-kathmandu-1987/file>>.
- 46 Hussain (n 26).
- 47 Mustafizur Rahman, Estiaque Bari and Serajum M. Farin, 'Operationalizing the SAARC Food Bank: Issues and Solutions' (ESCAP Development Papers 1803 2018).
- 48 Hussain (n 26).
- 49 Manzoor A. Naazer and Sumbal Hussain, 'SAARC after Three Decades: An Assessment of Progress in Regional Cooperation in Functional Areas (1985–2015)' (2016) 1/1 *Global Social Sciences Review*, 18.
- 50 Ramesh Trivedi (ed), *India's Relations with her Neighbours* (Gyan Publishing House 2008) 38.
- 51 Baniateilang Majaw, 'Climate Change and South Asian Association for Regional Cooperation: A Regional Response' (2012) 4/2 *International Journal of Social Sciences and Humanity Studies*, 71.
- 52 SAARC Environment Action Plan, Adopted by the Third Meeting of the SAARC Environment Ministers (Male, 15–16 October 1997).

mechanisms for sharing experience, information and resources on disaster preparedness, mitigation and management'.⁵³

In 2006, SAARC members states adopted the Male Declaration on a Comprehensive Regional Framework for Action 2006–2015,⁵⁴ which was designed and modelled on the Hyogo Framework for Action 2005–2015, adopted the year before at the UN World Conference on Disaster Reduction.⁵⁵ The SAARC Centre for Disaster Management (SDMC) and Preparedness (New Delhi), the SAARC Coastal Zone Management Centre (Male) and the SAARC Meteorological Research Centre (Dhaka) were the regional centres mandated to implement this framework, with several strategic goals including disaster risk reduction, assistance and post-disaster rehabilitation.⁵⁶ The framework also laid emphasis on developing and strengthening response to disasters at all levels.⁵⁷ In 2008, the SAARC nations adopted the 'Dhaka Declaration and SAARC Action Plan on Climate Change'.⁵⁸ It laid out areas for cooperation and the need to exchange information on disaster preparedness, extreme events and meteorological data'.⁵⁹ Notably, SAARC member countries were concerned with losses due to natural disasters and highlighted 'the need for the timely provision of relief in humanitarian emergencies'.⁶⁰ Following the concern and need, thereafter, the States, for the first time in a SAARC Summit, directed creation and adoption of a 'Natural Disaster Rapid Response Mechanism' under the SDMC.⁶¹ Subsequently, in 2009, the SAARC adopted the 'Delhi statement on Cooperation in Environment' for critical issues concerning the environment and climate change.⁶² It was through this statement that the 'ministers took note of the Draft SAARC Treaty on Cooperation in the field of Environment', which was later adopted as a legally binding treaty known as the SAARC Convention on

53 *Ibid.*

54 SAARC, 'Disaster Management in South Asia: A Comprehensive Regional Framework For Action 2006–2015' (2006).

55 Saidul Islam and Edison Kieu, 'Tackling Regional Climate Change Impacts and Food Security Issues: A Critical Analysis Across ASEAN, PIF, and SAARC' (2020) 12/3 Sustainability, 883.

56 SAARC, Disaster Management in South Asia (n 54).

57 *Ibid.*

58 Dhaka Declaration and SAARC Action Plan on Climate Change, the 14th SAARC Summit (New Delhi, 3–4 April, 2007).

59 *Ibid.*

60 Partnership for Growth for our People, Declaration, 15th SAARC Summit (Colombo, 2–3 August 2008).

61 *Ibid.*

62 SAARC Ministerial Statement on Cooperation on Environment – "Delhi Statement", adopted by the Eighth Meeting of the SAARC Environment Ministers (New Delhi, 20–21 October 2009).

Cooperation on Environment (2010).⁶³ The following year, the SAARC Nations adopted the 'Thimpu Declaration on Climate Change' intending to develop action plans for climate change.⁶⁴

In 2010, SAARC member states, while celebrating its Silver Jubilee, again recognized the increasing intensity of disasters in the region and called for negotiation and signing of the SARRND.⁶⁵ The SARRND, was signed in November 2011 and in the 2014 SAARC Summit, state parties 'directed the relevant bodies/mechanisms for [its] effective implementation'.⁶⁶ However the Treaty entered into force only in September 2016.⁶⁷ The reasons for the delay in the ratification of SARRND are not clear. Even after the ratification, the member states have largely acted through the centres like SDMC and have intentionally delayed the enforcement of SARRND, the creation of Standard Operating procedures (SoP) and the development of a Rapid Response Mechanism (RRM).⁶⁸ It took five years for enforcement after the SAARC members signed the SARRND. The delay in its enforcement and operationalisation due to the absence of a SoP and RRM, is one of the largest shortcomings of the SARRND.

Modelled on the ASEAN experience and its 2005 Agreement on Disaster Management and Emergency Response (AADMER) with the aim of developing a regional approach to disasters in the Indian sub-continent, the objective of the SARRND is to strengthen national disaster response and management systems and institutionalize regional disaster laws.⁶⁹ While there are substantial

63 SAARC Convention on Cooperation in Environment (29 April 2010) available at <<https://www.saarc-sec.org/index.php/resources/agreements-conventions/47-saarc-convention-on-cooperation-on-environment/file>>.

64 Nazrul Islam et al., 'Climate Change Impacts and Mitigation Strategies to Develop the Low Carbon Themes in Bangladesh' in Nazrul Islam and André van Amstel (eds), *Bangladesh II: Climate Change Impacts, Mitigation and Adaptation in Developing Countries* (Springer 2021).

65 Thimpu Silver Jubilee Declaration, 16th SAARC Summit Declaration (28–29 April 2010) available at <<https://www.mea.gov.in/bilateral-documents.htm?dtl/3886/16th+SAARC+Summit+Declaration+29+April+2010>>.

66 SAARC, 18th SAARC Summit, Kathmandu Declaration, Heads of State or Government, (Kathmany, 26–27 November 2014) available at <<https://www.saarc-sec.org/index.php/resources/summit-declarations/24-eighteenth-saarc-summit-kathmandu-2014/file>>.

67 Emika Tokunaga, 'Asia (2018)' (2019) 1/1 Yearbook of International Disaster Law Online, 336.

68 The SAARC-DMC website mentions on its "Development of Regional Mechanism (RRM) in the SAARC Region" page that "SDMC (IU) has initiated the process to implement SARRND" in 2022.

69 Tokunaga (n 67); Stacey White, *A Critical Disconnect: The Role of SAARC in Building the DRM Capacities of South Asian Countries* (Brookings Institution 2015) 7; Gabrielle Simm, 'Disaster Response in Southeast Asia: The ASEAN Agreement on Disaster Response and Emergency Management' (2018) 8/1 *Asian Journal of International Law*, 116; Alistair D.B. Cook and Christopher Chen, *Disaster Governance in the Asia-Pacific: Future Pathways for*

textual similarities between the AADMER and the SARRND, the intention of the SAARC member states when drafting, signing and ratifying the SARRND was to restrict its scope of application to “natural disasters”, differently from the definitions of “disasters” under the AADMER including both natural and man-made events. The restrictive use and conceptual understanding of the term “natural disasters” is allegedly due to political denial by the governments to take actions in all kinds of disasters.⁷⁰

However, this does not align with the definitions provided by other international instruments on disaster law, the large majority of which includes both natural and man-made disasters. Under the UN International Law Commission Draft Articles on protection of persons in the event of disasters, “disasters” mean ‘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’.⁷¹ Similarly, The IFRC defines “disasters” as ‘serious disruptions to the functioning of a community that exceeds its capacity to cope using its own resources’.⁷² IFRC also uses the term “non-conflict related disasters” in order to promote policies and actions on disasters not arising due to armed conflicts and other situations of systemic violence.⁷³ In the European Union, the term “disaster” means ‘any situation which has or may have a severe impact on people, the environment, or property, including cultural heritage’.⁷⁴ The EU amended this definition in 2021, and included the terms ‘multi-country transboundary effects’ of a disaster to the decision⁷⁵ ‘to improve cross-sectoral disaster risk management planning at Union Level’.⁷⁶ The recent definition

South and Southeast Asia (S. Rajaratnam School of International Studies and Nanyang Technological University 2021).

70 Chhaya Bhardwaj and A. Renganath, ‘Disaster-Induced Internal Displacement in India: Denial, Protection and Policy’ (2022) 15/4 Environmental Justice, 266, 268–270.

71 ILC, ‘Draft articles on the protection of persons in the event of disasters, with commentaries’ in Yearbook of the International Law Commission, 2016, vol. II (Part Two) available at <https://legal.un.org/ilc/texts/instruments/english/commentaries/6_3_2016.pdf>.

72 IFRC, ‘World Disasters Report 2020’, available at <https://www.ifrc.org/sites/default/files/2021-05/20201116_WorldDisasters_Full.pdf>.

73 International Federation of Red Cross and Red Crescent Societies, ‘IDRL – What’s in a Name?’ (5 April 2006); Michael Eburn, ‘International Law and Disaster Response’ (2010) 36 Monash University Law Review, 162.

74 Decision No. 1313/2013/EU of the European Parliament and of the Council, of 17 December 2013, on a Union Civil Protection Mechanism.

75 EU Commission, ‘European Emergency Response Capacity – ECHO Factsheet’ (2015) available at <https://ec.europa.eu/echo/files/aid/countries/factsheets/thematic/emergency_response_capacity_en.pdf>.

76 *Ibid.*

by the EU highlights the nuances of defining disasters in a trans-boundary context and instils a need to define disasters in a comprehensive and holistic manner. Against this backdrop, it clearly emerges how the SARRND definition of disasters is a unique feature in the current IDL domain, and thus not aligned with its general conceptual understanding. Additionally, the definition of “natural disasters” contradicts with the plain reading of the objective of the SARRND, namely ‘to provide effective regional mechanisms for rapid response to [any kind of] disasters to achieve substantial reduction of disaster losses in lives and in the social, economic and environmental assets of the Parties, and to jointly respond to disaster emergencies through concerted national efforts and intensified regional cooperation.’⁷⁷ Different regional treaties define the term “disasters” differently, based on the regional need and priorities. However, most definitions are comprehensive, based on internationally recognized understanding of disasters and progressive, except the SARRND’s definition of disasters. A more progressive approach, may help SAARC nations to take effective action under SARRND in future.

Additionally, compared to the AADMER, the SARRND approach appears as more “restrictive” also with reference to other key terms of reference. For instance, while both treaties define and uses the term ‘assisting party’, the second defines ‘assisting party’ as ‘a state’⁷⁸ while the AADMER also includes ‘international organization, and any other entity’.⁷⁹ The main implication of a restrictive definition of ‘assisting party’ meaning to be only state, restricts quality and quantity of assistance that may be otherwise available in a broader definition. Firstly, a state requesting humanitarian assistance for disasters can avail assistance from any other state or international organisation, if the definition of ‘assisting party’ is not restricted to states exclusively. Secondly, a restrictive definition also limits resources for financial and in-kind assistance, thereby limiting the scope of humanitarian assistance under the international disaster law.

SARRND is based on four principles,⁸⁰ starting from the one stating that the ‘primary responsibility to respond to disasters’ lies with the affected state.⁸¹ The second principle states that ‘the Requesting Party shall exercise the overall direction, coordination and supervision of the assistance within its territory’.⁸² If the assisting state appoints a ‘Head of assistance operation’ for all assistance

77 SARRND, art. II.

78 *Ibid.*, art. I(1).

79 AADMER, art. I(1).

80 SARRND, art. III.

81 *Ibid.*, art. III(1).

82 *Ibid.*, art. III(2).

given to a disaster-affected SAARC member, it will allow the requesting party to manage the overall assistance with ease. These provisions are designed keeping in mind the national and regional sensitivities. A feature of Asia is that Asian states generally accept the assistance, but do not request it.⁸³ In the light of this pattern, combined with age-old mutual distrust between SAARC Nations, the provision of having a 'Head of Assistance Operation' puts a name and face to the overall assistance that is received, presumably allowing states to trust the assistance operation. The Head can also be authorised to allow movement orders for assisting entities.⁸⁴ Additionally, the provisions related to identification require 'Personnel involved in the assistance operations (...) to wear uniforms with distinctive identification while performing official duties'.⁸⁵

The third principle concerns the issues of consent, sovereignty, territorial integrity and national unity.⁸⁶ All the SAARC countries have faced, in some way or another, a "national unity crisis", generally arising out of demands for secession.⁸⁷ The Indian subcontinent, in particular, 'has never accepted the legitimacy of the original partition of the sub-continent'⁸⁸ and accepted the 'sacred unity of post-colonial states'.⁸⁹ The issue of "national unity" has been managed (and often declared) as a matter of foreign policy to control "external threats" and violent military succession of neighbouring countries in the region.⁹⁰ For example, in the case of India, it has experienced violent disputes with neighbouring countries, giving rise to separatism within the territory of India.⁹¹ India has substantially defined the threats to national unity arising from the "peripheral states" and their conspiracies against the Indian territory.⁹² As said, this feature is also found in South-East Asia, reflecting on the post-colonial historical events shared by many of the countries belonging to that region.⁹³ The SARRND aims to facilitate trust by including provisions concerning 'consent of operations'⁹⁴ and allowing the requesting party to 'exercise overall direction, coordination and supervision of the

83 Simm (n 69) 124.

84 SARRND, art. XII.

85 *Ibid.*, art. XII.

86 *Ibid.*, art. III.

87 Pande (n 21) 12.

88 *Ibid.*

89 *Ibid.*

90 *Ibid.*, 250.

91 *Ibid.*

92 *Ibid.*, 252.

93 Simon Hollis, *The Role of Regional Organizations in Disaster Risk Management* (Palgrave Macmillan 2015) 13–46.

94 SARRND, art. III(4).

assistance within its territory'.⁹⁵ It also contains rules concerning the '[r]espect of National Laws and Regulations',⁹⁶ which requires members of the assistance operation to 'be sensitive to and respect the local customs and traditions of the requesting party', amongst other things.⁹⁷ The final principle empowers the Secretary-General of the SAARC to coordinate the RRM in consultation with SDMC and consent of other member states.⁹⁸

Like the AADMER, the objective of the SARRND 'is to provide effective regional mechanisms for rapid response to disasters to achieve substantial reduction of disaster losses in lives and in the social, economic and environmental assets of the Parties, and to jointly respond to disaster emergencies through concerted national efforts and intensified regional cooperation'.⁹⁹ It focuses on 'national efforts' by the members states,¹⁰⁰ in furtherance to which all the members of the SAARC have national disaster laws and action plans today and are discussed in detail in next part of the paper.¹⁰¹ The reaction to a natural disaster is seen in a twofold way, one with 'national effort' and the other through 'regional cooperation'.¹⁰² Therefore, in case of a natural disaster, the primary onus is on the nation to provide aid and assistance to its citizens and further extend assistance to other member states only at request.¹⁰³ SARRND also requires states to jointly or individually develop strategies and contingency/response plans to reduce losses from disasters;¹⁰⁴ to organize periodic mock drills to test their preparedness measures; and to earmark assets and capacities to be used in future disaster management operations.¹⁰⁵ The terms 'jointly' and 'individually' imply actions taken as part of 'national efforts', 'bilateral efforts' or through SAARC at the regional level. Additionally, the SARRND specifies that 'the members of the assistance operation' shall respect the national laws and regulations,¹⁰⁶ which include local customs and

95 *Ibid.*, art. IX(1).

96 *Ibid.*, art. X.

97 *Ibid.*

98 *Ibid.*, art. III(4).

99 *Ibid.*, art. II.

100 *Ibid.*, art. II.

101 *Infra*, para. 5.

102 *Ibid.*, art. II.

103 *Ibid.*, art. III.

104 *Ibid.*, art. V.

105 *Ibid.*, art. VI. SAARC SDMC operationalises this provision. Andrea de Guttry, 'Rules of General Scope in Order to Be Prepared to Deal with CBRN Emergency Situations' in Andrea de Guttry et al. (eds), *International Law and Chemical, Biological, Radio-Nuclear (CBRN) Events* (Brill Nijhoff 2022).

106 SARRND, art. X.

traditions of the requesting party.¹⁰⁷ The agreement is not intended to affect the rights and obligations of the parties under other bilateral or multilateral treaties, conventions and agreements to which they are a party.¹⁰⁸

The SARRND also recommends on the 'quality of assistance',¹⁰⁹ well in alignment with the UN Draft Articles on protection of persons in the event of disasters 2016¹¹⁰ and the AADMER.¹¹¹ The SARRND states that 'the relief goods and materials provided by the Assisting Party should meet the quality and validity requirements of the Parties concerned for consumption and utilization'.¹¹² The requesting party and the assisting party should consult on issues of claims, 'other than an act of gross negligence or contractual claims against each other', under the agreement.¹¹³ The rule on claims between requesting party and assisting party, primarily arises for issues concerning 'negligence', 'contractual claims', 'damage', 'loss or destruction of the other's property' or 'injury or death to personnel of both Parties arising out of the performance of their official duties'.¹¹⁴

There are general obligations set forth by the SARRND. The first general obligation for states is to 'cooperate in developing and implementing measures for Disaster Risk Reduction (DRR) including identification of disaster risk, development of monitoring, assessment and early warning systems, standby arrangements for disaster relief and emergency response, exchange of information and the provision of mutual assistance'.¹¹⁵ The issue of DRR is included as a general obligation within SARRND, despite the general inclination of the treaty to focus on disaster response. This general obligation aligns with other general obligations and the SAARC Charter that aims at promoting regional cooperation and joint action on issues concerning environment and protection of people in the region.¹¹⁶ Other general obligations include a distinct duty to inform and notify each other and the centres like the SDMC and the duty to share technical know-how and information on the best practices and lessons learnt in reducing disaster losses.¹¹⁷

107 *Ibid.*, art. x(1)(c).

108 *Ibid.*, art. xvii.

109 *Ibid.*, art. ix(4).

110 ILC, Draft articles (n 71) art. 14.

111 AADMER, art. 12.

112 SARRND, art. ix(3).

113 *Ibid.*

114 *Ibid.*

115 *Ibid.*, art. iv(1).

116 SAARC Social Charter (n 16), Preamble.

117 SARRND, art. iv(4).

The Agreement also has a feature that obliges states to create a Standard Operating Procedure (SOP) to uniformly govern the regional cooperation on disasters affecting one state in the region.¹¹⁸ However, there is a lack of a comprehensive SOP which can be considered a regional disaster response plan curated jointly in consensus by the member states.¹¹⁹ Absence of SOP can lead to an unorganised situation if states decide to receive and give humanitarian assistance to disaster-affected countries. For example, the countries that offered humanitarian assistance to Nepal in the absence of SOP, found themselves in a rather unorganised situation, in the absence of any framework governing the conduct of those providing aid and assistance within the country. A SOP is currently being developed as RRM by the SDMC. Under the relevant provisions of SARRND, the Secretary-General of SAARC is the overall coordinator to develop RRM and can utilize SDMC, as prescribed by SARRND.¹²⁰ The countries can also develop national SOPs, however, major actors in SAARC like India and Nepal, still do not have a SOP to govern receiving and giving humanitarian assistance.¹²¹

The agreement also mandates that “each party shall ensure according to its national legislation that the necessary measures are taken to mobilize equipment, facilities, materials, human and financial resources required to respond to disasters”.¹²² The emergency response can also be facilitated by conducting training and exercises to attain and maintain the relevance and applicability of SoPs¹²³ and standby arrangements for disaster relief.¹²⁴ However, the SDMC has taken the responsibility to operationalize the SARRND, namely through the development of a regional mechanism for disaster response in the region,¹²⁵ which will act as the regional SOP, jointly developed by the SAARC member states. The SARRND requires each member state to ‘designate a National Focal Point and one or more Competent Authorities for the purpose of implementation of this Agreement’.¹²⁶ Currently, the SARRND is operationalised through the SAARC-ADMC that has established National Focal Points to communicate

118 *Ibid.*, art. v.

119 *Ibid.*

120 *Ibid.*, art. III(4).

121 Chakradeo (n 3) 8.

122 SARRND, art. VII.

123 *Ibid.*, art. v(3)(b).

124 SDMC-IU Newsletter, Vol.05, 2021, SAARC & SDMC-IU, available at <http://saarc-sdmc.org/sites/default/files/newsletter_document_1/Newsletter_2020-21_vol5-new.pdf>.

125 The SAARC-SDMC website mentions on its “Development of Regional Mechanism (RRM) in the SAARC Region” page that “SDMC (IU) has initiated the process to implement SARRND”. See also <http://saarc-sdmc.org/sites/default/files/Annual_Report_2019_20.pdf>.

126 SARRND, art. XIV.

and build South Asian Disaster Knowledge Network (SADKN), to share information on hazards, vulnerabilities, risks and disasters.¹²⁷

The agreement specifies which state shall bear the financial responsibility of providing relief to the requesting state.¹²⁸ In the SAARC region it is believed that the promotion of financial cooperation is necessary for political stability, security and peace in the region.¹²⁹ However, the process to institutionalize financial contributions has not been developed yet.

5 “National Actions” within the SAARC Region

All the SAARC member states are prone to natural disasters: Afghanistan being prone to disasters such as earthquakes and landslides;¹³⁰ Bhutan is the world's most seismically active region and faces constant threats from Glacial Lake Outbursts Floods (GLOF);¹³¹ Maldives' precariously low level of elevation from the ocean's surface, it is at a high risk of storm surges, tsunamis, and rising seas;¹³² Nepal is prone to geological and hydro-meteorological disasters; Sri Lanka is at risk of multiple perils like coastal floods and erosions,¹³³ salinity intrusion,¹³⁴ cyclones and tornadoes;¹³⁵ Bangladesh is highly vulnerable to large earthquake and water related disasters viz cyclones, tornadoes, and flooding;¹³⁶ Pakistan is prone to natural hazards such as drought, floods, heat

127 See <https://preparecenter.org/sites/default/files/role_of_saarc_in_drm_south_asia_may_5_2015.pdf>.

128 SARRND, art. XV: Financial Arrangements.

129 Padmaja Murthy, 'Relevance of SAARC' (2000) 23/10 Strategic Analysis, 1781; Ileana Citaristi, 'South Asian Association for Regional Cooperation #x2014;Saarc' in The Europa Directory of International Organizations 2022 (Routledge 2022).

130 Jianqiang Zhang et al., 'Abe Berek landslide and landslide susceptibility assessment in Badakhshan Province, Afghanistan' (2015) 12/3 Landslides, 597.

131 Sonam Wangchuk, Tobias Bolch and J. Zawadzki, 'Towards automated mapping and monitoring of potentially dangerous glacial lakes in Bhutan Himalaya using Sentinel-1 Synthetic Aperture Radar data' (2019) 40/12 International Journal of Remote Sensing, 4642.

132 Katherine Butler, '14 Islands Threatened by Climate Change' (Treehugger, 29 June 2021) available at <<https://www.treehugger.com/island-nations-threatened-by-climate-change-4869275#citation-g>>.

133 H.V. Dayananda, 'Shoreline Erosion in Sri Lanka's Coastal Areas' (Colombo: Coast Conservation Department 1992) 9.

134 Hemantha Wijesekera et al., 'Southern Bay of Bengal currents and salinity intrusions during the northeast monsoon' (2015) 120/10 Journal of Geophysical Research: Oceans, 6897.

135 Supra.

136 Nehal Karim, 'Disasters in Bangladesh' (1995) 11/3 Natural Hazards, 247.

waves, extreme cold, and earthquakes¹³⁷ and India is prone to natural hazards such as drought, floods, heat waves, extreme cold, and earthquakes.¹³⁸

All the eight SAARC countries have national legislation or action plans on disaster management. These countries also have national institutions which are responsible for the implementation of the respective national disaster plans. These national plans, however, do not establish any protocols or national guidelines on the role of SAARC countries as an 'assisting party' under the SARRND. Secondly, the concept of 'disaster' is differently defined in their respective national disaster management laws and policies. The definition of 'disaster'¹³⁹ does not align with the regional definition of (natural) disaster since it is inclusive of both man-made and natural disasters,¹⁴⁰ unlike the definition prescribed by the SARRND. It is worth to note here that the definition of disaster in Bangladesh,¹⁴¹ Bhutan,¹⁴² Pakistan¹⁴³ and Sri Lanka¹⁴⁴ follow a similar definition of disaster to include natural and man-made disasters. As illustrated in more details below, almost all the national laws concerning disasters seem to be in accordance with one or the other international law treaty or instrument, including – but not limited to – the Hyogo Framework,¹⁴⁵ the Sendai Framework,¹⁴⁶ the Paris Agreement¹⁴⁷ or the SARRND. National action plans on disasters normally credit and commits to the Sendai Framework by most of the SAARC countries such as Bangladesh,¹⁴⁸ India,¹⁴⁹ Maldives,¹⁵⁰ Nepal,¹⁵¹

137 *Ibid.*

138 *Ibid.*

139 Indian DMA, Sec. 2(d).

140 Bhardwaj and Renganath (n 70).

141 Disaster Management Act, 2012, Sec. 2(11).

142 Disaster Management Act of Bhutan, 2013, Sec. 144(9).

143 National Disaster Management Act, Pakistan, 2010, Sec. 2(b).

144 Sri Lanka Disaster Management Act, 2005, Sec. 25.

145 Anshu Sharma, Viren Falcao and Vijayalakshmi Viswanathan (eds), Hyogo Framework for Action (HFA) Progress in Asia-Pacific: Regional Synthesis Report 2009–2011 (UNISDR 2011).

146 Christmas Uchiyama, Nafesa Ismail and Linda A. Stevenson, 'Assessing contribution to the Sendai Framework: Case study of climate adaptation and disaster risk reduction projects across sectors in Asia-Pacific (2015–2020)' (2021) 12 Progress in Disaster Science, 100195.

147 T.S. Amjath-Babu, Pramod K. Aggarwal and Sonja Vermeulen, 'Climate action for food security in South Asia? Analyzing the role of agriculture in nationally determined contributions to the Paris agreement' (2018) 19/3 Climate Policy, 283.

148 CFE-DM, 'Disaster Management Reference Handbook – Bangladesh' (May 2020) 34.

149 National Disaster Management Plan, 2019, available at <<https://ndma.gov.in/sites/default/files/PDF/ndmp-2019.pdf>>.

150 CFE-DM, 'Disaster Management Reference Handbook – Maldives' (May 2021) 8, 75.

151 Disaster Risk Reduction National Strategic Plan of Action 2018–2030, Nepal.

Pakistan¹⁵² and Afghanistan¹⁵³ and Sri Lanka¹⁵⁴ still on Hyogo Framework, but regionally fails to even acknowledge the regional cooperation through SAARC and SARRND, an exception being Bhutan.¹⁵⁵ Countries like Bhutan and Pakistan have no mention of SAARC while others do on a peripheral note. Further, the SAARC countries lack proper implementation of the obligation set out in SARRND.

A brief country wise national action plan and legislation is analysed below through its reference to regional and international commitments.

5.1 *Afghanistan*

Through its National Disaster Management Law,¹⁵⁶ Afghanistan seems to have made an effort on paper to provide a coherent domestic institutional framework on disaster management response mechanisms.¹⁵⁷ This Law defines ‘disasters’ as ‘an event of nature or man-made cause that leads to sudden disruption of normal life of society, causing damage to life and property’.¹⁵⁸ The National Disaster Management Committee (NDMC) is the focal point for disaster preparedness, management, and coordination in times of national disaster.¹⁵⁹ The NDMC acknowledges that it implements its framework i.e. National Disaster Management Plan 2010,¹⁶⁰ under the Hyogo framework; and aims to bridge the gap between the disaster reduction plans, climate change actions and to promote peace and development through social protections.¹⁶¹ The Strategic

152 CFE-DM, ‘Disaster Management Reference Handbook – Pakistan’ (June 2021) 34.

153 Rodrigo Mena and Dorothea Hilhorst, ‘The (im)possibilities of disaster risk reduction in the context of high-intensity conflict: the case of Afghanistan’ (2021) 20/2 Environmental Hazards, 188, 190.

154 National Disaster Management Plan 2013–2017, Sri Lanka.

155 National Disaster Risk Management Framework, Bhutan, 2006.

156 National Disaster Management Law, 2012.

157 Mena and Hilhorst (n 153).

158 The Law on Disaster Response, Management and Preparedness, available at <https://www.preventionweb.net/files/31182_afghanistannationaldisastermanageme-451.pdf>.

159 Afghanistan National Disaster Management Authority, ‘Disaster Management System in Afghanistan Good Practices and innovations in managing the specific disaster risk in Afghanistan’ (30 October 2017) available at <https://www.unescap.org/sites/default/files/Session_2_Afghanistan_Disaster_Management_System_in_Afghanistan_Good_Practices_and_innovations_in_managing_the_specific_disaster_risk_in_Afghanistan.pdf>.

160 National Disaster Management Plan, 2010, available at <https://www.preventionweb.net/files/31182_afghanistannationaldisastermanageme-451.pdf>.

161 Afghan Red Crescent Society and IFRC, ‘International Disaster Response Law (IDRL) in Afghanistan: A study for strengthening the legal and policy framework for international disaster response in the Islamic Republic of Afghanistan’ (2013) available at <https://disasterlaw.ifrc.org/sites/default/files/media/disaster_law/2020-09/Afghan%20IDRL%20Report%20Final%20v2.pdf>.

National Plan of Afghanistan for disaster reduction acknowledges the support rendered by SAARC along with other international organisations such as UNDP and International Strategy for disaster reduction.¹⁶² The National Plan also highlights the training courses and workshops on disaster risk management conducted by SAARC¹⁶³ and also organized a workshop on Drought Risk Management in 2010. Further, the National Plan also acknowledges the SAARC as one of the regional cooperation mechanisms where the nation sees itself as a responsible party taking the aid of SAARC (along with other regional and international organisations) for capacity building, information management, research and evaluation, public awareness,¹⁶⁴ but not in preparedness for effective response, community development and early warning system.¹⁶⁵

5.2 *Bangladesh*

The Disaster Management Act of 2012 (DM Act) is the principal legislation of Bangladesh to coordinate disaster management related activities and has formulated rules to build up effective infrastructure to cope with all types of disaster.¹⁶⁶ The DM Act provides for conceptualization and preparation of a National Plan for Disaster Management (NPDM),¹⁶⁷ a five yearly plan with three core goals of saving lives, protecting investments and effective recovery. The NPDM is based on four key principles of Disaster Risk Management namely, Preparedness, Early Warning and Alert, Emergency Response and Rehabilitation, Reconstruction and Recovery,¹⁶⁸ along the lines of the SARRND.¹⁶⁹ The country is currently following the NPDM for 2021–2025, through which it aims to strengthen and follow the implementation of the Sendai Framework for Disaster Risk Reduction (SFDRR)¹⁷⁰ priorities through different ministries, divisions and departments. In addition, the country's disaster management plan, like the NDMPs, is also guided by several other national and international

162 Afghanistan National Disaster Management Authority, 'Afghanistan Strategic National Action Plan (Snap) For Disaster Risk Reduction: Towards Peace and Stable Development' (March 2011).

163 *Ibid.*

164 *Ibid.*

165 *Ibid.*

166 The Disaster Management Act of 2012.

167 *Ibid.*

168 *Ibid.*

169 SAARC Comprehensive Framework on Disaster Management, available at <<http://saarc-sdmc.org/saarc-dm-framework>>.

170 Sushmita Mannan, Dewan M.E. Haque and Netai C.D. Sarker, 'A study on national DRR policy in alignment with the SFDRR: Identifying the scopes of improvement for Bangladesh' (2021) 12 *Progress in Disaster Science*, 100206.

instruments like the Standing Orders on Disasters of 2019 (SOD); the Disaster Management Policy Act, 2015 (DMPA) which enumerates the national strategies on disaster risk reduction and principles that guide disaster management,¹⁷¹ the South Asian Association for Regional Cooperation (SAARC), Framework for Action (SFA) 2006–2015, the SFDRR 2016–2030, the Asian Regional Plan for Disaster Risk Reduction (ARPD RR), and the Sustainable Development Goals (SDGs).¹⁷²

5.3 *Bhutan*

In Bhutan, the Disaster Management Act of 2013 (DMA)¹⁷³ is the primary legislation regulating the actions during a natural disaster. The DMA provides for seeking international humanitarian assistance,¹⁷⁴ assistance from the governments of other countries, international organisations, international non-governmental organisations, business establishments or volunteer groups¹⁷⁵ for the purpose of disaster/crisis management. In addition to the DMA, Bhutan has also set up Dzongkhag Disaster Management Committees (DDMC) and formulated the Dzongkhag Disaster Management Planning Guidelines (DMPG), with dzongkhags being the primary sub-divisions/districts in Bhutan. The Disaster management guidelines acknowledge the support needed by the regional organisations including SAARC for implementing disaster reduction initiatives.¹⁷⁶

5.4 *India*

The 2005 Disaster Management Act (DMA), is the key instrument adopted by India in this sector. It established the National Disaster Management Authority (NDMA) in the country as well as institutional mechanisms at the state and District Levels.¹⁷⁷ The NDMA is responsible for developing policies on disaster management, approving National Plans, formulating guidelines to be followed for drawing up state Plans, as well as to ensure timely and effective response to disasters.¹⁷⁸

171 Disaster Management Reference Handbook – Bangladesh (n 148).

172 National Plan for Disaster Management, 2021–2020.

173 Mihir Bhatt, Ronak B. Patel and Kelsey Gleason, 'Natural Hazards Governance in South Asia' (2019) 1 Oxford Research Encyclopedia of Natural Hazard Science.

174 Bhutan Disaster Management Act of 2013, Sec. 16.

175 *Ibid.*, Sec. 17.

176 Bhutan Disaster Risk Management Status Review.

177 Kiran K. Gowd, Donthagani Veerababu and Veeraihgari R. Reddy, 'COVID-19 and the legislative response in India: The need for a comprehensive health care law' (2021) 21/4 Journal of Public Affairs, 2669.

178 *Ibid.*

Further, India is also guided by a National Disaster Management Action Plan which is updated periodically with global best practices in disaster management.¹⁷⁹ The disaster management law and policy in India do not refer to any international or regional instrument expressly in a way to give effect to the regional or international commitments.¹⁸⁰ The National plan on disaster management was released in 2016¹⁸¹ wherein reference is made to the commitments included in the Sendai Framework, its close participation with UNISDR and Asian Disaster Reduction Centre. However, the plan is silent about its regional cooperation with SAARC, despite a statement highlighting the leading role of India in South Asian countries.¹⁸²

Further, the National Plan expresses that the assistance will be accepted only when provided by the United Nations and only if the government is unable to handle the disaster situation in hand, yet again neglecting the regional cooperation of SAARC.¹⁸³ The country also has a national policy framework undertaken by the government of The country also has a national policy framework undertaken by the government of India through NDMA to prevent, mitigate and be prepared for a quick response during a disaster. It coincides with the International Strategy for Disaster Reduction, the Rio Declaration, the Millennium Development Goals and the Hyogo Framework but not with any of the regional instruments and has not yet been updated with regard to other international instruments.¹⁸⁴

5.5 *Maldives*

It is believed that the Maldivian population, until the catastrophic incident of the Indian Ocean Tsunami in 2004, did not have a native word for 'disaster'.¹⁸⁵ It was a direct result of the catastrophe that this country setup and adopted its Disaster Management Act in 2006 (DMA or the Act).¹⁸⁶ The Act primarily

179 National Disaster Management Plan, 2019, available at <<https://ndma.gov.in/sites/default/files/PDF/ndmp-2019.pdf>>.

180 Country profile, available at <https://disasterlaw.ifrc.org/dmi/dmi_country/59>.

181 National Disaster Management Authority, Government of India, 'National Disaster Management Plan, 2016' (May 2016).

182 *Ibid.*

183 *Ibid.*

184 National Disaster Management Authority, Government of India, available at <<https://ndma.gov.in/about-us/introduction#:~:text=On%2023%20December%202005%2C%20the,and%20implement%20a%20holistic%20and>>.

185 UNITAR, 'Simple, Yet Effective: UNITAR Alumna Applies Disaster Risk Management Lessons To The Maldives' available at <<https://unitar.org/about/news-stories/stories/simple-yet-effective-unitar-alumna-applies-disaster-risk-management-lessons-maldives>>.

186 *Ibid.*

establishes an institutional framework for disaster risk management in the island-nation and calls for the creation of a National Disaster Management Authority (NDMA)¹⁸⁷ and a National Disaster Management Council (NDMC or the Council).¹⁸⁸

The NDMA leads and co-ordinates the national level emergency response¹⁸⁹ with an objective to promote an integrated and coordinated system of disaster management, with special emphasis on Disaster Risk Reduction¹⁹⁰ and prevention and mitigation of disasters.¹⁹¹ It is supported by the Maldives National Defence Force (MNUF), the Maldives Police Service (MPS), and the Maldivian Red Crescent (MRC).¹⁹² The NDMA receives technical and financial aid through collaborations and partnership with international technical bodies and donor agencies such as the UN Development Programme (UNDP), the UN Children's Fund (UNICEF), the UN Office for Disaster Risk Reduction (UNDRR) and the Asian Disaster Preparedness Center (ADPC).

5.6 *Nepal*

Nepal witnessed one of the worst disasters in recent years, when in 2005 the Gorkha earthquake, measuring 7.8 in magnitude, hit the country's capital claiming nearly 9,000 lives and damaging nearly 600,000 structures.¹⁹³ Until the enactment of the Natural Disaster Relief Act (NDRA) in 1982 (also known as the Natural Calamity Relief Act – NCRA), most disaster management activities were carried out in an unorganised manner and on an ad-hoc basis. This Act has now been replaced by the Disaster Risk Reduction and Management Act, 2074 (2017).¹⁹⁴ The DRR Act, along with the Local Government Operation Act, 2074 (2017) (LGOA) guide the disaster governance in the country.¹⁹⁵ In case of need, national and international organisations coordinate their responses through the National Emergency Operations Centre (NEOC), constituted

187 Maldives Disaster Management Act, 2016, Sec. 6.

188 Maldives Disaster Management Act, 2016 (DMA).

189 Disaster Management Reference Handbook – Maldives (n 150) 19.

190 Asian Disaster Reduction Center (ADRC). Republic of Maldives: Country Report, available at <www.adrc.asia/countryreport/MDV/2018/Maldives_CR2018A.pdf>.

191 *Supra*.

192 *Ibid*.

193 John P. Rafferty, 'Nepal earthquake of 2015' (Encyclopedia Britannica, 27 February 2022) available at <<https://www.britannica.com/topic/Nepal-earthquake-of-2015>>.

194 Pashupati Nepal, Narendra R. Khanal and Bishnu P. Pangali Sharma, 'Policies and institutions for disaster risk management in Nepal: A review' (2018) 11 *The Geographical Journal of Nepal*, 1.

195 CFE-DM, Disaster Management Reference Handbook – Nepal (October 2020) 30.

under the Minister of Home Affairs (MHA).¹⁹⁶ The MHA coordinates the preparedness and response action on the government's behalf with armed forces, humanitarian partners and also facilitates contribution and aid from the international community.¹⁹⁷ The National Disaster Response Framework 2070 (2014) (NDRF), outlines the foreign disaster relief and emergency response process if the country were to need international assistance during a disaster.¹⁹⁸ The DRR National Plan of Action adopted by Nepal on "risk reduction" adheres to its international and regional commitments more specifically of Asian Regional Plan, the Sendai Framework and the Cancun Declaration on sustainable use of biodiversity.¹⁹⁹ The regional and international cooperation and partnership is sought only at times when the nation is unable to manage the risk due to a disaster,²⁰⁰ which highlights that the nation is on the lines of being self-resilient. The structure of the risk reduction programme is built upon by following the recommendations made by the Sendai framework such as to have a national action plan on disaster reduction and identifying priority areas in line with Sendai framework.²⁰¹ With regards to financial assistance, a mention is made to the need of support from inter-governmental organisation while SAARC is one such.²⁰²

5.7 *Pakistan*

The Pakistani 2010 Natural Disaster Management Act, (DM Act) provides for the establishment of a Disaster Management System in the country,²⁰³ as well as of a Natural Disaster Management Commission (Commission)²⁰⁴ and a Natural Disaster Management Authority.²⁰⁵ During emergencies, the NDMA can disseminate guidelines and give direction to government agencies at all levels regarding response measures. The national action plan on disaster management is silent about the regional cooperation to assist the state during times of disaster. The disaster risk management framework of 2007 also mentions the sectoral policies linked to international protocols, among which disaster

196 *Ibid.*

197 *Ibid.*

198 *Ibid.*

199 DRR National Action Plan, Nepal, 29.

200 *Ibid.*

201 *Ibid.*

202 *Ibid.*

203 Syed M.A. Shah, 'Pakistan National Disaster Management Act – 2010 An Analytical Study' (Doctoral dissertation, Federal Urdu University of Arts, 2019).

204 *Ibid.*

205 *Ibid.*

management by ASEAN regional forum is one while the link with SAARC mentions 'yet to be finalised'.²⁰⁶

5.8 *Sri Lanka*

Sri Lanka's approach towards disaster management is in line with relevant global principles and initiatives like the five-point priority actions outlined in the Hyogo Framework for Action (HFA) 2005–2015 but is silent about its obligation under the Sendai Framework.²⁰⁷ The DMA provides for devising national policy and plans for effective use of resources for preparedness, prevention, response, relief, reconstruction and rehabilitation, and creating awareness amongst people to enable them to protect themselves from disasters,²⁰⁸ while it makes no reference to any of the regional commitments of the country. The Disaster Management Centre (DMC) is another important institution established under the DMA²⁰⁹ and acts as the executing agency of the National Council for Disaster Management which constitutes national policy.²¹⁰ The National Disaster policy of the country is silent about the regional (or) international cooperation to mitigate disaster.²¹¹

6 SAARC Successes in Addressing Disaster

The non-applicability of SARRND until September 2016 did not prevent SAARC nations from acting on regional disaster issues. For example, regardless of its historical differences and unity, there have been successful regional mechanisms like the SAARC Food Bank, which was established in the 1980s.²¹² This allows SAARC member countries to access food grains in case of emergencies like a man-made or natural calamity that affect the national food reserve of the country.²¹³ Despite the absence of agreed pricing modality, the lack of dedicated funds and of information about the food bank by the SAARC members

206 National Disaster Risk Management Framework, on National Disaster Management Authority (NDMA), Government of Pakistan.

207 R. Lalitha S. Fernando and Aruna Muthulingam, 'Effectiveness of Administrative Preparedness: A Case Study on Flooding Conditions in Ambagamuwa Korale Division of Nuwara Eliya District in Sri Lanka' in Huong Ha, R. Lalitha S. Fernando and Amir Mahmood (eds), *Strategic Disaster Risk Management in Asia* (Springer 2015).

208 *Supra* (212).

209 Disaster Management Act, No 13 of 2005, Sec. 8.

210 *Ibid.*, Sec. 2.

211 Sri Lanka National Disaster Management Policy.

212 Rahman, Bari and Farin (n 47).

213 *Ibid.*

states, it remains one of the most successful regional mechanisms in the case of disasters in the region.²¹⁴ Another example is assistance given by SAARC members to Nepal after the 2015 Earthquake. Even in the absence of an established SOP,²¹⁵ six countries from South Asia provided relief and humanitarian assistance to Nepal, although it was not a joint initiative.²¹⁶ A third example of regional cooperation on disaster issues comes from 2015, when the SAARC nations conducted a massive exercise called South Asian Disaster Management Exercise (SAADMEx) to 'test inter-governmental coordination efforts, create synergy and synchronize efforts to institutionalize regional cooperation on disaster response among the member countries'.²¹⁷

The SAARC-SDMC, along with the member states, has also successfully established the South Asian Disaster Knowledge Network SADKN,²¹⁸ which is allowing exchange of crucial information concerning regional disasters and related risks according to Article IV of SARRND. This action is in accordance with the IDL principle and duty to share information and notify in cases of disasters²¹⁹ and trans-boundary harm.²²⁰ Sharing of best practices has caused cross-fertilisation in environmental law in SAARC countries.²²¹ The work of SARRND and SAARNC-SDMC is linked together²²² and combines the work of SAARC Meteorological Research Centre, SAARC Forestry Centre and SAARC Coastal Zone Management Centre.²²³ Currently, the SDMC is committed to develop regional 'Early Warning Mechanism, Strategic Evacuation Plans and

214 *Ibid.*

215 Stacey White, 'A Critical Disconnect: The Role of SAARC In Building The DRM Capacities of South Asian Countries' (Brookings-LSE, May 2015); Tokunaga (n 67).

216 Saneet Chakradeo, Neighbourhood First Responder: India's Humanitarian Assistance and Disaster Relief (Brookings Institution India Center 2020).

217 Government of India, 'SAARC Member Countries Assemble to Discuss Preparations for the First South Asian Annual Disaster Management Exercise (SAADMEx) to be Held in November 2015' (Ministry of External Affairs, 3 September 2015) available at <<https://pib.gov.in/newsite/PrintRelease.aspx?relid=130331>>.

218 *Supra* (n).

219 ILC, Draft articles (n 71) art. 9(2) and art. 12. See generally, *Pulp Mills on the River Uruguay (Argentina v Uruguay)* (Judgment) [2010] ICJ Rep 14.

220 Paul C. Szasz et al., 'International Responsibility for Manmade Disasters' (1987) 81 Proceedings of the Annual Meeting (American Society of International Law) 320.

221 Shawkat Alam, 'Cross-fertilisation in environmental law: lessons from SAARC Countries' in Philippe Cullet, Lovleen Bhullar and Sujith Koonan (eds), *Oxford Handbook of Environment and Natural Resources Law in India* (forthcoming).

222 Amita Singh, 'Pandemic and the Emerging Threshold of Disaster Law in South Asia' (2021) 32/1 Dhaka University Law Journal, 152.

223 SAARC, South Asia working group meeting "crisis response in South Asia", 'Keynote address by H.R. MR. Amjad Hussian B. Sial, Secretary General of SAARC' (Kathmandu, 31 January–01 February 2018) available at: <<https://www.saarc-sec.org/index.php/re>

Timely Search and Rescue Mechanisms in line with the Sendai Framework'.²²⁴ The SDMC is also responsible to ensure the operationalization of SARRND and developing regional mechanism under it,²²⁵ however the delay in establishing a comprehensive SOP and RRM has remained a challenge. Additionally, the SAARC-STORM (Severe Thunderstorms: Observation and Regional Modelling) Programme is also undertaken as a 'cooperative scientific endeavor between SAARC Countries'.²²⁶ This Programme is likely to increase prediction and consequently early warning of severe storms frequenting in the region.²²⁷ The SAARC-STORM is also one of the mechanisms that exist in addition to the SARRND. It is difficult to ascertain the effectiveness of SARRND because regional humanitarian assistance under SARRND have not happened yet and remain largely bilateral.²²⁸

7 Challenges with SAARC in Achieving Disaster Coordination/ Risk Reduction

The SARRND is progressed since its entry into force in 2016, however, there are currently numerous challenges to its implementation. Firstly, a lack of a comprehensive focus of SAARC on "disasters" as against "natural disasters", prevented SAARC to favour a uniform practice of international disaster law in the region.²²⁹ This became particularly evident since 2020, when the Covid-19 pandemics – technically considerable as a natural disaster – could not be legally considered as a matter of core concerns to be addressed by SAARC under the SARRND. However, this did not impede SAARC members to take effective and immediate actions. For example, the SDMC made an overall revision of their website to share the update situations and related information on the pandemic of the COVID-19 with the SAARC states.²³⁰ SAARC member states

sources/statements/79-south-asia-working-group-meeting-on-crisis-response-in-south-asia-kathmandu-31-january-2018/file>.

224 *Ibid.*

225 *Supra* (n 69).

226 Someshwar Das et al., 'The SAARC STORM' (2014) 95/4 Bulletin of the American Meteorological Society, 603.

227 *Ibid.*

228 Chakradeo (n 3).

229 Emika Tokunaga, 'Asia (2020)' (2022) 3 Yearbook of International Disaster Law, 433.

230 *Ibid.* The official website for information about Covid-19 in SAARC can be accessed at <<http://www.covid19-sdmc.org/>>.

also established a COVID-19 relief fund regionally to support nations through the pandemic.²³¹

Secondly, a lack of SOP and RRM to implement SARRND is the biggest roadblock to effectively implementing the treaty for regional assistance actions and projects. Their operation and enforcement of SARRND need to be designed keeping in mind pandemics like Covid-19, which can create practical challenges concerning receiving and sending assistance to neighbouring states.²³²

Thirdly, within the SARRND, there is a lack of intersection with migration and displacement related issues. The International Organisation for Migration has highlighted the need for a bilateral and regional cooperation mechanism for people fleeing climate change and environmental disasters in the region.²³³ Although Bangladesh incorporates SAARC principles on disasters within its national legal and policy mechanisms,²³⁴ it does not contain provisions for those displaced across borders due to environmental and climatic factors. Other countries also have laws governing disaster-induced internal displacement²³⁵ but not cross-border migration. Generally, while the SAARC nations have avoided bringing up issues relating to refugees, migration and cross-border displacement, these issues are likely to become more relevant in the South Asian region with sea-level rise and increasing extreme weather events.²³⁶

Last but not the least, there is a lack of cooperation on climate finance and finance for disaster management under the SARRND and within SAARC generally. SAARC common stand concerning taking action on climate change and disasters has been continuous lack of resources, in particular financial resources as countries find it difficult to come together as a unit for financial aid

231 COVID19 emergency fund, available at <<http://covid19-sdmc.org/covid19-emergency-fund>>.

232 SDMC-IU Newsletter, Vol.05, 2021, SAARC & SDMC-IU.

233 Jane McAdam, 'From the Nansen Initiative to the Platform on Disaster Displacement: Shaping International Approaches to Climate Change, Disasters and Displacement' (2016) 39/4 University of New South Wales Law Journal, 1518.

234 Mostafa Mahmud Naser, 'Climate Change and Migration: Law and Policy Perspectives in Bangladesh' (2015) 2 Asian Journal of Law and Society, 35.

235 Bhardwaj and Renganath (n 70); Faizan Ali et al., 'Climate Change-Induced Conflicts in Pakistan: From National to Individual Level' (2018) 2/3 Earth Systems and Environment, 573; Thamina Chumky et al., 'The current research landscape of disaster-induced migration: A systematic review and bibliometric analysis' (2022) 74/3 International Journal of Disaster Risk Reduction, 102931; Nasheeth Thoha, 'Assessing potential climate-related security risks in the Maldives: Exploring the future climate-induced migration' (UNDP Issue Brief no 18/2020, 2020).

236 Abhinav Mehrotra and Chhaya Bhardwaj, 'Need for a National Legislation on Refugees in India at 75' (2022) 78/2 India Quarterly, 297.

and assistance.²³⁷ Due to these, least developed countries like Afghanistan and less economically resourceful countries like Bangladesh or Bhutan may not be able to financially contribute to the regional response system.

8 The Future of SAARC

As Inayat pointed out, when the SAARC was created it was neither polarizes along the east-west lines, nor had to cope with common security threats like the EU or the ASEAN.²³⁸ Due to these underlying reasons, the SAARC story is 'of both conflict and cooperation, driven above all by the primacy of national security interests.'²³⁹ In the 21st century this has changed, and climate change is a common security threat to the region and so are the consequent disasters and extreme weather events. As noted elsewhere,

There are several constraints on SAARC which include, guidelines for keeping bilateral and contentions issues out; with the rule unanimity in decision-making; with the bogey of the "Big Brother" all the time raised against India; with funding on a voluntary basis and with possibilities of external attempts at giving the forum a slant, the SAARC Cooperative effort is going to acquire extraordinary diplomatic skill and political commitment to nurture it though its days of infancy.²⁴⁰

The continuum of geo-political unrest, combined with the social semantics and the sentiments concerning national unity will continue to be part of the system. After the SARRND was drafted, the Asia Regional Plan for Implementation of the Sendai Framework for Disaster Risk Reduction 2015–2030 was published.²⁴¹ This plan does not recognise the states' obligations under the SAARC Agreement. Based on the outcomes of the 2019 and 2020 Asia-Pacific Partnership for Disaster Risk Reduction (APP-DRR) Forum including the consultations, the state parties launched the Asia-Pacific Action Plan 2021–2024

237 Kasturi Das and Kaushik Ranjan Bandyopadhyay, 'Climate Change Adaptation in the Framework of Regional Cooperation in South Asia' (2015) 9/1 Carbon and Climate Law Review 40; SAARC, 'Thimphu Statement on Climate Change' (28–29 April 2010) SAARC/SUMMIT.16/15.

238 Inayat (n 14).

239 *Ibid.*

240 K. Raman Pillai, 'Tensions Within Regional Organizations: A Study of SAARC' (1989) 50/1 The Indian Journal of Political Science, 18.

241 Tokunaga (n 229).

for the Implementation of the Sendai Framework for Disaster Risk Reduction 2015–2030.²⁴² This action plan does not refer to the SARRND. The reasons due to which this reference may have been missed out is not entirely clear, however, it can be concluded that these action plans fall under the category of soft law due to non-bindingness of the action plan due. It may also be said that lack of reference arises due to a siloed approach characterising such initiatives. An integration of regional and international action plans, declarations and treaties on disasters may add value to SARRND.

Additionally, health has only become a vital aspect of disaster related policies and framework in SAARC since 2014,²⁴³ but hasn't found its way officially in SARRND. This could be modified to make SARRND more comprehensive and inclusive, especially in the light of growing pandemics in last decades. One of the ways to modify SARRND will be to negotiate, sign and ratify an additional protocol to SARRND.

Finally, the SAARC/SARRND system can build upon its own good and effective practices from the past and integrate them into its RRM. A good practice is the SAARC Food Bank, which confirms that a regional mechanism to support SAARC Nations at the times of emergencies is effectively possible. Another good practice is the recent regional developments, with India taking the lead in providing aid and assistance during the COVID-19 disaster in the region, developing early warning system mechanisms, and supporting the SAARC Disaster Management Center hints at progressive development of the regional disaster law. In that phase, India launched an initiative called 'Vaccine *Maitri*' (literally meaning 'Vaccine Friendship'), to help fight the virus in the region, following many general principles of providing aid and assistance to the disaster-affected states. Some of these principles are also part of the SARRND, including but not limiting to, providing relief in case of disaster 'with the consent' of the affected state,²⁴⁴ bearing the cost of aid and assistance,²⁴⁵ upholding the principles of the SAARC Charter and promoting cooperation and region.²⁴⁶ This action was also followed by a SOP that was immediately developed and adopted for immediate relief and assistance during a health disaster in the region.²⁴⁷ Building on these recent develop-

²⁴² *Ibid.*

²⁴³ Minh Tran, 'Disaster risk reduction and health in the Asia-Pacific region: Five key findings on policy integration, gender equality and human rights' (SEI Discussion Brief, January 2022).

²⁴⁴ SARRND, art. III(4).

²⁴⁵ *Ibid.*, art. IX.

²⁴⁶ *Ibid.*, Preamble.

²⁴⁷ Tokunaga (n 229).

ments, SAARC members have the opportunity to revitalize and systematize the regional mechanism on rapid response to disasters, and ensure a progressive development of its regional disaster law.

In the words of Bijay Dahal²⁴⁸ from the Nepal Red Cross Society and who works in this field, the SARRND is an agreement of vital cooperation among SAARC member states in the region. Despite some challenges, he is optimistic that jointly, and cooperatively 'it can make a more resilient and cooperative South Asia Region as envisaged by SAARC Charter'.²⁴⁹

248 Bijay Dahal, Former employee at IFRC, 5 February 2022, in a personal interview to the authors of this piece.

249 *Ibid.*