

Ethical and legal aspects in the early warning process

Extended Abstract

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Day-to-day experience with the different stages of the early warning process from basic research over development, technical design, marketing, testing and application exhibits problems and shortcomings which cannot be attributed to the underlying science or technology. Although the hitherto available early warning systems for natural disaster reduction have made significant progress in the recent years in several fields of technical development and societal implementation, it must be concluded from practical experience with "real world conflicts" encountered that for long-term oriented and sustainable concepts of early warning the development and installation of firm overall ethical standards and rules on a global scale, as well as their application and monitoring are becoming indispensable. As a consequence, an extensive means of ethical training for institutions and individuals involved in the divergent fields of the process itself must be seen as an important factor on the way. This constitutes an evolving necessity of bringing the discourse on an appropriate level, by far exceeding the limits of the existing guidelines and common principles in use, which are right away available but necessarily had to be based on "best practice" approaches as a general rule – a substantial step ahead in comparison with the overall setup of early warning at the time of the Potsdam Conference.

It is felt that the introduction of the term *responsibility* (Imperative of Responsibility) in the sense of the philosopher Hans Jonas (Jonas 1984) in this discourse clearly adds a strong future orientation and offers a chance to establish a set of consistent baselines for progress, spanning over the different sectors, from science to legislation, from technology to politics, and from the media to the public sector, to name some more prominent relationships. Having been applied in pure science and technology first, it is shown that the reflection on the imperative of responsibility in this sense offers a useful means of disclosing practical solutions for some of the most critical issues of early warning, like definitions of general terms. For instance: What do we have to call a hazard? What is a disaster? What is the quality of a warning? Who defines the standards and who is in charge of monitoring them? How much commerce can be seen as acceptable in the respective sectors involved? And, as the most important: what about the truth and communicating it?

These questions lead to different aspects in the given framework which are mostly neglected or simply not identified, namely the legal-political criteria which govern all or at least most of the technical points. Policy making – and this can hardly be over-emphasized – means nothing without an ethical background and its expression in laws: Lawmaking is all. It starts with constitutional law and the very basic question, to what extent the single state is responsible for appropriate institution-building and capacity-building in our given context. Does the welfare of the nation also mean a duty to protect the citizens against disasters? The theme continues with non-constitutional law as international public law. There are consequences, if the disaster is crossing boundaries and it is in many cases not clear, who is in command and what kinds of responsibilities arise in one state for the neighbouring state. Especially in cases where inter-state matters are involved, a solid framework is required in order to let

solidarity come into effect. And: to what extent should internal administrative laws like health laws, police and public order laws etc. provide a legal basis for disaster warning and management? Up to now all this has merely been seen as a field for natural sciences and technology, guided by common principles and some kind of spontaneous pragmatism. Ongoing processes and flaws or failures of the recent past taught us that this is not enough. It might be advisable to discuss the legal principles before politics set the pace.

The *Draft Treaty establishing a Constitution for Europe* offers a very useful exemplum for the explanation of the connections between disasters, ethical values, policies and lawmaking. In view of the draft EU Charta it is remarkable that the European Union takes responsibility for a number of fundamental different values and not only for the framework of free economic and intellectual competition. One of these values is the competency on the one hand and the responsibility on the other, to safeguard European Union citizens against foreseeable or at least possible and imaginable disasters and catastrophes, may they have natural or industrial causes. As positive and new as this is, it is nevertheless vague and calls for detailed rules. These rules can only be laid down in a detailed legislation concerning the different fields, e.g., floods, earthquakes, epidemic infections, mass poisoning, the administrative necessities like “ which institution has which competencies?”, and last but not least the communication issue: Who has the legal duty/privilege to publish the truth, and to what extent, without causing panic reactions and emotional disorder. It can be shown that a detailed study of the Draft Treaty’s parts concerned with natural disasters under the aspect of the early warning approach offers specific suggestions for changes.

The respective law should, in order to answer all these questions, identify the institutional level that should be in charge to fulfil all the obligations. In the complex fight against hazards and disasters, many of the existing early warning systems themselves exhibit the features of being a special case of complex technical systems, characteristically encompassing interfaces between man and machine in several positions. Depending on the type of hazard, transnational or multi-national co-operation has become a crucial factor, starting with language issues, religions, ethnical habits, and other significant expressions of transculturality. Often enough physical and cultural properties of a given environment are neglected when rules and regulations are pondered. Definition of concrete parameters minimises overall contingency and leads to enhanced capabilities on the government and on the community level. An overall ethics of warning shall find its expression in national and supranational laws, regulations and standards.

Lit.:

Jonas, Hans (1984): *The Imperative of Responsibility. In Search of an Ethics for the Technological Age.* XII+255p, Chicago & London: The University of Chicago Press.

The European Convention (2003): *Draft Treaty establishing a Constitution for Europe.* VII+241p. Luxemburg.

Internet Version, 769.482 B

<http://european-convention.eu.int/docs/Treaty/cv00850.en03.pdf>