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978-1-107-06131-6 - The International Law of Disaster Relief

Edited by David D. Caron, Michael J. Kelly and Anastasia Telesetsky

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THE INTERNATIONAL LAW OF DISASTER RELIEF

Disasters can strike often and with unexpected fury, resulting in devastating consequences for local populations that are insufficiently prepared and largely dependent on foreign aid in the wake of such catastrophes. International law can play a significant role in the recovery after inevitable natural disasters; however, without clear legal frameworks, aid may be stopped, delayed, or even hijacked – placing the intended, suffering recipients in critical condition.

This edited volume brings together experts, emerging scholars, and practitioners in the field of international disaster law from North America, Japan, New Zealand, and Australia to analyze the evolution of international disaster law as a field that encompasses new ideas about human rights, sovereignty, and technology. Chapters focus on specific natural disasters like Hurricane Katrina, Cyclone Nargis, and Typhoon Haiyan in addition to volcanic and earthquake activity, wildfires, and desertification. The book begins a dialogue on the profound implications of the evolution of international law as a tool for disaster response.

David D. Caron is the dean of the Dickson Poon School of Law at King's College London and the C. William Maxeiner Emeritus Distinguished Professor of International Law at the University of California, Berkeley. He currently serves as a member of the World Economic Forum's Global Agenda Council on the Rule of Law, the U.S. Department of State Advisory Committee on Public International Law, and the board of editors of the *American Journal of International Law*.

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David D. Caron – For those who need not have suffered

Michael J. Kelly – For my son, Kruz Michael, who should grow up in a safer world

Anastasia Telesetsky – For my husband Matt and for each and every person whose quiet lives have been and will be instantaneously transformed in the face of a disaster

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Foreword

Fumio Kishida

Minister for Foreign Affairs of Japan

History is replete with disasters of all kinds. Natural disasters, in different forms, have affected countries on all continents. Many countries along the Pacific Rim, including Japan, have observed frequent and sometimes violent natural disasters such as floods, volcanic activities, earthquakes, and tsunamis. I find it particularly meaningful that the works on the international law of disaster relief by scholars from the “Four Societies of International Law” – the American Society of International Law, Australian and New Zealand Society of International Law, Canadian Council on International Law, and the Japanese Society of International Law – have been compiled in a publication to lead the international debate in this field.

Responding to a catastrophic disaster requires an international effort, and some form of coordination is necessary. It is not hard to imagine how this gives rise to a host of legal issues, and they need to be addressed effectively in order to minimize human and economic losses. The many aspects of international legal issues dealt with in this volume are all practically important and require urgent attention from both academics and practitioners.

Japan has relied on what nature can offer it to sustain its survival and prosper. Our people have valued living in harmony with nature, and such notions are perhaps manifested in many aspects of traditional Japanese culture. Nonetheless, nature is not always benevolent; our people have been tested through the ages in the face of natural disasters – typhoons, volcanic eruptions, earthquakes, and tsunamis.

The Great East Japan Earthquake of March 11, 2011, spawned a series of massive tsunamis that struck many places along the eastern coast of northern Japan, claiming more than 15,000 lives. Three years after the disaster, reconstruction activities have progressed amid a number of remaining challenges in recovering the affected areas. While the entire nation is continuing its utmost efforts, we still remember how we were truly heartened by the expression of solidarity and support from all corners of the world in the face of this disaster.

We were reminded of the bond of peoples in tackling difficulties, and of our role to respond in kind for the world.

The issues discussed in this book concern the foundation of such international cooperation, and I sincerely hope that it will provide a basis for further enhancing the effectiveness of international efforts to disaster relief. The value of this publication is felt close to my heart particularly with our recent experience of the Great East Japan Earthquake, and, I believe, to many readers around the world who have been affected by a natural disaster in one way or another. I look forward to seeing further collaboration among the legal scholars and experts from the Four Societies and beyond.

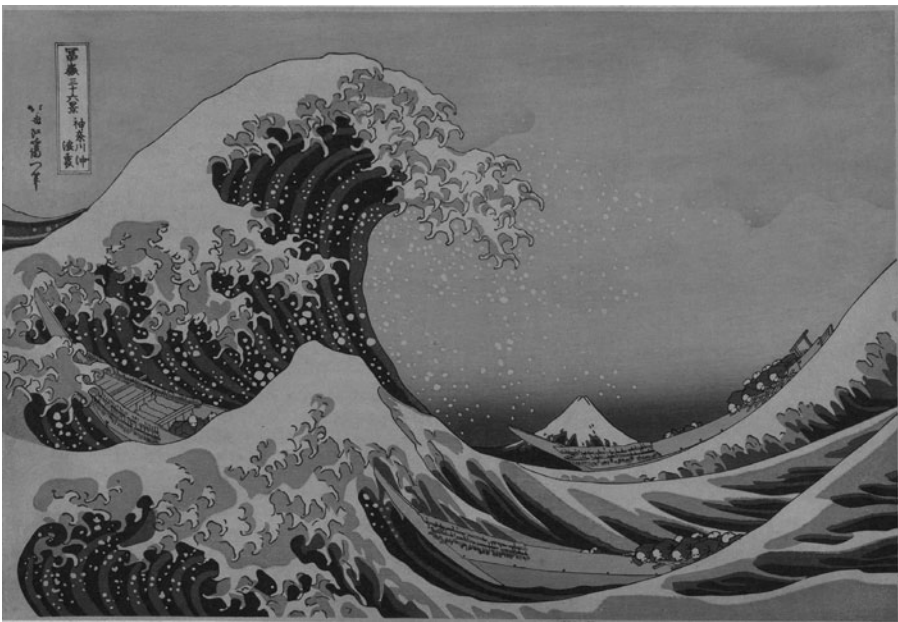


FIGURE 1 “The Great Wave off Kanagawa.” Color print from woodblock, Edo Period (printed between 1826–1833), No. 21 from the series *Thirty-Six Views of Mount Fuji* by Katsushika Hokusai.

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Preface

David D. Caron

The international law societies of Australia and New Zealand, Canada, Japan, and the United States (the “Four Societies”), seeking to promote an international network of young scholars, together undertook shortly after the new millennium to hold international conferences biannually at sites within each of the societies. These conferences have exceeded the expectations of all concerned. They have promoted excellence, created the personal ties that enrich and inform great scholarship, and opened numerous opportunities for future collaboration.

This volume flows from the Fourth International Four Societies Conference, and thus marks the completion of the first cycle of the Four Societies Project. The first conference was held in Wellington, New Zealand, in 2006; the second in Edmonton, Canada, in 2008; and the third in Awaji-shima, Japan, in 2010. The fourth and final conference of the cycle was hosted by the American Society of International Law (ASIL) at the University of California, Berkeley, in 2012.

ASIL proposed the topic of disasters as the focus for the fourth biannual conference on March 16, 2011, in the wake of the terrible tsunami that struck the Japanese islands. Then serving as president of the ASIL, I wrote to Professor Masaharu Yanagihara, president of the Japanese Society of International Law and professor of international law at Kyushu University:

Amidst the continuing tragedy that began with last Friday’s earthquake and tsunami, I write to express the heartfelt concern of the American Society of International Law for the people of Japan and for its colleagues in the Japanese Society of International Law. A catastrophe, like lightning, illuminates the world unexpectedly. And in the moment of clear vision that accompanies a catastrophe, we all feel deeply the fragility we share.

With this sense of solidarity in mind, we proceeded to propose that the focus of the 2012 Four Societies meeting be “Disasters and International Law,” a proposal to which all of the societies quickly agreed.

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Few aspects of the future are certain. Yet, it is certain that catastrophes, attended by widespread suffering, are a part of our collective future. No one will be surprised to wake tomorrow to learn of an earthquake, an accident at a nuclear power plant, or the desperate plight of persons fleeing chaos. Data indicate that a significant natural disaster occurs on average once a week. Every three weeks, there is a disaster that exceeds the response capacities of the country most affected. Damages inflicted by disasters kill one million people each decade and leave millions more homeless. Economic damages from natural disasters have tripled in the last thirty years. All of these statistics tend to increase with a growing population and it is argued by many that climate change will increase the intensity of some types of disasters.

Curiously, however, the international legal order addressing this certain future is, in comparison to other far less certain areas of international affairs, both relatively undeveloped in practice and unexamined in the academic legal literature. Efforts from the bottom up by groups of states develop haphazardly. Driven today by one disaster, tomorrow by another, the ad hoc incoherence of legal and institutional response mirrors the randomness of the catastrophes humanity encounters. The resulting fragmented ad hoc array of responses leaves many holes in the collective effort and often leads assistance amidst an emergency to be as likely a matter of luck as of planning. Simultaneously, the top-down efforts by international organizations and their member states to comprehensively confront this challenge easily spin into ever-broader discussions, sweeping in so many initiatives and efforts that the sheer weight of the agenda seems to impede progress. Similarly, the scholarly attention to catastrophes, with notable exceptions, is diffuse.

With this situation in mind, the Four Societies invited proposals addressing this multifaceted subject. This impressive volume represents the collected resulting papers. They form a balanced study illuminating and progressively advancing the global collective response to this pressing issue. I am delighted to observe that the Four Societies have undertaken a second cycle of international conferences, and it is heartwarming to see young scholars in the first cycle often taking the lead on the next. Scholarship usually is the work of a single person who puts pen to paper. But what that person writes, how that person's writing was made possible, and, indeed, who that person is depends very much on the communities that have nurtured and supported him or her. The Four Societies have done a great service and this insightful volume is proof of that.

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FIGURE 2 Editors and Contributors to the *International Law of Disaster Relief*. Photographed at the 4th Biannual Four Societies Symposium at Berkeley Law, University of California, Berkeley (September 2012), courtesy of James Block.

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This volume would not have been possible without the support of the Four Societies of International Law. Additionally, the travel and research support of the home universities, governments, and organizations of the participants was critical to the success of this important endeavor. Special mention must be made of the Millar Institute for Global Challenges and Law at Berkeley Law at the University of California, Berkeley, and its administrator Karen Chin, for hosting the symposium conference that culminated in this volume; the American Society of International Law (ASIL) and its executive director Elizabeth Anderson for ASIL's cosponsorship and logistical assistance; Creighton University School of Law for the support that funded valuable editorial and research assistance from Rachel Breger and Frank Ginsbach; and the University of Idaho College of Law for the clerical support of Ridley Williams.

As with any edited volume, the success of this endeavor rests chiefly with the level of attention and timeliness of the contributors. This project benefited immensely from a dedicated group of contributors who responded quickly and accurately to editorial comment and direction. The editors are grateful to the contributors for their hard work in producing this book, to the many individuals who are not named authors but who made these scholarly contributions possible by supporting the authors, and to the editorial staff of Cambridge University Press for publishing it with a view toward impacting the global discussion on framing the international law of disaster relief.