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A CALL TO RESPOND: THE INTERNATIONAL COMMUNITY'S OBLIGATION TO MITIGATE THE IMPACT OF NATURAL DISASTERS

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INTRODUCTION

On March 11, 2011, a devastating earthquake struck six miles off the coast of Japan.¹ A tsunami triggered by the earthquake engulfed large portions of the country.² Flooding caused by the tsunami destroyed whole towns; the entire population of one Japanese town was reported missing.³ As the world watched the plight of the Japanese people, the government warned of another international disaster—a possible nuclear meltdown.⁴ The Japanese began working around the clock to control stricken nuclear reactors.⁵

As we write this Article, many of the survivors of the disaster are stuck, waiting.⁶ The number of deaths has exceeded 8,000, with more than 12,000 persons missing.⁷ The government has warned many survivors to stay indoors to shield themselves from radiation exposure.⁸ In the areas near the nuclear reactors, many are too elderly or infirm to move.⁹ “Those who can leave have already left. Those here are the ones who cannot escape,” explained Nanae

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¹ Martin Fackler, *Powerful Quake and Tsunami Devastate Japan*, N.Y. TIMES, Mar. 11, 2011, at A1.

² *Id.*

³ Matthew L. Wald, *Japan Orders Evacuation Near 2nd Nuclear Plant*, N.Y. TIMES, Mar. 11, 2011, at A10.

⁴ *Id.*

⁵ *Id.*

⁶ Martin Fackler, *In Japan's Danger Zone, the Stranded Await the Merciful*, N.Y. TIMES, Mar. 18, 2011, at A1 [hereinafter *In Japan's Danger Zone*].

⁷ David Nakamura & Joel Auchenbach, *Death Toll from Japan's Disasters over 8,000; More than 13,000 Missing*, WASH. POST, Mar. 21, 2011, at A1.

⁸ *In Japan's Danger Zone*, *supra* note 6.

⁹ *Id.*

Takeshima, a forty-year-old resident of Minamisoma, a city about sixteen miles from the nuclear plant.¹⁰

The survivors lack phone service and electricity.¹¹ Water, food, and heating fuel are in short supply and constantly diminishing.¹² Those whose homes were destroyed wait at overcrowded shelters to be evacuated.¹³ As with previous natural disasters and particularly reminiscent of Hurricane Katrina, the Japanese people have criticized the national government's response—both in terms of failing to evacuate people from hazardous areas and failing to deliver necessary supplies.¹⁴ Some local governments and private entities have attempted to meet these needs.¹⁵ The issues faced by survivors in Japan are not unlike those faced by survivors of other natural disasters in recent years: frustration with the slowness of the government response, lack of resources, and overcrowding at shelters.¹⁶

As the Japanese and the international community struggle to contain and respond effectively to the crisis, thoughts of the earthquake that devastated Haiti in January 2010 arise.¹⁷ A developing country, ranked as the poorest in the Western Hemisphere, Haiti faced the additional burdens of a complete lack of financial means and infrastructure to mitigate and recover from the catastrophe.¹⁸

Challenged by the successes and failures of the Haiti relief efforts, the *Emory International Law Review's* Spring 2011 Symposium, "A Worldwide Response: An Examination of International Law Frameworks in the Aftermath of Natural Disasters" ("A Worldwide Response"), investigated how international law can develop to address disaster crises. On January 27, 2011, "A Worldwide Response" convened scholars and practitioners in the field of international disaster relief to discuss and further this uncertain, but critical field of international law. The Symposium highlighted three major themes in its day-long investigation of current international response. First, it explored

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ See *Haiti Raises Death Count on Anniversary*, CBC NEWS, <http://www.cbc.ca/news/world/story/2011/01/12/haiti-anniversary-memorials.html> (last updated Jan. 12, 2011, 11:10 PM).

¹⁸ *World Factbook: Haiti*, CIA, <https://www.cia.gov/library/publications/the-world-factbook/geos/ha.html> (last updated Nov. 10, 2011).

how we define “natural disaster” with respect to human vulnerability in the wake of a disaster and contemplated our moral call to respond to such disasters. Second, it highlighted the lack of a cohesive international framework to respond to natural disasters and discussed conflicts between existing frameworks. Third, it identified common legal issues that arise when disasters strike. As the Symposium’s participants engaged with these issues, it became clear that this event was one of the first of its kind.

I. DEFINING DISASTER AND OUR SHARED CALL TO RESPOND

As noted by many of the Symposium’s contributors, there is no consensus in the legal community as to the definition of the term “disaster.”¹⁹ According to Dean Jim Chen of the University of Louisville School of Law, disasters are defined by a perception of the size and scale of their effects.²⁰ The International Federation of the Red Cross (“IFRC”) defines “disaster” as “a sudden, calamitous event that seriously disrupts the functioning of a community or society and causes human, material, and economic or environmental losses that exceed the community’s or society’s ability to cope using its own resources.”²¹ Though often caused by nature, disasters can have

¹⁹ Although we use the term “disaster” expansively here, social scientists distinguish between “disasters” and “catastrophes.” Catastrophes are identified by the following factors:

1. Most or all of the community built structure is heavily impacted.
....
2. Local officials are unable to undertake their usual work role, and this often extends into the recovery period.
....
3. Help from nearby communities cannot be provided.
....
4. Most, if not all, of the everyday community functions are sharply and concurrently interrupted.
....
5. The mass media system especially in recent times socially constructs catastrophes even more than they do disasters.
.... [and]
6. Finally, because of the previous five processes, the political arena becomes even more important.

E.L. Quarantelli, *Catastrophes Are Different from Disasters: Some Implications for Crisis Planning and Managing Drawn from Katrina*, UNDERSTANDING KATRINA: PERSPECTIVES FROM THE SOCIAL SCIENCES (June 11, 2006), <http://understandingkatrina.ssrc.org/Quarantelli>.

²⁰ Jim Chen, Dean, Univ. of Louisville Sch. of Law, Panel Discussion at the *Emory International Law Review* Symposium: A Worldwide Response (Jan. 27, 2011), <http://www.youtube.com/watch?v=4goczBaFaPo>.

²¹ *What Is a Disaster?*, INT’L FED’N FOR RED CROSS, <http://www.ifrc.org/en/what-we-do/disaster-management/about-disasters/what-is-a-disaster> (last visited Oct. 31, 2011).

human origins. The IFRC has also provided a “disaster equation,” which reads, “(Vulnerability + Hazard)/Capacity = Disaster.”²² Simply, a disaster occurs when a hazard impacts vulnerable people.²³ The existence of a hazard and vulnerability of a population to that hazard increases the likelihood of disaster.

Using this definition as a guideline for understanding disasters, it becomes clear that our perception of disasters is tied to the human element; the severity of a disaster is often analyzed in terms of its impact on human-created communities and populations.²⁴ Thus, our vulnerability to disasters can be measured by our preparation and our capacity to respond.²⁵ Impoverished communities are inherently more vulnerable due to weak infrastructure and lack of resources, which directly influence their preparation and capacity to respond.

Natural disasters unearth economic inequalities in the affected community or region.²⁶ The wealthiest areas tend to have the strongest infrastructure, and thus are best equipped, quite literally, to weather the storm.²⁷ At “A Worldwide Response,” Brian Concannon, director and founder of the Institute for Justice and Democracy in Haiti, pointed out that only two people had died at Haiti’s national palace in Port-au-Prince and most of the building remained intact due to its strong structure, while hillside villages collapsed upon themselves.²⁸ Brian Concannon and Beatrice Lindstrom’s article, *Cheaper, Better, Longer-Lasting: A Rights-Based Approach to Disaster Response in Haiti*, explores the factors that led to the inadequacy of the earthquake response and the human rights challenges faced by Haitians.²⁹

²² *Id.*

²³ *See id.*

²⁴ Chen, *supra* note 20. Dean Chen pointed out how misleading the term “natural disaster” is in discussions of international relief. *Id.* No disaster is “natural,” but it is understood as a disaster because of the effects it has on man-made constructed communities. *Id.* For example, if an earthquake erupted near a remote island in Antarctica and dozens of small islands with no inhabitants were flooded by tsunami waves, yet there were no human deaths or consequences, it would be difficult to imagine the news being inundated with headlines about a natural disaster in Antarctica with no human effects.

²⁵ *See id.*

²⁶ David Partlett, Dean, Emory Univ. Sch. of Law, Introduction to *Emory International Law Review* Symposium: A Worldwide Response (Jan. 27, 2011), <http://www.youtube.com/watch?v=xaVVDJhAKA8>.

²⁷ *See* Brian Concannon, Dir. & Founder, Inst. for Justice & Democracy in Haiti, Panel Discussion at the *Emory International Law Review* Symposium: A Worldwide Response (Jan. 27, 2011), <http://www.youtube.com/watch?v=yXNBxaD7lj0>.

²⁸ *Id.*

²⁹ Brian Concannon & Beatrice Lindstrom, *Cheaper, Better, Longer-Lasting: A Rights-Based Approach to Disaster Response in Haiti*, 25 EMORY INT’L L. REV. 1145 (2011).

As discussed in Concannon and Lindstrom's piece, on a global scale, the poorest regions—those with the weakest infrastructure—are the most vulnerable in the aftermath of disaster.³⁰ Because Haiti is the poorest country in the Western Hemisphere, the 2010 earthquake was especially devastating, displacing more than 1 million people.³¹ In contrast, early reports from Japan indicated that the majority of its buildings remained standing following that earthquake.³² A far wealthier country than Haiti, Japan has more developed infrastructure, including some of the strictest building codes in the world.³³

Even though our vulnerability depends in part on economic wealth, all human beings are vulnerable in the face of natural disaster. Most of the Symposium's contributors assumed that the international community must respond to disaster. This is a worthwhile assumption to consider more closely. Our collective vulnerability imposes a moral obligation upon people to assist those affected by disaster and to prepare better for its occurrence. Admittedly, a sense of moral obligation may be counterintuitive. At first glance, disasters appear to be acts of nature over which we have no control. Our preparation for and response to a natural disaster, however, *is* a human effort and construct for which people share a responsibility.³⁴ Our preparation for disaster—including our building of structural safeguards in both wealthy and impoverished communities alike—and our response are factors within our control.³⁵ They are indicative of how “we honor our humanity,” as Emory University School of Law Professor Abdullahi Ahmed An-Na'im explained in his opening remarks at the Symposium.³⁶ With these words, he sounded the call to collective responsibility and collective action. But how will we answer it?

³⁰ *See id.*

³¹ *See* Paul Weisenfeld, Senior Deputy Assistant Adm'r, U.S. Agency for Int'l Dev., Latin Am./Caribbean Region, Keynote Address at the *Emory International Law Review* Symposium: A Worldwide Response (Jan. 27, 2011), <http://www.youtube.com/watch?v=xaVVDJhAKA8>. Wealthier countries like the United States and Chile have been less dependent upon international responders in the wake of disaster.

³² *Engineer: Tough Japanese Building Codes Worked*, CBS NEWS (Mar. 12, 2011, 11:42 AM), <http://www.cbsnews.com/stories/2011/03/12/earlyshow/saturday/main20042459.shtml>.

³³ *Id.* Japan has such strict building codes because Japan is a nation located along the “Ring of Fire,” a seismic area especially vulnerable to earthquakes. *Id.*

³⁴ Abdullahi An-Na'im, Professor, Emory Univ. Sch. of Law, Opening Remarks at the *Emory International Law Review* Symposium: A Worldwide Response (Jan. 27, 2011), <http://www.youtube.com/watch?v=xaVVDJhAKA8>.

³⁵ *Id.*

³⁶ *Id.*

II. LACK OF UNIFIED INTERNATIONAL FRAMEWORK

In response to this call, one of the goals of “A Worldwide Response” was to examine current international law frameworks that exist to address disaster relief. Ironically, however, the Symposium highlighted the total lack of a comprehensive unified framework to address disasters.³⁷ Elyse Mosquini, a delegate from the International Federation for the Red Cross to the United Nations, discussed that no “flagship international treaty” exists to directly address how international law and the international community shall or may respond to a disaster.³⁸

However, many international resolutions and regional and bilateral agreements have been issued regarding how countries may respond to each other in the event of a disaster.³⁹ Additionally, existing treaties regarding other areas of international law have relevant provisions in constructing a response to a disaster.⁴⁰ Thus, responders can examine a multitude of international agreements and protocols for guidance.⁴¹ However, depending on which instrument is referenced and used, the rules may be very different.⁴² Thus, according to Mosquini, it is tempting (and common) to set aside any international agreements and laws and simply respond to crises on an ad hoc basis.⁴³

The rising number of actors responding to disasters has demonstrated the need for a unified framework.⁴⁴ Currently, a country that experiences a disaster can be very easily overwhelmed in coordinating the vast number of actors attempting to respond.⁴⁵

³⁷ Elyse Mosquini, United Nations Delegate, Int’l Fed’n of Red Cross & Red Crescent Soc’ys, Panel Discussion at the *Emory International Law Review* Symposium: A Worldwide Response (Jan. 27, 2011), <http://www.youtube.com/watch?v=4goczBaFaPo>; see also Int’l Fed’n of Red Cross & Red Crescent Soc’ys, Background Information Sheet: Representative International Instruments on Disaster Response, available at <http://www.ifrc.org/Global/Publications/IDRL/Fact%20sheets/idrl-dresponse-background.pdf>; Elyse Mosquini, *Are Lawyers Unsung Disaster Heroes?: The Importance of Well-Prepared Domestic Legal and Regulatory Frameworks for Effective Disaster Response*, 25 EMORY INT’L L. REV. 1217 (2011).

³⁸ Mosquini, *supra* note 37; see also Int’l Fed’n of Red Cross & Red Crescent Soc’ys, *supra* note 37.

³⁹ See Int’l Fed’n of Red Cross & Red Crescent Soc’ys, *supra* note 37.

⁴⁰ See *id.* (presenting a representative list of such resolutions and agreements).

⁴¹ Mosquini, *supra* note 37.

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

While Mosquini illustrated the overarching need to coordinate international relief efforts, Professor Sophie Smyth provided a picture into the failures and successes of how the World Bank can address a disaster's aftermath.⁴⁶ Professor Smyth focused on the World Bank's role in providing funds and aid relief to countries affected by natural disasters during the period of reconstruction.⁴⁷ Professor Smyth argued that the most effective way the World Bank could respond to a disaster would be through creating a special purpose fund—a tactic for which precedent exists.⁴⁸ In a special purpose fund, the World Bank does not have control over the fund, but instead acts as trustee of the fund.⁴⁹ The donors to the fund have control as to how the funds are spent.⁵⁰ Special purpose funds have been created for reconstruction efforts in Indonesia after the tsunamis and for Haiti as well.⁵¹

These funds are particularly appealing because they offer a way for large pools of money to be brought together through the World Bank, but the donors and governments actually affected by the disaster retain control.⁵² Issues surrounding these funds are those of accountability (determining who is accountable for the individual fund), the ever-worsening reputation of the World Bank, finding donors willing to participate in the program, and the transaction costs that arise in the fund's creation.⁵³ Thus, while these funds do seem to have a great benefit and purpose for reconstruction efforts, governments and donors should weigh this benefit against the costs when considering whether to establish special purpose funds. Smyth's analysis of the issues surrounding the World Bank's special purpose funds provided insight into of all of the decisions and costs that hundreds of nongovernmental organizations and state actors must weigh in the wake of disaster.

III. LEGAL ISSUES COMMON TO INTERNATIONAL DISASTER RESPONSE

Although no cohesive legal framework exists for the response to natural disasters, most of the legal issues arising in their wake are common to all

⁴⁶ Sophie Smyth, Professor, Temple Univ. Beasley Sch. of Law, Panel Discussion at the *Emory International Law Review* Symposium: A Worldwide Response (Jan. 27, 2011), <http://www.youtube.com/watch?v=4goczBaFaPo>.

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

disasters.⁵⁴ Keynote speaker Paul Weisenfeld identified two key stages in the response to disaster: the humanitarian response and long-term development.⁵⁵ Each stage gives rise to unique legal issues.

Mosquini identified some of the issues common to the first stage: coordination of hundreds of responders and barriers to entry for aid providers.⁵⁶ A country's attempts to coordinate all of these actors and find legal avenues for aid providers to enter the country quickly can be overwhelming.⁵⁷ With regard to coordinating the numerous actors in disaster response, Weisenfeld explains in his article that systems and procedures should clarify roles and responsibilities among the different agencies and that there is a "need to move toward standardization of data collection and analysis across the various humanitarian actors to facilitate rapid identification" of where aid is most needed.⁵⁸

Tracy McGaugh, co-founder of YouMeWe, the Disaster Response Law & Policy Center, analyzed some of the other common legal issues in the second stage, beginning with "right-to-return" concerns.⁵⁹ In the aftermath of disaster, land and property rights create a legal quagmire. What rights do renters have regarding the site of the land where their home previously stood?⁶⁰ How should the law guide resettlement of the region?⁶¹ How will elections be conducted? Where and how will children receive an education?⁶² When people are evicted from the camps, what are their rights?⁶³ No legal framework clearly delineates these rights, nor does any framework clarify the corresponding obligations of states and other responders.⁶⁴

Further, as Tracy McGaugh explained, natural disasters generate huge problems with gender-based violence, giving rise to a host of legal issues.⁶⁵

⁵⁴ Tracy McGaugh, Co-Founder, YouMeWe, Panel Discussion at the *Emory International Law Review* Symposium: A Worldwide Response (Jan. 27, 2011), <http://www.youtube.com/watch?v=yXNBxaD7lj0>.

⁵⁵ Weisenfeld, *supra* note 31.

⁵⁶ Mosquini, *supra* note 37.

⁵⁷ *Id.*

⁵⁸ Paul E. Weisenfeld, *Successes and Challenges of the Haiti Earthquake Response: The Experience of USAID*, 25 EMORY INT'L L. REV. 1097, 1098 (2011).

⁵⁹ McGaugh, *supra* note 54.

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.*

⁶³ See Concannon, *supra* note 27.

⁶⁴ Mosquini, *supra* note 37; see also Int'l Fed'n of Red Cross & Red Crescent Soc'ys, *supra* note 37.

⁶⁵ McGaugh, *supra* note 54.

The rates of both child and adult prostitution increase, amplifying these individuals' vulnerability to gender-based violence.⁶⁶ How can victims report gender-based violence after relocating from the place where they experienced that violence?⁶⁷ At the Houston Astrodome after Hurricane Katrina, police did not know how to handle crime reports for incidents occurring outside of their jurisdiction.⁶⁸ In Haiti, for the officials to address a gender-based violent crime in a resettlement camp, victims were instructed to bring the perpetrators to the officials—a virtually impossible task, for obvious reasons.⁶⁹ The physical setup of the camps strongly impacts the occurrence of gender-based violence: the location of bathrooms and showers outside the interior of the camp place women and children at higher risk of sexual or physical assault.⁷⁰ The establishment of a legal regime to deal with the prevention and prosecution of gender-based violence is essential to prepare communities for the aftermath of future natural disasters.⁷¹

In his contribution to the Symposium, Jonathan Todres highlighted the vulnerability of children and the tendency of legal structures to neglect the unique legal issues that children face in the wake of a disaster. He explained that, in post-disaster settings, children are often “seen but not heard.”⁷² Despite the tendency to use children as the face of disaster, their voices are not considered in determining the appropriate response to a given disaster. In his article, he suggests that mainstreaming (including children's perspectives in the decision-making process) be used in the post-disaster context to address children's needs and rights more adequately.⁷³

CONCLUSION

Developing a legal framework to handle natural disasters is not only timely and relevant; it is overdue. The existing legal frameworks are insufficient. The consensus of “A Worldwide Response” was that a stronger, universal framework is needed to address the legal issues common to disasters and their aftermath. Collectively, we have the knowledge to create this framework.

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² Jonathan Todres, *Mainstreaming Children's Rights in Post-disaster Settings*, 25 EMORY INT'L L. REV. 1233, 1233–34 (2011).

⁷³ *Id.* at 1236.

Although the transaction costs associated with convening experts in the field and across disciplines remain a barrier, “A Worldwide Response” served as a crucial step in the development of this framework. Its development will help us to honor our humanity. Its development will assist us in answering our moral call.