

Preface:

Japanese Law after the 3-11 Disasters, and ANJeL's Anniversary Conference on Asia-Pacific Disaster Management

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This issue of the *Journal of Japanese Law* includes four more articles related to the 'triple disasters' that devastated the north-eastern part of Japan, in particular, from 11 March 2011.¹ It is important for the *Journal* to maintain its coverage of the background, effects and broader implications of the '3-11' disasters. This began already in Issue 31 (2011), with the first detailed Western-language analysis of compensation and related legal issues arising from the Fukushima nuclear power plant failure.² Large-scale disasters generate often complex legal questions as well as enormous and long-lasting human suffering, yet public attention and media coverage tend to wane quickly.

In this issue, Tohoku University Law Faculty Professor Hiroshi Kabashima outlines the wide range of socio-legal problems resulting from Japan's recent disasters, especially in his region.³ His colleague Associate Professor Hatsuru Morita focuses his own critique on the essentially political decision to keep alive the power plant operator (TEPCO), thanks to financial support from the government and other power companies operating nuclear reactors.⁴ Although this does help finance on-going compensation to victims, the decision also benefits TEPCO shareholders (including many pensioners and others who had invested in TEPCO as a 'safe' blue-chip company) and unsecured creditors. Associate Professor Chun Jin (moving soon to Doshisha University Law Faculty) and Ms Stacey Steele (with joint appointments at Melbourne Law School and Standard & Poors) provide the first detailed English-language analysis of the *Guidelines for Indi-*

1 See also generally e.g. YOICHI FUNABASHI and HEIZO TAKENAKA (eds.), *Lessons from the Disaster: Risk Management and the Compound Crisis Presented by the Great East Japan Earthquake* (The Japan Times, Tokyo, December 2011), available at <http://bookclub.japantimes.co.jp/en/title/Lessons%20from%20the%20Disaster>

2 JULIUS WEITZDÖRFER, *Die Haftung für Nuklearschäden nach japanischem Atomrecht – Rechtsprobleme der Reaktorkatastrophe von Fukushima I*, *ZJapanR / J.Japan.L.* 31 (2011) 61 (with an English summary reproduced at http://blogs.usyd.edu.au/japaneselaw/2011/10/guest_blog_sociolegal_issues_a.html). See also the comparative comment by NORBERT PELZER, *Die Haftung für Nuklearschäden nach japanischem Atomrecht aus internationaler Sicht*, *ZJapanR/J.Japan.L.* 32 (2011) 97 (with an English summary).

3 See *infra* at p. 7 et seq.

4 See *infra* at p. 23 et seq.

vidual Debtor Out-of-Court Workouts, available to assist victims of the 3-11 disasters.⁵ The fourth article in this issue, by Arkansas Law School Professor Robert Leflar and three Japanese colleagues, draws on interviews conducted in July 2011 to show more broadly how disaster victims are dealing with compensation and related difficulties thanks to support from community leaders, attorneys (*bengoshi*) in private practice or providing legal aid, and judicial scriveners (*shihō shoshi*).⁶

The first three articles were based on presentations at the international conference on ‘Socio-legal Norms in Preventing and Managing Disasters in Japan: Asia-Pacific and Interdisciplinary Perspectives’, held at the University of Sydney Law School over 1-2 March 2012.⁷ Most other presentations from that conference, as well as several works specifically commissioned afterwards, will be published in a 17-chapter book on ‘Asia-Pacific Disaster Management’ to be published by Springer Verlag in mid-2013.⁸

It is appropriate therefore to acknowledge the many people and organizations that made possible that conference. I should first thank especially the many speakers, session chairs and other participants – including the Consul-General of Japan in Sydney, Dr Masahiro Kohara (who opened the conference),⁹ and Adelaide University’s new Pro Vice-Chancellor (Int’l) and my colleague on this *Journal*’s editorial board, Professor Kent Anderson (who gave the closing speech at the conference).¹⁰ We also gratefully acknowledge our main sponsor, the *Japan Foundation Sydney*, which last year requested applications for joint research events on this important topic; and the other participating institutions – the *Law Faculty of Tohoku University* (one of University of Sydney’s longstanding partners in Japan) and various organizations related to the University of Sydney that came together to provide matching funding: the *Law School* and its *Centre for Asian and Pacific Law* (CAPLUS), the *Australian Network for Japanese Law* (ANJeL, centred on the Law Schools at the University of Sydney, the Australian National University and Bond University), the new *China Studies Centre*, the *Department of Japanese Studies*, and the *Office of the Deputy Vice-Chancellor (Int’l)*. I would also like to single out the fine administrative and research assistance provided by Melanie Trezise (ANJeL Executive Coordinator).

The conference commemorated several events, especially a series of recent large-scale disasters throughout the Asia-Pacific region. We remembered with sympathy those affected by the catastrophes that occurred early in 2011: Japan’s horrific ‘3-11’ disas-

5 See *infra* at p. 43 et seq.

6 See *infra* at p. 71 et seq., reprinted with permission from *Journal of Environmental Law & Litigation*, vol. 27, pp. 107-124 (2011).

7 See <http://blogs.usyd.edu.au/japaneselaw/2011/11/anniversaryconference.html> and (including the Final Program, Abstracts and Speaker bios) <http://sydney.edu.au/news/law/457.html?eventcategoryid=39&eventid=9063>

8 See chapter titles and contributors listed at http://blogs.usyd.edu.au/japaneselaw/2012/03/anjel_anniversary_conf_deberief.html

9 See http://sydney.edu.au/law/anjel/content/anjel_people_adb.html

10 See also <http://www.eastasiaforum.org/2011/06/20/a-hundred-days-after-japan-s-triple-disaster/>

ters, but also the massive earthquake in New Zealand on 22 February 2011¹¹ and Australia's floods around Queensland that peaked on 13 January.¹² We also recalled the victims of major disasters in China (especially the Sichuan earthquake of 2008), in South East Asia (the tsunami that hit Indonesia and other nations so badly the day after Christmas in 2004), in the USA (earlier severe earthquakes in California, as well as the world's first major nuclear plant accident: Three Mile Island back in 1979), and in many other parts of our region. The Asia-Pacific is the world's most natural-disaster-prone region, as noted by authors for the Australia Strategic Policy Institute in its recent Special Report.¹³ On a happier note, this conference also commemorates ANJeL's 10th anniversary and its international conference related to Japanese law.¹⁴ As with some of ANJeL's other research-oriented activities, we are pleased to collaborate again with the *Journal of Japanese Law* to share widely our views and findings with policy-makers and other communities.

A common theme running through the conference and the articles in this issue of the *Journal* is that in both disaster prevention and relief, regulatory regimes play key roles. For example, as for product safety,¹⁵ compensation for accident victims can come from public authorities (through budget allocations, or claims brought against the state by victims), through private (especially) tort law remedies enforced primarily through the courts, or through market mechanisms (including insurance markets). In turn, such avenues for disaster relief create incentive effects on governments, the private sector and others considering disaster prevention activities. But preparing for and dealing with disasters also implicates broader legal issues, including procedural and substantive rights under national and international law.¹⁶

The March 2011 conference held at the University of Sydney, and resultant publications, suggested ways of developing more efficient and legitimate regimes through comparative and interdisciplinary research. The conference brought together specialists in developments within all the countries just mentioned as well as many other parts of the

11 See the recently released Inquiry Report available at:

<http://canterbury.royalcommission.govt.nz/>

12 See the Inquiry Report available at: <http://www.floodcommission.qld.gov.au/>

13 ATHOL YATES / ANTHONY BERGIN, *More Than Good Deeds: Disaster Risk Management and Australian, Japanese and US Defence Forces* (ASPI, Special Report Issue 43, December 2011), at

http://www.aspi.org.au/publications/publication_details.aspx?ContentID=322&pubtype=-1.

14 http://sydney.edu.au/law/anjel/content/anjel_events_past.html

15 LUKE NOTTAGE, *Responsive Regulation and Comparative Consumer Product Safety* (January 31, 2011) Sydney Law School Research Paper No. 11/06 at <http://ssrn.com/abstract=1752627> (also in Japanese at

http://www.juris.hokudai.ac.jp/gcoel/journal/LPG_vol13/13_13.pdf).

16 See generally DANIEL FARBER / MICHAEL FAURE (eds.), *Disaster Law* (Edward Elgar, Cheltenham, 2010). See also e.g. ROBERT VERCHICK, *Facing Catastrophe: Environmental Action for a Post-Katrina World* (Harvard University Press, Cambridge, 2010), with an overview at papers.ssrn.com/sol3/papers.cfm?abstract_id=1633518

world, including Europe (e.g. Mr Julius Weitzdoerfer, Professor Michael Reich), as well as broader regional and international developments (e.g. the then Dean Gillian Triggs, Dr Hitoshi Nasu). These individuals' main areas of expertise ranged from Japanese or Asian Studies (Dr Yasuko Claremont, Professor Anderson, Dr T Nirarta Samadhi), media studies (Dr Rebecca Suter), health law and policy (Professor Reich, Ms Kylie Fletcher-Johnstone, Ms Michelle Daigle), political science (Associate Professor Daniel Aldrich, who participated by Skype¹⁷), sociology (Associate Professor An-xin Zhu), legal philosophy (Professor Kabashima), law and economics (Professor Morita), land law (Professor Elizabeth Toomey), tax law and policy (Mr Micah Burch), the private/ public law interface (myself, Mr Weitzdorfer), Asian and comparative law (Professor Vivienne Bath, Dr Simon Butt), through to international law (Dr Nasu, Professor Triggs). Many have been involved in policy-making and/or have first-hand experience of large-scale disasters. Together, we also hoped to provide original and engaging perspectives for the 'epistemic community' that has already built up in the field of 'disaster studies'.¹⁸

In addition, our conference and resultant publications explored major themes such as those raised by the pioneering comparative and interdisciplinary analysis of 'Toxic Politics' written by Professor Reich,¹⁹ who introduced via Skype some further perspectives and evidence in the wake of Japan's 3-11 'triple disasters' last year.²⁰ Reich explored when and how socio-economic issues can develop from 'private' into 'public' issues, and then into 'political' issues. He also asked how we can best address key problems surrounding 'care, compensation and clean-up'. More broadly, we considered whether such issues differ significantly in the field of artificial disasters (primarily 'man-made' disasters, such as the chemical disasters compared in Reich's earlier study), compared to natural disasters (even though the Fukushima catastrophe reminds us that the boundaries between these two types of disasters may be increasingly blurred). Another discussion point was whether attitudes and responses to various disasters vary extensively among countries and, if so, why.²¹

17 See also his 'Networks of Power: Institutions and Local Residents in Post-Tohoku Japan' in: Jeff Kingston (ed.), *Natural Disaster and Nuclear Crisis in Japan: Response and Recovery After Japan's 3/11* (Routledge, London, 2012) ch 7.

18 For another recent initiative in this field, see the 'Jurisprudence of Disasters' Collaborative Research Network within the Law and Society Association:
<http://www.lawandsociety.org/crn.html#24>

19 *Toxic Politics: Responding to Chemical Disasters* (Cornell University Press, Cornell, 1991).

20 See also for example his Keynote Speech at the Tohoku Public Health Association 60th Annual Meeting in Fukushima City, Japan, 'A Public Health Perspective on Reconstructing Post-Disaster Tohoku' (22 July 2011) available via
<http://www.hsph.harvard.edu/faculty/michael-reich/cv/>

21 See further my remarks at
http://blogs.usyd.edu.au/japaneselaw/2011/10/guest_blog_sociolegal_issues_a.html, elaborated in Simon Butt / Hitoshi Nasu / Luke Nottage, 'Introduction' in *ibid* (eds.) *Asia-Pacific Disaster Management: Comparative and Socio-legal Perspectives* (Springer Verlag, 2013), forthcoming.

Many difficult questions were raised at the conference and are still being explored in the ensuing publications, including those included in this issue of the *Journal of Japanese Law*. These works and discussions address disaster-related issues also raised at several other major conferences held recently in Japan and beyond, with more or less focus on legal dimensions and/or Asia-Pacific comparisons.²² We hope the articles in this issue as well as the forthcoming book resulting from the conference held at the University of Sydney will contribute to the on-going conversation and mutual learning in this field, as well as support for those directly and indirectly affected by disasters such as those that have recently afflicted Japan and other parts of the region.

22 See, for example, <http://news.harvard.edu/gazette/story/2011/03/crisis-in-japan-the-way-forward/> (Harvard, 23 March 2011; see also now <http://harvardforjapan.fas.harvard.edu/>), <http://www.law.berkeley.edu/11423.htm> (Berkeley, 25-26 October 2011; Tokyo, 6-7 March 2012), <http://www.ash.harvard.edu/APPF> (Singapore, 13-15 May 2012) and <http://www.misocream.org/apru2012/> (Sendai, 20-22 September 2012).