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Tsunamis, Hurricanes, Earthquakes, and Asteroids: Are We Ready for the Next 100 Years?

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TSUNAMIS, HURRICANES, EARTHQUAKES, AND ASTEROIDS: ARE WE READY FOR THE NEXT 100 YEARS?

The panel was convened at 10:45 a.m., Thursday, March 29, by its moderator, James Gathii of Albany Law School, who introduced the panelists: Michael Cohen of the New School; David Fisher of the International Federation of Red Cross and Red Crescent Societies; and Arthur Lerner-Lam of the Earth Institute, Columbia University.*

INTRODUCTORY REMARKS BY JAMES GATHII[†]

Welcome to this panel on tsunamis, hurricanes, earthquakes, and asteroids. This panel will examine the international community's ability to respond to disasters. Our panelists are David Fisher, Senior Legal Research Officer, International Federation of Red Cross and Red Crescent Societies; Professor Michael Cohen of the New School, where he was the founding Director of the International Affairs Program; and Dr. Arthur Lerner-Lam, the Doherty Senior Research Scientist and Associate Director for Seismology, Geology and Tectonophysics at the Lamont-Doherty Earth Observatory of Columbia University and the founding Director of the Center of Hazards and Risk Research, the Earth Institute at Columbia University.

This panel will be structured as a conversation, with the panelists addressing a series of questions. They will tell us whether advances in science and technology can help to prevent catastrophic events such as tsunamis, hurricanes, or earthquakes, which, as we know, cause untold destruction and human suffering on a massive scale. Just this morning, there is news of destruction and death caused by numerous tornadoes across the United States.

The panelists will also discuss what these disasters reveal about international law. While international law cannot control nature, can it mitigate its negative effects? In a recent book, *Laws of Fear: Beyond the Precautionary Principle*, Cass Sunstein has argued that the precautionary principle does not offer any guidance about how governments should respond to health, safety, or environmental risks.¹ While Sunstein's book deals with risks such as global warming, arsenic in drinking water, and genetically modified foods, his analysis may provide insight about how the international community and international law may appropriately respond to natural disasters. For example, to what extent, if at all, should cost-benefit analysis weigh in providing guidance on how to prepare for the next natural disaster? So Sunstein might ask: how much money and time is international society willing to pay for the kind of scientific research and expertise necessary to predict and finance effective warning systems? He suggests that responding to uncertain risks such as global warming should be preceded by a high level of certainty so that such a response does not divert resources from more pressing concerns—such as developing new technologies that might resolve occurring threats such as hunger.

Scientific inquiry should be pursued in a manner that reduces the burdens of the least advantaged members of society. Sunstein's arguments are mostly restricted to national societies where there is a social compact and expectation for looking after the least advantaged. The responsibility to the least advantaged in other parts of the world calls for an expansion of this conception, as it would certainly be the humane thing to do to share such information with countries that cannot afford to contribute in getting the information. This information

* Professor Cohen and Dr. Lerner-Lam did not submit written remarks to the *Proceedings*.

[†] Governor George E. Pataki Professor of International Commercial Law, Albany Law School.

¹ CASS SUNSTEIN, *LAWS OF FEAR: BEYOND THE PRECAUTIONARY PRINCIPLE* (2005).

could be crucial for saving the lives of people who are vulnerable to natural disasters around the world, as is already happening, and as I am sure our panelists will be discussing.

International law seems relevant because it increases the ways in which we might think of responding to natural disasters beyond cost-benefit analysis. While there are monetizable costs of natural disasters, so are there non-monetizable costs that have no actual market price, but are no less significant—e.g., the destruction of human life, coral reefs, human physical and emotional suffering short of fatality, or the extinction of species.

On the question of asteroids, it is notable that Congress has mandated NASA to survey and characterize some Near Earth Asteroids in order to understand and mitigate the threat of impacts by such objects. In 2003 NASA estimated that ninety percent of the risk of unpredicted impacts from some Near Earth Asteroids could be eliminated by extending the Spaceguard survey it was conducting. Further congressional funding is being sought to enable this survey to enhance the capability to detect, characterize, and plan for threat mitigation.

The efforts that ought to be invested in detecting and mitigating asteroids raise the question of whether we could use analogies from international law to think about the obligations states have in this context. For example, states are regarded as having duties of vigilance and due diligence to prevent their territory from being used for purposes that contravene the rights and interests of other states. Perhaps these duties of diligence and due diligence could be expanded, not so much to provide mandatory obligations, but to provide the kind of hortatory and recommendatory guidance for governments and decision makers as they cooperate in seeking as much information as possible to alert ourselves to risks—without the kind of cognitive and other biases that scholars like Cass Sunstein have worried might undermine well intentioned efforts to respond to risks.

I am looking forward to this conversation and learning from it. Our panelists will help to frame this issue better than I have attempted to in providing this background.