

# Chapter 24

## Disasters and the Law

Field of expertise: Law, Disaster Prevention Law, and Urban Law

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### Summary

The existing legal system for disaster prevention was not able to sufficiently cope with a large-scale disaster like the Great East Japan Earthquake, which had never been experienced before. Interviews were conducted mainly with disaster-stricken municipalities to identify problems and issues with the existing disaster prevention laws, and recommendations were made on how to improve them. Many of the recommendations have been realized through subsequent amendments to the Basic Act on Disaster Management, etc., but there are still issues that remain, such as the Disaster Relief Act.

**Keywords:** wide-area large-scale disaster, limitations and challenges of existing disaster prevention laws, Basic Act on Disaster Management, Disaster Relief Act, hearings with disaster-stricken municipalities, government support

### Introduction

I have been in charge of national disaster management at the (former) National Land Agency and the Cabinet Office, and experienced the Great East Japan Earthquake in my laboratory six months after I was appointed to the university in August 2010. Since then, I have conducted a series of interviews with disaster-stricken municipalities and other organizations, and have begun research on the limitations and challenges of conventional disaster prevention laws. Many of the recommendations based on the findings have been realized through the revision of the Basic Act on Disaster Management, but there are many issues that remain to be addressed.

### 1: Problems in Disaster Management Law Revealed by the Great East Japan Earthquake

#### What happened?

The existing legal system for disaster reduction was not able to cope with a large-scale disaster like the Great East Japan Earthquake, which had never been experienced before. Many

cities, towns, and villages affected by the tsunami lost many of their facilities and staff, and faced great difficulties in their disaster response.

The prefectural governments were also unable to provide rapid support to the affected municipalities in terms of manpower and materials, as many coastal municipalities were severely damaged at the same time. Transportation by land, sea, and air was disrupted, which greatly hindered the rescue, dispatch of personnel, and supply of goods.

### **Challenges in disaster response**

In the event of a major loss of functions, it was difficult for municipalities to quickly and accurately assess the damage. The prefectural government was also slow to provide support to the municipalities, and both the prefectural and municipal governments lacked know-how and had difficulty in ascertaining the number of evacuation centers and evacuees, resulting in a mismatch of relief supplies to evacuation centers and other facilities.

### **Challenges in recovery and reconstruction**

The financial situation of the municipalities along the Sanriku coast was extremely severe, and they had to rely on a large amount of national treasury funds. Land with unknown owners was a major obstacle to implementing disaster prevention group relocation as well as recovery and reconstruction projects.

### **Challenges in private-rental temporary housing**

In addition to the conventional temporary construction housing, many private-rental housing units were used for temporary housing. However, due to the principle of payment in-kind under the Disaster Relief Act, a huge amount of paperwork was required.

## **2: Paradigms Destroyed by the Earthquake**

### **Conventional wisdom and necessary responses**

Under the Basic Act on Disaster Management, once a disaster occurs, the primary responder is assumed to be the municipality, and there was no provision for measures to supplement this. For relatively large disasters, the Disaster Relief Act applies, and in such cases, disaster relief is to be carried out by prefectures as a legally mandated task by the national government. For this reason, the legal role of the national government was unclear.

### **Limitations of the Disaster Management Act, which did not anticipate large-scale disasters in a wide area**

Japan's legal system for disaster reduction is enacted or revised every time a major disaster occurs. In the case of a large-scale disaster such as the Great East Japan Earthquake, which was much larger than previously expected, the law did not anticipate that the facilities and staff of the affected municipalities would be damaged and unable to operate. The prefectural government was also unable to provide sufficient support to the municipalities due to lack of manpower. This was compensated for by support from the national government and other prefectural and municipal governments. The national government provided support by establishing

local task forces in the three affected prefectures under the Emergency Disaster Countermeasures Headquarters. The Tohoku Regional Development Bureau of the Ministry of Land, Infrastructure, Transport and Tourism and other local branch offices of various ministries and agencies also provided support through sending material and people to the affected municipalities, but many of these efforts were without any legal basis.

### **3: Direction of Amendments to the Disaster Prevention Law (Major Amendments)**

#### **Disaster Response Measures**

##### **(1) Facilitation of local assistance by the national government**

When the function of a government office of a disaster-stricken municipality is lost or has deteriorated, the prefectural government must first step in to supplement the loss. For what is still lacking, the national government supplements and builds a system for the two governments to support one other.

##### **(2) Securing emergency transportation routes**

In the aftermath of the Great East Japan Earthquake, the government provided support for the restoration of various infrastructures and for emergency transportation. In the event of a disaster of a certain scale or greater, it is necessary for the national government to take over authority and carry out construction work under its direct control, and to establish provisions that allow the national government and other road administrators to be involved in road restoration.

##### **(3) Facilitating the provision of relief supplies**

Initially, the staff of each local government brought in, sorted, delivered, and managed the inventory of relief supplies, but delays arose. After this, private contractors, who are professionals in distribution, provided assistance and contributed to the facilitation of the sorting and delivery of supplies. It is necessary to establish a system that facilitates the support of private companies.

#### **Disaster recovery and reconstruction measures**

##### **(1) National treasury for reconstruction and recovery planning**

It was extremely difficult for municipalities with weak financial resources to raise the enormous amount of money needed for recovery related to the Great East Japan Earthquake on their own. There is a need for a national subsidy system and local financial measures for municipalities with weak financial strength. It is also necessary to provide a legal basis for disaster recovery plans.

##### **(2) Acquisition of land with unknown owners**

Land with unknown owners has become a bottleneck in reconstruction projects. For the acquisition of such land, it is necessary to acquire land through what is called the arbitration of the

unknown<sup>1</sup>. In the case of group relocation of fishing communities for the purposes of disaster mitigation, it is necessary that the relocation site be in close proximity to the fishing community, as the residential area is inextricably linked to fishing rights.

### (3) Issues in private-rental temporary housing

Since the Disaster Relief Law stipulates the provision of goods in kind as a general rule, a three-way contract was made between the landlord, victims, and prefecture. The prefecture was busy with the large amount of paperwork for the rental of private temporary housing. It is necessary to establish a system to prepare for future earthquakes directly under the Tokyo metropolitan area.

## **4: Law Amendments, New Laws, and Remaining Issues (Major ones)**

### **Disaster response measures**

#### (1) Facilitation of local assistance by the government (Amendment to the Basic Act on Disaster Management)

When an emergency disaster situation is declared, the Cabinet makes decisions on the government's policy on emergency disaster control measures, and based on this policy, the government must take concerted action under the direction and supervision of the Prime Minister.

#### (2) Securing emergency transportation routes (Revision on the Road Act, under the Basic Act on Disaster Management)

When the functions of local governments are severely impaired due to a disaster, a mechanism has been established for the government to support disaster response measures and take emergency measures on their behalf. In addition, it was stipulated that necessary action should be taken by road administrators to strengthen measures against abandoned vehicles.

#### (3) Facilitating the provision of relief supplies (Amendment to the Basic Act on Disaster Management)

In order to provide supplies necessary for implementing disaster response measures, the prefectural government can request support from heads of designated administrative agencies<sup>2</sup>, and the mayor of a municipality can request the prefectural government for support when necessary. In addition, the head of a designated administrative agency may request support from designated public institutions<sup>3</sup>, such as a transportation operator, to transport goods necessary for disaster emergency measures.

## **2 Disaster recovery and reconstruction**

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<sup>1</sup> In land expropriation, when the expropriation committee decides on expropriation or use, if the name or address of the legal owner cannot be confirmed, matters may be decided without the missing information/without knowing who the legal owner is.

<sup>2</sup> National ministries and agencies such as the Cabinet Office.

<sup>3</sup> Specific corporations designated by the Prime Minister that run public interest businesses.

(1) National treasury for reconstruction and recovery plan (Enactment of legislation on the recovery from major disasters)

The government is to take financial measures for reconstruction as soon as possible. In addition, disaster recovery plans, which previously had no legal basis, were given a basis in this law in the case of large-scale disasters.

(2) Acquisition of Land with an Unknown Owner (Amendment to the Act on Special Zones for the Great East Japan Earthquake)

The provision of the Land Expropriation Act, which only allowed for land to be used for 6 months before the expropriation committee completes the adjudication process, can be extended to one year. In the acquisition of land for relocation sites for group relocation promotion projects for the purposes of disaster mitigation, projects with more than 5 residential units but less than 49 units can be designated as expropriation-eligible projects (previously, this was more than 50 units).

(3) Issues in private-rental temporary housing (Disaster Relief Law not yet revised)

The Board of Audit (2012) reported that in the case of a large-scale disaster such as the Great East Japan Earthquake, it is important to take flexible measures in accordance with the reality of the situation. Although the provision of temporary housing through the payment of rent is a promising measure for situations in which the prefectural governor deems it necessary, the Disaster Relief Act has not yet been revised to reflect this.

### **3 A new method of disaster science**

At the Graduate School of Public Policy, I am currently engaged in joint research with graduate students on the state of urban development legislation in a society with a shrinking population, including reconstruction of areas affected by the Great East Japan Earthquake and other disasters, as well as educational activities on disaster prevention law. In the Tohoku region, while the population of Sendai City and its surrounding municipalities is increasing, the population of local cities is decreasing at a faster pace than that of the nation as a whole. This is especially true in the affected municipalities along the Sanriku coast. The current state of the disaster-stricken areas is the state of Tohoku's cities of tomorrow, and the state of Tohoku's cities of today may be the state of the nation's regional cities of tomorrow. Surveys and research on community development will be a touchstone for the future, beyond the framework of disaster prevention.

### **Conclusion - from the author**

Many of the inadequacies in the Disaster Prevention Law that were brought to light by the Great East Japan Earthquake have been remedied to a great extent by subsequent amendments to the Basic Act on Disaster Management. However, there is no guarantee that we will be able to sufficiently respond to earthquakes such as those directly below the Tokyo metropolitan area and the Nankai Trough, which are said to have a high probability of occurring in the future. In the Disaster Relief Act, the 2018 amendment established a system that allows some government ordinance cities to delegate the administration of rescue in advance, but fundamental amendments

such as the principle of in-kind benefits have yet to be made. The lessons learned from the Great East Japan Earthquake should be looked at seriously and be utilized fully.

## **References**

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