Index

actual harm requirement 5
aggravated state responsibility 69, 86–90
aid workers see relief personnel
air disasters
air pollution
conventions 342–3
definition 342
alternative dispute resolution (ADR) 523–8
appropriateness 527–8
mediators / administrators 524–5
procedures 525–7
Anthropocene
definition 169
man-made / natural disasters, relationship between 169–72
armed conflict see also under humanitarian aid; international humanitarian law; transitional justice
children
impacts on 479–80
involvement in 397, 479, 482, 485, 492–3, 497–8
rights of 8–9
civil war 129
complex emergencies, and 6–7
cyber attacks, and 9
disaster definition, applicability 2–9, 111–12
exclusions 18–19
human rights law, applicability 482
international humanitarian law, applicability 132–4, 148, 150–51, 316
international investment agreements, and 215–17
national security, and 151
population displacement, and 115–16, 126, 367–8
prisoners of war, protections 388–9
property, protection 117–18
targeting, and 304–5
vulnerable persons, protection 387–90
war crimes 125–6
water security, and 301, 304–6
assistance see also humanitarian aid; wildfires
Bruges Resolution 453, 462, 475–6
definitions 457–8
expectations of 459
firefighting services 338–9
formal recognition of private sector role 233–4
global wealth inequality, and 454–5
humanitarian aid vs. humanitarian action 458
ILC Draft articles 477
background 453–4, 460–61, 463
definitions 454, 464
donor unilateralism, and 475–7
duty to offer assistance 476
human rights, and 470–75
impartiality principle 474–5
international organizations, offers by 469–70
legal status 465–6
limitations 456–7, 462–4
national contingency planning, and 449–50
purpose 460, 463
responsibility to protect 466–7
right to offer assistance 460–65, 467–70
rights and obligations 463–5
state sovereignty, and 475–7
states, offers by 468
interference, as 474–5
intervention in non-consenting state 475–6
Mohonk Criteria 458–60, 462–3, 468
obligations
to cooperate in good faith 455–6
definition 454, 463–5
to donate 454–5
food assistance 261–2
ILC Draft articles on 463–5
limitations 455
to offer assistance 455–6, 471–2, 476–7
to provide assistance 90, 261–2, 315, 455–6, 462
to seek assistance 99, 471, 476–7
politicization 474–5
relief personnel, definition 457–8
right to offer 453, 460–65, 467–70
right to receive 456
San Remo Principles 458–9, 469
attacks, definition 121–2
Badiou, Alain 107–8
Barber, Rebecca 82–3, 88
Bassiouni, M. Cherif 117
Berlin Rules 307–8, 316
biodiversity
food security, and 267–8
policy development 158
wildfires, and 337
Bretton Woods consensus 31–2
Brownlie, Ian 86
Bruges Resolution 453, 462, 475–6
Caribbean Catastrophe Risk Insurance Facility 244–5
Caribbean Disaster Emergency Management Agency 442
Cassese, Antonio 88
children
armed conflict
human rights law, and 482
impacts on 479–80
involvement in 397, 479, 482, 485, 492–3, 497–8
post-conflict transitional justice 18, 489–99
protection during 8–9
best interests, definition 397–8
definition 479–80
derogable rights 397
with disabilities, rights of 399
disasters
impacts on 383–4, 479
protections during 499
economic, social and cultural rights 484
protection of
abuse, freedom from 398, 482
adoption 397
asylum seekers 399
birth registration 398
child labour 483
child prostitution and pornography 397, 485
conventions 396–9, 483–4
crimes against humanity 492–3
education and development 399, 480, 482, 499
health and healthcare 399, 484
orphaned or separated children 388, 482
post-conflict legal protections 481–6
sexual violence 482–3
refugee rights, and 390, 399
right to be heard 490–91
right to humanitarian aid 104, 137–8
right to identity and nationality 398
right to life 399
right to parental or foster care 398
transitional justice 18, 489–91, 499
institutional reform 497–9
involvement in reform process 490–91
prosecutions 492–3
reparations 496–7
Truth Commissions 493–6
vulnerability of 479, 489
water contamination risks 331–2
water insecurity risks, and 302–3
Chile
Santiago earthquake (2010) 93–4
China
energy security policies 292
Ciraolo, Giovanni 49–51
civil and personal rights
development 29–30
civil war 129
climate change
disaster prevention, and 76
disaster research, and 109–10
emergencies vs. slow-onset disasters 4, 157–8, 173–4
environmental displacement 1, 312–13, 359
environmental resilience policy development 158–9
food security, and 254–59, 259–68, 268–9
geoengineering 173–4
influences on 52–3
land degradation, and 256–7
man-made / natural disasters, relationship between 170
mitigation and adaptation 316
common but differentiated responsibilities 310
cooporative efforts 310–11
counterproductiveness of 259–60
emission-reduction targets 310
food security, and 254–59, 268–9
liability, judicial rulings 310
refugees, judicial rulings 312–13
water security, and 301–3, 309–11
Co-ordinated Emergency Response Measures (CERM) 279
compensation 85, 164 see also insurance and reinsurance
climate change compensation mechanisms 172
complex emergencies
armed conflict, and 6–7
definition 4
international humanitarian law, and 147–9
conflict see also armed conflict
definition 272
consent
humanitarian aid, to 138–9, 141, 143–5, 150–51, 369
denial, and duty to intervene 475–6
marriage, to 396
cooperation principle 195–8
good faith 455–6
state sovereignty, and 197–8

corporate social responsibility 225–6, 237–9, 246–7

corporations

corporate social responsibility 225–6, 237–9, 246–7
corporate welfare 37–8
disaster management stakeholder roles
13–14
economic decolonisation 33–4
humanitarian aid from
benefits 226–7, 245–6
challenges and obstacles 230–32
involvement trends 226
privileges and immunities 231–2
regulatory avoidance 40–41
taxation 38–9
corruption 115, 126
Crawford, James 87

crimes against humanity 113, 117, 120–21
attack, interpretation 121–2
child abuse / sexual violence, prosecutions
for 492–3
denial of humanitarian aid 117, 121–2
deprivation 117, 128
disasters with natural causes, and 118–19
extermination and murder 122–3
genocide 482–3
inhume acts 124
persecution 117, 125
starvation 105, 114, 117, 122, 128, 139, 306, 483
thresholds 121–2
crisis see also financial crisis
definition 8, 272
environmental law development, and 153
international law generally, and 154
vs. disaster 8, 272–3
water crisis, definition 299–300
customary international law

table of contents

Index 533

Susan C. Breau and Katja L.H. Samuel  9781784717407
Downloaded from Elgar Online at 03/06/2019 06:04:23AM via free access

Columns Design XML Ltd / Job: Breau-Research_handbook_on_disasters_and_international_law / Division: Index /Pg. Position: 3 / Date: 25/7
disabled persons

children, rights of 399
disasters, uneven impacts on 384
protection of 384, 387–9, 399–401
disaster cycle 119–20
disaster-displaced persons see population displacement
disaster management see also post-conflict disaster management
corporate roles 13–14
human rights, and 11, 96, 106–8
derogations 94–6, 392–3
national contingency planning 17
population displacement, and 363–4
private sector roles 13–14
disaster mitigation see also responsibility to prevent
corporate roles 13–14
desertification prevention 158–9
disaster management see also post-conflict
disaster management
corporate roles 13–14
human rights, and 11, 96, 106–8
derogations 94–6, 392–3
national contingency planning 17
population displacement, and 363–4
private sector roles 13–14
disaster prevention see also disaster risk reduction; responsibility to prevent
claymate change, and 76
cooperation principle, and 195–8
due diligence 189–90, 193
international criminal law, and 11
international human rights law, and 11
international instruments 194–5
policy development 191–5
poverty, and 13
pre-disaster phase obligations 192
risk assessments 193–4
state responsibilities 70, 73–8
international law obligations, scope 10–11
sustainable development, and 177–80, 185–95
disaster relief
codes of conduct 100–101
termination of 84–5
disaster response see also responsibility to react
aggravated state responsibility, and 88–90
genoengineering 173–4
human rights law approach 237–41, 315
policy trends 180–81
disaster risk governance 17
disaster risk reduction (DRR)
concept development 328, 445
corruption, and 126
definition 327–8
human rights, and 106–9, 200–201, 329
Hyogo Framework 197–8, 445–6
ILC Draft Articles, and 449–50
national contingency planning, and 429–30, 445–51
policy development 177–8, 180–81
population displacement, and 363–4
mobility facilitation 366
planned relocation 366–7
resilience measures 365–7
risk maps 366
Red Cross / Red Crescent Society role 64–5
reverse DDR 120
right to life, and 201, 448
sustainable development, and 177–80, 185–7, 202
vulnerable persons, protection of 404
water contamination, and 327–9
Yokohama Strategy 445
disasters, generally see also man-made disasters; natural disasters
definition 2–10, 112, 154–5, 206, 320, 327, 502–3
actual harm requirement 5
armed conflict, and 2–9, 111–12
climate change, and 69, 177
complex emergencies 4
continuity of conflict, and 76
crisis vs. disaster 8, 272–3
due diligence 189–90, 193
cooperation principle, and 195–8
discrimination
prohibition against 394, 402
vulnerable persons, disaster impacts on 383–5
disease
pandemics 439
post-disaster outbreaks 502, 506, 508–9, 516, 520–21, 523
water contamination and poor sanitation, and 321–3
dispute settlement, generally see also post-conflict disaster management
awards, recognition and enforcement 513
international criminal law, and 513–15
international human rights law, and 504–7
international investment agreements, and 212–13
limitations 36–7, 39, 41–2
public interests, and 36–7, 39
Index 535

regime challenges 40–41
double jeopardy rule 393
drought
causes 299
desertification, prevention obligations 158, 256–7
impacts 299–301, 360
water security, and 299
due diligence see also responsibility to protect
common but differentiated responsibility 186, 310, 418
cyber law, and 17, 416, 426
applicability 418–20
benefits 420–22
development 417–18
limitations 422–5
definition 417
degree of care, interpretation 189–90
international human rights law, and 510–11
national contingency planning, and 448–9
necessary and appropriate measures, interpretation 193
obligations 17, 189–90
reasonable steps to prevent 417–18, 420–23
terrorism, and 421
duress 127

earthquakes
Christchurch (2011) 354
humanitarian aid
emergency financial aid 267
technology impacts on 226–7
impacts 52–3, 115
insurance pools 244–5
Pakistan (2005) 266, 360, 454
San Francisco (1906) 91–2, 227
Santiago, Chile (2010) 93–4
Sichuan (2008) 236
urbanization, and 52–3
elderly persons, convention protections 401–2
emergencies
complex emergencies 4, 6–7, 147–9
definition 393
human rights derogations during 94–6, 362, 392–3
vs. slow-onset disasters 4, 157–8, 173–4
emergency / aid workers see relief personnel
emergency preparedness see national contingency planning
energy security
Co-ordinated Emergency Response Measures (CERM) 279
conflict and crisis implications 14, 275–9, 292–4
coordination, need for 292–3
critical infrastructure
definition 281
identification 288–9
security policies 280–92
definition 273
EU policies 285–91
IEA role 278–9
importance of 272
interdependence 276–7, 292–3
international strategic approaches 277–8
national agency guidelines 283–5
OPEC role 278
political instability risks 275–6
regulatory limitations 279–80
stockholding policies 281, 289
terrorism, and 275–6, 280–81
trade agreements, and 277–8
transit route risks 275–7
US policies 280–85
energy supply
importance 272
interdependence 14, 272–5
regulatory frameworks 274
risks 275–6
trade patterns 274
environmental disasters see climate change; natural disasters
equality see also global inequality
citizens’ rights, development of 29–30
Eritrea-Ethiopia Claims Commission 505–6
Esping-Andersen, G. 29
Estonia
cyber threats 407–8
European Programme for Critical Infrastructure Protection (EPCIP) 288–9
European Union
Civil Protection Mechanism 442–3
energy security policies 285–91
extermination 122–3
famine
causes 116
desertification, prevention of 158
Ethiopia (1982–1985) 114, 128
Farber, D.A. 70, 74, 76, 173
Fidler, David 48–9, 53, 75, 78, 83, 386
financial crisis 23, 43
firefighting services 338–9
floods
causes 299
impacts 299–301
water security, and 299
food security 14
access 254
availability 254
climate change, and 255–7, 259–60
mitigation and adaptation 254–60, 268–9
community vulnerability, and 258
conditions endangering
causes 255–6
disaster, and 259–60
duty to prevent or mitigate 254–60
cooperation, need for 269–70
crop diversity, and 267–8
disaster recovery, and 264–9
disaster response frameworks 251–2
disaster risk reduction programs
early warning systems 256, 259
policy implementation 259–60
self-sufficiency and sustainability, and 257–8
disaster victimization, and 251
famine, and 116
financial support 258–9, 267
food networks, importance of 269–70
food safety, and 260, 263
genetic resources, and 268
humanitarian aid
codes of conduct 100–101, 264
consent to 262
protection of 262
insecurity trends 255–6
intergovernmental bodies, role 265–6
investment and reinvestment 264–5, 271
land tenure influences 258
local market protection 261
necessary aid 256
nutritional balance, and 270
poverty, and 257
principles 254
progressive realization, and 262
resilience mechanisms 267–8
right to food, and 252–3, 255–6
after a disaster 264–9
during a disaster 260–64
soft law mechanisms 261
Sphere Project Humanitarian Charter
100–101, 264
stability, and 254
state and non-state actor obligations 251–2
consultation 261
conventions 256–7
delivery of aid 263
food assistance 261–2
national legal obligations 256
prevention and mitigation 254–60
utilization 254
World Bank investment role 264, 267
forced marriage 396
forcible transfer or deportation 123–4
Foreign Direct Investment 206
forests
forestry management
FAO role 341–2, 344–5
international regimes 339–40
importance of 339–40
freshwater pollution
disaster policy development 165–6
Fuller, Lon 71, 73
gender see women
genocide 113, 482–3, 507–8
geoengineering 173–4
Germany
ergy security policies 289–90
Global Environment Facility (GEF) 268
global inequality
deregulation, and 32–3
disaster implications 10
globalisation, and 39–40
legal solutions, effectiveness of 23
state role and obligations 24–6
trends 10, 23–6
wealth, measurements of 40
global justice 24–5
globalisation
corporate welfare 37–8
global inequality, and 39–40
governance gap 30
hyperglobalisation 32
international trade and investment, and 32–3, 37–40
new medievalism 39–40
public interest influences 29–32, 37–40
social economic rights, and 30, 39
state sovereignty, and 29–30
Green Climate Fund 172
Gulf Coast Claims Facility (GCCF) 524–5
Habibis, Daphne 130
Hafner-Burton, E.M. 95
Haiti earthquake (2010) 82, 84–5, 93, 96, 267, 360, 377, 510–11, 516, 520–21
land rights 106–7
Hannigan, John 100
harm actual harm requirement 5
no-harm rule 190–91
threat of imminent serious harm 127
transboundary harm, prevention of 159–60, 187–91
hazardous substances environmental policy development 166–8 transfer of 186
Held, David 29
Hilson, C. 103
Hiroshima and Nagasaki nuclear detonation 166
Hobbes, Thomas 25–7
Hoffman, Michael 46
human development indices 40
human rights see also under natural disasters civil and political rights 394
criticism of 107–8
derogation from 94–6, 392–3
disaster risk reduction, and 106–9, 200–201, 329
economic, social and cultural rights 394–5
ethics of 107–8
food security, and 14
freedom from inhuman or degrading treatment 373, 393 slavery and servitude 393–4, 483
harmful traditional practices, protection from 395–6
interpretation of 96
judicial rights 394
obligation to seek assistance 99, 471, 476–7
right to a home 85
right to be heard 490–91
right to development 185
right to food 252–3, 255–6
after a disaster 264–9
during a disaster 260–64
soft law mechanisms 261
state and non-state actor obligations 261–2
right to humanitarian aid 103–5
right to justice 487
right to life 98–9, 101–3, 201, 332, 448, 510
children 399
judicial interpretation 102–3
protection obligations 98–9, 101–3, 332–3, 448, 510
water contamination, and 332
right to property 106–7
right to sanitation 313, 330–31
right to water 313–15, 330–31
socio-economic rights 98, 511–12
torture, freedom from 373, 388–9, 393
human rights law 2
armed conflict, and 314–15
assistance, obligations to provide 90, 261–2, 315, 455–6, 462, 470–75
death penalty, and 393, 395
derogations during emergency situations 94–6, 362, 392–3
non-derogable rights 393, 395
disaster management, and 11 sustainable development 199–201
disaster risk reduction, and 106–9, 200–201, 329
dispute settlement ICJ role 504–7
limitations 512–13
tribunals role 508–13
double jeopardy rule 393
due diligence, and 510–11
focus trends 16
humanitarian aid, private sector role 225, 237–41
international humanitarian law, convergence with 316
limitations 19
national contingency planning, and 446–8
population displacement, and cross-border displacement 377–9
disaster-related displacement 362–3
vulnerable persons, and 385
water security, and 313–15
human rights tribunals dispute settlement role 508–13
human security definition 72
human trafficking 395–6, 483
humanitarian aid see also assistance; private sector
armed conflict, and challenges 132–3
consent 138–9, 141, 143–5, 150–51, 369
Convention provisions 132–3
High Contracting Party concern 144–5
IHL and IDL protections, compared 149–52
impartiality principle 138–9, 141
military necessity limitations 139
national security, and 151
non-international armed conflict 140–42, 145–6
non-occupied territories, in 137–40
non-state armed group obligations 145–6
non-state controlled territories 142–6
obstruction or denial of access 138–40
occupied territory, in 135–7
principles 134
relief personnel 136–7, 142, 145–6, 151–2
state obligations 134–7, 141–2, 147
supplies, movement of 138–9, 141–2, 144–6
transit states 135–8
UN Security Council intervention 146
undue hardship requirement 141, 147
challenges to 12–13
children’s rights, and 104, 137–8
codes of conduct 263
complex emergencies, and 147–51
consent 50, 138–9, 141, 143–5, 150–51, 262, 369
denial or prevention of access 117, 121–2, 369–70, 475–6
duty to intervene, and 475–6
sovereign state, of 50, 138–9, 141
customs duties 135
donor unilateralism, and 475–7
expectations of 459
food safety regulations 263
humanitarian action, compared 458
impartiality principle 138–9, 141, 474–5
Mohonk Criteria 458
non-discrimination principle 369
obligations
delivery of food 263
non-state armed groups 145–6
policy development 48–55
politicization 474–5
privileges and immunities 231–2
protection of 262
right to food
after a disaster 265–9
during a disaster 260–64
right to intervene 105
right to receive 103–5, 456
technology impacts on 226–7
thresholds 50
trends 55, 236
humanitarianism 474–5
hurricanes 82
energy security impacts 277, 281
insurance mediation programs 525–6
insured losses 227
Mitch (1998) 362
Rita (2005) 252, 277, 281
adoption 74
cooperation principle 197–8, 445–6
goals 74–5
Red Cross / Red Crescent Society role 64
impartiality principle 138–9, 141, 474–5
India
energy security policies 292
industrial accidents
Chernobyl (1986) 161, 167, 436
Deepwater Horizon (2010) 506, 516, 519, 522, 524–5
dispute settlement 506
Ecuador, Lago Agrio 204–6, 506, 512–13, 516–18, 520
international law, and
limitations 512–13
obligations 436–7, 439–40
policy development 160–61
inhuman or degrading treatment, freedom from 373, 388–9, 393
insurance and reinsurance
climate change compensation mechanisms 172
disaster relief, and 225, 227
development trends 227
humanitarian aid, and 244–5
post-disaster recovery 85
mediation programmes 525–6
Inter-American Court of Human Rights 513
Intergovernmental Panel of Climate Change 170
International Atomic Energy Agency 167
international civil defence
wildfire prevention and assistance 353–4
International Civil Defence Organization 353–4
International Commission on Intervention and State Sovereignty 71–3
International Court of Justice
jurisdiction 506–7
post-disaster dispute resolution role 504–8, 528
International Criminal Court 111
international criminal law 317 see also crimes against humanity; genocide; war crimes applicability
civil war or peacetime 129
interconnectedness of law 129–30
natural disasters 114–16
non-state actors 113
children’s rights, and 8–9
civil war 129

crimes
attack, interpretation 121–2
causes attributable to natural disasters 118–20
characteristics of 112–13
corruption 126
creation of life-endangering conditions 117
crimes against humanity 117–25, 482–3
denial of humanitarian aid 117, 121–2
deprivation 117, 128
extermination and murder 122–3
forcible transfer or deportation 123–4
inhumane acts 124
persecution 117, 125
post-disaster restrictive behaviour 115–16
scope of 116–18
starvation 105, 114, 117, 122, 128, 139, 306, 483
terrorism 126
transboundary movement of waste 126
transnational organized crime 126–7
war crimes 113, 125–6
defences 127–8
duress 127
mistake of fact 127–8
threat of imminent serious harm / death 127
disaster prevention / mitigation, and 11–12
jurisdiction
air disasters 514–16
limitations 113, 128–9, 514–15
natural disasters 114–16

principles 114
protections 117–18
responsibility to react 83, 89
water security, and 303–4, 306–7
international criminal tribunals
dispute settlement role 513–15
limitations 514–15, 528–9
international disaster law (IDL), generally
challenges 2
development 2, 303
international humanitarian law, and 8, 149–51
state sovereignty, and 151
study trends 132–3
water security, and 303
international disaster response law (IDRL)
concept development 46–52, 463, 481–2
attitude changes 53
challenges and limitations 63
disaster risk reduction policy 64–7
humanitarian aid consent 50
IDRL Guidelines 60–63
influence and limitations on 48–9
information initiatives 46
peacetime relief 49
Red Cross / Red Crescent Society role 48–50, 55–9, 64–5, 481
scholarship trends 54
UN role 51–3
uptake progress 62–3
transitional justice, and 486–9
International Energy Agency (IEA) 278–9
International Energy Programme 278
international environmental law 2 see also sustainable development
challenges 174–5
disasters, and
definition 154–5
disaster law, relevance of 153
emergency vs. slow-onset disasters 173–4
grave and imminent peril 155–6
human agency, and 153
man-made / natural, relationship between 169–72
mixed character of 157–8
recovery measures, environmental impacts of 159
state responsibility for 155–6
international law generally, and 155–6
limitations 154–5, 174–5
policy development 156–8
emergencies vs. slow-onset disasters 157–8
focus 12, 153, 169, 174–5
freshwater pollution and disasters 165–6
industrial accidents 160–61
influences on 153
marine pollution and disasters 162–4
polluter pays principle 161
540 Research handbook on disasters and international law

- purpose 12, 169
- radioactive and hazardous substances 166–8
- soft law 156–8
- transboundary harm 159–61
- water security, and 303–4, 308
- precautionary principle, and 308
- international humanitarian law 2 see also humanitarian aid
- applicability
  - armed conflict, during 132–4, 148, 150–51, 316
  - non-international armed conflict, and 148–9, 152
  - non-state armed groups, and 143, 152
- complex emergencies, and 147–9
- coordination, need for 13–14
- development, influences on 48–9
- disabled persons, protections of 400
- disaster definition, and 7–8
- duty-based focus 96
- human rights law, convergence with 316
- international disaster law, and 8, 149–51
- peacetime relief 49
- vulnerable persons protections 387–90
- water security, and 303–6

international investment agreements
- armed conflict, applicability during 215–17
- BITs 209–11
- dispute settlement mechanisms 212–13
- economic vs. societal conflicts 208–9
- EPAs 211
- exception justification model 217–20
- fair and equitable treatment 213–14
- FTAs 211
- full protection and security criteria 213–15
- legitimate interest protections 211–12
- national treatment 220–23
- non-discrimination principle 216
- object and purpose 209–12
- political risk, and 217
- risk protection role 207–17
- standards of protection 210–11, 213–15
- trends 207–12

International Law Commission
- disaster response law policy development 65–7

Draft articles on disaster assistance 477
- background 453–4, 460–61, 463
- definitions 454, 464
- donor unilateralism, and 475–7
- duty to offer assistance 476
- human rights, and 470–75

- impartiality principle 474–5
- international organizations, offers by 469–70
- legal status 465–6
- limitations 456–7, 462–4
- national contingency planning, and 449–50
- purpose 460, 463
- responsibility to protect 466–7
- right to offer assistance 460–65, 467–70
- rights and obligations 463–5
- state sovereignty, and 475–7
- states, offers by 468

international law, generally
- accountability mechanisms 317
- applicability 3
- crises, influences of 154
- duty to cooperate 195–8
- effectiveness 3
- limitations 316–17
- regime interaction 316–17
- role, increase in 129–30

International Monetary Fund 31
International Oil Pollution Compensation Fund (IOPCF) 164
international refugee law
- admission criteria 375–8
- child refugee rights 390, 399
- climate change refugee rulings 312–13
- disaster displacement 364, 375–9
- human rights law, and 377–9
- non-refoulement 312, 373, 390
- return measures 378–9
- transhumance agreements 377
- vulnerable persons, protection of 390–92
- water security, and 311–13

international relations
- globalisation, and 30
- Westphalian model 29–30
- international responsibility
  - long-term reconstruction, and 85
  - triggers 72–3

International Search and Rescue Advisory Group (INSARAG) 59–60, 63, 354–5
international solidarity 17–18
international trade and investment see also international investment agreements
- corporate taxation 38–9
- corporate welfare 37–8
- disasters, and 13
- dispute settlement limitations 36–7, 39, 41–2
- economic decolonization 33–4
Index 541

global justice, and 24–5
globalisation, and 32–3, 37–40
policy development 31–3
private law governance 40–41
procedural bias 36–7
public interests, conflicts between 33–44
stabilisation clauses 33–4, 40–41
trade agreements
exception justification model 218–20
national treatment 220–23
international water law
development 307–8
disasters, and 303–4
equitable and reasonable use 308
humanisation of 316
principles 308–9
water security, and 307–9, 315–16
internationally wrongful acts 350–51
investment law see international investment agreements; international trade and investment
Iran
cyber-attacks 407–8
Islamic State of Iraq and the Levant (ISIL) 275–6
jurisdiction
dispute settlement
forum non conveniens 517–19, 529
immunity from 520–21
limitations 504–5, 515–16
justice see also transitional justice
democracy, and 28
global justice, influences on 24–5
judicial review 28
peace-building, and 486–8
political justice 488–9
right to 487
socio-economic justice 489
victims, recourse to international courts / tribunals 516
Kennedy, D. 30
land tenure
food security, and 258
Lillich, Richard 71
man-made disasters
armed conflict, and 2–7
Chernobyl (1986) 161, 167, 436
definition 2–4
dispute settlement, court role 506–7
Ecuador, Lago Agrio 204–6, 506, 512–13, 516–18, 520
grate and imminent peril 155–6
human rights, and 508–9
natural disasters, relationship between 169–72
state responsibility for 155–6
water security, and 299
marine environment
pollution and disasters policy development
civil liability 163–4
international law obligations 437–9
policy development 162–4
seabed mining 164
trends 162
market regulation
benefits and limitations 43–4
Marks, Susan 511–12
marriage 396
Marshall, T.H. 29
micro-insurance 227
Millennium Development Goals 76, 404
water safety and sanitation 322, 325–6
water security 298, 303
minority groups, convention protections 402
mitigation see climate change; disaster mitigation
Mohenk Criteria 458–60, 462–3, 468
money laundering 127
murder 122–3
Nansen Initiative Protection Agenda 16, 374, 376
national contingency planning 17
approaches 431–2
ASEAN 443–4
Caribbean 443
EU Civil Protection Mechanism 442–3
Hyogo Framework 197–8, 445–6
South Africa 432–4
Southeastern Europe 442–3
United States 434–5
Yokohama Strategy 445
civil defence, framework convention 444
definition 428–9
development 430–31
disaster risk reduction, and 429–30, 445–51
international law obligations 451–2
civil defence framework convention 444, 451
hazard-specific conventions 436–40
human rights 446–8
ILC Draft Articles 449–50
industrial accidents 436–7, 439–40
nuclear disasters 439–40
oil pollution 437–9
multilateral resolutions and declarations 444–6
national security, and 432
preparedness cycles 429–30
principles 428–9, 431–5
regional arrangements, and 440–44
   early warning systems 443–4
   limitations 440–41, 451
risk assessment 443–4
sovereignty, and 430
natural disasters
   danger zones, global population distribution in 52
   definition 3, 93
human impacts
   adverse agency 118–20
   corruption 115
   urbanization 52–3
human rights, and 93–6, 508–9
   ambiguous relationship 108–9
   codes of conduct 100–101
   derogation from 94–6
   disaster management 106–9
IASC Guidelines 95–8
ILC Draft Articles 98–100
obligation to seek assistance 99, 471, 476–7
protection of freedoms 98
protection of property 98
right to humanitarian aid 103–5
right to intervene 105
right to life 88–9, 101–3, 201, 510
right to property 106–7
socio-economic rights 98, 511–12
state obligations 99
impact trends 69, 177
international criminal law, and 114–16
loss impact trends 69, 177
man-made disasters, relationship between 169–72
understanding, developments in 53
necessity
   military necessity limitations 139
   necessary and appropriate measures 193
   necessary food aid 256
   principle of 350–51
new medievalism 39–40
new technologies see also cyber law;
   cyberspace
   risks vs. benefits, balancing 34
Nigeria
   energy security policies 291
   no-harm rule 190–91
non-government organisations
   human rights duties to offer / provide assistance 471–2
   humanitarian role 225
   offers of assistance by 469–70
non-international armed conflict
   definition 140–41
   humanitarian aid 140–42
   international humanitarian law, applicability 148, 152
water security, and 304–5
non-occupied territory
   humanitarian aid obligations 137–40
   non-refoulement principle 312, 373, 390
non-state actors
   cyber attacks by 415, 421
non-state armed groups
   humanitarian aid in areas controlled by 142–6
   aid facilitation 145–6
   challenges 142
   humanitarian access 143–5
   obligations 143, 145–6
   UN Security Council intervention 146
   humanitarian law applicability to 152
nuclear disasters
   Chernobyl (1986) 161, 167, 436
   Hiroshima and Nagasaki detonations 166
   international law obligations 439–40, 507
occupied territory
   humanitarian aid obligations 135–7
oil pollution
   civil liability 163–4, 437–9
   international law obligations 437–9
OPEC 278
organized crime 126–7
pandemics 439
Piketty, Thomas 32
polluter pays principle 161
pollution
   air pollution 342–3
   civil liability 163–4
   disaster policy development 165–6
   freshwater pollution 165–6
   marine pollution 162–4, 437–9
oil pollution 163–4
Polyani, Karl 26–9
population displacement 16
armed conflict, and 115–16, 126, 367–8
bilateral and regional migration agreements 364
causes 359, 361
climate change / environmental 1, 312–13, 359
forcible transfer or deportation 123–4
multi-causal displacement 360
sudden-onset disasters 359–60
cross-border displacement 360, 364
admission criteria 375–8
inhuman or degrading treatment 373
international law, and 372–3
Nansen Initiative 16, 374, 376
non-return criteria 378–9
protection regime 372–5
regime reform proposals 373
threat to life 373
transhumance agreements 377
disaster displacement
causes 359–60
disaster management, and 363–4
international human rights law, and 362–3
international refugee law 364, 375
non-return measures 378–9
protection during 379–80
disaster risk reduction 363–4
mobility facilitation 366
planned relocation 366–7
resilience measures 365–7
risk maps 366
humanitarian access, and 369–70
internal displacement 360, 363
duration 371
legal regime 367, 390
protection during 367–70
regime limitations 390
returning home 370–72
international procedural guidelines 363, 368–71
limitations of 379–81
relatives, location of 370
responsibility to protect, and 365, 368–70
trends 16, 52, 358–60
voluntary migration 364, 366
water security, and 311–13
post-conflict disaster management
alternative dispute resolution 523–8
appropriateness 527–8
mediators / administrators 524–5
procedures 525–7
dispute settlement 18
awards, recognition and enforcement 513
damages, distribution of 521
domestic court role 516–23
forum non conveniens 517–19, 529
human rights treaty bodies role 508–13, 528–9
ICJ role 504–8, 528
immunity from jurisdiction 520–21
international court / tribunal role, generally 503–4, 515–16, 528–9
international criminal tribunals role 513–15, 528–9
man-made disasters 506–7
parties, identification difficulties 519–20
study limitations 503–4
transboundary harm, and 507–8
insurance and compensation 85
jurisdiction
forum non conveniens 517–19, 529
immunity from 520–21
limitations 504–5, 515–16
reconstruction limitations 18
responsibility to rebuild 70, 83–5
transitional justice 18
poverty
disproportionate impacts of disasters 13
earthquake fatalities, and 115
eradication, as sustainable development goal 185
food security, and 257
public policy development 26–7
State role and obligations 24–5
trade and investment influences on 24–5
trends 23–4, 257
precautionary principle 88, 308
prisoners of war 388–9
private sector
corporate social responsibility 225–6, 237–9, 246–7
corporate welfare 37–8
definition 229–30
disaster management role 13–14
disasters, liability for 506–7
dispute settlement, and 506–7
economic decolonisation 33–4
humanitarian aid 225
accountability 246–7
benefits of 226–7, 245–6
challenges and obstacles 230–32
characteristics 226
cluster approach 241–2
codes of conduct vs. best practice 239–41
coordination challenges 243–5
coordination policies 241–3
duty to cooperate, and 233
ethical principles 244
EU agency role 236
formal recognition of assistance role 233–4
guidance for 225–6, 229–30, 232–3
human rights law approach 237–41
inappropriate relief 228–9
insurance 244–5
integration into system 228–9
involvement trends 225–6, 228
limitations 13–14
national legal frameworks 234–7
partnership models 242–3
privileges and immunities 231–2
US agency role 236
insurance and reinsurance 227
non-government organisations
human rights duties to offer / provide assistance 471–2
humanitarian role 225
offers of assistance by 469–70
regulatory avoidance 40–41
taxation 38–9
proceeds of crime 127
property
land tenure, and 258
protection obligations 98
right to 106–7
public goods
private goods, and 44
protection 28
public interests
concept development 26–30
dispute settlement, and 36–7, 39
free market influences 32–4
globalisation, and 29–32, 37–40
importance of 43–4
international trade, conflicts between 33–44
justice, and 28
nation state accountability, and 29–30
new technologies, and 34
procedural bias, and 36–7
public safety, and 34–5
welfare trends 25, 27
public-private partnerships 13
radioactive substances
environmental policy development 166–8
Rawson, J. 173
recovery and reconstruction see responsibility to rebuild
Red Cross / Red Crescent Societies
disaster risk reduction role 64–5, 70, 79–80
IDRL Guidelines 60–63, 79
International Disaster Response Law Project 46–7, 56–9
organisational structure 49
policy development role 46–50, 55–9, 65–6, 481
responsibility to react 79–80
refugees see also international refugee law;
population displacement
child refugee rights 390, 399
definition 390
disaster-related, trends 384
Regional Comprehensive Economic Partnership (RCEP) 207
reinsurance 227
relief personnel
armed conflict, and 142, 151–2
state obligations 136–7, 145–6
visas, taxes and permits 145–6
crime conventions 232–4, 246, 339
definition 457–8
tax planning for 338–9
firefighting services 338–9
right to work in safe conditions 339
resilience, generally see also responsibility to prevent
definition 404
responsibility, generally see international responsibility; state responsibility
responsibility to prevent 70, 73–8
common but differentiated 186, 310, 418
crime concepts development 73–8
definition 73
due diligence 189–90, 193
crime policy development 74–5
reasonable steps 417–18, 420–23
risk mitigation 74
scope 74
sustainable development, and 177–80, 185–95
responsibility to protect
concept development 69–73
customary international law, and 88–9, 417
ILC Draft articles 466–7
international crimes, and 83, 89
disasters with natural causes 118–20
limitations 89–90
obligation to assist 90, 261–2, 315
Index 545

obligation to seek assistance 99, 471, 476–7
population displacement 365, 368–70
responsibility to prevent 70, 73–8
responsibility to react 70, 78–83
responsibility to rebuild 70, 83–5
responsible sovereignty concept 118–19
right to intervene, and 105
right to life, and 201, 448
scope 73
responsibility to react 70, 78–83
concept development 78–9
industrial accidents 436–7, 439–40
international crimes 83, 89
national contingency planning, and 448–9
nuclear disasters 439–40
oil pollution 437–9
pandemics 439
third party state responsibilities 81
right to rebuild 70, 83–5
definition 83–4
disaster relief termination 84
insurance and compensation 85
limitations 84
long-term reconstruction projects 85
post-disaster recovery, and 84–5
right to be heard 490–91
right to development 185
right to food 252–3, 255–6
after a disaster 264–9
during a disaster 260–64
soft law mechanisms 261
state and non-state actor obligations 261–2
right to intervene 105
right to justice 487
right to life
children 399
judicial interpretation 102–3
protection obligations 98–9, 101–3, 332–3, 448, 510
water contamination, and 332
right to property 106–7
right to sanitation 313, 330–31
right to water 313–15, 330–31
Rodrik, D. 31–2
Ruggie, J. 27, 41
rule of law 487
Sachs, J. 30
Saechao, Tyra 82–3
Samuels, J.W. 54
San Remo Principles 458–9, 469
sanitation
disease, and 322–3
human right to 313, 330–31
Millennium Development Goals 322
right to water, and 330–31
Scharpf, F. 27
search and rescue 354–5
security see energy security; food security;
water security
Sen, Amartya 116
cooperation principle 197–8
disaster, definition 303
population displacement 363, 365–6
principles 75, 270, 303
sexual violence 9, 398, 482–3
slavery and servitude, freedom from 393–4, 483
slow-onset / creeping disasters 4, 157–8, 173–4
social economic rights
development 26–30
globalisation, and 30, 39
social progress indices 40
soft law
human rights in natural disasters 100–101
limitations 19
role of 19, 57–8
South Africa
contingency planning 432–4
Sphere Project 239
Humanitarian Charter 100–101, 264, 314
starvation 105, 114, 117, 122, 128, 139, 306, 483
state responsibility 17, 89–90
accountability 72
aggravated state responsibility 69, 86–90
carbon emission reductions 76
civil defence 353–4
common but differentiated 186, 310, 418
customary international law, and 88–9, 417
disaster notification 185, 190
erga omnes obligations 507–8
human rights, and disasters 99
communication of essential information 448
disaster-affected states, duties of 471
entities external to disaster 471–2
national contingency planning 446–8
right to life, and 98–9, 101–3, 201, 332–3, 448, 501
humanitarian aid
armed conflict, during 134–5
non-international armed conflict, during 141–2
occupying states 135–7
transit states 135–8
industrial accidents 436–7, 439–40
internationally wrongful acts 350–51
man-made disasters, for 155
grave and imminent peril 155–6
nuclear disasters 439–40, 507
obligation to assist 90, 261–2, 315, 455–6
obligation to seek assistance 99, 471, 476–7
oil pollution 437–9
pandemics 439
precautionary principle 89
principle of necessity 350–51
responsibility to prevent 70, 73–8, 192
sustainable development, and 177–80, 185–95
responsibility to protect 69–73, 83, 88–90, 118–19, 365
responsibility to react 70, 78–83
responsibility to rebuild 70, 83–5
scope 73
search and rescue 354–5
state sovereignty, and 71–3
sustainable development 177–80, 187–95
third party state responsibilities 81
transboundary harm, prevention of 160–61, 187–9
water contamination 332–3
state sovereignty
disaster assistance, and 475–7
globalisation, and 29–30
international disaster law, and 151
national contingency planning, and 430
obligation to seek assistance, and 99
principle of cooperation, and 197
responsible sovereignty concept 118–19
state responsibilities, and 71–3, 118–19
sudden-onset disasters 4
sustainable development
anthropocentrism, and 185
definition 181–4
disasters, and
human rights law, and 199–201
prevention obligations 177–80, 185–95, 201–3
risks of 12–13, 177–8
due diligence 189–90, 193
environmental protection requirement 184
forestry management 339–40
judicial interpretation 182–3
parameters 184
policy development 181–4
principles 184–7
common but differentiated responsibilities 186
cooperation 185–6, 195–8
dangerous substances, transfer of 186
developing countries, special situations 186
disaster prevention 177–80, 185–95
intergenerational equity 184
poverty eradication 185
precautionary principle 190–91
prevention of transboundary harm 187–91
sustainable production and consumption 185
right to development 185
risk assessment 193–4
role and importance 177–8, 184
state responsibility 187–95
water contamination, and 320, 324–7, 334
Sustainable Development Agenda 2030 303
Sustainable Development Goals 2015 15, 24, 320, 326
Syria
UN Security Council intervention 146
terrorism 126, 275–6
cyberspace threats 406, 421
due diligence, and 421
Texaco-Chevron Ecuador case 204–6, 506, 512–13, 516–18
threat of imminent serious harm / death 127
Tokunga, E. 78
Toman, Jiri 55
too big to fail 39–40
torture, freedom from 373, 388–9, 393
Trans-Pacific Partnership (TPP) 207
Transatlantic Trade and Investment Partnership (TTIP) 207
transboundary harm see also pollution
cyberspace disasters, and 407–8
dispute settlement 507–8
international law obligations
industrial accidents 436–7, 439–40
nuclear disasters 439–40
oil pollution 437–9
pandemics 439
prevention of
environmental policy development 159–61
reasonable steps 417–18, 420–23
sustainable development, and 187–91
transitional justice 18
changing attitudes to 488
children, post-conflict justice for 18, 489–91, 499
institutional reform 497–9
prosecutions 492–3
reparations 496–7
role in reform 490–91
Truth Commissions 493–6
international disaster response, and 486–9
peace-building, and 486–8
Truth Commissions 493–6
tsunamis 82

 corporate humanitarian engagement 245
dispute settlement, ADR role in 526–7
 environmental policy development 159
 vulnerable persons, impacts on 383–4
 Turkish Catastrophe Insurance Pool (TCIP) 245
typhoons
 Ketsana (2006) 377

 UN Office for Disaster Risk Reduction 74
 United Kingdom
 energy security policies 289–91

 United Nations
 disaster relief policy
 development 51–3, 74–5
 IDRL Guidelines, and 61
 peacebuilding support 84–5
 United States
 contingency planning 434–5
 energy security policies 280–85
 urbanization 52–3, 299
 use of force, definition 411–15

 Van Harten, G. 35–6
 Van Zyl, P. 488
 victims
 international courts / tribunals, recourse to 515–16
 vulnerable persons see also children;
population displacement
 disabled persons 384, 387–9, 399–401
disasters, impacts on 383–5
elderly persons 401–2
minority groups 402
protection regime 16, 385–6, 392, 403–5
armed conflict, during 387–90
derogation clauses 392–3
development 403–4
international human rights law 314–15, 392
international humanitarian law 387–90
international refugee law 390–92
limitations 389–90, 403–4
UNHCR role 391–2
sick or wounded persons 388–9
women 383–4, 395–6

 war crimes 113, 125–6, 306–7
 Warsaw Mechanism for Loss and Damage Associated with Climate Change Impacts 172
Washington consensus 32
water see also drought; floods; water contamination; water security; water supply
domestic vs. agricultural use 321
water contamination 15
causes 321–3
disaster risk reduction 327–9, 334
disasters, role in 320
disease, and 322–3
effects of 319, 321–3
human rights, and 333–4
right to life 332
right to water 313–15, 330–31
sanitation 330–31
industrial waste 323
International Drinking Water Decade 324–5
Millennium Development Goals 322, 325–6
prevention, international law role 320, 334
risks of 319
safety challenges 321–2
soft law instruments 326
state obligations 332–3
sustainable development, and 320, 324–7, 334
toxic contaminants 323
water crisis 319
definition 299–300
water security 14–15
armed conflict, and 301, 304–6
climate change, and 301–3, 309–11
definition 296–8
disasters, and 295
armed conflict, and 301
floods and drought 299–301
obstacles and threats to water security 300–301
water insecurity causing 299–300
water-related disasters 299
equitable and reasonable use 308

Susan C. Breau and Katja L.H. Samuel - 9781784717407
Downloaded from Elgar Online at 03/06/2019 06:04:23AM
via free access
548  *Research handbook on disasters and international law*

equity principle 317
global demand trends 295
governance approaches 296–7
individual perspective 298
insecurity, influences on 296–7
international criminal law, and 303–4, 306–7
international environmental law, and 307–9
international human rights law, and 313–15
international humanitarian law, and 303–6
international refugee law, and 311–13
international water law 307–9, 315–16
legal regime limitations 316–17
levels of 297–8
population displacement, and 311–13
precautionary principle, and 308
risks
  geographical distribution 301–3
  socio-economic distribution 301–3
starvation, and 306
war crimes, and 306–7
water crisis, definition 299–300
water supply
  access and demand trends 295, 334–5
disaster implications 295
wealth
  measurement of 40
  unequal distribution 23–4, 32
Westphalian model of international relations 29–30
White, Rob 130
Whitmore, J. 173
wildfires 15–16
  assistance and cooperation 338–9
  bilateral arrangements 344–9
  challenges 352–3
FAO Fire Management Global
  Assessment 341–2, 344–5
human rights conventions 339
international civil defence 353–4
international environmental law, generally 343–4
international search and rescue 354–5
local and regional arrangements 349–50
state obligations, generally 343–4, 350–52
transboundary pollution regime 342–3
UN Resolutions 339–40
unilateral action 350–52
definition 336–7
firefighting services, provision 338–9
forestry management, and 339–40
forests, importance of 339–40
human rights, and 339
impacts 337, 339–40
international law applicability 15–16
soft law
unique disaster characteristics 337–8, 350–51
women
  convention protections 383–4, 395–6
disasters, impacts on 383–4
harmful traditional practices, protection from 395–6
marriage, consent to 396
water insecurity risks 302–3
Wong, Jarod 82–3
World Bank 264, 267
World Trade Organization
  GATT 31–2
Yokohama Message / Strategy and Plan of Action 74, 177–8, 180, 194, 328