

# Introduction

## *The Editors*

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When the new millennium began, rather ominously, with a series of spectacular natural and man-made catastrophes, some commentators spoke of these events as the opening act of an ‘age of disaster’<sup>1</sup> in which the line between man-made and natural disasters was increasingly becoming blurred. For others this beginning symbolized, more dramatically still, the dawn of a new geological epoch, the Anthropocene,<sup>2</sup> a period in which human activity has begun to affect the very mechanics of ‘system Earth’ as such.<sup>3</sup> Whatever this inauspicious beginning’s larger significance (or eloquent characterization), it surely was also a prosaic reminder of the inexorable increase in discrete, intrinsically man-made hazards capable of causing significant accidental harm. Prime illustrations of this phenomenon are the accidents at the Montara Wellhead Platform<sup>4</sup> and the Macondo (Deepwater Horizon – DWH)<sup>5</sup> oil well, in 2009 and 2010 respectively, as well as the (earthquake and tsunami-

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<sup>1</sup> ‘Rather than a singular catastrophic event, Hurricane Katrina seems more and more like the opening act in what will become known as an age of disaster. Since Katrina, not only hurricanes, but also oil spills, earthquakes, floods, tornadoes, terrorist attacks, volcanoes, heat waves, blizzards, and all manner of other disasters seem to be occurring in the United States and across the globe with increasing regularity and destructiveness.’ AALS Workshop on Torts, Environment and Disaster, Berkeley, California, June 8–12, 2012, in aalsnews, February 2012, 12, accessed March 15, 2017 at <https://www.aals.org/wp-content/uploads/2014/04/february2012.pdf>.

<sup>2</sup> See ‘Welcome to the Anthropocene,’ *The Economist*, May 28, 2011, 11; and UNEP, *GEO-5 Global Environmental Outlook: Environment for the Future We Want* 193–214 (Valletta, Malta: United Nations Environment Programme, 2012).

<sup>3</sup> See generally, UNEP, *Keeping Track of Our Changing Environment: From Rio to Rio+20 (1992–2012)* (2011).

<sup>4</sup> See *Report of the Montara Commission of Inquiry* (Montara Commission of Inquiry, 2010).

<sup>5</sup> See National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling, *Deep Water: The Gulf Oil Spill Disaster and the Future of Offshore Drilling, Report to the President* (2011).

triggered) disaster at the Fukushima Daiichi nuclear power plant in 2011.<sup>6</sup>

Whereas, post-Fukushima, the nuclear industry underwent critical appraisal of its international regulatory framework and a tightening of its safety and emergency preparedness and response requirements,<sup>7</sup> in the wake of the Montara and DWH accidents, the offshore oil and gas industry escaped global-level scrutiny and regulatory attention for the simple reason that the industry had remained largely unregulated internationally. To be sure, the two offshore accidents did trigger reviews and, in a few instances, specific adjustments of national (and regional) laws and regulations applicable to offshore oil and gas operations. By contrast, at the global level, efforts at expanding the offshore industry's international governance structure beyond its presently extremely limited scope, let alone at establishing globally binding criteria to manage critical aspects of the risk of offshore accidents, have largely been stymied.<sup>8</sup> This lack of international regulatory attention to the offshore industry, however, is unjustifiable given enormous actual (as demonstrated by the Ixtoc I and Montara incidents) or potential (as hinted at by the DWH event) transboundary impacts of offshore accidents and the state of global regulatory interdependence characteristic of the industry as a whole.

The present volume seeks to provide a comprehensive analysis of this neglected transnational legal dimension of offshore oil and gas activities. It does so by covering both the prevention/minimization of harm and the post-accident management of risk, namely the allocation of harm through liability and compensation arrangements and, equally importantly, the processing of claims for compensation, especially in a mass torts context. Although the book explores the critical elements of what is a public international law framework for offshore oil and gas operations globally, it

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<sup>6</sup> 'Although triggered by the . . . [earthquake and tsunami of March 11, 2011], the subsequent accident at the Fukushima Daiichi Nuclear Power Plant cannot be regarded as a natural disaster. It was a profoundly manmade disaster – that could and should have been foreseen and prevented. And its effects could have been mitigated by a more effective human response.' The National Diet of Japan, *The Official Report of the Fukushima Nuclear Accident Independent Investigation Commission* 9 (The National Diet of Japan, 2012).

<sup>7</sup> See, e.g., Vienna Declaration on Nuclear Safety, Doc. CNS/DC/2015/2/Rev.1, February 9, 2015; and IAEA, *Preparedness and Response for a Nuclear or Radiological Emergency*, General Safety Requirements No. GSR Part 7 (Vienna: International Atomic Energy Agency, 2015).

<sup>8</sup> An example in point is Indonesia's original proposal for an international legal instrument to regulate transboundary liability and compensation issues associated with offshore accidents. For details, see Chapter 6, this volume.

draws heavily on comparative assessments of domestic legal concepts and approaches, especially as regards liability for and compensation of harm, and the procedural aspects of the handling of claims for compensation. In this vein, the book offers – and we hope you will agree – a unique perspective and closes a noticeable gap in the literature, as there exist no comparably extensive studies on how to manage – from a legal perspective – the transboundary risk of offshore accidents.

Finally, one of the major and, we submit, unavoidable challenges that a volume with multiple chapters and authors such as this one poses is the inevitable time lag between the original conceptualization of the project and its completion. This has proved to be a matter of special concern given the present volume's subject matter and the offshore industry's evolving prospects. Whereas the original idea for the book had been conceived in the immediate aftermath of the two accidents and the project began being tackled in earnest when the industry emerged from its long slump in the mid-decade, the industry now – in mid-2018 – faces again uncertain long-term prospects. This might, of course, affect the perception of the topicality of the issues under consideration in the present volume.

There is no denying that the climate change-driven campaign to accelerate the world's transition to a low-carbon economy will affect offshore oil and gas activities:<sup>9</sup> They are bound to decline over time.<sup>10</sup> At the same time, however, it is unlikely that the risk of offshore accidents is diminishing appreciably given that extractive operations continue to expand into deeper waters, remote locations and hostile environments, and now involve smaller and possibly less experienced operators. Besides, as is true of any maturing industry such as this one, the risk of accidents might increase rather than decrease. In other words, there is every reason to believe, we would argue strenuously, that the theme of this volume, rather than declining in importance, is likely to remain highly topical, at least in the short or medium term.

New Orleans, August 2018

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<sup>9</sup> See, e.g., 'France passes law banning all gas and oil production by 2040,' *Independent*, 20 December 2017, accessed April 15, 2018 at <https://www.independent.co.uk/news/world/europe/france-oil-gas-ban-production-2040-law-a8119976.html>; and Jamie Smith, 'New Zealand bans new offshore oil exploration,' *Financial Times*, April 13, 2018, 13.

<sup>10</sup> Some experts estimate that global overall oil demand will peak as early 2023 and as late as 2070. See 'Oil's "life and death" question,' *Financial Times*, June 20, 2018, 7.