

## The Use of the Regular Militaries for Natural Disaster Assistance: Climate Change and the Increasing Need for Changes to the Laws in the United States, China, Japan, the Philippines, and Other Countries

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# THE USE OF THE REGULAR MILITARIES FOR NATURAL DISASTER ASSISTANCE:

CLIMATE CHANGE AND THE INCREASING NEED FOR CHANGES TO THE LAWS IN THE UNITED STATES, CHINA, JAPAN, THE PHILIPPINES, AND OTHER COUNTRIES

By Donald D.A. Schaefer\*

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## INTRODUCTION

Today's environment has been changing, with ever-more hurricanes, typhoons, and cyclones becoming stronger and causing increasing damage to lives, communities, and countries as a whole. For the most part, the response time has been slow due to bureaucratic missteps and other top-down governance. Regular militaries have often been brought in haphazardly, and in many cases toward the end of the event. Militaries around the world should find ways to allow more effective use in assisting natural disaster efforts. Currently, politicians call in the military more as an afterthought when things start to get catastrophic, but by that time it is often too late. Instead, countries should have a plan in place for a single call from the president, prime minister, or other national leader to his or her military leader(s) to mobilize military forces when an event such as a category 5 typhoon or hurricane is approaching. Many nations will need to change their laws, revise their plans, and provide ongoing training for both military leaders and personnel to ensure that such protocols are allowed, understood, and implemented. With increased climate change and the impact that it is having, such action will become increasingly necessary: millions of lives will depend upon changes to many nations' current internal laws regarding local and international disaster assistance in order to survive.

This paper examines four developed nations that all face frequent natural disasters and that also share troubled histories concerning cooperating on military matters: the United States, China, Japan, and the Philippines. These nations were chosen to complete a comparative analysis with the United States. The selected countries were chosen from the Asia-Pacific region, which has continued to experience some of the greatest impacts from typhoons, flooding, and earthquakes, and to survey a variety of governmental policies. The concerns this paper raises set a precedent for other countries to take similar plans to train regular militaries for internal catastrophic natural disasters in advance and to put these practices into play immediately, preventing wasted time trying to figure out what to do next. These changes require amendments and reinterpretations of Constitutional laws, but nations around the world could benefit from making the necessary changes to ensure that loss of life and property decrease.

## CURRENT USE OF MILITARIES

Currently, militaries around the world primarily protect their countries and, if deemed necessary, fight wars. In discussing the political nature of wars, 19<sup>th</sup> century martial strategist Clausewitz posits that "war is simply a continuation of political intercourse, with the addition of other means. We . . . want to make it clear that war in itself does not suspend political intercourse or change it into something entirely different. In essentials that intercourse continues, irrespective of the means it employs."<sup>1</sup> War, therefore, is politics by other means. Nations have used their militaries to quell domestic uprisings as well as fight wars from both those who would invade them and those they would invade. Militaries do not appear to frequently deploy to provide aid to those in disaster-stricken areas, however, ignoring a major political role that militaries could play outside war time.

While the United States' military has grown under the leadership of United States President Donald Trump,<sup>2</sup> China has steadily risen as a global military power.<sup>3</sup> Weizhen Tan, Markets Editor for CNBC Asia points out, "Asia does not depend solely on the U.S. for security, but with the Chinese navy, army and air force growing in strength, a 'far more multi-polar, unstable military environment' has resulted."<sup>4</sup> A recent report by the U.S. Department of Defense acknowledges this shift:

China's leaders have benefited from what they view as a "period of strategic opportunity" during the initial two decades of the 21<sup>st</sup> century to develop domestically and expand China's "comprehensive national power." Over the coming decades, they are focused on realizing a powerful and prosperous China that is equipped with a "world-class" military, securing China's status as a great power with the aim of emerging as the preeminent power in the Indo-Pacific region.<sup>5</sup>

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China also has a very large military when compared to the United States.<sup>6</sup> According to *Business Insider*, “With a population of 1.3 billion to draw from . . . China has over 2.3 million in active service, with an additional 1.1 million as reserves and military police.”<sup>7</sup> With such large militaries, both would be expected to be able to address internal disasters with force, but neither side has done an adequate job with formally stated and provisioned preparations to this point.

The final two countries this paper analyzes, the Philippines and Japan, both have much smaller militaries and have chosen to use them for primarily defensive purposes.<sup>8</sup> China and the United States have continued strong if tenuous relationships with Japan – relationships that are being tested as China increases its reach within the Eastern Hemisphere.<sup>9</sup> Japan has a tremulous history with both China and the United States<sup>10</sup> due to the wars against and occupation of these countries, but today Japan depends on and benefits from both.<sup>11</sup> Japan surrendered to the United States after a lengthy and bloody war,<sup>12</sup> but has since gained influence as a key American ally.<sup>13</sup> Japan’s military has been primarily used for defense purposes in the post-World War II era.<sup>14</sup> It is a military, however, that can and should be used in the case of natural disasters.

With China’s increasing presence in the Asian world, however, Japan appears to be moving away from the United States as an ally<sup>15</sup> even as it continues to receive vast amounts of aid through a large U.S. military presence within its borders.<sup>16</sup> For Prime Minister Shinzō Abe, finding that balance between China’s Xi and America’s Trump continues to be a challenge. On the one hand, his relationship with Trump maintains the strong ties his country continues to enjoy economically and militarily with the United States. Despite this history of mutual support, Trump has found Japan willing to push back against him and perhaps even win regarding economics. William Pesek, author of *Japanization: What the World Can Learn from Japan’s Lost Decade* and *Politico* reporter, states, “Trump might be surprised to find Abe is more willing to push back than roll over” when it comes to trade relations with the United States.<sup>17</sup>

Both Xi and Abe have strengthened their countries’ friendship, despite the histories of their two respective countries. Japan’s relationship with China has come with a price, however. Many Chinese citizens refuse to forget<sup>18</sup> the Nanjing Massacre<sup>19</sup> even as officials bypass mentioning this incident in order for the two countries to work more closely together. The Associated Press states, “Chinese officials struck a tempered tone on the 80th anniversary of the Nanking Massacre on Wednesday, saying China would ‘look forward’ and deepen friendship with its neighbor Japan despite historical misgivings.”<sup>20</sup> Current tensions over the Senkaku Islands, which both China and Japan claim, also threaten ongoing efforts at reconciliation.<sup>21</sup> Yet, both countries appear ready to move beyond these islands. As Nakamaru points out,

On his three-day visit to Beijing from Saturday, Foreign Minister Taro Kono was on a mission to further a recent improvement in Sino-Japanese ties following years of

animosity over a territorial dispute and differing views on wartime history.

“Japan-China relations have normalized,” Kono told Chinese Premier Li Keqiang in a meeting Monday. “There are many difficult issues that we have yet to resolve, but we should stand shoulder to shoulder to work on issues on a global scale.”<sup>22</sup>

As these two countries grow closer and put their differences aside, simple economic cooperation and peace-time diplomacy should not overshadow international disaster preparation. For true peace between China and Japan, a mutual agreement to assist each other should a catastrophic event impact either of them needs to be established.

In the case of the Philippines, the military (estimated to be around 300,000 in strength<sup>23</sup>) has transformed recently from a primarily internal defense posture to one of protecting its seas against China and others who would use its territorial waters.<sup>24</sup> At the same time, this nation has gotten closer to China as the Philippines sees such relationship with the United States as waning<sup>25</sup>: “‘Your Honors, in this venue, I announce my separation from the United States . . . both in military, but economics also,’ said Philippine president Rodrigo Duterte to a burst of applause from an audience of officials in Beijing’s Great Hall of the People. . . .”<sup>26</sup> This distancing has continued. De Castro points out the difference in Duterte’s administration more specifically,

President Duterte has charted a different course for Philippine foreign policy. His pronouncements and actions are undoing former President Aquino’s agenda of balancing China’s expansive claim in the South China Sea specifically by weaning the Philippines away from its long-standing treaty ally, the United States. In turn, he has gravitated toward China. President Duterte believes that an appeasement policy on China is advantageous for the Philippines and is worth pursuing in exchange for the latter’s economic largesse.<sup>27</sup>

Still, Duterte must contend with the ongoing conflict with China in the South China Sea, specifically as it relates to the building up of defensive forces surrounding the “islands, islets, reefs, and shoals contested by the Philippines.”<sup>28</sup> Duterte struggles to find a balance between the desire to continue his ties to the United States<sup>29</sup> and his desire to court Xi amidst the ongoing conflict in this region.<sup>30</sup> The ties between Xi and Duterte continue to grow, however:

Beijing and Manila have agreed to a joint oil and gas exploration deal – one of 29 deals that were signed on Tuesday as Chinese President Xi Jinping began a two-day state visit to the Philippines.

The two nations also signed a memorandum of understanding to cooperate on Beijing’s vast trade and infrastructure strategy, the “Belt and Road Initiative”, and agreed to boost ties.

After meeting Philippine President Rodrigo Duterte for talks, Xi described the visit as a “milestone” in the countries’ relations. Xi is the first Chinese leader to visit Manila in 13 years.

... “China and the Philippines have a lot of common interests in the South China Sea,” Xi said after the talks. “We will continue to manage contentious issues and promote maritime cooperation through friendly consultation.”<sup>31</sup>

The ongoing conflict between the United States and China has given way to the possibility of a greater Chinese interest in the Philippines as China chooses to move toward greater influence within this area of the world. Yet, Trump continues to court Duterte, even boasting, “We’ve had a great relationship.”<sup>32</sup> According to the *Washington Post*, however,

At an Asian summit last week, Vice President Pence and Chinese President Xi Jinping traded barbs and delivered dueling visions of an Asia-Pacific region tilted toward one of two poles: the United States or China.

Hours later, the Chinese leader hit the road on a Southeast Asian charm offensive.

Xi swept into the Philippines on Tuesday as the first Chinese leader to make a state visit in 13 years. . . .

Xi’s visit to the Philippines — once an unshakable U.S. ally with deep historical and cultural ties to the United States — encapsulates how Southeast Asia and the Pacific have become ground zero in the accelerating contest for global influence between Beijing and Washington.<sup>33</sup>

So, while the United States may wish to move forward with its ties, both Duterte and Xi increasingly choose to push back against America and move closer together. As the Philippines chooses which relationship to strengthen, both nations will likely continue to have influence.

Should another catastrophic event such as a category 5 typhoon reach its shores,<sup>34</sup> the Philippines will need to act fast but may call upon assistance from both of its powerful trade partners, the United States and China. The South China Sea<sup>35</sup>, the East China Sea<sup>36</sup>, and seas globally<sup>37</sup> have been trending warmer, directly impacting China, Japan, and the Philippines through stronger and more powerful typhoons. Each nation benefits most by remaining in close relationship with the other nations to survive as a viable economic entity; therefore, all four countries should be prepared to work with each other as well as other nations, should a catastrophic natural disaster occur.

## A CHANGING WORLD

The year 2018 saw some of the most extreme weather since records began being recorded.<sup>38</sup> A recent report by the *World Meteorological Organization* paints a picture of steadily increasing extreme weather,<sup>39</sup> including increased rainfall and droughts that have led to flooding and wildfires<sup>40</sup> globally;<sup>41</sup> in the United States, Hurricanes Florence and Michael;<sup>42</sup> in Asia,

typhoons *Mangkhut* (Philippines and China), *Yutu* (Mariana Islands), and *Jebi* (Japan).<sup>43</sup> All told, natural disasters affected approximately 62 million people,<sup>44</sup> which explains the United Nations’ assertion:

Climate Change is the defining issue of our time and we are at a defining moment. From shifting weather patterns that threaten food production, to rising sea levels that increase the risk of catastrophic flooding, the impacts of climate change are global in scope and unprecedented in scale. Without drastic action today, adapting to these impacts in the future will be more difficult and costly.<sup>45</sup>

With global temperatures rising, the impact of the changing environment has become more apparent with each passing year.<sup>46</sup> For the first time, in 2019 “the concentration of carbon dioxide in the atmosphere eclipsed 415 parts per million. . . . Saturday’s carbon dioxide measurement of 415 parts per million at Hawaii’s Mauna Loa Observatory is the highest in at least 800,000 years and probably over 3 million years. Carbon dioxide levels have risen by nearly 50 percent since the Industrial Revolution.”<sup>47</sup> Climate change thus presents a “threat multiplier”:<sup>48</sup> climate change will continue to increase the power and scope of natural disasters, which will increasingly affect a population that may reach 8 billion by 2025.<sup>49</sup> Even as leaders in the United States refuse to address how it impacts humans during major events such as flooding, this paper urges world leaders to begin determining how best to address the changing environment’s impact on a population during catastrophic events.<sup>50</sup>

Current acknowledgment of and preparation for climate change remains insufficient. The leaders of the United States, China, Japan, and the Philippines have addressed climate change in drastically different ways. Trump has always been a sceptic of climate change. In a *Washington Post* article,

President Trump on Tuesday dismissed a landmark report<sup>51</sup> compiled by 13 federal agencies detailing how damage from global warming is intensifying throughout the country, . . .

The comments were the president’s most extensive yet on why he disagrees with his own government’s analysis, which found that climate change poses a severe threat to the health of Americans, as well as to the country’s infrastructure, economy and natural resources. The findings — unequivocal, urgent and alarming — are at odds with the Trump administration’s rollback of environmental regulations and absence of any climate action policy.

“One of the problems that a lot of people like myself, we have very high levels of intelligence but we’re not necessarily such believers. . . . As to whether or not it’s man-made and whether or not the effects that you’re talking about are there, I don’t see it.”<sup>52</sup>

Trump has continued to regard climate change skeptically, even as more floods, hurricanes, and tornadoes ravage the United States. In contrast to Trump, Xi has been a vocal supporter of issues concerning climate change and has been a world leader when it comes to pollution and alternate forms of energy, such as solar panels, wind energy.<sup>53</sup> Xi stated in 2016,

I have said for many times that green mountains and clear water are as good as mountains of gold and silver. To protect the environment is to protect productivity, and to improve the environment is to boost productivity. This simple fact is increasingly recognized by people.

We will unwaveringly pursue a strategy of sustainable development and stay committed to green, low-carbon and circular development and China's fundamental policy of conserving resources and protecting the environment. In promoting green development, we also aim to address climate change and overcapacity. In the next five years, China's water and energy consumption as well as CO2 emission per unit of GDP will be cut down by 23%, 15% and 18% respectively. We will make China a beautiful country with blue sky, green vegetation and clear rivers, so that the people will enjoy life in a livable environment and the ecological benefits created by economic development.<sup>54</sup>

The contrast between Trump and Xi's outlook on the environment could not differ further. Both leaders will need to address the changes that are taking place in the environment as more catastrophic events caused by climate change such as category 5 typhoons and hurricanes, along with the flooding that occurs as a result, only increases in the future. How each comes to terms with this change may well determine the fate that each may bring to countless people.

Both Abe of Japan and Duterte of the Philippines have supported counteracting climate change. Japan and the Philippines have faced extreme weather systems that have forced countless people from their homes and communities, making disaster management the key to survival.<sup>55</sup> Abe and Duterte each have come to a better understanding of the impact of global warming and have stated their desire to address the changes that are taking place. In Japan, where experience with climate change has been dramatic, each passing year requires further changes. As noted by Abe in an op-ed on September 23, 2018,

Unprecedented torrential rain and landslides ravaged the residents of western Japan this summer, killing more than 200 people, and ruining hundreds of thousands of livelihoods. Meanwhile, severe scorching heatwaves struck the country and resulted in approximately 160 deaths. Fierce heat also gripped North America and Europe, and hurricanes and typhoons hit the US and Philippines. . . .

Climate change can be life-threatening to all generations, be it the elderly or the young and in developed and developing countries alike. The problem is exacerbating more quickly than we expected. We must take more robust actions. And swiftly.

The way forward is clear. We must save both the green of the earth and the blue of its oceans. . . .

Addressing climate change, marine pollution, and disaster risk reduction are critical pillars for achieving the UN's Sustainable Development Goals.<sup>56</sup>

Abe has chosen to address climate change head-on: "Almost immediately after winning another term at the helm of Japan's ruling party, Prime Minister Shinzo Abe signaled that he intended to show more leadership on climate change."<sup>57</sup> For him, the reality of the recent changes in climate is reason for concern, as Japan has faced massive mudslides caused by increasing rain patterns and typhoons.<sup>58</sup> Therefore, the necessity of preparing for the next major catastrophic event to face Japan from a natural disaster perspective is critical, which requires considering how the military will be used when such events take place.

For Duterte, the Philippines faces a similar scenario regarding climate change<sup>59</sup> and the necessity to address it. Duterte has stated recently, "Climate change is not a typhoon that visits your country once or twice a year. Climate change is a day-to-day problem."<sup>60</sup> In regards to the withdrawal of the United States from the Paris Agreement on Climate Change, Duterte has stated, "I have to fathom the reason or even the rationale of the withdrawal. Is it because it cannot work hand in hand with other nations? Or is it because Trump would like to do it alone?"<sup>61</sup> Duterte signed the Paris agreement in 2017, even with his misgivings that it favors industrial countries.<sup>62</sup> His support, however, has been strong for the need to address climate change and its impact on the environment. Given the recent catastrophic events – from heavy rains, to flooding, and typhoons – that have hit the Philippines<sup>63</sup> and other parts of Asia,<sup>64</sup> such support should continue not only from him but also from other leaders around the world. Duterte preaches that cooperation is necessary:

President Rodrigo Duterte has called on different countries to have a "collective action" on climate change amid the concerning impacts of weather disturbances on developing countries.

During the Belt and Road Forum for International Cooperation in China, Duterte thanked countries that helped the Philippines in times of calamities and called for a more "proactive measures" on climate change.

"President Duterte expressed grave concern over the impact of more frequent and more intense disruptive weather on developing countries like the Philippines, and called for greater principled, concerted and

collective action on climate change,” Malacañang<sup>65</sup> said in a statement released Sunday.<sup>66</sup>

It is apparent that Duterte has grasped the significance of climate’s impact on his country, as have Xi and Abe to a lesser extent. Trump, for his part, should also come to realize the significance of climate change on natural disasters in the United States. Collectively, these nations represent a relatively small sector of the global impact of climate change. Other regions of Asia, Africa, Latin America, and Europe should all be taken into account, with the leader of each country addressing how climate change will affect the weather patterns within their respective leadership when it comes to catastrophic natural disasters. In turn, laws will need to change to allow the military more streamlined access to the areas most affected when such events occur. It is this area – the legal side of assistance – that this paper now turns.

### **GLOBAL LEGAL SITUATIONS IN ADDRESSING NATURAL DISASTERS VIA THE MILITARY**

Perhaps few other issues have dominated the issue of climate change in relation to natural disasters as the impact on human lives: Hurricane Michael,<sup>67</sup> Maria,<sup>68</sup> or Katrina<sup>69</sup> in the United States; the 2008 Sichuan earthquake<sup>70</sup> and the 2018 Super Typhoon Mangkhut<sup>71</sup> in China; the Great East Japan Earthquake in 2011 that caused the Fukushima Daiichi Accident<sup>72</sup> and the 2018 Typhoon Jebi in Japan<sup>73</sup>; or the super typhoon Yolanda/Haiyan in 2013<sup>74</sup> as well as Super Typhoon Mangkhut that first came ashore in the Philippines before moving on to China.<sup>75</sup> The military of each of these countries played some role, and the government in each country had to account for its actions during the devastating consequences of each event. Laws need to change to allow regular militaries to be used proactively and effectively during natural disasters rather than in the haphazard, often limited manner currently used, and certainly not as a last resort.

The main problem most established nations face in dealing with natural disasters is the sovereignty for the local area’s leadership being overshadowed by national leadership bringing troops to a given area. The legal challenges may be immense; however, by changing or reinterpreting laws, such massive use of military support in times of national crisis will ensure the more effective use of the armed forces during natural disasters, potentially saving whole communities.

### **THE UNITED STATES OF AMERICA**

Perhaps few other issues stand in the way of an effective use of America’s regular military (Army, Air Force, Marines, and Navy) as much as the Posse Comitatus Act<sup>76</sup> (PCA) of 1878<sup>77</sup> that forbids the use of federal troops for enforcement purposes.<sup>78</sup> While any number of exceptions<sup>79</sup> are currently allowed, the Insurrection Act of 1807<sup>80</sup> presents the best opportunity. The Insurrection Act allows troops (beyond the National Guard) to be deployed in the United States for peace-keeping duties<sup>81</sup>. McGrane states,

When the Insurrection Act has been invoked, the PCA’s restrictions are lifted and members of the military, under the command of the president, are free to arrest U.S. citizens for violations of state and federal law. . . . The Insurrection Act, as an exception to the PCA, recognizes that in certain circumstances the national interest is best promoted by the federal military performing law enforcement functions within the states.<sup>82</sup>

An Executive Order<sup>83</sup> concerning the interpretation of the Insurrection Act, however, could allow for the regular military to be used at the immediate and massive scale for catastrophic natural disasters as well as an exception to the PCA that needs to be signed by Trump to ensure that when another Hurricane Katrina level event occurs the necessary legal framework will be in place to ensure the survival and wellbeing of those involved. The use of the regular military will assist the Federal Emergency Management Agency (FEMA) but should also be the first major force to arrive once a catastrophic natural disaster occurs.

The use of this executive order to use the regular military as armed police in addition to the National Guard in this capacity would most likely be upheld by the courts if it is given as an exception to the Insurrection Act. Executive orders and other forms of unilateral actions have been upheld by the courts<sup>84</sup> and have the power of those signed into law by Congress,<sup>85</sup> including the use of executive agreements as a unilateral action<sup>86</sup> to provide assistance to an ally like Japan or the Philippines, should a catastrophic event occur there or elsewhere outside the borders of the United States.<sup>87</sup>

U.S. presidents throughout history have chosen to use executive orders for purposes of unilateral actions. Gallagher and Blackstone have stated, “While Congress is understood to be the primary institution in the policy-making process, ambiguity about the meaning of ‘executive power’ and ‘faithfully execute’ has opened the door for many influential policy decisions to be made by presidents acting unilaterally.”<sup>88</sup> Trump has made extensive use of executive orders<sup>89</sup> since coming into office,<sup>90</sup> and those orders have been given deference<sup>91</sup> – especially given the conservative nature of the current U.S. Supreme Court, with conservative justices holding a 5-4 lead. As with previous presidents, personality traits may determine the course of action and in what circumstances such orders are given.<sup>92</sup>

Once a catastrophic natural disaster event takes place – domestically or internationally – the president must address it, which will impact the public’s perception of the president as a leader.<sup>93</sup> Therefore, it is critical to understand the use of such unilateral actions from the perspective of the executive.<sup>94</sup> Presidents have used the armed forces without Congressional authorization through the use of unilateral action,<sup>95</sup> typically sending troops on military missions overseas, without informing Congress until after the action was initiated.<sup>96</sup> Therefore, the president can point to precedent to take a unilateral action after first giving an executive order (privately or otherwise) that will allow the president to commit troops to a part of the United

States threatened by a hurricane, earthquake, etc. The PCA failed to assist President George W. Bush [hereafter “Bush”] with Hurricane Katrina in 2005 because troops were not deployed until much later than was necessary,<sup>97</sup> and even then they were not used effectively.<sup>98</sup>

Had an executive order been given previously regarding the Insurrection Act, troops could have been provided during Hurricane Katrina at the onset, thereby saving lives and property.<sup>99</sup> Yet it was federalism that “substantially motivated President Bush’s decision not to invoke the Insurrection Act after Katrina.”<sup>100</sup> He goes on later to state,

Katrina exposed a failure in the United States’ disaster relief system. The storm made landfall on Monday morning; it wasn’t until Saturday that the federal government made up its mind about whether or not to use the military for law enforcement purposes inside New Orleans. Because of the objections of Governor [Kathleen] Blanco and the overriding state sovereignty concerns, the Bush Administration decided against invoking the Insurrection Act and using military as police.<sup>101</sup>

The Office of Legal Counsel under the Department of Justice stated that Bush had legal authority to use the Insurrection Act over the objection of Governor Kathleen Blanco to justify the presence of active-duty federal troops.<sup>102</sup> In this sense, the Insurrection Act has proven to constitute an exception to the PCA in the time of Hurricane Katrina, and, as a consequence, may be used again and legally upheld. Through an executive order signed in the near future, Trump and future presidents may find such a written order useful at a moment’s notice to assist in times of catastrophic natural disasters such as Hurricane Katrina<sup>103</sup> whether or not the governor(s) chooses to accept such help. Therefore, Trump should consider drafting or signing the order so that when future catastrophic natural disasters occur, assistance may be given without dispute over his power to make such an order. Neglecting to do so puts him at risk of earning the same reputation for indecision that Bush earned with Hurricane Katrina.

America had no direct plan in place at the time of Hurricane Katrina that would have allowed Bush to make a simple call to the 82<sup>nd</sup> Airborne or other special operations’ units within the armed forces to mobilize. Lipton, Schmitt and Shanker, *New York Times* correspondents covering political issues for a cumulative 30+ years, state that in the aftermath of Hurricane Katrina, “one senior Army officer expressed puzzlement that active-duty troops were not summoned sooner, saying 82<sup>nd</sup> Airborne troops were ready to move out from Fort Bragg, N.C., on Sunday, the day before the hurricane hit.”<sup>104</sup> The reality is that Bush chose not to use the regular military, which could have been used legally as noted above, for fear of usurping Blanco’s objections and authority. Naim Kapucu, Director of the School of Public Administration at the University of Central Florida, states,

The main problem was that the request for government assistance by the governors of impacted states was not made clear. Even though the need for military assistance was included in request letters, the explicit types and numbers of military units were not specified in the first few days. Another challenge was the complexity of legal statuses and command and control structures. The separation in the command structure of both the National Guard and the active-duty military resulted in slower operations and overall military response.<sup>105</sup>

Kapucu continues, stating the governor had no way to request active-duty Army and Marine land forces.<sup>106</sup> The author concludes by stating,

The military currently is governed by a lengthy, complex authorization process. Considering the lesson learned from Hurricane Katrina about the failures in establishing effective military engagement, emphasis should be put on addressing procedural obstacles, legal complexities, cost factors, political complications, . . . and other factors that contribute to the timeliness of a military response.<sup>107</sup>

As Kapucu has clearly indicated, local governments also need a clear path to request the Army, Navy, Marines, and Air Force in times of catastrophic natural disaster. An executive order before or after a disaster declaration<sup>108</sup> by the president as an interpretation of the Insurrection Act could reduce this logistical burden from national and local leadership, who should instead concern themselves with the other rigors of leading through a crisis. This executive order may be created either as an immediate use just before such action is required or be signed in the near future and put in place so that the use of the military can be given quickly. Yet, as Banks, currently a College of Law Board of Advisors Distinguished Professor at the peak of his 30 years at Syracuse University, points out, “As the Katrina experience demonstrated, however, the lack of a clear blueprint for a shared state and federal response to a major disaster greatly complicated the response to the storm, and even adroitness would have been too little too late to prevent some of the worst effects of Katrina.”<sup>109</sup> The continued failure to have such a plan in place to use active-duty military in times of major natural disasters will likely mean only continued pain and suffering for those involved once such events take place in the future.

### **THE PEOPLE’S REPUBLIC OF CHINA**

China has had a long history of disaster management<sup>110</sup> but still needs to improve.<sup>111</sup> Xi will need to consider how to deal with catastrophic natural disasters<sup>112</sup> that are likely to increase due to climate change,<sup>113</sup> and his handling of the military during such crises should be direct, immediate, and scalable. Like the United States, China needs a general interpretation of the 1947 Constitution under Chapter IV Article 43 in such a way as to allow this action to occur directly from Xi, without the need to go through other formal steps.<sup>114</sup> Xi has stated that there

needs to be “better integration between the military and civilian sectors.”<sup>115</sup> Through the process of modernization of its military with a focus on better relations with the civilian sectors,<sup>116</sup> direct use of China’s massive armed forces during a natural disaster needs to be further streamlined. As with the proposal for the United States, Xi’s determination, much like Trump’s, is critical in the process of assistance for natural disasters: “China’s disaster management system contains no law-based presidential disaster declarations; however, the national leader’s instruction (*pishi in Chinese*) play a similar role in disaster declarations.”<sup>117</sup> China’s leader should be able to put large numbers of military personnel<sup>118</sup> very quickly into a given area. Under Xi’s leadership, it is imperative that such actions are taken sooner than later, given the global climate changes that are causing far more dramatic events to take place.<sup>119</sup>

Xi’s legacy and reputation depend in part on how he manages future disasters. As with the 2008 Sichuan earthquake, the legitimacy of China’s government and its elites’ response should not be questioned after such an event.<sup>120</sup> Xi is the chairman of the Central Military Commission and one of the most powerful leaders in Modern Chinese history; therefore, as he continues to change and update the constitution and modernize the military, dramatic changes need to be made to the way to which natural disasters are responded.<sup>121</sup>

Supplies – bedding material, canvas, water, medical and other basic needs – remain vital to the military in combat and aid situations. The Chinese military mobilized during the 2008 Wenchuan earthquake,<sup>122</sup> but they faced a general lack of coordination in getting the necessary supplies to those who needed them most.<sup>123</sup> To prevent this haphazard distribution of aid, China needs to implement a policy<sup>124</sup> that allows for the pre-positioning of food, water, tarps, and medical supplies so that once a catastrophic natural disaster takes place, the supplies are easily available to give to those most in need. This policy should allow for the immediate use of those materials once they are called upon by Xi, members of his cabinet, or other top-ranking party members. Zhang and Chen state, “At present, there is no complete emergency material reserve system in China, and although the central reserve system is established, local reserve system is seriously insufficient. Therefore, in order to bring the materials reserve into the orbit of legalization material reserve rules and regulations should be improved.”<sup>125</sup> Given the number, magnitude, and lack of preparedness for earthquakes throughout China,<sup>126</sup> this author recommends that every nation should have large quantities of reserve material such as water, food, medicine, etc. that can be quickly distributed with the assistance of the active-duty military to those who need those supplies. Such changes to each nation’s laws should allow this to occur smoothly and with the direct use of the military.<sup>127</sup>

As Xi moves toward a likely reelection in 2023<sup>128</sup> and the continued centralization of his power,<sup>129</sup> he must consider the ramifications of catastrophic natural disasters and the need to use the military as first responders when they occur. He has come into office with a goal of being far more assertive when it comes to foreign policy,<sup>130</sup> thus he should be willing to use this

same assertiveness to reshape the military for better domestic responses to earthquakes, floods, typhoons, and other natural disasters.<sup>131</sup> In the process, China will need to streamline getting these resources to those who need it most. For this policy to have the highest impact, China must include a willingness to forge bonds with other nations,<sup>132</sup> allowing alliances and necessary resources both to flow into China during these events and to allow resources to be given to other nations when catastrophic natural disasters affect them. In this way, Xi’s goal of having a globalist view may be furthered as he champions the broader use of his military and other assistance to countries around the world in a show of good will and transparency in friendship during times of natural disasters affecting other countries. Both Japan and the Philippines, which are regularly hit with such disasters, could benefit with stronger pledges from China regarding these resources, as could the United States. Therefore, for the benefit of everyone involved, Chinese leadership under Xi needs to make changes to its laws<sup>133</sup> to allow a greater and more direct response to natural disasters that ensures the more effective use of its military.<sup>134</sup>

## JAPAN

Japan continues to be struck by natural disasters, with the 9.0 earthquake and tsunami that caused the Fukushima Daiichi Accident<sup>135</sup> being the worst in its modern history. Yet, with this natural disaster and the accident at the nuclear power plant that followed, the military could have done a better job with supplying aid to those who needed it most.<sup>136</sup> The leadership under Abe should modify its existing laws to accommodate a changing reality that more typhoons, earthquakes, tsunamis, and other catastrophic natural disasters will occur globally, and, as a direct result, nations need a more streamlined chain of command structure in place to allow for large-scale domestic military responses to these disasters.

Japan’s constitution, which was formulated after the end of World War II in 1947, had a pacifist clause: Chapter 2, Article 9 “Renunciation of War” states,

Aspiring sincerely to an international peace based on justice and order, the Japanese people forever renounce war as a sovereign right of the nation and the threat or use of force as means of settling international disputes.

In order to accomplish the aim of the preceding paragraph, land, sea, and air forces, as well as other war potential, will never be maintained. The right of belligerency of the state will not be recognized.<sup>137</sup>

Abe’s recent actions regarding the use of the military as it relates to Article 9 suggests a more aggressive reinterpretation of the use of Japan’s armed forces.<sup>138</sup> This reinterpretation should extend to allow the military to be used for more domestic and international aid purposes, shifting to allow them to be used effectively when natural disasters strike. This “collective security”<sup>139</sup> will ensure a better chance of survival during the next disaster. Such assistance – while not required – will ensure



a safer world in which countries put lives ahead of nationalistic views to form a greater level of cooperation in which countless lives around the world could benefit.

Given the sheer volume of U.S. troops in Japan, the allied nations need clearer laws governing when and how to use these joint forces to assist those most in need during natural disasters. The 2011 earthquake and resulting tsunami proved how vital such assistance can be in promoting peace through mutual aid. Talmadge explains,

Just one year after tensions over American military bases forced out a prime minister, a U.S. relief mission after the earthquake and tsunami is remaking Japanese opinions.

Roughly 20,000 U.S. troops have been mobilized in "Operation Tomodachi," or "Friend." It is the biggest bilateral humanitarian mission the U.S. has conducted in Japan, its most important ally in Asia.

As logistics gradually improve, U.S. troops have been moving farther into hard-hit zones and providing tons of relief supplies and badly needed manpower to help the hundreds of thousands of Japanese whose lives were shattered in the March 11 disaster. . . .

About 50,000 U.S. troops are stationed throughout Japan under a mutual security treaty signed in the 1960s. Tokyo strongly supports the alliance, because it saves Japan money on defense and serves as a powerful deterrent force in the region, particularly as China's military strength and economic clout rise.<sup>140</sup>

The bi-lateral agreement between the United States and Japan<sup>141</sup> should include an updated version to allow for disaster relief during times of natural disasters.

Such agreements should exist with other nations<sup>142</sup> allied with Japan so that when disaster strikes assistance may be given from the militaries around the world. In recent times, Japan has forged a stronger relationship with the Philippines over issues concerning China's access to the South China Sea.<sup>143</sup> As this relationship grows, the two nations need to include a formal resolution of bilateral assistance for each country in the event of a natural disaster. While such partnership is important regarding the use of militaries and other resources to combat China's rise in the region, it should also be modified to include the use of the military to assist in times of crises so that each country may benefit. At the same time, Japan needs to have a "balancing strategy"<sup>144</sup> between itself and China regarding its defense, going beyond matters concerning the Senkaku islands<sup>145</sup> and the ongoing issues in the South China Sea<sup>146</sup> to focus on issues concerning bilateral relations during major natural disasters.<sup>147</sup> For example, China gave Japan significant amounts of aid following the 2011 earthquake, including assistance from its military forces: "It's sending \$4.5 million worth of rescue materials, including blankets and flashlights. Beijing has promised more, if necessary."<sup>148</sup> Such agreements

should include the mutual transfer of aid during natural disasters, thereby forging relationships based upon mutual respect and need.

Japan is moving forward with a stronger defense policy regarding China and other nations, which in and of itself may be mutually beneficial given the need for a stronger military to address any number of issues it now faces. Singh argues that "a strong Japan is actually a source of regional stability. Its democratic identity, the resilient pacifism within Japanese society, and the continued robustness of the U.S.-Japan alliance support this conclusion."<sup>149</sup> Therefore, as Japan moves forward with its goals of modernizing its military and securing strategic ties to other nations, support from these nations should never be far behind as it deals with issues concerning natural disasters.

With current policies unchanged, assistance from Japan's and other nations' militaries (for example during the 2011 earthquake) was incomplete and inadequate in many respects.<sup>150</sup> Japan needs to reinterpret Article 9 of its constitution to allow for the direct and immediate use of its armed forces (even over the objections of local politicians<sup>151</sup>) so that in cases of catastrophic natural disasters, as illustrated by an article highlighting a recent drill<sup>152</sup>, such reinterpretation should allow for Abe or future prime ministers to have ground forces in the areas affected immediately, to-scale, and under a command-and-control person who wields the power to use the military in conjunction with other forms of assistance, including the acceptance of aid from other nations' militaries.<sup>153</sup> To aid this effort, Japan's role as leader in cell phone use should consider better implementation of social media<sup>154</sup> to help coordinate its military, to inform the local population of where and when to expect assistance, and to direct the leadership of Japan through various applications on the overall needs during the crises. Leveraging relationships with developed allies and its technological superiority, Abe could increase his nation's ability to respond to the pending disasters arising from global warming.

## THE REPUBLIC OF THE PHILIPPINES

Few other areas have been hit with as many typhoons in recent history as the Philippines.<sup>155</sup> A nation with over 7,000 islands,<sup>156</sup> the Philippines continues to face this trend of increasingly intense typhoon landfalls with a growing population, resulting in additional problems when natural disasters strike. Under the leadership of Duterte, the Philippines has moved politically further away from the United States and toward China and other countries in Asia. One major change has come from refocusing its military role from fighting the growing drug problems that have plagued the island nation to improved military assistance during natural disasters, just like the other countries discussed so far. Disaster aid has come from many countries, often in the form of assistance from nongovernmental agencies.<sup>157</sup> Such assistance should be accepted but coordinated by the president, who should also coordinate the military during such disasters. The 1987 Constitution<sup>158</sup> establishes the president as the Commander in Chief and mandates that the military remain under civilian control.<sup>159</sup> Duterte has continued

to remain close to his military,<sup>160</sup> and therefore the greater use of it during natural disasters should not constitute a major reform of the policies put into place. The goal here, as with other nations addressed, would be to streamline control of the military during natural disasters by Duterte to ensure a better and more effective use of it with the ultimate goal of saving lives and ensuring a quicker return to normal after a catastrophic natural disaster.

The Philippines has been faced with the devastating effects of typhoons that regularly come ashore along with the impacts that the storm surges bring with them.<sup>161</sup> The struggle to coordinate aid is often centered on how best to streamline the command-and-control operations of its military during those catastrophic natural disasters. Similarly to the Insurrection Act allowing the U.S. president to order military troops to devastated areas following a natural disaster, the Philippine President has power under the constitution that addresses the use of the military during times of declared martial law.<sup>162</sup> Such use will allow for the immediate, direct, and sustained use of its own military during times of typhoons, storm surges, and other natural disasters.

Military assistance may also come from other nations, too. As Yamada points out, “In November 2013, in the aftermath of Typhoon Yolanda/Haiyan, humanitarian aid and disaster response (HADR) were delivered by the U.S. military.”<sup>163</sup> According a collection of international military leaders and scholars, regarding Typhoon Yolanda/Haiyan,

With over \$86 million in total U.S. assistance, the U.S. military response efforts comprised more than 13,400 military personnel, 66 aircraft, and 12 naval vessels, which delivered over 2,495 tons of relief supplies and evacuated more than 21,000 people ...

Many humanitarian aid experts and military leaders noted that civil-military coordination was some of the best they had seen during the response to Super Typhoon Haiyan in the Philippines from November to December 2013. In total, the United States participated in relief efforts together with 57 other nations and 29 foreign militaries. Specifically, the USAID Office of Foreign Disaster Assistance (OFDA), U.S. Pacific Command (USPACOM), and the U.S. Embassy in Manila demonstrated clear understanding of their roles and responsibilities as evidenced by their effective coordination. Moreover, U.S. Government entities provided assistance that reflected their unique capabilities appropriately scaled throughout the response phase.<sup>164</sup>

In the case of Typhoon Yolanda/Haiyan, U.S. assistance and coordination played a pivotal role ensuring the security and wellbeing of those affected by the storm’s damage.<sup>165</sup> The Philippine military, however, has been criticized for its slow response to such disasters,<sup>166</sup> and therefore the improved use of its military through a streamlined process will benefit the president’s regime as well as the citizens’ livelihoods.

While the Philippines may always struggle distributing assistance from other nations, Duterte must address preparations for the yearly typhoon season as quickly as possible. Duterte has chosen the path of moving away from economic and military assistance from the United States and toward other nations like China,<sup>167</sup> even while multiple nations within the Pacific region struggle over how best to contain the perceived threat of an increasingly aggressive Chinese military in the South China Sea.<sup>168</sup> Duterte should consider maintaining the balance his nation needs between their available alliances – including his close relationships to China, the United States, Japan, and Australia, to name a few – in an effort to improve disaster assistance when typhoons and other natural disasters strike his country.

Part of the issues for those affected by a natural disaster is how soon they are informed about the event in question<sup>169</sup> and how quickly that information is relayed to those running the emergency management side.<sup>170</sup> Working at the local level through community leadership<sup>171</sup> as well as the continued assistance from abroad<sup>172</sup> matters during times of natural disasters. The Philippines’ leadership continues to struggle with and adapt to ongoing disaster response. Salazar points out,

In response to the frequency of natural and man-made disasters in the country, in February 2010 Congress passed Republic Act 10121 (RA 10121) which aimed to strengthen the Philippine Disaster Risk Reduction and Management System. The new law is important in that it signaled a paradigm shift from emphasizing disaster response to risk reduction, a principle which experts unanimously agree to be the best way to prepare for disaster and reduce its impact.<sup>173</sup>

The reality is that the Philippines needs to address the preparation for upcoming typhoons, storm surges, and other natural disasters. Scholars from the Philippine’s university system, point out that “The government’s problem of how to coordinate and manage the distribution of relief goods and the provision of much needed services underscores the significant role other agencies play in disaster response.”<sup>174</sup> What is needed are clearer plans and laws for how best to use those involved, especially response teams comprised of the military and those coordinating the teams.

Duterte faces further complications preparing for natural disasters in areas of the Philippines where armed conflicts continue. The continued insurgency<sup>175</sup> that has plagued areas throughout the Philippines may cast doubt on how effectively aid can be given in those areas most affected. The Armed Forces of the Philippines (AFP) are the best equipped to handle natural disasters in areas affected by unrest due to their size and readiness, but they should do so in a manner that is streamlined and effective so that the greatest amount of food<sup>176</sup> and other forms of aid can be given quickly to those most in need. The reality is that such events affect women,<sup>177</sup> children,<sup>178</sup> and the poor<sup>179</sup> disproportionately. It is important to understand the wellbeing of those affected by the typhoons<sup>180</sup> and other natural

disasters. Such aid can be given not only by the AFP but by other nations under the doctrine of “Responsibility to Protect” (“R2P”) <sup>181</sup> in the Association of Southeast Asian Nations (“ASEAN”). <sup>182</sup> As Puspita points out,

Indonesia, Myanmar, and the Philippines are the most vulnerable countries to natural disaster with internal conflict in Southeast Asia. These countries should not only maintain state sovereignty, but also recognize the humanitarian aid to the natural disaster. In order to apply the R2P doctrine to the victims of natural disaster in an armed conflict area, the role and capability of the ASEAN should be strengthened in the local, national, regional, and international level. <sup>183</sup>

Such assistance should allow for closer bonds between the Philippines and other nations regarding the giving of assistance to those areas most susceptible to insurgency and armed conflict. The use of the AFP in coordination with other nations’ militaries must play an important role with advanced preparation so that assistance can be given more quickly. Eastin adds that “the military’s role in distributing relief supplies and providing security escorts to humanitarian agencies can legitimize military presence in conflict zones, facilitate trust-building in local communities, and enhance intelligence gathering, the impact of which can assist counterinsurgency efforts.” <sup>184</sup> Cooperation between the AFP and locals may allow coordination within each group during times of crisis. <sup>185</sup> Such cooperation will allow the aid to get to those most in need, while setting aside issues related to ideology and politics.

Assistance under the ASEAN Agreement on Disaster Management and Emergency Response (“AADMER”) signed in July of 2005 provides a framework for assistance for countries throughout Southeast Asia including the Philippines during times of disasters. <sup>186</sup> As the ASEAN web site points out,

AADMER serves as a common platform and regional policy backbone for disaster management in the ASEAN region. The AADMER Work Programme outlines a detailed structure of activities of the region’s disaster management priorities over five-year periods. The ASEAN Committee on Disaster Management (ACDM) provides oversight to the implementation of the Work Programme and reports directly to the Ministers in charge of Disaster Management, who also serve as Conference of the Parties (COP). <sup>187</sup>

ASEAN Agreement on Disaster Management and Emergency Response (AADMER) <sup>188</sup> addresses the use of foreign military personnel but limits those outside of ASEAN. <sup>189</sup> Simm notes that “AADMER may well not be the most appropriate instrument to address the role of military assistance in disaster response. . . .” <sup>190</sup> Therefore, the Philippine government should make laws to clarify how and when domestic and foreign

military troops can be used in times of natural disasters so that assistance can be given quickly, to scale, and in coordination with other nations. The smaller nations in the ASEAN will more clearly see “the need for a strong and firm cooperative ASEAN effort in developing resilience against disasters – vulnerability is high, disasters are getting stronger and more frequent, and uniting small countries is prudent in pooling resources.” <sup>191</sup> The Philippines and others ASEAN nations need to coordinate better reactions to natural disasters and to use their militaries and different forms of assistance in a more streamlined manner. Unity is key to this goal’s success.

What remains to be seen is whether the government of the Philippines has sufficiently addressed the climate change <sup>192</sup> that continues to affect its country through more devastating typhoons whose potency will likely only increase in the future. As Pauline Eadie, Assistant Professor of Social Sciences at the University of Nottingham, points out in regards to resilience in the face of increasing typhoons and other disasters, “Leadership is . . . an important issue for resilience. Resilience is about building both stability and the conditions necessary for successful adaptation; therefore, it is important that systems of command and control are visionary and efficient.” <sup>193</sup> Such preparations must include the use of the foreign and domestic militaries and a streamlining of such use during times of crises caused by natural disasters. It must also include the leadership of Duterte.

President Duterte faces a changing world in which the environment will likely play a decisive role in balancing political alliances. The best option is to streamline the use of the military, alongside the National Disaster Risk Reduction and Management Council, to ensure that assistance is given in a quick, efficient, and abundant level. The assistance from the military can come under provisions in the Constitution concerning Martial Law. The AFP should be able to be mobilized with short notice to give aid from a pre-arranged site to ensure the continued survival of those most affected by a natural disaster. While the military has been active in establishing peace through Duterte’s fight against illegal drugs, they should also be given the additional task of keeping peace in the case of natural disasters. Such use would ensure that Duterte’s legacy be marked by the love and care that he gave to his people in times of need rather than just a brutal fight against drugs.


## CONCLUSION

Perhaps few other issues should be more important to a nation’s leaders than keeping the citizens of their countries safe from harm. In today’s environment, where climate change is affecting the very fabric of society, events around the increasingly globalized world are affecting nations in ways never seen before in isolation. Climate change is affecting the environment to the point where typhoons, hurricanes, and cyclones will increase globally. In addition to the damage from global warming, earthquakes have also devastated these countries. To overcome the current lack of coordination during these disasters, regular militaries for each country should be more actively engaged in

and used during these emergencies to ensure the survivability of those in many countries in the world. Such assistance should be streamlined so that access can be immediate and pre-positioned aid (such as water, food, and canvas) can be given with little or no delay. While this paper has looked at four specific developed countries as examples, the basic argument of using active duty military more aggressively during times of catastrophic natural disasters can be more broadly interpreted to apply to militaries and the countries they assist at a global scale.

The leadership of Trump, Xi, Abe, and Duterte should look to their laws to examine ways that will best allow for the streamlined usage of their armed forces during catastrophic events caused by climate change. With a simple phone call, the leader of any nation should be able to put large numbers of men and women in the armed forces to use during natural disasters when people's lives are at risk. Such changes will require modifications to or reinterpretations of their laws. This paper suggests specific interventions that pave the way to such

streamlining: that the United States interpret the Insurrection Act through an executive order allowing federal troops to be armed and used during national disasters, allowing FEMA a more stable environment to work within.

China should look to its own constitution for guidance as should Abe, as both leaders have chosen to move more aggressively in the usage of their respective militaries and the interpretation of their respective roles as allowed within their constitutions. The new changes should allow for using their militaries for domestic purposes under the direct leadership of Xi and Abe, respectively. Finally, Duterte should use an interpretation of his constitution regarding martial law to allow for direct and immediate usage of his military as it relates to national disasters. Based on these actionable items, other nations can also determine how best to modify their laws to join an international community concerned with mutual aid during the coming days of increasing natural disasters for the benefit of all. 

## ENDNOTES

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