structures, which was highlighted so effectively by the military lawyers that she interviewed. She advocates an important role for the JAG in training contractors and overseeing their performance in the field, and she stresses the importance of contractors being integrated into the military command structure in a way that enhances command authority.

To some extent, the lack of accountability for contractors may be seen as a contemptuous reaction to lawyers and a sense that their rules get in the way of contractor efficiency by imposing counterproductive constraints. To this criticism, Dickinson offers a well-measured rejoinder. She demonstrates the need for legal accountability and explains the role that it plays in reinforcing the authority of a military command, together with discipline and morale. Yet she also makes clear that if contractors cannot be trained, subjected to oversight, and held accountable as required by legal norms, then they are not likely to play a constructive role in future missions. It may thus be true that contractors are "here to stay" in international military operations. But whether contractors make a successful contribution still depends on resolution of the current accountability crisis.

Dickinson's book will serve as an invaluable resource for future lawyers and policymakers addressing the growing reliance on private security contractors. She has an uncanny eye for spotting issues in the making, and she has developed thoughtful legal solutions. At present, her *Outsourcing War and Peace* is the definitive work on this subject.

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Human Rights and Climate Change. Edited by Stephen Humphreys. Cambridge, New York: Cambridge University Press, 2011. Pp. xx, 348. Index. $99, £59.

Human Rights and Climate Change: A Review of the International Legal Dimensions. By Siobhán McInerney-Lankford, Mac Darrow, and Lavanya Rajamani. Washington DC: World Bank, 2011. Pp. xii, 145. $20.

Most international lawyers are familiar with the dialogue between environmental protection and human rights. The 1994 Ksentini Report,[1] prepared under the auspices of the UN Human Rights Commission, forcefully argued that all persons have the right to a secure, healthy, and ecologically sound environment. Even if the independent human right to an adequate environment has not been widely endorsed, we have often successfully witnessed it invoked derivatively (to property, health, family and home life, and even the right to life itself) against polluting activities in various international and regional human rights courts and quasi-judicial bodies. The use of international human rights discourse to protect the environment has also become commonplace in national judicial avenues, and literature on the topic is extensive.[2]

Against this backdrop, the passage of time has been necessary to address climate change as a human rights issue. In retrospect, it seems logical for human rights to cover climate change: the thinking underlying the connection between the environment and human rights is premised on the notion that the enjoyment of human rights is fundamentally dependent on the functioning of our ecosystems. As expressed in 1997 by then International Court of Justice Vice-President Christopher Weeramantry in his separate opinion in the *Gabčíkovo-Nagymaros Project* case, "The protection of the environment is likewise a vital part of contemporary human rights doctrine, for it is a *sine qua non* for numerous human rights such as the right to health and the right to life itself."[3]

Very recently, scholars, institutions, and even some intergovernmental organizations have begun to pay attention to the relationship between human rights and climate change. Why? We know that the current climate change regime is failing,

[1] UN Sub-Commission on Prevention of Discrimination and Protection of Minorities, Final Report Prepared by Fatma Zohra Ksentini, Special Rapporteur, UN Doc. E/CN.4/Sub.2/1994/9 (July 6, 1994).

[2] For a recent work, which includes interesting national cases, see DONALD K. ANTON & DINAH L. SHELTON, ENVIRONMENTAL PROTECTION AND HUMAN RIGHTS (2011).

[3] Gabčíkovo-Nagymaros Project (Hung./Slovk.), 1997 ICJ REP. 7, 88, 91 (Sept. 25) (Weeramantry, J., sep. op.), *available at* http://www.icj-cij.org/docket/files/92/7383.pdf.

by any standard, in a situation where the scientific consensus, driven by the Intergovernmental Panel on Climate Change (IPCC),[4] projects catastrophic consequences for humanity. We are thus required to address climate change indirectly using human rights, a body of international law that touches on almost all aspects of human life. Accordingly, in 2005, we witnessed the first human rights petition by the Inuit against the United States at the Inter-American Commission on Human Rights in which they claimed that the United States, the main greenhouse gas (GHG) emitter, had violated various human rights as a result of an irresponsible climate policy.[5] The basis of the Inuit petition linked human rights and climate change by showing that, since the 1960s, their Arctic home region has been warming at twice the rate as the rest of the world, thus depriving them of the right to subsist on their land and practice their culture in sound health, which they had done for centuries. The petition, although rejected by the Commission, has partly driven the first scholarly efforts at tackling the relationship between human rights and climate change.

One of the two books reviewed here, *Human Rights and Climate Change* (Humphreys volume), is an edited volume by Stephen Humphreys, the former research director of the influential International Council on Human Rights Policy. The product of a meeting organized by the Council in 2007, the Humphreys volume includes chapters by twelve well-known experts, including Humphreys, who participated, as well as an introduction and a conclusion by Humphreys. The other book reviewed here, *Human Rights and Climate Change: A Review of the International Legal Dimensions*, is a World Bank study, which may be downloaded in its electronic form[6] (World Bank study). It was produced under the direction of Siobhán McInerney-Lankford from the World Bank, who worked with Mac Darrow from the UN Office of the High Commissioner for Human Rights and Lavanya Rajamani from the Centre for Policy Research, New Delhi.

The two publications are different in style. The World Bank study is a straightforward survey of human rights implications resulting from climate change. In its six substantive chapters, the authors indicate the direction in which the book will proceed: the core issues relate to how the consequences of—and the responses to—climate change may affect the enjoyment of human rights. The authors point out that human rights may be relevant to the design and implementation of effective responses to climate change. The study draws noteworthy conclusions in its final chapter, entitled "Potential Operational Implications & Areas for Further Research."

The Humphreys volume is not as clear in structure. Part I deals generally with "Rights Perspectives on Global Warming," and part II, entitled "Priorities, Risks and Inequities in Global Responses," suggests, by its nonspecific nature, that it and, indeed, the book as a whole are a fairly fragmented set of essays on the relationship between human rights and climate change. Yet, while a more cohesive structure would have been beneficial, the in-depth introduction and conclusion by Humphreys bring unity to the publication. Moreover, the meeting from which these articles stemmed clearly pushed contributing scholars to the limits of legal thinking and produced innovative means of conceptualizing human rights implications resulting from climate change.

These two publications complement each other well. Because the World Bank study provides the reader with a clear background for understanding the relationship between human rights and climate change from a legal viewpoint, it should be read prior to the more challenging, yet highly interesting, Humphreys volume. The World Bank study sets forth a pragmatic and structured survey of human rights and climate change with an annexed list of relevant books, articles, and documents. The Humphreys volume, in turn, includes references to the documented climate change impacts, as well as its costs, as set out

[4] Information about the IPCC is available online at http://www.ipcc.ch/.

[5] *Available at* http://www.ciel.org/Publications/ICC_Petition_7Dec05.pdf.

[6] *At* http://www-wds.worldbank.org/servlet/main?menuPK=64187510&pagePK=64193027&piPK=64187937&theSitePK=523679&entityID=000356161_20110425021031.

in the IPCC 2007 Report and Stern Review,[7] respectively.

As discussed in the chapters of the Humphreys volume, many aspects of climate change and its consequences have definite human rights impacts on the present, rather than on the computer-simulated future. For example, in her rich chapter, Frances Seymour explains that forest-related mitigation and adaptation to climate change effects have already caused potential human rights violations. Deforestation is identified as a cause for landslides and flooding, which are becoming more frequent with climate change. Adaptation policies have governments decrease settlement and farming in sensitive watersheds, which, in turn, lead to the displacement of the poor without adequate compensation. Reducing emissions from deforestation and forest degradation has already triggered public and private investment in protecting forests, particularly tropical forests, which leads to the denial of resource rights of poor forest users, as well as forced evictions. These examples are all clear human rights violations. The implementation mechanisms of the Kyoto Protocol[8]—emissions trading, the Joint Implementation, and the Clean Development Mechanism (CDM)—were developed with a flexibility that would allow Annex I industrial countries (those with legally binding mitigation obligations) to meet their commitment targets at cheaper prices. As Philippe Cullet indicates in his chapter, "[T]he CDM does not include a framework that would ensure that projects are prioritised in accordance with their impacts on the poor and vulnerable and the environment in general" (p. 190), with the concomitant possibility of various human rights violations.

It seems very pertinent to relate fast-evolving procedural human rights to the analysis of the current legal regimes, both national and international, designed to deal with climate change, an issue that is taken up in both publications, particularly the World Bank study. For example, the Aarhus Convention[9] is an international convention granting procedural environmental rights on a regional level (access to information, as well as the public's right to participate in environmental decision-making and to appeal the decisions made), and the World Bank study shows that regional and global human rights developments indicate that basic principles of the Aarhus Convention may well be on their way to becoming customary international law and should have an effect on the implementation of states' mitigation and adaptation commitments, nationally or elsewhere. However, these procedural environmental participatory rights do not yet extend to states' obligations in protecting human rights in climate change negotiations at the international level as Humphreys claims; Article 3(7) of the Aarhus Convention is clearly a nonlegally binding hortatory statement, which does not yet carry legal force.

These procedural rights are fairly clear means of taking human rights into account in implementing current climate regime commitments and should be given more attention. More problematic, however, are those impacts of climate change that will not occur until some future date; at least from the legal perspective, it is the present or imminent violation of human rights that is relevant to the climate change regime. As noted above, the Inuit launched their human rights petition against the United States because they could demonstrate clear human rights violations related to climate change that had already taken place.

[7] IPCC, *Summary for Policymakers*, *in* CLIMATE CHANGE 2007: IMPACTS, ADAPTATION AND VULNERABILITY: CONTRIBUTION OF WORKING GROUP II TO THE FOURTH ASSESSMENT REPORT OF THE INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE (M. L. Parry et al. eds., 2007), *available at* http://www.ipcc.ch/pdf/assessment-report/ar4/wg2/ar4-wg2-spm.pdf; NICHOLAS STERN, STERN REVIEW ON THE ECONOMICS OF CLIMATE CHANGE (2006), *available at* http://webarchive.nationalarchives.gov.uk/+/http:/www.hm-treasury.gov.uk/sternreview_index.htm.

[8] Kyoto Protocol to the United Nations Framework Convention on Climate Change, Dec. 11, 1997, 2303 UNTS 162.

[9] Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, July 25, 1998, 38 ILM 517 (1999), *at* http://www.unece.org/env/pp/welcome.html.

In general, international lawyers have a tendency to not see much promise in human rights litigation in combating climate change. As Humphreys states in his volume, "[T]ort-like litigation is likely to be more fruitful in the national than the international context, and with regard to past rather than expected harms" (p. 40). In a similar vein, in his chapter in the Humphreys volume, Peter Newell sees a role for national litigation in holding companies accountable for their carbon emissions. Overall, he warns against using a narrow concept of human rights as a basis for litigation because those who require human rights protection most—the poorest of the poor—can rarely resort to litigation due to their lack of financial resources and elite expertise.

The Humphreys volume has a single thread running through the various chapters: climate change deepens the vicious cycle whereby the poor find themselves increasingly marginalized. This thread begins in Humphreys's luminous introduction and runs through the entirety of the volume. Cullet observes in his chapter that we must move beyond common, but differentiated, responsibilities by first allocating mitigation commitments to some countries within the developing world. Beyond that allocation, as equity and human rights place a focus on the situation of the most disadvantaged, differentiation is also required within countries. In his study, Jon Barnett uses three case studies—food security in Timor-Leste, irrigation and farmers on the north China plain, and diverse environmental issues in the South Pacific atolls—to explain why it is more difficult for a country with a poor human rights record to adapt to the consequences of climate change, especially as it affects the poorest segments of its population. John C. Mutter and Kye Mesa Barnard demonstrate how marginalized groups became victims in hurricane Katrina and cyclone Nargis. In not focusing on these peoples' special situations in a country's adaptation planning, they are, once again, more likely to suffer from increased numbers of climate-change-driven disasters than others.

Some scholars still see a need for international litigation. In the Humphreys volume, Dinah Shelton indicates in her chapter that it is legally viable for states—and arguably their legal responsibility due to the human rights of affected individuals under their jurisdiction—to take action against the primary GHG-emitting states. Like the World Bank study, Shelton relies on a well-established customary international law "do no harm" principle, which requires states to ensure that activities within their jurisdiction or under their control do not cause damage to the environment of other states. The World Bank study sees this no-harm principle as a core obligation common to multilateral environmental agreements and human rights. Shelton, however, draws inspiration from the famous *Trail Smelter* case[10] and the U.S. Supreme Court *Massachusetts v. Environmental Protection Agency* case.[11] In both, a sovereign and semi-sovereign state acted on behalf of individuals to protect them from transboundary pollution and further greenhouse gases, respectively. While I do not fully share Shelton's enthusiasm for using the practice of constituent units of federal states as a basis for considering analogous cases in international law—since, in contrast to the days of *Trail Smelter*, we now have international law regulating these situations—Shelton's innovative reading of these cases demonstrates that the bridge between national and international law could be utilized in both directions in our efforts to find ways to fully confront climate change.

In moving away from litigation, the World Bank study identifies a duty of "due diligence" (p. 133 n.436) to ensure that states' policies, actions, or possible neglect does not impede the realization of human rights elsewhere. Both publications include arguments, taken from human rights treaty bodies, that existing human rights treaties may be interpreted in a manner that obligates the states—and even their corporate entities—that are most responsible for climate change to protect or to at least not interfere with other states' ability to meet human rights obligations.

The World Bank study appears to imply that not only are territorial states obliged to respect, protect, and fulfill human rights under their jurisdiction but that these states are also universally

[10] Trail Smelter (U.S./Can.), 3 R.I.A.A. 1905 (1941), *reprinted in* 35 AJIL 684 (1941).

[11] 549 U.S. 497 (2007).

responsible for climate change. Nonetheless, as acknowledged by the World Bank study, developed states are at loggerheads with the pronouncements of human rights treaty bodies and special representatives on the validity of these interpretations. Independent human rights experts sitting on treaty committees allegedly stretch the law to its limits, a development that may be regarded as both positive and negative. Even if we are impressed by the work and interpretations of these treaty bodies, we must acknowledge that their work oftentimes exceeds what is acceptable to the community of states.

In his contribution to the Humphreys volume, Simon Caney takes this line of reasoning even further. I was particularly impressed by the viability of his clear and structured argument as I have not seen much promise in the influence of human rights on the design of the climate change regime as a whole. Caney points out that no scientific uncertainty exists over climate change radically affecting human rights: some changes have already occurred, and some will concretize in time. Although some uncertainty may exist as to how climate change will violate particular human rights, Caney focuses on the most modest and widely accepted interpretations of human rights—to life, health, and subsistence—and how they are violated by climate change. For example, he notes that controversies may surround the human right to life, but not in terms of its very core—all persons have a human right not to be arbitrarily deprived of their life—as prescribed by the International Covenant on Civil and Political Rights.[12] He continues:

> [N]ote that this formulation of the right to life conceives it simply as a negative right. As such, it does not make the more contentious claim that each person has a positive right to have their life saved from all kinds of threats. . . . By insisting that only "arbitrary" loss of life counts as a rights violation (and by allowing the possibility that capital punishment can be a non-arbitrary loss of life) one avoids this controversy. (P. 76)

Caney points to the loss of life caused by climate change, especially focusing on those projected by science. He contrasts a human rights approach to various versions of the cost-benefit analysis on how to justly allocate burdens over climate change, a topic that Humphreys skillfully presents in the introduction. Humphreys rightly identifies that the cost-benefit analysis cannot move beyond nation-states, which weakens its utility as most climate-change-driven human rights violations target the poorest within the states. Caney's human rights as "moral thresholds" approach requires discrimination between human beings because only some people within countries fall below the threshold (pp. 85–86). It is particularly important to note that, in Caney's approach, those suffering from climate-change-driven human rights violations have a right to compensation. This aspect is missing in the current climate change regime, which emphasizes only adaptation to climate change.

Caney does not move on to questions on how to operationalize such an approach to climate change mitigation and adaptation. Humphreys notes that most of the rights-based schemes introduce just allocation of mitigation burdens. For example, he highlights Henry Shue's differentiation between subsistence/survival emissions (in that GHGs that are used to fulfill basic human needs must be differentiated from those aiming to perpetuate luxurious lifestyles) and "contraction and convergence" (p. 13); these approaches do not "examine vulnerability beyond state level" (p. 15), which calculates emissions on the basis of gross domestic product only.[13]

Cullet's approach may be regarded as a means to operationalize Caney's ideas. Cullet believes that we should designate the atmosphere as a common heritage of humankind and that we should allocate rights to emit in a nuanced manner to enable the poorest within countries to benefit the most. In his passionate article, Sam Adelman would go much further with his idea of a right to sustainable development, which acts as a meta-right that can take

[12] International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 UNTS 171.

[13] Henry Shue, *Subsistence Emissions and Luxury Emissions*, 15 LAW & POL'Y 39 (1993).

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precedence over other rights. For him, this *grundnorm* would follow Cullet's approach and reconceptualize the atmosphere as the common heritage of mankind but would expand the beneficiaries to include not only human beings but all species.

Even though I was surprised to find myself thinking that, in effect, Caney's human rights as moral thresholds approach provides us with design principles for a just and effective climate regime, I found it too far-fetched from the current reality of the climate change regime. As Humphreys explains, the climate change regime appears to avoid the use of human rights language. This is, indeed, the case. He examines why the disciplines of human rights and climate change are so far apart—possibly further fragmenting international law as most international environmental lawyers would not recognize a discipline called climate change law—and ends the volume with a section entitled "Defragmentation of International Law?" The World Bank study recognizes the fragmentation in passing, but for Humphreys it is a real puzzle. He mentions the work of the UN International Law Commission noting that international law has its own mechanisms tilting toward systemic integration.[14] This method may be the one that brings unity to the abstract world of the "invisible college of international lawyers," but I would argue that real-world policies are rarely managed by international lawyers, despite the unity that we want to introduce into the international system. Regimes specialize and promote their own causes and thereby also conflict with one another. The climate change regime has problems in co-operating with clearly overlapping and immediate neighbors, such as the biodiversity regime, apart from human rights.

Caney does not only disagree with the cost-benefit analysis, but he also argues that the human rights approach has much more to offer to combat—or deal with—climate change than a security-oriented approach, an approach that I have regarded as the best available alternative in combating climate change.[15] But he understands the security-oriented approach too narrowly, noting that "[i]t gives us reason to be concerned about climate change only if, because, and to the extent that, it results in violent conflict" (pp. 85–86). This analysis is a constricted reading of the security-oriented approach in that it does not consider the long-standing discourse on the securitization of environmental problems, particularly in the case of climate change.

In my opinion, climate change should be framed anew as a collective security problem, as opposed to an environmental problem, with a corresponding soft welfare approach to its solution. Interestingly, Humphreys states that "it has become increasingly common to adopt the language of emergency when referring, not only to climate change effects, but to the phenomenon in its entirety" (p. 6 n.11). For him, this use of language does not appear convincing as it tends to "remove climate change impacts from the ordinary reach of human rights law, at least rhetorically" (*id.*). I believe that only by reframing climate change—likely the biggest collective security problem that humanity has faced—and understanding it primarily as a matter of collective security will stronger response measures necessarily follow. We must acknowledge that current efforts to deal with climate change have failed to deliver and that we are faced with gloomy future scenarios. We may, of course, defend the present efforts to deal with climate change as the only viable alternative. However, if these current efforts continue to act as a façade for inaction, providing states the excuse to argue that they are combating climate change while they are not, we must seriously examine other perspectives and possibilities of framing and solving climate change as a politico-legal problem.

At the moment, only weak signs indicate that such a shift is taking place. Furthermore, no strong signs suggest that human rights will determine our response to climate change in a manner that Caney

[14] Conclusions of the Work of the Study Group on the Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law (2006), *at* http://untreaty.un.org/ilc/texts/instruments/english/draft%20articles/1_9_2006.pdf.

[15] Timo Koivurova, *International Legal Avenues to Address the Plight of Victims of Climate Change: Problems and Prospects*, 22 J. ENVTL. L. & LITIG. 267 (2007).

insightfully offers. We do not see any development towards the meta-right that Adelman advocates, and we have not observed any steps to designate the atmosphere as a common heritage of mankind as Cullet and Adelman propose. These ideas are all interesting, and we must stretch our "legal muscles" in a manner similar to the contributors to the Humphreys volume. In her foreword to the Humphreys volume, Mary Robinson, the former UN high commissioner for human rights, captures the challenges ahead: "Climate change is a story about desperation and hope. It can kill us or it can save us. Climate change will test us, threaten us and force us to change" (p. xix). Her story does not predict what the ending will be, but the present prognosis is that, if anything, climate change will force us to change.

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