

CLIMATE CHANGE, THE PARIS AGREEMENT AND HUMAN RIGHTS

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Abstract The 2015 Paris Agreement on climate change is relevant to human rights law, not for what it says about human rights— which is next to nothing—but for what it says about the need to address the risk of climate change taking global temperatures above 1.5 or 2 °C. The Agreement could work, or it could fail by a large margin, but those who want to influence the outcome can still do so. That includes the human rights community. Since climate change is plainly a threat to human rights, how should the UN human rights institutions respond? Should they use their existing powers of oversight to focus attention on how States parties implement (or fail to implement) commitments made in the Paris Agreement? Or should they recognize a right to the enjoyment of a safe, clean, healthy and sustainable environment? Either choice would represent a significant contribution to the debate on human rights and climate change, giving humanity as a whole a voice that at present is scarcely heard.

Keywords: civil and political rights, climate change, economic and social rights, environment, human rights, sustainable development.

I. INTRODUCTION

Climate change is a threat to life on Earth as we know it. The Intergovernmental Panel on Climate Change concludes that evidence of changes in the climate system is now unequivocal, with the atmosphere and the oceans warming, glaciers and polar ice melting, sea levels rising, and atmospheric greenhouse gas concentrations at levels unprecedented in the past 800,000 years.¹ The oceans have mitigated climate change, absorbing 30 per cent of the anthropogenic CO₂ emissions, making them warmer and more acidic.²

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¹ See generally, Intergovernmental Panel on Climate Change, *Climate Change 2013: The Physical Science Basis: Working Group I Contribution to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change* (IPCC 2013). [‘IPCC 2013’]

² IPCC 2013, paras 2.2, 3.3, 5.2, 6.2–3.

The Kyoto Protocol, adopted in 1997 as a first step towards stabilizing the climate, has been ineffective in reducing the increased concentration of atmospheric greenhouse gases. On present trends, even if the 2015 Paris Agreement is fully implemented by all parties, it may be difficult to keep the increase in global temperatures below 2 °C, let alone achieve the target of 1.5 °C.³

Unless we succeed in reducing and restraining the increase in global average temperatures the consequences for humanity will be increasingly serious, if not catastrophic. Already, the effects of climate change and the warming of the atmosphere and the oceans are starting to impact on water supplies, agriculture, forests, small islands, low-lying coastal areas, and the marine environment. They are causing or exacerbating desertification, extreme weather, flooding, loss of biodiversity and changes in the distribution and abundance of fish stocks.⁴ Various human rights are potentially affected: life, health, private life, property, the right to water, food and an adequate standard of living. Indigenous and nomadic peoples, inhabitants of low-lying islands and coastal areas, subsistence farmers and fishermen, will all be particularly vulnerable to the effects of climate change. So will the polar bear, the penguin and other wildlife species. But as the IPCC reports show, everyone will be vulnerable to climate change if attempts to control and mitigate its causes and effects do not succeed.⁵ This is a vision of unsustainable development over the long term. Thus the fundamental challenge posed by climate change is not so much to human rights here and now, but to future generations and humanity itself. Short of nuclear war there is no bigger challenge facing life on Earth.

More than 30 years since it was first articulated by the Brundtland Report the concept of sustainable development remains almost infinitely malleable.⁶ While some have argued that sustainable development is a principle of international law,⁷ or even customary international law,⁸ the ICJ has more cautiously

³ IPCC, *Climate Change 2007: Synthesis Report* (Bangkok 2007); UN Environment Programme, *The Emissions Gap Report: Are the Copenhagen Accord Pledges Sufficient to Limit Global Warming to 2 °C or 1.5 °C? A Preliminary Assessment* (Nairobi 2010).

⁴ IPCC, *Climate Change 2014: Impacts, Adaptation, and Vulnerability* (Cambridge 2014); CBD Technical Series No 89, *The Lima Declaration on Biodiversity and Climate Change: Contributions from Science to Policy for Sustainable Development* (Montreal 2017); CBD Technical Series No 46, *Scientific Synthesis of the Impacts of Ocean Acidification on Marine Biodiversity* (Montreal 2009); FAO, *Climate Change Implications for Fisheries and Aquaculture* (Rome 2008).

⁵ IPCC, *Climate Change 2014: Impacts, Adaptation, and Vulnerability* (Cambridge 2014).

⁶ See generally M Redclift, *Sustainable Development: Exploring the Contradictions* (Routledge 1987); M Jacobs, *The Green Economy* (Pluto Press 1991); E Neumayer, *Weak Versus Strong Sustainability* (4th edn, Edward Elgar 2013); D Helm, *Natural Capital: Valuing the Planet* (Yale University Press 2015).

⁷ See eg C Voigt, *Sustainable Development as a Principle of International Law: Resolving Conflicts between Climate Measures and WTO Law* (Martinus Nijhoff 2009).

⁸ V Barral, 'Sustainable Development in International Law: Nature and Operation of an Evolutive Legal Norm' (2012) 23 EJIL 377, 388.

referred to it as an ‘international objective’.⁹ However defined, it is inherently complex and its implementation obliges governments to think in somewhat different terms from those to which they have been accustomed. Social, political and economic choices abound: what weight should be given to natural resource exploitation over nature protection, to industrial development over air and water quality, to land-use development over conservation of forests and wetlands, to energy consumption over the risks of climate change? The Sustainable Development Goals adopted by the UN recognize that it is for each State to make these choices.¹⁰ That freedom may result in wide diversities of policy and interpretation, as different governments and international organizations pursue their own priorities and make their own value judgments, moderated only to some extent by international agreements on such matters as climate change and conservation of biological diversity.

Although ‘sustainable development’ is used throughout the 1992 Rio Declaration on Environment and Development, and in Agenda 21,¹¹ it was not until the 2002 World Summit on Sustainable Development that anything approaching a UN definition of the concept could be attempted. Three ‘interdependent and mutually reinforcing pillars of sustainable development’ were identified in the Johannesburg Declaration—economic development, social development and environmental protection.¹² In 2015 the UN went further and adopted an ambitious set of ‘Sustainable Development Goals’.¹³ Like Agenda 21 in 1992, the 2030 Agenda for Sustainable Development affirms the need for a ‘global partnership for sustainable development’, and its goals are intended to promote implementation of the concept. The vision of sustainable development set out here mainly focuses on economic and social development; reduction of poverty and hunger are the pre-eminent objectives, but the goals cover almost every aspect of international policy, including well-being for all ages, gender equality, safer cities, better sanitation, sustainable consumption, access to justice, and so on.

While the preamble to the Agenda for Sustainable Development fully recognizes the seriousness of the environmental challenge—including threats to the climate, biodiversity, water resources, and the marine environment—only three of the 17 sustainable development goals are of particular relevance to the environment. The first commits States to take ‘urgent action’ to deal with climate change and its impacts.¹⁴ At least in form they have now done so by adopting the 2015 Paris Agreement.¹⁵ The second addresses conservation

⁹ *Pulp Mills on the River Uruguay Case (Argentina v Uruguay)* (2010) ICJ Rep 14, at 177. But see V Lowe in A Boyle and D Freestone (eds), *International Law and Sustainable Development* (Oxford University Press 1999) ch 2.

¹¹ See UN, *Report of the UN Conference on Environment and Development I*, UN Doc A/CONF.151/rev.1 (1992).

¹² UN, *Report of the World Summit on Sustainable Development*, UN Doc A/CONF.199/20 (2002) Res 1, para 5.

¹³ UNGA Res 70/1, *Transforming Our World: The 2030 Agenda for Sustainable Development* (2015).

¹⁴ SDG 13.

¹⁵ See next section.

and sustainable use of the oceans and marine resources.¹⁶ The third aims to conserve and sustainably manage terrestrial ecosystems such as forests and wetlands, combat desertification, and halt loss of biodiversity.¹⁷ All three are of course interlinked. None of this adds anything new to international environmental policy or law, but it does serve to reaffirm existing commitments within the context of a process whose outcomes the UN will review in due course.¹⁸

The Sustainable Development Goals have given the concept of sustainable development more concrete content, but they may also have underestimated the seriousness of the environmental problems the world continues to generate on a global scale. This is the point made cogently by Helm, who observes that ‘It is not hard to make the case that the process of destruction [of natural capital] has gone too far, and that renewable natural capital as a whole is already well below the optimal level ... The state of core ecosystem services, from climate to fresh water and soils, is already a serious cause for concern.’¹⁹

The key argument in this critique of existing conceptions of sustainability is that natural capital is not infinitely substitutable by man-made capital, and that some natural capital—including the global climate—must be preserved in order to meet the needs of future generations and prevent ultimate catastrophe.²⁰ Helm believes that international policy has been overly-focused on present generations, and that we need a stronger focus on the inheritance of future generations.²¹ Climate change and its consequences for global biodiversity, the oceans, and water supplies illustrate his point: put simply, long-term environmental problems have not been given nearly enough weight in the balance of environment and development. To address this omission Helm formulates an ‘aggregate natural capital rule’ designed to ensure that future generations inherit a comparable stock of natural capital even if it is not the same stock.²² He concludes that ‘no net loss would transform the environmental outlook’.²³ But there is only one climate system, and in this context no net loss can only mean sustaining that system at a temperature that would avoid ‘dangerous anthropogenic interference’.²⁴

The ‘green economy’ paradigm promoted by UN Environmental Programme and the Organisation for Economic Cooperation and Development at the 2012 UN Conference on Sustainable Development was based on the same conclusion: it was intended to foster economic growth and development while ensuring that natural assets continue to provide the resources and environmental services on which human well-being now and in the future

¹⁶ SDG 14. ¹⁷ SDG 15. ¹⁸ UNGA Res 70/1 (2015) paras 72–91.

¹⁹ Helm (n 6) 63. ²⁰ *ibid* 54–62. ²¹ *ibid* 8, 40. ²² *ibid* 8, 40. ²³ *ibid* 8.

²⁴ UN Framework Convention on Climate Change (1992) art 2.

depends.²⁵ As the 2012 negotiations got underway, however, it soon became evident that the ‘green economy’ would not turn into a new consensus, but would reopen unresolved questions concerning the very notion of sustainable development.²⁶ While some developed countries proposed the adoption of indicators to measure progress toward the green economy and the establishment of a capacity development scheme, developing countries largely resisted these suggestions, arguing that the green economy should not turn into a ‘normative straightjacket’.²⁷ The guidance on the green economy eventually included in the conference outcome document (*‘The Future We Want’*) thus represents only a minimalist common denominator between these largely opposing views.²⁸ It affirms that the green economy is but ‘one’ of the tools available to achieve sustainable development, and should not be regarded as a ‘rigid set of rules’.²⁹ All countries are encouraged to consider its implementation in a manner that ‘endeavours to drive sustained, inclusive and equitable economic growth and job creation’.³⁰ Once again, the emphasis here is not on long-term sustainability of natural capital but on short-term economic growth. This is the contested policy background against which we can now view the most recent agreement on climate change, the 2015 Paris Agreement.

II. THE 2015 PARIS AGREEMENT

The Paris Agreement³¹ sets out a new agenda for implementing the UN Framework Convention on Climate Change (UNFCCC) and the UN sustainable development goals post-Kyoto.³² Firstly it seeks to hold global temperature increases to ‘well below’ 2 °C and if possible below 1.5 °C.³³ It achieves this objective principally by committing all States parties to ‘prepare, communicate and maintain successive nationally determined contributions’ to reducing greenhouse gas emissions.³⁴ Secondly it seeks to

²⁵ UNEP, *Global Green New Deal* (Nairobi, 2009); and UNEP, *Towards a Green Economy: Pathways to Sustainable Development and Poverty Eradication* (Nairobi 2011); OECD, *Towards Green Growth* (Paris 2011); and World Bank, *Inclusive Green Growth* (Washington 2012).

²⁶ E Morgera and A Savaresi, ‘A Conceptual and Legal Perspective on the Green Economy’ (2012) 22 *RECIEL* 14, 22–4.

²⁷ Earth Negotiations Bulletin, *Summary of the First PREPCOM for the UN Conference on Sustainable Development* (17–19 May 2010) at 5.

²⁸ UNCSD, ‘The Future We Want’, UN Doc A/CONF.216/L.1 (2012). For analysis, see Morgera and Savaresi (n 26) 14.

²⁹ ‘The Future We Want’ (n 28) para 56.

³⁰ *ibid.*, para 62.

³¹ This is its full title. The Paris Agreement is in form, albeit not by name, a protocol to the 1992 UN Framework Convention on Climate Change, with which it shares the same institutional features. It was adopted by decision of the parties to the UNFCCC and only parties to the UNFCCC may become parties to the Paris Agreement. It entered into force on 21 November 2016. See generally D Bodansky, ‘The Paris Climate Change Agreement: A New Hope?’ (2016) 110 *AJIL* 306.

³² The commitments of developed State parties to reduce greenhouse gas emissions under the 1997 Kyoto Protocol expired in 2012 without having achieved any reduction in greenhouse gas emissions against the 1990 baseline.

³³ Art 2.

³⁴ Arts 3 and 4. See also art 5 on conservation of carbon sinks (ie forests).

enhance adaptation and climate resilience by promoting low carbon emissions development.³⁵ It achieves this objective mainly through provision for cooperation and capacity building and by reiterating the UN Framework Convention's provisions on financing.³⁶ There is thus an implicit assumption in the Paris Agreement that sustainable development requires low carbon development and a cap on global temperature increases.

The Paris Agreement retains the controversial concept of common but differentiated responsibility on which the UN climate regime has until now been based,³⁷ but in a very different form. Unlike the Kyoto Protocol, *all* parties to Paris—not just the developed States parties—are expected to 'prepare' some level of contribution to ensuring that greenhouse gas emissions peak as soon as possible and thereafter reduce rapidly so as to stabilize in the second half of the century.³⁸ The precise contribution for each party has not been agreed in advance but will be determined unilaterally by each party in accordance with its capabilities. The understanding is that reductions are to increase progressively, insofar as each country's circumstances allow, 'on the basis of equity, and in the context of sustainable development and efforts to eradicate poverty'.³⁹ Developed States will still take the lead,⁴⁰ but developing States are no longer exempt from making any emissions reductions, as they were under Kyoto. Although exemption may have been an understandable policy choice in 1992⁴¹ or 1997,⁴² by 2012 China was the world's biggest greenhouse gas emitter and India the world's third biggest.⁴³ Their combined emissions are nearly 20 per cent more than those of the US.⁴⁴ If climate change is to be tackled successfully then China, India and other industrialized developing States have to be brought into the greenhouse gas emissions and carbon management control regime. Paris does at least reflect reality: it recognizes that climate change is not caused only by developed States and that it cannot meaningfully be addressed by simplistic ideas of historic responsibility. This development is an important milestone in the evolution of the UN climate regime.

³⁵ Arts 2 and 7.

³⁶ Arts 6, 7 and 9.

³⁷ Preamble, 3rd recital. See generally L Rajamani, *Differential Treatment in International Environmental Law* (Oxford University Press 2006) especially ch 6; and L Rajamani, 'Ambition and Differentiation in the 2015 Paris Agreement: Interpretative Possibilities and Underlying Politics' (2016) 65 ICLQ 493.

³⁸ Art 4.

³⁹ Arts 3 and 4(3).

⁴⁰ Art 4(4).

⁴¹ At the adoption of the UNFCCC in 1992, the combined emissions of China and India, respectively the second (2694 Mt CO₂) and sixth (783 Mt CO₂) largest emitters in the world, were less than those of the United States (4918 Mt CO₂). See TA Boden, G Marland and RJ Andres, 'Global, Regional, and National Fossil-Fuel CO₂ Emissions: Carbon Dioxide Information Analysis Center, Oak Ridge National Laboratory', accessed via the Tyndall Centre's 'Global Carbon Atlas' at <<http://www.globalcarbonatlas.org/>>.

⁴² At the adoption of the Kyoto Protocol in 1997, the combined emissions of China and India, then the second (3467 Mt CO₂) and fifth (1043 Mt CO₂) largest emitters in the world, were still less than those of the United States (5415 Mt CO₂). *ibid.*

⁴³ The 2012 emissions of China were 9621 Mt CO₂ and India 2240 Mt CO₂. *ibid.*

⁴⁴ 5118 Mt CO₂ in 2012. *ibid.*

Will the Paris Agreement be more successful than Kyoto at reducing greenhouse gas emissions? On the positive side there is for the first time a clear and verifiable objective defined by reference to global temperatures. Equally importantly all the principal greenhouse gas emitters share a common commitment to reduce greenhouse gas emissions, even if their individual contributions will vary and be nationally determined. On the negative side, based on individual commitments made so far, global temperatures will continue to rise well beyond 2 °C unless States progressively and significantly keep reducing their emissions.⁴⁵ The Agreement could work, or it could fail by a large margin, but those who want to influence the outcome can still do so. That includes the human rights community.

III. HUMAN RIGHTS AND THE ENVIRONMENT

Why should environmental protection be treated as a human rights issue? There are several possible answers.⁴⁶ Most obviously, and in contrast to the rest of international environmental law, a human rights perspective directly addresses environmental impacts on the life, health, private life, and property of individual humans rather than on other States or the global environment. It may serve to secure higher standards of environmental quality, based on the obligation of States to take measures to control pollution affecting health, private life, and other human rights. It provides a framework within which detrimental impacts on food and water security can be addressed. It helps to promote the rule of law in this context: governments become directly accountable for their failure to regulate and control environmental nuisances, including those caused by corporations, and for facilitating access to justice and enforcing environmental laws and judicial decisions. Lastly, the broadening of economic and social rights to embrace elements of the public interest in environmental protection has given new life to the idea that there is, or should be, in some form, a right to a sustainable or ecologically sound environment.⁴⁷

Human rights jurisprudence relating to the environment has developed significantly in the 25 years since the Rio Conference, but none of this owes

⁴⁵ UNEP, *The Emissions Gap Report: Are the Copenhagen Accord Pledges Sufficient to Limit Global Warming to 2 °C or 1.5 °C? A Preliminary Assessment* (Nairobi 2010).

⁴⁶ See A Boyle and M Anderson (eds), *Human Rights Approaches to Environmental Protection* (Clarendon Press 1996); J Merrills in D Bodansky, J Brunnée and E Hey (eds), *Oxford Handbook of International Environmental Law* (Oxford University Press 2007) ch 28; D Anton and D Shelton, *Environmental Protection and Human Rights* (Cambridge University Press 2011); B Boer (ed), *Environmental Law Dimensions of Human Rights* (Oxford University Press 2015).

⁴⁷ See UNHRC, *Preliminary Report of Independent Expert on Human Rights Obligations Relating to a Safe, Clean, Healthy and Sustainable Environment*, A/HRC/22/43 (2012) [*UNHRC Preliminary Rep (2012)*]; J Knox and R Pejan (eds), *The Human Right to a Healthy Environment* (Cambridge University Press 2018).

anything to UN human rights bodies. An early attempt to adopt a UN declaration on human rights and the environment terminated in 1994 when an ambitious but politically controversial draft failed to secure the backing of States.⁴⁸ The Office of the High Commissioner for Human Rights returned to the problem in 2009, emphasizing that ‘While the universal human rights treaties do not refer to a specific right to a safe and healthy environment, the United Nations human rights treaty bodies all recognize the intrinsic link between the environment and the realization of a range of human rights, such as the right to life, to health, to food, to water, and to housing.’⁴⁹ Three theoretical approaches were subsequently identified.⁵⁰ The first sees the environment as a ‘precondition to the enjoyment of human rights’. The second views human rights as ‘tools to address environmental issues, both procedurally and substantively’. The third integrates human rights and the environment under the concept of sustainable development. Finally, the report also identifies ‘the call from some quarters for the recognition of a human right to a healthy environment’.⁵¹

An independent expert-special rapporteur (Professor John Knox) was appointed by the UN Human Rights Council in 2012 to report on the substantive and procedural dimensions of human rights obligations relating to the enjoyment of a ‘safe, clean, healthy and sustainable environment’ and the role of various institutional mechanisms in implementing those obligations.⁵² His reports articulate a largely uncontroversial account of what human rights law has contributed to environmental protection at the national and international level. The Special Rapporteur noted that ‘no global agreement sets out an explicit right to a healthy (or satisfactory, safe or sustainable) environment ... Nor have the later conferences on sustainable development in Johannesburg in 2002 and Rio de Janeiro in 2012 proclaimed a right to a healthy environment.’⁵³ However, his final report in 2018 advocates recognition of a right to a ‘safe, clean, healthy and sustainable environment’, derived largely from existing human rights law.⁵⁴

⁴⁸ ECOSOC, Draft Declaration of Principles on Human Rights and the Environment, in *Human Rights and the Environment*, Final Report (1994) UN Doc E/CN.4/Sub.2/1994/9. See N Popovic, ‘In Pursuit of Human Rights: Commentary on the Draft Declaration of Principles on Human Rights and the Environment’ (1996) 27 *ColumHumRtsLRev* 487.

⁴⁹ OHCHR, *Report on Climate Change and Human Rights*, UN Doc A/HRC/10/61 (2009) para 18 [‘OHCHR (2009) Rep’]. On the difficult political background see M Limon, in Knox and Pejan (n 47) ch 11.

⁵⁰ OHCHR, *Analytical Study on the Relationship between Human Rights and the Environment*, UN Doc A/HRC/19/34 (2011) paras 2, 6–9. ⁵¹ *ibid.*, para 12.

⁵² UNHRC *Preliminary Rep* (2012) A/HRC/22/43 (2012); *Mapping Report*, UN Doc A/HRC/25/53 (2013); *Compilation of Good Practices*, UN Doc A/HRC/28/61 (2015); *Note by Secretariat*, UN Doc A/HRC/31/53 (2015). See generally Knox and Pejan (n 47) ch 1.

⁵³ UNHRC *Preliminary Rep* (2012) para 14.

⁵⁴ UNHRC, *Report of the Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment*, UN Doc A/HRC/37/59 (2018).

At the same time there is value in setting down those elements of human rights law already reflected in the jurisprudence and in national law, and on which some degree of international consensus is achievable. The rapporteur has at least demonstrated that regional environmental practice in Europe, Latin America and Africa has global significance, including the procedural rights enshrined in the Aarhus Convention, the obligation to assess environmental impacts and ensure a reasonable balance between economic development and environmental protection, the need to implement and enforce applicable environmental standards, and to protect vulnerable groups such as indigenous peoples.⁵⁵ But while the UNHRC now recognizes the environmental dimensions of human rights law,⁵⁶ including its relevance for sustainable development, it remains to be seen whether UN treaty bodies follow suit in a meaningful way.⁵⁷

Does existing human rights law have any role in the process of tackling global climate change elaborated by the Paris Agreement? The OHCHR believes that it does. Its current policy asserts that ‘it is critical to apply a human rights-based approach to guide global policies and measures designed to address climate change’.⁵⁸ Its website identifies three ‘essential attributes’ of a human rights approach:

- As policies and programmes are formulated, the main objective should be to fulfil human rights.
- The rights-holders and their entitlements must be identified as well as the corresponding duty-bearers and their obligations in order to find ways to strengthen the capacities of rights-holders to make their claims and of duty-bearers to meet their obligations.
- Principles and standards derived from international human rights law – especially the Universal Declaration of Human Rights and the core universal human rights treaties, should guide all policies and programming in all phases of the process.⁵⁹

In its submission to the Paris Conference in 2015 the OHCHR set out ten considerations that should guide States in the actions they take to address climate change.⁶⁰ Inter alia these include mitigating climate change and preventing negative effects on human rights; ensuring accountability

⁵⁵ See UNHRC *Mapping Report* (2013).

⁵⁶ UNHRC Resolution 31/8 (2016).

⁵⁷ The current practice of the Committee on the Rights of the Child, the Committee on the Elimination of Discrimination against Women, and the Committee on Economic Social and Cultural Rights with respect to climate change is reviewed in CIEL, *States’ Human Rights Obligations in the Context of Climate Change* (Washington 2018).

⁵⁸ See OHCHR, ‘Human Rights and Climate Change: Overview’ at <<http://www.ohchr.org/EN/Issues/HRAndClimateChange/Pages/HRClimateChangeIndex.aspx>>.

⁵⁹ Summarizing the OHCHR website entry *ibid*.

⁶⁰ See ‘Understanding Human Rights and Climate Change’, OHCHR’s submission to the 21st Conference of Parties to the UNFCCC (27 November 2015) and the ‘Key Messages’ reproduced on its website.

and effective remedy for human rights harms caused by climate change; and guaranteeing equality, non-discrimination, and meaningful and informed participation in decision-making. States should cooperate to ensure an equitable outcome that delivers ‘low-carbon, climate-resilient, and sustainable development, while also rapidly reducing greenhouse gas emissions’. The policy asserts that ‘Only by integrating human rights in climate actions and policies and empowering people to participate in policy formulation can States promote sustainability and ensure the accountability of all duty-bearers for their actions. This, in turn, will promote consistency, policy coherence and the enjoyment of all human rights.’⁶¹

The UN human rights community is a late arrival at the climate-change ball—very late. But if climate change is the problem, is the OHCHR’s vision of human rights law as part of the answer plausible or realizable? For several reasons, it is far from clear that it is.

First, the whole tenor of the OHCHR’s submissions to the Paris negotiations is anthropocentric insofar as it focuses only on the harmful impact of climate change on the rights of humans, rather than on the environment as such. This is precisely the approach which ecological theorists have opposed because they believe it is insufficiently comprehensive and inconsistent with ecological reality and biological diversity.⁶² By looking at the problem in moral isolation from other species and the natural world we simply reinforce the assumption that the environment and its natural resources exist only for immediate human benefit and have no intrinsic worth in themselves. But as we saw earlier, we cannot afford to ignore the fundamental value of natural capital—the climate, biodiversity, ecosystems, the marine environment and so on—in sustaining life on Earth. The Paris Agreement recognizes this point.⁶³ It is tempting to describe OHCHR’s vision of human rights in this context as conceptually imperialist. A kinder view might be that it is simply myopic, for there is no inherent reason why a human-rights perspective should not take a longer-term perspective that balances competing values. Indeed, human rights law already recognizes that environmental protection is a legitimate aim of public policy and law that may in some cases constrain or limit the exercise of the right to possessions and property or other human rights.⁶⁴

⁶¹ ‘Key Messages’ *ibid.*

⁶² See R Eckersley, *Environmentalism and Political Theory* (UCL Press 1992); A Gillespie, *International Environmental Law, Policy and Ethics* (Clarendon Press 1997) ch 1.

⁶³ Preamble, para 13, refers to ‘the importance of ensuring the integrity of all ecosystems, including oceans, and the protection on biodiversity’.

⁶⁴ *Matos e Silva Lda v Portugal* [1996] IV ECHR; *Jacobsson v Sweden* No 2 [1998] I ECHR; *Katte Klitsche and de la Grange v Italy* [1994] ECHR Sers A/293B; *Pine Valley Developments Ltd v Ireland* [1991] ECHR Sers A/222, paras 57–59; *Katsoulis and Ors v Greece* [2004] ECHR 321; *Fredin v Sweden* [1991] ECHR Sers A/192, paras 41–51. See also *Apirana Mahuika and Ors v New Zealand* (2000) CCPR Comm No 547/1992, in which the UN Human Rights Committee

Second, beyond a dogmatic reiteration of the importance of human rights, no real attempt is made by the OHCHR to explore or explain in any detail how its emphasis on fulfilling human rights as ‘the main objective’ is supposed to save the climate from excessive warming in decades to come. The submissions do not go into detail and, not surprisingly, those who drafted the Paris Agreement evidently did not share the OHCHR’s conception of its own centrality to the problem. Thus, right from the start we have a relationship that is poorly thought out, and on which only a limited consensus exists.⁶⁵

IV. HUMAN RIGHTS IN THE PARIS AGREEMENT

The preamble to the Paris Agreement acknowledges that climate change is a common concern of humankind, and that ‘Parties should, when taking action to address climate change, respect, promote and consider *their respective obligations on human rights*, the right to health, the rights of indigenous peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situations and the right to development, as well as gender equality, empowerment of women and intergenerational equity.’ (original emphasis)

Despite much effort to achieve more during the negotiations, this is all the agreement says on the subject of human rights.⁶⁶ It is even less specific or prescriptive than the OHCHR submissions. As Rajamani observes, ‘This recital carefully circumscribes the impact of an explicit reference to human rights in the Paris Agreement.’⁶⁷ Human rights law is neither incorporated into the Paris Agreement by this wording, nor does it explicitly constitute a standard by which the adequacy of efforts taken by the parties to implement the objectives of the Paris Agreement might be judged.⁶⁸ There are several indicators of a downgrading of the human rights perspective. Firstly, the key paragraph is in the preamble, not the body of the treaty. It thus helps only to identify the object and purpose of the treaty and its context, not to impose obligations on the parties.⁶⁹ Second, it uses the word ‘should’, not ‘shall’, which implies a less than wholehearted endorsement of the relevance of the

upheld the State’s right to conserve and manage natural resources in the interests of future generations provided this did not amount to a denial of the applicant’s rights.

⁶⁵ See Limon in Knox and Pejan (n 47) ch 11.

⁶⁶ See D Klein *et al.* (eds), *The Paris Agreement on Climate Change* (Oxford University 2017) 108, 114–17; L Rajamani, ‘The Increasing Currency and Relevance of Rights-based Perspectives in the International Negotiations on Climate Change’ (2010) 22 JEL 391; S Duyck, ‘The Paris Climate Agreement and the Protection of Human Rights in a Changing Climate’ (2015) 26 YrbkIntlEnvL 3.

⁶⁷ Rajamani in Knox and Pejan (n 47) ch 13.

⁶⁸ See Rajamani, *ibid.* Contrast 1988 UN Convention Against Illicit Traffic in Narcotic Drugs, art 14(2), which provides in part: ‘Each Party shall take appropriate measures to prevent illicit cultivation ... The measures adopted shall respect fundamental human rights ...’

⁶⁹ R Gardiner, *Treaty Interpretation* (Oxford University Press 2008) 186.

various rights referred to.⁷⁰ The phrase ‘respect, promote and consider’ further minimizes any sense that the Agreement is reiterating a commitment to ‘fulfil’ or ‘protect’ human rights, the terms normally associated with human rights commitments.⁷¹ This choice of words was deliberate. At best it is little more than a recognition that, as the preamble says, States should take into account their human rights obligations when taking action to address climate change. To suggest that it brings about a ‘true incorporation of human rights into the Paris Agreement’ is wide of the mark.⁷² It does nothing of the kind. This preamble is not a triumph for the human rights lawyers.

Then there is the list of rights referred to in the preamble. It is a curious catalogue. The right to health is obviously relevant to climate change. But there is no mention of the right to private life, or life, or property, nor any of the social and economic rights that are also relevant, except the right to development. The word ‘sustainable’ is notably absent here, although referred to elsewhere. Indigenous peoples, children, women, persons with disabilities all have rights, and all will be vulnerable to climate change, but why their rights should be singled out for special mention rather than, for example, the inhabitants of sinking island States is not obvious. Overall this looks more like a list of categories designed to satisfy special interest groups rather than a serious attempt to address the relationship between human rights law and climate change.⁷³ It is easy therefore to start from a sceptical position about Paris and human rights. Essentially the agreement says nothing meaningful on the subject. Does this matter? Yes—it does.

Climate change is already regarded in international law as a ‘common concern of humanity’.⁷⁴ Thus it is an issue in respect of which all States have legitimate concerns. The UN is therefore right in principle to make the connection between human rights and climate change.⁷⁵ The OHCHR’s first report on the subject noted, however, that ‘[w]hile climate change has obvious implications for the enjoyment of human rights, it is less obvious whether, and to what extent, such effects can be qualified as human rights violations in a strict legal sense’.⁷⁶ That report goes on to observe the multiplicity of causes for environmental degradation and the difficulty of

⁷⁰ On the difference between ‘should’ and ‘shall’ see M Nordquist (ed), *United Nations Convention on the Law of the Sea 1982: A Commentary* (Brill 1993) II, xlv–xlvi.

⁷¹ Contrast UNHRC Res 31/8 (2016), which calls on States to ‘respect, protect, and fulfil human rights obligations’; and see Rajamani in Knox and Pejan (n 47) ch 13; Klein *et al.* (n 66) 115.

⁷² See Klein *et al.* (n 66) 115.

⁷³ A point confirmed by Klein *et al.* (n 66) 116.

⁷⁴ UNFCCC, Preamble, 1st recital (1992).

⁷⁵ UNHRC Res 10/4 (2009); OHCHR, *Report of the Independent Expert/Special Rapporteur etc.*, UN Doc A/HRC/31/52 (2016). See generally S Humphreys (ed), *Human Rights and Climate Change* (Oxford University Press 2009); J Knox, ‘Linking Human Rights and Climate Change at the UN’ (2009) 33 *HarvEnvtlLRev* 477; A Boyle, ‘Human Rights and the Environment: Where Next?’ (2012) 23 *EJIL* 613; S Atapattu, *Human Rights Approaches to Climate Change: Challenges and Opportunities* (Routledge 2015).

⁷⁶ OHCHR (2009) Rep (n 49) para 70.

relating specific effects to historic emissions in any one State. But this is only partly relevant.

Governments obviously have a responsibility to protect their own citizens from the harmful effects of climate change, regardless of which States have caused them. The rights to life, health, water and food, and the right to respect for private life and property, entail more than a simple prohibition on government interference: governments have a positive duty to take appropriate action to secure these rights,⁷⁷ as we can see in the human rights case law on environmental harm, where the problems were mainly a failure to regulate the activities of corporations, or to legislate on environmental matters, or to enforce existing environmental law.⁷⁸ At this level it is worth emphasizing that human rights obligations towards those most affected by climate change will at the very least require governments to take appropriate steps to mitigate the risk of harm within their own borders. Human rights treaty bodies have addressed the implications of climate change mainly from this perspective, and they have stressed the obligation of States parties to protect vulnerable communities.⁷⁹ If this is what the OHCHR had in mind then it is on safe ground, but it will have achieved very little.

However, in the climate change context, where the impacts are global, the key question is not whether greenhouse gas emitting States have to mitigate the harm to their own citizens, but whether they also have a responsibility to protect people in *other* States from the harmful impacts of those emissions on the global climate. The inhabitants of sinking islands in the South Seas may justifiably complain of human rights violations, but who is responsible? Those States like the United Kingdom and Germany whose historic emissions have unforeseeably caused the problem? Or those States like China and India whose current emissions are foreseeably making matters worse? Or those States like the United States or Canada which opted out of Kyoto and failed to take adequate measures to limit further emissions so as to stabilize global temperatures at 1990 levels? Or their own governments in the Association of Small Island States, which may have conceded far too much when ratifying the Kyoto Protocol or in subsequent climate negotiations? In OHCHR's view all States have an obligation 'to refrain from interfering with the enjoyment of human rights in other countries' and 'to take steps through international assistance and cooperation, depending on the availability of resources, to facilitate fulfilment of human rights in other countries including disaster relief, emergency assistance, and assistance to refugees and displaced persons'.⁸⁰

⁷⁷ See UNHRC, General Comment No 6 on Article 6 of the 1966 International Covenant on Civil and Political Rights, 16th Sess (1982).

⁷⁸ See eg *Lopez Ostra v Spain* [1994] 20 EHRR 277; *Guerra v Italy* [1998] 26 EHRR 357; *Fadeyeva v Russia* [2005] ECHR 376; *Öneryıldız v Turkey* [2004] ECHR 657; *Taskin v Turkey* [2006] 42 EHRR 50, paras 113–119.

⁷⁹ See (n 57).

⁸⁰ See OHCHR (2009) Rep (n 49) paras 86 and 99; and Limon in Knox and Pejan (n 47) ch 11.

The problem with this answer is that human rights treaties generally require a State party to secure the relevant rights and freedoms for everyone within its own territory or subject to its jurisdiction.⁸¹ The extraterritorial application of human rights law has normally arisen only where the State exercises jurisdiction or control over persons or territory abroad.⁸² These precedents bear little resemblance to transboundary pollution, where the State only exercises control over harmful activities located within its own territory, not over those who are harmed beyond its borders. They are even further removed from climate change.⁸³ Here, as we saw earlier, the obvious problems are the multiplicity of States contributing to the problem and the difficulty of showing any direct connection to the victims. It is much harder to frame such a problem in terms of the jurisdiction or control over persons or territory required by the human rights case law.

Does the *Advisory Opinion on the Environment and Human Rights* delivered in 2017 by the Inter-American Court of Human Rights change that conclusion? The Court advised that in cases of transboundary harm ‘a person is subject to the jurisdiction of the State of origin if there is a causal connection between the incident that took place on its territory and the violation of the human rights of persons outside its territory’.⁸⁴ The Court’s Opinion refers in particular to the obligation to conduct an Environmental Impact Assessment (EIA), to facilitate access to information, public participation, and access to justice.⁸⁵ At the very least this suggests that transboundary claimants in Latin America now have the same procedural rights as under the Aarhus Convention.⁸⁶ Whether the Court’s Opinion is intended to be any wider than that remains to

⁸¹ ICCPR, art 2 (1966) but see *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, *Advisory Opinion* (2004) ICJ Rep 136, para 109, and contrast the 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR), which has no such limitation. The 1969 American Convention on Human Rights, art 1 and the 1950 European Convention on Human Rights, art 1 make no reference to territory, but require parties to ensure to everyone ‘subject to’ or ‘within’ their jurisdiction the rights set out therein. See generally O De Schutter, *International Human Rights Law: Cases, Materials, Commentary* (Cambridge University Press 2010) 142–79.

⁸² *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, *Advisory Opinion* (2004) ICJ Rep 136, paras 109, 112; *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v Russian Federation)*, *Provisional Measures Order* (2008) ICJ Rep 386, para 109; *Ecuador v Colombia (Admissibility)* [2010] IACHR Rep No 112/10, paras 89–100; *Alejandro, Costa, de la Pena y Morales v Republica de Cuba* [1999] IACHR Rep No 86/99, para 23; *Coard v United States* [1999] IACHR Rep 109/99, para 37; *Al-Skeini v United Kingdom* [2011] ECHR, paras 130–142; *Öcalan v Turkey* [2005] 41 EHRR 985, para 91; *Ilascu v Moldova and Russia* [2005] 40 EHRR 46, paras 310–319, 376–394; *Issa et al v Turkey* [2004] 41 EHRR 567, para 71; *Cyprus v Turkey* [2002] 35 EHRR 30, para 78. See also General Comm No 31 adopted by the UNHR Cte, UN Doc HRI/GEN/1/Rev 7, 192 at 194ff, para 10.

⁸³ See the arguments in Boyle (n 75).

⁸⁴ *Advisory Opinion on Environment and Human Rights* (2017) IACTHR paras 103 and 104(h); translation from Official Summary, para II(h). At the time of writing full text was available only in Spanish.

⁸⁵ *ibid* para 103.

⁸⁶ Convention on Access to Information, Participation in Decision-Making, and Access to Justice in Environmental Matters (1998). See UNECE, *The Aarhus Convention: An Implementation Guide* (2nd edn, New York, 2014); J Ebbesson in Bodansky *et al.* (n 46) ch 29.

be seen, but it may have taken the Inter-American Convention some way towards the position adopted by Ecuador in the *Aerial Spraying* case of saying that a State has an obligation to protect the human rights of those affected by transboundary pollution for which that State is responsible.⁸⁷

But even if we accept that human rights law potentially has transboundary application as indicated by the Inter-American Court, it will still be hard to show that parties to the UNFCCC regime, including the major greenhouse gas emitters, have failed to strike the right balance between their own State's economic development and respect for human rights in other States⁸⁸ when they have either complied with or are exempt from greenhouse gas emissions reduction targets agreed by the international community as a whole. Inadequately controlled transboundary pollution is clearly a breach of general international law,⁸⁹ and may in limited circumstances also engage those human rights which potentially entail cross-border jurisdiction.⁹⁰ But, given the terms of the Kyoto Protocol,⁹¹ and the essentially voluntary character of key provisions of the Paris Agreement,⁹² it is far from clear that inadequately controlled climate change violates any existing treaty obligations or general international law. In those circumstances the argument that a policy which complies with the UN climate change regime nevertheless violates the existing human rights obligations of States is not easy to make. From this perspective, the OHCHR's focus on 'rights-holders' and 'duty bearers' is misplaced and essentially incoherent in the context of climate change. Cooperation to address climate change may be a better answer, but not if limited to assistance with disaster relief and displaced persons as envisaged by the OHCHR. Overall, OHCHR's approach fails to capture adequately a global perspective on the problem of climate change.

V. IS THERE ANOTHER VIEW?

The UN independent expert/special rapporteur appointed to report on climate change and human rights, Professor John Knox, has observed that 'whether or not climate change legally violates human rights norms is not the dispositive question'.⁹³ He takes a more insightful approach than the one adopted by OHCHR. His report emphasizes the global character of the threat

⁸⁷ See Memorial and Reply of Ecuador (2013) ICJ Rep.

⁸⁸ *Taskin v Turkey* (n 78) para 119; *Hatton v UK* [2003] ECHR 28, paras 98, 122–129 (Grand Chamber).

⁸⁹ *Pulp Mills Case* (n 9) paras 101, 187. ⁹⁰ eg the right of equal access to justice, on which see 1998 Aarhus Convention on Access to Information, Public Participation in Environmental Decision-making and Access to Justice, art 3(9).

⁹¹ Greenhouse gas emissions reduction targets under the 1997 Kyoto Protocol apply only to Annex I developed State parties, not to developing States, including China, India and Brazil.

⁹² On the question how far the specific provisions of the Paris Agreement create legally binding obligations see D Bodansky, 'The Legal Character of the Paris Agreement' (2016) 25 RECIEL 142. In particular he notes, *ibid*, at 150, that 'The Paris Agreement does not require parties to implement their NDCs; instead it simply requires parties to pursue domestic mitigation measures, an obligation they already have under the UNFCCC.' ⁹³ UN Doc A/HRC/31/52 (2016) para 36.

climate change poses for the enjoyment of human rights and focuses on the need for global cooperation to tackle climate change effectively in order to avert serious harm to those rights. He argues that obligations to protect human rights in the context of internal environmental harm 'can also inform the content of the duty of international cooperation when that duty pertains to a global environmental challenge such as climate change'.⁹⁴ On this view of human rights law 'All states have a duty to work together to address climate change, but the particular responsibilities necessary and appropriate for each State will depend in part upon its situation.'⁹⁵

Building on the 2015 Paris Agreement, Professor Knox reiterates the obligation of States to assess the climatic effects of activities within their jurisdiction; to control the activities of business and industry when these may cause climate change; to facilitate public participation in decision-making with respect to climate change; and to provide effective remedies for those adversely affected. All of this reflects existing human rights-based environmental jurisprudence.⁹⁶ His most important conclusion is that by itself the Paris Agreement will not prevent 'disastrous consequences for human rights' if States merely meet the commitments they have undertaken so far. It follows that '[f]rom a human rights perspective, then, it is necessary not only to implement the current intended contributions, but also to strengthen those contributions to meet the target set out in article 2 of the Paris Agreement.'⁹⁷ Knox's human rights perspective is considerably more focused and persuasive than the submissions made by the OHCHR to the Paris negotiations. The logic of his arguments leads to two possible conclusions about human rights and climate change.

First, UN human rights bodies could use their existing powers of oversight to focus attention on how States parties respond (or fail to respond) to commitments made in the Paris Agreement. This would represent a significant contribution to the debate on human rights and climate change. To some extent, as we saw earlier, it is already happening.⁹⁸ The Committee on Economic, Social and Cultural Rights has begun to address the failure of some States to reduce greenhouse gas emissions, preserve carbon sinks, and promote renewable energy.⁹⁹ It has also taken the view that the Convention on Climate Change and the Paris Agreement are relevant to interpreting the UNCESCR.¹⁰⁰ The 'Universal Periodic Review' for human rights established by the UN General Assembly in 2006¹⁰¹ could take this development further

⁹⁴ *ibid* para 45.

⁹⁵ *ibid* para 46.

⁹⁶ See (n 78).

⁹⁷ UN Doc A/HRC/31/52 (2016) paras 72–84. See also J Knox in C Carlarne, K Gray, and R Tarasofsky (eds), *The Oxford Handbook of International Climate Change Law* (Oxford University Press 2016) 213.

⁹⁹ CESCR, 'Concluding Observations' on: Australia (2017); Russian Federation (2017); Canada (2016). See also CEDAW, 'Concluding Observations' on Norway (2017).

¹⁰⁰ CESCR, 'Concluding Observations' on Australia (2017).

¹⁰¹ UNGA Res 60/251 (2006).

and on a more systematic basis. In addition to assessing compliance with established human rights obligations, the periodic review process permits the UN Human Rights Council to monitor compliance with voluntary pledges and commitments made by States; it requires no imagination to regard the Paris Agreement as falling within this category given the potential impact of climate change on a wide range of human rights.

The important point here is that human rights can be defined and expanded by reference to environmental commitments, including those adopted at Paris.¹⁰² Moreover, insofar as economic and social rights are generally concerned with encouraging governments to pursue policies which ‘ensure the satisfaction of, at the very least, minimum essential levels of each of the rights’,¹⁰³ making the Paris Agreement a success is vital for this purpose. Thus, despite its transparent weakness, the reference to human rights in the preamble of the Paris Agreement does reinforce their significance. Paris may not require States to comply with human rights commitments, but human rights commitments could and should require States to implement Paris, and their record in doing so can and should be monitored and assessed by UN human rights bodies in the same way that they would monitor and assess any other set of policies which adversely impact on the fulfilment of human rights.

Second, Knox’s final report has given the debate on climate change and human rights a renewed focus on environmental quality and sustainability.¹⁰⁴ Despite the efforts of the UN human rights treaty organs to invest the 1966 International Covenant on Economic, Social and Cultural Rights with greater environmental relevance, it still falls short of giving environmental quality recognition as a significant public interest.¹⁰⁵ Crucially, there is no right to a healthy, sustainable or ecologically sound environment in the Covenant.¹⁰⁶ Lacking the status of a right means that the environment can be trumped by those values that have that status, including the right to economic development and natural resource exploitation.¹⁰⁷ This is an omission that needs to be addressed if the

¹⁰² S Chuffart and J Viñuales in E Riedel, G Giacca and C Golay (eds), *Economic, Social and Cultural Rights in International Law* (Oxford 2014) 287–95. The same point is also applicable to the Aarhus Convention’s translation into European human rights law: see in particular *Taskin v Turkey* [2004] ECHR.

¹⁰³ UNCESCR, *General Comment No 3: The Nature of States’ Parties Obligations* (1990), interpreting art 2 of the Covenant. See M Craven, *The International Covenant on Economic, Social and Cultural Rights* (Clarendon Press 1995) ch 3.

¹⁰⁴ See (n 54).
¹⁰⁵ The UNCESCR has adopted various General Comments relevant to the environment and sustainable development, notably General Comments 12, 14 and 15, which interpret arts 11 and 12 of the ICESCR to include access to a sustainable food supply and sufficient, safe, and affordable water for domestic uses and sanitation. See UNCESCR, *General Comment No.12: The Right to Adequate Food*, UN Doc E/C.12/1999/5 (1999); *General Comment No.14: The Right to the Highest Attainable Standard of Health*, UN Doc E/C.12/2000/4 (2000); *General Comment No. 15: The Right to Water*, UN Doc E/C.12/2002/11 (2003).

¹⁰⁶ Though there is a right to health and environmental hygiene (art 12). Compare UNHRC Resolution 31/8 (2016) para 5(a), which encourages States ‘To adopt an effective normative framework for the enjoyment of a safe, clean, healthy and sustainable environment.’

¹⁰⁷ Pursuant to art 1 of both 1966 Covenants. See Merrills in Bodansky *et al.* (n 46) 663, 666.

sustainability of the global environment as a public good is to receive the weight it deserves in the balance of economic, social and cultural rights.

The key question therefore is what values we think a covenant on economic and social rights should recognize in the modern world. Is protection of the global environment, including the global climate system, a sufficiently important public good to merit economic and social rights status comparable to economic development? The answer to this question surely has to be yes. The UN has repeatedly endorsed the promotion of sustainable development as the core principle of international environmental policy for all States.¹⁰⁸ This is reflected in the Paris Agreement's references to sustainable development.¹⁰⁹ Is it now time to ensure that it is also reflected in human rights law?¹¹⁰ For political reasons this was a perspective wholly absent from the OHCHR's vision of the role of human rights law in the Paris negotiations.¹¹¹ Yet, as a matter of law, the International Court of Justice has referred to 'the need to reconcile economic development with protection of the environment [which] is aptly expressed in the concept of sustainable development'.¹¹² The essential point is that, while recognizing that the right to pursue economic development is an attribute of a State's sovereignty over its own natural resources and territory, it cannot lawfully be exercised without regard for the detrimental impact on the sustainability of the global environment or on human rights in general. The Paris Agreement is important precisely because it provides a clearer yardstick by which to measure that detrimental impact than previous climate change agreements have done. Even if we succeed in keeping global warming below the target of 1.5 °C there will be considerable damage to the planet; above 2 °C the damage becomes progressively more unsustainable. A right to a sustainable and ecologically sound environment would almost certainly be meaningless beyond that degree of climate change. Making such a right part of existing human rights law would, however, clearly give human rights bodies and courts the power to assess whether States are meeting their commitments with respect to climate change, including their obligation to cooperate for that purpose.

VI. CONCLUSIONS

The Paris Agreement is the first, but hopefully not the last, attempt to promote the 'urgent action' to deal with climate change envisaged by SDG 13. Beyond

¹⁰⁸ UN, *Report of the World Summit on Sustainable Development*, UN Doc A/CONF 199/20 (2002), Res 1, para 5; UNCSD, *The Future We Want*, UN Doc A/CONF 216/L 1 (2012) and UNGA Res 66/288 (2012) Annex.

¹⁰⁹ See Preamble and art 2, 4, 5, 6, 7 and 8.

¹¹⁰ See generally Knox and Pejan (n 47).

¹¹¹ See Limon and Rajamani in Knox and Pejan (n 47) chs 11 and 13.

¹¹² *Pulp Mills Case* (n 9) para 177; *Gabčíkovo-Nagymaros Case* (1997) ICJ Rep 7, para 140; *Iron Rhine Case* (2005) PCA; R Higgins in A Boyle and D Freestone (eds), *International Law and Sustainable Development* (Oxford University Press 1999) 87.

that it is harder to draw clear conclusions about how far Paris has embraced a human rights approach to climate change. The Paris Agreement is relevant to human rights law, not for what it says about human rights—which is next to nothing—but for what it says about the need to address the risk of climate change taking global temperatures above 1.5 °C. The UN special rapporteur is right in principle to argue that human rights law as a whole requires States to comply with expectations set out in Articles 2, 3 and 4 of the Agreement. UN human rights bodies need to act accordingly and hold States to account for what they have agreed in Paris. Climate change is a global problem. It cannot easily be addressed by the simple process of giving specific human rights transboundary effect. It affects too many States and too much of humanity. Its causes, its effects, and those responsible, are too numerous and too widely spread to respond usefully to individual human rights claims or to analysis by reference to particular human rights.

As the present author has previously argued,¹¹³ the response of human rights law—if it is to have one—needs to be in global terms, treating the global environment and climate as the common concern of humanity and climate change as a threat to human rights as a whole. In that context focusing on climate change within the corpus and institutional structures of economic, social and cultural rights makes sense, even if it means giving a broader interpretation to those rights or amending the 1966 ICESCR to include a right to a healthy, sustainable and ecologically sound environment (or any variation thereof). The value of Professor Knox's reports and of the evolving practice of a number of human rights treaty bodies is that they have begun to sketch out a more meaningful role for the international human rights community with respect to climate change than the OHCHR managed to do in its preparations for Paris. It remains to be seen how far the UN human rights institutions will take either approach.

¹¹³ Boyle (n 75) 613.