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Symposium Introduction: Critical Perspectives on Global Law and the Environment

Eliana CUSATO, Emily JONES, Birsha OHDEDAR and Judith BUENO DE MESQUITA

The University of Amsterdam, Amsterdam, The Netherlands, the University of Essex, Colchester and SOAS, University of London, London, United Kingdom, respectively.

Corresponding author: Eliana CUSATO, Email: e.t.cusato@uva.nl

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Global law and the environment is an increasingly prominent and rapidly evolving area of scholarship. In confronting global challenges such as climate change, biodiversity loss, freshwater scarcity, and other symptoms of planetary breakdown, critical scholars from different intellectual traditions are questioning the traditional approach taken within environmental law which has, so far, only managed to save “some trees” but failed to keep “the forest”.¹ These dominant legal interactions often use the law to address “problems” after they arrive. However, the law plays a key role also in constituting these “problems” by incentivizing certain harmful activities, upholding socio-political-economic structures, and through the limited framing of the issues it claims to solve. It is becoming increasingly clear that we live in a “legally constituted world”.² Against this background, there is a need for further critical reflection on the role of the law in preventing, addressing, and even driving the entangled socio-ecological-economic crises of modernity. Through interrogating the assumptions that underlie environmental law, critical scholars have exposed, challenged, and put forward alternative visions to its neo-colonial and gendered biases; its exclusion of indigenous perspectives and voices; its construction upon problematic representations of “the environment” that centres an anthropocentric worldview; and a neoliberal economic order that fosters vast environmental damage.

In April 2021, the School of Law and Human Rights Centre at the University of Essex hosted a workshop on “Critical Perspectives on Global Law and the Environment”. The workshop aimed to foster and develop critical scholarship on law and the environment, specifically among early-career researchers whose work embodies original approaches. Among the fifty-one expressions of interest for the workshop, sixteen papers were

¹ Klaus BOSSELMANN, “Losing the Forest for the Trees: Environmental Reductionism in the Law” (2010) 2(8) *Sustainability* 2424.

² See e.g. “Decolonisation, Oceans and International Law: A Conversation with Dr. Surabhi Ranganathan” *International Law and the Global South* (24 September 2021), online: *International Law & the Global South* <<https://internationallawandtheglobalsouth.com/decolonisation-oceans-and-international-law-a-conversation-with-dr-surabhi-ranganathan/>>; see also Surabhi RANGANATHAN, “Ocean Floor Grab: International Law and the Making of an Extractive Imaginary” (2019) 30(2) *European Journal of International Law* 573.

selected, taking into account geographical and gender balance and early-career status, with scholars participating from around the world, from Australia, to Barbados, Brazil, Germany, India, and beyond. Participants at the workshop discussed each paper in depth and senior colleagues acted as discussants. The six articles in this Symposium were among those presented at the workshop. The contributions to this Symposium build on existing critical work while pushing the conversation in new directions to foster a new generation of legal scholars.

I. From “International” to “Global” Law?

This Symposium employs global law as a frame to interrogate the role of law *vis-à-vis* different environmental issues. We decided to focus on global law instead of solely international law for several reasons. The main reason for this chosen focus is the nature of environmental law itself. International environmental law is commonly seen as a specialized sub-field of the “law of nations”. However, it also differs from other areas of international law due to its more global character. Indeed, the “law” that the different contributors to this Symposium explore cannot be conceptualized as one thing. Instead, it is a collection of principles, practices, and institutions enacted, negotiated, and challenged by various actors (public and private, state and non-state), across a variety of legal systems, and interconnecting with other governance frameworks bearing upon the environment.³

Much of this law is international law and much of it is domestic; some of it is both. Increasingly, a lot of this law is described as “transnational”⁴ or “global”. Environmental law scholarship has since long recognized the blurred lines between national and international law.⁵ As a field of scholarship, “global” environmental law has emerged to reflect how national, international, and transnational laws cannot be seen as distinct units.⁶ For instance, national laws and regulatory mechanisms have been “uploaded” into international environmental treaties and, similarly, international legal norms have been “downloaded” into national and regional systems.⁷ Environmental rights have often been adopted directly within national and regional systems without developing internationally. For instance, the right to a healthy environment was developed through the jurisprudence of national and regional courts before gaining traction at the international level, most notably through its recent recognition by the Human Rights Council.⁸ More recently, the so-called “rights of nature” are being recognized

³ See e.g. *Declaration of the United Nations Conference on the Human Environment*, Report of the United Nations Conference on the Human Environment, Stockholm 5–16 June 1972, UN Doc. A/CONF.48/14/Rev.1 (1972); *Transforming Our World: The 2030 Agenda for Sustainable Development*, Resolution Adopted by the General Assembly on 25 September 2015, UN Doc. A/RES/70/1 (2015).

⁴ Anna CHADWICK, *Law and the Political Economy of Hunger* (Oxford: Oxford University Press, 2019) at 7. See also Gregory SHAFFER, “The New Legal Realist Approach to International Law” (2015) 28(2) *Leiden Journal of International Law* 189; Peer ZUMBANSEN, ed., *The Many Lives of Transnational Law: Critical Engagements with Jessup’s Bold Proposal* (Cambridge: Cambridge University Press, 2020).

⁵ See e.g. Edith BROWN WEISS, “Understanding Compliance with International Environmental Agreements: The Baker’s Dozen Myths” (1998) 32(5) *University of Richmond Law Review* 1555 at 1558; Jonathan B. WIENER, “Something Borrowed for Something Blue: Legal Transplants and the Evolution of Global Environmental Law” (2001) 27 *Ecology Law Quarterly* 1295; Benjamin RICHARDSON, “Environmental Law in Postcolonial Societies: Straddling the Local-Global Institutional Spectrum” (2000) 11(1) *Colorado Journal of International Environmental Law and Policy* 1.

⁶ Tseming YANG and Robert V. PERCIVAL, “The Emergence of Global Environmental Law” (2009) 36 *Ecology Law Quarterly* 615; Louis J. KOTZÉ, “Rethinking Global Environmental Law and Governance in the Anthropocene” (2014) 32(2) *Journal of Energy & Natural Resources Law* 121.

⁷ Yang and Percival, *ibid.*, at 618.

⁸ The right to a healthy environment has been recognized in domestic legal systems since at least the 1980s. In 2021, it was recognized by the UN Human Rights Council, for the first time within an international legal

through law at the national level, with a substantial borrowing and transplantation between courts and legislatures, as well as a legal activism across borders.⁹ It is important to note that these developments have occurred across Global South-North boundaries.¹⁰ For these reasons, “global law” provides a much broader scope for interrogating the complexities of the relationship between the law and the environment than the distinct spaces of national or international, public or private law.

In his article in this Symposium, Offor analyzes the usefulness of global law when thinking about animal law. Offor notes the possibilities in global law in that it imagines a system of law beyond the Westphalian focus on statehood. This, in turn, he argues, provides a potential framework for thinking about the global while resisting the universalizing tendencies of international law. In a similar vein, we and the contributors to this issue, use global law to challenge universalisms. Therefore, as Offor argues in relation to global animal law, global law must constantly dismantle intersecting global inequalities and injustices, including colonialism, gendered structures of power and inequality, ableism, economic inequalities, and beyond. This requires paying attention to how anthropocentrism also fosters global inequalities, situating the white, heterosexual male of the Global North at the centre of legal thought, creating a legal system whereby the environment and animals are seen as objects of exploitation.

While global law may offer potential through a broader recognition of legal actors, there are also risks with this framing. Through recognizing a wider variety of sources of law and policy, global law risks, problematically, recognizing the power of subjects that may lack democratic legitimacy, and yet are significant in perpetuating environmental harm. We are referring here in particular to global corporations.¹¹ In light of these tensions, we use “global law” without attributing a specific normative meaning to it. The term global law is thereby used in a descriptive way to capture the diversity of actors, networks, and institutions involved in environmental governance and lawmaking at the domestic, transnational, and international levels. Ultimately, in using this term, we recognize that the concept of “global” in global law raises hard questions in terms of representation, power, and agency of human and non-human beings. While being wary of the critiques of global law, we argue that the latter may help push the boundaries of what is conventionally understood as international law and develop a new vocabulary to grapple with the complex challenges that we are facing.

II. South-North Relations and the Environment

The articles in this Symposium interrogate how relations between states are fundamental to understanding questions of law and the environment. A critical concern is the need to reflect the voices and perspectives of the Global South, where the vast majority of the world’s population live.¹² Scholarship focusing on Third World Approaches to

instrument. See *The Human Right to a Clean, Healthy and Sustainable Environment*, Resolution Adopted by the Human Rights Council on 8 October 2021, UN Doc. A/HRC/RES/48/13 (2021).

⁹ Craig M. KAUFFMAN and Pamela L. MARTIN, “Constructing Rights of Nature Norms in the US, Ecuador, and New Zealand” (2018) 18(4) *Global Environmental Politics* 43.

¹⁰ Global South countries such as Ecuador, Bolivia, and Colombia have been leading the way in the rights of nature jurisprudence. However, there has also been recognition in the Global North, in countries such as New Zealand and the US. Indigenous peoples have, in many instances, led the way in this emerging movement.

¹¹ See e.g. ESIL 2021, 16th Annual Conference of the European Society of International Law, Concluding Panel: Global Law as the End of International Law?; see also in general Susan MARKS, “Naming Global Administrative Law” (2005) 37 *N.Y.U. Journal of International Law & Politics* 995.

¹² Philippe CULLET and Sujith KOONAN, eds., *Research Handbook on Law, Environment and the Global South* (Cheltenham: Edward Elgar Publishing, 2019); Shawkat ALAM, Sumudu ATAPATTU, Carmen G. GONZALEZ, and

International Law (TWAIL) and Global South-North relations have exposed the colonial origins and neo-colonial divisions that persist in international environmental law.¹³ The history of international law and the environment demonstrates that countries in the Global North have prioritized certain environmental problems, while marginalizing poverty, structural inequalities, and the human environment.¹⁴ Ozone depletion in the 1980s, for instance, gave rise to technical fixes to much broader environmental problems. The climate regime has often focused disproportionately on greenhouse gas mitigation over climate adaptation and loss and damage, which are more acutely tied to development issues and questions of responsibility for past and current emissions. The Global South has, on the contrary, tied environmental problems to poverty and development, including issues of food and energy sovereignty, access to safe drinking water, and sanitation.¹⁵

These differences can be traced back to the birth of modern international environmental law at the Stockholm Conference in 1972. In Stockholm, Indira Gandhi, then Prime Minister of India, articulated the concerns of the South in relation to the global environmental regime that was being led primarily by the North.¹⁶ Gandhi emphasized the need for poverty eradication as a central tenant of tackling environmental issues. Looking back at Stockholm, fifty years on, Rao's contribution to the Symposium analyzes how TWAIL scholarship can benefit from understanding Gandhi's speech and demands. She argues that the central tenants of Gandhi's speech continue to pervade today, as reflected in debates around climate change loss and damage and by the debates within TWAIL scholarship itself. Rao argues that the demands for financial accountability from the Global North and protection of the interests of the Global South have come unstuck in the fifty years since Gandhi's speech. This reflects the structural limitations of working within the international legal system. A limitation that Gandhi, in her cautious and sceptical engagement with the Stockholm conference, in many ways, foresaw.¹⁷

In a similar vein, contributor Lancaster notes the continued impacts of colonialism on the tenure rights of indigenous people in the Caribbean Community (CARICOM) and the Organisation of Eastern Caribbean States (OECS). Colonialism obliterated traditional indigenous ownership and practices. However, Lancaster finds hope in emerging legal shifts to recognize traditional indigenous tenure. Drawing on existing provisions in environmental law and human rights law, Lancaster calls for these provisions to be applied as this regime develops, working to ensure the effective management of resources while upholding the fundamental rights of the inhabitants of the region.

Jona RAZZAQUE, eds., *International Environmental Law and the Global South* (Cambridge: Cambridge University Press, 2015); Usha NATARAJAN, "Third World Approaches to International Law (TWAIL) and the Environment" in Andreas PHILIPPOPOULOS-MIHALOPOULOS and Victoria BROOKS, eds., *Research Methods in Environmental Law: A Handbook* (Cheltenham: Edward Elgar Publishing, 2017), 207.

¹³ Karin MICKELSON, "South, North, International Environmental Law, and International Environmental Lawyers" (2000) 11(1) *Yearbook of International Environmental Law* 52; Carmen G. GONZALEZ, "Bridging the North-South Divide: International Environmental Law in the Anthropocene" (2015) 32 *Pace Environmental Law Review* 407; Stephen HUMPHREYS and Yoriko OTOMO, "Theorizing International Environmental Law" in Anne ORFORD and Florian HOFFMANN, eds., *The Oxford Handbook of the Theory of International Law* (Oxford: Oxford University Press, 2016), 797 at 798.

¹⁴ Sumudu ATAPATTU and Carmen G. GONZALEZ, "The North-South Divide in International Environmental Law: Framing the Issues" in Shawkat ALAM, Sumudu ATAPATTU, Carmen G. GONZALEZ, and Jona RAZZAQUE, eds., *International Environmental Law and the Global South* (Cambridge: Cambridge University Press, 2015), 1.

¹⁵ *Ibid.*

¹⁶ Karin MICKELSON, "The Stockholm Conference and the Creation of the South-North Divide in International Environmental Law and Policy" in Shawkat ALAM, Sumudu ATAPATTU, Carmen G. GONZALEZ, and Jona RAZZAQUE, eds., *International Environmental Law and the Global South* (Cambridge: Cambridge University Press, 2015), 109.

¹⁷ *Ibid.*, at 117.

III. Many Voices of Environmental Law

Moving beyond inter-state relations, questions of global law and the environment also bring to the fore the relations between different humans and between humans and non-humans. The recognition of the different actors in natural resource usage, environmental protection, agriculture, industrialization, and development is central in law. However, indigenous peoples, women, rural working classes, peasants, as well as animals, ecosystems, and “nature” have long been marginalized actors in legal systems.

Human rights are conventionally seen as a tool to empower the marginalized. However, human rights are not without many theoretical and practical challenges. Critical approaches have drawn attention to fundamental problems in how human rights law has been conceptualized and operationalized in the last thirty years, questioning whether these concerns can be overcome to successfully challenge the structural processes that drive the socio-environmental crisis.¹⁸ Scholars have drawn attention to how the “subject” and “object” of human rights needs to be re-examined.¹⁹ Grear, for instance, argues that the subject of human rights (and law more generally) has been the disembodied, rationalistic, individual (European/Northern) male.²⁰ This “imagined individual” embedded in the law and in our broader socio-economic structures has profound implications in the ordering of society. In other words, the law privileges a conception of this specific legal subject. At the same time, the presumed object is often the “environment”, animals, indigenous peoples, women, and other marginalized communities.

The ontological separation between humans and non-humans under environmental and human rights law is critiqued by Chaib in his contribution to this Symposium. Taking the debate further, Chaib posits *multinaturalism*, a concept developed by anthropologist Eduardo Viveiros de Castro, and analyzes how bringing an Amerindian perspective may further environmental law.²¹ Drawing on an Amerindian worldview, Chaib argues for accepting a variety of ontological possibilities under the law. Amerindian ontologies (like other indigenous ontologies) conceive the world in relational terms. Accordingly, he argues that we should not constrain ourselves to only seeing material objects as having the “status of reality”.²² Instead, Amerindian ontologies can live with various human, non-human, and indeed supernatural beings that are seen as “being” in a relational world because they have relations with each other. As Chaib argues, current attempts at addressing environmental law’s anthropocentrism – for instance, through extending legal personality to non-humans – though well-meaning, can end up re-enforcing the object/subject divide. On the other hand, the Amerindian view provides a more fluid way to conceive of legal personhood, based on relational ontology. This helps escape the anthropocentric and modernist tendencies that environmental law often goes back to. Chaib’s paper thus aims to contribute to the emerging decolonial, post-human, new materialist, and critical perspectives that seek to challenge the anthropocentrism of environmental law.

¹⁸ See e.g. Louis J. KOTZÉ, “The Anthropocene, Earth System Vulnerability and Socio-Ecological Injustice in an Age of Human Rights” (2019) 10(1) *Journal of Human Rights and the Environment* 62; Sam ADELMAN, “Rethinking Human Rights: The Impact of Climate Change on the Dominant Discourse” in Stephen HUMPHREYS, ed., *Human Rights and Climate Change* (Cambridge: Cambridge University Press, 2010), 159; Anna GREAR, “Human Rights and the Environment: A Tale of Ambivalence and Hope” in Douglas E. FISHER, ed., *Research Handbook on Fundamental Concepts of Environmental Law* (Cheltenham: Edward Elgar Publishing, 2016), 146.

¹⁹ Emily JONES, “Posthuman International Law and the Rights of Nature” (2021) 12 *Journal of Human Rights and the Environment* 76.

²⁰ Anna GREAR, “Towards ‘Climate Justice’? A Critical Reflection on Legal Subjectivity and Climate Injustice: Warning Signals, Patterned Hierarchies, Directions for Future Law and Policy” (2014) 5(0) *Journal of Human Rights and the Environment* 103 at 113.

²¹ Eduardo VIVEIROS DE CASTRO, *Cosmological Perspectivism in Amazonia and Elsewhere*, HAU Masterclass Series Volume 1 (Manchester: HAU Books, 2012).

²² Mihnea TĂNĂSESCU, “Rights of Nature, Legal Personality, and Indigenous Philosophies” (2020) 9(3) *Transnational Environmental Law* 429 at 450.

Efforts to broaden human rights' conceptual and practical boundaries have come from transnational struggles against capitalism and ecological destructions. These struggles have worked both within and outside the international legal system. One such pertinent example is the work of *La Via Campesina*, the transnational peasant and small-scale farmer movement driving the framing of the Rights of Peasants.²³ In her contribution to this Symposium, Lokhandwala examines the United Nations Declaration on the Rights of a Peasants (UNDROP), which institutionalizes these rights at the international level.²⁴ UNDROP stems from a radical movement that seeks to subvert capitalist logics over food production and consumption that has decimated rural lives and ecologies. Through the UNDROP, rights are reimagined in many ways through collectivizing rights, reinforcing the rights of marginalized groups, and emphasizing the rights of people to participate collectively in decision making over their lives, livelihoods and environments. Accordingly, the recognition of these rights is seen as part of a project to “decolonize” human rights.²⁵ Despite the radical aims of the UNDROP, Lokhandwala's skeptical account of the Declaration interrogates the limits of international human rights frameworks, questioning whether and how these frameworks can be translated into local and domestic action to overhaul systems of power.²⁶

IV. Growth, Capitalism, and the Environment

A final theme in this Symposium is the issue of growth and capitalism, which is central to understand the causes of the present ecological crisis. Traditionally, mainstream economic scholarship has argued that we can continue growing our economies while protecting the natural environment. For instance, the environmental Kuznets curve has dominated thinking, arguing that environmental protection becomes more effective once countries reach a particular state of economic development.²⁷ More recently, economists and international policy makers have claimed that we can decouple economic growth from material resource use (the so-called “green growth”).²⁸

The concept of sustainable development, which has become central to global environmental law and governance since the early 1990s, is based upon the view that economic growth, environmental protection, and human development can co-exist. For instance, the outcome of the Rio+20 Conference emphasized the importance of the “green economy” and “green growth” as integral to sustainable development.²⁹ The Sustainable Development Goals (SDGs) further integrate economic growth, including a goal to “decouple economic growth from environmental degradation”.³⁰ However, as Hickel and Kallis highlight in their recent analysis of empirical evidence and model-based projections, the absolute decoupling of resource use and economic growth has not been occurring at a global scale.³¹ They thereby argue that such decoupling cannot happen fast enough to respect

²³ Priscilla CLAEYS and Marc EDELMAN, “The United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas” (2020) 47(1) *The Journal of Peasant Studies* 1.

²⁴ *United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas*, Resolution Adopted by the General Assembly on 17 December 2018, UN Doc. A/RES/73/165 (2019).

²⁵ Priscilla CLAEYS, “The Rise of New Rights for Peasants: From Reliance on NGO Intermediaries to Direct Representation” (2018) 9(3–4) *Transnational Legal Theory* 386.

²⁶ See e.g. Margot E. SALOMON, “The Radical Ideation of Peasants, the ‘Pseudo-Radicalism’ of International Human Rights Law, and the Revolutionary Lawyer” (2020) 8(3) *London Review of International Law* 425.

²⁷ Susmita DASGUPTA, Benoit LAPLANTE, Hua WANG, and David WHEELER, “Confronting the Environmental Kuznets Curve” (2002) 16(1) *Journal of Economic Perspectives* 147.

²⁸ See e.g. Organisation for Economic Co-operation and Development (OECD), “Towards Green Growth: Monitoring Progress” (2011), online: OECD <<https://www.oecd.org/greengrowth/48224574.pdf>>.

²⁹ *The Future We Want*, Resolution Adopted by the General Assembly on 27 July 2012, UN Doc. A/RES/66/288 (2012).

³⁰ See in particular Sustainable Development Goal 8 “Decent Work and Economic Growth”.

³¹ Jason HICKEL and Giorgos KALLIS, “Is Green Growth Possible?” (2020) 25(4) *New Political Economy* 469.

the carbon budgets for 1.5 and 2°C against a background of continued economic growth.³² Degrowth has emerged as one of several proposed alternatives to the current capitalist, growth-oriented approach to (un)sustainable development.³³ Drawing on scholarship from fields including anthropology, ecology, and economics – but as yet undertheorized in international law – the central assumptions underlying degrowth are that growth is based on unsustainable depletion of natural resources and consumption; thus environmental sustainability can only be achieved with a reduction of economic activity. In this context, the degrowth movement has argued for a smaller, qualitatively different economy that is not underpinned by economic growth, particularly in the Global North given its disproportionate negative impact on the environment. Aligning with planetary environmental limits, degrowth is to be pursued while respecting human rights and reducing global socio-economic and other inequalities.

In his contribution to this Symposium, Fyock's article is one of the first to interrogate legal frameworks from the perspective of these alternative economic theories. Providing a preliminary examination of how international economic law can realign under degrowth, with a particular focus on international investment law and international corporate governance, Fyock argues that a shift in approach to degrowth would re-orient these regimes away from environmental and social harms. Furthermore, Lokhandwala also interacts with the broader debate on economic growth and capitalism. Lokhandwala's critical analysis of the UNDROP reminds us of the difficulties in radically tackling growth-oriented economic systems (most notably, the global agricultural system) through legal means.

V. Conclusion

Overall, this Symposium seeks to contribute to the field of global law and the environment, providing a series of critical perspectives on a variety of issues. The different contributions ask hard questions about the causes and consequences of the current ecological breakdown and reflect upon the possibilities – but also the politics – of law. In making clear the unequal power relations that shape legal arrangements, this collection of essays contributes to critical understandings of the role of the law both within and beyond the state. In addition, the Symposium presents an array of new and emerging voices in the field. As early career scholars we agree on the importance of giving a voice to the “next generation” of critical environmental law scholars especially women and academics from the Global South. To conclude therefore, we would like to draw on the words of Carmen Gonzalez, who states:³⁴

it is essential to mentor the next generation to make sure there is another generation of scholars, preferably scholar-activists who will take the reins when I am gone. This means doing lots of peer reviews of books and articles that might otherwise experience censorship. It means doing tenure and promotion reviews of scholars whose work might be unfairly evaluated because of their identities or because they deploy non-mainstream frameworks or methodologies. I recommend critical scholars for awards to make sure their work receives recognition. I also work with colleagues to produce scholarly anthologies. My experience is that individual articles can be ignored in disciplines closed to critical perspectives, but there is power in speaking collectively.

³² *Ibid.*, at 480.

³³ Ashish KOTHARI, Federico DEMARIA, and Alberto ACOSTA, “Buen Vivir, Degrowth and Ecological Swaraj: Alternatives to Sustainable Development and the Green Economy” (2014) 57(3–4) *Development* 362.

³⁴ Third World Approaches to International Law Review (TWAIR), “Meltdown! International Law Praxis During Socio-Ecological Crises” (9 September 2021), online: TWAIR <<https://twair.com/meltdown-international-law-praxis-during-socio-ecological-crises/>>.

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Eliana CUSATO is a Marie Curie post-doctoral research fellow, Amsterdam Center for International Law, University of Amsterdam.



Emily JONES is a Senior Lecturer at the School of Law and Human Rights Centre, University of Essex.



Birsha OHDEDAR is a Lecturer at SOAS University of London.



Judith BUENO DE MESQUITA is a Senior Lecturer and Co-Deputy Director of the Human Rights Centre at the School of Law, University of Essex.

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