

Climate Change and Human Rights Proceedings

Input for the 2016 Report to the Human Rights Council of the Special Rapporteur on Human Rights and the Environment

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Having particular regard to secondary norms on responsibility, how is it possible to implement human rights proceedings with respect to climate change?

It would be indispensable to quickly recognise a human right to (a sustainable) environment. This can be achieved by interpreting the no-harm rule (*Trail Smelter (USA v Canada)* (1938 and 1941) III RIAA 1905) as a (third generation) fundamental right.

Such a step is crucial to simplify the complex causation link existing between excessive greenhouse gas (GHG) emissions and first and second generation human rights, which entails: (1) anthropogenic GHG emissions; (2) rising atmospheric temperatures; (3) further environmental changes, eg, typhoons; and (4) human rights violations. A fundamental right to (a sustainable) environment would allow human rights protection mechanisms to be triggered directly by GHG emissions (1) exceeding the limits agreed under the UNFCCC regime.

The basic right-duty to (a sustainable) environment should be envisaged as a general (*erga omnes*) and peremptory (*cogens*) obligation (UNESCO and UNHCHR, *Bizkaia Declaration on the Right to Environment* (1999) arts 1-3). Such a right can already be acknowledged as a general principle of law (Knox, *Human Rights Obligations relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment*, UN Doc A/HRC/22/43 (2012) [12]). This should further lead to acknowledging a general principle of international law (Ksentini, *Human Rights and the Environment*, UN Doc E.CN.4/Sub.2/1994/9 (1994) [22]), either implicitly, based on the assumption that the right to environment is preliminary to the enjoyment of all other human rights (Small Island Developing States, *Malé Declaration on the Human Dimension of Global Climate Change* (2007) Preamble), or explicitly, possibly by means of a resolution of the UN General Assembly and the inclusion of such a right in the preamble to the UNFCCC and the Paris Agreement.

In more detail, see Ottavio Quirico, Jürgen Bröhmer and Marcel Szabó, 'States, Climate Change and Tripartite Human Rights: the Missing Link', in Ottavio Quirico and Mouloud Boumghar (eds), *Climate Change and Human Rights – An International and Comparative Law Perspective* (Routledge, 2015) 7, at 33-7.