

An aerial photograph of a coastal region in Norway, showing a series of small, rocky islands connected by a long, winding road and several bridges. The water is a deep blue, and the islands are covered in green vegetation. The sky is overcast with soft, grey clouds. The entire image is framed by a white border.

THE TRANSFORMATIVE POWER OF LAW: ADDRESSING GLOBAL ENVIRONMENTAL CHALLENGES

KEY MESSAGES FROM THE 2022 OSLO
INTERNATIONAL ENVIRONMENTAL
LAW CONFERENCE



WCEL

WORLD COMMISSION ON ENVIRONMENTAL LAW
COMMISSION MONDIALE DE DROIT DE L'ENVIRONNEMENT
COMISION MUNDIAL DE DERECHO AMBIENTAL



Photo: Nordland, Norway © Stein Egil Liland/Pexels



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The conference would also not have been successful without the support and commitment of the more than 750 speakers, chairs, and participants who promoted active dialogue and exchange, as well as the student volunteers, support staff, and the Executive Officer of the IUCN World Commission on Environmental Law, Mr. Roberto Coll. We thank each of the colleagues who contributed to the event and whom we might not have been able to name here. We appreciate you and look forward to working with you in the near future to continue to advocate the advancement of environmental law globally.

Table of Contents

Foreword, Antonio Herman Benjamin	5
Foreword, Hans Christian Bugge	6
Preface, Christina Voigt	7
About the IUCN World Commission on Environmental Law	8
About the 2022 Conference and this Publication	9
Summaries from the High-Level Opening Ceremony	10
Key messages:	
High-Level Opening Ceremony	16
First Conference Keynote	19
Second Conference Keynote	21
Global environmental challenges and the environmental rule of law	23
Transformative power of law	28
The power of international environmental law	32
Judicial dialogue	35
The role of the judiciary in bringing about transformative change	40
The transformation of ocean governance	43
Addressing climate change, pollution, and biodiversity loss	46
ADB developing environmental law champions legal education	49
The role of law in transforming towards a sustainable economy	53
New and emerging norms	56
Closing Plenary and Ceremony	63

Foreword

Antonio Herman Benjamin

Chief Justice, National High Court of Brazil (STJ)

Chair Emeritus, IUCN World Commission on Environmental Law

President, Global Judicial Institute on the Environment



Those who work with **Environmental Law** have at some point wondered whether the legal discipline is, in fact, effectively fulfilling its role in protecting nature, health, and landscape. Such inquiring, in this field, should not be seen as indicative of distrust in the numerous sets of international, national, and local norms promulgated since 1972. In fact, we question the effectiveness of Environmental Law for three main reasons. First, because we want Environmental Law to deliver tangible results – to have real transformative power --, as the environment requires much more than just a rhetorical discipline. Second, due to the environmental crisis (or environmental crises) being mutable, environmental norms must continuously renew and adapt to emerging realities and demands. Third, because we do not always know if the obstacles to enforcement lie within the law itself (or the lack thereof) or in the behavior of the implementing bodies and agents, especially judges.

This type of interrogation normally occurs within academia, which does not mean it should be a task only for professors. Without dialogue with those who practice Environmental Law daily, we can hardly identify and evaluate with any certainty the causes of the problems we face.

Under the dual perspective of the “transformative power of law” and “global environmental challenges,” the IUCN World Commission on Environmental Law, together with partner institutions, held in Oslo, in 2022, one of its most successful international congresses. Specialists from around the world gathered to discuss the present and future of Environmental Law, analyzing its (many) concrete results, its capacity to evolve to better face old and new challenges and, last but not least, the imperfections of the currently existing implementation systems.

When we talk about the “transformative power of law,” the initial image that comes to mind is one of movement beyond the status quo. Not only beyond (in the sense of addition) to what we have, but often also in contradiction to or even in direct rejection of the existing situation. It equally signifies the power to transform for the better, whether through improvement or by filling normative gaps, never to regress in terms of guarantees of fundamental rights and the ecological foundations of planetary life.

Finally, it is the transformative power of law that operates profoundly (or systematically) on procedural, substantive, and institutional levels. That is to say, among other features, it establishes new rights and obligations, recognizes new legal subjects and instruments, and penetrates various levels of state organization: the legislative, the executive, and the judiciary.

An event of this scale and vast content is not easily organized. Certainly, without the visionary and tireless work of Professor Christina Voigt, we would not have achieved such success. The University of Oslo, our host, is to be congratulated, as well as all the partners – and there were many – who joined Professor Christina Voigt, believing in the ambitious agenda she prepared.

The Congress’s proposals point to a global Environmental Law (something not to be confused with international Environmental Law), based on a renewed ethical and normative understanding of our relationship with Nature and ourselves, as well as the acceptance, once and for all, that it is not enough to work on the theory and forget the practice of Environmental Law.

Foreword

Prof. Dr. Hans Christian Bugge

*Professor Emeritus of Environmental Law, University of Oslo
Nicholas Robinson Award for Excellence in Environmental Law
and Policy, IUCN WCEL*



In 2020, the International Panel on Biodiversity and Ecosystem Services (IPBES) presented its first major report. It describes a dramatic and rapid decline in global biodiversity and ecosystems. It underlines that the environmental problems we face are rooted in fundamental social and economic causes: the growth in population, economic activities, international trade, and consumption, and in our way of life in general. As a consequence, “Goals for conserving and sustainably using nature ... may only be achieved through transformative changes across economic, social, political and technological factors.” To achieve this, the panel points to “environmental law and its implementation” as one of the five “main interventions” needed.

This challenges environmental and climate change law, which finds itself at a crossroads. The year 2022 marked fifty years since the Stockholm Declaration on the Human Environment and the establishment of UNEP in 1972, forty years of the United Nations Convention on the Law of the Sea, and the 30th anniversaries of the Rio Declaration on Environment and Development, the major UN conventions UNFCCC, CBD, and UNCCD, and the general acceptance of sustainable development as an overarching global goal.

In parallel with the impressive growth in national, regional and international environmental law, biodiversity and ecosystem services have continued to decline sharply over the last 50 years. The time has come both to critically assess the effectiveness of existing environmental law, and reflect on how it can be strengthened with a view to the transformative changes needed. The Oslo conference aimed to contribute to these challenges.

In this connection, mitigation of environmental problems has to be seen in a broader legal context; it must address the causes of the problems as much as the effects. Environmental law increasingly has to interrelate – and increasingly interrelates – with other areas of law, such as human rights law, public administrative law, trade and investment law, company law, energy law, transport law, criminal law, and civil law, to mention a few. Here lies a key to the role of law as a factor for change.

The conference papers in this publication fully witness the dynamism, the magnitude of issues and complexities of environmental law in 2022. The participants from all parts of the world reflect the truly global nature of this field. Not least encouraging is the number of young researchers presenting new understanding and ideas. In sum, the publication contributes to the further development of environmental and climate change law needed to face the challenges.

Preface

Prof. Dr. Christina Voigt

Chair, IUCN World Commission on Environmental Law



It is with great satisfaction that we can reflect the successes of the 2022 Oslo International Environmental Law Conference through this publication. This significant event was held at the beautiful ceremonial hall of the University of Oslo's Faculty of Law from 4 to 10 October 2022.

Jointly organized by the IUCN World Commission on Environmental Law and the Faculty of Law at the University of Oslo, this conference marked the third world environmental law conference, following those held in Rio de Janeiro in 2016 and the hybrid event in 2020. We were privileged to welcome over 200 speakers and about 600 participants, both in-person and online, from around the globe. This overwhelming response underscores the importance and urgency of our theme: "The Transformative Power of Law: Addressing Global Environmental Challenges."

The conference brought together a wide array of experts, including academics, judges, diplomats, civil servants, politicians, United Nations staff, and more. This diversity enriched our discussions and ensured a comprehensive exchange of ideas and perspectives. We were particularly pleased to include many younger voices, fostering forward-thinking dialogue.

The timing of this conference was particularly significant as it coincided with important anniversaries in the field of international environmental law: the 50th anniversary of the Stockholm Declaration, the 40th anniversary of the United Nations Convention on the Law of the Sea, and the 30th anniversary of the Rio Declaration. Our focus, however, was not on celebrating past achievements but on addressing the escalating environmental crises.

The conference underscored that we are at a critical juncture. The scientific community has made it clear that we have a small and rapidly closing window to mitigate the intensifying environmental crises that also threaten human rights and could lead to humanitarian disasters. The impacts of climate change, from droughts and fires in Europe to floods in Pakistan, are already devastating. As highlighted by UN Secretary-General Antonio Guterres, our world is in big trouble. The climate crisis, alongside biodiversity loss and global pollution, demands urgent and transformative legal responses.

We critically examined the adequacy, effectiveness, legitimacy, and fairness of current legislation. We explored new legal tools and concepts needed to catalyze transformative change, ensuring that the environmental rule of law acts as a powerful governance instrument to address these global challenges. As we move forward, let us continue to deepen our understanding, share innovative ideas, and inspire each other to harness the power of law in addressing the pressing environmental issues of our time.

The success of this conference would not have been possible without the support of our partners, including the University of Oslo Faculty of Law, the IUCN, the Norwegian Environment Agency, and many others. We are deeply grateful for their contributions and the hard work of those behind the scenes. A special thank you goes to all participants, to IUCN WCEL Executive Officer Roberto Coll for his tremendous efforts in organizing the conference, and to Marina Venâncio for editing this important publication.

ABOUT THE IUCN WORLD COMMISSION ON ENVIRONMENTAL LAW

The International Union for Conservation of Nature (IUCN) World Commission on Environmental Law (WCEL) is one of the [seven IUCN expert commissions](#). Its over 1,300 members worldwide work on a pro bono basis to advance environmental law worldwide. The Commission provides specialized knowledge and assistance to strengthen the legal foundations of nature conservation and sustainable development through the conceptual advancement of environmental principles, norms, and laws and by building the capacity of communities to benefit from the environmental rule of law.

According to [WCEL's Mandate 2021-2025](#), the Commission's main goals are to influence, encourage, and assist societies to employ the environmental rule of law for preventing harm to, conserving, restoring, and recovering sustaining nature, and ensure that uses of natural resources are equitable and ecologically sustainable, through:

- Advancing local, national, regional and international laws, administrative instruments and customary norms that support the environmental rule of law, are grounded in environmental ethics and foster ecological sustainability;
- Conducting and promoting education and research to strengthen the environmental rule of law and undertaking capacity building to enable governments and stakeholders to actively participate in effective environmental governance at all levels;
- Supporting the effective implementation of environmental laws through institutions that respect the environmental rule of law and ensure effective compliance and enforcement;
- Providing a central world forum for the development and integration of environmental law into all aspects and levels of governance; and
- Creating and promoting partnerships to support the development, implementation, and enforcement of environmental rule of law and extending professional and expert networks dedicated to the environmental rule of law.

WCEL's membership includes over a thousand environmental law and policy experts from all regions of the world. The Commission is led by Prof. Dr. Christina Voigt, Chair, and Mr. Ayman Cherakoui, Deputy-Chair, who are assisted by a Steering Committee appointed by the IUCN Council. The work of the Commission is structured around eight specialist groups focused on issues relating to biodiversity, climate change, early-career professionals, ethics, oceans, peace, security & conflict, soils & sustainable agriculture, water, and wetlands, as well as four task forces on a Model Forest Act, on the Agreement on Plastic Pollution, on the Global Judicial Institute on the Environment, and on the Rights of Nature.

More information about WCEL's publications and events is available on the Commission's [website](#). Please feel free to contact our Executive Officer for more details on how to participate in WCEL activities (wcel@iucn.org). We look forward to welcoming you to Commission!

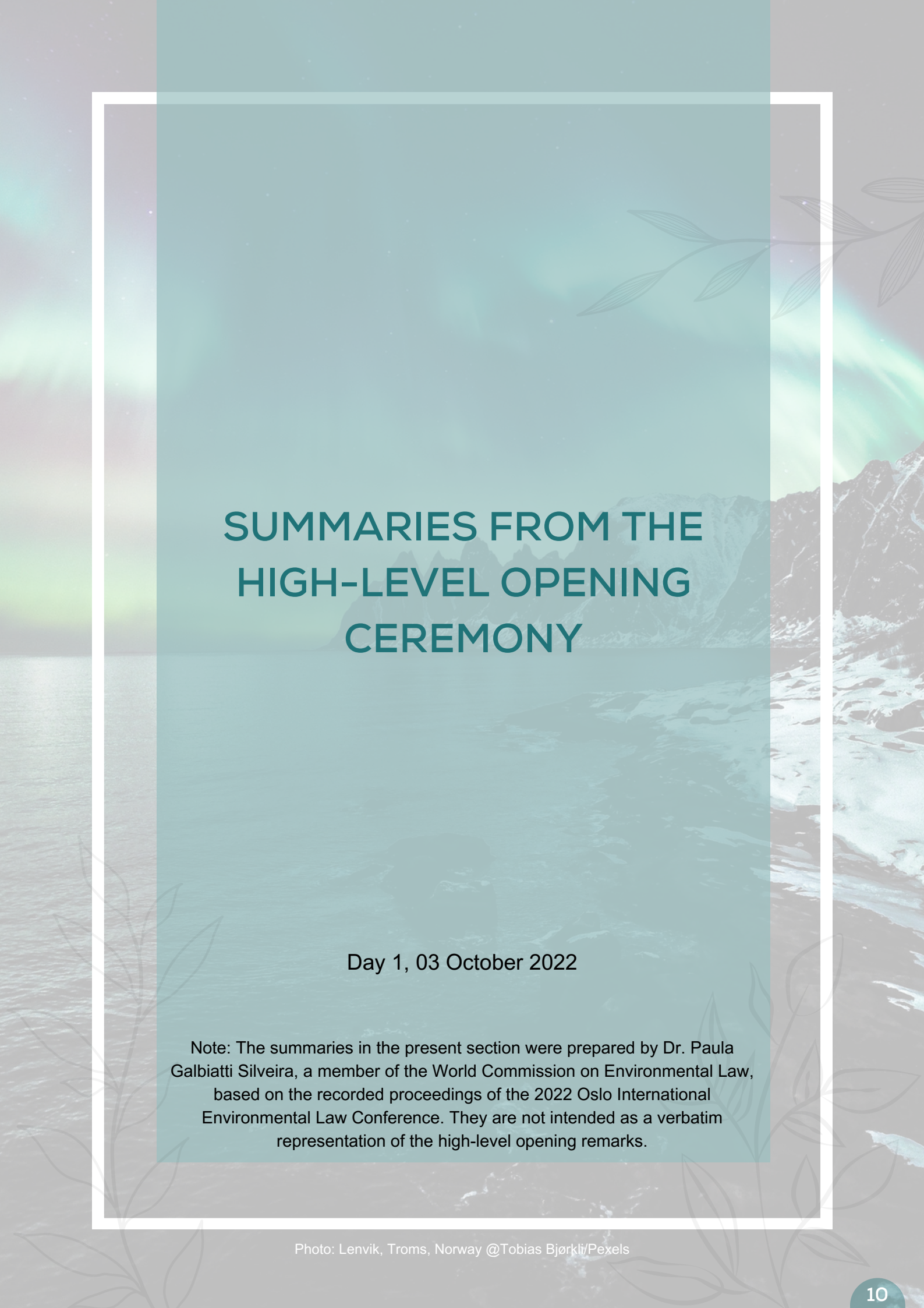
ABOUT THE 2022 CONFERENCE AND THIS PUBLICATION

The year 2022 marked several important anniversaries in environmental law-making: fifty years of the Stockholm Declaration on the Human Environment and the establishment of the United Nations Environment Programme in 1972, forty years of the United Nations Convention on the Law of the Sea, and thirtieth anniversaries of the Rio Declaration on Environment and Development and the Rio Conventions: the United Nations Framework Convention on Climate Change, the United Nations Convention on Biological Diversity and the United Nations Convention to Combat Desertification. These anniversaries provided an opportune moment for reflection on the power of law in bringing about the transformative changes needed to address the environmental crises of climate change, nature loss, and pollution.

Within this context, from ~~03 to 06~~ October 2022, the 2022 Oslo International Environmental Law Conference took place. It inquired about the ability of law, both on the national, regional, and international levels, to facilitate the necessary systemic changes to promote transformation across all sectors and levels. The Conference thus invited academics and researchers at all stages of their careers, policy-makers, legal practitioners, members of the Judiciary, intergovernmental organizations, and other relevant stakeholders to reflect on the importance of environmental law for the critical decade of action until 2030. Panelists and presenters addressed the adequacy, effectiveness, legitimacy, and fairness of current legislation or litigation in light of the challenges posed by the wide range of environmental problems pushing planetary bounds and threatening life on Earth.

The key messages from these four days of discussion were consolidated into this publication, which gives a glimpse of the breadth and diversity of challenges, as well as proposals and solutions offered by conference participants. Speakers from selected high-level sessions, plenary roundtables, keynote addresses, and parallel sessions were invited by IUCN WCEL to submit their core considerations and messages. A total of thirty-six contributions were received and later organized in alphabetical order according to their respective sessions. IUCN WCEL collaborators have also summarized the key messages from the opening plenary.

Since the Conference took place in October 2022, international environmental law has witnessed many relevant developments, including the adoption of the UNCBD's Kunming-Montreal Global Biodiversity Framework, the adoption of the Agreement under UNCLOS on the Conservation and Sustainable Use of Marine Biological Diversity of Areas beyond National Jurisdiction, four sessions of the Intergovernmental Negotiating Committee to develop an international legally binding instrument on plastic pollution, and the landmark advisory opinion from the International Tribunal for the Law of the Sea on States' obligations to protect and preserve the marine environment in relation to climate change. Despite these advances, the rapid progression of the environmental crises of nature loss, climate change, and pollution makes the discussions that took place in Oslo more timely than ever. We hope this publication sparks further dialogue and debate around the role of national and international environmental law in supporting, enabling, and promoting transformative change.



SUMMARIES FROM THE HIGH-LEVEL OPENING CEREMONY

Day 1, 03 October 2022

Note: The summaries in the present section were prepared by Dr. Paula Galbiatti Silveira, a member of the World Commission on Environmental Law, based on the recorded proceedings of the 2022 Oslo International Environmental Law Conference. They are not intended as a verbatim representation of the high-level opening remarks.



SUMMARY OF THE HIGH-LEVEL OPENING REMARKS FROM ANNIKEN HUITFELDT

NORWEGIAN MINISTER OF FOREIGN AFFAIRS

It is inspiring and relaxing to present at the 2022 Oslo International Environmental Law Conference. There is nothing relaxing, of course, about the Conference topics, which discuss issues of critical importance for the future of humanity. Just like Edvard Munch's paintings on the walls of the University Aula, such as the Sun and the Alma Mater, the Conference addresses truly big questions in life. There is nothing more important than ensuring planetary health and sustainable growth. Norway is deeply committed to addressing the global environmental crises to overcome them. For that, the nature of international law must be transformed, and ways for the global community to enter new global legal commitments must be found: the forces to make the necessary systemic changes. States and non-state actors must continue to be held accountable when legal commitments already in place are violated. Finding common solutions for these pressing issues requires creative thinking. It also requires discussion across various fields of expertise. It is especially important to have such conversations in the formal negotiating areas. In this sense, the Conference will facilitate critical input to processes that Norway attaches great importance to. This includes the ongoing efforts to conclude a global treaty on biodiversity beyond national jurisdictions and a new treaty to combat plastic pollution.

SUMMARY OF THE HIGH-LEVEL OPENING REMARKS FROM INGER ANDERSEN

EXECUTIVE DIRECTOR, UNITED NATIONS ENVIRONMENT PROGRAMME

2022 provides us with the chance to reflect on environmental law and the progress that has been made since the birth of the environmental movement at the Stockholm Conference fifty years ago. This progress has been considerable. From standing start, 176 countries now have environmental laws, 164 countries have created cabinet-level bodies responsible for environmental protection, and almost many countries in nations have enshrined the right to a healthy environment in their constitutions or national frameworks. Besides, 2022 also marks forty years of the Montevideo Environmental Law Programme. In July 2022, the United Nations National Assembly recognized the right to a clean, healthy, and sustainable environment, which we all hope can be a game changer. And yet, despite these laws, the planet is in deep crisis, in fact, in a triple planetary crisis: a crisis of climate change, a crisis of nature and biodiversity loss, and a crisis of pollution and waste. There is no need to lay out the scale of the crisis here; one can see it for itself just by looking at the front page of the newspaper or by looking around. The crisis tells three things about the law. First, that law does not necessarily mean justice. Second, there is a need to refocus the system to better protect the planet and the people who live in it. And finally, there is a need to innovate in environmental law. The approach of environment at the center of the law must be prioritized and a duty on humans to make choices consistent with ecological integrity and planetary boundaries must be imposed. Judges must be equipped with the knowledge necessary to advocate fairly for people, the climate, and the planet to truly understand the importance of intergenerational justice. It is essential not only to speak about environmental rights but also of the rights of the environment. There are examples of legal identities granted to rivers and mountains. This matters for indigenous people, it also matters because in this linear economic model where waste is relentlessly discarded into the environment, does not the environment also have rights? This is a much-needed conversation. Multilateralism must also be reimagined and move towards what the UN Secretary General calls “modern, inclusive, and networked multilateralism”. The proposed global instrument to end plastic pollution gives a chance to do just that. There is much work ahead to end the triple planetary crisis. But this cannot be done without solid and appropriate underlying law. It is for this reason that the work done by the 2022 Oslo International Environmental Law Conference and its attendees would be so critical for the future of this planet.

SUMMARY OF THE HIGH-LEVEL OPENING REMARKS FROM EMMANUEL UGIRASHEBUJA

MINISTER OF JUSTICE AND ATTORNEY GENERAL, REPUBLIC OF RWANDA

Law, generally, is a force. Force can be for good or for bad. So, it is critically important to analyze the transformative power of law in addressing global challenges: is the absence of law or the lack of implementation the major issue in addressing these challenges? It is not the absence of law, especially in some parts of the world like Rwanda, but the lack of political will to implement the laws. This is because the predominant work and goal of humanity is to achieve a safe and just space for itself. And this has been tried for so many years. But, to achieve this safe and just space for humanity, two important elements must be taken care of. The first element is the foundational elements of humanity, its basic rights: the right to food, the right to life, and the right to a safe and clean environment. However, these fundamental rights in themselves are not enough if you take care of them. The second important element that must be taken care of and is key to securing a just and safe space for humanity is taking care of environmental ceilings. If business as usual continues, the environmental ceilings will erode and a point will be reached when not much time is left to ensure these environmental ceilings are not transposed. If these are transposed, the foundation of rights must be forgotten. It is not possible to talk about the right to life if the challenges of climate change are not dealt with. It is not possible to speak of the right to a decent environment if all global environmental challenges are not dealt with. So, how to deal with this global challenge? One answer is to be found in law. However, the law in itself has its own limits; it is just one element of dealing with global environmental challenges. The question here is the political will to implement the laws that are very good in the books. Political will is extremely key to seeing the transformative power of law in addressing global environmental challenges. Another important element is how to interpret the laws. There is a lack of laws; the issue is either whether there is no will to implement the laws or they are interpreted in such ways that it is self-defeating, and a safe and just place for humanity is not achieved. The transformative power of law can only be achieved if judges interpret the laws to deal with the most pressing global challenges, one of which is environmental challenges. The fact is that, when laws are put in place, they are there to ensure that to achieve a safe and just place for humanity. For the law to be transformative and address global environmental challenges, whenever laws are created, they should be created with principles and principles: are we achieving a safe and just space for humanity? Rwanda, a small landlocked country, poor if measured according to wealth and poverty measurements, decided a decade ago to ban plastic bags. A few debates surrounded that decision. The first one was that Rwanda was a poor country and, as investors wanted to use plastic bags, how would the country still attract investors? Rwanda was not the first country that banned plastic bags – Rwanda's law was inspired by laws elsewhere, especially in Africa. The second question was whether this would be another good law in books that we will never implement, a question about political will. Rwanda passed the law and it strictly banned the use of plastic bags. Today, the country is still alive and the ban did not stop attracting of investors, what happened is that it attracted good investors that are those caring for the environment. Rwanda does not lack laws, the laws are there, and the only way that the laws can become a transformative power to address global environmental challenges is that they are properly interpreted by the judges and there should be political will from the Executive to ensure the laws are used appropriately to address such challenges.



SUMMARY OF THE HIGH-LEVEL OPENING REMARKS FROM RAGNHILD HENNUM

DEAN, FACULTY OF LAW - UNIVERSITY OF OSLO (2022)

We are at a crossroads. The decisions we make now can secure a liveable future”, said the Intergovernmental Panel on Climate Change (IPCC) Chair Hoesung Lee in April 2022, when IPCC Working Group III released its last report. The Co-Chair of Working Group III, Jim Skea, said it even stronger: “It’s now or never, if we want to limit global warming to 1.5°C (2.7°F)”. This is the emerging backdrop of the 2022 Oslo International Environmental Law Conference. Climate change and climate crisis are high on the agenda in the Faculty of Law of the University of Oslo but also at the University itself and throughout all the faculties working on climate change and sustainability goals. The Conference’s topic, the transformative power of law, makes every lawyer happy because it shows that law is not only conservative but can also be transformative. Together, it is possible to try to answer the question: “Can the challenges be solved by trying to use the legal tools available?” To answer this question, the best brains across nations and sectors must be brought together.

SUMMARY OF THE HIGH-LEVEL OPENING REMARKS FROM RAZAN AL MUBARAK

PRESIDENT, INTERNATIONAL UNION FOR CONSERVATION OF NATURE

Nature loss is happening at an incredible rate. The challenges faced with climate change add to this loss. In a report published in 2019, the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES) identified five drivers of nature loss which have accelerated since 1970. The First Driver is Land and Sea Use Change: half of all habitable land today is used for agriculture and livestock. In the past fifty years, there has been a fourfold increase in the number of marine dead zones. The Second Driver is Climate Change: forest fires are increasing, and coral reefs are being bleached, with more than 99% to be lost if global temperature increases beyond two degrees Celsius. The Third Driver is Natural Resource Exploitation: 93% of fish stocks are fished at or beyond maximum sustainable levels. The Fourth Driver is Pollution. And the Fifth is Invasive Alien Species. In mid-September 2022, during the United Nations General Assembly and Climate Week that took place in New York City (United States of America), it was clear that reversing the mentioned trends would require collective and multilateral solutions that are effective, just, and fair. Solutions must also consider both the north-south divide and the needs of today must be balanced against the needs of tomorrow. During the General Assembly, it was also clear that addressing climate change alone would not solve the biodiversity crisis. These must be tackled together and equally. It has been more than fifty years since the adoption of the Stockholm Declaration and the Action Plan for the Human Environment – the agreement that established the United Nations Environment Programme and also led to the Convention on Biological Diversity (CBD), Convention on International Trade of Endangered **Species** (CITES), and other multilateral environmental agreements.

IUCN, established in 1948, is a global conservation organization that is critically important to address the nature conservation challenges, and as such, IUCN is keenly interested in promoting and helping implement and adopt all environmental agreements through its 1,400 **members**. For conservation measures to be effective, durable, and sustainable not only is financial support required, but equally important are the regulatory frameworks, environmental regulations and laws that must be effectively implemented and enforced. And this can only happen by empowering implementation agencies around the world through access to knowledge and capacity-building programmes. In addition, effective conservation requires spatial planning and zoning laws, respect for indigenous peoples' rights and human rights, sometimes it even requires courts to step in and judges to not only understand the importance of environmental regulations, but also that these must be justly, fairly, and swiftly enforced. The IUCN World Commission on Environmental Law and its members are congratulated for bringing together so many different stakeholders at the 2022 Oslo International Environmental Law Conference to discuss the existing legal tools – and those that are needed – not only to inform the work of IUCN, but also its multiple stakeholders. This joint work can support the Conservation of Nature for All.



KEY MESSAGES FROM THE HIGH-LEVEL OPENING CEREMONY

Day 1, 03 October 2022



MR. ACHIM STEINER

ADMINISTRATOR, UNITED NATIONS DEVELOPMENT PROGRAMME (UNDP)

ENVIRONMENTAL LAW IN THE AGE OF INFORMATION

The tree of life continues to wither as we use the [equivalent of 1.6 Earths to maintain our current way of life](#). As we recalibrate our relationship with nature, the issue of climate change and the degradation of our natural world is increasingly moving to the domain of jurisprudence and constitutional law. In 2021, the United Nations (UN) Human Rights Council recognized the right to a clean, healthy, and sustainable environment as a human right, followed by the UN General Assembly in 2022. New technologies, especially digital, hold immense potential to advance these rights. That includes empowering environmental regulators and providing an evidence-based model for framing, monitoring, and enforcing effective policies attuned to the fragilities of our natural ecosystem as well as the cost of human action or, indeed, inaction. Countries and communities must now invest in, share, and shape policies around these now-vital digital tools to advance the future of environmental justice.

Data will be the fuel to power the Fourth Industrial Revolution, yet there remains a [dearth of data on crimes that affect the environment in many countries](#). The UN and its partners are helping to [fill that research gap](#). For example, a [wildlife crime intelligence database](#) in Thailand has strengthened the sharing of wildlife crime data among the multiple agencies involved in the law enforcement chain. The UN Biodiversity Lab 2.0 provides decision-makers with spatial data to put nature at the heart of sustainable development.

There is a growing [need to leverage technology to detect and investigate crimes that affect the environment](#). Consider Costa Rica, where an innovative [monitoring programme](#) enables the government to identify the pineapple producers behind illegal deforestation. With human rights safeguards in place, technologies such as [artificial intelligence can be used](#) to monitor the internet for illegal goods, including those connected to wildlife crime, or verify companies' environmental impact claims. New [machine learning models](#) can now efficiently locate industrial animal operations and help regulators determine each facility's environmental risk. Such tools will also allow regulators to sort millions of pages of real-time data and provide new oversight of a range of environmental issues, from illegal logging to overfishing, helping to prompt enforcement measures.

Addressing the transnational nature of issues around climate change, biodiversity loss, and pollution will involve simultaneously reinforcing environmental rule of law, building judicial capacity, mainstreaming environmental and climate analysis, and improving coordination between regulatory institutions on climate and environmental matters. Centralized databases and data-sharing mechanisms will be pivotal.

Indeed, given that the [destruction of nature threatens the global economy](#), countries should also consider enforceable liability for the theft or destruction of our natural assets.

Digital technology can also empower people to ensure that the right to a clean, healthy, and sustainable environment, including for future generations, is promoted, protected, and respected. That includes new tools and portals to allow people to report environmental crimes, connect to legal assistance, and strengthen their rights to own, manage, and control land and water resources. In the short-term, low-tech solutions such as SMS messages to instantly report environmental crimes and Freedom of Information legislation will continue to play a key role. Yet vicious attacks, including in the online sphere, on environmental human rights defenders continue to stifle voices. The UN Human Rights Office, the United Nations Development Programme (UNDP) and the Global Alliance of National Human Rights Institutions continue to enhance the ability of National Human Rights Institutions worldwide to protect these defenders and advance climate and environmental justice, including in the digital realm.

In the longer term, countries must now invest in their digital public infrastructure, the underlying network of digital platforms that allow governments to provide vital public services to citizens. It will allow countries to leverage new digital solutions and digital public goods, such as open-source software that drive progress on the Sustainable Development Goals, from climate action to environmental restoration. The Coalition for Digital Environmental Sustainability will be vital to steer the design, development, deployment, and regulation of digital technologies in this critical area.

Countries must now identify how emerging digital technology can protect and restore our environment in brand-new ways. That involves embracing the concept of foresight with a recognition that legislation itself can also shape future technology. That could, for instance, include legislation to introduce tax incentives for nature-positive digital solutions. Key actors – including the private sector and governments – also shoulder a responsibility to share the digital solutions that will benefit people and the planet, including how they access justice. That includes an emphasis on populations or groups that have challenges accessing justice, including in the digital sphere, based on non-discriminatory and inclusive approaches. In short, our community of nations must now embrace the symbiosis between digital technologies and environmental law to help nourish the tree of life back to health.



DR. PARVEZ HASSAN

SENIOR ADVOCATE, SUPREME COURT OF PAKISTAN
SENIOR PARTNER, HASSAN & HASSAN (ADVOCATES)
CHAIR EMERITUS, IUCN WORLD COMMISSION ON ENVIRONMENTAL LAW

LOSS AND DAMAGE IN CLIMATE CHANGE

For me, arriving in Oslo after the most devastating floods in the 75 years of the history of Pakistan, it was important to contextualize this tragedy in light of the need to prioritize Loss and Damage (L&D) and reaffirm climate justice and climate reparations in the global conversation on climate change. I did that in my remarks at the opening session on 3 October 2022, particularly in the face of the upcoming 27th session of the Conference of the Parties (COP 27) to the United Nations Framework Convention on Climate Change (UNFCCC) in Egypt.

I am glad that L&D developed into a major breakthrough at COP 27. Pakistan provided leadership, enabled by its being Chair of the Group of 77 (G77), in this debate to success. It is now for the global community to progress this further to help vulnerable developing countries to meet the devastation inflicted by, and the challenges of, climate change. L&D has been finally accepted in the agreement at COP 27 to set up a separate funding facility to address L&D. This acknowledgment will hopefully reorient the support of the rich developed countries (emitter economies) to meaningful and effective financial mechanisms such as debt write-offs/reliefs, debt for nature swaps, and positioning a global climate change fund, realistically adequate to the challenges ahead.

The United Nations (UN) Resolution on Decolonization, 1960, and the UN Resolution on Permanent Sovereignty on Natural Wealth and Resources, 1962, have, historically, framed the discussions in the development of environmental rights and obligations from Stockholm 1972 through Rio 1992, Johannesburg 2002, Rio +20 (2012) and all the debates in the Intergovernmental Panel on Climate Change (IPCC) and the Conference of the Parties to the UNFCCC. The trauma suffered by the former colonies with the rapacious exploitation by the colonial powers of the peoples (including slavery) and resources of the colonies, highlighted in the UN debates, importantly supported by the socialist bloc in the cold-war era, preceding the adoption of these Resolutions, has resonated in the North-South divide in all these law and policy-evolving deliberations. The South now seeks equity, justice, and fair play in the global debate on climate change.

The figures speak compellingly for climate justice: 92 percent of the excess greenhouse gas emissions are coming from the Global North, which controls 80 percent of the global wealth with 25 percent of the world's population.

The Global South is responsible for only 8 percent of the excess in emissions, has 20 percent of global resources, and supports 75 percent of the global population.

The South will, undoubtedly, seek to consolidate the gains of COP 27, particularly with respect to L&D, at the upcoming COP 28 later this year in the United Arab Emirates.

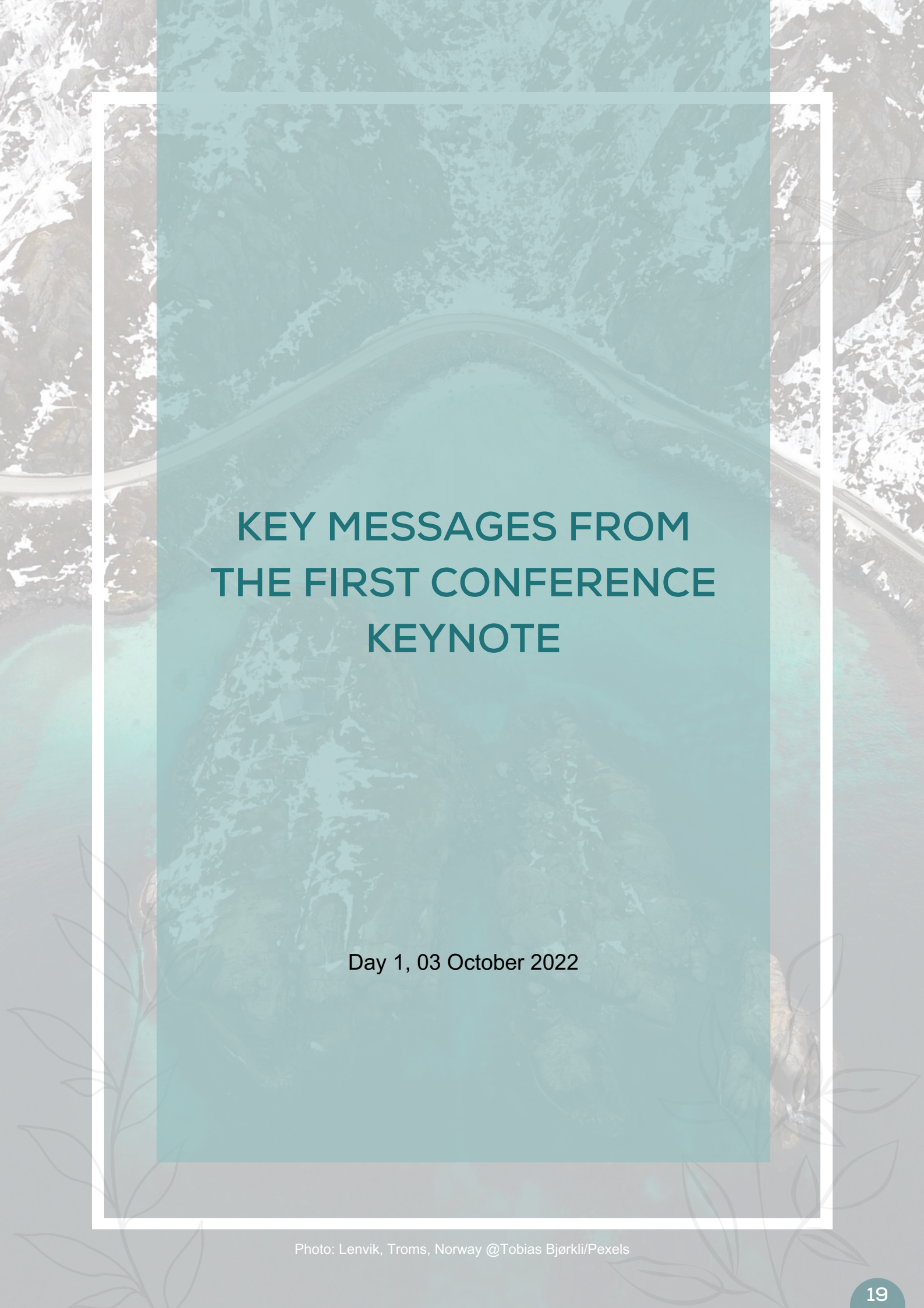
As one from the South, I want to share what are typical everyday voices in developing countries of their plight and helplessness in the face of lack of resources, financial and scientific, to deal with the gathering storm of climate change.

As I shared in Oslo, Pakistan was devastated by the floods of 2022. The estimated losses for these floods aggregate more than US\$ 30 billion. We have, this year, witnessed record-breaking monsoons, which triggered the 2022 floods. The financial outlays required for the preparation for this year for buildings, roads, bridges, canal and river embankments, and other infrastructure, as well as the need for disaster management, flood control, and early warning systems are also staggering. Pakistan's Minister of Climate Change, in a recent statement, lamented:

"For our part, Pakistan is aligned with the commitments of the Paris Agreement, and we look forward to a real change in the glacial pace of climate finance, adaptation and mitigation in our collective efforts, as developing countries such as Pakistan are actually facing climate catastrophe but face significant obstacles in securing the necessary funding to meet their climate goals."

The North must walk the talk to hand-hold the South to their mutual welfare and even survival. In 2009, the Copenhagen Climate Summit pledged an amount of US\$ 100 billion to the Global South. Even this amount which has been overwhelmed, in inadequacy, in recent years, has not been forthcoming. For the South, receiving help in financing adaptation, mitigation, loss, and damage are essential for any meaningful progress in the existential debate on climate change.

The North and the South can continue to dialogue about the challenges of climate change until the cows come home. Still, there will be no effective progress toward solutions, as better articulated, "for our common future," unless – and unless – the South is resourced to handle the storm imminently ahead of them.



KEY MESSAGES FROM THE FIRST CONFERENCE KEYNOTE

Day 1, 03 October 2022



PATRICIA KAMERI-MBOTE

DIRECTOR, LAW DIVISION
UNITED NATIONS ENVIRONMENT PROGRAMME

FIRST CONFERENCE KEYNOTE

The year 2022 marked five decades of the international environmental movement. The last 50 years have demonstrated an impressive record of environmental achievement; much more is being learned and done to protect our health and the environment. Even more significant, and certainly a more lasting accomplishment, has been the growth and shaping of the multilateral institutions that will continue to protect our environment in the years to come.

There is no doubt that much of this shaping has been guided by innovations in research that have informed law and policy on environmental issues, and that have contributed directly to strengthening and cementing elements of the environmental rule of law. Environmental law as a discipline has grown in the last five decades, and this has happened in direct competition with economic imperatives. The transformative power of environmental law is evidenced by the fact that, against all odds, States have come together to address growing environmental crises and are rowing fiercely in the same direction – in advancing actions to address the triple planetary crisis.

The triple planetary crisis is an immediate and deadly threat. People are dying and suffering from climate change. When more frequent and intense storms and droughts are hitting across the world. People are dying and suffering from nature and biodiversity loss. When a village is buried in a landslide because the hill above has been stripped of trees, and when degraded soils lose their capacity to produce food. And people are dying and suffering from pollution. When indoor and outdoor air pollution alone causes seven million premature deaths each year.

Yet we have come a long way in the last five decades in shaping the legal frameworks and institutions that will continue to protect the environment in the years to come. Fifty years ago, international environmental law was a fledgling field with less than three dozen multilateral environmental agreements. Today, it is arguably setting the pace for cooperation in the international community in the development of international law.

The transformative power of the law is shown where it has embodied the recognition that the environment and human rights are fully intertwined. It is undeniable that the Stockholm Declaration paved the way for greater efforts to link and promote human rights related to the environment. The International Bill of Rights (the two human rights covenants) also contributed to where we are today in terms of international consensus on the interdependence of human rights and the environment. But our world has changed drastically since the Covenants were written, and, certainly, the drafters did not anticipate all of today's problems.

Clearly, they did not foresee the enormity of our ecological degradation and the consequent necessity for human rights norms to encompass environmental considerations.

Promoting the right to a healthy environment is the most obvious mechanism to fulfill this need. This is evidenced in the significant move in constitutional democracies towards a rights consciousness. The right to a clean, healthy, and sustainable environment is recognized by over 155 States at the national and regional levels.

At the international level, it was recognized by the Human Rights Council in October 2021 and the General Assembly in July 2022. This latter universal recognition is a powerful catalyst for accelerated environmental action.

It is a fact that without the environmental rule of law and the enforcement of legal rights and obligations, environmental governance may be discretionary, subjective, and unpredictable. The transformative power of the law requires environmental decision-making processes to be founded on the right of access to information and participation in shaping decisions that will affect the environment.

There are massive expectations of the law and its transformative power. To accelerate action on the triple planetary crisis, laws need to do many things at many levels. Laws need to phase out coal and other fossil fuels, remove harmful subsidies, and regulate greenwashing. They need to create enabling conditions for investment in climate-resilient and nature positive development – including clear reporting and disclosure frameworks as well as harmonized taxonomies for sustainable investment. Laws need to facilitate the transition to net-zero and nature-positive pathways for the private sector, setting clear and predictable regulatory conditions.

Basically, laws need to do everything. But there are a couple of approaches that can help environmental law do the job it has to do. We need environmental law innovations that reflect networked and inclusive multilateralism. More networked means stronger coordination between regional and international organizations, international financial institutions, and public-private alliances. More inclusive means involving civil society, businesses, local and regional authorities, and others, and sharing power more broadly and fairly. Legal academics are clearly going to be key players in this process.

There is no question that addressing the triple planetary crisis is one of the imperatives of our time. While we have made strides in addressing environmental challenges through the law, the negative implications of our actions on this planet remain stubbornly high. And gains on this front will be lost unless we continue to doggedly demonstrate the transformative power of the law.



KEY MESSAGES FROM THE SECOND CONFERENCE KEYNOTE

Day 3, 05 October 2022

A circular portrait of Professor Karen Hulme, a woman with long brown hair and glasses, wearing a maroon sweater over a white collared shirt. The portrait is set against a light blue background with abstract circular patterns.

PROFESSOR KAREN HULME

CHAIR, SPECIALIST GROUP ON ENVIRONMENTAL SECURITY AND CONFLICT LAW

RESPONSE TO AMBASSADOR FIFE'S PRESENTATION ON 'WAYS TO STRENGTHEN THE PROTECTION OF THE ENVIRONMENT DURING ARMED CONFLICT'

In her response to the presentation given by Ambassador Fife, Professor Hulme first drew out some key issues in relation to the protection of the environment in relation to armed conflict.

She emphasized that the environment, ecosystems, and nature are resilient but lamented the fact that resilience has been abused in warfare where the environment has often been taken for granted, and it has even itself been fought over, including its lifeblood – water, forests, land, species, and its other natural 'riches.' Warfare is inherently destructive of the living world; it causes immense suffering to people, other species, and biodiversity, and causes pollution of the air, waters, and soils. But we cannot always prevent conflict, as much as we try. International humanitarian law (IHL) recognizes that armed conflict is a temporary phenomenon. However, sometimes, the notion of temporary becomes quite elastic, and, importantly, IHL recognizes that the parties are not unlimited in their actions. But inevitably, we see the environment slip down the agenda of parties in conflict. We have to ensure that, even in the darkest hours of warfare, the law is robust and practical, founded on the intrinsic value of nature and the biosphere, and effective.

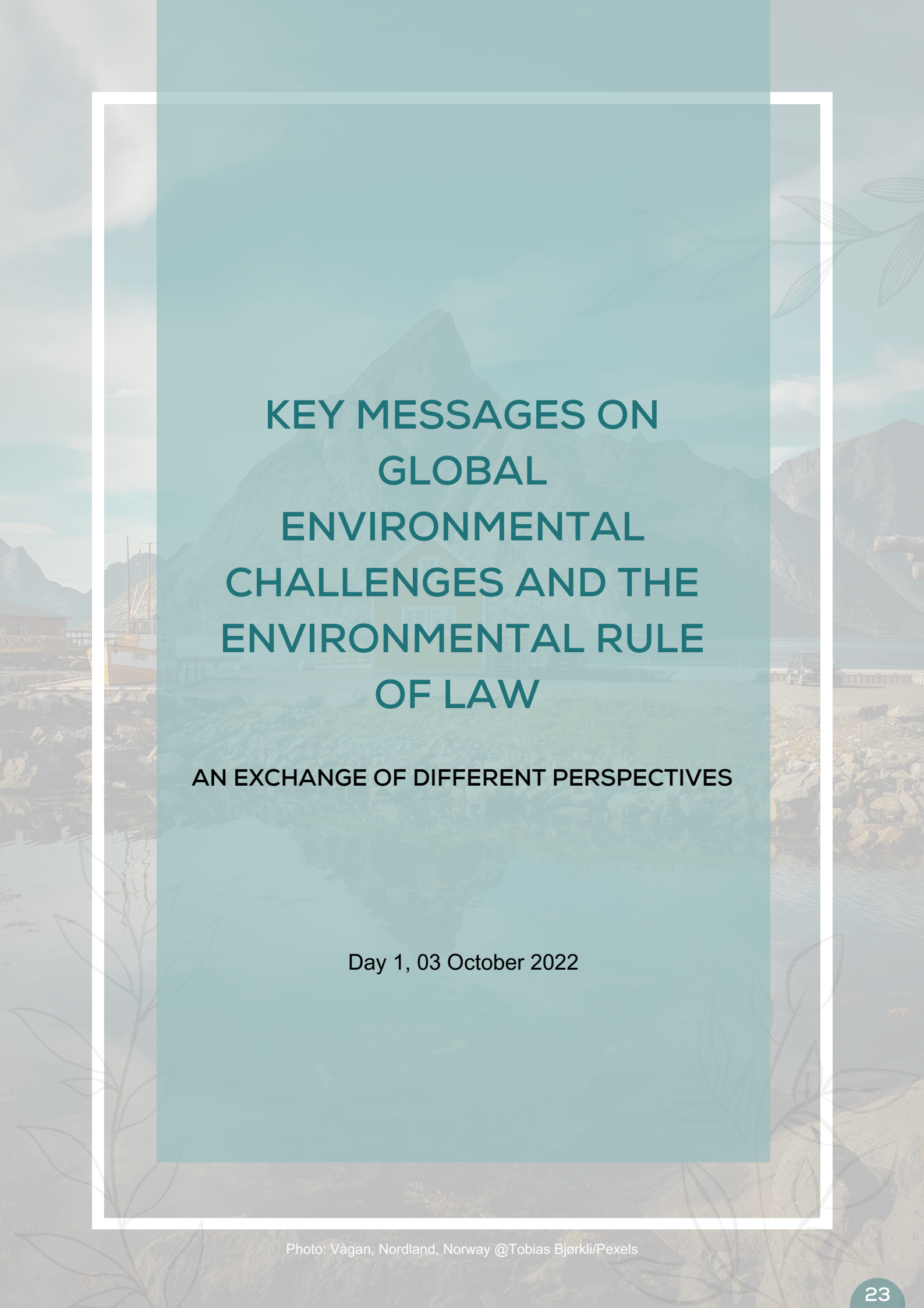
Professor Hulme continued by recognizing, as Ambassador Fife had in his own presentation, the importance of the recently adopted International Law Commission (ILC) principles on protection of the environment in relation to armed conflict ([A/77/10](#)), which are truly a milestone achievement in this area of law. It is also important to recognize the lengthy and detailed work in this area by the International law Commissioners and Special Rapporteurs, Ms. Marie Jacobsson of Sweden and Ms. Marja Lehto of Finland, as well as the Nordic countries which have shown strong enthusiasm and support in developing and advancing the law in this area.

Echoing the sentiments of Ambassador Fife, Professor Hulme opined that the ILC's Principles have 'creatively imagined' the legal landscape in this area. The ILC carefully and skillfully crafted a document that is broad, ambitious, and comprehensive in scope and one that is rigorous and innovative. The Principles also advance previous ILC work on the continuation of treaties in armed conflict and the need for systemic integration of interacting legal regimes.

They are truly transformative in the temporal approach adopted, notably analyzing the law before conflict (i.e., peacetime), during conflict, and post-conflict – an approach clearly key to help drive, broaden, and underpin the Principles. Professor Hulme also recognised that this temporal or spectrum approach is fundamental because it is not just bombs that cause devastation to the environment in armed conflict. There is, of course, also the broader military footprint on a modern battlefield to contend with, the disturbance and contamination of soils, for example, by heavy military vehicles and abandoned munitions. And if protected areas escape such harm, they may still not escape the accompanying governance vacuum that often leads to unsustainable exploitation of species and other resources. Consequently, IHL can only ever be part of the legal response.

Professor Hulme also recognized that it was this temporal approach that allowed the ILC to analyze the value of other areas of law in this arena, such as environmental law and human rights law, as well as to highlight the need to engage with other actors, for example encouraging states to carry out a timely post-conflict environmental assessment – such as those undertaken by the United Nations Environment Programme (UNEP). The Principles also advance key issues that have often been missing from the debates or laws, such as the impact of armed conflict on indigenous peoples and their resource access rights, and the long-lasting environmental legacy of toxic or hazardous remnants of war. Furthermore, they recognize gaps in the law including the need to further refine issues of liability for environmental harm in warfare, including by corporate actors and armed groups.

Thus, similar to Ambassador Fife, Professor Hulme suggested that there is much to be positive about when looking at the ILC Principles. She invited the audience to celebrate the ILC's achievement and to seize this momentum as we progress to the next stage of the process, which is for every one of us to take these principles – some of which, it is important to note, are already binding as treaty and/or customary international law – and use them, disseminate them, and develop them further to ensure that they become – as Ambassador Fife suggested – the 'building material' for future legal interpretations in this area.



KEY MESSAGES ON GLOBAL ENVIRONMENTAL CHALLENGES AND THE ENVIRONMENTAL RULE OF LAW

AN EXCHANGE OF DIFFERENT PERSPECTIVES

Day 1, 03 October 2022



DR. JONAS EBBESSON

PROFESSOR OF ENVIRONMENTAL LAW, STOCKHOLM UNIVERSITY
DIRECTOR, STOCKHOLM ENVIRONMENTAL LAW AND POLICY CENTRE, STOCKHOLM UNIVERSITY
FORMER CHAIR, AARHUS CONVENTION COMPLIANCE COMMITTEE

TWO KEY ELEMENTS OF THE RULE OF LAW IN TRANSBOUNDARY ENVIRONMENTAL CONTEXTS

The rule of law is key for a decent, fair, and orderly society, and it provides for legal certainty, predictability, and accountability. The rule of law requires that each and every one is recognised as a subject of the law, with rights and duties, and that the law is effectively accessible for and applicable to those concerned. This should apply also in transboundary environmental contexts.

To achieve that and to reduce the impact of state borders and jurisdictions, international law must develop and provide for (i) participatory rights for members of the public in transboundary contexts when their health or the environment is at stake, and (ii) accountability for corporations in transboundary contexts when their activities cause harm or risk of harm to human health or the environment.

Participatory rights: Since the early 1990s, international law has developed significantly in confirming and expanding participatory rights in environmental matters. This includes the right to have access to information, participate in decision-making and have access to justice in environmental matters, and be protected when exercising these rights.

In my teaching and writing about participatory rights, I have frequently underlined the different rationales for these rights, as they: promote respect for rules on environmental protection; improve implementation of environmental laws; improve the quality of environmental decision-making; improve control and transparency of public administration; further and adapt established human rights; enhance legitimacy, fairness and justice in decision-making; and thus promote trust in public authorities, and promote environmental democracy and the *rule of law*.

The 1992 Rio Conference was instrumental for this development of international law. In fact, *all* environmental treaties of global scope adopted since then include provisions supporting public participation in environmental matters. Still, the more advanced developments and solid support for participatory rights in international law are found in regional environmental treaties and regional human rights jurisprudence of three regions: Europe with Caucasus and Central Asia; Africa; and Latin America and the Caribbean.

This is a promising development, which promotes the rule of law in environmental contexts. The 1998 Aarhus Convention, 2018 Escazú Agreement, and 2003 Revised Maputo Convention, as well as the human rights regimes of these regions, have contributed to the confirmation and expansion of participatory rights in environmental matters. Increasingly, these treaty regimes also apply to transboundary cases so that members of the public can request information, participate in decision-making or bring cases to court regarding activities or adverse effects in other jurisdictions [...]

and states. Even so, this development is too slow and fragmentary, and there are still huge parts of the world where international law has not developed so as to provide for participatory rights.

Corporate accountability: For years, corporations have escaped liability for harm to human health or the environment in transboundary contexts, caused either by themselves or by their subsidiaries or dependent sub-contractors. This is due to ineffective procedures at the places where the harm occurred and difficulties in holding corporations accountable in their home countries.

While international law, since the 1990s, has promoted corporate interests and rights mainly through international trade and investment law, there has not yet been any corresponding change to hold these companies accountable in the same transboundary contexts. Except for some fragments in international law, the prospects of holding companies liable across state borders essentially depend on national laws (and including European Union (EU) law).

It is possible to bring such lawsuits in an increasing number of countries, and EU legislation on jurisdiction and the choice of law supports such procedures. The EU is also legislating on corporate sustainability, to hold corporations to account at home when causing or risk causing harm abroad by not acting with due diligence regarding human rights and environment protection standards.

Despite some recent indications to spur the development of international law on corporate accountability, there is still no such legal framework in place. Here too, the development of international law is too slow.

Conclusions: There are signs in global politics to increasingly transcend state borders and go beyond inter-state relations. Agenda 2030 and the Sustainable Development Goals are a case in point. In the book *The Cambridge Handbook of the Sustainable Development Goals and International Law* (2022), edited by Ellen Hey and myself, we argue that here the very concept of sustainable development is not only people-centred but even cosmopolitan; it highlights the situation of each and every individual – and insists that no one be left behind. This is highly relevant also for the rule of law in transboundary environmental contexts.

Strengthening participatory rights and corporate accountability, and reducing the impact of state borders and jurisdictional divides would significantly promote the rule of law in such contexts. And strengthening the rule of law would have positive effects on the transboundary environment.



MS. MARINA DEMARIA VENÂNCIO

CHAIR, IUCN WCEL EARLY-CAREER SPECIALIST GROUP

STRENGTHENING ENVIRONMENTAL RULE OF LAW FOR YOUTH AND FUTURE GENERATIONS

Environmental rule of law is crucial for ensuring that young people and future generations have a safe operating space to develop their relationship with people and the planet. It provides a framework for the core legal principles, rules, and guidelines necessary for living in harmony with nature, acknowledging the interconnectedness of human systems. Environmental rule of law promotes fair, transparent, and implementable environmental laws, strengthens coordination across institutions, and ensures access rights and public participation. Notably, it provides many entry points for the meaningful engagement of historically underrepresented groups, such as children and youth, in shaping the legal systems of tomorrow. Their effective understanding of, participation in, and contribution to lawmaking and decisionmaking is instrumental in identifying and promoting whole-of-society solutions to the crises of nature loss, climate change, and pollution.

Current challenges in international environmental law:

Despite the proliferation of numerous national environmental laws and multilateral environmental agreements over the past decades, a significant challenge lies in their enforcement and implementation, which is commonly referred to as the “implementation gap.” Furthermore, current challenges often reflect disciplinary silos (e.g., divides between environmental law, human rights law, food law, criminal law, civil law, administrative law, and other areas of public law), which can hinder comprehensive solutions. Thus, there is a pressing need for innovative, interdisciplinary legal approaches to the environmental problems of today.

The role of early-career law professionals, including

researchers and practitioners: Early-career researchers and practitioners are well-placed and equipped to help find solutions at the community, national, regional, and global levels. Communities of practice, such as the early-career specialist group of the IUCN World Commission on Environmental Law, bring together numerous young lawyers, diplomats, lecturers, judges, prosecutors, and government officials who stand ready to engage in intergenerational dialogue and projects.

By learning from past experiences and successes and leveraging their skills, young professionals contribute in many ways to gaining a better understanding of the implementation gap and finding ways to address it: (a) by acknowledging the need to engage, collaborate, and learn from all sectors of society, (b) by promoting scientific cooperation with other fields such as social and political sciences, (c) by developing action-oriented research and identifying the most appropriate platforms, networks, and avenues to share findings, and (d) by being champions for a right to a clean, healthy, and sustainable environment and other substantive and procedural environmental rights.

Advancing the environmental rule of law is a prerequisite for human life on the planet. This requires the collective effort of diverse stakeholders, especially the meaningful participation of youth and early-career professionals in the civic space. By supporting the young(er) generations and giving them opportunities to further develop their capacities and scale up their efforts, we can find better solutions and approaches to bridge the environmental law implementation gap and foster a sustainable and equitable future for all generations.



H.E. PIERRE MATHIEU DUHAMEL

AMBASSADOR, FRENCH EMBASSY TO NORWAY

GLOBAL ENVIRONMENTAL CHALLENGES AND THE ENVIRONMENTAL RULE OF LAW

When it comes to global environmental challenges, it is fair to say that we have been warned.

Science has warned us that we would face the collective responsibility of dramatic events for present and future generations were we to do nothing, were a plan of action not to be stated and implemented in a well-defined schedule. “We” meaning not the planet but the human species and a large part of living species.

In a classic approach by policymakers, the answer should come easily: Since it is a global issue, it is up to the international community to take charge of it in the relevant institutions; the global community must define objectives in the fight against climate change in our time and for the future. It is responsible for setting a time frame and the means to reach these objectives. It is, then, up to each and every country’s political authorities to translate and implement this strategy and adopt legal provisions and incentives of all kinds, in order to reach this monumental goal. Lastly, it is up to all targeted and concerned by these rules, companies as well as households, to comply with them.

If we were talking about any ordinary public policy, I could stop here. However, such is not the case because it is not simply about increasing the number of regulations and policy compliance tools but about steering entire economies and societies, changing their behavior, their production and consumption models, and all of this in a limited time. It is also about changing the behavior of States and public opinions whose internal contradictions must not be underestimated, beginning with the difficulty in reconciling mid- to long-term goals with counterproductive short-term concerns.

The climate issue forces us to create a connection between our present and our future, such that the latter does not end up disastrous. It is about acting in the present, for humanity to deviate from its path toward a catastrophe foretold. It is, in many aspects, a never-before-seen situation in humanity’s history.

In the face of such an immense task, what answers can the law, those who think it and make it, and those who embody it, starting with judges, give us?

The answer must be, on the one hand, simple enough to be understood by all, especially public opinion, and, on the other hand, a tool that those who implement the law are already used to handling.

The notion of liability comes to mind as one of the most fitting. But a quite new conception of liability, from legal reasoning using the present not to repair the consequences of a noxious past, to prevent a future that would be contradictory with the idea of survival.

Traditionally the legal system of liability looks at the past. It evaluates today the damage done yesterday, identifies causes and perpetrators, punishes the latter and repairs the former. It is an “ex post” way of thinking. Confronted with the chronicle of a catastrophe foretold, we must change our mindset: it is not about repairing past damage. It is about preventing future damage. Inaction, or the refusal to act, constitutes the reprehensible fact with regard to the certainty of future damage. We then go from an “ex post liability” to an “ex ante legal responsibility” that will apply to all, namely, States, companies, and individuals.

Two recent court decisions exemplify this shift from past to future.

In July 2021, the French State was sentenced by the “Conseil d’État,” the highest administrative court in France, because the State did not take the necessary measures to ensure the reduction of greenhouse gas emissions, as per national and European dispositions. The judge sanctioned the legal responsibility of the State in its inaction regarding the implementation of objectives it determined itself and committed to upholding.

The second example took place in the Netherlands and was aimed at a private company; it adopted similar legal reasoning, leaning on commitments made and focusing on the future.

The Shell group, via its executive management, had expressed a will to be proactive in fighting climate change. The Tribunal of The Hague held the group accountable in May 2021 for its very declaration that “committed” Shell to action in the strongest sense of the word.

Then the tribunal ordered the group, not to repair past damage but to endeavor to do as it said and uphold its commitments.

These two decisions illustrate how the courts can use traditional law instruments in a new way and adapt them to fix a global challenge in the interest of the global community, in its broadest sense.



PROF. DR. QIN TIANBAO

DIRECTOR, RESEARCH INSTITUTE OF ENVIRONMENTAL LAW, WUHAN UNIVERSITY

CHINA'S ECOLOGICAL CIVILIZATION CONSTRUCTION AND ENVIRONMENTAL LAW

Ecological Civilization, which features the harmonious coexistence of humans and nature, is a form of civilization that emerged after the Industrial Civilization. The core concept of Ecological Civilization can be traced back to the "Theory that Man is an Integral Part of Nature" in I Ching.

Since the report of the 17th National Congress of the Communist Party of China in 2007, which first proposed building an Ecological Civilization, the construction of China's Ecological Civilization has made substantial contributions to China's domestic environmental rule of law system and global environmental governance.

Improvements to China's domestic rule of law system can be observed at *three* primary levels.

At the micro-level, China's environmental law has revolutionized the legal concept of Person and Nature. On the one hand, China's environmental law endeavors to broaden the conventional notion of a "rational economic man" and establish a novel criterion of "rational ecological man" who can judiciously assess the ecological implications of his actions. On the other hand, China has demarcated the ambit of the subjects of environmental legal relations through legislative measures. The three facets of nature, namely "environment, resources, and ecology," are encapsulated in Chinese environmental law as "ecological environment," which epitomizes the objective of sustainable development of environmental law and provides the groundwork for determining the environmental adjustment scope law.

At the mezzo-level, following the requirements of sustainable development goals, China has established four principles to guarantee the rule of law in constructing ecological civilization: (1) The Principle of Ecological Priority. This principle is the fundamental criterion that prioritizes the health and integrity of ecosystems when economic development conflicts with ecological conservation. (2) The Principle of Green Development. This principle aims to promote the coordination of economic and social development with population, resources, and the environment, to achieve the unity of productivity and the ecological environment. (3) The Principle of Risk Prevention. This principle means that if science cannot prove the inevitability of hazards, preventive measures should be taken to prevent hazards and the emergence of uncertain ecological and environmental risks in sustainable development. (4) The Principle of Integrated Governance. This principle reflects the systematic, holistic, and synergistic nature of the rule of law system for ecological environment protection, linking the internal elements of the rule of law for ecological civilization with other external areas of governance.

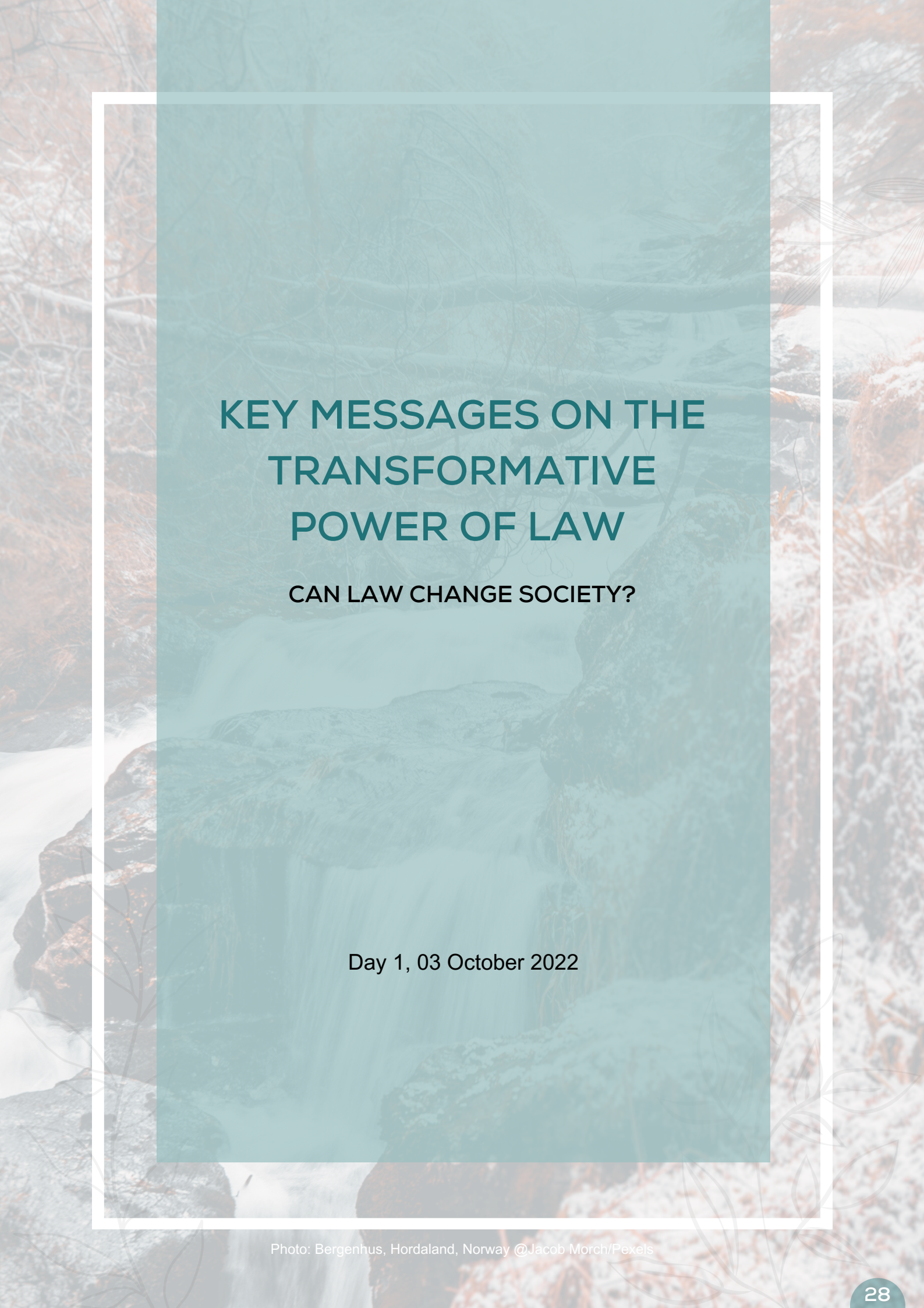
At the macro level, China has established a comprehensive "1+N+4" legal framework for ecological environmental protection, comprising one primary and comprehensive environmental protection law, several special laws, and four special regional laws. Over 30 laws, 100 administrative regulations, and 1,000 local regulations pertaining to ecological environment protection have been enacted and implemented in China.

China's Ecological Civilization Construction has made two noteworthy contributions to global environmental governance. Firstly, it has enriched the connotation of Sustainable Development Goals (SDGs), thereby augmenting their scope and depth. Secondly, it has facilitated the historical process of establishing the Principle of Resilience as a fundamental principle of international environmental law, thereby promoting the resilience of ecosystems and enhancing their capacity to adapt to environmental changes.

The conventional Three-Pillar Model of Sustainable Development comprises Green Economy, Inclusive Society, and Environmental Protection. However, China's Ecological Civilization has broadened the scope of "Environmental Protection" in the concept of Sustainable Development by defining it as "Ecological Security" and "Ecological Environment Protection." Furthermore, China's Five-sphere Integrated Plan has introduced new dimensions for extending the Three-Pillar Model from a cultural and political governance perspective, thereby enriching the model's scope and depth.

At a time when the global environmental governance system is at risk of progressive disintegration, refining and strengthening principles to achieve SDGs is imperative. Some scholars have suggested that the Principle of Resilience, derived from SDG 9 and SDG 11, is essential to global environmental governance. However, this principle has yet to be adopted as a principle of law. China has taken the initiative to internalize the Principle of Resilience into the Principle of Ecological Priority, and is actively exploring how this principle can be incorporated as a fundamental principle of environmental law in legislation, administrative enforcement of law, and judicature. China has summarized viable solutions for ecological restoration and alternative restoration through its practices.

China is anticipated to persist in promoting the construction of domestic ecological civilization, while simultaneously contributing Chinese experience, wisdom, and solutions to global environmental governance.



KEY MESSAGES ON THE TRANSFORMATIVE POWER OF LAW

CAN LAW CHANGE SOCIETY?

Day 1, 03 October 2022



MR. DONALD W. KANIARU

FORMER DIRECTOR, UN ENVIRONMENT PROGRAMME LAW DIVISION
MANAGING PARTNER, KANIARU & KANIARU ADVOCATES

THE TRANSFORMATIVE POWER OF LAW: CAN LAW CHANGE SOCIETY?

Environmental law and policy were unknown in my college days in the 1960s. Ahead of the Stockholm United Nations Conference on the Human Environment (UNCHE) in June 1972, only a few countries, notably Sweden (1968), the United States of America (1970), and Japan (1971), had enacted legislation mentioning the Environment; indeed, national reports by 86 governments only implied policy and not much else. The Stockholm UNCHE outcomes, duly adopted by the United Nations General Assembly in Resolution 2997 (XXVII) on 15th December 1972, and intensive work thereafter, changed the course of Environmental policy, regulation, and management.

Environmental law worldwide has since emerged as the law of the present and the future. In over 50 years since the inception of the UN Environment Programme (UNEP), this preeminence of environmental law and its adherents is, undoubtedly, unmatched. UNEP remains focused alongside its partners: governments, the United Nations (UN) system; specialized agencies; international and local non-governmental agencies in promoting action by the people and institutions at the national level in policy and statute, including enshrining environmental precepts into national constitutions of many nations. Ministries of Environment, Councils, and Commissions, which emerged subsequently, are a key part of the enabling institutional framework for promoting, implementing, and enforcing laws emulated globally.

Soft law instruments starting with the 1972 Stockholm Declaration and its twenty-six principles, as well as a series of principles every decade or two thereafter, have been embraced at global and regional levels and are now settled law in many nations. At the UNEP Committee of Permanent Representatives (CPR) meetings in March 2020, it was observed that *“all 193 UN member states are a party to at least one of over 1,300 Multilateral Environmental Agreements (MEAs) and 2,200 bilateral environmental agreements in existence today”*.

Additionally, notable achievements have fostered significant scientific progress, including furthering our understanding of the impacts of climate change, research into the development of more environmentally friendly materials, and the incorporation of environmental issues into the evaluation of investments, to name a few of the attendant and consequential impacts.

Our substantial past has brought us this far. The Law has been a game changer for society, and has pioneered and consistently contributed to instrumentalizing environmental law through the branches of national governance: the executive and the legislature first, and the judiciary later. In fact, the judiciary only engaged deeply with the field of the Environment in the 1990s, starting in 1996 in Africa; 1977 in South Asia; 1998 in South East Asia; 2000 and 2001 in South America and the Caribbean. At the global level, the judiciary took off in 2002 in Johannesburg, and, in two decades, it has a structured global programme on-going. Judicial decisions compiled by UNEP international and national, bound in volumes constitute critical reference materials deserving of a wider audience and sharing. The judiciary, an invaluable partner of society, has oversight and is critical to addressing the respective environmental challenges even as science and technology play their part as well.

Through these achievements, UNEP has emerged as the leading Environmental Authority globally, and an important symbol as the only UN headquarters in the Global South. The leadership provided since its inception by the seven (7) Executive Directors to date (Strong, Tolba, Dowdeswell, Toepfer, Steiner, Sorheim, and currently under Inger Andersen) - four of whom I had the privilege of serving under, cannot be overstated.

As the future beckons then, what role should the Law, and particularly environmental law, be expected to play? What challenges need to be addressed or managed by institutions such as UNEP and others? This task is well cut out, and the foundation is laid for the present generation as they configure the future in the next fifty years.



PROF. INGER-JOHANNE SAND

PROFESSOR, UNIVERSITY OF OSLO

CAN LAW CHANGE SOCIETY? NEW CONSTITUTIONAL QUESTIONS AND THE COMPLEXITY OF ENVIRONMENTAL REGULATION

Modern legal systems have been through a number of periods in terms of institutions, legislation, and methodical theories. It has been analyzed through different lenses and perspectives. The rule-of-law perspective and the autonomy of law have been one of the most dominant and defining theories. However, this has, at times, led to too backward-looking and conservative methods of law. Increasingly, we have also had theories of law and society. Law is a function in and for society. For law to be functioning and legitimate it needs to be in communication and interaction with society and societal change. Thus, what we need is a legal system that balances the existing institutions of law with rule-of-law principles, predictability, and legitimacy - and a dynamic approach to law where societal empirical changes are continually described empirically and translated into normativity.

Environmental status and change and climate change are factual changes that continuously need to be described in terms of the varieties of consequences of decreasing biodiversity, pollution, and climate change, but we also have to understand why this is happening. Environmental change is now occurring in close interaction with technological and economic change. Such changes are now occurring increasingly in a rapid and unpredictable manner. Numerous factors interact and create an enormous complexity. New knowledge and technologies are not easily translated into existing legal norms and concepts or stabilized categories of law. Complex and technology-based modern societies have unleashed an enormous burden on the legal and political communicative systems.

Existing law depends on structures such as constitutions, rule of law, predictability, economic rights, protection of private property, non-retroactivity, and legal subjectivity. These do not easily respond to environmental problems such as scientific uncertainty, risk and precaution, future consequences, chaos-like effects, exponential growth, accumulated consequences without singular responsibility, and general consequences such as pollution of air and sea, decreasing biodiversity, and climate change. It is difficult to describe the various consequences in terms of standards and rule-of-law. What is the appropriate level of sustainability and biodiversity? Unpredictable trajectories do not reconcile with rule-of-law. Proportionality may have to be assessed in complex ways which are not always easily transparent.

The environment and natural resources were not originally given specific legal positions in the first constitutions. After the Rio and Stockholm declarations, we have constitutionally oriented texts on environment and development. In Rio, principle seven (that is, "States shall cooperate in a spirit of global partnership to conserve, protect and restore the health and integrity of the Earth's ecosystem") may be the most unreserved obligation on the part of the states for environmental protection. In principle three, the right to development is made dependent on the needs of present and future generations. The environment and its protection are not defined *sui generis* as natural resources which must hold a certain factual standard in terms of biodiversity, existing eco-systems, lack of pollution, ability to reproduce etc, nor as a value of its own comparable to the value of citizens rights and state sovereignty and democracy. State authorities have the mandate to legislate internally and to participate and obligate the state on the international level. The obligations are also on the states.



MS. JOJO MEHTA

EXECUTIVE DIRECTOR, STOP ECOCIDE INTERNATIONAL

CAN ECOCIDE LAW TRANSFORM SOCIETY?

It was an honor to be able to join this conference. Where preceding speakers have covered the broader scope of this topic, I focused on a very specific example - the criminalization of ecocide, i.e., mass damage and destruction of ecosystems by historical reference, but also by inference from our direct experience of the momentum gathering behind the initiative to add ecocide as a fifth crime to the Rome Statute of the International Criminal Court.

There are moments when the collective consciousness of society becomes aware enough of a legal gap that it is possible to enact laws to address that gap. In turn, the laws adopted gradually transform the moral thinking of society. The need to address a “new” crime of genocide arose from awareness of the atrocities of the holocaust. Over the years since the adoption of the genocide convention and later the Rome Statute, while genocide itself has not been eliminated, what has certainly changed is the collective consciousness around the deliberate persecution of groups, and this has undoubtedly affected policy and society.

Similarly, the United Kingdom’s Child Protection Act was passed in 1989. Societal condemnation of what is now understood as abuse had to reach a certain level of awareness before the law was passed, but it did not require, and may not have had the support of a majority of the population. Now, however, understanding has shifted to condemn morally those acts which have been prohibited under criminal law.

This is a principal reason for our advocacy focus on the criminalization of ecocide. As the consensus definition that emerged last year from the Independent Expert Panel convened by our Foundation describes it, ecocide means “unlawful or wanton acts committed with knowledge that there is a substantial likelihood of severe and either widespread or long-term damage to the environment being caused by those acts.”

Millions would agree that a law prohibiting such acts is long overdue — but until recently, there was not enough awareness of the need to be able to actually legislate, despite clear evidence from scientists, experts, and on-the-ground frontline communities.

This has changed for a number of reasons: the frightening acceleration of the visible and felt effects of climate and ecological breakdown; the stark reports of the Intergovernmental Panel on Climate Change; and, crucially

the grassroots mobilizations that have broken open the media conversation and forced political discussion.

From a standing start a few short years ago, discussion of ecocide law is now on public record at parliamentary and/or government level in at least twenty-four countries that are parties to the Rome Statute. For the first time, we are also considering the use of existing laws of ecocide, which have been virtually untouched to date, for example, in Ukraine.

However, our most encouraging observation is that the transformative power of this proposed international crime is coming into effect considerably before the law itself. Cross-sector and global advocacy have triggered national progress on ecocide law, most notably in Belgium, but with echoes now emerging elsewhere, and also progress at the regional level, with the European Law Institute project and a growing push to include ecocide in the revised EU Directive on protection of the environment through criminal law.

We are also seeing a growing interest from the corporate world: in the recent Race 2 Zero Pivot Point Report, ecocide law is listed as a “driver and influencer” for the acceleration of climate action; we have even heard on-the-ground examples anecdotally: for instance, a mining company in Latin America spurred to sign environmental agreements after being shown the ecocide definition.

We see ecocide law, and in particular this definition, as precisely the kind of dynamic evolution of law that Professor Inger Johanne Sand highlighted the need for earlier in this panel.

I concluded by saying we believe that not only can law transform society, but also it can begin to do so as soon as it is visible on the horizon.

And in the case of ecocide, if we are, as a civilization, to make it through the coming decades in as few pieces as possible, setting this “outer boundary” criminal law will be essential, both as a deterrent and preventive guardrail to protect vital ecosystems and keystone species, and as a foundational piece to support the broader and growing body of environmental laws and to protect emerging environmental rights.

And so, this already perceptible influence of the approaching law comes not a moment too soon.

[For recent progress on legal recognition of ecocide, please visit: <https://www.stopecocide.earth/press-releases>]



KEY MESSAGES ON THE POWER OF INTERNATIONAL ENVIRONMENTAL LAW

EFFECTIVENESS, IMPACTS, AND
STRUCTURAL CHALLENGES THROUGH
MULTILATERAL ENVIRONMENTAL
AGREEMENTS

Day 2, 04 October 2022



MR. JOHN E SCANLON AO

CHAIR, GLOBAL INITIATIVE TO END WILDLIFE CRIME
CEO, ELEPHANT PROTECTION INITIATIVE FOUNDATION

ENSURING THE ACTIVE PARTICIPATION OF ALL RELEVANT ACTORS IN DELIVERING ON GLOBAL BIODIVERSITY COMMITMENTS

International environmental law-making has not been coherent, structured, or part of a grand plan. Instead, it has evolved naturally as the science base has improved.

Today, we have many well-crafted multilateral environmental agreements (MEAs) to address our most pressing environmental and sustainability challenges, with other instruments being agreed upon, advanced, or considered – on high seas, plastics, pandemics and wildlife trafficking, all of which are backed by a strong and improving science base.

Despite many of these agreements being in place for decades, we continue to struggle with their implementation and in securing adequate financing, which are interrelated, as well as with ensuring compliance. I will focus on biodiversity.

The two most recent Living Planet Reports show a sharp decline in wildlife over the past 50 years, uninterrupted by the adoption of multiple MEAs, including the Convention on Biological Diversity (CBD) and its 2010, 2020, and, most recently, its 2030, global strategies and targets.

Almost 50 years after the Stockholm Conference, and 30 years after the CBD was adopted, the IPBES Global Assessment Report on Biodiversity and Ecosystems Services concluded that one million species will go extinct within the coming decades if we continue on our current trajectory. There has been an agreement on international wetlands since 1971, yet we have lost 85% of wetlands by area.

Other IPBES reports on wildlife and pandemics, sustainable use, and the values of nature highlight multiple shortcomings. The IPBES has achieved, in a short space of time, what no other entity has managed to do: clearly and credibly portray the multiple dire threats to our biodiversity.

Firstly, a comment about CITES, with which I am very familiar. It has been more open than most MEAs in enabling the active involvement of observers from across all sectors. CITES could not have been implemented without this engagement. While States Parties carry the obligations, the wide array of actors engaged with the Convention have been critical to its relative success.

But CITES only addresses a thin slice of the biodiversity cake. There are many other biodiversity-related conventions – including those on wetlands of international importance, migratory species, and outstanding cultural and natural heritage.

It is the CBD alone, as a framework convention, that can address the full depth and breadth of biodiversity. Yet, in some ways, the adoption of the CBD was a double-edged sword.

On the one hand, it demonstrated political and legal commitment; on the other, it provided a forum for the global biodiversity community to meet and agree upon biodiversity strategies and targets that is largely detached from the agencies and sectors that determine the fate of biodiversity – and with no effective mechanism for addressing compliance.

This detachment is one reason why the CBD has failed to meet its targets time and time again. Fortunately, the engagement with other sectors and the level of financing are starting to change for the better. These issues are specifically addressed in the Kunming-Montreal Global Biodiversity Framework (GBF), but we still have a long way to go.

We need to engage more deeply with all actors in implementing the CBD, from local and rural communities, to Indigenous peoples, which the CBD has put quite some effort into, as well as the business and finance sectors, and a wide array of non-governmental organizations. If not, we will fail again.

But we need to go beyond mere engagement. For example, while the finance sector is a central part of a prosperous economy, it can be an enabler of the destruction of biodiversity.

But what are we asking of the financial sector? What do we say it must, should, or could do? Are we asking it to be a de facto regulator, to support regulators, to carry out due diligence, to make full disclosure, and of what, and to determine for themselves what is or is not environmentally destructive? The GBF offers some high-level guidance, and other processes are underway.

Over the past decades, we have placed a lot of reliance on non-binding, voluntary initiatives, pledges, and declarations. In the financial sector, we have the Equator Principles, amongst others, and more are on the way. They all serve a useful purpose. But where has it got us?

The IPBES explains how dire the situation is. How much longer can we place our faith in voluntary measures to save the day? Have we not reached the point where governments and parliaments must play a much stronger role as effective regulators in meeting a State's commitments under the CBD and other MEAs? Fortunately, we are starting to see some countries and regions make better use of the law.

We need all relevant actors on board to deliver on the GBF. Some are natural allies. Others will require more than a gentle nudge to head in the right direction.



PROF. DR. MARGARET A. YOUNG

PROFESSOR, MELBOURNE LAW SCHOOL, UNIVERSITY OF MELBOURNE

GLOBAL ENVIRONMENTAL CHALLENGES FACING OCEANS AND MARINE ECOSYSTEMS

“Obligations of States to protect oceans and marine ecosystems exist within their own territories and exclusive economic zones (EEZs), but also from their domestic patterns of production and consumption, their duties not to cause transboundary harm and their duties to cooperate in areas beyond national jurisdiction.”

Professor Young began by reflecting that States have declared a global emergency for the oceans. The declaration from the Heads of State at the 2022 United Nations (UN) Ocean Conference, endorsed by the UN General Assembly, has noted the critical pressures affecting oceans and marine ecosystems.

These pressures are driven by economic activity, population growth and demographic changes, technological advances, changing governance structures, and geopolitical instability. The pressures and drivers demonstrate that the UN Convention for the Law of the Sea (UNCLOS), the often called ‘constitution for the oceans,’ is necessary but not sufficient to govern the oceans. UNCLOS offers one of several fields of professional specialisation, or ‘regimes’ of treaties and organizations, that are necessary to address environmental challenges.

For example, the pressure of sea-level rise and ocean acidification needs to be faced by the international climate change regime, and the ‘Oceans-Climate Dialogue’ is a welcome development. Other treaties, including the Convention on Biological Diversity (CBD), will play an important role.

Professor Young also addressed the pressure of unsustainable fishing, which is governed by agreements supported by the Food and Agriculture Organization (FAO), the UN Fish Stocks Agreement, and new rules on fisheries subsidies at the World Trade Organization (WTO). The latter will enter into force upon ratification of 2/3 of the WTO membership and will depend for its successful operation and effectiveness on the standards of the FAO and other bodies.

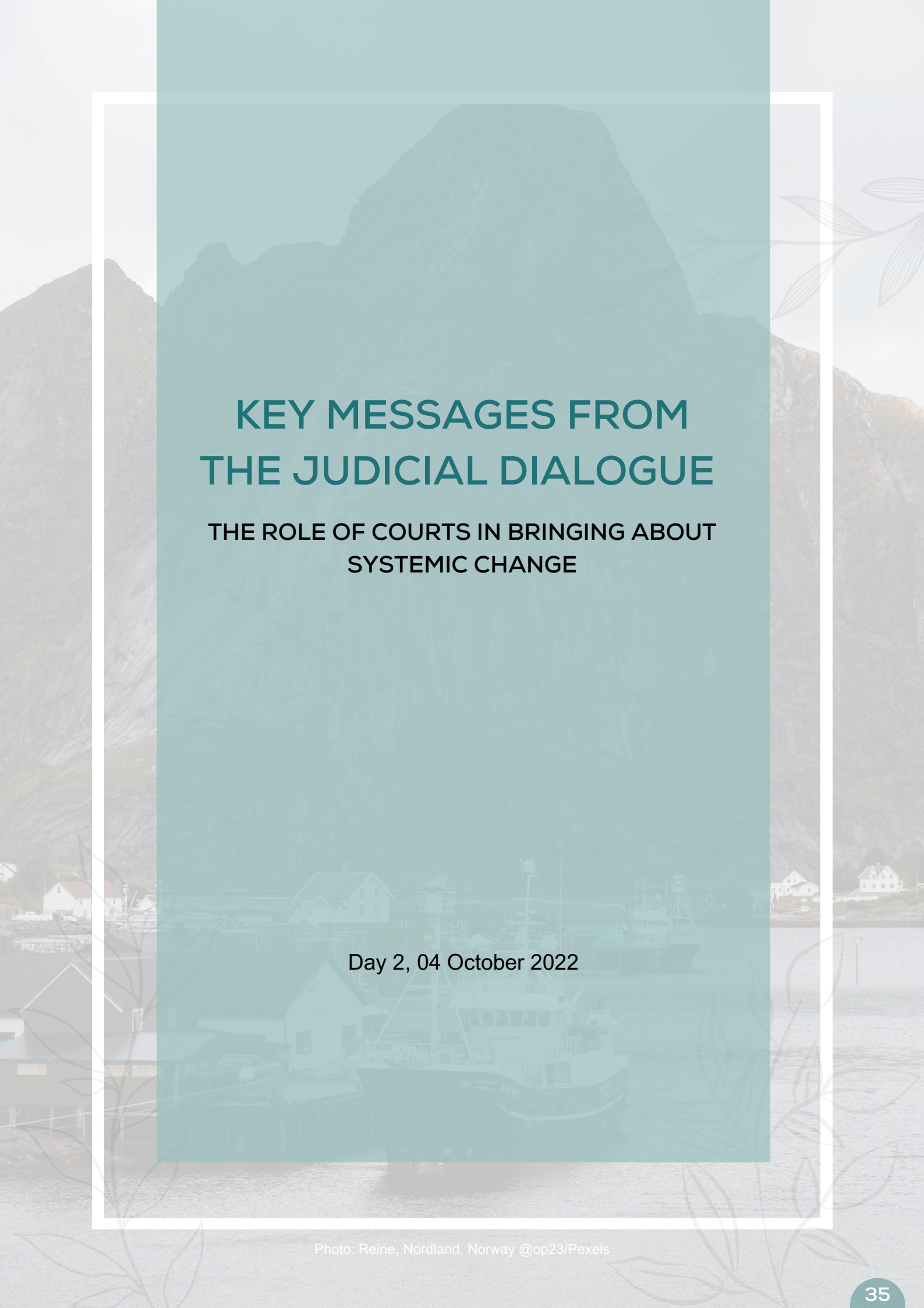
Global supply chains and modern trade and transshipment are heavily implicated in the exploitation of the resources of the sea, both within EEZs and the high seas. Trade agreements can ensure fisheries, environmental, and trade rules are mutually supportive. For example, the Comprehensive and Progressive Agreement for Trans-Pacific Partnership signals the appropriate use of measures to prevent trade in fish products resulting from illegal, unreported and unregulated (IUU) fishing.

Professor Young also noted the increase in marine pollution as an additional pressure on the oceans. This is addressed by UNCLOS, but also central are the International Maritime Organization (IMO), the United Nations Environment Programme (UNEP), regional bodies, and rule-making efforts for a new plastics treaty. Trade agreements have started to address this issue. For example, the revised North American Free Trade Agreement, which sets out obligations relating to marine capture fisheries and pollution, recognises the problem of marine litter, including plastic litter and microplastics. This is not sufficient, but it is a good start in seeking to govern consumption and production patterns affecting the oceans.

A further pressure on the oceans is the threat to marine biodiversity. These threats are addressed in UNCLOS, by the CBD’s efforts to protect ecologically or biologically significant marine areas, and through other approaches, including the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) framework. The law-making efforts for area-based management tools supported by the new internationally binding agreement on biodiversity beyond national jurisdiction (BBNJ) will also be significant, and will require support from a number of different international and regional organisations.

The examples discussed by Professor Young demonstrate that the pressures faced by the ocean require a coherent set of responses. Although the objectives and State parties of treaties may be different, the global emergency dictates high ambition, policy coherence and unity. In particular, the effectiveness of trade measures often depends on strong standards of protection for endangered species and ecosystems, which are to be found in multilateral environmental agreements (MEAs).

In line with her long-standing work on regime interaction, Professor Young emphasised that to address global environmental challenges, the system of public international law must operate through open, transparent, and participatory engagements that break down the siloes between regimes.



KEY MESSAGES FROM THE JUDICIAL DIALOGUE

THE ROLE OF COURTS IN BRINGING ABOUT
SYSTEMIC CHANGE

Day 2, 04 October 2022



JUSTICE LUC LAVRYSEN

PRESIDENT OF THE CONSTITUTIONAL COURT OF BELGIUM
PRESIDENT OF THE EUROPEAN UNION FORUM OF JUDGES FOR THE ENVIRONMENT
EMERITUS PROFESSOR OF ENVIRONMENTAL LAW, GHENT UNIVERSITY

THE ROLE OF COURTS IN BRINGING ABOUT SYSTEMIC CHANGE

At the Fourth Plenary Roundtable, the following question was raised: What is the role of courts in bringing about systemic change regarding the environment and environmental protection?

My first answer to that question would be that Courts do not have, as such, a role to play in bringing systemic change in any societal matter, including environmental matters. Indeed, that seems to be, in the first place, a matter for politics and lawmakers. The primary function of the courts in our type of society and our civil law system is to determine disputes between the parties according to pre-existing law. The courts decide specific disputes; they are not engaged in solving general problems outside the law. And they do not initiate cases themselves in our legal system. A litigant must decide to institute proceedings which that court has jurisdiction to determine. So, systemic change must come in the first place from the lawmakers.

Therefore, the question should be, in my opinion: what is the role of environmental law in bringing systemic change and are judges contributing to it, or can they?

I believe that environmental law has the potentiality to bring systemic change when it is upheld properly. And the judiciary has to play an important role in upholding the environmental rule of law. I can refer in this respect to "The Johannesburg Principles on the Role of Law and Sustainable Development," adopted at the Global Judges Symposium held in Johannesburg more than twenty years ago now, in which it has been emphasized that the "fragile state of the global environment requires the Judiciary as the guardian of the Rule of Law, to boldly and fearlessly implement and enforce applicable international and national laws, which in the field of environment and sustainable development will assist in alleviating poverty and sustaining an enduring civilization, and ensuring that the present generation will enjoy and improve the quality of life of all peoples, while also ensuring that the inherent rights and interests of succeeding generations are not compromised."

Looking at environmental law at the various levels, from the global, over the regional, to the national and sub-national levels, it contains the answer to the various ecological crises we face climate change, loss of biodiversity, pollution, and depletion. It provides for objectives to be obtained, e.g., to stabilize greenhouse gas concentrations "at a level that would prevent dangerous anthropogenic (human-induced) interference with the climate system" [...]

(UN Framework Convention on Climate Change) or "the conservation of biological diversity, the sustainable use of its components and the fair and equitable sharing of the benefits arising out of the utilization of genetic resources, including by appropriate access to genetic resources and by appropriate transfer of relevant technologies, taking into account all rights over those resources and to technologies, and by appropriate funding" (Convention on Biological Diversity) or "to protect human health and the environment from persistent organic pollutants" (Stockholm Convention on Persistent Organic Pollutants). It rests on globally accepted basic principles as the prevention and precautionary principles, the polluter pays principle, the integration principle, the principle of common but differentiated responsibilities, the substitution and proximity principles. It provides for a wide range of environmental policy instruments, from strategic environmental assessments, environmental impact assessments, permits, emission trading, green taxation, protected habitats and species, to circular economy instruments and measures to avoid chemical pollution or to combat environmental crime. Judges can contribute to the systemic change induced by environmental law by interpreting it in a consistent way, taking into account the objectives expressed in the law concerned or in the relevant higher-ranked law, be it international, European, or constitutional law. Systematic and teleological interpretation, considering the principle of effectiveness and the evolution of the regulated matter, is indicated. A good example, in my view, is the environmental case law of the Court of Justice of the European Union, which is giving hands and teeth to European Union environmental law. Human rights law and constitutional rights can reinforce this trend, as seen with the Urgenda case of the Supreme Court of the Netherlands or in the so-called Neubauer case of the German Constitutional Court.

Furthermore, judges can reveal lacuna in the law and invite lawmakers to fill them. But as indicated, in my view, it is not up to judges to produce new law in situations in which the existing law, even interpreted in a dynamic way, does not provide the solution that would be, from an environmental point of view, desirable.



PROF. MARCUS LIVIO GOMES

ASSOCIATED PROFESSOR, RIO DE JANEIRO STATE UNIVERSITY

SIRENEJUD – BRAZILIAN TECHNOLOGICAL TOOLS FOR JUSTICE AND SOCIO-ENVIRONMENTAL PROTECTION IN THE BRAZILIAN AMAZONIA*

Brazil is moving really fast to use technological tools for improving the judiciary efforts on environmental litigation. In this sense, Sirenejud is a platform developed jointly between Brazil's National Council of Justice (CNJ, in Portuguese) and the United Nations Development Programme (UNDP) and was conceived within the National Strategy of the Judiciary 2016-2021. Its main task is to ensure the proper monitoring of environmental issues throughout the country, bringing to light a number of issues that did not use to be monitored in an integrated manner by the judiciary.

The platform is fed judicial data through the Datajud system (more information is available at <https://www.cnj.jus.br/sistemas/datajud/>). It also relies on other public and private databases. The tool is not just a simple monitoring dashboard like others of CNJ. It is able to cross-reference, based on georeferencing and remote sensing, the regions of the country and the respective environmental processes filed or in progress in their jurisdictions.

Initial considerations: Concerns with the environment have been growing worldwide, and Brazil has been working towards facing challenges in terms of sustainability and preserving the environment. Despite political complexities, there are several important initiatives being brought to light. Information and communication technologies may not yet alone directly respond to the environmental challenges the globe faces. Yet, three main areas appear to benefit exponentially from the support of Information and Communication Technologies (ICTs) and digital technologies in general: (i) statistical analysis; (ii) monitoring; and (iii) evidence-based decision-making.

On the one hand, the digitalisation of documents and processes plays a part in mitigating the impact the judicial and bureaucratic activity itself has on the environment. On the other hand, collecting and processing environmental data, cross-referencing and/or enriching with other databases (judicial included) can provide important insights on the status of environmental policies and may suggest avenues of action.

Sirenejud and Brazilian Judiciary: The way in which the judiciary acts on environmental issues is directly related to the integration with other agencies for the prevention and combat of environmental crimes. In Brazil, monitoring the vast green areas of the country and the diversity of biomes is not an easy affair.

Investment in remote mapping since the 1980s has been one chief way to face the complexities of on-the-ground monitoring. In this sense, just as the [PDPJ-Br](#) represents a paradigm shift in the integration of the electronic process systems, recently the CNJ, in partnership with UNDP, started the implementation of a monitoring tool ("SireneJud"), capable of cross-referencing various information from agencies that make up the Brazilian environmental protection system.

Sirenejud is a platform developed jointly between the CNJ and UNDP and was conceived within the National Strategy of the Judiciary 2016-2021. Its main task is to ensure the proper monitoring of environmental issues throughout the country, bringing to light a number of issues that were not monitored in an integrated manner by the judiciary.

The tool is not just a simple monitoring dashboard like others of CNJ. It is able to cross-reference, based on georeferencing and remote sensing, the regions of the country and the respective environmental processes filed or in progress in their jurisdictions. Thus, for example, it is possible to identify the occurrence of forest fires in a municipality in the extreme North or extreme South of the country and link them to ongoing lawsuits. Another example is the cross-referencing of data on deforestation in the Amazon and also the ongoing lawsuits. With this, it is possible to determine which are the most problematic focus points in a region, the incidence of a certain type of lawsuit, and the duration of lawsuits.

Finally, it can be said that Sirenejud can be a main technological solution of the judiciary to support environmental issues, just as PDPJ-Br will serve for the electronic process and Synapses for AI mechanisms. In common, all these tools, each in its own area, have the role of ensuring the integration of the judiciary with the intensive use of technological mechanisms. Sirenejud is in the implementation phase.

Final considerations: Other countries could consider following the path Brazil's judiciary took, in particular, with tools like SireneJud. These kinds of tools help to highlight the contribution of the judiciary to the quite complex and broad field of environmental matters. Moreover, the data processed can serve as a solid basis for detecting weak points and reacting by means of political initiatives and legal measures, also in terms of targeted judiciary related-resource allocation.

* Note: This article is integrally based on the report [Justice and Socio-Environmental Protection in the Brazilian Amazon \(2020\)](#).



JUSTICE NICOLA PAIN

JUDGE, LAND AND ENVIRONMENT COURT OF NEW SOUTH WALES

CHALLENGES FOR JUDGES ADDRESSING GLOBAL ENVIRONMENTAL PROBLEMS

Whether courts can be seen as able to bring about systemic change, or whether it is appropriate to pose the question at all, must be informed by the fundamental importance of maintaining the separation of powers between the role of an elected parliament to make laws and the role of courts in applying and interpreting those laws.

The question is being posed in relation to the achievement of systemic environmental change. From the perspective of Australia, a common law country with democratically elected parliaments at national and state levels of government, environmental law is largely a creature of statute at both levels of government. Courts play an essential role in applying and interpreting the environmental law issues brought before them in an adversarial system. Their inherent role is to consider what an elected parliament has decreed. The ability of courts to bring about systemic environmental change is inherently limited by that essential role. Some would argue that is not the role of courts at all.

Courts in many common law and civil jurisdictions are being called on to consider a wide range of environmental issues. Environmental courts and tribunals have increased in number substantially in civil and common law countries in recent years, as identified recently in the United Nations Environment Programme 'Environmental Courts and Tribunals – 2021: A Guide for Policymakers' report.

Domestic courts play a significant role in construing and applying environmental laws and in developing appropriate remedies to respond to the issues proved before them. Judges in Australia must respond to the issues parties place before them in the adversarial system of litigation, which prevails.

By way of example of evolution in the application of environmental law in the Land and Environment Court of New South Wales (LEC), a substantial body of law has developed over many years in an incremental way through defining and refining the principles of ecologically sustainable development in numerous cases considering a wide variety of environmental issues. Ecologically sustainable development principles include the principle of inter-generational equity, the precautionary principle, and the polluter pays principle, amongst others, which draw in turn on international environmental principles.

Cases have considered the protection of forests, the protection of marine areas, and the protection of aboriginal heritage, amongst many other issues. I would argue this case law has led to greater effectiveness in the application of environmental law in New South Wales, where these principles play a role and have been referred to in other jurisdictions. Certainly, substantive decisions by judges can have significant impacts on the way the law is applied and, particularly, how it is applied by regulators where they must administer a statutory scheme that is subject to court oversight.

Access to justice is strongly influenced by the decisions of judges in relation to a number of important procedural and threshold matters. Such decisions greatly influence what kinds of cases reach court and, therefore, what kinds of substantive decisions are made. In Australia, the importance of public interest environmental litigation has been recognised over many decades. Public interest litigation seeks to address environmental harm and/or the effectiveness of environmental laws. There have been a number of significant decisions made by judges of the LEC in diverse areas of environmental law in such cases throughout the court's history. Such cases often test the boundaries of the law because of the arguments run by public interest applicants, which a judge must decide. Decisions by judges about procedural and threshold matters will enhance or inhibit access to courts. They can have a substantial impact on whether public interest issues, which may be groundbreaking in nature, reach a court for determination. Many of these procedural issues are arising in relation to climate change cases, which are often seeking to expand the application of law in novel ways.

The role of courts in strengthening the application and implementation of environmental law concepts can take place over a lengthy period, reflected in the accumulation of many individual cases before a particular court, so that environmental laws are strengthened through a court's jurisprudence.



LORD ROBERT CARNWATH

FORMER JUSTICE, UNITED KINGDOM SUPREME COURT

JUDGES AND ENVIRONMENTAL RIGHTS

The right to a healthy environment should be a basic right. But it is only recently that this has been recognised by the United Nations. It has been left to the judges to fill the gap. Thus, in the famous *Oposa* case in 1993, the Philippines Supreme Court described rights to a balanced and healthful ecology as "basic rights" which "predate all governments and constitutions" and "need not be written in the Constitution for they are assumed to exist from the inception of humankind." The court memorably upheld a challenge to the state's policies for granting consents to fell in the country's virgin forests, brought by 43 children from all over the Philippines, on behalf of themselves and "generations yet unborn."

In the same spirit, the courts of India and Pakistan have taken the lead in interpreting constitutional guarantees of the right to life to include environmental rights. In the words of the Pakistan Supreme Court, in the leading case of *Shehla Zia v WAPDA pld* (1994), the right to life

"...does not mean nor can it be restricted only to the vegetative or animal life or mere existence from conception to death. Life includes all such amenities and facilities which a person born in a free country is entitled to enjoy with dignity, legally and constitutionally."

The scope of this constitutional right is well illustrated by the now well-known case of *Leghari v Attorney-General*, in the Lahore High Court in 2015. The court was faced with a claim by a farmer whose land was suffering from the effects of climate change, and who charged the Government with failure to implement its own climate change policies. The court upheld the claim, relying again on the constitutional right to life. It ordered the setting up of a Climate Change Commission to oversee the implementation of those policies under the supervision of the court.

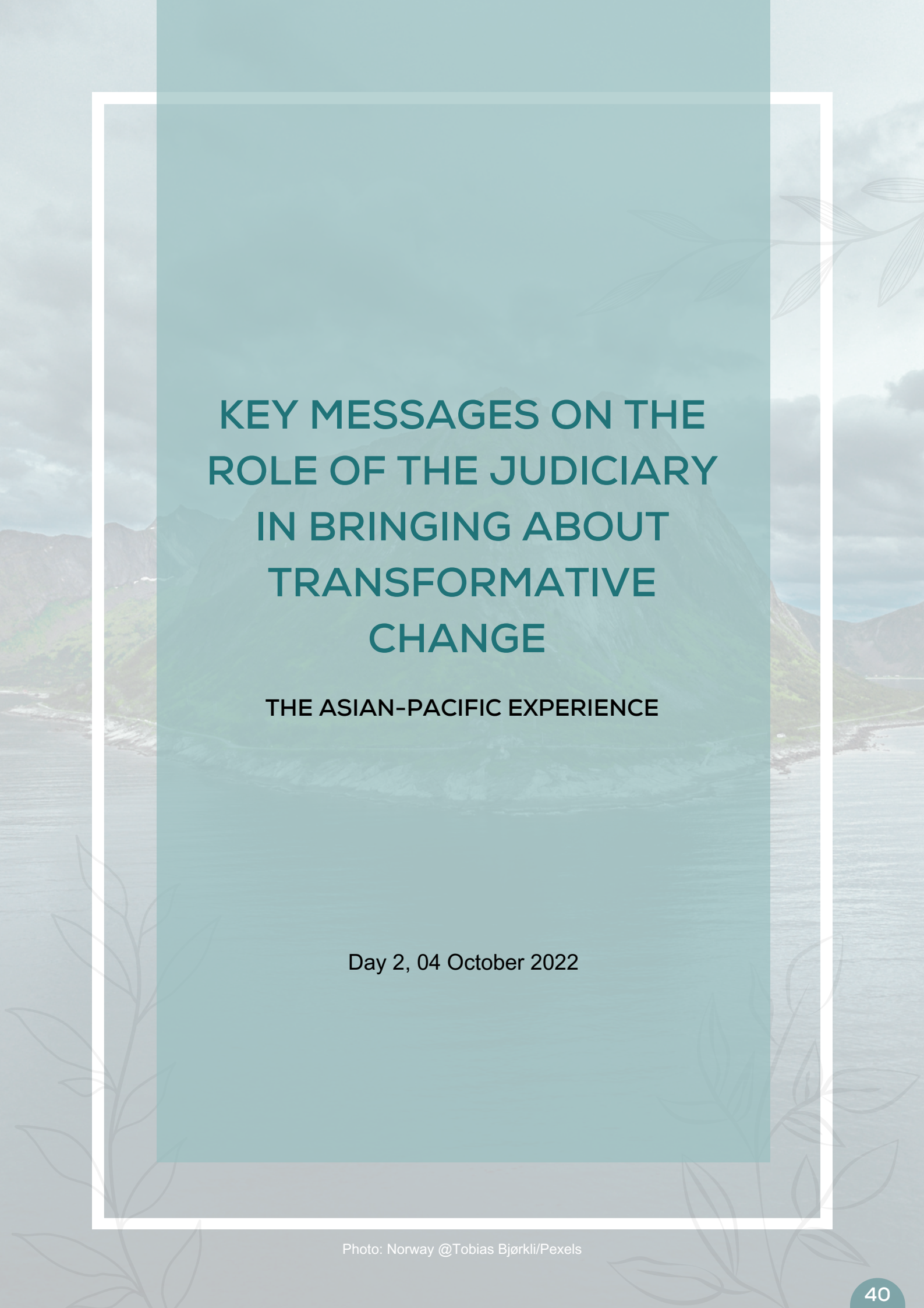
In Europe, the decisions of the European Court of Human Rights have to some extent filled a gap by the "greening" of articles 2 and 8. Thus in *Lopez Ostra v Spain* (1995) the court upheld a complaint of the government's failure to deal with smells, noise and fumes from a waste-treatment plant situated a few metres away from her home. But article 8 is about the protection of people rather than of the environment for its own sake. In *Kyrtatos v Greece* (2005), the applicants challenged the government's failure to demolish buildings where the permits to build on a swamp had been ruled unlawful by the Greek court.

The court held that there was no violation of Article 8, as the damage to the birds and other protected species did not affect the private rights of the complainants. Thus environmental rights are not "human rights" in the ordinary sense. They are much more than that. They involve rights and duties. The rights are those of not just of humans, but of all living things. The duties are ours, as the species with the unique ability to influence the environment for good or ill.

Turning to climate change, the Paris Agreement, in spite of its importance, is no more than a first step in the right direction. As the pressures on policy-makers increase, we can expect the courts to be drawn increasingly into the arena. However, it was the United States Supreme Court in the *Massachusetts* case (2007) which showed the way. The court decided by 5-4 that the regulatory powers under the Clean Air Act extended to greenhouse gas emissions and that in the face of unchallenged evidence that global warming threatens "severe and irreversible changes to natural ecosystems," the Environmental Protection Agency's failure to take action was unlawful.

It may be questionable whether the same result would have been reached by the present Supreme Court. But it was critically important at the time. After the change of administration in 2008, and in the face of political opposition to any new Federal legislation, it paved the way to the strong climate change programme initiated by President Obama under the existing Act, and to his effective participation in the Paris negotiations. It is fair to say that without that judicial decision, the Paris Agreement would not have happened.

In conclusion, I hope these illustrations are enough to show that Judges have an important role in protecting the right to a healthy environment. They cannot do it alone. They depend on political support and workable legislation. But judges and courts are vital for that legislation to have real teeth.



KEY MESSAGES ON THE ROLE OF THE JUDICIARY IN BRINGING ABOUT TRANSFORMATIVE CHANGE

THE ASIAN-PACIFIC EXPERIENCE

Day 2, 04 October 2022



JUSTICE ANANDA MOHAN BHATTARAI

JUSTICE, SUPREME COURT OF NEPAL

THE POWER OF REGIONAL JUDICIAL EXCHANGES AND ENVIRONMENT RIGHTS IN THE 21ST CENTURY

Whether one likes it or not, judges are already involved in norm creation. They are a catalyst in pursuing systemic change.

South Asia is known not only for having a strong and active court system but also as a locale attaching importance to comparative law and openness in learning from each other's experience. Walking in tandem has been possible due to both educational and judicial exchange in South Asia. I have in mind the sketch of environmental jurisprudence in South Asia evolving for around 40 years now. This sketch includes early cases such as Godavari Marble (Nepal), Maneka Gandhi, Subash Kumar, Dehradun Mining, etcetera (India), Moiddin Farooqui (Bangladesh), Sheela Zia (Pakistan), Eppawela Phosphate Mining case (Sri Lanka) and many others. Building on early cases, environmental jurisprudence has further developed in the course of addressing major challenges such as loss of biodiversity, pollution, climate change, and threat to human security due to poverty, starvation, and the lack of sustainable environmental planning.

The environmental justice movement in South Asia began by bringing humans to the center of environmental discourse and giving expansive meaning to the right to life. This resonance might have come from the Stockholm Declaration that called for an environment of a quality that permits a life of dignity and well-being. The courts in the 1980s echoed the same and began giving broad interpretations of rights, bringing human dignity to the center and spiraling out to encompass health, education, clean water, and a healthy and pollution-free environment under its sweep. The courts also juxtaposed constitutional rights versus constitutional duty in their quest for environmental rule of law.

The stimulus created by environmental jurisprudence is also witnessed in the constitutions drafted in the 1990s and the succeeding decades. Here, the Constitution of Nepal (1990, 2007, and 2015), Afghanistan (2004), Maldives (2008), and Bhutan (2008) are the cases in point. While the Constitutions of India (1950), Bangladesh (1971) or Sri Lanka (1978) - mostly post-colonial documents, have provisions relating to the protection of the environment in the Directive Principles, the Constitutions of Nepal, Bhutan, Maldives, and Afghanistan have emphasized on the right-based dimension of environment and brought the core content in the domain of enforceability. One also finds local emphasis in them such as disaster resilience, duty to cooperate in national calamity, minimum/adequate forest cover (Nepal, Bhutan), protection of farmers, herders, nomads (Afghanistan), and establishment of electricity and sewage system (Maldives).

Another thread that emerges from younger constitutions of South Asia is the internalization of environmental principles,

including trusteeship of nature, ecologically balanced sustainable development (Maldives), sovereign right of the state over resources (Bhutan), environmentally sustainable development with inter-generational equity, polluter pays principle, precautionary principle, prior informed consent and the right to compensation for any injury caused from environmental pollution or degradation (Nepal).

Regarding judicial exchange, thanks to the Asian Development Bank (ADB) and other international institutions, the exchange has been made possible for around ten years now. ADB is constantly engaged in judicial exchanges. This has given exposure to judges, has taken their decisions to an international audience, and, in the case of Nepal, has helped create an interest in Nepal by giving international exposure to the decisions of the Nepali judiciary. These judicial exchanges have helped us understand how similar environmental problems are addressed in neighboring countries and in advancing environmental jurisprudence. In several environmental cases in Nepal, such as the *Nijgadh Airport Case*, *Fewa Lake Protection Case*, *protection of heritage sites of Lord Pashupatinath*, *Chitwan National Park Case*, *case concerning the banning of export of stone, gravels, and sand*, etc., the Supreme Court has profusely used decisions coming from comparative jurisdiction. An example of emerging jurisprudence in South Asia is the intrinsic right of nature itself to exist.

Judicial activism, which in the case of Nepal has been constitutional activism, has been a common approach of the judiciaries in South Asia. The exchange contributed to the appreciation of environmental jurisprudence and the strategies taken in developing those jurisprudence. It has a few clear messages. **First** is the approach of taking the environment in a right-duty relation. **Second**, is the learning from judicial pronouncements and principles evolved in international law. **Third**, judicial commitments are based on achievement and sharing of best practices. **Fourth** is the widening canvas of sustainable, inclusive development. **Fifth**, is the deeper appreciation of science in understanding climate change, calamities, and catastrophes. The development of a comparative approach has contributed to strengthening the overall justice system in matters relating to not only environmental justice but also other streams such as gender justice, prison justice and juvenile justice. Exchange helps in knowledge diffusion, capacity building of judges, and thus contributes to the sustainability of the judicial approach. Collegiality is imperative amidst the mounting environmental challenges the region is facing and the wavering judicial trajectory amidst short-term political maleficence.



JUSTICE MARIA FILOMENA D. SINGH

ASSOCIATE JUSTICE, SUPREME COURT OF THE PHILIPPINES

HARNESSING TECHNOLOGY AND PROCEDURE IN DELIVERING ENVIRONMENTAL JUSTICE AND REFLECTIONS ON JUDICIAL NEEDS FOR BUILDING EXCELLENCE IN ENVIRONMENTAL LAW

As one of the most biodiverse countries in the world and home to various flora and fauna, the Philippines has adopted a steadfast stance in enforcing environmental laws vis-à-vis the balancing of the rights of stakeholders.

As various environmental issues escalate, the collective effort of nations to curb the perilous side effects of environmental degradation has assumed greater urgency and precedence. These measures include the elimination of single-use plastics in different establishments, as well as the rehabilitation of multiple bodies of water in urban areas, among others.

As environmental justice includes the responsibility of maintaining and preserving natural resources, each of us is called to be a steward of nature, performing our respective roles that contribute to the development, implementation, and enforcement of an effective and efficient environmental framework.

As a member of the Supreme Court of the Philippines, I am not only expected to perform my adjudicative functions with loyalty to the Constitution and the laws of our land but also to be proactive and responsive to the changing needs of our society, including the protection of environmental rights. From the landmark cases of *Oposa v. Factoran* in 1993 and the *Metropolitan Manila Development Authority v. Concerned Citizens of Manila Bay* in 2008, the High Court has not shied away from introducing and/or adopting new concepts that promote environmental justice and blazing new trails to grant relevant reliefs to those seeking protection and redress from already existing and even future environmental damage of varying degrees.

For the first time, the Supreme Court, in the case of *Oposa v. Factoran*, recognized the legal standing of petitioners-minors to represent their generation and the generations yet unborn in seeking judicial relief. This ruling has been cited and replicated globally.

More than a decade later, the Supreme Court applied the concept of a “writ of continuing mandamus,” which ensures that a ruling of the Court shall remain effective and enforceable, notwithstanding any administrative inaction or indifference. Through the writ of continuing mandamus, the Supreme Court, in the case of the *Metropolitan Manila Development Authority v. Concerned Citizens of Manila Bay*, directed the concerned government agencies to submit a quarterly progress report on the activities undertaken to carry into effect the ruling of the Court for the rehabilitation of Manila Bay.

The Supreme Court further introduced the Rule on the Writ of Kalikasan, adopting the special rule on the writ of nature targeted particularly against grave environmental injury affecting two or more provinces or cities.

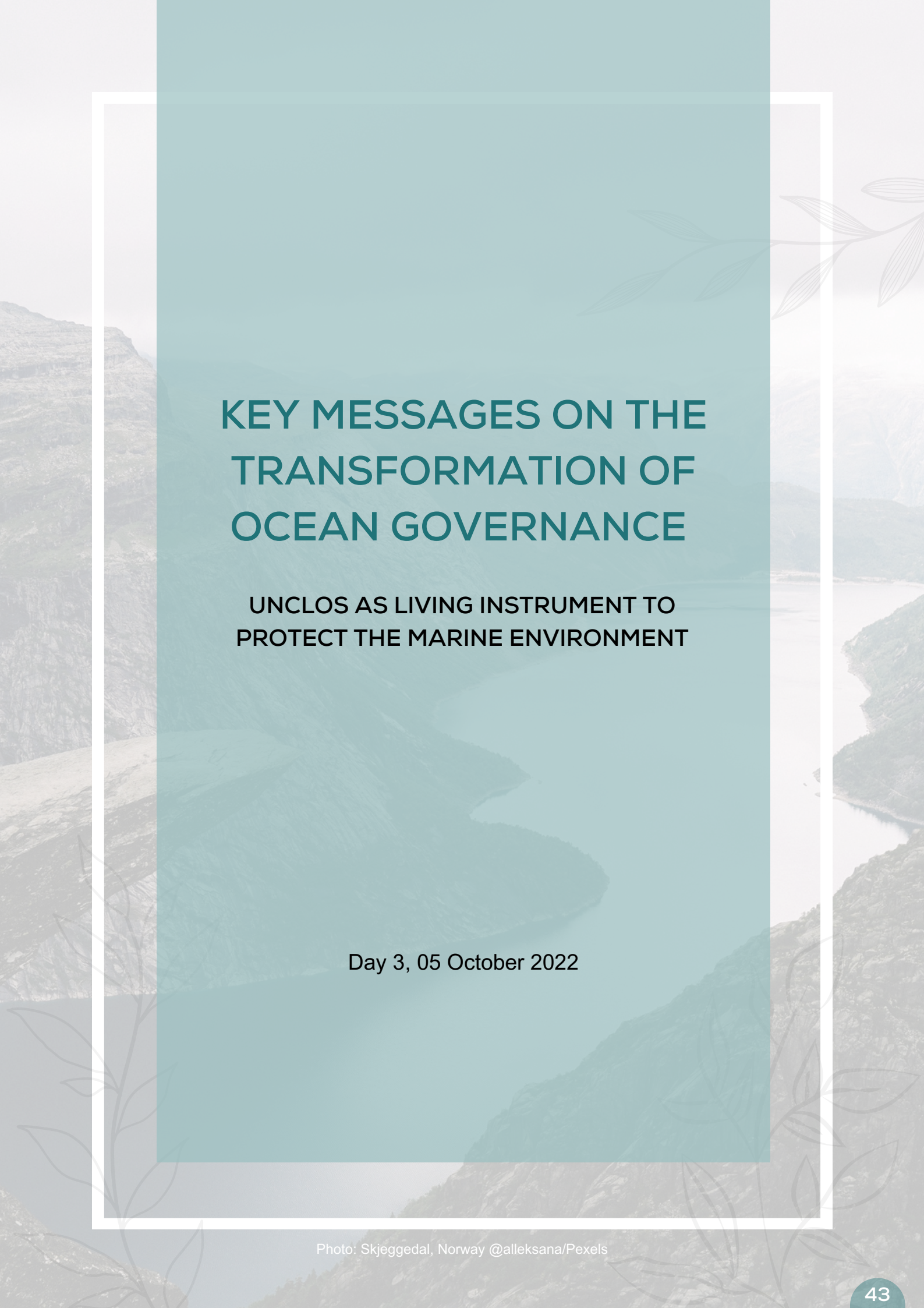
This remedy is predicated on an actual or threatened violation of the constitutional right to a balanced and healthful ecology, which involves environmental damage of such magnitude that transcends political and territorial boundaries. A party who invokes the writ must show a causal link, or at least a reasonable connection relative to the alleged actual or threatened violation of the constitutional right to a balanced and healthful ecology. With the advent of the Rules on Environmental Procedure, cases impacting the environment brought before the Supreme Court have exponentially increased throughout the years.

The Honorable Alexander G. Gesmundo, as Chief Justice of the Supreme Court of the Philippines, took steps to maximize available information and communications technology in the pursuit of a technology-driven Judiciary, partly in response to the prolonged community quarantine and in pursuit of a faster administration of justice, which saw a shift to technology-based platforms. For instance, with the use of videoconferencing hearings, a total of 112,760 persons deprived of liberty, 1,721 of which were children in conflict with the law, were released as of February 2022.

The same efficiency is now applied in resolving environmental cases where parties seek immediate relief to prevent further environmental damage. To be specific, judges are mandated under the Rules of Procedure for Environmental Cases to conduct continuous trials for two months from the date of the issuance of the pre-trial order. To meet this deadline, trial courts must utilize all available technology to facilitate the most expeditious disposition of the case.

As part of its Strategic Plan for Judicial Innovations from 2022 to 2027, the Philippine Supreme Court seeks to achieve efficiency through restructuring court systems, innovation, and better access to courts by bringing judicial services closer to the public. The mandatory Clinical Legal Education Program (CLEP) has fostered the establishment of law clinics in all the accredited law schools across the country. The law clinics have increased the access of the underprivileged and underserved to legal services, especially in far-flung areas where access is virtually nonexistent. A good number of these law clinics are engaged in environmental law assistance.

As the magnitude of environmental degradation becomes more pronounced and the adverse effects more felt, courts have to be more creative, more innovative, and more aggressive in finding solutions to the problems even beyond their traditional adjudicative role.



KEY MESSAGES ON THE TRANSFORMATION OF OCEAN GOVERNANCE

**UNCLOS AS LIVING INSTRUMENT TO
PROTECT THE MARINE ENVIRONMENT**

Day 3, 05 October 2022



CYMIE R. PAYNE

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THE LAW OF THE SEA TRIBUNAL AS A LIVING INSTITUTION CAPABLE OF ADDRESSING THE PROTECTION OF THE MARINE ENVIRONMENT, PARTICULARLY AREAS BEYOND NATIONAL JURISDICTION

Whether the Law of the Sea Tribunal (ITLOS) is capable of responding to the environmental and multilateral challenges we face today in the marine environment is a provocative question because international litigation remains in many ways bound to the rigid state-centered bilateralism of the past, leaving little room for public interest litigation. ITLOS has at times recognized that UNCLOS must be a living instrument, most notably in its exercise of its advisory opinion jurisdiction, but it is constrained in its contentious jurisdiction. Through its advisory opinions on the responsibility of states engaged in deep seabed mining in areas beyond national jurisdiction (Case No. 17) and on states' responsibility and liability with regard to Illegal, Unreported, and Unregulated fishing, ITLOS interpreted the Convention in light of modern ecological knowledge and circumstances. In those proceedings, the Tribunal heard from many states as well as several international organizations, including IUCN (IUCN participated in the 2023 climate change advisory opinion, Case No. 31, as well), and though the submissions of nongovernmental organizations were not included in the formal docket, ITLOS published them on its website with other case documents.

Public interest litigation has proved a crucial correction to the influence of private interests within national legal systems. It is particularly important in areas beyond national jurisdiction, where humankind and oceankind are least represented. But in the international sphere, there is not a clear, consistent, and powerful avatar able to represent the interests of the international community, writ large, much less the interests of ocean life, and their interests can be quickly marginalized when a particular industrial sector or geopolitical strategy is at issue. (C.R. Payne, "Responsibility to the international community for marine biodiversity beyond national jurisdiction," 11:1 Cambridge International Law Journal 24–50 (2022).) States may represent those interests as parties to litigation or as intervenors.

The Convention provides that, for contentious cases, parties may include States, intergovernmental organizations, and special provisions for seabed mining in areas beyond national jurisdiction. It also provides limited standing before the Seabed Disputes Chamber for private mining companies that are sponsored by States (state enterprises and natural or juridical persons). There are no provisions to allow civil society parties standing before the Tribunal or its Chamber to vindicate the public interest by bringing a contentious case. Balance may be provided to an extent through Article 84 of the Rules of the Tribunal, which allows ITLOS to invite non-party intergovernmental Organizations (IGOs) to furnish [...]

the Tribunal with information, and also allows such organizations to submit unsolicited briefs related to a particular case.

Turning to the Biodiversity Beyond National Jurisdiction (BBNJ) Agreement, it includes by reference the compulsory, binding dispute settlement provisions found in the Convention as well as non-binding alternatives and measures tailored to States that are not party to UNCLOS. (Note: the BBNJ Agreement was being negotiated at the time of the Oslo Conference; these comments are based on the text adopted on 20 June 2023.) As an implementing agreement to the Convention, it does not expand standing to IGOs or non-governmental organizations with regard to its provisions for compulsory, legally binding, third party dispute settlement. Although the amicus curiae opportunity should be applicable to proceedings before ITLOS, it would not necessarily be available where arbitration is chosen by the contending parties. Several provisions aim to prevent the need for formal dispute settlement; whether IGOs and civil society observers will have a role is yet to be determined. One is an implementation and compliance committee that is expected to take a facilitative approach to non-compliance. Another, allows the Parties concerned to refer the dispute to an ad hoc expert panel that they establish to resolve differences on technical issues; the panel will confer with them and will seek to resolve the dispute expeditiously without recourse to binding procedures for the settlement of disputes. The BBNJ Agreement provides for its Conference of the Parties to request an advisory opinion 'on a legal question on the conformity with this Agreement of a proposal before the Conference of the Parties on any matter within its competence.' Presumably, ITLOS will follow its former practice with respect to IGO participation in any such proceedings.

When the 1982 UN Convention on the Law of the Sea established ITLOS as the central forum to settle disputes over the application and interpretation of the Convention, the need to manage shared resources collectively was a consideration. The negotiation of the BBNJ Agreement shows that States are still engaging in multilateralism to manage common problems like conservation in areas beyond national jurisdiction (ABNJ). Future developments may seek to make litigation equally representative of diverse interests, notably those of the international community as a whole.



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CLIMATE CHANGE AND THE OCEAN: THE GLOBAL GOVERNANCE GAP

The ocean is seventy percent of Earth's surface. It is critical for regulating the climate. The ocean holds fifty times more carbon dioxide than the atmosphere, has absorbed more than twenty-five percent of emitted anthropogenic CO₂, and has absorbed ninety percent of the atmospheric warming from increasing greenhouse gases (GHG) in recent decades.

The impacts of climate change have been addressed in Reports of the Intergovernmental Panel on Climate Change since the First Assessment Report in 1990, in addition to the first Special Report on the Ocean and the Cryosphere in a Changing Climate in 2019, among others. Each report has systematically highlighted the many adverse impacts of GHG on the ocean, and as of 2005 included ocean acidification. The multiple adverse impacts on the ocean include ocean warming, rising sea levels, ocean chemistry change, deoxygenation, and ocean acidification. These consequences of climate change on the ocean directly impact the marine environment and ecosystems and, in turn, the livelihoods of millions of people and communities that depend on the ocean and its rich resources.

There are several challenges for international law in addressing these adverse impacts of climate change on the ocean, such as how to tackle GHG and the melting of ice sheets and glaciers that are leading to rising sea levels of the sea exceeding that which has taken place in the last three thousand years. Another challenge is the mitigation of excessive emission of CO₂ that is resulting in ocean acidification and threatening coral reefs, crustaceans, and the overall ecosystem. Likewise, adaptation to these impacts is of growing importance.

These physiological impacts also create "legal" questions. For example, do GHG emissions constitute "pollution"? What obligations do States have to protect and preserve the marine environment from the harmful impacts of a warming ocean, acidification, and deoxygenation? Sea level rise could potentially result in the loss of maritime entitlements if, legally speaking, maritime zones regress landwards. There are two major framework conventions and regimes with application, namely, the 1982 United Nations Convention on the Law of the Sea (UNCLOS) and the United Nations Framework Convention on Climate Change (UNFCCC). Do these regimes support each other, or are there gaps?

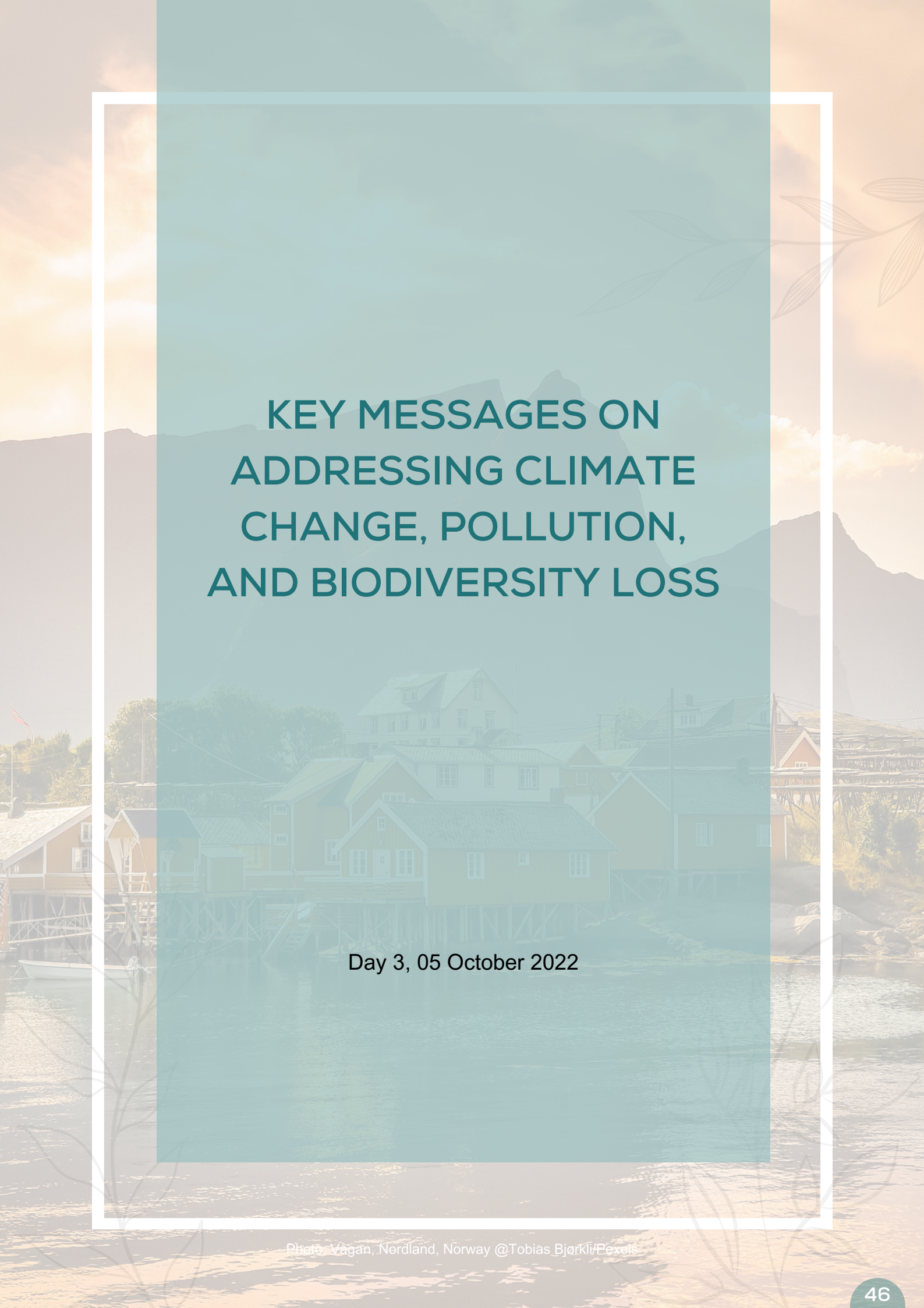
The 1982 UNCLOS is a pre-climate convention. While it is considered the "Constitution for the ocean" and is comprehensive in many ways, it does not address climate change directly as it was adopted before climate change was on the international agenda. Nonetheless, Part XII includes many important obligations for States with direct application to the ocean-climate nexus, including a definition of pollution [...]

under Article 1(4) that would encompass GHG emissions. For example, article 192 establishes a broad and clear obligation for States to protect and preserve the marine environment. Article 194 establishes a clear obligation for States to take the necessary measures to prevent, reduce, and control pollution of the marine environment from *any* source of pollution, with express reference to rare or fragile ecosystems as well as the habitat of depleted, threatened, or endangered species and other forms of marine life. It then becomes a matter of proper interpretation of these provisions to apply directly to the adverse impacts of climate change on the ocean. However, UNCLOS has some gaps, as it lacks a mechanism or process, such as a conference of the parties, for collective mitigation of GHG actions necessary to bring about transformational change.

The principal legal framework for climate change built under the overarching framework of the 1992 UNFCCC is the 2015 Paris Agreement. While the Agreement provides important processes and mechanisms for mitigation and adaptation, the UNFCCC regime is terrestrial in its ambit, giving limited attention to the ocean only in its function as a sink or reservoir under article 4 (1)(d) of UNFCCC and 5(1) of the Paris Agreement, with a brief mention of the ocean in the preamble of the latter. The Paris Agreement established in Article 2 the critical temperature target of well below 2°C above pre-industrial levels and of pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels. Since 2018, the ocean has been increasingly mainstreamed into the UNFCCC regime, but this is unlikely to result in establishing any obligations concerning the protection of the marine environment from the harmful impacts of climate change.

In sum, UNCLOS provides robust obligations to protect and preserve the marine environment from the adverse impacts of climate change but does not provide express obligations for mitigation obligations or processes. The UNFCCC regime, on the other hand, does.

In this context, how can we attain transformational change in global ocean-climate governance under these two major regimes? The climate-ocean nexus provides a case *par excellence* of the need to engage in regime interaction to ensure the complementarity and mutual supportiveness of these two regimes to attain the objective of mitigating GHG emissions and meet the temperature target of the Paris Agreement, which, in turn, will protect the marine environment.



KEY MESSAGES ON ADDRESSING CLIMATE CHANGE, POLLUTION, AND BIODIVERSITY LOSS

Day 3, 05 October 2022



PROF. EMMANUEL KASIMBAZI

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HOW TO ADDRESS CLIMATE CHANGE, POLLUTION, AND BIODIVERSITY LOSS?

Biodiversity loss continues to occur because the current policies and economic systems do not effectively incorporate biodiversity values in either the political or the market systems, and many current policies are not fully implemented. An added complexity is that the global nature of many biodiversity values results in the impact of biodiversity loss, which is experienced far beyond national boundaries.

Climate change and pollution are some of the major threats to biodiversity. On the one hand, climate change has severe impacts on biodiversity by altering the habitats of species and threatening their survival, making them vulnerable to extinction. As a result of temperature change, some oceanic coral reef ecosystems have declined. On the other hand, pollution is a serious threat to biodiversity because it impacts terrestrial ecosystems, including forests, grasslands, and other types of land-based ecosystems. Aquatic ecosystems, including rivers, lakes, and oceans, are equally vulnerable to the damaging effects of pollution.

Government efforts to deal with climate change, pollution, and biodiversity loss have been made through different multilateral environmental agreements (MEAs), especially in the biodiversity cluster. For example, the first efforts were made in 1971 with the Ramsar Convention on Wetlands of International Importance, especially as Waterfowl Habitat, and in 1973 with the Convention on International Trade in Endangered Species of Wild Fauna and Flora. These were followed by the Convention on the Conservation of Migratory Species of Wild Animals (1979). A milestone was the wide-ranging Convention on Biological Diversity (CBD) in 1992, with its Cartagena Protocol on Biosafety (2000), its Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization (2010), and the Strategic Plan for Biodiversity for the 2011-2020 and related Aichi Targets (2010). It is important to note that the CBD, the United Nations Convention to Combat Desertification (1994), and the United Nations Framework Convention on Climate Change (UNFCCC) are known as the three interlinked Rio conventions from the 1992 Earth Summit.

In December 2022, governments adopted a new agreement for nature under the CBD known as the “Kunming-Montreal Global Biodiversity Framework.” Target 7 of the framework calls for reducing pollution risks and the negative impact of pollution from all sources by 2030 to levels that are not harmful to biodiversity and ecosystem functions and services. A recent addition to the chemicals and waste cluster is the Minamata Convention on Mercury (2013).

In spite of the efforts under the CBD, biodiversity still continues to decline at an alarming and accelerating rate as humans displace and exploit life on Earth, causing climate change, pollution, and invasion of species. None of the twenty Aichi Biodiversity Targets were fully met, and ecosystems and their services continue to degrade. The Intergovernmental Science-policy Platform for Biodiversity and Ecosystem Services (IPBES) has provided the scientific basis for the new Kunming-Montreal Global Biodiversity Framework and its related targets. It recognizes that treating climate, biodiversity, and human society as coupled systems is key to successful outcomes from policy interventions.

The loss of terrestrial, freshwater, and marine biodiversity can be halted and reversed by addressing all the drivers of biodiversity loss and providing dedicated space for nature.

Within this context, the following efforts can be adopted to address climate change, pollution, and biodiversity loss. **First**, there is a need to address market and policy failures, including perverse production subsidies, undervaluation of biological resources, failure to internalize environmental costs into prices, and failure to recognize global values at the local level. **Secondly**, reducing the rate of biodiversity loss will require multiple and mutually supportive policies for the conservation and sustainable use of nature and the recognition of biodiversity values. New policies focusing on integrated landscape and watershed management and sustainable use – the ecosystem approach – can be effective in reducing biodiversity loss. **Third**, legal structures such as “biodiversity easements” and “payments for biodiversity services” need to be developed. Fourth, there is a need to strengthen political authority and power to take stronger decisions that affect biodiversity conservation and sustainable use. **Fifth**, all stakeholders, including landholders, community and political jurisdictions (local, national, and regional), and the private sector need to be involved in decision-making. **Sixth**, strengthened coordination and interlinkage between the biodiversity-related conventions and economic instruments and organizations such as the World Intellectual Property Organization and the World Trade Organization are needed. The Regional Economic organizations play important roles in creating such level playing fields, and collaboration across sectors within government is also required. Inter-Agency coordination is needed to bring coherence to international negotiations and to bring biodiversity concerns into national policy development.



DR. MAUD LELIEVRE

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THE LAW AS A STRATEGIC TOOL TO TACKLE CLIMATE CHANGE, POLLUTION, AND BIODIVERSITY LOSS

The relationship between pollution, biodiversity, and climate change is evident, concerning, and we must address it together. On the one hand, pollution has a direct effect on the increase in temperature and the depletion of the ozone layer. Both climate change and air pollution are exacerbated by the burning of fossil fuels, which increases CO₂ emissions. Likewise, carbon dioxide contributes 66% to the global warming effect, and methane contributes 16% to warming - where 60% of this contribution comes from anthropogenic sources such as livestock, rice agriculture, fossil fuel use, or biomass burning.

Pollution also has a significant effect on biodiversity. The presence of contaminants in water, air, and soil causes harmful disturbances in all ecosystems. Industrial and transportation activities pollute the atmosphere and are responsible for the destruction of large forests. In addition, they affect the soil, which is contaminated with acidic substances that make it difficult or impossible for new plant species to grow.

The relationship between climate change and biodiversity is a topic that has been highlighted in various meetings of the Conference of the Parties and other events. The direct effects of climate change on individuals, populations, and ecosystems are evident. Some examples include changes in the distribution, size, and structure of populations caused by rainfall patterns and temperature increases, the loss and retreat of glaciers in peatlands, lagoons, and high Andean forests that bring changes in the water cycle, altering the way of life of local populations, or the loss of forests that leads to a decrease in regional and local precipitation, resulting in temperature increases.

The devastating effects of the interaction of this triple crisis transcend ecosystems and reach our most vulnerable populations. Climate change affects poor and low-income communities the most, partly because many of them live on the margins of society, in unstable structures, and in areas that are more susceptible to floods, landslides, or earthquakes, but also because they lack the capacity, resources, and access to adequate emergency response systems. Feeding humanity, ensuring water and energy security, and enhancing the conservation, restoration, and sustainable use of nature are complementary goals that are closely interdependent. Therefore, food, water, and energy systems can and must be transformed to meet growing human needs in an equitable, resilient, and environmentally sound manner.

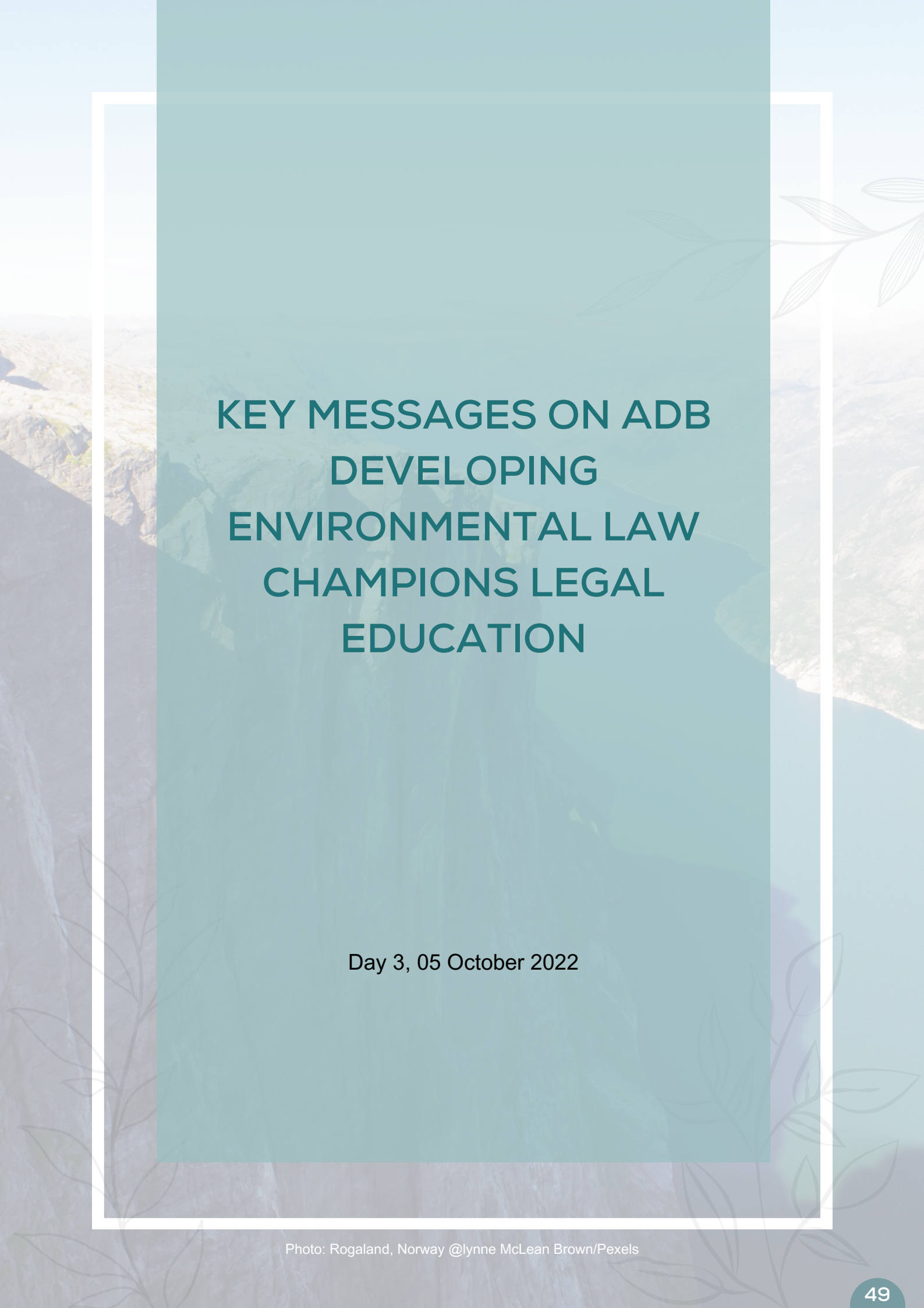
The set of solutions proposed to address these crises must go beyond discourse and be approached from a legal perspective. Until a few years ago, legal frameworks tended to operate independently. However, we have come to realize that environmental crises are interconnected, and legal frameworks have undergone a significant transformation as a result.

Environmental law is essential for sustainable development. It integrates environmental needs with the core elements of the rule of law and forms the basis for improved environmental governance. It highlights environmental sustainability by linking it to fundamental rights and obligations. It reflects universal moral values and ethical standards of behavior and provides a basis for environmental rights and obligations.

Therefore, the law must be developed for all ecosystems to promote biodiversity conservation and ecosystem restoration. It is essential to implement policies and strategies that integrate biodiversity conservation and restoration and to expand and improve protected areas. For example, fishery reform integrated spatial planning, conservation, climate change mitigation, and pollution reduction are key to restoring our biodiversity. Thus, it is important for the law to be cross-cutting and related to other policy areas, such as the transformation of economic and financial systems towards sustainability.

The law must reach all spheres of production, including agricultural systems that cooperate with nature, are resilient to change, and minimize negative impacts on the environment. The sustainability of aquatic food production requires sustainable fisheries management, establishing and expanding marine protected areas, and measures to combat climate change and pollution. Similarly, the intersection of science and policy, along with appropriate legal frameworks, can help minimize the effects of pollutants and waste on the environment and human health.

These crises are interconnected, and their effects must be addressed from a holistic perspective that integrates law, science, and local experience. In this regard, the law should be the tool to propose solutions aimed at meeting local needs and subject to the characteristics of each territory. The law should be the tool to link all levels of participation: international, national, and local. The law should be the tool to apply solutions linked to science and preservation. The law does not have to do everything, but it will undoubtedly be a strategic tool to tackle all these problems.



KEY MESSAGES ON ADB DEVELOPING ENVIRONMENTAL LAW CHAMPIONS LEGAL EDUCATION

Day 3, 05 October 2022



COMMISSIONER JOSEFE C. SORRERA-TY

COMMISSIONER REPRESENTING THE PHILIPPINE ASSOCIATION OF LAW SCHOOLS,
LEGAL EDUCATION BOARD

FORMING ENVIRONMENTAL LAW CHAMPIONS THROUGH LEGAL EDUCATION

“The Law is – in the last analysis – what the lawyers are; and the lawyers are what the law schools make them.” This quotation highlights the significant influence of legal education on the state of the laws of society. Cognizant of the power of legal education, the Legal Education Board (LEB) of the Philippines, the government agency given the authority by law to supervise all the law schools in the country, crafted a Revised Model Law Curriculum (RMLC). The RMLC prescribes the minimum curricular requirements of the Juris Doctor Program or the Law Course. One of the many goals of the RMLC is to transform law students into future lawyers who will be environmental law champions, thus, unleashing or leveraging the transformative power of the law in addressing environmental crises of climate change, nature destruction, and pollution.

The LEB initiated in 2015 the revision of the Model Law Curriculum to improve, update and upgrade the law curricula. The curriculum revision process involved focus group discussion, a nationwide survey of lawyers, a legal education summit, and a public consultation. One of the highlights of the curriculum revision was the submission of a position paper by the lawyers led by Atty. Antonio Oposa, law professors led by Prof. Galahad R. A. Pe Benito, and the DENR Lawyer's Guild to make environmental law a mandatory subject in the Law Curriculum of the country. The position paper highlighted that law students usually become judges or policymakers. If not knowledgeable about environmental law, there is a great danger that policies and decisions will give rise to environmental disasters. The position paper also shared a survey made among law students in a particular university which showed that most law students chose environmental law over other subjects on the question of the significance and relevance of courses. The position paper pointed to the relevance of environmental law during the pandemic. According to the position paper, no other course in law school comes close to studying the pandemic than environmental law. Many concepts in environmental law, like area-based management, non-attainment area, and health protection, may be applied to the pandemic.

The LEB responded to the position paper, and environmental law became a mandatory subject for all law programs in the Philippines. By requiring environmental law as a mandatory subject in the RMLC, the LEB has taken to heart its duty to ensure that legal education's transformative power will be able to transform law students into lawyers that are capacitated to respond to environmental challenges

In addition, the LEB joined hands with the Asian Development Bank (ADB), the IUCN Academy of Environmental Law (IUCNAel), and the UN Environment Program to capacitate environmental law teachers to become effective formators of future lawyers who will become environmental champions. One hundred nine environmental law professors attended the twelve weeks “Environmental Law Teachers Online Training Program” from September 2 to December 8, 2021. The weekly sessions were limited to two hours with local and foreign speakers with rich environmental perspectives. The following were the topics of the training program: State of environmental law in the Philippines (evolution, challenges, prospects, and opportunities), teaching environmental law online: benefits and challenges, methodology in the teaching of environmental law, key environmental issues and recent developments in environmental law, syllabus review workshop, pedagogical enrichment on environmental law, the role of courts in addressing environmental protection in the Philippines, climate change law, how to design an environmental clinic – experiences and challenges, environmental law in Asia (opportunities for comparative law) and environmental law in the Anthropocene.

The LEB is hopeful that with the RMLC mandating environmental law and the teachers' training program, the power of the law to transform environmental challenges into better realities will be ensured.



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SUPPORTING SOUTH ASIAN RESEARCH ON ENVIRONMENTAL LAW

Environmental law in South Asia is standing at a cusp wherein critical environmental and developmental problems must be dealt with urgently with innovative thinking. In the twentieth century, the global environmental movement was led by Western developed countries that prioritised environmental conservation and did not adequately integrate critical issues of development in the global South. Despite the collective voices raised by the developing South in the numerous environmental negotiations, countries of the Asian region have been grappling with development and environmental sustainability issues for decades. In the twenty-first century, Asian leadership will be crucial in addressing environmental and sustainability challenges both within the region and globally. The unique problems and issues faced by South Asian countries require not only an integration of international approaches but also a strong emphasis on national and regional home-grown strategies.

The region of South Asia faces similar environmental challenges. The foremost amongst them is the link between environmental degradation and poverty. Globally, environmental benefits and risks are disproportionately distributed. However, in the context of South Asia, the problem of maldistribution is particularly acute and exacerbated by the pressure of pursuing economic development agenda, which focuses on large-scale infrastructure projects. Such large-scale infrastructure projects often require the diversion of forestland. Unlike in developed countries, in rural areas, most Indigenous Peoples and local communities have a symbiotic relationship with their hinterland, and the diversion of forestland has an adverse impact on their ability to fulfil basic subsistence requirements. This has triggered numerous conflicts between state authorities and communities. At the heart of these conflicts are different visions of what constitutes sustainable and equitable development. Climate change has exacerbated these underlying historical conflicts and has also brought urgency to policy interventions to change the developmental pattern to minimize effects and build resilience.

This will require innovative partnerships between public authorities and private actors, greater decentralisation and devolution of political powers, and designing more opportunities for public participation and deliberation. At the same time, developing countries in this region would also need to collaborate with each other in pursuing joint actions to address transnational environmental problems. In this scenario, adequate focus on comparative law research can showcase the main features of legal initiatives providing a strong foundation for co-learning.

Comparative law provides a rich intellectual tradition and needs to be embraced within the region.

Environmental issues are not jurisdiction-specific; indeed, particular issues like deep-sea fishing, climate change, biodiversity protection, and waste management are inherently regional in orientation. Additionally, the region shares similar social and economic indicators and, therefore, the political economy context is common.

Academic scholarship on environmental law from this region has expanded rapidly. This is evident from the environmental law scholarship and standalone environmental law journals being published in the region. However, the representation of environmental law scholarship within international journals published in the Anglo-Saxon world has been limited. Largely, environmental law scholarships commenting on South Asia within such journals have been by academics from the region working in institutions based in institutions in the global North. It is, therefore, necessary to expand opportunities for scholars from this region to publish in international journals in the Anglo-Saxon world.

The first edition of the South Asian Research Colloquium on Environment and Climate Change (SARCECC 2020-21) was co-organized by the Centre for the Study of Law and Governance, Jawaharlal Nehru University, Faculty of Law, South Asian University and Gujarat National Law University. The colloquium included two virtual workshops. The first workshop was designed to introduce academics to more social science methodologies, as a multi-disciplinary lens is especially useful in environmental law research. Participants presented their papers in the second workshop as part of thematic panels, and academics commented on the papers.

The objective was to bring together young researchers and academics from the region and mentor them on new and emerging research methodologies. The colloquium aimed to establish a research network of mutual learning amongst academics of this region to strengthen comparative research on environmental issues in the region and explore new methodologies of empirical research on environmental issues. One of the outcomes of the SARECC was Environmental Law and Governance in South Asia - Special Issue of the LEAD Journal. Articles can be accessed here: <https://lead-journal.org/volume19/>

Prof. (Dr.) S. Shanthakumar, Dr. Stellina Jolly, and Dr. Nupur Chowdhury were the Program Directors of the first edition of the South Asian Research Colloquium on Environment and Climate Change (SARCECC), Co-organized by the Centre for the Study of Law and Governance, Jawaharlal Nehru University, Faculty of Legal Studies, South Asian University (SAU) and Centre for Environmental Law, Sustainable Development and Climate Change, Gujarat National Law University, 2021-22 with support from the Asian Development Bank, Manila.



ATTY. ROSE-LIZA EISMA-OSORIO

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DEVELOPING ENVIRONMENTAL LAW CHAMPIONS

Biodiversity loss, climate change, and pollution are complex issues affecting humanity today. These planetary crises require transformative solutions. Environmental law has slowly emerged to address these issues in many ways at a national and global scale. Environmental laws envision the protection of natural ecosystems from any harm and ensure the sustainability of resources for the benefit of present and future generations.

Environmental law plays a vital role in coping with environmental challenges and achieving a more sustainable world. It is the building block of Environmental Rule of Law, which integrates environmental needs with the essential elements of the rule of law and serves as the basis for improving environmental governance, according to the United Nations Environment Programme. There is recognition, however, that despite its unprecedented growth, the enforcement of environmental laws globally is still weak.

Environmental law is grounded on the respect for the fundamental human rights to a healthy environment. This is substantively reflected in a growing number of constitutions, national laws, and regulations. It is also recognized in international legal instruments, such as the landmark United Nations Resolution recognizing the human right to a clean, healthy, and sustainable environment. Yet the challenging task of ensuring its fulfillment remains.

The growing importance of environmental law calls for its adoption in legal education. Law schools must invest in the teaching of environmental law and start cultivating the seeds of environmental stewardship in this learning environment. Environment legal education can be encouraged through enabling conditions, such as mandating environmental law as a compulsory subject in the law curriculum.

There is a growing demand for training environmental law teachers in many countries in Asia where environmental law is now taught as a compulsory subject. For environmental law professors in the region, a training program was developed to improve environmental law education. The 'Developing Environmental Law Champions' training brings together law professors in Asia through the initiative and collaboration between many institutions, including the IUCN Academy of Environmental Law, the Asian Development Bank, among others.

The training program to improve environmental law education is necessary because there is a perceived growth in the demand for environmental law teachers in the region. In the Philippines, for instance, the imperative to strengthen the capacities of professors teaching environmental law is arguably more apparent as the Philippine Legal Education Board has mandated the mandatory teaching of environmental law in all law schools. The requirement to teach environmental law as a compulsory subject in law schools is mandated by the Philippine Legal Education Board.

There is likewise a clear need for the development of a model environmental law syllabus to strengthen the adoption of environmental law as a new field in some countries in the region. To cope with the legal education reforms that have started in these countries, the model syllabus pulls together the experts to share best practices in teaching environmental law and embed innovative teaching methodologies.

As cumulative anthropogenic impacts continue to disrupt the environment, the transformative role of environmental law can be unlocked by improving environmental legal education. This allows us to leap forward to a sustainable future.



KEY MESSAGES ON THE ROLE OF LAW IN TRANSFORMING TOWARDS A SUSTAINABLE ECONOMY

Day 4, 06 October 2022



DR. CRISTIANE DERANI

PROFESSOR, UNIVERSIDADE FEDERAL DE SANTA CATARINA

FROM COMMODIFICATION TO COLLABORATION: COMMONIZING FOOD SYSTEMS THROUGH ECOLOGICAL LAW

Global food systems are at a breaking point. They are responsible for roughly a quarter of global greenhouse gas emissions and are the top contributors to water pollution and biodiversity collapse. This clearly shows that nature is silently considered a hidden capital subsidizing food production, helping the performance of private producers. Understanding nature as a common home, wealth, and a good means that humanity is subsidizing food production when these commons come into the production process to make a marketable good. Food is an essential good for human existence, and, in this process, it is often not used to feed people. On the contrary, it commonly serves more and more selective communities that are depleting nature more and more and trespassing planetary boundaries.

Mainstream economics and politics frame food as a tradable good whose value is given by its market price, rejecting any market intervention to guarantee distribution and production. The free market in the food system is a fallacy and hides the privatization of public goods through subsidies and privatization of Nature targeting commodification. Liberal economics veil subsidies and the public goods that are provided to corporations in different stages of the food chain, harming the environment and undermining just and sustainable food production. Besides, subsidies supporting the fossil fuel industry and environmentally damaging financial support distort the market and open access toward public goods, such as freshwater and biodiversity, to private companies.

The path to a more sustainable food system requires moving from food as a commodity to food as a common good. Beyond being an economic good, food is also a common good and cannot be taken as a commodity and turned into a bare, fungible good. Food is a concrete good with special nutritious, cultural, and healthy content for human livelihood. Certainly, it is an economic good and can be changeable in the market mediated by a price. Yet, its value goes far beyond its monetary expression. This value must be recognized and cared for by public powers. This includes the value of nature as a public good and the common interest in having everyone fed with healthy and nutritious food.

Understanding that market structures are maintained by a law system leads to the recognition that there is a necessity for de-commodification.

Consequently, the communizing of food requires an ecological law structure based on ethics of ecocentrism, ecological primacy, and ecological justice.

The transformation of food from commons to commodities took strong political and legal action throughout centuries. Differently, it is important to envisage a legal regime able to de-commodify food, readdressing public investment to stimulate collaborative governance, supporting food cooperatives and innovative urban-rural relations, and promoting sharing of benefits provided through reliable, healthy food production and consumption and a fair distribution of financial, natural wealth and healthy and nutritious food. This requires moving from the idea of a global value food chain to a circular food production network of different magnitudes, either local or global.

By regulating credit and loans, it is possible to provide finance to more sustainable production practices. It is also possible to amplify legal regimes for small farmers, storage and distribution from farm to fork and back to farm, creating circularity and innovation with net-zero waste and emissions. This process also calls for change to strict regulation and liability for the use of pesticides and packaging. Also, stringent laws are essential to regulate land acquisition and intensive plantation, preventing the possession of land by landgrabbers. Furthermore, there is a need for investment and incentives on organic food and scientific innovation for sustainability in food conservation, transformation, and packaging.

These are only examples; much more can be created to foster the transformation. Law can be a tool for change by pointing out objectives, values, and ways of doing things. Principles of ecological law are set up to organize and inspire this movement. Here it is worth pointing out some of them: ecocentrism, ecointerdependency, decolonisation of actions and ideas, respect of planetary boundaries, ecological justice, democracy, respect for diversity and pluralism, solidarity, human responsibility, economic action for conservation, protection, and restoration, living in harmony with nature. Some are already legal principles, other ethical values, and drivers for change. They all express the urgent need for a radical transformation toward life existential values, rediscovering our place as a species and society on this planet.



MR. DANILO B. GARRIDO ALVES

DPHIL CANDIDATE, UNIVERSITY OF OXFORD

MULTILATERAL DEVELOPMENT BANKS AND THE ROAD TO GREATER SUSTAINABILITY

In response to one of the questions posed by the Plenary Chair, my intervention focused on the importance of taking accountability mechanisms seriously for greater sustainability within development banks – a topic on which I am currently writing my doctoral thesis.

In 2021, during a side conference at the 26th session of the Conference of the Parties to the United Nations Framework Convention on Climate Change (UNFCCC) in Glasgow, where my co-panelist Michael Strauss was present, I made a warning: development banks must do better; otherwise, they will face costly litigation. A couple of months before the 2022 Oslo International Environmental Law Conference, we saw the first litigation against a national domestic bank in relation to its climate policies. The suit was brought by the non-governmental organization Conectas against the Brazilian Development Bank (BNDES, in Portuguese) and its subsidiary BNDESPar in my home country, Brazil. The case is still ongoing, but, regardless of the result, one thing is safe to say: this will not be the last.

I took the opportunity of being in a plenary with legal counsel from various development banks to give some unsolicited advice. My top line: If you want to avoid costly and lengthy litigation, empower the independent accountability mechanisms of your institutions.

Almost all development banks have independent accountability mechanisms. These are dedicated quasi-judicial mechanisms mandated to, amongst other things, hear complaints from communities about the harm they endured as a result of a project financed by the bank and try to remedy this. However, and quite surprisingly, they have rarely been used for climate or energy transition claims. The results from the few existing cases, however, are very promising: the Independent Consultation and Investigation Mechanism (MICI), of the Inter-American Development Bank, was able to resolve a dispute in Costa Rica regarding a climate adaptation project that harmed both social and environmental rights of indigenous communities in the record time of two weeks. How many resources would be saved if, instead of courts, these types of mechanisms were the primary responsible for resolving disputes of a socio-environmental nature? Why are cases like this still the exception? Why are adversely affected persons and communities still favouring courts?

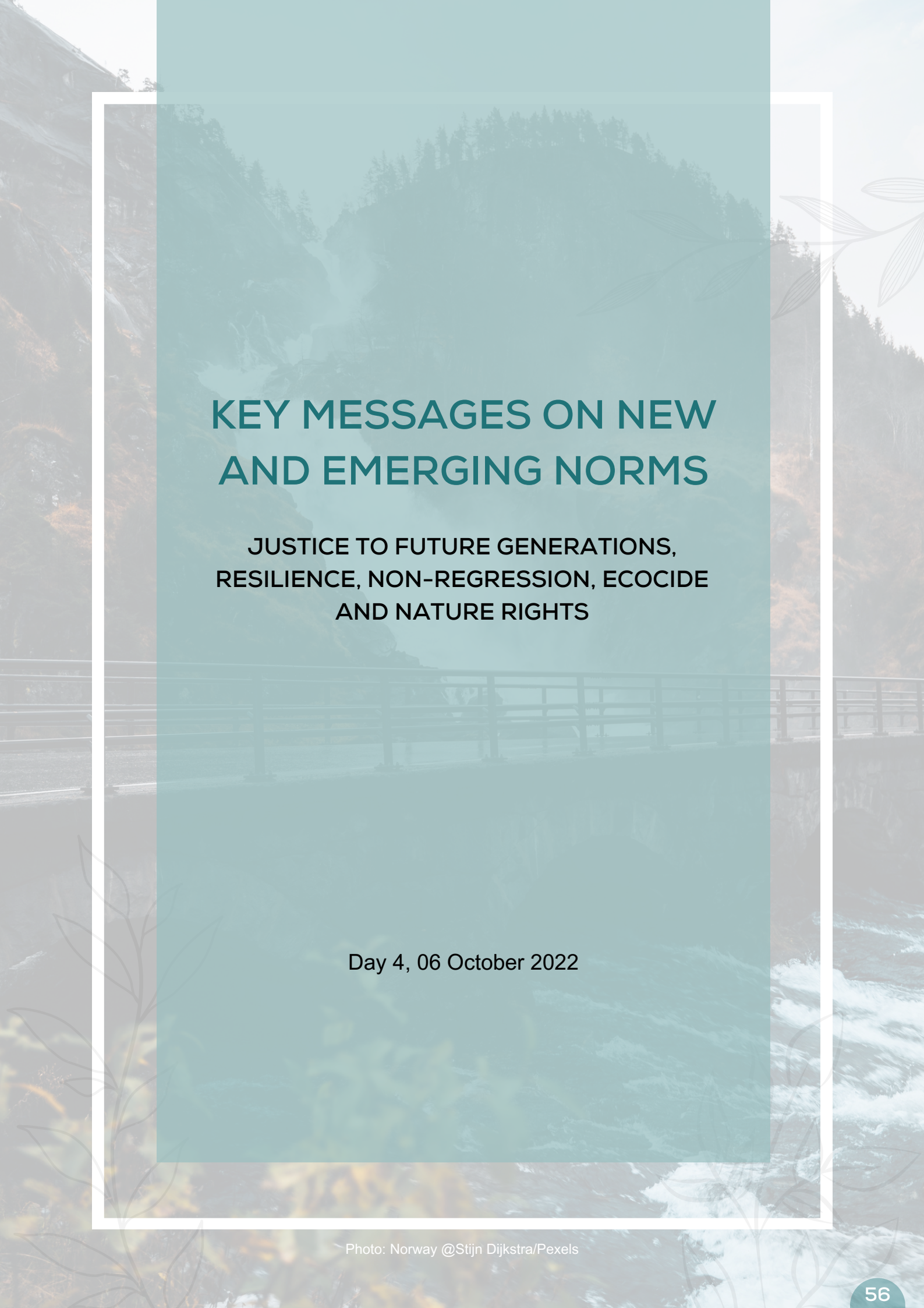
Many factors could be pointed out (e.g., lack of trust in the mechanism, insufficient remedies, non-mandatory participation of clients in the procedure), but they boil down to the relationship between the accountability mechanisms and their respective banks. Decisions from these mechanisms are not binding, and as pointed out in one of the parallel sessions of the Conference by Jonathan Brosseau, they are often not even complied with nor implemented.

Therefore, I prepared three pieces of unsolicited advice to the Banks present in the Seventh Plenary:

First, take the findings and recommendations of accountability mechanisms and ombudspersons seriously; even if there might be internal norms that prevent claimants from using them in court as evidence against your institutions, not complying with a recommendation made by your accountability mechanism will not count in your favor in court;

Second, in line with the need for institutional creativity that Jeffrey Sachs mentioned on the first day of the Conference, use your position as legal counsel to push internally for their decisions to be binding on the bank. This will improve the trust of communities regarding these mechanisms and will incentivize them to choose those routes rather than lengthy and costly litigation. If anything, it will save you money down the line; and

Third, establish project-level grievance mechanisms in every project that could greatly impact human rights or the environment. This way, issues can be more easily addressed before they escalate and potentially generate irreversible damage, which again will translate into enormous costs down the line.



KEY MESSAGES ON NEW AND EMERGING NORMS

**JUSTICE TO FUTURE GENERATIONS,
RESILIENCE, NON-REGRESSION, ECOCIDE
AND NATURE RIGHTS**

Day 4, 06 October 2022



DR. COLLINS ODOE

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NEW AND EMERGING NORMS: JUSTICE TO FUTURE GENERATIONS, RESILIENCE, NON-REGRESSION, ECOCIDE AND NATURE RIGHTS

This conference demonstrates that the law is a powerful tool for transforming society. But the law also needs to be transformed and transformative in its design, content, and application. In the quest to address global environmental challenges, innovations in rules continue to occur. Ecocide law, resilience, recognizing and protecting the rights of future generations, and nature rights offer hope that a better world is possible.

Increased attention to providing for and respecting the rights of nature, the need to protect the ecological integrity and the health of the environment, and the need to move to an exocentric approach are crucial. As the title of the UNEP 2021 report acknowledges, we need to “make peace with nature” by ending the war we have been waging with it.

Giving meaning to the rights of nature is aided by the existence and implementation of procedural environmental rights. By guaranteeing and ensuring access to environmental information, as well as ensuring public participation and access to justice, life will be breathed into these rights. However, procedural uncertainty is a key inhibitor and leads to ambiguity, which can be exploited to deny the right legal content and ensure the continuation of human beings’ war with nature. For instance, it is good to include provisions requiring public participation in legal frameworks. However, when there is ambiguity as to how such participation is to be conducted and their outcomes dealt with by public authorities, this scenario can lead to perfunctory treatment and result in non-implementation. Instances where very short notice is given and extensive documents are sent by WhatsApp give citizens limited or no opportunity to engage and influence decision-making. In the context of the rights of nature, the additional question of designing mechanisms to ensure participation for the benefit of the environment becomes key. Understanding that the term “public” is not homogenous in society and needs unpacking is important. This will avoid the exclusion of key segments of society, such as indigenous communities that have always had clear linkages with nature and respect nature’s rights but are ignored by human rights law and discourse. Secondly, while there is universal recognition that access to environmental information is an essential procedural right, ambiguity about how such information is to be provided and to whom can affect its utility as a tool for enjoying the right to a clean, healthy, and sustainable environment.

At the regional levels, there are differences concerning how the right is treated in the Aarhus Convention and Escazú agreement, with the latter being more deliberate in its demands to the parties to take legal and administrative measures to ensure that people are assisted in accessing information.

Procedural uncertainty encourages discretion and subjectivity and works against the realization of new and emerging norms such as nature rights. In an anthropocentric world, public entities and duty-bearers always defer to the known. In this instance, human rights are at the expense of nature rights. Overcoming such ambiguities must be part of our role in enhancing the transformative power of the law.

Concerning the contribution of human-rights-based approaches to the environment, we can draw the answer from the United Nations General Assembly (UNGA) resolution 76/300 on the right to a clean, healthy, and sustainable environment. Through this resolution, countries recognized that global environmental challenges “constitute some of the most pressing and serious threats to the ability of present and future generations to effectively enjoy all human rights.” It ensures that the universality and indivisibility of rights are operationalized. It gives momentum to the sustainability discourse. It helps us realize that nature supports not just the living but, to borrow from a quote of a Ghanaian chief, “few living, those dead, and the numerous yet to be borne.” It is a true embodiment of the interconnectedness of nature and humankind. It brings the question of guardianship and intergenerational equity and justice to the fore.

Place of nature rights: Kenya is making amendments to its Environmental Management and Coordination Act (EMCA) and has language on nature rights and ecocide. On Day One, we were told about twenty-four countries with ecocide provisions. The future must be just like the human right to a clean, healthy, and sustainable environment with over one hundred and fifty countries and regional and international legal instruments including it. More importantly, we need a future where there is not just recognition but also protection and promotion of the rights to Nature. A future where Christopher Stone does not have to ask whether Trees have standing.



DR. MICHAEL BOTHE

PROFESSOR EMERITUS, GOETHE-UNIVERSITY FRANKFURT AM MAIN

THE PRECAUTIONARY PRINCIPLE AND JUSTICE TO FUTURE GENERATIONS

The precautionary principle restrains economic freedom. Yet, it is praised because it is a necessary tool for preserving the environment. Concern for future generations is a necessary element of environmental policy as there is a need for intergenerational equity. But when is a certain behaviour necessary or not for the sake of intergenerational justice? This is where the principle of precaution comes into play.

The essential ingredient of the precautionary principle is uncertainty. Where there are reasons to assume that a certain activity or omission might cause damage ("serious," "irreversible," what could be called threshold or trigger suspicion), scientific uncertainty regarding the causal link between that act or omission and the damage shall not be used to postpone, or to refrain from, measures to avert the damage or to justify acts which might be dangerous for the environment. The principle thus requires abstention from economically useful activities to avoid dangers that may or may not exist, or to take economically burdensome preventive measures that may or may not be necessary. There is thus a price tag on applying the precautionary principle. Conversely, there is also a price tag for not applying the principle. When it becomes certain that the said abstention would have been necessary, but was not applied, it may be impossible or at least more costly to remedy the situation. There is a need to balance different probabilities. This is why certain formulations of the precautionary principle add economic considerations or the proportionality principle to its application.

This is unsatisfactory for both present and future generations. It is unreasonable to behave as if there were no such danger. But it is also unreasonable to simply refrain from development because of an uncertain threat. Thus, for maintaining and developing resources for future generations, something has to be done about the uncertainty. In order to ensure adequate living conditions for future generations, efforts are required to reduce or eliminate uncertainty. Thus, the precautionary principle implies the need to do research for the sake of intergenerational equity, and a need to do research to reduce or eliminate the relevant uncertainty.

Intergenerational equity not only entails a negative duty of abstention, namely abstaining from currently overusing the environment, but also a positive duty to take protective measures. If, according to the prevention principle, a State must abstain from engaging in or admitting certain [...]

activities because of their known negative effect on human health or the natural environment, there is also a positive duty to eliminate that danger, including by means of research. This should not be understood as opening the world to unrestrained research activities. There are various kinds of limitations involved in scientific research. Research yields new uncertainties. A clear and generally accepted result is not to be expected. Safeguarding the freedom of scientific activities does not permit disregarding dangers to health and the environment that may be caused by research activities. If motivated by the implications of the precautionary principle, research itself has to respect that principle. In other words, as dangers are involved in certain research activities, in particular, in the field of natural sciences, a blind flight into uncharted land is not only unethical but also unlawful.

What is the yardstick for research activities designed to remove, in the interest of future generations and sustainable development, uncertainties otherwise involved in hazardous economic activities? Another traditional instrument in the toolkit of environmental policy may help: the duty of due diligence. As defined in the case law of the International Court of Justice (ICJ), it requires relevant decision-makers to ascertain whether the activity in question entails a risk of significant environmental damage. Where research is necessary to remove the restraining effect that the precautionary principle may have on economic development, researchers have to apply due diligence to avoid or take into account dangers that go with that research. Even where environmental degradation demands swift action, that diligence may not be forgone.

Research governance and finance are challenged: protecting the environment is no longer only a local challenge. The knowledge necessary to clarify chains of causality of environmental damage requires a global scientific effort. This happens, for instance, in relation to climate change and biodiversity issues. The right of future generations to receive an environment satisfying their needs requires globally organized research. Thus, international scientific cooperation is a requirement of intergenerational justice. As there is no research without funding, intergenerational equity also requires cooperative funding, with an equitable distribution of financial burdens. All this implies fundamental legal postulates for the evolving international environmental legal order.



DR. MICHEL PRIEUR

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LAW

THE CHALLENGE OF IMPLEMENTING ENVIRONMENTAL LAW WITH LEGAL INDICATORS

Today, effective implementation of environmental law remains a global challenge. Environmental law has grown considerably, but an implementation gap persists worldwide. Why should this knowledge gap addressed?

1) If you read “state-of-the environment” reports, either at the international or national levels, you will frequently find a lot of data and figures about the number of endangered species or the level of air contamination, but nothing about environmental law implementation; the reports sometimes provide information on the number of existing treaties, but nothing on the evaluation of the implementation or, rather, the non-implementation of environmental law.

2) If you read the outcomes of the Conference of the Parties to environmental conventions or the reports of Compliance Committees under environmental treaties, you will find that they all call for improved implementation of environmental law. Therefore, there is a need to explain why environmental law is not being implemented.

3) If you read the UN General Assembly resolution 70/01, through which the Sustainable Development Goals (SDGs) were adopted, you will find 234 indicators. However, these environmental indicators are only designed to measure accurately, with figures and statistics, scientific and economic data. So far, no legal indicators have been officially set up by the UN Statistical Commission.

Therefore, in the absence of legal indicators, there is a big gap in our capacity to assess the effective implementation of environmental law and answer the question: Why is environmental law poorly implemented? Is it because of the drafting of the law? Is it because of any other legal issue? Or is it because of political reasons or of corruption?

That is why the International Center for Comparative Environmental Law (CIDCE), an international NGO member of the IUCN, [has been advocating for the creation and testing of such legal indicators over the last five years.](#)

Why do we need legal indicators? Not to evaluate the existence of environmental law but to assess the effectiveness of environmental law through an evaluation of all legal steps and procedures of legal enforcement.

In 2013, the UNEP Governing Council adopted decision 27/9 on advancing justice, governance, and law for environmental sustainability. That decision recognized the need to combat non-compliance with environmental law by increasing the effectiveness of administrative, civil, and criminal enforcement mechanisms. Likewise, in its [Environmental Rule of Law Report](#) of 2019, UNEP stressed the necessity to measure and compare progress in implementing environmental law through legal indicators.

To make this happen, it is urgent to set up legal indicators. [We are now only beginning to advance such an evaluation tool for environmental law effectiveness.](#) We can give some illustrations about the consciousness of the necessity to set up and require legal indicators as an innovative tool for evaluating environmental policy and law.

In 2017, the third session of the UN Environment Assembly (UNEA-3) adopted a Ministerial Declaration through which countries encouraged the development of “better multidisciplinary indicators” but without referring explicitly to “legal” indicators. Furthermore, the Fifth Montevideo Environmental Law Programme, adopted at UNEA-4 in 2019, aims to provide countries with “model indicators” for the effective implementation of environmental law.

In 2020, resolution 4/2020 (5-3) of the Kyoto Conference of the International Law Association recognized that “the creation of legal indicators for the effectiveness of international law related to sustainable development is critical.”

In 2020-21, the IUCN World Congress in Marseille [adopted resolution 050 entitled](#) “Measuring the effectiveness of environmental law using legal indicators,” which was endorsed by 83 States and 474 NGOs. The resolution urged the introduction of legal indicators in the state-of-the-environment reports.

This progressive recognition of the relevance of legal indicators clearly reflects a new norm as an emerging principle, namely, the need to accurately measure the effectiveness of environmental law.

To ensure continued progress and non-regression of environmental law, most environmental lawyers call for a specific new resolution From UNEA-6 in 2024 mandating that countries should quickly decide to establish such legal indicators, both at national and international levels.

Legal indicators will not offer a miraculous recipe to address the environmental law implementation gap in the short term. However, they will provide a key tool for the visibility of non-compliance and for assessing effective implementation and enforcement. If we do not demonstrate with figures that environmental law is necessary to implement both hard and soft law on environmental issues, environmental law will disappear by regression and succession of backtracking. This is not the future we want.

Legal indicators will improve the outcomes of the law, suggest the best solutions for its reform, and give civil society a better understanding of environmental rule of law in environmental protection. It is a question of survival of environmental law and, therefore, of our planet and our common future.



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NON-REGRESSION IN ENVIRONMENTAL LAW

The principle of non-regression is now a recognized principle in both international and domestic legal frameworks. It is not merely aspirational and has indeed been incorporated into multiple international treaties, trade agreements, soft law declarations, and domestic constitutions and statutes, with an emerging body of jurisprudence as judges apply the principle to concrete situations. The essence of this principle is that governments and other decision-makers may not “walk back” or diminish legal and regulatory standards for environmental protection once put in place.

Non-regression is a companion to the fundamental concept of progressive realization of human rights and the rights of nature. Since the Universal Declaration of Human Rights, the international legal system has placed an obligation on States to take “progressive measures” to ensure the fulfillment of human rights. Similar statements are found in other human rights treaties and documents. Progression cannot be accomplished without an equal commitment not to retreat or backslide. Now that the United Nations (UN) General Assembly has explicitly recognized a human right to a healthy environment, the mandate for non-regression in environmental protection carries greater weight on a global scale.

Now that the legal foundation for the principle of non-regression has been more clearly established, there is further need for jurists to define and work out how decision-makers and judges can apply the principle of non-regression in practice. Two key issues merit highlighting in particular. First, it is important for legal systems to define what constitutes a regression in environmental protection.

In some instances, this will be easy, as in the case of a protected area (e.g., the removal of the protected status or reduction in the boundaries of the area would constitute a regression) or in the case of numerical standards for pollution (e.g., increasing the allowed quantity of pollution emissions or withdrawing a restriction on permitted emissions would constitute a regression). However, in other circumstances, it may be more difficult to determine.

The second related question is to what extent a regression might or might not be justified by other priorities. A mere allegation of economic concerns must not be employed as a guise for withdrawing environmental protection. [...]

For example, in the early policy response to the Covid-19 pandemic, several governments proposed or adopted regressions in the name of promoting economic recovery, without providing any specific justification or analysis as to the necessity of such an action. However, when environmental rights and other fundamental human rights appear to be in tension, decision-makers need a more robust understanding of the principle of non-regression and how it can be used consistently with democratic principles and the notion of the indivisibility of human rights.

Several jurisdictions around the world are wrestling with these issues. In particular, courts in Latin American countries (e.g., Brazil, Colombia, Costa Rica, Mexico, and others) are rapidly developing further jurisprudence on the principle of non-regression. Scholars and practitioners should pay attention to how to make this principle effective as a tool to stop efforts to weaken environmental laws and more fully guarantee human rights and the rights of nature.



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THE PRINCIPLE OF RESILIENCE

Resilience is a characteristic of plants and animals, of ecosystems, and of social communities of homo sapiens. The Stockholm Resilience Center [has amply documented these phenomena](#). Resilience can be weakened or enhanced by governments. When homes are built in a flood plain, convenient to a river, the residents are predictably at risk due to floods. When a government observes its duty to perform an environmental impact assessment before allowing construction along a seacoast, it can require designs that will avert damage from predictable sea level rise. Failure to bolster resilience will leave people and economic development at risk.

As a general principle of law, resilience obliges States – and all of us – to take necessary measures to maintain and restore the capacity of ecosystems and human communities to withstand environmental disruption and degradation and to recover and adapt. Seen in this light, it is a corollary to the Human Right to a Clean, Healthy, and Sustainable Environment, recognized by the United Nations General Assembly in Resolution 76/300. Without resilience, the right of enjoying a sustainable human environment is problematic at best.

Resilience, then, has legal dimensions, which have increasingly been acknowledged. See, for example, Nicholas A. Robinson, [The Resilience Principle, 5 IUCN Acad. Env'tl. L. eJournal 19 \(2014\)](#). The Cambridge Center for Environment, Energy & Natural Resource Governance featured the Resilience Principles in its study on the legal foundations for a Global Pact on the Environment (Yann Aguilar and Jorge E. Viñuales, editors, March 2019). The Resilience Principle is a legal norm that obliges States to govern with the policies and tools of adaptive management. J. B. Ruhl, Barbara Cosens, and Niko Soininen, in their study entitled [“Resilience of Legal Systems: Toward Adaptive Governance”](#) (March 2021), examine the legal roles that Resilience serves in terms of (a) reliability, (b) efficiency, (c) scalability, (d) modularity, and (e) evolvability. The most obvious objective of Resilience is to provide redundancy and backup systems to compensate for those that may be compromised.

The UN Office for Disaster Risk Reduction [highlights the role of resilience](#) as “The ability of a system, community or society exposed to hazards to resist, absorb, accommodate, adapt to, transform and recover from the effects of a hazard in a timely and efficient manner, including through the preservation and restoration of its essential basic structures and functions through risk management.”

Climate disruption does more than undermine environmental security. It impairs the capacity of States to ensure the future well-being of their societies. Implementing the Resilience Principle counterbalances the assaults that a society experiences. In coming decades, this Principle will emerge from the sidelines to become central to the environmental rule of law.



DR. JURIS ROSA MANZO

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IS EQUITY A SAFE ISLAND IN THE TROUBLED WATER OF INTERNATIONAL ENVIRONMENTAL LAW?

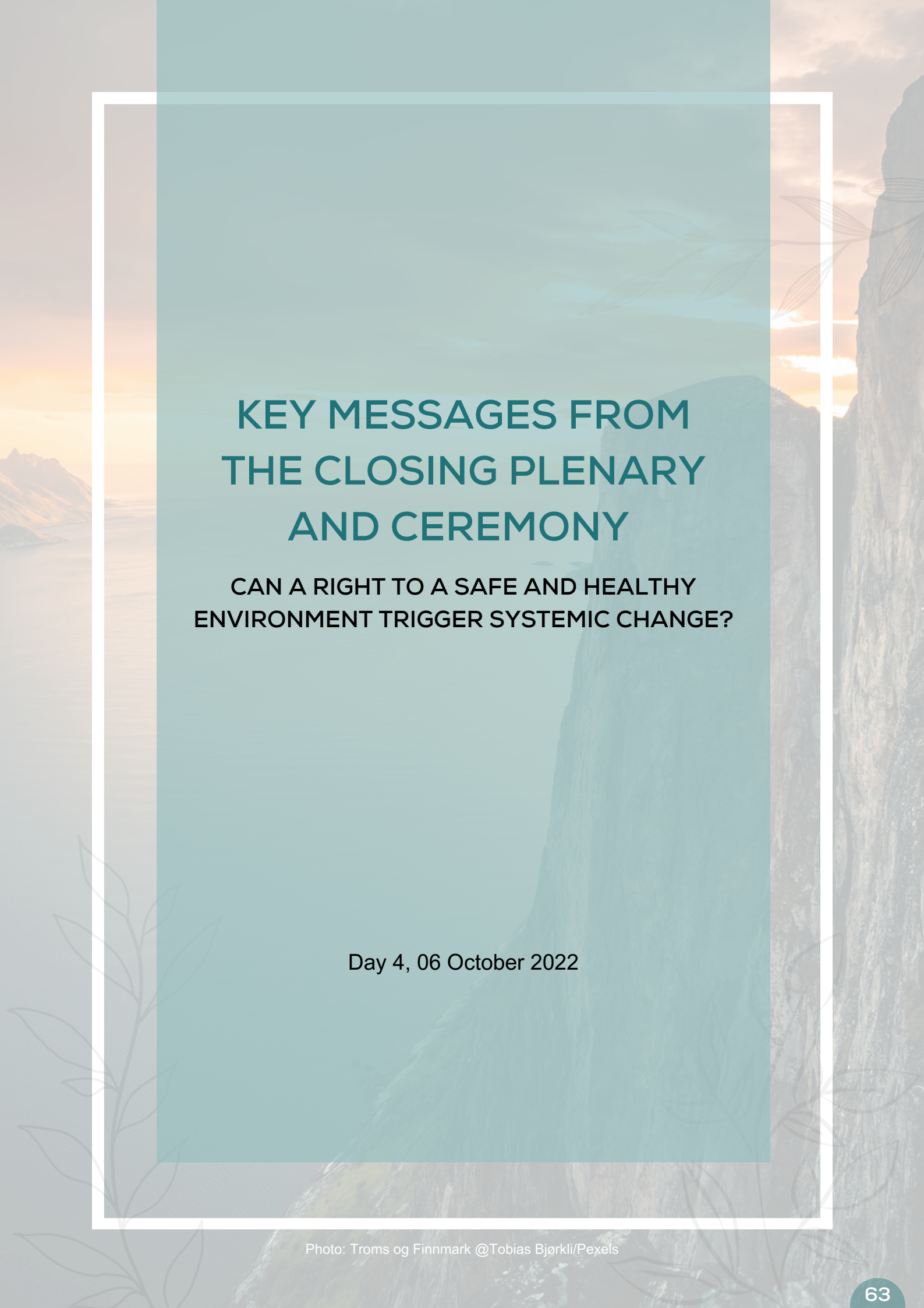
Calls for equity have been frequent since the beginning of international climate change negotiations. Ensuring equity is widely regarded as essential for forging any international climate change policy. Despite this, however, there is currently no common understanding of its meaning. Due to that, equity is being “mistreated,” taken advantage of, and also considered a sort of safe island by certain politicians, scholars, and practitioners. Thus, they call for more equity and equitable solutions in climate change policies, and there seems to be an ongoing tendency that sees equity as a panacea for all kinds of injustice.

The question that comes up is whether this island is as safe as it looks for those who continue to use and see equity as such. Different understandings of equity in different countries and the various ideas on how equity should be operationalized make it less protective than it appears. Someone could argue that no term provides guaranteed safety in its use. The lack of a common understanding of equity has practical implications, particularly, in the context of the international climate change regime, where equity concerns represent one of the “nasty challenges” that need to be addressed with a view to reaching a common solution to such a global issue. In order to achieve an equitable solution to the climate challenge, a new conceptualization of equity becomes necessary. Such a thing can be achieved not only by considering equity an operational principle rather than a desirable outcome, but also by implementing any climate policy in light of its multifaceted content.

A call for equity in climate change could be seen as tying together a group of injustice issues: equity is invoked to ensure distributive justice among States and recover from adverse climate impacts. In climate governance, equity is invoked to ensure an inclusive and transparent negotiation process. In addition to that, equity is invoked in order to protect the interests of future generations.

Hence, equity enjoys then a specific connotation in the context of international climate change law. Equity is made up of four principles: the principle of corrective justice, the principle of restorative justice, the principle of procedural equity, the principle of intergenerational equity.

In conclusion, one could picture climate equity as a prism with the issues of distributive justice, inter-generational equity, corrective justice, and procedural equity, making up its faces. Analyzing the way equity is defined one could liken it to the light that goes through a prism and comes out in the shape of a colorful spectrum. Now one could also draw a comparison between the colorful light and the way equity is used in international climate change law, where each one and single use of equity corresponds to one different color of the spectrum.



KEY MESSAGES FROM THE CLOSING PLENARY AND CEREMONY

**CAN A RIGHT TO A SAFE AND HEALTHY
ENVIRONMENT TRIGGER SYSTEMIC CHANGE?**

Day 4, 06 October 2022



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UNITED NATIONS HUMAN RIGHTS TREATY BODIES AND THE RIGHT TO A CLEAN AND SAFE ENVIRONMENT

Can a right to a safe and healthy environment trigger systemic change? This talk provided a general overview of how the United Nations human rights treaty bodies (UNTBs or Committees) have addressed the right to a safe and healthy environment and climate change; and whether that activity can trigger systemic change. First, the UNTBs main working methods were explained and then it was forecasted in a summary manner what effect that could have concerning protecting the environment and countering climate change. The ten UNTBs cover a broad range of human rights embedded in nine core UN human rights treaties. The Committees have shown awareness of the problem of climate change in their work, including through a joint statement issued in September 2019.

Methods of work: The three main methods of work of the UNTBs are the State reporting procedure, the individual communications procedure, and the adoption of general comments or general recommendations. All of them carry significant potential to effect change at the domestic level, depending on the level of engagement by various domestic and international stakeholders. The State reporting procedure is perhaps better suited to address systemic problems due to the constructive dialogue with States parties on a wide range of issues. The individual communications are useful in addressing specific cases and providing remedies as necessary. General comments (GCs) and general recommendations are useful in providing general guidance to States parties concerning the scope of their international legal obligations under the relevant treaties.

State reporting: In their constructive dialogue with States parties, the UNTBs can raise concerns regarding the protection of the environment and mitigation and adaptation measures relating to climate change, as relevant under their mandates and in connection with specific rights. The Committees' concerns and recommendations are included in the concluding observations. Moreover, some concluding observations are selected for follow-up.

Individual communications: While there are eight UNTBs that can receive individual communications, the Human Rights Committee (HRCttee) has received the majority of cases. Thus far, few cases have been brought concerning the protection of the environment and climate change. The five *Sacchi et al.* cases brought respectively against Argentina, Brazil, France, Germany and Türkiye were decided by the United Nations Committee on the Rights of the Child (CRC) in October 2021. Two relevant cases were decided by the HRCttee, namely *Teitiota v. New Zealand* (2020) and *Billy et al. v. Australia* (2022).

In the latter case, the HRCttee found a violation of articles 17 (private and family life) and 27 (rights of indigenous peoples). In a separate concurring opinion, I have tried to highlight the need to consider mitigation measures alongside adaptation measures. There have been a few cases before the HRCttee concerning the protection of the environment, including the recent *Portillo Cáceres et al. v. Paraguay* and *Benito Oliveira et al. v. Paraguay*. These cases are important for clarifying State obligations and providing remedies.

General comments: General Comments are important since, through them, Committees clarify State obligations under the relevant treaties. Three GCs need to be highlighted, namely CEDAW GC37 on "Gender-related dimensions of disaster risk reduction in the context of climate change" (CEDAW/C/GC/37, 2018); CRC's Draft GC26: Children's rights and the environment with a special focus on climate change (expected to be adopted in 2023); and, GC36 (2018) of the Human Rights Committee with references to climate change and the protection of the environment in connection with article 6 (right to life) of the Covenant.

Limitations on the State parties' engagement with Committees: First, in terms of Committees' institutional limitations, the addressees of the Committees' concluding observations are the States parties to the treaties and to the Optional Protocols on individual communications. Access to the individual communications procedure is significantly limited and not well-known. Second, not all States report regularly, hence the move towards the predictable review cycle. Third, the success or failure of the Committees is contingent, among others, on their support by the UN General Assembly through allocating sufficient resources (see the UNTBs 2020 strengthening process).

Concluding remarks: Can a right to a safe and healthy environment trigger systemic change? When it comes to the UNTBs involvement and contribution, my answer is a qualified "yes, if certain conditions are in place." The UNTBs have a significant potential to address issues concerning the protection of the environment and climate change. General comments can provide general legal guidance to States parties on their obligations. Concluding observations can provide concrete recommendations to States concerning the necessary steps required to address existing problems. Finally, individual complaints would allow complainants to bring cases before the Committees and get remedies when their domestic legal system has not been able to do so. We need to use various institutional mechanisms at our disposal to try to effect change, and UNTBs are an important tool we have to achieve that aim.



DR. IAN FRY

UN SPECIAL RAPPOREUR ON THE PROMOTION AND PROTECTION OF HUMAN RIGHTS
IN THE CONTEXT OF CLIMATE CHANGE

HUMAN RIGHTS AND CLIMATE CHANGE: KEY ISSUES FOR THE SPECIAL RAPPOREUR ON THE PROMOTION AND PROTECTION OF HUMAN RIGHTS IN THE CONTEXT OF CLIMATE CHANGE

In 2021, the Human Rights Council (HRC) agreed to establish the position of Special Rapporteur on the promotion and protection of human rights in the context of climate change.

The resolution creating the position was quite wide in scope. Perhaps the most significant was the first element, which requested the Special Rapporteur to study and identify how the adverse effects of climate change, including sudden and slow onset disasters, affect the full and effective enjoyment of human rights and make recommendations on how to address and prevent these adverse effects, in particular ways to strengthen the integration of human rights concerns into policymaking, legislation, and plans addressing climate change. Through the resolution, the HRC goes on to suggest that the Special Rapporteur should promote and exchange views on lessons learned and best practices related to the adoption of human rights-based, gender-responsive, age-sensitive, disability-inclusive, and risk-informed approaches to climate change adaptation and mitigation policies.

Prior to being appointed, I was invited by the Centre of International Environmental Law, the Geneva Environment Network, and other civil society organisations to come to Geneva and participate in a roundtable discussion about the mandate. I was appointed to the position in May 2022 and reported to the Human Rights Council in June, outlining the key thematic issues I would cover. These thematic issues were based on the roundtable discussions that I had with civil society organisations and other stakeholders.

My mandate requires me to report to the Human Rights Council and the United National General Assembly (UNGA) each year. Considering that this is a three-year appointment, I selected six themes to work on: The promotion and protection of human rights in the context of mitigation, adaptation, and financial actions to address climate change, with particular emphasis on loss and damage; addressing the human rights implications of climate change displacement; exploring approaches to enhance climate change legislation, supporting climate change litigation and advancing the principle of intergenerational justice; corporate accountability with respect to human rights and climate change; the protection of human rights through just transition for workers in industries that contribute to climate change; and, exploring the impacts of new technologies associated with climate change mitigation on human rights policy.

In considering the link between climate change and human rights, it is very evident that many intersectional issues play out in this space. These include race, gender (violence against women), sexual orientation and gender identity, Indigenous Peoples, people with disabilities, children and youth, health, and freedom of expression.

In recognizing the importance of ensuring a gender focus to my work, I established a Gender and Climate Rights Research Hub at the Australian National University where I teach part-time. The Research Hub is constituted by a small group of students interested in this issue.

Apart from reporting to the HRC and the UNGA, my work includes a number of other functions, including undertaking country visits to investigate links between climate change and human rights; preparing allegation Letters (letters of complaint) against perpetrators of human rights abuses linked to climate change; producing media releases on matters related to human rights and climate change, or other related issues jointly with other Special Rapporteurs; giving media interviews; engaging in diplomatic consultations; undertaking academic visits to attend conferences, in person and online; preparing amicus briefs for environmental cases; giving lectures in person and online; and helping facilitate training.

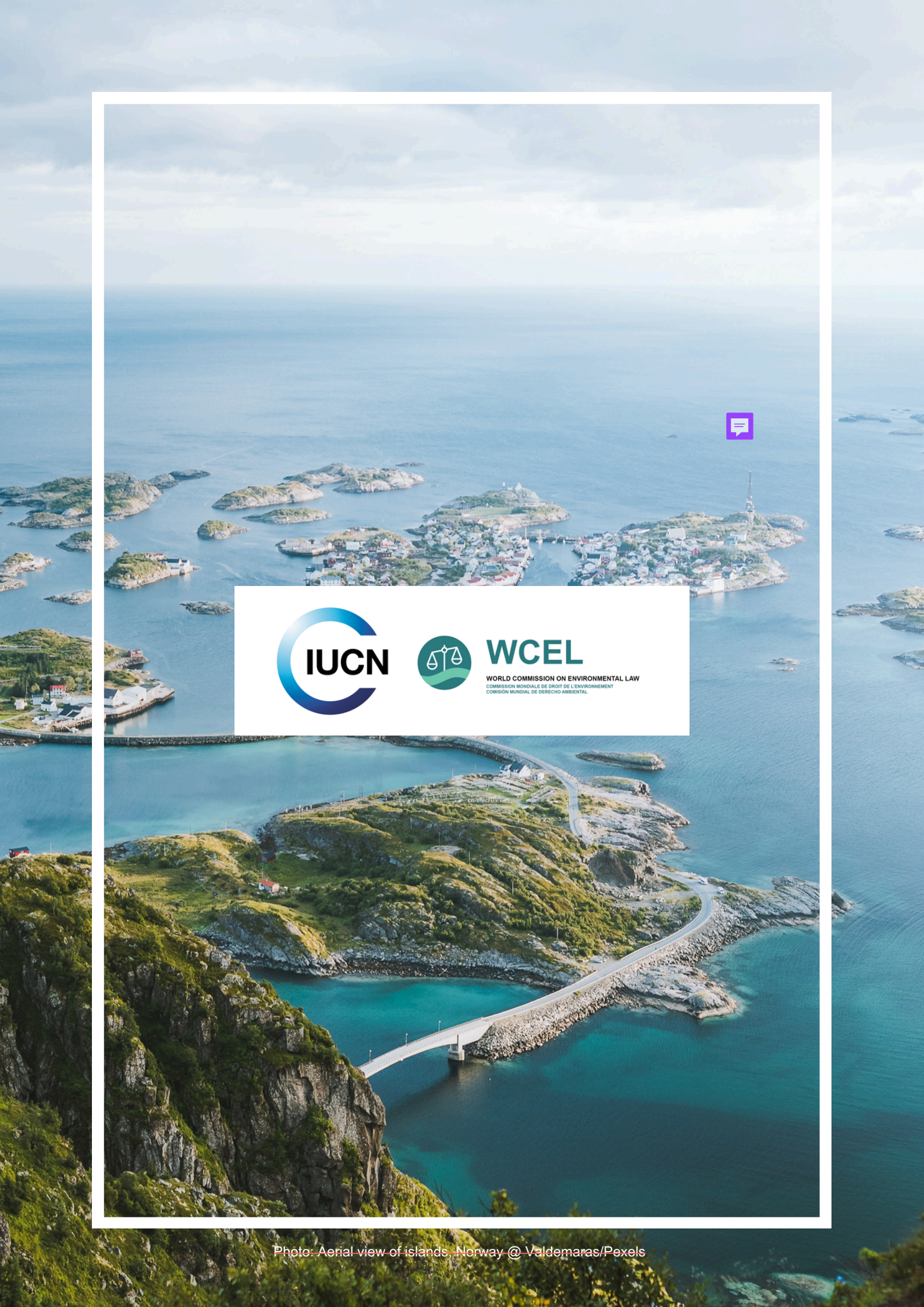
As examples of these activities, last year I made a country visit to Bangladesh to witness firsthand the effects of climate change on the rights of Bangladeshi citizens. It is estimated that between 300,000-400,000 people migrate away from rural areas into the cities in Bangladesh due to climate change impacts. Most end up in informal settlements where they suffer a variety of human rights violations, including sexual violence and trafficking.

With respect to allegation letters, I wrote a letter to the Egyptian government seeking an assurance that environmental human rights activists would not be harassed or persecuted if they held peaceful protests at the meeting of the Conference of the Parties (COP) to the United Nations Framework Convention on Climate Change in Sharm el Sheik, Egypt.

I am very concerned about the issue of climate change displacement, particularly people displaced across international borders due to climate change. While we like to call these people “climate change refugees,” they are not refugees under the 1951 Refugee Convention. Therefore, these people fall through the cracks with respect to the legal protection of their rights.

One aspect of my work that I particularly enjoy is working with a group of highly motivated young women called the Climate Youth Negotiators Group. They provide training for young people to attend climate change COPs as delegates. I assist in facilitating negotiation training for these delegates. They have organised for a hundred youth delegates to attend the next UNFCCC COP.

Needless to say, the work of a Special Rapporteur is never dull.



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