Introduction: the interplay between human rights and climate change law

The adverse effects of climate change threaten the enjoyment of a range of human rights, such as the right to life, adequate housing, food and the highest attainable standard of health.\(^1\) Qualifying the effects of climate change as human rights violations, however, poses a series of technical difficulties, including disentangling complex causal relationships and projections about future impacts.\(^2\) Conversely, measures adopted to tackle climate change may themselves have (and indeed have reportedly already had) negative impacts on the enjoyment of human rights.\(^3\) This is especially the case for activities affecting access to and the use of natural resources, such as land, water and forests. Adaptation and mitigation action can interfere with the enjoyment of human rights, such as that to culture, the respect for family life, access to safe drinking water and sanitation, Indigenous Peoples’ self-determination, as well as the gamut of procedural rights concerning access to information, justice and participation in decision-making.\(^4\) While climate change response measures can engender perverse outcomes for the protection of human rights, human rights protection can also engender problematic outcomes when it is pursued without factoring in climate change concerns.\(^5\)

This complex relationship between climate change and human rights obligations has increasingly been recognized in the literature,\(^6\) as well as by human rights bodies. Starting with 2008, the Human Rights Council (HRC) has adopted a string of resolutions emphasising the potential of human rights obligations, standards and principles to ‘inform and strengthen’ climate change law- and policy-making, by ‘promoting policy coherence, legitimacy and sustainable outcomes’.\(^7\) The HRC also encouraged its special procedures mandate holders to consider the issue of climate change and human rights within their respective mandates.\(^8\) As a result, the special procedures mandate holders unprecedentedly engaged with the making of the Paris Agreement, suggesting, amongst others, the inclusion of human rights language in the treaty and that Parties refrain from viewing their human rights responsibilities as stopping at their borders.\(^9\)
This impassionate plea was laden with potentially significant legal implications. As not all Parties to climate treaties have ratified the same human rights treaties, adhesion to the Paris Agreement could have become a means to impose upon state obligations enshrined in treaties they have not ratified. Furthermore, states commonly interpret their human rights instruments as jurisdictionally limited to individuals or entities within their effective control. It is, in other words, difficult to argue that states have specific obligations to undertake positive action to secure the protection of human rights associated with climate change impacts beyond their territorial boundaries. Finally, states’ discretion in choosing the means for implementing their international obligations renders striking a balance between competing societal interests and needs a rather context-specific matter, on which legislators enjoy a great deal of leeway.

These arguments were forcefully made in the lead-up to the adoption of the Paris Agreement. As a result, the Paris Agreement only partially follows the suggestions made by the special procedures mandate holders. The preamble specifies that Parties ‘should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights’, citing ‘the right to health, the rights of Indigenous Peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situations and the right to development, as well as gender equality, empowerment of women and intergenerational equity’. The operative part of the Paris Agreement also makes specific references to the need to be responsive to gender concerns as well as to the rights of Indigenous Peoples. Albeit timid, these textual references break new ground and may have significant implications for the interpretation and further development of Parties’ obligations under the climate regime, especially in the context of the newly established platform on indigenous and local community climate action.

This chapter analyses these recent developments, placing them in the context of the scholarly debate on the fragmentation of international law. This scholarship has investigated at length questions of coherence within and interplay between areas of the international legal order. It is used here as a conceptual lens to better understand interactions between international human rights and climate change law, as well as the means available to manage the interplay between the two. The chapter is structured as follows. The second section introduces the debate on the fragmentation of international law, as well as tools that have been devised to tackle it. The third section analyses how the tools identified in the scholarship on fragmentation have been deployed to address the interplay between the climate change and the human rights regimes. The conclusion offers some reflections on future interrelations between these two regimes.

The fragmentation of international law

The debate on the fragmentation of international law emerges from concerns that international law-making and institution-building increasingly tend to take place ‘with relative ignorance of legislative and institutional activities in the adjoining fields and of the general principles and practices of international law.’ The perceived compartmentalization of the law into highly specialized branches that develop in relative autonomy from each other is not only inter-specific, i.e. between different areas of the law (e.g. environmental law, human rights law, trade law, etc.), but also intra-specific, thus affecting instruments belonging to the same area of international law (e.g. climate change law, biodiversity law, etc.). This state of affairs is arguably the result of institutional deficiencies of the international legal system, which is inherently devoid of a clear normative and institutional hierarchy and a comprehensive judicial jurisdiction, as well as of the progressive transposition of governance functions from the national to the international plane.

After two decades of debate, fragmentation is widely accepted as an intrinsic characteristic of the international legal order. So while early scholarship focused on problematizing
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fragmentation, more recent scholarship acknowledges fragmentation as part of the natural state of things, and rather focuses on ways to manage it. How, in other words, is it possible to enhance the coherence between elements in the international legal architecture, avoiding the threat of ‘antagonistic developments’? And what is the relationship between rules embedded in separate but overlapping international regimes?

The International Law Commission (ILC) addressed these matters in one of its reports. The report points out that the increased specialization of international law poses challenges associated with the collision of norms and regimes, deploying the term ‘conflict’ to refer to a situation whereby ‘two rules or principles suggest different ways of dealing with a problem’. This definition encompasses not only mere ‘logical incompatibility’ between norms, but also ‘policy conflicts’, i.e. when a treaty frustrates the goals of another without there being any strict incompatibility between their provisions. These conflicts have been also described in the literature as ‘implementation conflicts’ – i.e. conflicts that are engendered by implementation of perfectly compatible treaty obligations – or ‘functional conflicts’ – i.e. interference in the operation of concurrent norms, that takes place for example when a norm reinforces the behaviour another seeks to discourage. The notion of policy conflict draws attention to the fact that interaction between international law regimes in not a one-off phenomenon, but concerns the ‘day-to-day working’ of legal instruments, starting from their very making and continuing with their interpretation and implementation. So, rather than simply focus on establishing the applicable legal regime and related set of rules in a given context, scholars are increasingly presuming that multiple international regimes interact with one another in an iterative manner and searching for constructive ways of making them work together.

The ILC report suggests three possible avenues to address conflict: conflict avoidance; resolution through the application of interpretative principles; and institutional cooperation and coordination. On conflict avoidance, the report suggests including in treaties guidance on how to deal with subsequent or prior conflicting treaties, distinguishing different typologies of so-called conflict clauses. These clauses typically specify that a treaty ‘is subject to’, or that ‘it is not to be considered as incompatible with, an earlier or later treaty’, or that ‘the provisions of that other treaty prevail’. The report nevertheless recognizes the limits to such clauses, which oftentimes merely ‘push’ the resolution of problems to the future.

On treaty interpretation, the ILC points to rules in the Vienna Convention on the Law of Treaties (VCLT) as the ‘tool-box’ for dealing with fragmentation. The VCLT codifies treaty interpretation rules that are commonly regarded as an embodiment of customary international law. Whilst recognising that VCLT rules give insufficient recognition to special types of treaties and rules concerning their interpretation and implementation, the ILC points to the continued relevance of these rules to dealing with conflict of norms.

In particular, the report underscores the role of systemic integration as an aid to deal specifically with policy conflicts. Systemic integration suggests that when creating new obligations, states are assumed not to derogate from their obligations, as embodied in any rules of international law that are both ‘relevant’ and ‘applicable’ in the relations between the Parties. The rationale behind this interpretation tenet is quite simple: rights and obligations established by treaty provisions exist alongside rights and obligations enshrined in other treaties. As none of these rights or obligations has any intrinsic priority against the others, the ILC suggests that their relationship be approached through a process of reasoning that ‘makes them appear as parts of some coherent and meaningful whole’. Such systemic thinking is arguably part of the very essence of legal reasoning and perhaps the only possible solution to the ‘clustered’ nature in which legal rules and principles appear.
In times of increasing fragmentation of the international legal order, systemic integration has unsurprisingly been the subject of much scholarly attention. Some scholars have cautioned against the dangers of conflating treaty ‘interpretation’ with treaty ‘modification’, pointing out that the presumption of coherence is to be ‘handled with care’ and assessed on a ‘case by case basis’, as states may indeed have adopted the new instrument with the specific purpose to do away with their extant international commitments. Admittedly, systemic integration may only resolve ‘apparent’ conflicts and not instances of actual incompatibility. Systemic integration therefore tends to operate before an irreconcilable conflict of norms has arisen and provides a tool to engender coherence in international law, by urging the interpretation of state obligations as much as possible in an integrated fashion.

Finally, the ILC report sets aside the question of institutional interaction, expressing the conviction that ‘the issue of institutional competencies is best dealt with by the institutions themselves’. This matter has nevertheless subsequently been addressed in a literature strand that builds upon international relations theories on interplay management. One of the most important studies on the issue distinguishes between various levels of coordination and institutionalisation, ranging from the macro level, where the interplay between regimes is managed by an overarching institution, to the micro level, where interplay management is left to the autonomous efforts of national governments. The next section considers how the techniques reviewed here may be used to address the interplay between climate change and human rights instruments.

Addressing conflicts between the climate change and the human rights regime

By virtue of its subject matter, the climate regime is particularly likely to overlap with other international regimes, and, as such, it is particularly prone to policy conflicts. As acknowledged above, this is especially the case in relation to human rights law. So whereas in principle there is no incompatibility between these two sets of international norms, in practice policy conflicts between the two may well emerge. This section considers how tools to manage the fragmentation of international law have been deployed and may be deployed in future as an aid to address the interplay between the human rights and climate change regimes. The role of conflict avoidance techniques, such as conflict clauses and systemic integration, is considered first, to then look at institutional cooperation as a means to better integrate human rights concerns into climate change action.

Conflict clauses

Neither the UNFCCC nor the Kyoto Protocol includes a conflict clause. Nevertheless, the Cancun Agreements say that Parties ‘should, in all climate change related actions, fully respect human rights’. Because of its hortatory tone and the fact that it was included in a COP decision, rather than in treaty text, the all-embracing reference to human rights in the Cancun Agreements was not particularly contentious. Conversely, the inclusion of a textual reference to human rights in the Paris Agreement was hotly debated. On the one hand, some Parties supported a blanket reference to human rights – e.g. ‘All Parties . . . shall ensure respect for human rights and gender equality in the implementation of the provisions of this Agreement’. On the other, some Parties expressed reservations, based on the fact that not all states have ratified international or regional human rights treaties.
The possibility to address this tension by means of a conflict clause was put forward in a report by the International Law Association (ILA), which suggested the following formulation: ‘states shall formulate, elaborate and implement international law relating to climate change in a mutually supportive manner with other relevant international law’.55 Such a conflict clause formulation would not create new obligations for states that are not Parties to human rights treaties already. Instead, it would merely underscore states’ existing obligations in relation, inter alia, to human rights, signalling to Parties that these too should be taken into account when implementing the Paris Agreement. The importance of this interpretative guidance would be limited, but not insignificant. As by its own nature the climate regime is prone to policy conflicts with other international instruments, reminding states of the need to align also with these when implementing climate treaties seems important. Not only would a conflict clause have the effect to emphasise that Parties should take their existing human rights commitments into account when they implement the Paris Agreement. It would also provide an important signal for institutions, within and without the climate regime, on the need to consider human rights in their guidance and standards concerning climate change response measures.

No conflict clause was eventually included in the Paris Agreement or even made it in the negotiating text. Nevertheless, the Paris Agreement’s preamble points to Parties’ ‘respective human rights obligations’. This reference draws attention to Parties’ obligations under treaties they have ratified already, or may ratify in future, rather than foreshadowing new ones. Even with this limited remit, the reference to human rights in the Paris Agreement is not devoid of legal consequence. Preambular text carries political and moral weight. By forging an explicit link with human rights instruments, the Paris Agreement’s preamble engenders an expectation that Parties will take into account their existing human rights obligations concerning matters such as, for example, public participation or the rights of women and Indigenous Peoples when they adopt climate change response measures. So in spite of its limited legal force and the lack of a conflict clause, the reference to human rights in the Paris Agreement is in many connections groundbreaking, especially in relation to the interpretation of Parties’ obligations. The next section looks at this issue in detail.

Treaty interpretation and systemic integration

The ILC report points out the fact that conflict resolution maxims, such as lex specialis derogat generali, have clear limitations in addressing policy conflicts such as those engendered by overlaps between the climate and human rights regimes.56 Identifying what is to be regarded as lex specialis, for example, may be difficult with regimes that tend to be all-encompassing in scope.57 Similarly, the lex posterior rule is of limited utility when dealing with ‘living instruments’ that are constantly kept under review by their treaty bodies, such as those on climate change.58 As a result, the ILC rather suggests relying upon systemic integration to deal with policy conflicts. Consequently, state obligations under climate treaties should be interpreted in a way that is mutually supportive, rather than conflicting with, obligations under other treaties, including human rights ones.

In the lead-up to the adoption of the Paris Agreement, a string of HRC resolutions drew attention to potential conflicts, overlaps and synergies between the climate change and human rights regimes.59 These decisions underscore the need for policy coherence, thus implicitly making reference to systemic integration in the interpretation of states’ obligations concerning human rights and climate change. Most saliently in 2014 the (then) Independent Expert on Human Rights and the Environment issued a report on the human rights threatened by climate...
change and the human rights obligations relating to climate change. This report was the first comprehensive effort to systematically map the human rights affected by climate change, as well as relevant guidance adopted by human rights bodies, thus providing an important *vademecum* for systemic integration.

The Paris Agreement’s preambular reference may be read as an invitation to practice systemic integration in the interpretation of Parties’ obligations, at least insofar as human rights are concerned. Well ahead of the adoption of the Paris Agreement, such an approach has already been experimented with in some areas of the climate regime, where potential conflicts with human rights obligations are particularly evident. As other contributions in this volume show, matters like REDD+ and climate finance have already confronted states and international agencies with challenging questions over the interplay between climate change and human rights law. COP decisions on REDD+ make reference to systemic integration. The need to ensure compatibility with human rights has instead been emphasised by one of the international agencies facilitating REDD+, which has adopted a human rights–based approach to its work, including free prior consent guidelines elaborated in partnership with human rights bodies. Equally, standards adopted by some climate finance institutions specifically refer to human rights. In both connections, therefore, while not all countries seeking climate/REDD+ finance may have ratified human rights treaties, human rights protection has been elected as one of the criteria they should satisfy to obtain such finance.

Experience accrued thus far with REDD+ and climate finance standards is an important term of reference to understand how obligations under the Paris Agreement may be interpreted in light of human rights law and practice, as well as challenges that can emerge in this process. This experience is likely to be particularly useful in relation to inter-state collaboration through the so-called Sustainable Development Mechanism (SDM). The Special Rapporteur on human rights and the environment has already drawn attention to the need to ensure that the latter mechanism incorporates strong social safeguards that accord with international human rights obligations. Institutional cooperation could be an important means to streamline human rights considerations into such safeguards. The next section looks at this matter.

**Institutional cooperation**

Ensuring that obligations under the climate regime are interpreted and implemented in line with states’ human rights obligations has long been left to the autonomous efforts of national decision-makers and single institutions, in what Sebastian Oberthür has aptly described as ‘autonomous’ or ‘unilateral interplay management’ – as opposed to forms of interplay management, where such coordination endeavours are carried out by a set of institutions together or by an overarching international institution. The risk that autonomous and unilateral interplay management end in incoherence is already palpable when one considers that standards already vary greatly, for example, in relation to climate finance.

In the lead-up to the adoption of the Paris Agreement, human rights bodies have become more and more proactive in their efforts to engage with legal developments in the climate regime. HRC resolutions set the premises for increased institutional cooperation, by encouraging the OHCHR and the HRC special procedures mandate holders to engage with the climate regime. Ensuing initiatives include the special procedures mandate holders’ open letter to climate negotiators issued in the lead-up to the adoption of the Paris Agreement, as well as OHCHR’s submissions on various matters under considerations at climate negotiations, such as gender, adaptation, the local and indigenous communities platform and the SDM, and the
elaboration of expert recommendations on climate change and human rights. Especially notable in this context are the activities undertaken by the Special Rapporteur on human rights and the environment, who through his reports, statements and letters has made significant efforts to engage with the climate change regime and provide recommendations on how to better factor in human rights in climate change law and policy.

Arguably, the very inclusion of a reference to human rights in the Paris Agreement is the result of advocacy by key epistemic actors, including the Special Rapporteur and former United Nations High Commissioner for Human Rights Mary Robinson. Aside from this milestone achievement, however, it is hard to say how receptive the climate regime has been to human rights bodies’ institutional cooperation efforts. Historically, Parties to the climate regime have been reluctant to establish inter-institutional linkages. Even when they have done so, as, for example, in the context of the Joint Liaison Group to enhance coordination between the UNFCCC, the Convention on Biological Diversity and the United Nations Convention to Combat Desertification, very limited results have been obtained, based on the argument that the Rio Conventions have ‘distinct legal character, mandate and membership’. Institutional cooperation with human rights bodies could be even more problematic, as treaty membership is more heterogeneous than that of the Rio Conventions. Yet again, the inclusion of a reference to human rights in the Paris Agreement may be a game-changer in this connection.

The HRC special procedures mandate holders have, for example, invited Parties to the climate regime to launch a work program to ensure that human rights are integrated into all aspects of climate actions. The creation of a work program would constitute an institutional space for Parties to consider whether and how to better integrate human rights in the climate regime. The work program could also become a forum for Parties to exchange information on experience with integrating human rights into climate action and share good practices. Finally, a work program could discuss institutional linkages between climate change bodies and international and regional bodies with a specific mandate on the protection of human rights. For example, Parties could entrust the UNFCCC Secretariat to collaborate with the OHCHR to integrate human rights consideration into climate action. Moving forward, a dedicated grievance mechanism for those complaining for human rights violations specifically associated with the implementation of climate change response measures could be established, such as a Special Rapporteur on climate change and human rights. Alternatively, human rights considerations may be specifically factored into the mandate of existing grievance mechanisms, such as, for example, the Independent Redress Mechanism established under the Green Climate Fund.

Inter-institutional cooperation could furthermore galvanise the use of extant human rights bodies as means to seek redress for human rights breaches associated with the implementation of climate change measures and/or impacts. There are already precedents of this happening in practice and more may be in the pipeline, due to imaginative climate change litigations strategies emerging around the globe. The UN Universal Periodic Review (UPR) could be tasked to specifically highlight human rights concerns associated with climate change and human rights. and thus become a means to see how Parties to the climate regime address human rights concerns associated with climate change and a way to disseminate best practices. A dedicated institution to support the consideration of human rights issues could also be established. This institution could be entrusted with the task to promote the sharing between Parties of information and of good practices on the integration of human rights in climate action. To support this task, Parties could be required to report efforts to integrate human rights into climate actions and policies in their national communications, or as part of their reporting obligations under human rights instruments.
Conclusion: where next?

As other chapters in this volume will show, the interplay between human rights and climate change law is far from unproblematic. As not all Parties to the climate regime have ratified human rights treaties, adherence to the Paris Agreement cannot be a means to impose upon state obligations enshrined in treaties they have not ratified. Furthermore, even for those states that do have human rights obligations, the conventional interpretation of the jurisdictional limitations of these obligations presently undermines arguments concerning the protection of human rights beyond state territorial boundaries. States’ margin of appreciation in implementing their obligations under both climate and human rights treaties is a considerable obstacle. Finally, thus far fundamental limitations in the climate regime have constrained synergies between human rights and climate change law, due to the primacy accorded to economic concerns and development in climate politics; the construction of climate change as a technocratic and scientific policy problem, rather than a human-centred one; and differences between mechanisms to assess compliance with climate obligations versus those used in the human rights regime.

Even bearing these complexities in mind, states’ human rights obligations in relation to both the impacts of climate change and response measures have pervasive legal ramifications. With the adoption of the Paris Agreement, these ramifications have been put in the spotlight. The agreement is potentially a game changer, opening up new avenues to improve coordination and address synergies between distinct international legal regimes. This chapter has shown that techniques devised to address the fragmentation of international law have already been deployed in this connection. Whilst not a conflict clause, the Paris Agreement’s reference to human rights draws attention to systemic integration, at least for those Parties that have ratified human rights treaties already. Human rights bodies have underscored the potential for systemic integration, and there is evidence that, at least in some cases, institutions in the climate regime have attempted to address human rights concerns in the standards they adopted. At the institutional level, human rights bodies have increasingly engaged with the making of international climate change law, from the drafting of the Paris Agreement to the nitty-gritty decision-making of climate treaty bodies.

Moving ahead, much more could be done to address the limitations of the climate regime: institutional cooperation could be systematised and become instrumental to the streamlining of human rights considerations into the climate regime. Human rights bodies may even provide institutionalized pathways to monitor and sanction human rights violations associated with climate change impacts and the implementation of climate change response measures. The Paris Agreement could thus become the foundation for unprecedented cross-fertilisation between international human rights and environmental law. Indeed, when an issue has over-arching implications for a range of different international regimes, it seems wise to emphasise and vigorously explore avenues for coordination. Yet, how far states will be willing to go down this route largely remains to be seen.

Notes

1 OHCHR, Report on the Relationship between Climate Change and Human Rights, UN Doc A/HR/C/10/61 (15 January 2009) 16.
2 Ibid., at 70.
3 Ibid., at 65–68.
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8 HRC Res. 26/27, supra note 7, at 7.


11 As reiterated for example in OHCHR, supra note 4, at 41.


15 Art. 7.3, Paris Agreement, supra note 14 and 11.2; B. Powlless, ‘The Indigenous Rights Framework and Climate Change’ (this volume) and A. Barre et al., ‘From Marrakesh to Marrakesh: The Rise of Gender Equality in the Global Climate Governance and Climate Action’ (this volume).

16 Decision 1/CP.21, Adoption of the Paris Agreement, FCCC/CP/2015/10/Add.1 (2015), at 135–136; and Report of the Conference of the Parties on its twenty-second session, held in Marrakech from 7 to 18 November 2016, FCCC/CP/2016/10 (2016), at 163–167.


18 Ibid., at 493.


21 See for example M. Young (ed.), Regime Interaction in International Law: Facing Fragmentation (2012); R. Michaels and J. Pauwelyn, ‘Conflict of Norms or Conflict of Laws? Different Techniques in the
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23 Ibid.

24 ILC, supra note 17, at 25.

25 Ibid., at 24.


30 ILC, supra note 17, at 13–19.

31 Ibid., at 278–281.

32 Ibid., at 276.


34 ILC, supra note 17, at 250.


36 ILC, supra note 17, at 251.

37 Ibid., at 410–480.

38 VCLT, supra note 33, Art. 31.3(c) and ILC, supra note 17, at 38.

39 ILC, Ibid., at 414.

40 Ibid., at 35.


44 ILC, supra note 17, at 42.


46 ILC, supra note 17, at 13.

47 See for example S. Oberthür and O. S. Stokke, Managing Institutional Complexity: Regime Interplay and Global Environmental Change (2011); Young, supra note 28, at 89; Dunoff, supra note 29, at 157; and van Asselt, supra note 21.


49 On the issue, see for example H. van Asselt, F. Sindico and M. A. Mehling, ‘Global Climate Change and the Fragmentation of International Law’, 30 Law & Policy (2008) 424; C. P. Carlarne, ‘Good Climate...
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50 See HRC, supra note 7 and corresponding text.


53 UNFCCC, Negotiating Text (12 February 2015), available online at https://unfccc.int/files/bodies/awg/application/pdf/negotiating_text_12022015@2200.pdf, at 12bis.

54 Human Rights Watch, supra note 13.

55 International Law Association, Legal Principles Relating to Climate Change (2014), available online at www.ila-hq.org/en/committees/index.cfm/cid/1029. Draft Article 10.1. Draft Article 10.3(b) included a specific reference to human rights, according to which: ‘States and competent international organizations shall respect international human rights when developing and implementing policies and actions at international, national, and subnational levels regarding climate change’.

56 ILC, supra note 17, at 22.


58 As argued also in Michaels and Pauwelyn, supra note 21, at 378; and van Asselt, supra note 57, at 1250–1252.

59 HRC, supra note 7, and corresponding text.


61 D. D. Pugley, ‘Rights, Justice, and REDD+: Lessons From Climate Advocacy and Early Implementation in the Amazon Basin’ (this volume).


64 Decision 1/CP.16, supra note 51, at Appendix I, at 2 (a), where specific reference is made to the fact that REDD+ actions ‘complement or are consistent with the objectives of national forest programmes and relevant international Conventions and agreements’. For a commentary, see A. Savaresi, ‘The Legal Status and Role of Safeguards’, in Christina Voigt (ed.), Research Handbook on REDD+ and International Law (Edward Elgar Publishing, 2016) 126.

65 See e.g. UN-REDD Programme, UN-REDD Programme Social and Environmental Principles and Criteria (2012), UNREDD/PB8/2012/V.1, at 2.


67 See e.g. Adaptation Fund, Environmental and Social Policy (2013) 15; ‘Projects/programmes supported by the Fund shall respect and where applicable promote international human rights’. GCF Environmental and Social Safeguards explicitly mention ensuring full respect of the human rights of indigenous peoples, and their FPIC, at least in certain circumstances. Compare: GCF, Guiding Framework and Procedures for Accrediting National, Regional and International Implementing Entities and Intermediaries, Including
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the Fund’s Fiduciary Principles and Standards and Environmental and Social Safeguards, GCF/B.07/02 (7 May 2014), at 1.7.


69 Paris Agreement, supra note 14, Art. 6.4.


71 Oberthür and Stokke, supra note 47, at 376.

72 Open Letter from special procedures mandate holders, supra note 9.

73 See: OHCHR response to UNFCCC Secretariat request for submissions on the Nairobi Work Programme: impacts, vulnerability and adaptation to climate change: Health impacts, including occupational health, safety and social protection, FCCC/SBSTA/2016/2, para 15(a)(i), 2016; OHCHR response to the UNFCCC Secretariat request for submissions on the Lima Work Programme on Gender: Views on possible elements and guiding principles for continuing and enhancing the work programme (SBI), FCCC/SBI/2016/L.16, paragraph 5, 2016; OHCHR response to the UNFCCC Secretariat request for submissions on the Paris committee on Capacity-Building: Views on the annual focus area or theme for the Paris Committee on Capacity-Building for 2017 (SBI), FCCC/SBI/2016/L.24, 2016; OHCHR response to UNFCCC Secretariat request for submissions on the Paris Agreement (APA): Views and guidance related to intended nationally determined contributions, adaption communications, the transparency framework, and the global stocktake, and for information, views and proposals on any work of the APA, FCCC/APA/2016/2, 2016; and OHCHR response to UNFCCC Secretariat request for submissions on the future UNFCCC Sustainable Development Mechanism: Regarding the rules, modalities and procedures for the mechanism established by Article 6, paragraph 4, of the Paris Agreement, supra note 14, para 100, 2016. All submissions are available online at www.ohchr.org/EN/Issues/HRAndClimateChange/Pages/UNFCCC.aspx.

74 The OHCHR hosted an expert meeting on climate change and human rights on 6–7 October 2016 in Geneva. The Draft Recommendations elaborated at the meeting are available online at www.ohchr.org/EN/Issues/HRAndClimateChange/Pages/ClimateChange.aspx.

75 Most notably: Report of the Special Rapporteur on human rights and the environment, supra note 4, and Letter from the Special Rapporteur on human rights and the environment to climate negotiators, supra note 70. The OHCHR has also been mandated to organise an expert meeting providing guidance on the same issue: Expert Meeting on Climate Change and Human Rights 6–7 October 2016, Draft Recommendations, available online at www.ohchr.org/EN/Issues/HRAndClimateChange/Pages/ClimateChange.aspx.

76 See for example the position by the US in Views on the Paper on Options for Enhanced Cooperation Among the Three Rio Conventions, Submissions From Parties, UN Doc. FCCC/SBSTA/2006/MISC.4 (23 March 2006), at 16. The same point was made by Australia, ibid., at 5, as observed also in van Asselt, supra note 57, at 41–24.

77 Open Letter from Special Procedures Mandate-Holders, supra note 9.

78 Cf. the petition launched by Environmental Justice Foundation, available online at http://ejfoundation.org/petition/special_rapporteur.

79 For an example of how the UN Convention on the Elimination of All Forms of Racial Discrimination has been applied in connection with REDD+ in Indonesia, see Savaresi, supra note 62; and N. Johnstone, Indonesia in the “REDD+”: Climate Change, Indigenous Peoples and Global Legal Pluralism’, 12(1) Asian-Pacific Law & Policy Journal (2011) 93.

80 As suggested e.g. in N. Chia, M. Mueller and J. Warland, Roundtable Summary – Human Rights & Climate Change: Connecting the Dots (2016), available online at www.ucl.ac.uk/global-governance/ggi-publications/john-knox-climatechange-publication.

81 This suggestion has been made in e.g. International Bar Association, Achieving Justice and Human Rights in an Era of Climate Disruption (2014), available online at www.ibanet.org/PresidentialTaskForceClimateJustice2014Report.aspx.


83 As suggested also in A. Boyle, ‘Climate Change and International Law – a Post-Kyoto Perspective’, 42 Environmental Policy and Law (2012) 6, at 342.