

Extraterritorial application of human rights obligations
in the context of climate change impacts
on small island states

Candidate number: 8008

Submission deadline: 29.05.2015

Number of words: 17,773



ACKNOWLEDGMENTS

I would like to express my gratitude to my supervisor Professor Christina Voigt for the useful comments, guidance and support throughout my thesis that enabled me to develop an understanding of the subject.

Furthermore, I would like to thank the library staff of the Norwegian Centre for Human Rights, particularly Kirsten Fuglestved, who always processed my interlibrary loan requests and helped me to locate various publications.

For any errors, shortcoming or inadequacies that may remain in this thesis the responsibility is entirely my own.

CONTENTS

Abbreviations	3
Introduction	4
Chapter I. Impacts of climate change on small island states	6
i. Sea-level rise	7
ii. Temperature rise	8
iii. Ocean acidification	9
iv. Other impacts	9
Chapter II. Link between human rights and climate change	11
Is there a right to a healthy and safe environment in international law?	12
Chapter III. Human rights impacts of climate change	14
i) Collective rights	14
<i>Right to self-determination</i>	14
ii) Right to life	16
iii) Right to property	18
iv) Economic, social and cultural rights	19
<i>Right to health</i>	19
<i>Right to food and right to water</i>	20
v) Procedural rights	21
<i>Right to environmental information</i>	22
<i>Right to participate in decision-making process</i>	23
<i>Right to remedy</i>	24
Chapter IV. Human rights obligations concerning climate change	25
i) Human rights obligations: to respect, to protect, to fulfil	25
<i>Obligations to respect</i>	26
<i>Obligation to protect</i>	27
<i>Obligation to fulfill</i>	28
ii) States' and non-state actors' obligations	28
iii) Human rights obligations of states within their jurisdiction	30
iv) Extraterritorial application of human rights obligations	31
<i>Extraterritorial application of the ICCPR</i>	32
<i>Extraterritorial application of the ICESCR</i>	35
Conclusion	40
Bibliography	41

ABBREVIATIONS

ACHR	African Charter on Human and Peoples' Rights
ACHPR	African Commission on Human and Peoples' Rights
CERD	Committee on the Elimination of Racial Discrimination
CBD	Convention on Biological Diversity
CoE	Council of Europe
ECHR	European Court of Human Rights
ECtHR	European Convention of Human Rights
HRC	Human Rights Committee
GDP	Gross Domestic Product
IACHR	Inter-American Court of Human Rights
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICJ	International Court of Justice
OAU	Organization of African Unity
OHCHR	Office of the United Nations High Commissioner for Human Rights
UDHR	Universal Declaration of Human Rights
UNDP	United Nations Development Programme
UNGA	United Nations General Assembly
UNFCCC	United Nations Framework Convention on Climate Change
WHO	World Health Organization

Introduction

Sea level rise is a huge problem for low-lying and small islands states. The Pacific archipelago of Kiribati is lying less than two meters above sea level. Due to global warming consequences such as sea level rise the state is compelled to consider constructing of floating platforms for its citizens to live on because sea level rise continuously threatens to submerge the islands.¹ However, such constructions would cost billions of dollars and small islands states cannot afford them without financial and technical assistance of the international community.

The first island that vanished from the face of the Earth was Lohachara located in Indian part of Sandarbans delta in the Bay of Bengal. Refugees from the obliterated island fled to Sagar, an island which already has lost more than 30 sq. km due to sea rise. Overall, around 70 000 people are in danger of being homeless.²

The Maldives is the lowest-lying nation in the world.³ Around 80 % of the islands are less than 1 meter above sea level and 96% of all islands are smaller than 1 km².⁴ A tsunami in 2004 devastated the Maldives, causing a loss of an estimated 60% of total GDP.⁵

These small island states are just few to mention. Among endangered low-lying states are picturesque Tuvalu, The Marshall Islands, Seychelles, The Torres Strait Islands, The Solomon Islands, Micronesia, Palau, Carteret Islands etc.⁶ Projections indicate that for the highest GHG concentration scenario, sea level rise would lie between 0.52 to 0.98 meters by 2100 and between 0.58 and 2.03 meters by 2200. This clearly would severely test the resilience and adaptive capacities of societies in low-lying coastal areas and small island states.⁷ Therefore, urgent legal and practical solutions to the problem needed.

¹ *Low-lying Pacific island nation of Kiribati considers building 'floating platforms'*, 07 Sep 2011, at <http://www.telegraph.co.uk/news/worldnews/australiaandthepacific/kiribati/8746642/Low-lying-Pacific-islands-consider-building-floating-platforms.html> (last visited 07.05.2015).

² *Disappearing world: Global warming claims tropical island*, 26 Dec 2006, at <http://www.independent.co.uk/environment/climate-change/disappearing-world-global-warming-claims-tropical-island-429764.html> (last visited 07.05.2015).

³ *11 Islands That Will Vanish When Sea Levels Rise*, 12 Oct 2012, at <http://www.businessinsider.com/islands-threatened-by-climate-change-2012-10?op=1> (last visited 07.05.2015).

⁴ Maldives Submission under Resolution HRC 7/23, 25 September 2008, p. 15.

⁵ *Id.*, p. 16.

⁶ *11 Islands That Will Vanish When Sea Levels Rise*, 12 Oct 2012, at <http://www.businessinsider.com/islands-threatened-by-climate-change-2012-10#kiribati-1> (last visited 07.05.2015).

⁷ Human Development Report, "Sustaining Human Progress: Reducing Vulnerabilities and Building Resilience", UNDP (2014), p.52, at <http://www.undp.org/content/dam/undp/library/corporate/HDR/2014HDR/HDR-2014-English.pdf> (last visited 07.05.2015).

Climate change is a problem not only for the environment, but it threatens the very well-being of nations and even sovereign states. Prime Minister of Tuvalu Enele Sopoaga has recently said about climate change that “it’s already like a weapon of mass destruction”.⁸ In the Pacific Islands states receive fees for fishing in their EEZ from foreign vessels. For some of them, the fees form large portion of government revenue.⁹ In case a baseline shifts landward, a low-lying state loses its sovereign rights over parts of the exclusive economic zone and continental shelf once they were within their jurisdiction.¹⁰

Climate change interferes with basic human rights, such as right to life, right to property, right to health etc. In the master thesis I am going to address aspects of international law and human rights law dealing with climate change impacts threatening human rights of low-lying and small island states’ peoples. Climate change problems should be approached with norms of international law, human rights law, international environmental law, and climate change law. It is important to inspect legal obligations of developed and industrialized states according to human rights binding agreements.

First chapter of the thesis discovers what impacts of climate change Small Island states have to experience nowadays. Second chapter concerns a link between climate change and human rights. In the third chapter I discuss impacts of climate change on particular human rights: right to self-determination, right to life, right to property, certain economic and social rights, as well as procedural rights. Forth chapter concludes with the discussion states human rights obligations in the climate change context and their extraterritorial character.

Definitions

Small Island Developing States (SIDS) comprise small islands and low-lying coastal countries that face the development constraints of a small population, limited resources, and

⁸ “The Impact of Climate Change on the Development Prospects of the Least Developed Countries and Small Island Developing States”, Study of the UN-OHRLS (2009), p. 8, at <http://unohrlls.org/custom-content/uploads/2013/11/The-Impact-of-Climate-Change-on-The-Development-Prospects-of-the-Least-Developed-Countries-and-Small-Island-Developing-States1.pdf> (last visited 07.05.2015).

⁹ Kiribati (42 percent of all government revenue in 2007), Nauru (17 percent of government revenue) and Tuvalu (11 percent of government revenue). Fees relatively to the population size: Nauru (US\$518 per resident), Tuvalu (US\$355 per resident) and Kiribati (US\$288 per resident). See FAO Fisheries and Aquaculture Technical Paper No. 537 (2010), *Marine fishery resources of the Pacific Islands*, p. 44, at <http://www.fao.org/docrep/012/i1452e/i1452e00.htm> (last visited 07.05.2015).

¹⁰ For example, the US Supreme Court held “Shifts in a low-water line along the shore, (...), could lead to a shift in the baseline for measuring a maritime zone for international purposes. In turn, the State’s entitlement to submerged lands beneath the territorial sea would change.” *United States v. Alaska* 521 U.S. 1 (1997).

remoteness, vulnerability to natural disasters and susceptibility to external impacts.¹¹ There are 51 SIDS and they are located across the Indian, Pacific and Atlantic Oceans.¹²

There are 49 *Least Developed Countries* (LDS) which are recognized as the world's poorest countries. They have a per capita GDP of less than \$900 and very low levels of capital, human and technological development. 11 states are both small island developing states and least developed countries.¹³

According to the definition given in Article 1 of the UNFCCC "*climate change*" is a change of climate which is attributed directly or indirectly to human activity that alters the composition of the global atmosphere and which is in addition to natural climate variability observed over comparable time periods.

Methods

The content of the thesis is judicial. Legal method is used in order to address legal issues raised. It means that primary attention will be paid to sources of international law which are outlined in the Article 38 of the Statute of the ICJ: international treaties, international customary law, general principles of international law, judicial decisions and teachings of qualified legal publicists.

Qualitative method and statistical data obtained from a number of official bodies and organizations, such as the Office of the UN High Commissioner for Human Rights, Human Rights Committee, WHO, the World Bank etc., official submissions of states will be used in the research.

Chapter I. Impacts of climate change on small island states

The UNFCCC recognized that low-lying states and other small island countries, countries with low-lying coastal areas are particularly vulnerable to the adverse effects of climate change.¹⁴

Sea-level rise is a huge danger for well-being of small islands states. However it is not the only problem that these states have to handle nowadays. Among other impacts of climate

¹¹ Study of the UN-OHRLLS (2009), *supra* note 8, p. 10.

¹² *Ibid.*

¹³ Comoros, Kiribati, Sao Tome and Principe, Tuvalu, Guinea-Bissau, Maldives, Solomon Islands, Vanuatu, Haiti, Samoa and Timor-Leste. *Id.*, p. 13

¹⁴ UNFCCC Preamble, UNTS, vol. 1771, p. 107 (1992).

change there are temperature rise, ocean acidification and precipitation changes.¹⁵ Several impacts of climate change will be discussed below.

i. Sea-level rise

Sea-level rise is a main concern for small island states. According to the 5th IPCC Assessment Report (AR5) it is very likely that global mean sea level rose at a mean rate of 1.7 mm per year between 1900 and 2010 and at a rate 3.2 mm per year from 1993 to 2010. Ocean thermal expansion and melting of glaciers have been the largest contributors, accounting for more than 80% of the global mean sea level rise over the period from 1993 to 2010.¹⁶ Combined effects of high tides, storm surge, surface waves and flooding rivers, also known as extreme sea levels¹⁷, pose a significant threat to coastal systems and low-lying areas around the globe, leading to inundation and erosion of coastlines and contamination of freshwater reserves and food crops.¹⁸

Direct effect of sea-level rise on small island states is decrease or even disappearance of land available for living. For example, in the Maldives around 42 % of population is at risk of losing their livelihood because they are located within 100 meters from coastline.¹⁹

AP5 indicates that the low elevation coastal zone constitutes 2% of the world's land area but contains 10% of the world's population. It means that around 600 million people may lose their homes, property and normal way of living, and their right to life, right to property and means of subsistence is under threat.

Tuvalu, a small island state with the population of 10300 and a total area of 27 km² is already experiencing landward flooding. Saltwater intrusion is affecting drinking water and food production. Both coastal erosion and sea-level rise reduce land area. Coastal erosion removes finer sediment from reef flat, beach and land, resulting in beach sediment coarsening. Fongafale Islet, one of the nine Tuvalu islands, is experiencing geological changes due to coastal erosion.²⁰ Tuvalu had to ask the governments of Australian and New Zealand to accept

¹⁵ Maldives Submission (2008), *supra* note 4.

¹⁶ Wong, P.P., I.J. Losada, J.-P. Gattuso, J. Hinkel, A. Khattabi, K.L. McInnes, Y. Saito, and A. Sallenger, 2014: "Coastal systems and low-lying areas". In: *Climate Change 2014: Impacts, Adaptation, and Vulnerability. Part A: Global and Sectoral Aspects. Contribution of Working Group II to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change*, p.368, at https://www.ipcc.ch/pdf/assessment-report/ar5/wg2/WGIIAR5-Chap5_FINAL.pdf (last visited 07.05.2015).

¹⁷ *Id.*, p. 370.

¹⁸ *Id.*, p.367; John Church, "Understanding sea level rise and variability", *Eos*, Vol. 88 (4), Transactions American Geophysical Union (2007), p. 43.

¹⁹ Maldives Submission (2008), *supra* note 4, p. 21

²⁰ Xue Chunting, "Causes of Land Loss in Tuvalu, a Small Island Nation in the Pacific", 4(2) *Journal of Ocean University of China*, 115 (2005), p. 115-116.

its citizens, but both countries refused to do so.²¹ For Tuvaluans climate change is not a future concern but an immediate threat, it is "nothing less than a form of slow death."²²

ii. *Temperature rise*

According to AP5 study sea surface temperature has significantly warmed during the past 30 years along more than 70% of the world's coastlines, with highly heterogeneous rates of change both spatially and seasonally.²³ The rate of temperature rise along coastlines is higher on average than the oceans and there is high confidence that positive trends in coastal sea surface temperature will continue.²⁴

The Maldives notes that sea temperature rise will harm both fisheries and coral, which has implications for the right to work, the right to a means of subsistence and the right to an adequate standard of living.²⁵

In perspective temperature rise threatens right to life and right to health. Combined with other effects of climate change temperature rise contributes to expansion of vector-borne diseases such as malaria and dengue due to their sensitivity to climatic factors. The AR5 shows that the area of the planet that was climatically suitable for dengue would increase under most scenarios. The Maldives Ministry of Health reported that cases of dengue increased by 2005 and in the first 24 weeks of 2008, 797 cases of dengue had been reported.²⁶ The first outbreak of *chikungunya* happened in the Maldives in 2006. The disease is also transferred by mosquitoes and causes similar symptoms as dengue, including high fever. 268 cases were reported during 2008.²⁷

The Maldives manages to keep disease outbreaks under control. I will argue that under human rights obligations international community has still to respond to such perspectives of vector-borne diseases outbreaks due to climate change and to provide small island states with adequate medical facilities and technology assistance.

²¹ Lester R. Brown, "Rising Sea Level Forcing Evacuation of Island Country" (2001), at http://www.earth-policy.org/plan_b_updates/2001/update2 (last visited 07.05.2015).

²² Eun Jung Cahill Che, "Tuvalu: Global-warming's first casualty", (2001) at <http://archives.starbulletin.com/2001/08/19/editorial/special.html> (last visited 07.05.2015).

²³ IPCC AR 5, "Coastal systems and low-lying areas", *supra* note 16, p. 371.

²⁴ *Id.*, p. 371-372.

²⁵ Maldives Submission (2008), *supra* note 4, p. 25.

²⁶ Maldives Ministry of Health (MMH), Epidemiology and Disease Surveillance Unit of the Department of Public Health (2008), in: Maldives Submission, *supra* note 4, p. 26.

²⁷ Maldives Ministry of Environment, Energy and Water (2006), in Maldives Submission, *supra* note 4, p. 26.

iii. *Ocean acidification*

Fifth Assessment Report of IPCC names three impacts of climate change that coastal systems are sensitive to: ocean temperature, sea level and ocean acidity.²⁸ Ocean acidification is a result of CO₂ uptake in the ocean due to emissions of greenhouse gases. The AP5 indicates with high confidence that coastal acidification is projected to continue but with large and uncertain regional and local variations. It is expected that increased quantities of atmospheric CO₂ will penetrate the ocean over the next century causing a reduction in pH²⁹ (-0.3/-0.4 pH unit in the surface ocean) and in the concentration of carbonate ions. This is affecting marine ecosystems and organisms in particular marine shelled molluscs, which are economically and ecologically important species providing essential ecosystem services including habitat structure for benthic organisms, water purification and a food source for other organisms.³⁰ Increase of ocean acidity level means that many people who are dependent on corals and fish stocks lose their means of subsistence.

iv. *Other impacts*

Coral islands like Maldives and Barbados are very dependent upon groundwater. Rainwater is the main source of fresh water. A 10 % rainfall reduction by 2050 could produce a 20 percent reduction in the size of the freshwater lens on Kiribati. It threatens structural changes of freshwater lenses resulting in droughts and shortage of drinking water.

On the other hand, it is expected that rainfalls increase in wet seasons, but not in dry seasons. It is fraught with increase of transmission diseases and erosion of coasts putting right to life, right to health and work of local population at danger.

²⁸ IPCC AR 5, “Coastal systems and low-lying areas”, *supra* note 16, p. 364.

²⁹ The lower the value, the more acidic is the environment. See “*What is Ocean Acidification?*” at <http://www.pmel.noaa.gov/co2/story/What+is+Ocean+Acidification%3F> (last visited 07.05.2015).

³⁰ More on this topic see Frédéric Gazeau et al. “Impacts of ocean acidification on marine shelled molluscs”, *160 Marine Biology* 2207 (2013)

Table 1. *Climate change impacts on human rights.*³¹

Climate Impact	Human Impact	Rights Implicated
Sea Level Rise <ul style="list-style-type: none"> • Flooding • Sea Surges • Erosion • Salination of land and water 	<ul style="list-style-type: none"> • Loss of land • Drowning, injury • Lack of clean water, disease • Damage to coastal infrastructure, homes, and property • Loss of agricultural lands • Threat to tourism, lost beaches 	<ul style="list-style-type: none"> • Self-determination [ICCPR;ICESCR,1] • Life [ICCPR, 6] • Health [ICESCR, 12] • Water [CEDAW,14; ICRC 24] • Means of subsistence [ICESCR,1] • Standard of living [ICESCR, 12] • Adequate housing [ICESCR,12] • Culture [ICCPR, 27] • Property [UDHR,17]
Temperature Increase <ul style="list-style-type: none"> • Change in disease vectors • Coral bleaching • Impact on Fisheries 	<ul style="list-style-type: none"> • Spread of disease • Changes in traditional fishing livelihood and commercial fishing • Threat to tourism, lost coral and fish diversity 	<ul style="list-style-type: none"> • Life [ICCPR, 6] • Health [ICESCR, 12] • Means of subsistence [ICESCR, 1] • Adequate standard of living [ICESCR, 12]
Extreme Weather Events <ul style="list-style-type: none"> • Higher intensity storms • Sea Surges 	<ul style="list-style-type: none"> • Dislocation of populations • Contamination of water supply • Damage to infrastructure: delays in medical treatment, food crisis • Psychological distress • Increased transmission of disease • Damage to agricultural lands • Disruption of educational services • Damage to tourism sector • Massive property damage 	<ul style="list-style-type: none"> • Life [ICCPR,6] • Health [ICESCR,12] • Water [CEDAW,14; ICRC 24] • Means of subsistence [ICESCR,1] • Adequate standard of living [ICESCR, 12] • Adequate and secure housing [ICESCR,12] • Education [ICESCR,13] • Property [UDHR,17]
Changes in Precipitation <ul style="list-style-type: none"> • Change in disease vectors • Erosion 	<ul style="list-style-type: none"> • Outbreak of disease • Depletion of agricultural soils 	<ul style="list-style-type: none"> • Life [ICCPR,6] • Health [ICESCR,12] • Means of subsistence [ICESCR,1]

³¹ Maldives Submission (2008), *supra* note 4, p. 18. The list is not exhaustive.

Chapter II. Link between human rights and climate change

In 2007 Small Island Developing States started a crusade on linking between climate change and human rights. In Male's Declaration on the Human Dimension of Global Climate Change representatives of SIDS noted the fundamental right to an environment capable of supporting full enjoyment of human rights including "the right to life, the right to take part in cultural life, the right to use and enjoy property, the right to an adequate standard of living, the right to food, and the right to the highest attainable standard of physical and mental health". SIDS are concerned that climate change impacts pose "the most immediate, fundamental and far-reaching threat to the environment, individuals and communities around the planet".³²

They request international community to commit to a process that will ensure that temperature rises fall below 2°C above pre-industrial averages, and that GHG concentrations are less than 450pp, in accordance with the principles of common but differentiated responsibilities.³³

It is beyond doubt that there is a link between human rights and environment. Stockholm Declaration states the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being."³⁴ The Rio Declaration proclaims that human beings are entitled to a healthy and productive life in harmony with nature.³⁵ In 2010 in its report on climate change Conference of Parties to the UNFCCC emphasized that "Parties should, in all climate change related actions, fully respect human rights."³⁶

Report of the OHCHR requested by the Maldives is wholly devoted to the relationship between human rights and climate change. It notes that the United Nations human rights treaty bodies all recognize the intrinsic link between the environment and the realization of a range of human rights, such as the right to life, to health, to food, to water, and to housing.³⁷ However, the OHCHR does not recognize that climate change necessarily violates human rights, because it is difficult to establish causal link between actions or inactions of one particular state and specific climate change effect happening in another country.³⁸

³² Preamble, Male's Declaration on the Human Dimension of Global Climate Change, 14 November 2007, at http://www.ciel.org/Publications/Male_Declaration_Nov07.pdf (last visited on 14.05.2015)

³³ Id., § 1.

³⁴ Stockholm Declaration 1972, principle 1.

³⁵ Rio Declaration 1992, principle 1.

³⁶ Report of the Conference of the Parties on its sixteenth session, held in Cancun from 29 November to 10 December 2010, UNFCCC Conference of the Parties, FCCC/CP/2010/7/Add.1, § 8.

³⁷ *Report on the relationship between climate change and human rights*, OHCHR, 15 January 2009, A/HRC/10/61, p. 23.

³⁸ *Ibid.*

Nevertheless, the OHCHR recognizes that human rights obligations provide important protection to individuals whose rights are affected by climate change irrespective of whether climate change effects are considered as human rights violations.³⁹ The Report notes that states have committed themselves not only to implement the treaties within their jurisdiction, but also to contribute, through international cooperation, to global implementation.⁴⁰

Attempt to establish the fact that human rights are violated by “impacts of global warming and climate change caused by acts and omission of the United States” has been made by an Inuit petition to the Inter-American Commission on Human Rights.⁴¹ However, the IACHR refused to hear the case because, in its opinion, the petition provides insufficient information to make a decision on the merits, in particular, information provided does not enable “to determine whether the alleged facts would tend to characterize a violation of rights protected by American Declaration”.⁴² However, on 1 March 2007 the Commission held the hearing concerning issues raised in the petition without discussing petition itself.⁴³

Is there a right to a healthy and safe environment in international law?

Regardless of existence of the link between human rights on one hand and climate change and environment on the other, there is no universal recognition of the right to a healthy environment as one of the human rights. However, there are examples of such recognition can be found in several international legal instruments. For example, African Charter on Human and Peoples’ Rights includes provision that “All peoples shall have the right to a general satisfactory environment favourable to their development.”⁴⁴ The General Assembly also recognizes that all individuals are entitled to live in an environment adequate for their health and well-being.”⁴⁵ In its Communication against Nigeria regarding clean environment the African Commission held that Article 24 of the Charter imposes upon states clear obligations “to take reasonable and other measures to prevent pollution and ecological

³⁹ *Id.*, p. 24

⁴⁰ *Id.*, p. 27

⁴¹ Sheila Watt-Cloutier, *Petition to the Inter American Commission on Human Rights Seeking Relief from Violations Resulting from Global Warming Caused by Acts and Omissions of the United States*, 7 December 2005.

⁴² Letter from Ariel E. Dulitzky, Assistant Executive Secretary, IACHR, to Sheila Watt-Cloutier, Petitioner, 16 November 2006, available at: <http://graphics8.nytimes.com/packages/pdf/science/16commissionletter.pdf>

⁴³ See Jessica Gordon “Inter-American Commission on Human Rights to Hold hearing after Rejecting Inuit Climate Change Petition” 7(2) *Sustainable Development Law & Policy* 55 (2007).

⁴⁴ OAU, *African Charter on Human and Peoples' Rights* (1981), art. 24.

⁴⁵ UN General Assembly Resolution A/RES/45/94, 14 December 1990, para. 1.

degradation, to promote conservation, and to secure an ecologically sustainable development and use of natural resources.”⁴⁶ The Court found a violation of the article in this case.

Article 11 of Additional Protocol to the American Convention on Human Rights (Protocol of San Salvador) provides “the right to live in a healthy environment and to have access to basic public services” and obligation of a state to “promote the protection, preservation, and improvement of the environment.” *Churchill* notes that Article 11 is quite weak in environmental protection because it requires a state to promote environmental protection when they feel able to do so in light of their available resources.⁴⁷ Although the European Convention on Human Rights or its protocols contain no provision concerning right to a healthy and safe environment, the European Court of Human Rights delivered several decisions on cases regarding environmental issues brought before it against state parties.⁴⁸

Nevertheless there is still no widespread recognition of right to a healthy environment in neither treaty nor customary international law. The President of the Maldives, H.E. Mr. Maumoon Abdul Gayoom, called international community “to grant universal recognition to the fact that environmental protection, preservation and security are part of an individual’s basic human rights.”⁴⁹ *Lang* notes that in order such “right to a healthy environment” to be created it is to be corroborated by many legally binding texts of a domestic origin (e.g. constitutions) or specific international treaties, which have emerged into international customary law.⁵⁰

⁴⁶ *The Social and Economic Rights Action Center and the Center for Economic and Social Rights v. Nigeria*, ACHPR, Comm. No. 155/96 (2001), para. 52.

⁴⁷ Robin Churchill, “Environmental Rights in Existing Human Rights Treaties”, in: *Human Rights Approaches to Environmental Protection*, ch. 5, Boyle, Anderson eds., (Clarendon Press, 1996), p. 100.

⁴⁸ *López Ostra v. Spain*, ECtHR (1994), *Oneryildiz v. Turkey*, ECtHR (2004), *Guerra et al. v. Italy*, ECtHR (1998), *Budayeva and Others v. Russia*, ECtHR (2008).

⁴⁹ Address by President Gayoom at Inauguration Ceremony of Small Island States Conference on “The Human Dimension of Global Climate Change”, Male’, 13 November 2007, in: Maldives Submission (2008), *supra* note 4, p. 13.

⁵⁰ Winfried Lang, “UN-Principles and International Environmental Law”, 3 *Max Planck Yearbook of United Nations Law* 157 (1998), p. 166.

Chapter III. Human rights impacts of climate change

i) *Collective rights*

Right to self-determination

It is not necessary to make a line between human rights of individuals on one side and human rights of groups on the other the climate change context. *Brownlie* noted that guaranties and standards governing treatment of individuals tend, by their emphasis on equality, to protect groups as well.⁵¹

In its Submission to the OHCHR the Maldives Republic argues that climate change impacts threaten the collective rights of the Maldivian people, in particular, the right to self-determination.⁵² The Report of the OHCHR recognizes that climate change impacts, such as extreme weather events and sea-level rise, threaten habitability and territorial existence of low-lying states.⁵³ For example, low-lying state of Kiribati has already initiated negotiations with Fiji to buy land in order to relocate its citizens from disappearing Kiribati's islands.⁵⁴ However due to large scale of the deal on one side and economic capabilities of small states like Kiribati on the other side, it requires international community's financial contribution.

Self-determination of peoples is recognized as a principle in Articles 1 and 55 of the UN Charter. As a principle and part of the obligations originating from the Charter, it is not a recommendation, but is a form of an authoritative interpretation of the Charter.⁵⁵ In words of the General Assembly resolution 2625 (XXV): "By virtue of the principle of equal rights and self-determination of peoples enshrined in the Charter of the United Nations, all peoples have the right freely to determine, without external interference, their political status and to pursue their economic, social and cultural development, and every State has the duty to respect this right in accordance with the provisions of the Charter."⁵⁶ The Human Rights Committee recognized the GA Resolution 2625 as "other international instruments" relevant for the right of all peoples to self-determination.⁵⁷

⁵¹ Brownlie I., *Principles of Public International Law*, 7th ed., (Oxford University Press, 2008), p. 579

⁵² Maldives Submission (2008), *supra* note 4, p. 39.

⁵³ OHCHR Report, *supra* note 37, p. 14.

⁵⁴ Paul Chapman, "Entire nation of Kiribati to be relocated over rising sea level threat", 7 March 2012, <http://www.telegraph.co.uk/news/worldnews/australiaandthepacific/kiribati/9127576/Entire-nation-of-Kiribati-to-be-relocated-over-rising-sea-level-threat.html>

⁵⁵ Brownlie, *supra* note 51, p. 581

⁵⁶ UNGA, *Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations*, 24 October 1970, A/RES/2625(XXV).

⁵⁷ General Comment No. 12 "The Right to Self-determination of Peoples" 1984, § 7.

The right to self-determination was incorporated later in the ICESCR and the ICCPR. Both Covenants establish that “all peoples have the right of self-determination” and by virtue of that right “they freely determine their political status and freely pursue their economic, social and cultural development”.⁵⁸ The Covenants impose an obligation to respect right to self-determination upon all states. Paragraph 2 of the Article provides that “In no case may a people be deprived of its own means of subsistence”. That is an important part of the right to self-determination. Human Rights Committee emphasized that the right to self-determination requires, *inter alia*, that all peoples must be able to freely dispose of their natural wealth and resources and that they may not be deprived of their own means of subsistence.⁵⁹ The OHCHR noted that this right entails corresponding duties for all States and the international community and states should indicate any factors or difficulties which prevent the free disposal of their natural wealth and resources contrary to the provisions of paragraph 2 and to what extent that affects the enjoyment of other rights set forth in the Covenant.⁶⁰

Ocean acidification, sea temperature change and other climate change impacts have implications for fisheries and agriculture of Small Island states in form of reduction of fish stocks and available area for agriculture, potential loss of species or shift in composition for capture fisheries, productivity reduction of reef fisheries etc.⁶¹

The right to self-determination was recognized and elaborated by the International Court of Justices in its several judgements. In *East Timor* case the Court noted that the right is “one of the essential principles of contemporary international law”.⁶² In words of the Court it is “irreproachable” that the right of peoples to self-determination, as it evolved from the Charter and from United Nations practice, has an *erga omnes* character.⁶³ This assertion was reiterated in the Court’s Advisory Opinion on the Wall.⁶⁴

Erga omnes character of the right to self-determination implies “obligations of a State towards the international community as a whole (...) In view of the importance of the rights involved, all States can be held to have a legal interest in their protection.”⁶⁵ Therefore it is

⁵⁸ Art. 1, §1, UNGA, *International Covenant on Civil and Political Rights*, UNTS, vol. 999, p. 171, 1966, UNGA, *International Covenant on Economic, Social and Cultural Rights*, UNTS, vol. 993, p. 3.

⁵⁹ UN Human Rights Committee (HRC), *UN Human Rights Committee: Concluding Observations: Canada*, 7 April 1999, CCPR/C/79/Add.105, §8

⁶⁰ CCPR General Comment No. 12, *supra* note 57, §5.

⁶¹ Policy brief, WorldFish Center “*The threat to fisheries and aquaculture from climate change*”, p. 3, available at: <http://www.burmalibrary.org/docs17/Climate%20Change%20and%20Fisheries.pdf> (last visited 19.05.2015)

⁶² *East Timor* (Portugal v. Australia), Judgment, I. C.J. Reports 1995, § 29.

⁶³ *Ibid.*

⁶⁴ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, ICJ Reports 2004, §155

⁶⁵ *Barcelona Traction, Light and Power Company, Limited*, Judgment, I.C.J. Reports 1970, § 33

safe to say that given seriousness of climate change impacts on small island states, both developing and developed have an interest to protect them from impacts that threaten their right to self-determination. Small island states produce less than 1 % of total GHG emissions per year.⁶⁶ These states have little capacity to handle with consequences of huge amount of emitted GHG by developed states and developing industrialized states, like China. For comparison in 2011 China, USA and the EU produced 26%, 17% and 11% respectively of the world CO2 emissions. Small island states' contribution of emissions is very little. Without international community contribution to combat with climate change impacts, small island states have little chance to success.

ii) *Right to life*

Right to life is recognized in both international and regional binding human rights instruments. It is among non-derogable rights that cannot be suspended even during national emergency. All three regional human rights instruments, ECHR (Art.2), IACHR (Art.4) and ACHR (Art. 4), provide that no one shall be arbitrary deprived of life. Shue called it basic right "that one must possess if one is to exercise other rights".⁶⁷ Right to life is included among peremptory norms *jus cogens* from which no derogation is permitted.⁶⁸ In the separate opinion on *Gabčíkovo-Nagymaros* case Judge Weeramantry noted that "protection of the environment is a vital part of contemporary human rights doctrine, for it is a *sine qua non* for numerous human rights such as the right to health and the right to life itself."⁶⁹ Professor Galicki noted the right to life being most of all connected and dependent on proper protection of the human environment because it, "like no other, may be directly and dangerously threatened by detrimental environmental measures. The right to life and quality of life depend directly on positive and negative environmental conditions."⁷⁰

Case law of the European Court of Human Rights is remarkable in development of right to life in the environmental context. The Court noted:

⁶⁶ Data available at: <http://cait.wri.org>

⁶⁷ Henry Shue, "*Basic rights: subsistence, affluence, and U.S. foreign policy*" 2nd ed. (Princeton University Press, 1996), p.19-20.

⁶⁸ Report by Special Rapporteur Mrs. Fatma Zohra Ksentini on Human Rights and the Environment, UNESCO E/CN.4/Sub.2/1994/9, §172.

⁶⁹ *Case concerning the Gabčíkovo-Nagymaros Project (Hungary/Slovakia)*, ICJ Reports 1997, (separate opinion of Judge Weeramantry), p. 91.

⁷⁰ Report of Special Rapporteur on Human Rights and the Environment, *supra* note 68, §174.

*“Article 2 does not solely concern deaths resulting from the use of force by agents of the State but also, in the first sentence of its first paragraph, lays down a positive obligation on States to take appropriate steps to safeguard the lives of those within their jurisdiction”.*⁷¹

Although the provision is negative in character as it aims to stop certain State actions, the Court has developed the doctrine of positive obligations. Given the fundamental importance of the right to life and the fact that most infringements are irreversible, this positive obligation of protection can apply in situations where life is at risk.⁷² In the environmental context, Article 2 has been applied where certain activities endangering the environment are so dangerous that they also endanger human life, e.g. operation of nuclear tests or chemical factories.⁷³ In case *Öneryıldız v. Turkey*, the Court assessed that “the national authorities did not do all that could have been expected of them to prevent the deaths of the applicant’s close relatives” in the explosion occurred on a municipal rubbish tip. The obligation applies in the context of any activity, whether public or not, in which the right to life may be at stake, (...), which by their very nature are dangerous.⁷⁴ The Court also recognized positive obligations for states to prevent loss of life in cases of natural disasters even if they are beyond human control.⁷⁵

International human rights treaty, the ICCPR (Art. 6), promulgates right to life as “inherent”. The Human Rights Committee noted that right to life is too often interpreted narrowly.⁷⁶ The Committee further noted:

“The expression “inherent right to life” cannot properly be understood in a restrictive manner, and the protection of this right requires that States adopt positive measures. In this connection, the Committee considers that it would be desirable for States parties to take all possible measures to reduce infant mortality and to increase life expectancy, especially in adopting measures to eliminate malnutrition and epidemics.”

Malnutrition and epidemics might be one of the adverse consequences of climate change for population of small island states. Although provisions of the ICCPR were adopted long before environmental protection and climate change became prominent issue, it is appropriate to say that states have positive obligations to take measures to provide healthy environment and combat climate change adverse impacts under right to life. *Caney and Bell*

⁷¹ *Budayeva and Others v. Russia*, ECtHR (2008), § 128; *L.C.B. v. the United Kingdom*, ECtHR (1998), § 36; *Paul and Audrey Edwards v. the United Kingdom*, ECtHR (2002), § 54.

⁷² Manual on Human Rights and Environment, 2nd ed., (Strasbourg: Council of Europe Publishing, 2012), p. 35

⁷³ *L.C.B. v. the United Kingdom*, ECtHR (1998), *Öneryıldız v. Turkey*, ECtHR (2004).

⁷⁴ *Öneryıldız v. Turkey*, ECtHR (2004), para. 70-71.

⁷⁵ *Budayeva and Others v. Russia*, ECtHR (2008), *Murillo Saldias v. Spain*, ECtHR (2006)

⁷⁶ CCPR General Comment No. 6: Article 6 (Right to Life), 1982, § 5.

argued that right to life is jeopardized by anthropogenic climate change.⁷⁷ In particular, hurricanes, storm surges and extreme precipitation will lead to direct loss of life.

Article 6 §2 of the Convention on the Rights of the Child provides a link between “inherent right to life” and state parties obligation “to ensure to the maximum extent possible the survival and development of the child”. The Committee on the Right of the Child reminds states that the right to survival and development can only be implemented in a holistic manner, through the enforcement of all the other provisions of the Convention, including rights to health, adequate nutrition, (...) a healthy and safe environment (...).’’.

The OHCHR notes in its Report that “protection of the right to life, generally and in the context of climate change, is closely related to measures for the fulfilment of other rights, such as those related to food, water, health and housing.” Acknowledging the link between right to life and other rights such as mentioned, they will be addressed more detailed further in the chapter.

iii) *Right to property*

Right to property is recognized in the Article 17 of the Universal Declaration on Human Rights. However, it was not included neither in the ICCPR not in the ICESCR. The right to property was not mentioned in the original rights and freedoms of the ECHR. It was added in Protocol 1 to the Convention in 1952. Article 11 of the ICESCR recognizes a right to adequate housing which includes entitlement to housing, land and property restitution.⁷⁸ Nevertheless, the right to adequate housing is not the same as the right to property. For example, the CERD recognizes both right to property (Art. 5 ‘d’ ‘v’) and right to housing (Art. 5 ‘e’ ‘iii’) referring the former to civil rights and the latter to the economic, social and cultural rights. Right to housing is wider than right to property and includes right to safe and secure place to live without unlawful interferences.⁷⁹

Although the right to property is not included in the ICCPR, it is guaranteed by regional human rights treaties. Article 1 of the ECHR Protocol I sets protection of property. Article 21 of the IACHR provides “the right to the use and enjoyment of his property. The law may subordinate such use and enjoyment to the interest of society.” Article 14 of the African

⁷⁷ Simon Caney, “Human Rights, Responsibilities and Climate Change” in: Charles R. Beitz and Robert E. Goodin eds., *Global Basic Rights* (Oxford University Press, 2009), p. 232; D. Bell “Does anthropogenic climate change violate human rights?” 14(2) *Critical Review of International Social and Political Philosophy* 99 (2011).

⁷⁸ OHCHR, *The Right to Adequate Housing*, Fact Sheet No. 21/Rev.1, p. 3.

⁷⁹ *Id.*, p. 36.

Charter on Human Rights also guarantees the right to property. All regional treaties establish that no one shall be deprived of his possessions except in the public interest or need and in accordance with the law.

The Inter-American Commission noted that “various international human rights instruments, both universal and regional in nature, have recognized the right to property as featuring among the fundamental rights of man”.⁸⁰ The Commission pointed out that rules established by non-binding American Declaration of the Rights and Duties of Man, in particular right to property, “become rules of international customary law and, as such, are considered obligatory in the doctrine and practice of international law”.⁸¹

The right to property is classified exclusively neither as civil or political right nor as economic or social right.⁸² However, whether or not the right to property is classified as civil/political or economic/social right, it is well established in binding international human rights instruments and its enjoyment is endangered by climate change impacts. In the Submission to the OHCHR the Maldives links impacts of climate change on Maldivian people and their property rights. In particular, increased incidents of flooding interfered with the homes, sea-level rise forced people to leave their homes and relocate. Decrease of soil fertility associated with salination from the sea-water threatens subsistence farming.⁸³ Deprivation of the use and enjoyment of land through climate change is occurring, therefore, and threatens small island states people’s human right to property.

iv) Economic, social and cultural rights

Right to health

Right to health is recognized in the Universal Declaration of Human Rights. The ICESCR refers to it as “the highest attainable standard of physical and mental health” (Art. 12, §1). The CESCR considers health as “a fundamental human right indispensable for the exercise of other human rights.”⁸⁴ The Special Rapporteur on the Human Rights and the

⁸⁰ IACHR, “Nicaragua”: The Right to Property, *Annual Report of the Inter-American Commission on Human Rights* 1993, OEA/Ser.L/V/II.85, doc.9, rev., Feb. 11, 1994, at 464-77.

⁸¹ *Ibid.*

⁸² Eide, Asbjørn; Krause, Catarina; Rosas, Allan, “Economic, Social, and Cultural Rights : A Textbook” (M. Nijhoff Publishers, 2001), p. 191; Donald M. Goldberg and Martin Wagner, “Petitioning for Adverse Impacts of Global Warming in the Inter-American Human Rights System”, in: “*Climate Change: Five Years After Kyoto*”, by V. Grover (Science Publishers, 2004), p. 191.

⁸³ Maldives Submission (2008), *supra* note 4, p. 47.

⁸⁴ CESCR General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12), 2000, § 1.

Environment noted that climate change is a serious reason for health concerns due to rapid spread of infectious diseases as a result of massive floods linked with sanitation problems and unsafe water.⁸⁵ Definition of “adverse effects of climate change” given in the UNFCCC refers to changes which have significant deleterious effects on human health and welfare (Art. 1, §1). The World Health Organization reports that extreme high temperatures can kill directly.⁸⁶ Climate change may swell the population at risk of malaria in Africa by 90 million by 2030, and the global population at risk of dengue by 2 billion by the 2080s.⁸⁷ Temperature changes, sea-level rise, storms and other impacts of climate change are not just environmental issues. They affect health which is a fundamental element of human existence.

Article 12 § 2 of the ICESCR lists examples of states obligations. The list is not exhaustive.⁸⁸ Basing on the CESCR’s comments the Article cannot be interpreted as imposing an obligation on states to ensure a good health and “protection against every possible cause of human ill health”. However, the article imposes an obligation to provide a variety of facilities, goods, services and conditions necessary for the realization of “the highest attainable standard of physical and mental health”.⁸⁹

Right to food and right to water

Climate change can affect humans’ adequate standard of living, depriving them from fresh and clean water and food. Absence of clean water and food unavoidably leads to the violation of the right to health recognized in the Article 12 of the ICESCR. Article 11 of the ICESCR recognizes the right of everyone to an adequate standard of living including adequate food, clothing and housing.

There are several important components of the right to food that should be mentioned. Firstly, food must be physically available. Availability in a region or a village alone does not mean that a person or a household has access to the food. The food needs to be accessible both physically and economically.⁹⁰ Secondly, accessibility of food is only sufficiently guaranteed when individuals or households do not have to sacrifice other essential basic needs

⁸⁵ Report of Special Rapporteur on Human Rights and the Environment, *supra* note 68, § 178.

⁸⁶ WHO Report “Protecting Health from Climate Change” (2008), p. 6.

⁸⁷ *Ibid.*

⁸⁸ CESCR, *General Comment No. 14*, *supra* note 84, § 7.

⁸⁹ *Id.*, § 9.

⁹⁰ Christoph Bals, “Climate Change, Food Security and the Right to Adequate Food” (Diakonisches Werk der EKD e.V., 2008), p. 58.

in order to get food.⁹¹ Third element is access to adequate health prevention and control of disease. Many children who die from malnutrition do have access to food, but cannot adequately utilize it, because diseases are hindering them.⁹² States have a core obligation to take the necessary action to mitigate and alleviate hunger even in times of natural or other disasters.⁹³

According to the CESCR the right to water falls within the scope of the Article 11.⁹⁴ The UN Human Development Report indicated that the hydrological patterns that determine availability of water will be transformed due to global warming and many of the world's most water stresses areas will get less water. Water flows will become less predictable and more subject to extreme events.⁹⁵

States have obligations to respect, protect and fulfil the right to food and water. Besides that states have a general obligation under the ICESCR to cooperate with other states to achieve full realization of these rights.⁹⁶ Moreover, under the UNFCCC the specific needs and special circumstances of small island states that are particularly vulnerable to the adverse effects of climate change should be given full consideration (Art. 3, §2). All states parties to the UNFCCC shall cooperate in developing and elaborating appropriate and integrated plans for coastal management and water resources, and for the protection of areas affected by floods (Art. 4 § 1(e)). The ultimate objective of the UNFCCC point out food production not being threatened by climate change is one of them as one of the objectives of the Convention (Art. 2).

v) Procedural rights

Procedural rights are contained in both human rights and environmental instruments. In particular in the UDHR, the ICCPR, American Convention of Human Rights, Rio Declaration of 1992, UN Convention on Biological Diversity, the UNFCCC, and Aarhus Convention 1998. Three procedural rights will be discussed: right to environmental information, right to participate in decision-making process and right to remedy. Procedural rights are relevant in the context of state's efforts to mitigate or adapt to climate change. Mitigation and adaptation

⁹¹ *Ibid.*

⁹² *Id.*, p. 59.

⁹³ CESCR General Comment No. 12: The Right to Adequate Food (Art. 11), 1999, § 6.

⁹⁴ CESCR General Comment No. 15: The Right to Water (Arts. 11 and 12 of the Covenant), 2003, § 3.

⁹⁵ UNDP Human Development Report 2006, p. 15.

⁹⁶ World Bank Study "Human rights and climate change: a review of the international legal dimensions" (2011), p. 17.

measures can themselves impact human rights. Procedural rights play an important role in ensuring that other human rights are protected.⁹⁷

Right to environmental information

The Principle 10 of the Rio Declaration provides that each individual shall have appropriate access to information concerning environment and opportunity to participate in decision-making processes. The Maldives Government noted:

*“Strong procedural rights and policies to improve public participation contribute to sound environmental decision-making, and can result in greater protection of both the environment and the individuals who depend on the environment for their survival.”*⁹⁸

The Special Rapporteur on the Human Rights and the Environment considers the right to information highly relevant to human rights and the environment because public access to information and obligation of states to disclose it are essential for the protection of the environment and the prevention of human rights violations related to the environment issues.⁹⁹ In view of the Special Rapporteur the right to environmental information requires that information, firstly, be relevant and comprehensive. Secondly, it must be provided in a timely manner. Thirdly, the procedures to obtain information must be simple and brief and the cost to individuals and groups is reasonable.¹⁰⁰ The right to information includes the right to be informed of any negative impacts on the environment, even without a request on the part of individual or group.¹⁰¹ Violations of human right to environmental information may occur when states use national security, “trade secrets”, *sub judice* rule¹⁰² as a ground not to disclose the information. The Special Rapporteur considers that such arguments must be reviewable to ensure that the right to information is not restricted.¹⁰³

The right to information is included in Article 19 of the UDHR and Article 19 of the ICCPR which provide “freedom to seek, receive and impart information and ideas of all kinds”. In the same way the right is granted by the American Convention in Article 13. The

⁹⁷ Maldives Submission (2008), *supra* note 4, p. 61

⁹⁸ *Id.*, p. 60.

⁹⁹ Report of Special Rapporteur on Human Rights and the Environment, *supra* note 68, § 203.

¹⁰⁰ *Id.*, § 204.

¹⁰¹ *Ibid.*

¹⁰² Under judicial consideration and therefore prohibited from public discussion elsewhere, <http://www.oxforddictionaries.com/definition/english/sub-judice> (last visited 19.05.2015).

¹⁰³ Report of Special Rapporteur on Human Rights and the Environment, *supra* note 68, § 213.

IACHR found that the article “protects the right of the individual to receive such information and the positive obligation of the State to provide it”.¹⁰⁴

The right to information is also found in environmental treaties, the UNFCCC and the CBD. However, it is noted that Article 6 of UNFCCC provides weak approach because it does not oblige states to provide information, but refers to promotion of public access to information and participation “within their respective capacities”.¹⁰⁵ The CBD does not ensure strong right to participate in decision-making process either. According to Article 14 states shall introduce “appropriate” environmental impact assessments procedures and “where appropriate” allow public participation in the procedures.¹⁰⁶

In the context of climate change it is important to note that the right to information protects not only individuals and groups, but also states themselves.¹⁰⁷ Small island states are entitled to be aware of the activities, operated by developed states or transnational enterprises, which affect the environment and may contribute to the climate change so that they can transfer this information to their population.

Right to participate in decision-making process

The need of participation of all concerned in environmental problems was established by Principle 10 of the Rio Declaration in 1992. This procedural right is incorporated in Article 21 of the UDHR and Article 25 of the ICCPR which notes that there shall be no “unreasonable restrictions” to this right. The American Convention contains similar provision in the article 23 “Right to Participate in Government”. In the European human rights system the right is limited to the right to vote in free and fair elections contained in Article 3 of the Protocol 1. It is noted that the right to participate in decision-making process is invoked far less often than the right to information and the right to remedy.¹⁰⁸ Nevertheless, the right is also contained in the UNFCCC which establish an obligation for a state to “encourage the widest participation” in the process of public awareness related to climate change” (Art. 4 § 1 (i)).

The right is closely related to the right to information because people shall be aware of the negative impacts on the environment and be able to effectively participate in its

¹⁰⁴ Claude Reyes et. al. v Chile, Judgment, IACHR (2006), § 77.

¹⁰⁵ Anton, K. Donald; Shelton, L. Dinah, *Environmental Protection and Human Rights* (Cambridge University Press, 2011), p. 357.

¹⁰⁶ *Ibid.*

¹⁰⁷ Report of Special Rapporteur on Human Rights and the Environment, *supra* note 68, §215-216.

¹⁰⁸ Anton and Shelton, *supra* note 105, p. 383.

protection. The Special Rapporteur noted that without proper environmental information, public participation is meaningless.¹⁰⁹ The Maldives Government stressed that “difficult decisions must be made on how to share the burdens of climate change.” Therefore it is important “to include the people affected in the decision-making process to determine how to respond to these threats.”¹¹⁰

Right to remedy

Human rights instruments, the UDHR (Article 8) and the ICCPR (Article 2 §3) contain the right to “an effective remedy”. However, the right to remedy is not included in the ICESCR. As other procedural rights, the right to remedy is provided in environmental instruments, e.g. in the Principle 10 of the Rio Declaration that provide “effective access to judicial and administrative proceedings, including redress and remedy”. According to the Law of the Sea Convention states are obliged to provide “relief in respect of damage caused by pollution of the marine environment by natural or juridical persons under their jurisdiction” (Art. 235, § 2). The right is closely connected with the right to access to judicial and administrative proceedings. In case the damage has been done, victims of environmental damage are entitled to seek a remedy from a responsible state.

Anton and *Shelton* noted that the right to remedy is not limited to nationals of a state. An injured person or one threatened with harm have a right of access to judicial procedure equal to that of nationals or residents.¹¹¹ It is particularly relevant in climate change context because peoples of small island states should be entitled to seek remedy not only from their own states but also from developed states. The Maldives Government noted that the right to remedy is “most directly applicable to the actions taken by governments in response to climate change, such as mitigation or adaptation measures”.¹¹²

¹⁰⁹ Report of Special Rapporteur on Human Rights and the Environment, *supra* note 68, § 218.

¹¹⁰ Maldives Submission (2008), *supra* note 4, p. 64

¹¹¹ Anton and Shelton, *supra* note 105, p. 383.

¹¹² Maldives Submission (2008), *supra* note 4, p. 65

Chapter IV. Human rights obligations concerning climate change

States play primary role in protection and promotion of human rights. It is an international duty of a state to ensure that it incorporates international human rights law norms and abides by them in its domestic policies. Paragraph 1 of the Vienna Declaration and Programme of Action reaffirms “solemn commitment of all States to fulfil their obligations to promote universal respect for, and observance and protection of, all human rights and fundamental freedoms for all”. Promotion and protection is “the first responsibility of Governments”. Human rights are a legitimate concern of the international community. This influences directly on state sovereignty and state’s control and authority over its activities within its jurisdiction is now subject to international legal review under international human rights.¹¹³ Although there are attempts to establish human rights obligations of private actors¹¹⁴ like transnational corporations¹¹⁵, states remain principal duty-holders of obligations under international human rights law.

i) Human rights obligations: to respect, to protect, to fulfil

States’ obligations in the field of human rights are contained in articles 2 of the ICCPR and the ICESCR. According to Article 2 of ICCPR states undertake “to respect and to ensure” rights contained in the Covenant “within its territory and subject to its jurisdiction”. The HRC commented on the obligations under article 2 and noted that “the Covenant generally leaves it to the States parties concerned to choose their method of implementation in their territories.”¹¹⁶ The wording “to ensure” calls for “specific activities by the States parties to enable individuals to enjoy their rights” and this interpretation related to all rights contained in the Covenant.

Article 2 of the ICESCR also refers to general obligations of states under the Covenant. However, the Committee elaborates on states human rights obligations in more details. The Committee notes that “Article 2 is of particular importance to a full understanding of the Covenant and must be seen as having a dynamic relationship with all of the other provisions

¹¹³ Evans, Malcolm D, *International law*, 4th ed. (Oxford University Press, 2014), p. 290.

¹¹⁴ UN Commission on Human Rights, *Draft Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights*, E/CN.4/Sub.2/2003/12 (2003).

¹¹⁵ According to the Draft Norms transnational corporation is “an economic entity operating in more than one country or a cluster of economic entities operating in two or more countries – whatever their legal form, whether in their home country or country of activity, and whether taken individually or collectively.”

¹¹⁶ CCPR General Comment No. 3: Article 2 (Implementation at the National Level), 1981, § 1.

of the Covenant.”¹¹⁷ Although the article acknowledges that states are restricted as to available resources to progressively realize human rights, the article encompasses the obligations of “immediate effect” like “undertaking to guarantee the rights without discrimination”.¹¹⁸ The Committee noted that the wording “to take steps” is not limited by other considerations. The full meaning of this wording can be achieved through reference to other language versions of the Covenant, where in French “to take steps” is “to act” (“s’engage à agir”), in Russian is “to adopt measures” (“принять меры”) which is similar to Spanish “a adoptar medidas”.¹¹⁹ Therefore, as the Committee noted, steps towards the full realization of the relevant rights must be taken within a reasonably short time after the Covenant entries into force for a State.¹²⁰ Analyzing the Covenants provisions, *Alston* and *Quinn* concluded that the main point of the phrase “to take steps” is an immediate application and the Covenant imposes “an immediate and readily identifiable obligation upon states parties”.¹²¹

The CESCR went even further in interpretation of states obligations concerning the right to water and the right to adequate food. The Committee developed the three-fold human rights obligations for states: obligations to respect, to protect and to fulfil. However, the obligations are not limited only to the right to water and the right to adequate food, but “any other human right” imposes these obligations.¹²²

Obligations to respect

Obligation to respect human rights is negative in nature which means that states refrain from certain actions, e.g. genocide or torture, or as the Committee puts it:

“States parties refrain from interfering directly or indirectly with the enjoyment of the right”.¹²³

In environmental and climate change context states shall refrain, e.g. from pollution of land and rivers vital for human right realization or excessive carbon dioxide emissions.

¹¹⁷ CESCR General Comment No. 3: The Nature of States Parties’ Obligations (Art. 2, Para. 1, of the Covenant), 1990, § 1.

¹¹⁸ *Ibid.*

¹¹⁹ *Id.*, § 2.

¹²⁰ *Ibid.*, § 2.

¹²¹ Alston and Quinn, “The nature and scope of states parties’ obligations under the International Covenant on Economic, Social and Cultural Rights” 9(2) *HRQ* 156 (1987), p. 166.

¹²² CESCR General Comment No. 12, *supra* note 93, § 15; CESCR General Comment No. 15, *supra* note 94, § 20.

¹²³ CESCR General Comment No. 15, *supra* note 94, § 21.

Obligation to respect may even include states' obligation to regulate activity of private actors.¹²⁴ As to the right to adequate food the Committee notes there is an obligation to ensure that states, enterprises and individuals are not taking measures as to prevent access to adequate food. The obligation includes, *inter alia*, refraining from arbitrary interference with the rights realization.¹²⁵ Under the right to health obligations to respect include a restraint from unlawfully polluting air, water and soil, e.g. through industrial waste from State-owned facilities, from using or testing nuclear, biological or chemical weapons if such testing results in the release of substances harmful to human health, and from limiting access to health services as a punitive measure.¹²⁶

Obligation to protect

Unlike negative obligation to respect, obligation to protect is positive and imposes on states a duty to act in order "to prevent third parties from interfering in any way with the enjoyment of the right".¹²⁷ Third parties include non-governmental actors, i.e. individuals, groups, corporations and other entities as well as agents acting under their authority. In the climate change context, the obligation to protect may include an obligation to regulate private emissions that contribute to climate change as well as an obligation to undertake adaptation measures to limit the harms caused by global warming.¹²⁸ The ECtHR implies in its case law that states are responsible for activities which are harmful to the environment whether they are carried out by the public authorities themselves or by a private company.¹²⁹

The CESCR commented on the right to health that obligation to protect may include the duties of States to adopt legislation or to take other measures ensuring equal access to health care and health-related services provided by third parties; to control the marketing of medical equipment and medicines by third parties; to take measures to protect all vulnerable or marginalized groups of society, in particular women, children, adolescents and older persons; to ensure that third parties do not limit people's access to health-related information and services.¹³⁰ These obligations implied by the right to health are extremely important in the

¹²⁴ Bodansky, Daniel, "Climate Change and Human Rights: Unpacking the Issues" 38 *Georgia Journal of International and Comparative Law* 511 (2010), p. 519; more on this below in the Chapter in "States' and non-state actors' obligations"

¹²⁵ CESCR General Comment No. 15, *supra* note 94, § 21.

¹²⁶ CESCR General Comment No. 14, *supra* note 84, § 34.

¹²⁷ CESCR General Comment No. 15, *supra* note 94, § 23.

¹²⁸ Bodansky, *supra* note 124, p. 520.

¹²⁹ CoE Manual on Human Rights and Environment, *supra* note 72, p. 124.

¹³⁰ CESCR General Comment No. 14, *supra* note 84, § 35.

context of climate change, because human rights to health of Small Island states' peoples in particular are threatened in case vector-borne diseases outbreak due to climate change.

Obligation to fulfil

In addition to the obligations to respect and protect obligation to fulfil human rights is imposed on states. As the CRSCR noted, under the right to health, the obligation to fulfil implies that states' duty to adopt appropriate legislative, administrative, budgetary, judicial, promotional and other measures towards the full realization of the right.¹³¹

The Committee subdivided the obligation to fulfil in three obligations: to facilitate, to provide and to promote.¹³² Obligation to facilitate imposes a duty to take positive measures that enable and assist individuals and communities to enjoy the right.¹³³ States must proactively engage in activities intended to strengthen people's access to and utilization of resources and means to ensure their livelihood.¹³⁴ States are obliged to provide the right when individuals or a group are unable, for reasons beyond their control, to realize that right themselves by the means at their disposal.¹³⁵ And finally states are obliged to promote the right, i.e. to maintain the right and to promote an appropriate education so that people are able to enjoy the right.¹³⁶ In the context of climate change an obligation to fulfil human rights can be attributable to developed states to provide assistance to small island states in order to combat climate change consequences.

It is well-established that all three aspects of obligations are attached to all human rights. The African Commission on Human Rights noted that "obligations universally apply to all rights and entail a combination of negative and positive duties" and "each layer of obligation is equally relevant to the rights in question".¹³⁷

ii) States' and non-state actors' obligations

Definition of non-state actor for the purposes of this work includes private business organizations, organizations not affiliated and not owned fully or in part by a state operating within state's territory and jurisdiction, transnational organizations, non-state armed groups.

¹³¹ *Id.*, § 33.

¹³² *Id.*, § 37; CESCR General Comment No. 15, *supra* note 94, § 25; CESCR General Comment No. 12, *supra* note 93, § 15.

¹³³ CESCR General Comment No. 14, *supra* note 84, § 37.

¹³⁴ CESCR General Comment No. 12, *supra* note 93, § 15.

¹³⁵ CESCR General Comment No. 15, *supra* note 94, § 25.

¹³⁶ *Ibid.*

¹³⁷ *Ogoniland Case*, *supra* note 46, § 44.

The definition does not include international organizations established and operating under public international law. In climate change context it is important to bear in mind that even if governmental entities stop emission of GHG, there is still a problem as large portion of GHG is emitted by private plants and factories.

Non-state actor bears no human rights obligations under international human rights law. There is no global or regional legal instrument establishing its responsibility vis-à-vis an individual. States remain sole duty-holders and guarantors of human rights protection and promotion. The International Court of Justice noted that “a State possesses the totality of international rights and duties recognized by international law”.¹³⁸

However, that does not mean that non-state actors stay without punishment for human rights violations. States are obliged to exercise its legislative, enforcement and judiciary powers in order to prevent and punish in accordance with domestic criminal law those who are responsible applying due diligence requirement. In *Velásquez Rodríguez* case the IACHR noted that “an illegal act which violates human rights and which is initially not directly imputable to a State (for example, because it is the act of a private person or because the person responsible has not been identified) can lead to international responsibility of the State, not because of the act itself, but because of the lack of due diligence to prevent the violation or to respond to it.”¹³⁹ As states are higher entities than individuals or private parties, they are indirectly responsible for non-states’ unlawful conduct.¹⁴⁰

Successful fulfilment of states obligations to protect individuals from unlawful actions of non-state actors depends on the right infringed, context of the case, means available for state for prevention and protection. The right to life, the right to health, the right to food and water, the right to property are often violated by the activity of private-owned enterprises. Therefore, states are indirectly responsible for their conduct. States are required to fully investigate cases of human rights violations and provide proportionate remedies to victims.

¹³⁸ *Reparation for Injuries Suffered in the Service of the United Nations*, Advisory Opinion, ICJ Reports 1949, § 180.

¹³⁹ *Velásquez Rodríguez Case*, Judgment, IACHR (Ser. C) No. 4 (1988), para. 172.

¹⁴⁰ Knox, “Horizontal Human Rights Law”, *102(1) AJIL* 1 (2008), p. 28.

iii) Human rights obligations of states within their jurisdiction

The OHCHR noted in its Report that human rights law provides more effective protection with regard to measures taken by States to address climate change and their impact on human rights.¹⁴¹ A state has an obligation to protect those who are under its jurisdiction from harmful and dangerous effects of climate change. Individuals rely in the first place on their own states in protection of their rights.¹⁴² It is clear that states have obligations not only to refrain from harmful and unlawful acts causing human rights violations, but also to protect their people from such acts fulfilled by non-state actors, operating under state's jurisdiction. International case law confirms such practice.¹⁴³ Harm caused by climate change is a type of harm caused by environmental degradation, therefore the environmental human rights jurisprudence could apply to it.¹⁴⁴

Knox suggests that although in climate change context obligations of a state include obligation to help its people to adapt to climate change consequences, there is no obligation under human rights law to mitigate their own GHG emissions.¹⁴⁵ In case of small island states mitigation of GHG emissions does not help a lot, because they do not emit more than 1 % of total emissions altogether.¹⁴⁶ Reduction of their emissions will not significantly contribute to climate change mitigation. Alternatively, reduction of GHG emissions by China, US, EU, Russia and other industrially developed states would contribute to climate change mitigations. However, it is difficult to argue that these states must significantly reduce their emissions in order to protect the rights of their own people under human rights law, unless there are extraterritorial obligations with respect to other people.¹⁴⁷

Nevertheless, even small island states bear responsibility to protect their people from climate change impacts, in particular to take effective measures to adapt to climate change consequences. The Maldives completed construction of the three-meter wall around its capital Male to protect people from sea surges.¹⁴⁸ Other measures to protect and ensure people's rights taken by the Maldives include improvements in medical services and infrastructure and

¹⁴¹ OHCHR Report, *supra* note 37, § 72.

¹⁴² *Id.*, § 72

¹⁴³ *Budayeva and Others v. Russia*, ECtHR (2008), *Ogoniland Case*, *supra* note 46, *Hatton and Others v. the United Kingdom*, ECtHR (2001), § 98; *Tătar v. Romania*, ECtHR (2009), § 87.

¹⁴⁴ World Bank Study (2010), *supra* note 96, p. 39.

¹⁴⁵ Knox, "Climate change and human rights law", 50(1) *VJIL* 163 (2009), p. 196

¹⁴⁶ Data available at: <http://cait.wri.org>

¹⁴⁷ Knox (2009), *supra* note 145, p. 197.

¹⁴⁸ The construction was fulfilled with the help of the Japanese Government, Maldives Submission (2008), *supra* note 4, p. 44.

other public services. Most at-risk populations can voluntarily be relocated to sites that enjoy greater protection from sea surges, less threat of extreme weather events, and greater access to medical and other services.¹⁴⁹ According to *Knox* in addition small island states have a duty to try to influence international community to reduce GHG emissions although it might be difficult in practice.¹⁵⁰

The OHCHR Report noted that “irrespective of the additional strain climate change-related events may place on available resources, States remain under an obligation to ensure the widest possible enjoyment of economic, social and cultural rights under any given circumstances. Importantly, States must, as a matter of priority, seek to satisfy core obligations and protect groups in society who are in a particularly vulnerable situation”.¹⁵¹ However, it should be stressed that “the additional strain” imposed by climate change which small island states have to handle is caused by “irresponsible environmental actions of countries beyond their borders and far beyond their effective control”.¹⁵²

Marc Limon, Advisor of the Ministry of Foreign Affairs of the Maldives noted that: *“Taken to the extreme, it suggests that even if industrialized nations defy their legal obligations under the UNFCCC and Kyoto Protocol, causing Small Island Developing States to become slowly uninhabitable, those small states nevertheless retain exactly the same level of legal obligation to fulfill the rights of their people to, for example, adequate housing and food.”*¹⁵³

Nevertheless, all states, both Small Island and industrially developed states, bear responsibility for protection of human rights within their jurisdiction irrespective of how much they contribute to climate change processes. Another question is whether states have any obligations with regard to protection of human rights extraterritorially.

iv) Extraterritorial application of human rights obligations

Without extraterritorial obligations, human rights cannot assume their proper role as the legal basis for regulating globalization and ensuring universal protection of all people and

¹⁴⁹ Measures listed are not exhausted, more in the Maldives submission (2008), p. 45.

¹⁵⁰ *Knox* (2009), *supra* note 145, p. 198.

¹⁵¹ OHCHR Report, *supra* note 37, § 77.

¹⁵² Limon, “Human rights obligations and accountability in the face of climate change”, 38(3) *Georgia Journal of International and Comparative Law* 543 (2010), p. 557

¹⁵³ *Ibid.*

groups,¹⁵⁴ in particular most vulnerable people who live less than two meters above the sea. Due to global danger climate change poses it may seem necessary to extend states' human rights obligations outside their jurisdiction and territory.¹⁵⁵

The question in this section is whether obligations under the ICCPR and the ICESCR imposed on high-emitting GHG states, apply extraterritorially, i.e. whether they have to respect, protect and fulfill human rights of the peoples living in small island states in accordance with the Covenants. The issue of extraterritorial application of the ICCPR and the ICESCR is discussed in the legal framework.

Extraterritorial application of the ICCPR

In the context of climate change the question on extraterritoriality is whether the ICCPR impose human rights obligations on state with regard to people who are not within the territory of that state. For example, does the ICCPR impose obligations under the right to life or the right to self-determination on the United States or China with respect to residents of the Maldives, Tuvalu, Palau and other small island states?

Generally speaking there are two views to interpretation of extraterritorial application of the ICCPR. The first view is that Article 2(1) should be interpreted strictly territorial as not providing extraterritorial application of human rights.¹⁵⁶ The Article 2(1) reads as follows:

“Each State Party to the present Covenant undertakes to respect and to ensure to all individuals *within its territory and subject to its jurisdiction* the rights recognized in the present Covenant, ...” (emphasis added).

The United States relied on “the plain and ordinary meaning” of Article that only those “individuals who are both *within* the territory of a State Party *and* subject to that State Party’s sovereign jurisdiction” (emphasis original).¹⁵⁷ According to the US even if to resort to the *travaux préparatoires* of the Covenant, they underscore the intent of the negotiators to limit

¹⁵⁴ CIEL / Greenpeace Study, “*Extraterritorial Obligations in the Context of Eco-destruction and Climate Change*” (2014), p. 5.

¹⁵⁵ World Bank Study (2010), *supra* note 96, p. 40

¹⁵⁶ See, for example, Dennis and Surena, “Application of the International Covenant on Civil and Political Rights in Times of Armed Conflict and Military Occupation: The Gap Between Legal *Theory and State Practice*”, 6 *European Human Rights Law Review* 714 (2008); McGoldrick, “Extraterritorial Application of the International Covenant on Civil and Political Rights”, in: *Extraterritorial application of human rights treaties*, Coomans and Kamminga (Intersentia, 2004)

¹⁵⁷ HRC Report, CCPR/C/USA/3 (2005), p. 109, available at: http://www.bayefsky.com/reports/us_ccpr_c_usa_3_2005.pdf (last visited 20.05.2015)

the territorial reach of obligations.¹⁵⁸ Discussions on extraterritorial application concern mainly military activity.¹⁵⁹ In the climate change context, according to the strictly territorial application of the ICCPR, people, living in small island states, are not within the territory of high-emitting states and are not subject to their jurisdiction, cannot claim that these states violate their right to life under the ICCPR. *Costa* noted that opponents to extraterritoriality consider human rights treaties' jurisdictional clauses within public international law framework¹⁶⁰, thus "the former will apply only in circumstances acknowledged by the latter".¹⁶¹ The literal interpretation of the Covenant shows reluctance of states to be bound by its obligations beyond their national borders.

The second view supports extraterritorial application of Article 2(1).¹⁶² On Wall Advisory Opinion the ICJ acknowledged in that "the ICCPR is applicable in respect of acts done by a State in the exercise of its jurisdiction outside its own territory".¹⁶³ The HRC noted in its General Comment that "a State party must respect and ensure the rights laid down in the Covenant to anyone within the power or effective control of that State Party".¹⁶⁴ The Government of Sweden opposed Turkey's declaration that it ratified the Covenant only with regard to its national territory:

*"It should be recalled that the duty to respect and ensure the rights recognized in the Covenant is mandatory upon State parties in relation to all individuals under their jurisdiction. A limitation to the national territory is contrary to the obligations of State parties in this regard and therefore incompatible with the object and purpose of the Covenant."*¹⁶⁵

¹⁵⁸ *Id.*, p. 110.

¹⁵⁹ *Bancović and others v Belgium* ECtHR (2001); *Al-Skeini and Others v the United Kingdom* ECtHR (2011); Gillard, "International Humanitarian Law and Extraterritorial State Conduct" in: *Extraterritorial application of human rights treaties*, Coomans and Kamminga (Intersentia, 2004); Michael, *Application of Human Rights Treaties Extraterritorially in Times of Armed Conflict and Military Occupation*, 99 AJIL 119 (2005).

¹⁶⁰ See, for example, McGoldrick, *supra* note 156, p. 42: "The meaning(s) of extraterritorial application have to be within a general framework of jurisdictional analysis in public international law".

¹⁶¹ Karen da Costa, "The Extraterritorial Application of Selected Human Rights Treaties" 14(4) *HRLR* 784 (2014), p. 12.

¹⁶² See, for example, Scheinin, "Extraterritorial Effect of the International Covenant on Civil and Political Rights", in: *Extraterritorial application of human rights treaties*, Fons Coomans and Menno T Kamminga (Intersentia, 2004); Milanovic, *Extraterritorial Application of Human Rights Treaties* (OUP, 2011); Loucaides, "Determining the Extra-territorial Effect of the European Convention: Facts, Jurisprudence and the Bankovic Case", 4 *European Human Rights Law Review* 391 (2006)

¹⁶³ Wall Advisory Opinion, *supra* note 64, §111

¹⁶⁴ HRC, General Comment No. 31 [80] The Nature of the General Legal Obligation Imposed on States Parties to the Covenant (2004), § 10.

¹⁶⁵ Sweden "Objection to the declarations and reservation made by Turkey upon ratification", 30 June 2004, UNTS Vol. 2265, A-14668, p. 222.

Milanovic is of the opinion that in light of the universality-driven object and purpose of the treaty, the ‘within its territory’ clause could be regarded as not requiring title, but control.¹⁶⁶ In the context of military activity, in order to raise the extraterritorial application of human rights it is necessary to apply “effective control”¹⁶⁷ or “overall control”¹⁶⁸ tests. Professor *Scheinin* noted that “the notion of ‘effective control’ is a part of the question: state responsibility under human rights treaties for extraterritorial acts of a state requires effective control over what?”¹⁶⁹ His proposal is a contextual assessment of the state’s factual control in respect of facts and events that allegedly constitute a violation of a human right.¹⁷⁰

In climate change context it is difficult to apply the test of effective or overall control because the main problem of climate change is that “its effects are produced not in the same place as its causes”.¹⁷¹ Making an analogy with military activities of a state outside its territory, *Boyle* suggested that “if states are responsible for their failure to control soldiers and judges abroad, *a fortiori* they should likewise be held responsible for a failure to control trans-boundary pollution and environmental harm emanating from industrial activities inside their own territory. These activities are within their jurisdiction in the obvious sense of being subject to their own law and administrative controls. Only the effects are extraterritorial.”¹⁷² Opposing *Boyle’s* conclusion, *Knox* pointed out that it is not the actions should be within state’s territory to invoke human rights obligations, but affected individuals who have to be within state’s territory and jurisdiction.¹⁷³ In case of climate change problems, they are not. However, *Knox* noted that in order to successfully argue that climate change effects amount to extraterritorial application, it is necessary to focus on concrete ways that climate change places those affected under the control of the states causing the harm.¹⁷⁴ Taking into account the fact that people lose control over their lives and they are forced to leave their homes, low-lying areas become uninhabitable, it is fair to say that they are subject to the control of high-emitting states.¹⁷⁵ Tuvalu already has claimed that the US and Australia are two major contributors to climate change effects in the Pacific region and that the Tuvaluans are

¹⁶⁶ *Milanovic*, *supra* note 162, p. 226

¹⁶⁷ *Bancovic* case ECtHR (2001)

¹⁶⁸ *Prosecutor v. Dusko Tadic (Appeal Judgement)*, IT-94-1-A, ICTY (1999)

¹⁶⁹ *Scheinin*, *supra* note 162, p. 76.

¹⁷⁰ *Ibid.*

¹⁷¹ Humphreys, Stephen “Climate change and international human rights law” in: *International Law in the Era of Climate Change*, ed. Rayfuse, Rosemary and Scott, Shirley V. (Edward Elgar, 2012), p. 38

¹⁷² Boyle, “Human rights or environmental rights? A reassessment” 18(3) *Fordham Environmental Law Journal* 471 (2007), p. 500

¹⁷³ *Knox* (2009), *supra* note 145, p. 203

¹⁷⁴ *Id.*, p. 204

¹⁷⁵ *Knox* (2009), *supra* note 145, p. 204

threatened with extinction.¹⁷⁶ Knox added that “as their territory literally disappears, they are arguably at the mercy of the larger, more powerful countries that have caused the harm”.¹⁷⁷

Article 1 of the ICCPR provides for right of people to “freely determine their political status and freely pursue their economic, social and cultural development”. The CCPR comments that the article imposes “corresponding obligations on *all* states and that *all* States parties to the Covenant should take positive action to facilitate realization of and respect for the right of peoples to self-determination”¹⁷⁸ (emphasis added). Not only small island states shall ensure the right to self-determination of their peoples, but other states also should take positive action to respect those people’s right. The obligations are interpreted for states as to “refrain from interfering in the internal affairs of other States and thereby adversely affecting the exercise of the right to self-determination.”¹⁷⁹ Thus the ICCPR clearly demonstrates extraterritorial application of the right to self-determination. Emissions of CO² which are not regulated by the UNFCCC system can be qualified as an interference in the internal affairs of small island states because it is impossible to hold the emissions strictly within national boundaries and, as far as those CO² emissions stays unregulated, they contribute to further climate change impacts on small island states. Therefore they shall be considered as a violation of the right to self-determination of small island states under the Article 1 of the ICCPR.

Moreover, Article 1 of the ICCPR is common with the Article 1 of the ICESCR, which has no jurisdictional limit. Therefore, it is absurd to suggest that the ICESCR provides extraterritorial application of the right to self-determination, and the ICCPR does not.¹⁸⁰

Extraterritorial application of the ICESCR

In contrast to the ICCPR, the ICESCR does not contain any provision on jurisdictional or territorial applicability of the treaty. The Covenant does not refer to jurisdiction or territory of a state. Extraterritorial application of the treaty is seen through international cooperation and assistance. The ICESCR refers to “international assistance and cooperation” in Articles 2(1) (general obligations), Article 11 (the right to adequate standard of living and the right to food), Article 15 (the right to participate in cultural life), Article 22 (international technical

¹⁷⁶ Coomans and Künnemann, *Cases and Concepts on Extraterritorial Obligations in the Area of Economic, Social and Cultural Rights* (Intersentia, 2012), p. 132.

¹⁷⁷ Knox (2009), *supra* note 145, p. 204

¹⁷⁸ CCPR General Comment No. 12, *supra* note 57, § 2

¹⁷⁹ *Id.*, § 6

¹⁸⁰ Knox (2009), *supra* note 145, p. 205.

assistance measures), Article 23 (international action to achieve the Covenant rights). The question is whether international cooperation is a legal obligation under the Covenant.

Obligation to international cooperation

The basis for the international cooperation under the ICESCR is article 2 (1) which provides states' commitment to "take steps, individually and through *international assistance and co-operation*, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures" (emphasis added). Although there was a general consensus during drafting stages that provision on international cooperation and assistance should be included in the Covenant¹⁸¹, "international cooperation" as an obligation is now challenged by several states, including the United Kingdom, the Czech Republic, Canada, France and Portugal. In particular, they stated that "international cooperation and assistance was an important moral obligation but not a legal entitlement, and did not interpret the Covenant to impose a legal obligation to provide development assistance or give a legal title to receive such aid".¹⁸² In the climate change context an obligation of international cooperation may be construed as an obligation to provide assistance to small island states with limited available resources to adapt or mitigate climate change impacts. It is not surprising that developed and high-emitting states do not want to be bound by Article 2(1) to provide such assistance. Adaptive measures cost millions dollars, e.g. improvement of water and sanitation system in Maldives cost about 20 USD million, construction of the sea wall – about 70 USD million.¹⁸³ While there are no legal obligations for states to provide a financial support, such assistance stays within political will of high-emitting states. It is worth mentioning that obligation to international cooperation includes an obligation for developing states to seek assistance where needed and ensure that assistance programs are monitored.¹⁸⁴

Alston and Quinn did an analysis of the preparatory works of the Article 2 (1) of the ICESCR and they concluded that "it is difficult, if not impossible, to sustain the argument that

¹⁸¹ Skogly, *Beyond national borders: states' human rights obligations in international cooperation* (Intersentia, 2006), p. 85.

¹⁸² OHCHR Report of the Open-ended Working Group established with a view to considering options regarding the elaboration of an optional protocol to the International Covenant on Economic, Social and Cultural Rights, E/CN.4/2005/52, § 76

¹⁸³ Maldives Submission (2008), *supra* note 4, p. 71-72.

¹⁸⁴ McInerney-Lankford, "Human rights and climate change: reflections on international legal issues and potential policy relevance" in: *Threatened Island Nations ...*, ed. Gerrard (Cambridge, 2013), p. 227

the commitment to international cooperation contained in the Covenant can accurately be characterized as a legally binding obligation upon any particular state to provide any particular form of assistance.” However, they add that “In the context of a given right it may, according to the circumstances, be possible to identify obligations to cooperate internationally that would appear to be mandatory on the basis of the undertaking contained in Article 2(1) of the Covenant.”¹⁸⁵ In contrast, *Knox* considers Article 2(1) containing an obligation to cooperate. He refers to the General comment of the CESCR where it emphasized that “in accordance with Articles 55 and 56 of the Charter of the United Nations, with well-established principles of international law, and with the provisions of the Covenant itself, international cooperation for development and thus for the realization of economic, social and cultural rights is an obligation of all States.”¹⁸⁶ It is worth to cite *Knox’s* view on the role of international cooperation in the climate change context: “Because greenhouse gases emitted anywhere on the planet contribute to global warming everywhere on the planet, it is impossible to effectively mitigate climate change without coordinated international action. In this instance, international cooperation must take the primary, rather than the secondary, role.”¹⁸⁷ However, due to soft law character of the Committee’s general comments, they do not bind states. *Commans* suggests that international obligations may be applicable if a developed state signs a bilateral agreement to financially assist a developing state or to support development projects.¹⁸⁸

Extraterritorial obligation to respect, protect and fulfil human rights

Two substantive articles of the Covenant contain specific obligations to respect, protect and fulfil corresponding human rights referencing to international cooperation.

One of them is Article 11(1) that provides: “The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.” Article 11, a substantive provision of the Covenant, guarantees the right to “adequate standard of living, including adequate food, clothing and housing”. Commenting this article the CESCR noted that international cooperation plays an essential role in achieving full realization of the right to food. It implies that states “should take steps to respect the enjoyment of the right to food in other countries,

¹⁸⁵ Alston and Quinn, *supra* note 121, p. 191.

¹⁸⁶ CESCR General Comment No. 3: The Nature of States Parties’ Obligations (1990) § 14.

¹⁸⁷ *Knox* (2009), *supra* note 145, p. 213.

¹⁸⁸ Coomans, *Extraterritorial application of human rights treaties*, (Intersentia, 2004), p. 197

to protect that right, to facilitate access to food and to provide the necessary aid when required.”¹⁸⁹ While it is not clear whether Article 11 imposes a positive obligation of a state to fulfil specific rights outside its territory and jurisdiction, there is at least a negative obligation to respect the rights. The Committee noted that “States parties should refrain at all times from food embargoes or similar measures which endanger conditions for food production and access to food in other countries.”¹⁹⁰ The same position is elaborated on the right to water, where the Committee pointed out that States are required “to refrain from actions that interfere, directly or indirectly, with the enjoyment of the right to water in other countries” and “to refrain at all times from imposing embargoes or similar measures, that prevent the supply of water, as well as goods and services essential for securing the right to water. Water should never be used as an instrument of political and economic pressure.”¹⁹¹ As to obligation to protect, states should take steps to prevent violations of the right to water¹⁹², the right to health¹⁹³ and the right to food¹⁹⁴ in other countries by their own citizens and companies.

The most complicated is the obligation to fulfil the Covenants rights in third states, whether states are required to contribute to the realization of the rights by providing aid and financial support to other states. For small island states this issue is of special significance due to the fact that climate change threatens their very existence. The CESCR fully described the obligation to fulfil the right to health in other states in its General comment No. 14. In particular, the Committee mentioned that states should facilitate access to essential health facilities, goods and services in other countries, wherever possible, and provide the necessary aid when required; should ensure that the right to health is given due attention in international agreements and, to that end, should consider the development of further legal instruments. At the same time parties should take steps to ensure that these instruments do not adversely impact upon the right to health; states parties, members of international financial institutions (IMF, the World Bank) and regional development banks, should pay greater attention to the protection of the right to health in influencing the lending policies, credit agreements and international measures of these institutions.¹⁹⁵ However, the right to health is contained in Article 12 which makes no reference to international cooperation. And due to soft law

¹⁸⁹ CESCR General Comment No. 12, *supra* note 93, § 36.

¹⁹⁰ *Id.*, § 37

¹⁹¹ CESCR General Comment No. 15, *supra* note 94, § 31-32.

¹⁹² *Id.*, § 33

¹⁹³ CESCR General Comment No. 14, *supra* note 84, § 39.

¹⁹⁴ CESCR General Comment No. 12, *supra* note 93, § 37.

¹⁹⁵ CESCR General Comment No. 14, *supra* note 84, § 39.

character of the Committee's comments, obligation to facilitate access to health facilities in small island states has weak legal force.

The second substantive article that contains reference to international cooperation is Article 15 (right to benefits from cultural and scientific work), providing in § 4 that states “recognize the benefits to be derived from the encouragement and development of international contacts and co-operation in the scientific and cultural fields”. It is noted that wording of the article is weaker than that found in Article 11 or 15. In other words, the Article is providing just recognition of international contacts and cooperation benefits.¹⁹⁶ The scope of this article is under-researched, and therefore, provides little space to claims of extraterritorial application of obligations deriving from it.

The ICESCR provides stronger basis for extraterritorial application of human rights than the ICCPR. Although developed states are reluctant to recognize an obligation to provide assistance to other states, international cooperation is recognized by the UN Charter, as well as explicitly envisaged by global human rights treaties.¹⁹⁷

The OHCHR noted that human rights standards and principles are consistent with “the principle of common but differentiated responsibilities” contained in Article 3 of the UNFCCC and that “international cooperation is not merely a matter of the obligations of a State towards other States, but also of the obligations towards individuals.”¹⁹⁸ While it is clear that there is a legal requirement in international law to cooperate in order to address properly climate change impacts, international cooperation faces political obstacles. It is noted that it makes little sense for a state to reduce its CO₂ emissions without assurances that other states also reduce them.¹⁹⁹ That is why international cooperation is required. In the climate change context there is an obligation for all states to cooperate and to provide assistance and facilities to fulfil particular human rights in small island states. Irrespective of jurisdiction and territory protection of all peoples from adverse impacts of climate change should be a purpose of the climate change negotiations. In climate change context human rights law provides a standard to achieve.²⁰⁰

¹⁹⁶ Skogly, *supra* note 181, p. 94.

¹⁹⁷ ICESCR, arts. 2(1), 11(2), 15(4), 22, 23; Convention on the Rights of the Child, arts. 4 and 24(4); CRPD, art. 32; Declaration on the Right to Development, arts. 3, 4, 6.

¹⁹⁸ OHCHR Report, *supra* note 37, § 87.

¹⁹⁹ Knox (2009), *supra* note 145, p. 211.

²⁰⁰ *Id.*, p. 213.

Conclusion

Climate change impacts, in particular sea-level rise, temperature change, ocean acidification, represent a serious threat for small island states' well-being. Climate change adverse impacts affect fundamental human rights, such as right to life, right to health, right to food and water, right to property etc. The problem is that developed and industrialized states, like USA, Russia, China, India, the EU, are main contributors to climate change. However, they are not that vulnerable to its impacts like small island states (Maldives, Tuvalu, Kiribati and many more). Although the small island states produce less than 1% of total CO₂ emissions per year, their population are the first who experience all hardship of sea level rise, coastal erosion, temperature change etc.

All states are primary bearers of human rights obligations. They are responsible to respect, protect and fulfil human rights. These obligations are provided in basic human rights instruments, the ICCPR and ICESCR, highlighted in various decisions of the ECHR, IACHR and ACHR, and elaborated in comments to the Covenants by CESCR and CCPR. States are indirectly responsible for non-state actors' activity. Undoubtedly small island states have human rights obligations vis-a-vis their own peoples. However, they are not able to handle climate change impacts alone.

The ICCPR provides its application just "*within its territory and subject to its jurisdiction*" what makes it difficult to claim extraterritorial application of human rights obligations of developed states. In contrast, the ICESCR does not contain any provision on jurisdictional or territorial applicability of the treaty. Extraterritorial application of the treaty is possible through reference to international cooperation and assistance. The US State Secretary recently noted that "there is no way the United States--nor any other country--could possibly address climate change alone."²⁰¹ And that is true, especially for small island states. Therefore, my work suggests that human rights law provides a standard to achieve in climate change combat, and the ICESCR provides a strong basis for international cooperation in climate change issues.

²⁰¹ Submission of the U.S. Intended Nationally Determined Contribution to the United Nations Framework Convention on Climate Change, 31 March 2015, at <http://www.state.gov/secretary/remarks/2015/03/240007.htm>

BIBLIOGRAPHY

UN Treaties and declarations

United Nations Framework Convention on Climate Change (UNFCCC), United Nations Treaty Series, vol. 1771, p. 107, 1992

Council of Europe, *European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14*, 4 November 1950, ETS 5

Organization of African Unity, *African Charter on Human and Peoples' Rights (Banjul Charter)*, 27 June 1981, CAB/LEG/67/3 rev. 5, 21 ILM 58 (1982)

UN General Assembly, *International Covenant on Civil and Political Rights*, United Nations Treaty Series, vol. 999, p. 171, 1966

UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, United Nations Treaty Series, vol. 993, p. 3, 1966

UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations Treaty Series, vol. 1577, p. 3

UN General Assembly, *Convention on the Rights of Persons with Disabilities*, 24 January 2007, A/RES/61/106

UN General Assembly, *Declaration on the Right to Development*, 4 December 1986, A/RES/41/128

UN General Assembly, Rio Declaration on Environment and Development, 1992, UN Doc. A/CONF.151/26 (vol. I) / 31 ILM 874 (1992)

Declaration of the United Nations Conference on the Human Environment, 1972, U.N. Doc. A/Conf.48/14/Rev. 1(1973), 11 ILM 1416 (1972) (Stockholm Declaration)

Resolutions, Declarations, Comments, Drafts and other documents

UN General Assembly, Resolution A/RES/45/94, 14 December 1990 at: <http://www.un.org/documents/ga/res/45/a45r094.htm> (last visited on 23.05.2015)

UN General Assembly, *Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations*, 24 October 1970, A/RES/2625(XXV)

UN Commission on Human Rights, Draft Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights, E/CN.4/Sub.2/2003/12 (2003)

Male's Declaration on the Human Dimension of Global Climate Change, 14 November

2007, at: http://www.ciel.org/Publications/Male_Declaration_Nov07.pdf (last visited on 14.05.2015)

HRC, General Comment No. 31 [80] The Nature of the General Legal Obligation Imposed on States Parties to the Covenant (2004)

CESCR General Comment No. 15: The Right to Water (Arts. 11 and 12 of the Covenant), 2003

CESCR General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12), 2000

CESCR General Comment No. 12: The Right to Adequate Food (Art. 11), 1999

CESCR General Comment No. 3: The Nature of States Parties' Obligations (Art. 2, Para. 1, of the Covenant) 1990

CCPR General Comment No. 12: Article 1 (Right to Self-determination) The Right to Self-determination of Peoples, 1984

CCPR General Comment No. 6: Article 6 (Right to Life), 1982

CCPR General Comment No. 3: Article 2 (Implementation at the National Level), 1981

OHCHR, *The Right to Adequate Housing*, Fact Sheet No. 21/Rev.1, at: http://www.ohchr.org/Documents/Publications/FS21_rev_1_Housing_en.pdf (last visited on 23.05.2015)

UN Human Rights Committee (HRC), *Concluding Observations: Canada*, 7 April 1999, CCPR/C/79/Add.105

Case law

ICJ

Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, ICJ Reports 2004, p. 136

Case concerning the Gabčíkovo-Nagymaros Project (Hungary/Slovakia), ICJ Reports 1997, p. 7

East Timor (Portugal v. Australia), Judgment, I. C.J. Reports 1995, p. 90

Barcelona Traction, Light and Power Company, Limited, Judgment, I.C.J. Reports 1970, p. 3

Reparation for Injuries Suffered in the Service of the United Nations, Advisory Opinion, ICJ Reports 1949, p. 174

ECtHR

Tătar v. Romania, ECtHR (2009)

Budayeva and Others v. Russia, ECtHR (2008)

Murillo Saldias v. Spain, ECtHR (2006)

Öneryıldız v. Turkey, ECHR (2004)

Paul and Audrey Edwards v. the United Kingdom, ECtHR (2002)

Hatton and Others v. the United Kingdom, ECtHR (2001)

L.C.B. v. the United Kingdom, ECtHR (1998)

Guerra et al. v. Italy, ECtHR (1998)

López Ostra v. Spain, ECtHR (1994)

IACHR and ACHR

Claude Reyes et. al. v Chile, Judgment, IACHR (2006)

The Social and Economic Rights Action Center and the Center for Economic and Social Rights v. Nigeria, African Commission on Human and Peoples' Rights, Comm. No. 155/96 (2001), at: <http://www1.umn.edu/humanrts/africa/comcases/155-96.html> (last visited on 15.05.2015)

Velasquez Rodriguez Case, Judgment, IACHR (Ser. C) No. 4 (1988)

Reports, submissions

OHCHR, *Report on the relationship between climate change and human rights* (2009), A/HRC/10/61, at: <http://www.ohchr.org/EN/Issues/HRAndClimateChange/Pages/Study.aspx> (last visited on 23.05.2015)

OHCHR, *Report of the Open-ended Working Group established with a view to considering options regarding the elaboration of an optional protocol to the International Covenant on Economic, Social and Cultural Rights*, E/CN.4/2005/52 (2005) at:

<http://www2.ohchr.org/english/bodies/chr/sessions/61/lisdocs.htm> (last visited 20.05.2015)

Submission of the Maldives to the Office of the UN High Commissioner for Human Rights under Resolution HRC 7/23, (2008), at:

http://www.ohchr.org/Documents/Issues/ClimateChange/Submissions/Maldives_Submission.pdf (last visited 07.05.2015)

IPCC, *Climate Change 2014: Impacts, Adaptation, and Vulnerability. Part A: Global and Sectoral Aspects*. Contribution of Working Group II to the Fifth Assessment Report (IPCC 5AP)

UNDP, Human Development Report, “*Sustaining Human Progress: Reducing*

Vulnerabilities and Building Resilience”, (2014)

UNDP Human Development Report (2006), at:
<http://hdr.undp.org/sites/default/files/reports/267/hdr06-complete.pdf> (last visited on 19.05.2015)

World Bank Study “Human rights and climate change: a review of the international legal dimensions” (2011)

UNFCCC Conference of the Parties, Report on its sixteenth session, Cancun, 29 November - 10 December 2010, FCCC/CP/2010/7/Add.1, at:
<http://unfccc.int/resource/docs/2010/cop16/eng/07a01.pdf> (last visited on 14.05.2015)

FAO, “*Marine fishery resources of the Pacific Islands*”, Fisheries and Aquaculture Technical Paper No. 537 (2010)

United Nations Office of the High Representative for the Least Developed Countries, Landlocked Developing Countries and Small Island Developing States Study “*The Impact of Climate Change on the Development Prospects of the Least Developed Countries and Small Island Developing States*”, (2009) at: <http://unohrrls.org/custom-content/uploads/2013/11/The-Impact-of-Climate-Change-on-The-Development-Prospects-of-the-Least-Developed-Countries-and-Small-Island-Developing-States1.pdf> (last visited on 23.05.2015)

WHO Report “Protecting Health from Climate Change” (2008), at:
<http://www.who.int/globalchange/publications/reports/9789241598880/en/> (last visited on 19.05.2015)

IACHR, “Nicaragua”: The Right to Property, *Annual Report of the Inter-American Commission on Human Rights* 1993, OEA/Ser.L/V/II.85, doc.9, rev. (1994)

Manual on Human Rights and Environment, 2nd ed., (Strasbourg: Council of Europe Publishing, 2012)

Report by Special Rapporteur Mrs. Fatma Zohra Ksentini on Human Rights and the Environment, UNESCO E/CN.4/Sub.2/1994/9, 6 July 1994

Center for International Environmental Law (CIEL) and Greenpeace Study, *Extraterritorial Obligations in the Context of Eco-destruction and Climate Change* (2014), at: http://www.ciel.org/Publications/ETOs_CC_16Jan15.pdf (last visited 20.05.2015)

Sheila Watt-Cloutier, *Petition to the Inter American Commission on Human Rights Seeking Relief from Violations Resulting from Global Warming Caused by Acts and Omissions of the United States*, 7 December 2005, at:

http://www.ciel.org/Publications/ICC_Petition_7Dec05.pdf (last visited on 15.05.2015).

Literature

Alston, Philip; Quinn, Gerard, “The nature and scope of states parties' obligations under the International Covenant on Economic, Social and Cultural Rights” 9(2) *Human Rights Quarterly* 156 (1987)

Anton, K. Donald; Shelton, L. Dinah, *Environmental Protection and Human Rights* (Cambridge University Press, 2011)

Bals, Christoph, “Climate Change, Food Security and the Right to Adequate Food” (Diakonisches Werk der EKD e.V., 2008), at: <http://germanwatch.org/klima/climfood.pdf> (last visited on 15.05.2015)

Bell, D. “Does anthropogenic climate change violate human rights?” 14(2) *Critical Review of International Social and Political Philosophy* 99 (2011)

Bodansky, Daniel, “Climate Change and Human Rights: Unpacking the Issues” 38 *Georgia Journal of International and Comparative Law* 511 (2010)

Boyle, Alan E., “Human rights or environmental rights? A reassessment” 18(3) *Fordham Environmental Law Journal* 471 (2007)

Boyle, Alan E.; Anderson, Michael R., *Human Rights Approaches to Environmental Protection*, (Clarendon Press, 1996)

Brownlie I., *Principles of Public International Law*, 7th ed., (Oxford University Press, 2008)

Caney, Simon, ‘Human Rights, Responsibilities and Climate Change’ in: Charles R. Beitz and Robert E. Goodin eds., *Global Basic Rights* (Oxford University Press, 2009)

Chunting, Xue, “Causes of Land Loss in Tuvalu, a Small Island Nation in the Pacific”, 4(2) *Journal of Ocean University of China*, 115 (2005).

Church, John, “Understanding sea level rise and variability”, Vol. 88 (4) *Eos*, Transactions American Geophysical Union 43 (2007)

Coomans, Fons; Künnemann, Rolf, *Cases and Concepts on Extraterritorial Obligations in the Area of Economic, Social and Cultural Rights* (Intersentia, 2012)

Coomans, Fons; Kamminga, Menno T., *Extraterritorial application of human rights treaties*, (Intersentia, 2004)

Da Costa, Karen, “The Extraterritorial Application of Selected Human Rights Treaties” 14(4) *Human Rights Law Review* 784 (2014)

Eide, Asbjørn; Krause, Catarina; Rosas, Allan, “Economic, Social, and Cultural Rights : A Textbook” (M. Nijhoff Publishers, 2001)

Evans, Malcolm D, International law, 4th ed. (Oxford University Press, 2014)

Gazeau, Frédéric et al. “Impacts of ocean acidification on marine shelled molluscs”, 160 *Marine Biology* 2207 (2013).

Gillard, Emanuela-Chiara, “International Humanitarian Law and Extraterritorial State Conduct” in: *Extraterritorial application of human rights treaties*, Fons Coomans and Menno T. Kamminga (Intersentia, 2004)

Goldberg, Donald M. and Wagner, Martin, “Petitioning for Adverse Impacts of Global Warming in the Inter-American Human Rights System”, in: “*Climate Change: Five Years After Kyoto*”, by V. Grover (Science Publishers, 2004)

Gordon, Jessica “Inter-American Commission on Human Rights to Hold hearing after Rejecting Inuit Climate Change Petition” 7(2) *Sustainable Development Law & Policy* 55 (2007)

Humphreys, Stephen “Climate change and international human rights law” in: *International Law in the Era of Climate Change*, ed. Rayfuse, Rosemary and Scott, Shirley V. (Edward Elgar, 2012)

Knox, John H., “Climate change and human rights law”, 50(1) *Virginia Journal of International Law* 163 (2009)

Knox, John H., “Horizontal Human Rights Law”, 102(1) *American journal of international law* 1 (2008)

Lang, Winfried, “UN-Principles and International Environmental Law”, 3 *Max Planck Yearbook of United Nations Law* 157 (1998)

Limon, Marc, “Human rights obligations and accountability in the face of climate change”, 38(3) *Georgia Journal of International and Comparative Law* 543 (2010)

Loucaides, Loukis J., “Determining the Extra-territorial Effect of the European Convention: Facts, Jurisprudence and the Bankovic Case”, 4 *European Human Rights Law Review* 391 (2006)

McGoldrick D., “Extraterritorial Application of the International Covenant on Civil and Political Rights”, in: *Extraterritorial application of human rights treaties*, Fons Coomans and Menno T Kamminga (Intersentia, 2004)

McInerney-Lankford, Siobhan, “Human rights and climate change: reflections on international legal issues and potential policy relevance” in: *Threatened Island Nations Legal*

Implications of Rising Seas and a Changing Climate, ed. Michael B. Gerrard (Cambridge, 2013)

Michael, Dennis J.; Andre, Surena M., “Application of the International Covenant on Civil and Political Rights in Times of Armed Conflict and Military Occupation: The Gap Between Legal Theory and State Practice”, 6 *European Human Rights Law Review* 714 (2008)

Michael, Dennis J., “Application of Human Rights Treaties Extraterritorially in Times of Armed Conflict and Military Occupation”, 99 *American journal of international law* 119 (2005)

Milanovic, Marko, *Extraterritorial Application of Human Rights Treaties: Law, Principles, and Policy: Law, Principles, and Policy* (Oxford University Press, 2011)

Scheinin M., “Extraterritorial Effect of the International Covenant on Civil and Political Rights”, in: *Extraterritorial application of human rights treaties*, Fons Coomans and Menno T Kamminga (Intersentia, 2004)

Shue, Henry, “*Basic rights: subsistence, affluence, and U.S. foreign policy*”, 2nd ed. (Princeton University Press, 1996)

Skogly, Sigrun I., *Beyond national borders: states' human rights obligations in international cooperation* (Intersentia, 2006)

Internet sources

<http://www.telegraph.co.uk>

<http://www.oxforddictionaries.com/>

<http://cait.wri.org>

<http://www.burmalibrary.org/>

<http://www.independent.co.uk/>

<http://www.businessinsider.com/>

<http://unohrlls.org/>

<http://www.fao.org/home/en/>

<http://www.undp.org/>

<http://www.ohchr.org/EN/Pages/WelcomePage.aspx>

<http://www.earth-policy.org/>

<http://archives.starbulletin.com/>

<http://www.pmel.noaa.gov/>