

ANZSIL Conference Keynote 2019

Climate Change, the Critical Decade and the Rule of Law

*Christina Voigt**

Keywords: transformative change, climate change, international law, Paris Agreement, due diligence, cooperation, multilateralism

I. Introduction

I am very grateful for the invitation to give a keynote speech on the topic of climate change and the role of international law. In my opinion, this is a topic which could not be more timely and relevant to an audience of international lawyers. Addressing climate change and the loss of nature will require a global transformation within a rapidly narrowing window of opportunity. International law is an important tool in this transformation and international lawyers the ones to apply it.

The topic of my talk is *International Law Futures: Climate Change, the Critical Decade and the Rule of Law*—but it is really about *challenges, choices, and consequences*—and the role of international law in those.

The combined and mutually enhancing *challenges* of run-away climate change, global biodiversity loss, changing bio-chemical properties of the oceans, and the massive destruction of marine and terrestrial ecosystems undermine the basis of (relative) global stability and order. They threaten human welfare and security, unravel economic systems, and destroy the very ‘book of life’ before we could even read it.¹

But science tells us that we (still) have a *choice*: a choice between getting our act together and addressing these challenges in a collective and effective manner or a world which will look *immeasurably* different from the current one; from the one in which complex human systems, including the international legal system, have evolved.

The time-span for making informed decisions based on choice is short. According to scientists, a fundamental, system-wide reorganisation across technological, economic and social factors needs to happen within the next 10–15 years; the ‘critical decade’.²

Thereafter, such transformative changes may come too late and we will have to deal with the *consequences* of our collective inactions, which most likely will be unravelling and catastrophic. These consequences could set an end to the order as we know it and give rise to unilateralism,

* Professor, University of Oslo, Department of Public and International Law (christina.voigt@jus.uio.no)

¹ Johan Rockström, presentation at Trondheim Conference on Biodiversity, 4 July 2019 (on file with the author). See also, J. Rockström, K. Richardson, W. Steffen, G. Mace, ‘Planetary Boundaries: Separating Fact from Fiction. A Response to Montoya et al.’ (2018) 33(4) *Trends in Ecology & Evolution* 232.

² Intergovernmental Panel on Climate Change, *Global Warming of 1.5°C: An IPCC Special Report on the impacts of global warming of 1.5°C above pre-industrial levels and related global greenhouse gas emission pathways, in the context of strengthening the global response to the threat of climate change, sustainable development, and efforts to eradicate poverty* (Report, October 2018) Summary for Policymakers 3–24 (‘IPCC’).

instability, insecurity and the use of might (if not chaos and anarchy). In short: We are facing *the* ‘critical decade’ to create starkly different futures.

Law, including international law, is an important lever in the choice between those possible ‘futures’. It can help to tilt the scale towards sustainable development and transformative change by, *inter alia*, spurring global action to limit climate change and biodiversity loss. *Or* it will become our contingency plan if we don’t succeed. In that situation, international law might be our last (best) hope to deal with the devastating consequences of *collective inaction* on climate change and destruction of nature; a tool that will have to handle the ‘new normal’ of massive global migration, the increased threat or even use of force, conflicts over access to food, water, resources and arable land and a sharp surge in global inequality.

It is perhaps safe to say that the role of international law has, most likely, never been more important. So, let me talk about *challenges, choices and consequences* of this critical decade in more detail.

II. Challenges

Scientists have over many decades warned about the human impact on natural systems. But they have *never* spoken so clearly and never with greater certainty and urgency as in the recent reports of the Intergovernmental Panel on Climate Change (IPCC)³ and the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES).⁴

The IPCC states that global warming is likely to reach 1.5 degrees Centigrade above pre-industrial levels between 2030 and 2050, if current rates continue.⁵ Such warming will increase the probability of severe droughts and heavy precipitation in several regions, lead to sea level rise, ocean de-oxygenation and increased ocean acidity⁶, impact biodiversity and ecosystems and create significant climate-related risks to health, livelihoods, food security, water supply and human security. The impacts intensify and self-enforce with greater warming. For example, already observed ice loss from Antarctica may be the onset of an irreversible ice sheet instability which has the potential to lead to sea-level rise of several meters within a few centuries.⁷ Moreover, at global warming of 1.5 degrees, most natural and human systems will reach the limit of their adaptive capacity; meaning that warming above and beyond leads to abrupt and unpredictable change. And yet, we are currently headed towards a “3–4 degrees Centigrade world”.⁸

The IPBES report shows that nature across the globe has been significantly altered by humans with more species threatened by extinction *than ever before*.⁹ This poses a serious risk to global food security and the resilience of agricultural systems. The rate of global change in nature and natural

³ Ibid; Intergovernmental Panel on Climate Change, *Special report on climate change, desertification, land degradation, sustainable land management, food security, and greenhouse gas fluxes in terrestrial ecosystems*, Summary for Policymakers (report, 2019) (‘IPCC 2019a’); Intergovernmental Panel on Climate Change, *Special Report on the Ocean and Cryosphere in a Changing Climate* (Report, September 2019), Summary for Policymakers (‘IPCC 2019b’).

⁴ Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services, *Report of the Plenary of the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services on the work of its seventh session* (Report, IPBES/7/10/Add.1, 29 May 2019) (‘IPBES’).

⁵ IPCC (n 2) 4.

⁶ IPCC 2019b (n 3).

⁷ IPCC 2019b (n3), 11.

⁸ United Nations Environment Programme, *Emissions Gap Report 2018* (Report, November 2018)

<https://wedocs.unep.org/bitstream/handle/20.500.11822/26895/EGR2018_FullReport_EN.pdf?sequence=1&isAllowed=y> (‘UNEP’).

⁹ IPBES (n 4) 4.

systems is *unprecedented* in human history with the largest global impact coming from changes in land and sea use, direct exploitation of organisms, pollution and climate change.

This situation means that most societal and environmental goals in international agreements, such as those embodied in the Aichi Targets under the UN Convention on Biological Diversity¹⁰ and the Sustainable Development Goals will most likely not be achieved. This will also undermine other goals, such as those specified in the Paris Agreement, of “holding the increase in the global average temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels”.¹¹

These reports underline the fact that we have entered a new geological age, sometimes referred to as the *Anthropocene*, in which humanity has become a driving force in changing natural systems, with severe, even disruptive, impacts on human and ecological systems.¹²

III. Choices

In this situation, which *choices* do we have? Science, surprisingly, gives us an optimistic answer: We (still) *have* a choice.

Coming back to the 2018 IPCC report, it tells in *very* clear terms what needs to be done. Global net emissions need to get down to *zero* around 2050 in order to keep global warming somewhere close to 1.5 degrees Centigrade.¹³ This means that fossil-fuel based emissions have to be entirely phased out in about 30 years. In any case, in the second half of this century, net emissions have to be *negative*; meaning that we will have to pump more CO₂ out of the air than is being emitted.

Similarly, the IPBES report states that nature can be conserved, restored and used sustainably if the main drivers are addressed.¹⁴ If the conversion of forests into agricultural land and development is halted and reversed, pollution and invasive species tackled, climate change mitigated—we might be able to bend the curve of biodiversity loss.

However, all reports stress that this can only be achieved through *transformative change*: the fundamental system-wide reorganisation across economic, social and technological factors, including paradigms, goals and values.¹⁵ The IPCC specifies that these *systems transitions* are unprecedented in terms of scale, but not necessarily in terms of speed.¹⁶ In other words, we have done quick changes before, but never at this scale.

And all reports call on *strengthening the global response* and enhancing *international cooperation*. Climate change and global biodiversity loss as collective action problems can only be effectively addressed through transformative international governance: a system of intensifying international cooperation, coordination management and implementation support. Also, the temporal scales of climate change and biodiversity loss exceed time horizons of most ‘traditional’ governance

¹⁰ *Convention on Biological Diversity*, opened for signature 5 June 1992, 1760 UNTS 79 (entered into force 29 December 1993).

¹¹ *Paris Agreement*, opened for signature 22 April 2016, [2016] ATS 24 (entered into force 4 November 2016), article 2.1(a).

¹² P.J. Crutzen, ‘Geology of mankind: The Anthropocene’ (2002) 415 *Nature* 23. See also, N. Robinson, ‘Evolved Norms: A Canon for the Anthropocene’ in Christina Voigt (ed), *Rule of Law for Nature* (Cambridge University Press, 2013) 46; T. Sterner, E.B. Barbier, I. Bateman, et. al., ‘Policy design for the Anthropocene’ (2019) 2 *Nature Sustainability* 14.

¹³ IPCC (n 2) 12.

¹⁴ IPBES (n 4) 8–9.

¹⁵ *Ibid* 6.

¹⁶ IPCC (n 2) 15.

arrangements, which challenges the ability to prepare for and respond to long-term changes. What is necessary are profound transformative changes in governance arrangements that tackle complex risks across scales, jurisdictions, sectors, policy domains and planning horizons.¹⁷ In other words, there is a *crucial role for international law*—and also for lawyers—not only in creating a global level playing field that avoids free riding, but in creating the legal structure for a coordinated response commensurate with these global challenges.

And here is our choice: we either put all our efforts into such transformative change and pull it off—or we don't. The consequences will be drastically different.

What would be the role of international law in bringing about transformative change? I suggest that there are, at least, two (continuous) roles, corresponding to an immediate, and a more longer-term timeframe.

(a) Role of International Law: Short-term

Immediately, international law provides a starting point—but its shortcomings have to be addressed. International environmental law consists of hundreds of treaties, but one important common denominator, highlighted by the UN Secretary General's Report on 'Gaps in International Environmental Law', is the *lack of effective implementation* of those treaties.¹⁸ In this context, Martti Koskenniemi stated already some time ago that '[w]hat is needed now is less the adoption of new instruments than more effective implementation of existing ones'.¹⁹

Most of the Aichi Biodiversity Targets under the Convention on Biological Diversity will not be achieved due to lacking implementation of the Convention.²⁰ The Nationally Determined Contributions (NDCs) of Parties to the Paris Agreement are not yet ambitious enough to reach the global goal set up by that Agreement, but will need to progress and increase in their level of climate change mitigation ambition every five years in order for Parties to collectively achieve the long-term temperature goals set out in article 2.²¹

Lawyers need to investigate the reasons for inadequate implementation. There can be many. There can be financial, technological or capacity constraints or the absence of political will or of effective enforcement regimes. Yet, there can be legal reasons too. They can manifest themselves in inadequate or missing transformation of international obligations into national law; conflicting legal norms or contestations in courts. Here, lawyers have an important role to play in creating and supporting the legal and regulatory environment for effective implementation; if necessary through courts!

We should, however, be careful to not conflate the critique of inadequate implementation with the critique of the existing international law itself. For example, the problem with the Aichi Targets were not the targets—but the lack of processes and arrangements to break them down to effective domestic efforts. The problem with insufficient NDCs under the Paris Agreement is not the Agreement but the

¹⁷ IPCC 2019b (n 3), 34.

¹⁸ *Gaps in International Environmental Law and Environment-related Instruments: Towards a Global Pact for the Environment – Report of the Secretary-General*, UN Doc A/73/419 (30 November 2018) ('*Gaps in International Environmental Law*').

¹⁹ M. Koskenniemi, 'Breach of Treaty or Non-Compliance? Reflections on the Enforcement of the Montreal Protocol' (1992) 3(1) *Yearbook of International Environmental Law* 123, 123.

²⁰ Conference of the Parties to the Convention on Biological Diversity, *Decision Adopted by the Conference of the Parties to the Convention on Biological Diversity at its Tenth Meeting*, UNEP, 10th mtg, Agenda Item 4.4, UNEP/CBD/COP/DEC/X/2 (29 October 2010).

²¹ UNEP (n 8) executive summary.

fact that its processes have not yet cranked in motion. In fact, progressively increasing the currently insufficient ambition of parties' NDCs is the Agreement's very *raison d'être*. Critique of the Paris Agreement is like dismissing a (promising) marathon runner for not having met the finishing line, before he/she even started the run.

The Paris Agreement is the most promising international agreement we have. Its nature is catalytic and facilitative and its processes iterative and coordinated in order to get states where they need to be—over time, together. Lawyers need to defend it, use it in international and domestic courts, base their legal arguments on it; in particular its goals, its principles of progression and the need to reflect highest ambition in NDCs.²² If the international legal community dismisses it, then we are shooting ourselves in the foot. There is *no other* comprehensive international climate agreement. It took states almost a quarter of a century to get there; it is very highly unlikely that there will be another one within the foreseeable future. At the very least, we need to give it a chance.

Lawyers therefore need to use existing multilateral environmental agreements for all they are worth: promoting their relevance in the development, application and interpretation of laws, especially within other legal areas, such as trade, investment, human rights. Lawyers need to insist on their application in domestic legislation; as well as raise their importance in the international discourse, and claim their relevance in litigation in international and domestic courts.

With the current groundswell of climate litigation worldwide, we already see this happening. Justice Brian Preston of the New South Wales Land and Environment Court in the landmark judgment *Gloucester Resources Limited v Minister for Planning* referred frequently to the Paris Agreement. When upholding the refusal to consent to the Rocky Hill Coal Project, he stated:

No new fossil fuel development is consistent with meeting the Paris accord climate targets ... Meeting the Paris accord climate targets means that not only must currently operating mines and gas wells be closed before their economic lifetime is completed, but also that no approved and no proposed fossil fuel projects, based on existing reserves, can be implemented ... The exploitation and burning of a new fossil fuel reserve, which will increase GHG emissions, cannot assist in achieving the rapid and deep reductions in GHG emissions that are necessary in order to achieve 'a balance between anthropogenic emissions by sources and removals by sinks of greenhouse gases in the second half of this century' (Article 4(1) of the Paris Agreement) or the long term temperature goal of limiting the increase in global average temperature to between 1.5°C and 2°C above pre-industrial levels (Article 2 of the Paris Agreement).²³

This is just one example of how international law can be used and its relevance be strengthened in national law.

Another example of the increasing legal relevance of the Paris Agreement are the references made to it in *other* areas of international law. In a recent joint statement, five UN Human Rights Treaty Bodies called upon states that "[i]n order...to comply with their human rights obligations, and to realize the objectives of the Paris Agreement, they must adopt and implement policies aimed at reducing emissions, which reflect the *highest possible ambition [article 4.3]*, foster climate resilience and

²² *Paris Agreement* (n 11) arts 2, 4.3. See also, Christina Voigt and Felipe Ferreira, "Dynamic Differentiation": The Principles of CBDR-RC, Progression and Highest Possible Ambition in the Paris Agreement' (2016) 5(2) *Transnational Environmental Law* 285.

²³ *Gloucester Resources Limited v Minister for Planning* (2019) NSWLEC 7, [446]–[448].

ensure that public and private investments are consistent with a pathway towards low carbon emissions and climate resilient development.²⁴ In other words, articles 2.1 and 4.3 of the Paris Agreement together are being used to determine the substance of human rights obligations with respect to climate change.

Similarly, in a recent communication to the UN Committee on the Rights of the Child, the petitioners (16 children and youths) claim that international human rights obligations are informed by the rules of international environmental law, and that the Convention on the Rights of the Child must be interpreted taking into account the respondents' obligations under international law.²⁵ Accordingly, they argue that the respondents (i.e. Brazil, Argentina, Germany, France and Turkey) by not reducing their emissions at the "highest possible ambition" according to article 4.3 of the Paris Agreement, have failed to comply with their human rights obligations.²⁶ Reducing emissions at the highest possible ambition, they claim, implies *inter alia* using maximum available resources.²⁷ This amounts to a *due diligence* standard for complying with human rights obligations, according to which states must take all appropriate measures to address climate change and its adverse affects, employ their best efforts or, simply, do "as well as they can".²⁸

(b) Role of International Law: Longer-term

International law, of course, has yet to live up to the challenge of spurring global transformative change. And here, second, *changes of a more fundamental character* are necessary—in the longer run.

The general structure of international law, including environmental law, is by its nature fragmented.²⁹ Environmental issues are being dealt with by sectoral, issue-specific, largely isolated treaties, often spatially limited to specific regions. There is no overarching general framework which brings them together under the same normative umbrella and provides for a certain degree of coordination and coherence. Neither is there any tool that levels out the uneven playing field between short-term specific economic interest and the long-term, accumulative nature of environmental goals.

This situation impedes the effectiveness of international law in solving environmental challenges.³⁰ International Environmental Law perhaps more than any other field of international law, depends on coordination between its different parts—and other relevant international agreements—with the aim of creating coherence.

The current situation sits uneasy with the temporal and spatial scale of environmental changes within the atmosphere, biosphere, cryosphere and hydrosphere—which consist of complex, interdependent

²⁴ Committee on the Elimination of Discrimination Against Women, Committee on Economic, Social and Cultural Rights, Committee on the Protection of the Rights of All Migrant Workers and Members of their Families, Committee on the Rights of the Child, and Committee on the Rights of Persons with Disabilities, *Joint Statement on "Human Rights and Climate Change"* (16 September 2019) <<http://https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=24998&LangID=E>>.

²⁵ Communication to the Committee on the Rights of the Child in the case of C. Sacchi et al. v. Argentina, Brazil, France, Germany and Turkey (23 September 2019), paragraphs 14, 174, 182.

²⁶ *Ibid* [20].

²⁷ *Ibid* [178].

²⁸ Christina Voigt, 'The Paris Agreement: What is the standard of conduct for parties?', *Questions of International Law* (24 May 2016) <<http://www.qil-qdi.org/paris-agreement-standard-conduct-parties/>>.

²⁹ Alan Boyle and Catherine Redgwell, *International Law and the Environment* (Oxford University Press, 4th ed, 2019); Philippe Sands and others, *Principles of International Environmental Law* (Cambridge University Press, 4th ed, 2018); Daniel Bodansky, *The Art and Craft of International Environmental Law* (Harvard University Press, 2011); Daniel Bodansky, Jutta Brunnée and Ellen Hey (eds), *The Oxford Handbook of International Environmental Law* (Oxford University Press, 2008).

³⁰ *Gaps in International Environmental Law* (n 18) summary.

and interconnected systems. In other words, it needs to a greater extent mirror the unchanging and universal laws of nature.

It should therefore, at a minimum, develop mutually supportive international goals and targets. These international targets and goals need to be kept under constant review, updated and kept in alignment with best available science. This means that they have to be dynamic; allowing for adjustment and refinement without lengthy negotiation processes.

Mutually supportive international goals and targets would help decision-making and implementation at the *national level*, to adopt more holistic, integrated policies and measures, across scales, jurisdictions, sectors, policy domains and planning/budgeting horizons.

In developing cross-sectoral approaches and goals complex risks need to be tackled. This requires that direct and indirect, distant and cumulative impacts need to be taken into account. In the face of complexity and uncertainty, this might require pre-emptive and precautionary actions in regulation and management to avoid, mitigate and restore the deterioration of nature and climatic stability.

Important is also that international standards and goals, can be broken down to national/individual action; that they are easily understandable, measurable, implementable and easily reportable.

In developing such goals and corresponding policies and measures, there needs to be better and stronger inclusion of the voices of vulnerable and affected communities, especially effective participation of indigenous peoples.

But, simply setting new targets is *not enough* if they are not met. These targets need to translate into adequate and effective action. There is therefore an urgent need for more coordinated and concerted implementation structures. International law needs to give clear *guidance* to states on how to improve their individual and collective performance. In order to spur states into coordinated actions, international law has to be catalytic and facilitative in nature and create conditions under which parties progressively and with a certain degree of flexibility reduce their impact on natural systems through coordinated, iterative policy shifts.

This takes time—but in the absence of clear, binding standards, at a minimum, States already have a legal duty: they must act with *due diligence* in avoiding environmental harm. Accordingly, each state must apply its best effort and take all appropriate and adequate measures according to their capabilities and, in proportion to the risk of environmental harm, in addressing an environmental concern.³¹ This standard of care already *is* international law and the development of most future obligations in international environmental law will, in one form or the other, be based on it. Lawyers have a responsibility to defend it.

Other steps, as identified in the report by the UN Secretary General, would be to increase the coordination between different regimes by (i) creating cooperation between conventions; (ii) mapping of existing global and regional action plans and agreements to create an overview of coverage and identify inter-linkages; (iii) using the same reporting channels for reporting and/or monitoring processes ('integrated reporting'); and (iv) sharing of lessons-learned and best practices among

³¹ See, eg, International Law Association, 'Due Diligence in International Law' (Reports) <<http://www.ila-hq.org/index.php/study-groups>>; see also Joanna Kulesza, *Due Diligence in International Law* (Brill Nijhoff, 2016). See also, in the context of the Paris Agreement: Christina Voigt, 'The Paris Agreement: What is the standard of conduct for parties?', *Questions of International Law* (24 May 2016) <<http://www.qil-qdi.org/paris-agreement-standard-conduct-parties/>>.

regimes. Potential conflicts between treaty regimes can further be managed by using legal means of conflict clauses, mutual supportiveness, or the application of the interpretive principle of ‘systemic integration’ contained in Article 31.3(c) of the Vienna Convention on the Law of Treaties.³²

Importantly, international law needs to strongly draw private actors into its force field and to set out new frameworks for private sector investment and innovation. This would need to include fundamental reforms of economic and financial systems, including subsidies and taxes, incentive programs, how to spur innovations, patents etc. Trade agreements and commodities and derivative markets should be reformed to be able to react to the challenges generated by displacement of unsustainable consumption and production, and need to decouple improvements in well-being (economic or not) from fossil fuel use, land conversation, pollution and unsustainable economic growth.

This requires not only the internalisation of external environmental costs. In fact, it requires rethinking of the concept of economic growth and its legal underpinnings. Economic development needs to be sustainable. Unchecked growth, for growth’s sake, is not. But international law is tightly knit to the current conventional paradigm of unfettered economic growth—which is the cause of most environmental problems. We will have to rethink which elements of the international legal system are fit for a transformative change, which need to be reformed—and which need to be discharged. Some principles and even laws and treaties might not be fit for purpose.

This future of international law is one where it guides the sustainable development of resilient ecological, social, and economic systems in the face of uncertainty and complexity, while taking account of global differences in challenges and needs as well as global inequalities.

In-built flexibility, system-science based goals and dynamic developments based on principles such as progression and highest ambition, are some of the features that international law might have to exhibit in order to remain relevant and effective.

Eventually, international law would need to unite and guide actors, public and private, in the system-wide reorganisation and reformation across sectors and borders to promote (and enforce) global sustainable development within the boundaries set by atmospheric, biospheric and hydrospheric thresholds. This does not only apply to the silo of international environmental law—but needs to inform and be integrated into *all* areas of international regulation, including trade, investment, data protection, human rights etc.

Given the slow pace of international negotiation processes and the protection of vested, sovereign or commercial interests, these suggestions might sound somewhat utopian. But rather than being an apology for the status quo of international affairs, international law and law-makers can, should and must aspire to create a better, sustainable world—in the same spirit which informed the drafters of the UN Charter. The path towards transformative change is not an easy one, but the alternative is worse; much worse.

IV. Consequences

This brings us to my third point: what would the future of international law be if such transformative change does not take place (in time)? There is a reason for why states, governments, cities, people—

³² *Gaps in International Environmental Law* (n 18) [83].

young people—call the current state an ‘emergency’: a climate emergency; an extinction emergency. Johan Rockström calls it ‘a global emergency’.³³

If not addressed, we are facing self-enforcing biosphere and atmosphere feedbacks and systems changes—and we will be looking at an unpredictable and ‘un-plannable’ future where basically all bets are off; a future where circumstances will be immeasurably different and most likely chaotic, to an extent that an orderly, legalistic approach is difficult to envisage. Some even speak about an ‘end of the rule of law’.³⁴

Philip Alston, the UN Special Rapporteur on extreme poverty and human rights warns in his latest report ‘Climate change and poverty’, of ‘climate apartheid’—where hundreds of millions of people will face food insecurity, forced migration, disease and death.³⁵ Interesting in this respect is his critique of the human rights community, which, in his words:

...has been every bit as complacent as most governments in the face of the ultimate challenge to mankind represented by climate change. The steps taken by most United Nations human rights bodies have been patently inadequate and premised on forms of incremental managerialism and proceduralism which are entirely disproportionate to the urgency and magnitude of the threat. Ticking boxes will not save humanity or the planet from impending disaster.³⁶

If this failure is not rectified, he warns, we will have to face up to the fact that human rights *might not survive* the coming upheaval.

In even more dramatic words Joseph Stiglitz, recipient of the 2001 Nobel Memorial Prize in Economics, warns that climate change is our third world war: we cannot afford to lose it.³⁷ Some scholars already discuss the rise of authoritarian international law.³⁸ With the recent breakdown in the international liberal order, we have seen its institutions come under attack. They ask what would international law look like in an authoritarian world? The answer is not encouraging.

The impacts of climate change and global earth-system changes risk undoing the last 50 years of progress in development, global health and poverty reduction. In fact, they risk undermining the UN Charter. A future of international law where we lose the battles of climate change and global biodiversity loss, is one that will have to address *simultaneously* mass migration, battles over resources, closing borders, violence and unrest.

And *this* should *deeply* worry us. International law has clearly not been able to ensure human rights to immigrants, open borders, secure peace globally or stop violence today. What could *possibly* make us think it may be up to the challenge in the future, if circumstances get worse? In this scenario, international law will most likely be reduced to a weak and insufficient back-up tool to manage conflict—a global contingency plan; and most likely an authoritarian one, where a few benefit, and

³³ Johan Rockström, presentation, Trondheim Conference on Biodiversity, 4 July 2019 (on file with the author).

³⁴ Philip Alston, *Climate change and poverty: report of the Special Rapporteur on Extreme Poverty and Human Rights*, UN Doc A/HRC/41/39 (25 June 2019).

³⁵ *Ibid.*

³⁶ *Ibid* [87].

³⁷ J. Stiglitz, ‘The climate crisis is our third world war. It needs a bold response’, *The Guardian* (online, 4 June 2019) <<https://www.theguardian.com/commentisfree/2019/jun/04/climate-change-world-war-iii-green-new-deal>>.

³⁸ See Tom Ginsburg, ‘Hersch Lauterpacht Memorial Lecture 2019: ‘Democracies and International Law: The Trials of Liberalism (Part 3)’, *University of Cambridge* (Lecture, 15 March 2019) <<https://upload.sms.csx.cam.ac.uk/media/2939251>>.

billions lose. But not much, if anything, would be left from its promise to be a ‘gentle civilizer of nations’.³⁹ The preference for one future over the other is obvious. Whether we get there depends on the choices we make in *this* decade—the crucial decade.

Let me conclude on a positive note. UN Secretary General António Guterres noted that climate change as the biggest collective action problem can also be seen as ‘*an opportunity for multilateralism to prove its value*’.⁴⁰ We all, in our own ways, as judges, students, practitioners, diplomats, teachers, professors, civil servants—and enlightened and concerned citizens (and voters)—we must grab this opportunity; as I am sure we will.

³⁹ M. Koskenniemi, *The Gentle Civilizer of Nations. The Rise and Fall of International Law 1870–1960* (Cambridge University Press, 2001).

⁴⁰ J. Worland, ‘U.N. Head: Climate Change Can Prove the Value of Collective Action’, *Time*, 13 June 2019.
