

HUMAN RIGHTS AND CLIMATE CHANGE – INTERNATIONAL STANDARDS

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Abstract

The study is dealing with the link between human rights protection and climate change seen from the perspective of international standards. Although the two areas developed separately, their interdependence has become more and more evident in the last two decades. Climate change and environmental degradation undermines the human rights either directly or indirectly. In contemporary circumstances, climate change issues affect both developed and developing countries, but its consequences are more devastating for developing countries, taken into consideration their scarce resources. In reality, climate change constantly hampers the broad range of human rights, such as the right to health, the right to life, the right to food, water, shelter, property. Exactly in the domain of the global health security, the issues of human rights protection and climate change effects are intertwined.

The UN Framework Convention (1992) and the Kyoto Protocol (1997) do not contain provisions that are directly related to the right to a healthy environment. Directly the reference to human rights was made only in the Paris Agreement (2015). Human activities affect negatively climate change at global level. International standards are aimed at possible solidarity needed to overcome it. The Kyoto Protocol has its own goals, in the part that refers to individual groups of countries, specified through the obligations to reduce emissions of greenhouse gases. This is separately defined for the developed countries.

The right to a healthy, safe, clean and sustainable environment is now recognized in many UN resolutions, national constitutions and regional instruments. Global dimensions of climate change problems pose the open question of developing countries' position, bearing in mind their scarce resources to deal with it. International standards in the area of climate change are to be significantly improved in direction of more solidarity towards developing countries.

Keywords: *climate change, human rights, UN Framework Convention*

JEL Classification: [K 3, K 33]

1. Introduction

Contemporary international community is based on protection of human rights and safeguarding the environment, together with maintaining peace and security, which are fundamental values. Human rights, such as the right to life and the right to health can be endangered by poor quality of the environment. The right to health is closely linked with a decent standard of living with adequate living conditions and medical care (Grahovac, 2020, 182). Therefore, human rights and

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environment protection are intertwined. At the end of XX century those links started to be able to change the perspective on environment and its protection.

The United Nations (UN) Resolution on Human Rights and Environment defines that “the effective enjoyment of all human rights, including the right to education and the rights of assembly and freedom of expression as well as full enjoyment of economic, social and cultural rights, could foster better environmental protection by creating conditions conducive to modification of behavior patterns that lead to environmental degradation”.¹ The 1972 United Nations (UN) Conference on the Human Environment declared that “man’s environment, the natural and the man-made, are essential to his well-being and to the enjoyment of basic human rights - even the right to life itself”.² This UN Declaration was the first international document on the issue. The first principle of the Stockholm Declaration clearly set the scene by recognizing that “man has 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, and he bears a solemn responsibility to protect and improve the environment for present and future generations”.³ Consequently, this paper is dealing with international standards on climate change and enjoyment of human rights. As the former United Nations rapporteur, J. H. Knox, puts it, although the two areas developed separately, their interdependence has become more and more evident in the last two decades (Knox, 2018, 1).

The International Court of Justice (ICJ) recognized, in its 1997 *Gabčíkovo-Nagymaros* judgment, that “the environment is not an abstraction but represents the living space, the quality of life and the very health of human beings, including generations unborn”.⁴ In 2011 the UN Human Rights Council initiated a study of the relationship between human rights and the environment.⁵ Later, in March 2012 an independent expert was appointed, who was asked to make recommendations on human rights obligations relating to the enjoyment of a “safe, clean, healthy and sustainable environment”.⁶ Disasters and global warming hamper the human rights globally, because global climate change influences negatively the human security, the right to life, the right to food, the right to water, as well as other economic, social and cultural rights.

This paper is dealing with the link between human rights protection and climate change seen from the perspective of international standards. Furthermore,

¹ UN Resolution Human Rights and Environment 5 June 2001 AG/RES. 1819 (XXXI-O/01).

² Declaration of the United Nations Conference on the Human Environment, 16 June 1972, Stockholm (A/CONF.48/14/Rev.1).

³ *Ibidem*.

⁴ ICJ, *Gabčíkovo-Nagymaros* Project, judgment of 25 September 1997, Reports 1997, para. 53.

⁵ UN Human Rights Council (UN HRC) res. 16/11, ‘Human Rights and the Environment’, 24 Mar. 2011.

⁶ UNHRC res. 19/12, ‘Human Rights and the Environment’, 20 Mar. 2012.

the most relevant documents on climate change with international standards are presented. Concluding remarks emphasize important obligations for states, which are established under UN Framework Convention, the Kyoto Protocol the Paris Agreement.

2. Link between human rights protection and climate change

Human beings have right not to suffer from the ill effects of global climate change (Caney, 2010). Public's awareness of human activity as a driver of climate change dates back to the 1980s. In 1988 the NASA scientist James Hansen gave testimony to USA Congress, alerting the danger of global warming. As a result, the media and the public started paying closer attention to the causes and effects of climate change. The year after (1989), the UN established the Intergovernmental Panel on Climate Change (IPCC). The term "climate change" was firstly used by Wallace Broecker who was a geochemist of Columbia University's Lamont-Doherty Geological Observatory in 1975.

In contemporary circumstances, climate change issues affect both developed and developing countries, but its consequences are more devastating for developing countries, taken into consideration their scarce resources. In reality, climate change constantly hamper the broad range of human rights, such as the right to health, the right to life, the right to food, water, shelter, property.

Recent World Bank estimates (Groundswell, 2021) indicate that climate change could cause 216 million climate migrants by 2050, if no further action is taken. Furthermore, the report states that climate-driven migration could be reduced by almost 60-80% if governments as soon as possible cut their greenhouse emissions and create resilient and inclusive development plans for each phase of the climate migration to ensure positive adaptation. Climate change significantly impacts migration patterns, but "climate migrants" do not fulfil the legal definition of "*refugee*" provided by the 1951 Refugee Convention (UNHCR 1951) and its 1967 Protocol and therefore they are not entitled to receive international protection.

In order to establish that climate change constitutes a human rights violation, a legal duty will have to have been breached (Bodansky, 2010, 38). Human rights duties are usually categorized as obligations placed upon states to respect, protect and fulfil human rights. Consequently, states have to pay attention to a number of specific human rights provisions when adopting regulatory measures addressing climate change. The duty to protect human rights relates to the responsibility that states have to ensure that non-state actors do not violate human rights of other citizens.

The right to life is often considered to be one of the most fundamental human rights. International human rights treaties and customary international law affirm states' obligation to not undertake acts that harm or threaten human life. The right to life is guaranteed by nearly all major human rights instruments.

For example, Article 3 of the UN Universal Declaration of Human Rights states: “Everyone has the right to life, liberty and security of person.” In a similar manner, Article 6 of the International Covenant on Civil and Political Rights (CCPR) states that: “every human being has the inherent right to life”.⁷ In its General Comment No. 6, the UN Human Rights Committee has also stated that the right to life “has been too often narrowly interpreted. 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.” (UN Human Rights Committee General Comment No. 6) All persons have a human right not to be arbitrarily deprived of life. Climate change can violate the human right to life in at least two ways: First, climate change increases the frequency and severity of extreme weather events – such as tornadoes, storm surges, flooding, and landslides – which can lead to the death of individuals. Second, heat waves and other extreme weather events caused by climate change can also result in the destruction of entire communities, such as small island states, and the loss of life on a large scale (Zirojević, Gasmi, 2021, 227).

All persons have a human right that other people do not act so as to create serious threats to their health. Just as extreme weather events linked to climate change threaten the right to life, so too may they violate the right to health where heat waves, storms, fires, droughts and the like increase the number of people suffering from disease or injuries. Changes in climate, such as warmer temperatures, humidity, and sea level rise, can increase infectious diseases, such as malaria, diarrheal illnesses, and dengue fever. Climate change can also cause increases in ground-level ozone, which is linked to increased cardio-respiratory disease.

All persons have a human right that other people do not act so as to deprive them of the means of subsistence. Climate change threatens this right in at least four distinct ways: (1) Rising temperatures may lead to drought and decreased food security; (2) Sea-level rise may decrease agricultural crop production by saltwater intrusion and inundation; (3) Flooding can also cause crop failure; (4) Extreme weather events may also destroy crops.

Human rights must be incorporated as a cross-cutting issue at every level of the global climate change framework. The linkage between human rights and climate change is one founded not only upon pragmatic observations or strategic

⁷ The International Covenant on Civil and Political Rights, New York, 16 December 1966, in force 23 March 1976, 999 United Nations Treaty Series (1976), 302. Additionally, this right has been recognized in the United Nations Convention on the Rights of the Child, New York, 20 November 1989, in force 2 September 1990, 1577 United Nations Treaty Series (1990), 3, Art. 6; The European Convention on Human Rights and Fundamental Freedoms, Rome, 4 November 1950, in force 3 September 1953, 213 United Nations Treaty Series (1951), 222, Art. 2; the African Charter on Human and Peoples’ Rights, *supra*, note 13, Art. 4; the American Convention on Human Rights, *supra*, note 13, Art. 4; and the American Declaration of the Rights and Duties of Man, Bogotá, 2 May 1948, OEA/Ser.L.V/II.82 doc.6 rev.1 (1992), Art. 1.

thinking, but also on moral arguments concerning fairness, justice and rights. People have a duty not to take part in activities that undermine the human rights of other people. Human rights-based approaches can operate as a basis for compensation where environmental harm has occurred (Caney, 2010, 16). Moreover, ensuring the rights to information and participation are essential to maximizing the local awareness and input necessary to achieving real change in direction of prevention of environmental harm. Integrating human rights throughout the climate change regime will focus the debate, foster consensus, and keep the emphasis where it belongs: on the most vulnerable.

Framework principles on human rights and the environment mention climate and climate change in three places (principles 11, 13 and 16), (UNGA: 2018), but without explicit formulations on the human right to, healthy or appropriate climate. The UN Framework Convention and the Kyoto Protocol do not contain provisions that are directly related to the right to a healthy environment. Directly the reference to human rights was made only in the Paris Agreement. However, the right to a healthy environment is not mentioned in particular the way we are already talking, but among other things, the right to health is defined. In indent 11 of the Preamble to this Agreement it is stipulated that the contracting parties "should... respect and promote human rights, the right to health, the rights of indigenous peoples, local communities, migrants, children, persons with disabilities and vulnerable people, as well as the right to development, gender equality, women empowerment and intergenerational equality."

3. Relevant international standards on climate change

Human activities affect negatively climate change at global level (Todić, 2018, 168-169). International standards are aimed at possible solidarity needed to overcome it. Global warming has been registered since fifties of XX century. The atmosphere and the ocean are warming, the amount of snow and ice has been reduced, and the sea level is rising.⁸ The World Bank's Climate Change Report (2010) estimates that under the no-action scenario, there is a significant risk of temperatures rising between 4 and 5 degrees Celsius by the end of the XXI century.⁹

The climate change law covers an extremely wide range of issues and the boundaries of this law regime cannot be precisely determined (Todić, 2019). It encompasses with its content international treaties and other sources of law governing relations in the international community for cooperation, use and protection of different elements of the environment. Group of international treaties that regulate climate change have recently received more attention in

⁸ Climate Change 2014, Synthesis Report IPCC, Contribution of Working Groups I, II and III to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change (Core Writing Team, R.K. Pachauri and L.A. Meyer (eds.), IPCC, Geneva, Switzerland, 2014, p.2.

⁹ World Development Report 2010: Development and Climate Change. Washington D.C. The World Bank, 2010.

relation to all other international agreements and issues under consideration within the framework of environmental law (water resources management, biodiversity protection, waste and chemical management, etc.). Sources of international law of importance for climate change are considered in the part of international agreements that are relating to the protection of the atmosphere. This is usually based on a system of norms that is contained in the elements established by the UN Framework Convention on Climate Change (Framework Convention, 9 May 1992) and international agreements concluded in connection with it: the Kyoto Protocol (11 December 1997) and the Paris Agreement (12 December 2015).

International organizations and many states make appeal to reduce the emission of gases with effect of greenhouses (GHG) and the business sector is promoting or trying to promote "sustainability". However, overall global levels of emissions of these gases continue to rise (Wright, Nyberg, 2015, 3).

Relevant international standards are contained in the subject of regulation and objectives of the UN Framework Convention on Climate Change. The subject of regulation is the definition of the term "climate change", as well as human activities that cause changes in the composition of the global atmosphere from the definition of "climate change" (art. 1, par.2 of the Framework Convention). The meaning of the term "climate change" has evolved over time: from linking the meaning of this term to environmental degradation, through putting in the context of development issues, to discussions on issues that link climate change to migration and security challenges (Vlassopoulos, 2012). From "Climate Change", the Framework Convention distinguishes between "adverse effects of climate change", which, judging by the definition of this term, opens up space for a new round of expanding issues which should be covered by the international law of climate change. Under this the term refers to "changes in the physical environment" or "biota", due to climate change, which have significant detrimental effects on the composition, the ability to regenerate or the productivity of natural and controlled ecosystems or the functioning of socio-economic systems or human health and well-being.

The breadth of objectives is illustrated by the wording of Article 1 of the Framework Convention. There is defined as the "ultimate goal of achieving stabilization of concentration green-house gases in the atmosphere at a level that would prevent dangerous anthropogenic impacts on the climate system." The Framework Convention prescribes that the realization of this goal relates to "the ability of ecosystems to adapt naturally to climate change". At the same time, an attempt was made to determine the meaning of the time frame through its binding to provide conditions "not to be endangered food production and to enable further stable economic development" (Todić, 2019, 47). The way in which it should be made stable economic development requires a much more detailed elaboration. There is almost no end to the possible measures in this area.

Therefore, more precise elements are introduced by later Kyoto Protocol and Paris Agreement.

The Kyoto Protocol has its own goals, in the part that refers to individual groups of countries, specified through the obligations to reduce emissions of greenhouse gases. This is separately defined for the developed countries. In the period of 2008 - 2012, thirtyeight developed countries are to reduce their total greenhouse gas emissions by at least 5% compared to 1990 levels. Those goals are differentiated among developed countries. Therefore, USA are obliged to reduce total greenhouse gas emissions by at least 7%, but in the meantime, USA revoked their obligations. Japan and Canada are obliged to reduce total greenhouse gas emissions by at least 6%, while for the European Union as a whole, it is defined at 8% comparatively (Todić. 2018, 172-173).

The last in a series of these documents (Paris Agreement), in an effort to improve the implementation of the Framework Convention, is focused on three groups of goals:

1. limiting the growth of the average global temperatures significantly below 2 ° C compared to pre-industrial level;
2. increasing the ability to adapt to negative influences of climate change and
3. aligning financial flows with development needs accompanied by low greenhouse gas emissions and strengthened resilience to climate change (art. 2 of the Paris Agreement).

In the absence of agreement on the formulation of firm commitments, Paris Agreement (2015) established a bottom-up approach as formal policy of the international community. Within the projected framework, states set their own emission limits and stronger participation is expected by non-state and subnational entities. However, the problem of the Paris Agreement is in the fact that not all norms have mandatory character, although it is international treaty (Bodansky, 2016, 142-150). Nevertheless, the Paris Agreement defines countries' activities in the period after 2020, especially in the field of nationally determined contributions. This includes that each country defines and publish own nationally determined contribution. Paris Agreement entered into force on 4 November 2016.

The issue of the situation in key economic sectors which are contributing to greenhouse gas emissions is significant. Article 1 of the Framework Convention defines the term "gases greenhouses mean those gaseous constituents of the atmosphere, as natural so do anthropogenic, which absorb and re-emit infrared radiation, and the term "source" means any process or activity which some greenhouse gas, aerosol or precursor greenhouse gas garden, releases into the atmosphere. It was later annexed to the Kyoto Protocol and specified to be, for the purposes of what establishes the law of climate change, as "greenhouse gases" considered carbon monoxide (CO₂), methane (CH₄), nitrogen sub-oxide

(H₂O), hydrogen-fluorine hydrocarbons (HFCs), perfluorocarbons (PFCs) and sulfur hexafluoride (SF₆). At the same time, six groups of sectors that are sources of gases with effect were defined as greenhouses, namely: energy (energy industries, industrial production and construction, transport, other sectors and others), fugitive emissions from fuels (solid fuels, oil, natural gas), industrial processes (mineral production, chemical industry, metallurgy, other production, production of halogenated hydrocarbons and sulfur-hexafluoride, consumption of halogenated hydrocarbons and sulfur hexafluoride), use of solvents and other products, agriculture (intestinal fermentation, use of natural fertilizers, cultivation rice, agricultural land, controlled burning of savannas, combustion of agricultural waste in the fields), and onshore waste, wastewater management, waste incineration) (Todić, 2019, 49).

UN Framework Convention formulated important principles for the interpretation and implementation of the Convention. Those are:

- the principle of equality and common, but differentiated responsibilities, which assumes that developed countries are to have leading role in responsibility;
- to take into account the specificities of the developing countries;
- precautionary principle;
- the principle of integrating of climate protection measures in national development programs;
- the principle of cooperation in advancing the building of an open international economic system (Todić, 2018, 170-171).

The Framework Convention established own institutional infrastructure in the form of the Conference of the Parties, Secretariat and two subsidiary bodies: one for scientific cooperation, and the other for the implementation of the Convention.

Concluding remarks

Climate change and environmental degradation undermines the human rights either directly or indirectly (Zirojević, Gasmi, 2021, 220). Health is a psychophysical aspect of human well-being and enjoys protection globally because of its importance (Grahovac, 2020, 182). Exactly in the domain of the global health security the issues of human rights protection and climate change effects are intertwined.

The right to a healthy, safe, clean and sustainable environment is now recognized in many UN resolutions,¹⁰ national constitutions and regional

¹⁰ UN Human Rights Council (UNHRC), “The right to a clean, healthy and sustainable environment: non-toxic environment“, Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, A/HRC/49/53, 12 January 2022, 21.

instruments, with over ninety (90) national constitutions recognizing some form of environmental rights since the mid-1970s.

However, unclear boundaries of the international standards of the climate change law derive from the breadth, complexity and unclear boundaries of climate change as a problem. Response width on the question of ways and mechanisms of influencing the climate system (causes of climate change), as well as the consequences of such impact - leaves significant space to discuss the limits of climate change law. Precisely, the most relevant UN Framework Convention contains framework obligations for the states that are very wide defined with the need to be elaborated in later stage. Those are general obligations for states, *summa summarum*, such as the following:

- A. Elaboration, renewal and making available to the Conference of the Parties to the national cadastral anthropogenic emissions inventories of all non-regulated greenhouse gas emissions, using comparable methodologies.
- B. Formulation, implementation, publication and renewal of national and regional programs containing measures to mitigate climate change.
- C. Cooperation on the development, application, dissemination and transfer of technologies, methods and processes, which limit, reduce or prevent anthropogenic greenhouse gas emissions in all relevant sectors (transport, energy, industry, agriculture, forestry, waste management).
- D. Rational use of abysses and all reservoirs of greenhouse gases, including biomass, forests, oceans, as well as other terrestrial, coastal and marine ecosystems, cooperation in their preservation and quality improvement.
- E. Support and cooperation in research, establishment of a database on the climate system.
- F. Sharing relevant information.
- G. Cooperation in the field of education and professional training.

Framework Convention defined special obligations of state Parties that are listed in the Annex I for thirty-eight (38) countries and in the Annex II for twenty-five (25) countries, which are all developed states. Those countries are to pursue policy and measures for modification of the long-term tendencies of anthropogenic impacts of greenhouse gases and protection and increase of greenhouse gas reservoirs. Furthermore, developed countries should ensure additional sources of funding to cover the costs of developing countries. Countries listed in the Annex I are transition economy countries, which are entitled with certain degree of flexibility to deal with climate change issues. Developing countries have confirmed priority by the Framework Convention to deal with grave problems of eradicating poverty and to foster own social and economic development.

Paris Agreement on climate defines the obligations of the most the most endangered countries (art. 4 par15): “In implementing this agreement, the Parties will consider the interests of the Parties whose economies are the most affected by measures to combat climate change, especially developing countries.”

The importance of the Kyoto Protocol is in the fact that it has established three basic mechanisms for realization of its objectives: joint implementation (art.6); clean development mechanism (art.12) and emissions trading (art.17). Joint implementation assumes joint projects of developed and developing countries for implementation of the Framework Convention and the Kyoto Protocol. Clean development mechanism is aimed to help countries that are not listed in the Annex I, to achieve sustainable development and to help countries from the Annex I to ensure respect of quantified emission limits. Emissions trading stipulates that Conference of parties will further define modalities and rules for reporting, verification and calculation of emissions for trading.

Finally, it can be concluded that global dimensions of climate change problems pose the open question of developing countries’ position, bearing in mind their scarce resources to deal with it. Based on the above, it is to be concluded that the international community has not resolved this major issue in a spirit of solidarity, despite the fact that there are some parts of relevant international treaties that contain special norms on developing countries. Consequently, international standards in the area of climate change are to be significantly improved in direction of more solidarity towards developing countries.

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