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State responsibility for human rights violations associated with climate change

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Introduction

International human rights law is *prima facie* relevant to climate change because climate change and its associated impacts have an adverse effect on the enjoyment of internationally recognised human rights. Indeed, the link between climate change and human rights has been articulated in multilateral forums, by various human rights treaty bodies, and by the Conference of the Parties (COP) to the United Nations Framework Convention on Climate Change (UNFCCC).¹ Notably, however, in the various statements of international bodies linking climate change with human rights, no reference is made to 'violations' of human rights. This raises questions about the premise that the purpose of human rights law is, to quote the European Court of Human Rights (ECtHR), '[to guarantee] not rights that are theoretical or illusory but rights that are practical and effective'.²

This chapter demonstrates how existing norms of international law can be employed to establish State responsibility for acts and omissions that lead to dangerous climate change and associated violations of human rights, or for human rights violations resulting from measures to respond to climate change.³ This is done through an analysis of the law of State responsibility; the nature of States' obligations to prevent human rights violations and to take measures to ensure the realisation of human rights at home and abroad; and questions related to causation and proof of damages. The conclusion elaborates on the potential role of the law of State responsibility in strengthening the legal protection offered by international law to peoples and individuals affected by climate change.

State responsibility for human rights violations associated with climate change

The law of State responsibility is important for answering legal questions related to climate change and human rights because it contains 'the general conditions under international law for the State to be considered responsible for wrongful actions or omissions, and the legal consequences which flow therefrom'.⁴ This general law builds on the doctrine expressed by the Permanent Court in the *Factory at Chorzów* case that 'it is a principle of international law, and

even a general conception of law, that any breach of an engagement involves an obligation to make reparation'.⁵ Today, the law of State responsibility is stated authoritatively in the 'Articles on the Responsibility of States for Internationally Wrongful Acts' ('ARS') produced by the International Law Commission ('ILC').⁶

The relevance of the general rules of State responsibility to human rights obligations has been expressly and widely recognised by international human rights bodies,⁷ and examples of cases where human rights bodies relied on these rules for the interpretation of human rights treaties are increasingly numerous.⁸ Academic literature similarly suggests that the law of State responsibility and international human rights law are mutually reinforcing.⁹ From an international human rights law perspective, the right to a remedy is a substantive right. This right is protected under customary international law¹⁰ and expressed in human rights treaties in various forms.¹¹ The right to a remedy exists not only *ex post facto* but also when there is a threat of a violation.¹² Accordingly, the general law of State responsibility can be understood as providing a structure through which redress for human rights violations can be obtained by States on behalf of the victims of the violation, or directly by victims themselves.

Establishing state responsibility

The law of State responsibility is based on the principle of independent responsibility of States. This principle basically means that each State is responsible for its own conduct. The principle follows from the constituent elements of an internationally wrongful act of a State listed in Article 2 of the ARS, which states that a State has committed an internationally wrongful act when an action or omission:

- a is attributable to the State under international law; and
- b constitutes a breach of an international obligation of the State.¹³

Whether or not certain acts or omissions are attributable to a State is determined by reference to the rules on attribution. These rules exist because States can rarely, if ever, guarantee the conduct of all private persons or entities on its territory.¹⁴ It is important to get to grips with these rules for the purpose of establishing State responsibility for climate change-related conduct that affects the enjoyment of human rights: after all, a large part of the greenhouse gases that cause climate change are emitted by entities other than States: corporations that exploit fossil fuels, utility companies that produce electricity, enterprises that manufacture products, airlines and car companies that allow travel, and producers and consumers who supply and demand these products and services.

The rules on attribution are expressed in Articles 4–11 of the ARS. The general rule of attribution is contained in Article 4 (entitled 'Conduct of organs of a State'), which provides that

[t]he conduct of any organ shall be considered an act of that State under international law, whether the organ exercises legislative, executive, judicial or any other functions, whatever position it holds in the organisation of the State, and whatever its character as an organ of the central Government or of a territorial unit of the State.¹⁵

The Commentaries clarify that the reference to a State organ in Article 4 extends to organs of government 'of whatever kind or classification, exercising whatever functions, and at whatever level in the hierarchy'.¹⁶ This rule operates similarly, if not identically, in international human rights law: the UN Human Rights Committee (HRC), for example, has found violations of the

Covenant that were attributable to central government and its legislature, federal governments, municipal authorities, judicial authorities, police and security forces and various types of State agents.¹⁷ The type of conduct that is generally attributable to a State as a consequence of these rules includes national legislation, decisions of the judiciary or administrative measures.¹⁸

It is worth emphasising that the general rule of attribution reflected in Article 4 of the ARS allows omissions to be attributed to States (that is, a failure on the part of the State's organs or agents to carry out an international obligation).¹⁹ The Commentaries to the ARS stress that '[c]ases in which the international responsibility of a State has been invoked on the basis of an omission are at least as numerous as those based on positive acts, and no difference in principle exists between the two'.²⁰ Further, the Commentaries clarify that whether an act of a State involves an act or an omission, '[w]hat is crucial is that a given event is sufficiently connected to conduct . . . which is attributable to the State'.²¹

The scope for attribution is extended even further through the rule that an internationally wrongful act may consist of several acts and omissions that cumulatively amount to a breach of obligations.²² In the ARS, this is expressed in Article 15 which states that State responsibility can arise from a 'breach consisting of a composite act'.²³ The breach has to extend over the entire period 'starting with the first of the actions or omissions of the series and lasts for as long as these actions or omissions are repeated and remain not in conformity with the international obligation'.²⁴

Together, these rules on attribution suggest that a contextual analysis of a State's conduct and the obligations by which it is bound is the most appropriate method for determining whether a human rights violation has occurred. Such an analysis could take account of a range of conduct as attributable to the State – from information reported to the Conference of the Parties to the UNFCCC to its national legislation and regulatory framework, energy subsidies, trade policies and the extent of assistance provided and received in accordance with technology transfer and financial obligations – to determine whether this conduct is in accordance with its international human rights obligations. The sections below set out the standards against which such conduct should be analysed.

The scope and nature of states' human rights obligations related to climate change

Before discussing the scope of States' obligations under international human rights law, it is important to consider the sources from which these obligations emerge. The key point to highlight in this regard is that all States are bound by a wide range of human rights obligations that demand the protection of civil and political as well as economic, social and cultural rights.

First of all, the UN Charter contains more than a dozen references to human rights, proclaims the realisation of human rights as one of the main purposes of the organisation and provides that Member States shall cooperate to take joint and separate action with the UN to promote respect for and observance of human rights.²⁵ The Universal Declaration of Human Rights (UDHR) can be understood as an authoritative interpretation of the substantive rights referred to in the UN Charter.²⁶ Widely ratified human rights treaties provide additional human rights obligations for States. For example, the International Covenant on Civil and Political Rights (ICCPR)²⁷ has 168 State parties, which include all States listed in Annex I to the UNFCCC, and dozens of States located in areas where climate change is forecast to have serious negative impacts on human life and livelihoods.²⁸ The vast majority of States have also ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR),²⁹ with 164 State parties.³⁰ The number of ratifications of international human rights treaties has risen rapidly in recent years,

with all UN Member States having ratified at least one core human rights treaty and 80 per cent having ratified four or more.³¹ The effect of the consolidation of human rights norms through various sources of international law is that the norms contained in the UDHR are applicable across different fields of international law as customary norms binding on all States.³²

As regards the interpretation of human rights treaties, we must note that the emphasis is, in Nowak's words, '[e]ssentially . . . on interpreting treaties . . . in the light of their object and purpose'.³³ And for human rights treaties, the main object and purpose is guaranteeing the enjoyment of the rights protected in those treaties.³⁴ As discussed below, this presses in favour of a broad interpretation of the substantive human rights that are affected by the adverse effects of climate change.

Obligations to prevent human rights violations

Perhaps the most important human rights obligations in the context of climate change are obligations to take measures to prevent future harm. Such obligations are important not only to prevent or mitigate a range of adverse effects of climate change that would affect the enjoyment of human rights, but also to allow for the establishment of State responsibility for climate change-related human rights violations that might already be occurring as a result of past emissions. This section peruses an analysis of States' obligations related to the right to life as protected under Article 6 of the ICCPR and numerous other human rights instruments to illustrate the scope and nature of these obligations.

In its General Comment No. 6 on the Right to Life, the HRC states explicitly that the right to life 'is a right which should not be interpreted narrowly'.³⁵ This reflects the position of all regional and international human rights bodies with respect to the scope of the right to life. For example, the Inter-American Court of Human Rights (IACtHR) has stated that the

fundamental right to life includes, not only the right of every human being not to be deprived of his life arbitrarily, but also the right that he will not be prevented from having access to the conditions that guarantee a dignified existence.³⁶

And in *SERAC v Nigeria*, the African Commission on Human and Peoples' Rights (ACHPR) found a violation of the right to life based on 'unacceptable' levels of 'pollution and environmental degradation'.³⁷ Commentators understand the right as protecting the ability of each individual to 'have access to the means of survival; realize full life expectancy; avoid serious environmental risks to life; and to enjoy protection by the State against unwarranted deprivation of life'.³⁸

Article 6(1) of the ICCPR generates two categories of obligations: a prohibition of the arbitrary deprivation of life, and an obligation to take positive measures to ensure that right, including measures to ensure its protection in law.³⁹ As regards the obligation to take legislative measures, the HRC has found that the law's protection is required against a wide variety of threats, including infanticide committed to protect a woman's honour,⁴⁰ killings resulting from the availability of firearms to the general public,⁴¹ and the 'production, testing, possession, deployment and use of nuclear weapons'.⁴² At the European level, the ECtHR similarly holds that the States' legislative and administrative framework must protect against a wide variety of threats to human life,⁴³ including environmental damage.⁴⁴ It seems safe to assume that in a similar vein, climate change-related threats must be mitigated through effective legislation in order to protect human life. According to Nowak, a violation of the obligation to protect the right to life by law can be assumed 'when State legislation . . . is manifestly insufficient as measured against the actual threat'.⁴⁵

However, the positive obligations of States under the right to life go beyond an obligation to take legislative measures.⁴⁶ For example, the HRC has taken the view that the right requires that States take 'measures to reduce infant mortality and to increase life expectancy, especially in adopting measures to eliminate malnutrition and epidemics'.⁴⁷ Moreover, it has stressed that these positive obligations will only be fully met if States protect individuals against violations by its agents as well as violations committed by private persons or entities likely to prejudice the enjoyment of Covenant rights.⁴⁸ In a similar vein, the IACtHR found in the landmark case *Velásquez Rodríguez v Honduras*⁴⁹ that State responsibility for the violation had arisen 'not because of the act [of abduction and killing] itself, but because of the lack of due diligence to prevent the violation or to respond to it as required by the Convention'.⁵⁰ This line of jurisprudence suggests that States are obliged to take measures to prevent human rights violations resulting from the actions of private persons that cause climate change, including fossil fuel companies and other polluting industries.⁵¹

ECtHR jurisprudence, starting with *Osman v UK*, suggests that the standard of care required in relation to a risk, of which the State had actual or presumed knowledge, is one of reasonableness:

The Court does not accept . . . that the failure to perceive the risk to life in the circumstances known at the time or to take preventive measures to avoid that risk must be tantamount to gross negligence or wilful disregard of the duty to protect life. . . . Such a rigid standard must be considered to be incompatible with the requirements of [the right to life]. . . . [H]aving regard to the [fundamental] nature of [the right], it is sufficient for an applicant to show that the authorities did not do all that could be reasonably expected of them to avoid a real and immediate risk to life of which they have or ought to have knowledge.⁵²

Actual or presumed knowledge of the climate change-related risks may arise from the UNFCCC, the reports of the IPCC and other scientific studies, as well as from affected communities' efforts to draw attention to these risks.

The case of *Tatar C. v Roumanie*⁵³ illustrates the overlap between States' obligations to prevent human rights violations and 'due diligence' obligations arising from the precautionary principle as embodied in international environmental law, including the UNFCCC.⁵⁴ In its ruling, the Court stressed that even in the absence of scientific probability regarding a causal link, the existence of a 'serious and substantial' risk to health and well-being of the applicants imposed on the State 'a positive obligation to adopt adequate measures capable of protecting the rights of the applicants to respect for their private and family life and, more generally, to the enjoyment of a healthy and protected environment'.⁵⁵

States' prevention obligations under international human rights law may however go further than parallel 'due diligence' obligations under international environmental law. It is clear from the interpretative practice of human rights bodies that States are not only obliged to assess potential risks to human life, but must also respond to any 'serious and substantial' risk with measures 'designed to secure respect' for human rights, and 'capable of protecting [those rights]'.⁵⁶ In other words, States do not have the discretion to prioritise policy objectives such as the protection of particular industries over mitigation and other response measures that would avert the serious and substantial risks posed by climate change to human life. Moreover, these response measures must themselves be compatible with States' obligations to respect and ensure human rights. This means, amongst other things, that all States must reconcile obligations to protect peoples and individuals against the adverse effects of climate change with co-existing obligations to realise the rights of those who have obtained negligible benefits from emission-producing activities.

Through their focus on equity and common but differentiated responsibilities and respective capabilities (CBDRRC), the UNFCCC and its associated instruments encourage States to fulfil their human rights obligations by taking science-based mitigation measures without perpetuating existing inequalities. Although the principle of CBDRRC applies exclusively to relations between States, it shares with international human rights law the objective of achieving substantive equality.⁵⁷ The lack of legally binding emission reduction commitments in the recently adopted Paris Agreement underscores the importance of substantive human rights obligations to mitigate climate change in a manner that is fair and equitable. At the same time, the Paris Agreement provides a procedural framework that could shed light on States' compliance with these human rights obligations. The reference to human rights in the Preamble of the Agreement could catalyse further information on, and review of, the overall human rights implications of States' mitigation actions.

Obligations to ensure the realisation of human rights at home and abroad

In addition to obligations to prevent future harm, international human rights law imposes obligations on States to ensure the progressive realisation of human rights within the State's own territory as well as internationally. This section discusses such obligations and their relevance in the context of climate change, taking the right to health as an example.⁵⁸

The right to health, as protected under Article 12 of the ICESCR and numerous other human rights instruments, is a right that States are obliged to progressively realise. The Committee on Economic, Social and Cultural Rights (CESCR) has emphasised that although 'the right to health is not to be understood as a right to be *healthy*',⁵⁹ it nonetheless creates States' obligations.⁶⁰ These obligations are understood as including 'immediate obligations, ... [to] ... guarantee that the right will be exercised without discrimination of any kind' and to take steps 'towards the full realization' of the right that 'must be deliberate, concrete and targeted towards the full realization of the right to health'.⁶¹

To clarify the content of States' obligations, the CESCR has used a respect-protect-fulfil typology of obligations that arise from the right to health.⁶² It understands the obligation to 'respect' the right as 'an obligation of States to respect the freedom of individuals and groups to preserve and to make use of their existing entitlements'.⁶³ The CESCR has interpreted the right to health as requiring respect for the right to health of a people within a State's territory and in other States,⁶⁴ entailing an obligation 'to refrain from unlawfully polluting air, water and soil, e.g. through industrial waste from State-owned facilities'.⁶⁵ Accordingly, the right could be violated by actively engaging in 'activities that harm the composition of the global atmosphere or arbitrarily interfere with healthy environmental conditions'.⁶⁶ Moreover, the CESCR has explicitly stated that the right to health obliges States to ensure that international instruments, presumably including climate change-related agreements, 'do not adversely impact upon the right to health'.⁶⁷

The obligation to protect the right to health involves 'the preservation of existing entitlements or resource bases', including through regulation,⁶⁸ in accordance with the UN Charter and applicable international law.⁶⁹ States must accordingly adopt measures against environmental and occupational health hazards⁷⁰ and national policies to reduce and eliminate air, water and soil pollution.⁷¹ Moreover, States must prevent 'encroachment on the land of indigenous peoples or vulnerable groups',⁷² 'ensure food availability, regulation of food prices and subsidies, and rationing of essentials while ensuring producers a fair price',⁷³ and prevent private enterprises from engaging in environmental pollution 'especially that which contaminates the food chain'.⁷⁴

In the context of climate change, the right to health also appears to entail an obligation to regulate private actors in order to achieve and uphold emission limitation and reduction standards,⁷⁵ and to adopt and implement 'laws, plans, policies, programmes and projects that tackle the adverse effects of climate change'.⁷⁶

The CESCR further directs that States must give 'sufficient recognition to the right to health in the national political and legal systems, preferably by way of legislative implementation',⁷⁷ and must allocate 'a sufficient percentage of a State's available budget ... to the right to health'.⁷⁸ This illustrates what the CESCR describes as the obligations to 'fulfil' the right to health; a positive obligation that is triggered 'whenever an individual or group is unable, for reasons beyond their control' to enjoy the right 'by the means at their disposal'.⁷⁹ It basically requires that the State 'be the provider', which 'can range anywhere from a minimum safety net, providing that it keeps everyone above the poverty line appropriate to the level of development of that country, to a full comprehensive welfare model'.⁸⁰ Again, this obligation has an extraterritorial dimension: States are required to 'facilitate access to essential health facilities, goods and services in other countries, wherever possible and [to] provide the necessary aid when required'.⁸¹ In the context of climate change, this is interpreted as an obligation on high-income States to facilitate access to essential health services as well as assistance to adapt to climate change in low-income States.⁸²

The parallel obligations of developed States contained in Article 4 of the UNFCCC and reaffirmed in the Paris Agreement⁸³ could serve as a bottom line in the interpretation of these obligations. And again, the procedural framework established under the Paris Agreement could serve to shed light on compliance with these obligations. The Agreement specifically requires developed States to communicate information related to the fulfilment of their finance obligations, while other States providing resources are encouraged to communicate such information.⁸⁴ This information is to inform the global stocktaking process aimed at reviewing States' 'collective progress towards achieving the purpose of [the Agreement] and its long-term goals',⁸⁵ including the goals of '[m]aking finance flows consistent with a pathway towards low greenhouse gas emissions and climate resilient development' and '[i]ncreasing the ability to adapt to the adverse impacts of climate change and foster climate resilience and low greenhouse gas emissions development, in a manner that does not threaten food production'.⁸⁶ To meet these goals and fulfil parallel obligations under international human rights law, developed States would need to scale up funding to assist developing States in taking the resilience-building and adaptation actions required to ensure the realisation of human rights.⁸⁷

Legal consequences of state responsibility

When a State actually violates its human rights obligations, State responsibility is established 'as immediately as between the two [or more] States'.⁸⁸ This rule indicates that the legal consequences of State responsibility arise automatically once a State violates a human rights obligation, irrespective of whether any victim of the violations actively seeks a remedy for the damage or harm suffered. This section spells out the legal consequences of an internationally wrongful act, once it occurs.

Cessation of wrongful conduct

The basic principle governing the legal consequences of wrongful conduct (or what the ARS call the 'content' of State responsibility) is that a State that commits an internationally wrongful act 'must, so far as possible, wipe-out all the consequences of the illegal act and re-establish the situation which would, in all probability, have existed had that act not been committed'.⁸⁹

The emphasis on restoring the situation to what it was before the wrongful act was committed reflects the broader objective of compliance with obligations, which is emphasised in the ARS through the codification of the continued duty of performance,⁹⁰ and of the duty to cease the wrongful act (if it is ongoing)⁹¹ in two separate articles. Together, these provisions make it clear that the law of State responsibility is not a liability system with the primary or exclusive goal of providing injured persons with compensation. The Commentaries further emphasise that compliance with existing obligations is a prerequisite to the restoration and repair of the legal relationships affected by the breach.⁹² The duty of cessation further comprises an obligation to offer appropriate assurances and guarantees of non-repetition where the circumstances require.⁹³

International human rights law similarly recognises that adequate and effective remedies for violations 'serve to deter violations and uphold the legal order that the treaties create'.⁹⁴ The duty of cessation has been characterised by the HRC as 'an essential element of the human right to a remedy' that entails an obligation 'to take measures to prevent the recurrence of a violation', including through changes in the State Party's laws or practice if necessary.⁹⁵ The ACHPR's findings in *SERAC v Nigeria* illustrate that in the human rights context, the duty to offer appropriate assurances and guarantees of non-repetition may reinforce existing procedural rights; when violating a range of human rights, Nigeria had incurred 'secondary' obligations to provide 'information on health and environmental risks and meaningful access to regulatory and decision-making bodies to communities likely to be affected by oil operations'.⁹⁶

The consequences for States that incur these types of obligations based on climate change-related wrongful conduct could be drastic, particularly where the violation involves not a single act, but a series of wrongful acts and omissions. To meet its obligation of cessation, a State may need to make changes to significant parts of its laws, regulatory system and levels of assistance requested from, or provided to, other States in order to restore compliance with the substantive obligation that was violated. For example, a State may need to withdraw fossil fuel subsidies, adopt new regulations and policies to phase out fossil fuels, and bring all existing regulations and policies in line with emission reduction goals that reflect its highest possible ambition as well as CBDRRC.⁹⁷ In a similar vein, a developed State might be under an immediate obligation to scale up funding for mitigation, adaptation and capacity-building actions in developing States to restore compliance with its human rights obligations.

Realising victims' right to a remedy

The second set of obligations arising from an internationally wrongful act centre around an obligation to make full reparations for the injury caused by the wrongful act.⁹⁸ Injury is understood as including any material or moral damage caused by the act⁹⁹ and includes 'the injury resulting from and ascribable to the wrongful act' rather than 'any and all consequences' flowing from it.¹⁰⁰ This makes it clear that there must be a link between the wrongful act and some injury in order for there to be an obligation of reparation. However, the causal requirement inherent in the link is not the same in relation to every breach¹⁰¹ and can be established even when the wrongful conduct was only one of several factors that contributed to the injury.¹⁰²

Where the obligation breached relates to the prevention of harm, the link between injury and the breach is likely to involve consideration of the extent to which the harm was a reasonably foreseeable consequence of the action taken.¹⁰³ Based on the reports of the IPCC, input from affected communities and the definition of 'climate change' in Article 1 of the UNFCCC, a broad range of climate change-related risks and harm could be considered as reasonably foreseeable consequences of climate change and the human activities that are known to cause it. As far as evidential requirements are concerned, the principle of effectiveness may require shifting

at least part of the risk of uncertainty to the State where it can be established with a reasonable degree of certainty that specific injury has occurred as a result of global warming.¹⁰⁴ Moreover, as Werksman suggests, the correlation between greenhouse gas emissions, atmospheric chemistry and global warming has probably

been demonstrated with sufficient confidence that it seems unlikely that an adjudicator would require a complainant, in order to obtain relief, to demonstrate what would not be possible – that a specific emission of greenhouse gases by State S directly caused the specific impact in State I.¹⁰⁵

All this means that existing evidence may well be sufficient to substantiate claims for reparation for climate change-related State conduct that constitutes a violation of international human rights law. As the science of attribution evolves, the chances that the victims of such wrongful conduct will be able to ascertain their entitlement to reparations should further increase. In addition, where State responsibility is invoked through individual complaint procedures under human rights treaties, victims have usually been identified in a claim's admissibility stage. In such cases, a link between State conduct and the individual's situation will already have been established once the case reaches the reparations stage.¹⁰⁶

Once the duty to make full reparations has been triggered, the scope of the injury has to be established. This will be a fact-sensitive exercise which will require significant interpretation of complex evidence related to risks and probabilities. However, the law of State responsibility does provide some clear road signs for determining the nature and amount of reparations due. The first is the principle that no reduction or attenuation of reparation will be made for any concurrent causes.¹⁰⁷ The duty to make reparations is similarly unaffected by a responsible State's ability to pay,¹⁰⁸ or by a claimant's inability to determine the quantity and value of the losses suffered.¹⁰⁹ In other words, the duty of the responsible State to make full reparations for the injury is unqualified in general international law.¹¹⁰

The understanding of the right to a remedy as a substantive human right implies that the focus of the duty to make reparations for a breach of international human rights law lies squarely on restoring the rights of victims, insofar as victims of the violation can be identified. Where it is not certain whether an individual qualifies as a victim of the breach, uncertainty could be addressed in accordance with the human rights principle *in dubio pro libertate et dignitate*. Furthermore, irrespective of whether victims can be identified, the content of the obligation must reflect the aim of re-establishing the *status quo ante*.¹¹¹ The wide range of remedies awarded for human rights violations (including restitution, compensation, rehabilitation, and measures of satisfaction such as public apologies, public memorials, guarantees of non-repetition and, more importantly, changes in relevant laws or practices) reflect the potential for constructing remedies for climate change damage that are consistent with human rights objectives.¹¹² These remedies should materialise through bottom-up processes: individuals and communities affected by climate change themselves are in the best position to identify and develop suitable remedies for violations of their human rights. Thus, in cases where a State plans to invoke the law of State responsibility on behalf of affected communities, consultative processes will be needed to ensure that reparation claims accurately reflect the demands of those communities.

Concluding remarks

This chapter has demonstrated that States' obligations under international human rights law could provide a basis for State action in the context of climate change, as well as for State

responsibility claims related to climate change and associated human rights violations. In a nutshell, international human rights law requires climate action that not only reflects States' maximum efforts to combat climate change, but also leads to a fair distribution of mitigation and adaptation burdens at local, domestic and global levels. Moreover, all States must take measures to prevent human rights from being violated in the context of response measures. The law of State responsibility is automatically triggered once a State breaches any of these obligations.

Whether a State has breached its human rights obligations through climate change-related conduct needs to be established on a case-by-case basis, taking into account the effects of its conduct on the enjoyment of human rights at home and abroad and the foreseeability of those effects. Hereby the States' obligations under the UNFCCC and the Paris Agreement could be taken as bottom lines for human rights obligations related to international cooperation and assistance.¹¹³

Once a breach of obligations has occurred, the responsible State must first and foremost restore compliance with the obligations that were violated. In other words, a State whose legislative framework or conduct is not in accordance with a human rights obligation incurs an obligation to bring its laws and practices in line with the relevant obligation. Moreover, the State must take measures to prevent future breaches of the obligation. And where the unlawful conduct – such as a State's failure to take adequate measures to prevent loss of life associated with the adverse effects of climate change – has actually caused harm, the State also incurs an obligation to make full reparations for the injury. These reparations must be directed to the beneficiaries of the obligation, which usually means the victims of the human rights violation.

The scope and nature of appropriate remedies might be relatively easy to establish where the violation concerns localised damage to individuals or communities, such as harm resulting from land grabbing or the exclusion of vulnerable communities from adaptation programmes. However, where the unlawful conduct relates to the impact of climate change *per se* on the enjoyment of human rights, the severity and scale of damage and the virtually limitless number of potential victims will trigger difficult questions related to causation, proof and victimhood. These questions will be complicated by the fact that multiple States might be responsible for the same damage. In such cases, the effectiveness of the law of State responsibility is hinged on the extent to which States cooperate to give effect to the victims' right to a remedy and to restore the rule of law. With liability and compensation excluded, at least for now, from the scope of the Warsaw Mechanism on Loss and Damage Associated with Climate Change,¹¹⁴ it would seem opportune to explore the role of human rights bodies in facilitating such cooperation. Meanwhile, the human rights community could work with affected communities to develop guidance on the types of remedies that might be appropriate for various climate change-related human rights violations.

Notes

- 1 *United Nations Framework Convention on Climate Change* 1992, 1771 UNTS 107 (UNFCCC). See Decision 1/CP.16, UN Doc. FCCC/CP/2010/7/Add.1 (10 December 2010), at preambular para. 7 and ch. I, para. 8. See also *Paris Agreement on Climate Change*, UN Doc. FCCC/CP/2015/L.9/Rev.1 (12 December 2015) ('Paris Agreement'), at preambular para. 11.
- 2 ECtHR, *Airey v. Republic of Ireland*, Appl. no 6289/7, Judgment of 9 October 1979. All ECtHR decisions are available online at <http://hudoc.echr.coe.int>.
- 3 As the focus of this chapter is on human rights, it does not specifically discuss State responsibility for non-compliance with the UNFCCC. On concurrent responsibility under the two international regimes, see Wewerinke, 'The Role of the UN Human Rights Council in Addressing Climate Change', 7 *Human Rights and International Legal Discourse (HRILD)* (2014) 21–23.

- 4 J. Crawford, *The International Law Commission's Articles on State Responsibility: Introduction, Text, Commentaries* (2002) 31.
- 5 *Case Concerning the Factory at Chorzów (Germany v Poland)*, 1927 PCIJ Series A, No. 17, at 29.
- 6 ILC, *Articles on the Responsibility of States for Internationally Wrongful Acts*, Report of the ILC on the Work of Its 53rd Session, Official Records of the General Assembly, 56th Session, Supplement No. 10, UN Doc A/56/10 (2001), at chapter IV.E.2 ('ILC ARS'). On the legal authority of the Articles, see J. Crawford and S. Olleson, 'The Continuing Debate on a UN Convention on State Responsibility', 54 *International and Comparative Law Quarterly (ICLQ)* (2005) 959, at 968 and 971 (pointing out that 'there is an ongoing process of consolidation of the international rules of State responsibility as reflected in the Articles' with the Articles 'performing a constructive role in articulating the secondary rules of responsibility'). Cf. D.D. Caron, 'The ILC Articles on State Responsibility: the Paradoxical Relationship Between Form and Authority', 96 *American Journal of International Law (AJIL)* (2002) 857, at 867 (arguing that the Articles are 'similar in authority to the writings of highly qualified publicists').
- 7 *Patrick Coleman v Australia*, Communication No. 1157/2003, UN Doc. CCPR/C/87/D/1157/2003, para. 6.2; *S Jegatheeswara Sarma v Sri Lanka*, Communication No. 950/2000, UN Doc. CCPR/C/78/D/950/2000, para. 9.2; *Humberto Menanteau Aceituno and Mr. José Carrasco Vásquez (represented by counsel Mr. Nelson Caucoto Pereira of the Fundación de Ayuda Social de las Iglesias Cristianas) v Chile*, Communication No. 746/1997, UN Doc. CCPR/C/66/C/746/1997, para. 5.4. See also, the Individual concurring opinion of Kurt Herndl and Waleed Sadi in *Cox v Canada*, Communication No. 539/1993, UN Doc. CCPR/C/52/D/539/19930.
- 8 For a clear example, see IACtHR, *The Mayagna (Sumo) Awas Tingni Community v Nicaragua*, Judgment (31 August 2001), at para. 154; IACtHR, *Marino López et al. v Colombia*, Judgment (Merits) (31 March 2011), at para. 42. See also D. McGoldrick, *The Human Rights Committee* (1991), at 169. All IACtHR decisions are available online at www.corteidh.or.cr/index.php/en/jurisprudencia.
- 9 D. McGoldrick, 'State Responsibility and the International Covenant on Civil and Political Rights', in M. Fitzmaurice and D. Sarooshi (eds.), *Issues of State Responsibility Before International Judicial Institutions* (2004), at 199; E.W. Vierdag, 'Some Remarks About Special Features of Human Rights Treaties', 25 *Netherlands Yearbook of International Law (NYIL)* (1994) 119, at 135.
- 10 See *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, GA Res. 60/147 (16 December 2005), at Annex, Principles 1(b), 2 and 3 (pertaining to gross violations of international human rights law and international crimes), and 11. See also D. Shelton, *Remedies in International Human Rights Law*, 2nd ed. (2010), at 103.
- 11 For an overview of global and regional human rights treaties that incorporate the right to a remedy, see Shelton, *supra* note 10, at 113–20. See also, Crawford, *The ILC Articles*, *supra* note 4, at 95, paras 3–4.
- 12 Shelton, *supra* note 10, at 104ff.
- 13 Art. 2 ILC ARS.
- 14 J. Crawford, 'The ILC's Articles on Responsibility of States for Internationally Wrongful Acts: a Retrospect', 96 *American Journal of International Law (AJIL)* (2002) 874, at 879.
- 15 Art. 4(2) ILC ARS clarifies that '[a]n organ includes any person or entity which has that status in accordance with the internal law of the State'. See also R.B. Lillich *et al.*, 'Attribution Issues in State Responsibility', 84 *Proceedings of the Annual Meeting (American Society of International Law)* (1990) 51, at 52 (pointing out that the principle that 'a State may act through its own independent failure of duty or inaction when an international obligation requires state action in relation to non-State conduct' is reflected in all codifications and restatements of the law on State responsibility).
- 16 ILC ARS, Commentary to Article 4, para. 5.
- 17 McGoldrick, 'State Responsibility', *supra* note 9, at fn 74–83 and accompanying text, containing citations.
- 18 *Ibid.*
- 19 This formulation was used in Article 1 of the Outcome Document of the Third Committee of the 1930 Hague Conference, reproduced in Yearbook of the United Nations 1956, Vol. II, p. 225, Document A/CN.4/96, Annex 3.
- 20 Crawford, *The ILC Articles*, *supra* note 4, at 35 and at Commentary to Article 2, para. 4.
- 21 *Ibid.*, at Commentary to Article 2, paras 5–6.
- 22 See, for example, ECtHR, *Paul and Audrey Edwards v. United Kingdom*, Appl. No. 46477/99, Judgement of 14 March 2002, at para. 64.
- 23 Art. 15(1) ILC ARS.

- 24 Art 15(2) ILC ARS. See also ECtHR, *Ireland v. United Kingdom*, Appl. No. 5310/71, Judgment of 18 January 1978 at para. 159, in which the ECtHR discussed the concept of a 'practice incompatible with the Convention'.
- 25 1 UNTS XVI. See especially Arts 1, 55 and 56.
- 26 Universal Declaration of Human Rights 1948, GA Res. 217 A (III), A/810 (UDHR), 10 December 1948, at preambular recitals 6 and 7. See also, Proclamation of Teheran, *Final Act of the International Conference on Human Rights, Teheran, 22 April to 13 May 1968*, UN Doc. A/CONF 32/41 3 (1968) (stating that the UDHR 'states a common understanding of the peoples of the world concerning the inalienable and inviolable rights of all members of the human family and constitutes an obligation for all members of the international community'). See further, De Schutter *et al.*, 'Commentary to the Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights', 34 *Human Rights Quarterly (HRQ)* (2012) 1084, at 1092 and N. Jayawickrama, *The Judicial Application of Human Rights Law: National, Regional and International Jurisprudence* (2002) 30.
- 27 International Covenant on Civil and Political Rights 1966, 999 UNTS 171 (ICCPR).
- 28 For ratification status, see <http://treaties.un.org/Pages/Treaties.aspx?id=4&subid=A&lang=en> (last visited 1 September 2016).
- 29 International Covenant on Economic, Social and Cultural Rights 1966, 993 UNTS 3 (ICESCR).
- 30 For ratification status, see <http://treaties.un.org/Pages/Treaties.aspx?id=4&subid=A&lang=en> (last visited 1 September 2016).
- 31 See website of the UN OHCHR, www.ohchr.org/EN/HRBodies/Pages/HumanRightsBodies.aspx (last visited 17 August 2016).
- 32 *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, 8 July 1996, ICJ Reports (1996) 241, para. 79. See also M. Salomon, 'Deprivation, Causation, and the Law of International Cooperation', in M. Langford *et al.* (eds.), *Global Justice, State Duties: The Extraterritorial Scope of Economic, Social and Cultural Rights in International Law* (2012) 259, at 304 (arguing that '[t]oday, the existence of a customary international law principle to respect and observe human rights in the main, which can be said to apply to basic socio-economic rights, is increasingly difficult to refute'). Cf. J. Crawford, *Brownlie's Principles of Public International Law*, 8th ed. (2012) 21.
- 33 M. Nowak, *U.N. Covenant on Civil and Political Rights: CCPR Commentary*, 2nd ed. (2004) XXIV. See also A. Orakhelashvili, 'Restrictive Interpretation of Human Rights Treaties in the Recent Jurisprudence of the European Court of Human Rights', 14 *European Journal of International Law (EJIL)* (2003) 529.
- 34 M. Nowak, *Introduction to the International Human Rights Regime* (2003) 65. See also IACtHR, *Other Treaties Subject to the Advisory Jurisdiction of the Court (Article 64 ACHR)*, Advisory Opinion, 24 September 1982, at para. 24 and IACtHR, *The Effect of Reservations on the Entry into Force of the ACHR (Articles 74 and 75)*, Advisory Opinion, 24 September 1982, at para. 27.
- 35 UN Human Rights Committee (UNHRC), *General Comment No. 6: The Right to Life (Article 6)*, available online at www.refworld.org/docid/45388400a.html, at paras 1, 5 (quote from para. 1).
- 36 IACtHR, *Villagrán-Morales, et al., v Guatemala*, Judgment, 19 November 1999, at para. 144.
- 37 ACHPR, *SERAC and Another v Nigeria*, Decision (Merits), 27 October 2001, at para. 67. See also, ECtHR, *Oneryildiz v Turkey*, Appl. no. 48939/99, Judgment of 30 November 2004, at 115.
- 38 Ramcharan, 'The Concept and Dimension of the Right to Life', in B. G. Ramcharan (ed.), *The Right to Life in International Law* (1985) 1, at 7.
- 39 See UNHRC, *General Comment*, *supra* note 35, at paras 3–5; Nowak, *U.N. Covenant*, *supra* note 33, at 105.
- 40 UNHRC, *Concluding Observations on Paraguay* (1995), UN Doc. CCPR/79/Add 48, 5 April 1995, at para. 16.
- 41 UNHRC, *Concluding Observations on the United States* (1995), UN Doc. CCPR/C79/Add 50, 7 April 1995, at para. 17.
- 42 UNHRC, *General Comment No. 14: Nuclear Weapons and the Right to Life (Article 6)*, available online at www.refworld.org/docid/453883f911.html (last visited 15 March 2017), at paras 6–7. See also Nowak, *U.N. Covenant*, *supra* note 33, at 126; S. Joseph, J. Schultz and M. Castan, *The International Covenant on Civil and Political Rights: Cases, Materials, and Commentary*, 2nd ed. (2005) 185.
- 43 See, for example, ECtHR, *Osman v United Kingdom*, Appl. no. 48939/99, Judgment of 30 November 2004, para. 115; ECtHR, *Ilhan v Turkey*, Appl. no. 22277/93, Judgment of 20 December 2011, para. 91; ECtHR, *Kilic v Turkey*, Appl. no. 22492/93, Judgment of 28 March 2000, para. 62; and ECtHR, *Mahmut Kaya v Turkey*, Appl. no. 22535/93, Judgment of 19 February 1998, para. 85.

- 44 See ECtHR, *Oneryildiz v Turkey*, *supra* note 37, para. 79 (concerning the State's failure to prevent a possible explosion of methane gas from a garbage dump under the authority of the City Council).
- 45 Nowak, *U.N. Covenant*, *supra* note 33, at 123. See also Ramcharan, *supra* note 38, at 20.
- 46 See *General Comment No. 6: The Right to Life (Article 6)*, *supra* note 35, para. 5.
- 47 *Ibid.*, para. 5. In Nowak's opinion, the HRC's interpretation of Art. 6(1) shows 'not only a willingness to innovate, but also a resolute application of the premises derived from Art. 6, whereby the right to life is not to be interpreted narrowly and States parties are obligated to take positive measures to ensure it.' Nowak, *U.N. Covenant*, *supra* note 33, at 127.
- 48 UNHRC, *General Comment No 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, UN Doc. CCPR/C/21/Rev1/Add 13 (26 May 2004), para. 8.
- 49 IACtHR, *Velásquez Rodríguez v Honduras*, Judgment, 29 July 1988.
- 50 *Ibid.*, para. 172.
- 51 See also *Trail Smelter (United States v Canada)*, 11 March 1941, 3 UN Reports of International Arbitration Awards 1905, at 1965. Although this case concerned injury caused by fumes, the principle that all States are obliged to take measures to prevent injury 'established by clear and convincing evidence' has a more general application to all sorts of environmental damage, including damage to the world's common spaces. See J. Charney, 'Third State Remedies for Environmental Damage to the World's Common Spaces', in F. Francioni and T. Scovazzi (eds.), *International Responsibility for Environmental Harm* (1991) 149.
- 52 *Osman v United Kingdom*, *supra* note 43, paras 115–16. See also ECtHR, *Budayeva et al v Russia*, Appl. No. 48939/99, Judgment of 30 Nov 2004, para. 132.
- 53 ECtHR, *Tatar c. Roumanie*, Appl. no. 67021/01, Judgment of 5 July 2007.
- 54 UNFCCC, Art. 3(1).
- 55 *Tatar c. Roumanie*, *supra* note 53, paras 107–24.
- 56 ECtHR, *X. and Y. v Netherlands*, Appl. no. 8978/80, Judgment of 26 March 1985, para. 23.
- 57 See C. Segger *et al.*, 'Prospects for Principles of International Sustainable Development Law After the WSSD: Common But Differentiated Responsibilities, Precaution and Participation', 12 *Review of European, Comparative and International Environmental Law (RECIEL)* (2003) 54, at 57 (explaining that differentiated responsibility 'aims to promote substantive equality between developing and developed States within a regime, rather than mere formal equality').
- 58 For an examination of climate change and economic, social and cultural rights, see generally S. Jodoin and K. Loftis (eds.), *Economic, Social, and Cultural Rights and Climate Change: A Legal Reference Guide* (2013), available online at <https://environment.yale.edu/content/documents/00004236/ESC-Rights-and-Climate-Change-Legal-Reference-Guide.pdf?1386877062>.
- 59 CESCR, *General Comment No. 14: The Right to the Highest Attainable Standard of Health (Article 12)*, UN Doc. E/C 12/2000/4 (11 August 2000), para. 8.
- 60 *Ibid.*, paras 30–45.
- 61 *Ibid.*, para. 30.
- 62 *Ibid.*, para. 15. This typology is based on the work of the former Special Rapporteur on the Right to Food, Asbjørn Eide. See Eide, 'Economic, Social and Cultural Rights as Human Rights', in A. Eide, C. Krause and A. Rosas (eds.), *Economic, Social and Cultural Rights*, 2nd edn (2001) 9 at 23–25.
- 63 See A. Eide, 'The Right to an Adequate Standard of Living Including the Right to Food', in A. Eide, C. Krause and A. Rosas (eds.), *Economic, Social and Cultural Rights*, 2nd edn (2001) 133 at 142.
- 64 *General Comment No. 14*, *supra* note 59, at para. 39.
- 65 *Ibid.*, para. 34.
- 66 P. Hunt and R. Khosla, 'Climate Change and the Right to the Highest Attainable Standard of Health', in S. Humphreys (ed.), *Climate Change and Human Rights* (2009) 238, at 252.
- 67 *General Comment No. 14*, *supra* note 59, at para. 39.
- 68 See Eide, 'The Right to an Adequate Standard of Living', *supra* note 63, at 143. See also *General Comment No. 14*, *supra* note 59 at para. 35.
- 69 *General Comment No. 14*, *supra* note 59 at para. 39.
- 70 *Ibid.*, paras 36–37.
- 71 *Ibid.*
- 72 Eide, 'The Right to an Adequate Standard of Living', *supra* note 63, at 143.
- 73 *Ibid.*, at 144.
- 74 CESCR, *Concluding Observations on the Russian Federation*, UN Doc E/C.12/1/Add.13 (20 May 1997), at para. 38.

- 75 Hunt and Khosla, *supra* note 66, at 252. Inspiration may also be drawn from the *Minors Oposa* decision of the Philippine Supreme Court, which decided that on the basis of the rights to health and ecology contained in the Philippines Constitution, the Philippine government had to protect the population against the impacts of rainforest logging activities. *Juan Antonio Oposa et al. v the Honorable Fulgencio Factoran Jr., Secretary of the Department of the Environment and Natural Resources et al.*, Supreme Court of the Philippines, G.R. No. 101083 (Phil).
- 76 Hunt and Khosla, *supra* note 66, at 255.
- 77 *General Comment No. 14*, *supra* note 59, at para. 36.
- 78 See, for example, CESCR, *Concluding Observations on Chile*, UN Doc E/C.12/1988/SR.13, para. 12 and CESCR, *Concluding Observations on North Korea*, UN Doc E/C.12/1987/SR.22, paras 5 and 17. See also, C. Doebbler and F. Bustreo, 'Making Health an Imperative of Foreign Policy: The Value of a Human Rights Approach', 12 *Health and Human Rights Journal (HHR)* (2010) 47, at 53.
- 79 CESCR, *General Comment No. 12: Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social and Cultural Rights: The Right to Adequate Food (Art. 11)*, UN Doc. E/C.12/1999/5 (12 May 1999), at para. 15.
- 80 See Eide, 'The Right to an Adequate Standard of Living', *supra* note 63, at 145.
- 81 *General Comment No. 14*, *supra* note 59, at para. 39. See also Doebbler and Bustreo, *supra* note 78, at 53 (stating that the right to health 'encourages a world order in which donor states can point out human rights obligations to recipient countries, while recipient countries can point out the duties to cooperate to ensure human rights, including the obligations for providing adequate resources that are incumbent upon donor countries').
- 82 Hunt and Khosla, *supra* note 66, at 252.
- 83 Paris Agreement, Article 9(1).
- 84 Paris Agreement, Article 9(5).
- 85 Paris Agreement, Article 14(1).
- 86 Paris Agreement, Article 2(1)(c) and (b).
- 87 See, for example, Callaghan, 'Climate Finance After COP21: Pathways to Effective Financing of Commitments and Needs', a report for Investor Watch (December 2015) at 10 (pointing out that '[o]n the evidence of the INDCs, financial requirements of developing nations to meet proposed actions far exceeds (probably by a factor of five times) the USD 100 billion' pledged by developed countries. See further M. Wewerinke-Singh and C. Doebbler, 'The Paris Agreement: Some Critical Reflections on Process and Substance', 39(4) *University of New South Wales Law Journal* (2016) 114.
- 88 *Phosphates in Morocco (Italy v France)*, 1938 PCIJ Series A/B, No. 74 at 10, para. 48.
- 89 *Case Concerning the Factory at Chorzów (Germany v Poland)*, *supra* note 55, at 47 at 47.
- 90 ILC ARS, Art. 29.
- 91 ILC ARS, Art. 30(a). The treatment of cessation as a distinct legal consequence of an internationally wrongful acts is a relatively novel development; previously, cessation was considered as part of the remedy of satisfaction. See also, Shelton, *Remedies in International Human Rights Law*, *supra* note 10 and Crawford, *The ILC Articles*, *supra* note 4, at 68, para. 114 and Crawford, *Brownlie's Principles of Public International Law*, *supra* note 3232567567.
- 92 ILC ARS, Commentary to Art. 30, para. 1.
- 93 ILC ARS, Art. 30(b) and Commentary to Art. 30, para. 1.
- 94 Shelton, *Remedies in International Human Rights Law*, *supra* note 10, at 99.
- 95 UNHRC, *General Comment No 31*, *supra* note 48, paras 16–17.
- 96 *SERAC and Another v Nigeria*, *supra* note 37, para. 69.
- 97 This requirement matches the procedural obligation under the Paris Agreement of submitting 'nationally determined contributions' that reflect these objectives. See Paris Agreement, Article 4(3).
- 98 ILC ARS, Art. 31(1).
- 99 ILC ARS, Commentary to Art. 31, para. 5.
- 100 *Ibid.*, para. 10.
- 101 *Ibid.*
- 102 See, for example, *United States Diplomatic and Consular Staff in Tehran*, Judgment, 24 May 1980, ICJ Reports (1980) 3.
- 103 Shelton, *Remedies in International Human Rights Law*, *supra* note 10, at 89, 99.
- 104 *Ibid.*, at 50, 317 (stating that the burden of uncertainty or lack of proof may sometimes shift to the State to uphold the deterrent function of remedies for human rights violations).

- 105 J. Werksman, 'Could a Small Island Successfully Sue a Big Emitter? Pursuing a Legal Theory and a Venue for Climate Justice', in M. B. Gerrard and G. E. Wannier (eds.), *Threatened Island Nations: Legal Implications of Rising Seas and a Changing Climate* (2012) 409, at 412.
- 106 The 'victim requirement' is one of the admissibility criteria that need to be met before a particular judicial or quasi-judicial human rights body can consider the merits of an international complaint for an alleged human rights violation. For example, Art. 34 of the ECHR provides that only complainants who are directly affected by the alleged breach of the ECHR have a right to complain about the violation before the ECtHR. Art. 1 of the Optional Protocol of the ICCPR and Art. 2 of the Optional Protocol to the ICESCR contain a similar requirement.
- 107 See, for example, *United States Diplomatic and Consular Staff in Tehran*, *supra* note 102.
- 108 See J. Crawford, *State Responsibility: The General Part* (2013) 481.
- 109 ECtHR, *Mentes et al. v Turkey*, Appl. no. 58/1996/677/867, Judgment of 24 July 1998, at para. 106 (stating that there should be some pecuniary remedy, but 'since the applicants have not substantiated their claims as to the quantity and value of their lost property with any documentary or other evidence, the Government have not provided any detailed documents, and the Commission has made no findings of fact in this respect, the Court's assessment of amounts to be awarded must, by necessity, be speculative and based on principles of equity').
- 110 ILC ARS, Commentary to Art. 31, para. 12 (stating that 'international practice and the decisions of international tribunals do not support the reduction or attenuation of reparation for concurrent causes'). See also Crawford, *State Responsibility: The General Part*, *supra* note 108, at 496.
- 111 *Case Concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v Serbia and Montenegro)*, Judgment, 26 February 2007, ICJ Reports (2007) 43; *Ahmadou Sadio Diallo (Guinea v DRC)*, Judgment, 30 November 2010, ICJ Reports (2010) 639; *Vélásquez Rodríguez v Honduras*, *supra* note 49.
- 112 UNHRC, *General Comment No 31*, *supra* note 48, at para. 16.
- 113 See further Wewerinke, *supra* note 3 at 12ff.
- 114 UNFCCC, *COP Decision 1/CP.21*, UN Doc. CP/2015/10/Add.1 (29 January 2016), para. 52. See further M. J. Mace and R. Verheyen, 'Loss, Damage and Responsibility After COP21: All Options Open for the Paris Agreement', 25 *Review of European, Comparative and International Environmental Law (RECIEL)* (2016) 197.