



Universiteit
Leiden
The Netherlands

**Pandemics, Planetary Health and Human Rights:
Rethinking the Duty to Cooperate in the Face of
Compound Global Crises**

Wewerinke, M.J.

Citation

Wewerinke, M. J. (2021). Pandemics, Planetary Health and Human Rights: Rethinking the Duty to Cooperate in the Face of Compound Global Crises. *Max Planck Yearbook Of United Nations Law*, 24(2020), 399-425. doi:10.1163/18757413_02401013

Version: Publisher's Version

License: [Leiden University Non-exclusive license](#)

Downloaded from: <https://hdl.handle.net/1887/3278390>

Note: To cite this publication please use the final published version (if applicable).

Pandemics, Planetary Health and Human Rights

Rethinking the Duty to Cooperate in the Face of Compound Global Crises

Margaretha Wewerinke-Singh*

Abstract

Global solidarity and international cooperation are key to addressing compound global crises – such as climate change, biodiversity loss and pandemics – effectively. It remains unclear, however, to what extent, and on what legal basis, solidarity and international cooperation constitute legal obligations of States under different branches of international law. Questions also persist about the extent to which and how States' obligations of international cooperation are differentiated; what common and differentiated obligations entail in practice for States at different levels of development; and how potential conflicts between different types of obligations (e.g. territorial and extraterritorial human rights obligations) must be addressed. This article seeks to unpack these questions from the perspective of international human rights law, giving due consideration to relevant principles and provisions of international environmental agreements. It builds on international law scholarship that has explained how and why the provisions of the UN Charter should be interpreted as creating genuine membership duties, including an obligation to cooperate to realise human rights. Further, it builds on more recent scholarship that has explored how this obligation applies in connection with climate change and biodiversity, and on a nascent body of scholarship on the COVID-19 crisis, human rights and international law. The aim of the article is to explore the role of the principle of solidarity and the duty to cooperate to realise human rights in devising more effective and holistic responses to compound global crises.

Keywords

International law – international human rights law – international environmental law – COVID-19 – loss and damage from climate change – law of international cooperation – extraterritorial human rights obligations

* The authors contribute in their personal capacity only. Any views that they express or any information that they provide cannot be attributed to the institutions with which they are or have been affiliated, or to the editors of the Max Planck Yearbook of United Nations Law.

1 Introduction**

The COVID-19 pandemic has been characterised as the ‘worst global crisis since the Second World War’,¹ with implications for the enjoyment of virtually all human rights protected under international law. This crisis occurs while the world is at a tipping point with respect to climate change and biodiversity loss, and against the backdrop of unprecedented levels of inequality.²

The climate and biodiversity crises are intertwined: scientists point out that limiting global warming to 1.5°C requires ‘conserving *all* native ecosystems – coupled with energy transition measures’,³ while climate change itself is a major driver of biodiversity loss. The connection between the deterioration of the Earth’s climate and ecosystems and zoonotic pandemics has also been widely recognised: as the United Nations Environment Programme (UNEP) and the Office of the UN High Commissioner for Human Rights (OHCHR) note in a joint publication, ‘the growing risk of emerging infectious diseases is caused by a “perfect storm” of human actions that damage ecosystems and biodiversity, such as deforestation, land clearing and conversion for agriculture, the wildlife trade, expanding human population, settlements and infrastructure, intensified livestock production, and climate change.’⁴ The publication warns

** This contribution shares thoughts with M. Wewerinke-Singh, ‘A Human Rights Approach to Energy: Realising the Rights of Billions within Ecological Limits’, paper presented at workshop ‘Human Rights and the Climate Change Crisis: Ethical Implications and the Human Rights to Development and a Healthy Environment’, University of Geneva, 26–27 November 2020 and M. Wewerinke-Singh, ‘Taking Human Rights Seriously in the Face of COVID-19 and the Global Climate Crisis’, The Global Initiative for Economic, Social and Cultural Rights (2020) <<https://www.gi-escr.org/blog/taking-human-rights-seriously-in-the-face-of-covid-19-and-the-global-climate-crisis>> (accessed 21 January 2021). The authors is grateful to Melina Antoniadis for research assistance.

- 1 International Labour Organisation, ‘ILO Monitor: COVID-19 and the World of Work’ (23 September 2020) <https://www.ilo.org/global/topics/coronavirus/impacts-and-responses/WCMS_755910/lang-en/index.htm> (accessed 20 January 2021).
- 2 Independent Group of Scientists appointed by the Secretary-General, *Global Sustainable Development Report 2019: The Future is Now – Science for Achieving Sustainable Development* (United Nations 2019).
- 3 E. Dinerstein and others, ‘A Global Deal for Nature: Guiding Principles, Milestones and Targets’ (2019) 5 *Science Advances* 1, at 1.
- 4 United Nations Environment Programme and Office of the United Nations High Commissioner for Human Rights, ‘UN Environmental Rights Bulletin: September 2020 Edition’ <<https://spark.adobe.com/page/djLcWfUOGlo2P/>> (accessed 11 January 2021). See also B. Jones and others, ‘Zoonosis Emergence Linked to Agricultural Intensification and Environmental Change’ (2013) 110 *Proceedings of the National Academy of Sciences of the United States of America* 8399, and United Nations Environment Programme, ‘Preventing the Next Pandemic: Zoonotic Diseases and How to Break the Chain of Transmission’ (2020).

that if we fail to adopt ‘a rights-based approach’ to environmental protection, ‘future generations will live in an ecologically impoverished world, deprived of nature’s critical contributions to human wellbeing, ravaged by increasingly frequent pandemics, and riven by deepening environmental injustices’.⁵

Global solidarity and international cooperation are key to addressing these compound crises effectively, as repeatedly stressed by UN Secretary-General António Guterres,⁶ international human rights bodies⁷ and UN human rights experts.⁸ It remains unclear, however, to what extent, and on what legal bases, solidarity and international cooperation constitute legal obligations of States under different branches of international law. Questions also persist about the extent to which and how States’ obligations of international cooperation are differentiated; what common and differentiated obligations entail in practice for States at different levels of development; and how potential conflicts between different types of obligations (e.g. territorial and extraterritorial human rights obligations) must be addressed.

This article seeks to unpack these questions from the perspective of international human rights law, giving due consideration to relevant principles and provisions of international environmental agreements. It builds on international law scholarship that has explained how and why the provisions of the UN Charter should be interpreted as creating genuine membership duties, including an obligation to cooperate to realise human rights.⁹ To understand the definition and content of human rights covered by this obligation, it draws on previous work demonstrating how the Universal Declaration of Human

5 United Nations Environment Programme and Office of the United Nations High Commissioner for Human Rights (note 4).

6 See for example UN News, ‘COVID-19 Shows “Urgent Need” for Solidarity, UN Chief Tells Nobel Forum’ (2020) <<https://news.un.org/en/story/2020/12/1079802>> (accessed 11 January 2021).

7 See for example UN Committee on Economic, Social and Cultural Rights, ‘Statement on the Coronavirus Disease (COVID-19) Pandemic and Economic, Social and Cultural Rights’, UN Doc E/C.12/2020/1 (17 April 2020).

8 See e.g. T. Mofokeng and others, ‘Statement by UN Human Rights Experts: Universal Access to Vaccines Is Essential for Prevention and Containment of COVID-19 around the World’ (2020) <<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26484&LangID=E>> (accessed 10 January 2021).

9 R. Wolfrum, ‘Chapter I: Purposes and Principles, Article 1’ in B. Simma and others (eds), *The Charter of the United Nations: A Commentary*, (Volume 11 3rd edn, OUP 2012); R. Wolfrum and E. Riedel, ‘Chapter IX: International Economic and Social Co-Operation, Article 55(C)’ in B. Simma and others (eds), *The Charter of the United Nations: A Commentary* (Volume 11 3rd edn, OUP 2012), at 1579; T. Stoll, ‘Chapter IX: International Economic and Social Co-Operation, Article 56’ in B. Simma and others (eds), *The Charter of the United Nations: A Commentary* (Volume 11 3rd edn, OUP 2012).

Rights (UDHR) may be regarded as an authoritative interpretation of the UN Charter, and as expressing general principles of law within the sense of Art. 38(1)(c) of the Statute of the International Court of Justice.¹⁰ Further, it builds on more recent scholarship that has explored how this obligation applies in connection with climate change and biodiversity,¹¹ including in the context of international climate and biodiversity governance,¹² and on a nascent body of scholarship on the COVID-19 crisis, human rights and international law. The aim of the article is to explore the role of the principle of solidarity and the duty to cooperate to realise human rights in devising more effective and holistic responses to compound global crises.

The article proceeds as follows. The first section examines the linkages between the COVID-19 pandemic and the impacts of climate change on human that are already being experienced across the globe, drawing on a case study from the Pacific Islands. The second section explores the substantive content of relevant obligations of international cooperation to prevent and address these impacts, with particular attention to the inter-relationship between international human rights law on the one hand and international environmental law on the other. The third section sets out what these obligations may entail in practice for States at different levels of development in the context of the current global crises. Finally, the fourth section evaluates the potential for an integrated approach to human rights and global environmental governance in the context of the COVID-19 pandemic – in terms of cross-analysis and exchange, institutional reform and through new norms and institutions. The article concludes with some reflections on the opportunities created by the current crises to rethink international cooperation on human rights through the UN system.

10 B. Simma and P. Alston, 'The Sources of Human Rights Law: Custom, Jus Cogens, and General Principles' (1988) *Australian Yearbook of International Law* 82; O. de Schutter et al., 'Commentary to the Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights' (2012) 34 *Human Rights Quarterly* 1084, T 1092; N. Jayawickrama, *The Judicial Application of Human Rights Law: National, Regional and International Jurisprudence* (CUP 2002), at 30; J. McAdam, *Climate Change, Forced Migration, and International Law* (OUP 2012), at 263.

11 J. Knox, 'Climate Change and Human Rights Law' (2009) 50 *Vir. Jl of Int'l Law* 163; A. Boyle, 'Climate Change, the Paris Agreement and Human Rights' (2018) 67 *International & Comparative Law Quarterly* 759.

12 S. Duyck, S. Jodoin and A. Johl, *The Routledge Handbook of Human Rights and Climate Governance* (Routledge 2018).

2 COVID-19, Climate Change and Human Rights

The human rights implications of both the pandemic and the environmental crisis are severe and wide-ranging. In different ways each of the crises threatens to kill several million people,¹³ with those who are already marginalised facing a disproportionate risk to their lives and livelihoods. Firstly, both the COVID-19 and environmental crises are much more likely to be deadly for those living in societies with fragile healthcare systems and limited or no social security than for those with access to adequate healthcare and welfare systems. The risks of contracting COVID-19, and of facing serious consequences from doing so, are particularly high for at least one billion of people who live in informal settlements or encampments, where the lack of adequate space, sanitary facilities and clean water make social distancing and handwashing difficult or impossible.¹⁴ These settlements and encampments also tend to be ill-adapted to extreme weather, while for many, moving there was wholly or partly motivated by the need to escape from the ravages of climate change. And while vaccine strategies are being rolled out across the world, disenfranchised people in developing States are the least likely to have rapid access to safe and effective vaccines and treatment.

Secondly, the economic and social impact of both crises perpetuate existing inequalities and undermine people's resilience to deal with economic shocks. The nexus between environmental degradation and poverty has been a concern for decades: for example, the climate crisis is known to undermine agriculture, access to clean water, food security, housing, health and education, amongst other repercussions, and has already forced millions of people to migrate.¹⁵ These various consequences of climate change perpetuate the cycle of poverty for many of those affected, posing a threat to the realisation of

13 A. Haines & K. Ebi, 'The Imperative for Climate Action to Protect Health' (2019) 380 *New England Journal of Medicine* 263; John Hopkins University Coronavirus Resource Center, 'COVID-19 case tracker' <<https://coronavirus.jhu.edu>> (accessed 20 January 2021).

14 L. Farha, 'COVID-19 Guidance Note Protecting Residents of Informal Settlements' (28 March 2020) <<https://reliefweb.int/sites/reliefweb.int/files/resources/75500.pdf>> (accessed 20 January 2021).

15 V. Masson-Delmotte and others (eds), *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* (IPCC, 2018). On global warming and migration specifically: F. Laczko and C. Aghazarm (eds), *Migration, Environment and Climate Change: Assessing the Evidence* (IOM 2009). <https://publications.iom.int/system/files/pdf/migration_and_environment.pdf> (accessed 20 January 2021).

nearly all human rights.¹⁶ The COVID-19 pandemic exacerbates this threat: it is estimated that one hundred seventy-six million people will fall into extreme poverty due to the pandemic, with 1.6 billion workers in the informal sector being particularly at risk of deprivation.¹⁷ The World Food Programme further projected that two hundred sixty-five million people would face acute hunger by the end of 2020, doubling the number of people at risk of crisis levels of hunger.¹⁸ Across the globe, the homeless, minorities, people in detention, people with disabilities, indigenous peoples, refugees, migrants, the displaced and other marginalised groups are at a greatest risk of experiencing infringements of their human rights as a result of the combined effects of the global crises.

The interaction of the environmental and COVID-19 crises came into sharp focus when severe, tropical Cyclone Harold made its way across the Pacific Islands in early April 2020, coinciding with the rapid spread of the SARS-CoV-2 virus across the globe. The Solomon Islands were affected first, with significant damage to the islands, food sources of several villages destroyed, and twenty-seven people missing and presumed dead after their ferry was swept away in dangerous seas.¹⁹ The passengers were amongst hundreds trying to return from the capital to their home villages as part of COVID-19 contingency plans.²⁰ The cyclone proceeded to cause widespread destruction in Vanuatu, Fiji and Tonga, killing at least thirty-one people while flattening entire villages, destroying homes, schools, medical clinics and food gardens, and damaging critical

16 K. Warkins, 'Human Development Report 2007/2008: Fighting Climate Change: Human Solidarity in a Divided World' (2007) <<http://hdr.undp.org/en/content/human-development-report-20078>> (accessed 20 January 2021).

17 D. Mahler and others, 'Updated Estimates of the Impact of COVID-19 on Global Poverty' (World Bank Blogs 2020) <<https://blogs.worldbank.org/opendata/updated-estimates-impact-covid-19-global-poverty>> accessed 20 January 2021; Oxfam, 'Dignity Not Destitution: An 'Economic Rescue Plan For All' to tackle the Coronavirus crisis and rebuild a more equal world' (2020) <<https://www.oxfam.org/en/research/dignity-not-destitution>> (accessed 20 January 2021).

18 P. Anthem, 'Risk of Hunger Pandemic as Coronavirus Set to Almost Double Acute Hunger by End of 2020' (World Food Programme 2020) <<https://www.wfp.org/stories/risk-hunger-pandemic-coronavirus-set-almost-double-acute-hunger-end-2020>> (accessed 6 January 2021).

19 Radio New Zealand, 'Food security an Issue in Solomon Islands following TC Harold' (6 April 2020) <<https://www.rnz.co.nz/international/pacific-news/413525/food-security-an-issue-in-solomon-islands-following-tc-harold>> (accessed 20 January 2021).

20 'Twenty-seven confirmed missing in Solomons ferry tragedy' (TRT World, 5 April 2020) <<https://www.trtworld.com/life/twenty-seven-confirmed-missing-in-solomons-ferry-tragedy-35127>> (accessed 20 January 2021).

infrastructure such as electricity, water supplies and roads.²¹ In Vanuatu's Sanma Province alone, an estimated ninety per cent of the population lost their homes; sixty per cent of schools were damaged.²² As an inhabitant of Ranwas in Vanuatu's Pentecost lamented, 'the whole place looks as if it was bombed'.²³

With sustained winds of up to 165 mph, Harold was the strongest cyclone to hit Pacific Island nations since cyclone Pam in 2015 and Winston in 2016, both of which were also classified as category five cyclones. In December 2020, yet another category five cyclone, Yasa, flattened entire villages and killed at least four people in the north of Fiji.²⁴ This quick succession of 'monster' cyclones fits neatly into a pattern of increased intensification of events linked to warming ocean temperatures.²⁵ Sea-level rise, coastal erosion, salt-water intrusion and more frequent and intense droughts have caused further damage to people's lives and livelihoods in the region, with similar or climatologically related impacts experienced in other regions.²⁶

In the Pacific, the coinciding of the cyclone with the pandemic greatly increased the risks of human rights harm, or indeed violations, in various ways. As the cyclone approached, social distancing measures to prevent the spread of the virus had to be suspended to enable people to find safe shelter in mass evacuation centres. While the Solomon Islands, Vanuatu and Tonga did not have any confirmed COVID-19 cases, preventive measures had to be taken to minimise the risk of the virus spreading undetected, also due to extremely limited testing and treatment capacity. As the lead spokesperson of Vanuatu's

21 D. McGarry, 'It's All Gone': Cyclone Harold cuts a deadly path through Vanuatu' (The Guardian, 9 April 2020) <<https://www.theguardian.com/world/2020/apr/10/its-all-gone-cyclone-harold-cuts-a-deadly-path-through-vanuatu>> (accessed 20 January 2021).

22 UNICEF, 'Thousands of Pacific Island children at risk in the aftermath of Tropical Cyclone Harold' (24 April 2020) <<https://www.unicef.org/press-releases/thousands-pacific-island-children-risk-aftermath-tropical-cyclone-harold>> (accessed 20 January 2021).

23 B. Robinson-Drawbridge, 'As if it was bombed': Vanuatu's Pentecost devastated by Cyclone Harold' (Radio New Zealand, 15 April 2020) <<https://www.rnz.co.nz/international/pacific-news/414299/as-if-it-was-bombed-vanuatu-s-pentecost-devastated-by-cyclone-harold>> (accessed 20 January 2021).

24 Y. Murray-Atfield, 'Deadly Tropical Cyclone Yasa leaves "devastation" across Fiji's north' (ABC News, 20 December 2020) <<https://www.abc.net.au/news/2020-12-20/tropical-cyclone-yasa-leaves-devastation-in-fiji/13001014>> (accessed 20 January 2021).

25 A. Fritz, 'Top hurricane expert: Climate change influenced Tropical Cyclone Pam' (The Washington Post, 18 March 2015) <<https://www.washingtonpost.com/news/capital-weather-gang/wp/2015/03/18/top-hurricane-expert-climate-change-influenced-tropical-cyclone-pam/>> (accessed 20 January 2021).

26 Masson-Delmotte and others (eds), *Global Warming of 1.5°C* (note 15).

COVID-19 advisory team explained, if the virus arrived 'it would be a disaster'.²⁷ In Fiji, which did have a small number of confirmed COVID-19 cases, the government declared the country's second State of Natural Disaster in a week after the number of cases increased in the aftermath of the cyclone.²⁸ By responding swiftly and effectively to the heightened risk of the virus spreading in a disaster context, most Pacific Island governments were able to avert a full-fledged outbreak within their territories.

While these national responses count as 'best practice', Pacific Island governments have been unable to prevent interferences with human rights resulting from the compound crises. Most notably, travel and quarantine restrictions coupled with shrinking aid budgets have undermined the relief effort following the cyclones.²⁹ As a result, thousands of people remain displaced, or are living in damaged areas with reduced access to clean water and sanitation.³⁰ Widespread damage to tourist sites and infrastructure resulting from the cyclone is yet another blow to the hospitality and tourism sector across the region, which has already been severely hit by travel restrictions related to the pandemic.³¹ Schools destroyed by the cyclone are yet to be rebuilt, with drops in household incomes posing further risks of disruption to children's education. The combined development setbacks may be felt for years or even decades. Other regions including Southeast and Central Asia, Central and South America and sub-Saharan Africa similarly face the double blow of severe climate change impacts and development setbacks resulting from the

27 Y. Bjornum, 'If it comes, It will be a Disaster': Life in One of the Only Countries Without Coronavirus' (The Guardian, 7 April 2020) <<https://www.theguardian.com/world/2020/apr/08/if-it-comes-it-will-be-a-disaster-life-in-vanuatu-one-of-the-only-countries-with-out-coronavirus>> (accessed 20 January 2021).

28 C. Rovoi, 'Fiji declares second State of Natural Disaster as COVID-19 cases increase' (Radio New Zealand, 16 April 2020) <<https://www.rnz.co.nz/international/pacific-news/414433/fiji-declares-second-state-of-natural-disaster-as-covid-19-cases-increase>> (accessed 20 January 2021).

29 D. McGarry, 'Cyclone Harold: Relief for Vanuatu delayed by coronavirus contamination fears' (The Guardian, 14 April 2020) <<https://www.theguardian.com/world/2020/apr/14/cyclone-harold-relief-for-vanuatu-delayed-by-coronavirus-contamination-fears>> (accessed 20 January 2021).

30 T. Fuatai, 'Vanuatu: 1000 still waiting for cyclone relief' (Newsroom, 19 April 2020) <<https://www.newsroom.co.nz/vanuatu-1000-still-waiting-for-cyclone-relief>> (accessed 20 January 2021).

31 T. Newton Cain and D. McGarry, 'Coronavirus in the Pacific: Weekly Briefing' (The Guardian, 7 April 2020) <<https://www.theguardian.com/world/2020/jun/03/coronavirus-in-the-pacific-weekly-briefing>> (accessed 20 January 2021).

pandemic, with potentially devastating consequences for the enjoyment of human rights.³²

3 The Duty to Cooperate to Realise Human Rights in the Face of the COVID-19 and Environmental Crises

International human rights law could, at least in theory, play a transformative role in correcting the injustices associated with the environmental and COVID-19 crises that occur in the Pacific Islands region and across the globe. Given the global nature of these compound crises, whether it can do so in practice depends in part on the extent to which global solidarity and international cooperation are part of human rights-based responses. As noted above, the need for global solidarity and cooperation is widely recognised in international discourse: UN Secretary-General António Guterres, for example, has called for global solidarity in response to the pandemic, explaining how the crisis has highlighted the urgent need for ‘more international cooperation and stronger institutions’.³³ In a similar vein, nine UN human rights experts have warned that States tackling the COVID-19 pandemic individually would provide ‘a path to further deaths’, noting that ‘all efforts to prevent, treat and contain COVID-19 must be based on the bedrock human rights-based principles of international solidarity, cooperation and assistance’.³⁴ Yet it remains unclear from these statements what exactly is meant by ‘solidarity’ and ‘cooperation’, and to what extent and how these notions are grounded in existing international law. This section seeks to unpack these questions at the level of international legal norms, with section (4) elaborating on what, in terms of concrete steps, may satisfy the requirements of solidarity and international cooperation that exist under international law.

In international law, the notion of solidarity generally refers to States’ obligations to take into account ‘the interests of other States or their subjects or the common interests of the world community’ in their respective domestic

32 International Recovery Platform, ‘COVID-19 Recovery: Policy Brief’ (2020) <https://www.recoveryplatform.org/assets/publication/Covid19_Recovery/COVID-19%20Recovery%20Policy%20Brief.pdf> (accessed 12 January 2021).

33 UN News, ‘COVID-19 Shows “Urgent Need” for Solidarity, UN Chief Tells Nobel Forum’ (2020) <<https://news.un.org/en/story/2020/12/1079802>> (accessed 11 January 2021).

34 T. Mofokeng and others, ‘Statement by UN Human Rights Experts: Universal Access to Vaccines Is Essential for Prevention and Containment of COVID-19 around the World’ (2020) <<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26484&LangID=E>> (accessed 10 January 2021).

policies.³⁵ Moreover, solidarity implies ‘readiness to cooperate and to accept the resulting costs with the view to fostering common interests or shared values’ and thus foresees ‘the equalisation of States by bilateral or multilateral institutionalised cooperation’.³⁶ The principle of solidarity can no longer be dismissed as ‘another academic fiction’, having become ‘a catalyst, triggering both a normative and an operational dynamic’³⁷ and representing one of the ‘common constitutional characteristics’³⁸ of distinct branches of international law. As such, the principle is ‘instrumental in protecting fundamental values shared by the international community’, and increasingly ensures ‘the cohesion and consistency of the international legal order across various branches’.³⁹ As Wolfrum sums it up, the principle of solidarity ‘reflects the transformation of international law into a value-based international legal order’.⁴⁰

While most international documents and instruments that refer to solidarity leave the term undefined, two UNGA Resolutions – 56/151 of 19 December 2001 and 57/213 of 18 December 2002, both entitled ‘Promotion of a Democratic and Equitable International Order’ – form a notable exception. These resolutions both define solidarity as:

A fundamental value, by virtue of which global challenges must be managed in a way that distributes costs and burdens fairly, in accordance with basic principles of equity and social justice, and ensures that those who suffer or [who] benefit the least receive help from those who benefit the most.⁴¹

In international environmental law, the principle of solidarity finds expression in differentiated obligations enabling States to achieve common objectives.⁴²

35 Ibid., at para. 3.

36 Ibid.

37 K. Wellens, ‘Revisiting Soliarity as a (Re-)Emerging Constitutional Principle’ in R. Wolfrum and C. Kojima (eds), *Solidarity: A Structural Principle of International Law* (Springer 2010), at 35–36.

38 C. Walter, ‘International Law in a Process of Constitutionalisation’ in J. Nijman and A. Nollkaemper (eds), *New Perspectives on the Divide between National and International Law* (OUP 2007).

39 Ibid., at 36.

40 R. Wolfrum, ‘Solidarity among States: An Emerging Structural Principle of International Law’ in P. Dupuy (ed.), *Völkerrecht als Weltoerordnung: Festschrift für Christian Tomuschat* (NP Engel 2006), at 1087.

41 UNGA Res 56/151 ‘Promotion of a democratic and equitable international order’ (19 December 2001) and UNGA Res 57/213 ‘Promotion of a democratic and equitable international order’ (18 December 2002).

42 Wellens, ‘Revisiting Soliarity as a (Re-)Emerging Constitutional Principle’ (note 37), at 13.

These differentiated obligations are premised on the principle of common but differentiated responsibilities and respective capabilities ('CBDRRC').⁴³ As Shelton points out, the principle reflects the notion of corrective or restorative justice, which seeks to correct an imbalance resulting from past injustices.⁴⁴ In the case of climate change and biodiversity loss, the imbalance at stake concerns historical differences in States' contributions to the root causes of the problem.⁴⁵ In addition, the principle recognises the differences in the respective capacities of States to respond to the problem.⁴⁶ These combined bases for differentiation result in a balanced normative framework enabling States to take coordinated action to achieve the goals of the respective environmental regimes.

In international human rights law, the principle of solidarity is most clearly reflected in obligations of international cooperation and assistance. As Skogly has noted, these obligations are not a new or emerging phenomenon in international human rights law; rather, they are existing obligations that have remained largely unarticulated.⁴⁷ The legal basis for the duty to cooperate towards the realisation of human rights can be found in the UN Charter, as well as in international human rights treaties. Art. 55 of the UN Charter requires the United Nations to promote, amongst other things, 'universal respect for, and observance of, human rights and fundamental freedoms for all'.⁴⁸ Pursuant to Art. 56, 'All Members pledge themselves to take joint and separate action in

43 Rio Declaration on Environment and Development (United Nations Conference on Environment and Development, 3–14 June 1992), Principle 7 ('In view of the different contributions to global environmental degradation, States have common but differentiated responsibilities'); United Nations Framework Convention on Climate Change (adopted 9 May 1992, entered into force 21 March 1994), Art. 3(1) (UNFCCC). See also M-C. Segger and others, 'Prospects for Principles of International Sustainable Development Law after the WSSD: Common but Differentiated Responsibilities, Precaution and Participation' (2003) 12 *RECIEL* 54, 56.

44 D. Shelton, 'Describing the Elephant: International Justice and Environmental Law' in J. Ebbesson and P. Okowa (eds), *Environmental Law and Justice in Context* (CUP 2009), at 61.

45 M. Salomon, 'Deprivation, Causation and the Law of International Cooperation' in M. Langford and others (eds), *Global Justice, State Duties: The Extraterritorial Scope of Economic, Social and Cultural Rights in International Law* (CUP 2009). J. Brunnée, 'Climate Change, Global Environmental Justice and International Environmental Law' in J. Ebbesson and P. Okowa (eds), *Environmental Law and Justice in Context* (CUP 2009), at 326.

46 Salomon, 'Deprivation, Causation and the Law of International Cooperation' (note 45).

47 S. Skogly, *Beyond National Borders: States' Human Rights Obligations in Their International Cooperation* (Intersentia 2006).

48 Charter of the United Nations (adopted on 24 October 1945) 1 UNTS XVI Art. 55 (UN Charter).

cooperation with the Organisation for the achievement of the purposes set forth in Article 55.⁴⁹ Both provisions are referenced in the Preamble of the UDHR, as well as in the Vienna Declaration and Programme of Action and in the establishment of the mandate of the High Commissioner for Human Rights.⁵⁰ None of these documents, however, clarify what exactly these provisions require in terms of concrete action from UN Member States. In this context, Stoll has argued that the obligations of UN Member States under Art. 56 comprise at least a procedural obligation to reply to and follow-up on requests by the Organisation, including its specialised agencies and treaty bodies, for the purpose of the universal realisation of human rights.⁵¹ In addition, Art. 56 requires that States ‘actively seek and proactively promote “cooperation with the Organisation” by means of launching initiatives within the Organisation and organising support’.⁵² In other words, each Member State must ‘take the initiative to cooperate with the Organisation if so required’ to achieve the purpose of the universal realisation of human rights.⁵³ In addition, more substantive obligations of international cooperation may follow from an interpretation of Art. 56 in light of the object and purpose of the UN Charter, which includes promoting and encouraging respect for human rights.⁵⁴

The duty to cooperate for the realisation of human rights finds a more advanced expression in Art. 2(1) of the International Covenant on Economic, Social and Cultural Rights (‘ICESCR’),⁵⁵ which requires State parties to take steps, both individually and ‘through international assistance and cooperation’ toward the progressive realisation of the rights contained in the Covenant. This provision has been authoritatively interpreted by the Committee on Economic, Social and Cultural Rights (‘CESCR’) in General Comments and Concluding Observations. While none of these are legally binding upon State parties, the General Comments have been relied upon by the International

49 Art. 56 UN Charter.

50 UNGA Res 48/141 (7 January 1994), preambular paragraph 7. See also Simma and Alston, ‘The Sources of Human Rights Law: Custom, Jus Cogens, and General Principles’ (note 10) and accompanying text.

51 Stoll, ‘Chapter IX: International Economic and Social Co-Operation, Article 56’ (note 9), at 1605.

52 Ibid.

53 Ibid.

54 Art. 1(3) UN Charter; Vienna Convention on the Law of Treaties (adopted 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331 (VCLT). L. Gross, R. Wetzels and D. Rauschnig, ‘Vienna Convention on the Law of Treaties’ (1969) 63 Am. J. Int’l L. 875; E. Cannizzaro, *The Law of Treaties beyond the Vienna Convention* (OUP 2011).

55 International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 Jan. 1976) 993 UNTS 3 (‘ICESCR’).

Law Commission ('ILC') to describe the legal effect of the ICESCR,⁵⁶ and the International Court of Justice ('ICJ') has used the CESCR's Concluding Observations to interpret the ICESCR's provisions.⁵⁷

In its General Comment No. 3 on the nature of States parties' obligations, the CESCR has emphasised that 'the undertaking in Article 2(1) "to take steps" ... is not qualified or limited by other considerations'.⁵⁸ Further, it has noted that 'the phrase "to the maximum of its available resources" was intended by the drafters of the Covenant to refer to both the resources existing within a State and those available from the international community through international cooperation and assistance'.⁵⁹ Additional references to international cooperation in the ICESCR are contained in Arts. 11,⁶⁰ 15,⁶¹ 22⁶² and 23.⁶³ In accordance with these provisions, the CESCR has consistently interpreted the Covenant as imposing international cooperation obligations on States in

56 International Law Commission, 'Draft Articles on Responsibility of States for Internationally Wrongful Acts, with Commentaries' (2001), Art. 50(1)(b). See also, e.g., UNGA Res 58/165 'International Covenants on Human Rights' (22 December 2003), at para. 24 ('welcomes the continuing efforts of the Human Rights Committee and the CESCR to strive for uniform standards in the implementation of the provisions of the International Covenants on Human Rights, and appeals to other bodies dealing with similar human rights questions to respect those uniform standards, as expressed in the general comments of the Committees').

57 *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (Advisory Opinion)* [2004] ICJ Rep 136, at para. 112.

58 CESCR, 'General Comment No. 3: The Nature of States Parties Obligations (Art 2, para 1)' (14 December 1990), at para 2.

59 *Ibid.*, at para. 13.

60 Art. 11 ICESCR (providing an international cooperation obligation with regard to the rights to an adequate standard of living and the right to be free from hunger).

61 Art. 15 ICESCR (providing that 'State Parties to the present Covenant recognise the benefits to be derived from the encouragement and development of international contacts and cooperation in the scientific and cultural fields').

62 Art. 22 ICESCR, mandating ECOSOC to 'bring to the attention of other organs of the United Nations, their subsidiary organs and specialized agencies concerned with furnishing technical assistance any matters arising out of [State reports] which may assist such bodies in deciding, each within its field of competence, on the advisability of international measures likely to contribute to the effective progressive implementation of the present Covenant'. These monitoring functions are now carried out by the Committee on Economic, Social and Cultural Rights in accordance with ECOSOC Resolution 185/17.

63 Art. 23 ICESCR, providing that 'States Parties to the present Covenant agree that international action for the achievement of the rights recognised in the present Covenant includes such methods as the conclusion of conventions, the adoption of recommendations, the furnishing of technical assistance and the holding of regional meetings and technical meetings for the purpose of consultation and study organised in conjunction with the Governments concerned'.

connection with all Covenant rights.⁶⁴ In the face of the COVID-19 and climate crises, particularly important is General Comment No. 14 on the right to the highest attainable standard of health in which the CESCR sets out an entire range of ‘international obligations’ arising from Art. 12 of the ICESCR.⁶⁵ The Committee also mentions a ‘collective responsibility’ on the part of the international community to address the problem of transmittable diseases and the ‘special responsibility and interest’ of economically developed States to assist poorer developing States in this regard.⁶⁶ The CESCR’s General Comment No.12 sets out similar international obligations in relation to the right to food,⁶⁷ as do General Comment No.17 on the right to enjoy the benefits of scientific progress,⁶⁸ General Comment No.18 on the right to work,⁶⁹ General Comment

64 See *infra* for examples on the right to food, adequate housing, water and the highest attainable standard of health. See further Skogly, *Beyond National Borders: States’ Human Rights Obligations in International Cooperation* (note 47), at 152.

65 The listed obligations are: first, to respect the enjoyment of the right to health in other countries; second, to prevent third parties from violating the right in other countries ‘if they are able to influence these third parties by way of legal or political means’; third, ‘depending on the availability of resources’ to facilitate access to essential health facilities, goods and services in other countries, wherever possible and to provide the necessary aid when required; fourth, to ensure that the right to health is given due attention in international agreements and that other international agreements do not adversely impact upon the right to health; fifth, to ensure that their actions as members of international organisations take due account of the right to health; and sixth, to cooperate in providing disaster relief and humanitarian assistance in times of emergency with contributions ‘to the maximum of [a State’s] capacity’. CESCR, ‘General Comment No. 14: The Right to the Highest Attainable Standard of Health (Article 12)’ at paras. 39–40. See also M. Craven, *The International Covenant on Economic, Social, and Cultural Rights: A Perspective on Its Development* (OUP 1995) at 253, and F. Bustreo and C. Doebbler, ‘Making Health an Imperative of Foreign Policy: The Value of a Human Rights Approach’ 12 *Health and Human Rights Journal* 47, 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’).

66 CESCR, ‘General Comment No. 14’, at paras. 40, 45.

67 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), at paras. 36–37.

68 CESCR, ‘General Comment No. 17: The Right of Everyone to Benefit from the Protection of the Moral and Material Interests Resulting from Any Scientific, Literary or Artistic Production of Which He or She Is the Author (article 15, paragraph 1(c), of the Covenant), at paras. 36–38.

69 CESCR, ‘General Comment No. 18: The Right to Work (Article 6 of the International Covenant on Economic, Social and Cultural Rights), at paras. 29–30.

No.13 on the right to education,⁷⁰ and General Comment No.21 on the right to take part in cultural life.⁷¹

Importantly, the CESCR has placed these obligations in a broader legal context, noting that ‘in accordance with Arts. 55 and 56 of the Charter of the United Nations, with well-established principles of international law, and with the provisions of the Covenant itself, international cooperation for development and thus for the realisation of economic, social and cultural rights is an obligation of all States’, which is ‘particularly incumbent upon those States which are in a position to assist others in this regard’.⁷² It is clear from this statement that the CESCR considers States’ obligations of international cooperation and assistance under the treaty to be differentiated. Moreover, the statement suggests that differentiation under the treaty is based primarily, if not exclusively, on capacity. The climate change and biodiversity regimes, in contrast, also explicitly recognise ‘responsibility’ as a basis for obligations of international cooperation and assistance, as discussed above. Importantly, emerging State practice suggests that the principle of common but differentiated responsibilities and respective capabilities informs States’ obligations under international human rights law related to environmental problems.⁷³ Conversely, human rights standards and principles can ‘inform debates on equity and fair distribution of mitigation and adaptation burdens’ by ‘[focusing] attention on how a given distribution of burden affects the enjoyment of human rights’.⁷⁴ Taking account of both responsibility and capacity in understanding States’ obligations to cooperate in response to global crises is in line with the principle of solidarity, as it ensures that these crises are managed in a way that distributes costs and burdens fairly.

While the existence of differentiated obligations under both international human rights law and international environmental law seems to be generally accepted, questions remain about the exact content of these obligations. Some of the most pressing questions concern the notion of State sovereignty, and

70 CESCR, ‘General Comment No. 13: The Right to Education (Art. 13)’, at para. 56.

71 CESCR, ‘General Comment No. 21: Right of The Right to Take Part in Cultural Life (art. 15, para. 1(a), of the International Covenant on Economic, Social and Cultural Rights)’, at paras. 56–59.

72 CESCR, ‘The Nature of States Parties Obligations (Art. 2, Para. 1)’, at para. 14.

73 See, for example, UN Human Rights Council resolutions 7/23, 10/4, 18/22, 26/27, 29/15, 32/33, 35/20, 38/4, 42/21 and 44/7; *The State of the Netherlands v Urgenda Foundation*, (20 December 2019) case 19/00135, at para. 576. See also Report of the Office of the United Nations High Commissioner for Human Rights on the Relationship between Climate Change and Human Rights, UN Doc. A/HRC/10/61 (15 January 2009).

74 *Ibid.*, at para. 88.

States' obligations to realise the rights of their own people versus responsibilities vis-à-vis people abroad. As a starting point, international human rights law generally assumes that the territorial State, or the State acting domestically, is primarily responsible for the realisation of human rights within that territory. However, as Salomon has argued, 'this point should not be overstated' as against the backdrop of widespread human rights deprivations globally, failing to recognise 'complementary duties among external States to remedy the state of affairs' would render the positive obligation of international cooperation for the realisation of human rights meaningless.⁷⁵ This logic is supported by the object and purpose of human rights treaties and the principle of effectiveness, which international courts have recognised as particularly relevant in the interpretation of their provisions.⁷⁶ The question is, then, how to deal with potential conflicts between States' territorial and extraterritorial human rights obligations. For example, as Wilde notes, the 'progressive test' derived from Art. 2(1) of the ICESCR, requiring best efforts to be made in connection with the fulfilment of economic, social and cultural rights, 'has to reckon with a new complicating factor' when applied to extraterritorial assistance: 'How are resources to be divided up between welfare "at home" and welfare "abroad", assuming a zero sum equation?'⁷⁷ Various answers have been proposed in literature and practice.⁷⁸ Perhaps most notably, the target of 0.7 per cent of gross domestic product to be allocated to Official Development Assistance ('ODA') has been recognised by human rights bodies as a minimum threshold for high-income States to comply with their obligations of international cooperation and assistance under core human rights treaties.⁷⁹ As such, Wilde identifies this target as 'the closest that international law has come to a benchmark for

75 Salomon, 'Deprivation, Causation and the Law of International Cooperation' (note 45).

76 See for example *Questions Relating to the Obligation to Prosecute or Extradite (Belgium v Senegal) (Judgment)* [2012] ICJ Rep 422.

77 *Ibid.*, at 392.

78 See e.g. Salomon, 'Deprivation, Causation and the Law of International Cooperation' (note 45); A. Khalfan, 'Division of Responsibility amongst States' in M. Langford and others (eds), *Global Justice, State Duties: The Extraterritorial Scope of Economic, Social and Cultural Rights in International Law* (CUP 2009).

79 M. Ssenyonjo, 'Economic, Social and Cultural Rights' in M. Baderin and M. Ssenyonjo (eds), *International Human Rights Law: Six Decades after the UDHR and Beyond* (Routledge 2016), at 61. See also M. Salomon, 'The Maastricht Principles on Extraterritorial Obligations in the Area of Economic, Social and Cultural Rights: An Overview of Positive "Obligations to Fulfil"' (*EJIL: Talk!*, 2012) <<https://www.ejiltalk.org/the-maastricht-principles-on-extraterritorial-obligations-of-states-in-the-area-of-economic-social-and-cultural-rights-and-its-commentary-an-overview-of-positive-obligations-to-fulfil/>> (accessed 22 February 2021).

economic redistribution through aid, thereby speaking to the crucial issue of where the balance is to be struck between welfare at home and welfare extra-territorially.⁸⁰ While characterising the target as ‘remarkably modest’, he highlights the importance of its specificity. Indeed, failing to indicate particular levels of financial and resource transfer required by international human rights law could make the duty to cooperate so vague as to be incapable of meaningfully addressing global poverty and economic inequality across borders.⁸¹

Additional questions arise with regard to the beneficiaries and enforceability of these obligations. As Salomon notes, international law lacks ‘a clear system of coordination and allocation of responsibilities necessary to give effect to the obligation to cooperate in fulfilling socio-economic rights throughout the world.’⁸² As such it seems difficult, if not impossible to establish that a specific State has an obligation under international human rights law to provide material assistance to any other specific State. This does not mean, however, that the relevant obligations of international cooperation and assistance are unenforceable. First of all, a State may be responsible for breaching these obligations if it fails to work toward the creation of a system of cooperation through which these obligations can be meaningfully implemented. This is true for both high-income and low-income States.⁸³ Breaches of high-income States’ obligations could arguably be established where the level of ODA provided falls short of the 0.7 per cent benchmark, or where its ‘economic, financial, monetary and other policies ... [cause] injury to the interests of developing States

80 Ibid., at 393. See also Salomon, ‘Deprivation, Causation and the Law of International Cooperation’ (note 45).

81 Ibid., at 393–394. An alternative approach builds on the distinction between ‘the minimum essential level’ of economic, social and cultural rights, the levels of these rights above the minimum essential level, and ‘individual “preferences” for goods and services that are not necessarily required in order to ensure human rights’. See Khalfan ‘Division of Responsibility amongst States’ (note 78) (referring to H. Shue, *Basic Rights: Subsistence, Affluence and U.S. Foreign Policy* (2nd edn Princeton University Press 1996), at 160).

82 Salomon, ‘Deprivation, Causation and the Law of International Cooperation’ (note 45); (with references to P. Alston and G. Quinn, ‘The Nature and Scope of States Parties’ Obligations under the International Covenant on Economic, Social and Cultural Rights’ (1987) 9 *Human Rights Quarterly* 156, at 191; M. Bulajić, *Principles of International Development Law: Progressive Development of the Principles of International Law Relating to the New Economic Order* (2nd edn Martinus Nijhoff Publishers 1993) and M. Salomon, *Global Responsibility for Human Rights: World Poverty and the Development of International Law* (OUP 2007).

83 Salomon, ‘The Maastricht Principles on Extraterritorial Obligations in the Area of Economic, Social and Cultural Rights: An Overview of Positive “Obligations to Fulfil”’ (note 79).

and to the rights of their peoples'.⁸⁴ As for low-income States, a breach of obligations could arise where a State has failed to seek to mobilise the necessary resources to realise human rights at home.⁸⁵ Further, it is important to note that a lack of resources does not relieve a State of its obligations of best efforts to realise human rights domestically: there is no legal basis for States in need to refuse to discharge their own territorial obligations by invoking the failed conduct of other States in assisting.⁸⁶

Finally, an important point to note concerns State sovereignty. As Khalfan notes, obligations of international cooperation and assistance do not entitle a State 'to act outside of permissible jurisdiction under international law except when a State that has lawful jurisdiction has permitted or acquiesced in such action'.⁸⁷ In this sense, these obligations are aligned with the notion of sovereign equality of States and do not infringe on it.⁸⁸

4 Operationalising the Duty to Cooperate in Response to Compound Global Crises

The analysis in the previous section has demonstrated that States' obligations of international cooperation and assistance are firmly established under international human rights law. Further, it has clarified that these obligations are both procedural (requiring States to cooperate with relevant parts of the UN system in preventing and addressing infringements with human rights) and

84 Salomon, 'Deprivation, Causation and the Law of International Cooperation' (note 45); (with references to P. Alston and G. Quinn, 'The Nature and Scope of States Parties' Obligations under the International Covenant on Economic, Social and Cultural Rights' (1987) 9 *Human Rights Quarterly* 156, at 191; M. Bulajić, *Principles of International Development Law: Progressive Development of the Principles of International Law Relating to the New Economic Order* (2nd edn Martinus Nijhoff Publishers 1993) and M. Salomon, *Global Responsibility for Human Rights: World Poverty and the Development of International Law* (OUP 2007) (note 82).

85 Salomon, 'The Maastricht Principles on Extraterritorial Obligations in the Area of Economic, Social and Cultural Rights: An Overview of Positive "Obligations to Fulfil"' (note 79).

86 Ibid.

87 Khalfan 'Division of Responsibility amongst States' (note 78), at 316 (recognising the prevention of violations of peremptory rules of international law as an exception, and noting that measures involving the use of force against other States to this end require UN Security Council authorisation under Chapter VI of the UN Charter).

88 See L. Boisson de Chazournes, 'Responsibility to Protect: Reflecting Solidarity?' in R. Wolfrum and C. Kojima (eds), *Solidarity: A Structural Principle of International Law* (Springer 2009).

substantive (amongst other things, requiring high-income States to provide financial and technical support to low-income States for the realisation of human rights). To illustrate what these common and differentiated obligations may mean in practice in the context of today's compound global crises, the present section circles back to the factual background provided in sections (1) and (2). It builds on the previous section's observation that States' obligations under international human rights law give legal expression to the principle of solidarity by requiring that States align their actions with the shared values that are embedded in international human rights law, including equity and social justice. Against this factual and normative backdrop, the section uses the goals of the Paris Agreement as a prism through which the intersections between the compound global crises, and related obligations of States, may be analysed and interpreted. These goals are set out in Art. 2 of the Agreement and comprise a long-term temperature goal; a finance goal; and an adaptation and resilience goal. The section explains how these goals gain in legal weight and specificity when read together with States' human rights obligations of international cooperation and assistance.

The long-term temperature goal of the Paris Agreement is to hold global temperature rise well below 2°C and to pursue efforts to keep it below 1.5°C. In interpreting this goal, it is important to note that UN human rights treaty bodies have stressed the need to limit global temperature rise to 1.5°C above pre-industrial levels in order to minimise the adverse effects of climate change on the enjoyment of human rights.⁸⁹ Indeed, pressure from the human rights community contributed to the incorporation of the 1.5°C limit in the Paris Agreement.⁹⁰ Emerging jurisprudence from domestic courts suggests that a State's failure to align its policies with the long-term temperature goal of the Paris Agreement may constitute a breach of obligations under international human rights law.⁹¹ To prevent such violations, States may need to strengthen the environmental rule of law at the national level and develop evidence-based policy scenarios that are aligned with the goal. In the context of the COVID-19 pandemic, States would need to make efforts to align bailouts, other forms of

89 Committee on the Elimination of Discrimination Against Women and others, 'Joint Statement on "Human Rights and Climate Change" (2019) <<https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=24998&LangID=E>> (accessed 21 January 2021).

90 A. Rubinson, 'For Human Rights (Every) Day: Climate Change Negotiators in Paris Must Support 1.5C Goal' (Center for International Environmental Law, 2015) <<https://www.ciel.org/for-human-rights-every-day-climate-change-negotiators-in-paris-must-support-1-5c-goal/>> (accessed 20 January 2021).

91 *The State of the Netherlands v Urgenda Foundation* (note 73).

public spending and tax policies with the long-term temperature goal, as well as with the related goal of ‘making finance flows consistent with a pathway towards low greenhouse gas emissions and climate-resilient development’.⁹²

At the same time, all States remain obliged to respect, protect and fulfil the rights of their own people in the design and implementation of climate, energy and pandemic recovery policies. This requires policies designed to ensure that socioeconomic and environmental benefits of sustainable energy policies and investments are reaped in short-term responses to COVID-19, as well as in mid-term recovery and long-term development planning.⁹³ Moreover, incorporating explicit human rights safeguards into relevant laws and policies is vital to prevent and reverse human rights violations connected with energy and extraction projects (such as land grabbing, destruction of sacred sites, mistreatment of local communities and dangerous working conditions).⁹⁴ The pressing need for these safeguards is evident from reports that the COVID-19 crisis is being used as a pretext for pursuing extraction projects without proper due diligence, transparency nor free, prior and informed consent of indigenous peoples in the Philippines, Liberia and Colombia.⁹⁵ Moreover, a recent 40-country study indicates that around the world, lockdowns have been hampering indigenous peoples’ ability to defend their lands, particularly where the private sector was subjected to more lenient or no restrictions.⁹⁶ As the private actors involved in these extraction projects often include multinational corporations, international collaboration to establish these safeguards and ensure their effectiveness is crucial.

States’ obligations to protect human rights from the adverse effects of climate change and the pandemic, and to cooperate to this end, also require enhanced efforts towards the Paris Agreement’s goal of increasing adaptive capacities

92 Paris Agreement (adopted 12 December 2015, entered into force 4 November 2016), Art. 2(1)(c).

93 United Nations Department of Economic and Social Affairs, ‘High-Level Political Forum 2020: Accelerating SDG7 Achievement in the Time of Covid-19’ (2020), at 23.

94 D. Olawuyi, ‘Energy (and Human Rights) for All: Addressing Human Rights Risks in Energy Access Projects’ in R. Salter, C. Gonzalez and E. Kronk Warner (eds), *Energy Justice: US and International Perspectives* (Edward Elgar 2018).

95 S. Szoke-Burke, ‘Land Investments During COVID-19: The Hazards of Pressing on Without Community Participation’ (State of the Planet, 2020) <<https://news.climate.columbia.edu/2020/05/28/land-investments-covid-19/>> (accessed 20 January 2021).

96 G. Walters and others, ‘COVID-19, Indigenous Peoples, Local Communities and Natural Resource Governance: A Preliminary Study’ (2021) <<https://www.iucn.org/news/commission-environmental-economic-and-social-policy/202101/covid-19-indigenous-peoples-local-communities-and-natural-resource-governance-a-preliminary-study>> (accessed 13 January 2021).

and fostering climate resilience.⁹⁷ Specifically, high-income States arguably have an obligation, based on their capacity to assist, to provide enhanced support for COVID-19 recovery efforts in low-income States so as to prevent people from falling into extreme poverty. The \$2.5 trillion package proposed by UNCTAD in March 2020,⁹⁸ along with a range of other policy measures aimed at mitigating economic damage from the COVID-19 crisis in developing and least developed States,⁹⁹ represents less than the bare minimum of what human rights law requires in terms of international cooperation and assistance. The package is similar in size to ODA that should have been delivered over the last decade in accordance with the 0.7% ODA target which, as noted above, may be construed as a minimum threshold for high-income States to comply with their obligations of international cooperation and assistance under core human rights treaties.¹⁰⁰ Low-income States, on their part, must use the maximum of their available resources to protect their people against the impact of the compound crises and proactively seek international assistance where the available resources fall short.

Additional obligations of international cooperation and assistance arise from high-income States' greater responsibility for the root causes of the environmental crises. The UN High Commissioner for Human Rights has previously called for new and additional sources of finance (such as financial transaction taxes and carbon taxes) to reduce inequalities and fulfil human rights commitments in the face of the climate crisis.¹⁰¹ As the world grapples with the COVID-19 pandemic and its differentiated impacts, this call has gained new

97 Paris Agreement to the United Nations Framework Convention on Climate Change (adopted 12 December 2015, entered into force 4 November 2016) T.I.A.S. No. 16-1104 (Paris Agreement), Art. 2(1)(b).

98 UNCTAD, 'UN Calls for \$2.5 trillion coronavirus crisis package for developing countries' (30 March 2020) Available at: <<https://unctad.org/news/un-calls-25-trillion-coronavirus-crisis-package-developing-countries>>.

99 M Kituyi, 'Impact of the COVID-19 pandemic on trade and development: Transitioning to a new normal' (UNCTAD, 19 November 2020) <<https://unctad.org/webflyer/impact-covid-19-pandemic-trade-and-development-transitioning-new-normal>> (accessed 20 January 2021).

100 M Ssenyonjo, 'Economic, Social and Cultural Rights' in M A Baderin & M Ssenyonjo (eds), *International Human Rights Law: Six Decades after the UDHR and Beyond* (Routledge 2016) 61. See also Salomon, 'The Maastricht Principles on Extraterritorial Obligations in the Area of Economic, Social and Cultural Rights: An Overview of Positive "Obligations to Fulfil"' (note 79).

101 UN OHCHR, 'Key Messages on Human Rights and Financing for Development', <<https://www.ohchr.org/Documents/Issues/MDGs/Post2015/HRAAndFinancingForDevelopment.pdf>> (accessed 19 January 2021).

importance. The human rights community may hold governments to account to heed it by emphasising the legally binding nature of States' parallel obligations under international environmental law. Most notably, the UN Framework Convention on Climate Change ('UNFCCC') specifically obliges developed States to take the lead in climate action and provide financial resources and technology to developing States for mitigation and adaptation.¹⁰² In a similar vein, the Convention on Biological Diversity ('CBD') obliges developed States to provide support to developing States for conserving, protecting and restoring healthy ecosystems and biodiversity.¹⁰³ While the precise content of these obligations remains unclear, there is potential for judicial and quasi-judicial bodies to clarify their meaning in the context of litigation.¹⁰⁴

Similar potential for clarifying States' obligations of international cooperation and assistance exists in connection with loss and damage resulting from climate change,¹⁰⁵ such as the devastation caused by Cyclones Harold and Yasa in Pacific Island countries. Arguably, international cooperation to avert, minimise and address such loss and damage is an essential component of States' obligations to provide an adequate and effective remedy for human rights violations resulting from climate change.¹⁰⁶ Again, while the exact content of these obligations remains unclear, emerging case law of domestic courts demonstrates the potential for clarification and enforcement of these obligations through litigation. Particularly noteworthy is the Supreme Court of the Netherlands' finding in the *Urgenda* case that the principle of common but differentiated responsibilities and respective capabilities ('CBDRRC') reflects 'widely accepted rules' which are based on 'the underlying principle ... that, in short, "partial fault" [for causing damage] also justifies partial responsibility'.¹⁰⁷

102 United Nations Framework Convention on Climate Change (adopted 9 May 1992, entered into force 19 June 1993) 1771 UNTS 107 ('UNFCCC'), Arts. 3 and 4.

103 Convention on Biological Diversity, Arts. 8(m) and 9(e).

104 See generally Wolfgang Kahl and Marc-Philippe Weller (eds), *Climate Change Litigation: A Handbook* (Hart Publishing 2021); Francesco Sindico and Makane Moise Mbengue (eds), *Comparative Climate Change Litigation: Beyond the Usual Suspects* (Springer 2021); Jacqueline Peel and Hari M. Osofsky, 'A Rights Turn in Climate Change Litigation?', *Transnational Environmental Law* (2018).

105 Art. 8 Paris Agreement (note 97); M. Wewerinke-Singh and D. Salili, 'Between Negotiations and Litigation: Vanuatu's Perspective on Loss and Damage from Climate Change' (2020) 20 *Climate Policy* 681; J. Gupta, 'No money for climate loss and damage' (*Eco-Business*, 12 December 2019), <<https://www.eco-business.com/news/no-money-for-climate-loss-and-damage/>> (accessed 20 January 2021).

106 M. Wewerinke-Singh, 'Remedies for Human Rights Violations Caused by Climate Change' (2019) 9 *Climate Law* 224.

107 *The State of the Netherlands v Urgenda Foundation* (note 73), at para. 5.7.6.

It is worth highlighting that this finding served to interpret and give effect to the State's human rights obligations. When applied to cases of loss and damage from climate change, this interpretation could support an approach whereby States' obligations of international cooperation and assistance are proportionate to their respective contributions to greenhouse gases accumulated in the global atmosphere.¹⁰⁸ At the same time, the parallel obligations of climate vulnerable States to protect their own people allow for claims against those States where it has failed to make best efforts to prevent the violations. More specific standards for apportioning responsibility between States in these areas could emerge when the principle of CBDRRC, and related principles and provisions of international environmental law and international human rights law, are applied to the specific facts of loss and damage cases.

5 Strengthening the UN System to Facilitate a Rights-Based Response

The analysis of obligations in the previous section confirms Bennoune's point that 'human rights as a broader discipline is not solely procedural [but also] substantive and interdisciplinary, and its core principles are as important to project now as its technicalities'.¹⁰⁹ At the same time, it has noted that these obligations remain poorly understood and therefore difficult to implement.¹¹⁰ While litigation could potentially remedy this situation, at least to an extent, on a case-by-case basis, multilateralism remains vital for ensuring a coordinated response to compound global crises. International cooperation to this end can be understood as a procedural obligation of all UN Member States under Arts. 55 and 56 of the UN Charter. Implementation of this obligation can follow two complementary trajectories: on the one hand, working through the current UN system to promote global solidarity and facilitate a more integrated approach to human rights and environmental protection; on the other hand, ensuring reform of the system – including by establishing new norms and institutions – to fill gaps in implementation and enforcement.

¹⁰⁸ See also T. Crosland, A. Meyer and M. Wewerinke-Singh, 'The Paris Agreement Implementation Blueprint: A Practical Guide to Bridging the Gap between Actions and Goal and Closing the Accountability Deficit (Part 1)' (2017) 25 *Environmental Liability* 114.

¹⁰⁹ K. Bennoune, "'Lest We Should Sleep": COVID-19 and Human Rights' (2020) 114 *American Journal of International Law* 666, at 675.

¹¹⁰ See also D. Pozen and K. Scheppele, 'Executive Underreach, in Pandemics and Otherwise' (2020) 114 *American Journal of International Law* 608, at 616.

With regard to global solidarity, the task of human rights advocates to 'help bridge the experience and knowledge divide between the wronged and those who wrong them'¹¹¹ is as challenging as it is important in the face of compound global crises. It requires that the human rights dimensions of the pandemic and environmental crises be brought to the fore in multilateral forums and public awareness. At the national level, National Human Rights Institutions ('NHRIs') often collect and receive quantitative and qualitative data that sheds light on environmental injustices and associated human rights violations. NHRIs should therefore be included in recovery planning processes, with a clear mandate and sufficient budget to monitor the implementation of pandemic recovery and climate policies from a human rights perspective. Ensuring informed and effective participation of indigenous peoples, local communities and other rightsholders in these processes is also essential to ensure alignment of these policies with States' human rights obligations. This often requires rearranging and reconfiguring institutional arrangements throughout the policy cycle: inclusive agenda setting, policy analysis and formulation, decision-making, implementation and evaluation, and capacity-building across the board.¹¹²

At the multilateral level, cross-analysis and exchange between human rights mechanisms, the international climate change and biodiversity regimes and other relevant parts of the UN system can play an important role in operationalising the principle of solidarity and related obligations of States. For example, States could include in their Nationally Determined Contributions ('NDCs') submitted under Art. 4(2) of the Paris Agreement, as well as in their National Biodiversity Strategies and Action Plans submitted under Art. 6 of the Convention on Biological Diversity, evidence of compliance with their obligations to protect human rights in all measures taken to respond to climate change¹¹³ and protect biodiversity. The five-yearly Global Stocktake established under the Paris Agreement, the first of which is scheduled to conclude in 2023, offers a particularly important opportunity to assess the collective progress towards the goals of the Paris Agreement and its human rights dimensions.¹¹⁴ This process would enable States to adopt best practices on the realisation of a human rights-based

111 N. Jain, 'Pandemics as Rights-Generators' (2020) 114 *American Journal of International Law* 677.

112 Z. Shawoo and others, 'Increasing Policy Coherence between NDCs and SDGs: A National Perspective' (Stockholm Environment Institute, 2020) <<https://www.sei.org/publications/increasing-policy-coherence-between-ndcs-and-sdgs/>> (accessed 20 January 2021).

113 Paris Agreement (note 97), preambular paragraph 11.

114 H. Winkler, 'Putting Equity into Practice in the Global Stocktake under the Paris Agreement' (2020) 20 *Climate Policy* 124.

approach to climate action when updating their NDCs, including in connection with international cooperation and assistance. In a similar vein, States' submissions under the Human Rights Council's Universal Periodic Review process and reporting to human rights treaty bodies should outline measures taken to ensure the achievement of the goals of the Paris Agreement and the realisation of the vision of the Convention on Biological Diversity of living in harmony with nature by 2050, both domestically and through international cooperation. In all cases, this entails demonstrating that COVID-19 recovery policies accelerate the transition to zero-emission, sustainable economies in a manner that contributes to the realisation of all human rights. Moreover, it requires laying out what finance and other forms of support are being provided and received for climate-resilient development, biodiversity protection and addressing loss and damage in in developing States. Ongoing negotiations on a legally binding instrument on business and human rights¹¹⁵ could serve as a stepping-stone for a regulatory framework to catalyse additional private sector finance for all these facets of climate and environmental action.

As the body tasked with directing international health within the UN system, the World Health Organisation ('WHO') needs to adopt structural reforms to give effect to the commitment to the protection of the right to health expressed in its Constitution, including by facilitating more structural collaboration with human rights mechanisms,¹¹⁶ the international climate change and biodiversity regimes, the Food and Agriculture Organisation (FAO), the UN Environment Programme, the World Organisation for Animal Health and other relevant bodies. As the Special Rapporteur for Human Rights and the Environment points out, such collaboration should facilitate the systematic implementation of a 'One Health' approach; 'an integrated strategy for the complex interconnections between humans, animals and ecosystems'.¹¹⁷ Benvenisti's observation that the WHO's shortcomings in responding to the COVID-19 pandemic 'lies with the Member States who designed it'¹¹⁸ reminds us of the responsibility of those same Member States to enact such reforms. The human rights community, in turn, can and should do more to hold States

115 See O. de Schutter, 'Towards a New Treaty on Business and Human Rights' (2016) 1 *Business and Human Rights Journal* 41.

116 J. Alvarez, 'The WHO in the Age of the Coronavirus' (2020) 14 *American Journal of International Law* 578, at 587.

117 'Human Rights Depend on a Healthy Biosphere. Report of the Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment, David R. Boyd' (15 July 2020).

118 E. Benvenisti, 'The WHO-Destined to Fail?: Political Cooperation and the COVID-19 Pandemic' (2020) 114 *American Journal of International Law* 588, at 588.

to account for their human rights obligations in connection with the UN system's capacity to do its part in addressing compound global crises.

In terms of new norms and institutions, achieving universal recognition of a right to a healthy environment could be an important stepping-stone towards a more integrated approach to health, human rights and environmental protection.¹¹⁹ The 2020 annual report of the Special Rapporteur on Human Rights and the Environment documents how recognition of this right in numerous jurisdictions has enabled victims of environmental harm to claim redress through the courts.¹²⁰ Consideration must also be given to how this right may be effectively enforced at the international level, such as through the expansion of the mandates of existing human rights treaty bodies or even the creation of a new judicial body – which could draw on existing proposals such as those for a World Court of Human Rights¹²¹ and an International Court of the Environment.¹²² While these proposals may seem overly ambitious or even unrealistic to some, closing the implementation and enforcement gap urgently requires bold initiatives that do not merely scratch the surface of the international legal order, but effectively transform it.

6 Conclusion

While a wide array of human rights issues is most appropriately addressed at the national level, climate change, mass extinction and pandemics are

119 A letter calling on the UN Human Rights Council to 'recognise without delay the human rights to a safe, clean, healthy, and sustainable environment' is currently voiced by more than 1,000 organisations from around the world. See 'Call for the Global Recognition of the Right to a Healthy Environment' <<http://healthyenvironmentisaright.org>> accessed 16 January 2021. See also J. Knox and R. Pejan (eds), *The Human Right to a Healthy Environment* (CUP 2018).

120 'Human Rights Depend on a Healthy Biosphere. Report of the Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment, David R. Boyd' (note 117) paras 32–36. See also D. Boyd, 'Catalyst for Change: Evaluating Forty Years of Experience in Implementing the Right to a Healthy Environment' in J. Knox and R. Pejan (eds), *The Human Right to a Healthy Environment* (CUP 2018).

121 J. Kozma, M. Nowak and M. Scheinin, *A World Court of Human Rights: Consolidated Statute and Commentary* (NWV Verlag 2011); see also B. Ramcharan, *Modernizing the UN Human Rights System* (Brill 2019), at 170–175. Cf P. Alston, 'Against a World Court for Human Rights' (2014) 28 *Ethics and International Affairs* 197.

122 ICE Coalition, 'Creating the International Court for the Environment' <<http://www.icecoalition.org>> (accessed 16 January 2021).

paradigmatic examples of global problems that require coordinated responses and international cooperation in order to prevent and respond to human rights violations. In these instances, as Knox notes, 'international cooperation must take the primary, rather than the secondary, role'.¹²³ Against this backdrop, this article has considered how broad obligations of international cooperation and assistance under international human rights law may translate into more specific requirements for joint and separate action to prevent and address human rights violations connected with the COVID-19 and environmental crises. It has demonstrated how an integrated approach to international law that is premised on global solidarity can play a role in preventing and redressing human rights violations connected with these compound crises. At the same time, it has argued that protecting human rights in the face of the crises may require the adoption of new laws and the establishment of new institutions. Initiatives such as the proposed treaty on business and human rights, international codification of the human rights to a healthy environment and the establishment of an international court mandated to deal with environmental rights claims all merit serious consideration in these times of crisis. With Paparinskis, we may see the pandemic as offering 'a law-making moment'¹²⁴ and recall that the international legal order has been shaped in significant part by past global crises and shocks. As Schlesinger has observed, 'the UN's capacity to serve as the venue for all nations and to reinvent itself as fresh crises demand ... is impressive'.¹²⁵ With the liveability of our planet so obviously at stake, this capacity must be harnessed.

123 J. Knox, 'Climate Change and Human Rights Law' (note 11), at 213.

124 M. Paparinskis, 'The Once and Future Law of State Responsibility' (2020) 144 *American Journal of International Law* 618.

125 S. Schlesinger, 'Has the UN Lived Up to Its Charter?' in I. Shapiro and J. Lampert (eds), *Charter of the United Nations, Together with Scholarly Commentaries and Essential Historical Documents* (Yale University Press 2014), at 120.