

## Human Rights and International Environmental Law: Some Current Problems

© Alan Boyle\*

1. Intro
  2. The UN human rights organs and the environment
  3. Environmental rights and “human rights”
  4. Transboundary application of human rights treaties
  5. The right to a decent environment
  6. Amending the treaties or adopting declarations
  7. Environmental courts and litigation on human rights and the environment
- 
1. **The UN human rights organs and the environment: is the environment part of human rights law?**
    - Remarkably, the environmental dimensions of human rights law are rarely discussed in academic treatments of human rights. Literature mainly written by environmentalists or generalist international lawyers. Nevertheless, growing environmental caseload of HR courts indicates their appreciation of the importance of the topic: in effect a greening of human rights law has taken place. Not going to address this jurisprudence today – already covered in the literature, including my own work (B&B Ch5; Fordham ELR 2007; UNEP paper 2010). But in summary, so extensive is the environmental jurisprudence that proposals for the adoption of an environmental protocol to the ECHR have not been pursued.<sup>1</sup> Instead, a *Manual on Human Rights and the Environment* adopted by the Council of Europe in 2005 recapitulates the Court’s decisions on this subject and sets out some general principles. The greening of HR case law is not confined to Europe, but extends to IACHR and ACHPR, as well as the ICCPR.
    - Like the HR literature, it is not clear how far UN HR community takes environment seriously. Want to start by focusing on that aspect today - UN’s record on environmental rights.
    - No doubt that civil, political, economic and social rights may have broader environmental implications. A report for the Office of the High Commissioner on Human Rights emphasises the key point that “While the universal human rights treaties do not refer to a specific right to a safe and healthy environment, the United Nations human rights treaty bodies all recognize the intrinsic link

---

\* Professor of Public International Law, University of Edinburgh and barrister, Essex Court Chambers, London. © AEBoyle 2011

<sup>1</sup> See Council of Europe: Committee of Experts for the Development of Human Rights, *Final Activity Report on Human Rights and the Environment*, DH-DEV(2005)006rev, Strasbourg, 10 November 2005, 2-3 [Hereafter ‘Council of Europe Report’].

between the environment and the realization of a range of human rights, such as the right to life, to health, to food, to water, and to housing.”<sup>2</sup>

- UN Human Rights Committee has adopted various General Comments that are relevant to environment and sustainable development, notably General Comments 14 and 15, which interpret Articles 11 and 12 of the ICESCR to include access to sufficient, safe, and affordable water for domestic uses and sanitation; the prevention and reduction of exposure to harmful substances including radiation and chemicals, or other detrimental environmental conditions that directly or indirectly impact upon human health. These are useful and important interpretations that have also had some impact on related areas of international law – eg Article 10 of UN Watercourses Convention which gives priority to ‘vital human needs’ when allocating scarce water resources. The UN 6<sup>th</sup> committee commentary on the Watercourses Convention indicates that “In determining ‘vital human needs’ special attention is to be paid to providing sufficient water to sustain human life, including both drinking water and water required for the production of food in order to prevent starvation.”<sup>3</sup> On this view, existing economic and social rights help guarantee some of the indispensable attributes of a decent environment.
- In 2009 UNHR Council adopted Resolution 10/4 (2009) on Human rights and climate change:  
“*Noting* that climate change-related impacts have a range of implications, both direct and indirect, for the effective enjoyment of human rights including, inter alia, the right to life, the right to adequate food, the right to the highest attainable standard of health, the right to adequate housing, the right to self-determination and human rights obligations related to access to safe drinking water and sanitation, and recalling that in no case may a people be deprived of its own means of subsistence”
- Nevertheless, two observations in the OHCHR report are worth highlighting. First, the report noted that “[w]hile climate change has obvious implications for the enjoyment of human rights, it is less obvious whether, and to what extent, such effects can be qualified as human rights violations in a strict legal sense.”<sup>4</sup> The multiplicity of causes for environmental degradation and the difficulty of relating specific effects to historic emissions in particular countries make attributing responsibility to any one state problematic. Secondly, as the report also points out, “(...) human rights litigation is not well-suited to promote precautionary measures based on risk assessments, unless such risks pose an imminent threat to the human rights of specific individuals. Yet, by drawing attention to the broader human rights implications of climate change risks, the human rights perspective, in line with the precautionary principle, emphasizes the need to avoid unnecessary delay in taking action to contain

---

<sup>2</sup> UN HRC, *Report of the OHCHR on the relationship between climate change and human rights*, UN Doc. A/HRC/10/61, 15 January 2009, para. 18.

<sup>3</sup> *Rept. of the 6th Committee Working Group*, GAOR A/51/869 (1997)

<sup>4</sup> *Supra*, n.2, para. 70.

the threat of global warming.”<sup>5</sup> I will return to some of these issues later, but in summary, on the view set out here, a human rights perspective on climate change essentially serves to reinforce political pressure coming from the more vulnerable developing states. Its utility is rhetorical rather than juridical.

- UNHRC has also adopted Resolution 2005/60 (2005) on human rights and the environment as part of sustainable development:

1. *Takes note* of the report of the Secretary-General on human rights and the environment as part of sustainable development (E/CN.4/2005/96);
2. *Reaffirms* that peace, security, stability and respect for human rights and fundamental freedoms, including the right to development, as well as respect for cultural diversity are essential for achieving sustainable development and ensuring that sustainable development benefits all, as set forth in the Plan of Implementation of the World Summit on Sustainable Development;
3. *Calls upon* States to take all necessary measures to protect the legitimate exercise of everyone’s human rights when promoting environmental protection and sustainable development .....
4. *Stresses* the importance for States, when developing their environmental policies, to take into account how environmental degradation may affect all members of society, and in particular women, children, indigenous people or disadvantaged members of society, .....
5. *Encourages* all efforts towards the implementation of the principles of the Rio Declaration on Environment and Development, in particular principle 10, in order to contribute, inter alia, to effective access to judicial and administrative proceedings, including redress and remedy;

Implementation of Rio P.10 is the one significant element here: will say more when we look at the Aarhus Convention.

- UNHRC has appointed special rapporteurs to report on individual countries. A number of these independent reports have covered environmental conditions. See e.g. *Reports of the independent expert on the issue of human rights obligations related to access to safe drinking water and sanitation in Costa Rica and on the situation of human rights in the Democratic People’s Republic of Korea*<sup>6</sup>
- UNHRC also has power to appoint SR’s on particular issues: Only one relevant to environment is of longstanding - Special rapporteur on illicit movement and dumping of toxic and dangerous products and wastes. Activity confined to country visits and annual reports. Present SR does not paint encouraging picture:

“34. The Special Rapporteur remains discouraged by the lack of attention paid to the mandate. During consultations with Member States, the Special Rapporteur is often confronted with arguments that issues of toxic waste

---

<sup>5</sup> Ibid, para. 91.

<sup>6</sup> See e.g. UN Human Rights Council, *Report of the independent expert on the issue of human rights obligations related to access to safe drinking water and sanitation in Costa Rica*, UN Doc. A/HRC/12/24/Add. 1, 23 June 2009; UN Human Rights Council, *Report of the Special Rapporteur on the situation of human rights in the Democratic People’s Republic of Korea*, Doc. A/HRC/10/18, 24 February 2009.

management are more appropriately discussed in environmental forums than at the Human Rights Council. .... He calls on the Human Rights Council to take this issue more seriously. He is discouraged by the limited number of States willing to engage in constructive dialogue with him on the mandate during the interactive sessions at the Human Rights Council.

35. Resolution 2005/15 set forth an ambitious agenda for the mandate. While the Special Rapporteur remains committed to effectively implementing his mandate, he is unable to carry out all the work requested by the Commission on Human Rights, now assumed by the Human Rights Council due to limited resources. He would like to appeal to States to provide more funds and support to the Office of the High Commissioner for Human Rights in order to enable it to support his work more effectively.<sup>7</sup>

- Revealing for what it says about lack of priority given to the subject and sense that it is not really a human rights issue at all.
- OHCHR appears particularly lukewarm: organised two seminars on HR and Env in 2002 and 2009 jointly with UNEP, but unable or unwilling to participate in further attempts to promote new declaration on HR and Env. Expert group convened to draft a declaration in 2010 by UNEP without OHCHR participation but the project is still stalled. Draft declaration produced by the experts is interesting and rather different from the 1994 text produced by the special rapporteur of the Sub-Commission on the Prevention of Discrimination and Protection of Minorities.<sup>8</sup> That text went no further due to opposition from developed states. Not clear the new attempt will do any better. No clear political mandate for it at present, although Rio + 20 may provide an opportunity.
- Overall therefore the record of UNHRC and OHCHR on HR and environment is somewhat sparse and understated: HR courts have contributed a great deal more to the subject than interstate negotiation or the specialists of the UN HR community.

## 2. Environmental rights or “human rights”

- Are environmental rights the same as human rights? Or put another way, are all environmental rights part of the corpus of human rights law? Plainly, insofar we are talking about a greening of rights found in avowedly human rights treaties – the ICCPR, the ICESCR, the EHCHR, the IACHR and the ACHPR – then we are necessarily talking about human rights law. That includes the right to life, right to private life, right to health, right to water, and right to property.<sup>9</sup>

---

<sup>7</sup> UN HRC, Report of the Special Rapporteur on the adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights, GAOR A/HRC/9/22, 13 August 2008.

<sup>8</sup> ECOSOC, *Human Rights and the Environment*, Final Report (1994) UN Doc. E/CN.4/Sub.2/1994/9, p.59.

<sup>9</sup>

- But not all environmental rights are found in mainstream human rights treaties. The most obvious example is the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters adopted by the UNECE. Its preamble not only recalls Principle 1 of the Stockholm Declaration and recognises that ‘adequate protection of the environment is essential to human well-being and the enjoyment of basic human rights, including the right to life itself’ but also asserts that ‘every person has the right to live in an environment adequate to his or her health and well-being, and the duty, both individually and in association with others, to protect and improve the environment for the benefit of present and future generations.’<sup>10</sup>
- This was initially a regional convention, whose participants include European Union states and most of the former Soviet states, but it is in fact open to any state to participate. Canada, for example, is a party.<sup>11</sup> As Kofi Annan, formerly Secretary-General of the UN, observed: ‘*Although regional in scope, the significance of the Aarhus Convention is global. [I]t is the most ambitious venture in the area of “environmental democracy” so far undertaken under the auspices of the United Nations.*’<sup>12</sup> In his view the Convention has the ‘*potential to serve as a global framework for strengthening citizens’ environmental rights*’.<sup>13</sup>
- The Aarhus Convention represents an important extension of environmental rights, but also of the corpus of human rights law. However, its focus is strictly procedural in content, limited to public participation in environmental decision-making and access to justice and information.<sup>14</sup> As a conception of environmental rights it owes little to Stockholm Principle 1 and everything to Principle 10 of the 1992 Rio Declaration, which gives explicit support in mandatory language to the same category of procedural rights.<sup>15</sup> The Aarhus Convention is widely ratified in Europe and has had significant influence on the jurisprudence of the European Court of Human Rights, whose decisions in effect incorporate its main elements.<sup>16</sup>
- The Convention is also important because, unlike human rights treaties, it gives particular emphasis to public interest activism by NGOs.<sup>17</sup> Insofar as it empowers claimants with a ‘sufficient interest’ to engage in public interest litigation when their own rights are not in issue,<sup>18</sup> Article 9 of Aarhus thus

---

<sup>10</sup> The UK made a declaration on signing the Convention that this provision is ‘an aspiration’, not a legal right.

<sup>11</sup>

<sup>12</sup> Annan, ‘Foreword’, UNECE, *The Aarhus Convention-An Implementation Guide*, v

<sup>13</sup> *Ibid.*

<sup>14</sup> Section 2(4).

<sup>15</sup> See also UNCED, Agenda 21, Ch 23, especially 23.2,

<sup>16</sup>

<sup>17</sup> Articles 4(1)(a) 6 and 9 are considered below.

<sup>18</sup> ‘Sufficient interest’ is not defined by the Convention but the phrase is drawn from English administrative law. In its first ruling, the Aarhus Compliance Committee held that ‘Although what constitutes a sufficient interest and impairment of a right shall be determined in accordance with

appears to go beyond the requirements of the ECHR. The broader public interest approach of the Aarhus Convention and the narrower ECHR/IACHR focus on the rights of affected individuals is very evident in the case-law.<sup>19</sup> This is a significant difference between the two treaties which has important implications for any debate about the need for an autonomous right to a decent or satisfactory environment, a question to which we return below.

- A further important difference between the Aarhus Convention and the ECHR is the adoption of a non-compliance procedure. The most innovative features of the ‘non-confrontational, non-judicial and consultative’ procedure established under Article 15 of the Convention are that members of the public and NGOs may bring complaints before a non-compliance committee whose members are not only independent of the parties but may be nominated by NGOs.<sup>20</sup> In all these respects it is obviously closer to human rights treaty monitoring bodies such as the UN Human Rights Committee than to the judicial processes of the ECHR.<sup>21</sup> The process was strongly opposed by the United States during negotiations,<sup>22</sup> but it has nevertheless been accepted throughout Europe and the former Soviet states. The committee hearing complaints has given rulings which interpret and clarify provisions of the convention and a body of case law is emerging.<sup>23</sup> There have been findings of non-compliance against several parties resulting in recommendations that the respondent states should change their law, develop better implementation, or engage in capacity-building and training. Kravchenko concludes that ‘independence, transparency, and NGO involvement in the Convention’s novel compliance mechanism represent an ambitious effort to bring democracy and participation to the very heart of compliance itself.’<sup>24</sup>

---

national law, it must be decided “with the objective of giving the public concerned wide access to justice” within the scope of the Convention.’ They are not required to establish an *actio popularis*, but they must not use national law ‘as an excuse for introducing or maintaining so strict criteria that they effectively bar all or almost all environmental organizations from challenging acts or omissions that contravene national law relating to the environment.’ See UNECE, Compliance Committee, *Bond Beter Leefmilieu Vlaanderen VZW- Findings and Recommendation with regard to compliance by Belgium* (Comm.ACCC/C/2005/11) ECE/MP.PP/C.1/2006/4/Add.2 (28 July 2006) paras. 33 - 36.

<sup>19</sup>

<sup>20</sup> Aarhus Convention, Decision 1/7: Review of Compliance, *Report of 1<sup>st</sup> Mtg of Parties*, UN Doc ECE/MP.PP/2/Add.8 (2004). See also Report of the Compliance Committee, UN Doc. ECE/MP.PP/2005/13 (2005) and generally Kravchenko, 18 *Colorado JIELP* (2007) 1; Koester, 2 *J.Eur.Env&Plng.L* (2005) 31. The compliance procedure adopted in 2007 under the 1999 UNECE Protocol on Water and Health is modelled directly on the Aarhus procedure. Other NCPs with independent members but with no public participation include the Compliance Committees of the Biosafety Protocol and the Kyoto Protocol.

<sup>21</sup> See generally Alston and Crawford (eds) *The Future of UN Human Rights Treaty Monitoring* (Cambridge, 2000).

<sup>22</sup> But compare procedures for individual enforcement under the 1993 North American Agreement on Environmental Co-operation.

<sup>23</sup> *Infra*, Ch 5.

<sup>24</sup> Kravchenko, 18 *Colorado JIELP* (2007) 49.

- Nevertheless, individual complainants would be well-advised to appreciate that many of the same rights they enjoy under the Aarhus Convention can also be asserted under the European Convention of Human Rights.<sup>25</sup> As we noted earlier, most of the Convention’s principal provisions have been interpreted into the ECHR and a growing number of ECHR cases involve issues that also arise under the Aarhus Convention. Only NGOs have no alternative procedure available to them.

### 3. Transboundary application of human rights treaties

- International human rights treaties generally require a state party to secure the relevant rights and freedoms for everyone within its own territory or subject to its jurisdiction.<sup>26</sup> At first sight, this may suggest that a state cannot be held responsible for violating the rights of persons in other countries. In its Advisory Opinion on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* the ICJ noted that:

“.....while the jurisdiction of States is primarily territorial, it may sometimes be exercised outside the national territory. Considering the object and purpose of the International Covenant on Civil and Political Rights, it would seem natural that, even when such is the case, State parties to the Covenant should be bound to comply with its provisions.”<sup>27</sup>

- However, the ratio of this and other similar cases is that where a state exercises control over foreign territory – usually through occupation – human rights obligations will follow.<sup>28</sup> The more difficult question is whether a state must also respect human rights in other countries when activities within its own territory or jurisdiction affect the enjoyment of human rights extraterritorially. Transboundary pollution or global climate change provide the two obvious examples. We know that states have a duty in general international law to exercise due diligence over activities within their own territory that may cause significant harm to other states or areas beyond national jurisdiction, including the global environment.<sup>29</sup> We also know that failure by a state to regulate or control environmental nuisances or to protect the environment may interfere with individual rights. Cases such as *Guerra*, *Lopez Ostra*, *Öneryildiz*, *Taskin*, *Fadeyeva*, *Budayaeva* and *Tatar* show how the right to private life, or the right to life, can be used to compel governments to regulate environmental risks, enforce environmental laws, or disclose

---

<sup>25</sup> See *infra* Ch 5, section 2(5).

<sup>26</sup> 1950 European Convention on Human Rights, Article 1; 1966 UN Covenant on Civil and Political Rights, Article 2.

<sup>27</sup> *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, ICJ Reports 2004, para. 109.

<sup>28</sup>

<sup>29</sup>

information.<sup>30</sup> Does this obligation apply equally or at all if those whose rights are affected live outside the territory or beyond the jurisdiction of that state?

- As the UN Human Rights Committee observed in *Delia Saldías de López v. Uruguay*: “It would be *unconscionable* to so interpret the responsibility under article 2 of the Covenant as to permit a State party to perpetrate violations of the Covenant on the territory of another State, which violations it could not perpetrate on its own territory.”<sup>31</sup> But this begs the question whether transboundary pollution does engage the responsibility of the state for perpetrating violations on the territory of another state. One answer, based on jurisprudence of the IACHR and ECHR is to rely on the notion of a “common legal space” within which each state party has an obligation to respect human rights within another state party.
- On that view a failure to regulate extraterritorial pollution or to provide redress within its legal system for transboundary victims *would* amount to a violation of their human rights. This approach conveniently avoids the rationale of the *Bankovic* decision, which on this view applies only to extraterritorial effects outside the common legal space of parties to the ECHR. It is also supported by the Aarhus Convention. While not specifically requiring transboundary application, Aarhus applies in general terms to the ‘the public’ or ‘the public concerned,’ without distinguishing between those inside the state and others beyond its borders. Article 3(9), the non-discrimination article, also ensures that foreign nationals and NGOs have the same rights as anyone else even if domiciled or registered elsewhere.
- At the very least a state which allows harmful activities within its own territory to cause foreseeable harm extraterritorially is likely to violate human rights obligations if it does not permit access to justice and afford effective domestic remedies. Similarly, it would not be unreasonable to expect one state to take into account foreseeable transboundary impacts in another state when balancing the wider public interest against the possible harm to individual rights.<sup>32</sup> Where it is possible to take effective measures to prevent or mitigate transboundary harm to human rights then the argument that the state has no obligation to do so merely because the harm is extraterritorial is not very attractive. There is no principled basis for suggesting that the outcome of cases such as *Hatton* should depend on whether those affected by excessive noise are in the same country, or in other countries. From this it also follows that representations from those affected in other countries should be taken into

---

<sup>30</sup> *Lopez Ostra v. Spain* (1994) 20 EHRR 277; *Guerra v. Italy* (1998) 26 EHRR 357; *Fadeyeva v. Russia* [2005] ECHR 376; *Öneryildiz v. Turkey* [2004] ECHR 657; *Taskin v. Turkey* [2004] ECHR, paras. 113-9; *Tatar v. Romania* [2009] ECHR, para 88; *Budayeva v Russia* [2008] ECHR.

<sup>31</sup> (1981) ICCPR Comm. No. 52/1979, para. 12.3, referring to Art. 2 of the UN Covenant on Civil and Political Rights. See also *Lilian Celiberti de Casariego v. Uruguay*, ICCPR Comm. No. 56/1979 (1981).

<sup>32</sup> International Law Association, *Report of 72<sup>nd</sup> Conference* (Toronto, 2006), Committee on Transnational Enforcement of Environmental Law, Final Report, Rule 2, and commentary.



account and given due weight.<sup>33</sup> We shall have to await a decision in the *Aerial Spraying Case* before these questions are conclusively resolved.

- Even if this reasoning is correct in cases of transboundary pollution affecting a neighbouring state, it does not follow that it will be equally valid in cases of global environmental harm, such as climate change. Here the obvious problem is the multiplicity of states contributing to the problem, and the difficulty of showing any direct connection to the victims. The inhabitants of sinking islands in the South Seas may justifiably complain of human rights violations, but who is responsible? Those states like the UK, US and Germany whose historic emissions have unforeseeably caused the problem? Those states like China and India whose current emissions have foreseeably made matters worse? Those states like the US or Canada which have failed to agree to or to take adequate measures to limit further emissions or to stabilise global temperatures at 1990 levels? At this point it may be better to accept, as the OHCHR appears to have done, that human rights law is not the right medium for addressing a shared problem of this kind and that further negotiations through the UNFCCC process are the only answer.

#### 4. A Right to a decent environment?

- Despite their evolutionary character, human rights treaties still fall short of guaranteeing a right to a decent or satisfactory environment if that concept is understood in broader, essentially qualitative, terms unrelated to impacts on specific humans. It remains true, as the ECtHR re-iterated in *Kyrtatos*, that ‘neither Article 8 nor any of the other articles of the Convention are specifically designed to provide general protection of the environment as such...’<sup>34</sup> This case involved the illegal draining of a wetland. Although the applicants were successful insofar as the state’s non-enforcement of a court judgment was concerned, the European Court could find no violation of their right to private life or enjoyment of property arising out of the destruction of the area in question. Although they lived nearby, the applicants’ rights were not affected. They were not entitled to live in any particular environment, or to have the surrounding environment indefinitely preserved.
- The Inter American Commission on Human Rights has taken a similar view, rejecting as inadmissible a claim on behalf of all the citizens of Panama to protect a nature reserve from development.<sup>35</sup> In a comparable case

---

<sup>33</sup> Ibid. See also Article 13 of the ILC Draft Articles on Prevention of Transboundary Harm,.....

<sup>34</sup> *Kyrtatos v. Greece* [2003] ECHR 242, para. 52.

<sup>35</sup> *Metropolitan Nature Reserve v. Panama*, Case 11.533, Report No. 88/03, Inter-Am. C.H.R., OEA/Ser.L/V/II.118 Doc. 70 rev. 2 at 524 (2003), para. 34: ‘It is clear from an analysis of the case reported here that Rodrigo Noriega filed a petition on behalf of the citizens of Panama alleging that the right to property of all Panamanians has been violated. He points out that those principally affected include environmental, civic and scientific groups such as the Residents of Panama, Friends of the Metropolitan Nature Reserve, the Audubon Society of Panama, United Civic Associations, and the Association for the Research and Protection of Panamanian Species. The Commission, on that basis, holds the present complaint to be inadmissible since it concerns

concerning objections to the growing of genetically modified crops the UN Human Rights Committee likewise held that ‘no person may, in theoretical terms and by *actio popularis*, object to a law or practice which he holds to be at variance with the Covenant.’<sup>36</sup>

- *Ogoniland* decision goes further than any previous human rights case in the substantive environmental obligations it places on states. It is unique in applying for the first time the right of peoples to dispose freely of their own natural resources.<sup>37</sup> When combined with the evidence of severe harm to the lives, health, property and well-being of the local population, the decision can be seen as a challenge to the sustainability of oil extraction in Ogoniland. The most obvious characteristics of unsustainable development include material harm and a lack of material benefits for those most adversely affected. In that sense it is not surprising that the African Commission does not see this case simply as a failure to maintain a fair balance between public good and private rights. This decision gives some indication of how environmental rights could be used, but its exceptional basis in Articles 21 and 24 has to be remembered. No other treaty contains anything directly comparable. Moreover, the rights created by the African Convention are peoples’ rights, not individual rights.
- Should we then go the whole way and create a right to a decent environment in international human rights law? UN Covenant on Economic and Social Rights reiterates the right of peoples to ‘freely pursue their economic, social and cultural development’ and to ‘freely dispose of their natural wealth and resources...’, but other than ‘the improvement of all aspects of environmental and industrial hygiene’ (Article 12), it makes no specific reference to protection of the environment. UN human rights organs have done their best to give the ESCR Covenant greater environmental relevance. Arguably what is needed here is a broader and more explicit focus on environmental quality which could be

---

abstract victims represented in an *actio popularis* rather than specifically identified and defined individuals. The Commission does recognize that given the nature of the complaint, the petition could hardly pinpoint a group of victims with particularity since all the citizens of Panama are described as property owners of the Metropolitan Nature Reserve. The petition is inadmissible, further, because the environmental, civic, and scientific groups considered most harmed by the alleged violations are legal entities and not natural persons, as the Convention stipulates. The Commission therefore rules that it has not the requisite competence *ratione personae* to adjudicate the present matter in accordance with jurisprudence establishing the standard of interpretation for Article 44 of the Convention as applied in the aforementioned cases.’ (footnotes omitted).

<sup>36</sup> *Brun v. France* (2006) ICCPR Communication No. 1453/2006, para.6.3.

<sup>37</sup> Article 21. Although Article 1(2) of the 1966 ICCPR also recognises the right of peoples to ‘freely dispose of their natural wealth and resources.....’ it is not justiciable by the HRC under the procedure for individual complaints laid down in the Optional Protocol: see *Lubicon Lake Band v. Canada* (1990) ICCPR Communication No. 167/1984, para. 32.1. Violation of the right to permanent sovereignty over natural resources was also pleaded in the *East Timor Case* (1995) ICJ Reports 90, at 94, but the case was held to be inadmissible.

balanced more directly against the covenant's economic and developmental priorities.<sup>38</sup>

- For this purpose the role of international human rights courts is important but limited to the protection of individual civil and political rights and ill-suited to broader forms of public interest litigation for which national courts are better equipped. Larger questions of economic and social welfare have been and should remain within the confines of the more political supervisory processes envisaged by the ESCR Covenant and the European Social Charter. At the substantive level a 'right' to a decent or satisfactory environment can best be envisaged within that context, but at present it remains largely absent from the relevant global and regional treaties. This is an omission which can and should be addressed if environmental considerations are to receive the weight they deserve in the balance of economic, social and cultural rights.
- Alternative and more ambitious option is to revert to idea of a declaration codifying right to a decent environment in human rights law – see draft attached. But no evidence that states are any more in favour than before.
- Do we need an environment court? Not clear to me what benefits are. ICJ/PCA perfectly able to handle inter-state environmental cases. Real issue here is lack of international human rights court, not lack of an environmental court. Can we address that problem? Seems unlikely that US, China, Iran etc would show any interest.

---

<sup>38</sup> For a progressive reading which uses the right to health as a basis for promoting economic development and environmental protection see F.M.Willis, Economic Development, Environmental Protection and the Right to Health (1996-7) 9 *Geo.Int.Env.L.R* 195.