

Climate Justice

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Climate Justice

A Voice for the Future

Teresa M. Thorp

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From Seattle to Copenhagen, from Funafuti to Rio, tens of thousands of people from every corner of the world are marching in the streets. Being swept along in the crowds, I realised that everyone around me was rallying around the same cause, justice. What struck me the most though was that not a single government knew how to respond, nor did the people around me have a rule of law that was capable of doing so.

Teresa Thorp, 2008

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Preface

The idea to search for solutions to injustice was implanted in my convictions over 30 years ago. Fifteen years thereafter, my early teachers of international law ignited a spark of inspiration that sent me on a path of discovery, carried me through the process and still shapes my thinking today. Professor Edmond Jouve, former Director of the Observatory of International Relations of Development and of l'Observatoire des Relations Internationales du Développement et de la Francophonie (ORIDEF), provided my first insights into the *droit des gens*, the law of peoples in general, and a “discourse on the method” in particular. Professor Boutros Boutros-Ghali’s course on *la Francophonie* introduced me to theories of justice and teleological thinking from a civil law perspective.

Since this work on climate justice started, much has happened in international law. New situations have arisen in international climate law. The IPCC’s predictions of more intense weather events have been reinforced around the world. From the USA to Bangladesh, a mass of civil society organisations are advocating for different strands of so-called “climate justice”. Rio + 20 and the first Kyoto commitment period have passed.

Science may be questionable but one thing remains constant: while there is a humanitarian need to respond to disasters and build resilience, the debate about reaching consensus on international legal norms rages on. Governing the existing and potential adverse effects of climate change is a universal human rights issue that requires a legitimate and effective legal approach to human development, not just a moral one.

This book situates the adverse effects of climate change as a concern for all humanity. It develops a unified and universal approach to the constitutionalism of international climate law. It uses methods similar to those developed by Pictet to unify humanitarian law (the Geneva Conventions, Protocols I and II and consequential norms) and by UNCITRAL to harmonise international commercial transactions.

Humanitarian law and private international law widely recognise a theory of justice founded on legal justice. Current threads of climate policy and law often differ. Numerous publications advocate for relative empiricism, “thick law”, “thin law” or “non-law” instead. For many, *climate injustice* is a problem caused by others. Empirical, ethical and scientific work continues, but time is running away from us.

There is an urgent need for a universal and unified normative response grounded in common *elements*. The book makes the first steps in this direction. It offers an approach to break the deadlock in international climate negotiations. It provides a user guide on how to do it.

The book frames *legal justice* as the engine of *climate justice*. It develops a legitimate normative basis to unify a universal approach to climate law. A common voice paves the way to the future. It speaks for all if all can use it, and if all can use it, it is *applicable to all*.

In the remembrances of time, I hope that human dignity, human security and human rights will regain their footing in local communities and in the global community within which they reside. “*We think, therefore I am.*”

Acknowledgement

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Abbreviations

AB	Appellate Body
ACHPR	African Commission on Human and Peoples' Rights
ACP	African, Caribbean and Pacific Group of States
ACTSC	Australian Capital Territory Supreme Court
ADP	Ad Hoc Working Group on the Durban Platform for Enhanced Action
AHRLR	African Human Rights Law Reports
AMCEN	African Ministerial Conference on the Environment
AOSIS	Alliance of Small Island States
APEC	Asia-Pacific Economic Cooperation
AR	Assessment Report
ASEAN	Association of Southeast Asian Nations
AU	African Union
AWG-LCA	Ad Hoc Working Group on Long-Term Cooperative Action
BwHC	High Court, Botswana
CAADP	Comprehensive Africa Agriculture Development Programme
CAN	Climate Action Network
CBA	cost-benefit analysis
CBD	Convention on Biological Diversity
CBDR	common but differentiated responsibilities
CBDRRC	common but differentiated responsibilities and respective capabilities
CDM	Clean Development Mechanism
CE	Council of Europe
CE	European Council conformity marking to be used in technical harmonisation directives
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CER	Certified Emissions Reduction
CETS	Council of Europe Treaty Series
CFI	European Court of First Instance
CIS	Commonwealth of Independent States
CITES	Convention on International Trade in Endangered Species of Wild Fauna and Flora
CMP	Conference of the Parties Serving as the Meeting of the Parties to the Kyoto Protocol
COMESA	Common Market for Eastern and Southern Africa

COP	Conference of the Parties
COST	European Cooperation in Science and Technology
CSR	corporate social responsibility
CTC	Certified Treaty Collection
DSB	Dispute Settlement Body (WTO)
DSU	Dispute Settlement Rules: Understanding on Rules and Procedures Governing the Settlement of Disputes (WTO)
EAC	East African Community
EC	European Commission
EC	European Communities
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms
ECJ	European Court of Justice (Court of Justice for the European Communities)
ECommHR	European Commission of Human Rights
ECOWAS	Economic Community of West African States
ECtHR	European Court of Human Rights
EEZ	exclusive economic zone
EHRR	European Human Rights Reports
EIA	Environmental Impact Assessment
ELD	Environmental Liability Directive
EPA	economic partnership agreement
EPA	Environmental Protection Agency (USA)
ESC	economic, social and cultural
ETS	European Treaty Series
EU	European Union
FAO	United Nations Framework Convention on Climate Change
FET	fair and equitable treatment
FTA	free trade agreement
FVA	Framework for Various Approaches
GAOR	General Assembly Official Records (United Nations)
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade
GCCA	Global Climate Change Alliance
GDP	gross domestic product
GHG	greenhouse gas
HRC	United Nations Human Rights Committee
IACCommHR	Inter-American Commission of Human Rights
IACtHR	Inter-American Court of Human Rights
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICJ	International Court of Justice

ICRC	International Committee of the Red Cross
ICTR	International Criminal Tribunal for Rwanda
IFRC	International Federation of Red Cross and Red Crescent Societies
IIA	International Investment Agreement
ILA	International Law Association
ILAC-LPCC	ILA's Committee on Legal Principles Relating to Climate Change
ILC	International Law Commission
ILM	International Legal Materials
IMF	International Monetary Fund
INC-FCCC	Intergovernmental Negotiating Committee for a Framework Convention on Climate Change
IPCC	Intergovernmental Panel on Climate Change
ISO	International Organization for Standardization
ITLOS	International Tribunal for the Law of the Sea
IUCN	International Union for the Conservation of Nature and Natural Resources
JI	Joint Implementation
KeHC	High Court, Kenya
LTRAP	Convention on Long-Range Transboundary Air Pollution
MDG	Millennium Development Goal
MDG + 2015	Millennium Development Goals after 2015
MEA	multilateral environmental agreement
MFN	most favoured nation
MOP	Meeting of the Parties
MRV	Measurement, Reporting and Verification
NAMA	Nationally Appropriate Mitigation Action
NAPA	National Adaptation Programmes of Action
NEPAD	New Partnership for Africa's Development
NGO	non-governmental organisation
OAS	Organization of American States
OAU	Organisation of African Unity
OECD	Organisation for Economic Co-operation and Development
OED	<i>Oxford English Dictionary</i>
OJ	official journal
PCIJ	Permanent Court of International Justice
REDD	Reducing Emissions from Deforestation and Degradation
REDD+	Reducing emissions from deforestation and forest degradation and the role of conservation, sustainable management of forests and enhancement of forest carbon stocks

Res.	resolution
Rio + 20	UN Conference on Sustainable Development (UNCSD) held in Rio de Janeiro, Brazil, from 20 to 23 June 2012, 20 years after the landmark 1992 Earth Summit in Rio
SADC	Southern African Development Community
SBI	Subsidiary Body for Implementation
SBSTA	Subsidiary Body for Scientific and Technological Advice
SC	Security Council
TBT	Technical Barriers to Trade
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
TNC	transnational corporation
TRIPS	WTO Agreement on Trade-Related Intellectual Property Rights
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNCCD	United Nations Convention to Combat Desertification
UNCITRAL	United Nations Commission on International Trade Law
UNCLOS	United Nations Convention on the Law of the Sea
UNCLOS	United Nations Conference on the Law of the Sea
UNCTAD	United Nations Conference on Trade and Development
UNDP	United Nations Development Programme
UNECE	United Nations Economic Commission for Europe
UNEP	United Nations Environment Programme
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNFCCC	United Nations Framework Convention on Climate Change
UNGA	United Nations General Assembly
UNIDROIT	International Institute for the Unification of Private Law
UNTC	United Nations Treaty Collection
UNTS	United Nations Treaty Series
US	United States
USA	United States of America
US EPA	United States Environmental Protection Agency
VCLT	Vienna Convention on the Law of Treaties 1969
WHO	World Health Organization
WTO	World Trade Organization