ABSTRACTS TRACK 4

INTERNATIONAL CONFERENCE

THE GLOBAL CHALLENGE OF HUMAN RIGHTS INTEGRATION: TOWARDS A USERS' PERSPECTIVE

TRACK 4 - CONVERGENCE AND DIVERGENCE BETWEEN INTERNATIONAL HUMAN RIGHTS LAW AND OTHER BRANCHES OF INTERNATIONAL LAW

Track leaders: Paul De Hert and Stefaan Smis, Vrije Universiteit Brussel

Panel session no. 1: Convergence and divergence between IHRL and international criminal law

Wednesday 9 December, 15.30 – 17.00

Chair: Stefaan Smis

The Future of the International Criminal Court: A Non-Human Rights Body?

Marina Aksenova, iCourts

The future of the International Criminal Court (ICC) is uncertain. The Court's architecture ensures that priority is given to domestic prosecutions, while at the same time, imbuing international values into national systems. The principle of complementarity raises an important question: do values travel and, if so, how does this process occur? How important are human rights norms in the assessment of the unwillingness or inability of domestic legal system to conduct relevant investigations? The approach of the Court to the rights of the accused and victims' rights poses challenges. In the recent Al Senussi complementarity decision, the ICC refused to act as a human rights court and rendered the case inadmissible, notwithstanding the death penalty threating the accused if tried in Libya. The Court's view might be altered when victims' rights are at stake, as is the case in Colombia, where the ICC prosecution currently conducts preliminary investigations. The ICC pioneered an important new development in international sentencing - an attempt to incorporate victims' rights, including the rights to reparation and compensation, within the international criminal justice paradigm. This effort corresponds to the restorative justice philosophy of punishment. The Court reinforced the restorative rationale in its decision on reparations in Lubanga by stressing the need "to go beyond the notion of punitive justice, towards a solution which is more inclusive, encourages participation and recognizes the need to provide effective remedies for victims." The paper will explore the relationship between human rights law and international criminal law in the context of complementarity analysis of the ICC.

The Problem of Purpose: Where Human Rights Law Meets International Criminal Law

Patrick Keenan, University of Illinois

As the International Criminal Court enters its second decade of operation and the International Criminal Tribunals for the Former Yugoslavia and Rwanda slowly wind down their operations, it is an opportune time to examine the purposes of international criminal law. International criminal tribunals have quickly become part of the landscape of conflict resolution and transitions from a period of oppression to peace and stability. The law and values of human rights have begun to have a substantial effect on international criminal law. One of the most common refrains from those who create international criminal tribunals and the prosecutors who work in them is that the tribunals exist to promote the human rights of victims and their survivors. Every prosecutor declares his or her dedication to the task of doing as much as possible for victims. David Crane, the first prosecutor at

the Special Court for Sierra Leone, argued that "the true purpose of the tribunal [is] the victims, their families, towns, and districts." Luis Ocampo, the first prosecutor at the International Criminal Court, has argued that a prosecutor must "become a lawyer for the people."

All modern international criminal tribunals are structured to support victims through the trial and appellate process. In the ICTY and ICTR, there is a unit within the court that provides support for victims. It counsels victims on the importance and meaning of their testimony, provides information about trials, and generally attempts to help victims participate meaningfully and as painlessly as possible. Despite the widespread concern for victims and the nascent structures in place to attend to the needs of victims, it is not at all clear what the doctrinal effects of a victim-centered approach are or might be. What does it mean for a prosecutor to be a lawyer for the victims? In this paper, I argue that international criminal tribunals should attend to the needs of victims in three principal ways. The first is to prosecute systematic crimes; that is, those crimes that affect wide swaths of the victim population. The second is to use trials to create a victim-focused history of the period of violence. Finally, I argue that prosecutors should select for prosecution those cases that carry the greatest social stigma. Using the evidence from real cases, I show that contemporary international criminal law could be deployed in this way, and that doing so would better promote the human rights of victims.

Beyond the Courtroom: the ICC as an Enforcer of International Human Rights Law?

Emma Irving, University of Amsterdam

International criminal justice is often criticised by communities recovering from conflict because it affords a 'higher quality' of justice to those who are most responsible for atrocities. In terms of the trial itself, this is often true. The domestic legal system is usually crippled by conflict, whereas the due process norms in the Rome Statute of the ICC are comprehensive. But beyond the courtroom, are the human rights of an ICC accused really better protected than those of a person indicted by a domestic court? Or are ICC accused vulnerable to many of the same human rights violations?

When John is arrested in Utopia on an ICC arrest warrant, the Rome Statute requires the Utopian court to examine whether his rights have been respected and due process followed during the arrest. The ICC has a supervisory role in the protection of these rights, enabling it to use its position to ensure that John's human rights as protected under domestic law are respected. In so doing, the ICC will be providing John with better protection than his domestic accused counterparts. Later, John is convicted of his crimes and sent to Troy to serve his sentence. In this situation, the ICC's role is much more limited. The Rome Statute does not grant the Court much power to safeguard John's rights while he is imprisoned. His situation is then more on par with his fellow domestic inmates – which, depending on Troy's human rights record, could leave John open to human rights violations. Despite the ICC's focus on human rights, the Court might not able to fully protect John in all instances.

This paper seeks to understand the role that the ICC could play in ensuring that the human rights of ICC accused and convicted are respected, even when they are under the control of a State Party. The paper will do this by examining three stages of the international criminal justice process: investigation, arrest, and enforcement of sentence. These are all moments in time when the ICC accused is on the territory of a State Party, and as such are points of contact between two spheres: international human rights as protected under the Rome Statute, and international human rights as protected under domestic law. Following the analysis of ICC accused, the paper will also discuss the potential for the ICC to use its position to improve the protection of domestic accused.

The Right to Appeal a Criminal Conviction Imposed on Appeal in International Criminal Law – Towards a Common Norm?

Drazan Djukic, Tilburg University

The right to appeal a criminal conviction is an essential component of the right to a fair trial, seeing that it ensures a possibility to challenge the factual basis and the application of the law underlying a conviction. However, the relevant human rights norms diverge on different facets of the right to appeal. Whereas Article 14(5) ICCPR and Article 8(2)(h) ACHR set forth an unqualified right to appeal, Article 2(2) Protocol 7 of the ECHR excludes a right to appeal "in regard to offences of a minor character, […], or in cases in which the person concerned was tried in the first instance by the highest tribunal or was convicted following an appeal against acquittal". What is more, the HRC and the IACtHR have expressly held that a further appeal must be available in respect of a conviction imposed on appeal after an acquittal has been entered by a lower court. Another distinction arises out of the fact that the Explanatory Report to Protocol 7 of the ECHR states that an appeal may be limited to a control of the application of the law, even though the HRC and IACtHR require scrutiny of the factual basis underlying a conviction.

The application of these norms in the context of international criminal law poses additional difficulties, in view of the lack of clearly defined treaty obligations and diverging opinions amongst the judges of the Appeals Chambers. This contribution proposes a solution in respect of a particularly challenging aspect of the right to appeal – a conviction imposed on appeal following a first-instance acquittal. It argues that, in the context of the Ad Hoc Tribunals and the ICC, a common basis is identifiable in respect of relevant human rights standards, as opposed to the current approach in which a particular interpretation is (implicitly) adopted. On this basis, international criminal tribunals may vacate an acquittal in favour of a conviction, provided that oral appellate hearings are conducted and the reversal does not result from elements not contained in the original charges. This contribution will substantively develop the existing scholarship on the right to appeal, in light of the limited academic attention devoted to this topic and persisting uncertainty surrounding a critical stage of international criminal trials.

Panel session no. 2: Convergence and divergence between IHRL and transnational criminal law and international responsibility law

Thursday 10 December, 11.30 – 13.00

Chair: Paul De Hert

Strengthening action to end forced labour: the new International Labour Organisation Protocol of 2014 to the Forced Labour Convention, 1930 and the positive human rights obligations of states

Amy Weatherburn, Vrije Universiteit Brussel

The adoption of the ILO Protocol of 2014 to the Forced Labour Convention, 1930 (the Protocol) reinforces the need for a strengthened legal framework to address the existence, globally, of significant implementation gaps in combating forced labour. This paper will consider the extent to which the newly adopted Protocol achieves a modern approach to addressing forced labour by ensuring that a comprehensive and effective response is adopted addressing prevention, prosecution

and victim protection within the broader framework of promoting decent work.

To date, human rights law jurisprudence has reinforced the obligation for the State to both abstain and to act in order to suppress the use of forced labour. The significance of the positive human rights obligations is particularly relevant as it is estimated that 90 % of forced labour today occurs in the "private economy", therefore perpetrators are non-state actors not accountable for violations of human rights. Three-quarters of this is in productive activities such as agriculture, domestic work, construction, fisheries and manufacturing, and the remainder involves commercial sexual exploitation. The suppression for forced labour therefore necessitates preventive action by states who are a party to the Protocol and the 1930 ILO Convention.

In addition to the human rights law jurisprudence, this paper will also take into account recent policy and legal developments reflect growing acceptance that States have a duty to protect against non-State human rights abuses within their territory and/or jurisdiction.[1]

This paper will consider the application of such human rights obligations in the provision of strong victim protection measures and appropriate and accessible justice and compensation mechanisms. Furthermore, this paper will examine the need for a robust law enforcement response as well as the strengthened role of labour inspectorates in the identification of victims of forced labour. Finally, building upon established networks in the context of combating human trafficking, the paper will outline the importance of broadening international and regional policy and cooperation frameworks.

Trafficking in human beings: human rights-based approach v. criminal law approach, clash or integration?

Valentina Milano, University of the Balearic Islands

Is human trafficking foremost a heinous crime, requiring concerted action against organized criminal networks? Or is it primarily a grave human rights violation, where the protection of victims must be the utmost priority? While human trafficking lays at the intersection of international human rights law and transnational criminal law, these two bodies of law's responses to this phenomenon remained fully separated during the whole 20th century, with discouraging results. Whereas the criminal law perspective dominated the scene, human rights law remained almost silent until 2000, when the adoption of the UN Trafficking Protocol marked a collision, but also a first reticent convergence, between these two branches of law.

This paper explores the extent to which human rights law is permeating the transnational criminal law response to human trafficking, and vice versa. The distinctive ways in which these two bodies of law coexist in the Trafficking Protocol and in the more recent European anti-trafficking convention (2005) and EU directive (2011) are analyzed, and observations are made in terms of convergence and divergence of their approaches: are they fundamentally distinct, in terms of norms but also of monitoring and protection mechanisms? To what extent are they compatible or mutually reinforcing? What role do human rights soft law instruments and human rights bodies' pronouncements - such as the *Rantsev* ECtHR case - play towards the integration of these two branches of law? With what practical impact for the victims?

The author argues that the divergence between human rights law and criminal law is broader at the UN level than at the regional European level, where the dichotomy between the two approaches may have already been bridged. She also examines the gap-filling and guiding effect of international human rights law: by placing the victim at the center of the trafficking response, the human rights perspective not only provides a long-awaited protection to victims but also adds effectiveness to the traditional criminal law response in terms of investigation and prosecution of traffickers. On the other hand, she highlights the weaknesses of a solely human rights based response, and the gap-filling role

[1] Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework (A/HRC/17/31); OHCHR, Recommended Principles and Guidelines on Human Rights and Human Trafficking (2002).

the criminal law approach plays in a number of areas. Lastly, the paper examines whether transnational criminal law, and even national criminal law, is in a process of transformation under the influence of human rights law. To conclude, the author explores whether the human rights based approach provides a suitable theoretical framework for the integration of different bodies of international law.

Towards shared responsibility for human rights violations: the need for divergence between human rights and international responsibility law

Wouter Vandenhole, University of Antwerp

Human rights challenges become more and more transnationalized. The exploitation of natural resources; the introduction of austerity measures; peace operations or migration control – to mention just a few – all imply a multiplicity and diversity of actors. In addition to the territorial state – the traditional focus of human rights law – other actors are involved: transnational corporations; international financial institutions; international organisations; armed groups; and foreign states. I therefore argued that human rights law has to evolve, so that it is able to cope with current realities and to include all these actors.

A central element in the much needed conceptual development of human rights law is the introduction of genuine shared responsibility for human rights violations. More often than not, it is impossible to establish which actor is to be held responsible for which violations. However, independent rather than shared responsibility is the default position in international responsibility law, as reflected in the Articles on State Responsibility. I therefore argue that an unequivocal divergence between human rights law and responsibility law is needed.

Panel session no. 3: Convergence and divergence between IHRL and international humanitarian law and international refugee law

Thursday 10 December, 16.30 – 18.00

Chair: Stefaan Smis

The Human Rights Foundations of the International Protection Regime

Linda Kirk, Australian National University

Whereas international refugee law and international human rights law were originally viewed as two distinct branches of international law, their multi-faceted interaction is now acknowledged in both state practice and academic writing. International human rights law has both informed and transformed the distinctive tenets of international refugee law, specifically the definition of 'refugee' and the principle of *non- refoulement*. The impact of human rights law on the understanding of these central concepts of refugee law has been such that "the normative frame of forced migration has been displaced from refugee law to human rights law."

The cornerstone of the refugee definition, 'being persecuted', clearly illustrates the infusion of human rights law within refugee law. Defining 'being persecuted' by reference to human rights standards has been widely recognised as the most principled and least subjective approach to this central concept of refugee law. This 'human rights approach' underlies the refugee law jurisprudence of the United Kingdom, Canadian and New Zealand courts, and is reflected in the EU Qualification Directive. In Australia, the courts have been less willing to adopt the human rights paradigm in developing the concept of 'being persecuted'. This has led to conceptual confusion and uncertainty, and the absence of principled and objective standards that can be applied to determine whether an individual's

circumstances meet the definition of 'being persecuted'. This lack of a firm human rights foundation underpinning the refugee definition in domestic jurisprudence has given license to the Australian Parliament to legislate to introduce into Australian domestic law a *sui generis* refugee definition that is divorced from international human rights law standards.

This paper examines the permeation of international human rights law into international refugee law and the manner in which the former has been instrumental in the emergence of a universally accepted and dynamic understanding of the refugee definition. It argues that the human rights approach to the refugee definition provides both an objective basis for the assessment of persecutory harm, and facilitates the evolution of the Refugee Convention to meet the changing realities of forced migration. It shows that when domestic interpretations of the refugee definition are unhinged from the human rights law framework, the conceptual confusion that results can be leveraged by legislatures determined to assert their 'sovereign right' to control the influx of migrants, and thereby undermine the international regime for the protection of refugees.

The prohibition on arbitrary displacement: convergence and divergence of international humanitarian and human rights law

Deborah Casalin, CIDSE/Broederlijk Delen

While the concurrent applicability of international human rights law (IHRL) and international humanitarian law (IHL) in situations of armed conflict and occupation has been widely confirmed, and IHL is generally recognized as *lex specialis*, there is still debate about the precise interaction of these two bodies of law. A number of views have developed to describe the various possible constellations, which largely depend on the particular rule in question. Analyses of the IHL/IHRL relationship with regard to specific rules have largely focused on the right to life and detention - this paper aims to make a further contribution by examining the rules prohibiting arbitrary internal displacement under IHL and IHRL, and considering the relationship between them in armed conflict and occupation.

An examination of the relevant IHL and IHRL standards reveals different criteria for when displacement may be deemed arbitrary. International human rights law offers a range of protections from forced eviction in a state's sovereign territory (e.g. requirements relating to consultation, free and informed consent, and provision of alternatives), which may largely be applied in a complementary manner in armed conflict. However, it is submitted that these are not suitable for cumulative application with IHL in situations of occupation. According to the letter of the Fourth Geneva Convention, IHL places a more absolute prohibition on forcible transfer, to which specific legal consequences in terms of third state obligations and individual criminal responsibility are attached. As such, this prohibition constitutes an unusual example of an IHL rule operating as *lex specialis* in order to provide more stringent protection (as opposed to more commonly analysed cases where IHL operates as *lex specialis* in order to derogate from peacetime human rights norms).

The paper also seeks to illustrate the practical relevance of this interpretation in practice through examining cases of internal transfer of communities in Area C of the occupied Palestinian territory. Particular attention is drawn to the aims and purposes of the law of occupation (*inter alia*, preserving the sovereignty and demographic composition of the occupied territory and the rights of the local population), the question of genuine consent under occupation in light of the ICTY's „coercive environment" concept, and the misuse of human rights discourse in justification of transfer.

"It was the best of times, it was the worst of times": a tale of detention in time of emergency

Federica Favuzza, University of Milan

In less than a year, the human right to personal liberty and security has become one of the hottest topics in international law. Despite the relevance that it had already acquired in recent times – e.g. in

the context of the war on terror – the implications of public emergencies on this right have recently been addressed by international courts and human rights mechanisms in an attempt to shed some light on its scope and on the interaction with the norms of other branches of international law.

On 16 September 2014, the European Court of Human Rights issued its judgment in the case Hassan v. The United Kingdom (No. 29750/09), for the first time openly dealing with the conflict between international humanitarian law norms on internment and Article 5(1) of the European Convention on Human Rights (ECHR). One month later, the Human Rights Committee adopted a new General Comment on Article 9 (CCPR/C/GC/35, 28 October 2014), finally addressing some highly controversial issues such as that of the arbitrary nature of security detentions. Just a few days ago (4 May 2015), the Working Group on Arbitrary Detention submitted to the Human Rights Council the text of the UN Basic Principles and Guidelines on remedies and procedures on the right of anyone deprived of their liberty to bring proceedings before a court, with the aim to "provide guidance to States on the fundamental principles on which the laws and procedures regulating this right should be based and on the elements required for its effective exercise" (§7).

The aim of this paper is to ascertain whether the right to personal liberty and security is doomed to succumb in time of emergency. To this end, the paper will tell the story of a fictional character, Dr. Alexandre Manette, who is suddenly deprived of his liberty in a situation of public emergency. A twofold comparison will be drawn. The research will investigate whether Dr. Manette's fate is likely to be any different being him detained by a State which is party (a) to the International Covenant on Civil and Political Rights or, alternatively, (b) to the ECHR. At the same time, the research will consider if and how, in the context of each case, the norms of other branches of international law come into play, distinguishing between (i) an international armed conflict, (ii) a non-international armed conflict and (iii) another public emergency, e.g. terrorism.

The European Court of Human Rights' Approach to Armed Conflict: Ivory Tower or Pas de Deux?

Cedric De Koker, Ghent University

Adopted in the aftermath of the Second World War, the European Convention on Human Rights (ECHR) was principally conceived to apply in times of peace, with International Humanitarian Law (IHL) being regarded as the sole legal regime relevant during armed conflict. Yet, against the backdrop of the humanization of international law and the acceptance of the continued applicability of human rights law in times of war by both the ICJ and (universal and regional) human rights bodies, this strict separation between the jus in bello and the jus in pace has become untenable and questions have been raised as to the concrete implementation of human rights standards during armed conflict. With the territorial scope application of the Convention extending to instable European area's (e.g. Transnistria, Chechnya, Cyprus) and State Signatories participating in international military operations around the world, the European Court of Human Rights (ECtHR) has, as a result, increasingly been called upon to interpret and apply ECHR provisions in conflict-related cases. In this context, the judges have had to address a host of complex legal issues, chief among them the multifaceted relationship and interaction of the ECHR with the sometimes contradicting norms of IHL. As a well-coordinated application of these bodies of law remains vital to ensuring adequate protection during armed conflict, this issue requires further analysis. In this paper, it will be examined, through an in-depth analysis of the its case law, how the ECtHR has approached cases stemming from armed conflicts: have the judges solely resorted to examining possible human rights questions as they would have done in other cases or have they also applied and referred to IHL – be it to interpret human rights norms or to enforce the standards of IHL itself –, as such breaking down the barriers between IHL and HRL. In other words, has the Court adopted an 'ivory tower' attitude, ignoring questions of IHL and showing tunnel vision with regard to human rights issues, or has it performed an elegant 'pas de deux', providing a workable theory for the concurrent application of both bodies of law.

Panel session no. 4: Convergence and divergence between IHRL and international economic law and international environmental law

Friday 11 December, 11.00 – 12.30

Chair: Paul De Hert

Trade and Human Rights: A mutual exclusion?

Gudrun Zagel, University of the Federal Army Neubiberg

Australia – Tobacco is only the most recent of numerous WTO cases fuelling the debate on the divergence between trade and human rights. From a human rights point of view, Australia's labeling requirements for tobacco products constitute a measure to fulfill its obligations under the right to health, whereas from the trade law perspective it amounts to a violation of WTO obligations. Similar arguments exist for *EC – Hormones*, *EC- GMO*, or *US - Clove Cigarettes*. The general perception resulting from these cases is that compliance with trade rules and human rights is mutually exclusive, as the adoption of human rights measures is severely constrained by trade rules.

The purpose of this paper is to analyze these perceptions from a legal point of view in order to determine, whether and to what extent there is a true divergence between trade and human rights obligations that cannot be solved within the existing legal framework. On this behalf, three questions will be examined, namely to what extent the substantive rules of both branches of law exclude the fulfillment of the obligations of the other branch of law respectively, whether the WTO dispute settlement rules permit taking into account the human rights obligations of WTO members in dispute settlement proceedings, and the legal obligations of the WTO dispute settlement institutions as well as the WTO members to prevent divergences between trade and human rights law.

On the basis of the cases mentioned above, the paper will demonstrate that the fulfillment of trade and human rights obligations is usually possible at the same time, which implies that there is no divergence in the substantive obligations of both branches of law. Moreover, the WTO dispute settlement rules facilitate the interpretation of WTO rules in the light of international human rights law. Importantly, the WTO even has the obligation to do so, and WTO members are bound to fulfill both their human rights and their trade law obligations at the same time. The continuous existence of the legally barely justifiable perception that trade and human rights law are mutually exclusive, can be explained by an erroneous appraisal of the WTO's case-law: It is the function of the WTO dispute settlement institutions to determine whether trade-related human rights measures comply with WTO obligations. However, a decision establishing that a trade-related human rights measure constitutes a breach of WTO law must not be understood as the WTO's rejection of human rights concerns generally, but rather as the requirement to *redraft* such trade-related human rights measures in compliance with WTO obligations. Complying with this obligation is the task of the WTO members, and it will usually be possible to do so without violating human rights obligations, as international human rights law provides for a large amount of flexibility when taking implementing measures.

The Role of the Unified Patent Court and the Court of Justice of the EU in Realising Judicial Coherence at the Human Rights-Patent Law Interface

Federica Baldan & Esther van Zimmeren, University of Antwerp

Human rights and patent law have typically developed in isolation from each other in most jurisdictions, despite a number of controversial cases in particular in the biomedical sector, which did lead to a fierce debate on the interface between the two fields of law. The reason of their debated relationship has often been connected to their different rationale: while human rights are rooted in morality, patent protection is primarily founded in economic justifications. Yet, the European patent system is witnessing some major institutional reforms, which might have an impact on the interface

between these two bodies of law.

After several decades of negotiations, in 2012 the EU institutions finally agreed on the establishment of a centralized and highly specialized patent judiciary, the so-called Unified Patent Court (UPC), as part of the Unitary Patent Package. The UPC is expected to become operational in 2016 and will function as an additional layer of judicial protection within the multi-level structure of the European patent system. Some experts have emphasized the risks involved in the establishment of a specialized patent court, including the possibility that patent law will further develop in isolation from other areas of law (Ohly 2013; Petersen & Schovsbo 2010). However, the dialogue between the UPC and the Court of Justice of the European Union (CJEU) through the preliminary ruling procedure (as designed by the UPC Agreement) might actually open up the patent system to influences from different interests and values, including fundamental rights. Arguably, by striking a better balance between human rights and patent law, the establishment of the UPC may contribute to "global judicial coherence" (Dworkin, 1986), which relates to coherence not only within a particular branch of law, but within an entire legal system.

The *research question* of the current paper inquires to what extent these developments might affect the convergence of human rights and patent law and might improve judicial coherence in the European patent system. The conceptual framework used in the paper is based on the *literature* on judicial coherence, multilevel governance and institutional change.

The Integration of Environmental Protection Considerations Within the Human Rights Law Regime: Which Solutions Have Been Provided By Regional Human Rights Courts?

Marie-Catherine Petersmann, European University Institute

This paper results from a critical engagement with the conception of Human Rights Law (HRL) and International Environmental Law (IEL) as two separate legal regimes. Departing from Koskenniemi's definition of legal regimes as *"specialized and (relatively) autonomous rules or rule-complexes, legal institutions and spheres of legal practice (...) each possessing their own principles and institutions"* I will argue that the analysis of case law of regional human rights courts points in an opposite direction. This analysis leads to the following statement: while HRL and IEL have been framed as symptoms of the fragmentation of international law, practice does not show two 'autopoietic systems' or diverging regimes that follow their own logic, determined by distinct principles and implemented by specialized institutions. Contrarily, case law analysis demonstrates that environmental protection regulations have penetrated the HRL regime, either (i) explicitly or (ii) implicitly by (a) being read into other rights such as the right to life or health, or (b) as a general interest of the society.

In this light, this paper aims at identifying the numerous conflicts that arise between environmental protection regulations and specific human rights. By focusing on the case law of regional human rights mechanisms, it highlights the 'positive' and the 'negative' integration of IEL within the HRL regime. It argues that these supposedly separate bodies of law are in reality intrinsically intertwined. The case law analysis of the 'negative integration' of IEL within the HRL regime teaches us that HRL adjudicators have done more than neutrally measuring conformity of environmental protection regulations with the HRL regime. While some cases add specific procedural requirements to these environmental protection regulations – the *Xàkmok Kàsek* case – others establish a hierarchy between IEL and HRL – the *Fredin, Hamer* and *Turgut* cases – and yet others engage in defining and arguably even producing environmental rights – the *Herrick* and *Chapman* cases. This paper provides specific insights on how regional human rights adjudicators resolve conflicts and what the consequences are of these judicial techniques on both the content of the respective legal regimes and their hierarchical relationship. Thereby the paper argues that both content and implementation of

IEL cannot be understood without integrating HRL adjudicators in the analytical framework.

Human Rights Implications of Climate Change: The Urgent Need to Mainstream Human Rights in the Post-2015 Climate Regime

Mohammed Behnassi, LAGOS, Ibn Zohr University of Agadir

When talking about environment and human rights-related issues,
perceived as a risk multiplier and a key crosscutting issue. Based on this assumption, many studies and assessments have demonstrated that climate change is putting both human security and many human rights – such as rights to life, health, shelter, and food – at risk. Indeed, human rights implications of climate change are already serious and alarming in many vulnerable parts of the world. Besides, not only climate change seriously affects human rights, but also the global climate action is not shaped to reduce these violations. Many of the response mechanisms are actually violating human rights in their implementation, making climate justice and equity a crucial issue. On other scales, countries have actually begun to formulate their climate change policies; however most of them were based on different considerations and objectives, rather than on issues of justice or equity.

Therefore, the more significant challenge currently being faced involves how to ensure that human rights are recognized and mainstreamed in the post-2015 regime. There are indeed potential synergies between existing human rights obligations and the new climate agreement. A key issue, therefore, is how to bring the discourse of human rights and the discourse of climate change together, without causing an “allergic reaction” on the part of policy makers. In a post-2015 regime, we need to achieve climate justice, including urgent action on mitigation and real safeguards to prevent serious violations of human rights. The narrative of human rights and climate justice is powerful and there is a real opportunity to use this narrative to engage relevant actors. Bringing human rights into the process is also about power, ambition and resilience; it is about trying to change the power dynamic so that the movement was back in the hands of vulnerable countries.

This paper intends to investigate the potential synergies between the international human rights law and the future climate change regime. Firstly, an overview of the human rights implications of climate change is undertaken. Secondly, the analysis will assess the extent to which human rights have been considered in the evolving climate regime since the adoption of the UNFCCC in 1992. Finally, the areas where human rights should be mainstreamed in the climate regime, the related implications for the international human rights law itself will be highlighted. Policy and research oriented recommendations will be provided throughout the paper.