



Justice in the Balance: State vs. Civil Society Perspectives on the Climate Change Regime

Rosa Manzo*

Abstract

Justice cuts across climate change in various ways. There are two viewpoints from which one can evaluate the degree of justice. The first comes from the perspective of a civil society, the other from a state's point of view. The final conclusion is that the degree of justice varies in accordance with the viewpoints, which on their part depend on where the evaluation is carried out. While a state's perspective on the justice of a climate regime is based on the ratio of benefits against costs derived from international climate agreements, a civil society's perspective is based on the evaluation of how the agreement can provide an effective response to adverse effects. As has been shown, States' views differ from those of the civil society. This means that what is just to States can differ significantly from what civil society considers to be just. As a consequence, an answer to justice and its role in designing the international climate regime should start taking into consideration the perspective from which the issue is viewed. By highlighting the diverging priorities—state-centric cost-benefit analyses versus civil society's focus on tangible outcomes for communities—the paper aims to show that justice is a context-dependent concept within climate governance.

Keywords: Climate Change, Civil Society, Equity, Human well-being, Justice

*Department of Public International Law, University of Oslo, Norway;
rosama@uio.no

1. Introduction

The issue of climate change intersects with justice in various ways. Firstly, climate change presents itself as a problem of justice due to the uneven distribution of its adverse effects on countries and generations, differing contributions to Green House Gas (GHG) emissions, and uneven capabilities to deal with the consequences. Secondly, the term 'justice' is often used in discussions surrounding climate change, highlighting the need for fair and equitable solutions.

In the context of the international climate change regime, justice plays a crucial role in its design and implementation. Here, the second question to be answered concerns the role of justice in international law pertaining to climate change. It is not by chance that the concept of Just Climate Agreement came up during the last phase of climate negotiations. The binominal expressions 'just' and 'agreement' pose a couple of questions, how can one assess the degree of justice in a climate agreement? Who can assess that? First section of the paper briefly examines the issue of justice with respect to climate change. The second section explains how the concept of climate justice emerged in the climate change debate and how it is currently developing. The third section will suggest two viewpoints from which one can evaluate the degree of justice of a climate agreement. In conclusion, the paper underscores that while States approach climate agreements primarily through a lens of cost-benefit analysis, aiming to balance national interests, civil society views the justice of these agreements in terms of their effectiveness in mitigating climate impacts and ensuring human well-being. This dichotomy illustrates that the perception of justice in climate governance is context-dependent, reflecting the varying, and often different priorities of states and civil society.

2. The Justice Dilemma in Distributing Emission Reduction Burdens Among States

Scientists agree that the global average temperature has risen approximately “by 1 °C over the period above pre-industrial revolution levels with a likely range of 0.8°C to 1.2°C”.^{1 2} It has been estimated that the atmosphere has a limited capacity to store Green House Gasses (GHGs) which amount to 450 parts per million CO₂eq without causing significant and irreversible impacts on natural and human systems.³ Keeping the level of concentration of GHGs at 450ppm CO₂ eq by 2100 will allow the average global temperature rise to be kept below to 2 degrees relative to pre-industrial levels.⁴ Based on the latest measurement in March 2020, the CO₂ eq amounts to 414.50 ppm.⁵ This means that the 450ppm CO₂ eq is not far from being reached.

This highlights why limiting GHG concentrations to 450 ppm CO₂eq requires ‘substantial cuts in anthropogenic GHG

¹ Inter-governmental Panel on Climate Change (IPCC), *Summary for Policymakers in 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*, Cambridge University Press, pp. 3-24 (2018) <https://doi.org/10.1017/9781009157940.001>.

² *Id*

³ World Meteorological Organization, *The State of Greenhouse Gases in the Atmosphere Based on Global Observations Through 2018*, WMO Greenhouse Gas Bulletin, https://library.wmo.int/index.php?lvl=notice_display&id=3030#.XrIUZGgzbIV (last visited Mar. 5, 2024).

⁴ Inter-governmental Panel on Climate Change (IPCC), *Summary for Policymakers* (2014).

⁵ Alexander Gillespie, *Climate Change, Ozone Depletion and Air Pollution: Legal Commentaries with Policy and Science Considerations*, Yearbook of International Environmental Law, Vol 16 Issue 1, (2005) <https://doi.org/10.1093/yiel/16.1.874>. See also, Earth System Research Laboratories, Global Monitoring Laboratory, Data Gathered by the Mauna Loa Observatory in Hawaii.

emissions by mid-century'.⁶ This goal raises an important question: How can emission reductions be fairly distributed among states? This question, in turn, presents a challenge of distributive justice, as nations must consider how to share the responsibilities of reducing emissions equitably. This does not mean that all country States can be equally assigned the same amount of GHG emission reductions because countries have made different contributions to the increase of the GHGs in the atmosphere. Consequently, the question of distributive justice which arises is about how much GHGs should each country State reduce and which are the factors that must be taken into account in order to divide the amount of the global GHGs emissions reduction needed for distribution. Several proposals have been suggested to that effect. None of them represents a silver bullet. Among these proposals, the global carbon budget (GCBA)⁷ divides the global amount of GHG emissions by evaluating countries on two criteria: responsibility for emissions and per capita emissions.⁸

Responsibility and population factors are not the only considerations proposed for achieving a fair distribution. Also, other models consider each country's financial capacity to bear the costs of emission cuts.⁹ The capacity of each country could be based on the evaluation of the-per-capita income or the

⁶ Inter-governmental Panel on Climate Change (IPCC, *Summary for Policymakers* 4.1 Long Term Mitigation Pathways (2014).

⁷ Katharina Michaelowa & Axel Michaelowa, *Equity and Development: Developing Countries in International Climate Negotiations, Global Climate Policy: Actors, Concepts and Enduring Challenges* (2018), <https://doi.org/10.7551/mitpress/10264.003.0012>.

⁸ Malte Meinshausen et al., *Greenhouse-Gas Emission Targets for Limiting Global Warming to 2 °C*, 458 NATURE 1158 (2009), <https://doi.org/10.1038/nature08017>.

⁹ Marion Vieweg et al., *Squaring the Circle of Mitigation Adequacy and Equity: Options and Perspectives* (2014), https://epub.wupperinst.org/frontdoor/deliver/index/docId/5417/file/5417_Mitigation.pdf

country's Gross Domestic Product (GDP).¹⁰ If the distribution of emission reductions were based on the financial capacity of each country, then the developed countries would have to make larger amounts of emission reductions due to the fact they have larger financial resources for sustaining the costs derived by the emission cuts. Other models combine both the historical and future responsibility as well as the financial capacity. They also take into account additional indicators, such as the level of human development,¹¹ the so-called development threshold and the reliability on green energy sources.¹²

2.1. The Problem of Justice related to climate impacts

Another aspect which deals with the issue of justice is associated with the distribution of impacts of climate change. Discussing impacts inevitably leads to the concept of harm and, therefore, the need for compensatory protection for those who will be exposed to the effects of climate change, both potentially and in practice. Additionally, a distinctly legal aspect arises when we consider that responsibility for this protection should fall on those who have, in fact, caused the harm. Therefore, delving into the nature of these impacts is an essential step in understanding the legal dimension in which this issue is situated. Scientific studies have shown that the human interference on the climate system will give rise to benefits as well as a high risk of adverse impacts on natural

¹⁰ Gregory Briner & Andrew Prag, *Establishing and Understanding Post-2020 Climate Change Mitigation Commitments*, OECD Publishing (2013), 5jzb44qw9df7-en.pdf

¹¹ *The Climate Equity Reference Project*, <https://climateequityreference.org/calculator-about/the-climate-equity-reference-project-approach-to-equity-benchmarking/>.

¹² Steffen Kallbekken, Håkon Sælen & Arild Underdal, *Equity and Spectrum of Mitigation Commitments in the 2015 Agreement 1-69*, NORDISK MINISTERRÅD, (2014)

and human systems.¹³ While some countries could get benefit from the increase in the global mean temperature,¹⁴ the world as a whole will feel the adverse impacts of climate change. From a legal perspective, addressing the uneven benefits and adverse impacts of climate change involves a combination of international responsibility, justice, and accountability principles aimed at protecting the rights and livelihoods of those most affected by climate disruptions as well as the environment per se. Moreover, it is important to investigate the nature of the damage to assess it not only in physical terms but also in economic terms. A general consensus exists that the potential impacts of climate change will affect a wide range of sectors, including freshwater resources, ecosystems, coastal and ocean systems, food security, human health, energy production, forests, national security, and fisheries.¹⁵ Collectively, these are referred to as physical impacts, as they encompass the tangible, sector-wide disruptions and challenges that climate change presents across diverse areas critical to both natural and human systems. Scientists generally agree that sea levels are very likely to rise across more than 95% of the ocean area due to the ongoing melting of glaciers.¹⁶ This phenomenon will particularly impact low-lying coastal countries, reducing their capacity to manage storms and floods and diminishing their land area. As a result, it is anticipated that by 2050,¹⁷ 1 billion people may be displaced, leading to significant new flows of migration. Due to the uptake of CO₂, ocean productivity and chemistry is changing. This will

¹³ *supra* n4

¹⁴ Eli P. Fenichel et al., *Wealth Reallocation and Sustainability Under Climate Change*, 6 *Nature Clim. Change* 237, 237–44 (2016), <http://www.nature.com/nclimate/journal/v6/n3/full/nclimate2871.html>.

¹⁵ John Agard et al., *Glossary*, in *AR5 Climate Change 2014: Impacts, Adaptation and Vulnerability* (IPCC 2014).

¹⁶ *supra* n 4

¹⁷ International Organization for Migration, *World Migration Report*, (2020) publications.iom.int/system/files/pdf/wmr_2020.pdf

dramatically bring about shifts of species to higher latitudes, damages to ecosystems such as coral reefs and seaweed together with acidification, hypoxia and dead zones.¹⁸

As global temperatures rise, the frequency and intensity of heat waves are expected to increase. Changes in precipitation patterns will result in more frequent and severe droughts, which will significantly impact local ecosystems and agriculture. According to United Nations projections, the world population will exceed 9 billion by 2050, leading to greater demands for food production and increased water requirements. This population growth will make water resources scarcer worldwide, not only in arid regions where scarcity is currently more pronounced. Human health will be particularly affected by the increase in global temperature. Heat waves, droughts, storms and floods will increase deaths.¹⁹ The warming of 1.5 °C and 2 °C is projected to increase the risks of some vector-borne diseases, such as malaria and dengue fever.²⁰

In addition to these impacts, scientists have also noted the possibility that major effects could occur rapidly.²¹ These impacts are referred to as abrupt climate change.²² As has been explained, “[...] an abrupt climate change occurs when the climate system is forced to cross some threshold, triggering a transition to a new state at a rate determined by the climate system itself and faster than the cause.”²³ All countries face

¹⁸ IPCC, *Special Report on the Ocean and Cryosphere in a Changing Climate* (2019), <https://www.ipcc.ch/srocc/>.

¹⁹ IPCC, *Special Report on Climate Change and Health*, (2018) <https://www.ipcc.ch/report/sr15/>.

²⁰ Inter-governmental Panel on Climate Change (IPCC), *Summary for Policymakers* (2018).

²¹ Christopher B. Field et al., *Managing the Risks of Extreme Events and Disasters to Advance Climate Change Adaptation: Special Report of the Intergovernmental Panel on Climate Change*, Cambridge Univ. Press (2012).

²² R. B. Alley et al., *Abrupt Climate Change*, 299 *Science* 2005 (2003)

²³ *Id*

challenges in the way they respond to adverse impacts. Nevertheless, some of them are more vulnerable.²⁴

Differences in vulnerability stem from non-climatic factors, in particular socio-economic, gender,²⁵ demographic factors, differences in governance, access to livestock, all of which affect the capacity to cope and adapt to the adverse effects as well as their own resilience.²⁶ Differences in vulnerability explain why the risk of potential impacts is highly unevenly distributed around the world. Vulnerability to climate change is often higher in lower-income countries,²⁷ yet some nations—particularly small islands and low-lying coastal areas—will face severe, interconnected risks, including prolonged coastal flooding and significant impacts on populations, infrastructure, and assets, regardless of income levels. On the other hand, the Eastern Mediterranean region, which has already been hit by a very intense and prolonged drought period between 2007 and 2010²⁸ will further be affected by more droughts in the future. In addition to this, disadvantaged people and communities are the most vulnerable to the effects of climate change, at all levels of development.²⁹ The poor are particularly affected by the adverse effects such as heat waves and consequent droughts. The physical impacts mentioned above will hinder economic growth and efforts for poverty reduction, as well as undermine

²⁴ John Agard et al, *supra* n 15

²⁵ Anne Jerneck, *What about Gender in Climate Change? Twelve Feminist Lessons from Development*, 10 *Sustainability* 627, 1-12 (2018)

²⁶ John Agard et al, *supra* n 15

²⁷ W. Neil Adger and others, *Fairness in Adaptation to Climate Change* (The MIT Press 2006).

²⁸ *supra* n 1

²⁹ Christopher B. Field & Vicente R. Barros eds., *Climate Change 2014: Impacts, Adaptation, and Vulnerability: Part A: Global and Sectoral Aspects: Working Group II Contribution to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change*, Cambridge University Press (2014), 9781107058071_frontmatter.pdf

food security, and therefore will lead to an increase in food prices both in urban and rural areas.³⁰ Climate change is expected to create more poverty between now and 2100. As a result, two challenges need to be dealt with, the first one is concerned about the protection of those who will suffer the most from the adverse effects of global warming; the second one details the distribution of costs resulting from the adaptation programs which foster the adoption of new policies and technologies which , could help vulnerable States in facing the adverse effects of climate change, and possible compensation. Dealing with these two challenges successfully would increase the resilience of everyone affected by the adverse effects of climate change.³¹

2.2 Intergenerational Climate Injustice

Climate change is also an injustice towards future generations as adverse effects of current emissions are going to be felt over time. This is a result of the lagging effect of the GHGs³², and according to the Summary Report of the Inter-governmental Panel on Climate Change (2014), CO₂ emissions from fossil fuel combustion and industrial processes contributed approximately 78%. In particular, climate experts call CO₂ a 'stock pollutant' because it lingers in the atmosphere for a century and accumulates over time at about 50% of CO₂ will be removed within 20 years, and about 80% within a few centuries.³³ The remaining 20% will be in the atmosphere for millennia.³⁴ Hence, it is challenging to ensure distribution of

³⁰ *Id*

³¹ *supra* n 4

³² Inter-governmental Panel on Climate Change, *Summary for Policymakers*, Working Group III, at 3 (2014).

³³ Inter-governmental Panel on Climate Change, IPCC, 2013: *Climate Change 2013: The Physical Science Basis. Contribution of Working Group I to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change*, Cambridge University Press (2013) <https://www.ipcc.ch/report/ar5/wg1/>

³⁴ Mason Inman, *Carbon is Forever*, 1 NATURE CLIM. CHANGE 156 (2008),

mitigation burdens and adaptation costs between those who are alive and those who will be born.³⁵ In this regard, some questions arise: firstly, what does the notion of future generations imply? Where do the current generations end and when do the future ones begin? What type of moral and/or legal obligations should our generation(s) keep in mind.³⁶ It is also related to the extent the present generation should cover the costs derived from the effect of climate change. The debate on these issues goes beyond the scope of the present analysis, but for the sake of a general background the present work will give a summary of the ongoing discussion questioning the responsibility of today's society to address climate impacts that will disproportionately affect future generations.

A range of definitions of future generations have been provided so far. To give a gist of the discussion on this topic, future generations could include the next two or three generations as well as the current ones or even their children. Some have suggested that reference be made exclusively to people alive today. In this way, future generations would include those who are born now and will become adult in the next two decades.³⁷ However, Parfit's Paradox, also known as the Non-Identity Problem, complicates this discussion.³⁸ The paradox suggests that our choices today directly shape who will exist in the future, making it difficult to define who future

<https://doi.org/10.1038/climate.2008.122>.

³⁵ Peter Lawrence, *Justice for Future Generations: Climate Change and International Law*, Edward Elgar Publ'g (2014)

³⁶ Barry S. Gower, *The Environment and Justice for Future Generations*, in *JUST ENVIRONMENTS: INTERGENERATIONAL, INTERNATIONAL, AND INTERSPECIES ISSUES* 63, David E. Cooper & Joy A. Palmer eds., Routledge, (1995).

³⁷ James Nickel & Daniel Magraw, *Philosophical Issues in International Environmental Law*, *The Philosophy of International Law* 459, 459-60 (Samantha Besson & John Tasioulas eds., Oxford Univ. Press 2010).

³⁸ Jeff McMahan, *Climate Change, War, and the Non-Identity Problem*, 18 *J. Moral Phil.* 211 (2021).

generations are. This paradox, therefore, considers the principle of sustainable development and intergenerational equity as a means of placing a collective moral and legal responsibility on the present generations toward future generations, who, for their part, will never be able to claim individual rights against the former.

Another aspect of intergenerational responsibility is the claim that the present generation has a duty of fairness towards the future generations and should bear all the costs coming from the mitigation and adaptation policy in order to avoid the likelihood that future generations get harmed by the adverse effects of global warming.³⁹ On the other hand, some have claimed that it could be unfair to assign this duty to the present generation.⁴⁰ The argument here is that one should not have a sense of duty towards those who do not exist yet, and perhaps never will. In other words, future generations cannot be seen as victims of the present generation(s) because their existence depends on the latter. Future generations are simply a natural continuation of the present generation.

Another suggestion has been to focus exclusively on the actions of the present generation and evaluate their actions based on the safeguarding of the environment *per se*.⁴¹ The other aspect of injustice have also been noted in the discussion over equitable distribution of costs between present and future generations. Generally speaking, an equitable distribution of costs results in an equitable distribution of benefits. As far as global warming is concerned, the costs which the present generation will cover for halting will reap benefits in the distant future. This means that the present generation will not

³⁹Jeff McMahan, *supra n 38*

⁴⁰Roger Crisp, *supra n 37*

⁴¹Edward A. Page, *Climate Change, Justice and Future Generations*, Int'l Env'tl. Agreement: Politics, L& Econ., (2008), <https://doi.org/10.1007/s10784-007-9059-x>

enjoy the benefits but will exclusively bear the costs.⁴² The resulting challenge to justice for policy makers is to find and to identify and implement approaches that ensure consistent benefits from efforts to combat climate change.

2.3 Climate Change Governance and Justice

The IPCC characterizes climate change governance as a set of purposeful mechanisms and measures aimed at steering social systems towards preventing, mitigating, or adapting to the risks posed by climate change.⁴³ Given that climate change is a global issue that transcends national boundaries, governance in this context is essential. The global nature of the issue gives rise to distinctive challenges in terms of governance, given the necessity for international coordination and collective action.⁴⁴ One of these is the challenge of empowering all States to effectively participate in the negotiation of a global climate regime.⁴⁵ Within climate governance, justice assumes a procedural role, emphasizing transparency and inclusiveness in the climate negotiations. It is thus imperative that all stakeholders, particularly those hailing from vulnerable or disproportionately affected communities, are given a fair opportunity to engage in the decision-making process, raise concerns, and exert influence over the decisions that will be taken on the table of climate negotiations. As Michael Zammit Cutajar Wisel, the former United Nations Framework Convention on Climate Change (UNFCCC) Executive Secretary stated: “We all learn what is fair and not from a very young age: at home, in the classroom, and above all in the playground. If the game is not fair- if the rules are not respected, if there is cheating or bullying- we do not accept the

⁴² David G. Victor, *Global Warming Gridlock: Creating More Effective Strategies for Protecting the Planet* 40, Cambridge Univ. Press (2011).

⁴³ Inter-governmental Panel on Climate Change, *Synthesis Report: Glossary* (2023).

⁴⁴ *Id*

⁴⁵ *supra n.43*

result. At a more sophisticated level, this concept of fairness applies to international negotiations".⁴⁶ Why does procedural justice play a key role in shaping the international climate change regime? Young explains that, climate change belongs to an 'identifiable and significant' class of environmental issues which exhibit a constant pattern of features.⁴⁷ The most prominent aspects of these features are_ the need for a unanimous solution by all States and not just by a small number; the lack of trustworthy data for a cost-benefit analysis suited to convince States that benefits of the program for combating climate change outweigh the costs;⁴⁸ the need to promote a sense of legitimacy for the solutions that are adopted in order to achieve the implementation of and compliance with the decisions that are taken. Climate change meets all these conditions. With respect to global solution, no State has the capacity to impose a solution on climate problems because no group of States enjoy such hegemonic power.⁴⁹ It is therefore essential to come to an agreed outcome among all the State Parties to the negotiating process. This can be achieved by giving to all States the effective possibility to make their voice heard while negotiating on a global climate regime.

The lack of trustworthy data for a cost-benefit analysis fails to convince States that the benefits coming from adopting a global climate regime would outweigh the costs from repairing the damages occurred by the increase in the global temperature. In order to establish a sense of legitimacy, it is imperative that the implementation of a global climate regime

⁴⁶ Michael Zammit Cutajar, *Brussels Equity Workshop*, Nov. 6-7, 2012.

⁴⁷ Oran Young, *Does Fairness Matter in International Environmental Governance? Creating an Effective and Equitable Climate Regime, Toward a New Climate Agreement: Conflict, Resolution, and Governance* 17, C. Todd, J. Hovi & D. McEvoy eds., Routledge (2013).

⁴⁸ Stephen M. Gardiner, *Climate Justice*, *The Oxford Handbook of Climate Change and Society* (pp. 309-322). Oxford University Press (2012)

⁴⁹ Esty, *Revitalizing Global Environmental Governance for Climate Change*, 15 *Global Governance* 427 (2009).

is not contingent on the financial commitments made by countries. It is rather the feeling that the content of the agreement is just that can drive States towards its implementation. It is therefore essential that a climate of 'trust' be established between states during negotiations so as to foster not only communication on their intentions but also a sharing of objectives to be achieved through collective participation.⁵⁰ Following the line of Young's reasoning ensures procedural justice in terms of effective participation of all States, and procures results and transparency of data, which are fundamental internationally in the whole process of making laws for issues elected to climate.

3. The Concept of Climate Justice

Climate justice is a formal request for a fair distribution of emission burdens and costs for climate actions with a view to protecting vulnerable people from the adverse impacts of climate change, providing protection for future generations and a transparent and inclusive procedural process. However, the concept has gained prominence as a different notion. When it comes to climate justice, scholars seem to be in disagreement on a specific definition. Gardiner refers to 'varieties of justice' applicable to climate change: the global, the intergenerational, and the theoretical one.⁵¹ The International Bar Association (IBA) launched the Task Force on Climate Change Justice and Human Rights in November 2012, following the proposal put forward by the former UN Secretary-General's Special Envoy for Climate Change Mary Robinson.⁵² It is interesting to see that the concept of climate justice shares some similarities with the concept of sustainable

⁵⁰ Daniel H. Cole, *Trust, Cooperation, and Polycentric Climate Negotiations*, 21 *Duke Envtl. L. & Pol'y F.* 227 (2013).

⁵¹ Stephen M. Gardiner, *supra* n48

⁵² Int'l Bar Ass'n Climate Change Justice & Human Rights Task Force, *Achieving Justice and Human Rights in an Era of Climate Disruption* xvii (2014).

development with regard to the history of its formulation. Similar to sustainable development, set down by the later UN Special Envoy Gro Harlem Brundtland, the concept of climate justice came on the input of the UN Special Envoy Mary Robinson. Two women UN Special Envoys have contributed to the formulation of two revolutionary environmental concepts.⁵³ The IBA's Task Force adopted the following definition of climate change justice:

“To ensure communities, individuals and governments have substantive legal and procedural rights relating to the enjoyment of a safe, clean, healthy and sustainable environment and the means to take or cause measures to be taken within their national legislative and judicial systems, where necessary, at regional and international levels, to mitigate sources of climate change and provide for adaptation to its effects in a manner that respects human rights”.

As the report explains, climate justice involves the rights and responsibilities that corporations, individuals, and governments have towards vulnerable populations who will be disproportionately affected by climate change.⁵⁴ It is widely acknowledged that climate change has the potential to undermine a wide range of internationally protected human rights, such as the right to life, self-determination, water, food, health, and adequate standards of living.⁵⁵ Its effects will mostly affect those who have contributed the least to human

⁵³ James Meadowcroft & Daniel J. Fiorino, eds., *Conceptual Innovation in Environmental Policy*, MIT Press (2017)

⁵⁴ Report of the Special Rapporteur on Human Rights and the Environment, U.N. Doc. A/74/61 (2019).

⁵⁵ Office of the U.N. High Comm'r for Human Rights, Report on the Relationship Between Climate Change and Human Rights, U.N. Doc. A/HRC/10/61 (2009). See also Human Rights Council no 7/23.

induced climate change as mentioned earlier.⁵⁶ Some of the issues made in the aforementioned discussions are worthy of attention. The first one has to do with the human dimension of the concept of climate justice which covers the impacts on individuals and aims to provide protection for those adversely affected. By doing so, it refocuses international climate law discourse onto the needs and subjective rights of individuals.⁵⁷ This also explains why climate justice, according to a copious part of the scholarship, falls within the human-rights based approach to climate change.⁵⁸

Another aspect concerns those who are regarded as vulnerable to the effects of climate change. Vulnerability issues emerged in the First Intergovernmental Panel on Climate Change (IPCC) Assessment report which highlighted how “small low-lying island states and large populations living in low-lying coastal areas will be increasingly vulnerable to the combination of sea level rise, storm surges and coastal flooding”.⁵⁹ According to the 2009 Annual Report of the United Nations High Commissioner for Human Rights, the effects of climate change will be felt most acutely by vulnerable groups such as women, children and indigenous people.⁶⁰ Some scholars have even argued that the notion of vulnerable people should be extended to include the notion of future

⁵⁶ *Id*, section 2.2

⁵⁷ Franziska Knur, The United Nations Human Rights-Based Approach to Climate Change - Introducing a Human Dimension to International Climate Law, in *Climate Change: A Threat to Peace: Impacts on Cultural Heritage and Cultural Diversity* 51 (Peter Lang ed., Peter Lang GmbH 2015).

⁵⁸ Bridget Lewis, *The Rights of Future Generations within the Post-Paris Climate Regime*, 7 *Transnat'l Env'tl. L.* 87, 89 (2018).

⁵⁹ Inter-governmental Panel on Climate Change, *The First Assessment Report*, at 24 (1990).

⁶⁰ Office of the U.N. High Comm'r for Human Rights, Report on the Relationship Between Climate Change and Human Rights, U.N. Doc. A/HRC/10/61 (2009) <https://www.ohchr.org/Documents/Press/AnalyticalStudy.pdf>.

generations as well. As to who are responsible for the climate change, climate Justice holds single individuals, corporations and governments responsible for climate change issues. It needs to be noted that the concept of climate justice has gained an independent notion quite recently.

Justice needs to be interwoven with the climate debate. This includes its crucial role in designing the international climate change regime. It is not by chance that the concept of Just Climate Agreement came up in the last few years.⁶¹ The binominal expressions 'just' and 'agreement' pose questions which can one assess the degree of justice in a climate agreement and who can assess that. The following sections will present two contrasting perspectives that should be considered before engaging in a discourse on the justice of a climate agreement. As if we were photographers, we can examine each climate agreement from a variety of perspectives, and depending on the perspective chosen, the image will take a different form. Similarly, in the context of climate change, the perspective from which we examine a climate agreement leads us to a different conclusion regarding the justice of that agreement.

3.1 The Perspective of Civil Society

When it comes to climate change the question of who evaluates the 'justness' of the international climate change regime becomes important. Such a question is interlinked with the question of the legitimacy of international law. The distinction between the legitimacy and justice of international law is not clear-cut. However, it is interesting to note that the question of

⁶¹Sunita Narain, 'Building an effective and just climate agreement' 10 *The UNESCO courier* 11; Carl Cassegard and others, 'COP as a Global Public Sphere, News media frames, movement frames, and media standing of climate movement actors' in *Climate Action in a Globalizing World - Comparative Perspectives on Environmental Movements in the Global North* (Routledge 2017).

the legitimacy of international law began to emerge as a response to a new course in international governance specifically, since international governance, has increasingly affected not only States but also individuals and other non-state actors.⁶² Thus, the assessment of how just is any international regime should be answered by those who are impacted by the effects of the regime as well.⁶³ Climate change complicates this assumption due to its global scope, with some describing the severity of the issue by stating that 'climate change is a global threat graver than terrorism'.⁶⁴ Its global dimension has found its place in the climate regime since its first formulation in 1992. The preamble to the United Nations Convention on Climate Change says that "change in the Earth's climate and its adverse effects are a common concern of humankind". Defining climate change as a 'common concern of humankind'⁶⁵ could sound less immediate at conveying the message of climate global impacts than defining climate change in terms of 'a global threat graver than terrorism'.⁶⁶ However, both expressions do aim to achieve the same effect which is to convey the message that climate change

⁶² Daniel Bodansky, *Legitimacy in International Law and International Relations*, in *Interdisciplinary Perspectives on International Law and International Relations 2* (Jeffrey L. Dunoff & Mark A. Pollack eds., Cambridge Univ. Press 2012).

⁶³ Samantha Besson & John Tasioulas, *Legitimacy of International Law*, in *THE PHILOSOPHY OF INTERNATIONAL LAW 117* (Samantha Besson & John Tasioulas eds., Oxford Univ. Press 2010).

⁶⁴ Daniel Bodansky, *The Art and Craft of International Environmental Law 139* (Harvard Univ. Press 2010).

⁶⁵ Preamble to the UNFCCC, 1992

⁶⁶ Jutta Brunnée et al., *The Global Climate Regime: Wither Common Concern?* in *Coexistence, Cooperation and Solidarity: Liber Amicorum Rüdiger Wolfrum 722, 722-23* (Holger Hestermeyer & Rüdiger Wolfrum eds., Martinus Nijhoff Publishers 2012). See also - Nicholas A. Robinson, *Dictionary of Environmental and Climate Change Law 57* (Edward Elgar 2013) (entry: "Common Human Concerns"), Daniel Bodansky, *The Art and Craft of International Environmental Law 139* (Harvard Univ. Press 2010).

will affect the entire world, the present as well as the future generations. Being a common concern for human kind makes it legitimate for the civil society as a whole to evaluate how just the commitments undertaken by State Parties are. From this perspective, the degree of justice of any commitments shall be assessed in light of the increasing intensity of the “adverse effects” which are going to be felt by the civil society at a global level.⁶⁷ In addition to that, the assessment of justice has to be carried out in terms of the rate of the impacts on the present as well as future generations. This view is shared by those who argue in favor of a human-centered ethical approach to a climate change solution.⁶⁸ This approach evaluates acts in light of their consequences on human beings and differs from the environmental-centered ones also called eco-centric approaches which evaluate human action in light of its impacts on the environment.⁶⁹ Based on this human-centered approach, namely the idea that justice should be assessed in terms of impacts of a global climate agreement on populations, it has been argued that the climate regime has an inevitable ethical dimension.⁷⁰

In accordance with the human-centered approach, the determination of significant impacts, the justification for their importance, the extent of protection owed to individuals, the manner in which uncertainty should be addressed, and the

⁶⁷ United Nations Framework Convention on Climate Change Art. 1, May 9, 1992, 1771 U.N.T.S. 107

⁶⁸ Simon Caney, *Climate Change, Human Rights and Moral Thresholds*, in *Human Rights and Climate Change* 69 (Stephen Humphreys ed., Cambridge Univ. Press 2010).

⁶⁹ Jorge E. Viñuales, *Balancing Effectiveness and Fairness in the Redesign of the Climate Change Regime*, 24 *Leiden J. Int'l L.* 223, Cambridge Univ. Press, (2011)

⁷⁰ Simon Caney, *Climate Change and the Duties of the Advantaged*, 13 *CRITICAL REV. INT'L SOC. & POL. PHIL.: DEMOCRACY, EQUALITY, AND JUSTICE* 203, 203–28 (2010). See also, JEREMY MOSS, *CLIMATE CHANGE AND JUSTICE* (Cambridge Univ. Press 2015).

selection of appropriate indicators are all inherently ethical decisions. This gives rise to the question of what level of risk is acceptable, thereby bringing issues of justice to the fore. Caney proposes that dangerous climate change should be evaluated based on its impact on human rights.⁷¹ Consequently, economic indicators such as GDP are frequently employed, despite their inherent limitations in the context of climate change, which is complex and uncertain. The multifaceted effects of climate change introduce a high degree of uncertainty, rendering it challenging to eliminate all risks entirely. This undermines the reliability of economic indicators as a measure of climate impacts. That said, evaluating an agreement based on its actual ability to prevent and reduce impacts on populations raises another enduring issue: identifying the most appropriate indicators to assess the effectiveness of an agreement in terms of impact reduction.

Thus, it can be said that an international climate agreement results to be just as long as it is considered to be capable of being effective. In the context of climate change, this means being able to mitigate and prevent climate change impacts on populations. At this point, one question arises: what is it that drives States to evaluate a climate agreement as just? Do States consider a climate agreement to be just on the basis of how much the agreement will mitigate and prevent adverse climate change impacts? The next paragraph will look at the perspective of States.

3.2 The Perspective of States

Since the inception of the modern concept of Statehood, it has been held that States should represent the interests of their population.⁷² In this regard, recent court decisions have ruled that states have a duty to protect their citizens from the adverse

⁷¹ Simon Caney, *Just Emissions*, 40 *Phil. & Pub. Aff.* 255, 255-300 (2012)

⁷²Malcolm Evans, *International Law* 177 (3d ed., Oxford Univ. Press 2010).

effects of climate change.⁷³ On these grounds, the focus can shift from people, to their respective countries. The question is whether this shift in perspective can bring about a change in the assessment of fairness. From a general public international law perspective, the sense of fairness guides the success of an international agreement. At first glance the concept of ‘Just Agreement’ does not seem applicable to a global climate agreement exclusively. Any agreement perceived as unfair by potential State Parties would likely not be signed by them. This is because one fundamental rule of treaty law is that treaties depend on state consent in accordance with Art 11 Vienna Convention on Law of the Treaties (VCLT).⁷⁴ This voluntary nature of treaties has been seen as the reason for why treaty norms are often characterized as commitments rather than obligations.⁷⁵ The voluntary nature of treaties determines the self-binding quality of treaty law.⁷⁶ States do not come to the negotiation table with the objective of writing a fair agreement in terms of Plato’s idea of absolute justice. Rather, each State is assumed to try to get the best deal for itself that it can. States enter into a treaty by pursuing their self-interests.⁷⁷ A State will enter into an agreement when it thinks that the benefits of doing so exceed the costs and not otherwise.⁷⁸ This assessment of justice from population to states.

⁷³ See *Foster v. Washington Dep’t of Ecology*, No. 14-2-25295-1 SEA (Wash. Super. Ct. Nov. 19, 2015). *Asghar Leghari v. Federation of Pakistan*, (2015) W.P. No. 25501/2015 (Lahore High Ct. Green Bench). *Urgenda Foundation v. Kingdom of the Netherlands*, Supreme Court of the Netherlands, [19/00135], Dec. 20, 2019.

⁷⁴ Vienna Convention on the Law of Treaties, May 23, 1969, 1155 U.N.T.S. 331.

⁷⁵ Antonio Marchesi, *Obblighi di Condotta e Obblighi di Risultato* (Giuffrè 2003)

⁷⁶ Daniel Bodansky, *The Art and Craft of International Environmental Law* 157, Harvard Univ. Press (2010).

⁷⁷ Scott Barrett, *Environment and Statecraft: The Strategy of Environmental Treaty-Making* xiv (Oxford Univ. Press 2003).

⁷⁸ DANIEL BODANSKY, *THE ART AND CRAFT OF INTERNATIONAL ENVIRONMENTAL LAW* 159 (Harvard Univ. Press 2010).

What has been interesting to see is that when it comes to country states level, the climate change discourse on justice has been carried out in terms of costs and benefits.⁷⁹ In other words, this change in perspective, from population to their representatives, implies a different way of assessing fairness. This is due to the features of the problem itself. Climate change is certainly a transnational environmental problem and that makes it harder to remedy than domestic problems simply because of principles of sovereignty.⁸⁰ Under international law,⁸¹ States have the sovereign right to exploit their own resources in accordance with their own environmental policies.⁸² This suggests that states do not engage in negotiations with the intention of making their resources available to address a shared challenge. Rather, their objective is to exploit their national resources in a way that maximizes benefit for their state. According to Barrett, States adopt the rule of cost-benefits analysis, in particular, when they are asked to protect global environmental resources for example the ozone layer, the entirety of the earth's biodiversity and the global climate. Thus, each State prefers to avoid paying for the protection of the environment knowing at the same time that, by doing so, they harm it. It is, therefore, not surprising that

See also, ORAN YOUNG, DOES FAIRNESS MATTER IN INTERNATIONAL ENVIRONMENTAL GOVERNANCE, IN TOWARD A NEW CLIMATE AGREEMENT: CONFLICT, RESOLUTION AND GOVERNANCE 189, 189-90 (Jon Hovi, Todd L. Cherry & David M. McEvoy eds., Routledge 2014).

⁷⁹ Robert E. Scott & Paul B. Stephan, *Self-Enforcing International Agreements and the Limits of Coercion*, 2004 WIS. L. REV. 629

⁸⁰ Scott Barrett, *Environment and Statecraft: The Strategy of Environmental Treaty-Making*, at xi (Oxford Univ. Press 2003).

⁸¹ Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, 1996 I.C.J. 226 (July 8).

⁸² Stockholm Declaration on the Human Environment, Principle 21, U.N. Doc. A/CONF.48/14/Rev.1 (1972); Rio Declaration on Environment and Development, Principle 2, U.N. Doc. A/CONF.151/26 (Vol. I) (1992).

one of the principles of the UNFCCC was the principle of cost-effective measures:

Art. 3 UNFCCC: “[T]aking into account the fact that policies and measures to deal with climate change should be cost-effective so as to ensure global benefits at the lowest possible cost.”⁸³

In the context of Climate Change, the interpretation of justice in terms of a cost-benefit analysis has acquired a greater emphasis as well as international support especially after the release of the Stern Review on “The Economics of Climate Change.”⁸⁴ The Review arrived at the conclusion that “the benefits of strong and early action [aimed to tackle global warming] far outweigh the economic costs of not acting”. In light of the review, tackling climate change ought to represent a source of wealth and growth both for rich and poor countries. It was argued that changes in low-carbon energy technologies and related low-carbon goods and services would create significant business opportunities,⁸⁵ though one criticism of the Review was its lack of an exact estimate of the costs associated with climate policy.⁸⁶ Thus, one could say that States perceive an international agreement as just as long as it is just to them in terms of benefits which they may potentially gain upon the agreement’s implementation. Consequently, the assessment of the fairness of a climate agreement varies significantly depending on the perspective of States that do not prioritize the agreement's capacity to mitigate the adverse effects of climate change on their populations, but the extent to

⁸³ United Nations Framework Convention on Climate Change Art. 3, May 9, 1992, 1771 U.N.T.S. 107

⁸⁴ Nicholas Stern, *Stern Review on the Economics of Climate Change* (H.M. Treasury 2006).

⁸⁵ William D. Nordhaus, *A Review of the Stern Review on the Economics of Climate Change*, 45 *J. Econ. Literature* 686 (2007).

⁸⁶ *Id*

which the agreement's capacity to balance economic costs and benefits.

5. Conclusion

In conclusion, justice plays an indispensable role in addressing the multifaceted challenges of climate change within the international climate regime. Climate change is essentially an issue of injustice, manifesting in the unequal distribution of harmful emissions worldwide and the subsequent uneven distribution of adverse impacts. These impacts disproportionately harm certain countries—often those that have contributed the least to harmful emissions—while benefiting others. Furthermore, climate change poses a significant threat to future generations, both in terms of adverse impacts and the distribution of costs. Additionally, the complexities of climate governance hinder the ability to ensure that all stakeholders have the opportunity to voice their concerns and influence decisions during climate negotiations. In this context, the call for justice is raised by those who align themselves with one of the four issues of injustice mentioned above. Additionally, this call is echoed by those who advocate for a specific interpretation of climate justice as a demand for targeted protection for those most affected by the adverse effects of climate change and the most vulnerable to its consequences. Within this framework, two main perspectives emerge for evaluating the fairness of a climate agreement. Civil society tends to assess the justice of a climate agreement in terms of its effectiveness in preventing and mitigating the adverse impacts of climate change on populations. In contrast, States adopt a distinctly different perspective, viewing an agreement as fair if it does not impose significant costs and, ideally, brings benefits to the state itself. This divergence reveals that the definition of justice varies considerably between States and civil society, with the same agreement potentially being deemed both fair and unfair, depending on the perspective taken.